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IN THE
COURT OF APPEALS OF INDIANA

RICHARD B. JESSUP,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0703-CR-191
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Francis C. Gull, Judge
Cause No. 02D04-0604-FA-19

November 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Richard Jessup appeals his sentence for child molesting as a class A felony,[1] burglary as a class B felony,[2] and being an habitual offender.[3] Jessup raises two issues, which we revise and restate as:

I. Whether Jessup's convictions for child molesting and burglary violate the prohibition against double jeopardy;

II. Whether the trial court abused its discretion in sentencing Jessup; and

III. Whether Jessup's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.[4]

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[1] Ind. Code § 35-42-4-3 (2004).

[2] Ind. Code § 35-43-2-1 (2004).

[3] Ind. Code § 35-50-2-8 (Supp. 2005).

[4] Jessup included a copy of the presentence investigation report on white paper in his appendix. See Appellant's Appendix at 38-44. We remind Jessup that Ind. Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Ind. Administrative Rule 9(G)(1)(b)(viii) states that "[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the presentence investigation report printed on white paper in his appellant's appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:

> Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:
>
> (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential."
>
> (2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not For Public Access" or "Confidential" and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

The relevant facts follow.[5] On April 13, 2006, Jessup, born on October 20, 1962, broke and entered the dwelling of Shannon Flores. Jessup found six-year-old M.F. sleeping on the living room floor. Jessup pulled M.F.'s underpants down and put his finger into her vagina. M.F. said, "Why are you doing this?" Appellant's Appendix at 30-31. At some point, M.F. woke her sister and Mother.

The State charged Jessup with: Count I, child molesting as a class A felony; Count II, burglary as a class B felony; Count III, child molesting as a class C felony;[6] and Count IV, being an habitual offender. Jessup pleaded guilty but mentally ill to Count I, child molesting as a class A felony, Count II, burglary as a class B felony; and Count IV, being an habitual offender, and the State dismissed Count III, child molesting as a class C felony.

At the sentencing hearing, Dr. Stephen Ross indicated that Jessup's primary diagnosis "would be an impulse control disorder with depression and episodes of periodic loss of contact with reality." Sentencing Transcript at 7. Dr. Ross indicated that he did not think that Jessup was psychotic at the time of the offenses and that Jessup does not suffer from any condition that prevents him from understanding the wrongfulness of his actions. Jessup has a "strong impulse to molest young girls." Id. at 9. Jessup apologized to the victim's family.

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[5] The record does not include a transcript of the guilty plea hearing.

[6] Ind. Code § 35-42-4-3 (2004).

The trial court found the following aggravators: Jessup's criminal history, Jessup's failed efforts at rehabilitation, and the fact that Jessup was on parole at the time of the offenses. The trial court found Jessup's guilty plea, acceptance of responsibility, remorse, and mental illness as mitigators. The trial court found that the aggravators outweighed the mitigators and sentenced Jessup to forty years for child molesting as a class A felony, enhanced by thirty years for his status as an habitual offender, and fifteen years for burglary as a class B felony. The trial court ordered that the sentences be served consecutively.

I.

The first issue is whether Jessup's convictions for child molesting and burglary violate the prohibition against double jeopardy. Jessup pleaded guilty to child molesting and burglary, and the State dismissed the charge of child molesting as a class B felony. "Defendants who plead guilty to achieve favorable outcomes in the process of bargaining give up a plethora of substantive claims and procedural rights." Games v. State, 743 N.E.2d 1132, 1135 (Ind. 2001). Because Jessup pleaded guilty, he waived his claim that his convictions violate the prohibition against double jeopardy. See, e.g., id. at 1135 (holding that defendant waived his claim of double jeopardy by pleading guilty); Mapp v. State, 770 N.E.2d 332, 334 (Ind. 2002) (holding that defendant "waived his right to challenge his convictions on double jeopardy grounds when he entered his plea agreement").

II.

The next issue is whether the trial court abused its discretion in sentencing Jessup.

We note that Jessup's offense was committed after the April 25, 2005, revisions of the sentencing scheme.[7] In clarifying these revisions, the Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), reh'g granted on other grounds. We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Id.

A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law." Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Id. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

[7] Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences. See Ind. Code § 35-50-2-5 (Supp. 2005).

Jessup argues that the trial court "gave insufficient weight to Jessup's mental illness, and acceptance of responsibility, and too much weight to his prior criminal history."[8] Appellant's Brief at 9. Jessup asks us to review the weight given to the aggravating and mitigating factors for abuse of discretion, which we cannot do. See Anglemyer, 868 N.E.2d at 491 (holding that the relative weight or value assignable to aggravating and mitigating factors properly found is not subject to review for abuse of discretion).

III.

The next issue is whether Jessup's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) 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." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Jessup broke and entered the dwelling of Shannon Flores. Jessup found six-year-old M.F. sleeping on the living room floor, pulled M.F.'s underpants down, and put his finger into her vagina. Since the

[8] Jessup also argues that "based upon the fact that the crimes were one continuous transaction or episode of criminal conduct, the sentences should have been run concurrently." Appellant's Brief at 8. Jessup does not develop this argument and provides no citations to authority. Failure to put forth a cogent argument acts as a waiver of the issue on appeal. Davenport v. State, 734 N.E.2d 622, 623-624 (Ind. Ct. App. 2000), trans. denied.

offenses, M.F. refuses to sleep alone, awakens screaming in terror, and is afraid of strangers.

Our review of the character of the offender reveals that Jessup pleaded guilty and apologized to the victim's family. Dr. Ross indicated that Jessup's primary diagnosis "would be an impulse control disorder with depression and episodes of periodic loss of contact with reality." Sentencing Transcript at 7. However, Dr. Ross also indicated that he did not think that Jessup was psychotic at the time of the offenses and that Jessup does not suffer from any condition that prevents him from understanding the wrongfulness of his actions. Jessup has a "strong impulse to molest young girls." Id. at 9. The presentence investigation report reveals that Jessup has convictions for indecent exposure, two counts of public indecency as class D felonies, and attempted criminal confinement as a class C felony. Jessup was on parole at the time of the offenses.

After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Leffingwell v. State, 810 N.E.2d 369, 372 (Ind. Ct. App. 2004) (holding that the trial court's decision to impose the maximum sentence of eight years for child molesting as a class C felony was not inappropriate); Haddock v. State, 800 N.E.2d 242, 248 (Ind. Ct. App. 2003) (holding that defendant's sentence of 326 years for numerous convictions, including child molesting, was not inappropriate).

For the foregoing reasons, we affirm Jessup's sentence for child molesting as a class A felony, burglary as a class B felony, and being an habitual offender.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur