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IN THE
COURT OF APPEALS OF INDIANA

Russell G. Finnegan,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 20, 2023

Court of Appeals Case No. 22A-CR-1131

Appeal from the Pulaski Superior Court

The Honorable Kim Hall, Special Judge

Trial Court Cause No. 66D01-2005-F5-10

May, Judge.

[1] Russell G. Finnegan appeals following his conviction of Level 5 felony intimidation of a judicial officer.[1] Finnegan raises two issues on appeal, which we revise and restate as:

> 1. Whether the trial court erred by denying Finnegan's motions for discharge pursuant to Criminal Rule 4 when he was held in pretrial detention for longer than seventy days and he was brought to trial more than a year after the State filed charges against him; and
>
> 2. Whether the State violated Finnegan's right to a speedy trial, guaranteed by both the Indiana Constitution and the United States Constitution.

We affirm.

Facts and Procedural History

[2] On April 9, 2020, Finnegan, an inmate in the Pulaski County Jail, sent a letter to the Honorable Mary Welker, judge of the Pulaski Circuit Court. At the time, Finnegan was the defendant in a criminal case pending before Judge Welker. In his letter, Finnegan stated: "You put this letter in a court file and I will nail your ass for contempt. You are already going to get fucked up for criminal confinement." (State's Ex. 1.) Finnegan also wrote: "Send me your goddamn

[1] Ind. Code § 35-45-2-1(b)(2)(B) (2019).

address so I can do business with you personally, appropriately." (*Id*.) On April 21, 2020, Sergeant Frederick Rogers of the Pulaski County Sheriff's Office met with Judge Welker at the Pulaski Circuit Court. Judge Welker showed Sergeant Rogers the letter Finnegan sent her. Sergeant Rogers described Judge Welker's demeanor during this meeting as "intimidated and threatened" and "very concerned[.]" (Tr. Vol. II at 158.) Sergeant Rogers then forwarded a copy of the letter along with his report of his meeting with Judge Welker to the Pulaski County Prosecutor's Office.

[3] On May 29, 2020, the State charged Finnegan with Level 5 felony intimidation of a judicial officer. On June 3, 2020, officers arrested Finnegan, and Finnegan posted bond. As a condition of his bond, Finnegan was to have no contact with Judge Welker. Several judges recused themselves, and a special judge was appointed to preside over the case. Judge Kim Hall took the oath to preside as special judge on July 2, 2020. Finnegan's initial hearing occurred on July 16, 2020. Finnegan retained private counsel, but his attorney filed a motion to withdraw on July 29, 2020, after Finnegan "command[ed]" him to withdraw. (App. Vol. II at 71.) Finnegan then filed a notice of his intent to proceed pro se, but at a status conference on November 23, 2020, Finnegan asked the court to appoint a public defender for him. The trial court appointed Attorney Richard Ballard to act as Finnegan's attorney. Finnegan subsequently hired Attorney Andrew Achey and Attorney Ballard withdrew.

[4] On December 14, 2020, our Indiana Supreme Court issued an order prohibiting all in-person jury trials until March 1, 2021. *In the Matter of Admin. Rule 17*

Emergency Relief for Ind. Trial Courts Relating to 2019 Novel Coronavirus (COVID-19), No. 20S-CB-123 (Ind. Dec. 14, 2020). The order also tolled the period from December 14, 2020, until March 1, 2021, for Criminal Rule 4 purposes. *Id*. On December 21, 2020, Finnegan's bond was revoked because he communicated additional threats against Judge Welker and other members of Pulaski County justice system.[2] On December 29, 2020, Finnegan was arrested and taken into custody.

[5] On February 15, 2021, Finnegan filed a motion for competency evaluation. On February 16, 2021, the trial court granted Finnegan's motion for a competency evaluation and stayed the proceedings in the instant case. Finnegan filed a pro se fast and speedy trial demand on February 23, 2021. On March 2, 2021, the trial court issued an order striking the documents Finnegan had filed pro se because Finnegan was represented by counsel when the documents were filed. On March 4, 2021, Attorney Achey filed a motion to withdraw as Finnegan's attorney, and the trial court granted the motion. The independent evaluators conducting the competency evaluation each concluded Finnegan was competent to stand trial, and the last of the two evaluations was filed on April

[2] Finnegan communicated these threats while utilizing a veteran's crisis hotline. After making the threats, Finnegan was detained pursuant to an emergency detention order. Finnegan was subsequently housed at a mental health facility and arrested upon his release from that facility.

