2026 PA Super 249

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MARVIN WASHINGTON	:	
Petitioner	:	No. 103 WDM 2026

Appeal from the Order Entered August 21, 2026
In the Court of Common Pleas of Allegheny County Criminal Division at No(s): CP-02-MD-0010568-2026

BEFORE: BOWES, J., DUBOW, J., and STEVENS, P.J.E.*

OPINION BY STEVENS, P.J.E.: **FILED: November 3, 2026**

Petitioner Marvin Washington filed a "Petition for Specialized Review Pursuant to Pa.R.A.P. 1610" (hereinafter "PFSR"), seeking review of the order of the Court of Common Pleas of Allegheny County which denied Petitioner's motion for modification of bail. ***See*** Pa.R.A.P. 1610 (providing for review of an order modifying conditions of release before sentence via petition for specialized review); Pa.R.A.P. 1762(b)(2) (providing that an order relating to bail when no appeal is pending shall be subject to review pursuant to Chapter 16 of Rules of Appellate Procedure); ***Interest of N.E.M.***, 311 A.3d 1088 (Pa. 2024) (holding review of a petition for specialized review involving juvenile out-of-home placement order is mandatory); ***Commonwealth v. Miller***, 319 A.3d 575 (Pa. Super. 2024) (applying rationale in ***N.E.M.*** to petitions for specialized review of bail under Rule 1610). As the trial court's denial of

* Former Justice specially assigned to the Superior Court.

Petitioner's request for bail modification was erroneous, we vacate the trial court's order and remand for the trial court to determine whether to impose monetary or nonmonetary bail and to assess what bail conditions are necessary, if any.

On July 21, 2026, Petitioner was charged with Drug Delivery Resulting in Death, Criminal Use of a Communication Facility, Possession of a Controlled Substance, and Delivery of a Controlled Substance.[1] These charges were based on allegations that Petitioner had provided a controlled substance to a woman (hereinafter "the victim"), which led to her fatal overdose.[2]

On July 24, 2026, at Petitioner's arraignment, the magistrate court denied Petitioner bail. Although the preliminary hearing was scheduled for August 6, 2026, it was continued due to the unavailability of Commonwealth witnesses. On August 3, 2026, the trial court again denied Petitioner bail.

On August 5, 2026, Petitioner filed a motion to modify bail, requesting nonmonetary bail with electronic home monitoring. On August 20, 2026, the trial court held a hearing on the motion. At the beginning of the hearing, Taylor Hackett, a representative of Pretrial Services, informed the trial court that Petitioner's criminal record included twelve arrests, one felony conviction, two misdemeanor convictions, and no failures to appear. Notes of Testimony (N.T.), 9/10/26, at 3. Ms. Hackett confirmed Petitioner's felony conviction

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[1] 18 Pa.C.S.A. §§ 2506(a), 7512(a); 35 P.S. § 780-113(a)(16), (30), respectively. The docket shows that while this appeal was pending, the Commonwealth filed its criminal information on October 9, 2026.

[2] The victim's full name was not included in the record provided to this Court.

was from the 1980s. ***Id.*** Ultimately, Ms. Hackett indicated that Pretrial Services recommended no release and no contact with the victim's family. ***Id.***

Defense counsel argued that Petitioner should be granted bail as he was neither a flight risk nor a danger to the community. Defense counsel provided the trial court with the street address where Petitioner lives with his son. ***Id.*** at 3-4. Defense counsel noted Petitioner had to renew his housing that month or risk losing it. ***Id.*** at 4. With respect to the instant case, defense counsel highlighted that Petitioner voluntarily submitted to a police interview and surrendered to police. ***Id.***

While defense counsel acknowledged Petitioner's criminal history, she emphasized Petitioner had no failures to appear in any prosecution, his felony conviction for receiving stolen property was from approximately forty years ago, and Petitioner's most recent conviction was in 2017 for a misdemeanor possession charge. ***Id.*** Defense counsel also noted that Petitioner, a sixty-one-year-old man, did not have any history of drug dealing and no drugs were recovered from his residence. ***Id.***

Further, defense counsel raised evidentiary concerns, claiming the victim's autopsy revealed that other drugs were present in her system that did not match the substance that Petitioner allegedly provided her. ***Id.*** at 4-5. Lastly, defense counsel emphasized that while the underlying incident occurred in September 2024, Petitioner remained within the community for two years without any incident or police contact, showing the Commonwealth itself did not consider Petitioner to be a danger to the community. ***Id.*** at 5.

