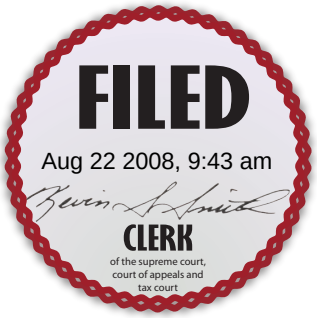

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IN THE
COURT OF APPEALS OF INDIANA

RANDY L. NELSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 41A01-0802-PC-91
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Kim Van Valer, Judge
Cause No. 41D03-0702-FA-1

August 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Randy L. Nelson appeals his sixty-year sentence for two counts of Class A felony child molesting.[1] Nelson does not challenge his thirty-year advisory sentences for each count, but he believes the order that he serve those sentences consecutively is inappropriate in light of his character and the nature of his offense. We affirm.

FACTS AND PROCEDURAL HISTORY

During portions of 2005, 2006, and 2007, forty-three year old Nelson was living with his two nieces and their mother. During that time his nieces were between six and eight years old, and their mother left them in Nelson's care while she was working. Nelson repeatedly molested them. For example, when the oldest girl would ask permission to go outside or to a friend's house, he would require her to engage in sexual activity before permitting her to leave. Nelson admitted to the girls' grandparents that he was molesting them, and then he gave a statement to the police.

The State charged Nelson with four counts of child molesting: two as Class A felonies for deviate sexual conduct with children under the age of fourteen, and two for Class C felony fondling or touching with intent to arouse.[2] Nelson agreed to plead guilty to the two Class A felony counts; the State would dismiss the other two counts. The court sentenced Nelson to thirty years for each count, with twenty-seven executed and three suspended to probation. *See* Ind. Code § 35-50-2-4 (advisory sentence for Class A felony is thirty years). In ordering the sentences served consecutively, the court explained:

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

> I am going to find that it is appropriate for these sentences to be served consecutively to one another. The reasons for that are the repeat offense. You stated yourself you knew it to be wrong and you continued to do it. And the second, and probably more important, is that you were a trusted person with these young girls in a position that to them was a position of education, of example, of influence. You were an adult in their lives and a significant adult in their lives. Not just someone they ran into every once in a while. You were living in their home. Uh, and you abused that in just about the worst way possible. Those are the justifications I find it appropriate to have these served consecutively.

(Tr. at 23.)

DISCUSSION AND DECISION

Nelson argues his consecutive sentences are inappropriate.

> Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review of a sentence imposed by the trial court." This appellate authority is implemented through 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."

Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (internal citations omitted), *clarified on reh'g on other grounds* 875 N.E.2d 218 (Ind. 2007). We give deference to the trial court's decision, recognizing its special expertise in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 208 (Ind. 2007). The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Nelson acknowledges his offense "is contemptible." (Appellant's Br. at 4). At the time of these events, Nelson's nieces were under the age of eight. Their mother allowed Nelson to live with them and had placed her daughters in Nelson's care while she went to

work. Nelson touched his nieces' bare genitals, forced them to touch his penis, rubbed his penis against their bare bottoms, and attempted to penetrate their anuses with his penis.

Nelson would not estimate how many times he molested the older girl, but he admitted it was "a number of times." (Tr. at 15.) The probable cause affidavit, which Nelson testified was correct, indicates he molested her for nearly eighteen months. Nelson told the police he "would rub his penis on her butt until he ejaculated . . . approximately 1 time per week." (Appellant's Second App. at 13.)[3] In light of the other forms of molestation also described in the affidavit, one could infer he molested her many times.

Nelson's criminal history includes only a misdemeanor conviction of driving while suspended and a traffic infraction. Nevertheless, he testified he knew it was wrong to molest his nieces, yet he failed to seek professional help, leave the home, or take any action that would free the victims of his admittedly contemptible behavior. He violated his position of trust with both of his nieces.

We cannot find consecutive sentences inappropriate in light of Nelson's character and offense. Accordingly, we affirm.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.

[3] Nelson's "Second Appendix" contains documents that include confidential information.