21, 2021. The trial court found Finnegan competent to stand trial on April 28, 2021.[3]

[6] On June 4, 2021, Finnegan filed a "Motion for Discharge Pursuant to Criminal Rule 4(C) and Demand for Immediate Release," (App. Vol. III at 30), which the trial court subsequently denied. On June 17, 2021, Finnegan filed a "Demand for Fast and Speedy Trial by Jury CR4(B)." On June 28, 2021, Finnegan filed a notice stating: "I have been held six months without a trial date being set … Help, Help, Help, somebody please prosecute me." (App. Vol. III at 104.) On July 2, 2021, Finnegan filed a demand for immediate release pursuant to Criminal Rule 4(A). On August 3, 2021, Finnegan filed another motion for a fast and speedy trial. On August 19, 2021, the trial court appointed Attorney Paul Stanko to represent Finnegan. However, even after Attorney Stanko was appointed to represent him, Finnegan continued to file documents pro se. Many of Finnegan's pro se filings included gratuitous profanity and insults. Finnegan also continued to send letters to Judge Welker and her court staff during the summer of 2021. In one of the letters, Finnegan wrote to Judge Welker: "As soon as I get out I am walking across the street with my handcuffs and cuffing your dumb bitch ass up[.]" (State's Ex. 5.) In

[3] The State asserts in its brief that this order was entered in another criminal case involving Finnegan, Cause Number 66C01-1910-F3-00014, and the trial court intended for that order to also apply to the instant case. However, an order finding Finnegan competent to stand trial is not reflected in the chronological case summary of the instant case. In his brief, Finnegan states: "The second and last remaining competency report was filed on April 21, 2021. This ended the stay of proceedings entered on February 15, 2021." (Appellant's Br. at 7.) (internal citation to record omitted). Nevertheless, our analysis does not change whether the stay ended on April 21, 2021, or April 28, 2021.

another letter, Finnegan described a necrophiliac fantasy involving Judge Welker's corpse.

[7] On September 28, 2021, the trial court entered an abusive pro se litigant order. The order noted: "Once counsel is appointed or hired a defendant speaks to the Court through counsel." (App. Vol. III at 158.) The order also stated the trial court would not review any pro se filings from Finnegan if Finnegan was represented by counsel and placed restrictions on Finnegan's filings if he chose to proceed as a self-represented litigant.

[8] On September 29, 2021, Attorney Stanko filed a motion to withdraw his appearance because Finnegan invoked his right to self-representation, and the trial court granted Attorney Stanko's motion to withdraw. On October 18, 2021, Finnegan filed a "Motion for Discharge" and a "Demand for Immediate Release pursuant to Criminal Rule 4(A) and Covid-19 Outbreak in Pulaski Co. Jail." (*Id*. at 168-175.) On October 19, 2021, the trial court struck Finnegan's motions because Finnegan failed to comply with the terms of the trial court's September 28, 2021, order. Finnegan then filed another demand for immediate release and motion for discharge on October 22, 2021. On November 5, 2021, Finnegan filed a "Demand for Fast and Speedy Trial by Jury C.R. 4(B)." (*Id*. at 190.) On November 22, 2021, the trial court issued an order granting Finnegan's motion for a speedy trial. The trial court noted that court congestion prevented it from holding a trial within seventy days, but the trial court scheduled Finnegan's trial to begin on February 2, 2022.

[9] On December 28, 2021, the trial court issued an order directing the State to file a report "regarding whether the Defendant should remain incarcerated or be released from incarceration." (*Id*. at 204.) The State filed its report on January 7, 2022. The State detailed the chronology of the case and argued that the delays that occurred as the result of the need to appoint a special judge and to conduct a competency evaluation tolled the Criminal Rule 4(C) period. On January 24, 2022, the trial court issued an order releasing Finnegan on his own recognizance in the instant case, but Finnegan remained in the Pulaski County Jail because he was being held on other matters. On January 26, 2022, the trial court entered an order continuing Finnegan's jury trial due to a public health emergency.

