

334 So.3d 696
District Court of Appeal of Florida, Second District.

Melissa COSSIO, Petitioner,
v.
Carmine MARCENO, Jr., Sheriff of Lee County,
Respondent.
Gabriel Cossio, Petitioner,
v.
Carmine Marceno, Jr., Sheriff of Lee County,
Respondent.

Nos. 2D21-2749, 2D21-2777
|
February 18, 2022

Synopsis

Background: Married co-defendants indicted on drug-related charges filed consolidated petitions for writ of habeas corpus challenging order of the Circuit Court, 20th Judicial Circuit, Lee County, [Robert Branning, J.](#), revoking their bonds and denying their respective motions to strike pretrial release condition that prohibited them from having contact with each other.

[Holding:] The District Court of Appeal, [Khouzam, C.J.](#), held that state's interests were not so compelling to justify pretrial release condition that prohibited married co-defendants from having contact with each other.

Petitions granted.

Procedural Posture(s): Appellate Review; Bail or Custody Motion.

West Headnotes (3)

- [1] [Bail](#) Imposition of conditions in general
[Bail](#) Amount of Bail
[Criminal Law](#) Preliminary proceedings

Trial court's determination of amount for bail or bond and conditions of release is discretionary and subject to reversal only if that discretion is abused, but that discretion is not unlimited,

particularly with respect to conditions of release that result in sweeping restrictions on important constitutional rights.

[2] [Bail](#) Imposition of conditions in general

State's interests were not so compelling to justify pretrial release condition that prohibited married co-defendants indicted on drug-related charges from having contact with each other; even as amended to allow third-party contact regarding childcare matters, restriction interfered with their fundamental marital rights by precluding communication regarding wide variety of matters about which married couples needed to communicate on regular—if not daily—basis but which had nothing to do with case or relevant state's interests.

[3] [Bail](#) Imposition of conditions in general

Pretrial release conditions restricting fundamental rights may be justified so long as they are narrowly tailored to relevant governmental interests.

***697** Petition for Writ of Habeas Corpus to the Circuit Court for Lee County; [Robert Branning, Judge.](#)

Attorneys and Law Firms

[Christopher H. Brown](#) of Brown, Suarez, Rios & Weinberg, P.A., Fort Myers, for Petitioner Melissa Cossio, and [Landon P. Miller](#) of Mangone & Miller Law Offices, P.A., Naples, for Petitioner Gabriel Cossio.

Ashley Moody, Attorney General, Tallahassee, and Johnny T. Salgado, Assistant Attorney General, Tampa, for Respondent.

Opinion

KHOUZAM, Judge.

In these consolidated petitions for writ of habeas corpus, petitioners Melissa Cossio and Gabriel Cossio—a married couple—challenge the trial court’s order revoking their bonds and denying their respective motions to strike a pretrial release condition that prohibited them from having contact with each other. Because the trial court abused its discretion in revoking the bond based on a violation of a special condition of pretrial release that permitted almost no contact between the married couple, we granted their petitions in a prior order. This opinion explains our decision. Our prior order also stayed enforcement of the no-contact provision. The stay is hereby lifted, and the no-contact provision is quashed to the extent that it is inconsistent with this opinion.

The petitioners have been married for thirteen years and have two children together. They are also codefendants, each charged with several counts of trafficking and possession of illegal substances. In addition, Mr. Cossio was charged with one count of fleeing to elude law enforcement at high speed.

The court granted the Cossios’ respective motions for pretrial release. But as one of their conditions, the court ordered ***698** them to have no contact with any codefendants, including each other. At the request of the parties, the court subsequently modified the condition to allow for third-party contact so that the petitioners could address childcare matters.

While Mr. Cossio was in jail, he called his son. About two minutes into the call, Mrs. Cossio entered the conversation. They spoke for about ten minutes about securing funds and collateral for Mr. Cossio’s bond. A few days later, Mr. Cossio posted bond and was released.

Based on the recorded phone conversation, the State filed a motion to revoke the petitioners’ respective bonds. Both petitioners filed motions to strike the no-contact condition as void ab initio. The trial court denied the motions, noting that the “no contact order was clear, unambiguous, and reasonable in consideration of the nature and gravity of the charges.”

[1]“A trial court’s determination of the amount for bail or

bond and conditions of release is discretionary and subject to reversal only if that discretion is abused.” *Norton-Nugin v. State*, 179 So. 3d 557, 559 (Fla. 2d DCA 2015). However, that discretion is not unlimited, particularly with respect to “conditions of release that result in ‘sweeping restrictions on important constitutional rights.’ ” See *United States v. Martinez*, Nos. 4:21-cr-00107-SMR-HCA-1 & 2, 2021 WL 4169789 (S.D. Iowa Sept. 13, 2021) (quoting *United States v. Hobbs*, 845 F.3d 365, 368 (8th Cir. 2016)).

