S265210

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CHELSEA BECKER, Petitioner,	)	Supreme Court No. _____
	)	Court of Appeal No: F081362
v.		
SUPERIOR COURT OF KINGS COUNTY, Respondent;	)	Kings Super. Ct. No. 19CM-5304
THE PEOPLE, Real Party in Interest	)	

PETITION FOR REVIEW

Of the October 15, 2020 unpublished decision of the
Court of Appeal, Fifth Appellate District
Denying Petitioner's Writ of Habeas Corpus

ROGER T. NUTTALL (SBN 42500)
NUTTALL NUTTALL & COLEMAN
2333 Merced Street
Fresno, California 93721
Tel: (559) 233-2900

JACQUELINE GOODMAN (SBN: 172308)
THE GOODMAN LAW BUILDING
712 N. Harbor Blvd.
Fullerton, California 92832
Tel: (714) 879-5770

SAMANTHA LEE (SBN: #315464)
NATIONAL ADVOCATES FOR PREGNANT WOMEN
575 8th Avenue, 7th Floor
New York, New York 10018
Tel: (212)255-9253

TO BE FILED IN THE SUPREME COURT

APP-008

CALIFORNIA SUPREME COURT	COURT OF APPEAL CASE NUMBER: F061362
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 42500 NAME: ROGER T. NUTTALL FIRM NAME: LAW OFFICES OF NUTTALL & COLEMAN STREET ADDRESS: 2333 MERCED STREET CITY: FRESNO STATE: CA ZIP CODE: 93721 TELEPHONE NO.: (559) 233-2900 FAX NO.: (559) 485-3852 E-MAIL ADDRESS: bryan@nuttallcoleman.com ATTORNEY FOR (name): PETITIONER	SUPERIOR COURT CASE NUMBER: 19CM-5304
APPELLANT/ PETITIONER: CHELSEA BECKER RESPONDENT/ REAL PARTY IN INTEREST: KINGS COUNTY SUPERIOR COURT PEOPLE OF THE STATE OF CALIFORNIA	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): PETITIONER, CHELSEA BECKER

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (*Explain*):
(1) JACQUELINE GOODMAN	ATTORNEY FOR PETITIONER/DEFENDANT
(2) ROGER T. NUTTALL	ATTORNEY FOR PETITIONER/DEFENDANT
(3) SAMANTHA LEE	ATTORNEY FOR PETITIONER/DEFENDANT
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: October 23, 2020

ROGER T. NUTTALL
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

California Constitution

Statutes

Rules

Other Authorities

QUESTION PRESENTED FOR REVIEW:

Petitioner, who is indigent, is being held on $2,000,000 bail based on charges that she claims are unauthorized as a matter of law. Whether or not the charge against Petitioner is found to be unauthorized, given that the imposition of the excessive bail in this case was based on palpably false information and without any of the inquiry required by Penal Code § 1275, and *People v. Humphrey*, (2018) 233 Cal.Rptr.3d 129 [417 P.3d 769] (Section III), does the continued incarceration of Petitioner violate her right to due process and equal protection under the law, rendering her detention unlawful?

STATEMENT OF THE CASE

Petitioner experienced a stillbirth on September 10, 2019. On October 31, 2019 the Kings County District Attorney (hereinafter District Attorney or DA) a charged her with murder in violation of Penal Code section 187. On November 6, 2019, at her first appearance in the Kings County Superior court, the court set her bail, without regard for her individual circumstances and instead according to a "schedule" of bail at $5,000,000. On February 20, 2020, the Superior Court heard a motion to reduce the bail however, the court failed to consider the factors required by Penal Code section 1275 as well as those enunciated by this Court in *People v. Humphrey*, (2018) 233 Cal.Rptr.3d 129 [417 P.3d 769] (Section III).[1] Nonetheless, the Superior Court set the new bail at $2,000,000. On May 20, 2020 with the COVID 19 pandemic exploding around the country and with particular ferocity in prisons and jails, Petitioner moved again to reduce her bail. The prosecution argued and the Superior Court agreed that Ms. Becker was safer staying in jail. In addition, the prosecution argued that releasing Ms. Becker would "compromise public safety" because she might become pregnant again. Opposition to Motion to Release at 4:12-17 (Ex. 15). Despite being presented with proof of Petitioner's indigency, the court declined to change her bail from $2,000,000.

On July 6, 2020, Petitioner filed a Petition for Habeas Corpus in the Fifth District Court of Appeal. Ignoring the August 26, 2020 watershed precedential change in bail law ordered by this court in *Humphrey*, *id*., on October 15, 2020, a majority of the Court of Appeals summarily denied relief with no rationale, no analysis, and no acknowledgement of the Superior Court's failure to consider the factors laid out in Penal Code section 1275 or

[1] As of August 26, 2020, this Court made Part III of the opinion in *Humphrey* binding to trial courts, barring judges from relying on bail schedules, such as originally occurred in Petitioner's case.

