

**IN THE
COURT OF APPEALS OF INDIANA**

CAUSE NO. 19A-CR-00049

STANLEY WATSON)	
Appellant/Defendant)	Appeal from the Ripley Circuit Court
)	
v.)	Trial Court case no.: 69C01-0010-CF-0000052
)	
STATE OF INDIANA,)	
Appellee)	Hon. James D. Humphrey, Special Judge

BRIEF OF APPELLANT
STANLEY WATSON

Leanna Weissmann
Attorney at Law
P.O. Box 3704
Lawrenceburg, IN 47025
812-926-2097
I.B.N. 18214-49
Attorney for Appellant

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STATEMENT OF THE ISSUE

ISSUE:

Mr. Watson committed his crime in October 2000, but successfully challenged the first habitual offender enhancement. Though the State refiled its habitual offender information on November 28, 2012, the State failed to bring Mr. Watson to trial until November 27, 2018 – a delay of six years.

Did the trial court err in denying Mr. Watson's motion to dismiss where the State took six years to retry him?

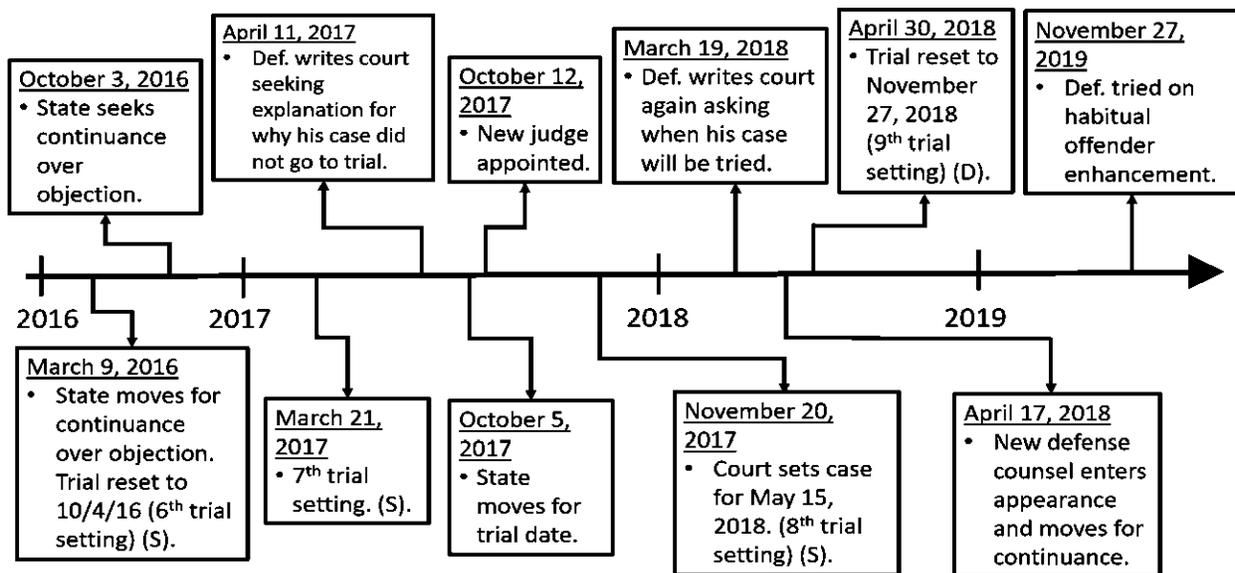
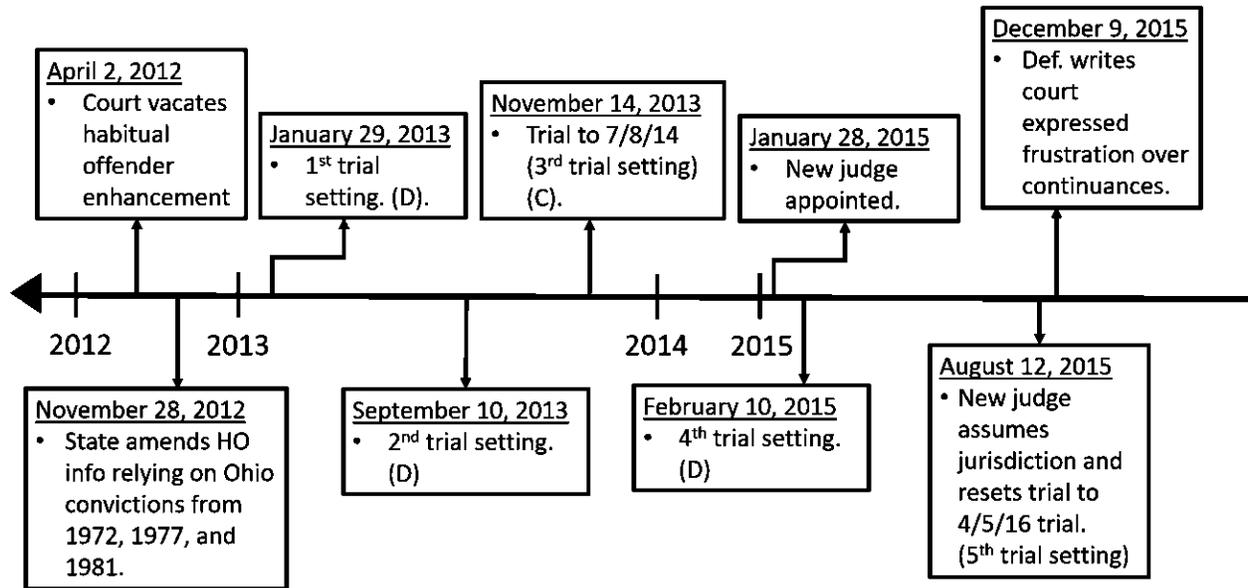
STATEMENT OF THE CASE

