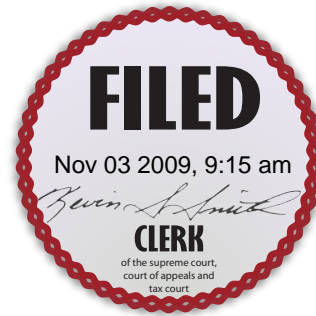


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CALVIN LAWSON,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0902-CR-141

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William E. Young, Judge
The Honorable Michael Jensen, Magistrate
Cause No. 49G02-0710-FC-208591

November 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Calvin Lawson appeals his conviction after a bench trial for carrying a handgun without a license as a class C felony.¹

We affirm.

ISSUE

Whether the trial court abused its discretion in denying Lawson's motion to dismiss.

FACTS

On October 3, 2007, the State charged Lawson with Count I, carrying a handgun without a license as a class C felony; Count II, carrying a handgun without a license as a class A misdemeanor; and Count III, dangerous possession of a firearm as a class A misdemeanor. Following an initial hearing in Marion County Superior Court F11, the trial court, "on its own motion," found "that the interests of justice are best served by holding the initial hearing in the court randomly assigned to this matter." (Lawson's App. 5). It therefore, without objection by Lawson, transferred the case "to the assigned Marion Superior Court for all further proceedings." *Id.* Thus, the case was "transferred into Court G04" on October 3, 2007. *Id.*

On October 4, 2007, the State filed a motion to transfer the case. In support of its motion, it alleged the following:

1. This case was inadvertently filed in[] the incorrect court.
2. All Major Felony Handgun cases are to be filed in courts G20 and G23.
3. This case is a Major Felony Handgun case.

¹ Ind. Code §§ 35-47-2-1; 35-47-2-23.

....

5. Such a transfer would help with Judicial Economy and efficiency with the disposition of this case.

Id. at 24. On the same date and without objection by Lawson, the trial court granted the State's motion and transferred the case "out of Court G04" and "into Court G23." *Id.* at 6.

On or about February 25, 2008, the State filed a petition to transfer several cases, including Lawson's, to Court G20 "pursuant to the agreement on the distribution of felony firearm cases[.]"² (State's App. 1). The trial court granted the petition and on February 25, 2008, again without objection by Lawson, transferred Lawson's case to Court G20.

On May 13, 2008, Lawson, by counsel, filed an objection to the State's petition to transfer and motion to dismiss, asserting that the transfer of the case "to a particular court and particular judge" was "no more than forum shopping on behalf of the State." (Lawson's App. 30). He further asserted that the transfer violated Marion Superior Court Criminal Division Rule 49-CR2.2-100 ("Rule 100"), which provided, in pertinent part, as follows:

- (a) All criminal cases filed in Marion County Superior Courts shall be assigned to an individual courtroom on a random basis. The random assignment rule for criminal cases does not apply to certain cases designated by the Court and the Prosecutor as belonging in the:
 - domestic violence courts; or
 - major felony and class D felony drug court; or
 - community court; or

² That agreement is not part of the record.

- traffic court; or
- those cases involved in case consolidation as noted below.

This rule strives for the equalization of caseload among all of the individual courtrooms.

(b) All hearings for Major Felony cases will be conducted in the Major Felony Court. Any new filing for a major felony case shall be randomly assigned to one of multiple courtrooms designated as Major Felony Courts (G01, G02, G03, G04, G05, G06, and G22) with the exception of a major felony drug offense case, which shall be randomly assigned to major felony drug courts G20 and G23.

L.R. 49-CR2.2-100 (2008).³ The trial court denied Lawson's motion.

Lawson filed a motion to reconsider on July 9, 2008, which the trial court denied. On August 7, 2008, Lawson filed a motion, requesting that the trial court certify its denial of his motion to dismiss for interlocutory appeal. The trial court denied that motion.

The trial court held a bench trial on October 8, 2008. The State and Lawson filed a Joint Stipulation of Facts, whereby Lawson admitted to bringing a handgun to his high school and placing it in his locker. The trial court found Lawson guilty of carrying a handgun without a license as a class C felony. Following a sentencing hearing on January 14, 2009, the trial court sentenced Lawson to two years, with 726 days suspended. The trial court ordered that 365 days be served on probation.

DECISION

Lawson asserts that the trial court improperly denied his motion to dismiss. He argues that he "was prejudiced by having to litigate in front of a judge who was handpicked by the State" Lawson's Br. at 5. He further argues that Rule 100 is

³ Rule 100 subsequently was amended to provide that major felony handgun cases shall be assigned to major felony drug court G20.

jurisdictional in nature, and therefore, the transfer of his case to Court G20 violated Rule 100.

