

IN THE  
INDIANA SUPREME COURT

No. 19A-CR-49

STANLEY WATSON,  
*Appellant-Petitioner,*

v.

STATE OF INDIANA,  
*Appellee-Respondent.*

Appeal from the  
Ripley Superior Court,

No. 69C01-0010-CF-52,

The Honorable James D. Humphrey,  
Judge.

**STATE'S PETITION TO TRANSFER**

CURTIS T. HILL, JR.  
Attorney General  
Attorney No. 13999-20

SAMUEL J. DAYTON  
Deputy Attorney General  
Attorney No. 31822-49

OFFICE OF THE ATTORNEY GENERAL  
Indiana Government Center South  
302 West Washington Street, Fifth Floor  
Indianapolis, Indiana 46204-2770  
317-233-3972 (telephone)  
Samuel.Dayton@atg.in.gov

*Attorneys for Appellee*

**QUESTION PRESENTED ON TRANSFER**

After obtaining post-conviction relief, Watson was retried for being a habitual offender. Whether the trial court correctly followed this Court's case law in finding that Criminal Rule 4(C) does not apply to retrials.

**TABLE OF CONTENTS**

Table of Authorities.....4

Background and Prior Treatment of Issue on Transfer .....6

Argument:

    Criminal Rule 4(C) does not apply to retrials for habitual offender  
    enhancements following post-conviction relief.....8

Conclusion.....15

Certificate of Word Count .....15

Certificate of Service .....15

## TABLE OF AUTHORITIES

### Cases

<i>Austin v. State</i> , 997 N.E.2d 1027 (Ind. 2013) .....	10
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972) .....	5, 7, 11
<i>State ex rel. Brumfield v. Perry Circuit Court</i> , 426 N.E.2d 692 (Ind. 1981) .....	<i>passim</i>
<i>Crawford v. State</i> , 669 N.E.2d 141 (Ind. 1996).....	5
<i>Cundiff v. State</i> , 967 N.E.2d 1026 (Ind. 2012).....	10
<i>James v. State</i> , 716 N.E.2d 935 (Ind. 1999).....	10
<i>Lahr v. State</i> , 615 N.E.2d 150 (Ind. Ct. App. 1993).....	6, 10, 14
<i>Nelson v. State</i> , 542 N.E.2d 1336 (Ind. 1989) .....	<i>passim</i>
<i>Poore v. State</i> , 685 N.E.2d 36 (Ind. 1997) .....	11, 12, 14
<i>State v. Larkin</i> , 100 N.E.3d 700 (Ind. 2018).....	7
<i>State v. Montgomery</i> , 901 N.E.2d 515 (Ind. Ct. App. 2009), <i>trans. denied</i> .....	6, 10, 14
<i>Watson v. State</i> , 19A-CR-49, slip op. (Ind. Ct. App. Oct. 31, 2019) .....	5, 8, 12, 13

### Other Authorities

Ind. Criminal Rule 4.....	5, 9, 10
Ind. Criminal Rule 4(B).....	11, 12, 14
Ind. Criminal Rule 4(C).....	<i>passim</i>

Petition to Transfer  
State of Indiana

The Court of Appeals departed from this Court's precedent and created a split in Court of Appeals case law that must be remedied by this Court. *Watson v. State*, 19A-CR-49, slip op. (Ind. Ct. App. Oct. 31, 2019). This Court should grant transfer in order to hold that Criminal Rule 4(C) does not apply to the time period upon retrial of a habitual offender. A decade after his original conviction, Watson received post-conviction relief that vacated his habitual offender enhancement. For a variety of reasons, Watson's retrial on his habitual offender enhancement did not occur quickly. Around six years after the habitual offender charge was amended, and approximately two weeks before trial, Watson moved to dismiss the amended habitual offender charge pursuant to Criminal Rule 4(C). The trial court denied Watson's motion because it found that the law was "clear" that Criminal Rule 4(C) did not apply to retrials. (App. Vol. III 148).

On appeal, the Court of Appeals applied Criminal Rule 4(C) to the retrial of Watson's habitual offender enhancement. This flies in the face of precedent. As early as 1981, this Court recognized that it is "obvious" that Criminal Rule 4 does not anticipate mistrials. *State ex rel. Brumfield v. Perry Circuit Court*, 426 N.E.2d 692, 695 (Ind. 1981). This Court reaffirmed that decision in 1989, when it found that delays following mistrials are only governed by a "reasonable time" standard. *Nelson v. State*, 542 N.E.2d 1336, 1338 (Ind. 1989); *see also Barker v. Wingo*, 407 U.S. 514 (1972) (establishing the test for reasonableness under the federal Constitution); *Crawford v. State*, 669 N.E.2d 141, 145 (Ind. 1996) (applying the same test under the Indiana Constitution). Prior to this decision, the Court of

Appeals relied upon this Court's precedent to find that Criminal Rule 4(C) does not apply "on retrial." *Lahr v. State*, 615 N.E.2d 150, 151-52 (Ind. Ct. App. 1993); *State v. Montgomery*, 901 N.E.2d 515, 519-20 (Ind. Ct. App. 2009), *trans. denied*. The appellate court's decision fails to address or otherwise reconcile this case law.

