

[APPELLATE COURT CAPTION]

VERIFIED PETITION TO SET BOND PENDING APPEAL

The Appellant, by counsel, pursuant to Indiana Code 35-33-9-1 and Indiana Appellate Rule 18, moves this Court to set a reasonable appeal bond. In support of the Petition, the Appellant states the following:

1. On [insert date], the Appellant was sentenced to [insert sentence] for [insert conviction(s)], and is currently incarcerated at [insert jail or prison].

2. On [insert date], the Appellant filed his Motion for an Appeal Bond in the trial court. On [insert date], the trial court denied the motion. *A certified copy of the Motion for Appeal Bond and the trial court's denial are attached hereto and incorporated herein as Exhibit A and B, respectively.*

3. The Court of Appeals has jurisdiction to reconsider the trial court's denial of the Motion for Appeal Bond pursuant to Indiana Appellate Rule 18. *See Exhibit B.*

4. This Court has jurisdiction over the appeal under [CHOOSE ONE: Indiana Rule of Appellate Procedure 4 OR Indiana Rule of Appellate Procedure 5]

5. On [insert date], a Notice of Appeal was filed with the trial court clerk. [Further specify at what procedural point is the appeal, i.e, briefing or waiting for completion of transcript].

6. The Appellant requests this Court to set a reasonable bond pending his direct appeal.

7. Pursuant to Tyson v. State, 593 N.E.2d 175 (Ind. 1992), the Appellant must show this Court: (A) there is a high probability of reversible error at trial; (B) Appellant has a low risk of flight; and (C) Appellant has no potential of dangerousness.

A. High probability of reversible error. [Provide a summary of the argument upon which you believe the Appellant's convictions will be reversed. Be sure to include case law].

B. Low risk of flight. The Appellant poses an extremely low risk of flight. [Specify reasons why the Appellant is a low risk of flight; (for example- The Appellant is [insert age]. While awaiting trial on these charges, the Appellant was out on surety bond. At no time did the Appellant fail to appear. Furthermore, in sentencing the Appellant, the trial court found two mitigating factors which weigh heavily in favor of

the appellant's contention that he poses a low risk of flight: 1. The appellant has no previous criminal record; and 2. The appellant has an outstanding employment record and record of support for his family. Specifically, the trial court found as follows: "I'm going to find as a second mitigating factor that he has an excellent, if not outstanding, employment record and record of support for his family for many, many years." p. 847. The relevant portion of the sentencing transcript is attached hereto and incorporated herein as Exhibit "C".)]

C. No potential for dangerousness. [Specify reasons why Appellant is not dangerous. (for example- The Appellant has no prior criminal record. The Appellant's convictions were for non-violent crimes)].

8. If granted an appeal bond, the Appellant would reside with his [insert family members] at [insert address], which has been their family home for [insert number of years].

9. If granted an appeal bond, the Appellant would have sufficient means to support himself through [insert employment, etc].

10. The Appellant requests this Court to set a reasonable appeal bond. The Appellant would comply with all orders and conditions set forth by this Court during the pendency of his direct appeal. The Appellant would also surrender himself to the jurisdiction of this Court should his direct appeal be decided adversely to him.

WHEREFORE, the Appellant, by counsel, respectfully requests this Court grant his Verified Petition to Set Bond Pending Appeal and for all other relief just and proper in the premise

(Attorney Signature)

VERIFICATION

Under penalty of perjury, the foregoing representations are true and accurate to the best of my knowledge and belief.

(Attorney Signature)

REFERENCES

CASEBANK G.2.d

Indiana Rule of Appellate Procedure 18 (“After the trial court or Administrative Agency decides the issue of a stay, the Court of Appeal may reconsider the issue at any time upon a showing, by certified copies, of the trial court’s action. The Court on Appeal may grant or deny the stay and set or modify the bond or letter of credit.”).

I.C. 35-33-9-1 et. seq.

I.C. 35-33-9-1 (a person convicted of a Class A felony or a felony which is non-suspendible under I.C. 35-50-2-2 may not be let to bail pending appeal).

I.C. 35-33-9-6 (“where a penalty in a criminal case is a fine only, the defendant may have a stay of execution on appeal as provided by law).

CASELAW

Atkins v. State, 550 N.E.2d 342 (Ind.Ct.App. 1990) (the right to bail pending appeal is not required by the constitution; it is a matter of legislative grace).

Willis v. State, 492 N.E.2d 45 (Ind.Ct.App. 1986) (following the denial of bail pending appeal by the trial court, the Defendant may properly petition the appellate court to be let to bail pending appeal; the appellate court ordered the Defendant let to bail).

Tyson v. State, 593 N.E.2d 175 (Ind. 1992) (appellate court’s review is not de novo, however, nor is it limited to review of the trial court’s abuse of discretion; review lies somewhere in the middle, with the court having the ability to examine factors pertinent to a bail decision, but granting the trial court appropriate deference on issues where the trial court is in the best position to judge; because of the presumption of guilt after conviction, the Defendant bear the burden of demonstrating compelling reasons to allow him to remain free pending appeal; three factors to be considered are: 1) the probability of reversible error at trial; (2) the risk of flight; and (3) the potential dangerousness of the Appellant; Factors 2 and 3 involve deference to the trial court, while factor 1 does not).

Woods v. State, 583 N.E.2d 1211 (Ind. 1992) (trial court loses jurisdiction to order sentence executed if person on bail is not recalled to court within a reasonable time after the denial of the appeal is certified; here, court lost jurisdiction to impose sentence).