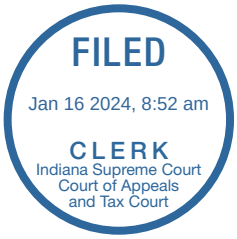
MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

Elmer Ray Spradlin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 16, 2024

Court of Appeals Case No. 22A-CR-2984

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No. 79D02-2010-F1-14

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

[1] Elmer Spradlin was convicted of six counts of child molesting and one count of vicarious sexual gratification for acts he committed against his two surrogate granddaughters over a seven-year period. Spradlin appeals his convictions, contending he was deprived of his constitutional right to confront witnesses when the trial court found the youngest victim unavailable for trial and admitted the victim's forensic interviews in place of her trial testimony. Spradlin also challenges his 60-year sentence as inappropriate. We reject Spradlin's claims and decline to revise Spradlin's sentence, but we remand for correction of a scrivener's error in the Abstract of Judgment.

Facts

[2] Spradlin is the surrogate grandfather of two sisters: Victim 1 (born in 2006) and Victim 2 (born in 2003).[1] Beginning in 2007, when Victim 2 was about four years old, Spradlin touched and rubbed Victim 2's vagina several times during her visits to his home. Spradlin similarly touched Victim 2 again during her visits when she was six. The molestations continued for the next five years until Victim 2 was 11 years old and started locking her room at night.

[1] Victims 1 and 2 are the daughters of S.B., the younger sister of Spradlin's wife. Although Victims 1 and 2 technically are Spradlin's nieces by marriage, Spradlin and his wife either adopted or took custody of S.B. when she was 11 years old. Accordingly, the family treated Spradlin as if he were the grandfather of Victims 1 and 2.

[3] Spradlin also molested Victim 1 during visits to his home from the time she was about three years old. The molestations of Victim 1 continued after the family of Victims 1 and 2 moved into Spradlin's home due to financial difficulties in the summer of 2016. For almost seven years, Spradlin rubbed and digitally penetrated Victim 1's vagina as well as squeezed her breasts, sometimes several times daily. Spradlin, while clothed, pressed his penis against Victim 1's buttocks or vagina. At other times, he tried to force Victim 1's hand between his legs. And he once forced a pet dog to lick Victim 1's vagina.

[4] Once when Victim 1 accused Spradlin of being perverted, Spradlin laughingly denied the accusation before asking Victim 1 if she wanted him to be a pervert. On another occasion, when Victim 1 told Spradlin she would report his conduct, Spradlin threatened that police would take away their shared home if she did.

[5] Spradlin last molested Victim 1 in November 2016, when she was ten years old. Soon afterward, Victim 1 reported Spradlin's molestations to school friends and a teacher. Upon learning of the molestations, Victim 1's mother contacted police, who arranged a forensic interview of Victim 1. Victim 2 later reported that she too had been molested by Spradlin. The girls' family moved out of Spradlin's home around Thanksgiving 2016. Spradlin had little contact with the family after that.

[6] Police interviewed Spradlin, who denied molesting Victims 1 and 2. The investigation languished for the next three years until March 2020, when police

arranged a second forensic interview of Victim 1. Seven months later, the State charged Spradlin with 12 counts of child molesting and 4 counts of vicarious sexual gratification.

[7] Spradlin filed a notice of alibi alleging he had been working in Michigan from August 2009 to June 2010 and that he also worked at "SIA" in Lafayette during the entire period of the alleged molestations. He also sought to depose Victim 1. The State objected, and the trial court eventually denied Spradlin's request after a hearing.

[8] Shortly before Spradlin's jury trial, the State sought to admit Victim 1's forensic interviews in lieu of her trial testimony. After a hearing, the trial court found Victim 1 was a protected person unavailable for trial. That determination led to admission of Victim 1's forensic interviews at Spradlin's trial.

