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55/01/08 Dr. Sam Moves To Gain Release

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DR. SAM MOVES TO GAIN RELEASE

Drops 'New Evidence' Bid;
Hearing to Be Jan. 17

BY SANFORD WATZMAN

Withdrawing one motion and filing another, Dr. Samuel H. Sheppard asked the Court of Appeals late yesterday to free him on bail.

The county prosecutor's office retorted that it would oppose this action because Dr. Sheppard is not a "bailable" person. Assistant County Prosecutor Saul S. Danaceau cited sections of the criminal code to support this contention.

A hearing on the bail motion, which includes also a request that the postponement of Dr. Sam's life-imprisonment sentence be extended, will be held a week from Monday at Lakeside Avenue Courthouse.

Seen Leaving Door Open

Abandoned for the time being was the attempt to get a new trial for Dr. Sheppard on the ground of "newly discovered evidence." A hearing on that issue had been scheduled for this morning in the courtroom of Common Pleas Judge Edward Blythin.

Defense Chief William J. Corrigan asked Judge Blythin yesterday morning, before the suicide of Mrs. Richard A. Sheppard, to dismiss the new-evidence motion "without prejudice." Since this matter could be heard any time within 120 days dating from the conviction Corrigan apparently was leaving the road open to renew this action should he deem it advisable.

It was Judge Blythin who ordered that execution of Dr. Sheppard's sentence be stayed. This order will remain in effect until the Court of Appeals rules on the same question.

In the meantime Dr. Sheppard, who was convicted of second-degree murder in the killing

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of his wife, Marilyn, will be kept in County Jail, accumulating no credit toward his penitentiary term.

At the same time Corrigan filed in the higher court notice that he would appeal the conviction. This document indicated that the appeal would be argued on questions of law, and was taken also as indicating that facts in the case would not be disputed as such.

The appeal will be considered by the three-judge appellate bench entirely apart from the bail and sentence-postponement questions.

Danaceau Cites Code

Observers were of the opinion that, because of the present state of the docket and the 2,000,000-word record of the trial, a ruling on the appeal would not be forthcoming until the summer or fall.

Prosecutor Danaceau cited a section of the criminal code, referring to the trial court, which reads in part: "In all bailable cases, except those in which the punishment is imprisonment for life, such judge may release the defendant upon a recognizance . . ."

In another section of the code, Danaceau pointed out, it is stated that a higher court "has the same power and authority to . . . admit the defendant to bail . . ." as is provided for the trial court.

Laws Untested

Since the lower court is prohibited by law in life-imprisonment cases from setting bail, Danaceau asserted, the Court of Appeals, having only "the same power," could not do it, either.

The laws governing this issue became effective Oct. 1, 1953, and have not yet been tested in court action, Danaceau added.

In withdrawing his new-evidence motion, Corrigan gave no reason to the prosecutors or Judge Blythin and would not discuss the matter with reporters.

The new evidence, if any, has not been revealed by the Shepard family or any member of the defense staff.