

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.  
SOUTHERN DISTRICT

SUPERIOR COURT  
No. 2019-CR-00814

State of New Hampshire

v.

Dale E. Holloway, Jr.

**ORDER ON DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

The defendant, Dale E. Holloway, Jr., stands indicted on numerous charges arising out of a shooting at a wedding in October 2019, including two counts of attempted murder, two counts of first degree assault, one count of second degree assault, and one count of being a felon in possession of a firearm. He has been held on pretrial preventative detention at the Hillsborough County House of Corrections (the "jail") since his arrest on October 12, 2019. Currently pending before the Court is the defendant's petition for a writ of habeas corpus in which he seeks an order releasing him from incarceration on personal recognizance bail until trial. The State objects. The Court held a hearing on the petition on April 21, 2021, at which it heard testimony from the superintendent of the jail, Willie Scurry. After considering the record, the arguments, and the applicable law, the Court finds and rules as follows.

**Background**

On October 12, 2019, the defendant went to a church wedding in Pelham armed with a gun. The State alleges that the defendant approached the altar, shot the bishop in the neck and then shot the bride in the arm. He also struck the groom with the gun after it jammed. Following the shooting, several wedding guests detained the defendant until the police arrived. Once officers arrived, they arrested the defendant.

Following his arrest, the defendant was held on preventative detention by agreement and a bail hearing was scheduled for October 22, 2019. The Court assigned an attorney from the New Hampshire Public Defender's office to represent the defendant. Prior to the bail hearing, the defendant allegedly assaulted his public defender during a meeting at the jail. The State has brought several assault charges against the defendant for this alleged conduct, which are being adjudicated by the superior court in the northern judicial district of Hillsborough County ("Hillsborough-North case"). As a result of the alleged assault on his public defender, the Court postponed the October 22, 2019 bail hearing until new counsel could be appointed to represent the defendant. On April 14, 2020, the Court held a bail hearing and concluded that the defendant should remain on preventative detention due primarily to his dangerousness. The defendant is also being held on preventative detention in the Hillsborough-North case for similar reasons. Jury selection is set to begin on June 1, 2021 in the Hillsborough-North case and on September 7, 2021 in this case.<sup>1</sup> The defendant now petitions the Court for a writ of habeas corpus,<sup>2</sup> alleging that his continued detention until his trial date<sup>3</sup> violates his right to due process under the Fifth Amendment to the United States Constitution.<sup>4</sup> He makes no state constitutional claim.

---

<sup>1</sup> Due to the COVID-19 pandemic, superior courts have been unable to schedule jury trials until recently.

<sup>2</sup> The defendant also recently petitioned the supreme court for a writ of habeas corpus, which was denied.

<sup>3</sup> At the hearing, the defendant made clear that he is only seeking relief related to this Court's bail order and not from the bail order entered in the Hillsborough-North case. Given this position, the petition seems rather academic. That is, even if the Court were to find that the defendant should be afforded bail in this case, he would still be subject to the preventative detention order in the Hillsborough-North case.

<sup>4</sup> However, it is well-established that "the Fifth Amendment's due process clause only applies to the federal government." *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008). As such, the Court assumes that the defendant makes his argument pursuant to the Fourteenth Amendment's due process clause, which governs state action. As neither party argues otherwise, the Court further assumes that the analysis is the same under both amendments.

## Analysis

Pretrial detention generally serves regulatory purposes, such as ensuring that “an alleged offender attends trial and is incapacitated if he or she is a danger to the community,” Mont v. United States, 139 S. Ct. 1826, 1842 (2019) (Sotomayor, J., dissenting), and will “submit to punishment if convicted,” State v. Furgal, 161 N.H. 206, 214 (2010). Pretrial detention remains “constitutional so long as it serves regulatory rather than punitive purposes.” In re Request to Release Certain Pretrial Detainees, 244 A.3d 760, 767 (N.J. 2021). However, it is undisputed that, at some point, pretrial detention can “become excessively prolonged, and therefore punitive,” resulting in a due process violation. United States v. Salerno, 481 U.S. 739, 747 n.4 (1987).

While the Supreme Court has expressly stated that it has “no view as to the point at which detention in a particular case might become excessively prolonged,” id., circuit courts examine several factors on a “case-by-case basis” in deciding whether a lengthy pretrial detention results in a due process violation. United States v. Briggs, 697 F.3d 98, 101 (2d Cir. 2012). For instance, in United States v. Accetturo, the court stated:

Because due process is a flexible concept, arbitrary lines should not be drawn regarding precisely when defendants adjudged to be . . . dangers to the community should be released pending trial. Instead, . . . due process judgments should be made on the facts of individual cases, and should reflect 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 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.

