

IN THE SUPREME COURT OF OHIO

State ex rel. DOUGLAS E. ODOLECKI :
:
Relator, : Case No. 2016-0436
:
v. : Original Action in Habeas, Mandamus,
: and Prohibition
FRANK D. CELEBREZZE, JR., et al., :
:
Respondents. :

**RESPONDENTS JUDGE FRANK D. CELEBREZZE, JR., AND
EIGHTH DISTRICT COURT OF APPEALS'
MOTION TO DISMISS AMENDED COMPLAINT**

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RESPONDENTS JUDGE FRANK D. CELEBREZZE, JR., AND
EIGHTH DISTRICT COURT OF APPEALS'
MOTION TO DISMISS AMENDED COMPLAINT

Pursuant to Sup.Ct.Prac.R. 12.04 and Civ.R. 12(B)(6), Respondents Judge Frank D. Celebrezze, Jr. and Eighth District Court of Appeals hereby move this Court to dismiss Relator's Amended Complaint against them for a writ of habeas, mandamus, and prohibition. A memorandum in support of this motion is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Relator, Douglas E. Odolecki, fails to establish that Respondents Judge Frank D. Celebrezze, Jr., and the Eighth District Court of Appeals (hereafter “State Respondents”) patently abused their discretion when they denied him bond pending appeal. In particular, Relator cannot show a patent abuse of discretion in denying him bond where he shows no remorse for his crimes—including interfering with police as they attempted to approach a suicidal teenager with autism—exhibits a pattern of frequent interference with the City of Parma’s Police Department, and poses a threat of post-conviction flight-risk as a result of the 240-day sentence he now vigorously contests. To assume that State Respondents acted purely arbitrarily in denying his motion for bond—after extensive motion briefing by both sides—would ignore the presumption of regularity which adheres to all judicial proceedings. Accordingly, Relator does not qualify for the extraordinary writ of habeas corpus.

Because habeas would be the proper remedy, mandamus is not an available form of relief. As Relator fails to state a claim for a writ of mandamus or habeas corpus—and makes no claim in prohibition against State Respondents—this Court should dismiss Relator’s Amended Complaint against them.

I. STATEMENT OF FACTS

On February 12, 2016, Parma Municipal Court found Relator guilty of two counts of obstructing official business, one count of misconduct at an emergency, and one count of disorderly conduct. Parma Municipal Court Nos. 14CRB02839, 15CRB03055. Relator’s conduct included interfering with police who were trying to talk a “suicidal teenager with autism” down from a guardrail. Am. Compl. ¶ 15-16. The trial court sentenced Relator to 90

days for each obstruction of official business count, 30 days for the count of misconduct at an emergency, and 30 days for disorderly conduct, all to run consecutively. Compl. ¶ 24.

Relator appealed on February 25, 2016, and the next day filed a motion in the Eighth District to grant him an appellate bond. The City of Parma then filed a memorandum in opposition. Ex. 1.¹ Relying on the reasons this Court used to affirm the denial of bail in *Christopher v. McFaul*, the City laid out the reasons to deny appellate bond to Relator. 18 Ohio St.3d 233, 234, 480 N.E.2d 484 (1985) (“[W]e are unable to determine the strength of his case on appeal by the pleadings filed in this case. Nor has petitioner's third assertion [that he poses no danger to the community] been established by the pleadings. . . [A]lthough petitioner has appeared whenever requested by the court during his trial on the merits, the danger of flight is inherently greater after a conviction than before a guilty verdict.”) In particular, the City noted Relator’s “lack of remorse in light of the overwhelming evidence that his conduct was illegal,” that he “continues to interfere with the police work conducted by the City of Parma Police Department,” that he “has been heard encouraging an individual to find personal information relating to the trial judge in an attempt to harass the judge,” and that he “cannot demonstrate that he has substantive argument.” Ex. 1 at 5-7.

Relator then filed three additional pleadings in support of his motion: 1) on February 29, 2016, he filed a reply in support of his motion for appellate bond; 2) on March 9, 2016, he filed a supplemental brief in support of his motion for appellate bond, to which the City filed

¹ Courts commonly take judicial notice of documents filed in other courts. *See, e.g., Kramer v. Time Warner, Inc.*, 937 F.2d 767, 774 (2d Cir. 1991). This Court has held that a court may consider “appropriate matters” in determining whether a Civ.R. 12(B)(6) motion should be granted *without* converting it into a motion for summary judgment. *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶ 10.

a memorandum in opposition, and 3) on March 10, 2016, he filed a reply to the City's opposition to his supplemental motion. On March 10, 2016, State Respondents denied Relator's motion for appellate bond.

Less than two weeks later, Relator filed the instant petition for a writ of habeas corpus, mandamus and prohibition. On April 15, 2016, Relator filed an Amended Complaint that added new allegations and a new request for mandamus, Am. Compl. ¶ 47-50, all pertaining to the Parma Municipal Court, Parma Municipal Court Judge Deanna O'Donnell and Clerk of the Parma Municipal Court Marty Vittardi. Relator added no new allegations or claims against State Respondents. His petition for a writ of prohibition does not seek relief from State Respondents. The remaining requests for habeas and mandamus should be dismissed for failure to state a claim.

II. STANDARD OF REVIEW

A motion to dismiss for failure to state a claim upon which a court can grant relief challenges the sufficiency of the complaint itself. *Volbers-Klarich v. Middletown Mgmt, Inc.*, 125 Ohio St.3d. 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. In determining whether to grant a motion to dismiss pursuant to Civ. R. 12(B)(6), a court "must presume that all factual allegations in the complaint, are true and must make all reasonable inferences in favor of the non-moving party." *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1984).

III. LAW AND ANALYSIS

A. Relator is not entitled to a writ of habeas corpus.

Relator fails to state a claim for the extraordinary relief of habeas corpus. In order to avoid dismissal of a petition for habeas corpus, "a petitioner must state with particularity the

extraordinary circumstances entitling him to habeas corpus relief.” *Chari v. Vore*, 91 Ohio St.3d 323, 328, 744 N.E.2d 763 (2001), citing *State ex rel. Wilcox v. Seidner*, 76 Ohio St.3d 412, 414, 667 N.E.2d 1220 (1996). Unsupported conclusions contained in a habeas corpus petition are not considered admitted and are insufficient to withstand dismissal. *State ex rel. Carrion v. Ohio Adult Parole Auth.*, 80 Ohio St.3d 637, 638, 687 N.E.2d 759 (1998).

The decision of a court denying bail should not be disturbed unless there is a “patent abuse of discretion.” *Jurek v. McFaul*, 39 Ohio St.3d 42, 43, 528 N.E.2d 1260 (1988), citing *Coleman v. McGettrick*, 2 Ohio St.2d 177, 180, 207 N.E.2d 552 (1965) (“* * * [T]he release of an accused on bail after conviction and pending appeal is not a matter of right but a question to be resolved by an exercise of the sound discretion of the court. Only if there is a patent abuse of such discretion should the decision of the court denying bail be disturbed.”) This deferential standard exists because there is no constitutional right to post-conviction bail. *Id.* Rather, the right to such bail exists by virtue of R.C. 2953.09, App.R. 8, and Crim.R. 46. *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 594-95, 635 N.E.2d 26 (1994).

