

THIS IS PETITIONER'S FIRST APPLICATION FOR RELIEF¹

IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE

JANET E. HINDS,)	
)	
Petitioner,)	Docket No. _____
)	
v.)	Criminal Court Judge _____
)	
STATE OF TENNESSEE.)	General Sessions Docket(s): 1753638-46
)	
Respondent.)	
)	

**PETITION FOR WRIT OF CERTIORARI AND SUPERSEDEAS
TO RECONSIDER PETITIONER'S BOND AMOUNT AND CONDITIONS**

COMES NOW Petitioner Janet E. Hinds ("Petitioner" or "Ms. Hinds"), through counsel, and pursuant to TENN. CODE ANN. § 40-11-144(b), § 27-8-101 *et seq.*, and respectfully requests this Court hear evidence and reconsider petitioner's bonds set by the Court of General Sessions in this matter in a cumulative amount of \$300,000 with the conditions of house arrest and suspension of driving privileges. The bond set is excessive for the charge of Vehicular Homicide (By Recklessness), constitutes a violation of due process, and is tantamount to holding her without bond in violation of the Eighth Amendment and the Tennessee Constitution. Reasonable bail "has traditionally been a 'fundamental constitutional right'." *State v. Burgins*, 464 S.W.3d 298 (Tenn. 2015).

¹ Petitioner's counsel filed a pleading entitled Motion to Reconsider Bond on February 26, 2019, which has not been heard. The instant petition is requested to substitute for that prior pleading.

Tennessee law requires bond be set “no higher than necessary” to ensure the defendant’s appearance in court and to protect the community. See TENN. CODE ANN. § 40-11-118. This determination must be based on an assessment of the following statutorily delineated factors:

- (1) The defendant’s length of residence in the community;
- (2) The defendant’s employment status and history and financial condition;
- (3) The defendant’s family ties and relationships;
- (4) The defendant’s reputation, character and mental condition;
- (5) The defendant’s prior criminal record, record of appearance in court proceedings, record of flight to avoid prosecution or failure to appear at court proceedings;
- (6) The nature of the offense and the apparent probability of conviction and the likely sentence;
- (7) The defendant’s prior criminal record and the likelihood that because of that record defendant will pose a risk of danger to the community;
- (8) The identity of responsible members of the community who will vouch for the defendant’s reliability;
- (9) Any other factors indicating the defendant’s ties to the community or bearing on the risk of the defendant’s willful failure to appear.

AS GROUNDS, Ms. Hinds is entitled to a reasonable bond and accordingly moves the Court to hear evidence, as heard by the Court of General Sessions, that:

1. Ms. Hinds, who is 54 years-old, is a lifelong resident of Hamilton County, specifically Hixson, Tennessee. She currently owns a house in Hixson at Port Drive which she has owned since 1990. She is divorced and raised two sons as a single parent. She lives with her six dogs and is actively involved in her community.
2. The defendant has been a federal employee of the United States Postal Service for thirty three (33) years, now in the capacity of Postmaster of Soddy Daisy, Tennessee. If she remains held on this excessive bond she will likely lose her job and, consequentially, lose her pension benefits that otherwise vest next year after a lifetime of public service.
3. Ms. Hinds has two grown sons, one of whom, Justin Pugh, lives in Knoxville and the other, Jarod Hinds, who lives with his wife in Soddy Daisy. Petitioner’s parents, W. Clifford and Ruth Kirk are married and live in Hixson near the defendant. Petitioner’s sister, Cindy Mosgrove, and her brother-in-law live in Sale Creek, Tennessee. Cindy Mosgrove is a retired Postal Inspector who spent decades in postal law enforcement.

4. Ms. Hinds has an excellent reputation in the community, and no adverse issues exist as to her character or mental condition. In favor of a reasonable bond, Ms. Hinds does have significant medical issues including an aortic aneurism and hypertension. Defendant is concerned that these issues will not be properly monitored and treated at CoreCivic Silverdale.
5. Ms. Hinds has no criminal record other than a single *Speeding* conviction in 1998, and the State cannot claim that she poses a danger to any other person or persons based solely upon the unadjudicated Vehicular Homicide by Recklessness.²
6. That the death of Officer Galinger was a tragic accident not proximately caused by any conduct of the defendant. The reality of the death is terrible but the defense expects to show that myriad factors – having nothing to do with Ms. Hinds – were the legal cause of the accident. These include road conditions, lighting, weather, and inadequate signage, among others.
7. The Court will, at its pleasure, hear from multiple community members to vouch for defendant’s reliability.
8. At her General Sessions bond hearing the State maintained that defendant was a flight risk because she had allegedly delayed turning herself into police. This is incorrect. Some context and chronology are important here:

