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NO. 98154-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JULIAN PIMENTEL,

Petitioner.

v.

THE JUDGES OF THE KING COUNTY SUPERIOR COURT and
DAN SATTERBERG, KING COUNTY PROSECUTING ATTORNEY,

Respondents.

APPLICATION FOR WRIT OF PROHIBITION

ALLEN, HANSEN, MAYBROWN
& OFFENBECHER, P.S.

David Allen, Esq.
Todd Maybrown, Esq.
Cooper Offenbecher, Esq.
Danielle Smith, Esq.
600 University Street, Suite 3020
Seattle, WA 98101
(206) 447-9681

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I. APPLICATION FOR WRIT OF PROHIBITION

Petitioner Julian Pimentel petitions this Court to issue a Writ of Prohibition against Respondents, the King County Prosecuting Attorney's Office (hereinafter "KCPAO") and the Judges of the King County Superior Court (herein after "Judges"), pursuant to Art. 4, Sec. 4 of the Washington State Constitution in that Petitioner has no plain, speedy or adequate legal remedies.

Petitioner alleges that the King County Superior Court Judges, at the insistence of the KCPAO, have exceeded their jurisdiction and violated both the United States Constitution and the Washington State Constitution as well as relevant Court and Ethics Rules, by utilizing an *ex parte* procedure, where there is neither notice nor the ability for the Petitioner to respond, prior to the Superior Court Judges increasing bail previously set at a contested bail hearing in District Court, where Petitioner appeared and was represented by counsel.

In support of this Application, Petitioner relies upon the annexed Memorandum in Support of Application For Writ, and the Declarations of David Allen, Amy Muth and Emily Gause.

II. MEMORANDUM OF AUTHORITIES IN SUPPORT OF APPLICATION FOR WRIT

A. Introduction

This is an Application for a Writ of Prohibition against the Judges of the King County Superior Court and Dan Satterberg, King County Prosecuting Attorney. Petitioner Julian Pimentel is requesting that this Court issue a Writ of Prohibition, prohibiting the King County Superior Court Judges from raising bail at an *ex parte* proceeding, without notice or input from defense counsel, where bail was previously set at a contested hearing in King County District Court at petitioner's first appearance, following an arrest based on probable cause, and where there was no claim that the Petitioner violated his conditions of release. Petitioner is also requesting that the KCPAO be prohibited from making such *ex parte* requests in the future. As will be shown, *infra*, this has been a persistent, ongoing issue in King County for nearly a quarter of a century.¹

B. Facts of Petition

1. Charges in *State v. Pimentel*

Petitioner Julian Pimentel was charged by Information with Assault in the Second Degree with Sexual Motivation. The Information, filed on April 19, 2018, alleged that on April 17, 2018 he committed assault in the

¹ See § II(C)(1) *infra* and Allen Dec'1 at pp. 6-8 and Apps. F, G and H thereto.

second degree with intent to commit the felony of indecent liberties on ARW, who was physically helpless or mentally incapacitated.² At the time ARW would have been approximately 15-1/2 years old.³ See Allen Declaration, App. E.

2. **Facts relating to *Ex Parte* Raising of Previously Set Bail in the *Pimentel* Matter**

ARW claimed that Petitioner had sexual intercourse with her when she was incapacitated due to her intoxication. The case was investigated by Federal Way Police Department Detective Richard Adams. Detective Adams sent a letter to Petitioner and directed him to surrender or be arrested on probable cause. Accompanied by his father, Adrian Pimentel, who is an attorney, Julian surrendered to the Federal Way Police Department on April 17, 2018 and was arrested and transferred to the King County Jail. Allen Dec'1, pp. 2.

Pursuant to longstanding King County procedure, Petitioner Julian Pimentel's first appearance was before a King County District Court Judge, the next day, April 18, 2018.⁴ The prosecutor requested bail in the sum of

² There was an obvious scrivener's error in the Information, which erroneously alleged that the incident occurred on April 17, 2018, which is the date Petitioner voluntarily surrendered. Det. Anderson's Certification for Determination of Probable Cause at p. 1, states that the incident occurred on February 10, 2018, which would have been two days after Petitioner turned 18 years old. See Allen Dec'1 p. 5, App. E.

³ Because Petitioner's and ARW's age differential was less than four years, sexual intercourse would not have been illegal but for the allegation that ARW was incapable of consent due to her level of intoxication pursuant to RCW 9A.44.079.

⁴ CrR 3.2.1 and CrRLJ 3.2.1(a) create a procedure where there is concurrent jurisdiction in

\$150,000. Defense attorney David Allen appeared and argued for a PR release, informing the judge that the jail PR screeners recommended a PR release; that Detective Adams stated in his report that he had no objection to release; that Petitioner was just two months over the age of 18; he had no criminal convictions; he had a stable address and lived with his father, who was an attorney practicing in Kitsap County; and, that there was nothing predatory alleged. The court heard from Plaintiff's father, Adrian Pimentel, who confirmed that his son had a stable address and assured the Court he would appear.⁵

After hearing from both sides, District Court Judge Charles Delaurenti followed the recommendations of the defense and the PR screener and released Petitioner on his personal recognizance, with conditions, and entered a Sexual Assault Protection Order.⁶ Pursuant to District Court procedure, a return date was set. In this case he was ordered to return to court the next day, April 19, 2019. *See* Allen Dec'l, App. A.

Because the arrest was based on probable cause, at this stage the prosecuting attorney had not formally filed a charge. However, the next

both Superior or District Court for the first appearance of a suspect arrested on probable cause. *See: State v. Stevens County District Court Judge*, --- Wn.2d ---, 453 P.2d 984 (2019). Many counties schedule first appearances in Superior Court, thereby avoiding the problems existing in King County. *See* Allen Dec'l pp. 8-9; Gause Dec'l p. 3.

⁵ A copy of the transcript of the first appearance hearing before Judge Delaurenti is attached to the Allen Dec'l as Appendix A.

⁶ A copy of the court's Conditions of Release is attached to the Allen Dec'l, Appendix B.

day, without notice to the Defense, the State electronically filed an Information in Superior Court charging Assault in the Second Degree with intent to commit a felony, with Sexual Motivation. *See* Allen Dec'1, Appendix C. In its Superior Court filing, the Senior Deputy Prosecuting Attorney (“DPA”), without notice to the defense, requested that bond be raised *ex parte* to \$50,000 and that an arrest warrant be entered. In support of this, she filed a “Prosecuting Attorney Case Summary and Request for Bail/Or Conditions of Release.” *See* Allen Dec'1, Appendix C.⁷

The DPA correctly stated in her request for increase of bail that her office had requested bail of \$150,000 at the first appearance the day before but the District Court judge released the defendant on his personal recognizance. The DPA then erroneously stated that at the first appearance the court did not have the Certification for Determination of Probable Cause (hereinafter, “Certificate”) and was therefore unaware that there were statements from complainant’s friends who were with the victim and the defendant that day, which the DPA claimed was “new information” justifying the bail increase from a PR to \$50,000. The DPA wrote:

Pursuant to CrR 2.2(b)(2)(ii), the State requests a warrant because the defendant is likely to commit a violent offense. At the time of first appearance the State requested

⁷ The April 19, 2018 orders raising bail to \$50,000 and issuing an arrest warrant were signed by a Superior Court Judge at 2:26 PM. The parties and court were not made aware of this at the 2:30 P.M. second appearance District Court Calendar, and the Petitioner was not arrested on the warrant, which would normally have occurred.

\$150,000.00. The court did not grant bail and released the defendant on his personal recognizance. **At the time of first appearance the court was unaware that there were statements from friends that were with the victim and the defendant that day. In the certification for determination of probable cause [sic], which provides much more detail of the events of the day, the friends state that the victim was impaired both earlier in the day and during the time frame when the sexual assault occurred. The victim is only fifteen years old and was supplied liquor by the defendant, which witnesses report that he stole. Given the new information from friends regarding the victim's impairment the State respectfully requests the court set bail in the amount of \$50,000.00.** The State is also seeking a sexual assault protection order for the victim. (Emphasis supplied.)

See Allen Dec'1, p. 3, App. C.

This statement by the Senior DPA in her *ex parte* request for increase in bail was misleading, inaccurate, erroneous and also irrelevant to the setting of bail. The transcript of the April 18, 2018 District Court hearing demonstrates that the District Court judge was provided with a copy of the Certificate at that time. *See* Allen Dec'1, p. 2, App. A.

The District Court judge stated on the record at the first appearance that he had “read the Affidavit of Probable Cause.” *Id.*⁸ Therefore, the statement by the DPA referencing the so-called “new” information in the Certification for Determination of Probable Cause was not new at all but

⁸ The Certificate has been variously referred to as both the Certification for Determination of Probable Cause and the Affidavit of Probable Cause. They refer to the same document.

instead reviewed and considered by the District Court judge at the time of the first appearance hearing.

Additionally, these erroneously entitled “new facts” contained in the Certificate did not bear at all upon any of the CrR 3.2 considerations that a judge would review for a bail determination.⁹

CrR 3.2 provides in its relevant portion:

(a) Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused’s personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused’s appearance, when required,

or

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, “violent crimes” are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

* * *

(c) Relevant Factors--Future Appearance. In determining which conditions of release will reasonably assure the accused’s appearance, the court shall, on the available

⁹ While these ‘new facts’ might have arguably been relevant to a determination of probable cause that had already occurred the day before in District Court (the defense took “no position” on this issue) and the judge found probable cause existed. Allen Dec’1, p. 2, App. A.

information, consider the relevant facts including but not limited to:

- (1) The accused's history of response to legal process, particularly court orders to personally appear;
- (2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;
- (3) The accused's family ties and relationships;
- (4) The accused's reputation, character and mental condition;
- (5) The length of the accused's residence in the community;
- (6) The accused's criminal record;
- (7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;
- (8) The nature of the charge, if relevant to the risk of nonappearance;
- (9) Any other factors indicating the accused's ties to the community.

CrR 3.2(a) and (c).

As should be obvious, nothing at all in this so-called "new information" provided by the State in any way addresses those factors relevant to release under CrR 3.2(c). Moreover, the fact that the assigned case Detective had no objection to Petitioner's release conclusively established that concerns about Petitioner being a danger to the community, as that term is used in CrR 3.2(d) and (e), did not exist. *See Allen Decl.*, p.

3.

The DPA did not provide the Superior Court judge with the audio recording or a transcript of the District Court bail hearing; she did not inform the Superior Court judge that Petitioner voluntarily surrendered; that the PR court screener recommended PR; that the investigating detective had no objection to his release from custody; that Petitioner's father was present and spoke on his behalf at the bail hearing; nor any of the other points presented by the defense at the District Court bail hearing.

The Superior Court judge granted the prosecutor's *ex parte* request for an arrest warrant and a \$50,000 bail increase. *See* Allen Decl., p. 4, App. D.

The Petitioner's Superior Court arraignment, which under King County procedure would have been the first time he would have been able to challenge the increased bond, was scheduled for May 3, 2018, almost two weeks later. Rather than risk the investigating detective arresting the defendant prior to the arraignment on the arrest warrant, the defense posted bail in the amount of \$50,000, which required Petitioner's father to pay a \$4,000 premium to the bonding company and post property as collateral.¹⁰

The Petitioner's criminal case proceeded through discovery and defense interviews of prosecution witnesses. The Petitioner appeared at all

¹⁰ As shown in the Allen Dec'l, p. 5, and the Muth Dec'l, p. 2, many defendants are arrested pursuant to this procedure, prior to their arraignment, some at gun point, without the means to challenge the increase, and without any notice after their bail was raised *ex parte*.

scheduled hearings and there were no violations of the conditions of release. On January 11, 2019, the prosecution dismissed the case outright, writing in its dismissal motion that:

This case should be dismissed for the following reasons: In the interests of justice **and based upon information not available at the time of filing.**

See Allen Dec'l, p. 9, App. I.¹¹

C. **There is No Plain, Speedy or Adequate Remedy at Law to Address this Issue Other than By a Writ of Prohibition**

1. **The Criminal Bar Has Objected to This Procedure for Decades and Has Unsuccessfully Tried to Reform the Procedure**

Private attorneys and public defenders in King County have been objecting to this procedure for almost a quarter of a century. Attached to the Allen Dec'l are the many letters he sent on behalf of the Washington Association of Criminal Defense Lawyers starting in 1996, 24 years ago, to the then-presiding judges and the KCPAO objecting to this procedure. Follow-up letters were sent in 1997, 1999, 2015, 2016 and many meetings took place which were attended by King County Criminal Presiding Judges and senior staff from the King County PAO. Allen Dec'l, pp. 6-8, Apps. F, G and H. The Defense Bar put a great deal of time and effort into attempting

¹¹ The defense witness interviews of the complainant and her friends established that, while she had been drinking, she was not physically helpless or mentally incapacitated and that the sexual contact was consensual. *See* Allen Decl., p. 9.

to negotiate a change in this procedure. Nothing ever came of this and the procedure has continued, although there were many meetings with King County judges and supervisory prosecutors at the KCPAO over almost 25 years in a futile effort to change this procedure. *See: Id.* This procedure is ongoing and continues to occur on a regular basis. *See* Allen Dec'l, pp. 8-9; Gause Dec'l, pp. 1-2.

2. **Even Though the *Pimentel* Case Has Been Dismissed, this Issue Continues to Recur**

Because bail issues quickly become moot, there is no other practical remedy to address this recurring issue other than a writ of prohibition pursuant to Art. 4, Sec. 4 of the Washington State Constitution.

It has long been recognized that appellate courts will consider moot matters when they address issues that are continuing and of substantial public importance. This is especially the case in bail matters, where there is no mechanism for an appeal regarding bail once a case is completed and where the bail issue quickly becomes moot when the case is resolved by a dismissal, as here, or an acquittal or conviction. Also, criminal defendants whose bail has been raised *ex parte* would have to first challenge the bail increase at arraignment in order to perfect their appeal. However, once their bail has been reviewed at the arraignment, the issue effectively becomes moot in that particular case. Public defenders cannot readily challenge *ex parte* increases of bail on appeal because this is typically not within their

mandate. Defendants with private attorneys would not fund an appeal challenging this *ex parte* procedure, once their bail has been reviewed at arraignment, especially due to legal fees and the necessity to focus on their pending criminal case.¹²

In *State v. Hunley*, 175 Wn.2d 901 (2012), this Court reviewed a moot issue involving sentencing statutes which shifted a burden to the defendant and therefore violated due process. While this Court explained that it typically did not consider questions that were moot, which that case was because of the expiration of the defendant's sentencing term, "we may retain and decide an appeal if it involves matters of continuing and substantial public interest." *Id.* at 907. This Court wrote that there were three factors to be considered:

'[(1)] the public or private nature of the question presented, [(2)] the desirability of an authoritative determination for the future guidance of public officers, and [(3)] the likelihood of future recurrence of the question.' "

Id. at 906 (quoting from *State v. Gentry*, 125 Wn.2d 570, 616 (1995)).

These factors all mandate review in the instant matter.

Likewise in *State v. Imgram*, 9 Wn.App.2d 482 (2019), a defendant appealed his burglary conviction as well as his pre-trial bail. Even though his pretrial bail issue was moot as a result of the conviction, the Court

¹² Petitioner's attorneys are representing him in this matter *pro bono*. Allen Dec'1, p. 1.

nevertheless reviewed this issue because it was a matter involving continuing and substantial public interest, with a likelihood to recur:

We will also consider “the likelihood that the case will escape review because the facts of the controversy are short-lived.”

