



**GENERAL SESSIONS COURT
ANDERSON COUNTY TENNESSEE
SEVENTH JUDICIAL DISTRICT**

Don A. Layton
Judge Division I
Room 303 Courthouse
Clinton, TN 37716
(865) 457-6217

Carol Higgs,
Judicial Aide

March 25, 2013

Ronald N. Murch
Judge Division II
101 Bus Terminal Rd.
Oak Ridge, TN 37830
(865) 425-0370

Dolores Brosseau
Judicial Aide

Anderson County Commission
Anderson County Courthouse
100 N. Main St.
Clinton, TN 37716

Dear Honorable Mayor and Anderson County Commissioners:

We have tried to avoid comment on many public and written statements made by Mr. Baker, but his continued assault on the Judiciary has misrepresented the situation to Commission and the public and has left us no choice but to respond. Mr. Baker came into his job without knowledge of the laws of this state setting forth the authority or responsibility for the release of persons from jail, with absolutely no experience with such matters in this state or county, and based on our understanding of his qualifications, none or little elsewhere. The Judges of this county dealing with those issues have collectively over 40 years of judicial experience with many years beyond that as lawyers involved in the criminal justice system, yet to hear Mr. Baker tell it, he has all the answers to significantly reduce the jail population and save the county "millions of dollars per year by reducing the population in jail", but which he can't do because the Judges refuse to cooperate with him. Jail overpopulation is a problem throughout this state. It is in no manner unique to Anderson County. No one else has found the magic bullet.

The fact of the matter is that Mr. Baker has made no real attempt to work with the Judges. He was on the job for about one month before he met with Judge Layton, almost 3 months before he met with Judge Murch, and for about one month before he met Judge Elledge. He never talked to the Judges or inquired about what we were doing, why we did what we do, or what we had done regarding release of prisoners. His approach was he had preconceived notions about what he was going to do, and he was going to do it his way without regard to what the law or the Judges required and that he could force the Judges to accept that. His continued erroneous public assault on the Judiciary is an example of that approach.

He was advised that the law provides he must have the Judges approval and consent on and all matters pertaining to release of inmates, and as they bear the responsibility and consequences for those decisions he should bring his ideas or proposals to the Judges for approval. He would agree he should do that only to follow up with public or written criticism that the judges failed to cooperate with him. Apparently, not agreeing with him is considered by him as a failure to cooperate. He was advised he could be more effective in reducing the future jail population by focusing upon persons sentenced already to jail who have much more incentive to change their ways. He has done some of that, of which the effectiveness won't be known for some time, but he stubbornly refused to accept what the law requires with regard to pretrial release of inmates and to understand the consequences and responsibility for those decisions fall upon the Judiciary. One of the recommendations in his letter of resignation about pretrial and probation is completely contrary to the law of this state and shows he continues to disregard what the law is.

Commission and the public can rest assured the Judges of this county are acutely aware of and equally concerned by the problems, monetary and otherwise that are caused by jail overcrowding. Many factors are considered by us in determining whether to release pretrial detainees. We utilize our experience, our knowledge of the particular defendant, the allegations of the sworn warrant, likelihood criminal behavior would continue, the affidavit of income and expenses showing where they live, what type of family do they have, and their employment, seriousness and nature of the charges, past record of the individual and his history with the court, including likelihood of showing up to court or failure to appear in the past or failures to comply with previous pretrial release or probation terms. Mr. Baker has criticized us for using what he describes as a subjective rather than objective approach without understanding what all we consider in making those decisions and without understanding we have firsthand experience dealing with and knowledge of many of these individuals.

The placement, confinement, or retention of anyone to jail is a responsibility taken very seriously by all of us. It affects many lives. There are numerous factors we take into account depending on each particular case. Sometimes the decision is clear and easy. In others it is a difficult decision. It is never taken lightly or without regard to careful analysis. None of the Judges have an agenda to fill up all available jail space. Jail populations continue to grow everywhere, fueled mostly by growth of drug use, though defendants do not serve significant jail time just for use of drugs alone, but rather because of the sale of drugs or other crimes such as burglary, robbery, and other theft related crimes that have shown a significant increase to pay for the drugs. We cannot ignore our responsibility to the public because it increases the jail population.