In a divided, published opinion, the Court of Appeals departed from its own precedent and the precedent of this Court by applying Criminal Rule 4(C) to the Watson's retrial following Watson's successful petition for post-conviction relief. Moreover, the Court of Appeals problematically provided no guidance to trial courts regarding how its new rule should be applied given that Criminal Rule 4(C) has a static timeline that runs from the time criminal charges are filed or the defendant is arrested, whichever occurs later—a timeline that is fundamentally incompatible with the Court of Appeals' opinion applying it to a retrial following post-conviction relief.

#### **BACKGROUND AND PRIOR TREATMENT OF ISSUE ON TRANSFER**

In August 2001, the trial court sentenced 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 due to a defect in two of the underlying convictions. (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).

Petition to Transfer  
State of Indiana

On January 11, 2013, Watson moved for a continuance of the trial set for January 29, 2013. (App. Vol. II 99). From that first continuance, the trial would be delayed for approximately another six years. On November 15, 2018, Watson moved to dismiss this case. (App. Vol. III 11-23).

On November 28, 2018, the trial court denied Watson's motion to dismiss. (App. Vol. III 146-51). Using the constitutional speedy trial test, the trial court calculated that 2,431 days had passed between April 2, 2012, and November 27, 2018.<sup>1</sup> (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>2</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

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

---

<sup>1</sup> A constitutional calculation does not use the same calculation methods as those used for Criminal Rule 4(C). (App. Vol. II 148); *compare Barker*, 407 U.S. at 531-32, *with* Crim. R. 4(C). For example, delays attributable to the appointment of special judges are chargeable against defendants for the purposes of Criminal Rule 4(C). *State v. Larkin*, 100 N.E.3d 700, 705-06 (Ind. 2018).

<sup>2</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).

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).

In a published opinion, the Court of Appeals found that Criminal Rule 4(C) applied to the Watson’s retrial for his habitual offender enhancement. *Watson*, slip op. at 9-10.

## ARGUMENT

### **Criminal Rule 4(C) does not apply to retrials for habitual offender enhancements following post-conviction relief.**

The Court of Appeals’ application of Criminal Rule 4(C) departs from this Court’s precedent, creates a split in authority from the Court of Appeals, fails to promote justice, and provides no guidance to trial courts regarding how they are supposed to calculate Criminal Rule 4(C)’s static deadline. Specifically, Criminal Rule 4(C) states that “[n]o 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....” This Court and the Court of Appeals, until this case, consistently found that Criminal Rule 4(C) does not apply to retrials because the Rule does not anticipate retrials. The Court of Appeals’ opinion provides no guidance to trial courts about how to interpret Criminal Rule

Petition to Transfer  
State of Indiana

4(C)'s triggering events of "one year from the date the criminal charge...is filed" or the defendant's "arrest on such charge" are to be applied going forward. This Court should grant transfer eliminate the division created in Indiana's case law and to reaffirm the precedent that Criminal Rule 4(C) does not apply to retrials.

This has never applied Criminal Rule 4(C) does to retrials. Rather, this Court has repeatedly observed that Rule 4(C) does not contemplate retrials. In *Brumfield*, the defendant had been timely brought to trial, but the trial court declared a mistrial, discharged the jury, and released the defendant on bond. 426 N.E.2d at 694. By the time the trial court held a hearing to set a new trial date, more than a year had passed since the original charges had been filed. *Id.* The defendant filed a motion for discharge pursuant to Criminal Rule 4(C), but the trial court denied the motion. *Id.* The defendant petitioned this Court for an emergency writ to compel the trial court to discharge him, but this Court denied his request. *Id.* at 694-95. This Court observed that it is

obvious that [Criminal Rule 4] does not anticipate mistrials. The rule speaks in terms of the time allowed the State to bring a defendant to trial not to convict him. In the case before us, the defendant was brought to trial within the prescribed period of time under the rule. The rule does not specify how much time is reasonable following a mistrial by reason of a hung jury. Until such a rule is adopted, the only limitation is a "reasonable time."

*Id.* at 695. This Court reaffirmed that decision in *Nelson*, 542 N.E.2d at 1338.

