STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1697

State of Minnesota,
Respondent,

vs.

Andrew Wallace Matthews,
Appellant.

Filed July 6, 2020
Appeal dismissed
Hooten, Judge

Hennepin County District Court
File No. 27-CR-18-26082

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael J. Colich, Brooklyn Park City Attorney, Ellen A.C. LaVigne, Assistant City Attorney, Colich & Associates, Minneapolis, Minnesota (for respondent)

Samuel A. McCloud, The Law Office of Samuel A. McCloud, Cambridge, Minnesota; and

Thomas P. Leavitt, Thomas P. Leavitt, Criminal Defense, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Worke, Judge; and Jesson, Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

In this appeal from a pre-trial order to impose bail or conditions of release following a third driving-while-impaired (DWI) arrest within ten years, appellant challenges the district court's decision to impose maximum bail or conditions of release as required under Minn. Stat. § 169A.44, subd. 1 (2018), arguing that the district court failed to exercise its discretionary authority for the setting of bail under Minn. R. Crim. P. 6.02. Because under the unique facts of this case, we are unable to provide any remedy to appellant, we dismiss the appeal as moot.

FACTS

On September 11, 2018, at approximately 2:57 a.m., after observing a vehicle drift into the left lane multiple times, a Brooklyn Park police officer pulled over the car driven by appellant Andrew Wallace Matthews. During the stop, Matthews refused to submit to a preliminary breath test and was subsequently placed under arrest. A warranted blood sample was collected from Matthews at approximately 4:06 a.m. and was later analyzed to reveal a blood alcohol concentration of 0.15.

The next month, Matthews was charged with one count of second-degree DWI in violation of Minn. Stat. § 169A.20, subd. 1(1) (2018), and one count of second-degree DWI with a blood alcohol concentration of 0.08 or more in violation of Minn. Stat. § 169A.20, subd. 1(5) (2018). Both counts were charged as gross misdemeanors. Matthews had two prior DWI convictions: one from December 19, 2011, and one from August 4, 2014.

After Matthews appeared several times in district court, the state and Matthews agreed that Matthews' case would be transferred to the Hennepin County Veterans Court (Veterans Court). At that time, the district court learned from defense counsel that Matthews scheduled an out-of-state trip that he planned to take before entering Veterans Court. Surprised that Matthews could leave the state, the district court searched the court record and learned that conditions for Matthews' release awaiting trial were never set.

After the district court raised the issue of whether bail should be set due to his impending out-of-state trip, the state requested maximum bail of $12,000, or remote electronic monitoring as required under Minn. Stat. § 169A.44, subd. 1. Matthews' defense counsel argued that Minn. R. Crim. P. 6.02 affords discretion to district courts to set bail and that under the rule, the district court should set bail only if it had "some question as to whether or not [Matthews is] going to show up for court." Matthews' counsel noted that Matthews had already appeared at three or four court hearings related to his charges and had not "re-offended or done anything to endanger the public." He also emphasized that Matthews, "within a week or so," would "get conditions . . . from veterans court."

The district court rejected Matthews' arguments and imposed maximum bail of $12,000 or, in the alternative, offered Matthews release with an agreement to submit to electronic alcohol monitoring and refrain from consuming alcohol. Defense counsel asked that the district court explain the basis for the bail. When the district court started to explain that she was "doing it because of the statutory--," defense counsel interrupted and stated "[s]o you're relying on the statute." The judge responded "I am." Matthews posted a bond for $12,000 that same day and was released without any additional conditions.

A few weeks after posting the bail bond, Matthews signed a participation agreement with the Veterans Court. This participation agreement required, among other things, that Matthews "attend and complete any treatment program and/or support group as the Court directs," refrain from possession of alcohol or non-prescribed mood-altering substances, and submit to any substance-use testing ordered by the Veterans Court.

Matthews appeals.

D E C I S I O N

Matthews argues that because the setting of bail or conditions of release is procedural, and therefore within the inherent powers of the court, Minn. R. Crim. P. 6.02 takes precedence over Minn. Stat. § 169A.44, subd. 1. Matthews claims that the district court erred by only relying on the statute, rather than the rule, in setting bail. The state responds that the issues in this appeal are moot because a favorable decision by this court will not result in any effective relief for Matthews. The state further maintains that even if this matter were not moot, this court has already held in *State v. Houx*, 709 N.W.2d 280, 281 (Minn. App. 2006), that there is no conflict between the rule and the statute.

"An appeal should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). Although mootness is a "flexible discretionary doctrine" and is not to be "automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved," *id.* at 4, "[i]f the court is unable to grant effectual relief, the issue raised is deemed to be moot resulting in dismissal of the appeal." *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989).

Minn. Stat. § 169A.44, subd. 1(b), provides that, unless maximum bail is imposed, a person with a gross misdemeanor DWI charge "may be released from detention only if the person agrees to: (1) abstain from alcohol; and (2) submit to a program of electronic alcohol monitoring, involving at least daily measurements of the person's alcohol concentration, pending resolution of the charge."

Matthews appears to complain that he was required to both post the maximum bail to the district court and ended up with essentially similar release conditions, such as alcohol monitoring and refraining from drinking alcohol, after he was transferred to Veterans Court. However, a review of the record shows that when Matthews' defense counsel indicated that Matthews planned to leave the state, the district court gave Matthews a choice: either he (1) pay $12,000 in bail with no conditions regarding alcohol use so that he could attend his out-of-state meeting, or (2) participate in the remote electronic alcohol monitoring program, which would require that he seek permission from probation to leave the state and be excused from daily monitoring. Both Matthews and the district court acknowledged that the release requirements applied only so long as it took to transfer Matthews' case from district court to Veterans Court. So as to be permitted to leave the state within this timeframe, Matthews chose to post a bond for the $12,000 bail. The record is clear that Matthews posted this bond with full knowledge that he would be accepting conditions imposed by the Veterans Court shortly upon his return from his out-of-state trip.

Under these unique facts, we conclude that this court is unable to provide Matthews with a remedy, and thus this issue is moot. *See State ex rel. Lezer v. Tahash*, 128 N.W.2d 708, 708 (Minn. 1964) (noting that when a court is unable to provide a remedy, the issue

is moot).[1] Because Matthews posted bond, he was able to take his out-of-state trip. Furthermore, the record shows that Matthews, as part of his participation in Veterans Court, voluntarily consented to various conditions—including refraining from alcohol consumption.

The mootness doctrine is appropriate when a decision is no longer necessary, or a grant of relief is no longer possible. *Dean*, 686 N.W.2d 4–5. We conclude that this is one of those circumstances in which we are unable to grant relief. This is not a situation in which a criminal defendant seeks release from detention as a result of an unreasonable bail setting or the imposition of unreasonable release conditions and thus a remedy is available. Rather, we conclude that this is simply a case in which Matthews could have easily accepted the conditions as set forth in the bail statute to avoid being subject to the maximum bail, conditions substantially similar to those that Matthews knew that he was going to agree to in Veterans Court, but instead chose to post a bond so that he could take his out-of-state trip.

As we are unable to award effective relief to Matthews, we conclude that this issue is moot.

Appeal dismissed.

[1] *State ex rel. Lezer v. Tahash* was abrogated on unrelated grounds by *State ex rel. Atkinson Tahash*, 142 N.W.2d 294 (Minn. 1964).