IN THE SUPERIOR COURT OF POLK COUNTY
STATE OF GEORGIA

JIMMY BRIAN BLACKMON,	)	
Petitioner,	)	
	)	**CIVIL ACTION FILE**
v.	)	**NUMBER: 2021-CV-132 MHM**
	)	
JOHNNY MOATS,	)	
Respondent.	)	

ORDER ON PETITION FOR WRIT OF MANDAMUS ABSOLUTE

This matter is pending before the undersigned after *sua sponte* recusal by Judge Meng Lim. In this petition, Jimmy Brian Blackmon seeks a *Writ of Mandamus Absolute* against Polk County Sheriff Johnny Moats that would require Sheriff Moats to accept as surety for Blackmon's bond a transfer bond from Carroll County in the amount of $110,200.00 as ordered by Judge Lim, and to immediately release Blackmon from the custody of the Polk County Sheriff's Department. Blackmon also seeks to have Sheriff Moats pay Blackmon's reasonable attorney's fees and costs of bringing litigation.

I. Procedural history-

A. *Arrest and pre-indictment Motion for Bond:*

After an 8-day manhunt which involved the lock down of local schools, law enforcement helicopters, and the assistance of the United States Marshals Service and many local law enforcement officers at significant public expense, Jimmy Brian Blackmon was arrested on his father's property in Carroll County, Georgia, on October 26, 2020. Blackmon was wanted on Polk County warrants alleging the October 18, 2020, murder of his wife, along with possession of a firearm during the commission of a crime, third degree cruelty to children, and influencing a witness.

On November 23, 2020, petitioner Blackmon filed a Motion for Bond in the Superior Court of Polk County in case number 2020-CR-1619-MHL (previously 2020-UN-349-MHL). The Motion for Bond was set for a hearing on December 14, 2020, before Judge Meng Lim.

B. *Blackmon indicted by Polk County grand jury on December 10, 2020*:

Prior to Judge Lim hearing the bond motion, Blackmon was indicted by a Polk County grand jury on December 10, 2020, and stands charged in Polk Superior Court criminal action file number 2020-CR-1619 MHL for the offenses of malice murder of his wife, two counts of felony murder against his wife, family violence aggravated assault against his wife, possession of a firearm by a convicted felon, possession of a firearm during the commission of a felony, and third degree cruelty to children for allegedly murdering his wife with the knowledge that a child was present to hear the act.

C. *Judge Lim commences hearing on Motion for Bond on December 14, 2020*:

After the above indictment was returned by the grand jury, the two-day hearing on Motion for Bond commenced on December 14, 2020.

Judge Meng Lim granted bond to Blackmon with conditions by order filed on December 18, 2020, in the amount of $500,000.00. See Plaintiff's Exhibit #1.

D. *Blackmon's Motion for Bond Reduction*:

On January 5, 2021, Blackmon filed a Motion for Bond Reduction. The motion was set for hearing on January 11, 2021.

By order dated January 12, 2021, Judge Lim reduced Blackmon's bond to the amount of $100,000.00 and amended the bond order to add additional names to the "no-contact" provision of the bond.

As to the type of surety for the bond, Judge Lim's order provided that "upon the Sheriff approving surety, the Defendant shall be released from the Polk County Jail upon the Defendant making a real property bond in the amount of $100,000.00. This bond order requires that the surety be real property." See Plaintiff's Exhibit #2.

E. *Blackmon's first Motion to Amend Bond Order or Clarify Bond*:

On January 19, 2021, Petitioner Blackmon filed a Motion to Amend Bond Order or Clarify Bond. The motion states in part that,

> *7.*
>
> *Despite the clear language of the Amended Order Setting Bond, the Polk County Sheriff is interpreting the bond order to require that only the Defendant's father's property can be used as*

surety. The Amended Order Setting Bond makes no such requirement.

8.

Although the Defendant submits that the Amended Order Setting Bond is clear, the Defendant now moves this Court to amend the current bond order in this case to provide that any property can be used to satisfy the bond order. Alternatively, the Defendant respectfully ***requests that the Court clarify its bond order*** *to provide that* ***any property can be used to satisfy the bond order***. [emphasis added]

Blackmon concluded his motion by asking that Judge Lim "either amend the bond order or clarify the bond order to provide that any property can be used to satisfy the bond order."

On January 28, 2021, Judge Lim issued an order clarifying that the property-only bond must be satisfied using the Petitioner's father's property, which is the father's residence located in Carroll County, Georgia. See Plaintiff's Exhibit #3. Sheriff Moats testified that this is the same Carroll County property at which Blackmon was found when law enforcement arrested him.

F. *Blackmon's second Motion to Amend Bond Order*:

On February 12, 2021, Blackmon filed his second motion for Judge Lim to amend his January 12, 2021, *Amended Bond Order* as well as his January 28, 2021, *Order On Motion to Amend Bond or Clarify Bond.* This motion was motivated by the refusal of Polk County Sheriff Johnny Moats to accept a transfer bond from Carroll County obtained by Petitioner's father Venson Blackmon.

Blackmon's motion requests that Judge Lim "amend the bond order to allow the Defendant to drop the requirement that the bond be posted using the Defendant's father's Carroll County property and that the Defendant be allowed to use a bondsman to post bond."

The motion further requests that Judge Lim amend "the current bond order to provide as follows:

(a) that the Defendant's bond shall be $100,000.00;
(b) *that the Defendant may post bond by using property inside or outside of Polk County, Georgia, by posting cash, or by hiring and*

engaging a bonding company to sign a bond on the Defendant's behalf.

Additionally, the Defendant requests that all other provisions of the bond order, as amended, including provisions regarding a leg monitor and no -contact with certain parties, remain in force.

As of the March 5, 2021, hearing on this mandamus petition, Judge Lim has not yet ruled on Blackmon's second motion filed on February 12, 2021.

G. *Blackmon's Petition for Mandamus Absolute*:

On February 17, 2021, Blackmon filed the Petition for *Writ of Mandamus Absolute* against Sheriff Moats.

Two days later, by order filed on February 19, 2021, Judge Lim, on his own motion, filed his order voluntarily recusing from deciding this matter. This matter was, by standard procedure, reassigned to the undersigned judge.

II. Issue before this Court –

The issue before this Court is very specific.

Blackmon asks this Court to issue a *Writ of Mandamus Absolute* requiring that Sheriff Moats accept Blackmon's transfer bond from Carroll County in the amount of $110,200.00 and to immediately release Blackmon from the custody of the Polk County Sheriff. Blackmon also seeks to have Sheriff Moats pay Blackmon's reasonable attorney's fees and costs of litigation.

It is also important to note that the mandamus action pending before this Court does not involve this Court in any decision about the amount and conditions of bond for Blackmon in the criminal case.

III. Nature of a Petition for *Writ of Mandamus* –

"All official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights..." O.C.G.A. §9-6-20.

"Mandamus is an extraordinary remedy that can be granted only when the petitioner has a clear legal right to the relief sought and no other adequate remedy at law. *She, Inc. v. West,* 269 Ga. 201, 498 S.E.2d 257 (1998).

This Court analyzes these factors below.

