ADVANCE SHEET HEADNOTE
September 9, 2024

2024 CO 57

No. 24SA75, *People v. Lewis*—Postconviction Bail—Postconviction Bail Exceptions—section 16-4-201.5(2)(a), C.R.S. (2023)—Colo. Const. art. II, § 19—County Court Appeals—Crim. P. 37(f)—Section 16-2-114(6), C.R.S. (2023)—Section 16-4-204, C.R.S. (2023)—Stays of Execution Pending Appeal—*People v. Steen*, 2014 CO 9, 318 P.3d 487—Statutory Interpretation.

In this C.A.R. 21 proceeding, the supreme court holds that once a county court has found that a convicted defendant poses a danger to an individual or the community, it cannot grant that defendant an appeal bond. Appeal bonds in such circumstances are prohibited by section 16 4 201.5(2)(a), C.R.S. (2023), and article II, section 19 of the Colorado Constitution. However, county courts are still required, upon request, to stay the execution of a defendant's sentence pending appeal under People v. Steen, 2014 CO 9, 318 P.3d 487. Further, the court holds that section 16 4 204, C.R.S. (2023), provides the exclusive method of appeal for trial court rulings on appeal bonds under section 16-4-201.5. Because the county court properly denied the appeal bond in this case, the supreme court discharges the order to show cause.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

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24 CO 57

Supreme Court Case No. 24SA75
Original Proceeding Pursuant to C.A.R. 21
County Court, City and County of Denver, Case No. 19M00428
Honorable Kerri Lombardi, Judge

In Re
Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Richard Lewis.

Order to Show Cause Discharged
en banc
September 9, 2024

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CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court.

¶1 Richard Lewis was convicted of misdemeanor offenses in county court. At sentencing, the court found that Lewis posed a danger to the community and therefore denied his request for an appeal bond under section 16-4-201.5(2)(a), C.R.S. (2023) (requiring a court to deny bail if it finds that the defendant poses "a danger to the safety of any person or the community").

¶2 We granted Lewis's request for an order to show cause under C.A.R. 21. Lewis argues that the county court erred by relying on section 16-4-201.5(2) to deny his appeal bond request. Instead, he argues, his county court appeal (and therefore his bond request) is governed by section 16-2-114(6), C.R.S. (2023). Specifically, he contends that under this court's decision in *People v. Steen*, 2014 CO 9, ¶¶ 16–17, 318 P.3d 487, 491–92, the county court was required under section 16-2-114(6) to stay the execution of his sentence and grant him an appeal bond.

¶3 We disagree. *Steen* addressed stays of execution in county court appeals. It did not address bail, which is a separate consideration. We conclude that the county court did not err by relying on 16-4-201.5, nor did it abuse its discretion by denying Lewis's request for an appeal bond. Accordingly, we discharge the order to show cause.

I. Facts and Procedural History

¶4 Following a trial in county court, a jury found Lewis guilty of four misdemeanors—two counts of unlawful sexual contact and two counts of unlawful sexual contact on a client by a psychotherapist.

¶5 Throughout trial, Lewis had been on a personal recognizance bond. After the jury's verdict, the county court considered whether to continue Lewis's bond pending sentencing. The prosecution argued that Lewis was not entitled to bond, and requested that, at minimum, the court remand Lewis into custody and set a bond hearing. The defense disagreed, noting that Lewis had been on bond until that point and had not "picked up even so much as a traffic citation" during that time. The county court, however, found that Lewis's circumstances had changed with his conviction and revoked his personal recognizance bond—noting that the case was "incredibly serious" and disagreeing with the defense that Lewis had demonstrated a lack of danger to the community. It then set a new cash bond at $5,000 pending sentencing, which Lewis posted.

¶6 At sentencing, the court noted that Lewis expressed no remorse or responsibility despite knowing that his actions were wrong. It observed that he exploited and disparaged the victim throughout the trial. And it expressed concern that, because Lewis's first wife was his previous patient, Lewis exhibited a pattern of exploiting his clients. The court sentenced Lewis to two twelve-month

sentences in the Denver County Jail,[1] the latter of which was suspended on the condition that Lewis successfully complete five years of sex offender probation. Lewis then moved for a stay of execution and requested that the court continue the $5,000 cash bond it had imposed before sentencing. Instead, the court revoked Lewis's bond and requested the prosecution's input as to a new bond. The prosecution reminded the court that it had previously found that Lewis posed a community safety risk. It argued that under section 16-4-201.5(2)(a), an appeal bond was not allowed unless the court made a finding that the defendant was unlikely to flee and did not pose a danger to the safety of any person or the community. It further urged the court to examine the factors set forth under section 16-4-202, C.R.S. (2023), when considering an appeal bond.

