No. 100718-3

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LEONEL GONZALEZ,

Petitioner

ON DISCRETIONARY REVIEW FROM THE
SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

PETITIONER'S REPLY

Gregory C. Link
Attorney for Petitioner

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101
206-587-2711

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A. Argument

The trial court violated Article I, section 20 when it denied bail. Mr. Gonzalez's resulting confinement is unlawful.

This case involves a simple question. Does the term "possible" include that which is impossible? Seemingly the answer is simple. Just as 2+2 must equal 4 and a circle cannot be a square, "possible" cannot mean "impossible. But the deputy prosecutor's answer, as does the trial court ruling, does all it can to avoid that simple and seemingly unavoidable answer. Instead, deputy prosecutor insists the phrase "offenses punishable by the possibility of life in prison" includes offense for which a life sentence is impossible.

If convicted of the charged offenses, Leonel Gonzalez could not receive a life sentence. The deputy prosecutor's answer does not dispute that point. Because they cannot. Again, there are no circumstances under which Mr. Gonzalez could be actually be sentenced to life in prison or anything close. A life sentence is not possible for the offense he is charged with.

That should end the debate as the plain language of Article I, §section 20 allows a court to deny bail only when a life sentence is possible. The court must give constitutional text its "common and ordinary meaning, as determined at the time [it was] drafted." *Wash. Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004) (citing *State ex rel. O'Connell v. Slavin*, 75 Wn.2d 554, 557, 452 P.2d 943 (1969)). If constitutional language is plain and unambiguous a court must give the words the plain, natural, and most obvious meaning the framers intended. *Auto. United Trades Org. v. State*, 175 Wn.2d 537, 545, 286 P.3d 377, 381 (2012) (internal citations omitted). The Court should not resort to "forced construction for the purpose of limiting or extending" the meaning of the text. *Id*. Where an amendment is enacted by a vote of the people the focus is on the voters' intent. *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 97, 758 P.2d 480 (1988).

Since a court may deny bail only for "offenses punishable by the possibility of life in prison" and Mr. Gonzalez's conviction could not yield a life sentence, a life sentence is not possible. Voters would not have understood the term "possible" to include charged offenses for which a life sentence was not actually possible.

It is also worth noting that CrR 3.2 only permits denial of bail in capital cases. In all other cases, including those in which the court finds the person poses a risk of danger or a failure to appear, a court is precluded from denying bail.

Rather than address the actual language of the amendment, or explain how voters could have intended "possible" to include "impossible," the deputy prosecutor's principle argument in response is to point to a case interpreting the phrase "capital offense" in the context of bail on appeal. Answer at 8 (citing *Ex Parte Berry*, 198 Wash. 317, 88 P.2d 427 (1939)).

The deputy prosecutor asserts *Berry* addressed "the correct metric for purposes of assessing the *constitutional* right to bail." *Id*. (Emphasis added.) That is a plain misstatement of *Berry*'s holding. In fact, the Court quite clearly declined to address the provisions of Article I, section 20, because the Court found it was inapplicable post-conviction. *Berry*, 198 Wash. at 320.

Moreover, the petitioner in *Berry* actually faced a capital offense. The charged offense could have yielded either a death sentence or life in prison. *Id*. at 318. At trial the jury rejected the death sentence and instead recommended a life sentence. *Id*. Thus, what is clear it the petitioner actually faced the possibility of death. As the court explained an offense is a capital offense "not [when] the death penalty must necessarily be imposed, but whether it may be imposed." 198 Wash. at 319. That was the case in *Berry*.

Here by contrast, a life sentence may not be imposed under any circumstances. Mr. Gonzalez has not been charged

with an offense for which a life sentence is possible. To be clear, Mr. Gonzalez has never argued the "the possibility of life in prison" means offense for which a life sentence must be imposed. Instead, he has argued it cannot include offenses for which a life is legally impermissible, such as for the offense he is charged with.

This case begins, and should end, with the answer to a simple question can "possible" mean that which is "impossible." Obviously the answer is "no."

The fact that the deputy prosecutor insists it otherwise underscores the need for this Court to accept review.

B. Conclusion

Article I, section 20 is not ambiguous; its plain language controls. A court may only deny bail where the charge carries the possibility of a life sentence. There are no circumstances in which the charge against Mr. Gonzalez could result in a life sentence. It is impossible. The court clearly erred and violated the provisions of Article I, section 20 in denying bail.

This Court should accept direct discretionary review and reverse the trial court's decision.

I certify this document contains 795 words and complies with RAP 18.17.

Respectfully submitted this 4th day of May, 2022.

Gregory C. Link – 25228
Attorney for Petitioner
Washington Appellate Project - 91052
greg@washapp.org

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 100718-3**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent James Whisman, DPA
[Jim.Whisman@kingcounty.gov]
[PAOAppellateUnitMail@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit

☐ appellant

☐ Attorney for other party

NINA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: May 6, 2022

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