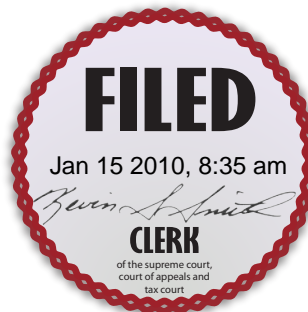


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

VICTOR SOBOLEWSKI
Bunker Hill, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

SCOTT L. BARNHART
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

VICTOR SOBOLEWSKI,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 63A01-0907-CR-354

APPEAL FROM THE PIKE CIRCUIT COURT
The Honorable Jeffrey L. Biesterveld, Judge
Cause Nos. 63C01-0702-FC-85 & 63C01-0702-FC-115

January 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

In a case involving the return of bond deposits, Victor Sobolewski, *pro se*, appeals the trial court's denial of his *pro se* motions under Indiana Trial Rule 60(B)(8). Specifically, Sobolewski contends that the trial court abused its discretion by ordering the clerk to disburse his remaining bond deposits toward publicly paid costs of representation when one cause number resulted in an acquittal and another cause number was dismissed. We find that Indiana Code section 35-33-8-3.2 authorizes a trial court to order the clerk to retain publicly paid costs of representation from bond deposits not only in instances of conviction but also in instances of acquittal and dismissal of charges. We therefore affirm the trial court on this issue as well as those concerning the clerk's remittance of the bond deposits and the consolidation of the publicly paid costs of Sobolewski's representation when the same public defender represented him in both cause numbers.

Facts and Procedural History

In February 2007 Sobolewski was charged with two counts of Class C felony contributing to the delinquency of a minor¹ and Class B misdemeanor furnishing alcohol to a minor² in cause number 63C01-0702-FC-00085 ("FC-85"). He was later charged with Class B felony sexual misconduct with a minor³ and being a habitual offender⁴ in cause number 63C01-0702-FC-00115 ("FC-115"). The trial court appointed the same

¹ Ind. Code § 35-46-1-8(b)(1)(A)(i), (ii).

² Ind. Code § 7.1-5-7-8(a).

³ Ind. Code § 35-42-4-9(a)(1). The sexual misconduct with a minor charge was originally charged as a Class C felony.

⁴ Ind. Code § 35-50-2-8(a).

public defender to represent Sobolewski in both cause numbers. Sobolewski deposited ten percent of the bail as security for the full amount of the bail in each cause number (\$500 for the \$5000 bail in FC-85 and \$3500 for the \$35,000 bail in FC-115) pursuant to Indiana Code section 35-33-8-3.2, which provides in pertinent part:

(a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

* * * * *

(2) Require the defendant to execute:

(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, *publicly paid costs of representation that shall be disposed of in accordance with subsection (b)*, and the fee required by subsection (d). . . . The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

* * * * *

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the

defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), “*disposition*” occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(Emphasis added).

The written bond agreements included the following:

If there is no forfeiture but assigned counsel represents me and there are publicly paid costs of representation, the deposit, less fees retained by the Clerk, shall be retained by the Clerk and I shall receive back only that portion of the deposit, if any, which exceeds the publicly paid costs of representation.

Appellant’s App. p. 24, 26.

In September 2007 a jury acquitted Sobolewski of sexual misconduct with a minor in FC-115. The State subsequently moved to dismiss FC-85, which the trial court granted. The Chronological Case Summary indicates that in March 2008, the public defender who represented Sobolewski filed a request for payment of pauper fees, which amounted to \$11,433.02,⁵ and “the Court having noted bond proceeds in the amount of \$3,690.00 are still available, now directs the Clerk to pay said bond monies to the attorney of record for pauper attorney services rendered.” *Id.* at 7, 18.

Over a year later, in May 2009, Sobolewski filed *pro se* motions for relief under Indiana Trial Rule 60(B)(8) in both cause numbers. In these motions, Sobolewski argued that the trial court abused its discretion by: (1) ordering one hundred dollars of each of his bond deposits to be withheld for the supplemental public defender services fund; (2)

⁵ Although the CCS entries for March 3, 2008, indicate that the public defender’s services totaled \$11,433.02, Appellant’s App. p. 6, 18, the trial court’s March 3, 2008, order indicates that the public defender’s services totaled \$15,123.02, *id.* at 46.

failing to order the clerk to remit to him the remaining deposit within thirty days after the disposition of the charges; and (3) ordering the remaining deposit in each cause number to be applied to the other cause number. He additionally stated that “due to his incarceration at the Miami Correctional Facility (M.C.F.) and the limited access to law library facilities (less than one (1) hour per week) he has not been made aware of the Admission to Bail Conditions-Fees (I.C. § 35-33-8-3.2) and Ind. Trial Rule 60.” *Id.* at 32, 35. After the State filed a response, the trial court denied Sobolewski’s motions. Sobolewski, *pro se*, now appeals.

