

JUN 10 2009

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-159

JUNE TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Rutland Circuit
	}	
Adrienne Fortin	}	DOCKET NO. 445-3-09Rdcr
	}	
	}	Trial Judge: Thomas A. Zonay

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

Defendant was arrested and charged with two felonies: possession of heroin in a quantity of 200 milligrams or more, 18 V.S.A. § 4233(a)(2), and conspiracy to sell regulated drugs, 13 V.S.A. § 1404(c)(5). At her arraignment, the court set bail at \$100,000, and defendant was detained when she was unable to post bail in that amount. Defendant moved for bail review, as provided under 13 V.S.A. § 7574, to reduce bail. After a bail-review hearing, the district court reduced bail to \$50,000. Defendant was again detained when she was unable to produce bail in that amount, and later filed this appeal.¹

On appeal, defendant seeks to reduce or suspend bail so that she may be released from detention to enter an in-patient drug-treatment program. She argues that bail is excessive because she has substantial ties to the community in the form of family and prior long-term employment, that the charges against her are for nonviolent offenses, and that the district court did not give sufficient weight to the fact that, since her arraignment, she has been clean and sober. While we appreciate the importance of drug treatment and recognize that defendant's goal of receiving such treatment is laudable, our review of bail is limited by statute and are required to affirm the district court's order if "it is supported by the proceedings below." 13 V.S.A. § 7556(b). In this case, there is sufficient support for the bail set by the district court and we affirm.

In its review of the bail, the district court acknowledged defendant's sobriety and reduced her bail by half. The court noted on the record that its review decision was based not only on

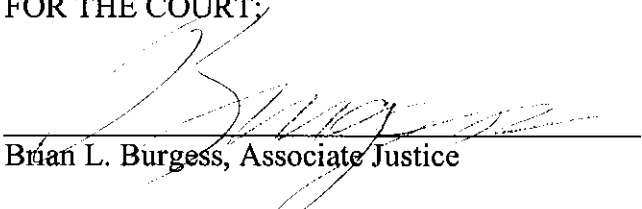
¹ Following the bail-review hearing, but before this appeal was filed, the State amended the information to charge defendant with an additional offense, the misdemeanor of knowingly permitting a dwelling to be used for the purpose of illegally selling regulated drugs. 18 V.S.A. § 4252(a). Because this charge was not considered by the district court for bail purposes, we do not consider it here.

this new information, but also on the facts determined at the earlier hearing. Defendant did not include a transcript of the earlier proceedings, but counsel represented to this Court, without objection by the State, that the earlier proceeding established defendant had family ties to the community and had been employed. It was also determined that she had two prior misdemeanor convictions, one failure to appear at court leading to an arrest, and one finding of violation of probation.²

Defense counsel further recounted at oral argument that the district court's initial bail decision was based on its determination that defendant's drug addiction outweighed any ties to the community in terms of assessing her risk of flight. By the time of bail review, defendant was sober as a result of her incarceration, and her employer expressed a willingness to take her back. As already noted, the court considered defendant's sobriety since her detention and weighed this in her favor by reducing the bail amount from \$100,000 to \$50,000. Additionally, the court did not foreclose defendant from returning for another bail review if she is able to present the court with a more concrete plan regarding entry into a drug-treatment program.

The record presented provides sufficient support to uphold the district court's bail decision. Defendant is facing two felony charges relating to commercial narcotics trafficking, which each present a risk of incarceration should defendant be convicted. The potential loss of freedom presents some logical risk of flight. Further, this risk is aggravated by defendant's criminal history confirming that she could not be entirely relied upon to appear as ordered, or to abide by court-ordered conditions. The conjunction of these factors provided a basis for the court's conclusion that defendant is not a good candidate for release—absent a significant investment of bail in her return. In sum, the district court considered all of the relevant evidence, and its decision is supported by the record. Consequently, we affirm.

FOR THE COURT:



Brian L. Burgess, Associate Justice

² Another failure to appear was reportedly resolved by a later appearance without arrest, and a second complaint for violation of probation was apparently dismissed to the satisfaction of the State.