

In the Court of Appeals of the State of Alaska

Melvin Steve Harry,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13255**

Order

Date of Order: **10/8/2018**

Trial Court Case No. **4BE-18-00719CR**

[Before: Chief Judge Mannheimer, Judge Allard, and Judge Wollenberg.]

Melvin Steve Harry is charged with three counts of indecent exposure, and he is currently being held in custody in lieu of cash bail in the amount of \$10,000.

The record of the bail hearing shows that Harry suffers from mental illness. At the time of these offense, Harry was housed at Morgan House, an assisted living facility run by the Yukon-Kuskokwim Health Corporation. At Morgan House, Harry received psychotherapy and medication, but the facility is not a “closed” facility, and the staff did not constantly monitor Harry’s whereabouts.

At the bail hearing, the State argued that Harry should be held in custody unless the Yukon-Kuskokwim Health Corporation could arrange for Harry to be subject to a higher degree of supervision and control. Harry’s attorney argued that Harry should be allowed to continue living at Morgan House. However, Harry’s clinician at Morgan House, Bethel Adiele, told the court that he was uncertain whether Harry was able to understand — much less honor — the conditions imposed by the court. When the court

asked Adiele whether the Health Corporation could place Harry in a different home or facility with a higher level of supervision, Adiele told the court that he had tried to arrange a meeting to discuss this possibility, but Adiele did not know when this meeting would take place.

After considering the matter, the court imposed a monetary bail of \$10,000 — an amount that was beyond Harry’s means. The court explained its decision by declaring that Harry posed a danger to the community, and that there was “no alternative other than leaving [Harry] in custody pending his trial”, given his clinician’s uncertainty as to whether Harry could understand and abide by non-monetary conditions of bail.

We conclude that the court abused its discretion when it imposed monetary bail for the express purpose of keeping Harry in custody.

The record shows that the court was willing to consider releasing Harry to an assisted living home (or similar facility) so long as Harry received an increased level of supervision and monitoring of his whereabouts. Harry’s attorney and Harry’s care-providers were apparently unable to offer a package of care and housing that satisfied the court’s concerns. But the proper judicial response, in these circumstances, was not to impose monetary bail in an unreachable level. Rather, the court should have imposed bail conditions that described the kind of living facility and level of supervision that would be satisfactory to the court.

The court could properly hold Harry in custody until Harry’s attorney offered a living and treatment proposal that met the court’s conditions. But it was an abuse of discretion for the court to impose monetary bail that had nothing to do with the court’s underlying concerns — monetary bail whose sole purpose was to keep Harry in

jail, and which would, in fact, prevent Harry from being released even if Harry's attorney came up with a residential proposal that met the court's concerns.

For these reasons, the trial court's bail decision is VACATED, and the court is directed to impose new conditions of bail.

Entered at the direction of the Court.

Clerk of the Appellate Courts

/s/ W. Kyle Roberts

W. Kyle Roberts, Deputy Clerk

cc: Court of Appeals Judges
Judge Finn
Trial Court Appeals Clerk

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