

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. 18006804CF10A

vs.

JUDGE: WEEKES

ALAN J POLLACK,
Defendant.

**EMERGENCY MOTION FOR RELEASE ON RECOGNIZANCE OR
IN THE ALTERNATIVE TO REDUCE BOND**

The Defendant, ALAN J POLLACK, by and through the undersigned attorney, moves this Honorable Court for the entry of an Order directing the Defendant to be released on his own recognizance, or in the alternative to set a nominal bond.

BACKGROUND INFORMATION

The Defendant would show the following as grounds for this motion:

1. The Defendant is incarcerated at the Broward County Jail for violation of probation due to a no bond warrant signed by this Honorable Court.
2. The Defendant was original charged with one count of "Sexual Battery Fail to Comply with Law."
3. The allegations contained in the warrant against the defendant are strictly technical in nature.
4. On May 5, 2019, Defendant was placed on Level 2 Pre-trial Release on a GPS monitor and released to Project Soar, a residential treatment program.
5. On January 30, 2020, Defendant's case was resolved and Defendant was placed on probations for a term of five (5) years.
6. On March 6, 2020, BSO Probation Services filed an affidavit accusing him of violating the conditions of his probation by changing his residence without first procuring the consent of his probations officers.

7. The affidavit alleges that on or about March 3, 2020 the Defendant did move from his last known place of residence at 11 NW 32nd Ave, Lauderhill, Florida, which is the location for Project Soar.
8. The affidavit also alleges that on February 9, 2020, the Defendant “refused to submit to electronic monitoring as evidenced by triggering a bracelet gone alarm” on February 9, 2020 and on March 3, 2020.
9. The Defendant is a sixty-four (64) year-old male with a physical disability and is confined to a wheel chair.
10. Defendant also has a history of mental health concerns.
11. Defendant is not a flight risk.
12. Defendant is not a danger to the community.
13. The Defendant is indigent pursuant to Section 27.52, Florida Statutes and is financially only able to post a nominal bond.
14. The Defendant’s indigent status is an important consideration in determining the conditions of pretrial release.
15. The Defendant is **not** charged with a capital crime or an offense punishable by life imprisonment. The Defendant is entitled to a reasonable bond based upon his specific financial circumstances. See, Hamilton v. Bieluch, 29 Fla. L. Weekly D 2209 (Fla. 4th DCA 2004); Williams v. State, 855 So. 2d 1206 (Fla. 5th DCA 2003); Winer v. Spears, 771 So. 2d 621 (Fla. 3rd DCA 2000); Henley, v. Jenne, 796 So. 2d 1273 (Fla. 4th DCA 2001); Elliot v. Jenne, 745 So. 2d 1101 (Fla. 4th DCA 1999); Martin v. Jenne, 745 So. 2d 412 (Fla. 4th DCA 1999); Patterson v. Neuman, 707 So. 2d 946 (Fla. 4th DCA 1998); Cameron v. McCampbell, 704 So. 2d 721 (Fla. 4th DCA 1998).
16. Other grounds to be argued *ore tenus*.

ARGUMENT FOR EMERGENCY RELEASE

I. The Defendant must be immediately released because the COVID-19 global pandemic poses a dangerous threat to public health and safety within jail populations.

The coronavirus global pandemic poses an extremely dangerous threat to the health and safety of all jail populations. Incarcerated defendants, detention deputies, jail personnel, and multiple stakeholders face a disproportionate risk of fatal infection.

Pursuant to F.S. 90.202 and 90.203, the Defendant further motions this Court to take judicial notice of the following:

- A. Public health experts recognize that COVID-19 poses a dangerous threat to jail populations.¹
- B. Correctional health expert, Dr. Marc Stern advises that a “**smaller population**” in jails, and detention centers can help to significantly reduce the spread of disease.²
- C. Public health experts believe preventing the spread of coronavirus within jail and prison populations will be a difficult challenge.³
- D. Public health experts recognize that “[t]he coronavirus spreads quickly in closed spaces, like cruise ships, nursing homes – **and jails and prisons.**”⁴
- E. The CDC has recommended that no gatherings occur with more than 50 people.⁵
- F. The Whitehouse Coronavirus Task Force goes a step further and recommends that there be no gatherings of groups of more than 10 people.⁶
- G. Large metropolitan areas are taking steps to reduce jail population.⁷

Accordingly, it is imperative for this Honorable Court to immediately reduce the jail population by releasing those who are charged with non-violent offenses that do not pose a threat of danger to society. Because of the global pandemic jury trials have been suspended, court hearings have been postponed, and thousands of businesses have closed

¹ US: COVID-19 Threatens People Behind Bars; <https://www.hrw.org/news/2020/03/12/us-covid-19-threatens-people-behind-bars#>

