

Samiuddin v. Nothwehr

Citation: No. CR-16-0422-PR, 2017 WL 4974744 (Ariz. Nov. 2, 2017).

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Author: Justice Lopez

Joined by: Chief Justice Bales, Vice Chief Justice Pelander, Justices Brutinel, Timmer, Bolick, and Gould.

Facts: Samiuddin was charged under Arizona law with five counts of public sexual indecency to a minor and two counts of public sexual indecency after he allegedly appeared nude at his apartment window and masturbated in view of two women and five children who were walking on the sidewalk. These victims claimed that Samiuddin ran out of his apartment in a towel wrapped around his waist and told the victims that he was innocent. Samiuddin denied the victim's allegations, including the interaction after the alleged exposure.

Procedural history: The trial court released Samiuddin on bail with pretrial release conditions, including that he reside apart from his family and that he have no contact with minors under any circumstances.¹ Samiuddin sought to modify these release conditions because he claimed to live with several of his minor children, and therefore wanted unsupervised contact with his children by permitting him to return home.² After a hearing, the trial court modified the release conditions to allow Samiuddin to have contact with his children if he was supervised by a court approved monitor and paid the cost of the court approved supervision.³

On appeal, Samiuddin argued that Arizona law did not authorize the trial court's conditions, but even if it did, the conditions violated his Fourteenth Amendment due process rights. The court of appeals declined jurisdiction of the special action, but the Arizona Supreme Court granted review because Samiuddin lacked a sufficient remedy for appellate review and the issue regarding standards for pretrial release conditions in the context of parent's access to minor non-victim children is recurring and of statewide importance.⁴

Issue: After the accused was charged with public sexual indecency and public sexual indecency to a minor, the trial court imposed pretrial release conditions that required the accused to reside apart from his family and have no unsupervised contact with his minor non-victim children. Is this permitted under Arizona law, and if so, do these conditions violate the Due Process Clause of the Fourteenth Amendment?

Holding: No. Arizona's Constitution, rules, and statutes authorize the trial court to impose these pretrial conditions. However, the conditions must comply with Arizona Rules of Criminal Procedure, which require release conditions be "the least onerous" that are

¹ Samiuddin v. Nothwehr, No. CR-16-0422-PR, 2017 WL 4974744, at *1 (Ariz. Nov. 2, 2017).

² *Id.*

³ *Id.*

⁴ *Id.* at *2.

“reasonable and necessary to protect other persons or the community,” which is to be considered by an individualized determination by the trial court.

Disposition: The trial court’s decision regarding Samiuddin’s pretrial release conditions were vacated and remanded to reconsider the conditions, because the Arizona Supreme Court lacked an adequate record to review whether the trial court’s conditions comply with the Arizona Rules of Criminal Procedure and are based on an individualized determination.

Rule: Arizona law permits the trial court to impose pretrial release conditions that require an accused to reside apart from his/her family and the s/he have no unsupervised contact with his/her minor non-victim children, but these conditions must be made by the trial court through an individualized determination that the conditions are the least onerous, and are reasonable and necessary to protect other persons or the community.

Reasoning:

- **Law Authorizing Pretrial Conditions:** The court first cited the Arizona Constitution, which provides three grounds for imposing pretrial bail and release conditions: “(1) to ‘assur[e] the appearance of the accused’; (2) to ‘protect against the intimidation of witnesses’; and (3) to ‘protect the safety of the victim, any other person or the community.’”⁵ The court also cited Arizona statutes that permit judicial officers to impose bail or release conditions with discretion to restrict a person’s associates or prohibit a person from engaging in certain described activities.⁶ Furthermore, the Arizona Rules of Criminal Procedure provide judicial officers substantial discretion to impose pretrial release conditions.⁷
- **Authority to Impose the “No Unsupervised Contact” Pretrial Release Condition:** The Arizona Constitution, statutes, and rules all permit pretrial release conditions that prohibit or restrict an accused’s ability to contact his/her minor non-victim children if the condition is “the least onerous” and “reasonable and necessary” to ensure their safety.⁸
- **Due Process and Pretrial Release Conditions:** The court agreed that Samiuddin has a fundamental right to parent his children, and that the pretrial release conditions implemented by the trial court implicate that right. However, the infringement does not require strict scrutiny review.⁹ Overall, “a defendant’s fundamental parental rights may be balanced with the state’s interest in protecting the accused’s children.”¹⁰ Also, Arizona’s scheme for imposing pretrial conditions satisfies the Fourteenth Amendment’s substantive due process standards “because, by its terms,

⁵ *Id.* (citing ARIZ. CONST. art. II, § 22(B)).

⁶ *Id.* (citing ARIZ. REV. STAT. ANN. § 13-3967(D)(2), (D)(4) (2017)).

⁷ *Id.* (citing ARIZ. R. CRIM. P. 7.2–.3).

⁸ *Id.* at *3.

⁹ *Id.* (citing *Simpson v. Miller (Simpson II)*, 241 Ariz. 341, 347–48 (2017)).

¹⁰ *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 750–51 (1987)).

it requires courts to tailor pretrial release conditions to be the least onerous, reasonable and necessary to effectuate the state's compelling interest in protecting 'other persons or the community.'"¹¹

- **Evidentiary Hearing:** Arizona rules and statutes do not require an evidentiary hearing to impose initial pretrial release conditions or to reconsider the conditions. The only requirement is an opportunity to be heard on release conditions.¹² Furthermore, an evidentiary hearing is not a procedural due process requirement under the test provided by the Supreme Court in *Mathews v. Eldridge*,¹³ which requires courts to consider the following factors do determine whether procedural due process requires additional safeguards such as an evidentiary hearing:
 1. The private interest affected;
 2. "The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and
 3. "The Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."¹⁴
- The court applied the test to Samiuddin and concluded:
 1. Samiuddin's private interest was not substantially affected because speedy-trial rules limit the pretrial conditions to the duration of his criminal case and the objective of the conditions is not to interfere with or sever his parental rights.
 2. The risk of error due to procedural inadequacies was not apparent in Samiuddin's case.
 3. The state's interest did not require an evidentiary hearing under due process standards because the court was not persuaded that there was value to be gained through an evidentiary hearing that outweighed the additional fiscal and administrative burdens stemming from more litigation.
- **Individualized Determination:** To determine the "least onerous" release condition "reasonable and necessary" to protect the public, the judge must make an individualized determination.¹⁵ This is a case-specific inquiry that considers the future dangerousness of the accused.¹⁶ The determination requires the trial court to make findings and articulate its reasoning as to why the condition upholds the

¹¹ *Id.* (citing *United States v. Wolf Child*, 699 F.3d 1082, 1092–93 (9th Cir. 2012)).

¹² *Id.* at *5 (citing ARIZ. R. CRIM. P. 4.2(a)(7)).

¹³ 424 U.S. 319 (1976).

¹⁴ *Id.* at 335.

¹⁵ *Samiuddin*, 2017 WL 4974744, at *6 (citing *Simpson v. Miller (Simpson II)*, 241 Ariz. 341, 347–48 (2017)).

¹⁶ *Id.*

standard. Here, the court did not have a sufficient record to review whether the trial court's conditions complied with the rules and were based on an individualized determination.