

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JOSEPH JEFFRIES,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Jul 05 2016 04:04 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

CASE NO: 68338

OPPOSITION TO MOTION FOR RELEASE PENDING APPEAL

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, STEVEN S. OWENS, and files this Opposition to Motion for Release Pending Appeal. This opposition is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

Dated this 5th day of July, 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Steven S. Owens
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney

MEMORANDUM

This is appeal from a judgment of conviction for 2nd Murder With Deadly Weapon by jury verdict. Appellant was sentenced to life with parole eligibility after ten years, plus a consecutive 12 to 72 months for the deadly weapon enhancement, and was given 424 days credit for time served. The Judgment of Conviction was filed on June 2, 2015, and the Notice of Appeal on June 29, 2015. Although briefing of the appeal is nearly complete, Appellant has now moved for release pending appeal which the State opposes.

A motion for bail or release pending appeal ordinarily must be submitted, in the first instance, to the district court. Polito v. State, 70 Nev. 525, 526, 275 P.2d 884, 884 (1954), superseded by statute on other grounds as stated in In re Austin, 86 Nev. 798, 477 P.2d 873 (1970); NRS 177.145; NRAP 8(e). This is because, in considering a motion for bail pending appeal, this Court does not conduct its own fact-finding proceeding, but makes an independent judgment based upon a review of the reasons for denying bail which were relied upon by the district court. Lane v. State, 98 Nev. 458, 652 P.2d 1174 (1982); In re Austin, 86 Nev. at 802, 477 P.2d 876. Ultimately, a defendant “who has been convicted of a violent, serious offense and who faces a substantial term of imprisonment will shoulder a heavy burden” to demonstrate factors weigh in favor of allowing bail pending appeal. Bergna v. State, 120 Nev. 869, 877, 102 P.3d 549, 554 (2004).

It does not appear from the record below that Appellant has submitted the question of release pending appeal to the district court in the first instance, nor does Appellant claim to have done so. The statement of facts in Appellant's motion does not contain a single citation to the record nor attach any exhibits in support of the factors for consideration of bail. To the extent Appellant premises his argument for release upon allegations made in his motion for sanctions, the State likewise incorporates by this reference its opposition to the sanctions motion. Appellant fails to cite any authority for the proposition that this Court may release a convicted murderer on bail pending appeal purely as a sanction against the State and without regard to the merits of the issue. Because this Court does not act as a fact-finder, the record is incomplete and inadequate for consideration of Appellant's release pending appeal.

WHEREFORE, the State respectfully requests that release pending appeal be denied.

Dated this 5th day of July, 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Steven S. Owens*

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 5th day of July, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

VINCENT SAVARESE, III, ESQ.
Counsel for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney

BY /s/ j. garcia
Employee,
Clark County District Attorney's Office

SSO/Ekaterina Derjavina/jg