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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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**Ex parte Calvin Barnes**

**PETITION FOR WRIT OF HABEAS CORPUS**

**(In re: State of Alabama**

**v.**

**Calvin Cornelius Barnes)**

**(Mobile Circuit Court, CC-17-2125)**

PER CURIAM.

Calvin Barnes petitions this Court for a writ of habeas corpus directing the Mobile Circuit Court ("the circuit

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court"), Judge Jim Patterson presiding, to vacate its orders revoking his bail and denying his motion to reinstate his bail. Because the circuit court acted beyond its authority, we grant the petition and issue the writ.

#### Facts and Procedural History

Barnes was arrested in September 2016 and was charged with murder under § 13A-6-2(a)(1), Ala. Code 1975. The Mobile District Court set Barnes's bail at \$150,000 with a \$10,000 cash component. The district court held a preliminary hearing in October 2016, and Barnes's case was bound over to the grand jury. In May 2017, the grand jury returned an indictment against Barnes for murder. Barnes's bail obligation was transferred to the circuit court pursuant to Rule 7.6(a), Ala. R. Crim. P. Barnes was arraigned before the circuit court on July 21, 2017. The circuit court set the case for trial on February 26, 2018.

In November 2017, Barnes moved for an evidentiary hearing seeking to establish immunity from prosecution on the basis that he was acting in defense of others under § 13A-3-23(d), Ala. Code 1975, at the time of the killing.<sup>1</sup> Barnes alleged

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<sup>1</sup>Section 13A-3-23(d) entitles a defendant to a pretrial hearing on immunity and provides: "A person who uses force,

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that he shot the victim, who was his wife's brother, when the victim was attempting to break into Barnes's house. The circuit court held a hearing on January 31, 2018, on the issue of Barnes's immunity, and, following that hearing, the circuit court entered an order finding that Barnes had not proven by a preponderance of the evidence that the use of lethal force was justified. Shortly thereafter, the circuit court rescheduled the case for trial on August 20, 2018. After granting two continuances -- one on a motion filed by the State and the other on a motion filed by Barnes -- the circuit court set the trial for May 13, 2019.

On May 10, 2019, Barnes's attorney moved for leave to withdraw from representation of Barnes on the grounds that he was having difficulty communicating with Barnes and that Barnes had retained a new attorney. The circuit court granted the motion to withdraw.

On May 13, 2019, Barnes appeared for trial with his new attorney, and the circuit court questioned Barnes about his former attorney's withdrawal. Barnes's new attorney stated

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including deadly physical force, as justified and permitted in this section is immune from criminal prosecution and civil action for the use of such force, unless the force was determined to be unlawful."

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that he and Barnes had discussed everything and that the circuit court "won't have anymore problems with Mr. Barnes." Before allowing additional explanation, the circuit court announced that it would revoke Barnes's bond, stating:

"THE COURT: Well, let me tell you what pops into my mind: A sua sponte the Court [sic]. This has the feel of the purpose to delay the inevitable. That's what it feels like to me.

"And so, frankly, I'm going to revoke his bond because I think -- we are too broke. This Circuit is too broke to let another precious trial setting go past. And I have other people in here trying to get speedy trial motions and all that stuff so I'm taking him in. I'm revoking his bond."

Barnes's attorney objected to the circuit court's decision, citing Rule 7.5, Ala. R. Crim. P. The circuit court responded:

"THE COURT: It may be an issue of first impression, but when we have an excellent lawyer with an excellent reputation -- and [Barnes's former attorney] has that. He works in Federal Court. He works in State Court. And then we swap horses right before trial, the Court can only come to one conclusion.

"And the gravity of the charge is one of the factors that I can consider. And maybe this is an issue of first impression that we'll have to test out, but I've made my ruling.

". . . .

"[ATTORNEY FOR BARNES]: ... Judge, I would ask you to consider one thing: The State of Alabama has not moved -- and there's been no allegations

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whatsoever that he has violated the terms and conditions of his bond. And --

"THE COURT: This Court, like I said, sua sponte of its own initiative is going to take this action because this Court looked very strongly at the record that we've done. And if I'm wrong, y'all can show me, but I've made my ruling. So I'm going to go ahead and take him in. ... You can go ahead and file the motion to reconsider and give me the law. And if I'm wrong, I will undo it."

