MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brian Eskridge,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 28, 2023

Court of Appeals Case No. 22A-CR-1027

Appeal from the Porter Superior Court

The Honorable Michael A. Fish, Judge

Trial Court Cause No. 64D01-1506-FA-4789

Memorandum Decision by Judge Tavitas
Judges Vaidik and Foley concur.

Tavitas, Judge.

Case Summary

[1] Brian Eskridge appeals his convictions for three counts of child molestation, Class A felonies, and his three consecutive, maximum sentences, which total 150 years. Eskridge argues that: 1) the trial court abused its discretion by declining to sanction the State after it failed to disclose a witness's statements before trial; 2) the State failed to present sufficient evidence to support his convictions; 3) the trial court abused its discretion by sentencing Eskridge to three consecutive, maximum sentences; and 4) Eskridge's sentences are inappropriate. We find that Eskridge's arguments are without merit and, accordingly, affirm.

Issues

[2] Eskridge raises four issues on appeal, which we restate as:

I. Whether the trial court abused its discretion by declining to sanction the State after it failed to disclose a witness's statements before trial.

II. Whether the State failed to present sufficient evidence to support Eskridge's convictions.

III. Whether the trial court abused its discretion by sentencing Eskridge to three consecutive, maximum sentences.

IV. Whether Eskridge's consecutive, maximum sentences, which total 150 years, are inappropriate.

Facts

[3] R.G. ("Mother") gave birth to S.G. on August 15, 1996. When S.G. was approximately five months old, she was diagnosed with Williams Syndrome. S.G. has a "[m]ild intellectual disability," and she "operates at about the age of five." Tr. Vol. II p. 202; Tr. Vol. III p. 53.

[4] Eskridge, who was born in January 1975, began dating Mother when S.G. was eight months old, and, in December 1998, Eskridge and Mother married.[1] Eskridge and Mother had two children of their own, F.E., born in 1999, and Z.E., born in 2003.

[5] The family lived in a townhouse in Valparaiso from approximately March or April 2009 to August 2012. S.G. and F.E. shared a bedroom upstairs where F.E. usually slept on the top bed and S.G. slept on the trundle bed. Eskridge often spent time alone with the children in the house while Mother was at work.

[6] In February 2010, at approximately 3:00 a.m., F.E. went to her bedroom but found the bedroom locked. F.E. knocked and heard "scuffling noises inside." Tr. Vol. III p. 45. After "about a minute and-a-half," Eskridge came out of the bedroom in "[b]oxers and a white T-shirt" and appeared "[d]isheveled"; Eskridge's "hair was a mess, he looked almost out of breath, and [he] rushed out." *Id.* at 46. Inside the bedroom, F.E. observed that S.G. was "shaking and

[1] On December 11, 2015, Eskridge and Mother divorced.

sobbing" on the top bed, that S.G.'s "hair was all over the place," and that the "blankets were ruffled." *Id*. at 47, 49.

[7] In March 2010, also at approximately 3:00 a.m., F.E. found Eskridge and S.G. lying in bed together "[s]ideways but on their back." *Id*. at 51. When F.E. entered the bedroom, Eskridge "startled up and said, 'I was listening to her heart beat. It calms me down.'" *Id*. at 52.

[8] In either 2010 or 2011, S.G. had an "outburst" regarding Eskridge that Mother "did not pay appropriate attention to. . . ."[2] *Id*. at 17. In March 2015, S.G. reported to Mother that Eskridge inappropriately touched her. That April, F.E. and S.G. both spoke with a forensic interviewer at Dunebrook, a child advocacy center, regarding Eskridge's inappropriate touching of S.G. During her interview, S.G. was presented with diagrams of a girl's and boy's anatomy. On the girl diagram, S.G circled the vagina and the anus as areas where Eskridge inappropriately touched her and, on the boy diagram, she circled the penis and lips as body parts with which Eskridge inappropriately touched her.

