

No. _____

MARCUS CONNER,

Petitioner,

v.

INDIANA,

Respondent.

PETITIONER'S APPENDIX

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In the
Indiana Supreme Court

Marcus Conner,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
19A-PC-02106

Trial Court Case No.
20D03-1701-PC-5



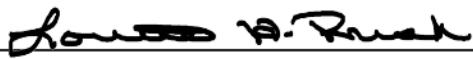
Order

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 9/24/2020.

FOR THE COURT


Loretta H. Rush
Chief Justice of Indiana

All Justices concur, except Rush, C.J., and Goff, J., who vote to grant the petition to transfer.

Conner v. State

Court of Appeals of Indiana

April 8, 2020, Decided; April 8, 2020, Filed

Court of Appeals Case No. 19A-PC-2106

Reporter

2020 Ind. App. Unpub. LEXIS 458 *; 146 N.E.3d 343

Marcus Conner, Appellant-Petitioner, v.
State of Indiana, Appellee-Plaintiff

Notice: PURSUANT TO INDIANA 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.

PUBLISHED IN TABLE FORMAT IN THE NORTH EASTERN REPORTER.

Subsequent History: Transfer denied by Conner v. State, 2020 Ind. LEXIS 779 (Ind., Sept. 24, 2020)

Prior History: [*1] Appeal from the Elkhart Superior Court. The Honorable George W. Biddlecome, Senior Judge. Trial Court Cause No. 20D03-1701-PC-5. Conner v. State, 59 N.E.3d 1100, 2016 Ind. App. Unpub. LEXIS 804 (Ind. Ct. App., July 13, 2016)

Counsel: ATTORNEYS FOR APPELLANT:

Amy E. Karozos, Indiana State Public Defender; J. Michael Sauer, Deputy Public Defender, Indianapolis, Indiana.

ATTORNEYS FOR APPELLEE: Curtis T. Hill, Jr., Attorney General of Indiana; Tyler G. Banks, Deputy Attorney General, Indianapolis, Indiana.

Judges: May, Judge. Najam, J., and Altice, J., concur.

Opinion by: May

Opinion

MEMORANDUM DECISION

May, Judge.

P1 Marcus Conner appeals the post-conviction court's denial of his petition for post-conviction relief. He raises two issues for our review, which we revise and restate as: (1) whether his trial counsel was ineffective for failing to assert his right to a speedy trial under the Indiana and United States

Constitutions, and (2) whether his appellate counsel was ineffective for not arguing that there was insufficient evidence to demonstrate he committed his offense within 1,000 feet of a youth program center. We affirm.

Facts and Procedural History

P2 In a memorandum decision affirming Conner's convictions on direct appeal, we summarized the facts and course of proceedings in his criminal case as follows:

On September [*2] 19, 2012, Conner was arrested after he sold cocaine to two confidential informants during three separate controlled buys arranged by the Elkhart Police Department. Conner sold the cocaine from his home, which was located within 1000 feet of a youth program center. On September 24, 2012, the State charged Conner with three counts of Dealing in Cocaine, as Class A felonies,¹ and Maintaining a Common Nuisance, as a Class D felony.² On March 26, 2015, the State moved to amend the charging information to allege that Conner was a habitual offender.³

At Conner's initial hearing, a trial date was set for March 11, 2013.

On the court's own motion, and by an order dated March 8, 2013, the trial court vacated the March 11, 2013 trial date due to court congestion and set a pre-trial conference for April 11, 2013 for the purpose of selecting a new trial date. On Conner's motion,

the pretrial conference was continued. At a pre-trial conference held on May 2, 2013, the trial was rescheduled for July 15, 2013.

On defendant's motion, and by an order dated July 12, 2013, the trial court vacated the July 15, 2013 trial date, 'with [Indiana Criminal Rule] 4 time chargeable to the Defense' (App. 149), and scheduled [*3] a pre-trial conference for July 25, 2013. At the conference, the trial was rescheduled for August 12, 2013.

On the State's motion, and by an order dated July 31, 2013, the trial court vacated the August 12, 2013 trial date due to court congestion. At a pre-trial conference held September 5, 2013, the trial was rescheduled for January 6, 2014.

On the court's motion, and by an order dated January 2, 2014, the court again vacated the January 6, 2014 trial date due to court congestion and set a pre-trial conference for February 6, 2014. At the conference, the court set the trial for March 24, 2014.

The State then filed two more motions to continue due to court congestion. By an order dated March 17, 2014, the March 24, 2014 trial was cancelled and rescheduled for June 23, 2014. By an order dated June 19, 2014, the June 23, 2014 trial date also was vacated.

On July 7, 2014, Conner, acting pro se, sent to the court a motion for discharge under Indiana Criminal Rule 4. Conner was represented by counsel at the time, so the court did not accept the filing. At a pretrial conference held July 31, 2014, the cancelled June 23, 2014 trial was rescheduled for January 26, 2014

¹ Ind. Code § 35-48-4-1 (2006).

² Ind. Code § 35-48-4-13 (2001).

³ Ind. Code § 35-50-2-8 (2005).

[sic].

On October 23, 2014, Conner submitted another [*4] pro se motion for discharge, which the trial court again did not accept because Conner was represented by counsel.

On the State's motion, and by an order dated January 20, 2015, the court rescheduled the January 26, 2015 trial due to court congestion and set a pre-trial conference for February 26, 2015.

At the February 26, 2015 pre-trial conference, Conner, this time by counsel, filed in open court a motion for discharge under Indiana Criminal Rule 4. The court heard argument on the motion. The motion was denied, and trial was set for April 6, 2015.

On April 6, 2015, the day of trial, Conner's counsel moved to withdraw his representation due to a conflict of interest. The trial was continued.

A jury trial was held on July 20 and 21, 2015, and Conner was found guilty as charged. Conner admitted to being a habitual offender. By orders dated August 27 and 28, 2015, the trial court sentenced Conner to an aggregate sentence of seventy-two years.

Conner v. State, No. 20A03-1509-CR-1426, 2016 Ind. App. Unpub. LEXIS 804, 2016 WL 3745924, slip. op. at 1-2 (Ind. Ct. App. July 13, 2016) (footnotes added).

