

**IN THE COURT OF APPEALS OF IOWA**

No. 7-821 / 06-1193  
Filed November 29, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**CHRIS LEON CHRISTOPHER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Karen A. Romano,  
Judge.

Defendant appeals the district court decision increasing the amount of his  
appeal bond. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Celene Gogerty, Assistant  
County Attorney, for appellee.

Considered by Huitink, P.J., and Miller, J., and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**ROBINSON, S.J.****I. Background Facts & Proceedings**

Chris Christopher was previously convicted of two counts of possession of a controlled substance and one count of driving while barred. On February 9, 2006, he was sentenced to a term of imprisonment not to exceed five years on each of the counts of possession of a controlled substance, and two years on the charge of driving while barred, all to be served concurrently. The court set bond on appeal at \$9750. Christopher filed an appeal bond for \$9750 on February 13, 2006, and he appealed his convictions.<sup>1</sup>

On July 11, 2006, the State filed an application for a bond review hearing based on information that in June 2006 Christopher had been charged with possession of a controlled substance with intent to deliver, possession of a controlled substance, and driving while barred. The State sought to increase Christopher's appeal bond under Iowa Code section 811.2(2) (2005). Christopher claimed an increase would violate section 811.7.

After a hearing, the district court ruled "the court finds that the current appeal bond is insufficient based upon the defendant's new criminal charges which jeopardize the personal safety of other persons." The court increased Christopher's appeal bond to \$50,000. Christopher now appeals the increase in his appeal bond.

**II. Standard of Review**

In reviewing the amount of an appeal bond, our review is for an abuse of discretion. *State v. Kellogg*, 534 N.W.2d 431, 433 (Iowa 1995). We will not

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<sup>1</sup> See the companion case, *State v. Christopher*, No. 06-0256 (Iowa Ct. App. \_\_\_\_\_).

reverse for an abuse of discretion unless such discretion is exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.* at 434. To the extent defendant may be claiming a violation of his statutory rights under chapter 811, our review is for the correction of errors at law. *See id.*

### **III. Merits**

“The right of a defendant to be admitted to bail following a judgment and sentence in certain criminal cases is strictly statutory.” *State v. Formaro*, 638 N.W.2d 720, 726-27 (Iowa 2002). All defendants, with certain specific exceptions, may be released on bail, both before and after conviction. Iowa Code § 811.1. A defendant may provide bail and be released while the defendant’s conviction is pending on appeal. Iowa Code § 811.5. The amount of bail during an appeal may be set by the district court. *Id.* Bailable defendants may be released in accordance with the provisions of section 811.2. *Id.*

The district court has jurisdiction to consider motions and applications regarding bail while an appeal is pending. *Formaro*, 638 N.W.2d at 727. Thus, the court could properly consider the State’s application to increase the amount of Christopher’s bail bond.

Christopher’s arguments are based on section 811.7, which applies when “the defendant has failed to appear as required, or the defendant has violated a condition of release, or when, after the filing of an indictment or information, the court finds the bail taken or money deposited is insufficient.” He claims his bail may be increased only if the district court finds one of these conditions has occurred.

Section 811.7 provides a defendant may be arrested and recommitted to jail based on one of the conditions found in that section. See *State v. Stradt*, 556 N.W.2d 149, 151 (Iowa 1996). In fact, an order for recommitment under section 811.7 “must direct that the defendant be arrested and committed to the custody of the sheriff of the county in which such order is entered.” Iowa Code § 811.7(2). The order in the present case did not direct that Christopher be arrested and placed in jail. The order increased the amount required for an appeal bond to \$50,000. We conclude the order in this case is not an order for recommitment, and the conditions of section 811.7 did not need to be met before the court could increase defendant’s bail. Defendant’s bail in this case is controlled by section 811.5 (bail on appeal) which incorporates section 811.2.

A court is authorized to increase the amount of bail by section 811.2(1)(d), which provides:

If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase of bail and the defendant must provide the additional undertaking, written or in cash, to secure release.

In addition:

A magistrate ordering the release of the defendant on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release, provided that, if the imposition of different or additional conditions results in the detention of the defendant as a result of the defendant’s inability to meet such conditions, the provisions of subsection 3 of this section shall apply.

Iowa Code § 811.2(6).<sup>2</sup>

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<sup>2</sup> Section 811.2(3) refers to the release of a defendant at the initial appearance, as permitted by section 804.21.

The conditions the court should consider in setting the amount of bail are found in section 811.2(2), and include “the safety of another person or persons.” See *State v. Briggs*, 666 N.W.2d 573, 584 (Iowa 2003). The district court increased the amount of defendant’s bail “based upon the defendant’s new criminal charges which jeopardize the personal safety of other persons.” “Determination of the conditions of release of one charged with a public offense is directed to the magistrate’s discretion. If such an order is supported by the record we must affirm.” *State v. Gaines*, 171 N.W.2d 303, 304 (Iowa 1969). Having examined the record in this case, we conclude the district court did not abuse its discretion in increasing defendant’s bail to \$50,000.

We affirm the decision of the district court.

**AFFIRMED.**