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IN THE
COURT OF APPEALS OF INDIANA

LEE TIBBETTS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1010-CR-609
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0906-FA-55739

August 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Lee Tibbetts appeals his convictions and sentence for four counts of child molesting as class A felonies,[1] two counts of child molesting as class C felonies,[2] and one count of vicarious sexual gratification as a class D felony.[3] Tibbetts raises three issues, which we revise and restate as:

I. Whether the trial court abused its discretion in admitting into evidence certain testimony;

II. Whether three of Tibbetts's convictions for child molesting, one as a class A felony and two as class C felonies, violate double jeopardy; and

III. Whether Tibbetts's sentence is inappropriate.

We affirm.

The relevant facts follow. In January of 2009, I.O., who was born on March 7, 1996, transferred to John Marshall High School in Marion County, Indiana, for the second semester of his seventh grade year. Tibbetts was I.O.'s teacher for third-period math class. I.O. saw a school-based therapist at John Marshall on a regular basis. Tibbetts was aware that other students had called I.O. gay, and at some point Tibbetts asked the therapist: "Is [I.O.] gay or what?" Transcript at 177.

At some point in early March of 2009, prior to I.O.'s thirteenth birthday, Tibbetts told I.O. to stay after class as the other students moved on to the next period. I.O. sat down on a wooden chair in the corner of the classroom by the chalkboard, and Tibbetts locked the classroom door. At first, Tibbetts helped I.O. with his math and then asked

[1] Ind. Code § 35-42-4-3(a) (Supp. 2007).

[2] Ind. Code § 35-42-4-3(b) (Supp. 2007).

[3] Ind. Code § 35-42-4-5 (2004).

how I.O.'s other classes were going. Tibbetts then asked I.O. if he "was gay," and I.O. said "no." Id. at 38. Tibbetts asked if I.O. had "ever been touched before," and I.O. said "no." Id. At that point, Tibbetts, who was seated in his chair which had wheels on it, started touching I.O.'s chest with his hands, both over and underneath I.O.'s clothes. I.O. told Tibbetts to stop, and Tibbetts stated that if I.O. said anything that he would "lower [I.O.'s] grade and fail [him]." Id. at 45.

Tibbetts untucked I.O.'s shirt and unbuckled I.O.'s pants. Tibbetts pulled I.O.'s penis out from the hole in I.O.'s boxers and started "going up and down with his hand." Id. at 42. Tibbetts's hand was on I.O.'s penis for five to ten minutes. Tibbetts then put I.O.'s penis in his mouth until "[w]hite stuff came out . . . into [Tibbetts's] mouth," and Tibbetts "swallowed it." Id. at 43-44. I.O. did not tell anyone because he was afraid.

Later in March 2009, after I.O.'s thirteenth birthday, Tibbetts again told I.O. to stay after math class and locked the classroom door. Tibbetts said to I.O., "you already know what to do." Id. at 51. I.O. sat down, and Tibbetts "started feeling" on I.O. and unzipped I.O.'s clothing. Id. at 52. Tibbetts put I.O.'s penis in his mouth until "white stuff" "came out into [Tibbetts's] mouth," and Tibbetts "swallowed it." Id. at 53. I.O. later went back to Tibbetts and "asked if it really happened," and Tibbetts said, "[I.O.], you know it happened." Id.

On a third occasion in March 2009, Tibbetts again touched I.O. on the chest and penis in his classroom. Tibbetts put I.O.'s penis in his mouth. Debra Barlowe, the school's vice principal, came to the classroom door and attempted to open the door, but the door was locked. Barlowe, who had keys for all of the school's rooms, started to look

for a key which would unlock the door. Inside the classroom, Tibbetts "hurried up and got up," told I.O. "to pull [his] clothes back up and say that [Tibbetts] brought [I.O.] in for sagging,"[4] and "then [] ran to the door." Id. at 56. As Barlowe put the key into the door, Tibbetts opened the door. Barlowe entered the room, noticed I.O. in the corner of the room, and asked why I.O. was in the classroom. Tibbetts said that he had brought I.O. "in for sagging," which was against the rules at John Marshall. Id. Barlowe told I.O. to come with her, and as I.O. was walking out of the classroom, Tibbetts "mouthed the words 'don't tell'" to I.O. Id. at 59.

