# In the Court of Appeals of the State of Alaska

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| **Adam Fleischman,** Appellant, v. **State of Alaska,** Appellee. | Court of Appeals No. **A-13977** **Order** Date of Order: **July 12, 2022** |

Trial Court Case No. **3AN-21-00057CR**

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

Adam Daniel Fleischman appeals from the trial court's February 8, 2022 bail order requiring him to post a $1,000,000 cash performance bond and a $250,000 cash appearance bond. For the reasons explained in this order, we affirm the trial court's order denying Fleischman's request to reduce the bail to the amount requested by Fleischman — *i.e.*, a $40,000 performance bond and a $250,000 unsecured appearance bond. But because the trial court found that bail lower than what is currently ordered may be adequate to reasonably ensure Fleischman's appearance in court and protect the public, we remand this matter to the trial court with instructions to impose a lower bail.

Fleischman is charged with one count of first-degree murder and two counts of second-degree murder for the January 2021 killing of his wife.[1] According to the charging document, Fleischman shot his wife in the head while she was seated on the toilet, when the couple's two young children were in the residence. At Fleischman's initial arraignment on January 5, 2021, his bail was set at a $1,000,000 cash performance bond and a $250,000 cash appearance bond, along with conditions of release that included house arrest enforced by PED location monitoring. This bail has remained

[1] AS 11.41.100(a)(1)(A) and AS 11.41.110(a)(1) and (2), respectively.

unchanged since then, although the court has twice reviewed the bail at Fleischman's request.

Fleischman's first bail review hearing took place on May 28, 2021. At that hearing, Fleischman asked the court to lower the performance bond to $40,000 and to convert the $250,000 cash appearance bond to an unsecured appearance bond. After hearing testimony about Fleischman's finances through his aunt, Frances Souza, the trial court questioned the need for a $1,000,000 performance bond and a $250,000 appearance bond. It nevertheless denied Fleischman's request without any reduction in his bail.

Approximately seven months later, Fleischman requested a second bail review hearing. Fleischman claimed that he had new information — specifically, that he had contracted with Alaska Defendant Monitoring (ADM) to use a "high-risk" monitoring system to enforce his house arrest — that entitled him to further review of bail under AS 12.30.006(d)(1).

In February 2022 the court considered Fleischman's second request to reduce his bail. Although the State objected that the change from monitoring by PED to monitoring by ADM's high-risk monitor was not sufficient "new information" to entitle Fleischman to review of his bail, the trial court conducted the hearing.

During the hearing, a representative of ADM testified about the ways in which ADM's high-risk monitoring system would be more effective in monitoring Fleischman's house arrest than PED's location monitoring system. Fleischman's aunt also testified for a second time, providing updated information about Fleischman's finances.

At the close of the hearing, the prosecutor told the court that "given the testimony that we've heard . . . I could see you lowering [the performance bond] to a couple hundred thousand," but he objected to any change in the appearance bond. And although the court acknowledged that the existing bail was "high" and "need[ed] to be reduced," it declined to modify the bail order.

The trial court found that, given the potential for a 99-year sentence, Fleischman presented a risk of flight. The court noted that Fleischman no longer had family living in the state and that he was not offering to have a third-party custodian reside with him. Thus, it found that, while the high-risk offender monitoring "provide[d] some additional level of security," a cash appearance bond was needed.

The trial court additionally found that the alleged offense was "as serious as it [could] possibly be" and that the State's evidence, which included Fleischman's confession, was strong. It noted that the bail proposal did not include posting the $20,000 Fleischman had in savings, nor did it include posting the $30,000 that his aunt had in savings. The court explained that it was "almost unheard of" for a family to hold "that amount of cash . . . in reserves" and that "[i]t's typically the other way around where the proposal is more than the family has . . . , which provides the court with some level of assurance that . . . the offender isn't going to walk away . . . and put the family at risk." Finally, the court expressed concern about Fleischman's proposed residence in a multi-unit apartment building where enforcing house arrest would be difficult.

As we have explained, the trial court denied Fleischman's request to lower the bail, and Fleischman now appeals that decision to this Court.

On appeal, Fleischman contends that the trial court abused its discretion when it declined to reduce his bail even though it acknowledged that the bond was

unnecessarily high. He asks us to remand this matter to the trial court with instructions to approve his bail proposal.