[9] The jury found Spradlin not guilty of two counts of vicarious sexual gratification but guilty of the remaining charges. Based on double jeopardy concerns, the trial court convicted Spradlin only of six counts of child molesting and one count of vicarious sexual gratification. The court then sentenced Spradlin to 60 years imprisonment, with 8 years suspended to supervised probation. Spradlin appeals both his convictions and his sentence.

Discussion and Decision

[10] Spradlin raises three primary issues on appeal. First, he contends the trial court violated Spradlin's right to confront Victim 1 under the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Indiana

Constitution. Second, he argues that the trial court abused its discretion by admitting his booking photograph into evidence. Finally, Spradlin challenges his 60-year aggregate sentence as inappropriate under Indiana Appellate Rule 7(B). Finding no reversible error or inappropriate sentence, we affirm Spradlin's convictions and sentence but remand for a minor scrivener's error in the sentencing documents.

I. The Trial Court Did Not Violate Spradlin's Constitutional Right to Confrontation

[11] Under both the federal and state constitutions, criminal defendants have the right to confront witnesses against them. *See* U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him"); Ind. Const. art. 1, § 13 ("In all criminal prosecutions, the accused shall have the right . . . to meet the witnesses face to face"). Spradlin argues that the trial court violated his constitutional right to confront witnesses under both the federal and state constitutions by erroneously: (1) admitting under Indiana Code § 35-37-4-6 (the Protected Person Statute) Victim 1's forensic interviews in lieu of her trial testimony; and (2) denying Spradlin's motions to depose Victim 1 under Indiana Code § 35-40-5-11.5 (the Child Deposition Statute). We find no confrontation right violation because the trial court acted in accordance with the governing statutes in admitting the forensic interviews and denying the deposition request.

A. Spradlin Has Shown No Unconstitutional Irregularities in the Protected Person Statute Proceedings

[12] Spradlin claims the admission of Victim 1's forensic interviews violated his confrontation right because the requirements of the Protected Person Statute were unmet and he was not allowed to confront Victim 1 face to face at the protected person hearing. We find neither claim persuasive.

[13] The Protected Person Statute permits admission of otherwise inadmissible hearsay evidence—including forensic interviews—relating to sex crimes against a victim who is under 14 years old at the time of the offense and less than 18 years at the time of trial. Ind. Code § 35-37-4-6(a)(1), (c)(1), (d) (2022). Before a child's forensic interview victim may be admitted under the Protected Person Statute, however, several requirements must be met.

[14] The trial court must find in a hearing outside the presence of the jury "that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability." Ind. Code § 35-37-4-6(e)(1) (2022). The defendant has a right to be present at this hearing, and the protected person must appear either in person or through closed circuit television. *Id.* The protected person also must testify at trial or be found to be unavailable as a witness. Ind. Code § 35-37-4-6(e)(2) (2022). In this case, Victim 1 was found to be a protected person unavailable for trial. She therefore never appeared before the jury except through her recorded forensic interviews.

i. The Requirements of the Protected Person Statute Were Met

[15] Spradlin contends the unavailability and reliability requirements of the Protected Person Statute were not met here. He therefore concludes the trial court erred in admitting the forensic interviews in violation of his constitutional right to confront Victim 1.

[16] We review the admission of statements under the Protected Persons Statute for an abuse of discretion. *Perryman v. State*, 80 N.E.3d 234, 241 (Ind. Ct. App. 2017). Although the trial court is afforded broad discretion in evidentiary matters, the Protected Person Statute "impinges upon the ordinary evidentiary regime" and therefore imposes on the trial court "a special level of judicial responsibility." *Carpenter v. State*, 786 N.E.2d 696, 702 (Ind. 2003) (quoting *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999)). We conclude that both the unavailability and reliability requirements were met and that Spradlin has shown no constitutional irregularity in Victim 1's testimony at the protected person hearing.

a. Victim 1 Was Unavailable Under the Protected Person Statute

[17] For purposes of the Protected Person Statute, a protected person is unavailable for trial if the trial court finds, based on testimony of a "provider" and any "other evidence," that "testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate." Ind. Code § 35-37-4-6(e)(2)(B)(i) (2022). A trial court's observations of the child alone cannot justify

a finding of unavailability under the Protected Person Statute. *Norris v. State*, 53 N.E.3d 512, 518 (Ind. Ct. App. 2016).