Id. at 490. The *Imgram* Court emphasized that there were a “dearth of cases” addressing bail matters even though these are matters that are likely to recur and the issues would otherwise evade appellate review, unless courts considered matters that were technically moot. *Id.*

However, unlike *Imgram*, where the defendant had at least one viable, non-mooted, grounds for appeal, (the validity of the Oregon protective order), once the assault charge was dismissed in *Pimentel*, there were no grounds for an appeal. *See*: RAP 2.2.

The King County *ex parte* bail procedure raised in this writ implicates all of the *State v. Hunley, supra*, factors: it is clearly a matter of a public nature; there must be a determination for the future guidance of judges and prosecutors; the procedure has been in place for decades and is recurring; and, it is an issue involving matters “of continuing and substantial public interest.” *Hunley, supra* at 907.

3. **Pretrial Incarceration Has a Huge Impact on a Person's Life, Family and Oftentimes Leads to Harsher Sentencing**

In the instant case, Petitioner was fortunate to have a parent who had the economic means to purchase a bail bond. In this situation, the effect of this unconstitutional procedure is still substantial, although strictly economic. However, where a defendant does not have the means to post an increased bond, research demonstrates that even short periods of incarceration have a very substantial effect on a person's employment, housing, child custody and access to healthcare.¹³ A person already experiencing homelessness may lose shelter space, personal belongings stored there and a place on a wait list to enter permanent housing.¹⁴ Recent studies demonstrate a causal link between pretrial incarceration and adverse case outcomes.¹⁵ According to an article written by King County Superior Court Judge Theresa Doyle:

[j]udges have discussed concerns about the unconscious influence that a defendant's custody status has on their sentencing decisions. With an out-of-custody defendant, the

¹³ Lisa Foster, *Judicial Responsibility for Justice in Criminal Courts*, 46 HOFSTRA L. REV. 21 (Fall 2017)

¹⁴ ACLU, *No Money, No Freedom: The Need for Bail Reform* (2016), <http://www.aclu-wa.org/bail>.

¹⁵ *Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing*, 131 Harv. L. Rev. 1125, 1128 (2018); see also Paul Heaton, Sandra Mayson, & Megan Stevenson, *The Downstream Consequence of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 714 (2017); see also John D. Parron, *Pleading for Freedom: The Threat of Guilty Pleas Induced by the Revocation of Bail*, 20 UPAJCL 137; see also Samuel Wiseman, *Pretrial Detention and the Right to be Monitored*, 123 YLJ 1344 (2014).

judge had to make an affirmative decision to send the person to prison or jail rather than imposing an alternative. An in-custody defendant is already there.”¹⁶

A recent article in The Intercept, *New Orleans Prosecutors Routinely Violate Defendants’ Right to Counsel to Keep Them in Jail*, May 15, 2019, details a pre-trial bail procedure in New Orleans very similar to that in King County.¹⁷ In New Orleans, a defendant held on suspicion of a felony is first brought before a magistrate judge to have his initial bail set. In that particular case, the bond was set at \$500,000, which would require a ten percent premium of \$50,000. However, without notifying the defendant or his lawyers, the prosecutors took the indictment to a higher judge, requesting and obtaining an increase to \$1.5 million dollars, which the defendant could not raise. This is effectively the same procedure that exists in King County.

The article reports that in 151 cases studied, the average bail set by a magistrate, where the defense was present, was \$165,103. However, after the prosecutor returned an indictment to the criminal district judge, who only heard arguments from the state, the bail amount increased by an average of \$952,368. Even where defense attorneys later took the issue back before the court to challenge the bail increase, the reduction was only

¹⁶ Theresa Doyle, King County Bar Bulletin, *Fixing the Money Bail System*, 1 (April 2016), <https://www.courts.wa.gov/subsite/mjc/docs/FixingtheMoneyBailSystem.pdf>.

¹⁷ <https://interc.pt/2E9rzSs>.

an average of \$64,037, for a final bail amount of just over one million dollars, much larger than the original bond. *Id* at 5.

As in the *Pimentel* case, this article provides what has been described as a “perfect example” of why the *ex parte* procedure allowing a judge to *ex parte* raise bond after an initial hearing before a magistrate judge is so unfair:

A magistrate was able to hear this testimony and these arguments and make a decision on bail based on firsthand knowledge of the evidence. But this system then allowed the district attorney to do an end run around the defense, taking the case to “a secret proceeding” that allowed them to “present whatever version of the facts they want,” secure a “quick indictment,” and run back to a district judge to inflate the bond “so high that [the client] will never get out of jail,” [his attorney stated].

Id. at 9.

4. **A Writ is the Only Effective Means to Address this Issue**

Article 4, § 4 “Jurisdiction” of the Washington State Constitution, provides in its relevant portion that:

The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. (Emphasis added.)

Because Petitioner is requesting that the KCPAO and the Judges of the Superior Court “desist or refrain from further proceedings” as to its *ex parte* bail practice, a writ of prohibition is the appropriate mechanism.¹⁸

D. The King County Procedure, Whereby the State Schedules the First Appearance of a Person Arrested on Probable Cause on a Felony Charge Before a King County District Court Judge, and if it is Unsatisfied with the Court’s Decision as to Bail, Submits the Matter to a Superior Court Judge, *Ex Parte*, Without Notice to the Defendant or Counsel, and Requests a Bail Increase and Controls What Information the Superior Court Judge Receives, is Unconstitutional, Violates Court Rules and Must be Prohibited

1. The *Ex Parte* Procedure is Unconstitutional

The bail procedure in King County relating to individuals, like Petitioner, who are initially arrested (or who surrender under the threat of arrest) on the basis of probable cause in a felony matter, and who have had their bail set in cases in District Court, but which is later increased *ex parte* by the Superior Court, without notice, violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Sections 14, 20 and 22 of the Washington State Constitution, court rules and ethics rules for lawyers and judges.

¹⁸ *East Valley School Dist. No. 90 v. Taylor*, 174 Wn.App. 52 (2013) explained that the Court of Appeals did not have jurisdiction to issue an original writ, such as the writ of prohibition requested here, but instead jurisdiction was reserved to this Court.

The KCPAO and the Superior Court Judges have had a procedure in place for decades whereby individuals arrested on probable cause for a felony, or, like the Petitioner, who voluntarily surrender and have their first appearance before a King County District Court judge where bail is set and probable cause determined in a contested proceeding. Following the first appearance, the District Court will set a second appearance within 72 hours of the first appearance, in order to give the State an opportunity to file charges. If charges are not filed by the second appearance, the District Court matter is dismissed.¹⁹ The State then has the opportunity to file its case at some later time in Superior Court within the applicable statute of limitations without the speedy trial clock running. If charges are filed before the time of the second appearance, the defendant will be ordered to appear in Superior Court for an arraignment, which is typically set 10-14 days out.²⁰

In many cases in King County where a defendant is released either on personal recognizance or on a bail lower than requested by the State, the State will proceed, as it did in the instant case. That is, it will file an Information in Superior Court with its *ex parte* motion for an increase in bail and request for an arrest warrant, without the defense receiving notice

¹⁹ The defendant is then released from custody if he or she did not previously get a PR release or could not post bond. The dismissal stops the running of the speedy trial clock.

²⁰ See Allen Dec'l, p. 5; Gause Dec'l, p. 2.

or an opportunity to appear in court. A Superior Court judge will then decide the State's motion for a bail increase, without any opportunity for the defense to appear and oppose the request to raise bail or even file a pleading in opposition. In fact, the defense will have no notice until after the Superior Court judge increases bail.²¹ In the great majority of cases, as here, Superior Court judges routinely raise bail when requested by the State at this stage, even when State does not allege a violation of conditions of release. *See* CrR 3.2(k)(1); Allen Dec'1, pp. 3-4.

This system effectively prevents the defense from having an opportunity to appear and argue against requested bail increases, which are routinely granted by King County Superior Court judges who hear from only the State on their increased bail bond request and where there is absolutely no input from the defense.

As in the instant case, arraignment is usually set out ten days to two weeks after an information is filed in superior court which would be the first time a challenge to the increased bail would be heard. There is no established procedure available in King County Superior Court whereby a defendant can have an expedited hearing in order to attempt to convince a Superior Court judge to not raise bail, but instead the defense would have

²¹ The defense will typically have no notice even after the increase unless it contacts the prosecutor or checks the electronic court docket, which often is not up to date, or informed at the second appearance. Allen Dec'1, pp. 5.

to wait until the arraignment or note a motion with seven days' notice. Even if the defense requested that time be shortened, it would still take several days and a great deal of effort to schedule an expedited hearing. *See*: Allen Dec'1, pp. 4-5; Gause Dec'1, p. 2.

Moreover, if the defendant does not immediately post the increased bond, as was done here, the defendant risks being arrested on the warrant by the investigative detective, as often occurs in these matters. *See* Allen Dec'1, pp. 4-5; 6-7.

This procedure, which most often results in increased bails, has a very deleterious effect on defendants. Once the bail is increased *ex parte*, it is often the benchmark by which a judge at a later contested hearing considers bail. As shown in § C(1), *supra*, this often results in a higher bail than was set at the initial contested bail hearing.

Additionally, as shown in the Allen, Muth and Gause Declarations, frequently individuals post bail and are released after the District Court calendar but are again incarcerated within days once the bond is increased *ex parte* in the Superior Court, and affirmed at arraignment. Besides the yo-yo emotional effect of being incarcerated-released-incarcerated, it also results in the individuals losing the substantial premium they had already paid to the bonding company, which is typically 8% to 10% of the bail

amount. In such a situation, the defendants and their families are also punished financially.

2. **A Defendant Has a Constitutional Right to Be Present and Represented at Every Critical Stage of a Criminal Prosecution**

Following the setting of bail or granting a PR at a contested hearing, the State's motion to raise bail is a critical stage:

A criminal defendant has a right, under the due process clause of the Fourteenth Amendment, to be present "at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." *Kentucky v. Stincer*, 482 U.S. 730, 745, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987); *In re Pers. Restraint of Lord*, 123 Wash.2d 296, 306, 868 P.2d 835 (1994) (*Lord II*). Article I, section 22 of Washington's Constitution also guarantees the right to "appear and defend in person."

State v. Schierman, 192 Wn.2d 577, 600-01 (2018).

State v. Pruitt, 145 Wn.App. 784 (2008), considered a criminal defendant's right "to attend all critical stages of his trial" and wrote that it is broader than just confronting these witnesses:

This is true even in situations where the defendant is not actually confronting witnesses or evidence against him.

Id. at 333. This obviously includes bail hearings.

A lawyer's presence at certain pretrial stages, such as a defendant's post indictment lineup, was held to be critical to ensure a fair trial "in coping with legal problems or meeting his adversary." *United States v. Wade*, 388 U.S. 218, 223 (1967). The Supreme Court explained that "what makes a

stage critical is what shows the need for counsel's presence." *Rothgery v. Gillespie County, Texas*, 554 U.S. 191, 212 (2008). *Rothgery* holds that a lawyer's advocacy at the initial bail hearing fits within the Court's critical-stage analysis. A motion to increase bail requires counsel's presence and is likewise a critical stage.

In *Rothgery, id.*, a former state court criminal defendant whose criminal case was eventually dismissed, sued the county under a 42 U.S.C. § 1983 federal civil rights action alleging violation of the Sixth and Fourteenth Amendments for denying him counsel at bond hearings.²² The Court held:

Once attachment occurs, the accused at least is entitled to the presence of appointed counsel during any "critical stage" of the postattachment proceedings; what makes a stage critical is what shows the need for counsel's presence. Thus, counsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself.

Commenting on *Rothgery, supra*, the Court in *Booth v. Galveston County*, 352 F.Supp.3d 718 (2019, S.D. Texas), wrote that:

There can really be no question that an initial bail hearing should be considered a critical stage of trial. See *Higazy v. Templeton*, 505 F.3d 161, 172 (2d Cir. 2007) ("a bail hearing is a critical stage of the State's criminal process") (internal quotation marks and citation omitted); *Caliste*, 329 F.Supp.3d at 314 ("the issue of pretrial

²² The federal cases addressing state court bail issues are 42 U.S.C. § 1983 civil rights damage actions, which is the legal theory used to address damages after a state court criminal case has concluded.

detention is an issue of significant consequence for the accused”). As a District Court in the Eastern District of Louisiana recently noted:

[W]ithout representative counsel the risk of erroneous pretrial detention is high. Preliminary hearings can be complex and difficult to navigate for lay individuals and many, following arrest, lack access to other resources that would allow them to present their best case. Considering the already established vital importance of pretrial liberty, assistance of counsel is of the utmost value at a bail hearing. *Caliste*, 329 F.Supp.3d at 314. (Emphasis supplied.)

Id at 738-39.

In *Higazy v. Templeton*, 505 F.3d 161 (2d Cir. 2007) an arrestee brought a civil rights action alleging that his Fifth Amendment right against self-incrimination was violated at a bail hearing. The Second Circuit, relying on *Coleman v. Alabama*, 399 U.S. 1 (1970), held that a bail hearing was a “critical stage” under the Sixth Amendment in a state criminal trial:

The status of bail hearings under other constitutional provisions supports the conclusion that such a hearing is part of a criminal case against an individual against whom charges are pending. **In the Sixth Amendment context, the Supreme Court found that a bail hearing is a “critical stage of the State's criminal process at which the accused is as much entitled to such aid (of counsel) ... as at the trial itself.”** *Coleman v. Alabama*, 399 U.S. 1, 9-10, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970) (internal quotation marks and citation omitted; ellipsis in original). The Court followed this logic when discussing the Eighth Amendment, in *Stack v. Boyle*, 342 U.S. 1, 6-7, 72 S.Ct. 1, 96 L.Ed.3d (1951), where it also treated a bail hearing as “a criminal proceeding.” This

accords with our case law on bail hearings. In *United States v. Abuhamra*, 389 F.3d 309, 323 (2d Cir. 2004), we wrote that “[b]ail hearings fit comfortably within the sphere of adversarial proceedings closely related to trial.” (Emphasis supplied.)

Id at 172–73 (1st Cir. 2007).

Likewise, in *U.S. v. Abuhamra*, 389 F.3d 309, 323-24 (2d Cir. 2004), *cited in Higazy, supra*, the court, in a direct appeal from an order of detention of a federal prisoner, addressed the District Court’s improper reliance on *ex parte* information at a bail hearing, and wrote:

While the Sixth Amendment speaks only of a “public trial,” the Supreme Court has construed this right expansively to apply to a range of criminal proceedings, including jury selection, *see Press–Enterprise Co. v. Superior Court of California (“Press Enterprise I”),* 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984); suppression hearings, *see Waller v. Georgia*, 467 U.S. at 46-47, 104 S.Ct. 2210; and even pre-indictment probable cause hearings, *see Press–Enterprise II*, 478 U.S. at 10-13, 106 S.Ct. 2735. **Bail hearings fit comfortably within the sphere of adversarial proceedings closely related to trial. Bail litigation arises only after a defendant is formally charged with crimes that the prosecution must be prepared to prove within a specified time at trial. The statutory presumptions and burdens applicable to bail determinations are all defined in terms of a defendant’s trial status. Further, bail hearings, like probable cause and suppression hearings, are frequently hotly contested and require a court’s careful consideration of a host of facts about the defendant and the crimes charged. Thus, there is an interest in conducting such hearings in open courtrooms so that persons with relevant information can come forward.**

* * *

Although a defendant who has been found guilty at trial retains only a modest conditional expectation of continued liberty pending sentencing, neither the defendant nor the public would be well served by having determinations that so immediately affect even this reduced interest routinely made in closed proceedings or on secret evidence. Thus, while the right to open proceedings is subject to exception, *see Waller v. Georgia*, 467 U.S. at 39, 104 S.Ct. 2210, this factor also merits consideration in reviewing Abuhamra's due process challenge.

