ATTORNEY FOR APPELLANT:

DONALD R. SHULER
Barkes, Kolbus & Rife, LLP
Goshen, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DEREK J. JONES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-1103-CR-95
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0806-FA-35

November 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Derek J. Jones ("Jones") appeals his convictions for one count of child molesting[1] as a Class A felony, two counts of attempted child molesting,[2] each as a Class A felony, three counts of vicarious sexual gratification,[3] each as a Class B felony, four counts of child molesting,[4] each as a Class C felony, one count of performing sexual conduct in the presence of a minor,[5] a Class D felony, and one count of dissemination of matter harmful to minors,[6] a Class D felony. Jones also appeals his sentence of one-hundred-three years executed in the Indiana Department of Correction. On appeal, Jones raises the following restated issues:

I. Whether the evidence was sufficient to sustain Jones's convictions;[7]

II. Whether Jones's convictions for fondling one victim and for attempting to commit deviate sexual conduct on a second victim violated double jeopardy principles;

III. Whether the trial court abused its discretion in imposing a forty-year sentence for Count XII, child molesting as a Class C felony; and

IV. Whether Jones's sentence is inappropriate in light of the nature of the offenses and the character of the offender.

We affirm in part, vacate in part, and remand with instructions.

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[1] *See* Ind. Code § 35-42-4-3(a)(1).

[2] *See* Ind. Code § 35-42-4-3(a)(1); Ind. Code § 35-41-5-1.

[3] *See* Ind. Code § 35-42-4-5(b)(3).

[4] *See* Ind. Code § 35-42-4-3(b).

[5] *See* Ind. Code § 35-42-4-5(c)(3).

[6] *See* Ind. Code § 35-49-3-3(a)(2).

[7] Jones does not appeal the sufficiency of the evidence as to his convictions for three counts of vicarious sexual gratification, each as a Class B felony, one count of performing sexual conduct in the presence of a minor as a Class D felony, and one count of dissemination of matter harmful to minors as a Class D felony.

FACTS AND PROCEDURAL HISTORY

In August 2006, thirty-two-year-old Jones, his long-time friend Bradley Searfoss ("Searfoss"), and Searfoss's five-year-old son, M.S., lived in the upstairs apartment of a duplex located on North 5th Street in Goshen, Indiana. S.P., Searfoss's seven-year-old stepdaughter, stayed at the duplex every other weekend. During the following year, Jones's girlfriend, Tammy Hall ("Hall"), and Searfoss's girlfriend, Kristeen Hicks ("Hicks"), and their respective children, moved into the duplex. Hall had three children, an eight-year-old daughter, C.W., a six-year-old son, P.H., and a three-year-old daughter, E.H. Hicks had one son, three-year-old D.H.

The adults alternated babysitting for the children; Jones, who had irregular employment, cared for the children frequently. Jones also volunteered to watch Hall's children when she went out.

On April 14, 2008, Searfoss and Hicks were watching E.H. and D.H., who were about four years old and three years old, respectively. Hicks went to check on the children, and upon glancing into their room, Hicks was shocked to see that E.H. was naked and on top of D.H. with her "private parts" in his face. *Tr*. at 497-98. Hicks was upset and went to get Searfoss to have him deal with the situation. When Searfoss went into the room, he saw the children engaged in the same activity; E.H. was straddling D.H. "like a sexual position," neither child was wearing pants, and E.H. was telling D.H., "You put that there and I say, 'Ooh baby, ooh baby, yeah.'" *Id*. at 353. When Searfoss confronted the children, E.H. ran into the closet, and D.H. covered up. *Id*. Searfoss got both children dressed and asked where the children had "learned something like that." *Id*.

at 354. After hearing the answer, Hicks and Searfoss called Hall, and Hall came home and spoke with E.H.

During the trial, Hall described her conversation with E.H. in the following exchange with counsel:

> Q What happened then?
> A She told me that – that [Jones] has been doing that to her and all I can remember is crying, being upset.
> Q What did she do when she saw you crying?
> A She thought that she did something wrong.
> Q What happened then, Tammy?
> A I gave E.H. a hug and she looked at me and said that it wasn't just her, it happened to – she said it happened to P.H. and C.W., as well.
> Q When she was talking to you, did she tell you anything about [Jones]?
> A She just said that he would touch her down there.
> Q Did she use the word "down there"?
> A Her naughty place.

Id. at 429-30. After learning this information from E.H., Hall picked up C.W. and P.H. from school, and then Hicks, Hall, and Searfoss contacted the police.

