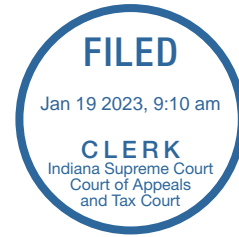


# MEMORANDUM DECISION

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 the law of the case.



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# IN THE COURT OF APPEALS OF INDIANA

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David Brian Parish,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 19, 2023

Court of Appeals Case No.  
22A-CR-2038

Appeal from the Sullivan Circuit  
Court

The Honorable Robert E. Hunley,  
II, Judge

Trial Court Cause No.  
77C01-2201-F5-46

**Pyle, Judge.**

## Statement of the Case

- [1] David Brian Parish (“Parish”) appeals the trial court’s order denying his motion to reduce his bail. Parish argues that the trial court abused its discretion by denying his motion for a reduction of bail. Concluding that the trial court did not abuse its discretion, we affirm the trial court’s judgment.
- [2] We affirm.

### Issue

Whether the trial court abused its discretion by denying Parish’s motion for a reduction of bail.

### Facts

- [3] On January 19, 2022, the State charged fifty-six-year-old Parish with the following six counts that were alleged to have occurred on January 13, 2022: Count 1, Level 5 felony burglary; Count 2, Level 6 felony theft; Count 3, Level 6 felony possession of methamphetamine; Count 4, Class B misdemeanor possession of marijuana; Count 5, Class C misdemeanor possession of paraphernalia; and Count 6, Level 6 felony unlawful possession of a syringe.<sup>1</sup> Additionally, the State filed a notice of intent to file an habitual offender

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<sup>1</sup> The charging information and probable cause affidavit allege that Parish broke and entered a residence by forcing open the front door. Specifically, he broke the glass on the door and bent the frame. Parish then ransacked the house and took items, including a coin collection, jewelry, and lamp, back to his own house. Parish’s wife discovered these items, as well as other items that did not belong to her or Parish, and asked Parish about them. Parish’s wife later consented to a search of their house and told police that Parish used drugs and that she had seen drugs in their house. The police discovered drugs, syringes, and paraphernalia.

enhancement. On January 31, 2022, the trial court found probable cause, issued an arrest warrant, and set Parish's bail at "\$47,000 and d[id] not allow the posting of 10%." (App. Vol. 2 at 30).

[4] In May 2022, Parish was arrested in Kentucky where he had been living since mid-January 2022. Parish waived extradition. On May 26, 2022, the trial court held Parish's initial hearing. During the hearing, Parish stated that his current address was in Lexington, Kentucky. At the end of the hearing, the trial court noted that Parish's bail was cash only because he lived in Kentucky. Parish then stated that his address was in Carlisle, Indiana. When the trial court commented that Parish had given his current address as being in Kentucky, Parish confirmed that he currently lived in Kentucky. The trial court told Parish that it was leaving his bail at \$47,000 but that it would re-evaluate the amount once it received a pretrial assessment report from the probation department.

[5] The probation department interviewed Parish and filed the pretrial assessment report of Parish on the same day as the initial hearing. This report indicated that Parish reported that he had lived in Kentucky with his friend and his wife for five months. Additionally, the report provided that Parish had a high school diploma and had completed some college. The report also indicated that Parish

had been unemployed since March 2019<sup>2</sup> and that there was no reason why he was not currently working. The probation department also reported that Parish's risk level under the IRAS<sup>3</sup> was high, and it recommended that there would be no change in the bail. Thereafter, the trial court entered an order on the initial hearing and kept Parish's bail at \$47,000.

[6] In June 2022, the probation department filed an amendment to its pretrial assessment report, which included an updated criminal history report. This amendment revealed that Parish's criminal history spans four decades and consists of twelve felony convictions and two misdemeanor convictions. His felony convictions include involuntary manslaughter, six burglary convictions, receiving stolen property, possession of marijuana, and two battery convictions. In 2019, Parish was on probation following a domestic battery conviction, but he was unsatisfactorily released from probation after he failed to complete an alcohol/drug program.

[7] In July 2022, Parish filed a motion to reduce his bail. During a hearing on the motion, Parish testified that he had previously lived in Sullivan County for three years. Parish also testified that he had moved to Kentucky in mid-

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<sup>2</sup> While the probation report indicated that Parish had last worked in March 2019, Parish stated during the initial hearing that he had been unemployed "since Covid began[,]" which would be March 2020. (Tr. Vol. 2 at 12). Thus, Parish had been unemployed for a minimum of two years.

<sup>3</sup> The IRAS is the Indiana Risk Assessment System's Pretrial Assessment Tool. *See DeWees v. State*, 180 N.E.3d 261, 266 (Ind. 2022).

January 2022 after his wife had filed for divorce and had locked him out of the house. Parish testified that he had no place to stay in Sullivan County, so he had his friends from Kentucky pick him up and take him to their house. Parish stated that he was not on probation or parole and that he had no pending cases. As exhibits, Parish offered a chronological case summary and a judgment order from his 2010 conviction for Class D felony receiving stolen property to show that he had been released for five days following sentencing and had reported back to the court to execute his sentence.

[8] Parish also presented testimony from the jail commander of the Sullivan County Jail, who indicated that Parish had not had any verbal or written write-ups. Additionally, Parish presented testimony from Beth Gonternan (“Gonternan”), who was his friend’s wife with whom Parish had been living in Kentucky. Gonternan testified that Parish could continue to live with her and her husband in Kentucky if he were released, that her husband could help provide employment for Parish, and that she could help transport Parish back to Indiana for any court hearings. Following the hearing, the trial court denied Parish’s motion for bail reduction.