There is no patent abuse of discretion in this case, as Relator has failed to overcome the “presumption of regularity [that] attaches to all judicial proceedings.” *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, ¶ 19, citing *State v. Edwards*, 157 Ohio St. 175, 183, 105 N.E.2d 259 (1952); *State v. Sweet*, 72 Ohio St.3d 375, 376, 650 N.E.2d 450 (1995); *State v. Robb*, 88 Ohio St.3d 59, 87, 723 N.E.2d 1019 (2000). In other words, even when an order does not spell out a court’s reasoning, a reviewing court will presume that the lower court followed the law. To follow Relator’s argument that State Respondents had no sound ground for denying an appellate bond, this Court would have to assume that, because the Court of Appeals rendered no written opinion in its denial of bail, it had no grounds for

such denial but acted purely arbitrarily. This is the assumption urged by Relator's complaint. But "[s]uch assumption cannot validly be made" in light of the presumption of regularity. *See, e.g., Coleman v. McGettrick*, 2 Ohio St. 2d 177, 180, 207 N.E.2d 552 (1965).

In *Coleman*, this Court found no abuse of discretion in the decision of a court of appeals to deny bail, even in the absence of a written decision by the court of appeals. *Id.* In particular, the Court noted that the court of appeals denied bail after "petitioner's extensive prior record of arrests and convictions was examined, and the question as to whether a substantial question was raised on the appeal was considered." *Id.*

Similarly in this case, State Respondents gave Relator the opportunity to submit extensive briefing before denying his request for appellate bond. Relator submitted four filings arguing for an appellate bond, and the City of Parma submitted two filings in opposition. Just as in *Coleman*, State Respondents had the opportunity to consider Relator's record and whether a substantive question was raised on appeal. The record here stands in stark contrast to the more favorable record for a stay of execution in a case cited by Relator, where the Court noted that "petitioner was on bail during the entire proceedings in the trial court; that petitioner was released after sentencing by the trial court on his own recognizance for three days and during said period did not flee; and that petitioner and his wife have operated a business in Glen Falls, New York for a period of three years." *In re Liles*, 35 Ohio St.3d 610, 610, 520 N.E.2d 183 (1988).² Here, as noted above, the City provided numerous

² Relator also cites to *State ex rel. Hunter v. Cunningham*, 141 Ohio St.3d 1423, 2014-Ohio-5699, 21 N.E.3d 1116, but in that case the writs were all denied. To the extent that the Court in that case stayed the petitioner's sentence pending appeal, the facts were more favorable to the petitioner in that case. For instance, the petitioner in that case was a suspended state court judge, and she was facing less jail time (six months) than the 240 days at issue here.

reasons to deny bail, including Relator’s lack of remorse, his continued interference with the police, his attempt to harass the trial judge, his lack of a substantive argument on appeal, and his increased flight risk following his conviction (and what he perceives to be an excessive sentence). Ex. 1 at 5-7.

Regarding Relator’s substantive argument—that he should not have received consecutive sentences—State Respondents did not patently abuse their discretion in denying bond where it is “unable to determine the strength of [the appellant’s] case on appeal by the pleadings filed in this case.” *Christopher*, 18 Ohio St.3d at 234. On appeals involving the imposition of consecutive sentences, R.C. 2953.08(G)(2)(a) directs the appellate court “to review the record, including the findings underlying the sentence” and to modify or vacate the sentence “if it clearly and convincingly finds * * * [t]hat the record does not support the sentencing court's findings under division * * * (C)(4) of section 2929.14 * * * of the Revised Code.” But that statute does not specify where the findings are to be made, and a trial court is not required by Crim.R. 32(A)(4) to give reasons supporting its decision to impose consecutive sentences. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 27. Rather, the Court in that case reversed the trial court only after a full review of the record on direct appeal. *See id.* at ¶ 30 (noting that even a trial court’s “inadvertent failure to incorporate the statutory findings in the sentencing entry” would not render a sentence invalid if the findings are supported elsewhere in the record). Thus, Relator’s ground for appeal requires a review of the record for the basis upon which the trial court imposed consecutive sentences. As Relator’s pleadings in the Eighth District—including the lack of any supporting documentation in his motion for bond—are insufficient to show the strength of his

case without further review, State Respondents did not patently abuse their discretion in denying bond.

