ATTORNEY FOR APPELLANT:

DUSTIN HOUCHIN
Houchin Law Office, P.C.
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Special Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CHARLES G. PARSONS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 88A01-0606-CR-259
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WASHINGTON CIRCUIT COURT
The Honorable Robert Bennett, Judge
Cause No. 88C01-9801-CF-4

September 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Charles Parsons appeals his forty-year sentence for class A felony child molesting. We affirm.

Issue

Parsons questions whether the trial court properly sentenced him.

Facts and Procedural History

Between October 21, 1995, and October 21, 1996, thirty-nine-year-old Parsons had his ten-year-old stepdaughter, A.S., place her mouth on his penis, fondled A.S., had A.S. fondle him, and masturbated in front of A.S.[1] A.S.'s mother sometimes participated with Parsons in the abuse of her daughter. In fact, Parsons claimed that A.S.'s mother had encouraged him to perform sexual acts with and in front of A.S. Eventually, A.S. reported the abuse to a school counselor. On January 5, 1998, the State charged Parsons with class A felony child molesting, two counts of class C felony child molesting, class D felony dissemination of matter harmful to minors, and class D felony neglect of a dependent. On January 29, 1998, Parsons pled guilty to all charges. Parsons's plea agreement contained no recommendation to the trial court regarding sentencing.

Prior to sentencing, the trial court ordered a psychological evaluation of Parsons. A clinical neuropsychologist concluded that Parsons had "an extensive history of manic depressive illness" and that he would "clearly require consistent psychopharmacologic

[1] For purposes of his pre-sentence investigation report, Parsons stated that he had married A.S.'s mother on October 21, 1995. Apparently, that marriage was not legal, however, and the couple was actually married in 1998.

treatment on a permanent basis." Appellant's App. at 3. The evaluator also expressed his concern that "should [Parsons] not ultimately be incarcerated he may, as has been the case previously, rely excessively if not exclusively on divine intervention, and thereby discontinue pharmacotherapy, the ultimate effects of which will certainly put himself, and possibly others, at considerable risk." *Id*.

On May 19, 1998, the trial court held a sentencing hearing. At the hearing, Parsons testified that he had committed the offenses after he discontinued his medication for manic depression and began abusing alcohol. The trial court sentenced Parsons to forty years for class A felony child molesting, four years for each of the two class C felony child molesting convictions, one and one-half years for class D felony dissemination of matter harmful to minors, and one and one-half years for class D felony neglect of a dependent. The court ordered all of the sentences to run concurrently. Parsons now belatedly appeals his forty-year sentence for class A felony child molesting.

Discussion and Decision

A. Consideration of Aggravating and Mitigating Circumstances

At the time of Parsons's sentencing, the sentencing statute for class A felonies read in relevant part as follows: "A person who commits a Class A felony shall be imprisoned for a fixed term of thirty (30) years, with not more than twenty (20) years added for aggravating circumstances or not more than ten (10) years subtracted for mitigating circumstances[.]" Ind. Code § 35-50-2-4 (1998). For his class A felony conviction, the trial court sentenced Parsons to an enhanced term of forty years.

Parsons claims that the trial court improperly considered and balanced certain

aggravating and mitigating circumstances. Our standard of review of sentencing decisions is well settled. Sentencing is a determination within the sound discretion of the trial court, and we will not reverse the trial court's decision absent an abuse of discretion. *Beck v. State*, 790 N.E.2d 520, 522 (Ind. Ct. App. 2003).

> If the [trial] court relies on aggravating or mitigating circumstances to deviate from the presumptive sentence, it must (1) identify all significant mitigating and aggravating circumstances; (2) state the specific reason why each circumstance has been determined to be mitigating or aggravating; and (3) articulate the court's evaluation and balancing of the circumstances.

Merlington v. State, 814 N.E.2d 269, 272 (Ind. 2004).

