SUPREME COURT, STATE OF COLORADO Colorado State Judicial Building 2 East 17th Avenue Denver, Colorado 80203	DATE FILED May 03, 2024 2:50 PM
Original Proceeding County Court, City and County of Denver, 2019M00428	
IN RE: **The People of the State of Colorado** Respondent-Appellee, v. **RICHARD LEWIS**, Petitioner-Appellant.	▲ COURT USE ONLY ▲ Case Number: 2024SA000075
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DENVER COUNTY COURT'S ANSWER BRIEF TO ORDER AND RULE TO SHOW CAUSE

Certificate of Compliance

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certified that:

- The brief complies with C.A.R. 28(g) and contains 4,961 words.
- The brief complies with C.A.R. 28(a)(7)(A).
    - For the party raising the issue:
        - It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the records (R. CF p. __), not to an entire document, where the issue was raised and ruled on.
- I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/Paige Arrants
Paige Arrants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

ISSUES ON APPEAL

I. Whether the county court erroneously applied the appeal bond factors in C.R.S. § 16-4-201.5[1] which allow for a complete denial of bail pending appeal, to a stay of execution pending appeal of a county court judgment pursuant to section 16-2-114(6), C.R.S. and Crim. P. 37(f).

II. Whether the county court erred and abused its discretion by denying Petitioner bail as part of a stay of execution pending appeal because it is contrary to *People v. Steen*, 2014 CO 9, in which this Court recognized a mandatory stay of execution is necessary to remove "the specter of a useless appeal."

[1] The Petition also includes C.R.S. § 16-4-202(1) in this first issue on appeal. However, the county court did not reference, analyze, or go through the factors of C.R.S. § 16-4-202(1) when denying post-conviction bail to Petitioner. Rather, the prosecutor referenced C.R.S. § 16-4-202 before the county court denied post-conviction bail pursuant to C.R.S. § 16-4-201.5. Sentencing Hearing Transcript (Hereinafter "TR B") 01/05/2024, p. 36:19 – 39:3 (Petitioner's Exhibit C).

STATEMENT OF THE CASE

On November 13, 2023, Petitioner Richard Lewis ("Petitioner") was convicted by a jury of two counts of unlawful sexual contact pursuant to C.R.S. § 18-3-404(1)(a) and two counts of sexual assault on a client by a psychotherapist pursuant to C.R.S. § 18-3-405.5(2)(a), which are all misdemeanors. Jury Trial – Day 3 Transcript (Hereinafter "TR A") 11/13/2023, p. 3:4-16 (Petitioner's Exhibit A).

At the sentencing hearing on January 5, 2024, the Denver County Court ("county court") imposed a sentence of twelve-months in county jail on counts one and three as well as twelve-months in county jail for counts two and four. Sentencing Hearing Transcript (Hereinafter "TR B") 01/05/2024, p. 33:12-34:5 (Petitioner's Exhibit C). The sentence for counts two and four was suspended on the condition that Petitioner strictly comply with sex offender probation for five years. *Id.*

Following sentencing, Petitioner informed the county court that he would appeal the sentence and moved for an automatic stay of execution pursuant to Crim. P. 37(f). TR B 01/05/2024, p. 34:24-35:2. Additionally, he requested that his posted $5,000 bond be continued pending appeal. *Id.* at p. 35:10-36:4.

Before issuing an order on whether Petitioner should be allowed bond pending appeal, the county court heard arguments from attorneys for both parties. TR B 01/05/2024, p. 35:3-37:12. The county court judge recognized that Petitioner was

not a flight risk but had "significant concerns about the safety of the community and specifically [the victim]." *Id.* at p. 37:22-24. Further, the county court found that Petitioner had both made "…incredibly derogatory…" statements about and placed significant blame on the victim. *Id.* at p. 37:24-38:2. Finally, the county court stated that "any appeal with respect to [the twelve-month sentence] is frivolous" and that the case had been continuously delayed. *Id.* at p. 38:2-5. Weighing these considerations in accordance with C.R.S. § 16-4-201.5, the county court denied bond. *Id.* Petitioner subsequently filed the present C.A.R. 21 Petition, *In Re People v. Richard Lewis* (hereinafter "Petition"), regarding the county court's application of C.R.S. §§ 16-4-201.5 and 16-4-202(1)[2] in denying post-conviction bail on March 12, 2024.

