

MEMORANDUM DECISION

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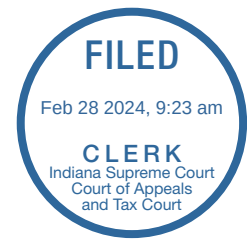


IN THE Court of Appeals of Indiana

Aaron Lamont Marks,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 28, 2024

Court of Appeals Case No.
23A-CR-1938

Appeal from the Marion Superior Court

The Honorable Mark Stoner, Judge

Trial Court Cause No.
49D32-2211-F2-30721

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Case Summary

- [1] Aaron L. Marks was convicted of Possession of Methamphetamine, as a Level 3 felony;¹ Possession of a Narcotic Drug, as a Level 4 felony;² and Possession of Cocaine, as a Level 4 felony.³ He was also adjudicated a habitual offender, which determination he now challenges on appeal. Marks presents the sole issue of whether the trial court abused its discretion by allowing the State to file a belated habitual offender allegation, after finding that the delay was based upon good cause (ongoing plea negotiations), where Marks requested a continuance for the purpose of continuing negotiations but rejected the State's subsequent proposal without making a counteroffer. We affirm.

Facts and Procedural History

- [2] On November 9, 2022, Indianapolis Metropolitan Police Department officers were dispatched to an Indianapolis hotel to serve an arrest warrant upon Marks. The officers observed Marks exit the hotel with a luggage cart and a “fanny pack” and placed him under arrest. (Tr. Vol. III, pg. 118.) The corresponding search yielded substances that were subjected to laboratory testing and found to

¹ Ind. Code § 35-48-4-1.1(a)(2), (e)(1).

² I.C. § 35-48-4-1(a)(2), (e)(2).

³ I.C. § 35-48-4-1(a)(2), (e)(2).

be: 7.62 grams of cocaine, 7.99 grams of fentanyl, 6.5 grams of marijuana, and 20.69 grams of methamphetamine.

- [3] On November 14, 2022, the State charged Marks with Dealing in Methamphetamine, Dealing in a Narcotic Drug, and Dealing in Cocaine, each as a Level 2 felony. A trial date was initially set for January 30, 2023.
- [4] On January 17, defense counsel contacted a deputy prosecutor via email to offer that Marks would plead guilty to a Level 3 felony; on January 23, defense counsel sent a reminder about the offer. On the same day, Marks filed an unopposed motion to continue the trial due to “ongoing negotiations to resolve this matter.” (App. Vol. II, pg. 49.) Marks renewed his request for the State to agree to a Level 3 felony agreement. On February 8, the State made two separate offers to Mark a few hours apart; both were rejected. At a pretrial conference on March 21, defense counsel advised the trial court that the State had offered “to run the three F2 causes consecutive” and counsel expected to “get something different from the State.” (Tr. Vol. II, pg. 12.) Marks requested and was granted a continuance “in order to negotiate that.” (*Id.*)
- [5] Also on March 21, the State filed a notice of intent to file a habitual offender allegation “by filing a separate page alleging two prior unrelated felony convictions.” (App. Vol. II, pg. 52.) But the State did not file an information on that date. Thereafter, Marks did not solicit an additional offer from the State. However, the State reached out to defense counsel with an additional

offer – standing firm on the felony level, but with a proposed sentence reduction. Marks rejected the offer and made no counteroffer.

- [6] On April 19, the State asked defense counsel “if we were going to trial in this case” and defense counsel “reminded the State that their offer had been rejected.” (Tr. Vol. II, pg. 27.) On April 21, the State filed an information alleging that Marks is a habitual offender. Marks objected to the filing as untimely because it was made less than thirty days before the commencement of trial.⁴ The State responded that it had good cause for the belated filing, specifically, that the State and Marks had been engaged in ongoing plea negotiations.
- [7] The trial court heard arguments of counsel, together with their summaries of the negotiations process. Defense counsel represented that he “never solicited a plea after that February 8th date, nor [proposed] a counteroffer.” (*Id.* at 33.) According to the State, although it would not agree to a lower felony, it had made “another plea with less time still” and had agreed “not to file that enhancement if [Marks] accepted [the] offer.” (*Id.*) The trial court found that good faith negotiations had been ongoing and thus good cause existed to permit the belated filing.
- [8] On May 17, Marks’s jury trial commenced. He was convicted of a lesser charge of possession on each of the three counts against him. Marks waived his right

⁴ See I.C. § 35-34-1-5(e).

to a jury trial for the enhancement and habitual offender phases of trial. The trial court found that the State had established the bases for enhancements and entered judgments of conviction against Marks for: Possession of Methamphetamine, as a Level 3 felony; Possession of a Narcotic Drug, as a Level 4 felony; and Possession of Cocaine, as a Level 4 felony. The trial court also adjudicated Marks to be a habitual offender.

- [9] On July 27, 2023, the trial court imposed upon Marks an aggregate sentence of twenty years. This consists of ten years for Possession of Methamphetamine, enhanced by ten years due to Marks’s habitual offender status and two concurrent sentences of six years each for Possession of a Narcotic Drug and Possession of Cocaine. Marks now appeals.

