FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-3259

KATHERINE MAGBANUA,

Petitioner,

v.

WALT MCNEIL, as Sheriff of Leon County, Florida, and STATE OF FLORIDA,

Respondents.

Petition for Writ of Habeas Corpus—Original Jurisdiction.

January 7, 2021

ROWE, J.

Katherine Magbanua petitions this Court for a writ of habeas corpus, challenging the trial court's order summarily denying her third motion for pretrial release. Magbanua argues that the trial court erred by denying her motion without an evidentiary hearing. And she asserts that even if the proof of her guilt were evident or the presumption great, the trial court failed to exercise its discretion to consider other facts that would support her request for pretrial release. We previously denied the petition and now write to explain our rationale.

Facts

Magbanua was arrested in 2016 for her suspected involvement in the murder of Florida State University law professor Daniel Markel. On the morning of July 18, 2014, Markel was shot twice in the head while sitting in his car in the garage at his house. A witness saw a Toyota Prius backing out of Markel's driveway after gunshots were fired.

The investigation of Markel's murder led police to identify Luis Rivera and Sigfredo Garcia as suspects. The two had been in Tallahassee at the time of the murder and had rented a Toyota Prius matching the description of the car seen in Markel's driveway. Magbanua had been in an intimate relationship with Garcia and was the mother of two of his children. Magbanua also had a connection to the murder victim. Magbanua was in a relationship with Charlie Adelson, the brother of Markel's ex-wife, Wendi Adelson. Before the murder, Markel and Wendi Adelson were fighting over the custody of their two children.

Based on evidence developed during the investigation, the State suspected that Magbanua acted as a go-between in a murder-for-hire scheme. The State believed that Magbanua, acting at the direction of Charlie Adelson (and possibly other members of the Adelson family), hired Garcia and Rivera to murder Markel. The alleged motive behind the murder was to eliminate Markel so that Wendi Adelson could obtain sole custody of the Markel children.

The State developed substantial evidence in support of its murder-for-hire theory. Investigators learned that just before the murder, Garcia had multiple telephone conversations with Harvey Adelson, the father of Charlie and Wendi Adelson. The State also obtained cell phone records showing several calls between Charlie Adelson and Magbanua in the hours just before and right after Markel's murder. Phone records also showed that Magbanua called Garcia right after the murder. The next morning, Magbanua's cellular coordinates placed her at Charlie Adelson's home.

The State's case against Magbanua solidified when Rivera testified before the grand jury. Rivera asserted that he first

thought that he and Garcia were going to Tallahassee to commit a robbery. But Garcia told Rivera on the drive to Tallahassee that they were hired to kill Markel because Wendi Adelson wanted sole custody of her children. Rivera understood that Wendi Adelson arranged for Magbanua to hire him and Garcia to commit the murder for $100,000. Rivera testified that after Markel was shot, Garcia's first call was to Magbanua to report that the murder had been committed. He testified that Magbanua responded, "I know." Shortly after returning to Miami, Rivera attested that Magbanua brought him a brown paper bag containing $37,000 for his participation in the murder.

Procedural History

Based on the evidence obtained in the murder investigation, Magbanua was indicted by a grand jury on the charges of principal to first-degree murder, conspiracy to commit murder, and solicitation to commit murder. After her arrest, Magbanua moved for pretrial release. After a day-long evidentiary hearing, the trial court denied the motion, finding that the proof of Magbanua's guilt was evident or the presumption great. The court also found that Rivera's testimony provided direct evidence to support the murder charges. Magbanua challenged the trial court's order denying her motion by filing a habeas petition in this Court. The petition was denied on the merits without an opinion. *See Magbanua v. McNeil*, 230 So. 3d 832 (Fla. 1st DCA 2017) (unpublished table decision).

Magbanua remained in custody pending trial. She and Garcia were tried together in September 2019. After a three-week trial, the jury found Garcia guilty of first-degree murder and conspiracy to commit murder. But the jury could not reach a unanimous verdict as to Magbanua's guilt. A month later, the trial court declared a mistrial and scheduled Magbanua's retrial.

