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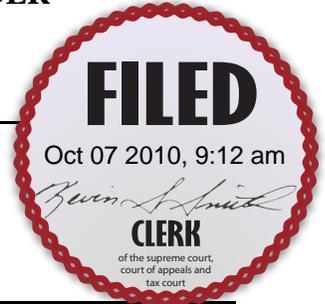
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**IN THE
COURT OF APPEALS OF INDIANA**



DORRIS MERRIWEATHER III,)

Appellant-Defendant,)

vs.)

No. 02A04-0912-CR-691

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0903-FA-20

October 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Dorris Merriweather III appeals his conviction of two counts of Child Molesting,¹ one as a class A felony and one as a class C felony. Merriweather presents the following restated issues for review:

1. Did the trial court properly apply the alibi statute with respect to the date the charged offenses were alleged to have occurred?
2. Is the evidence sufficient to support the convictions?
3. Did the trial court properly exclude, pursuant to Ind. Evidence Rule 412, evidence pertaining to the victim's prior sexual conduct?
4. Did the trial court err in denying Merriweather's motions for mistrial?
5. Did the trial court err in refusing to send exhibits into the jury room during deliberations?
6. Is Merriweather's sentence inappropriate?

We affirm.

The facts favorable to the convictions are that N.M., born on September 14, 2000, is Merriweather's biological daughter. Between September 2007 and September 2008, N.M. lived with her mother and younger brother. Between March and September 2008, N.M.'s mother (Mother) worked outside the home from 3 p.m. to 11 p.m. Generally, Mother's parents stayed with the children when they arrived home from school until Mother came home from work. Sometimes, however, Merriweather would arrive home before Mother and the grandparents would go home, leaving Merriweather to watch the children by himself.

When N.M. was seven years old, Merriweather came into her bedroom and put his fingers "inside" her "private part". *Transcript* at 178. Referring to an anatomical drawing of

¹ Ind. Code Ann. § 35-42-4-3 (West, Westlaw through 2010 2nd Regular Sess.).

a female child, N.M. indicated that her “private part” was her genitalia. Merriweather also touched N.M.’s private part with his penis and touched her on her “butt” with his penis. *Id.* at 177. When Merriweather touched N.M. with his penis, it was “hard”, *id.*, and sometimes after these touchings occurred on N.M.’s bed, there was a wet spot on her bed sheets. Merriweather instructed N.M. not to tell anyone what had happened.

On September 26, 2008, N.M.’s grandmother was babysitting the children when she noticed that N.M. was running in an unusual manner. She asked N.M. if anyone had touched her and N.M. initially responded in the negative. A few minutes later, however, she told her grandmother that her father had touched her. Her grandmother then drove N.M. to the hospital, where she was examined and interviewed. During the interview, N.M. indicated that she had been sexually abused by her father. The physical exam revealed no injuries to N.M.’s genitalia, but did reveal that she had several small superficial linear anal fissures, which could have been caused by several things, including penetration by an object. DNA swabs were taken from N.M.’s neck and revealed DNA from an unknown male source. N.M.’s male relatives, including Merriweather, were excluded as sources of one sample, while no conclusions could be drawn with respect to the other sample.

On March 16, 2009, Merriweather was charged with four counts of child molesting, three as class A felonies (one alleging sexual intercourse, the others alleging sexual deviate conduct) and one as a class C felony (alleging fondling or touching). All of the acts were alleged to have occurred “[s]ometime during the period of time between the 14th day of September, 2007 and the 26th day of September, 2008, in the County of Allen and in the State of Indiana[.]” *Appellant’s Appendix.* at 682-85. Before trial, Merriweather filed a notice of

alibi defense and sought an order compelling the State to provide more specific times, dates, and places of the alleged molestations. The trial court denied that motion upon grounds that “[c]ase law has been very clear in child molesting cases that time is not of the essence, even with an alibi being filed.” *Transcript of June 8, 2009 Motion Hearing* at 11. Following a jury trial, Merriweather was found not guilty of Counts I and II, class A felonies alleging intercourse and deviate sexual conduct, but guilty of Counts III and IV, alleging deviate sexual conduct and fondling or touching. The trial court sentenced Merriweather to forty-five years for the class A felony conviction and eight years for the class C felony, with those terms to be served concurrently. Further facts will be provided where relevant.

