

MAR 22 2010

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-108

MARCH TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
	}	
Mary Ashline	}	DOCKET NO. 447-2-10 Cncr
	}	
	}	Trial Judge: Matthew I. Katz

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

Defendant Mary Ashline appeals from a denial of her motion to strike a condition of release imposed by the district court following her arraignment on a charge of a second offense of driving under the influence (DUI) under 23 V.S.A. § 1201(a)(2). The condition at issue required defendant to place her vehicle on cement blocks. At the hearing below, the trial court denied defendant's motion and found that the condition was the least restrictive necessary to adequately protect the public. I affirm.

A person charged with an offense and released on personal recognizance may be ordered to comply with conditions of release, including restrictions on travel, if such conditions are "reasonably necessary to protect the public." 13 V.S.A. § 7554(a)(2)(D). To determine the necessity of conditions of release, a judicial officer must take into account

the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of residence in the community, record of convictions, and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings. Recent history of actual violence or threats of violence may be considered by the judicial officer as bearing on the character and mental condition of the accused.

13 V.S.A. § 7554(b). We review the trial court's decision setting conditions of release under a deferential standard, affirming if the decision is "supported by the proceedings below." 13 V.S.A. § 7556(c); see also State v. Porter, No. 2006-110, 2006 WL 5866256, slip op. at 2 (Vt. March 2006) (unreported mem.) (deferring to district court's "broad discretion" when proceedings supported court order requiring the defendant to report to police department daily for alcohol testing following charge of third DUI offense).

On appeal, defendant argues that the trial court's order upholding the condition is not supported by the proceedings below because there is no indication that requiring defendant to immobilize her car is the least restrictive condition necessary to protect the public, especially given the fact that defendant has no history of non-compliance with court orders. In its decision upholding the condition, the district court noted that this was a second DUI offense, that the test indicated defendant's blood alcohol concentration was extremely high (.273), and that defendant's driving immediately preceding the traffic stop was very poor. Further, the court noted that because defendant lives in a rural area and because her employment as a maid requires travel by vehicle, the immobilization of defendant's car, rather than an order prohibiting defendant from driving, was necessary to assure that the public is protected from defendant's drinking and driving.

In light of the deference owed to the trial court's determinations in setting conditions of release, the court's findings regarding defendant's extremely high level of intoxication, her particularly dangerous driving, and the likelihood that defendant would drive given her rural address and job duties, adequately support the requirement that defendant place her car on cement blocks. This is notably not a situation where an entire family relies on one car for transportation or where compliance with the condition would be so onerous as to amount to an abuse of the trial court's wide discretion. Instead, the condition here meets the statutory requirement that the combination of conditions be the least restrictive necessary to reasonably assure the protection of the public.

Affirmed.

FOR THE COURT:



Denise R. Johnson, Associate Justice