

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Marcus Trevor Bartole,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*

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March 28, 2024

Court of Appeals Case No.  
23A-CR-1709

Appeal from the Tippecanoe Superior Court  
The Honorable Randy J. Williams, Judge

Trial Court Cause No.  
79D01-2111-F3-33

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**Memorandum Decision by Judge Pyle**  
Judges Bailey and Crone concur.

**Pyle, Judge.**

## **Statement of the Case**

[1] Marcus Trevor Bartole (“Bartole”), pro se, appeals the trial court’s order denying his motion to reduce his bail. Bartole 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 Bartole’s motion for a reduction of bail.

## **Facts**

[3] On November 17, 2021, the State charged Bartole with: Count 1, Level 3 felony rape; Count 2, Level 5 felony failure to register as a sex or violent offender; Count 3, Level 6 felony failure to register as a sex or violent offender; Count 4, Level 6 felony sexual battery; Count 5, Level 6 felony strangulation; Count 6, Level 6 felony confinement; and Count 7, Class A misdemeanor battery.<sup>1</sup> The State alleged that all counts occurred on November 12, 2021 and involved the same victim.

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<sup>1</sup> Count 1 alleged that Bartole had knowingly or intentionally performed sexual intercourse or other sexual conduct with Victim 1 (“Victim 1”) when Victim 1 was compelled by force or the imminent threat of force.

[4] Also, on November 17, 2021, the State noted that the standard bond was \$15,000 surety and \$1,500 cash but requested that the trial court set bond at \$150,000 surety and \$15,000 cash. In support of its request, the State advised the trial court that Bartole: (1) had three prior felony convictions, which included a 2021 Indiana conviction for Level 6 felony resisting law enforcement, a 2021 Indiana conviction for Level 6 felony operating a vehicle while intoxicated, and a 2009 North Dakota Class B felony conviction for sexual imposition; (2) was on probation at the time he allegedly committed the offenses in this case; (3) had few, if any, ties to the community; (4) presented a danger to himself or to others; and (5) was a convicted sex offender and the alleged offenses in this case were also for sex crimes. The trial court set Bartole's bond at \$40,000 surety and \$4,000 cash.

[5] In February 2022, the State filed an information alleging that Bartole was an habitual offender. The State specifically alleged that Bartole had the following three prior unrelated felony convictions: (1) a 2021 conviction for Level 6 felony operating a vehicle while intoxicated; (2) a 2019 conviction for Level 6

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Count 2 alleged that Bartole, a sex or violent offender that was required to register under INDIANA CODE CHAPTER 11-8-8, did knowingly or intentionally fail to register as a sex or violent offender and had a prior unrelated 2019 conviction for Level 6 felony failure to register as a sex offender. Count 3 alleged that Bartole, a sex or violent offender required to register under INDIANA CODE CHAPTER 11-8-8, knowingly or intentionally failed to register as required. Count 4 alleged that Bartole, with the intent to arouse or satisfy his sexual desires, compelled Victim 1 to submit to a touching by force or imminent threat of force. Count 5 alleged that Bartole knowingly or intentionally applied pressure to the throat or neck of Victim 1 in a manner that impeded normal breathing or blood circulation of Victim 1. Count 6 alleged that Bartole knowingly or intentionally confined Victim 1 without her consent. Count 7 alleged that Bartole knowingly or intentionally touched Victim 1 in a rude, insolent, or angry manner, resulting in injury to Victim 1.

felony failure to register as a sex offender; and (3) a 2009 North Dakota conviction for Class B felony sexual imposition.

[6] In May 2023, Bartole filed a motion for bond reduction. In June 2023, the trial court held a hearing on Bartole’s motion. At the hearing, Bartole told the trial court that although he had failed to appear for a bench trial in the fall of 2020, he would attend all court dates in the current case because he had family and friends “who [were] absolutely committed to make sure [he] show[ed] up to Court[.]” (Tr. Vol. 2 at 6). Bartole further told the trial court that he was not a flight risk because he was “an innocent man . . . fully committed and looking forward to coming to trial[.]” (Tr. Vol. 2 at 7). Bartole asked the trial court to “convert the \$44000 secure bond into an unsecured personal bond and on top of that apply a \$2500 with a 10% option surety bond which would require \$250 to post or a \$250 cash bond.” (Tr. Vol. 2 at 9).

[7] The State argued that Bartole posed a threat to the community. Specifically, the State pointed out that North Dakota’s sexual imposition statute read similarly to Indiana’s rape statute and that Bartole had been charged with committing rape in the current case. The State also pointed out that Bartole was on probation at the time that he allegedly committed the offenses in the current case. Following the hearing, in July 2023, the trial court denied Bartole’s motion for bail reduction.

[8] Bartole now appeals.

## Decision

- [9] At the outset, we note that Bartole has chosen to proceed pro se. We hold pro se litigants to the same legal standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. Accordingly, pro se litigants are bound to follow the established rules of procedure. *Id.*
- [10] Here, Bartole has failed to comply with Indiana Appellate Rule 43(C), which states that an appellate brief “shall be produced in a neat and legible manner[.]” Bartole’s forty-one page handwritten brief is, for the most part, illegible. However, because we are able to ascertain the gravamen of his argument, we will address his sole issue that the trial court abused its discretion by denying his motion for a reduction of bail.
- [11] We review the trial court’s bail determination for an abuse of discretion. *DeWees v. State*, 180 N.E.3d 261, 264 (Ind. 2022). 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. *Id.*
- [12] INDIANA CODE § 35-33-8-4(a) provides that the court shall order the amount in which a person charged by an indictment or information is to be held on bail. INDIANA CODE § 35-33-8-4(b) provides that 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.

[13] INDIANA CODE § 35-33-8-4(b) further provides:

In setting and accepting an amount of bail, the judicial officer shall consider the bail guidelines described in section 3.8 of this chapter<sup>[2]</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;

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<sup>2</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.”)

(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;

(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).

[14] 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 . . . .

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(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.

[15] Here, the record reveals that Bartole is facing seven charges, including one Level 3 felony, one Level 5 felony, four Level 6 felonies, and one Class A misdemeanor. These allegations include rape, failure to register as a sex or violent offender with a prior unrelated conviction for failing to register as a sex offender, failing to register as a sex or violent offender, sexual battery, strangulation, criminal confinement, and battery resulting in bodily injury. Moreover, the State also filed an information alleging that Bartole was an habitual offender. Our Indiana Supreme Court has stated that a potentially lengthy sentence tends to increase the risk that the defendant will fail to appear for trial and cuts substantially the argument that the trial court abused its discretion by denying a motion to reduce bail. *Id.* at 270.

[16] Additionally, Bartole has a significant criminal history that spans more than a decade and includes several felony convictions, including failure to register as a sex offender, operating a vehicle while intoxicated, and resisting law enforcement. Bartole also has a prior conviction for sexual imposition in North Dakota, and he has been charged with a similar felony offense in the current case. Further, Bartole was on probation at the time that he allegedly committed the offenses in this case. We also note that Bartole failed to attend a bench trial in the fall of 2020, demonstrating his disdain for the court’s authority to bring him to trial.



[17] In light of 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 Bartole’s motion for a bail 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”).

[18] Affirmed.

Bailey, J., and Crone, J., concur.

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