² *Id.*

³ US Jails and Prisons are Fertile Grounds for Infectious Disease; <https://www.businessinsider.com/experts-keeping-prisons-free-of-coronavirus-will-be-a-challenge-2020-3>

⁴ Prisons and Jails are Vulnerable to COVID-19 Outbreaks; <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>

⁵ The CDC Recommends Cancellation of Events with 50 People or More; <https://www.cnn.com/2020/03/15/health/us-coronavirus-sunday-updates/index.html>

⁶ White House Advises Public to Avoid Groups of More than 10; <https://www.cnn.com/2020/03/16/politics/white-house-guidelines-coronavirus/index.html>

⁷ Los Angeles Sheriff Releasing Inmates, Urging Fewer Arrests to Help Combat Coronavirus; <https://www.nbcnews.com/news/us-news/los-angeles-sheriff-releasing-inmates-urging-fewer-arrests-help-combat-n1161206>

nationwide. Likewise, appropriate steps must be taken to protect jail populations. It is evident that jails are a breeding ground for infectious diseases. Notably, Broward County leads the state of Florida in confirmed cases of COVID-19 by a significant margin.⁸ Healthcare services at the jail will be overrun if this highly-contagious pandemic affects the jail population. Furthermore, the higher the jail population, the higher the risk of community spread. Detention deputies and jail personnel are at high risk of contracting the coronavirus. Jail personnel return to the community and may infect family, friends, and those whom they contact in the community, further contributing to community spread. Under these circumstances, unnecessary incarceration poses an unjustified risk to human life.

II. The Defendant must be released because he is not a danger to the community, and the risks of prolonged incarceration significantly outweigh any potential benefits.

The primary purpose of a bail determination in criminal proceedings is (1) to ensure the appearance of the criminal defendant at subsequent proceedings, and (2) to protect the community against **unreasonable** danger from the criminal defendant. *See* Section 903.046(1), Florida Statutes (2019) (emphasis added). The State has no evidence showing that the Defendant is a flight risk or that his release poses any “unreasonable” danger to the community, therefore he should be released on his own recognizance (ROR) or on standard-pretrial release. Additionally, speedy trial time periods have been tolled, and all regular court dockets have been suspended or cancelled; Defendants should not languish in custody if the court system has come to a halt.

⁸ Coronavirus: Broward Leads State In Coronavirus Cases, Big Weekend Jump Statewide; <https://miami.cbslocal.com/2020/03/16/coronavirus-broward-leads-state-in-coronavirus-cases-big-weekend-jump-statewide/>

It is important to note that a defendant's financial circumstances must be considered. "[E]vidence of financial resources of the defendant must be heard and taken into consideration before bond is set." *Martin v. Jenne*, 745 So. 2d 412, 414 (Fla. 4th DCA 1999). "Although bond schedules serve a valid purpose, they may not provide a justification for excessive bail." *Rawls v. State*, 540 So. 2d 946 (Fla. 5th DCA 1989). No defendant's life or health should be at risk simply because he is too poor to post a bond or too poor to afford a house for purposes of "Level-2" house arrest. Furthermore, the general public health should not be jeopardized by an unnecessarily high jail population, simply because most defendants in the criminal justice system cannot afford bail.

Pursuant to Florida law, the Court must consider a broad set of criteria including the nature and circumstances of the offense charged, attempts to avoid prosecution, defendant's criminal history, and any other facts that the court considers relevant, among others. See Section 903.046(2), Florida Statutes (2019). The Defendant's unique circumstances require immediate release. Furthermore, the Defendant is not a flight risk and does not pose any unreasonable danger to the community. In summary, any possible societal "benefit" is vastly outweighed by the risks of continued incarceration:

1. The risk to the Defendant's health and safety outweighs the need for incarceration.
2. The risk to the remainder of the jail population outweighs the need for incarceration.
3. The risk to jail personnel outweighs any societal benefit derived from incarceration.
4. The risk of community spread outweighs any possible benefit derived from incarceration.

5. The risk of cruel or unusual punishment (including jail quarantine, solitary confinement, or possible death) significantly outweighs any possible benefit derived from incarceration.

Given the totality of the circumstances, this Honorable Court must immediately release the defendant on his own recognizance (ROR) or in the alternative set a nominal bond.

WHEREFORE, the Defendant, respectfully motions this Honorable Court to grant this Emergency Motion for Release for the safety of all stakeholders including incarcerated defendants, jail personnel, and the general public.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, KRISTEN ODIJK, at courtdocs@sao17.state.fl.us, Broward County Courthouse, Fort Lauderdale, Florida, this March 19, 2020.

HOWARD FINKELSTEIN
Public Defender
17th Judicial Circuit

s/ PARBATTIE RAMPERSAUD

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