CV-10- 4003762	:	SUPERIOR COURT
MICHAEL C. SKAKEL	:	JUDICIAL DISTRICT OF TOLLAND
V.	:	AT ROCKVILLE
COMMISSIONER OF CORRECTION	:	OCTOBER 30, 2013

RESPONDENT'S RESPONSE TO THE COURT'S INQUIRY, OBJECTION TO PETITIONER'S REQUEST FOR BOND AND OBJECTION TO REQUEST TO TERMINATE THE STAY

The Respondent hereby submits its response to the inquiry posed by the court in its October 24, 2013 e-mail to the parties, objects to the petitioner's request for bond, and also objects to petitioner's request to terminate the stay.

I. BRIEF HISTORY OF THE CASE

This petition for writ of habeas corpus arises from petitioner's 2002 conviction for the 1975 murder of Martha Moxley. The petitioner was convicted on June 7, 2002 following a trial before the Honorable John F. Kavanewsky, Jr. and a jury of twelve. On August 29, 2002, the court sentenced the petitioner, pursuant to General Statutes § 53a-35 (Rev. to 1975), to the custody of the Commissioner of Correction for a period of not less than twenty years, nor more than life.

Our Supreme Court affirmed petitioner's conviction on January 24, 2006. *State v. Skakel*, 276 Conn. 633, 888 A.2d 985 (2006). The United States Supreme Court denied his Petition for Certiorari on November 13, 2006. *Skakel v. Connecticut*, 127 S. Ct. 578 (2006).

Petitioner filed a Petition for New Trial, pursuant to General Statutes §52-270, on

August 25, 2005. After trial on the action, the court (*Karazin,* J.) denied the petition by Memorandum of Decision dated October 25, 2007. On April 20, 2010, after briefing and argument, our Supreme Court affirmed the trial court decision denying petitioner a new trial. *Skakel v. State*, 295 Conn. 447 (2010).

Petitioner has also pursued relief in federal court. On November 5, 2007, petitioner filed a petition for writ of habeas corpus, pursuant to 28 U.S.C §2254 in the United States District Court for the District of Connecticut. On July 27, 2009, the federal district court (*Dorsey*, J.) entered an order staying the federal action until petitioner exhausts all of the claims contained in his federal petition.

On September 27, 2010, petitioner filed a state petition for writ of habeas corpus. Trial on the habeas matter began on April 16, 2013. Petitioner amended his petition for the final time on May 17, 2013. On October 23, 2013, the habeas court (*Bishop*, J.) issued a Memorandum of Decision granting the petition.

On October 24, 2013, petitioner filed a Motion for Release on Bond. That same day, the court requested briefs addressing whether the court has any common law or statutory authority to entertain a motion for bond.

On October 28, 2013, petitioner filed a Motion to Terminate the Automatic Stay.

II. BECAUSE PETITIONER STANDS CONVICTED OF MURDER, AND REMAINS IN THE STATUS OF A SENTENCED INMATE DURING THE DURATION OF THE AUTOMATIC STAY AND THE STAY PENDING APPEAL, THIS COURT HAS NEITHER THE STATUTORY NOR COMMON LAW AUTHORITY TO GRANT BOND

There are two possible sources of a court's authority to set a post-conviction bond: Connecticut General Statutes or the common law. Under the present circumstances, neither endows this court with the authority to set bond.

First, it is clear that petitioner cannot claim statutory support for his bond request. If, as petitioner seems to be arguing, the statute governing post-conviction bail, General Statutes § 54-63f, has no application in the habeas context; See Motion to Terminate Automatic Stay, at 4-6; then it lends no support to his request for bond. On the other hand, if it applies at all in this context, petitioner, as one convicted of murder, is specifically excluded from the class of persons for whom post-conviction bond is available. General Statutes § 54-63f ("A person who has been convicted of any offense, except a violation of section 53a-54a, 53a-54b, 53a-54c or 53a-54d . . . and is either awaiting sentence or has given oral or written notice of such person's intention to appeal . . . may be released pending final disposition of the case, . . ").

This leaves petitioner's claim solely dependent on common law. Here, petitioner's claim fares no better.[1] The seminal case on common law authority to set bond after judgment is *State v. Vaughn*, 71 Conn. 457, 42 A. 640, 641 (1899):

> The power to admit to bail after conviction is not a statutory, but a common law power. The constitutional provision does not apply. Bail is then a matter of absolute discretion – to be exercised by the court, however, with

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[1] Curiously, petitioner does not directly address whether this court has any common law authority to set bail, despite this court's directive to do so. Nevertheless, by re-focusing his efforts on a motion to terminate stay, petitioner appears to concede there is no common law authority to set bond so long as a stay is in place.