This appeal follows the retrial of a habitual offender enhancement attached to a Class A Felony Dealing in Cocaine from October 19, 2000. Appellant's App. Vol. 2, P. 24. On April 2, 2012, the court vacated the initial habitual offender adjudication upon agreement from the State that Mr. Watson's prior criminal history from Ohio consisted of misdemeanors. Tr. Vol. 2, P. 10, Appellant's App. Vol. 2, PP. 50, 96, 107. The court permitted the State to refile the habitual offender enhancement using different Ohio convictions from 1973, 1977, and 1981. Appellant's App. Vol. 2, PP. 97-98.

The State filed the new information on November 28, 2012, however six years lapsed before the State retried Mr. Watson. In those six years, the State calculated delays as 2 ½ years attributable to the Court; 2 ½ years attributable to Mr. Watson; and 1 year attributable

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to the State. Suppl. Tr. Vol. 2, PP. 40-41.

The following timeline gives a more detailed progression of the case:



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On November 15, 2018, Mr. Watson moved to dismiss the habitual offender enhancement claiming a six-year time period to retry the habitual offender enhancement violated Criminal Rule 4(c) and/or defendant's speedy trial rights. Appellant's App. Vol. 2, PP. 98-110; Suppl. Tr. PP. 32-39. Following a hearing, the court denied Mr. Watson's motion to dismiss, finding in relevant part:

- Length of delay was considerable, but slightly less than four years are attributable to State or court.
- Five-year delay is the minimum required for a defendant to be automatically entitled to relief.
- Delays are partly attributable to appointment of two different special judges.
- Though Watson wrote the court letters, his counsel did not file a motion to dismiss until November 2018.
- Watson was not prejudiced because he was in jail serving his fifty-year sentence for drug dealing and was not due for release until 2026.
- Watson was not prejudiced by being unable to use a more lenient version of the habitual offender statute because the new statute did not apply to him.

Appellant's App. Vol. 3, PP. 148-150.

A jury heard the case November 27, 2018 and found Mr. Watson to be a habitual offender. Appellant's App. Vol. 3, PP. 144-145. Based on this finding, the trial court imposed the required thirty-year enhancement based on the law in effect in 2000.

Appellant's App. Vol. 3, P. 141. Thus, Mr. Watson has been sentenced to eighty years imprisonment. Appellant's App. Vol. 2, P. 22.

The court sentenced Mr. Watson on December 20, 2018. According to this Court's docket, Mr. Watson filed his notice of appeal on December 5, 2018. The clerk issued a notice of completion of transcript on January 10, 2019, however counsel needed additional transcripts. The clerk filed additional transcripts on April 25, making this brief due (after the

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holiday) on May 28, 2019.

STATEMENT OF FACTS

Undercover officers suspected Mr. Watson's brother dealt cocaine. Appellant's App. Vol. 2, PP. 27-28. Officers set up a controlled buy between the brother and an undercover officer. *Id.* Mr. Watson drove his brother to the drug exchange and provided the drug. Both men were arrested after delivering eight ounces of cocaine to the undercover officer. *Id.* at 27, 36.

