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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVID GLASGOW, )

Appellant-Defendant, )

vs. )

No. 79A02-0607-CR-579

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE TIPPECANOE CIRCUIT COURT  
The Honorable Donald Daniel, Judge  
Cause No. 79C01-0507-FD-16

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**April 4, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

David Glasgow (“Glasgow”) appeals the Tippecanoe Circuit Court’s denial of his motion for discharge filed pursuant to Indiana Criminal Rule 4(B). Because Glasgow failed to object until nearly two months after the trial court scheduled his trial outside of the speedy trial time limitation, we conclude that Glasgow waived his request for a speedy trial.

Affirmed.

### **Facts and Procedural History**

On February 4, 2005, West Lafayette police officer Jeffrey Dumscomb (“Officer Dumscomb”) was on patrol in Tippecanoe County when he observed a blue truck with defective brake lights and a defective exhaust system. He initiated a traffic stop and found Glasgow alone in the vehicle. He then smelled marijuana emitting from Glasgow’s truck. Officer Dumscomb returned to his own vehicle, where he observed Glasgow digging around inside of the truck.

Upon returning to Glasgow’s truck, Officer Dumscomb asked Glasgow to exit the vehicle. He performed a pat-down search of Glasgow’s person and then conducted a search of Glasgow’s truck. Officer Dumscomb found marijuana in Glasgow’s right front pocket, and he also found marijuana shakes<sup>1</sup> inside the cab of the truck.

On July 11, 2005, the State charged Glasgow with Class A misdemeanor possession of marijuana, Class D felony possession of marijuana with a prior conviction, Class D felony maintaining a common nuisance, and being a habitual substance offender. On July 25, 2005, the trial court received two handwritten letters from Glasgow

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<sup>1</sup> “Marijuana shake” is a term the officer used to describe the remnants and crumbs left over when physically handling marijuana. Tr. p. 75-76.

requesting a speedy trial. Both letters were dated July 18, 2005, and one letter was addressed to the judge, while the other letter was addressed to the court's clerk. Apparently, Glasgow wrote these letters while incarcerated at the Carroll County jail. See Appellant's App. p. 62.

On July 29, 2005, Glasgow was transported from the Carroll County jail to the Cass County jail to serve a sentence for a Cass County offense. After serving his time for this offense, he was transferred to the Tippecanoe County jail. The Tippecanoe Circuit Court held an initial hearing on September 6, 2005, regarding the Tippecanoe County charges. At that time, the trial court scheduled another hearing for September, 9, 2005. Glasgow appeared in person at the hearing on September 9th, and the trial court entered a preliminary plea of not guilty. The trial court also scheduled Glasgow's jury trial for November 22, 2005.

Glasgow appeared before the trial court again on October 12, 2005, at which time the trial court appointed him counsel and reaffirmed that the jury trial was scheduled for November 22, 2005. Glasgow and his appointed counsel appeared before the trial court again on November 4, 2005, and the trial court once again confirmed that the jury trial was scheduled for November 22nd.

On November 9, 2005, thirteen days before the trial was scheduled to take place, Glasgow filed a motion for discharge. On November 17th, the trial court released Glasgow on his own recognizance but did not dismiss the charges. The trial court held a hearing on January 3, 2006, on Glasgow's motion for discharge, which was subsequently

denied without findings or conclusions. At the January 3rd hearing, the trial court also rescheduled Glasgow's trial date for February 22, 2006.

A jury trial took place on February 22nd, where the jury found Glasgow guilty of Class A misdemeanor possession of marijuana, but acquitted him of maintaining a common nuisance.<sup>2</sup> A bench trial conducted on the same day resulted in Glasgow's conviction of being a habitual substance offender.<sup>3</sup> The trial court held a sentencing hearing on March 23, 2006, sentencing Glasgow to 172 days of incarceration and two and a half years of probation. Glasgow now appeals. Additional facts will be added as necessary.

### **Discussion and Decision**

Glasgow contends that the trial court violated his statutory right to a speedy trial under Indiana Criminal Rule 4(B) when it failed to try him within seventy days of July 25, 2005, the date that Glasgow filed a pro se motion for a speedy trial. We review de novo a trial court's denial of a motion to discharge a defendant. Kirby v. State, 774 N.E.2d 523, 530 (Ind. Ct. App. 2002), trans. denied.<sup>4</sup>

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<sup>2</sup> There is quite a bit of discrepancy regarding the date the jury trial actually took place. The court reporter's transcript initially dates the proceedings as February 2, 2006. Tr. p. 1. However, her certificate indicates that the transcript is a record of the proceedings that took place on February 10, 2006. Id. at 170. Additionally the trial court's chronological case summary dates the entry regarding the jury's verdict as March 3, 2006. Appellant's App. p. 2. The jury verdict forms signed by the jury foreperson are dated February 22, 2006. Id. at 274-275. We have chosen to adopt the February 22, 2006 date, as previous entries in the CCS reveal that the trial was scheduled to take place on February 22nd. We remind the trial court that the dates on which motions are filed or when proceedings take place oftentimes dictate the outcome of an appeal. Therefore, it is imperative for trial courts to establish procedures to ensure the accuracy of their records.

