MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D)
, this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE

COURT OF APPEALS OF INDIANA

Fredrick Goodloe,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

October 26, 2022

Court of Appeals Case No.
22A-CR-222

Appeal from the Marion Superior Court

The Honorable Shatrese M. Flowers, Judge

Trial Court Cause No.
49D28-1906-FA-25030

Robb, Judge.

Case Summary and Issues

[1] Following a jury trial, Fredrick Goodloe was convicted of four counts of child molesting, all Class A felonies. The trial court then sentenced Goodloe to an aggregate of 105 years executed in the Indiana Department of Correction ("DOC"). Goodloe now appeals, raising multiple issues for our review which we restate as: (1) whether there was sufficient evidence to support one of Goodloe's convictions; and (2) whether Goodloe's sentence was inappropriate given the nature of the offense and the character of the offender. Concluding the State presented sufficient evidence and Goodloe's sentence was not inappropriate, we affirm.

Facts and Procedural History

[2] In 2000, Goodloe began dating Melissa Cisneros and moved into her home shortly after they started dating. Cisneros had four children at the time. Cisneros and Goodloe frequently moved, living at over fifteen different addresses between 2000 and 2013. During this time, Goodloe would watch the children at home while Cisneros worked. In 2013, Goodloe and Cisneros broke up. In 2019, Cisneros's youngest child, M.C., told a friend that Goodloe had molested her multiple times when she was younger. The friend told her mother who in turn called the police. M.C. was interviewed by police and detailed multiple sexual encounters with Goodloe beginning when she was between five and six years old.

[3] On June 25, 2019, Goodloe was charged with four counts of child molesting as Class A felonies, two counts of child molesting by "deviate sexual conduct" and two counts of child molesting by "sexual intercourse[.]" Appellant's Appendix, Volume II at 123. At trial, M.C. testified regarding four separate instances of molestation. *See* Transcript of Evidence, Volume 3 at 57-61. The jury found Goodloe guilty on all charges.

[4] At the sentencing hearing, the trial court found Goodloe's position of trust with M.C., the nature and circumstances of the offenses, and Goodloe's criminal history to be aggravating circumstances. The trial court found Goodloe's completion of programs while incarcerated to be the sole mitigating circumstance. The trial court found that the aggravators outweighed the mitigators. The trial court then sentenced Goodloe to thirty-five years on each conviction, ordering three to run consecutively to each other and one to be served concurrently for an aggregate of 105 years to be executed in the DOC. Goodloe now appeals. Additional facts will be presented as necessary.

Discussion and Decision

I. Sufficiency of the Evidence

[5] When reviewing the sufficiency of the evidence required to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Instead, we consider only the evidence supporting the verdict and any reasonable inferences that can be drawn therefrom. *Morris v. State*, 114 N.E.3d 531, 535 (Ind. Ct. App.

2018), *trans. denied.* We consider conflicting evidence most favorably to the verdict. *Silvers v. State*, 114 N.E.3d 931, 936 (Ind. Ct. App. 2018). "We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt." *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). The evidence need not overcome every reasonable hypothesis of innocence; it is sufficient if an inference may reasonably be drawn from the evidence to support the verdict. *Silvers*, 114 N.E.3d at 936. Moreover, a conviction for child molesting may rest solely upon the uncorroborated testimony of the victim. *Rose v. State*, 36 N.E.3d 1055, 1061 (Ind. Ct. App. 2015).