A. Blackmon has no clear legal right to the relief sought and does have a remedy at law:

For the reasons stated below, this Court finds that a *writ of mandamus absolute* cannot issue because Blackmon (i) has an adequate remedy at law pending before Judge Lim as well as the right of appeal from Judge Lim's decisions, and (ii) has no clear legal right to the relief sought in this pending Petition for *Writ of Mandamus Absolute.*

1. Blackmon has an adequate remedy at law:

Blackmon has, in fact, already proceeded with his remedy at law. He filed on February 12, 2021, a *Motion to Amend the Bond Order* in Criminal Action 2020-CR-1619-MHL, asking Judge Lim to "amend the bond order to allow the Defendant to drop the requirement that the bond be posted using the Defendant's father's Carroll County property and that the Defendant be allowed to use a bondsman to post bond."

Blackmon further argues in his Motion to Amend the Bond Order currently pending before Judge Lim that,

> *the Polk County Sheriff seeks to assert 'discretion' in denying the validity of the surety presented in the form of a transfer bond. In short, the Polk County Sheriff has decided that he will not accept the transfer bond from Carroll County, Georgia even though it comports with all requirements as set forth by this Court's bond order, as amended, and the bonding provisions of the Polk County Jail. ... Defendant now seeks an order from this Court amending the current bond order to provide as follows: (a) that the Defendant's bond shall be $100,000.00; (b) that the Defendant may post bond by using property inside or outside of Polk County, Georgia, by posting cash, or by hiring and engaging a bonding company to sign a bond on the Defendant's behalf.*

Blackmon further states in Paragraph 6 of his February 12, 2021, motion that,

> *The Defendant submits that amending the bond order to allow for a bonding company to sign the Defendant's bond will more efficiently and quickly resolve the issue as to whether the surety is sufficient. The duly authorized bonding companies in Polk County, Georgia are already approved by the Polk County Sheriff.*
>
> *WHEREFORE, the Defendant prays that the Court amend the bond order to allow the Defendant to use property in Polk County, Georgia and to allow the Defendant to engage a bonding company to sign the Defendant's bond.*

As of the date of the hearing before this Court, Judge Lim has not yet ruled on Blackmon's motion of February 12, 2021.

i. Blackmon's legal remedy is to obtain a modification of that portion of Judge Lim's Order of January 28, 2021, that intrudes upon the sheriff's authority to approve a surety for a bail bond

Judge Lim's most recent *Order On Defendant's Motion to Amend Bond Order/Motion to Clarify Bond Order* filed on January 28, 2021, *requires* that the surety for that bond be the Carroll County real estate owned by Blackmon's father.

In *Jarvis v. J & J Bonding Co.,* 239 Ga. 213, 214, 236 S.E.2d 370, 371 (1977), our Supreme Court reviewed an order from the Superior Court of Dekalb County in which the judge ordered the sheriff "to comply with *court-ordered* standards in approving professional bondsmen..." [emphasis added]

Upon review of the law, the majority of the Supreme Court reversed the Dekalb Superior Court judge's order and sent it back to the superior court judge with the requirement that the judge "reconsider the...original complaint [of the bonding company] in light of the amendment to Code Ann. s 27-418 [currently found at O.C.G.A. §17-6-15], which became effective on March 11, 1977. This act places the authority to accept sureties in felony cases in the office of the sheriff and not in the superior court."

The statute that led to reversal of the superior court judge in the *Jarvis* opinion is currently found in O.C.G.A. §17-6-15(b)(1) and provides that:

> "No person shall be imprisoned under a felony commitment when bail has been fixed, ***if the person tenders and offers to give bond*** in the amount fixed, ***with sureties acceptable to the sheriff of the county in which the alleged offense occurred***; provided, however,

> the sheriff shall publish and make available written rules and regulations defining acceptable sureties and prescribing under what conditions sureties may be accepted." [emphasis added]

Judge Lim's bond order filed on January 28, 2021, "clarifying" the bond for Blackmon, requires that the surety for that bond be the Carroll County real estate owned by Blackmon's father. See Plaintiff's Exhibit #3.

This Court finds that this portion of Judge Lim's order exceeds the lawful authority of any judge setting a pre-trial bond because it goes beyond setting a bond amount, which in Blackmon's case is undoubtedly within the sole authority of the superior court, and declares that the surety shall be the father of Jimmy Blackmon and declares that the property to be put up as surety shall be Carroll County real estate owned by Jimmy Blackmon's father. This portion of the January 28, 2021, bond order is an unlawful intrusion into the authority of Sheriff Moats as declared by our legislature on March 11, 1977, and which as of all times relevant to this case remains in effect in O.C.G.A. §17-6-15(b)(1).

Moreover, that part of Judge Lim's order requiring that the surety be Venson Blackmon's Carroll County property raises the specter of separation of powers issues between a sheriff and the court. "The Georgia Constitution is also clear that one branch cannot subsume another's territory: "The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided." GA. CONST. OF 1983, ART. I, SEC. II, PAR. III. Put plainly, one person cannot perform both executive and judicial functions. See *Brown v. Scott*, 266 Ga. 44, 46, 464 S.E.2d 607 (1995)." *Georgia Dep't of Human Servs. v. Steiner*, 303 Ga. 890, 904, 815 S.E.2d 883, 896 (2018).

In addition to Blackmon's current legal remedy in the form of a ruling by Judge Lim on Blackmon's motion filed February 12, a right of appeal to the Georgia appellate courts is ordinarily an adequate remedy of law preventing mandamus of an action by a Superior Court. *Chandler v. Davis*, 269 Ga. 727, 504 S.E.2d 440 (1998); *Kappelmeier v. Winegarden*, 279 Ga. 874, 621 S.E.2d 452 (2005) (appeal adequate to require vacation of order).

Blackmon also argues that even if Sheriff Moats would approve a professional bonding company posting Blackmon's bond, Blackmon is out of legal remedies because it has been three weeks since he filed his February 12, 2021, *Motion to Amend the Bond Order* filed in Criminal Action 2020-CR-1619-MHL, asking Judge Lim to "amend the bond order to allow the Defendant to drop the requirement that the bond be posted using

the Defendant's father's Carroll County property and that the Defendant be allowed to use a bondsman to post bond" and Judge Lim has not yet ruled. Thus, Blackmon argues that mandamus against Sheriff Moats is his only remedy.

But in this Court's opinion, the remedy here is not mandamus against Sheriff Moats for refusing to approve the transfer bond from Carroll County that Judge Lim requires as surety for the $100,000 bond that Judge Lim set. Mandamus is an extraordinary remedy, and the remedy for a judge who will not rule on a pending motion is not to seek mandamus against another official to enforce an order that overreaches the judge's authority. There are other remedies more focused on inaction by a judicial officer. See, e.g., *Water Visions Intern. v. Tippett Clepper Associates*, 293 Ga.App. 285, 288 (3), 666 S.E.2d 628 (2008); *Fein v. Bessen*, 300 Ga. 25, 29, 793 S.E.2d 76, 80 (2016); *Stubbs v. Carpenter*, 271 Ga. 327, 519 S.E.2d 451 (1999)

Thus, Blackmon's Petition for *Writ of Mandamus Absolute* must be denied because (i) Blackmon has an adequate remedy at law which is pending before Judge Lim and because (ii) mandamus cannot "be granted on a mere suspicion or fear, *before* a refusal to act or the doing of a wrongful act" by Sheriff Moats *after* the entry of an order by Judge Lim that does not intrude upon the authority of a Georgia sheriff, Sheriff Moats in this case, to determine whether a surety is acceptable.

