

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-111

MARCH TERM, 2004

	} APPEALED FROM:
	}
	} Franklin District Court
State of Vermont	}
	}
v.	} DOCKET NO. 151-2-04 FrCr
	}
Kirk Benjamin	}
	}
	}
	}

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

Pursuant to 13 V.S.A. § 7556(b), defendant appeals a Franklin District Court order denying his request to reduce bail set at \$50,000 as a condition of defendant's release. Defendant argues on appeal that such bail is excessive and unsupported by the evidence. We affirm.

Defendant is charged with three counts of aggravated sexual assault, in violation of 13 V.S.A. § 3253(8), two counts of sexual assault on a minor, in violation of 13 V.S.A. § 3252(b)(1), and one count of lewd and lascivious conduct with a child, in violation of 13 V.S.A. § 2602. All the charges are felonies which carry maximum imprisonment sentences of life, thirty-five years, and five years respectively.

Defendant was arraigned on February 24, 2004. Pursuant to 13 V.S.A. § 7553a, and at the State's request, the court held defendant without bail pending a bail hearing. At the bail hearing conducted on February 26, the State requested bail in the amount of \$50,000. The court then set bail at \$50,000, surety or cash, and imposed additional conditions of release. On March 1, upon defendant's motion to review and reduce bail, the court conducted a second bail hearing. Defendant argued that defendant's employment history, ties to community and lack of a significant criminal record support less restrictive conditions because they demonstrate that defendant poses no risk of flight. Defendant requested that in lieu of the \$50,000 cash or surety bond requirement the court accept a secured appearance bond in the amount of \$10,000 to be secured by a cash deposit of \$1,000. The court denied the request finding that the appearance bond was not sufficient to secure defendant's appearance in the face of six pending felonies, three of which carry potential life imprisonment sentences. This appeal followed.

Defendant reiterates here the argument made below: that the bail imposed is excessive and that less restrictive conditions are warranted where, as here, defendant is a financially needy person with substantial ties to the community and without a significant criminal history. Our review of appeals pursuant to § 7556 is deferential to the trial court, and its decision will be affirmed if it is supported by the proceedings below. State v. Parda, 142 Vt. 261, 262 (1982).

The purpose of bail is to assure appearance in court, and the court has wide latitude in determining the appropriate amount. State v. Pray, 133 Vt. 537, 541-42 (1975). Defendant need not to be capable of meeting bail in order for the amount to be supported by the record. State v. Duff, 151 Vt. 433, 436 (1989). In determining whether the person presents a risk of nonappearance, the court shall consider " the seriousness of the offense charged and the number of offenses with which the person is charged." 13 V.S.A. § 7554(a)(1). Here, defendant faced six felony charges punishable by lengthy sentences. In light of the seriousness and number of offenses charged, bail in the amount of \$50,000 in surety or cash cannot be characterized as " an amount so high that it cannot be justified" by the risk of defendant's nonappearance. Cf. Duff, 151 Vt. at 435-36 (finding no evidentiary support to justify setting bail at

\$150,000); State v. Cardinal, 147 Vt. 461, 466 (1986) (holding that \$250,000 bail condition was unsupported by the evidence). The court could reasonably conclude that the amount set in this matter was necessary to secure defendant's appearance at trial, notwithstanding defendant's ties to the community. The order appealed from is supported by the proceedings below and is therefore affirmed.

Affirmed.

FOR THE COURT:

Jeffrey L. Amestoy, Chief Justice