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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In Re BETTIE WEBB	No. S247074
On	
Habeas Corpus.	

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

RESPONDENT'S REPLY BRIEF ON THE MERITS

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INTRODUCTION

The issue in this case is whether trial courts possess inherent authority to impose reasonable bail conditions related to public safety on felony defendants who are released on monetary bail. Contrary to petitioner's claim, this issue was raised and argued in the Court of Appeal. In addressing whether the trial court in this case properly imposed as a condition of bail a Fourth Amendment waiver, the Court of Appeal addressed the general proposition of whether a trial court had inherent authority to impose bail conditions on a felony defendant released on cash bail. Respondent's issue for review presented to this court was based on that general proposition: specifically, that a trial court has inherent authority to consider and impose reasonable bail conditions related to public safety on a felony defendant who has posted cash bail.[1]

In addition, petitioner in her answer brief argues that trial courts lack inherent authority to impose bail conditions because courts may increase monetary bail to protect the public and because such authority would be inconsistent with the statutory framework related to bail. Those arguments are meritless. First, in a post-*Humphrey*[2] landscape, courts may not simply impose high bail amounts to protect the public but instead are required to consider whether less restrictive nonfinancial release conditions will protect the public. Second, as set forth in more detail below, recognizing a trial court's inherent authority to impose bail conditions related to public safety

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[1] 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? Respondent addressed this issue in a supplemental brief filed October 10, 2018.

[2] *In re Humphrey* (2018) 19 Cal.App.5th 1006 (*Humphrey*), review granted May 23, 2018, S247278.

is wholly consistent with the constitutional and statutory framework related to bail.

Petitioner also contends this court should disregard well-reasoned rationale of prior appellate decisions suggesting trial courts have inherent authority to impose bail conditions because the authority is dicta. But, whether or not dicta, the rationale set forth in *In re McSherry*,[3] recognizing a trial court's inherent authority to impose reasonable bail conditions related to public safety, is both thorough and persuasive, and should be adopted by this court.

Finally, in her answer brief, petitioner contends that while respondent argued in its petition for review that this case conflicts with the *Humphrey* decision, respondent did not explain the conflict in its opening brief. The conflict between this case and *Humphrey* is that in this case the court held that a trial court does not have inherent authority to impose reasonable bail conditions related to public safety on a felony defendant released on bail. In contrast, the Court of Appeal in *Humphrey* mandates that trial courts consider less restrictive nonfinancial conditions of release and contemplates a felony defendant being released on bail coupled with conditions.

DISCUSSION

I.

THE ISSUE PRESENTED IN RESPONDENT'S PETITION FOR REVIEW WAS RAISED AND ARGUED IN THE COURT OF APPEAL, THEREFORE IT IS PROPERLY BEFORE THIS COURT

In respondent's petition for review, one issue was presented for review: Do trial courts possess inherent authority to impose reasonable bail conditions related to public safety on felony defendants who are released on

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[3] *In re McSherry* (2003) 112 Cal.App.4th 856 (*McSherry*).

monetary bail? Petitioner argues the issue presented was not the issue raised and argued in the Court of Appeal. Petitioner argues the issue addressed by the Court of Appeal was much narrower: whether trial courts have statutory or inherent authority to impose a bail *search* condition. (Answer Brief on the Merits (ABM), p. 9.) Petitioner is wrong.

The petition for writ of habeas corpus filed in the Court of Appeal by petitioner included the following point headings: "I. The court had no statutory authority to impose a bail condition; II. The court's inherent authority to admit petitioner to bail did not authorize it to add bail conditions." (Petition for Writ of Habeas Corpus, case D072981, p. 2.) Petitioner in turn argued that once a felony defendant posted bail at the scheduled amount trial courts had neither statutory nor inherent authority to impose bail conditions.

In its return, respondent stated, "Respondent agrees there is no specific statute addressing a trial court's authority to impose a bail condition on a defendant who has posted reasonable bail." But, respondent then argued "a trial court has the inherent authority to impose such a condition, so long as the condition relates to public safety and is reasonable." (Return to Petition for Writ of Habeas Corpus, case D072981, p. 17.)

The Court of Appeal addressed the issue presented in the petition for review in its published opinion. The majority first agreed with the parties that there was no statutory authority related to "a court or magistrate's authority to impose conditions for a person released on the scheduled amount of bail for a felony case." (*In re Webb* (2018) 20 Cal.App.5th 44, 50 (*Webb*).) The Court of Appeal then considered whether the trial court had inherent authority to impose bail conditions. (*Id.* at pp. 51-57.)