Despite the circuit court's ruling, Barnes's attorney announced that Barnes was ready for trial, and he asserted that he had met with Barnes's former attorney and had reviewed the evidence in detail. The circuit court replied that it could not "make the State do that because on Friday both of you were told that we're not [going to trial]."<sup>2</sup> After the hearing, the circuit court entered an order in which it stated that Barnes had been taken into custody, set a hearing to revoke Barnes's bail for the morning of the following day, and directed Barnes's former attorney to appear at the revocation hearing.

Later that day, the State filed what it styled "State's Filing on Court's Order Revoking Defendant's Bond" in which it requested a hearing regarding the conditions of Barnes's bail

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<sup>2</sup>The circuit court had not entered an order continuing the May 13, 2019, trial date.

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based on its belief that Barnes's "actions may solely be an attempt to delay his trial." The State did not move to have Barnes's bail revoked, and it did not assert that Barnes had violated any conditions of his release.

On May 14, 2019, Barnes's attorney filed a motion requesting the circuit court to release Barnes and asking for a continuance of the revocation hearing set for that day. At the beginning of the hearing, the circuit court stated that it would not continue the hearing, noting that the hearing had to be held within 72 hours after Barnes was taken into custody. Barnes requested a delay until at least the afternoon to have time to prepare a response. The circuit court denied Barnes's request and proceeded to hold the hearing. The circuit court stated:

"And I will tell you on the record that I did some research yesterday, and I don't know that there's any precedent for what I did. This may be an issue of first impression.

"I stand on the record that I made yesterday about how this case proceeded. I stand on the record yesterday about [Barnes] terminating [his former attorney,] who has an excellent reputation as attorney on the eve of trial."

The circuit court then asked Barnes's former attorney, over Barnes's objections, whether Barnes had met his financial

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obligations to the attorney. When his former attorney replied that Barnes had not met his financial obligations, the circuit court stated: "Okay. That's all I need to know." The proceedings continued, with the circuit court asking:

"THE COURT: Is there anything else anybody needs to add?

"[ATTORNEY FOR BARNES]: I just have argument.

"THE COURT: Okay.

"[ATTORNEY FOR BARNES]: The State has no argument?

"[ATTORNEY FOR THE STATE]: Well, I agree with the Court's statement in that I was unable to locate any precedent for this particular sequence of events. It does seem to be in a gray area of Rule 7.5. The question is, is revoking the bond until the next trial date is set the only remedy that is possible. That Rule 7.5 is full of several discretionary statements what the Court may do.

"THE COURT: What sentence would he be looking for [if] he was convicted of what ... he's charged with? He's charged with murder.

"[ATTORNEY FOR THE STATE]: He's charged with a Class A Felony, committed with a gun. And is a minimum 20, maximum of life. His one prior conviction does not alter that sentence range.

"THE COURT: So the minimum he would face would be 20 years?

"[ATTORNEY FOR THE STATE]: If he were found guilty as charged.

"THE COURT: If he were found guilty. If he were found guilty.

"Well, in this highly unusual situation, I will say on the record again, I pondered it over the weekend that it strikes me odd that he'd fire an extremely competent counsel on the eve of a trial that set back in -- I think it was January -- February 18th I think was the order setting the trial for yesterday.

"And I will tell you on the record that [Barnes's new attorney] whispered to me yesterday morning before we started that he had not entered that appearance that the Court had asked for because he was want[ing] to make sure he got his money to be paid.

"And so with the financial obligation that remains outstanding to [Barnes's former attorney], and the fact that [Barnes's new attorney] was paid by his admission, then the Court finds it all highly unusual. And so I would like appellate guidance because I personally think the man is a flight risk. And if I'm wrong, I'm sure mandamus petition will fly and they will tell me very shortly that I am wrong and I will put you back out on bond.

"But the problem is with 13th Circuit so sever[e]ly underfunded and the fact that we have had to schedule this murder trial -- and both of you are busy with such trials that feeding this case in has been a problem for the Court. It has to be reschedule[d]. It will be delayed for eight or nine months longer.