[9] On June 3, 2015, then-Detective Sergeant Dave A. Castellanos interviewed Eskridge regarding S.G.'s allegations. Eskridge at first denied inappropriately touching S.G. Eventually, however, Eskridge stated, "It was an accident" and "I was always on stupid Prozac, man. It made me do s**t." Ex. Vol. V, State's Ex. 7 44:49-:55, 45:10-:16. Eskridge continued, "I'd just [] kiss her and feel on

[2] The record does not reveal what S.G. stated during this outburst.

her." *Id.* at 47:04-:08. He stated, "Hands were the worst," and when asked how he touched S.G. with his hands, he responded, "Just fondle. Grab her boob." *Id.* at 1:10:33-:46.

[10] Eskridge later admitted, "It was fellatio . . . but not me to her." *Id*. at 50:33-:37. He stated, "As far as the intercourse, I tried . . . it don't work." *Id*. at 1:07:00-:03. When asked if he tried to have sexual intercourse with S.G. on additional occasions, he responded, "It wasn't more than ten [times]." *Id*. at 1:09:15-:28. When asked if he penetrated S.G. vaginally, Eskridge responded, "Maybe she thought [so] just because it was around the area." *Id.* at 1:12:33-:37. When asked if he used a condom, Eskridge responded "Probably not . . . [Mother] would've been wondering where those condoms were from." *Id*. at 1:18:30-:39.

[11] Eskridge stated that S.G. was "thirteen or fourteen" when the inappropriate touching occurred. *Id*. at 1:00:58-:59. He stated that he was "f*****g horribly sorry" and that he "almost wanted [S.G.] . . . to be with [him]." *Id*. at 1:14:38-:4, 1:16:00-:05.

[12] On June 15, 2015, the State charged Eskridge with three counts of child molestation, Class A felonies. Counts I and II alleged that, on or between January 1, 2005, and August 14, 2010, Eskridge engaged in sexual conduct other than sexual intercourse with S.G.; and Count III alleged that, during that same time period, Eskridge engaged in sexual intercourse with S.G.

[13] On September 16, 2015, the trial court issued a discovery order that required *inter alia* the State to disclose "[t]he names and last known addresses of persons

whom the State of Indiana intends to call as witnesses together with their written statements, recorded or taped statements, video-taped statements, memoranda containing substantially verbatim reports of their oral statements and memoranda reporting or summarizing their oral statements." Appellant's App. Vol. II p. 50. The order also required the State to disclose any evidence favorable to the defense.

[14] On January 13, 2021, the State provided Eskridge with discovery, including videotapes of F.E.'s and S.G.'s Dunebrook interviews. As the trial date approached, the State listed F.E. and S.G. as witnesses. Eskridge, however, did not depose S.G. or F.E.

[15] On March 4, 2022, the State amended the charging information. The amended information alleges that Eskridge "knowingly performed or submitted to": (1) as to Count I, "anal sex" with S.G.; (2) as to Count II, "oral sex" with S.G.; and (3) as to Count III, "sexual intercourse" with S.G. Appellant's App. Vol. II p. 156-57. The State alleged that these offenses occurred between January 1, 2009, and August 14, 2010.

[16] The trial court held a jury trial on March 15-17, 2022. After the State gave its opening statement, Eskridge moved to continue the trial or, in the alternative, to exclude testimony regarding F.E.'s account of the February and March 2010 incidents. He argued that F.E. did not make any statements regarding those incidents in her Dunebrook interview and that the State failed to disclose F.E.'s statements regarding the February and March 2010 incidents as required by the

trial court's discovery order. The State explained that it first learned of F.E.'s statements during a March 4, 2022 pretrial meeting with witnesses and that, aside from its "work product notes," it had not "synthesized" the information "into some sort of statement." Tr. Vol. II pp. 187, 189.

[17] The trial court denied Eskridge's motion on the grounds that: 1) the statements were not exculpatory material required to be disclosed to the defense under *Brady*[3] but were, rather, "a matter of impeachment"; 2) the State did not violate the discovery order; and 3) Eskridge had "ample opportunity to interview or depose" F.E. *Id*. at 191-92.

