

**FILED**  
Superior Court of California  
County of Los Angeles

**JAN 24 2024**

David W. Slayton, Executive Officer/Clerk of Court  
By: R. Saiki, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA, ) Case No.: BA487932  
v. )  
DANIEL PETER MASTERSON, ) ORDER RE: DEFENDANT'S MOTION  
Defendant. ) FOR BAIL ON APPEAL AND REQUEST  
TO SEAL

**I.**

**SUMMARY OF PROCEEDINGS AND ORDER**

The Court has read and considered both defendant Daniel Peter Masterson's (defendant) Motion for Bail on Appeal and Application for Permission to File Unredacted Motion for Bail on Appeal Under Seal filed on January 18, 2024; Defendant's Declarations in Support of Motion for Bail on Appeal filed on January 22, 2024; and the People's Opposition to Defendant's Motion for Bail on Appeal filed on January 22, 2024. The Court has also read and considered the record from both jury trials (the first trial and second retrial), the record and arguments from previous motions, and the records and files in the above-captioned case.

In his Motion for Bail on Appeal pursuant to Penal Code Section 1272.1, defendant asserts that he has strong ties to the community, does not pose a risk of danger to the community,

1 has been crime free since 2003, and is likely to be meritorious on his appeal by raising new or  
2 stronger arguments regarding the statute of limitations not previously made. Pursuant to Penal  
3 Code Section 1476, defendant also argues that he is entitled to bail pending a habeas corpus  
4 petition not yet filed citing witness interviews from 2004 which were known to the parties and  
5 which were not presented to either jury but which defendant contends should have been. Finally,  
6 defendant requests to seal the identities of the witnesses and the substance of their interviews  
7 citing undue media attention to the victims and the witnesses.

8 To support all of these requests, defendant submits numerous character letters written on  
9 defendant's behalf and the witness interviews from 2004 of Jenni Weinman, Paige Dorian, Luke  
10 Watson, and Brie Schaeffer. The substance of these interviews was known to both parties prior  
11 to both jury trials. Neither party called any of these witnesses to testify thus the substance of the  
12 interviews was not evidence at either trial. In addition, the defendant submits a lengthy  
13 substantive legal argument regarding the statute of limitations and the application of the one  
14 strike law not previously made during the three prior court hearings on this specific matter.

15 First, defendant has failed to address or explain the reason for delay in filing this request  
16 for bail on appeal. Second, defendant has failed to raise or address specific facts relevant to this  
17 Court's specific and narrowed inquiry regarding defendant's suitability for bail on appeal. Third,  
18 defendant has failed to file a petition for writ of habeas corpus and has failed to show how this  
19 Court would have jurisdiction over a concurrent petition for habeas corpus while the above-  
20 captioned case is pending appeal. Fourth, defendant is now attempting to place before this Court  
21 new substantive legal arguments not previously made and evidence not previously submitted to  
22 the jury in order to augment the trial record for purposes of appellate review. Neither new legal  
23 arguments nor items of evidence are appropriate considerations for the specific criteria listed in  
24 Penal Code Section 1272.1. Thus, the Court considers defendant's attempt to bring these matters  
25 before the trial court as either a motion for reconsideration of its denial of defendant's Motion to  
26 Modify the Verdict and for Dismissal or alternatively, as a motion to augment and supplement  
27 the trial record.

28 Accordingly, and for the reasons set forth below, the Court rules as follows:

- 1) Defendant's Motion to Seal Unredacted Motion for Bail on Appeal is DENIED;
- 2) Defendant's Motion for Bail on Appeal is DENIED as untimely and on its merits;
- 3) Defendant's Motion for Bail Pending Petition for Writ of Habeas Corpus is DISMISSED;
- 4) Defendant's Motion for Reconsideration of Denial of Motion to Modify the Verdict and for Dismissal is DENIED;
- 5) Defendant's Motion to Augment and Supplement the Trial Record is DENIED;

The Court further orders stricken for court consideration from defendant's Motion for Bail on Appeal the following:

- 6) Pg. 9:16 – pg. 21:20 (Statute of Limitations substantive legal argument)
- 7) Pg. 22:11 – pg. 25:18 (Summary of witness interviews of Jenni Weinman, Paige Dorian, Luke Watson, and Brie Schaeffer)
- 8) Pgs. 38 – 66 (Exhibits consisting of witness interviews listed above)

The Court also orders stricken for court consideration from People's Opposition to Defendant's Motion for Bail on Appeal the following:

- 9) Pg. 8:25 – pg. 11:19 (Statute of Limitations substantive legal argument)

## II.

### PROCEDURAL HISTORY

In 2001 and 2003, as determined by a jury, the defendant committed two counts of forcible rape in violation of Penal Code Section 261(a)(2) against Jane Doe 1 (Jen B.) and Jane Doe 2 (N. Trout). The allegations related to Jane Doe 1 were reported to and were first investigated by the Los Angeles Police Department (LAPD) in 2004.