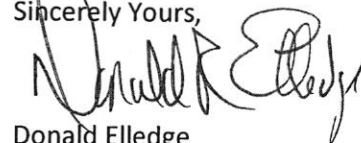
The Judiciary is a separate branch of government with specific responsibilities placed upon it. There are times that requests or desires of the administrative and legislative branches can be accommodated or are in accord with the responsibilities of the Judiciary, and times legislative or administrative request can't be accommodated just as we understand these branches can't always accommodate our request. We have always tried to accommodate requests of Commission where possible and where not in conflict with our responsibilities. However, we are bound by our oaths, responsibilities, and obligations under the law and to the citizens to do the job we were elected to do and that means there may be times or things that Commission would prefer or want us to do that we cannot do. It is not a matter of

cooperating or refusing to cooperate. It is the operation of separate branches of government each performing their responsibilities.

There seems to be a lack of understanding or knowledge that we have taken many steps in the past and continue to look for ways to reduce the jail population. We have released individuals at the request of the jail medical staff that would not otherwise be released because of their serious medical problems and attendant costs that would entail. We have lessened some sentences from what we would have otherwise given. Bonds for non violent or less serious crimes have been reduced. Community service in lieu of jail has been used. The use of ankle bracelets in lieu of jail has been implemented in some cases. Some defendants are encouraged and given the opportunity to go to rehab in lieu of jail. Community Corrections and Drug Court have been implemented in the Criminal Court. Within the boundaries of costs and available resources, and within the boundaries of the law and our responsibilities we always remain open to consideration of all avenues to reduce not only current but future jail populations.

We have attached various statutes pertaining to the law on responsibility for release of prisoners. There is also attached a copy of an e-mail recently received that may shed some light on the effect jail may have on some individuals. The name is redacted to protect the senders identity.

Sincerely Yours,



Donald Elledge
Criminal and Circuit Judge



Don A. Layton
General Sessions Judge
Division I



Ron N. Murch
General Sessions Judge
Division II

Attachment, T.C.A
Attachment, email

From: Ronald Murch [REDACTED]
Sent: Thursday, March 21, 2013 9:16 AM
To: [REDACTED]
Subject: Sucessful life turnaround

[REDACTED] Angie Alley has forwarded your email wherein you stated you have been clean for 5 years. I was glad to learn of that as all too often we do not see or do not hear about successful recoveries. I applaud you for that as I know it is a difficult road. There are too few success stories. If you are willing I would appreciate your sharing with me how you were able to successfully overcome your problems, including what you think worked well, what didn't, and the setbacks you may have faced on the road to recovery and how you overcame them. I am always interested in and looking for approaches that work in hopes that others may be able to follow the same path. If you are willing to respond to this you may do so at the email address above. If you get back to this area feel free to stop by the court.

Again, congratulations on your success.

No virus found in this message.

Checked by AVG - www.avg.com

Version: 10.0.1430 / Virus Database: 2641/5692 - Release Date: 03/20/13

From: [REDACTED]
Sent: Thursday, March 21, 2013 2:14 PM
To: Ronald Murch
Subject: RE: Successful life turnaround

***Please forgive me, I may be all over the place in this email.

Judge Murch,

I feel honored. Just to be honest with you, NO ONE will get clean until they are READY! I spent 5 years of my life smoking crack cocaine to cover up the horrible childhood I had! It took for me, in and out of jail, on the streets destroying myself. To be honest with you, on most days you were my life saver with the jail sentences. What really motivated me was in November of 2007 I got out of jail with the belief in myself that I would never use again but being in Oak Ridge, it was so easy to sue then get a job and do the right thing so I started using again, by February 2008 I already had a warrant for my arrest, I called this program in Nashville called Magdalene to get on the waiting list (Got on the waiting list in December) I knew I wanted to turn my life around but honestly I thought I would be a "crack head" the REST of my life! By February, I FINALLY walked into my Mom's house and hit my knees and said I needed help, at this time the "Dope Boys" were mixing crack and meth and that was TOO MUCH for me! I knew I was also facing another jail sentence so I started calling Magdalene to see where I was on the waiting list, after two weeks of calling, I finally got a bed in their "Safe House" on February 27,

