



On appeal, Appellant-Defendant Gary Hempstead contends that the trial court erred in applying his \$1500 cash bond to certain court costs and fees. Finding no error, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On August 22, 2005, the State charged Hempstead, under cause number 03D01-0508-FC-1437 (“Cause No. 1437”), with Forgery, a Class C felony, and Receiving Stolen Property, a Class D felony. Hempstead pled guilty on November 14, 2005, and was subsequently sentenced to six years of incarceration with two years suspended to probation. On January 30, 2008, the State filed a petition to revoke Hempstead’s probation in Cause No. 1437, following his January 26, 2008 arrest for possession of methamphetamine. The court issued a warrant for Hempstead’s arrest and set bail at \$15,000, or ten percent in cash.

On January 31, 2008, the State charged Hempstead, under cause number 03D01-0801-FD-229 (“Cause No. 229”), with Possession of Methamphetamine, a Class D felony, and Possession of a Single Precursor, a Class D felony. On February 5, 2008, Hempstead posted a \$1500 bond in Cause No. 1437. Hempstead’s bond was forfeited after he failed to appear before the trial court on March, 10, 2008.

On May 14, 2008, the State charged Hempstead, under cause number 03D01-0805-FB-966 (“Cause No. 966”), with Dealing in Methamphetamine, a Class B felony, Possession of Methamphetamine, a Class D felony, and Possession of Chemical Reagents or Precursors with Intent to Manufacture a Controlled Substance, a Class D felony. Hempstead and the State entered into a plea agreement on July 28, 2008, in which Hempstead agreed to plead guilty to dealing in methamphetamine, and the State agreed to dismiss all remaining charges

stemming from Cause Nos. 229 and 966, as well as its petition to revoke Hempstead's probation in Cause No. 1437. The agreement also capped Hempstead's executed sentence at eighteen years and specified that the \$1500 bond posted under Cause 1437 should be released to Hempstead.

The trial court conducted a change of plea hearing on July 28, 2008. At the plea hearing, the trial court questioned the portion of the plea agreement stating that the \$1500 bond should be released to Hempstead, commenting, "Is that after payment of costs? I don't think the State has the authority to make a deal about what's gonna be done with the money that's under the charge of the Court." Tr. p. 10. The trial court further commented that the bond would be applied to pay "some of the fees in this case," such as court costs. Tr. p. 10.

At sentencing, Hempstead acknowledged his understanding that any fees owed would come out of the \$1500 bond he had posted in Cause No. 1437, and that he would receive any funds that were left over. The trial court noted that such fees would include, but were not limited to, court costs, probation fees, a bond fee, and a minimal amount to the public defender fund. On August 27, 2008, the trial court ordered that Hempstead's bond be released and applied as follows: "\$260 Day Reporting fees, \$100 probation administration fee, \$125 UDS fees, \$460 adult probation fees, \$144 restitution balance, \$156 Court costs [for Cause No. 1437], and \$164 Court costs for 03D01-0805-FB-966. Any balance to be refunded to the defendant." Appellant's App. p. 168. Hempstead now appeals.

### **DISCUSSION AND DECISION**

Hempstead contends that the trial court erred when it did not release the \$1500 bond

paid in Cause No. 1437 to him. Specifically, Hempstead claims that the trial court's order that certain court costs and fees in excess of the \$164 in court costs associated with Cause No. 966 be deducted from his bond is inconsistent with the terms of his plea agreement. We disagree.

“Our courts have long held that plea agreements are in the nature of contracts entered into between the defendant and the State.” *Lee v. State*, 816 N.E.2d 35, 38 (Ind. 2004).

[A] plea agreement is contractual in nature, binding the defendant, the [S]tate, and the trial court. The prosecutor and the defendant are the contracting parties, and the trial court[']s role with respect to their agreement is described by statute: If the court accepts a plea agreement, it shall be bound by its terms.