"Now, the Court's done. If [Barnes's attorney] wants to make his record -- make his argument.

"[ATTORNEY FOR BARNES]: I'd like to note that the Court just announced he's done and I have not



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even had a chance to present my argument. And so this is just a record.

"First off, I have not been able to even present an argument on behalf of [Barnes's] half [sic]. And what we've heard here today is that even the Court and the State ... admit that they can't find a single statutory -- anything in the rules or the statutes that justified taking this man's freedom. However, the Court has stated that he's going to do it anyway until somebody tells him differently. It is all based upon what the Judge believes, not based on any evidence put before the Court.

"And in addition to the other pleadings that I have that there is not any condition in Rule 7.3[, Ala. R. Crim. P.,] or 7.5 that allows for what's taken place today.

"So essentially what has taken place is the Court is saying that we're not going to follow the law. That I'm going to make you go to Montgomery to find justice. And I believe that that is just not right, Judge. And I ask that you release him on his bond and follow the law which is Rule 7.[5]. Have the Prosecutor file a motion before ruling on it, and then set the case for a hearing.

"Thank you.

"THE COURT: All right. This matter is concluded."

After the hearing, the circuit court entered an order denying Barnes's motion for release. Barnes filed a petition for writ of habeas corpus in the Alabama Court of Criminal Appeals. That court, citing § 15-21-6(a), Ala. Code 1975, dismissed Barnes's petition because Barnes had not first

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addressed his petition to the nearest circuit-court judge. Thereafter, Barnes filed a habeas petition in this Court. On October 10, 2019, in response to Barnes's motion to stay enforcement of the circuit court's order revoking his bail, this Court stayed the order and ordered Barnes released from custody on his original bond.

#### Discussion

Barnes argues that the circuit court's revocation of his bail violated his procedural due-process rights because, he says, the circuit court did not comply with Rule 7.5, Ala. R. Crim. P. Specifically, Barnes asserts, the circuit court revoked Barnes's bail without a motion having been made by the State, without holding a hearing, and without any evidence to support revocation. Barnes further argues that the State's belated "Filing on Court's Order Revoking Defendant's Bond" does not cure the circuit court's wrongful revocation.

Judge Patterson filed a response brief in opposition to Barnes's petition.<sup>3</sup> In his brief, Judge Patterson asserts that, in light of the testimony from the immunity hearing, the gravity of the charge, the fact that Barnes could be sentenced

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<sup>3</sup>This Court ordered all respondents, including Judge Patterson, to file an answer to Barnes's petition.

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to a minimum of 20 years, and Barnes's refusal to work with his former attorney, he determined that Barnes was attempting to delay his trial. Judge Patterson contends that, after holding a 72-hour hearing, he revoked Barnes's bail because he considered Barnes to be a flight risk. Judge Patterson does not cite any authority in support of his reasoning.

The State does not dispute Barnes's arguments concerning the circuit court's revocation order. Instead, the State asserts that, pursuant to § 15-21-6(a), Ala. Code 1975, Barnes was required to first file a habeas petition in the circuit court rather than filing the petition directly with the Court of Criminal Appeals. Section 15-21-6(a) states: "When the person is confined in a county jail or any other place on a charge of felony or under a commitment or an indictment for felony, the petition for a writ of habeas corpus must be addressed to the nearest circuit court judge."

We first address whether Barnes correctly filed his petition in the appellate courts, or whether he should have first filed his petition in the circuit court pursuant to § 15-21-6(a). This Court has stated that § 15-21-6, upon which the Court of Criminal Appeals relied in dismissing the

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petition, "implicates not jurisdiction, but venue." Ex parte Culbreth, 966 So. 2d 910, 912 (Ala. 2006). Moreover, § 141(d), Ala. Const. 1901, authorizes the Court of Criminal Appeals to issue writs of habeas corpus:

"The court of criminal appeals shall have and exercise original jurisdiction in the issuance and determination of writs of quo warranto and mandamus in relation to matters in which said court has appellate jurisdiction. Said court shall have authority to issue writs of injunction, habeas corpus and such other remedial and original writs as are necessary to give it a general superintendence and control of jurisdiction inferior to it and in matters over which it has exclusive appellate jurisdiction; to punish for contempts by the infliction of a fine as high as one hundred dollars, and imprisonment not exceeding ten days, one or both, and to exercise such other powers as may be given to said court by law."

