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SUPREME COURT, STATE OF COLORADO 1560 Broadway 1820, Denver, CO 80202	
Original Proceeding 17th Judicial District Court Case Number 22CR1524 Honorable Robert Kiesnowski Court of Appeals Honorable Judges Harris, Brown, Kuhn Case Number 22CA2062	▲ COURT USE ONLY ▲
In Re: THE PEOPLE OF THE STATE OF COLORADO. Respondent vs. **JERRELLE SMITH,** Petitioner	
ADC Appellate Attorney for Petitioner Teodorovic Law, P.C. Adrienne R. Teodorovic, Atty. Reg. #44254 1600 Stout Street, Suite 1400 Denver, CO 80202 Phone: (720) 515-0355 Email: adie@TLColorado.com	Case Number:

In Re People of the State of Colorado v. Jerrelle Smith

Petition for Rule to Show Cause Pursuant to Rule C.A.R. 21

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all relevant requirements of C.A.R. 21, 28, and 32, including all formatting requirements set forth in the rules.

Respectfully submitted this 3rd day of January, 2023.

/s/Adrienne R. Teodorovic
Adrienne R. Teodorovic
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

IDENTITY OF THE PARTIES

The Petitioner in this original proceeding is Jerrelle Smith, who is the Defendant in the 17th Judicial District Court case number 22CR1524. The proposed Respondents are the People of the State of Colorado (the prosecution), the 17th Judicial District Court (district court), and the court of appeals. *See People v. Williams*, 987 P.2d 232, 233 n. 1 (Colo. 1999) (acknowledging that, although any relief under C.A.R. 21 would issue against the tribunal below, the prosecution is the "real party in interest"); *see also* C.A.R. 21 (b) ("The proposed respondent shall be the real party in interest.").

IDENTITY OF THE COURT BELOW

The court of appeals, 22CA2062, issued the challenged order dismissing Smith's appeal of the district court's order refusing to set bond taken pursuant to C.R.S. § 16-4-204. The district court entered the challenged order refusing to set bond in 22CR1524, which is a pending criminal prosecution against Smith for crimes including a class 1 felony alleged to have been committed after July 1, 2020.

The relief requested in this case would issue against the 17th Judicial District Court. *See* C.A.R. 21 (e)(2)(B), (e)(2)(C); *Williams*, 987 P.2d at 233 n.1.

STATEMENT OF FACTS, RULINGS COMPLAINED OF, AND RELIEF SOUGHT

A. The district court's order refusing to set bond

On May 18, 2022, the district court issued an arrest warrant in which the court ordered Smith be held without a bond. *Appendix A*. On May 25, 2022, police arrested Smith on the warrant.[1] The prosecution charged Smith with a class 1 felony. *See fn. 1*.

On June 6, 2022, counsel for Smith requested bond be set, but the court refused to do so. Again, on October 10, 2022, Smith argued that bond had to be set regardless of whether proof was evident and presumption was great. (TR 10/10/22, pp. 255-56, 258-60). The court refused to set bond at the time but agreed to review authority and make a later determination.

[1] This Court may take judicial notice of adjudicative facts pursuant to CRE 201. *See also Prestige Homes, Inc. v. Legouffe*, 658 P.2d 850, 853 (Colo. 1983). Court records are adequate sources of judicially noticeable facts. *Doyle v. People*, 343 P.3d 961, 965 (Colo. 2015).

(*Id.* at pp. 261:13-17). Accordingly, by October 12, 2022, because of the class 1 felony, Smith remained incarcerated without bond.