[18] Spradlin claims the evidence was insufficient to meet this standard. He focuses on the failure of the "provider"—in this case, Victim 1's psychiatrist—to specifically state that testifying in Spradlin's presence would cause Victim 1 to suffer serious emotional distress such that she could not reasonably communicate. But Spradlin minimizes the psychiatrist's testimony and ignores the other evidence upon which the trial court relied. In its detailed order, the court found:

> Victim 1 has suffered thirteen (13) mental health hospitalizations since her disclosure of sexual abuse six years ago. She has demonstrated serious emotional distress when recalling her abuse such as hyperventilating, anxiety, withdrawal, physical aggression, crying and curling up in a corner, and walking out of therapy. She has been diagnosed with significant conditions including, but not limited to anxiety; PTSD; borderline personality disorder; and oppositional defiant disorder. She has harmed herself and has been suicidal. She was hospitalized very recently.
>
> Victim #1's Psychiatrist stated that testimony in the presence of Defendant would likely be "difficult", and that Victim #1 may become "agitated" and "nervous." The Court concedes this does not meet statutory requirements that the testimony would cause "serious emotional distress such that the protected person cannot reasonably communicate." Indeed, it could be said of any child witness that testimony in the presence of an accused abuser would be difficult and cause nervousness or anxiety.
>
> But the statute allows this court to consider other evidence in addition to a Psychiatrist's opinion. Here, Victim #1's current

> therapist has witnessed the reactions of Victim #1 when attempting to discuss the details of the alleged sexual abuse. Those reactions include Victim #1 shutting down and even leaving the room. The therapist concluded that Victim #1's testimony in the presence of her abuser would likely cause "additional emotional distress." Victim #1's mother also testified. She has been by her daughter's side during the past six years and thirteen hospitalizations since the disclosure of the sexual abuse. She believes that testimony of her daughter in presence of Defendant would have a 'very negative effect' that could range from "shutting down" to becoming "enraged" or "violent." The Court also observed Victim #1's demeanor when she testified remotely at the hearing. While Victim #1 appeared to be calm, she could not definitely identify Defendant during the Zoom hearing. This is not necessarily a reliable prediction of how Victim #1 may react or communicate if brought into open court in the physical presence of Defendant.
>
> Considering the entire record, the Court finds that the State has met its burden in establishing that Victim #1 is unavailable for trial because her testimony in the physical presence of the Defendant will cause her to suffer serious emotional distress such that she cannot reasonably communicate.

App. Vol. II, pp. 96-98.

[19] The Protected Person Statute "requires that the trial court, and not the medical professional, makes the determination whether trial testimony would cause the protected person serious emotional distress such that the protected person cannot reasonably communicate." *Norris*, 53 N.E.3d at 520. Therefore, the failure of Victim 1's psychiatrist to specifically use the words "severe emotional distress," as provided in Indiana Code § 35-37-4-6(e)(2)(B)(i) (2022), does not prevent the trial court from finding Victim 1 unavailable when the psychiatrist's

testimony, buttressed by other evidence, shows that standard is met. The evidence cited by the trial court—none of which Spradlin suggests is factually inaccurate—was sufficient to support the trial court's finding of unavailability.

b. The Forensic Interviews Had Sufficient Indications of Reliability

[20] Spradlin's attack on the reliability of the forensic interviews is similarly unpersuasive. In evaluating the time, content, and circumstances of a child's statements for sufficient reliability under the Protected Person Statute, these factors, among others, are considered:

- whether there was significant opportunity for coaching;
- the nature of the questioning;
- whether a motive to fabricate exists;
- use of age-appropriate terminology; and
- spontaneity and repetition.

Perryman, 80 N.E.3d at 242 (citing *Pierce v. State*, 677 N.E.2d 39, 44 (Ind. 1997)). After considering these factors, the trial court here found that the time, content, and circumstances of the forensic interviews provided sufficient indications of reliability.