1.

Merriweather contends the trial court erred in concluding the alibi statute did not compel the State to give more precise dates, times, and places the molestation offenses were alleged to have occurred.

On May 6, 2009, pursuant to Ind. Code Ann. § 35-5-1-2, since repealed and recodified at Ind. Code Ann. § 35-36-4-2 (West, Westlaw through 2010 2nd Regular Sess.), Merriweather filed a Notice of Alibi asking the State to “provide the exact date and exact place of the alleged crime to the Defendant’s counsel as provided by law.” *Appellant’s Appendix* at 653. The State responded that the crimes occurred at the victim’s home and that it would rely upon the charging informations as to the dates of the alleged offenses. On July 2, 2009, Merriweather filed a motion to compel, asking the court for an order directing the State to offer more specificity with respect to the time and place of the alleged offenses. The court denied the motion to compel.

I.C. § 35-36-4-2(a) provides:

(a) When a defendant files a notice of alibi, the prosecuting attorney shall file with the court and serve upon the defendant, or upon his counsel, a specific statement containing:

- (1) the date the defendant was alleged to have committed the crime;
and
- (2) the exact place where the defendant was alleged to have committed the crime;

that he intends to present at trial. However, the prosecuting attorney need not comply with this requirement if he intends to present at trial the date and place listed in the indictment or information as the date and place of the crime.

Our Supreme Court has held that “the purpose of the notice of alibi statute is to narrow the factual issues of time and place to the degree practicable.” *Thurston v. State*, 472 N.E.2d 198, 201 (Ind. 1985) (quoting *Bruce v. State*, 268 Ind. 180, 375 N.E.2d 1042, 1058 (1978), *cert. denied*, 439 U.S. 988). In *Bruce*, the Court further clarified that the alibi statute “requires the prosecutor to state the time of the offense with such reasonable specificity as the circumstances of the case allow[.]” *Bruce v. State*, 375 N.E.2d at 1058.

We have often noted that child molesting cases and youthful witnesses present particular problems with respect to specifying the time and place of the alleged offenses, and therefore “the necessity of permitting such offenses to be alleged generally in terms of time and place.” *Vail v. State*, 536 N.E.2d 302, 303 (Ind. Ct. App. 1989). Here, as in *Bruce* and *Thurston*, we conclude that the circumstances did not permit a narrowing of the time period beyond that stated in the State’s response and amended response. The evidence demonstrated that during the time period indicated on the charging informations, Merriweather had regular access to the victim in the evening hours when her mother was away at work and no other

adults were present. According to the victim's testimony, she was molested "lots of times" and the incidents always occurred at her mother's house on Standish Drive while her mother was at work. Transcript at 181. At trial, the then-nine-year-old victim was unable to recall or relate specific dates when the activity proscribed by subsection (a) of the child molesting statute occurred. She stated only that she was seven years old when the molestations occurred. The evidence indicates that N.M.'s seventh birthday was on September 14, 2007. She told her grandmother about what had happened on September 26, 2008. At that time, N.M. indicated that what turned out to be the final act of molestation had occurred the night before.

On these facts, it would not be practicable to confine the State to a more specific time in its proof. The prosecution could not have been more precise in pinpointing the time of the offenses and it is not apparent to us how Merriweather was rendered unable to adequately prepare a defense to these charges. In cases such as this where a child victim is unable to provide specific dates of alleged offenses that occur over a period of time, "the consequence may be to preclude a defendant from claiming an alibi unless he can account for the entire period at issue. On the other hand, the more generalized the state's case is as to time and place the more vulnerable it becomes to a credibility challenge." *Vail v. State*, 536 N.E.2d at 303. Thus, under the circumstances of this case, the State's response to Merriweather's alibi notice was not overly broad.

2.

