

**COMMONWEALTH OF KENTUCKY
SUPREME COURT**

CASE NO: _____

**DERRICK AMMONS,
DESMOND BELLOMY,
ROBERT COLLIER,
ROBERT DECKER,
BRITTANY [sic, BRITTNEY] HOUCHIN-DECKER,
STANLEY KEITH,
JAMES KLEINHELTER,
VIRGIL PRESTON,
ROBERT WESLEY STEPHENS, AND
BRANDON WRIGHT**

PETITIONERS

VS.

**HON. JANET C. BOOTH, 13TH JUDICIAL DISTRICT
HON. TIMOTHY R. COLEMAN, 38TH JUDICIAL CIRCUIT
HON. STEVEN R. CREBESSA, 46TH JUDICIAL DISTRICT
HON. HUNTER DAUGHERTY, 13TH JUDICIAL CIRCUIT
HON. JOE W. HENDRICKS, JR., 7TH JUDICIAL CIRCUIT
HON. JENNIFER PORTER, 55TH JUDICIAL DISTRICT
HON. KIM RAZOR, 19TH JUDICIAL DISTRICT
HON. KATHRYN G. SLONE, 28TH JUDICIAL DISTRICT**

RESPONDENTS

AND

COMMONWEALTH OF KENTUCKY

REAL PARTY IN INTEREST

**PETITION TO EXERCISE ORIGINAL JURISDICTION
UNDER KENTUCKY CONSTITUTION § 110(2)(a)**

Come the Petitioners, through undersigned counsel, and under Ky. Const. § 110(2)(a) and all other applicable law, petition this Court to exercise its original jurisdiction over matters within the Court of Justice by prohibiting the use of money bail as a means to secure the attendance of an indigent person, and prohibiting the detention of any individual

except after a hearing that comports with due process and upon a finding by clear and convincing evidence that the individual presents a danger to the community, and no condition or combination of conditions would reasonably ensure the safety of the public.

As basis for this action, Petitioners state the following:

Introduction

Kentucky's system of pretrial release is badly broken. Almost all jurisdictions impose money bail even in cases involving minor offenses, and that money bail often effectively denies the defendant the presumption of innocence. What's worse, the application of this money bail practice varies wildly across Kentucky, such that the county which prosecutes the defendant may have a significant impact in whether the defendant remains incarcerated. What's worse, Kentucky has no meaningful speedy trial rule, so individuals can remain incarcerated pretrial until they have no more sentence to serve, effectively obliterating the presumption of innocence and their right to due process. Even among those whose cases get resolved while they still have a sentence remaining, the evidence is clear that those detained pretrial fare much worse than those who remain out of custody, meaning the quality of the justice you receive may literally depend on the county you are charged in.

In the end, this problem arises out of a lack of meaningful and enforceable standards in the rules governing pretrial release. In order to address this problem, this Court should use its authority under Ky. Const. § 110(2)(a) to enter an order directing the Court of Justice to refrain from using money bail in any case involving an indigent person, unless there is a finding by clear and convincing evidence that the individual presents a danger to the community.

Parties

I. Petitioners

This petition is brought on behalf of ten named persons. However, all of these are representative of other persons – hundreds of them – who are either as of this moment incarcerated pretrial while their case is pending, notwithstanding their presumption of innocence, or who were incarcerated for a period of time prior to being able to post a bail before. Others have already had their cases adjudicated, but were unable to make bail while they were presumed innocent, a deprivation of liberty which they will not get back, and for which the only remedy is a change in the rules which will prospectively govern the pretrial release of persons who are presumed innocent.

- A. **Derrick Ammons** is charged in Meade Circuit Court with Criminal Mischief Second Degree for throwing a laundry detergent bottle onto a car causing damage (Meade District Court, 19-M-00365). His Affidavit and a portion of his court file are attached as Exhibit 1.
- B. **Desmond Bellomy** is charged in Jessamine Circuit Court with Receiving Stolen Property > \$10,000 for obtaining a Jeep Cherokee, Fleeing or Evading Police, Possession of a Controlled Substance (Cocaine), and Criminal Mischief. (Jessamine Circuit Court, 19-CR-00273). His most recent pretrial risk assessment report (which was produced after he was indicted in Jessamine Circuit Court), and a portion of his court file are attached as Exhibit 2.
- C. **Robert Collier** was charged in Mason District Court, now bound over awaiting possible indictment in Mason Circuit Court, with Criminal Abuse of a Child, First

Degree (Mason District Court, 19-F-00257). His pretrial risk assessment report, and a portion of his court file, are attached as Exhibit 3.

