

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-101-2023-00040

HANNAH GUTIERREZ,

Defendant.

MOTION FOR RELEASE PENDING APPEAL

Hannah Gutierrez, by and through her counsel of record, Jason Bowles of Bowles Law Firm, and Monnica L. Barreras of the Law Office of Monnica L. Barreras, hereby moves this Honorable Court for release pending appeal, and in support of this motion states as follows:

1. A trial was held in this matter from February 21, 2024 through March 6, 2024, and on March 5, 2024, the jury returned a split verdict, finding Ms. Gutierrez-Reed guilty of involuntary manslaughter and not guilty of tampering with evidence.

2. This Court sentenced Ms. Gutierrez Reed to 18 months imprisonment. Ms. Gutierrez has also filed a post conviction motion on the jury instructions. The Court denied this motion. She will be appealing the jury instruction issue, as well as other evidentiary issues in the trial and denial of prior motions filed in this case.

3. Ms. Gutierrez Reed is requesting to be released while she appeals, as if her appeal is successful, she will have served most or all of her sentence anyway, rendering a large part of the appeal meaningless. She is not a danger to the community or a flight risk.

4. A hearing is not requested on this motion.

I. HISTORY OF LAW REGARDING RELEASE PENDING APPEAL

The fact that a defendant has been convicted and sentenced does not deprive her of all procedural safeguards and constitutional protections in our justice system. The question of bail pending an appeal from conviction first came before the U.S. Supreme Court in the case of *Hudson v. Parker*, infra. That decision was then variously interpreted by the circuit courts of appeal, and in turn various states. In *United States v. Hudson*, 65 Fed. 68 (D.C 1894.) a district court held that one convicted of a felony could not be released on bail, pending appeal. On a Writ of Mandamus, the Supreme Court found that the “Petitioner [is] entitled to writ of mandamus to the district judge to admit the petitioner to bail on his giving bond in proper form, and with sufficient sureties.” *Hudson v. Parker*, 15 S.Ct. 450, 455, 156 U.S. 277, 289 (U.S. 1895). Then, in *McKnight v. United States*, 113 Fed. 451 (6th Cir. 1902), the court construed *Hudson v. Parker*, supra, to hold that it was the duty of a court to admit to bail, pending appeal from a conviction, in all cases except those concerning capital crime. It was said in that case that the mere fact that the defendant had been tried and convicted of multiple counts of embezzlement was not sufficient grounds for denying bail pending a writ of error. But in other circuits it has been held or assumed that the rule laid down in *Hudson v. Parker*, supra, was that the granting of bail was a matter within the discretion of the court. *Garvey v. United States*, 292 Fed. 591 (2nd Cir. 1923); *United States v. St. John*, 254 Fed. 794 (7th Cir. 1918); *Rossi v. United States* 11 F. 2d 264 (8th Cir. 1926).

Later, the US Supreme Court reasoned that bail shall never be denied for the pure purpose of punishment, since a judgment of conviction cannot be executed while a matter is stayed pending appeal. *Reynolds v. U.S.*, 80 S. Ct. 30, 4 L. Ed. 2d 46 (U.S. 1959). The Supreme Court reiterated that the entire purpose of bail is to “insure the defendant's appearance and submission to the judgment of the court”. *Id.* Since then, bail has been granted pending appeal for reasons such as a

defendant's demonstrated history of appearing in court whenever required. *People v. Vasquez*, 88 A.D.2d 667, 450 N.Y.S.2d 606 (2d Dep't 1982).

Courts then started looking at the basic merits, or lack of merits of an appeal in order to determine whether bail is appropriate pending appeal. However, many courts are still reluctant to prejudge the merits of a defendant's appeal and deny him bail on this and have noted that a defendant's appeal, no matter how meritorious, may be rendered meaningless if he is denied bail pending appeal. The reason for this is due to the delays of the court system, the sentence may be served before the appeal can be considered. As such, courts may also rely, at least in part, on the shortness of a defendant's sentence in holding that he should be granted bail pending appeal *See*, Right of defendant in state court to bail pending appeal from conviction—modern cases, 28 A.L.R.4th 227 (Originally published in 1984).

Bail was then afforded nationwide on cases pending appeal on cases of various types of offenses. *Sica v. U.S.*, 82 S. Ct. 669, 7 L. Ed. 2d 778, (U.S. 1962). (Defendant convicted of racketeering, extortion, and conspiracy was entitled to bail pending appeal where defendant had a home, wife, family, and business in area, and suffered from a serious illness which might require hospitalization, and where, although defendant participated in threats to principal government witness, evidence tended to show that defendant was acting at another bidding). The Supreme Court, and federal rules stand for the proposition that if an appeal is not frivolous or is not taken for delay, bail pending appeal should ordinarily be granted. Fed.Rules Crim.Proc. Rule 46(a) (2); *Leigh v. U.S.*, 82 S. Ct. 994, 8 L. Ed. 2d 269 (U.S. 1962).

