Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V RICHARD ALLEN WHITE

Docket No. 382141

LC No. 26-002054-FH

Michelle M. Rick
Presiding Judge

Kristina Robinson Garrett

Daniel S. Korobkin
Judges

The motion for immediate consideration is GRANTED.

The motion to review bail is DENIED for lack of merit in the grounds presented.

Michelle Rick

Presiding Judge

Korobkin, J. (*dissenting*).

I respectfully dissent. In my opinion, the trial court abused its discretion because the record does not support a finding that requiring money bail in an amount that defendant cannot afford to pay is necessary to assure defendant's appearance or the protection of the public. MCR 6.106(E), (F), (H)(1). Therefore, I would reverse the trial court's order denying defendant's motion to modify bond and remand with instructions to reduce bail to an amount that defendant can afford to pay. The trial court may order other conditions of pretrial release that are reasonably necessary to ensure defendant's appearance and the safety of the public, including but not limited to conditions that prohibit defendant from driving, using alcohol, or illicitly using controlled substances as well as conditions that require reporting, testing, screening, and monitoring to ensure defendant's compliance. MCR 6.106(D).

In addition to the above analysis under MCR 6.106, I agree with defendant that conditioning his pretrial release on payment of money bail that he cannot afford violates his rights to due process and equal protection under the law. See *Bearden v Georgia*, 461 US 660, 672-673 (1983); *People v Collins*, 239 Mich App 125, 135-136 (1999). Except in situations not applicable here, the Michigan Constitution guarantees that "[a]ll persons shall, before conviction, be bailable by sufficient sureties . . . ." Const 1963, art 1, § 15. For individuals who cannot afford the amount of bail that has been set, this "right" to bail is illusory and the pretrial release order is functionally equivalent to an order of pretrial detention. Although pretrial detention may be justified when no conditions of release can reasonably assure a defendant's appearance at trial or the safety of the public, see *United States v Salerno*, 481 US 739, 748-751, 755 (1987), it cannot be justified merely because a defendant cannot afford to pay. In the present case, under the trial court's pretrial release order, if defendant could afford to pay or post a $75,000 cash or surety bond, then defendant would be released with conditions. Thus, the trial court has implicitly determined that a hypothetical individual who is similarly situated to defendant but happens to be wealthier could be

safely released with such conditions. It is therefore primarily defendant's inability to afford money bail that prevents his release. In my view, that is prohibited under *Bearden*, *Collins*, and *Salerno*, *supra*.[1]

[1] Courts in other jurisdictions have held that conditioning pretrial release on the payment of money bail that a defendant cannot afford is unconstitutional. See, e.g., *In re Humphrey*, 482 P3d 1008 (Cal, 2021); *Valdez-Jimenez v Eighth Judicial Dist Court*, 460 P3d 976 (Nev, 2020); *Brangan v Commonwealth*, 80 NE3d 949 (Mass, 2017); *State v Brown*, 338 P3d 1276 (NM, 2014). "Decisions from other jurisdictions are not precedentially binding, but they may be considered for their persuasive value." *People v Lillis*, ___ Mich App ___, ___ n 3 (2026) (Docket No. 372637); slip op at 5 n 3.

COURT OF APPEALS OF THE STATE OF MICHIGAN
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A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

September 4, 2026
Date

Chief Clerk