In 2016, Jen B., N. Trout, and a third alleged rape victim, Jane Doe 3 (Chrissie B.) reported to LAPD, the incidents of forcible rape committed by defendant. The Jane Does have alleged that they and their families have been subject to ongoing and repeated occurrences of harassment, stalking and other injury in retaliation for reporting the rapes to LAPD. On August 22, 2019, in Los Angeles Superior Court Civil Case Number 19STCV29458, the Jane Does in the instant case and other individuals filed a civil complaint against the following defendants:

1 Church of Scientology Celebrity Centre International; Church of Scientology International;  
2 Religious Technology Center; Daniel Masterson (the defendant here); and David Miscavige.  
3 The civil case was placed on hold while the criminal case proceeded. Now that this criminal  
4 case has concluded, the civil case is proceeding and is currently being litigated. The plaintiffs  
5 are seeking, among other things, an unspecified monetary damages.

6 On June 16, 2020, a complaint was filed against defendant charging him with three  
7 counts of forcible rape in violation of Penal Code Section 261(a)(2) and the multiple victims  
8 enhancement in violation of Penal Code Section 667.61(c). These three counts occurred between  
9 2001 and 2003. These three charges have remained the same throughout the pendency of this  
10 matter. On the same date as the filing of the complaint, Judge Shelly Torrealba issued an arrest  
11 warrant for defendant and set bail in the amount of \$3,300,000, an amount deviated upward from  
12 the recommended bail for the above-listed charges as listed in the recommended bail schedule.

13 On October 19, 2020, Judge Eleanor Hunter considered the defendant's Demurrer for  
14 Prosecution Barred by Statute of Limitations filed on September 18, 2020, People's Opposition  
15 to defendant's Demurrer filed on October 1, 2020, defendant's Reply to Opposition filed on  
16 October 7, 2020, and People's Sur-Reply filed on October 15, 2020, as well as further argument  
17 by counsel. Judge Hunter denied defendant's Demurrer.

18 On November 2, 2020, defendant filed a Petition for Writ of Mandate or Prohibition or  
19 other Appropriate Writ Relief and Memorandum and Authorities in support thereof challenging  
20 Judge Hunter's denial of defendant's Demurrer.

21 On November 13, 2020, Judge William Ryan issued a Memorandum of Decision denying  
22 defendant's Petition for Writ of Mandate and further denied defendant's Request for Stay.

23 On May 21, 2021, at the conclusion of the Preliminary Hearing, this Court held defendant  
24 to answer to all charges. This Court denied the People's request to remand defendant to custody  
25 but did order defendant to surrender his passport. Bail remained as previously set.

26 On October 11, 2022, the first jury trial commenced.

27 On November 30, 2022, the Court found that the jury was deadlocked and declared a  
28 mistrial.

1 On April 17, 2023, the second jury trial commenced.

2 On May 31, 2023, the jury returned guilty verdicts as to Counts One and Two and hung  
3 in favor of 8 to 4 for guilty on Count Three. The Court ordered defendant remanded to custody  
4 and denied defendant's request for release on electronic home monitoring pending sentencing.

5 On September 7, 2023, the Court sentenced defendant to a total aggregate term of 30  
6 years to life in state prison (15 years to life for each count of forcible rape to be served  
7 consecutively). Prior to the imposition of sentence, the Court denied defendant's Motion to  
8 Modify the Verdict and for Dismissal challenging the conviction and re-arguing the statute of  
9 limitations motion. No request for bail on appeal was raised at that time.