II. NEW MEXICO LAW REGARDING BAIL PENDING APPEAL

With the above back drop, the State of New Mexico also has a mechanism whereby Defendants are released on bond pending appeal. Pursuant to Rule 5-402:

C. Release After Sentencing. After imposition of a judgment and sentence, the court, upon motion of the defendant, may establish conditions of release pending appeal or a motion for new trial. The court may utilize the criteria listed in Paragraph B of Rule 5-401, and may also consider the fact of defendant's conviction and the length of sentence imposed. The defendant shall be detained unless the district court after a hearing determines that the defendant is not likely to flee and does not pose a danger to the safety of any other person or the community if released. In the event the court requires a bail bond in the same amount as that established for release pending trial, the bond previously furnished shall continue pending appeal or disposition of a motion for a new trial, unless the surety has been discharged by order of the court. Nothing in this rule shall be construed as prohibiting the judge from increasing the amount of bond on appeal.

(emphasis added). Therefore, the New Mexico Rules specifically contemplates the possibility of release under the same terms and conditions as previously imposed before imposition of a sentence, and in fact incorporates the same criteria for that determination as set forth in Rule 5-401. Under that criteria, the Court must consider:

- 1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including:
 - (a) the person's character and physical and mental condition;
 - (b) the person's family ties;
 - (c) the person's employment status, employment history and financial resources;
 - (d) the person's past and present residences;
 - (e) the length of residence in the community;
 - (f) any facts tending to indicate that the person has strong ties to the community;
 - (g) any facts indicating the possibility that the person will commit new crimes if released;
 - (h) the person's past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearance at court proceedings; and
 - (i) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal or completion of an offense under federal, state or local law;
- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release; and
- (5) any other facts tending to indicate the person is likely to appear.

In addition, our state also has a statute providing for a stay of execution of a sentence pending appeal. NMSA, § 31-11-1 provides in pertinent part:

C. If a defendant is convicted of a noncapital offense other than a violent offense and is sentenced to a term of imprisonment not suspended in whole, he shall not be entitled to release pending appeal unless the court finds:

(1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and

(2) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

Rule 12-205 - Release pending appeal in criminal matters

A. Appeal by the state. When the state appeals an order dismissing a complaint, information, or indictment, the district court shall consider releasing the defendant on personal recognizance or unsecured appearance bond pending final determination of the appeal. When the state appeals an order suppressing or excluding evidence or requiring the return of seized property, the defendant may be released under conditions determined in accordance with Rule 5-401 NMRA.

B. Motion to review conditions of release. Upon motion, the district court shall initially set conditions of release pending appeal. A motion by either party for modification of the conditions of release shall first be made to the district court and may be decided without the presence of the defendant. If the district court has refused release pending appeal or has imposed conditions of release pending appeal that the defendant cannot meet, a motion for modification of the conditions may be made to the appropriate appellate court. If the case has not been previously docketed in the appellate court, subject to the provisions of Rule 12-304 NMRA, the docket fee shall accompany the motion. The motion may be made at any time and shall be determined promptly by the appellate court on the papers, affidavits, and portions of the record presented by the parties.

C. Further review by certiorari. A party may seek review of a decision of the Court of Appeals by filing a petition for writ of certiorari under Rule 12-502 NMRA. Upon the granting of a petition for certiorari by the Supreme Court, the defendant may file a motion in the Supreme Court for modification of conditions of release in accordance with Paragraph B of this rule.

D. United States Supreme Court. Upon filing an appeal or a petition for writ of certiorari in the United States Supreme Court, the defendant may file a motion for modification of conditions of release with the appellate court whose decision is sought to be reviewed.

E. Further appeal by state. If the state files a petition for rehearing or for certiorari in the Supreme Court or in the United States Supreme Court, and the mandate is stayed in accordance with Rule 12-402 NMRA, the defendant may file a motion for release or modification of conditions of release with the appellate court whose decision is sought to be reviewed.

N.M. R. App. P. 12-205.

Applying these rules, Ms. Gutierrez Reed will appeal a substantial issue of law regarding the jury instruction issues raised in her prior post conviction motion, that will likely result in reversal. The appeal is not for purposes of delay.

No hearing is requested on this motion.

WHEREFORE, Hannah Gutierrez-Reed respectfully requests this Court release her pending appeal.

Respectfully submitted,

/s/ Jason Bowles

Jason Bowles

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-and-

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent through the ESF system, which caused the following parties to be served by electronic means, as reflected on the Notice of Electronic Filing this 7th day of May, 2024, to the counsel listed below:

Kari Morrissey, Special Prosecutor
Jason Lewis, Special Prosecutor
Erlinda Johnson, Special Prosecutor

/s/ Jason Bowles
Jason Bowles
Bowles Law Firm