IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In Re BETTIE WEBB

On

Habeas Corpus.

No. S247074

Appeal from the Fourth Appellate District, Division One, Case No. D072981
Superior Court of San Diego County, Case No. SCS293150
The Honorable Stephanie Sontag, Judge

OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED FOR REVIEW

Do trial courts possess inherent authority to impose reasonable[1] bail conditions related to public safety on felony defendants who are released on monetary bail?

STATEMENT OF THE CASE

On April 23, 2017, defendant and petitioner, Bettie Webb, visited an inmate at Donovan State Prison. (Exh. 8[2] [Preliminary Hearing Examination Transcript, CS293150] at pp. 5-6.) When questioned by officers, Webb informed them that she had contraband on her person and produced a bindle of heroin from her underwear. (Exh. 8 at p. 6.)

Webb was immediately arrested and booked into jail for transportation of a controlled substance for sale, a violation of Health and Safety Code section 11352, subdivision (a). She was released on bail after posting the scheduled bail amount of $50,000. (Exh. 2 at p. 3.)

On April 28, 2017, the San Diego County District Attorney's Office (hereinafter "Respondent") filed a felony complaint charging Webb with two counts. In count one, Webb was charged with knowingly bringing a controlled substance into a state prison (Pen. Code, § 4573) and in count two, Webb was charged with unauthorized possession of a controlled

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[1] This court has noted that reasonableness depends on "the relationship of the condition to the crime or crimes which defendant is charged and to the defendant's background, including his or her prior criminal conduct." (*In re York* (1995) 9 Cal.4th 1133, 1151, fn. 10.)

[2] The exhibit number corresponds to the numbered exhibits filed with the Court of Appeal at the time Respondent's Return to Petition for Writ of Habeas Corpus was filed on November 30, 2017. The exhibits are part of the record on appeal. The record on appeal was received by this court on February 20, 2018.

substance in a prison (Pen. Code, § 4573.6). (Exh. 1 [Complaint, CS293150].)

On May 1, 2017, the trial court arraigned Webb on the complaint and noted that she was present after posting a $50,000 bond. (Exh. 2 [Arraignment Transcript, CS293150] at p. 2.) Over her objection, the magistrate imposed a Fourth Amendment waiver as a condition of her bail release. (Exh. 2 at pp. 2-4.)

She petitioned for a writ of habeas corpus in the superior court challenging the search condition. (Exh. 6 [Petition for Writ of Habeas Corpus, HSC11619].) In her petition, she argued the trial court had neither statutory nor inherent authority to impose a bail condition on her once she was released on bail and, if the court had such authority, the search condition in her case violated her constitutional right to due process. (Exh. 6 at pp. 9-24.)

On July 31, 2017, a preliminary hearing was held before the Honorable Stephanie Sontag. Webb was bound over on both counts, and her custody status remained as previously set. (Exh. 8 at p. 11.)

On October 5, 2017, the superior court issued its order denying the petition for writ of habeas corpus. (Exh. 10 [Superior Court Order, HSC11619].) Webb then filed a petition for writ of habeas corpus in the Court of Appeal, raising the same challenges to the search condition. On January 31, 2018, in a published opinion, the majority granted Webb's petition for writ of habeas corpus. The court held that outside the statutory bail scheme set forth in the Penal Code, a trial court does not possess inherent authority to impose bail conditions once a felony defendant is released on bail. (*In re Webb* (2018) 20 Cal.App.5th 44, 51.) In a concurring opinion, Justice Patricia D. Benke, agreed with the result, but

concluded that consistent with then-existing case law, trial courts do have inherent authority to impose bail conditions in felony cases when a defendant is released on monetary bail. (*Id.* at p. 57.)

On February 20, 2018, Respondent filed a petition for review in this court.

On March 5, 2018, Webb pled guilty to count 1 and an amended count 3, a violation of Health and Safety Code section 11350 [possession of a controlled substance]. On April 16, 2018, the trial court placed Webb on probation for three years.[3]

On April 25, 2018, this court granted Respondent's petition for review.

