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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2295**

State of Minnesota,  
Respondent,

vs.

James Michael Villalon,  
Appellant.

**Filed August 13, 2012  
Dismissed  
Stoneburner, Judge**

Ramsey County District Court  
File No. 62-CR-11-8465

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

Sara R. Grewing, St. Paul City Attorney, Kyle A. Lundgren, Assistant St. Paul City Attorney, St. Paul, Minnesota (for respondent)

David J. Risk, Caplan & Tamburino Law Firm, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant challenges the provision in Minn. Stat. § 169A.40, subd. 3 (2010), mandating detention “until the person’s first court appearance “as unconstitutional on its

face and as applied. Appellant argues that the bail provision of the Minnesota Constitution mandates that a defendant is entitled to post bail immediately upon being charged and that his post-charge, pre-court-appearance detention violated his constitutional right to bail and due process and constituted double jeopardy. Because we conclude that the issues raised by appellant are moot, we dismiss.

### **FACTS**

Appellant James Michael Villalon was arrested at 3:00 a.m. on a Sunday morning pursuant to Minn. Stat. § 169A.40, subd. 3, which provides that, for arrests based on a reasonable belief of a violation of prescribed DWI offenses, offenders must be taken into custody and “detained until the person’s first court appearance.” On Monday afternoon, appellant was charged by complaint with gross-misdemeanor refusal to test, in violation of Minn. Stat. §§ 169A.20, subd. 2, .25, subd. 1(b) (2010), and gross-misdemeanor DWI in violation of Minn. Stat §§ 169A.20, subd. 1(1), .26 (2010). The complaint includes an order of detention with the notation “Hold for Court.” Villalon’s attorney unsuccessfully attempted to have bail set in the maximum amount of \$12,000 prior to Villalon’s first appearance in district court. Villalon appeared in district court on Tuesday. At that hearing, Villalon’s attorney made an oral record of his attempts to secure bail prior to Villalon’s court appearance. Bail was set in the amount of \$12,000. Villalon posted bail and was released from custody.

Approximately two months later, Villalon appealed the order-of-detention portion of the complaint, asserting that section 169A.40, subdivision 3, is unconstitutional to the extent that it requires detention after an individual is charged because the provision

conflicts with the mandatory bail provision of the Minnesota Constitution, constitutes punishment for purposes of double jeopardy, and, as applied, violated Villalon's due-process rights. In his brief on appeal, Villalon seeks "reversal of the refusal to grant him bail prior to his first appearance." He also states that "this court should direct that Ramsey County always allow a person charged with DWI to be released upon maximum bail prior to a first appearance at the person's request."<sup>1</sup>

Approximately one month after filing the appeal, Villalon pleaded guilty to and was convicted of gross-misdemeanor DWI.

## D E C I S I O N

Respondent State of Minnesota argues that because Villalon was granted bail, was released from custody, and has been convicted of and sentenced for the crime that led to his detention, any question regarding bail is moot. This court will dismiss a case as moot when an event occurs that makes a decision on the merits unnecessary or an award of effective relief impossible. *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). Whether an issue is moot is a question of law, which this court reviews de novo. *Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004), *review denied* (Minn. Apr. 4, 2005).

"The mootness doctrine demands appellate courts hear only live controversies, and they may not issue advisory opinions." *Farm Bureau Mut. Ins. Co. v. Schwan*, 687 N.W.2d 388, 391 (Minn. App. 2004). The supreme court has held that, absent a showing

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<sup>1</sup> At oral argument on appeal, Villalon also requested that this court declare that the challenged provision in Minn. Stat. § 169A.40, subd. 3, is unconstitutional.

of extraordinary circumstances, an issue concerning the *amount* of pretrial bail is moot after conviction. *State v. Arens*, 586 N.W.2d 131, 132-33 (Minn. 1998) (holding that appellant’s subsequent conviction rendered his constitutional challenge to cash-only bail moot). A reviewing court will not, however, dismiss an issue as moot if it is capable of repetition and likely to evade review. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005).

Villalon argues that although the issue may be moot because no relief can be provided to him, the issue of whether post-charge, pre-first-appearance detention required by Minn. Stat. § 169A.40, subd. 3, is unconstitutional, should not be dismissed as moot because it is capable of repetition, likely to evade judicial review, and is a public issue of statewide significance.

“[T]he ‘capable of repetition, yet evading review’ doctrine is ‘limited to the situation where two elements are combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again.’” *Id.* (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S. Ct. 347, 349 (1975)). For reasons unique to this case, Villalon made no effort to obtain an appearance before a judge immediately after his complaint was signed, nor did he seek any emergency relief from this court when bail was not set as soon as it was requested. We are not persuaded that the circumstances of this case are capable of repetition or likely to evade review.

We are also not persuaded that this is an issue of statewide significance. The complained-of provision has been the law for more than a decade, and this appears to be the first time it has been challenged. There is nothing in the record that demonstrates whether a significant number of defendants have encountered the circumstances recounted by Villalon in either procuring bail before a first appearance or procuring an expedited first appearance.

Additionally, we note that although the Minnesota cases relied on by Villalon hold that defendants in criminal cases have a right to be released on bail prior to conviction, *see State v. Pett*, 253 Minn. 429, 92 N.W.2d 205 (Minn. 1958), Villalon cites no authority for his assertion that the Minnesota Constitution mandates that bail be set simultaneously with the issuance of a complaint. And, as noted by the state, there are procedural safeguards in place to ensure that no defendant is held for an unreasonable amount of time before being brought before a judge. *See* Minn. R. Crim. P. 4.02, subd. 5 (providing that an arrested person who is not released under other provisions must be brought before a judge “without unnecessary delay, and not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as soon as a judge is available”); *see also* Minn. R. Crim. P. 4.03, subd. 1 (“When a person arrested without a warrant is not released under this rule or Rule 6, a judge must make a probable cause determination without unnecessary delay, and in any event within 48 hours from the time of the arrest, including the day of arrest, Saturdays, Sundays, and legal holidays.”).

Because the timelines contained in the criminal rules were met and ensure that no defendant is unreasonably detained, we conclude that the minimal delay in this case

between the signing of the complaint and Villalon's first appearance in court does not present an issue of statewide significance that would justify excepting this case from application of the mootness doctrine.

**Dismissed.**