10 On September 18, 2023, defendant lodged with the Superior Court a Notice of Appeal.

11 On October 11, 2023; November 13, 2023; and December 7, 2023; and December 13,  
12 2023; this Court conducted numerous hearings to ensure that defendant was in compliance with  
13 statutory firearms relinquishment requirements. Despite being given ample opportunity to divest  
14 himself of ownership of numerous firearms and as set forth in the December 12, 2023 probation  
15 report regarding defendant's failed relinquishment of specific firearms, defendant continues to  
16 own 10 out of 23 firearms although he now stands as a convicted felon and is thus, prohibited by  
17 law from such possession. On December 13, 2023, this Court found that defendant was not in  
18 compliance with the firearms relinquishment statutory requirements.

19 At no time during any of the above-listed hearings and while defendant was still housed  
20 in a local custodial facility, did the defense request bail on appeal. Sometime after the December  
21 13, 2023 hearing, defendant was transported to state prison to serve his life sentences. Currently,  
22 defendant is in custody in state prison serving his 30 years to life sentence imposed by this Court.

23 On January 18, 2024, the record on appeal was filed in the Court of Appeal.

24 The above-captioned case is now pending before the Court of Appeal.

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III.

ANALYSIS AND ORDERS

**A. Defendant's Request to Seal Unredacted Motion**

Defendant has requested to seal his unredacted motion for Bail on Appeal in order to keep from public view the identity and substance of witnesses and their statements regarding Count One, the forcible rape of Jane Doe 1 (Jen B.). Rule 2.550(d) sets forth that:

The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

*California Rules of Court, Rule 2.550(d)*

In the instant case, defendant has failed to meet any of the requirements listed in Rule of Court 2.550(d). Specifically, defendant has failed to identify an overriding interest supporting the sealing of records from public review and has also failed to establish prejudice if the subject records are not sealed.

Jen B. has already testified no less than three times, in open court, regarding the forcible rape and her prior sexual contacts with defendant. Each time she was called to testify, Jen B. was on the stand for days regarding this specific subject matter and was cross examined at length by defense counsel regarding her sexual relationship with the defendant. The Court is hard pressed to find how sealing the witness interviews now, post-conviction, saves Jen B. any further embarrassment or diminishes the media attention than that which she has already experienced throughout the course of these criminal proceedings.

1 Thus, it appears that the proffered defense witnesses may wish to hide their identities and  
2 statements from the public forum but defendant cites no authority which holds that the desire to  
3 avoid unwanted media attention or embarrassment to the witnesses is an overriding interest  
4 which overcomes the right of the public to access the record and constitutes good cause  
5 justifying the sealing of the records. Thus, the Court finds that defendant has not met any of the  
6 five factors listed in Rule 2.550(d) and defendant's request to file under seal his unredacted  
7 Motion for Bail on Appeal is denied.

8 **B. Defendant's Request for Bail on Appeal Pursuant to Section 1272.1**

9 Defendant has requested bail on appeal pursuant to Penal Code Section 1272.1. Section  
10 1272.1 clearly sets forth the burden of proof, the standard of proof, and the criteria for  
11 consideration. Pursuant to Section 1272.1, defendant must demonstrate *all* factors, by clear and  
12 convincing evidence, that 1) defendant is not likely to flee when considering his ties to the  
13 community, his past record of appearances, and the severity of his sentence; 2) defendant does  
14 not pose a danger to the safety to any other person or the community and the court *shall* consider  
15 if the crime of conviction is a violent felony; and 3) the appeal is not for purposes of delay and  
16 raises a substantial legal question that could result in reversal if decided in his favor. *Penal Code*  
17 *Section 1272.1.*

18 The discretion to grant bail after conviction and pending appeal lies with the trial court in  
19 the first instance. *People v. Hall*, (1953) 115 Cal.App.2d 144. After a conviction for a  
20 noncapital offense, a defendant who has appealed may request the trial court to release him on  
21 bail. *In re Weiner*, (1995) 32 Cal.App.4<sup>th</sup> 441. In addition, refusal of a judge to admit defendant  
22 to bail pending appeal was a matter within his discretion and such refusal did not indicate that  
23 the judge was biased or prejudiced against the defendant during trial or at all. *People v. Oringer*,  
24 (1961) 193 Cal.App.2d 19.

25 The California Supreme Court has provided guidance regarding the application of  
26 Section 1272.1. In *Pipinos*, the Court specified what constitutes an adequate statement of reason  
27 for denying release pending appeal. *In re Pipinos*, (1982) 33 Cal.3d 189. In that case, the  
28 defendant was convicted of five drug offenses and sentenced to four years in state prison. The

1 trial court denied bail on appeal finding that the defendant posed a substantial flight risk,  
2 represented some risk to society, and was not likely to succeed on appeal. The California  
3 Supreme Court upheld the trial court's denial of bail on appeal but found that the statement of  
4 reasons was inadequate thus, it remanded the case so that the trial court could conduct a hearing  
5 and provide an adequate statement of reasons for the denial.

6 In denying defendant's appeal, the *Pipinos* court first noted that a convicted defendant  
7 has no absolute right to bail on appeal and release after a felony conviction lies with the trial  
8 court's discretion. *Id.* at p. 196. In exercising its discretion, the trial court may consider the  
9 likelihood of defendant's flight, the potential danger to society posed by defendant's release, and  
10 the frivolousness or lack of diligence of defendant's prosecution of his appeal. In *Pipinos*, the  
11 defendant had stable and long term ties to the community, employment, family attachments, and  
12 property holdings. The defendant continued to appear after he was sentenced to four years in  
13 state prison but while still out of custody. Additionally, the defendant had submitted at  
14 sentencing, three reports (one from probation and two from doctors) indicating that defendant  
15 should not be sent to state prison. The *Pipinos* Court noted that the three reports, by themselves,  
16 presented a *prima facie* case for bail on appeal but that the trial court was free to reject those  
17 conclusions. *Id.* at p. 199. The Court further reasoned that the four years in prison may be a  
18 sentence so severe that it was likely a defendant would elect to leave his family and forego his  
19 property but that the trial court failed to articulate that or balance competing concerns on the  
20 record. *Id.* In determining whether the defendant was a danger to the community, the trial court  
21 failed to articulate whether defendant would continue to commit crime and failed to address the  
22 reports submitted for sentencing. *Id.* at p. 200. Finally, the Court held that when determining if  
23 the appeal is frivolous, the trial court “. . . ‘should **not** require as a prerequisite to release that the  
24 appeal actually appear meritorious; instead denial of release on these grounds is only justifiable  
25 if the appeal so baseless as to deserve to be condemned as frivolous or is sought as a device for  
26 mere delay.’” *Id.* at p. 201; (*emphasis added*)(citing *Ward v. United States*, (1956 76 S.Ct. 1063,  
27 1065).

1           When considering whether a defendant poses a danger to others or to the community, the  
2 court may consider the alleged injury to the victim or witnesses, defendant's alleged use of a  
3 firearm and defendant's alleged use of controlled substances. *In re Weiner, supra*.

4           Defendant has failed to present any authority holding that a defendant convicted of two  
5 violent felonies and sentenced to two life sentences does not pose a flight risk or danger to the  
6 community. In *People v. Turner*, the defendant was convicted of two counts of rape by force or  
7 violence in violation of Penal Code Section 261(2). In upholding the trial court's denial of bail  
8 on appeal, the *Turner* court found that defendant's attorney's hearsay statements regarding  
9 defendant's record of appearance was insufficient to establish that the trial court abused its  
10 discretion in denying bail on appeal. *People v. Turner*, (1974) 39 Cal.App.3<sup>rd</sup> 682.

#### 11           **1. Defendant Poses a Flight Risk**

12           In the instant case, defendant has failed to show, by clear and convincing evidence, that  
13 he is not a flight risk. Defendant failed to address or bring to this Court's attention the changed  
14 circumstances to his family ties including his pending divorce proceedings. This changed  
15 circumstance weighs heavily against defendant's attempt to establish stable ties to the  
16 community post-sentencing.

17           In addition to the change in his marital status, defendant's related civil lawsuit is now  
18 proceeding forward with litigation. Defendant failed to address or bring to this Court's attention  
19 the fact that the civil litigation is proceeding and that defendant may be responsible for  
20 significant financial obligations in the form of attorneys fees and a potentially large monetary  
21 judgement against him. This fact further undermines the significance of defendant's ties to the  
22 community and increases his risk of flight.

23           While defendant did make all of his court appearances while out on bail, defendant's bail  
24 was set in the extraordinary amount of over \$3,000,000. Defendant has failed to present to this  
25 Court what type of bail, which properties, and/or what type of release conditions would be  
26 sufficient to assure his presence now that he has been convicted, sentenced to and is currently  
27 serving two life terms in prison. Moreover, defendant has failed to address the probation report's  
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1 recommendation that he is both ineligible and unsuitable for probation based upon severity of the  
2 current offense, the vulnerability of the victims, and the potential threat to public safety.

