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VERONICA HANDY, ESQUIRE
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For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

KEVIN MORAN,)	S. Ct. Crim. No. 2022-0001
Appellant/Defendant,)	Re: Super. Ct. Crim. No. 112/2021 (STX)
)	
v.)	<u>Consolidated Cases:</u>
)	S. Ct. Crim. No. 2022-0001
)	S. Ct. Crim. No. 2022-0007
PEOPLE OF THE VIRGIN ISLANDS,)	
Appellee/Plaintiff.)	
)	
)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Jomo Meade

Considered and Filed: April 8, 2022

Cite as: 2022 VI 9

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

APPEARANCES:

Pamela L. Colon, Esq.
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St. Croix, U.S.V.I.
Attorney for Appellant,

Michael Robert Francisco, Esq.
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Attorney for Appellee.

OPINION OF THE COURT

PER CURIAM.

¶ 1 This matter comes before the Court pursuant to a motion for summary reversal filed by Kevin Moran, which requests that we set aside multiple decisions of the Superior Court denying various motions to modify the conditions of his pretrial release. For the reasons that follow, we

grant the motion and reverse the pertinent orders of the Superior Court.

I. BACKGROUND

¶ 2 On April 28, 2021, the People charged Moran with various offenses, including first-degree unlawful sexual contact and aggravated assault. The Superior Court issued a pretrial release order on April 30, 2021, which authorized his release upon posting of a \$67,500 unsecured bond or a secured bond or cash in the amount of \$7,500. The pretrial release order directed Moran to reside at his specified residence and to not to leave the island of St. Croix without the written permission of the Superior Court, but did not order him released to a third-party custodian, impose a curfew, require electronic monitoring, or place other restrictions on his movement.

¶ 3 On May 17, 2021, Moran filed a motion requesting permission to travel to the mainland United States from June 10, 2021, to August 28, 2021. Moran stated that during this time he would spend time assisting his wife, who was scheduled to undergo shoulder surgery, at their second home in Fairhope, Alabama; travel with his wife to visit her elderly parents in Connecticut; and represent the Virgin Islands in a qualifier for a national triathlon held in Wisconsin. Moran’s proposed travel did not conflict with any in-person court appearances scheduled for his case. In a June 4, 2021 opposition, the People opposed the motion to travel solely on grounds that “[t]he rationale for pretrial release is to reduce the custodial burden on the judicial system,” that “[p]retrial release does not mean that a criminal defendant’s life while awaiting disposition of the criminal matter is business as usual” and “is definitely not an opportunity to allow criminal defendants to travel unnecessarily and to take leisurely vacations,” that “[Moran]’s actions of planning and booking a summer vacation after being arrested and charged with various serious felonies . . . indicates a fundamental lack of appreciation for the judicial process and a message that Mr. Moran is above the law,” and that “[g]ranted [Moran]’s motion to take a leisurely

vacation while on pretrial release for myriad serious felonies would undermine the judicial process and send the wrong message to the victim and the community at large—that Mr. Moran is above the law.”

¶ 4 The Superior Court held a hearing on the motion on June 10, 2021, and orally announced that it would grant it in part by permitting travel to Alabama, denying permission to travel to Wisconsin, and permitting only one week of travel to Connecticut. The Superior Court also imposed conditions on his travel, including requiring that he fly by plane and submit his tickets and itinerary prior to travel; that he report to the Office of Probation by video conference every Tuesday and Friday; that he surrender his passport and execute a waiver of extradition; and that he surrender any firearms upon arrival in Alabama. The Superior Court subsequently memorialized its ruling in a June 11, 2021 order.

¶ 5 Subsequently, Moran filed a motion to extend his return date from August 28, 2021, to September 3, 2021, due to his wife being re-admitted to the hospital on an emergency basis due to developing life-threatening blood clots in both of her lungs. The Superior Court, however, summarily denied the motion. Moran returned to the Virgin Islands as scheduled without incident after completing his travel.

¶ 6 On December 7, 2021, Moran filed a motion requesting permission to file a motion for judicial disqualification under seal. The Superior Court, however, did not immediately rule on this motion. Therefore, on December 13, 2021, Moran filed an emergency motion for permission to travel from St. Croix to Alabama from December 18, 2021, to January 9, 2022, so that he could spend the Christmas and New Year holidays with his wife and family. The People did not object to the request, and no in-person court hearings had been scheduled for this period. Nevertheless,

the Superior Court denied the motion in a December 15, 2021 order, which stated, in pertinent part, as follows:

The Court has previously granted the Defendant’s request to travel outside this jurisdiction from June to August 2021. The Court understands the Defendant’s desire to be with his family at this time. However, the Defendant is subject to restrictions in relation to very serious criminal charges. These restrictions are essential to administration of criminal justice. Even though the Defendant carries the presumption of innocence, he is not afforded the scope of movement to travel as one who has not been charged. The Defendant is aware of the restrictions that have been placed on his travel and could make other arrangements to be with his family in keeping with his current circumstances.

