VERMONT SUPREME COURT
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DEC 17 2008

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-463

DECEMBER TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
John Winn	}	
	}	DOCKET NO. 688-06-07 Frcr; 807-7-08
	}	Frcr
	}	
		Trial Judge: Michael S. Kupersmith

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

Defendant John Winn, who stands charged with aggravated murder and second-degree murder, appeals from the district court's order imposing a $100,000 bail requirement and other conditions of release. He requests that the bail amount be reduced. Defendant contends that the findings below are insufficient to support the increase, and that the increase of the bail amount was outside the scope of this Court's August 22, 2008 remand. We consider the arguments in turn, recounting additional facts as necessary.

Defendant appealed, in early August of this year, from the district court's decision to hold him without bail. A single-Justice panel of this Court concluded that the record was inadequate to support the hold-without-bail order, and accordingly reversed that order. See State v. Winn, 2008-321 (Aug. 22, 2008) (mem.) The conditions in place prior to the hold-without-bail order were reimposed, and the matter was remanded for the "limited purpose of considering whether additional conditions are required under [13 V.S.A.] § 7554." The prior conditions included bail of $35,000.

Upon remand, the district court conducted two days of hearings. A recording of a 911 call from defendant's wife was received into evidence. During the call, Mrs. Winn stated that defendant was getting ready to leave the state. She further stated that defendant had told her that he would either kill himself or leave the state rather than go to jail. Mrs. Winn's probation officer also testified that Mrs. Winn had told her that defendant had been drinking and using drugs, in violation of his conditions of release, and that defendant had threatened to kill Mrs. Winn's then-boyfriend. Mrs. Winn testified that she did not remember making these statements to her probation officer, and further testified that she had not told the truth to the 911 operator. The trial court found that Mrs. Winn's in-court statements were not truthful, but that the statements to the probation officer and the 911 operator were.

Mrs. Winn also testified that she had visited defendant several times during his conditional release, and that during those visits he had twice smoked marijuana with her—in violation of his conditions—and gone for a walk with her in the woods—also in violation of his conditions. The district court credited this testimony, found that defendant had violated his conditions of release, and concluded that the defendant's future appearance would not be guaranteed by the conditions in place. Accordingly, the court increased the bail amount to $100,000 and imposed other additional conditions.

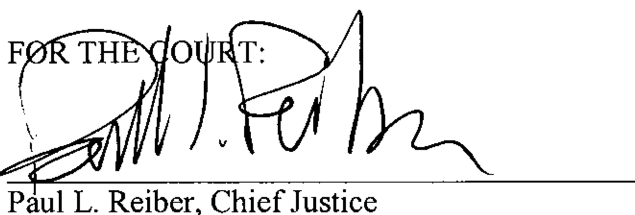
Defendant first contends that the findings below are insufficient to support the increased bail amount. A higher bail amount may be justified, however, when conditions change after the original bail amount is imposed. See, e.g., State v. Cardinal, 147 Vt. 461 (1986) (increased bail amount justified by new charges, which increased risk of nonappearance). Here, the trial court found—and defendant does not contest the finding—that after the $35,000 bail amount was set, defendant stated that he would leave the state rather than go to jail. The judge was certainly within his discretion in concluding, based upon this, that $35,000 was not sufficient to guarantee defendant's appearance at trial—indeed, defendant's statement clearly implied as much—and that a higher bail amount should be imposed.

Defendant also argues that the August 22, 2008 remand was limited to the question of whether "additional conditions" were appropriate, and that the bail amount is not a "condition." This contention is contrary to the plain language of the bail statutes. The statute governing release prior to trial, to cite one example, expressly includes an "appearance bond" as a "condition" of release. See 13 V.S.A. § 7554. Our published bail decisions also uniformly treat bail as a "condition" under the statutes. See, e.g., State v. Webb, 132 Vt. 418 (1974) (referring to bail as a "condition of release"). The trial court, therefore, acted within the scope of our mandate on remand.

The order increasing the bail amount was supported by the proceedings below and it was fully consonant with our law. It is hereby affirmed.

Affirmed.

FOR THE COURT:



Paul L. Reiber, Chief Justice