

[Cite as *State ex rel. Sellers v. McFaul*, 2006-Ohio-1936.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 87866

STATE OF OHIO, EX REL.,	:	ORIGINAL ACTION
JOSEPH SELLERS	:	
	:	JOURNAL ENTRY
Relator	:	AND
	:	OPINION
vs.	:	
	:	
GERALD MCFAUL, SHERIFF	:	
	:	April 18, 2006
Respondent	:	

DATE OF JOURNALIZATION:

CHARACTER OF PROCEEDINGS: WRIT OF HABEAS CORPUS

JUDGMENT: Writ Granted.
Motion No. 382405
Order No. 383032

APPEARANCES:

For Relator: DONALD GALLICK
14837 Detroit Avenue, #242
Lakewood, Ohio 44107

For Respondent: WILLIAM D. MASON
Cuyahoga County Prosecutor
BY: T. ALLAN REGAS
Assistant County Prosecutor
Justice Center - 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

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JUDGE KENNETH A. ROCCO:

{¶1} On March 9, 2006, the petitioner, Joseph Sellers, commenced this habeas corpus action against the respondent, Sheriff Gerald McFaul, on the grounds of excessive bail. Sellers is facing a charge of involuntary manslaughter, and the trial court set bond at \$200,000. On March 17, 2006, Sellers filed a copy of the bond hearing transcript, and the Sheriff, through the Cuyahoga County Prosecutor, filed a motion to dismiss on March 23, 2006. Sellers filed a brief in opposition, and pursuant to the direction of this court, both parties, in early April, supplemented their arguments with additional facts. Accordingly, the matter is ripe for determination. For the following reasons, this court grants the writ of habeas corpus and further grants relief by setting bond at \$25,000 in the underlying case, *State v. Sellers*, Cuyahoga County Common Pleas Court Case No. CR-446948.

Factual and Procedural Background

{¶2} Sellers had a daughter with Ella May, who is the daughter of Virginia May. On June 11, 1995, Sellers went to visit his daughter at Virginia's house. The victim, Anthony Payne, who was Ella's then-current boyfriend, was also there. After playing with his daughter for a few minutes, Payne approached Sellers and swung a beer bottle at him. The two men then fought and broke Virginia's two picture windows. She ordered them from her house. Once outside, Ella threw a brick through Sellers' car window, and the victim hit Sellers in the back of the head with a broom handle, and

Sellers began to bleed. The victim then ran away. Sellers chased the victim with a baseball bat. When the victim stumbled, Sellers hit him in the head. Since then, the victim has been in a permanent vegetative state.

{¶3} The Grand Jury indicted Sellers for felonious assault. At trial, Judge Patricia Gaughan found Sellers guilty of aggravated assault, a lesser included offense. She sentenced him to three to five years in prison. Sellers served approximately three years and eleven months and successfully completed parole. He then resumed his employment.

{¶4} On July 16, 2003, the victim died. The coroner opined that the death was a homicide because it arose from the 1995 assault; but for the assault which caused the coma, Payne would not have died of pneumonia. The grand jury indicted Sellers for involuntary manslaughter.

{¶5} The bail commissioner recommended a \$25,000 bond, and the arraigning judge, Leo Spellacy, agreed. The Cuyahoga County Common Pleas Court bail guidelines recommend bail for involuntary manslaughter between \$10,000 and \$50,000. Throughout the proceedings in Case No. CR-446948, the trial judge continued bail at \$25,000.

{¶6} Sellers requested an independent expert witness to review the cause of death. The trial court denied the motion. Consequently, Sellers pleaded no contest so that he could appeal the

issue. The trial judge found him guilty and on July 13, 2004, sentenced him to seven years in prison, but granted him full credit for the time served for the aggravated assault. On appeal in November 2005, this court overruled his assignments of error involving double jeopardy and sentencing, but reversed and remanded on the issue of the independent expert witness. *State v. Sellers*, Cuyahoga App. No. 85611, 2005-Ohio-6010. On remand at the bond hearing on March 3, 2006, the trial judge opined that she always thought the bond was low and raised it to \$200,000.

