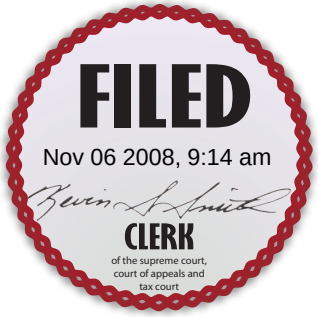

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IN THE
COURT OF APPEALS OF INDIANA

C.A.W.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 11A01-0804-JV-181
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLAY CIRCUIT COURT
The Honorable Joseph D. Trout, Judge
Cause No. 11C01-0006-JD-175

November 6, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

C.A.W., Jr. appeals from the juvenile court's denial of his Ind. Trial Rule 60(B) motion for relief from his juvenile adjudications for two counts of what would be child molesting if committed by an adult. C.A.W. presents one issue for our review: Did the trial court abuse its discretion in denying his motion for relief from judgment?

We affirm.

C.A.W. was born on March 11, 1989. On June 13, 2000, the custodial parent ("Mother") of then eleven-year-old C.A.W.,[1] reported to authorities that C.A.W. may have molested her daughters, then five-year-old F.W. and ten-year old A.W. Around that time, C.A.W. was in counseling at the Hamilton Center, Inc. and was subsequently referred to BHC Meadows Hospital in Bloomington, Indiana for treatment of depression.[2] At the time Mother made her report, C.A.W. was in the care of Meadows Hospital. At a June 22, 2000 detention hearing, C.A.W. appeared before the juvenile court, accompanied by Mother, and was advised by the court that he had the right to be represented by an attorney. The juvenile court further advised C.A.W. and Mother that it could appoint an attorney if requested, "But, if I do so, you and your mother could be required to pay for the lawyer." *Appellant's Appendix* at 41. C.A.W. indicated that he did not have an attorney and that he did not wish to consult with one. Mother confirmed that C.A.W.'s waiver of his right to counsel was okay with her. Mother then notified the juvenile court that she wanted C.A.W. detained because she felt that her daughters would not be safe if he was returned to her care and she knew of

[1] C.A.W.'s parents divorced in 1997, and C.A.W. had no contact with his father after December 1999.

[2] C.A.W. was prescribed Wellbutrin and Risperadol.

no friends or relatives that could keep him. The juvenile court ordered C.A.W. moved to a detention center.

On June 27, 2000, the State filed a delinquency petition alleging that C.A.W. had committed two counts of what would be child molesting if committed by an adult. An initial hearing was held on June 30, 2000, and again, Mother accompanied C.A.W. Prior to this hearing, C.A.W. and Mother were provided with an Advisement of Rights and Dispositional Alternatives form while they waited in a cloak room or hallway adjacent to the juvenile court.[3] Because C.A.W. was in custody, law enforcement officers were present at all times. The advisement form provided on the first page that C.A.W. was "entitled to . . . be represented by counsel". *Id*. at 31. C.A.W.'s and Mother's signatures appear at the end of the advisement form. Mother testified that it was her custom to read documents before signing them. At the time, C.A.W. was a year behind in school, having been held back in second grade due to his inability to read. Shortly after the hearing, testing revealed that C.A.W.'s reading ability was "[w]ell below average". *Id*. at 36. C.A.W. testified that he did not remember signing the advisement form, and in any event, at that time he would not have been able to read or understand the form.

Presuming he was the person who met with C.A.W. and Mother and provided them with the advisement form, probation officer Steve Bell testified that it was his practice to explain the contents of the form, answer any questions posed, and to inform the child and the

[3] Steve Bell of the Montgomery County Probation Office testified that he was likely the person who met with C.A.W. and Mother prior to the hearing. Although Bell had no specific recollection of meeting with C.A.W. and Mother or reviewing the advisement form with them, his handwriting appears on the first page of the advisement. Neither C.A.W. nor Mother remembers meeting Bell.

parent of what would happen while the court was in session, including that the juvenile court judge would inquire if the child wished to have an attorney appointed.

During the initial hearing and before C.A.W. made his admission to the allegations against him, the juvenile court noted that C.A.W. and Mother had signed the advisement form and then the following exchange took place:

> COURT: . . . Now you have the right to be represented by an attorney, and at your request, I could appoint an attorney to represent you. But if I do so, you and your mother could be required to pay for the attorney. Do you have an attorney [C.A.W.]?
> CHILD: (Shaking head)
> COURT: Your are saying No, is that correct? Do you wish to talk with one?
> CHILD: No.
> COURT: No. Is that all right with you, Mrs. [Mother]?
> MOTHER: Yes.

