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IN THE COURT OF APPEALS OF INDIANA

RYAN K. BASKETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-0704-CR-346
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Steven R. Nation, Judge
Cause No. 29D01-0010-CF-072

October 31, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Ryan K. Baskett appeals the sentence imposed by the trial court after Baskett pleaded guilty to Child Molesting,[1] a class A felony. Baskett argues that the trial court overlooked significant mitigators, failed to explain the basis for a number of the aggravating factors, and imposed a sentence that is inappropriate in light of the nature of the offense and Baskett's character. Finding no reversible error, we affirm the judgment of the trial court.

FACTS

In March 2000, twenty-three-year-old Baskett had sexual intercourse with thirteen-year-old J.R. On October 23, 2000, the State charged Baskett with two counts of class A felony child molesting and two counts of class C felony child molesting. On June 28, 2001, Baskett pleaded guilty to one count of class A felony child molesting in exchange for the dismissal of the remaining charges. The plea agreement capped the executed portion of the sentence at forty-five years.

At the conclusion of the August 2, 2001, sentencing hearing, the trial court made the following determinations regarding aggravating and mitigating factors:

> . . . [T]he Court does note for the record the aggravating circumstance of the person has a history of criminal activity. The person also has a history of violating either terms of work release and/or probation. The court finds that because of the nature of the crimes the person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person in a penal facility. The Court also finds that a major factor for this Court's consideration as to the risk of future victims and the nature and character of this crime and of this Defendant is that this is the third offense within a short amount of time, six years,

[1] Ind. Code § 35-42-4-3.

> that the Defendant has been charged with similar types of offenses. Court taking that all into consideration must make the determination and as to the mitigating circumstance although it is set forth in the Pre-Sentence, the Court considers his upbringing, it does not consider it a mitigating circumstance. The Court does now find that the aggravating circumstances outweigh the mitigating circumstances.

Tr. p. 38. The trial court sentenced Baskett to a forty-five-year executed term. Baskett now brings this belated appeal.

DISCUSSION AND DECISION

I. Sentencing Statement

Baskett first argues that the trial court erroneously overlooked significant mitigators and failed to state a sufficient factual basis for certain aggravators. Initially, we observe that inasmuch as Baskett committed the crime in March 2000, the older, presumptive sentencing scheme applies. Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007) (holding that "the sentencing statute in effect at the time a crime is committed governs the sentence for that crime"). Under the presumptive sentencing scheme, sentencing determinations are within the sound discretion of the trial court, and we will only reverse for an abuse of discretion. Krumm v. State, 793 N.E.2d 1170, 1186 (Ind. Ct. App. 2003). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

In a sentencing statement, a trial court must identify all significant aggravating and mitigating factors, explain why such factors were found, and balance the factors in arriving at the sentence. Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006). A trial court is not obligated to weigh a mitigating factor as heavily as the defendant requests. Smallwood v.

State, 773 N.E.2d 259, 263 (Ind. 2002). A single aggravating factor may support the imposition of an enhanced sentence. Payton v. State, 818 N.E.2d 493, 496 (Ind. Ct. App. 2004).

A. Aggravators

Baskett argues that the trial court failed to clearly identify and explain the aggravating factors in adequate detail. The trial court must specify the facts and reasons leading it to find the existence of aggravating factors. Sherwood v. State, 749 N.E.2d 36, 37 (Ind. 2001).

The first aggravator is Baskett's criminal history, which includes one true finding of delinquency for acts that would have been possession of marijuana and escape had they been committed by an adult. As an adult, Baskett was convicted of class C felony sexual misconduct with a minor, class D felony sexual battery, class C misdemeanor operating without insurance, class A misdemeanor criminal trespass, class D felony residential entry, and class D felony battery on a law enforcement officer with bodily injury. Additionally, Baskett has violated probation and work release on numerous occasions.

It is readily apparent that this is a valid aggravator. Moreover, it is sufficient on its own to support an enhanced sentence. See Battles v. State, 688 N.E.2d 1230, 1235 (Ind. 1997) (finding that a defendant's criminal history alone may be sufficient to support a maximum sentence).[2] Thus, to the extent that the trial court should have provided more explanation of the facts and reasons underlying the other aggravators, any error was

[2] To the extent that the trial court may have misspoken about Baskett's contacts with the criminal justice system when he was a juvenile, the error was harmless given his lengthy and substantial remaining criminal history.

harmless, inasmuch as Baskett's criminal history alone is sufficient to support the enhanced sentence.

