

STATEMENT OF THE CASE

Richard H. Lyons appeals his sentence following his conviction for Sexual Misconduct with a Minor, as a Class B felony, pursuant to a guilty plea. Lyons raises a single issue for our review, namely, whether his sentence is inappropriate.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 24, 2006, Lyons engaged a fifteen-year-old child in deviate sexual conduct by placing his penis in the child's anus. On August 30, the State charged Lyons with one count of Criminal Deviate Conduct, as a Class B felony. The State subsequently amended its charging information to include a count of sexual misconduct with a minor, as a Class B felony. On December 6, Lyons pleaded guilty to the charge of sexual misconduct with a minor, and, in exchange, the State dismissed the pending charge of criminal deviate conduct.

On February 15, 2007, the trial court sentenced Lyons to fifteen years, with five years suspended.¹ That same day, the court entered its Judgment of Conviction, in which it explained Lyons' sentence as follows:

The Court finds that the following aggravating circumstances are present in this case.

1. The Defendant has suffered six previous misdemeanor convictions.
2. The offense was committed in the presence of another child.

The Court finds that the following mitigating circumstances are present in this case.

¹ Indiana Code Section 35-50-2-5 permits the trial court to sentence a person convicted of a Class B felony to "a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years."

1. The Defendant has accepted responsibility for his criminal conduct through his plea of guilty; however, the Court declines to accord substantial weight to this mitigator, noting that Dr. Wax found the Defendant to be in a “very strong stance of factual denial and an extreme stance of cognitive denial.” Thus, the Defendant’s acceptance of responsibility, while sparing the State and the victim the expense and trauma of trial, is not of a kind and character which gives the Court much hope for effective therapy at this juncture.

2. The Defendant has no previous felony convictions; however, the Court declines to give significant weight to this mitigator, noting that the Defendant did, in fact, suffer a felony conviction which was later reduced to a misdemeanor conviction.

3. The Defendant enjoys strong family support; however, the Court declines to ascribe significant weight to this mitigator, noting that the Defendant’s familial support system was not sufficient to enable him to avoid commission of this offense.

The Court finds that the aggravators listed above outweigh those mitigators also listed, thus justifying the enhanced sentence imposed this date.

Appellant’s App. at 36. This appeal ensued.

DISCUSSION AND DECISION

On appeal, Lyons maintains that his fifteen-year sentence is inappropriate in light of his character.² Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)) (alteration original). This appellate authority is

² Lyons also argues that “the court abused its discretion in failing to give Lyons substantial mitigating weigh[t]” to his guilty plea. Appellant’s Brief at 3. But “the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence.” Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). As such, Lyons’ argument on appeal is not a valid argument for whether the court abused its discretion. See id. Nonetheless, we consider Lyons’ guilty plea in our review of the inappropriateness of his sentence under Indiana Appellate Rule 7(B).

implemented through Indiana Appellate Rule 7(B). Id. Under Appellate Rule 7(B), we assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Anglemyer, 868 N.E.2d at 494 (quoting Childress, 848 N.E.2d at 1080) (alteration in original).

Lyons sentence is not inappropriate in light of his character.³ In support of his position on appeal, Lyons asserts that his sentence “is unreasonable because of [his] lack of prior felony convictions” and because his guilty plea demonstrates his acceptance of responsibility. Appellant’s Brief at 3. The trial court expressly considered Lyons’ lack of a prior felony conviction and his guilty plea as mitigating circumstances and declined to give either mitigator substantial weight. We cannot disagree with the court’s assessment.

Although Lyons’ criminal history is lacking in prior felony convictions, he had been convicted of six misdemeanors before he engaged a fifteen year-old child in sexual misconduct. And Lyons’ guilty plea is not automatically a substantial mitigator. Rather, a guilty plea is not significant when it is “more likely the result of pragmatism than acceptance of responsibility and remorse.” Davies v. State, 758 N.E.2d 981, 987 (Ind. Ct. App. 2001) (quotations omitted), trans. denied. Here, in exchange for his plea the State

³ Lyons does not challenge the inappropriateness of his sentence in light of the nature of his offense. We therefore do not address that aspect of Appellate Rule 7(B). See Ind. Appellate Rule 46(A)(8)(a); Anglemyer, 868 N.E.2d at 494 (“a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” (quoting Childress, 848 N.E.2d at 1080) (alteration in original)).

dismissed a pending Class B felony charge, and, in addition, the trial court specifically found that Lyons had a “very strong stance of factual denial and an extreme stance of cognitive denial” regarding his criminal behavior. Appellant’s App. at 36. Those facts belie Lyons’ argument on appeal that his guilty plea is entitled to significant mitigating consideration. Rather, Lyons’ criminal history demonstrates his poor character, and we agree with the trial court that his “acceptance of responsibility . . . is not of a kind and character” entitling his guilty plea to significant mitigation. See Appellant’s App. at 36. In light of those facts, we cannot say that his fifteen-year sentence is inappropriate.

Affirmed.

BAILEY, J., and CRONE, J., concur.