Id. at 47. C.A.W. then admitted the allegations against him, even going so far as to correct the judge as to the facts set forth in the allegations read by the judge.

A dispositional hearing was held on July 20, 2000. The juvenile court committed C.A.W. to the Gibault School for Boys. In June 2001, the juvenile court ordered C.A.W. committed to the Department of Correction for placement in the sex offender's treatment program. On February 7, 2002, C.A.W. was placed in the custody of his grandparents and ultimately placed on probation until he reached the age of eighteen. On May 31, 2002, the State filed a petition to revoke C.A.W.'s probation, but subsequently withdrew the petition in April 2003. On March 12, 2007, the State filed a second petition to revoke C.A.W.'s probation.

On November 7, 2007, counsel for C.A.W. filed a petition for post-conviction relief seeking to vacate C.A.W.'s juvenile adjudication. On January 22, 2008, counsel for C.A.W.

filed a second petition attacking the juvenile adjudication pursuant to T.R. 60(B).[4] The trial court held a hearing on C.A.W.'s T.R. 60(B) motion on February 7, 2008. On March 11, 2008, the court entered an order denying C.A.W.'s motion. In denying the motion, the court made the following findings and conclusions:

> 1. [C.A.W.] was eleven years of age at the time of his juvenile adjudication on June 30, 2000. Although his reading skills were below average, there is no evidence to support the proposition that he did not have the ability to read and understand. At the hearing, it is the Court's belief, that the standard procedures of custodian and child advisement of rights did take place; that the mother and child were submitted an Advisement of Rights and Dispositional Alternatives form prior to the hearing; that they had a meaningful opportunity to completely read said form in each others' presence; that it was signed; and that the probation officer in charge thereafter asked them the substantial equivalent of "whether or not they had any questions".
>
> 2. The Court rejects the proposal from the petitioner that they did not have access to this form prior to the hearing or that they did not have access to meaningfully consult with each other prior to the hearing. Furthermore, the form itself in regard to the advisement of rights is extremely simple to read and understand and constitutes the first half page of said document.
>
> 3. Additionally, the Transcript of the hearing does disclose that on June 30, 2000, as he did on June 22, 2000, Judge Yelton informed mother and child of their right to be represented by an attorney. Judge Yelton further followed up by again asking if they wished to talk with one. Although Judge Yelton did say they "could" be required to pay for the cost of an appointed attorney, he did not say that they "would" be so required, and this Court believes that such an advisement is a correct statement of the law.
>
> When Judge Yelton questioned the child about whether or not he had committed the delinquent acts for which he was charged, the record is clear that the child listened and understood in that he corrected the Judge by saying that he did not threaten to kill (his sister) but only said he would "beat her up". This is further evidence that the child and mother were hearing and understanding at the time of this plea/disposition hearing. The Court rejects the inference that because the child had been previously treated for depression and may or may not have been on medication, that he was not thinking clearly.

[4] This motion is in pertinent part identical to the post-conviction petition filed on November 7, 2007.

4. In regard to the allegation that the mother's interest was adverse to the child['s], the record is clear that the mother and grandfather were present and clearly supporting the child. Although mother was the reporting person, she herself was not the victim. She even testified at the hearing that in her opinion her interest was not adverse to the child and she and her father were there to support him.

5. The Court finds that there is no evidence existing in this case showing a meritorious defense. In fact, over the past seven and a half years, there has never been any allegation by this child that he was innocent of the delinquent acts which he admitted to performing. Furthermore, it is not like the child did not have an opportunity to address the Judge again in the past seven years. The record indicates that following the June 30, 2000 disposition, there was an issue before the Court about a second allegation of molestation occurring while he was on furlough and is placed with the Department of Correction. Furthermore, on February 2, 2002, he was released to his grandparents and on February 13, 2002, he was placed on probation until reaching age 18. Numerous reports over the years were given from the facilities where [C.A.W.] was a resident, and not one time in all these years did he indicate any wish to the Judge to protest his innocence, nor did any member of his family on his behalf. Thus, it is the opinion of the Court in addition to not showing a meritorious defense, there is no indication there is a reasonable excuse or justification for this kind of delay. Furthermore after his detainment on the current allegations, he was represented by an attorney and yet did not file a Motion to Vacate the Juvenile Delinquency Adjudication until November 7, 2007.

6. To the extent the State is required to prove that a plea to a delinquent act is voluntary in nature and conducted according to law, it is this Court's opinion that that burden has been sustained.

7. To the extent that a petitioner is required to prove on a Trial Rule 60(B) Motion that he is entitled to the relief requested, the petitioner has failed in that endeavor.