> great caution, and rarely to be allowed when the crime is serious. *But the power to admit to bail is inherent in the court, so long as the prisoner is in its custody; that is, until he is taken in execution.*

40 A.2d at 641. (emphasis added).

Vaughn makes clear that the court's common law power to admit a defendant to bail after conviction exists only so long as the defendant remains in its custody; it ends when the judgment is executed, which in a criminal case occurs when he begins serving his sentence. See *State v. Luzietti*, 230 Conn. 427, 432, 646 A.2d 85, 88 (1994)("A judgment mittimus was issued immediately and custody of the defendant was transferred thereby to the department of correction. At that time, the court lost jurisdiction over the case and, in the absence of a statutory grant of jurisdiction, it had no power to set aside the conviction.")

In this instance, because Practice Book §61-11 imposes an automatic stay of the judgment of this court until the time to take an appeal has passed, and because once the respondent files its appeal, (which it intends to do in a timely manner) the matter will be further stayed pending resolution of the appeal; Practice Book § 61-11 (a); this court's order vacating the conviction and remanding the matter for a new trial, is of no effect. Petitioner, therefore, remains in the status of a sentenced inmate in the custody of the department of correction. He is thus beyond the general common law authority of a court for purposes of post-conviction bond.

Whether there exists a special common law authority, beyond that recognized in *Vaughn*, which attaches to the habeas context is a murky issue. A careful review of the cases usually cited to support such authority, however, reveals that none were in the same

procedural posture as this case. *See Gaines v. Manson* 194 Conn. 510, 527-30, 481 A.2d 1084 (1984); *Winnick v. Reilly*, 100 Conn. 291, 297 (1924); *Cinque v. Boyd*, 99 Conn. 70, 92 (1923). In *Gaines,* our Supreme Court recognized that release on bail may be an appropriate remedy if, on remand, the habeas court were to find that certain incarcerated inmates had been prejudiced due to unconscionable delay in resolving their direct appeals. In so doing, it merely stated that the habeas court had authority to consider such a remedy if it found continued custody unlawful in light of those delays. *Gaines* dicta cannot be read to sweep more broadly and encompass a habeas court's consideration of bail when enforcement of the judgment finding a violation is stayed. Because here the particular violation found by this court is a conviction obtained in violation of petitioner's Sixth Amendment rights, and because that judgment has been stayed, there is no unlawful custody warranting relief.

Winnick is also inapplicable, but for different reasons. In *Winnick* the petitioner was held on a governor's warrant pending extradition to New Jersey. He challenged his custody by arguing that the New Jersey indictment failed to state a crime. He was thus in a pre-trial status, and not a sentenced inmate, as is petitioner.

Cinque v. Boyd, involved an appeal from a juvenile's commitment to the School for Boys in Meriden. In discussing the possible sources of a court's authority to admit one to bail, the court explicitly found the petitioner did not come within the court's common law authority:

> The statute expressly provides that, pending hearing in the juvenile court and before commitment, a child may be admitted to bail. No similar

> provision exists for taking bail pending an appeal from the judgment of the juvenile court. The city court of New Haven has the power and duty under General Statutes, § 6548, as amended in the Public Acts of 1921, c. 201, § 3, to take bail in criminal appeals within the period of 48 hours after conviction. No power is given a juvenile court to take bail on an appeal from its orders. By our common law any person in custody on appeal to the court of common pleas from his conviction of crime by an inferior court may apply to the appellate court to be admitted to bail. The superior court, on an appeal after conviction of crime, has the inherent power to admit to bail, but the power is discretionary, and its exercise not a matter of right accruing to the convicted defendant. State v. Vaughan, 71 Conn. 457, 461, 42 Atl. 640. Inferentially the court of common pleas, a court proceeding according to the course of the common law, within its jurisdictional cognizance has the same power in criminal matters as we have just intimated. *But clearly these various methods for release on bail do not affect an appeal like the one under consideration.*

Id. at 685-86.

Although the *Cinque* court concluded that petitioner's detention was unlawful, it did so in reliance on the pertinent juvenile statute, not by recognizing a common law authority for a habeas court to set bail during the pendency of an appeal. *Id.* ("As we have said before, there is no provision in the Juvenile Court Act for detention pending an appeal from that court, hence there was no warrant of law for such detention, and so by virtue of [Article I, §10 of the Connecticut constitution], the detention of the plaintiff by the defendant in the Connecticut School for Boys was illegal, and he should be freed therefrom, and delivered to his father who is entitled to his custody.").