Sometime in April of 2009, I.O. was putting away laptop computers in the middle of Tibbetts's classroom when Tibbetts told him to stay. Tibbetts started touching I.O. behind the laptop computer storage cabinet. I.O. said that "people will be able to see us," and Tibbetts stated "they can't see us." Id. at 63. Tibbetts unzipped I.O.'s clothing, took out I.O.'s penis and put it in his mouth until "[w]hite stuff came out." Id. When Tibbetts was sucking I.O.'s penis, Tibbetts would sometimes touch his own penis on the outside of his clothing.

In May 2009, I.O. told a classmate friend what Tibbetts was doing, although I.O. did not tell the classmate everything because he did not want his friend to think that he was gay. On May 20, 2009, I.O. told his school-based therapist that he had been "sexually assaulted." Id. at 170. On that same day, Tibbetts called the cell phone of I.O.'s mother five times while she was at work, but Tibbetts spoke to I.O.'s mother only twice. During the first call in which Tibbetts and I.O.'s mother spoke with each other,

[4] According to I.O., "sagging" meant "[h]aving my pants below the waist." Transcript at 58.

Tibbetts asked I.O.'s mother if I.O. had said anything to her about Tibbetts, if I.O. was angry with him, and if I.O. had said that Tibbetts "did anything to him." Id. at 214. During the second call, Tibbetts told I.O.'s mother that I.O. was "in with the Assistant Principal and the Social Worker" and "said something about calling the union, do I need to call the union." Id. at 215.

On June 16, 2009, the State filed an information charging Tibbetts with eight counts, which was later amended to seven counts, four for child molesting as class A felonies, two for child molesting as class C felonies, and one count of vicarious sexual gratification as a class D felony.

At the jury trial in August 2010, the court admitted into evidence, over Tibbetts's objection, certain testimony of Indianapolis Police Detective Gregory Norris. Specifically, during direct examination, the following colloquy occurred:

[Prosecutor]:	Detective Norris, in your training and experience as a Child Abuse Detective for eleven years and investigating over 950 cases and interviewing over 2000 children, is it unusual for a child to not immediately report something like this?
[Defense Counsel]:	Objection, Your Honor. Calls for bolstering testimony.
[Prosecutor]:	Your Honor, I think in his training and experience, he can explain to the jury the dynamics of child molest; that he can explain whether or not this is nor is not unusual. I believe he has a level of expertise that is probably beyond some of [sic] people that are not familiar with child molesting. And I think that he has the ability to explain that to the jury.

The Court:	Overruled. He may answer.
[Detective Norris]:	Actually, the vast majority of cases that I've investigated and received are not immediate disclosures. They're delayed disclosures.
[Prosecutor]:	And in your training and experience, is it unusual for a child to not give all the details to the first person that you tell?
[Defense Counsel]:	Same objection, Your Honor.
The Court:	Overruled.

* * * * *

[Detective Norris]:	It is not unusual at all.
[Deputy Prosecutor]:	And can you explain why that is?
[Detective Norris]:	Well, for a number of reasons. But, you know, disclosure of an incident like this is a process. Kids tell – some kids do tell right away. But, the majority don't. And for a number of reasons. They might be embarrassed. They might be afraid that they are going to get in trouble. Or afraid that they are not going to be believed. Or afraid that the person that has assaulted them might, might get in trouble. Because it's usually someone the child trusts or loves. So, for a number of reasons. And, you know, it's, it's not always – they don't always that person that they, that you would assume that would be the one that, you know they always tell me everything. . . .
[Prosecutor]:	Thank you. I have no further questions.

Id. at 354-356.

The jury found Tibbetts guilty as charged on all seven counts. The court found the fact that Tibbetts stood in a position of authority and trust with I.O., the fact that Tibbetts

took advantage of the fact that I.O. was the object of other children's teasing and did not feel a part of the school community, and the multiple situations of abuse to be aggravating circumstances. The court found Tibbetts's lack of prior convictions to be a mitigating circumstance. The court found that the aggravating circumstances strongly outweighed the mitigating circumstance and sentenced Tibbetts to fifty years, with ten years suspended, for each of the four molesting convictions as class A felonies, four years for each of the two molesting convictions as class C felonies, and one and one-half years for the conviction for vicarious sexual gratification as a class D felony, with all sentences to be served concurrently. The court also placed Tibbetts on probation for five years and ordered the last two years of his incarcerated sentence to be served through community corrections programs. Thus, Tibbetts received an aggregate sentence of fifty years, ten years of which was suspended.