(Emphasis supplied).

In Petitioner's case, the State presented inaccurate information at the closed *ex parte* proceeding. This creates the same concern that was addressed by the courts in the foregoing cases. By conducting these hearings *ex parte*, the King County Superior Court deprives defendants of the opportunity to present relevant information or contest facts raised by the State. The *ex parte* bail increase in Petitioner's case is no different than the facts in *Higazy* and *Abuhamra, supra*, which the Second Circuit found to be violations of Due Process.

In response to the expected argument by the State that the first appearance before the District Court judge, rather than the Superior Court, does not entitle one to be present or have representation at a subsequent bail determination in Superior Court, this position is inconsistent with black letter Supreme Court law decided fifty years ago. In *Coleman v. Alabama*,

399 U.S. 1 (1970) the Court considered the preliminary hearing stage in an Alabama state prosecution, which occurs prior to charges being filed and has the sole purpose of determining whether there is sufficient evidence to proceed and if so “to fix bail if the offense is bailable.” *Id.* at 8.

The *Coleman* Court concluded that this was a critical stage:

The inability of the indigent accused on his own to realize these advantages of a lawyer's assistance compels the conclusion that the **Alabama preliminary hearing is a ‘critical stage’ of the State's criminal process at which the accused is ‘as much entitled to such aid (of counsel) as at the trial itself.’** *Powell v. Alabama, supra*, 287 U.S. at 57, 53 S.Ct. at 60.

399 U.S. at 9-10. Emphasis added.

The Alabama procedure at issue in *Coleman, id.*, is analogous to the procedure in question in King County. That is, the King County District Court First Appearance hearing accomplishes the same things as the Alabama preliminary hearing – to establish probable cause and set bail. In total similarity to the King County First Appearance procedure, the preliminary hearing in Alabama “is not a required step in an Alabama prosecution,” in that the State “may seek an indictment directly from the grand jury without a preliminary hearing.” *Id.* at 8.

This is the same as the procedure in Washington State where court rules provide for concurrent jurisdiction in both District and Superior Court for persons arrested on suspicion of probable cause to commit a felony. *See:*

State v. Stevens County District Court Judge, --- Wn.2d ---, 453 P.3d 984 (2019); CrR 3.2.1 and CrRLJ 3.2.1. The District Court’s First Appearance calendar is therefore a critical phase and counsel is required. That being the case, by parity of reasoning, the KCPAO’s request to increase bond in Superior Court must also be held to be a critical phase and the current no notice, *ex parte* proceeding, is unconstitutional.

Had a Superior Court judge rather than a District Court Judge, sat at the contested First Appearance, which is the procedure utilized in many Washington counties (*see* Allen Dec’1, pp. 8-9; Gause Dec’1, p. 3), there would have been no *ex parte* bail increases permitted because the procedure in Superior Court for revision of a Superior Court judge’s prior bail ruling would have been pursuant to CrR 3.2(k) or (l), and then only for good cause after a “hearing.”²³

3. The Prosecutor and Superior Court Judges Actions Violated Ethical Prohibitions as to Ex Parte Contacts

RPC 3.5 states in its relevant portion that an attorney shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order.

²³ Under CrR 3.2(l)(1), prior notice and a contested hearing are not required where it is alleged that the accused “willfully violated his conditions of release,” which was not alleged here.

A similar rule pertaining to judges is Rule 2.9 of the Code of Judicial Conduct (CJC), which provides in its relevant portion that:

A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, before that judge's court except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

The matter of the bail increase in the case of *State of Washington v. Julian Pimentel* in both District Court and Superior Court was a “pending or impending matter,” as those terms are used in CJC Rule 2.9. The exceptions to this rule contained in CJC Rule 2.9(A)(1)(a) and (b) did not apply, because this did not take place in the context of a mental health, drug or therapeutic court. Nor was it the type of communication which a judge could possibly believe would not give a tactical advantage to the State as a

result of the *ex parte* communication. Likewise, the judge did not notify and “give [the defense] an opportunity to respond.”

While CJC Rule 2.9(A)(5) provides that a judge may consider an *ex parte* communication when expressly authorized by law, there is no such authorization where the State merely wants the Superior Court to reconsider the prior ruling of the District Court Judge at the prior contested bail hearing, and no violations of conditions of release were alleged. It is not a situation where the State alleged that conditions of release were violated and public safety was at risk, in which case an arrest warrant could be issued, followed by “an immediate hearing” to reconsider conditions of release. *See*: CrR 3.2(1)(1). Instead, it was simply the KCPAO trying to gain an advantage by violating the Federal and State constitutions and court rules prohibiting *ex parte* proceedings after the defense had already made its appearance and had a contested hearing in the forum that the State chose to utilize in the first place -- the District Court’s first appearance calendar.

4. The Prosecutor Violated the Requirement of Candor to the Tribunal

As often happens in *ex parte* bail matters, the State either misstates the facts or does not provide all the relevant and material facts. Both those problems occurred here.

RPC 3.3 “Candor towards the tribunal” provides in its relevant portion that:

a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

* * *

(4) offer evidence that the lawyer knows to be false.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding.

The duty of candor required by RPC 3.3 is heightened where, as here, there is an *ex parte* proceeding:

f) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

CrR 3.3(f) (emphasis added).

In the instant case, the DPA did not comply with her ethical duties. While she did inform the Superior Court judge that the defendant had been granted a PR release in District Court, she did not inform the Superior Court Judge that the PR screeners recommended a PR; that the case detective had no objection to release; that the Petitioner voluntarily surrendered as requested by the detective; that the Petitioner had no prior convictions; that

the Petitioner's attorney father appeared and spoke on his behalf with regard to a stable home environment as well as his promise that the Petitioner would appear at all hearings; and other reasons why he qualified for a PR release; nor did she provide the audio recording from the First Appearance hearing.

Instead, the State came up with what it called "new facts," which were not new at all because they were contained in the Certificate that the District Court judge reviewed the day before. Moreover, these so-called new facts were not even relevant to CrR 3.2 conditions of release, but were instead provided as an excuse for the Court to improperly increase the defendant's bond *ex parte* to \$50,000. *See: In re Carmick*, 146 Wn.2d 582, 594 (2002) (in an *ex parte* proceeding, a court views "misrepresentations to the court with particular disfavor," and "will not tolerate any deviation from the strictest adherence to this duty.").

5. **King County Local Court Rules are Unconstitutional if Used as Justification for an Ex Parte Increase of Bail Following a Contested Hearing in District Court**

King County's local criminal rule LCrR 2.2 "Warrant upon indictment or information" provides:

(b) Issuance of Summons in Lieu of Warrant.

(1) When Summons Must Issue. Absent a showing of cause for issuance of a warrant, a summons shall issue for

a person who has been released on personal recognizance by a magistrate by the exercise of discretion on the preliminary appearance calendar. The person shall be directed to appear on the arraignment calendar.

(g) Information to Be Supplied to the Court. When a charge is filed in Superior Court and a warrant is requested, the court shall be provided with the following information about the person charged:

(1) The pretrial release interview form, if any, completed by either a bail interviewer or by the defense counsel.

(2) By the prosecuting attorney, insofar as possible.

(A) A brief summary of the alleged facts of the charge;

(B) Information concerning other known pending or potential charges;

(C) A summary of any known criminal record;

(D) Any other facts deemed material to the issue of pretrial release;

(E) Any ruling of a magistrate at a preliminary appearance.

[Amended effective September 1, 2001.]

A local court rule or even a statute passed by the legislature cannot override the United States Constitution or the Washington State Constitution. *See, e.g. State v. Villela*, __ Wn.2d ___, 450 P.2d 170, 172 (2019) (“Our Constitution cannot be amended by statute, and while the

legislature can give more protection to constitutional rights through legislation, it cannot use the legislature to take that protection away”).

While LCrR 2.2 might arguably be valid if it were limited to suspects who had not previously appeared in court on the current matter; were at large; an attorney had not appeared; and, no prior bail orders in the current proceeding were entered; that is not the case here.

Insofar as LCrR 2.2 is utilized to conduct an *ex parte* hearing to increase bail previously set by the District Court judge without notice or input from the defense, it is unconstitutional and violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution as well as Article 1, Sections 14, 20 and 22 of the Washington State Constitution. It also violates applicable court ethics rules.

6. The King County Ex Parte Bail Procedure Differs from the Procedure in Most Counties

The procedure in King County differs from most other counties as far as Petitioner could ascertain.²⁴ King County uses a procedure whereby first appearances on felony probable cause arrests are handled by King County District Court judges at contested hearings and the defendants are present in court represented by counsel. Thus far the procedure is constitutional. Where it fails is that it allows the KCPAO, when it is

²⁴ See Allen Dec’l, pp. 8-9; Gause Dec’l, p. 3.

displeased with the bail set in District Court, to request bond increases in Superior Court without notice to the defense. And, as often happens in *ex parte* matters, and in fact did occur in Petitioner's case, the DPA presented irrelevant, erroneous and false facts and fallacious arguments without an opportunity for the defense to respond.

However, even if the King County Prosecuting Attorney's Office had provided the audio recording or a transcript of the bail hearing below, the defense would still be prejudiced because it could not confront the State's "new information" presented at this critical phase. *See, e.g., State v. I.N.A.*, 9 Wn.App.2d 422, 426 (2019), "[b]asic due process and the governing criminal rules require notice of court proceedings to counsel of record."

III. CONCLUSION

For the reasons stated, this Court should issue a writ of prohibition directing the elected King County Prosecuting Attorney and the Judges of

the King County Superior Court to cease the unconstitutional *ex parte* procedure occurring on King County bail matters.

RESPECTFULLY SUBMITTED this 30th day of January, 2020.

Allen, Hansen, Maybrown & Offenbecher, P.S.
Attorneys for Petitioner

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

DAVID ALLEN, WSBA #500
TODD MAYBROWN, WSBA #18557
COOPER OFFENBECHER, WSBA #40695
DANIELLE SMITH, WSBA #49165

FILED
SUPREME COURT
STATE OF WASHINGTON
2/4/2020 1:34 PM
BY SUSAN L. CARLSON
CLERK

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7 IN THE SUPREME COURT
8 OF THE STATE OF WASHINGTON

9 JULIAN PIMENTEL,

10 Petitioner,

11 v.

12 JUDGES OF THE KING COUNTY
13 SUPERIOR COURT and DAN
14 SATTERBERG, KING COUNTY
PROSECUTING ATTORNEY,

15 Respondents.

NO. 98154-0

DECLARATION OF DAVID ALLEN IN
SUPPORT OF APPLICATION FOR A
WRIT OF PROHIBITION

16 I, David Allen, do hereby declare:

17 1. I am an attorney in good standing in the Washington State Bar Association and
18 limit my practice to criminal defense and professional ethics representation for lawyers and
19 judges. I have been a member of the Washington State Bar Association since March 20, 1970.

20 2. My law partners and I are representing Petitioner on this Application for a Writ
21 of Prohibition on a *pro bono* basis.

22 3. I previously represented Petitioner in the matter of *State v. Julian T. Pimentel*,
23 King County Superior Court No. 18-1-01217-8 KNT. The pertinent facts involving this
24 matter follow.
25
26

1 4. On or about April 16, 2018, Petitioner received a letter from Federal Way
2 Police Department Detective Richard Adams informing him that he was being investigated
3 for a felony sex offense and directed him to surrender or be arrested on probable cause.

4 5. Accompanied by his father, Petitioner surrendered to Detective Adams at the
5 Federal Way Police Department on April 17, 2018 and he was booked into jail at the MRJC.

6 6. Pursuant to long standing King County procedure, which has been in place at
7 least since the mid-1990's, individuals investigated for felonies, but not yet charged, who
8 have either voluntarily surrendered or have been arrested on probable cause, appear on the
9 King County District Court's First Appearance Calendar the day after they are first booked
10 into jail.

11 7. Pursuant to this procedure, Petitioner appeared before King County District
12 Court Judge Charles Delaurenti on April 18, 2018. The deputy prosecuting attorney (DPA)
13 requested bail in the sum of \$150,000. Defense counsel David Allen appeared and argued for
14 a PR release, informing the judge that the jail PR screeners recommended a PR release; that
15 Detective Adams stated in his report before Judge Delaurenti that he had no objection to
16 release; that Petitioner was just two months over the age of 18; he had no criminal
17 convictions; he had a stable address and lived with his father, who is an attorney practicing in
18 Kitsap County; and, that there was nothing predatory alleged. The court heard from
19 Plaintiff's father, Adrian Pimentel, who confirmed that his son had a stable address and
20 assured the Court he would appear. A true and accurate copy of the transcript of the District
21 Court bond hearing is attached hereto as Appendix A.
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1 8. Petitioner was released on his personal recognizance with conditions and
2 directed to return to court the next day, April 19, 2018, for his second appearance. The
3 Conditions of Release are attached hereto as Appendix B.

4 9. On April 19, 2018, prior to the Petitioner's second appearance, a DPA filed an
5 Information charging Mr. Pimentel in Superior Court with a sexual assault felony and also
6 filed a pleading entitled "Prosecuting Attorney's Case Summary and Request for Bail and/or
7 Conditions of Release." In this pleading, the State requested a warrant and, relying upon
8 "new information" that the DPA claimed was contained in the Certification for Determination
9 of Probable Cause, requested that bail be increased from the PR set in District Court the prior
10 day to the amount of \$50,000. A copy of this pleading is attached as Appendix C.

11 10. The DPA correctly stated in her request for increase of bail that her office had
12 requested bail of \$150,000 at the first appearance the day before but the District Court judge
13 released the defendant on his personal recognizance. The DPA then erroneously stated that at
14 the first appearance the court did not have the Certification for Determination of Probable
15 Cause (hereinafter, "Certificate") and was therefore unaware that there were statements from
16 complainant's friends who were with the victim and the defendant that day, which the DPA
17 claimed was "new information" justifying the bail increase from a PR to \$50,000. The DPA
18 wrote:
19
20
21

22 Pursuant to CrR 2.2(b)(2)(ii), the State requests a warrant because the defendant
23 is likely to commit a violent offense. At the time of first appearance the State
24 requested \$150,000.00. The court did not grant bail and released the defendant
25 on his personal recognizance. **At the time of first appearance the court was
26 unaware that there were statements from friends that were with the victim
and the defendant that day. In the certification for determination of
probable case [sic], which provides much more detail of the events of the
day, the friends state that the victim was impaired both earlier in the day
and during the time frame when the sexual assault occurred. The victim is
only fifteen years old and was supplied liquor by the defendant, which
witnesses report that he stole. Given the new information from friends**

1 **regarding the victim’s impairment the State respectfully requests the court**
2 **set bail in the amount of \$50,000.00.** The State is also seeking a sexual
3 assault protection order for the victim. (Emphasis supplied.)

