DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JAMES SULLIVAN LITTLE,

Petitioner,

v.

BOB GUALTIERI, Sheriff, Pinellas County,

Respondent.

No. 2D22-2613

December 16, 2022

Petition for Writ of Habeas Corpus to the Circuit Court for Pinellas County; Philip J. Federico, Judge.

Sara Mollo, Public Defender, and W. Randall Harper, Assistant Public Defender, Clearwater, for Petitioner.

Ashley Moody, Attorney General, Tallahassee, and Blain A. Goff, Assistant Attorney General, Tampa, for Respondent.

NORTHCUTT, Judge.

James Sullivan Little filed a petition for writ of habeas corpus challenging his detention after the revocation of his pretrial release. We deny Little's petition as moot because the circuit court ordered him released soon after he filed it, but we write to explain why we would have granted the petition if it had not been mooted by Little's release.

Little was arrested for felony battery and resisting an officer without violence.[1] Judge Todd, the first appearance judge, set bond and pretrial release conditions, including one requiring Little to wear a continuous alcohol monitoring device. The case was assigned to Judge Burgess. Little posted bond and was released.

A few months later, Judge Federico—who at the time was the duty judge handling emergencies for judges who were not available[2]—ordered Little's arrest and directed that he be held without bond. The basis for the order was a Pretrial Services employee's ex parte "oral motion and testimony" alleging that Little had consumed alcohol about fifteen days earlier. Little turned himself in and was released on his own recognizance only after filing the instant habeas corpus petition.

Judge Federico, in his capacity as the emergency duty judge, should not have ordered Little's arrest and detention. "Generally, only the trial judge can modify existing pretrial release conditions[.]" *Johnson v. State*, 277 So. 3d 123, 125 (Fla. 4th DCA 2019) (distinguishing the authority of the trial judge from other judges to determine and enforce pretrial release or order pretrial detention); *see also* Fla. R. Crim. P. 3.131(g)(1) (providing that "[t]he court in which the cause is pending may direct the arrest and commitment of the defendant who is at large on bail when: (1) there has been a breach of the undertaking[.]").

Rule 3.131 further supports our conclusion. That rule specifies the judges who have authority to set or modify bail. Subsection (d)(1) states:

> (1) When a judicial officer not possessing trial jurisdiction orders a defendant held to answer before a court having

---

[1] The State charged Little only with felony battery.

[2] Sixth Circuit Administrative Order No. 2022-022 PI-CIR appoints judges as Emergency Duty Judges and sets their schedules to handle matters when assigned judges are unavailable.

> jurisdiction to try the defendant, and bail has been denied or sought to be modified, application by motion may be made to the court having jurisdiction to try the defendant or, in the absence of the judge of the trial court, to the circuit court. The motion shall be determined promptly. No judge or a court of equal or inferior jurisdiction may modify or set a condition of release, unless the judge:
>
> > (A) imposed the conditions of bail or set the amount of bond required;
> >
> > (B) is the chief judge of the circuit in which the defendant is to be tried;
> >
> > (C) has been assigned to preside over the criminal trial of the defendant; or
> >
> > (D) is the first appearance judge and was authorized by the judge initially setting or denying bail to modify or set conditions of release.

See also § 903.02(2), Fla. Stat. (2021) (containing similar provisions).[3] As can be seen, the rule does not empower an alternate judge such as an emergency duty judge to "modify or set a condition of release."

The State argues that Sixth Circuit Administrative Order No. 2022-022 PI-CIR § 2(F)(1)(c) authorized the emergency duty judge's actions here. However, that administrative order is directed only to *emergencies*. It permits an emergency duty judge "to hear any criminal matter of an *emergency nature* where the assigned judge is unavailable." (Italicized emphasis added, other emphasis removed.) Manifestly, an alcohol event that occurred *fifteen days earlier* did not present an emergency. Any

[3] In addition, an authorized judge may not modify bail on a motion by the State without a "showing [of] good cause and with at least 3 hours' notice to the attorney for the defendant." Fla. R. Crim. P. 3.131(d)(2).

issue posed by Little's alleged violation of pretrial release conditions on that occasion easily could have awaited the availability of the assigned trial judge, who would have dealt with the matter in the normal course of business, as required by the Sixth Circuit's administrative order and rule 3.131(d)(1) and (g)(1). To interpret the administrative order in the manner the State suggests would contravene Florida law. *See* Fla. R. Gen. Prac. & Jud. Admin. 2.120(c) (defining an administrative order as "[a] directive necessary to administer properly the court's affairs but not inconsistent with the constitution or with court rules and administrative orders entered by the supreme court").

Petition denied as moot.

SILBERMAN and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion subject to revision prior to official publication.