

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

**THE PHILADELPHIA
COMMUNITY BAIL FUND, et al.,**
Petitioners,

v.

**ARRAIGNMENT COURT
MAGISTRATES of the FIRST
JUDICIAL DISTRICT of the
COMMONWEALTH OF
PENNSYLVANIA,**
Respondents.

No. 21 EM 2019

**PETITIONERS' RESPONSE TO THE REPORT OF THE SPECIAL
MASTER [Executive Summary]**

STATEMENT OF THE CASE

On March 12, 2019, ten individuals held on bail they could not afford, the Philadelphia Community Bail Fund, and the Youth Art & Self-Empowerment Project initiated this action by filing an Application for Leave to File Original Process, along with a Class Action Complaint and Petition for a Writ of Mandamus. The relief Petitioners sought was an order compelling the Arraignment Court Magistrates of the First Judicial District (“Respondents” or “ACMs”) to conduct preliminary arraignments in conformance with the Pennsylvania Rules of Criminal Procedure and the Pennsylvania Constitution.

The Complaint, based on the experiences of the Individual Petitioners and documentation of over 2,000 preliminary arraignments, alleged that the preliminary arraignments conducted by Respondents did not comply with the Pennsylvania Constitution and the Pennsylvania Rules of Criminal Procedure. It further alleged that those proceedings routinely resulted in the imposition of monetary conditions of release that indigent defendants, including the Individual Petitioners, could not hope to meet. Petitioners alleged that Respondents: (1) did not meaningfully consider defendants' ability to pay, or whether available alternative conditions of release would serve the primary purpose of bail; (2) imposed high monetary conditions for the purposing of ensuring that certain defendants remain incarcerated pending trial; and (3) conducted preliminary arraignments in a cursory fashion and without any of the hallmarks of due process.

Petitioners further alleged that the failure to comply with the Pennsylvania Constitution and the Rules resulted in thousands of people who are entitled to release being assigned monetary bail that they cannot afford and unjustly deprived of their pretrial liberty. Community advocates such as the Philadelphia Community Bail Fund and the Youth Art & Self-Empowerment Project, along with academics, reform advocates, and government officials have, for years, called attention to the substantial harms caused by the imposition of unaffordable monetary bail in

Philadelphia. Petitioners filed this action to bring bail setting practices in Philadelphia into compliance with the Rules and Constitution.

On July 8, 2019, this Court denied the application for leave to proceed anonymously, granted the application to file an amended complaint and petition, denied the motion for class certification, and denied the request for mandamus relief. In that same Order, this Court invoked its King's Bench jurisdiction to conduct an "inquiry relative to the operation of the cash-bail system in the First Judicial District . . . limited to Petitioners' allegations regarding systemic failures of the First Judicial District to properly conduct cash-bail matters pursuant to current law, as well as any suggestions for action by this Court in response to those alleged systemic failures." The Court appointed the Honorable John M. Cleland as a special master to oversee the inquiry, and invited the participation of the Philadelphia District Attorney's Office, the Defender Association of Philadelphia, and the President Judges of the First Judicial District and of the Philadelphia Municipal Court. The Court set deadlines for the completion of inquiry, the submission of a report from the Special Master, and responses thereto.

On July 18, 2019, at a meeting convened by the Special Master,

[I]t was agreed that the case would proceed in the nature of a mediation with the goal of reaching agreement among the participants [including Petitioners, Respondents, the District Attorney's Office and the Defender Association] rather than in the form of contested litigation involving discovery, witness testimony, briefing and argument.

The agreed-on goal reached at that meeting was to develop a set of joint recommendations for improvement of the Philadelphia bail system.

...

Thereafter, there followed a series of meetings in Harrisburg and Philadelphia. Some were held by conference call and some were face-to-face. [The Special Master] participated in some meetings and others involved only counsel without [the Special Master].

(Report 2.)

