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In Chesapeake, some jailed inmates can’t get a new bond hearing despite coronavirus pandemic

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| CHESAPEAKE

Earlier this month, a Chesapeake public defender asked the court to consider letting a man facing a drug charge out on bond because of the coronavirus pandemic.

As COVID-19 spread, hundreds of thousands had been infected worldwide and thousands had died, attorney Erik Mussoni wrote in his request. The local jail “has never confronted a global health pandemic like this one.”

“People who have control over their bodies are self-isolating to prevent contracting or spreading this deadly disease,” the lawyer wrote.

Mussoni’s client, Danial Curtin, was arrested in August last year on a charge of possessing methamphetamine. He initially got a bond, but it was revoked in November.

Curtin’s ongoing detention during the pandemic posed a threat to his life and to the health and safety of the community, Mussoni wrote, adding that no judge had found holding him without bond was necessary to ensure public safety or prevent him from fleeing.

 In his 10-page request, Mussoni cited information from the World Health Organization, Centers for Disease Control and the White House. He included national, state and local infection numbers and information from experts on health in jails and prisons

Five days later, in a written order, a Circuit Court judge denied Mussoni’s request for an emergency hearing.

His isn’t the only such request for bond to be rejected without a court hearing. Kathleen Ortiz, the city’s top public defender, said Circuit Court judges have denied at least two bond hearing requests from attorneys in her office for people who previously had a bond denied in that court.

Circuit Court judges have denied at least three other bond hearings requested by public defenders for clients who have never before had a bail hearing in that court, she said. In one of those cases, guidelines recommend a sentencing range of one day to three months behind bars if the person is found guilty, according to Ortiz. In another case, the defendant never had a bond hearing in the lower court, either, she said.

Ortiz said it has been frustrating, and she and the other lawyers in her office believe the coronavirus qualifies as a “change in circumstances” — that their clients should get a chance in court to argue for bond once more. The top public defenders in Norfolk, Portsmouth, Hampton and Newport News said Circuit Court judges in their cities are granting hearings on such requests — even if some defendants are still ultimately denied bond.

“At least give us the opportunity to be heard. What is the harm in that?” Ortiz said. “That’s all we’re asking.”

In a joint statement last month, the governor’s office, state Department of Corrections, Indigent Defense Commission and the associations of Virginia sheriffs, regional jails and commonwealth’s attorneys said state law provides tools for criminal justice officials to “work collaboratively” to prevent spread of the illness while upholding public safety. Ortiz said she believes denying requests for bond hearings runs counter to that.

Randall Smith, Chesapeake Circuit Court’s chief judge, declined a request for a phone interview for this story, citing “Judicial (canons) and ethics.” But in an email, he said his court's judges are relying on the Supreme Court’s emergency order, the governor’s executive orders and their own discretion when deciding how to rule during the pandemic.

Some people have to be given a bond hearing, Smith wrote, such as those just arrested or those who have appealed a lower court's denial of bond. In other cases, the judges must weigh defendants’ arguments for why hearings are necessary against the risks of holding them. Smith noted the courts must also hold other essential hearings, such as guardianships and requests for protective orders or civil injunctions.

Unlike other neighboring cities, Smith said, Chesapeake only has one courtroom with secure video and audio capabilities, and it’s busy with essential hearings most of the day. But he added that judges “are concerned that other cases may require attention or hearing,” so they are vetting written requests for hearings.

The public defenders could appeal the denials to the Court of Appeals, although they haven’t done so yet.

In similar cases in Alaska last month, three men were denied second or subsequent bail review hearings, with judges finding the coronavirus pandemic was not “new information” justifying a new bail hearing, according to court documents. But that state’s Court of Appeals ultimately reversed those decisions, ordering the lower courts to hold a bail review hearing in each case, court records show.

“We hold simply that the defendants are entitled to hearings at which an individualized assessment of their bail release proposals, in the context of the COVID-19 pandemic, can occur,” the court order says.

In Chesapeake, requests for bond hearings for defendants who've already had one go to the presiding judge, who determines if a hearing is necessary.

Even under normal circumstances, outside of the pandemic, defense attorneys who ask for a bond hearing for clients who’ve already had one in that court must show there has been a change in circumstances that warrants a new hearing.

“This allows judicial resources to be used wisely, and avoids the possibility of a few cases preventing others from being considered,” Smith wrote in his email to The Virginian-Pilot.

Ortiz said that during the pandemic, it has become a more onerous challenge to get judges to hear those bond reconsiderations in court. The bar seems higher, she said.

“If COVID-19 isn’t a change in circumstances, I don’t know what is,” Ortiz said.

For Mussoni’s client, not getting a new bond hearing was frustrating, the attorney said. He had asked for a hearing in part because he was worried about his elderly mother, who has health issues and is at risk, the lawyer had written in his request.

A few days after Mussoni made his request in that case, another public defender, Oksana LaBounty, filed a nearly identical motion for one of her clients.

Lloyd Ramsey is waiting to be sentenced and has been incarcerated since May last year on charges of misdemeanor destruction of property and felony attempting to break and enter, according to LaBounty’s motion filed in court. He was denied bond in General District Court last year and again on appeal in Circuit Court.

LaBounty said the sentencing guidelines in Ramsey’s case call for a period of probation, not jail time, although she said prosecutors contest that. LaBounty said the prosecutor opposes granting her client bond but was not opposed to him getting a hearing.

But the request for one was rejected.

Ortiz said attorneys in her office have had success getting bond hearings in General District Court — and in getting their clients out, too — but that’s been more challenging in Circuit Court, where felony cases are heard.

In Norfolk, Public Defender Sherri Carr said lawyers in her office have not had a hard time getting hearings for bond reconsideration in Circuit Court. Judges there hold bond hearings three times a day because of the volume of cases, she said.

Portsmouth’s top public defender, Brenda Spry, said Circuit judges there are hearing her requests as quickly as she can make them. The judges have granted a number of bonds, she said, and they haven’t refused to hear any motions she’s filed.

Matthew Johnson, public defender for Hampton, said he notified judges early on that there was going to be a flood of bond hearings. Within the first few weeks of the pandemic, his office had 50 to 60 bond hearings across all levels of state court, requesting them first for high-risk clients, such as the elderly and people with pre-existing conditions.

“Our goal is to get everybody out that we can,” he said.

Johnson said judges in Hampton have been agreeable to setting bond hearings the attorneys request.

In Chesapeake, Ortiz said her office did 31 bond motions in Circuit Court from March 17 to March 31 and 17 so far this month.

She said getting bail hearings is perhaps even more pressing now: A food service contractor at the city jail and three deputies have tested positive for the illness this month, and the sheriff recently got state permission to convert a vacant building there into a housing unit for coronavirus-positive inmates, possibly from throughout the region, should the need arise.

No inmates at the city jail have tested positive for the illness, according to the sheriff’s office.

In the meantime, public defenders’ phones are ringing with panicked clients and their families on the other end.

“People are really nervous,” said Robin Winn, one of the attorneys in Ortiz’s office. “Every day I’m getting these calls: ‘Why can’t you get him out?’

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