In the first habitual offender information, the State relied on Ohio convictions from 1990, 1992, and 1997. Appellant's App. Vol. 2, P. 50. However, these offenses carried only one-year imprisonment, making them insufficient under Indiana's habitual offender statute. After the State agreed the first habitual offender enhancement must be vacated, the State refiled the enhancement using much more remote criminal history from 1973, 1977, and 1981. Appellant's App. Vol. 2, PP. 97-98.

As discussed in the *Statement of the Case*, the State eventually tried Mr. Watson six years after filing the new habitual offender information. Mr. Watson now appeals claiming the State waited too long.

SUMMARY OF THE ARGUMENT

ISSUE:

Mr. Watson committed his crime in October 2000, but successfully challenged the first habitual offender enhancement. Though the State refiled its habitual offender

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information on November 28, 2012, the State failed to bring Mr. Watson to trial until November 27, 2018 – a delay of six years.

Did the trial court err in denying Mr. Watson's motion to dismiss where the State took six years to retry him?

The State was bound by Criminal Rule 4 to try Mr. Watson within a year of filing the habitual offender information. Our Supreme Court has held that Criminal Rule 4 applies to habitual offender retrials. Because the State, by its own admission, delayed for at least a year, the Criminal Rule 4 violation was clear.

Alternatively, the State failed to act in the reasonable time required by the *Sixth Amendment* and *Article 1, Section 12* of the Indiana Constitution. The analysis of the four *Barker* factors tilts in Mr. Watson's favor. The lapse of so much time violated Mr. Watson's right to a speedy trial.

Finally, due process concerns arose given the delay in resolution of Mr. Watson's ultimate sentence. He faced an additional thirty years incarceration which could make the difference between sixty-eight-year-old Watson eventually being released or dying of old age in prison. The State's delay violated Watson's rights to due process.

ARGUMENT

ISSUE:

Mr. Watson committed his crime in October 2000, but successfully challenged the first habitual offender enhancement. Though the State refiled its habitual offender

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information on November 28, 2012, the State failed to bring Mr. Watson to trial until November 27, 2018 – a delay of six years.

Did the trial court err in denying Mr. Watson's motion to dismiss where the State took six years to retry him?

1. Introduction.

Mr. Watson's habitual offender information should have been dismissed for at least three reasons.

- 1) Criminal Rule 4 applies to retrials of habitual offender enhancements. By delaying for more than a year, the State failed in its obligation to try Mr. Watson as contemplated by the criminal rules.
- 2) Even if the more general constitutional speedy trial analysis applies, the State still loses. Waiting for six years was an unreasonable amount of time to retry a simple habitual offender enhancement.
- 3) Finally, if this Court looks at this as a sentencing matter, due process requires a defendant not be held in perpetual limbo concerning his sentence. Thus, this constitutional avenue provides another option for relief.

Any of these three concerns gave the trial court reason to dismiss Mr. Watson's habitual offender information after it had remained pending for six years.

2. Court applies a de novo standard of review.

In reviewing a trial court's ruling on a motion for discharge, this Court applies a de novo standard of review to issues of law and to the application of law to undisputed facts. *Hoskins v. State*, 83 N.E.3d 124, 127 (Ind. Ct. App. 2017).

3. Habitual offender adjudications are akin to trials.

Written into Indiana law in 1977, habitual offender enhancements act to increase punishment based on recidivism. *Peoples v. State*, 929 N.E.2d 750, 751 (Ind. 2010). Not exactly a criminal charge and not just a sentencing tool, a habitual offender enhancement contains elements of both. The habitual offender determination relates to sentencing in terms of its result and while not a separate offense, is a pending criminal proceeding with the hallmarks of a trial. *Poore v. State*, 685 N.E.2d 36, 38 (Ind. 1997).

In most respects, the habitual offender accusation triggers the same constitutional “procedural safeguards as those required for any other charge that takes away an individual's liberty.” *Poore v. State*, 685 N.E.2d 36, 39 (Ind. 1997). The State must file charges in an information and prove its allegations beyond a reasonable doubt. *Ind. Code* § 35-50-2-8. A defendant has a right to have the case heard by a jury. *Stanley v. State*, 531 N.E.2d 484, 486 (Ind. 1988). And a habitual offender determination acts as a trial within the meaning of Criminal Rule 4. *Poore* at 39.¹

Given the due process rights at play in Mr. Watson’s case, it was incumbent on the State to act with due diligence in retrying the enhancement. A delay of six years was too long.