[18] During the trial, Mother testified that Eskridge told her that "he felt differently about [S.G.] than the other kids." *Id*. at 9. F.E. testified regarding the February and March 2010 incidents. F.E. further testified that she saw Eskridge and S.G. "cuddling with each other . . . [o]n many occasions." *Id*. at 55. Detective Castellanos, now a sergeant, testified regarding his interview with Eskridge.

[19] S.G. testified that Eskridge "raped" her "non-stop" in numerous ways and that Eskridge "made [her] say a prayer" after each occurrence. Tr. Vol. III p. 81. She testified that the inappropriate touching all occurred in the townhouse in Valparaiso when Mother was at work.

[20] S.G. testified that she was "probably" thirteen when the Eskridge first penetrated her vaginally and that she was thirteen when Eskridge first

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[3] *See Brady v. Maryland*, 373 U.S. 83 (1963).

penetrated her anally. *Id*. at 96. When asked how old she was when Eskridge penetrated her orally, S.G. at first testified that she was "16, 15 – I mean, 14 and 15 and 13" and then clarified that she was "14 and 13." *Id*.

[21] On cross-examination, S.G. testified that the inappropriate touching all occurred when she was in high school, which her report card reveals she began in 2011. On re-direct, S.G. testified that she believed that she began high school at age twelve or thirteen. S.G. further testified that Eskridge penetrated her vaginally "[f]ive or six times," penetrated her anally "[f]ive or six times," penetrated her orally "a lot," which she testified was "more than five or six" times, and that the abuse went on for "[m]onths, years." *Id*. at 92-93, 96.

[22] Eskridge testified in his own defense and denied inappropriately touching S.G. He testified that he only admitted to inappropriately touching S.G. during his interview with Detective Castellanos because he "was having a massive panic attack" and "just wanted to get out of there." *Id*. at 167.

[23] The jury found Eskridge guilty of all three counts. The trial court entered judgments of conviction on the same.

[24] The trial court held a sentencing hearing on April 6, 2022, and stated that Eskridge was "one of the worst offenders." Tr. Vol. IV p. 38. The trial court also observed that Eskridge did not offer an apology or express remorse. The trial court found six aggravating factors: 1) Eskridge "was in a position of having [the] care, custody, or control of the victim"; 2) the harm, injury, loss, or damage suffered by the victim was significant and greater than the elements

necessary to prove the commission of the offenses; 3) Eskridge violated the conditions of his pre-trial release by committing harassment, a Class B misdemeanor; 4) "the victim of the offense is a person with a disability[,] and [Eskridge] knew that the victim is a person with a disability"; 5) Eskridge committed multiple episodes of abuse over a significant period of time; and 6) Eskridge has a history of criminal activity, namely, his harassment conviction. Appellant's App. Vol. II p. 245. The trial court observed that the fact that S.G. "is a victim with a disability" was the "most significant" aggravating factor. Tr. Vol. IV p. 40. The trial court found as a mitigator that "the circumstances in this cause are unlikely to reoccur." Appellant's App. Vol. II p. 245.

[25] The trial court found "the aggravating factors significantly outweigh[ed] the mitigating factor" and sentenced Eskridge to three consecutive sentences of fifty years, the statutory maximum, all executed, for a total sentence of 150 years. *Id*. Eskridge now appeals.

Discussion and Decision

I. Discovery Sanction

[26] Eskridge argues that the State was required to disclose F.E.'s statements regarding the February and March 2010 incidents under the trial court's discovery order and that the trial erred in refusing to continue the trial or, in the alternative, exclude F.E.'s testimony regarding those incidents. We disagree.

[27] Trial Rule 37(B)(2) provides that, when a party violates a discovery order, the trial court "may make such orders in regard to the failure as are just." We

afford trial courts "great deference" in fashioning these remedies. *Cain v. State*, 955 N.E.2d 714, 718 (Ind. 2011). "The primary factors that a trial court should consider when addressing a discovery violation are 'whether the breach was intentional or in bad faith and whether substantial prejudice has resulted.'" *Id.* (quoting *Wiseheart v. State*, 491 N.E.2d 985, 988 (Ind. 1986)). "We will affirm a trial court's rulings absent 'clear error and resulting prejudice.'" *Id.* (quoting *Williams v. State*, 714 N.E.2d 644, 649 (Ind. 1999), *trans. denied*).