[6] Goodloe challenges the sufficiency of the evidence supporting one of his child molesting by sexual intercourse convictions. The State bears the burden of proving all elements of the charged crime beyond a reasonable doubt. *Taylor v. State*, 587 N.E.2d 1293, 1301 (Ind. 1992); *see also* Ind. Code § 35-41-4-1(a). Pursuant to Indiana Code section 35-42-4-3(a)(1), a person over the age of twenty-one who, with a child under fourteen years of age, "knowingly or intentionally performs or submits to sexual intercourse" commits child molesting. Sexual intercourse is defined as "an act that includes any penetration of the female sex organ by the male sex organ." Ind. Code § 35-31.5-2-302. Our supreme court has held that proof of the slightest penetration is sufficient to prove sexual intercourse. *Dinger v. State*, 540 N.E.2d 39, 40 (Ind. 1989). Further, we have stated that the proof of penetration is not required to be in any

particular form of words. *Omans v. State*, 412 N.E.2d 305, 310 (Ind. Ct. App. 1980).

[7] Goodloe contends that M.C.'s testimony does not establish child molesting by sexual intercourse; specifically, Goodloe argues that the testimony does not establish vaginal penetration. Here, M.C. testified as follows:

> [State:] What happened when he took you into his bedroom?
>
> [M.C.:] I remember feeling my pants being pulled down. I was still playing sleep. I didn't know what's happening.
>
> [State:] What did he do after he pulled your pants down?
>
> [M.C.:] He started messing with . . . I have to say the word? He started messing with my vagina.
>
> [State:] He started messing with your vagina?
>
> [M.C.:] Yes.
>
> [State:] How was he messing with it?
>
> [M.C.:] He started rubbing it.
>
> [State:] What did he do after her rubbed it?
>
> [M.C.:] He stuck his fingers inside.
>
> [State:] What did he do after that?

> [M.C.:] I can't remember right now. I don't remember all of the details that happened after that.
>
> [State:] Did another part of his body touch your body?
>
> [M.C.:] Yes.
>
> [State:] What part of his body?
>
> [M.C.:] His penis.
>
> [State:] Where did he put his penis?
>
> [M.C.:] Inside of me.

Tr., Vol. 3 at 57-58 (cleaned up). Goodloe contends M.C.'s testimony that his penis went "inside" of her does not establish that he placed his penis in her vagina. Goodloe argues that because M.C. was twenty-one years old when she gave the testimony, she was required to "to state more precisely that Goodloe placed his penis in her vagina" and that the jury was unable to infer that M.C. meant vagina when she said the word "inside." Brief of Appellant at 10.

[8] Goodloe relies on *Spurlock v. State*, wherein our supreme court determined that penetration could not be inferred based on the testimony of a victim "who was of an age to understand and respond to the questions[.]" 675 N.E.2d 312, 315 (Ind. 1996). Goodloe correctly differentiates M.C.'s testimony, as a twenty-one-year-old, from victims who testify at a much younger age with a more limited sexual vocabulary. However, we find *Spurlock* distinguishable. In *Spurlock*, the

victim did not testify that penetration occurred, instead she explicitly testified that she did not know whether the defendant's penis went inside her. *See id.* Therefore, penetration could not be inferred. However, the *Spurlock* court continued, stating:

> We believe a detailed anatomical description of penetration is unnecessary and undesirable for two reasons. First, many people are not able to articulate the precise anatomical features that were or were not penetrated. Second, to require such detailed descriptions would subject victims to unwarranted questioning and cross-examination regarding the details and extent of penetration. As noted, any penetration is enough.

Id.

[9] Here, M.C. did not use childish vernacular in describing sexual acts nor did she fail to testify that penetration occurred. Instead, she merely omits the term "vagina" once in a line of questioning. However, from the context in which M.C. stated that Goodloe placed his penis "[i]nside" of her, the jury could reasonably determine that she meant her vagina. Tr., Vol. 3 at 58. To hold otherwise would involve reweighing the evidence, which we will not do. *Drane*, 867 N.E.2d at 146. Therefore, we conclude that the State presented sufficient evidence to support Goodloe's child molesting by sexual intercourse conviction.

