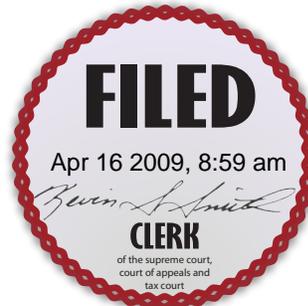


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES RIVERS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0809-CR-791

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles A. Wiles, Senior Judge
Cause No. 49G04-0708-FA-173420

April 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Charles Rivers appeals his convictions for two counts of class A felony child molesting and his aggregate sixty-year sentence. We affirm.

Issues

We restate the issues as follows:

- I. Is the evidence sufficient to sustain Rivers's convictions for class A felony child molesting?
- II. Is Rivers's aggregate sixty-year sentence inappropriate in light of the nature of the offense and his character?

Facts and Procedural History

Between 1998 and 2000, Rivers and his girlfriend frequently visited his brother, sister-in-law, and niece C.R., then around age seven or eight, at their Indianapolis home. One night, after C.R.'s parents had gone to bed, Rivers was watching television in the living room while Rivers's girlfriend and C.R. slept nearby. Rivers removed C.R.'s underwear, and she awoke and questioned what he was doing. He told her he was checking the size of her underwear. He then placed his mouth on C.R.'s vagina and orally molested her for about two minutes until she pushed him away with her feet.

A few months later, during another visit to C.R.'s home, Rivers's girlfriend left with C.R.'s parents to purchase some food. While Rivers babysat C.R., he placed his hand on her leg. C.R. went into the bathroom and unsuccessfully attempted to lock the door. Rivers followed her into the bathroom and told her to turn around and face the toilet. He pulled

down her underwear and “tried to enter [C.R.] from behind.” Tr. at 25. She repeatedly told Rivers that it hurt, and Rivers replied that it “would only hurt a little bit.” *Id.*

About thirty minutes later, while C.R. was brushing her teeth, Rivers entered the room, sat on the toilet, and pulled out his penis. He took C.R.’s hand, placed it on his penis, and moved it up-and-down for about three minutes. He ejaculated on her hand and then told her “that it meant that he liked [her].” *Id.* at 27.

A few years later, C.R. and her mother moved to a new house, and Rivers and his girlfriend moved in with them. C.R.’s father Troy was in a recovery center, and on one of her visits to the center, C.R. told him that Rivers had molested her. About three weeks later, when Troy left the recovery center, he confronted Rivers, who admitted that he had molested C.R. *Id.* at 68. Troy then ordered Rivers out of the house and reported the molestations to the police.

On August 24, 2007, the State charged Rivers with two counts of class A felony child molesting and one count of class C felony child molesting. On July 14, 2008, a jury convicted him on all counts. On August 5, 2008, the trial court sentenced him to two consecutive thirty-year sentences on the class A felony counts and a concurrent four-year sentence on the class C felony count. On September 3, 2008, Rivers appealed his two class A felony convictions and his aggregate sixty-year sentence. Additional facts will be provided as necessary.

Discussion and Decision

I. Sufficiency of Evidence

Rivers challenges the sufficiency of evidence to sustain his class A child molesting convictions. When reviewing sufficiency claims, we neither reweigh evidence nor assess witness credibility. *Sargent v. State*, 875 N.E.2d 762, 767 (Ind. Ct. App. 2007). Rather, we consider only the evidence and reasonable inferences most favorable to the verdict. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Downey v. State*, 726 N.E.2d 794, 796 (Ind. Ct. App. 2000), *trans. denied*.

Rivers was convicted pursuant to Indiana Code Section 35-42-4-3, which provides in part,

(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.

Rivers first asserts that the State failed to establish that he was over the age of twenty-one when he committed the offenses. He argues that the only testimony regarding his age was his brother Troy's testimony, in which Troy responded affirmatively to a simple question of whether Rivers was over the age of twenty-one. Tr. at 59. Rivers asserts that this testimony establishes his age as of the date of the trial and not his age at the time he molested C.R. However, Indianapolis Metropolitan Police Detective Jan Faber testified that when she interviewed Rivers and prepared the probable cause affidavit, she was able to verify Rivers's date of birth as November 14, 1962. *Id.* at 85. Thus, at the time of the July 2008 trial, he was forty-five years old, more than twice the age required to convict him of class A felony

child molesting. Even counting back to the likely dates of his offenses, he would have been approximately thirty-six years old at the time. Moreover, the jury was in a position to view Rivers and draw a reasonable inference from firsthand observation. Therefore, the evidence is sufficient to support the jury's conclusion that Rivers was over twenty-one when he molested C.R.

