Filed 12/30/25 In re Chung CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JAE HAN CHUNG, on Habeas Corpus.	B347815 (Los Angeles County Super. Ct. No. KA127842)

ORIGINAL PROCEEDING; petition for writ of habeas corpus, Victor Martinez and Juan Carlos Dominguez, Judges. Petition granted.

Michael Reed, under appointment by the Court of Appeal; Jae Han Chung, in pro. per. for Defendant and Petitioner.

Nathan J. Hochman, District Attorney, Cassandra Thorp and Elizabeth Marks, Deputy District Attorneys for Real Party in Interest.

Jae Han Chung (petitioner) petitioned the California Supreme Court for a writ of habeas corpus, challenging the trial court's order denying him bail. The Supreme Court issued an order to show cause, returnable before this court, "why the petitioner should not be granted a new bail review hearing." After reviewing the petition and the parties' briefing, we conclude that at a pretrial hearing on May 16, 2024, the court erred in denying petitioner's request for a bail review hearing after petitioner showed changed circumstances entitling him to such a review. Therefore, we grant the petition and direct the trial court to hold a new bail review hearing.

BACKGROUND

A. Petitioner's Bail Is Initially Set at $350,000, and Petitioner Posts Bail

On June 22, 2021, petitioner pleaded not guilty to three counts of sex offenses involving two alleged victims: one count of continuous sexual abuse of a child under 14 years (Pen. Code,[1] § 288.5, subd. (a); count 1), and two counts of lewd or lascivious acts with a child of 14 or 15 years by a defendant who was at least 10 years older than the child (§ 288, subd. (c)(1); counts 2 & 3). With a prior strike conviction allegation under the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), petitioner's maximum prison exposure was 44 years (the upper term of 16 years on count 1, plus the upper term of three years on each of counts 2 and 3, doubled because of a prior strike). The court set bail at $350,000, which petitioner posted, and he was released from custody.

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[1] Undesignated statutory references are to the Penal Code.

B. After the Preliminary Hearing, Bail Is Increased to $2,000,000 Based on Amended Charges and Enhancements

At the preliminary hearing on October 21, 2021, the alleged victims, then 16 and 19 years old, testified. Based on the testimony, the court granted the prosecution's motion to amend the complaint to add count 4, lewd or lascivious act with a child *under* 14 years (§ 288, subd. (a)), and the court dismissed counts 2 and 3, which had alleged the victim was 14 or 15 years old at the time of the lewd or lascivious acts. The addition of count 4, a qualifying offense, allowed the prosecution to allege a multiple victim enhancement under section 667.61, subdivision (e)(4), providing a punishment of 15 years to life on both count 1 and count 4. (§ 667.61, subds. (b), (c) & (e).) The court granted the prosecution's motion to amend the complaint to allege the enhancement. With the amendments, petitioner's maximum prison exposure increased from 44 years to 60 years to life. The court held petitioner to answer on counts 1 and 4 and, over petitioner's objection, increased bail to $2,000,000 (which was less than the amount provided in the bail schedule for the charged offenses and enhancements). Petitioner was unable to post bail in the new amount, and he was remanded to custody.

On November 4, 2021, the prosecution filed an information charging petitioner with the above-described offenses and enhancements. At the arraignment held the same day, new defense counsel substituted in, and petitioner pleaded not guilty to counts 1 and 4. The minute order from the arraignment states that the court set bail at $2,000,000 and, at new defense counsel's request, the court continued the matter to January 19, 2022 "for pretrial conference/trial setting and bail review."

C. Petitioner's Motions to Reduce Bail

1. *January 2022 bail motion*

On January 13, 2022, petitioner, through his retained counsel, filed a motion for an order releasing him on his own recognizance or, in the alternative, an order reducing bail. Therein, petitioner stated he did not have the means to post a $2,000,000 bail, and he argued a reduction in bail was appropriate based on a consideration of the factors set forth in section 1275 (protection of the public, seriousness of the charged offenses, previous criminal record, and probability of his appearance in court) and under applicable case law.

Petitioner was unable to appear in court on January 19, 2022, the date scheduled for the pretrial conference/trial setting and the hearing on his bail motion, and the court continued the matter. The minute order states that bail remained set at $2,000,000.