2. Blackmon has no legal right to the relief sought herein:

As plead in this pending Petition for *Writ of Mandamus*, the narrow and specific issue before the Court is that Blackmon must show that he has a clear legal right to approval by Sheriff Moats of the property bond posted by Blackmon's father in Carroll County and transferred to Polk County.

Georgia sheriffs are granted authority "to determine the acceptability of the sureties who write bonds in the county." See *Jarvis v. J & J Bonding Co.*, 239 Ga. 213, 236 S.E.2d 370 (1977).

Mandamus will not issue to compel performance of a discretionary act unless the public official has grossly abused his or her discretion. *Dickerson v. Augusta–Richmond County Comm.*, 271 Ga. 612, 613(1), 523 S.E.2d 310 (1999).

As to discretionary duties, our Supreme Court has explained:

> Where the *act required by law to be done involves the exercise of some degree of official discretion and judgment* upon the part of the officer charged with its performance, the writ of

> mandamus may properly command him to act, or, as is otherwise expressed, may set him in motion; it will not further control or interfere with his action, *nor will it direct him to act in any specific manner.*

Love v. Fulton Cty. Bd. of Tax Assessors, 348 Ga. App. 309, 317, 821 S.E.2d 575, 583 (2018).[emphasis added]

> [A] public official's exercise of discretion will not be disturbed by a mandamus order unless the official's actions were arbitrary, capricious and unreasonable. A mandamus complaint cannot succeed merely by urging that the public action it seeks to compel would be "reasonable"—mandamus is not available to remedy anything other than a public official's (or a public body's) discretionary abuse as evidenced by action that was arbitrary, capricious, and unreasonable.

Riley v. S. LNG, Inc., 300 Ga. 689, 691, 797 S.E.2d 878, 880 (2017)

Proving only a *mere* abuse of discretion is not sufficient to obtain a writ of mandamus. *Burke Cty. v. Askin*, 291 Ga. 697, 697, 732 S.E.2d 416, 417 (2012).

Here, Blackmon has the burden of showing that Sheriff Moats' refusal to approve the Carroll County transfer bond secured by his father's Carroll County real estate was a *gross* abuse of Sheriff Moats' discretion. *Pryor Org., Inc. v. Stewart*, 274 Ga. 487, 487–88, 554 S.E.2d 132, 134 (2001).

A sheriff's discretion is not absolute but is circumscribed by the statutes from which his authority derives. See *Jarvis v. J & J Bonding Co.*, supra. "[T]he legally flawed exercise of discretion is the same as refusal to exercise any discretion, which is a manifest abuse of discretion. [Cits.]" *Wilson v. State Farm Mut. Auto. Ins. Co.*, 239 Ga.App. 168, 172, 520 S.E.2d 917 (1999).

Therefore, this Court must determine whether the evidence before this Court *demands* a finding that Blackmon satisfied the requirements set forth in O.C.G.A. §17–6–15 for approval of a property bond posted by his father with real estate located outside of Polk County, where the crimes alleged occurred. *Pryor Org., Inc. v. Stewart*, 274 Ga. 487, 487–88, 554 S.E.2d 132, 134 (2001).

a. *Did Sheriff Moats grossly abuse his discretion in refusing to accept as surety for Blackmon's bond the Carroll County real property offered by Blackmon's father ?*

> Mandamus will not issue to compel performance of a discretionary *488 act unless the public official has grossly abused his or her discretion....[Blackmon has] the burden of showing that the Sheriff's refusal to ... [approve the Carroll County transfer bond secured by his father's Carroll County real estate] was a gross abuse of his discretion.

Pryor Org., Inc. v. Stewart, 274 Ga. 487, 487–88, 554 S.E.2d 132, 134 (2001).

In connection with this issue, Blackmon argues in his Petition for *Writ of Mandamus* as follows:

> *13.*
>
> *Georgia law is clear that, given the offenses that the Petitioner is accused of committing, the responsibility for determining, setting, or allowing bail for the Petitioner solely lies within the sound discretion of a superior court judge. See Howard v. State, 197 Ga. App. 693, 693 (1990). Accordingly, Sheriff Moat[s] does not have the authority to determine whether or not the Petitioner should be released on bail nor what the conditions of bail must be.*

Blackmon is correct that Sheriff Moats does not have the authority to determine whether the Petitioner *should* be released on bail nor *what the conditions of bail* must be. However, pursuant to O.C.G.A. §17-6-15(b)(1), Sheriff Moats does hold the discretion to decide *whether the sureties offered* by Blackmon for the bond set by Judge Lim *are acceptable.*

i. Georgia law governing the setting, posting, and liabilities of bail bonds:

The general legal principles governing pretrial bail bonds and the legal relationship between the state, the defendant/principle, and the bondsman/surety have been described as follows.

> "A person who puts up a bail bond is a surety who guarantees the appearance of the accused. By posting a bail bond for the accused, the surety willingly takes custody of the accused in place of the state and insures the

state against the risk of flight by accepting responsibility for the consequences thereof. The state is not the bail bond surety's surety. Before allowing release on bail, a court may seek to assure itself that proposed posters or sureties are financially responsible and have "moral suasion" over the defendant."

See 8 C.J.S. Bail § 170. (footnotes omitted)

"It is the duty of an official, in accepting bail, to exercise the greatest care to see that the bond or recognizance he or she accepts is legal in form, that the sureties whose names are signed thereto are the persons they purport to be, and that they are able to respond to the full extent of the penalty thereof in case the principal fails to comply with the conditions. However, the approving officer ordinarily is given considerable discretion, and the applicable law may expressly leave the approval of a tendered bail bond to the discretion of the responsible officer."

See 8 C.J.S. Bail § 171. (footnotes omitted)

"A bail bond is a promise by the surety that the principal will appear before the court in exchange for a promise by the state that it will release the principal. Stated another way, a bail bond is a promise to indemnify the state against the cost of retrieving a criminal defendant who has not appeared for trial. The consideration for a bail bond or other security for bail, as between the people and the sureties thereon, is the release of the defendant charged with a crime, and such release is sufficient consideration for each part of the bond.

A bail bond surety's obligation is defined by its written contract with the state and its principal. In general under a bail bond the state and surety agree that if the state will release the defendant from custody, the surety will undertake that the defendant will appear personally and at a specified time and place, and if the defendant fails to appear at the proper time and place, the surety becomes the absolute debtor of the state for the amount of the bond."

8 C.J.S. Bail § 159 (footnotes omitted)

"A defendant is regarded as being in the custody of his or her surety from the time of execution of the bond until the defendant is discharged, and bail is considered a jail of his or her own choosing. The risk of a defendant not appearing is borne by the bail bond surety and the surety, in order to protect its interest, must take steps to prevent a defendant from absconding. Although the surety is not expected to keep the principal in physical restraint, he or she is expected to keep close track of the principal's

whereabouts and to keep him or her within the state subject to the jurisdiction of the court.

