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The Honorable Edward J. McBride, Jr., P.J. Cr.
Superior Court of New Jersey
Camden County Hall of Justice
101 South Fifth Street
Camden, New Jersey 08103

Re: State of New Jersey v. Louis Pierce
Ind. No. 3008-09-98

Judge McBride:

Please accept this letter in lieu of a more formal brief in opposition to defendant's emergent motion to modify defendant's monetary bail and grant release. While on April 8, 2020 the Third Circuit Court of Appeals granted habeas relief and lifted the federal stay, the State's commitment to retry defendant for the two counts of attempted murder and related weapons charges he is still facing under indictment require continued detention. Defendant's COVID-19 concerns are unsupported and speculative and do not justify immediate release, particularly in light of the fact that there has not been a single case of confirmed COVID-19 in the county jail. Having served merely twenty years of his life/29.5-years without parole sentence, and having nine prior convictions on five separate dates, defendant remains a danger to society,

as the present bail set reflects.¹ He is also a tremendous flight risk given his exposure to, and previous sentence of, life in prison. Accordingly, this Court should deny the motion, and continue the current bail set.

First, nothing in the Third Circuit's Order requires defendant's release. The Third Circuit simply granted habeas release and lifted the federal stay, but defendant was being held independently as a result of this Court's bail set. To the extent that defendant relies on the Third Circuit's Order in which the court states that "[i]n light of the present COVID-19 pandemic, we direct that Appellee be released immediately, pending the State's decision on retrial," it is inapposite as the State is presently seeking to retry defendant on these serious charges. In that regard, defendant remains similarly situated to any other pretrial detainee facing first-degree charges of violence.

Second, defendant has failed to make anything more than a speculative argument concerning COVID-19, which does not warrant defendant's release. At the outset, of course the Supreme Court's order regarding defendants sentenced to county jail does not apply to defendant, who is a pretrial detainee. Moreover, defendant failed to make any supported argument concerning his particular situation. Defendant has failed to indicate, much less document, how his unspecified time of having previously been with diagnosed with hepatitis C—which is readily treatable by antiviral medication—makes him vulnerable; the illness is not listed among those which have been outlined by the Centers for

¹ According to Promis Gavel, Judge McBride revoked Defendant's bail on December 3, 2018. See State's Exhibit A.

Disease Control and Prevention as attributable to a higher risk for severe illness if COVID-19 is contracted. Without making this particularized showing of how his health puts him at heightened risk if he were to contract COVID-19, and without even alleging that the jail is experiencing an outbreak of people contracting COVID-19, which it is most assuredly not, defendant's claims are unavailing as merely speculative. This generalized concern does not rise to the level of a material change in circumstances in defendant's case.

Defendant's generalized argument that the existence of possible medical issues requires his release was addressed, albeit in a different context under Criminal Justice Reform, in State v. Williams, 452 N.J. Super. 16, 2017 (App. Div. 2017). There, the trial court found that the defendant's pregnancy should be a factor to be considered in determining whether to release her pending trial, and found that factor outweighed the no-release recommendation in the Public Safety Assessment. Id. at 19.

On appeal, the Appellate Division reversed, finding that there was no indication that defendant's pregnancy was high-risk or presented unusual medical complications that would require specialized treatment. Id. at 22. The Court further found that there was no indication that the jail was incapable of providing appropriate medical care. Ibid. It found that the trial court's findings regarding the pregnancy warranting release were "speculative, unsupported by any facts in the record, and, therefore, irrelevant to a pretrial detention

determination.” Ibid. In other words, generally citing to a medical situation was insufficient, in and of itself, to tip the scales in favor of release.

While case law regarding pretrial detention in the wake of Covid-19 is limited, United States v. Clark, 2020 U.S. Dist. LEXIS 51390 (D. Kan. 2020), is instructive, albeit in the Federal Bail Reform Act context. There, the defendant was detained pending trial for various CDS charges. Id. at *1. The defendant sought temporary release due to Covid-19 and his status as a diabetic. Ibid. In rendering its decision, the court analyzed its original grounds for pretrial detention as “[the defendant] was both a risk of flight and a danger to the community,” id. at 10, as well as: (1) The Specificity of the Defendant's Stated Covid-19 Concerns; (2) The Extent to Which the Proposed Release Plan is Tailored to Mitigate or Exacerbate the Defendant's Overall Covid-19 Risks; and (4) The Likelihood the Defendant's Proposed Release Plan Would Increase Covid-19 Risks to Others.

