

**IN THE  
INDIANA SUPREME COURT**

APPELLATE 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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APPELLANT STANLEY WATSON'S  
BRIEF IN OPPOSITION TO PETITION TO TRANSFER

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Brief in Opposition to Petition to Transfer  
Appellant Stanley Watson

**QUESTION PRESENTED FOR REVIEW**

Stanley Watson waited more than six years for the State to retry him on his habitual offender charge. Mr. Watson contended this delay violated both *Criminal Rule 4(C)* and his constitutional speedy trial rights. Relying only on *Criminal Rule 4(C)*, the Court of Appeals vacated Mr. Watson's habitual offender enhancement.

*Should this Court deny transfer thereby affirming the Court of Appeals' opinion that Criminal Rule 4(C) is triggered in retrials of habitual offender adjudications?*

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

Police officers set up a controlled buy between Mr. Watson's brother and an undercover officer. Appellant's App. Vol. 2, PP. 27-28. Because Mr. Watson drove his brother to the deal and provided the cocaine, both men were arrested for selling eight ounces of cocaine to the undercover officer. *Id.* at 27, 36. Following Mr. Watson's conviction, the court sentenced him to 50 years for drug dealing adding a mandatory 30-year sentencing enhancement. *Watson v. State*, 135 N.E.3d 982, 983 (Ind. Ct. App. 2019).

In 2012, the court vacated Mr. Watson's original 30-year enhancement because two of his Ohio felonies did not qualify under Indiana's habitual offender laws. Using different Ohio convictions from 1972, 1977, and 1981, the State filed a new habitual offender allegation against Mr. Watson on November 28, 2012. App. Vol. 2, P. 98. About six years passed from the filing of new charges until the State held the hour-long hearing. *Watson v. State*, 135 N.E.3d 982, 987 (Ind. Ct. App. 2019).

Mr. Watson unsuccessfully moved for discharge arguing either a *Criminal Rule 4* violation or alternatively an infringement of his constitutional right to a speedy trial. After denying Mr. Watson's request for discharge, the trial court found Mr. Watson a habitual offender and added 30 years to his sentence, for a total of 80 years imprisonment. Appellant's App. Vol. 3, P. 141.

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On appeal Mr. Watson argued, and the Court of Appeals agreed, that *Criminal Rule 4* applied and the State waited too long to resolve Mr. Watson's case. The appellate court relied on this Court's decision in *Poore v. State*, 685 N.E.2d 36, 38 (Ind. 1997) which applied the time limits of *Criminal Rule 4(B)* to retrials of habitual offender adjudications. Though *Poore* opted not to give a definitive opinion on the application of *Criminal Rule 4(C)*, the Court of Appeals determined this Court had not foreclosed such an application.

The State now seeks transfer, arguing *Criminal Rule 4(C)* does not apply to any retrials including those involving habitual offender enhancements. According to the State, the Court of Appeals' opinion departs from precedent and provides no guidance to trial courts as to what triggers the one-year time limit. Watson opposes transfer because:

- The Court of Appeals' opinion properly applied precedent because this Court chose to employ different rules to habitual offender retrials than to retrials on underlying offenses. Retrials in habitual offender cases like this one require repleading of the case using a different set of defendant's prior convictions. This repleading places habitual offender retrials in a different procedural posture than normal retrials.
- Refiling of habitual offender charges triggers the one-year timeline. In Mr. Watson's case, the State filed new charges on November 28, 2012, alleging different qualifying prior felonies. The new filing forced Mr. Watson to answer to different past criminal convictions than that which formed his first habitual offender charge.
- The State delayed for 477 days with at least 377 days occurring after the November 2012 filing. The State's actions violate *Criminal Rule 4* as the Court of Appeals held.

Because the Court of Appeals properly determined that *Criminal Rule 4(C)* applies to retrials of habitual offender enhancements and because the State failed in its duty to timely try Mr. Watson, this Court should deny the State's petition for transfer.

## **ARGUMENT**

*Should this Court deny transfer thereby affirming the Court of Appeals' opinion that Criminal Rule 4(C) is triggered in retrials of habitual offender adjudications?*

### **1. The State's concerns are unfounded.**

The State raises three questions in support of transfer.

- 1) *Does applying Criminal Rule 4(C) to habitual offender retrials defy precedent?*
- 2) *Does the opinion confound trial judges concerning what triggers the one-year period?*
- 3) *Does requiring the State to retry habitual offender adjudications in one-year thwart justice?*

The answer to all these questions is “no,” and thus this Court should deny transfer.

### **2. The Court of Appeals' opinion properly applies precedent.**

In finding *Criminal Rule 4* inapplicable to retrials of habitual offender adjudications, the State relies on two cases which involved retrials of underlying offenses occurring nine and sixteen years prior to this Court's application of *Criminal Rule 4(B)* in the habitual offender arena. See *Poore v. State*, 685 N.E.2d 36, 38 (Ind. 1997). Relying on the general premise that *Criminal Rule 4* is inapplicable following mistrials, the State fails to grasp the evolution of the law prompted by *Poore*.

