

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

TAMAR EVANS, :  
 :  
 Petitioner, :  
 : No. 108410  
 v. :  
 :  
 CLIFFORD PINKNEY, :  
 CUYAHOGA COUNTY SHERIFF, :  
 :  
 Respondent. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: PETITION DENIED**  
**DATED: June 17, 2019**

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Writ of Habeas Corpus  
Motion No. 527562  
Order No. 528700

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***Appearances:***

Kimberly Kendall Corral, *for petitioner*

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Frank Romeo Zeleznikar, Assistant  
Prosecuting Attorney, *for respondent*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} On April 8, 2019, the petitioner, Tamar Evans, commenced this habeas corpus action against the respondent, Sheriff Clifford Pinkney. Evans avers that he is being illegally held on an excessive \$1,000,000 bond for aggravated

murder. On April 16, 2019, the sheriff moved for summary judgment, and Evans filed his reply brief on April 24, 2019. For the following reasons, this court grants the sheriff's motion for summary judgment and denies the application for a writ of habeas corpus.

{¶ 2} In August 2003, in the underlying case, *State v. Evans*, Cuyahoga C.P. No. CR-03-442218-ZA, the grand jury indicted Evans and Lamaien Wright-Scott, for aggravated robbery with firearm specifications, aggravated murder with firearm specifications, aggravated murder with felony-murder and firearm specifications, murder with firearm specifications, and carrying concealed weapons. The docket in the underlying case shows that the court set bond at \$1,000,000.

{¶ 3} The state asserts that during its investigation, Evans confessed to killing the victim, Matthew Glasear, as follows: Evans and Wright-Scott saw Glasear apparently selling drugs. Wright-Scott said they could get him once the buyers left. Evans and Wright-Scott ran up to Glasear and told him “don't run, don't move.” Evans said that he saw Glasear pulling his hand out of his pocket and that he had something in his hand; thinking that the object was a gun, Evans shot him. When Glasear did not immediately fall to the ground, Evans shot him again. Evans and Wright-Scott took Glasear's cell phone, money, and drugs, and ran away. During the confession, Evans identified a picture of Glasear as the man he shot and the revolver that was found on him at his arrest as the gun he used to shoot Glasear. Wright-Scott's statement to the police corroborated Evans's account.

**{¶ 4}** In June 2004, Evans and the state reached a plea bargain. The state amended the aggravated murder with felony-murder and firearm specifications to involuntary manslaughter with firearm specifications and nolle the other murder charges. Evans pled guilty to involuntary manslaughter, aggravated robbery, and carrying a concealed weapon. The judge imposed a sentence of 24 years for these charges to run consecutive to an 11-year sentence in *State v Evans*, Cuyahoga C.P. No. CR-03-442161-ZA, for an agreed combined sentence of 35 years.

**{¶ 5}** In August 2018, the trial court granted Evans's motion to withdraw his guilty plea based on actual innocence. After a hearing and reviewing affidavits, the trial court found that Wright-Scott testified consistently with his affidavit that he and he alone shot Glasear and that his testimony was consistent with other proffered evidence. In granting the motion to withdraw his guilty plea, the original charges and the original bond revived. *State ex rel. Cola v. McFaul*, 109 Ohio App.3d 203, 671 N.E.2d 1316 (8th Dist.1996). After denying a motion to reduce bond, the trial court explicitly reaffirmed the \$1,000,000 bond in a March 28, 2019 journal entry. Evans now brings this habeas corpus action to contest the bond's propriety.

**{¶ 6}** The principles governing habeas corpus in these matters are well established. Under both the United States and Ohio Constitutions, "excessive bail shall not be required." If the offense is bailable, the right to reasonable bail is an inviolable one that may not be infringed or denied. *In re Gentry*, 7 Ohio App.3d 143, 454 N.E.2d 987 (6th Dist.1982), and *Lewis v. Telb*, 26 Ohio App.3d 11, 497 N.E.2d

1376 (6th Dist.1985). The purpose of bail is to secure the attendance of the accused at trial. *Bland v. Holden*, 21 Ohio St.2d 238, 257 N.E.2d 397 (1970).

{¶ 7} In Ohio, the writ of habeas corpus protects the right to reasonable bail. *In re Gentry*. A person charged with the commission of a bailable offense cannot be required to furnish bail in an excessive or unreasonable amount. *In re Lonardo*, 86 Ohio App. 289, 89 N.E.2d 502 (8th Dist.1949). Indeed, bail set at an unreasonable amount violates the constitutional guarantees. *Stack v. Boyle*, 342 U.S. 1, 72 S.Ct.1, 96 L.Ed. 3 (1951). Pursuant to Crim.R. 46, in determining what is reasonable bail, the court must consider all relevant information including but not limited to, the nature and circumstances of the offense charged, the weight of the evidence, the accused's history of flight or failure to appear at court proceedings, his ties to the community, including his family, financial resources and employment, and his character and mental condition. After weighing these factors, the trial judge sets the amount of bail within its sound discretion. The discretion to set bail also permits the trial court to change bail as circumstances warrant. *Hardy v. McFaul*, 8th Dist. Cuyahoga No. 84495, 2004-Ohio-2694. In a habeas corpus action to contest the reasonableness of bond, this court must determine whether the trial court abused its discretion. *Jenkins v. Billy*, 43 Ohio St.3d 84, 538 N.E.2d 1045 (1989); *In re Gentry, Lewis*; and *In re Green*, 101 Ohio App.3d 726, 656 N.E.2d 705 (8th Dist.1995).