3 Most importantly, defendant has failed to adequately address the severity of his sentence.  
4 Defendant has been sentenced to two terms of 15 years to life to be served consecutively and is  
5 currently in state prison serving that sentence. If defendant's conviction and sentence are upheld  
6 on appeal, he will likely remain in custody for decades and perhaps the rest of his life. In light of  
7 the fact that defendant has no wife to go home to, defendant now has every incentive to flee and  
8 little reason to return to state prison to serve out the remainder of his lengthy sentence should his  
9 appeal be unsuccessful. Based upon the severity of defendant's sentence alone, let alone his  
10 diminished community ties, defendant poses a risk of flight.

11 This Court finds that defendant has failed to establish, by clear and convincing evidence,  
12 that he is not a flight risk based upon his inadequate ties to the community, the violent nature of  
13 his crimes of conviction, and the severity of his sentence.

## 14 **2. Defendant Poses a Danger to the Others and to the Community**

15 Defendant asserts that he has not engaged in any other criminal conduct since 2003 and  
16 that he does not pose a danger to the victims or the community at large. Once again, defendant  
17 has failed to address facts in the record which weigh against his bid for bail on appeal. First,  
18 defendant does not mention nor address the two additional rape victims who testified as other  
19 bad act evidence during the two jury trials in the instant case. Additionally, defendant does not  
20 address the violent nature of the crimes of conviction.

21 Second, defendant has failed to address the allegations which are the subject of the  
22 related civil suit brought by the victims, specifically that defendant and others acting on  
23 defendant's behalf engaged in numerous acts of stalking, harassment and injury to the three  
24 named victims in the instant case as well numerous other individuals including the named  
25 victims' family members and other former domestic partners of the defendant. The alleged acts  
26 and injuries which are the subject of the related civil suit are alleged to have occurred in 2016  
27 and through the date of sentencing in the instant case, 2023. In addition, some of the alleged acts  
28 are both tortious and criminal in nature and if true, establish a continuing danger to society.

1 Third and of concern to this Court, defendant has engaged in ongoing criminal conduct in  
2 the form of illegal firearms possession. During the course of the sentencing proceedings, this  
3 Court set numerous hearings to ensure that defendant properly relinquished, as mandated by  
4 statute, all of the 23 firearms registered to him. After numerous hearings, this Court found  
5 defendant to be in violation of the relinquishment statutes. Based upon the December 12, 2023  
6 probation report, that defendant still maintains ownership of 10 of his 23 firearms despite the fact  
7 that he is now a prohibited person due to his felony convictions in the instant case. Moreover,  
8 this Court found that one firearm in particular was missing altogether and that contrary to the  
9 paperwork previously submitted by defendant, it was not destroyed as he previously had led this  
10 Court to believe. Accordingly, this Court found probable cause to issue search warrants for the  
11 missing weapon. It should further be noted that Jen B. testified in both trials, that defendant held  
12 a gun in a manner she felt threatened by while he was engaged in the forcible rape. To argue that  
13 defendant has not engaged in continued criminal conduct and does not pose a risk of danger to  
14 any of the victims while approximately guns presently remain registered to him and one gun may  
15 still be unaccounted for flies in the face of the facts presented to this Court.

16 This Court finds that defendant has failed to establish, by clear and convincing evidence,  
17 that he has remained crime free since 2003 and has further failed to establish that he does not  
18 pose a risk of danger to any person or to the community at large based upon the violent nature of  
19 the crimes of conviction, the additional victims of repeated rapes who testified at trial,  
20 defendant's alleged stalking and harassment of the victims and their families after 2016 and  
21 beyond, and defendant's continued ownership of numerous guns including a gun which is  
22 currently unaccounted for.

### 23 **3. Defendant's Pending Appeal and Additional Arguments Regarding** 24 **Statute of Limitations**

25 As expressly held in *Pipinos*, this Court does *not* evaluate whether defendant's appeal or  
26 any issue contained therein is meritorious. Rather, the only inquiry for this Court is whether  
27 defendant's appeal is frivolous or a device for delay. This Court finds neither; rather defendant's  
28 appeal does not appear to be frivolous nor for delay purposes.

1 Defendant has submitted to this Court, additional substantive arguments regarding the  
2 statute of limitations which he contends is new or stronger than that previously made at the three  
3 prior proceedings regarding this topic. However, the parties are bound by the trial court record  
4 and proceedings previously made. Defendant has already had three bites at the apple to argue  
5 the application of the statute of limitations to the instant case: the Demurrer argued and denied  
6 before Judge Hunter, the Petition for Writ of Mandate argued and denied before Judge Ryan, and  
7 the Motion to Modify Verdict and for Dismissal argued and denied before this Court.

8 Contrary to defendant's assertion, the *Pipinos* Court specifically precludes the trial court  
9 from considering the actual merits of the issues and arguments to be appealed. The *Pipinos* Court  
10 held that in deciding whether or not a defendant should be released on bail, the trial court should  
11 *not* determine if the appeal is meritorious but rather determine only if the appeal is so baseless as  
12 to be frivolous or a delaying tactic. *Pipinos, supra.* at p. 201. Defendant is now attempting to  
13 make new substantive legal arguments on a previously litigated issue which is not an appropriate  
14 consideration for a motion for bail on appeal pursuant to Section 1272.1. Thus, this Court is *not*  
15 allowing further briefing nor argument on the merits of the statute of limitations arguments and  
16 both parties are bound by the record previously made on this issue and now submitted to and  
17 pending before the Court of Appeal.

18 To the extent that defendant is requesting reconsideration of his Motion to Modify the  
19 Verdict and for Denial and/or to augment the trial court record, those requests are denied.

20 **4. Defendant's Request for Bail on Appeal Pursuant to Section 1272.1 is**  
21 **Denied as Both Untimely and on its Merits**

22 First, defendant's Motion for Bail on Appeal is untimely and defendant has failed to  
23 justify or present any facts explaining the long delay in making this request. On May 31, 2023,  
24 the jury returned guilty verdicts on two of three counts of forcible rape and subsequently  
25 defendant was remanded into custody. At that time, defense counsel argued for release pending  
26 the sentencing hearing and placement on electronic home monitoring. This Court denied that  
27 request finding that defendant was both a flight risk and a danger to the community. This Court  
28 further cited Penal Code Section 1166 requiring that upon the return of a general verdict against

1 a defendant, the defendant *shall* be remanded unless the seriousness of the offense, the likelihood  
2 of defendant's appearance, and public safety concerns support defendant's release. *Penal Code*  
3 *Section 1166*. Four months later in September 2023, defendant was sentenced to life in state  
4 prison. Subsequently, the Court conducted four additional hearings regarding defendant's  
5 firearms relinquishment or the lack thereof. At no time between May 31, 2023, and January 18,  
6 2024, approximately 8 months, has defendant requested bail on appeal. Defendant has failed to  
7 offer any reason for the delay in making this request nor has he identified any changed  
8 circumstance that would justify such a delay. Thus, this Court finds that defendant's request for  
9 release now, while he is actually serving two life sentences in prison, is untimely.

10 *Assuming, arguendo*, that defendant's request for bail on appeal is not untimely,  
11 defendant has failed to establish, by clear and convincing evidence, that he meets all three  
12 criteria listed in Section 1272.1 as set forth above.

13 **C. Defendant's Request for Bail Pending Habeas Corpus Petition Pursuant to Penal**  
14 **Code Section 1476**

15 Defendant alternatively requests bail pending a habeas corpus petition pursuant to Penal  
16 Code 1476. Defendant asserts that he will be filing a concurrent petition for habeas corpus  
17 before this Court and for that reason, he attached several witness statements from 2004 and their  
18 summaries that he claims are exculpatory to his Motion for Bail on Appeal. Any court  
19 authorized to grant the writ and to which the petition is pending before, may grant bail, if the  
20 offense is bailable, pending the determination of the proceeding. *Penal Code Section 1476*.

21 First, no petition for writ of habeas corpus on defendant's behalf is pending before this  
22 Court nor has defendant filed a concurrent petition for writ of habeas corpus. Thus, bail pursuant  
23 to Penal Code Section 1476 is inapplicable here.

24 Second, should defendant anticipate filing a petition for writ of habeas corpus with this  
25 Court while his direct appeal is pending before the Court of Appeal, defendant has failed to cite  
26 to any authority that establishes jurisdiction for this Court to entertain such a petition.

27 The California Supreme Court has held that generally, a petition for writ of habeas corpus  
28 is unavailable while the case is pending before the Court of Appeal on the same issues. "...

