

## 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.



---

### ATTORNEYS FOR APPELLANT

Theodore E. Rokita  
Attorney General of Indiana

George P. Sherman  
Supervising Deputy Attorney  
General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

State of Indiana,  
*Appellant-Plaintiff,*

v.

Reggie D. Simmons,  
*Appellee-Defendant.*

October 3, 2022

Court of Appeals Case No.  
22A-CR-719

Appeal from the  
Allen Superior Court

The Honorable  
Frances C. Gull, Judge

Trial Court Case No.  
02D05-1909-F5-298

**Friedlander, Senior Judge.**

- [1] The State of Indiana appeals the trial court’s dismissal of its charging information against Reggie D. Simmons, challenging the trial court’s conclusion that it waited too long to bring Simmons to trial. We reverse and remand.
- [2] On September 13, 2020, the State filed an information charging Simmons with carrying a handgun without a license while having a prior conviction, a Level 5 felony.<sup>1</sup> On October 2, 2019, Simmons requested a trial by jury, and the trial court scheduled trial to begin on January 29, 2020. As we discuss in more detail below, the trial date was repeatedly delayed. The court rescheduled the trial twice due to calendar congestion, the State requested one continuance, and an additional delay resulted from an order of the Indiana Supreme Court issued to address trial court operations during the COVID-19 pandemic.
- [3] On November 22, 2021, Simmons filed a motion for discharge under Indiana Criminal Rule 4. The State filed a response in opposition, and Simmons filed a reply to the State’s response. The trial court held a hearing and granted Simmons’ motion, concluding the State had failed to fulfill its “affirmative duty to bring a defendant to trial within one year.” Appellant’s App. Vol. 2, p. 31. The State filed a motion to correct error, which the trial court denied. The State subsequently appealed pursuant to Indiana Code section 35-38-4-2(a)(2) (2021), which authorizes the State to appeal as of right from “an order granting a

---

<sup>1</sup> Ind. Code § 35-47-2-1 (2017).

motion to discharge a defendant before trial for any reason, including delay commencing the trial . . . .”

[4] Simmons has not filed an Appellee’s Brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments on his or her behalf. *State v. Mooney*, 51 N.E.3d 281 (Ind. Ct. App. 2016). Instead, we may reverse the trial court’s judgment if the appellant shows prima facie error. *State v. Isaacs*, 794 N.E.2d 1120 (Ind. Ct. App. 2003). Review for prima facie error is “a less stringent standard,” requiring the appellant to prove error on the face of the judgment, or at first sight. *Castillo-Aguilar v. State*, 962 N.E.2d 667, 669 (Ind. Ct. App. 2012), *trans. denied*. But even under this less stringent standard of review, we remain obligated to “properly decide the law as applied to the facts of the case.” *Id.*

[5] Indiana Criminal Rule 4 generally implements the constitutional right of an accused to a speedy trial. *Cundiff v. State*, 967 N.E.2d 1026 (Ind. 2012). The parties’ arguments to the trial court addressed subsection (C) of that rule, which provides:

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, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this

rule. 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 order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

[6] The time limit set forth in Rule 4(C) is triggered automatically at the beginning of a criminal prosecution; the one-year clock runs from the later of charges being filed or arrest. *Watson v. State*, 155 N.E.3d 608 (Ind. 2020). The time limit may be “extended or tolled in certain circumstances based on the actions of either the State, the defendant, or the trial court.” *Battering v. State*, 150 N.E.3d 597, 598 (Ind. 2020). Defendants may extend the one-year deadline by seeking or acquiescing in delay resulting in a later trial date. *Id.* (quotation omitted).

[7] In Simmons’ case, the one-year deadline began to run on September 13, 2019, when the State filed a charging information against him and the trial court issued a warrant for his arrest. During a subsequent hearing, the trial court scheduled a two-day jury trial to begin on January 29, 2020. The State does not dispute that the span of time between September 13, 2019 and January 29, 2020, or 138 days, is chargeable to the State for purposes of Rule 4(C).

[8] On January 29, 2020, the trial court, citing court congestion due to another case having priority, issued an order rescheduling the trial to begin on July 15, 2020. Simmons suggested the new trial date. Based on Simmons’ agreement with

rescheduling the trial, the days between January 29, 2020, and July 15, 2020, are not attributable to the State.

- [9] On June 9, 2020, the State moved to continue the trial, alleging that a witness was unavailable. The trial court granted the motion and rescheduled the trial to January 20, 2021. The State concedes that the span of time between July 15, 2020 and January 20, 2021, or 189 days, is chargeable to the State, for a running total of 327 days.
- [10] On December 14, 2020, the Indiana Supreme Court issued an order barring trial courts from holding in-person jury trials until March 1, 2021. *In the Matter of Admin. R. 17 Emergency Relief for Ind. Trial Cts. Relating to the 2019 Novel Coronavirus (COVID-19)*, No. 20S-CB-123 (Dec. 14, 2020). The Indiana Supreme Court further determined that deadlines under Indiana Criminal Rule 4(C) would be tolled until March 1, 2021. *Id.*
- [11] On December 15, 2020, the trial court held a hearing, during which the court noted that the previously scheduled trial had to be vacated due to the Indiana Supreme Court's order. Simmons, through counsel, informed the trial court that the parties had agreed to hold the trial starting on July 7, 2021. The trial court directly asked Simmons if he accepted the new trial date, and he agreed. Having acquiesced to the new trial date, the span of time between the ending of the tolling period on March 1, 2021, and the newly-scheduled trial date of July 7, 2021, cannot be attributed to the State.

- [12] The trial court held another hearing on July 7, 2021. During the hearing, the court stated that the jury trial would have to be rescheduled again due to court congestion. Specifically, the court identified another pending case in which the defendant had requested a speedy trial, meaning that it took priority. Simmons' counsel offered a new trial date of January 18, 2022. Once again, the trial court directly asked Simmons if he accepted the new trial date, and he agreed. Due to Simmons' acquiescence, the span of time between July 7, 2021, and January 18, 2022, is not chargeable to the State.
- [13] On November 22, 2021, Simmons filed his motion for discharge, arguing that the State had failed to try him within the one-year period. In particular, he argued that the two occasions on which the trial court continued the trial due to court congestion were not attributable to him. Simmons did not dispute the trial court's factual findings of congestion. Instead, he merely claimed the delays were chargeable to the State. This claim overlooks Simmons' acquiescence to both of those continuances.
- [14] Next, the trial court stated in its discharge order that the time between the end of the tolling period set by the Indiana Supreme Court and the July 7, 2021 date was attributable to the State. We agree with the State that, due to Simmons' agreement with the proposed July 7, 2021 trial date, the period of time cited by the trial court was not chargeable to the State. *See Henderson v. State*, 647 N.E.2d 7 (Ind. Ct. App. 1995) (Henderson agreed with State's motion to continue trial; delay was chargeable to Henderson). As a result, when

Simmons filed his motion for discharge, the total time attributable to the State was only 327 days, well short of Criminal Rule 4(C)'s one-year limit.

[15] We conclude the State has demonstrated prima facie error in the trial court's grant of Simmons' motion for discharge. We reverse the trial court's judgment and remand for further proceedings not inconsistent with this decision.

[16] Judgment reversed and remanded.

Vaidik, J., and Crone, J., concur.