On October 12, 2022, Smith argued that because the death penalty had been repealed, bond had to be set because no crime charged after the repeal could constitute a "capital offense." (TR 10/12/22, p. 3). The district court agreed that Smith's "argument not only ha[d] historical support but it ha[d] logical support too if you look at definitions." (*Id.* at p. 4:20-22). Still, the district court found that it was bound by Colorado Supreme Court precedent decided prior to the repeal of the death penalty, and therefore, "unless and until the Colorado Supreme Court or the Colorado Court of Appeals tells [the court] otherwise, [it had] to follow the minority rule" announced in the precedent that preceded the repeal and deny bond if it found that the proof is evident and presumption is great. (*Id.* at p. 4:22-25). The district court then found that the proof was evident and presumption great and denied bond. (*Id.* at p. 11:18-19).

On November 30, 2022, the district court reduced to writing its oral order denying bond. *Attachment B*. To date, Smith continues to be held without bond.

B. The court of appeals order dismissing Smith's appeal pursuant to C.R.S. § 16-4-204

Smith appealed the district court's order denying bond to the court of appeals pursuant to C.R.S. § 16-4-204 in case number 22CA2062. But, on December 20, 2022, the court of appeals issued an order dismissing the appeal. *Appendix C*. The court made no findings supporting the dismissal except that it had considered Smith's petition and the prosecution's response, which argued lack of jurisdiction, in resolving to dismiss the appeal. *See id.*

C. Relief sought

Smith complains that the court of appeals has jurisdiction under C.R.S. § 16-4-204 to hear Smith's appeal and should not have dismissed Smith's appeal but instead, should have considered the merits of the appeal. Smith respectfully requests that this Court consider and decide the jurisdictional issue.

However, Smith's overarching complaint is regarding the district court's refusal to set bond and the district court's ongoing detention of Smith without bond. In Colorado, bail is an absolute constitutional right. Colo. Const. art. II, § 19; *see* C.R.S. § 16-4-101 (mirroring constitutional

provision). Historically, an exception[2] has existed to this constitutional right in cases charging a class 1 felony—"capital offenses" are unbailable when proof is evident and presumption is great. Colo. Const. art. II, § 19(1)(a). But, a legislative Act, effective July 1, 2020, repealed the death penalty, and consequently, rendered "capital offenses" obsolete, thus making bailable as a matter of absolute constitutional right all offenses committed on or after July 1, 2020, except in circumstances not relevant here. *See* SB20-100 (abolishing the death penalty) (effective July 1, 2020); *supra* fn. 2.

Smith, who faces a class 1 felony for offenses alleged to have been committed after July 1, 2020, cannot, under any circumstances, be subject to death as a penalty—the death penalty has not just been temporarily invalidated by court decree, the death penalty no longer exists in Colorado. Thus, Smith is not facing a "capital offense" under any construction of law. Accordingly, the district court must set bond forthwith. Ongoing failure to set bond constitutes a violation of Smith's absolute constitutional right to bail.

[2] Other exceptions exist but are not relevant here. *See* Colo. Const. art II, § 19; C.R.S. § 16-4-101.

Accordingly, Smith respectfully requests that this Court, in the interest of efficiency and because of the novelty and import of the issue presented, issue a rule to show cause to the district court and prosecution to show cause why Smith should remain detained without bail pending trial in district court case number 22CR1524. Smith requests that, even though the court of appeals has jurisdiction to hear this matter, that this Court resolve the ultimate questions of law. This Court similarly did so in *People v. Jones*, 346 P.3d 44 (Colo. 2021) where it determined that that court of appeals had erroneously cited a jurisdictional issue in refusing to consider the merits of an issue under C.R.S. § 16-4-204, but went on to decide the issue "[i]n light of the procedural history…, the urgency that attaches to review of bail bond orders, and the fact that the matter at issue is one of statutory construction, fully briefed to and partially resolved in addressing the question of appellate review." *Jones*, 346 at 51. The procedural history and urgency that existed in *Jones* are likewise present here. Additionally, the issues here involve constitutional and statutory construction and interpretation. The issues are fully briefed to this Court. And, this court will inevitably partially resolve the matter in addressing the question of appellate review.

