

STATE OF INDIANA)
)ss:
COUNTY OF CARROLL)

STATE OF INDIANA)
)
vs.)
)
RICHARD M. ALLEN)

IN THE CARROLL CIRCUIT COURT

CAUSE NO. 08C01-2210-MR-000001

**MOTION TO RECONSIDER AND REQUEST FOR
DUE PROCESS HEARING**

Comes now the Defendant, Richard Allen, by Counsel, Bradley A. Rozzi, and respectfully requests that this Court reconsider the Order on Judgment of the Court entered on April 14, 2023 and further, schedule a due process hearing in this cause. In support of said Motion, Defendant Allen states as follows:

1. Defendant Allen is currently incarcerated in the Indiana Department of Corrections pursuant to the Court Order of November 3, 2022, wherein the Honorable Benjamin A. Diener ordered the transfer of Defendant Allen pursuant to I.C. 35-33-11-1 (Safekeeping Statute);
2. At no time prior to the issuance of the November 3, 2022, Safekeeping Order was there any evidentiary hearing to support the issuance of said Order;
3. Defendant Allen has been continuously incarcerated in the maximum security unit of the Westville Correctional Facility since November of 2022;
4. During the course of his incarceration, Defendant Allen has been subjected to oppressive conditions to the extent he has been treated less favorably than other inmates in similar circumstances. Defendant Allen incorporates herein, the allegations contained in Defendant's April 5, 2023, Emergency Motion to Modify Safekeeping Order;
5. The Emergency Motion filed on April 5, 2023, requested that this Honorable Court schedule a hearing so as to allow Defendant Allen to offer up evidence in support of his request. No hearing was afforded to Defendant Allen;

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6. On April 14, 2023, the Court, sua sponte, issued an Order for Judgment of the Court essentially, reinforcing the safekeeping Order that was previously issued by the Honorable Judge Benjamin A. Diener;


7. I.C. 35-33-11-1 holds that the “*Court shall determine whether the inmate is in imminent danger of serious bodily injury or death, or represents a substantial threat to the safety of others.*” Article I, Section 12 of the Indiana Constitution provides that “*all Courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law justice shall be administered freely and without purchase; completely, and without denial; speedily, and without delay.*” Ledbetter v. Hunter, 652 N.E.2d 543 (June 1995). There has been no showing, either prior to the November 2022 Safekeeping Order and/or prior to the issuance of the Order for Judgment of the Court of April 14, 2023, which supports the need to confine Defendant Allen in the Indiana Department of Corrections, under his current conditions;

8. Defendant Allen further believes that his Sixth Amendment right to counsel and corresponding rights under Article I, Section 12 of the Indiana Constitution have been violated for reasons including, but not limited to, the following:

- a. Defendant incorporates the allegations contained in the Emergency Motion to Modify Safekeeping Order file-marked April 5, 2023;
- b. All of Defendant Allen’s movements, including his meetings with his attorneys are videotaped by Department of Correction officials;
- c. Information regarding Defendant Allen’s medical and psychiatric condition may have been disclosed without his consent; and
- d. Defendant Allen is unable to discuss the merits of his case, or anything associated therewith, other than through his lawyers on a limited and restricted basis due to logistical challenges with his current detention and due to the distance between he and his lawyers.

9. Defendant Allen respectfully requests that this Court set an evidentiary hearing in this matter and after hearing evidence, modify and/or rescind the Safekeeping Order previously issued in this cause, and for all other just and proper relief in the premises.

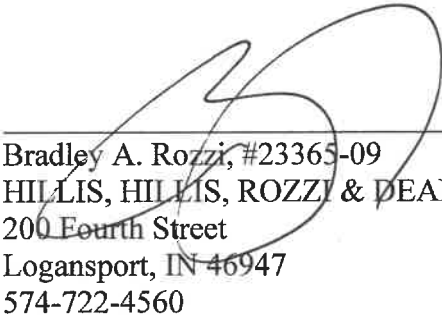
Respectfully Submitted,



Bradley A. Rozzi, #23365-09

CERTIFICATE OF SERVICE

I certify that I have served a copy of this document by the County e-filing system upon the Carroll County Prosecutor's Office and Andrew J. Baldwin the 3rd day of May, 2023.



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