We review a trial court's denial of a motion to dismiss for an abuse of discretion. *Ingram v. State*, 760 N.E.2d 615, 618 (Ind. Ct. App. 2001), *trans. denied*. We therefore will reverse the trial court's decision only if it is clearly against the logic and effect of the facts and circumstances. *Id.* Furthermore, as Lawson is appealing from a negative judgment, "we will reverse the trial court's ruling only if the evidence is without conflict and leads inescapably to the conclusion that the defendant was entitled to dismissal." *See Mendoza v. State*, 869 N.E.2d 546, 551 (Ind. Ct. App. 2007), *trans. denied*.

1. Prejudice

Lawson contends that he was prejudiced by the transfer of his case to "a particular judge" Lawson's Br. at 6.

Indiana Criminal Rule 12(B) provides:⁴

In felony and misdemeanor cases, the state or defendant may request a change of judge for bias or prejudice. The party shall timely file an affidavit that the judge has a personal bias or prejudice against the state or defendant. The affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be accompanied by a certificate from the attorney of record that the attorney in good faith believes that the historical facts recited in the affidavit are true. The request shall be granted if the historical facts recited in the affidavit support a rational inference of bias or prejudice.

⁴ We are aware that "a transfer from one court to another in the same county is neither a change of venue nor a change of judge." *Woodward v. State*, 770 N.E.2d 897, 899 (Ind. Ct. App. 2002), *trans. denied*. Thus, it is not subject to Criminal Rule 12. *Id.* at 900. Similarly, a transfer of a case between two rooms of the criminal division of the same court is not a change of venue. *Id.* at 900. Nonetheless, to the extent that Lawson argues he was entitled to a change of judge and that the transfer constituted a change of venue from the judge, we shall address the issue under Criminal Rule 12.

“The law presumes that a judge is unbiased and unprejudiced.” *McKinney v. State*, 873 N.E.2d 639, 640 (Ind. Ct. App. 2007), *trans. denied*.

Lawson, by counsel, did not file a motion for change of judge pursuant to Criminal Rule 12(B), despite his assertion that “[a]ny system in which a prosecutor can control the assignment of a case to particular judge” is “totally inappropriate,” (Lawson’s App. 31), and that he was “prejudiced by having to litigate in front of a judge who was handpicked by the State to hear the case in violation of local rules.” Lawson’s Br. at 5. Thus, he has waived any argument that he was entitled to a change of judge. *See Flowers v. State*, 738 N.E.2d 1051, 1059 (Ind. 2000) (“The law is settled that a defendant is not entitled to a change of judge where the mandates of Criminal Rule 12 have not been followed.”).

Furthermore, in his motion to dismiss, he failed to show or assert any facts of personal prejudice or bias on the judge’s part. *See Garland v. State*, 788 N.E.2d 425, 433 (Ind. 2003) (“A showing of prejudice that calls for a change of judge must be established from personal, individual attacks on a defendant’s character, or otherwise.”). Thus, we find no error in denying his motion to dismiss and in assigning Lawson’s case to Court G20.

2. Jurisdiction

Lawson also asserts Rule 100 is a mandatory rule, and therefore, the trial court was bound by Rule 100. We disagree.

Indiana Trial Rule 81 authorizes local court rules for the regulation of practice within a local court. *See Ind. Trial Rule 81; Buckalew v. Buckalew*, 754 N.E.2d 896, 897

(Ind. 2001). A trial court, however, may waive compliance with its own local rule. *See id.*

Before a court may set aside its own rule, and it should not be set aside lightly, the court must assure itself that it is in the interests of justice to do so, that the substantive rights of the parties are not prejudiced, and that the rule is not a mandatory rule.

Buckalew, 754 N.E.2d at 897.

The “not a mandatory rule” qualification is a “reference to time limitations and other procedural prerequisites that had generally been described as ‘jurisdictional,’ and from which court may not waive compliance.” *Id.* at 898.

There are three types of jurisdiction: (1) jurisdiction of the subject matter, (2) jurisdiction of the person, and (3) jurisdiction over the particular case. Subject matter jurisdiction refers to the power of courts to hear and decide a class of cases. The issue of subject matter jurisdiction is resolved by determining whether the claim involved falls within the general scope of authority conferred on the court by the Indiana Constitution or by statute. When courts lack subject matter jurisdiction, their actions are void ab initio and may be attacked at any time. On the other hand, jurisdiction over the particular case refers to a trial court’s right, authority, and power to hear and decide a specific case within the class of cases over which a court has subject matter jurisdiction.

Kondamuri v. Kondamuri, 799 N.E.2d 1153, 1156-57 (Ind. Ct. App. 2003) (internal citations and footnote omitted), *trans. denied*. Thus, jurisdiction over a particular case “refers to failure to meet procedural requirements but does not constitute a limitation on subject matter jurisdiction in the sense that the court cannot hear cases of the same general class.” *Packard v. Shoopman*, 852 N.E.2d 927, 930 (Ind. 2006).