REASON WHY NO OTHER ADEQUATE REMEDY IS AVAILABLE

While relief under C.A.R. 21 is an extraordinary remedy, the Colorado Supreme Court "may exercise original jurisdiction under C.A.R. 21 where a trial court proceeds without or in excess of its jurisdiction or to review a serious abuse of trial court discretion, and where an appeal would not be an adequate remedy," *People v. Ray*, 252 P.3d 1042, 1047 (Colo. 2011), and "when a party may otherwise suffer irreparable harm, [or] when a petition raises issues of significant public importance that [this Court has] not yet considered." *People v. Hernandez*, 488 P.3d 1055 (Colo. 2021).

This Court has exercised original jurisdiction in similar circumstances. For instance, in *Jones*, 346 P.3d 44, this Court held both that (1) the court of appeals erred in claiming a jurisdictional bar to reviewing issues raised under C.R.S. § 16-4-204, and (2) that the district court had abused its discretion in refusing to set bond. This Court has also exercised original jurisdiction in other cases involving a district court's refusal to set bond. *See e.g.*, *Palmer v. District Court*, 398 P.2d 435, 436 (Colo. 1965) (holding that the district court violated article II, section 19 of the Colorado Constitution in denying bail).

This Court should exercise original jurisdiction here and decide the bond issues for three important reasons. First, the bond issues involve two related issues of first impression that will require interpretation of the Colorado Constitution and bail statutes: (1) whether, following the repeal of the death penalty in Colorado, a class 1 felony related to conduct occurring on or after July 1, 2020 constitutes a "capital offense," and (2) whether following repeal of the death penalty, those charged with class 1 felonies have an absolute right to bail.

Since July 1, 2020, the state has charged several class 1 felonies, yet district courts continue to refuse to set bond in these cases despite a major change in the law that affects the meaning of "capital offense"—the repeal of the death penalty. This petition presents this Court with an opportunity to address these important issues, to put a stop to ongoing disregard of the absolute right to bail, and to interpret the Colorado Constitution and relevant statutes following a historic, and unprecedented change in the law.

Second, this is a matter of great public importance. As the United States Supreme Court wisely recognized, the "traditional right to freedom before convictions permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless

the right to bail is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." *Stack v. Boyle*, 342 U.S. 1, 4 (1951). The General Assembly has the authority to limit the right to bail so long as the limitation comports with the Colorado Constitution. *See Dunbar v. District Court*, 500 P.2d 358, 359 (Colo. 1972). In repealing the death penalty, the General Assembly removed a limitation on the right to bail, yet district courts have been unwilling to recognize the same without guidance from this Court. This petition presents this Court with the opportunity to provide that guidance and protect the presumption of innocence.

Third, Smith may only challenge the denial of bail by petitioning this Court under C.A.R. 21. The court of appeals has, albeit erroneously, declined to consider the issue citing lack of statutory jurisdiction under C.R.S. § 16-4-204. Defendants cannot raise issues regarding bond on direct appeal. *See People v. Velasquez*, 641 P.2d 943, 945 n.5 (Colo. 1982) (issues of bond become moot after conviction). Even if they could, on direct appeal, there would be no meaningful remedy for the unconstitutional denial of the absolute right to bail. This Court is Smith's last resort.

Certainly, the public's faith in republican government would suffer if, in the wake of a historic and major legislative change, the judiciary—the branch tasked with interpreting the Colorado constitution and construing legislation—chooses to remain silent knowing that silence threatens the exercise of an absolute state constitutional right and threatens to diminish the presumption of innocence. If not now, then when will this issue be decided? And, how? The court of appeals has claimed a jurisdictional bar to considering the issue. And, allowing the issue to persist will have the consequence of district courts continuing to follow obsolete rules of law to deny an accused the absolute right to bail, and thus, the full gamut of the presumption of innocence to which he is entitled. As the district court in this case admonished, "unless and until the Colorado Supreme Court or the Colorado Court of Appeals tells [the court] otherwise, [it will] follow the minority rule" announced in now obsolete precedent that preceded the historic death penalty repeal. (TR 10/12/22, p. 4:22-25). This Court must weigh in—the time is now.

ISSUES PRESENTED

Whether following the repeal of the death penalty in Colorado, a class 1 felony related to conduct occurring on or after July 1, 2020, constitutes a "capital offense."

Whether following the repeal of the death penalty, those charged with class 1 felonies have an absolute right to bail.

Whether the court of appeals erred in dismissing Smith's appeal taking pursuant to C.R.S. § 16-4-204.

LEGAL AUTHORITY, ARGUMENT, AND ANALYSIS

A. The district court abused its discretion and violated Smith's absolute constitutional right to bail by refusing to set bond because a class 1 felony charged on or after July 1, 2020, cannot under any circumstances constitute a "capital offense."

1. Standard of Review and Preservation

Ordinarily, review of a trial court's decision whether to set bond is for an abuse of discretion. *People v. Johnson*, 488 P.3d 232, 236 (Colo. App. 2017); *People v. Fallis*, 353 P.3d 934, 935 (Colo. App. 2015) (citing *Balltrip v. People*, 401 P.2d 259, 262 (Colo. 1965)). However, when the denial of bond turns on a legal question, review must be *de novo*. *Johnson*, 488 P.3d at 236 (citing *People v. Blagg*, 340 P.3d 1137 (Colo. 2015)).

To decide the issue of whether the district court abused its discretion in refusing to set bond pursuant to C.R.S. § 16-4-104, this Court must

decide, *de novo*, the legal question of whether the abolition of the death penalty in Colorado has rendered obsolete a definitional provision of "bailable offenses" that excepts from bail "capital offenses when proof is evident or presumption is great." *See* C.R.S. § 16-4-101(1)(a); *see also* Colo. Const. art. II, § 19(1)(a).

Smith preserved this issue in oral argument to the district court. *See* (TR 10/10/22, pp. 255-56, 258-60; TR 10/12/22, p. 3). Because Smith remains incarcerated without bond due to the district court's ongoing erroneous findings that a class 1 felony charge after July 1, 2020 constitutes a "capital offense" thus negating a defendant's absolute right to bail under Article II, Section 19 of the Colorado Constitution and C.R.S. § 16-4-104, the issue is ripe for review.

2. Bail is an absolute constitutional right with few exceptions.

The Colorado Constitution mandates that all persons "shall be bailable…pending disposition of charges." Colo. Const. art. II, § 19(1). The General Assembly has drafted identical language into the bail statutory scheme. *See* C.R.S. § 16-4-101. The "shall be bailable" language has its roots in the presumption of innocence. *Johnson*, 488 P.3d at 236 (citing *Stack*, 342 U.S. at 4 (the "traditional right to freedom before convictions permits

the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless the right to bail is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."). Therefore, to preserve the right to bail, and thus, the presumption of innocence, Colorado's constitution, and corresponding statutory provision, creates few exceptions under which a person may be denied bail. *See* Colo. Const. art. II, § 19(1); C.R.S. § 16-4-101(1). Historically, one exception has been "capital offenses" when proof is evident and presumption is great. Colo. Const. art. II, § 19(1)(a); C.R.S. § 16-4-101(1)(a). But, that exception no longer applies to offenses committed on or after July 1, 2020.

3. The Colorado General Assembly's 2020 repeal of the death penalty had the butterfly effect of rendering obsolete the "capital offense" exception to the constitutional right to bail.

On March 23, 2020, in a historic moment in Colorado history, Governor Jared S. Polis signed into law a repeal of the death penalty. *See* SB20-100 (enacted March 23, 2020) (effective July 1, 2020). This Act had a butterfly effect—in the wake of the wing flap of the death penalty repeal, "capital offense" as used in the Colorado Constitution and bail statutes became obsolete as applied to offenses committed on or after July 1, 2020.