[21] Although Spradlin appears to challenge the introduction of Victim 1's forensic interviews from both 2016 and 2020, he focuses on the latter. He claims that the four-year gap between the two interviews presented a significant opportunity for coaching and therefore rendered the second interview unreliable. He points to some of Victim 1's language during the 2020 interview as indicative of

coaching. He also notes that Victim 1 did not reveal certain molestations during the second interview that she reported during the first.

[22] But much of Spradlin's argument is explained by Victim 1's increasing maturity. She was 10 years old during the first interview and used appropriate child euphemisms instead of anatomical terms. She refused to speak about the molestations for much of the first interview due to embarrassment and concerns that Spradlin, with whom she still lived, would get in trouble.

[23] Victim 1 was 14 years old during the second interview and appeared significantly matured and more articulate. She used anatomical terms that appeared appropriate for a teenager. Although Victim 1 still appeared uncomfortable discussing the molestations, she no longer lived with Spradlin and expressed an understanding of the need to detail any acts of molestation. Victim 1 recounted in her second interview many of the same molestations described in her first interview. Admittedly, she revealed in her 2020 interview new molestations not mentioned in her 2016 interview. She also did not mention in her 2020 interview all the accusations she made during her 2016 interview. However, Victim 1's description of Spradlin's course of conduct was strikingly similar in both interviews.

[24] The nature of the questioning also supports a finding of reliability. The same experienced forensic interviewer conducted the questioning of Victim 1 in both interviews. The forensic interviewer asked open ended questions and made

clear that Victim 1 could correct her if the interviewer said anything that was incorrect.

[25] Given all these considerations, we conclude the trial court did not abuse its discretion in finding the forensic interviews bore sufficient indications of reliability. As Spradlin has not shown any requirements of the Protected Person Statute were unmet, we reject his claim that the Statute did not authorize admission of the forensic interviews.

ii. Spradlin Has Not Shown that He Was Deprived of Face-to-Face Confrontation of Victim 1 at the Protected Person Hearing

[26] Spradlin also contends the trial court deprived him of his right under the Indiana Constitution to confront Victim 1 face to face at the protected person hearing. *See* Ind. Const. art. 1, § 13 ("In all criminal prosecutions, the accused shall have the right . . . to meet the witnesses face to face."). We review de novo claims of confrontation clause violations. *See*, *e.g.*, *Galloway v. State*, 188 N.E.3d 493, 499 (Ind. Ct. App. 2022); *Jones v. State*, 982 N.E.2d 417, 422 (Ind. Ct. App. 2013).

[27] "A face-to-face meeting occurs when persons are positioned in the presence of one another so as to permit each to see and recognize the other." *Brady v. State*, 575 N.E.2d 981, 987 (Ind. 1991). Victim 1 testified remotely via Zoom. Spradlin argues no face-to-face meeting occurred because the trial court positioned the camera so that Victim 1 could not see Spradlin during her testimony.

[28] Before Victim 1 began testifying at the protected person hearing, she acknowledged she could see the prosecutor, the judge, and the two men sitting together—that is, Spradlin and his counsel. Victim 1 told the judge that she did not recognize the two men, however.

[29] The state constitutional right to face-to-face confrontation is not absolute and may be waived. *Id.*; *Mathews v. State*, 26 N.E.3d 130, 135 (Ind. Ct. App. 2015). Spradlin did not object to the positioning of the camera when the trial court still could have cured any error by moving the camera. Spradlin acknowledges this omission but claims his earlier objection to *any* remote testimony by Victim 1 was sufficient to preserve this claim. As the State suggests, Spradlin's objection to any remote testimony did not relieve him of the duty to object to the camera angle at the hearing. *See White v. State*, 772 N.E.2d 408, 411 (Ind. 2002) ("A party may not object on one ground at trial and raise a different ground on appeal.").[2]

[30] Waiver notwithstanding, Spradlin assumes Victim 1's inability to recognize him at the protected person hearing is due to the camera positioning and not due to lack of contact with Spradlin for several years. The record does not support such an assumption. Victim 1 was able to recognize the prosecutor, who was sitting at a table near Spradlin. This identification seemingly would not have been possible if the camera angle was the only problem. The record also shows

[2] Spradlin does not rely on the fundamental error doctrine.

that Spradlin dramatically changed his appearance after his arrest—a circumstance that could have contributed to Victim 1's identification difficulties.

