

Timothy Treacy appeals his convictions for operating while intoxicated as a class D felony¹ and public intoxication as a class B misdemeanor.² Treacy raises one issue, which we revise and restate as whether the trial court erred by denying Treacy's motion for discharge under Ind. Criminal Rule 4(C). We affirm.

The relevant facts follow. On August 25, 2006, the State charged Treacy with: Count I, operating while intoxicated as a class D felony; Count II, operating at or above 0.08 but less than 0.15 as a class D felony; and Count III, public intoxication as a class B misdemeanor. After numerous delays, Treacy filed a Motion to Release Defendant Pursuant to Criminal Rule 4(C) on March 19, 2009. The court took the matter under advisement. On July 28, 2009, attorney Paul Ogden filed an Application for Discharge of Defendant Pursuant to Criminal Rule 4.³ After further delays, a jury trial was held on August 27, 2009. At the beginning of the jury trial, Treacy renewed his motion for discharge under Ind. Criminal Rule 4, which the court denied. After the jury trial, Treacy was found guilty as charged. On September 9, 2009, the court entered judgment and sentenced Treacy to ten days for public intoxication as a class B misdemeanor and 545 days with 455 days suspended for operating a vehicle while intoxicated as a class D felony.

¹ Ind. Code §§ 9-30-5-2 (2004); 9-30-5-3 (2004) (subsequently amended by Pub. L. No. 126-2008, § 9 (eff. July 1, 2008)).

² Ind. Code § 7.1-5-1-3 (2004).

³ It appears that Ogden had not yet formally entered an appearance in this case. The chronological case summary reveals the following entry dated July 31, 2009: "OGDEN ALSO MAKES APPEARANCE." Appellant's Appendix at 36.

The sole issue is whether the trial court erred by denying Treacy's motion for discharge under Ind. Criminal Rule 4(C).⁴ Treacy argues that he should be discharged because the State failed to bring him to trial within the one-year period under Ind. Criminal Rule 4(C). Specifically, Treacy argues that he objected at the outset of the jury trial on August 27, 2009, and that "[a]t least 425 days between when Mr. Treacy was charged and when he was tried were not chargeable to him under CR 4." Appellant's Brief at 18.

Ind. Criminal Rule 4(C) provides:

No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

"The rule places an affirmative duty on the State to bring a defendant to trial within one year of being charged or arrested, but allows for extensions of that time for various

⁴ The State argues that "any protestations on the part of [attorney Paul] Ogden were inappropriate and not cognizable by the trial court, as he never entered an appearance in this matter." Appellee's Brief at 15. We need not address the State's argument or the earlier motions filed by Treacy as Treacy focuses on the denial of his renewal of his motion to dismiss under Ind. Criminal Rule 4 at the trial and does not appear to challenge the denial of any other motion that could be construed as a motion under Ind. Criminal Rule 4(C).

reasons.” Cook v. State, 810 N.E.2d 1064, 1065 (Ind. 2004). The one-year period is extended by any delay due to: (1) a defendant’s motion for a continuance; (2) a delay caused by the defendant’s act; or (3) congestion of the court calendar. Isaacs v. State, 673 N.E.2d 757, 762 (Ind. 1996). “A defendant extends the one-year period by seeking or acquiescing in delay resulting in a later trial date.” Pelley v. State, 901 N.E.2d 494, 498 (Ind. 2009), reh’g denied. “[W]hen a defendant takes action which delays the proceeding, that time is chargeable to the defendant and extends the one-year time limit, regardless of whether a trial date has been set at the time or not.” Cook, 810 N.E.2d at 1066-1067.

“The defendant’s failure to object timely will be deemed acquiescence in the setting of that date.” Vermillion v. State, 719 N.E.2d 1201, 1204 (Ind. 1999), reh’g denied. When a defendant asks for a continuance, the time between the motion for a continuance and the new trial date is chargeable to the defendant. Id. When a motion for discharge for an Ind. Criminal Rule 4 violation is made prematurely, it is properly denied. Stephenson v. State, 742 N.E.2d 463, 487, n.21 (Ind. 2001), cert. denied, 534 U.S. 1105, 122 S. Ct. 905 (2002). The determination of whether a particular delay in bringing a defendant to trial violates the speedy trial guarantee depends on the specific circumstances of the case. Payton v. State, 905 N.E.2d 508, 511 (Ind. Ct. App. 2009), trans. denied.

Upon appellate review, a trial court’s finding of congestion will be presumed valid and need not be contemporaneously explained or documented by the trial court. Alter v.

