

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Aaron Seidel,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



November 26, 2024

Court of Appeals Case No.
24A-CR-1005

Appeal from the Lake Superior Court

The Honorable Gina L. Jones, Judge

Trial Court Cause No.
45G03-2004-F4-48

Memorandum Decision by Judge Bailey

Judges Bradford and Foley concur.

Bailey, Judge.

Case Summary

- [1] Aaron Seidel appeals his sentence following his convictions for two counts of child molesting, as Level 4 felonies.¹ Seidel raises one issue for our review, namely, whether the trial court abused its discretion when it identified the age of the victim as an aggravating factor at sentencing. We affirm.

Facts and Procedural History

- [2] Seidel began dating Nicole Zychal in 2018, and they moved in together that December. Zychal has a daughter, S.Z., who lived with her father but would stay with Zychal and Seidel on certain weekends. At first, S.Z. thought her relationship with Seidel was “casual” and “comforting[.]” Tr. Vol. 3 at 66. However, at some point, Seidel began touching S.Z. in a way that made her feel “uncomfortable.” *Id.* at 68.

¹ Ind. Code § 35-42-4-3(b).

[3] On one occasion in March 2018, when S.Z. was ten years old,² Seidel touched S.Z.'s vagina over her clothing. It was a "gentle press" that lasted longer than "a casual brush." *Id.* at 71. Then on another occasion in September 2018, when S.Z. was eleven years old, Seidel again touched her vagina under her clothes. S.Z. did not initially tell anyone what had happened but ultimately disclosed the events to her brother and to a school counselor.

[4] The State charged Seidel with two counts of child molesting, as Level 4 felonies. The court held a jury trial, during which S.Z. testified to the events. At the conclusion of the trial, the jury found Seidel guilty of both counts. The court entered judgment of conviction accordingly. Thereafter, the court held a sentencing hearing. The court identified as aggravating factors Seidel's two prior felony convictions; that S.Z. was less than twelve years old at the time Seidel committed the offenses; that Seidel had recently violated the conditions of "probation, parole, pardon, or Community Corrections placement"; and that Seidel was in the "position of having the care, custody, or control" of S.Z. *Tr.* Vol. 4 at 63. The court did not identify any mitigators. Accordingly, the court sentenced Seidel to eight years, with six years executed and two years suspended to probation, on each count. The court then ordered the sentences to run consecutively. This appeal ensued.

² S.Z. was born on April 10, 2008.

Discussion and Decision

[5] Seidel contends that the court abused its discretion when it sentenced him. Sentencing decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). An abuse of discretion occurs if the 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.” *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted), *trans. denied*.

[6] A trial court abuses its discretion in sentencing if it does any of the following:

(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. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490-491 (Ind.), *clarified on reh’g on other grounds*, 875 N.E.2d 218 (Ind. 2007)).

[7] Seidel asserts that the trial court abused its discretion when it sentenced him because it used an element of the offenses as an aggravating factor to enhance his sentence. In particular, Seidel contends that the court identified S.Z.’s age as an aggravator but that “S.Z.’s age was a material element of the crime for which [he] was sentenced.” Appellant’s Br. at 8. As outlined above, the court

identified S.Z.'s age at the time of the offenses—less than twelve—as an aggravator. And to convict Seidel of Level 4 felony child molesting, the State was required to prove that he, “with a child under fourteen (14) years of age,” performed or submitted to any fondling or touching of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person. I.C. § 35-42-4-3(b).

[8] Seidel is correct that, “[w]here a trial court’s reason for imposing a sentence greater than the advisory sentence includes material elements of the offense, absent something unique about the circumstances that would justify deviating from the advisory sentence, that reason is ‘improper as a matter of law.’” *Gomillia v. State*, 13 N.E.3d 846, 852-23 (Ind. 2014) (quoting *Anglemyer*, 868 N.E.2d at 491). However, the element of the offense requires that the victim be younger than fourteen. And our Supreme Court has stated that “the victim’s age . . . suggests a sliding scale in sentencing” and that “[t]he younger the victim, the more culpable the defendant’s conduct.” *Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011). Here, S.Z. was less than twelve years old when Seidel fondled her, meaning she was at least two years younger than the statute required. The trial court did not improperly rely on this aggravator.

[9] In any event, even if the court relied on an improper aggravator, we need not remand for resentencing. “In cases where the trial court has abused its discretion, we will remand for resentencing only ‘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.’” *Bryant v. State*,

959 N.E.2d 315, 322 (Ind. Ct. App. 2011) (quoting *Anglemyer*, 868 N.E.2d at 491.

[10] Here, in addition to identifying S.Z.'s age as an aggravator, the court additionally identified as aggravating factors Seidel's prior two felony convictions, his recent violation of supervised release, and his position of care over S.Z. Accordingly, it is clear that the trial court did not rely solely on S.Z.'s age when it imposed Seidel's sentence. And we can say with confidence that, even if the trial court had not considered that factor, it would have imposed the same sentence. We therefore cannot say that the trial court abused its discretion when it sentenced Seidel. We affirm Seidel's sentence.

[11] Affirmed.

Bradford, J., and Foley, J., concur.

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