

Rel: September 22, 2023

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is published in Southern Reporter.

Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

CR-2023-0325

Ex parte Jacobye Bryan Green

PETITION FOR WRIT OF HABEAS CORPUS

(In re: State of Alabama

v.

Jacoby Bryan Green)

**Jefferson Circuit Court
(CC-23-826.60)**

PER CURIAM.

Jacoby Bryan Green petitions this Court, pursuant to Rule 21(c), Ala. R. App. P., to issue a writ of habeas corpus directing the Jefferson Circuit Court, Judge Michael Streety, presiding, to vacate its order

denying his Petition for Writ of Habeas Corpus and to reinstate his \$50,000 bond.

Facts and Procedural History

On February 8, 2023, an arrest warrant was issued for Green, alleging that he had intentionally caused the death of Phillip Edward Lankford by shooting him with a pistol, see § 13A-6-2(a)(1), Ala. Code 1975. (Petition, Exhibit A.) Following his arrest, the Jefferson District Court, Judge Katrina Ross, presiding, held a pretrial detention hearing on February 10, 2023, pursuant to § 15-13-3(b)(3), Ala. Code 1975. The State offered the testimony of Detective Bill Hill of the Jefferson County Sheriff's Department, who testified that he had located an eyewitness to Lankford's shooting death, that the eyewitness had identified Green as the shooter, and that Green had pending robbery charges. (Petition, Exhibit B.) Det. Hill conceded on cross-examination that there was no physical evidence linking Green to the murder, that the eyewitness had not originally been forthcoming, and that the eyewitness had a lengthy criminal history. Nonetheless, the State argued to Judge Ross that she should deny Green bail. At the conclusion of the hearing, Judge Ross ordered that bail be set at \$100,000 but stated that she might revisit that

decision after further consideration of the State's evidence. Later that day, Judge Ross issued an order setting bail at \$50,000. (Petition, Exhibit C.)

On March 22, 2023, the Jefferson District Court, Judge William A. Bell, Jr., presiding, held a preliminary hearing. The State again presented the testimony of Det. Hill, whose testimony was substantively the same as had been presented at the pretrial-detention hearing. The State asked that the case be bound over to the circuit court and that Green's bail be raised "out of concern for the safety of the community." (Petition, Exhibit E.) In addition to finding sufficient probable cause for the case to be bound over, Judge Bell revoked Green's bail and ordered that he be held without bail.

On March 28, 2023, Green filed a petition for a writ of habeas corpus in the Jefferson Circuit Court, which was denied. Green has now filed a petition for a writ of habeas corpus with this Court, asserting that he is entitled to relief because, he says, the State failed to comply with the requirements of § 15-13-3, Ala. Code 1975, for reopening the pretrial-detention hearing. The respondents have filed an answer, and this Court has considered that answer.

Discussion

Article I, § 16, Alabama Constitution of 1901, had long granted an absolute right to bail in all noncapital cases. See State v. Blake, 642 So. 2d 959, 968 (Ala. 1994). However, the kidnapping and murder of Aniah Blanchard, allegedly perpetrated by a man who was free on bail for various violent offenses, caused a groundswell of support to remove that right for certain charges.¹ Act No. 2021-267, Ala. Act. 2021, which was enacted by the Alabama Legislature on April 22, 2021, and signed into law by Governor Kay Ivey on June 24, 2021, created "Aniah's Law" and provided additional offenses for which bail could be denied. The act was set to become effective immediately upon the ratification of the amendment to Article I, § 16, Alabama Constitution of 1901, which Alabama voters overwhelmingly approved on November 8, 2022.

¹ Blanchard, a 19-year-old college student, was reported missing in October 2019; her remains were discovered the following month. The man accused of her kidnapping and murder was, at the time of Blanchard's disappearance, free on bail for, among other charges, robbery, attempted murder, and kidnapping.

Aniah's Law, among other things, amended § 15-13-3, Ala. Code 1975, to provide a process for the denial of bail for certain enumerated offenses. Section 15-13-3(b)(1), as amended, states that

"The court, after a [pretrial detention] hearing as provided in this subsection, after the presentment of an indictment or a showing of probable cause in the charged offense, and if the prosecuting attorney proves by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court or protect the safety of the community or any person, may deny a defendant's bail, if he or she is charged with any of the following offenses:

"a. Murder, as provided in Section 13A-6-2[, Ala. Code 1975].