State, 860 N.E.2d 874, 877 (Ind. Ct. App. 2007). However, a defendant may overcome this presumption by demonstrating that the finding of congestion was factually or legally inaccurate. Id. Such proof establishes a *prima facie* case adequate for discharge unless the trial court sets forth an explanation for congestion. Id. If the trial court provides further findings which explain the congestion and justify the delay, the appellate court will give reasonable deference to the trial court's explanation. Id. The burden then shifts back to the defendant to establish that he is entitled to discharge by showing that the trial court was clearly erroneous. Id.

We have previously stated that “to determine whether a trial court's finding of congestion was accurate, it is necessary to view the trial court's calendar on the date that the court granted the trial continuance.” Truax v. State, 856 N.E.2d 116, 121 (Ind. Ct. App. 2006). If a defendant fails to present evidence that the trial court's finding of congestion is clearly erroneous on the date that the court granted the continuance, the defendant's discharge motion will fail. Id.

Treacy was charged on August 25, 2006. Thus, the State was required to bring Treacy to trial by August 25, 2007, unless the one-year period was extended by delays not chargeable to the State. Based upon our calculations below, we conclude that the delays attributable to Treacy extended the one-year limit by 735 days to August 29, 2009. Thus, Treacy's motion for discharge on August 27, 2009, was premature and his right under Ind. Criminal Rule 4(C) to be brought to trial within one year of being charged has not been violated.

On September 20, 2006, Treacy moved for a continuance so that he could hire his own attorney and asked the court for a continuance of six months. The court granted Treacy's motion for a continuance and scheduled a pre-trial conference for December 13, 2006. This extended the one-year period by eighty-four days.⁵ (Cumulative extension (hereinafter, "C.E.") 84 days). On December 13, 2006, Treacy requested a continuance, which the court granted. The court scheduled a pre-trial conference for March 7, 2007. This extended the one-year period by another eighty-four days.⁶ (C.E. 168 days).

On March 21, 2007, Treacy requested a continuance, which the court granted. The court then scheduled a pre-trial conference for April 4, 2007. This extended the one-year period by fourteen days.⁷ (C.E. 182 days). On April 4, 2007, Treacy requested a continuance, and the court granted Treacy a continuance and scheduled the next pre-trial conference for June 6, 2007. This extended the one-year period by sixty-three days.⁸ (C.E. 245 days). On May 30, 2007, Treacy requested a continuance, and the court granted the continuance and scheduled the next pre-trial conference for June 13, 2007. This extended the one-year period by seven days.⁹ (C.E. 252 days).

⁵ This represents the delay between September 20, 2006, and December 13, 2006.

⁶ This represents the delay between December 13, 2006, and March 7, 2007.

⁷ This represents the delay between March 21, 2007, and April 4, 2007.

⁸ This represents the delay between April 4, 2007, and June 6, 2007.

⁹ This represents the delay between June 6, 2007, and June 13, 2007. We use June 6, 2007, as the beginning point for this calculation because the previous calculation included the days between April 4, 2007, and June 6, 2007. See Henderson v. State, 647 N.E.2d 7, 13 (Ind. Ct. App. 1995) (holding that this court does not charge defendant twice for those days of delay that overlap), reh'g denied, trans. denied.

On June 13, 2007, the court held a pre-trial conference and Treacy's attorney, James Recker, informed the court that Treacy had informed him that he wished to terminate Recker's representation and that there was a fundamental disagreement about the best way to defend the case. The court granted Recker's motion to withdraw. Treacy indicated that he was not sure whether he wanted an attorney or wanted to represent himself. The court appointed A.J. Reiber, a public defender, until Treacy decided how he wanted to proceed. The court rescheduled a pre-trial conference for July 11, 2007. This extended the one-year period by twenty-eight days.¹⁰ (C.E. 280 days). See Vermillion, 719 N.E.2d at 1204 (holding that if a defendant's actions cause his attorney's resignation or withdrawal, then the defendant is charged with that delay).

On July 11, 2007, the court held a pre-trial conference, and Reiber indicated that Treacy was proceeding *pro se*. Treacy indicated that he wished to have Reiber represent him "for now," but that he wanted to hire an attorney. Transcript at 43. Treacy stated that he wanted to "see about getting an attorney," and the court rescheduled the pre-trial conference for August 1, 2007. Id. at 44. This extended the one-year period by twenty-one days.¹¹ (C.E. 301 days).

On August 1, 2007, the court held a pre-trial conference, and Treacy indicated that he wished to represent himself. Treacy informed the court that he had several "[v]ery serious matters" that he wanted to clarify before the court. Id. at 50. Treacy then asked

¹⁰ This represents the delay between June 13, 2007, and July 11, 2007.

