In the Court of Appeals of the State of Alaska

Jeffrey Aaron Vaneyck, Appellant, v. **State of Alaska**, Appellee.	)	Court of Appeals No. **A-13201**
	)	**Order**
	)	Date of Order: **10/9/2018**

Trial Court Case # **4FA-17-01948CR**

Before: Mannheimer, Chief Judge, Allard, and Wollenberg, Judges

This case comes before us a second time on bail appeal. The defendant, Jeffrey Aaron Vaneyck, is charged with several felonies: attempted first-degree murder, kidnapping, first-degree robbery, second- and third-degree assault, and two counts of third-degree weapons misconduct. He has prior convictions for driving under the influence, various felony drug and weapon convictions, and two prior convictions for failure to appear.

Because the current charges against Vaneyck arose prior to January 1, 2018, the former version of AS 12.30.011 applies to Vaneyck's case.

In Vaneyck's first bail appeal, we vacated the superior court's "no bail" order and remanded Vaneyck's case to the superior court for clarification of the superior court's bail ruling, as well as further litigation of the constitutionality of a "no bail" order under former AS 12.30.011(d)(2).

On remand, the superior court vacated the "no bail" order in Vaneyck's case and set bail as follows: 24-hour GPS electronic monitoring through a private electronic monitoring company, a separate 24-hour live third-party custodian, a $50,000 performance bond, and a $10,000 appearance bond.

Vaneyck now appeals this new bail order, raising three separate arguments. First, Vaneyck argues that he is entitled to the application of the current version of AS 12.30.011 (*i.e.*, the version that took effect on January 1st of this year), and that failure to apply this new bail statute to his case violates equal protection. Second, Vaneyck argues that the superior court's requirement of a $50,000 performance bond is both unconstitutional and excessive. Lastly, Vaneyck asks this Court to modify his $10,000 appearance bond. Currently, under the superior court's order, this $10,000 bond must be deposited in full, either in cash or by corporate surety. Vaneyck argues that he should be allowed to post only 10% of this bond in cash, in accordance with a provision of the new bail statute, AS 12.30.011(f)(2)(A).

For the reasons explained here, we reject Vaneyck's constitutional arguments, and we further conclude that the superior court did not abuse its discretion when it set the conditions of Vaneyck's release. We therefore affirm the court's bail order.[1]

Vaneyck's equal protection claim

In 2016, the Alaska legislature modified Alaska's bail statutes to implement a more evidence-based approach to bail decisions.[2]

Among the changes enacted by the legislature was the creation of a new pre-trial enforcement division within the Department of Corrections.[3] Under the new

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[1] *See* AS 12.30.030(a); *Stiegele v. State*, 685 P.2d 1255, 1256 n.1 (Alaska App. 1984).

[2] *See* SLA 2016, ch. 36, § 59; *see also* the sponsor statement of Senator John Coghill, *available at* http://www.akleg.gov/basis/get_documents.asp?session=29&docid=63794.

[3] *See* AS 33.07.010; *see also* Fiscal Note 39, Senate Bill 91, 2016 House Journal 2606 *available at*

bail system, a pre-trial officer conducts a risk assessment of every defendant within 24 hours of their arrest, and then provides that risk assessment and bail recommendations to the trial court.[4] The pre-trial enforcement division also assists in monitoring individuals while they are on pre-trial release.[5]

Because of the administrative and financial costs involved in setting up this new system, the legislature delayed the effective date of the new bail statute until January 1, 2018.[6] The legislature also limited the number of defendants who would be initially served by this new program by expressly providing that the new bail statute would apply only to defendants charged with offenses alleged to have been committed on or after January 1, 2018.[7]

Vaneyck acknowledges that his offenses are alleged to have occurred before the effective date of the new bail statute. However, Vaneyck argues that he is entitled as a matter of equal protection to the benefits of the new bail statute. According to Vaneyck, no legitimate government interest is served by the legislature's decision to limit the new bail statute to defendants whose offenses were committed on or after January 1, 2018.

In response, the State argues that Vaneyck has waived his equal protection claim by failing to adequately brief his equal protection claim and failing to obtain a direct ruling on this constitutional question from the trial court. We agree with the State that Vaneyck has failed to adequately preserve or brief this issue.

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http://www.legis.state.ak.us/PDF/29/F/SB0091-30-2-040816-DPS-N.PDF.

[4] AS 33.07.030(a); *see also* AS 12.25.150(a).

[5] AS 33.07.030(f).

[6] SLA 2016, ch. 36, § 192.

[7] *See* SLA 2016, ch. 36, §§ 59, 185(o), and 192.