¶7 The county court proceeded to assess Lewis's eligibility for an appeal bond under section 16-4-201.5(2). It found that while Lewis was unlikely to flee, it had

[1] The county court held that Lewis's convictions under counts one and three merged and that his convictions under counts two and four merged because in each instance they were based on identical acts.

"significant concerns about the safety of the community and specifically [the victim]." Accordingly, the court denied Lewis's request for an appeal bond.[2]

¶8 After sentencing, Lewis filed a written motion arguing that, under section 16-2-114(6), Crim. P. 37(f), and *Steen*, the county court was required to stay the execution of his sentence pending appeal. He simultaneously filed a C.A.R. 21 petition seeking relief from the county court's denial of his appeal bond, and we issued an order to show cause.[3]

II. Original Jurisdiction

¶9 The county court suggests that jurisdiction is improper because section 16-4-204, C.R.S. (2023), is the exclusive method of appellate review for appeal bond denials under section 16-4-201.5. As discussed below, we agree that section 16-4-204 provides the exclusive method of appeal in this context. Nevertheless, the decision to exercise C.A.R. 21 jurisdiction lies within this court's sole

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[2] The county court also reasoned that any appeal regarding Lewis's sentence would be frivolous. *See* § 16-4-201.5(2)(b) ("The court shall not set bail that is otherwise allowed . . . unless the court finds that . . . [t]he appeal is not frivolous or is not pursued for the purpose of delay."). Because we conclude that, under section 16-4-201.5(2)(a) and article II, section 19 of the Colorado Constitution, the county court's finding that Lewis posed a danger to the community prohibited the court from granting him an appeal bond, we need not address this additional basis for the county court's ruling.

[3] Lewis has since filed a notice of appeal seeking review of his convictions in the District Court, City and County of Denver. However, that appeal has been stayed pending resolution of these proceedings.

discretion. *People v. Seymour*, 2023 CO 53, ¶ 16, 536 P.3d 1260, 1269. We choose to exercise our jurisdiction here because the interpretation of section 16-4-201.5, section 16-2-114(6), and Crim. P. 37(f) raises an important issue of first impression likely to recur in misdemeanor cases prosecuted in county courts. *Steen*, ¶ 8, 318 P.3d at 490.

III. Standard of Review

¶10 We review issues of statutory or constitutional interpretation de novo. *People v. Smith*, 2023 CO 40, ¶ 19, 531 P.3d 1051, 1054; *Steen*, ¶ 9, 318 P.3d at 490. In construing a statute, our fundamental responsibility is to ascertain and give effect to the General Assembly's intent. *Steen*, ¶ 9, 318 P.3d at 490 (citing *People v. Zhuk*, 239 P.3d 437, 438 (Colo. 2010)). "In so doing, we look to the plain and ordinary meaning of the statutory language, and we construe the statute to further the legislative intent represented by the statutory scheme." *Id.* (quoting *People v. Manzo*, 144 P.3d 551, 554 (Colo. 2006)). We also "avoid interpretations that result in superfluous words or phrases or 'illogical or absurd results.'" *People v. Howell*, 2024 CO 42, ¶ 8, 550 P.3d 679, 683 (quoting *People v. Rau*, 2022 CO 3, ¶ 16, 501 P.3d 803, 809). Importantly, "[w]here two legislative acts may be construed to avoid inconsistency, the court is obligated to construe them in that manner." *Steen*, ¶ 9, 318 P.3d at 490.

¶11 We typically review a trial court's bail determination for an abuse of discretion, *Smith*, ¶ 18, 531 P.3d at 1054, and defer to a trial court's factual findings underpinning that determination so long as they are supported by evidence in the record, *Goodwin v. Dist. Ct.*, 586 P.2d 2, 4 (Colo. 1978).

IV. Analysis

¶12 Lewis contends that section 16-2-114(6), Crim. P. 37(f), and *Steen* require the county court to both stay the execution of his sentence pending appeal and grant him an appeal bond. While we agree that the county court was required to stay the execution of Lewis's sentence, bail and stays of execution are separate processes. And unlike the statutory provisions examined in *Steen*, the language in section 16-4-201.5(2) does not conflict with section 16-2-114(6) or Crim. P. 37(f). Rather, section 16-4-201.5(2) incorporates the bail prohibitions listed in article II, section 19 of the Colorado Constitution—which, among other things, prohibits bail after conviction if a defendant is deemed a danger to the community. Accordingly, having found that Lewis presented a danger to the community, the county court properly denied bail.