The trial court asked the prosecutor why there was such a long delay in the filing of the instant charges. ***Id.*** at 8. The prosecutor acknowledged that he did not know the actual basis for the delay as he had not been involved with the investigation of the case. ***Id.*** However, the prosecutor noted that delays are often associated with the prosecution of the charge of Drug Delivery Resulting in Death as such cases require extensive review of medical records and consultation with medical experts to assess causation. ***Id.***

The sole witness presented by the Commonwealth was the victim's mother, Hope Sullivan, who indicated that the victim's ten-year-old son had found the victim lying on the bathroom floor on the night of her overdose. ***Id.*** at 7. Ms. Sullivan indicated that she cried every day as she missed her daughter. ***Id.*** Characterizing Petitioner as a "danger to society," Ms. Sullivan asked that Petitioner be denied bail so that "he can't do this to anyone else's child." ***Id.*** Defense counsel had no questions on cross-examination. ***Id.***

The trial court then asked Ms. Sullivan whether the victim had a history of drug use; Ms. Sullivan responded in the negative, explaining that the victim had undergone brain surgery a year before the incident. ***Id.*** at 7-8. When the trial court asked about the nature of her daughter's relationship with Petitioner, Ms. Sullivan stated that she did not know. ***Id.*** at 8.

Thereafter, the trial court stated it would look over the matter and issue a ruling. ***Id.*** The Commonwealth did not admit any further evidence. Defense counsel asked to clarify for the record that the victim's autopsy reported she had a history of drug use. ***Id.*** The trial court concluded the hearing.

On August 21, 2026, the trial court entered an order denying Petitioner's motion for modification of bail. On September 2, 2026, Petitioner timely filed the PFSR. On September 16, 2026, the Commonwealth filed its response.

In its September 10, 2026 statement of reasons in support of the bail order pursuant to Pa.R.A.P. 1762(e), the trial court set forth several reasons for denying Petitioner bail. First, although the trial court acknowledged the charges against Petitioner, including Drug Delivery Resulting in Death, did not automatically render Petitioner ineligible for bail under 42 Pa.C.S.A. § 5701,[3] the trial court emphasized Petitioner's alleged conduct was a significant factor in causing the victim's death. The trial court highlighted that in recent years, Allegheny County has averaged more than four hundred drug overdose deaths annually. The trial court also noted both the Pretrial Services department and the magisterial district judge recommended no release.

Further, the trial court noted that during the August 20, 2026 bond hearing, defense counsel had referenced factual information that was likely gleaned from the affidavit of probable cause. In order to provide context for such allegations, the trial court *sua sponte* reviewed the affidavit of probable cause which had not been presented at the bond hearing. The trial court noted that the affidavit of probable cause had stated that the prosecution had retrieved text messages between Petitioner and the victim in which Petitioner

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[3] Section 5701 of the Judicial Code, which governs a prisoner's right to bail, is derived from Article 1, Sections 13 and 14 of the Pennsylvania Constitution, which we discuss *infra*.

agreed to provide the victim with drugs, but clarified that he does not do bundles, but rather "only do[e]s bricks." Statement of Reasons, 9/10/26, at 2. Thus, the trial court concluded that Petitioner "presents a danger to the community" and accordingly, bond was denied. ***Id.***

We are guided by the following standard of review: "[t]his Court reviews bail orders for an abuse of discretion, reversing only where the trial court misapplies the law, its judgment is manifestly unreasonable, or the evidence of record shows that its decision is a result of partiality, prejudice, bias, or ill will." ***Commonwealth v. Younger***, 363 A.3d 359, 361-62 (Pa. Super. 2026) (citing ***Commonwealth v. Bishop***, 829 A.2d 1170, 1172 (Pa. Super. 2003)). Our scope of review is limited to the record evidence presented at the bail hearing and the trial court's findings, reviewed in the light most favorable to the prevailing party. ***Commonwealth v. Talley***, 670 Pa. 671, 265 A.3d 485, 527 (2021). We will affirm the trial court's order "if [the court's] factual findings are supported by competent evidence of record, and [its] legal conclusions drawn therefrom are correct." ***Id.***

Article I, Section 14 of the Pennsylvania Constitution, which protects a defendant's right to bail with certain exceptions, provides in relevant part:

> All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great[.]

Pa. Const. art. I, § 14.

In ***Talley***, our Supreme Court analyzed the constitutional right to bail pursuant to Article I, Section 14, concluding as follows:

> [A] trial court may deny bail under Article I[,] Section 14 when the Commonwealth's proffered evidence makes it substantially more likely than not that the accused: (1) committed a capital offense, (2) committed an offense that carries a maximum sentence of life imprisonment, or **(3) presents a danger to any person and the community, which cannot be abated using any available bail conditions**. That determination requires a qualitative assessment of the Commonwealth's case. If the balance of the evidence is rife with uncertainty, legally is incompetent, requires excessive inferential leaps, or lacks any indicia of credibility, it simply is not evident proof, nor can it give rise to a great presumption, that the accused is not entitled to bail.

Talley, 670 Pa. at 738–39, 265 A.3d at 525-26 (emphasis added). "If the Commonwealth fails to satisfy its burden of proof, the trial court cannot deny bail." ***Id.*** at 719, 265 A.3d at 513 (citing ***Commonwealth v. Truesdale***, 449 Pa. 325, 296 A.2d 829, 836 (1972)).

More specifically, the Supreme Court provided that when the Commonwealth seeks to deny bail on the basis of danger the accused poses "to any person and the community," the Commonwealth must demonstrate that "it is **substantially more likely than not** that (1) the accused will harm someone if he is released and that (2) there is no condition of bail within the court's power that reasonably can prevent the defendant from inflicting that harm." ***Talley***, 670 Pa. at 736–37, 265 A.3d at 524–25 (bold in original).

The Supreme Court set forth a non-exhaustive list of factors a trial court should consider in denying bail on the basis that the defendant presents a

danger to any person or the community, including "the defendant's character, relevant behavioral history or past patterns of conduct; the gravity of the charged offense; the conditions of bail reasonably available to the court; and any evidence that tends to show that those conditions would be inadequate to ensure the protection of any person or the community."[4] ***Id.*** at 525.

The ***Talley*** Court clarified the standard of proof required in Article I, Section 14, "'proof is evident or presumption great,' calls for a substantial quantity of legally competent evidence, meaning evidence that is admissible

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[4] Pennsylvania Rule of Criminal Procedure 523, which sets forth criteria for a bail authority to consider in determining whether to release a defendant and what conditions, if any, to impose, contains similar factors, including:

> (1) the nature of the offense charged and any mitigating or aggravating factors that may bear upon the likelihood of conviction and possible penalty;
> (2) the defendant's employment status and history, and financial condition;
> (3) the nature of the defendant's family relationships;
> (4) the length and nature of the defendant's residence in the community, and any past residences;
> (5) the defendant's age, character, reputation, mental condition, and whether addicted to alcohol or drugs;
> (6) if the defendant has previously been released on bail, whether he or she appeared as required and complied with the conditions of the bail bond;
> (7) whether the defendant has any record of flight to avoid arrest or prosecution, or of escape or attempted escape;
> (8) the defendant's prior criminal record;
> (9) any use of false identification; and
> (10) any other factors relevant to whether the defendant will appear as required and comply with the conditions of the bail bond.

