

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Orlando Cook,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 19, 2024

Court of Appeals Case No.  
23A-CR-747

Appeal from the  
Marion Superior Court

The Honorable  
Jennifer Prinz Harrison, Judge

Trial Court Cause No.  
49D20-2101-F1-1909

**Memorandum Decision by Senior Judge Baker**  
Judges Crone and Kenworthy concur.

**Baker, Senior Judge.**

## Statement of the Case

- [1] Orlando Cook's cousin disclosed he had molested her when they were younger. Cook appeals his conviction of Class C felony child molesting, claiming the charge was barred by the statute of limitations. Concluding the State timely filed the charge, we affirm.

## Facts and Procedural History

- [2] In 2010, when A.F. was ten years old, her cousin Cook (who was eight years older than her) touched her vagina over and underneath her clothes several times. Cook continued to molest A.F. until she turned fifteen, in 2015. A.F. told a family member about Cook's misconduct when she was twenty.
- [3] On January 19, 2021, the State charged Cook with Class C felony child molesting and Level 5 felony sexual misconduct with a minor. For the child molest charge, the State alleged as follows:

On or about or between September 18, 2010, and June 30, 2014, ORLANDO LORENZO COOK did perform or submit to fondling or touching with [A.F.], a child under the age of fourteen years, with the intent to arouse or satisfy the sexual desires of the child or defendant.

Appellant's App., Conf. Vol. 2, p. 94.

- [4] A jury determined Cook was guilty as charged. The trial court sentenced Cook to seven years in total, and this appeal followed.

## Discussion and Decision

- [5] Cook claims the State did not timely file the charge of Class C felony child molesting.<sup>1</sup> “A statute of limitation is designed to insure against prejudice and injustice to a defendant which is occasioned by a delay in prosecution.” *State v. Lindsay*, 862 N.E.2d 314, 317 (Ind. Ct. App. 2007), *trans. denied*. The State must prove the defendant committed the crime charged within the statute of limitations. *Id.* The application of a statute of limitations is a question of law, which we review de novo. *See State v. Barnett*, 176 N.E.3d 542, 557 (Ind. Ct. App. 2021) (discussing standard of review), *trans. denied*. If the language of a statute is clear and unambiguous, “we must apply its plain and ordinary meaning without resort to any other rules of statutory construction.” *State v. McHenry*, 74 N.E.3d 577, 579 (Ind. Ct. App. 2017), *trans. denied*.
- [6] The applicable statute of limitations is “that which was in effect at the time the prosecution was instituted.” *Patterson v. State*, 532 N.E.2d 604, 607 (Ind. 1988). When the State filed the child molest charge against Cook in January 2021, Indiana Code section 35-41-4-2(a)(1) (2020) set a five-year deadline to file a Class C felony charge. But the State could also commence a prosecution for child molesting “before the date that the alleged victim of the offense reaches thirty-one (31) years of age.” Indiana Code § 35-41-4-2(e).

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<sup>1</sup> In his Appellant’s Brief, Cook argued the charge of Level 5 felony sexual misconduct with a minor was also barred by the statute of limitations. But he has withdrawn that argument in his Reply Brief.

- [7] In this case, there is no dispute A.F. was younger than thirty-one years of age when the State filed charges. As a result, the State complied with the statute of limitations. *See Parmley v. State*, 699 N.E.2d 288, 290-91 (Ind. Ct. App. 1998) (rejecting Parmley’s statute of limitations challenge to a child molest charge; the General Assembly had amended the statute to extend the charging deadline before the charge was filed), *trans. denied*.
- [8] Cook insists the “applicable period of limitation” expired before the State filed charges, arguing the provision allowing the filing of a child molest charge until the victim turns thirty-one was not enacted until 2019, well after Cook’s criminal conduct had ceased. Reply Br. p. 5. Cook cites *Swopshire v. State*, 177 N.E.3d 98 (Ind. Ct. App. 2021), *trans. denied*, but that case does not support his position. In *Swopshire*, the Court stated, “We have repeatedly held that extensions of statutes of limitation are applicable to crimes that have not expired at the time the extension takes effect.” 177 N.E.3d at 103.
- [9] In Cook’s case, the Indiana General Assembly amended Indiana Code section 35-41-4-2 in 2013 (during the period of time alleged in the charging information) to add the following provision: “A prosecution for a sex offense listed in IC 11-8-8-4.5 that is committed against a child and that is not . . . a Class A felony; or . . . listed in subsection (e); is barred unless commenced within ten (10) years after the commission of the offense . . . .” Indiana Code section 35-41-4-2(m) (2013).

[10] The offense at issue here, Class C felony child molestation by fondling or touching, was a sex offense listed in Indiana Code section 11-8-8-4.5 (2007) during the relevant time period. Further, the State did not charge the offense as a Class A felony. And child molesting by fondling or touching, as defined by Ind. Code section 35-42-4-3(b) (2007), was not listed in subsection (e) of Indiana Code section 35-41-4-2. As a result, the charge here was subject to the ten-year extension of the statute of limitations. And the General Assembly further extended the statute of limitations in 2019 by holding that all charges of child molesting may be filed before the victim turns thirty-one. *See* 2019 Ind. Acts 368-69. Cook's claim must fail.

## Conclusion

[11] For the reasons stated above, we affirm the judgment of the trial court.

[12] Affirmed.

Crone, J., and Kenworthy, J., concur.