Discussion and Decision

- [10] Marks contends that good faith negotiations had ceased in advance of the filing because he made his last counteroffer on February 8, 2023, and the State was well aware that he would reject any offer to plead guilty to a Level 2 felony. According to Marks, he “simply rejected the State’s pleas, refused to counteroffer, and reiterated that he would not plead guilty to a certain charge” and it “makes no difference whether the remaining terms were exactly the same.” Reply Brief at 6.
- [11] Indiana Code Section 35-34-1-5(e) governs the time for filing an amendment to include a habitual offender allegation, providing in pertinent part:

An amendment of an indictment or information to include a habitual offender charge under IC 35-50-2-8 must be made at least thirty (30) days before the commencement of trial. However, upon a showing of good cause, the court may permit the filing of a habitual offender charge at any time before the commencement of the trial if the amendment does not prejudice the substantial rights of the defendant.

- [12] The Indiana Supreme Court has held that the purpose of Ind. Code § 35-34-1-5(e) “is to allow a defendant sufficient time to prepare a defense for an habitual offender charge.” *Haymaker v. State*, 667 N.E.2d 1113, 1114 (Ind. 1996). The State must affirmatively show “good cause” for a belated filing. *Attebury v. State*, 703 N.E.2d 175, 179 (Ind. Ct. App. 1998), *overruled on other grounds by Williams v. State*, 735 N.E.2d 785, 790 (Ind. 2000). This requirement is not satisfied simply by showing a lack of prejudice. *Id.*
- [13] A trial court’s finding of good cause is reviewed for an abuse of discretion, which occurs “only where the decision is clearly against the logic and effect of the facts and circumstances.” *Land v. State*, 802 N.E.2d 45, 53 (Ind. Ct. App. 2004) (quoting *Palmer v. State*, 704 N.E.2d 124, 127 (Ind. 1999)), *trans. denied*. “Good cause” is not defined but has been found to exist where “plea negotiations continued up to or very shortly prior to the filing of the enhancement [and the defendant] either refused to accept the plea bargain offer or rejected the offer by inaction.” *Johnican v. State*, 804 N.E.2d 211, 215 (Ind. Ct. App. 2004).

[14] Here, each of the State’s offers required that Marks plead guilty to a Level 2 felony. Marks steadfastly refused to do so and made his last counteroffer months before trial. For these reasons, he argues that good faith plea negotiations ended well in advance of trial, as was the case in *Campbell v. State*, 161 N.E.3d 371 (Ind. Ct. App. 2020). However, *Campbell* is distinguishable and does not support Marks’s argument.

[15] In *Campbell*, as a result of events in March of 2018, the appellant had been charged with several offenses, including a Level 4 felony. *Id.* at 373. The State filed a notice of its intent to file a habitual offender enhancement and, a few months after that, asked if Campbell was interested in a plea agreement. *Id.* at 374. Campbell responded that he would only plead guilty to two misdemeanors, and he maintained this position as the State repeatedly offered its original terms and also inquired whether Campbell was interested in making a counteroffer. *Id.* On the day before the scheduled trial date in February 2019, the court granted the State’s motion to add a habitual offender sentencing enhancement, to which Campbell objected as being outside the statutory period. *Id.* The State attributed delay to ongoing plea negotiations and staff changes in its office; the trial court overruled Campbell’s objection.

[16] On appeal, this Court acknowledged that good cause for a belated filing of a habitual offender allegation could exist due to “ongoing plea negotiations.” *Id.* at 377. However, the Court stated: “that is not the situation before us,” and explained:

Here, the State tendered the same plea offer several times and then asked if Campbell wanted to make a counteroffer. There is no evidence Campbell's counsel ever attempted to solicit a plea offer from the State, that the State agreed not to file the enhancement if Campbell accepted its plea offer, or that the parties were engaged in bona fide and ongoing plea negotiations up until the State's filing.

Id. Ultimately, the Court was “not persuaded that the State’s periodic tendering of the same plea offer that had been repeatedly rejected by a defendant, whose position remained constant, constitutes ongoing plea negotiations.” *Id.*

[17] In sum, *Campbell* involved a one-sided initiation of unchanging proposed terms. That is not the scenario here. Marks sought to engage the State in plea negotiations and actively participated. Although Marks now claims that his counsel recognized the parties were at an impasse and ceased negotiations in February of 2023, this position is contradicted by the record. At the March 21, 2023, pre-trial conference Marks’s counsel advised the trial court that negotiations were in progress:

Judge, the current plea I have on the offer is to run the three F2 causes consecutive to each other. I think we are going to get something different from the State, but I would like to continue this in order to negotiate that.

(Tr. Vol. II, pg. 12.) When the trial court asked, “how close are we,” defense counsel responded: “we are a bit off, I would say,” and continued: “if we don’t come up with something, we will just take a jury.” *Id.* at 13. Defense counsel’s inchoate hopes of terms sufficiently acceptable to avoid trial were ultimately not

fulfilled. Yet counsel had clearly communicated to the court that he would be expecting and evaluating additional input from the State. As such, the trial court acted within its discretion to find the existence of ongoing good faith negotiations until shortly before the State's filing.

Conclusion

[18] The trial court did not abuse its discretion in finding good cause to allow the State to file the habitual-offender allegation less than thirty days before the commencement of trial.

[19] Affirmed.

Crone, J., and Pyle, J., concur.

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