The Superior Court also issued a second order on December 15, 2021, granting the motion to file the disqualification motion under seal.

¶ 7 The next day, Moran filed an emergency motion for reconsideration of the December 15, 2021 order, as well as the sealed motion for judicial disqualification. In the reconsideration motion, Moran emphasized that the Superior Court had given no reason for denying the request other than the fact that he was charged with a crime and argued that both precedent from this Court as well as Rule 5.1 of the Virgin Islands Rules of Criminal Procedure required the Superior Court to make an individualized determination, to impose the least restrictive conditions of release, and to state its findings on the record. In the disqualification motion, Moran, among other things, relied on the statements the judge had made at a September 15, 2021 status conference with respect to his “personal opinions” or “personal philosophy” regarding accepting indigent appointments in sexual assault cases.

¶ 8 The Superior Court held a hearing on the reconsideration motion on December 17, 2021, orally denied it, and subsequently memorialized its decision in a December 21, 2021 order. In its order, the Superior Court stated that “[w]hile the Defendant has a right to bail . . . the Defendant does not have [a] right to have the terms of his pretrial release administered in his favor every time

he wishes to travel,” and held that “[t]he terms of release as set by the Magistrate have already been determined to be the least restrictive under the circumstances.”

¶ 9 After the Superior Court issued its oral order but before it memorialized it into writing, on December 20, 2021, Moran filed an emergency motion for modification of his conditions of release. In his motion, Moran requested that his release conditions be modified—whether permanently or temporarily—to remove the travel restriction completely, or to at a minimum permit travel between St. Croix and Fairhope, Alabama. The People opposed the motion, and again emphasized that “[g]ranted [Moran]’s motion to freely move about the country while on pretrial release for serious felonies would undermine the judicial process and send the wrong message to the victim and the community at large—that Mr. Moran is above the law.”

¶ 10 The Superior Court held a hearing on the modification motion on December 30, 2021. At the hearing, the Superior Court orally denied the modification motion on grounds that Moran had been charged with a serious crime and that the conditions were necessary to prevent him from being a flight risk or a danger to the community. The Superior Court ultimately issued a written order on January 13, 2022, consistent with its oral findings.

¶ 11 Moran filed a notice of appeal with this Court on January 10, 2022. On January 14, 2022, Moran filed a motion for expedited appeal and summary reversal, on the grounds that the Superior Court acted in a way contrary to established law. Although counsel for the People entered an appearance on January 26, 2022, the People never filed an opposition or other response to the summary action motion.

¶ 12 The Superior Court, in a January 19, 2022 order, scheduled a hearing on the judicial disqualification motion for February 10, 2022, which was subsequently rescheduled to March 14,

2022.¹ On January 28, 2022, Moran filed an emergency motion for permission to travel from St. Croix to Connecticut and Alabama from February 1, 2022, to February 15, 2022, to provide moral, emotional, and physical support to his 88-year-old mother-in-law, who had been hospitalized with COVID-19 and pneumonia and was likely to die, as well as his 91-year-old father-in-law, who was suffering from dementia. The People opposed the motion, and on January 31, 2022, the Superior Court issued an order denying it, first on the basis that “the assistance being rendered by Mr. Moran may be very limited since his mother-in-law is hospitalized with COVID and likely cannot receive visitors,” and also on the previously-stated grounds that he “is subject to the jurisdiction of this Court in relation to serious charges” and “cannot be allowed periods away from this jurisdiction under the circumstances.”

