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IN THE COURT OF APPEALS OF INDIANA

STEVEN DUBREE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0707-CR-321
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-9908-CP-508

November 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Steven Dubree asserts the twenty-year sentence he received for one count of Class

B felony child molesting is inappropriate in light of his character and offense. We affirm.

FACTS AND PROCEDURAL HISTORY

On August 27, 1999, the State charged Dubree with one count of Class A felony child molesting, two counts of Class C felony child molesting, and two counts of Class D felony child solicitation. Dubree pled guilty to one count of Class B felony child molesting as a lesser-included offense of the Class A felony charge, and in exchange the State dismissed the remaining charges and promised not to file additional charges in relation to this victim or three other alleged victims. After hearing evidence on June 27, 2000, the court found two aggravators, the circumstance of the crime and the young age of the child, and no mitigators. Finding the aggravators outweighed the mitigators, the court imposed the maximum sentence for a Class B felony, 20 years.[1]

DISCUSSION AND DECISION

Dubree challenges his sentence.[2] At the time of Dubree's crime, trial courts had broad discretion to determine a sentence. *Henderson v. State*, 769 N.E.2d 172, 179 (Ind. 2002). That discretion included the ability to increase or decrease the sentence from the presumptive based on aggravating or mitigating factors. *Id.* Accordingly, we may not modify the sentence imposed by the trial court unless a clear abuse of discretion has occurred. *Id.*

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[1] On May 9, 2007, the trial court granted Dubree's motion to file a belated notice of appeal.

[2] Under Post-Conviction Rule 2(1), which permits belated direct appeals, "[a] belated appeal is treated as though it was filed within the time period for an appeal but is subject to the law that would have governed a timely appeal." *Gutermuth v. State*, 868 N.E.2d 427, 433 (Ind. 2007). Accordingly, Dubree may not take advantage of *Blakely v. Washington*, 542 U.S. 296 (2004), *reh'g denied* 542 U.S. 961 (2004). *Gutermuth*, 868 N.E.2d at 435. Similarly, we apply the version of Ind. Appellate Rule 7(B) in effect until January 1, 2003.

Dubree challenges the validity of one of the court's two aggravators: the age of the victim. He offers only one case citation, without a pinpoint citation or a parenthetical reflecting the relevant portion of that case. Accordingly, Dubree has waived this argument for appeal.[3] *See* Ind. Appellate Rule 46(A)(8) ("Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22."). *See also Nicholson v. State*, 768 N.E.2d 1043, 1048 n.6 (Ind. Ct. App. 2002) (Citations "should include both the page on which the source begins and the page on which the specific material appears. . . . [W]e will not, on review, search through the authorities cited by a party in order to try to find legal support for its position.").

Dubree also asserts his sentence is unreasonable. Until 2003, Ind. Appellate Rule 7(B) provided: "The Court shall not revise a sentence authorized by statute unless the sentence is manifestly unreasonable in light of the nature of the offense and the character of the offender."

> In determining whether a sentence is manifestly unreasonable, the issue is not whether in our judgment the sentence is unreasonable, but whether it is clearly, plainly and obviously so.

[3] If Dubree was citing *Smith v. State*, 780 N.E.2d 1214 (Ind. Ct. App. 2003), *trans. denied* 792 N.E.2d 41 (Ind. 2003), for its holding "a material element of the offense may not also constitute an aggravating factor to support an enhanced sentence," 780 N.E.2d at 1219, his argument fails. A conviction of child molesting requires proof the victim was under the age of fourteen; the court noted Dubree's victim was only seven. *See Buchanan v. State*, 767 N.E.2d 967, 971 (Ind. 2002) (noting one of the "non-exclusive aggravating circumstances designated by statute for consideration in imposing sentence is 'whether the victim of the crime was less than twelve years of age.' Ind. Code § 35-38-1-7.1(a)(4)."); *Edwards v. State*, 842 N.E.2d 849, 855 (Ind. Ct. App. 2006) (noting age may be appropriate aggravator when court states the age in relation to the particular facts and circumstances of the case, especially when victim is much younger than required by the crime's defining statute).

> We have observed that the maximum possible sentences are generally most appropriate for the worst offenders. This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002).

According to Dubree's Pre-sentence Investigation Report[4] he has no prior convictions.[5] Nevertheless, in light of his behavior toward his victim, we cannot find the maximum punishment unreasonable.

Dubree admitted that while his step-daughter A.M.P. was seven or eight years old and was living with him, he placed his mouth on her vagina.[6] In a letter to the court, A.M.P. described other incidents of molestation by Dubree: Dubree taught her about French kissing, Dubree made her pray for him after he forced her to perform sex acts, and Dubree threatened to spank her if she refused to perform oral sex or if she told anyone what was happening.

The court indicated it would consider, for sentencing purposes, interviews of

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[4] Counsel taped into the back of each copy of the brief a sealed envelope containing a copy of the Pre-sentence Investigation Report on white paper. Because a "presentence report" is to be kept confidential, *see* Ind. Code § 35-38-1-13, we direct counsel to review Ind. Administrative Rule 9(G), Ind. Trial Rule 5(G), and Ind. Appellate Rule 9(J).

[5] The report reveals a charge of criminal conversion and a separate allegation of theft, both of which were dismissed. Dubree was also charged with an infraction for speeding, but it was dismissed, and he was fined for failure to carry his driver's license.

[6] Dubree told the probation officer the charges against him were "bogus," because he had never molested his step-daughter, but he pled guilty "to get on which his life" and to avoid the consequences of a Class A felony conviction. (PSI at 5.) This suggests he has not fully accepted responsibility for his actions and renders his character suspect.

A.M.P. and a second alleged victim the court had reviewed in chambers.[7] The court noted a clinical psychologist reported Dubree's "prognosis for change is guarded. Long term psychotherapy will be necessary to alter his narcissistic psychopathology." (Tr. at 43.) The court then said:

> I'm talking to you because I think you are extremely dangerous to children. I cannot imagine a person doing this to an eight year old child that's the stepdaughter in your home and say that you are not dangerous to a segment of society that has no other protection than the law. And sometimes their family can't protect them. And I don't see you changing. I don't see – I don't see you being affected. I don't see you – I know you said I am remorseful for what I did. I know you said it, but there is no affect here. There is no – I just don't understand it.
>
> I think you're dangerous. The psychologist thinks you have a very guarded possibility of rehabilitation. I mean he said it himself. [Dubree] seems to have an insufficient capacity to experience and express affect.
>
> I'm afraid that I cannot – I have to balance what is fair and for rehabilitation if it's possible and protection of society. And what I'm getting to at the very bottom end of all of it is I am very well aware that day for a day credit exists, and I am very well aware that a twenty year sentence is a ten year sentence or less if you get some educational benefit.
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> * * * * *
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> And if you were so impelled to so seriously molest this child that regarded you and called you her father in the home that should have been her protection, then I don't know – I don't know how I can do a sentence that is going to adequately protect the other children ten years, five years, four years, six years from now from similar predations by you. That's what I am concerned about.

(*Id*. at 45-6.)

Dubree's crime was not a "one-time occurrence," but rather "a protracted episode of molestation." *Cf. Buchanan*, 767 N.E.2d at 973 (finding fifty-year maximum sentence inappropriate for one-time occurrence of molestation during which victim was not harmed). While no evidence indicates Dubree physically injured A.M.P. during the

[7] The record before us does not include those tapes.

molestations, he threatened to hurt her if she refused to perform oral sex or if she told anyone about the molestations. We cannot find his twenty-year sentence manifestly unreasonable.

Affirmed.

CRONE, J., and DARDEN, J., concur.