Three months after the trial court declared the mistrial, Magbanua moved for pretrial release for a second time. She cited the mistrial and the evidence presented at trial, and she argued the totality of the evidence did not support a finding that the proof of her guilt was evident or the presumption great. Magbanua also attacked the direct evidence against her by casting doubt on Rivera's credibility. As to the circumstantial evidence, Magbanua

asserted that there were innocent explanations that would support her defense that she was not involved in the planning or execution of the murder.

After due consideration, the trial court summarily denied the motion: "Although the failure to reach a unanimous verdict is a factor for the Court to consider, the fact that at least one juror was unable to decide that the defendant was guilty is not binding on the Court." The court found: "The Court is still of the view that proof of defendant's guilt is evident and the presumption is great . . . based on the information and testimony presented during the three week trial." Magbanua did not seek review of the trial court's ruling on her second motion or challenge its failure to hold a hearing.

Then, seven more months passed, during which Magbanua's retrial was postponed. In August 2020, Magbanua filed a third motion for pretrial release. Magbanua repeated some of the arguments made in her second motion—that the facts and testimony adduced at trial, along with the mistrial, showed that the proof of her guilt was not evident and the presumption was not great. She also argued that the COVID-19 pandemic constituted a change in conditions warranting her pretrial release because it hindered the preparation of her defense and proper precautions were not being taken at the jail.

A successor judge was assigned to Magbanua's case upon the retirement of the judge originally assigned to the case. The successor judge summarily denied the motion. The trial court found that the predecessor judge had considered the facts related to the mistrial and the testimony adduced at trial when it ruled on Magbanua's second motion. And the trial court rejected Magbanua's pandemic-related arguments, finding that the jail had proper and constitutionally adequate protocols in place. Magbanua now challenges the trial court's order denying her pretrial release, petitioning this Court for the extraordinary writ of habeas corpus.

Analysis

A defendant may seek relief from an order denying pretrial release by petitioning for a writ of habeas corpus. *See Flicker v. Duff*, 290 So. 2d 129, 130 (Fla. 1st DCA 1974). Article I, section 14 of the Florida Constitution governs the right to pretrial release:

> Pretrial release and detention.—
>
> Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

"This provision has been construed to mean that a person charged with a capital offense or an offense punishable by life imprisonment is 'entitled to release on reasonable bail as a matter of right' unless 'the proof is evident or the presumption great that [the accused] is guilty of the offense charged.'" *Williams v. State*, 266 So. 3d 1197, 1197–98 (Fla. 1st DCA 2018) (quoting *State v. Arthur*, 390 So. 2d 717, 718 (Fla. 1980)).

The State charged Magbanua with a capital offense: first-degree murder. § 782.04(1)(a)1., Fla. Stat (2014). And so, the trial court could deny her pretrial release if the State could show that "the proof of guilt is evident or the presumption is great." *Williams*, 266 So. 3d at 1198. The supreme court recognized in *Arthur* that the State can meet its evidentiary burden by "presenting the evidence relied upon by the grand jury or the state attorney in charging the crime." *Arthur*, 390 So. 2d at 720. The State may present such evidence "in the form of transcripts or affidavits." *Id.*

The trial court determined that the State met its burden here and denied Magbanua's third motion for pretrial release. The trial court found that the predecessor judge conducted a full evidentiary

hearing under *Arthur* on Magbanua's first motion and found that the proof of her guilt was evident and the presumption great. The trial court found that the predecessor judge then considered Magbanua's allegations related to the mistrial and the evidence from the trial when it ruled on her second motion for pretrial release. The trial court denied her request for relief as to those grounds for a third time "[c]onsistent with [the] prior ruling." Last, as to Magbanua's plea for pretrial release based on pandemic-related concerns, the trial court found that those facts did not support pretrial release.

In her petition to this Court, Magbanua contends that the trial court erred in two respects when it denied her motion: (1) it failed to hold a hearing on her motion; and (2) it did not recognize its discretion to grant pretrial release under the facts here. We disagree.

