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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2020-2021

CR-19-0960

Ex parte State of Alabama

(In re: State of Alabama v. Lamar Quintez Coffey)

**Appeal from Morgan District Court
(DC-19-540; DC-19-541)**

PER CURIAM.

The District Attorney for the 8th Judicial Circuit filed this petition for a writ of mandamus on July 24, 2020, requesting that this Court direct Judge Stephen F. Brown to vacate his order denying the State's motion to revoke Lamar Quintez Coffey's bail, to issue an arrest warrant for Coffey,

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and to hold a hearing concerning the alleged violations of Coffey's pretrial release. We grant the petition.

Facts

On February 27, 2019, Coffey was arrested for and charged with unlawful possession of a controlled substance, see § 13A-12-212, Ala. Code 1975, and unlawful possession of drug paraphernalia, see § 13A-12-260, Ala. Code 1975. (State's petition, Exhibits A & B.) Coffey was released later that day on a \$1,300 consolidated professional surety bond. (State's petition, Exhibit C.) No preliminary hearing was demanded; the cases were bound over to the Morgan County grand jury; and the cases were assigned to Judge Brown. On July 1, 2020, Coffey was arrested following a traffic stop and a subsequent search of the vehicle in which Coffey was traveling; the search yielded a vacuum-sealed bag containing marijuana and digital scales.¹ (State's petition, Exhibits D & E.) On July 15, 2020, the State moved to revoke Coffey's bail, alleging that he had violated the terms and conditions of his pretrial release by committing the new offenses of first-degree

¹There is a discrepancy in the attachments to the petition regarding whether the arrest occurred on June 30 or July 1.

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unlawful possession of marijuana, see § 13A-12-213, Ala. Code 1975, and unlawful possession of drug paraphernalia, see § 13A-12-260, Ala. Code 1975. (State's petition, Exhibit F.) The following day Judge Brown issued an order stating that he was unable to determine whether the allegations in the State's motion were violations of the terms and conditions of Coffey's pretrial release. (State's petition, Exhibit G.) The order allowed the State to supplement its motion with proof of the terms and conditions that it alleged were violated. (Id.) On July 22, 2020, the State filed a supplement to its motion, asserting that Coffey had failed to "[r]efrain from committing any criminal offense," as that condition appears in Rule 7.3(a)(2), Ala. R. Crim. P. (State's petition, Exhibit H.) Two days later, Judge Brown issued an order denying the State's motion to revoke Coffey's bail and imposing conditions on Coffey's bail, including that Coffey "shall not violate any federal, state, or local law." (State's petition, Exhibit I.)

The State petitioned this Court for a writ of mandamus on July 31, 2020. This Court granted the respondent the opportunity to file an answer to the allegations contained in the State's petition. Judge Brown filed an answer on

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September 10, 2020, and this Court has considered his response.

Standard of Review

""A writ of mandamus is an extraordinary remedy, and it will be 'issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.' Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993). A writ of mandamus will issue only in situations where other relief is unavailable or is inadequate, and it cannot be used as a substitute for appeal. Ex parte Drill Parts & Serv. Co., 590 So. 2d 252 (Ala. 1991)."

""Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998)."

Ex parte Ward, 957 So. 2d 449, 451 (Ala. 2006).

Discussion

Art. I, § 16, Alabama Constitution of 1901, provides that every person charged with a noncapital offense has the right to pretrial bail: "That all persons shall, before conviction, beailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and that excessive bail shall not in any case be required."

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This right to pretrial release has been incorporated into Rule 7.2(a), Ala. R. Crim. P., which allows that, before conviction, "[a]ny defendant charged with an offense bailable as a matter of right may be released pending or during trial on his or her personal recognizance or on an appearance bond."

Coffey was released pending trial on a consolidated appearance bond in accordance with Rule 7.2. It is a mandatory condition of every release under Rule 7, Ala. R. Crim. P., that the defendant "[r]efrain from committing any criminal offense." Rule 7.3(a)(2). Here, the State moved to revoke Coffey's bail, asserting that he had violated that mandatory condition of his pretrial release. The State asserts that, in accordance with Rule 7.5, Ala. R. Crim. P., Judge Brown had the duty to issue a warrant for Coffey's arrest and to hold a hearing on the State's allegations:

"Upon motion of the prosecutor stating with particularity the facts or circumstances constituting a material breach of the conditions of release or stating with particularity that material misrepresentations or omissions of fact were made in securing the defendant's release, the court having jurisdiction over the defendant released shall issue an arrest warrant under Rule 3.1 to secure the defendant's presence in court. A copy of the motion shall be served with the warrant, and a hearing shall be held on the motion without undue delay, except in no event later than seventy-two (72) hours

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after the arrest of the defendant released, as provided in Rule 4.3(a)."