A surety on an appearance bond undertakes an absolute duty to produce the principal at the time set for trial or hearing, and a surety assumes the risk of a defendant's failure to appear. In posting bail for the principal, the surety in effect guarantees that the principal will appear and answer in court; it is on account of this guarantee that if the surety fails to produce its principal at the appointed time, a default will be entered against the principal and surety and the principal's obligation and that of the surety will be forfeited. Under a bail bond, the state and surety agree that if the state will release the defendant from custody, the surety will undertake that the defendant will appear personally and at a specified time and place, and if the defendant fails to appear at the proper time and place, the surety becomes the absolute debtor of the state for the amount of the bond....By contrast, the timely production of the body of the defendant constitutes a showing of good cause why a forfeiture judgment may not be entered against a surety. Also, when a nonappearance is not one that the bail was required to, or did, cover, the surety is not liable on its bond."

8 C.J.S. Bail § 235 (footnotes omitted)

"A bond is a transaction in the nature of a contract among three parties: the State, the principal, and the bondsman. Where one accused of crime is released on bond, he is transferred from the custody of the sheriff to the legal, but friendly, custody of the bail, whose dominion is a continuance of the original imprisonment, but they may at will surrender him again to the custody of the law.... Coleman v. State, 121 Ga. 594, 597(1), (2), 49 S.E. 716 (1905). The principal promises to appear at trial, the State releases the principal,...and the bondsman guarantees the principal's appearance at trial. When the principal returns or is returned to the jurisdiction, all the parties to the contract have performed."

Raburn Bonding Co. v. State, 244 Ga. App. 386, 388, 535 S.E.2d 763, 765 (2000)

"When a person is arrested and released on bond, he is transferred from the custody of the sheriff to the custody of the bondsman. The control of a bondsman over his principal is "a continuance of the original imprisonment." Taylor v. Taintor, 83 U.S. [16 Wall.] 366, 370, 21 L.Ed. 287 (1872); Coleman v. State, 121 Ga. 594, 597, 49 S.E. 716 (1905). Therefore, "[w]hen a prisoner is out on bond he is still under court control, though the bounds of his confinement are enlarged. His bondsmen are his jailers." Carlson v. Landon, 342 U.S. 524, 547, 72 S.Ct. 525, 538, 96 L.Ed. 547 (1952).

> The bondsmen have an interest in ensuring that the principals appear in court, because if they do not appear then the bond will be forfeited. As a result of their custody, bondsmen "have their principal on a string, and may pull the string whenever they please, and render him in their discharge." Taylor, 83 U.S. at 371. If the principal refuses to surrender, the bondsman under common law can lawfully arrest him and **555 return him to the sheriff's custody. Id. at 371; Clark v. Gordon, 82 Ga. 613, 616, 9 S.E. 333 (1889); Bennett v. State, 169 Ga.App. 85, 311 S.E.2d 513 (1983). See Gray v. Strickland, 163 Ala. 344, 50 So. 152, 153 (Ala. 1909)."
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> *Harper v. State*, 338 Ga. App. 535, 536–37, 790 S.E.2d 552, 554–55 (2016), rev'd, on other grounds by 303 Ga. 144, 810 S.E.2d 484 (2018).

In Georgia, the legal duties in setting and posting bail bonds are divided between judges and sheriffs.

a. Role of the judge in setting a bond-

"The amount of bail to be assessed in each criminal case is generally within the sound discretion of the trial judge, whose decision will not be reversed on appeal absent a clear abuse of that discretion. O.C.G.A. §17-6-1 (Code Ann § 27-901); *Jones v. Grimes*, 219 Ga. 585 (134 SE2d 790) (1964).

When fixing the amount of bail, the judge is to consider chiefly the probability that the accused, if freed, will appear at trial; other factors to be considered include the accused's ability to pay, the seriousness of the offense, and the accused's character and reputation. *Howard v. State*, 197 Ga. App. 693, 693, 399 S.E.2d 283, 284 (1990).

A superior court judge, not a sheriff or county, controls the bail procedure for [murder], the offense for which [Blackmon sought] bond. O.C.G.A. §17–6–1(a)(11). Neither ...[the Sheriff...] nor [the] County [have] any responsibility for determining, setting, or allowing bail for [Blackmon] ." *Washington v. Jefferson Cty.*, 221 Ga. App. 81, 82, 470 S.E.2d 714, 715 (1996).

b. Role of the sheriff once a bond is set-

Once a judge sets a bond, "O.C.G.A. §17–6–15(b) provides statutory authority for a sheriff to make the determination of the acceptability of a surety. [Sheriff Moats' decision as to] approval of the surety on [Blackmon's] bond involved the use of judgment and was thus a discretionary function..." *Washington v. Jefferson Cty.*, 221 Ga. App. 81, 82, 470 S.E.2d 714, 716 (1996).

O.C.G.A. §17-6-1 (e)(4) states that ***"[a]ny bond issued by an elected judge*** or judge sitting by designation ***that purports a dollar amount shall be executed in the full-face amount of such bond through secured means*** as provided for in Code Section 17-6-4 [cash bonds] or 17-6-50 [a professional bondsperson] **or** shall be executed ***by use of property as approved by the sheriff in the county where the offense was committed.***" [emphasis added]

O.C.G.A. §17-6-1 (j) provides that "[f]or all persons who have been authorized by law or the court to be released on bail, sheriffs and constables shall accept such bail; ***provided, however, that the sureties tendered and offered on the bond are approved by the sheriff*** of the county in which the offense was committed." [emphasis added]

The law cited above creates a clear dividing line between the authority of the judge and the authority of the sheriff. The judge holds the authority to determine whether to set bail, and if so the amount as well as the form of bail, such as cash, professional bondsman, or real property. At this point, the work of the judge is complete.

It then falls upon the sheriff to decide whether to approve the proposed surety for bond set by the judge. The importance of the sheriff's decision concerning the acceptance of the surety is obvious given that the surety takes on the responsibility to insure the state against the risk of the defendant's flight from justice by accepting responsibility for the consequences thereof.

In addition to the plain language found in O.C.G.A. §17-6-1 and O.C.G.A. §17-6-15 granting to sheriffs the authority to determine the acceptability of sureties for bail bonds, there are clear practical reasons for vesting this responsibility with the sheriff and not the judge. One only needs to read through the Polk Sheriff's rules and regulations for property bonds (see Plaintiff's Exhibit #4) to see how complex this decision can be. The officer deciding whether to approve a parcel of real property as surety for a property bond must consider the following, at a minimum:

1. What is the bondperson's interest in the real property, if any? Property interests that may or may not be proper to serve as surety include survivorship, executor/executrix, family limited partnerships, life estates, joint tenants with right of survivorship, individuals who pay tax bills for the property but have no ownership interest, land under covenants, business-owned property, land with unknown heirs who have ownership interests, land with mobile homes, and land with multiple owners.