¹ Although not relevant to the issues raised on this appeal, we express concern with the decision of the Superior Court to rule on multiple substantive motions while the December 15, 2021 judicial disqualification motion remained pending. This Court has previously acknowledged that the filing of a disqualification motion does not automatically stay all proceedings in a summary contempt action. *See In re M.R.*, 64 V.I. 333, 352 n.5 (V.I. 2016). This, however, represents an exception to the general rule that motions requesting disqualification of judges or attorneys should receive priority consideration and be resolved prior to rulings on substantive motions. *See, e.g., Moody v. Simmons*, 858 F.2d 137, 142-43 (3d Cir. 1988); *Grimes v. District of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015). Certainly, it is understandable—and perhaps desirable—for the Superior Court to briefly defer consideration of a complex or novel disqualification motion to issue an immediate ruling on a highly time-sensitive motion for emergency relief that could become moot through inaction. However, the justification for declining to even set a hearing on a judicial disqualification motion until two months after it was filed is considerably less understandable and creates a real risk that multiple substantive matters will later need to be re-litigated before a new judge if disqualification is ultimately warranted. *See Moody*, 858 F.2d at 143. While this may no longer be a concern in this case, in that the Superior Court orally denied the motion for judicial disqualification at the March 14, 2022 hearing, we remind the Superior Court that the preferred practice is to resolve an outstanding question of judicial disqualification prior to other substantive motions unless there is an exigency or other appropriate reason to proceed differently.

¶ 13 Moran filed a second notice of appeal with this Court on February 2, 2022. On the same day, Moran also moved that the appeals be consolidated because they raise related questions of fact and law. This Court granted the motion.

II. DISCUSSION

¶ 14 This Court possesses jurisdiction over these appeals pursuant to title 4, section 32(a) of the Virgin Islands Code, which vests us with jurisdiction over “all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court.” *See also* 48 U.S.C. § 1613a(d). Although the Superior Court’s orders would not ordinarily qualify as a final judgment because they collectively do not resolve all issues between the parties, and do not come within the class of interlocutory orders that are appealable as of right,² we nevertheless possess jurisdiction under the collateral order doctrine, in that an order denying a motion for modification of bail (1) “conclusively determin[e]s the disputed question,” (2) “resolve[s] an important issue completely separate from the merits of the action,” and (3) is “effectively unreviewable on appeal from a final judgment.” *Rieara v. People*, 57 V.I. 659, 664-65 (V.I. 2012) (collecting cases).

¶ 15 “We review the trial court’s decisions regarding the amount of bail and other release

² As we previously explained,

The Supreme Court has jurisdiction over an appeal from a decision or order “detaining a person charged with or convicted of an offense” that is entered pursuant to section 3504a, of title 5 of the Virgin Islands Code or other provision of law. 4 V.I.C. § 33(d)(4). *See Browne v. People*, 50 V.I. 241, 246 (V.I. 2008). However, the trial court has not issued an order detaining [the defendant]; instead, it has issued an order granting his release, albeit under bail conditions he alleges that he cannot satisfy.

Rieara v. People, 57 V.I. 659, 664 (V.I. 2012). Because the Superior Court did not order Moran detained, but has in fact permitted his release under specified conditions, this appeal is not authorized by section 33(d)(4).

conditions for abuse of discretion.” *Id.* The Superior Court abuses its discretion when its “decision rests upon a clearly erroneous finding of fact, an errant conclusion of law or an improper application of law to fact.” *Stevens v. People*, 55 V.I. 550, 556 (V.I. 2011) (citations omitted). And as we have previously explained,

This Court may summarily affirm, reverse, vacate, or otherwise modify a Superior Court decision without full briefing and oral argument “if it clearly appears that no substantial question is presented or that subsequent precedent or a change in circumstances warrants such action,” provided that the parties receive “an opportunity to submit argument in support of or in opposition to such disposition.” V.I.S.Ct. I.O.P. 9.4. In other words, “[t]o invoke our discretion to grant summary relief, it is sufficient to demonstrate . . . that the basic facts are both uncomplicated and undisputed; and, that the trial court’s ruling rests on a narrow and clear-cut issue of law.” *Oliver T. Carr Mgmt., Inc. v. National Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). “[T]he granting of summary disposition is not an extraordinary remedy”; rather, “it is an essential part of [a] court’s system of case management that allows the court to manage its very large case load.” *Watson v. United States*, 73 A.3d 130, 131-32 (D.C. Aug. 8, 2013).

Mustafa v. Camacho, 59 V.I. 566, 570 (V.I. 2013).

¶ 16 Here, the People had an opportunity to respond to Moran’s summary action motion, but nevertheless have not done so. Yet although the People failed to file an opposition or other response to Moran’s motion for summary action, it is well-established “that parties may not, through explicit agreement or implicitly by omission, stipulate to the law,” and thus we must independently determine whether the Superior Court committed reversible error. *Simmonds v. People*, 59 V.I. 480, 493 (V.I. 2013). In any case, the People filed its brief on the merits while the summary action motion was pending before this Court, and we therefore possess the benefit of those arguments.