[10] On March 8, 2022, the trial court held Finnegan's jury trial. Finnegan proceeded pro se, but the trial court reappointed Attorney Ballard to act as standby counsel. Before voir dire, Finnegan asserted his right to a speedy trial had been violated, and he objected to the trial court proceeding with trial. The trial court overruled Finnegan's objection and the trial proceeded. During trial, the State moved to amend the charging information in order to expand the time period over which it alleged Finnegan committed the crime of intimidation to include the summer of 2021. Finnegan did not object to the State's motion, and the trial court granted the motion. The jury returned a guilty verdict, and on April 5, 2022, the trial court sentenced Finnegan to six years in the Indiana Department of Correction.

Discussion and Decision

1. Criminal Rule 4

[11] Finnegan contends the delay between the date he was arrested and the date his trial began exceeded the period allowed for bringing a defendant to trial by Indiana Rule of Criminal Procedure 4. Therefore, Finnegan argues he was entitled to discharge under both Criminal Rule 4(B) and 4(C). "In reviewing Criminal Rule 4 claims, we review questions of law de novo, and we review factual findings under the clearly erroneous standard." *State v. Harper*, 135 N.E.3d 962, 972 (Ind. Ct. App. 2019), *trans. denied*. Rule 4 "was adopted to implement a defendant's right to a speedy trial." *State v. Lindauer*, 105 N.E.3d 211, 214 (Ind. Ct. App. 2018), *trans. denied*. Its purpose "is to promote early trials, not to discharge defendants." *Harper*, 135 N.E.3d at 972.

1.1 Criminal Rule 4(B)

[12] Finnegan asserts the trial court failed to try Finnegan in accordance with the time period provided in Criminal Rule 4(B), and therefore, the trial court should have discharged him. Rule 4(B)(1) states:

> If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar.

Finnegan filed his first fast and speedy trial demand on February 23, 2021, pro se, even though he was represented by counsel at the time. Thus, Finnegan's demand was procedurally improper, and the trial court did not err in failing to consider it. *See Black v. State*, 7 N.E.3d 333, 338 (Ind. Ct. App. 2014) (holding that because the defendant's pro se speedy trial request was filed after counsel had been appointed, the trial court was not required to respond to it).

[13] Finnegan also filed several additional motions for a fast and speedy trial with his final motion requesting a speedy trial filed on November 5, 2021. In *Minneman v. State*, our Indiana Supreme Court explained that "[w]hen a defendant files a motion for early trial under Ind. R. Crim. P. 4(B), such filing constitutes an abandonment of previous motions for early trial filed by that defendant." 441 N.E.2d 673, 677 (Ind. 1982), *reh'g denied*. The defendant making a speedy trial request must "maintain a position which is reasonably consistent with the request he has made." *Id*. When a defendant makes a speedy trial motion, the State has seventy days to bring the defendant to trial, but a second speedy trial motion is inconsistent with the initial motion because it changes the date by which the State must bring the defendant to trial.

[14] For example, in *Hahn v. State*, the defendant made a speedy trial motion on September 9, 2013, which required him to be brought to trial by November 18, 2013. 67 N.E.3d 1071, 1080 (Ind. Ct. App. 2016), *trans. denied*. However, the defendant made a second speedy trial motion at a hearing on November 14, 2013, and we held this second request constituted an abandonment of the first request, and therefore, the trial court was required to try the defendant within

seventy days of the second request, which was by January 27, 2014. *Id*. at 1081. Likewise, when Finnegan filed his motion for a fast and speedy trial on November 5, 2021, he abandoned all previous fast and speedy trial motions. *See Minneman*, 441 N.E.2d at 677 ("Therefore, when Appellant filed his motion for speedy trial on October 30, 1979, he abandoned the earlier motion filed on August 9, 1979, and we are no longer concerned with that motion.").