Since the 1400s "capital" has meant "'[a]ffecting, or involving loss of, the head or life,' or '[p]unishable by death.'" *State v. Ameer*, 458 P.3d 390, 392 (N.M. 2018) (citations omitted). Notably, *Black's Law Dictionary* defines "capital" as "[p]unishable by execution; involving the death penalty." (11th ed. 2019) (providing as an example of usage "capital offense").

Consequently, for decades, "a substantial majority of jurisdictions" have held that a "capital offense" is one that subjects the defendant to imposition of the death penalty. *See Ameer*, 458 P.3d at 393 (listing cases from 23 jurisdictions holding the same). *E.g. State v. Washington*, 294 So.2d 793 (La. 1974) (defining "capital offense" as "an offense that may be punished by death" and acknowledging that if the death penalty is not a penalty for the crime charged, "bail must be granted").

And, from nearly the outset of our becoming a state, this Court has consistently embraced this common understanding of the term "capital offense." For instance, in 1890, this Court considered whether "one charged with murder of the first degree, *the punishment for which is death*, may be admitted to bail after indictment and prior to trial." *In re Losasso*, 24 P. 1080, 1080 (Colo. 1890) (emphasis added). This Court held that "*[w]hen*

life is suspended in the balance, the temptation to avoid trial is…peculiarly great; and a release upon bail should not be permitted, unless the court feels clear that the constitutional exception does not apply." *Id.* at 1082 (emphasis added).

Even as the law has evolved, the critical variable has always been the legislature's categorization of a "capital offense" as *eligible* for the death penalty. For instance, in 1972, in the wake of *Furman v. Georgia*, 408 U.S. 238 (1972), this Court held that because *Furman* did not abolish the death penalty in all cases, the exception to bail only applies to offenses that "in the judgment of our Legislature, permitted the imposition of the death penalty." *Dunbar*, 500 P.2d at 358, 359. *Accord Ameer*, 458 P.3d at 397 ("*Dunbar* merely recited that murder remained a capital offense for which bail could be denied under the Colorado Constitution.").

Again, in *People v. Blagg*, this Court construed Article II, Section 19(1)(a) to prohibit bail when proof is evident and presumption is great that a defendant committed a crime that *could be* punished by death. 340 P.3d at 1140 ("First degree murder is a capital offense, even in a case where the death penalty is not at issue.") (citing *Tribe v. District Court*, 593 P.2d 1369, 1370-71 (Colo. 1979)).

But, with the repeal of the death penalty in Colorado, things have changed. Now, there is no possible way someone could be eligible for the death penalty for any offense committed on or after July 1, 2020. Accordingly, if charged on or after July 1, 2020, a class 1 felony is not a "capital offense." The repeal took the death penalty off the books. And, this fact is critical because "[n]o case in Colorado has ever held that the legislature could abolish the possibility of capital punishment for an offense and still classify the offense as 'capital' for the purpose of denying the constitutional right to [bail]." *Ameer*, 458 P.3d at 397-98 (citing Colorado legislative history suggesting that all other nonbailable offenses have been defined by amendment). In fact, "no case in *any jurisdiction*…has held that a constitutional provision guaranteeing bail in all but "capital offenses" will permit bail to be denied after a *legislative* abolition of capital punishment." *Id.* at 395 (first emphasis added).

4. A court-created rule that class 1 felonies remain "capital offenses" despite the repeal of the death penalty would constitute judicial amendment in violation of the Colorado Constitution.

Colorado should not strive to become a stand-alone state holding that class 1 felonies remain capital offenses even after the abolition of the death penalty. In fact, it would be foolish, and unconstitutional, for the judiciary

to create such a rule. Namely, it would defy the plain language of Article II, Section 19 of the Colorado Constitution thus constitute judicial amendment in violation of Article XIX of the Colorado Constitution.

