



Appellant-defendant Joe Thomas Bunch appeals the eight-year aggregate sentence that was imposed following his convictions on four counts of Child Molesting,<sup>1</sup> a class C felony. Specifically, Bunch argues that the trial court abused its discretion when it identified certain aggravating circumstances and that the sentence was inappropriate in light of the nature of the offenses and his character. Finding no error, we affirm the judgment of the trial court.

### FACTS

On June 12, 2006, eight-year-old T.S. reported to her parents that Bunch, her seventy-one-year-old step-grandfather, had inappropriately touched her. T.S. reported that on at least two occasions, Bunch had placed his hands on T.S.'s vagina. On another occasion, Bunch was naked and placed his penis on T.S.'s vagina.

Thereafter, the State charged Bunch with four counts of child molesting as a class C felony and with one count of class A felony child molesting. On January 22, 2007, Bunch entered into a plea agreement, which provided that he would plead guilty to all four class C felony child molesting charges in exchange for the State's dismissal of the class A felony charge. During the guilty plea hearing, Bunch admitted that he had touched T.S. on four occasions with the intent to arouse or satisfy his sexual desires.

At the sentencing hearing on May 17, 2007, the trial court identified the lack of Bunch's criminal history, his show of remorse, his employment record, the fact that he pleaded guilty, his mental and physical problems, and his age, as mitigating factors. The trial court then determined that Bunch's violation of his position of trust, the repeated offenses,

---

<sup>1</sup> Ind. Code § 35-42-4-3(b).

and the impact that Bunch's conduct had on the family, were aggravating factors. The trial court summarized its weighing of aggravating and mitigating factors as follows:

Because and primarily because of the repeated offenses in a position of trust, I'm going to find that the aggravating factors outweigh the mitigating factors. I am going to enter a sentence of eight (8) years on each count to run concurrently, of which six (6) years will be served in the Department of Correction, and two (2) years shall be served on Community Correction with a requirement of home detention.

Appellant's App. p. 91. Bunch now appeals.

## DISCUSSION AND DECISION

### I. Standard of Review

We initially observe that sentencing decisions are within the trial court's discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). So long as the sentence imposed is within the statutory range, the trial court's sentencing determination will be reversed only for an abuse of discretion. Id. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Id. However, this court may revise an otherwise proper sentence where, after due consideration of the trial court's sentencing determination, it finds that the sentence imposed is inappropriate in light of the nature of the offense and the defendant's character. Ind. Appellate Rule 7(B). The defendant carries the burden to convince the appellate court that the sentence imposed is inappropriate. Id. at 494.

---

## II. Improper Aggravating Circumstances

Bunch claims that the trial court identified several improper aggravating factors. Specifically, Bunch argues that the evidence did not establish that Bunch violated a position of trust with T.S, that identifying the “repetitious nature of the offenses” as an aggravating circumstance was error, and that the trial court improperly determined that “harm to the family caused by [Bunch’s] actions” was an aggravating factor. Appellant’s Br. p. 8-9.

In resolving this issue, we initially observe that “in determining what sentence to impose for a crime, the court may consider . . . [that t]he person was in a position having care, custody, or control of the victim of the offense.” Ind. Code § 35-38-1-7.1(a)(8). Sentencing courts frequently cite the position of trust aggravator in instances where an adult has committed an offense against a minor and there is at least an inference that the adult had authority over the minor. Rodriguez v. State, 868 N.E.2d 551, 555 (Ind. Ct. App. 2007). This court has determined that abusing a position of trust is, by itself, a valid aggravator that supports the maximum enhancement of a sentence for child molesting. Hart v. State, 829 N.E.2d 541, 544 (Ind. Ct. App. 2005).

In this case, T.S.’s father testified that he trusted Bunch to “keep [his] daughter [when] . . . not around.” Tr. p. 34. Moreover, T.S. spent the night at Bunch’s residence on occasion. Bunch occasionally remained in the same bed with T.S. and touched T.S.’s vagina with his hands, kissed her with his tongue in her mouth, and touched her vagina with his penis. Id. at 12-13. This was sufficient evidence to establish that Bunch violated his position of trust. See Medina v. State, 828 N.E.2d 427, 433 (Ind. Ct. App. 2005) (observing that the defendant

violated his position of trust where it was established that the defendant molested his step-granddaughter at his residence where she occasionally spent the night). As a result, Bunch's claim fails.

Bunch also claims that the trial court erred in identifying the "repetitious nature of the offenses" as an aggravating circumstance. Appellant's Br. p. 11. Notwithstanding Bunch's contention, this court has determined that "repeated molestations occurring over a period of time can be an aggravating factor supporting the maximum enhancement." Newsome v. State, 797 N.E.2d 293, 300-01 (Ind. Ct. App. 2003).

