

IN THE  
INDIANA COURT OF APPEALS

No. 19A-CR-49

STANLEY WATSON,  
*Appellant-Defendant,*

v.

STATE OF INDIANA,  
*Appellee-Plaintiff.*

Appeal from the  
Ripley Circuit Court,

No. 69C01-0010-CF-52,<sup>1</sup>

The Honorable James D. Humphrey,  
Special Judge.

**STATE'S BRIEF OF APPELLEE**

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<sup>1</sup> This case was also given a Dearborn County cause number due to the appointment of a special judge: 15C01-1711-CB-47. (Supp. Tr. Vol. II 16).

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## STATEMENT OF THE ISSUES

Whether the trial court abused its discretion by finding that Watson was retried within a reasonable amount of time.

## STATEMENT OF THE CASE

### **Nature of the Case**

Stanley Watson filed this direct appeal following the retrial of his habitual offender sentence enhancement.

### **Course of Proceedings**

On October 20, 2000, the State charged Watson with dealing in cocaine, a Class A felony. (App. Vol. II 36). The State filed an additional charge against Watson on November 17, 2000, for conspiracy to deliver cocaine, a Class A felony. (App. Vol. II 39, 43-44).

On December 11, 2000, the trial court granted the State's request to add a charge against Watson for being a habitual offender. (App. Vol. II 48-50). The State alleged that Watson was a habitual offender due to prior convictions from Ohio in 1990, 1992, and 1997. (App. Vol. II 49).

A jury trial was held from June 26 to June 28, 2001. (App. Vol. II 51). The jury found Watson guilty of dealing in cocaine and conspiracy to deliver cocaine, each as a Class A felony. (App. Vol. II 51). After further proceedings, the jury found Watson to be a habitual offender. (App. Vol. II 51). The trial court entered convictions against Watson for dealing in cocaine, a Class A felony, and of being a habitual offender. (App. Vol. II 90). On August 28, 2001, the trial court sentenced

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Watson to 50 years for dealing in cocaine and 30 years for being a habitual offender. (App. Vol. II 90).

On April 2, 2012, the trial court vacated the habitual offender conviction pursuant to post-conviction proceedings in cause number 69C01-0305-PC-2. (App. Vol. II 94-96). On November 28, 2012, the trial court granted leave for the State to amend the information and charge Watson with being a habitual offender due to three different Ohio convictions. (App. Vol. II 97-98).

On January 11, 2013, Watson moved for a continuance of the trial set for January 29, 2013. (App. Vol. II 99). Watson's motion for that continuance stated, "Defendant is incarcerated and has several years left on his current sentence so a continuance at this time would cause no harm." (App. Vol. II 99). On September 13, 2013, Watson moved for a continuance of the jury trial set for September 10, 2013,<sup>2</sup> as Watson was detained in federal prison in Kentucky and his counsel was "unable to secure his attendance" for the trial.<sup>3</sup> (App. Vol. II 102). After granting Watson's motion for a continuance, the trial court set a new trial date for June 3, 2014. (App. Vol. II 103). On its own motion, the trial court rescheduled the trial for July 8, 2014. (App. Vol. II 104).

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<sup>2</sup> This motion appears to have been made and granted after the fact. (App. Vol. II 102-03).

<sup>3</sup> The record presented to the Court provides no explanation for why Watson's counsel could not secure Watson's attendance for trial despite having eight months of notice. (App. Vol. II 100, 102).

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On June 12, 2014, Watson filed a motion to continue the trial set for July 8, 2014. (App. Vol. II 105). Once again, he told the trial court, “Defendant is currently serving a sentence in the Indiana Department of Corrections [sic] and will not be prejudiced by this continuance.” (App. Vol. II 105). The trial court granted Watson’s continuance request and set trial for February 10, 2015. (App. Vol. II 106).

