

<p>SUPREME COURT, STATE OF COLORADO</p> <p>Colorado State Judicial Building 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED March 12, 2024 11:35 AM</p>
<p>Denver County, Denver County Court Honorable Kerri Lombardi, Judge Case No. 19M00428</p>	
<p>IN RE:</p> <p>THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent-Appellee,</p> <p>v.</p> <p>RICHARD LEWIS,</p> <p>Petitioner-Appellant</p>	<p>Δ COURT USE ONLY Δ</p>
<p>Megan A. Ring Colorado State Public Defender</p> <p>John Patrick Galligan, Deputy State Public Defender Attorney Registration No. 46266 1560 Broadway, Suite 300 Denver, Colorado 80202</p> <p>Phone: (303) 620-4999 Fax: (303) 620-4987 Email: john.galligan@coloradodefenders.us</p>	<p>Case Number: 24SA ____</p>
<p>IN RE: PEOPLE V. RICHARD LEWIS</p>	

Certificate of Compliance

I certify this petition complies with all requirements of C.A.R. 28(g) and 32, including those rules' formatting requirements.

I certify the petition complies with C.A.R. 21.

I certify this petition contains 3,318 words.

I acknowledge my petition may be stricken if it fails to comply with C.A.R. 21, 28(g), or 32.

John Patrick Galligan

Mr. Lewis petitions this Court, pursuant to C.A.R. 21, to issue an order to show cause and to grant the appropriate relief as requested below.

ISSUES PRESENTED

I. Whether the county court erroneously applied the appeal bond factors in section 16-4-201.5, C.R.S. and section 16-4-202(1), C.R.S., 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 Mr. Lewis 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.”

THE PARTIES

The petitioner in this original proceeding is Mr. Lewis, the defendant in Denver County Court. The proposed respondents are the People of the State of Colorado (the prosecution) and the Denver County Court (the trial court). *See People v. Williams*, 987 P.2d 232, 233 n.1 (Colo. 1999) (noting that, although any

relief under C.A.R. 21 would issue against the tribunal below, “we treat the State as the respondent, since it is the ‘real party in interest.’”).

TRIBUNAL BELOW

The tribunal that issued the order that is the subject of this original proceeding is the Denver County Court. The contested ruling was issued in Denver County Court case 19M00428.

ENTITY AGAINST WHICH RELIEF IS SOUGHT

The relief requested in this case would issue against the Denver County Court.

RULINGS COMPLAINED OF AND RELIEF SOUGHT

The ruling complained of here is the trial court’s order denying Mr. Lewis bail pending appeal of the sustained misdemeanor convictions in this case. Mr. Lewis seeks an order requiring the Denver County Court to set bail pending appeal.

NO OTHER ADEQUATE REMEDY IS AVAILABLE

This Court should exercise its discretion to hear this C.A.R. 21 appeal because the trial court abused its discretion and misinterpreted this Court’s precedent, the normal appellate process would be inadequate, and this case raises an issue of first impression that is of significant public importance.

First, providing relief under C.A.R. 21 is appropriate because the trial court abused its discretion and erroneously interpreted this Court's precedent. *See Fogani v. Young*, 115 P.3d 1268, 1271 (Colo. 2005) (C.A.R. 21 relief is "an appropriate remedy for trial court abuse of discretion where an appellate remedy would be inadequate[.]"). The trial court's ruling denying Mr. Lewis bail pending appeal is contrary to the clear mandate promulgated by § 16-2-114(6), C.R.S., Crim. P. 37(f), and this Court's decision in *People v. Steen*, 2014 CO 9, which all require Colorado county courts to grant a stay of execution of sentence upon request pending appeal of a misdemeanor conviction. Therefore, the trial court's order denying Mr. Lewis bail runs afoul of this Court's precedent which held that the expedited nature of county court appeals require a mandatory stay of execution of sentence upon request to avoid the "specter of a useless appeal." *Steen*, ¶ 24

Second, "[t]his court exercises its original jurisdiction under C.A.R. 21 . . . when an appeal does not provide a plain, speedy, and adequate remedy for the party." *People v. Martinez*, 22 P.3d 915, 921 (Colo. 2001) (citations omitted). Here, while section 16-4-204, C.R.S. does provide a mechanism to appeal the trial court's order denying bail, it "does not provide a plain, speedy, and adequate remedy for" Mr. Lewis. *Martinez*, 22 P.3d at 921. Indeed, if Mr. Lewis were to appeal the county

court's ruling pursuant to section 16-4-204, C.R.S. then "he may realize little or no benefit to succeeding on" the bond appeal given that "all or most of his sentence [may have] already been served" by the time an appellate court intervenes. *Steen*, ¶ 24. This is because "[g]iven the length of time required to obtain a judgment on appeal, county court defendants are at a greater risk of completing all, or most, of their sentences before an appellate judgment has been reached[.]" *Id.*