P3 On direct appeal, Conner argued that he was entitled to discharge under Indiana Criminal Rule 4(C) because two of the trial court's findings of court congestion were erroneous. *Id.* at 2-3. We held the number of days of delay chargeable to the State did not exceed

365. *Id.* at 5. Conner also argued [*5] the delay violated his constitutional right to a speedy trial, but we held the argument was waived because trial counsel did not raise the argument below. *Id.* at 6. We affirmed Conner's convictions. *Id.*

P4 Conner filed a petition for post-conviction relief *pro se* on January 23, 2017. On June 27, 2017, the court appointed a public defender to represent Conner, and Conner filed an amended petition on November 8, 2018. The amended petition alleged ineffective assistance of both trial counsel and appellate counsel. The amended petition argued Conner's trial counsel were ineffective because they did not argue the delay in bringing Conner to trial violated Conner's right to a speedy trial. The amended petition also argued Conner's appellate counsel was ineffective for not arguing there was insufficient evidence to prove Conner sold cocaine within 1000 feet of a youth program center. The post-conviction court held a bifurcated evidentiary hearing on March 29, 2019, and May 3, 2019.

P5 Conner's trial attorneys, Peter Todd and Christopher Crawford, as well as Conner's appellate counsel, Mari Duerring, testified at the hearing. Todd initially represented Conner at the trial level, but Crawford took over [*6] the representation of Conner following a reassignment of responsibilities among the Elkhart County public defenders. Crawford withdrew his representation when he discovered a conflict of interest, and Todd resumed his representation of Conner. Todd testified at the hearing on Conner's petition for post-conviction relief that even though he was familiar

with Criminal Rule 4 and the constitutional right to a speedy trial, he "didn't contemplate in [Conner's] case that that might be something [he] would file on [Conner's] behalf." (Tr. Vol. II at 10.)

P6 Crawford testified that, while he filed a motion for discharge under Criminal Rule 4, he thought he did not also assert Conner's constitutional right to a speedy trial because evidence was not lost as a result of the delay. Duerring testified she did not raise the issue of whether the State presented sufficient evidence to prove Conner dealt cocaine within 1,000 feet of a youth program center on direct appeal because she did not think the issue was as strong as the arguments she raised.

P7 On August 30, 2019, the post-conviction court issued an order denying Conner's petition for post-conviction relief with findings of fact and conclusions of law. Regarding Conner's [*7] claim his trial attorneys were ineffective for failing to adequately assert his constitutional right to a speedy trial, the court found

the issue of whether [Conner] was entitled to be discharged under the speedy trial provisions of the United States and Indiana Constitutions was raised on direct appeal and decided adversely to [Conner]. Accordingly, as a matter of procedure, this argument is *res judicata* and not available for review in this [post-conviction proceeding].

(App. Vol. II at 134-135) (emphasis in original). The court nevertheless analyzed the delay from the date of Conner's arrest to his trial and determined the delay was justified. The

court held

trial counsel's performance cannot be said to have fallen below an objective standard of reasonableness when he chose not to object to the delay in this case on constitutional grounds as well as pursuant to Criminal Rule 4. Moreover, [Conner] has not demonstrated that had counsel done so, the result would have been different, i.e., he would have been discharged or his convictions would have been vacated.

(*Id.* at 138.)

P8 The court also found appellate counsel was not ineffective because Conner's argument that there was insufficient evidence to show he dealt cocaine within 1,000 [*8] feet of a youth program center was not supported by the record. The court made findings referencing an Elkhart Police Department officer's testimony during Conner's criminal trial that two Elkhart County Health Department buildings were located within 1,000 feet of Conner's residence and the testimony of both Gwen Jaeger and Melanie Sizemore regarding the programs offered to children at each of the two Health Department buildings.

Discussion and Decision

P9 The petitioner for post-conviction relief must establish that he is entitled to relief by a preponderance of the evidence. *Timberlake v. State*, 753 N.E.2d 591, 597 (Ind. 2001), *reh'g denied*, *cert. denied* 537 U.S. 839 (2002). "Because he is now appealing a negative judgment, to the extent his appeal turns on factual issues, [the petitioner] must convince this Court that the evidence as a whole leads unerringly

and unmistakably to a decision opposite that reached by the post-conviction court." *Id.* "Where the [post-conviction] court has entered findings of fact and conclusions of law, we accept the findings of fact unless clearly erroneous, but accord no deference [to] conclusions of law." *Turner v. State*, 974 N.E.2d 575, 581 (Ind. Ct. App. 2012), *trans. denied*. We will reverse the post-conviction court's decision only if the evidence is without conflict and [*9] leads to a conclusion opposite that reached by the post-conviction court. *Id.* at 581-82.

P10 The Sixth Amendment to the United States Constitution provides that in all criminal prosecutions, a defendant is entitled "to have the assistance of counsel for his defense." U.S. Const. amend. VI. Counsel's assistance must be effective for this constitutional guarantee to be realized. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), *reh'g denied*. There is a strong presumption that trial counsel provided effective representation, and a petitioner must put forth compelling evidence to rebut that presumption. *McCullough v. State*, 973 N.E.2d 62, 74 (Ind. Ct. App. 2012), *trans. denied*. "Isolated poor strategy, inexperience, or bad tactics does not necessarily constitute ineffective assistance of counsel." *Id.* Rather, a petitioner must show that trial counsel's performance was deficient, and the petitioner was prejudiced by the deficiency. *Id.* at 75.

