

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

BRITTANY KNIGHT,

Petitioner,

v.

CASE NO. 4:17cv464-RH/CAS

SHERIFF OF LEON COUNTY,

Respondent.

**ORDER DENYING THE MOTION TO DISMISS,
DENYING WITHOUT PREJUDICE THE
CLASS-CERTIFICATION MOTION, SETTING A
DEADLINE FOR A RENEWED CLASS-CERTIFICATION
MOTION, AND STAYING OTHER PROCEEDINGS**

The petitioner Brittany Knight filed this petition for a writ of habeas corpus while in pretrial detention in the Leon County Jail. She asserts the practice in Leon County of setting unaffordable bail without considering available alternatives—in effect, detaining some criminal defendants but not others based solely on differences in wealth—violates the United States Constitution. Ms. Knight seeks to represent a class of similarly situated detainees. Pending are Ms. Knight’s original and supplemental motions to certify a class, the respondent Sheriff’s motion to

dismiss, cross-motions for summary judgment, and Ms. Knight's motion for a writ of habeas corpus ad testificandum, which would allow her attendance at trial.

A state may properly detain a defendant pending trial when necessary to reasonably assure the defendant's appearance as required and the safety of the community. These are compelling state interests. When detention is permissible under these standards, a state may accomplish the result through an explicit detention order or by setting unaffordable bail. But when detention is not permissible under these standards, unaffordable bail is excessive and impermissibly discriminatory.

This record shows that many defendants are in the respondent Sheriff's custody because of unaffordable bail. But the record does not show how many of those defendants were properly subject to detention based on flight risk or danger to the community. Ms. Knight does not claim, and the record does not indicate, that any state judge has acted from an improper motive. But the record would support a finding that in many instances, state judges have not explicitly considered ability to afford bail in the amount imposed or alternatives to detention that would adequately assure a defendant's appearance as required and the safety of the community. Detaining a defendant—including by imposing unaffordable bail—without considering whether alternatives would adequately serve the state's

interests and without providing notice and an opportunity to be heard on this issue is unconstitutional.

Ms. Knight entered a nolo contendere plea and is serving a sentence; she is no longer in pretrial detention. Her individual claim is not capable of repetition, yet evading review. If a class is certified, the claim may go forward. If not, the case will properly be dismissed as moot. In all other respects, the motion to dismiss is unfounded. No ruling has been made on whether Ms. Knight was properly subject to detention as a flight risk or danger to the community.

The pending class-certification motion, as supplemented, does not address *Brecht v. Abrahamson*, 507 U.S. 619 (1993). *Brecht* holds that a person serving a state sentence may obtain federal habeas relief based on a state-court trial error only if the error “had substantial and injurious effect or influence in determining the” outcome of the state proceeding. *Id.* at 637. This order denies the pending class-certification motion but allows Ms. Knight to file a renewed motion. The memorandum supporting a renewed motion may (and should when feasible) incorporate by reference any applicable portion of the original motion, as supplemented; may address any other matter; should address the applicability of *Brecht* in a habeas challenge to *pretrial detention*; and should address the impact of *Brecht* (if held applicable) on class certification. *See, e.g., Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (identifying a certification issue as not just

whether the claims of class members present common questions but whether class treatment will “generate common answers apt to drive the resolution of the litigation”).

For these reasons and those set out on the record of the hearing on August 23, 2018,

IT IS ORDERED:

1. The motion to certify a class, ECF No. 5, as supplemented, ECF No. 47, is denied without prejudice. The petitioner may file by October 9, 2018, a renewed motion to certify a class.

2. The motion to dismiss, ECF No. 24, is denied. But the case will be dismissed as moot if a class is not certified.

3. The deadline for the respondent and amici to respond to a renewed motion to certify a class is 21 days after the motion is served.

4. The word limit in Local Rule 7.1 applies to each memorandum supporting or opposing a renewed motion.

5. All other proceedings, including any requirement to answer the petition, are stayed until (a) 14 days after entry of an order on any renewed motion to certify a class, or (b) otherwise ordered. A party may move to vacate the stay at any time.

6. The pretrial conference and trial are canceled and will be reset on adequate notice if the case is not fully resolved on motions.

7. The motion for a writ of habeas corpus ad testificandum, ECF No. 118, as amended, ECF No. 119, is denied as moot.

SO ORDERED on August 24, 2018.

s/Robert L. Hinkle
United States District Judge