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**IN THE  
COURT OF APPEALS OF INDIANA**

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RONALD BAKER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A03-0809-CR-464

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable Jerome Frese, Judge  
Cause No. 71D03-0712-FC-357

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**March 24, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Ronald Baker appeals his sentence for two counts of child molesting as class C felonies.<sup>1</sup> Baker raises one issue, which we revise and restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We reverse and remand.

The relevant facts follow. Baker visited his daughter in the summer of 2007 and again in November 2007. During those times, Baker twice touched C.W., the eleven-year-old half-sister of Baker's daughter, with the intent to satisfy his sexual desires.

The State charged Baker with three counts of child molesting as class C felonies. On July 28, 2008, Baker pled guilty to two counts of child molesting as class C felonies, and the State dismissed the remaining charge of child molesting as a class C felony and a charge of burglary as a class C felony under a different cause number. The trial court accepted the plea agreement.

After a sentencing hearing, the trial court found the following mitigators: Baker admitted his guilt and acknowledged his responsibility; Baker was in the Marines and received an honorable discharge after four years of service; Baker did not have a criminal record; and Baker had a disease and lost the bone in his upper arms. The trial court found Baker's position of trust and the time between the offenses as aggravators. The trial court also noted that Baker suggested he was seduced by the victim. The trial court found that

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<sup>1</sup> Ind. Code § 35-42-4-3 (Supp. 2007).

the aggravators outweighed the mitigators and “because there’s a serious concern I have for your danger to young children” sentenced Baker to eight years for each count of child molesting as class C felonies and ordered that the sentences be served consecutively. August 11, 2008 Transcript at 30.

The issue is whether Baker’s sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Baker argues that his sentence should be revised to the advisory sentence of four years for each count and that the sentences run concurrently.

Initially, we note that Baker received the maximum sentence. See Ind. Code § 35-50-2-6 (Supp. 2005). In general, the maximum possible sentences are generally most appropriate for the worst offenders. Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002). This is not, however, a guideline to determine whether a worse offender could be imagined. Id. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Id. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer

generally to the class of offenses and offenders that warrant the maximum punishment.

Id. But such class encompasses a considerable variety of offenses and offenders. Id.

Our review of the nature of the offense reveals that C.W. looked up to Baker as “Daddy Ron.” August 11, 2008 Transcript at 11. Baker molested C.W. twice between May 2007 and November 2007.

Our review of the character of the offender reveals that Baker pled guilty to two counts of child molesting as class C felonies, and the State dismissed one count of child molesting as a class C felony and one count of burglary as a class C felony. At the sentencing hearing, Baker stated, “Well, your Honor, for these very serious transgressions I’d like to say that, you know, I’m filled with a lot of regret, remorse, shame, sorrow. I just humbly beg for forgiveness from the victim, the victim’s mother, this Court, and ultimately from God above. That’s all I have to say, your Honor.” August 11, 2008 Transcript at 10-11. However, the trial court noted that Baker suggested that he was seduced by the victim. In the presentence investigation report, Baker described the offenses as follows:

Child Molestation: This summer I visited my daughter (the victim[']s ½ sister) for the month of August. During that time the victim wanted to sleep whenever I slept – She said, “You cuddle better than mom does – mom snores too loud and she kicks.” There was no touching at that time. There was touching only one time – that occurred two days prior to the victim[']s 12th birthday. The night of the incident the victim had been reading some vampire book. She came to me & asked if I’d cuddle w/ her because she was scarr [sic] I said ok (a mistake I’ll never make again). After about an hour she climbed on top of me – I was on my back she was

facing away from me. She took both my hands & placed them on her genitiles [sic] but I let my hands fall back to my side. Then she layed [sic] next to me & rubbed my genitiles [sic] with the inside of her leg.

Appellee's Appendix at 15. Baker also wrote, "Child Molesting lessons learned: I'll never cuddle w/ an underaged female ever again – I'll never be alone with an under aged female ever again." Id. at 16.

Baker has no criminal history. Baker served in the Marines from 1983 until 1987 when he was honorably discharged. In 1997, Baker contracted "Necrotising Fasciitis (aka 'flesh eating virus' syndrome)" and suffers from chronic back pain, depression, and anxiety. Id. at 6.

After due consideration of the trial court's decision, and in light of Baker's lack of criminal history and guilty plea, we cannot say that Baker is one of the worst offenders deserving of the maximum sentence. See Asher v. State, 790 N.E.2d 567, 572 (Ind. Ct. App. 2003) (holding that the defendant was not "the very worst offender" because of his lack of criminal history). We conclude that Baker's sentence is inappropriate and that his sentence should be reduced to five years for each count of child molesting as a class C felony to be served consecutively for a total sentence of ten years with two years suspended to probation.

For the foregoing reasons, we reverse Baker's sentence and remand this case to the trial court with instructions to issue an amended sentencing order and to issue any other

documents or chronological case summary entries necessary to impose a total sentence of ten years with two years suspended.

Reversed and remanded with instructions.

ROBB, J. concurs

CRONE, J. dissents with separate opinion

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**CRONE, Judge, dissenting**

I agree that Baker is not the worst type of offender and acknowledge that the circumstances of his crimes are not substantially more egregious than those contemplated by the four-year advisory sentence for class C felony child molesting. Nevertheless, I believe that the nature of the offenses and Baker's character support the imposition of consecutive sentences and an aggregate term in excess of the ten years mandated by the majority. Therefore, I respectfully dissent.