

ENTRY ORDER

SUPREME COURT DOCKET NO. 2021-182

AUGUST TERM, 2021

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	Superior Court, Franklin Unit,
	}	Criminal Division
	}	
Adam Tatro	}	DOCKET NO. 21-CR-02367

Trial Judge: Howard A. Kalfus

In the above-entitled cause, the Clerk will enter:

¶ 1. Pursuant to 13 V.S.A. § 7556(b), defendant Adam Tatro appeals the trial court’s order setting bail in this case at \$5000, cash or surety. Because the trial court relied on a misreading of defendant’s criminal-history record in concluding that this amount was necessary to mitigate his risk of flight, we reverse and remand the matter to the trial court to review the bail decision anew.

¶ 2. In March 2021, defendant was charged with violation of an abuse-prevention order, see 13 V.S.A. § 1030(a); aggravated stalking in violation of a court order, see 13 V.S.A. § 1063(a)(1); attempted burglary, see 13 V.S.A. § 1201(a) and § 9; unlawful mischief resulting in property damage exceeding \$250, see 13 V.S.A. § 3701(b); and violation of conditions of release, see 13 V.S.A. § 7559(e). At his arraignment, the court set bail at \$5000 on the basis of defendant’s “record of nonappearance on at least three convictions for acts of violence and apparent inability to conform his conduct to the orders of the court.”

¶ 3. In July 2021, defendant filed a motion to review bail under 13 V.S.A. § 7554(d). At a hearing on this motion, defendant argued that bail was unnecessary to mitigate his risk of flight and requested that it be struck upon confirmation of his admission to a residential substance-abuse treatment program. The court rejected defendant’s request, concluding that \$5000 cash or surety bail was the least-restrictive condition which could reasonably assure defendant’s appearance in this matter. It indicated that its ruling was based on consideration of “the seriousness of the charges in these cases; defendant’s three prior failures to appear for court; [audio interference] his record, which includes three felonies, twelve misdemeanors, eight violations of probation.”

¶ 4. Defendant appeals from this decision, arguing that (1) the court based its conclusion that cash or surety was necessary to mitigate defendant’s risk of flight on an incorrect reading of his criminal-history record; and (2) the court erred when it did not set forth reasoning supporting the conclusion that a secured or unsecured appearance bond would not suffice to mitigate the risk

of flight rather than the more-restrictive requirement of cash bail or surety bond. Because I conclude that the matter must be remanded as a result of the former issue, I do not reach the latter.¹

¶ 5. Under 13 V.S.A. § 7554(a)(1), any person charged with an offense—but not held without bail under §§ 7553 or 7553a—shall be released on personal recognizance or an unsecured appearance bond “unless the judicial officer determines that such a release will not reasonably mitigate the risk of flight from prosecution.” “ ‘Flight from prosecution’ means any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings.” 13 V.S.A. § 7576(9) (“ ‘Flight from prosecution’ means any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings.”). To take the measure of the risk of flight presented, the court “shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged.” 13 V.S.A. § 7554(a)(1).

¶ 6. If the court determines that defendant poses a flight risk, it must impose the least restrictive condition or combination of conditions which will reasonably mitigate that risk. *Id.* These conditions include, “[u]pon consideration of the defendant’s financial means,” the option to “require the execution of a surety bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.” 13 V.S.A. § 7554(a)(1)(E). In determining which conditions to impose, the court must also consider

the nature and circumstances of the offense charged; the weight of the evidence against the accused; the accused’s employment; financial resources, including the accused’s ability to post bail; the accused’s character and mental condition; the accused’s length of residence in the community; and the accused’s record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

13 V.S.A. § 7554(b)(1). Where, as here, a person is detained as a result of his inability to meet the resulting conditions, he is entitled to have those conditions reviewed by the trial court. 13 V.S.A. § 7554(d)(1). If the court declines to amend the conditions as requested by defendant, it must set forth “a reasonable basis for continuing the conditions imposed.” *Id.*

¶ 7. We review the trial court’s bail-review decision for an abuse of discretion. *State v. Rougeau*, 2019 VT 18, ¶ 14, 209 Vt. 535. We must affirm its order “if it is supported by the proceedings below.” 13 V.S.A. § 7556(b). “If the factors relied upon are a ‘reasonable basis’ for continuing the condition imposed, then the court has done all that it must.” *Rougeau*, 2019 VT 18, ¶ 17.

¶ 8. Here, defendant argues that the trial court erred in its assessment of his criminal-history record in two respects. First, he contends that the court based its decision on an incorrect belief that defendant failed to appear for court on three separate occasions, when, in fact, all of

¹ At the hearing on this bail appeal, defendant requested the Court to take judicial notice of COVID-19 conditions within the State correctional system. In light of the remand, we also do not reach this issue.

these failures to appear took place on a single day. The State agrees that the three failures to appear all arose from a single incident involving three cases, rather than a failure to appear on three separate dates. Second, defendant argues that the court erred in finding that he violated conditions of probation on eight occasions. The State concedes that the criminal-history record the court relied on reflects that defendant was not—as the court stated in support of its conclusion—convicted of violating his conditions of probation eight times. The State agrees that this matter should be remanded to the trial court for renewed consideration of defendant’s motion to review bail based on an accurate assessment of his criminal-history record.

¶ 9. The trial court’s misunderstanding of defendant’s criminal record cannot form the required “reasonable basis” to continue the challenged bail amount.² See Rougeau, 2019 VT 18, ¶ 17. Therefore, the order must be reversed and the matter remanded for the trial court to review bail on the basis of a corrected understanding of the record. At that time, the court shall determine whether defendant poses a flight risk, and, if so, impose the least restrictive condition or combination of conditions which will reasonably mitigate that risk

Reversed and remanded. Mandate to issue forthwith.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

² The trial court’s misunderstanding surrounding defendant’s probation violations serves as the basis for this conclusion. As this, alone, requires remand, I do not consider whether the court’s statement that defendant had “three prior failures to appear for court” reflected an understanding that each of these failures took place on a single day.