P11 When evaluating a defendant's ineffective-assistance-of-counsel claim, we apply the well-established, two-part *Strickland* test. "The defendant must prove: (1) counsel rendered deficient

performance, meaning counsel's representation fell below an objective standard of reasonableness as gauged by prevailing professional norms; and (2) counsel's deficient performance prejudiced the defendant, i.e., but for counsel's errors the result of the proceeding [*10] would have been different." *Bobadilla v. State*, 117 N.E.3d 1272, 1280 (Ind. 2019) (internal citation omitted). We also apply the *Strickland* test when evaluating a claim of ineffective assistance of appellate counsel. *Hollowell v. State*, 19 N.E.3d 263, 269 (Ind. 2014). The petitioner "must show appellate counsel was deficient in his or her performance and that the deficiency resulted in prejudice." *Id.*

1. Performance of Trial Counsel Regarding Conner's Right to a Speedy Trial

P12 Conner argues his trial attorneys were ineffective because they failed to preserve his constitutional right to a speedy trial. The United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial" U.S. Const. amend. VI. Additionally, the Indiana Constitution provides: "Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." Ind. Const. Art. 1, sec. 12. In *Barker v. Wingo*, the United States Supreme Court announced a balancing test for courts to consider in determining if a criminal defendant has been deprived of the right to a speedy trial. 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). The test considers four factors: "Length of delay, the reason for the delay, the

defendant's assertion of his right, and prejudice to the defendant." *Id.* We use the *Barker* factors to **[*11]** analyze speedy trial claims asserted under either the federal or the state constitution. *Sweeney v. State*, 704 N.E.2d 86, 102 (Ind. 1998).

P13 Indiana Criminal Rule 4 is meant to ensure that a defendant receives a prompt trial, but a Criminal Rule 4 challenge is separate and distinct from a claimed violation of a defendant's constitutional right to a speedy trial. *Austin v. State*, 997 N.E.2d 1027, 1037 n.7 (Ind. 2013). Criminal Rule 4(A) limits the amount of time a defendant may remain in jail awaiting trial. A defendant may not be held in jail without trial for a period in excess of six months unless the defendant moves for a continuance, the defendant delays the trial by his own act, or there is not sufficient time to try the defendant because of court congestion or emergency. Ind. Criminal Rule 4. Similarly, Criminal Rule 4(C) provides that a defendant shall not be held to answer a criminal charge for a period greater than one year unless the defendant moves for a continuance, the defendant delays the trial by his own act, or there is not sufficient time to try the defendant because of court congestion or emergency. *Id.* When evaluating a Criminal Rule 4 motion, we count the number of days the defendant has been held to answer a criminal charge, discount the number of days of delay attributable to the defendant's actions and court congestion, and if the total number of days exceeds the time **[*12]** period provided in the rule, grant the defendant relief. See *Curtis v. State*, 948 N.E.2d 1143, 1151 (Ind. 2011) (holding that "because the days

that count toward the Rule 4(C) period exceed 365, the trial court should have granted Curtis's motion to dismiss and discharge").

P14 Initially, Conner challenges the post-conviction court's conclusion that his argument that he was entitled to discharge pursuant to the speedy trial provisions of the United States and Indiana Constitutions is barred by *res judicata* because the argument was raised on direct appeal. Conner acknowledges that "[i]f an issue was raised on direct appeal, but decided adversely to the petitioner, it is *res judicata*." *Reed v. State*, 856 N.E.2d 1189, 1194 (Ind. 2006). However, Conner argues we did not consider or decide whether Conner should have been discharged pursuant to the speedy trial provisions of the state and federal constitutions because we held on direct appeal that the challenge was waived. See *Conner*, *slip op.* at 6 ("Conner did not raise his constitutional claims before the trial court, either in his written motion for discharge or at the hearing on the motion. Issues not raised at the trial level are generally waived on appeal. Accordingly, Conner's constitutional speedy-trial claims are forfeited.") (internal citation omitted). **[*13]** Therefore, Conner maintains, he is not barred from arguing that he is entitled to post-conviction relief because his trial attorneys were ineffective in failing to preserve the issue for appeal. We agree that Conner's claim is not barred by *res judicata*. See *Reed*, 856 N.E.2d at 1195 (holding defendant's ineffective assistance of counsel claim was not barred by *res judicata* because, although a sentencing issue was raised on direct appeal, counsel did not raise argument that the court could not impose

consecutive sentences).

A. Length of Delay

P15 Conner argues all four *Barker* factors weigh in his favor. He notes the delay from when charges were filed against him to when he was tried was 1,029 days.⁴ The length of the delay serves as a "triggering mechanism" for a defendant to assert his speedy trial right. *Barker*, 407 U.S. at 530. The tolerable length of a delay depends on the nature and circumstances of each case. *Id.* at 530-31. Conner points to *Ballentine v. State*, in which our Indiana Supreme Court noted that facially, "and without considering other factors," a delay of two-and-one-half years is "unusually long." 480 N.E.2d 957, 959 (Ind. 1985). Conner also cites *Logan v. State*, wherein our Indiana Supreme Court observed that a delay of over three-and-one-half years in the [*14] defendant's case "was considerable, unfortunate, and inexcusable." 16 N.E.3d 953, 962 (Ind. 2014).⁵ Consequently, the Supreme Court held the length of the delay weighed heavily in *Logan*'s favor. *Id.* Therefore, Conner contends the post-conviction court should have weighed heavily in his favor the length of delay between when Conner was charged and when he was tried.

P16 However, as the State points out, the length of the delay between when

Conner was charged and when he was tried is not as long as the delay in some cases where defendants have made unsuccessful speedy-trial claims. See, e.g., *Barker*, 407 U.S. at 533 (a "well over five year[]" delay); *O'Quinn v. Spiller*, 806 F.3d 974, 977-79 (7th Cir. 2015) (finding reasonable application of *Barker* when state court denied speedy-trial claim for forty-two-month delay); *United States v. Oriedo*, 498 F.3d 593, 598 (7th Cir. 2007) ("nearly three years"); *Johnson v. State*, 83 N.E.3d 81, 87 (Ind. Ct. App. 2017) (1,579-day delay); *Sickels v. State*, 960 N.E.2d 205, 221 (Ind. Ct. App. 2012) (nine-year delay), *reh'g denied, aff'd on trans.* 982 N.E.2d 1010 (Ind. 2013). *But see Logan*, 16 N.E.3d at 962 (finding "three-and-one-half-year delay" unconstitutional). Therefore, while the delay in bringing Conner to trial was lengthy, the delay was not so long that it violated Conner's constitutional right to a speedy trial.

