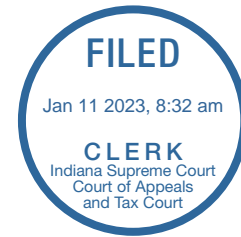


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Jason Collins,

Appellant,

v.

State of Indiana,

Appellee.

January 11, 2023

Court of Appeals Case No.
22A-CR-718

Appeal from the Grant Superior
Court

The Honorable Dana J.
Kenworthy, Judge

Trial Court Cause No.
27D02-2105-F4-21

Brown, Judge.

[1] Jason Collins appeals the trial court’s denial of his Motion for Bond Reduction. We affirm.

Facts and Procedural History

[2] On January 25, 2021, the State charged Collins in cause number 27D02-2101-F1-1 (“Cause No. 1”) with: Count I, child molesting as a level 1 felony; and Count II, child molesting as a level 1 felony; Count III, child molesting as a level 4 felony; Count IV, incest as a level 4 felony; and Count V, neglect of a dependent as a level 6 felony.¹ The court ordered that “[b]ond is set at \$100,000 cash or surety.” Appellant’s Appendix Volume II at 19. On March 17, 2021, Collins filed a motion to reduce bail, and on April 5, 2021, the court issued an order stating his “bail is changed to \$50,000.” *Id.* at 29. An entry dated April 6, 2021, in the chronological case summary states “[b]ond posted in sum of \$5000.” *Id.* at 20. On May 24, 2021, the State charged Collins with child molesting as a level 4 felony under cause number 27D02-2105-F4-21

¹ Count I alleged Collins performed sexual intercourse or other sexual conduct with “Victim 1,” a child who was nine to eleven years old, between January 2019 and October 2020. Count II alleged Collins performed sexual intercourse or other sexual conduct with “Victim 2,” a child who was ten to twelve years old, between January 2019 and October 2020. Count III alleged Collins fondled or touched Victim 1 between January 2019 and October 2020. Count IV alleged Collins performed sexual intercourse or other sexual conduct with Victim 2, knowing the person was biologically related to him, between January 2019 and October 2020. Count V alleged that, on or about January 14, 2021, Collins, having the care of Victim 2, a dependent, had sexual intercourse with Victim 2 knowing that Collins had a sexually transmitted disease.

(“Cause No. 21”), the cause from which this appeal arises.² The court ordered that Collins’s bond be set at \$100,000.³

[3] On August 12, 2021, Collins filed a Motion for Bond Reduction arguing that he could not afford the bond and was not a flight risk. On October 18, 2021, the court held a hearing. Collins testified that he resided in Grant County all of his life, lived at his last residence for eight years, was forty-five years old, had quite a few family members living in the community, and was employed for an HVAC and plumbing company prior to his arrest. When asked “are you aware of the dates that [Cause No. 21] allegedly took place,” he replied affirmatively, and when asked “were the dates [] that that allegedly took place, before or after the [] the filing of [Cause No. 1],” he answered “[s]upposedly before.” Transcript Volume II at 15. When asked how much he “could afford to post” in Cause No. 21, he answered “[p]robably \$1,000.” *Id.* at 16.

[4] C.M. testified that S.L. was her ten-year-old granddaughter and the alleged victim in Cause No. 21. C.M. stated her position was that Collins’s bond should not be reduced. When asked if she had “care and custody of [S.L.] now,” C.M. answered affirmatively, and when asked if she was a court appointed guardian, she replied “[y]es I am.” *Id.* at 19. When asked if S.L.

² The State alleged that, “on or about January, 2018 and April 2020,” Collins fondled or touched the victim, who was six to eight years old. Appellant’s Appendix Volume II at 7.

³ An entry in the chronological case summary for Cause No. 21 states: “Order on Initial Hearing . . . Bond remains as previously set at amount \$100,000.00 cash only . . . Order Signed: 05/26/2021.” Appellant’s Appendix Volume II at 3.

“indicated that she is scared of Mr. Collins,” C.M. answered: “Very much. She has nightmares.” *Id.* at 19-20. She also indicated that S.L. is in counseling.

[5] The prosecutor requested the court to take judicial notice of the charges filed in Cause No. 1 and the probable cause filings in Cause Nos. 1 and 21.⁴ The court took judicial notice of Cause No. 1, noted the charges in that case, stated the two alleged victims in that case were under thirteen years old, stated the alleged victims in Cause No. 1 were different than the alleged victim in Cause No. 21, and noted the alleged victim in Cause No. 21 was a young child as well. Collins’s counsel argued that Collins did not pose any sort of flight risk or threat to the community or alleged victims. He argued “the alleged events in [Cause No. 21] actually [] pre-dated the alleged events in [Cause No. 1] and so we believe that it would be improper for the Court to elevate his bond based on that” and “[i]t’s not as though he was out on bond and committed a new criminal offense.” *Id.* at 22. The court stated that it considered the charges in

