

**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

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REPLY BRIEF OF APPELLANT  
STANLEY WATSON

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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?*

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## 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 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 argues Criminal Rule 4(C) does not apply to cases on remand because the relevant Supreme Court case appears to differentiate 4(B), which does apply, to 4(C) which might not apply. The State gathers this from a footnote in that opinion which is not that definitive in its language. The court's rationale behind applying 4(B) to habitual offender retrials applies with equal force to 4(C).

As for the reasonableness of the six-year delay, the State argues it did not act in bad faith as support that relief is not warranted. The State misses the point. Even if the State didn't delay specifically to harm the defendant, the State still had an affirmative duty to diligently prosecute Mr. Watson. By failing for years to take any action, the State neglected its duty. The State then diminishes Mr. Watson's letters to the court as insufficient to assert his right to a speedy trial. As an incarcerated defendant without a law degree, Mr. Watson

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did what he could to make the court aware of his plight. Finally, as for prejudice, the State fails to note how stressful it is for a defendant to wait six years to know if he will live long enough to be freed from incarceration.

## 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 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. Mr. Watson pursues three avenues of relief.

Mr. Watson argued that three reasons supported his motion to dismiss the habitual offender charge:

- 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, Mr. Watson still prevails. 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.

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The State responds to the first two of the three arguments.

2. Argument #1: C.R 4 applies to retrials of habitual offender enhancements.

The State argues Mr. Watson misinterprets the law by relying on the Supreme Court's opinion in *Poore v. State*, 685 N.E.2d 36, 39 (Ind. 1997) which found Criminal Rule 4(B) applies to retrials of habitual offender cases on remand. The State contends the *Poore* opinion was specifically limited to Criminal Rule 4(B) not 4(C). In support, the State points to footnote #2 in the *Poore* opinion differentiating decisions holding Criminal Rule 4(C) inapplicable to retrial. *Id.* at fn. 2.

Footnote #2 leaves room for interpretation. Though the Indiana Supreme Court drafted its opinion in *Poore* to concentrate on Criminal Rule 4(B) and not 4(C), this does not mean that the Court's underlying rationale doesn't (or shouldn't) apply to all subsections of Criminal Rule 4. Criminal Rule 4 is intended to implement the constitutional right to a speedy trial which ensures citizens do not linger in the court system without knowing their fates. *Lockert v. State*, 711 N.E.2d 88 (Ind. Ct. App. 1999) (speaking only to the purpose of CR 4).

In *Poore*, the Supreme Court acknowledged that a defendant facing a habitual offender enhancement faces the same uncomfortable uncertainty as does a defendant awaiting trial. *Id.* at 39, citing *Poore v. State*, 660 N.E.2d 591, 597 (Ind. Ct. App. 1996), *vacated on transfer*. It is this being held on a criminal charge without resolution that obligates the State to act expeditiously to resolve a criminal matter. The speedy trial right exists to: 1)

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prevent oppressive pretrial incarceration; 2) to minimize anxiety and concern of the accused; and 3) to limit the possibility that the defense will be impaired. *Danks v. State*, 733 N.E.2d 474, 481 (Ind. Ct. App. 2000) (citing *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101).

The uncertainty related to an unresolved criminal charge formed the concern which drove the *Poore* Court to require speedy resolution of habitual offender charges on remand. That the defendant in *Poore* filed a Criminal Rule 4(B) request and Watson did not, is of no real distinction. Both men faced the uncomfortable position of “being held” to face additional punishment. It is the uncertain nature of the defendant’s situation which compels the State to act and which drove the resolution in *Poore*. As the Court noted:

Without the incentive Rule 4(B) provides for prompt adjudication of criminal prosecutions, an accused could languish in jail essentially at the mercy of judicial or prosecutorial discretion, protected only by the more opaque contours of the constitutional right to a speedy trial.

*Poore* at 41.

Given the concerns at play in holding someone for a habitual enhancement, it would seem incongruent that the Mr. Poore would be retried in 70 days whereas Mr. Watson who filed no motion must wait six years for resolution of his case. Either *Poore* should be read to include all parameters of Criminal Rule 4 or this Court should explain that State should retry habitual enhancements within a year. The problem with not applying Criminal Rule 4 to safeguard a defendant’s rights, is that defendants, like Watson, languish in jail “at the mercy of the judicial or prosecutorial discretion” to move their cases. Those in power failed

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to act with any concern to see Mr. Watson's matter resolved. The result was that Mr. Watson remained in limbo for six years following the reversal of his habitual offender enhancement.

3. Argument #2: Six years is an unreasonable time for a retrial.

Even if this Court disagrees with the application of Criminal Rule 4 to habitual offender retrials, six years is still too long for a defendant to wait to resolve his case. A year forms a touchstone of reasonableness. In other words, it should be reasonably possible that all defendants have their cases tried within a year timeframe. Some cases might unfold quicker or some cases might be a little slower when factoring in court congestion and defendants' motions. That the one-year timeframe stands as a benchmark for reasonableness is clear because a delay of only 18 months triggers a speedy trial analysis under *Barker v. Wingo*, 407 U.S. 514, 531-32, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). See *State v. Montgomery*, 901 N.E.2d 515, 520 (Ind. Ct. App. 2009).

3.1 No legitimate reason exists for the delay.

The State acknowledges that Watson's delay of six years triggered the *Barker* analysis. Appellee's Br. at 17. However, the State then argues that none of the delays involved a "deliberate attempt [by the State] to hamper the defense." *Id.* Because the State had no insidious intent, the State argues the length of delay "does not tilt specifically in favor of either party." *Id.* at 18-19.

