

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re BETTIE WEBB

No. S247074

On

Habeas Corpus.

SUPREME COURT
FILED

OCT 11 2018

Jorge Navarrete Clerk

Deputy

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



PETITIONER'S SUPPLEMENTAL BRIEF
RE: SENATE BILL NO. 10 (2017-2018 REG. SESS.)

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INTRODUCTION

The majority of the Court of Appeal in this case, in a published opinion, 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 on a felony defendant who has been released from custody after posting the scheduled amount of bail. (*In re Webb* (2018) 20 Cal.App.5th 44, 51-52.) Respondent petitioned for review asking this court to address the issue: Do trial courts possess inherent authority to impose reasonable¹ bail conditions related to public safety on felony defendants who are released on monetary bail?

While this case was pending, the Governor approved legislation, Senate Bill number 10 (SB10), which eliminates California's current monetary bail system. The new risk-based pretrial system, which will replace the current monetary bail system, is set to commence at the earliest on October 1, 2019. If the new risk-based pretrial system goes into effect, defendants will no longer be released on monetary bail, in fact the court is prohibited "from imposing a financial condition" or requiring a defendant "to pay for any nonmonetary condition." Thus, if the new risk-based pretrial system goes into effect the issue presented by respondent in this case will be moot because defendants will no longer be released on monetary bail.

However, despite the approval of SB10, because of the delay in its application and the possibility that it may be rejected by the electorate by way of referendum, defendants will continue to be released on monetary

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.)

bail. Because the monetary bail system will continue to be in place until at least October 2019, the issue presented in this case must still be resolved. As further detailed in respondent's opening brief, this court should hold that trial courts possess inherent authority to impose reasonable bail conditions related to public safety on felony defendants released on monetary bail.

ISSUE PRESENTED

On April 25, 2018, this court granted respondent's petition for review, which presented the following issue for review:

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

On September 12, 2018, this court ordered supplemental briefing addressing the following question:

What effect, if any, does Senate Bill No. 10 (2017-2018 Reg. Sess.) have on the resolution of the issues presented by this case?

DISCUSSION

I.

IF THE RISK-BASED PRETRIAL SYSTEM SET FORTH IN SB10 COMMENCES AND REPLACES THE CURRENT MONETARY BAIL SYSTEM, IT MOOTS THE ISSUE PRESENTED IN THIS CASE; BUT THE ISSUE PRESENTED STILL NEEDS RESOLUTION WHILE MONETARY BAIL IS THE LAW

A. SB10

On August 28, 2018, the Governor signed SB10. The bill is titled, "Pretrial release or detention: pretrial services." SB10 eliminates California's current monetary bail system and replaces it with a risk-based pretrial system, commencing October 1, 2019. (Pen. Code, § 1320.6.)

Accordingly, the current statutory law related to bail set forth in title 10, chapter 1 of the Penal Code remains the law "until October 1, 2019, and as of that date is repealed." (Pen. Code, § 1320.6.) At the same time, SB10

has been approved, albeit the risk-based pretrial system will not commence until October 1, 2019.

Under the new pretrial system, criminal defendants charged with misdemeanors, with certain exceptions, will be booked and released. (Pen. Code, § 1320.8.) Defendants charged with felonies will be assessed using a “validated risk assessment tool.” Those defendants who are assessed as low or medium risk², will be released on their own recognizance or supervised recognizance prior to arraignment, with the least restrictive *nonmonetary* conditions that will reasonably assure public safety and the defendant’s return to court. (Legis. Counsel’s Dig., Sen. Bill No. 10 (2017-2018 Reg. Sess.) Stats. 2018, pp. 1-2.) Felony defendants classified as high risk may be detained. (Pen. Code, § 1320.13.) And, under the new system the court is prohibited “from imposing a financial condition” or requiring a defendant “to pay for any nonmonetary condition.” (Legis. Counsel’s Dig., Sen. Bill No. 10 (2017-2018 Reg. Sess.) Stats. 2018; Pen. Code, § 1320.13, subd. (e)(2).)

B. The Future of SB10 Remains Unclear

Although the Legislature approved and on August 28, 2018, the Governor signed SB10, the risk-based pretrial system is not set to commence until October 1, 2019.

On August 28, 2018, the same day the Governor signed SB10, bail bond companies, through counsel, submitted a proposed statewide referendum of SB10. The bond companies have until November 26, 2018, to collect 365,880 valid signatures of registered voters to place the referendum on the November 2020 ballot. (Egelko, *Bail Bond Companies Gathering Signatures for Referendum to Keep Them in Business* (Sept. 11,

² Penal Code section 1320.7 enacted as part of SB10 defines low and medium risk.