¹¹ This represents the delay between July 11, 2007, and August 1, 2007.

the trial judge if he and the prosecutor had taken oaths of office to support and uphold the Constitution of the United States. The court told Treacy that “this is not going to be a podium for you to preach to this Court. If you have a question, as [sic] your question.” Id. Treacy again asked if the court and the prosecutor had taken oaths of office. The court stated: “I’m not going to take time to answer those questions. If you want to ask a question with regard to the procedures of this . . . of these cases, I will” Id. at 51. Treacy again attempted to ask the court about the oath, and the court stated “when you get yourself oriented to processing these cases, you let the Sheriff know so that they can bring [you] back over here to this Court. But I am not going to listen to your philosophical debates about my responsibilities as a judge.” Id. at 51-52. The court rescheduled the pre-trial conference for August 8, 2007.

On August 8, 2007, the court informed Treacy as follows: “This is not a forum for you to preach about the obligations and the responsibilities of this Court. This is a [h]earing for you to conduct the business about the disposition of your cases.” Id. at 55-56. After some discussion, Treacy began discussing the oath of office of the court and the prosecutor. The court ended the hearing and scheduled a pre-trial conference for August 15, 2007. On August 15, 2007, the court held a pre-trial conference and released Treacy on his own recognizance over the prosecutor’s objection. The court scheduled a pre-trial conference for September 26, 2007.¹²

¹² Treacy argues that he should not be charged with the eighty-six days from July 2, 2007, to September 26, 2007. Treacy appears to argue that the trial court refused his request to speak at the pre-trial conferences on July 11, 2007, August 1, 2007, and August 8, 2007. Treacy fails to put forth a cogent

On September 26, 2007, the court held a pre-trial conference, and Treacy was represented by Jeffrey McQuary. The court asked whether it needed to set these matters for a jury trial, and McQuary stated “I think that something can be worked out.” Id. at 63. McQuary also stated that he was still obtaining discovery from prior counsel and needed another pre-trial conference. The court granted Treacy a continuance and rescheduled the pre-trial conference for November 28, 2007. This extended the one-year period by sixty-three days.¹³ (C.E. 364 days).

On November 28, 2007, the court held a pre-trial conference, and McQuary stated that the prosecutor and Treacy had worked out a plea agreement in principle and that there were some “relatively minor details that still need[ed] to be worked out.” Id. at 74. McQuary indicated that he wanted to come back in two weeks. The court rescheduled a pre-trial conference for December 5, 2007. This extended the one-year period by seven days.¹⁴ (C.E. 371 days).

argument as to how this impacts the analysis under Ind. Criminal Rule 4 or how such an argument negates responsibility for the delay between July 11, 2007, and August 1, 2007. Consequently, this issue is waived. See, e.g., Cooper v. State, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant’s contention was waived because it was “supported neither by cogent argument nor citation to authority”); Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument). Moreover, we need not address whether any portion of the delay between August 1, 2007, and September 26, 2007, is attributable to Treacy because the overall delay caused by Treacy’s other motions and acquiescences made Treacy’s motion for discharge at trial premature.

¹³ This represents the delay between September 26, 2007, and November 28, 2007.

¹⁴ This represents the delay between November 28, 2007, and December 5, 2007.

On December 5, 2007, the court held a pre-trial conference and scheduled a pre-trial conference for December 17, 2007.¹⁵ On December 17, 2007, the court held a pre-trial conference and the following exchange occurred:

THE COURT: I suppose you want a fast and speedy trial?

MR. McQUARY: No, Judge. In due course would be preferable.

THE COURT: Really?

MR. McQUARY: Yes, sir.

* * * * *

THE COURT: 06-159623 is confirmed now for jury.

MR. McQUARY: Yes, Your Honor.

COURT REPORTER: Judge, we do not have any Tuesday jury dates open until March. We [h]ave. . .

THE COURT: March.

MR. McQUARY: Your Honor, I have a jury trial at the end of February in Federal Court, so a mid-March date would be preferable.

¹⁵ The transcript reveals the following entry regarding the December 5, 2007 pre-trial conference:

THIS CASE WAS NOT CALLED IN OPEN COURT AND DOES NOT APPEAR ON THE COURT REPORTER'S LOG NOTES AS HAVING BEEN CALLED. IT IS BELIEVED BY THE JUDGE AND THE COURT REPORTER THAT COUNSEL FOR THE STATE AND DEFENSE PARTICIPATED IN MEETING IN CHAMBERS WITH THE PRESIDING JUDGE AND A NEW PRE-TRIAL DATE OF DECEMBER 17, 2007 AT 9:00 A.M. WAS SET.

Transcript at 78.

Id. at 81, 83-84 (emphases added). The court scheduled a pre-trial conference for March 3, 2008, and a jury trial for March 13, 2008. Given that there was not an express finding of congestion on the calendar, this time is chargeable to the State.

