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IN THE
COURT OF APPEALS OF INDIANA

James G. Owens,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 30, 2021

Court of Appeals Case No.
20A-CR-1685

Appeal from the Jennings
Circuit Court

The Honorable Jon W.
Webster, Judge

Trial Court Cause No.
40C01-1903-F4-10

Pyle, Judge.

Statement of the Case

- [1] In this interlocutory appeal, James G. Owens (“Owens”) appeals the trial court’s denial of his Criminal Rule 4(A) motion for release from jail. Concluding that the trial court properly denied Owens’ motion where less than

six months was attributable to the Criminal Rule 4(A) period, we affirm the trial court’s interlocutory order.

[2] We affirm.

Issue

Whether the trial court erred by denying Owens’ Criminal Rule 4(A) motion for release.

Facts

[3] On March 5, 2019, the State charged Owens with Level 4 felony arson, Level 5 felony intimidation, Level 6 felony unlawful possession of a syringe, Level 6 felony auto theft, and Class B misdemeanor criminal mischief. That same day, Owens filed a “Promise To Appear” for his March 21, 2019 initial hearing and was released on his own recognizance. (App. Vol. 2 at 3). Owens, however, failed to appear for his initial hearing. The trial court issued a warrant for Owens’ arrest, and he was arrested on April 12, 2019. The trial court held an initial hearing on April 18, 2019 and then scheduled Owens’ jury trial for July 22, 2019.

[4] On June 25, 2019, Owens filed a motion to continue his jury trial.¹ He noted that he sought the continuance because he “desire[d] to depose the State’s

¹ Both parties stated that Owens filed his continuance motion on June 26, 2019. However, the chronological case summary and the motion itself reveal that Owens’ continuance motion was file stamped on June 25, 2019. *See* (App. Vol. 2 at 6); (Appellee’s App. Vol. 2 at 2).

witnesses and require[d] additional time to do so.” (Appellee’s App. Vol. 2 at 2). Owens requested the jury trial “be continued to a date convenient to Court and counsel[.]” (Appellee’s App. Vol. 2 at 2). The trial court granted Owens’ continuance motion and specifically stated that the “case w[ould] be reset for the appropriate hearing, once counsel come to an agreement on what needs to be set and request a hearing.” (App. Vol. 2 at 13).

[5] On October 1, 2019, the deputy prosecutor sent Owens’ counsel an email, noting that the depositions had been completed and asking Owens’ counsel how he wanted to proceed. Owens’ counsel informed the deputy prosecutor that he would discuss it with Owens. Upon the passage of time with no response from Owens, the State filed, on January 14, 2020, a motion requesting the trial court to set a jury trial date. Thereafter, on February 19, 2020, the trial court granted the State’s request and noted that it would schedule a jury trial by separate order. On February 27, 2020, the trial court set Owens’ jury trial for May 18, 2020.

[6] On April 7, 2020, Owens filed a motion for release pursuant to Criminal Rule 4(A). He asserted that he had been detained for more than six months and sought release from jail pending the resolution of his case. Specifically, Owens stated that he had been “first arrested on April 22, 2019 (sic)”² and had been

² Owens erroneously stated that he had been arrested on April 22, 2019. In fact, he was arrested on April 12, 2019.

“continuously incarcerated” in jail for this case since that arrest. (Appellee’s App. Vol. 2 at 3).

[7] The trial court held a hearing on Owens’ motion on June 3, 2020.³ The trial court pointed out that Owens had been arrested on April 12, 2019 and not April 22 as he had stated in his motion. Owens argued that “the dates are the dates and here we are.” (Tr. Vol. 2 at 4). The State argued that Owens’ motion should be denied because the time following Owens’ continuance motion was attributable to him and extended the Rule 4(A) period. The parties also discussed the fact that, due to the Covid-19 pandemic, the Indiana Supreme Court had issued an emergency order, which, in relevant part, had tolled the time limits for Criminal Rule 4 through August 14, 2020. During the hearing, the State offered copies of the deputy prosecutor’s email to Owens’ counsel and an Indiana Supreme Court’s emergency order as exhibits.

[8] On June 5, 2020, the trial court issued an order denying Owens’ Criminal Rule 4(A) motion for release. Thereafter, Owens filed a petition seeking to have the trial court certify its order and a motion to stay the proceedings. The trial court granted both requests. Owens then sought permission to file this interlocutory appeal, and this Court granted his request. Owens now appeals.

³ The hearing had to be rescheduled because of Covid-19 concerns.

Decision

- [9] Owens challenges the trial court’s interlocutory order denying his Criminal Rule 4(A) motion for release.
- [10] “The broad goal of Indiana’s Criminal Rule 4 is to provide functionality to a criminal defendant’s fundamental and constitutionally protected right to a speedy trial.” *Austin v. State*, 997 N.E.2d 1027, 1037 (Ind. 2013). In reviewing Criminal Rule 4 claims, we review questions of law de novo, and we review factual findings under the clearly erroneous standard. *Id.* at 1039-40. Criminal Rule 4(A) provides, in relevant part, as follows:

(A) Defendant in Jail. No defendant shall be detained in jail on a charge, without a trial, for a period in aggregate embracing more than six (6) months 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[.] . . .* Any defendant so detained shall be released on his own recognizance at the conclusion of the six-month period aforesaid and may be held to answer a criminal charge against him within the limitations provided for in subsection (C) of this rule.

Ind. Crim. Rule 4(A) (emphasis added). Additionally, “[w]hen a continuance is had on motion of the defendant, or delay in trial is caused by his act, any time limitation contained in this rule shall be extended by the amount of the resulting period of such delay caused thereby.” Crim. R. 4(F).