After multiple rounds of negotiations, the District Attorney's Office, the Defender Association, Petitioners, the President Judge of the Municipal Court, and Respondents reached an agreement regarding eight recommendations for ensuring that the bail system in Philadelphia adheres to the Rules and the Constitution. However, the parties could not reach agreement on several of the relevant legal standards. On November 7, 2019, the parties submitted a document to the Special Master outlining the agreements and outstanding issues. (Exhibit A, "Submission to the Special Master Proposed Interim Pretrial Reform," hereinafter "Submission.")

The Special Master reviewed the Submission and issued his Report on December 16, 2019. Therein, the Special Master recommended that the Court adopt the eight agreements and offered a number of additional suggestions for improving the bail system.

SUMMARY OF THE ARGUMENT

This Court crafted the Rules of Criminal Procedure governing bail to discourage pretrial detention and secure the right to pretrial release set forth in Article I, § 14 of the Constitution. Those Rules “reaffirm that the purpose of bail is to ensure the defendant’s appearance and that Pennsylvania law favors the release, rather than detention of an individual pending a determination of guilt or innocence.” 25 Pa.B. 4100, 4116 (Sept. 30, 1995).

Despite this, every day hundreds of people in Philadelphia await their trials behind bars, solely because they cannot afford to pay monetary bail. It is no wonder that they cannot afford their bail: despite Philadelphia’s extremely high rates of poverty, the bails set in the Philadelphia Arraignment Court routinely exceed \$10,000, and even \$100,000. These bails do not reflect the required consideration of the defendant’s financial resources. These monetary bails set without consideration of the defendant’s resources are, in effect, detention decisions, made without meeting the constitutional standard that “no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community.” Pa. Const. art I, § 14. In these cases, rather than a condition of release, monetary bail becomes a de facto order of pretrial detention.

Following this Court's exercise of its King's Bench jurisdiction in this matter, the parties – along with the Special Master, the District Attorney's Office, the Defender Association, and the President Judge of the Philadelphia Municipal Court – worked together to develop concrete proposed changes intended to align bail proceedings in Philadelphia Arraignment Court and Municipal Court with the Constitution and the letter and spirit of the Rules governing bail.

Petitioners wish to express their deep appreciation for the Special Master's oversight of this process. The Special Master's careful and thoughtful approach, as well as his patience with the complications of a four-way negotiation, made it possible for the parties to achieve far more through this process than would have been possible without the assistance of the Special Master.

As outlined in the Special Master's Report, the parties reached the following eight substantive agreements to improve Philadelphia's bail system:

AGREEMENT 1: Defendants shall be represented at preliminary arraignments, and shall be afforded an opportunity to communicate confidentially with counsel or counsel's representative prior to and during the preliminary arraignment.

AGREEMENT 2: All conditions of bail imposed by the Arraignment Court Magistrates ("ACMs") must be free from ambiguity, clearly explained to the defendant, documented, accessible to all parties and to law enforcement, and enforceable.

AGREEMENT 3: Pursuant to the law set forth in Article I, Section 14 of the Pennsylvania Constitution, all defendants shall be presumed releasable.

AGREEMENT 4: All parties agree that ACMs may, pursuant to their own determination or in response to a motion by the DAO, make the necessary findings and order a defendant held without bail at the time of preliminary arraignment pursuant to Article I, Section 14 of the Pennsylvania Constitution and Rule of Criminal Procedure 520.

AGREEMENT 5: A decision to impose monetary conditions must consider a defendant's ability to pay along with the release criteria set forth in Rule of Criminal Procedure 523 and any decision to impose monetary or non-monetary conditions of bail must be guided by the Rules of Criminal Procedure.

AGREEMENT 6: If a defendant is held without bail at the preliminary arraignment, the defendant shall be entitled to a Release Determination Hearing in the Municipal Court within three business days, where practicable.

AGREEMENT 7: Any defendant who remains in custody due to the imposition of a monetary or non-monetary condition (e.g. house arrest), shall be entitled to a Bail Review Hearing within three business days.