2008 I took a suitcase of the few belongings that I still had and my Grandfather took me to Nashville and dropped me off. It was really scary for me, but I knew I wanted to change so I just held on and kept putting one foot in front of the other. Magdalene is an AMAZING program, it is two years of rent free living in nice houses, groups every day, they pay for EVERYTHING and really teach you how to live life on life's terms without the use of drugs. My teeth were rotting out of my mouth from the drugs, I had \$6300.00 worth of work done to them that the program paid for. I completed the program in 18 months, got my driver's license back, got insurance and a car. I then, moved out with my boyfriend, got married and had an AMAZING little girl who is now in her "terrible two's" I'm sad to say, my husband and I are no longer together so I am now a single mother. You will be happy to know, I support us 100%! I get absolutely no government services or child support! It makes me proud to say that after watching my Mother my entire life, live off of the state and not try to doing any better for her children. I grew up with my mother constantly trying to commit suicide and in and out of mental institutions, my step mom was the best thing to a mother for me but she was the first person to hand me a crack pipe after she let my Father and got strung out. I was dealt a rough hand but I have defiantly turned it around for the good. I have managed to work my way up on the totem pole as far as jobs go, I started at Thistle Farms which is a place of employment for the women of Magdalene, I have worked in gas stations, hotels, two treatment centers, Transitions Housing and Mending Hearts. I now work for a law firm called Center for Elder Veterans Rights, as a trained paralegal. I have been on this job for over a year now and I LOVE it!! It is VERY rewarding to assist disabled Veterans with getting

VA Benefits to assist with the cost of Assisted Living, Independent Living, etc. – I have even been able to come back to Anderson County Jail and share my story with the women which was very rewarding and something I would love to do again. I must say, it has not always been easy but it HAS been worth it!! Thank you so very much for inquiring about my story, there is more to it but this is what came from my heart. ----- Now, will you drop all my fines? I'm just kidding, a good laugh there! ☺ Take care Judge Murch! Please let me know if there is anything I can do to help you with assisting people in getting clean and sober! Thanks again for my life saving jail sentences!! My clean date is 2/27/2008!!

Bail of persons held for extradition, § 40-9-106.

Bail of persons taken in fresh pursuit by officers from other states, § 40-7-204.

Bail of workhouse prisoners, § 41-2-126.

Bail pending appeal, §§ 40-26-102, 40-26-103, 40-26-104.

Right of bail, Tenn. Const., art. I, § 15.

Taking recognizances on recommitment by supreme court, § 16-3-203.

Undertaking on continuance from term to term, § 40-18-103.

Section to Section References.

This chapter is referred to in §§ 40-1-111, 40-6-215, 67-4-803, 67-4-805.

This part is referred to in §§ 40-11-201, 40-13-302, and 40-20-111.

Sections 40-11-101 — 40-11-144 are referred to in §§ 40-11-103, 40-11-106, 40-11-111, 40-11-122.

Textbooks.

Tennessee Criminal Practice and Procedure (Raybin), § 4.3.

Tennessee Jurisprudence, 4 Tenn. Juris., Bail and Recognizance, §§ 3-5; 17 Tenn. Juris., Justices of Peace and General Sessions Courts, § 39.

40-11-102. Bailable offenses.

Before trial, all defendants shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. After conviction, defendants are bailable as provided by § 40-11-113, § 40-11-143 or both.

History.

Acts 1978, ch. 506, § 2; T.C.A., § 40-1202.

Cross-References.

Admission to bail for motor vehicle violations, § 55-10-203.

Bailable offenses, Tenn. Const., art. I, § 15.

Bail for defendant charged with commission of crime while free on bail, § 40-11-148.

Section to Section References.

Sections 40-11-101 — 40-11-144 are referred to in §§ 40-11-101, 40-11-103, 40-11-106, 40-11-111, 40-11-122.

Textbooks.

Tennessee Criminal Practice and Procedure (Raybin), §§ 4.1, 4.2, 4.5.

Law Reviews.

A Noble Ideal Whose Time Has Come (Penny J. White), 18 Mem. St. U.L. Rev. 223 (1989).

An Analysis of the Bail Reform Act of 1984, 53 Tenn. L. Rev. 145 (1985).

Bail Bonds Under the Tennessee Bail Reform Act of 1978 (Judge David D. Creekmore), 21 No. 1, Tenn. B.J. 23 (1985).

Comparative Legislation.

Admission to bail:

Ala. Code § 15-13-1 et seq.

Ark. Code § 16-84-101 et seq.

Ga. O.C.G.A. § 17-6-1 et seq.

Miss. Code Ann. § 99-5-1 et seq.

Mo. Rev. Stat. § 544.040 et seq.

N.C. Gen. Stat. § 15A-531 et seq.

Va. Code § 19.2-119 et seq.

Cited:

Indemnity Ins. Co. v. Blackwell, 653 S.W.2d 262, 1983 Tenn. App. LEXIS 546 (Tenn. Ct. App. 1983); Am. Bonding Co. v. Vaughn, — S.W.3d —, 2011 Tenn. App. LEXIS 486 (Tenn. Ct. App. Sept. 2, 2011).

Collateral References.

8A Am. Jur. 2d Bail and Recognizance § 1 et seq.

8 C.J.S. Bail § 1 et seq.

Bail ⇌ 49.39-97.

Tennessee Jurisprudence, 4 Tenn. Juris., Bail and Recognizance, § 3.

Law Reviews.

The Tennessee Bail System — What's the Best Cure? (Michael D. Brent), 8 Mem. St. U.L. Rev. 121.

Cited:

In re Sanford & Sons Bail Bonds, 96 S.W.3d 199, 2002 Tenn. Crim. App. LEXIS 473 (Tenn. Crim. App. 2002).

DECISIONS UNDER PRIOR LAW

1. Application.

Where the former section became law after defendant's arrest, its provisions concerning

bail did not apply to defendants. *Ellis v. State*, 544 S.W.2d 908, 1976 Tenn. Crim. App. LEXIS 338 (Tenn. Crim. App. 1976).

Collateral References.

Bail ⇐ 49.39-97.

40-11-114. Contents of written undertaking.

(a) Bail, when not given in open court, is given by a written undertaking, containing the conditions of release, the agreement of the defendant to appear in the court having jurisdiction of the offense as directed by the court and/or an amount to be paid for nonappearance, signed by the defendant, and if made under § 40-11-122(2), signed also by court-approved and sufficient surety or sureties. The written undertaking must be approved by the officer taking it.

(b) An electronically transmitted facsimile copy of a written undertaking shall have the same legal effect as the original written undertaking. An electronically transmitted facsimile copy of a written undertaking signed by the defendant shall have the same legal effect as the written undertaking signed by the defendant.

History.

Acts 1978, ch. 506, § 14; T.C.A., § 40-1214; Acts 1999, ch. 52, § 1.

Section to Section References.

Sections 40-11-101 — 40-11-144 are referred to in §§ 40-11-101, 40-11-103, 40-11-106, 40-11-111, 40-11-122.

Textbooks.

Pritchard on Wills and Administration of Estates (5th ed., Phillips and Robinson), § 858.

Tennessee Criminal Practice and Procedure (Raybin), § 4.12.

Tennessee Jurisprudence, 4 Tenn. Juris., Bail and Recognizance, § 6.

Law Reviews.

The Tennessee Bail System — What's the Best Cure? (Michael D. Brent), 8 Mem. St. U.L. Rev. 121.

Collateral References.

Bail ⇐ 49.39-97.

40-11-115. Release on recognizance or unsecured bond — Factors considered.

(a) Any person charged with a bailable offense may, before a magistrate authorized to admit the person to bail, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the magistrate.

(b) In determining whether or not a person shall be released as provided in this section and that a release will reasonably assure the appearance of the person as required, the magistrate shall take into account:

- (1) The defendant's length of residence in the community;
- (2) The defendant's employment status and history, and financial condition;
- (3) The defendant's family ties and relationships;
- (4) The defendant's reputation, character and mental condition;
- (5) The defendant's prior criminal record, including prior releases on recognizance or bail;

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(6) The identity of responsible members of the community who will vouch for defendant's reliability;

(7) The nature of the offense and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of nonappearance; and

(8) Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.

History.

Acts 1978, ch. 506, § 15; T.C.A., § 40-1215.

Section to Section References.

Sections 40-11-101 — 40-11-144 are referred to in §§ 40-11-101, 40-11-103, 40-11-106, 40-11-111, 40-11-122.

This section is referred to in §§ 40-11-104, 40-11-116, 40-11-117, 40-11-120.

Textbooks.

Tennessee Criminal Practice and Procedure (Raybin), §§ 4.1, 4.6, 4.22, 4.24.

Tennessee Jurisprudence, 4 Tenn. Juris., Bail and Recognizance, § 10.

Cited:

O'Rourke v. O'Rourke, 337 S.W.3d 189, 2009 Tenn. App. LEXIS 315 (Tenn. Ct. App. June 5, 2009).

Collateral References.

Application of state statute establishing pre-trial release of accused on personal recognizance as presumptive form of release. 78 A.L.R.3d 780.

Bail ⇌ 49.39-97.

40-11-116. Conditions on release.

(a) If a defendant does not qualify for a release upon recognizance under § 40-11-115, then the magistrate shall impose the least onerous conditions reasonably likely to assure the defendant's appearance in court.

(b) If conditions on release are found necessary, the magistrate may impose one (1) or more of the following conditions:

(1) Release the defendant into the care of some qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. This supervisor shall maintain close contact with the defendant, assist the defendant in making arrangements to appear in court, and, where appropriate, accompany the defendant to court. The supervisor shall not be required to be financially responsible for the defendant, nor to forfeit money in the event the defendant fails to appear in court. The department of correction and its officers are not to be considered an appropriate qualified organization or person under this section;

(2) Impose reasonable restrictions on the activities, movements, associations and residences of the defendant; and/or

(3) Impose any other reasonable restriction designed to assure the defendant's appearance, including, but not limited to, the deposit of bail pursuant to § 40-11-117.

History.

Acts 1978, ch. 506, § 16; T.C.A., § 40-1216; Acts 2001, ch. 443, §§ 1, 2; 2012, ch. 727, § 10.

Compiler's Notes.

For the preamble to the act concerning transfers of certain functions relating to probation and parole services and the community correction grant program from the board of probation

and parole to the department of correction, please refer to Acts 2012, ch. 727.

Acts 2012, ch. 727, § 63 provided that the implementation of the act, which amended subdivision (b)(1), shall be fully accomplished on or before January 1, 2013.

Amendments.

The 2012 amendment substituted "depart-

*Problem with
bail is we
wanted to
ask questions
Not
interfere*

pre-trial inception

ment of correction" for "board of probation and parole" in the last sentence of (b)(1).

Effective Dates.

Acts 2012, ch. 727, § 63. July 1, 2012.

Section to Section References.

Sections 40-11-101 — 40-11-144 are referred to in §§ 40-11-101, 40-11-103, 40-11-106, 40-11-111, 40-11-122.

This section is referred to in § 40-11-104, 40-11-117.

Textbooks.

Tennessee Criminal Practice and Procedure (Raybin), §§ 4.1, 4.6, 4.22, 4.26.

Tennessee Jurisprudence, 4 Tenn. Juris., Bail and Recognizance, § 6.

Cited:

State v. Carter, — S.W.3d —, 2012 Tenn. Crim. App. LEXIS 403 (Tenn. Crim. App. June 15, 2012).

Collateral References.

Bail ⇌ 49.39-97.

40-11-117. Bail security required.

Absent a showing that conditions on a release on recognizance will reasonably assure the appearance of the defendant as required, the magistrate shall, in lieu of the conditions of release set out in § 40-11-115 or § 40-11-116, require bail to be given.

