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IN THE
COURT OF APPEALS OF INDIANA

TROY RIGGS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0905-CR-487
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0804-FC-130

November 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Troy Riggs appeals from his two convictions for Trafficking with an Inmate, one as a Class C felony and one as a Class A misdemeanor, following a jury trial. Riggs raises two issues for our review, which we restate as follows:

> 1. Whether Riggs preserved his claim that the trial court violated his Indiana Criminal Rule 4(B) right to a speedy trial; and
>
> 2. Whether the trial court abused its discretion when it ordered Riggs to wear shackles around his legs during his trial.
>
> We affirm.

FACTS AND PROCEDURAL HISTORY

On March 23, 2008, Riggs, an inmate at the Pendleton Correctional Facility, asked Jessica Turner to smuggle contraband into the prison during a later visit. Specifically, Riggs asked Turner to bring marijuana, tobacco, and cell phones. Riggs also gave Turner specific information on how to smuggle the items past guards. However, when Turner attempted to give the contraband to Riggs on March 25, guards discovered the items and arrested her.

On April 22, 2008, the State charged Riggs with two counts of trafficking with an inmate. The trial court held an initial hearing on May 15, at which Riggs orally requested a public defender and a speedy trial. The court appointed a public defender for Riggs and informed him that he would be tried within seventy days, pursuant to Indiana Criminal Rule 4(B), unless Riggs later withdrew his speedy trial request. At the same time, the court forwarded to Riggs' counsel Riggs' request for a speedy trial.

On July 18, the trial court set Riggs' trial date for September 30, "this being the earliest date available due to Court congestion," which was in excess of seventy days after Riggs' speedy trial request. Appellant's App. at 2. Although it is not clear why in the record, the next hearing date did not actually occur until December 1. At that dispositional hearing, Riggs for the first time objected to his trial date and moved to dismiss the State's charges because he had not been tried within seventy days of his request. The court denied Riggs' motion. The court then reset his trial date for March 12, 2009.

At the beginning of his trial, but before the jury entered the courtroom, the following exchange took place:

> Q [by Riggs' counsel]: You understand there's a jury in the courtroom and one of the issues that we talked about was the possibility that you could choose to wear civilian rather than your prison clothes. And we've provided some civilian clothes that I went and bought and brought them here today in the jury room for you to change and it was your decision, you thought you didn't need to do that. The fact that the incident occurred in the prison demonstrates that you're in the prison and it was probably something that was unnecessary and that's what you pointed out to us and it was your decision not to wear the clothes.
>
> A [Riggs]: Yes.
>
> * * *
>
> [State to the Court]: . . . The only other issue I can think of is the shackles. I'm requesting for certain reasons that he keep them on, but I don't know if there's gonna be an objection, but he's not asked that they be taken off since he's in segregation for some violence in prison, so we're requesting that he stay shackled especially in light of the fact that he does not want to change clothes.
>
> [Riggs' counsel to the Court]: My client wants to object to that, he'd like to not be shackled. He's got family in there and of course the jury would probably be prejudiced by the—they know he's in prison, they just don't

> know—this just conveys the fact that he's probably really dangerous and someone to be feared.
>
> [State]: Well and the problem is that he is. He's currently in segregation for an unrelated incident to this about a battery on another inmate, so now we're here on a case where a co-defendant has plead[ed] and is here to testify and he has a confession . . . , but I have some concerns for the safety of the members of the courtroom, courtroom staff, [defense counsel] and just the courtroom atmosphere in general based on his prior acts of violence[.] [S]o we are requesting that he remain shackled especially in light of the fact that he doesn't want to change clothes . . . .
>
> [THE COURT]: Do you have any evidence that you want to put on to support your statement?