Admittedly, various superior court decisions assume a general common law authority to admit a habeas petitioner to bail. *See e.g., Rose v. Nickerson,* 29 Conn. Sup. 81, 82-83 (1970); *Miller v. Warden.* 1996 WL 222404 (1996); *Michael T. v. Warden*, 2012 WL 386641 (2012); *see also Guadalupe v. Commissioner*, 68 Conn. App. 376, 387-88

(2002)(assuming, without deciding, that habeas court had authority to release petitioner but upholding its exercise of discretion in refusing to do so). Nevertheless, lower court decisions on this issue are not of one mind. See *Crespo v. Warden,* TSR CV07-4001993. App. at A1(Ruling by *Sferrazza*, J. declining to lift stay, and finding, in light of that ruling, that it had no authority to admit petitioner to bail); see also App. at A8 (Petitioner Crespo's Motion for Review, requesting bond hearing); App at A14(Order of Appellate Court granting Motion for Review but denying relief requested). Further, as argued *supra,* the authority generally cited by the superior court decisions granting bond cannot be extended to the situation before this court.

III. EVEN IF THE COMMON LAW GRANTS THIS COURT AUTHORITY TO ADMIT PETITIONER TO BOND, THE PUBLIC POLICY OF THE STATE REQUIRES THE COURT TO DENY PETITIONER'S REQUEST

As mentioned previously, the common law has long recognized that the discretion to admit a convicted prisoner to bail must be exercised with great caution and is rarely justified when the crime is serious. *Vaughn*, 40 A.2d at 641. In addition to this common law caution, the court's discretion is further informed by the clear directive of our legislature as expressed in General Statutes 54-63f (denying post-conviction bail to those convicted of murder). As Judge Rittenband recognized in *Woods v. Warden*, 2004 WL 424092 (2004):

> The Court finds that this section [General Statutes §54-63f] does apply to the Petitioner even though it is a criminal statute. This Court concludes that a habeas action is a quasi-civil action and a quasi-criminal action. It is clear that the Connecticut Legislature did not want people released on bond who have been convicted of murder. Even though this Court vacated the conviction by granting the habeas petition and the claims for relief therein, the Petitioner still is a person who has been convicted of a violation of Section

53a-54a. Because of the automatic stay of this Court's decision, Petitioner remains convicted of the violation of C.G.S. § 53a-54a.

In any event, based upon the language of C.G.S. § 54-63f, the intent of the Legislature is clearly not to permit release of a person convicted of murder notwithstanding the decision of this Habeas Court.

Woods v. Warden, CV000598785, 2004 WL 424092 (Conn. Super. Ct. Feb. 11, 2004).[2]

Our Supreme Court has recognized this curtailment of judicial discretion to be appropriate and constitutional. *State v. McCahill*, 261 Conn. 492, 519 (2002). In light of the public policy of this state as expressed by our legislature, this court should deny bond.

IV. THIS COURT SHOULD DECLINE PETITIONER'S INVITATION TO CIRCUMVENT THE CLEAR POLICY OF THIS STATE AGAINST RELEASING THOSE CONVICTED OF MURDER BY TERMINATING THE STAY IN ORDER TO RELEASE PETITIONER; LIFTING THE STAY WOULD NOT SERVE THE DUE ADMINISTRATION OF JUSTICE

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[2] The *Woods* court also commented on the legislative history of this provision, noting:

"This Court has made an exhaustive review of the legislative history of C.G.S. § 54-63f, and although it does not specifically refer to the granting of a habeas petition and vacating a conviction of C.G.S. § 53a-54a, it is clear from the remarks of legislators that the legislative intent was not to release on bail someone convicted of a violation of C.G.S. § 53a-54a. See record of the Connecticut House of Representatives floor debate 4/28/00, pg. 004327, Rep. Farr: "This Legislature in its wisdom passed a bill that I had actually introduced I believe two years ago, which provides that if you're convicted of murder, you're not going to be released on bond pending sentence." This was a reference to the 1998 amendment prohibiting bond for those convicted of murder. See annotations to the present statute. In 2000 the Legislature added prohibition for any crime of violence which 2000 amendment was overturned by the Supreme Court."

Woods v. Warden, CV000598785, 2004 WL 424092 (Conn. Super. Ct. Feb. 11, 2004)

Perhaps in recognition of the fact that this court has no authority to grant bail so long as its judgment is subject to stay, petitioner argues that the automatic stay provision of Practice Book § 61-11 does not apply in habeas cases and, failing that, that this court should lift the stay. He contends that this latter action is required by the "due administration of justice." *Motion to Terminate Automatic Stay*, at 6-13.