Merriweather contends the evidence was insufficient to support the convictions. Our standard of review for challenges to the sufficiency of evidence is well settled.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and “must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *Id.* at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

Merriweather was convicted of Counts III and IV. Count III alleged Merriweather committed child molesting as a class A felony by performing or submitting to deviate sexual conduct with N.M., who was less than fourteen years old. Deviate sexual conduct is defined as “an act involving ... (1) a sex organ of one person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object.” Ind. Code Ann. § 35-41-1-9 (West, Westlaw through 2010 2nd Regular Sess.).

N.M. testified that Merriweather put his “private” “on [her] butt.” *Transcript* at 177. She was asked to clarify whether Merriweather “put his private on [her] butt or in [her] butt.” *Id.* at 178. She responded, “In my butt.” *Id.* Merriweather contends “butt” as used by N.M. does not clearly refer to the anus, as is required by I.C. § 35-41-1-9. Rather, he contends, the “butt” is the “prominence formed by the gluteal [sic] muscles or the two rounded prominences separated by a median cleft that form the lower part of the back and consist largely of the gluteus [sic] muscles.” *Appellant's Brief* at 17. Even assuming, without deciding, that there is merit to this contention, we note that N.M. also testified that Merriweather touched her “private”, by which she clarified through reference to a drawing she meant her genitalia. *Transcript* at 178. She was asked, “You said he touched your

private with his fingers. Where did his fingers go exactly.” *Id.* She responded, “Inside.” *Id.* In *Stewart v. State*, 555 N.E.2d 121 (Ind. 1990), our Supreme Court held that a finger is an object within the meaning of the deviate sexual conduct statute. Proof of even the slightest penetration of the external female genitalia is sufficient to sustain a conviction for child molesting. *Scott v. State*, 771 N.E.2d 718 (Ind. Ct. App. 2002), *trans. denied*. N.M.’s testimony was sufficient to prove the elements of the offense charged in Count III.

Merriweather also contends the evidence was insufficient to support his conviction for child molesting as a class C felony. Merriweather’s challenge on this issue centers upon N.M.’s credibility. He claims, “There is no physical evidence. There is no corroboration. The testimony of N.M. is inherently suspect because of the evidence ... which was preserved by Merriweather’s offer to prove.” *Appellant’s Brief* at 18. The testimony to which these comments alluded concerned N.M.’s description of a time that Merriweather touched “inside” her “private” with his finger. *Transcript* at 178. In fact, Merriweather’s conviction under Count IV was not based upon the incident to which N.M. referred in the testimony referenced by Merriweather. Rather, as the prosecuting attorney explained, Count IV was based upon the following allegations:

Now, Count IV is a general touching of a child and when you touch a child under the age of fourteen for the purposes of sexual intent that is child molesting, a class C felony. Clearly there was evidence of multiple touchings. [N.M.] told you about the touching. The touching of her vaginal area with his penis, with his finger, the touching of her butt. She told you that these events occurred not just one time, but more than one time. ... The [S]tate has proven sufficient evidence beyond a reasonable doubt the defendant is guilty of count IV[.]

Transcript at 447. As the prosecutor indicated, N.M. testified that Merriweather touched her

butt with his penis. We perceive nothing in N.M.'s testimony that renders her account of these molestation episodes, which formed the basis for Count IV, inherently incredible. The evidence was therefore sufficient to support Merriweather's conviction under Count IV.

3.

Merriweather contends the trial court improperly excluded evidence pertaining to the victim's prior sexual conduct. Our standard of review for the admissibility of evidence is well established. The admission or exclusion of evidence lies within the sound discretion of the trial court and is afforded great deference on appeal. *Whiteside v. State*, 853 N.E.2d 1021 (Ind. Ct. App. 2006). We will reverse the trial court's ruling on the admissibility of evidence only for an abuse of discretion. *Id.* An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor. *Id.*

At trial, Merriweather sought to introduce evidence of an episode that allegedly occurred shortly before the time N.M. initially reported the molestations to her grandmother. According to one of Merriweather's neighbors, Joseph Bryant, he saw N.M. and a little neighborhood boy "humping" near N.M.'s house. *Transcript of August 11, 2009 Motion Hearing* at 15. According to Bryant, N.M.'s dress was up and her underwear was pulled down. Bryant yelled at the children to stop, which they did. The little boy ran away almost immediately. Bryant told Merriweather about the incident on September 24, 2008, two days before N.M. told her grandmother about the molestations.