[31] Spradlin has not met his burden of establishing that he did not receive the type of face-to-face confrontation required by Article 1, Section 13, as interpreted by *Brady*. Decided in the pre-Zoom era, *Brady* specifically embraced the use of closed-circuit television testimony in child sex cases that "would permit the witness to see the accused and the trier of fact and would allow the accused and the trier of fact to see and hear the witness." 575 N.E.2d at 989. Spradlin does not suggest that he and Victim 1 could not see or hear each other during her testimony.

[32] In sum, we are unpersuaded by any of Spradlin's claims of a confrontation violation based on alleged irregularities in the Protected Person Statute proceedings.

B. The Trial Court's Denial of Spradlin's Motion to Depose Victim 1 Did Not Violate his Confrontation Rights

[33] Spradlin next claims the trial court mistakenly determined he had not met the requirements of the Child Deposition Statute, leading the court to erroneously deny his motions to depose Victim 1 and thereby deprive him of his confrontation right. *See* Ind. Code § 35-40-5-11.5 (2021). Depositions are part of discovery, over which trial courts have broad discretion. *Church v. State*, 189

N.E.3d 580, 585 (Ind. 2022). We therefore typically review these matters for an abuse of discretion.[3] *Id.*

[34] The Child Deposition Statute "prohibits the ability of criminal defendants to depose the victim of a sex offense" unless the defendant meets one of three conditions. *Rosenbaum v. State*, 193 N.E.3d 417, 426 (Ind. Ct. App. 2022), *trans. denied*. A defendant meets one of these conditions if the defendant proves by a preponderance of the evidence, and the trial court finds, that a deposition is necessary "due to the existence of extraordinary circumstances" and "in the interest of justice." Ind. Code § 35-40-5-11.5(d)(3), (g). That is the only condition that Spradlin claims he met, but we find this argument unpersuasive.

[35] Spradlin contends his alibi defense was an extraordinary circumstance for which a deposition of Victim 1 was necessary. But the trial court determined otherwise. In its order denying Spradlin's first motion to depose Victim 1, the court reasoned:

> 7. Defendant's Notice of Alibi is very broad and vaguely states that he was working in Michigan for a brief time during the alleged charges and that he was working in Lafayette, Indiana during all other times alleged in the charges. This Notice does not account for times when he was not working.

[3] Although Spradlin advocates a de novo standard of review, it would apply here only if the "trial court's ruling involves a pure question of law, such as the interpretation or constitutionality" of the Child Deposition Statute. *Church v. State*, 189 N.E.3d 580, 585 (Ind. 2022). This claim involves only review of the trial court's statutory findings.

> 8. Considering the broad language of the Notice of Alibi and that Defendant has had opportunities to review the child's forensic interviews and depose her family members, the Court concludes that Defendant has failed to establish by a preponderance of the evidence that a deposition of the child is necessary due to the existence of extraordinary circumstances and is in the interest of justice. See I.C. 35-40-5-11.5(9).
>
> 9. The Court also considers the child victim's current mental and emotional well-being and that Defendant has alternatives available to him to explore or challenge the allegations such as review of the forensic interviews, deposition of family members, and cross-examination at trial.

App. Vol. II, pp. 66-67.

