

[Cite as *Palmer-Tesema v. Pinkney*, 2018-Ohio-1852.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 107025

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**YOHANN PALMER-TESEMA**

PETITIONER

vs.

**CLIFFORD PINKNEY,  
CUYAHOGA COUNTY SHERIFF**

RESPONDENT

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**JUDGMENT:**  
JUDGMENT FOR PETITIONER

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Writ of Habeas Corpus  
Motion No. 516589  
Order No. 517335

**RELEASE DATE:** May 9, 2018

**ATTORNEYS FOR PETITIONER**

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**ATTORNEYS FOR RESPONDENT**

Michael C. O'Malley  
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By: Carl Mazzone  
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The Justice Center  
1200 Ontario Street  
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ANITA LASTER MAYS, J.:

{¶1} Yohann Palmer-Tesema has commenced this habeas corpus action against Clifford Pinkney, the Cuyahoga County Sheriff (“Sheriff Pinkney”). Palmer-Tesema alleges that his \$250,000 pretrial bail is excessive and unreasonable and seeks a reduction in the amount of bail with additional conditions. Pinkney has filed a motion for summary judgment that is denied for the following reasons.

### FACTS

{¶2} On February 22, 2018, Palmer-Tesema appeared in the Rocky River Municipal Court following his arrest for the offense of rape. The Rocky River Municipal Court set bail in the amount of \$250,000, cash or surety, and ordered that Palmer-Tesema be bound over to the Cuyahoga County Common Pleas Court.

{¶3} On March 20, 2018, Palmer-Tesema was indicted, in *State v. Palmer-Tesema*, Cuyahoga C.P. No. CR-18-626287, for six counts of rape (R.C. 2907.02(A)(1)(c)) with sexually violent predator specifications (R.C. 2941.148(A)), and three counts of kidnaping (R.C. 2905.01(A)(4)) with sexual motivation specifications (R.C. 2941.147(A)) and sexually violent predator specifications (R.C. 2941.148(A)). The nine counts allege three separate victims.

{¶4} On March 23, 2018, Palmer-Tesema was arraigned with bail continued in the amount of \$250,000 with further conditions of no contact with the victims and a

continuance of a temporary protection order. On April 2, 2018, the trial court denied Palmer-Tesema's first request for bail reduction. On April 5, 2018, the trial court denied Palmer-Tesema's second request for bail reduction. On April 8, 2018, Palmer-Tesema filed his petition for a writ of habeas corpus. On April 11, 2018, Sheriff Pinkney filed a Civ.R. 56(C) motion for summary judgment. On April 18, 2018, Palmer-Tesema filed a brief in opposition to the motion for summary judgment. On April 25, 2018, the writ issued, and on May 3, 2018, this court conducted an evidentiary hearing and heard the arguments of counsel.

{¶5} For the following reasons, we deny Sheriff Pinkney's motion for summary judgment and find that bail in the amount of \$250,000 is excessive.

### **LEGAL ANALYSIS**

{¶6} The principles governing habeas corpus are well settled under the United States Constitution and the Ohio Constitution: "excessive bail shall not be required." If a charged offense is bailable, the right to reasonable bail may not be infringed or denied. *Lewis v. Telb*, 26 Ohio App.3d 11, 497 N.E.2d 1376 (6th Dist.1985); *In re Gentry*, 7 Ohio App.3d 143, 454 N.E.2d 987 (6th Dist.1982). The purpose of bail is to secure the attendance of the defendant at trial. *Bland v. Holden*, 21 Ohio St.2d 238, 257 N.E.2d 397 (1970). A person charged with the commission of a bailable offense cannot be required to furnish bail in an excessive or unreasonable amount. *In re Lonardo*, 86 Ohio App. 289, 89 N.E.2d 502 (8th Dist.1949).

{¶7} In determining what is reasonable bail, a trial court must apply the factors contained within Crim.R. 46 and consider all relevant information, including but not limited to, the nature and circumstances of the charged offense; the weight of the evidence; confirmation of the defendant's identity; the defendant's history of flight or failure to appear at court proceedings; ties to the community, including his family, financial resources and employment; character and mental condition; record of conviction; and whether the defendant is on probation, community control sanction, parole, or postrelease control. The trial court, after weighing these factors, sets the amount of bail. *Hardy v. McFaul*, 8th Dist. Cuyahoga No. 84495, 2004-Ohio-2694; *State v. Marte*, 8th Dist. Cuyahoga No. 69587, 1996 Ohio App. LEXIS 2193 (May 23, 1996).

{¶8} An action in habeas corpus, that involves a claim of excessive bail, requires a hybrid analysis consisting of appellate and original review.

