

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

CIVIL ACTION NO. 85-541

CHAMPION CHANEY, PETITIONER,

VS: REPORT AND RECOMMENDATION

JOHN REES, WARDEN, RESPONDENT.

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In August, 1986, Judge William O. Bertelsman adopted the undersigned's Report and Recommendation and ordered that the petition for a writ of habeas corpus be granted. On September 4, 1986, the respondent's motion for a stay of execution of judgment pending appeal was granted.

Currently pending is the motion of the petitioner for bail pending appeal. Therein, Chaney argues that since the state failed to file objections to one favorable portion of the undersigned's report and recommendation, he is entitled to either retrial or a dismissal of the indictment and, therefore, should have access to bail. This Report and Recommendation is entered after consideration of this motion. Sizemore v. District Court, 735 F.2d 204, 208 (6th Cir. 1984).

A decision on bail under these circumstances is within district court discretion. Fed. R. App. P. 23(c). And at least one district court has held that a state prisoner should not be released on bail pending appeal from the district court's order granting his petition for a writ of habeas corpus, where he faced a prolonged sentence if the conviction was affirmed. United States ex. rel Rice v. Vincent, 486 F.2d 215 (2d Cir. 1973). In this particular instance, the undersigned does not believe that release would be appropriate.

Accordingly, it is RECOMMENDED that the motion for bail be denied.

Objections to this Report and Recommendation must be filed within ten days of the date of entry of the same or further appeal is waived. Fed. R. Civ. P. 72(b). Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), aff'd \_\_\_\_\_ U.S. \_\_\_\_\_ (1984).

This the \_\_\_\_\_ day of November, 1986.

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JOSEPH M. HOOD,  
UNITED STATES MAGISTRATE