

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Billy Williams,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*



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March 8, 2024

Court of Appeals Case No.  
23A-MI-2363

Interlocutory Appeal from the Marion Superior Court

The Honorable Patrick J. Dietrick, Judge

Trial Court Cause No.  
49D12-2203-MI-7802

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**Memorandum Decision by Judge Bradford**  
Chief Judge Altice and Judge Felix concur.

## **Bradford, Judge.**

### **Case Summary**

- [1] Billy Williams was arrested for a drug-related crime, after which the State filed a civil-forfeiture complaint regarding \$10,848.00 and a Jeep that police had seized during Williams's arrest. Williams pled guilty to dealing in methamphetamine and parole violations and, on that same day, moved to dismiss the State's civil-forfeiture complaint under Indiana Trial Rule 41(E), claiming that the State had failed to prosecute the action. Ultimately, the trial court denied Williams's motion to dismiss. Williams moved to certify the issue for interlocutory appeal, over which we accepted jurisdiction. Williams argues that the trial court abused its discretion in denying his Trial Rule 41(E) motion to dismiss. We affirm.

### **Facts and Procedural History**

- [2] On March 3, 2022, police arrested Williams and seized a Jeep and \$10,848.00. The State alleged that the currency had been furnished, or was intended to be furnished, in exchange for a violation of a criminal statute or otherwise was traceable as proceeds for such a violation. On March 9, 2022, the State sought forfeiture pursuant to Indiana Code section 34-24-1-1. In July, Williams filed a response in which he denied the State's allegations. On January 16, 2023, Williams agreed to plead guilty to dealing in methamphetamine and violating the terms of his parole. A change of plea hearing was scheduled for February 16, 2023.

[3] Also on January 16, 2023, Williams moved to dismiss the forfeiture action under Trial Rule 41(E). Williams alleged that the forfeiture case had been pending for over eleven months without the State having made an effort to prosecute it. For its part, the State argued that Williams had changed his plea and that the parties had not engaged in meaningful settlement negotiations. On January 26, 2023, the trial court denied Williams's motion to dismiss without a hearing; however, the trial court granted William's subsequent motion to correct error and set the matter for hearing.

[4] On July 26, 2023, the trial court conducted a hearing on Williams's motion to dismiss the civil-forfeiture case. After hearing argument from both parties, the trial court took the matter under advisement. On August 3, 2023, the State moved for summary judgment. Two weeks later, the trial court denied Williams's motion to dismiss without explanation and Williams sought this interlocutory appeal.

## Discussion and Decision

[5] In pertinent part, Trial Rule 41(E) provides:

[W]hen no action has been taken in a civil case for a period of sixty [60] days, the court, on motion of a party or on its own motion shall order a hearing for the purpose of dismissing such case. The court shall enter an order of dismissal at plaintiff's costs if the plaintiff shall not show sufficient cause at or before such hearing.

We reverse a trial court’s decision on a Trial 41(E) motion for dismissal for failure to prosecute “only in the event of a clear abuse of discretion, which occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before it.” *Sharif v. Cooper*, 141 N.E.3d 1258, 1261 (Ind. Ct. App. 2020).

[6] Indiana courts have identified nine factors to balance when considering whether to dismiss a case for failure to prosecute. Those factors include:

(1) the length of delay; (2) the reason for the delay; (3) the degree of personal responsibility on the part of the plaintiff; (4) the degree to which the plaintiff will be charged for the acts of his attorney; (5) the amount of prejudice to the defendant caused by the delay; (7) the existence and effectiveness of sanctions less drastic than dismissal which fulfill the purposes of the rules and the desire to avoid court congestion; (8) the desirability of deciding the case on the merits; and (9) the extent to which the plaintiff has been stirred into action by a threat of dismissal as opposed to diligence on the plaintiff’s part.

*Id.* at 1262. The weight particular factors bear in each case depends on the facts of that case. *Id.* However, “a lengthy period of inactivity may be enough to justify dismissal [...], especially if the plaintiff has no excuse for the delay.”

*Deutsche Bank Nat. Tr. Co. v. Harris*, 985 N.E.2d 804, 814 (Ind. Ct. App. 2013).

While Indiana law does not require trial courts to impose lesser sanctions before applying the ultimate sanction of dismissal, we generally view dismissals with disfavor because “they are extreme remedies that should be granted only under limited circumstances.” *Sharif*, 141 N.E.3d at 1262.