¶13 We begin by noting that, once a defendant has been found guilty, there is no constitutional right to bail. *People v. Hoover*, 119 P.3d 564, 566 (Colo. App. 2005). Rather, article II, section 19(2.5)(a) of the Colorado Constitution states, "The court may grant bail after a person is convicted, pending sentencing or appeal, only as

provided by statute as enacted by the [G]eneral [A]ssembly." Moreover, article II, section 19(2.5)(b) prohibits setting bail after conviction for a defendant unless the court finds, among other things, that the defendant "does not pose a danger to the safety of any person or the community."

¶14 The General Assembly has enacted a statutory scheme to govern appeal bonds, sections 16-4-201 to -205, C.R.S. (2023) ("Colorado's appeal bond statutes"). These statutes add detail that is not in the Colorado Constitution, such as factors courts must consider when determining whether to grant an appeal bond, § 16-4-202, and how to appeal a court's denial of an appeal bond request, § 16-4-204.

¶15 Colorado's appeal bond statutes authorize appeal bonds for all courts. § 16-4-201, C.R.S. (2023). In so doing, the General Assembly reasserted the same postconviction bail exceptions outlined in the Colorado Constitution:

> The court shall not set bail that is otherwise allowed pursuant to subsection (1) of this section unless the court finds that:
>
> (a) The person is unlikely to flee and does not pose a danger to the safety of any person or the community; and
>
> (b) The appeal is not frivolous or is not pursued for the purpose of delay.

§ 16-4-201.5(2). This language is, in all material aspects, identical to article II, section 19(2.5)(b) of the Colorado Constitution, indicating that section 16-4-201.5(2) effectively codified the postconviction bail provisions and exceptions

found in article II, section 19(2.5)(b) of the Colorado Constitution.[4] Importantly, both section 16-4-201.5(2) and article II, section 19(2.5)(b) are not qualified as applying to only district courts. Rather, both use the general term "court."

¶16 The county court thus lacked discretion, on multiple grounds, to grant Lewis bail once he was convicted, and the court found that he posed a danger to the community. Having found that Lewis presented a danger to the community, both article II, section 19 and section 16-4-201.5(2) prohibited the county court from granting Lewis an appeal bond.

¶17 Lewis responds that section 16-2-114(6), Crim. P. 37(f), and our decision in *Steen* required the county court to grant his request for a stay of execution pending appeal—and that the county court was required to grant him an appeal bond as well. We disagree.

¶18 Section 16-2-114 and Crim. P. 37 govern appeals of misdemeanor convictions entered in county court. *Steen*, ¶ 17, 318 P.3d at 492. Relevant here,

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[4] Witness testimony at the House Judiciary Committee hearing for H.B. 99-1162, which first enacted section 16-4-201.5(2), reflects that the General Assembly codified article II, section 19(2.5)(b) to signal to attorneys and judges that these bail exceptions exist, given that it is unusual for bail exceptions to be located in a constitutional provision. Hearing on H.B. 1162 before the H. Judiciary Comm., 62d Gen. Assemb., 1st Sess. (Feb. 2, 1999) (statements of Bob Grant, Dist. Att'y, 17th Jud. Dist.).

under section 16-2-114(6), "a stay of execution shall be granted by the county court upon request." *See also* Crim. P. 37(f) (same).

¶19 In *Steen*, a county court defendant was sentenced, in part, to probation, and the county court denied the defendant's request to stay the execution of his probationary sentence pending appeal. ¶¶ 3–4, 318 P.3d at 489. This court then issued an order to show cause under C.A.R. 21 to resolve a conflict between section 16-2-114(6), which states that "a stay of execution shall be granted by the county court upon request," and section 16-4-201(2), which states that "[t]he trial court, in its discretion, may grant a stay of probation." *Steen*, ¶ 11, 318 P.3d at 490–91. We reasoned that because section 16-2-114(6) expressly governs appeals from a county court, its mandatory language controlled in that case. *Steen*, ¶ 23, 318 P.3d at 493. Accordingly, we held that section 16-2-114(6) and Crim. P. 37(f) (which contains identical mandatory language) "require a county court, upon request, to grant a stay of execution of a defendant's sentence pending appeal of a misdemeanor conviction to the district court." *Steen*, ¶¶ 23, 26, 318 P.3d at 493–94.

¶20 *Steen* makes clear that section 16-2-114(6) and Crim. P. 37(f) require the county court to grant Lewis's request to stay the execution of his sentence.[5] But we disagree with Lewis that section 16-2-114(6) requires the county court to grant him an appeal bond. Section 16-2-114(6) says, "If a sentence of imprisonment has been imposed, the defendant *may* be required to post bail." (Emphasis added). By its express wording, section 16-2-114(6) does not require bail to be granted.[6] This case thus does not present a statutory conflict similar to that in *Steen*. Rather, there is no conflict between section 16-2-114(6)'s stay requirement and section 16-4-201.5(2)'s appeal bond exceptions. Indeed, county courts can comply with the requirements of both statutes.