We note that Vaneyck has not addressed the legislature's administrative and financial reasons for limiting the application of the new bail statute. The record does not contain any statistics regarding the number of defendants in Vaneyck's position — *i.e.*, defendants currently being held in custody for offenses committed before January 1, 2018, who would arguably gain their release if their bail conditions were re-evaluated under the new statute. Nor does the record contain any information that would allow this Court to meaningfully assess the administrative and financial costs that would result if these defendants were included in the new bail system.

Additionally, Vaneyck has not meaningfully briefed the legal standard that would govern our evaluation of this classification under the equal protection clause — nor has he provided any analysis of the legal authority that he cursorily cites in his pleadings.

In any event, the constitutional guarantee of equal protection is violated only when similarly situated defendants are treated differently.[8] Here, it is not clear that application of the new bail statute to Vaneyck's case would make any material difference to his bail, now that the superior court has rescinded its "no-bail" order and has set conditions of release.

Vaneyck points out that, under the new bail statute, he would be entitled to release under the "least restrictive condition or conditions that will reasonably ensure the appearance of the person in court and the safety of the victim, other persons, and the community."[9] But this is essentially the same standard that applies under the former bail statute, once the "no-bail" presumption of subsection (d)(2) has been rebutted — as it has been in Vaneyck's case. Under the former statute, once the presumption against bail release has been rebutted, the court is required to impose "the least restrictive condition

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[8] *See State v. Ladd*, 951 P.2d 1220, 1224 (Alaska App. 1998).

[9] *See* AS 12.30.011(j).

or conditions that will reasonably assure the person's appearance and protect the victim, other persons, and the community." Former AS 12.30.011(b).

We further note that, under the new statute, Vaneyck would likely be subject to the same kinds of bail restrictions as under the pre-2018 statute. He is charged with violent felonies, and he does not claim that he would be classified as a "low risk" offender under the current bail statute's risk assessment tool. Nor does it appear likely that Vaneyck would receive this classification, given his criminal history — which includes several felonies and two prior convictions for failure to appear. Thus, even under the new statute, Vaneyck's bail conditions would be governed by AS 12.30.011(f)(2) — a provision that authorizes the trial court to impose the same sorts of bail conditions that Vaneyck currently faces.[10]

For these reasons, we reject Vaneyck's equal protection arguments.

Vaneyck's challenge to the $50,000 performance bond

After this Court remanded Vaneyck's case to the superior court (following his first bail appeal), Vaneyck proposed that he be released on 24-hour GPS electronic monitoring, together with a third-party custodian (who had already been approved), and a $10,000 appearance bond, of which 10% would be posted in cash (and no performance bond). When the prosecutor asked the superior court to impose a $150,000 cash performance bond, Vaneyck argued that performance bonds are *per se* unconstitutional, and he further argued the $150,000 performance bond requested by the State would be equivalent to an impermissible "no-bail" order in his case.

Based on Vaneyck's prior criminal history, and based on what the superior court's finding that Vaneyck had not been candid about that history, the superior court

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[10] *Compare* AS 12.30.011(f)(2)(A)-(C) *with* former AS 12.30.011(b)(2017); *see also* AS 12.30.011(j).

concluded that Vaneyck was a "danger to the public" and that his bail proposal was insufficient to reasonably assure Vaneyck's future court appearances and the continued safety of the victim and the community. The court concluded that Vaneyck needed a "substantial financial incentive" to comply with his conditions of release. The court then set a $50,000 performance bond "for the simple purpose that, given his record, only a substantial amount of posting will inspire [Vaneyck], in the court's view, to actually follow court orders."

On appeal, Vaneyck challenges this $50,000 performance bond as excessive, and he also renews his argument that performance bonds are *per se* unconstitutional. In response, the State argues that Vaneyck has waived his constitutional challenge to performance bonds because he failed to obtain a ruling on this issue from the superior court, and because he has inadequately briefed this issue on appeal.

Again, we agree with the State that Vaneyck has failed to adequately preserve his constitutional challenge. We therefore only address Vaneyck's argument that his $50,000 performance bond is excessive.

Vaneyck argues that the superior court's decision to require a $50,000 performance bond is unreasonable, given the fact that Vaneyck's compliance with his bail conditions will be directly monitored, both by the private electronic monitoring company and by his court-approved third-party custodian. Vaneyck also points out that he already has a significant incentive to abide by his conditions of release, since any violation of those conditions could result in new criminal charges. Lastly, Vaneyck asserts that, given his financial situation, a $50,000 performance bond is the equivalent of a "no-bail" order.