In addressing the first factor, the court recognized the defendant’s “legitimate concerns about his underlying health conditions,” but found “his arguments about incarceration . . . too speculative . . . to favor release[,]” because he could not “predict the extent to which Covid-19 cases might arise at the facility any more than many Americans can predict how they might be exposed to the virus.” Id. at *14, 17-18. The court found the second factor—the Extent to Which the Proposed Release Plan is Tailored to Mitigate or Exacerbate the Defendant's Overall Covid-19 Risks—neutral. Id. at *21. In so finding, the court again noted that “[i]t is speculative to

predict whether [the defendant] is safer in terms of his overall Covid-19 risks whether he is in custody or temporarily released to live with his mother.” Ibid.

As to the final factor, the court found the defendant’s release would “increase the risk of harm to others,” noting that

[W]hen [the defendant] violates his conditions of release (as he likely will), law enforcement officers will be forced to expend valuable resources during a national crisis to take him back into custody . . . and return him to the District of Kansas, both increasing the risk to them of contracting and spreading Covid-19 and further increasing the risk to the prison population when he inevitably returns to the facility.

[Id. at 23 (emphasis added); see also United States v. Patel, 2020 WL 1698785 (D.N.J. April 8, 2020) (citing Clark with approval to deny a diabetic defendant’s motion for release pending trial due to COVID-19 concerns).]

Recently, the Third Circuit Court of Appeals, in dictum, similarly rejected COVID-19 concerns as speculative and unavailing to justify release of a 68-year-old inmate who suffered from Parkinson’s Disease, diabetes, and heart issues: “We do not mean to minimize the risks that COVID-19 poses in the federal prison system, particularly for inmates like Raia. But the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering [the Bureau of Prisons]’s statutory role, and its extensive and professional efforts to curtail the virus’s spread.” United States v. Raia, ___ F.3d ___, ___ (3d Cir. Apr. 2, 2020) at *8. See also United States v. Legard, 2020 U.S. Dist. LEXIS 52166 (D. Md. Mar. 24, 2020) (denying motion for reconsideration where “[t]here [was] no change in

circumstances since the hearing of March 12, 2020,” and the defendant “proffer[ed that] he suffers from asthma and is at a higher risk of infection from the Covid-19 virus if he remains in custody”); United States v. Pierresaint, 2020 U.S. Dist. LEXIS 50529 (W.D. Tex. Mar. 24 2020) (denying modification of pretrial detention where the defendant “invoke[d] the Covid-19 pandemic emergency,” but “ma[d]e no argument that he has a medical condition weighing against detention”). While the State is sensitive to the evolving issues surrounding the spread of COVID-19, defendant has made no particularized showing of how his health puts him at heightened risk if he were to contract COVID-19, and without any proof that the jail is experiencing an outbreak of people contracting COVID-19 that its efforts are not equipped to address, defendant’s claims are unavailing as merely speculative.

The fact is, there have been no positive tests for COVID-19 in the Camden County Jail. See Certification of Warden Karen Taylor, paragraph 8, attached hereto as “Exhibit B.” Moreover, the facility has already executed a detailed plan designed to protect inmates, corrections officers and other staff. Id. at paragraphs 9-12. These precautions include, but are in no way limited to, daily sanitation of the facility, additional sanitizer accessibility, the provision of disinfectant products to both staff and inmates, minimal outside traffic and a 14-day quarantine for all new admissions, with their temperature being monitored daily. Id. Between March 30th and April 2nd, three corrections officers tested positive for the virus outside of the County Jail. Id. at paragraphs 3-5. Every corrections officer and inmate who came into contact with one of the three infected officers has been placed in a 14-day

quarantine. Id. at paragraphs 6-7. Defendant's assertions regarding COVID-19 in the County Jail are nothing more than pure speculation.

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The only factors that should be considered by this Court in the instant motion are those that guide setting bail as set forth in State v. Johnson, 61 N.J. 351 (1972). Those factors are: (1) the seriousness of the crime charged against the defendant, the apparent likelihood of conviction and the extent of the punishment prescribed by the Legislature, (2) the defendant's criminal record, if any, and previous record on bail if any; (3) his reputation, and mental condition; (4) the length of his residence in the community; (5) his family ties and relationships; (6) his employment status, record of employment and his financial condition; (7) the identity of responsible members of the community who would vouch for defendant's reliability; (8) any other factors indicating defendant's mode of life, or ties to the community or bearing on the risk of failure to appear. Id. at 364-65. Application of these factors to the present case makes clear that the current bail is warranted and appropriate.