AGREEMENT 8: Any defendant who remains in custody should be afforded an expedited preliminary hearing.

(Report 12-13).

The Special Master recommended that “all eight of the Agreements . . . be adopted and implemented.” (Report 11). Petitioners concur in that request; as described below, these joint agreements are rooted in the law. However, these proposals will become reality only if this Court orders the parties to implement them.

The parties also articulated the following major points of disagreement regarding interpretation of the Constitution and Rules:

DISAGREEMENT 1: Petitioners and the Defender [Association] assert that, before a bail authority may order pretrial detention, the Commonwealth must prove by clear and convincing evidence that the defendant presents a substantial threat to an individual and the community and that no conditions of release can reasonably assure their safety. [Respondents do not agree.]¹

DISAGREEMENT 2: [Petitioners, the District Attorney’s Office and the Defender Association] agree that the ACMs should apply the least restrictive condition necessary to ensure a defendant’s appearance, the safety of all persons and the community, or compliance with the bail bond. [Respondents do not agree.]

DISAGREEMENT 3: [Petitioners, the District Attorney’s Office and the Defender Association] agree that when assigning a condition of bail, other than ROR, the ACM must either state, in writing on the release paperwork or orally on the record, the specific reasons why the condition or combination of conditions is the least restrictive and reasonably necessary to ensure appearance, the safety of all persons and the community, and compliance with conditions. [Respondents do not agree.]

DISAGREEMENT 4: [Petitioners, the District Attorney’s Office, and the Defender Association agree] Prior to imposing monetary conditions of bail, the ACMs should conduct a robust ability-to-pay hearing carefully considering a defendant’s entire financial picture, including income and expenses as well as life circumstances. [Respondents do not agree].

DISAGREEMENT 5: [Petitioners, the District Attorney’s Office and the Defender Association agree] The First Judicial District should create a process to expedite release procedures for defendants charged with low-level misdemeanors. [Respondents do not agree.]

¹ The District Attorney’s Office took “no position on the standard of proof required before a bail authority may order pretrial detention.” (Submission 9, Disagreement 1).

(Report 14-15). These outstanding disagreements largely pertain to the development of standards to guide bail-setting practices.

Below, Petitioners set forth the history of Pennsylvania's Constitutional bail provisions to provide context and a framework to support the Court's adoption of the joint agreement that all defendants' must be "presumed releasable." Petitioners then explain how the Rules of Criminal Procedure effectuate the constitutional right to pretrial release, require the procedural changes agreed to by the parties, and support Petitioners' view of the applicable legal standards where those are in dispute. Petitioners ask this Court to resolve these substantive disagreements to give full meaning and effect to the current rules. In the third section, Petitioners discuss the procedural safeguards necessary for pretrial detention decisions, explain why the subsequent detention hearings contemplated by the agreements support due process, and explain why the Court should hold that "clear and convincing evidence" is the necessary constitutional standard for pretrial detention. In the fourth section, Petitioners address several suggestions offered by the Special Master to improve the operation and accountability of Philadelphia's bail system. In the final section, Petitioners urge this Court to provide for clear authority over bail proceedings and order the development of a plan to implement, evaluate, and report on the progress and results of the changes contemplated by the parties' agreements and the Court's order.

The eight joint agreements, if implemented consistently and monitored for compliance, would help bring the Philadelphia bail system into compliance with the principles animating the Rules and the broad right to pretrial release enshrined in Article I, Section 14 of the Pennsylvania Constitution.

Equally important, however, is this Court's resolution of the parties' disagreements over the legal standards to be applied in the revised proceedings. Leaving the disagreements about these standards unresolved will undermine the goals of the agreed upon reforms, fail to remedy the behavior that forms the basis of Petitioners' Complaint, and result in the continued pretrial detention of people, like the Individual Petitioners, who lack the ability to purchase their freedom. Therefore, Petitioners ask this Court to order implementation of the joint agreements and resolve the disagreements.