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**OKANOGAN COUNTY SUPERIOR COURT  
FOR THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	<b>Case No. 15-1-00202-1</b>
	)	
Plaintiff,	)	<b>MOTION TO REDUCE BAIL</b>
v.	)	
	)	
JAMES FAIRE,	)	
	)	
Defendant.	)	

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**1.0 REMEDY BEING SOUGHT**

COMES NOW JAMES FAIRE, by and through counsel of record, Stephen Pidgeon, and MOVES this court to reduce bail required for the release of James Faire from \$750,000 to \$5,000.

**2.0 POINTS AND AUTHORITIES**

Article I, Section 20 of Washington’s Constitution provides as follows:  
All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great. Bail may be denied for offenses punishable by the possibility of life in prison upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the

1 community or any persons, subject to such limitations as shall be determined by the  
2 legislature. Article I, Section 20, Washington State Constitution.

3 RCW 10.21.010 provides that it “is the intent of the legislature to enact a law for the purpose  
4 of reasonably assuring public safety in bail determination hearings and hearings pursuant to the  
5 proposed amendment to Article I, section 20 of the state Constitution set forth in House Joint  
6 Resolution No. 4220. Other provisions of law address matters relating to assuring the appearance of  
7 the defendant at trial and preventing interference with the administration of justice.”

8  
9 Public Law 2010 c 254 § 3.

10 Further, the notes to the law provides that "the legislature intends by this act to require an  
11 individualized determination by a judicial officer of conditions of release for persons in custody for  
12 felony. This requirement is consistent with constitutional requirements and court rules regarding the  
13 right of a detained person to a prompt determination of probable cause and judicial review of the  
14 conditions of release and the requirement that judicial determinations of bail or release be made no  
15 later than the preliminary appearance stage." Public Law 2010 c 254 § 1. House Joint Resolution No.  
16 4220 was approved and ratified by the voters November 2, 2010.  
17

18 RCW 10.21.020, provides that “upon the appearance before a judicial officer of a person  
19 charged with an offense, the judicial officer must issue an order that, pending trial, the person be:

- 20  
21 (1) Released on personal recognizance;  
22 (2) Released on a condition or combination of conditions ordered under RCW 10.21.030 or  
23 other provision of law;  
24 (3) Temporarily detained as allowed by law; or  
25 (4) Detained as provided under chapter 254, Laws of 2010.  
26

1 Public Law 2010 c 254 § 4.

2 RCW 10.21.030 provides that the judicial officer may amend order.

3 (1) The judicial officer may at any time amend the order to impose additional or different  
4 conditions of release. The conditions imposed under this chapter supplement but do not  
5 supplant provisions of law allowing the imposition of conditions to assure the appearance of  
6 the defendant at trial or to prevent interference with the administration of justice.  
7

8 (2) Appropriate conditions of release under this chapter include, but are not limited to, the  
9 following:

10 (a) The defendant may be placed in the custody of a pretrial release program;

11 (b) The defendant may have restrictions placed upon travel, association, or place of  
12 abode during the period of release;

13 (c) The defendant may be required to comply with a specified curfew;

14 (d) The defendant may be required to return to custody during specified hours or to be  
15 placed on electronic monitoring, as defined in RCW 9.94A.030, if available. The  
16 defendant, if convicted, may not have the period of incarceration reduced by the  
17 number of days spent on electronic monitoring;  
18

19 (e) The defendant may be required to comply with a program of home detention, as  
20 defined in RCW 9.94A.030;

21 (f) The defendant may be prohibited from approaching or communicating in any  
22 manner with particular persons or classes of persons;  
23

24 (g) The defendant may be prohibited from going to certain geographical areas or  
25 premises;  
26

1 (h) The defendant may be prohibited from possessing any dangerous weapons or  
2 firearms;

3 (i) The defendant may be prohibited from possessing or consuming any intoxicating  
4 liquors or drugs not prescribed to the defendant. The defendant may be required to  
5 submit to testing to determine the defendant's compliance with this condition;

6 (j) The defendant may be prohibited from operating a motor vehicle that is not  
7 equipped with an ignition interlock device;

8 (k) The defendant may be required to report regularly to and remain under the  
9 supervision of an officer of the court or other person or agency; and

10 (l) The defendant may be prohibited from committing any violations of criminal law.  
11