D. **Robert Decker** is charged in Todd Circuit Court with First Degree Trafficking in a Controlled Substance, 1st Offense, under KRS 218A.1412, combined with a charge of First Degree Possession of a Controlled Substance under KSR 218A.1415, and for not having his rear license plate illuminated, having expired tags, failing to maintain vehicle insurance, and drug paraphernalia. (Todd Circuit Court, 18-CR-00012). His pretrial risk assessment report and a portion of his court file are attached as Exhibit 4.

E. **Brittney Houchin-Decker** is charged in Edmonson Circuit Court with Possession of Controlled Substance, Possession of Drug Paraphernalia, and two counts each of Wanton Endangerment and Endangerment of a Child for being in a home with drugs and children. (Edmonson Circuit Court, 19-CR-00118). Her Affidavit and a portion of her court file are attached as Exhibit 5.

F. **Stanley Keith** is charged in Bullitt District Court with Operating on a Suspended License and Leaving the Scene of an Accident. (Bullitt District Court, 19-T-05030). His pretrial risk assessment report and portion of his court file are attached as Exhibit 6.

G. **James Kleinhelter** was charged with Criminal Mischief Third Degree and Burglary Third Degree in Bullitt District Court. (Bullitt District Court, 19-F-00884). His pretrial risk assessment report and a portion of his court file are attached as Exhibit 7.

- H. **Virgil Preston** is charged in Jessamine District Court with Wanton Endangerment First Degree (amended to Second Degree). (Jessamine District Court, 18-F-00419). His attorney's Affidavit, filed with permission of Mr. Preston, and a portion of Mr. Preston's court file are attached as Exhibit 8. The Affidavit has been redacted to remove the names of individuals other Mr. Preston who were involved in the case.
- I. **Robert Wesley Stephens** is charged with Trafficking in a Controlled Substance, First Degree, First Offense in Pulaski District Court and has been bound over to Pulaski Circuit Court. (Pulaski District Court, 19-F-00610). His pretrial risk assessment report and a portion of his court file are attached as Exhibit 9.
- J. **Brandon Wright** is charged with Flagrant Non-Support in Bullitt District Court and has been bound over to Bullitt Circuit Court. (Bullitt District Court, 19-F-00921). His pretrial risk assessment report and a portion of his court file are attached as Exhibit 10.

II. Respondents

The following are the nominal Respondents to this Petition, and are the currently sitting judges in the Courts in which the cases of the above-named Petitioners were or are pending.

- A. **Hon. Jennifer Booth**, 13th Judicial District, Jessamine District Court
- B. **Hon. Timothy R. Coleman**, 38th Judicial Circuit, Edmonson Circuit Court
- C. **Hon. Steven R. Crebessa**, 46th Judicial District, Meade District Court
- D. **Hon. Hunter Daugherty**, 13th Judicial Circuit, Jessamine Circuit Court
- E. **Hon. Joe W. Hendricks, Jr.**, 7th Judicial Circuit, Todd Circuit Court (Retired)
- F. **Hon. Jennifer Porter**, 55th Judicial District, Bullitt District Court

G. **Hon. Kim Razor**, 19th Judicial District, Mason District Court

H. **Hon. Kathryn G. Slone**, 28th Judicial District, Pulaski District Court

III. Real Party in Interest, Commonwealth of Kentucky

The Commonwealth of Kentucky is the entity charged with initiating prosecutions. In each of the cases herein, the Commonwealth sought or supported the pretrial release decision made by the lower court. In this action the chief prosecutor under KRS 15.700, the Kentucky Attorney General, Daniel Cameron, is being served as the representative of the Commonwealth.

The Office of the Attorney General is served as both the designated appellate counsel for the Commonwealth in cases which come before this Court under KRS 15.020, and as required by CR 24.03, when the Constitutionality of an Act of the General Assembly is challenged.