2. Once the ownership interests are clarified, then the fair market value of the property must be assessed.
3. Once the FMV is determined, then must be determined the nature, type, and amounts of any and all liens on the property, including mortgages, court judgments, second mortgages, and any previously posted court appearance bonds for which the parcel has been used and which remain in effect.
4. Next, the bonding office must determine whether all ad valorem taxes have been paid for the subject property.

This Court is unaware of any judicial officers who have the staff, data, and time to analyze the above details for every bond order issued by those judicial officers.

Moreover, nowhere in Judge Lim's third order (Plaintiff's Exhibit #3) nor in his two previous bond orders are there any findings of fact as to the viability of Venson Blackmon's Carroll County real property to serve as surety for Jimmy Blackmon's $100,000 bond in light of all of Sheriff Moats' rules and regulations set out in Plaintiff's Exhibit #4.

Blackmon further argues that:

> *14.*
>
> *Most importantly, for all persons who have been authorized by law or a court to be released on bail, "sheriffs and constables shall accept such bail...."* Bunyon v. Burke Cty., 306 F. Supp. 2d 1240, 1249 (S.D. Ga. 2004) [citing O.C.G.A. § 17–6–1(j)], aff'd sub nom. *Bunyon v. Burke Cty.*, Ga., 116 Fed. Appx. 249 (11th Cir. 2004).

Plaintiff cites for support the *Bunyon* opinion's statement that "Most importantly, for all persons who have been authorized by law or a court to be released on bail, 'sheriffs and constables **shall accept such bail**....' Id. §17–6–1(j)." [emphasis added].

But in *Bunyon*, the plaintiff/criminal defendant Bunyon "was charged with the misdemeanor of underage drinking." The legal standard for bond in felony cases such as Blackmon's where he is charged with among other crimes, the malice murder of his wife, is different than for misdemeanor bonds which was the issue in the *Bunyon* opinion.

Blackmon further argues that:

15.

Furthermore, Georgia law does not prohibit the posting of property bonds and a sheriff may not prohibit the posting of property bonds. See O.C.G.A. §17–6–15 (b)(3).

While it is correct that a sheriff may not categorically prohibit the posting of property bonds, it is clear that, as stated by the Eleventh Circuit Court of Appeals,

> "[w]ith regard to determining who is an 'acceptable surety' to write bonds in their respective counties, Georgia sheriffs have a statutory mandate to exercise broad discretion. The extensive discretion of sheriffs is plainly evident in Georgia statutes:
>
> (a) "Code section shall not be construed to require a sheriff to accept a professional bonding company or bondsperson as a surety." O.C.G.A. § 17–6–15(b)(2);
>
> (b) Sheriffs can create additional rules and regulations to determine "under what conditions sureties may be accepted." O.C.G.A. § 17–6–15(b)(1);
>
> (c) "If the sheriff determines that a professional bonding company is an acceptable surety, the rules and regulations shall require, but shall not be limited to, the following [list of rules]." O.C.G.A. § 17–6–15(b)(1)(H); and
>
> (d) A professional bondman "must" be approved by the "sheriff in the county where the bonding business is conducted." O.C.G.A. § 17–6–50(b), (b)(4).
>
> Under these statutes, the sheriff has discretion to decide whether a candidate is acceptable, and the statute "shall not" require a sheriff to accept any specific applicant. Therefore, even if an applicant met the minimum requirements for a certificate of authority prescribed by statute, it cannot claim any entitlement to that certificate because the statute expressly provides for the sheriff to exercise discretion to decide, generally, how many, and specifically, to which, applicants the sheriff will issue certificates. Because of this grant of discretion to the sheriff, the Georgia Supreme Court has held that an applicant for authority to be a professional bondsman does not have a constitutionally protected right. *Harrison v. Wigington,* 269 Ga. 388, 497 S.E.2d 568, 569 (1998). In sum, A.A.A.'s mere unilateral expectation that its application might be accepted in the Sheriff's discretion does not qualify *525 as a constitutionally protected property interest.

A.A.A. Always Open Bail Bonds, Inc. v. DeKalb Cty., Georgia, 129 F. App'x 522, 524–25 (11th Cir. 2005).

As concerning the posting of property bonds as surety for pretrial bail, Georgia law provides at O.C.G.A. §17-6-15(b)(3) that said code section,

> shall not be construed to ***prevent*** the posting of real property bonds and the sheriff ***may not prohibit*** the posting of property bonds. ***Additional requirements for the use of real property may be determined at the discretion of the sheriff.*** The sheriff shall ***not prohibit a nonresident of the county from posting a real property bond if such real property is located in the county in which it is offered as bond and if*** such property has ***sufficient unencumbered equity*** to satisfy the sheriff's posted rules and regulations as to acceptable sureties.
> [emphasis added]

This Court concludes that Georgia law assigns to the sheriff considerable discretion in determining the requirements for the use of real property as surety for a bail bond.

Blackmon further argues that:

> *16.*
>
> *Sheriff Moat[s] willfully refuses to accept Petitioner's bail and property bond, as ordered by the Court. This refusal is a violation of Sheriff Moats' ministerial duties.*

This Court finds that a sheriff's decision as to whether to accept a specific surety is not a ministerial duty or act but is a discretionary act.

"Whether the acts upon which liability is predicated are ministerial or discretionary is determined by the facts of the particular case." *Woodard v. Laurens County*, 265 Ga. 404, 406, 456 S.E.2d 581, 583 (1995) (quoting *Gilbert v. Richardson*, 264 Ga. 744, 753, 452 S.E.2d 476, 483 (1994)). "Generally, the determination of whether an action is discretionary or ministerial depends on the character of the specific actions complained of, not the general nature of the job, and is to be made on a case-by-case basis." *Wright v. Ashe*, 220 Ga. App. 91, 93, 469 S.E.2d 268, 270-71 (1996) (citation omitted). Acts which are rote and do not require personal decision-making will generally be considered ministerial, while "[a] discretionary act . . . calls for the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed." *Vertner v. Gerber*, 198 Ga. App. 645, 646, 402 S.E.2d 315, 316 (1991).

"O.C.G.A. §17–6–15(b) provides statutory authority for a sheriff to make the determination of the acceptability of a surety. [A sheriff's] ... approval of the surety on [a defendant's]...bond involve[s] the use of judgment and [is] thus a discretionary function..." *Washington v. Jefferson Cty.*, 221 Ga. App. 81, 82, 470 S.E.2d 714, 716 (1996)

This Court finds that a sheriff's decision whether to approve surety for a bond is not a ministerial act but is a discretionary act.

Blackmon further argues that:

> *17.*
>
> *Sheriff Moats' willful refusal to accept Petitioner's bail and property bond amounts to a violation of Petitioner's right to be free from excessive bail under the Eighth Amendment to the United States Constitution and Article 1, Section 1, Paragraph 17 of the Georgia Constitution. See Jones v. Grimes, 219 Ga. 585, 587 (1964) ("Excessive bail is the equivalent of a refusal to grant bail.").*

Blackmon has not shown that Sheriff Moats has refused *all* sureties reasonably available to Blackmon, because Judge Lim has not yet ruled on Blackmon's pending motion in the criminal case to use a professional bondsman. Thus, Blackmon has not established facts upon which this Court could even consider that a total refusal to accept any surety would amount to a violation of Petitioner's right to be free from excessive bail under the Eighth Amendment to the United States Constitution and Article 1, Section 1, Paragraph 17 of the Georgia Constitution.

Moreover, while Blackmon cites to *Jones v. Grimes*, 219 Ga. 585, 587 (1964), that opinion also acknowledges that,

> 'The gist of the problem confronting a court in setting the amount of bail is to place the amount high enough to reasonably assure the presence of the defendant when it is required, and at the same time to avoid a figure higher than that reasonably calculated to fulfill this purpose, and therefore excessive.' 8 Am.Jur.2nd p. 824, § 70. Many factors are to be considered in fixing bail, some of which are ability of the defendant to give bail, the seriousness of the offense, penalty, character and reputation of the accused, health, probability of the defendant appearing to serve sentence, forfeiture of other bonds, and whether a fugitive. See 8 Am.Jur.2nd p. 824, § 71.
> 'In setting the amount of bail, the principal factor considered, to the determination of which most other factors are directed, is the

> probability of the appearance of the accused, or of his flight to avoid punishment.'
>
> *Jones v. Grimes*, 219 Ga. 585, 587, 134 S.E.2d 790, 792 (1964).

Blackmon further argues that:

> *18.*
>
> *Upon information and belief, Sheriff Moat[s] may attempt to argue that he has discretion to make the determination of the acceptability of a surety pursuant to O.C.G.A. § 17–6–15(b)(3). However, a sheriff may only exercise such discretion in accordance with the sheriff's "posted rules and regulations as to acceptable sureties." See §17–6–15 (b)(3).*

Blackmon's argument here, reduced to its essential logic, is that if the sheriff fails to "publish and make available written rules and regulations defining acceptable sureties and prescribing under what conditions sureties may be accepted" then the sheriff has *no* discretion to decide whether *any* surety is unacceptable. The logical conclusion of this argument is that the sheriff who does not publish or make rules and regulations about sureties is a sheriff who must mechanically and mindlessly approve any and all sureties that are tendered by defendants.

But logically at the outset, a sheriff's discretion must precede a sheriff's written policy, for a set of rules written before a sheriff exercises the thought and judgment inherent in discretionary decisions (see *Vertner v. Gerber*, 198 Ga. App. 645, 646, 402 S.E.2d 315, 316 (1991)) concerning the types of sureties to approve would amount to little more than gibberish.

The only other "logical" option would be to expect that a new sheriff must possess the gift of omniscience so that he or she would have the ability to accurately predict all future events and thereby create a comprehensive set of rules and regulations governing the acceptance of sureties that would never be met with an unforeseen situation.

Moreover, a set of rules and regulations for bail bonds that is unyielding to new circumstances would cease to be workable policy and would, like Judge Lim's third order, remove all future discretion from the sheriff. Indeed, such an approach to written bonding rules would, ironically, lock up a sheriff's discretion to that moment in time when those rules were set down, and prevent a sheriff from responding to uncommon events or those of first impression. Even our most cherished legal documents, such as our Declaration of Independence and the Constitution of the United States, were set down in writing *after*

human experience made the need for them apparent. And our U.S. Constitution has seen multiple amendments adopted after the need for them became clear and desirable.

Statutes should not be given an apparent literal meaning leading to unreasonable, extraordinary, unjust, or absurd consequences. *In re Blalock*, 31 F.2d 612 (1929).

A review of the "rules and regulations" requirement of O.C.G.A. § 17–6–15(b) leads to the conclusion that the specific factors that make up such rules and regulations are primarily addressing the approval of professional bonding companies. The Court has found no Georgia opinion, and Blackmon has cited none, addressing what legal and practical consequences flow from a sheriff's total failure to "publish and make available written rules and regulations defining acceptable sureties and prescribing under what conditions sureties may be accepted" when it comes to the posting of bond other than by professional bonding companies. But such is not the situation before this Court because the Polk County Sheriff's Office does indeed have in place written rules and regulations for property bonds and transfer bonds. See Plaintiff's Exhibit #4. The only circumstance relevant to Blackmon's Petition that is not addressed in Plaintiff's Exhibit #4 is the use of a transfer property bond for defendants charged with malice murder and related serious felonies.

As to the situation where a "person tenders and offers to give bond in the amount fixed," O.C.G.A. §17-6-15 states that,

i. The sureties must be acceptable to the sheriff of the county in which the alleged offense occurred; O.C.G.A. §17-6-15 (b)(1)
ii. the sheriff shall publish and make available written rules and regulations defining acceptable sureties and prescribing under what conditions sureties may be accepted. O.C.G.A. §17-6-15 (b)(1)
iii. O.C.G.A. §17-6-15 shall not be construed to prevent the posting of real property bonds; O.C.G.A. §17-6-15 (b)(3)
iv. The sheriff may not prohibit the posting of property bonds. O.C.G.A. §17-6-15 (b)(3).
v. Additional requirements for the use of real property may be determined at the discretion of the sheriff. O.C.G.A. §17-6-15 (b)(3).
vi. Pursuant to O.C.G.A. §17-6-15 (b)(3), the sheriff shall not prohibit a *nonresident* of the county from posting a real property bond if
    a. such real property *is located in the county in which it is offered as bond* and
    b. if such property has sufficient unencumbered equity to satisfy the sheriff's posted rules and regulations as to acceptable sureties.

These statutory requirements do not explicitly require the sheriff to make a set of rules that can never be amended, nor is a method prescribed setting out a procedure for adjusting or modifying the sheriff's rules in response to new or changing circumstances. Moreover, there is no requirement as to whether publication of the rules must precede or follow the sheriff's exercise of discretion. Logic would dictate that any set of responsible and workable rules would be the product of a sheriff's discretion, insofar as mortals have enough training and experience to address in a written document the majority of circumstances that can expect to be encountered. But no mortal should be expected to be a clairvoyant. O.C.G.A. §1-3-1(c) provides that "[a] substantial compliance with any statutory requirement, especially on the part of public officers, shall be deemed and held sufficient, and no proceeding shall be declared void for want of such compliance, unless expressly so provided by law."

In fact, as to the rules for professional bonding companies, the statutory requirements for the sheriff's rules include the following statements - "the rules and regulations shall require, but shall not be limited to, the following" seven various topics, concluding with the statement allowing "[a]dditional criteria and requirements for approving and regulating bonding companies to be determined at the discretion of the sheriff." O.C.G.A. §17-6-15 (b)(1).

Moreover, even with the requirement for such rules and regulations, O.C.G.A. §17-6-15 (b)(2) states that "[t]his Code section shall not be construed to require a sheriff to accept a professional bonding company or bondsperson as a surety."

When O.C.G.A. §17-6-15 addresses property bonds, it provides that "[a]dditional requirements for the use of real property may be determined at the discretion of the sheriff. The sheriff shall not prohibit a nonresident of the county from posting a real property bond if such real property is located in the county in which it is offered as bond and if such property has sufficient unencumbered equity to satisfy the sheriff's posted rules and regulations as to acceptable sureties." O.C.G.A. §17-6-15 (b)(3).