12 Public Law 2015 c 287 § 5; 2014 c 24 § 2; 2010 c 254 § 5.  
13

14 RCW 10.21.040 provides for expedited review as follows:

15 If, after a hearing on offenses prescribed in Article I, section 20 of the state Constitution, the  
16 judicial officer finds, by clear and convincing evidence, that a person shows a propensity for  
17 violence that creates a substantial likelihood of danger to the community or any persons, and  
18 finds that no condition or combination of conditions will reasonably assure the safety of any  
19 other person and the community, such judicial officer must order the detention of the person  
20 before trial. The detainee is entitled to expedited review of the detention order by the court of  
21 appeals under the writ provided in RCW 7.36.160.  
22

23 Public Law 2010 c 254 § 6.  
24

25 RCW 10.21.050 provides that the judicial officer to consider available information as  
26 follows:

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1 The judicial officer must, in determining whether there are conditions of release that will  
2 reasonably assure the safety of any other person and the community, take into account the  
3 available information concerning:

4 (1) The nature and circumstances of the offense charged, including whether the  
5 offense is a crime of violence;

6 (2) The weight of the evidence against the defendant; and

7 (3) The history and characteristics of the defendant, including:

8 (a) The person's character, physical and mental condition, family ties,  
9 employment, financial resources, length of residence in the community,  
10 community ties, past conduct, history relating to drug or alcohol abuse,  
11 criminal history, and record concerning appearance at court proceedings;

12 (b) Whether, at the time of the current offense or arrest, the defendant was on  
13 community supervision, probation, parole, or on other release pending trial,  
14 sentencing, appeal, or completion of sentence for an offense under federal,  
15 state, or local law; and

16 (c) The nature and seriousness of the danger to any person or the community  
17 that would be posed by the defendant's release.  
18

19  
20  
21 Public Law 2010 c 254 § 7.

22 RCW 10.21.060 provides that

23 (1) The judicial officer must hold a hearing in cases involving offenses prescribed in Article  
24 I, section 20, to determine whether any condition or combination of conditions will  
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MOTION TO REDUCE BAIL - Page 5 of 11

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1 reasonably assure the safety of any other person and the community upon motion of the  
2 attorney for the government.

3 (2) The hearing must be held immediately upon the defendant's first appearance before the  
4 judicial officer unless the defendant, or the attorney for the government, seeks a continuance.  
5 Except for good cause, a continuance on motion of such person may not exceed five days  
6 (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on  
7 motion of the attorney for the government may not exceed three days (not including any  
8 intermediate Saturday, Sunday, or legal holiday). During a continuance, such person must be  
9 detained.  
10

11 (3) At the hearing, such defendant has the right to be represented by counsel, and, if  
12 financially unable to obtain representation, to have counsel appointed. The defendant must be  
13 afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who  
14 appear at the hearing, and to present information by proffer or otherwise. The rules  
15 concerning admissibility of evidence in criminal trials do not apply to the presentation and  
16 consideration of information at the hearing. The facts the judicial officer uses to support a  
17 finding that no condition or combination of conditions will reasonably assure the safety of  
18 any other person and the community must be supported by clear and convincing evidence of a  
19 propensity for violence that creates a substantial likelihood of danger to the community or  
20 any persons.  
21

22 (4) The defendant may be detained pending completion of the hearing. The hearing may be  
23 reopened, before or after a determination by the judicial officer, at any time before trial if the  
24 judicial officer finds that information exists that was not known to the movant at the time of  
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1 the hearing and that has a material bearing on the issue whether there are conditions of  
2 release that will reasonably assure the safety of any other person and the community.

3 Public Law 2010 c 254 § 8.

4 Any denial of this motion for reduction of pretrial bail will deny Mr. Faire an opportunity to  
5 assist in his own defense, and will constitute a failure by the court to honor the presumption of his  
6 innocence.

7 Imposition of pretrial bail is proper when determined to be necessary to insure court appearance of  
8 the accused. CrR 3.2(a)(5); *State v. Smith*, 84 Wn.2d 498, 505, 527 P.2d 674 (1974). A bond of no  
9 more than \$5,000 will be necessary to insure the appearance of Mr. Faire.

