

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-504

DECEMBER TERM, 2004

State of Vermont	}	APPEALED FROM:
	}	District Court of Vermont, Unit No. 2,
	}	Chittenden Circuit
v.	}	
Larkin Forney	}	DOCKET NO. 2182-5-03 Cncr
	}	
	}	
	}	

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

Defendant Larkin Forney appeals from the district court's October 28, 2004 order reducing bail and imposing conditions of release pending the disposition of the charges against him. This is the second appeal pertaining to bail and conditions of release in this case. Previously, the Court reversed the bail and conditions imposed by the district court because, after reviewing 13 V.S.A. § 7554, the Court concluded that the district court erred by imposing excessive bail and physically restrictive conditions of release designed to ensure defendant's continued incarceration, and that such conditions were not lawful absent a finding of "extraordinary circumstances." At that time, the record revealed no finding of extraordinary circumstances, and so this Court remanded to the district court with instructions to lower bail and set conditions that were consistent with the statute's presumption in favor of release under these circumstances¹. On remand, the district court did reduce bail, but made no additional findings on extraordinary circumstances. The district court imposed the same unduly prohibitive conditions as were initially imposed, adding a requirement that defendant be escorted by a court approved supervisor any time he goes anywhere outside his approved residence. This appeal involves the same question of law as the previous appeal. On appeal, as in the district court, the State and defendant agree about the appropriate amount of bail and on the conditions of release. Accordingly, the district court's order is reversed, and defendant is ordered released once he posts the bail ordered herein and signs the conditions of release discussed below.

The State requested, and defendant has agreed, that the imposition of \$10,000 total bail will reasonably assure defendant's appearance as required. Bail may be satisfied by posting a surety bond with sufficient solvent sureties, see 13 V.S.A. § 7554(a)(1)(D), or by depositing that amount in cash with the clerk of court, see *id.* § 7554(a)(1)(E). This bail amount covers all charges pending against defendant, and supersedes all previously imposed bail. The Court agrees that this amount is appropriate in light of the number and seriousness of the charges facing defendant. In approving this bail amount, the Court notes the absence of record evidence indicating that this defendant presents a risk of flight above and beyond the general risk of nonappearance in situations involving a defendant facing felony charges. Specifically, there is no evidence of nonappearance for past court dates.

The State requested and defendant has agreed to certain conditions of release designed to assure defendant's appearance and to protect the public. The parties' stipulated conditions are appended to this order. The Court hereby adopts and incorporates these conditions.

According to the stipulation, defendant will be released to the custody of Richard Forney, defendant's father, pursuant to the seventh "additional condition." Though defendant has had a history of noncompliance with conditions of release while under the supervision of Richard Forney, the Court notes that Richard Forney has testified to a greater understanding of the importance of his supervisory role and is willing to accept the responsibility. During the district

court hearing after remand, defendant described the positive, stabilizing effects of the sobriety he has achieved and the mental health counseling he has obtained while being incarcerated for the last seventeen months. He further promised to abide by all of his father's rules. Under these circumstances, the Court is satisfied that Richard Forney will be able to fulfill his responsibilities as defendant's supervisor, and will call the police if he learns that his son has violated any conditions of release.

The district court's order reducing cash bail and imposing conditions of release is reversed. Total bail is reduced to \$10,000 cash or surety. Conditions of release are imposed according to the terms of the stipulation appended to this order. Defendant shall not be released until he and his supervisor, Richard Forney, have signed the Conditions of Release form.

FOR THE COURT:

Denise R. Johnson, Associate Justice

Footnote

1. This Court issued its previous order on October 6, 2004 under Supreme Court docket number 2004-396. That order is hereby incorporated by reference.