[28] We conclude that, whether or not the State violated the trial court's discovery order, Eskridge suffered no prejudice. Eskridge was aware that F.E. stated during her 2015 Dunebrook interview that Eskridge inappropriately touched S.G., and Eskridge's defense strategy consisted of discrediting F.E. Eskridge fails to explain how his strategy would have changed had the State disclosed F.E.'s statements regarding the February and March 2010 incidents before trial. *See Berry v. State*, 715 N.E.2d 864, 866 (Ind. 1999) (holding that the State's failure to disclose the results of a DNA test "did not appear to make a difference in [the defendant's] trial strategy or tactics"). Eskridge argues that the trial court should have given him more time to depose F.E. regarding those incidents; however, Eskridge had ample time to depose F.E. during the nearly seven-year interval between the filing of charges and Eskridge's trial, yet he failed to do so. *See Warren v. State*, 725 N.E.2d 828, 832 (Ind. 2000) (affirming trial court's refusal to exclude photographic evidence that the State failed to disclose when the defendant "was aware of their existence and could have reviewed them in advance of trial"), *trans. denied*.

[29] Eskridge relies on our decision in *Hall v. State*, 176 Ind. App. 59, 374 N.E.2d 62 (1978). In that case, the State failed to disclose to the defense a letter, written by the rape victim's father and step-mother, that "alleged that the victim had previously received psychiatric treatment for compulsion to lie and for sexual problems and that she had previously unjustly accused other men, including her own father, of raping her." 176 Ind. App. at 61, 374 N.E.2d at 64. The trial court denied the defendant's motion to continue the trial to permit the defense to investigate the letter. *Id*. On appeal, we reversed, holding:

> Significant allegations and statements in the letter . . . necessitated that [the defendant] depose or subpoena witnesses having personal knowledge of the victim's propensities to lie and to threaten to accuse others of rape. Such testimony would have gone directly to the victim's credibility as a witness, and, therefore, would have allowed the trier of fact to make a more informed decision as to [the defendant's] guilt or innocence.

176 Ind. App. at 66, 374 N.E.2d at 67.

[30] We find *Hall* distinguishable. Unlike the letter in *Hall*, F.E.'s statements regarding the February and March 2010 incidents do not reveal additional witnesses who would discredit her veracity nor do her statements reveal a propensity to lie. At most, F.E.'s statements regarding the February and March 2010 incidents provided additional details regarding Eskridge's inappropriate touching of S.G., which F.E. alleged as early as 2015 during her Dunebrook interview. Eskridge had ample opportunity to impeach F.E. for failing to mention these incidents prior to her interview with the State, and the jury

evidently chose to believe F.E. Accordingly, we find that the trial court did not err in declining to continue to the trial or exclude F.E.'s testimony regarding the February and March 2010 incidents.

II. Sufficiency of the Evidence

A. The State Presented Sufficient Evidence

[31] Eskridge next argues that the State presented insufficient evidence to support his convictions. We disagree.

[32] Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). "When there are conflicts in the evidence, the jury must resolve them." *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell*, 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn

from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[33] At the time the offenses occurred, the statute defining child molestation provided:

> (a) A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony. However, the offense is a Class A felony if:
>
> > (1) it is committed by a person at least twenty-one (21) years of age. . . .

Indiana Code Section 35-42-4-3 (2007).

[34] "There is longstanding caselaw holding that, although time is not of essence in most child molesting cases, the exact date of an act becomes important if 'the victim's age at the time of the offense falls at or near the dividing line between classes of felonies.'" *Adcock v. State*, 22 N.E.3d 720, 726 (Ind. Ct. App. 2014) (quoting *Barger v. State*, 587 N.E.2d 1304, 1307 (Ind. 1992)), *trans. denied*. Eskridge argues that the State failed to present sufficient evidence that the three counts of child molestation each occurred when S.G. was under the age of fourteen and that he, therefore, could not have been convicted of three counts of child molestation as a Class A felony. We conclude, however, that the State provided sufficient evidence that S.G. was under the age of fourteen when the charged events occurred.