* * *

9. To the extent the motion is filed pursuant to these reasons and specifically Trial Rule 60(B)(8), the requested relief is denied for the reasons stated above which may be summarized by stating that the defendant's plea to delinquency allegations was voluntary and conducted in accordance with the law; that the mother and grandfather's interest at the time of said plea/disposition was not adverse to the petitioner; that the petitioner had sufficient ability to read and understand and an opportunity for meaningful

> consultation with his mother, that no meritorious defense has been raised in 7 ½ years despite numerous opportunities to do so; and that finally the motion should be denied on the basis of Laches.

Id. at 26-28.

On appeal, C.A.W. argues that the court erroneously denied his motion for relief from the determination that he was a juvenile delinquent. Specifically, C.A.W. argues that his motion was filed within a reasonable time and that he established a meritorious defense inasmuch as he established that his juvenile adjudication was predicated on his admission, which he claims was tendered without the benefit of counsel, without the advice of a disinterested parent or guardian, and without an adequate opportunity to consult with his mother, all in violation of his right to counsel under the federal and state constitutions and in violation of Ind. Code Ann. § 31-32-5-1 (West, Premise through 2007 1st Regular Sess.).

A trial court has discretion to grant or deny a motion for relief from judgment, and we will review a trial court's decision only for an abuse of that discretion. *N.M. v. State*, 791 N.E.2d 802 (Ind. Ct. App. 2003). An abuse of discretion will be found if the trial court's decision is clearly against the logic and effect of the facts and circumstances, or reasonable inferences therefrom, that were before the court. *Id*.

C.A.W.'s request for relief was made pursuant to T.R. 60(B)(8). A motion seeking relief under that subsection must be filed within a reasonable time and must allege a meritorious defense. Here, we need not decide whether C.A.W. established a meritorious defense because we agree with the trial court that the delay of nearly seven years in filing his request to set aside his juvenile adjudications was not reasonable. The determination of what constitutes a reasonable time varies with the circumstances of the case. *G.B. v. State*, 715

N.E.2d 951 (Ind. Ct. App. 1999). Relevant to the question of timeliness is prejudice to the party opposing the motion and the basis for the moving party's delay. *Id*.

C.A.W. was adjudicated a delinquent in June of 2000. C.A.W. did not initiate procedures to set aside the adjudication until May 4, 2007.[5] C.A.W. does not attempt to justify the delay between 2000 and 2007, but focuses only upon the timeframe after he turned eighteen (i.e., March 11, 2007). We note that in the years that followed his adjudication, C.A.W. returned to the juvenile court for multiple hearings, he was committed to the DOC in 2001, and was released to probation in 2002. At no time did C.A.W. indicate to the juvenile court, the DOC, or the probation department that he was dissatisfied with his 2000 adjudication.

Additionally, we consider the prejudice to the State occasioned by C.A.W.'s delay in seeking relief. More than seven years have passed since the molestation incidents took place. The victims were five and ten years old at the time and would likely have diminished capacity to recall the events, if in fact they would even be willing to testify in the event relief is granted and a delinquency petition is re-filed. Further, the transcript of the T.R. 60(B) hearing demonstrates that the memories of all involved have faded. Indeed, C.A.W., Mother, and the probation officer were often unable to recall the events as they may have transpired in 2000.

[5] At the hearing on C.A.W.'s T.R. 60(B) motion, C.A.W.'s counsel informed the court that a motion to produce the records of C.A.W.'s juvenile adjudication was filed with the State on May 4, 2007 and a motion to produce the juvenile file was filed on May 21, 2007. After the records were turned over, C.A.W.'s counsel requested that the detention, initial, and disposition hearings be transcribed. The transcripts were completed on October 31, 2007, and C.A.W.'s petition for post-conviction relief was filed on November 7, 2007. The State did not dispute this timeline.

In light of C.A.W.'s failure to justify the seven-year delay in seeking to set aside his juvenile adjudication and the great prejudice resulting to the State because of this delay, C.A.W. has not met his burden of showing that he filed his T.R.60(B)(8) motion within a reasonable amount of time. (Compare the instant case with *G.B. v. State*, 715 N.E.2d 951 (concluding that T.R. 60(B) motion challenging the voluntariness of waiver of counsel in juvenile proceeding was timely filed ten months after modification hearing when juvenile initiated procedures to obtain transcripts of hearing for purposes of filing T.R. 60(B) motion within three months of disposition modification proceeding)). We therefore conclude that the trial court did not abuse its discretion in denying C.A.W.'s requested relief.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur