

ENTRY ORDER

JAN 20 2009

SUPREME COURT DOCKET NO. 2008-516

JANUARY TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windham Circuit
Antonio A. Delgado	}	
	}	DOCKET NO. 1285-9-08 Wmcr
	}	
	}	Trial Judge: Karen R. Carroll

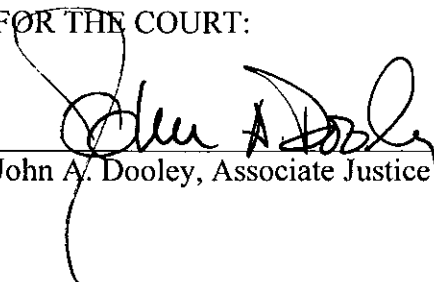
In the above-entitled cause, the Clerk will enter:

Defendant Antonio A. Delgado appeals from the conditions of release imposed by the district court following his arraignment on felony burglary charges under 13 V.S.A. § 1201(a). At defendant's arraignment held on September 30, 2008, the district court set bail at \$5000. At the bail appeal hearing held on December 19, 2008, the court found that defendant had no discernable ties to Vermont. The court further found that defendant's ties to his residence in Hartford, Connecticut were tenuous, as his living situation and address had changed since he has been incarcerated, and that he has no job and did not own any assets that would keep him in Hartford. The court concluded that because of his lack of ties to the community and the seriousness of the charge he is facing, defendant presented a risk of nonappearance and continued its earlier order setting bail at \$5000. Defendant has been incarcerated since his arraignment. Defendant appeals the bail determination pursuant to 13 V.S.A. § 7556(b).

On appeal, this Court will reverse a bail determination only if it is not "supported by the proceedings below." 13 V.S.A. § 7556(b). Defendant does not dispute the district court's findings regarding his lack of ties to Vermont. Defendant contends that the \$5000 bail is excessive because of his very limited assets and income. Although defendant proffered that he could make bail if set at \$500, that amount appears slight compared to the risk of flight he presents. Although affordability may be a factor the trial court will consider 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 (1989). Mere inability to procure bail does not render it excessive. The record below amply supports the bail amount, even though defendant may be unable to meet it.

Affirmed.

FOR THE COURT:

  
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John A. Dooley, Associate Justice