

STRAFFORD, SS

SUPERIOR COURT
DOCKET NO. 219-2022-CR-00068

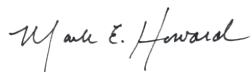
Upon review of the motion and the State's objection, and after hearing on the motion for bail, the motion is denied. These are significant offenses involving burglaries and stalking behavior. The defendant also lives a considerable distance away in Pennsylvania. So Ordered.

THE STATE OF NEW HAMPSHIRE

v.

MAURICIO GUERRERO

Clerk's Notice of Decision
Document Sent to Parties
on 10/05/2023



Honorable Mark E. Howard
October 5, 2023

MOTION FOR BAIL PENDING APPEAL

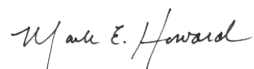
NOW COMES, the Defendant, Mauricio Guerrero, by and through his Attorney, Harry N. Starbranch, who respectfully moves this Honorable Court pursuant to NH Rules of Criminal Procedure 32, and RSA 597:1-a,II, to order that your Defendant be released on bail pending the Appeal;

As grounds for this Motion, your Defendant sets forth the following:

1. Your Defendant was convicted after trial of two felonies alleging Burglary and three counts of Misdemeanor Criminal Trespass. The Jury also convicted the Defendant of Invasion of Privacy, however, that complaint was dismissed.
2. This Honorable Court, applying the same standard as the bail pending appeal statute, released your Defendant pending sentencing.
3. On July 19, 2023, this Honorable Court sentenced your Defendant to, inter alia, 12 months in the HOC stand committed. The Defendant was taken into custody at that time.

Clerk to schedule bail hearing. Defendant to appear by video from the HOC.

Clerk's Notice of Decision
Document Sent to Parties
on 08/01/2023


Honorable Mark E. Howard
July 31, 2023

4. On July 21, 2023, the Defendant filed a Rule 7, Mandatory Appeal to our Supreme Court, (see attachment “A”). The essence of the Appeal involves a jury instruction relative to the Burglary charges.
5. RSA 597:1-a allows for bail pending appeal; (RSA §597:1-a,ii; Release or Detention of a Defendant Pending Sentence or Appeal);

The court shall order that a person who has been found guilty of a felony and who is awaiting imposition or execution of sentence be detained **unless** the court finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of the person or to any other person or the community. If the court makes such a finding, it shall order the release of the person in accordance with the provisions of RSA 597:2, (emphasis added)

6. In the case at bar, during the pendency of the litigation (pretrial and posttrial) your Defendant has been released on bail with conditions. One of those conditions was supervision by Community Corrections. The Defendant has performed well on community corrections. Upon information and belief, the Defendant was extremely cooperative with the Community Corrections personnel supervising him.
7. The Defendant submits that the facts and rationale behind this Court’s decision to release the Defendant pending trial is now supported by the Defendant’s historical compliance and performance while on bail. It is clear the Defendant was appropriately released pending trial. The Defendant requests the Court make those findings again when considering the instant request for bail pending appeal.
8. The issue appealed, upon information and belief, is a case of first impression in our jurisdiction. The Appeal is clearly not frivolous or dilatory. The issue of intent and when it was formed was the subject of litigation from voir dire to closing arguments.

WHEREFORE, your Defendant moves that this Honorable Court Grant the following relief:

- A) That this Honorable Court grant your Defendant's Motion for Bail Pending Appeal, and.
- B) Order the Defendant be released upon the same conditions as previously set (with the ankle monitor at the discretion of Community Corrections), and;
- C) Schedule a hearing at the Clerk's discretion, and;
- D) Any such other and further relief as may be deemed just and proper.

Respectfully submitted,
Mauricio Guerrero,
By and Through his Attorney,
Harry N. Starbranch

Dated: July 21, 2023

/s/ Harry Starbranch
Harry N. Starbranch
NH Bar No. 6991
171 Middle Street
Portsmouth, NH 03801
(603) 436-5566

CERTIFICATE OF SERVICE

I, Harry N. Starbranch, Jr., Esq., hereby certify that a true copy of the foregoing **MOTION FOR BAIL PENDING APPEAL** has this date been served upon the STATE through ECF: Emily Garod, Esq., Strafford County Attorney's Office.

Dated: July 21, 2023

By: /s/ Harry Starbranch
Harry N. Starbranch, Jr., Esq.

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

RULE 7 NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court or circuit court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving a collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A other than an appeal from the first final order. (An appeal from the first final order issued in a domestic relations matter filed under RSA chapters 457 to 461-A should be filed on this form.)

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

3A. APPEALING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

E-Mail address: _____
Telephone number: _____

3B. APPEALING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

E-Mail address: _____
Telephone number: _____

4A. OPPOSING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

E-Mail address: _____
Telephone number: _____

4B. OPPOSING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

E-Mail address: _____
Telephone number: _____

Case Name: _____

RULE 7 NOTICE OF MANDATORY APPEAL

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

8. APPELLATE DEFENDER REQUESTED?

YES or NO: _____

IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND SUBMIT A CURRENT REQUEST FOR A LAWYER FORM (FINANCIAL STATEMENT). SEE SUPREME COURT RULE 32(4).

9. IS ANY PART OF CASE CONFIDENTIAL?

YES or NO: _____

IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE?

YES or NO: _____

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL? SEE SUPREME COURT RULE 15, COMMENT.

YES or NO: _____

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

RULE 7 NOTICE OF MANDATORY APPEAL

TRANSCRIPT ORDER FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. Parties will be provided with an electronic copy of the transcript in PDF-A format. A paper copy of the transcript may also be prepared for the court.

PROCEEDINGS TO BE TRANSCRIBED					
PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g., 1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
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				X \$137.50	\$
				TOTAL DEPOSIT	\$

PROCEEDINGS PREVIOUSLY TRANSCRIBED					
PROCEEDING DATE (List date of each transcript volume)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY (YES OR NO)	DEPOSIT FOR ADDITIONAL COPIES
					TBD
					TBD
					TBD

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you will be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.