MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jordan Hacker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 17, 2021

Court of Appeals Case No. 21A-CR-1739

Appeal from the Clark Circuit Court

The Honorable Abraham F.A. Navarro, Judge

Trial Court Cause No. 10C03-2104-F6-527

Bailey, Judge.

Case Summary

[1] With criminal charges still pending against him, Jordan Hacker ("Hacker") is appealing a preliminary order on pretrial release, in which the court directed him to participate in pretrial services "at a level to be determined by [pretrial] services . . . after assessment." Tr. Vol. 2 at 6. Hacker contends that the court improperly delegated its responsibility to decide the conditions of his release.

[2] We address the issue of jurisdiction sua sponte, and ultimately do not reach the merits of this appeal. That is, applying Indiana Code Section 35-38-4-1 along with guidance from the Indiana Supreme Court, we conclude that the instant order is interlocutory because Hacker has not presented the issue of pretrial release to the trial court (e.g., by objecting to the conditions). Furthermore, because the order is not appealable under Appellate Rule 14, we must dismiss.

Facts and Procedural History

[3] The State filed a criminal charge against Hacker. At an initial hearing, the trial court authorized Hacker's pretrial release, but not unconditionally. That is, on July 13, 2021, the court ordered Hacker to participate in pretrial services "at a level to be determined by [pretrial] services . . . after assessment." Tr. Vol. 2 at 6; *see also* Appealed Order at 1 (containing a note that the level of pretrial services was "T.B.D. by Assessment"). Pretrial services later completed the assessment and determined that Hacker should report monthly. There is no indication of record that the court later considered the results of the assessment.

[4] Hacker filed his Notice of Appeal on August 12, 2021.

Discussion and Decision

[5] On appeal, Hacker argues that—among other things—the trial court erred by delegating its authority to pretrial services. Hacker asserts that the trial court should have considered the results of the pretrial assessment and, regardless, should have been the arbiter determining the extent of restraints on his liberty.

[6] Neither party addresses jurisdiction. Even so, we must sua sponte determine whether this Court has jurisdiction to decide the case. *See, e.g.*, *Whiting v. State*, 969 N.E.2d 24, 32 n.8 (Ind. 2012) (explaining that a court may sua sponte address the issue of subject-matter jurisdiction); *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014) ("Whether an order is a final judgment governs the appellate courts' subject[-]matter jurisdiction."). As to jurisdiction, the Indiana Constitution specifies that the Indiana Court of Appeals "shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify by rules[.]" Ind. Const. art. 7, § 6. The applicable rule is Indiana Appellate Rule 5, which provides that, generally, the Court of Appeals has "jurisdiction in all appeals from Final Judgments" as well as "appeals of interlocutory orders under Rule 14[.]" We address each category in turn.

Interlocutory Order

[7] An interlocutory order is "interim or temporary," *i.e.*, "not constituting a final resolution of the whole controversy." *Interlocutory*, Black's Law Dictionary

(11th ed. 2019). At first glance, the instant order—addressing only the conditions of pretrial release—seems to be interlocutory. Turning to Appellate Rule 14(A), the following interlocutory orders are appealable as of right:

> (1) For the payment of money;
>
> (2) To compel the execution of any document;
>
> (3) To compel the delivery or assignment of any securities, evidence of debt, documents or things in action;
>
> (4) For the sale or delivery of the possession of real property;
>
> (5) Granting or refusing to grant, dissolving, or refusing to dissolve a preliminary injunction;
>
> (6) Appointing or refusing to appoint a receiver, or revoking or refusing to revoke the appointment of a receiver;
>
> (7) For a writ of habeas corpus not otherwise authorized to be taken directly to the Supreme Court;
>
> (8) Transferring or refusing to transfer a case under Trial Rule 75; and
>
> (9) Issued by an Administrative Agency that by statute is expressly required to be appealed as a mandatory interlocutory appeal.

[8] The instant order does not fall under any of these categories. Moreover, although a defendant may appeal other interlocutory orders by perfecting an

interlocutory appeal, *see* Ind. Appellate Rule 14(B), Hacker has not done so. Furthermore, although an appellant generally may pursue "[o]ther interlocutory appeals . . . as provided by statute," App. R. 14(D), this rule appears to be somewhat subsumed by Rule 2(H), which specifies that certain orders become "final"—and therefore appealable—when "otherwise deemed final by law."