(Emphasis added.) In addition, § 12-3-11, Ala. Code 1975, provides that the courts of appeals "shall have authority to ... issue writs of habeas corpus and such other remedial and original writs as are necessary to give it a general superintendence and control of jurisdiction inferior to it."

Similarly, this Court has the authority to issue writs of habeas corpus and to review petitions for habeas corpus that have been denied by the intermediate appellate courts. Section 140(b), Ala. Const. 1901, provides that "[t]he supreme

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court shall have original jurisdiction ... to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction ...." See also § 12-2-7(3), Ala. Code 1975 (granting this Court the authority "[t]o issue writs of injunction, habeas corpus, and such other remedial and original writs as are necessary to give to it a general superintendence and control of courts of inferior jurisdiction"). Rule 21(e)(1), Ala. R. App. P., authorizes this Court to review petitions for the writ of habeas corpus that have been denied by an intermediate appellate courts. That rule states:

"A decision of a court of appeals on an original petition for writ of mandamus or prohibition or other extraordinary writ (i.e., a decision on a petition filed in the court of appeals) may be reviewed de novo in the supreme court, and an application for rehearing in the court of appeals is not a prerequisite for such review. If an original petition for extraordinary relief has been denied by the court of appeals, review may be had by filing a similar petition in the supreme court (and, in such a case, in the supreme court the petition shall seek a writ directed to the trial judge)."

In Ex parte Stokes, 990 So. 2d 852, 856 (Ala. 2008), this Court reviewed a decision of the Court of Criminal Appeals denying a defendant's petition for habeas relief. We explained

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that "[a] petition for a writ of habeas corpus is the proper vehicle by which to challenge the setting of allegedly excessive bail." 990 So. 2d at 856 (citing Ex parte Colbert, 717 So. 2d 868, 870 (Ala. Crim. App. 1998)). In Ex parte Colbert, the district court initially set the defendant's bail at \$1 million and then reduced it to \$500,000. The defendant filed a petition for the writ of habeas corpus in the circuit court requesting that bail be further reduced, but the circuit court instead revoked the defendant's bail. The defendant filed a petition for a writ of habeas corpus in the Court of Criminal Appeals. The State contended that the defendant should have first filed a direct appeal from the circuit court's denial of the petition rather than seeking habeas relief in the Court of Criminal Appeals. That court held that, under § 141, it "will entertain original petitions for a writ of habeas corpus arising out of a circuit court's denial of, or the setting of excessive, pretrial bail." Ex parte Colbert, 717 So. 2d at 870 (overruling Clay v. State, 561 So. 2d 1116 (Ala. Crim. App. 1990)). The Court of Criminal Appeals stated:

"The purpose of a habeas corpus petition is defined in Black's Law Dictionary 709 (6th ed. 1990), as 'to [seek] release from unlawful imprisonment.' Indeed, attacking the denial of

pretrial bail would be a futile exercise if a party was forced to file a direct appeal and await the result of the appellate process, rather than to obtain immediate relief by filing an original habeas corpus petition with this Court. In Ex parte Lee, 275 Ala. [343] at 344, 155 So. 2d 296 [at 297 (1963)], the Alabama Supreme Court stated, '[t]his court in the absence of unusual circumstances will not entertain an original petition for writ of habeas corpus.' Certainly, a circuit court's denial of bail in a case where bail is constitutionally required is the 'unusual circumstance' envisioned in Lee."

717 So. 2d at 870 (emphasis added). Likewise, in Ex parte Patterson, 70 So. 3d 435, 436 (Ala. Crim. App. 2011), the Court of Criminal Appeals granted an original habeas corpus petition filed in that court challenging a trial court's refusal to reinstate a defendant's pretrial bail after revocation.

As discussed in further detail below, Barnes's case presents not just an unusual circumstance, but a circumstance involving a questionable sua sponte decision by the circuit court revoking a defendant's bail after the defendant changed attorneys and after the defendant appeared in court on the trial date. Under § 141 and § 12-3-11, Barnes's petition was ripe for review by the Court of Criminal Appeals, and that court, under the particular circumstances of this case, was

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incorrect in dismissing Barnes's petition pursuant to § 15-21-6. We further recognize the futility created by requiring a defendant to file a petition for the writ of habeas corpus in the first instance with the same court that ordered the revocation of release.

We now turn to our de novo review of the merits of Barnes's petition for habeas relief. See Rule 21(e)(1). It is well settled that, unless charged with a capital offense, an accused has an absolute right to pretrial bail and that the bail imposed shall not be excessive. See Art. I, § 16, Ala. Const. 1901; § 15-13-2, Ala. Code 1975. "'The purposes of bail are to secure the accused's attendance [at trial], and avoid the imprisonment of persons still entitled to a presumption of innocence, among others.'" Ex parte Patterson, 70 So. 3d at 437 (quoting 8 C.J.S. Bail § 6 (2010)). See also § 15-13-102, Ala. Code 1975 ("The primary purpose of bail is to procure the release of a person charged with an offense upon obtaining assurance, with or without security, of the defendant's future appearance in court."). As the Court of Criminal Appeals explained in Ex parte Fleming, 814 So. 2d 302, 303 (Ala. Crim.



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App. 2001), "a defendant may forfeit his constitutional right to pretrial bail by his conduct while out on bail."

Rule 7.5, Ala. R. Crim. P., establishes the procedure for bail-revocation proceedings.<sup>4</sup> Pursuant to that rule, the State

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<sup>4</sup>Rule 7.5 states:

"(a) Issuance of Warrant. Upon motion of the prosecutor stating with particularity the facts or circumstances constituting a material breach of the conditions of release or stating with particularity that material misrepresentations or omissions of fact were made in securing the defendant's release, the court having jurisdiction over the defendant released shall issue an arrest warrant under Rule 3.1 to secure the defendant's presence in court. A copy of the motion shall be served with the warrant, and a hearing shall be held on the motion without undue delay, except in no event later than seventy-two (72) hours after the arrest of the defendant released, as provided in Rule 4.3(a).

"(b) Hearing; Review of Conditions; Revocation of Release. If, after a hearing on the matters set forth in the motion, the court finds that the defendant released has not complied with or has violated the conditions of release, or that material misrepresentations or omissions of fact were made in securing the defendant's release, the court may modify the conditions or revoke the release. If a ground alleged for revocation of the release is that the defendant released has violated the condition under Rule 7.3(a)(2) by committing a criminal offense, or that there was a misrepresentation or omission concerning other charges pending against the defendant released, the court may modify the conditions of release or revoke the release after a hearing, if the court finds that there is probable cause (or if there has already been a finding of

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is required to file a motion "stating with particularity the facts or circumstances constituting a material breach of the conditions of release or stating with particularity that material misrepresentations or omissions of fact were made in securing the defendant's release." Rule 7.5(a). After the filing of the State's motion, the trial court "shall issue an arrest warrant under Rule 3.1[, Ala. R. Crim. P.,] to secure the defendant's presence in court," and the motion and the warrant must be served on the defendant. Within 72 hours of the defendant's arrest on the revocation warrant, the trial court must hold a hearing on the motion and must, thereafter, determine whether the defendant has "complied with or has violated the conditions of release" or whether "material misrepresentations or omissions of fact were made in securing the defendant's release." Rule 7.5(b).

The revocation procedure used by the circuit court was in complete disregard of Rule 7.5. The circuit court revoked Barnes's bail and ordered Barnes to be taken into custody immediately without the State having filed a motion, without

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probable cause) to believe that the defendant released committed the other offense or offenses charged."

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issuing a warrant for Barnes's arrest, and without holding a hearing on matters asserted in a motion by the State. The circuit court received no evidence indicating that Barnes had violated the conditions of release set forth under Rule 7.3, Ala. R. Crim P.,<sup>5</sup> or that revocation was otherwise warranted

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<sup>5</sup>Rule 7.3 states:

"(a) Mandatory Conditions. Every order of release under this rule shall contain the conditions that the defendant:

"(1) Appear to answer and to submit to the orders and process of the court having jurisdiction of the case;

"(2) Refrain from committing any criminal offense;

"(3) Not depart from the state without leave of court; and

"(4) Promptly notify the court of any change of address.

"(b) Additional Conditions. An order of release may include any one or more of the following conditions reasonably necessary to secure a defendant's appearance:

"(1) Execution of an appearance bond in an amount specified by the court, either with or without requiring that the defendant deposit with the clerk security in an amount as required by the court;

"(2) Execution of a secured appearance bond;

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under Rule 7.5. Although the circuit court held a hearing the day after it announced it was revoking Barnes's bail and ordered that Barnes be taken into custody, the circuit court did not receive evidence supporting revocation at that hearing. Moreover, before providing Barnes an opportunity to present his argument, the circuit court announced that it was "done." Despite continued objections by Barnes's attorney and the circuit court's acknowledgment that there was "no precedent for what [it] did," the circuit court doubled down on its decision and refused to reinstate Barnes's bail. The May 14, 2019, hearing was in no way the meaningful hearing that due process requires.

Additionally, the circuit court's decision to revoke Barnes's release is not supported by the materials submitted

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"(3) Placing the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

"(4) Restrictions on the defendant's travel, associations, or place of abode during the period of release;

"(5) Return to custody after specified hours; or

"(6) Any other conditions which the court deems reasonably necessary."

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to this Court. None of the reasons given by the circuit court indicate that Barnes had failed to comply with or had violated his conditions of release or that Barnes had made material misrepresentations or omissions of fact to the district court when bail was initially granted. To the extent the circuit court now contends that it based its decision on evidence presented at the immunity hearing, that hearing was held in January 2019 -- four months before the circuit court decided to revoke Barnes's bail -- and cannot serve as a basis for revocation. A defendant's decision to change his representation, even at the last minute, is not a justifiable reason to revoke bail, nor is a defendant's failure to pay his attorney a reason to revoke a defendant's bail. A defendant's request to continue a trial setting, likewise, is not a permissible reason to revoke bail. Moreover, a perceived lack of funding of the court system is not a relevant consideration in determining whether to revoke a defendant's bail.

In addition, nothing in the record supports the circuit court's determination that Barnes had become a flight risk. No evidence was produced showing that Barnes had failed to appear at any hearing or that Barnes's appearance at trial would not

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be reasonably assured by the conditions of release initially imposed. To the contrary, Barnes appeared in court on May 13, 2019, the trial date, and announced that he was ready to proceed with the trial. This fact alone underscores the imprudence of the circuit court's deeming Barnes to be a flight risk. How can a defendant who has appeared on the date of trial be found to be at risk of fleeing from his obligation to attend the trial? Given the totality of the circumstances, the circuit court's revocation order appears to be an impermissible, vexatious measure designed to punish Barnes for what the circuit court thought were attempts to delay trial, rather than a legitimate attempt to secure Barnes's presence at trial. See § 15-13-102.

The circuit court erred by basing the revocation on an unsupported and unsubstantiated belief that Barnes intended to delay his trial setting and had become a flight risk, rather than on evidence satisfying the requirements for revocation in Rule 7.5. Furthermore, the circuit court erred in denying Barnes's request to reinstate his pretrial bail -- a right to which he was entitled under the law, regardless of the heinousness of the crime he is accused of committing. See Art.

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I, § 16, Ala. Const. 1901. Accordingly, Barnes has demonstrated that he has been illegally detained and that he is entitled to relief.<sup>6</sup> See Ex parte Boykins, 862 So. 2d 587, 591 (Ala. 2002) (quoting Heflin v. United States, 358 U.S. 415, 421 (1959)) (explaining that the purpose of a writ of habeas corpus "'is to inquire into the legality of the detention of one in custody'" (emphasis omitted)).

#### Conclusion

We grant Barnes's petition and direct the circuit court to vacate its order revoking Barnes's bail and to reinstate Barnes's original bail.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

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<sup>6</sup>But for this Court's granting Barnes's motion to stay enforcement of the revocation, Barnes would still be illegally detained.