The court considered the case cited by respondent, *In re McSherry*, in which the Second District Appellate Division, Division Seven, upheld

imposition of a bail condition outside the statutory bail scheme. (*McSherry*, *supra*, 112 Cal.App.4th at p. 863.) But, the court declined to rely on *In re McSherry*. The court stated the case could not "properly be read as granting courts or magistrates authority to impose conditions in felony cases beyond that envisioned by the Legislature in its comprehensive bail scheme." (*Webb*, *supra*, 20 Cal.App.5th at pp. 54-55.) The court continued "[s]uch a reading constitutes an impermissible amendment of the statutory scheme, contrary to the Legislature's expressed intent." (*Id.* at p. 55.) The court then stated "[t]he Legislature has not authorized bail conditions in such cases; but unconditionally requires that a person who has posted bail 'shall be discharged from custody . . .' [Citation.]" (*Ibid.*) Thus, contrary to petitioner's argument, the Court of Appeal did decide the issue presented; it concluded that trial courts do not have inherent authority to impose bail conditions on a felony defendant released on the scheduled bail amount.

In fact, the same was recognized by the Honorable Justice Patricia Benke, in her concurring opinion. Justice Benke stated "unlike my colleagues, I agree with the courts in *In re McSherry* [citation] and *Gray v. Superior Court* [citation], that a trial court has inherent authority to impose conditions on a defendant's release, even when a defendant is able to post the amount of bail set forth in the court's bail schedule." (*Webb*, *supra*, 20 Cal.App.5th at pp. 58. (conc. opn. of Benke, P.).) Justice Benke then set forth her analysis as to why trial courts possessed inherent authority to impose bail conditions on felony defendants released on monetary bail. She noted, "I think we must recognize the practical necessity that in particular cases, in order to assure the defendant's appearance and *protect the public from harm*, a trial court has the power to impose conditions which restrain the behavior or provide monitoring of a defendant while criminal proceedings are pending – even where as here, the defendant has the ability to post cash bail." (*Id.* at p. 58, original italics.)

In sum, the issue presented in respondent's petition for review was raised and argued in the Court of Appeal and is properly before this court.

Notwithstanding, in her answer brief, petitioner attempts to narrow the issue presented to this court. Petitioner contends the only issues resolved by the Court of Appeal were whether the trial court had statutory or inherent authority to impose a *search condition*. (ABM, p. 9.) But, as evident from the citations to the opinion in this case, *ante*, the court's decision was not limited to whether a search condition could be imposed on a felony defendant released on monetary bail. Instead, the majority also answered the broader question of whether a trial court had inherent authority to impose any bail condition on a felony defendant released on the scheduled bail amount. The majority answered that question in the negative, and the concurring justice disagreed.

Ultimately, petitioner's argument is an attempt to interject a separate issue before this court, that is whether a trial court possesses inherent authority to impose a Fourth Amendment waiver as a condition of bail on a felony defendant released on bail. In respondent's petition for review, respondent stated it did "not seek review of whether the bail condition imposed in this case was a proper exercise of the trial court's inherent authority. Rather, respondent seeks to resolve the conflict in the law created by this case and *Humphrey* as to whether the trial court has inherent authority to impose reasonable bail conditions, related to public safety when a felony defendant is released on bail." (Petition for Review, p. 3.) Petitioner had an opportunity to not only file an answer to the petition for review responding to the issue presented by respondent but also the opportunity to ask the court "to address additional issues if it grants review." (Cal. Rules of Court, rule 8.500, subd. (a)(2).) No such answer was filed. Accordingly, the only issue presented to this court is whether "trial courts possess inherent authority to impose reasonable bail conditions

related to public safety on felony defendants who are released on monetary bail."[4]

II.