Rule 7.5, Ala. R. Crim. P.

In his response to this Court, Judge Brown acknowledges the requirements of Rule 7.5, but asserts that he had no duty in this case to issue a warrant for Coffey's arrest or to hold a hearing because the State failed to plead with particularity "the material breach of release conditions." (Respondent's answer, at 18.) Judge Brown further asserts that the State could not meet its burden because, based on his review of the record, Coffey was "released by an 'order of release' which failed to include the mandatory conditions of release" found in Rule 7.3(a), Ala. R. Crim. P., or any other conditions of release. (Respondent's answer, at 20.) Stated differently, Judge Brown found that Coffey had been released on bail without any conditions. Judge Brown asserts that revoking Coffey's bail based on conditions that were not specifically placed upon his release would violate Coffey's due-process rights.

Indeed, Coffey is entitled to due process, and notice is a component of due process:

"Procedural due process, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 6, of the Alabama Constitution of 1901, broadly speaking, contemplates the rudimentary requirements of fair play, which include a fair and open hearing before a legally constituted court or other authority, with notice and the opportunity to present evidence and argument, representation by counsel, if desired, and information as to the claims of the opposing party, with reasonable opportunity to controvert them."

Ex parte Weeks, 611 So. 2d 259, 261 (Ala. 1992) (citing Pike v. Southern Bell Tel. & Tel. Co., 263 Ala. 59, 81 So. 2d 254 (1955), and Vernon v. State, 245 Ala. 633, 18 So. 2d 388 (1944)). It does not appear that the State disputes Judge Brown's finding that Coffey was not given notice that he was to refrain from committing any criminal offense as a condition of his pretrial release. Nonetheless, the State does not see a lack of notice to be fatal to its position in this instance.

The State points to this Court's holding in Walker v. State, 294 So. 3d 825 (Ala. Crim. App. 2019), in support of its position. In Walker the State alleged that the appellant had violated the terms and conditions of his probation by committing new offenses. The appellant moved to dismiss the revocation proceedings because, he asserted, he had not been given notice of the terms of his probation. This Court

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recognized that Rule 27.6(e), Ala. R. Crim. P., specifically stated that "'[p]robation shall not be revoked for violation of a condition or regulation if the probationer had not received a written copy of the condition or regulation.' (Emphasis added)." Walker, 294 So. 3d at 830. Even so, this Court upheld the revocation of the appellant's probation because,

"'beyond any expressed condition of probation, there exists the implied condition that the probationer live and remain at liberty without violating the law. Moore v. State, 494 So. 2d 198 (Ala. Cr. App. 1986); Ellard v. State, 474 So. 2d 743 (Ala. Cr. App. 1984), aff'd, 474 So. 2d 758 (Ala. 1985)."'

"McKinnon v. State, 883 So. 2d 253, 254 (Ala. Crim. App. 2003) (quoting Weaver v. State, 515 So. 2d 79, 82 (Ala. Crim. App. 1987))."

Walker, 294 So. 3d at 830.

Although Walker deals with the revocation of probation as opposed to bail, we find its holding instructive. The State alleged in its motion to revoke Coffey's bail that he had committed two new offenses while he was released on bail. Regardless of whether Coffey had received notice of the condition that he "[r]efrain from committing any criminal offense," Rule 7.3(a)(2), "'a condition of [bail] that a

person may not commit a [new offense] is so basic and fundamental that any reasonable person would be aware of such condition.'" Wilcox v. State, 395 So. 2d 1054, 1057 (Ala. 1981) (quoting Brooks v. State, Okl. Cr., 484 P.2d 1333, 1334 (1971)); see Croshon v. State, 966 So. 2d 293, 295 (Ala. Crim. App. 2007) (holding that the "revocation of Croshon's probation was proper because, even though Croshon had not yet been given the express terms of his probation, refraining from committing further criminal offenses is an implied condition of every probationary sentence").

