

Writs Nos. F07-33595 and F07-33596

In re Joey CHARBONNEAU § IN THE CRIMINAL DISTRICT
 § COURT No. 2,
 § DALLAS COUNTY, TEXAS

**APPLICANT'S MOTION FOR RECONSIDERATION OF DENIAL OF
APPLICATION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR
EXPEDITED CONSIDERATION**

1. On October 5, 2007, this Court heard argument on Joey Charbonneau's Application for Writ of Habeas Corpus. Also on October 5, 2007, this Court issued a written ruling denying Charbonneau's application.
2. In its written Order, the Court relied on the State's representation at the hearing in this matter on October 5, 2007, that Charbonneau had been arrested for two additional cases since the felonies were allegedly committed.
3. A review of the cases for which information is available to Charbonneau's counsel produces records only of charges and arrests that arose prior to the posting of bond in the two felony cases Charbonneau has pending before the Court.
4. Charbonneau was arrested on case MA0730579 on May 19, 2007. Ex. A.
5. Charbonneau was arrested on case MB0734733 on May 27, 2007. Ex. A.
6. Charbonneau was arrested on his felony charges, F07-33595 and F07-33596, on May 24, 2007. Ex. A. Charbonneau's "arrest" for case MB0734733 occurred while he was in custody in the Dallas County Jail.
7. Charbonneau was released on bond on or about June 17, 2007. Ex. B. ¶ 4.
8. The records regarding cases MA0730579 and MA0734733 were available before Charbonneau was released from jail on or about June 17, 2007.
9. Charbonneau's parents paid bond on all four charges – the felonies before this Court, *and* the two misdemeanors mentioned above – at the same time when securing his release. Ex. B. ¶ 4.
10. The misdemeanor arrests were known in Charbonneau's record when Charbonneau was released from jail on or about June 17, 2007.
11. After a good faith search, Charbonneau's counsel has not located any record of any pending or resolved charge against Charbonneau that arose subsequent to the posting of bond in the felony cases pending before the Court, or that resulted in a

- new arrest subsequent to the posting of bond and for which records would not have been available at the time bond was posted.
12. The Court never mentioned any other charges when it made its decision to raise Charbonneau's bail. Ex. B. ¶ 8.
 13. The Court never made any finding on the record about danger to the alleged victims of the felony crimes. Ex. B. ¶ 8.
 14. One of the misdemeanor charges, MA0730579, is a driving while license suspended charge. This minor charge, on its face, is not sufficient to cause the Court to raise Charbonneau's bail. The arrest in this offense occurred prior to Charbonneau's arrest in the felony cases pending before the Court and his release on bond.
 15. The second charge is also a minor charge. MB0734733 was filed in relation to an alleged petty theft that involved no violence and that occurred prior to the date of his felony arrest. Charbonneau's arrest on this charge occurred prior to Charbonneau's release on bond.
 16. Except in exceptional circumstances, Texas law provides that a defendant "shall not be required to give another bond in the course of the same criminal action." TEX. CODE CRIM. PROC. art. 17.09. Two minor misdemeanor charges, the arrests for which occurred prior to release on bond, are not exceptional circumstances justifying raising Charbonneau's bail.
 17. The power of the court to set bail may not be used to oppress or punish. TEX. CODE CRIM. PROC. art. 17.15.
 18. Prior to the Court's decision to raise his bail, Charbonneau diligently appeared before the court many times, including daily appearances in the period leading up to the bail increase; at none of these appearances did the court make mention of any "danger" Charbonneau allegedly posed. Ex. B. The Court further did not mention Charbonneau's misdemeanor charges as a rationale for increasing Charbonneau's bail. Ex. B. ¶ 14.
 19. The original bail was "sufficiently high to give reasonable assurance" that Charbonneau would answer the charges against him (TEX. CODE CRIM. PROC. art. 17.15(1): indeed, he was appearing in court daily.
 20. The Court had already considered the "nature of the offense and the circumstances under which it was committed" when it set the original bail, TEX. CODE CRIM. PROC. art. 17.15(3), and took no evidence and made no findings that indicated a changed understanding of the original charges. Ex. B. ¶¶ 8-14.
 21. The Court made no finding about the "future safety of a victim of the alleged offense." TEX. CODE CRIM. P. art. 17.15(5); Ex. B. ¶ 8.

22. The Court made no finding that an increase in bail was warranted due to Charbonneau's allegedly subsequent misdemeanor charges when it increased Charbonneau's bail amount on September 26, 2007. See TEX. CODE CRIM. PROC. art. 17.09 (requiring good and sufficient cause for bail increase). It was only at the hearing on the habeas writ that the prosecutor raised, and the Court relied on, Charbonneau's misdemeanor charges as a rationale for the bail increase.
23. Texas law commands that the Court "shall" set a hearing on a habeas writ on the "earliest day" the judge can devote to the cause. TEX. CODE CRIM. P. art. 11.11. Charbonneau remains in jail, and urges that the Court examine this matter as soon as possible. The information needed is in the Court files and country records and attached to this Motion; the misdemeanors are not subsequent to the felony charges, and therefore Charbonneau's bond should be reinstated at its original amount.
24. Charbonneau is indigent and cannot afford counsel. Ex. B. ¶ 17. By this Court raising his bail, it has assured the Charbonneau will be in jail until his indictment or trial.

PRAYER

Because Charbonneau's misdemeanors were not subsequent to the felony charges, and because Charbonneau's bond was sufficient, this Court should reinstate Charbonneau's original bond, allowing him to leave the Dallas County Jail. If the Court denies the request to reinstate Charbonneau's bond, Charbonneau prays that this Court enter an order specifying which charges arising subsequent to the posting of bail the Court believes warrant an increase in bail so that Charbonneau can properly respond to the assertion that there are subsequent charges, as he is not aware of any such charges.

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