On January 18, 2008, Treacy's attorney, McQuary, filed a motion to withdraw. McQuary attached a copy of a letter from Treacy which was addressed to the court and stated:

I hereby notify the court that I Timothy-Patrick: Treacy am dismissing my lawyer Jefferey [sic] McQuary due to the fact that I feel as though he has been compromised and is innefective [sic] as counsil [sic]. I will be seeking alternate counsil [sic]. I do not want a public Defender!!

Appellant's Appendix at 100. On March 3, 2008, the court granted McQuary's motion to withdraw and held a pre-trial conference, at which Treacy indicated that he was proceeding *pro se*. Treacy indicated that he did not have any files on this matter. The court instructed McQuary to provide Treacy with the pertinent information from the files. The court scheduled pre-trial conferences for March 5, 2008, and March 31, 2008, and scheduled a jury trial for April 8, 2008. Treacy's actions caused his attorney's withdrawal, and Treacy acquiesced in the rescheduling of the trial and thus waived the right to object. See Vermillion, 719 N.E.2d at 1204-1205. This extended the one-year period by twenty-six days.¹⁶ (C.E. 397 days).

On March 5, 2008, the court held a pre-trial conference and indicated that it was going to appoint Reiber to serve as a technical advisor to Treacy, but Reiber informed the

¹⁶ This represents the delay between March 13, 2008, and April 8, 2008.

court that Treacy had filed “paperwork” against him stating that Reiber owed Treacy \$3.5 million for violating his rights. Transcript at 106. The court stated that he “might just pick someone from the Bar.” Id. at 107. The court scheduled a pre-trial conference for March 12, 2008.

On March 12, 2008, the court held a pre-trial conference, and the court and Treacy discussed Treacy’s request to be released from jail. Treacy stated that he had “private counsel under private contract.” Id. at 114. The court informed Treacy that “[a] person who has not been admitted to the Bar – to the practice of law – cannot represent you.” Id. Treacy said, “you’re talking about the British Accredited Registry? That’s what Bar stands for. Right?” Id. at 115. After some discussion, the following exchange occurred:

THE COURT: I’ll tell you what . . . so who is this man here in the gray t-shirt sitting with your mother?

MR. TREACY: Jonathan Hirshberger (sic).

THE COURT: A friend of yours?

MR. TREACY: Yeah, it’s my (inaudible).

THE COURT: Well, I know he wants to help you real bad.

MR. TREACY: He wants to help me.

THE COURT: I’ll bet he has . . . I’ll bet he has some good information to give you.

MR. TREACY: He has some wonderful information.

THE COURT: I’ll bet he does.

MR. TREACY: Yes.

THE COURT: But, you need call him, because I'm going to set this matter over until the 31st day of March.

Id. at 120.

On March 31, 2008, Treacy informed the court that he was not "ready for trial" and that he had "some more thinking to do." Id. at 132. The court granted Treacy's request for a continuance over the prosecutor's objection and scheduled a pre-trial conference for April 28, 2008. The court later scheduled a jury trial for May 22, 2008. This extended the one-year period by forty-four days.¹⁷ (C.E. 441 days).

¹⁷ This represents the delay between April 8, 2008, and May 22, 2008. We use April 8, 2008, as the beginning point for this calculation because the previous calculation included the days between March 13, 2008, and April 8, 2008. See Henderson, 647 N.E.2d at 13.

Treacy argues that the delay between April 28, 2008, and May 22, 2008, should not be charged to him because "[a]t the April 28 pre-trial conference, the trial court set jury trial for May 22, 2008," and "Mr. Treacy objected on the grounds that the trial date was beyond 365 days since he had been charged." Appellant's Brief at 25. Treacy cites to page 148 of the transcript in support of his argument. However, page 148 of the transcript does not reveal that Treacy objected at the April 28, 2008 conference. Rather, the following exchange is revealed:

THE COURT: So it's time now for this case to be tried.

MR. TREACY: No. I request one more Pre-Trial in a week.

THE COURT: No.

* * * * *

COURT REPORTER: The date we have is for Jury Trial May 22nd at 9:00 o'clock. Do we need a Pre-Trial on this?

THE COURT: Now, if we proceed . . .

MR. TREACY: Well, like I said, I'm not ready . . . I'm not ready for Jury Trial.

Transcript at 148. Thus, the portion of the transcript cited by Treacy does not support his argument. Moreover, even assuming that Treacy objected, as previously mentioned, at a pre-trial conference on March 31, 2008, Treacy informed the court that he was not "ready for trial" and that he had "some more

At the pre-trial conference on April 28, 2008, the court informed Treacy that “[i]t’s time for a jury to decide the facts of these matters.” Id. at 146. Treacy informed the court that he was not ready for a jury trial.