¹ The most notable difference between a criminal conviction and a habitual offender finding concerns double jeopardy. Unlike a criminal case, this clause does not prevent the State from re-prosecuting a habitual offender enhancement which was reversed for insufficient evidence. *Jaramillo v. State*, 823 N.E.2d 1187, 1191 (Ind. 2005).

4. Mr. Watson should have been discharged under Criminal Rule 4.

Indiana Criminal Rule 4(C) requires the State to bring a person to trial within one year from the date the criminal charge against such defendant is filed, excluding delays attributable to the defendant. *Cook v. State*, 810 N.E.2d 1064 (Ind. 2004). Indiana's Supreme Court has already held that Criminal Rule 4 applies to retrials of habitual offender enhancements. *Poore v. State*, 685 N.E.2d 36, 39 (Ind. 1997).

In *Poore*, the defendant successfully challenged his habitual offender adjudication on April 11, 1994. *Id.* at 37. Set to be retried only on the habitual offender charge, *Poore* requested a speedy trial under Criminal Rule 4(b) on May 10, 1994 but the court did not try him until August 10, 1994 which was beyond the seventy-day limit. *Id.* In finding the trial untimely, the Court noted that a restraint on liberty imposed pending the outcome of the habitual offender case, which is why Rule 4(B) guarantees a speedy trial to an incarcerated defendant. *Id.*

In analyzing Criminal Rule 4 in the context of habitual offender retrials, the Supreme Court adopted Judge Sullivan's dissent in the Court of Appeals' opinion that *Poore* was *being held* on a criminal charge for purposes of the rule. *Poore v. State*, 685 N.E.2d 36, 39 (Ind. 1997), citing *Poore v. State*, 660 N.E.2d 591, 597 (Ind. Ct. App. 1996), *vacated on transfer*. In his dissent, Judge Sullivan argues that a defendant's confinement on the underlying conviction triggers Criminal Rule 4 because the defendant is without question:

being held to answer to the habitual offender charge. Until that issue is resolved, his sentence and commitment upon the underlying conviction remains *in fieri*.

Poore v. State, 660 N.E.2d 591, 597. It is this *in fieri*, or pending, nature of the defendant's situation which compels the State to act in a reasonably timely fashion. A defendant is usually imprisoned serving time on his underlying sentence. That does not mean he is not also held to answer for the new charge. *Id.* An argument relying only on incarceration for the underlying offense holds "superficial appeal" given the ramifications of habitual offender sentencing on a defendant's liberty.

In *Poore*, the Indiana Supreme Court stated:

This case presents the narrow question whether the time limits prescribed by Indiana Rule of Criminal Procedure 4(B) apply to a retrial of a habitual offender finding. **Because we hold that the time limits are applicable**, we grant transfer, vacate the habitual offender finding and accompanying sentence enhancement, and reverse for further proceedings consistent with this opinion.

Id. (emphasis added). The Indiana Supreme Court has never overruled *Poore*.

In finding Criminal Rule 4 inapplicable to Mr. Watson, the trial court improperly relied on *State v. Montgomery*, 901 N.E.2d 515, 519 (Ind. Ct. App. 2009) rather than *Poore*. Appellant's App. Vol. 3, P. 148 (par. 1). *Montgomery* discussed retrial of a vacated arson

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conviction, not a habitual offender enhancement. In concluding Criminal Rule 4 does not apply to retrials of criminal convictions, *Montgomery* relied on the Indiana Supreme Court case originating the concept in 1989. *Id. citing Nelson v. State*, 542 N.E.2d 1336, 1338 (Ind. 1989). Since *Nelson* in 1989, Indiana law has been clear that Criminal Rule 4 does not apply to criminal retrials. The Supreme Court announced this rule a full nine years before deciding that Criminal Rule 4 does apply to habitual offender retrials in *Poore v. State*, 685 N.E.2d 36, 39 (Ind. 1997).

Clearly the Indiana Supreme Court meant to apply a different analysis to habitual offender retrials than that applicable in regular criminal retrials. It is possible this is because a habitual offender enhancement can add enough time to a defendant's sentence to change his incarceration status and impact his DOC classification. The enhancement is not without ramifications.

Just as *Poore* was restrained by having to face additional prison time, the State restrained Mr. Watson's liberty triggering Criminal Rule 4 with the November 28, 2012 refiling of the habitual offender charge. Appellant's App. Vol. 2, P. 98. The State failed to try Mr. Watson within the year required by Criminal Rule 4, instead taking more than six years to prosecute his case. This is a clear violation of that rule.