SUMMARY OF THE ARGUMENT

This Court should not exercise its discretion to hear Petitioner's C.A.R. 21 appeal because the county court did not exceed its jurisdiction, abuse its discretion, or misinterpret precedent when denying Petitioner post-conviction bail. Further, although C.R.S. § 16-4-204 is an expedited avenue of review for defendants to seek review of an appeal bond determination and was available to Petitioner, he declined to pursue that option. Because appeal via C.R.S. § 16-4-204 was an available, plain,

[2] *See supra* FN 1, at pg v.

speedy, and adequate remedy that Petitioner could have taken instead of the present appeal, this Court should decline to exercise its jurisdiction over the present Petition. However, even if the Court entertains the Petition, its arguments lack merit.

For example, while Petitioner heavily relies on *People v. Steen* in attempts to argue that the county court erred and abused its discretion in denying him bail pending appeal, *Steen*'s ruling was in regard to a stay of execution and has no effect on a court's proper application of C.R.S. § 16-4-201.5 in denying bail post-conviction. Moreover, contrary to Petitioner's assertion otherwise, neither C.R.S. § 16-2-114(6) nor Crim. P. 37(f) require that bail be set in conjunction with a mandatory stay of execution; instead, both allow judges to exercise discretion regarding whether to set bail post-conviction. Further, statutes governing bail after conviction and bond hearing factors apply to both misdemeanors and felonies and do not conflict with C.R.S. § 16-2-114(6) nor Crim. P. 37(f). In recognizing that there is no constitutional right to post-conviction bail, the county court judge properly applied C.R.S. § 16-4-201.5 to Petitioner's case, and appropriately denied him bail pending appeal pursuant to Colorado's Constitution, statutes, and caselaw. The county court did not exceed its jurisdiction or abuse its discretion in denying post-conviction bail to Petitioner and respectfully requests that this Court affirm its Order denying bail and discharge the Rule to Show Cause.

STANDARD OF REVIEW

I. Standard of Review for Rule to Show Cause[3]:

Exercise of original jurisdiction pursuant to C.A.R. 21 is not mandatory. Rather, it is appropriate to determine whether the trial court exceeded its jurisdiction or to review an abuse of discretion when no adequate appellate remedy exists. *Coquina Oil Corp. v. District Court*, 623 P.2d 40, 41 (Colo. 1981). Further, C.A.R. 21 represents "an extraordinary remedy that is limited in both purpose and availability." *Raven v. Polis*, 479 P.3d 918, 920 (Colo. 2021) (citations omitted) (relief is appropriate when appellate remedy would be inadequate, when a party may otherwise suffer irreparable harm or when the petition raises issues of significant public importance that the Court has not yet considered); *see also Brown v. Long Romero*, 495 P.3d 955, 958 (Colo. 2021) (C.A.R. 21 provides relief that is extraordinary in nature).

[3] The Petition does not contain separate headings regarding the applicable standard of review. However, the Petition references abuse of discretion and states when original jurisdiction can be exercised under C.A.R. 21, which Denver County Court does not disagree with. *See* Petition, pgs. 3, 15. Similarly, because the Petition was silent regarding preservation for appeal of the issues before this Court, Denver County Court cannot affirmatively agree or disagree as to whether these issues were properly preserved for appeal.

