MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Andrew A. Achey
Rhett Lee
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Caroline G. Templeton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

David J. Avalle,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 4, 2021

Court of Appeals Case No. 21A-CR-632

Appeal from the Cass Superior Court

The Honorable Lisa Swaim, Judge

Trial Court Cause No. 09D02-2102-F1-1

Tavitas, Judge.

Case Summary

[1] David Avalle appeals the trial court's denial of his motion for a bond reduction and the trial court's sua sponte increase of his bond. Given that, during the

proceedings on appeal, Avalle's bond was revoked as a result of new charges against him, Avalle's appeal is moot. Accordingly, we dismiss.

Issue

[2] Avalle raises three issues[1], but we address one dispositive issue, which we restate as whether Avalle's appeal is moot.

Facts

[3] On February 9, 2021, the State charged Avalle with child molesting, a Level 1 felony.[2] The charge relates to allegations that Avalle had sexual intercourse with his girlfriend's eleven-year-old daughter, B.H. The State filed a motion for greater than the standard bond because Avalle "made statements indicating that if he bonds out he will harm and/or kill himself" and because Avalle "made statements indicating that if he bonds out he will flee the jurisdiction to the State of Florida with his dad." Appellee's App. Vol. II p. 3. The trial court set Avalle's bond at $100,000.00 cash only. The trial court also issued a no contact order between Avalle and B.H.

---

[1] Avalle argues that: (1) the trial court erred by sua sponte increasing Avalle's bond; (2) the trial court erred by admitting a pre-trial services report without giving Avalle notice or the opportunity to respond to the report; and (3) the trial court erred when it set the amount of Avalle's bond.

[2] The State later amended the charges to include five counts of child molesting, Level 1 felonies; one count of attempted child molesting, a Level 1 felony; and child exploitation, a Level 4 felony.

[4] On February 22, 2021, Avalle filed a motion to reduce his bond.[3] The trial court held a hearing on the matter on March 8, 2021. The trial court inquired whether Avalle objected to "being evaluated for pretrial services," and Avalle had no objection. *Id.* at 59-60. The trial court then took the matter of the bond reduction under advisement and ordered the pretrial release service program coordinator to evaluate Avalle and provide a report to the trial court. On March 17, 2021, Cass County pretrial services filed a pretrial investigative report, which recommended that, because Avalle was "a substantial flight risk," Avalle's release "would not be in the best interest of the community or public safety." *Id.* at 14. The trial court then ruled on the bond reduction under advisement and issued an order denying Avalle's request for a bond reduction and increasing Avalle's bond to "$150,000 cash only." Appellant's App. Vol. II p. 15.

[5] Avalle filed an appeal of the trial court's bond order and a motion to stay the trial court's order. The motions panel of this Court granted Avalle's motion in part and ordered the trial court to set bond at $150,000.00 cash or surety. The trial court complied and ordered that Avalle have no contact with the victim as a condition of pretrial release. Avalle posted bond on May 27, 2021.

[6] On June 18, 2021, the State filed a new charge against Avalle of invasion of privacy, a Class A misdemeanor. The State alleged that Avalle violated a no

---

[3] The motion was not provided in Appellant's Appendix.

contact order issued in these proceedings to "protect Victim 1." *See* CCS for Cause No. 09D02-2106-CM-401. On June 21, 2021, the State filed a motion to revoke Avalle's bond due to the new charge. After a hearing, the trial court revoked Avalle's bond pursuant to Indiana Code Section 35-33-8-5(d), and Avalle is now being held without bond. The State then filed a motion to dismiss this appeal as moot.

Analysis

[7] Avalle argues that the trial court erred when it increased his bond to $150,000.00 cash only. The State, however, contends that Avalle's appeal is moot. We agree with the State.

[8] "'The long-standing rule in Indiana courts has been that a case is deemed moot when no effective relief can be rendered to the parties before the court.'" *T.W. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 121 N.E.3d 1039, 1042 (Ind. 2019) (quoting *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991)), *reh'g denied*. "When the controversy at issue has been ended or settled, or somehow disposed of so as to render it unnecessary to decide the question involved, the case will be dismissed." *Id.* "Indiana recognizes a public interest exception to the mootness doctrine, which may be invoked when the issue involves a question of great public importance which is likely to recur." *Id.* (quoting *Matter of Tina T.*, 579 N.E.2d 48, 54 (Ind. 1991)). "When this Court elects to address an issue under the public interest exception, it need not 'address all of the issues in the case as presented by the parties.'" *Id.* (quoting *Lawrance*, 579 N.E.2d at 37).

[9] The State properly points out that the "relief Avalle sought, a reduction in his bail, is no longer relief this Court can grant because of the subsequent revocation of his bond for new criminal behavior." *See* July 2, 2021 Motion to Dismiss as Moot. Because Avalle has been charged with a new offense, the trial court revoked Avalle's bond, and he is now being held without bond, we cannot grant the relief that Avalle requests. Moreover, the reduction in Avalle's bond does not present a question of great public importance that is likely to recur. Accordingly, we dismiss Avalle's appeal.

Conclusion

[10] Avalle's appeal is moot, and we dismiss.

[11] Dismissed.

Najam, J., and Pyle, J., concur.