

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-066

MARCH TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Caledonia Circuit
Jonas Dixon	}	
	}	DOCKET NO. 69-1-07 CaCr

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

Defendant is charged with one count of second degree murder pursuant to 13 V.S.A. § 2301 for allegedly acting in “wanton disregard of the likelihood that his actions [could] naturally cause death or great bodily harm” to another. Because the maximum penalty he faces is life imprisonment, he may be held without bail provided that the evidence of his guilt is great. 13 V.S.A. § 7553. The district court found, and defendant does not presently contest, that the evidence of his guilt is great. Pursuant to its discretion, however, the court set bail at \$100,000. Defendant appeals.

It is well-established that although a defendant has no right to bail under § 7553, a court nevertheless has discretion to set terms of release. See, e.g., Ex parte Dexter, 93 Vt. 304, 315 (1919) (stating that a court may set bail in its discretion even where there is no right to it, but emphasizing that court’s discretion must be “sound” and not arbitrary); State v. Passino, 154 Vt. 377, 379 (1990) (remanding for consideration of whether bail was appropriate despite the applicability of § 7553). Once bail is allowed, this Court can review the reasonableness of the amount set. See State v. Duff, 151 Vt. 433, 436 (1989) (finding \$150,000 cash bail excessive, based on the circumstances, for defendant who faced first and second degree murder charges).

Here, the court found that the evidence of defendant’s guilt was great and emphasized that the charge he faced was very serious. It found that the severity of the charge, and the potential penalties it carried, “weigh[ed] very heavily” against setting bail because of the “presumed risk of flight.” On the other hand, however, the court considered a number of other factors that all weighed in favor of releasing defendant on bail, including the lack of any previous record in either the juvenile or adult system and the fact that defendant—who is fifteen years old—has never even been suspended from school. The court stated that it found “significant” the fact that there was neither a “record of flight to avoid prosecution,” nor a “record of failures to

appear.” The court further noted evidence indicating that defendant is the opposite of a flight risk based on his “engag[ing] with the operator in the 911 call,” and “taking responsibility for getting help, summoning ambulances, [and] attempting to provide information.”

There is no evidence in the record as to how the court arrived at \$100,000 as an amount of bail. It noted the seriousness of the offense, and the strength of the evidence, but these factors are present in every case in which the requirements of § 7553 are met. It specifically noted that defendant’s financial resources were irrelevant given his age; there is no indication in the record of any wealth on the part of defendant or his family. The only basis for the \$100,000 appears to have been, based on the State’s candid assertion at oral argument in this Court, that the State requested and received bail in that amount in a previous case, and therefore initially requested it here as well. We have held, however, that “standards for fixing bail are to be applied to each defendant individually” and cannot be dictated simply by amounts set in previous cases. State v. Toomey, 126 Vt. 123, 126 (1966).

Here, there is no explained relation between the amount of bail set by the court and the risk of flight posed by defendant. See Duff, 151 Vt. at 436 (rejecting trial court’s bail figure as excessively high where there was “no evidence of the risk of flight beyond the charge”). Accordingly, we cannot determine whether the \$100,000 bail figure is appropriately supported, as our standard of review requires. See 13 V.S.A. § 7556(b). We therefore reverse and remand the case for reconsideration and a more clear statement of the basis for the amount of bail set.

Reversed and remanded for reconsideration consistent with the views expressed herein.

FOR THE COURT:

John A. Dooley, Associate Justice