

Joshua Murrell appeals the trial court's denial of his Demand for Trial Setting and Motion to Transport Defendant to Marion County Jail for Purpose of Trial Preparation or Competency Evaluation. Murrell raises one issue, which we revise and restate as whether the trial court erred by denying Murrell's motion for discharge under Ind. Criminal Rule 4(C). Finding *sua sponte* that Murrell failed to properly bring this interlocutory appeal, we dismiss.

The relevant facts follow. On April 30, 2006, the State charged Murrell with criminal trespass as a class A misdemeanor. On August 31, 2009, Murrell filed a Motion to Dismiss and Discharge Defendant pursuant to Ind. Criminal Rule 4(C). On January 12, 2010, the court denied Murrell's motion.

On January 26, 2010, Murrell filed a Demand for Trial Setting and Motion to Transport Defendant to Marion County Jail for Purpose of Trial Preparation or Competency Evaluation. Murrell requested that the court "set a Court Trial in the above-captioned matters in order to resolve same and to transport Defendant to the Marion County Jail in order to prepare for same or to request an evaluation of Defendant's competency, if necessary." Appellant's Appendix at 33.

On April 16, 2010, the court denied Murrell's Demand for Trial Setting and Motion to Transport. On April 26, 2010, Murrell petitioned the court to certify its April 16, 2010 order for interlocutory appeal, and the court did so that same day. Specifically, the court stated that its order "filed April 16, 2010, be certified for interlocutory appeal" *Id.* at 15. On May 24, 2010, Murrell filed a Verified Petition to Accept Jurisdiction,

and this court accepted jurisdiction of the appeal pursuant to Ind. Appellate Rule 14(B) on June 28, 2010.

Initially, we observe that Murrell does not focus his arguments on appeal on the denial of his Demand for Trial Setting and Motion to Transport. Rather, Murrell raises the issue of whether “the trial court erred in denying the accused’s motion to dismiss and discharge under Crim. Rule 4(C)” pursuant to the January 12, 2010 order. Appellant’s Brief at 1. We also observe that Murrell included the court’s January 12, 2010 order in his appellant’s brief and not the April 16, 2010 order even though Murrell petitioned for certification of the April 16, 2010 order, the court certified the April 16, 2010 order, Murrell’s Notice of Interlocutory Appeal mentions only the April 16, 2010 order, and Ind. Appellate Rule 46(A)(10) provides that the appellant’s brief “shall include any written opinion, memorandum of decision or findings of fact and conclusions thereon relating to the issues raised on appeal.”

Ind. Appellate Rule 5(B) provides that “[t]he Court of Appeals shall have jurisdiction over appeals of interlocutory orders under Rule 14” Ind. Appellate Rule 14(B)(1)(a) governs the time for filing a motion requesting certification of an interlocutory order and provides:

A motion requesting certification of an interlocutory order must be filed in the trial court within thirty (30) days after the date the interlocutory order is noted in the Chronological Case Summary unless the trial court, for good cause, permits a belated motion. If the trial court grants a belated motion and certifies the appeal, the court shall make a finding that the certification is based on a showing of good cause, and shall set forth the basis for that finding.

Murrell did not file a motion requesting certification of the court's January 12, 2010 order denying his Motion to Dismiss and Discharge Defendant within thirty days. Indeed, Murrell never filed a motion requesting certification of this order as his Petition to Certify an Order for Interlocutory Appeal requested that the court "certify its April 16, 2010 ruling." Appellant's Appendix at 34. Nor did Murrell file a belated motion as to the January 12, 2010 order.

Thus, we turn our attention to the court's denial of Murrell's Demand for Trial Setting and Motion to Transport. In that motion, Murrell stated:

That Defendant's Motion to Dismiss the above-captioned matters based upon Indiana Rule of Criminal Procedure 4(C) and I.C. 35-34-1-4 were denied by this Court on January 12, 2010, despite the fact his cases have pended in excess of one (1) year without being brought to trial attributable to the State and its failure to try Defendant.