On January 21, 2015, the trial court judge at that time entered an order recusing himself due to prior involvement in the prosecution of Watson. (App. Vol. II 107). A special judge was appointed on January 28, 2015. (App. Vol. II 108). The special judge entered an order accepting his appointment on August 12, 2015.<sup>4</sup> (App. Vol. II 109). On September 29, 2015, Watson, acting on his own and not through his attorney, sent a letter to the trial court asking for a status update and to complain about his attorney. (App. Vol. III 64). On October 20, 2015, the special judge entered an order setting the matter for pretrial conference on March 8, 2015,<sup>5</sup> and a jury trial on April 5, 2016. (App. Vol. II 110). On March 2, 2016, the special judge, *sua sponte*, entered an order continuing the pretrial conference and set it for March 9, 2016, one day later than it was previously scheduled for. (App. Vol. II 113). At the pretrial conference on March 9, 2016, the State moved for a continuance of

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<sup>4</sup> The special judge’s order did not explain the gap between the notice of his appointment and entry of the order accepting the appointment. (App. Vol. II 108-09).

<sup>5</sup> On December 9, 2015, the special judge amended its order and corrected the date to be March 8, 2016. (App. Vol. II 112). Watson brought this mistake to the trial court’s attention, saying that he wanted to avoid a “mix-up.” (App. Vol. II 111).

the trial, which the special judge granted over Watson's objection. (App. Vol. II 114). The special judge set the matter for pretrial conference for September 12, 2016, and trial on October 18, 2016. (App. Vol. II 114). On March 10, 2016, the special judge entered an order to transport Watson on those dates. (App. Vol. II 115).

On May 10, 2016, the special judge, *sua sponte*, moved the trial to October 4, 2016, which was two weeks earlier than the previously scheduled date. (App. Vol. II 116). A pretrial conference was held on September 12, 2016. (App. Vol. II 117). On October 3, 2016, the State filed a motion to continue the trial scheduled for October 4, 2016. (App. Vol. II 118). In its motion, the State asserted, "Based on the Defendant currently serving a criminal sentence, the Court has indicated that said continuance will not result in any Criminal Rule 4 ramifications against the State." (App. Vol. II 118). On October 3, 2016, the special judge granted the State's request for a continuance and set the trial for March 21, 2017.<sup>6</sup> (App. Vol. II 120).

On April 11, 2017, Watson, acting on his own and not through his attorney, sent the trial court clerk a request for a copy of the CCS from his case after he was not transported for the March 21, 2017, trial date; he complained about his attorney, but he did not assert any request for a speedy trial or object to the duration of the case. (App. Vol. II 121). On October 5, 2017, the State moved for a

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<sup>6</sup> Although the special judge's entry from the pretrial conference showed that the State would be filing a written continuance to which Watson preemptively objected, there is nothing in the record showing that Watson objected to the request once the written motion was filed. (App. Vol. II 117-20).

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trial date to be set. (App. Vol. II 122). Later that day, the special judge entered an order recusing himself due to the fact that he was no longer serving as a senior judge. (App. Vol. II 123). On October 12, 2017, a second special judge entered an order recusing himself due to a conflict. (App. Vol. II 125).

On October 12, 2017, the trial court clerk appointed the judge of the Ohio County Circuit Court as a special judge in this matter. (App. Vol. II 126). On November 20, 2017, the Ohio Circuit Court judge entered an order setting the matter for a final pretrial conference on April 2, 2018, and trial on May 15, 2018. (App. Vol. II 127). On March 19, 2018, Watson, acting on his own and not through his attorney, sent the trial court clerk a request for his “new court date.” (App. Vol. II 128).

On April 10, 2018, Watson’s attorney moved to withdraw due to scheduling conflicts. (App. Vol. II 129). The motion to withdraw was granted on April 13, 2018, and new counsel was appointed at the same time. (App. Vol. II 16, 130). Watson’s new attorney filed his appearance on April 17, 2018. (App. Vol. II 131-32).

On April 26, 2018, Watson filed a motion to continue the trial scheduled for May 15, 2018. (App. Vol. II 133). Watson’s continuance was granted, and a pretrial conference was set for October 22, 2018, and trial was set for November 27, 2018. (App. Vol. II 135). On September 18, 2018, Watson, acting on his own and not through his attorney, sent a request for certain documents to the trial court clerk. (App. Vol. II 136). On November 15, 2018, Watson moved to dismiss this case. (App. Vol. III 11-23). On November 21 and 26, 2018, the State made motions to amend the

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charging information as to form and not as to substance. (App. Vol. III 3-6). Watson filed a motion to continue the trial scheduled for November 27, 2018, but that request was denied. (App. Vol. III 90-92, 96). Watson filed an amended motion to continue and request funds for a fingerprint expert on November 25, 2018, but this request was denied. (App. Vol. III 8).

