
Setting Bonds in Municipal Court: Restriction on Pretrial and Appeal Bonds

Many times a Judge would like to be able to prevent a defendant from leaving the confines of the City Jail for various good reasons. For example, in the case of Ex Parte Larry W. Gilham (City of Trussville vs. Larry W. Gilham), the defendant was a convicted sex offender and was seen inside his motor vehicle where school children were walking with his door open and his pants undone. He was charged with indecent exposure. Upon a trial of the matter, after finding the defendant guilty, the wise trial court sentenced the defendant to six months in the City Jail. The defendant gave notice of appeal and the Court would not allow the defendant to remain free from custody while he appealed his conviction. The municipal judge determined Mr. Gilham "a real and present danger of harm" to the public at large. The Circuit Judge agreed with the wise municipal judge and directed Mr. Gilham to be held in custody until his case was tried. The Circuit Court like the Municipal Court determined that Rule 7.2(d) of the Alabama Rules of Criminal Procedure governed in this case. It states, "Release shall be denied after conviction and sentence if the trial court has reason to believe that an appearance bond or conditions of release will not reasonably assure that the defendant will not flee, or that the defendant's being at large poses a real and present danger of harm to any other person or to the public at large, or if at the time the sentence was rendered, the defendant filed a notice of appeal and elected to waive release and to begin serving the sentence."

The Court of Appeals determined otherwise, it held,

"Rule 30.3 clearly states the two prerequisites necessary to appeal a municipal court conviction to circuit court. The requirements are 1) written notice and 2) the posting of bond. The Committee Comments to this rule state:

"Section (b), which provides for a bond on appeal to secure the defendant's appearance and the payment of costs, combines the statutory requirement of Ala.Code 1975, § 12-12-70(b) and § 12-14-70(e). Since no bond amount is provided, the specific provisions now contained in § 12-14-70(c) shall continue to govern appeals from municipal court to circuit court, i.e., 'not more than twice the amount of the fine and costs, as fixed by the court, or in the event no fine is levied the bond shall be in an amount not to exceed \$1,000.00, as fixed by the court, conditioned upon the defendant's appearance before the circuit court.' "

Because Rule 30.3 specifically deals with the appeal of a municipal court conviction to circuit court, Rule 7.2(d), Ala.R.Crim.P., does not apply. "[T]he more specific will prevail as against a more general statement pertaining to the same subject matter." *Jefferson County v. Braswell*, 407 So.2d 115, 119 (Ala.1981).

"These rules shall govern the practice and procedure in all criminal proceedings in all courts of the State of Alabama, and political subdivisions thereof, except as otherwise provided by court rule." Rule 1.1 Alabama Rules of Criminal Procedure.

"Municipal judges shall admit to bail any person charged with violation of any municipal ordinance by requiring an appearance bond, with good security, to be approved by the respective municipal judges or their designees, in an amount not to exceed \$1,000.00, and may, in their discretion, admit to bail such person on a personal recognizance bond, such bonds to be conditioned on the appearance of such person before the judge on a day named therein to answer the charges preferred against him. The municipal judge may waive an appearance bond upon satisfactory showing that the defendant is indigent or otherwise unable to make bond." Ala.Code 1975 § 12-14-5.

Rule 7.2 of Alabama Rules of Criminal Procedure states,

Any 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 unless the court or magistrate determines that such a release will not reasonably assure the defendant's appearance as required, or that the defendant's being at large will pose a real and present danger to others or to the public at large. If such a determination is made, the court may impose the least onerous condition or conditions contained in Rule 7.3(b) that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or to the public at large. In making such a determination, the court may take into account the following:

1. The age, background and family ties, relationships and circumstances of the defendant.
2. The defendant's reputation, character, and health.

3. The defendant's prior criminal record, including prior releases on recognizance or on secured appearance bonds, and other pending cases.

4. The identity of responsible members of the community who will vouch for the defendant's reliability.

5. Violence or lack of violence in the alleged commission of the offense.

6. The nature of the offense charged, the apparent probability of conviction, and the likely sentence, insofar as these factors are relevant to the risk of nonappearance.

7. The type of weapon used, e.g., knife, pistol, shotgun, sawed-off shotgun.

8. Threats made against victims and/or witnesses.

9. The value of property taken during the alleged commission of the offense.

10. Whether the property allegedly taken was recovered or not; damage or lack of damage to property allegedly taken.

11. Residence of the defendant, including consideration of real property ownership, and length of residence in his or her place of domicile.

12. In cases where the defendant is charged with a drug offense, evidence of selling or pusher activity should indicate a substantial increase in the amount of bond.

13. Consideration of the defendant's employment status and history, the location of defendant's employment, e.g., whether employed in the county where the alleged offense occurred, and the defendant's financial

condition.

14. Any enhancement statutes related to the charged offense.

Can the Court place conditions upon a defendant's bond? Yes.

Rule 7.3 of the Alabama Rules of Criminal Procedure sets out the conditions of release.

(a) MANDATORY CONDITIONS. Every order of release under this rule shall contain the conditions that the defendant:

(1) Appear to answer and to submit to the orders and process of the court having jurisdiction of the case;

(2) Refrain from committing any criminal offense;

(3) Not depart from the state without leave of court; and

(4) Promptly notify the court of any change of address.