II. Standard of Review for Denial of Bond[4]:

Whether the trial court improperly decided to deny bond is reviewed for an abuse of discretion. *People v. Johnson*, 488 P.3d 232, 236 (Colo. App. 2017) (citing *People v. Hoover*, 119 P.3d 564, 566 (Colo. App. 2005)). A court only abuses its discretion if its decision is manifestly arbitrary, unreasonable, or unfair, or if it misconstrues or misapplies the law. *People v. Fallis*, 353 P.3d 934, 935 (Colo. App. 2015) (citing *People v. DeAtley*, 333 P.3d 61, 65 (Colo. 2014); *People v. Glover*, 363 P.3d 736, 739 (2015). Whether a trial court's decision is manifestly arbitrary, unreasonable, or unfair is not a question of whether the reviewing court would have reached a different result but, rather, whether the trial court's decision fell within a range of reasonable options. *Fallis*, 353 P.3d at 935 (citing *People v. Rhea*, 349 P.3d 280, 293 (Colo. App. 2014)).

[4] The Petition does not contain any heading regarding the applicable standard of review for an order denying bond. However, the Petition references abuse of discretion, which Denver County Court does not disagree with. *See* Petition, pgs. 3, 15.

ARGUMENTS IN OPPOSITION TO RELIEF UNDER C.A.R. 21

I. C.R.S. § 16-4-204 is an available, plain, speedy, and adequate remedy that Petitioner could have taken instead of appeal via C.A.R. 21.

C.R.S. § 16-4-204(1) allows defendants to seek review of an appeal bond determination by filing a petition in the appellate court. The statute grants the appellate court authority to (1) remand the petition for further hearings, (2) order the trial court to modify the terms and conditions of appeal bond, or (3) order the trial court to modify in part and remand in part. C.R.S. § 16-4-204(3)(a)-(c). If an order is entered pursuant to C.R.S. § 16-4-201, **appellate review via C.R.S. § 16-4-204** "**shall be the exclusive method of review**." C.R.S. § 16-4-204(1) (emphasis added).

While C.R.S. § 16-4-204(1) does not explicitly state that it applies to orders denying bail pursuant to C.R.S. § 16-4-201.5, in *People v. Johnson*, the Colorado Court of Appeals considered an appeal brought under C.R.S. § 16-4-204 wherein a convicted petitioner was denied bond. *Johnson*, 488 P.3d at 234. The *Johnson* Court concluded that C.R.S. § 16-4-201.5 applied, and found that the district court properly exercised its discretion in denying bond to the convicted petitioner when it found he was a danger to the community. *Id.* at 239. Thus, *Johnson* makes clear thar orders issued pursuant to C.R.S. § 16-4-201.5 are appropriate for appellate review under C.R.S. § 16-4-204.

Further, C.R.S. § 16-4-204(1) is distinguishable from a conventional appellate appeal in that it is an expedited process. Specifically, in *People v. Jones*, **this Court refers to appeals brought pursuant to § 16-4-204(1) as "an expedited appellate review of orders setting or changing the types and conditions of bail."** 346 P.3d 44, 50-51 (Colo. 2015) (emphasis added).

Here, Petitioner was sentenced to 12 months in county jail, as well as a suspended sentence of 12 months of county jail conditioned upon successful completion of five years of sex offender probation, with probation running concurrently with the jail sentence. TR B 01/05/2024, p. 33:12-34:16. In other words, Petitioner's sentence encompassed at least a four-year period. *Id.*; Terms of Supervised Probation, 1-2 (Petitioner's Appendix E). Petitioner acknowledges that he could have appealed the denial of bail pursuant to C.R.S. § 16-4-204. Petition, 3. However, without supporting detail, he alleges that it is not a plain, speedy, or adequate remedy because he may have already served most or all of his sentence by the time judgment on his appeal was entered. *Id.* at 3-4.