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The State relies on *Brumfield v. State*, 426 N.E.2d 692 (Ind. 1981) and *Nelson v. State*, 542 N.E.2d 1336 (Ind. 1989). These cases both bear notable distinctions to Mr. Watson's appeal. *Brumfield* concerned whether the *Criminal Rule 4* clock restarts after a hung jury. Rather than determining how to calculate the one-year period following a mistrial, this Court held *Criminal Rule 4* inapplicable and instead adopted a "reasonable time" analysis for retrials. *Nelson* gave this Court an opportunity to apply the reasonableness standard to a seventeen-month delay following a hung jury. See *Nelson v. State*, 542 N.E.2d 1336 (Ind. 1989). Both *Nelson* and *Brumfield* acknowledged that the reality of retrials do not lend themselves well to the application of a rule triggered either by an arrest or the filing of charges. A retrial after a hung jury or following an appellate victory does not require charges to be refiled or the defendant to be rearrested. Therefore, with no guarantee that the triggering factors from *Criminal Rule 4* will reoccur, the Supreme Court found *Criminal Rule 4* did not apply to retrials.

In the years following *Brumfield* and *Nelson*, the Court of Appeals continued to apply the reasonableness standard to scenarios concerning retrials of underlying offenses. See e.g. *Driver v. State*, 594 N.E.2d 488 (Ind. Ct. App. 1992) (trial court vacated conviction during Driver's appeal and State brought him to trial 16 months later); *Faulisi v. State*, 602 N.E.2d 1032 (Ind. Ct. App. 1992) (following a hung jury, the State tried defendant a little over a year later); *Lahr v. State*, 615 N.E.2d 150 (Ind. Ct. App. 1993) (defendant retried 18 months after an appellate reversal); *State v. Montgomery*, 901 N.E.2d 515, 519 (Ind. Ct. App. 2009)

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(State took three years to bring defendant to trial after appellate reversal).

Until 1997, thought was given to habitual offender situations. Finally in *Poore v. State*, 685 N.E.2d 36, 38 (Ind. 1997), this Court contemplated the unique scenario of habitual offender retrials which place defendants in a fundamentally different position than a defendant facing retrial on his underlying charges.

In a normal retrial, defendants are entitled to bond and can therefore enjoy their freedom while awaiting trial. Defendants awaiting resolution on sentencing enhancements serve time in prison in an *in fieri* status with the unresolved matter impacting their DOC classifications. See Indiana Department of Correction Adult Offender Classification Manual (1/1/15), P. 37.<sup>1</sup> DOC classifications influence the amount of freedom one enjoys while serving time. In Mr. Watson's case, he served time for more than six years with a "matter pending" status hanging over his daily prison life.

Moreover, in Mr. Watson's case, the 30-year sentencing enhancement destroys his hope of living long enough to be free. Without the enhancement, he would be released in seven years at the age of 76. Appellant's App. Vol. 3, PP. 148-150. Adding the mandatory

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<sup>1</sup> The manual notes on page 37:

*The warrant/detainer screens in the offender information system are to include all pending and sentenced offenses along with dispositions, if sentenced. If it is impossible to gain complete information prior to classification out of RDC or RTI, all information gathered is to be noted and the offender is to be classified as if the warrant information is active and pending.*

And on page 42:

*The warrant/detainer screens in the offender information system are to include all pending and sentenced offenses along with dispositions, if sentenced.*

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30-year habitual enhancement ensures Mr. Watson will die in prison of old age.

Another notable difference between normal retrials and habitual offender retrials is that in the latter the State is typically attempting a second bite of the proverbial apple by using different convictions.<sup>2</sup> Therefore, the State repleads the matter citing the new prior history which forms the habitual offender status. The repleading of the habitual offender charge giving a clear starting point for *Criminal Rule 4* purposes.

Given these differences, it is no surprise that this Court opted to treat habitual offender retrials differently from retrials of underlying offenses. In *Poore v. State*, 685 N.E.2d 36, 38 (Ind. 1997), this Court analyzed the purpose behind *Criminal Rule 4* which disfavors keeping a person in prison with his matters indefinitely pending. For purposes of the rule, a defendant is:

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. This Court acknowledged DOC classifications impact daily prison life and restrict a person's freedom in a unique way not contemplated by a general retrial. In the retrial *Poore* faced, he was in prison serving time on his underlying sentence with the possibility of serving more time and with the active case presenting

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<sup>2</sup> It might be possible that a habitual offender reversal would not filing of new charges. However, counsel is unable to form an example of this situation and this unique fact pattern is not now before the Court.

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current consequences to his DOC classification. Under these facts, *Poore* found the time limits of *Criminal Rule 4(B)* applicable to retrial of his habitual offender charge.