Although these cases both observe that Criminal Rule 4(C) does not anticipate mistrials, there is no reason to conclude that retrials for any other reason are contemplated by the rule. Nor is there a reasonable basis for treating the two

differently. *See James v. State*, 716 N.E.2d 935, 939 (Ind. 1999) (“[W]e have held that Crim. R. 4(C) does not apply to retrials”) (citing *Brumfield*, 426 N.E.2d at 695). Even in light of this Court’s decision in *Brumfield*, this Court has not amended Criminal Rule 4(C) to accommodate mistrials or other retrials.

Indeed, the Court of Appeals in *Lahr* interpreted this Court’s precedent as clearly establishing that “the time limitations of [Criminal Rule 4(C)] do not apply on retrial.” 615 N.E.2d at 151 (citing *Nelson*, 542 N.E.2d at 1338). In *Montgomery*, the Court of Appeals concluded, “to the extent that the trial court discharged the case against Montgomery because of a violation of his right to a speedy trial under Rule 4(C), we hold that the trial court erred.” 901 N.E.2d at 519 (citing *Lahr*, 615 N.E.2d at 151; *Nelson*, 542 N.E.2d at 1338). Instead, the Court of Appeals applied the constitutional speedy trial analysis. *Id.*

Retrials do not implicate the same concerns about timeliness as initial trials do, particularly in the context of retrials limited to determining whether the defendant is a habitual offender. The purpose of Criminal Rule 4 “is to provide functionality to a criminal defendant’s fundamental and constitutionally protected right to a speedy trial.” *Austin v. State*, 997 N.E.2d 1027, 1037 (Ind. 2013). Criminal Rule 4 is not intended to address every situation covered by the constitutional right to a speedy trial. *Cundiff v. State*, 967 N.E.2d 1026, 1027 n.2 (Ind. 2012) (citations omitted). It is less reasonable to apply the rigid functionality of Criminal Rule 4(C) to retrials because retrials often involve concerns that initial trials do not. Perhaps the clearest example of the difference is due to the passage of time. Retrials,

Petition to Transfer  
State of Indiana

particularly those following post-conviction relief, can happen long after the conclusion of an initial trial. This can cause preparation for a retrial can become much more difficult than preparation for an initial trial, especially in situations where memories have faded or witnesses become unavailable. On the other hand, retrials can also be less intrusive on the rights of a defendant than an initial trial. Watson, for example, was still serving his underlying 50-year sentence at the time of his retrial and has demonstrated no prejudice to his ability to assert a defense to the amended habitual offender charge. Pending the retrial, there was no question of Watson's guilt as to the underlying felony offense. Because initial trials and retrials do not implicate the same policy considerations, Criminal Rule 4(C) should not automatically be applied to both situations. The flexible constitutional analysis is better equipped to address the unique circumstances that arise in retrials. *See Barker*, 407 U.S. at 530.

Watson and the Court of Appeals' reliance on this Court's decision in *Poore v. State* is misplaced because this Court carefully explained that it was limiting its holding to the definition of "trial" in Criminal Rule 4(B).<sup>3</sup> 685 N.E.2d 36, 37-38 (Ind. 1997). In *Poore*, the defendant's habitual offender enhancement was vacated following a successful petition for post-conviction relief, the matter was set for retrial, and the defendant moved for a speedy trial under Criminal Rule 4(B). *Id.* at

---

<sup>3</sup> The Court also found that *Poore* was "held in jail on an indictment or affidavit" for the purposes of Criminal Rule 4(B), which is not language that appears in Criminal Rule 4(C). Instead, as discussed further below, Criminal Rule 4(C) refers to activities that only occur at the beginning of a criminal prosecution: the filing of charges and the arrest on those charges.

37. Poore objected to the setting of a trial date outside of the 70-day window triggered by the filing of his speedy trial request, and he renewed those objections at the start of the retrial. *Id.* This Court found that Criminal Rule 4(B) applied to retrials for habitual offender proceedings, but the Court specifically noted that it was “express[ing] no opinion on whether a habitual offender hearing is a trial for any other purposes” and explained that cases addressing retrials and Criminal Rule 4(C) were “not on point.” *Id.* at 38 n.2, 39. In light of the care taken by this Court to avoid comparisons to Criminal Rule 4(C) in *Poore*, the Court of Appeals’s observation that “*Poore* did not foreclose Criminal Rule 4(C)’s application to habitual offender rehearings,” *Watson*, slip op. at 5, misses the mark. *Poore* actually did foreclose Rule 4(C)’s application by explicitly leaving in place the existing precedent in *Brumfield* and *Nelson*, which expressly foreclosed Criminal Rule 4(C)’s application to habitual offender retrials.