PETITIONER'S ARGUMENT THAT TRIAL COURTS MAY INCREASE MONETARY BAIL TO PROTECT THE PUBLIC FAILS TO RECOGNIZE THE IMPORT OF *HUMPHREY*

In her answer brief, petitioner contends that trial courts lack *statutory* authority to impose reasonable bail conditions related to public safety on felony defendants because the legislature has "formulated a system of protecting the public through an increase in money bail, use of protective orders, and noticed hearings." (ABM, pp. 15-17.) While petitioner is correct that there is no statutory authority allowing a court to impose bail conditions on felony defendants released on scheduled bail, she is wrong in contending the only way a court may ensure public safety is through an increase in money bail. At the outset, respondent has never argued that trial courts have *statutory* authority to impose reasonable bail conditions related to public safety on felony defendants who post bail at the scheduled amount. Rather, respondent's argument is, and has always been, that trial courts have *inherent* authority to impose reasonable bail conditions related to public safety on felony defendants. Additionally, post-*Humphrey*, contrary to petitioner's argument, trial courts may not simply set high money bail amounts to protect the public.

In her answer brief, petitioner relies on various statutes contained within the Penal Code to argue that when public safety is the concern of the trial court, it is statutorily authorized to increase bail. (ABM, at pp. 12-18.)

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[4] Because the only issue presented for review is whether trial courts possess inherent authority to impose reasonable bail conditions related to public safety on felony defendants released on monetary bail, petitioner's argument in her supplemental brief, that a bail search condition will be unreasonable under SB10, is not addressed. The reasonableness of a bail search condition is not the issue presented to this court.

But, those statutes must now be read in conjunction with the *Humphrey* decision. Post-*Humphrey*, trial courts may no longer simply increase bail amounts to protect the public. Instead, the Court of Appeal in *Humphrey* held that in setting money bail courts must consider amongst other factors a defendant's ability to pay money bail. (*Humphrey*, *supra*, 19 Cal.App.5th at p. 1048.) The other constitutionally mandated factors a court must consider in setting bail include the seriousness of the offense charged, the previous criminal record of the defendant, the probability of his or her appearing at the trial or hearing of the case, and the protection of the public. (Cal. Const., art. I, §§ 12 & 28, subd. (f)(3).) Once all factors are taken into consideration, the court must set bail in an amount necessary to ensure the defendant's future court appearance, which may or may not be affordable. (*Humphrey*, *supra*, 19 Cal.App.5th at p. 1048.) Thus, petitioner's argument that trial courts may simply increase monetary bail to protect the public runs afoul of *Humphrey*, which prohibits the imposition of bail beyond what is necessary to ensure a defendant's future court appearance. (*Ibid.*)

Further, petitioner's contention that only increases in money bail, protective orders, and noticed hearings may be used to protect the public is contrary to the requirement in *Humphrey* that trial courts also consider whether less restrictive alternatives to bail would be sufficient. (*Humphrey*, *supra*, 10 Cal.App.5th at p. 1048.) In *Humphrey*, the Court of Appeal stated "when the court's concern is protection of the public rather than flight" then the trial court is obligated "to inquire whether less restrictive alternatives to detention could adequately protect public or victim safety." (*Humphrey*, *supra*, 10 Cal.App.5th at p. 1029.) And, the court in *Humphrey* contemplated trial courts imposing bail conditions or a combination of money bail and bail conditions. (*Id.* at p. 1045.) As a result, petitioner's argument that trial courts are limited to increasing money bail, issuing protective orders, and having noticed hearings to protect the public, must be

rejected. The First District Court of Appeal in *Humphrey* has recognized that trial courts are not so limited under the current statutory scheme.

III.

REASONABLE BAIL CONDITIONS RELATED TO PUBLIC SAFETY MAY BE IMPOSED AT ARRAIGNMENT OR UPON A FINDING OF "GOOD CAUSE"

Petitioner contends that respondent is advocating for "allowing courts unlimited authority to fashion conditions of release at any stage in the proceedings without changed circumstances . . ." As a consequence, defendants will be "second guessing whether they should post bond" because they will be concerned about the potential "for a slew of additional conditions" being imposed. (ABM, at p. 17.) Petitioner misinterprets respondent's position.

As in the case with bail, trial courts would be limited to imposing reasonable bail conditions related to public safety on felony defendants by Penal Code section 1289. This section provides that once a defendant has been admitted to bail, a trial court "upon good cause" may increase or reduce the amount of bail." Good cause "must be founded on changed circumstances relating to the defendant or the proceedings." (*In re Annis* (2005) 127 Cal.App.4th 1190, 1195.) In cases where the amount of bail is increased, a defendant may be returned to custody, unless he gives the increased amount. (Pen. Code, § 1289.)

