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Valdez-Jimenez v. Eighth Jud. Dist. Ct., 163 Nev. Adv. Op. 20 (April 9, 2020)

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Weil, Katrina, "Valdez-Jimenez v. Eighth Jud. Dist. Ct., 163 Nev. Adv. Op. 20 (April 9, 2020)" (2020). *Nevada Supreme Court Summaries*. 1299.

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CRIMINAL LAW: BAIL

Summary

The Court determined what process is constitutionally required when a district court sets bail in an amount that the defendant cannot afford, resulting in pretrial detention. The Court found that bail may only be imposed where it is necessary to reasonably ensure the defendant's appearance at court proceedings or to reasonably protect the community. If a defendant remains in custody after arrest they are (1) entitled to an individualized hearing, where (2) the State must prove by clear and convincing evidence that bail, rather than less restrictive conditions, is necessary to ensure the defendant's appearance at future court proceedings or to protect the safety of the community, and (3) the district court must also state its findings and reasons for the bail decision on the record.

Background

Petitioners Aaron Frye and Jose Valdez-Jimenez were arrested and charged with felony offenses. Bail was set for each petitioner in the justice court. The state then obtained an indictment from a grand jury. After the indictment returns, the district court set bail in the amounts requested by the State. For Frye, the bail was set for \$250,000, and for Valdez-Jimenez, bail was set for \$40,000. Both petitioners filed a motion to vacate or reduce the bail amount, contending that the bail amounts were excessive, and the bail process violated both their right to due process and equal protection.

The district court held hearings on the motions and denied both of them. The district court judge for Frye's motion indicated that its role was limited to determining whether the bail amount was an abuse of discretion. The judge found that the amount was not an abuse of discretion. The district court judge for Valdez-Jimenez's motion found that Nevada's statutory scheme, not the Supreme Court case *United States v. Salerno*, controlled.² Nevada's statutory scheme requires good cause be shown before an accused could be released without bail.

Both Frye and Valdez-Jimenez filed a petition for a writ of mandamus challenging the bail process and decisions.

Discussion

We elect to entertain the petitions for a writ of mandamus

The Court first determined whether the writ of mandamus was appropriate. The petitioners contend that the constitutional issues raised in their bail proceedings are important and will likely arise again but evade review.

¹ By Katrina Weil.

² *United States v. Salerno*, 481 U.S. 739 (1987).

The Court may consider a case that is moot when it “involves a matter of widespread importance that is capable of repetition, yet evading review.”³ The party seeking to overcome mootness must prove that “(1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important.”⁴

When assessing the first factor, the Court found that the petitioners met the durational requirement. Most bail orders are short in duration and the issues concerning bail and pretrial detention become moot once the case is resolved by dismissal, guilty plea, or trial.

Turning to the second factor, the Court found that the petitioners proved that there was a likelihood that a similar issue will arise in the future. The Court clarified that it didn’t mean that a similar issue would recur to the petitioners personally. Precedent from the Court has implicitly rejected the “same complaining party” requirement, instead focusing on whether the issues raised by the party are likely to recur under similar circumstances.⁵ Petitioners provided documents from other criminal cases where defendants had raised similar arguments about the process of setting bail. The Court determined these issues had occurred in the past and they will arise in the future.

Finally, the Court also found the third factor was met. These issues affect both arrestees and involve the constitutionality of Nevada’s bail system. Deciding upon these issues would also help to provide guidance for judges who are responsible for assessing an arrestee’s custody status.

The Constitutionality of the Bail Process

A. Bail in an amount greater than necessary to ensure the defendant’s appearance and the safety of the community is unconstitutional

The Court found that under the Nevada Constitution, individuals who are accused of committing noncapital, non-first-degree murder offenses have a right to bail in a reasonable amount.⁶

Determining the reasonable amount will depend on the circumstances of the individual. However, this bail must not be in amount greater than necessary to serve the State’s interests. For bail to be reasonable, it must relate to one of two purposes, (1) to ensure that the appearance of the accused at all stages of the proceedings, or (2) protect the safety of the victim and the community.

