IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
Plaintiff,	)	
	)	
v.	)	ID No. 91004136DI
	)	
JERMAINE WRIGHT,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Paul R. Wallace, Esquire, Gregory E. Smith, Esquire, Maria Knoll, Esquire and Danielle J. Brennan, Esquire, Department of Justice, Wilmington, Delaware – Attorneys for The State.

Herbert W. Mondros, Esquire, Margolis Edelstein, Wilmington, Delaware – Attorney for Defendant.

James Moreno, Esquire and Tracy Ulstad, Esquire, Philadelphia, Pennsylvania – Attorneys for the Defendant.

JOHN A. PARKINS, JR., JUDGE

The issue before the court is whether, under the unusual circumstances of this case, this court has jurisdiction to conduct a second proof positive hearing and, in the absence of a showing of proof positive and presumption great, admit the defendant to bail. The court finds on the basis of the Delaware Constitution and Delaware statutory law that it has such jurisdiction.

Procedural History

The long and convoluted procedural history of this case is discussed in some detail in the court's January 3, 2012 opinion vacating Defendant's conviction and sentence. There is no need to repeat that history here except to note that shortly after he was indicted the defendant was afforded a proof positive hearing in which this court found proof positive and presumption great that Defendant had committed the capital murder of Phillip Seifert.

The present dispute comes before the court in a remand from the Delaware Supreme Court. In its January 3, 2012 opinion this court found that Wright's conviction was constitutionally infirm. In particular, it found that the chief investigating police investigator withheld evidence of a nearly identical crime—not involving Wright—which occurred nearby just 40 minutes before the killing at The Hiway Inn.[1] The court also found that the chief investigating officer failed to give satisfactory

[1] *State v. Wright*, __ A.3d __, I.D. No. 91004136DI, at 84 (Del. Super. Jan. 3, 2012).

Miranda warnings to Wright, telling Wright he was only entitled to an attorney if the "State feels you need one." Finally, the court concluded that a coalescence of factors, each supported by undisputed new expert testimony, operated to render Wright's waiver of his *Miranda* rights involuntary. As a result of its findings, the court vacated Wright's convictions and death sentence.[2]

When the court announced its opinion it suggested a need for a new proof positive hearing and scheduled such a hearing. The State appealed this court's January 3 opinion and order before the proof positive hearing took place. This court concluded that the pendency of the appeal deprived it of jurisdiction unless, and until, the Supreme Court remanded the matter for such a hearing. Shortly thereafter, Wright sought a remand in the Supreme Court so as to permit this court to conduct a bail hearing. The State opposed that motion, arguing that Wright was not entitled to bail. The Supreme Court noted that the question whether, under these circumstances, this court had jurisdiction to grant bail was one of first impression. Rather than address the issue on the basis of the truncated record before it, the Supreme Court remanded the matter "for the sole purpose of deciding whether [the Superior Court] has jurisdiction and, if so, for conducting such a

[2] *Wright*, I.D. No. 91004136DI, at 98.

hearing, subject to further review by [the Supreme] Court upon an appeal from either party."[3]

Immediately after receipt of the remand, this court posed certain questions including whether this court has the questioned jurisdiction. Both sides have timely responded in writing and supplemented their responses with letter correspondence.

Analysis

Relying primarily, if not exclusively, on 11 *Del.C.* §4502, the State argues that this court lacks jurisdiction to conduct a bail hearing. §4502 provides:

> No writ of error or writ of certiorari issuing from the Supreme Court in any criminal cause shall operate as a stay of execution of the sentence of the trial court unless such writ of error or writ of certiorari be sued out within 30 days from the date of final judgment in the court below, and unless the plaintiff in error obtains from the trial court (or, if the trial court refuses, then from 1 of the Justices of the Supreme Court) a certificate that there is reasonable ground to believe that there is error in the record which might require a reversal of the judgment below, or that the record presents an important question of substantive law which ought to be decided by the Supreme Court, and unless the plaintiff in error furnishes bond to the State, with surety to be approved and in an amount to be fixed by 1 of the Justices of the Supreme Court, conditioned as prescribed by rule of court. In cases where sentence of life imprisonment has been imposed, there shall be no stay of execution, and no supersedeas bond taken or allowed. **In cases where sentence of death has been imposed, the trial court, if the certificate provided for in this section has been granted, may stay the execution of the death penalty pending the determination of the cause by the Supreme**

[3] *State v. Wright*, C.A. No. 10, 2012, at 3 (Del. Mar. 2, 2012) (ORDER).

