

Defendant-Appellant Loren Naylor appeals the 124-year sentence imposed after he pled guilty to four counts of child molestation as Class A felonies and one count of child molestation as a Class C felony. We affirm.

Naylor raises a single, multi-part issue for our review, which we restate as the following two issues:

- I. Whether the trial court abused its discretion in the weighing of mitigating and aggravating circumstances.
- II. Whether consecutive sentences are appropriate based on the nature of the offenses and the character of the offender.

Naylor pled guilty to engaging in four counts of child molesting as Class A felonies and one count of child molesting as a Class C felony during a period between July 1, 2005 and March 1, 2007. At the conclusion of the plea hearing, the sentencing court found as aggravating factors: (1) that Naylor violated a position of trust because the victim was under his care; (2) that the numerous offenses were committed over a long period of time; and (3) that the victim was only eight years old when the offenses began. The sentencing court found as a mitigating factor that Naylor's guilty plea saved the State time and money and insured that the victim did not have to testify. However, the court concluded that the guilty plea should be given less weight because of the overwhelming evidence against Naylor. The court subsequently issued an "Order on Sentence" in which it found as aggravators "Defendant's prior criminal history; multiple counts; [and] violated a position of trust." Appellant's App. at 34.

I.

Naylor contends that the trial court abused its discretion because it failed to give his guilty plea significant mitigating weight or consider his criminal history of two arrests for misdemeanors and his remorse as mitigating factors. Naylor further contends that the trial court abused its discretion in considering “multiple counts” as a separate aggravator.

At the outset, we note that because the offenses in this case were committed after the April 25, 2005, revisions to the sentencing statutes, we review Naylor’s sentence under the advisory sentencing scheme. *See Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007). When evaluating sentencing challenges under the advisory sentencing scheme, we first confirm that the trial court issued the required sentencing statement, which includes a reasonably detailed recitation of the trial court’s reasons for imposing a particular sentence. *Id.* at 490. If the recitation includes a finding of mitigating or aggravating circumstances, the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.*

So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Id.* An abuse of discretion occurs 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. *Id.* One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. *Id.* Another example includes entering a sentencing statement that explains reasons for imposing a sentence, including mitigating and aggravating circumstances, which are

not supported by the record. *Id.* at 490-91. A court may also abuse its discretion by citing reasons that are contrary to law. *Id.* at 491.

Because the trial court no longer has any obligation to weigh mitigating and aggravating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion in failing to properly weigh such factors. *Id.* at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of mitigating or aggravating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

This does not mean that defendants have no recourse in challenging sentences they believe are excessive. *Id.* Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id.* It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

Essentially, Naylor is here challenging the trial court's weighing of the guilty plea and criminal history as mitigating factors. This argument is not available under the advisory sentencing scheme and will be addressed below as part of this court's assessment of the appropriateness of the sentence under Ind. Appellate Rule 7(B).

Naylor challenges the trial court's decision not to find his remorse as a mitigating factor. We note that Naylor's remorse was offset by his claim that the eight-year-old victim was the initial aggressor. The trial court was not required to give any weight to Naylor's proclaimed remorse.

Finally, Naylor challenges the trial court's reliance on "multiple counts" as contrary to law. A panel of this court has opined that enhancement of a sentence upon the basis of the number of child molesting offenses may be improper. *See Kien v. State*, 782 N.E.2d 398, 411 (Ind. Ct. App. 2003), *trans. denied*. However, the court further held that enhancement is proper when it appears that the trial court considered the ongoing nature of the acts and the effect the acts would have upon the victim. *Id.* The court concluded that where it could be inferred from the evidence that a period of time elapsed in which the defendant would have had "an opportunity to reflect upon his conduct and the harm he was causing [the victim], imposition of an enhanced sentence is proper." *Id.* Because we determined that it was reasonable to infer from the evidence that Kien had an opportunity to reflect upon the harm he was causing, we held that an enhancement based upon "multiple offenses" was proper. *Id.*

Here, the trial court emphasized the length of time the victim was subjected to Naylor's actions. In essence, the trial court emphasized the repeated victimization of the girl and implied the terrible impact of those repeated acts upon a very young girl. It is this emphasis of the particularized facts and circumstances that supports the court's determination that the commission of multiple offenses is a valid aggravator that impacts upon the trial court's determination regarding consecutive sentences.

II.

Naylor contends that the imposition of consecutive sentences is inappropriate. Specifically, he argues that although the offenses he committed were very serious, his lack of criminal history establishes that he is not one of the worst offenders

A sentence authorized by statute will not be revised unless the sentence is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B). Ind. Code § 35-50-2-4 provides that a person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty years.

We must refrain from merely substituting our opinion for that of the trial court. *Sallee v. State*, 777 N.E.2d 1204, 1216 (Ind.Ct.App.2002), *trans. denied*. In determining the appropriateness of a sentence in light of the "very worst offense and offender" argument, we must concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on the nature, extent, and depravity of the offense for which the defendant was sentenced, and what it reveals about the defendant's character. *See Groves v. State*, 787 N.E.2d 401, 410 (Ind. Ct. App. 2003) (citing *Watson v. State*, 776 N.E.2d 914, 922 (Ind. Ct. App. 2002); *Brown v. State*, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), *trans. denied*). Furthermore, we note that even though Naylor received a lengthy sentence, he did not receive the worst of sentences. The sentence consisted of consecutive sentences based on the advisory sentence for each individual offense.

With regard to the nature of the offenses, we note that over a period of years, Naylor subjected a child in his care to a series of unspeakable acts. During that period

of time, there is no doubt that he witnessed her confusion and pain. Yet, Naylor persisted in violating the victim and changed her life forever. Furthermore, some of these acts were observed by the victim's younger sister.

With regard to the nature of the offender, we note that Naylor instructed the victim not to tell anyone about his actions, an instruction that illustrates that he knew he was committing wrongful acts, but persisted in doing so. His "remorse" was offset by his insistence that the young victim is the one who started it all.

For purposes of sentencing, the good that occurred because of Naylor's guilty plea and lack of prior criminal history is outweighed by the repetition and callousness of his acts. The consecutive sentences imposed by the trial court are appropriate.¹

Affirmed.

CRONE, J., and BRADFORD, J., concur.

¹ Naylor also cites cases where appellate courts overturned lengthy sentences that were based on the commission of multiple sexual offenses against the victim by a defendant who had a limited criminal history. Appellant's Brief at 12-13. Our review of these cases discloses that they are distinguishable. (See *Kien*, 782 N.E.2d at 416 (holding that it was significant that offenses occurred in "close proximity in time"); *Haycraft v. State*, 760 N.E.2d 203 (Ind. Ct. App. 2001) (decreasing the sentence per offense but approving an 150-year total sentence); *Walker v. State*, 747 N.E.2d 536 (Ind. 2001), *trans. denied* (finding a violation of App.R. 7(B) where, unlike the present case, the sentence did not correlate with the character of the offender); and *Bluck v. State*, 716 N.E.2d 507 (Ind. Ct. App. 1999) (declining to determine whether the sentence should be decreased pursuant to App.R. 7(B)).