Petitioner's audacious, but unsupported, assertion that habeas cases are exempt from Practice Book § 61-11 should be summarily rejected. Our Appellate Court rejected just such a contention *Taylor v. Commissioner*, CV05-4000409S and *Gould v. Commissioner*, CV03-0004219S. (See order dated March 22, 2010, Exhibit A to Petitioner's Motion to Terminate Automatic Stay).

Despite the undoubted application of Practice Book §61-11, petitioner argues that the existence of a stay "eviscerates the remedy ordered by this Court and infringes upon the Court's authority to grant the Writ[.] *Motion to Terminate Automatic Stay* at 10. In support of this assertion petitioner cites *People ex rel Sabatino v. Jennings*, 246 N.Y. 258 (1927) for the proposition that "[a] statute suspending the effect of the discharge by mere force of an appeal would be at war with the mandate of the Constitution whereby the writ of habeas corpus is preserved in all its ancient plenitude." *Motion* at 10. Petitioner's reliance on *Jennings* is misplaced.

As an initial matter, *Jennings* was based on a statute which has no counterpart in Connecticut law.[3] More importantly, however, sixty years before *Jennings* the Connecticut Supreme Court of Errors reached a contrary conclusion. In *MacReady v. Wilcox*, 33 Conn. 321 (1866), the Connecticut court held that a stay of a habeas corpus order during an appeal did not violate the United States Constitution. In *MacReady*, the petitioner claimed that his case was not "subject of review, from the fact that the delay occasioned thereby is in conflict with the provisions of the constitution of the United States which declares that "the privilege of the writ of habeas corpus shall not be suspended. . . ." *MacReady*, 33 Conn. at 329. The court rejected the petitioner's claim, stating that:

> The constitution has reference to a state of things in which the courts of the state . . . have no power to apply the remedy of habeas corpus, for its operation is suspended . . . and the citizens of the state therefore cannot resort to this mode of testing the legality of imprisonment when they are subjected to it. *It has no reference to a reasonable delay that may be occasioned in the disposition of such cases.*

(Emphasis added.) *MacReady v. Wilsox*, *supra*, 329.

It is therefore clear that petitioner cannot escape the mandated stay provisions of Practice Book § 61-11. Petitioner's alternative assertion, that a termination of the stay is required to further the "due administration of justice" should be similarly rejected. Contrary to petitioner's assertion, it would *thwart* the due administration of justice to terminate the stay and remand this case to the trial court docket while the appeal proceeds. Such a

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[3] The statute on which the New York Court of Appeals based its decision provided: "A prisoner who has been discharged by a final order made upon a writ of habeas corpus or certiorari shall not be again imprisoned, restrained, or kept in custody, for the same cause." *Jennings*, supra, 260.

bizarre result, -- placing this case on both the trial and appellate dockets where the actions of either court could moot the judgment of the other -- cannot be in accord with the "due administration of justice."

Further, the "due administration of justice" cannot be served by requiring the state to re-try the defendant before this court's judgment is reviewed in an appellate forum. The state is entitled to avail itself of the appellate process and seek vindication of a result it believes to be unjust. The state intends to challenge this court's judgment as contrary to any reasonable view of the facts and appropriate application of the law. Petitioner should not be permitted to short-circuit the state's opportunity to obtain such review by forcing the matter to trial before appellate review is complete. Doing so in this instance would be particularly inappropriate in view of the substantial judicial scrutiny already afforded the evidence of petitioner's guilt and the regularity of the procedures employed throughout his prosecution. See *Thim* J. (Grand Jury); *Dennis*, J. (Juvenile transfer hearing); *Kavanewsky*, J. (probable cause hearing); *Kavanewsky*, J. (trial); Connecticut Supreme Court (*Sullivan*, C.J., *Katz*, *Palmer*, *Vertefeuille* and *Zarella*, Js., direct appeal); *Karazin*, J. (petition for new trial proceeding); Connecticut Supreme Court (*Katz, Vertefeuille*, *Zarella* and *McLachlan*, Js., appeal from denial of petition for new trial).[4]

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[4] Justice Palmer, in dissent on the appeal from the denial of a new trial, is the only other judicial authority prior to this court to express serious reservations regarding the reliability of petitioner's conviction. Interestingly, however, he did so on the basis of what he perceived as the reliability of Tony Bryant's allegations accusing two of his boyhood friends. This court, while also expressing concerns about the reliability of the verdict, did

Moreover, terminating the stay so that petitioner would be eligible for bail would fly in the face of the public policy of our state. Our legislature has already balanced the equities and determined that those convicted of murder should not be given post-trial bail. Petitioner's invitation to circumvent this clear directive should be rejected by this court.

