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FRESNO COUNTY SUPERIOR COURT  
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO  
CENTRAL DIVISION

In re Douglas R. Stankewitz,	)	No. 21CRWR685993
	)	
Petitioner,	)	Dept. 62
	)	
On Habeas Corpus	)	ORDER DENYING PETITIONER'S MOTION FOR RELEASE ON OWN RECOGNIZANCE OR SETTING BAIL

Having read and considered Petitioner Douglas R. Stankewitz's "Notice of Motion and Motion for Release on Own Recognizance or Setting of Bail at Reasonable Amount" filed on November 22, 2021, the Court denies Petitioner's motion.

Petitioner's re-trial in 1983 resulted in convictions for first degree murder (Pen. Code, § 187<sup>1</sup>), kidnapping (§ 207) and robbery (§ 211); the jury found true allegations that Petitioner personally used a firearm (§ 12022.5) and that the murder was committed during the commission of the robbery and kidnapping (§ 190.2). Petitioner received the death penalty. (See *People v. Douglas Stankewitz* (Super. Ct. Fresno County, No. CF8227015).)

On May 3, 2019, following the Ninth Circuit Court of Appeal's decision affirming the District Court's grant of habeas relief, this Court resentenced Petitioner to life without the possibility

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

1 of parole. On July 3, 2019, Petitioner filed an appeal, which is  
2 remains pending. (See *People v. Stankewitz* (No. F079560).)

3 Petitioner first contends that he may be released on his own  
4 recognizance, at the trial court's discretion, pursuant to the  
5 California Constitution, Article I, section 12. However, this  
6 section pertains to setting bail when a person faces pending  
7 criminal charges and requires a court to find the specified risk  
8 of harm by "clear and convincing evidence" before detaining an  
9 arrestee by denying bail. (See *In re Humphrey* (2021) 11 Cal.5th  
10 135, 153; *In re Weiner* (1995) 32 Cal.App.4th 441, 444 ["Except  
11 under limited circumstances, the California Constitution  
12 guarantees a pretrial right to release on nonexcessive bail."].)  
13 Here, Petitioner has already been convicted of and sentenced on  
14 criminal charges. Article I, section 12 does not apply here.

15 Since Petitioner has already been convicted and sentenced,  
16 his request for release on bail pending his appeal falls under  
17 section 1272, subdivision (3). Section 1272.1 states that release  
18 on bail under section 1272, subdivision (3) shall be ordered by  
19 the court if the defendant demonstrates: (a) by clear and  
20 convincing evidence, the defendant is not likely to flee; (b) by  
21 clear and convincing evidence, the defendant does not pose a  
22 danger to the safety of any other person or the community; and (c)  
23 the appeal is not for the purpose of delay and the defendant's  
24 appeal raises substantial legal questions which, if decided in his  
25 favor, is likely to result in a reversal of his conviction.

26 While Petitioner contends that he is not likely to flee, the  
27 Court notes that his sentence is severe: life without the  
28 possibility of parole. Petitioner also contends that he is not a

1 danger to the community because his health issues and age lowers  
2 the risk of recidivism. However, the Court notes that Petitioner  
3 was convicted of three violent crimes under section 667.5,  
4 subdivision (c): first degree murder, kidnapping and robbery.  
5 Last, although Petitioner makes the general allegation that the  
6 appeal would likely result in a new trial or full resentencing, he  
7 only alleges facts in support of the possibility of resentencing,  
8 not in reversal of his conviction. Section 1272.1, subdivision  
9 (3)(c) addresses a likely reversal of a convictions, not simply a  
10 resentencing. As such, the Court finds that Petitioner fails to  
11 demonstrate that the Court should grant his request for release on  
12 his own recognizance, or for the setting of reasonable bail, under  
13 section 1272.1.

14 Petitioner also fails to demonstrate that bail may be set  
15 under section 1476. This section provides, in short, that any  
16 court or judge authorized to grant a writ may admit to bail the  
17 writ petitioner detained upon a criminal charge, if the offense is  
18 bailable, pending the determination of the writ proceeding. (§  
19 1476.) This statute requires that the petitioner be detained on a  
20 criminal charge when considering admitting him to bail. The cases  
21 Petitioner cites also concern defendants with pending criminal  
22 charges. (See *In re Peterson* (1958) 51 Cal.2d 177, 181; *In re*  
23 *Smiley* (1967) 66 Cal. 2d 606, 612-613.) Here, Petitioner is not  
24 detained on criminal charges, but has already been convicted of  
25 and sentenced on such charges.

26 Finally, Petitioner's request for a hearing under section  
27 1319 is also inapplicable as this section specifically requires a  
28 hearing before releasing a person arrested for a violent felony

