

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-539

DECEMBER TERM, 2002

State of Vermont	}	APPEALED FROM:
	}	
v.	}	Windsor District Court
	}	
Theodore Brown	}	DOCKET NO. 1575-11-02 WrCr
	}	
	}	Trial Judge: Theresa S. DiMauro
	}	
	}	
	}	

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

Theodore Brown appeals the Windsor District Court's denial of his motion to strike the condition of release requiring that he report to the Ludlow Police Department daily. He contends that the reporting condition is not reasonably necessary to assure his appearance, as required under 13 V.S.A. §7554(a)(1). He argues that his past record demonstrates that he generally complies with court requirements, including requirements that he appear in court. He further argues that the reasons given by the trial judge for maintaining the reporting requirement, including the extent of his prior record, the nature of the current allegations, which involve a high-speed car chase in an attempt to elude police, and a prior escape which occurred in a different state, the details of which are not available to this Court or the trial court, are not a sufficient basis for the trial court's decision to maintain the reporting requirement. Although defendant raises many arguments, particularly arguments to the effect that the nature of the offense is not so serious as to justify such an onerous requirement, that appear reasonable and that a different judge might have found persuasive at the trial court level, at this level of review the trial court's judgment is reversed only where it is not supported by the proceedings below. I find adequate support for the trial court's decision to maintain the reporting requirement based on the proceedings below, and I therefore affirm the trial court's denial of defendant's motion to amend.

When a person has had conditions of release imposed or amended, and has appealed to the court having original jurisdiction pursuant to §7556(a) and been denied relief, the person may appeal to a single justice of the supreme court, pursuant to 13 V.S.A. §7556(b). Section 7556(b) requires that "[a]ny order so appealed shall be affirmed if it is supported by the proceedings below." Under this standard of review, the reviewing justice is precluded from amending an order on the grounds that a different order might appear more reasonable on the record. If there is sufficient evidence in the proceedings below to justify the trial court's exercise of discretion, the condition must be upheld.

In this case, the lower court found that defendant's lengthy criminal history, including violations of probation and an escape, justified the reporting condition. The court also noted that the charge itself was one that raised particular concerns of escape, suggesting a propensity towards flight and non-appearance. Regarding defendant's argument that the reporting requirement was excessively onerous, the court indicated that it would be amenable to striking the reporting condition for a few days in order to accommodate defendant's desire to visit friends or relatives as needed. The court has actually demonstrated willingness to provide relief in this regard; counsel for defendant indicated during the hearing on this matter that the lower court is allowing defendant to travel to Florida for the holidays, waiving the reporting requirement during the period of defendant's visit. Section 7554(a)(1) requires the court to take into account the seriousness of the offense and impose the least restrictive conditions that will reasonably assure the appearance of the person as required. While it is possible that these criteria could lead to a different conclusion about the reporting requirement than the one reached by the trial court in this case, I cannot say that the trial court's decision is not supported by the record.

Affirmed.

FOR THE COURT:

Denise R. Johnson, Associate Justice