783 F.2d 382, 388 (3d Cir. 1986); see also United States v. Zannino, 798 F.2d 544, 547 (1st Cir. 1986) (addressing due process argument using same factors). Because both

the State and the defendant seemingly agree that the factors from Accetturo govern the analysis, and because there is no controlling precedent to the contrary, the Court finds it appropriate to use these factors for the purposes of this order. See State v. Samaria, Hillsborough Cnty. Super. Ct. N. Dist., No. 216-2019-CR-01613, at 9 (Jan. 11, 2021) (Order, Delker, J.) (using same factors). The Court will examine each one in turn.

*A. Seriousness of the Charges*

Here, the defendant stands indicted on two counts of attempted murder. These are undoubtedly grave charges as they carry a maximum penalty of life in prison. See RSA 629:1, IV. Indeed, there is a statutory presumption in attempted murder cases that the defendant be denied bail if “the State can show that ‘the proof is evident or the presumption great’ that the defendant will be convicted.” Furgal, 161 N.H. at 210 (citing RSA 597:1-c)).<sup>5</sup> As such, this factor weighs heavily against the defendant.

*B. Strength of State’s Proof of Dangerousness*

There is significant evidence demonstrating the defendant’s dangerousness. First, the alleged conduct giving rise to charges in this case strongly suggests that the defendant would present a danger to the community if he were released. Second, the defendant is charged with violently attacking his own lawyer in the jail following his arrest. This alleged attack is indicative of a person with uncontrolled violent and dangerous tendencies. Third, the defendant has “significant untreated mental health issues,” State v. Holloway, Hillsborough Cnty. Super. Ct. N. Dist., No. 216-2019-CR-01856, at 11 (Mar. 12, 2021) (Order, Nicolosi, J.), and has filed a notice of an insanity

---

<sup>5</sup> The State did not invoke this statute at the original bail hearing. Rather, the State relied on the traditional bail analysis, including the defendant’s dangerousness, in opposing bail. The Court only cites this statute to demonstrate the seriousness of the charges.

defense in the Hillsborough-North case. He has even attributed the charged conduct in this case to schizophrenia. This suggests that the defendant's mental health issues, which remain untreated, make him a danger to others. Finally, the defendant has a lengthy and serious criminal record, including Massachusetts convictions for violent crimes, such as assault and battery with a dangerous weapon and assault to kill. In fact, at the time of the charged conduct, the defendant was on parole in Massachusetts. The defendant's previous disregard of his parole conditions suggests that, despite bail restrictions the Court could try to impose to ensure the public's safety, the defendant is not likely to follow them. See United States v. Noble, No. 1:17-05, 2020 U.S. Dist. LEXIS 113238, at \*12 (W.D. Pa. June 26, 2020) (explaining that "Defendant's criminal history, and particularly the fact that most of his crimes were committed while he was under court supervision, strongly support there is a danger Defendant will continue in illegal activity if released on bond"). For all of these reasons, the Court finds this factor weighs heavily against the defendant.

### *C. The Strength of the State's Case*

Here, the State has strong evidence of the defendant's guilt. The defendant allegedly shot the victims at a wedding in front of dozens of people. As such, there are numerous witnesses to the charged conduct. The police quickly recovered the gun used in the shooting while at the scene and also arrested the defendant at the scene, leaving little dispute as to his identity. In addition, the defendant made statements before and after the shooting suggesting that his actions were motivated by his desire to exact revenge. Specifically, there were individuals at the wedding that he believed were involved in his stepfather's death. These statements establish that the defendant had a

motive and acted intentionally, if not purposely. The defendant has also not filed any notices of affirmative defenses that might negate or excuse the charged conduct. Simply put, given the physical evidence, the eyewitnesses, and the defendant's own statements, the Court finds that the State's evidence of the defendant's guilt is strong.

