



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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March 25, 2021

Andy Elders
Deputy Public Defender
4103 Chain Bridge Road
Fairfax, VA 22030

Stephanie K. Buck
Senior Assistant Commonwealth Attorney
4110 Chain Bridge Road
Fairfax, VA 22030

Re: Commonwealth v. Michael E. Johnson, FE 2020-509

Dear Mr. Elders and Ms. Buck:

This matter is before the court on Defendant's Motion To Lift Stay Of Order Admitting The Accused To Bail.

It is undisputed that, because of the charges, Defendant's case is a presumption case pursuant to Code § 19.2-120, i.e., "[t]he judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public" The court found that Defendant had rebutted the presumption and granted Defendant bail with conditions; the court also granted the Commonwealth's motion to stay execution of the court's order until close of business Wednesday, March 24, 2021 to afford the Commonwealth an opportunity to appeal that order.

Defendant contends that the court does not have statutory authority to stay execution of its order granting bail so as to afford the Commonwealth an opportunity to appeal that order; the basis of Defendant's contention is that the provision of Code § 19.2-124(C)¹ concerning presumption cases is limited to

¹ "C. In a matter not governed by subsection B or C of § 19.2-120 or § 19.2-120.1, the court granting or denying such bail may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court. When a district

the authority of the district courts to stay execution of their bail orders. The Commonwealth contends that the court has inherent authority to stay its orders without regard to Code § 19.2-124(C).

For the reasons set forth below, the court finds that it has inherent authority to stay its order and thus DENIES Defendant's motion.

ANALYSIS

While the court can locate no Virginia appellate decision expressly holding that the courts have an inherent power to stay execution of their own orders, the reported decisions from the Virginia appellate courts are rife with opinions in which those courts have assumed *sub silentio* that courts have that inherent power. See e.g., *Gilmore v. Finn*, 259 Va. 448, 455, n.3 (2000) ("The trial court subsequently amended the period of the stay to 30 days, that is, until September 30, 1998, to permit an appeal to this Court."); *Edwards v. Vesilind*, 292 Va. 510, 519, 790 S.E.2d 469, 474 (2016) ("The circuit court stayed the collection of the fines imposed during the pendency of this appeal."); *Pollack v. Allen*, 266 Va. 118, 121 (2003) ("The court stayed its prior order while considering Pollack's objections"); *Town of Leesburg v. Giordano*, 280 Va. 597, 605 (2010) ("The court stayed enforcement of its order for ninety days"); *Lee v. Spoden*, 290 Va. 235, 250 (2015) ("the trial court merely stayed its decision on the demurrer to allow her to seek a rule to show cause"); *Thompson v. Fairfax Cty. Dep't of Fam. Servs.*, 62 Va. App. 350, 377 (2013) ("the purpose of a stay pending appeal 'is to preserve the status quo pending appellate determination,'" (citation omitted)); and *Shah v. Shah*, 70 Va. App. 588, 591 (2019) ("the trial court stayed the divorce case pending the results of the marriage fraud case").

The court's inherent power derives from the "separate and independent status of the judiciary in the Commonwealth's tripartite system of government [which] implies certain inherent powers 'incident to the exercise of judicial power' vested in the courts." *Taylor v. Commonwealth*, 58 Va. App. 435, 439-440 (2011). As explained in *Primov v. Serco, Inc.*, 296 Va. 59 (2018), where the Court adopted the holding in *Landis v. North American Co.*, 299 U.S. 248 (1936), with regard to the power to stay proceedings:

"the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."

296 Va. at 67.

Against this backdrop of the inherent power of courts to stay execution of their orders, the General Assembly enacted Code § 19.2-124(C). In its initial incarnation in 2013, subsection (C) provided:

court grants bail over the presumption against bail in a matter that is governed by subsection B or C of § 19.2-120 or § 19.2-120.1, and upon notice by the Commonwealth of its appeal of the court's decision, the court shall stay execution of such order for so long as reasonably practical for the Commonwealth to obtain an expedited hearing before the circuit court, but in no event more than five days, unless the defendant requests a hearing date outside the five-day limit."

C. The court granting or denying such bail may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court. No such stay may be granted after any person who has been granted bail has been released from custody on such bail.

2013 Acts of Assembly, ch. 408.

In the 2016 Session, Senate Bill No. 285 was introduced to amend Code § 19.2-124(C) to read:

C. In a matter not governed by subsection B or C of § 19.2-120 or § 19.2-120.1, the court granting or denying such bail may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court. When a court grants bail over the presumption against bail in a matter that is governed by subsection B or C of § 19.2-120 or § 19.2-120.1, and upon notice by the Commonwealth of its appeal of the court's decision, the court shall stay execution of such order for so long as reasonably practical for the Commonwealth to obtain an expedited hearing before the next higher court, but in no event more than seven business days, unless the defendant requests a hearing date outside the seven-business-day limit.²

Thus, for non-presumption cases, the bill *permitted*, but did not require, a stay pending appeal (which the court already had the authority to order), but set forth an express condition of "good cause shown." For presumption cases, however, the bill *required* a stay pending appeal. Critically for the instant case, the Senate amended the second sentence of the bill -- concerning appeals of presumption cases -- to limit the mandatory stay to appeals from the general district courts to the circuit courts.³ And, in the House, the bill was further amended to limit the mandatory stay to appeals from all the district courts (not just the general district courts) to the circuit courts. The *Summary As Passed* explained that the bill:

Requires a district court to stay the imposition of its order granting bail in cases where there was a presumption against bail if the court receives notice that the Commonwealth is going to appeal the court's decision to the circuit court. The stay is limited to five days but can be waived if the defendant requests a hearing outside the five days.

While the bill does not articulate a reason for limiting mandatory stays in presumption cases to appeals from the district courts to the circuit courts, the court draws from the amendments and the *Summary As Passed* that the General Assembly intended to keep in place the circuit courts' traditional inherent discretionary authority to stay its orders. Thus, for appeals of presumption

² "[A] matter not governed by subsection B or C of § 19.2-120 or § 19.2-120.1" is a non-presumption case and "a matter that is governed by subsection B or C of § 19.2-120 or § 19.2-120.1" is a presumption case.

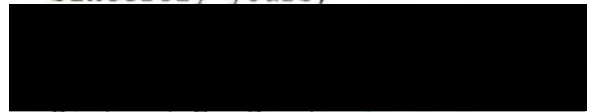
³ The amendments also changed "seven business days" to "five days."

cases, the authority of the circuit courts to stay execution of the court's decision remains, and it remains discretionary.

CONCLUSION

In light of the above, the court DENIES Defendant's Motion To Lift Stay Of Order Admitting The Accused To Bail.

Sincerely yours,



Richard E. Gardiner
Judge