

[CAPTION]

MOTION FOR RELEASE OF BOND

The Defendant, by counsel, respectfully requests this Court to release the Defendant's entire cash bond previously posted. In support of the Motion, the Defendant states the following:

1. On [insert date], this Court entered judgment of conviction and sentenced the Defendant in the above captioned cause. The sentence included various fees and a fine of [insert amount of fine].
2. On [insert date], this Court ordered the Defendant's bond withheld in an amount sufficient to satisfy the fine, costs and fees imposed. The Court also ordered the balance held for the criminal charges that remain pending against the Defendant.
3. Indiana law is clear that the purpose of bail is to ensure the appearance of the Defendant, and if that end has been achieved, the trial court may not appropriate the bail towards other ends except as provided by statute. Bennett v. State, 668 N.E.2d 1256 (Ind.Ct.App. 1996).
4. Unless otherwise agreed under I.C. 35-33-8-3.2(a), there exist no Indiana statute that allows for the withholding of a cash bond to pay for any purpose when the Defendant has posted the entire cash bond. Blixt v. State, 872 N.E.2d 149 (Ind.Ct.App. 2007) (as of July 1, 2006, I.C. 35-33-8-3.2(a) authorizes retention of cash bond if agreed to by the parties); cf. Traylor v. State, 817 N.E.2d 611 (Ind.Ct.App. 2004) (where the defendant posted entire amount of bail in cash, he was entitled to remittance of \$30,000 cash bond); Goffinet v. State, 775 N.E.2d 1227 (Ind.Ct.App. 2002) (trial court erred in retaining \$5,679 for various costs and fees from bond where defendant posted entire cash bond); Jones v. State, 716 N.E.2d 556 (Ind.Ct.App. 1999) (statutory provision for retention of bond money as compensation for publicly-provided representation applies only when the defendant has posted ten percent of the bond with the Clerk); Cody v. State, 702 N.E.2d

364 (Ind.Ct.App. 1998) (trial court erroneously retained bond to pay for representation costs where defendant posted full cash bond).

5. There exists no statute providing authority to the trial court for applying the cash bond to future costs. Hendrix v. State, 615 N.E.2d 483 (Ind. 1993) (trial court improperly withheld bond to pay for costs of appellate representation); Goffinet v. State, 775 N.E.2d 1227 (Ind.Ct.App. 2002).
6. There is no Indiana statute authorizing the withholding of a bond in order to pay for fines and costs simply because the bond was revoked.
7. Therefore, the trial court lacks authority to order the Defendant's bond previously posted in the above-captioned cause withheld for purposes of payment of fees, costs and fines in the above-captioned cause and any other pending cause.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to release the Defendant's entire cash bond, and for all other relief just and proper in the premises.

(Signature)

CASE LAW:

J.J. Richard Farm Corp. v. State, 642 N.E.2d 1384 (Ind.Ct.App. 1994) (third party who posted cash bail for Defendant did not lose his or her interest in the money and is entitled to its return if the Defendant appears in court as required; trial court erred in ordering \$50,000 cash bail to be disbursed to the Defendant less \$24,135 to satisfy child support arrearage and future appellate costs).