In arguing that Rule 100 is jurisdictional, Lawson does not claim that Court G20, as part of the Marion Superior Court, is without power to hear criminal cases.⁵ Rather, he contends that “[t]he rule at issue in this case is jurisdictional in nature as it goes to which courts are permitted to hear which cases.” Lawson’s Br. at 5. Thus, he seems to argue that Rule 100 confers jurisdiction only to particular courts over certain cases.

When interpreting trial rules, we apply the rules of statutory construction. *Carter-McMahon v. McMahon*, 815 N.E.2d 170, 175 (Ind. Ct. App. 2004). “[O]ur objective when construing the meaning of a rule is to ascertain and give effect to the intent underlying the rule.” *Id.* “If the language of a rule is clear and unambiguous, it is not subject to judicial interpretation.” *Id.*

Again, Rule 100 provides, in relevant part, as follows:

(a) All criminal cases filed in Marion County Superior Courts shall be assigned to an individual courtroom on a random basis. The random assignment rule for criminal cases does not apply to certain cases designated by the Court and the Prosecutor

This rule strives for the equalization of caseload among all of the individual courtrooms.

(b) All hearings for Major Felony cases will be conducted in the Major Felony Court. Any new filing for a major felony case shall be randomly assigned to one of multiple courtrooms designated as Major Felony Courts (G01, G02, G03, G04, G05, G06, and G22) with the exception of a major felony drug offense case, which shall be randomly assigned to major felony drug courts G20 and G23.

⁵ In fact, Indiana Code section 33-33-49-9 provides that Marion Superior Court has “[c]oncurrent and coextensive jurisdiction with the Marion circuit court in all cases and upon all subject matters, including . . . criminal matters . . .” and “[o]riginal jurisdiction of all violations of Indiana law.”

We cannot say that Rule 100 is a mandatory rule in the jurisdictional sense. It does not purport to grant only to particular courtrooms within the Marion County Superior Court jurisdiction over certain cases. Rather, its purpose is to better administer justice through the “equalization of caseload among individual courtrooms.” Rule 100. Where, as here, a case is transferred between rooms within the same court, we cannot say that the defendant has suffered harm or prejudice. *See Beason v. State*, 690 N.E.2d 277, 280 (Ind. 1998) (finding that a defendant suffers no harm or prejudice when his case is transferred between courts of equal jurisdiction).

Moreover, despite the use of the term “shall” within Rule 100, we cannot say that it mandates the assignment of cases. The term “shall” generally “connotes a mandatory as opposed to a discretionary import.” *Parmeter v. Cass County Dep’t of Child Serv.*, 878 N.E.2d 444, 448 (Ind. Ct. App. 2007), *reh’g denied*. The term, however, “may be construed as directory instead of mandatory” to prevent defeat of the drafters’ intent. *See id.* “Thus, the term ‘shall’ is directory when the [rule] fails to specify adverse consequences, the provision does not go to the essence of the [rule’s] purpose, and a mandatory construction would thwart” the purpose of the rule. *See id.* (interpreting the term “shall” within a statute and legislative intent).

Rule 100 does not specify adverse consequences for failing to comply with it. Also, requiring that major felony cases be randomly assigned to only those specific courts designated as major felony courts does not go the essence of Rule 100’s purpose, which is to equalize the caseload among the individual courtrooms; in fact, a mandatory construction would thwart the very purpose of Rule 100 by requiring the assignment of

certain cases to only those designated courts despite congestions of the courts' calendars. Finding that Lawson was not prejudiced by the transfer of his case and that Rule 100 is not a mandatory rule, we find no error in denying his motion to dismiss.⁶

Affirmed.

ROBB, J., and MATHIAS, J., concur.

⁶ In summary, we note that, to the extent Lawson argues that the trial court lacked jurisdiction over his particular case, he has waived that argument. The record reveals that a public defender filed an appearance on Lawson's behalf on October 10, 2007. Lawson's current counsel filed an appearance on February 11, 2008. On February 25, 2008, the State filed its petition to transfer Lawson's case to Court G20; the trial court granted the transfer the same day. Lawson did not file an objection to the transfer until May 13, 2008, after appearing for multiple pre-trial conference hearings. We cannot say that Lawson timely objected to the lack of jurisdiction. *See Kondamuri*, 799 N.E.2d at 1156-57 ("A judgment rendered by a court that lacks jurisdiction over the particular case is voidable and requires a timely objection or the lack of jurisdiction over the particular case is waived."). We also note that Lawson did not petition for a change of venue but apparently waived a jury trial and appeared before the judge for a bench trial even after becoming aware of the judge's identity.