[36] Spradlin twice renewed his motion to depose Victim 1 before trial. The trial court initially granted Spradlin's renewed motions to depose due to constitutional challenges to the Child Deposition Statute then pending in the Indiana appellate courts. The court reversed its decision, however, after the State's motion to correct error noted that the Indiana Supreme Court was reviewing the statute. Seven months later, on the eve of trial, the State filed its notice of intent to offer Victim 1's forensic interviews instead of her trial testimony—a motion that led to the protected person hearing and the trial court's finding of Victim 1's unavailability for trial. That was the first point at which the State deviated from its position that Victim 1 would testify at trial. Spradlin did not later renew his motion to take Victim 1's deposition.

[37] On appeal, Spradlin argues that the trial court erred in denying the deposition because extraordinary circumstances existed and the interests of justice dictated

it.[4] We conclude the trial court properly determined that Spradlin proved neither element.

[38] Spradlin alleges several extraordinary circumstances existed that the trial court erroneously overlooked. First, he asserts that the criminal charges were extraordinary because the State alleged only broad date ranges for the 16 counts allegedly committed over seven years. Spradlin argues that he therefore could not adequately investigate or present his alibi defense without deposing Victim 1 and pinning down the dates of the alleged offenses. Although Spradlin acknowledges that timing typically is not critical in child sex offenses, he contends timing is critical here because the statutory classifications for offenses changed in 2014 and he was charged with both pre-2014 and post-2014 offenses.

[39] But Spradlin's own conduct establishes that this circumstance was not extraordinary. The trial court specifically authorized Spradlin at the protected person hearing to cross-examine Victim 1 about the substance of her allegations of molestation. Spradlin never questioned Victim 1 about the timing of the incidents.

[40] Spradlin also suggests the State's contradictory representations about Victim 1's ability to testify at trial was an extraordinary circumstance. At the first hearing

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[4] The State claims Spradlin waived this issue by failing to renew his motion to depose after the protected person hearing. Given that we have determined that Spradlin failed to prove he was entitled to depose Victim 1, we do not address this waiver argument.

on Spradlin's motion to depose Victim 1, the State stated that Victim 1 would testify at trial. Months later, and shortly before trial, the State alleged, and the trial court ultimately ruled, that Victim 1 was a protected person unavailable for trial. Spradlin points to concerns expressed by the trial court about this about-face, but the trial court also acknowledged the "evolving" nature of mental health issues. Tr. Vol. II, pp. 92-93.[5]

[41] Spradlin's failure to renew his motion to depose Victim 1 after the protected person hearing suggests Spradlin no longer needed to depose Victim 1 after his cross-examination of her during that hearing. Moreover, Spradlin cites no evidence suggesting he was unable to obtain through cross-examination of Victim 1 at the protected person hearing the evidence necessary for his trial defense.

[42] Spradlin also does not offer any separate reasons why the interests of justice warranted his deposition of Victim 1. The trial court did not abuse its discretion in denying Spradlin's motion to depose Victim 1 nor did that denial violate Spradlin's confrontation right.

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[5] Spradlin also accuses the State of intentionally delaying any criminal charges against Spradlin until the Child Deposition Statute was enacted. Spradlin does not offer any citations to the record to support this claim, and we do not find anything in the record to suggest it is true.

II. The Trial Court Did Not Abuse Its Discretion by Admitting Spradlin's Jail Photograph

[43] The trial court admitted, over Spradlin's objection, a photograph of Spradlin taken when he was first booked into jail after his arrest. The photo showed Spradlin with long hair and a long beard. By the time of trial, he was clean shaven with short hair. Spradlin claims the booking photo was irrelevant and prejudiced him because it depicted him "in an unkempt manner in a jail setting." Appellant's Br., p. 38.

[44] Relevant evidence generally is admissible, but irrelevant evidence is not. Ind. Evidence Rule 402. "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Ind. Evidence Rule 401. But even relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Ind. Evidence Rule 403. We review a trial court's decision to admit photographic evidence under an abuse of discretion standard. *Knapp v. State*, 9 N.E.3d 1274, 1281 (Ind. 2014).