Though *Poore* addressed *Criminal Rule 4(B)* and not 4(C), the underlying rationale applies with equal force to both sections of the rule. The State must act expeditiously to resolve a criminal matter because the defendant faces an ongoing uncertainty and negative impact to his prison life until the matter is resolved. This concern drove the *Poore* Court to apply *Criminal Rule 4* in habitual offender cases. That the defendant in *Poore* filed a *Criminal Rule 4(B)* request and Mr. Watson did not, is of no real distinction. Both men faced the uncomfortable position of “being held” in fieri and thus it is incongruent that Mr. *Poore* would be retried in 70 days whereas Mr. Watson who filed no motion must wait more than six years for resolution of his case.

Moreover, the State filed new habitual offender charges against Mr. Watson. Rather than revisiting past allegations, Mr. Watson faced a whole new set of accusations which he had to defend. The new charges gave him access to new defenses while conversely forcing him to explain different past criminal behavior. This is an important distinction because when a defendant is retried on a habitual offender charge, he is not answering again to the same set of allegations, but rather faces a new battle. With new charges, the defendant’s plight takes a new path. Therefore, the filing of these different charges, places a defendant into the position of being held “to answer a criminal charge” for purposes of *Criminal Rule 4(C)* again when the State recharges him.

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The Court of Appeals properly applied *Poore* to include all parameters of *Criminal Rule 4*. To do otherwise is to allow defendants, like Watson, to languish in jail at the mercy of the judge or prosecutor while facing restrictions imposed on their prison life due to these unresolved matters. Because those in power failed to act expeditiously, Mr. Watson remained in limbo for six years following the reversal of his habitual offender enhancement. The Court of Appeals properly applied precedent in righting this wrong.

3. The State's concerns about confusion in application of Rule 4(C) are without merit.

The State argues the Court of Appeals' opinion leaves courts uncertain when the one-year time period begins. This is where the difference between habitual offender enhancements and retrials on underlying offenses takes on importance. In normal retrials, the State does not need to file new charges because the second trial is a repeat of the first. Conversely, habitual offender retrials involve different past criminal history requiring the State to file new allegations and plead different underlying offenses than those utilized at the first trial.

For instance, in this case, the State initially relied cases from the 1990's. The new habitual offender allegation pled Ohio offenses from 1972, 1977, and 1981. App. Vol. 2, P. 98. When the State filed the new charges on November 28, 2012, Mr. Watson was placed in the position of being held for purposes of *Criminal Rule 4(C)*. Contrary to the State's assertion, the Court of Appeals' opinion leaves a clear starting point for the one-year

deadline.

4. The Court of Appeals' opinion promotes justice.

The State writes that the Court of Appeals' opinion "fails to promote justice." Br. of Appellee, P. 8. The opposite seems true. For more than six years, Mr. Watson awaited disposition of his case, gently nudging the court to set a date to resolve the matter. He served prison time with the pending charge affecting his DOC classification and possibly limiting freedoms he might have otherwise enjoyed but for the unresolved matter resting in his prison file. It seems 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 concern to anyone other than Mr. Watson. In applying *Criminal Rule 4* to habitual offender retrials, the Court of Appeals ensured justice in this case.

5. Mr. Watson's enhancement should remain vacated.

If this Court wishes to establish a bright line rule for the triggering of *Criminal Rule 4(C)* for habitual offender retrials, Mr. Watson's habitual offender enhancement must remain vacated. A reasonable bright line rule triggers the start of *Criminal Rule 4(C)* on the date the State files new habitual offender charges. In this case, that date is November 28, 2012. App. Vol. 2, P. 98. The bulk of the State's delay occurred between March 9, 2016 and March 21, 2017 from continuances granted over Mr. Watson's objections. App. Vol. 3, P.

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147. This 377-day period exceeds the time allowed by *Criminal Rule 4(C)*. This bright line rule establishes the certainty the State seeks while balancing the realities of the unique position faced by the imprisoned defendant awaiting a sentencing enhancement retrial.

Finally, if this Court decides not to apply *Criminal Rule 4(C)* to habitual offender retrials, Mr. Watson is still entitled to relief under his state and federal constitutional rights to a speedy trial. Regardless of whether this Court relies on *Criminal Rule 4(C)* or the state and federal constitutions, the State still took too long to retrial him. Mr. Watson relies on his arguments from prior briefs on this issue.

### **CONCLUSION**

The Indiana Court of Appeal's decision properly applied *Criminal Rule 4(C)* to the retrial of Mr. Watson's habitual offender adjudication. This Court should deny transfer.

Respectfully Submitted,

*/s/ Leanna Weissmann*

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*/s/ Leanna Weissmann*

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**CERTIFICATE OF SERVICE**

I do solemnly affirm under the penalties for perjury that on January 6, 2019, I served through IEFS upon Attorney General of Indiana, IGCS, Fifth Floor, 402 West Washington Street, Indianapolis, Indiana 46204-2794 one (1) copy of Appellant *Stanley Watson's Brief in Opposition to Petition to Transfer*.

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