*Pannarale v. State*, 638 N.E.2d 1247, 1248 (Ind. 1994) (citation and quotation marks omitted). Because plea agreements are contracts, the principles of contract law can provide guidance in the consideration of the agreement. *Lee*, 816 N.E.2d at 38. It is a well-established principle of contract law that a modification of a written contract can be made orally. *Sees v. Bank One, Indiana, N.A.*, 839 N.E.2d 154, 161 (Ind. 2005); *van de Leuv v. Methodist Hosp. of Indiana*, 642 N.E.2d 531, 534 (Ind. Ct. App. 1994).

Hempstead and the State entered into a plea agreement which stated that “\$1500.00 bond posted under cause FC-1437 shall be released to defendant.” However, at the July 28, 2008 change of plea hearing, the trial court indicated that it would only accept the parties' plea agreement if part of Hempstead's \$1500 cash bond was used to pay certain court costs and fees. At this hearing, the trial court clearly stated that Hempstead's \$1500 cash bond would be released, and any amount left over after the payment of certain costs and fees

would be returned to him. Hempstead’s counsel indicated that this would be “no problem,” and neither Hempstead nor his counsel raised any objection. Tr. p. 10. At sentencing, the trial court again reiterated that Hempstead’s \$1500 cash bond would be applied to court costs, probation fees, a bond fee, and a minimal amount paid to the public defender fund, and that any amount remaining would be returned to Hempstead. Again, neither Hempstead nor his counsel raised any objection.

These facts establish that the parties orally agreed to modify the original terms of the plea agreement in exchange for the trial court’s acceptance. Hempstead’s argument on appeal acknowledges that the parties orally modified the plea agreement to include certain court costs associated with Cause No. 966, but asserts that the oral modification did not include all of the court costs and fees ordered by the trial court. However, nothing in the record suggests that the parties’ oral modification was limited solely to the court costs associated with Cause No. 966. Rather, the record suggests that the parties’ plea agreement was modified to include all court costs and fees ordered by the trial court. Therefore, in light of the parties’ oral modification of the plea agreement, we conclude that the trial court’s order was consistent with the terms of the parties’ plea agreement, as modified. *See Sees*, 839 N.E.2d at 161; *van de Leuv*, 642 N.E.2d at 534 (providing that parties may orally modify a written contract).

Moreover, Indiana Code section 35-33-8-3.2 (2005) establishes, in pertinent part, as follows:

- (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant’s appearance at any stage of the legal

proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

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(2) Require the defendant to execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail. If the defendant is convicted, the court may retain all or a part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision the following:

(A) Fines, costs, fees, and restitution as ordered by the court.

(B) Publicly paid costs of representation that shall be disposed of in accordance with subsection (b).

Here, Hempstead posted a cash bond in the amount of \$1500, or ten percent of his \$15,000 bail. Therefore, the trial court may retain all or a portion of Hempstead's cash bond for the payment of fines, costs, fees, and restitution pursuant to Indiana Code section 35-33-8-3.2(a)(2). *See also, Traylor v. State*, 817 N.E.2d 611, 624 (Ind. Ct. App. 2004), *trans. denied*; *Goffinet v. State*, 775 N.E.2d 1227, 1233-34 (Ind. Ct. App. 2002), *trans. denied*; *Cody v. State*, 702 N.E.2d 364, 367 (Ind. Ct. App. 1998) (providing that a trial court may retain all or a portion of defendant's cash bond when defendant pays ten percent of the set bail amount). The trial court ordered that Hempstead pay certain court costs, fees, and restitution pursuant to Indiana Code section 35-33-8-3.2(a)(2). Because the trial court's order provides that certain court costs, fees, and restitution will be paid from Hempstead's \$1500 cash bond in accordance with Indiana Code section 35-33-8-3.2(a)(2), we find no error on the trial court's behalf.

The judgment of the trial court is affirmed.

MAY, J., and FRIEDLANDER, J., concur.