2. *April 19, 2022 hearing*

The court (Judge Victor Martinez) heard petitioner's bail motion on April 19, 2022. At the outset of the hearing, the court asked petitioner's counsel to describe the changed circumstances that would permit the court to reconsider bail at this juncture.[2] Defense counsel responded, "There's no real change in circumstances in the case, per se . . . ." Counsel added, "At this

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[2] Under section 1289, "After a defendant has been admitted to bail upon an indictment or information, the Court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail." Such "good cause must be founded on changed circumstances relating to the defendant or the proceedings." (*In re Alberto* (2002) 102 Cal.App.4th 421, 430 (*Alberto*).)

time, I mean, when I got on the case, Your Honor, I found out my client's father, who's present in court today, is willing to have my client reside at his location on GPS monitoring with search and seizure terms which I think would mitigate any concerns the court would have of flight risk or safety risk in terms of any contact with any victims or even with the public. So my goal is really to mitigate any risk the court would see in this case and have my client be out on bail, some bail also with GPS monitoring so that he can assist himself in his own defense in this case as well as assist me."

The court found petitioner failed to show circumstances had changed since bail was set at $2,000,000 (by a different judge) to warrant a reduction in bail. However, the court found that *In re Brown* (2022) 76 Cal.App.5th 296 (*Brown*), a Court of Appeal decision issued on March 14, 2022, a month before this hearing, constituted changed circumstances to reconsider the $2,000,000 bail and bring the bail order into "compliance" with the new case. In *Brown*, Division Seven of this appellate district summarized the pertinent part of the California Supreme Court's seminal bail decision in *In re Humphrey* (2021) 11 Cal.5th 135 (*Humphrey*) as follows: "[I]f the court properly determines nonfinancial conditions are insufficient to protect the state's interests, but that imposing a money bail condition (alone or in combination with nonfinancial conditions) would adequately protect the public and the victims and ensure the arrestee's presence in court, the court must consider the individual arrestee's ability to pay and 'set bail at a level the arrestee can reasonably afford.' " (*Brown*, at p. 308.) The *Brown* court went on to conclude, "If money bail set at that level [a level the defendant can reasonably afford] is not sufficient to protect the

state's compelling interests, *then the trial court's only option is to order pretrial detention*, assuming the evidentiary record is sufficient to support the findings necessary to justify such an order." (*Ibid.*, italics added.)

The court conducted a bail review and heard from both sides. The court made factual findings regarding petitioner's danger to public safety and flight risk. The court stated, in pertinent part, "Based upon the *Brown* case, the court should consider monetary bail. The problem is defendant indicated the defendant has no monetary bail he believes he can do." The court made factual findings in accord with article 1, section 12, subdivision (b) of the California Constitution, which provides an exception to the requirement that a defendant be released on bail in the case of "[f]elony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others." Citing *Brown*, *Humphrey*, and the California Constitution, the court ordered that petitioner's "bail is reset at no bail."

3. *May 9, 2024 hearing*

Two years later, at a pretrial hearing on May 9, 2024, petitioner, who had been self-represented for approximately one year, attempted to file another bail motion. The court (Judge Juan Carlos Domingez) "reject[ed]" the motion for filing, finding a written motion was unnecessary, and stated it would "entertain" an oral motion. Before petitioner asserted the grounds for his motion, the court stated, "So, since another judge set the bail, you're looking at a life sentence, and there are no changed

circumstances from the time that bail has been set to the present, I'm denying it." The court also noted that petitioner had been in custody for two and a half years. Petitioner asserted the court (Judge Martinez) should not have "taken away the bail" at the April 19, 2022 hearing, arguing there were no changed circumstances at that time to reconsider the $2,000,000 bail order. The court inquired if there was a practical difference between $2,000,000 and no bail. Petitioner responded, "Well, I was hoping to have a bail and the bail reduced to something that's affordable." After the prosecutor provided a summary of the circumstances leading up to the no-bail order, the court stated, "And so that was Judge Martinez's decision and I'm not going to revisit it. Your motion is denied." The court set a jury trial for September 23, 2024.[3]

4. *May 16, 2024 bail motion and hearing*

A week later, at a pretrial hearing on May 16, 2024, petitioner, who was still self-represented, explained that the changed circumstance supporting his bail motion was new case law decided after the court (Judge Martinez) issued the no-bail order on April 19, 2022. Petitioner renewed his request to file a written motion and at the urging of the prosecutor, the court (Judge Dominguez) allowed petitioner to file the motion. The court took a recess to review the motion and the case law cited therein.