History.

Acts 1978, ch. 506, § 17; T.C.A., § 40-1217.

Section to Section References.

Sections 40-11-101 — 40-11-144 are referred to in §§ 40-11-101, 40-11-103, 40-11-106, 40-11-111, 40-11-122.

This section is referred to in §§ 40-11-104, 40-11-110, 40-11-116.

Textbooks.

Tennessee Criminal Practice and Procedure (Raybin), § 4.1.

Tennessee Jurisprudence, 4 Tenn. Juris., Bail and Recognizance, §§ 1, 6, 14.

Cited:

State v. Carter, — S.W.3d —, 2012 Tenn. Crim. App. LEXIS 403 (Tenn. Crim. App. June 15, 2012).

Collateral References.

Bail ⇌ 49.39-97.

40-11-118. Execution and deposit — Bail set no higher than necessary — Factors considered — Bonds and sureties.

(a) Any defendant for whom bail has been set may execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money in cash equal to the amount of the bail. Upon depositing this sum, the defendant shall be released from custody subject to the conditions of the bail bond. Bail shall be set as low as the court determines is necessary to reasonably assure the appearance of the defendant as required.

(b) In determining the amount of bail necessary to reasonably assure the appearance of the defendant while at the same time protecting the safety of the public, the magistrate shall consider the following:

- (1) The defendant's length of residence in the community;
- (2) The defendant's employment status and history and financial condition;
- (3) The defendant's family ties and relationships;
- (4) The defendant's reputation, character and mental condition;
- (5) The defendant's prior criminal record, record of appearance at court proceedings, record of flight to avoid prosecution or failure to appear at court proceedings;

(6) The nature of the offense and the apparent probability of conviction and the likely sentence;

(7) The defendant's prior criminal record and the likelihood that because of that record the defendant will pose a risk of danger to the community;

(8) The identity of responsible members of the community who will vouch for the defendant's reliability; however, no member of the community may vouch for more than two (2) defendants at any time while charges are still pending or a forfeiture is outstanding; and

(9) Any other factors indicating the defendant's ties to the community or bearing on the risk of the defendant's willful failure to appear.

(c)(1) Whenever a court's judgment includes the requirement that the defendant pay a fine or cost, the court may require that the payment of the fine or cost be secured by surety bond or other appropriate undertaking if such defendant has a history of past due fines and costs. A parent, guardian or other responsible party may be permitted to act as surety in order to guarantee the payment of the fine or cost.

(2) Notwithstanding any other provision of law to the contrary, unless the surety executes a bond or agreement which specifically makes the surety liable for the fine, cost, or restitution, no surety shall be held liable for the fine, cost or restitution without the surety's consent.

(d)(1) When the court is determining the amount and conditions of bail to be imposed upon a defendant, the court shall consider the use of special conditions for the defendant, including, but not limited to, the conditions set out in subdivision (d)(2), if the defendant is charged with a violation of § 39-13-106, § 39-13-213(a)(2), § 39-13-218 or § 55-10-401, and the defendant has one (1) or more prior convictions for a violation of § 39-13-106, § 39-13-213(a)(2), § 39-13-218 or § 55-10-401.

(2) The special conditions the court shall consider pursuant to subdivision (d)(1) are:

(A) The use of ignition interlock devices;

(B) The use of transdermal monitoring devices or other alternative alcohol monitoring devices;

(C) The use of electronic monitoring with random alcohol or drug testing; or

(D) Pretrial residency in an in-patient alcohol or drug rehabilitation center.

(3) As used in this subsection (d), "court" includes any person authorized by § 40-11-106 to take bail.

(e) After an inquiry pursuant to § 40-7-123 into the citizenship status of a defendant who is arrested for causing a traffic accident resulting in either the death or serious bodily injury, as defined in § 55-50-502, of another while driving without a valid driver license and evidence of financial responsibility as required by § 55-12-139, if it is determined that the defendant is not lawfully present in the United States, when determining the amount of bail, the defendant may be deemed a risk of flight.