Facts

The facts involving each of the named plaintiffs are as follows:

1. **Derrick Ammons** was arrested on November 15, 2019 and was given a \$500 cash bond which he could not post. (Meade District Court, 19-M-00365). The Meade County Attorney's Office moved for an examination of competency, but his attorney objected on the grounds that, although the client was eccentric, he seemed competent and that Kentucky Correctional Psychiatric Center (KCPC) and Central State Hospital were "backed up," and Mr. Ammons would remain in custody for months in the event he could not get into one of them for evaluation. His attorney had a DPA Alternative Sentencing Worker look for treatment locally as an alternative, but at the next court date, the Meade

County Attorney again requested an evaluation and stated that the state would not accept outpatient treatment. By the end of the day, Mr. Ammons was accepted at "The Brook" for inpatient treatment and was allowed to be furloughed to treatment there, but was required to return to custody after completion of treatment. Mr. Ammons claims to have "lost everything," including his housing and his disability payments, all because he could not post bond and be released. Ultimately, Mr. Ammons accepted an offer for twelve months of conditionally discharged time, and agreed to not reside in Meade County. He was released the day he pled guilty. According to Mr. Ammons, he signed the plea order "mainly because he did not want to be in jail any longer." (See Affidavit of Mr. Ammons in Exhibit 1).

Mr. Ammons situation is but one example of someone who is supposedly too dangerous to release prior to adjudication (when he is still presumed innocent), but can be released on non-monetary conditions the moment he admits guilt.

2. **Desmond Bellomy** was arrested on September 1, 2019 on charges of Receiving Stolen Property > \$10,000 for obtaining a Jeep Cherokee, Fleeing or Evading Police, Possession of a Controlled Substance (cocaine), and Criminal Mischief. He was also erroneously charged with being a felon in possession of a handgun, later dismissed as Mr. Bellomy has no prior felony conviction. Pretrial Services assessed Mr. Bellomy as a moderate risk of failure to appear in court and a moderate risk of committing new criminal activity. His bond was set at \$10,000 cash, although his Pretrial Services report recommended that he be released on his own recognizance.

Desmond Bellomy is incarcerated in Jessamine County Detention Center pending trial. He is 20 years old, unemployed, and could not possibly afford to post a \$10,000 bond.

Currently he has no suitable plea offer, and when he receives one he will likely be under great pressure to plea to a felony conviction in order to be released. Mr. Bellomy's jury trial in Jessamine Circuit Court is currently scheduled for February 24, 2020. Unless he makes bail beforehand, on that date, Mr. Bellomy will have already been incarcerated for almost six months.

3. **Robert Collier** was bound over from Mason District Court on charges of Criminal Abuse of a Child, First Degree on a \$50,000 cash bond for allegedly allowing his children to remain in unsanitary conditions without the ability to leave such conditions and without proper nourishment or supervision. He was arrested on November 27, 2019, and assessed as a moderate (2) risk of failing to appear, and a low (1) risk of committing new criminal activity. The recommendation of pretrial was to release him on own recognizance or on an unsecured bond. Following his preliminary hearing and a request by his public defender for a modification of bail, the District Court December 4, 2019 wrote in the court's calendar that bond "will remain the same over objection of DPA." Fifty-thousand dollars bail for Mr. Collier, who has been found "needy" under KRS Chapter 31, is oppressive, and can only be viewed as a bail set to detain. Clearly, however, a wealthy person or someone with liquid assets could post this bail. Mr. Collier's indigency prevents him from doing so.

4. **Robert Decker** was charged with various crimes in Todd County, the most serious of which were First Degree, Trafficking in a Controlled Substance, First Offense, and Possession of a Controlled Substance. (Todd Circuit Court, 18-CR-00012). He was classified as a low (1) risk to fail to appear and a low (3) risk to commit new criminal

activity. His bail was initially set at \$75,000, and eventually lowered to \$50,000 cash only. He ultimately pled to his offenses and is still incarcerated, awaiting his chances at parole.

Meanwhile, within a year of his indictment, more or less, there were others in other parts of the state charged with offenses, of which the primary charges were the same as Mr. Decker's: First Degree Trafficking in a Controlled Substance, 1st Offense, and First Degree Possession of a Controlled Substance. (These persons are not parties to this Petition, and their bonds are displayed below solely as a comparison to Mr. Decker's, who's case is listed last below, to show a small example of the varied nature of bails set for persons similarly charged.)