Transcript at 16-18. In response to the court's question, the State called Mike Rains, Internal Affairs Investigator at Pendleton Correctional Facility, to testify. Rains testified that Riggs was being held in segregation at the prison because Riggs "was observed hitting another offender with a tray in the head" while in the prison's dining room. Id. at 20. Riggs did not object to or challenge Rains' testimony. The court then stated:

> [H]is D.O.C. sheet[] shows burglary, robbery with serious bodily injury, criminal confinement, several criminal confinements, [and] child molesting[.] I think the defendant should have the hands unshackled so he can write[and] communicate[;] I'll leave the legs shackled. We'll take him into the courtroom—we'll excuse the jury out—take the jury out of the courtroom, bring the defendant in and have him sit at the counsel table, then we'll bring the jury back so they won't know that he has leg shackles on.

Id. at 22.

After the ensuing trial, the jury found Riggs guilty as charged. The court entered its judgments of convictions against Riggs and sentenced him accordingly. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Speedy Trial Request

Riggs first argues that the trial court violated his right to a speedy trial. As we have discussed:

> the right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and by Article I, Section 12 of the Indiana Constitution. Clark v. State, 659 N.E.2d 548, 551 (Ind. 1995). The provisions of Criminal Rule 4 implement a defendant's right to a speedy trial by establishing time deadlines by which trials must be held. Collins v. State, 730 N.E.2d 181, 182 (Ind. Ct. App. 2000). Criminal Rule 4(B)(1) provides, in relevant part, as follows:
>
> > 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.
>
> A defendant must maintain a position reasonably consistent with his request for a speedy trial, and he must object—at the earliest opportunity—to a trial setting that is beyond the seventy-day time period. Hill v. State, 777 N.E.2d 795, 798 (Ind. Ct. App. 2002). The Rule explicitly provides that court congestion is an exception to the seventy-day time period. Ind. Crim. R. 4(B)(1); Paul v. State, 799 N.E.2d 1194, 1197 (Ind. Ct. App. 2003). A trial court's finding of congestion is presumed to be valid. Logan v. State, 836 N.E.2d 467, 474 (Ind. Ct. App. 2005).

Truax v. State, 856 N.E.2d 116, 120 (Ind. Ct. App. 2006) (emphasis added).

Our Supreme Court has consistently held that a timely objection to the setting of a date for trial is essential for appellate review: "'[I]t was incumbent upon the defendant to protest, at his first opportunity, if his trial date was set for a date subsequent to that permitted under the rule and that his failure to do so must be regarded as acquiescence

and a waiver.'" Banks v. State, 273 Ind. 99, 101, 402 N.E.2d 1213, 1214 (1980) (quoting Utterback v. State, 261 Ind. 685, 686, 310 N.E.2d 552, 553 (1974)) (alteration original). For example, in Wright v. State, 593 N.E.2d 1192, 1195 (Ind. 1992), cert. denied, 506 U.S. at 1001 (1992), abrogated on other grounds by Fajardo v. State, 859 N.E.2d 1201, 1206-07 (Ind. 2007), the defendant waited "nearly a month" after the trial court had set his trial before filing an objection to the trial date. The court held that that delay allowed a reasonable assumption that the defendant had abandoned his request for a speedy trial pursuant to Criminal Rule 4(B)(1). Id.

Here, Riggs failed to preserve his argument on the trial date setting with a timely objection. On May 15, the trial court accepted Riggs' speedy trial request and forwarded that request to Riggs' counsel. That seventy-day period would have expired on July 24. On July 18, the court set Riggs' trial date for September 30, noting congestion of the court's calendar. Thus, Riggs had six full days—four business days—to inform the court of its noncompliance with his Criminal Rule 4(B) request so that the court could attempt to correct the alleged mistake. See id. But Riggs did not object until the next hearing date, on December 1, more than four months after the court had first set his trial date beyond the seventy-day limit of Criminal Rule 4(B). That was too long, and Riggs therefore acquiesced to the later setting of his trial. See id.

