

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Karrie K. McClung
Elkhart, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ellen H. Meilaender
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Aaron A. Whitman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 11, 2023

Court of Appeals Case No.
23A-CR-1001

Appeal from the
Elkhart Superior Court

The Honorable
Kristine A. Osterday, Judge

Trial Court Cause No.
20D01-2302-F4-7

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Aaron Whitman (“Whitman”) appeals the denial of his request to reduce his \$1,000,000 bail after he was charged with an array of serious felonies. The trial court concluded both that Whitman posed a risk to the community and that he is a flight risk. We decline his invitation to consider this an abuse of discretion, and, accordingly, affirm.

Facts and Procedural History

[2] On February 21, 2023, the State charged Whitman with: (1) unlawful possession of a firearm by a serious violent felon, a Level 4 felony; (2) criminal recklessness, a Level 5 felony; and (3) resisting law enforcement, a Level 6 felony. Whitman, according to the charging information, is alleged to have discharged a firearm into an inhabited dwelling and then used a vehicle to flee from police units with their emergency lights engaged. On March 17, 2023, the State filed additional charges: (1) two counts of attempted aggravated battery, each as a Level 3 felony; (2) domestic battery resulting in serious bodily injury, a Level 5 felony; and (3) strangulation, a Level 6 felony. The second charging information contained no new factual allegations other than that the alleged battery resulted in the unconsciousness of the alleged victim.

[3] The trial court set Whitman’s bail at \$1,000,000 with a 10% cash bond option and then ordered a bond report. The report contained information regarding Whitman’s family, finances, employment, and health. The report further indicated that Whitman initially scored as low-risk pursuant to Indiana’s Risk Assessment System, but that the rating had been altered to high-risk “due to the

serious nature of the offenses alleged.” Appellant’s App. Vol. II p. 22. The bond report concluded that a bond reduction was not recommended.

- [4] The trial court held a bail review hearing on April 17, 2023, during which it heard only argument. The trial court noted that “the bond is set rather high and would be difficult for most people to post the bond.” Tr. Vol. II p. 7. Nevertheless, the trial court considered Whitman’s criminal history, which it found contained prior crimes similar to those alleged here. The trial court also considered the fact that Whitman had already attempted to flee from police at a “high rate of speed.” *Id.* It concluded, therefore, that it had concerns with both whether Whitman is a risk to the community and whether he constitutes a flight risk. Ultimately, the trial court denied the request for a bail reduction. Whitman now appeals.

Discussion and Decision

- [5] “As a general matter, the setting of the amount of bail is within the discretion of the trial court and will be reversed only for an abuse of that discretion.” *Lopez v. State*, 985 N.E.2d 358, 360 (Ind. Ct. App. 2013) (citing *Winn v. State*, 973 N.E.2d 653, 655 (Ind. Ct. App. 2012)). “We therefore review the trial court’s denial of a defendant’s motion to reduce bail for an abuse of discretion.” *Id.* ““An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it.”” *Id.* (quoting *Sneed v. State*, 946 N.E.2d 1255, 1257 (Ind. Ct. App. 2011)). “The denial of a motion to reduce bail is a final judgment appealable as of right.” *Id.*

[6] The parties appear to agree that Whitman's bail amount is a significant upward departure from the local bond schedule (some five or six times the amount that the schedule advises). Whitman argues that it is an unconstitutional upward departure. *See* Ind. Const. art. 1 §§ 16-17.

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). This section of the code also requires judicial officers to consider a number of factors in determining a bail amount, among them: (1) length and character of the defendant's residence in the community; (2) employment status and history; (3) defendant's ability to pay; (4) defendant's family ties and relationships; (5) defendant's criminal record; and (6) the nature and gravity of the offenses charged as well as the seriousness of the potential penalty faced.

[7] The trial court, here, heard argument that Whitman has children and a brother in the local community where he also owns a home. He has been consistently and locally employed for several years, though he cannot produce \$100,000 to pay the 10% bond option. The trial court also, however, reviewed information regarding Whitman's criminal history, which is both lengthy and violent. It also considered Whitman's being in the high-risk category in Indiana's pre-trial risk assessment program. *See* I.C. § 35-33-8-3.8(b). Moreover, the trial court considered the seriousness of the charges which are comprised of some seven

felonies, and, thus, potentially decades in prison, as well as the fact that one of the charges stems from Whitman attempting to flee from police in a car.

Finally, we note that the trial court considered, but ultimately rejected, less-restrictive measures. It did not find “that a less restrictive measure of placing the Defendant on an ankle monitor as Pre-Trial Release would be satisfactory to address the significant concerns that this Court has regarding the safety to the community.” Tr. Vol. II p. 8.

[8] The trial court, in short, conducted an analysis similar to the one set forth and sanctioned by our Supreme Court in its recent decision in *DeWees v. State*, 180 N.E.3d 261 (Ind. 2022), considering all relevant factors. Significant upward departure from the local bond schedule notwithstanding, where there are multiple factors counseling that a defendant is both a flight risk and poses a risk to the community, and additional factors counseling that he is not, we must commend the bail determination to the sound discretion of the trial court. Here, we cannot conclude that that discretion was abused.

[9] Affirmed.

Altice, C.J., and May, J., concur.