In short, “[t]here is no showing of irregularity to contradict the presumption of regularity accorded all judicial proceedings.” *Sweet*, 72 Ohio St.3d at 376. Accordingly, Relator fails to state a claim for habeas relief.

B. Relator is not entitled to a writ of mandamus.

Relator has failed to state a claim for a writ of mandamus. The “proper remedy” to address a denial of bond or excessive bail is a writ of habeas corpus. *State ex rel. Goodgame v. Russo*, 8th Dist. Cuyahoga No. 97347, 2012-Ohio-92, ¶ 3 (Jan. 11, 2012), citing R.C. Chapter 2725; *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 653 N.E.2d 26 (1994) (“[H]abeas corpus is the proper vehicle to challenge excessive bail or refusal to set bail after a judgment of conviction”); and *Chari v. Vore*, 91 Ohio St.3d 323, 744 N.E.2d 763 (2001). This Court has held that “mandamus is no longer available in these cases given the availability of habeas corpus.” *State ex rel. Pirman*, 69 Ohio St. 3d at 594. As Relator has failed to state a claim for habeas relief, and as mandamus relief is not available, Relator’s complaint should be dismissed.

Even if mandamus were an available remedy—and it is not—Relator’s claim would fail for the same reasons listed in Section A above. Namely, Relator has failed to show that State Respondents patently abused their discretion, and accordingly he cannot demonstrate an adequate legal right or a duty by State Respondents to grant him bond. *See State ex rel. Richard v. Mohr*, 135 Ohio St.3d 373, 2013-Ohio-1471, 987 N.E.2d 650, ¶ 4 (holding that a petitioner seeking mandamus relief “must establish a clear legal right to the requested relief, a clear legal duty on the part of appellees to provide it, and the lack of an adequate remedy in

the ordinary course of the law”). For this reason as well, Relator fails to state a claim for mandamus relief.

IV. CONCLUSION

As noted previously on Page 4, Relator’s Amended Complaint for a writ of prohibition does not seek relief from State Respondents. For the foregoing reasons, Respondents Judge Frank D. Celebrezze, Jr., and Eighth District Court of Appeals respectfully move this Court to dismiss Relator’s claims against them in habeas and mandamus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion to Dismiss* was served by regular U.S. mail, postage prepaid, and email on April 22, 2016, upon the following:

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EXHIBIT 1



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FILING OTHER THAN MOTION Electronically Filed:
February 26, 2016 16:09

By: TIMOTHY G. DOBECK 0034699A

Confirmation Nbr. 682517

CITY OF PARMA

CA 16 104160

vs.

DOUGLAS E ODOLECKI

Judge:

Pages Filed: 8

IN THE EIGHTH DISTRICT COURT OF APPEAL
CUYAHOGA COUNTY, OHIO

CITY OF PARMA)	CASE NO: CA-16-104160
)	
Plaintiff/Appellee,)	(Parma Municipal Court Case Nos.
)	14CRB02839; 15CRB30555)
vs.)	
)	
DOUGLAS E. ODOLECKI)	
)	<u>APPELLEE'S BRIEF IN OPPOSITION</u>
)	<u>TO APPELLANT'S MOTION FOR</u>
Defendant/Appellant)	<u>GRANT OF BOND PENDING APPEAL</u>

Now comes Plaintiff/Appellee, City of Parma ("Parma"), by and through below-named counsel, and respectfully submits Parma's Brief in Opposition of Defendant/Appellant's Motion to Set Bond Pending Appeal, attached hereto and incorporated herein.

Respectfully submitted,

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ARGUMENT

1. Introduction and Summary.

On February 12, 2016, Parma Municipal Court found Defendant Douglas Odolecki guilty of two (2) counts of obstructing official business, one (1) count of misconduct at an emergency, and one (1) count of disorderly conduct. The trial court sentenced Odolecki to 90 days for each obstruction of official business count, 30 days for the count of misconduct at an emergency, and 30 days for disorderly conduct. The counts were to be run consecutive as were the cases. On February 26, 2016, Defendant filed a motion with this court to grant him an appellate bond.

