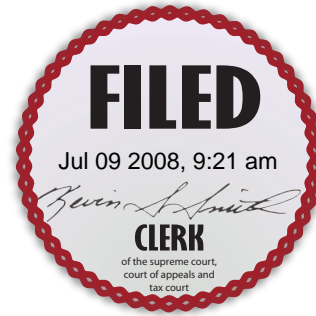


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TONY WALKER, )

Appellant-Defendant, )

vs. )

No. 49A05-0712-CR-663

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Grant Hawkins, Judge  
Cause No. 49G05-0510-FA-182546

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**JULY 9, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBERTSON, Senior Judge**

## STATEMENT OF THE CASE

Defendant-Appellant Tony Walker (“Walker”) appeals from his conviction after a bench trial of two counts of Class A felony child molesting, one count of Class C felony child molesting, and a habitual offender admission. The trial court sentenced Walker to the presumptive sentence for each of the felony convictions and imposed a thirty-year habitual offender enhancement to one of the Class A felony convictions. The Class A felony sentences were to be served consecutively with the Class C felony sentence to be served concurrently with the Class A felony convictions. Walker’s aggregate sentence is ninety years.

We affirm.

## ISSUES

Walker presents the following restated issues for our review:

- I. Whether there was sufficient evidence to support his child molestation convictions, considering the credibility of the victims’ testimony, and alleged coercive tactics employed by law enforcement in obtaining Walker’s confession; and
- II. Whether the sentence imposed by the trial court was inappropriate in light of the nature of the offense and the character of the offender.

## FACTS AND PROCEDURAL HISTORY

Patricia Walker’s marriage to Walker caused friction between Patricia and her daughters. Nonetheless, when one of Patricia’s daughters was incarcerated, Patricia and Walker took that daughter’s five female children into their home. They all lived in one half of a double in Indianapolis, Indiana from May 12, 2002 until September 1, 2003.

The girls ranged in age from six years to three months old.<sup>1</sup> Walker was thirty years old. Patricia and Walker slept together in a bed, while the girls slept on pallets on the floor.

DG4's school had a good touch/bad touch program. DG4's comments to her teacher after that program led to an investigation where all the girls were interviewed. The police interviewed Walker and he confessed to three instances where he had molested DG4 and DG2, and had fondled DG9.

Walker was charged with nine counts of child molestation. However, he was convicted of three counts, which are the subject of this appeal, and the trial court directed verdicts on the other charges.

Additional facts will be supplied as needed.

## DISCUSSION AND DECISION

### I. SUFFICIENCY OF THE EVIDENCE

Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled. In reviewing a sufficiency of the evidence challenge, the Court neither reweighs the evidence nor reassesses the credibility of the witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028 (Ind. Ct. App. 2002). We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. *Id.* We will affirm the conviction if there is probative evidence from which a reasonable jury could have found Defendant guilty beyond a reasonable doubt. *Id.* at 1028-29. The

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<sup>1</sup> The girls all have identical initials. Therefore, they will be referred to in this opinion by a combination of their initials and ages: DG9, DG4, DG2, DG1, and DG3mos.

uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. *Gleaves v. State*, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

Walker attacks the sufficiency of the evidence in two ways. First, he argues that the victims' testimony was coached and not credible. Second, he argues that he confessed to the crimes only because he thought that by telling the police what they wanted to hear, he would be allowed to go home.

As for the coaching aspect of Walker's argument, Walker points to the unsolicited testimony by two of the girls that their aunt smoked cigarettes and not marijuana. However, when questioned further about whether she had been told what to say on the stand, DG2 stated that her aunt had told her to tell the truth. The only aspect of DG2's testimony that appears to be coached was that she was told to say that her aunt did not smoke marijuana. Walker's argument here fails.

Walker attempts to support his argument that the victims' testimony was not credible, by pointing out that five of his motions for directed verdict were granted at the close of the State's case, and a sixth motion was taken under advisement, ultimately resulting in a not guilty finding after the Defendant's case and the State's rebuttal.

A review of the record reveals that DG9 denied the allegations of molestation contained in Counts III and IV occurred. Consequently, the State failed to prove its case with respect to those counts against Walker. Count II involved an allegation that Walker sodomized DG4. Walker argued that there should have been some evidence of physical trauma had an adult male sodomized a four-year-old girl. Therefore, a directed verdict in Walker's favor was appropriate because the State failed to meet its burden of proof on

that count. Count VII involved an allegation of molestation of DG1. The State presented no evidence on that count, so a directed verdict was proper. Count VI alleged that Walker molested DG3mos, but that allegation relied upon the testimony of DG4. The trial court found that DG4's testimony as to that count was not credible, and directed a verdict in favor of Walker. Count V was taken under advisement until the close of the Defendant's case and the State's rebuttal. At that time, the trial court directed a verdict in favor of Walker.

It appears that the trial judge carefully considered the testimony and evaluated the credibility of the witnesses. Moreover, the trial judge evaluated whether the State had met its burden of proof on each of the counts against Walker. Here, the evidence presented on the counts resulting in convictions came from the victims, and was corroborated by Walker's confession. We will not reweigh the evidence. There was sufficient evidence to support Walker's conviction.

Last, Walker claims that he vehemently denied the accusations made against him, but finally confessed with the hope of being allowed to go home. He claims that he merely parroted the accusations back to the police officer. However, we will not reweigh the evidence. Walker was not a stranger to law enforcement due to his prior contacts with police. He asks us to believe that he thought he would be allowed to go home if he told the officer what he wanted to hear.

