

State v. Taylor (2007-353)

2015 VT 21

[Filed 18-Sep-2007]

ENTRY ORDER

2015 VT 21

SUPREME COURT DOCKET NO. 2007-353

SEPTEMBER TERM, 2007

State of Vermont

v.

David Taylor

} APPEALED FROM:
}
}
} District Court of Vermont,
} Unit No. 2, Bennington Circuit
}
} DOCKET NO. 956-8-07 BnCr

Trial Judge: David Howard

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

¶ 1. Defendant David Taylor is charged with one count of aggravated sexual assault in violation of 13 V.S.A. § 3253(a). He appeals the district court's order that he be held without bail. We affirm.

¶ 2. The maximum sentence for aggravated sexual assault is life imprisonment, 13 V.S.A. § 3253(b), and therefore defendant is not entitled to bail as a matter of right if the evidence of guilt is great. *Id.* § 7553. For purposes of the bail hearing, defendant stipulated both that the maximum sentence for aggravated sexual assault is life imprisonment and that the evidence of guilt is great. Under such circumstances, a presumption arises in favor of incarceration, and "release is reserved only for extraordinary cases." *State v. Blackmer*, 160 Vt. 451, 458, 631 A.2d 1134, 1139 (1993). Thus, the defendant bears the burden of persuading the court that his is an extraordinary case. See *Id.* at 457-58, 631 A.2d at 1138 ("in such cases . . . a heavy burden should be placed upon the defendant to clearly demonstrate that he is entitled to bail despite the gravity of the offense and the nature of the punishment he faces.") (citation omitted).

¶ 3. However, the trial court is still required to exercise its discretion in deciding whether or not to impose bail and conditions of release. *State v. Duff*, 151 Vt. 433, 441, 563 A.2d 258, 264 (1989). The court's discretion is extremely broad, but its decision cannot be arbitrary. *Blackmer*, 160 Vt. at 458, 631 A.2d at 1139. We review the court's determination for abuse of that discretion. See *State v. Turnbaugh*, 174 Vt. 532, 535, 811 A.2d 662, 666 (2002) (mem.).

¶ 4. In this case, the trial court adequately exercised its discretion to deny bail. The trial court considered whether conditions of release would address its concerns about defendant's danger to the public. The court ultimately decided that conditions of release could not assure sufficient control of defendant's behavior toward other children and that the nature of defendant's alleged actions were bold and serious enough to support holding him without bail. The trial court's ruling was within its discretion.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice