NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ALAN DALE SEWELL,

Petitioner,

v.

PAUL BLACKMAN, SHERIFF OF HIGHLANDS COUNTY, FLORIDA,

Respondent.

Case No. 2D20-84

Opinion filed March 11, 2020.

Petition for Writ of Habeas Corpus to the Circuit Court for Highlands County; Peter F. Estrada, Judge

Robert J. Buonauro, New Smyrna Beach, for Petitioner.

Ashley Moody, Attorney General, Tallahassee, and David Campbell, Assistant Attorney General, Tampa, for Respondent.

NORTHCUTT, Judge.

Alan Dale Sewell has petitioned for a writ of habeas corpus, complaining that the monetary bond required as a condition of his pretrial release on pending criminal charges is excessive. We agree, and we grant the petition.

Setting conditions of release, including whether and how much monetary bail must be posted, is a matter for the discretion of the trial court, whose determination may be reversed only if that discretion is abused. Norton-Nugin v. State, 179 So. 3d 557, 559 (Fla. 2d DCA 2015). Seeking a writ of habeas corpus is the proper method for obtaining review of pretrial release conditions. Id. An appellate court will grant relief if the petitioner demonstrates that the conditions imposed for his release are unreasonable under the circumstances. Alvarez v. Crowder, 645 So. 2d 63, 64 (Fla. 4th DCA 1994).

Sewell is charged with 305 third-degree felony counts of possessing, controlling, or intentionally viewing child pornography, § 827.071(5)(a), Fla. Stat. (2019), and two misdemeanors. At issue here is a pretrial release order setting Sewell's monetary bond at $1000 for each child pornography charge and $500 per misdemeanor, resulting in an aggregate monetary bond of $306,000.[1]

The undisputed evidence established that Sewell has no ability to meet that condition. He is over fifty-six years old, unemployed, and disabled. When he was arrested, he was residing in a home owned by his mother, who lives across the street in another home she owns. Sewell had been receiving $771 per month in disability

[1]This is the third time this court has considered the matter of Sewell's bond. It was initially set at $10,000 per count of possession of child pornography and $1000 per misdemeanor. By unpublished order in case 2D19-3698, we previously granted a habeas corpus petition filed by Sewell because his bond was tantamount to no bond at all. Thereafter, the circuit court reduced the bond for each child pornography charge to $4000 and reduced the bond on the misdemeanor charges to $500 each. Again, by unpublished order in case 2D19-4285, this court granted a habeas corpus petition filed by Sewell on the basis that his aggregate bail of $1,221,000 was tantamount to no bond at all. The bond at issue here was imposed following the latter order.

payments, but those payments ceased due to his detention in jail. He has no savings, and there are only about thirty dollars in his checking account. In addition to providing his housing, Sewell's mother has been paying his medical expenses. She testified that she is willing to post his bond and that she can afford a bond in the $10,000–$25,000 range.[2]

The right of an accused to be released on reasonable conditions pending trial is enshrined in Florida's constitution at article I, section 14. With two exceptions, that provision directs that "every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions." Id. One exception applies only to an accused who is charged with a capital offense or an offense punishable by life imprisonment, and so it is not implicated by the third-degree felonies charged against Sewell. Id. Under the other exception to the right of pretrial release, an accused may be detained if "no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process[.]" Id. This exception, too, is inapplicable here because the State has not affirmatively invoked it by filing a motion for pretrial detention and satisfying the burden of proof such a motion entails. See Preston v. Gee, 133 So. 3d 1218, 1223–25 (Fla. 2d DCA 2014); see also Miller v. State,

[2]When assessing the financial circumstances of an accused, it is appropriate to consider the willingness and abilities of the accused's family and friends to contribute to his or her bail. See Henley v. Jenne, 796 So. 2d 1273, 1275 (Fla. 4th DCA 2001) ("By agreeing to become financially responsible for a defendant's bail these family members and friends have a very personal stake in seeing the defendant appear in court when scheduled. With that stake and their close relationship with the defendant comes their peculiar ability to use their power and influences to make certain that he will meet his obligation to appear.").

980 So. 2d 1092, 1093–94 (Fla. 2d DCA 2008). Thus, Sewell is constitutionally entitled to pretrial release on reasonable conditions.

Florida Rule of Criminal Procedure 3.131 governs pretrial release. See § 907.041(2), Fla. Stat. (2019). The rule sets forth a range of possible conditions in increasing order of restrictiveness, from release on personal recognizance up to posting bail in the form of a cash deposit or a surety bond. Fla. R. Crim. P. 3.131(b)(1). It requires the court to impose the first, least restrictive, listed condition that would reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, and assure the integrity of the judicial process. If no single condition would adequately satisfy those criteria, the court is permitted to impose a combination of conditions. Id.

Notably, because the crimes charged against Sewell are not designated as "dangerous" in section 907.041(4)(a), there is a statutory presumption favoring his release on nonmonetary conditions. See § 907.041(3); see also Fla. R. Crim. P. 3.131(b)(1). But in its order setting Sewell's conditions of release, the circuit court appeared to discount that presumption based on its view that Sewell's alleged offenses pose an "unreasonable danger to [the] community." In support of that assertion, the court quoted State v. Beckman, 547 So. 2d 210, 211 (Fla. 5th DCA 1989): "Possession of child pornography, unlike adult pornography, is a sad guarantee that children have been and will be abused. It fuels the economic motive for production of child pornography and is an integral part of the production-distribution cycle."

