

IN THE
COURT OF APPEALS OF INDIANA

No. 23A-CR-2924

JAMEY NOEL,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from Clark Circuit Court,

No. 10C01-2311-F5-297,

The Honorable Larry W. Medlock,
Special Judge.

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

I. Whether this appeal is moot when Noel posted bond on the day of his initial hearing.

II. Whether the trial court abused its discretion in setting bond.

STATEMENT OF THE CASE

On November 8, 2023, the State charged Noel with corrupt business influence as a Level 5 felony, two counts of theft as Level 5 felonies, three counts of theft as Level 6 felonies, four counts of ghost employment as Level 6 felonies, four counts of official misconduct as Level 6 felonies, and obstruction of justice as a Level 6 felony (App. 14–28). An initial hearing was held on November 9, 2023, at which the trial court set a bond amount at \$75,000 (App. 68). Noel posted bond that day (App. 66–67). Noel filed a notice of appeal on December 7, 2023 (Docket).

STATEMENT OF FACTS

Noel was the elected sheriff of Clark County from January 1, 2015, until December 31, 2022 (App. 29). In the summer after his tenure as sheriff ended, the Indiana State Police began an investigation into Noel employing jail staff to work “on his rental property, private business buildings, ... pole barn, cars, and private residence while being on duty and being paid as Clark County employees” (App. 29). Four of the employees Noel used to perform such work while they were being paid by the County confirmed the State Police’s suspicions in interviews, with one employee confirming that Noel had asked him to “pick up and transport cars” for Noel’s private collection using the jail’s truck, trailer, and gas (App. 29–30). Noel

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used Clark County employees to help build a pole barn to house Noel's private car collection, which one employee estimated held "approximately 100 vehicles" (App. 35). Not only did Noel use county-paid employees for their labor, he gave them a credit card bearing the account holder's name as "Jail Commander Fund" to purchase repair parts for Noel's private vehicles (App. 36).

The State Police learned that Noel was also the Fire Chief of the New Albany Township Fire Department and also the CEO of the Utica Township Volunteer Fire Fighters Association (App. 36). Police searched for all vehicles registered to the Utica Township Association and to another of Noel's businesses with which the New Albany Township Fire Department had a contract (App. 37). The search found that the following vehicles were registered to the Utica Township Association:

1. 2023 Blue Cadillac Escalade
2. 2020 Gray Dodge Charger Hell Cat
3. 2020 Black Cadillac CT 5 Sport
4. 2015 Black Camaro Z28
5. 2020 Blue Cadillac ST6
6. 2017 Black Cadillac Escalade Luxury
7. 2017 Blue Corvette Grand Sport
8. 2018 Orange Camaro SS
9. 2019 Black Cadillac XT5
10. 2022 Black Cadillac CT5 Premium Luxury
11. 2023 Gray Cadillac V ESU Sport
12. 2023 Gray Cadillac Sport
13. 2023 Black Grand Wagoneer Series III Jeep
14. 2022 Black Cadillac Sport Platinum
15. 2021 Black Cadillac Escalade Sport
16. 2023 Black Cadillac CT5-V
17. 2020 Red Corvette Sting Ray
18. 2021 Gray Dodge Challenger SRT Hell Cat Red Eye
19. 1993 Blue Ford Taurus
20. 2000 Silver Mercury Grand Marquis
21. 1998 Brown Ford Crown Victoria
22. 1994 Blue Crown Victoria
23. 1989 Blue Ford Bronco II
24. 2022 Black Dodge Pursuit¹

(App. 37).

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These discoveries led police to obtain search warrants for Noel's house, pole barn, and two of Utica Township's fire stations (App. 37). When the team of investigators arrived at the pole barn, they used a doorbell that had audio transmitting capabilities to contact Noel (App. 37). Noel answered the doorbell over the transmitter and agreed to come to the pole barn (App. 37). When Noel arrived, he was told that the warrants covered a search of his cell phone (App. 37). Noel provided the phone to police, who then discovered that it had been "factory reset and the data had been wiped shortly before [police] seized the phone" (App. 37).

Inside of the pole barn, troopers found seven vehicles that were registered to the Utica Township Volunteer Fire Fighters Association, one of which was a black Chevrolet Camaro (App. 38–41). Troopers also learned that there were additional Utica-owned vehicles at Noel's daughter's residence, and after obtaining a search warrant, police found two other Utica vehicles there, one of which was a 2023 Cadillac Escalade (App. 40–42). Also found at Noel's daughter's house was a "Kubota 4x4 mule utility vehicle" that had a "tag on the key" indicating that it belonged to one of Noel's companies that had contracted with the New Albany Township Fire Department (App. 42).

