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ADNAN SYED

Applicant

v.

STATE OF MARYLAND

Respondent

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NOs. 199103042-46
PETITION NO. 10432

2017 JAN 27 PM 1:20

CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

* * * * *

**ADNAN SYED'S APPLICATION FOR LEAVE TO APPEAL
DENIAL OF MOTION FOR RELEASE PENDING APPEAL**

Adnan Syed, through undersigned counsel, and pursuant to Md. Code Ann., Crim. Proc. § 7-109(a),¹ files this Application for Leave to Appeal the Circuit Court's denial of his Motion for Release Pending Appeal.

After serving more than 17 years in prison based on an unconstitutional conviction for a crime he did not commit, Syed was granted a new trial. But because the Circuit Court applied the wrong legal standard in deciding Syed's Motion for Release, and incorrectly understood this Court's Remand Order, Syed remains in prison, having not even been given a bail hearing. This appeal presents three important legal issues of broad application suitable for discretionary review: (1) the proper standard for making a bail determination after a petitioner's conviction has been vacated but while a State appeal is pending; (2) the limitation, if any, that orders of remand place on circuit courts' authority to adjudicate ancillary issues; and (3) the relevance of potential

¹ Syed's Motion for Release was filed pursuant to Md. Code Ann., Crim. Proc. § 7-109(b)(2)(ii). Subsection (a) of section 7-109, in turn, provides that "[w]ithin 30 days after the court passes an order in accordance with this subtitle, a person aggrieved by the order . . . may apply to the Court of Special Appeals for leave to appeal the order." *Id.* § 7-109(a). The word "subtitle" in section 7-109(a) refers to subtitle 1 of title 7 of the Maryland Code of Criminal Procedure.

issues for appeal on circuit courts' authority to grant petitioners release under Maryland's post-conviction statute.

Statement of the Facts

Hae Min Lee, a student at Woodlawn High School in Baltimore County, went missing on the afternoon of January 13, 1999. Nearly a month later, her body was found partially buried in Leakin Park. The cause of death was strangulation. After receiving an anonymous tip and speaking with Jay Wilds, a recent graduate of Woodlawn High School and known drug dealer, police focused their investigation on 17-year-old Woodlawn student Adnan Syed. Syed, an honors student who was just about to graduate from high school, was charged with first-degree murder, second-degree murder, kidnapping, robbery, and false imprisonment.

I. Syed's Initial Bail Hearings

Syed appeared before the District Court for his initial bail hearing on March 1, 1999. The hearing proceeded on a significant mistake of fact: the charging document incorrectly listed Syed's date of birth, leading the court to mistakenly conclude that Syed was an 18-year-old adult rather than a 17-year-old juvenile. Ex. 1 (Charging Document). Based on this factual error, the court considered the charges to potentially be a "capital offense." They were not, of course, because juveniles were not eligible for the death penalty in Maryland. Emphasizing the "capital" nature of the offense, the District Court ordered that Syed be held without bail. Ex. 2 (Letter of Syed's Attorney).

Syed sought review of the District Court's denial of bail and appeared before the Circuit Court in March 1999. In addition to his lack of criminal record, Syed attended court that day backed by many supporters: hundreds of members of the community showed up in person, and he had the signatures of some 600 individuals who had either written letters or signed a petition

supporting his release. Members of the community were so confident in Syed's suitability for release on bail that several of them offered their own property as security.

Nevertheless, the hearing focused less on Syed's clean record and community support and more on Syed's Pakistani roots – even though Syed was born in the United States and was a U.S. citizen. The State raised concerns about Syed's ethnic heritage based upon a private conversation the then-Assistant State's Attorney claimed to have had with Larry Marshall, a Senior Legal Advisor from the Department of Justice's Office of International Affairs. The State argued that there was a "pattern in the United States of America where young Pakistan males have been jilted, have committed murder and have fled to Pakistan and we have been unable to extradite them back." Ex. 3 at 19 (Bail Transcript). If released on bail, the State argued, Syed would escape to Pakistan. And the State went further, claiming that "we have information from our investigation that [Syed] has an uncle in Pakistan and he's indicated he can make people disappear," and that it would be easy for Syed to obtain a passport from the Pakistani Embassy in New York City. *Id.* at 19-20.