[45] Spradlin claims the booking photo was not relevant because his identity was not at issue. But the photograph was admitted only after an equivocal identification of Spradlin by Victim 2, who had not seen Spradlin in six years. Victim 2, however, was able to identify Spradlin from the photograph. The booking photo therefore was relevant to his identification.

[46] Spradlin's claim of unfair prejudice is also unpersuasive. *See James v. State*, 613 N.E.2d 15, 28 (Ind. 1993) ("[T]he admission of mug shots is not always reversible error."). The booking photo merely depicted Spradlin with longer hair and facial hair that he lacked at trial. Nothing in the photograph reveals that it was taken in a jail setting, and the jury already knew that Spradlin had been arrested in 2020 for these offenses.

[47] Even if the booking photo was improperly admitted, the error was harmless in light of the overwhelming evidence of Spradlin's guilt—particularly the testimony of Victim 2 and the forensic interviews of Victim 1. *See id.* (finding admission of mug shot containing criminal case information was harmless in light of substantial evidence of guilt).

III. Spradlin's Sentence Is Not Inappropriate Under Appellate Rule 7(B), But Remand to Correct a Scrivener's Error is Required.

[48] Indiana Appellate Rule 7(B) permits this Court to "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." Our principal role in reviewing sentence appropriateness is to "attempt to leaven the outliers . . . not to achieve a perceived 'correct' sentence.'" *Knapp*, 9 N.E.3d 1274, 1292 (Ind. 2014) (quotations omitted). We thus defer substantially to the trial court's sentencing decision, which prevails unless "overcome by compelling evidence portraying

in a positive light the nature of the offense . . . and the defendant's character. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[49] We begin a Rule 7(B) analysis by considering the advisory sentence, which "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). As to Victim 1, Spradlin was convicted of four counts of child molesting (one Class A felony, one Level 1 felony, one Class C felony, and one Level 4 felony) and one count of vicarious sexual gratification (a Class B felony). And as to Victim 2, he was convicted of two counts of child molesting (one Class C felony and one Level 4 felony).

[50] As the following chart shows, the trial court entered the advisory sentence for Spradlin's vicarious sexual gratification conviction but otherwise imposed sentences above the advisory level on each of Spradlin's convictions (including maximum sentences for the Class A felony child molesting and two Class C felony child molesting convictions):

Offense for Which Spradlin was Convicted	**Sentencing Range for Offense**	**Advisory Sentence**	**Statutory Source**	**Sentence Imposed**
Count I: Class A felony Child Molesting	20 to 40 years imprisonment	30 years imprisonment	Ind. Code § 35-50-2-4(a) (2014)	40 years
Count IV: Level 1 felony Child Molesting	20 to 50 years imprisonment	30 years	Ind. Code § 35-50-2-4(b) (2014)	40 years

Counts V and XIII: Class C felony Child Molesting	2 to 8 years imprisonment	4 years imprisonment	Ind. Code § 35-50-2-6(a)	8 years for each count
Counts VIII and XVI: Level 4 felony Child Molesting	2 to 12 years imprisonment	6 years imprisonment	Ind. Code § 35-50-2-5.5	8 years for Count VIII; 10 years, with two years suspended, on Count XVI
Count IX: Class B felony Vicarious Sexual Gratification	6 to 20 years imprisonment	10 years imprisonment	Ind. Code § 35-50-2-5(a)	10 years

[51] The trial court ordered that Spradlin consecutively serve his sentences on Counts I, XVI, and IX. But his sentences on Counts IV, V, and VIII were to be served concurrently with Count I. In addition, the trial court ordered Spradlin's sentence on Count XIII to be served concurrently with his sentence for Count XVI. Thus, although Spradlin faced a maximum of 160 years in prison, he received an aggregate sentence of 60 years. The trial court also suspended 8 of those 60 years imprisonment to supervised probation, although the court did not specify in its oral or written sentencing orders the count(s) to which the suspension attached.

