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IN THE COURT OF APPEALS OF INDIANA

Tyson Eminger,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 10, 2023

Court of Appeals Case No. 22A-CR-1077

Appeal from the Noble Superior Court

The Honorable Robert E. Kirsch, Judge

Trial Court Cause No. 57D01-1703-MC-11

Opinion by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Tyson Eminger appeals the trial court's order granting the State's motion for relief from judgment under Indiana Trial Rule 60(B)(8). Eminger raises a single issue for our review, namely, whether the trial court abused its discretion when it granted the State's motion, which the State filed after the court had previously granted Eminger's own Rule 60(B) motion. We reverse and remand with instructions.

Facts and Procedural History

[2] In March 2017, Noble County Sheriff's Officers suspected Eminger of being a "major . . . supplier" of methamphetamine out of his residence in Kendallville. Appellant's App. Vol. 2, p. 12. Acting on a search warrant, officers entered Eminger's residence. There, they located and seized an unknown quantity of methamphetamine, paraphernalia, and $4,260 in United States currency. On March 8, the State charged Eminger with Level 2 felony dealing in methamphetamine, Level 4 felony possession of methamphetamine, Level 6 felony possession of methamphetamine, Level 6 felony possession of a syringe, and Level 6 felony maintaining a common nuisance in case number 57D01-1703-F2-2 ("F2-2").

[3] On March 15, meanwhile, in case number 57D01-1703-MC-11 ("MC-11"), the State moved to transfer the seized $4,260 to the United States Department of Justice pursuant to Indiana Code section 35-33-5-5(j) and Indiana Code chapter 34-24-1 (2016). The State did not provide Eminger with notice of the motion to transfer, and the trial court granted the State's motion that same day. *See* Appellant's App. Vol. 2, p. 15. In November 2018, Eminger pleaded guilty in

case F2-2 to Level 6 felony possession of methamphetamine. In exchange for his plea, the State dismissed the remaining counts.

[4] In July 2019, Eminger filed a Trial Rule 60(B) motion for relief from the court's March 15 transfer order in MC-11. In his motion, Eminger alleged in relevant part that the transfer order violated the procedures outlined in Indiana Code chapter 34-24-1 on the disposition of seized property. He further alleged that he was not served notice of the State's motion to transfer the seized funds to the United States.[1] In response, the State moved to dismiss Eminger's Trial Rule 60(B) motion because the State no longer had jurisdiction over the currency and also on the theory that Eminger was not entitled to notice of the motion to transfer.

[5] The trial court granted Eminger's motion both on the ground that he had not been served proper notice and also on the ground that the procedural requirements of Indiana Code chapter 34-24-1 had not been followed in transferring the currency to the United States. In granting Eminger's motion, the court expressly found that his delay in seeking relief was reasonable. The court then ordered the State "to secure the money from the federal government . . . pending further proceedings as to the proper disposition of such funds." *Id.* at 29.

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[1] In his motion, Eminger identified the amount of the currency at issue as $4,270 instead of $4,260, which error the trial court repeated in granting Eminger's motion. But this was a clear scrivener's error; there is no question that the amount of the currency at issue was in fact $4,260.

[6] The State did not appeal the trial court's order granting Eminger's Trial Rule 60(B) motion. Instead, about two-and-one-half months later, the State moved for an extension of time to comply with the court's order to secure the currency. Then, another month after that, the State filed its own motion for relief from judgment pursuant to Trial Rule 60(B)(8). In that motion, the State alleged that the trial court's order granting Eminger's Rule 60(B) motion was erroneous because the United States had forfeited the currency in accordance with due process; because the currency had been properly transferred to the United States under Indiana law; and because the State had no access to, authority over, or ability to compel the United States to return the currency. The State also expressly repeated its original arguments made in response to Eminger's Rule 60(B) motion.

[7] After a hearing on the State's Trial Rule 60(B) motion, the trial court granted the State's motion for relief from judgment, vacating its prior order on Eminger's motion. Among other reasons, the court reconsidered the timing of Eminger's motion, concluding now that "waiting 855 days" to file that motion was "not reasonable." *Id.* at 7. The court further concluded that the March 2017 transfer order was issued pursuant to Indiana Code section 35-33-5-5(j), that that statute "requires the State Court to sign the Turnover Order," and that, pursuant to the transfer, "the U.S. Currency in question was transferred to the United States federal government, thereby causing this Court to lose jurisdiction over the matter." *Id.* at 8. This appeal ensued.