Because sweeping no-contact orders prohibiting defendants from making contact with their spouses implicate the fundamental right of marriage, courts have consistently been reluctant to uphold such orders and, absent extraordinary circumstances, generally draw the line at restrictions that go beyond the scope of the pending cases. See, e.g., *Hobbs*, 845 F.3d at 367 (vacating condition of postsentencing supervised release prohibiting any contact with codefendant spouse as overly broad); *State v. Guill*, 359 Mont. 225, 248 P.3d 826, 827-28 (2011) (upholding sentencing restriction prohibiting all contact with codefendant husband in light of his extraordinary psychological manipulation in “factually one of the more bizarre cases to reach this Court”); *State v. Rieger*, 286 Neb. 788, 839 N.W.2d 282, 288-89 (2013) (reversing condition of probation prohibiting all contact with spouse for entry of less restrictive condition); *State v. Martin*, 282 Or. 583, 580 P.2d 536, 539-40 (1978) (en banc) (narrowing condition of probation prohibiting defendant from associating with anyone ever convicted of a crime to exclude her husband, noting the trial court’s findings “might have been sufficient to support a condition of probation that defendant not associate with her former partner in crime, had that person not been her spouse”); *State v. Muldowney*, No. 2013-138, 2013 WL 2631206, at *2 (Vt. Apr. 18, 2013) (upholding pretrial order prohibiting defendant from discussing pending charges and alleged victims with his wife, a witness in the case); *State v. Warren*, 165 Wash.2d 17, 195 P.3d 940, 948 (2008) (en banc) (upholding order prohibiting contact with wife where condition was necessary to protect her and the child victims from defendant).

The case that we find most analogous to ours is *Martinez*, 2021 WL 4169789, which involved a no-contact provision imposed on married codefendants in the context of pretrial release. Mr. and Mrs. Martinez had been married at least thirteen years when they were indicted on drug-related charges. *Id.* at *1-*2. The parties were granted pretrial release with the condition of avoiding all contact with codefendants. *Id.* at *1. Mr. Martinez argued that their constitutional interest in marriage “outweigh[ed] the government’s pretrial interest ***699** in preventing

contact between codefendants.” *Id.*

The court began its analysis by noting that “[c]ourts sometimes impose no-contact orders between married codefendants as conditions of pretrial release.” *Id.* The court pointed out that the no-contact order would last only a few months, as compared to posttrial no-contact orders, which might span years. *Id.* at *2. However, the court also agreed that conditions of release should not broadly restrict important constitutional rights and “[w]here a more narrowly-tailored condition is available, it must be used.” *Id.* (citing *Hobbs*, 845 F.3d at 369).

Ultimately, the *Martinez* court concluded that “[t]he government’s interests are not so compelling ... as to justify prohibiting communication altogether.” *Id.* The court therefore granted the couple’s motion to modify the conditions of pretrial release “to permit communication with each other about matters unrelated to the criminal case, subject to the condition that, upon request ..., they must provide records of any electronic communications with each other.” *Id.* at *3. The court held that it was justifiable to restrict the parties from residing together or discussing matters related to their criminal case. *Id.* at *2; see also *United States v. Vandenberg*, 761 F. App’x 655, 657 (8th Cir. 2019) (upholding the limited restriction prohibiting defendant from living with his parents but allowing him to have contact with them). This narrowly tailored alternative to the original no-contact order would still serve the government’s interests of “preventing collusion and/or witness tampering, protecting the public from further criminal offenses, and deterring both defendants.” *Martinez*, 2021 WL 4169789 at *2.

^[2] ^[3]Here, too, the State’s interests are not so compelling to justify the substantial prohibition fashioned by the trial court. Even as amended to allow third-party contact regarding childcare matters, the restriction precludes communication regarding a wide variety of matters about which married couples must communicate on a regular—if not daily—basis but which have nothing to do with the case or the relevant State’s interests. Such a sweeping restriction infringes on the Cossios’ fundamental marital rights. However, as the *Martinez* court recognized, some restrictions even on such fundamental rights may be justified so long as they are narrowly tailored to the relevant governmental interests—in this case, to assure the presence of the accused at trial and to protect the community from the risk of physical harm to persons. See § 907.041(4)(c)(7), Fla. Stat. (2020).

For these reasons, we granted the petitions and vacated the revocation of the Cossios’ pretrial release. The no-contact provision is quashed to the extent that it is inconsistent with this opinion.

Petitions granted.

LaROSE and SMITH, JJ., Concur.

All Citations

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