(b) ADDITIONAL CONDITIONS. An order of release may include any one or more of the following conditions reasonably necessary to secure a defendant's appearance:

(1) Execution of an appearance bond in an amount specified by the court, either with or without requiring that the defendant deposit with the clerk security in an amount as required by the court;

(2) Execution of a secured appearance bond;

(3) Placing the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(4) Restrictions on the defendant's travel,

associations, or place of abode during the period of release;

(5) Return to custody after specified hours; or

(6) Any other conditions which the court deems reasonably necessary.

HOW DO YOU DO IT. . . .

See Rule 7.3 of Alabama Rules of Criminal Procedure.

(a) INITIAL DECISION. If a defendant has not been released from custody and is brought before a court for initial appearance, a determination of the conditions of release shall be made. The ***judge or magistrate*** shall **issue an order containing the conditions of release and shall inform the defendant of the conditions, the possible consequences of their violation, and that a warrant for arrest of the defendant will be issued immediately upon report of a violation.**

(b) AMENDMENT OF CONDITIONS. If the defendant is in custody, the judge or magistrate may, for good cause shown, either on its own initiative or on application of either party, modify the conditions of release, **after first giving the parties an adequate opportunity to respond to the proposed modification.**

(d) REVIEW BY MUNICIPAL COURT. By the second day of each month, the officials having custody of defendants being held in a municipal jail pending trial or on extraordinary writs shall provide the presiding municipal judge, the city attorney, and the municipal court clerk, with the names of all defendants in their custody, the charge or charges upon which they are being held, and the date they were most recently taken into custody. The municipal court shall review the

conditions of release for every defendant who has been in the municipal jail for more than ninety (90) days.

SO YOU LET THE DEFENDANT OUT WHO ABUSED HIS WIFE AGAIN OR MORE LIKELY, THREATENED HER IF SHE WERE TO TESTIFY AGAINST HIM, IN VIOLATION OF A CONDITION OF YOUR BOND, WHAT DO YOU DO NOW. . .

1. Obtain Motion from Prosecutor which should state 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.
2. Issue warrant pursuant to Rule 3.1 to secure the defendant's presence in Court.
3. Make certain a copy of the Motion is served with the warrant.
4. A hearing shall be held on the Motion in no event later than 72 hours following the defendant's arrest as provided in Rule 4.3(a) Alabama Rules of Criminal Procedure.
5. After having a hearing, the Court can modify the conditions of defendant's release, including revocation of his release. See Rule 7.5(b) of the Alabama Rules of Criminal Procedure.

See attached cases which hold for following points of law.

1. Clearly, a district court has the jurisdiction to admit a defendant to bond after arrest. See Ala.Code 1975, §§ 15-4-9(b); 15-6-22; 15-9-42, -43, -44; 15-11-3, -4; and 15-13-107(a), (b). Under Rule 7.3, A.R.Crim.P., the district court had the authority to establish the conditions of the appellant's release. Therefore, even if the district court does not have the authority to issue a "restraining order" or an "injunction," an issue we need not, and do not, decide, a district court clearly has the jurisdiction to prevent a defendant from associating with or contacting another person as a condition of pretrial release on bond pursuant to Rule 7.3(b). Morton v. State 651 So.2d 42 (Cr.App. 1994).
2. Initially, we must note that a trial judge normally has the authority to impose on a defendant's bail any conditions that he believes necessary to preserve the safety of the public and to assure that the defendant will return to court at the appointed time. Rules 7.2 and 7.3(b), Ala.R.Crim.P.; see also Shabazz v. State, 440 So.2d 1200, 1202 (Ala.Cr.App.1983). Ex Parte Joseph Phelps, (State vs. Harris) 612 So.2d 1177 (Ala. 1992).
3. Despite state's contention that individual had mental problems, individual charged with attempted murder was entitled to have circuit court set reasonable bail, although trial judge could raise amount of bond, require additional sureties, and add additional conditions as seemed necessary. Const. Art. 1, § 16; Rules Crim.Proc., Rule 7.3. Ex Parte Casey Lee Murphree (State vs. Murphree) 675 So.2d 556 (Cr.App. 1996).
4. Criminal defendants, who had capias warrants against them for their failure to pay post-conviction fines, applied for injunction prohibiting city from enforcing its new bail policy, under which only cash bail or complete payment of outstanding fines would be available under capias warrant. The Circuit Court, Montgomery County, No. CV-98-2182, Sarah M. Greenhaw, J., denied application, and defendants appealed. The Court of Civil Appeals, Yates, J., held that bail policy did not violate State Constitution, Bail Reform Act, Rules of Criminal Procedure, or Equal Protection Clause. Williams vs. City of Montgomery 739 So.2d 515 (Ala.Civ. 1999).

PREPARED BY:

CARL E. CHAMBLEE, JR.
MUNICIPAL JUDGE - CITY OF TRUSSVILLE AND ARGO
5582 APPLE PARK DRIVE
BIRMINGHAM, ALABAMA 35235