Soon thereafter, Jones called and left Hall messages denying that he had committed the offenses and urging her to run away with him. *Id*. at 435. Two days later, Hall agreed that she and her children would meet Jones at a hotel in Illinois. Jones arrived at the hotel driving his mother's car because he was sure the police would be looking for his truck. *Id*. at 440. Hall, Jones, and the children spent the night in a hotel, where Jones suggested that Hall dye her hair to avoid detection. *Id*. at 440-41. The next day, Jones threw away Hall's cell phone so that they could not be tracked and decided that Hall and her children should drive with him in his car. *Id*. at 442-43. Upon learning

that they would all be driving in one car, the children looked "terrified." *Id*. at 443. Over the next few days, Jones drove Hall and her children to Texas; on the way, they slept in the car in the woods, again to avoid detection. *Id*. at 444. Jones was finally apprehended in Texas, four days after Hall had left Indianapolis. *Id*. at 446.

Initially, the State filed a fifteen-count information against Jones that was amended on October 18, 2010 to a twelve-count information. Jones was charged with one count of child molesting as a Class A felony, two counts of attempted child molesting, each as a Class A felony, three counts of vicarious sexual gratification, each as a Class B felony, four counts of child molesting, each as a Class C felony, one count of performing sexual conduct in the presence of a minor, a Class D felony, and one count of dissemination of matter harmful to minors, a Class D felony. Following a jury trial, Jones was convicted of all twelve counts.

During Jones's sentencing hearing, the trial court found as aggravating circumstances that Jones: (1) had a criminal record (a Class B felony battery resulting in bodily injury to a small child, and four misdemeanor convictions, one of which was for contributing to the delinquency of a minor); (2) had violated his probation twice; (3) had violated his community corrections placement once; and (4) had four failures to appear for court dates. The trial court also considered that the instant case involved five small children, twelve separate criminal actions, and took place over an extended period of time. Additionally, the trial court found that, during the time he was living with the children, Jones had ample opportunity to reflect upon his course of conduct and the harm that he was doing to the children, to seek help, and to stop hurting these children. Jones,

however, continued to molest and harm the children who lived with him. *Id.* at 835.

While Jones claimed that he suffered from mental illness, the trial court noted that Jones "received no mental health treatment prior to his incarceration as a result of these offenses. . . . To the extent that there is any nexus between these conditions and the crimes that he committed – and I don't acknowledge such nexus exists – he bears the responsibility of not addressing his illnesses in a responsible manner and thus sparing his victims the collateral damage, if you will, of those illnesses and his failure to treat." *Id.* The trial court also found no nexus between Jones's alleged steady employment and the crimes he had committed. *Id.* at 835-36.

At the close of the hearing, the trial court imposed the following sentences: forty years for each of the Class A felonies, Counts V, VI, and XI; fifteen years for each of the Class B felonies, Counts II, III, and VII; six years for each of the Class C felonies, Counts I, VIII, and IX; and two years for each of the Class D felonies, Counts IV and X. The trial court also mistakenly imposed forty years for the Class C felony alleged in Count XII. The trial court ordered that the sentences for the convictions related to each victim should run concurrently to each other, that the sentences for the convictions related to each of the five victims should run consecutively to each other, and that the aggregate sentence be executed with the Indiana Department of Correction. The trial court stated that the aggregate sentence was one-hundred-thirteen years; however, the trial court's written sentencing order calculated the sentence as one-hundred-three years. Jones now appeals his sentence and certain convictions. Additional facts will be added as necessary.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Jones argues that there is insufficient evidence to sustain his convictions for child molesting and attempted child molesting. Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Lainhart v. State*, 916 N.E.2d 924, 939 (Ind. Ct. App. 2009). We will consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* A conviction may be based upon circumstantial evidence alone. *Id*. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id*.

We begin by noting that, as an element of each alleged offense, the State had to prove that Jones was over a certain age and that his victim was under a certain age. Jones does not raise any claim that the State failed to prove the ages required under each offense.

A. Class A Felony Child Molesting

Jones contends that there was insufficient evidence to support his conviction for Count V, child molesting as a Class A felony by subjecting four-year-old E.H. to deviate sexual conduct. Indiana Code section 35-42-4-3(a) provides in pertinent part:

> A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony. However, the offense is a Class A felony if:

> (1) it is committed by a person at least twenty-one (21) years of age[.]

