

ENTRY ORDER

AUG 11 2009

SUPREME COURT DOCKET NO. 2009-266

AUGUST TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
Jabari V. Peterson	}	
	}	DOCKET NO. 1571-4-09 Cncr
	}	
	}	Trial Judge: Ben W. Joseph

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

Defendant Jabari V. Peterson appeals the district court's most recent bail order in this case, entered upon remand by this Court after defendant's appeal of a similar order. Defendant argues that the \$100,000 bail amount set by the district court upon remand was excessive and unsupported by the record. We affirm.

Defendant faces three counts of violating 18 V.S.A. § 4231(b)(1) and one count of violating 13 V.S.A. § 1404(c)(5) in connection with the State's allegations that he sold crack cocaine to a police informant. At his May 26, 2009 arraignment, the court set bail at \$100,000. Defendant moved pursuant to 13 V.S.A. § 7554(d)(1) to have his bail reviewed. The court, Judge A. Gregory Rainville presiding, upheld the bail set, summarily concluding that the weight of the evidence against defendant as well as the fact that defendant resides out of state supported bail in the amount of \$100,000.

Defendant subsequently appealed Judge Rainville's order, arguing that the \$100,000 bail amount was excessive. We reversed and remanded, reasoning that "there [was] no evidence in the record as to how the court arrived at \$100,000 as an appropriate amount of bail; that is, there is no explained relation between the amount of bail set by the court and the risk of flight posed by defendant." We continued:

While the fact that a defendant resides out of state may, as a general matter, support a higher bail amount, here, this general consideration must be weighed against the fact that defendant has, in the past, appeared in court when called and considered along with the other factors enumerated in 13 V.S.A. § 7554(b). The record simply does not reflect such an analysis. Therefore, we reverse and remand the case for reconsideration and a clearer statement of the basis for the amount of bail set.

Upon remand, on July 24, 2009, the court held another bail hearing. No evidence was taken, but attorneys for both parties made arguments to the court. Specifically, defendant's attorney pointed out that defendant has two children with his partner in Brooklyn, New York, where he also is on a list for union work. Defendant's attorney noted that defendant had appeared in court in Vermont when released on \$10,000 bail in connection with a previous cocaine possession charge, and that defendant had a sister who lived in Vermont. Defendant's attorney argued that defendant's ties to his family and community in New York City made the risk of flight small; specifically, defendant's attorney argued that these ties gave him adequate incentive "to work within the system, as opposed to just taking off and living life on the run, trying to stay one step ahead of everybody." Defense counsel suggested that \$15,000 would be an appropriate amount of bail in this case.

The State's attorney acknowledged that defendant had a record of appearing in connection with a prior matter, but pointed out that defendant has now been charged with multiple counts of selling crack cocaine and with more serious crimes. The State cited the affidavit of probable cause as indicating that defendant has a motor vehicle registered to another person, "a common tactic used by persons who sell drugs to avoid being surveilled by the police," and a separate address in Plattsburgh, New York. The State's attorney concluded that "those two facts point out that [defendant] has a number of avenues to go to in case he chose to leave the state." The State's attorney also noted that there was no evidence that defendant had steady employment, and questioned how he was keeping steady employment in New York and selling drugs in Vermont at the same time.

In a written decision dated July 30, 2009, the trial court engaged in a discussion in which it concluded as follows: that the weight of the evidence against defendant was great; that the evidence suggested that defendant made his living selling illegal drugs, rather than at steady employment in New York City; and that defendant faced exposure of up to twenty years in prison. The court also reasoned that while defendant had appeared as directed in connection with the prior possession charge, the charges in this case were more serious, and while the previous possession charge "was dismissed after a motion to suppress . . . was granted," it "does not appear likely that he will be able to avoid conviction" in this case. The Court concluded that a bond of \$100,000 was required to assure defendant's appearance for trial. No mention was made of defendant's family ties in New York or Vermont.

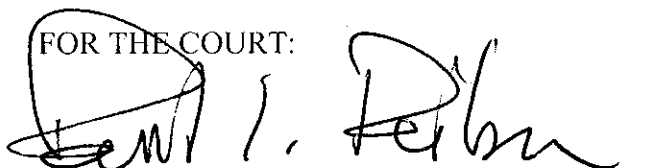
We will affirm a trial court's bail decision regarding conditions of release, including bail amount, "if it is supported by the proceedings below," 13 V.S.A. § 7556(b), and if it was made after a consideration of the factors mandated by 13 V.S.A. § 7554(b). Section 7554(b) provides, in pertinent part:

* Defense counsel reasoned that \$15,000 would be appropriate because, whereas defendant was facing an offer of two to five years in connection with the previous possession charge, he is now facing an offer from the State of three to eight years, an increase, he argued, of approximately fifty percent. Therefore, he concluded, an increase of fifty percent was appropriate.

In determining which conditions of release to impose under subsection (a) of this section, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of residence in the community, record of convictions, and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

While puzzled by the trial court's failure to mention defendant's family ties, we find the court's analysis of the factors in § 7554(b) to have been adequate, given the limited nature of the proffers before it. Nor do we find \$100,000 to be excessive given the seriousness of the offenses, the weight of the evidence, and defendant's limited ties to Vermont. The bail decision is supported by the proceedings, and we therefore affirm it.

Affirmed.

FOR THE COURT:

Paul L. Reiber, Chief Justice