

In the
Indiana Supreme Court

Rodolfo A. Lopez, Jr.,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
19A-CR-00098

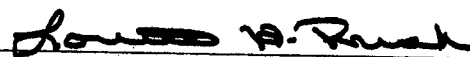
Trial Court Case No.
46C01-1802-F6-149

Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 5/14/2020.

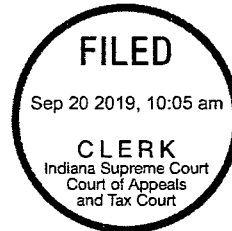


Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

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.



ATTORNEY FOR APPELLANT

Jennifer L. Koethe
Navarre, Florida

ATTORNEYS FOR APPELLEE

Curtis T. Hill, Jr.
Attorney General of Indiana

George P. Sherman
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Rodolfo Lopez, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 20, 2019

Court of Appeals Case No.
19A-CR-98

Appeal from the LaPorte Circuit
Court

The Honorable Thomas J.
Alevizos, Judge

Trial Court Cause No.
46C01-1802-F6-149

Baker, Judge.

- [1] On February 15, 2018, the State charged Rodolfo Lopez, Jr., in LaPorte County with four Level 6 felonies, later amending the charging information by changing the felonies to Level 5 offenses. On May 24, 2018, Lopez, who was being held in the St. Joseph County Jail on other charges, filed a request to proceed pro se and a motion for a speedy trial in LaPorte County. A warrant for Lopez's arrest for the LaPorte County charges was served on July 3, 2018.
- [2] At Lopez's initial hearing in LaPorte County on July 6, 2018, he waived his right to counsel and requested a bench trial, which the trial court scheduled for August 16, 2018. Lopez did not object to the date, nor did he move for discharge at any point prior to trial. Following the August 16, 2018, bench trial, the trial court found Lopez guilty as charged, later sentencing him to concurrent sentences of three years each on all counts. Lopez now appeals.
- [3] Criminal Rule 4(B) 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" A defendant must maintain a position reasonably consistent with his request for a speedy trial; therefore, he must object at the earliest opportunity to a trial setting that is beyond the seventy-day time period. *Hill v. State*, 777 N.E.2d 795, 797-98 (Ind. Ct. App. 2002). If an objection is not timely made, the defendant is deemed to have acquiesced to the trial date. *Hampton v. State*, 754 N.E.2d 1037, 1039 (Ind. Ct. App. 2001). Furthermore, a defendant waives review of this issue on appeal if he does not move for discharge or dismissal prior to trial. *Id.* at 1040.

[4] In this case, Lopez did not object to the trial date, which he claims exceeded the seventy-day time limit set forth in Criminal Rule 4(B). Therefore, he acquiesced to the trial date. Moreover, he did not move for discharge or dismissal prior to trial, meaning that he has waived the issue for appeal. Lopez argues that we should afford him leniency because he was pro se, but it is well established that pro se litigants are held to the same standard as attorneys and are required to follow procedural rules. *E.g., Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004). Therefore, he is not entitled to relief on this basis.

[5] The judgment of the trial court is affirmed.

Kirsch, J., and Crone, J., concur.

STATE OF INDIANA) IN THE LA PORTE CIRCUIT COURT
) SS:
COUNTY OF LA PORTE) 2018 TERM

STATE OF INDIANA)
)
VS.) CAUSE NO. 46C01-1802-F6-149
)
RODOLFO A. LOPEZ, JR.)

JUDGMENT OF CONVICTION & SENTENCING ORDER

The above-entitled cause having come on for hearing on this 24th day of October, 2018, the State of Indiana appears by Deputy Prosecuting Attorney Frank A. Rodriguez, for the County of LaPorte, State of Indiana; and the Defendant, Rodolfo A. Lopez, Jr., appears in person and pro se, and this matter is now submitted for sentencing.

The Court, having found the Defendant, Rodolfo A. Lopez, Jr., guilty at Bench Trial, now finds:

The Court now enters a judgment of conviction against the Defendant, Rodolfo A. Lopez, Jr., to Count I, Battery Against a Public Safety Official, a Level 5 Felony, to Count II, Battery Against a Public Safety Official, a Level 5 Felony, to Count III, Resisting Law Enforcement, a Level 6 Felony, to Count IV, Resisting Law Enforcement, a Level 6 Felony.