[9] Parish now appeals.

## **Decision**

[10] Parish argues that the trial court abused its discretion by denying his motion for a reduction of bail. He contends that there was an abuse of discretion because he did not have the ability to pay the amount and because the amount was

higher than reasonably necessary to assure his appearance in court. We disagree.

[11] “The amount of bail is within the sound discretion of the trial court and will be reversed only for an abuse of discretion.” *Perry v. State*, 541 N.E.2d 913, 919 (Ind. 1989). “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.” *DeWees v. State*, 180 N.E.3d 261, 264 (Ind. 2022) (cleaned up). “The Indiana Constitution prohibits excessive bail.” *Sneed v. State*, 946 N.E.2d 1255, 1257 (Ind. Ct. App. 2011) (citing Ind. Const. art. 1, § 16). “[B]ail is excessive if set at an amount higher than reasonably calculated to ensure the accused party’s presence in court.” *Sneed*, 946 N.E.2d at 1257. *See also* IND. CODE § 35-33-8-4(b) (providing that “[b]ail 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”). “The inability of the accused to procure the amount necessary is not a factor that, on its own, renders the amount unreasonable.” *Johnson v. State*, 114 N.E.3d 908, 910 (Ind. Ct. App. 2018).

[12] INDIANA CODE § 35-33-8-4(b) provides that, when setting the amount of bail, a trial court is required to

consider the bail guidelines described in section 3.8 of this chapter<sup>[4]</sup> 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;

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<sup>4</sup> INDIANA CODE § 35-33-8-3.8 provides, in part, that “[a] court shall consider the results of the Indiana pretrial risk assessment system (if available) before setting or modifying bail for an arrestee.” I.C. § 35-33-8-3.8(a). *See also* Ind. Crim. Rule 26(B) (“In determining whether an arrestee presents a substantial risk of flight or danger to self or other persons or to the public [on pretrial release], the court should utilize the results of an evidence-based risk assessment approved by the Indiana Office of Court Services, and such other information as the court finds relevant.”)

(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.

I.C. § 35-33-8-4(b).

[13] Motions to reduce bond are governed by INDIANA CODE § 35-33-8-5, which provides, in relevant part:

(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 [INDIANA CODE § 35-33-8-4(b)], 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) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community.

I.C. § 35-33-8-5 (emphasis added). “[T]his statutory scheme imparts considerable judicial flexibility in the execution of bail.” *DeWees*, 180 N.E.3d at 268.



[14] Parish suggests that the trial court abused its discretion by not making findings regarding each of the statutory factors. However, due to our presumption that the trial court knows and follows the applicable law, we decline to infer from the lack of specific findings that the trial court failed to consider the relevant evidence and statutory factors. *See Sneed*, 946 N.E.2d at 1259. “Indiana Code sections 35-33-8-4 and 35-33-8-5 require the trial court to consider the relevant factors but do not by their terms require the trial court to explain its reasoning for setting or failing to reduce bail.” *Id.*

[15] Here, the record reveals that Parish is facing six charges, including one Level 5 felony, three Level 6 felonies, and two misdemeanors. These allegations include burglary, theft, possession of methamphetamine, possession of marijuana, and other drug-related offenses. The potential maximum penalty for these offenses is just over fourteen years of incarceration. *See* I.C. §§ 35-50-2-6; 35-50-2-7; 35-50-3-3; 35-50-3-4. Moreover, the State filed a notice of intent to file an habitual offender enhancement, and this enhancement would carry an additional maximum penalty of six years added to the potential fourteen-year sentence. *See* I.C. § 35-50-2-8. “[A] potentially lengthy sentence tends to increase the risk that [the defendant] will fail to appear for trial[,] and this cuts substantially against [the] argument that the trial court abused its discretion by denying a motion to reduce bail.” *DeWees*, 180 N.E.3d at 270 (cleaned up). The record also reveals that Parish had been living in Kentucky for several months and that he moved there just after the time of the alleged offenses in this case. Parish has been unemployed for several years, and the probation

department's pretrial assessment report indicated that there was no reason why Parish was not currently employed. Additionally, Parish's character is diminished by his significant criminal history. Parish's criminal history spans four decades and consists of twelve felony convictions and two misdemeanor convictions. His felony convictions include involuntary manslaughter, six burglary convictions, receiving stolen property, possession of marijuana, and two battery convictions. Parish failed to successfully complete probation from his most recent conviction. Furthermore, the probation department's pretrial assessment report indicated that Parish's risk level on the IRAS was high.

[16] Given the record before us and the “considerable judicial flexibility in the execution of bail[,]” *DeWees*, 180 N.E.3d at 268, we conclude that the trial court's decision denying Parish's motion for a bond reduction is not clearly against the logic and effect of the facts and circumstances before the court. Because the trial court did not abuse its discretion, we affirm the trial court's judgment. *See Medina v. State*, 188 N.E.3d 897, 907 (Ind. Ct. App. 2022) (explaining that “[o]ur [Indiana] Supreme Court's decision in *DeWees* makes clear the broad discretion trial courts possess in bail decisions”).

[17] Affirmed.

Vaidik, J., and Bradford, J., concur.