

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-226

JULY TERM, 2017

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	Superior Court, Chittenden Unit,
	}	Criminal Division
Van V. Thomas	}	
	}	DOCKET NOS. 3233-9-16 Cncr &
	}	4115-11-16 Cncr
	}	
		Trial Judge: Nancy J. Waples

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

Defendant Van V. Thomas appeals the Chittenden Superior Court’s order requiring him to post a surety bond or cash in the amount of \$50,001 as a condition of release in these two dockets. For the reasons below, this matter is remanded to the trial court for a new hearing to review the court’s initial determination of bail.

Defendant is charged with four counts of dispensing cocaine in violation of 18 V.S.A. § 4231(b)(1); two counts of possessing cocaine in violation of 18 V.S.A. § 4231(a)(3); two counts of dispensing a depressant, stimulant, or narcotic in violation of 18 V.S.A. § 4234(b)(1); and one count of possessing a depressant, stimulant, or narcotic in violation of 18 V.S.A. § 4234(a)(1).

On September 1, 2016, the trial court set defendant’s bail in the distribution and possession of cocaine charges at \$50,000. On December 16, 2016, the trial court set defendant’s bail in the distribution and possession of a depressant, stimulant, or narcotic charges at one dollar. Defendant did not post bail and has been held since.

Defendant filed a motion to review this initial bail determination on June 8, 2017. The trial court held a hearing on defendant’s motion on June 14, 2017. Defense counsel presented a legal argument but no evidence at the hearing. Likewise, the State presented argument but no evidence. The trial court concluded that defendant provided “no basis for the court to reconsider the previous court’s decision.” Thus, the trial court declined to amend defendant’s conditions of release. This appeal followed.

Defendant presents more or less the same arguments in this appeal as those presented at the trial court’s review hearing in June 2017. First, defendant argues that though the trial court is instructed to consider community ties when setting conditions of release under 13 V.S.A. § 7554(b), the statute does not specify that the community in question must be within the state of Vermont and that defendant’s ties to an out-of-state community should weigh in his favor when considering appropriate conditions of release. Second, defendant argues that the bail amount at issue here is excessive, that defendant is unable to post it, and, as such, it violates the Eighth Amendment of the U.S. Constitution.

This Court’s review of a bail determination is for abuse of discretion and an order “shall be affirmed if it is supported by the proceedings below.” 13 V.S.A. § 7556(b). When an order is unsupported by the record below, it may be remanded for a new hearing. Id.

The Vermont Constitution presumes that, except in certain enumerated instances which do not apply here, “[a]ll persons shall be bailable.” Vt. Const. ch. II, § 40. This provision is implemented through 13 V.S.A. § 7554, which states that “[a]ny person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial.” Under § 7554, a court shall order a defendant released on either “personal recognizance or upon the execution of an unsecured appearance bond” unless the court determines that “such a release will not reasonably ensure the appearance of the person as required.” The Court may also impose the least restrictive of a statutory list of conditions that will ensure a defendant’s appearance. 13 V.S.A. § 7554(a)(1).

The statute specifies the factors that a trial court may consider when imposing conditions of release. This list includes the nature and character of the charged offenses; the strength of the State’s evidence; a defendant’s “family ties, employment, financial resources, character and mental condition,” and the length of his or her residence in his or her community; as well as a defendant’s record of convictions and of appearance, or nonappearance, at court proceedings. Id. § 7554(b).

Defendant’s first argument is related to these factors—more specifically, the statute’s direction that a trial court should consider a defendant’s ties to family and community when setting conditions of release. As defendant notes, the statute does not expressly state that a defendant’s ties to Vermont family and community are part of the trial court’s calculus. But such an interpretation is clearly implied. Conditions of release and the imposition of bail are appropriate when a defendant presents a risk of nonappearance at scheduled court proceedings, and a defendant’s ties to family and community are factors to consider when the trial court is determining whether a defendant presents a risk of nonappearance such that conditions of release and the imposition of bail are appropriate. The single logical conclusion is that a defendant’s ties to Vermont family and community weigh against the risk of nonappearance, while, on the other side of the balance, scant ties to family or community within the geographic borders of the state weigh in favor of the risk of nonappearance. To read the statute any other way would make little sense. Thus, defendant’s first argument is unpersuasive.

Defendant’s second argument is reminiscent of this Court’s recent decision in State v. Pratt, 2017 VT 9, __ Vt. __, __ A.3d __. Under the federal constitution,* a court may not impose “[e]xcessive bail.” U.S. Const. amend. VIII. As explained in Pratt:

The touchstone for identifying excessive bail under the Eighth Amendment is not what a defendant can pay but, rather, whether bail is set at “a figure higher than an amount reasonably calculated to fulfill” the purpose of “giving adequate assurance that [the defendant] will stand trial and submit to sentence if found guilty.”

* The Vermont Constitution provides that “[e]xcessive bail shall not be exacted for bailable offenses. Vt. Const. ch. II, § 40. Defendant has not presented an argument under the state constitution; thus, this analysis is confined to federal constitutional law.

2017 VT 9, ¶ 15 (quoting Stack v. Boyle, 342 U.S. 1, 4 (1951)). Because bail set at a figure higher than a defendant can pay runs counter to the presumption that a defendant is innocent, courts should be extremely cautious when setting bail at such an amount. Id. ¶ 17; see also State v. Hance, 2006 VT 97, ¶ 17, 180 Vt. 357, 910 A.2d 874; State v. Duff, 151 Vt. 433, 435-36, 563 A.2d 258, 260-61 (1989). A trial court should set a cash bail beyond a defendant’s ability to pay only when that decision is “supported by findings that show the defendant presents a risk of nonappearance and that the conditions are the least restrictive means of assuring the defendant’s appearance.” Id. ¶ 18.

In this case, the record below is sparse. As noted above, defense counsel presented a purely legal argument, though one without reference to any source of law beyond the Eighth Amendment of the U.S. Constitution. Defense counsel did not present any evidence to show that the amount of bail set was beyond defendant’s ability to pay or any evidence to show that less-restrictive conditions could ensure defendant’s appearance at future court proceedings. In short, no evidence was presented upon which the trial court could make findings of fact.

That said, a person who is held because he or she is unable to satisfy the conditions of release imposed by the court is entitled to a hearing and to have those conditions reviewed by the trial court with original jurisdiction. 13 V.S.A. § 7554(d)(1). Furthermore, “[u]nless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed.” Id.

The trial court issued an oral decision at the conclusion of the hearing on defendant’s motion. In that decision, the court stated: “the judge or the court who previously made the decision regarding the imposition of bail pursuant to their bail statute made—I am certain went through an analysis as to why the bail amount was appropriate under these circumstances.” The court further stated that defense counsel’s motion included no authority cited for the idea that the Eighth Amendment was related to bail determinations, and, because the court was not itself aware of any Eighth Amendment jurisprudence involving bail, denied defendant’s motion as presenting no basis for reconsideration of the initial bail determination. However, the court made no specific findings as required by § 7554(d)(1).

Because the trial court did not make findings as to the “reasonable basis for continuing the conditions imposed,” this matter is remanded for the court to hold a hearing and make the required factual findings and to conduct the analysis under § 7554(a)(1).

Remanded.

FOR THE COURT:

Karen R. Carroll, Associate Justice