As far as the other "equities" petitioner asks this court to balance, respondent strongly disagrees with petitioner's assessment of respondent's chances of prevailing on appeal. As the respondent has maintained throughout these proceedings, a full review of the record shows that the efforts of petitioner's trial counsel, Michael Sherman, far exceeded the standards of most non-capital defenses. He spent thousands of hours preparing the defense, challenged the state on legal issues large and small, consulted with experts, and assembled a full team of lawyers to assist in the defense. Shorn of their personal animus, petitioner's claims against Sherman consist of nothing more than second-guessing reasonable tactical and strategic decisions that were made after extensive investigation and legal research. Simply put, if the level of representation petitioner received falls short of Sixth Amendment standards, countless convictions would be called into question.

In addition, as respondent has argued throughout these proceedings; see Respondent's Pre-trial brief, pp.1-22; and Respondent's Post-Trial brief at 1-4; the evidence of petitioner's guilt is substantial and the jury's verdict must be respected.

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not find Bryant's allegations reliable or credible, particularly in view of the testimony of Attorney Richard Alexander relating Bryant's "trail of deceit." *Memorandum* at 33.

Finally, if this court were to terminate the automatic stay now in effect or the appellate stay which will ensue once the appeal is filed, the effect of that action would be to remand this case to the criminal docket at the Judicial District of Stamford/Norwalk. Any requests for bond must then be addressed in that forum.

V. CONCLUSION

For the foregoing reasons, the respondent urges this court to deny petitioner's request for bail. Respondent also urges this court to deny petitioner's request to terminate the stay.

Respectfully submitted,

COMMISSIONER OF CORRECTION

BY: _____

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CERTIFICATION

I hereby certify that a copy of this OBJECTION has been sent via e-mail and mailed to Attorney Hubert J. Santos and Attorney Jessica Santos 51 Russ Street, Hartford, Connecticut 06106, telephone number (860) 249-6548, fax number (860) 724-5533 on this date.

Date: October 30, 2013

SUSANN E. GILL
Supervisory Assistant State's Attorney

NO: CV07-4001993	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT
RAFAEL CRESPO		OF TOLLAND
v.	:	AT ROCKVILLE, CONNECTICUT
WARDEN	:	JANUARY 03, 2013

H E A R I N G

JAN 17 2013

BEFORE THE HONORABLE SAMUEL SFERRAZZA, JUDGE

A P P E A R A N C E S :

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Reported By:
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THE COURT: This is the matter of Rafael Crespo, Jr. versus Warden. There's been some post trial motions that are filed. Counsel, if you'd identify yourselves and who you represent for the record.

ATTY. CARPENTER: Attorney Hillary Carpenter for Mr. Crespo.

ATTY. MACIULEWSKI: Morning, Your Honor, Adrian Maciulewski for the respondent.

THE COURT: Yes. This is the respondent's -- actually, it's the petitioner's motion for termination of the automatic stay. Go ahead.

ATTY. CARPENTER: Yes, Your Honor. Petitioner has filed a motion for relief from the stay of execution of this Court's judgment for the purposes of him applying for bond and posting bond pending the outcome of the appeal in this case.

We believe that this step is necessary in order for him -- the Court's judgment in order to proceed with the bond application.

ATTY. MACIULEWSKI: Your Honor, the concern that the respondent has with lifting the stay is that the judgment of the criminal trial court did include a protective order that we do not want disturbed pending the outcome of the appeal, and I feel that lifting the stay may in fact do that. That's my concern.

I've also found case law, Your Honor, whereby a stay can co-exist with the ordering of a bond, and I can cite that for Your Honor. It is out of this Judicial District. That's Michael T. versus Warden. It's unpublished at 2012 WL 386641. That was January 12, 2012, Your Honor, so we would object to lifting the stay at this time.

ATTY. CARPENTER: And, Your Honor, just for the record.

THE COURT: Yes.

ATTY. CARPENTER: The petitioner has no objection to the protective order staying fully in place and actually wishes it to stay in place.

THE COURT: All right. I have, in other cases where I've granted habeases, terminated the automatic stay in cases like that where I have ruled that the petitioner had already served the maximum possible sentence and the respondent was appealing from that decision.

I've had other cases where I've ruled as a matter of law that the petitioner could not be convicted of the offense for which he was convicted, therefore, could not be facing any possible imprisonment.

This case is different. In this case, I granted the petition based on the failure of Attorney Pickering to call a witness, and based on

the witness' testimony at the habeas hearing, felt that that lack of that testimony before the jury undermined confidence in the conviction and that there was a reasonable probability that the outcome might be changed.

