

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-055

APRIL TERM, 2017

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	Superior Court, Orleans Unit,
	}	Criminal Division
Garrett Cornelius	}	
	}	DOCKET NOS. 525-10-16 Oscr
	}	634-12-16 Oscr
	}	
		Trial Judge: Howard E. Van Benthuyssen

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

Defendant Garrett Cornelius challenges the conditions of release imposed in Docket Nos. 525-10-16 Oscr and 634-12-16 Oscr. For the following reasons, all of defendant's conditions of release are vacated and defendant is released on personal recognizance.

On October 27, 2016, defendant was charged as an accessory aiding in the commission of a felony pursuant to 13 V.S.A. § 3. The information and probable cause affidavit alleged that defendant's brother failed to return from furlough at the specified time as required by 13 V.S.A. § 1501(b)(1) and, as a result, a warrant was issued for his arrest. Although the warrant for defendant's brother is still outstanding, the police believe that defendant and his brother reside together at 123 Lake Road. As a result of this assumed residence, the State claimed that defendant aided his brother's continuing escape by filing paperwork in court, obtaining food supplies from the local food pantry, picking up medical prescriptions, and burning wood in their home stove. At defendant's arraignment, according to the docket entries for No. 525-10-16 Oscr, the court also found that probable cause existed; however, the court did not sign or date the information indicating it found probable cause and the transcript of the arraignment does not indicate that the court made any finding of probable cause. Nevertheless, the trial court imposed bail of \$10,000 and set conditions of release.

Subsequently, defendant's bail was reduced and he was released on conditions. In part, these conditions precluded defendant from residing at 123 Lake Road, contacting his brother, and from entering the Town of Newport.

On December 19, 2016, the State charged defendant with a second count of aiding in the commission of a felony and three counts of violating his conditions of release (VCRs). Similar to the first charge, the State alleged that defendant aided his brother by picking up medical prescriptions, shoveling the driveway of 123 Lake Road, building a snow pack around the base of the house, and burning wood twigs in the home stove. These actions also formed the basis for the

State's claim that defendant violated his conditions of release. The court imposed bail and set conditions of release that mimicked the conditions previously imposed. Further, although the docket entries for No. 634-12-16 Oscr again indicate that the court made a finding of probable cause, this determination is not reflected by the information, which was not signed by the court, or the transcript, which contains no reference to a finding of probable cause.*

Defendant now appeals and asks this Court to strike the conditions prohibiting him from residing at 123 Lake Road, contacting his brother, and from entering the Town of Newport.

Conditions of release may be appealed to a single justice of this Court and "shall be affirmed if supported by the proceedings below." 13 V.S.A. § 7556(c). Under 13 V.S.A. § 7554(a)(1), a trial court may impose restrictions to ensure a defendant's appearance, as long as the condition imposed or the combination of conditions imposed is the least restrictive means that will reasonably ensure the defendant's attendance. A court has wide discretion to determine the least restrictive condition, and this Court will not reverse such discretionary rulings unless "the court failed to exercise its discretion, or exercised it for reasons clearly untenable or to an extent clearly unreasonable." State v. Savo, 141 Vt. 203, 208 (1982).

In this case, the conditions imposed are untenable. As part of determining a defendant's risk of nonappearance, the court must consider the seriousness of the offense, along with other factors. 13 V.S.A. § 7554(a)(1). As the court acknowledged, defendant has no history of nonappearance, no history of violence, no prior convictions, and has significant, familial ties to the community. More important, although the repercussions of the charges defendant faces are serious, the substance and nature of the State's allegations are not. Accomplice liability requires a common plan and the same degree of specific intent as the principal. In re Hyde, 2015 VT 106, ¶ 12, 200 Vt. 103, 109 (2015). Although his brother's escape occurred on July 16, 2016, and remains ongoing, the record contains negligible evidence supporting the State's contention that the actions defendant took were part of a common plan or specifically intended to aid his brother's escape. Most critically, 13 V.S.A. § 1503 specifically exempts family members, including brothers, from the charge of aiding an escaped prisoner. As the State acknowledged during argument, it is attempting to smoke out defendant's brother by using its prosecutorial powers to cut off all necessary aid from defendant. But even a cursory reading of § 1503 suggests that the Legislature declined to attach criminal liability to defendant's acts.

* During the time period from the first charge of aiding escape to the second charge, defendant filed a motion to review probable cause, an amended motion to review probable cause, and an amended motion to dismiss for lack of probable cause, all of which the trial court denied, without a hearing, in a written decision issued on December 29, 2016. In the same decision, the trial court denied defendant's motion to dismiss for lack of a prima facie case under Vermont Rule of Criminal Procedure 12(d). Neither decision is on appeal here and thus the application of the facts to the respective standards of proof is not on review.

Because the State's charges strain credulity and every other factor weighs in favor of the least restrictive conditions possible, all of defendant's conditions are vacated and he shall be released on personal recognizance.

All conditions of release are vacated and defendant is released on personal recognizance.

FOR THE COURT:

Marilyn S. Skoglund, Associate Justice