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[3] Although the issue presented is now moot as to petitioner, as set forth in Respondent's petition for review, the People did not seek review in this case to determine whether "the bail condition imposed in this case was a proper exercise of the trial court's inherent authority." (Petn. for Review at p. 3.) Instead, Respondent sought review to resolve the general question "whether the trial court has inherent authority to impose reasonable conditions, related to public safety, when a felony defendant is released on bail." (Petn. for Review at p. 3.) Therefore, Respondent requests that this court exercise its discretion to address the issue presented because it presents a question of statewide general public concern, "in the area of supervision of the administration of justice." (*In re Walters* (1975) 15 Cal.3d 738, 744.) Further, the issue presented is subject to repetition and yet, evading review because of the relatively brief time between imposition of a bail condition and the resolution of a case. (*In re Robin M.* (1978) 21 Cal.3d 337, 341, fn. 6.)

ARGUMENT

TRIAL COURTS POSSESS INHERENT AUTHORITY TO IMPOSE REASONABLE BAIL CONDITIONS RELATED TO PUBLIC SAFETY ON FELONY DEFENDANTS RELEASED ON BAIL

A. Introduction

The California Constitution provides that a felony defendant shall be released pretrial on monetary bail, except in limited circumstances. (Cal. Const., art. I, § 12.) And, in fact, "the dominant form of release for felony bookings is bail." (Sonya Tofya et al., Pretrial Release in California (Public Policy Inst. Of Cal., May 2017), www.ppic.org/content/pubs/report/R_0517STR.pdf.) In setting bail, both the California Constitution and the Penal Code mandate that "[p]ublic safety and the safety of the victim shall be the primary considerations." (Cal. Const., art. I, § 28, subd. (f)(3); Pen. Code, § 1275.)

To protect the public as mandated by the California Constitution and Penal Code, trial courts exercising their jurisdiction to set bail in felony cases, must have not only the ability to set a monetary bail amount but also the inherent authority to impose reasonable bail conditions related to public safety. The recognition of such authority is consistent with the legislative intent behind the bail system: public safety is of paramount importance. And, is in accord with sound public policy.

The majority decision in this case, in failing to recognize the court's inherent authority to impose reasonable bail conditions related to public safety, draws an unjustifiable and rigid legal line. And, as noted in the concurring opinion in this case, it fails to recognize:

> [T]he practical necessity that in particular cases, in order to assure a defendant's appearance and protect the public from harm, a trial court has the power to impose conditions which restrain the

> behavior or provide monitoring of a defendant while criminal proceedings are pending-even where as here, the defendant has the ability to post cash bail.

(*In re Webb, supra*, 20 Cal.App.5th at p. 58 (conc. opn. of Benke, P.).)

Accordingly, Respondent respectfully requests that this court reverse the judgement of the Court of Appeal and find that trial courts possess inherent authority to impose reasonable bail conditions related to public safety on felony defendants released on bail.

B. The Inherent Authority of the Courts

Once a court has jurisdiction over a matter, it is beyond dispute that a court has inherent power which "extends to all matters reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to or not in conflict with valid existing law and constitutional provisions." (20 Am.Jur.2d (2018) Courts, § 36.) "These powers allow the court to take actions reasonably necessary to administer justice efficiently, fairly, and economically and are essential to the court's existence, dignity, and functions." (20 Am.Jur.2d (2018) Courts, § 36.)

In California, the inherent authority of the courts has been recognized by this court. In *In re Reno* (2012) 55 Cal.4th 428, this court noted: "[i]t is established that the inherent powers of the courts are derived from the Constitution (art. VI, § 1 [reserving judicial power to the courts] [citations], and are not confined by or dependent on statute [citations]." *(In re Reno, supra*, 55 Cal.4th at p. 522, quoting *Walker v. Superior Court* (1991) 53 Cal.3d 257, 267.) This court went on to explain:

> It is . . . well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them. In addition to their inherent equitable power derived from the historic power of equity courts, all courts have inherent supervisory or administrative powers

> which enable them to carry out their duties, and which exist apart from any statutory authority. It is beyond dispute that Courts have inherent power . . . to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council. That inherent power entitles trial courts to exercise reasonable control over all proceedings connected with pending litigation . . . in order to insure the orderly administration of justice. Courts are not powerless to formulate rules of procedure where justice demands it.

(*In re Reno*, *supra*, 55 Cal.4th at p. 522, internal quotations omitted.)

California Code of Civil Procedure section 187 further provides:

> When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, *all the means necessary to carry it into effect are also given*; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process of mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

(Civ. Proc. Code, § 187, italics added.)

Thus, in California when jurisdiction is conferred upon the courts by law, whether constitution or statute, they "have and should maintain vigorously all the inherent and implied powers necessary to properly and effectively function . . ." (*People v. Engram* (2010) 50 Cal.4th 1131, 1146.) "How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." (*Ibid.*)

"Courts have exercised inherent powers in 'situations in which the rights and powers of the parties have been established by substantive law or court order but workable means by which those rights may be enforced or powers implemented have not been granted by statute.' [Citation.]" (*People v. Superior Court* [*Morales*] (2017) 2 Cal.5th 523, 532.) Notably, the courts inherent powers are not limited to fashioning procedural rules. (*Ibid.*)

Townsel v. Superior Court (1999) 20 Cal.4th 1084 illustrates the foregoing principles. In *Townsel*, the superior court ordered sua sponte that defendant's appellate counsel was prohibited from contacting trial jurors without first obtaining the court's approval. (*Id.* at p. 1088.) When counsel asked the trial court for the legal basis in support of the order, the trial court was unable to cite any authority but stated it believed it was "only fair that jurors not be contacted unless there's some cause." (*Ibid.*)

On review, this court was presented with the issue of whether the trial court had inherent authority to issue the order since no statute authorized the order. (*Townsel v. Superior Court*, *supra*, 20 Cal.4th at p. 1087.) In holding that the trial court did have inherent authority to issue the order, this court first noted that "[i]n the last decade, the Legislature" had both enacted new statutes and amended the same statutes, to increasingly "protect the safety and privacy of jurors." (*Id.* at p. 1091.) This court also recognized that prior to the enactment of any affirmative statutory power, trial courts had "exercised their inherent powers to ensure jurors were protected" and that "[s]uch inherent power did not disappear as a result of the Legislature's judicial action." (*Ibid.*) "Rather, trial courts retain inherent power to protect both juror safety and juror privacy." (*Ibid.*) This court in holding that the trial court did have inherent authority to protect jurors also acknowledged that it had to balance "the equally weighty public policy that criminal defendants are entitled to jury verdicts untainted by prejudicial juror misconduct." (*Id.* at p. 1092.) Despite the competing interest, this court held the trial court "possessed the inherent judicial power to limit the parties' ability to contact jurors following the completion of the trial" and that the order was "fully consistent" with the legislative intent, protection of jurors, set forth in the newly enacted statutes. (*Id.* at pp. 1093-1094.)

In sum, the above authorities evidence that once a trial court has jurisdiction over a matter, the trial court also possesses inherent authority to issue any reasonable orders necessary to give effect to the jurisdiction conferred and that are consistent with the legislative intent.