Here, it was established that Bunch molested T.S. over the course of a year on several occasions. Tr. p. 10-13. Moreover, evidence was presented that Bunch had also begun to molest one of his other young step-granddaughters. Id. at 47. In light of these circumstances, we conclude that the trial court properly identified the repetitious nature of the offenses as an aggravating factor. See Stout v. State, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005) (observing that the serial nature of offenses committed against a victim may be a valid aggravating circumstance), trans. denied.

Finally, Bunch challenges the trial court's determination that the adverse effects on Bunch and T.S.'s family constituted an aggravating circumstance. In essence, Bunch argues that this aggravator cannot stand because "the sentencing record fails to demonstrate exactly how the family was divided and whether or not it actually had any effect on [T.S.]."

In Leffingwell v. State, 793 N.E.2d 307, 310 (Ind. Ct. App. 2003), this court observed that the impact upon others may qualify as an aggravator in some situations, but the

defendant's actions must have had an impact of a destructive nature that is not normally associated with the commission of the offense in question. Moreover, the impact must be foreseeable to the defendant. In Leffingwell, we determined that because the trial court did not describe an impact above that normally expected from a child molesting case, the aggravator was inappropriate. Id. Here, however, the trial court explained at the sentencing hearing that “[i]t is clear from the evidence that I’ve heard today that there has been a devastating impact upon the family. It’s created mistrust and hostility where there wasn’t before. It’s torn apart the defendant’s wife’s family because she was hopelessly in the middle.” Tr. p. 52. Moreover, Bunch’s wife—T.S.’s grandmother—testified in Bunch’s favor at the sentencing hearing. As a result, the divide resulted in substantial tension among all family members. Indeed, T.S.’s uncle testified:

I love my mother very much. I was the baby of the family and I don’t separate easily from my mother and to see and feel the bitterness between my mom, who I love so much, and [T.S.’s father] was a very hurtful thing. . . . [I]t’s caused me a lot of stress and anxiety and sleepless nights just wondering how we [were] all gonna be able to hold together.

Id. at 37.

It is readily apparent that Bunch’s actions have divided the family. In our view, the trial court adequately explained this circumstance, and it is apparent that the effect on the family was above that which would typically be expected by a victim in a child molestation case. Thus, the aggravator was appropriate.

We note, however, that even assuming for argument’s sake that this aggravating factor was improperly identified, we have held that a defendant’s sentence may be upheld if a

legitimate aggravator otherwise supports it. Powell v. State, 751 N.E.2d 311, 317 (Ind. Ct. App. 2001). Here, Bunch's breach of his position of trust and the repetitious nature of the offenses were both proper aggravating factors and were adequate to justify an enhanced sentence. Thus, we cannot say that the trial court abused its discretion with respect to the finding of aggravating circumstances. See Garrett v. State, 714 N.E.2d 618, 623 (Ind. 1999) (holding that the trial court did not abuse its discretion because, even though trial court erred in finding one improper aggravating circumstance, other valid aggravating circumstances remained). In sum, Bunch does not succeed on his claim that he must be resentenced even if we assume that the trial court improperly found the adverse effects of Bush's crime to be an aggravating factor.

### III. Appropriate Sentence

Bunch also maintains that his sentence was inappropriate when considering the nature of the offenses and his character. In particular, Bunch contends that "taken in consideration with a pristine background, and the nature of the offense, . . . the sentence imposed was inappropriate." Appellant's Br. p. 12.

Regarding the nature of the offenses, the evidence established that Bunch repeatedly molested his eight-year-old step-granddaughter when T.S.'s parents left her in his care. Moreover, Bunch violated his position of trust as a grandparent when he committed these offenses. The evidence also showed that Bunch kissed T.S. with his tongue on multiple occasions while lying on top of her with his penis touching her vaginal area. These activities establish the particularly egregious nature of Bunch's conduct. Thus, we reject Bunch's

claim that his sentence was inappropriate when considering the nature of the offenses.

Although Bunch contends that his character was “pristine” because he has no criminal history, appellant’s br. p. 8, 12, the evidence established that Bunch violated his position of trust with T.S. when engaging in the above-described sexual misconduct with her. Moreover, T.S.’s aunt testified that her then-five-year-old daughter was similarly victimized by Bunch, although not to the same extent as T.S. Tr. p. 47. In essence, it is apparent that Bunch has a complete disregard for his family members.

Bunch could have received an eight-year term of imprisonment on each of the charged offenses, which would have resulted in an aggregate sentence of thirty-two years. See Ind. Code § 35-50-2-6. The State asserts—and we agree—that the eight-year sentence is “more than appropriate” in light of the nature of the offenses and Bunch’s character. Appellee’s Br. p. 10. As a result, we decline to revise Bunch’s sentence.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.