On May 22, 2008, the State indicated that it was ready to proceed, but Treacy stated, “I’m not ready for the trial today.” Id. at 154. When asked his reasons for not being ready for trial, Treacy stated: “Well, I’m incarcerated, for one thing. CCA keeps me doped up all the time and I’m in no . . . there’s no way I can even prepare for this. And I need now to figure out . . . I need to locate some counsel for my defense and that’s what I plan on doing.” Id. Treacy acknowledged that asking for a continuance would extend the time period under Criminal Rule 4, but still requested a continuance. Over the State’s objection, the court granted Treacy a continuance and rescheduled a pre-trial conference for June 11, 2008, and the jury trial for June 19, 2008. This extended the one-year period by twenty-eight days.¹⁸ (C.E. 469 days).

On June 11, 2008, the court held a pre-trial conference, and Treacy indicated that he had a financial advisor but did not have a lawyer. Treacy also indicated that he did not want a lawyer to represent him but that he was entitled to counsel. Treacy stated that he

thinking to do.” Id. at 132. The court granted Treacy’s request for a continuance over the prosecutor’s objection, and removed the previously scheduled trial date of April 8, 2008, from the calendar.

¹⁸ This represents the delay between May 22, 2008, and June 19, 2008.

was not yet ready for trial and informed the court that he was appointing the judge as his fiduciary.¹⁹ The court advised Treacy to be ready for trial.

On June 19, 2008, the State indicated that it was ready to go forward with trial, and Treacy indicated that he was not ready to proceed with trial because there was a “facility shakedown and they destroyed all [his] paperwork.” Id. at 174. The court indicated that the trial would proceed, and Treacy repeatedly stated that he could not proceed with trial and requested a continuance. After some discussion and after Treacy indicated that he would continue to interrupt the court, the court found Treacy in contempt and had Treacy removed from the courtroom. The court brought Treacy back into the courtroom, and Treacy informed the court that he would continue to interrupt the court and would not follow the rules because he was “under the influence.” Id. at 207. The court appointed two disinterested medical professionals to evaluate Treacy’s competency and scheduled a status hearing for July 17, 2008.

We observe that Treacy does not challenge this delay as being attributable to him. Moreover, the court found Treacy in contempt and appointed two disinterested medical professionals only after Treacy indicated that he would continue to interrupt the court and would not follow the rules. Under the circumstances, we conclude that this delay extended the one-year period by twenty-eight days.²⁰ (C.E. 497 days). See 16B W. A.

¹⁹ Specifically, Treacy stated: “Okay. Well, I would like to officially appoint you as my fiduciary, which is accepting financial stu . . . financial responsibility for my straw man.” Transcript at 169.

²⁰ This represents the delay between June 19, 2008, and July 17, 2008.

KERR, INDIANA PRACTICE § 19.3c at 47 (1998) (“[t]he defendant may . . . be chargeable for any such delays when a trial court acts *sua sponte* in ordering a mental competency examination or acts at the suggestion of the prosecutor or some other person.”); *Id.* at § 18.5 at 25 (stating that Ind. Code § 35-36-3-2, which provides in part that “[u]pon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred,” “does not specify any limitations and therefore would appear to cover any delays that are caused by the trial court acting *sua sponte* or at the suggestion of a person other than the defendant”); see also *Craft v. Klepfer*, 260 Ind. 78, 78-82, 292 N.E.2d 601, 602-604 (1973) (holding that the defendant must be released from her commitment in a mental hospital because she was capable of understanding the proceedings against her and must be afforded her right to a speedy trial after she was committed to a mental hospital for two years after the prosecutor moved the trial court for a mental examination of the defendant and she was found to have lacked the requisite standard of mental competency to stand trial).

On July 17, 2008, the court held a hearing and indicated that both medical professionals found that Treacy was competent. The court also indicated the need to set a date for trial. Treacy then stated:

Well, Your Honor, my debt to society's been paid. Your guys have received this information on July 2nd. The 1040 form of IRS, the Notice Concerning Fiduciary Relationship. You've received all that. And really, the next step is I need to be let go and my friends and family are here. And if I don't get let go immediately my next step is to bond . . . is to bond the charges and everybody in the Court will be appointed as co-fiduciaries for my strongman, including the Bailiff, the Prosecutor's Office, and you – the

Commissioner. Then Statutes and Codes will be bonded and that is not a threat, it is a fact. And I brought . . . I brought two W9 forms, one for you and one for the Prosecutor. I will leave these here for you guys to fill out.

Id. at 212-213. The court scheduled a pre-trial conference for August 20, 2008, and a jury trial for August 26, 2008.