Both the State and the court acted without due urgency concerning Mr. Watson because he remained jailed on the underlying felony. This is clear from the State's October 3, 2016 motion noting that because Mr. Watson was serving a sentence, "the Court has indicated that said continuance will not result in any Criminal Rule 4 ramifications against

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the State.” Appellants App. Vol. 2, P. 118. The trial court and the State operated under the mistaken assumption that Mr. Watson’s incarceration under the underlying offense allowed his case to remain pending indefinitely, awaiting trial at the convenience of the State. This runs contrary to the opinion of the Indiana Supreme Court.

Mr. Watson’s matter remained *in fieri* with him getting more and more impatient as the years passed. In 2015, Mr. Watson became weary of waiting for a resolution of his case and wrote the court to point out a scheduling error. He stated, “I want to get this trial over.” Appellant’s App. Vol. 2, P. 111. He wrote again on April 11, 2017, asking about the status of his case and complaining his attorney was unresponsive. *Id.* at 121. No one took any action until the State finally moved for a trial date on October 5, 2017, nearly five years after filing the information. Appellant’s App. Vol. 2, P. 122. Even then, the State acted with no urgency and a year later, Mr. Watson moved to dismiss his case. Appellant’s App. Vol. 3, PP. 11-78.

Criminal Rule 4(c) required a trial within one year of the November 28, 2012 charging date. Appellant’s App. Vol. 2, P. 97. The State readily acknowledged that during the six years it took to try Mr. Watson, at least a year of delay could be attributed to the State. Suppl. Tr. Vol. 2, PP. 40-41. This acknowledgement by the State crediting at least a year delay to itself supports a finding that the State failed to try Mr. Watson in the year required by Criminal Rule 4(c). Because the State bears the burden of timely prosecution, the trial court erred in denying the motion for discharge under Criminal Rule 4(c).

5. Six years for a retrial violated Mr. Watson's speedy trial right.

This case can, and should, be decided under *Criminal Rule 4*. However, if this Court decides that no rule violation occurred, the constitutional rights to a speedy trial provide even broader protection than Criminal Rule 4. *Logan v. State*, 16 N.E.3d 953, 965 (Ind. 2014) (finding court complied with Crim. Rule 4 but defendant's speedy trial rights were violated). The right to speedy trial is a fundamental principle of constitutional law arising under both the *Sixth Amendment* and *Article 1, Section 12 of the Indiana Constitution*. See *Fisher v. State*, 933 N.E.2d 526 (Ind. Ct. App. 2010).

The *Sixth Amendment* to the U.S. Constitution provides, in relevant part, that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." *Article 1, Section 12* of the Indiana Constitution states, in applicable part, that "[j]ustice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." IND. CONST. art. 1, § 12. Under both constitutional provisions, a defendant must be tried within a reasonable time. *Fryback v. State*, 272 Ind. 660, 400 N.E.2d 1128, 1131 (Ind. 1980). To determine reasonableness, this Court applies the federal speedy trial analysis of *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). See *Logan v. State*, 16 N.E.3d 953, 961-962 (Ind. 2014).

The *Barker* analysis requires a balancing test in which the conduct of both the prosecution and the defendant are weighed against these four factors:

- (1) length of the delay
- (2) reasons for the delay;
- (3) defendant's assertion of his or her right; and

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(4) prejudice to the defendant.

Logan at 962. The Supreme Court regards none of the four factors as a required condition to the finding of a deprivation of the right of speedy trial. *Barker v. Wingo*, 407 U.S. 514, 533, 92 S.Ct. 2182, 2193, 33 L.Ed.2d 101 (1972). Rather, these factors act as interrelated concepts to be considered together with such other circumstances that may be relevant. *Id.*

5.1. Delay of six years weighs in Mr. Watson's favor.

The trial court found 2431 days (or 6 2/3 years) lapsed before the State brought Mr. Watson to trial. Appellant's App. Vol. 3, P. 146 (par. 5). The trial court properly found that the total delay in this case was "considerable." Appellants App. Vol. 3, P. 148 (par 3). In *Logan v. State*, 16 N.E.3d 953, 965 (Ind. 2014), our Supreme Court held a delay of 3 ½ years to try a Class C felony child molestation case "greatly exceeded what we would consider reasonable." *Id.* If 3 ½ years greatly exceeds a reasonable time, then 6 ½ years certainly tips the scales.