Per its statutory language, C.R.S. § 16-4-204 is the exclusive method of appellate review for orders regarding bail or appeal bond, and under *Jones*, the review is expedited. Additionally, the remedy of review under C.R.S. § 16-4-204 is adequate, because the appellate court could effectively force the trial court to grant

Petitioner's request for appeal bond. Because Petitioner provides no detailed reasoning as to how C.R.S. § 16-4-204 does not provide a plain, speedy, or adequate remedy as an expedited appellate avenue he could have pursued, this Court should decline to exercise its jurisdiction over this case.

II. *Steen*'s ruling regarding stays of execution has no effect on the county court's proper application of C.R.S. § 16-4-201.5 in denying bail to a convicted person in the present case.

Bail and stays of execution are distinct legal concepts. Colorado statute consistently refers to stay of executions and bail as separate processes. *See* Crim. P. 37(f) (Stating that **bail "may" be imposed** after a mandatory stay of execution); *see also* C.R.S. § 16-11-307(b) (Contemplating a scenario where a stay of execution is granted but a defendant remains imprisoned) (emphasis added). A defendant can be held in detention pending appeal while a stay of execution is also in effect. For example, C.R.S. § 16-11-307(b) (regarding credit for confinement pending appeal) makes it clear that a defendant may be kept in confinement after the grant of a stay of execution pending appeal, stating "[a] defendant whose sentence is stayed pending appeal… 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…"

Notwithstanding the fact that bail and stays of execution are independent legal issues, Petitioner heavily relies on this Court's ruling in *People v. Steen*, which

analyzed a stay of execution. 318 P.3d 487, 489 (Colo. 2014). The Petition reads as if *Steen* involved the same facts, concepts, and legal issues as the present case which somehow require this Court to set bail for a convicted person post-trial. However, *Steen*'s holding and analysis were in regard to a stay of execution, not setting bail pending appeal. *Id.* at 489.

Bail is only tangentially mentioned three times in *Steen*'s majority opinion. *Id.* at 492-93. It is mentioned twice in this Court's block quotes of C.R.S. § 16-2-114(6) and Crim. P. 37(f), and shortly thereafter where this Court recognizes that such sources "**permit** a county court to impose a condition of bail (if a sentence of imprisonment is imposed)". *Id.* at 492 (emphasis added). Attempting to persuade this Court that the county court's denial of bail to Petitioner after his conviction was contrary to *Steen*, the Petition contains a block quote of *Steen*'s paragraph 24. Petition, 14. However, again, the block quote does not concern bail, nor does it even contain the word "bail" in it. *Id.*

As discussed further in section VI below, *Steen*'s ruling had no precedential effect on the key issue in this case – the county court's proper application of C.R.S. § 16-4-201.5 when deciding whether to grant bail to a convicted person post-trial. This Court should not adopt Petitioner's misconstrual of *Steen*, and accordingly, discharge the Rule to Show Cause.

III. Neither C.R.S. § 16-2-114(6) nor Crim. P. 37(f) require bail to be set in conjunction with a mandatory stay of execution; instead both allow judges to exercise discretion regarding whether to set bail post-conviction.

While Petitioner alleges that the trial court ordered that he be held without bail pending appeal contrary to C.R.S. § 16-2-114(6) and Crim. P. 37(f), neither the statute nor the rule require bail to be set in conjunction with a mandatory stay of execution. Petition, pgs. 3, 9. The Petition conveniently omits language which provides judges discretion regarding the decision to impose bail in its first half, but later acknowledges that "[s]ection 16-2-114(6), C.R.S. and Crim. P. 37(f) do permit the county court to require the posting of bail if a sentence of imprisonment has been imposed." Petition, 12.[5]

C.R.S. § 16-2-114(6) states "pending the docketing of the appeal, . . . If a sentence of imprisonment has been imposed, the defendant **may** be required to post bail." (emphasis added). Likewise, Crim. P. 37(f) is identical, stating, "pending the docketing of the appeal, . . .If a sentence of imprisonment has been imposed, the defendant **may** be required to post bail." (emphasis added). Further, in *Steen*, this Court explicitly recognized that county courts retain discretion to impose conditions of bail, stating as facts that "section 16-2-114(6) and Crim. P. 37(f) **permit** a county