On November 28, 2018, the trial court denied Watson's motion to dismiss. (App. Vol. III 146-51). The trial court calculated that 2,431 days had passed between April 2, 2012, and November 27, 2018. (App. Vol. III 146). It calculated that 742 days of delay occurred after Watson made continuance requests delaying the trial from January 9, 2013, to January 21, 2015; that the continuances requested by the State in 2016 and 2017 were not made in bad faith and resulted in 377 days of delay<sup>7</sup>; and 980 days of delay occurred due to the trial court's scheduling of matters, the recusal or resignation of two judges, and the appointment of two special judges. (App. Vol. III 147). Further, the trial court found that the continuance requested from Watson's newly appointed counsel resulted in a delay of 232 days, and it noted that on November 18, 2015, Watson wrote in a letter to the court, "I want to get this trial over." (App. Vol. III 148). The trial court found that Watson failed to produce evidence showing "how the delay in retrial on the habitual

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<sup>7</sup> However, the trial court found a total of 477 days of delay were directly attributable to the State in its conclusions of law. (App. Vol. III 148).

offender allegation would actually prejudice his ability to present a defense.” (App. Vol. III 148).

In its denial of Watson’s motion to dismiss, the trial court found that Criminal Rule 4(C) “does not apply to retrials after vacation or reversal of a conviction. The sole possible basis for relief is Watson’s constitutional right to a speedy trial.” (App. Vol. III 148). It further found that “Watson’s constitutional right to a speedy trial ha[d] not been violated.” (App. Vol. III 150).

A jury trial was held on November 27, 2018, and the jury found Watson guilty of being a habitual offender. (App. Vol. III 152). Accordingly, the trial court entered a judgment of conviction against Watson for being a habitual offender on November 30, 2018. (App. Vol. III 152).

### **Disposition**

On December 20, 2018, the trial court enhanced Watson’s sentence for dealing cocaine by 30 years because he was a habitual offender. (App. Vol. III 195-97).

### **Course of Appellate Proceedings**

Watson filed his notice of appeal on January 9, 2019. (Docket). On February 5, 2019, the Court granted leave for Watson to file a non-conforming appendix. (Docket). The notice of completion of the transcript was filed on February 22, 2019. (Docket). After receiving extensions of time, Watson filed his appellant’s brief on May 27, 2019. (Docket).

### **STATEMENT OF THE FACTS**

Watson was convicted of Class A felony dealing in cocaine and was also found to be a habitual offender in 2001. (App. Vol. II 90-91). He was sentenced to 80 years in prison. (App. Vol. II 90-91). Watson later pursued post-conviction relief, and the post-conviction court vacated the habitual offender finding in 2012 (App. Vol. II 94-96). The State subsequently obtained permission to amend the habitual offender information. (App. Vol. II 97-98).

After several continuances requested by Watson and the State, as well as several changes of judges and continuances on the court's own motion, Watson moved to dismiss the case shortly before the retrial on the habitual offender allegation was set to begin. (App. Vol. II 99-100, 102-09, 113-14, 116, 118, 120, 122-26, 129-30, 133-35; App. Vol. III 11-24, 25-39). The trial court denied Watson's motion, and a jury found Watson was a habitual offender (App. Vol. III 146-52).