We agree with Vaneyck that, even without the performance bond, his behavior on bail release will be heavily monitored and controlled. We also presume that Vaneyck will be bearing the financial costs of the private electronic monitoring that was ordered in his case. But the determination of appropriate bail conditions in a given case

is, in large measure, a discretionary function, and the trial court is in the best position to make this determination. Accordingly, when the record is clear that the trial court has considered the relevant factors and has applied the correct law, our review of the trial court's decision is governed by the deferential abuse of discretion standard.[11]

Here, the superior court considered the relevant factors and made explicit findings in support of its decision to impose a performance bond in Vaneyck's case. The superior court also explained its reasoning for including this additional monetary condition. Given the seriousness of the current charges, and given Vaneyck's past criminal history, we find no abuse of discretion in the court's decision to impose a performance bond.

We also find no abuse of discretion in the amount of the performance bond. A court may set the monetary component of bail in an amount that imposes a financial strain on the defendant if the court finds that this amount of money is actually necessary to either protect the public or ensure future court appearances.[12] Although the goal of incentivizing a defendant's compliance with bail conditions is not served by setting bail in an amount so high that it is financially impossible for the defendant to secure release,[13] we have reviewed the record in Vaneyck's case and it appears that the superior court reasonably believed that Vaneyck would be able to afford the $50,000 performance bond. Although Vaneyck now claims that it is wholly unreasonable to think that he could deposit the $50,000 or secure a corporate bond to cover this amount, there is

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[11] AS 12.30.030.

[12] *See Pisano v. State*, A-13089, at *8 (Alaska App. May 24, 2018) (unpublished); *West v. State*, A-11993, at *4 (Alaska App. Aug. 18, 2014) (unpublished).

[13] *See Camara v. State*, 916 So. 2d 946, 947 (Fla. App. 2005) (recognizing that monetary bail that exceeds the financial resources of the defendant "is tantamount to no bond at all" and requiring evidence of the defendant's financial resources to be heard and considered before bond is set).

nothing in the record currently before us to directly support Vaneyck's claim.

In his trial court pleadings, Vaneyck asserted that the $150,000 performance bond requested by the State would operate as a "no-bail" order. But he did not indicate what amount of performance bond *would be* within his ability to pay. And, as we have explained, the superior court did not impose the $150,000 performance bond requested by the State. Instead, the court imposed an amount that was closer to the monetary bail originally proposed by Vaneyck.

To the extent that the superior court may have been wrong in its estimation of Vaneyck's ability to pay, it was incumbent on Vaneyck to object to the $50,000 bond on that basis, and to provide the superior court with sufficient financial information to allow the court to assess Vaneyck's argument. Without this kind of record, we will not second-guess the superior court's reasons for imposing the $50,000 bond, nor will we assume that this amount is truly outside Vaneyck's ability to pay.

Vaneyck's challenge to the $10,000 appearance bond

As we have already explained, the superior court imposed a $10,000 appearance bond, and the court ordered that 100% of this bond had to deposited with the court, either in cash or through corporate surety. On appeal, Vaneyck argues that the superior court should have accepted a deposit of only 10% of this bond.

The primary focus of Vaneyck's argument is his assertion that, under the new bail statute, any appearance bond can be satisfied by posting 10% of the bond amount. But Vaneyck's assertion is based on a misreading of the new bail statute.

Alaska Statute 12.30.011(f)(2)(A) authorizes courts in certain circumstances to impose "an appearance bond with a posting not to exceed 10 percent of the specified amount of the bond[,] with the condition that the deposit be returned upon the

appearance of the person at scheduled hearings."[14] But the very next provision of the statute, AS 12.30.011(f)(2)(B), authorizes courts to impose a different type of bond — "a bail bond with sufficient solvent sureties or the deposit of cash."[15] Thus (contrary to Vaneyck's argument), even under the new bail statute, trial courts retain the discretion to require defendants to post 100% of the bond, either in cash or by surety.

The record of the bail proceedings in this case shows that the superior court considered Vaneyck's request that he be permitted to post only 10% of the appearance bond, but the superior court rejected this request because it concluded that a 100% deposit (either in cash or by surety) was required to reasonably assure Vaneyck's future court appearances, given his prior convictions for failure to appear.

Although a different judge may well have reached a different conclusion on this matter, the test is abuse of discretion — and we find no abuse of discretion in the superior court's decision.

Conclusion

For the reasons explained here, we AFFIRM the superior court's bail order.

Clerk of the Appellate Courts
/s/ Sarah E. Anderson

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[14] AS 12.30.011(f)(2)(A).

[15] AS 12.30.011(f)(2)(A); *see also* Alaska Criminal Rule 41.