Rivers also argues that the State failed to establish physical contact between his penis and C.R.'s anus. *See* Ind. Code § 35-41-1-9 (defining deviate sexual conduct as act involving one person's sex organ and another person's mouth or anus). He bases his argument on the fact that C.R. used the term "butt" instead of anus when she described the point of contact. Tr. at 25. However, she also testified that the contact hurt her and that "[h]e tried to enter me from behind." *Id.* When the prosecutor asked, "Did it feel like he was trying to get his penis into your anus?" C.R. responded affirmatively. *Id.* at 25-26. Therefore, notwithstanding her imprecise terminology, C.R.'s testimony clearly supports a finding of contact between Rivers's penis and her anus.¹ Accordingly, the evidence is sufficient to support Rivers's class A felony child molesting convictions.

II. Sentencing

Finally, Rivers challenges the appropriateness of his aggregate sixty-year sentence. On appeal, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [this] Court finds that the sentence is inappropriate in light of the nature

¹ To the extent that Rivers relies on *Downey*, 726 N.E.2d at 797, we find the facts distinguishable. The record in that case indicated that the defendant stimulated himself by rubbing his penis against or between the child's buttocks. We held that the evidence was insufficient to establish contact with the anus in that case.

of the offense and the character of the offender.” Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the reviewing court that his sentence meets the inappropriateness standard. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218.

Rivers was convicted of two class A felony counts and one class C felony count of child molesting. The advisory sentence for a class A felony is thirty years. Ind. Code § 35-50-2-4. The trial court has discretion to impose consecutive sentences in child molesting cases. Ind. Code § 35-50-1-2(c). Here, the trial court sentenced Rivers to consecutive advisory terms of thirty years for each of the two class A felonies, with a four-year concurrent sentence for the class C felony.

In addressing the nature of Rivers’s offenses, even he acknowledges that “it is difficult to portray the[m] in a positive light.” Appellant’s Br. at 10. Rivers did not commit an isolated or random act upon a stranger; even worse, he committed a series of depraved acts upon his eight-year-old niece.

Moreover, Rivers’s poor character is reflected by his abuse of his position of trust as both uncle and caretaker for his niece. His acts caused severe emotional damage to C.R. and to the family as a whole. The fact that C.R. attempted to lock herself in the bathroom during Rivers’s second attempt to initiate a touching indicates that she feared he would molest her again. To assert, as Rivers does in his brief, that buying C.R. gifts and taking her on camping trips somehow redeems his character, is implausible at best. *Id.* Lack of criminal record notwithstanding, Rivers’s significant abuse of trust indicates an extreme disregard for the

welfare and safety of others. *See Garland v. State*, 855 N.E.2d 703, 711 (Ind. Ct. App. 2006) (finding significant abuse of trust and affirming uncle/caretaker's fifty-year maximum sentence for one count of class A felony child molesting of his seven-year-old niece), *trans. denied* (2007). Rivers has failed to carry his burden of showing that his sentence is inappropriate in light of the nature of his offenses and his character. Accordingly, we affirm Rivers's sentence.

Affirmed.

MATHIAS, concurs.

RILEY, J. concurs in part, dissents in part with separate opinion.

**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES RIVERS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0809-CR-791
)	
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

Judge, Riley, concurring in part and dissenting in part with opinion.

I concur in part and dissent in part. I agree that there is sufficient evidence to support Rivers’ class A felony child molesting convictions.

I dissent to the finding that consecutive sentences should be imposed for an aggregate sentence of sixty years. Because Rivers does not have a criminal record, I find that the advisory sentence of thirty years is appropriate in each of the class A felony

convictions and should run concurrent with one another. Thus, the aggregate sentence of thirty years for the two class A felonies, with a four year concurrent sentence for the class C felony is an appropriate sentence in light of his character.