Before trial, Merriweather sought permission to introduce this evidence via

“Defendant’s Motion to Introduce Rape Shield Evidence, Ind. R. Evid. 412.” *Appellant’s Appendix* at 670. The trial court denied that motion, ruling that the evidence was inadmissible under Indiana Evidence Rule 412. Merriweather sought to introduce the evidence at trial but was denied.

Evid. R. 412 embodies the basic principles of Indiana’s Rape Shield Statute and is commonly referred to as the Rape Shield Rule. The rule is not precisely the same as the statute, however. To the extent there are differences, Evid. R. 412 controls. *Maldonado v. State*, 908 N.E.2d 632 (Ind. Ct. App. 2009), *trans. denied*. Rule 412 provides, in pertinent part, as follows:

- (a) In a prosecution for a sex crime, evidence of the past sexual conduct of a victim or witness may not be admitted, except:
 - (1) evidence of the victim’s or of a witness’s past sexual conduct with the defendant;
 - (2) evidence which shows that some person other than the defendant committed the act upon which the prosecution is founded;
 - (3) evidence that the victim’s pregnancy at the time of trial was not caused by the defendant; or
 - (4) evidence of conviction for a crime to impeach under Rule 609.

There is also a common-law exception to the Rape Shield Rule that does not apply here (when a defendant seeks to introduce evidence of a prior false accusation of rape or sexual misconduct). *See id.*

Merriweather does not identify any exception that applies here, nor does our research reveal any. It seems instead that he contends the evidence was admissible to show that N.M. was motivated to level these accusations to avoid punishment for the incident involving the

neighbor boy.² We can discern no facts supporting this claim. In a related claim, it seems that Merriweather contends the testimony was admissible for purposes of generally impeaching N.M.'s credibility. N.M. admitted during questioning outside the presence of the jury that there had been an incident during the relevant time frame when a neighborhood boy was "humping" her. *Transcript* at 202. She claimed, however, that she was not wearing a dress at the time, that her underwear was not pulled down, that no man (i.e., Bryant) had confronted her and the little boy about it, and that Merriweather did not talk to her about it later. Merriweather argues that Bryant's testimony would have contradicted N.M.'s on the above points, thereby impeaching her credibility. In effect then, Merriweather contends he was denied the right of confrontation guaranteed by the Sixth Amendment.

When considering whether the exclusion of this evidence violated Merriweather's right of confrontation, we examine both the effect of the precluded evidence on Merriweather's Sixth Amendment rights and the State's interests in excluding the evidence in question. *See Oatts v. State*, 899 N.E.2d 714 (Ind. Ct. App. 2009).

In examining the effect, if any, of the precluded evidence on Merriweather's Sixth Amendment rights we must first determine the relevance of the evidence. *See id.* As set out above, Merriweather contends the evidence was relevant to show that N.M. was untruthful, i.e., that she had lied about some of the facts involved in the incident with the neighbor boy. Although it is true that there were some factual discrepancies between N.M.'s and Bryant's

² At trial, counsel argued that the evidence was admissible for the following reason: "[T]he jury in hearing all of that information would be able to conclude a motive or bias that goes to the credibility of this witness in that she's accusing her father of these things even though it related to this boy and her fear of being punished." *Transcript* at 206.

respective accounts of the incident involving the neighbor boy, they were of comparatively little significance. It seems to us that the question whether the incident occurred is the single most important “fact,” and N.M. was truthful about that. The other points upon which her account of the incident differed from Merriweather’s were few and minor, i.e., what she was wearing, whether her underwear was pulled down, and whether Bryant said anything to her at the time. Viewed thus, this evidence was of marginal relevance, at best.