those articulated in *Humphrey*, but "without prejudice." *See* Becker v. Sup. Ct. of Kings County, Order Denying Petition for Writ of Habeas Corpus (Oct. 15, 2020), Appendix 1 (CRC 8.504(e)(1)(A) (hereinafter "Order"). Justice Peña's dissent to that decision stated that, "For the reasons stated in, and in conjunction with, Petitioner's demurrer petition (case No. F081341), I vote to issue an order to show cause why the relief prayed for in the above entitled matter should not be granted." For that reason, Petitioner—consistent with California Rules of Court Rule 8.200, which holds that "[…]as part of its brief, a party may join in or adopt by reference all or part of a brief in the same or a related appeal"— Ms. Becker adopts and incorporates by reference herein the entire Petition for Writ of Prohibition (Fifth Appellate District Case No. F081341) and the Reply filed by the Petitioner in that matter, including but not limited to all of the legal arguments, exhibits, authority, references and material contained within it. (CRC 8.504 (e)(3)). Likewise, based on Justice Peña's dissent in the Order in this matter, Petitioner provides this court the Order and dissent filed in the matter of Petitioner's Petition for Writ of Prohibition in the Fifth Appellate District Case No. F081341.(CRC 8.504 (e)(B)) Appendix 2. While the two petitions are procedurally distinct, the unlawful nature of Ms. Becker's incarceration cannot be extricated from the fact that the crime with which she is charged does not exist in the State of California. The issue of the illegality of not only her detention, but of her prosecution as a whole, is detailed in the Writ of Prohibition papers and provide invaluable context to this Court as it considers Petitioner's sustained and unjustified incarceration.

REVIEW IS NECESSARY TO RESOLVE THE IMPORTANT QUESTION OF WHETHER BAIL SET IN THE AMOUNT OF $2,000,000 FOR PETITIONER, WHO IS AN INDIGENT WOMAN CHARGED WITH CONDUCT THAT DOES NOT CONSTITUTE A CRIME IN CALIFORNIA, VIOLATES HER DUE PROCESS AND EQUAL PROTECTION RIGHTS WHEN THE COURT BASED ITS BAIL DECISION ON WHAT WAS DEMONSTRATED TO HAVE BEEN FALSE INFORMATION ABOUT PETITIONER AND WITHOUT ANY OF THE INQUIRY REQUIRED BY PENAL CODE § 1275, AND *PEOPLE V. HUMPHREY*, (2018) 233 CAL.RPTR.3D 129 [417 P.3D 769] (SECTION III)

Review is necessary to settle an important question of law and for the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order Cal. Rules of Court, rule 8.500(b)(1) and (4).

Summary of Argument

Petitioner Chelsea Becker is one of millions of Americans who each year experience a pregnancy loss, miscarriage and still birth, and one of thousands who experience stillbirth (pregnancy loss after 20 weeks) each year in California. She is also one of millions of people engaged in an ongoing struggle with drug dependency. Ms. Becker has suffered from substance use disorder and, as a result, was unable to stop using methamphetamine over a period of years including during each of her four pregnancies. Her first three pregnancies continued to term and she gave birth to babies that are healthy and well. On September 10, 2019, Petitioner's last pregnancy ended, as did those of thousands of other women in California and across the country, in a stillbirth. These facts are not in dispute and indeed they are the very facts which form the foundation of the prosecution against Petitioner. *See* District Attorneys Opposition to the Petition for a Writ of Habeas Corpus p. 8-9.

On October 31, 2019, the Kings County District Attorney (DA) charged Petitioner with one count of Murder of a Human Fetus, a felony, in

violation of California Penal Code section 187(a), based on the allegation that Petitioner's pregnancy ended in stillbirth as a result of her drug use. *See* Criminal Complaint (Ex. 5) to Writ of Habeas Corpus.[2] In California, a woman's pregnancy loss, for any reason,[3] *is not a crime*. The District Attorney lodged the charge despite the murder statute's explicit provision that the law cannot be used to prosecute "any person who commits an act that results in the death of the fetus if … [t]he act was solicited, aided, abetted, or consented to *by the mother of the fetus*." Pen. C. § 187(b) (emphasis added).

Petitioner was arrested on November 5, 2019 and booked into the Kings County Jail on November 6, 2019 on $5,000,000 bail. *Id.* After a bail hearing on February 20, 2020, at which the prosecution wrongly claimed, as is more fully described below, that the Petitioner had been convicted of a felony strike offense and had failed to appear in court when obligated to do so, in reliance on those errors of fact the Kings County Superior Court reduced the bail to $2,000,000. It is respectfully submitted that this change was obviously intentionally a difference without a distinction. Unable to afford any bail, Ms. Becker has remained in custody since that date, during the COVID 19 pandemic, in a county jail which has no records of testing of any staff and, as of the date of the filing of the Writ of Habeas Corpus in the Court of Appeal had tested exactly two prisoners. *See* Kings County COVID 19 Testing Records (Ex. 10).

---

[2] Hereinafter all references to Petitioner's exhibits contained in the volume of exhibits filed in support of the Writ of Habeas Corpus will be referenced simply as Ex. __

[3] Petitioner contests causation as a matter of science in this case but this issue has no impact on the strictly legal issue raised in the Writ of Prohibition. Even if the District Attorney's causation allegations are accepted, there is no crime.

Petitioner sought writ relief thereafter with the California Court of Appeal, Fifth Appellate District. On July 6, 2020 Petitioner filed her Petition for a Habeas Corpus seeking an order releasing her from pre-trial incarceration. Petitioner also filed a Petition for Writ of Prohibition (#F081341) on July 2, 2020 focusing on Penal Code section 187 and its prohibition of charging women who experience a pregnancy loss with murder based on their volitional conduct while pregnant. The Court of Appeal, in separate orders, summarily denied both Petitions on October 15, 2020. *See* Order Denying Petition for Writ of Habeas Corpus, Appendix 1. The Petition for a Writ of Prohibition is also the subject of a separate, but related, Petition for Review.