Now, of course, that standard is not that it's more probable than not. It's simply that there's a reasonable likelihood, reasonable probability, and I should point out that those words are synonyms, and I used them both in the opinion. They don't need clarification in that sense. The dictionary definition, Webster's New College Dictionary, in the definition of probability, the first synonym in capitals is likelihood, and our Supreme Court has used them interchangeably, and I meant to use them as synonyms as opposed to more probable than not or more likely than not, which is a different standard for preponderance. I think that doesn't need further statement.

In this particular case, this was not a claim of actual innocence where I made a finding that the petitioner had introduced evidence by the clear and convincing standard that he did not commit the offense. I simply said that he's entitled to a new trial.

Under those circumstances, I'm not going to grant the motion for relief from the stay, which

moots the issue of a bond, in my opinion, because the automatic stay means that he remains in the status that he remained before I rendered my decision, which is as a sentenced prisoner, so there is no bond to be set, so I can't set any bond.

What I had ruled was, and assuming my ruling is upheld on appeal, that the bond will be set by the criminal court where you can go through all the proceedings -- I know there's a possibility I could set a bond, but I think it's better for the criminal court to set bond rather than this Court. They have a bail commissioner. They have opportunities for all the parties to hear it, but I'm going to deny the motion for relief from stay of execution pending the appeal, which moots the question of a bond. And I think that addresses all of the issues we need? I'm denying the motion for clarification.

THE CLERK: Yes, Your Honor.

THE COURT: All right. I think that's it.

ATTY. CARPENTER: Thank you, Your Honor.

ATTY. MACIULEWSKI: Thank you, Your Honor.

THE COURT: So this matter is concluded. There was a petition for cert filed, which I will grant. That was the respondent's. Did the petitioner also file a motion for pet cert?

Sometimes that happens where they both file --

ATTY. CARPENTER: No, Your Honor.

THE COURT: -- as you can imagine. All right. Thank you. This matter is in recess.

(Whereupon, a recess was taken.)

NO: CV07-4001933	:	SUPERIOR COURT
RAFAEL CRESPO	:	JUDICIAL DISTRICT
		OF TOLLAND
v.	:	AT ROCKVILLE, CONNECTICUT
WARDEN	:	JANUARY 3,. 2013

C E R T I F I C A T I O N

I hereby certify the foregoing pages/electronic version are a true and correct transcription of the stenographic notes of the above-referenced case, heard in Superior Court, Judicial District of Tolland, Tolland, Connecticut, before the Honorable Samuel Sferrazza, Judge, on the 3rd day of January, 2013.

Dated this 4th day of January, 2013 in Rockville, Connecticut.

Rebecca J. Livingstone

Certified Court Reporter

JAN 17 2013

No. CV07-4001993	:	
RAFAEL CRESPO	:	APPELLATE COURT
VS.	:	STATE OF CONNECTICUT
COMMISSIONER OF CORRECTION	:	January 14, 2013

MOTION FOR REVIEW

Pursuant to Connecticut P.B. § 60-2 (Supervision of Procedure) and 66-6 (Motion for Review) the Petitioner, Rafael Crespo, moves for review of the decision by the Habeas Court, Judge Samuel Sferrazza, denying the Petitioner's Motion For Relief From Stay Of Execution Of Judgment Of Habeas Corpus Court And For Petitioner's Release On Bond Pending The Outcome Of Appeal and sustaining the Respondent's objection to said motion.

I. **Brief History of the Case**

The Petitioner filed a pro se petition for writ of habeas corpus in the Judicial District of Tolland at Rockville on October 4, 2007. On November 28, 2012, the Habeas Court granted relief on the Petitioner's claim of ineffective assistance of counsel based upon trial counsel's failure to investigate, discover and present the testimony of a witness to impeach the complainant's testimony. The Court vacated the Petitioner's convictions and remanded the matter to Part A of the judicial district of New Haven for further prosecution, including the setting of bond. On December 3, 2012, the Respondent filed a Motion for Extension of Time within which to file its appellate paperwork, thereby stating its intention to appeal the Court's decision.

On December 7, 2012, the Petitioner filed a Motion For Relief From Stay Of Execution Of Judgment Of Habeas Corpus Court And For Petitioner's Release On Bond Pending The Outcome Of Appeal. The Respondent filed an objection to the motion on December 12, 2012. The following day, the Respondent filed a petition for certification to appeal the Habeas Court's decision. That petition was granted on January 3, 2013. Also on January 3, 2013, the Habeas Court held a hearing on the Petitioner's Motion for Relief and sustained the Respondent's objection to the motion, denying the Petitioner relief from stay of execution of the judgment.