4 11. The “new information” relied upon by the DPA to justify the bail increase was,
5 in fact, provided to and considered by the District Court Judge at the Petitioner’s first
6 appearance. *See* District Court Transcript, App. A, p. 1.

7 12. The Information and accompanying motion to raise bail and for an arrest
8 warrant was filed electronically and transmitted to Superior Court Judge J. Cayce who
9 electronically signed these documents on April 19, 2018, which increased bail to \$50,000 by
10 virtue of the arrest warrant. Appendix D, hereto.

11 13. This motion for an increase in bond and the Superior Court order granting it
12 and issuing an arrest warrant for \$50,000 were granted *ex parte* and done without any notice
13 to the defendant or his attorney and without any opportunity for them to appear or to respond.

14 14. Petitioner returned to District Court, as required, on April 19, 2018, for his
15 second appearance. The parties were not made aware of the filing of the Information or the
16 increase in bail or the arrest warrant at this second appearance and because of this oversight
17 the Petitioner was not then arrested.

18 15. Later in the day on April 19, 2019, when I learned of the *ex parte* bail increase
19 by calling the KCPAO, I immediately notified Petitioner and his father. Petitioner’s father
20 decided to purchase a \$50,000 bail bond, which required him to pay an 8% premium (\$4,000)
21 and pledge property, in order to keep his son from being re-arrested prior to his May 3, 2018
22 arraignment, which would have been the first time the *ex parte* bail increase could have been
23 challenged, under King County Practice, absent a motion to special set a hearing under
24 shortened time. It would have taken several days and much effort to schedule a hearing on
25 shortened time. It would have taken several days and much effort to schedule a hearing on
26 shortened time.

1 shortened time, during which time Mr. Pimentel would have been subject to arrest under the
2 warrant.

3 16. There is a scrivener's error in the Information which erroneously alleged the
4 offense occurred April 18, 2018, which was the day Petitioner first appeared in court. This
5 error is demonstrated by the Certification for Determination of Probable Cause authored by
6 Detective Richard Adams of the Federal Way Police Department which states that "on or
7 about 2-10-18, ARW was sexually assaulted by Julian Pimentel (DOB 2-8-00)" The
8 Certification for Determination of Probable Cause was transmitted on April 17, 2018 by the
9 detective to the KCPAO. This Certificate is attached as Appendix E hereto.

10 17. As alleged in the Certification for Determination of Probable Cause, on the
11 date of the incident, ARW would have been 15 years and 4 months old and Julian Pimentel
12 would have turned 18 years old two days earlier.

13 18. There is no established procedure available in King County for a hearing in
14 order to challenge the *ex parte* bond increase except at the Superior Court arraignment. The
15 arraignment is typically set out ten days to two weeks following the filing of charges. In the
16 instant case, the arraignment was set for May 3, 2018, which was 13 days after the bail was
17 raised and arrest warrant signed. A defendant who has been previously released who does not
18 surrender to jail will often be arrested by the case detective per the warrant.

19 19. In the course of my representation of clients, I have had several clients who
20 were released from jail after their first or second appearance on the District Court's calendar,
21 but arrested by the investigative detectives within a short period of time after bond was raised
22 in the *ex parte* proceeding outlined previously, where I was not even aware that bond had
23 been increased or a warrant issued because neither the Court nor the KCPAO provides notice.
24
25
26

1 20. In order to keep from being arrested after an *ex parte* bail increase, a defendant
2 who is released will either have to post the increased bail if he or she has the financial means
3 to do so; surrender themselves to jail and wait until the arraignment to argue for lower bail;
4 or, attempt to avoid apprehension until the arraignment, which is not something attorneys can
5 ethically recommend given the pendency of the warrant, and also because of the physical
6 danger inherent in being arrested on the felony warrant at gun point.
7

8 21. This procedure has been in place for many decades.

9 22. I, my law partners and many other interested persons who are members of the
10 Washington Association of Criminal Defense Lawyers have been attempting to negotiate
11 changes in this procedure, without success for almost 25 years.
12

13 23. Richard Hansen, my former law partner now retired, and I were co-chairs of
14 the WACDL's State Court Procedure Committee. On December 17, 1996, we wrote a letter
15 to Presiding Judge Janice Niemi; Presiding Criminal Judge Brian Gains; and Criminal
16 Motions Judge Dale Ramerman. In this letter we complained about the procedure which is
17 exactly the same as now and identical to the subject matter of the Pimentel Application for a
18 Writ of Prohibition. In our letter, we described the evils of the *ex parte* procedure and we also
19 raised the problem with clients posting bonds, being released, and then being brought back
20 into custody because they could not pay the additional premium once bail was raised *ex parte*.
21

22 24. We gave the example of a then client of ours, a Mr. F., who posted a \$25,000
23 bond in District Court, which was the amount requested at that point by the prosecutor. The
24 Prosecutor's Office then decided that additional bond was required and *ex parte* requested a
25 bond increase to \$75,000, which was granted, without any notice to us. Even though Mr. F.
26 appeared at his second appearance in District Court and there was no mention at that stage of

1 bond being raised, he “was [later] arrested at gunpoint at his apartment that night on the basis
2 of the filing warrant.”

3 25. Follow-up letters were sent to Judge Janice Niemi, the then-presiding criminal
4 judge, on April 10, 1997; May 21, 1997; and, May 30, 1997; further detailing the problems,
5 providing additional examples and questioning the constitutionality of this practice. These
6 letters are attached as Appendix F. While there were meetings that occurred with judges and
7 prosecutors, the procedure was not changed.
8

9 26. Also attached hereto in Appendix F is a letter from Judge Niemi dated May 22,
10 1997, referencing this issue and her conversations with supervisory prosecutors, following a
11 “criminal directors meeting on May 7, 1997.” She wrote that since “the practice of setting
12 high bail on a complaint after release from the investigation calendar for a much lower bail
13 amount is more widespread than SAU within the Prosecutor’s Office, this informal discussion
14 will not help much.” She suggested we talk to Chief Criminal Deputy Mark Larson or even
15 Norm Maleng, the elected prosecutor, to try to work out a procedure and further wrote that
16 she would be willing to be involved in “pre-arraignment bond hearings.”
17

18 27. As a result, on May 30, 1997, I wrote the attached letter to Norm Maleng, the
19 elected King County Prosecuting Attorney, setting forth information previously given to
20 Judge Niemi, along with letters we had sent to her. *See* Appendix F. While there were
21 additional meetings with Mark Larson, the KCPAO Chief Criminal Deputy and other senior
22 prosecutors, the KCPAO was unwilling to change its procedure.
23

24 28. Although there were continued efforts to try to convince the Prosecutor’s
25 Office to change its procedure, nothing changed. For example, on January 21, 1999, I
26 contacted then presiding criminal Judge Michael Spearman and wrote him the letter attached

1 as Appendix G. There were several follow up meetings with judges and prosecutors,
2 including one on June 4, 2001, with Presiding Judge Spearman and prosecutors, but nothing
3 changed.

4 29. Throughout the years there were many more efforts to try to have the King
5 County Prosecuting Attorney change its procedure, including a meeting with then Criminal
6 Presiding Judge Ronald Kessler on June 13, 2005 at a King County “work group meeting.”
7 More recently, I and other interested defense attorneys met on September 21, 2015 with King
8 County Chief Criminal Deputy Mark Larson, Special Assault Unit supervisor Lisa Johnson
9 and others in an attempt to change the procedure. Although both sides attempted to reach an
10 agreement, the Prosecutor’s Office again refused to change its practice of requesting *ex parte*
11 increases in bail, and our efforts failed once again.
12

13 30. On June 30, 2016, I sent the letter attached as Appendix H to Judge Dean Lum,
14 who was then a criminal presiding judge. In that letter I referenced a meeting that Judge Lum,
15 Judge Ronald Kessler, Chief Criminal Prosecutor Mark Larson and I had on April 13, 2016,
16 to attempt to remedy this situation. As with prior efforts, nothing changed.
17

18 31. There were additional meetings with judges and prosecutors besides the ones I
19 have detailed, *supra*, over the past 24 years.
20

21 32. This procedure is still ongoing as the *Pimentel* matter demonstrated. I have
22 communicated with other attorneys who inform me that the aforementioned procedure is still
23 occurring in King County on a regular basis.

24 33. Over the course of my 50 years of practice I have substantial trial experience in
25 other counties. I have also spoken with attorneys who are based in other counties who have
26 told me that the practice of raising bonds *ex parte* does not exist in their counties. I have

1 never experienced the *ex parte* procedure which occurs in King County when practicing in
2 other counties.

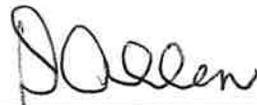
3 34. In fact, in a majority of counties, including Whatcom, Snohomish, Pierce,
4 Thurston and Spokane counties, the first appearances are handled in Superior Court, rather
5 than District Court, as occurs in King County, which avoids this issue.
6

7 35. After almost 25 years of trying to change this procedure by reaching an
8 accommodation with the King County Prosecuting Attorney's Office and the King County
9 Superior Court Judges, there is no other option than to file the requested application for a writ
10 of prohibition seeking relief to stop this ongoing unconstitutional practice.

11 36. The *Pimentel* case proceeded through the discovery phase. After defense
12 interviews established that the complainant, although having drunk alcohol, was not
13 physically helpless or mentally incapacitated, as those terms are defined in RCW
14 9A.44.010(4) and (5), at the time of the sexual contact, the State dismissed the case on
15 January 11, 2019. In its Motion, Certification and Order of Dismissal, the DPA wrote that it
16 appearing "that the ends of justice do not warrant further proceedings in this matter; now
17 therefore" the case should be dismissed. A copy of this pleading is attached hereto as
18 Appendix I.
19

20 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
21 WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST
22 OF MY KNOWLEDGE.

23 DATED at Seattle, Washington this 30th day of January, 2020.

24 

25 _____
26 DAVID ALLEN, WSBA #500
Attorney for Petitioner

APPENDIX A

KING COUNTY DISTRICT COURT

STATE OF WASHINGTON,)	
Plaintiff,	)	District Case No. 218010696
v.	)	Superior Case No. 18-1-01217-8 KNT
JULIAN PIMENTEL,)	
Defendant.)	

HEARING - FELONY FIRST APPEARANCE

April 18, 2018

The Honorable Charles J. Delaurenti Presiding

TRANSCRIBED BY: Marjorie Jackson, CET
 Reed Jackson Watkins, LLC
 Court-Certified Transcription
 206.624.3005

A P P E A R A N C E S

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On Behalf of the Plaintiff:

LAUREN MARKS BURKE

King County Prosecutor's Office

516 Third Avenue, Suite W554

Seattle, Washington 98104-2362

On Behalf of the Defendant:

DAVID ALLEN

Allen Hansen Maybrow & Offenbecher, PS

600 University Street, Suite 3020

Seattle, Washington 98101-4105

Also Present:

Adrian Pimentel, Father of Defendant

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April 18, 2018

THE COURT: We're on the record on the felony first appearance calendar. Ms. Lauren Burke is present, representing the State. This is Mr. Julian Taylor Pimentel, who's present and represented by -- excuse me -- Mr. David Allen.

Go ahead, Counsel.

MS. BURKE: Thank you, Your Honor. This is Investigation Cause No. 218010696. The State is asking for a finding of probable cause for Rape in the Second Degree under (b), incapable of consent.

THE COURT: And, Mr. Allen, did the Defense wish to be heard as to probable cause at this time?

MR. ALLEN: No, your Honor, we'll take no position on that.

THE COURT: Having read the Affidavit of Probable Cause, I make a finding of probable cause, one count of Rape in the Second Degree under section (b), incapable of submitting.

Go ahead, Ms. Burke, as far as bond, conditions of release.

MS. BURKE: Your Honor, this is a difficult case for the State, given that Mr. Pimentel is so young. However, the facts in this case are extremely concerning, and we do

1 believe that bail in the amount of \$150,000 is appropriate
2 and necessary to ensure the safety of the community. We
3 note that the victim had six shots of vodka in about 30
4 minutes. She was semiconscious at the time. The defendant
5 asked the other people who were present to leave for a
6 period of about 30 to 40 minutes, during which time he raped
7 her vaginally. He later bragged to the other people who
8 were there that he had, quote, "fucked the shit out of" the
9 victim.

10 She, the next day, did had some memory of the event. Her
11 vagina was sore and bleeding. It was not a time that she
12 was expecting blood. So we do think that, given the facts
13 of this case alone, \$150,000 bail is necessary and
14 appropriate.

15 THE COURT: Thank you.

16 Mr. Allen?

17 MR. ALLEN: Your Honor, I'd point out first that the
18 detective said he had no objection to release. And,
19 secondly and most importantly, the PR screeners did
20 recommend a PR release.

21 Mr. Pimentel is just 18. He's a young man. He's two
22 months over 18, and he has a stable address. He lives with
23 his father in Poulsbo. His father is in court and wants to
24 say a few words in a minute.

25 THE COURT: Certainly.

1 MR. ALLEN: His father, Adrian Pimentel, is an attorney
2 practicing law in Kitsap County and will certainly provide a
3 stable residence for Julian when he is released. This is a
4 case where certainly there's allegations, but it's not one
5 of these terribly-violent-allegation-type cases. We see
6 more and more of these cases being alleged, incapable of
7 consent. There is indication she had memory. I believe
8 that she was 16 years old, so there's not a huge age
9 differential. In fact, it would not be a crime if it
10 weren't for the allegation that she was incapable of
11 consent, because she is over the age of consent and less
12 than 4 years between them. Even if she were under 16, she
13 is within the 4-year differential.

14 It's clear also that she drank alcohol on her own.
15 Nothing was forced on her. This was not a predatory-type
16 act.

17 Your Honor, I believe this is one of those cases that
18 does qualify and should be given a personal recognizance
19 release. Mr. Pimentel does not have criminal history of any
20 sort. There were some investigations, I understand, that
21 the Theft in the Second Degree and taking a car -- which was
22 his parents' car, he drove it without permission -- will not
23 be filed.

24 There are some of these other matters that go back to
25 2007 and 2009 that don't show that he was a suspect. In

1 fact, back then he would be 8 or 9 years old, maybe 10 years
2 old at the most. So given all that, I believe that personal
3 recognizance should be given.

4 I would also point out that he surrendered himself
5 yesterday with our assistance. His dad drive him down to
6 Federal Way. This was after the detective sent a letter to
7 his dad's address. So we've cooperated as much as possible.
8 He is not a flight risk and he is not a danger in the
9 community. And, certainly, there's a presumption of
10 innocence which attaches.

11 Your Honor, I would like, with the Court's permission, to
12 have Adrian Pimentel step forward and say a few words.

13 THE COURT: Sure. Would you come forward, Mr. Pimentel,
14 to the podium there and you can talk right into the
15 microphone?

16 MR. ADRIAN PIMENTEL: Oh, okay.

17 THE COURT: And you might have to pull it out. The
18 closer you get to it, the better we'll be able to hear. Go
19 ahead, sir.

20 MR. ADRIAN PIMENTEL: Okay. Can you hear me?

21 THE COURT: Yes.

22 MR. ADRIAN PIMENTEL: Okay.

23 THE COURT: You might want to talk -- I can hear, but can
24 everyone else hear?

25 MR. ALLEN: Yes, yes.

1 THE COURT: Okay. Go ahead, sir.

2 MR. ADRIAN PIMENTEL: Okay. Julian will be living with
3 me. Julian has never had a job, so he has no ability to
4 earn money or to run. The risk of flight is zero. He was
5 raised here his entire life. He was born in Washington
6 State. He has been raised here his entire life with the
7 exception of going to a boarding school in Utah for short
8 periods of time.

