

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-505

NOVEMBER TERM, 2005

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	Franklin District
	}	
Eric Besette	}	DOCKET NO. 94-1-05 FrCr
	}	

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

Defendant appeals the district court=s decision to hold him without bail pending the merits hearing on defendant=s alleged violation of the conditions of probation. We find that the district court=s decision to hold defendant without bail was not supported, and remand for further proceedings.

Under V.R.Cr.P. 32.1(a)(3), Aa probationer held in custody pursuant to a request to revoke probation may be released by a judicial officer pending hearing or appeal. . . . Any denial of or change in the terms of release shall be reviewable in the manner provided in 13 V.S.A. " 7554 and 7556 for pre-trial release.@ (emphasis added). 13 V.S.A. ' 7556(b) allows a person to appeal an order denying bail and holds that A[a]ny order so appealed shall be affirmed if it is supported by the proceedings below.@ See also State v. Passino, 154 Vt. 377, 378 (1990). Accordingly, this Court must determine if the order in the present case is supported by the proceedings below.

The Legislature apparently concluded that the right to bail in the Vermont Constitution, Vt. Const. ch. II, ' 40, does not apply to probation revocation proceedings because the Legislature provided in 28 V.S.A. ' 301(4) that there is no Aright to bail or release@ in such a proceeding. The statute does not, however, end this appeal. A trial court has the discretion to release a defendant on bail whether or not he has a constitutional right to bail. Passino, 154 Vt. at 379. This Court further held in Passino that a trial court must make findings to indicate how it exercised its discretion to consider bail, even if it concludes that no bail will be allowed. Id.

In this case, the district court failed to indicate that it exercised its discretion to consider imposing bail upon defendant. Although the court cited to the alleged facts of the violation of probation charge, it never indicated which facts, if any, might bear on whether bail was appropriate, or otherwise give any indication as to why it was appropriate to hold defendant without bail. Id. (AThe opinion of the trial court discusses only the strength of the evidence and not any of the facts that might bear on whether bail was appropriate.@).

Accordingly, the order holding defendant without bail is remanded to the district court to consider whether that court should in its discretion authorize conditions of release, and to explain how it exercised its discretion.

Vacated and remanded.

FOR THE COURT:

John A. Dooley, Associate Justice