ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-272

JULY TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
Randy Francis	}	
	}	DOCKET NOS. 794-2-03, 262-1-03, and
	}	7920-121-02 Cncr
	}	
		Trial Judge: Linda Levitt

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

Defendant Randy Francis appeals from the district court's denial of his "Motion for Bail Review." Defendant was convicted and sentenced for three crimes in May 2003. He was released on probation in July 2005. His probation was revoked in December 2007, and he was ordered to serve the remaining balance of his sentence with "credit for time served according to law." Defendant contends that the Department of Corrections (DOC) has incorrectly calculated his sentence, and that he should have been released in May 2008, having served his maximum sentence. That contention, first raised via V.R.C.P. 75 motion in the Superior Court, is the subject of a currently pending direct appeal in this Court. In connection with a motion to expedite our review of that appeal, defendant requested that he be released on "personal recognizance bail" pending resolution of the appeal. The motion to expedite was granted; in the order granting the motion to expedite, it was noted that, if defendant wished to pursue his request to be released on "bail" pending resolution of the appeal, he should file "appropriate bail-review motions" in the district court. Defendant then filed a motion for bail review in the district court. The motion was denied after hearing, and defendant appealed.

As the above makes clear, the procedural posture here is quite unusual. Defendant's request for "bail," coming as it did long after his conviction and the revocation of his probation, does not fit within our bail statutes. See generally 13 V.S.A. §§ 7551 et seq. (providing for release for persons "charged with" criminal offenses). Defendant's notice of appeal cites § 7556(b), which does not clearly apply to defendant under these facts. Defendant did not file a motion for release under V.R.Cr.P. 46(c), which governs release pending appeal. That Rule would appear to apply more directly in this situation, as it allows "a motion for release" to be filed "at any time" after the filing of a notice of appeal. Rule 46 directs that motions for release pending appeal shall be evaluated based on the standards announced in 13 V.S.A. § 7554, which governs release prior to trial. Similarly, were we to treat the appeal as one arising under

§ 7556(b), our review would be to determine whether the district court's denial of the motion was "supported by the proceedings below" based on the standards in § 7554.[*]

In any event, although the precise standard to be applied in these circumstances is not obvious, there is no difficulty affirming the trial court's denial of defendant's motion. The trial court noted that defendant had not stated what standard should apply to the motion, and that he himself had styled it a "Motion for Bail Review." Thus, the trial court did not err in proceeding to conclude that defendant's motion would fail under any bail-review standard, in light of defendant's eight prior failures to appear, his multiple violations of probation and parole, his lengthy felony record, and the fact that the only averment made by the defense was that defendant was likely to appear for future court proceedings because he had lived in the area all his life. The court, in its oral ruling, appears to have applied the standards in 13 V.S.A. § 7554. That section provides that criminal defendants shall be ordered released "unless the judicial officer determines that such a release will not reasonably assure the appearance of the person," in which case the officer shall "impose the least restrictive combination of . . . conditions which will reasonably assure the appearance of the person." In light of defendant's failure to offer any alternative standard, it was not error for the district court to rely on the standard in 13 V.S.A. § 7554. The district court's decision is affirmed.

Affirmed.

FOR THE COURT:

Paul L. Reiber, Chief Justice

[*] Defendant contends for the first time on appeal that the proper standard is the one applied to requests for civil injunctions, but the claim was not raised before the trial court. We therefore decline to consider it.