2018) San Francisco Chronicle <https://sfchronicle.com/new/article/Bail-bond-companies-seek-to-block-new-law-that-13221653.php?utm_campaign=email-premium&utm_source=CMS%20Sharing%20Button&utm_medium=social> (as of Oct. 1, 2018).)

If enough signatures are gathered and the referendum is placed on the November 2020 ballot, the risk-based pretrial system will not commence as anticipated in October 2019. Instead, SB10 would be held in abeyance pending the outcome of the statewide vote in November 2020 and the current monetary bail system would remain the law. (Cal. Const., art. II, § 10, subd. (a); *Yesson v. San Francisco Municipal Transportation Agency* (2014) 224 Cal.App.4th 108, 116 [“the effective date of the ordinance shall be suspended”].)

It would then be up to the electorate to approve or reject the new risk-based pretrial system in November 2020. If voters approve the risk-based system it would then be implemented, again, after the vote in November 2020. (Cal. Const., art. II, § 10, subd. (a) [a referendum approved by a majority of votes cast thereon takes effect on the fifth day after the Secretary of State files the statement of the vote for the election at which the measure is voted on, but the measure may provide that it becomes operative after its effective date].) If the voters reject the risk-based pretrial system in November 2020, California’s current monetary bail system would continue to remain in effect. Thus, there is still need for this court to decide the issue presented in this case.

C. If the Risk-Based Pretrial System Set Forth in SB10 Commences and Replaces the Current Monetary Bail System, the Issue of Whether Trial Courts Possess Inherent Authority to Impose Reasonable Bail Conditions Related to Public Safety on Felony Defendants Who Are Released on Monetary Bail Is Mooted

If the risk-based pretrial system set forth in SB10 commences in October 2019 or later, the current monetary bail system will be eliminated. Trial courts will be prohibited from setting monetary bail and from imposing any financial condition on a defendant to obtain pretrial release. (Legis. Counsel's Dig., Sen. Bill No. 10 (2017-2018 Reg. Sess.) Stats. 2018, pp. 1-2.) Thus, the issue presented in this case: Do trial courts possess inherent authority to impose reasonable bail conditions related to public safety on felony defendants who are released on *monetary bail*, will be moot because the court will no longer be authorized to set monetary bail, nor may it require payment for any nonmonetary condition of release. (See Legis. Counsel's Dig., Sen. Bill No. 10 (2017-2018 Reg. Sess.) Stats. 2018, pp. 1-2; Pen. Code, § 1320.13, subd. (e)(2).)

However, as set forth above, the earliest the new risk-based pretrial system would commence is in October 2019. From now until the new system commences, if it ever commences, the issue presented must still be resolved. And, as more fully detailed in respondent's opening brief, this court should conclude that trial courts possess inherent authority to impose reasonable bail conditions related to public safety on felony defendants released on monetary bail.

CONCLUSION

If the new risk-based pretrial system commences, the issue presented in this case becomes moot because the monetary bail system will be eliminated. However, because implementation of the new system is not set to commence until October 2019, the issue presented in this case must still

be resolved because until the new system commences defendants will continue to be released on monetary bail. Whether or not a reasonable condition related to public safety may be imposed on a felony defendant released on monetary bail is an issue subject to repetition and an issue of statewide general public concern, "in the area of supervision of the administration of justice." It should be resolved on the merits.

Dated: October 10, 2018 Respectfully submitted,

SUMMER STEPHAN

District Attorney

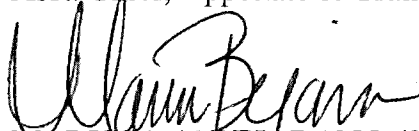
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CERTIFICATE OF WORD COUNT

I certify that this PETITIONER'S SUPPLEMENTAL BRIEF RE:
SENATE BILL NO. 10 (2017-2018 REG. SESS.), including footnotes, and
excluding tables and this certificate, contains 1,483 words according to the
computer program used to prepare it.



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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In Re BETTIE WEBB On Habeas Corpus.	For Court Use Only
	Supreme Court No.: S247074 Court of Appeal No.: D072981 Superior Court No.: SCS293150

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the County of San Diego, over eighteen years of age and not a party to the within action. My business address is 330 West Broadway, Suite 860, San Diego, CA 92101.

On October 10, 2018, a member of our office served a copy of the within **PETITIONER'S SUPPLEMENTAL BRIEF RE: SENATE BILL NO. 10 (2017-2018 REG. SESS.)** to the interested parties in the within action by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, in the United States Mail, addressed as follows:

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I also served the following parties electronically via www.truefiling.com:

COURT OF APPEAL, FOURTH DISTRICT, DIVISION ONE

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 10, 2018 at 330 West Broadway, San Diego, CA 92101.



Jerri D. Carter