Discussion and Decision

Sobolewski appeals the trial court’s denial of his Indiana Trial Rule 60(B)(8) motions. The grant or denial of an Indiana Trial Rule 60(B) motion for relief from judgment is within the sound discretion of the trial court, and we will reverse only if the trial court abused its discretion. *State v. Willits*, 773 N.E.2d 808, 811 (Ind. 2002). An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.* Under Indiana Trial Rule 60(B), a trial court may upon motion relieve a party from a judgment for seven specific reasons delineated in the rule, Ind. Trial Rule 60(B)(1)-(7), as well as “any reason justifying relief from the operation of the judgment, other than” the first four reasons, T.R. 60(B)(8). To invoke the residual powers of Trial Rule 60(B)(8), a movant must show: (1) exceptional circumstances justifying extraordinary relief and (2) the proceedings were commenced within a reasonable time. *Freshwater v. State*, 834 N.E.2d 1133, 1136 (Ind. Ct. App. 2005) (quoting *Jordan v.*

State, 549 N.E.2d 382, 384 (Ind. Ct. App. 1990), *reh’g denied, trans. denied*), *trans. denied*.

We initially observe that, in his Trial Rule 60(B)(8) motions, Sobolewski did not address any exceptional circumstances justifying extraordinary relief or establish that the proceedings were commenced within a reasonable time. As Sobolewski has also failed to make these showings on appeal, any such contentions are waived for failure to present a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a) (“The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning.”); *Lyles v. State*, 834 N.E.2d 1035, 1050-51 (Ind. Ct. App. 2005) (holding that the defendant’s failure to develop a cogent argument waived his remaining issues for appellate review), *reh’g denied, trans. denied*. Although we acknowledge Sobolewski’s limited law library access in the correctional facility at which he is incarcerated, this does not constitute an exceptional circumstance or establish that the proceedings were commenced within a reasonable time.

Waiver notwithstanding, given our preference for resolving a case on its merits, we review Sobolewski’s claim on appeal. Specifically, he contends that the trial court abused its discretion by: (1) ordering the clerk to disburse his remaining bond deposits toward publicly paid costs of representation when FC-115 resulted in an acquittal and FC-85 was dismissed; (2) not ordering the clerk to remit to him the remaining bond deposits within thirty days after disposition of the charges; and (3) “consolidating the costs of publicly paid representation for multiple cases so as to appropriate untimely remitted bond deposits.” Appellant’s Br. p. 1.

Sobolewski signed a written bond agreement in each cause number stating that he would receive his bond deposit only after the deduction of fees and “the publicly paid costs of representation.” Moreover, although subsection (a)(2)(B) of Indiana Code section 35-33-8-3.2 provides that the court may require the defendant to execute an agreement allowing it to retain all or part of the deposit “to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted,” subsection (a)(2) goes on to provide that “[t]he clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court [and] publicly paid costs of representation that shall be disposed of in accordance with subsection (b).” Subsection (b) provides that within thirty days after “disposition” of the charges, the court shall order the clerk to remit the remaining deposit to the defendant less the amount deposited by the clerk in the supplemental public defender services fund. Subsection (c) then defines “disposition” as used in subsection (b) as “when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.” Section 35-33-8-3.2 clearly allows a trial court to retain bond deposits for publicly paid costs of representation in instances of acquittal and dismissal of charges, and thus, Sobolewski’s contention that his remaining deposits cannot go toward publicly paid costs of representation because he was acquitted in FC-115 and the charges were dismissed in FC-85 does not follow from a careful reading of the statute. The trial court did not abuse its discretion by ordering that the clerk disburse his remaining deposits toward publicly paid costs of representation.⁶ The trial court also did not abuse its

⁶ Within his argument that the trial court abused its discretion by ordering the clerk to disburse his remaining deposits toward publicly paid costs of representation, Sobolewski also argues that the trial

discretion by not ordering the clerk to remit to him the remaining bond deposits since the public defender's bill for services exceeded the remaining bond deposits of \$3,690.

With regard to Sobolewski's final argument, that the trial court abused its discretion by consolidating the publicly paid costs of his representation, we note that the same public defender represented Sobolewski in both cause numbers. The trial court, observing that a total of \$3690 in bond proceeds were available, did not abuse its discretion by consolidating the publicly paid costs of Sobolewski's representation and ordering the amount to be paid to the public defender to come from both cause numbers.

Affirmed.

RILEY, J., and CRONE, J., concur.

court abused its discretion by ordering one hundred dollars of each of his posted bonds to be withheld for the supplemental public defender services fund. However, under Indiana Code section 35-33-7-6(c)(1), if a trial court finds that a defendant is able to pay part of the cost of representation by assigned counsel, it has the authority to order the defendant to pay a fee of one hundred dollars in a felony action. This fee is to be deposited by the clerk into the supplemental public defender services fund. The trial court did not abuse its discretion.