9 He -- the things -- I did look at the record that was in
10 front of us, and I saw stuff from '07, '08, '09. I have no
11 idea what that relates to. It's not Julian. Julian would
12 have been 7, 8, 9 years old, and he never had any
13 interaction with the police at those ages.

14 The stuff that you see that's more recent, it is -- it
15 was my automobile. What Julian -- we were dealing with the
16 typical close-to-18 behavior. And at one point Julian used
17 my debit card without permission and took my vehicle to do
18 it. I reported it. I then spoke with the prosecutor, and
19 the prosecutor decided not to charge it. That is not --
20 those will not be charged.

21 Again, the things that we have been dealing with are
22 miles away from this typical 18-year-old-type stuff. I
23 don't anticipate we're going to have any issues with him.
24 From the moment this came up, he has been very somber, very
25 serious, and he seems to understand the seriousness of what

1 he's facing. And so I don't anticipate having any problems
2 with him at all.

3 I will probably take him to work, and he'll probably work
4 with me. I have a firm and I have seven employees, and he
5 will probably come to my firm and he will probably work with
6 me during the day.

7 THE COURT: Thank you. And the return date is when?

8 THE CLERK: It's tomorrow.

9 MS. BURKE: Your Honor, the State is asking for a sexual
10 assault protection order, as well. I do have a copy of that
11 here.

12 THE COURT: I assume there's no objection, Mr. Allen?

13 MR. ALLEN: That's correct, your Honor

14 THE COURT: Granted.

15 (Attorney-Client privileged conversation)

16 THE COURT: Counsel, what I'm going to do is as follows:

17 Clearly, I'm concerned about the nature of the alleged
18 violation. As I commented earlier, I have not seen a case
19 in a long time where it appears everyone is making
20 recommendations for release. The State's recommendation for
21 bond is not unreasonable, but when I look at all the
22 circumstances and with the return date tomorrow, I will
23 release him on his personal recognizance.

24 Conditions in addition to that are obviously no
25 consumption of alcohol, non-prescribed medications,

1 controlled substances, including marijuana, period. Clearly
2 there will be no contact. Assuming that his father is
3 willing to keep control, I will simply require that he is
4 released to his father to return tomorrow afternoon at 2:45.
5 And I would consider -- and I'm not sure what the Superior
6 Court will do -- the Court would also consider -- Ms. Burke,
7 you can pass that along to your office -- that tomorrow,
8 even if bail isn't set at a minimum, probably a GPS
9 monitoring device to keep track of his whereabouts.

10 MR. ALLEN: That's in the future, Your Honor.

11 THE COURT: Yeah. Because it wouldn't make much sense
12 for me to order it now because with a return date of
13 tomorrow, that's not going to be installed that fast anyway.

14 So any questions from either side?

15 MR. ALLEN: I don't believe so, Your Honor.

16 THE COURT: Thank you. Good luck, sir.

17 MR. ALLEN: Thank you, Your Honor.

18 (Conclusion of hearing.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
)
COUNTY OF SNOHOMISH)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of August, 2019.

Marjorie Jackson

Marjorie Jackson, CET



APPENDIX B

KING COUNTY DISTRICT COURT
STATE OF WASHINGTON

STATE OF WASHINGTON

Plaintiff)

Case No: 218010696

vs

Julian Pimentel

Defendant)

CONDITIONS OF RELEASE

X Pending Filing of Charges

PROBABLE CAUSE FOUND (X) YES () NO

IT IS ORDERED that the accused arrested on the 17 day of April, 2017 for investigation of Indecent Liberties shall pursuant to CrRLJ3.2 be:

- Unconditionally released from the King County Jail - forthwith.
- Released from the King County Jail, on the following conditions:
 - The execution of surety bond or posting cash in the amount of \$ _____
 - Personal Recognizance
 - No contact with the victim or witnesses: ARW
 - Possess no weapons / alcohol / non-prescription drugs
 - Phone Block on telephone number: _____
 - No new law violations _____
 - Additional conditions: _____

- The defendant shall appear for a hearing on: 4/19/18
 - King County Correction Facility - 500 5th Avenue, Courtroom #1, Seattle, Washington at 2:30 pm or _____
 - Maleng Regional Justice Center - 401 4th Avenue North, Courtroom GB, Kent, Washington at 2:45 pm.

If you are in custody at the time of this hearing you will not be transported to court. Instead, if charges have not been filed you will be released from jail on this case number. If charges have been filed you will be transported to Superior Court for arraignment within 14 days. You may contact the jail staff in your unit to find out if charges have been filed.

Dated: 4-18-18

[Signature]
JUDGE / COMMISSIONER / PRO TEM

I have read the above conditions of release. I agree to follow said conditions and understand that any violation may lead to the forfeiture of any bond posted. I UNDERSTAND THAT EVEN THOUGH CHARGES HAVE NOT BEEN FILED ON THIS INVESTIGATION THE STATE MAY FILE CHARGES AT A LATER DATE.

Address: 650 NE 5th Hwy 308 #B Phone: 253-439-9583
City: 98148 WA Zip Code: 98370

Signed: *[Signature]* Copy received: Accused

If there is any change in your address, phone number or employment, you are to inform the Court immediately by phone: (206) 205-9200 or notify the King County Prosecutor by phone: RJC (206) 205-7485, Seattle (206) 296-9000.

APPENDIX C

FILED

18 APR 19 PM 2:26

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 18-1-01217-8 KNT

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	
v.	)	No. 18-1-01217-8 KNT
)	
JULIAN T PIMENTEL,	)	INFORMATION
)	
	)	Defendant.
)	
)	

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse JULIAN T PIMENTEL of the following crime[s]: **Assault In The Second Degree—Sexual Motivation**, committed as follows:

Count 1: Assault In The Second Degree-Sexual Motivation

That the defendant JULIAN T PIMENTEL in King County, Washington, on or about April 17, 2018, with intent to commit the felony of Indecent Liberties, did intentionally assault A.R.W. (10/29/02;

Contrary to RCW 9A.36.021(1)(e), and against the peace and dignity of the State of Washington.

And further do allege the defendant, Julian T Pimentel of commission of this crime with sexual motivation, that is: that one of the purposes for which the defendant committed this crime was for the purpose of his sexual gratification, under the authority of RCW 9.94A.835.

DANIEL T. SATTERBERG
Prosecuting Attorney



By: Nicole L. Weston, WSBA #34071
Senior Deputy Prosecuting Attorney
Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
Maleng Regional Justice Center
401 4th Avenue North, Suite 2A
Kent, WA 98032-4429
(206) 477-3757 FAX (206) 205-7475

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CAUSE NO. 18-1-01217-8 KNT

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
CONDITIONS OF RELEASE

The State incorporates by reference the Certification for Determination of Probable Cause prepared by Officer Richard Adams of the Federal Way Police Department for case number 180003699.

Pursuant to CrR 2.2(b)(2)(ii), the State requests a warrant because the defendant is likely to commit a violent offense. At the time of first appearance the State requested \$150,000.00. The court did not grant bail and released the defendant on his personal recognizance. At the time of first appearance the court was unaware that there were statements from friends that were with the victim and the defendant that day. In the certification for determination of probable case, which provides much more detail of the events of the day, the friends state that the victim was impaired both earlier in the day and during the time frame when the sexual assault occurred. The victim is only fifteen years old and was supplied liquor to by the defendant, which witnesses report that he stole. Given the new information from the friends regarding the victim's impairment the State respectfully requests the court set bail in the amount of \$50,000.00. The State is also seeking a sexual assault protection order for the victim.

Signed and dated by me this 19th day of April, 2018.



Nicole L. Weston, WSBA #34071
Senior Deputy Prosecuting Attorney

APPENDIX D

FILED

18 APR 19 PM 2:26

KING COUNTY
SUPERIOR COURT CLERK
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CASE NUMBER: 18-1-01217-8 KNT

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	
v.	)	No. 18-1-01217-8 KNT
)	
JULIAN T PIMENTEL,)	
)	
	)	MOTION, FINDING OF PROBABLE
	)	CAUSE AND ORDER DIRECTING
	)	ISSUANCE OF SUMMONS OR
	)	WARRANT AND FIXING BAIL

The plaintiff, having informed the court that it is filing herein an Information charging the defendant with the crime(s) of **Assault In The Second Degree**, now moves the court pursuant to CrR 2.2(a) for a determination of probable cause and an order directing the issuance of a summons or warrant for the arrest of the defendant, and

fixing the bail of the defendant in the amount of \$50,000.00, cash or approved surety bond; **and no contact direct or indirect with A.R.W. (10/29/02). The no contact order issued at the time of first appearance remains in effect until arraignment. The Order to Surrender Weapons issued at the time of first appearance remains in effect until arraignment.**

directing the issuance of a summons; **and no contact direct or indirect with . The no contact order issued at the time of first appearance remains in effect until arraignment.**

In connection with this motion, the plaintiff offers the following incorporated materials: The Federal Way Police Department certification or affidavit for determination of probable cause; the Federal Way Police Department suspect identification data; and the prosecutor's summary in support of order directing issuance of summons or order fixing bail and/or conditions of release.

MOTION, FINDING OF PROBABLE CAUSE AND
ORDER DIRECTING ISSUANCE OF SUMMONS OR
WARRANT AND FIXING BAIL - 1

Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
Maleng Regional Justice Center
401 4th Avenue North, Suite 2A
Kent, WA 98032-4429
(206) 477-3757 FAX (206) 205-7475

1 If the defendant is not in custody, the plaintiff has attempted to ascertain the defendant's
2 current address by searching the District Court Information System database, the driver's license
3 and identicard database maintained by the Department of Licensing, and the database maintained
4 by the Department of Corrections listing persons incarcerated and under supervision.

DANIEL T. SATTERBERG, Prosecuting Attorney

By:



Nicole L. Weston, WSBA #34071
Senior Deputy Prosecuting Attorney

8 FINDING OF PROBABLE CAUSE AND ORDER FOR ARREST WARRANT

9 The court finds that probable cause exists to believe that the above-named defendant
10 committed an offense or offenses charged in the information herein based upon the police agency
11 certification/affidavit of probable cause incorporated and pursuant to CrR 2.2(a).

11 IT IS ORDERED that the Clerk of this Court issue a summons or warrant of arrest for the
12 above-named defendant; and

13 IT IS FURTHER ORDERED that

14 the bail of the defendant be fixed in the amount of \$50,000.00,
15 cash or approved surety bond; and defendant shall have no
16 contact direct or indirect with A.R.W. (10/29/02). The no
17 contact order issued at the time of first appearance remains in
18 effect until arraignment. The Order to Surrender Weapons
19 issued at the time of first appearance remains in effect until
20 arraignment.

18 a summons shall be issued; if the defendant is incarcerated on
19 the investigation charge herein the defendant shall be released from
20 custody; and shall have no contact direct or indirect with . The
21 no contact order issued at the time of first appearance remains
22 in effect until arraignment.

21 Additional Conditions: _____
22 _____
23 _____
24 _____

24 MOTION, FINDING OF PROBABLE CAUSE AND
ORDER DIRECTING ISSUANCE OF SUMMONS OR
WARRANT AND FIXING BAIL - 2

Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
Maleng Regional Justice Center
401 4th Avenue North, Suite 2A
Kent, WA 98032-4429
(206) 477-3757 FAX (206) 205-7475

1 IT IS FURTHER ORDERED that the defendant be advised of the amount of bail fixed by
the court and/or conditions of his or her release, and of his or her right to request a bail reduction.
2 Service of the warrant by telegraph or teletype is authorized.

3 SIGNED this _____ day of April, 2018.

4 _____
JUDGE

5 Presented by:

6
7 

8 Nicole L. Weston, WSBA #34071
Senior Deputy Prosecuting Attorney
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24 MOTION, FINDING OF PROBABLE CAUSE AND
ORDER DIRECTING ISSUANCE OF SUMMONS OR
WARRANT AND FIXING BAIL - 3

Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
Maleng Regional Justice Center
401 4th Avenue North, Suite 2A
Kent, WA 98032-4429
(206) 477-3757 FAX (206) 205-7475

King County Superior Court
Judicial Electronic Signature Page

Case Number: 18-1-01217-8
Case Title: The State of Washington vs Julian T Pimentel

Document Title: PROPOSED ORDER/FINDINGS

Signed by: james cayce
Date: 4/19/2018 2:26:00 PM

digitally signed by J. Cayce

Judge/Commissioner: james cayce

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 1E7BB8AA0B606C74DA41E1FFF52F530BEFD7C69D
Certificate effective date: 7/29/2013 12:54:03 PM
Certificate expiry date: 7/29/2018 12:54:03 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="James
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APPENDIX E



King County

**eLODI
PROSECUTING ATTORNEY'S OFFICE
Certification for Determination of Probable Cause**

That *Richard Adams 167* is a *Police Officer* with the *Federal Way Police Department* and is familiar with the investigation conducted in *Federal Way Police Department 180003699*. There is probable cause to believe that *PIMENTEL, JULIAN T, 2/8/2000* committed the crime(s) of:

- *Indecent Liberties (Mentally Defective - Physically Helpless), in Federal Way*

County of King, in the State of Washington.

This belief is predicated on the following facts and circumstances:

On 3-18-18, ARW (DOB: 10-29-02) and her mother, Kali A, reported to Federal Way Police Officer N. Wong that, on or about 2-10-18, ARW was sexually assaulted by Julian Pimentel (DOB: 2-8-00) while they were at RSP's (DOB: 10-4-02) residence (29954 4 Ave S, Federal Way, King County, Washington).

ARW and RSP are friends. An acquaintance, NAC (DOB: 6-14-01), was present at the time of the incident. Another friend, OBB (DOB: 2-22-02) became involved by phone immediately after the incident. ARW knew Julian Pimentel for about a week prior to this incident; they were never previously in a dating or intimate relationship. A subsequent police investigation (conducted by Officer N. Wong and Detective R. Adams) revealed the following:

In her initial written statement and during a child forensic interview, ARW related the following: on 2-9-18, she went to stay at her biological father's residence for the weekend. ARW's father became intoxicated and began to purposely annoy ARW's brother, causing ARW to become upset. The next day, on 2-10-18, ARW decided to leave her father's house and walked to RSP's house.

RSP and ARW went to the Commons Mall (1928 S Commons, Federal Way) before going to OBB's house. OBB was not home, but they met with Julian Pimentel (who was staying with OBB at the time).

RSP, ARW, Julian Pimentel, and NAC then hung out at Taco Bell before they (with the exception of NAC) went back to the Commons Mall.

At the mall, Julian Pimentel stole a bottle of alcohol (later described by ARW as tequila) from Target. They then got a smoothie because RSP did not like the taste of alcohol.

RSP, ARW, and Julian Pimentel went into the women's restroom located in the food court. There, the three of them drank about a third of the bottle of alcohol.

RSP, ARW, and Julian Pimentel went to Kohl's where they sat on the beds. They then went to the movie theater courtyard.

