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**IN THE
COURT OF APPEALS OF INDIANA**

RICKEY L. SCHULTZ,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 64A03-0702-CR-80
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Mary R. Harper, Judge
Cause No. 64D05-0511-FC-9613

July 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Rickey Schultz appeals his sentence enhancement of ten years due to his status as a repeat sexual offender.¹ Schultz raises one issue on appeal, which we revise and restate as whether the ten-year sentence enhancement for being a repeat sexual offender was statutorily authorized. We reverse and remand.

The relevant facts follow. On July 9, 2005, the Portage Police Department received a report that several children had been molested by Schultz. The State charged Schultz with five counts of child molesting as class C felonies. On November 14, 2005, the State filed its notice to seek an enhanced sentence based on Schultz's prior convictions.²

On April 25, 2006, Schultz and the State entered into a plea agreement, where Schultz pleaded guilty to two counts of child molesting as class C felonies, and being a repeat sexual offender. For each of the two counts of child molestation, the State and Schultz agreed to a sentence of eight years in the Department of Correction, with six years suspended on probation. The sentences were to run concurrently. The sentence for the enhancement was left to the trial court's discretion.

On November 21, 2006, Schultz was sentenced according to the plea agreement and received eight years in the Department of Correction for each count, with six years suspended. On the repeat sexual offender enhancement, Schultz was sentenced an additional ten years in the Department of Correction, for a total sentence of eighteen

¹ Ind. Code § 35-50-2-14 (Supp. 2005) (subsequently amended by Pub. L. No. 6-2006, § 9, Pub. L. No. 140-2006, § 37, Pub. L. No. 173-2006, § 37).

² Schultz had three previous convictions for aggravated criminal sexual abuse in the State of Illinois.

years in the Department of Correction, with six years suspended. When finding a defendant is an habitual criminal offender, a court is required to impose an habitual offender enhancement upon only one of the convictions, and to specify the conviction thus enhanced. Winn v. State. 748 N.E.2d 352, 360 (Ind. 2001). In this case, the trial court did not attach the enhancement to a specific conviction sentence as required.

The sole issue is whether Schultz's ten-year enhanced sentence for being a repeat sexual offender was statutorily authorized. "Within the applicable statutory and constitutional parameters, sentencing decisions rest within the sound discretion of the trial court and are reversed only for an abuse of that discretion." Harrison v. State, 699 N.E.2d 645, 650 (Ind. 1998).

Schultz's sentence enhancement of ten years was outside the statutory authority of the trial court. Under Ind. Code § 35-50-2-14(e), "[t]he court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years." Schultz's underlying offense was child molesting, a class C felony. Indiana Code § 35-50-2-6 (Supp. 2005) provides an advisory sentence of four years for class C felonies. The trial court sentenced Schultz to ten years for the repeat sexual offender enhancement, which is six years more than the advisory sentence.³

Therefore, we conclude that the trial court lacked the statutory authorization to sentence Schultz to ten years under the repeat sexual offender enhancement statute. See,

³The State agrees that the trial court sentenced Schultz far beyond the advisory sentence for child molesting as a class C felony. The State also agrees that we should remand this case to the trial court for resentencing "to impose a sentence 'that is the advisory sentence for the underlying offense.'" Appellee's Brief at 4.

e.g., Primmer v. State, 857 N.E.2d 11, 18-19 (Ind. Ct. App. 2006) (holding that the trial court exceeded its statutory authority by sentencing defendant to ten years, when a class C felony only carries an advisory sentence of four years).

For the foregoing reasons, we reverse and remand to the trial court, with instructions to re-sentence the defendant consistently with this opinion.

Reversed and remanded.

MAY, J. and BAILEY, J. concur