

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Sarah Welch,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 10, 2021

Court of Appeals Case No.  
20A-CR-1573

Appeal from the Clark Circuit  
Court

The Honorable Bradley B. Jacobs,  
Judge

Trial Court Cause No.  
10C02-1805-F6-964

**Pyle, Judge.**

## **Statement of the Case**

[1] In this interlocutory appeal, Sarah Welch (“Welch”) argues that the trial court clearly erred by denying her motion for discharge under Indiana Criminal Rule 4(C). Concluding that the trial court did not clearly err, we affirm the trial court’s denial of Welch’s motion for discharge.

[2] We affirm.

## **Issue**

Whether the trial court clearly erred by denying Welch’s motion to discharge under Criminal Rule 4(C).

## **Facts**

[3] On May 31, 2018, the State charged Welch with Level 6 felony possession of methamphetamine, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia. Welch’s initial hearing occurred on June 1, 2018, and the trial court scheduled a status of counsel hearing for July 20, 2018. Welch failed to appear for the July 20 status hearing, and the trial court issued a warrant for her arrest.

[4] On February 13, 2019, Welch was arrested on the warrant. The next day, the trial court held a status of counsel hearing and appointed Welch a public defender. According to the Chronological Case Summary (“CCS”), two pre-trial conferences were scheduled for March 14, 2019 and April 18, 2019.

Additionally, a status conference was scheduled for May 8, 2019. Welch was released on her own recognizance.

- [5] The trial court held pre-trial conferences on March 14 and April 18, wherein the May 8 status hearing remained set. On May 8, 2019, the parties appeared for the status hearing and agreed to schedule additional pre-trial conferences for June 13, 2019 and July 11, 2019. The CCS indicates “PTC HELD. Reset to 6/13/19 and 7/11/19[.]” (App. Vol. 2 at 5). Additionally, the entry form for the May 8 status hearing, which is signed by Welch, her attorney, and the State, shows that the option “[a]greement” is circled under the “[n]ew dates request[ed][ ] [b][y][ ]” heading. (App. Vol. 2 at 26).
- [6] The June 13, 2019 pre-trial conference occurred, and the July pre-trial conference remained set. At the July 11, 2019 conference, additional pre-trial conferences were scheduled for August 19, 2019 and September 16, 2019.
- [7] The parties appeared for the August 19, 2019 pre-trial conference, and the September hearing remained set. However, Welch’s attorney did not appear for the September 16, 2019 pre-trial conference. As a result, the trial court did not hold the hearing, and the trial court noted that the “continuance [was] chargeable to defendant[.]” (App. Vol. 2 at 5). The trial court rescheduled the pre-trial conference for November 7, 2019 and scheduled a final pre-trial conference for December 5, 2019.
- [8] The November 7, 2019 pre-trial conference occurred, and the December 5 date remained set. According to the CCS, the December 5, 2019 pre-trial conference

was “reset” for February 10, 2020. (App. Vol. 2 at 6). The entry form for the December 5 hearing, which is signed by Welch’s counsel and the State, shows the box next to “request by defense” checked. (App. Vol. 2 at 32). In addition to the pre-trial conference being reset to February 10, the trial court also scheduled a final pre-trial conference for March 5, 2020.

[9] The February 10, 2020 pre-trial conference occurred, and the March 5 date remained set. According to the CCS, the March 5, 2020 pre-trial conference was “reset” for June 1, 2020. (App. Vol. 2 at 6). The entry form for the March 5 pre-trial conference, which is signed by Welch’s counsel and the State, shows the box next to “request by defense” checked. (App. Vol. 2 at 35). In addition to resetting the pre-trial conference, the trial court also set a final pre-trial conference for June 22, 2020 and scheduled Welch’s jury trial for June 30, 2020.

[10] On March 13, 2020, the Circuit Courts of Clark County petitioned the Indiana Supreme Court for emergency relief due to the novel coronavirus (“COVID-19”) pursuant to Indiana Administrative Rule 17. Our supreme court granted the petition, declared an emergency, authorized the tolling of all laws, rules, and procedures setting time limits for speedy trials in criminal cases, and suspended all criminal proceedings through April 10, 2020. *See In re Matter of Petition of the Clark Circuit Courts for Administrative Rule 17 Emergency Relief*, 20S-CB-111 (Ind. Mar. 13, 2020). This order was extended on April 15, 2020 through May 4, 2020. *See In re Matter of Petition of the Clark Circuit Courts for Administrative Rule 17 Emergency Relief*, 20S-CB-111 (Ind. Apr. 15, 2020).

- [11] On May 4, 2020, the trial court, on its own motion, continued the case for a period of sixty (60) days “based upon congestion, and emergency, due to the pending public health emergency issued by Governor of Indiana.” (App. Vol. 2 at 6). As a result, the trial court rescheduled Welch’s jury trial for September 1, 2020.
- [12] The June 1, 2020 pre-trial conference occurred, and the future dates remained set. According to the CCS, on June 4, 2020, the trial court rescheduled Welch’s jury trial to September 9, 2020 “due to the COVID-19 pandemic[.]” (App. Vol. 2 at 7). On June 22, 2020, Welch filed a motion to dismiss pursuant to Criminal Rule 4(C). The trial court scheduled a hearing on Welch’s motion for July 6, 2020.
- [13] At the July 6 hearing, Welch argued that the following time periods are attributable to the State: (1) May 25, 2018 to July 20, 2018 – a total of 56 days; (2) February 14, 2019 to September 15, 2019 – a total of 213 days; and (3) November 8, 2019 to either June 4 or June 22, 2020 – a total of 209 or 227 days. The trial court found that because Welch acquiesced to additional pre-trial dates on May 8, 2019, the delay until September was chargeable to her. The trial court further charged the delays on December 5, 2019 and March 5, 2020 to Welch because the additional pre-trial dates had been requested by defense. Thereafter, the trial court denied Welch’s motion.
- [14] On July 22, 2020, Welch filed a motion to certify for interlocutory appeal the trial court’s denial of her motion to dismiss, which the trial court granted. On

