

STATE OF LOUISIANA

NO. 18-K-504

VERSUS

FIFTH CIRCUIT

TEDDY CHESTER

COURT OF APPEAL

STATE OF LOUISIANA

September 06, 2018

Susan Buchholz

First Deputy Clerk

IN RE TEDDY CHESTER

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE ELLEN SHIRER KOVACH, DIVISION "K", NUMBER 96-2598

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Marc E. Johnson

WRIT GRANTED FOR LIMITED PURPOSE

Relator, Teddy Chester, seeks this Court's supervisory review of the trial court's denial of his Motion for Bail.

On April 25, 1996, relator was indicted for the first degree murder of John Adams. On May 14, 1997, after a trial by jury, relator was found guilty as charged. On May 16, 1997, the jury determined that a sentence of death be imposed. The Louisiana Supreme Court affirmed relator's conviction and sentence. *State v. Chester*, 97-2790 (La. 12/01/98), 724 So.2d 1276. In due course, relator filed a federal petition for a writ of habeas corpus under 28 U.S.C. § 2254(d), raising thirty-two claims for relief. On June 11, 2018, the federal district court granted the writ and ordered the State of Louisiana to either retry relator or release him from state custody within 120 days. On August 16, 2018, the State amended the Bill of Indictment to reflect the charge of second degree murder, and relator entered a plea of not guilty. On August 27, 2018, relator filed a Motion for Bail that was summarily denied by the trial court.

La. Const. Art. 1, §18, entitled "Right to Bail," provides:

- A. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient surety, except when he is charged with a capital offense and the proof is evident and the presumption of guilt is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is imprisonment for five years or less; and the judge may grant bail if the maximum sentence which may be imposed is imprisonment exceeding five years. After sentencing

and until final judgment, a person shall be bailable if the sentence actually imposed is five years or less; and the judge may grant bail if the sentence actually imposed exceeds imprisonment for five years.

- B. However, a person charged with a crime of violence as defined by law or with production, manufacture, distribution, or dispensing or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance as defined by the Louisiana Controlled Dangerous Substances Law, and the proof is evident and the presumption of guilt is great, shall not be bailable if, after a contradictory hearing, the judge or magistrate finds by clear and convincing evidence that there is a substantial risk that the person may flee or poses an imminent danger to any other person or the community.

La. C.Cr.P. art. 312, entitled “Right to bail before and after conviction,” provides, in pertinent part:

- A. Except as provided in this Article and Article 313, a person in custody who is charged with the commission of an offense is entitled to bail before conviction.

La. C.Cr.P. art. 313, entitled “Gwen’s Law; bail hearings; detention without bail,” provides, in pertinent part:

- B. Upon motion of the prosecuting attorney, the judge or magistrate may order the temporary detention of a person in custody who is charged with the commission of an offense, for a period of not more than five days, exclusive of weekends and legal holidays, pending the conducting of a contradictory bail hearing. Following the contradictory hearing, upon proof by clear and convincing evidence either that there is a substantial risk that the defendant might flee or that the defendant poses an imminent danger to any other person or the community, the judge or magistrate may order the defendant held without bail pending trial.

Relator is now charged with second degree murder, a crime of violence as defined in La. R.S. 14:2(B). Therefore, in the present case, in accordance with La. Const. Art. 1, §18 and La. C.Cr.P. arts. 312 and 313(B), relator may be held without bail pending trial only if, *after a contradictory hearing*, the proof is evident and the presumption of guilt is great and the trial court finds by clear and convincing evidence that there is a substantial risk that relator may flee or poses an imminent danger to any other person or the community.¹ Here, the trial court summarily denied bail, and thus failed to hold a contradictory hearing on relator’s Motion for Bail. Accordingly, we hereby grant this writ application, vacate the trial court’s ruling that summarily denied relator’s Motion for Bail, and remand the matter to the trial court to conduct a contradictory hearing on relator’s Motion for

¹ We note that relator’s prior conviction has no bearing on his current right to be released on bail. See La. C.Cr.P.art. 930.5, which provides:

If a court grants relief under an application for post-conviction relief, the court shall order that the petitioner be held in custody pending a new trial if it appears that there are legally sufficient grounds upon which to re-prosecute the petitioner.

In such a case, the petitioner shall be entitled to bail on the offense as though he has not been convicted of the offense.

Bail within five days, exclusive of weekends and legal holidays, of the date of this disposition. Relator shall remain in custody pending resolution of the bail hearing and a final ruling thereon.

Gretna, Louisiana, this 6th day of September, 2018.

JGG
SMC
MEJ

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **09/06/2018** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY

CHERYL Q. LANDRIEU
CLERK OF COURT

18-K-504

E-NOTIFIED

Rachel J. Conner (Relator)

Terry M. Boudreaux (Respondent)
Darren A. Allemand (Respondent)
Cecelia T. Kappel (Relator)

MAILED

Hon. Paul D. Connick, Jr. (Respondent)
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