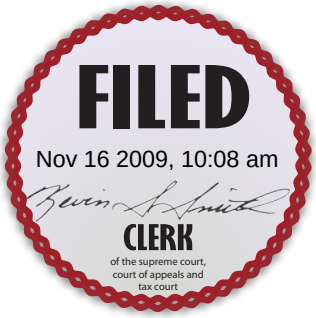

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IN THE
COURT OF APPEALS OF INDIANA

JENNIFER LEONARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 09A04-0906-CR-337
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CASS SUPERIOR COURT
The Honorable Thomas C. Perrone, Judge
Cause No. 09D01-0901-FB-1

November 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jennifer K. Leonard appeals the sentence imposed following her plea of guilty to two counts of neglect of a dependent resulting in bodily injury, each a Class C felony. She asserts the sentence was inappropriate in light of her character and the nature of her offenses. We affirm.

FACTS AND PROCEDURAL HISTORY

In spring 2008, Leonard resided with her four-year old son, J.L.; her sister, Melissa Chandler; and Melissa's four-year old daughter, M.D., at the home of Madeline and Donald Hawk. While there, Leonard saw Madeline Hawk repeatedly abuse J.L. and M.D. Hawk beat the two children with wooden spoons that had been glued together, causing significant injuries including bruising and open sores. On Hawk's instruction, Leonard purchased flex ties that were used to tie the children to various objects in the home. At one point, Leonard saw M.D. cuffed to a doorknob for at least two days. Leonard admits she knew the children were being hit with the wooden spoons and were at times restrained to objects in the home, but claims she did not remedy the situation because she feared Hawk. Leonard said Hawk was very controlling, but residing in the Hawks' home was her only option.

As a result of their injuries, the children continue to experience problems. M.D. appears to suffer from post-traumatic stress disorder. She has been left with significant scarring around her mouth, which interferes with her ability to speak and eat and will require future surgeries. J.L. also exhibits continuing effects of the abuse, as evidenced

by behavioral problems such as hitting, biting, and public urination. He has made poor progress in therapy.

The State charged Leonard with two counts of neglect of a dependent resulting in serious bodily injury, each a Class B felony; two counts of battery resulting in serious bodily injury to a child under fourteen, each a Class B felony; two counts of neglect of a dependent by confinement with "flex cuffs," each a Class C felony; and two counts of neglect of a dependent resulting in bodily injury, each a Class C felony. Leonard agreed to plead guilty to two counts of neglect resulting in bodily injury as Class C felonies,[1] and the State agreed to drop the remaining charges. The length of the sentences would be left to the trial court's discretion, but the sentences would run concurrently. The trial court accepted the plea agreement and sentenced Leonard to concurrent eight-year terms. A Class C felony carries a penalty of imprisonment for a fixed term between two and eight years, with the advisory sentence being four years.[2]

DISCUSSION AND DECISION

Leonard asserts the sentence was inappropriate in light of the nature of the offense and her character. We disagree.

"Sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). The merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). *Anglemyer v. State*, 868 N.E.2d 482,

[1] Ind. Code § 35-46-1-4(a)(1).
[2] Ind. Code § 35-50-2-6.

491 (Ind. 2007), *clarified on reh'g,* 875 N.E.2d 218 (Ind. 2007). Indiana Appellate Rule 7(B) provides we 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." The appellant has the burden to show the sentence is inappropriate. *Rutherford v. State,* 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). In reviewing the sentence, we look to any factors appearing in the record. *Roney v. State,* 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 217 (Ind. 2007).

The trial court sentenced Leonard to the maximum sentence of eight years for each offense to run concurrently. Generally, maximum sentences should be reserved for the worst offenses and offenders. *Bacher v. State,* 686 N.E.2d 791, 802 (Ind. 1997). Leonard claims she is not the worst offender, nor is this the worst case of neglect resulting in bodily injury. However,

> [i]f we were to take this language literally, we would reserve the maximum punishment for only the single most heinous offense . . . . 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*.

As to the nature of the offense, the circumstances surrounding this crime justify a maximum sentence.[3] The trial court recognized the following factors during sentencing: 1) the ages of the victims; 2) the victims were developmentally delayed; 3) the harm to the victims went beyond what would be an element to the crime pled to; and 4) the recurring nature of the abandonment. The trial court noted the crime occurred day after day for approximately three months; it was not a single act of poor judgment, but a continuous abandonment of responsibility to care for the children. The children continue to suffer from the lingering effects of their injuries. Based on the circumstances surrounding the offenses, the maximum sentence was appropriate.

As to Leonard's character, the trial court noted Leonard lacked education and did not have a criminal history. Leonard's husband and mother testified that Leonard had a good relationship with her son, and before moving in with the Hawks, there was no evidence of abuse. We cannot overlook Leonard's repeated failure to report the abuse or remove the children from the situation. Although there was evidence that Leonard's only option was to live with the Hawks, there is no evidence she tried to stop the abuse.

We conclude Leonard's sentence was appropriate in light of her character and the nature of the offenses. Accordingly, we affirm.

[3] We decline the State's invitation to hold that Leonard did not receive the maximum sentence because she might have received a larger one had she not pled guilty. Under rule 7(B), we review the sentence imposed, not a sentence that might have been, but was not, imposed.

Affirmed.

CRONE, J., and BROWN, J., concur.