

PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff-Appellee,)

v.)

JUSSIE SMOLLETT,
Defendant-Appellant.)

Appellate Court No. 22-0322
Appeal to First District Appellate Court
Appeal from the Circuit Court of Cook
County
Circuit Court No. 20 CR 03050-01
Trial Court Judge: Hon. James B. Linn
Date of Judgment: 03/10/22
Date of Post-Trial Motion: 03/10/22
Date of Notice of Appeal: 03/10/22
Felony
In Custody

FILED APPELLATE COURT
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THOMAS D. PALELLA
CLERK OF COURT

**EMERGENCY MOTION TO STAY SENTENCE
AND/OR TO GRANT BAIL PENDING APPEAL**

The Defense, on behalf of Mr. Jussie Smollett, by and through one of his attorneys, Neny E. Uche, pursuant to Illinois Supreme Court Rule 609(a); Rule 361(g); Rule 11 and Illinois First District Rules 3 (B) and Rule 4 (J) respectfully asks this Court to stay Mr. Smollett’s sentence and/or grant bail to the Defendant-Appellant, Jussie Smollett, pending his appeal. The Defendant is requesting this Court act on this motion on 03/11/22, or an otherwise expeditious decision by the appellate Court on a date this Court deems fit as there exist extraordinary circumstances which involve the health and safety of Mr. Smollett being held in custody.

In support, the Defendant-Appellant states as follows:

1. Based upon the facts set forth herein, this matter constitutes an emergency as the circumstance could lead to irreparable damage if the Defendant-Appellant is not heard, instant, prior to the time this matter could be heard on the regular motion call.
2. The Defendant-Appellant, Jussie Smollett (“Smollett”) respectfully asks this Court to stay the sentence imposed by the Trial Court on March 10, 2022.

3. Illinois Supreme Court Rule 609 (a), which states as follows:
 - a. "If an appeal is taken from a judgment following which the defendant is sentenced to imprisonment or periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or from an order revoking or modifying the conditions attached to a sentence of probation or conditional discharge and imposing a sentence of imprisonment or periodic imprisonment, the defendant may be admitted to bail and the sentence or condition of imprisonment or periodic imprisonment stayed, with or without bond, by a judge of the trial or reviewing court. Upon motion showing good cause the reviewing court or a judge thereof may revoke the order of the trial court or order that the amount of bail be increased or decreased."

4. In 2019, the Defendant-Appellant was indicted on multiple disorderly conduct counts in the matter known as People v Smollett filed under case number 19CR0310401 in the Circuit Court of Cook County.

5. Sometime in March, 2019, the Defendant reached an agreement for pre-trial diversion with the Cook County State's Attorney's Office in the above-mentioned 2019 Case.

6. As part of the agreement in the 2019 Case, Mr. Smollett was ordered to complete community service and forfeit his \$10,000 bail bond to the City of Chicago.

7. On March 26, 2019, the Cook County State's Attorney's Office acknowledged Mr. Smollett performed his obligations of the agreement and dismissed the indictments. Attached hereto as Exhibit "1" is a copy of the Certified Statement of Disposition.

8. On February 12, 2020, the Office of Special Prosecutor re-indicted Mr. Smollett on the same multiple disorderly conduct counts based on the same facts as the 2019 case and despite his forfeiting of his \$10,000 bail bond and completing community service.
9. During the pendency of the case, trial and after conviction, Mr. Smollett was released on an I-bond.
10. On December 9, 2021, after a jury trial, Mr. Smollett was convicted on five counts of disorderly conduct.
11. On March 10, 2022, after denying Mr. Smollett's post trial motions the Trial Court sentenced Mr. Smollett to thirty (30) months felony probation with the first 150 days to be served in the custody of the Cook County Jail, entered a order for \$25,000 in fines, and \$120,106 in restitution.
12. On March 10, 2022, Mr. Smollett filed a Notice of Appeal of the March 10, 2022 sentencing and December 9, 2021 conviction.
13. For good cause shown, judicial economy and efficient administration of justice, it is in the best interest of the parties for this reviewing court to stay the enforcement of incarceration of Mr. Smollett, to waive the appeal bond, or in the alternative enter a time for Mr. Smollett to pay a just and reasonable bond.

14. The Appellee is not prejudiced by the granting of this motion.

15. Mr. Smollett has a meritorious appeal, and has exercised due diligence in the quest to have this matter heard on the merits of the case.

16. Specifically, Smollett seeks a stay of the sentence pending appeal due to the double jeopardy he has faced in his 2019 case, and the current conviction in the instant matter under case number 20CR0305001.

