Administrative Office of the Courts

FOR IMMEDIATE RELEASE

Jan. 11, 2018

Contact: Barry Massey, communications officer
bmassey@nmcourts.gov
505-827-4805
505-470-3436

SUPREME COURT ISSUES RULINGS PROVIDING GUIDANCE ON MOTIONS FOR PRETRIAL DETENTION OF CRIMINAL DEFENDANTS

SANTA FE – The New Mexico Supreme Court issued two unanimous opinions on Thursday addressing the evidence required for the pretrial detention of criminal defendants.

A constitutional amendment adopted by voters in 2016 gave judges the authority to order the pretrial detention of a defendant if a prosecutor files a written motion with the court and proves by clear and convincing evidence that the defendant should be held in jail to assure public safety.

The opinions by the court provide guidance to judges, prosecutors and defense attorneys on evidence at hearings to determine whether felony defendants should be held in jail while awaiting trial because they are too dangerous for release.

In the rulings, the court held that:

- Live testimony by witnesses is not required at pretrial detention hearings.

- Prosecutors can offer a wide range of evidence such as law enforcement and court records, information on a defendant's criminal history and "credible proffers," which are statements by the prosecutor of what a witness would say if called to testify at the hearing.

- Judges should focus on the reliability and accuracy of evidence rather than the form of the evidence in detention hearings.

Click here to read the court's opinion in *State ex rel. Torrez v. Whitaker*, No. S-1-SC-36379 slip op. (N.M. S. Ct. January 11, 2018), and click here to read the opinion in State v. Groves, No. S-1-SC-36363 slip op. (N.M. S. Ct. January 11, 2018).

The court delivered oral rulings from the bench last year that decided the cases after arguments from attorneys in the two cases. The court's written opinions provide the detailed legal reasoning for the decisions, which can serve as a precedent for future cases.

"We agree with courts in all other federal and state bail reform jurisdictions that have considered the same issues, and we hold that the showing of dangerousness required by the new constitutional authority is not bound by formal rules of evidence but instead focuses on judicial assessment of all reliable information presented to the court in any format worthy of reasoned consideration," the court stated in its ruling in a case brought by Second Judicial District Attorney Raúl Torrez. "The probative value of the information, rather than the technical form, is the proper focus of the inquiry at a pretrial detention hearing."

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