Habeas corpus actions involving claims of excessive pretrial bail are hybrid cases requiring either or both appellate and original review. *See State, ex rel. Baker v. Troutman* (1990), 50 Ohio St.3d 270, 553 N.E.2d 1053; *Jenkins v. Billy* (1989), 43 Ohio St.3d 84, 538 N.E.2d 1045; *In re DeFronzo* (1977), 49 Ohio St.2d 271, 361 N.E.2d 448; *State v. Bevacqua* (1946), 147 Ohio St. 20 (Syl.), 67 N.E.2d 786. At the hearing in the case sub judice, petitioner did not provide a transcript of the bail hearings before the trial court. When this occurs in appellate cases, we generally presume regularity and affirm the actions of the trial court since, absent the record from below, we cannot assume error or an abuse of discretion. *See generally Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384. However, because of the hybrid nature of habeas actions which permits us to hold a hearing de novo after the trial court denies a motion to reduce bail, *see Bevacqua*, 147 Ohio St. at 23, we can make our own independent decision as to the requisite bail.

*In re: Hartberger v. McFaul*, 8th Dist. Cuyahoga No. 63713 (May 29, 1992), at 3.

{¶9} Herein, no hearings were conducted by the trial court prior to denial of Palmer-Tesema's motions to reduce the amount of bail. Thus, this court must determine whether the amount of bail set for Palmer-Tesema, based upon the evidentiary hearing conducted before this court, was excessive. *State ex rel. Baker v. Troutman, supra*; *Jenkins v. Billy*, 43 Ohio St.3d 84, 538 N.E.2d 1045 (1989); *In re Green*, 101 Ohio App.3d 726, 656 N.E.2d 705 (8th Dist.1995).

{¶10} Herein, we find that bail in the amount of \$250,000 is excessive. *Ghali v. McFaul*, 8th Dist. Cuyahoga No. 71334, 1996 Ohio App.LEXIS 4564 (Oct. 15, 1996). There is no doubt that the charges pending against Palmer-Tesema are very serious. However, based upon the evidentiary hearing held before this court, we find that our consideration of the factors enumerated within Crim.R. 46(C) warrant a reduction in the amount of bail. The testimony at the evidentiary hearing demonstrates that no weapon was used by Palmer-Tesema during the alleged commission of the charged offenses; Palmer-Tesema's identity was confirmed; Palmer-Tesema has strong family ties to the community; Palmer-Tesema possesses no mental conditions; Palmer-Tesema is 21 years of age and will soon turn 22 years of age; Palmer-Tesema has resided within Cuyahoga County for the majority of his life; Palmer-Tesema has no adult or juvenile record of convictions; Palmer-Tesema has no record of attempting to avoid prosecution; the Rocky River Police Detective testified that Palmer-Tesema cooperated fully and immediately with the police investigation; Palmer-Tesema voluntarily submitted himself for an

interview with the Rocky River Police Department; the Rocky River Police Detective testified that Palmer-Tesema informed the police of his need to leave the state of Ohio and his voluntary return to Ohio; and Palmer-Tesema is not on probation, a community control sanction, parole, or postrelease control. We further find the recommendation of the Cuyahoga County Bond Commissioner, to set bail in at least the amount of \$50,000, to be highly persuasive.

{¶11} The state's legitimate concern for the general safety of the community, the victims, witnesses, and law enforcement officers is best served by imposing conditions of no contact, electronically monitored home detention, and other specified restrictions, not the imposition of unreasonable bail.

{¶12} Accordingly, we deny Sheriff Pinkney's motion for summary judgment. We grant relief as follows: 1) Palmer-Tesema's bail is reduced to \$100,000 with the bail bond secured by the deposit of ten percent in the amount of the bond in cash, a surety bond, or a bond secured by real estate or securities as allowed by law; 2) Palmer-Tesema is to have no contact, by any means, including but not limited to telephone, email, regular mail, or the internet, with any alleged victim, even if contact is initiated by the alleged victims or on behalf of the alleged victims; 3) Palmer-Tesema is to submit to electronically monitored home detention (GPS), at 21960 Eaton Road, Fairview Park, Ohio 44126, the home of Carolyn Palmer-Benion, and be monitored by the Cuyahoga County Sheriff and the Cuyahoga County Court of Common Pleas Supervised Release Program Department; 4) Palmer-Tesema is to surrender his United States passport, and

any other passport issued to Palmer-Tesema by a foreign country, to the Cuyahoga County Sheriff; 5) Palmer-Tesema is prohibited from ingesting any form of alcohol, which includes beer, wine, whiskey, or any illegal drug; 6) Palmer-Tesema is permitted to be released from home detention for court appearances, consultation with his attorney, and for medical treatment; and 7) Palmer-Tesema is prohibited from leaving Cuyahoga County. Any deviation from the terms and conditions of this bond must be addressed or approved by the trial court judge. Costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶13} Judgment for petitioner.

ANITA LASTER MAYS, JUDGE

MARY EILEEN KILBANE, P.J., and  
MELODY J. STEWART, J., CONCUR