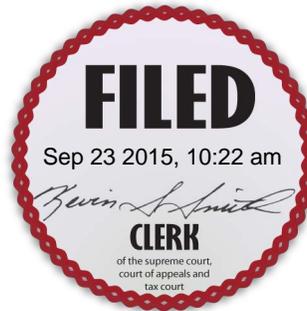


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Clinton M. Garrett,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 23, 2015

Court of Appeals Case No.
02A04-1502-CR-82

Appeal from the Allen Superior
Court

The Honorable Wendy W. Davis

Trial Court Cause No.
02D04-1407-F6-62

Bailey, Judge.

Case Summary

- [1] Clinton Garrett (“Garrett”) appeals his conviction and sentence for Residential Entry, a Level 6 felony.¹ We affirm.

Issues

- [2] Garrett presents two issues for review:
- I. Whether he is entitled to discharge pursuant to Indiana Criminal Rule 4(B); and
 - II. Whether his sentence is inappropriate.

Facts and Procedural History

- [3] During the afternoon of July 24, 2012, Garrett entered the Fort Wayne home of William and Fauline Altamirano (“William” and “Fauline”) by breaching a locked screen door. Once inside the residence, Garrett began to confront William’s cousin, Justin Snawder (“Snawder”), over an alleged debt. Garrett, who appeared to be intoxicated, was drinking from a bottle inside a brown paper bag. He pushed against William in an attempt to get to Snawder and waved the bottle in Snawder’s face. Garrett repeatedly refused demands that he

¹ Ind. Code § 35-43-2-1.5.

leave the residence and threatened that “his people” would be back to “light up the house tonight.” (Tr. at 161.)

[4] After about thirty minutes, William forced Garrett out of the house and Fauline called 9-1-1. Police located Garrett in a neighbor’s yard, questioned him, and told him to leave. When told that he would be charged with trespassing if he returned, Garrett responded by threatening to kill the homeowner. On July 30, 2014, the State charged Garrett with Residential Entry, and a warrant was issued for his arrest.

[5] On August 3, 2014, Garrett was released on bond. Four days later, he filed a motion for a speedy trial. Garrett was subsequently arrested for violating parole. His trial for Residential Entry was initially set for October 14, 2014, but was continued at the request of the State. Garrett filed a motion for discharge, which was denied. At the conclusion of a one-day jury trial conducted on January 15, 2015, Garrett was convicted as charged. He was sentenced to two and one-half years imprisonment. He now appeals.

Discussion and Decision

Speedy Trial

[6] The United States and Indiana Constitutions protect the right of an accused to a speedy trial. U.S. Const. amend. VI; Ind. Const. art. 1, § 12. Indiana Criminal Rule 4 generally implements the constitutional right of an accused to a speedy trial. *Cundiff v. State*, 967 N.E.2d 1026, 1027 (Ind. 2012). Subsection (B) of the

Rule provides, in part, 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.” Ind. Crim. Rule 4(B)(1). This subsection has application when a defendant is incarcerated on the charge for which he seeks a speedy trial. *Cundiff*, 967 N.E.2d at 1031.

[7] Garrett was released on bond on August 3, 2014. Thus, when he made his speedy trial motion on August 7, 2014, he was not incarcerated. On August 29, 2014, Garrett was arrested for violating parole. On September 30, 2014, the State moved for a continuance, asserting that Garrett’s “motion for a speedy trial has no further legal effect.” (App. at 9.) On October 29, 2014, when Garrett filed his motion for discharge on Criminal Rule 4(B) grounds, he was incarcerated but not “on the charge for which he seeks a speedy trial.” *Cundiff*, 967 N.E.2d at 1031.

[8] Garrett seems to concede as much, but argues that he is nevertheless entitled to discharge because the State did not, at its earliest opportunity, claim that Garrett was not entitled to Criminal Rule 4(B)’s application. Instead, the State acquiesced in the initial setting of the October 14, 2014 trial date. Later, the State moved for a continuance, then claiming that Criminal Rule 4(B) was inapplicable. According to Garrett, because the State did not initially argue inapplicability, the State is thereafter estopped from making such a claim. He offers no authority to this effect.

[9] Indeed, the plain language of Criminal Rule 4(B) and *Cundiff* dictate the result here. After August 3, 2014, Garrett was not incarcerated on the charge for which he sought a speedy trial. He is not entitled to discharge pursuant to Criminal Rule 4(B).

Sentence

[10] Upon conviction of a Level 6 felony, Garrett was subject to a term of imprisonment of between six months and two and one-half years, with the advisory sentence being one year. I.C. § 35-50-2-7. The trial court imposed the maximum sentence, finding no mitigating circumstances and finding Garrett's criminal history and violation of parole to be aggravating circumstances. Garrett seeks revision of his sentence to the advisory sentence.

[11] The authority granted to this Court by Article 7, § 6 of the Indiana Constitution permitting appellate review and revision of criminal sentences is implemented through Appellate Rule 7(B), which provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In performing our review, we assess "the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of such review is to attempt to leaven the outliers. *Id.* at 1225. A defendant "must persuade the appellate court that his or her sentence has met th[e]

inappropriateness standard of review.”’ *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

[12] As to the nature of Garrett’s offense, he broke into a residence to insist that an alleged debt be settled. Garrett appeared to be intoxicated, and he swung the bottle from which he had been drinking at one of the residents. There were several children present when Garrett initiated the confrontation and, although he was repeatedly reminded of the children’s presence and asked to leave, Garrett refused to do so. He remained for approximately one-half hour before he was pushed out the door. He made threats against the residents of the home he had entered, and also against the neighbor in whose yard he took refuge.

[13] As for his character, Garrett had already compiled a substantial criminal history before committing the instant offense. He was adjudicated delinquent on three occasions. He has ten prior felony convictions and eight prior misdemeanor convictions. Twice, suspended sentences were revoked. Garrett was on parole at the time of the instant offense. His history indicates an inability to benefit from rehabilitative efforts short of incarceration.

[14] Having reviewed the matter, we conclude that the trial court did not impose an inappropriate sentence under Appellate Rule 7(B), and the sentence does not warrant appellate revision. Accordingly, we decline to disturb the sentence imposed by the trial court.

Conclusion

[15] Garrett is not entitled to discharge under Criminal Rule 4(B). His maximum sentence for a Level 6 felony is not inappropriate.

[16] Affirmed.

Baker, J., and Mathias, J., concur.