C. Relevant Bail Law and the Overriding Legislative Intent: Public Safety is of Paramount Importance

Turning to the issue of bail, since 1849, the state of California has recognized with limited exceptions, a defendant's constitutional right to bail. (Former Cal. Const., art. I, § 7, as enacted in 1849; Cal. Const., art. I, § 12; *People v. Turner* (1974) 39 Cal.App.3d 682, 684 [right to bail was included in "California Constitution as adopted in 1849"].) Bail is commonly understood as "the money or security a person accused of a crime is required to provide to the court in order to be released from custody . . ." with "the purpose of bail [] to assure a defendant's attendance in court. (Pretrial Detention Reform, Recommendations to the Chief Justice, Pretrial Detention Reform Workgroup (2017) p. 9; *In re Underwood* (1973) 9 Cal.3d 345, 348.) Historically, bail was not a means to punish a defendant nor to protect the public. (*In re Underwood*, *supra*, 9 Cal.3d at p. 348.) In *In re Underwood*, this court held that "[t]he purpose of bail is to assure the defendant's attendance in court when his presence is required." (*Ibid.*) "Bail is not a means for punishing defendants [citation] nor for protecting the public safety." (*Ibid.*)

In 1982, pretrial release and detention expanded. That same year, California voters enacted Proposition 4. Proponents of Proposition 4 argued "[p]resent law does not allow judges in making bail decisions to consider public safety or the likelihood that one who is accused of a felony will commit violent acts while out on bail awaiting trial. Proposition 4 will change this law and provide judges with a necessary legal tool to protect

the public from repeat violent offenders." (See Official Voters Information Guide, Primary Elec. (Jun. 8, 1982) Proposition 4, Argument in Favor of Proposition 4, p. 18.) Ultimately, Proposition 4 amended section 12, article I of the constitution to permit courts "setting bail to consider factors other than the probability that the defendant would appear at trial." (*People v. Standish* (2006) 38 Cal.4th 858, 875.) In addition, Proposition 4 broadened the list of felons that could be denied bail. (*Id.* at p. 877.) "In particular, the measure authorized courts to consider the seriousness of the offense and the previous criminal record of the accused, and the proponents of the measure made it clear they intended that *public safety* should be a consideration in bail decisions." (*Ibid.*, italics added.) Thus, as amended in 1982 and to the present, section 12 states in part:

> In fixing the amount of bail, the court shall take into consideration the seriousness of the offense, the previous criminal records of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

(Cal. Const., art. I, § 12.)

Also on the ballot in 1982, was Proposition 8. Proposition 8, added section 28, article I to the California Constitution, known as the Victim's Bill of rights. (See Ballot Pamp., Primary Elec. (June 8, 1982) text of Prop. 8, p. 33.) The bail-related provisions of Proposition 8 included:

> In setting, reducing or denying bail, the judge or magistrate shall take into consideration the *protection of the public*, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. *Public safety shall be the primary consideration.*

(Former Cal. Const., art. I, § 28, subd. (e), italics added.) When both propositions 4 and 8 passed in 1982, this court held that that they were in conflict and because Proposition 4 received more votes it prevailed. (*People v. Standish*, *supra*, 38 Cal.4th at pp. 877-878.)

As a result, Proposition 8 did not take effect. (*Ibid.*)

Thereafter, in 2008, California voters amended and reenacted section 28's bail provisions in Proposition 9, also known as Marsy's Law. (Ballot Pamp., Gen. Elec. (Nov. 4, 2008) text of Prop. 9, p. 128.) Two subdivisions of article 1, section 28 of the constitution are bail-related. Specifically, subdivision (b) sets forth a victim's right to have their safety and that of their family "considered *in fixing the amount of bail and release conditions* for the defendant." (Cal. Const., art. I, § 28, subd. (b)(3), italics added.) And subdivision (f) provides:

> In setting, reducing or denying bail, the judge or magistrate shall take into consideration the *protection of the public*, the *safety of the victim*, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing on the case. *Public safety and the safety of the victim shall be the primary considerations.*

(Cal. Const., art. I, § 28, subd. (f)(3), italics added.)