[35] In *Adcock*, we held that the State failed to present sufficient evidence that the victim was under the age of fourteen at the time that she was molested when the victim "could only testify that Adcock had inserted his finger into her vagina sometime while she was in junior high school; she was thirteen for about one-half of that time and fourteen for the other half." *Id*. at 726.

[36] Here, however, S.G. gave more precise testimony regarding her age when Eskridge molested her. She testified that she was "probably" thirteen when Eskridge first penetrated her vaginally, that she was thirteen when Eskridge first penetrated her anally, and that she was "14 and 13" when Eskridge penetrated her orally. Tr. Vol. III p. 96. *See Bowles v. State*, 737 N.E.2d 1150, 1152 (Ind. 2000) ("A victim's testimony, even if uncorroborated, is ordinarily sufficient to sustain a conviction for child molesting."). In addition, S.G.'s testimony was corroborated by: 1) F.E., who testified regarding the February and March 2010 incidents, which would have both occurred before S.G. turned fourteen; and 2) Eskridge himself, who admitted during his interview with Detective Castellanos that S.G. could have been age thirteen when he inappropriately touched her.

[37] Eskridge argues that the evidence regarding S.G.'s age at the time of the molestation is insufficient because: 1) S.G. testified that she was in high school when the inappropriate touching occurred; and 2) she began high school in 2011, when she would have been at least age fourteen. S.G., however, testified that she believed that she began high school at age twelve or thirteen, which is inaccurate. While the evidence is not entirely free of conflict, any conflict was

for the jury to resolve, and Eskridge merely asks that we reweigh the evidence, which we cannot do.

B. S.G.'s Testimony was not Incredibly Dubious

[38] Eskridge next argues that, even if the evidence is sufficient to support his convictions, we should nonetheless reverse because S.G.'s testimony was incredibly dubious. We disagree.

[39] We have summarized the incredible dubiosity rule as follows:

> The incredible dubiosity rule allows the reviewing court to impinge upon the factfinder's responsibility to judge the credibility of witnesses when confronted with evidence that is "so unbelievable, incredible, or improbable that no reasonable person could ever reach a guilty verdict based upon that evidence alone." *Moore v. State*, 27 N.E.3d 749, 751 (Ind. 2015). The rule is applied in limited circumstances, namely where there is "[(1)] a sole testifying witness; [(2)] testimony that is inherently contradictory, equivocal, or the result of coercion; and [(3)] a complete absence of circumstantial evidence." *Id.* at 756. Application of the incredible dubiosity rule is "rare[,] and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). "[W]hile incredible dubiosity provides a standard that is 'not impossible' to meet, it is a 'difficult standard to meet, [and] one that requires great ambiguity and inconsistency in the evidence.'" *Moore*, 27 N.E.3d at 756 (quoting *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001)).

Smith v. State, 163 N.E.3d 925, 929 (Ind. Ct. App. 2021).

[40] The incredible dubiosity rule is inapplicable here. We do not decide whether the first and second elements of the rule are met because ample circumstantial evidence of Eskridge's guilt exists. F.E.'s testimony regarding the February and March 2010 incidents supports a finding that Eskridge molested S.G. on at least two occasions before S.G. turned fourteen. In addition, Mother testified that Eskridge told her that "he felt differently about [S.G.] than the other kids." Tr. Vol. III p. 9. Furthermore, Eskridge himself made numerous inculpatory statements during his interview with Detective Castellanos, including that he would "fondle" S.G. and "[gr]rab her boob"; that he and S.G. engaged in "fellatio"; that he "tried" to have intercourse with S.G. "no more than ten [times]"; that his penis was "around the area" of S.G.'s vagina; that he "[p]robably" did not use a condom because "[Mother] would have wondered where those condoms were from"; and that he "almost wanted [S.G.] . . . to be with [him]." Ex. Vol. V, State's Ex. 7 1:10:33-:46, 50:33-:37, 1:07:00-:03, 1:09:15-:28, 1:12:33-:37, 1:18:30-:39, 1:16:00-:05. Eskridge also admitted that S.G. could have been age thirteen when he molested her. Because there is not a "complete absence" of circumstantial evidence of Eskridge's guilt, the incredible dubiosity rule does not apply. *Smith*, 163 N.E.3d at 929. The State, therefore, presented sufficient evidence to support Eskridge's convictions.