In accordance with Penal Code section 1289, at arraignment, if bail has not been set, the court would be authorized to set bail and impose reasonable bail conditions related to public safety. Thereafter, reasonable bail conditions could only be imposed "upon good cause." If at arraignment a defendant has already been released, the trial court could also increase or decrease bail and impose reasonable bail conditions related to public safety if there is "good cause."

Petitioner's argument that defendants may second guess whether they should post a bond because of a concern that trial courts may impose a "slew of additional conditions" is unfounded. Trial courts will not have unfettered discretion to impose bail conditions. Instead, at arraignment, if a defendant has been released from custody, the court must have good cause to impose bail conditions just as it must have good cause to increase bail on the same defendant. In addition, the trial court would be limited to imposing reasonable bail conditions related to public safety.

IV.

RECOGNIZING A TRIAL COURT'S INHERENT AUTHORITY TO IMPOSE REASONABLE BAIL CONDITIONS RELATED TO PUBLIC SAFETY ON FELONY DEFENDANTS IS CONSISTENT WITH THE CONSTITUTIONAL AND STATUTORY PROVISIONS RELATED TO BAIL

In argument II, petitioner argues that trial courts do not have inherent authority to impose reasonable bail conditions related to public safety on felony defendants because the "[t]he court's inherent authority is limited by statute." (ABM, at p. 18.) She argues that because the Penal Code provides that defendants "shall be discharged from custody" upon the posting of bail, the trial court may not exercise its inherent authority to impose bail conditions because that would "impact the statutory right to be released." (ABM, at p. 22.)

Petitioner's claims must be rejected. Contrary to her argument, the constitutional and statutory scheme related to bail does not preclude a trial court from exercising its inherent authority to impose reasonable bail conditions related to public safety on felony defendants. And, the recognition of the court's inherent authority to impose reasonable bail conditions related to public safety is wholly consistent with the constitutional and statutory scheme related to bail.

Notably, in support of her argument, petitioner cites to only Penal Code sections 1269b and 1269c for the proposition that a defendant shall be released on posting bail. (ABM, at p. 22.)

Petitioner fails to cite or acknowledge the constitutional mandates related to bail. Article I, section 28 of the California Constitution, Marsy's Law, contains two subdivisions that are bail related. Subdivision (b) sets forth a victim's right to have their safety and that of their family "considered in fixing *the amount of bail and release conditions* for the defendant." (Cal. Const., art. I, § 28, subd. (b), italics added.) Subdivision (f)(3) provides that in "setting, reducing, or denying bail . . . public safety and the safety of the victim will be the primary considerations. (Cal. Const., art. I, § 28, subd. (f)(3).) In addition to that constitutional framework, Penal Code section 1275 provides that "[i]n setting, reducing, or denying bail . . . public safety shall be the primary consideration." (Pen. Code, § 1275, subd. (a)(1).) Hence, "public safety . . . is now the primary factor for the court to consider in the setting of bail." (*McSherry*, *supra*, 112 Cal.App.4th at p. 861.)

For that reason, the Second District Court of Appeal, Division Seven, rejected a similar argument in *McSherry* despite the statutory language providing that once convicted, a misdemeanor defendant had an absolute right to release on bail. In *McSherry*, the defendant was convicted of three counts of loitering about schools and sentenced to 18 months in jail. (*McSherry*, *supra*, 112 Cal.App.4th at pp. 858-859.) Pending appeal, defendant requested bail; bail was set, and the trial court imposed various conditions citing concern for public safety. (*Id.* at p. 859.) Defendant filed a petition for writ of habeas corpus arguing that pursuant to Penal Code section 1272, he had an absolute right to bail and that the trial court lacked authority to impose bail conditions. (*Id.* at p. 858.) The Court of Appeal disagreed. (*Ibid.*)

In reaching its decision, the court recognized that Penal Code section 1272 provides that a criminal defendant who has been convicted of a misdemeanor, "has an absolute right to bail." (*McSherry*, *supra*, 112 Cal.App.4th at p. 858.) The court also noted that in setting bail a trial court was bound to take into consideration the factors set forth in Penal Code section 1275, including public safety. (*Id.* at p. 860.) The court then stated that if the bail statute was read as argued by the defendant such that he was entitled to be released on bail without any conditions, then the language related to public safety would be "rendered superfluous." (*Ibid.*) The court continued:

> To accept petitioner's contentions would mean that a court has the power to impose bail conditions on a person who has merely been charged with a crime and before the nature of his involvement has been determined, but once the defendant has been found guilty and found to be deserving of the maximum sentence, then the court must release the defendant as a matter of right and is powerless to impose any conditions on his or her bail.
>
> Such an interpretation is nonsensical. . . . This cannot be what the Legislature intended.