B. Reasons for the Delay

P17 The next factor we consider is the reasons for the delay. We look with strong disfavor on any attempt by the State to delay trial [*15] in order to hamper the defendant's defense. *Barker*, 407 U.S. at 531. Purportedly neutral reasons for delay, such as negligence or overcrowded courts, are weighed less heavily against the State. *Id.* However, a missing witness or some other valid reason may fully justify delay. *Id.*

P18 In *Logan*, the court stated "[a]lthough a congested court calendar weighs less heavily against the State, it must be viewed as the responsibility of the government and an impediment to a defendant's constitutional right to a

⁴ The time between charging and trial was 1,029 days. However, Conner was incarcerated for 1,034 days before trial because he was arrested five days before he was charged.

⁵ Conner's case and *Logan* both originated in Elkhart Superior Court 3.

speedy trial." 16 N.E.3d at 963. Conner's trial was delayed 728 days due to court congestion, and Conner argues this delay should weigh against the State. Additionally, Conner's trial was delayed 105 days because his trial counsel discovered a conflict of interest on the day of trial. Conner contends this delay should also be attributed to the State because the State could have determined there was a conflict of interest in advance of trial by reviewing the dockets of the confidential informant's criminal cases.

P19 However, Conner puts forth no authority to support his proposition that the State should have reviewed the confidential informant's chronological case summaries to determine if Conner's trial counsel had a conflict [*16] of interest. We decline to impose such a duty on the State. We also note that when the court continued Conner's trial due to court congestion, the court did so to accommodate older cases. (Prior Case App. Vol. I at 152 (moved for case charged in April 2009); 144-45 (moved for case charged in March 2012); 143 (moved for case charged in September 2010); 139-40 (moved for case charged in June 2012 and subject to Rule 4(B) request); 137-38 (moved for case charged in June 2012); 127-28 (moved for case charged in September 2011).) Therefore, while the delays due to court congestion weigh against the State, we give this factor slight weight because the delays were justified. See *Wilkins v. State*, 901 N.E.2d 535, 537-38 (Ind. Ct. App. 2009) (holding defendant's right to speedy trial was not violated when trial was continued due to court congestion), *trans. denied*.

C. Assertion of Speedy Trial Right

P20 As explained in *Barker*: "The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." 407 U.S. at 531-32. Conner sent five *pro se* letters or motions to the trial court while he was represented by counsel complaining about the [*17] delay in bringing him to trial, and Conner's counsel filed a motion for discharge under Criminal Rule 4 in February 2015. The motion for discharge asked the court to release Conner from jail or dismiss the case. Conner notes the defendant in *Logan* objected seven times to the delay in bringing him to trial, and the *Logan* court held that these repeated assertions weighed in *Logan*'s favor. 16 N.E.3d at 963.⁶ Conner contends his *pro se* assertions should receive the same weight in the *Barker* analysis as motions made by counsel. However, as our

⁶ Conner offered the chronological case summary in *Logan* and motions *Logan* filed in the trial court as Petitioner's Exhibit 4 at the hearing on postconviction relief. However, the court did not admit the exhibit into evidence. Conner argues the exhibit "is relevant to a proper evaluation of Conner's assertion of his speedy trial right. The post-conviction court abused its discretion by refusing to admit Petitioner's Exhibit 4 into evidence." (Appellant's Br. at 29.) The trial court may refuse to admit evidence that is cumulative. *The Pelican, Inc. v. Downey*, 567 N.E.2d 847, 850 (Ind. Ct. App. 1991), *trans. denied*. Before ruling on the State's objection to Exhibit 4, the court asked Conner what the exhibit added to what was said in the *Logan* decision. Apparently unsatisfied with Conner's answer, the court sustained the State's objection. Therefore, we hold the trial court did not abuse its discretion in refusing to admit Exhibit 4. See *id.* at 850 (holding trial court did not abuse discretion in excluding cumulative evidence).

Indiana Supreme Court observed in *Underwood v. State*, trial courts are "not required" to respond to *pro se* requests or motions when the litigant is represented by counsel. 722 N.E.2d 828, 832 (Ind. 2000) ("To require the trial court to respond to both Defendant and counsel would effectively create a hybrid representation to which Defendant is not entitled."), *reh'g denied*. We also note that a litigant's *pro se* requests could undermine trial counsel's litigation strategy. Therefore, Conner's assertion of his constitutional right carries little weight.

D. Prejudice Due to Delay

P21 The speedy trial right is designed to protect three interests: "(i) to prevent oppressive pretrial incarceration; **[*18]** (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Barker*, 407 U.S. at 532. The most serious of these concerns is the possibility the defense may be impaired. *Id.* Conner argues he was prejudiced by his lengthy "oppressive pretrial incarceration." (Appellant's Br. at 30.) He notes his period of pretrial incarceration was longer than the defendant in *Logan*. 16 N.E.3d at 964 (Conner's 1,034 days as compared to Logan's 1,029 days). Conner disagrees with the post-conviction court's conclusion that his pretrial incarceration "although lengthy, is clearly explainable and justified." (App. Vol. II at 138.) However, Conner puts forth no assertion of prejudice beyond the fact of his incarceration. See *Johnson*, 83 N.E.3d at 87 ("The burden is on the defendant to show actual prejudice to prove a speedy trial deprivation."). In fact, Crawford

testified evidence was not lost as a result of the delay. Therefore, this factor weighs heavily in favor of the State. See *id.* (holding prejudice factor weighed against defendant when his defense was not impaired).

P22 The length of delay in bringing Conner to trial was long, but other defendants have had longer delays without violating their rights to a speedy trial. Therefore, **[*19]** we weigh the length of the delay in Conner's favor but afford it little weight. Similarly, we weigh the substantial delay due to court congestion only slightly against the State. We also weigh Conner's assertion of his speedy trial right slightly in his favor because, while his trial counsel did not explicitly raise Conner's constitutional right to a speedy trial, Conner's counsel did file a motion for discharge under Criminal Rule 4. However, most significantly, we weigh the lack of prejudice to Conner as a result of the delay heavily against Conner. Having considered all four *Barker* factors, we hold that Conner's trial attorneys did not perform deficiently because any constitutional challenge to the pretrial delay would not have been successful. See *Wingate v. State*, 900 N.E.2d 468, 474 (Ind. Ct. App. 2009) (holding trial counsel did not render ineffective assistance by not arguing the State violated Criminal Rule 4(B) when it filed additional charges).