Court, but the defendant below shall not be released from custody.[4]

Two things are immediately evident from the statute's language. First, it applies to writs of error sought by a defendant. Second, the language upon which the State relies only "[i]n cases where sentence of death has been imposed." It therefore does not apply here because (1) this is an appeal by the State, not the defendant and (2) as the State conceded in the Supreme Court[5], Defendant is not under a sentence of death.

The language, purpose, and history of §4502 show that the statute applies only in instances in which the defendant has appealed. It speaks in terms of "a stay of execution of the sentence" which necessarily suggests the defendant is seeking the stay. Similarly the evident purpose of the statute is to provide a mechanism for a defendant to avoid imprisonment when "there is reasonable ground to believe there is error in the record which might require reversal of the judgment below."[6] This purpose has no meaning in which the State seeks to appeal and therefore the statute does not apply in such instances. Finally the historical context of the statute shows that General Assembly could not have intended it to apply to appeals by the State. The ancestor of §4502 was enacted in 1935.[7] At that time appeals by the State from criminal

[4] 11 *Del. C*. § 4502 (emphasis added).
[5] Response in Opposition to Wright's Motion to Expedite at ¶10, *Wright*, No. 10, 2012 (Del. Mar. 2, 2012).
[6] 11 *Del. C*. § 4502.
[7] *Del. C.* §5327 (1935).

matters were unknown.[8] It was not until 1969 when the General Assembly enacted 10 *Del. C.* §9902 that the State had any right of appeal.[9] Necessarily, therefore, the General Assembly did not contemplate appeals by the state when it enacted §4502.

The State's reliance upon §4502 is also misplaced because the defendant is not longer under a sentence of death. The State suggests that Defendant is still under a sentence of death until this court's January 3 order and opinion are affirmed. This argument is belied, however, by the position taken by the State before the Supreme Court. In opposing Wright's motion in the Supreme Court to expedite the appeal, the State told the Court that Wright "*is no longer under sentence of death*, and is currently being held as a pretrial detainee."[10]

Assuming that the language of §4502 could somehow be stretched to encompass the instant matter, its application here would violate the state constitution. Article I section 12 of the Delaware constitution guarantees bail to all persons, including those charged with capital crimes, unless, for capital offenses, there is "proof positive or presumption great."[11] In the instant matter, the court held that Wright's confession should not have been admitted and that, absent the confession, the State's case was "weak to non-existent." This is

---

[8] *United States v. Sanges,* 144 U.S. 310, 323 (1892); *State v. Dobies,* 290 A.2d 663, 665 (Del. Super. 1972) ("At common law, a state had no right of appeal in a criminal case.").

[9] 57 Del. Laws 133 (1969); Richard E. Poole, *Jurisdictional Changes*, in Delaware Supreme Court Golden Anniversary 33 (Randy J. Holland & Helen L. Winslow eds., 2001).

[10] Response in Opposition to Wright's Motion to Expedite at ¶10, *Wright*, No. 10, 2012 (Del. Mar. 2, 2012) (emphasis added).

[11] *Del. Const.* art. I §12.

tantamount to a finding there is no proof positive or presumption great of Wright's guilt. Wright's detention without bail pursuant to §4502 cannot be reconciled with his constitutional right to bail absent a showing of proof positive and presumption great. It is a time worn adage that whenever possible statutes are construed to render them constitutional. "[W]here a possible infringement of a constitutional guarantee exists, the interpreting court should strive to construe the legislative intent so as to avoid unnecessary constitutional infirmities."[12] The court therefore construes §4502 to not apply to instances in which it has determined, either expressly or implicitly, that the evidence falls short of the standard for proof positive and presumption great.

The State raises some peripheral arguments which merit brief mention. At least one of the State's arguments is inconsistent. At one point in its memorandum, the State asserts that "[w]ere this Court to find it could allow Wright to be released on bail while the appeal is pending, this Court would in essence be prejudging the merits of the appeal."[13] Yet later the State urges the court to adopt the standards for granting a preliminary injunction.[14] In the State's words those standards require the court to determine whether Wright has "a reasonable probability of eventual success on the merits."[15] Putting aside the inconsistency between telling the court not to prejudge the

---

12 *Richardson v. Wile,* 535 A.2d 1346, 1350 (Del. 1988).
13 State's Response to Questions Submitted on Remand Regarding Bail, at 6.
14 *Id.* at 6-7.
15 *Id.* at 7.

merits of the appeal and later telling the court it must do so, the State's contention that the court's jurisdiction to conduct a bail hearing is somehow limited by the standards for a preliminary judgment is without merit.

Elsewhere in its submission the State cites to four cases in which convictions underlying death penalties were overturned by an appellate court.[16] The State correctly points out that in none of those four cases did the Superior Court order a new proof positive hearing on remand. But the issue was never raised in any of those cases. Hence they do not stand, either singly or collectively, for the proposition that this court lacks jurisdiction to set bail in this case.

The State also refers to the Supreme Court's rules on applications for a stay and recites that this "Court's disposition of Wright's motion for post-conviction relief amounted to a stay of execution of his death sentence and more."[17] The "and more" is lost in the State's discussion and it is the "and more" which renders the Supreme Court's rules on stays inapposite. The court's January 3 opinion and order is not a "stay" of Wright's death sentence. Rather it is a vacation of that sentence and his underlying conviction. Hence rules relating to "stays" are inapplicable here.

The state closes its argument with the following:

---

[16] *Id.* at 5-6 (citing *Cooke v. State*, 977 A.2d 803 (Del. 2009); *Charbonneau v. State*, 904 A.2d 295 (Del. 2006); *Ashley v. State*, 798 A.2d 1019 (Del. 2002); *Riley v. Taylor*, 277 F.3d 261 (3d Cir. 2001)).

[17] State's Response to Questions Submitted on Remand Regarding Bail, at 4.

> For more than twenty years the Seifert family has legitimately believed that Jermaine Wright is the person who murdered their loved one. This Court's decision on Wright's fourth motion for post-conviction relief single-handedly undid the work of the two juries who heard the evidence for themselves; the prior Superior Court judge who presided over the two trials, the suppression hearings and post-conviction evidentiary hearings; and three unanimous decisions of the Delaware Supreme Court affirming Wright's convictions, sentence, and denials of prior post-conviction relief motions. Given the strong likelihood that Wright would not wait to see whether the Delaware Supreme Court will re-impose his death sentence, both the Seifert family and the public have a strong interest in having Wright remain in prison while the Delaware Supreme Court considers the appeal.[18]

None of this is germane to the jurisdictional argument before the court. Nonetheless the court would be remiss if it did not take pains to point out that this is not a case in which the court has undone the work of the trial judge or the Supreme Court. The issues on which this court's January 3 opinion turn were never presented to the trial judge or the Supreme Court. For example the trial judge never had the benefit of the wealth of undisputed expert evidence Wright presented at the Rule 61 hearing. The trial judge was never told that the chief investigating officer withheld information about the nearly identical crime occurring nearby shortly before the HiWay Inn killing, and the trial judge never had the benefit of counsel bringing to her attention the serious defect in the *Miranda* warnings in this case. Not surprisingly, therefore these issues have also never been presented to the Supreme Court.

[18] *Id.* at 7-8.

Conclusion

The court wishes to be clear about the narrow scope of its ruling. It holds only that it has jurisdiction to conduct a second proof positive hearing when it vacates a conviction and death penalty and, in so doing, calls into question the whether the evidence is sufficient to show proof positive and presumption great. The question whether it has jurisdiction to conduct a second proof positive hearing when the reason for vacating the conviction does not call into question the sufficiency of that evidence remains for another day.

_____

John A. Parkins, Jr.

Dated: April 2, 2012

oc: Prothonotary