[52] The Abstract of Judgment does not specify Spradlin's aggregate sentence, but it does detail the sentences for each count and whether they are to be served consecutively or concurrently. In that respect, the Abstract of Judgment is identical to the trial court's oral and written sentencing orders. But according to the Abstract of Judgment, the trial court applied the 8-year suspension to

Spradlin's 10-year sentence for Count XVI. Attaching the sentence suspension to Count XVI, however, results in an aggregate executed sentence of 58 years because Spradlin must serve his unsuspended 8-year sentence in Count XIII concurrently with Count XV1. Only by attaching the 8-year suspension to Count IX can the 52-year executed sentence imposed by the trial court be achieved.[6]

[53] As the Abstract of Judgment appears to reflect a scrivener's error that neither party challenged on appeal, we remand to the trial court to correct the Abstract of Judgment. We also proceed to address Spradlin's claim that his 60-year sentence is inappropriate under Rule 7(B). *See Wilson v. State*, 39 N.E.3d 705, 718-19 (Ind. Ct. App. 2015) (affirming sentence after finding that inconsistency in Abstract of Judgment was scrivener's error when trial court's intent was clear).

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[6] The trial court's oral and written sentencing orders and the Abstract of Judgment all reflect that the sentences on Counts XVI and XIII were to be served concurrently to each other but consecutive to the 40-year sentence for Counts I, IV, V, and VIII and the 10-year sentence for Count IX, resulting in a total sentence of 60 years. If the 8-year suspension is applied to the 10-year sentence for Count XVI, Spradlin's concurrent sentences on Count XVI and Count XIII, for which he was sentenced to 8 years, would result in an 8-year executed sentence followed by eight years of supervised probation. *See Hart v. State*, 889 N.E.2d 1266, 1271 (Ind. Ct. App. 2008) (ruling that a convicted offender cannot be incarcerated while simultaneously receiving rehabilitative services associated with probation because the rehabilitative process "can only be accomplished outside the confines of prison"). And that, in turn, would mean that the executed portion of Spradlin's 60-year sentence would be 58 years (40 years for Counts I, IV, V, and VIII plus 10 years for Count IX plus 8 years for Counts XIII and XVI)—six years greater than the executed sentence specifically imposed by the trial court in its oral and written sentencing orders.

[54] As to the nature of the offenses, Spradlin merely claims that "[t]he facts and circumstances of Spradlin's convictions do not exceed the moral revulsion inherent in the crime." Appellant's Br., p. 42. The record shows otherwise.

[55] As the surrogate grandfather of Victims 1 and 2, Spradlin violated a position of trust. His perversion extended to incorporating the family dog into the molestations. And he threatened Victim 1 with homelessness if she reported his conduct. Spradlin's offenses particularly traumatized Victim 1, who afterward has been hospitalized in mental health facilities many times.

[56] Spradlin's character also is unavailing. His lack of criminal convictions is a mitigating circumstance, as the trial court found. *See* Ind. Code § 35-38-1-7.1(b)(6). But Spradlin committed this sexual misconduct over seven years. Those seven years represented more than 10 percent of his life. The molestations sometimes occurred as often as multiple times daily and always at times when the victims were depending on him for care or housing. The way he tried to conceal his crimes—by making Victim 1 choose between justice and homelessness—reflects extremely poorly on his character.

[57] Although Spradlin's friends and family sent many letters of support to the trial court, none recognized Spradlin had committed these offenses. A number of the letters even described Spradlin as a wonderful grandfather, despite his seven convictions for sexually victimizing two of his grandchildren.

[58] Spradlin carries the burden of proving his sentence is inappropriate. *Grimes v. State*, 84 N.E.3d 635, 645 (Ind. Ct. App. 2017). We conclude he has not met

that burden, given the prolonged and repetitive nature of the offenses, his position of trust with the victims, and the extraordinary damage that his offenses perpetrated.

[59] In conclusion, no violation of Spradlin's confrontation right occurred, the trial court properly admitted his booking photo, and his 60-year sentence is not inappropriate. We therefore affirm the trial court's judgment and remand for correction of the scrivener's error in the Abstract of Judgment.

Altice, C.J., and Kenworthy, J., concur.