In addition to the constitutional framework set forth above, the California Penal Code in title 10, contains a number of statutory provisions that govern the setting of bail. As was the case with the constitution, prior to its amendment in 1987, the Penal Code provided that "[t]he only permissible purpose of such bail, whether before or after conviction, is 'practical assurance that defendant will attend upon the court when his presence is required." (*Ex parte Newbern* (1961) 55 Cal.2d 500, 503.) To that end, the magistrate setting bail was entitled to consider "the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his appearing at the trial or hearing on the case." (*Ibid.*)

However, in 1987 the Legislature amended Penal Code section 1275 to its present form which now reads:

> In setting, reducing, or denying bail, the judge or magistrate shall take into consideration the *protection of the public*, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing on the case. *The public safety shall be the primary consideration.*

(Pen. Code, § 1275, subd. (a)(1), italics added.) Hence, "public safety, not the certainty of appearance, is now the primary factor for the court to consider in the setting of bail." (*In re McSherry* (2003) 112 Cal.App.4th 856, 861 (*McSherry*).) In addition, a number of other statutes make it express "that the safety of the public is of paramount importance." (*Id.* at p. 862.) For example, Penal Code section 1269c provides in part that if a "peace officer has reasonable cause to believe that the amount of bail set forth in the schedule of bail for that offense is insufficient . . . *to ensure the protection of a victim, or a family member* of a victim" he or she may request an order setting higher bail. (Pen. Code, § 1269c, italics added.) Penal Code section 1270 provides that if a court determines "that an own recognizance release will compromise public safety . . . the court shall then set bail and specify the conditions, if any, whereunder the defendant shall be released." That statute also reiterates "*[p]ublic safety shall be the primary consideration.*" (Pen. Code, § 1270, subd. (a), italics added.) And, Penal Code section 1270.1, which applies to those arrested for serious and violent felonies, requires courts to consider "the danger that may be posed to other persons if the detained person is released" whether on bail or on their own recognizance. (Pen. Code, § 1270.1, subd. (c).)

Ultimately, the above cited constitutional provisions and statutes evidence that in California once a judge determines a defendant is bailable, its number one priority in setting bail must be the protection of the public.

D. In Order to Give Effect to Legislative Intent Related to Bail: Protection of the Public is of Paramount Importance, Trial Courts Must Possess Inherent Authority to Impose Reasonable Bail Conditions Related to Public Safety on Felony Defendants Released on Bail

Applying the foregoing principles, "jurisdiction is . . . conferred" on the trial courts to set bail or deny bail (in limited circumstances) by section 12, article 1 of the California Constitution. In addition, both the California Constitution and the Penal Code mandate that the court in "setting, reducing or denying bail" make public safety the "primary consideration." (Cal. Const., art. I, § 28, subd. (f)(3); Pen. Code, § 1275, subd. (a)(1).) Additionally, section 28 of the California Constitution provides that crime victims possess the right to have their safety "and that of their family considered in fixing the amount of bail and release conditions for the defendant." (Cal. Const., art. I, § 28, subd. (b)(3).)

However, simply setting a monetary bail amount in some cases may not be enough to protect the public. Trial courts are tasked with balancing the constitutional right to be released on bail, while at the same time protecting the public, the victim, and the victim's family. In order to serve those competing interests, they must have the inherent authority to impose reasonable conditions related to public safety on felony defendants released on bail.

As set forth in the concurring opinion by Justice Benke in this case, in order to "protect the public from harm" trial courts must possess inherent authority to impose bail conditions "which restrain the behavior or provide monitoring of a defendant while criminal proceedings are pending -- even where as here, the defendant has the ability to post cash bail." (*In re Webb*, *supra*, 20 Cal.App.5th at p. 58 (conc. opn. of Benke, P.).)

Recognition of that inherent authority would also be fully consistent with existing law. Bail conditions are referenced once in the constitution and twice in the Penal Code. First, as set forth above, the voters expressly recognized a right to impose release conditions when they enacted section 28 of the California Constitution. (Cal. Const., art. I, § 28, subd. (b)(3).) That section sets forth a victim's right to have their safety "and the victim's family considered *in fixing the amount of bail and release conditions* for the defendant." (Cal. Const., art. I, § 28, subd. (b)(3), italics added.)