B. Mitigators

The trial court found no significant mitigating circumstances. Baskett argues that the trial court should have found his remorse, his age, his traumatic childhood, and his guilty plea as mitigating factors. To succeed in arguing that the trial court erroneously overlooked a mitigator, a defendant must establish that the mitigating evidence is both significant and clearly supported by the record. Simmons v. State, 814 N.E.2d 670, 677-78 (Ind. Ct. App. 2004). Baskett did not ask that the trial court consider his remorse or age as mitigating factors; consequently, he has waived the argument regarding these mitigators. Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005).[3]

Waiver notwithstanding, as to Baskett's remorse, at the sentencing hearing he begged the judge for sentencing leniency and then stated that "I made a major mistake and I should have made a better judgment call. I'm sorry for the people that I hurt and I just—I think that's it." Tr. p. 7. In the presentence investigation report, Baskett blames his actions on the victim's maturity and the fact that he had just broken up with his fiancée. Appellant's App. p. 154. Given this evidence, the trial court concluded that Baskett neither truly regrets his actions nor empathizes with the victim, and we will not second-guess that conclusion. See Corralez v. State, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004) (noting that the trial court is in

[3] Baskett argues that his expressions of remorse during the sentencing hearing were sufficient to avoid waiver. To avoid waiver, however, he should have specifically asked that the trial court consider his remorse and age as mitigators.

the best position to determine whether a defendant's remorse is genuine because it can directly observe and listen to the defendant). Thus, we find that the trial court did not abuse its discretion in failing to find Baskett's remorse as a mitigating factor.

Baskett next argues that because he was twenty-three at the time he committed the offense, the trial court should have considered his young age to be a mitigating factor. When Baskett had sex with a thirteen-year-old girl, however, he had been a legal adult for five years. Considering Baskett's criminal history and the seriousness of his crime, nothing in the record or the law leads us to conclude that the trial court abused its discretion in failing to find Baskett's age to be a mitigating factor. See Corcoran v. State, 774 N.E.2d 495, 500 (Ind. 2002) (holding that defendant's age of twenty-two was "well past the age of sixteen where the law requires special treatment"); Ketcham v. State, 780 N.E.2d 1171, 1180 n.6 (Ind. Ct. App. 2003) (holding that failure to give mitigating weight to defendant's age of twenty was not an abuse of discretion given his lengthy criminal history and the seriousness of his crime).

Next, Baskett contends that the trial court should have considered his troubled childhood to be a mitigating circumstance. Specifically, he argues that he presented evidence establishing that he suffered physical, emotional, and sexual abuse at the hands of various caretakers including his parents, stepparents, uncle, and babysitters, beginning at the age of five. Furthermore, he lived with foster parents from the time he was twelve until he turned eighteen years old. Our Supreme Court, however, has consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight. Coleman v. State, 741 N.E.2d

697, 700 (Ind. 2000). Moreover, this court has held that when, as here, a defendant has a difficult childhood but then makes the conscious decision to create more victims by becoming an abuser himself, there is no requirement that the trial court give mitigating weight to the difficulties faced by the defendant as a child. Hines v. State, 856 N.E.2d 1275, 1283 (Ind. Ct. App. 2006), trans. denied. Consequently, we find that the trial court did not abuse its discretion by failing to find Baskett's troubled youth to be a mitigating factor.

Finally, Baskett argues that the trial court erroneously failed to find his guilty plea to be a mitigating circumstance. A trial court should generally make some acknowledgement of a guilty plea when sentencing a defendant, Hope v. State, 834 N.E.2d 713, 713 (Ind. Ct. App. 2005), but a guilty plea need not be a significant mitigator where the defendant has reaped a substantial benefit from the plea, Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied.

Here, in exchange for Baskett's guilty plea to one count of class A felony child molesting, the State dismissed a second count of class A felony child molesting and two counts of the offense as a class C felony. Had Baskett gone to trial and been convicted as charged, he faced up to 116 years in prison. See Ind. Code §§ 35-50-2-4, -6. Instead, he pleaded guilty pursuant to an agreement that capped the executed portion of his sentence at forty-five years. Consequently, Baskett reaped a substantial benefit from this guilty plea and the trial court was not required to give it significant mitigating weight. To the extent that the trial court erred by not acknowledging the guilty plea as a mitigator, therefore, the error is harmless given the plea's minimal mitigating weight and the substantial aggravating weight

of Baskett's criminal history. Ultimately, we find that the trial court did not abuse its discretion by imposing a forty-five-year executed sentence on Baskett.

II. Appropriateness

Baskett also argues that the sentence is inappropriate in light of the nature of the offense and his character pursuant to Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). As for the nature of the offense, Baskett had sex with a thirteen-year-old girl. As put by the State, "there appears to be nothing unusual or extraordinary about the commission of the crime." Appellee's Br. p. 12.

Turning to Baskett's character, we again look to his extensive criminal history dating back to his juvenile years, during which he faced five charges with two informal adjustments, including one for child molesting. As an adult, Baskett has amassed convictions for, among other things, sexual battery and battery on a law enforcement officer. He has also violated probation and work release on numerous occasions. Baskett's myriad contacts with the criminal justice system have not caused him to respect the rule of law or his fellow citizens. Furthermore, he has failed to take advantage of lenient treatment afforded to him in the past.

Under these circumstances, we find that the forty-five-year executed sentence imposed by the trial court is not inappropriate.[4]

The judgment of the trial court is affirmed.

MAY, J., and CRONE, J., concur.

[4] To the extent that Baskett argues that maximum sentences are reserved for the very worst offenses and offenders, Newsome v. State, 797 N.E.2d 293, 302 (Ind. Ct. App. 2003), we observe that Baskett did not receive the maximum sentence for class A felony child molesting, which is fifty years imprisonment. I.C. § 35-50-2-4. Consequently, this authority does not aid Baskett's appropriateness argument.