Discussion of Law

{¶7} The principles governing habeas corpus in these matters are well established. Under both the United States and Ohio Constitutions, "excessive bail shall not be required." If the offense is bailable, the right to reasonable bail is an inviolable one which may not be infringed or denied. *In re Gentry* (1982), 7 Ohio App.3d 143, 454 N.E.2d 987 and *Lewis v. Telb* (1985), 26 Ohio App.3d 11, 497 N.E.2d 1376. The purpose of bail is to secure the attendance of the accused at trial. *Bland v. Holden* (1970), 21 Ohio St. 238, 257 N.E.2d 238.

{¶8} In Ohio, the writ of habeas corpus protects the right to reasonable bail. *In re Gentry*. 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* (1949), 86 Ohio App. 289, 89 N.E.2d 502. Indeed, bail set at an unreasonable

amount violates the constitutional guarantees. *Stack v. Boyle* (1951), 342 U.S. 1, 72 S.Ct.1, 96 L.Ed. 3. Pursuant to Crim.R. 46, in determining what is reasonable bail, the court must consider all relevant information including but not limited to, the nature and circumstances of the offense charged, the weight of the evidence, the accused's history of flight or failure to appear at court proceedings, his ties to the community, including his family, financial resources and employment, and his character and mental condition. After weighing these factors, the trial judge within his sound discretion, sets the amount of bail. The discretion to set bail also permits the trial court to change bail as circumstances warrant. *State v. Marte* (May 23, 1996), Cuyahoga App. No. 69587 and *Hardy v. McFaul* (May 27, 2004), Cuyahoga App. No. 84495. In a habeas corpus action to contest the reasonableness of bond, this court must determine whether the trial court abused its discretion. *Jenkins v. Billy* (1989), 43 Ohio St.3d 84, 584 N.E.2d 1045; *In re Gentry*; *Lewis*; and *In re Green* (1995), 101 Ohio App.3d 726, 656 N.E.2d 705.

{¶9} As the Supreme Court stated in *Stack*, "This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." 342 U.S. at 4-5.

{¶ 10} In the present case, a \$200,000 bail is extremely high. It is nearly ten times the amount initially recommended by the bond commissioner, set by the arraigning judge, and at least acquiesced by the trial judge for approximately six months until Sellers pleaded no contest. This bail is also four times the highest bond for involuntary manslaughter in the bail guidelines.

{¶ 11} Moreover, Sellers' circumstances have not particularly changed, except that he has obtained a reversal and remand from the court of appeals so that he may prepare and present a defense on causation, which is what he wanted to do initially. He has also served over a year and a half toward any sentence for involuntary manslaughter. Therefore, if he is found guilty again and the trial judge reimposes the seven-year sentence, Sellers would have only eighteen months left to serve. A \$200,000 bond is extraordinarily high for such a potential penalty.

{¶ 12} Furthermore, Crim. R. 46(H) indicates that, subject to the trial judge's sound discretion, "the same bond shall continue until the return of a verdict or the acceptance of a guilty plea." Cf. *Utley v. Kohl* (1997), 120 Ohio App.3d 34, 646 N.E.2d 652 - if there is no showing of any changed circumstances of the accused or his surrounding, the bond as set should continue.

{¶ 13} Accordingly, this court rules that the \$200,000 bond in the present case is an abuse of discretion. Pursuant to R.C. 2725.09, this court issues the writ of habeas corpus and grants

relief as follows: In *State of Ohio v. Joseph Sellers*, Cuyahoga County Common Pleas Court Case No. CR-446948, the original bond of \$25,000 is reinstated, and Joseph Sellers is ordered released upon posting a bail bond in said amount. Respondent to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

KENNETH A. ROCCO
JUDGE

COLLEEN CONWAY COONEY, P.J., CONCURS

DIANE KARPINSKI, J., CONCURS