In the motion, petitioner argued that *In re Kowalczyk* (2022) 85 Cal.App.5th 667 (*Kowalczyk*), review granted March 15,

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[3] The district attorney has not argued this appeal is moot, so we assume the case has not yet been tried and petitioner remains in custody under the no-bail order.

2023, S277910, a case decided in the First District, constituted changed circumstances for reconsideration of bail. The *Kowalczyk* court disagreed with the *Brown* court's conclusion that a pretrial detention order is the only option when a bail amount the defendant can afford is insufficient to protect the public and ensure the defendant's presence in court. The *Kowalczyk* court concluded that under *Humphrey*, if a court makes the "findings necessary to support a detention," the court may set bail "in an amount higher than a defendant can afford." (*Kowalczyk*, at pp. 692, 690.) Petitioner also cited *Yedinak v. Superior Court* (2023) 92 Cal.App.5th 876, a case describing "the individualized assessment" required under *Humphrey* and article 1, section 12, subdivision (b) of the California Constitution for a pretrial detention order. Petitioner requested the court consider these authorities at a new bail review hearing.

After the recess, the court heard from both sides, referenced *Kowalczyk*[4] and *Yedinak*, and denied petitioner's motion, concluding there were no changed circumstances that

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[4] The court made the following comments about *Kowalczyk*: "On the *Kowalczyk* case, Mr. Chung -- and that's why I went to the other case, the *Yedinak* case. But the *Kowalczyk* case basically says -- the holding is basically this: Finally, we reiterate the fundamental principle that liberty is the norm and that detention prior to trial or without trial is a carefully limited exception. While section 12 [of article 1 of the California Constitution] does not prohibit a court from fixing bail in an amount the defendant cannot likely meet, it will be the rare case of where such monetary condition is truly necessary to sufficiently protect the state's compelling interest in public and victim safety and assurance of appearance in court."

warranted reconsideration of bail or the factual findings Judge Martinez made on April 19, 2022.

D. Petition for a Writ of Habeas Corpus in the California Supreme Court

After we denied a petition for a writ of mandate and a petition for a writ of habeas corpus that petitioner filed in this court, on June 9, 2025, petitioner, who remained self-represented, filed a habeas corpus petition in the California Supreme Court, challenging his pretrial detention and the denial of bail. Among his numerous claims as to why he is entitled to a reconsideration of bail, petitioner noted the court "did not have the benefit of" *Kowalczyk* when Judge Martinez issued the no-bail order on April 19, 2022. Petitioner asserted that under *Kowalczyk*'s rationale, the court may set bail in an amount petitioner cannot afford (a conclusion at odds with the *Brown* decision Judge Martinez followed).

On July 23, 2025, after a round of informal briefing, the Supreme Court issued an order to show cause, returnable before this court, "why the petitioner should not be granted a new bail review hearing."

E. Briefing in This Court

The district attorney filed a return on behalf of the People. Petitioner, through counsel we appointed, filed a reply. We requested the parties file supplemental briefing addressing (1) whether *Brown* constituted changed circumstances for the court to reconsider bail at the April 19, 2022 hearing; (2) whether *Kowalczyk* constituted changed circumstances for reconsideration of bail in connection with petitioner's May 16, 2024 bail motion;

and (3) whether the court at the May 16, 2024 hearing addressed whether *Kowalczyk* constituted changed circumstances for reconsideration of bail, based on *Kowalczyk*'s disagreement with *Brown*'s interpretation of *Humphrey*, and if not, whether that was error. Both sides filed supplemental letter briefs addressing these issues.

DISCUSSION

After a court sets bail at an arraignment on an information, a court may later increase or reduce bail upon a showing of good cause. (§ 1289; *Alberto*, *supra*, 102 Cal.App.4th at pp. 426, 430.) Such "good cause must be founded on changed circumstances relating to the defendant or the proceedings." (*Alberto*, at p. 430.) Both sides agree, as do we, that new case law may constitute changed circumstances for reconsideration of bail. For example, after the California Supreme Court in *Humphrey* "address[ed] the constitutionality of money bail as currently used in California as well as the proper role of public and victim safety in making bail determinations" (*Humphrey*, *supra*, 11 Cal.5th at pp. 146-147), courts conducted post-arraignment bail review hearings on defendants' motions raising *Humphrey*. (See, e.g., *Brown*, *supra*, 76 Cal.App.5th at pp. 299-301.)