Third, this case raises an issue of first impression that is of significant public importance. *See Colorado Ethics Watch v. Independent Ethics Commission*, 2016 CO 21, ¶ 5 (noting C.A.R. 21 relief is typically granted in "cases that raise issues of first impression and that are of significant public importance.") (quoting *Dwyer v. State*, 2015 CO 58, ¶ 4). This Court has not yet decided whether the appeal bond factors in section 16-4-201.5, C.R.S. and section 16-4-202(1), C.R.S. apply to bail imposed by a county court granting 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). Further, if trial courts are authorized to deny county court defendants bail pending appeal, then this would effectively render the mandatory stay of execution provisions obsolete and run counter to the policy considerations that this Court considered in affirming such stays are mandatory. *Steen*, ¶¶ 24–26. Finally, granting C.A.R. 21

relief is appropriate because this case “raises an important issue of first impression and one that is likely to recur in misdemeanor cases prosecuted in county courts[,]” and “conventional appellate processes are inadequate here[.]” *Id.* at ¶ 8. Thus, this Court should issue a rule to show cause.

FACTUAL AND PROCEDURAL BACKGROUND

On November 13, 2023, Mr. Lewis was convicted after a jury trial of two counts of unlawful sexual contact, a class one misdemeanor in violation of § 18-3-404(1)(a), C.R.S., and two counts of sexual assault on a client by a psychotherapist, a class one misdemeanor in violation of § 18-3-405.5(2)(a), C.R.S. (2019); (Appendix A, p 3; Appendix H, p 1).¹ Immediately following the jury’s verdict, the trial court revoked Mr. Lewis’ personal recognizance bond pending sentencing and set bail in the amount of \$5,000 cash only. (Appendix A, pp 7-8; Appendix H, p 1). Mr. Lewis posted the \$5,000 cash bond the following day. (Appendix B, p 1). Subsequently, on January 5, 2024, Mr. Lewis appeared on bond for the scheduled sentencing hearing. (Appendix C, pp 1-40).

After hearing arguments from both parties, the trial court sentenced Mr. Lewis

¹ Because Mr. Lewis is separately pursuing a direct appeal of the sustained convictions, undersigned counsel will not include a recitation of facts that are not relevant to the nature of this petition.

to a twelve-month term in the Denver County Jail as to counts one and three.² (*Id.* at pp 32-34; Appendix D, p 1). Additionally, the trial court sentenced Mr. Lewis to a twelve-month term of Denver County Jail as to counts two and four; however, this sentence was suspended upon the condition that Mr. Lewis complete a five-year term of sex-offense specific probation. (Appendix C, p 32-34; Appendix E, pp 1-2). The probationary term was ordered to run concurrent to the twelve-month jail sentence. (Appendix C, p 32-34; Appendix E, pp 1-2).

After the sentence was imposed, Mr. Lewis notified the trial court that he would be pursuing a direct appeal and requested that the Office of the Public Defender be appointed to represent him on appeal. (Appendix C, pp 34-39; Appendix F, pp 1-3). Additionally, Mr. Lewis requested that the trial court grant the motion for an automatic stay of execution of sentence pursuant to Crim. P. 37(f). (Appendix C, pp 34-36, Appendix G, pp 1-3).

Defense counsel stated that Mr. Lewis had appeared with consent of surety and requested that the trial court allow him to remain on the \$5,000 cash bond he posted prior to sentencing pending his direct appeal. (Appendix B, p 1; Appendix

² At the sentencing hearing, the trial court found that the unlawful sexual contact convictions merged with the sexual assault on a client by a psychotherapist convictions because they were based on identical acts. (Appendix C, pp. 32-34).

C, pp 34-36;). In support of this request, defense counsel noted that Mr. Lewis had never failed to appear for a court date during the five-year pendency of this case,³ and he was not a danger to the community. (Appendix C, pp 34-36). The prosecution responded by citing section 16-4-201.5, C.R.S. and argued “that [there] would need to be a record that would need to be made by THE COURT before even being [sic] allowed to set a bail - - pending appeal.” (*Id.* at p 36). The prosecutor also asked the trial court to consider the factors outlined in section 16-4-202, C.R.S., in his request that the trial court deny Mr. Lewis bail pending appeal. (*Id.* at pp 36-37).

The county court judge cited section 16-4-201.5, C.R.S. and stated that “while I don’t necessarily think Mr. Lewis would flee, I do have -- significant concerns about the safety of the community and specifically [the victim].” (*Id.* at p 37). The trial court went on to find “that at least with respect [to] the 12 month sentence any appeal with respect to that is frivolous. - And that this has been continuously delayed and THE COURT is denying bond.” (*Id.* at pp 37-38).