Police also conducted an investigation into banking and vehicle-purchase records regarding Noel and the Utica Township Volunteer Fire Fighters Association (App. 43). This examination disclosed what police believed to be a "corrupt business practice" of "layering," the purpose of which "is to make the process of tracking money or assets through each layer of a business, in this case using assumed

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business names and separate accounts, more difficult” (App. 43). Investigators found “a pattern of purchasing and selling dozens of vehicles” by the Utica Township Volunteer Fire Fighters Association and “its’ affiliated businesses,” and also found “multiple instances” of Utica-owned assets that were sold or traded “resulting in zero return” to Utica but instead created financial gain for Noel personally (App. 43). Police included the following as examples in a probable cause affidavit:

On May 3, 2021, Jamey Noel traded a Utica owned 2020 Chevrolet Corvette, VIN#1G1Y72D43L5115893, valued at \$92,000 for a 2020 Mercedes-Benz S-Class 450, VIN#WDDUG6EB1LA497932, and registered said Mercedes in his own name.

On January 2, 2019, Jamey Noel traded a Utica owned 2017 Chevrolet 3500 Silverado, for a 2019 Challenger SRT Hellcat, VIN#2C3CDZL98KH502984, and titled said Hellcat in his own name. On October 10, 2019, Jamey Noel then personally sold said Hellcat to Utica for \$83,716.

On April 30, 2021, Jamey Noel traded a Utica owned vehicle in for a 2012 Porsche Panamera, VIN# WP0AB2A74CL060999, and titled said Porsche in his own name. On September 12, 2022, Jamey Noel sold said Porsche for \$32,000 to a car dealership and deposited said funds into his personal bank account on September 14, 2022.

On December 2, 2020, Jamey Noel traded a Utica owned vehicle in for a 1957 Chevrolet Bel-Air, VIN#VC57S281812, and titled said Chevrolet in his own name. On September 27, 2022, Jamey Noel sold said Chevrolet for \$39,500 to Kenny Hughbanks and deposits said funds into his personal bank account on September 28, 2022.

On August 31, 2022, Jamey Noel took a Utica owned Kubota HST Tractor, purchased in 2017 for \$40,600, and sold it to James Bishop for \$31,000. On September 14, 2022, Jamey Noel deposited the check for \$31,000 in his personal bank account.

(App. 43).

A sealed arrest warrant was issued (App. 47). While the State Police were waiting for the warrant, they attempted to locate Noel (Tr. 12). According to the State at a later hearing, police followed Noel as he went to Kentucky, where Noel “attempted to elude them for a significant period of time, ultimately, parking his vehicle on the street in Louisville [and] getting into a car with his attorney in Kentucky” (Tr. 12).

After the arrest warrant was executed, Noel appeared for an initial hearing on the charges on November 9, 2023 (App. 66–68). At this hearing, the State informed the trial court that Noel had a home in Florida and that Noel also owned his own airplane (Tr. 11). Also at this hearing, a pre-trial services evaluator called the circumstances of the defendant here “unique,” and the trial court agreed with that characterization (Tr. 24, 28–29). The trial court set a bond amount at \$75,000 (Tr. 28–29). The trial court did allow Noel to keep a shotgun in his possession and, upon later motion, also allowed him to travel to California for a vacation (App. 84, 88).

SUMMARY OF THE ARGUMENT

This appeal is moot, and it should be dismissed. On the day that bond was set Noel immediately posted it. Therefore, any decision this Court would make would be purely advisory. And the case law does not currently need advisory opinions on bail for a case where the defendant is wealthy, able to easily liquidate assets, and presents a unique circumstance. Even if this case is not dismissed, the trial court did not abuse its discretion in setting a bond amount given the facts and circumstances before it. This Court should dismiss or otherwise affirm.

ARGUMENT

I.

This appeal should be dismissed because it is moot.

