

ENTRY ORDER

OCT 16 2009

SUPREME COURT DOCKET NO. 2009-379

OCTOBER TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Franklin Circuit
	}	
Ray A. Hurlburt	}	DOCKET NO. 968-8-09 Frcr
	}	
	}	Trial Judge: A. Gregory Rainville

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

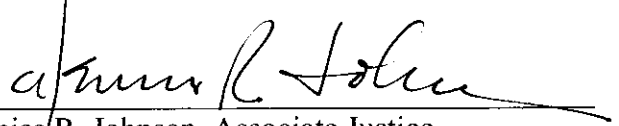
Defendant Ray Hurlburt appeals from a denial of his motion to amend a condition of release imposed by the district court following his arraignment on charges of lewd and lascivious conduct with a minor and sexual assault of a victim less than ten years of age. The condition at issue prohibits defendant from having any contact with females under the age of sixteen. Defendant's motion to amend this condition asked the court to allow defendant to have supervised contact with his eight-year-old granddaughter, M.N. At the hearing below, the district court denied defendant's motion and found that given the seriousness of the underlying felony charges, the condition prohibiting contact with females under the age of 16, including M.N., was necessary to protect the public. We affirm.

Defendant argues that the district court's order upholding the unamended condition is not supported by the proceedings below. 13 V.S.A. § 7556(c) ("Any order so appealed shall be affirmed if it is supported by the proceedings below."). Defendant contends that because M.N.'s mother would have "eyes-on" supervision of M.N. at all times defendant is with her, this proposal to amend the condition would adequately protect M.N. The court considered testimony from defendant's daughter, the mother of M.N., who testified that she did not believe the charges against her father and that after she learned of the allegations, but before the arraignment, she allowed her father to stay overnight in her house.

In its decision, the district court weighed the importance of preserving the relationship between grandfather and granddaughter against the court's duty to ensure the protection of the public. The court agreed that M.N.'s mother would undoubtedly protect M.N. when she was present; however, the court was concerned that given that mother did not appreciate the seriousness of the charges against defendant, it was possible that there would be times when mother would not exercise constant supervision of defendant and M.N. The facts provide an adequate basis for the court to have concluded that defendant should not be allowed contact with M.N.

The district court's decision not to amend the condition of release was supported by the record and meets the statutory requirement that the combination of conditions be the least restrictive necessary to reasonably assure the protection of the public.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "Denise R. Johnson", written over a horizontal line.

Denise R. Johnson, Associate Justice