Pa.R.Crim.P. 523.

under either the evidentiary rules, or that is encompassed in the criminal rules addressing release criteria." ***Id.*** at 736, 265 A.3d at 524 (citation omitted). The Supreme Court cautioned that "the Commonwealth cannot satisfy the burden of persuasion solely by stacking inference upon inference. Nor can the connection between the evidence and what it seeks to prove be conjectural. The combination of the evidence and inferences must be "reasonable, credible, and of solid value." ***Id.*** at 737, 265 A.3d at 525 (citation and internal quotation marks omitted).

With the foregoing standard in mind, we evaluate Petitioner's claim that the trial court erred in denying Petitioner bail as the Commonwealth did not present sufficient evidence that it is "substantially more likely than not that (1) the accused will harm someone if he is released and that (2) there is no condition of bail within the court's power that reasonable can prevent the defendant from inflicting that harm." PFSR, at ¶ 6 (quoting ***Talley***, ***supra***).

Petitioner claims that the Commonwealth's sole offering – the testimony of the victim's mother – was legally insufficient because she was not present at the time of the alleged offenses, she admitted that she did not know the nature of her daughter's relationship with Petitioner, and she offered nothing probative that Petitioner was a danger to the community or a flight risk. Petitioner argues that because the Commonwealth did not present competent evidence, the trial court was unable to consider the release criteria enumerated in Pa.R.Crim.P. 523(a), as ***Talley*** requires.

Petitioner reiterates his claim that his personal history militates in favor of release. Petitioner asserts that he has no violent criminal convictions, his sole felony conviction dates back to the 1980s, and his most recent conviction is a misdemeanor from 2017, nearly a decade ago. Petitioner also notes that he is sixty-one years old and has had no history of drug dealing. Given that the underlying incident occurred in September 2024 and he remained at liberty for nearly two years without issue or police contact before the charges were filed, Petitioner argues that these circumstances show that even the Commonwealth did not view Petitioner as a danger to the community. Accordingly, Petitioner asks for release on non-monetary bail, either with a no-contact condition as to the victim's family, or alternatively, with electronic home monitoring at his residence with the same no-contact condition.

We find the facts of ***Talley*** are analogous to the case at bar. In ***Talley***, the Supreme Court found that the trial court erred in determining that the Commonwealth met the requisite burden of proof for the denial of bail under Article I, Section 14 when the prosecution solely relied on allegations in the affidavit of probable cause attached to the criminal complaint and did not offer any evidence or testimony to establish that no condition or combination of conditions of bail could protect the community from Petitioner. The Supreme Court found that the trial court did not perform the qualitative assessment required by Article I, Section 14, as it did not consider testimony, exhibits, or other competent evidence; the Supreme Court noted that "[a]n affidavit of probable cause simply is not conducive to assessing the persuasiveness of the

Commonwealth's case" as it contains layered hearsay statements that do not constitute legally competent evidence. ***Id.*** at 741, 265 A.3d at 527-28. As such, the Supreme Court found that the trial court's decision to deny bail was erroneous.

Likewise, in this case, the trial court failed to perform the qualitative analysis under the standards set forth in ***Talley*** by considering sufficient competent evidence in order to justify its decision to deny Petitioner bail. The trial court made no attempt to make any findings with respect to whether the Commonwealth had proven that it is substantially more likely than not that (1) Petitioner would harm someone upon his release and (2) there is no condition of bail within the trial court's power that reasonably can prevent Petitioner from inflicting that harm. ***Talley***, ***supra***.

We acknowledge that the trial court considered the gravity of the offense, the fact that Petitioner has been accused of conduct that was a significant factor in the victim's death, and the statistic that Allegheny County has consistently averaged over four hundred drug overdose deaths annually. The trial court also relied on the fact that the magistrate and Pretrial Services Department recommended no release. The trial court's finding that Petitioner posed a danger to the community was also based on its *sua sponte* review of the affidavit of probable cause in which it noted that the Commonwealth had alleged that it discovered text messages between Petitioner and the victim in which Petitioner agreed to provide the victim with drugs, but indicated that he only did "bricks."