This Court should not consider Noel’s moot bond appeal because he has been released, and this case does not involve an issue of great public importance. When a court can no longer give the parties effective relief upon disposition of a challenge, the challenge is moot. *E.F. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 188 N.E.3d 464, 466 (Ind. 2022) (citing *T.W. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 121 N.E.3d 1039, 1042 (Ind. 2019)). “[M]oot appeals ordinarily are dismissed[.]” *I.J. v. State*, 178 N.E.3d 798, 799 (Ind. 2022). “When ‘[n]one of the parties seem to have any interest left in the case,’ [an appellate court] should dismiss because it ‘ought not to be engaged in passing on moot-court questions.’” *Seo v. State*, 148 N.E.3d 952, 965 (Ind. 2020) (Massa, J., dissenting) (quoting *State ex rel. Taylor v. Mount*, 52 N.E. 407, 407 (Ind. 1898)) (first alteration added by *Seo*, second supplied). Because Noel posted bond on the day it was set, he has no more interest in the amount of his posted bond, and he has no remedy to be garnered from succeeding in this appeal.

To avoid the consequences of a moot appeal, Noel argues under the public-interest-exception to our state’s mootness doctrine (Def. Br. 14–17). “When appellate courts invoke this exception,” it still “results in ‘decisions which are, for all practical purposes, advisory opinions.’” *I.J.*, 178 N.E.3d at 799 (quoting *Mosley v. State*, 908 N.E.2d 599, 603 (Ind. 2009)); see *Hill v. State*, 592 N.E.2d 1229, 1230 (Ind. 1992) (“We do not provide advisory opinions.”). Generally, cases fitting the public-interest exception “raise important policy concerns and present issues that

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are likely to recur.” *Mosley*, 908 N.E.2d at 603. Not only must a moot issue contain both an extremely important policy or legal issue and the likelihood of a significant prospect of recurring, but the issue must also be one that is likely to evade appellate review if unaddressed. *Samm v. State*, 893 N.E.2d 761, 765 (Ind. Ct. App. 2008) (citing *Jones v. State*, 847 N.E.2d 190, 200 (Ind. Ct. App. 2006), *trans. denied*).

Noel has failed to persuasively invoke the great-public-interest exception. The circumstances here do not present an issue likely to recur: As the trial court recognized, the defendant and the facts before it were “unique” (Tr. 28–29). Defendants come to our trial courts with a panoply of different circumstances—wealthy, indigent, with funds obtained by illicit means, younger, older, experienced in the criminal-justice system, or first-time offenders—and not all of their appeals should evade the mootness bar under the great-public-interest exception when those defendants are able to post a reasonable bond amount. And nothing about a decision in this case will help reviewing courts in the future: It is not every day that criminal trial courts are faced with formerly elected law-enforcement officials who have enriched themselves at the public’s expense. Not every day are trial courts facing defendants with a glut of liquifiable assets—high-value vehicles, in this case. From these circumstances, the trial court set a bond amount that was reasonable (evidenced by the quick payment) and also such that it discouraged flight lest the posted bond money be confiscated.

Further, the issue of bond in this case does not raise an important policy concern: This case does not raise any issue that would apply to bond appeals

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generally. This case is nothing more than a single trial court's exercise of discretion based on a unique defendant's circumstances. No larger legal pronouncement is called for based on the issues Noel has raised. Finally, bond issues do not necessarily evade review because orders setting bond are appealable final judgments, and appellate courts have made decisions concerning bond frequently. *Lopez v. State*, 985 N.E.2d 358, 360 (Ind. Ct. App. 2013) (citing *Sneed v. State*, 946 N.E.2d 1255, 1256 n.1 (Ind. Ct. App. 2013)); *see, e.g., DeWees v. State*, 180 N.E.3d 261 (Ind. 2022); *Medina v. State*, 188 N.E.3d 897 (Ind. Ct. App. 2022); *Jones v. State*, 189 N.E.3d 227 (Ind. Ct. App. 2022); *Hall v. State*, 166 N.E.3d 406 (Ind. Ct. App. 2021); *Doroszko v. State*, 154 N.E.3d 874 (Ind. Ct. App. 2020). The great-public-interest exception should not be applied in this case.

But Noel believes that because his issue involves bond, then he automatically meets the exception to the mootness doctrine. At least that is the logic of his argument: He notes that bail has to do with constitutional protections, and that the setting of bond happens daily in Indiana courts (Def. Br. 16). Both of those propositions are factually accurate, but they do nothing to show that this case and its "unique" facts are so greatly important that this Court should issue an advisory opinion (Tr. 28–29). *See I.J.*, 178 N.E.3d at 799. This Court has never held that bond issues are exempt from the generic live-controversy requirement; in fact, they are final appealable orders. Just because Noel's case involves bond does not mean that it meets the mootness exception, despite his argument. This appeal should be dismissed.

II.

