# In the Court of Appeals of the State of Alaska

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| **Seth Albert Lookhart,**<br>Appellant,<br><br>v.<br><br>**State of Alaska,**<br>Appellee. | Court of Appeals No. **A-13752**<br><br>**Order**<br><br>Date of Order: **October 29, 2021** |

Trial Court Case No. **3AN-17-02990CR**

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

Seth Lookhart has filed in this Court a motion seeking review of the superior court's order declining to extend his remand date past November 8, 2021. As explained in this order, we remand this matter to the superior court for consideration of Lookhart's request for continued bail pending appeal.

In January 2020, following a bench trial, Lookhart was found guilty of multiple counts of Medicaid fraud, practicing dentistry without a license, and reckless endangerment. Lookhart was sentenced on September 14, 2020 and received a composite sentence of 20 years with 8 years suspended (12 years to serve). At sentencing, Lookhart asked for a delayed remand date. The superior court set a remand date of December 7, 2020 and stated that Lookhart's bail conditions remained in place.

On October 26, 2020, Lookhart, through his trial counsel, moved for bail pending appeal, seeking to remain on bail through the resolution of his direct appeal in this Court. On November 25, 2020 the superior court signed Lookhart's proposed "Order Granting Motion Re Release Pending Appeal," adding that it was "pursuant to

all terms and conditions previously imposed." However, the court also added a notation stating, "remand reset to 06/7/21," which thus amounted only to a partial grant of Lookhart's request for bail pending appeal. At a hearing on the date that the court signed the order, the court stated that the remand date was "dependent on what the status was with the court of appeals at that time."

Lookhart filed a notice of appeal and related paperwork in this Court on the same date that he moved for bail pending appeal in the superior court.

On April 29, 2021, the superior court held a hearing regarding Lookhart's request for permission to travel outside Alaska. At that hearing, Lookhart's new counsel, an assistant public defender, noted that his opening brief on appeal was not due until March 2022, and asked the court to extend Lookhart's remand date until then. The court granted Lookhart's travel request and extended the remand date to November 8, 2021. The court stated, however, that "[a]ny further application for a continued remand, in my view, should then be made to the court — the court of appeals."

In late June 2021, Lookhart requested another bail hearing. The State in turn moved to exonerate Lookhart's bail bond, on the basis that the bonding company did not provide bail pending appeal. The court held a hearing on June 29, 2021. Lookhart asserted that the fact that the bonding company did not underwrite bonds for bail pending appeal was new information that justified a review of his bail, and asked that his bail be extended until March 2022. The court declined to extend the remand date, keeping it at November 8, 2021. The court stated:

> I am making that the remand date and if there needs to be an application made to change that, it needs to be made to the court of appeals. Whatever they decide — if they remand

> back to this court with directions to do this, that, or the other thing, of course, this court will consider that. November 8 at 1:45, that is the remand date.

On September 13, 2021, Lookhart, through the Public Defender Agency, filed a motion in his pending direct appeal seeking review of the superior court's order declining to extend his remand date.[1] This motion asks us to "direct the trial court to consider whether to continue Lookhart's remand date until the conclusion of his direct appeal," *i.e.*, to grant full bail pending appeal.

The State opposed the motion seeking review, arguing that the request was untimely because Lookhart was really asking for review of the superior court's April 29, 2021 order. The State also argued that there was no basis to conclude that the superior court misunderstood its authority to grant bail pending appeal, and that Lookhart had failed to articulate a good reason either for granting bail until the appeal was concluded or for just extending the remand date. We requested a reply from Lookhart regarding the timeliness of his bail appeal.

Having considered the parties' positions, we accept Lookhart's motion for filing and elect to consider it on the merits. Assuming for the sake of argument that the State is correct and that Lookhart is really challenging the April 29, 2021 order, we nonetheless have discretion to accept the late-filed motion under Alaska Appellate Rules 502(b) and 521, and we exercise our discretion to do so.

Considering the motion on its merits, we remand this matter to the superior court to consider in the first instance Lookhart's request for a delay of his remand date until the conclusion of his appeal, *i.e.*, for full bail pending appeal. We do so because

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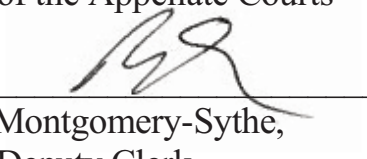
[1] *See* Alaska R. App. P. 206(b).

we are unsure from the language used by the superior court whether the court believed that it lacked the authority to grant a further extension of the remand date, or whether it believed that a further extension of the remand date was unwarranted and that Lookhart should challenge that conclusion in this Court if he disagreed with it. We note that, to the extent it was the latter, the superior court offered no reasons for its decision to decline bail pending resolution of the appeal, making it difficult for this Court to undertake any meaningful review of that decision.

The pendency of Lookhart's direct appeal did not divest the trial court of jurisdiction to entertain his request for bail pending appeal, or to extend the remand date, and it is the trial court that must do so in the first instance.[2] We therefore REMAND this matter to the trial court for consideration of Lookhart's request for bail pending appeal prior to the currently scheduled remand date of November 8, 2021.

Entered at the direction of the Court.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Judge Morse
Judge Wolverton
Trial Court Clerk

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[2] *See Jackson v. State*, 926 P.2d 1180, 1184-85 (Alaska App. 1996).

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