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SUPREME COURT
COURT OF APPEALS

IN THE SUPREME COURT OF MISSISSIPPI

No. 2020-AD-00001-SCT
&
No. 89-R-99038-SCT

IN RE: EMERGENCY ORDER RELATED TO CORONAVIRUS (COVID-19)

EMERGENCY ADMINISTRATIVE ORDER-8

Rule 8.5(c) of the Mississippi Rules of Criminal Procedure provides:

> **(c) Review by Circuit Court.** No later than seven (7) days before the commencement of each term of circuit court in which criminal cases are adjudicated, the official(s) having custody of felony defendants being held for trial, grand jury action, or extradition within the county (or within the county's judicial districts in which the court term is to be held) shall provide the presiding judge, the district attorney, and the clerk of the circuit court the names of all defendants in their custody, the charge(s) upon which they are being held, and the date they were most recently taken into custody. The senior circuit judge, or such other judge as the senior circuit judge designates, shall review the conditions of release for every felony defendant who is eligible for bail and has been in jail for more than ninety (90) days.

MRCrP 8.5(c).

In prior Emergency Administrative Orders, the Court has recognized that the national and state emergencies created by Coronavirus (COVID-19) require appropriate measures to protect the health and safety of the citizens of this State. And, in Emergency Administrative Order-4, the Court determined that:

> the Office of the State Public Defender and the State are granted the authority to develop procedures based on available technology to ensure that people have access to the courts at this critical time while minimizing the risk of bringing this potentially deadly virus into one of our detention centers.

On April 9, 2020, the Attorney General for the State of Mississippi and the State Public Defender jointly filed a Motion for Temporary Modification of Rule 8.5(c) of the Mississippi Rules of Criminal Procedure. The motion reads:

> [b]ecause the next criminal term of court in many jurisdictions could be months away, either as a result of regularly-scheduled terms of court or as a result of the emergency orders entered by this Court in response to the COVID-19 pandemic, no . . . reviews will take place under [MRCrP 8.5(c)] for weeks or months.

To the end of preventing the spread of this deadly virus in detention centers throughout this State, the petitioners:

> request that Rule 8.5(c) be temporarily modified to require senior circuit court judges, or their designees, to conduct within five days of entry of an order of this Court, and weekly thereafter until the current statewide State of Emergency is lifted, a review of the conditions of release for all pre-trial detainees currently housed in Mississippi's county and regional jails without regard for whether they have been detained for more than 90 days. Rule 8.5(c) should be temporarily modified further to require sheriffs to produce to senior circuit judges, district attorneys, clerks of court, and the local senior public defender jail census information within two days of an order of this Court and weekly thereafter.

Subsequently, the Office of the Attorney General made an *ore tenus* motion to amend "weekly" to every two weeks.

On April 9, 2020, the Court entered an Order which provided "the bench, the bar, and any parties interested or affected by this proposed change . . . the opportunity to respond and comment on the proposed temporary modification of Rule 8.5(c)" by April 14, 2020.

The Court received responses from:

(1) Circuit Judge Joseph H. Loper, Jr.;

(2) Circuit Judge Lee J. Howard;

(3) the Circuit Court Judges of the Second Judicial District (i.e., Circuit Judge Roger T. Clark, Circuit Judge Lisa P. Dodson, Circuit Judge Lawrence P. Bourgeois, Circuit Judge Christopher L. Schmidt);

(4) Circuit Judge Dal Williamson;

(5) REFORM Alliance; and

(6) DeSoto County Circuit Court Public Defender Jessica L. Massey.

The responses received from (1) - (4) were largely opposed to the temporary modification of MRCrP 8.5(c). They opined, *inter alia*, that adequate "safeguards" already exist and/or are being implemented within the individual districts and counties "to protect the rights of pre-trial detainees[,]" such that the temporary modification of MRCrP 8.5(c) is "well meaning, but unnecessary." And the Circuit Court Judges of the Second Judicial District represented that "none of the stakeholders in this [c]ircuit [(including the "Sheriffs Department, District Attorney and Public Defenders")] are in favor of the [m]otion." Conversely, the responses received from (5) & (6) expressed support for the present motion.

On April 22, 2020, the Attorney General for the State of Mississippi filed a Notice of Withdrawal of Motion for Emergency Order Related to COVID-19 on Behalf of the Attorney General. Such action was based upon, *inter alia*, the responses (e.g., "[s]teps taken in some districts are even more than what was requested in the joint motion") and the fact that "[t]here are currently no reported cases and no major outbreaks inside our local jails." The pleading expressly stated it "does not affect the State Public Defender's request for relief."

On April 23, 2020, counsel for the Attorney General for the State of Mississippi and the State Public Defender appeared before the Court, *en banc*, for a video conference on the matter.

After due consideration, the Supreme Court and the Chief Justice, in his capacity as chief administrative officer of all courts in the state, find that this motion should be denied.

Nonetheless, in light of the dangers created by Coronavirus (COVID-19) within the unique context of detention centers, the Supreme Court and the Chief Justice, in his capacity as chief administrative officer of all courts in the state, find that the following action is warranted in all districts and counties which have not conducted a review of conditions of release of all pre-trial detainees within the past thirty (30) days:

> (A) Within seven (7) days of the entry of this Order, the official(s) having custody of pre-trial detainees shall provide the senior circuit judge, the district attorney, the clerk of the circuit court, and the local senior public defender the names of all pre-trial detainees in their custody, the charge(s) upon which they are being held, and the date they were most recently taken into custody.
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> (B) Within fourteen (14) days of the entry of this Order, the senior circuit judge, or such other judge as the senior circuit judge designates, shall review the conditions of release for every pre-trial detainee who is eligible for bail. The real or potential impact of Coronavirus (COVID-19) within an individual detention center may be a consideration when reviewing such conditions of release.

IT IS THEREFORE ORDERED that the Motion for Temporary Modification of Rule 8.5(c) of the Mississippi Rules of Criminal Procedure is hereby denied.

IT IS FURTHER ORDERED that in light of the dangers created by Coronavirus (COVID-19) within the unique context of detention centers, the following action is warranted

in all districts and counties which have not conducted a review of conditions of release of all pre-trial detainees within the past thirty (30) days:

> (A) Within seven (7) days of the entry of this Order, the official(s) having custody of pre-trial detainees shall provide the senior circuit judge, the district attorney, the clerk of the circuit court, and the local senior public defender the names of all pre-trial detainees in their custody, the charge(s) upon which they are being held, and the date they were most recently taken into custody.
>
> (B) Within fourteen (14) days of the entry of this Order, the senior circuit judge, or such other judge as the senior circuit judge designates, shall review the conditions of release for every pre-trial detainee who is eligible for bail. The real or potential impact of Coronavirus (COVID-19) within an individual detention center may be a consideration when reviewing such conditions of release.

SO ORDERED, this the 23 day of April, 2020.

MICHAEL K. RANDOLPH,
CHIEF JUSTICE
FOR THE COURT