The Prosecution was clear in describing its opposition to the elimination of the excessive bail imposed on Ms. Becker and her release from jail when it explained that: **"her release from Kings County Jail could subject yet another one of her fetuses to toxic amounts of methamphetamine or other controlled substances should she get pregnant again and use illicit drugs during her pregnancy."** District Attorney's Informal Response to Petition for a Writ of Habeas Corpus at p. 7. The suggestion that it is her ability to procreate that keeps Ms. Becker behind bars on an unaffordable bail is shocking, legally impermissible and distressing as explained in Section II, below. As such, it cannot be permitted to stand. The obvious corollary to the DA's position is that if Ms. Becker would simply agree to be sterilized, there would be no need for bail.

In denying the Petition for a Writ of Habeas Corpus the Court of Appeal provided no analysis or rationale. It left open the door for Petitioner to re-file her petition by denying the Petition without prejudice. But if that door was left open to await a determination on the legitimacy, *vel non* of the prosecution of Ms. Becker, then, it appears the Court of Appeal has missed the point of a Petition for a Writ of Habeas Corpus. Petitioner is entitled to a

bail remission today. A reduction in bail is not contingent on a finding that the prosecution of Petitioner is unauthorized under Penal Code Section 187(b)(3) and illegal as a matter of law. If that event occurs, months or years from now, the case will be over and there will, of course, be no basis to incarcerate Ms. Becker. But until that point in time, Ms. Becker's bail certainly remains excessive and unlawful. Likewise, if the Writ of Prohibition does not issue, and Ms. Becker continues to face a prosecution, she should, nonetheless, be released on her own recognizance there being no rational or legal basis for the bail decision, divorced as it was from the actual facts of Ms. Becker's history and the completely unmet requirements of Penal Code section 1275 and those of *Humphrey*, 233 Cal.Rptr.3d 129 [417 P.3d 769] (Section III).

Failure to provide appellate guidance, now, on the question of bail not only leaves Ms. Becker unlawfully imprisoned for the foreseeable future, but also provides license to the Kings County District Attorney and others to continue to bring similar charges against women who have stillbirths or miscarriages and hold them in jail on what amounts to—in reality—a denial of bail pending the resolution of the central issue in this case.

And while bail must be reduced regardless of whether the charge against Ms. Becker is cognizable—which it is not—the issue of whether a woman can be charged with the murder of her own fetus is dispositive of the bail issue as well. To leave Ms. Becker in jail, on an unattainable $2,000,000 bail, so that she might develop a trial court record on an issue that is absolutely not in dispute between the parties, that is, that the fetus Ms. Becker is charged with having murdered was her own, and risk indictment for a non-existent crime is both unjust and unnecessary as a matter of law. Indeed, what record needs to be developed is not clear and we can only speculated that it is an issue that is simply not in dispute between the parties,

that is, that the fetus that Ms. Becker is charged with having murdered was her own[4].

The issue before the Court is purely a question of law and one dispositive of the underlying proceeding. There is nothing that the prosecution could establish in the record below that would alter the fact that it seeks to prosecute Ms. Becker's for her own pregnancy loss as if it were murder. Petitioner incorporates by reference the California Attorney General's brief filed in support of her Petition for a Writ of Prohibition, case # F081341 in the Fifth District Court of Appeal.(CRC 8.504(e)(3)) The Attorney General stated the State's position on this precise issue when he wrote:

> A woman necessarily consents to an act that she herself voluntarily undertakes, free of fraud, duress, or mistake. The acts in question in this case—the defendant's drug use during her pregnancy—fall squarely within the subdivision (b)(3) exclusion. This Court should grant the writ. […]The Attorney General agrees with Petitioner that the text, purpose, and legislative history of California Penal Code section 187 demonstrate that a woman cannot be prosecuted for murder as a result of her own omissions or actions that might result in pregnancy loss. The superior court erred in concluding otherwise.

---

[4] As noted in the Summary Order in the Petition for a Writ of Prohibition issued by the Court of Appeal, Appendix 2 "The accusatory pleading states: The 'crime of Murder Of Human Fetus in violation of PC187(a), a Felony, was committed in that the said defendant, …, did unlawfully, and with malice aforethought murder a human fetus.'" If instead of the words "a human fetus," the prosecution has used the words "her human fetus," the Fifth District Court of Appeal would have had no basis at all to summarily deny that Writ (also without prejudice). But there is simply no lack of clarity of whose fetus is at issue in this matter. The prosecution has never contended or argued, that the stillbirth in this case was delivered by anyone other than Ms. Becker. And certainly, Ms. Becker acknowledges and continues to mourn the loss.

> […] The superior court's contrary interpretation would lead to absurd—and constitutionally questionable— results.[…] It would subject all women who suffer a pregnancy loss to the threat of criminal investigation and possible prosecution for murder. Whether a stillbirth or a miscarriage was due to drug use or some other reason, there is nothing in the statute that would constrain a district attorney's ability to investigate the most intimate aspects of the circumstances of a woman's pregnancy and to bring murder charges against that woman who suffered a pregnancy loss.

Attorney General's Amicus pp. 5, 8, 11.

No woman in California who, because she experiences a miscarriage or stillbirth, can be charged with murder based on her own conduct—under any circumstances. That Petitioner should sit in jail on an excessively high bail waiting for the "the court to answer this important question of law," Justice Peña, Appendix 2 p. 5, is a stain on the efforts made by this Court and others to ensure fairness and due process in the bail system. *See, e.g.*, *Humphrey*, 233 Cal.Rptr.3d 129 [417 P.3d 769] (Section III).

