MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rick A. Deck,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 15, 2023

Court of Appeals Case No. 22A-CR-1448

Appeal from the Jefferson Circuit Court

The Honorable Donald J. Mote, Judge

Trial Court Cause No. 39C01-2010-F4-1178

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

[1] Rick Deck was convicted of Level 4 felony child solicitation and found to be a habitual offender, and the trial court sentenced him to thirty-two years. Deck now appeals, arguing the trial court erred in denying his motion to dismiss the case under Indiana Criminal Rule 4(B) and that his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On September 28, 2020, fifty-seven-year-old Deck found the Facebook profile of a girl named "Jaidyn Reed." Reed's profile featured the phrase "Just a 14 year old girl living in an adult world." Ex. 1. But Reed was not a fourteen-year-old girl; the profile was created by Detective Shawn Scudder of the Madison Police Department. Upon finding Reed's profile, Deck sent a message saying, "Hi there girl." Exs. 2, 7. Over the next eleven days, Deck and Reed's profile exchanged messages. The second message ever sent by Reed's profile said, "I'm only 14. That ok?," to which Deck responded, "Sure I like little girl[s]" and "Send me a sexy pic." *Id.* Most messages Deck sent to Reed were sexually explicit, such as the following:

> You're 14 years old right damn you're still baby I like me some baby p**** tear that little p**** up keep my big di[**] out of nothing man it's still so good so tempting first you will play with it for about half hour 20 minutes get some lube I like a lot of

> lotion a lot of lube a lot just pictures being greased up naked on top of each other in a bed first time would have you come into my room take off all your clothes I would grab Teresa grease and lotion all over your body[.]
>
> * * * *
>
> Damn little girl I'll be damned if I might come get my whole big di[**] in your p****

Id. Reed's profile told Deck several times she was fourteen. Deck suggested that he travel from Kokomo, where he lived, to Madison to meet Reed. He said he would bring a "dildo" and suggested they stay in a hotel. *Id.* On October 9, Deck drove to Madison. Reed's profile directed Deck to a fountain on Broadway Street. When Deck arrived, he was arrested. A "very large pink dildo" and a bottle of alcohol were found in Deck's car. Tr. p. 91.

[3] The State charged Deck with Level 4 felony child solicitation, Level 4 felony attempted sexual misconduct with a minor, and Class A misdemeanor driving while suspended.[1] The State also alleged that Deck is a habitual offender. An initial hearing was held on October 14. At that hearing, Deck requested an early trial under Indiana Criminal Rule 4(B)(1), which provides:

> If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such

[1] The State also charged Deck with possession of marijuana but later dismissed that count.

> motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar.

The court appointed an attorney and set a jury trial for December 15, which was within the seventy-day deadline (the trial had to be held on or before December 23). A review-of-counsel hearing was held on November 23. At that hearing, the court appointed a new attorney (Deck's first attorney left the public defender's office), but the December 15 trial date remained in place.

[4] On December 1, a status hearing was held. The hearing was held via Zoom due to the COVID-19 pandemic. Deck's new attorney said that since she had just received the case, she wouldn't be ready for trial on December 15. The trial court placed Deck and his attorney in a Zoom breakout room to discuss the matter. After their discussion, Deck's attorney told the court:

> I also asked [Deck] his position on me asking for a motion to continue and explained how that time would run against him, and he has agreed to allow me to do that, so I am formally moving to continue the trial right now.

Supp. Tr. p. 6. The court asked if anyone wanted a trial date, and Deck's attorney responded, "I believe that Mr. Deck would like something on the calendar, but I'm not asking for anything immediately, Your Honor." *Id.* at 7. The court set trial for January 19, 2021, and said it hoped that COVID-19 conditions would improve by then so that an in-person trial could be held.

[5] Less than two weeks later, on December 14, our Supreme Court issued an order suspending in-person jury trials until March 1, 2021. *See* Order Suspending Jury Trials, Case No. 20S-CB-123 (Ind. Dec. 14, 2020).[2] On January 7, the trial court issued a "Pre-Trial Conference Memorandum," which provides in pertinent part:

> Trial is vacated by Supreme Court Order in Case [N]o. 20S-CB-123. Matter to be rescheduled by CCS entry no sooner than March 1, 2021 with notice to parties.