The trial court did not need to hold an evidentiary hearing on Magbanua's third motion for pretrial. The predecessor judge considered the grounds alleged in her third motion about the mistrial and the evidence adduced at trial when it ruled on her second motion. And Magbanua showed no change in conditions that would compel the successor judge to revisit the ruling of the predecessor judge on the allegations relating to the trial and mistrial.[*] *See Ex parte Sirmans*, 116 So. 282, 285 (Fla. 1927) (holding that "the judgment of the county judge that the accused is entitled to bail is res adjudicata as to that issue until a change in conditions is shown"). Without a change in conditions or the emergence of additional evidence, there was no reason for the

---

[*] The supreme court has held that a trial resulting in a mistrial can constitute a change in conditions and allow the trial court to reconsider a prior ruling on pretrial release. *See State v. Frear*, 20 So. 2d 481, 481–82 (Fla. 1945). But Magbanua did not challenge the trial court's failure to hold a hearing on her **second** motion for pretrial release, in which she initially sought release based on the mistrial and the evidence adduced at trial. And so, we do not reach whether the facts and evidence cited in **that** motion was a sufficient change in conditions to warrant an evidentiary hearing.

successor judge to conduct a hearing or reconsider the predecessor judge's previous rulings on the very same arguments. *See Soto v. State*, 89 So. 3d 263, 263 (Fla. 3d DCA 2012) (holding that once a trial court grants bail to a defendant charged with life felonies, "it cannot revoke the decision if circumstances have not changed or additional evidence emerged since the bond was originally set").

And the only new information presented as a basis for pretrial release in Magbanua's third motion concerned the pandemic-related allegations. But those allegations present no information relevant to the trial court's determination of whether to grant pretrial release. *See id.*; *cf. Mathis v. Starr*, 152 So. 2d 161, 162 (Fla. 1983) (finding that the "primary purpose" of a bail hearing in a capital case "is to determine whether or not proof of the accused's guilt is evident or the presumption great"). In determining whether to grant pretrial release, the trial court had to consider the criteria provided under section 903.046(2), Florida Statutes (2020), including: "[t]he nature and circumstances of the offense charged," "[t]he weight of the evidence against the defendant," the defendant's flight risk, and "[t]he nature and probability of danger which the defendant's release poses to the community." *See* Fla. R. Crim. P. 3.131(b)(3) (reciting the same criteria). Although the statute allows the trial court to rely on "[a]ny other facts" it "considers relevant," none of the enumerated statutory criteria supports granting Magbanua pretrial release based on her pandemic-related allegations. *See* § 903.046(1), Fla. Stat. (2020) (expressing that along with securing the defendant's appearance at subsequent proceedings, the purpose of a bail determination is "to protect the community against unreasonable danger from the criminal defendant"). And so, because Magbanua did not allege any new or relevant facts for the trial court to consider, the trial court acted within its discretion by not holding an evidentiary hearing on her third motion for pretrial release.

But even if she were not entitled to a hearing on her motion, Magbanua argues that she is still entitled to habeas relief because the trial court failed to recognize its discretion to grant pretrial release based on her pandemic-related claims—even though the court found the proof of her guilt was evident and the presumption great. Magbanua is correct that the trial court had discretion to grant pretrial release despite its findings on the proof of her guilt.

See Arthur, 390 So. 2d at 719 ("When the proof is evident or the presumption great that the accused committed a capital or life imprisonment offense, the accused may still come forward with a showing addressed to the court's discretion to grant or deny bail."). But her argument fails because the face of the trial court's order shows that the court understood the range of its discretion.

Right after concluding that the proof of Magbanua's guilt remained evident and the presumption great, the trial court turned to Magbanua's pandemic-related arguments. The trial court found that she had not established a reason for the court to grant pretrial release, determining that: "the Leon County Sheriff's Office Pandemic Standard Operating Procedures and the COVID-19 Preparation and Prevention Strategies in place at the Leon County Detention Facility are sufficient to address any danger to [Magbanua's] health. The Leon County Sheriff is providing adequate constitutionally required care to its inmates, including [Magbanua]." Thus, the trial court understood its discretion to consider Magbanua's motion, despite the proof of her guilt. *Cf. Reeves v. Nocco*, 141 So. 3d 775, 779–80 (Fla. 2d DCA 2014) (granting a habeas petition because it appeared that the trial court believed it had no discretion to grant release when the proof was evident or the presumption great).

Thus, because Magbanua has not established entitlement to the writ, we deny her petition for writ of habeas corpus.

LEWIS and BILBREY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Kristen Kawass of the Law Offices of Kawass, P.A., Miami, for Petitioner.

Ashley Moody, Attorney General, and Robert "Charlie" Lee, Assistant Attorney General, Tallahassee, for Respondents.