(*Id.* at pp. 861-862.)

The court then set its focus on determining the legislative intent behind the statutory scheme related to bail. (*McSherry*, *supra*, 112 Cal.App.4th. at p. 862.) "Within the bail statutory framework is the Legislature's overriding theme; the safety of the public is of paramount importance. [Citations.]" (*Id.* at p. 862.) The court concluded, "Given the circumstances of the Legislation and the overall plan, it would defeat the Legislature's purpose to hold that a person . . . was absolutely entitled to remain free on bail without any restrictions or conditions . . ." (*Id.* at p. 863.) The court then held that despite the fact the defendant had an absolute right to bail and no statute permitted the imposition of bail conditions post-

conviction, the trial court "has the right to place restrictions on the right to bail of a convicted misdemeanant as long as those conditions relate to the safety of the public." (*Id.* at p. 863.)

The same rationale compels the same conclusion here. The language cited by petitioner must be read in conjunction with all of the constitutional and statutory provisions related to bail. When read in that context a trial court is not powerless to impose conditions related to public safety, but instead must act in accordance with the constitutional mandate that public safety be protected. Finding that trial courts may exercise their inherent authority to impose reasonable conditions related to public safety on felony defendants is consistent with the constitutional and statutory scheme and its "overriding theme; the safety of the public is of paramount importance." (*McSherry*, *supra*, 112 Cal.App.4th. at p. 862.) A contrary conclusion, that trial courts must release a defendant on monetary bail without the ability to condition their release in order to protect the public, would be inconsistent with the constitutional and statutory scheme related to bail and should be rejected.

V.

WHETHER DICTA OR NOT, THE WELL-REASONED RATIONALE IN *MCSHERRY* THAT A TRIAL COURT HAS INHERENT AUTHORITY TO IMPOSE BAIL CONDITIONS RELATED TO PUBLIC SAFETY IS SOUND, PERSUASIVE, AND SHOULD BE ADOPTED BY THIS COURT

In respondent's opening brief on the merits, respondent noted that prior to the decision in this case, Courts of Appeal had recognized a trial court's inherent authority to impose reasonable bail conditions related to public safety and cited *McSherry* and *Gray v. Superior Court* (2005) 125 Cal.App.4th 629 (*Gray*). Petitioner attempts to dismiss the rationale in those cases as dicta. (ABM, at pp. 23-28.)

Although dicta is not controlling on a court, it may be followed if persuasive. (*Humphrey's Executor v. United States* (1935) 295 U.S. 602, 627-628 [55 S.Ct. 869, 79 L.Ed. 1611].) "Dicta that reflects a 'thorough analysis' or 'compelling logic' should be followed." (*California v. Superior Court* (*Underwriters at Lloyd's of London*) (2000) 78 Cal.App.4th 1019, 1029, fn. 13.) "A statement that does not possess the force of a square holding may nevertheless be considered highly persuasive, particularly when made by an able court after careful consideration, or in the course of an elaborate view of the authorities, or when it has been long followed." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 947, p. 989.)

Such is the case in both *McSherry* and *Gray*. As set forth above, *McSherry* was presented with whether a trial court could impose bail conditions related to public safety on a misdemeanor defendant, while the defendant was released on bail pending appeal. (*McSherry*, *supra*, 112 Cal.App.4th at p. 858.) The defendant argued he was entitled to be released on bail as a matter of right and that the court was powerless to impose conditions on his bail. (*Id.* at p. 862.) In holding that the trial court was so authorized, the court first considered that pursuant to Penal Code section 1272, a misdemeanor defendant has an absolute right to bail pending appeal. (*Ibid.*) The court also considered that in setting bail the trial court was required to consider the various factors set forth in Penal Code section 1275, including public safety. (*Id.* at p. 860.) The court further recognized that pretrial the Penal Code provides that charged misdemeanants are entitled to be released on their own recognizance unless the courts finds they are likely to compromise public safety. If a defendant poses a public safety risk, then the court is authorized "to set bail and specify the conditions, if any, whereunder the defendant shall be released." (*Id.* at p. 861.) The court then examined the statutory scheme related to bail,

including the Legislature's intent, before recognizing a trial court's inherent authority to impose reasonable bail conditions related to public safety.