[7] Williams argues that the trial court’s denial of his motion to dismiss the State’s case was a clear abuse of discretion. We, however, disagree because the totality of those aforementioned factors weighs in the State’s favor. First, the total delay between the State’s filing of its forfeiture complaint and its motion for summary judgment was seventeen months, and less than seven months between the filing of Williams’s guilty plea and the State’s filing of its summary-judgment motion. While seventeen months is a considerable time, it is not particularly egregious compared to other cases. *See United Broth. of Carpenters & Joiners of Am., Loc. Union No. 2371 v. Merch. Equip. Grp., Div. of MEG Mfg. Corp.*, 963 N.E.2d 602, 604 (Ind. Ct. App. 2012) (the plaintiffs took no action for more than a decade); *see also Paternity of J.A.P. ex rel. Puckett v. Jones*, 857 N.E.2d 1, 9 (Ind. Ct. App. 2006) (“the failure to prosecute a matter for more than ten years, the length of inactivity in the present case, is egregious”), *trans. denied*.

[8] In any event, the State provides compelling reasons for its delay. The State argues that it delayed the prosecution of its forfeiture complaint due to Williams’s pending criminal case to avoid “creat[ing] all kinds of issues[,]” especially before Williams’s change-of-plea hearing. Tr. Vol. II p. 13. To start, the State notes that it waited until Williams’s criminal case was resolved because it would not want to “move forward on a forfeiture case where a Marion County court has said that the evidence was seized illegally.” Tr. Vol. II p. 13. Likewise, the State noted that if the trial court had granted forfeiture and a subsequent motion to suppress had been granted in the criminal case, “that would be a mess.” Tr. Vol. II p. 13. Additionally, the State attributes its

delay, in part, to having to defend Williams's motion to dismiss. In fact, the State filed its summary-judgment motion only one week after the trial court had held a hearing on William's motion to dismiss.

[9] More importantly, the State argues that moving forward with discovery during Williams's criminal case would have been fruitless because, as Williams's counsel noted, he "would assert [Williams's] Fifth Amendment privilege" to prevent "the feds deciding that they're going to prosecute him for the same thing." Tr. Vol. II p. 8. While a conviction on the underlying criminal activity is not a prerequisite for forfeiture, some forfeiture claims are developed after resolution of the associated criminal case. *See Brown v. Eaton*, 164 N.E.3d 153, 159 (Ind. Ct. App. 2021) (bench trial held in civil forfeiture case one year after the defendant pled guilty in the criminal case), *trans. denied*; *Coulter v. Caviness*, 128 N.E.3d 541, 544 (Ind. Ct. App. 2019) (filing a motion for summary judgment in a forfeiture case three months after the defendant pled guilty in his criminal case). Here, the State has provided numerous reasons to explain its delay. *But see Belcaster v. Miller*, 785 N.E.2d 1164, 1168 (Ind. Ct. App. 2003) (concluding that dismissal was appropriate, in part, because the evidence showed that "the Belcasters provide[d] *no reason* for th[eir] delay on appeal") (emphasis added), *trans. denied*.

[10] Additionally, the record is silent on any prejudice Williams experienced by the State's delay. In *Lee v. Friedman*, 637 N.E.2d 1318, 1321 (Ind. Ct. App. 1994), we concluded that the defendants had experienced prejudice when the plaintiff had delayed prosecution for fifteen months and the defendants were over eighty

years old, and the record reflected other dilatory conduct on the plaintiff's part. Likewise, in *Bank of America, N.A. v. Congress-Jones*, 122 N.E.3d 859, 865 (Ind. Ct. App. 2019), we concluded the defendant was prejudiced, in part, because she had been at risk of losing counsel and unable to hire another attorney to “defend her in this lengthy lawsuit.” Here, however, Williams is only in his forties and there is no indication in the record that he had been at risk of losing representation.

[11] The record, moreover, does not suggest any deliberate dilatory conduct, stalling, or unwillingness to resolve the case on the State's part. In *Belcaster*, 785 N.E.2d at 1166, 1168, “the evidence showed that the Belcasters ha[d] a lengthy history of having deliberately proceeded in a dilatory fashion[,]” including multiple periods of delay as long as eleven months, and “failed to show sufficient cause for the failure to prosecute[.]” As Williams himself states, the “record is unclear in this regard[,]” as it does not indicate any bad-faith dilatory practices by the State. Appellant's Br. p. 12.

[12] Williams also argues that he stirred the State into action by the threat of his motion to dismiss. Specifically, Williams points out that the State had failed to act in this case until after the Trial Rule 41(E) hearing, which suggests “that the State's motivation was prompted by comments made by the trial court at the hearing.” Appellant's Br. p. 12. However, the State provided reasons for its delay, and Williams moved for dismissal on the same day that he pled guilty, potentially to curtail the State's ability to seek civil forfeiture after the resolution of his criminal case. Given our preference for deciding cases on the merits,

disfavor of the extreme remedy of dismissal, and deference to the trial court, we cannot say that the trial court abused its discretion in concluding that the totality of these factors weighed in favor of denying Williams's motion to dismiss. *Sharif*, 141 N.E.3d at 1262.

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

Altice, C.J., and Felix, J., concur.

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