They then walked RSP to the bus stop because RSP had to go home. ARW and Julian Pimentel then went back to the mall. ARW said she did not remember what they did at the mall after RSP left. ARW said that this was a chunk of time that she did not really remember. ARW then recalled that they went behind the mall where NAC shared a blunt with them.

ARW said that they went to OBB's house; however, OBB's mom said that they could not stay there. They then went to RSP's house at about 1930-2000 hours. RSP's mother allowed them all to stay the night.

At RSP's house, they all went downstairs to hang out. Then, all four of them (RSP, NAC, Julian Pimentel, and ARW) went to the camper. At the camper, ARW and the others (except Julian Pimentel) drank more alcohol. They hung out and talked.

Eventually, Julian Pimentel kicked out the others from the camper. At this point, ARW described her brain as feeling as if it was slowing down and as if she were in another dimension. ARW said that she only remembered flashes or



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glimpses of what happened next.

ARW recalled Julian Pimentel taking off her clothes. ARW said that she was aware but not aware of what was happening. She said that she could see her body but couldn't do anything. ARW felt confused. When asked where she was at when her clothes were being taken off, ARW drew a diagram of the trailer. ARW explained that she was lying on the bed as Julian Pimentel took off her clothes. She said that Julian Pimentel was sometimes on top of her and sometimes down by her legs as he removed her clothing. ARW said she next remembered feeling a lot of pain and that this pain snapped her out of her state for a second. ARW said that she felt pain in her private area (vagina).

When asked what she next remembered, ARW said that she was later told by RSP that RSP and NAC came back to the camper 20 minutes later and that Julian Pimentel told them that they needed more time.

Next, ARW recalled being downstairs in RSP's house. ARW drew a diagram of the downstairs of RSP's house. She explained that she came downstairs with Julian Pimentel. She recalled that Julian Pimentel used NAC's cell phone to text OBB. ARW said that OBB then spoke with her and told her to get away from Julian Pimentel.

ARW related that RSP had the boys stay in the camper; ARW and RSP slept in the bedroom.

ARW said that she spoke with RSP and that ARW broke down when she realized what happened to her. RSP said she was sorry and that things would be okay. At this point, ARW said she was no longer feeling the effects of the alcohol.

ARW related to Child Forensic Interviewer A. Layne that she first met Julian Pimentel about a week before this incident. She said that Julian Pimentel asked her if she was a virgin. ARW told Julian Pimentel that she was, and he asked when she planned on losing her virginity. ARW told Julian Pimentel that this was not something that somebody planned.

ARW related that the next day, OBB came back and that they went to OBB's house. The whole group (except Julian Pimentel) went to OBB's house as NAC had told Julian Pimentel that he was not welcome. However, ARW said that the group briefly ran into Julian Pimentel the next day. ARW did not talk to Julian Pimentel, but NAC approached him.

Afterwards, Julian Pimentel texted ARW via Instagram, but she did not respond to him.

ARW related that the next day, a condom was found in the camper. ARW then recalled hearing Julian Pimentel opening the condom wrapper at the time of the incident. ARW also said that she remembered the camper shaking. When asked to explain further, ARW said that she did not know how to put it. She said that they were having sex but that she didn't remember it.

After the incident, ARW said that she was bleeding a lot even though it was not her time for her period. ARW said her private area hurt (was sore) the next morning for a few hours.

ARW mentioned that from OBB, she heard that Julian Pimentel told him that ARW gave her consent to Julian Pimentel. However, ARW related that she did not remember if she consented to having sex with him.

After a break in the interview, ARW related that RSP and OBB told her that Julian Pimentel was 18 years old. ARW said that although she never directly told Julian Pimentel her age, he did know what grade she was in.

ARW related that there were a few times in the past that she had sipped alcohol but that this was the first time she had consumed tequila.

ARW described how she made her disclosure to her mother. ARW said that her mother was talking to her about her rights and how she could say no to things (including if somebody wanted to pressure her to have sex). ARW said that she broke down crying and then told her mother what happened.

When asked further about consent while they were in the camper, ARW said that she did not know if she said no to Julian Pimentel or otherwise indicated that she did not want to have sex with him.



King County

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ARW said that she had only known Julian Pimentel for a week prior to this incident. She said she had only seen Julian Pimentel twice. ARW said that they never had any conversation about dating or going out together.

ARW positively identified Julian Pimentel in a photographic lineup.

Detective R. Adams obtained recorded statements from NAC, RSP, and OBB.

NAC related that he met with RSP, ARW, and Julian Pimentel on 2-10-18. NAC's account of what happened prior to going to RSP's house was consistent with what ARW said happened. NAC described ARW as being visibly intoxicated while at the mall (swaying when she walked and slurring her speech). NAC also noted that Julian Pimentel was not very intoxicated.

At RSP's house, NAC related that they all hung out in the camper/trailer. NAC related that everybody except Julian Pimentel was drinking alcohol (vodka). In particular, NAC related that ARW drank about six shots of vodka in about a thirty minute timeframe. NAC said that ARW was lying on the bed and that Julian Pimentel was sitting next to her. Julian Pimentel asked to be left alone in the camper, so RSP and NAC left.

About thirty minutes later, NAC said they returned to the camper. After Julian Pimentel and ARW were no longer alone, Julian Pimentel repeatedly bragged to NAC, telling him that he "fucked the shit out of [ARW]."

NAC further related that it appeared obvious that ARW was heavily intoxicated and was not in a state to be able to give her consent. NAC also stated that Julian Pimentel had previously made comments to OBB that he was going to have sex with ARW (and that OBB had asked him not to).

RSP's account of what happened in the early part of the day was consistent with ARW's statement. RSP related that she, ARW, and Julian Pimentel consumed alcohol (vodka) the NAC stole from Target. RSP related that she noticed signs of impairment in the way ARW spoke and walked while at the mall, but she stated that ARW was tipsy but not overly drunk.

RSP said that later that evening, ARW, Julian Pimentel, and NAC showed up at her house. ARW threw rocks at RSP's window because ARW's cell phone had died. RSP and ARW subsequently convinced RSP's mother to allow them all to stay over for the night (with the understanding that the girls would sleep in the house and that the boys would sleep in the camper).

RSP said that they all hung out in the camper. RSP said that they drank more of the alcohol. RSP noticed that ARW was getting more drunk and described that ARW wasn't talking very much and would just laugh a lot (which is not normal for ARW).

Eventually, RSP said that Julian Pimentel told her and NAC that he needed them to leave the camper so that he could talk with ARW in private. RSP was skeptical about Julian Pimentel's motives but they eventually left ARW alone in the camper for about ten minutes. After ten minutes, RSP and NAC returned to the camper to check on ARW and Julian Pimentel. RSP said that ARW and Julian Pimentel were on the bed but could not tell much else. Julian Pimentel convinced RSP and NAC to leave again.

Afterwards, Julian Pimentel and ARW came into the house. Julian Pimentel asked to borrow NAC's cell phone in order to text OBB. RSP later found out from NAC that Julian Pimentel had texted OBB to tell him that he had "banged" ARW. ARW spoke with RSP. ARW was upset and disclosed that she believed that Julian Pimentel had raped her. ARW told RSP that she could not recall all of the details.

OBB related that he has known Julian Pimentel for about 7-8 years; he described OBB as being persistent and related that Julian Pimentel has addiction issues. OBB related he has known ARW for about 3-4 years.

OBB believed that Julian Pimentel and ARW met a short time (less than a week) before this incident. Julian Pimentel



King County

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expressed interest in ARW, and OBB told Julian Pimentel not to pursue her (due to the age difference and Julian Pimentel's addiction issues).

On the date of the incident, OBB related that Julian Pimentel texted him with NAC's phone to let OBB know that he had "fucked" ARW. Later, Julian Pimentel had a conversation with OBB wherein he said that ARW had consented to have sex with him.

OBB related that ARW said she could not recall all of the details of what happened (as she had been drinking alcohol).

On 4-17-18, at about 1140 hours, Julian Pimentel turned himself in at the Federal Way Police Department. Julian Pimentel was arrested and booked into jail without incident. Julian Pimentel invoked his right to a lawyer and declined to provide any statements.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct.
Signed and dated by me this 17 day of April, 2018, at Federal Way, Washington.

This printout is from the King County Electronic Log of Detective Investigations (eLODI) system, where the above officer signed and transmitted this referral as permitted by GR 30 and LGR 30.

APPENDIX F

LAW OFFICES OF
ALLEN, HANSEN & MAYBROWN, P.S.

DAVID ALLEN
RICHARD HANSEN
TODD MAYBROWN

1001 FOURTH AVENUE PLAZA
SUITE 4301
SEATTLE, WASHINGTON 98154

AREA CODE 206
TELEPHONE 447-9681
FAX 447-0839

December 17, 1996

Honorable Brian Gain
Honorable Janice Niemi
Honorable Ricardo Martinez
Honorable Dale Ramerman
King County Superior Court
King County Courthouse
516 Third Avenue
Seattle, WA 98104

Dear Judges Gain, Niemi, Martinez and Ramerman:

Richard Hansen and I are co-chairs of the Washington Association of Criminal Defense Lawyer's State Court Procedure Committee. With the advent of the Kent Regional Justice Center, we would very much like to have input into the procedural process as it will affect private attorneys.

As private attorneys, we certainly have different concerns than public defenders. While public defenders can station attorneys all day at Kent to handle the routine hearings, such as case scheduling hearings, these will be difficult for many private attorneys to cover from Seattle. We therefore would appreciate the opportunity to meet with you and discuss the transition plans.

We also would like to discuss a procedure that has been in place for years and that has wreaked havoc for clients who have been arrested on suspicion of a felony and first appear on the District Court investigation calendar. After bail is set they are often released prior to the case being filed in Superior Court. On many occasions, the prosecuting attorney who files the case will request substantially higher bail at the time they present the case for filing in King County Superior Court than has been previously set by the District Court judge. Clients who have spent a substantial amount of money purchasing bail bonds in District Court are then faced with being arrested prior to even appearing in Superior Court, even though they have bailed out and made all appearances. Worse yet, the bail premium they have paid, which can easily cost \$2,000-3,000, can be rendered worthless a day or two later as a result of this ex parte filing practice.

This happened recently in a case we handled. Paul Fretheim was arrested on suspicion of felony harassment. The prosecutor requested a \$25,000 bond in District Court. Paul posted the bond and was released. The prosecutor then filed the case in Superior

December 17, 1996
Page Two

Court, requesting a \$75,000 cash bond, without notice to us. Paul and I appeared in District Court the next day for the second appearance and were told that the case had been filed direct and to appear in Superior Court the day after. No one gave us notice that the prosecutor had requested and obtained the warrant with the higher bond. Paul was arrested at gun point at his apartment that night on the basis of the filing warrant.

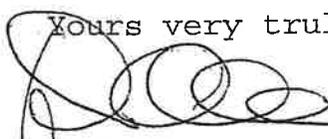
While the presiding criminal judge reinstated the \$25,000 bond previously set, this was obviously a very difficult situation and presented a danger for our client as well as a substantial inconvenience. It was also very embarrassing for us as attorneys because we assured our client that by appearing as directed in court, he would not be arrested.

It strikes me that once we appear in District Court and bail is set, that we should be given notice and have the opportunity to appear in Superior Court to argue against higher bail. At the least, the prosecutor should be required to inform the Superior Court judge at the time of filing the case that the defendant is represented and that bail has been set below.

We would appreciate having the opportunity to meet with you or other judges regarding this and other procedural issues. We feel that our input from the private bar will be beneficial to all concerned.

Thank you in advance for your consideration of this.

Yours very truly,

A handwritten signature in black ink, appearing to be "David Allen", written over a horizontal line.

David Allen
Lawyer

DA:spc

cc: Lenell Nussbaum, President WACDL
Richard Hansen, Esq.

LAW OFFICES OF
ALLEN, HANSEN & MAYBROWN, P.S.

DAVID ALLEN
RICHARD HANSEN
TODD MAYBROWN

1001 FOURTH AVENUE PLAZA
SUITE 4301
SEATTLE, WASHINGTON 98154

AREA CODE 206
TELEPHONE 447-9681
FAX 447-0839

April 10, 1997

Honorable Janice Niemi
Superior Court Judge
King County Courthouse
516 Third Avenue
Seattle, WA 98104

RE: Filing of Information

Dear Judge Niemi:

As I indicated in my previous letter to you, the Washington Association of Criminal Defense Lawyers is very interested in having input as to the filing procedure. This is particularly the case with regard to the State requesting high bails (often cash only bails) in cases where our clients have been previously released on bond at the suspicion calendar.

This recently occurred where a client of mine had been released on a \$25,000 cash bail at the District Court Suspicion Calendar. The prosecutor, in the Certificate of Probable Cause, requested \$40,000 cash only bail on a charge alleging assault 2° and unlawful imprisonment against my client's wife. There were no allegations of any recurrent criminal conduct following his arrest and release. Although my client has no priors (and the standard range for these offenses is just six to twelve months in jail), he is employed, and we met with the wife's attorney and agreed to a restraining order, you signed the bond for \$40,000 cash only bail. We had no notice. Our client was arrested at gun point prior to his arraignment.

Unfortunately, this is not an isolated event in our experience, and it is not only unfair but dangerous, and a waste of police resources. Most important, we feel that this ex parte procedure violates fundamental principles of due process and the constitutional right to reasonable bail.

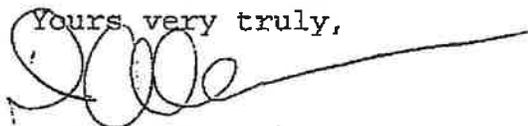
In my prior discussion with you, you suggested we take this up on appeal. This will be very difficult, because in the several cases we have had where this issue arose, our clients have either been subsequently released on PR or bailed out, therefore mooting the case.

Hon. Janice Niemi
April 10, 1997
Page Two

It is my hope that a meeting will either result in a procedure that protects the rights of clients or a means to bring this up to the appellate court in a "friendly" declaratory judgment type lawsuit.

I would appreciate a time when I could discuss this with you. I will be calling your bailiff to set up a meeting.

Yours, very truly,

A handwritten signature in cursive script, appearing to read 'D. Allen', with a long horizontal line extending to the right.

David Allen
Lawyer

DA:spc

cc: Teresa Mathis, WACDL

LAW OFFICES OF
ALLEN, HANSEN & MAYBROWN, P.S.

DAVID ALLEN
RICHARD HANSEN
TODD MAYBROWN

1001 FOURTH AVENUE PLAZA
SUITE 4301
SEATTLE, WASHINGTON 98154

AREA CODE 206
TELEPHONE 447-9681
FAX 447-0839

May 21, 1997

Honorable Janice Niemi
Superior Court Judge
King County Courthouse
516 Third Avenue
Seattle, WA 98104

RE: Bail Procedure

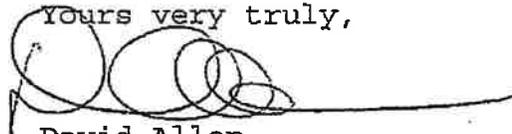
Dear Judge Niemi:

At the "supervisors" meeting on May 7, 1997, we discussed the bail/warrant procedure prior to arraignment. You indicated that you would meet with Kathy Goater from SAU to discuss this with her. At the time of the meeting, Craig Peterson, Senior Prosecuting Attorney was present.

From speaking with other attorneys, it appears that this is a broader problem, not only involving SAU. While SAU often requests high bails, we have also seen this throughout the King County Prosecutor's Office.