I.

The first issue is whether the trial court abused its discretion in admitting into evidence a portion of Detective Norris's testimony. The admission and exclusion of evidence is a matter within the sound discretion of the trial court, and we will review only for an abuse of discretion. Wilson v. State, 765 N.E.2d 1265, 1272 (Ind. 2002). "An abuse of discretion occurs when the trial court's ruling is clearly against the logic, facts, and circumstances presented." Oatts v. State, 899 N.E.2d 714, 719 (Ind. Ct. App. 2009).

Tibbetts argues that the court erred when it permitted Detective Norris to testify over his objection. Tibbetts cites to Ind. Evidence Rule 704 and argues that "[b]y informing the jury regarding his experience as to how child molest victims typically

respond, the detective, by inference, vouched that the testimony of I.O. was reliable." Appellant's Brief at 7. Tibbetts further argues that "[i]n view of the rather specific information provided by Detective Norris in his explanation of his answer, his testimony was a 'direct assertion' as to his belief in I.O.'s testimony" and that "[t]he detective's testimony does not ask the jury to rely on abstract reasoning; rather, it suggests this is exactly what happened here." Id. at 8. Tibbetts argues that the error here affects his substantial rights and that accordingly his convictions on all counts must be vacated.

The State argues that the court did not abuse its discretion in admitting Detective Norris's testimony that children often delay disclosure of molestation. The State cites to the transcript and asserts that, during cross-examination of I.O., "Tibbetts attempted to impeach I.O. as to why I.O. did not report the molestation immediately and why I.O. did not initially tell the entire story." Appellee's Brief at 6. The State argues that Tibbetts's "theory at trial was that I.O. was being untruthful or exaggerating because he failed to immediately report Tibbetts' acts of molestations . . . ." Id. at 7. The State asserts that it laid a foundation about Detective Norris's experience in investigating child molestations and that Detective Norris had received extensive training, investigated approximately 950 cases of alleged child molestations, and interviewed approximately 2,000 children regarding sexual abuse. The State further asserts that Detective Norris "never testified whether I.O. was telling the truth" and that the testimony "was not a direct assertion that I.O. was telling the truth, but instead a statement that I.O.'s conduct was typical of other sexual abuse victims in his class." Id. at 9-10. The State also argues that even if any error existed, it was at most harmless.

Ind. Evidence Rule 704(b) provides: "Witnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions." However, the Indiana Supreme Court has recognized "that there is a special problem in assessing the credibility of children who are called upon as witnesses to describe sexual conduct." Lawrence v. State, 464 N.E.2d 923, 925 (Ind. 1984), abrogated on other grounds by Lannan v. State, 600 N.E.2d 1334 (Ind. 1992). In Lawrence, the Court held:

> Whenever an alleged child victim takes the witness stand in such cases, the child's capacity to accurately describe a meeting with an adult which may involve touching, sexual stimulation, displays of affection and the like, is automatically in issue, whether or not there is an effort by the opponent of such witness to impeach on the basis of a lack of such capacity. The presence of that issue justifies the court in permitting some accrediting of the child witness in the form of opinions from parents, teachers, and others having adequate experience with the child, that the child is not prone to exaggerate or fantasize about sexual matters. Such opinions will facilitate an original credibility assessment of the child by the trier of fact, so long as they do not take the direct form of "I believe the child's story", or "In my opinion the child is telling the truth." As we read the challenged testimony of the social worker in this case it did not take this direct form, and was thus properly permitted by the trial court to be heard by the jury.

