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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 10/4/2024 8:31 AM

2 Opinion Number: _____

3 Filing Date: October 4, 2024



Ramon J. Maestas
Chief Clerk

4 **No. A-1-CA-42156**

5 **STATE OF NEW MEXICO,**

6 Plaintiff-Appellee,

7 v.

8 **ROMAINE BEGAY,**

9 Defendant-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY**

11 **Jennifer Delaney, District Court Judge**

12 Raúl Torrez, Attorney General

13 Santa Fe, NM

14 Tyler Sciara, Assistant Solicitor General

15 Albuquerque, NM

16 for Appellee

17 Mario A. R. Carreon

18 Las Cruces, NM

19 for Appellant

1 **OPINION**

2 **WRAY, Judge.**

3 {1} This matter is before us on expedited appeal pursuant to Rule 12-204 NMRA.
4 The district court granted the State’s motion for pretrial detention under Rule 5-409
5 NMRA, and Defendant appeals. Discerning no abuse of discretion, we affirm.
6 Further, we write in this case to explain this Court’s understanding and application
7 of our Supreme Court’s decision in *State v. Anderson*, 2023-NMSC-019, 536 P.3d
8 453.

9 {2} Our Supreme Court has interpreted Article II, Section 13 of the New Mexico
10 Constitution, to allow “a defendant charged with a felony [to] be detained without
11 bail prior to trial if the [s]tate demonstrates by clear and convincing evidence that
12 (1) the defendant is dangerous and (2) no release conditions will reasonably protect
13 the safety of any individual or the community.” *Anderson*, 2023-NMSC-019, ¶ 1. To
14 determine whether the state has met its burden to justify pretrial detention without
15 bond, district courts are instructed to consider a number of factors, as well as “any
16 fact relevant to the nature and seriousness of the danger to any person or the
17 community that would be posed by the defendant’s release and any fact relevant to
18 the issue of whether any conditions of release will reasonably protect the safety of
19 any person or the community.” Rule 5-409(F)(6). The district court is afforded great
20 discretion to conduct this balance. *See Anderson*, 2023-NMSC-019, ¶ 34.

1 Nevertheless, the district court must “consider all facts relevant to the detention
2 inquiry” and “must always conduct a totality of the circumstances analysis in
3 reaching a decision on pretrial detention.” *Id.* ¶ 60.

4 {3} In the present case, the district court granted the State’s motion to detain
5 Defendant. On appeal, Defendant does not challenge the district court’s
6 determination of dangerousness. Instead, Defendant argues that the district court did
7 not consider “less restrictive conditions of release rather than incarceration,”
8 including the impact of incarceration on Defendant’s family and Defendant’s lack
9 of criminal history, significant community ties, and resignation from teaching. On
10 appeal, we “reverse a district court’s ruling on pretrial detention if the ruling ‘is
11 arbitrary, capricious, or reflects an abuse of discretion; is not supported by
12 substantial evidence; or is otherwise not in accordance with law.’” *Id.* ¶ 34
13 (alteration omitted) (quoting Rule 12-204(D)(2)(b)).

14 {4} Our Supreme Court has directed that when considering whether any
15 conditions of release will reasonably protect the safety of any person or the
16 community, “the district court must consider not only whether a defendant is likely
17 to comply with release conditions but also the likely consequences to any person or
18 the community should a defendant fail to comply.” *Anderson*, 2023-NMSC-019,
19 ¶ 58. This evaluation is not independent from, but instead “must be viewed in light
20 of, the magnitude of a defendant’s dangerousness.” *Id.* ¶ 59. We view this to require

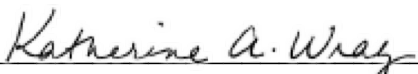
1 that the district court, in considering the efficacy of conditions of release, specifically
2 weigh the defendant's history of committing dangerous crimes together with the
3 dangerousness of the charged crime, the likelihood that the defendant will violate
4 conditions of release, the risks to the community if the defendant does violate
5 conditions of release, and any other relevant circumstances. *See id.* (noting that "the
6 district court must evaluate each case on its particular facts and consider the totality
7 of the circumstances"); Rule 5-409(F) (requiring the district court to consider "any
8 fact relevant" to the inquiries).

9 {5} That balance in the present case involved Defendant's criminal history and
10 convictions for any violent crimes together with any evidence that Defendant might
11 violate conditions imposed on him and the risk to the children of the community
12 should Defendant violate those conditions. In the order, the district court noted
13 Defendant's lack of criminal history and the absence of evidence that Defendant
14 might violate conditions as well as the dangerousness of the charged crime, the
15 evidence supporting the charges, and Defendant's existing relationships with
16 children in the community. To the extent that Defendant argues that the impact of
17 pretrial detention on Defendant's family is relevant, while we do not hold that such
18 an inquiry is required we note that the district court weighed those facts in the
19 balance. The district court reviewed evidence that Defendant's wife requires
20 assistance with day-to-day tasks and that his son had to attend college remotely to

1 care for her while Defendant was incarcerated. The district court explained that it
2 had considered “how to ensure the community’s safety if you were released based
3 on the horrific situation that you’ve put your family in” but expressed unwillingness
4 to “take the risk” that others would be harmed by Defendant’s conduct. This balance,
5 the district court explained at the hearing, rendered the risk to the community too
6 great should Defendant violate conditions of release. As a result, the district court
7 found by clear and convincing evidence that no conditions of release could “be
8 fashioned at this time that would keep the community safe.” In light of the whole
9 record, we conclude that the district court’s decision is not “unreasonable or without
10 rational basis” and is supported by evidence “that a reasonable mind would find
11 adequate.” *See id.* ¶ 34.

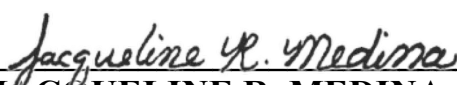
12 {6} We therefore affirm the district court’s order granting the State’s motion for
13 pretrial detention.

14 {7} **IT IS SO ORDERED.**

15 
16 **KATHERINE A. WRAY** Judge

17 **WE CONCUR:**

18 
19 **KRISTINA BOGARDUS**, Judge

20 
21 **JACQUELINE R. MEDINA**, Judge