

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAR 13 2008
MICHAEL S. RICHIE
CLERK

JERMAINE DARNELL NEUGENT,)
)
Petitioner,)
)
-vs-)
)
THE HONORABLE TWYLA)
MASON-GRAY, JUDGE,)
DISTRICT COURT OF OKLAHOMA)
COUNTY,)
)
Respondent.)

No. HB-2008-177

ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner filed a petition for writ of habeas corpus in this Court challenging an order of the District Court of Oklahoma County granting the State's motion for detention without bond in Case No. CF-2007-715. In that case, Petitioner is charged with the offenses of Count 4 - Possession of a Controlled Dangerous Substance (Marijuana), AFCF; Count 6 - Possession of a Controlled Dangerous Substance (Cocaine Base) With Intent to Distribute, AFCF; and Count 7 - Possession of a Firearm, AFCF. Bond was originally set in the amount of \$20,000 and was posted by Petitioner.

On April 5, 2007, Petitioner failed to appear for preliminary hearing conference. A warrant was issued for Petitioner's arrest, his original bond was ordered forfeited, and bond was reset to \$40,000. In December of 2007, Petitioner was arrested and returned to the custody of the Oklahoma County

Sheriff. On December 14, 2007, Petitioner was arraigned before the Honorable Russell D. Hall, Special Judge, and bond was set in the sum of \$40,000. (O.R. 33). On January 7, 2008, bond was posted for Petitioner. (O.R. 36).

On February 4, 2008, the State filed a motion for detention of Petitioner without bond. On February 5, 2008, a hearing on the State's motion was conducted before the Respondent, the Honorable Twyla Mason Gray, District Judge, pursuant to Okla. Const. Art. II, § 8, and *Brill v. Gurich*, 1998 OK CR 49, 965 P.2d 404. At the conclusion of the evidence and arguments, Judge Gray granted the State's motion for detention of Petitioner without bond.

Petitioner filed this proceeding to challenge Judge Gray's order granting the State's motion for detention of Petitioner without bond. Petitioner's first proposition contends Judge Gray abused her discretion by ignoring the procedural requirements of *Brill, supra*. Petitioner claims (a) the *Brill* motion and hearing were not timely; (b) Judge Gray denied Petitioner the right to cross-examine witnesses; (c) Judge Gray denied Petitioner the right to call witnesses; and (d) Judge Gray erroneously assigned Petitioner the burden to produce evidence. Petitioner's second proposition contends Judge Gray abused her discretion in granting the State's motion because the State offered no evidence to support the allegations in its motion. Petitioner asks this Court to issue a writ of habeas corpus to release him from confinement as a result of Judge Gray's order.

Before addressing this matter, this Court ordered Judge Gray, or a designated representative, to file a response in this matter. *Neugent v. Gray*,

No. HB-2008-177 (Okl.Cr. March 4, 2008). This Court directed that the response address Petitioner's arguments, but particularly the claim that the motion was not timely filed in that it should have been filed prior to Petitioner's December 14, 2007, arraignment after his return to custody. *Id.* This Court also directed that the response address whether the December 14, 2007, hearing was reopened by proceedings on February 5, 2008, and whether information existed that was not known to the State at the time of the December 14, 2007, hearing pursuant to *Brill*, 1998 OK CR 49 at ¶13, 965 P.2d at 407-08. *Id.* The time for filing the response has expired. *Id.* No response has been filed by Judge Gray, or a designated representative.


Before any order denying bond is entered, a hearing shall be held immediately following the person's first appearance before the judicial officer. *Brill*, 1998 OK CR 49 at ¶13, 965 P.2d at 407-08. In Petitioner's first appearance before a judicial officer after his arrest and return to the custody of the Oklahoma County Sheriff in December of 2007, Petitioner was arraigned before Judge Hall. The State did not move for detention of Petitioner without bond prior to that first appearance, and bond was set in the sum of \$40,000. The hearing on bond may be reopened at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing. *Brill, supra.* Neither the State's motion for detention without bond, nor Judge Gray's order detaining Petitioner without bond, nor the transcript of proceedings on the motion, contain any information that was not known to the State at the time of Petitioner's first appearance before Judge Hall.

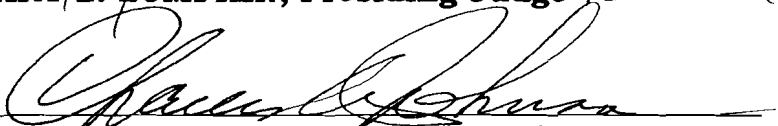
Brill, supra. Thus the procedural requirements were not met before the order denying bond was entered. *Brill, supra.*

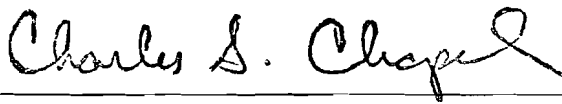
Therefore, this Court finds the petition for writ of habeas corpus should be, and is thereby, **GRANTED**. The District Court is directed to reinstate Petitioner's bond in the amount of \$40,000.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 19th day of March, 2008.


GARY L. LUMPKIN, Presiding Judge *Concur in result based on failure to file response*


CHARLES A. JOHNSON, Vice Presiding Judge

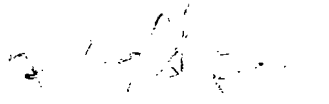

CHARLES S. CHAPEL, Judge

NOT PARTICIPATING


ARLENE JOHNSON, Judge

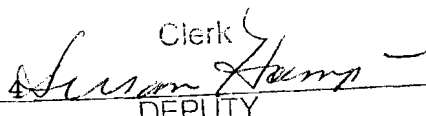
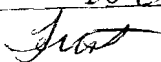

DAVID B. LEWIS, Judge

ATTEST:



OB Clerk I, _____, Clerk of the Appellate Courts of the State of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct copy of the original filed in said Court in Cause No. _____ and case, as

In _____ day of _____ 19th day of March 2008.

By  Clerk
 DEPUTY