III. Sentencing—Abuse of Discretion

[41] Eskridge next argues that the trial court abused its discretion by considering several aggravating factors and by imposing consecutive, maximum sentences. We find that the trial court did not abuse its discretion.

[42] Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007); *Phipps v. State*, 90 N.E.3d 1190, 1197 (Ind. 2018). "An abuse occurs only 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." *Schuler v. State*, 132 N.E.3d 903, 904 (Ind. 2019) (citing *Rice v. State*, 6 N.E.3d 940, 943 (Ind. 2014)).

[43] A trial court abuses its discretion in a number of ways, including:

> (1) "failing to enter a sentencing statement at all"; (2) entering a sentencing statement in which the aggravating and mitigating factors are not supported by the record; (3) entering a sentencing statement that does not include reasons that are clearly supported by the record and advanced for consideration; or (4) entering a sentencing statement in which the reasons provided in the statement are "improper as a matter of law."

Ackerman v. State, 51 N.E.3d 171, 193 (Ind. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490-91), *cert. denied*.

[44] "This Court presumes that a court that conducts a sentencing hearing renders its decision solely on the basis of relevant and probative evidence." *Schuler*, 132 N.E.2d at 905. "When an abuse of discretion occurs, this Court 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.'" *Ackerman*, 51 N.E.3d at 194 (quoting *Anglemyer*, 868 N.E.2d at 491).

[45] Eskridge first argues that the trial court improperly considered as an aggravator that "the harm, injury, loss, or damage suffered by the victim was significant and greater than the elements necessary to prove the commission of the offense[s]" because "S.G. did not testify as to how many of [the] multiple incidents occurred when she was thirteen and how many occurred when she was fourteen [when] the conduct would no longer constitute Class A Child Molesting." Appellant's Br. p. 25; Appellant's Reply p. 12. In other words, Eskridge argues that the trial court could not consider as aggravating evidence that Eskridge also molested S.G. when she was fourteen because such an offense was not charged. This argument is misplaced.

[46] Indiana Code Section 35-38-1-7.1(a) permits trial courts to consider as an aggravating factor whether:

> (1) The harm, injury, loss, or damage suffered by the victim of an offense was:
>
> (A) significant; and
>
> (B) greater than the elements necessary to prove the commission of the offense.

Here, the State charged Eskridge with three counts of child molestation, a Class A felony. Under the applicable version of Indiana Code Section 35-42-4-

3(a)(1), the State was required to prove that Eskridge "knowingly or intentionally perform[ed] or submit[ed] to sexual intercourse or other sexual conduct" with S.G. when she was under the age of fourteen and Eskridge was at least age twenty-one. The fact that Eskridge also molested S.G. when she was fourteen is not a necessary element under that statute. The trial court, therefore, did not err by considering these additional instances of molestation as an aggravating factor.

[47] Eskridge next argues that the trial court improperly considered as aggravating the fact that Eskridge "committed multiple episodes of abuse over a significant amount of time" because the evidence does not establish how many total instances of molestation occurred and how many of those instances occurred when S.G. was under the age of fourteen. Appellant's Br. p. 26. We disagree.