While support from the community is normally an asset for a defendant seeking bail, the State turned this convention on its head, arguing that the many people present in the courtroom – some wearing traditional ethnic clothing – were a liability. The State claimed – without any evidence – that "[Syed] is unique because he has limitless resources. He has the resources of his entire community here. Our investigation reveals that he can tap resources from Pakistan as well." *Id.* at 21. The Circuit Court did not permit Syed's defense counsel to respond to the ethnically charged arguments set forth by the State.²

² Last year, Judge Welch agreed that the March 1999 bail proceeding was "fundamentally flawed" because of the State's argument, which he characterized as "xenophobic" and based on "a gendered, cultural stereotype of Pakistani men." Ex. 4 at 11 n.6 (Order Denying Bail).

Approximately three weeks after Syed was denied bail, the State conceded that it had “misconstrued” the conversation with Marshall, the DOJ official, which formed the centerpiece of its flight-risk argument. Indeed, Marshall had subsequently read the transcript of the proceedings and had contacted the State to deny many of the statements attributed to him, including the statement that there was a “pattern of young students who had been jilted, committed murder and fled to Pakistan.” Ex. 5 (Letter to Judge David Mitchell). But the damage had been done, and Syed has been locked up ever since.

II. Syed’s Trial and Conviction

After his first trial ended in a mistrial, Syed’s second trial began in January 2000 before the Honorable Wanda K. Heard. Syed was represented by Cristina Gutierrez, a Baltimore criminal defense lawyer. The Syed trial turned out to be among Gutierrez’s last; she was disbarred in 2001 for misappropriating client funds.

The State’s case against Syed relied primarily on the story of one witness – Jay Wilds – and cell phone records. Through Wilds’ testimony, the State presented a timeline of Syed’s purported movements on the day the victim disappeared. Wilds testified that Syed drove him to the mall that morning to buy Wilds’ girlfriend a birthday present. After returning to Woodlawn High School for class, Syed lent Wilds his car to continue shopping and gave him his cell phone so that Syed could call for a ride after school.

According to the State’s theory, Syed left school with the victim shortly after classes ended at 2:15 p.m. and drove in her car to the parking lot of a Best Buy. By 2:36 p.m., having allegedly committed the murder, Syed called Wilds from the Best Buy parking lot to be picked up. According to the State, therefore, the murder occurred sometime between 2:15 p.m. and 2:36 p.m. The State repeatedly emphasized this segment of its timeline to the jury.

Wilds further claimed that, after the murder occurred, he met Syed in the Best Buy parking lot, where Syed showed him the victim's body in the trunk of her car. According to Wilds, the two then took the victim's car to the Interstate 70 Park & Ride in Baltimore City and then went to buy some marijuana. Later that night, Wilds claimed, he and Syed buried the victim's body in Leakin Park. The State contended that two incoming calls to Syed's cell phone, at 7:09 p.m. and 7:16 p.m., confirmed that Syed was near Leakin Park at this time.

The jury found Syed guilty. He was sentenced to life plus 30 years in prison.

III. The Circuit Court Vacates Syed's Conviction and Orders a New Trial

In June 2016, acting pursuant to an order of remand from this Court to allow Syed to move to re-open the post-conviction proceedings, Judge Welch granted Syed's motion, held a hearing, vacated Syed's conviction, and ordered a new trial. He found Syed's trial counsel constitutionally ineffective for failing to challenge the State's cell tower expert with the disclaimer provided by AT&T that certain cell phone calls – including the incoming calls that purportedly put Syed near Leakin Park – were “unreliable” for the purpose of determining location. *See* Ex. 6 at 55-56 (Opinion Granting Syed Post-Conviction Relief). In other words, AT&T had warned against using the records in the exact manner the State had used them. The Circuit Court found that the AT&T disclaimer was significant, given the role the cell phone records played in obtaining Syed's conviction, and that, had the disclaimer been properly raised by defense counsel, the State's expert witness would not have testified as he did about the reliability of the phone records. This, in turn, would have materially impacted the case in Syed's favor.

The Circuit Court also considered defense counsel's failure to contact or call as an alibi witness Asia McClain, who testified in post-conviction proceedings that she had been with Syed

in a library at the same time as the State theorized the murder took place. Although the Circuit Court found defense counsel to be deficient for failing to investigate that alibi, the Circuit Court did not find the error sufficiently prejudicial to independently merit a new trial – for the reason that the cell tower evidence was the “crux” of the State’s case.

Following Judge Welch’s ruling, the State filed an Application for Leave to Appeal, and the Circuit Court granted a stay of its post-conviction ruling. Syed then filed a Conditional Application for Leave to Cross Appeal. The applications were granted in January 2017, and both the State’s appeal and Syed’s cross appeal are currently pending before the Court of Special Appeals.