1 Where there is no statutory exception, “[t]he filing of a valid notice of appeal vests jurisdiction of  
2 the cause in the appellate court until determination of the appeal and the issuance of the  
3 remittitur and deprives the trial court of jurisdiction to make any order affecting the judgement.”  
4 *People v. Wagner*, (2009) 45 Cal.4<sup>th</sup> 1039 (citing *People v. Lockridge*, (1993) 12 Cal.App.4<sup>th</sup>  
5 1752, 2757).

6 In *People v. Mayfield*, while his appeal was pending, the defendant filed a petition for  
7 writ of habeas corpus on the same ground on which he appealed. *People v. Mayfield*, (1993) 5  
8 Cal.4<sup>th</sup> 220. The Court held that a petition for writ of habeas corpus was unavailable to  
9 defendant. Specifically, “[w]hatever a trial court might conclude in hindsight about the legal  
10 validity of a ruling is irrelevant to a question on appeal whether the court in fact erred, because  
11 the matter is for the reviewing court to decide after examination of the record and the law.” *Id.*  
12 at p. 226. The California Supreme Court cited to *France v. Superior Court*, which held that after  
13 a defendant has taken an appeal from a judgment of conviction and while the appeal is pending  
14 before the Court of Appeal, a trial court has no authority to discharge through habeas corpus  
15 proceedings, a petition for writ of habeas corpus filed by a defendant. *Id.* at p. 225; *France v.*  
16 *Superior Court*, (1927) 201 Cal. 122.

17 Defendant has filed a notice of appeal, the record for appeal has been submitted to the  
18 Court of Appeal, and this matter is now pending before the Court of Appeal. As of this date,  
19 defendant has not yet filed any petition for writ of habeas corpus nor would this Court have  
20 jurisdiction generally to consider a petition for writ of habeas corpus. Yet, defendant has  
21 attached to his Motion for Bail on Appeal, a number of witness interviews that he claims are  
22 important to and part of a petition for writ of habeas corpus yet to be filed. The witness  
23 interviews that defendant now claims are exculpatory were known to both parties prior to the  
24 jury trials however, neither side chose to call any of the proffered witnesses to testify. Thus, the  
25 witness interviews and statements are not part of the trial evidence in the case at hand.

26 As set forth above, such attachments are inappropriate considerations for a bail on appeal  
27 request. Also as set forth above, this Court does not generally have jurisdiction to consider a  
28 petition for writ of habeas corpus while the matter is also pending direct appeal. Thus,

1 defendant's attachments and proffered reasons for the attachments appear to be a veiled attempt  
2 to augment the trial record for purposes of appellate review. Accordingly, this Court denies  
3 defendant's attempt or request to augment the trial record in such a manner. These attachments  
4 are *not* properly before this Court for purposes of defendant's release request.

5 **ORDERS**

6 For the reasons set forth above, the Court orders as follows:

- 7 1) Defendant's Motion to Seal Unredacted Motion for Bail on Appeal is DENIED.  
8 2) Defendant's Motion for Bail on Appeal is DENIED as untimely and on its merits.  
9 3) Defendant's Motion for Bail Pending Petition for Writ of Habeas Corpus is  
10 DISMISSED.

11 To the extent that defendant's arguments are construed as a motion for reconsideration or  
12 a motion to augment, the Court orders as follows:

- 13 4) Defendant's Motion for Reconsideration of Denial of Motion to Modify the Verdict  
14 and for Dismissal is DENIED.  
15 5) Defendant's Motion to Augment and Supplement the trial record with additional  
16 substantive arguments and evidence in the form of witness interviews and their  
17 accompanying summaries is DENIED.

18 The Court further ORDERS STRICKEN from consideration from Defendant's Motion  
19 for Bail on Appeal as follows:

- 20 6) Pg. 9:16 – pg. 21:20 (statute of limitations substantive legal argument).  
21 7) Pg. 22:11 – pg. 25:18 (summary of witness interviews of Jenni Weinman, Paige  
22 Dorian, Luke Watson, and Brie Schaeffer).  
23 8) Pgs. 38 – 66 (exhibits of witness interviews listed above).

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1 The Court further ORDERS STRICKEN from consideration from People's Opposition to  
2 Defendant's Motion for Bail on Appeal as follows:

3 9) Pg. 8:25 – pg. 11:19 (statute of limitations substantive legal argument).

4  
5 January 24, 2024

*Charlaine F. Olmedo*  
CHARLAINE F. OLMEDO

6 CHARLAINE F. OLMEDO  
7 Judge of the Superior Court

8 The clerk is to give notice to each party.  
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