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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY TITUS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0705-CR-241
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John Marnocha, Judge
Cause No. 71D01-0507-FD-692

October 18, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF CASE

Appellant-Defendant, Anthony Titus (Titus), appeals his conviction and sentence for performing sexual conduct in the presence of a minor, a Class D felony, Ind. Code §35-42-4-5(c)(3).

ISSUES

Titus raises two issues on appeal on appeal, which we restate as follows:

(1) Whether the State presented sufficient evidence to sustain Titus' conviction for performing sexual conduct in the presence of a minor, and

(2) Whether the trial court properly sentenced Titus.

FACTS AND PROCEDURAL HISTORY

On June 30, 2005, around 1:00 p.m., Titus was at his apartment in South Bend, Indiana, when his five-year-old neighbor, W.M., knocked on the door asking to play with Titus' two girls. Titus told her that the girls were sleeping, but she could come inside to watch television.

Titus asked W.M. whether she had ever had braids in her hair similar to his daughters' hair. When W.M. stated she had not, Titus told her to follow him into the bathroom so he could braid her hair. W.M. sat on the toilet as Titus combed her hair. During this interaction, Titus pulled his penis out of his pants and turned W.M. toward him. Titus was squeezing his penis in his hand and told W.M. to open her mouth. When she refused, he again told her to open her mouth. W.M. still refused. Titus told W.M. not to tell her mother about the incident. W.M. then left the restroom and went into one of the girl's rooms.

Shortly thereafter, Titus' daughters woke up and all three girls had ice cream before W.M. returned back to her apartment. Later in the afternoon, W.M. told her brother what happened in Titus' apartment, but he did not believe her. As a result, W.M. told her mother about the events that transpired in Titus' apartment and asked her mother to tell her brother she was not lying. When her mother asked W.M. to clarify what she was talking about, W.M. stated, "[Titus] showed me his private part and told me to open my mouth." Thereafter, W.M.'s mother called the police and Titus was arrested.

On July 1, 2005, the State filed an Information charging Titus for performing sexual conduct in the presence of a minor, a Class D felony, I.C. §35-42-4-5(c)(3). On January 11, 2007, a jury trial was held. The jury found Titus guilty as charged and the court entered a conviction. On February 21, 2007, the trial court sentenced Titus to the Department of Correction for three years.

Titus now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Titus first contends the evidence presented by the State at trial was insufficient to support his conviction for performing sexual conduct in the presence of a minor. Specifically, Titus argues the State presented only one witness to testify regarding the events which led to Titus' conviction and that there was no physical evidence to corroborate W.M.'s story.

Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. *White v. State*, 846 N.E.2d 1026, 1030 (Ind. Ct. App. 2006), *trans. denied*. We will consider only the evidence most favorable to the judgment together with all reasonable and logical inferences to be drawn therefrom. *Id.* The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Id.*

Titus contends the State presented only one witness to testify regarding the events which led to his conviction. W.M. testified that Titus pulled his penis out of his pants and turned her toward him. Titus was squeezing his penis in his hand and told W.M. to open her mouth. When she refused he told her again to open her mouth. Indiana law holds that a single witness' uncorroborated testimony can be sufficient to sustain a conviction. *See Ware v. State*, 816 N.E.2d 1167, 1173 (Ind. Ct. App. 2004) (noting a molested child's uncorroborated testimony is sufficient to sustain a conviction."); *see also Parmley v. State*, 699 N.E.2d 288, 291 (Ind. Ct. App. 1998) (upholding a child molest conviction based solely on the child victim's uncorroborated testimony, even though the child had trouble describing the events in great detail). Thus, we conclude that the testimony of W.M. is sufficient evidence to support Titus' conviction for performing sexual conduct in the presence of a minor.

II. *Sentencing*

Titus argues that the trial court improperly sentenced him. Specifically, Titus contends that the trial court abused its discretion when considering his criminal history as an aggravating factor. Titus contends that while a criminal history is an aggravating factor for the sentencing court to consider, its significance should vary based on the gravity, nature and number of prior offenses as they relate to the current offense. In addition, Titus asserts his sentence is inappropriate in light of the nature of the offense and his character.

Our supreme court recently clarified a defendant's right to appellate review of a trial court's sentencing decision by stating, "[s]o long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." *Anglemyer v. State,* 868 N.E.2d 482, 490 (Ind. 2007). An abuse of discretion occurs if we find the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Payne v. State,* 854 N.E.2d 7, 13 (Ind.Ct.App.2006). Further, a trial court may impose any sentence within the statutory range without regard to the existence of aggravating or mitigating circumstances. *Anglemyer*, 868 N.E.2d at 489. However, to perform our function of reviewing the trial court's sentencing discretion, "we must be told of [its] reasons for imposing the sentence… This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions." *Id.* at 490 (quoting *Page v.* State, 424 N.E.2d 1021, 1023 (Ind. 1981)). Such facts must have support in the record. *Anglemyer*, 868 N.E.2d at 490.

Accordingly, where the trial court has entered a reasonably detailed sentencing statement explaining its reasons for a given sentence that is supported by the record, we may only review the sentence through Appellate Rule 7(B). *Id.* at 492. This rule provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we] find that the sentence is inappropriate in light of the nature of the offense and the character of the offender." App. R. 7(B).

Titus only argues that his sentence is inappropriate in light of the nature of the offense and his character. We have the authority to review the appropriateness of a sentence authorized by statute through Appellate Rule 7(B). *Anglemyer,* 868 N.E.2d at 491. That rule permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender.

First, we conclude the nature of this crime supports the sentence imposed. W.M. is five-years old. W.M. was a neighbor who frequently played with Appellant's children at his residence. By letting W.M. play at his house, Titus created a position of trust between himself and W.M. Titus violated this trust when he told W.M. to perform a sexual act on him in the bathroom.

Moreover, based on Titus' criminal history, we are not persuaded that his sentence was inappropriate based on his character. "[I]n addition to any prior felony convictions, a trial court is allowed to 'consider misdemeanors and other prior criminal activity which has not been reduced to a conviction but which does indicate a prior criminal history." *Moyer v.*

State, 796 N.E.2d 309, 313 (Ind. Ct. App. 2003) (quoting *Hoelscsher v. State,* 707 N.E.2d 1014, 1025 (Ind. Ct. App. 2005)). This is not Titus' first experience with the criminal justice system. In 1989, Titus was convicted for felony robbery. During his first sentence, Titus violated his probation. Again in 1997, Titus was convicted for felony robbery and sentenced to five years. More recently, in 2003, Titus was convicted for false informing. These convictions indicate that Titus continues to defy the law. Thus, we conclude the three-year sentence imposed by the trial court is appropriate based on his character.

CONCLUSION

Based on the foregoing, we conclude (1) the State presented sufficient evidence to sustain Titus' Class D felony conviction for performing sexual conduct in the presence of a minor; and (2) the trial court properly sentenced Titus.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.