The Court, having had this matter under advisement and considered the written Pre-Sentence Investigation Report, now finds:

The Court finds that there are minimal aggravating and mitigating factors.

The Defendant, Rodolfo A. Lopez, Jr., who is a male person, 35 years of age, is guilty of two counts of Battery Against a Public Safety Official, Level 5 Felonies, of two counts of Resisting Law Enforcement, Level 6 Felonies.

APPENDIX C



IT IS ORDERED, ADJUDGED AND DECREED by the Court that the Defendant, Rodolfo A. Lopez, Jr., shall be committed to the custody of the Indiana Department of Correction for a period of three (3) years under each count. Said sentences shall be served concurrently.

THE COURT FURTHER FINDS that zero (0) days of the sentence of imprisonment shall be suspended.

The Court finds that the Defendant shall be given one hundred seventeen (117) days credit under Credit Class B toward the sentence of imprisonment for time spent in confinement as a result of these charges.

A fine in the amount of \$1.00 and Court costs in the amount of \$185.00 shall be assessed against the Defendant and shall be of record only.

The Defendant was advised of his right to appeal said conviction and sentence and indicates to the Court that he understands said right.

The Defendant is remanded back into the custody of the Sheriff.

SO ORDERED this 24th day of October, 2018.



**THOMAS ALEVIZOS, JUDGE
LAPORTE CIRCUIT COURT**

cc: Deputy Prosecuting Attorney Frank A. Rodriguez, Esq.
Rodolfo A. Lopez, Jr., Defendant, c/o LPCJ
IDOC
Sheriff
Probation
Clerk/ck

STATE OF INDIANA)	IN THE LAPORTE CIRCUIT COURT
)ss:	
COUNTY OF LAPORTE)	CONTINUOUS TERM, 2018

STATE OF INDIANA)	
Plaintiff,)	
)	
v.)	CAUSE NO. 46C01-1802-F6-149
)	
RODOLFO LOPEZ, JR)	
DOC #251416)	
Defendant/Petitioner.)	

ORDER FOR PERFECTION OF APPEAL

Petitioner/Defendant, RODOLFO LOPEZ, JR., an offender confined at Indiana Department of Correction (IDOC), having presented to this Court an imperfect, yet timely, Notice of Appeal, now finds as follows:

1. Petitioner submitted an imperfect attempt at filing an Appeal of his criminal conviction, signed November 9, 2018.
2. Petitioner was convicted in this Court of several charges on October 24, 2018.
3. The Petitioner's attempt at appeal is thus timely.
4. However, Petitioner's Notice of Appeal has many fatal defects, not the least of which include appealing to a tribunal that does not exist ("LaPorte County Court of Appeals") or including a Cause Number to reference from what decision Petitioner may be seeking appeal.
5. Regardless of the defects, and taken within the context of all current and pertinent facts, Petitioner's intent is clear, and thus this Court finds that Petitioner has made an effective, if imperfect, motion to appeal judgment of his convictions.
6. Due to Petitioner's current commitment to IDOC, this Court finds that the Petitioner is HEREBY INDIGENT and without means to secure his own counsel.

ENCLOSURE

7. To avoid further delay regarding Petitioner's appeal, this Court finds that referral to the services of the LAPORTE COUNTY PUBLIC DEFENDER'S OFFICE is necessary.

IT IS THEREFORE ORDERED that this Matter is HEREBY REFERRED TO LAPORTE COUNTY PUBLIC DEFENDER'S OFFICE for such support may be necessary to fully and effectively represent Petitioner's appeal.

SO ORDERED on this the 5th day of December, 2018.



HON. THOMAS J ALEVIZOS

Judge

Distribution:

Rodolfo Lopez, Jr., #251416, IDOC 737 Moon Road, Plainfield, IN 46168

LaPorte County Public Defender's Office

Clerk

RJO

/gor

**Additional material
from this filing is
available in the
Clerk's Office.**