On July 22, 2008, the court held a pre-trial conference and informed Treacy that his jury trial had been changed to August 7, 2008, with a pre-trial conference scheduled for July 28, 2008. The court informed Treacy that it was going to appoint a standby lawyer for him from the Public Defender's Office.

On July 28, 2008, the court held a pre-trial conference, but the prosecutor was not present. On August 7, 2008, the prosecutor indicated that he was ready to proceed to trial, but Treacy indicated that he was not ready to go forward with trial. The court rescheduled a pre-trial conference for October 6, 2008, and scheduled a jury trial for October 16, 2008. This extended the one-year period by seventy days.²¹ (C.E. 567 days). See Vermillion, 719 N.E.2d at 1204 (holding that when a defendant asks for a continuance, the time between the motion for a continuance and the new trial date is chargeable to the defendant); see also State v. Goble, 717 N.E.2d 1268, 1272 (Ind. Ct. App. 1999) (holding that when a defendant requests a continuance of his trial date, the delay attributable to the defendant runs from the time the motion is filed through the new date upon which the trial is scheduled to begin).

²¹ This represents the delay between August 7, 2008, and October 16, 2008.

At a pre-trial conference on October 6, 2008, the court informed Treacy that it would not have jurors available because the “panel program is in training.”²² Transcript at 238. The chronological case summary contains the following entry for October 6, 2008: “CASE CONGESTED OFF DUE TO CLOSURE OF JURY POOL FOR TRAINING.” Appellant’s Appendix at 28. The court rescheduled the pre-trial conference for November 3, 2008, and a trial for November 13, 2008. This extended the one-year period by eighteen days.²³ (C.E. 585 days). See Loyd v. State, 272 Ind. 404, 409, 398 N.E.2d 1260, 1265 (1980) (holding that “[t]he court calendar may be congested by a variety of circumstances, among them the unavailability of essential personnel or physical facilities”), cert. denied, 449 U.S. 881, 101 S. Ct. 231 (1980).

On November 3, 2008, the court stated that the matter was “congested off the calendar.” Id. at 243. Treacy stated that he needed two weeks and that a “UCC-1” would be filed. Id. at 247. The court removed his scheduled jury trial from the calendar and rescheduled a pre-trial conference for November 20, 2008, and a jury trial for December 4, 2008. This extended the one-year period by thirty-one days.²⁴ (C.E. 616 days).

²² Specifically, the trial court stated: “We had a Pre-Trial Conference and I have been informed by our Jury Panel (sic) that we will not have a . . . jurors available this week, because the panel program is in training. So, on the Court’s motion I’ll take this matter off of the jury trial calendar.” Transcript at 237-238.

²³ This represents the delay between October 16, 2008, and November 3, 2008.

²⁴ This represents the delay between November 3, 2008, and December 4, 2008.

Treacy argues that the delay between August 7, 2008, and November 13, 2008, should not be charged to him. Specifically, Treacy argues:

On November 20, 2008, the court held a pre-trial conference and placed Treacy on house arrest and released him on his own recognizance. Treacy stated that a deal could be worked out. Treacy later stated that “according to Rule 4 of the Indiana Rules of Civil Pro . . . or Court . . . Criminal Procedure, 4G states that Defendant can’t be incarcerated more than a year without trial or plea or dismiss.” Id. at 263. The court told Treacy “this is not a time to talk about technicalities. Okay? Now we’re talking in generalities.” Id. After some discussion, the court took the matter off the jury calendar over the State’s objection “because there may be some opportunity to resolve this matter” and because Treacy “expressed some desire to resolve this matter.” Id. at 261, 267. After further discussion, the court told Treacy that it wanted to see him back on December 16, 2008, and Treacy stated: “Can we put it out a little farther than that” Id. at 266. The court later stated: “Now, you know, the reason why I set this matter over is . . . is that you

At the August 7, 2008, pre-trial conference, jury trial was set for October 6, 2008. However, on October 6, 2008, the trial court removed the case from the calendar because a jury panel was not available because that week “the panel program [was] in training.” Jury trial was re-set for November 3. Mr. Treacy argued the trial court could not set his matter for jury trial. There is no indication in the record that the jury panel training program was anything but a planned event. Mr. Treacy’s request for hearing on CR 4 violations in this case prevented him from developing any further record on the question. Mr. Treacy should not be charged with these 118 days.

Appellant’s Brief at 25-26 (citations omitted).