"b. Kidnapping in the first degree, as provided in Section 13A-6-43[, Ala. Code 1975].

"c. Rape in the first degree, as provided in Section 13A-6-61[, Ala. Code 1975].

"d. Sodomy in the first degree, as provided in Section 13A-6-63[, Ala. Code 1975].

"e. Sexual torture, as provided in Section 13A-6-65.1[, Ala. Code 1975].

"f. Domestic violence in the first degree, as provided in Section 13A-6-130[, Ala. Code 1975].

"g. Human trafficking in the first degree, as provided in Section 13A-6-152[, Ala. Code 1975].

"h. Burglary in the first degree, as provided in Section 13A-7-5[, Ala. Code 1975].

"i. Arson in the first degree, as provided in Section 13A-7-41[, Ala. Code 1975].

"j. Robbery in the first degree, as provided in Section 13A-8-41[, Ala. Code 1975].

"k. Terrorism, as provided in subdivision (b)(2) of Section 13A-10-152[, Ala. Code 1975].

"l. Aggravated child abuse, as provided in subsection (b) of Section 26-15-3.1[, Ala. Code 1975]."

The pretrial-detention hearing should generally be held "immediately upon the defendant's first appearance before the court," § 15-13-3(b)(3), and a defendant charged with an enumerated offense shall be held without bail prior to that hearing. § 15-13-3(b)(2). Courts are directed to consider "the nature and circumstances of the offenses charged," "the weight of the evidence against the defendant," "the history and characteristics of the defendant," and "the nature and seriousness of the danger to any person or the community if the defendant is released." § 15-13-3(b)(5). Of course, given the timing of the pretrial-detention hearing, it is possible information relevant to a bail determination could be discovered after a pretrial-detention hearing has concluded. Section 15-13-3(b)(7) accounts for this:

"a. A prosecuting attorney may file a motion for a pretrial detention hearing at any time.

"b. A pretrial detention hearing may be reopened, before or after a determination by the court, at any time prior to trial if the court finds that information exists that was not known by the movant at the time of the pretrial detention hearing."

It is this subsection at issue in Green's petition. The State's answer does not address § 15-13-3(b)(7), arguing instead that the denial of bail is within the recommended range of the bail schedule for a charge of murder. See Rule 7.2(b), Ala. R. Crim. P. Although the State is correct, the State's answer does not address the question before this Court: Whether the procedure used by the district court here to reopen the pretrial-detention hearing complied with § 15-13-3(b)(7). This Court holds that it did not.

""The cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature as manifested in the language of the statute.'" Ex parte Moore, 880 So. 2d 1131, 1140 (Ala. 2003) (quoting Ex parte Weaver, 871 So. 2d 820, 823 (Ala. 2003), quoting in turn Ex parte State Dep't of Revenue, 683 So. 2d 980, 983 (Ala. 1996)). 'In any case involving statutory construction, our inquiry begins with the language of the statute, and if the meaning of the statutory language is plain, our analysis ends there.' Ex parte McCormick, 932 So. 2d 124, 132 (Ala. 2005). 'Principles of statutory construction instruct this Court to interpret the plain language of a statute to mean exactly what it says and to engage in judicial construction only if the language in the statute is ambiguous.' Ex parte Pratt, 815 So. 2d 532, 535

(Ala. 2001). 'If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.' IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). Moreover, '[w]ords used in a statute must be given their natural, plain, ordinary, and commonly understood meaning,' IMED Corp., 602 So. 2d at 346, and '[b]ecause the meaning of statutory language depends on context, a statute is to be read as a whole ... [and s]ubsections of a statute are in pari materia.' Ex parte Jackson, 614 So. 2d 405, 406 (Ala. 1993)."

Mitchell v. State, 316 So. 3d 242, 247 (Ala. Crim. App. 2019).