"Deviate sexual conduct" means an act involving: (1) a sex organ of one person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object. Ind. Code § 35-41-1-9.

Here, Count V alleged that Jones, "a person at least twenty-one (21) years of age, did knowingly perform deviate sexual conduct with E.H., a child under fourteen years of age." *Appellant's App.* at 17. A finger may be considered an object under the statute. *Simmons v. State*, 746 N.E.2d 81, 86 (Ind. Ct. App. 2001) (citing *Stewart v. State*, 555 N.E.2d 121, 126 (Ind. 1990), *overruled on other grounds by Lannan v. State*, 600 N.E.2d 1334 (Ind. 1992)).

At trial, E.H. testified that Jones touched her "pee pee" with his hand. *Tr*. at 658. E.H. explained that a pee-pee is used "[t]o go to the bathroom." *Id.* When asked to demonstrate the motion that Jones used, E.H. "rub[bed] the rail surrounding the witness stand with her index finger in a back-and-forth motion." *Id.* at 659. E.H. testified that she was not wearing clothes when this occurred and that [Jones] was watching a movie on television with "boys and girls . . . [k]issing and humping each other." *Id.* at 660. When asked what it felt like when Jones was touching her like that, E.H. stated that it felt "[l]ike someone stabbing me." *Id*. E.H. asked Jones to stop, but Jones responded, "No." *Id*.

Jones contends that without any other witnesses or evidence of this particular offense, there is insufficient evidence to sustain his conviction of Count V. Additionally,

he maintains that the "rubbing motion as indicated by E.H. during her testimony" does not allow for the penetration of E.H.'s sex organ necessary to prove deviate sexual conduct. *Appellant's Br.* at 22. We disagree.

"A conviction of child molesting may rest solely on the uncorroborated testimony of the alleged victim.[8] *Baber v. State*, 870 N.E.2d 486, 490 (Ind. Ct. App. 2007), *trans. denied*. Here, after hearing E.H.'s testimony, including that when Jones touched her she felt like she was being stabbed, there was sufficient evidence for the jury to find Jones guilty of child molesting for knowingly performing deviate sexual conduct with E.H. Jones's argument is merely a request to reweigh the evidence, which we may not do. *Komyatti v. State*, 931 N.E.2d 411, 420 (Ind. Ct. App. 2010).

B. Attempted Child Molesting

Jones next contends that there was insufficient evidence to support his conviction for two counts of Class A felony attempted child molesting which were charged under Counts VI and XI. As noted above, pursuant to Indiana Code section 35-42-4-3(a), it is a Class A felony for a person who is at least twenty-one years of age to perform sexual intercourse on a child who is under fourteen years of age. Likewise, it is a Class A felony for a person, who is at least twenty-one years of age and acting with the culpability required for commission of the crime, to engage in conduct that constitutes a substantial

[8] On appeal, Jones, citing to *Anderson v. State*, 790 N.E.2d 146, 148 (Ind. Ct. App. 2003), *trans. denied*, argues that testimony solely from the alleged victim may be insufficient. *Anderson*, however, can be distinguished. In *Anderson*, the court was not judging whether the testimony of a single witness was sufficient to affirm a defendant's conviction; instead, the court was analyzing the appropriateness of informing the jury that "[t]he sole and uncorroborated testimony of the alleged victim, if believed beyond a reasonable doubt, would be sufficient to sustain a conviction." 790 N.E.2d at 147. The holding in *Anderson* is inapposite to this case.

step toward commission of the crime.[9]

1. Count VI

Count VI alleged that Jones, "a person at least twenty-one years of age, did knowingly engage in conduct that constitutes a substantial step towards the crime of child molesting in that [Jones] attempted to cause E.H., a child under fourteen years of age, to submit to an act involving sexual intercourse." *Appellant's App.* at 17. E.H. testified at trial that she was alone with Jones in his bedroom, both were naked, and Jones had placed E.H. on top of him. *Tr*. at 662. Indicating that it was hard to talk about the incident, E.H. testified that they were on the bed, that Jones had put her "straight" . . . on his front," and that he had placed his hands under her armpits *Id*. at 661, 665. E.H. testified that Jones was pushing her up and down and that she felt like someone was stabbing her. E.H. testified that Jones pushed her up and down "a lot" and that, upon being let down, she could feel Jones's chest." *Id*. at 665-66. Although at first reluctant, E.H. later testified that she could feel Jones's "pee pee" when she was being lifted up and down. *Id*. at 668. When asked what made it stop, E.H. said it was her mom (Hall). *Id*. at 669. Hicks testified that she went into Jones's room around 11:00 p.m., and although not wearing her glasses, she was surprised to find that E.H. was on top of Jones. *Id*. at 522.