Treacy’s argument does not impact our conclusion that the delay between August 7, 2008, the date of the previously scheduled jury trial when Treacy informed the court that he was not ready to go forward with trial, and October 16, 2008, the date of the rescheduled trial, extended the one-year period by seventy days. As for the delay between November 3, 2008, and December 4, 2008, Treacy does not challenge the trial court’s statement at the November 3, 2008 pre-trial conference that the matter was “congested off the calendar.” Transcript at 243. Treacy also does not argue that he did not request a continuance when he stated that he needed two weeks and that a “UCC-1” would be filed. Id. at 237.

expressed some desire to resolve this matter, which is a new approach. And I'm trying to facilitate that" Id. at 267. The court scheduled a pre-trial conference for December 16, 2008.²⁵

On December 16, 2008, the court held a pre-trial conference, and Treacy indicated that he contacted attorneys but they were either not interested in the case or too expensive. Treacy stated: "I got one guy that I talked to yesterday. . . . I supposed to get back with him." Id. at 274. After some discussion, the trial court stated: "Now, I've made a step forward toward you and I released you from custody so that you could make arrangements – intelligent arrangements to resolve these cases." Id. at 275-276. The court strongly suggested to Treacy to return with a lawyer. At one point, Treacy mentioned Ind. Criminal Rule 4, and the court told Treacy: "See, as long as you keep dragging your feet Criminal Rule 4 doesn't come into play." Id. at 277. The court told Treacy: "Well, do you understand where we stand now? When you come back next you either have a lawyer or be prepared to have these matters set for a trial or have this Court review your ability to manage these cases, period, without a some [sic] psychiatric treatment." Id. at 278. The court scheduled a pre-trial conference for January 20, 2009, over the State's objection.²⁶

²⁵ Again, we need not address whether this delay is attributable to Treacy because the overall delay caused by Treacy's other motions and acquiescences made Treacy's motion for discharge at trial premature.

²⁶ Again, we need not address whether this delay is attributable to Treacy.

On January 20, 2009, the court held a pre-trial conference, and Treacy's attorney, Patrick Stern, requested "one more Pre-Trial." Id. at 283. The court scheduled a pre-trial conference for February 17, 2009. This extended the one-year period by twenty-eight days.²⁷ (C.E. 644 days).

On February 17, 2009, the court held a pre-trial conference and scheduled a pre-trial conference on March 23, 2009, and a jury trial on April 2, 2009. On March 19, 2009, Treacy's attorney, Stern, filed a Motion to Release Defendant Pursuant to Criminal Rule 4(C).

On March 23, 2009, the court held a pre-trial conference, and Treacy's attorney stated that if he "was forced [he was] still prepared to try it on the 2nd," and was "not asking for a continuance," but wanted to schedule a hearing on his Criminal Rule 4 motion. Id. at 297-298. The court mentioned continuing the case and stated: "Well, the reason is I'm assigned to sit in another Court all day on the 2nd. So I would not be available." Id. at 296. Treacy's attorney also stated: "If it's congested off. So that's . . . that's your prerogative and I think that we can't object to it if the Court congests it, then that's the Court doing that. And it is not chargeable to either of us." Id. at 298. The court found court congestion and rescheduled the jury trial for April 23, 2009. The chronological case summary contains an entry dated March 23, 2009, which states: "CONGESTED OFF JUDGE GOODMAN'S CALENDAR." Appellant's Appendix at 32.

²⁷ This represents the delay between January 20, 2009, and February 17, 2009.

On appeal, Treacy challenges the court's finding of congestion. Treacy points to the following exchange which occurred at a pre-trial conference that occurred on July 29, 2009:

THE COURT:^[28] It should have been tried the last time. So, it was congested off, I guess, is that true?

MR. STERN:^[29] I was prepared . . .

[Prosecutor]: It was, Your Honor.

MR. STERN: . . . I was prepared . . . Judge, I was prepared to try it on that day. I state for the record and in fact told . . . I mean, I in fact asked it be set and the record will reflect, because . . . and the Prosecutor was prepared to try it and we, in fact, were under agreement that the matter was going to be tried on that date in front of Judge Goodman. So you can't blame that on . . .

THE COURT: I don't see how it could be congested off if Goodman was the judge.

MR. STERN: I have no idea. Goodman should have never congested it off. Because . . .

COURT REPORTER: Judge Goodman congested it off of his calendar, because of his personal calendar.

THE COURT: Oh. He does sit down in Johnson County. There's a problem down there. The Prosecutor got elected Judge.

Transcript at 429. The discussion then shifted to a different topic.

²⁸ Senior Judge Richard Saltee presided at the pre-trial conference on July 29, 2009.

²⁹ Stern was Treacy's attorney at this time.

Treacy argues that “[t]here is no mention in Criminal Rule 4 that the personal calendar of a pro tem judge, or the congested calendar of another county’s courts, can constitute the basis of congesting a trial off.” Appellant’s Brief at 27. Treacy also argues that “the trial court erred in purportedly congesting Mr. Treacy’s jury trial off the calendar when the congestion was not of that specific trial court’s calendar.” Id. Even assuming that this delay is properly chargeable to the State, the overall delay attributable to Treacy caused by his remaining motions and acquiescences made Treacy’s motion for discharge at trial premature.