A review of the record reveals that while the officer did provide a little information about the allegations to Walker while questioning him, Walker provided

details about how the molestations occurred, addresses, time of day, and people present, that corroborated the victims' accounts. We will not reweigh the evidence.

Furthermore, Walker does not offer much to support his argument that his confession was coerced. There is no evidence in the record to suggest that Walker was led to believe that he could go home if he confessed. Therefore, this argument fails.

## II. INAPPROPRIATE SENTENCE

Walker claims that his ninety-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Walker does not challenge the trial court's sentencing statement or any of the aggravating or mitigating factors relied upon in sentencing. Instead, Walker claims that his character is indicative of the possibility of rehabilitation and that the nature of the offense was limited in scope and duration. He concludes that a reduced sentence would be more appropriate.

Indiana Appellate Rule 7(B) provides, "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." A trial court must set forth its reasoning only when deviating from the statutory presumptive sentence. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). When the trial court imposes a sentence other than the presumptive sentence, or imposes consecutive sentences where not required to do so by statute, a court on review will examine the record to insure that the trial court explained its reasons for selecting the sentence it imposed. *Id.* at 1080-81. The burden rests with the defendant to convince the appellate court that his sentence is inappropriate. *Id.* at 1080.

The trial court found as aggravating factors that Walker was in a position of trust over his victims, and that Walker had a prior criminal history. The trial court found as mitigating factors that Walker showed kindness and support to his terminally ill wife, and that his incarceration would work a hardship upon her. After balancing the aggravating and mitigating factors, the trial court imposed the advisory sentences for each of the convictions.<sup>2</sup> The trial court found that the presence of multiple victims of multiple crimes was an aggravating factor used to order the two Class A felonies served consecutively. The Class C felony was ordered to be served concurrently with the Class A felonies. The trial court enhanced one of the Class A felony convictions by thirty years for the habitual offender admission.

Regarding the nature of the offense, the presumptive sentence, now the advisory sentence, is the starting point the Legislature has selected as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. Here, the trial court imposed the presumptive sentence for each of the convictions. Walker argues that less than the presumptive sentence should be imposed because he did not use or threaten to use a deadly weapon in the commission of the offenses. However, the State aptly notes that the use of a deadly weapon is not necessary to cause young girls, from two years old to nine years old, to acquiesce to the authority of adults. Walker abused his position of trust with the girls, his step-grandchildren, and molested them.

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<sup>2</sup> Ind. Code §35-50-2-4 provides that the sentencing range for a Class A felony is from twenty to fifty years with the advisory sentence being thirty years. Ind. Code §35-50-2-6 provides that the sentencing range for a Class C felony is from two years to eight years with the advisory sentence being four years. Ind. Code §35-50-2-8(h) provides that a habitual offender shall be sentenced to an additional fixed term that is not less than the advisory sentence for the underlying offense, but may not exceed thirty years.

Regarding the character of the offender, Walker argues that he has been kind and supporting of his terminally ill wife. He claims that his compassion and inclination toward rehabilitation necessitate a reduction in his sentence

Walker was arrested for theft in 1991; however, that charge was dismissed. In 1992, Walker was convicted of robbing a restaurant at knifepoint and served six years executed in the Department of Correction. Ten months after his release for that offense, Walker violated his probation and was ordered to serve four more years in the Department of Correction. Walker was released to parole in 2000, only to violate that parole and serve another five months in 2002.

On May 9, 1996, Walker committed another robbery of a convenience store. He was sentenced to four years in the Department of Correction and was released on May 23, 1998. Five years later, in February 2003, Walker was arrested for domestic battery and battery. Those charges were ultimately dismissed.

In September of 2003, Walker was charged with attempted murder, child molestation, two counts of intimidation, two counts of criminal recklessness, attempted aggravated battery, attempted battery, and with being a habitual offender. He was convicted of one count of intimidation for threatening a woman for reporting an allegation of child molestation to police. He was also found to be a habitual offender. He was sentenced to five years in November of 2004. He was released to probation on March 3, 2005, and violated his probation a month later. Walker was on probation when he committed the instant offenses.



This history shows that Walker has squandered every opportunity he has been provided by way of probation or parole. His intimidation conviction involved the reporting of a child molestation. He is a habitual offender who has resisted previous attempts at rehabilitation.

The trial court appropriately credited Walker with his kindness and support of Patricia. The trial court also noted the hardship Walker's incarceration would work on her in her final days. However, Walker has not established that imposition of a sentence less than the presumptive would be more appropriate here.

The trial court also noted that the existence of multiple victims and crimes was an aggravating circumstance. However, the trial court chose to address that aggravating circumstance in imposing consecutive sentences. The commission of multiples crimes against multiple victims is a valid aggravating factor which may be used to enhance a sentence or order that sentences be served consecutively. *See Hampton v. State*, 553 N.E.2d 132, 137 (Ind. 1990). In order to impose consecutive sentences, the trial court must find at least one aggravating factor. *Morgan v. State*, 675 N.E.2d 1067, 1073 (Ind. 1993). In the present case, the trial court chose to use the multiple crimes/multiple victims aggravating factor to impose consecutive sentences for the Class A felonies. We find no error here. Furthermore, the sentence imposed on the habitual offender admission is authorized by statute. We find no error there.

### CONCLUSION

There is sufficient evidence to support Walker's convictions. The victims' testimony is corroborated by Walker's own confession. Further, the sentence imposed by

the trial court is not inappropriate in light of the nature of the offense or the character of the offender.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.