Setting bail at $2,000,000 means that Ms. Becker, based on false allegations related to her purported criminal record and her court appearance history, without any risk to the public, and with a failure to consider her individual circumstances, including indigency will remain incarcerated for a non-existent crime at a time when detained individuals are at a heightened risk of contracting COVID-19 and suffering severe health consequences. Petitioner has been needlessly held in jail for almost a year on account of her indigency,[5] the state's failure to provide the court with accurate information

[5] There is no doubt that the Superior Court was aware of Ms. Becker's indigency on May 20, 2020, when the court heard the argument on the renewed bail motion, because attached as Exhibit 2 to the Ms. Becker's Reply was an Affidavit of Indigency from that date (Ex. 16).

about Ms. Becker, the Superior Court's failure to acknowledge and appropriately respond to the prosecution's misrepresentations of facts about Ms. Becker as well as its support of a decision to bring a prosecution that is itself statutorily unauthorized. The risk of Ms. Becker's continued incarceration—in addition to her constitutional right pre-trial to the least restrictive means of ensuring she appears at future court dates— is exacerbated by the fact that detention facilities in Kings County and throughout the state and country have become particularly fertile ground for the ongoing COVID-19 pandemic. As a result of the Superior Court's orders, it is now not only Petitioner's freedom that is needlessly in jeopardy, but also her life.

Petitioner's continued detention warrants a writ to secure her release. It is incumbent upon this Court to grant review so that such relief will neither be unjustly delayed nor denied.

I. The trial court's imposition of a $2,000,000 bail is excessive and violates Ms. Becker's constitutional and statutory rights to a reasonable bail.

Article I, § 12 of the California Constitution guarantees the accused's right to be released prior to trial on reasonable bail. This right is subject to three exceptions: (1) capital crimes; (2) felony offenses involving acts of violence where the court has found, "upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others;" and (3) felony offenses where the court has found, also "on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released." *Id*. None of these exceptions apply to Ms. Becker, and she maintains her right to release on bail. The trial court's order that Ms. Becker be held subject to $2,000,000, however, constitutes the functional equivalent of denial of bail and violates Article I,

§ 12 of the California Constitution as well as California's statutory guarantee of bail "as a matter of right" for all non-capital offenses. Cal. Pen. Code §1271 (emphasis added). The reduction of her bail from $5,000,000 to $2,000,000 was unusually confounding and was presented as an intentionally and effectively meaningless order by the court, which necessarily must have recognized that Ms. Becker, as an indigent person, would be no more likely to secure the funds to satisfy a bail of $2,000,000 than of $5,000,000. The effect of the excessive amount is the same—that Petitioner will remain incarcerated during the months and possibly years that this case remains pending, unless review is granted and the Court of Appeal is required to consider the merits of her Petition.

II. There has never been any statutory basis to set bail in Petitioner's case.

A court must take into consideration four factors when setting, reducing, or denying bail: "[1] protection of the public, [2] the seriousness of the offense charged, [3] the previous criminal record of the defendant, and [4] the probability of his or her appearing at trial or at a hearing of the case." Cal. Pen. Code § 1275(a)(1). Public safety shall remain "the primary consideration." *Id.*; *see also* Cal. Pen. Code § 1271. The Superior Court failed, however, to take into consideration *any* of these factors at any stage, and instead, set a bail amount that is obviously excessive and without any regard for Petitioner's individual circumstances.

A. Petitioner's bail is not necessary to protect the public.

The DA's noxious notion that limiting Petitioner's opportunity to procreate by keeping her in jail is "protecting the public" must be rejected. However, the prosecutor actually stated as much in her Opposition to the Renewed Bail Motion at 4:15 -17 (Ex. 15):

> [H]er sentence is nowhere near timed out and she is young with a high risk of repeating her crime. Accordingly, her release would compromise

> public safety—the primary consideration at a bail review hearing—and the court must deny her request.

And that is precisely what the court did. The idea that any DA would contend that the ability to procreate should constitute a reason to keep anyone in jail is both appalling and unconstitutional. And yet, that precise position was repeated in the DA's Opposition to the Petition for a Writ of Habeas Corpus at p. 14:

> Petitioner's incarceration is necessary to protect the safety of potential victims—especially the prospect of her becoming impregnated and carrying another fetus while ingesting controlled substances that would prove toxic to the fetus.

The truth is, there is no public to be protected in this matter. Pregnancy is not a threat to public safety and Petitioner's substance abuse disorder—is a health problem she struggles with, not a crime. To state that she must be kept from conceiving a child is unconstitutional as a matter of both privacy and equal protection of the law.[6] and cannot serve as the basis of her bail. *See Skinner v. Oklahoma* (1942) 316 U.S. 535, 541 (procreation is "one of the basic civil rights of man" and is "fundamental to the very existence and survival of the race"); *People v. Pointer* (1984) 151 Cal.App.3d 1128, 1139 [199 Cal.Rptr. 357] (reversing portion of sentencing order that prevented defendant, after felony child endangerment conviction, from conceiving

---

[6] California courts have recognized that imposing differential burdens on pregnancy or potential pregnancy constitutes unlawful sex discrimination. *See* Johnson Controls, Inc. v. Fair Employment & Housing Com. (1990) 218 Cal.App.3d 517 (holding that company's "fetal protection program" that treated differently people of childbearing capacity violated prohibition on sex discrimination). Indeed, California has statutorily defined "sex discrimination" in many contexts to include "[p]regnancy or medical conditions related to pregnancy." *See, e.g.*, Cal. Gov't Code § 12926(r)(1)(A). The DA's position that a woman should be held in jail to prevent her from becoming pregnant is clearly unlawful sex discrimination.

during probationary period); *see also People v. Dominguez* (1967) 256 Cal.App.2d 623, 629 [64 Cal.Rptr. 290] (striking a probation condition that the defendant not become pregnant while unmarried on grounds that the defendant was "entitled to her freedom on probation unless it [was] revoked for lawful reasons").