Turning to the Penal Code, the two statutes that permit imposition of bail conditions are Penal Code section 1270 and 1269c. Penal Code section 1270 [release on non-capital offense; procedure], states that as to misdemeanor defendants, if a trial court determines they should not be released on their own recognizance because they pose a public safety risk or because it will not assure the presence of the defendant, "the court shall then *set bail and specify the conditions*, if any, whereunder the defendant shall be released." (Pen. Code, § 1270, subd. (a), italics added.)

Penal Code section 1269c [increase or reduction of bail; application by peace officer or defendant; determination by magistrate] provides for imposition of bail conditions in limited situations. (Pen. Code, § 1269c.) That statute permits a defendant who is arrested without a warrant for a bailable offense, prior to arraignment, to apply for "bail lower than that provided in the schedule or on his own recognizance," or for a peace officer to apply for an increase in bail prior to arraignment. (Pen. Code, § 1269c.) The statute provides that when "that application" is made, the magistrate or commissioner:

> [I]s authorized to set bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, *and to set bail on the terms and conditions* that he or she,

> in his or her discretion, deems appropriate, or he or she may authorize the defendant's release on his or her own recognizance.

(Pen. Code, § 1269c, italics added.)

And, before the opinion in this case, in *People v. McSherry* the court recognized that when matters did not fall squarely within the above Penal Code provisions, that did not mean the courts were powerless to impose reasonable bail conditions related to public safety. Rather, the court held that in order to give effect to the "Legislature's overriding theme; the safety of the public is of paramount importance . . ." "it would defeat the Legislature's purpose to hold that a person . . . was absolutely entitled to remain free on bail without any restrictions or conditions . . ." (*McSherry*, *supra*, 112 Cal.App.4th at pp. 862-863.)

In the end, because trial courts are conferred jurisdiction to set bail and they are mandated to protect the public in exercising that jurisdiction, this court should expressly recognize their inherent authority to impose reasonable bail conditions related to public safety. The imposition of reasonable bail conditions related to public safety gives the trial courts an additional means to protect the public and is fully consistent with existing law. Further, it best serves the competing interests of a defendant's constitutional right to bail and the government's interest in protecting the public.

E. Prior to the Opinion in this Case the Inherent Authority of Trial Courts to Impose Reasonable Bail Conditions Related to Public Safety Had Been Recognized

Prior to the decision in this case, Courts of Appeal had recognized a trial court's inherent authority to impose reasonable bail conditions related to public safety. In reaching that conclusion, the courts had first recognized that within the statutory scheme related to bail, bail conditions were only statutorily authorized under two statutes. But, importantly, when a matter

did not fall squarely within the above two narrow circumstances, the Courts of Appeal, prior to this case, generally recognized that trial courts had inherent authority to impose reasonable bail conditions related to public safety. (See *McSherry*, *supra*, 112 Cal.App.4th at p. 863; *Gray v. Superior Court* (2005) 125 Cal.App.4th 629, 641-642 (*Gray*).)

The first case to hold that trial courts had inherent authority to impose bail conditions outside the statutory framework was *McSherry*. Both rehearing and review were denied in that case. In *McSherry*, the defendant was convicted of three misdemeanor counts of loitering about schools and sentenced to 18 months in county jail. (*McSherry*, *supra*, 112 Cal.App.4th at p. 859.) After the sentence was imposed, the defendant requested bail pending appeal of his matter. (*Ibid.*) The court granted the defendant's request but ordered bail conditions out of concern for public safety. The bail conditions were: 1) the defendant was not to drive any motor vehicle; 2) stay at least 500 yards away from children; and 3) stay at least 500 yards away from any school, park, playground, daycare center or swimming pool in which children were present. (*Ibid.*) Subsequently, the defendant filed a petition for writ of habeas corpus in the Court of Appeal arguing that the trial court did not have authority to impose the bail conditions on the granting of his bail because Penal Code section 1270, which permitted the court to release misdemeanor defendants on bail and impose bail conditions, only related to the release on bail before conviction, not post-conviction. (*Id.* at pp. 861-862.)

