

STATE OF MINNESOTA
IN COURT OF APPEALS

State of Minnesota,

Respondent,

vs.

Airizes Samuel Miller,

Appellant.

**SPECIAL
TERM
ORDER¹**

#A25-2162

Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Rasmusson, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

Appellant Airizes Samuel Miller filed a motion for release pending appeal of his conviction for first-degree criminal sexual conduct. Respondent State of Minnesota filed a response in opposition to Miller's motion.

A jury found Miller guilty of first-degree criminal sexual conduct based on allegations that he repeatedly sexually assaulted his girlfriend's minor child. During trial, there were repeated concerns with Miller contacting witnesses for the state, which

¹ Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

culminated in the district court threatening to hold Miller in contempt if he did so again and warning him that he could be prosecuted criminally for witness tampering. At the conclusion of trial, counsel for Miller requested that he remain on release pending sentencing. In denying this request, the district court stated:

Given the severity of this offense, given the type of offense that it is as it is related to the safety of minor children and the community, and also the ongoing open other matters that Mr. Miller has, the Court is concerned for safety. The Court is concerned about his appearance—whether or not he will appear for sentencing. And at this point, I am entering the conviction and I am holding him without bail.

At sentencing, the district court denied Miller's motion for a downward dispositional departure, expressing its concerns that Miller has "shown no remorse or accountability or insight at all into [his] behavior and conduct." The district court imposed an executed sentence of 180 months in prison. After filing a notice of appeal with this court, Miller filed a motion for release pending appeal with the district court. The following day, the district court filed an order denying Miller's motion without discussion or analysis. Miller now asks this court to grant his release pending appeal.

A criminal defendant's appeal "does not stay execution of the judgment or sentence unless a district court judge or a judge of the appellate court grants a stay." Minn. R. Crim. P. 28.02, subd. 6. A defendant is not entitled to release pending appeal from a judgment of conviction unless the defendant establishes that: "(a) the appeal is not frivolous or taken for delay" and that "(b) no substantial risk exists that the defendant: (i) will fail to appear to answer the judgment following the conclusion of the appellate proceedings; (ii) is likely

to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice.” Minn. R. Crim. P. 28.02, subd. 7(2).

A defendant seeking release pending appeal must first apply to the district court. *Id.*, subd. 7(3). “If the defendant appeals and has previously applied to the district court for release pending appeal, the defendant may file a motion for release, or for modification of the conditions of release, to the applicable appellate court or to a judge or justice of that court.” *Id.* This court reviews de novo the grounds asserted for a release pending appeal. *State v. Johnson*, 447 N.W.2d 605, 606 (Minn. App. 1989). But this court also recognizes that the district court “is in a far better position than an appellate court to determine whether a defendant” has met the burden of establishing the factors governing release. *State v. McKinley*, 424 N.W.2d 586, 586-87 (Minn. App. 1988).

In his motion to this court, Miller argues that he has satisfied all conditions necessary for this court to grant his release pending resolution of this appeal. First, he asserts that his principal brief in this matter, which raises three colorable issues challenging the judgment of conviction, demonstrates that this appeal is not frivolous or taken for delay. Second, he argues that he has not previously failed to appear in this matter and measures such as electronic home monitoring could be employed to ensure his reappearance. And third, he argues that there is no substantial risk that he will commit a serious crime, intimidate witnesses, otherwise interfere with the administration of justice while released because the current offense is his only “serious crime” and appropriate conditions of release would serve to mitigate the risk of his involvement in any such behavior.

Here, although the district court did not provide any additional discussion or reasoning in support of its order denying Miller's release pending appeal, its conclusion is more than amply supported by its previous statements in denying his request for presentencing release, its concerns regarding Miller's potential witness tampering during trial, its concerns with his failure to accept responsibility for his actions, and the severity of the underlying offense itself. Based upon our de novo review of the record, and in consideration of the *McKinley* court's observation that district courts are best situated to determine whether a defendant has met his burdens under rule 28.02, subdivision 7(2), we conclude Miller has not adequately demonstrated that he does not pose a substantial risk of failing to appear to answer the judgment at the conclusion of this appeal, committing an additional serious offense, intimidating witnesses, or otherwise interfering with the administration of justice while on release.

IT IS HEREBY ORDERED: Appellant's motion for release pending appeal is denied.

Dated: July 21, 2026

BY THE COURT



Michelle A. Larkin
Presiding Judge