The State moved the circuit court, which had jurisdiction over Coffey, to revoke Coffey's bail and stated in that motion "with particularity the facts or circumstances constituting a material breach of the conditions of release," Rule 7.5(a), Ala. R. Crim. P., namely, that Coffey had failed to refrain from committing a new criminal offense, which was a mandatory condition of his release. Consequently, the State was entitled to the issuance of an arrest warrant to secure Coffey's presence and a hearing at which it would have the opportunity to establish probable cause to believe the

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allegations in the State's motion. See Rule 7.5, Ala. R. Crim. P.

This Court holds that the State has demonstrated a clear legal right to relief and an imperative duty upon Judge Brown to perform, accompanied by a refusal to do so. Additionally, the State has no other adequate remedy, and it has properly invoked jurisdiction of this Court. Therefore, the State has met its burden of demonstrating its right to mandamus relief. Judge Brown is directed to issue an arrest warrant to secure Coffey's presence and to hold a hearing at which the State will have the opportunity to establish probable cause to believe the allegations in the State's motion to revoke Coffey's bail. See Rule 7.5, Ala. R. Crim. P.

PETITION GRANTED; WRIT ISSUED.

Windom, P.J., and Kellum, McCool, and Minor, JJ., concur.
Cole, J., dissents, with opinion.

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COLE, Judge, dissenting.

This Court's per curiam opinion grants the State's request for mandamus relief and holds that "the State has demonstrated a clear legal right to relief and an imperative duty upon Judge Brown to perform, accompanied by a refusal to do so." Because I believe the State has failed to meet the requirements for mandamus relief, I respectfully dissent.

The majority correctly states the standard for a petition for a writ of mandamus:

"A writ of mandamus is an extraordinary remedy, and it will be issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.' Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993). . ."

"Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998)."

Ex parte Ward, 957 So. 2d 449, 451 (Ala. 2006). In relation to the second factor listed above--a court's duty to perform and its refusal to perform--"[t]his Court will not, on a mandamus petition, direct a trial court to take some action it has not refused to take." Wolfe v. Wal-Mart Stores, Inc., 93

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So. 3d 937, 941 (Ala. 2012) (quoting Ex parte Windom, 763 So. 2d 946, 949 (Ala. 2000)). Furthermore, it is clear that "[a] writ of mandamus will issue only when this Court's jurisdiction is properly invoked, the petitioner has a clear legal right to the relief requested, the trial court has refused to perform an act that it is required to do, and no other legal remedy is available." Ex parte Wall, 983 So. 2d 380 (2007). I believe the State has failed to establish that the trial court refused to do what the State now asks this Court to make it do.

The petition filed with this Court is expressly

"seeking a writ on mandamus from this Court which would Order Judge Brown to issue an arrest warrant for the Defendant and hold a hearing concerning the violation of the terms of his release pursuant to Rule 7.5 of the Alabama Rules of Criminal Procedure."

(State's Petition for Writ of Mandamus, p. 9) (emphasis added). The State, however, did not request this relief below. The State's mandamus petition was filed following the trial court's denial of the State's "Motion to Revoke Bond." (See State's Petition for Writ of Mandamus, Appendix F.) In this motion, the State "move[d the trial court] to revoke the bond of the defendant." (Id.) After outlining the new charges

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allegedly committed by Lamar Quintez Coffey, the State asserted that Coffey had violated the conditions of his bond and the State "move[d] to revoke the defendant's bond." (Id.) The trial court then entered an order stating that it was "unable to determine whether the things alleged were in violation of the terms of the Defendant's release" and encouraged the State to "supplement its Motion to include any proof of the terms or conditions of the Defendant's release which were violated." (See State's Petition for Writ of Mandamus, Appendix H.) The State filed a "Supplemental Brief" in which it argued, in part, that the conditions of Coffey's bond could be implied, but no additional request for relief was included. (Appendix H, State's Petition for Writ of Mandamus). When the trial court denied the State's motion to revoke bond, this mandamus petition followed.

