# In the Court of Appeals of the State of Alaska

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| **Wyatt Redfox,**<br>Appellant,<br><br>v.<br><br>**State of Alaska,**<br>Appellee. | Court of Appeals No. **A-13765**<br><br>**Order**<br><br>Date of Order: **4/1/2021** |

Trial Court Case No. **3AN-20-05703CR**

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

Wyatt N. Redfox seeks appellate review of the trial court's order denying his proposal for bail release. For the reasons explained here, we affirm the trial court's order, but we direct the superior court to reassess the monetary component of the bail when it approves a suitable third-party custodian.

In July 2020, Redfox was arrested for an incident involving his significant other, M.W., and her aunt, R.O. The State alleged that Redfox struck both M.W. and R.O. and that he stabbed M.W.'s leg with a knife. When he was arraigned on charges related to this incident, the judge set bail in the amount of a $1,500 cash performance bond and ordered him to remain on house arrest with electronic location monitoring. The judge also ordered Redfox not to possess weapons and not to contact M.W. or R.O.

Ten days later, on July 30, 2020, a grand jury indicted Redfox for these offenses as well as for additional offenses that occurred on June 27, 2020, when Redfox allegedly strangled M.W. in a car until she blacked out and then smashed her forehead into the dashboard. The indictment charged Redfox with two counts of second-degree

assault and five counts of third-degree assault.[1] The State also filed an information charging Redfox with unlawful contact and violating conditions of release.[2] These charges were based on the State's claim that Redfox contacted M.W. on July 28, 2020, in violation of the no-contact order.

At a bail hearing that was held on August 4, 2020, both parties asked the court to modify the bail order. Redfox asked the court to remove the house arrest requirement because he did not have stable housing and to reduce his bail to an unsecured bond. The State asked the court to increase the bail to a $10,000 cash performance bond, arguing that the lower bail amount did not deter Redfox from contacting M.W. and did not take into account the incident that arose on June 27, 2020, when Redfox allegedly strangled M.W.

M.W. appeared by telephone at the bail hearing and requested that Redfox not be released on bail. She stated that she believed that Redfox would continue to try to contact her and that she would not be safe if Redfox were released.

The trial court granted Redfox's request to remove the house arrest requirement, but it increased the bail to a $5,000 performance bond and added a condition requiring a third-party custodian.

At subsequent bail hearings, the trial court denied Redfox's requests to reduce the performance bond amount and also denied his request to remove the third-party custodian requirement. In ruling on Redfox's requests, the trial court noted

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[1] AS 11.41.210(a)(1), AS 11.41.220(a)(1)(A), AS 11.41.220(a)(1)(B), and AS 11.41.220(a)(5), respectively.

[2] AS 11.56.750 and AS 11.56.757(a), respectively.

Redfox's extensive criminal history, which includes several convictions for assault over the last four years, including at least one prior conviction for assaulting M.W. The court emphasized the nature of the pending charges, including the allegation that Redfox contacted M.W. in violation of the court order. Because of Redfox's criminal history, the charges against him, and his contact with M.W., the court found that Redfox's release on electronic monitoring needed to be combined with a cash performance bond and monitoring by a third-party custodian. The court therefore denied Redfox's request to modify bail, and Redfox now appeals from the court's decision.

On appeal, Redfox first argues that requiring a third-party custodian as a condition of release on bail violates both the state and federal constitutions. He also argues that, because of the COVID-19 pandemic, denial of his requested bail modification amounts to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and Article I, section 12 of the Alaska Constitution.

But Redfox did not make these constitutional arguments to the trial court. Under Alaska law, a litigant who wishes to raise an issue on appeal must show that the issue was adequately preserved in the lower court — which means not only that the litigant presented the issue to the lower court, but also that the lower court ruled on that

issue.[3] Because Redfox never asked the trial court to consider these claims, the claims are waived.

Redfox next argues that the trial court erred by requiring conditions of release in addition to the $5,000 cash performance bond. According to Redfox, if a court requires the posting of cash bail, the court may not impose any additional conditions of release — in other words, cash bail may only be ordered as an alternative to, and not in addition to, any other conditions of release.

Redfox's understanding of the law is incorrect. Under AS 12.30.011(b), a judicial officer has the authority to impose any condition, or combination of conditions, provided that those conditions constitute the least restrictive means to "reasonably ensure the person's appearance and protect the victim, other persons, and the community." Accordingly, we find no merit to Redfox's claim that the $5,000 cash performance bond precluded the imposition of any other bail conditions.

