

Michael A. McCoy appeals after a jury trial from his conviction of Intimidation,¹ a class D felony. McCoy presents the following issue for review: Was McCoy denied his right to a speedy trial pursuant to Ind. Crim. Rule 4(B)(1) and, thus, entitled to discharge?

We affirm.

On January 9, 2008, the State charged McCoy with one count of intimidation in connection with threats McCoy communicated to a correctional officer. Several days after a public defender was appointed to represent him, McCoy filed the first of many *pro se* motions for speedy trial which were stricken from the record by the trial court. On May 9, 2008, McCoy, by counsel, filed a motion for early trial pursuant to Crim. R. 4(B)(1) and the trial court set McCoy's jury trial for July 16, 2008. The State filed a motion to reset the jury trial to July 11, 2008.

McCoy's trial counsel filed a motion to withdraw his appearance due to a "fundamental disagreement" with McCoy. *Appellant's Appendix* at 39. A week before trial, a hearing at which McCoy was not present was held on defense counsel's motion. The trial court then granted the State's motion to release McCoy on his own recognizance as to the current charges. McCoy remained in jail though because he was being held without bail on unrelated charges. The trial court then set a new trial date for November 6, 2008.

The trial court granted two different motions to substitute counsel representing McCoy, and the jury trial date was reset for March 31, 2009. The trial court *sua sponte* reset the trial date twice due to congestion of the court's docket, ultimately setting the matter for

¹ Ind. Code Ann. § 35-45-2-1 (West, Westlaw through 2009 1st Special Sess.)

jury trial on June 17, 2009. A jury trial was held on that date, but a mistrial was declared after the jury could not reach a verdict. A second jury trial was held on July 13, 2009, and McCoy was found guilty as charged. At that time, the trial court sentenced McCoy to a term of three years executed to be served consecutive to a sentence in another cause. McCoy now appeals.

The right of an accused to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and by article 1, § 12 of the Indiana Constitution. *Clark v. State*, 659 N.E.2d 548 (Ind. 1995). The provisions of Crim. R. 4 implement the defendant's speedy trial right by establishing time deadlines by which trials must be held. *Truax v. State*, 856 N.E.2d 116 (Ind. Ct. App. 2006). Crim. R. 4(B)(1) states as follows:

If 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, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar.

Further, “[a] defendant must maintain a position reasonably consistent with his request for a speedy trial, and he must object--at the earliest opportunity--to a trial setting that is beyond the seventy-day time period.” *Truax v. State*, 856 N.E.2d at 120. Put differently, it is a 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) and failure to do so results in abandonment of the defendant's request for a speedy trial. *Hampton v. State*, 754 N.E.2d 1037 (Ind. Ct. App. 2001).

We first note that if a defendant has counsel, he speaks to the court through his counsel. *Underwood v. State*, 722 N.E.2d 828 (Ind. 2000). To require the trial court to respond to both the defendant and counsel would effectively create a hybrid representation to which a defendant is not entitled. *Id.* Here, McCoy was represented by counsel, but continued to file *pro se* motions with the trial court. The trial court correctly ordered those motions stricken from the record. Although McCoy filed a *pro se* motion for expiration of time under Crim. R. 4(B) approximately three weeks after the pretrial conference, McCoy, through counsel, never filed a motion for discharge prior to trial and did not object to subsequent jury trial dates. McCoy has waived this allegation of error on appeal.

Additionally, the State's motion to release McCoy on his own recognizance for the charge at issue here was granted by the trial court during a pretrial conference held within the seventy-day time period. McCoy was being held without bail on unrelated charges. He argues that his release on the instant charge did not satisfy the requirements of the rule because he remained incarcerated for the unrelated charges.

In *Fossey v. State*, 254 Ind. 173, 258 N.E.2d 616 (1970), our Supreme Court held that the fact that a defendant is in jail on a prior conviction, either in-state or in another jurisdiction, does not vitiate the defendant's right to a speedy trial on another pending charge. Further, in *Jackson v. State*, 663 N.E.2d 766 (Ind. 1996), our Supreme Court held that a defendant who was incarcerated by the Indiana Department of Correction to serve a sentence on unrelated charges was entitled to a speedy trial as requested pursuant to Crim. R. 4(B)(1) on new charges brought against him. Because that defendant was not brought to trial within

seventy days of his request for a speedy trial on the new charges, the defendant's convictions on those new charges were set aside and the cause was remanded to the trial court with instructions to grant the defendant's motion for discharge as to those new charges. *Id.*

In the present case, McCoy was released on his own recognizance on the instant charge which was the subject of his speedy trial request. The other charges, for which McCoy was being held without bail, were treated separately. Waiver notwithstanding, we find no violation of Crim. R. 4(B)(1) here.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.