[15] Consequently, the relevant inquiry for the purpose of Criminal Rule 4(B) is whether the trial court tried Finnegan within the requisite amount of time from his November 5, 2021, motion. The trial court granted Finnegan's speedy trial motion on November 22, 2021. In the order, the trial court also explained:

> 6. The Court now finds that pursuant to the provisions of C.R.4, there exists congestion in the combined calendars of this Court, and the calendar of Special Judge Kim Hall, which prohibits the jury trial being held within the seventy (70) day time period.
>
> 7. The first available date for this matter to proceed to jury trial is February 2, 2022.
>
> 8. The Court now schedules this matter for jury trial on February 2, 2022, with three (3) days reserved.

(App. Vol. III at 192-93.) "Our Supreme Court has repeatedly held that a trial court may, on its own motion or on the motion of the prosecutor, continue a trial date due to a congested court calendar," *Baker v. State*, 590 N.E.2d 1126, 1128 (Ind. Ct. App. 1992), and Finnegan does not challenge the reasonableness of the trial court's court congestion finding. Nonetheless, the trial court issued

an order releasing Finnegan on his own recognizance in the instant case on January 24, 2022, thereby rendering any request for discharge pursuant to Rule 4(B) moot. *See Williams v. State*, 631 N.E.2d 485, 487 (Ind. 1994) ("Once released from custody, a defendant receives no further benefit from Crim. R. 4(B)."), *reh'g denied*.

1.2 Criminal Rule 4(C)

[16] Finnegan also argues his oral motion for discharge on the first day of trial should have been granted because the State did not bring him to trial within a year of his arrest. Indiana Criminal Rule 4(C) 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.

[17] On March 16, 2020, our Indiana Supreme Court issued an emergency order directing trial courts to prepare emergency local plans to combat the spread of

the Covid-19 coronavirus and protect public health. *In the Matter of Admin. Rule 17 Emergency Relief for Ind. Trial Courts Relating to 2019 Novel Coronavirus (COVID-19)*, No. 20S-CB-123 (Ind. Mar. 16, 2020). The suggested emergency measures listed in our Supreme Court's order included suspending all jury trials and "[t]olling for a limited time all laws, rules, and procedures setting time limits for speedy trials in criminal and juvenile proceedings[.]" *Id*. On May 29, 2020, the Supreme Court issued an order extending the trial courts' emergency tolling authority. This order provided:

> Being duly advised, the Court ORDERS as follows, notwithstanding any contrary provision of any previous order granting local or statewide relief under Indiana Administrative Rule 17:
>
> 1. The Court authorizes the tolling, **through August 14, 2020**, of all laws, rules, and procedures setting time limits for speedy trials in criminal and juvenile proceedings; public health and mental health matters; all judgments, support, and other orders; and in all other civil and criminal matters before Indiana trial courts. Further, no interest shall be due or charged during this tolled period.
>
> 2. For purposes of
>
> a. Indiana Criminal Rule 4(A) and 4(C), and
>
> b. early-trial demands filed under Indiana Criminal Rule 4(B) **before April 3, 2020**,

> the tolled period shall be calculated **from April 3, 2020 through August 14, 2020** and shall be **further subject to** congestion of the court calendar or locally existing emergency conditions for good cause shown.

In the Matter of Admin. Rule 17 Emergency Relief for Ind. Trial Courts Relating to 2019 Novel Coronavirus (COVID-19), No. 20S-CB-123 (Ind. May 29, 2020) (emphases in original). Thus, while Finnegan was arrested in the instant case on June 3, 2020, he did not begin accruing time for Criminal Rule 4 purposes until August 14, 2020. Between August 14, 2020, and December 14, 2020, when our Indiana Supreme Court issued another emergency relief order related to Covid-19 suspending jury trials until March 1, 2021, 122 days passed. Moreover, Finnegan filed a motion for a competency evaluation that further tolled the Rule 4(C) period until the trial court declared Finnegan competent to stand trial on April 28, 2021. *See O'Neil v. State*, 597 N.E.2d 379, 384 (Ind. Ct. App. 1992) ("trial delays caused by a defendant's motion for psychiatric examination are the responsibility of the defendant"), *trans. denied*.