¶21 This is because stays of execution and bail are separate processes. In other words, a court can stay the execution of a sentence while also denying bail. Other statutory provisions make this distinction apparent. For example, section 16-4-201(1)(a) says that a convicted defendant may move for an appeal bond "during any stay of execution or pending review by an appellate court." This

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[5] The record on appeal is unclear on whether the county court granted Lewis's request to stay the execution of his sentence. To the extent that Lewis's request was denied, we direct the court on remand to grant his request to stay the execution of his sentence pending appeal, subject to modification by the district court. *See Steen*, ¶ 25, 318 P.3d at 494; § 16-2-114(6); Crim. P. 37(f).

[6] We therefore also reject Lewis's argument that section 16-2-114(6) establishes a bond specific to county courts (as opposed to an appeal bond) that must be granted in conjunction with a stay of execution.

language would be meaningless if stays of execution automatically resulted in the defendant receiving an appeal bond. Additionally, section 16-11-307(1)(b), C.R.S. (2023), deals with situations where a defendant's sentence is stayed but bail is denied:

> A defendant whose sentence is stayed pending appeal after July 1, 1972, but who is confined pending disposition of the appeal, is entitled to credit against the term of his sentence for the entire period of such confinement, and this is so even though the defendant could have elected to commence serving his sentence before disposition of his appeal.

If bail were required whenever a court stayed execution of a defendant's sentence pending appeal, section 16-11-307(1)(b) would be superfluous. We avoid such constructions. *See Howell*, ¶ 8, 550 P.3d at 683.

¶22 Lewis also argues that the denial of an appeal bond to defendants seeking review of their county court convictions raises "the specter of a useless appeal" that we cautioned against in *Steen*, ¶ 24, 318 P.3d at 494. We disagree. Section 16-4-204 provides a specific appellate process for defendants who are denied an appeal bond. *See People v. Jones*, 2015 CO 20, ¶ 15, 346 P.3d 44, 49. In *Jones*, ¶ 1, 346 P.3d at 46, we noted that section 16-4-204 appeals are expedited. As a practical matter, this makes sense. *See* C.A.R. 2 (permitting an appellate court, for good cause, to suspend the typical requirements of the appellate rules and expedite an appeal).

¶23 Notably, section 16-4-204 creates the exclusive appellate process for review of appeal bond rulings:

> After entry of an order pursuant to section 16-4-109[, C.R.S. (2023),] or 16-4-201, the defendant or the state may seek review of said order by filing a petition for review in the appellate court. If an order has been entered pursuant to section 16-4-104[, C.R.S. (2023)], 16-4-109, or 16-4-201, the petition shall be the exclusive method of appellate review.

Although section 16-4-204 does not expressly refer to rulings under section 16-4-201.5, the statutory scheme as a whole makes it clear that section 16-4-204 also provides the exclusive method for appealing rulings under section 16-4-201.5. *See Martin v. People*, 27 P.3d 846, 851 (Colo. 2001) ("We 'must read and consider the statutory scheme as a whole to give consistent, harmonious and sensible effect to all its parts.'" (quoting *Charnes v. Boom*, 766 P.2d 665, 667 (Colo. 1988))). Section 16-4-204(1) provides that "the defendant *or* the state may seek review" of an appeal bond ruling. (Emphasis added). Section 16-4-201, while giving courts discretion over appeal bond motions, only contemplates granting or modifying appeal bonds. *See* § 16-4-201(1)(a). Conversely, section 16-4-201.5 only contemplates denying appeal bonds. Therefore, in order for either "the defendant or the state" to appeal a trial court's appeal bond ruling, as required by section 16-4-204(1), rulings under both section 16-4-201 and -201.5 must be appealable. Section 16-4-204 thus provides the exclusive manner of appealing denials of appeal bonds under section 16-4-201.5.

V. Conclusion

¶24 In sum, a defendant who is convicted in county court of a misdemeanor offense and is sentenced to a term of imprisonment is not necessarily entitled to an appeal bond. The postconviction bail exceptions in section 16-4-201.5 and in article II, section 19 of the Colorado Constitution prohibit a county court from granting bail where the defendant poses a danger to an individual or the community. This is so even though section 16-2-114(6), Crim. P. 37(f), and *Steen* require a county court, upon request, to stay the execution of a defendant's sentence pending appeal. Further, section 16-4-204 provides the exclusive method of appeal for trial court rulings on appeal bonds under section 16-4-201.5.

¶25 We discharge the order to show cause and remand this case to the county court for further proceedings consistent with this opinion.