Defense counsel attempted to make a record in response to the ruling denying

³ Mr. Lewis was found guilty as charged following a jury trial on March 6, 2020, however, the Denver District Court reversed his convictions on appeal in an unpublished order issued on October 14, 2022. *See The People of the State of Colorado v. Richard Lewis*, 21CV31516.

Mr. Lewis bail before the trial court interjected and advised defense counsel that she could include this issue in a forthcoming appeal. (*Id.* at pp 38–39).⁴ Finally, the trial court granted Mr. Lewis’ motion to proceed in forma pauperis and to have the Office of the Public Defender appointed to represent him on appeal. (*Id.* at p 39; Appendix F, pp 1–3).

ARGUMENTS IN SUPPORT OF RELIEF UNDER C.A.R. 21

The appeal bond provisions in section 16-4-201.5, C.R.S. and section 16-4-202(1), C.R.S. should not apply to bail that a county court *may* order as part of the stay of execution of sentence required upon request pending appeal pursuant to § 16-2-114(6), C.R.S. and Crim. P. 37(f). Section 16-4-201.5, C.R.S. and section 16-4-202(1), C.R.S. permit the complete denial of bail pending appeal. However, the express language of the county court appeal statute, rule, and this Court’s decision in *People v. Steen*, 2014 CO 9, make clear a stay of execution upon request pending appeal is mandatory. Therefore, the trial court’s order denying Mr. Lewis bail

⁴ MS. BUCK: And Your Honor so my note there is that the subsection (2) states that THE COURT shall not bail that is otherwise allowed pursuant to subsection (1). Subsection (1) -- is granting bail after conviction -- with respect to a number of enumerated offenses that this does not -- THE COURT: -- Enumerated offenses are things THE COURT can not [sic] set bail on. So thank you Ms. Buck. You can put all of it in your appeal. I appreciate it. Mr. Lewis take a seat over here please.

pending appeal in this case is contrary to the expedited nature of county court appeals recognized as necessary in *Steen, supra* to avoid useless appeals. These are issues of first impression, and both are a matter of importance to county court appeals across the state. *See People v. Hernandez*, 2021 CO 45, ¶ 15 (reasoning that an issue had significant public importance in part because of “its potential impact on defendants’ constitutional rights in trial court proceedings across Colorado.”). Thus, this Court should issue a rule to show cause.

- I. **The county court erroneously applied the appeal bond factors in section 16-4-201.5, C.R.S. and section 16-4-202(1), C.R.S. by denying bail 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).**

In Colorado, the rules governing county court appeals provide that “[p]ending the docketing of the appeal, a stay of execution *shall* be granted by the county court upon request.” C.R.S. § 16-2-114(6) (2024) (emphasis added); *see also* Crim. P. 37(f) (2024) (same). “[S]ection 16-2-114(6) and Crim. P. 37(f) 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*, ¶ 2.

Here, contrary to § 16-2-114(6), C.R.S. and Crim. P. 37(f), the trial court ordered that Mr. Lewis be held without bail pending appeal pursuant to section

16-4-201.5, C.R.S. and section 16-4-202(1), C.R.S. (Appendix C, pp 37-38). The trial court failed to address the policy considerations noted by this Court in *Steen*, in which this Court explained that the provisions requiring a stay of execution were enacted as part of the simplified procedures governing county court appeals and that a stay is necessary to remove “the specter of a useless appeal.” *Id.* at ¶ 24.

Further, in *Steen*, this Court rejected the prosecution’s argument that §16-4-201(2), C.R.S. provided Colorado courts with discretion to grant a stay of execution of sentence for a misdemeanor conviction as opposed to section 16-2-114(6), C.R.S. and Crim. P. 37(f). *Id.* at ¶¶ 11-23. Specifically, this Court observed that “[o]ur court rules reflect the distinctions between sections 18-1.3-202(1) and 16-4-201(2) (both governing probationary sentences on the one hand), and section 16-2-114(6) (specifically governing appeals of misdemeanor convictions obtained in county court).” *Id.* at ¶ 18. After noting this observation, this Court held that “[b]ecause section 16-2-114 and Crim. P. 37 expressly govern appeals from county court, we conclude that, where a misdemeanor conviction obtained in county court is appealed to the district court, the plain language of section 16-2-114(6) and Crim. P. 37(f) require the county court to grant a stay of execution upon request made pending the docketing of an appeal.” *Id.* at ¶ 23.