On April 29, 2009, the court held a pre-trial conference.³⁰ Treacy’s counsel informed the court that he could not conclude that it had been more than a year without obtaining the transcripts of the previous hearings. Treacy’s attorney agreed that a continuance from the date of the hearing until “whenever we figure this out” would be charged to Treacy. Transcript at 316.

On May 20, 2009, the court held a pre-trial conference, and Treacy’s attorney indicated that he had not reviewed the transcripts from the earlier hearings. The court scheduled a jury trial for July 14, 2009.

On June 22, 2009, Treacy’s attorney, Stern, filed a motion to withdraw appearance indicating Treacy had fired Stern. The motion attached a letter from Treacy to Stern which stated in part: “It is very clear after the hearing that you are being compensated by

³⁰ The record does not reveal why a jury trial was not held on April 23, 2009.

the state to make darn sure that the CR4 never get [sic] out and I am railroaded into a conviction.” Appellant’s Appendix at 170.

On July 14, 2009, the court held a pre-trial conference, and Treacy admitted that the case was continued because he fired his attorney. Treacy informed the court that he did not want to schedule a trial within the next couple of weeks. Again, Stern indicated that he needed to get the transcripts of the hearings. The court suggested trying the case the following week, and the State agreed, but Treacy stated, “No, let’s not do it.” Transcript at 393. Treacy also indicated that he was not sure whether he wanted Stern to remain as his attorney. The court instructed Paul Ogden, who was representing Treacy in a civil matter, to listen to the tapes of the previous hearings with Stern and the prosecutor. Treacy later indicated that he wanted Stern to remain as his attorney. Treacy agreed that he would “[g]o by what” Ogden and Stern said “about what transpires at these Hearings” because he “trust[s] them fully.” Id. at 415. The court scheduled a pre-trial conference for July 29, 2009.

On July 29, 2009, the court held a hearing and the prosecutor indicated that he and Stern listened to the tapes and that Stern indicated that he was “going to waive the CR4 Motion.”³¹ Id. at 423. Based upon the statement by Treacy’s counsel at the April 29,

³¹ Stern was present at the hearing and stated: “But there’s a problem with that, Your Honor. Is . . . since that time I was fired again.” Transcript at 423. After some discussion, the court stated: “So, for . . . we’re set for trial. You can have both lawyers if you want. I won’t let Pat Stern off unless you insist on only having lawyer [sic] that’s now filed an Appearance. But he’s got to be ready to go, otherwise I’m not going to let you use this system. We continue this and continue this. It’s absolutely ridiculous.” Id. at 427. After further discussion, Treacy indicated that he wanted Stern to continue to represent him.

2009 pre-trial conference that a continuance from the date of the hearing until “whenever we figure this out” would be charged to Treacy, id. at 316, Treacy’s concession that the firing of his attorney resulted in a continuance chargeable to him, and Treacy’s request for a continuance, we conclude that the delay between April 29, 2009, and July 29, 2009, is attributable to Treacy. This extended the one-year period by ninety-one days.³² (C.E. 735 days).

The delays discussed above extended the one-year limit by 735 days to August 29, 2009. We conclude that Treacy’s motion for discharge on August 27, 2009, was premature and his right under Ind. Criminal Rule 4(C) to be brought to trial within one year of being charged has not been violated. Thus, the trial court properly denied Treacy’s motion for discharge under Ind. Criminal Rule 4(C).³³ See Cook, 810 N.E.2d at 1068 (holding that defendant’s right under Ind. Criminal Rule 4(C) was not violated).

For the foregoing reasons, we affirm Treacy’s convictions for operating while intoxicated as a class D felony and public intoxication as a class B misdemeanor.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.

³² This represents the delay between April 29, 2009, and July 29, 2009.

³³ Treacy argues that he “filed motions relative to C.R. 4 and was entitled, but denied, hearing on those motions by the trial court.” Appellant’s Brief at 20. The Indiana Supreme Court has held that “[i]n order to assure that the rule will function as intended with respect to the right to speedy trial, a defendant must be granted a reasonable opportunity to demonstrate violations of the rule and to obtain the relief provided therein.” Clark v. State, 659 N.E.2d 548, 551 (Ind. 1995). Given the multiple pre-trial conferences held after Treacy filed his initial motion under Ind. Criminal Rule 4(C) in March 2009, and the pre-trial conference held after the attorneys had listened to the previous hearings, we cannot say that Treacy was denied a reasonable opportunity to demonstrate violations of the rule.