B. The "seriousness of the offense," when considered in light of the alleged facts, cannot justify $2,000,000 bail.

While murder is clearly a serious offense, in this case, although the Petitioner contests the conclusion that any of her actions actually caused her to have a stillbirth, even the prosecutor argues that the Petitioner did not *intend* to cause the demise of her fetus. While alleging that Ms. Becker did, "with malice aforethought," cause the death of her fetus, the State simultaneously argues that "[t]here is no evidence that [Ms. Becker] took any actions whatsoever to abort the fetus." Opposition to Demurrer/Nonstatutory Motion to Dismiss 2:27, 6:8 (Ex. 20) (maintaining that Petitioner "never wanted to abort her child which is precisely why she named the child, Zachariah"). It is undisputed that the only "intent" the DA seeks to prove is Ms. Becker's alleged intentional ingestion of a controlled substance. Such cannot form the basis for setting a $2,000,000 bail.

C. The Superior Court relied on a demonstrably false criminal history in issuing bail, rendering the bail unlawful.

The underpinning of the bail order which was issued by the Superior Court is irreparably based upon misconceptions of both law and fact. The District Attorney initially informed the court that Ms. Becker had a felony conviction and a strike offense. Ex. 9 p. 5 and Ex. 17 p. 32-33. The Superior Court relied on that allegation. However, it was untrue. Ms. Becker has never been convicted of a felony. As a juvenile, she pled to a misdemeanor and

successfully served a year of probation. Becker Juvenile Records Part 1:21, 23,33,57 and Part 2:33 (Ex. 18) (filed in a separate confidential volume).

The Petitioner has never been convicted of a strike offense, nor has she ever failed to appear in court when obligated to do so. Despite this fact, the DA alleged that she did not appear in court on the date that an arrest warrant was issued for her. The Bail Review Report (Ex. 8), erroneously stated that, "[o]n October 31, 2019, the defendant failed to appear to Court and a Warrant of Arrest was issued in the amount of $5,000,000.00." Although an arrest warrant was issued on October 31, 2019, the warrant was not issued for a failure to appear and, indeed, Ms. Becker had no court hearing scheduled on that date. Rather, October 31, 2019 was the date on which the Kings County District Attorney first filed its criminal complaint against Petitioner and asked the court to issue a warrant for her arrest on that basis. Criminal Complaint (Ex. 5); Hanford Police Department Supplement 8 Report (Nov. 7, 2019) (Ex. 6) ("On 10-31-19, Kings County Superior Court Judge Robert S. Burns signed a warrant of arrest for Chelsea Becker for the felony charge of Pen. Code, § 187(a) with the bail amount of $5,000,000."). Petitioner was arrested one week later, on November 5, 2019, without incident, and has been held on millions of dollars bail since that date. Any statement that she ever failed to appear in court is simply not true.

Despite the court's reliance on false and misleading information to set the bail at $2,000,000, when the court was ultimately apprised of the truth, the Superior Court failed to rectify the infirmity of Ms. Becker's incarceration and the bail remained unchanged. The Superior Court's decision is found at p. 33:2 -34:24 (Ex. 17). Petitioner implores this Court to grant review of her Petition so that Ms. Becker's bail can be considered based upon the requirements enunciated by statute and by this Court, rather than on demonstrably false statements made by the prosecution and relied upon by the Superior Court.

III. The Superior Court has denied Petitioner her procedural and substantive due process rights by refusing to consider the increasing impact of the COVID-19 pandemic

Despite the near universally accepted need to quickly address the spread of the virus, the Superior Court in this matter has utterly failed to recognize and address the risk that attends Ms. Becker's continued detention and instead has inexplicably suggested that the crowded and inescapable confines of jail is "the safer place for her[.]" 34:11-12 (Ex. 17). The Superior Court sought to minimize the risks arising from crowded and unjustified confinement during a pandemic stating that: "[W]e have received no notification of any positive tests within the jail and that is borne out in the bail review report from Probation that when they checked that was still the status." 33:23-26 (Ex. 17). This claim, however, was made based upon a complete lack of accurate information. The truth is that, as of June 26, 2020, the Kings County Jail had *no* records of *ever* having done *any* testing of staff and had conducted exactly two tests on prisoners. (Ex. 10). Nonetheless, the Superior Court, without any apparent good reason, simply proceeded to suggest that the Kings County Jail was the safest place for Petitioner to be (Ex. 17) 34: 9-24.[7] Since filing Petitioner's Reply to the Opposition to the Writ for Habeas Corpus, COVID 19 cases in Kings County have increased from 3,523 on August 25, 2020 to 4,539 as of October 21. This is an increase of over 25% in almost two months. Those numbers only include the non-incarcerated population of Kings County. The number of COVID 19 cases within state correctional facilities in Kings County have increased from 2,264

[7] Given the fact that asymptomatic cases of COVID 19 amount to up to 1/3 of all cases and since there are no records of any testing of the staff and only two tests of prisoners at Kings County Jail, it can scarcely be said that Ms. Becker is safest in jail.

on August 25, 2020 to 3,364 as of October 21. This is an increase of 33%.[8] It should be noted that the Kings County Jail feeds prisoners into the state correctional facilities located within Kings County. The lack of testing of prisoners within the Kings County Jail is therefore all the more troubling.