However, pursuant to ***Talley***, the trial court was not permitted to base its finding of Petitioner's dangerousness solely on the hearsay statements set forth in the affidavit of probable cause, which did not constitute competent evidence.[5] The Commonwealth did not refer to the affidavit of probable cause at the bail hearing or attempt to present any documentary evidence or testimony to verify the averments in the probable cause.

In addition, while the trial court focused on the nature of Petitioner's offense and its perception of the strength of the Commonwealth's case against Petitioner on the instant charges, the trial court did not appear to consider the remaining Rule 423(A) factors, including but not limited to, Petitioner's age, character, reputation, mental condition, drug use, and any other evidence relevant to whether Petitioner would appear as required and comply with his bail conditions. We note that the Commonwealth did not attempt to present evidence on the majority of these factors.

Although the trial court heard the recitation of Petitioner's criminal record, the trial court made no attempt to explain how this criminal history factored into his decision that bail should be denied. The trial court did not ask the prosecution to respond to defense counsel's argument that Petitioner was not a flight risk. While the prosecutor presented the testimony of the Ms. Sullivan, the victim's mother, who indicated how distraught she was over the

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[5] The trial court in this case noted that it was "compelled to review" the affidavit of probable cause even though it acknowledged that the reliance on allegations in such affidavit was "frowned upon" by the Supreme Court in ***Talley***. T.C.O. at ¶ 5.

victim's death, Ms. Sullivan admitted she did not have any knowledge about how Petitioner knew her daughter and did not offer any testimony about Petitioner's character or any other factor upon which the trial court could find that Petitioner presented a danger to others if released.

Even assuming *arguendo* that the trial court relied on sufficient competent evidence to conclude it was substantially more likely than not that Petitioner would harm someone upon his release, there is no indication in the record that the trial court made any attempt whatsoever to consider whether there is any condition of bail within the trial court's power that reasonably can prevent Petitioner from inflicting that harm. ***Talley***, ***supra***. The trial court did not evaluate whether the conditions of release suggested by defense counsel (nonmonetary bail with electronic home monitoring) would have been inadequate to abate any potential harm presented by Petitioner. The Commonwealth did not offer any commentary on the feasibility of allowing Petitioner on bail through electronic home monitoring, but simply asked defense counsel at what residential address did Petitioner propose that electronic home monitoring be implemented. N.T. at 5-6.

Thus, the trial court failed to adequately assess whether Petitioner presents a danger to any person or the community which cannot be abated using any available bail conditions. The trial court's failure to conduct an assessment compliant with ***Talley*** was largely influenced by the Commonwealth's failure to present adequate competent evidence to allow the trial court to properly evaluate the bail request. As noted above, "[i]f the

Commonwealth fails to satisfy its burden of proof, the trial court cannot deny bail." ***Talley***, ***supra***. Accordingly, we conclude that the trial court abused its discretion in denying Petitioner's motion for bail modification.

In ***Talley***, the Supreme Court stated that "[w]hen a trial court errs in denying bail to a defendant, the defendant's remedy is limited to an immediate appeal seeking an order for his release pending trial." ***Talley***, 670 Pa. at 743, 265 A.3d at 529 (citing ***Commonwealth v. Abdullah***, 539 Pa. 351, 652 A.2d 811, 813 (1995)).

For the foregoing reasons, we vacate the trial court's order denying Petitioner's motion for bail modification; we remand for the trial court to determine whether to impose monetary or nonmonetary bail and to assess what bail conditions are necessary, if any.[6]

Order vacated. Remanded for further proceedings. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

11/3/2026

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[6] Petitioner shall remain without bail until the trial judge determines which type of bail to impose and whether any bail conditions are necessary.