

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota,

vs
Plaintiff, NOTICE OF MOTION AND MOTION
FOR RELEASE PENDING APPEAL PURSUANT TO
MINN. R. CRIM. P. 28 AND 6.02
BRIAN HARRY KJELLBERG, Court File Number: 62-CR-21-6868
Defendant.

TO: THE HONOURABLE LEONARDO CASTRO; COURT ADMINISTRATION,
RAMSEY COUNTY DISTRICT COURT ADMINISTRATION; RAMSEY COUNTY
ATTORNEY'S OFFICE.

PLEASE TAKE NOTICE, that on **November 29, 2023 at 11:00am**, Defendant will respectfully make a motion to the District Court to stay further incarceration pursuant to Minnesota Rules of Criminal Procedure Rule 28.02, subd. 7.

Defendant was sentenced by This Court on May 31, 2023, to a downward dispositional sentence staying execution of a 150 month sentence, with an interim condition of serving 365 days in jail, with permission to do all jail programming if eligible. Defendant was taken into custody on that date and began his 365 day sentence. On August 29, 2023, Plaintiff (Respondent in the appellate matter) filed a notice of appeal to challenge This Court's sentencing decision; after Plaintiff-Respondent filed its notice of appeal, Defendant (Appellate) filed his notice of appeal of the criminal matter. For reasons set forth below, and those to be provided at the motion hearing, Defendant Respectfully requests This Court grant his motion and provide conditions of release pending his appeal.

1. The Court may grant release pending appeal.

The Minnesota Rules of Criminal Procedure allow a district court to release a defendant on appeal when the court has granted a stay of sentence to the defendant. MRCP 28.02, subd. 7(1).

- (1) Conditions of Release. If a defendant appeals, and a court grants a stay, Rule 6.02, subs. 1 and 2, govern the conditions for defendant's release and the

factors determining the conditions of release, except as provided by this rule. The court must also take into consideration that the defendant may be compelled to serve the sentence imposed before the appellate court decides the case.

If the Defendant was sentenced to incarceration, a court may release a defendant pending appeal if the defendant establishes: the appeal is not frivolous or taken for delay, *and* there is no substantial risk of flight, and it is unlikely the defendant will commit a serious crime, intimidate a witness, or interfere with the administration of justice. MRCP 28.02, subd. 7(2).

In this matter, the Defendant was found guilty after jury trial of murder in the second degree, death resulting from the commitment of a felony. This Court granted the Defendant's motion for a downward dispositional departure and stayed execution of 150 months. The presumption when a court has stayed a sentence is to release a defendant pending appeal. *See* MRCP 28.02, subd. 7(2).

2. Conditions of Release will ensure the Defendant's

If the Court determines that conditions of release are necessary in Defendant's case for his release pending appeal, MRCP 6.02 governs the conditions a court may set if it grants a defendant's release pending appeal. MRCP 28.02, subd. 7(1).

If a court determines there is a risk to public safety or no reasonable assurances of a Defendant's appearance, the court may set a bond or set a number of conditions which would reasonably address the defendant's appearance and public safety concerns, such as: supervision, restrictions on travel/association/residence; an appearance bond; or other conditions as the court may deem necessary. MRCP 6.02, subd. 1. In making this assessment, the court evaluates a number of factors, such as: the nature of the offense, the weight of the evidence, family ties, employment, financial resources, character/mental condition, length of residence in the community, criminal convictions, prior history of appearance in court, prior flight to avoid prosecution, the victim's safety, any other person's safety, and the community's safety. Minnesota Rules of Criminal Procedure, 6.02, subd. 2.

Here, the Defendant has only ever been charged with the matter before This Court. He has made all of his court appearances without any issues related to pretrial release, and

he appeared before this Court at sentencing anticipating a presumptive commitment to prison. For these reasons, and additional reasons to be provided for the Court's consideration at the hearing, Defendant Respectfully requests this Court grant his motion for release pending appeal.

October 16, 2023

Date

/s/ Melvin R. Welch

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