ATTORNEY FOR APPELLANT:

BRUCE E. ANDIS
Lebanon, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RYAN D. JOHANNINGSMEIER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

WILLIAM TAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 06A04-1104-CR-272
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BOONE CIRCUIT COURT
The Honorable Rebecca C. McClure, Special Judge
Cause No. 06C01-1002-FB-51

December 20, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant William Taylor appeals his convictions and sentence on two counts of Child Molestation,[1] a class A felony. More particularly, Taylor argues that he was entitled to dismissal under Indiana Criminal Rule 4(C) (Rule 4(C)) because the State failed to bring him to trial in Boone County within one year after similar charges were filed in Hendricks County. Additionally, Taylor maintains that if this Court affirms the trial court's denial of his motion for dismissal, then we should revise his eighty-year sentence because it is inappropriate in light of the nature of the offenses and his character. Concluding that Taylor was not entitled to dismissal and finding that his sentence is not inappropriate, we affirm the decision of the trial court.

FACTS

Taylor was N.H.'s stepfather, and he lived with her and her mother, S.H., in Boone County while N.H. was between the ages of five and eight. In 1999, N.H. first remembers Taylor coming into her room at night, climbing into her bed, and putting his hand down her pants underneath her underwear when she was about seven years old. Taylor would ask N.H. if she knew what a man's penis looked like and whether she liked what he was doing to her. Taylor committed these acts three or four times a week and continued to fondle N.H. even after her sister was born and sleeping in the same room.

The family moved to another house in Boone County in July 2001 when N.H. was in the fourth grade. While there, Taylor began putting his mouth on N.H.'s vagina and fondling her breasts.

[1] Ind. Code § 35-42-4-3.

Taylor would also make N.H. put her mouth on his penis. On Sundays, after S.H. left for work, Taylor would take N.H. into his bedroom, lock the door, and undress them both. Taylor would then force N.H. to either give or receive oral sex. When Taylor forced N.H. to give oral sex, he would ejaculate into her mouth. Taylor took N.H. into his bedroom two to three times a week.

Taylor once forced N.H. to kneel in the kitchen and put his penis into her mouth, choosing that location so that he could look out the windows to ensure that nobody came home. Taylor also continued to go into the room that N.H. shared with her younger sister and sexually fondle N.H. at night, while her sister was in the room.

Taylor would tell N.H. that he loved her and often apologized after molesting N.H. But a few days later, he would commit the same act and apologize yet again. The cycle continued this way for a long time.

When N.H. threatened to tell someone, Taylor laughed and told her that if she told anyone, he would go to prison and N.H.'s sister would grow up without a father, just like N.H. Taylor also told her that the family would not have any money and would lose their home.

When N.H. eventually told her mother, she contacted the police. Boone County Sheriff's Department Detective Thomas Beard and Indiana State Police Detective Jim Dungan took N.H. to Suzy's Place, a child advocacy center, for a forensic interview on December 17, 2009. Detective Dungan worked cases in Hendricks County, and N.H. had indicated that some of the molestations had occurred there.

After the interview, N.H. called Taylor while Detectives Beard and Dungan recorded the conversation. During the telephone conversation, N.H. told Taylor that she had told her mother about the "oral stuff," and Taylor exclaimed, "I'm going, I'm in jail, I'm done. I'm dead." Tr. p. 594. He continued, "I'll go to prison for the rest of my life now . . . I don't know why I did it, started anything with you." Id. at 595. Taylor told N.H. to tell her mother that "it was just that one (1) time and both of us has been sorry ever since, but we haven't done anything since. I'm in jail." Id. at 596. When N.H. stated that "it happened a lot," Taylor replied, "I know it and I'm sorry for everything." Id. Taylor attempted to explain to N.H. that he molested her because he "was in love with [her]" and "wanted to teach [her] what sex was supposed to be like . . . ." Id. at 597-98.

After the telephone conversation, Detectives Beard and Dungan went to Taylor's apartment in Brownsburg to speak with him. And after speaking with the Hendricks County Prosecutor's Office regarding their criminal investigation, the detectives arrested Taylor and took him to the Hendricks County jail on December 17, 2009.

On February 4, 2010, the State charged Taylor with two counts of class B felony child molesting in Boone County. Court conferences revealed that Taylor was also facing charges in Hendricks County for molesting N.H. based on alleged instances that had occurred there. Taylor was served with a bench warrant from Boone County on April 7, 2010.