The State’s interest in excluding the evidence, on the other hand, is significant. Evid. R. 412 reflects a policy first embodied in Indiana’s Rape Shield Act to the effect that inquiry into a victim’s prior sexual activity should not be permitted to become a focus of the defense. *See Oatts v. State*, 899 N.E.2d 714. The rule “is intended to prevent the victim from being put on trial, to protect the victim against surprise, harassment, and unnecessary invasion of privacy, and, importantly, to remove obstacles to reporting sex crimes.” *Id.* at 723. We are especially mindful of this policy with respect to victims of child molesting, who are among the most vulnerable of victims. Moreover, we agree with the State that allowing evidence of other sexual conduct under this theory would largely eviscerate Rule 412.

In light of the above, we cannot say that the exclusion of the evidence pertaining to the incident involving the neighbor boy violated Merriweather’s right to cross-examine witnesses under the Sixth Amendment of the United States Constitution.

4.

During the opening remarks to the jury, the prosecuting attorney advised the jury of the facts that the State expected to establish in its case-in-chief. In the midst of presaging N.M.’s testimony, the prosecutor stated, “She said that it happened lots of times, all the

time.” *Transcript* at 163. Merriweather objected on grounds that he had been charged with only four counts – and thus acts – of molestation, and that the State’s comment necessarily alleged numerous uncharged acts. Counsel sought a mistrial or, in the alternative, an admonishment to the jury. The trial court denied both requests. Merriweather contends the trial court erred in denying his motion for mistrial.

“The trial court is in the best position to assess the impact of a particular event upon the jury.” *Anderson v. State*, 774 N.E.2d 906, 911 (Ind. Ct. App. 2002). The decision whether to grant or deny a motion for mistrial is committed to the sound discretion of the trial court and will be reversed only upon an abuse of that discretion. *Anderson v. State*, 774 N.E.2d 906. We will reverse the denial of a motion for a mistrial only upon a showing that the defendant was placed in a position of grave peril to which he should not have been subjected. *Id.* The declaration of a mistrial is an extreme action that is warranted only when no other action can be expected to remedy the situation. *Id.* On appeal, the defendant bears the burden of showing that he was placed in grave peril by the denial of the mistrial motion and that no other action could have remedied the perilous situation into which he was placed. *Id.*

The charging informations, including those pertaining to Counts III and IV, alleged that during the period from September 2007 to September 26, 2008, Merriweather “did perform or submit to deviate sexual conduct” with N.M., *Appellant’s Appendix* at 684, and “did perform or submit to fondling or touching” with N.M. with the intent of arousing or satisfying his of the child’s sexual desires. *Id.* at 685. N.M. was unable to recall with specificity how many times she had been molested, nor could she recall the dates these

events had occurred. Therefore, the charging informations cannot be understood to allege four individual episodes of molestation. Rather, they allege that Merriweather committed four forms of molestation (i.e., intercourse, deviate sexual conduct by penetrating N.M.'s anus, deviate sexual conduct by inserting his finger in N.M.'s genitalia, and fondling or touching). As a result, the prosecutor's comment accurately reflected the nature of the allegations against Merriweather, and in that sense did not address uncharged acts.

Moreover, even assuming for the sake of argument that this comment was inappropriate, it did not place Merriweather in a position of grave peril. We note that Merriweather was charged with four counts of child molesting, but the jury found him not guilty of two counts. This reflects that the jury demonstrated the ability to consider the State's evidence and make separate determinations of guilt with respect to the elements of the different offenses alleged in each count, ultimately finding him not guilty of Counts I and II, both class A felonies. The comment to which Merriweather objected was general in nature and thus pertained equally to all four counts. The jury's "not guilty" verdicts on Counts I and II reflect that the comment did not have the prejudicial effect Merriweather claims. The trial court did not err in denying the motion for mistrial submitted on this basis.

