

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

CASEY MARIE ANTHONY,

Petitioner,

v.

CASE NO.: 5D08-2512

STATE OF FLORIDA,

Respondent,

_____ /

STATE'S RESPONSE TO THE HABEAS PETITION

Pursuant to the Court's order entered July 25, 2008, the State files the following response to the Petition for Writ of Habeas Corpus (Petition):

1. Petitioner was arrested for Child Neglect, making False Official Statements, and Obstructing a Criminal Investigation.¹ Child neglect is a third degree felony, and the remaining two offenses are misdemeanors.

2. Defense counsel filed a motion to set bail bond, and a hearing was held on July 22, 2008, at which five witnesses testified. The witnesses were Petitioner's mother, father, brother, and two of the law enforcement officers handling the case (the lead detective and a canine officer).

3. After hearing the evidence presented as well as argument from each side, the trial court set bond at \$500,000 on the felony and \$100 on each misdemeanor. Additionally, the trial court

¹In violation of sections 827.02(3)(c), 837.06, and 837.055, Florida Statutes, respectively.

ordered home confinement with electronic monitoring, a psychological evaluation of Petitioner, and forfeiture of any passport owned by Petitioner upon the posting of bond.² The instant Petition is challenging this order.

ANALYSIS

Respondent recognizes that it is well settled in Florida that every person charged with a crime is entitled to pretrial release on reasonable conditions. Art. I, §14, Fla. Const.³ The State is also aware that excessive bail is tantamount to no bail at all. See Rawls v. State, 540 So. 2d 946 (Fla. 5th DCA 1989). However, there is also a presumption of correctness as to a trial court's decision and a petitioner has to show an abuse of discretion by the trial court in its determination. See Ho v. State, 929 So. 2d 1155 (Fla. 5th DCA 2006) (Sawaya, J., concurring specially). Under the abuse of discretion standard of review, the appellate court pays substantial deference to the trial court's ruling. A trial court's determination will be upheld by the appellate court "unless the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trial court."

²It appears the home confinement was part of an amended order which was entered on July 23, 2008, *nunc pro tunc* to July 22, 2008, which clarified the GPS (global positioning system) requirement set out at the hearing. (B)

³Petitioner is not currently charged with a capital offense nor an offense punishable by life imprisonment. These are the only two exceptions to Florida Rule of Criminal Procedure 3.131 which sets out the procedure for criminal defendants to be released pretrial.

Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980). The abuse of discretion standard is one of the most difficult for an appellant or petitioner to satisfy. Ford v. Ford, 700 So. 2d 191, 195 (Fla. 4th DCA 1997).

Florida Rule of Criminal Procedure 3.131 provides as follows:

(a) Right to Pretrial Release. - Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. 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, the accused may be detained.

...

(b)

...

(3) In determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court may consider the nature and circumstances of the offense charged and the penalty provided by law; the weight of the evidence against the defendant; the defendant's family ties, length of residence in the community, employment history, financial resources, need for substance abuse evaluation and/or treatment, and mental condition; the defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the court considers relevant.

see also, section 903.046, Fla. Stat. (2008).

Furthermore, as recognized by appellate court in Dyson v.

Campbell, 921 So. 2d 692, 693 (Fla. 1st DCA), rev. denied, 933 So. 2d 520 (Fla. 2006), bond is not excessive simply because it is high:

We are well aware of the body of case law essentially holding that the setting of an excessive bond is the functional equivalent of setting no bond at all, and that the remedy of habeas corpus relief lies in such a circumstance. See, e.g., Good v. Wille, 382 So. 2d 408 (Fla. 4th DCA 1980). It does not follow, however, that where a defendant testifies that he cannot meet a given bond amount, that bond is *per se* excessive or unreasonable. In addition to a defendant's financial resources, a trial court must consider a host of other factors in determining whether to release the defendant on bail or other conditions, and if so, what bail or other conditions are appropriate. See Fla. R. Crim. P. 3.131; § 903.046, Fla. Stat. (2005). In this case, few if any of those factors weigh in petitioner's favor, and insofar as it relates to monetary conditions, we decline to adopt petitioner's view that 'reasonable conditions' of pretrial release necessarily means conditions that the defendant can reasonably meet.

This point was also emphasized in Hernandez v. Roth, 890 So. 2d 1173, 1174 (Fla. 3d DCA 2004), in which the court wrote:

The key phrase is reasonable conditions. Section 903.046 of the Florida Statutes provides a broad, non-exclusive list of factors that the legislature instructs the court 'shall consider' in determining the conditions of bail. It includes, *inter alia*, the nature of the offense, the weight of the evidence, the defendant's ties to the community, and any 'past conduct' of the defendant. Furthermore, subsection (k) even more broadly authorizes the trial court to consider "any other facts that the court considers relevant.

The State would submit that the trial court properly applied the controlling rule and law when it set out reasonable conditions for Petitioner's release. At the hearing, defense counsel during his argument to the trial court stated that this was not a capital case and that his client was entitled to a bond. (A 113). Later

in his argument he continued by stating that the current charges entitled her to a bond. (A 115). However, he also added, "I would ask that you consider she [Petitioner] possibly holds the key to finding her daughter." (A 115). Defense counsel stated that if Petitioner were released she could assist in the search for her daughter. (A 117).