2. Performance of Appellate Counsel

P23 Conner argues his appellate counsel was ineffective because she "failed to recognize that despite evidence of youth program centers within 1,000 feet of the offenses at the time of trial in 2015,

there was no evidence of youth program centers at these locations at the time of the offenses **[*20]** in 2012." (Appellant's Br. at 33.) He argues the only evidence that a youth program center operated within 1,000 feet of Conner's house in 2012 was hearsay, which the trial court admonished the jury not to consider.

P24 Claims of ineffective assistance of appellant counsel generally fall into three categories: "(1) denying access to appeal; (2) waiver of issues; (3) failure to present issues well." *Harrison v. State*, 707 N.E.2d 767, 786 (Ind. 1999). Appellate counsel is expected to present the issues on appeal most likely to result in a reversal, and we show strong deference to appellate counsel's strategic decision of which issues to bring. *Walker v. State*, 988 N.E.2d 1181, 1191 (Ind. Ct. App. 2013), trans. denied. "In evaluating whether appellate counsel performed deficiently by failing to raise an issue on appeal, we apply the following test: (1) whether the unraised issue is significant and obvious from the face of the record and (2) whether the unraised issue is 'clearly stronger' than the raised issues." *Id.* (quoting *Henley v. State*, 881 N.E.2d 639, 644 (Ind. 2008)).

P25 Conner maintains the absence of evidence regarding youth program centers in 2012 was significant and obvious from the face of the record, and the issue was clearly stronger than the issues raised on direct appeal by Conner's appellate counsel. Conner sold cocaine in **[*21]** three separate controlled buys between August 31 and September 19, 2012.⁷ Conner's jury trial

occurred on July 20 and 21, 2015. Melanie Sizemore testified during Conner's jury trial. She was an employee of Healthy Beginnings, a division of the Elkhart County Health Department, located at 1400 Hudson Street in Elkhart, Indiana.

P26 Conner challenges the post-conviction court's finding that the State "question[ed] Ms. Sizemore about her knowledge of the hours of operation in 2012, [sic] and established a business records exception to the hearsay objection." (App. Vol. II at 161.) Conner objected on hearsay grounds to Sizemore's testimony about Healthy Beginnings' hours of operation in 2012. The court sustained Conner's objection and admonished the jury. While the State asked Sizemore additional questions to try to establish that her testimony fell within the business records exception to the hearsay rule, Conner contends such efforts were insufficient.

P27 However, we note the uncorroborated testimony of a single witness can sustain a conviction. *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012). Notwithstanding Sizemore's testimony, Conner's proposed sufficiency argument fails because of the testimony of Gwen Jaeger, manager of the nursing division for **[*22]** the Elkhart County Health Department building at 608 Oakland Avenue in Elkhart. The building housed an immunization clinic, a lead poison prevention program for small children, and other services. The clinic served both children and adults. Jaeger testified the clinic was open Monday

⁷The trial court took judicial notice that one of the

controlled buys occurred on a Friday, and the other two controlled buys occurred on Wednesdays.

through Friday and approximately twenty to thirty children would visit the clinic per day. The State asked Jaeger:

[State:] So, Miss Jaeger, would children have been present at 608 Oakland Avenue on Friday, August 31st, at around 11:00 a.m.?

[Jaeger:] I would say, yeah.

[State:] Okay. What about on Wednesday, September 5th of 2012, about 1:30 p.m.?

[Jaeger:] Yeah. We're not closed for lunch, so yeah. Yes.

[State:] How about Wednesday, September 19th, 2012, at 1:45 p.m.?

[Jaeger:] Yes.

constitutional speedy trial objection to the delay in bringing Conner to trial. The delay was justified, and Conner's defense was not prejudiced as a result of the delay. Also, Conner's appellate counsel did not perform deficiently by failing to raise a sufficiency argument on direct appeal because such argument would not have been successful. Therefore, we affirm the trial court's denial of Conner's petition for post-conviction relief.

P29 Affirmed.

Najam, J., and Altice, J., concur.

(Prior Case Tr. Vol. II at 256.) Conner attempts to discredit this testimony by arguing there is no evidence in the record that Jaeger worked at the Oakland Avenue clinic in 2012. He also contends Jaeger's use of the present tense demonstrates she was testifying as to the hours of operation at time of trial rather than at the time of offense. However, these arguments would not have been successful on direct appeal because they are **[*23]** requests for us to reweigh the evidence. See *Schath v. State*, 2 N.E.3d 136, 138 (Ind. Ct. App. 2014) ("appellate courts do not reweigh the evidence or assess the credibility of the witnesses"). Therefore, we hold Conner's appellate counsel did not perform deficiently when she chose not to raise a meritless argument. See *Garrett v. State*, 992 N.E.2d 710, 724-25 (Ind. 2013) (holding appellate counsel did not perform deficiently by not raising weak double jeopardy argument on direct appeal).

Conclusion

P28 Conner's trial attorneys did not perform deficiently by failing to raise a

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Conner v. State

Court of Appeals of Indiana

July 13, 2016, Decided; July 13, 2016, Filed

Court of Appeals Case No. 20A03-1509-CR-1426

Reporter

2016 Ind. App. Unpub. LEXIS 804 *; 59 N.E.3d 1100

Marielena Duerring, South Bend,
Indiana.

Marcus T. Conner, Appellant-Defendant,
v. State of Indiana, Appellee-Plaintiff

ATTORNEYS FOR APPELLEE: Gregory F.
Zoeller, Attorney General of Indiana;
Angela N. Sanchez, Deputy Attorney
General, Indianapolis, Indiana.

Notice: PURSUANT TO INDIANA
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.

PUBLISHED IN TABLE FORMAT IN THE
NORTH EASTERN REPORTER.