> Here, we have a constitutional provision that mandates, with certain exceptions, that persons involved in the criminal process have the right to have reasonable bail set. [Citation.] We also have a statute that states a sentence [sic] misdemeanant has an absolute right to be released on bail while an appeal is pending. [Citation.] Within the bail statutory framework is the Legislature's overriding theme; the safety of the public is of paramount importance. (See [Pen. Code,] §§ 1269c, 1270, 1270.1, 1272.1, and 1275.) At the time of the amendments to the sections just cited, and since, the Legislature of this state has been concerned with public safety and the need to protect that public . . .
>
> Given the circumstances of the legislation and the overall plan, it would defeat the Legislature's purpose to hold that a person who has been to prison once for kidnapping and abusing a child, has been sent to a state mental hospital for mentally disordered sex offenders and has been convicted of at least eight separate misdemeanors involving loitering in and around schools and places where children congregate, was absolutely entitled to remain free on bail without any restrictions or conditions being placed upon his movements. Accordingly we hold that under [Penal Code] section 1272, a trial court has the right to place restrictions on the right to bail of a convicted misdemeanant as long as those conditions relate to the safety of the public.

(*Id.* at pp. 862-863.)

Notably, Penal Code section 1272 does not authorize the imposition of bail conditions, rather it provides that a convicted misdemeanant has an absolute right to bail pending appeal. (Pen. Code, § 1272.) Thus, *McSherry* has been cited for the proposition that trial courts have inherent authority to impose reasonable bail conditions related to public safety.

Following that decision, the court in *Gray* considered whether a trial court could prohibit a defendant, released on monetary bail for felony offenses, from practicing medicine as a condition of bail. (*Gray*, *supra*, 125 Cal.App.4th at p. 635.) The court noted, like in *McSherry*, that there was no

statute authorizing the trial court to impose the bail condition on a felony defendant released on bail. (*Id.* at p. 641.) But, relying on *McSherry*, the court stated "there is a general understanding that the trial court possesses inherent authority to impose conditions associated with release on bail." (*Id.* at p. 642.)

Moreover, at least two courts have cited *McSherry* and *Gray* for the proposition that courts have authority to impose conditions on a defendant released on monetary bail. (See e.g. *Naidu v. Superior Court* (2018) 20 Cal.App.5th 300, 308 ["In the words of the *Gray* court, 'There appears to be little dispute that a trial court may impose conditions associated with release on bail . . .' "]; *People v. International Fidelity Insurance Company* (2017) 11 Cal.App.5th 456, 462 ["the trial court has the power to impose reasonable bail conditions intended to ensure public safety"].)

In addition, in *Humphrey*, the First District Court of Appeal recently suggested that to comport with constitutional concerns courts may impose a monetary bail amount coupled with conditions to protect the victim and community. (*Humphrey*, *supra*, 19 Cal.App.5th at p. 1026.) It should also be noted that the twelve judges appointed to the Pretrial Detention Reform Workgroup, recognized in its Recommendations to the Chief Justice, that:

> The court is authorized to set bail in an amount deemed sufficient to ensure the defendant's appearance, or to ensure the protection of a victim or family member of a victim of domestic violence, and to include *terms and conditions* that the court, in its discretion, deems appropriate.

(Pretrial Detention Reform, Recommendations to the Chief Justice, Pretrial Detention Reform Workgroup (2017) p. 27, italics added.) And, that "the court may set conditions on bail release." (*Ibid.*) In support of that proposition, the Workgroup cited *Gray*, and also cited to *McSherry* for examples of "common conditions of release." (*Ibid.*)

Thus, the rationale and analysis set forth in *McSherry* should be considered highly persuasive because it was "made by an able court after careful consideration," "in the course of an elaborate view of the authorities," and "it has been long followed." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 947, p. 989.) For these reasons, respondent urges this Court to expressly find that a trial court has inherent authority to impose in the appropriate case reasonable bail conditions related to public safety on a felony defendant who has been released on scheduled bail.

VI.