### **SUMMARY OF THE ARGUMENT**

Watson has not demonstrated that he is entitled to relief. He has not demonstrated that Criminal Rule 4(C) requires reversal because he has not shown that it applies to retrials. The precedent he cites in an attempt to argue otherwise is explicitly considered inapposite by the very text he cites in support. He has not shown that the Indiana or United States Constitutions demand reversal because he has not demonstrated that the delay was not reasonable in light of the circumstances. He has not shown that he was interested in invoking a right to a speedy trial until six years into the case when he moved to dismiss his case less

than two weeks before trial. Lastly, he has not shown that he was prejudiced in any way, except potentially by the length of the delay itself. However, as Watson noted in one of his motions for a continuance, there was “no harm” in a delay because Watson was already serving a lengthy sentence. A delay of under four years for a retrial, where much of the delay was necessitated by the appointment of multiple special judges and the State did not delay the trial in bad faith, does not justify dismissal of charges on speedy trial grounds by itself. This Court should affirm the trial court’s proper exercise of discretion in finding that the delay was reasonable under the circumstances.

### **ARGUMENT**

**The trial court did not abuse its discretion by finding that the State retried Watson within a reasonable amount of time where Watson did not assert his rights until after six years had passed and could not demonstrate actual or presumed prejudice.**

This Court should affirm Watson’s habitual offender conviction because he has not shown that his rights under Criminal Rule 4 or to a speedy trial under the Indiana Constitution or U.S. Constitution were violated. Pursuant to Criminal Rule 4(C):

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 held 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

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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.

Article 1, Section 12, of the Indiana Constitution states in relevant part, “Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.” Additionally, the Sixth Amendment to the U.S. Constitution grants defendants in criminal cases “the right to a speedy and public trial.” *See also* U.S. Const. amend. XIV.

As Watson pointed out to the trial court in his motion to dismiss, the standard for when a defendant must be retried—as opposed to an initial trial—under all three of those authorities is that the defendant must be tried within a “reasonable” amount of time. (App. Vol. III 13-14 (citing *Nelson v. State*, 542 N.E.2d 1336 (Ind. 1989) (observing that Criminal Rule 4 “does not specify how much time is reasonable following a mistrial by reason of a hung jury”); *Barker v. Wingo*, 407 U.S. 514 (1972); *Lahr v. State*, 615 N.E.2d 150 (Ind. Ct. App. 1993); *State ex rel. Brumfield v. Perry Circuit Court*, 426 N.E.2d 692 (Ind. 1981))). Ordinarily, decisions on motions for discharge are reviewed *de novo*. *Hoskins v. State*, 83 N.E.3d 124, 127 (Ind. Ct. App. 2017). However, where trial courts are vested with discretion, this Court reviews the decision for an abuse of discretion. *O’Neill v. State*, 597 N.E.2d 379, 382 (Ind. Ct. App. 1992), *trans. denied*. Specifically, a trial court only commits an abuse

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of discretion when its decision is “clearly against the logic and effect of the facts or the reasonable, probable deductions which may be drawn from the facts and circumstances of the case.” *Id.* (citing *Boles v. Weidner*, 449 N.E.2d 288, 290 (Ind. 1983); *Klagiss v. State*, 585 N.E.2d 674, 680 (Ind. Ct. App. 1992), *trans. denied*).

This Court should not find a strict one-year deadline for the State to bring Watson to trial existed in this case following the vacatur of his original habitual offender conviction. On appeal, Watson has abandoned his recognition of the standard for retrials and mistakenly overreaches by applying *Poore v. State* to applications of Criminal Rule 4(C). 685 N.E.2d 36 (Ind. 1997); (Appellant’s Br. 13-16). Watson fails to acknowledge that in *Poore* the defendant moved for a speedy trial under Criminal Rule 4(B). *Id.* at 37. Our Supreme Court specifically noted that the “decisions holding Rule 4(C) inapplicable to retrials are not on point,” and “Rule 4(B) applies to retrials so long as the defendant makes a Rule 4(B) request after the retrial has been ordered.” *Id.* at 38 n.2. There is nothing in the record showing that Watson made an affirmative request for an early trial under Criminal Rule 4(B). Because our Supreme Court has already found that the cases interpreting Criminal Rule 4(C) in the context of retrials was not relevant to the interpretation of Rule 4(B), interpretations of Criminal Rule 4(B) and *Poore* are therefore irrelevant to the current proceedings as they stand for different resolutions to dissimilar issues. *See also State v. Roth*, 585 N.E.2d 717, 718 (Ind. Ct. App. 1992), *trans. denied* (noting that the “Supreme Court determined that the time limits in C.R. 4(A) and (C) did

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not continue in effect after a mistrial, and that the defendant must be retried within a reasonable amount of time after a mistrial”) (citations omitted). Watson’s argument that *Poore* shows that “Indiana’s Supreme Court has already held that Criminal Rule 4 applies to retrials of habitual offender enhancements” is therefore overbroad, ill-founded, and not well-taken. (Appellant’s Br. 13).

Instead, this Court reviews whether a defendant was brought to trial within a reasonable amount of time. In *Brumfield*, our Supreme Court found that Criminal Rule 4 “does not anticipate mistrials,” and it noted that the “rule speaks in terms of the time allowed the State to bring a defendant to trial not to convict him.” 426 N.E.2d at 695. As a result, our Supreme Court held that the “only limitation” on the State’s deadline to bring a defendant to retrial following a mistrial is a “reasonable time.” *Id.* There is no reason to believe that retrials following post-conviction relief should be treated differently from retrials following mistrials. *See also State v. Montgomery*, 901 N.E.2d 515, 519 (Ind. Ct. App. 2009), *trans. denied* (finding that reasonableness of time is the standard for the State’s deadline to retry a defendant after an appellate reversal) (citing *Lahr v. State*, 615 N.E.2d 150, 151 (Ind. Ct. App. 1993); *Nelson*, 542 N.E.2d at 1338). Because Criminal Rule 4(C) does not specify a time in which a retrial must be initiated, the trial court “possesses the discretion to determine” whether the State has retried a defendant within a reasonable amount of time. *O’Neill*, 597 N.E.2d at 382 (citing *Brumfield*, 426 N.E.2d at 695, *Roth*, 585 N.E.2d at 718). This is the same standard used to determine whether a defendant’s speedy trial rights under the Indiana Constitution or the U.S. Constitution have

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been offended. *See Barker*, 407 U.S. at 530; *Crawford v. State*, 669 N.E.2d 141, 145 (Ind. 1996); *Logan v. State*, 16 N.E.3d 953, 961-62 (Ind. 2014).

The trial court did not abuse its discretion by finding that that the State had retried Watson within a reasonable amount of time. (App. Vol. III 146-51).

In judging whether the specific circumstances establish a violation of the speedy trial right, the court balances four factors: 1) the length of the delay; 2) the reasons for the delay; 3) the timeliness and vigor of the defendant's assertion of the right to a speedy trial; and 4) the prejudice, if any, the delay caused the defendant.

*O'Neill*, 597 N.E.2d at 381-82. The first factor is a "triggering mechanism" that determines whether it is necessary to engage in the balancing test at all.

*Montgomery*, 901 N.E.2d at 520 (citing *Sturgeon v. State*, 683 N.E.2d 612, 616 (Ind. Ct. App. 1997), *trans. denied*; *Barker*, 407 U.S. at 530). This Court has found 18 months sufficient to trigger review under the *Barker* balancing test without particular inquiry into the "particular circumstances' of the case." *Id.* (citing *Lahr*, 615 N.E.2d at 152). As a result, the analysis in this case continues to the other factors.

The reasons for delay in this case are varied, but the common thread is that none of them involved a deliberate attempt to hamper the defense.

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 courts 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. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

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*Id.* (quoting *State v. Azania*, 865 N.E.2d 994, 1002 (Ind. 2007); *Barker*, 407 U.S. at 531). The trial court found 732 days were attributable to continuances requested by Watson, which weighed against Watson; 477 days of delay were attributable to continuances motions and the “time period between when post-conviction relief was granted and when [the State] requested a habitual offender retrial” and weighed against the State; 980 days of delay were attributable to actions of the trial court, which it found weighed against the State but to a lesser extent than the delays directly caused by the State; and 232 days of delay were attributable to the delay caused by the withdrawal of Watson’s original attorney and continuance requested by his second, which the trial court found should weigh against neither party. (App. Vol. III 148-49). With respect to the delay directly attributable to the State, the trial court found, “There is no evidence that these continuance motions were made in bad faith or for the purpose of prejudicing Watson’s defense,” and Watson has made no showing to the contrary on appeal.<sup>8</sup> (App. Vol. III 147). As to the delay attributable to actions of the trial court, the court found the following:

