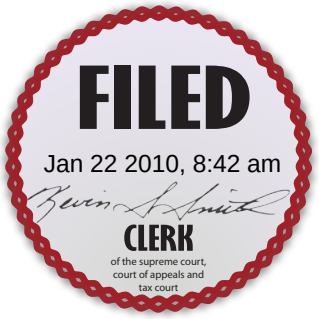

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IN THE
COURT OF APPEALS OF INDIANA

JEFFREY BAKER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 67A01-0908-CR-425
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew L. Headley, Judge
Cause No. 67C01-0812-FA-276

January 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Jeffrey Baker appeals following his conviction, pursuant to a guilty plea, for Class A felony Child Molesting,[1] for which he received a sentence of thirty-five years in the Department of Correction, with five years suspended. Upon appeal, Baker claims that his sentence is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

The following facts constituted the factual basis entered during Baker's May 12, 2009 plea hearing. Between January 1, 2008 and December 5, 2008, in Putnam County, Baker engaged in sexual intercourse with J.K., who was his thirteen-year-old step-daughter, approximately three or four times. Baker was born on July 30, 1958, and was forty-nine or fifty years old at the time.

On December 8, 2008, the State charged Baker with child molesting as both a Class A felony (Count 1) and a Class C felony (Count 2). On May 12, 2009, Baker pled guilty to the Class A felony.[2] Following a June 11, 2009 sentencing hearing, on June 15, 2009, the trial court imposed a sentence of forty years in the Department of Correction, with ten years suspended. The trial court also found Baker to be a sexually violent predator and required that he register as a sex offender upon release from incarceration. On July 13, 2009, Baker filed a motion to correct error, and on July 27, 2009, the trial court modified Baker's sentence to thirty-five years in the Department of Correction with five years suspended. This appeal follows.

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

[2] While the record does not demonstrate that Count 2 was dismissed, both defense counsel's comments at the plea hearing and the CCS indicate the State's willingness and intention to do so. Count 2 is not at issue in this appeal.

DISCUSSION AND DECISION

In challenging the appropriateness of his sentence, Baker claims that there was only one victim, namely J.K., which he suggests minimizes the egregious nature of his crime. Baker further focuses upon his lack of a criminal history, his willingness to plead guilty to save J.K. the trauma of trial, and his own victimization as a child, which he argues place his character in a relatively positive light. Article VII, Sections 4 and 6 of the Indiana Constitution "'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'" *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." We exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant's burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

Baker committed a Class A felony, which carries a sentencing range of between twenty and fifty years, with an advisory sentence of thirty years. *See* Ind. Code § 35-50-

2-4 (2007). Baker received a sentence of thirty-five years, with five years suspended, which was five years in excess of the advisory sentence.[3]

Baker argues that his crime had only one victim, but he does not dispute its egregious nature or that it involved multiple acts of sexual intercourse with his thirteen-year-old step-daughter, with whom he had—and took advantage of—a position of trust. Of course, even if Baker's acts had had "only" one victim, this victim was severely traumatized. J.K. is now in therapy and will be into the indefinite future, and there is little doubt that the course of her life has been fundamentally affected. Further, contrary to Baker's contention, his acts did not merely injure one person. Indeed, J.K.'s father's testimony indicated the great length to which his life was changed by Baker's acts against his daughter.

To the extent Baker's lack of a criminal history and willingness to plead guilty reflect upon his character, any generally good character these factors tend to show is largely overshadowed by his willingness to enter into a long-term sexual relationship with his thirteen-year-old step-daughter. Further, while there was evidence that Baker suffered sexual abuse as a child, he was willing to perpetuate that cycle by inflicting these very abuses—multiple times—upon yet another child, demonstrating a conscious disregard for the ongoing harm he would have known this would cause.

[3] There is currently a split on this court regarding the extent to which the suspended nature of a defendant's sentence is relevant for purposes of evaluating his sentence under Rule 7(B). *See Jenkins v. State*, 909 N.E.2d 1080, 1084-86 (Ind. Ct. App. 2009), *trans. denied*. In this appeal, we assume that Baker received a sentence five years in excess of the advisory.

We are unpersuaded that Baker's thirty-five year sentence, with five years suspended, is inappropriate.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.