In the Court of Appeals of the State of Alaska

Judith James, Appellant, v. **State of Alaska,** Appellee.	Court of Appeals No. **A-13503** **Order** Re: Bail Appeal Date of Order: **December 11, 2019**

Trial Court Case No. **4FY-19-00034CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Judith S. James appeals from the superior court's order increasing her bail at the State's request. For the reasons explained in this order, we vacate the court's order and remand this case to the superior court to reinstate the prior performance bond set on July 24, 2019.

Facts and proceedings

The State initially charged James with one count of second-degree assault (a class B felony) for intentionally causing physical injury to Clifton Jonas by means of a dangerous instrument. *See* AS 11.41.210(a)(1). According to the complaint, James and her sister brought Jonas to James's home in Fort Yukon where James stabbed him multiple times after accusing him of posting pictures of her on social media. James was intoxicated at the time. James has no prior criminal history.

It was clear from the complaint that Jonas was seriously injured from the attack. According to the complaint, Jonas had "several cuts on his face and neck and a stab wound on the right side of his chest." The stab wound was about an inch wide and

had penetrated deep and "possibly injured organs inside." The complaint also stated that Jonas was being medevacked to Fairbanks due to his injuries.

As a person charged with a class B felony, James was presumptively eligible for release on her own recognizance (OR) under AS 12.30.011(a). However, at her initial arraignment, the court had the authority under AS 12.30.011(b) to impose additional conditions of release if it determined that an OR release would not "reasonably ensure the appearance of the person or [would] pose a danger to the victim, other persons, or the community."

That is what happened here. Based on the seriousness of the criminal conduct alleged in the complaint, the court imposed a $5,000 cash performance bond. (The court did not impose an appearance bond and therefore did not appear to have any concerns that James was a flight risk.) The court also ordered James to abstain from alcohol and to have no contact with Jonas, the alleged victim.

Six days after bail was set in this case, the State presented the case to the grand jury. The grand jury returned a true bill charging James with one count of first-degree assault (a class A felony) for recklessly causing serious physical injury to Clifton Jonas by means of a dangerous instrument, a knife. *See* AS 11.41.200(a)(1). Under the bail statute that went into effect on July 9, 2019, a person charged with a class A felony faces a "rebuttable presumption" that "there is a substantial risk that the person will not appear and the person poses a danger to the victim, other persons, or the community." AS 12.30.011(d)(2)(A).

After the grand jury indicted James on a class A felony, the prosecutor filed a request to increase bail.[1] James objected to the court holding a bail review hearing at the State's request, arguing that there was no provision in the bail statute authorizing such a request.

At the subsequent hearings, the State relied exclusively on the increase in the level of charge to support its request for higher bail. At an initial bail hearing, the prosecutor suggested that the injuries to Jonas were "much more serious than initially thought" and that "the State want[ed] to be heard on this." But when the court continued the hearing to the next day to decide whether the State was entitled to a hearing, a different prosecutor appeared. The prosecutor at this second hearing explained to the court that she had not covered the grand jury proceeding, and she was therefore unaware of what new information the prosecutor who conducted the grand jury may have learned. That is, the prosecutor did not introduce any new information about Jonas's injuries for the court to consider other than the information that had already been considered by the first judge at the initial appearance.

The defense attorney continued to object to the bail hearing, arguing that there was no new information for the court to consider and the prior bail order should therefore stand. The defense attorney also stated that James was still in custody because she had been unable to post the $5,000 cash performance bond.

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[1] Initially, James's attorney also filed a request for a bail hearing, seeking a decrease in bail because James was unable to post the $5,000 cash required by the first bail order. James's attorney subsequently withdrew this request.

The trial court overruled the defense objection, finding that the court had the authority to review James's bail at the State's request because it had new information — the increase in charges to a class A felony — to consider.

In considering the State's request, the court found first that James's ties to Fort Yukon alleviated some of its concerns that she would be a flight risk, and the court did not impose an appearance bond.

But the court found that the circumstances of the offense were very serious and that James posed a "high" danger to Jonas, the alleged victim. Relying on essentially the same information that was available to the first court who set bail, the court found that the $5,000 cash performance bail was too low, and the court increased the bail to a $10,000 cash performance bond.