Ms. Becker remains in a jail environment which has been proven across California and the country to be ideal for the virus to thrive, spread and kill. All the while, due to her asthma, Ms. Becker is at increased risk should she become infected. For this reason, this Court's review of this matter is essential.

IV. The Trial Court's failure to consider Ms. Becker's ability to pay the $2,000,000 bail violated her right to due process and equal protection under the law, rendering her detention unlawful

On August 26, 2020, the California Supreme Court made binding to trial courts Part III of the opinion in *Humphrey*, *supra,* https://tinyurl.com/y2cw49ky barring judges from relying on bail schedules, such as was done in Petitioner's case. This Court has now confirmed that such a practice violates the due process rights of low-income people who are arrested for felonies in the state. Part III of the *Humphrey* decision which now has precedential effect, holds that:

> Failure to consider a defendant's ability to pay before setting money bail is one aspect of the fundamental requirement that decisions that may result in pretrial detention must be based on factors related to the individual defendant's circumstances. This requirement is implicit in the principles we have discussed—that a defendant may not be imprisoned solely due to poverty and that rigorous procedural safeguards are necessary to assure the accuracy of determinations that an arrestee is dangerous and that detention is required due to the absence of

[8] https://www.countyofkings.com/departments/health-welfare/public-health/coronavirus-disease-2019-covid-19

> less restrictive alternatives sufficient to protect the public.

In re Humphrey 19 Cal.App.5th at 1041 [228 Cal.Rptr.3d 513]. The Superior Court accomplished exactly none of these objectives in setting and declining to lower a $2,000,000 bail on the indigent Petitioner. Petitioner asks this Court to require adherence to its decisions and grant review in the present case.

CONCLUSION

The Superior Court has failed to make any individualized inquiry or finding in setting Ms. Becker's bail, as required by Penal Code section 1275. Ms. Becker is being held on allegations that do not constitute a crime in California, and she should be released. Ms. Becker has strong ties to the County, and there is no fact-based reason to believe that she would not appear at future court dates. Despite the prosecution's appalling position that it is Ms. Becker's ability to procreate that presents a risk to the public, in fact, there has been no cognizable risk to the public suggested and indeed, she personally faces grave risk as she remains in detention. The denial of the writ by the Court of Appeal was without any stated reasons and that decision exposes Petitioner to an extended period of incarceration without her bail having been appropriately addressed. For the reasons set forth herein, and because justice demands it, Ms. Becker asks this Court to rectify the Court of Appeal's refusal to take up the issue and to grant review.

Date: October 26, 2020

Respectfully submitted,

/s/ Roger T. Nuttall
ROGER T. NUTTALL (SBN 42500)
NUTTALL & COLEMAN
2333 Merced Street
Fresno, California 93721
Tel: (559) 233-2900

CERTIFICATE OF WORD COUNT

I, Roger T. Nuttall, co-counsel for Chelsea Becker, Petitioner and defendant, do hereby certify and verify, pursuant to the California Rules of Court, rule 8.204(c)(1), that the word processing program used to generate this brief indicates that the word count for this document (Petition for Review) is 5,249 words, excluding the tables, this certificate, and any attachment permitted under rule 8.486(b)(1).

I declare that the foregoing is true and correct to the best of my knowledge and belief at the time of making this verification.

EXECUTED on October 26, 2020, under penalty of perjury under the laws of the State of California, in Fresno, California.

/s/ Roger T. Nuttall
ROGER T. NUTTALL

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIFTH APPELLATE DISTRICT

In re	F081362
CHELSEA BECKER,	(Kings Super. Ct. No. 19CM-5304)
On Habeas Corpus.	**ORDER**

BY THE COURT:*

The "Petition for Writ of Habeas Corpus," filed on July 8, 2020, is denied without prejudice.

Levy, A.P.J.

Detjen, J.

Dissent, J. Peña,

For the reasons stated in, and in conjunction with, Petitioner's demurrer petition (case No. F081341), I vote to issue an order to show cause why the relief prayed for in the above entitled matter should not be granted.

* Before Levy, A.P.J., Detjen, J. and Peña, J., Dissenting

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIFTH APPELLATE DISTRICT

CHELSEA BECKER, Petitioner, v. THE SUPERIOR COURT OF KINGS COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	F081341 (Kings Super. Ct. No. 19CM-5304) **ORDER**

BY THE COURT:*

Petitioner requests review of the trial court's ruling on her demurrer. A demurrer to an accusatory pleading raises a question of law as to the sufficiency of the accusatory pleading and only tests those defects appearing on its face. (Pen. Code, § 1004.) The accusatory pleading states: The "crime of Murder Of Human Fetus in violation of PC187(a), a Felony, was committed in that the said defendant, …, did unlawfully, and with malice aforethought murder a human fetus." Petitioner fails to make a prima facie showing the accusatory pleading is defective on its face. Her petition is denied. Her request for a stay of proceedings in the superior court is also denied. Our denial does not preclude petitioner from seeking writ relief once the facts of her case become part of the record.

Levy, A.P.J.

Detjen, J.

* Before Levy, A.P.J., Detjen, J. and Peña, J., Dissenting

Dissent, J. Peña,

I vote to issue an order to show cause before this court as to why the relief prayed for in the above entitled matter should not be granted.