The Court also notes that much of its delay was caused by the need to appoint two different special judges during the pendency of this case. The Indiana Supreme Court has held that, at least with respect to Criminal Rule 4(C), delays in trial caused by the need to appoint a special judge are not attributable to the State. *State v. Larkin*, 100

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<sup>8</sup> Watson ignores the language from *Barker* (and incorporated by *Azania*) that insidious attempts to delay trial weigh against the State heavier than other delays for the purpose of determining reasonableness of a delay. 407 U.S. at 531; 865 N.E.2d at 1002; *see* (Appellant’s Br. 19, 26) (incorrectly asserting that “[b]ad faith is not part of the equation”). However, Watson acknowledges that the State did not have any “evil intent” in this case. (Appellant’s Br. 19).

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N.E.3d 700, 705-06 (Ind. 2018). The Court acknowledges that a constitutional speedy trial analysis is different than a Rule 4(C) analysis. *See Logan*, 16 N.E.3d at 963. Still, delays related to special judge appointments in this case should not weigh heavily against the State.

(App. Vol. III 149). As a result, this factor does not tilt specifically in favor of either party. Watson was directly at fault for a longer delay than the State was directly responsible for. (App. Vol. III 146-49). The trial court did not abuse its discretion by finding that the delays attributable to the court weighed against the State to a lesser extent than the actions of the State itself. If this *Barker* factor balances against the State, it does so only slightly.

As for the factor regarding assertion of the right to a speedy trial, Watson was neither timely nor vigorous in his invocation of his rights for a speedy trial.

Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

*Montgomery*, 901 N.E.2d at 521-22 (quoting *Azania*, 865 N.E.2d at 1002-03; *Barker*, 407 U.S. at 531-32); *see also Doggett v. United States*, 505 U.S. 647, 653 (1992) (noting that if the defendant had known about his indictment one and a half years before the government's six-year delay and failed to invoke his right to a speedy trial, this *Barker* factor would be "weighed heavily against him"). Watson's first

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invocation of his right to a speedy trial was nearly as delayed as the trial itself. (App Vol. II 19; App. Vol. III 11-23, 149). He filed his motion to dismiss pursuant to Criminal Rule 4(C) on November 15, 2018, less than two weeks before his final trial date. (App. Vol. II 19; App. Vol. III 11-23). Indeed, the trial court observed that after the first special judge alerted the parties to his retirement, it was the State, not Watson, who requested that a trial date be set. (App. Vol. II 149). As a result, this *Barker* factor balances firmly against Watson, and the trial court did not abuse its discretion by finding the same.

Watson once again overreaches by mischaracterizing the substance of the letters he sent to the trial court and the trial court clerk; they were requests for clarifications and status updates and a forum for Watson to complain about his attorney, not invocations of a speedy trial right. On December 9, 2015, Watson pointed out to the trial court that the trial court's order dated October 20, 2015, setting the matter for a pretrial conference on March 8, 2015, was incorrect and that he wanted to ensure that there would be no issues with his transportation from the jail to the courtroom. (App. Vol. II 110-11). Although Watson mentioned that he wanted to "get this trial over," he said this in the context of wanting to avoid foreseeable, avoidable delays due to typographical errors. (App. Vol. II 111). There is nothing in that letter about an invocation of speedy trial rights or a desired pace of the proceedings. (App. Vol. II 111). On April 11, 2017, Watson sent a letter to the trial court clerk asking for a status update because he was not transported from the jail on his previously scheduled court date and to complain that his attorney was