10 Once having found that bail was necessary as in this case, the amount is a matter within court  
11 discretion to be reversed on appeal only for manifest abuse. CrR 3.2(a)(5); *State v. Smith*, 84 Wn.2d  
12 498, 505, 527 P.2d 674 (1974). Mr. Faire has no prior conviction of any crime in the state of  
13 Washington, is not evasive to the court about his permanent address, and is of no threat to the  
14 community in any respect.

15 We note also that “cash only” bail violates CrRLJ 3.2(a) and article I, section 20 of the  
16 Washington Constitution. The court rule, under these circumstances, does not permit cash only bail.  
17 *City of Yakima v. Mollett*, 115 Wash.App. 604, 63 P. 3d 177 (Wa.Div. 3) (2003).

18 CrRLJ 3.2(a) partly states:

19 The court shall impose the least restrictive of the following conditions that will reasonably  
20 assure that the accused will be present for later hearings, will not significantly interfere with  
21 the administration of justice and not pose a substantial danger to others or the community or,  
22 if no single condition gives that assurance, any combination of the following conditions:  
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1 (1) Place the accused in the custody of a designated person or organization agreeing to  
2 supervise the accused;

3 (2) Place restrictions on the travel, association, or place of abode of the accused  
4 during the period of release;

5 (3) Require the execution of an unsecured bond in a specified amount;

6  
7 (4) Require the execution of a bond in a specified amount and the deposit in the registry of  
8 the court in cash or other security as directed, of a sum not to exceed 10 percent of the  
9 amount of the bond, such deposit to be returned upon the performance of the conditions of  
10 release or forfeited for violation of any condition of release;

11 (5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in  
12 lieu thereof;

13 (6) Require the accused to return to custody during specified hours; or

14 (7) Impose any condition other than detention deemed reasonably necessary to assure  
15 appearance as required, assure noninterference with the trial and reduce danger to others or  
16 the community.  
17

18 CrRLJ 3.2(a) sets forth release conditions that vary in severity. The least restrictive bail  
19 provision is an unsecured bond in a specific amount. CrRLJ 3.2(a)(3). A more restrictive provision is  
20 a bond, apparently unsecured, in a specific amount accompanied by a deposit "in cash or other  
21 security" of a sum not exceeding 10 percent of the face value of the bond. CrRLJ 3.2(a)(4). Another  
22 restrictive provision is a surety bond in a specified amount, "or the deposit of cash in lieu thereof."  
23 CrRLJ 3.2(a)(5). The final provision permits the court to impose "any condition other than  
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1 detention." CrRLJ 3.2(a)(7). *City of Yakima v. Mollett*, 115 Wash.App. 604, 63 P. 3d 177, 180  
2 (Wa.Div. 3) (2003).

3 CrRLJ 3.2(a)(7) authorizes "*any condition other than detention.*" (Italics added.) It would be  
4 inconsistent with the rule for the trial court to impose "cash only" bail knowing the defendant  
5 probably lacked the means to pay it. *See Hendon*, 609 N.E.2d at 544 (reasoning "the only apparent  
6 purpose in requiring a `cash only' bond to the exclusion of the other forms provided in [the rules] is  
7 to restrict the accused's access to a surety and, thus, to detain the accused in violation of [the State  
8 constitution]"); see also *Brooks*, 604 N.W.2d at 353 (noting "cash only bail orders can be used to  
9 deny bail to those accused who have other means of providing sufficient surety"). *City of Yakima v.*  
10 *Mollett*, 115 Wash.App. 604, 63 P. 3d 177, 180 (Wa.Div. 3) (2003).  
11

12  
13 For these reasons, James Faire respectfully requests that bail be reduced to \$5,000.

14 Dated this 3<sup>rd</sup> day of February, 2016.

15  
16 \_\_\_\_\_  
17 Stephen Pidgeon, WSBA #25265  
18 1523 132 Street SE, STE C-350  
19 Everett, Washington 98208  
20 (425)605-4774  
21 Attorney for James Faire  
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1 **Certification of Service**

2 The undersigned also certifies that the foregoing was served on the Prosecutor for Okanogan  
3 County by delivering to the following:

4 Karl Sloan  
5 237 Fourth Avenue N.  
6 Okanogan, WA 98840  
7 Telephone: (509) 422-7280

8 By Express Mail, postage prepaid this 4th day of February, 2016.

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STEPHEN W. PIDGEON, WSBA #25265  
12 Attorney for Defendant  
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