The record reflects that, although the State did request that the trial court revoke Coffey's bond, at no time did the State move the trial court to issue a warrant for Coffey's arrest. Furthermore, the State never expressly requested that the trial court hold a revocation hearing, only that Coffey's bond be revoked. The State asks this Court to order the trial

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court to issue a warrant for Coffey's arrest and to conduct a revocation hearing, not to order the trial court to revoke Coffey's bond. Because the State requests different relief in its mandamus petition than it requested in its motion filed with the trial court, the State cannot possibly show that the trial court "refused" to perform a duty that it was requested to perform. Therefore, the State has failed to meet the mandamus requirement of a "refusal" to act on the part of the trial court as complained of in the petition.

It is apparent that the State couches its request for relief in this Court in terms of the trial court's failure to issue a warrant for Coffey's arrest and to hold a hearing on the matter because the State is required to prove that the trial court had a "duty" that it failed to perform. Rule 7.5, Ala. R. Crim. P., states:

"Upon motion of the prosecutor stating with particularity the facts or circumstances constituting a material breach of the conditions of release or stating with particularity that material misrepresentations or omissions of fact were made in securing the defendant's release, the court having jurisdiction over the defendant released shall issue an arrest warrant under Rule 3.1 to secure the defendant's presence in court. A copy of the motion shall be served with the warrant, and a hearing shall be held on the motion without undue delay, except in no event later than seventy-two (72) hours

after the arrest of the defendant released, as provided in Rule 4.3(a)."

(Emphasis added.) This rule requires the trial court to issue a warrant and to conduct a hearing only if certain conditions are met, but no rule requires revocation of a defendant's bond even if the prosecution sufficiently establishes that the conditions of bond have been violated. In other words, the decision to revoke an individual's bond is discretionary with the trial court. Because revocation of an individual's bond is not required, to allege in its mandamus petition an "imperative duty" as required for mandamus relief, the State was forced to change its original request for relief and assert that the trial court failed to issue a warrant and failed to hold a hearing. Otherwise, the State would be unable to allege that the trial court had a "duty" to perform. Yet the State's failure to request the same relief at the trial level that it asserted to this Court is fatal to the State's petition.

A strict reading of Rules 7.5 and 3.1, Ala. R. Crim. P., also calls into question the State's argument that trial courts are required to issue warrants when the prosecution has sufficiently established that an individual who has been

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released on bond has been arrested for a new offense. Rule 7.5, Ala. R. Crim. P., states that any trial court that issues a warrant for the reasons outlined in this Rule, "shall issue [the] arrest warrant under Rule 3.1 to secure the defendant's presence in court." Rule 3.1, Ala. R. Crim. P., states that "[u]pon return of an indictment or upon a finding of probable cause made pursuant to Rule 2.4, the judge or magistrate shall immediately cause to be issued an arrest warrant or a summons, as provided in Rule 3.2." A reading of Rule 7.5 in conjunction with Rule 3.1 requires the issuing judge to determine that there is probable cause to believe that the subject of the potential warrant has committed the new offense. Although the previous issuance of a warrant for Coffey's arrest does indicate that a judge or magistrate found that probable cause existed to believe that he committed the new offenses (See State's Petition for Writ of Mandamus, Appendix A), Rule 7.5, Ala. R. Crim. P., calls for an independent determination of probable cause by "the court having jurisdiction over the defendant released." It is well established that a judge is required to issue a warrant of arrest only if the judge is "reasonably satisfied that

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the offense complained of has been committed and that there is reasonable ground to believe that the defendant is guilty thereof." § 15-7-3, Ala. Code 1975. Because it is within a judge's "discretion to determine whether probable cause exist[s] before issuing a warrant" Almon v. Gibbs, 545 So. 2d 18, 20 (Ala. 1989), the State could not show a "clear legal right" to the issuance of a warrant if probable cause is required because the trial court was merely acting within its discretion in determining whether probable cause existed.

A finding of probable cause is especially tenuous in circumstances such as those underlying Coffey's new arrest. When he was arrested, Coffey was in the front passenger seat of a vehicle, contraband was found in a backpack in the back-seat, there was no known suspicious activity connecting Coffey to the contraband, and the driver was also arrested. The law is clear that, "[w]here the accused is not in exclusive possession of the place where the substance is found, it cannot be concluded that he had knowledge of the contraband unless there are additional independent facts and circumstances that connect the defendant to the contraband." Richardson v. State, 863 So. 2d 122, 125 (Ala. Crim. App.