I would request to be present at any meeting with prosecutors. I feel that this is something that should be done with both a defense and prosecutor present. Just as the prosecutor was present at the supervisors meetings to provide input, the same should be the case in follow-up meetings where procedure is discussed. Since this will involve procedures that effect the defense, I do not think that a meeting with only the prosecutor would be as productive as meetings where all of us can discuss and hopefully resolve the issue.

Yours very truly,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

David Allen
Lawyer

DA:spc

**KING COUNTY SUPERIOR COURT
CRIMINAL PRESIDING DEPARTMENT**

E 1201 King County Courthouse
Seattle, Washington 98104
(206) 296-9130

ALLEN, HANSEN & MAYBROWN

MAY 27 1997

COPY RECEIVED

May 22, 1997

Mr. David Allen
Allen, Hansen & Maybrown, P.S.
1001 Fourth Avenue Plaza, Suite 4301
Seattle, Washington 98154

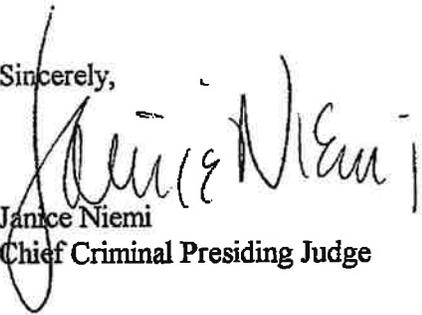
Dear Mr. Allen:

I spoke informally with Ms. Goater and Ms. Fox from SAU and they had ideas for a way to handle the problem discussed at the criminal directors meeting on May 7, 1997.

But since, according to your letter of May 21, 1997, the practice of setting high bail on a complaint after release from the investigation calendar for a much lower bail amount is more widespread than SAU within the prosecutor's office, this informal discussion will not help much.

My suggestion is that you talk to Mark Larson or Paul Trause or even Norm Maleng to try to work out a procedure so that you can be notified when your client has a warrant and bail order signed and they are aware of attorney representation. I am willing to be involved in pre-arraignment bond hearings.

Sincerely,


Janice Niemi
Chief Criminal Presiding Judge

JN:bl

LAW OFFICES OF
ALLEN, HANSEN & MAYBROWN, P.S.

DAVID ALLEN
RICHARD HANSEN
TODD MAYBROWN

1001 FOURTH AVENUE PLAZA
SUITE 4301
SEATTLE, WASHINGTON 98154

AREA CODE 206
TELEPHONE 447-9581
FAX 447-0839

May 30, 1997

Honorable Janice Niemi
Superior Court Judge
King County Courthouse
516 Third Avenue
Seattle, WA 98104

RE: Bail Procedure at Time Filing Information

Dear Judge Niemi:

Thank you for your letter of May 22, 1997.

In discussing this issue with members of the bar, attorney Bob Wayne brought LCrR 2.2(g) to my attention. I believe that this local rule directly addresses the issue of King County Prosecuting Attorneys asking for high bails at the time of filing Informations, without informing you of prior bail rulings by district court judges at the suspicion calendar.

LCrR 2.2 "Warrant Upon Indictment or Information" provides in its relevant portion:

(g) When a charge is filed in Superior Court and a warrant is requested, the Court shall be provided with the following information about the person charged:

(1) The pretrial release interview form, completed by either a bail interviewer or by the defense counsel.

(2) By the prosecuting attorney, insofar as possible.

(A) A brief summary of the alleged facts of the charge;

(B) Information concerning other known pending or potential charges;

(C) A summary of any known criminal record;

(D) Any other facts deemed material to the issue of pretrial release.

(3) Any ruling of a magistrate at a preliminary appearance. (emphasis added).

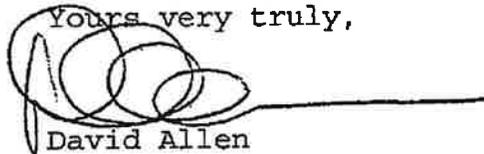
Honorable Janice Niemi
May 30, 1997
Page Two

As this rule requires, the prosecuting attorney shall inform you of this important background information regarding bail rulings and releases as well as pretrial release interviews so that you can decide whether a warrant for arrest is appropriate and, if so, can set an appropriate bail. To my knowledge, the prosecuting attorney has never complied with this rule.

I am enclosing a copy of a letter that I am sending to Mr. Maleng, requesting that his office immediately begin complying with this rule. Perhaps another meeting with the prosecuting attorney and the defense bar would be helpful in order to discuss the implementation of this rule.

Thank you for your consideration of this matter.

Yours very truly,



David Allen
Lawyer

DA:spc
Encl.

cc: Honorable Ann Schindler, Presiding Judge (RJC)
Norm Maleng, King County Prosecuting Attorney
Michael Frost, Esq.
Robert Wayne, Esq.
Teresa Mathis, WACDL

LAW OFFICES OF
ALLEN, HANSEN & MAYBROWN, P.S.

DAVID ALLEN
RICHARD HANSEN
TODD MAYBROWN

1001 FOURTH AVENUE PLAZA
SUITE 4301
SEATTLE, WASHINGTON 98154

AREA CODE 206
TELEPHONE 447-9681
FAX 447-0839

May 30, 1997

Norm Maleng
King County Prosecuting Attorney
King County Courthouse
516 Third Avenue, W554
Seattle, WA 98104

RE: Bail Procedure at Time of Filing Information

Dear Norm:

The defense bar has been in contact with Judge Niemi regarding procedures for requests of bail and arrest warrants by prosecutors at time of the filing of the Information. It has been the practice of your office to routinely request high bails (including cash only bails) at the time of filing of Informations in cases where our clients have been previously released on bond at the suspicion calendar. At the time that your prosecutors file the Information, Certificate of Probable Cause and Request for Bond with the Presiding Judge, the Judge is not informed of the fact that the defendant has already been released on bond by a district court judge. Therefore, when the presiding criminal judge signs the requested warrant, the judge does not have information as to the current bail situation.

This has happened with several of our clients in the recent past. One example is the case of State v. Paul Fretheim, No. 96-1-07245-8 KNT handled by my partner, Richard Hansen. Paul, a Seattle Public School teacher, was arrested on probable cause by the Seattle Police Department on suspicion of felony harassment. He was released by the district court judge at the "suspicion" calendar on \$25,000 bail. I appeared at Paul's second appearance and was told that the case had been filed in Superior Court and that he should appear in court two days later for the arraignment. However, that evening he was arrested at gun point at his apartment because your office requested and obtained a \$75,000 cash only bail and failed to inform the Superior Court Presiding Judge that he had posted bail, that he had appeared at his second appearance and that there were no other new violations or allegations.

At the time of his Superior Court arraignment, Judge Gain reduced the bail back to the original \$25,000 that had been posted and released Paul from jail once he was informed of the above. Interestingly, this case was resolved with a plea to a one count misdemeanor for failure to obey a protective order, with no jail

Norm Maleng
May 30, 1997
Page 2

time being imposed. Therefore, the only time Mr. Fretheim spent in jail was as a result of his arrest on probable cause and later ex parte request for a warrant.

This again happened recently with another client of mine, Donald Sandstede, II, who was released on \$25,000 cash bail at the district court suspicion calendar after being arrested for an assault on his wife. The prosecutor, in the Certificate for Probable Cause, requested and obtained a \$40,000 cash only bail on a charge alleging assault in the second degree and unlawful imprisonment, even though he had already been released on bail and there were no further allegations that there had been any contact between him and his wife. In fact, an attorney from my office met with the wife's attorney shortly after he had been released on bail and agreed to the terms of a restraining order and also for him to return to the family home and her to move out. In spite of the above, and the fact that he had no priors, and the standard range for the offense is just 6-12 months in jail, your office requested and obtained a \$40,000 cash only bail. We had no notice of this happening. Like Mr. Fretheim, our client was arrested at gun point prior to his arraignment. Your office did not inform the court of his prior release on bond. His parents posted the \$40,000 cash bail so he could be released from custody (he was arrested on a Wednesday evening and the next available bond reduction calendar at the RJC was the following Monday. Judge Gain later reduced his bond to \$20,000 at a bond reduction hearing).

These are not isolated events. In my experience, it is common for individuals to be released on the suspicion calendar, and rearrested after your office requests an ex parte high bail, without informing the judge of the most important facts regarding prior release. This ex parte procedure violates fundamental principles of due process, the constitutional right to bail, and a local court rule.

This recurring problem has been brought before Judge Niemi. I am enclosing a copy of Judge Niemi's May 22, 1997 letter, wherein she suggests we bring it to your attention.

Recently, attorney Bob Wayne brought King County Local Rule LCrR 2.2 "Warrant Upon Indictment Or Information" to my attention. This rule provides in its relevant portion:

(g) When a charge is filed in Superior Court and a warrant is requested, the Court shall be provided with the following information about the person charged:

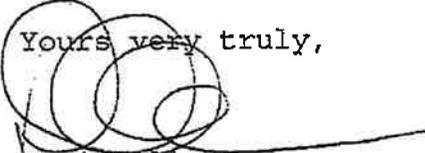
Norm Maleng
May 30, 1997
Page 3

- (1) The pretrial release interview form, completed by either a bail interviewer or by the defense counsel.
- (2) By the prosecuting attorney, insofar as possible.
 - (A) A brief summary of the alleged facts of the charge;
 - (B) Information concerning other known pending or potential charges;
 - (C) A summary of any known criminal record;
 - (D) Any other facts deemed material to the issue of pretrial release.
- (3) Any ruling of a magistrate at a preliminary appearance.

As you can see from the enclosed Fretheim and Sandstede Certificates of Probable Cause, this information was not provided. These are not anomalies, however. In my experience, I have never seen a case where your office has complied with this rule. I would hope that you instruct your deputies to begin doing so immediately.

I would appreciate your getting back to me at your earliest possible convenience so we can follow up on this.

Yours very truly,



David Allen
Lawyer

DA:spc
Encl.

cc: Honorable Janice Niemi
Honorable Ann Schindler
Mike Frost, Esq.
Bob Wayne, Esq.
Teresa Mathis, WACDL

APPENDIX G

LAW OFFICES OF
ALLEN, HANSEN & MAYBROWN, P.S.

DAVID ALLEN
RICHARD HANSEN
TODD MAYBROWN

1001 FOURTH AVENUE PLAZA
SUITE 4301
SEATTLE, WASHINGTON 98154

AREA CODE 206
TELEPHONE 447-9681
FAX 447-0839

January 21, 1999

Honorable Michael Spearman
Superior Court Judge
King County Courthouse
516 Third Avenue
Seattle, WA 98104

RE: Issues on Arraignment Calendar

Dear Judge Spearman:

When we talked briefly last week, I mentioned that issues continue to arise on the arraignment calendar. One problem that occurs on a fairly regular basis is as follows: A client of ours bails out on the district court investigation calendar. Prosecutors often ask for higher bail in superior court when cases are filed ex-parte without informing the presiding judge that bail was set below on the district court calendar and the client bailed out. Until brought to the court's attention (please see attached letter), prosecutors were not complying with LCrR 2.2, which requires them to inform the superior court judge of any bail decisions below. The prosecutor's office has since indicated it will follow this rule (see letter from Lynn Moberly), although compliance is not uniform.

A similar problem occurred just recently with a client of mine who appeared on the investigation calendar on the charge of attempted robbery. The prosecutor requested, and the judge ordered, a \$25,000 cash only bail. The client posted the bail and was released from custody.

The prosecutor then filed the case in superior court requesting a \$25,000 cash only bail, as set below in district court. However, the Certificate of Probable Cause (attached hereto is the Information and Certificate of Probable Cause) did not indicate that the bail was posted below and the client was released from custody, although it did indicate that bail had been set. Judge Niemi signed the requested warrant for \$25,000 cash only.

Honorable Michael Spearman
January 21, 1999
Page 2 of 2

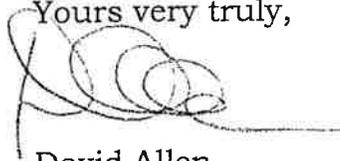
My client appeared as required at the arraignment on Monday, January 4, 1999. At approximately the same time as he was appearing in court, police came to his apartment to arrest him on the warrant. Fortunately, he was not home, but instead was in court. Judge Niemi left the bail at \$25,000 and the bail was transferred from district to superior court, without a problem.

While this case did not result in him being rearrested, it brings up a rather common problem. That is, even though many of our clients bail out on the investigation calendar, they are often re-arrested before they can come in for arraignment. This is especially so in cases at the RJC, where the local police agencies seem to act very quickly on warrants. Therefore, clients who have posted substantial bail, who have not reoffended, and are planning to appear at arraignment, are re-arrested before they can appear in court. Absent exigent circumstances, such as a new offense or additional information (such as being a fugitive from another state, which was not known earlier), it is a terrible waste of resources as well as a great trauma to the client, to be arrested at gun point (this has happened to several clients of mine), just because the case has been filed in superior court.

I am sure there is an easy solution to this, such as informing the presiding judge of the release status, holding any warrant until the arraignment, notifying defense counsel, etc. I would be anxious to meet with you and prosecutors in order to solve this fairly common problem.

Thank you for reviewing this.

Yours very truly,

A handwritten signature in black ink, appearing to read "David Allen", with a horizontal line extending to the right from the end of the signature.

David Allen
Lawyer

DA:spc
Encl.

APPENDIX H

LAW OFFICES OF
ALLEN, HANSEN, MAYBROWN & OFFENBECHER, P.S.

DAVID ALLEN
RICHARD HANSEN
TODD MAYBROWN
COOPER OFFENBECHER

ONE UNION SQUARE
600 UNIVERSITY STREET
SUITE 3020
SEATTLE, WASHINGTON 98101

TELEPHONE 206-447-9681
FAX 206-447-0839
www.ahmlawyers.com

June 30, 2016

sent by mail and email

Honorable Dean Lum
Superior Court Judge
King County Courthouse
516 Third Ave., C203
Seattle, WA 98104

*Re: Procedures When Bail is Set in District Court and Raised, ex parte, by
Superior Court Judges Prior to Arraignment*

Dear Judge Lum:

I apologize for the delay in getting back to you. I have been in several trials, including one in Spokane County Superior Court.

When Mark Larson, Judge Kessler, you and I last met on April 13, 2016, we discussed issues regarding cases where some Superior Court judges impose substantial bail increases *ex parte* in matters where lower bail was set on the District Court Investigation Calendar and the defendant has been released on bail. You asked me to send you examples of matters where this has been a huge problem for defendants.

To put this issue in context, the great majority of felony suspects who are arrested occur on the basis of probable cause, rather than an arrest warrant. In such cases, the defendant/suspect will appear the next afternoon on the so-called investigation calendar in District Court for a hearing to determine whether there exists probable cause and to set the conditions of release. Oftentimes, a judge *pro tem* will be sitting.

The majority of our clients and other WACDL members' clients will bail out after the first appearance. The State then will decide whether to delay filing or do what is known as "file direct" at the second appearance, which occurs a day or two later. The State, when filing felony charges in Superior Court, will often ask for a bail increase from what was set in District Court. However, even when the State does not ask for a bail increase, several Superior Court judges routinely raise a defendant's bail *ex parte*, sometimes doubling or tripling the amount set

in District Court, even though there are no new facts other than what was presented to the District Court judge.

