

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK PAUL BANKA,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Mar 13 2020 10:18 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 80181

OPPOSITION TO MOTION FOR BAIL PENDING APPEAL

Comes Now the State of Nevada, by Steven B. Wolfson, Clark County District Attorney, through his Chief Deputy, TALEEN PANDUKHT, and files this Opposition to Motion for Bail Pending Appeal. This opposition is filed pursuant to NRAP Rules 8(e) and 27 and is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

Dated this 13th day of March, 2020.

Respectfully submitted,

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

BY */s/ Taleen Pandukht*

TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
Office of the Clark County District Attorney

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
OPPOSITION TO MOTION FOR BAIL PENDING APPEAL**

STATEMENT OF THE CASE

On January 11, 2017, the State filed a criminal complaint in Henderson Justice Court charging Jack Paul Banka (“Appellant”) with one (1) count of DRIVING AND/OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR ALCOHOL RESULTING IN SUBSTANTIAL BODILY HARM; and two (2) counts of LEAVING THE SCENE OF AN ACCIDENT. Appellant’s Appendix (“AA”) at 003-004.

Between February 21, 2017, the initial arraignment, and June 28, 2018, when the preliminary hearing was conducted, the case was continued numerous times for Appellant to prepare and consider offers of resolution. On June 28, 2018, Appellant was bound up to district court following his preliminary hearing.

On July 6, 2018, the State filed an Information charging Jack Paul Banka (“Appellant”) with DRIVING UNDER THE INFLUENCE RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 484C.110, 484C.430, 484C.150 – NOC 53906). AA005-006.

On June 24, 2019, Appellant entered into a Guilty Plea Agreement with the State wherein he pled guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) to one (1) count of DRIVING AND/OR BEING IN ACTUAL PHYSICAL

CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR ALCOHOL RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 484C.110, 484C.430 – NOC 53906). AA025.

On June 21, 2019, Appellant filed an emergency Writ of Mandamus and Emergency Motion to Stay Trial with the Nevada Supreme Court. On June 21, 2019 the State filed its Opposition. The Supreme Court denied the Writ and Motion. AA023.

On October 23, 2019, at the time of sentencing, Appellant's counsel asked to file a Motion to Arrest Judgment in Open Court. The sentencing date was continued to provide time to Defendant to file the motion electronically. On November 6, 2019, the State filed its Opposition. On November 12, 2019, Appellant filed his Reply.

On November 15, 2019, Appellant filed a subsequent Motion to Withdraw Plea.

On November 18, 2019, the Court denied Appellant's Motion to Arrest Judgment and declined to consider Appellant's Motion to Withdraw Plea. AA049.

On November 19, 2019, Appellant filed an Amended Motion to Withdraw Previously Entered Plea of Guilty. On November 25, 2019, the State filed its Opposition. On December 2, 2019, Appellant filed his Reply. On December 4, 2019, the district Court denied Appellant's Motion. AA52.

On December 4, 2019, Appellant was sentenced to a minimum of forty-eight (48) and maximum of one hundred and twenty (120) months in the Nevada Department of Corrections. AA096

On December 4, 2019, Appellant filed a Notice of Appeal. AA106.

On December 4, 2019, Appellant filed a Motion for Bond Pending Appeal. On December 6, 2019, the State filed its Opposition. On December 9, 2019, Appellant filed his Reply. On December 11, 2019, Appellant attempted to argue matters not in the pleadings. The district court continued the matter for supplemental briefing.

On January 6, 2020, Appellant filed a Supplemental Points and Authorities. On January 27, 2020, the State filed its Opposition. On January 30, 2020, Appellant filed his Reply. On February 24, 2020, the district court denied Appellant Motion for Bond Pending Appeal. Bail Appendix (“BA”) at 20.

STATEMENT OF FACTS

On December 21, 2016, Appellant was driving his vehicle in Henderson, Nevada. PSI at 4.¹ While driving, Appellant made a left turn into oncoming traffic. Id. at 5. While making the turn, Appellant struck another drivers vehicle. This accident cause one of the passengers of the other vehicle to suffer from a fractured sternum. Id. at 5. Appellant fled the scene but was pursued by a witness. Id. at 4.

