

<p>COURT OF APPEALS, STATE OF COLORADO</p> <p>2 East 14th Ave. Denver, CO 80203</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Mesa County District Court Honorable Matthew D. Barrett, Judge Case No. 22CR371</p>	
<p>THE PEOPLE OF THE STATE OF COLORADO,</p> <p>Plaintiff-Appellee,</p> <p>v.</p> <p>TINA PETERS</p> <p>Defendant-Appellant.</p>	<p>Case No. 24CA1951</p>
<p>PHILIP J. WEISER, Attorney General LISA K. MICHAELS, Senior Assistant Attorney General* Registration Number: 38949 Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203 *Counsel of Record</p>	
<p>RESPONSE TO PETITION FOR APPEAL BOND</p>	

The People oppose Ms. Peters’ petition for review of the trial court’s denial of an appeal bond for the following reasons:

I. Ms. Peters has already appealed the trial court’s denial of an appeal bond, and the instant petition for review is also untimely.

Ms. Peters requested an appeal bond in the trial court on October 1, 2024. CF, pp.5108-5112. The court denied the request on the record at the sentencing hearing and in a subsequent written order. TR-10/3/24, pp.100-04; CF, p.5203. On November 17, 2024, Ms. Peters filed a “Motion for bond pending appeal – C.A.R. 9(b)” in this Court.

At the time Ms. Peters filed that motion, C.A.R. 9(b) permitted defendants to request an appeal bond from this Court if the trial court denied release pending appeal.¹ Although Ms. Peters cited C.A.R. 9(b) as the authority under which she filed the previous motion, the substance of the motion sought review of the trial court’s ruling, a request addressed by C.A.R. 9(a).² Specifically, Ms. Peters asserted that

¹ C.A.R. 9(b) was amended effective January 9, 2025, and now permits a defendant to request an appeal bond from this Court only when the trial court fails or refuses to issue an order granting or denying an appeal bond. C.A.R. 9(b) (2026); § 16-4-205, C.R.S. (2026).

² C.A.R. 9(a) was also subsequently amended but still provides the procedures applicable to appellate review of a trial court’s order granting or denying an appeal bond. C.A.R. 9(a) (2026); § 16-4-204, C.R.S. (2026).

“the district court erred when it found that Appellant’s statements made her a danger to the community,” so “the order of the district court denying bond pending appeal must be reversed.” Motion for bond, pp.16-17. She also contended that “[t]he district court abused its discretion by concluding that Appellant ‘lied’ about the risk of computer manipulation” and therefore “abused its discretion when it denied Appellant’s motion for bond pending appeal.” Motion for bond, pp.18-21. The People responded to those arguments with the law and analysis applicable to petitions for review of the trial court’s ruling. *See* Response.

Although Ms. Peters contended in her reply that she was not seeking review of the trial court’s order, she maintained her arguments that the trial court erred, and argued which standard of review would apply if the motion was treated as a petition for review of the trial court’s order. Reply, pp.2-4. Furthermore, Ms. Peters took the position in her federal habeas corpus case that she already appealed the trial court’s decision to this Court. *See* Ex. A (attached), pp.6, 17 (arguing her

claim was exhausted and stating that her arguments to this Court addressed the trial court's decision); *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (exhaustion requires one full round of state's appellate review process). Because the substance of Ms. Peters' prior motion challenged the trial court's ruling, it was a petition for review, regardless of how she attempted to characterize it. *See, e.g., People v. Lopez*, 2025 COA 73, ¶ 10 (holding that the substance of a motion controls how it is designated). And this Court denied that motion on December 6, 2024, thereby upholding the trial court's order.

The People are aware of no authority that provides a second review of the trial court's denial of an appeal bond. Accordingly, this Court should not permit Ms. Peters a second bite of the apple. *Cf. People v. Taylor*, 2018 COA 175, ¶ 1 (denying as successive second motion for collateral review of conviction).

In any event, the instant petition for review is time-barred. Under C.A.R. 4(b), an appeal from the trial court's denial of an appeal bond must be filed within 49 days of the order. *People v. Jenkins*, 2025 COA

90, ¶ 12. The deadline is jurisdictional. *Id.*; *People v. Baker*, 104 P.3d 893, 895 (Colo. 2005). Here, Ms. Peters waited more than a year (i.e., 484 days) to file her motion.

A showing of excusable neglect can excuse a late motion under C.A.R. 4(b)(3), but only if the motion is filed within 35 days of the deadline. *Jenkins*, ¶ 19. Under C.A.R. 26(b), this Court may accept a late appeal for “good cause shown.” *Id.* at ¶ 20. Here however, Ms. Peters has made no attempt to show good cause for her untimely filing.

Moreover, although *Jenkins* was issued after the deadline to appeal the trial court’s order, Ms. Peters has had the benefit of *Jenkins* since November 26, 2025. Yet she waited more than 49 days after it was issued to file the instant petition for review (i.e., 65 days), and has offered no good cause for that delay.

