

**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT**

**NO. 2022-0523**

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**State of New Hampshire**

**v.**

**Dan LaGuerre**

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**Mandatory Appeal from  
Hillsborough County Superior Court – Northern District  
Pursuant to New Hampshire Supreme Court Rule 7**

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**REPLY BRIEF OF DAN LAGUERRE, APPELLANT**

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Respectfully submitted,

Dan LaGuerre

By his Attorneys,

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*Cassandra Moran will present oral argument.*

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## **STANDARD OF REVIEW**

The standard of review is articulated in Mr. LaGuerre's opening brief.

## ARGUMENT

This reply brief lists errors in the state's memorandum as it pertains to Mr. LaGuerre's motion for bail. Record references are to the Appendix ("App.") or to the State's Brief ("St. Br.").

### **I. The Record is Sufficient for this Court to Address Mr. LaGuerre's Bail Arguments.**

The State argues that Mr. LaGuerre has not provided enough evidence for the Court to address this appeal. St. Br. 7. This assertion misconstrues Mr. LaGuerre's argument and is beside the point. He raises a legal challenge. Thus, although Mr. LaGuerre's opening brief does go into extensive detail about his medical conditions, it does so to provide context for the Court. The trial court does not contest Mr. LaGuerre's safety concern in its order, it merely states that the motion for bail is an improper vehicle to seek relief. *See* Order 1-2. The specifics of Mr. LaGuerre's medical history and medication are not necessary to the extent that they alter or otherwise affect the trial court's analysis. Accordingly, the fact that the medical records were not submitted to the trial court is not grounds for denying this appeal.

Likewise, the fact that Mr. LaGuerre did not provide this Court a copy of a transcript is immaterial. The issues giving rise to the September 6 Emergency Motion for Bail and the subsequent appeal were not present at the time of the August 26, 2022 hearing; at the August 26 hearing, Mr. LaGuerre had not been suffering from a deterioration of his medical conditions. To that point, Mr. LaGuerre expressly invokes RSA 597:2, IV in his opening brief, which allows him to request a new bail hearing in light

of new evidence.

Additionally, given the urgent nature of the September 6 motion and the time that it takes to request and receive medical records from HCDOC, the medical records were practically unavailable when the original motion was filed. Similarly, Mr. LaGuerre was positive for COVID-19 when the September 6 motion was filed, and likely would not have been able to meet with counsel to get a release. *See* App. 067, 074.

In its brief, the State says this Court should not consider the medical records because they are a new argument. St. Br. 8. However, the September 6 Emergency Motion for Bail merely addresses Mr. LaGuerre's medical conditions and relevant treatment and includes an attached affidavit and doctor's note. *See* App. 002-011. The medical records do not introduce new information or arguments, but they simply expand on and evidence allegations that were already before the trial court. The State cites no authority that supports its position that this Court should not consider the medical information provided in Mr. LaGuerre's Appendix. The case that the State does cite, *State v. Batisa-Silva*, 171 N.H. 818 (2019) does not prohibit Mr. LaGuerre from presenting his medical records to this Court, it merely prohibits defendants from raising new arguments. *See State v. Batisa-Silva*, 171 N.H. 818, 822 (2019) ("The defendant, as the appealing party, bears the burden of demonstrating that he specifically *raised the arguments* articulated in his appellate brief before the trial court") (emphasis added). Because Mr. LaGuerre is merely giving information, he is not prohibited from providing the medical records.

## **II. The State Improperly Interprets RSA 597:2, III(a) As Requiring Mr. LaGuerre's Continued Detention**

The State argues that the trial court correctly interpreted RSA 597:2, III(a), but like the trial court, it fails to read the statute as a whole. Even though the trial court found at the August 26 bail hearing that Mr. LaGuerre was a danger to himself or others and there were no restrictive conditions that would allow for the defendant's release at that time, it is still required to consider the first sentence of RSA 597:2, III(a) in its new analysis. In addition to the procedure and findings that the State explains in its brief, RSA 597:2, III(a) also requires that the trial court make a determination on the safety of the defendant with regards to his continued incarceration. The statute plainly states that "[w]hen considering whether to release or detain a person, the court shall consider the . . . [s]afety of the public or the defendant." The last sentence of the section and the procedure outlined by the State merely supplements this requirement and lays out a procedure for an initial bail hearing. The State's analysis of this section does not address nor negate that the plain language of the statute requires that the court consider the safety of the defendant in determining whether to detain or release him.