This motion for review, which is filed within ten days of the decision sought to be reviewed, is timely filed.

II. **Specific Facts Relied Upon**

In sustaining the Respondent's objection to the motion for relief from stay, the Habeas Court stated that the denial rendered the Petitioner's simultaneous motion for release on bond "moot."[1] The Petitioner was not brought to Court for the hearing.

Petitioner wishes to appeal from the Court's determination that the issue of bond is moot and the effective denial of a hearing on the Petitioner's motion for release on bond. The Petitioner requests that this Court direct the Habeas Court to hold a hearing on the Petitioner's request for bond and issue a ruling on that request.

[1] The Petitioner ordered an expedited transcript of the hearing on January 9, 2012. A transcript order form is attached hereto.

III. Legal Grounds Relied Upon

Petitioner relies on his right to due process of law under the fifth and fourteenth amendments to the constitution of the United States and on the right to due process of law to which he is entitled under Article I, section 8 of the Connecticut constitution. The Petitioner also relies on settled case law that supports his application for release on bond pending the Respondent's appeal in the habeas corpus matter.

A. THE COURT ERRED IN DETERMINING THAT THE ISSUE OF THE PETITIONER'S APPLICATION FOR RELEASE ON BOND WAS MOOT IN LIGHT OF THE COURT'S DENIAL OF THE MOTION FOR RELIEF FROM STAY OF EXECUTION OF JUDGMENT.

"Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to take an appeal has expired. If an appeal is filed, such proceedings shall be stayed until the final determination of the cause." Conn. Prac. Bk. § 61-11(a). The decision of whether to afford relief from the automatic stay is in the sound discretion of the trial court. Conn. Prac. Bk. § 61-11(c); Conn. Prac. Bk. § 61-11(d).

However, the existence of an automatic stay does not render the issue of bond moot. "[T]he judicial branch has long had the power to submit a defendant to bail following conviction. This power has existed in the judicial branch since the earliest days of Connecticut's statehood and even before." State v. McCahill, 261 Conn. 492, 510 (2002), citing State v. Beach, 2 Kirby (Conn. Sup.) 20, 21 (1786-87). "[T]he power to admit to bail is inherent in the court so long as the prisoner is in its custody. . . . [This] also applies to habeas corpus." Rose v. Nickeson, 29 Conn. Supp. 81 (1970), citing Winnick v. Reilly, 100 Conn. 291, 297 (1924); Cinque v.

Boyd, 99 Conn. 70, 92 (1923). See also Gaines v. Manson, 194 Conn. 510, 529 (1984)("Just as the judiciary has inherent power to remedy unconstitutional delays in the disposition of civil jury cases . . . so too there is inherent power to remedy unconstitutional delays in criminal appeals by admitting petitioners for habeas corpus to bail.").

Indeed, in a recent Superior Court decision, a habeas court granted bond to a petitioner awaiting the outcome of the respondent's appeal. "A stay barring enforcement of a judgment can peacefully co-exist with the setting of a bond that can be posted during the appeal." Michael T. v. Warden, Superior Court, judicial district of Tolland-Rockville, Docket No. CV05-4000278 (January 10, 2012).

IV. Conclusion

WHEREFORE, the Petitioner respectfully moves this Appellate Court to grant the Motion for Review and FURTHER to order that the Habeas Court hold a hearing on the Motion for Petitioner's Release on Bond Pending the Outcome of Appeal.

Respectfully submitted,
The Petitioner

BY: _____

APD Hilary Carpenter (JN 425410)
Office of Chief Public Defender – Habeas Unit
2275 Silas Deane Highway
Rocky Hill, CT 06067
Tel: 860-258-4940
Fax: 860-258-4949

NOTICE OF APPEAL TRANSCRIPT ORDER

JD-CR-38 Rev. 3/10 Pr. Bk. §§ 63-4, 63-8, 63-8A

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Number

INSTRUCTIONS TO PERSON ORDERING A TRANSCRIPT FOR AN APPEAL

1. Fill out section 1 only and give this form to the Official Court Reporter.
2. Give the Official Court Reporter the name and address of all counsel and self-represented parties of record.
3. After the Official Court Reporter fills out section 3 and returns the form to you, fill out section 4.

Section 1.