Standard of Review

[8] Eminger appeals the trial court's grant of the State's motion for relief from judgment pursuant to Indiana Trial Rule 60(B)(8). As our Supreme Court has stated:

> The decision of whether the grant a Trial Rule 60(B)(8) motion is left to the equitable discretion of the trial court, and is reviewable only for abuse of discretion. *Gipson v. Gipson*, 644 N.E.2d 876, 877 (Ind. 1994). "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *McElfresh v. State*, 51 N.E.3d 103, 107 (Ind. 2016) (internal quotations and citations omitted). The reviewing court does not reweigh the evidence. *Gipson*, 644 N.E.2d at 877.

State v. Collier, 61 N.E.3d 265, 268 (Ind. 2016).

Discussion and Decision

[9] On appeal, Eminger contends that the trial court abused its discretion when it considered the State's Trial Rule 60(B)(8) motion for relief from judgment. According to Eminger, the proper procedure for the State to challenge the trial court's order granting his Rule 60(B) motion was to timely appeal the trial court's judgment, not to wait more than three months before filing its own Rule 60(B) motion. On these facts, we agree with Eminger.

[10] Successive Trial Rule 60(B) motions are not per se contrary to law. However, "[i]t is well-established that a motion under T.R. 60 may not serve as a substitute for a direct appeal." *Magnuson v. Blickenstaff*, 508 N.E.2d 814, 816

(Ind. Ct. App. 1987); *see also* *In re Paternity of P.S.S.*, 934 N.E.2d 737, 740 (Ind. 2010). "Trial Rule 60(B) motions address only the procedural, equitable grounds justifying relief from the legal finality of a final judgment, not the legal merits of the judgment." *P.S.S.*, 934 N.E.2d at 740 (quoting *Mid-West Fed. Sav. Bank v. Epperson*, 579 N.E.2d 124, 129 (Ind. Ct. App. 1991)).

[11] Thus, "[Trial Rule] 60(B) is meant to afford relief from circumstances which could not have been discovered during the period a motion to correct error could have been filed." *Bello v. Bello*, 102 N.E.3d 891, 894 (Ind. Ct. App. 2018). "[A]ny issue which was raised by[,] or could have been raised by[,] timely motion to correct error[] and timely direct appeal may not be subject of motion for relief from judgment." *Cullison v. Medley*, 619 N.E.2d 937, 945 (Ind. Ct. App. 1993), *trans. denied*. A party who files a successive Trial Rule 60(B) motion faces an "extraordinary burden: to establish that the grounds for . . . additional error were unknown or unknowable to the movant at the time" of the first Rule 60(B) motion. *Weinreb v. TR Devs., LLC*, 943 N.E.2d 856, 863-64 (Ind. Ct. App. 2011) (quoting *Siebert Oxidermo, Inc. v. Shields*, 446 N.E.2d 332, 338 (Ind. 1983)), *trans. denied*.

[12] Here, Eminger's Trial Rule 60(B) motion for relief from judgment asserted, in relevant part, that he had not been properly served with the State's March 2017 motion to transfer the currency to the United States. Again, the trial court granted the State's motion to transfer the same day the State filed that motion. In ruling on Eminger's Trial Rule 60(B) motion, the trial court found that the

March 2017 transfer order did not afford Eminger the process to which he was due.

[13] The court's ruling on Eminger's Trial Rule 60(B) motion was correct on the merits of his motion. Indiana Code section 35-33-5-5(j) (2016) authorized the trial court to transfer property seized "under IC 34-24-1" to the United States. Indiana Code section 34-24-1-2(a)(1)(B) (2016) provided in relevant part that property may be seized if the seizure is incident to a "lawful search." As our Supreme Court has stated: "The statute contemplates a lawful search"; thus, "if the search or seizure . . . was unlawful," the trial court cannot order the property to be transferred to the United States. *Membres v. State*, 889 N.E.2d 265, 268-69 (Ind. 2008).