[5] The law providing judges discretion over granting or denying bail is further discussed in sections VI and VII below.

court to impose a condition of bail (if a sentence of imprisonment is imposed)". *Steen*, 318 P.3d at 492 (emphasis added). Likewise undercutting his own argument, Petitioner recognizes that C.R.S. § 16-4-201(1)(a)-(d) "provides trial courts discretion to set bail after conviction subject to certain conditions". Petition, 11.

Nothing in the language of C.R.S. § 16-2-114(6) nor Crim. P. 37(f) mandate that bail be granted pending the docketing of an appeal. *Steen* further reinforces the fact that the county court retains discretion to deny bail in its analysis of C.R.S. § 16-2-114(6) and Crim. P. 37(f). *See Steen*, 318 P.3d at 492-93; *see also* C.R.S. § 16-4-201(1)(a)-(d). Accordingly, this Court should reject Petitioner's argument and discharge the Rule to Show Cause.

IV. C.R.S. §§ 16-4-201.5 and 16-4-202[6] apply to county court proceedings and do not conflict with C.R.S. § 16-2-114(6) and Crim. P. 37(f).

Without support, the Petition broadly alleges that if C.R.S. § 16-4-201 does not apply to appeals of a county court judgment, then neither do C.R.S. §§ 16-4-201.5 nor 16-4-202. Petition, 11. However, *Steen* did not rule that C.R.S. § 16-4-201 as a whole did not apply to appeals of a county court judgment; rather, *Steen*'s ruling was narrow, and only applied to subsection (2) of C.R.S. § 16-4-201 in regard to a stay of execution of a sentence. *Steen*, 318 P.3d at 491-92.

[6] *See supra* FN 1, at pg v.

Specifically in *Steen*, this Court found an express conflict between C.R.S. § 16-4-201(2), which gives courts discretion to grant a stay of probation pending appeal, and C.R.S. § 16-2-114(6) and Crim. P. 37, which require county courts to enter a stay of execution pending appeal. *Steen*, 318 P.3d at 491-93. In *Steen,* this Court noted that, "[w]here possible, we interpret conflicting statutes in a manner that harmonizes the statues and gives meaning to other potentially conflicting statutes." *Id.* at 490. It further stated **"[w]here two legislative acts may be construed to avoid inconsistency, the court is obligated to construe them in that manner."** *Id.* (emphasis added). *Steen* found that because C.R.S. § 16-2-114(6) and Crim. P. 37 directly applied to appeals from county court proceedings, they were given precedence over C.R.S. § 16-4-201(2), which governed probationary sentences more generally. *Id.* at 491-93.

Here, unlike the statutory provisions and rules at issue in *Steen*, the statutes presently before the Court, C.R.S. §§ 16-4-201.5 and 16-4-202[7], do not directly conflict with C.R.S. § 16-2-114(6) nor Crim. P. 37(f). Specifically, statutes concerning bail after conviction and bond hearing factors (C.R.S. §§ 16-4-201.5 and 16-4-202) do not conflict with the county court appellate statute and rule raised by Petitioner (C.R.S. § 16-2-114(6) and Crim. P. 37(f)). Rather, these statutes and rule

[7] *See supra* FN 1, at pg v.

of criminal procedure are harmonious. As analyzed in section II above, denying bail does not necessarily violate any requirement to grant a stay of execution pending appeal.

Both C.R.S. § 16-2-114(6) and Crim. P. 37(f) explicitly state "[i]f a sentence of imprisonment has been imposed, the defendant **may** be required to post bail." (emphasis added). Similarly, C.R.S. § 16-4-201.5 states that "[t]he court **may** grant bail after a person is convicted, pending sentencing or appeal." (emphasis added). These laws give the court discretion to apply bail. Because C.R.S. §§ 16-4-201.5 and 16-4-202[8] apply to county court proceedings and no conflict exists between the bail and bond hearing statutes raised by Petitioner, the Court should discharge the Rule.