Clearly from the plain language of the statute, a sheriff has considerable discretion. Notably, the only element of a property bond that has to be addressed by "the sheriff's posted rules and regulations as to acceptable sureties" is that the "property has sufficient unencumbered equity."

Moreover, the statute is silent as to the offer of *out-of-county* property as surety. As a result of that silence, a sheriff arguably has no obligation to accept or consider a nonresident of the county when that non-resident offers as surety a real property bond for real property located *outside* the county in which it is offered as bond. *Compare* O.C.G.A. §17-6-15 (b)(3). "The maxim '*expressio unius est, exclusio alterius,*' the express

mention of one thing implies the exclusion of another, is frequently quoted in our courts....A maxim very nearly identical with it, to wit, *expressum facit cessare tacitum*, applies more particularly in the construction of statutes. This maxim then only means, 'that if you expressly name (in a deed or other contract, for example) some, out of certain requisites, the inference is stronger that those omitted are intended to be excluded, than if none at all had been mentioned.' -*Broom's Legal Maxims*, 278-9, 280; 9 A. and E. 953. The inference drawn from the fact of specification is stronger but not conclusive, that all other things are excluded." *Bailey v. Lumpkin*, 1 Ga. 392, 403 (1846).

Blackmon further argues that:

> *19.*
>
> *Sheriff Moat[s] has willfully ignored, and will continue to willfully ignore, his own posted rules and regulations as to the acceptable sureties in Polk County. Sheriff Moat[s] has chosen to apply a new and unique set of rules as it concerns any surety which is attempted to be posted for Petitioner's bail, and only Petitioner's bail, to wit: No surety will ever be acceptable.*

Blackmon argues here that "Sheriff Moat[s] has willfully ignored, ***and will continue to willfully ignore***, his own posted rules and regulations as to the acceptable sureties in Polk County. Sheriff Moat[s] has chosen to apply a new and unique set of rules as it concerns any surety which is attempted to be posted for Petitioner's bail, and only Petitioner's bail, to wit: ***No surety will ever be acceptable***." [emphasis added]

But the evidence before this Court does not establish that Sheriff Moats *has refused or will refuse* to approve *any* surety or *all* sureties subsequent to the filing of a bond order by Judge Lim that sets a specific bond amount and that allows Blackmon to "post bond by using property inside or outside of Polk County, Georgia, by posting cash, or by hiring and engaging a bonding company to sign a bond on the Defendant's behalf."

Sheriff Moats testified that if Judge Lim ordered that the surety for the bond set by Judge Lim was to be provided by a professional bonding company, that he would not disapprove of such, and would allow an approved bonding company to post Blackmon's bond in the amount set by Judge Lim, even though he would remain in strong disagreement with Judge Lim that allowing Blackmon out on a $100,000 bond is in the best interests of community safety.

O.C.G.A. §9-6-26 provides that mandamus "will not be granted when it is manifest that the writ would, for any cause, be nugatory or fruitless, nor will it be granted on a mere suspicion or fear, *before* a refusal to act or the doing of a wrongful act." [emphasis added]

Blackmon argues further that:

> *20.*
>
> *Sheriff Moat[s] has grossly abused any discretion he may have concerning the acceptability of surety and he has acted in manner that is entirely arbitrary, capricious, and unreasonable.*

Under what circumstances could a court find that such discretion has been grossly abused? Clearly it has to be more than the mere fact that a criminal defendant's proposed and tendered surety is disapproved by the sheriff.

In assessing whether Sheriff Moats has grossly abused his discretion, this Court applies the same standard of review in a mandamus proceeding as is applied to judicial review of an administrative board's decision. O.C.G.A. § 50–13–19(h)(6). *Carnes v. Charlock Investments (USA), Inc.*, 258 Ga. 771, 373 S.E.2d 742 (1988). As stated in footnote 1 of the *Carnes* opinion:

> "In closing the road, the Board acted as an administrative body. OCGA § 50–13–19(h)(6) specifies that in reviewing an administrative decision, the trial court may not substitute its judgment for the Board's on questions of fact, but may reverse if the administrative decision is "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."
>
> Here, Charlock sought a mandamus, not judicial review of the Board's decision. However, the same standard of review applies. The trial court must affirm the Board's decision unless the Board acted arbitrarily, capriciously, and unreasonably.
>
> This is the same standard of review required in constitutional due process analysis. See e.g., *Barrett v. Hamby*, 235 Ga. 262, 265, 219 S.E.2d 399 (1975); *City of Atlanta v. Wansley Moving & Storage Co.*, 245 Ga. 794, 796, 267 S.E.2d 234 (1980). Whether the Board abused its discretion is a question of law...."

> "[I]f arbitrary and capricious action is alleged the [reviewing] court must determine whether a rational basis exists for the decision made. This is a question of law." (Citations and punctuation omitted.) *Gwinnett Hosp.*, 262 Ga.App. at 883, 586 S.E.2d 762, quoting *Sawyer v. Reheis*, 213 Ga.App. 727, 729–730(2), 445 S.E.2d 837 (1994). The same case defines "arbitrary" as
>
> > fixed or done capriciously or at pleasure; without adequate determining principle; not founded

> in the nature of things; non-rational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic.

Ne. Georgia Med. Ctr., Inc. v. Winder HMA, Inc., 303 Ga. App. 50, 58, 693 S.E.2d 110, 116 (2010).

With the above standard of review and legal principles in mind, the Court finds from the testimony of Sheriff Moats that he exercised his discretion and refused approval of the Carroll County transfer bond from Mr. Blackmon's father for the following reasons.

(i) The unwritten practice of the Polk County Sheriff's Office has been to never accept a transfer bond on a murder charge. This practice has never been placed in writing because it has rarely been suggested. The record before this Court does not identify where the idea originated for a Carroll County transfer bond of Mr. Venson Blackmon's real property. Because Judge Lim made the decision to grant Blackmon's bond and ordered that it be secured with Venson Blackmon's Carroll County residence but recused from this case and did not testify before this Court, this Court is left to gain whatever insight is available from the record in making this decision. It appears to this Court that the idea of the Carroll County transfer bond originated with Judge Lim, not Sheriff Moats, so the potential for finding that Sheriff Moats' arbitrarily and capriciously denied the Carroll County transfer bond is greatly diminished.

(ii) Sheriff Moats testified that an 8-day manhunt for Blackmon ensued after he became the suspect in his wife's murder. The manhunt required that local schools be placed on lockdown and also required the assistance of the United States Marshals Service to locate Blackmon. Blackmon was eventually found and arrested while hiding out on the Carroll County property of his father Venson Blackmon, the same property that Blackmon has tendered to Sheriff Moats as surety for his bail bond. Sheriff Moats stated that he was surprised that Venson Blackmon was not facing charges in Carroll County for harboring his son Jimmy Blackmon as a fugitive.