On appeal, Jones admits that E.H. was in his room on the night in question, yet states that she was there because she was afraid of a storm. Jones denies that anything

[9] Indiana Code section 35-41-5-1(a) provides:

> A person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime. An attempt to commit a crime is a felony or misdemeanor of the same class as the crime attempted. . . .

happened with E.H. on the night in question. *Appellant's Br.* at 23. Questioning E.H.'s credibility, Jones notes that it was not until E.H. had been asked multiple times, that she testified that she could feel Jones's penis. *Id.* Additionally, Jones argues that, contrary to E.H.'s testimony, it was Hicks who walked in on them, not E.H.'s mother. Jones states that the above constitutes conflicting evidence over what occurred on the night in question.

Jones maintains that the incredible dubiosity rule applies. The incredible dubiosity rule provides that a court may "impinge on the jury's responsibility to judge the credibility of witnesses only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002). The application of this rule is limited to situations where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. *James v. State*, 755 N.E.2d 226, 231 (Ind. Ct. App. 2001), *trans. denied*. "[A]pplication of this rule is rare and . . . the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Stephenson v. State*, 742 N.E.2d 463, 498 (Ind. 2001), *cert. denied*, 534 U.S. 1105 (2002) (quotation omitted).

Here, we do not find E.H.'s testimony so equivocal or inherently contradictory such that no rational jury could believe it. Additionally, while Hicks's testimony does not fully corroborate E.H.'s testimony, it does not conflict with it. Even E.H.'s few equivocations in testimony are appropriate to her age and the passage of time. *Surber v.*

State, 884 N.E.2d 856, 869 (Ind. Ct. App. 2008), *trans. denied*. We find the evidence was sufficiently clear and unequivocal to fall outside the incredible dubiosity rule. Again, Jones's argument amounts to nothing more than an invitation to reweigh the evidence, which this court cannot do. *Komyatti*, 931 N.E.2d at 420.

2. Count XI

Count XI alleged that Jones, "a person at least twenty-one years of age, did knowingly engage in conduct that constitutes a substantial step towards the crime of child molesting in that [Jones] attempted to cause E.H., a child under fourteen years of age, to submit to an act involving deviate sexual conduct." *Appellant's App.* at 19. E.H. testified at trial that Jones "ask[ed] if he could put his penis in [her] mouth." *Tr.* at 679. On appeal, Jones "maintains that even considering the evidence most favorable to the conviction, the sole request for fellatio from E.H. should not be considered a substantial step towards the crime of child molesting." *Appellant's Br.* at 24. Under the facts of this case, we disagree.

The State bears the burden of proving that Jones acted with the culpability required to commit deviate sexual conduct when he engaged in conduct that was a substantial step toward its commission. *See* Ind. Code § 35-41-5-1; *Smith v. State*, 636 N.E.2d 124, 126 (Ind. 1994). Specifically, the State must show that Jones intentionally or knowingly engaged in conduct that was a substantial step towards causing E.H. to perform or submit to deviate sexual conduct compelled by force or threat of imminent force. *Smith*, 636 N.E.2d at 126.

During trial, S.P. testified that Jones displayed a pornographic videotape to E.H.,

M.S., P.H., and S.P. while Jones was wearing a robe with nothing under it. *Tr*. at 549-57. While watching the video, Jones took off his robe, had E.H. kneel in front of him, and told her to "suck his penis." *Id*. at 559. When she refused, Jones said, "You either suck my penis or you have sex with M.S." *Id*. at 560. "When being given the option of either to suck [Jones's] penis or have sex with M.S. . . . she chose to have sex with M.S." *Id*. This evidence was sufficient for a jury to find that Jones intentionally or knowingly engaged in conduct that was a substantial step towards causing E.H. to perform or submit to deviate sexual conduct compelled by force or threat of imminent force. *Smith*, 636 N.E.2d at 126. Jones's argument amounts to nothing more than an invitation to reweigh the evidence, which this court cannot do. *Komyatti*, 931 N.E.2d at 420.

C. Class C Felony Child Molesting

Jones also contends that there was insufficient evidence to support his conviction for four counts of child molesting, each as a Class C felony. Indiana Code section 35-42-4-3(b) provides in pertinent part:

> A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony. . . .

