

IN THE
SUPREME COURT
OF MISSOURI

STATE OF MISSOURI,)	
)	
Plaintiff,)	
v.)	No. SC92532
)	
KIRK JACKSON,)	
)	
Defendant.)	

DEFENDANT’S APPLICATION FOR RELIEF PURSUANT TO RULE 33.09
FROM THE ST. CHARLES COUNTY CIRCUIT COURT
11th JUDICIAL CIRCUIT
THE HONORABLE NANCY SCHNEIDER, CIRCUIT JUDGE

BRIEF OF MISSOURI ASSOCIATION OF PROSECUTING ATTORNEYS
IN SUPPORT OF PLAINTIFF AS *AMICUS CURIAE*

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Missouri Association of Prosecuting Attorneys (MAPA), established in 1969, is a non-profit, voluntary association of Missouri's 115 prosecutors, and approximately 300 assistant prosecutors and additional investigators. MAPA strides to provide uniformity and efficiency in the discharge of duties and functions of Missouri's prosecutors, to promote high levels of professionalism amongst Missouri's prosecutors, and to continually improve the criminal justice system in Missouri.

This case raises a matter of interest not only to Missouri's prosecutors, but to the integrity and future of the criminal justice system in Missouri. The invalidation of cash-only bail in Missouri would result in an influx of cases into the Missouri State Public Defender System. The practical effect of the elimination of cash-only bonds will be that courts, when balancing the public safety interest, will compensate for the inability to set appropriate cash-only bonds by increasing the amount of the surety bond. This will do nothing but result in an increased inability of defendants to post the sufficient securities, thereby resulting in more individuals who are in pre-trial detention being funneled into the Public Defender system.

ARGUMENT

I

THE DEFENDANT’S CONSTITUTIONAL RIGHT TO BAIL BY SUFFICIENT SURETIES IS BALANCED AND LIMITED BY THE CONSTITUTIONAL RIGHTS AFFORDED TO CRIME VICTIMS AND THE RESPONSIBILITY OF THE TRIAL COURT TO ENSURE THE SAFETY OF THE PUBLIC.

Article I, Section 20 of the Missouri Constitution provides that “all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.”¹ This guarantee is specifically balanced and limited by a subsequent clause in the Missouri Constitution, which states that “[n]otwithstanding section 20 of article I of this Constitution, upon a showing that the defendant poses a danger to a crime victim, the community, or any other person, the court may deny bail or

¹ Mo. Const. Art. I, Sec. 20

may impose special conditions which the defendant and surety must guarantee.”² Such conditions reasonably may include the restriction of bonds to cash-only.

Indeed, the constitutional guarantee of bail upon sufficient sureties does not preclude the ability of both the legislature and this Court, as a matter of procedure, from authorizing additional manners in which a court may ensure the appearance of a criminal defendant. Accordingly, the use of cash in lieu of sufficient sureties is authorized by section 544.455.1(3)³, and Rule 33.01(d)(3) specifically authorizes the Court to allow the release of the defendant pre-trial upon cash deposit.

II

INVALIDATION OF THE CASH-ONLY BAIL SYSTEM WILL RESULT IN UNINTENDED CONSEQUENCES TO THE CRIMINAL JUSTICE SYSTEM SUCH AS AN INCREASE IN THE WORKLOAD OF THE PUBLIC DEFENDER SYSTEM.

While the constitutional argument of the defendant clearly fails, a broader consideration for this Court is the policy implications of invalidation of the cash-only bail system, as the defendant seeks.

² Mo. Const. Art. I, Sec. 32.2

³ All statutory references are to RSMo. 2000 unless otherwise noted.

This Court recently issued its opinion in *State ex rel. Missouri Public Defender Commission v. Waters*.⁴ In that case, the majority opinion suggested in a footnote that there could be a “[b]roader use of signature bonds and the consideration of lower bail amounts for non-violent offenders. . .”⁵ and clearly seeks to advise trial courts to find creative ways to ensure release of pre-trial detainees who are non-violent.⁶ At first blush, the idea of elimination of cash-only bonds may seem to mesh perfectly with this philosophy. While *amicus* respectfully disagrees with any assertion that the Missouri State Public Defender system faces a constitutional crisis relating to its workload, the prudent course of action would be to refrain from trying to fix that purported problem.⁷ Public defenders consider the ability of a defendant to make bond in their application

⁴ *State ex rel. Missouri Public Defender Commission v. Waters*., No. SC91150, 2012 WL 3104427 (Mo. banc Jul. 31, 2012).