[18] Between April 28, 2021, and November 22, 2021, 208 days passed, and this time was not tolled for Rule 4(C) purposes, bringing Finnegan's total to 330 days. On November 22, 2021, the trial court granted Finnegan's speedy trial motion, and in that order, the trial court set Finnegan's trial to begin on February 2, 2022, which was the earliest date the court could bring Finnegan to trial because of court congestion. However, on January 26, 2022, the trial court entered an order continuing Finnegan's trial until March 8, 2022, because the high rate of Covid-19 transmission in Pulaski County at the time made it unsafe

to hold jury trials. Thus, while 648 days passed between the date of Finnegan's arrest and the beginning of his trial, all but 330 of those days were tolled for Rule 4(C) purposes. Therefore, Finnegan was not entitled to discharge pursuant to Rule 4(C). *See Smith v. State*, 188 N.E.3d 63, 68 (Ind. Ct. App. 2022) (holding trial court did not err in continuing defendant's trial because of a public health emergency and denying his motion for discharge).

2. Constitutional Right to Speedy Trial

[19] The Sixth Amendment to the United States Constitution guarantees the accused in all criminal prosecutions "the right to a speedy and public trial[.]" Likewise, Article 1, Section 12 of the Indiana Constitution provides: "Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." We apply the four-factor balancing test announced by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2181 (1972), to determine whether a defendant's speedy trial right has been violated. *Watson v. State*, 155 N.E.3d 608, 614 (Ind. 2020). Even though the *Barker* test is grounded in the Sixth Amendment, we also apply the test to evaluate speedy trial challenges under Article 1, Section 12 of the Indiana Constitution. *Id.* "The test assesses both the government's and the defendant's conduct and takes into consideration (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the speedy trial right, and (4) any resulting prejudice." *Id.*

2.1 Length of Delay

[20] "The length of the delay acts as a triggering mechanism; a delay of more than a year post-accusation is 'presumptively prejudicial' and triggers the *Barker* analysis." *McClellan v. State*, 6 N.E.3d 1001, 1005 (Ind. Ct. App. 2014) (quoting *Vermillion v. State*, 719 N.E.2d 1201, 1206 (Ind. 1999), *reh'g denied*). The delay between when the State charged Finnegan with intimidation and when his trial began was well more than a year. Thus, we continue to the remaining *Barker* factors.

2.2 Reason for Delay

[21] Finnegan contends "[t]here was no justifiable reason for the State to delay trying Finnegan for nearly two years[.]" (Appellant's Br. at 18.) "When considering the reason for delays, we look at 'whether the government or the criminal defendant is more to blame for that delay.'" *Johnson v. State*, 83 N.E.3d 81, 85 (Ind. Ct. App. 2017) (quoting *Doggett v. U. S.*, 505 U.S. 647, 651, 112 S. Ct. 2686, 2690 (1992)). In *Barker*, the United States Supreme Court explained

> different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded court should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.

407 U.S. at 531, 92 S. Ct. 2182.

[22] As explained above, most of the delay in bringing Finnegan to trial was because a public health emergency caused by the COVID-19 pandemic made it unsafe to conduct jury trials. In *Blake v. State*, we held the trial court did not err in continuing the defendant's jury trial and denying his motion for discharge. 176 N.E.3d 989, 995 (Ind. Ct. App. 2021). We explained that even though we were approximately ten months into the pandemic at the time of the defendant's scheduled jury trial, the trial court could not safely summon a jury because the virus "continued to present a very real danger." *Id*. at 994. Likewise, the Covid-19 pandemic justifiably delayed Finnegan's trial, and to the extent the government shoulders the blame for the delay in bringing Finnegan to trial because of court congestion, any such blame is minimal because the congestion arose in large part from pandemic-related shutdowns. Moreover, Finnegan contributed to the delay of his own trial through his motion to assess his competence. Therefore, this factor weighs against Finnegan. *See Johnson*, 83 N.E.3d at 87 (holding the reason for delay *Barker* factor weighed against defendant even though delays due to court congestion were considered against the State).

