

Bail Able

By: Lance Hester; April 2003

Division III has recently held that courts ordering “cash only” bail violate CrR 3.2(a). See City of Yakima v. Mollett, No. 20548-7-III, Div. III (2003). For years attorneys and defendants have felt “cash only” bail is a violation of the court rule and the state constitution. Finally, an attorney and defendant have been passionate enough about the cause that it has been brought before Division III.

Despite explicitly ruling the case “moot,” the court reviewed the matter because it involved a “matter[s] of continuing and substantial public interest.” Mr. Mollett proceeded with arguments based on both the court rule and the state constitution. The court resolved in Mr. Mollett's favor based on the court rule, thereby not reaching the constitutional argument.

The relevant portion of the rule reads, “...require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;”

The court concluded “CrRLJ 3.2(a)(5) does not authorize ‘cash only’ bail to the exclusion of a bond.” This conclusion was based on a reading of the entire rule, while dismissing the city's argument that the “deposit of cash” clause is wholly independent from the rest of the rule/clause. The court emphasized the need to read this clause in the context of the entire rule, which results in the more reasonable interpretation that posting cash is an option the trial court may order *along with* the primary condition of a bond. The court noted, “If the rule drafters intended to authorize ‘cash only’ bail, they could have easily set it out as a discrete condition of release.” The ultimate conclusion was that the rule does not authorize cash only bail to the exclusion of a bond.

Most courts I have been in recently have demonstrated their adaptation to this recent ruling. However, various prosecutors seem to be adjusting the amount for which they request bail to reflect significantly higher amounts than before, thus making the cash portion on a bond the same as what would otherwise be fully refundable as bail. In fact, at least one municipal judge recently shared that he has seen on-line discussions between members of the district court bench on ideas for circumventing the above rule while discussing bail. Because it's a relatively new issue and one that will remain important in the near future, the practitioner should make sure to object any time the state or a judge suggests bail is to be “cash only.” Further, the objection should be clearly articulated as based on *both* of the following: (A) CrR

3.2 (or CrRLJ 3.2) and Yakima v. Mollett, and (B) Article I, Section 20 of the Washington Constitution. Because the court did not reach the constitutional issue in Mollett, it may be an upcoming issue should the Supreme Court resolve things contrary to the court-rule-based decision of Mollett.

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