5.2. There was no legitimate reason for the delays.

In identifying why so much time passed, the court attributed only 742 days of delay to Mr. Watson. Appellant's App. Vol. 3, P. 146 (par. 6). The court attributed at least 377 days to actions by the State. *Id.* (par. 11). Much of the delay, 980 days, related to trial court inactivity and reassignment of judges. *Id.* (par. 15). Inexplicably, it took one judge eight months to accept his appointment. Appellant's App. Vol. 3, P. 147 (par. 8). For over a year,

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from October 2016 to October 2017, the docket reflects only one entry – Mr. Watson’s letter asking about the status of his case. Appellant’s App. Vol. 2, P. 15. The State took no action to push the case to trial until October 5, 2017 when the State finally filed for a trial date. Appellant’s App. Vol. 2, P. 122. By this time, five years had passed since the filing of the information.

It appears no one acted with any urgency because Mr. Watson was serving time on the underlying charge and thus the scheduling of his trial was of no moment. As the State indicated in one of its continuance motions, because Mr. Watson was serving a sentence, “the Court has indicated that said continuance will not result in any Criminal Rule 4 ramifications against the State.” Appellants App. Vol. 2, P. 118. Trial dates were rescheduled nine times and for a period of one year, the only action on the case was Mr. Watson’s request for information. Appellant’s App. Vol. 2, P. 15.

In its order, the trial court assigned no significant weight to the delays because the State hadn’t been acting in bad faith. Appellant’s App. Vol. 3, P. 149 (par. 6). This is the wrong analysis as it ignores the State’s responsibility to timely try a defendant. Bad faith is not part of the equation. Even where the delay hinges on court congestion, which is clearly not bad faith, the State can still fail in its duties as the ultimate responsibility lies with the government to try a defendant. *Logan v. State*, 16 N.E.3d 953, 963 (Ind. 2014).

This case appears to have been delayed due to neglect and not from an evil intent by the State. But one need not show an evil intent to prove a speedy trial violation. Had Mr. Watson been responsible for the delays, the result might be different. But because the State

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ignored Mr. Watson's case for years and failed to bring him to trial in a timely manner, this factor tilts in Mr. Watson's favor.

5.3. Mr. Watson reminded the court to resolve his case.

Whether Mr. Watson asserted his constitutional right to a speedy trial "is entitled to strong evidentiary weight in determining whether [he] is being deprived of the right." *Barker v. Wingo*, 407 U.S. 514, 531-32, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). Mr. Watson politely reminded the court that he wanted to be tried. On December 9, 2015, he wrote the court noting an error on his trial date and said, "I don't want there to be any mix-up as I want to get this trial over." Appellant's App. Vol. 2, P. 111. He wrote again on April 17, 2017 saying he could not get ahold of his attorney and wanted to know his new court date. Appellant's App. Vol. 2, P. 121. Mr. Watson must have felt his requests were falling on deaf ears because the court still failed to act. Nothing happened on his case until October of 2017 when the State finally asked the court to put a trial date on the calendar. Appellant's App. Vol. 2, P. 122.

Relying on *Underwood v. State*, 722 N.E.2d 828, 832-833 (Ind. 2000), the trial court disregarded Mr. Watson's letters because he was represented by counsel. Appellant's App. Vol. 3, P. 149 (par. 10). *Underwood* concerned a situation where a defendant continued to file motions contrary to his counsel's need for time to prepare for trial. That that case holds is that a court need not respond to both counsel and a defendant, especially where the two make contrary requests. *Id. Underwood* does not hold that a defendant's complaints about

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timeliness only count on a *Barker* analysis if those complaints come through counsel. To the extent the trial court ignored Mr. Watson's letters in the *Barker* analysis, this was done in error.

Mr. Watson made attempts during the six-year period to have his matter resolved. His communications were ignored as he continued to sit in jail awaiting his trial. This factor favors dismissal of Mr. Watson's habitual offender information.

5.4. The case remained pending, prejudicing Watson with lack of resolution.

The interval between accusation and trial can cross the threshold which divides ordinary from presumptively prejudicial delay. *Doggett v. U.S.*, 505 U.S. 647, 658 112 S.Ct. 2686, 2690, 120 L.E.2d 520 (1992). The customary promptness for trials in Indiana is one year. See Criminal Rule 4. When inexcusable governmental neglect so far exceeds a state's threshold for a speedy trial (one year in Indiana), then the presumption of prejudice attaches and requires relief. *Doggett* at 2690. As stated by the United States Supreme Court:

When 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 defendant's acquiescence, nor persuasively rebutted, the defendant is entitled to relief.