It has been my and other WACDL attorneys' experience that the investigating detectives are very proactive in arresting defendants, who have previously been released on bail off the investigation calendar, on the new, higher bail warrants, signed *ex parte* by Superior Court judges.

While occasionally a defense attorney learns about this increase and his client has time to rush out and pay the bonding company for an additional bond (assuming the client has enough liquid cash to pay for the bail premium increase), it has been our experience (mine and other WACDL members) that a detective will often arrest the defendant before the new bond can be posted. This is a huge problem for our clients who think they have posted bail and are complying with release conditions but nevertheless get arrested at gunpoint.

An example of the problem occurred in a recent case involving one of my clients where the State requested \$50,000 bond on the jail investigation calendar; the District Court judge reduced it to \$40,000; the client posted bail and was released; when the State filed charges it requested the same \$40,000 amount already posted; and yet the Superior Court judge entered an *ex parte* order raising bond to \$100,000. There was no way we could schedule a hearing and argue for a bond reduction prior to his being arrested by the lead detective on his case. Only because we called the Prosecutor's Office did we learn of the increase and managed to file a new bond for the increased amount just before he was re-arrested on the warrant. We never had the opportunity to argue for lower bail.

In another recent case, a different client was also released on bail after his first appearance on the investigation calendar. As with the other case, his bond was increased substantially by a Superior Court judge *ex parte* only a few days later when the case was filed (in this case, the State asked for the increase - there was no new information presented and no violations after his release). While the client's parents had the means to pay the increased bail, by the time we heard about the increase the detective was already outside the client's house to arrest him. Through great effort, as well as luck, I was able to contact the bonding company and arrange for an increased bond to be filed at the last minute. After a series of phone calls, I obtained the detective's cell phone number and reached him when he was literally at the front door of the client's parents' house to arrest him. The detective confirmed with the SAU filing deputy that bond had been posted and left.

Another example was provided by a WACDL attorney where her client posted bond in the sum of \$250,000 set at his first appearance investigation

calendar and was released. The State then filed charges and requested and obtained a \$750,000 warrant, with no new information beyond what was presented to the District Court judge to justify the increase, and her client was arrested. The arraignment judge kept the bond at \$750,000. This meant that her client paid a premium of \$20,000 (8% of \$250,000) to the bonding company to be out of custody for just a few days. If the attorney had known that the bond would be increased so dramatically, her client would have not wasted this considerable sum, which was needed for legal fees and living expenses for his family. In effect, this was a windfall for the bonding company and a financial disaster for the defendant who could have saved the \$20,000 premium.

This current procedure is not only very upsetting and expensive for defendants, it is also very disruptive, in that while they think they are released and following all conditions, a detective can appear at their house and arrest them at gunpoint, which has happened, without any prior notice to them or their attorneys. It also creates additional work for the detective and additional costs for the state by re-incarcerating a person who might have been able to post an increased bond if he or she had advanced notice and time to do so.

These situations are not unique but instead occur routinely. In all these cases there was neither "new" information presented by the State nor any allegations that the defendant violated conditions of release. For historical perspective, I am enclosing letters I wrote in 1996 and 1997, almost 20 years ago, to then presiding Judge Janice Niemi and to the late Norm Maleng, outlining and attempting to come up with a resolution to this same exact problem. We were unable to work out any solutions and this effort basically died on the vine.¹ The letters outline the exact same problems that are still routinely occurring, two decades later. See Appendix A, hereto.

Given the foregoing, both the State and Defense are motivated to institute a better procedure that both protects the community but also the rights of defendants. Mark Larson, KCPO Chief Criminal Deputy, who is copied on this letter, and I, on behalf of WACDL, have been meeting to try to come up with improvements on the current system.

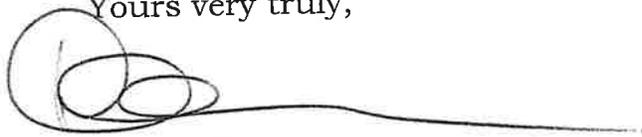
Mark and I have discussed this problem and have some suggested changes we'd like to present for your and other judges' consideration. While Mark and I (and other prosecutors and defense attorneys) may differ on the appropriate amount of bail in a particular case, or how the system should be changed, I believe that we are in agreement that a system needs to be in place where there is **certainty** when bail is initially set (recognizing of course that bail may be

¹ The only improvement, albeit minor, is that the State is now complying with LCrR 2.2(g)(2)(E) by informing the court of the bail amount set by the District Court judge.

increased if there is a violation of conditions, a new arrest or offense, or relevant background facts not previously known), such as a defendant's prior convictions not being known at his first appearance. The current system is simply unfair and broken.

We would like to continue discussions with you and other judges to try to come up with an effective alternative to the current system so that, absent new information or a violation of a condition of release, the bail that is initially set stays in place unless a motion to increase is noted so that the defense can appear and argue reasons to not increase bail.

Yours very truly,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal tail extending to the right.

David Allen
Lawyer

DA:spc
Encl.

cc: Honorable Ronald Kessler (w/encl.) [by mail and email]
Mark Larson, Chief Criminal Deputy (w/encl.) [by mail and email]

APPENDIX I

FILED
KING COUNTY WASHINGTON

JAN 11 2019

SUPERIOR COURT CLERK
BY Theresa Sorenson
DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 18-1-01217-8 KNT

vs.

JULIAN T PIMENTEL,

Defendant.

MOTION, CERTIFICATION AND
ORDER OF DISMISSAL
[Clerk's Action Required]

COMES NOW Daniel T. Satterberg, Prosecuting Attorney for King County, Washington, by and through his deputy, and moves the court for an order dismissing the above-entitled cause as to the above defendant for the reasons as set forth in the certification of the undersigned deputy prosecuting attorney.

That Brynn N. H. Jacobson is a Deputy Prosecuting Attorney in and for King County, Washington, and am familiar with the records and files herein. This case should be dismissed for the following reasons: In the interests of justice and based upon information not available at the time of filing.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. Signed and dated by me this 11th day of January, 2019, at Kent, Washington.



Brynn N. H. Jacobson
WSBA# 47820
Deputy Prosecuting Attorney

Daniel T. Satterberg, Prosecuting Attorney
Criminal Division
Maleng Regional Justice Center
401 4th Avenue North, Suite 2A
Kent, WA 98032-4429
(206) 477-3757 FAX (206) 205-7475

MOTION, CERTIFICATION AND ORDER OF
DISMISSAL - 1

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ORDER

IT APPEARING from the motion and certification that the ends of justice do not warrant further proceedings in this matter; now, therefore
IT IS HEREBY ORDERED, ADJUDGED and DECREED that the above-entitled cause as to the above named defendant be, and the same hereby is, dismissed.
DONE IN OPEN COURT this 11th day of January, 2019.



JUDGE Chad Allred

Presented by:



Brynn N. H. Jacobson
WSBA# 47820
Deputy Prosecuting Attorney

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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JULIAN PIMENTEL,

No. 98154-0

9

Petitioner,

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v.

DECLARATION OF EMILY M.
GAUSE IN SUPPORT OF
APPLICATION FOR WRIT OF
PROHIBITION

11

THE JUDGES OF THE KING COUNTY
SUPERIOR COURT and DAN
SATTERBERG, KING COUNTY
PROSECUTING ATTORNEY,

12

13

Respondents.

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EMILY M. GAUSE, WSBA #44446, makes the following declaration in
accordance with RCW 9A.72.085:

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17

1. I am an attorney in good standing with the Washington State Bar Association and
practice criminal defense throughout the state of Washington. I was admitted to
practice in Washington on December 5, 2011.

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19

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2. I have represented several clients who have been affected by the *ex parte* bond
increase procedure that is addressed in the Pimentel Application for a Writ of
Prohibition.

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3. In May of 2019 I represented a client, whose name I am not authorized to release.

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As in *Pimentel*, the \$50,000 bail set at the first appearance on the King County

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District Court's first appearance calendar was increased to \$200,000 through the *ex parte* warrant procedure.

4. In another separate case, I represented a client, whose name I am not authorized to release, who following her arrest in April of 2019, was ordered released on the King County District Court's first appearance calendar on her personal recognizance, although the State was requesting bail in the amount of \$40,000. At her second appearance, no charges were filed. A few weeks later the State decided to file charges and sought and obtained an *ex parte* arrest warrant in the amount of \$40,000. There were no changes of circumstances alleged in the application for the warrant to increase bail.
5. I am aware from my practice and from speaking with other defense attorneys that this *ex parte* procedure is still ongoing.
6. There is no established procedure available in King County for a hearing in order to challenge the *ex parte* bond increases except at the Superior Court arraignment. The arraignment is typically set out approximately two weeks following the filing of charges. I have no ability to address the warrant amount or the issuance of a warrant prior to arraignment.
7. My clients have on several occasions posted a bond after first appearance only to be taken back into custody and held on a much higher bail amount, unable to post the higher bond, and they therefore lose the amount they first posted. Additionally, my clients have often been afraid to leave their houses between the filing of the charge and their arraignment hearing, for fear they may be arrested on the warrant. Until I can address the warrant and the bail amount at arraignment, there is nothing I can do to help my clients.

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8. I practice throughout the state of Washington and have represented people accused of felony crimes in 22 counties. To my knowledge, King County is the *only* county that engages in this practice of increasing bail amounts *ex parte* after a judge has already provided for a bail amount at first appearance. I believe this practice is unconstitutional.

DATED this 16th day of January, 2020.

Respectfully submitted,

Gause Law Offices, PLLC



Emily M. Gause, WSBA #44446

FILED
SUPREME COURT
STATE OF WASHINGTON
2/4/2020 1:34 PM
BY SUSAN L. CARLSON
CLERK

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IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

JULIAN PIMENTEL,

Petitioner,

v.

JUDGES OF THE KING COUNTY
SUPERIOR COURT; and, DAN
SATTEBERG, KING COUNTY
PROSECUTING ATTORNEY,

Respondents.

NO. 98154-0

DECLARATION OF AMY MUTH IN
SUPPORT OF APPLICATION FOR WRIT
OF PROHIBITION

I, Amy Muth, do hereby declare:

1. I am an attorney licensed to practice in Washington State, WSBA #31862, admitted in November of 2001;
2. In 2014, I represented a client named Laszlo Molnar, King County Superior Court Cause #14-1-06526-1;
3. I appeared for Mr. Molnar who made his first in custody appearance in King County District Court on November 15, 2014, before the Honorable Ronald Bathum. At that time, the court found probable cause that Mr. Molnar had committed the crime of Rape in the Second Degree. The state requested bail in the amount of \$500,000, and after a contested hearing the court imposed bail in the amount of \$200,000;

1 4. That same day, Mr. Molnar purchased a \$200,000 bail bond for which he paid
2 a bond premium of 8%, or \$16,000 and also pledged property, and was released from
3 jail.

4 5. On or about November 18, 2014, Mr. Molnar was charged by Information with
5 Rape in the Second Degree and although bail had been set at \$200,000 which had been
6 posted, the State made an *ex-parte* request for an arrest warrant in the amount of
7 \$750,000. Mr. Molnar was arrested on this warrant at his home and booked into jail.
8

9 6. Mr. Molnar was unable to post the increased bond and was jailed pre-trial. He
10 therefore forfeited the \$16,000 premium he paid to the bonding agency for posting the
11 original bond, which resulted in his release for only a few days.
12

13 7. Although I appeared at the District Court first appearance with Mr. Molnar and
14 stated that I was his counsel—in the presence of a King County deputy prosecuting
15 attorney—I was never notified that the state intended to seek a bond increase and
16 arrest warrant in the amount of \$750,000. Nor was I ever given the opportunity to
17 appear or to correct the record as to the inaccurate information the State presented
18 asking that Mr. Molnar's bond be increased from \$200,000 to \$750,000.
19

20 8. Mr. Molnar was therefore in custody at the time of his arraignment. My motion
21 to reduce bond was denied.

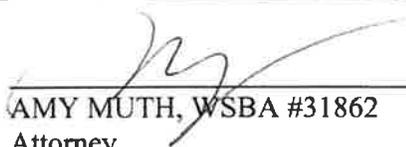
22 9. I feel I was at a definite disadvantage because of the *ex-parte* increase in bond.
23 Because he was arrested on the warrant and in custody, I could not have him appear at
24 arraignment and demonstrate that he was not a flight risk. It was also a negative
25 psychological factor in that I was arguing against a bond that was already set, albeit in
26 an unconstitutional manner, which effectively meant that I had the heavy burden to

1 show why the current bond was unreasonable. This would have been a different
2 situation if my client had been out of custody and the State was moving for a bond
3 increase, which would have meant that it had the burden.

4
5 10. If I had known that the State was going to request an *ex-parte* bond increase I
6 would have advised him not to post bond because of the risk of him being released
7 only briefly and wasting a substantial sum of money that was needed for his defense.

8 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
9 WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST OF
10 MY KNOWLEDGE.

11 DATED at Seattle, Washington this 31st day of October, 2019.

12 
13 _____
14 AMY MUTH, WSBA #31862
15 Attorney

ALLEN, HANSEN, MAYBROWN, OFFENBECHER

February 04, 2020 - 1:34 PM

Filing Original Action Against State Officer

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: Case Initiation

The following documents have been uploaded:

- OAS_Affidavit_Declaration_20200204131757SC371373_3643.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was Declaration of David Allen in Support of Application for a Writ of Prohibition.pdf
- OAS_Cert_of_Service_20200204131757SC371373_1370.pdf
This File Contains:
Certificate of Service
The Original File Name was ACCEPTANCE OF SERVICE OF APPLICATION FOR WRIT OF PROHIBITION AND SUPPORTING DECLARATIONS David Eldred Sr DPA.pdf
- OAS_Letters_Memos_20200204131757SC371373_1706.pdf
This File Contains:
Letters/Memos - Other
The Original File Name was ACCEPTANCE OF SERVICE OF APPLICATION FOR WRIT OF PROHIBITION AND SUPPORTING DECLARATIONS Judge Rogers.pdf
- OAS_Motion_20200204131757SC371373_5725.pdf
This File Contains:
Motion 1 - Other
The Original File Name was Declaration of Emily M. Gause in Support of Application for Writ of Prohibition.pdf
- OAS_Other_20200204131757SC371373_3794.pdf
This File Contains:
Other - Decl's of Amy Muth and Emily Gause
The Original File Name was Declaration of Amy Muth in Support of Application for Writ of Prohibition.pdf
- OAS_Petition_for_Writ_20200204131757SC371373_7761.pdf
This File Contains:
Petition for Writ
The Original File Name was Application for a Writ of Prohibition.pdf

A copy of the uploaded files will be sent to:

- cooper@ahmlawyers.com
- danielle@ahmlawyers.com
- david.eldred@kingcounty.gov
- jim.rogers@kingcounty.gov
- monica.gillum@kingcounty.gov
- todd@ahmlawyers.com

Comments:

Being filed are the Application for a Writ of Prohibition, the Declarations of David Allen, Amy Muth and Emily Gause as well as the Acceptances of Service signed by Senior Prosecutor David Eldred and King County Superior Court Judge Jim Rogers.

Sender Name: Sarah Conger - Email: sarah@ahmlawyers.com

Filing on Behalf of: David Allen - Email: david@ahmlawyers.com (Alternate Email: alex@ahmlawyers.com)

Address:

600 University Street

Suite 3020

Seattle, WA, 98101

Phone: (206) 447-9681

Note: The Filing Id is 20200204131757SC371373