Appellant's App. Vol. II p. 142. On January 20, the trial court made a CCS entry resetting trial for April 20.

[6] In early April, Deck's counsel withdrew (Deck had filed a disciplinary complaint against her), and a third attorney was appointed. On April 20, the trial court issued an order of congestion rescheduling trial to July 6 because of COVID-19 and the lack of a suitable space to safely conduct in-person trials. *Id.* at 154-55. Deck then moved to continue the trial three times, and trial was reset for January 4, 2022.

[7] On December 14, 2021, Deck moved to dismiss the case, alleging he had not been tried in seventy days in violation of his October 14, 2020 request for an

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[2] Under the order, for purposes of early-trial demands filed under Criminal Rule 4(B) before December 14, 2020, the "tolled period shall be calculated **from [December 14, 2020,] through March 1, 2021**, and shall then be subject to congestion of the court calendar or locally existing emergency conditions for good cause shown."

early trial under Criminal Rule 4(B). *Id.* at 197. The trial court denied Deck's motion, finding that he had abandoned his request for an early trial.

[8] A jury trial was held in April 2022, and the jury found Deck guilty of Level 4 felony child solicitation, Level 4 felony attempted sexual misconduct with a minor, and Class A misdemeanor driving while suspended. Deck waived his right to a jury trial on the habitual-offender enhancement, and the trial court found him to be a habitual offender. The court did not enter judgment of conviction on attempted sexual misconduct with a minor due to double-jeopardy concerns.

[9] At the sentencing hearing, evidence was presented that Deck's criminal history dates back to 1994 and includes convictions ranging from misdemeanor battery, criminal mischief, and harassment to felony intimidation, possession of an altered handgun, attempted robbery, burglary (twice), and dealing in methamphetamine. In addition, Deck has served several stints in prison, including an eleven-year sentence, and has violated his probation several times. Evidence was also presented that six months after his arrest in this case, Deck sent a letter from jail outlining a fantasy where he had sex with his girlfriend and "a little girl" around eight to ten years old. Sent. Ex. 2. Deck also wrote that he likes "little girls" and wants to have sex with them. *Id.*; Tr. p. 202.

[10] The trial court found five aggravators: (1) Deck has a "substantial and lengthy history of criminal behavior" and is in need of correctional treatment; (2) the risk of Deck reoffending is "exceedingly high" given his lengthy criminal

history and the letter he wrote in jail; (3) "[t]he persistent and graphic nature of the messages go well beyond the elements necessary to prove" child solicitation; (4) the "manner" in which he committed the offenses, i.e., social media, was troubling; and (5) the offense was "well-planned" and not "spur of the moment," as he drove over two hours and came "equipped with a sex toy, alcohol, and made arrangements for a hotel." Tr. pp. 204-06; Appellant's App. Vol. IV pp. 70-71. The court found as a mitigator that Deck expressed remorse but gave it minimal weight. Finding the aggravators to "significantly" outweigh the mitigator, the court sentenced Deck to twelve years for Level 4 felony child solicitation enhanced by twenty years for being a habitual offender, for a total sentence of thirty-two years. Appellant's App. Vol. IV p. 71. The court did not impose a sentence for driving while suspended.

[11] Deck now appeals.

Discussion and Decision

I. Criminal Rule 4(B)

[12] Deck contends the trial court should have granted his motion to dismiss the case because he wasn't brought to trial within seventy days of his request for an early trial under Criminal Rule 4(B). The State responds that the court properly denied Deck's motion to dismiss because he abandoned his request for an early trial. In reviewing Criminal Rule 4 claims, we review questions of law de novo and factual findings for clear error. *Watson v. State*, 155 N.E.3d 608, 614 (Ind. 2020).

