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IN THE SUPREME COURT OF MISSISSIPPI

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

NO. 2020-AD-00001-SCT

IN RE: JOINT MOTION FOR EMERGENCY ORDER RELATED TO COVID-19

MOTION FOR TEMPORARY MODIFICATION OF RULE 8.5(c) OF THE MISSISSIPPI RULES OF CRIMINAL PROCEDURE TO REQUIRE SENIOR CIRCUIT COURT JUDGES, OR THEIR DESIGNEES, TO CONDUCT WEEKLY REVIEWS OF THE CONDITIONS OF RELEASE FOR ALL PRE-TRIAL DETAINEES

COMES NOW, the Attorney General for the State of Mississippi and the State Public Defender and, in accordance with Rule 27(f) of the Mississippi Rules of Civil Procedure, files this joint motion for temporary modification of Rule 8.5(c) of the Mississippi Rules of Criminal Procedure to require senior circuit court judges, or their designees, to conduct within five days of entry of an order of this Court, and weekly thereafter, a review of the conditions of release for all pre-trial detainees currently housed in Mississippi's county and regional jails without regard for whether they have been detained for more than 90 days. In support of this motion, the movants would show:

1. Through its recent emergency orders, this honorable Court "has recognized that the national and state emergencies presented by Coronavirus (COVID-19) require appropriate measures to protect the health and safety of the citizens of this State." *Emergency Administrative Order-6*, No. 2020-AD-00001-SCT (Miss. Mar. 24, 2020).
2. This Court has also made clear that "consistent with the Constitution of this State, all local and state courts shall remain open" to ensure the administration of justice "without sale, denial, or delay. *Emergency Administrative Order-3*, No. 2020-AD-00001-SCT (Miss. Mar. 17, 2020) (quoting Miss. Const. Art. 3, § 24).

3. In furtherance of maintaining the operations of the courts while providing for the protection of citizens' health and safety, this Court has encouraged courts to utilize available technologies, including teleconferencing and videoconferencing during initial appearance and bail hearings. *Emergency Administrative Order-5*, No. 2020-AD-00001-SCT (Miss. Mar. 20, 2020). The Court has further ordered that all persons qualified to administer an oath may do so remotely by audio-video technology. *See Emergency Administrative Order-6, supra.*
4. In another recent order, this Court temporarily suspended the requirement of Rule 1.8(a)(3) of the Mississippi Rules of Criminal Procedure that defense counsel be present with the defendant during proceedings conducted by interactive audiovisual equipment. *Emergency Administrative Order-4*, No. 2020-AD-00001-SCT (Miss. Mar. 18, 2020). In so finding, the Court noted that utilizing available technology will “ensure that people have access to the courts at this critical time while minimizing the risk of bringing this potentially deadly virus into one of our detention centers.” *Id.*
5. Most recently in *Emergency Administrative Order-7*, No. 2020-AD-00001-SCT (Miss. Mar. 26, 2020) the Court further suspended Rule 1.8(c) of the Mississippi Rules of Criminal Procedure to allow conducting revocations and sentencings by videoconference.
6. In these extraordinary circumstances presented by Coronavirus (COVID-19), it is paramount that correction and detention centers take every precaution to ensure that the virus is not introduced to the detainee population.
7. The risk of COVID-19 outbreaks in prisons and jails is well-documented. Stated simply, it is extremely difficult for Mississippi sheriffs to comply with CDC

guidelines in jails where close physical proximity is a reality, access to protective equipment is limited, effective quarantine space is scarce or entirely unavailable, and exposure to those moving in and out from the “free world” is unavoidable. The consistent advice received from the White House and the medical community is to limit the number of people in confined spaces and thereby enhance the possibility of social-distancing and other infection control measures. To that end, Attorney General Barr has encouraged release of federal inmates where possible and urged consideration of the pandemic when making pretrial release determinations. This Court previously has entered seven emergency orders recognizing the risks created by the COVID-19 pandemic.

