



## **STATEMENT OF THE CASE**

Robert L. Frank, Jr. appeals his twenty-year aggregate sentence following his convictions for sexual misconduct with a minor, as a Class B felony, and sexual battery, as a Class D felony, after Frank pleaded guilty. Frank raises a single issue for our review, which we restate as whether his sentence is inappropriate in light of the nature of the offenses and his character. We affirm.

## **FACTS AND PROCEDURAL HISTORY**

Between October 7, 2009, and November 26, 2009, Frank engaged L.L.M., a minor, in sexual intercourse on multiple occasions. In December of 2009, Frank compelled T.F., his pregnant wife, through force or the imminent threat of force, to engage in deviate sexual conduct. The crime against his (now former) wife occurred in the presence of their two young children.

On March 15, 2010, the State filed an information against Frank, in which the State alleged that Frank had engaged in sexual misconduct with a minor, as a Class B felony, and was an habitual offender. That same day but under a different cause number, the State alleged that Frank had committed criminal deviate conduct, as a Class B felony, and was an habitual offender. The State also had charges pending against Frank under a third cause number for invasion of privacy, as a Class A misdemeanor, after Frank allegedly violated a no-contact order with T.F.

On November 19, 2010, Frank entered into a plea agreement with the State. Pursuant to that agreement, Frank admitted as true the factual basis for the State's charge of sexual misconduct with a minor, as a Class B felony. Frank also admitted as true the

factual basis for the lesser offense of sexual battery, as a Class D felony, for the crime against his wife. In exchange for those admissions, the State dismissed the remaining allegations, including both allegations of Frank being an habitual offender. The parties further agreed that “the sentence shall be capped at 20 years.” Appellant’s App. at 41.

Following a sentencing hearing, the trial court ordered Frank to serve an aggregate, executed term of twenty years. In determining that sentence, the court reasoned in relevant part as follows:

I’m not sure I get the point about these [being] common B or D felony offenses, not extraordinary B or D felony offenses. In that regard . . . we’re talking about sexual misconduct with a minor and sexual battery. There are victims, live victims of these offenses. . . . In these cases we have individuals who are victims. Which individuals who were victimized in a very personal matter, manner. And I would think that by almost any definition of extraordinary felonies . . . , these would meet that definition. With regards to the suggestion that Mr. Frank receive at least a partially suspended sentence so he can have the opportunity to show that he can be, he can lead a law abiding life, be a law abiding citizen, the evidence is . . . pretty clear that he can’t. I counted fourteen felony convictions. And . . . [s]ince he’s been an adult, he has been ordered to serve twenty years, actually, twenty-three years and sixty days of jail time since he’s turned eighteen.<sup>[1]</sup> I mean, and with probation violations, he’s actually served most of that time. I mean, he obviously earned good time credit in serving these sentences or he’d still be in jail. But most of that twenty-three years and sixty days has actually been served through the original sentence plus probation violations. And Mr. Frank has violated probation in every single case. Every single felony case that he’s been placed on probation he has violated that probation at least once. So I think that Mr. Frank’s had an opportunity to demonstrate whether he can be a law abiding citizen or not.

Transcript at 28-29. This appeal ensued.

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<sup>1</sup> At the time of the sentencing hearing, Frank was thirty-seven years old.

## DISCUSSION AND DECISION

Frank contends that his twenty-year sentence, which is the maximum sentence for a Class B felony, is inappropriate in light of the nature of the offense and his character. See Ind. Code § 35-50-2-5. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offense and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration original).

Moreover, “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. The principal role of appellate review is to attempt to “leaven the outliers.” Id. at 1225. Whether we

regard a sentence as inappropriate at the end of the day turns on “our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case.” Id. at 1224.

The entirety of Frank’s substantive argument on appeal is as follows:

The court without setting forth its reasons or weighing the aggravating and mitigating factors sentenced Frank to the fully executed maximum sentence. During the sentencing hearing, Frank expressed remorse for his actions, Frank took responsibility for his actions by pleading guilty, and although Frank has an extensive prior criminal history, the nature of his prior criminal history is [de]void of crimes of violence or sex. The only aggravating factor appears to be Frank’s extensive prior criminal history noted in the presentence report. Accordingly, in light of the nature of the present offenses and Frank’s admitted remorse and acceptance of responsibility[,] imposition of the fully executed sentence was inappropriate.

Appellant’s Br. at 6-7. We cannot agree with Frank’s contention that his twenty-year sentence is inappropriate.

As an initial matter, we note that the trial court’s sentencing statement makes clear that the court considered Frank’s lengthy criminal history to be a serious aggravator and that the court did not find any significant mitigators. On the record before us, we cannot fault the court for those conclusions, and Frank does not argue on appeal that the trial court abused its discretion in reaching those conclusions or that his proffered mitigators were significant and clearly supported by the record. See Anglemyer v. State, 868 N.E.2d 482, 490-91 (Ind. 2007), clarified on other grounds on reh’g, 875 N.E.2d 218 (Ind. 2007); Ousley v. State, 807 N.E.2d 758, 763 (Ind. Ct. App. 2004). We will not make those arguments on his behalf.

Neither is Frank's aggregate sentence inappropriate in light of the nature of the present offenses or his character. He engaged a minor child in sexual intercourse on multiple occasions over the course of several weeks, and he forced his wife to engage in deviate sexual conduct in the presence of their children. Moreover, as the trial court thoroughly discussed, Frank's vast criminal history and history of probation violations are ample evidence of his poor character. And in exchange for pleading guilty, the State dismissed the remaining allegations against Frank, including two allegations that he was an habitual offender. His twenty-year executed sentence is not inappropriate.

Affirmed.

ROBB, C.J., and CRONE, J., concur.