Subsequent History: Post-conviction
relief denied at Conner v. State, 2020
Ind. App. Unpub. LEXIS 458 (Ind. Ct.
App., Apr. 8, 2020)

Prior History: [*1] Appeal from the
Elkhart Superior Court 3. The Honorable
Teresa L. Cataldo, Judge. Trial Court
Cause No. 20D03-1209-FA-63.

Judges: Bailey, Judge. Bradford, J., and
Altice, J., concur.

Opinion by: Bailey

Opinion

MEMORANDUM DECISION

Bailey, Judge.

Case Summary

P1 Marcus T. Conner ("Conner") appeals his convictions for three counts of Dealing in Cocaine, as Class A felonies,¹ and Maintaining a Common Nuisance, as a Class D felony.² We affirm.

¹ Ind. Code §§ 35-48-4-1-(a)(1)(C) & (b)(3)(B)(iv) (2008).

² I.C. § 35-48-4-13(b)(2)(B).

Issues

P2 Conner presents two issues for our review, which we restate as:

- I. Whether two of the trial court's findings of court congestion were clearly erroneous; and
- II. Whether Conner waived his constitutional speedy-trial claims by failing to raise them before the trial court.

Facts and Procedural History

P3 On September 19, 2012, Conner was arrested after he sold cocaine to two confidential informants during three separate controlled buys arranged by the Elkhart Police Department. Conner sold the cocaine from his home, which was located within 1000 feet of a youth program center. **[*2]** On September 24, 2012, the State charged Conner with three counts of Dealing in Cocaine, as Class A felonies, and Maintaining a Common Nuisance, as a Class D felony. On March 26, 2015, the State moved to amend the charging information to allege that Conner was a habitual offender.³

P4 At Conner's initial hearing, a trial date was set for March 11, 2013.

P5 On the court's own motion, and by an order dated March 8, 2013, the trial court vacated the March 11, 2013 trial date due to court congestion and set a pre-trial conference for April 11, 2013 for the purpose of selecting a new trial date. On Conner's motion, the pre-trial conference was continued. At a pre-trial conference held on May 2, 2013, the trial was rescheduled for July 15, 2013.

P6 On defendant's motion, and by an order dated July 12, 2013, the trial court vacated the July 15, 2013 trial date, "with [Indiana Criminal Rule] 4 time chargeable to the Defense" (App. 149), and scheduled a pre-trial conference for July 25, 2013. At the conference, the trial was rescheduled for August 12, 2013.

P7 On the State's motion, and by an order dated July 31, 2013, the trial court vacated the August 12, 2013 trial date due to court congestion. **[*3]** At a pre-trial conference held September 5, 2013, the trial was rescheduled for January 6, 2014.

P8 On the court's motion, and by an order dated January 2, 2014, the court again vacated the January 6, 2014 trial date due to court congestion and set a pre-trial conference for February 6, 2014. At the conference, the court set the trial for March 24, 2014.

P9 The State then filed two more motions to continue due to court congestion. By an order dated March 17, 2014, the March 24, 2014 trial was cancelled and rescheduled for June 23, 2014. By an order dated June 19, 2014, the June 23, 2014 trial date also was vacated.

P10 On July 7, 2014, Conner, acting pro se, sent to the court a motion for discharge under Indiana Criminal Rule 4. Conner was represented by counsel at the time, so the court did not accept the filing. At a pretrial conference held July 31, 2014, the cancelled June 23, 2014 trial was rescheduled for January 26, 2014.

P11 On October 23, 2014, Conner submitted another pro se motion for

³ I.C. § 35-50-2-8.

discharge, which the trial court again did not accept because Conner was represented by counsel.

P12 On the State's motion, and by an order dated January 20, 2015, the court rescheduled the January 26, 2015 trial due [***4**] to court congestion and set a pre-trial conference for February 26, 2015.

P13 At the February 26, 2015 pre-trial conference, Conner, this time by counsel, filed in open court a motion for discharge under Indiana Criminal Rule 4. The court heard argument on the motion. The motion was denied, and trial was set for April 6, 2015.

P14 On April 6, 2015, the day of trial, Conner's counsel moved to withdraw his representation due to a conflict of interest. The trial was continued.

P15 A jury trial was held on July 20 and 21, 2015, and Conner was found guilty as charged. Conner admitted to being a habitual offender. By orders dated August 27 and 28, 2015, the trial court sentenced Conner to an aggregate sentence of seventy-two years.

P16 Conner now appeals his convictions.

Discussion and Decision

P17 Although "Indiana Criminal Rule 4 generally implements the constitutional right of a criminal defendant to a speedy trial," *Bridwell v. State*, 659 N.E.2d 552, 553 (Ind.1995), "the protections of Rule 4(C) are not co-extensive with the protections guaranteed by the Sixth Amendment [to the U.S. Constitution] and Article 1, Section 12" of the Indiana Constitution. *Logan v. State*, 16 N.E.3d 953, 961 (Ind. 2014). Thus, "our review of Rule 4 challenges is 'separate and

distinct' from our review of claimed violations of the speedy trial rights secured by the" U.S. and Indiana Constitutions. [***5**] *Id.* at 958. Where an appellant challenges the timeliness of his trial on both grounds, "we ordinarily begin our analysis with [Criminal Rule] 4." *Sweeney v. State*, 704 N.E.2d 86, 99 (Ind. 1998).

