

HILLSBOROUGH, SS THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT
226-2019-CR-00814

STATE OF NEW HAMPSHIRE
v.
DALE HOLLOWAY

PETITION FOR WRIT OF HABEAS CORPUS

NOW COMES, Attorney Michael J. Zaino, on behalf of the Defendant, Dale Holloway, who hereby requests that this Court order his release from custody, as his incarceration violates his due process liberty interest. In support the following is offered:

PARTIES

1. Petitioner, Dale Holloway, is an inmate at the Hillsborough County Department of Corrections in Manchester, New Hampshire, detained pretrial by order of this Court.
2. Respondent is the State of New Hampshire, being represented by ACA Catherine Devine and ACA Brian Greklek-McKeon.

JURISDICTION

3. RSA 534:3 provides this Court has jurisdiction over petitions for writs of habeas corpus in matters concerning individuals incarcerated in this County, as is the defendant. Venue is proper because the defendant is incarcerated in a correctional facility located in Hillsborough County.

FACTS

4. The defendant stands charged with several serious felonies including, inter alia, Attempted Murder, First Degree Assault, Second Degree Assault, and Felon in Possession of a Dangerous Weapon. These charges stem from an alleged shooting that took place at the Pentecostal Church on October 12, 2021. The defendant was

taken into custody at the scene. The defendant was ordered held on preventative detention by order of this court issued October 15, 2019. The defendant had a bail review hearing on April 14, 2020 and the court continued the preventative detention order.

5. As of the filing of this Petition, no trial date has been scheduled. The defendant argues that his pretrial detention for 540 days (17 months and 23 days) as of the filing of this Petition, has rendered his detention punitive rather than regulatory and violated his Due Process rights under the Fifth Amendment.

LAW AND ANALYSIS

6. One of the most elemental components of our constitutional liberty is the notion that all individuals are presumed innocent until the government proves a criminal charge beyond a reasonable doubt. See Coffin v. United States, 156 U.S. 432, 453 (1895). A person may not be punished until the prosecution has met that burden.

7. The Due Process Clause of the Fifth Amendment provides that “no person shall...be deprived of life, liberty, or property without due process of law....” The Supreme Court has held that the U.S. Constitution protects individuals against “substantive” and “procedural” violations of the Due Process Clause. US v. Salerno, 481 U.S. 739, 746 (1987).

8. Preventative detention necessarily implicates the defendant’s due process liberty interest. However, the mere fact that a person is detained does not automatically lead to the conclusion that the government has imposed punishment. Id. While preventative detention is not in and of itself punitive, there are circumstances in which the continued detention of an individual pretrial could cross an unspecified line at which point the

detention would be rendered punitive rather than regulatory. Id. at 747n.4; See Also U.S. v. Taylor, 602 Fed. Appx. 713, 717 (10th Cir. 2015); U.S. v. Briggs, 697 F.3d 98, 101 (2d Cir. 2012); U.S. v. Orena, 986 F.2d 628, 630 (2d Cir. 1993); U.S. v. Gonzales Claudio, 806 F.2d 334, 340 (2d Cir. 1986).

9. In Briggs, the Court held that “while length of detention is obviously a central focus of our inquiry...the due process limit on the duration of preventative detention requires an assessment on a case-by-case basis....” Briggs, 697 F.3d at 101. The Court went further and noted that in making such an assessment, courts should consider “the strength of the evidence justifying detention, the government’s responsibility for the delay in proceeding to trial, and the length of the detention itself.” Id. The court also noted that the “longer the detention, and the larger the prosecution’s part in prolonging it, the stronger the evidence justifying detention must be if it is to be deemed sufficient to justify the detention’s continuance. Id.

10. The First Circuit has articulated several factors to consider where to draw the arbitrary line when defendants adjudged to be flight risks or dangers to the community should be released pending trial. See U.S. v. Zannino, 798 F.2d 544, 547 (1986). The factors to consider are “the factors relevant in the initial detention decision, such as the seriousness of the charges, the strength of the government’s proof that defendant poses a risk of flight or a danger to the community, and the strength of the government’s case on the merits. Moreover, these judgments should reflect such additional factors as the length of the detention that has in fact occurred, the complexity of the case, and whether the strategy of one side or the other has added needlessly to that complexity.” Id. These factors were adopted by Judge Delker in State v. Samaria, 216-219-CR-01613, Order on

Defendant's Request to Amend Bail dated January 11, 2021.

11. In this case, the defendant has been incarcerated for almost 18 months. Under ordinary circumstances, New Hampshire's Speedy Trial Policy requires the court to hold a hearing for the state to show cause why charges should not be dismissed if an incarcerated defendant is not brought to trial within four months. See State v. Skillin, No. 201-0395 (N.H. July 30, 2015)(non-precedential order citing Speedy Trial Policy). Trial has never been scheduled in this matter. Regardless, if it had, it would have been continued based on the Emergency Order issued by the New Hampshire Supreme Court suspending all jury trials due to the corona virus pandemic. Although some trials have resumed, the ongoing public health crisis has resulted and may continue to result in further suspension of trials.

12. Although the reason for delay is neutral – that is, no one could have predicted the COVID-19 pandemic that has made jury trials logistically impossible, the fact remains that Mr. Holloway has remained incarcerated pretrial and based on the length of that incarceration, it has changed from regulatory to punitive and violates the defendant's presumption of innocence and results in improper punishment without trial. The Constitution is not suspended simply because the State of New Hampshire finds itself in a state of emergency. See Ex parte Sheffield, 611 S.W.3d 630, 635 (Tex. App. 2020). . As Judge Delker noted, "it is in these moments of crisis that the true test of our adherence to core constitutional principles are tested." Samaria Supra.

CONCLUSION

13. For the foregoing reasons and because no trial has been scheduled in this matter, the defendant requests that he be released on personal recognizance and be placed

under house arrest with his mother under any conditions deemed appropriate by the court.

WHEREFORE, the petitioner, Dale Holloway, respectfully requests this Court:

- A. GRANT this Petition and release him on personal recognizance bail, or
- B. Schedule a hearing on this matter, and
- C. Grant such further relief as justice may require.

Respectfully submitted,

Date: April 6, 2021

/s/ Michael J. Zaino
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to all interested parties via the Odyssey File and Serve system.

Date: April 6, 2021

/s/ Michael J. Zaino