The second motion for mistrial was premised upon a question posed to Merriweather during his cross-examination. Upon direct examination, Merriweather testified that he had a prior conviction for false informing. During cross-examination, the prosecuting attorney asked: "And that false informing conviction that your attorney referred to earlier under cause number 02D04-0601-CM54, January 3, 2006, is for lying to police, isn't it?" *Transcript* at 420. Defense counsel immediately objected and approached the bench, where the court

conferred with defense counsel and the prosecuting attorney. Defense counsel asked the court to instruct the jury to disregard the question and to instruct the State not to ask any further questions concerning that conviction. In the presence of the jury, the court sustained the objection and admonished the jury to disregard the question.

Merriweather does not explain what irreparable harm resulted from the question (other than claiming, without further elaboration, that it “harpooned Merriweather’s credibility”), or why the admonishment did not suffice. A timely and accurate admonition is generally an adequate curative measure for prejudice that may result from an improper comment made by a prosecutor. *Donnegan v. State*, 809 N.E.2d 966 (Ind. Ct. App. 2004), *trans. denied*. In this case, Merriweather has failed to demonstrate that he was placed in grave peril by the question because the admonishment to disregard the State’s question cured whatever prejudice Merriweather suffered thereby. The trial court did not err in denying this motion for mistrial.

5.

Exhibits 3 through 10 included the sexual assault kit taken from N.M., an oral swab and pubic hairs taken from Merriweather, and oral swabs taken from other family members. Merriweather’s counsel asked that all of the exhibits be sent to the jury during deliberations. The trial court denied that request with respect to Exhibits 3-10. Merriweather claims the trial court erred in doing so.

Disregarding the brief description of the facts germane to this argument, Merriweather’s entire argument on this issue is as follows: “Merriweather’s defense showed that Merriweather was not guilty. There was evidence of an unknown male.” *Appellant’s Brief* at 27. Merriweather makes no attempt even to relate the foregoing sentences to the

issue presented, much less provide cogent argument explaining how the trial court's ruling ran afoul of the applicable legal standards. Moreover, he fails to cite a single source of authority for the proposition that the trial court's decision was erroneous. The failure to present a cogent argument or citation to authority constitutes waiver of the issue for appellate review. *See* Ind. Appellate Rule 46(A)(8)(a) (specifying that appellant's arguments must be supported by cogent reasoning and citations to the authorities, statutes, and appendix that were relied on). This argument is waived. *See Davis v. State*, 835 N.E.2d 1102 (Ind. Ct. App. 2005), *trans. denied*.

6.

Finally, Merriweather contends his sentence is inappropriate. He was sentenced to forty-five years for the class A felony conviction and eight years for the class C felony conviction, to be served concurrently.

We have the constitutional authority to revise a sentence if, after considering the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Merriweather bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

We note as an initial matter that Merriweather did not include the presentence investigation report (PSI) in his appendix. His argument relies on information contained in

the PSI and the trial court's analysis thereof. Therefore, his failure to include the PSI in his appellate materials hampers our ability to consider this argument and review the trial court's sentencing decision. *See Nasser v. State*, 727 N.E.2d 1105 (Ind. Ct. App. 2000) (holding that the defendant waived a sentencing argument because he had failed to include the PSI in the record), *trans. denied*; *but see* Ind. Appellate Rule 49(B) (providing that "[a]ny party's failure to include any item in an Appendix shall not waive any issue or argument").

With respect to the nature of the offense, the facts detailed previously in this opinion reveal that Merriweather molested his young daughter in multiple ways on multiple occasions over a period of approximately one year. In preying upon his daughter in this fashion, he betrayed his position of trust. The ongoing, serial nature of the molestations of N.M. is an aggravating circumstance.

Turning to Merriweather's character, and forced to glean what we can of Merriweather's criminal record through the court's comments at the sentencing hearing, we note his extensive criminal history. According to the court's comments, Merriweather accumulated fourteen misdemeanor offenses and one felony conviction between 1990 and 2009. His convictions include three for battery and one for domestic battery, two for disorderly conduct, four for resisting law enforcement, and one firearms offense. These convictions reflect a propensity toward violence. Merriweather has failed on more than one occasion to abide by the terms of probation and as a result his probation was revoked. In fact, Merriweather was on probation when he committed these offenses. In view of his character and the aggravating nature of his offenses, the sentence imposed by the trial court is not inappropriate.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.