At a pretrial court conference in Boone County on June 23, 2010, the trial court set a contested trial date of September 13, 2010, which was vacated when Special Judge Rebecca McClure assumed jurisdiction in place of departing Circuit Court Judge Steven David. After a pretrial conference on December 3, 2010, the trial was reset for February 1, 2011. The trial court and the parties reaffirmed the February 1, 2011 trial date at pretrial conferences on January 19, 2011 and January 26, 2011.

On January 28, 2011, the trial court permitted the State to amend Counts I and II to class A felony child molestation. Count I alleged that, between January 1, 2001, and December 21, 2004, Taylor was over twenty-one years of age and performed deviate sexual conduct by placing his mouth on the vagina of a child under fourteen years of age. Appellant's App. p. 52. Count II alleged that, between January 1, 2001, and December 31, 2004, Taylor was over twenty-one years of age and submitted to deviate sexual conduct by having a child under fourteen years of age place her mouth on his penis. Id.

Jury selection began on February 1, 2011, but the trial court "recesse[d] trial" when the county commissioners closed the courthouse because of an ice storm. Id. at 7. The case resumed on February 4, 2011, after a two and one-half day weather emergency had closed the courthouse. However, the trial court was forced to recess again because an insufficient number of potential jurors appeared to complete jury selection. When asked whether Taylor objected to resuming on February 22, 2011, defense counsel replied, "We'll make the 22nd work Your Honor." Tr. p. 408.

On February 22, 2011, the morning the trial was to resume, Taylor filed his motion for discharge and dismissal based on Rule 4(C). After hearing argument, the trial court denied the motion, reasoning that Taylor was brought to trial on February 1, when the first prospective jurors were sworn and that it had clearly noted each time it was necessary to take a break that it was a recess rather than a continuance. Additionally, the trial court observed that up until that day, there had been no objection to the recesses. Id. at 424-30. After the presentation of evidence, the jury returned guilty verdicts on two counts of child molesting as class A felonies.

A sentencing hearing was held on April 5, 2011. The trial court determined that the aggravating factors included that Taylor had violated a position of trust, the tender age of N.H. when the molestations began, the threats that Taylor made to ensure N.H.'s silence, and the ongoing nature of the molestations.

In mitigation, the trial court noted that Taylor lacked a criminal record but declined to give that factor significant weight in light of the continuous nature of the molestations and that Taylor had silenced his victim through the use of threats. The trial court also gave "little to no weight" to Taylor's remorse, concluding that Taylor's statements of remorse made in court were:

> too little too late in the eyes of this Court. The Court heard in trial the telephone call between you and [N.H.] on the day that she did disclose what had occurred and what you had done to her. And what the Court heard in the course of that telephone call was your concern as to what was gonna happen to you if she told.

Tr. p. 873. The trial court sentenced Taylor to forty years on each count and ordered that the sentences be served consecutively, for a total executed term of eighty years imprisonment. Taylor now appeals.

DISCUSSION AND DECISION

I. Criminal Rule 4(C) Motion for Discharge

Taylor argues that that the trial court erred by denying his motion for discharge, pursuant to Rule 4(C), insofar as the State failed to bring him to trial in Boone County within one year of his arrest of what Taylor claims are factually-related charges in Hendricks County. More particularly, Taylor points out that he was arrested in Hendricks County on December 18, 2009, but that his trial in Boone County did not begin until February 1, 2011. While a trial court's factual findings are entitled to deference, we will review its legal conclusions de novo. Feuston v. State, 953 N.E.2d 545, 548 (Ind. Ct. App. 2011).

The provisions in Rule 4(C) seek to implement the right to a speedy trial guaranteed by the Sixth Amendment to the U.S. Constitution and Article I, Section 12 of the Indiana Constitution, by establishing deadlines by which trials must be held. Collins v. State, 730 N.E.2d 181, 182 (Ind. Ct. App. 2000). Specifically, Rule 4(C) provides, in relevant part:

> 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.

Thus, the Rule 4(C) places an affirmative duty on the State to bring a criminal defendant to trial within one year of being charged or arrested, but allows for extensions of that time period for several reasons. Cook v. State, 810 N.E.2d 1064, 1065 (Ind. 2004). For instance, if the delay is caused by the defendant's own actions, the time limit is extended. Id. at 1066.

