ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-088

MARCH TERM, 2017

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	Superior Court, Rutland Unit,
	}	Criminal Division
Alexis David Rodriguez	}	
	}	DOCKET NO. 194-2-17 Rdcr
	}	
		Trial Judge: Cortland T. Corsones

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

Defendant Alexis Rodriguez appeals the portion of Condition Eleven of his pretrial release that requires him to find an alternate residence by April 1, 2017. Because the imposition of this condition is not supported by the record, the condition is vacated.

On July 11, 2016, the State charged defendant with lewd and lascivious conduct pursuant to 13 V.S.A. § 2601. To support this charge, the State alleged that a complainant observed defendant looking into a neighbor's window at two young girls while his hand was in his pants. The trial court set bail at $5000.00 and imposed conditions of release, including a twenty-four-seven curfew at 29 School Street, with exceptions for legal, medical, treatment, or work purposes.

On July 22, 2016, defendant was released on bail; several days later, on July 25, the court moved the twenty-four-seven curfew to reflect defendant's new residence at 41 Creek Road, with the same exceptions. On February 21, 2017, police officers discovered that defendant was residing at 166 School Street, not 41 Creek Road, as required by his conditions. Defendant admitted that he had been living at 166 School Street for approximately three months. As a result, the State charged defendant with two counts of violating his conditions of release (VCRs) under 13 V.S.A. § 7559(e).

At defendant's arraignment for the VCRs, the court imposed the same conditions of release, but amended the twenty-four-seven curfew to defendant's new residence at 166 School Street. Initially, the State did not object to this amendment, but subsequently filed a motion to reconsider the amendment. The central basis for the State's motion to reconsider was that the Wallingford Elementary School bordered the back of 166 School Street.

At the hearing to reconsider the defendant's conditions of release, defendant testified that he lived in the upstairs apartment at 166 School Street and that the apartment had a separate entrance. He further testified that his downstairs neighbor is the son of his landlord, and that his landlord is "kind of, like a mom—second mom to me." He acknowledged that his downstairs

neighbor had children, but claimed that they lived with their mother and that he did not know when they visited the neighbor. Finally, he stated that he generally left for work at 6:00 a.m. and returned to his home by 4:15 p.m.

The court granted the State's motion to reconsider and imposed a condition requiring defendant to find an alternate residence by April 1, 2017. In doing so, the court noted that the State alleged that defendant touched his penis while looking in a neighbor's window at girls. Because of the elementary school behind 166 School Street, the court believed that the potential for regular contact with girls existed. Moreover, the court presumed that, even though defendant did not return home from work until 4:15 p.m., afterschool activities could still result in regular contact.

Defendant now appeals the requirement that he change his residence by April 1. He argues principally that the condition is not the least restrictive condition necessary to ensure public safety and that, because the residency condition is physically restrictive, "extraordinary circumstances" must be found to justify the condition. Because the record does not show that the relocation condition is the least restrictive condition necessary, the condition is vacated. And, as a result, defendant's second argument is not addressed.

Amended conditions of release may be appealed to a single justice of this Court and "shall be affirmed if [they are] supported by the proceedings below." 13 V.S.A. § 7556(c). Under 13 V.S.A. § 7554(a)(2)(B), a trial court may impose restrictions on a defendant's "place of abode" to protect the public, as long as the condition imposed or the combination of conditions imposed is the least restrictive means that will reasonably ensure protection of the public. The trial court has wide discretion to determine the least restrictive condition, and this Court will not reverse such discretionary rulings unless "the court failed to exercise its discretion, or exercised it for reasons clearly untenable or to an extent clearly unreasonable." State v. Savo, 141 Vt. 203, 208 (1982).

In this case, the record below does not support the condition requiring defendant to move his residence. The trial court's decision is based almost entirely on the possibility that defendant may come in contact with young girls while traveling to and from work. But nothing in the record supports the assumption that afterschool activities will be in session or that unattended children will regularly contact defendant as result. Indeed, as the trial court acknowledged, it relied entirely on its own presumption when determining that regular contact would occur, and not the evidence on hand. More important, defendant is already subject to a twenty-four-seven curfew, which significantly limits any contact he may have with the public, specifically young girls. Given that the allegations do not suggest that defendant sought out children away from his home or that defendant physically touched young girls, the twenty-four-seven curfew is the least restrictive means necessary to protect the public.

The condition that requires defendant to relocate his residence is vacated because it is not supported by the record below. See 13 V.S.A. § 7556(c).

The portion of Condition Eleven that requires defendant to relocate his residence is vacated.

FOR THE COURT:

Marilyn S. Skoglund, Associate Justice