

MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANT

Ashley M. Dyer
Bloomfield, Indiana

Victoria Bailey Casanova
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Gerald Leroy Thompson, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 20, 2023

Court of Appeals Case No.
22A-CR-2039

Appeal from the Greene Superior
Court

The Honorable Dena A. Martin,
Judge

Trial Court Cause No.
28D01-2107-F3-2

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] Gerald Leroy Thompson, Jr., pleaded guilty to rape, as a Level 3 felony. Along with a 14-year sentence, the trial court imposed a \$1000 public defender fee, a \$500 sexual assault victim fee, court costs, and a \$100 fine. Thompson's cash bail bond deposit of \$1600 was released to satisfy these amounts. The sole issue presented on appeal is whether the trial court abused its discretion by ordering Thompson to pay a public defender fee.

[2] We affirm.

Facts & Procedural History

[3] The State charged Thompson with Level 3 felony rape, Level 6 felony domestic battery, and Level 6 felony criminal confinement. Shortly after his arrest on these charges, Thompson signed a bond agreement and paid ten percent of the amount of his bail in cash by depositing \$1600 in escrow with the clerk. The agreement provided in relevant part as follows:

If there is no forfeiture, and if there is a conviction entered against me, the Court may order me to pay a fine, costs, or fees ... and the bond deposit may be applied to the payment of such fine, costs, and fees. Further, *if a public defender represents me and there are public[l]y paid costs of representation, the bond deposits, less fine[,] costs and fees retained by the clerk, shall be retained by the clerk and I shall receive back only that portion of the deposit, if any, which remains after fine, costs, fees, and the publicly paid costs of representation are paid.* Amounts of the deposit retained for publicly paid costs of representation shall be deposited by the clerk in the supplemental public defender services fund established under I.C. 33-40-3-1.

Appellant's Appendix at 39 (underlining in original and italics added).

- [4] Thompson subsequently requested a public defender, and Chief Public Defender Ashley Dyer entered her appearance on behalf of Thompson in September 2021. Counsel Dyer prepared Thompson's case for trial. A week before the scheduled jury trial, Thompson entered into a plea agreement with the State. In exchange for Thompson's plea of guilty to the rape charge, the State agreed to the dismissal of the remaining counts and to a sentencing cap of fourteen years.
- [5] The trial court accepted the plea agreement and, following a sentencing hearing, sentenced Thompson to fourteen years in prison. Additionally, the trial court imposed a \$1000 public defender fee, a \$500 sexual assault victim fee, court costs, and a \$100 fine. The trial court ordered Thompson's bond to be released and applied to these charges, respectively.

Discussion & Decision

- [6] On appeal, Thompson argues that the trial court abused its discretion by ordering him to pay a \$1000 public defender fee. We review a trial court's imposition of such a public defender fee for an abuse of discretion. *Jackson v. State*, 968 N.E.2d 328, 333 (Ind. Ct. App. 2012). "If the trial court imposes fees within statutory limits, there is no abuse of discretion." *Id.*
- [7] Thompson observes that the trial court specifically found him to be indigent and that the court did not inquire into whether Thompson had the ability to pay the \$1000 fee. Accordingly, he argues that the fee was not permissible under

any of the three statutory provisions that allow for the imposition of a public defender fee under certain circumstances – Ind. Code § 35-33-7-6, Ind. Code § 33-37-2-3, and Ind. Code § 33-40-3-6. *See Jackson*, 968 N.E.2d at 333 (“Three statutory provisions address the imposition of public defender fees and the trial court can order reimbursement under any or a combination thereof.”).

[8] We need not look to the requirements of the individual statutes, however, because in this case the \$1000 public defender fee was paid out of the escrow funds from Thompson’s \$1600 cash bail bond, which he deposited with the clerk pursuant to the terms of a written bond agreement. I.C. § 35-33-8-3.2(a)(2) permits a trial court, as a condition of pretrial release, to:

Require the defendant to execute:

- (A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and
- (B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

Pursuant to this statutory provision, the bond agreement that Thompson executed expressly permitted, in the event of conviction, the \$1600 bond deposit to be applied to the payment of his public defender fee, as well as other fees, costs, and fines.

- [9] As Thompson was convicted, the trial court had authority to order the bond deposit to be retained pursuant to the bond agreement. *See Wright v. State*, 949 N.E.2d 411, 414-15 (Ind. Ct. App. 2011) (“Wright entered into a contract, the terms of which are specifically authorized by statute, and she is bound by the terms of that contract.”). Indeed, we have held that when a defendant posts a cash bail bond pursuant to I.C. § 35-33-8-3.2(a)(2), upon the defendant’s conviction, the trial court has the authority – without holding an indigency hearing – to disburse funds from the escrow account to pay public defender costs. *See Wright*, 949 N.E.2d at 416; *see also Holder v. State*, 119 N.E.3d 621, 624 n.1 (Ind. Ct. App. 2019) (“While a determination of indigency is necessary when a court imposes costs, an indigency hearing is not required in order to apply cash bond money to these costs.”).
- [10] Here, the \$1000 public defender fee imposed was paid entirely from the \$1600 deposit, and the remainder of the funds was applied to the other fees, costs, and fines. The trial court did not abuse its discretion in so disbursing the funds.
- [11] Affirmed.

Riley, J. and Pyle, J., concur.