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not answering his calls. (App. Vol. II 121). There is nothing in this letter invoking speedy trial rights or asking for the pace of the proceedings to be increased. (App. Vol. II 121).<sup>9</sup> On March 19, 2018, Watson wrote to the trial court clerk complaining about the availability of his attorney and asked for the clerk for his new court date. (App. Vol. II 128). Once again, Watson did not invoke his rights to a speedy trial or ask for an increased pace of litigation. (App. Vol. II 128). The same occurred in his letter to the trial court clerk on September 18, 2018, as well. (App. Vol. II 136). In addition to all of the foregoing reasons, the trial court could not consider the substance—to the extent there was any—of Watson’s communications because they were made by Watson himself while he was represented by an attorney. *See Broome v. State*, 687 N.E.2d 590, 594 (Ind. Ct. App. 1997) (finding that a party cannot act *pro se* while represented by counsel and that a trial court may ignore filings made by the represented party’s filings that were not filed by counsel) (citing *Kindred v. State*, 521 N.E.2d 320, 325 (Ind. 1988); *Bradberry v. State*, 266 Ind. 530, 537, 364 N.E.2d 1183, 1187 (Ind. 1977)), *summarily aff’d in relevant part*, 694 N.E.2d 280, 281 (Ind. 1998). The trial court did not abuse its discretion by declining to find that these communications tilted the balance in Watson’s favor.

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<sup>9</sup> In *Logan*, our Supreme Court noted that defendants who are unhappy with the pace of litigation may file a motion under Criminal Rule 4(B) for an early trial, which triggers different standards. 16 N.E.3d at 960-61. Watson made no such motion, with or without counsel.

Watson has also not shown that he suffered sufficient prejudice to shift the final *Barker* factor in his favor.

Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (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. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.

*Montgomery*, 901 N.E.2d at 522 (quoting *Barker*, 407 U.S. at 532). “The burden is on the defendant to show he was actually prejudiced by the delay.” *Id.* (citing *Sturgeon*, 683 N.E.2d at 617).

The delays not attributable to Watson do not rise to the level of presumed prejudice. In his attempt to compare his case to *Doggett*, Watson glazes over the fact that a large portion of the delay in his case was attributable to him. (Appellant’s Br. 21). In *Doggett*, the Supreme Court found that the “extraordinary 8½ year lag between Doggett’s indictment and arrest clearly suffices to trigger the speedy trial inquiry” and that the defendant would have been tried six years earlier had the government not delayed his case due to “inexcusable oversights.” *Id.* at 652, 657-58. It further wrote that “[w]hen the Government’s negligence thus causes delay six times as long as that generally sufficient to trigger judicial review...and when the presumption of prejudice, albeit unspecified, is neither extenuated, as by the

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defendant's acquiescence...nor persuasively rebutted, the defendant is entitled to relief." *Id.* at 658 (footnotes omitted). Although "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify," even where prejudice is presumed, it "cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria...it is part of the mix of relevant facts, and its importance increases with the length of delay." *Id.* at 655-56. Watson experienced a much shorter delay than the defendant in *Doggett* because around two and a half years of delay occurred at his request for continuances. (App. Vol. II 99, 102, 105; App. Vol. III 148). Watson also noted in more than one continuance request that there was "no harm" in a delay because the sentence he was serving still had several years remaining. (App. Vol. II 99, 105).

In applying the principle of presumed prejudice, our Supreme Court in *Logan* found that where the defendant had experienced a 1,291-day delay, mostly due to court congestion, and had demonstrated "oppressive pretrial incarceration," the *Barker* factor of prejudice still only weighed "moderately in his favor." 16 N.E.3d at 964. The less-than-four-year delay of Watson's retrial was substantially less than the delay in *Doggett*. To the extent Watson has demonstrated any prejudice, it is certainly less than the moderate prejudice found in *Logan* because, as discussed below, Watson has not demonstrated prejudice to any of the interests the Supreme Court identified in *Barker*.

With respect to a defendant's interest in avoiding oppressive pretrial incarceration, the *Barker* Court explained that the procedural posture of a

case matters; an incarcerated defendant serving a duly entered conviction experiences less prejudice than a defendant who is not. Specifically, the Court noted, “if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense,” and “[i]mposing those consequences on anyone *who has not yet been convicted* is serious.” *Barker*, 407 U.S. at 532 (emphasis added). Watson has not experienced oppressive pretrial incarceration because he is serving a duly entered 50-year sentence for dealing in cocaine.<sup>10</sup> (App. Vol. II 94-95). Moreover, serving a lawful sentence cannot be considered “oppressive pretrial incarceration” under any standard.