August 25, 2020, our Court accepted jurisdiction of Welch’s interlocutory appeal.<sup>1</sup>

## Decision

[15] Welch argues that the trial court erred by denying her motion for discharge pursuant to Indiana Criminal Rule 4(C), which 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 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 shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

The State has an affirmative duty to bring the defendant to trial within one year of being charged or arrested. *Wood v. State*, 999 N.E.2d 1054, 1060 (Ind. Ct. App. 2013), *trans. denied, cert. denied*. Thus, under Criminal Rule 4(C), a defendant may seek and be granted a discharge if she is not brought to trial within the proper time period. *State v. Delph*, 875 N.E.2d 416, 419 (Ind. Ct.

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<sup>1</sup> The only hearings recorded and transcribed for our review were the July 20, 2018 status hearing and the July 6, 2020 hearing on Welch’s motion for discharge. This has resulted in difficulty discerning what occurred at key hearings.

App. 2007), *reh'g denied, trans. denied*. “The objective of the rule is to move cases along and to provide the defendant with a timely trial, not to create a mechanism to avoid trial.” *Brown v. State*, 725 N.E.2d 823, 825 (Ind. 2000). Criminal Rule 4 is not intended to be a mechanism for providing defendants a technical means to escape prosecution. *Austin v. State*, 997 N.E.2d 1027, 1037 (Ind. 2013). When a defendant moves for discharge, she bears the burden of showing that she has not been timely brought to trial and that she is not responsible for the delay. *Wood*, 999 N.E.2d at 1060.

[16] Whether delays in the scheduling of trial have occurred and to whom they are chargeable are factual determinations for the trial court and “appellate review is for clear error.” *Austin*, 997 N.E.2d at 1040. Thus, we may not reweigh the evidence or reassess witness credibility, and we reverse if we are left “‘with a definite and firm conviction that a mistake has been made.’” *Id.* (quoting *State v. Oney*, 993 N.E.2d 157, 161 (Ind. 2013)).

[17] Here, the parties agree that the one-year period began to run on May 31, 2018, when the State charged Welch. Thus, at the time Welch filed her motion for discharge, a total of 753 days had elapsed. The parties further agree the delays caused by Welch’s failure to appear for the July 20, 2018 status conference until February 14, 2019, a total of 209 days, and her attorney’s failure to appear at the September 16, 2019 pre-trial conference until November 7, 2019, a total of 52 days, are chargeable to Welch. Additionally, both parties agree the delays

caused by the COVID-19 pandemic are attributable to an emergency, a total of 101 days. In sum, 362 days are not counted against the Rule 4(C) time period.

[18] Welch argues the trial court erred by denying her motion for discharge on the basis that she acquiesced to delays in May 2019 and July 2019 and requested additional pre-trial conferences on December 5, 2019 and March 5, 2020. We need only address Welch’s argument disputing the trial court’s decision to charge her with the delay caused by her requests for additional pre-trial conferences. According to Welch, she “did not request that any previously scheduled hearing be delayed, [she] simply requested that additional hearing dates be placed on the docket.” (Welch’s Br. 21). In so arguing, she asserts that her requests for additional dates did not delay any task that needed to be completed before a trial. We disagree.

[19] Initially, we note that Criminal Rule 4(C) explicitly states that the one-year period does not include delays due to a “continuance had on [a defendant’s] motion, or the delay was caused by [her] act.” Ind. Crim. Rule 4(C). Further, it is well-settled that “delays caused by action taken by the defendant are chargeable to the defendant regardless of whether a trial date has been set.” *Cook v. State*, 810 N.E.2d 1064, 1067 (Ind. 2004).

[20] Here, the trial court determined Criminal Rule 4(C) had not been violated because, in part, the delay caused by Welch’s request for additional pre-trial conferences was chargeable to her. Our review of the record reveals that the December 5 and March 5 pre-trial conferences had been “reset[.]” (App. Vol. 2



at 6). Although the CCS does not provide additional information, our further review of the record reveals that the entry forms for each date, which are signed by Welch's counsel and the State, both indicate that the additional dates had been requested by Welch. Indeed, Welch concedes as much throughout her brief.

[21] The combined 75-day delay caused by Welch's action, i.e., her request for additional pre-trial dates, results in a total of 336 days chargeable to her. Welch cannot delay proceedings without accountability. *See State v. Lindauer*, 105 N.E.3d 211, 216 (Ind. Ct. App. 2018) (explaining that a defendant cannot habitually move to reset the preliminary hearing at which the trial date was to be set and then assert a meritorious claim that his right to trial within a year was violated), *trans. denied*. When combined with the COVID-19 emergency, forty-nine (49) days remain on the one-year period to bring Welch to trial. Thus, the trial court did not clearly err, and Welch is not entitled to discharge pursuant to Criminal Rule 4(C).

[22] Affirmed.

Vaidik, J., and Brown, J., concur.