Mere touching alone is not sufficient to constitute the crime of child molesting. *Bowles v. State*, 737 N.E.2d 1150, 1152 (Ind. 2000). The State must also prove beyond a reasonable doubt that the act of touching was accompanied by the specific intent to arouse or satisfy sexual desires. *Id*. The intent element of child molesting may be established by circumstantial evidence and may be inferred from the actor's conduct and

the natural and usual sequence to which such conduct usually points. *Id*.

1. Count I

Count I alleged that Jones touched C.W. with the intent to arouse or to satisfy the sexual desire of either C.W. or Jones. C.W. testified that she was in the kitchen of the apartment with Jones when he placed his hand between her legs and "tickle[d her] down area" *Tr*. at 596. C.W. explained that her "down area" is "where [she] pee[s]." *Id*. at 597. By using hand motions, C.W. demonstrated that Jones would tickle her with his "palm up," and he would "us[e his] fingers in a wagging motion." *Id*. at 598. C.W. said that he touched her "up between the legs" and that he stopped only when she told him to stop and moved away from him.

Jones contends that C.W.'s testimony is uncorroborated by any other testimony and, as such, cannot on its own provide sufficient probative evidence to support the conviction. He further contends that the act of placing ones hand on another's private area does not, by itself, constitute sufficient evidence of intent to arouse sexual desire. *Appellant's Br.* at 26. We are not persuaded. As noted above, "[a] conviction of child molesting may rest solely on the uncorroborated testimony of the alleged victim. *Baber*, 870 N.E.2d at 490. Additionally, here, Jones provided no non-sexual reason for his having touched C.W. Because the requisite intent may be inferred from the evidence that the defendant touched the genitals of a child, it was within the jury's purview to decide that the evidence that Jones touched C.W. "up between the legs" was sufficient to support the requisite intent required for the conviction. Jones requests that we reweigh the evidence, a request we must decline. *Komyatti*, 931 N.E.2d at 420.

2. Counts VIII, IX, and XII

Regarding the Class C felony child molesting convictions alleged in Counts VIII, IX, and XII, Jones again contends that uncorroborated testimony of each victim cannot support his convictions. Given the authority cited above, Jones's argument regarding uncorroborated testimony again must fail. The following evidence was sufficient for the jury to reach a conclusion that Jones was guilty of each respective offense. As to Count VIII, E.H. testified that Jones rubbed her sex organ (in her words, her "pee pee") on more than one occasion. *Tr*. at 657-59. As to Count IX, six-year-old P.H. testified that Jones entered the bathroom while he was taking a bath. Jones showed P.H. a magazine depicting naked women, and asked him which woman he liked. *Id*. at 630-31. Jones did not help P.H. bathe; instead, he grabbed P.H.'s penis and then left. *Id*. at 631. Finally, as to Count XII, S.P. testified that, during the episode when Jones directed E.H. and M.S. to engage in sexual intercourse, Jones placed his hand down the back of her pants and touched her anus (as described during trial, "the part that poops"). *Id*. at 566-68. Jones asked S.P. if she liked being touched in that way, to which she responded, "No." Jones's arguments again amount to nothing more than an invitation that we reweigh the evidence. As we have noted numerous times before, this is an invitation we cannot accept. *Komyatti*, 931 N.E.2d at 420.

We find the evidence was sufficient to support the jury's verdict as to each count that Jones appeals.

II. Double Jeopardy

Jones also contends that his conviction for Count I, the fondling of C.W., and

Count XI, his attempt to cause E.H. to submit to deviate sexual conduct, violate Article I, section 14 of the Indiana Constitution. *Appellant's Br.* at 28. Specifically, he contends that these two convictions violate the prohibition against double jeopardy on the grounds of the "actual evidence test." *See Richardson v. State*, 717 N.E.2d 32, 49-50 (Ind. 1999). We disagree.