IV. Syed’s Application for Release Pending Appeal.

In October 2016, after Judge Welch’s ruling and while the State’s Application for Leave to Appeal and Syed’s Conditional Application for Leave to Cross Appeal were pending, Syed filed an Application for Release Pending Appeal pursuant to Md. Code Ann., Crim. Proc. § 7-109(b)(2). In that application, Syed presented evidence that he poses neither a risk of flight nor a danger to anyone and that the State’s evidence against him was directly contradicted, technologically suspect, and medically impossible.

Specifically, Syed argued that the State’s cell phone evidence – purportedly placing Syed near the burial site and deemed to be “the crux” of the State’s case – had already been discredited by Judge Welch, who found that “but for trial counsel’s unprofessional error in failing to confront the State’s cell tower expert with the disclaimer, *the result of the trial would have been different.*” Ex. 6 at 47, 50 (Opinion Granting Syed Post-Conviction Relief) (emphasis added). Syed also raised new evidence not previously considered by the Circuit Court prior to granting him a new trial. He brought forth evidence demonstrating that Wilds, the State’s key witness, had

completely disavowed his previous testimony on absolutely core facts for the State – like whether and when Syed supposedly told Wilds that he was going to commit the murder, the location where Wilds first saw the victim, and the timing of the alleged burial. Syed also established that Wilds’ credibility was further undermined by his repeated interactions with law enforcement since the conclusion of Syed’s constitutionally defective trial in 2000, including an arrest for allegedly strangling and threatening to kill a girlfriend. And finally, Syed offered the sworn affidavit of an expert witness who explained that the forensic and pathological findings from the victim’s autopsy, when combined with the positioning of her body, make it completely implausible for the murder to have occurred on the State’s timeline.

The State opposed Syed’s application, but did not even address, let alone dispute, any of the new evidence presented by Syed.

On December 28, 2016, without holding a hearing on the matter, the Circuit Court issued a memorandum opinion denying Syed’s application. The Circuit Court first found that this Court’s Remand Order curtailed its discretion to grant release and denied Syed’s release because of what the Circuit Court thought was impending “future action by the Maryland Court of Special Appeals.” Ex. 4 at 4-5 (Order Denying Bail). In the alternative, the Circuit Court assessed Syed’s eligibility for release as governed by the Maryland Rules. *Id.* at 5. After finding “that the numerous pending appellate issues place[d Syed] in a post-trial status, rather than a pretrial status,” the Circuit Court applied the standard for post-*conviction* release set forth in Rule 4-349 and *Bigley v. Warden, Md. Corr. Inst. for Women*, 16 Md. App. 1 (1972). Ex. 4 at 6 (Order Denying Bail). Placing the burden on Syed and following *Bigley*’s direction to “proceed with caution” in granting release to one recently convicted of a crime, the Circuit Court denied

Syed's application under its alternative analysis as well. *Id.* at 13 (quoting *Bigley*, 16 Md. App. at 12).

Standard of Review

“[T]he Court of Special Appeals must exercise its discretion to determine whether or not to grant an [application for leave to appeal].” *Grayson v. State*, 354 Md. 1, 15 (1999); *see also* Md. Rule 8-204(f). Leave to appeal is reserved for cases that present legal issues of broad import. *See, e.g., Blanks v. State*, 228 Md. App. 335, 338 (2016) (granting leave to appeal whether Sixth Amendment right to confront witnesses applies in probation revocation hearing); *McNeil v. Warden of Md. House of Corr.*, 233 Md. 602, 603 (1963) (granting leave to appeal whether a defendant is entitled to the assistance of counsel in municipal court).

On appeal, the Circuit Court's conclusions on questions of law are reviewed *de novo*, whereas findings of fact are reviewed under a clear error standard. *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 457 (2008).