Accordingly, the trial court should have considered the safety of Mr. LaGuerre when it denied his motion for bail.

## **III. The State Improperly Asserts that Mr. LaGuerre Requested Relief Unavailable Under the Bail Statute**

The State argues that Mr. LaGuerre's motion for bail complains about treatment by HCDOC rather than the trial court's denial of bail. St. Br. 15. This is incorrect. Mr. LaGuerre's complaints about HCDOC and his

treatment merely provide background to his request for bail and outline why his continued detention is unsafe in accordance with RSA 597:2, III(a). In other words, the mere condition of this confinement is not the complaint, it is the continued danger to Mr. LaGuerre's health as a result.

Accordingly, Mr. LaGuerre is not asking the State to defend or otherwise correct the conditions of Mr. LaGuerre's confinement, it is merely explaining why these conditions create an environment whereby bail is an appropriate remedy. Even though this does implicate the same concerns as available civil relief such as a petition for a writ of habeas corpus, the motion for bail, and this appeal, involves RSA 597:2, which is the proper relief in criminal proceedings. *See* RSA Title LIX.

Although this claim for relief is based partially on a continued violation of Mr. LaGuerre's constitutional rights, it does not rise to the level of habeas relief. The State does not credibly dispute that the trial court has the ability to consider such issues in a bail analysis. *See State v. Hutton*, 107 N.H. 426, 428 (1966) (“[The trial court’s] discretion includes the authority to determine not only the amount of bail and its type but also such other conditions as may tend to safeguard the rights of the accused . . . .” (citing N.H. Const. Part I, art. 33); *State v. Gagne*, 129 N.H. 93, 96-97 (1986) (“The authority to protect a constitutional right is not dependent upon legislative enactment or grant of authority [by the legislature] to the judiciary. The authority of the judiciary to provide a remedy guaranteed by the constitution . . . stems from the constitution itself and is inherent in the very nature of the judicial function” (alterations and omissions in original) (internal citation and quotation omitted). Thus, Mr. LaGuerre's argument does not require the trial court to consider the levels of liberty interest as



the State suggests.

Because Mr. LaGuerre's safety is at risk due to his continued incarceration, RSA 597:2, III(a) is an appropriate avenue for him to seek release, regardless of whether there are other avenues available as well.

### **CONCLUSION**

For the reasons set forth above, Mr. LaGuerre requests oral argument in this matter at the earliest possible date.

Dated: October 25, 2022

Respectfully submitted,  
Dan LaGuerre

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**CERTIFICATE OF SERVICE**

The foregoing brief has been provided to counsel of record by electronic filing.

Dated: October 25, 2022

/s/ Cassandra A. Moran \_\_\_\_\_  
Cassandra A. Moran, Esquire

**CERTIFICATION PURSUANT TO SUPREME COURT RULE 16(3)**

I, Cassandra A. Moran, hereby certify that the appealed decisions are in writing and are appended to opening brief in this matter.

Dated: October 25, 2022

/s/ Cassandra A. Moran \_\_\_\_\_  
Cassandra A. Moran, Esquire

**STATEMENT OF COMPLIANCE WITH WORD LIMITATION**

I, Cassandra A. Moran, hereby certify that this reply brief contains a total of 1203 words and meets the requirement of 3,000 words or less for a brief per Rule 16(11).

Dated: October 25, 2022

/s/ Cassandra A. Moran \_\_\_\_\_  
Cassandra A. Moran, Esquire