{¶ 8} As the Supreme Court stated in *Stack*, "This traditional right to freedom before conviction permits the unhampered preparation of a defense, and

serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.” *Stack* at 4-5.

{¶ 9} In the present case, this court concludes that the trial court did not abuse its discretion in setting bail. The charges of aggravated murder, murder, and aggravated robbery are very serious and could lead to a life sentence. Moreover, Evans confessed to killing Glasear and pled guilty. Nor would the trial court be amiss in concluding that spending many years in prison would create a great temptation to abscond and never return.

{¶ 10} Moreover, the courts have upheld \$1,000,000 bonds in very serious cases.

{¶ 11} Like Evans, Michael Norman was charged with the aggravated murder and aggravated robbery of an individual, and bond was set at \$1,000,000. Norman sought habeas relief to reduce his bond, but this court, after reviewing the facts, ruled that it could not conclude that the common pleas court had abused its discretion by setting bail at \$1,000,000. *Norman v. McFaul*, 8th Dist. Cuyahoga No. 76231, 1999 Ohio App. LEXIS 1683 (Apr. 8, 1999). In *Nawash v. McFaul*, 8th Dist. Cuyahoga No. 81380, 2002-Ohio-3645, the grand jury indicted Nawash with two counts of conspiracy to commit aggravated murder, two counts of conspiracy to commit aggravated robbery, two counts of attempted aggravated murder, aggravated arson, and two counts of attempted aggravated robbery. The court of common pleas raised his bail from \$30,000 to \$100,000 to \$1,000,000. At that

point, Nawash sought relief in habeas corpus to reduce the bond. This court upheld the bond noting the strength of the evidence against him and his ties to foreign countries. Similarly, the Supreme Court of Ohio ruled that the petitioner in *Ahmad v. Plummer*, 126 Ohio St.3d 262, 2010-Ohio-3757, 933 N.E.2d 256, did not establish that the trial court had abused its discretion in setting a \$3,000,000 bond for charges of conspiracy to commit murder.

{¶ 12} In *Birner v. McFaul*, 8th Dist. Cuyahoga No. 80408, 2001 Ohio App. LEXIS 5241 (Nov. 21, 2001), this court denied habeas relief to Birner whose bail had been set at \$1,000,000. In that case, Birner was charged with 42 counts, including engaging in a pattern of corrupt activity and aggravated drug trafficking. This court upheld a \$1,000,000 bail for another person charged with serious drug offenses in *Armendariz v. McFaul*, 8th Dist. Cuyahoga No. 82703, 2003-Ohio-2327. Bonds of \$1,000,000 were also not reduced in *Dixon v. McFaul*, 8th Dist. Cuyahoga No. 80920, 2002-Ohio-1066; *State ex rel. Hassen v. Maier*, 5th Dist. Stark No. 2014CA00109, 2014-Ohio-3459; and *Muntaser v. McFaul*, 8th Dist. Cuyahoga No. 81165, 2002 Ohio App. LEXIS 2928 (June 6, 2002).

{¶ 13} R.C. 2725.04(D) requires that the petitioner attach all his pertinent commitment papers. In *State ex rel. Jackson v. Sloane*, 150 Ohio St.3d 14, 2015-Ohio-3220, 78 N.E.3d 822, the Supreme Court of Ohio affirmed the dismissal of a habeas corpus petition because the petitioner did not attach the judgment entries of conviction for all of his criminal cases. The court reasoned that all the commitment papers are necessary for a complete understanding of the petition. *Pence v. Bunting*,

143 Ohio St.3d 532, 2015-Ohio-2026, 40 N.E.3d 1058. In the present case, Evans was convicted of several accounts of felonious assault in *Spate v. Evans*, Cuyahoga C.P. No. CR-03-442161-ZA, and his 11-year sentence in that case is to be served consecutively to the sentence in the underlying case. Thus, that conviction should have also been attached so that the court could have a complete understanding of the case.

{¶ 14} Accordingly, this court grants the respondent's motion for summary judgment and denies the petition for a writ of habeas corpus. Petitioner to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 15} Petition denied.

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SEAN C. GALLAGHER, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and  
RAYMOND C. HEADEN, J., CONCUR