Criminal Rule 4

P18 Conner first contends he was entitled to discharge under Indiana Criminal Rule 4(C).⁴ The goal of Criminal Rule 4 is to effectuate "a criminal defendant's fundamental and constitutionally protected right to a speedy trial." *Austin v. State*, 997 N.E.2d 1027, 1037 (Ind. 2013). The rule "provides that a defendant may not be held to answer a criminal charge for greater than one year unless the delay is caused by the defendant, emergency, or

⁴ Criminal Rule 4(C) states:

No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, [***6**] the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

court congestion.'" *Curtis v. State*, 948 N.E.2d 1143, 1148-49 (Ind. 2011) (quoting *Pelley v. State*, 901 N.E.2d 494, 497 (Ind. 2009)). The focus of Criminal Rule 4 is not fault, but to ensure early trials. *Id.* at 1151. The rule places an affirmative duty on the State to bring a defendant to trial. *Id.*

P19 Under Criminal Rule 4(C), the time period begins "from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later[.]" Crim R. 4(C). Delays caused by emergency or court congestion do not count toward the one-year period. Crim R. 4(C). In addition, delays caused by the defendant extend the Rule 4(C) one-year time period. Crim. R. 4(F). "In the end, tacking on additional time to the one-year period and excluding days from the one-year period are one and the same." *Curtis*, 948 N.E.2d at 1150. Thus to analyze a claim under Criminal Rule 4(C), we determine whether the time not attributable to the defendant's delays, court congestion, or emergency exceeds 365 days. *Id.*

P20 In this case, the State filed charges on September 24, 2012. Conner's trial was originally **[*7]** scheduled for March 11, 2013, but on March 8, 2013 the court on its own motion vacated the trial date due to court congestion. Therefore, the 165 days from September 24, 2012 to March 8, 2013, are charged to the State for the purposes of Criminal Rule 4.⁵

P21 Thereafter, Conner's trial date was vacated and rescheduled six more times

⁵ Conner contends this is 162 days, but our calculations show 165.

before Conner filed his motion for discharge on February 26, 2015. On five occasions, the trial court, either on its own or the State's motion, issued an order vacating the trial date due to court congestion.⁶ Conner requested a continuance of the July 15, 2013 trial.⁷ Conner also requested a continuance of a pre-trial conference that was set for the purpose of selecting a new trial date.⁸ Because these delays were caused by court congestion or Conner, none of this time is charged to the State.

P22 In sum, of the 885 days from charging (September 24, 2012) to the date on which Conner filed a motion for discharge (February 26, 2015), only 165 days were attributable to the State for Criminal Rule 4(C) purposes.⁹ Because the number of days chargeable to the State does not exceed 365, Conner was not entitled to discharge under Criminal Rule 4(C).

P23 On appeal, Conner argues that two of the trial court's findings of congestion were erroneous, that the time should have been charged to the State, and thus he was entitled to discharge. We review a trial court's factual finding of court congestion or emergency for clear

⁶ In addition to the original March 11, 2013 trial date, the trial dates vacated due to court congestion were: August 12, 2013; January 6, 2014; March 24, 2014; June 23, 2014; and January 26, 2015.

⁷ Conner's April 6, 2015 trial date was also continued when his counsel moved to withdraw due to a conflict of interest. However, **[*8]** this continuance occurred after Conner filed his motion for discharge, and in any case, Conner does not argue the delay should be charged to the State.

⁸ The pre-trial conference originally was scheduled for April 11, 2013 and held May 2, 2013.

⁹ In total, 1029 days elapsed between charging (September 24, 2012) and trial (July 20, 2015).

error. *Austin*, 997 N.E.2d at 1040.¹⁰

Upon appellate review, a trial court's finding of congestion will be presumed valid and need not be contemporaneously explained or documented by the trial court. However, a defendant may challenge that finding, by filing a Motion for Discharge and demonstrating that, [*9] at the time the trial court made its decision to postpone trial, the finding of congestion was factually or legally inaccurate. Such proof would be *prima facie* adequate for discharge, absent further trial court findings explaining the congestion and justifying the continuance. In the appellate review of such a case, the trial court's explanations will be accorded reasonable deference, and a defendant must establish his entitlement to relief by showing that the trial court was clearly erroneous.

Clark v. State, 659 N.E.2d 548, 552 (Ind. 1995).

P24 First, Conner argues that the court erred in vacating the August 12, 2013 trial date because the parties agreed to the date during a pre-trial conference held on July 25, 2013, but shortly after, on July 31, 2013, the court granted the State's July 29, 2013 motion to vacate the trial date due to court congestion. According to Conner, "[i]t strains logic and common sense to decipher how both the trial court . . . and the State . . .

¹⁰ Although *Austin* concerned Criminal Rule 4(B), Criminal Rules 4(A) and 4(C) also provide for continuance due to a congested calendar or emergency. Therefore, "analysis in the context of Criminal 4(B) should apply with equal force to Criminal Rules 4(A) and 4(C)." *Austin*, 997 N.E.2d at 1038 n.8.

could on July 25th agree to set Conner's trial on August 12 and [*10] then just four (4) days later, the same deputy prosecutor successfully files a motion to continue that trial date due to court congestion." (Appellant's Br. 8.) Conner argues that the timing of the State's motion renders the August 12, 2013 trial setting "meaningless," and therefore the delay from the time of the State's motion to continue (July 29, 2013) to the next trial date (January 6, 2014) should be chargeable to the State.¹¹

P25 The court's order vacating the August 12, 2013 trial date states only that the "court finds that this case is not likely to proceed due to congestion of the Court's calendar . . ." (App. 144.) The corresponding entry on the Chronological Case Summary ("CCS") provides more detail, revealing that "[t]he first priority setting [*11] on August 12, 2013 is State of Indiana versus Kenneth L. Johnson, Cause No. 20D03-1203-FA-17." (App. 12.) However, Conner did not object to the State's motion for continuance or otherwise challenge the court's order.¹²

¹¹ Conner's brief is inconsistent: he contends that the delay should be calculated from the time the State's motion to continue was filed (July 29, 2013) to the next trial date (January 6, 2014), but later defines the time period as between July 31, 2013 (the date of the court's order vacating the trial date) and January 2, 2014 (the court's next finding of congestion). At most, the period from July 29, 2013 to January 6, 2014 is 161 days.

¹² Eighteen months later, Conner eventually filed a motion for discharge on February 26, 2015, which did not challenge the factual accuracy of any of the court's findings of congestion. At the hearing on the motion, in response to the prosecuting attorney's argument that Conner had not challenged the court's findings, Conner's counsel argued:

I believe on a number of those occasions [when Conner's case was continued], either of those

Accordingly, the record concerning the trial court's finding was not further developed. The record shows Conner's trial date was vacated because another case scheduled for trial that day had priority. Absent further evidence that the finding was factually or legally inaccurate, "a trial court's finding of congestion will be presumed valid . . ." *Clark*, 659 N.E.2d at 552. Conner has not shown the court's finding of congestion was clearly erroneous merely by alleging on appeal that the timing of the State's motion was suspect.