Her attempt to characterize her prior motion as one filed under C.A.R. 9(b) demonstrates that the decision not to timely file a motion for review under C.A.R. 9(a) was strategic rather than the result of

inadvertence. Further, she waited until after her federal habeas petition regarding the denial of appeal bond was dismissed on December 8, 2025, *see* Pet. Ex. 5, to file the instant petition for review. Thus, the delay should not be presumed to be the result of ineffective assistance of counsel. Nor has Ms. Peters asserted it was.

Even if Ms. Peters had attempted to assert good cause, she cannot show it because the totality of the circumstances weigh against it. In determining whether good cause exists to accept a late appeal, this Court must assess the totality of the circumstances. *Jenkins*, ¶ 21. Three nonexclusive factors inform the analysis: (1) the potential prejudice suffered by the People from the late filing; (2) the interests of judicial economy; and (3) the propriety of requiring the defendant to pursue other remedies. *Id.*

Here, accepting Ms. Peters' late filing would both prejudice the People and frustrate the interests of judicial economy. As noted above, over a year has passed since the trial court issued its ruling. And the People have already expended resources in responding to Ms. Peters'

previous motion regarding an appeal bond in this Court, which this Court, in turn, has already reviewed.

Finally, Ms. Peters has already pursued other remedies. In addition to the previous motion she filed in this Court, she challenged this Court's denial of her previous motion in her federal habeas corpus action. *See* Pet. Ex. 5. And that case resulted in the People's expenditure of significant resources as the litigation lasted nine months and required the People to file seven substantive briefs and litigate three motions hearings.

Accordingly, Ms. Peters cannot show good cause for her latest, untimely attempt to challenge the trial court's order.

II. If this Court reviews the petition, it should deny it.

To the extent this Court reviews Ms. Peters' petition, this Court should deny it because the governing statutes preclude her release on an appeal bond. By statute, a court shall not set bail after a conviction unless the court finds that:

(a) the person is unlikely to flee and does not pose a danger to the safety of any person or the community; and

(b) the appeal is not frivolous or is not pursued for the purpose of delay.

§ 16-4-201.5(2), C.R.S. (2026).

If section 16-4-201.5(2) alone does not foreclose an appeal bond, the court shall consider a variety of other factors before granting an appeal bond, specifically:

(a) The nature and circumstances of the offense before the court and the sentence imposed for that offense;

(b) The defendant's length of residence in the community;

(c) The defendant's employment, family ties, character, reputation, and mental condition;

(d) The defendant's past criminal record and record of appearance at court proceedings;

(e) Any showing of intimidation or harassment of witnesses or potential witnesses, or the likelihood that the defendant will harm or threaten any person having a part in the trial resulting in conviction;

(f) Any other criminal charges pending against the defendant and the potential sentences should the defendant be convicted of those charges;

(g) The circumstances of, and sentences imposed in, any criminal case in which the defendant has been convicted but execution stayed pending appeal;

(h) The likelihood that the defendant will commit additional criminal offenses during the pendency of such defendant's appeal; and

(i) The likelihood of success on appeal.

§ 16-4-202(1), C.R.S. (2026).

An appellate court reviews a trial court's order denying an appeal bond for an abuse of discretion. *People v. Gurule*, 174 P.3d 846 (Colo. App. 2007); *see also* § 16-4-201(1)(a), C.R.S. (2026). If the court's factual findings are supported by the record, reversal is not warranted. *See People v. Wright*, 672 P.2d 518, 521 (Colo. 1983). This Court may affirm the trial court's order on any grounds supported by the record. *See Moore v. 4th Jud. Dist. Att'y*, 2024 COA 48, ¶ 5; *accord People v. Dyer*, 2019 COA 161, ¶ 39.

Here, the trial court found that Ms. Peters' likelihood of success on appeal was poor and adopted the prosecution's arguments about her flight risk. TR-10/3/24, p.100:15-24; CF, p.5203. These arguments included that Ms. Peters had access to private planes and took frequent flights around the country during her home detention for another case. CF, pp.5127, 5129. And both the prosecution and the trial court discussed Ms. Peters' disregard of court orders, and the trial court noted during the sentencing hearing that Ms. Peters kicked a police officer who arrested her. TR-10/3/24, pp.85:9-14, 99:9-11; CF, pp.5129

Given the trial court's findings regarding Ms. Peters' flight risk, it was required to deny her request for an appeal bond on this threshold question. *See* § 16-4-201.5(2)(a) (court shall not set bail *unless* it finds defendant is unlikely to flee). And the trial court's assessment on this statutory prong has record support, as discussed, including Ms. Peters' frequent travel, even during home detention; access to private planes; and disregard of court orders.

Consideration of the factors under § 16-4-202(1) was thus unnecessary and any alleged error the court made during that consideration is therefore moot and need not be addressed.

Nevertheless, the trial court also found that: Ms. Peters' likelihood of success on appeal was poor; her criminal conduct had a negative effect on her reputation and community ties; she lacked remorse for her crimes; and she would commit the crimes again if she could. These findings have record support and weigh against granting an appeal bond. TR-10/3/24, pp.97-98, 100:15-24.