B. An individualized bail hearing must be held within a reasonable time after arrest for defendants who remain in custody

The Court next determined that an accused is entitled to a prompt individualized hearing on his or her custody status after arrest. Generally, this hearing occurs at the initial appearance, or arraignment. However, when a defendant remains in custody following indictment, he or she must be brought promptly before the district court for an individualized custody status determination.

³ *Personhood Nev. v. Brisol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010).

⁴ *Bisch v. Las Vegas Metro. Police Dep’t*, 129 Nev. 328, 334–35, 302 P.3d 1108, 1113 (2013).

⁵ *See Solid v. Eighth Judicial Dist. Court*, 133 Nev. 118, 120, 393 P.3d 666, 670 (2017).

⁶ NEV. CONST. art 1, § 6.

C. Heightened procedural due process requirements apply when bail is set in an amount the defendant cannot afford

The Court found that release on personal recognizance or subject to nonmonetary conditions could be sufficient to reasonably ensure the purposes of bail are met. When determining if the purposes of bail are met, the district court should consider the individual circumstances of the defendant, including his or her character and ties to the community, his or her criminal history, and the nature of and potential sentence for the alleged offenses.

If, after a consideration of all the relevant factors, the court finds that no combination of nonmonetary conditions would be sufficient to reasonably ensure the defendant's appearance or the safety of the community, then the court must determine the amount of bail that is necessary. The court must take into consideration the defendant's financial resources as well as the other factors relevant to the purposes of bail.

The Court found that when bail is set in an amount that results in continued detention, it functions as a detention order. As such, it is subject to the same due process requirements applicable to a deprivation of liberty. If bail is set in an amount that results in continued detention, the Court found that additional procedural safeguards are necessary to ensure the accuracy of the court's bail assessment and to comport with procedural due process. The Court noted three protections of great importance in safeguarding against erroneous de facto detention orders.

First, when the State requests bail to be set following an indictment, the defendant is entitled to a prompt individualized hearing on his or her custody status. At the hearing, the defendant shall have the right to be represented by counsel and shall be afforded the right to testify and present evidence.

Second, the State has the burden of proving by clear and convincing evidence that no less restrictive alternative will satisfy its interests in ensuring the defendant's presence and the community's safety.

Finally, the Court must make findings of fact and state its reasons for the bail decision on the record.

Additionally, the Court severed the "good cause" requirement of NRS 178.4851(1).⁷ The good cause requirement undermines the constitutional right to non-excessive bail, as it excuses the Court from considering less restrictive conditions before determining that bail is necessary.

D. Pickering, C.J., concurring in part and dissenting in part

Justice Pickering concurs with the importance of prompt and constitutionally conducted pretrial detention and release decisions. However, Justice Pickering dissents with entertaining the writ of mandamus.

Both petitioners pleaded guilty in 2019. As such, they no longer have pretrial confinement and the Court should deny their petitions as moot. Justice Pickering does not agree with the

⁷ NEV. REV. STAT. § 178.4851(1) (2019).

analysis of the *Bisch* factors and finds that *Bisch* departs from federal case law.⁸ As the judgment cannot affect the parties, changes have occurred since the petitioners 2018 bail proceedings, and changes are continuing occur in Nevada's bail procedures, Justice Pickering would deny their petitions as moot.

Conclusion

Bail may only be imposed where it is necessary to reasonably ensure the defendant's appearance at court proceedings or to reasonably protect the community. If a defendant remains in custody after arrest they are entitled to an individualized hearing at which the State must prove by clear and convincing evidence that bail, rather than less restrictive conditions, is necessary to ensure the defendant's appearance at future court proceedings or to protect the safety of the community. The district court must also state its findings and reasons for the bail decision on the record.

⁸ *Bisch*, 129 Nev. 328 at 334–35.