V. C.R.S. §§ 16-4-201(1), 16-4-201.5, and 16-4-202[9] apply to both misdemeanor and felony offenses.

Petitioner argues that C.R.S. § 16-4-201(1)(a)-(d) only applies to felony offenses. Petition, 11-12. However, this characterization of the statute is inaccurate. C.R.S. § 16-4-201(1)(a) states that "[a]fter conviction, either before or after sentencing, the defendant may… move for release on bail… during any stay of execution or pending review by an appellate court…". Nowhere does the statute say

[8] *See supra* FN 1, at pg v.

[9] *See supra* FN 1, at pg v.

that it only applies to felonies. The only reference to felony offenses is in § 16-4-201(1)(d), which states that "[f]or a defendant who has been convicted of a felony offense, a condition of bail bond shall be… that the defendant consents to extradition…" Further undercutting Petitioner's argument is the fact that like Petitioner in the present case, the Petitioner in *Steen* was also only convicted of misdemeanor offenses. *Steen*, 318 P.3d at 489.

After Steen's misdemeanor convictions, the county court applied C.R.S. § 16-4-201, and in its review, this Court did not find nor make any comment that the county court erred in applying the statute to misdemeanor, rather than felony offenses. *Id.* at 489-92. Likewise, *People v. Craig* also shows that C.R.S. § 16-4-201 does not solely apply to felony offenses. 585 P.2d 1257, 1258 (Colo. App. 1978). In *Craig,* the Colorado Court of Appeals held that "[a] conviction occurred within the meaning of [C.R.S. § 16-4-201] when the court accepted Craig's plea of guilty to the lesser offense of misdemeanor theft," indicating that C.R.S. §16-4-201 applies to misdemeanor offenses. *Id.*

The Petition's assertion that C.R.S. § 16-4-201 does not apply to county court judgments because it only applies to felony charges is erroneous, and should be disregarded. This false assertion serves as a faulty premise to Petitioner's argument that "if section 16-4-201, C.R.S., which governs bail after conviction, does not apply

to appeals of a county court judgment then neither do either section 16-4-201.5, C.R.S. or section 16-4-202". Petition, 11. As discussed in section IV above, *Steen*'s ruling was strictly tailored to subsection (2) of C.R.S. § 16-4-201; it is inaccurate to state that *Steen* ruled that C.R.S. § 16-4-201 does not apply to county court judgments as a whole.

Accordingly, this Court should not adopt Petitioner's misguided logic in surmising that neither C.R.S. § § 16-4-201.5 nor 16-4-202[10] apply to county court appeals either on the basis of an inaccurate portrayal of *Steen*, or on the false assertion that C.R.S. § 16-4-201 only applies to felony charges. Nowhere in either C.R.S. §§ 16-4-201.5 nor 16-4-202[11] state that the bail factors only apply to felony offenses. Because the statutory bail and appeal bond factors apply to both misdemeanors and felonies, this Court should find that these provisions apply to bail pending appeal of misdemeanor offenses and discharge the Rule to Show Cause.

VI. There is no constitutional right to post-conviction bail, and the county court properly applied C.R.S. § 16-4-201.5 to Petitioner's case.

There is no constitutional right to bail after conviction in Colorado. Colo. Const. art. II, § 19(2.5)(a). The granting of bail pending appeal, and the conditions

[10] *See supra* FN 1, at pg v.

[11] *See supra* FN 1, at pg v.

thereof, initially rests with the trial court. C.R.S. §§ 16-4-201 and 16-4-201.5. Ample caselaw likewise recognizes that the right to bail evaporates for convicted criminal defendants post-trial.