Ms. Peters asserts that the "sole[]" basis of the trial court's decision was her allegations of election fraud, in violation of her First Amendment rights. Pet., p.8. As an initial matter, because the trial court's denial of an appeal bond was required under § 16-4-201.5(2)(a) on the threshold question regarding Ms. Peters' flight risk, this Court need not decide whether the trial court's consideration of Ms. Peters' speech violated the First Amendment. The same is also true because

the trial court's findings regarding the statutory factors under § 16-4-202(1) sufficiently support its denial of an appeal bond.

In any event, the trial court did not violate Ms. Peters' First Amendment rights. The trial court explained that it was imposing a sentence that would promote the acceptance of responsibility, deter similar crimes, and contemplate rehabilitation, in addition to punishment. TR-10/3/24, pp.95-96. It also specifically addressed mitigating factors. TR-10/3/24, pp.96-97. While the trial court also considered Ms. Peters' speech and beliefs, no First Amendment violation occurred.

The Supreme Court has held that a trial court does not violate the First Amendment by considering a defendant's protected beliefs and associations in punishing the defendant. *Wisconsin v. Mitchell*, 508 U.S. 476, 486 (1993); accord *Barclay v. Florida*, 463 U.S. 939, 103 (1983). Applying this holding, lower courts have upheld sentences imposed, or enhanced, on the basis of a defendant's speech or beliefs when the speech or beliefs are relevant to the issues at the sentencing hearing.

See United States v. Simkanin, 420 F.3d 397, 417, 419 (5th Cir. 2005) (no First Amendment violation when court increased sentence based on defendant's beliefs and associations, which were directly related to his crimes and demonstrated likelihood of future criminal conduct); *United States v. Smith*, 424 F.3d 992, 1016 (9th Cir. 2005) (no First Amendment violation when court increased sentence based on defendant's speech, which demonstrated lack of remorse and continued willingness to engage in criminal conduct); *Kapadia v. Tally*, 229 F.3d 641, 647-48 (7th Cir. 2000) (no First Amendment violation when court enhanced sentence on basis of defendant's beliefs and speech, which court found relevant to motive and showed lack of remorse).

Neither this Court, nor the Colorado Supreme Court, have found a First Amendment violation when a trial court punished a defendant on the basis of their relevant speech, associations, or beliefs. In fact, divisions of this Court have held that trial courts may properly consider what defendants say during allocution, including whether their statements demonstrate an evasion of responsibility. *See, e.g., People v.*

McBride, 228 P.3d 216, 228 (Colo. App. 2009); *People v. Villarreal*, 131 P.3d 1119, 1129 (Colo. App. 2005).

Here, the trial court imposed the sentence and denied Ms. Peters an appeal bond after considering the allegations of election fraud she presented during her 24-page allocution. TR-10/3/24, pp.67-91, 98-100. The court also considered the allegations of election fraud Ms. Peters made publicly. TR-10/3/24, pp.98-100. Under *Mitchell* and *Barclay*, the trial court did not violate Ms. Peters' First Amendment rights in considering her speech and beliefs when sentencing her, because it found that her speech and beliefs demonstrated a lack of remorse, a willingness to re-offend, a disregard of the law and courts. And, as the court explained, one of the purposes of the sentence was to deter both Ms. Peters and others from engaging in this type of conduct. TR-10/3/24, pp.95-96.

Finally, Ms. Peters states that one of the bases for her petition for review is "changed circumstances at the La Vista Women's Correctional Facility." Pet., p.6. But conditions of confinement are not a proper basis

on which to grant an appeal bond as the statutory factors do not address it. And even if they did, the trial court must have the opportunity to consider it in the first instance; this Court cannot consider it for the first time on appeal. *See* § 16-4-201, et seq; C.A.R. 9; *People v. Kuy Ho Yi*, 741 P.2d 1264, 1265 (Colo. App. 1987). To address those allegations, this Court would have to engage in fact-finding to determine whether to credit Ms. Peters' assertions regarding her conditions of confinement, a function this Court cannot perform. *See, e.g., People In Interest of S.Z.S.*, 2022 COA 133, ¶ 21.

III. Assignment of a new district court judge is not a proper remedy.

Ms. Peters requests that this Court enter an order directing the trial court to assign a different judge to her district court case, Pet., p.13. But Ms. Peters has not filed a motion for disqualification of the current judge, much less any affidavits supporting such a motion. *See* § 16-6-201, C.R.S. (2026) (requiring a verified motion and at least two affidavits); *People v. Vecchio*, 819 P.2d 533, 535 (Colo. App. 1991) (“Whether judicial recusal is required must be determined by the legal

sufficiency of the averments in the motion and affidavits filed by the movant.”). Nor is assignment of a new district court judge a remedy provided under § 16-4-204(3).

WHEREFORE, the People respectfully request that this Court deny the petition for review because it is successive and untimely, and because the trial court’s findings under the governing statutes are supported by the record and preclude the granting of an appeal bond. Furthermore, Ms. Peters’ First Amendment rights were not violated.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **RESPONSE** upon **PETER TICKTIN, JOHN CASE, PATRICK MCSWEENEY, ROBERT CYNKAR**, and all parties herein, via Colorado Courts E-filing System on February 6, 2026.

/s/ Lisa K. Michaels