Section 16-4-201(1)(a)-(d), C.R.S. provides trial courts discretion to set bail after conviction subject to certain conditions. *See id.* Further, the statute only refers to bail after conviction for a felony offense. *See* C.R.S. § 16-4-201(1)(d) (“For a defendant who has been convicted of a felony offense, a condition of bail bond shall be that the court shall require the defendant to execute or subscribe a written prior waiver of extradition stating that the defendant consents to extradition to this state and waives all formal procedures incidental to extradition proceedings in the event that he or she is arrested in another state while released on such bail bond and acknowledging that he or she shall not be admitted to bail in any other state pending extradition to this state.”). And finally, section 16-4-201(2), C.R.S. provides trial courts with discretion to grant a stay of execution of sentence for a defendant who is sentenced to probation; however, as noted above, this Court held that this section did not apply to county court judgments. *Steen*, ¶¶ 11-23.

Therefore, it follows 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, C.R.S. both of which the trial court relied upon in denying Mr. Lewis bail pending appeal in this case. (Appendix C, pp 37-39). Section 16-4-201.5(1)(a)-(j), C.R.S. provides an

enumerated list of felony offenses that defendants are not entitled to bail after conviction. *See id.* And section 16-4-201.5(2)(a),(b) provides the findings that the trial court must make when setting bail after conviction for offenses that are not otherwise listed in subsection (1). *See id.* But it is clear from the plain language of section 16-4-201, C.R.S., section 16-4-201.5, C.R.S., and this Court's decision in *Steen* that these provisions do not apply to bail pending appeal of a misdemeanor conviction.

Finally, section 16-4-202(1), C.R.S. provides, in relevant part, that: “[t]he court shall consider the following factors in deciding whether or not an appeal bond should be granted and determining the type of bond and conditions of release required[.]” Section 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. But it is clear from the express language of the rule, statute, and *Steen* that a court cannot actually or constructively deny a stay of execution when requested pending an appeal of a county court judgment. “[S]tatutes giving the right of appeal are liberally construed in furtherance of justice, and [] such interpretation as will work a forfeiture of the right is not favored.” *Wigton v. Wigton*, 169 P. 133, 134 (Colo. 1917).

Accordingly, because this presents an issue of first impression that is a matter of importance to county court appeals across Colorado, this Court should issue a rule to show cause.

II. The county court erred in denying Mr. Lewis 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.”

In Colorado, “[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[.]” *People. Hoover*, 119 P.3d 564, 566 (Colo. App. 2005). However, if State law authorizes an appeal bond subject to certain circumstances, then trial courts may not deny a defendant’s request for an appeal bond arbitrarily or unreasonably without violating their constitutional right to Due Process of Law. U.S. Const. amends. V, XIV; Colo. Const. amend. art. II, § 25; *see, e.g., Young v. Hubbard*, 673 F.2d 132, 134 (5th Cir. 1982) (quoting *Finetti v. Harris*, 609 F.2d 594, 599 (2nd Cir. 1979) (“[W]hile there is no absolute federal constitutional right to bail pending appeal, once a state makes provisions for such bail, the Eighth and Fourteenth Amendments require that it not be denied arbitrarily or unreasonably.”)).

A defendant has a fundamental right to the direct appeal of a criminal

conviction. *See* C.R.S. § 16-12-101 (2024) (“Every person convicted of an offense under the statutes of this state has the right of appeal to review the proceedings resulting in conviction.”); *Peterson v. People*, 113 P.3d 706, 708 (Colo. 2005) (“We are also mindful that in Colorado, the right to direct appeal of a criminal conviction is fundamental.”). As noted above, this Court construes rules governing appeals “liberally and disfavor[s] interpretations that work a forfeiture of that right.”

Peterson, 113 P.3d at 708 (citing *Wigton*, 169 P. at 134).

A complete denial of bail is contrary to what this Court noted in *Steen, supra*.

Specifically, this Court observed:

We note that without a mandatory stay upon request, a defendant may choose not to appeal a county court conviction because he may realize little or no benefit to succeeding on appeal in the district court if all or most of his sentence has already been served. Given the length of time required to obtain a judgment on appeal, county court defendants are at a greater risk of completing all, or most, of their sentences before an appellate judgment has been reached by the district court.

Steen, ¶ 24.

This Court explained that the mandatory stay of execution provisions enacted in the simplified rules applicable to county court appeals are intended to remove “the specter of a useless appeal.” *Id.* Here, the county court’s order denying Mr. Lewis bail pending appeal is contrary to the mandatory stay of execution provisions

applicable to county court appeals. This presents an issue of first impression that is of significant public importance. *See Hernandez*, ¶ 15. This Court should issue a rule to show cause.

CONCLUSION

Mr. Lewis should be granted relief under C.A.R. 21 because the trial court erred and abused its discretion by denying him bail pending appeal of his misdemeanor convictions in this case. This Court should thus issue a rule to show cause.

Dated this day: March 5, 2024.

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