Argument

I. The Circuit Court Applied The Wrong Standard In Denying Release.

A. The Circuit Court erred in applying the standard for post-conviction release.

In denying Syed's request for release, the Circuit Court relied on the wrong legal standard. The Circuit Court applied the Maryland Rules and case law applicable to requests for release following a *conviction*. *See* Ex. 4 at 6 (Order Denying Bail) (applying Md. Rule 4-349(b) and *Bigley*, 16 Md. App. 1). But, by its plain terms, the Maryland Rule governing pre-trial release applies. Rule 4-216(d) provides that “[a] defendant charged with an offense for which the maximum penalty is life imprisonment . . . may be released before verdict or pending a new trial, if a new trial has been ordered.” *See also* Md. Code Ann., Crim. Proc. § 5-102 (“A defendant

charged with a crime punishable by life imprisonment may be released on bail or other conditions of release before conviction.”).³ Here, Syed is currently being detained “pending a new trial.” Md. Rule 4-216(d). In addition, the concerns animating the post-conviction standard for release on bail do not apply to Syed. Because the Circuit Court has *vacated* his conviction and granted him a new trial, Syed’s position is more akin to that of a defendant awaiting trial. The Circuit Court therefore should have applied the applicable standard for pre-trial release. *See* Md. Rule 4-216(e). Its failure to do so is reversible error.

And this error was highly significant. Maryland courts apply a much harsher standard to requests for release by a convicted defendant than to requests by defendants awaiting trial. This Court has instructed, for example, that after conviction “courts should proceed with caution and grant bail pending appeal only where the peculiar circumstances of the case render it proper.” *Bigley*, 16 Md. App. at 12 (quoting 8 Am. Jur. 2d, Bail and Recognizance § 44, pp. 809-911); *see also Gillis v. Comm’r, Dep’t of Corr.*, 52 Md. App. 26, 27 (1982) (“In this State, there is no right to bail after a conviction.”); Md. Rule. 4-349(c) (“The court may impose different or greater conditions for release [after conviction] than had been imposed upon the defendant before trial . . .”). The widely accepted rationale for this approach is twofold. First, a conviction removes the “uncertain[ty] whether the accused is guilty or innocent of the crime charged,” which ordinarily weighs in favor of granting bail. *Bigley*, 16 Md. App. at 11 (quoting 4 Wharton’s Crim. Law & Proc. § 1824, 667-668 (12 ed. 1957)). Second, once a conviction is obtained, “the probability of ultimate punishment is so enhanced that the accused is much more likely to attempt to escape if liberated on bail than before conviction.” *Id.*

³ Although Syed sought relief under subsection 7-109(b)(2)(ii) of the Maryland Code of Criminal Procedure, that subsection does not specify the factors that courts should consider as part of the bail inquiry. As a result, the Circuit Court considered Md. Rules 4-349 and 4-216, before incorrectly choosing to rely on the former to guide its analysis of Syed’s request for release.

Neither justification for the post-conviction release standard applies to Syed. Unlike a recently convicted defendant who awaits sentencing or who has filed a direct appeal, Syed is not subject to a valid conviction. The Circuit Court has found that his conviction was obtained in violation of his fundamental constitutional right to effective assistance of counsel and that a new trial is required. In light of that decision, there is again “uncertain[ty about] whether the accused is guilty or innocent of the crime charged.” *Id.* And, relatedly, “the probability of ultimate punishment” is correspondingly less than that of a convicted defendant awaiting sentencing or proceeding as an appellant before this Court. *Id.* Under the current status quo, Syed will only be punished if the State proves his guilt beyond a reasonable doubt at a new trial—just like a pre-trial defendant—or carries its heavy burden on appeal to establish that the Circuit Court was wrong to vacate Syed’s unconstitutional conviction. Because the concerns animating the post-conviction release standards do not apply to Syed, the default pre-trial release standard should govern. *See Clarke v. Moran*, 451 A.2d 577, 577 (R.I. 1982) (holding that because petitioner’s conviction had been vacated, he stood “in the same position as any other person awaiting trial upon an indictment”).

Contrary to the State’s position, the Circuit Court’s stay pending appeal of its order vacating Syed’s conviction and granting him a new trial does not alter this analysis or require application of the post-conviction release standard. *See Ex. 7 at 2* (State’s Resp. to Pet.’s Mot. for Release). The stay does not undermine the relevant findings by the Circuit Court—that Syed’s conviction is constitutionally invalid and that a new trial is warranted. Nothing in the Circuit Court’s boilerplate order granting a stay calls these findings into question. *See Ex. 8* (Order Granting Stay) (granting stay “upon consideration” of the State’s request and “no

response in opposition having been filed”).⁴ Rather, the purpose of a stay in these circumstances is “to avoid the obvious inefficiency of forcing the state to retry [Syed] while concurrently appealing [the Circuit Court’s] decision,” and “to prevent[] the complications and confusion that could result if [Syed] were to be acquitted in a retrial before [this Court] reached a decision.” *Dassey v. Dittmann*, No. 14-CV-1310, 2016 WL 6684214, at *1 (E.D. Wis. Nov. 14, 2016). Accordingly, notwithstanding the stay pending appeal, the Circuit Court’s finding that Syed’s conviction is invalid puts him in the position of a pre-trial defendant, not a post-conviction defendant subject to a credible determination of guilt and facing a high probability of punishment. The Circuit Court therefore erred in applying the stricter legal standard applicable to post-conviction requests for release.