Id. at 33. However, Murrell did not specifically request discharge or ask the court to reconsider its January 12, 2010 order. Rather, Murrell requested that the court "set a Court Trial in the above-captioned matters in order to resolve same and to transport Defendant to the Marion County Jail in order to prepare for same or to request an evaluation of Defendant's competency, if necessary."¹ Id.

While Murrell stated in his Petition to Certify an Order for Interlocutory Appeal that "pursuant to Criminal Rule 4(C), [he] was entitled to the dismissal of the

¹ Even assuming that Murrell's Demand for Trial Setting and Motion to Transport was a motion to reconsider, Ind. Trial Procedure Rule 53.4 provides in part that a motion to reconsider "shall not . . . extend the time for any further required or permitted action, motion, or proceedings under these rules."

aforementioned cause numbers and charges,” id. at 35, “[t]he language of Rule 14(B) clearly identifies certification of an order, not of specific issues or questions.” State v. Keller, 845 N.E.2d 154, 160 (Ind. Ct. App. 2006) (citing Budden v. Bd. of Sch. Comm’rs of City of Indianapolis, 698 N.E.2d 1157, 1166 n.14 (Ind. 1998)).

We acknowledge that this Court previously granted Murrell’s Verified Petition to Accept Jurisdiction. However, we point out that Murrell’s petition incorrectly characterized the April 16, 2010 order as a denial of his motion to dismiss. Specifically, Murrell stated:

On November 20, 2009, Mr. Murrell, by counsel, moved to dismiss the charges under criminal rule 4(C) but the motion was denied by the trial court on January 12, 2010.^[2] On January 26, 2010, Mr. Murrell, by counsel, filed a demand for trial setting and motion to transport defendant to Marion County Jail for purpose of trial preparation or competency evaluation, again arguing his cases was [sic] pending in violation of criminal rule 4(C). The motion to dismiss was denied April 16, 2010.

Verified Petition to Accept Jurisdiction of an Interlocutory Appeal at 2.

Under these facts and circumstances, we conclude that Murrell failed to properly and timely appeal the trial court’s January 12, 2010 order denying his Motion to Dismiss and Discharge Defendant. Accordingly, we dismiss Murrell’s appeal. See Cooper v. State, 917 N.E.2d 667, 672 (Ind. 2009) (“Where the notice of appeal is untimely filed, ‘the right to appeal *shall be forfeited* except as provided by [Post-Conviction Rule] 2.’ App. R. 9(A)(5) (emphasis added).”); Wesley v. State, 696 N.E.2d 882, 882-883 (Ind. Ct.

² The record does not reveal that Murrell filed a motion to dismiss on November 20, 2009. Rather, on August 31, 2009, Murrell filed a Motion to Dismiss and Discharge Defendant pursuant to Ind. Criminal Rule 4(C), and the State filed its response on November 20, 2009. See Appellant’s Appendix at 18-19, 22-26.

App. 1998) (holding that without proper certification of an order under a discretionary interlocutory appeal “we have no jurisdiction to entertain the appeal”); see also Keller, 845 N.E.2d at 160 (“Appeals may be taken from interlocutory orders . . . when the trial court certifies its order for review.”); Harrell v. State, 614 N.E.2d 959, 963 n.1 (Ind. Ct. App. 1993) (observing that “[o]ur appellate rules may be used to ensure that only appropriate interlocutory appeals are permitted” and that a defendant cannot invoke an interlocutory discretionary appeal without certification by the trial court and acceptance by the Court of Appeals), reh’g denied, trans. denied; Ind. Appellate Rule 9(A)(5) (providing that unless a notice of appeal is timely filed, the right to appeal shall be forfeited).

For the foregoing reasons we dismiss this appeal.

Dismissed.

ROBB, C.J., and RILEY, J., concur.