⁵ *Id.* at*14 n.18.

⁶ In the instant case, it cannot reasonably be argued that the defendant is charged with crimes that are non-violent. Defendant is charged with fourteen felony counts of invasion of privacy in the first degree under section 565.252, RSMo. No reasonable person would tell a crime victim that just because they were not physically assaulted that they were not violated by the behavior proscribed in this section.

⁷ “[T]he role of this Court is to decide cases – not to fix problems. When courts try to fix problems, unanticipated consequences sometimes lead to further confusion and complications.” *Id.* at *19 n.3, (Fischer, J. dissenting).

process and determination of indigency. *State v. Lewis*, 222 S.W.3d 284 (Mo. banc 2007); *section 600.086.1, RSMo.* Invalidation of the cash-only bond option would not invalidate the responsibility trial courts have in assessing the potential danger to crime victims, the community, or others.⁸ It should be presumed that dangerous and violent defendants, as well as those who pose a continuous disruption to public order, will be considered likely candidates for special conditions such as higher bond amounts. Indeed, repeat offenders who face enhanced sentencing are also legitimate candidates for higher bond amounts due to the increased likelihood of flight that comes with facing a lengthy prison sentence. Accordingly, the practical reality is that trial courts will likely compensate for the inability to order cash-only bonds with increased bond amounts subject to surety. Due to the basic nature of risk assessment in a business model, the bail bond industry⁹ presumptively will compensate to cover their losses on high bond amounts by adjusting their fees upward. There should be no expectation that defendants will be able to pay the increased bail bond fee, and the state will likely see an increase in pre-trial detention.¹⁰ This will have the result of creating more defendants who are classified as

⁸ Mo. Const. Art. I, Sec. 32.2

⁹ This industry is subject to minimal statutory regulation under section 374.700, et seq. RSMo.

¹⁰ This will also result in decreased availability for county jails to accept probationers for administrative jail sanctions under the Justice Reinvestment Act which was passed as HB1525, signed by the Governor, and will become effective on August 28, 2012.

indigent, funneling them into the caseload of the public defender system, a result the majority opinion clearly sought to avoid in *State ex rel. Missouri Public Defender Commission*.

Additionally, as a practical matter, cash-only bonds are often converted to court costs and restitution for crime victims, which is another guaranteed right under the Missouri Constitution.¹¹ Without the ability to retain and convert this cash to court costs and restitution, the criminal justice system and the innocent citizens it is meant to protect would suffer financial losses that should rightfully be paid by the criminal defendants who committed the underlying crimes.

CONCLUSION

Article I, Section 32.2 of the Missouri Constitution clearly controls and specifically allows for special conditions of bond that can reasonably include cash-only status. This is illustrated by both state statute and this Court's own Rule 33.01.

The ramifications of invalidation of the cash-only bail system in Missouri would be in contravention of the suggestions by the majority opinion in *State ex rel. Missouri Public Defender Commission*.

¹¹ Mo. Const. Art. I, Sec. 32.1(4)

While amicus respectfully disagrees with the assertion that there is a constitutional caseload crisis within the Missouri Public Defender System, the elimination of the cash-only bail system would only create more cases within that system.

In addition, the elimination of the cash-only bond system would result in increased county jail populations, thereby undermining the goal of the Justice Reinvestment Act and result in less likelihood of collection of court costs and crime victim restitution.

For these reasons, the defendant's application for relief should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I, the undersigned, hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 2,170 words, excluding the cover, certification and appendix, as determined by Microsoft Word, and;
2. That a true and correct copy of the foregoing was sent through the e-filing system this 20th day of August, 2012 to: Louis R. Horwitz, attorney for defendant and a registered user of the eFiling system and Rebecca Shaffar, attorney for plaintiff and a registered user of the eFiling system.

/s/Robert P. McCulloch

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