In the Court of Appeals of the State of Alaska

Tyler James Love,
Petitioner,

v.

Municipality of Anchorage,
Respondent.

Court of Appeals No. **A-13996**

Order
Petition for Review

Date of Order: **June 28, 2022**

Trial Court Case No. **3AN-20-07285CR**

Before: Wollenberg, Harbison, and Terrell, Judges.

Tyler James Love, who is awaiting trial on municipal charges, petitions this Court for review of the district court's April 11, 2022 order denying his request to modify his bail conditions to remove electronic monitoring.[1] Because we agree with Love that this condition is not among the least restrictive conditions necessary to reasonably ensure the protection of the victim and the community, we reverse the district court's order and direct the district court to remove the electronic monitoring condition.

The Municipality of Anchorage has charged Love by information with three misdemeanor charges: (1) assault,[2] (2) unlawful use or possession of firearms,[3] and (3) family violence (*i.e.*, committing an assault in the presence of a child).[4] The charges stem from an incident that took place on September 17, 2020.

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[1] *See Isadore v. State*, 378 P.3d 406, 407 (Alaska App. 2016) (holding that an out-of-custody defendant is entitled to petition for review of a trial court's bail decision).

[2] Anchorage Municipal Code (AMC) 08.10.010(B)(1).

[3] AMC 08.25.030(A)(2).

[4] AMC 08.10.050(B).

According to the charging document, Love, who was estranged from his wife, M.L., went to M.L.'s house while he was heavily intoxicated "to have sex with her one last time." After having sex with M.L., Love asked her if she had been cheating on him, and, when she said that she had, he punched her multiple times on the left side of her face. He then put his hand around her neck and shoved her up against a wall. Their young children were inside the house while this was happening. Love then went to a gun safe, took out a handgun, and stated that he was going to kill himself. Shortly thereafter, Love was apprehended by police.

Love, who has no criminal history, was arraigned the next day, on September 18, 2020. A risk assessment by the Pretrial Enforcement Division found that Love had a "New Criminal Arrest" score of 1 — *i.e.*, that he presented a low risk of committing a new offense. At the hearing, defense counsel submitted an electronic monitoring proposal. The court ultimately released Love without any monetary bail and ordered that, as conditions of release, Love could have no direct or indirect contact with M.L., could not be within 500 feet of M.L.'s residence, and was required to remain on house arrest with electronic monitoring.

Nearly a year later, on August 18, 2021, the court modified Love's bail conditions at his request, removing the house arrest condition but maintaining the requirement that Love submit to electronic location monitoring. The court also continued the exclusion zone around M.L.'s residence. The court noted that Love and M.L. appeared to be appropriately proceeding through their pending divorce proceedings.

Seven months later, Love asked the court to modify his bail conditions to remove electronic monitoring. At a hearing on April 11, 2022, the assistant municipal

prosecutor argued that the court should not modify Love's bail conditions, stating that the facts of the offense raised "red flags" related to domestic violence, particularly Love's choking of M.L. and his threats of suicide. When the court asked M.L. for her position on Love's request, she neither supported nor opposed the request, instead responding, "I'm just kind of here to listen."

The district court declined to modify Love's bail conditions to remove electronic monitoring. The court acknowledged that, in setting bail conditions, it was required to consider the protection of the public and the victim. The court stated that, based on the complaint, it saw several "red flags" related to domestic violence, specifically the presence of firearms and Love's threats to kill himself. The court stated it was denying Love's request "in an abundance of caution."

Love now petitions this Court for review. Love argues that electronic monitoring constitutes a serious burden on a person's liberty and privacy. He argues that electronic monitoring was not the least restrictive condition or among the least restrictive set of conditions necessary to reasonably ensure M.L.'s safety. The Municipality of Anchorage has filed a notice of no response — in essence taking no position on this petition.

Article I, Section 11 of the Alaska Constitution guarantees the right to pretrial bail release. Consistent with this right, AS 12.30.011(b) requires a court to impose the least restrictive condition or conditions on pretrial bail release that will reasonably ensure the defendant's appearance and protect the victim, other persons, and the community.

We agree with the district court that the facts of the offense support its concern for M.L.'s safety. But electronic monitoring places a burden on a defendant's

liberty and privacy (and, for those defendants subject to monitoring by a private electronic monitoring company, their finances as well). Love has no criminal history, and the parties agreed at the April 11, 2022 hearing that, since his release on September 18, 2020, Love has not violated any of his bail conditions. Love has appeared personally or through counsel at all court hearings. Additionally, at the bail hearings, M.L. has not opposed Love's requests to gradually ease the bail restrictions.

While the district court correctly stated that it was required to consider the protection of the public and M.L. when setting bail conditions, the court did not refer to, and does not appear to have been implicitly applying, the requirement that the bail condition at issue be the least restrictive condition, or among the least restrictive set of conditions, necessary to reasonably ensure the protection of the victim and the community. Having reviewed the record, including the history of Love's bail release in this case, we conclude that electronic monitoring is not among the least restrictive set of conditions necessary to reasonably ensure the safety of M.L. and the community.

We accordingly grant Love's petition, REVERSE the district court's order, and remand with directions to remove the electronic monitoring condition.

Entered at the direction of the Court.

Clerk of the Appellate Courts

Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Judge Nesbett
Trial Court Clerk - Anchorage

Distribution:

Email:
Fink, Joshua P.
Stanley, Sarah E.