THE DECISION IN THIS CASE FINDING A TRIAL COURT DOES NOT HAVE INHERENT AUTHORITY TO IMPOSE REASONABLE CONDITIONS RELATED TO PUBLIC SAFETY ON A FELONY DEFENDANT RELEASED ON BAIL CONFLICTS WITH *HUMPHREY'S* MANDATE TO CONSIDER LESS RESTRICTIVE NONFINANCIAL CONDITIONS OF RELEASE

Petitioner's final claim is that in respondent's petition for review respondent claimed that *Humphrey* conflicted with this case and no mention of the conflict was set forth in the opening brief. (ABM, p. 28.) Simply stated, *Humphrey* conflicts with this case because it contemplates the imposition of money bail coupled with bail conditions to protect the public whereas the court in this case held no conditions could be imposed on a felony defendant released on the scheduled bail amount.

In *Humphrey*, the Court of Appeal held that in setting bail a trial court must inquire and determine a defendant's ability to pay, amongst other factors set forth in the California Constitution and Penal Code. (*Humphrey*, *supra*, 19 Cal.App.5th at pp. 1014, 1024.) The court continued that before bail is set in an amount a defendant is unable to afford, resulting in a *sub rosa* detention, the court should inquire into whether "less restrictive conditions of release would be sufficient to reasonably assure"

the defendant's appearance. (*Id.* at p. 1026.) The court also stated that before a court imposes bail in an amount a defendant is unable to afford a court must make a finding "that no less restrictive nonfinancial conditions of release would be sufficient to protect the victim and community." (*Ibid.*) The court's decision was based on a line of United States Supreme Court precedent that the court interpreted stood for "the general proposition that when a person's freedom from governmental detention is conditioned on payment of a monetary sum, courts must consider the person's financial situation and *alternative conditions of release when calculating what the person must pay* to satisfy the particular state interest." (*Id.* at p. 1029, italics added, internal quotation marks omitted.) Thus, in *Humphrey* the court contemplated trial courts imposing bail on felony defendants coupled with bail conditions.

In contrast, the majority in *Webb* held that no condition may be imposed once a felony-charged defendant posts the scheduled bail amount. (*Webb*, *supra*, 20 Cal.App.5th at p. 55.) Thus, the conflict between the two cases is this: in the context of determining a felony bail amount, *Humphrey* can be read as a court having authority to impose conditions in addition to bail whereas *Webb* rejects a court having that authority unless that authority is contained in the statutory bail scheme.

CONCLUSION

For the foregoing reasons, respondent respectfully requests this court reverse the Court of Appeal's holding that trial courts may not exercise their inherent authority to impose reasonable bail conditions related to public safety on felony defendants released on bail.

Dated: October 24, 2018

Respectfully Submitted,

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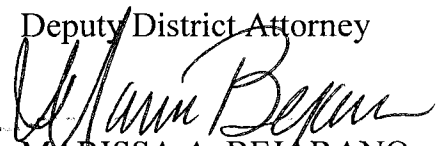

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CERTIFICATE OF WORD COUNT

I certify that this RESPONDENT'S REPLY BRIEF ON THE MERITS, including footnotes, and excluding tables and this certificate, contains 5,318 words according to the computer program used to prepare it.

MARISSA BEJARANO, SBN 234544
Deputy District Attorney

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.

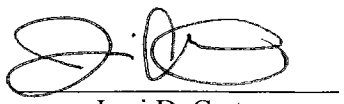
On October 24, 2018, a member of our office served a copy of the within **RESPONDENT'S REPLY BRIEF ON THE MERITS** to the interested parties in the within action by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, in the United States Mail, addressed as follows:

Robert Ford Office of the Public Defender 450 B. St., Suite 1100 San Diego, CA 92101 ***Attorney for Appellant and Petitioner Bettie Webb***	San Diego Superior Court Attn: Clerk of the Court/Appellate Division c/o Honorable Stephanie Sontag, Judge 1100 Union Street, Suite 218 San Diego, CA 92101

I also electronically served the same referenced above document to the following entities via www.truefiling.com:

COURT OF APPEAL, FOURTH DISTRICT, DIVISION ONE
ATTORNEY GENERAL'S OFFICE: AGSD.DAService@doj.ca.gov
APPELLATE DEFENDERS, INC: eservice-criminal@adi-sandiego.com
SAN DIEGO SUPERIOR COURT: Appeals.Central@SDCourt.ca.gov
ROBERT FORD: Robert.ford@sdcounty.ca.gov

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 24, 2018 at 330 West Broadway, San Diego, CA 92101.



Jerri D. Carter