[48] First, when reviewing the trial court's sentencing order, we will not reexamine Eskridge's convictions. We assume that Eskridge penetrated S.G. vaginally, anally, and orally at least once each before she turned fourteen, as found by the jury. Second, S.G. testified that Eskridge penetrated her vaginally "[f]ive or six times"; penetrated her anally "[f]ive or six times"; penetrated her orally "a lot," which she testified was "more than five or six" times; and that the abuse went on for months and years. Tr. Vol. III pp. 92-93. The trial court could properly consider as aggravating those instances of molestation other than the three that were charged because the State was not required to prove the additional instances at trial. And because the State was not required to prove that those instances amounted to Class A felonies under the applicable version of Indiana

Code Section 35-42-4-3(a)(1), whether S.G. was younger than age fourteen is irrelevant. The trial court, accordingly, did not abuse its discretion.

[49] Lastly, Eskridge argues that the trial court erred in imposing consecutive sentences. Eskridge argues that the trial court "fail[ed] to issue a sufficient explanation" regarding its decision to impose consecutive sentences. Appellant's Br. p. 28. We disagree.

[50] "In its sound discretion, a trial court may impose consecutive or concurrent terms of imprisonment." *S.B. v. State*, 175 N.E.3d 1199, 1202-03 (Ind. Ct. App. 2021) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008)); *see also* Ind. Code § 35-50-1-2. "'[C]onsecutive sentences are based upon the principle that each separate and distinct criminal act should receive a separately experienced punishment.'" *Young v. Ind. Dep't of Correction*, 22 N.E.3d 716, 719 (Ind. Ct. App. 2014) (quoting *Crider v. State*, 984 N.E.2d 618, 621 (Ind. 2013)), *trans. denied*. "[T]he 'trial court is required to state its reasons for imposing consecutive sentences or enhanced terms, and a single aggravating circumstance may be sufficient to support the imposition of consecutive sentences.'" *Richardson v. State*, 189 N.E.3d 629, 637-38 (Ind. Ct. App. 2022) (quoting *Gober v. State*, 163 N.E.3d 347, 356 (Ind. Ct. App. 2021), *trans. denied*).

[51] Here, as we have explained, the trial court found at least four valid aggravating factors. In addition, the trial court explained that it considered Eskridge to be "one of the worst offenders" and that Eskridge "violated [S.G.]'s body in every possible way" numerous times. Tr. Vol. IV p. 38. The trial court also observed

that Eskridge expressed no remorse for his offenses. We find that the trial court was well within its discretion to impose consecutive sentences. Accordingly, the trial court did not abuse its discretion.[4]

IV. Eskridge's Sentence is Not Inappropriate

[52] Eskridge's final argument is that his consecutive, maximum sentences, which total 150 years, are inappropriate in light of the nature of the offense and his character. We find that they are not.

[53] The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender."[5] Our review of a sentence under Appellate

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[4] Eskridge also challenges the trial court's consideration of his criminal history as aggravating. We do not address this argument because we are confident that the trial court would impose the same sentence even if it did not consider Eskridge's criminal history as aggravating. Eskridge does not challenge the trial court's finding as aggravators that Eskridge "was in a position of having [the] care, custody, or control of the victim" or that "the victim of the offense is a person with a disability[,] and [Eskridge] knew that the victim is a person with a disability." Appellant's App. Vol. II p. 245. The trial court observed that the fact that S.G. "is a victim with a disability" was the "most significant" aggravating factor. Tr. Vol. IV p. 40. In addition, as we have found, the trial court properly considered the harm to S.G. and the multiple instances of abuse as aggravating.

We have repeatedly held that "[a] single aggravating circumstance may be sufficient to enhance a sentence." *Kedrowitz v. State*, 199 N.E.3d 386, 404 (Ind. Ct. App. 2022) (quoting *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016), *trans. denied*). Because the trial court did not abuse its discretion in considering these four serious factors as aggravating, we are confident that the trial court would impose the same sentences had those factors been the only basis for its decision.

[5] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157

Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[54] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id.* "Whether a sentence should be deemed inappropriate 'turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.'" *Id.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). When determining whether a sentence is inappropriate, the advisory sentence is the

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N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).

starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014).