P26 Conner next argues that the trial court erred in vacating the January 26, 2015 trial date. For that date, the State moved to continue, and the court's order, dated January 20, 2015, again stated that the "court finds that this case is not likely to proceed due to congestion of the Court's calendar . . ." (App. 127.) The corresponding CCS entry elaborates that "[t]he first priority setting on January 26, 201[5] is State of Indiana versus Jose Jesus Macias, Cause No. 20D03-1109-FA-00026." (App. 15.)

P27 At the pre-trial hearing held to reschedule the January 26, 2015 trial date, Conner filed in open court a motion for discharge. However, in the written motion, Conner did not challenge the factual accuracy of the court's finding of congestion. In fact, regarding the January 26, 2015 trial date, Conner's counsel stated:

cases [the cases with higher priority] did [*12] not go. I don't - - I don't specifically have the documentation concerning which cases did go on particular days.

(Discharge Tr. 6-7.) However, Conner never pointed to specific dates or presented evidence to show which of the court's findings of congestion were allegedly erroneous.

I do realize that [Conner] was congested out the last time due to another matter that was apparently [*13] scheduled for trial at the same time as his trial. I do believe that that case may have been my case, and *I believe it was ultimately pled out the - - if I remember correctly - - the morning of trial* in connection with that matter.

(Discharge Tr. 4) (emphases added). By this statement, Conner's counsel appears to have represented to the court that the finding of congestion was factually accurate when it was made on January 20, 2015 because the priority case was not resolved until January 26, 2015.

P28 Conner now argues that the court's finding of congestion was erroneous because on January 16, 2015 — one day after the State's motion to continue was filed — the Macias case was continued to another date. In support, Conner has submitted the CCS from the Macias case as an addendum to his appellate brief and asks us to take judicial notice of the CCS under Indiana Evidence Rule 201.

P29 It is axiomatic that appellate review of the factfinder's assessment is limited to those matters contained in the record that were presented to and considered by the factfinder. *Dollar Inn, Inc. v. Slone*, 695 N.E.2d 185, 188 (Ind. Ct. App. 1998), *trans. denied*. "On appeal, judicial notice may not be used to fill evidentiary gaps." *Id.*

P30 By submitting the CCS, Conner seeks to present evidence that [*14] should have been presented first to the trial court. We decline Conner's attempt to fill an evidentiary gap, and we will not

review the Macias CCS on appeal. The purpose of presenting such evidence first to the trial court is to allow the court to make further "findings explaining the congestion and justifying the continuance." *Clark*, 659 N.E.2d at 552. Perhaps when presented with evidence that the case with first priority on January 26, 2015 had been rescheduled, the court could have shown that another case with priority over Conner's still justified a finding of congestion. That is, even if the Macias case was rescheduled prior to January 26, 2015, it does not necessarily follow that Conner's case was the next case in line. By failing to present to the trial court evidence to support his claim, Conner deprived the court of an opportunity to respond and further develop the record. Absent evidence to the contrary, we presume the court's finding of congestion was valid. Accordingly, Conner has failed to show that the court's finding of congestion on January 26, 2015 was clearly erroneous.

P31 We acknowledge that a 1029-day delay from charging to trial is extraordinarily — and disconcertingly — long.¹³ As our [*15] supreme court has repeatedly cautioned, court congestion "is not a blank check for poor judicial administration." *Logan*, 16 N.E.3d at 961; *Austin*, 997 N.E.2d at 1043. Still, Conner acquiesced in many of the continuances and failed to timely challenge the court's findings of congestion. Additionally, Conner did not file a motion for early trial under Criminal Rule 4(B), which may have entitled him to priority over other

cases.¹⁴

P32 Because the number of days chargeable to the State did not exceed 365, Conner was not entitled to discharge under Indiana Criminal Rule 4(C).

Constitutional Claims

P33 Conner next argues that a 1029-day delay from charging to trial violated his rights to a speedy trial under the U.S. and Indiana Constitutions. The Sixth Amendment to the U.S. Constitution provides, in part: "In all criminal prosecutions, [*16] the accused shall enjoy the right to a speedy and public trial . . ." Article 1, Section 12 of the Indiana Constitution provides, in part: "Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay."

P34 As an initial matter, the State argues that Conner waived his constitutional claims because he raises them for the first time on appeal. In support, the State cites *Curtis*, in which the Indiana Supreme Court held that an appellant forfeited his constitutional speedy-trial claim where the issue was not presented to the trial court but first raised on interlocutory appeal. 948 N.E.2d at 1147-48. The court reasoned that "[t]o hold otherwise would allow a

¹⁴ Conner's counsel stated at the discharge hearing that "[w]e had not necessarily made a formal motion in regards for an early trial because of the issue that that may preclude any argument in regards to the motion for discharge." (Discharge Tr. 3-4.) Counsel reiterated that he did not pursue a Criminal Rule 4(B) motion "because I did not want to lose this potential appealable issue in connection with this case." (Discharge Tr. 4.)

¹³ Conner contends the delay was 1018 days, but again our calculation comes in a little higher.

party to circumvent the well-established rule that issues must be raised before the trial court or are unavailable on appeal." *Id.* at 1148 (citing *Pigg v. State*, 929 N.E.2d 799, 803 (Ind. Ct. App. 2010), *trans. denied*).

P35 Although *Curtis* involved an interlocutory appeal, we find the court's reasoning equally applicable here. Conner did not raise his constitutional claims before the trial court, either in his written motion for discharge or at the hearing on the motion. Issues not raised at the trial level are generally waived on appeal. See *id.* Accordingly, Conner's constitutional speedy-trial claims are forfeited. **[*17]**

Conclusion

P36 Conner was not entitled to discharge under Indiana Criminal Rule 4. Conner's constitutional speedy-trial claims are waived.

P37 Affirmed.

Bradford, J., and Altice, J., concur.

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