"[U]nder the *Richardson* actual evidence test, the Indiana Double Jeopardy Clause is *not* violated when the evidentiary facts establishing the essential elements of one offense also establish only one or even several, *but not all*, of the essential elements of a second offense." *Spivey v. State*, 761 N.E.2d 831, 833 (Ind. 2002) (emphasis added). Here, the facts establishing the elements of Class C child molesting of C.W. are as follows: Jones placed his hand up between C.W.'s legs and waggled his fingers until C.W. moved away and told him to stop. None of these facts establish *any* of the essential elements of the charged attempted child molesting of E.H.: an act that involved Jones making an ultimatum that E.H. either perform fellatio on Jones or that E.H. have sex with M.S. Additionally, even if any of the actual evidence overlapped, a claim of double jeopardy as to Counts I and XI would still be defeated because of the unique proof required for two separate victims. *See Bald v. State*, 766 N.E.2d 1170, 1172 n.4 (Ind. 2002) (observing that defendant's "convictions arise from a situation 'where separate victims are involved,' which has been a scenario that does not constitute double jeopardy" (quoting *Richardson*, 717 N.E.2d at 56 (Sullivan, J., concurring))). Accordingly, Jones's convictions do not violate the *Richardson*/*Spivey* actual evidence test.

III. Sentence for Class C Child Molesting

Jones next argues that it was an abuse of the trial court's discretion to enter a forty-year sentence on Count XII, a Class C felony child molesting conviction. The State agrees that the maximum sentence for a Class C felony is eight years. *See* Ind. Code § 35-50-2-6(a). A trial court must impose a sentence that is authorized by statute. Ind. Code § 35-38-1-7.1. Here, the trial court imposed a sentence of six years for each of the other three Class C felony convictions. We vacate the trial court's forty-year sentence for Count XII and remand to the trial court with instructions to enter a six-year sentence on Count XII to run consecutively to the sentences for the convictions related to the other victims for an aggregate sentence of sixty-nine years.

IV. Inappropriateness of Sentence

Jones finally asserts that his sentence is inappropriate in light of the nature of the offenses and the character of the offender. In his brief, Jones challenges the "aggregate sentence, [which] considering the sentencing error in Section III [above], would be anywhere from sixty-five (65) years to seventy-one (71) years." *Appellant's Br.* at 32. As noted in the previous section, Jones now appeals a sentence of sixty-nine years executed with the Indiana Department of Correction.

This court has authority to revise a sentence '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. *Spitler v. State*, 908 N.E.2d 694, 696 (Ind. Ct. App. 2009) (citing Ind. Appellate Rule 7(B)), *trans. denied*. The advisory sentence for a crime is the starting point our legislature has selected as an appropriate sentence for

the crime committed. *Richardson v. State*, 906 N.E.2d 241, 247 (Ind. Ct. App. 2009). Here, Jones was convicted of: (1) three Class A felonies, each of which carries an advisory sentence of thirty years; (2) three Class B felonies, each of which carries an advisory sentence of ten years; (3) four Class C felonies, each of which carries an advisory sentence of four years; and (4) two Class D felonies, each of which carries an advisory sentence of one and one-half years. The potential sentence for these crimes far outweighed even the one-hundred-three-year sentence initially imposed by the court.

Jones first contends that his aggregate sentence is inappropriate because the nature of the crimes was not "particularly outrageous." *Appellant's Br.* at 36. We disagree. Jones was convicted of twelve counts of child molesting, committed against five children under the age of ten, over a significant period of time. These crimes were not committed in isolation, but instead, were committed against these children in groups. Furthermore, Jones not only committed the criminal acts on these children, but also compelled the children to engage in criminal acts against each other at his direction; the victims were children who were siblings and who lived together in a home as if they were siblings. We cannot say that the sentence is inappropriate in light of the nature of the offenses.

Jones next contends that his sentence was inappropriate in light of the character of the offender. As support for his claim, Jones cites to having only one prior felony, to the fact that he "attempted to maintain steady employment in a struggling economy, and that he did so while he was suffering from [mental illness]." *Appellant's Br.* at 38. Again, we are not persuaded. As Jones admits, he has a criminal history that includes a conviction for a Class B felony battery resulting in serious bodily injury to a three-year-old child, as

well as various charges of driving while suspended. On numerous occasions, Jones has violated probation, and the trial court has issued bench warrants due to his failure to appear.

Jones's character is reflected in the fact that he violated the trust of his girlfriend, his longtime friend, and each of these children, who at various times had been placed in his care. When Jones learned that his girlfriend, Hall, had reported the instant crimes, Jones enticed Hall to run away with her children and meet him in Illinois. To avoid detection, Jones drove his mother's car, threw away Hall's cell phone, and had Hall dye her hair. During the trip to Texas, Jones made Hall and the children ride in his car and required them to sleep at night in his car, which was hidden in the woods. We cannot say that the sentence imposed by the trial court is inappropriate in light of Jones's character.

Affirmed in part, vacated in part, and remanded with instructions.

BAKER, J., and BROWN, J., concur.