

INDIANA SUPREME COURT

Calvin Merida v. State of Indiana

987 N.E.2d 1091 (Ind. 2013) · No. 69S01-1301-CR-24 · Decided May 17, 2013

SUMMARY

The Indiana Supreme Court reviewed the sentence imposed on Calvin Merida after he pleaded guilty to two Class A felony counts of child molesting. Applying Indiana Appellate Rule 7(B), the Court held that the trial court's consecutive advisory sentences totaling sixty years were not inappropriate and affirmed the sentence.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Per Curiam; Chief Justice Dickson; Justice Rucker; Justice David; Justice Massa; Justice Rush
JURISDICTION	Indiana
DECIDED	May 17, 2013
DOCKET	69S01-1301-CR-24
DISPOSITION	affirmed
PROCEDURAL POSTURE	Merida appealed his aggregate sixty-year sentence for two Class A felony child-molesting convictions. The Indiana Court of Appeals revised the consecutive sentences to concurrent sentences under Indiana Appellate Rule 7(B), reducing the aggregate sentence to thirty years. The Indiana Supreme Court granted transfer and reviewed whether the sentence was inappropriate under Rule 7(B).
STANDARD OF REVIEW	Under Indiana Appellate Rule 7(B), an appellate court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the sentence is inappropriate in light of the nature of the offense and the character of the offender.
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion; precedential.
PARTIES	Calvin Merida v. State of Indiana

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Merida's aggregate sixty-year sentence was inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offenses and the character of the offender.
2. Whether the Indiana Court of Appeals properly revised the consecutive sentences to concurrent sentences.

HOLDINGS

1. The trial court's sixty-year aggregate sentence was not inappropriate in light of the nature of the offenses and Merida's character and therefore did not warrant appellate revision.

KEY QUOTATIONS

“The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” (2)

FACTUAL BACKGROUND

An investigation showed that Merida had molested a girl beginning when she was approximately five or six years old, possibly as early as 2000, and continuing through 2007. He was charged with ten counts and pleaded guilty to two Class A felony counts after a jury was empaneled but before evidence was presented. The trial court imposed consecutive advisory thirty-year sentences, emphasizing Merida's position of care, custody, and control over the victim, the seven-year duration of the conduct, and the victim's substantial emotional and social consequences.

PROCEDURAL HISTORY

Merida was charged with ten counts of child molesting, pleaded guilty to two Class A felony counts after jury empanelment but before evidence was presented, and received consecutive advisory thirty-year sentences totaling sixty years. The Court of Appeals revised the sentences to run concurrently. On the State's petition to transfer, the Indiana Supreme Court vacated the Court of Appeals decision and affirmed the trial court's sentence.

DISPOSITION

affirmed

CASES CITED

- Merida v. State, 977 N.E.2d 406 (Ind. Ct. App. 2012)
- Merida v. State, 980 N.E.2d 841 (Ind. Jan. 11, 2013) (table)
- Cardwell v. State, 895 N.E.2d 1219, 1222-25 (Ind. 2008)

- Serino v. State, 798 N.E.2d 852, 856-57 (Ind. 2003)

OPINION

PER CURIAM.

ATTORNEY FOR APPELLANT ATTORNEYS FOR APPELLEE Jennifer A. Joas Gregory F. Zoeller Madison, Indiana Attorney General of Indiana Brian Reitz Deputy Attorney General Indianapolis, Indiana

In the May 17 2013, 12:14 pm Indiana Supreme Court _____
No. 69S01-1301-CR-24 CALVIN MERIDA, Appellant (Defendant below), v. STATE OF INDIANA, Appellee (Plaintiff below). _____ Appeal from the Ripley Circuit Court No. 69C01-1012-FA-8 The Honorable Carl H. Taul, Judge _____ On Petition To Transfer from the Indiana Court of Appeals, No. 69A01-1203-CR-110 _____ May 17, 2013] Per Curiam.

An investigation showed Merida had been molesting a girl from the time she was five or six years old, starting perhaps as early as 2000. In all, Merida was charged with ten counts of child molesting covering the period from 2000 through 2007.

After a jury was empanelled but before evidence was offered, Merida pled guilty to two counts of child molesting as Class A felonies. See Ind. Code § 35-42-4-3(a) (2008). The remaining counts were dismissed. The sentencing range for a Class A felony is from twenty years to fifty years; the advisory sentence is thirty years. See I. C. § 35-50-2-4 (2008).

The trial court imposed consecutive advisory sentences for an aggregate term of sixty years. As mitigating circumstances, the Court noted the guilty plea but did not accord it a lot of weight since the State and the victim had had to prepare for trial.

The trial court also noted Merida's lack of criminal history. The trial court discussed several aggravating circumstances. Merida was in a position of having care, custody and control of the girl, and his conduct occurred over a seven-year period. Also, as a result of the offense becoming known in the community, the girl no longer attends public school and does not go out with friends or talk with them on the phone as she once did.

She has suffered an emotional impact greater than in the usual case, the trial court noted. Citing Indiana Appellate Rule 7(B), the Court of Appeals revised the sentences by ordering them to run concurrently, thus reducing the aggregate term from sixty years to thirty years. See Merida v. State, 977 N.E.2d 406 (Ind. Ct. App. 2012), vacated.

We granted the State's petition to transfer jurisdiction to this Court. See *Merida v. State*, 980 N.E.2d 841 (Ind. Jan. 11, 2013) (table); App. R. 56(B); 58(A). The authority granted by Article 7, § 4 of the Indiana Constitution permitting appellate review and revision of criminal sentences is implemented through Appellate Rule 7(B), which provides: "The Court may revise a sentence authorized by statute if, after due consideration of 2 the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, and as interpreted by case law, appellate courts may revise sentences after due consideration of the trial court's decision, if the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.

Cardwell v. State, 895 N.E.2d 1219, 1222-25 (Ind. 2008); *Serino v. State*, 798 N.E.2d 852, 856-57 (Ind. 2003). The principal role of such review is to attempt to leaven the outliers. *Cardwell*, 895 N.E.2d at 1225. Having reviewed the matter, our collective judgment is that the sentence imposed by the trial court is not inappropriate under Appellate Rule 7(B), and does not warrant appellate revision.

Accordingly, we affirm the sentence imposed by the trial court. Dickson, C.J., and Rucker, David, Massa, and Rush, JJ., concur. 3