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IN THE
COURT OF APPEALS OF INDIANA

GARY GARDNER,	)	
	)	
Appellant-Defendant ,	)	
	)	
vs.	)	No. 49A02-0704-CR-360
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause No. 49G06-0405-FA-079859

December 19, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Gary Gardner ("Gardner") pleaded guilty in Marion Superior Court to three counts of Class A felony child molesting, one count of Class C felony child molesting, and one count of Class C felony child exploitation. Gardner appeals and argues that the trial court abused its sentencing discretion by failing to issue a written sentencing statement.

We affirm.

Facts and Procedural History

Between November of 2002 and August of 2003, Gardner molested his stepdaughter by acts including digital penetration, fellatio, and anal intercourse, while the girl was between five and six years old. From November of 2003 and May of 2004, Gardner took pornographic photographs of the same stepdaughter, his own daughter, who was two to three years old, and another young girl in his care who was four to five years old. One of the photographs shows Gardner touching the genital area of the last-mentioned girl.

On May 13, 2004, the State charged Gardner with four counts of Class A felony child molesting, one count of Class C felony child molesting, one count of Class C felony child exploitation, and one count of Class D felony possession of child pornography. On February 18, 2005, the State added an additional charge of Class C felony child molesting. On May 18, 2005, Gardner agreed to plead guilty to three counts of Class A felony child molesting, one count of Class C felony child molesting, and one count of Class C felony child exploitation. In exchange, the State agreed to dismiss the remaining charges and agreed to a sentence "cap" of ninety years executed. The trial court accepted the plea agreement the following day.

At a sentencing hearing held on June 7, 2005, the trial court identified the following aggravating factors: that Gardner was in a position of trust with his victims, that the victims were of a tender age, and that Gardner committed multiple acts of molesting against multiple victims. The trial court also considered as mitigating Gardner's lack of criminal history, although given his history of molesting children without being caught, the court afforded this factor little weight. Additionally, the trial court identified Gardner's acceptance of responsibility and remorse as a mitigating factor, but also afforded this little weight because the trial court viewed his remorse as being motivated by Gardner's self-pity.

The trial court then acknowledged that the aggravators would justify enhanced sentences, but decided to impose the presumptive sentence of thirty years on each Class A felony conviction, all to be served consecutively. With regard to the Class C felony child exploitation conviction, the court imposed an enhanced sentence of eight years, and with regard to the Class C felony child molesting conviction, the court imposed an enhanced sentence of six years. Both of the Class C felony convictions were ordered to run concurrently with the A felony convictions, for a total of ninety years executed. Gardner now appeals.

Discussion and Decision

Gardner claims that the trial court erred by failing to issue a separate, written sentencing statement. The statute on which Gardener relies provides:

> Before sentencing a person for a felony, the court must conduct a hearing to consider the facts and circumstances relevant to sentencing. The person is

> entitled to subpoena and call witnesses and to present information in his own behalf. The court shall make a record of the hearing, including:
> (1) a transcript of the hearing;
> (2) a copy of the presentence report; and
> (3) if the court finds aggravating circumstances or mitigating circumstances, *a statement of the court's reasons for selecting the sentence that it imposes*.

Ind. Code § 35-38-1-3 (2004) (emphasis added). Gardner claims that a written transcript of the trial court's oral sentencing statement is insufficient to satisfy subsection (3) because subsection (1) already requires a transcript of the hearing.

This argument has been rejected by our supreme court. See Coates v. State, 534 N.E.2d 1087, 1098 (Ind. 1989) (concluding that in non-capital cases, the trial court's sentencing statement need not be set out in a separate order book entry, but may be provided by the transcript of the sentencing hearing); see also Mundt v. State, 612 N.E.2d 566, 568 (Ind. Ct. App. 1993) (noting that while the better practice for trial courts would be to set out a written statement of its reasons in its sentencing order, it is sufficient in non-death penalty cases if the trial court's reasons for enhancement are clear from a review of the sentencing transcript), trans. denied.[1]

Gardener claims that Anglemyer v. State, 868 N.E.2d 482 (Ind. 2007), clarified upon reh'g, 875 N.E.2d 218, requires trial courts to give sentencing statements. Although Anglemyer did say as much, Gardner committed his crimes between 2002 and 2004 under the older pre-Blakely sentencing scheme. Anglemyer interpreted the post-Blakely

[1] Indiana Code section 35-38-1-1.3 was enacted in 2007. This statute provides that, "[a]fter a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes." Even if this could be interpreted as a requirement for a separate, written sentencing statement, it was enacted after the trial court in the present case sentenced Gardner.

sentencing amendments in 2005 and is therefore inapplicable to Gardner's sentence.[2] See Storey v. State, 875 N.E.2d 243, 250 n.4 (Ind. Ct. App. 2007); Cole v. State, 850 N.E.2d 417, 418 n.1 (Ind. Ct. App. 2006).

Here, contrary to Gardner's claims, the trial court's reasons for the sentence it imposed are clear from the transcript of the trial court's oral sentencing statement. The trial court identified which factors it found to be aggravating and mitigating. It then noted that these factors justified an enhanced sentence, but, likely due to the limits contained in the plea agreement, declined to enhance the Class A felony convictions but did enhance the Class C felony convictions. Other than his claim that the trial court was required to enter a written sentencing statement, Gardner makes no separate claim that the trial court's sentence was erroneous.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.

[2] Moreover, the requirement in Anglemyer that a trial court issue a sentencing statement does not seem to mean that the trial court must enter a separate, written sentencing order. Indeed, at issue in Windhorst v. State, 868 N.E.2d 504, 506 (Ind. 2007), reh'g denied, an opinion issued the same day as Anglemyer, was the trial court's failure to give any sentencing statement when imposing the advisory sentence.