[13] The purpose of Criminal Rule 4(B) is to prevent a defendant from being detained in jail for more than seventy days after requesting an early trial. *Hahn v. State,* 67 N.E.3d 1071, 1079 (Ind. Ct. App. 2016), *trans. denied.* Once a defendant makes an early-trial request, he "must maintain a position reasonably consistent with his request for a speedy trial and must object, at his earliest opportunity, to a trial setting that is beyond the seventy-day time period." *Wilkins v. State*, 901 N.E.2d 535, 537 (Ind. Ct. App. 2009) (quotation omitted), *trans. denied*. If no objection is made, "the defendant has abandoned his request for an early trial." *Id.* "The defendant's obligation to object to a trial date that falls outside the Criminal Rule 4(B) time frame reflects the purpose of the rule—to ensure early trials, not to allow defendants to manipulate the means designed for their protection and permit them to escape trials"—and allows the trial court to reset the trial within the proper time period. *Id.* (quotation omitted); *Hahn*, 67 N.E.3d at 1080.

[14] Deck requested an early trial on October 14, 2020. The trial court set trial for December 15, which was within the seventy-day deadline. On December 1, Deck moved to continue the trial and asked for a new date. The court reset trial for January 19, 2021. According to Deck, his motion to continue was not an abandonment of his request for an early trial but simply tolled the running of the seventy-day period. *See* Ind. Crim. Rule 4(B)(1) (providing that a defendant must be discharged if not brought to trial within seventy days of the motion "except where a continuance within said period is had on his motion"). We do

not have to decide this issue. Even assuming Deck didn't abandon his request for an early trial by moving to continue the trial, he is still not entitled to relief.

[15] Deck doesn't dispute that he was required to object to a trial date falling outside the seventy-day period. Rather, he argues he didn't have notice that the trial court rescheduled trial on January 20 for April 20 because the court made a CCS entry instead of issuing an order. Therefore, Deck's argument continues, he couldn't have objected: "Deck was incarcerated and had no access to the CCS through the JTS system that Jefferson County was utilizing at the time. . . . Deck was essentially incarcerated with out [sic] the means to effectuate an objection . . . ." Appellant's Br. p. 12. But Deck was represented by an attorney at the time, and Deck does not suggest, much less point to any evidence, that his attorney failed to receive notice of the January 20 CCS entry setting trial for April 20. Had Deck objected to the April 20 trial date, the court could have rescheduled trial for an earlier date or entered an order of congestion or emergency. Deck's failure to object to the rescheduling of trial for April 20 constitutes an abandonment of his request for an early trial. *See Wilkins*, 901 N.E.2d at 537 (holding that the defendant "acquiesced to the trial setting outside of the seventy-day requirements and thereby abandoned his request for an early trial" where he failed to object to a trial set beyond the seventy-day time period). We therefore affirm the trial court's denial of Deck's motion to dismiss.

II. Sentence

[16] Deck next contends his thirty-two-year sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that an appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). "Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[17] The sentencing range for a Level 4 felony is two to twelve years, with an advisory term of six years. Ind. Code § 35-50-2-5.5. The sentencing range for the habitual-offender enhancement is six to twenty years. I.C. § 35-50-2-8(i). For the Level 4 felony, the trial court sentenced Deck to the maximum term of twelve years. This sentence was enhanced by twenty years (also the maximum) for the habitual-offender finding, for a total sentence of thirty-two years.

[18] As for the nature of the offenses, tellingly, Deck doesn't acknowledge the substance of the messages he sent to Reed's profile during those eleven days or the fact that he traveled two hours, equipped with a sex toy, alcohol, and hotel arrangements. Rather, he argues the nature of the offenses warrants a reduction in his sentence because there was "no actual child involved." Appellant's Br. p. 17. But the child-solicitation statute doesn't distinguish between an actual child and someone the defendant "believes to be" a child. *See* I.C. § 35-42-4-6. There is ample evidence that Deck believed he was soliciting a fourteen-year-old girl for sex.

[19] Deck's character doesn't warrant a reduction in his sentence either. Deck doesn't acknowledge the extent of his criminal history or the fact that he has served several stints in prison already. In addition, while awaiting trial in this case, Deck sent a "disturbing" letter about his desire to have sex with "little girls." Appellant's App. Vol. IV p. 71. As the trial court aptly observed, it "fear[ed] for the physical safety of any child who may have the misfortune of meeting the Defendant." *Id.* The trial court acknowledged that Deck expressed remorse but gave it little weight because it couldn't tell if it was just a ploy for leniency. Deck has failed to persuade us that his thirty-two-year sentence is inappropriate.

[20] Affirmed.

Tavitas, J., and Foley, J., concur.