

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-144

APRIL TERM, 2002

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont
	}	
v.	}	Unit No. 1, Windham District
	}	
Nathan Hazlett	}	DOCKET NO. 1867-10-98 Wmcr
	}	
	}	Trial Judge: Karen R. Carroll
	}	

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

Defendant Nathan Hazlett appeals the district court's order holding him without bail pending a hearing on two charges of violating his probation. He argues that the order is at odds with the court's concurrent order releasing him on bail, with conditions of release, on a charge of involuntary manslaughter, which prompted the violation-of-probation charge. He also argues that the order is not supported by the record. The order is affirmed.

In November 1999, defendant was found guilty of two counts of violating a relief-from-abuse order following a trial by jury. He was sentenced to four months to three years on the first offense, and zero to three years on the second offense, to be served consecutively. His sentence was subsequently modified to a suspended sentence with credit for fifteen months already served. He was released on conditions of probation on June 25, 2001.

On March 11, 2002, defendant was charged with violating the conditions of probation set for both of the above offenses. The charges stemmed from an incident that has also led to defendant being charged with involuntary manslaughter in violation of 13 V.S.A. 2304. After a hearing, the district court ordered defendant held without bail on the charges of violating his probation. It also set bail on the involuntary manslaughter charge at \$25,000 and established conditions of release. Defendant filed a motion for bail review, and, after a hearing on the motion, the trial court declined to modify its order. Pursuant to 13 V.S.A. 7556(b), defendant appeals to this Court.

Defendant renews the argument here that he made before the district court regarding his motion to for bail review: that the court's bail order on the manslaughter charge is inconsistent with its bail order on the violation of probation charges. It is not clear whether defendant is urging a rule that would require that bail established in a new criminal case against a defendant be identical to the bail set in a violation-of-probation proceeding when the charged crime also gives rise to the probation proceeding, but this Court declines to adopt such a bright-line rule. Nor is this Court troubled by disparate orders in such circumstances.

As the trial court observed, defendant stands before the court in distinctly different postures in each case. In a violation-of-probation context, a defendant has already been convicted of a crime and is still subject to the supervision of corrections. See 28 V.S.A. 201-02, 205 (defining probation, and describing powers and responsibilities of corrections regarding probationers committed to its care and custody). In addition to the traditional concerns regarding a defendant's appearance or flight facing a court in a bail proceeding, the violation-of-probation context implicates correctional concerns. See 28 V.S.A. 202(1) (charging commissioner with general supervision of probationers and responsibility for prescribing rules governing their conduct). Furthermore, the Legislature has made clear that a probationer does not have

a right to bail when charged with a violation of probation. 28 V.S.A. 301(4) ("Pending arraignment for any charge of violation, the probationer shall continue to be detained at a correctional facility. Thereafter, the court may release the probationer pursuant to section 7554 of Title 13. There shall be no right to bail or release."). In contrast, a defendant in a traditional criminal case is presumed innocent and is generally entitled to bail. See 13 V.S.A. 6502 (recognizing presumption of innocence in criminal causes) & 7554 (providing general rule is release pending trial); see also Vt. Const. ch.11, 40. Thus, the court's bail order in this case will not be reversed on the basis of the disparate treatment of the two types of charges facing defendant.

Defendant also argues that the court's order is not supported by the record in light of defendant's life-long connections to Vermont and his family ties to the area. The court based its decision that defendant was not an appropriate candidate for bail as a probationer on his lengthy history of noncompliance with court orders and his criminal history. We review such decisions for an abuse of discretion, State v. Barrows, \_\_\_ Vt. \_\_\_, \_\_\_, 776 A.2d 431, 432 (2001) (single-justice entry order) (noting that issue in appeal from a denial of release on a violation-of-probation charge is whether court abused its discretion when deciding probationer was not eligible for release, not whether court properly considered factors regarding conditions of release); compare V.R.Cr.P. 32.1(a)(1) (providing that, when probationer held on ground of violating probation, probationer should continue to be held for a revocation hearing if probable cause is found for the violation-of-probation charge), with V.R.Cr.P. 32.1(a)(3) (providing that court "may" release a probationer pending a revocation hearing and that, if so, court should consider factors enumerated in 13 V.S.A. 7554 in setting conditions of release); and will affirm the order if it is supported by the proceedings below, 13 V.S.A. 7556(b).

The trial court took judicial notice of the fact that the charges for which defendant was on probation stemmed from two separate violations of a relief-from-abuse order occurring in 2000, that defendant had five previous convictions for violating conditions of release in 1995 and 1996, and that defendant was convicted of criminal contempt for violating a court order in 1992. The court also noted defendant's lengthy criminal record. The trial court carefully considered the record before it and the parties' arguments regarding bail. Considering these facts, the record supports the trial court's order declining to grant bail to defendant in his violation-of-probation proceeding.

Affirmed.

FOR THE COURT:

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Marilyn S. Skoglund, Associate Justice