In response, the prosecutor began by noting that the State fully recognized that Petitioner was entitled to a bond. (A 118). The prosecutor next pointed out, "You really haven't heard any argument or been presented with any evidence about what sort of bond they are seeking, what the family can reasonably afford, what other restrictions on her liberty would ensure her presence." (A 119). The prosecutor then argued as follows:

[M]s. Anthony is a person of interest in what is looking to be a homicide investigation.

Given that - given that, they have information that there was a decomposing body at some point in the trunk of the car, that they have taken that evidence and submitted it to a lab microanalysis in hopes of determining whether or not, in fact, that was Caylee Anthony's decomposing body in the trunk of the car.

The risk of her flight if she is released on some low bond increases exponentially. Essentially now, she's heard this additional evidence and that she is their person of interest in what looks to be a homicide investigation. There are some things that I could point out to the Court that are probably rather obvious. Even though she has ties to the community by virtue of the fact that she has lived here a long period of time, those ties are very tangential. She doesn't appear to have a job or has had long-term employment. She really has no reason to stay here if, in fact, her family feels that they hold some weight over her, they apparently, to date, have not been able to get her to tell them anything about her daughter other than the lies that she has already told to the Orange County Sheriff's Office.

What we have here is a mother who let her child go missing, has no explanation for it. There's evidence that the child may no longer be alive and that she would have been the only person responsible for the child during the operative time frame.

...

(A 119-120).

After hearing all the testimony and argument from each side, the trial court started by observing that he had "listened carefully" to the evidence. (A 125). He then correctly noted that the criteria to be reviewed were set out in Rule 3.131. (A 125-126). The court next went through that criteria finding that there was substantial evidence Petitioner had lied to authorities (if fact, she had admitted such to them).⁴ (A 126). He continued by addressing her ties in the community recognizing the presence of her family locally; however, the court also found her adult employment history to be almost non-existent. (A 126). The judge next considered Petitioner's mental condition and stated, "I can't begin to describe [it]." (A 127). He asked the attorneys if he could order a psychological evaluation to which neither side objected. (A 127). As to Petitioner's past and present conduct, the court found her actions concerning her daughter to be "strange." (A 127). He found she was not a danger to the community with the exception of her daughter and continued by addressing the alert by the cadaver canine. (A 128-129).

⁴The judge even stated that "the truth and Ms. Anthony are strangers." (A 129).

The court concluded the hearing by setting a \$500,000 bond plus GPS monitoring upon release. (A 129). He stated he was aware that the bond was "way high" and that the court, "can always reconsider the bond as well as the conditions of bond at a later date and I will if it [sic] situation arises." (A 129).

This ruling was entered at the conclusion of a two and one half hour hearing. Some of the facts supporting the trial court's findings included the numerous lies Petitioner had told law enforcement such as: telling her family she was an event coordinator at Universal Studios (A 32), telling the same story to law enforcement and even taking them to an office building at Universal before admitting she was lying to them (A 96), informing her family once confronted that she knew where Caylee was and would take them there first thing in the morning (A 66-67), and naming a babysitter who none of Petitioner's friends or family had ever met as well as someone who law enforcement cannot locate (A 97).

Also considered by the trial court was the evidence that Caylee may have been murdered which included: smell of a possibly decomposing body in the car (A 73), possible hair samples of Caylee retrieved from the trunk of the car as well as a stain (A 76), the neighbor's report of Petitioner backing the car into the garage and borrowing a shovel (A 77), a cadaver dog alerting to the trunk of the car (A 106), and two cadaver dogs alerting to the same spot at the residence (A 83, 107).

As far as possible flight, the mother, Cynthia Anthony, admitted at the hearing that Petitioner and Caylee lived with them

but had disappeared for a month. (A 42-43). It was not until July 15th at about 7:00 p.m. did she see Petitioner. (A 48). After talking to her daughter, Cynthia Anthony called 911 concerned about the whereabouts of Caylee. (A 49).

Of additional concern to the court was the mental state of Petitioner. A psychological evaluation was ordered by the court with no objection by defense counsel.

All of these were factors considered by the trial court when it determined the proper amount of bond. The court was aware of the controlling law and simply applied the facts it heard at the hearing to set bond. Cameron v. McCampbell, 704 So. 2d 721 (Fla. 4th DCA 1998)(Bail may be set higher than "standard" when justified by informed consideration of applicable statutory criteria.)

The court set out what it determined to be reasonable conditions for Petitioner's release, and Petitioner has failed to show that such action by the trial court was "arbitrary, fanciful, or unreasonable."

WHEREFORE, the State presents the above facts and law in response to this Court's order to show cause and submits that Petitioner had failed to show the trial court abused its discretion.⁵

⁵However, if this Court does find that the trial court abused its discretion, the State would request that the matter be returned to the trial court for a reduction of bond hearing - not simply setting the amount as requested by Petitioner. As noted in the Petition (page 6) as to GPS and home confinement conditions, it should be left to the trial court in its unique position to determine the proper conditions of release. Even the trial court noted when imposing the conditions that it would be willing to

Respectfully submitted,

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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above State's Response⁶ to the Habeas Petition has been furnished by U.S. Mail as well as by facsimile to counsel for Petitioner, Jose A. Baez, Esq., 522 Simpson Road, Kissimmee, FL 34744, and Michael Walsh, P.A. and Michelle Walsh, P.A., co-counsels for Petitioner, at 46 N.E. 6th Street, Miami, FL 33132, this _____ day of July 2008.

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL

reconsider the conditions upon proper motion (A 129).

⁶The appendix provided to the Court was not forwarded to opposing counsel given that it contains the same documents that were attached to the Petition.

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