The sole issue presented by the petition, which the parties agree is a pure question of law, is whether Penal Code section 187, subdivision (b)(3) categorically prohibits the state from charging a mother with the murder of her own fetus.[1] Petitioner demurred to the criminal complaint, which charged her with the murder of a fetus under "PC 187(a)," and moved to dismiss the complaint. In opposition to the demurrer, the People stated the facts it would prove at trial included the following: "On September 10, 2019, Defendant gave birth to a stillborn child at Hanford Adventist Medical Center whom she had already named Zachariah Joseph Campos. [D]efendant delivered the stillborn baby at 36 weeks gestational, which, at that age, could have resulted in a viable living human being outside of the womb.… [¶] The Coroner's report attached hereto as Exhibit 1, revealed Zachariah Joseph Campos'[s] cause of death was 'Acute Methamphetamine Toxicity.' It also revealed a level of .02 grams % blood ethyl alcohol.… Blood work conducted on the Defendant 'showed positive for methamphetamine.' (Exhibit 1 at p. l.) … [¶] Defendant's mother told Hanford Police that Defendant admitted to using methamphetamine during this pregnancy as she had during her three previous pregnancies.… [D]efendant's other children tested positive for methamphetamine at birth and were adopted out of Defendant's care as newborns. Defendant herself admitted … that she did use methamphetamine while pregnant this time …."

After noting no California cases have ruled on the question of whether section 187 applies to a mother who allegedly killed her own fetus, the trial court overruled petitioner's demurrer, concluding the plain language of the statute did not specifically exclude mothers in the death of their own fetuses and the Legislature could have easily done so. Notably absent from the People's written opposition, their oral argument to the court, or the court's ruling, was the issue of the sufficiency of the pleading, a purported lack of defects appearing on its face, or citation to section 1004.

With no opportunity provided to petitioner to address these issues, my colleagues have determined, sua sponte, and with no legal analysis to support the conclusion, that petitioner fails to make a prima facie showing the accusatory pleading is defective on its face. I do not approve of this approach in this case because I am not convinced the conclusion is correct. Equally important, I am doubtful the conclusion reached by the trial court was correct.

First, in my opinion, the question of the sufficiency of the pleading is not so black and white when one considers the following: What is the role of subdivision (b) on the sufficiency of the pleading, which provides for various exclusions or exceptions to subdivision (a) where the death of a fetus is charged? In the murder of a fetus case, is a

---

[1] Further undesignated statutory references are to the Penal Code.

criminal complaint defective or insufficient if it fails to allege that subdivision (b) does not apply? If asked, might petitioner have other possible arguments to support a prima facie case? Was the People's failure to make the argument a tactical decision that implicates waiver and forfeiture principles? An order to show cause with requests for additional briefing would provide a more complete vetting of these questions and perhaps a different conclusion.

Of greater concern, which causes me to exercise my discretion to vote for the issuance of an order to show cause, is the uncertainty in the law, the correctness of the court's ruling on the sole question of law that was considered, and the magnitude and importance of the issue to this and future cases where the mother is alleged to have committed murder pertaining to the death of her own fetus.

Section 187 and Fetal Murder

Section 187, subdivision (a), defines murder as "the unlawful killing of a human being, or a fetus, with malice aforethought." Subdivision (b) provides an exception for acts that result in the death of a fetus if any of the following apply:

> "(1) The act complied with the Therapeutic Abortion Act, Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code.
>
> "(2) The act was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the mother of the fetus or where her death from childbirth, although not medically certain, would be substantially certain or more likely than not.
>
> "(3) The act was solicited, aided, abetted, or consented to by the mother of the fetus."

Section 187 was amended in 1970 in response to *Keeler v. Superior Court* (1970) 2 Cal.3d 619, which held that a fetus is not a "human being" within the meaning of the former version of section 187, and therefore the defendant could not be prosecuted for the murder of his estranged wife's fetus. (*People v. Davis* (1994) 7 Cal.4th 797, 803.) The 1970 amendment added the words "or fetus" to subdivision (a), and added the exceptions listed in subdivision (b). (Stats. 1970, ch. 1311, § 1, p. 2440.) The applicability or scope of these exceptions is not well defined, as they have not been interpreted by any published California cases. The exceptions were also added prior to *Roe v. Wade* (1973) 410 U.S. 113 (*Roe*). Subdivisions (b)(1) and (b)(2) appear to carve out narrow exceptions for medical abortions in certain circumstances, but it is unclear what significance, if any, those sections carry following *Roe.* Moreover, the Therapeutic Abortion Act referenced in subdivision (a) has been repealed and replaced by the broader Reproductive Privacy Act. (Stats. 2002, ch. 385, § 2.)

Statutory Interpretation

Petitioner's statutory interpretation claims are based solely on the exception set forth in section 187, subdivision (b)(3). Petitioner makes several arguments that this subdivision categorically prohibits the prosecution of a mother for the murder of her fetus. First, petitioner claims the plain language of the statute prohibits such a prosecution because any intentional act committed by the mother was inherently "consented to by the mother of the fetus." (§ 187, subd. (b)(3).) Second, petitioner contends the legislative history of section 187 and subsequent attempts to pass legislation that would otherwise criminalize conduct by a mother impacting her fetus indicates the Legislature did not intend to permit such prosecution. Third, petitioner claims interpreting section 187 in this way would lead to absurd results, including the prosecution of expectant mothers for many other types of conduct that are arguably dangerous to the health of a fetus.

Plain Language

Petitioner argues that a mother cannot be prosecuted for the death of her fetus pursuant to section 187, subdivision (b)(3), asserting that where a mother has engaged in a volitional or voluntary act, she has by definition "consented" to the act. The California Attorney General has filed an amicus curiae brief supporting this interpretation, contending that "[a] woman necessarily consents to an act that she herself voluntarily undertakes, free of fraud, duress, or mistake." Although perhaps not conclusive, this interpretation of the language appears to me to have some persuasive force.