⁴ An affidavit for search warrant and arrest warrant dated January 14, 2021, stated that a report was received by the Department of Child Services (“DCS”) that Collins’s daughter was touched by Collins. It stated that DCS also received a report that another female disclosed that Collins raped her, that there were multiple incidents of sexual conduct, and that Collins had ejaculated on her face and hair, and during a forensic interview the female disclosed penile/vaginal penetration by Collins and that Collins had engaged in sexual contact with both her and his daughter at the same time. It stated that Collins’s daughter, during a forensic interview, disclosed digital penetration of her vagina by Collins and that Collins engaged in penile/vaginal penetration with her. The affidavit stated that both children disclosed being exposed to pornography by Collins. It stated the guardian of one of the children advised that the child disclosed that photographs had been taken of her during an incident of sexual contact by Collins. The affidavit also stated both children tested positive for a sexually transmitted disease. An affidavit for arrest warrant dated May 20, 2021, stated a child who was eight years old disclosed during an interview that Collins “touched the front and back of her . . . privates while she . . . was sleeping.” Appellee’s Appendix Volume II at 6. The affidavit also stated that Collins was out on bond and that, on May 19, 2021, law enforcement received a report that Collins was witnessed in the area of the residence of one of the children.

both cases, noted the alleged victims were three young girls, the guardian of the alleged victim in Cause No. 21 testified that the alleged victim is extremely fearful of Collins, and “based upon the findings in the probable cause in both cases, I am going to find that Mr. Collins poses a threat to [] the safety of the community[,] particularly children[,] and deny the bond reduction.” *Id.* at 23. The court’s written order provided “[b]ond remains set at \$100,000 cash only.” Appellant’s Appendix Volume II at 9.

Discussion

[6] Collins asserts the trial court abused its discretion in denying his request for bail reduction, he “cannot afford the \$100,000 cash only bail,” and “there is no evidence to suggest that [he] is a flight risk, harbors disdain for the court’s authority to bring him to trial, or [is] a danger to himself, others, or community.” Appellant’s Brief at 8-9.

[7] An abuse of discretion standard of review applies to a trial court’s bail determination. *DeWees v. State*, 180 N.E.3d 261, 264 (Ind. 2022). A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* Ind. Code § 35-33-8-4(a) provides the court shall order the amount in which a person charged by an indictment or information is to be held to bail. Ind. Code § 35-33-8-4(b) provides that bail may not be set higher than that amount reasonably required to assure the defendant’s appearance in court or to assure the physical safety of another person or the community if the court finds by clear and convincing evidence

that the defendant poses a risk to the physical safety of another person or the community. Ind. Code § 35-33-8-4(b) further provides:

In setting and accepting an amount of bail, the judicial officer shall consider the bail guidelines described in section 3.8 of this chapter and take into account all facts relevant to the risk of nonappearance, including:

- (1) the length and character of the defendant's residence in the community;
- (2) the defendant's employment status and history and the defendant's ability to give bail;
- (3) the defendant's family ties and relationships;
- (4) the defendant's character, reputation, habits, and mental condition;
- (5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring the defendant to trial;
- (6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;
- (7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance;
- (8) the source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance;
- (9) that the defendant is a foreign national who is unlawfully present in the United States under federal immigration law; and
- (10) any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant

might not recognize and adhere to the authority of the court to bring the defendant to trial.

[8] Ind. Code § 35-33-8-5 governs the alteration of bail and provides:

(a) Upon a showing of good cause, the state or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending

* * * * *

(c) When the defendant presents additional evidence of substantial mitigating factors, based on the factors set forth in section 4(b) of this chapter, which reasonably suggests that the defendant recognizes the court’s authority to bring the defendant to trial, the court may reduce bail. However, the court may not reduce bail if the court finds by clear and convincing evidence that the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B)^[5] exist or that the defendant otherwise poses a risk to the physical safety of another person or the community.

“[T]his statutory scheme imparts considerable judicial flexibility in the execution of bail.” *DeWees*, 180 N.E.3d at 268.

[9] The record reveals that Collins was charged with child molesting as a level 4 felony under Cause No. 21 after having been charged with five offenses under Cause No. 1 including two counts of child molesting as level 1 felonies, child

⁵ Ind. Code § 35-40-6-6(1)(A) and (B) provide:

(A) that an act or threat of physical violence or intimidation has been made against the victim or the immediate family of the victim; and

(B) that the act or threat described in clause (A) has been made by the defendant or at the direction of the defendant;

molesting and incest as level 4 felonies, and neglect of a dependent as a level 6 felony. The State alleged that each of Collins's three victims were younger than thirteen years old when the crimes occurred. Collins's daughter disclosed digital and penile penetration of her vagina by Collins. One of the other children reported that Collins raped her, ejaculated on her face and hair, and engaged in sexual contact with her and his daughter at the same time. She also disclosed that photographs of her were taken during an incident of sexual contact by Collins. Two of the children tested positive for a sexually transmitted disease and reported that Collins exposed them to pornography. The grandmother and guardian of the alleged child victim in Cause No. 21 testified that the child was very scared of Collins, has nightmares, and is in counseling. While out on bond in Cause No. 1, Collins was observed in the area of the residence of one of the children. Collins faces significant penalties for his alleged crimes. The trial court found that Collins posed a threat to the safety of the community and particularly children. We find no abuse of discretion.

[10] Affirmed.

Bradford, J., and Pyle, J., concur.