8. We now have the first reported cases in a correctional facility in Mississippi. Coronavirus in Mississippi: 25 inmates, 3 staff infected at Yazoo City's federal prison. <https://www.clarionledger.com/story/news/2020/04/07/25-inmates-3-staff-infected-covid-19-yazoo-city-prison/2965665001/>
9. Rule 8.5(c) of the Mississippi Rules of Criminal Procedure requires sheriffs to produce jail census information seven days before each circuit court criminal term. Senior circuit judges, or their designees, are required to review the conditions of release for each bailable defendant who has been detained for more than 90 days. Because the next criminal term of court in many jurisdictions could be months away, either as a result of regularly-scheduled terms of court or as a result of the emergency orders entered by this Court in response to the COVID-19 pandemic, no such reviews will take place under this Rule for weeks or months.

10. Rule 8.5(b) of the Mississippi Rules of Criminal Procedure authorizes courts to modify conditions of release on their own initiative for good cause shown.
11. In recognition of the challenges faced by Mississippi sheriffs in their efforts to avoid an outbreak of COVID-19 in their jails, Petitioners respectfully request that Rule 8.5(c) be temporarily modified to require senior circuit court judges, or their designees, to conduct within five days of entry of an order of this Court, and weekly thereafter until the current statewide State of Emergency is lifted, a review of the conditions of release for all pre-trial detainees currently housed in Mississippi's county and regional jails without regard for whether they have been detained for more than 90 days. Rule 8.5(c) should be temporarily modified further to require sheriffs to produce to senior circuit judges, district attorneys, clerks of court, and the local senior public defender jail census information within two days of an order of this Court and weekly thereafter.
12. This weekly review is not intended to create or mandate further hearings to be held in open court during the COVID-19 pandemic, but rather mandates teleconferencing or other video/audio electronic means to review jail census information concerning those pre-trial detainees currently housed in county and regional jails.
13. This Court has the "inherent authority to adopt rules of practice, procedure, and evidence to promote justice, uniformity, and the efficiency of the courts," as articulated in *Newell v. State*, 308 So. 2d 71 (Miss. 1975) and *Hall v. State*, 539 So. 2d 1338 (Miss. 1989)." UCRCCP 1.05A at cmt.
14. In accordance with that inherent authority, Movants respectfully request that this Court temporarily suspend Rule 8.5(c) of the Mississippi Rules of Criminal Procedure

to require senior circuit court judges, or their designees, to conduct within five days of entry of an order of this Court, and weekly thereafter, a review of the conditions of release for all pre-trial detainees currently housed in Mississippi's county and regional jails without regard for whether they have been detained for more than 90 days.

WHEREFORE, PREMISES CONSIDERED, Movants Attorney General for the State of Mississippi and the State Public Defender respectfully request that this Court enter an Emergency Administrative Order temporarily modifying Rule 8.5(c) of the Mississippi Rules of Criminal Procedure, to the extent that the Rule shall temporarily require weekly review of the conditions of release for all pre-trial detainees currently housed in Mississippi's county and regional jails without regard for whether they have been detained for more than 90 days.

Respectfully submitted, this the 8th day of April, 2020.

LYNN FITCH
ATTORNEY GENERAL
STATE OF MISSISSIPPI

BY: /s/ Mary Helen Wall
MARY HELEN WALL (MSB NO. 100857)
DEPUTY ATTORNEY GENERAL

ANDRE DE GRUY
STATE PUBLIC DEFENDER

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Whitmire, D. Jeremy

From: Andre' De Gruy <ADeGr@ospd.ms.gov>
Sent: Wednesday, April 08, 2020 6:35 PM
To: Whitmire, D. Jeremy
Cc: Candace.Mayberry@ago.ms.gov <Candace.Mayberry@ago.ms.gov>; Mary Helen Wall
Subject: Joint Motion for Emergency Order Modifying Rules of Criminal Procedure
Attachments: JOINT MOTION bail review[5211].pdf

Mr. Whitmire,

Please see the attached motion for the Court's review. Thank you for your assistance.

Sincerely,

André de Gruy
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Sent from Mail for Windows 10