The first time Watson expressed concerns about anxiety was in an attempt to show prejudice in his motion to dismiss for alleged speedy trial violations shortly before his retrial was set to begin. (App. Vol. III 11-23). Watson began these retrial proceedings by requesting delays and representing to the trial court that he would not experience prejudice from a delay because he was already serving an executed

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<sup>10</sup> Additionally, Watson was charged and convicted in the United States District Court for the Southern District of Indiana while serving his sentence at the Indiana Department of Correction. (App. Vol. III 161). In August 2012, Watson was charged in the United States District Court for the Southern District of Indiana. (App. Vol. III 160). In January 2015, Watson was convicted in that court for use of a communication facility to facilitate the commission of distribution and/or possession with intent to distribute methamphetamine and was sentenced to 36 months of imprisonment in the United States Bureau of Prisons “consecutive to any other term of imprisonment.” (App. Vol. III 160). Watson’s ongoing federal proceedings appear to have been the basis for at least one of his continuance requests. (App. Vol. II 102).

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sentence. (App. Vol. II 99). He made this same argument again a year later. (App. Vol. II 105). Watson's *pro se* communications with the trial court and trial court clerk show frustration with his legal representation; they do not include requests to speed up the pace of litigation or express any anxiety over the possible extension of his sentence. (App. Vol. II 111, 121, 128, 136; Vol. III 64). He made one passing reference to wanting the trial to be over, but he did not express anxiety over the final result of the case while doing so. (App. Vol. II 111). As noted above, he said this in the context of wanting to avoid a needless scheduling "mix-up" by clarifying his pretrial hearing date given an error in the trial court's scheduling order. (App. Vol. II 110-11). Watson ended that letter by saying, "Could you please make sure this is straightened out." (App. Vol. II 111). The trial court promptly corrected its mistake. (App. Vol. II 112). Additionally, as discussed above, the trial court was not required to give any weight to Watson's communications because they were not sent through his attorney. The trial court did not abuse its discretion by finding that whatever anxiety Watson experienced, it was not sufficient to weigh the *Barker* prejudice factor in his favor.

Watson has not shown the delay in this case prejudiced his defense, nor could he. The *Barker* Court explained that this interest is the most important of the three it identified. 407 U.S. at 532. Watson was well aware of his previous convictions, and there is no indication that he believed that he had a meritorious defense against a habitual offender enhancement. Indeed, Watson elected not to present a defense at trial. (Tr. Vol. II 84). Watson has made no demonstration that this choice

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had anything to do with the delay of his trial. The delay in this context was more likely to risk the State's case given that it relied on the preservation of decades-old records from another state. (St. Exs. 1-2). Watson attempted to argue to the trial court that he missed an opportunity to be sentenced under changes in the statute, but the trial court squarely rejected this argument because Indiana case law makes clear that those changes did not apply to cases filed by July 1, 2014. (App. Vol. II 50) (citing *Cox v. State*, 38 N.E.3d 702, 704 (Ind. Ct. App. 2015)). There is no reason to believe that the trial court abused its discretion by declining to find prejudice to Watson's ability to defend himself.

Watson has not demonstrated that he is entitled to relief. He has not demonstrated that Criminal Rule 4(C) requires reversal because he has not shown that it applies to retrials. He has not shown that the Indiana or United States Constitutions demand reversal because he has not demonstrated that the delay was not reasonable in light of the circumstances. He has not shown that he was interested in invoking a right to a speedy trial until six years into the case as a possible way out of liability for being a habitual offender. Lastly, he has not shown that he was prejudiced in any way, except potentially by the length of the delay itself. As discussed above, a delay of under four years for a retrial, where much of the delay was necessitated by the appointment of multiple special judges and the State did not delay the trial in bad faith, does not justify dismissal of charges on speedy trial grounds by itself. (App. Vol. III 149). As a result, this Court should

affirm the trial court's proper and well-supported exercise of discretion in finding that the delay was reasonable under the circumstances.

**CONCLUSION**

This Court should affirm the trial court's judgment.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on June 26, 2019, the foregoing document was electronically filed using the Indiana E-filing System (“IEFS”). I also certify that on June 26, 2019, the foregoing was served upon opposing counsel, via IEFS, addressed as follows:

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