Decisions from Colorado courts and other federal courts are in accord – they routinely recognize that there is no constitutional right to bail after conviction. As articulated in *People v. Hoover,* "[t]he constitution does not establish a right to bail after trial; it merely allows the legislature to authorize post-trial bail, and only for certain defendants." 119 P.3d at 566. Colorado courts recognize that the "power to grant such bail is provided by statute and is within the sound discretion of the trial court." *People v. Roca*, 17 P.3d 835, 836 (Colo. App. 2000); *see also Johnson*, 488 P.3d at 239 (probationer had no right to bond in menacing and criminal impersonation cases because he had been convicted in those cases); *see also U.S. v. Affleck*, 765 F.2d 944, 948 (10th Cir. 1985) (en banc) (there is no constitutional right to bail pending appeal); *see also Young v. Hubbard*, 673 F.2d 132, 134 (5th Cir. 1982) (there is no absolute federal constitutional right to bail pending appeal).

Congruous with the aforementioned caselaw, C.R.S. § 16-4-201.5(1) lists instances where the court cannot grant bail, which did not apply to Petitioner. In contrast, subsection two enumerates when the court can set bail post-conviction and pending appeal, specifically after finding: the person is unlikely to flee, poses no

danger to a person or the community, and appeal is not frivolous or pursued for the purpose of delay. C.R.S. § 16-4-201.5(2); *see also* 18 U.S.C. § 3143(b) (listing the substantially same post-conviction appeal bond factors).

Here, the county court correctly denied bail to Petitioner, a convicted sex offender. Petitioner was convicted of two counts of unlawful sexual contact and two counts of sexual assault on a client by a psychotherapist on November 13, 2023. TR A 11/13/2023, p. 3:4-16. At the sentencing hearing on January 5, 2024, the county court judge addressed Petitioner, stating "this is a really aggravated case to which I think you have taken zero responsibility and have zero – remorse", noting that Petitioner, as the victim's therapist who reported to her probation officer, manipulated and exploited his victim, and was a "predator". TR B 01/05/2024, p. 29:9-30:3.

The county court judge then addressed C.R.S. § 16-4-201.5, specifically noting that it "discusses the right to bail after conviction," and considered the factors of subsection two. TR B 01/05/2024, p. 37:13 - 38:5. In deciding whether to set bail after Petitioner's conviction, the county court judge looked to the factors in C.R.S. § 16-4-201.5(2) and stated that while she did not necessarily think Petitioner would flee, she had "significant concerns about the safety of the community", as well as the victim of Petitioner's crimes. *Id.* at p. 37:22-38:2. The judge also stated that she

thought that appeal regarding sentencing was frivolous, and found that the case had been continuously delayed. *Id.* at p. 38:2-5. As a result, the county court denied post-conviction bail. *Id.* at p. 38:4-5.

Petitioner acknowledges that there is no constitutional right to bail after trial, but notes that trial courts may not deny a request for bond arbitrarily or unreasonably. Petition, 13. However, Petitioner's silence as to how the county court's denial of appeal bond was arbitrary or unreasonable speaks volumes.

Here, the county court judge did not deny Petitioner's request for bail arbitrarily or unreasonably. Rather, she recognized that Petitioner had no right to bail after his criminal convictions, and properly applied C.R.S. § 16-4-201.5(2) to his case. TR B 01/05/2024, p. 37:13-38:5. The judge appropriately exercised her discretion when considering whether to grant bail to Petitioner by carefully going through each factor of subsection two, ultimately finding that he did not meet its requirements. *Id.* at p. 37:13-38:5.

In finding that Petitioner was a danger to the safety of the community and his victim, that appeal was frivolous, and that delay existed, the county court judge showed sound reasoning as to why she was denying post-conviction bail to Petitioner. It is obvious that the county court judge did not unreasonably or arbitrarily deny Petitioner post-conviction bail, but rather, provided appropriate

reasoning as to why she was doing so. This Court should follow both the Colorado and federal Constitutions, as well as caselaw, and find that the county court properly applied the bond factors in C.R.S. § 16-4-201.5 when denying Petitioner post-conviction bail, and discharge the Rule.