In response, Riggs argues that the December 1 date was the earliest he could have objected because his trial counsel "was unaware that he had moved for a speedy trial." Appellant's Brief at 7. That argument is not persuasive for numerous reasons, but we note only that a chronological case summary entry for May 23, 2008, expressly states that

on May 15 the trial court appointed Blanchard Shearer of the public defender's office to represent Riggs, and Riggs' speedy trial "request has been forwarded to the public defender for review." Appellant's App. at 2. Thus, the evidence demonstrates that Riggs' counsel was informed of the speedy trial request. Of course, Riggs himself also knew of his request, having orally made the motion on May 15, and could have informed his attorney of that motion to ensure it would be properly addressed. Finally, we note that Riggs does not suggest he received ineffective trial counsel or that the court's finding of a congested calendar was erroneous.

Issue Two: Shackles

Riggs next contends that the trial court abused its discretion when it ordered him to be restrained by leg shackles during his trial. Our Supreme Court has discussed this issue:

> As a general proposition a defendant has the right to appear before a jury without physical restraints, unless such restraints are necessary to prevent the defendant's escape, to protect those present in the courtroom, or to maintain order during trial. Bivins v. State, 642 N.E.2d 928, 936 (Ind. 1994). This right arises from the basic principle of American jurisprudence that a person accused of a crime is presumed innocent until proven guilty beyond a reasonable doubt. Wrinkles [v. State, 749 N.E.2d 1179, 1193 (Ind. 2001)]. For this presumption to be effective, courts must guard against practices that unnecessarily mark the defendant as a dangerous character or suggest that his guilt is a foregone conclusion. Id. (citing Holbrook [v. Flynn], 475 U.S. [560, 567-68 (1986)], 106 S. Ct. 1340; Estelle v. Williams, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976)).

Overstreet v. State, 877 N.E.2d 144, 160 (Ind. 2007), cert. denied, 128 S. Ct. 458 (2008). Thus, "the facts and reasoning supporting the trial judge's determination that restraints are necessary must be placed on the record." Wrinkles, 749 N.E.2d at 1193 (quotation

omitted). "Upon appellate review of an order to restrain the defendant, we consider whether the trial court abused its discretion." Bivins, 642 N.E.2d at 936. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. Cochran v. State, 843 N.E.2d 980, 982-83 (Ind. Ct. App. 2006), trans. denied, cert. denied, 127 S. Ct. 943 (2007).

Riggs argues that the trial court abused its discretion because "there was no evidence that Riggs had been violent while being transported, or disrespectful to the court[,] or any indication that he was a risk to escape, or a safety risk to anyone in the courtroom, or that he was being disorderly." Appellant's Brief at 9. We cannot agree. The trial court clearly articulated the facts and reasoning for its decision on the record. As discussed above, the trial court heard evidence that Riggs was currently in "segregation" at the Pendleton Correctional Facility due to violent behavior, and the court reviewed Riggs' extensive and violent criminal history. Transcript at 20. Protection of those in the courtroom is a recognized reason for restraining a defendant, and the facts and circumstances before the trial court support that rationale. See Overstreet, 877 N.E.2d at 160 (citing Bivins, 642 N.E.2d at 936).

Further, in Bivins our Supreme Court held that the trial court could not have abused its discretion in ordering the defendant restrained when the defendant "does not assert that the jury ever saw the shackles or had any awareness of his restraint." 642 N.E.2d at 936. As in Bivins, Riggs does not assert that the jury had any awareness of his restraint. Indeed, the court expressly sought to mitigate the effects of the shackles by ordering only Riggs' legs to be shackled and requiring Riggs to be transported in and out

of the courtroom outside the presence of the jury, which prevented the jury from seeing the restraints. Finally, Riggs' acquiescence to being tried while in his prison garb further diminished any effect of the restraints on the jury because the jury would have already been aware of the State's restraint to his liberty. Accordingly, the trial court did not abuse its discretion when it ordered Riggs to be partially shackled during the course of his trial.

Conclusion

In sum, we hold that Riggs did not timely object to the trial court's setting of his trial date beyond the seventy-day limit of Criminal Rule 4(B) and he therefore waived his speedy trial request. We also hold that the trial court did not abuse its discretion when it ordered Riggs to be placed in leg shackles during his trial. Thus, we affirm Riggs' convictions.

Affirmed.

KIRSCH, J., and BARNES, J., concur.