We certainly concur in Beckman's observation that possessing child pornography harms society by creating an economic incentive for the creation of such

material. However, the Beckman opinion was not concerned with whether that systemic economic incentive posed a danger for purposes of setting reasonable conditions of an individual accused's pretrial release. Rather, the court was discussing the potential First Amendment implications of a statute that criminalizes the private possession of child pornography in one's home. In other words, the perniciousness of the activity is why it is illegal; it is not in itself a justification for effectively denying pretrial release by setting an exorbitant bail amount.

Whether the risk is of physical harm to persons, flight, or failure to appear for court hearings, in Sewell's case the facts furnish no reasonable basis to conclude that any potential danger posed by Sewell's release cannot be alleviated by nonmonetary conditions. See Norton-Nugin, 179 So. 3d at 560 (reasoning that the special conditions of the accused's release were sufficient to protect against the risk of flight, danger to the community at large, and to children in the community; thus the purposes of pretrial release could be accomplished without requiring the accused to post an excessive $150,000 bond). Indeed, pursuant to rule 3.131(b)(1), the court prescribed numerous other conditions of Sewell's release: He must live with his mother. All Internet access accounts, including those at his mother's house, must be terminated. Sewell is prohibited to access the Internet or to possess any type of electronic device that could access the Internet. He may not have contact with anyone under eighteen years old, including minors in his family, and he may not go near any school, facility, or grounds where minors are located. Sewell must meet with his pretrial release officer

twice each week and make his mobile phone available for the officer's inspection. With some specific exceptions, he may not leave Highlands County.[3]

In substantial part, the pretrial release considerations in this case are similar to those in Narducci v. State, 952 So. 2d 622 (Fla. 4th DCA 2007). Narducci was charged with two counts of lewd computer solicitation of a child. Id. at 622–23. The circuit court set his bond at $150,000 per count for a total bond of $300,000. Id. at 623. However, Narducci's financial circumstances were such that he could afford to post a bond of only about $25,000. Id. He filed a motion to reduce bond, but the court denied it, reasoning that given the nature of the offenses and the arrest affidavit there was no way to protect juvenile members of the public due to the ease of accessing the Internet. Id. The Fourth District granted habeas relief, reasoning among other things that the bond imposed was tantamount to no bond at all and that the trial court had failed to consider nonmonetary conditions such as barring Narducci from accessing the Internet. Id. at 623–24.

Similarly, in this case the circuit court abused its discretion by setting monetary bail in an aggregate amount that is so far beyond Sewell's financial capability that he has no prospect of posting it.[4] We emphasize that the

---

[3]The court apparently failed to consider other nonmonetary conditions such as placing Sewell under house arrest or ordering him to wear an electronic security bracelet monitored by GPS. See Alvarez v. Felton, 639 So. 2d 994, 995 (Fla. 3d DCA 1994) (finding no abuse of discretion in the imposition of house arrest); see also State v. Patino, 192 So. 3d 495, 496 (Fla. 2d DCA 2016) (discussing home detention and GPS monitoring).

[4]When setting the current bond, the circuit court expressed some frustration about the difficulty of setting a reasonable bond in light of the volume of the charges against Sewell. See Fla. R. Crim. P. 3.131(b)(2) (requiring that if a court sets monetary bond, the court must set a separate and specific bail amount for each charge).

> [p]rimary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the state of the burden of detaining the accused pending the trial, and to place the accused as much under the power of the court as if he were in custody of the proper officer.

Norton-Nugin, 179 So. 3d at 559 (quoting Pinellas County v. Robertson, 490 So. 2d 1041, 1042 (Fla. 2d DCA 1986)). The monetary bond imposed here is far in excess of that necessary to accomplish those purposes, especially in light of the other conditions prescribed by the court or available to it. It is tantamount to granting Sewell no release at all, in violation of the Florida Constitution. See Cameron v. McCampbell, 704 So. 2d 721, 723 (Fla. 4th DCA 1998); Good v. Wille, 382 So. 2d 408, 410 (Fla. 4th DCA 1980).

Accordingly, we grant the petition and quash the circuit court's order setting bail. The court shall forthwith make a new determination of reasonable bail and pretrial conditions. The parties may be given an opportunity to present additional evidence if the trial court deems it necessary. See Good, 382 So. 2d at 411.

Petition granted.

SILBERMAN and KELLY, JJ., Concur.

But when considering an accused's financial resources, it is appropriate for the court to consider the aggregate bond. See Alexander v. Broward Cty. Sheriff's Office, 6 So. 3d 707, 708 (Fla. 4th DCA 2009) ("Petitioner seeks habeas corpus relief in this court on the grounds that the total amount of the bond set is excessive in light of his financial circumstances. It is well settled that excessive bond is tantamount to no bond, and that an appellate court will grant relief where the petitioner shows that the amount of bond set is unreasonable under the circumstances." (emphasis added)). We also note that cases involving possession of child pornography are likely to involve voluminous charges because the statute allows the State to file separate charges for the possession, control, or intentional viewing of each file on a per-child basis. § 827.015(5)(a). This is exacerbated when the charges involve the use of the Internet because digital files can be transmitted instantaneously. See State v. Cohen, 696 So. 2d 435, 439 (Fla. 4th DCA 1997).