<u>Court</u>	<u>Case No.</u>	<u>Style</u>	<u>Bond</u>
Ballard District	18-F-00001	<i>Comm. v. Holt</i>	\$15,000 unsecured
McCracken Circuit	18-F-00063	<i>Comm. v. Gainey</i>	\$2,500 cash only
Madison District	17-F-00648	<i>Comm. v. Perrin</i>	\$15,000 cash only
Ohio Circuit	18-CR-00009	<i>Comm. v. Hardin</i>	Own recognizance
Nelson District	18-F-00035	<i>Comm. v. Fife</i>	\$5,000 surety
Todd Circuit	18-CR-00012	<i>Comm. v. Decker</i>	\$50,000 cash only

There are no standards or guidelines to explain the wide variance in these amounts, or to suggest that any of these amounts represent the least restrictive alternative to incarceration pretrial. A person charged in Ohio County is better off than the person charged in Todd County for no other reason than the judges in those counties prefer different bonds. Meanwhile, a person with wealth can make all of these bonds while a poor person may be able to make nothing more than the own-recognizance bond. These bails simply are not based upon "standards relevant to the purpose of assuring the presence of that defendant" required by *Stack*, which was recognized as binding upon Kentucky in *Abraham v. Commonwealth*, 565 S.W.2d 152 (Ky. App. 1977).

Mr. Decker's situation is but one example of someone who has a high bail, which by the amount set is manifestly excessive for someone who is appointed a public defender, and which varies greatly with other bails set for similarly situated persons charged in other counties.

5. **Brittney Houchin-Decker** was arrested on August 28, 2019 on charges of Possession of Controlled Substance, Wanton Endangerment, and Endangerment of a Child for being in a home with drugs and children (Edmonson District Court, 19-F-00065, Edmonson Circuit Court, 19-CR-00118). Three other co-defendants were also charged. Ms. Houchin-Decker was given bail credit and released on September 10, 2019. However, on September 30, 2019 she was indicted upon these charges, as well as an additional count of Endangering the Welfare of a Minor, two counts of Wanton Endangerment 1st degree, and 2 counts of Criminal Abuse 2nd degree. Notwithstanding the fact that she was out of jail and lawfully abiding by the terms of her bail, upon indictment the circuit judge issued a warrant with a \$25,000 cash bond. In this jurisdiction, it is a regular practice that indictments are given cash bonds even if the defendant is already out on a district court bond and complying with the terms of the bond. Ms. Houchin-Decker was arraigned on October 21, 2019, but her bond remained the same until November 18, 2019, when she was granted a surety bond. However, she could not arrange for her bond to be posted until December 17, 2019. Throughout this time, all her co-defendants remained out of custody. She is 25 years old with a previous felony diversion but no felony convictions. Her next court date is not until January 27, 2020.

For Ms. Houchin-Decker, her time in jail between September 10, 2019 and December 17, 2019 was owing only to the fact that she could not make bail. Had she been

a person with means, she could have posted \$25,000 cash; but, being a “needy” person as that term is used in KRS Chapter 31, the \$25,000 represented an amount intended to detain.

6. **Stanley Keith** is charged with operating on a suspended license and leaving the scene of an accident in Bullitt District Court, 19-T-05030. He was arrested on December 12, 2019, was classified as a moderate risk in both categories of failure-to-appear and new criminal activity, having missed only one court date ever, and none in the past two years. He is a Shepherdsville resident who has obligations of family support. The trial judge set an initial bond of \$1,000. On December 21, nine days later, the Court amended the bond to a \$1,000 surety bond, and set a court date of January 28, 2020. The surety bond was posted on December 21, 2019, nine days after initial arrest and incarceration pretrial. The nine days which Mr. Keith served has amounted to only one of two things: If it is determined that he is not guilty, then it amounted to nine days of freedom needlessly lost which cannot be given back. If it is determined by plea or trial that he is guilty, then it represented a prepayment on a finding of eventual guilt, which flies in the face of a presumption of innocence. The nine days represent an arbitrary amount of time incarcerated, as if he had been able to secure a surety earlier, it would have been less, if later, it would have been more.

7. **James Kleinhelter** was charged on December 2, 2019 with criminal mischief and burglary in Bullitt District Court. He is alleged to have stolen four trash bags full of food from a food trailer at Kart Country, a go-kart-themed amusement park in Shepherdsville. He is also alleged to have stolen one of the park’s go-karts and two batteries. Pretrial Services assessed Mr. Kleinhelter as having a low risk of failure to appear