2.3 Assertion of Right

[23] Finnegan contends he consistently asserted his right to a speedy trial, and he notes that he filed many motions asking for a speedy trial and requesting that he be discharged. Yet, even while ostensibly asserting his speedy trial right, Finnegan pursued dilatory litigation tactics. His trial was delayed because he

sought a competency evaluation. Finnegan also fired multiple attorneys who appeared on his behalf in this case, and in the end, he chose to proceed pro se. Moreover, as even Finnegan acknowledges, he "did repeatedly file nonsensical pro se motions[.]" (Appellant's Reply Br. at 11.) For example, he entitled one motion: "Pussy Galore!" (App. Vol. III at 142.) Finnegan entitled another motion: "What is the matter Buttfucked?" (*Id*. at 151.) In that motion, Finnegan posed questions to the trial judge, such as, "Do you need hit in your Ha! Ha! fuckface?" and "Why are you not smarter than the equipment you are operating?" (*Id*.) Finnegan's filings in the instant case and a host of thirteen other cases prompted the trial court to enter an order declaring Finnegan an abusive litigant. Thus, while Finnegan said he wanted a speedy trial many times in his filings with the trial court, his overall litigation tactics were inconsistent with that desire. *See Taylor v. State*, 468 N.E.2d 1378, 1381 (Ind. 1984) (concluding from defendant's multiple changes of attorney and requests for a continuance that "[t]he record strongly indicates that the appellant did not want a speedy trial") (internal quotation marks omitted).

2.4 Prejudice to Finnegan

[24] "The final factor in the *Barker* test, prejudice, is assessed in light of the three interests which the right to a speedy trial was designed to protect: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Sweeny v. State*, 704 N.E.2d 86, 103 (Ind. 1998). The possibility of defense impairment is the most important of these three concerns, and it is the

defendant's burden to show actual prejudice because of the delay. *Johnson*, 83 N.E.3d at 87.

[25] Finnegan argues he suffered prejudice because the delay impaired his defense. He notes the State moved at trial to amend the charging information to include a time period spanning from April 2020 through September 2021, and Finnegan asserts he was prejudiced by the delay in bringing him to trial because the delay allowed the State to collect the letters Finnegan sent to Judge Welker during the summer of 2021 and use those letters to support the intimidation charge. Finnegan asserts the State's evidence of intimidation would have been limited to the letter he sent on April 9, 2020, had he been brought to trial earlier.

[26] However, at trial, Finnegan chose not to object to the State's request to amendment of the charging information to include this expanded time period. A party may not raise an argument or objection on appeal that was not raised before the trial court. *Byrd v. State*, 592 N.E.2d 690, 691 (Ind. 1992) ("It is well settled that Indiana's appellate courts look with disfavor upon issues that are raised by a party for the first time on appeal … without raising the issue at first opportunity in the trial court."). Therefore, Finnegan waived any objection to the State amending the charging information by not raising the objection at trial, and he cannot now claim he was prejudiced by the amendment. *See Shorter v. State*, 144 N.E.3d 829, 841 (Ind. Ct. App. 2020) (holding arguments defendant did not raise before the trial court were waived on appeal), *trans. denied*.

[27] It is well settled that pro se litigants must be held to the same legal standards as licensed attorneys, and this means they must be prepared to accept the consequences of their failure to abide by established rules of procedure. *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016), *reh'g denied*. In addition, the State would not have been able to use the letters against Finnegan if he had abided by the no contact order and had not written them in the first place. As a result, we disagree with Finnegan's assertion that the delay in bringing him to trial impaired his defense. *See Sturgeon v. State*, 683 N.E.2d 612, 618 (Ind. Ct. App. 1997) (holding defendant's defense was not impaired by delay in bringing him to trial), *trans. denied*.

2.5 Summation

[28] There was a substantial delay in bringing Finnegan to trial, but the State's share of blame for that delay is minimal. Moreover, while Finnegan requested a speedy trial in his filings with the court, his overall litigation strategy brings that asserted desire into question, and Finnegan was not prejudiced by the delay. Therefore, we hold Finnegan's constitutional right to a speedy trial was not violated. *See McCarthy v. State*, 176 N.E.3d 562, 571 (Ind. Ct. App. 2021) (holding delay did not violate defendant's speedy trial right).

Conclusion

[29] Finnegan was not entitled to any further relief under Criminal Rule 4 – Finnegan's request for discharge under Rule 4(B) became moot once the trial court released him on his own recognizance, and the State brought Finnegan to

trial within the time mandated by Rule 4(C). The State also did not violate Finnegan's right to a speedy trial guaranteed by both the United States Constitution and the Indiana Constitution. We accordingly affirm the trial court.

[30] Affirmed.

Crone, J., and Weissmann, J., concur.