On review, the Second District Appellate Court, Division Seven disagreed with the defendant. The reviewing court noted Penal Code section 1270 allows a court to set bail and specify conditions as to a defendant when they are simply charged with a misdemeanor. (*In re McSherry*, *supra*, 112 Cal.App.4th at p. 860.) The court recognized that the

defendant did not fall squarely within that statute because, at the time the conditions were imposed, he had been convicted and sentenced. The court then noted:

> To accept petitioner's contentions would mean that a court has the power to impose bail conditions on a person who has merely been charged with a crime and before the nature of his involvement has been determined, but once the defendant has been found guilty and found to be deserving of the maximum sentence, then the court must release the defendant as a matter of right and is powerless to impose any conditions on his or her bail.
>
> Such an interpretation is nonsensical. Petitioner's arguments also lead to the conclusion that even though a court can set bail conditions for an unconvicted misdemeanant, it could not do so for a person charged with a violent or serious felony because "conditions" are not mentioned in section 1270.1. Likewise, if a defendant has been convicted of a felony, under petitioner's view, even though the right is [sic] bail is discretionary, the court is powerless to impose bail conditions . . . This cannot be what the Legislature intended.

(*Id.* at pp. 861-862.)

The court then set its focus on determining the legislative intent behind the bail statutes. (*In re McSherry*, *supra*, 112 Cal.App.4th at p. 862.) In doing so, the court first noted the California Constitution "mandates with certain exceptions, that persons involved in the criminal process have the right to have reasonable bail." (*Ibid.*) The court continued, "Within the bail statutory framework is the Legislature's overriding theme; the safety of the public is of paramount importance. [Citations.]" (*Id.* at p. 862.) The court concluded, "Given the circumstances of the Legislation and the overall plan, it would defeat the Legislature's purpose to hold that a person . . . was absolutely entitled to remain free on bail without any restrictions or conditions . . ." (*Id.* at p. 863.) "Accordingly, we hold that under section 1272, a trial court has the right to place restrictions on the right to bail of a convicted misdemeanant as long as those conditions relate to the safety of

the public."[4] (*Id.* at p. 863.) In other words, the *McSherry* court held the trial court had inherent authority to impose bail conditions on the defendant's release despite the fact that the statutory bail framework did not expressly permit a trial court to impose bail conditions on such a defendant post-conviction.

Following *McSherry*, the First District Appellate Court, Division Three, was presented with the question of whether the trial court could prohibit a defendant, released on monetary bail for felony offenses, from practicing medicine as a condition of bail. (*Gray*, *supra*, 125 Cal.App.4th at p. 635.) The court noted like in *McSherry*, that there was no statute authorizing the trial court to impose the bail condition. (*Id.* at p. 641.) However, relying on *McSherry* the court stated "there is a general understanding that the trial court possesses inherent authority to impose conditions associated with release on bail." (*Id.* at p. 642.) The court continued "[t]here appears to be little dispute that a trial court may impose conditions associated with release on bail; the question is whether and to what extent the court's authority is limited." (*Id.* at p. 642.) The court then relying on *McSherry* concluded that "bail conditions intended for public protection must be reasonable." (*Ibid.*) Next, the court turned to the facts presented in its case and held that while the bail condition in that case was "not per se unreasonable," under the circumstances, imposition of the

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[4]Penal Code section 1272 provides in relevant part: "After conviction of an offense not punishable with death, a defendant who has made application for probation or who has appealed may be admitted to bail: ¶ . . . ¶ 2. As a matter of right, before judgment is pronounced pending application for probation in cases of misdemeanors, or when the appeal is from a judgment imposing imprisonment in cases of misdemeanors." (Pen. Code, § 1272, subd. (2).) The statute makes no reference to bail conditions.