

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Nicholas Adian Tennis,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 30, 2024

Court of Appeals Case No.
24A-CR-89

Appeal from the Vigo Superior Court
The Honorable Charles D. Johnson, Judge

Trial Court Cause No.
84D01-2311-F4-4168

Memorandum Decision by Judge Pyle
Judges Bailey and Crone concur.

Pyle, Judge.

Statement of the Case

[1] Nicholas Adian Tennis (“Tennis”) appeals the trial court’s order denying his motion to reduce his bail. Tennis 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 Tennis’ motion for a reduction of bail.

Facts

[3] On November 15, 2023, the State charged nineteen-year-old Tennis with Level 4 felony child molesting.¹ The State alleged that Tennis had touched the genital area of a four-year-old child while he was working at the daycare that the child attended. The trial court found that probable cause existed based on the charging information and set bail at “\$75,000 no 10%[.]” (App. Vol. 2 at 13). On November 16, 2023, the trial court held an initial hearing. At the initial

¹ The charging information and probable cause affidavit alleged that nineteen-year-old Tennis worked at a day care where the four-year-old child attended. The probable cause affidavit further alleged that Tennis had “used two fingers to spread open the child’s vagina to expose her clitoris.” (App. Vol. 2 at 12). The probable cause affidavit alleged that thereafter, Tennis gave the child candy. Further, the probable cause affidavit alleged that Tennis had told officers that touching the child’s vagina had made him “hot” and that Tennis had referred to himself as “disgusting” and “horny.” (App. Vol. 2 at 12).

hearing, the trial court left Tennis' bail at "\$75,000.00, no 10% permitted." (App. Vol. 2 at 14). The trial court also ordered Vigo County Community Corrections ("VCCC") to assess Tennis for all programs and ordered a mental health evaluation.

[4] On November 17, 2023, Licensed Clinical Social Worker Virgil Macke ("Macke") filed a mental health evaluation ("the mental health evaluation") with the trial court. The mental health evaluation provided that Tennis had "experienced significant childhood trauma and ha[d] had emotional issues most of his life. [Tennis] has had multiple hospitalizations at the Harsha Center, Hamilton Center, Valley Professionals and at a facility in Columbus, IN." (App. Vol. 2 at 17). The mental health evaluation also provided that Tennis currently had "high anxiety, difficulty focusing, racing thoughts and an unstable mood" and that Tennis was "not on any medication." (App. Vol. 2 at 17). Macke diagnosed Tennis with "ADHD, PTSD, Borderline Personality Traits and Rule/Out Bipolar Disorder." (App. Vol. 2 at 17). Finally, Macke noted that at Tennis' age, some mental health issues start to get stronger and recommended that Tennis receive therapy and medication.

[5] On November 20, 2023, Tennis filed a motion to reduce bond. VCCC filed a community corrections evaluation with the trial court on November 22, 2023. In its evaluation, VCCC noted that Tennis was "not appropriate for residential services or electronic monitoring" because he had "reported that he d[id] not have a residence to enroll in electronic monitoring." (App. Vol. 2 at 32). VCCC also noted that Tennis was ineligible for services because of the nature of

the offense and the age of the victim. Tennis' IRAS² reported that his risk level was "low[.]" (App. Supp. at 2). The IRAS also provided that Tennis had no previous criminal history.

[6] On December 18, 2023, the trial court held a bail review hearing. At the hearing, Tennis argued that he should be released on his own recognizance because the IRAS set his risk level at low and because he had no criminal history. The State argued that bail should not be reduced because Tennis was a danger to himself or others and due to Tennis' mental health. The State also noted the nature of the charge and the age of the victim. At the conclusion of the hearing, the trial court denied Tennis' motion to reduce bond.

[7] Tennis now appeals.

Decision

[8] Tennis argues that the trial court abused its discretion when it denied his motion for a reduction of bail. 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.*

² The IRAS is the Indiana Risk Assessment System's Pretrial Assessment Tool. *See DeWees v. State*, 180 N.E.3d 261, 266 (Ind. 2022).

[9] 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.

[10] 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 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;

(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).

[11] 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.

[12] Here, the State charged Tennis with Level 4 felony child molesting. Our review of the record reveals that the probable cause affidavit alleged that nineteen-year-old Tennis, while working at a day care, touched the vagina of a four-year-old child and gave the child candy afterward. The probable cause affidavit noted that Tennis had told officers that touching the child’s vagina made him “hot” and that Tennis had referred to himself as “disgusting” and “horny.” (App. Vol. 2 at 12). The record before us shows that Tennis poses a risk to the physical safety of another person or the community. *See* I.C. § 35-33-8-5. Further, the record shows that Tennis has ongoing mental health problems including “ADHD, PTSD, Borderline Personality Traits and Rule/Out Bipolar Disorder.” (App. Vol. 2 at 17). Tennis also disclosed to VCCC that he does not have a residence where he could live for the purposes of electronic monitoring.

[13] Tennis argues that the trial court abused its discretion when it denied his motion to reduce bail because: (1) the IRAS reported that his risk level was low; (2) he has no criminal history; and (3) he has strong ties to the community. However, the factors above weigh in favor of the trial court’s decision. Specifically, the mental health evaluation revealed that nineteen-year-old Tennis struggles with multiple mental health conditions. Additionally, Tennis does not appear to have a residence in which he could live for purposes of

electronic monitoring, which cuts against his assertion that he has strong ties to the community. Further, the record reveals that Tennis poses a risk to the physical safety of another person or the community.

[14] 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 Tennis’ 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”).

[15] Affirmed.

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

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