Redfox also argues that the bail set in his case is excessive. Both the United States and Alaska Constitutions prohibit the imposition of "excessive" bail.[4] Excessive bail is that which goes beyond the amount actually necessary to fulfill the purposes of

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[3] *Hollstein v. State*, 175 P.3d 1288, 1290 (Alaska App. 2008); *see also Bryant v. State*, 115 P.3d 1249, 1258 (Alaska App. 2005) ("Normally, an appellant may only appeal issues on which he has obtained an adverse ruling from the trial court."); *Mahan v. State*, 51 P.3d 962, 966 (Alaska App. 2002) ("To preserve an issue for appeal, an appellant must obtain an adverse ruling.").

[4] U.S. Const. amend. VIII; Alaska Const. art. I, § 12.

bail — *i.e.*, to reasonably ensure the defendant's appearance and the safety of the community.[5]

There are two different components of Redfox's bail that he challenges: (1) the third-party custodian requirement; and (2) the $5,000 cash performance bond. (Redfox does not challenge the PED electronic monitoring and we therefore do not address this component.)

Absent legal error, we review a trial court's decision to impose particular bail conditions for an abuse of discretion.[6] Under this standard of review, an appellate court will uphold the trial court's decision unless that decision was "arbitrary, capricious, manifestly unreasonable, or stemmed from an improper motive."[7]

Here, we find no abuse of discretion in the imposition of the third-party custodian requirement. The trial court found that a third-party custodian was necessary to reasonably ensure the safety of the community, and in particular the safety of M.W. In making this finding, the trial court relied on Redfox's extensive history of assaultive conduct, including a prior conviction for assaulting M.W., as well as the seriousness of the current allegations. The trial court also relied on M.W.'s significant fear of the defendant and the fact that Redfox continued to make efforts to contact M.W. even after

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[5] *See Stack v. Boyle*, 342 U.S. 1, 5 (1951); *Doe v. State*, 487 P.2d 47, 51 (Alaska 1971); *Torgerson v. State*, 444 P.3d 235, 237 (Alaska App. 2019).

[6] AS 12.30.030(a).

[7] *Wahl v. State*, 441 P.3d 424, 430 (Alaska 2019) (internal quotations omitted).

being ordered not to do so by the court.[8] Given Redfox's prior violation of the court order, and all of the surrounding circumstances of his criminal history and his relationship with M.W., we conclude that the trial court could reasonably find that the in-person supervision and accountability that a third-party custodian provides was necessary in this case.

We are less certain about the amount of monetary bail. If released, Redfox will be under extremely heavy supervision and will be monitored by both PED electronic monitoring and a third-party custodian. Given this unusual dual coverage, it is not clear what purpose setting the bail above Redfox's ability to pay serves.[9]

We recognize, however, that the trial court is currently operating without full information about the kind of third-party custodian that Redfox will propose or how strong that third-party custodian will be. Accordingly, we conclude that the trial court should reassess the monetary component of the bail order once it has approved a third-party custodian. If, after approving a third-party custodian, the court continues to believe

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[8] *See* AS 12.30.027(a) (requiring the court, when setting conditions of release, to specifically consider the safety of the alleged victim in a case involving domestic violence).

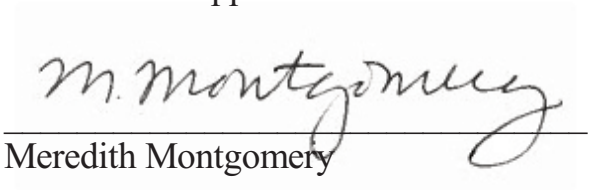
[9] *See Torgerson*, 444 P.3d at 237 ("While the Alaska Supreme Court has declared that a criminal defendant is not necessarily entitled to bail in an amount the defendant can post, a judge may not set bail in an amount that goes beyond that which is necessary to fulfill the purposes of bail — *i.e.*, to reasonably assure the defendant's appearance and the safety of the alleged victim, other persons, and the community."); *Reeves v. State*, 411 P.2d 212, 216 (Alaska 1966) (noting that while there is no absolute right to release without bail, "[i]t would be unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom."); *see also* Alaska Const. art. I, § 11.

that the monetary bail should be set outside Redfox's ability to pay, the court shall make particularized findings as to why it is setting the monetary component of Redfox's bail order outside his ability to pay, given the existence of both PED electronic monitoring and supervision by a third-party custodian.[10]

Accordingly, we AFFIRM the superior court's bail order, but we direct the superior court to reassess the monetary component of the bail after it approves a suitable third-party custodian.

Entered at the direction of the Court.

Clerk of the Appellate Courts



Meredith Montgomery

cc: Judge Easter
Trial Court Clerk - Anchorage

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[10] *See Brangan v. Commonwealth*, 80 N.E.3d 949, 964-66 (Mass. 2017) (recognizing that a "particularized statement as to why no less restrictive conditions will suffice," including "how the bail amount was calculated," is appropriate in light of due process concerns and "because holding a defendant on an unaffordable bail amount defeats bail's purpose of securing pretrial liberty").