At Parsons's sentencing hearing, the trial court identified two aggravating circumstances: the likelihood that Parsons would reoffend and his need for corrective or rehabilitative treatment that could best be provided by committing the person to a penal facility.[2] As mitigators, the trial court noted that Parsons had almost no criminal history and that he accepted responsibility for his crimes against A.S. by pleading guilty. The court balanced the factors and concluded that the aggravators outweighed the mitigators, as it stated in relevant part:

> I'm concerned about [Parsons] willing to stay on his medication as a result to prior information. … Uh, as a mitigating factor I think there's no history of criminal activity or delinquency except for that old case.[3] …. [Court begins reading aloud from psychological evaluation]: 'I do have concerns that should he not ultimately be incarcerated he may, as has been the case previously, rely excessively, if not exclusively, on divine intervention and may thereby

[2] The trial court mentioned certain other factors that were identified as possible aggravators by the probation officer who prepared Parsons's pre-sentence investigation report. However, the trial court did not formally adopt them at sentencing, so we will presume that the trial court did not assign weight to them for purposes of determining Parsons's sentence.

[3] In November1979, Parsons was charged with first degree arson in Colorado Springs, Colarado. In May 1980, he was found not guilty by reason of insanity.

> discontinue psychotherapy, pharmacological [] therapy. The ultimate effects, which will certainly put himself and possibly others at risk.' …. [Court resumes sentencing statement]: I think I should take into consideration that you do plead guilty. It showed me to some degree that you are willing to accept responsibility for what you've done. …. The fact of the matter is that I have no confidence in letting you … go without some sort of incarceration. …. I don't think it's safe to the public to let you … go right now. I think you … need some help. Now the question is whether or not you're going to get it and where you're going to go. I'm going to recommend that you receive it, that's what's been done by the Department of Corrections.

Tr. at 145-46.

First, Parsons argues that the trial court failed to give sufficient mitigating weight to his lack of criminal history. As shown above, the trial court did acknowledge at sentencing that Parson's prior criminal record consisted of only one item, a 1979 arson charge that resulted in a finding of not guilty by reason of insanity. A trial court is not required, however, to assign the same weight or credit to mitigating evidence as does the defendant. *Love v. State*, 741 N.E.2d 789, 793 (Ind. Ct. App. 2001). It was well within the discretion of the trial court to give little weight to Parson's sparse criminal history.

Second, Parsons claims that the trial court should have considered as a significant mitigator the opinion of the probation officer who prepared the pre-sentence investigation report ("the PSI") that Parsons's crimes were the result of circumstances unlikely to recur. While the court acknowledged this statement, it also noted this was the case "mostly because of the fact that [A.S.] is no longer in the home and [is] unlikely to be … returned." Tr. at 145. Parsons notes that there is no evidence that he committed similar illegal acts prior to becoming involved with his wife. As the State points out, however, Parsons showed no intent of distancing himself from A.S.'s mother. In fact, he married her after he was arrested

and pled guilty to these crimes against A.S. Parsons also directs our attention to evidence that he had benefited from counseling provided by his pastors. The trial court focused instead upon the psychological evaluation, which indicated that Parsons had a history of discontinuing his medication and relying instead upon "divine intervention" to cure his manic depression. *Id*. at 147-48. It appears that for these reasons, the trial court did not consider the unlikelihood of recurrence as a significant mitigator. In our view, the court did not abuse its discretion.

Finally, Parsons contends that the trial court should have considered his mental illness to be a significant mitigator. While Parsons obviously suffers from a serious mental condition, he has successfully managed it with medication in the past. He chose to discontinue his medication and consume alcohol, however, and he claims that these decisions led him, at least in part, to abuse A.S. As noted by the State, Parsons knew, even during this period of drinking alcohol and not taking his medication, that his abuse of A.S. was wrong. He testified that he and his wife had spoken many times about discontinuing the molestation. *See id*. at 83-84 ("we'd go to church or something and then come home and she'd say, 'we've got to stop, we've got to stop[,]' … then … "we'd go to church and I'd say, 'now we've got to get a hold of this situation[.]'").

Our supreme court has held that there are several considerations that bear on the weight, if any, that should be given to mental illness in sentencing, including: (1) the extent of the defendant's inability to control his behavior due to the disorder, (2) overall limitations on functioning, (3) the duration of the mental illness, and (4) the extent of any nexus between the disorder and the commission of the crime. *Weeks v. State*, 697 N.E.2d 28, 30 (Ind. 1998).

