

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

State of Minnesota,

**STATE'S RESPONSE IN
OPPOSITION TO
MOTION FOR RELEASE**

vs.

Brian Harry Kjellberg.

Court File No. 62-CR-21-6868

TO: THE HONORABLE LEONARDO CASTRO, JUDGE OF RAMSEY COUNTY DISTRICT COURT; AND MELVIN R. WELCH, ATTORNEY FOR BRIAN KJELLBERG.

The State opposes the release of defendant Brian Kjellberg pending appeal.

On March 30, 2023, a Ramsey County jury found Brian Harry Kjellberg guilty of second-degree unintentional murder for stabbing and killing Arnell Stewart in St. Paul. This Court sentenced Defendant to a downward dispositional departure to probation with a 150-month prison term stayed for 10 years with a condition that he will serve 365 days in the Ramsey County Jail on May 31, 2023.

The case is currently on direct appeal by Defendant and on sentencing appeal by the State. Defendant now moves this Court to order his release pending further proceedings in his appeal.¹ Minn. R. Crim. P. 28.02, subd. 7(2), states:

¹ A defendant must first make the motion for release to the trial court. Minn. R. Crim. P. 28.02, Subd. 7(3). The trial court “is in a far better position than an appellate court” to make the requisite determination. *State v. McKinley*, 424 N.W.2d 586, 586-87 (Minn. App. 1988).

If a defendant was sentenced to incarceration, a court must not grant release pending appeal from a judgment of conviction unless the defendant establishes to the court's satisfaction that:

- (a) the appeal is not frivolous or taken for delay; and
- (b) no substantial risk exists that the defendant:
 - (i) will fail to appear to answer the judgment following the conclusion of the appellate proceedings;
 - (ii) is likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice.

The filing of an appeal does not stay execution of a sentence. The Minnesota Rules of Criminal Procedure provide, "When a defendant files an appeal, this does not stay execution of the judgment or sentence unless a district court judge or a judge of the appellate court grants a stay." Minn. R. Crim. P. 28.02, subd. 6. Clearly, the presumption is that a sentence will not be stayed. The constitutional right to bail "before conviction" does not apply after conviction. *See* Minn. Const. Art. I, § 7; *State v. Freitag*, 281 Minn. 573, 575, 161 N.W.2d 530, 532 (1968) ("There is no constitutional right to release on bail pending appeal.").

Moreover, Defendant still stands convicted of second-degree murder because the appellate court judgment is pending. *O'Meara v. State*, 679 N.W.2d 334, 339 (Minn. 2004) (states that a case is final when judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari has elapsed or the petition has been finally denied).

Notwithstanding Defendant's fairly made points about his lack of prior criminal history, and his court attendance, he currently stands convicted of a very serious crime. Additionally, Defendant is in a different position than the vast majority of defendants who are convicted of a similar charge and file a similar motion because Defendant's motion for a downward dispositional departure was granted at sentencing and Defendant is serving a 365-day sentence in local jail, opposed to the presumptive prison commit of 150 months.

The circumstances of this case, while clearly disputed, do not favor release pending any further proceedings in the appeal. This Court should not be satisfied that Defendant has established that he is entitled to release pending appeal under Minn. R. Crim. P. 28.02, subd. 7.

The State respectfully requests that Petitioner's Motion for Release Pending Appeal be denied.

Respectfully submitted,

JOHN J. CHOI
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/s/ Makenzie Lee

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Dated: November 29, 2023

I certify that on the above date
I sent a copy to defense counsel by:

- Courier (includes interoffice mail)
 Fax
 U.S. Mail
 Personal Service
 E-service

/s/ Doua Yang



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