

Ex parte Newsome, No. 06-22-00123-CR (Tex. App.-Texarkana, Dec. 8, 2022)

Attorneys. James R. Hagan (appellate)(trial), Natalie Anderson (appellate)(trial), Jonathan Hyatt (appellate)(trial)

Issue & Answer. If the prosecution says nothing about its state of readiness for trial at a hearing on a writ of habeas corpus seeking release for delay in readiness for trial (Texas Code of Criminal Procedure Article 17.151) is the trial court required to release the defendant even when he requests release after indictment? **Yes.**

Facts. On January 1, 2020, the State arrested the defendant for capital murder and held him with bail set at three million dollars. On September 28, 2020, the State indicted the defendant. On July 12, 2022, the defendant filed a writ of habeas corpus seeking release on personal bond pursuant to Article 17.151 of the Code of Criminal Procedure (release because of delay in readiness for trial or securing indictment). Only the defendant presented evidence at the hearing on his writ-a single witness established his indigence.

Analysis. Under Article 17.151 (release because of delay in readiness for trial or securing indictment) the State has an initial burden to make a prima facie showing that it was ready for trial within the applicable period (Class B: 15 days, Class A: 30 days, Felony: 90 days). The State can discharge its burden by either announcing ready in the allotted time or announcing retrospectively that it had been ready in the allotted time. Here the State made no attempt to claim it had been ready for trial within the statutory time frame. Because Governor Abbott's pandemic emergency proclamation remains in effect and Executive Order GA-13 prohibits PR bonds under 17.151, the Court must release the defendant on a bond he can afford.

Comment. This opinion is only possible because trial counsel filed a writ of habeas corpus (eligible for interlocutory appeal) and not a motion (not eligible for interlocutory appeal).