Parma asks this Court to deny Defendant's request for an appellate bond.

Douglas Odolecki has displayed a complete disregard for the safety of the residents of the City of Parma. In one of the matters before the trial court, Odolecki attempted to interfere with the Parma Police's attempt to talk with a youth that had been contemplating ending his life by jumping off a Parma bridge.

Furthermore, since sentencing, Mr. Odolecki has been recorded on a telephone call from jail urging that his colleagues and supporters find personal information about the trial judge in order to contact her at home. There is plainly a risk that if released on bond, Mr. Odolecki will engage in improper intimidation, harassment and retaliation, and even criminal activity, and pose a threat to administration of justice and orderly proceedings in court.

2. Legal Standard for Issuance of an Appellate Bond.

A criminal defendant convicted of a crime has no constitutional right to bail on appeal from a conviction. *Dapice v. Strickrath*, 40 Ohio St.3d 298, 533 N.E.2d 339 (1988). “[T]he release of an accused on bail after conviction and pending appeal is not a matter of right but a question to be resolved by an exercise of the sound discretion of the court. Only if there is a patent abuse of such discretion should the decision of the court denying bail be disturbed,” *Coleman v. McGettrick*, 2 Ohio St.2d 177, 180, 207 N.E.2d 552 (1965). In determining whether bond is appropriate, Crim.R. 46(B) and (C) provide the conditions and factors that should be weighed:

(B) Conditions of Bail. The court may impose any of the following conditions of bail:

- 1) Place the person in the custody of a designated person or organization agreeing to supervise the persons;
- 2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- 3) Place the person under a house arrest, electronic monitoring, or work release program;
- 4) Regulate or prohibit the person’s contact with the victim;
- 5) Regulate the person’s contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;
- 6) Require a person who is charged with an offense that is alcohol or drug related, and who appears to need treatment, to attend treatment while on bail;
- 7) Any other constitutional condition considered reasonably necessary to ensure appearance or public safety.

(C) Factors. In determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to:

- 1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;
- 2) The weight of the evidence against the defendant;
- 3) The confirmation of the defendant's identity;
- 4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;
- 5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order.

"[T]he decision to grant a stay of execution of sentence pending appeal is within the sound discretion of the trial court. Absent a showing that the trial court abused its discretion in denying the requested stay, the trial court's decision will be affirmed."

Village of Middlefield v. Fairbanks, 11th Dist. No. 1321, 1987 WL 14420, at *1, citing *Christopher v. McFaul*, 18 Ohio St.3d 233, 480 N.E.2d 484 (1985).

Ohio's appellate courts have repeatedly applied the abuse of discretion standard from *McFaul* when reviewing a trial court's denial of a motion for an appellate bond, rather than a de novo standard of review. See *State v. Ogle*, 4th Dist. Nos. 11CA29, 11CA32, 12CA2, 12CA11, 12CA12, 12CA19, 2013-Ohio-3420, at ¶ 55 ("The release of an accused on bail after conviction and pending appeal is not a matter of right but a question to be resolved by an exercise of the sound discretion of the court. Only if there is a patent abuse of such discretion should the decision of the court denying bail be disturbed"); *State v. Miller*, 77 Ohio app.3d 305, 318, 602 N.E.2d 296 (8th Dist. 1991)

("the appellant has failed to demonstrate any abuse of discretion on the part of the trial court in the denial of bail pending appeal"); *State v. Tillimon*, 6th Dist. No. L-93-334, 1994 WL 385180, at *1 ("A denial of bond will only be reversed on a showing of abuse of discretion by the trial court").