Legislative History

Petitioner contends that the legislative history of section 187 supports the interpretation of subdivision (b)(3) that a mother cannot be prosecuted for the murder of her fetus. Petitioner submits an affidavit from Assemblyman W. Craig Biddle, who was the primary author of the 1970 amendment to section 187. In the affidavit, Biddle states that the sole purpose of the amendment was to "make punishable as murder a third party's willful assault on a pregnant woman resulting in the death of her fetus." (Exhibit 13.) With respect to subdivision (b)(3), he explains: "[T]his latter exception would include illegal abortions obtained by a pregnant woman. While such illegal abortions would, at the time, still be punishable under the state's consensual abortion law (Penal Code § 275), they would not be punishable as murder." (*Ibid*.) He concludes the affidavit by stating that no legislator ever suggested that the 1970 amendment "could be used to make punishable as murder conduct by a pregnant woman that resulted in the death of her fetus." (*Ibid*.)

Petitioner also points to four failed attempts to enact legislation creating criminal liability for mothers who use drugs while pregnant. In 1987, the Legislature rejected a bill that would have expanded the definition of criminal child endangerment to include substance use during pregnancy. (Sen. Bill No. 1070 (1987–1988 Reg. Sess.) In 1989, the Legislature rejected a bill that would have made use of a controlled substance during pregnancy resulting in fetal demise punishable as manslaughter. (Sen. Bill No. 1465

(1989–1990 Reg. Sess.) In 1991, the Legislature rejected a bill that would have subjected to criminal liability a mother who abused substances during pregnancy that had an impact on her child's health after birth. (Assem. Bill No. 650 (1990–1991 Reg. Sess.) Finally, in 1996, the Legislature rejected a bill that would have criminalized "fetal child neglect." (Assem. Bill. No. 2614 (1995–1996 Reg. Sess.)

This legislative history tends to support petitioner's argument. Although Biddle's opinion regarding the scope of subdivision (b)(3) of section 287 is not conclusive and may have limited relevance, it provides context that helps explain the Legislature's intent in amending section 187. Based on Biddle's affidavit, it appears the Legislature intended to exempt mothers who obtain illegal abortions from liability for murder, but not from other statutes criminalizing illegal abortions. This interpretation is bolstered by the failed attempts at criminalizing drug use while pregnant, as it suggests that the authors of the rejected legislation recognized that additional legislation would be necessary to punish pregnant mothers who use drugs, because they cannot be prosecuted for murder under section 187.

Conclusion

The 1970 amendments to the homicide statute are clumsily written and outdated. They were drafted for a pre-*Roe* world, with less than precise statutory language to delineate between lawful and unlawful conduct. Although petitioner presents additional arguments to support her position, it is unnecessary to consider them here. Based on the statutory language and the legislative history of section 187, petitioner presents a strong case that in enacting subdivision (b) when amending the murder definition in section 187 to include the unlawful killing of a fetus, the Legislature did not intend to include the acts of the mother in the death of her own fetus. This case provides an excellent opportunity for this court to answer this important question of law.

PROOF OF SERVICE

STATE OF CALIFORNIA,)
COUNTY OF FRESNO.)

I am employed in the County of Fresno, State of California. I am over the age of eighteen (18) and not a party to the within action; my business address is: 2333 Merced Street, Fresno, California 93721.

On October 26, 2020, I served the foregoing document described as: PETITION FOR REVIEW on the interested parties in this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

Xavier Becerra
California Attorney General's Office
Post Office Box 944255
Sacramento, California 94244

[X] Electronic Service

Melissa D'Morias Deputy District Attorney COUNTY OF KINGS
1400 W. Lacey Blvd., Bldg. 4
Hanford, CA 93230

Clerk of the Court,
Kings County Superior Court
1640 Kings County Dr.
Hanford, CA 93230

Hon. Robert Shane Burns, Judge
Kings County Superior Court
1649 Kings County Dr.
Hanford, California 93230

[X] [U.S. MAIL]
[X] {State} I declare under penalty of perjury, under the laws of the State of California the above is true and correct. EXECUTED on October 26, 2020, at Fresno, California.

/s/ Bryan Murray
BRYAN MURRAY

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Chelsea Becker v. Superior Court of Kings County**
Case Number: **TEMP-JLQ16EHJ**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **angel@nuttallcoleman.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	S____PET Becker

Service Recipients:

Person Served	Email Address	Type	Date / Time
Roger Nuttall Nuttall Coleman & Drandell 42500	angel@nuttallcoleman.com	e-Serve	10/26/2020 3:35:07 PM
Jacqueline Goodman	jacquie@jglawgroup.com	e-Serve	10/26/2020 3:35:07 PM
Samantha Lee	sbl@advocatesforpregnantwomen.org	e-Serve	10/26/2020 3:35:07 PM
Xavier Becerra	PO Box 944255 Sacramento, California 93230	Mail	10/26/2020 3:35:07 PM
Melissa D'Morias	Melissa.D'Morias@co.kings.ca.us	e-Serve	10/26/2020 3:35:07 PM
Clerk of the Court, Kings County Superior Court	1640 Kings County Drive Hanford, California 93230	Mail	10/26/2020 3:35:07 PM
Hon. Robert Shane Burns	1649 Kings County Drive Hanford, California 93230	Mail	10/26/2020 3:35:07 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/26/2020
Date

/s/Roger Nuttall
Signature

Nuttall, Roger (42500)

Last Name, First Name (PNum)

Nuttall Coleman & Drandell

Law Firm