The Supreme Court of Ohio

CASE ANNOUNCEMENTS

December 3, 2020

[Cite as *12/03/2020 Case Announcements #2*, 2020-Ohio-5506.]

MERIT DECISIONS WITHOUT OPINIONS

2020-1320. Hartman v. Schilling.

In Habeas Corpus. Sua sponte, cause dismissed.

O'Connor, C.J., and French, Fischer, and DeWine, JJ., concur.

Kennedy, J., dissents, with an opinion.

Donnelly, J., dissents and would grant the writ.

Stewart, J., not participating.

KENNEDY, J., dissenting.

{¶ 1} Because the allegations in Mitchell Hartman's petition for a writ of habeas corpus and exhibits that are attached to it do not demonstrate that the trial court abused its discretion in setting the amount and conditions of bail in Hartman's criminal prosecution, I would deny his petition on the merits. I write separately, however, because this case illustrates how this court now has two competing lines of precedent regarding our standard of review for habeas actions in which the petitioner alleges the imposition of excessive bail. Does this court review the trial court's imposition of bail for an abuse of discretion (as the majority seems to do today) or does this court review the trial court's order de novo and without any deference to the lower court's decision (as we have previously held)? Until we resolve this contradiction and reconcile our caselaw, this area of law will remain a source of confusion for litigants, lawyers, and jurists alike.

{¶ 2} The majority's dismissal of Hartman's petition conflicts with our recent decision in *Mohamed v. Eckelberry*, ___ Ohio St.3d ___, 2020-Ohio-4585, ___ N.E.3d ___. In that case,

Hassan Mohamed had filed a threadbare petition for a writ of habeas corpus asserting that the bond set by the trial court was excessive, yet we nonetheless ordered a return of the writ and received new evidence at a hearing before a master commissioner. *See id*. at ¶ 1. We then applied a de novo standard of review, explaining that "in an original action, an appellate court may permit a habeas petitioner to introduce evidence to prove his claim and then exercise its own discretion in imposing an appropriate bail amount." *Id*. at ¶ 5.

{¶ 3} We did not defer to the trial court's exercise of discretion in setting the amount of bail; instead, we "completed an independent review of the record," *id*. at ¶ 15, and agreed with the master commissioner that the $1,000,000 cash or surety bond on which Mohamed was being held was excessive, *id.* at ¶ 2, 15. We reduced it to $200,000, secured by the deposit of 10 percent of the amount of the bail bond in cash, a surety bond, or property. *Id.* at ¶ 15. This court retained the nonfinancial conditions imposed by the trial court but also imposed new conditions: "Mohamed shall be monitored electronically, he shall surrender his passport if he owns one, he will reside with his father in Columbus and nowhere else, he may travel for necessities and for reasons related to the care of his father, and he may not leave the state of Ohio." *Id*.

{¶ 4} It is not possible to square our decision in *Mohamed* with today's summary dismissal of Hartman's petition. As I explained in my dissent in *Mohamed,* this court created a new right "open to all criminal defendants in this state who are dissatisfied with the amount of bail that has been imposed by a trial court" through which this court could exercise its "sole, unreviewable discretion [and] substitute its judgment for that of the trial court." *Id*. at ¶ 27 (Kennedy, J., dissenting).

{¶ 5} If *Mohamed,* ___ Ohio St.3d ___, 2020-Ohio-4585, ___ N.E.3d ___, is still the law, however, it is unclear how this court could ever dismiss a petition for a writ of habeas corpus for failure to state a claim for relief when the petitioner's claim is that his bail is excessive. If *Mohamed* controls, Hartman is entitled to our de novo review and the same process that we applied in *Mohamed*: ordering a return on the writ and an evidentiary hearing before one of this court's master commissioners. The majority fails to justify why the doors it threw wide open in *Mohamed* are now closed shut to Hartman.

{¶ 6} Hartman's petition arguably presents a stronger case for relief than the petition that was filed in *Mohamed*. Crim.R. 46(B) states that when a trial court determines that denying bail is not required by statute, "the court shall release the defendant on the least restrictive conditions

that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the protection or safety of any person or the community, and that the defendant will not obstruct the criminal justice process." Prior to his conviction and the reversal of that conviction by the court of appeals, *State v. Hartman*, 8th Dist. Cuyahoga No. 105159, 2018-Ohio-2641, ¶ 38-54, *aff'd*, __ Ohio St.3d __, 2020-Ohio-4440, __ N.E.3d __, Hartman had been released on bail. Defense counsel indicated at the bond hearing after the reversal of his conviction that Hartman had attended all hearings and was not a threat to the public or the criminal-justice process. Unlike Mohamed, Hartman submitted the transcript of his bond hearing, during which the trial court imposed more onerous conditions of release than it had previously imposed on Hartman, including home detention and global-positioning-system ("GPS") monitoring.

{¶ 7} Nonetheless, I adhere to the view expressed in my dissent in *Mohamed* that we review a trial court's decision pertaining to bail for an abuse of discretion, because "[t]he discretion to set bail * * * is committed to the trial court by Article I, Section 9 of the Ohio Constitution and Crim.R. 46." *Mohamed* at ¶ 27 (Kennedy, J., dissenting). A habeas action is within the original jurisdiction of this court, and we therefore "take a de novo review of the evidence presented in the trial court and any new evidence submitted to this court." *Id*. at ¶ 37 (Kennedy, J., dissenting). "But the focus remains on whether the petitioner is entitled to a writ of habeas corpus," *id*., and when a petitioner claims that he or she is unlawfully confined on excessive bail, the petitioner is not entitled to a reduction in bail unless the petitioner first demonstrates that the trial court abused its discretion in setting the bail amount, *id*. at ¶ 38 (Kennedy, J., dissenting).

{¶ 8} An " ' "abuse of discretion" * * * implies that the court's attitude is unreasonable, arbitrary or unconscionable.' " (Ellipsis added in *White*.) *State v. White*, 118 Ohio St.3d 12, 2008-Ohio-1623, 885 N.E.2d 905, ¶ 46, quoting *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). A trial court will also be found to have abused its discretion when its decision exhibits a "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd*., 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993).

{¶ 9} It is debatable whether setting a bond with new conditions of release was needed to assure Hartman's appearance in court, to protect the public, and to ensure the fair administration of justice. If this court actually reviewed the evidence in this case under a de novo standard of review, it might come to a different conclusion than the trial court. However, because this court's proper standard of review for an excessive-bail claim is that of an abuse of discretion—not a de

novo standard of review—I would overrule this court's holding in *Mohamed*, ___ Ohio St.3d ___, 2020-Ohio-4585, ___ N.E.3d ___. And because it cannot be said that the trial court's decision in this case was unreasonable, arbitrary, or unconscionable or otherwise exhibited perversity of will, passion, prejudice, partiality, or moral delinquency, I would deny Hartman's petition for a writ of habeas corpus.