

ENTRY ORDER

APR 12 2010

SUPREME COURT DOCKET NO. 2010-135

APRIL TERM, 2010

|                  |   |                               |
|------------------|---|-------------------------------|
| State of Vermont | } | APPEALED FROM:                |
|                  | } |                               |
| v.               | } | District Court of Vermont,    |
|                  | } | Unit No. 1, Windham Circuit   |
| Charles Chandler | } |                               |
|                  | } | DOCKET NO. 663-5-06 Wmcr      |
|                  | } |                               |
|                  | } | Trial Judge: Karen R. Carroll |

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

On March 30, 2006, defendant Charles Chandler had a confrontation on his property with several firefighters, leading to criminal charges for impeding a public officer, which is a felony under 13 V.S.A. § 3001. On November 20, 2009, a jury convicted defendant on this charge. That same day, the trial court released defendant on conditions. On March 30, 2010, following a presentence investigation report (PSI), defendant was sentenced to 29 to 30 days. Defendant, who was pro se at the time of the sentencing hearing, requested a stay of execution pending appeal. The trial court denied that stay. Defendant hired an attorney, who filed a written motion for stay of execution, which the trial court denied in writing on April 5, 2010. Defendant appealed that decision to this Court, and a hearing was held on April 12, 2010.

The trial court evaluated this case under Vermont Rule of Criminal Procedure 38(b), which lists a number of factors that the trial court “shall consider” in determining whether to stay a felony conviction. Here, the trial court failed to consider two important factors. One factor that the trial court did not mention in its entry order is the “length of the sentence imposed.” V.R.Cr.P. 38(b)(2). As defendant notes, this factor is important here because, without a stay, defendant will undoubtedly serve his full prison sentence of 29 to 30 days before his appeal is heard. Indeed, as of today, defendant has already served 14 days, which is nearly half of his full sentence.

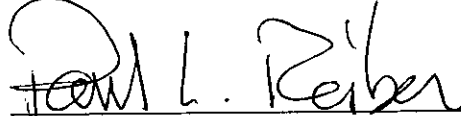
Another factor that the trial court failed to consider is “defendant’s record of appearance at judicial proceedings,” V.R.Cr.P. 38(b)(5), which is meant to address defendant’s likelihood of flight. Similarly, Vermont Rule of Criminal Procedure 46(c), which applies pending appeal whenever a defendant files a motion for release or for amendment of conditions of release, also states that the trial court “shall consider” the factors listed in 13 V.S.A. 7554(b) on pretrial release, which also address defendant’s likelihood of flight. Thus, when a defendant requests release pending appeal, both Rule 38(b) and Rule 46(c) require the trial court to consider the likelihood that the defendant will take flight to avoid serving his sentence. Here, in the trial court’s one paragraph entry order denying defendant’s motion to stay, the court never addressed

whether defendant presented any risk of flight. Further, in the trial court's November 20, 2009 entry order releasing defendant pending sentencing, the court implicitly held that defendant did not present a risk of flight when the court released defendant conditionally. Similarly, at the April 12, 2010 hearing before this Court, the State's Attorney agreed with defense counsel that defendant did not present a risk of flight.

Although the trial court's omissions are not necessarily dispositive of the matter, in this particular case, where (without a stay) the full sentence imposed would undoubtedly be served before defendant's appeal could be resolved on the merits, and where all parties agree that defendant does not present a risk of flight, the trial court did not exercise its discretion appropriately in requiring defendant to serve his sentence now before his appeal has been heard.

Reversed; defendant shall be released immediately, subject to all of the conditions listed in the trial court's November 20, 2009 conditional release, a copy of which is attached to this order.

FOR THE COURT:

A handwritten signature in black ink that reads "Paul L. Reiber". The signature is written in a cursive style with a large initial "P" and "R".

Paul L. Reiber, Chief Justice

FAXED

STATE OF VERMONT  
DISTRICT COURT OF VERMONT  
Unit No. 1, Windham Circuit

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C O N D I T I O N S   O F   R E L E A S E

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Date of Order: November 20, 2009

State v. Chandler, Charles

Defendant's Date of Birth: 07/20/1957

663-5-06 Wmcr, count 1 IMPEDING PUBLIC OFFICER  
13V3001

Arresting Agency: Windham CSD

The Court has determined that future appearance(s) of the defendant will not be reasonably assured by his or her release on personal recognizance or execution of an unsecured appearance bond alone; or that the release of the defendant will constitute a danger to the public. It is therefore ORDERED that the defendant be released upon the following conditions:

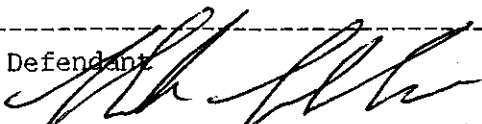
1. You must come to court when you are told to.
2. You must give your attorney or the court clerk your address and phone number. If it changes, you must tell them immediately.
3. You must not be charged with or have probable cause found for a new offense while this case is open.
14. You must NOT have contact with:  
Scott Nystrom, William Staats, Michael Fontaine, John Feifel, Robert Holden, Matthew Linn, Travis Watson, Jeromy Languerand, Theresa Greaves, Wayne Winot Todd Lawley and Allan Sands.  
This includes in person, in writing, by telephone, by e-mail or through a third person regardless of whether you are in jail or released.
15. You must NOT abuse or harass in any way  
same as in 14  
regardless of whether you are in jail or released.
31. exception to #14 - would be incidental contact while conducting lawful business within the Town Of Newfane or in the business offices.

VIOLATIONS OF ANY OF THESE CONDITIONS IS A CRIME. If you violate any of these conditions the court may send you to jail or keep you in jail and you may be charged with new crimes. You must follow these conditions until your case is closed or until the court changes the conditions.

Order of the Court: Karen R. Carroll - ASF  
Karen R. Carroll

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I have received a copy of this order. I have read it. I understand it.

|          |      |  |
|----------|------|--|
| Date     | Time | Defendant  |
| 11-20-09 | 4:05 |  |