Doggett v. U.S., 505 U.S. 647, 658 112 S.Ct. 2686, 2690, 120 L.E.2d 520 (1992) (internal citations omitted). Like *Doggett*, Mr. Watson presents a case with the same extensive six-year delay suffered by the defendant in *Doggett*. Therefore, presumed prejudice entitles him

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to relief.

The trial court looked for actual prejudice, declaring that the changes in the law did not apply to Mr. Watson and a defendant's anxiety in awaiting disposition of his fate was not enough to tip the prejudice factor from *Barker*. Appellant's App. Vol. 3, P. 150 (par. 15). Even if a defendant can only show personal anxiety from his long wait for trial, this factor can tip moderately in his favor. For instance, in *Logan v. State*, 16 N.E.3d 953 (Ind. 2014), the court gave prejudice moderate weight given Logan's oppressive pretrial incarceration lasting 1,029 days. *Id.* at 964. The court should also give this factor at least moderate to heavy weight in Mr. Watson's case considering his wait was much longer than that in *Logan* and because of Mr. Watson's age.

Born in 1951, Mr. Watson went to prison on the underlying offense when he was fifty years old. Appellant's App. Vol. 2, P. 54. He is now sixty-nine years old, having served nineteen years for an undercover drug buy. Without the habitual offender enhancement, he is due to be released in just seven years, in 2026. Appellant's App. Vol. 3, PP. 148-150. His release at seventy-six years of age gives Mr. Watson hope that he will live long enough to become a free man. Supp. Tr. P. 36. Adding the mandatory thirty-year habitual enhancement ensures Mr. Watson will die in prison of old age.

Given the severe downward trend in the length of drug sentences since 2000 when Mr. Watson was arrested, he likely spent the last six years hoping for a positive resolution of his case, but still aware that under the extreme sentencing sanction from 2000 that he faced life in prison for his drug crime. The addition of the thirty-year sentence enhancement

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tipped the scales so strongly towards harsh sentencing that Mr. Watson knows he will now die in jail. This is beyond the normal anxiety felt by a person facing prosecution and as such, this factor should weigh heavier in Mr. Watson's case.

5.5. The balance of factors weighs in Watson's favor.

The six-year length of the delay was extreme and should weigh heavily in Mr. Watson's favor. The State gave no valid reason for why it took six years to try Mr. Watson, meaning this factor should weigh heavily in Mr. Watson's favor. Though incarcerated, Mr. Watson wrote the court twice and made it clear he desired resolution of the matter. The defendant's reminders to the court about his case should weigh in his favor. As for prejudice, the length of time which elapsed presumes prejudice without a specific showing. Even so, Mr. Watson experienced anxiety over his situation because he did not know for six years whether he would see freedom in his lifetime. This factor weighs heavily in Mr. Watson's favor.

Because the trial court failed to properly analyze and weigh the *Barker* factors, this Court must reverse the order denying Mr. Watson's motion to dismiss.

6. The delay triggers due process concerns.

As discussed in Section 3, habitual offender enhancements are both crimes and sentencing tools. The State may argue that because Mr. Watson was already in prison, this was merely a sentencing delay. Even so, he is entitled to relief. To the degree that habitual

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offender enhancements may be viewed as sentencing tools, the State must still act promptly because defendants have a due process right to be sentenced without undue delay.

The protections for due process in sentencing arise under the *Fourteenth Amendment* and *Article I, § 12 of the Indiana Constitution*.

The Fourteenth Amendment states:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, § 12 of the Indiana Constitution states:

All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase, completely, and without denial; speedily, and without delay.

Indiana's due course of law provision likely stemmed from Sir Edward Coke's commentary on the Magna Carta. *Sanchez v. State*, 749 N.E.2d 509, 514 (Ind. 2001). The basic thrust is that "courts will adhere to the law, rather than whim or corruption, in dispensing justice to litigants." *Id.* citing Jennifer Friesen, *State Constitutional Law* § 6-2(a) (2d ed. 1996). Provisions like Indiana's Article 1, Section 12 arose in response to the abuses that were present in England at that time, including bribes to delay or expedite the judicial system. *Id.*

Fundamental fairness in judicial proceedings is assumed and required by our state constitution. *Sanchez* at 515. Therefore, the common understanding is that courts of this

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state are constitutionally bound by the basic concepts of fairness that are frequently identified with "due process" in the federal constitution. *Id.* Thus, the argument under the Fourteenth Amendment would be the same under Indiana's constitution.