[14] We have previously recognized that our Supreme Court's analysis in *Membres* means that "the defendant has the right to challenge the lawfulness of the search *prior to the court's granting of a motion to transfer* . . . ." *Adams v. State*, 967 N.E.2d 568, 571 (Ind. Ct. App. 2012) (emphasis added), *trans. denied*; *see also Lewis v. Putnam Cnty. Sheriff's Dep't*, 125 N.E.3d 655, 659-60 (Ind. Ct. App. 2019) (noting that, to support a motion to transfer, the State also must prove that "the money is directly related to some sort of criminal activity"). Of course, if the defendant has the right to challenge a motion to transfer, he is entitled to notice of the motion so he may challenge it. As that did not happen here, the trial court properly granted his Trial Rule 60(B) motion for relief from the March 2017 transfer order.

[15] The State did not appeal the trial court's order on Eminger's Trial Rule 60(B) motion. Instead, some three-and-one-half months later, the State filed its own Trial Rule 60(B) motion. The only new argument presented by the State in its Trial Rule 60(B) motion was the assertion that the United States had afforded Eminger the process to which he was due prior to its forfeiture of the currency. But that assertion was of no force or effect; whether the United States afforded Eminger his due process protections in the forfeiture proceeding does not speak to whether the trial court afforded him his due process protections in the transfer proceeding. Thus, this "new" argument by the State was not a sufficient basis from which the trial court could have revisited its order granting Eminger's Trial Rule 60(B) motion.

[16] As for the remainder of the issues raised by the State in its Trial Rule 60(B) motion, those issues merely rehashed the State's original arguments against Eminger's Rule 60(B) motion. That is, the State again sought to challenge the legal merits of Eminger's motion; the State's Rule 60(B) motion did not present a previously unknown or unknowable procedural or equitable basis for relief from the trial court's judgment on Eminger's motion.

[17] Indeed, the lack of merit underlying the State's Trial Rule 60(B) motion is apparent in its argument on appeal. In response to Eminger's argument on appeal, the State asserts that the trial court's grant of Eminger's Rule 60(B) motion was an interlocutory order and, as such, the State could not have prosecuted an appeal of that order.

[18] But Indiana Trial Rule 60(C) is clear: "A ruling or order of the court denying or granting relief, in whole or in part, by motion under subdivision (B) of this rule shall be deemed a final judgment, and an appeal may be taken therefrom as in the case of a judgment." Although the State argues otherwise, we conclude that Rule 60(C) means what it says. The trial court's order granting—even if only in part—Eminger's request for relief under Rule 60(B) was as a matter of law a final judgment. *See also* Ind. Appellate Rule 2(H)(3) ("A judgment is a final judgment if . . . it is deemed final under Trial Rule 60(C)[.]"); *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 757-58 (Ind. 2014). Therefore, if the State believed the trial court's order on Eminger's Rule 60(B) motion were legally erroneous—as the thrust of the State's Rule 60(B) motion made clear—the State was required to seek appellate review of that order.

[19] Accordingly, we conclude that the trial court erred when it granted the State's Trial Rule 60(B) motion and when the court vacated its decision on Eminger's Trial Rule 60(B) motion. The trial court's decision on the State's motion is reversed, and the court's decision on Eminger's motion is reinstated on its merits.

[20] However, we revise the relief ordered by the court on Eminger's motion. Eminger was entitled to challenge the State's motion to transfer, but the State failed to serve that motion on Eminger, and the trial court erroneously granted the State's transfer motion without permitting Eminger to challenge it. We conclude that the proper remedy on Eminger's motion for relief from that judgment is to afford Eminger a hearing at which he may challenge the

lawfulness of the State's seizure of the currency. Of course, the State has already transferred the currency to the United States; in such circumstances, should the trial court on remand determine that the State's seizure of the currency was unlawful, the State shall "reimburse" Eminger "instanter," and the State may then "choose to try to recoup that money from the federal government." *Lewis*, 125 N.E.3d. at 660.

[21] Reversed and remanded with instructions.

May, J., and Bradford, J., concur.