Here, while Parsons claimed some connection between his manic depression and the crimes he committed against A.S., he had been able to control his illness with medication, which he voluntarily discontinued prior to these crimes. Also, he was able to hold a job for more than ten years prior to his arrest, indicating that his illness did not significantly limit his ability to function. Therefore, we cannot conclude that the trial court abused its discretion in not considering Parsons's manic depression a mitigating factor.

Parsons also contends that the trial court improperly assigned aggravating weight to the fact that A.S. was ten years old at the time Parsons molested her. A sentencing court may not use a factor constituting a material element of an offense as an aggravating circumstance. *Burgess v. State*, 854 N.E.2d 35, 41 (Ind. Ct. App. 2006). Pursuant to Indiana Code Section 35-42-4-3, one element of the crime of class A felony child molesting is that the victim is a "child under fourteen years of age[.]"

The trial court did not clearly identify A.S.'s age as an aggravating circumstance. Parsons claims that because the trial court relied upon the PSI report, and because the PSI report included the probation officer's identification of A.S.'s age as an "Aggravating Factor[] to consider for sentencing[,]" it follows that the trial court erred in assigning aggravating weight to this factor. Appellant's App. at 8. While it is true that the trial court reviewed the possible aggravators cited in the PSI report at the sentencing hearing, the court also stated that A.S.'s age "is not the overriding consideration because the [statute] makes it a more serious offense because of the age of the victim. *And then* we're required to consider

the aggravating and mitigating factors." Tr. at 143 (emphasis added).[4]

It is, at best, unclear whether the trial court used the victim's age as an aggravator in this case. We agree that if it relied upon that factor in aggravating Parsons's sentence, that reliance would amount to error. Any error would be harmless, however, because a single aggravating circumstance is sufficient to justify an enhanced sentence. *See Hawkins v. State*, 748 N.E.2d 362, 363 (Ind. 2001). Here, the trial court did clearly cite as aggravators the risk that Parsons might commit another crime and Parsons's need for correctional or rehabilitative treatment that could best be provided by commitment to a penal facility. These two aggravators were sufficient to support the enhancement of Parsons's sentence for class A felony child molesting.

In sum, we find no abuse of discretion in the trial court's consideration of aggravators and mitigators.

B. Indiana Appellate Rule 7(B) Review

Parsons also asks us to use our authority under Article 7, Section 6 of the Indiana Constitution to review and revise his sentence. Indiana Appellate Rule 7(B) states that this Court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

As for the nature of the offense, the applicable sentencing statute in effect at the time

[4] We note that when the trial court made this statement, it was actually referring to the PSI report prepared for Parsons's wife, who was being sentenced at the same hearing. There is no evidence to indicate that the trial court treated this issue any differently with regard to Parsons, however.

of Parsons's sentencing indicated that a range of twenty to fifty years was appropriate for a class A felony. Parsons molested his stepdaughter, blamed his mental illness for his actions even though he had stopped taking medication that had successfully controlled his illness in the past, and blamed his wife for initiating and encouraging the abuse. The devastating effect of his crimes upon A.S. is illustrated by her victim statement included within the PSI. She asked whether people could be sentenced to death for crimes like Parsons's, and she later stated, "I think he should go to jail for the rest of his life." Appellant's Supp. App. at 51.

Regarding Parsons's character, our review of the record indicates that he repeatedly victimized A.S. over a lengthy period of time, even though he was fully aware that his actions were wrong. Prior to his sentencing hearing, he married the woman with whom he abused A.S. At sentencing, he blamed his manic depression for causing him to commit these crimes, while acknowledging that he voluntarily discontinued his medication and began drinking prior to the crimes. He also attempted to downplay the seriousness of his offenses, claiming that when he apologized to A.S. for the abuse, she "kind of shrugged her shoulders on it and like it was nothing, you know." Tr. at 84. Finally, the trial court stated its concerns that Parsons might be a danger to society because he has a history of failing to consistently take his medication.

Based on the foregoing, we conclude that Parsons's sentence of forty years—ten years more than the presumptive sentence at that time—was appropriate in light of the nature of the offense and his character.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.