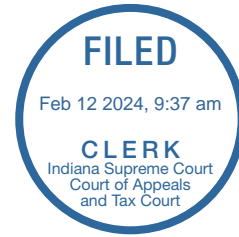


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Ralph Lopez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 12, 2024

Court of Appeals Case No.
23A-CR-1766

Appeal from the Marion Superior
Court

The Honorable James B. Osborn,
Judge

Trial Court Cause No.
49D21-2302-F5-5383

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitas concur.

Weissmann, Judge.

- [1] After a jury found Ralph Lopez guilty of identity deception, Lopez stipulated that he had been convicted of the prior felonies listed in the State's related habitual offender allegation. Based on that stipulation, the trial court dismissed the jury and found Lopez to be a habitual offender. Because Lopez never waived his right to a jury trial on the habitual offender allegation, we reverse.

Facts

- [2] Lopez misidentified himself as "Daniel" Lopez to police investigating a disturbance. Police ultimately arrested Lopez in connection with that investigation and, while being booked into jail, Lopez again falsely claimed that he was "Daniel." The State later discovered Lopez's true identity through his fingerprints taken at booking. It charged him with Level 6 felony identity deception and firearms charges and alleged he was a habitual offender.
- [3] A jury found Lopez guilty of identity deception but not guilty of the firearms charges. Before the jury reconvened for the habitual offender proceeding, Lopez and the State stipulated that Lopez had been convicted of the offenses listed in the habitual offender allegation. The trial court questioned Lopez about his understanding of the stipulation and its consequences but not about his right to a jury trial on the habitual offender allegation.
- [4] The trial court accepted the stipulation and found Lopez to be a habitual offender in a bench trial. It then sentenced him to one year of imprisonment for

identity deception, enhanced by three years due to his habitual offender status. Lopez appeals, challenging only the habitual offender finding.

Discussion and Decision

- [5] Lopez contends, and the State agrees, that the trial court committed fundamental error by finding Lopez to be a habitual offender without Lopez ever waiving his right to a jury trial on the issue. A criminal defendant must personally waive his right to a jury trial on an habitual offender allegation. *Horton v. State*, 51 N.E.3d 1154, 1158 (Ind. 2016); *Bradtmiller v. State*, 113 N.E.3d 255, 256-57 (Ind. Ct. App. 2018). The record shows no such waiver. The trial court therefore violated Lopez’s jury trial right by finding him to be a habitual offender. *See Horton*, 51 N.E.3d at 1160; *Saylor v. State*, 55 N.E.3d 354, 367 (Ind. Ct. App. 2016).
- [6] Accordingly, we reverse the trial court’s habitual offender finding and remand for further proceedings consistent with this opinion.

Mathias, J., and Tavitas, J., concur.