

Case Law Update:

First District Illinois Appellate Court: No More Denial Of Bail In The Absence Of Statutory Procedures: *People V. Gil*

by Adam J. Sheppard

In December, 2019, in *People v. Gil*, 2019 IL APP (1st) 192419, the First District Illinois Appellate Court held that before a judge can deny bail to a defendant who is charged with an otherwise bailable offense on grounds that the defendant is dangerous, the State must file a “verified petition” for no bail (as the statute requires). Moreover, the defendant is entitled to a hearing on that issue.

Statutorily, there are very few offenses that are non-bailable, *e.g.*, capital offenses (which no longer exist in Illinois) or offenses where the defendant faces life imprisonment. However, judges had been routinely ordering no bail on otherwise bailable offenses by determining, *sua sponte*, that the defendant posed a danger to the community. In issuing those no-bail orders, judges relied on Circuit Court General Order 18.8A (entered July 17, 2017). General Order 18.8A was an order from Chief Judge Evans which was largely meant to encourage more I-bonds and affordable bail in less serious cases. Statistics from the Office of the Chief Judge show that the order had that desirable effect.

Unfortunately, judges also interpreted one paragraph of that order as giving them the authority to deny bail to a defendant who was otherwise statutorily bailable. The paragraph in question states, “If the court determines that release on bail is not appropriate,” the court shall enter certain findings as to why it believed the defendant was a danger. See Gen. Order 18.8A, ¶4.

The comments to the order show that the paragraph was really intended to ensure that judges entered thorough findings on the record to allow for meaningful review of bail decisions. However, judges were interpreting that paragraph as according them the discretion to deny bail when they deemed a defendant dangerous even if the State had not petitioned for no bail.

Gil clarifies that Chief Judge Evans’s order does not grant judges the authority to deny bail absent compliance with statutory procedures. Specifically, before a judge can deny bail to a defendant on grounds that he is charged with a non-probationable offense and poses a risk of danger, the State must file a “verified petition” to deny bail and the defendant is entitled to a hearing on that issue. At that hearing, the defendant has certain rights such as limited discovery, the right to call witnesses, and the right to petition the court to compel the presence of the complainant. See 5/110-6.1.

The *Gil* decision stemmed from the arrest of Jason Gil, a 43-year-old with no criminal history, a master’s degree from the University of Chicago, strong family ties (children), and roots in the community. Pretrial Services graded him a “1-1” on the Public Safety Assessment, meaning he was the lowest risk to commit new criminal activity and the lowest risk to fail to appear.

The State charged Gil with sex offenses relating to an alleged relationship with a minor. It did not allege force or threat of force. Notwithstanding that fact, and despite Gil’s positive background, judges denied him bail based on dangerousness. As the appellate court noted, however, there was no real evidence that Gil’s admission to bail actually posed a danger to anybody.

Gil's lawyers – the undersigned author and his partner – petitioned three judges to release Gil on bail. After exhausting bail review in the Circuit Court, they appealed. The First District of the Illinois Appellate Court reversed the no-bail order from the trial court and remanded the case for the setting of bail. Bail was subsequently set and Gil has been released on bail. The case remains pending.

The facts of *Gil* illustrate the type of cases for which judges are inclined to set no bail: cases involving serious and extremely prejudicial allegations. However, as the Appellate Court has now reaffirmed, the seriousness of the case alone is not a sufficient ground on which to conclude that a defendant is dangerous. Before a judge can deny bail on grounds that the defendant is facing a non-probationable case and poses a threat of dangerousness, the State must file a “verified petition” requesting no bail and a hearing must be held on that issue. At that hearing, the State bears the burden of proving by “clear and convincing evidence” that the defendant’s admission to bail poses a “real and present” threat to a person or persons and that “no condition or combination of conditions” will reasonably assure the physical safety of another person or persons. *Id.* at 6.1. Practitioners should be steadfast in holding the State to those statutory requirements.

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