Ms. Hinds voluntarily turned herself into law enforcement and had intended to do so well before she was under any suspicion. Defendant contacted Attorney Jerry Summers by telephone Sunday morning, February 24 shortly after 9:00 a.m. She had just learned that an officer had been hit in the area where she had driven the night before and had reported to a family member that she had collided with a road sign. In the course of talking with Mr. Summers, Ms. Hinds related that she wanted his assistance in “turning herself in” to police. At 11:09 a.m., arrangements were made to meet with Ben McGowan at counsel’s office with her parents. Because of counsel’s schedule this could not be done until after 12:00 p.m. During the resulting afternoon meeting it was decided that she would turn herself in the next morning, provided a warrant had by that time issued. At approximately 3:35 p.m., counsel McGowan sent a text message to Detective Lucas Fuller of Major Crimes reporting Ms. Hinds’ possible involvement and desire to turn herself in. Subsequent to that counsel spoke and texted with District Attorney

² See (7), *supra*, requiring a showing that defendant has a “*prior criminal record* and the likelihood that *because of that record* the defendant will pose a risk of danger to the community.” (Emphasis added.) Legally speaking, an assessment of dangerousness to the community must then be predicated on the existing criminal record, not the charges before the Court. In this case there are none. Obviously, too, there exists no record of her failure to attend court proceedings. Notably, she is before the Court having voluntarily turned herself in for service of the warrants in this case.

Pinkston and Executive Assistant Cameron Williams regarding various search issues and other matters, but at no time was it requested that Ms. Hinds immediately report - presumably because there was no extant arrest warrant. Counsel continued to coordinate with State prosecutors and the Tennessee Bureau of Investigation on Sunday and early Monday morning when it was agreed she was to report at 9:15 a.m. at the Chattanooga Police Services Center. She did so at 9:27 a.m.

In arguing that this delay was probative of her flight risk, the State also announced to the Court that *the accident had occurred on "Friday"* not Saturday night. This was inadvertent and escaped the immediate notice of counsel (though not the media). Thus, in setting the \$300,000 bond Judge Sell was left with the false impression that Ms. Hinds delayed reporting all day Saturday, sought legal counsel Sunday, and finally turned herself in Monday. The facts instead indicate that by approximately 9:00 a.m. Sunday, Ms. Hinds was seeking legal counsel to assist in turning herself in and that she was not instructed how and where to do so until counsel reached out to Tennessee Bureau of Investigation agents early Monday morning after the arrest warrants issued overnight.

WHEREFORE, each statutorily delineated factor militates in favor of a reasonable bond and a bond of \$300,000 is manifestly more consistent with a murder charge than a C felony for which Petitioner, even if convicted, would be diversion eligible and deemed a favorable candidate for an alternative sentence. The lower court abused its discretion by failing to properly apply the mandatory TENN. CODE ANN. § 40-11-118 factors, speculated as to facts not in evidence, while disregarding other proffered evidence, and ignored the range of acceptable alternative dispositions in setting a bond and conditions that appear punitive and rhetorical in nature, and far greater than necessary to protect the public or insure Petitioner's appearance. *See Heyne v. Metro Nashville Bd. Of Pub. Educ.*, 380 S.W.3d 715, 730 (Tenn. 2012).

Ms. Hinds respectfully submits that the Fifth, Eighth and Fourteenth Amendments and Tenn. Const. art. I, § 8 and §16, require that her bonds be reduced to no more than a cumulative total of \$35,000.00 and that, if necessary, reasonable conditions be set by the Court that are consistent with the true purposes of bond in assuring Petitioner's appearance and protecting the community.

Respectfully submitted,

SUMMERS, RUFOLO & RODGERS, P.C.
By and through defense counsel,



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BPR No. 025560

Marya Schalk

BPR No. 024785

Counsel for Petitioner

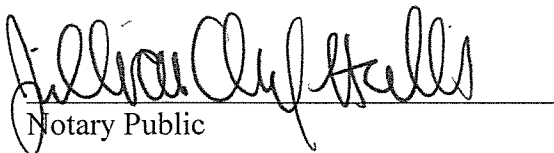
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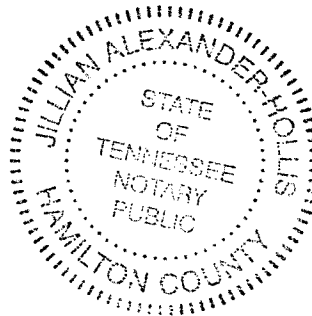
Chattanooga, Tennessee 37402

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SWORN TO AND SUBSCRIBED before me this 27th day of February 2019


Notary Public

My commission expires: 03/28/2022




CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing document has been duly served upon:

NEAL PINKSTON, Attorney General
CAMERON WILLIAMS
Assistant District Attorney
600 Market Street, Room 310
Chattanooga, TN 37402

either by hand delivery or by placing a copy of same in the United States mail, properly addressed with sufficient postage affixed thereto to carry same to its destination.

This 27 day of February 2019.



Benjamin L. McGowan