Green asserts in his petition that Judge Bell erred in reopening the proceedings under Aniah's Law because the State failed to move for the proceedings to be reopened. The State does not dispute this assertion and conceded in the habeas proceedings conducted in the circuit court that it did not move to reopen the pretrial-detention hearing. (Petition, Exhibit I.) The State argued to the circuit court, though, that § 15-13-3(b)(7) creates two avenues for the pretrial detention hearing to be reopened – either the prosecuting attorney files a motion to reopen the pretrial-detention hearing or the court finds that information exists that was not known by the movant at the time of the pretrial-detention hearing. The State asserted that it had satisfied § 15-13-3(b)(7)b. by showing there was new information unknown to it at the pretrial-

detention hearing held on February 10, 2023. Green responded that the subsections a. and b. of § 15-13-3(b)(7) must be read in pari materia and that both subsections must be met before a pretrial-detention hearing may be reopened.

This Court agrees with Green that both § 15-13-3(b)(7)a. and § 15-13-3(b)(7)b. must be satisfied before a pretrial-detention hearing may be reopened. The results of viewing the subsections as independent avenues for reopening a pretrial detention hearing would be problematic. For instance, § 15-13-3(b)(7)a. expressly allows for the State to "file a motion for a pretrial detention hearing at any time." Yet, there is no standard attached to this subsection to guide the court as to when granting that motion would be appropriate. Section 15-13-3(b)(7)b. unambiguously provides a standard – "the court finds that information exists that was not known by the movant at the time of the pretrial detention hearing." But, allowing the pretrial-detention hearing to be reopened on this finding without requiring the State to first file a motion would deprive the defendant of notice of the State's intent to revisit the question whether the defendant should be denied bail. Notice is a key component of procedural 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)). The language of § 15-13-3(b)(7)b. supports the conclusion that a motion is required inasmuch as it refers to a "movant." See Black's Law Dictionary 1173 (10th ed. 2014) (defining "movant" as "[s]omeone who makes a motion to the court or a deliberative body").

Reading the relevant subsections in pari materia, as we must, see Mitchell, supra, this Court concludes that § 15-13-3(b)(7)a. and § 15-13-3(b)(7)b. must be satisfied to reopen a pretrial-detention hearing. Pursuant to § 15-13-3(b)(7)a. the State must file a motion to reopen the pretrial-detention hearing, and, pursuant to § 15-13-3(b)(7)b., the court

must find that information exists that was not known by the movant at the time of the pretrial detention hearing.²

In accordance with § 15-13-3(b)(3), District Judge Katrina Ross held a pretrial-detention hearing on February 10, 2023. After a consideration of the State's evidence, Judge Ross set Green's bail at \$50,000. At the preliminary hearing held on March 22, 2023, District Judge William Bell effectively reopened the pretrial-detention hearing, despite the State's failure to file a motion for its reopening. Therefore, Judge Bell erred in removing the bail previously set by Judge Ross.

Green also argues that the district court failed to comply with § 15-13-3(b)(7)b. in reopening the pretrial-detention hearing because, he says, there was no finding that "information exists that was not known by the movant at the time of the pretrial detention hearing." The circuit court rejected this argument in the hearing on Green's petition for a writ of habeas corpus filed below, stating that the proper inquiry was not whether there was "new information to the detectives [but rather] new

² This opinion should not be read as limiting a defendant who is being held without bail pursuant to § 15-13-3, Ala. Code 1975, or a judge from seeking a modification of the conditions of release. A defendant in custody or a judge may still seek modifications pursuant to Rule 7.4(b), Ala. R. Crim. P.

information to the Court for the Court to consider it." (Petition, Exhibit I.) This Court pretermits consideration of this claim but does point out that § 15-13-3(b)(7)b. states that the trial court must find "that information exists that was not known by the movant at the time of the pretrial detention hearing." (Emphasis added.)

Conclusion

Green has established that he is entitled to the reinstatement of the bail set by Judge Ross – \$50,000. Therefore, we grant Green's petition and direct the circuit court to reinstate Green's bail.

PETITION GRANTED; WRIT ISSUED.

Windom, P.J., and Kellum and McCool, JJ., concur. Cole and Minor, JJ., concur in the result.