A trial court's decision to deny bail pending an appeal is not an abuse of discretion where (1) the strength of the case on appeal cannot be determined from the pleadings, (2) the absence of a threat to the community is not established by the pleadings, and (3) only the fact that no flight from trial took place is offered as proof that no likelihood exists of flight pending appeal. *McFaul*, 18 Ohio St.3d 233, 480 N.E.2d 484.

3. Douglas Odolecki Is Underserving of an Appellate Bond Where His Crimes Were Extremely Serious, He Has Shown No Remorse for His Actions. Any Delay of His Sentence would Demean the Seriousness of His Offenses.

Mr. Odolecki's lack of remorse in light of the overwhelming evidence that his conduct was illegal strongly indicates that Odolecki continues to feel he has done nothing wrong and should weigh against the grant of an appellate bond.

Odolecki's request for an appellate bond should also be denied because the benefit of such a bond would negate the trial court's explicit intent in sentencing him to jail and squander any potential deterrent effect that his sentence may have.

4. Odolecki Is An Ongoing Threat to the Community.

Douglas Odolecki should not receive the benefit of an appellate bond because he is a continuing threat to the legal community. Mr. Odolecki continues to interfere with the police work conducted by the City of Parma Police Department. This

interference was taken to a new level when he interfered with the Police Department's attempt to assist in a youth's attempt of suicide in which he was convicted of in this matter.

Furthermore, Mr. Odolecki has been heard encouraging an individual to find personal information relating to the trial judge in an attempt to harass the judge. Mr. Odolecki is a continued threat to the legal community.

5. Odolecki Fails to Demonstrate the Strength of His Appeal In His Pleadings and Fails to Demonstrate That He Is Not a Flight Risk.

Odolecki fails to satisfy the remaining two prongs of the *McFaul* test. First, the strength of Odolecki's case on appeal cannot be determined from the pleadings in this Court. Odolecki must want this Court to ignore this part of the test from *McFaul*. Odolecki cannot demonstrate that he has a substantive argument. Odolecki's pleadings both here and in the trial court fail to do so. Odolecki's pleadings in this court likewise fail to meet his burden of establishing the strength of his case.

Odolecki claims that the maximum sentence he can receive for this sentence is ninety (90) days, as the sentences must be served concurrently pursuant to R.C. Section 2929.41. Appellant has obviously misread O.R.C. 2929.41. Specifically, O.R.C. Section 2929.41 provides:

2929.41 Concurrent and consecutive sentences.

(A) Except as provided in division (B) of this section, division (C) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States. Except as provided in division (B)(3) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently

with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution.

(B)

(1) A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of imprisonment when the trial court specifies that it is to be served consecutively or when it is imposed for a misdemeanor violation of section 2907.322, 2921.34, or 2923.131 of the Revised Code. [Emphasis added.]

Finally, under the third prong of *McFaul*, Odolecki has a greater incentive to flee now that he has been convicted and sentenced to a jail term. “[T]he danger of flight is inherently greater after a conviction than before a guilty verdict.” *McFaul*, at 234. This is because only after his conviction did Odolecki know for a certainty that he faced a sentence of jail time. Thus, Odolecki’s contention that his pre-sentence record of court appearances justifies a post-sentence bond is unpersuasive. Nor do Odolecki’s ties to the community establish a logical reason to grant him an appellate bond. Odolecki’s ties to the community did not stop him from committing these actions on two separate dates and they should not stop this Court from holding him accountable for them.

6. Conclusion.

Based on the foregoing, the City of Parma respectfully requests that this Honorable Court deny Odolecki’s request for an appellate bond.

Respectfully submitted,

/s/ John J. Spellacy

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CERTIFICATE OF SERVICE

A copy of the foregoing *Appellee's Brief in Opposition to Appellant's Motion to Set Bond Pending Appeal* was served this 26th day of February, 2016 to all named parties through the Court's electronic filing system.

/s/ John J. Spellacy

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