With regard to the first factor, the seriousness of the crime charged against the defendant, the apparent likelihood of conviction and the extent of the punishment prescribed by the legislature, the Supreme Court noted, "It may be recognized that the same urge for flight is not present where the death penalty is not involved. But **exposure to a life sentence** for murder **may well stimulate a substantial urge to flee**-even if not as intense as where the accused faces the

possibility of death.” Id. at 364 (emphasis added). Although the defendant in the case at bar is not charged with murder, he does face a life sentence as a persistent offender with nine prior convictions who is charged with two counts of attempted murder and various firearms offenses. Moreover, the Honorable Irvin J. Snyder, J.S.C., who presided over the trial, determined that in fact a sentence of life in prison was warranted for this defendant and his crimes and that sentence was repeatedly affirmed on numerous appeals over the past 20 years. This factor alone justifies the bail previously set by this Court.

The second Johnson factor, the defendant's criminal record, if any, and previous record on bail if any, is also highly relevant and weighs in favor of maintaining the current bail. The defendant's criminal history is as follows:

- On January 13, 1983, in his first adult conviction at the age of 20 from charges he incurred shortly after reaching the age of 18, the defendant was sentenced to one year of probation after pleading guilty to Receiving Stolen Property in Monmouth County.
- On January 27, 1983, still at the age of 20, the defendant was sentenced to five years of probation on three separate cases in Gloucester County. The sentences were imposed concurrently. In the first case, the defendant pled guilty to Burglary. He pled guilty to one count of Larceny and one count of Burglary in each of the remaining two cases.
- On April 8, 1983, the defendant was sentenced to two years of probation conditioned upon him serving 90 days in the Camden County Correctional Facility on two separate cases in Camden County. In the first, he pled guilty to Receiving Stolen Property. In the second, he pled guilty to two counts, Hindering Apprehension or Prosecution and Possession of a Prohibited Weapon.
- Despite receiving the benefit of probationary sentences on the aforementioned six cases, less than three months after the

imposition of his last probationary sentence, the defendant was charged with committing a robbery on June 28, 1983. He again negotiated a plea agreement with the State and pled guilty to that second-degree offense on October 26, 1984. He was sentenced to seven years in State Prison on November 14, 1984. This was a Camden County case.

- On March 11, 1993, the defendant was arrested and charged with a variety of narcotics offenses. He pled guilty to Possession of an Imitation Controlled Dangerous Substance with Intent to Distribute and was sentenced to four years in State Prison on September 9, 1993. Again, this was a Camden County case.
- On October 28, 1995, the defendant was arrested and charged with Possession of a Controlled Dangerous Substance, Possession of a Controlled Dangerous Substance with Intent to Distribute, and Possession of a Controlled Dangerous Substance with Intent to Distribute within 1000 feet of a School. He pled guilty to the School Zone violation on July 21, 2000, after he was convicted at trial in the instant matter. On October 2, 2000, he was sentenced to a five-year term in prison subject to a 33-month bar on parole eligibility. The passage of time in this particular narcotics prosecution suggests the defendant was likely a fugitive on those charges for some period of time, although this has not been verified.

Assessment of the remaining Johnson factors is difficult because the defendant has been incarcerated, not only for the majority of his adult life, but also for the past 20 years. Regardless, there is no question that the defendant remains a danger to society, requiring the current bail. Defendant had eight prior convictions before committing the instant offense. Instead of rehabilitating, defendant escalated his violence to the ultimate crime by brazenly shooting two people multiple times, in public, from only thirteen yards away. It is only by chance that the victims survived. There is no reason to believe that this pattern of lawlessness would not continue. Having served only

twenty years of a life/29.5-year sentence, the consequences to the 59-year-old defendant of retrial and reconviction remain significant. Defendant essentially asks this Court to release him on his own recognizance, which is unquestionably inappropriate given his extensive criminal history and exposure to a sentence of life in prison.

For all these reasons, the State respectfully requests that this Court deny defendant's emergent motion for immediate release and reinstate the defendant's most recent bail set.

Respectfully submitted,

/s/ Christine Shah

Christine Shah
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