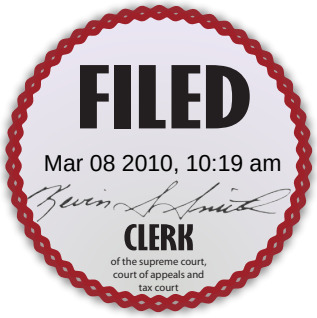

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IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY HOBBS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 36A01-0909-CR-472
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William E. Vance, Judge
Cause No. 36C01-0901-FA-1

March 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Timothy Hobbs was convicted of five counts of Class A felony child molesting and was sentenced to an aggregate term of 105 years. We conclude Hobbs' sentence is not inappropriate in light of the nature of the offenses and his character. We affirm.

Facts and Procedural History

Hobbs was thirty-six years old when he began living with his girlfriend Melissa and her three children. At some point Hobbs married Melissa and became stepfather to her kids. Melissa's daughter S.G. was eight or nine years old when Hobbs first moved in. Hobbs sexually abused S.G. over the next four years.

Hobbs would molest S.G. while her mother was at work. He fondled S.G.'s breasts, made her perform oral sex on him, and engaged in both vaginal and anal sex with her. Hobbs threatened to kill S.G. and her family if she told anyone about their sexual relations. Hobbs also smoked marijuana with S.G. and encouraged her to take birth control. Hobbs moved out in 2008, after which S.G. informed her family that he had sexually abused her.

Hobbs was charged with five counts of Class A felony child molesting which occurred between 2005 and December 2008. A jury found Hobbs guilty as charged. Hobbs was sentenced to thirty-five years on each count. Counts I and II were run concurrently, and Counts III and IV were run concurrently. Count V was run consecutive to Counts I and IV, for an aggregate term of 105 years.

Discussion and Decision

Hobbs argues that his 105-year sentence is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a 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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

With regard to the nature of the offenses, Hobbs sexually abused his stepdaughter over a period of approximately four years. He was charged in this case with no fewer than five separate instances of molestation. The acts included oral sex, vaginal sex, and anal sex. Hobbs provided his stepdaughter marijuana and encouraged her to go on birth control. He violated a position of trust and authority in order to take advantage of her, and he threatened to kill her entire family if she told anyone what he was doing.

As for his character, Hobbs' criminal record includes two battery convictions as well as convictions for disorderly conduct and check deception. His pre-sentence investigation report reflects an additional pending charge for battery resulting in bodily injury. Moreover, Hobbs committed at least a portion of the present misconduct while on probation from another cause.

Hobbs cites a series of sexual misconduct and child molestation cases in which defendants' aggregate sentences were reduced substantially. *See Serino v. State*, 798 N.E.2d 852, 857-58 (Ind. 2003) (385 years modified to 90 years); *Walker v. State*, 747 N.E.2d 536, 538 (Ind. 2001) (80 years modified to 40); *Fointno v. State*, 487 N.E.2d 140, 149 (Ind. 1986) (104 years modified to 80); *Payton v. State*, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004) (39 years modified to 25 1/2), *trans. denied*; *Kien v. State*, 782 N.E.2d 398, 416-17 (Ind. Ct. App. 2003) (120 years modified to 80), *reh'g denied*, *trans. denied*; *see also Tyler v. State*, 903 N.E.2d 463, 468-69 (Ind. 2009) (110 years modified to 67 1/2). Yet each of these cases offered at least some compelling circumstances which favored a downward sentence revision. *See Serino*, 798 N.E.2d at 858 ("Pertinent to the appropriateness of this outcome was substantial uncontested testimony from numerous witnesses speaking to Serino's positive character traits."); *Walker*, 747 N.E.2d at 538 (trial court found no history of criminal behavior); *Fointno*, 487 N.E.2d at 148 ("Defendant had *no* criminal record prior to this assault, and had served as an Anderson fireman for about 10 years, apparently with no serious problems or disciplinary citations."); *Payton*, 818 N.E.2d at 498 (inappropriate touching lasted a minute or two for each child, and children were fully clothed); *Kien*, 782 N.E.2d at 416 ("[T]he evidence did not necessarily establish that the acts occurred at significantly different times with Kien having time to reflect upon the heinous nature of the crimes committed[.]"); *see also Tyler*, 903 N.E.2d at 469 (defendant did not seek to establish a prior position of trust or confidence over victim children, he was emotionally troubled from a young age, he was placed in institutions throughout his youth, and he was diagnosed with a brain tumor

which affected his ability to control his behavior). We find no similar considerations in the case before us.

In conclusion, we cannot say Hobbs' aggregate 105-year term is inappropriate in light of the nature of the offenses and his character.

Affirmed.

RILEY, J., and CRONE, J., concur.