

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-336

SEPTEMBER TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Washington Circuit
	}	
Peter J. Quist	}	DOCKET NO. 229-2-07
	}	
	}	Trial Judge: M. Patricia Zimmerman

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

Defendant was convicted by a jury of twelve felonies and two misdemeanors for failure to file and pay state income taxes. Following the trial, the district court conducted a bail review hearing pursuant to 13 V.S.A. § 7574 regarding defendant’s terms and conditions of release pending sentencing and post-trial motions. The court imposed a condition that defendant post \$100,000 cash or surety. Unable to make bail in that amount, defendant was detained and appealed the bail condition to this Court. Subsequent to that filing, but prior to this Court hearing his appeal, defendant’s parents posted the bail on defendant’s behalf.

Our review of conditions of release is limited by statute. 13 V.S.A. § 7556(b). We affirm the district court’s order “if it is supported by the proceedings below.” *Id.* Under the governing statute, “where there is sufficient evidence to demonstrate a substantial risk that a defendant will not show up for [scheduled court appearances], conditions, monetary or otherwise, to insure his return are indicated.” *State v. Roessell*, 132 Vt. 634, 636 (1974). In this case, the court found that defendant was a risk of flight for a variety of reasons: first, defendant previously failed to appear for jury draw; second, defendant’s trial testimony, exhibits and belated discovery of purportedly exculpatory documents suggested a lack of reliability; and third, the multiplicity of his convictions. Based on its perceived risk of flight, the district court imposed the \$100,000 bail. We affirm.

The court’s findings and perception are supported by the record. The record confirms that defendant failed to appear for jury selection, necessitating his arrest and delaying the proceedings for about a month. The trial court’s post-trial characterization of defendant’s testimony as “somewhat odd” is, considered in the context of the case history, cross-examination, and content of the defense documents offered into evidence, a thinly veiled comment on defendant’s lack of credibility. Such comment is equally justified by the record, including defendant’s explanation of his discovery, virtually on the eve of trial, of copies of exonerating documents that had eluded him for some year and a half preceding trial; his explanation of a \$5,000 tax payment check mailed in 2005 that had yet to clear by the time of

trial, but had prompted no inquiry by defendant; and his reference to copies of federal income tax returns which, according to the state's rebuttal evidence, were never filed. The court's treatment of defendant as less than reliable was not untenable. Finally, defendant does stand convicted of multiple felonies and misdemeanors presenting potential incarceration for up to thirty-eight years. 32 V.S.A. § 5894 (c) (twelve counts at up to three years each) and (d) (two counts at up to one year each).

Risk of flight, as well as the trial court's conclusion that defendant's appearance cannot reasonably be guaranteed without a significant financial investment in his compliance, is supported by the proceedings below. Exposure to significant incarceration gives rise to a logical risk of flight. Defendant's unreliability, coupled with his actual failure to appear in disregard of the court's order in the past, aggravates that risk. In addition, no evidence appears on the record that defendant has family ties to secure him to the community, and defendant leases, but owns no property in the state. Under all of the circumstances presented below, imposition of \$100,000 bail was not patently unreasonable.

FOR THE COURT:

Brian L. Burgess, Associate Justice