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2003). See also Brooks v. State, [Ms. CR-18-1171, Sept. 11, 2020] ___ So. 3d ___, ___ (Ala. Crim. App. 2020) (evidence of a container holding an illegal substance in close proximity to the defendant, without more, was "insufficient to prove the knowledge necessary to support a finding of constructive possession"). Based upon the facts presented, if Judge Brown determined that he should not issue an arrest warrant for Coffey because he did not have "reasonable ground[s] to believe that the defendant [was] guilty," this Court should not second-guess that determination. Because probable cause was required for the issuance of the warrant based on Coffey's alleged violation of the conditions of his bond, and this probable-cause determination was discretionary, the State had no "clear legal right" to the relief it seeks and the trial court was under no "duty" to act. Therefore, the State's mandamus petition is due to be denied.

Even if I presume that Rule 7.5, Ala. R. Crim. P., does not require a finding of probable cause for a warrant to issue, I still question the majority's holding that Rule 7.5 requires a trial court to issue a warrant for the arrest of an individual who has committed a new offense while on bond when

that individual was not notified that committing a new offense is a violation of the conditions of his bond. This Court's per curiam opinion holds that "'a condition of [bail] that a person may not commit a [new offense] is so basic and fundamental that any reasonable person would be aware of such a condition.'" Wilcox v. State, 395 So. 2d 1054, 1057 (Ala. 1981)." ___ So. 3d at ___. Clearly, any person who is released on bond should be notified, in writing, of the conditions of the bond. See Rule 7.3, Ala. R. Crim. P. In this case, it appears that Coffey was released on his original case without being notified or advised of the conditions of his bond, and I would allow the trial court to use its discretion to determine whether a new offense, which is not outlined as an express condition of bond, should be regarded as "a material breach of the conditions of release" so as to trigger the arguably mandatory issuance of a warrant for an individual's arrest pursuant to Rule 7.5, Ala. R. Crim. P. As the trial court noted, a part of this discretion would be a determination of whether an individual's due-process rights would be violated as a result of a warrant being issued for a violation not expressly listed in the conditions of release.

Finally, I would hold that the lack of any precedent to support the State's position that all defendants who have been released on bond should be aware that their bond can be revoked for the commission a new offense precludes this Court from finding that the trial court violated the State's "clear legal right" by failing to issue a warrant for Coffey's arrest. As the trial court stated in its response to this Court, "the State can cite no case for the proposition that it asserts." (Respondent's reply, p. 16). I agree with the majority opinion of this Court that decisions such as Croshon v. State, 966 So. 2d 293 (Ala. Crim. App. 2007), which stand for the proposition that refraining from committing a new offense is an implied condition of probation, are "instructive." But I do not agree that the ability to find "instructive" cases on a related issue leads to the conclusion that it is "clear" the trial court should have issued a warrant for Coffey's arrest. There are numerous ways to distinguish the line of probation-revocation cases from Coffey's pretrial-bond-revocation case, including Coffey's continued presumption of innocence until there is a final adjudication of his case, that probation remains an act of

"grace" whereas bail is constitutionally required, that a defendant on pretrial release seldom has legal representation at the time of his release on bond to inform him of any "implied" conditions of bond, and that an accused may not have had an opportunity to discuss these matters with a judge before his release on bond. Furthermore, Rule 7.5, Ala. R. Crim. P., expressly states that the prosecution must establish that there was a "material breach of the conditions of release," and there does not appear to be any dispute that the "record reflects that no conditions were ordered and no notice of conditions was provided to the Defendant." (Respondent's brief, p. 15.) Although the majority reaches a reasonable conclusion that revocation of pretrial bond should be equated with the revocation of an individual's probation, I would not hold that this necessarily leads to the conclusion that it is "clear" that the trial court was required to issue a writ for Coffey's arrest under the circumstances presented to this Court. Because the trial court had no legal authority guiding its decision and the trial court's determination that a warrant should not be issued was reasonable, it is not "clear"

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that the State is entitled to the relief it seeks as is required for a writ of mandamus to issue.

For the foregoing reasons, I respectfully dissent.