¹ The State has contemporaneously filed a Motion to Transmit the PSI.

Appellant's vehicle eventually stopped working. Id. Appellant got out of his vehicle and began running from the location. Id.

Officers responding to the scene eventually found Appellant approximately 1,500 feet from his vehicle. Id. Appellant appeared intoxicated. Id. Appellant further failed a field sobriety test. Id. Officers then gave Appellant a preliminary breath test which revealed that Appellant had a Blood Alcohol Content (BAC) of .146. Id. Officers also found an alcoholic beverage in Appellant's vehicle. Id. at 5.

ARGUMENT

This Court should deny the instant motion for bail pending appeal. There is "no constitutional right to bail following conviction and pending appeal." Bergna v. State, 120 Nev. 869, 872, 102 P.3d 549, 551 (2004). Nevertheless, this Court has statutory authority to allow bail pending appeal. NRS 178.488. In deciding whether to allow bail pending appeal, this Court is guided by two factors: whether the appeal is frivolous or taken for delay and whether the Appellant's release may pose a risk of flight or danger to the community. Bergna, 120 Nev. at 877, 102 P.3d at 554; see also NRS 178.488(1) ("Bail may be allowed pending appeal . . . unless it appears that the appeal is frivolous or taken for delay."). In evaluating the two Bergna factors, there are several relevant considerations, including the nature and quality of the evidence adduced at trial, the circumstances of the offense, and the Appellant's prior criminal record, attempted escapes from confinement, community associations,

and employment status. Bergna, 120 Nev. at 877, 102 P.3d at 554. Ultimately, an Appellant “who has been convicted of a violent, serious offense and who faces a substantial term of imprisonment will shoulder a heavy burden” to demonstrate that both factors weigh in favor of allowing bail pending appeal. Id.

The Bergna factors do not support releasing Appellant on bail. First, as the district court correctly found, Appellant has consistently attempted to delay his ultimate conviction. BA019. If Appellant truly wished to profess his innocence, he had the option of pleading not guilty and proceeding to trial. Instead, Appellant has dragged his feet at every stage of the proceedings, entered into an Alford plea, filed multiple post-sentencing Motions, and is now appealing the denial of at least one of said Motions. AA093. In fact, Appellant has already dragged this case out for over three (3) years. PSI at 4. This appeal is just the latest in a series of filings Appellant has brought to try and delay his lawfully imposed sentence.

Second, Appellant is a flight risk. While Appellant has no prior failures to appear, Appellant previously tried to flee the scene of the accident when he caused a car crash while driving under the influence. PSI at 2, 4. As such, Appellant has attempted to evade the consequences of this crime once already. Given this record, as well as the fact that Appellant is facing a stipulated sentence of four (4) to ten (10) years, Appellant can be counted on to not commit a second attempt to flee and is a flight risk.

Third, this Court should deny the instant motion under Bergna because if it were granted, Appellant would be a risk to the community. Appellant plead guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) to Driving While Under the Influence Resulting in Substantial Bodily Harm (Category B Felony – NRS 484C.110, 484C.430 – NOC 53906). Appellant in fact made a left turn into incoming traffic, failed to yield, and struck another vehicle. PSI at 5. One of the passengers in the other vehicle suffered a broken sternum. PSI at 5. Instead of stopping his vehicle, Appellant fled the scene. PSI at 4-5. While Appellant does not have a criminal history outside of the instant offense, the State would submit that given the nature of this crime, and Appellant’s clear lack of regard for the safety of those around him, Appellant would represent a significant danger to the community and present a flight risk if he were to be released.

CONCLUSION

For the foregoing reasons, the instant Motion to Be Released on Bail Pending Appeal should be denied.

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Dated this 13th day of March, 2020.

Respectfully submitted,

STEVEN B. WOLFSON

Clark County District Attorney

BY */s/ Taleen Pandukht*

TALEEN PANDUKHT

Chief Deputy District Attorney

Nevada Bar #005734

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 13th day of March, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

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Chief Deputy District Attorney

/s/ J. Garcia

Employee, Clark County
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TP/Ronald Evans/jg