STATE OF MAINE

SUPREME JUDICIAL COURT
Docket No. SJC-23-2

State of Maine, *ex rel.* Angelina Dube Peterson, et al.	)	
Petitioner	)	**Motion to Dismiss Filed By Respondent Peter A. Johnson, Aroostook County Sheriff**
Peter A. Johnson, Aroostook County Sheriff, et al.	)	
Respondents.	)	

NOW COMES the Respondent, Aroostook County Sheriff Peter A. Johnson, and files the following Motion to Dismiss the Petitioners' Petition for a Writ of Habeas Corpus, as follows:

1. <u>A Writ of Habeas Corpus Is Not Available to a Pretrial Detainee.</u>

Title 14 M.R.S. § 5512(1) states that a writ of habeas corpus is not available to "[p]ersons committed to or confined in prison or jail *on suspicion of* treason, felony or accessories before the fact to a felony." (emphasis added). In other words, for any individual identified by the Petitioners who has been charged with a felony, the Petition should be denied.

The Petitioners attempt to circumvent § 5512 by asserting that it is unconstitutional because it "foreclose[s] an avenue to the writ that was available at

common law[.]" Petition at 6. Yet none of the case law cited by Petitioners actually supports the notion that a pre-trial writ of habeas corpus was available at common law. *See* Petition at 6-7.

For example, *Kimball v. State,* 490 A.2d 653, 658-59 (Me. 1985) concerned an appellant's petition for *post-conviction* review. The Law Court's recognition that art. I, § 10 of the Maine Constitution forbids suspension of habeas corpus was in the context of making post-conviction review available where such review "completely replaces the remedies available pursuant to post-conviction habeas corpus[.]" *Kimball,* 490 A.2d at 659 (quoting 15 M.R.S.A. § 2122) (quotation marks omitted). The case says nothing about the availability of a *pre-trial* writ of habeas corpus at common law. Likewise, *Fredette v. State*, 428 A.2d 395 (Me. 1981), also concerned a post-conviction petition for a writ of habeas corpus. The Court's discussion of art. I, § 10 of the Maine Constitution concerned a criminal defendant's constitutional right to bail before conviction, which is not disputed in this case.

The Petitioners' citation of *Wade v. Warden of State Prison,* 145 Me. 120 (1950), is similarly unavailing because the petition in that case was also a post-conviction petition. Moreover, the *Wade* Court's opinion concerned the question of whether the Superior Court had properly exercised jurisdiction over a juvenile defendant. *Id.* The case says nothing about the common law availability of a writ of habeas corpus to a defendant awaiting trial. *See id.*

Finally, the Petitioners' citation to *Ex Parte Bollman,* 8 U.S. 75, 93-94 (1807), does involve an instance where a writ of habeas corpus issued to two District of Columbia men accused but not convicted of treason in the early 19th century. Nevertheless, *Bollman* also appears to undercut the Petitioners' argument because Justice Marshall explicitly identified the source of the U.S. Supreme Court's habeas corpus jurisdiction as statute rather than common law, stating that "for the meaning of the term *habeas corpus*, resort may unquestionably be had to the common law; but *the power to award the writ by any of the courts of the United States, must be given by written law*." (emphasis added). This contradicts the Petitioners' argument that this Court may grant a writ of habeas corpus based on their unsupported assertions about what the common law practice was with regard to such writs.

A. The Court's Common Law Jurisdiction Is More Limited Than Petitioners Describe.

The Petitioners also assert that "regardless of the applicability of the statutory habeas process," this Court "retains jurisdiction to grant the writ of habeas corpus as it existed at common law," pursuant to 4 M.R.S. § 7. Petition at 6-7, para. 16. This argument is unconvincing because under § 7, the Supreme Judicial Court may only exercise its jurisdiction according to the common law in a manner "*not inconsistent with the Constitution or any statute*[.]" 4 M.R.S. § 7 (emphasis added). The Petitioners do not acknowledge this limitation, and instead imply that § 7 serves as

a basis for disregarding the fact that 14 M.R.S. § 5512(1) forecloses the availability of habeas corpus to pretrial detainees. *See* Petition at 7. None of the case law that the Petitioners cited support this argument, as discussed above.

2. <u>Discovery Is Not an Entitlement In Habeas Corpus Proceedings.</u>

Even if this Court determines that the petition should not be dismissed, it should nonetheless throw cold water on the Petitioners' expectations with regard to discovery.

In their Traverse, the Petitioners gloss over some of the hurdles that stand between them and the possibility of discovery. For example, while they assert that the Maine Rules of Civil Procedure are of limited applicability under Me. R. Civ. P. 81(b)(1), they show no such hesitation about the Rules where discovery is concerned, suggesting that the Court might "resort to common law or Rules 26(a) and 34 . . . to provide equivalent relief." Petitioners' Traverse at 2-3. Yet the Petitioners failed to cite any authority for support. They also omitted language from Rule 81(b)(1) that directly discusses discovery, i.e., that "depositions shall be taken or interrogatories served only by order of the court *on motion for cause shown*." Me. R. Civ. P. 81(b)(1) (emphasis added).

This language is consistent with federal precedent concerning habeas corpus proceedings, where "[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Bracy v.*

Gramley, 520 U.S. 899, 904 (1997). *See also Harris v. Nelson,* 394 U.S. 286, 295 (1969) (additional citation omitted). "In civil matters including habeas, evidentiary proceedings are appropriate only where the party bearing the burden of proof on an element starts with enough evidence to create a genuine issue of fact." *Bader v. Warden, New Hampshire State Prison,* 488 F.3d 483, 488 (1st Cir. 2007).

In fact, "the party requesting discovery must not only provide reasons for the discovery," but also must specify "any proposed interrogatories and requests for admission" and "any requested documents." *Teti v. Bender,* 507 F.3d 50, 60 (1st Cir. 2007). Generalized discovery requests that do not "indicate exactly" what information the requesting party seeks to obtain are insufficient. *Id*. To the contrary, "good cause" in this context means "specific allegations" that give a court "reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is ... entitled to relief." *Bracy v. Gramley,* 520 U.S. 899, 908–09 (1997).

In other words, "a habeas proceeding is not a fishing expedition," *Teti,* 507 F.3d at 60, and open-ended discovery is not permitted.

Respectfully submitted,

Dated: October 20, 2023

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CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, I caused the foregoing pleading to be served via email upon the following counsel or parties:

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