This appeal followed.

Why we vacate the increase in James's monetary bail and reinstate the prior performance bond

James first argues that the trial court erred in holding the bail review hearing at the State's request. According to James, there is no authority for the proposition that the State can seek an increase in bail based only on the grand jury indicting the defendant on a higher level charge.

We disagree with this assertion. If the State has new information related to a person's flight risk or dangerousness, the court has the authority to hear that new information and to determine whether the existing bail conditions are sufficient in light

of that new information.[2] But any change in the bail must actually be predicated on this new information.

Here we reach James's second argument — that, despite the grand jury's indictment of James for a higher level offense, there was not actually any new information underlying the change in bail. In particular, James argues that all of the facts contained in the original complaint before the first judge were sufficient to describe "serious physical injury" and therefore support a charge of first-degree assault, and the State presented no new information beyond that contained in the complaint. Under the circumstances of this case, we agree with James.

The State relied on the grand jury's indictment on a higher level offense to justify its request for a bail review. An increase in the level of charges could certainly constitute new information with respect to a defendant's flight risk, given the

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[2] Unlike a defendant, the State may not automatically request an independent review of the bail conditions set at the arraignment. *See Torgerson v. State*, 444 P.3d 235, 237 (Alaska App. 2019) (construing AS 12.30.006(c) to require "an independent assessment" of bail conditions at a defendant's first bail review hearing). Alaska Statute 12.30.006(c) provides, in relevant part: "A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed[.]" There is no comparable review provision for the State. (Indeed, the prosecutor who initially requested an increase in James's bail acknowledged that the State was not entitled to request a hearing simply to challenge the magistrate's bail decision.)

If the State is dissatisfied with the conditions set at arraignment, the State may seek review of the bail order through this Court. *See* AS 22.07.020(a)(7).

corresponding increase in the defendant's potential sentencing exposure.[3] But in this case, the court did not view this new information as altering its assessment of James's flight risk. Like the first judge, the second judge did not impose an appearance bond.

A grand jury's indictment on a higher level offense could also indicate that the State presented new information to the grand jury related to the defendant's conduct — information that might impact a court's assessment of the defendant's dangerousness. But in this case, although the first prosecutor explained that the State wished to be heard on new information about Jonas's injuries, the State never presented this information. Rather, the second prosecutor told the court that she did not handle the grand jury proceeding and that she was therefore unable to provide any new information to the court beyond what was already contained in the criminal complaint.

The record therefore makes clear that, although the charges increased from a class B felony to a class A felony, the second judge had essentially the same substantive information about James's conduct before him that the first judge did. We recognize that the first judge was setting bail in a class B felony — to which no statutory presumption applies — while the second judge was setting bail in a class A felony case — to which a statutory presumption of flight risk and dangerousness applies.[4] But a statutory presumption of dangerousness is largely meaningless in a case where the court has *already* found the defendant to be dangerous and has already accounted for that

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[3] *See Brooks v. State*, 145 So.3d 219, 220 (Fla. Dist. Ct. App. 2014) (per curiam) (holding that the filing of additional criminal charges may warrant a change in bond because the possibility of a more severe penalty results in an enhanced possibility of flight).

[4] *See* AS 12.30.011(d)(2)(A).

dangerousness in the court's bail order. Likewise, a statutory presumption that a defendant is a flight risk is irrelevant in a case where that presumption was apparently rebutted, and no appearance bond was ever imposed.

Because the State did not ultimately present any new information regarding James's conduct or dangerousness, the court should not have increased James's performance bond and should have declined further review. Accordingly, we **VACATE** the August 7, 2019 increase in James's monetary bail and reinstate the prior performance bond set on July 24, 2019.

Entered at the direction of the Court.

Clerk of the Appellate Courts

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Meredith Montgomery

cc: Court of Appeals Judges
Judge Bennett
Trial Court Clerk - Fort Yukon

Distribution:

Mail:
Biderman, Jonathan B., Public Defender
Hoffer, Stefan Thomas