In the present case, Fleischman asked the trial court to lower the performance bond to $40,000 and explained that the bond would be paid by his aunt. As the trial court recognized, this would leave $20,000 of cash in his savings account and an additional $30,000 in his aunt's savings account. Fleischman did not offer to post any of his own money as part of his bail proposal.

In denying Fleischman's request, the trial court found that this arrangement would provide scant incentive for Fleischman to follow his conditions of release. The court also relied on the severity of the alleged offense, which it found to be "as serious as it [could] possibly be," and the strength of the State's case. And in denying Fleischman's request to convert the appearance bond to an entirely unsecured bond, the court found — based on Fleischman's exposure to a potential 99-year sentence and the fact that his entire family lives outside of Alaska — that Fleischman is a flight risk.

Although Article I, Section 11 of the Alaska Constitution entitles a person accused of a crime to be released on bail, defendants do not have the absolute right to a monetary bail that they can afford.[2] Instead, under AS 12.30.011(b), a court is required to impose the least restrictive condition or conditions of release that will reasonably ensure the defendant's appearance and protect the victim, other persons, and the community. Additionally, in this case, because Fleischman is charged with unclassified and class A felonies, there is a rebuttable statutory presumption that there is "a

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[2] *Gilbert v. State*, 540 P.2d 485, 486 n.12 (Alaska 1975) (citing *Reeves v. State*, 411 P.2d 212 (Alaska 1966)).

substantial risk" that Fleischman will not appear and that he poses a danger to other persons and the community.[3] We accordingly conclude that the trial court did not abuse its discretion when it denied Fleischman's bail proposal.

We nevertheless also conclude that the trial court must reconsider its bail order in this case. As Fleischman points out, at his first bail hearing, the trial court noted that it did not "think that the million dollars and the 250,000 [dollars] . . . [were] necessarily appropriate," but it nevertheless declined to change the bail. Similarly, at Fleischman's second bail hearing, which was held eight months later, a different judge acknowledged that the existing bail was "high" and that it "need[ed] to be reduced." And the prosecutor told the court, "[G]iven the testimony that we've heard . . . I could see you lowering [the performance bond] to a couple hundred thousand." Thus, there was no disagreement that the current bail is higher than is necessary to reasonably ensure Fleischman's appearance and protect the community. On this basis, we conclude that the court's order continuing Fleischman's bail without any reduction was an abuse of its discretion.[4]

There is one additional issue we must address in this case. In its response to Fleischman's bail appeal, the State urges us to affirm the trial court's bail order because, in its view, Fleischman's offer to have his house arrest monitored by ADM was not "new information" that would entitle him to a bail hearing under AS 12.30.006(d)(1).

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[3] AS 12.30.011(d)(2)(A).

[4] We also note that AS 12.30.011(b)(1) does not authorize the court to require an appearance bond to be secured by an amount that exceeds ten percent of the amount of the bond.

The State is correct that a defendant is generally entitled to a second or subsequent bail review hearing only if the defendant presents the court with information that was not considered at previous bail hearings.[5] But because the underlying right of pretrial release is guaranteed by the Alaska Constitution, we have recognized that courts should narrowly construe the statutory restrictions on pretrial release set out by AS 12.30.006.[6] In other words, courts should broadly construe what qualifies as "new information" for purposes of obtaining a subsequent bail review hearing under AS 12.30.006(d)(1).[7]

In the present case, a representative from ADM testified about the many ways in which ADM's "high-risk monitor" would provide better enforcement of the court's conditions than other monitors. We conclude that this constituted "new information" for purposes of AS 12.30.006(d)(1), and we accordingly reject the State's contention that Fleischman was not entitled to the second bail hearing that was conducted in this case.

*Conclusion*

We AFFIRM the trial court's order denying Fleischman's request to reduce the bail in this case to a $40,000 cash performance bond and a $250,000 unsecured appearance bond. However, we REMAND the matter to reconsider bail and to impose a lower cash bond amount.

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[5] AS 12.30.006(d)(1).

[6] *Karr v. State*, 459 P.3d 1183, 1185 (Alaska App. 2020).

[7] *Id.*

Entered at the direction of the Court.

Clerk of the Appellate Courts

*/s/ M. Montgomery*

Meredith Montgomery

cc: Judge Peterson
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