II. Inappropriate Sentence

[10] Indiana Appellate Rule 7(B) permits us to revise a sentence "if, after due consideration of the trial court's decision, [we] find[ ] that the sentence is

inappropriate in light of the nature of the offense and the character of the offender." Sentencing is "principally a discretionary function" of the trial court to which we afford great deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference 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). An evaluation of the nature of the offense and the character of the offender are separate inquiries that are ultimately balanced to determine whether a sentence is inappropriate. *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017).

[11] The defendant carries the burden of persuading us that the sentence imposed by the trial court is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may consider any factors appearing in the record in making such a determination, *Reis*, 88 N.E.3d at 1102. The question under Rule 7(B) is "not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate." *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). "The principal role of appellate review should be to attempt to leaven the outliers . . . not to achieve a perceived 'correct' result in each case." *Cardwell*, 895 N.E.2d at 1225.

A. Nature of the Offense

[12] Our analysis of the nature of the offense starts with the advisory sentence. *Reis*, 88 N.E.3d at 1104. The advisory sentence is the starting point selected by the legislature as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. Goodloe was convicted of four Class A felonies. Pursuant to Indiana Code section 35-50-2-4(a), a person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with an advisory sentence of thirty years. Goodloe was sentenced to thirty-five years for each count with three counts to be served consecutively and one concurrently for an aggregate sentence of 105 years. Thus, on each count Goodloe was sentenced to above the advisory sentence but below the maximum. Further, Goodloe was not ordered to serve all four convictions consecutively; therefore, Goodloe was sentenced to well below the maximum penalty he faced. *Cf. Brown v. State*, 760 N.E.2d 243, 245 (Ind. Ct. App. 2002) (stating the maximum sentence on two charges to be served consecutively indicates a maximum sentence), *trans. denied*.

[13] When evaluating a defendant's sentence that deviates from the advisory sentence, we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017), *trans. denied.*

[14] First, we note that M.C. was between the age of five and six when Goodloe first molested her, well below the statutory age of fourteen. *See Quiroz v. State*, 963 N.E.2d 37, 45 (Ind. Ct. App. 2012) (stating that when a victim is well below the statutory age element a sentence greater than the advisory is justified), *trans. denied*. Further, Goodloe dated M.C.'s mother, lived with the victim for thirteen years, and watched her while her mother was at work, thus violating a position of trust. *See Mise v. State*, 142 N.E.3d 1079, 1089 (Ind. Ct. App. 2020) (observing that the defendant "committed his offenses against two young girls with whom he shared a father-daughter relationship. He abused his position of trust with these girls and robbed them of their youthful innocence when he molested them."), *trans. denied.* Therefore, we conclude Goodloe's sentence was not inappropriate given the nature of the offense.

B. Character of the Offender

[15] Goodloe also argues that his sentence is inappropriate given his character. We conduct our review of a defendant's character by engaging in a broad consideration of his or her qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). A defendant's life and conduct are illustrative of his or her character. *Id.* When considering the character of the offender, one relevant consideration is the defendant's criminal history, *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007), and "[t]he significance of [a defendant's] criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense[,]" *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013).

[16] Goodloe argues that his record of steady employment and the limited nature of his criminal history reflect favorably on his character. We note Goodloe's steady employment; however, his criminal history is lengthy and "[e]ven a minor criminal record reflects poorly on a defendant's character[.]" *Reis*, 88 N.E.3d at 1105. Goodloe has an extensive history of traffic violations as well as theft and invasion of privacy convictions.[1] *See* Appellant's App., Vol. II at 187-92. We conclude that Goodloe's criminal history demonstrates poor character. Therefore, given Goodloe's character, his sentence is not inappropriate.

Conclusion

[17] We conclude that the State presented sufficient evidence to support Goodloe's conviction of child molesting by sexual intercourse and that Goodloe's sentence was not inappropriate. Accordingly, we affirm.

[18] Affirmed.

Mathias, J., and Foley, J., concur.

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[1] Goodloe also has a lengthy juvenile record and was adjudicated a delinquent for possession, theft, battery, and sexual battery.