

STATE OF MAINE
OXFORD, ss.

UNIFIED CRIMINAL DOCKET
LOCATION: South Paris
Docket No.: _____

JOSEPH DENBOW,

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Petitioner,

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v.

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STATE OF MAINE,

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Respondent.

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**EMERGENCY MOTION FOR RELEASE
ON BAIL AND LEAVE TO FILE
UNSWORN PETITION**

INTRODUCTION

Pursuant to 15 M.R.S. § 2129(4) and Rule 74 of the Maine Rules of Criminal Procedure, Petitioner, Joseph Denbow, respectfully requests release on bail pending adjudication of his petition for post-conviction relief. Mr. Denbow suffers from numerous chronic health conditions, placing him at serious risk of death from COVID-19 in the prison setting. The totality of factors, including Mr. Denbow’s risk of death in prison, the low risk posed by his release, and his indigent status all militate in favor of immediate release on personal recognizance (“PR”) bail. In light of the mortal dangers posed to Mr. Denbow by continued incarceration, emergency relief is requested within 48 hours.

DISCUSSION

By statute, this Court “may order the release of the petitioner [seeking post-conviction review] on bail at such time and under such circumstances and conditions as the Supreme Judicial Court provides by rule.” 15 M.R.S. § 2129(4). Rule 74 of the Maine Criminal Rules of Procedure, in turn, allows for release of the petitioner on bail if: (1) “the petitioner has a reasonable likelihood of prevailing on the petition,” (2) “release on bail is appropriate given the

crime and the nature of the ultimate relief contemplated by the court if the petitioner were to prevail,” and (3) “the standards and conditions governing bail contained in 15 M.R.S. § 1051(2) and (3) are satisfied.” M. R. Civ. P. 74(b).

Each of these standards is satisfied here. *First*, Mr. Denbow is likely to prevail on the merits of his petition. As described in the memorandum of law filed with this motion, the COVID-19 pandemic has transformed Mr. Denbow’s sentence to one imposing a high risk of death. Such a sentence is grossly disproportionate to Mr. Denbow’s nonviolent offenses and in violation of the Maine and United States Constitutions. *Second*, release on bail is appropriate given the nonviolent nature of Mr. Denbow’s driving and forgery offenses, and is consistent with the petition’s request to enable Mr. Denbow to physically distance in the community during the COVID-19 pandemic. *Third*, as discussed below, the standards listed in 15 M.R.S. § 1051(2) and (3) are satisfied in this case.

Specifically, section 1051(2) provides that post-conviction bail may only be provided if the judge or justice has “probable cause” to believe that:

- A. There is no substantial risk that the defendant will fail to appear as required and will not otherwise pose a substantial risk to the integrity of the judicial process;
- B. There is no substantial risk that the defendant will pose a danger to another or to the community; and
- C. There is no substantial risk that the defendant will commit new criminal conduct.

15 M.R.S. § 1051(2). Each of these factors supports release. There is no substantial risk that Mr. Denbow would fail to appear for future court dates because, upon release, Mr. Denbow would live with his fiancé in the community where he can safely perform physical distancing while remaining in proximity to the court. Release is particularly consistent with the “integrity of the judicial process” given that Mr. Denbow has already served the majority of his sentence and is

set to be released in August 2020. Nor is there any substantial risk that releasing Mr. Denbow would pose any risk to the community. To the contrary, forcing Mr. Denbow to remain in prison—where he is likely to be exposed to the virus, spread it to others, and require a hospital bed and other scarce medical resources—is where the true danger to the community lies.¹ Finally, there is no substantial risk that Mr. Denbow will commit new criminal conduct. Rather, he simply wishes to remain safe at home with his fiancé during this state of emergency.²

Furthermore, aside from the bail conditions that are mandatory for post-conviction bail, no additional conditions or money bail are required.³ *See, e.g.*, 15 M.R.S. § 1051(3). When a judge decides to set bail in the post-conviction context, the factors set forth in section 1026 provide the general framework. *See* 15 M.R.S. § 1051(2) (referring to section 1026 and stating that “[i]f the judge or justice decides to set post-conviction bail for a defendant, the judge or

¹ People with asthma are more likely to require hospitalization and a ventilator than people without a chronic health condition. Indeed, of those hospitalized for COVID-19, 89% had some underlying health condition and 17% had chronic lung disease specifically. Shikha Garg, M.D., *et al.*, *Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019 – COVID-NET, 14 states, March 1-30, 2020*, Centers for Disease Control and Prevention (Apr. 8, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm>.

² The remaining factors for consideration under section 1051(2) likewise support release. These factors include:

factors relevant to preconviction bail listed in section 1026, as well as the facts proved at trial, the length of the term of imprisonment imposed and any previous unexcused failure to appear as required before any court or the defendant’s prior failure to obey an order or judgment of any court, including, but not limited to, violating a protection from abuse order pursuant to Title 19, section 769 or Title 19-A, section 4011.

15 M.R.S. § 1051(2).

³ “Every order for post-conviction release of a defendant must include a waiver of extradition by the defendant as well as a condition of bail that the defendant refrain from new criminal conduct and not violate any pending protection from abuse order pursuant to Title 19, section 769, or Title 19-A, section 4011.” 15 M.R.S. § 1051(1).

justice shall apply the same factors in setting the kind and amount of that bail”). Under section 1026, release must be “on personal recognizance or upon execution of an unsecured appearance bond,” without any conditions, unless doing so would undermine the purposes of the Bail Code. *See* 15 M.R.S. § 1026(2), (3). Payment of money bail or additional conditions of release are required only upon a showing of need. *See id.* In this case, there is no reason to require cash bail or additional conditions of release. Not only does release of Mr. Denbow pose minimal risk, but his indigent status and imminent risk of death in prison require speedy release uninhibited by unnecessary conditions.

Petitioner respectfully requests the Court’s expedited consideration of this motion for bail. Although no positive tests for COVID-19 have been publicly reported at the Mountain View facility, the prevalence of asymptomatic carriers and the dearth of testing mean that COVID-19 may be spreading in the facility at this very moment. Immediate relief is required to protect Mr. Denbow from unnecessary risk of death.

Finally, Petitioner respectfully request leave to file an unsworn petition for post-conviction review, signed by his attorney. Given the expedited nature of this request and COVID-19-related restrictions on visitation, there was no time or opportunity for an in-person meeting for Mr. Denbow to physically sign the petition before filing. By electronically signing the petition, Mr. Denbow’s attorney represents that, to the best of her knowledge, information, and belief there is good ground to support it.

CONCLUSION

For these reasons, Petitioner respectfully requests that the Court provide expedited consideration of this motion within 48 hours, grant release on PR bail, and permit filing of the unsworn petition.

Respectfully submitted, this 13th day of April, 2020,

/s/ Emma E. Bond

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I certify that there are good grounds to support this pleading, that it complies with PMO-SJC-3, and that it is not being filed to cause any delay.

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CERTIFICATE OF SERVICE

I, Emma E. Bond, hereby certify that on April 13, 2020, the above EMERGENCY MOTION FOR RELEASE ON BAIL AND LEAVE TO FILE UNSWORN PETITION was sent to the following:

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