<sup>3</sup> It also appears that a bench trial convicted Glasgow of Class D felony possession of marijuana while having a prior conviction. Tr. p. 180. However, this conviction does not appear anywhere in the CCS, and it is further not addressed in the trial court's sentencing order. Appellant's App. pp. 384-388.

<sup>4</sup> We remind Appellant's counsel that the "argument [section of Appellant's brief] must include for each issue a concise statement of the applicable standard of review." Ind. Appellate Rule 46(A)(8)(b) (2007). We also remind Appellant's counsel that an attorney tendering a document to the clerk of this court must

Indiana Criminal Rule 4(B) (2007) provides that “[i]f any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion . . . .” In Williams v. State, 631 N.E.2d 485, 486 (Ind. 1994), our supreme court stated that “[t]he purpose served by Crim. R. 4(B) is to prevent a defendant from being detained in jail for more than 70 days after requesting an early trial.” Here, Glasgow unquestionably spent more than seventy days in jail after requesting an early trial. He filed a request for a speedy trial with the trial court on July 25, 2005, giving the trial court until October 3rd to conduct his trial. Glasgow was released on his own recognizance on November 17, 2005, and the trial court did not conduct his jury trial until February 2006.

However, we note that prior to filing his motion for discharge, Glasgow failed to object to the trial court scheduling his trial outside of the seventy-day time limitation. It is well established that a defendant must maintain a position reasonably consistent with his request for a speedy trial and must object, at his earliest opportunity, to a trial setting that is beyond the seventy-day time period. Townsend v. State, 673 N.E.2d 503, 506 (Ind. Ct. App. 1996); James v. State, 622 N.E.2d 1303, 1306 (Ind. Ct. App. 1993); see also Pasha v. State, 524 N.E.2d 310, 312 (Ind. 1988). This requirement is enforced to enable the trial court to reset the trial date within the proper time period. Dukes v. State, 661 N.E.2d 1263, 1266 (Ind. Ct. App. 1996). When a defendant requesting an early trial date on a date within the seventy-day period does not then object to a trial date which falls outside the limit, he has abandoned his request for a speedy trial pursuant to

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include a certificate of service, certifying that service has been made and listing the parties served, as well as the date and means of service. Ind. Appellate Rule 24(D) (2007).

Criminal Rule 4(B). James, 622 N.E.2d at 1306. In other words, it is the defendant's obligation to call to the trial court's attention a trial date that has been set outside the time frame allowed by Criminal Rule 4(B). Townsend, 673 N.E.2d at 506.

In recognizing this obligation, our supreme court noted in Utterback v. State, 261 Ind. 685, 687, 310 N.E.2d 552, 553-554 (1974), that "[t]he purpose of the rules is to assure early trials and not discharge defendants." Our supreme court further noted that although "[t]he courts are under legal and moral mandate to protect the constitutional rights of accused persons . . . this should not entirely relieve [defendants] from acting reasonably in their own behalf." Id. The right to a speedy trial is not intended to allow defendants a means of escape by abusing the procedures that the courts have designed for their protection. Id.

In Townsend, this court held that a defendant had acquiesced to a trial date set outside the speedy trial period when he failed to object to the trial court scheduling a date outside of the Criminal Rule 4(B) limit, and thus, had abandoned his request for a speedy trial. 673 N.E.2d at 506. Here, Glasgow appeared in person at the hearing on September 9, 2005, at which time he did not object to the trial court's scheduling his jury trial outside the seventy-day time limitation. Glasgow also appeared in person at a hearing on October 12, 2005. At this time, the trial court appointed him counsel and reaffirmed that the jury trial was scheduled for November 22, 2005. Again, Glasgow did not object to this date. The case summary indicates that Glasgow also appeared with counsel at a hearing on November 4, 2005. At this hearing the court again confirmed the jury trial for Tuesday, November 22, 2005. Glasgow did not object.

Glasgow did not file a motion for discharge until November 9, 2005, nearly two months after the trial court scheduled a date for his jury trial and only thirteen days before the trial was to take place. Consequently, Glasgow did not file an objection at his earliest opportunity. We therefore conclude that Glasgow acquiesced to a trial date outside of the seventy-day speedy trial time limitation provided for in Criminal Rule 4(B) and waived his claim for discharge.

Affirmed.

NAJAM, J., and MAY, J., concur.