*D. Length of Detention*

The defendant has been incarcerated since his arrest on October 12, 2019, a period of nearly nineteen months. By the time jury selection begins, the defendant will have been held without bail for nearly twenty-three months. These are undoubtedly long periods of pretrial detention. Thus, this factor weighs in the defendant's favor. See United States v. Torres, No. 21-50006, 2021 U.S. App. LEXIS 12147, at \*25 (9th Cir. Apr. 23, 2021) (pretrial detention spanning twenty-one months "weighs in favor of recognizing a due process violation"); United States v. Gonzales Claudio, 806 F.2d 334, 336 (2d Cir. 1986) (vacating trial court's pretrial detention order where defendants were expected to be incarcerated for twenty-six months until trial), Zannino, 798 F.2d at 547 (assuming without deciding "that in many, perhaps most, cases, sixteen months would be found to exceed the due process limitations on the duration of pretrial confinement"); cf. State v. Brooks, 162 N.H. 570, 581 (2011) (in speedy trial analysis, delay of ninety days between arrest and trial is presumptively prejudicial).

*E. Complexity of the Case*

This factor is not particularly relevant here. Notwithstanding the number of times the defendant has changed lawyers, the delay in bringing the defendant to trial is almost entirely attributable to the COVID-19 pandemic, not the complexity of the case. Thus, the Court concludes that this factor is neutral in the analysis.

#### *F. Reasons for the Delay*

As discussed in the preceding paragraph, the current delay in bringing the defendant to trial in this case is mostly due to the COVID-19 pandemic and the Court's previous inability to hold jury trials. As such, this factor weighs against a finding of a due process violation. See Torres, 2021 U.S. App. LEXIS 12147, at \*26 (fact that "continuances were a direct result of the COVID-19 pandemic" weighed "against finding a due process violation"); United States v. Tawfik, No. 20-2254, 2021 U.S. App. LEXIS 11575, at \*8 (6th Cir. Apr. 20, 2021) (delay does not weigh in defendant's favor where "postponements are due to a global pandemic"); United States v. Nero, No. 17-cr-20183-5, 2021 U.S. Dist. LEXIS 56348, at \*10 (E.D. Mich. Mar. 25, 2021), aff'd, 2021 U.S. App. LEXIS 11574 (6th Cir. Apr. 20, 2021) (rejecting defendant's "assertion that the Government and the Court bear responsibility for the pretrial delay caused by the COVID-19 pandemic" and instead finding that it weighed against due process violation); United States v. Zhukov, No. 18-CR-633, 2020 WL 6302298, at \*3 (E.D.N.Y. Oct. 27, 2020) ("[T]he delay in bringing this case to trial is overwhelmingly attributable to one factor—the COVID-19 epidemic—that is surely beyond the prosecution's control.").

Having considered the six factors, the Court must now weigh them to determine whether the defendant's pretrial detention has become punitive and therefore resulted in a denial of due process. Here, the only factor that supports a finding of a due process violation is the length of the defendant's current detention. While the Court recognizes that this factor weighs strongly in the defendant's favor in this case, "the length of detention alone is not dispositive and will rarely by itself offend due process." United States v. El-Hage, 213 F.3d 74, 79 (2d Cir. 2000) (finding that a detention period of 30–

33 months did not violate due process where the prosecution bore little responsibility for the delay and the charges against the defendant were grave).<sup>6</sup> When this single factor is balanced against the seriousness of the charges, the repeated and well-founded findings of dangerousness by at least two different judges, the significant evidence supporting the State's charges, and the fact that the delay in bringing the defendant to trial is almost entirely attributable to a global pandemic, the Court concludes that the defendant's pretrial detention remains regulatory. As such, the Court's preventative detention bail order does not violate the defendant's due process rights. The defendant's petition for a writ of habeas corpus is accordingly DENIED.

So ordered.

Date: May 11, 2021



Hon. Charles S. Temple,  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 05/11/2021

---

<sup>6</sup> Indeed, courts have held that significantly longer periods of pretrial detention did not offend the defendant's due process rights. See, e.g., Noble, 2020 U.S. Dist. LEXIS 113238, at \*13 (41-month pretrial detention did not violate due process); United States v. Flores, No. 2:14-cr-00684, 2018 WL 3530837, at \*2 (C.D. Cal. July 20, 2018) (43-month pretrial detention expected to last for a total of 52 months did not violate due process); United States v. Robinson, No. 10-CR-239S, 2014 WL 2207970, at \*4 (W.D.N.Y. May 28, 2014) (continuing a pretrial detention of over 40 months without prejudice to renewal of the motion for release in six months on due-process grounds); United States v. Speed, No. 09-CR-329, 2013 WL 6531950, at \*5 (W.D.N.Y. Dec. 12, 2013) (55-month pretrial detention did not offend due process).