ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-489

JANUARY TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
Jamel Scott	}	
	}	DOCKET NO. 3250-8-06 Cncr

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

Defendant here appeals from his conditions of release, claiming that the trial court's decision to set bail at $250,000 is excessive. Defendant is held pending trial on charges of assault and robbery with injury, burglary of an occupied dwelling, and simple assault. This Court will reverse a bail determination only if it is not "supported by the proceedings below." 13 V.S.A. ¶ 7556(b).

Following a bail hearing, the trial court found that defendant had a significant criminal record, including prior convictions for manslaughter, attempted robbery, assault with a deadly weapon, and possession of a firearm by a felon—the last two offenses apparently occurring while on parole for manslaughter. The trial court further found that defendant had three revocations of that parole, and had to be twice extradited, from North Carolina to New York, and from New York to Vermont. The court noted that defendant has multiple social security numbers and aliases, no discernable ties to Vermont and faces up to forty-five years incarceration on the two pending felony charges. These findings are not disputed. The court concluded that "[t]here is absolutely no possibility that...[d]efendant would remain in Vermont" for trial.

While $250,000 is substantial bail, defendant presents a substantial flight risk. Given his violent criminal history, significant incarceration is not unlikely in the event of new convictions for robbery and burglary. His repeated parole violations and criminal activity while on parole confirm that defendant cannot be relied upon to abide by conditions of release, let alone respond to court process. Even if the trial court's declaration that there is "no possibility" defendant will appear for trial might be characterized as overly absolute, it cannot be said that the court's

fundamental concern that defendant would likely not return to court is unsupported by the record. Imposition of $250,000 bail was no abuse of discretion.[1]

Although defendant proffered that he could make bail if set at $5,000, that amount appears slight compared to the serious risk of flight at hand. Affordability is not a factor which need be considered by the trial court when setting bail; the purpose of bail is to ensure defendant's appearance, and "defendant need not be capable of meeting bail in order for the amount to be supported by the record." State v. Duff, 151 Vt. 433, 436, 563 A.2d 258, 261 (1989). Here, only by insisting on a major financial stake by defendant, or others, in his appearance would the trial court reasonably expect defendant to return for trial.

Affirmed.

FOR THE COURT:

Brian L. Burgess, Associate Justice

[1] Defendant's citation to State v. Baron Watson, No. 2007-409 (Vt. Oct. 10, 2007) (unreported mem.), to support his claim that $250,000 is excessive is unpersuasive. In Watson, this Court remanded for a new bail hearing when the trial court's decision to set bail at $750,000 on charges of aggravated assault with a weapon, possession of cocaine and DLS was essentially unexplained, except by references to defendant's unsettled community ties and the "seriousness" of the charges. Watson is inapposite to the instant case where the trial court based its bail decision not just on the lack of incentive for defendant to risk a lengthy sentence, but also on his several identities, his record of release violations, his unwillingness to voluntarily return to court, and his lack of any meaningful connection to Vermont—all giving rise to a logical and substantial risk of flight.