This Court’s decision in *Poore* recognized that there are meaningful differences between Criminal Rules 4(B) and 4(C) written directly into the text of each rule. Unlike Criminal Rule 4(C), which has a one-year deadline triggered by the filing of charges or the arrest of the defendant, whichever occurs later, Criminal Rule 4(B)’s 70-day deadline is triggered by the filing of a request for a speedy trial under the rule when the defendant is “held in jail on an indictment or an affidavit.” Crim. R. 4(B). In those circumstances, unless an exception applies, the defendant “shall be discharged if not brought to trial within [70] calendar days from the date of [his] motion.” Crim. R. 4(B). In other words, Criminal Rule 4(B) contemplates a

Petition to Transfer  
State of Indiana

flexible deadline that may be imposed at the defendant's discretion, whereas Criminal Rule 4(C) only contemplates a single, default timeline initiated by the filing of charges and/or the arrest.

In his dissent in this case, Judge Kirsch correctly highlighted the incompatibility between Criminal Rule 4(C) and retrials by recognizing that the deadlines contemplated by Criminal Rule 4(C) had "expired more than a decade prior to [Watson] filing his petition for post-conviction relief." *Watson*, slip op. at 11. Criminal Rule 4(C) simply does not contemplate errors occurring at trial because the events that trigger the rule only occur at the beginning of a criminal proceeding. Here, the State did not file new charges against Watson, it simply amended the existing charges with leave of the trial court. (App. Vol. II 97). Surely this Court did not intend for the deadline of "one year from the date the criminal charge against [the] defendant is filed" to be reset simply because the State filed an amended charging information. Crim. R. 4(C). The Court of Appeals appears to have treated the State's amended charges in this case as triggering a new one-year deadline; this approach is inconsistent with the text of Criminal Rule 4(C), which is precisely what this Court recognized in *Brumfield*. As a result, the Court of Appeals' failure to acknowledge *Brumfield* has resulted in a new application of Criminal Rule 4(C) squarely opposed to this Court's precedent in *Brumfield*.

Importantly, defendants on retrial continue to have mechanisms to ensure their speedy trial rights are enforceable even without the static, default rule of Criminal Rule 4(C). As this Court observed in *Brumfield* and *Nelson*, and the Court

Petition to Transfer  
State of Indiana

of Appeals observed in *Lahr* and *Montgomery*, retrials must occur within a reasonable time under the federal and Indiana constitutions. *Brumfield*, 426 N.E.2d at 695; *Nelson*, 542 N.E.2d at 1338; *Lahr*, 615 N.E.2d at 151-52; *Montgomery*, 901 N.E.2d at 519-20. And in the event that defendants are unhappy with the pace of litigation, *Poore* makes clear that defendants may use Criminal Rule 4(B) to force the State to go to trial within 70 days, even with respect to retrials for habitual offender enhancements. *Poore*, 685 N.E.2d at 39.

The Court of Appeals opinion failed to acknowledge the existence of *Brumfield*, *Nelson*, *Lahr*, and *Montgomery*, let alone explain why it did not find those cases to be controlling. The Court of Appeals' failure to address *Brumfield* is particularly problematic given that the Court of Appeals has done with an opinion what this Court said in *Brumfield* could only be done with the adoption of a new rule. *Brumfield*, 426 N.E.2d at 695. As a result, the Court of Appeals disregarded this Court's precedent, created a split in its own authority (including with respect to *Montgomery*, which was decided post-*Poore*), and failed to explain how trial courts are to determine which events begin the one-year deadline for retrials. This is destined to create confusion for trial courts in light of the contrary text of the rule. This Court should therefore grant transfer and hold that Criminal Rule 4(C) does not apply to retrials.

**CONCLUSION**

This Court should grant transfer and affirm the trial court's judgment.

CURTIS T. HILL, JR.  
Attorney General  
Attorney No. 13999-20

By: /s/ Samuel J. Dayton  
Samuel J. Dayton  
Deputy Attorney General  
Attorney No. 31822-49

OFFICE OF THE ATTORNEY GENERAL  
Indiana Government Center South  
302 West Washington Street, Fifth Floor  
Indianapolis, Indiana 46204-2770  
317-233-3972 (telephone)  
Samuel.Dayton@atg.in.gov

*Attorneys for Appellee*

**CERTIFICATE OF WORD COUNT**

I verify that this Petition to Transfer contains no more than 4,200 words.

/s/ Samuel J. Dayton  
Samuel J. Dayton

**CERTIFICATE OF SERVICE**

I certify that on December 16, 2019, the foregoing document was electronically filed using the Indiana E-filing System ("IEFS"). I further certify that on December 16, 2019, the foregoing was served upon opposing counsel, via IEFS, addressed as follows:

Leanna Weissman  
attorneylw@embarqmail.com

/s/ Samuel J. Dayton  
Samuel J. Dayton