

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2011

JAMES KEITH LEIGHTON,

Petitioner,

v.

CASE NO. 5D10-3013

STATE OF FLORIDA,

Respondent.

Opinion filed February 23, 2011

Petition for Writ of Habeas Corpus,
A Case of Original Jurisdiction.

Terry L. Locy of the Law Firm of
Terry L. Locy, P.A., Cocoa, for Petitioner.

Pamela Jo Bondi, Attorney General,
Tallahassee and Carmen F. Corrente,
Assistant Attorney General, Daytona Beach,
for Respondent.

PER CURIAM.

James Keith Leighton (Petitioner) filed a Petition for Writ of Habeas Corpus with this court asserting that the pretrial bail set in his criminal case in the amount of 1.6 million dollars was tantamount to no bond at all and the trial court's refusal to reduce excessive bond was an abuse of discretion. We grant the petition and order the trial court to either set a reasonable bond or detain the petitioner without bond and set forth the reasons therefor.

Petitioner was originally arrested for the offenses of attempted first degree murder (count one), shooting a missile into a structure or vehicle (count two) and the

use of a weapon in the commission of a felony (count three). A cumulative bond amount was set at 1.6 million dollars.

At no time did the State request detention pursuant to Florida Rule of Criminal Procedure 3.132, even though the petitioner was charged with a first degree felony punishable by up to life imprisonment. See Art. 1, Sec. 14, Fla. Const. In fact, the record reveals that defense counsel initially and incorrectly stated that the trial court could not detain the petitioner without the setting of bond, because none of the charges filed constituted a capital offense. Neither the State nor the trial judge questioned this assertion, and no request was made to deny bond. Testimony and evidence were then taken regarding the factors set forth in Florida Rule of Criminal Procedure 3.131(b)(3) and Florida Statute Section 903.046(2). Significantly, the petitioner is a 23 year old with no assets and he earns approximately \$400 per week. Therefore, although the trial court found that the crimes charged are particularly egregious and the petitioner "continues to represent a potential danger to the community," the bond amount set is excessive based on the petitioner's financial situation and cannot stand. See Best v. State, 28 So. 3d 134 (Fla. 5th DCA 2010). The petitioner is entitled to a new bond hearing wherein the lower court must either set a reasonable bond or detain the petitioner without bond, supported by appropriate findings.

PETITION GRANTED; REMANDED.

SAWAYA, PALMER, and JACOBUS, J.J. concur.