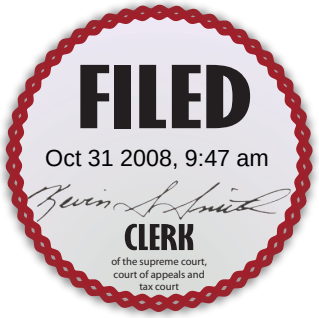

ATTORNEY FOR APPELLANT:

CHRIS P. FRAZIER
Marion County Public Defender

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

CYNTHIA L. PLOUGHE
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

ROCKY L. CRITSER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0803-CR-296
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Commissioner
Cause No. 49G06-0711-FC-240934

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Rocky L. Critser appeals the sentence he received following his conviction of Child Molesting,[1] a class C felony. Upon appeal, Critser contends the sentence is inappropriate in light of his character and the nature of his offense.

We affirm.

The facts favorable to the conviction are that on November 12, 2007, Father was visiting a mall in Indianapolis with his sons and his six-year-old daughter, K.C. As Father and his children moved to different locations in the mall, he noticed a man who appeared to be following them. That man turned out to be Critser. After Father and his children had spent approximately an hour in the mall's game room, they left. Father noticed Critser was still following them so he decided to go to a lower level and seek the assistance of a security guard. He and his children started down an escalator; the boys went first, Father followed them, and K.C. was immediately behind Father. When they were halfway down to the next level, Father felt a nudge from behind. He turned around to see a wide-eyed K.C. "standing frozen still", her mouth "just stuck open like she couldn't say nothing", *Transcript* at 35, and then he observed that Critser was grabbing K.C. between her legs with his right hand. Father quickly pulled K.C. away and noticed that she was so frightened she had wet herself. He ran down the escalator with his children, left them with a friend whom he happened to see there and pursued Critser. Father caught Critser while they were still inside the mall and restrained him until security personnel arrived and Critser was arrested.

Critser was charged with child molesting as a class C felony and convicted following a bench trial. Following a hearing, the trial court imposed the maximum eight-year-sentence,

[1] Ind. Code Ann. § 35-42-4-3 (West, PREMISE through 2007 1st Regular Sess.).

which Critser maintains is excessive and inappropriate.

We have the constitutional authority to revise a sentence if, after consideration of 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 are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). "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*. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

We first address an argument made by Critser that we have addressed many times before – i.e., that the maximum sentence should be reserved for the very worst offenses and offenders, and that this is not such a case. Thus, the argument goes, he should not have received the maximum sentence. We have consistently responded that we cannot approach the review of maximum sentences using this template, i.e., comparing the underlying offense in question with other crimes. Rather, "we should concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Brown v. State*, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), *trans. denied*.

We turn now to the focus of Critser's argument, which is that in view of the facts that

Critser was molested as a youth, has been homeless and abuses drugs and alcohol, and committed the molestation of K.C. while not occupying a position of trust with her, he does not merit the harshest possible penalty. At the sentencing hearing, after detailing Critser's criminal history, the trial court made the following comments and observations:

> And I think it's the fact that he's on probation for a sexual offense, which the Court finds to be the heaviest aggravating factor and it's the one the Court gives the greatest weight. And while I'm going to give Mr. Critser credit for being candid about his sexual history, I do find several aspects of his history to be rather disturbing. He has admitted to having had sex with a cat, he's admitted to having had sex with a six year old boy on at least five different occasions, he admits to having had fantasies involving sex with children, he has given some type of payment to children in exchange for sexual activity, he admits to going to an area or a place where children are likely to be present in order to have sexual conduct with children or to groom or fantasy [sic] about them and he also admits to the PSI writer that he has masturbated in a vehicle while watching children in an assembled area. Again, I give him credit for being frank about his history. I would say ninety-nine percent of the time people who answer these questions try to minimize such things. But when I look at the risk of reoffense and whether or not Mr. Critser poses an expressed danger to the community, specifically the children of this community, everything about his history tells me yes. In mitigation I do find that he himself was a victim of child abuse. And I've been doing this long enough to know that many of those who do abuse were abused themselves as children. I also note that he does have some significant substance abuse issues. I also note that he is homeless and has been homeless for several years. As I add it up I find that the aggravators outweigh the mitigators so the imposition of the sentence above the advisory term is warranted. And it is because of his past sexual conduct and the danger he poses to the children of this community, I think it is absolutely necessary that I impose the maximum eligible sentence in his case.

Transcript at 74-75.

The foregoing comments require little elaboration on our part, except to say that the facts set forth therein are supported by the evidence of record, and the reasoning based on those facts is sound. We add to these comments our observation that the level of Critser's

depravity, and thus the danger he poses to the community, are starkly illustrated by his actions in this case. After noticeably stalking K.C. and her family in a public place, and while on a crowded escalator in a crowded mall, with the victim's father standing only inches in front of her, Critser brazenly and openly fondled a young girl. The maximum, eight-year sentence imposed by the trial court is not inappropriate in light of Critser's character and the nature of this offense.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur