

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2016 KW 1212

VERSUS

OCT 17 2016

DONALD FONTENOT

In Re: Donald Fontenot, applying for supervisory writs, 22nd Judicial District Court, Parish of Washington, No. unknown.

BEFORE: WHIPPLE, C.J., GUIDRY AND McCLENDON, JJ.

WRIT GRANTED. In the instant case, on or about August 5, 2016, relator filed in the district court a two-part pleading captioned "Motion to Quash La. R.S. [sic] ART 532/701 (B) Release." The records of the Washington Parish Clerk's Office reflect that on August 29, 2016, the district court denied relator's motion for release pursuant to La. Code Crim. P. art. 701(B), but failed to address the motion to quash. Therefore, the district court is ordered to expressly rule on the motion to quash issue.

JMG
VGW

McClendon, J., dissents and would deny the writ application. To the extent that relator is arguing that the district court failed to rule on the motion to quash issue, I would deny relief for two reasons. First, the motion to quash the charge was filed prematurely, as an indictment has not been issued. Second, in the motion to quash, relator argues a defense on the merits, which cannot be resolved through a motion to quash. See **State v. Gomez-Lopez**, 2012-0661 (La. App. 1st Cir. 11/14/12), 2012 WL 5508375.

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DEPUTY CLERK OF COURT
FOR THE COURT