As an initial matter, the State contends that by not objecting to the trial date at the earliest possible opportunity, Taylor has waived his right to discharge. Our Supreme Court has explained the rule that "if the time period provided by [Rule 4] has not expired and a trial date is set for a date beyond that period, a timely objection must be made." Brown v. State, 725 N.E.2d 823, 825 (Ind. 2000). If a defendant fails to object to a trial outside the prescribed one-year period, he is deemed to have acquiesced to the belated trial date. Young v. State, 765 N.E.2d 673, 679-80 (Ind. Ct. App. 2002).

Here, the trial court set a trial date of September 13, 2010, which was vacated and eventually rescheduled for February 1, 2011, at the December 3, 2010 pretrial conference. Taylor did not object to the rescheduled date at the December 3 conference. When the court recessed until February 22, 2011, following the February 1 snow

emergency, Taylor's counsel stated, "We'll make the 22nd work Your Honor." Tr. p. 408. Consequently, Taylor acquiesced in the trial date and has waived the issue.

Waiver notwithstanding, the trial court did not err by denying Taylor's motion for discharge because no Rule 4(C) violation occurred. Rule 4(C)'s "'one-year period commences with the date of arrest or filing of information, whichever is later.'" State v. Suggs, 755 N.E.2d 1099, 1102 (Ind. Ct. App. 2001) (quoting Isaacs v. State, 673 N.E.2d 757, 762 (Ind. 1996)). Accordingly, Rule 4(C) provides that the one-year time period begins to accrue upon the later of the defendant's arrest or the date the criminal charge is filed.

In this case, Taylor was not charged in Boone County until February 4, 2010, and was not arrested on those charges until April 7, 2010. Thus, the one-year period did not begin until the warrant was served and he was taken into custody on April 7, 2010, and the State had until April 7, 2011 to bring Taylor to trial.

Nevertheless, Taylor argues that because a Boone County's Sheriff's detective was present for his arrest on distinct charges in Hendricks County, the one-year time period began when he was arrested in Hendricks County on December 18, 2009. However, the Boone County detective testified that he accompanied a state police detective assigned to Hendricks County on that arrest only because they had been working jointly on their cases after the victim had reported that the molestation had occurred in the two counties. Tr. p. 607.

First, Taylor does not cite to any authority in support of this argument. Moreover, the cases to which Taylor cites discuss when the time period under Rule 4 is tolled rather than when it begins. Consequently, Taylor has failed to show that the trial court erred when it denied his motion to discharge.

II. Sentence

Taylor contends that his eighty-year sentence is inappropriate in light of the nature of the offenses and his character. The Indiana Constitution authorizes independent appellate review and revision of sentences, which is implemented through Appellate Rule 7(B) (Rule 7(B)). Carroll v. State, 922 N.E.2d 755, 757 (Ind. Ct. App. 2010), trans. denied. Nevertheless, we will give "due consideration" to the lower court's holding. Akard v. State, 937 N.E.2d 811, 813 (Ind. 2010). The defendant bears the burden of convincing this Court that the sentence imposed is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Taylor was convicted of two counts of class A felony child molesting. Sentences for class A felonies range from twenty to fifty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4. Taylor received two forty-year sentences on each count to run consecutively, for a total executed term of eighty years.

As for the nature of the offense, Taylor was N.H.'s stepfather and occupied a position of trust. At the tender of age of seven, Taylor began coming into N.H.'s room three to four times a week, climbing into bed with her, and fondling her. Taylor would ask N.H. if she knew what a man's penis looked like and if she liked what he was doing

to her. Tr. p. 698-700. Taylor committed these acts even after N.H.'s sister was born and sleeping in the same room.

When N.H. was the in the fourth grade, the molestations began to escalate. More particularly, every Sunday, when N.H.'s mom left for work, Taylor would force N.H. to either give or receive oral sex. When Taylor forced N.H. to perform oral sex, he would ejaculate in her mouth. Additionally, Taylor took N.H. into his bedroom two to three times a week, and it became a "routine." Tr. p. 703-09. On one occasion, Taylor forced N.H. to kneel in the kitchen and put his penis in her mouth, so that he could look out the windows to ensure that nobody came home. And Taylor continued to go into the room that N.H. shared with her younger sister and sexually fondle N.H. while her sister was in the room. Id. at 760-61.

