

IN THE SUPREME COURT STATE OF COLORADO
DENVER, COLORADO

Case No. _____

STATE OF COLORADO,
Plaintiff,

vs.

Chief Kurt R. Riggin,
Ex rel/ Accused.

) District Court Case No.14CV349-7
) County Court Case No. 12M6211
) Notice of Interlocutory Appeal
) Petition for Declaratory and injunctive relief for
) unauthorized bail, denial of bail, cash only self bail.
) Violation of Article 2 Sec. 19, and 20 of the
) COLORADO STATE CONSTITUTION, AND
) 4th,5th,8th AMENDMENTS U.S. CONSTITUTION
) Motion to dismiss charges and exonerate bail.
)
)
)

I. INTRODUCTION.

1.1 COMES NOW, Accused/Defendant appearing Specially not Generally hereto, seeking specific relief in the form of Declaratory and injunctive relief, and dismissal with prejudice of all charges in the above captioned criminal case. This Court will find that well established and constitutionally guaranteed forms of bail were denied in this Court's imposition of cash only self bail, thus constituting excessive bail, pains and penalties. *Any and all emphasis* employed herein may be construed to have been added.

II. EXCESSIVE & UNAUTHORIZED BAIL.

2.1 As the docket in this case reflects, trial court imposed a *cash only self* bail upon its finding of probable cause without a valid affidavit (no jurat) on file at a nonpublic hearing set for December 3rd, 2012 no summons was ever served. Accused was arrested on March 14, 2014, at approx: 6:10 on a nonexistent warrant, the officers forced entry and assaulted an at-risk adult to get in. The accused demanded to see the warrant when the officers broke through the door and pushed the homeowner with Parkinson's into the closet to get to the accused he was handcuffed put in the back of cop car for over 2 1/2 hours was then taken to and held in JEFFERSON County jail from approx: 9:00 until 2:45am when he bailed at no point was a warrant ever produced. Chief Riggan was arrested by WHEATRIDGE P.D. in his doctor's home without a warrant, and without any proof of service of any court order, and without any jurisdiction. Cash only bail paid and on deposit is in amount of \$200.00. Cash only bail violates the United States Constitution 8th amendment, and the Colorado Constitution, Article II, § Sec. 19, and 20, *to wit*:

Article II, § 20 Bail, when authorized. All persons charged with crime shall be bailable ***by sufficient sureties***, except for capital offenses when the proof is evident, or the presumption great.

2.2 Court rule does nothing to set forth authority to limit bail to any particular type of surety such as *cash only*. If this provision of the Colorado constitution is read to mean that "sureties" includes cash, it cannot be said to provide that one in custody can be required to post only cash bail, since the term "surety" embraces more than just *cash* in its scope.

Surety bond. *See* BOND.¹

Surety. One who at the request of another, and for the purpose of securing him a benefit, ***become responsible for the performance*** of the latter, of some act in favor of a third person, or hypothecates ***property as security*** therefore. ***One who undertakes to pay money or to do any other act in event that his principle fails therein. A person who is primarily liable for payment or of debt or performance of obligations of***

¹ See *Black's*, 6th Edition, "Surety bond."

another. Branch Banking & Trust Co. v. Creasy, 301 N.C. 44, 269 S.E.2d 117, 122. One bound with his principal for the payment of a sum of money or for the performance of some duty or promise and who is entitled to be indemnified by someone who ought to have paid or performed if payment or performance be enforced against him. Term includes a guarantor. UC.C. § 1-201(40). *See also* Suretyship; Suretyship, contract of. ²

Bond. *Appearance bond. Type of bail bond* required to insure presence of defendant in criminal case. *See* BAIL (*Bail bond*). ³

Bail. *Bailable offense.* One for which the prisoner may be *admitted to bail. Bailable action.* One in which *the defendant is entitled to be discharged* from arrest only *upon giving bond* to answer. ⁴

2.3 The above definitions do not limit the scope of the subject term (“surety”) to only “cash” and indeed embrace sureties of many if not every nature, one of which is a bail *bond*.

2.4 *Arguendo*, if a bond *is not* a surety, when such *is* accepted as bail, would not the reviewing court be in violation of Article II, § 19, 20, which authorizes only “sureties” as bail? To hold that the term “surety” means only cash places these authorities on their respective heads. While the Court may accept cash as bail, nowhere is it that a court may exclude from consideration other types of sureties allowable under Colorado Constitution Article II, § 19, 20.

2.5 While statute allows the court to set the *amount* of bail, it does not allow the court to set the *form* of bail beyond “sufficient sureties.” While the Constitution for this state makes available to the Plaintiff the posting of bail in the form of *any* sufficient sureties, trial court’s imposition of a *cash only* bail wrongfully removed from his grasp that bail which might be secured through the posting of *other* sureties such as a bond or other consideration; this is the imposition of excessive bail, and the denial of lawful forms of bail, in violation of Colorado Const. Art. II, Sec. § 19, and 20 and the 8th Amendment of the U.S CONSTITUTION. **Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.**

² See *Black’s*, 6th Edition, “Surety.”

³ See *Black’s*, 6th Edition, “Bond. *Appearance bond*.”

⁴ See *Black’s*, 6th Edition, “Bail.”

Article II, § 19 Excessive bail, fines and punishments. *Excessive bail shall not be required*, excessive fines imposed, nor cruel punishment inflicted.

2.6 Unless it can be said that *cash* is the only surety, that the provisions cited, *supra*, allows for only such an imposition, it must be held that the term “surety,” as it is found in Article I, § 20, is intended to embrace *any* security and not just cash.

2.7 “A judge may not impose a penalty greater than that allowed by statutes, for his court.”⁵ Absent some statutory authority to limit the form of surety acceptable as bail and allowed under constitutional provisions, the accused must be held to have been deprived of bail by those sureties other than cash which he might otherwise have been able to procure or exploit such as property, or other sureties.

2.8 Defendant charges that his rights under Article II, §§ 19, and 20 of the Colorado Constitution were violated, when sureties other than cash were denied him as options for the purposes of bail.

III. RELIEF REQUESTED.

3.1 WHEREFORE, Defendant requests that the Court issue Declaratory and injunctive relief and dismiss of all charges, and return the bail demanded under its *cash only self* bail order, under which the accused, and many other’s arrested were justified, and exonerate all bail.

3.2 Defendant requires that the plaintiff cite that authority which allows them to restrict bail to a certain form of surety, (such as cash only) in, violation of Colorado Constitution Art.2. sec. 19, and 20. I hereby petition the court for Declaratory and injunctive relief and an order for dismissal with prejudice of the charges outstanding against the accused if a valid affidavit with a jurat cannot be provided, or authority to demand cash only self bail for a noncapital offence cannot readily be disclosed without violating the constitutional rights of all the accused.

Dated: October. _____, 2014

Respectfully submitted: _____
Chief: Kurt R. Riggin /Accused

5