VII. The plain language of Colorado's Constitution, statutes, and caselaw harmoniously affirm that judges retain discretion to deny post-conviction bail.

Here, Petitioner asks this Court to completely dismantle the plain language of the Colorado Constitution, the plain language of Colorado statutes, and decades of caselaw plainly stating that there is no right to bail after conviction, and that the granting or denial of bail pending appeal properly rests with the trial court. *See* section VI above. Petitioner is effectively asking that this Court ignore the plain language of C.R.S. § 16-4-201.5 and its requirements, strip all discretion and reasoning from trial judges, and order judges to automatically grant bail to convicted persons post-trial when requested.

When construing statutes, this Court looks to legislative intent, the "plain and ordinary meaning of the statutory language", and considers "the statutory scheme as a whole to give consistent, harmonious, and sensible effect to all its parts." *Steen*, 318 P.3d at 490. Here, the plain language of C.R.S. § 16-4-201.5(2) states that the court "**shall not set bail** that is otherwise allowed pursuant to subsection (1) of this

section **unless the court finds that**: . . . (listing requirements a and b)". (emphasis added). This Court generally interprets "shall" with a mandatory connotation. *Steen*, 318 P.3d at 492.

Likewise, the Colorado constitution states that the court "**may** grant bail after a person is convicted, pending sentencing or appeal, only as provided by statute as enacted by the general assembly; except that … [listing exceptions]". Colo. Const. art. II, § 19(2.5)(a) (emphasis added). Colorado's constitution continues:

> (b) The court **shall not set bail** that is otherwise allowed pursuant to this subsection (2.5) **unless the court finds** that:
> (I) **The person** is unlikely to flee and **does not pose a danger to the safety of any person or the community**; **and**
> (II) The **appeal is not frivolous or** is not pursued for the purpose of **delay**.
>
> Colo. Const. art. II, § 19(2.5)(b) (emphasis added).

The language of Article II, § (2.5)(a)-(b) of Colorado's Constitution and C.R.S. § 16-4-201.5(2) are near identical in regard to granting bail to a convicted person. It is clear that the two were designed to coexist in harmony. The plain meaning of "shall not set bail … unless the court finds that" mandates that bail for a convicted person is not automatic and can only be granted if certain requirements are met, and the court makes specific findings. *Id.* The intent was to ensure justice, and promote safety and judicial efficiency. Recognizing and codifying trial courts' discretionary power to deny bail post-trial to convicted persons is fundamentally at

odds with Petitioner's requested relief. As discussed in section VI above, the county court appropriately found that Petitioner failed to satisfy the requirements of C.R.S. § 16-4-201.5(2), and properly denied post-conviction bail.

Petitioner's arguments should be rejected because they are contrary to the Colorado Constitution and caselaw. This Court should not order the county court to set bail for Petitioner - a convicted sex offender - who was properly denied bail after the county court judge appropriately exercised her discretion and reasonably found that Petitioner was a danger to the community and the victim in his case, that appeal was frivolous, and that the case had been unduly delayed. Petitioner's attempt to create a new, automatic right to bail for convicted persons is contrary to Colorado law and should be denied.

CONCLUSION

Relief under C.A.R. 21 is not appropriate here. The Denver County Court correctly applied the factors in C.R.S. § 16-4-201.5 and did not abuse its discretion in denying post-conviction bail to Petitioner, a convicted sexual offender who was found to be without remorse, and a danger to the community and his victim. Accordingly, the Denver County Court respectfully requests that this Court affirm the Denver County Court's Order denying bail and discharge the Rule to Show Cause.

Respectfully submitted this 3rd day of May 2024.

By: */s/ Paige Arrants*
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