464 N.E.2d at 925.

Here, Detective Norris's testimony did not cross the line into impermissible vouching. Although Detective Norris's testimony that it is not unusual for a child not to immediately give all of the details of a molestation for various reasons, as set forth above, may have been persuasive to some extent, Detective Norris did not directly comment on the credibility of I.O.'s testimony. Tibbetts has failed to demonstrate that the trial court abused its discretion in admitting the challenged testimony. See, e.g., Hook v. State, 705

N.E.2d 219, 221-223 (Ind. Ct. App. 1999) (holding that a detective's testimony that in his experience dealing with child molestation cases it was not uncommon for children to give inconsistent statements over time was not a direct assertion that he believed the child was telling the truth and holding that the trial court did not abuse its discretion in allowing the detective's testimony), trans. denied; see also Krumm v. State, 793 N.E.2d 1170, 1185 (Ind. Ct. App. 2003) (holding that the defendant failed to demonstrate that an error occurred where the testimony of the State's expert psychologist did not cross the line into impermissible vouching and noting that although the witness's testimony may have been persuasive it did not directly comment on the credibility of the victim's testimony); Jarrett v. State, 580 N.E.2d 245, 250 (Ind. Ct. App. 1991) (finding that a witness's testimony that "most children [the victim's] age do not fantasize about sexual relationships without some prior exposure, and that probably 95% of the children telling stories about sexual encounters at that age are telling the truth" was not a direct assertion of the witness's belief that the victim was telling the truth), trans. denied.

II.

The next issue is whether Tibbetts's convictions under Count I for child molesting as a class A felony and under Counts V and VI for child molesting as class C felonies violate double jeopardy. Tibbetts argues that "the trial court entered judgment on two counts of Child Molesting as Class C felonies apparently arising out of two of the same incidents" and that "[a]lthough these separate offenses each contain a different element so that the convictions do not violate the first prong of Richardson v. State, 717 NE2d 32, 49 (Ind 1999), entering judgment and sentencing for both offenses violates the actual

evidence test and, therefore, two of the convictions must be vacated." Appellant's Brief at 9.

The Indiana Constitution provides that "[n]o person shall be put in jeopardy twice for the same offense." IND. CONST. art. 1, § 14. In Richardson v. State, the Indiana Supreme Court developed a two-part test for Indiana double jeopardy claims, holding that "two or more offenses are the 'same offense' in violation of Article I, Section 14 of the Indiana Constitution, if, with respect to *either* the statutory elements of the challenged crimes *or* the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense." 717 N.E.2d 32, 49 (Ind. 1999).

In support of his claim, Tibbetts argues that "[b]ased on the vagueness as to the time of the offenses in the charging Information and in the testimony of the victim, it is merely possible that the jury relied on the theory advanced by the prosecution in final argument as to how the offenses occurred," that "the counts in the charging Information do not identify the time of each occurrence with any degree of specificity," that "it is impossible to determine that the acts considered to be fondling as part of the Class C offenses were not part and parcel of the greater offenses," and that there is at least some degree of probability that the jury did not conclude that the rubbing of the chest preliminary to fellatio constituted 'fondling' within the meaning of IC 35-42-4-3(a)." Appellant's Brief at 11-12. Tibbetts also argues that "[e]ven if one could identify during which specific incidents the second offenses occurred, the evidence does not show there

was some pause to distinguish one act from the other" and that "[d]uring each of the acts of fellatio there must have been some element of fondling as part of that act." Id. at 12.

The State argues that Tibbetts's convictions were "based on different evidentiary facts and thus did not violate the Indiana Constitution's prohibition against double jeopardy." Appellee's Brief at 11. The State argues that Tibbetts's four class A felony convictions "were based on four incidences where Tibbetts performed oral sex on I.O.," while Tibbetts's two class C felony convictions "were based on Tibbetts' actions of rubbing on I.O.'s chest and masturbating I.O.'s penis during the first incident." Id. at 12. The State argues that, during its closing argument, it "carefully parsed the evidence and explicitly delineated the factual allegation that corresponded to each charged offense." Id. The State also asserts that "[e]ach stage of Tibbetts' molestation of I.O. required a separate and independent decision" and that "Tibbetts rubbed I.O.'s chest, masturbated I.O.'s penis, and performed oral sex on I.O." Id. at 14.