**If this case is not dismissed,
the trial court's bond decision should be affirmed.**

Should this Court choose to decide this case on the merits, it should affirm. Decisions about bail are left to the trial court's discretion. *DeWees*, 180 N.E.3d at 264 (citing *Perry v. State*, 541 N.E.2d 913, 919 (Ind. 1989)). Reversal is only proper when the trial court issues a decision that 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.* (citing *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007)). This Court does not reweigh the evidence and considers all evidence in favor of the trial court's ruling. *Doroszko*, 154 N.E.3d at 876 (citing *Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), *trans. denied*).

The Indiana Constitution prohibits excessive bail, Ind. Const. art. 1, § 16, and the Indiana Code states 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[.]" Ind. Code § 35-33-8-4(b). A defendant challenging his bond amount must prove that the "trial court's setting of bail was excessive." *Sneed*, 946 N.E.2d at 1257–58 (citing I.C. § 35-33-8-5(c) ("When the defendant presents additional evidence of substantial mitigating factors ... the court may reduce bail.")). The defendant must prove that the trial court's bond amount "was excessive" to secure a bail reduction. *Id.* Indiana Code Section 35-33-8-4(b) lists some factors that courts should consider in making a bond decision.

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The trial court did not abuse its discretion here given the nature of this case and this defendant. Noel is accused of employing multiple people and various fraudulent schemes to increase his personal wealth—crimes that are meant to avoid detection by duplicitous means. *See* I.C. § 35-33-8-4(b)(7) (bail consideration of “the nature and gravity of the offense”). The facts as alleged and as discovered by the State Police show that Noel is not the everyday opportunistic robber who victimized an easy target, but instead he is alleged to be a sophisticated manipulator of municipal systems with their blind spots and loopholes. Moreover, Noel committed these crimes while in a position of public trust, and Noel violated that trust to defraud the citizens of Clark County, which is an indication that Noel does not take his public promises and the laws of this State (that he previously was sworn to enforce) seriously. *See* I.C. § 35-33-8-4(b)(4) (bail consideration of “the defendant’s character, reputation, habits, and mental condition”). In fact, it is entirely plausible that Noel used fraudulently gained funds to post the already reasonable bond amount. *See* I.C. § 35-33-8-4(b)(7) (bail consideration of “the source of funds or property to be used to post bail”). Given the nature of Noel’s crimes involving fraud and deceit, \$75,000 was not an unreasonable bond amount, especially given Noel’s obvious ability to pay that amount.

Noel’s contrary position rests on an alleged lack of written findings and also because he is not a flight risk or danger to others (Def. Br. 17–23). First, he provides no authority that either the bond statutes or Criminal Rule 26 require a specific written order with specific findings of fact to justify a bond decision. This Court can

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review the transcript of the hearing and other materials in support of the trial court's decision without needing special findings from the trial court. Second, Noel could have moved the trial court for written findings under Trial Rule 52 and did not. Third, while the typical bond decisions do consider flight risk and danger to others, this, as noted, is a "unique" case involving a wealthy defendant whose fraudulent schemes earned possibly hundreds of thousands of dollars (Tr. 28–29). And, as to flight risk, the State did indicate (and Noel does not contest) that he owned an airplane, could fly it, and owned a house in Florida (Tr. 11). It is not the case that only defendants with obvious proclivities for violence are required to post bond. Noel's large-scale scheme of fraud has done significant harm to Clark County and its citizens. The trial court imposed a reasonable bond amount, and this Court should affirm.¹

¹ To the extent that Noel is challenging any of his conditions of bond, those claims are unavailable to him for two reasons. First, any claim is waived for failing to present cogent argument given that his complaints about the "unreasonable[ness]" of any conditions are merely mentioned in passing and are not accompanied by any substantive argument (Def. Br. 22). Ind. Appellate Rule 46(A)(8)(a). Second, orders setting terms and conditions of bond have not been considered final appealable judgment but are merely interlocutory. *See, e.g., Steiner v. State*, 763 N.E.2d 1024, 1026–27 (Ind. Ct. App. 2002) (noting that order requiring drug screens was subject to the discretionary interlocutory-appeal procedure); *Larkins v. State*, 622 N.E.2d 1299, 1300 n.1. (Ind. Ct. App. 1993) (holding that an order forfeiting bond "is a mere interlocutory order, forming part of the proceedings in the prosecution, from which no appeal will lie").

CONCLUSION

This appeal is moot and should be dismissed. If not, the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 12, 2024, I electronically filed the foregoing using the Indiana Electronic Filing System (IEFS), and that on the same date the foregoing document was served upon counsel via IEFS.

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