Name of case	Trial court docket number
Rafael Crespo, Jr. v. Commissioner of Correction	CV07-4001993

Hearing dates of transcript being ordered: 1/3/2013

Trial court location	Judicial district of
Tolland JD, 69 Brooklyn Street, Rockville, CT 06066	Tolland

Name(s) of Judge(s)	Case type ("X" one)	Case tried to ("X" one)	Appeal to ("X" one)
Sferrazza, J.	☐ Criminal ☐ Family ☒ Civil ☐ Juvenile	☐ Jury ☒ Court	☐ Supreme Court ☒ Appellate Court

Appeal ("X" one)

- ☐ 1. From judgment in juvenile matters:
  - ☐ (a) concerning Termination of Parental Rights
  - ☐ (b) other than Termination of Parental Rights
- ☒ 2. From a criminal judgment where defendant is:
  - ☒ (a) incarcerated
  - ☐ (b) not incarcerated
- ☐ 3. From court closure order
- ☐ 4. Involving the public interest
- ☐ 5. From judgment involving custody of minor children
- ☐ 6. From all other judgments

An electronic version of a previously delivered transcript is being ordered: ☒ Yes ☐ No

Describe in detail including specific dates, the parts of the proceedings for which a transcript is being ordered. If you are ordering an electronic version of a previously delivered transcript, indicate that the paper transcript already was delivered. Attach a sheet of plain paper if needed.

1/3/2013 - Motion Hearing - Sferrazza, J.

A paper version of this transcript was ordered on 1/9/2013 but has not yet been received.

From

Name and mailing address of person ordering transcript	Telephone number
APD Hilary Carpenter, Habeas Unit, 2275 Silas Deane Hwy, Rocky Hill, CT 06067	860-258-4940

Relationship (Attorney for Plaintiff, Defense, etc.)	Signature of person ordering transcript	Date signed
Attorney for Petitioner	▶ [signature]	1/14/13

Do not write below this line when ordering the transcript.

Section 2. Official Court Reporter's Appeal Transcript Order Acknowledgment *(Completed by Official Court Reporter after satisfactory financial arrangements have been made Section 63-8 of the Connecticut Practice Book.)*

Name(s) of reporter(s)/monitor(s)	Estimated number of pages	Only electronic version of previously delivered transcript? Yes	No	Number of pages previously delivered	Estimated delivery date
		☐	☐		
		☐	☐		
		☐	☐		
		☐	☐		
Total estimated pages →	Total estimated pages	Total delivered pages →		Total delivered pages	Final Estimated delivery date

Name of Official Court Reporter	Signature of Official Court Reporter	Date signed

Order Acknowledgment

Section 3. Official Court Reporter's Certificate Of Completion *(Completed by Official Court Reporter upon delivery of the entire transcript ordered above.)*

Actual number of pages in entire Appeal Transcript: _____ Date of final delivery (Practice Book Section 63-8(c)) _____

This certificate is filed as required by Practice book Section 63-8	Signature of Official Court Reporter	Date signed

Section 4. Certification Of Service By Ordering Party *(Ordering party to send completed certificate to Chief Clerk, 231 Capitol Avenue, Hartford, CT 06106.)*

I certify that a copy of the above Certificate of Completion was served on all counsel and self-represented parties of record.

Signature of ordering party	Date signed

CERTIFICATION

Pursuant to Conn. Prac. Bk. § 66-2, 66-3, 62-7 the undersigned certifies the foregoing was mailed first class postage prepaid this 14th day of January, 2013 to: Adrienne Maciulewski, 234 Church Street, 4th floor, New Haven, CT 06510, (Tel: 203-789-7801; Fax: 203-789-7849) and to the Petitioner, Rafael Crespo, Jr., #340646, Brooklyn C.I., 59 Hartford Rd., Brooklyn, CT 06234.

It is also hereby certified that to the best of the undersigned's knowledge and belief this motion compiles with the format requirements of Practice Book §66-3.

Hilary Carpenter, JN 425410

RJSV

APPELLATE COURT APR 26 2013

STATE OF CONNECTICUT

AC 35372

RAFAEL CRESPO

V.

COMMISSIONER OF CORRECTION

APRIL 24, 2013

ORDER

THE MOTION OF THE PETITIONER, FILED JANUARY 14, 2013, FOR REVIEW, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

ORDERED THAT THE MOTION FOR REVIEW IS GRANTED, BUT THE RELIEF SOUGHT THEREIN IS DENIED.

BY THE COURT,

Cynthia M. Gworek

CYNTHIA M. GWOREK
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 4/25/13
HILARY CARPENTER, ASSISTANT PUBLIC DEFENDER
ROBERT J. SCHEINBLUM, SENIOR ASSISTANT STATE'S ATTORNEY
CLERK, SUPERIOR COURT, TOLLAND AT SOMERS, CV07 4001993S
HON. SAMUEL J. SFERRAZZA

bjm 122915