17. Smollett filed multiple motions to dismiss between 2019 and 2021 based on breach of contractual obligation and violation of his double jeopardy rights. Attached as Group Exhibit "2" are the sentencing memorandum and sentencing documents, including the original conviction which were filed with the Trial Court, as well as the following Group Exhibit 3; which include, additional motions, including pre-trial motions challenging the appointment of a special prosecutor and the State's Attorney's breach of contract:
 - a. Motion to Dismiss Double Jeopardy
 - b. Motion to Dismiss Based on Contract
 - c. Motion to Dismiss Special Prosecutor

18. In addition, Mr. Smollett has substantial appellate issues and he will be irreparably harmed if he serves a sentence based on convictions which may be reversed on appeal.

See Group Exhibit 4

19. Smollett has become a target of vicious threats in the social media forums which no doubt reflects the hatred and wish for physical harm towards Smollett which he may experience during incarceration.

20. Mr. Smollett anticipates he will most likely be assigned to segregated incarceration or protective custody, both euphemisms for solitary confinement; a situation which could have extraordinary damage on his mental health. As a result, any custodial setting poses a safety and health danger to the life of Mr. Smollett.

21. Specifically, if the stay is not granted, Mr. Smollett will most likely serve the imposed sentence of 150 days in the custody of the Cook County Jail prior to the completion of the appeal thus creating irreparable harm and the issue of incarceration becomes moot to the detriment of Mr. Smollett.

Necessity of an Appeal Bond

22. Illinois Supreme Court Rule 305 (a), which states as follows:

“a. "Stay of Enforcement of Money Judgments. The enforcement of a judgment for money only, or any portion of a judgment which is for money, shall be stayed if a timely notice of appeal is filed and an appeal

bond or other form of security, including, but not limited to, letters of credit, escrow agreements, and certificates of deposit, is presented to, approved by and filed with the court within the time for filing the notice of appeal or within any extension of time granted under paragraph (c) of this rule. Notice of the presentment of the bond or other form of security shall be given by the judgment debtor to all parties....”

23. Appeal bonds ensure that original judgments are paid if an appeal is unsuccessful. These surety bonds discourage individuals who lose cases from filing frivolous appeals and prevent abuse of the appellate system.
24. Mr. Smollett is in a quandary as he is uncertain if an appeal bond is required in this appeal.
25. Given the procedural posture of this case, Mr. Smollett is uncertain if the \$25,000 in fines, and \$120,106 in restitution constitute a money judgment requiring an appeal bond.
26. To the extent a bond is required for this appeal, Mr. Smollett requests this Court waive the appeal bond or this Court enters an order setting a reasonable bond and a date certain for Mr. Smollett to pay the sum.
27. In support of this motion, the affidavit of Dr. Michael Freeman is attached hereto as Exhibit “5”. Dr. Freeman attests to the serious health risk Mr. Smollett faces due to his compromised immune system and the potential exposure of Smollett to COVID 19 virus which has been a serious health issue in the jail and prison system in Illinois.

28. Based upon the foregoing argument, Mr. Smollett seeks an order waiving the appeal bond and stay of sentence pending the appeal.

29. A proposed order is attached.

30. Pursuant to the order of the Trial Court, most of the documents in this case were filed via email to the Court's clerk. As such, we do not have filed stamped copies of all filings. However, the Court's clerk will supply filed stamped copies by the close of business today. Defendant-Appellant can then supplement the record with file stamped versions where file stamps are missing.

WHEREFORE, the Defendant-Appellant Jussie Smollett respectfully prays this Honorable Court:

- A. Grant this Emergency Motion to Stay Sentencing.
- B. Grant this Emergency Motion for bail pending appeal
- C. Grant such other and further relief as this Court deems just and equitable.

Respectfully submitted,

/s/ Nnanenyem E. Uche

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**SUPREME COURT RULE 137 ATTORNEY
CERTIFICATION**

I, Nnanenyem E. Uche, the undersigned attorney, certify that I have read the pleading: that to the best of my knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

/s/ Nnanenyem E. Uche

NNANENYEM E.UCHE

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ORDER

Upon consideration of Defendant-Appellant, NENYE UCHE's Emergency Motion to Stay Sentence and/or for Bail Pending Appeal, pursuant to Illinois Supreme Court Rules 609(a); Rule 361(g); Rule 11 and Illinois First District Rules 3 (B) and Rule 4 (J), the Court being fully advised as to the premises and the parties having notice, IT IS HEREBY ORDERED THAT:

IT IS HEREBY ORDERED that the motion is:

(1) The motion to Stay Sentence is:

GRANTED DENIED

(2) The motion to Set Bail Pending Appeal is:

GRANTED DENIED

ENTERED:

JUDGE

/s/ Nnanenyem E. Uche
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NOTICE OF MOTION

To: Attorney(s) for Plaintiff/Appellee:
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Please take NOTICE that on March 11, 2022, we filed with The Appellate Court of the 1st District the following document:

- **EMERGENCY MOTION TO STAY SENTENCE AND/OR TO GRANT BAIL PENDING APPEAL**

By: /s/ Nnanenyem Uche
Attorney for Defendant-Appellant

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