

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

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THE PEOPLE OF THE STATE OF NEW YORK :
EX. Rel. PHILIP DESGRANGES, ESQ. ON :
BEHALF OF CHRISTOPHER KUNKELI :
Petitioner, :
v. :
ADRIAN BUTCH ANDERSON, Dutchess County :
Sheriff, :
Respondent. :
----- X

ORDER TO SHOW CAUSE

HABEAS CORPUS

App. Div. Docket No.
2018-346

FEE EXEMPT
KL#1

Upon the annexed and verified petition of Christopher Kunkeli, dated January 9, 2018, and the papers annexed thereto, and the petitioner having waived production of the person said to be detained,

LET the Sheriff of Dutchess County, or any other person having custody of Christopher Kunkeli, and the District Attorney of Dutchess County **SHOW CAUSE BEFORE** ~~ADRIAN BUTCH ANDERSON~~ ^{the Supreme Court, Dutchess County} at the courthouse thereof located at ~~115 Market Place, Brooklyn, NY 11201~~ ^{10 Market Street, Poughkeepsie, NY} on the 11th day of January 2018, at 10:00 o'clock in the forenoon of that date or as soon thereafter as counsel may be heard, why a judgment should not be made and entered:

1. Declaring, pursuant to CPLR §§ 3001; 411; and 5011, that it is presumptively impermissible under equal protection and due process to incarcerate an indigent pretrial defendant solely because he or she is unable to pay bail. Incarceration is impermissible unless the bail-setting court, on the record:
 - a) inquires into whether the defendant has the financial resources to pay and, if the defendant does not;
 - b) explains how bail was calculated and why that amount is necessary;
 - c) determines that, and explains why, no less restrictive form of financial bail and alternatives to bail would reasonably assure the defendant's

return to court; and

- d) explains why the risk of flight is so great that nothing short of pretrial detention will reasonably assure the defendant's return to court.
2. Declaring that, because the presiding judge failed to adhere to the constitutional requirements in the preceding paragraph, the petitioner's pretrial detention solely because of his inability to pay bail violates his equal protection and due process rights under the Fourteenth Amendment of the United States Constitution and under the New York Constitution.
3. Directing the person said to be detained, Christopher Kunkeli, to be immediately released pursuant to CPLR § 7010 (a) on the basis of the presiding judge's failure to adhere to the constitutional requirements in paragraph 1. In the alternative, returning the matter to the presiding judge for disposition consistent with the above declaratory judgment pursuant to the Court's declaratory judgment authority. (CPLR §§ 3001; 3017 [a]).
4. Ordering that the petitioner be paroled pursuant to CPLR § 7009 (e) pending the final disposition of this proceeding.
5. If this case becomes moot because the petitioner is released from jail or for another other reason, (a) granting an exception to mootness, (b) converting this habeas petition to an Article 78 petition for declaratory judgment, and (c) issuing the declaratory relief requested herein.
6. Granting such other and further relief as to the Court may deem just and equitable.

Oral argument shall be required on the return date of this proceeding.

7. Waive the filing fee pursuant to CPLR 1101e

SUFFICIENT CAUSE THEREFOR APPEARING, it is

ORDERED that service of a copy of this order to show cause and the papers upon which it was made pursuant to CPLR 7005 by ~~overnight mail to~~ *personal delivery to* SK


The Respondent, the Sheriff of Dutchess County at the Sheriff's Office, 150 North Hamilton Street, Poughkeepsie, New York, 12601, or, if he cannot with due diligence be found, to any person having custody of the person said to be detained at the time of service, and

The Appeals Bureau of the Office of the respondent District Attorney of Dutchess County, William V. Grady, at 236 Main Street, Poughkeepsie, New York, 12601.

shall be deemed sufficient service thereof if made on or before ^{5:00 P.M. on} January 10, 2018. SK

~~**ORDERED** that any papers opposing the relief requested herein be served and filed on _____ and the petitioner's reply be served and filed on _____.~~

Dates: Brooklyn, New York
January 9, 2018


Hon. Sylvia O. Hinds-Radix
Associate Justice
Appellate Division 2nd Dept.