Tibbetts essentially contends that his convictions under Counts I, V, and VI violate Indiana's "actual evidence test." Under the actual evidence test, the evidence presented at trial is examined to determine whether each challenged offense was established by separate and distinct facts. Lee v. State, 892 N.E.2d 1231, 1234 (Ind. 2008). To show that two challenged offenses constitute the "same offense" in a claim of double jeopardy, a defendant must demonstrate a reasonable possibility that the evidentiary facts used by the fact finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense. Id. The Indiana Supreme Court has determined the possibility to be remote and speculative and therefore

not reasonable when finding no sufficiently substantial likelihood that the jury used the same evidentiary facts to establish the essential elements of two offenses. Hopkins v. State, 759 N.E.2d 633, 640 (Ind. 2001) (citations omitted). In determining the facts used by the fact-finder to establish the elements of each offense, it is appropriate to consider the charging information, jury instructions, and arguments of counsel. Lee, 892 N.E.2d at 1234; Spivey v. State, 761 N.E.2d 831, 832 (Ind. 2002).

Our review of the record reveals that Counts I through IV alleged that Tibbetts "did perform or submit to deviate sexual conduct, an act involving a sex organ, that is: PENIS of I.O. and the MOUTH of LEE TIBBETTS, with I.O. a child who was then under the age of fourteen (14) years . . . ." Appellant's Appendix at 29-30. Counts V and VI alleged that Tibbetts "did perform or submit to any fondling or touching with I.O. . . . with intent to arouse or satisfy the sexual desires of I.O. and/or the sexual desires of Lee Tibbetts." Id. at 31.

The record reveals that the State presented evidence related to three incidents on the first day that Tibbetts told I.O. to stay after class. First, I.O. testified that in early March 2009, Tibbetts told him to stay after class, locked the classroom door, asked I.O. if he "was gay" and if I.O. had "ever been touched before," to which I.O. said "no," see Transcript at 38, and then started touching I.O.'s chest with his hands, both over and underneath I.O.'s clothes. I.O. testified that he told Tibbetts to stop, and Tibbetts stated that if I.O. said anything that he would lower I.O.'s grade and fail him. Second, at some point, Tibbetts untucked I.O.'s shirt, unbuckled I.O.'s pants, pulled I.O.'s penis out from the hole in I.O.'s boxers, and "started going up and down with his hand." Id. at 42. The

prosecutor asked I.O. how long Tibbetts's hand was on I.O.'s penis, and I.O. stated "[f]or about five to ten minutes." Id. at 43. Third, Tibbetts "started putting [I.O.'s] penis into his mouth" and went "up and down" with "[h]is mouth" until I.O. ejaculated. Id.

During closing arguments before the jury, the State argued in part as follows:

> [] Tibbetts is charged with two C felony child molests for fondling or touching with [I.O.]. Again when [I.O.] was 12 or 13 years of age. And this was done with the intent to arouse or satisfy the sexual desires of [I.O.] or [] Tibbetts. [] Tibbetts rubbed on [I.O.'s] chest the first time that this occurred. That was the first act of touching. He rubbed on his chest. [] Tibbetts clearly did that to arouse either his or [I.O.'s] sexual desires. And how do we know that? Because his next act was to touch [I.O.'s] penis.
>
> [] Tibbetts masturbated [I.O.'s] penis. [I.O.] showed you how [] Tibbetts took his hand and went up and down on [I.O.'s] penis. Again, a touching or fondling that is clearly done to satisfy the sexual desires of either the defendant or [I.O.].

Id. at 367-368.

Based upon the record, including the evidence and the prosecutor's arguments presented to the jury, we conclude that the State distinguished and set forth independent evidence of Counts I, V, and VI. Thus, we cannot say that Tibbetts' convictions for Counts I, V, and VI violate Indiana's prohibition against double jeopardy. See Pontius v. State, 930 N.E.2d 1212, 1219 (Ind. Ct. App. 2010) (holding that while the charging informations for two counts were identical, the evidence used to prove each count was clearly distinct), trans. denied; Micheau v. State, 893 N.E.2d 1053, 1066 (Ind. Ct. App. 2008) (holding based on the evidence presented at trial and the prosecutor's closing argument that the State distinguished and set forth independent evidence of two counts and thus the defendant's convictions for those did not violate Indiana's double jeopardy