Courts are powerless to unilaterally amend the Colorado Constitution. *See* Colo. Const. art. XIX; *In re Interrogatories Propounded by Senate Concerning House Bill 1078*, 536 P.2d 308, 319 (Colo. 1975) (acknowledging lack of authority to judicially amend constitution). The judiciary has a duty to "refrain from asserting a power that does not belong to it, for this is…a violation of the people's confidence." *City and County of Denver v. Lynch*, 18 P.2d 907, 909 (Colo. 1932). *C.f. Littleton v. Wagenblast*, 338 P.2d 1025, 1029-30 (Colo. 1959) ("To give effect to such construction would require the Court to indulge in judicial legislation. This we cannot do.").

Notably, Article II, Section 19(1)(a) does not include "murder" or "class 1 felony." The language is deliberately "capital offense." Had the ratifiers of the Colorado Constitution intended to deny bail to anyone charged with murder or a class 1 felony the Colorado Constitution would state so unequivocally. But it does not. And, it has never been disputed that a defendant accused of murder as a class 2 felony, or an offense not

historically subject to the death penalty, would be entitled to bail as a matter of right under Article II, Section 19(1)(a), and in compliance with the legislative mandates of C.R.S. § 16-4-104. Therefore, construing "capital offense" to include charges that can, under no circumstances, be considered subject to capital punishment would have greater implications than this Court has power to create.

5. Smith has an absolute constitutional right to bail subject to no exceptions, and therefore, the district court abused its discretion in refusing to set bond, and each day Smith (or any other defendant accused of a class 1 felony committed on or after July 1, 2020) remains in custody without bond he suffers an unjust violation of his absolute right to bail and the presumption of innocence he is due is unjustly diminished.

The offense date alleged in Smith's case is October 20, 2021. Thus, Smith's offense post-dates the effective date of the repeal of the death penalty. Accordingly, under no circumstances can the class 1 felony with which Smith has been charged subject him to the death penalty.

Therefore, Smith is not facing a "capital offense" under any construction of the law. Thus, the logic of *Dunbar* and its progeny no longer extends to the circumstances of this case. This is so because a class 1 felony committed on or after July 1, 2020, cannot be classified as a "capital

offense"—capital punishment, cannot under any circumstances, exist for these offenses. Under the *Dunbar* "classification" theory, capital punishment had not been abolished, it had simply been rendered unconstitutional, but remained on the books. Thus, class 1 felonies remained subject to death as a maximum penalty when charged based on the statutory penalty classification for the offense, and therefore, could be classified as "capital offenses." *See Ameer*, 458 P.3d at 397-98 (discussing legislative history relevant to this conclusion). The same is no longer true for offenses committed on or after July 1, 2020. *Compare* C.R.S. § 18-1.3-401(1)(a)(IV), (1)(a)(V)(A), (1)(a)(V)(A.1) (penalty for class 1 felony includes "death") *with* C.R.S. § 18-1.3-401(1)(a)(V.5)(A) (penalty for class 1 felony includes only "life imprisonment"). The logic that requires a court to set bond in a murder charged as a class 2 felony must now be followed with respect to class 1 felonies.

To hold otherwise, as did the district court here, would be a misapplication and improper extension of the "classification theory" and would be to add meaning to "capital offense" that far exceeds the plain language of the term. Namely, this Court would have to adopt that "capital" refers to something other than the death penalty, which no court, including

any Colorado court, has ever held. Such a holding would constitute judicial amendment of the plain language of the Colorado Constitution. That the district court, here, has misconstrued "capital offense" as used in Article II, Section 19(1)(a) of the Colorado Constitution and C.R.S. § 16-4-104(1)(a), and relied on caselaw citing the *Dunbar* classification theory to deny Smith bail constitutes an abuse of discretion. One that continues to deprive Smith of an absolute right and diminish the presumption of Smith's innocence.

Accordingly, this Court should issue a rule to show cause why Smith should remain detained without bond when neither the Colorado Constitution nor statute supports this outcome. This is so because C.R.S. § 16-4-101(1)(a) does not apply to this case, so whether proof is evident and presumption is great has no relevance to whether bond should be set in this case. Instead, bond must be set in accordance with Article II, Section 19 of the Colorado Constitution and C.R.S. § 16-4-104. Ongoing failure to set bond in accordance with these provisions violates Smith's absolute constitutional right to bail.

B. The court of appeals erred in dismissing Smith's petition brought under C.R.S. § 16-4-204—that statute expressly provides the court of appeals with jurisdiction to decide the issue.

With the enactment of SB20-100, the "capital offense" constitutional limitation on bail has become obsolete. Likewise, the statutory definition of nonbailable offenses to include "capital offenses" has become obsolete. *See* C.R.S. § 16-4-101(1)(a).

When a district court misconstrues the law or misapplies an obsolete definition to deny a defendant bond, the district court abuses its discretion in violation of C.R.S. § 16-4-104(1). This is so because setting no bond violates the plain language of the statute requiring that "[t]he court shall determine,…which of the following types of bond is appropriate for the pretrial release of a person in custody." *See Fallis*, 353 P.3d at 935 ("A court abuses its discretion if its decision is manifestly arbitrary, unreasonable, or unfair, or if it misconstrues or misapplies the law."). This Court has held that C.R.S. § 16-1-104 "*mandates* that the court determine which of various statutory approved types of bond is appropriate for the pretrial release of the person in custody." *Jones*, 346 P.3d at 49 (emphasis added). Bail is an absolute right unless limited by the Colorado Constitution or statute, thus the district court did not have discretion to refuse to determine which of various statutory approved types of bond was appropriate for the pretrial release of Smith.

Accordingly, C.R.S. § 16-4-204(1) expressly allowed for the court of appeals to review the issues because the matter involves review of a violation of C.R.S. § 16-4-104. Even though the issue involves determination of a legal issue that requires constitutional and statutory interpretation, that did not deprive the court of appeals of jurisdiction. *E.g.* *Johnson*, 488 P.3d at 236 (interpreting the Colorado Constitution and statutory bail scheme to resolve issue presented of whether court abused discretion in denying bond).

The court of appeals was not asked to decide whether the district court abused its discretion in refusing to set bond under C.R.S. § 16-4-101(1)(a). The court of appeals was asked to decide whether, in the wake of the enactment of SB20-100, a court must set bond as a matter of right under C.R.S. § 16-4-104(1), which does not include as an option refusing to set bond, because the limitations of C.R.S. § 16-4-101(1)(a) no longer apply and no other exception exists to the requirement under C.R.S. § 16-4-104(1) that the court set a bond. *C.f. Jones*, 346 P.3d at 50-51 (the court of appeals should not deny review based on an overly restrictive interpretation of a statute requiring the court to review a district court's bond determination). Accordingly, the court of appeals had jurisdiction to consider the issue.

CONCLUSION

The district court abused its discretion in relying on C.R.S. § 16-4-101(1)(a) to refuse to set bond. Therefore, the matter should be remanded with an order to show cause why Smith should remain detained without bond when neither the Colorado Constitution nor statute supports this outcome.

LIST OF SUPPORTING DOCUMENTS

Orders	
Appendix A	Order for Warrant: Arrest Warrant (May 18, 2022)
Appendix B	Order (November 30, 2022)
Appendix C	Order of the Court of Appeals (December 20, 2022)
Transcripts	
Transcript 10/10/22 (denying bond and reserving issue for hearing)	
Transcript 10/12/22 (denying bond and holding proof evident presumption great hearing)	

CERTIFICATE OF SERVICE

I certify that on January 3, 2023, the original of this PETITION FOR RULE TO SHOW CAUSE PURSUANT TO C.A.R. 21 was filed with the Colorado Supreme Court, and a true and correct copy was served by the Colorado Courts E-filing system on appeals clerks for the 17th Judicial District, and the 17th Judicial District Attorney. Copies were also served upon trial counsel for Smith: Rachel Lanzen and W. Trent Palmer.

/s/*Adrienne R. Teodorovic*