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The State ignores its affirmative duty to prosecute. *Fisher v. State*, 933 N.E.2d 526, 530 (Ind. Ct. App. 2010). In *Fisher*, the State failed to prosecute the defendant based on a policy to await defendants' completion of a sentence in another jurisdiction. *Id.* The State charged Mr. Fisher in 2001 and the defendant presented himself for prosecution in 2006, but as of 2009, the State had failed to act on his case. *Id.* In dismissing the criminal charges, the Court of Appeals found the State "has an affirmative duty to pursue prosecution" and in failing to do so, the State violated Mr. Fisher's right to a speedy trial. *Id.* at 533.

There were no allegations in *Fisher* that the State delayed prosecutions to harm the defendant. Rather the State failed in its obligation to diligently prosecute when it ignored Mr. Fisher's charges for eight years. This failure in prosecutorial duties led to relief in *Fisher* and should lead to relief here.

The record demonstrates that the State did little to move Mr. Watson's case forward. For instance, in the eight months it took one special judge to accept his appointment, the State filed no motions and took no action to prosecute the case. For an entire year, from October 2016 to October 2017, the docket reflected only one entry – Mr. Watson's letter asking about the status of his case. Appellant's App. Vol. 2, P. 15. Again, the State did nothing. It appears the State adopted a lackadaisical attitude towards Mr. Watson's case because he was serving time on the underlying charge and thus the scheduling of his trial lacked urgency. But that excuse did not win the day in *Fisher*, and it should not carry the day here. It was the State's obligation to prosecute, and the failure to do so for six years entitles Mr. Watson to dismissal of the habitual offender enhancement.

3.2 Mr. Watson asserted his speedy trial rights.

The State next argues that Mr. Watson did not vigorously invoke his speedy trial right. Appellee's Br. at 19. The State relies only on Watson's motion to dismiss filed in November 2018 and gives little credence to Watson's letters to the court. *Id.* at 20. The State sees his letters as mere complaints and not an invocation of his speedy trial rights because Mr. Watson was represented by counsel and thus the court could not act on his letters. *Id.*

To support its contention that a defendant's filings have no substance, the State relies on a series of cases concerning filings made by defendants in addition to filings made by defendant's counsel. Appellee's Br. at 21. Those cases do not hold that a court is rendered unable to check its docket and ensure cases move efficiently through the system just because a defendant, and not his attorney, has reminded the court that a criminal matter is still pending years after filing.

By dismissing Mr. Watson's letters to the court as inadequate assertions of a speedy trial right, the State elevates form over substance. Though Mr. Watson did not file a formal motion to dismiss until November 2018, he did make efforts to vocalize his plight. Mr. Watson was an incarcerated defendant languishing in jail as his case failed to progress and his attorney filed no motions to move the case.<sup>1</sup> Without legal training and expertise, it is not unreasonable that Mr. Watson wrote the court letters rather than filing legal motions.

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<sup>1</sup> Until April 2018, Watson was represented by attorney John Watson (no relation). Mr. Watson withdrew his representation anticipating "changes to his schedule." Appellant's App. Vol. 2, P. 129. Those changes involved his being hired by this prosecutor as a deputy. <http://www.dearbornohioprossecutor.com/prosecutors-office>

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The thrust of Mr. Watson's letters was that he wanted someone to act on his case so it could be finalized. As he told the court on December 9, 2015, "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 wanting a new court date. Appellant's App. Vol. 2, P. 121. Notwithstanding these communications to the court in 2015 and 2017, Mr. Watson did not see his case resolved until November 2018. Contrary to the State's assertion, Watson's reminders to the court that he wanted to be tried should tilt in Mr. Watson's favor.

3.3 A defendant experiences much anxiety waiting to see if he will die in prison.

The State finds little to no prejudice to Mr. Watson because some of the delay was attributable to him. Additionally, to the extent that Mr. Watson expressed anxiety, the State noted he was in jail anyway on other offenses. Appellee's Br. at 24-25. Apparently his presence in prison should have reduced his concerns about whether he'd receive more jail time.

Mr. Watson's continuances accounted for only 742 days of the 2431 days it took to bring him to trial. Appellee's Br. at 10. Put mathematically, Mr. Watson's delay attributed to only 30% of the entire delay. More to the point was the lack of urgency by anyone, other than Mr. Watson, to see his case resolved. Because Mr. Watson's habitual offender allegation arose before the legislative overhaul of Indiana's drug crimes, he faced a mandatory thirty-year habitual enhancement. As explained in his prior brief, the addition of the enhancement changed his prison release date from 2026 to 2041, meaning he will be

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released near his 90<sup>th</sup> birthday instead of around the time he turns 75. The reality of those fifteen years produces the likelihood Mr. Watson will die of old age before he is freed. The State failed to address the anxiety one must feel in waiting six years to discover if he will be released or likely die in prison.

4. Fundamental due process attaches to failures to resolve sentencing issues.

The State fails to respond to Mr. Watson's last argument. In a nutshell, Mr. Watson proactively resists any attempts to liken a habitual offender enhancement to a sentencing delay, as opposed to a speedy trial issue. Even to the degree habitual offender enhancements act as sentencing tools, the defendant is still protected by due process against undue delay. In so arguing, Mr. Watson points to *Betterman v. Montana*, 136 S. Ct. 1609, 1617-1618, 194 L.Ed. 2d 723, 733-734 (2016) (concurrence by Sotomayor).

**CONCLUSION**

The State gave no legitimate reason for why it took six years to retry Mr. Watson. He therefore respectfully requests this court to vacate the habitual offender finding and the thirty-year associated sentence.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I do solemnly affirm under the penalties for perjury that on June 29, 2019, I served upon Attorney General of Indiana through Indiana's e-filing system, one (1) copy of the foregoing entitled *Reply Brief of Appellant Stanley Watson*.

*/s/ Leanna Weissmann*

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