[11] The parties use the date that Owens was arrested, April 12, 2019, as the relevant starting date for the calculating the days in this case. Under Criminal Rule 4(A), Owens could not be detained in jail pending trial for more than six months from that date “except where a continuance was had on his motion, or the delay was caused by his act[.]” Crim. R. 4(A). Where, as here, Owens moved to continue the scheduled jury trial, the time limitation contained in Criminal Rule 4 was, therefore, “extended by the amount of the resulting period of such delay caused thereby.” Crim. R. 4(F). Specifically, on June 25, 2019, Owens moved to continue the July 2019 trial so that he could depose the State’s witnesses. Ultimately, the trial court set the new trial date for May 18, 2020.

[12] The parties do not dispute that the time between the date of Owens’ arrest (April 12, 2019) and the date of his motion for a continuance (June 25, 2019), which equates to seventy-four (74) days, would be counted toward the six-month limitation of Criminal Rule 4(A). The disagreement in this case centers on whether the time that elapsed between Owens’ continuance motion (June 25, 2019) until the new trial date (May 18, 2020) should be counted as a delay attributable to Owens, thereby extending the six-month time limitation of Criminal Rule 4(A) by 328 days.

[13] Owens recognizes that some delay following his continuance motion would be attributable to him. He, however, contends that only the time between his continuance motion (June 25, 2019) to the date that the State requested the trial court to reschedule the trial (January 14, 2020), which totals 203 days, should

be attributable to him, while the remaining 125 days from the State’s trial scheduling request (January 14, 2020) to the new trial date (May 18, 2020) should be counted toward the six-month limitation of Criminal Rule 4(A). Owens, therefore, contends that the accumulation of the days counted toward the six-month limitation of Criminal Rule 4(A) (125 days plus 74 days, totaling 199 days) would entitle him to release from jail to await his trial.

[14] The State, on the other hand, argues that the entirety of the 328 days that elapsed between Owens’ continuance motion (June 25, 2019) until the new trial date (May 18, 2020) should be counted as a delay attributable to Owens because the delay was caused by his continuance request. We agree with the State that the trial court properly denied Owens’ Criminal Rule 4(A) motion.

[15] Our supreme court has explained that “when a defendant requests a continuance, the elapsed period between his motion for a continuance and the new trial date is generally chargeable to the defendant.” *Stephenson v. State*, 742 N.E.2d 463, 488 (Ind. 2001) (citing *Vermillion v. State*, 719 N.E.2d 1201, 1204 (Ind. 1999), *reh’g denied*, *cert. denied*). Thus, the Rule 4(A) period was extended by the time that had elapsed between the date of Owens’ continuance motion to the new trial date. *See Stephenson*, 742 N.E.2d at 488.⁴ Because less than six months was attributable to the Criminal Rule 4(A) period, the trial court did not

⁴ We note that there are situations where the period following a defendant’s continuance motion may not be attributable to him, such as when a defendant moves for a continuance because of the State’s failure to respond to discovery requests. *See Isaacs v. State*, 673 N.E.2d 757, 762 (Ind. 1996). However, this is not one of those situations.

err by denying Owens' Criminal Rule 4(A) motion for release. *See, e.g., id.* at 487 n.21 (providing that it is proper to deny a Criminal 4 motion that is prematurely made).⁵

[16] Affirmed.

Najam, J., and Tavitas, concur.

⁵ We note that the State alternatively argues that “[e]ven if this Court were to agree with Owens and attribute time after the State’s request for a new trial date to the Criminal Rule 4(A) period, Criminal Rule 4(A)’s six-month period is unmet.” (State’s Br. 10). The State points to the Indiana Supreme Court’s emergency orders, which tolled the time limits for Criminal Rule 4 in Jennings County from March 18, 2020 through August 14, 2020. *See In the Matter of the Petition of the Courts of Jennings County for Administrative Rule 17 Emergency Relief*, 20S-CB-186 (March 19, 2020) (providing that, effective March 18, 2020 through April 15, 2020, the Indiana Supreme Court authorized the tolling of Criminal Rule 4 time limits in the Jennings County courts); *In the Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, 141 N.E.3d 389 (Ind. March 23, 2020) (providing that, effective March 23, 2020 through April 6, 2020, the Indiana Supreme Court authorized the tolling of Criminal Rule 4 time limits in all Indiana trial courts); *In the Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, 145 N.E.3d 787 (Ind. May 29, 2020) (extending the emergency tolling authority in Indiana trial courts and providing, that for Criminal Rule 4(A), the tolled period shall be calculated from April 3, 2020 through August 14, 2020).

Given the facts in this appeal, it is unnecessary to address the State’s alternative basis for affirming the trial court’s interlocutory order and the applicability of our supreme court’s emergency orders. We do, however, note that “[a]n accused . . . has two distinct but related rights to have the processes of justice move deliberately toward the end of obtaining a trial within a reasonable and agreeable time—one right is guaranteed by the Constitutions and one by the implementing CR. 4.” *Cundiff v. State*, 967 N.E.2d 1026, 1027 n.2 (Ind. 2012) (quoting *State v. Moles*, 166 Ind.App. 632, 646, 337 N.E.2d 543, 552 (1975)). Our supreme court’s emergency orders were issued pursuant to Indiana Administrative Rule 17, which provides authority for the issuance of orders relating to “*rules and procedures affecting time limits currently imposed for speedy trials in criminal . . . proceedings[.]*” Admin. R 17(A) (emphasis added). Here, the issue regarding the validity of the emergency orders and our supreme court’s authority is not before this Court; accordingly, we leave it for another day.