[55] In the case at bar, Eskridge was convicted of three counts of child molestation, Class A felonies, under the applicable version of Indiana Code Section 35-42-4-3(a)(1). Class A felonies carry a sentencing range of twenty to fifty years, with the advisory sentence set at thirty years. Ind. Code § 35-50-2-4. Eskridge was sentenced to three consecutive, maximum sentences of fifty years for a total sentence of 150 years.

[56] Beginning with the character of the offender, our analysis involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, past rehabilitative efforts, and remorse. *See Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021); *McCain*, 148 N.E.3d at 985. The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense. *Pierce v. State*, 949 N.E.2d 349, 352-53 (Ind. 2011); *see also Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[57] Eskridge argues that his character weighs against the imposed sentence because he was employed full-time when sentenced, has strong family support, and his

criminal history is minor. We first observe that "employment is not necessarily mitigating," and that Eskridge fails to explain how the fact of his employment alone evidences good character. *Pelissier v. State*, 122 N.E.3d 983, 991 (Ind. Ct. App. 2019) (citing *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*), *trans. denied*. Eskridge's family support, similarly, says very little about his character. Finally, Eskridge's criminal history, while minor, still reflects poorly on his character, especially given its recency and the fact that he committed the offense while on pre-trial release. In summary, Eskridge fails to present compelling evidence of good character traits, and we, therefore, find that this factor does not render Eskridge's sentence inappropriate.

[58] Turning to the nature of the offense, our analysis requires us to look at the nature, extent, heinousness, and brutality of the offense. *See Brown v. State*, 10 N.E.3d 1, 5 (Ind. 2014). We may also consider whether the offender "was in a position of trust" with the victim. *Pierce*, 949 N.E.2d at 352. Here, on multiple occasions and in numerous ways, Eskridge sexually abused his disabled stepdaughter, whom he had helped raise since she was an infant. In addition, despite copious evidence against him, including his own admissions, Eskridge expressed no remorse and refused to apologize to S.G. during sentencing.

[59] Despite the horrific nature of Eskridge's offenses, Eskridge argues that his consecutive, maximum sentences are inappropriate because his offenses involve similar conduct against the same victim. The Indiana Supreme Court has revised consecutive sentences to run concurrently when the defendant was convicted of "identical" counts against the same victim. *See Harris v. State*, 897

N.E.2d 927, 930 (Ind. 2008); *Monroe v. State*, 886 N.E.2d 578, 580 (Ind. 2008); *Walker v. State*, 747 N.E.2d 536, 538 (Ind. 2001).

[60] In *Smith v. State*, however, the Court affirmed a consecutive sentence for two of the four convictions and revised the remaining counts to run concurrently. 889 N.E.2d 261, 264 (Ind. 2008). In so doing, the Court relied on the defendant's minor criminal history and the fact that the defendant sexually abused the victim "on multiple occasions over an extended period of years, violating his position of trust as her step-father, and inflicting additional psychological abuse using anger and guilt." *Id*.

[61] We first find that maximum sentences are warranted. "'[T]he maximum possible sentences are generally most appropriate for the worst offenders.'" *Stidham*, 157 N.E.3d at 1196 (quoting *Buchanan v. State*, 767 N.E.2d 968, 973 (Ind. 2002)). Here, while all "crimes against children are particularly contemptable," *Pierce*, 949 N.E.2d at 352, Eskridge selected a victim who, not only was he in a position of trust with, but also, due to her disability, was especially vulnerable.

[62] Regarding whether Eskridge's sentences should be served consecutively, we observe that, unlike *Harris*, *Monroe*, and *Walker*, Eskridge's convictions were not identical but instead involved three distinct sex crimes and that his victim was disabled. We, therefore, do not find that Eskridge's sentences should be served concurrently.

Conclusion

[63] We find that: 1) the trial court did not err in declining to sanction the State for failing to disclose F.E.'s statements before trial; 2) the State presented sufficient evidence to support Eskridge's convictions; 3) the trial court did not abuse its discretion by sentencing Eskridge to three consecutive, maximum sentences; and 4) Eskridge's sentences are not inappropriate pursuant to Indiana Appellate Rule 7(B).

[64] Affirmed.

Vaidik, J., and Foley, J., concur.