clause), trans. denied; Storey v. State, 875 N.E.2d 243, 250 (Ind. Ct. App. 2007) (holding that the State "carefully parsed the evidence" and "[i]n doing so, the State set forth independent evidence" that the defendant committed each of the charged offenses and the defendant's convictions did not violate double jeopardy), trans. denied; Thomas v. State, 840 N.E.2d 893, 900-901 (Ind. Ct. App. 2006) (holding in part that the incidents alleged in several counts for child molesting were established by separate and distinct facts in that the incidents occurred in different rooms and at different times and that therefore the defendant's convictions under those counts did not violate the Indiana Constitution where several of the counts in the amended charging information were similar or identical), trans. denied.

III.

The next issue is whether Tibbetts's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute 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." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Tibbetts argues that the seriousness of the offense is already reflected in the level of the felonies for which convictions were entered and that "[t]he gravity of the offense is already being punished by imposition of the most severe sentence other than Murder." Appellant's Brief at 15-16. He further argues that "[i]n contrast to many such cases,

there was no element of violence or physical force in this case" and that "there was no physical injury or trauma to the victim." Id. at 16. Tibbetts also argues that what is most important is his character, as attested to by twenty-three people who wrote to the court regarding the content of his character. Tibbetts asserts that he was "adopted as an infant from his native Korea and throughout his life endured teasing, even rejection, due to his Asian characteristics" and "he also experienced discrimination because of his sexual orientation." Id. Tibbetts argues he had no referrals to juvenile court and no prior convictions as an adult, that he has bachelor's and master's degrees in education, has been employed as a teacher for several years, and does not abuse alcohol or use any type of drug.

The State argues that Tibbetts violated the teacher-student relationship and used his position of authority, that Tibbetts repeatedly molested his student, and that I.O. was twelve and thirteen at the time of the incidents. The State argues that Tibbetts threatened that if I.O. told anyone about the molestations, Tibbetts would lower his grade and cause him to fail. The State also argues that "Tibbetts' choice of victims showed a proclivity to prey on the weak" and that "I.O. was new to John Marshall and was in therapy at the time of the incident, which Tibbetts was aware of—in fact, at some point around when the molestations were occurring, Tibbetts asked I.O.'s therapist if I.O. was homosexual." Appellee's Brief at 17-18.

Initially, to the extent Tibbetts claims that he received a maximum sentence and that such sentences should be reserved for the worst offenders, Tibbetts did not receive a

maximum executed sentence in this case.[5] Rather, he received concurrent sentences of fifty years for each of his class A felony convictions with ten of those years suspended. See Davidson v. State, 926 N.E.2d 1023, 1025 (Ind. 2010) (declining to "narrowly interpret the word 'sentence' in Appellate Rule 7 to constrict appellate courts to consider only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended").

A review of the nature of the offenses reveals that, as discussed above, on four occasions during I.O.'s seventh grade year Tibbetts kept I.O. after class, locked the classroom door, touched and masturbated I.O., and put I.O.'s penis in his mouth until I.O. ejaculated. Tibbetts told I.O. that if I.O. said anything that Tibbetts would lower his grade and fail him. Tibbetts had asked I.O.'s therapist whether I.O. was gay and was aware that other students had called I.O. gay. A review of the character of the offender reveals that Tibbetts has no known prior adult convictions.

After due consideration of the trial court's decision and of the record, we conclude that Tibbetts has not sustained his burden of establishing that his aggregate sentence of fifty years, ten years of which were suspended and two years of which were ordered served through community corrections, is inappropriate in light of the nature of the offense and his character. See Baber v. State, 870 N.E.2d 486, 494 (Ind. Ct. App. 2007) (holding that the defendant's sentence was not inappropriate in light of the offense and his character where the defendant had molested the victim in his classroom and noting

[5] Ind. Code § 35-50-2-4 provides in part that "[a] person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years."

that the defendant "chose to violate the trust of one of his students by repeatedly molesting her in the classroom" and that nothing about the defendant's character suggested his sentence was inappropriate), trans. denied.

For the foregoing reasons, we affirm Tibbetts's convictions and sentence.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.