B. The Circuit Court’s error was not harmless.

Had the Circuit Court correctly determined that Syed’s status is that of a pre-trial defendant and applied Md. Rule 4-216, the outcome of its bail analysis likely would have been different. As discussed above, bail is disfavored under Rule 4-349 because it governs the inquiry for defendants who have already been found guilty at trial. Rule 4-349(b) provides that “the burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.” Moreover, *Bigley*, 16 Md. App. at 12, upon which the Circuit Court relied in denying Syed release, specifically cautions courts about releasing defendants on bail post-conviction. As the Circuit Court explained, “[a]lthough *Bigley* notes that the court is afforded discretion to release a defendant after conviction, the message is clear:

⁴ To the extent the Circuit Court implicitly considered the traditional factors regulating issuance of a stay, those factors allow a court to “grant a stay even though its own approach may be contrary to movant’s view of the merits.” *Washington Metro Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *see also Goldstein v. Miller*, 488 F. Supp. 156, 172 (D. Md. 1980) (“The likelihood-of-success standard does not mean that the trial court needs to change its mind or develop serious doubts concerning the correctness of its decision in order to grant a stay pending appeal.”).

proceed with caution.” Ex. 4 at 13 (Order Denying Bail). Consistent with that warning, Maryland courts have been reluctant to grant bail to convicted defendants. *See Whiteley v. Warden, Md. Penitentiary*, 258 Md. 634, 636 (1970) (stating that “there must be some assurance that a convicted defendant will not engage in further criminal conduct if admitted to bail,” and affirming denial of bail to defendant convicted of conspiracy to sell marijuana).

By contrast, Rule 4-216 assigns no such burden to the defendant, instead providing only that the defendant may be released “if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.” Md. Rule 4-216(d). Indeed, release under Rule 4-216 is the norm for defendants in a pre-trial posture. Pre-trial defendants are entitled to a presumption of innocence; thus, pre-trial release is denied only under extraordinary circumstances. *See Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 58 (1991) (“every attempt” should be made “to minimize the time a presumptively innocent person spends in jail”); *Stack v. Boyle*, 342 U.S. 1, 7–8 (1951) (“[T]he spirit of the [bail] procedure is to enable [defendants] to stay out of jail until a trial has found them guilty. Without that conditional privilege, even those wrongly accused are punished[.]”) (Jackson, J., concurring); *Wheeler v. State*, 160 Md. App. 566, 574 (2005) (before denying bail, court must find “by clear and convincing evidence that no condition or combination of conditions of pretrial release can reasonably protect against the danger that the defendant presents to an identifiable potential victim and/or to the community.”).

As a result, when a request for release is evaluated under Rule 4-216, it is far more likely to result in release than a decision made under Rule 4-349 and *Bigley*. As this Court recognized, “[t]here is nothing punitive about this rule [4-216], which – in most cases – results in the

defendant's pretrial release." *Wheeler*, 160 Md. App. at 577. Syed is no longer subject to a valid conviction and therefore was entitled to a bail determination under Rule 4-216, not Rule 4-349. Had the Circuit Court properly conducted its analysis pursuant to Rule 4-216, it very likely would have granted Syed release.

II. The Circuit Court Incorrectly Concluded that the Remand Order and the Existence of Appellate Issues Limited its Discretion to Release Syed on Bail.

The Circuit Court denied Syed's petition for release on bail for the alternative reason that its discretion was limited by the Remand Order, which supposedly "indicat[ed] further action by the Maryland Court of Special Appeals." Ex. 4 at 5 (Order Denying Bail). For two reasons, this conclusion was incorrect.