(iii) Sheriff Moats noted that Venson Blackmon's Carroll County property has no debt attached to it and that Judge Lim's bond of $100,000 is half the appraised value of the property. Moats' concern is that if Venson Blackmon is not committed to seeing his son appear in Polk Superior court and allows him to abscond, he could easily use the remaining equity in that property to

> borrow the amount at risk of bond forfeiture to avoid the loss of his land, which in Moats' judgment would be a small price for a father to pay to see his son have a chance to escape the potential life sentence for malice murder. Therefore, Sheriff Moats concluded that Venson Blackmon was not a reliable person to take on the legal obligation and commitment as surety to the State of Georgia to ensure that his son Jimmy Blackmon returns to face justice in Polk Superior Court for malice murder.

Upon this Court's review of the reasons offered by Sheriff Moats for disapproving Venson Blackmon and his property as surety for Jimmy Blackmon's bond, this Court concludes that Sheriff Moats' discretionary decision does not exhibit any indicators that it was "fixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things; non-rational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic." *Ne. Georgia Med. Ctr., Inc. v. Winder HMA, Inc.*, 303 Ga. App. 50, 58, 693 S.E.2d 110, 116 (2010).

Therefore, this Court concludes that Sheriff Moats' decision to not approve the Carroll County transfer bond of Venson Blackmon was not a gross abuse of his discretion.

Even if Sheriff Moats had opened and inspected the Carroll County transfer bond when Venson Blackmon first attempted to deliver it at the Polk County jail, this Court is of the opinion that his refusal of it would not have been a gross abuse of his discretion, for the following reasons.

Petitioner's Exhibit # 6 is the Carroll County transfer bond as delivered in a sealed envelope to Venson Blackmon by the Carroll County Sheriff's Office and opened for the first time in the presence of the Court and all parties at the mandamus hearing before this Court.

Petitioner's Exhibit # 4 is the Polk County Sheriff's Office written rules and regulations governing property bonds and transfer bonds as they existed at all times relevant to this Petition for *Writ of Mandamus*.

Upon review of this Petitioner's Exhibit #6, the Court finds that Blackmon's father, Joulis Venson Blackmon, was granted power of attorney by Linda Faye Blackmon on April 16, 2020. Both individuals list 2562 Horsley Mill Road in Carrollton, Georgia, as their residence address on that power of attorney.

The record before this Court does not establish the relationship between Venson Blackmon and Linda Faye Blackmon beyond that of principal and agent, and ultimately as conservator of her estate.

Notably, on the transfer Appearance Bond (T.A.B.) prepared by the Carroll County Sheriff's Office, the surety is listed as "Vinson Blackmon" which is a different name than "Venson Blackmon." Moreover, the T.A.B. is signed by "Vinson J. Blackmon" of an address listed as 2562 Horsley Mill Road in Carrollton, Georgia.

This name differs from the name used on the Power of Attorney for Linda Faye Blackmon – "Joulis Venson Blackmon." Moreover, "Joulis Venson Blackmon" is the name listed on the Georgia driver's license photocopy appearing on the paperwork that constitutes part of Linda Faye Blackmon's power of attorney.

Polk Sheriff's Office policy for transfer bonds, contained on unnumbered pages found within Plaintiff's Exhibit #4, states that "[i]f the bond is not correct, return it and tell the person they will have to get it re-done at that counties (sic) jail....If everything checks out on the transfer bond...," then the jail officer is authorized to complete the bonding and release process.

Polk Sheriff's Office policy for property bonds, contained on unnumbered pages within Plaintiff's Exhibit #4, addresses multiple types of property interests and ownership situations with written policy statements as to which forms of property ownership and interests are not acceptable for a property bond. On an unnumbered page contained within Plaintiff's Exhibit #4 is a table listing the types of interests in property that can and cannot be used to post a property bond. Among the situations that will not be approved for a property bond are the following: survivorship, executor/executrix, family limited, life estate, JTWS, C/O (yes for the owner, no for the C/O). Not listed is the situation presented by the Carroll County transfer bond, which is one executed by a person holding a power of attorney.

But based upon the Polk Sheriff's rules and regulations contained in Plaintiff's Exhibit #4, this Court is of the opinion that it would not be a gross abuse of discretion for Sheriff Moats to disapprove and reject the Carroll County transfer bond on the grounds that (i) it is executed by a person holding a power of attorney, and/or (ii) the Carroll County T.A.B. names and bears the signature of a "Vinson J. Blackmon" as the surety that does not match perfectly with the name of the agent in the Power of Attorney granted by Linda Faye Blackmon to "Joulis Venson Blackmon."

For reasons stated above, this Court finds that Sheriff Moats has not grossly abused his discretion and has not acted in manner that is entirely arbitrary, capricious, and unreasonable.

Blackmon further states in his motion that

> *"[w]hile acknowledging that Sheriff Moat[s] may take the stance that he has discretion in determining whether to accept Petitioner's bail and property bond, Petitioner does not concede that the Sheriff has such discretion. Petitioner takes the position that any construction or interpretation of O.C.G.A. § 17–6–15 or 17-6-1 which gives Sheriff Moat the discretion to reject, modify, or alter the terms of the Court's bond orders is wholly unconstitutional. Furthermore, the Court has the duty to reject a construction of a statute which will result in unreasonable consequences or absurd results not contemplated by the legislature. General Electric Credit Corp. of Ga. v. Brooks, 242 Ga. 109, 112 (1978)."*

This Court finds that a resolution of Blackmon's Petition for *Writ of Mandamus* does not require this Court to conclude that Sheriff Moats has the discretion to "reject, modify, or alter the terms of ... [Judge Lim's] bond orders." Rather, the resolution of this petition hinges in part on the recognition that Judge Lim's most recent bond order, Petitioner's Exhibit #3, as discussed above, unlawfully intrudes upon the authority given to Sheriff Moats by Georgia law to decide what surety is acceptable for posting the bond for the dollar amount lawfully set by Judge Lim.

IV. Blackmon's claim for attorney's fees is denied -

Having concluded that Petitioner Jimmy Brian Blackmon is not entitled to a writ of mandamus absolute against Sheriff Johnny Moats, Blackmon's claim for expenses and attorney's fees against Moats is DENIED.

CONCLUSION

The writ of mandamus absolute is an extraordinary remedy. Because plaintiff Blackmon has a remedy at law, because he has no absolute right to the approval of and acceptance by Sheriff Moats of Venson Blackmon's transfer bond from Carroll County in the amount of $110,200.00, nor to his immediate release from the custody of the Polk County Sheriff's Department, and because the evidence does not establish that Sheriff Johnny Moats has grossly abused the discretion granted to him by Georgia law, the petition for writ of mandamus absolute is HEREBY DENIED.

Accordingly, Blackmon's request that Sheriff Johnny Moats pay the enumerated attorneys' fees and expenses related to the bringing of this petition is also DENIED.

It is SO ORDERED this 8th day of March, 2021.

Hon. Mark H. Murphy
Judge, Polk Superior Court
Tallapoosa Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing ORDER by depositing same in the United States Mail with adequate postage thereon and properly addressed upon the following, unless otherwise noted:

Christopher P. Twyman, Esq.
711 Broad Street
Rome, Georgia 30161
Via Peachcourt

Johnny Moats, Sheriff
1676 Rockmart Highway
Cedartown, Georgia 30125
Via Peachcourt

This 8th day of March, 2021.

Heather Prescott
Polk County Superior Court