Taylor told N.H. that he loved her and apologized after the molestations, but the cycle continued. When N.H. threatened to report Taylor, he used N.H.'s fears and insecurities to silence her by telling her that he would go to prison, leaving her sister without a father, just like N.H., and that the family would be poor and lose their house. Id. at 710. The ongoing and manipulative nature of the offenses, which began when N.H. was only seven years old and perpetrated by someone in a position of trust, does not assist Taylor's inappropriateness argument.

As for Taylor's character, while he does not have much in the way of a formal criminal record, the ongoing sexual abuse that he committed against his own stepdaughter indicates that he has not been a law-abiding citizen. Moreover, Taylor used

threats to silence his victim. In short, Taylor preyed on his young victim's vulnerabilities in nearly every way possible.

Furthermore, throughout N.H.'s recorded conversation with Taylor, during which she told him that she had informed her mother about the abuse, he showed virtually no remorse or concern for N.H.'s well-being. To be sure, Taylor stated, "I'm going, I'm in jail, I'm done. I'm dead." Id. at 594. Taylor tried to convince N.H. to fabricate what had happened by telling her mother that the abuse had only happened one time. Instead of taking responsibility for his actions, Taylor tried to tell N.H. that he abused her because he "was in love with [her]" and "wanted to teach [her] what sex was supposed to be like. . . ." Id. at 597-98. Under these facts and circumstances, we cannot say that Taylor's character warrants a revision of sentence. Accordingly, Taylor has failed to convince this Court that his sentence is inappropriate in light of the nature of the offenses and his character, and we affirm the decision of the trial court.

The judgment of the trial court is affirmed.

KIRSCH, J., concurs.

BROWN, J., concurring in part and dissenting in part, with opinion.

IN THE
COURT OF APPEALS OF INDIANA

WILLIAM TAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 06A04-1104-CR-272
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

BROWN, Judge, concurring in part and dissenting in part

I concur with the majority as to affirming the denial of Taylor's motion to dismiss under Indiana Criminal Rule 4(C), but I respectfully dissent as to the finding that the sentence imposed is not inappropriate.

According to the Presentence Investigation Report, Taylor was 62 years old at the time of sentencing and had no prior criminal convictions. While the acts he committed were egregious and continued over a long period of time, they involved a single victim. The trial court both enhanced the sentence on each count by ten years about the advisory sentence of thirty years, and further enhanced the sentences by ordering that they be served consecutively. After giving due consideration to the trial court's decision, I would

find the sentence inappropriate under Indiana Appellate Rule 7(B) and revise the sentence to the maximum of fifty years on each count to be served concurrent with each other. See Monroe v. State, 886 N.E.2d 578, 580-581 (Ind. 2008) (holding that the defendant, who molested a single child victim for over two years and whose criminal history was not a significant aggravator, was deserving of enhanced, but not consecutive, sentences for five counts of child molesting as class A felonies, and revising the defendant's sentence to the maximum fifty-year term for each of the five counts to be served concurrently); see also Pierce v. State, 949 N.E.2d 349, (Ind. 2011) (noting that "[t]he nature and circumstances of [the defendant's] crime coupled with his position of trust with the child victim is sufficiently aggravating to warrant an enhanced sentence. But, we do not believe this necessarily justifies enhancing each of the Class A felonies and imposing four consecutive sentences," and holding that the defendant serve "an enhanced term of forty (40) years on Count I, the advisory sentence of thirty (30) years on Counts II and III, and the advisory sentence of four (4) years on Count IV. Counts II, III, and IV shall be served concurrently with each other and consecutive to the sentence imposed in Count I . . ."); Rivers v. State, 915 N.E.2d 141, 143-144 (Ind. 2009) (holding that the defendant's convictions for two counts of child molesting as class A felonies and one count of child molesting as a class C felony should run concurrently rather than consecutively in part because he had no criminal history); Harris v. State, 897 N.E.2d 927, 928, 930 (Ind. 2008) (holding that while enhanced sentences for two counts of child molesting as class A felonies were warranted, consecutive sentences were unwarranted where the defendant

committed multiple uncharged acts of sexual misconduct occurring over a period of time, the counts of child molestation involved the same victim, and his criminal history was not a significant aggravator).