At the April 19, 2022 hearing, the court (Judge Martinez) found *Brown* constituted changed circumstances to conduct a bail review hearing and bring the bail order into "compliance" with *Brown*. As set forth above, the *Brown* court extended *Humphrey* to conclude that when a bail amount the defendant can afford is insufficient to protect the public and ensure the defendant's presence in court, "then the trial court's only option is to order pretrial detention, assuming the evidentiary record is sufficient

to support the findings necessary to justify such an order." (*Brown*, *supra*, 76 Cal.App.5th at p. 308.) Prior to the April 19, 2022 hearing, bail was set at $2,000,000, an amount petitioner said he could not afford, and the court concluded *Brown* required the court to "reset" bail "at no bail," after it made detention findings.

The district attorney argues the court was not required to find changed circumstances to reconsider bail at the April 19, 2022 hearing. The district attorney cites section 985, which permits a court to increase bail at an arraignment on an information, with no good cause requirement. Under the district attorney's interpretation of the record, the court did not consider bail at the November 4, 2021 arraignment on the information and instead deferred consideration of bail to a later date at defense counsel's request. We disagree with the district attorney's interpretation of the record. Although the minute order from the arraignment states that the matter was continued at defense counsel's request "for pretrial conference/trial setting and bail review," it does not state that consideration of bail under section 985 was deferred. Rather, it states, "Bail set at $2,000,000." In any event, our resolution of this writ petition does not depend upon whether a finding of changed circumstances was required for the court to reconsider bail at the April 19, 2022 hearing. What is important here is that the court relied on *Brown* in resetting the $2,000,000 bail to no bail.

There is no dispute that changed circumstances were required for reconsideration of bail at the May 16, 2024 hearing. We conclude that petitioner's citation of *Kowalczyk* in his written motion and at the hearing constituted changed circumstances, given Judge Martinez's reliance on *Brown* in issuing the no-bail

order. As explained, the *Kowalczyk* court disagreed with the *Brown* court's conclusion that a pretrial detention order is the only option when a bail amount the defendant can afford is insufficient to protect the public and ensure the defendant's presence in court. The *Kowalczyk* court concluded that under *Humphrey*, if a court makes the "findings necessary to support a detention," the court may set bail "in an amount higher than a defendant can afford." (*Kowalczyk*, *supra*, 85 Cal.App.5th at pp. 692, 690.) Thus, under *Kowalczyk*, the court (Judge Dominguez) could have determined at the May 16, 2024 hearing whether there was an amount of bail sufficient to protect the public and ensure petitioner's presence in court and set bail at that amount, even if it made a finding that petitioner could not afford to post the bail. The district attorney acknowledges that the court could have chosen to follow *Kowalczyk* instead of *Brown*, even though *Kowalczyk* was (and still is) on review in our Supreme Court. (See Cal. Rules of Court, rule 8.1115(e)(1); comment to subd. (e)(3) of rule 8.1115 ["Superior courts may, in the exercise of their discretion, choose to follow a published review-granted Court of Appeal opinion, even if that opinion conflicts with a published precedential Court of Appeal opinion"].)

We express no opinion on whether a court should follow *Brown* or *Kowalczyk*. Our holding is a narrow one: Given the conflict between *Brown* and *Kowalczyk*, the court erred in concluding *Kowalczyk* did not constitute changed circumstances and in declining to conduct a new bail review hearing based on the changed circumstances. " '[W]e review a trial court's ultimate decision to deny bail for abuse of discretion. . . . An abuse of discretion occurs when the trial court, for example, is unaware of its discretion, fails to consider a relevant factor that deserves

significant weight, gives significant weight to an irrelevant or impermissible factor, or makes a decision so arbitrary or irrational that no reasonable person could agree with it.' " (*Brown*, *supra*, 76 Cal.App.5th at p. 302.) In failing to address the conflict between *Brown* and *Kowalczyk* that was a primary basis for petitioner's motion, the court abused its discretion.

DISPOSITION

The petition for a writ of habeas corpus is granted. The superior court is directed to hold a new bail review hearing.

NOT TO BE PUBLISHED

M. KIM, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.