¶ 17 We agree with Moran that summary reversal is warranted, on multiple grounds. It is well-established, in the Virgin Islands and throughout the United States, that the purpose of bail and pretrial release conditions is not to punish the defendant, who is presumed innocent. Rather, the

primary purpose of bail is to assure the presence of the defendant for trial under such conditions that also reasonably protect the community. *See* V.I. R. CRIM. P. 5.1(b); *Tobal v. People*, 51 V.I. 147, 155 n.4 (V.I. 2009) (collecting cases); *see also United States v. Montalvo-Murillo*, 495 U.S. 711, 719-20 (1990). “Any bail or conditions of release that are not tailored to achieve the purpose of bail are considered excessive and therefore unconstitutional.” *Rieara*, 57 V.I. at 667. Therefore, it is unconstitutional to use bail or other pretrial release conditions as a mechanism to punish the defendant in advance prior to conviction for crimes that may or may not have been committed. *United States v. Alston*, 420 F.2d 176, 179 (D.C. Cir. 1969). And similarly, the fact that the prosecution chose to charge the defendant with a serious crime—*standing alone without more*—should have no bearing on the amount of bail or the conditions of pretrial release, since doing so “would inject into our own system of government the very principles of totalitarianism” which are antithetical to a free society by in effect granting the prosecution the authority to set bail or release conditions through its discretionary charging decisions. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). Thus, the Superior Court committed error to the extent it denied Moran’s motions based on a belief that individuals charged with what it believes to be serious crimes must always be subject to travel restrictions and should be denied permission to leave the Virgin Islands for that reason alone.

¶ 18 We also agree with Moran that the Superior Court failed to conduct the required individualized conditions of release assessment. Although this Court has held that the fact that one judge has set bail or pretrial release conditions a certain way should have no bearing on a subsequent motion to modify those conditions, *see Rieara*, 57 V.I. at 667, the Superior Court stated in its December 21, 2021 order and at the December 30, 2021 hearing that “[t]he terms of release as set by the Magistrate have already been determined to be the least restrictive under the circumstances,” even though the stated reasons for Moran’s desire to travel stem from events that

occurred after the original April 30, 2021 pretrial release order had been entered. And while the Superior Court did identify various factors in its January 13, 2022 order, it did so largely in a vacuum without “clearly explain[ing] *why* those criteria support the ultimate bail amount or other release conditions.” *Id.* at 668 (emphasis added).

¶ 19 Perhaps most significantly, the Superior Court also failed to provide a sufficient explanation for its denial of Moran’s motions to travel. Certainly, the Superior Court may impose travel restrictions on a criminal defendant. *See* V.I. R. CRIM. P. 5.1(b)(3). However, since restricting the ability to travel for an individual who has not yet been convicted of a crime constitutes a substantial restraint on the freedom of a person who remains presumed innocent, *see Justices of Boston Municipal Court v. Lydon*, 466 U.S. 294, 301 (1984), such restrictions are permissible only when in furtherance of a legitimate governmental purpose and are unconstitutional if imposed without such purpose or arbitrarily. *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Importantly, travel restrictions, like other pretrial release conditions such as the amount of bail, must also be imposed only after an individualized assessment. *See Rieara*, 57 V.I. at 667; *see also State v. Spady*, 354 P.3d 590, 600 (Mont. 2015) (holding it unconstitutional for a trial court to automatically order a defendant to participate in a sobriety program as a condition of pretrial release without an individualized assessment as to why such a requirement is necessary). Significantly, in denying the motions to travel, the Superior Court failed to explain what circumstances had changed so as to preclude Moran from traveling to Alabama for two weeks even though it had previously permitted him to travel to the same location for nearly three months. For these reasons, we reverse and vacate the Superior Court’s December 15, 2021, December 21, 2021, January 13, 2022, and January 31, 2022 orders, and remand the case for the Superior Court to

consider Moran’s motions pursuant to the correct legal standard and issue appropriate findings in a manner consistent with this opinion.

III. CONCLUSION

¶ 20 The Superior Court acted contrary to precedents of this Court and the Supreme Court of the United States in basing its decisions to deny Moran’s motions on considerations not consistent with the purpose of bail and pretrial release, and by failing to conduct an appropriate individualized assessment. Accordingly, we reverse and vacate the Superior Court’s December 15, 2021, December 21, 2021, January 13, 2022, and January 31, 2022 orders. We remand the case for the Superior Court to consider Moran’s motions pursuant to the correct legal standard and issue appropriate findings in a manner consistent with this opinion.

Dated this 8th day of April, 2022.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: /s/ Reisha Corneiro
Deputy Clerk

Dated: April 8, 2022