Because due process rights are subject to waiver, *See Pigg v. State*, 929 N.E.2d 799, 803 (Ind. Ct. App. 2010), Mr. Watson approaches this issue as one of fundamental error. The fundamental error exception applies only when the error "constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process." *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006). The error claimed must either "make a fair trial impossible" or constitute "clearly blatant violations of basic and elementary principles of due process." *Clark v. State*, 915 N.E.2d 126, 131 (Ind. 2009).

Even at stages of the criminal-justice process where the speedy trial right is not engaged, the defendant is still protected against undue delay. *Betterman v. Montana*, 136 S. Ct. 1609, 1617-1618, 194 L.Ed. 2d 723, 733-734 (2016) (concurrence by Sotomayor). this stage. The primary safeguard comes from statutes and rules. The federal rule requires courts to "impose sentence without unnecessary delay." *Fed. Rule Crim. Proc.* 32(b)(1). Indiana requires sentencing within thirty days. *Indiana Code* § 35-38-1-2(b). Underlying these provisions is an understanding that a defendant retains an interest in a sentencing proceeding that is fundamentally fair.

The Due Process Clause is "flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U. S. 471, 481, 92 S. Ct. 2593, 33 L.

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Ed. 2d 484 (1972). As Justice Sotomayor noted in her concurring opinion in *Betterman*, supra., different tests are used to consider whether different kinds of delay run afoul of the Due Process Clause. Though still an open question, Justice Sotomayor, opined that the appropriate test would likely be the same as in *Barker v. Wingo*, 407 U. S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). Because the Barker test remains flexible, it would allow “courts to take account of any differences between trial and sentencing delays.” *Betterman v. Montana*, 136 S. Ct. 1609, 1617-1618, 194 L.Ed. 2d 723, 733-734 (2016) (concurrency by Sotomayor).

Mr. Watson incorporates his arguments from Section 5 above in which he already addressed the *Barker* factors. Each argument for each factor applies equally well here.

FACTOR ONE - The six-year length of the delay was an extremely long time for Mr. Watson to learn his ultimate sentence. FACTOR TWO – the State nor the court presented any justification for delaying the ultimate resolution of Mr. Watson’s sentence. FACTOR THREE - Mr. Watson wrote the court twice because he wanted to know whether he was destined to die in jail. Therefore, he acted with reasonable promptness to resolve his case. FACTOR FOUR - Mr. Watson experienced prejudice in the sentencing delay because he did not know what his fate would be. Given the stakes between ultimate freedom and dying of old age in prison, this factor worked a great hardship on Mr. Watson.

To the extent Mr. Watson failed to preserve this issue, fundamental error attaches. Fundamental error arises with blatant violations of basic and elementary principles of due process. *Clark v. State*, 915 N.E.2d 126, 131 (Ind. 2009). The process due Mr. Watson was

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sentencing within a reasonable time. The State charged the habitual offender enhancement in 2012, and Mr. Watson then saw his case continued, forgotten and delayed for six years. Because of this unreasonable delay, Mr. Watson's due process rights were violated under both the federal and Indiana constitution and this violation was so fundamentally erroneous that Mr. Watson is entitled to relief.

CONCLUSION

"To no one will we sell, to no one deny or delay right or justice." MAGNA CARTA, § XXIX. First articulated in the Magna Carta, the right to a speedy trial and to due process of law is fundamental to our justice system. Indiana has encapsulated that right into Criminal Rule 4 which requires trial within one year. The State failed in that obligation.

Notwithstanding Criminal Rule 4, speedy trial rights are fundamentally interwoven into the federal and state constitution. Because these fundamental rights were violated here, the court erred in denying Mr. Watson's motion to dismiss the habitual offender information. Finally, to the extent that a habitual offender adjudication touches on sentencing, a defendant has a due process right to sentencing in a reasonable time.

Mr. Watson respectfully requests this court to vacate the habitual offender finding and the thirty-year associated sentence or grant any other relief deemed appropriate.

Respectfully Submitted,

/s/ Leanna Weissmann

Brief of Appellant
Stanley Watson
Leanna Weissmann
I.B.N.# 18214-49
Attorney at Law
P.O. Box 3704
Lawrenceburg, Indiana 47025
(812) 926-2097

CERTIFICATE OF SERVICE

I do solemnly affirm under the penalties for perjury that on May 27, 2019, I served upon Attorney General of Indiana through Indiana's e-filing system, one (1) copy of the foregoing entitled *Brief of Appellant Stanley Watson*.

/s/ Leanna Weissmann

Leanna Weissmann,
Attorney at Law
I.B.N.# 18214-49
P.O. Box 3704
Lawrenceburg, Indiana 47025
(812) 926-2097