First, this Court did not constrain the Circuit Court's authority on the issue of bail, much less prohibit Syed's release. Indeed, this Court granted the Circuit Court wide latitude on remand. Specifically, the Remand Order instructed the Circuit Court to exercise "its discretion" to "conduct *any* further proceedings it deems appropriate." Ex. 9 at 4 (Remand Order) (emphasis added); *see also id.* at 5 (authorizing the Circuit Court to take "any action it deems appropriate"). The Circuit Court properly exercised this discretion when, on remand, it re-opened Syed's post-conviction proceedings, held an evidentiary hearing, vacated his conviction, and ordered a new trial. *See* Resp't Adnan Syed's Resp. to State's Appl. for Leave to Appeal at 12-13, *Syed v. State*, No. 1396 (Md. Ct. Spec. App. Sept. 15, 2016). But it erred in concluding that its discretion to act ended there. The authority to release Syed on bail was incidental (and ancillary) once the Circuit Court voided his conviction. Indeed, the legislature specifically codified that authority for petitions like Syed's. *See* Md. Code Ann., Crim. Proc. § 7-109(b)(2)(ii).

Nothing in the Remand Order expressed an intention to limit this statutory authority. And silence on the issue of bail should not be interpreted to restrict the discretion the Remand Order

explicitly granted the Circuit Court; limited remands generally place no restrictions on lower courts' ability to adjudicate "issues arising for the first time on remand[.]" *United States v. Morris*, 259 F.3d 894, 898 (7th Cir. 2001); *see also Baltimore Cty. v. Baltimore Cty. Fraternal Order of Police, Lodge No. 4*, 220 Md. App. 596, 662 (2014) (addressing issues that "arose for the first time after the remand" because they had not previously been decided on appeal), *aff'd sub nom. Baltimore Cty. v. Fraternal Order of Police, Baltimore Cty. Lodge No. 4*, 449 Md. 713 (2016). Of course, the question of whether Syed should be released on bail arose only after his conviction was vacated, and the Circuit Court thus retained the authority to decide it.

Second, the Circuit Court erred as a matter of law in concluding that the mere existence of issues on appeal rendered Syed unsuitable for release on bail. As an initial matter, an appeal does not divest a circuit court of jurisdiction. Rather, circuit courts retain the "inherent power to make rulings" so long as those rulings do not "interfere with the appeal or the issues to be decided in the appeal." *Folk v. State*, 142 Md. App. 590, 598 (2002). Although the Circuit Court in this case declared that granting Syed release on bail "would not be appropriate" in light of certain "appellate issues[.]" it identified no reason why doing so would impair this Court's ability to review whether Syed was appropriately granted a new trial. Ex. 4 at 4-5 (Order Denying Bail).

No such reason exists. "The purpose of bail is to assure the attendance of the accused at the trial" or other judicial proceeding. *Simmons v. Warden of Baltimore City Jail*, 16 Md. App. 449, 450 (1973).⁵ This purpose necessarily contemplates that further judicial proceedings may occur and that suitable bail conditions short of outright denial often will be sufficient to ensure

⁵ While further considerations, like whether an accused represents a danger to others, can sometimes inform the bail inquiry, the Circuit Court correctly found that Syed did not represent a danger to the community. Ex. 4 at 12 (Order Denying Bail).

the accused's attendance. Ironically, a possible appeal—the very proceeding that the Circuit Court found justified the denial of bail—was actually a necessary precondition to Syed's right to *seek* bail in this case; the applicable statutory provision authorizes releasing a petitioner on bail *only* where the State has “state[d] an intention to file an application for an appeal” from an order of the circuit court. Md. Code Ann., Crim. Proc. § 7-109(b)(2).⁶ As a requirement for release under this subsection, a possible appeal cannot provide a basis for denying release. Otherwise, this subsection would be rendered meaningless. *See DeBusk v. Johns Hopkins Hosp.*, 342 Md. 432, 445 (1996) (“[O]ne of our cardinal rules of statutory construction is not to find any word, clause, sentence, or phrase (nor, we might add, statutory subsection) superfluous, meaningless, or nugatory, unless we have some clear indication to the contrary.”) (citations omitted).

Because neither the Remand Order nor the existence of appellate issues limited its discretion on the issue of bail, the Circuit Court erred in denying Syed release on those grounds.

Conclusion

For all the foregoing reasons, this Court should grant Syed's Application for Leave to Appeal.

⁶ When the Circuit Court issued its December 2016 decision denying bail, no appeal was pending or certain to occur. At that time, the State had filed a notice of intent and, subsequently, an application for *leave* to appeal from the opinion and order granting Syed a new trial. It was only in January 2017 that this Court granted the State leave to appeal and Syed leave to cross appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2017, a copy of the foregoing was
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