Final Order

[9] At first, it seems that our inquiry is over. However, we must still consider whether the order is regarded as a final judgment under the Appellate Rules:

> A judgment is a final judgment if:
>
> > (1) it disposes of all claims as to all parties;
> >
> > (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;
> >
> > (3) it is deemed final under Trial Rule 60(C);
> >
> > (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
> >
> > (5) **it is otherwise deemed final by law**.

App. R. 2(H) (emphasis added). Here, the only viable category is the fifth, which permits an appeal from an order "otherwise deemed final by law." *Id.*

[10] Our legislature has broadened a criminal defendant's right to an appeal:

> (a) An appeal to the supreme court or the court of appeals may be taken by the defendant:
>
> > (1) as a matter of right from **any judgment in a criminal action**; and
> >
> > (2) in accordance with this chapter.
>
> (b) Any decision of the court **or intermediate order** made during the proceedings may be reviewed.

Ind. Code § 35-38-4-1 (emphases added). In light of this statute, eligible judgments would be deemed final by law and thus appealable under our rules.

[11] In *Bozovichar v. State*, our Supreme Court looked to this statute—as then codified elsewhere—when concluding that a defendant may appeal the denial of bail in a murder case. 103 N.E.2d 680, 682 (Ind. 1952) ("The judgment under consideration is appealable under Burns' 1942 Repl. § 9-2301"), *abrogated on other grounds*; *cf.* Burns' 1942 Repl. § 9-2301 (providing that the defendant may pursue an appeal "as a matter of right, from any judgment in a criminal action against him, in the manner and in the cases prescribed herein; and, upon the appeal, any decision of the court or intermediate order made in the progress of the case may be reviewed"). Of course, that case involved the outright denial

of bail. *See Bozovichar*, 103 N.E.2d at 681. Moreover, that defendant had "filed a motion . . . to be admitted to bail"—a motion the trial court had denied. *See id.* Here, Hacker was not denied bail and he did not file a motion on bail.

[12] So far as we can tell, the Indiana Supreme Court has addressed cases related to the appeal of pretrial bail determinations only when the defendant first filed a motion with the trial court. *See id.* (involving the denial of a motion to be admitted to bail); *State ex rel. Peak v. Marion Crim. Ct., Div. One*, 203 N.E.2d 301, 302 (Ind. 1965) (involving the denial of a motion for reduction of bail). Indeed, in *Peak,* the Court was careful to state that "[**w**]**here a motion for reduction of bail has been denied**, it is considered to be a final decision and the defendant has a right of appeal to this court, since it is a 'judgment' pursuant to the provisions of § 9-2301" (now substantially codified at Section 35-38-4-1). 203 N.E.2d at 302. Moreover, this Court has applied *Peak* and addressed the propriety of the amount of bond when the defendant had first sought a reduction. *See Sneed v. State*, 946 N.E.2d 1255, 1256-57 (Ind. Ct. App. 2011). We are unaware of binding authority stating that a preliminary order on bail, with no sort of motion or request thereon, constitutes an appealable judgment.

[13] It also makes sense to require the defendant to first bring a bail-related matter to the attention of the trial court. Indeed, here, it would be far more efficient to first give the trial court the opportunity to evaluate the propriety of its order. Perhaps, the court would adopt the recommended conditions of pretrial release after considering the risk assessment, rather than potentially wait for the case to be remanded with instructions requiring just that. *See* I.C. § 35-33-8-3.2(a)

("**After considering the results of the pretrial risk assessment, (if available)**, other relevant factors, and [statutory] bail guidelines . . . , a court may admit a defendant to bail and impose [enumerated] conditions to assure the defendant's appearance at any stage of the legal proceedings[.]" (emphasis added)).

[14] Ultimately, it does not seem that a preliminary bail order—without more—has the degree of finality contemplated by Indiana Code Section 35-38-4-1, as interpreted and applied by the Indiana Supreme Court. *See, e.g.*, *Bozovichar*, 103 N.E.2d at 681 (suggesting that a judgment in a criminal matter would be appealable when the judgment is "conclusive of any question in a case").

[15] All in all, we cannot say that this Court has jurisdiction. We therefore dismiss.

[16] Dismissed.

Mathias, J., and Altice, J., concur.