

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-120

APRIL TERM, 2019

State of Vermont v. Miles E. Hoisington*	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 14-2-19 Cncm
		Trial Judge: Kevin W. Griffin

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

Defendant is being held in Vermont as a fugitive from justice pending extradition to New Hampshire, pursuant to 13 V.S.A. § 4903. See 13 V.S.A. § 4903 (“Whenever an offender is apprehended in a neighboring state, and it may be necessary to transport him or her through this State to the place where the offense was committed, a Superior Court judge . . . shall issue a warrant under his or her hand and seal . . . authorizing such conveyance.”). Defendant has an active arrest warrant out of New Hampshire (issued on February 21, 2019) for a crime punishable by a term of imprisonment for more than one year—criminal threatening behavior with a deadly weapon. Defendant was taken into custody in Vermont on February 25, 2019, after Vermont officials received a complaint that defendant was seated in a hotel restaurant without any pants on.

At the arraignment on February 26, 2019, the State argued that bail is appropriate in this case given defendant’s ties to multiple states, defendant’s hold-without-bail warrant from New Hampshire, and the fact that defendant “essentially fled to Vermont” following the New Hampshire charges and has not returned to New Hampshire of his own volition to resolve his pending case. The State requested the court set bail at \$250,000. Defendant asked the court to release him without bail and indicated his intent to resolve the matter in New Hampshire. After hearing the arguments, the trial court set defendant’s bail at \$10,000 with conditions.¹ 13 V.S.A. § 7554(a)(1). A status conference was held on March 27, 2019 regarding the pending extradition proceedings and defense counsel’s plans to file a habeas petition. The State requested a sixty-day extension to hold defendant pending the governor’s extradition warrant, which the court granted.² Defendant remains incarcerated.

¹ The court set two conditions, which required that defendant (1) appear for court-mandated proceedings and (2) advise his attorney and the court clerk of his address and phone number and any changes to this information.

² Vermont has a statutory scheme that provides for the arrest of a person charged with a crime in another state and for that person’s extradition to the state in which the crime was committed. See 13 V.S.A. § 4954 (allowing for arrest without warrant if person is charged in another state with a crime punishable by death or by imprisonment for a term exceeding one year); *id.* § 4955 (allowing commitment of person “[i]f upon examination it appears that the person held is the person charged with having committed the crime alleged and that the person probably committed the crime” for up to thirty days while awaiting a Governor’s warrant in the state having jurisdiction of the offense); *id.* § 4956 (allowing judge to admit person charged to bail “[u]nless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed”); *id.* § 4957 (allowing for extension of time to commit person while awaiting a Governor’s warrant for up to sixty additional

Representing himself, defendant appealed the court's bail determination pursuant to 13 V.S.A. § 7556(b). In his appeal filed with this Court on April 1, 2019, defendant explained that he had discharged his public defenders and now contested the trial court's decision to set bail because he is not a danger to the community and is not a flight risk because he is a "resident of Vermont," attends a local church, and sees a psychologist in Vermont. The Court notified defendant's counsel of record, Attorney Bryan Dodge, of the appeal, and Attorney Dodge represented defendant for the remainder of the bail proceedings.³ See V.R.A.P. 45.1(a) (indicating that when appeal is filed, Supreme Court clerk enters names of parties' attorneys "as they appear on the certified copy of the superior court docket entries").

This Court held a bail hearing on April 17, 2019. The State argued that the \$10,000 bail set by the court was appropriate based on the trial court's findings regarding defendant's risk of flight and considering defendant's acknowledgement that he came to Vermont to avoid New Hampshire. Defendant's counsel represented defendant's standing objection to the trial court's bail determination.

This Court reviews the trial court's decision for abuse of discretion, State v. Pratt, 2017 VT 9, ¶ 20, 204 Vt. 282, and will affirm if the court's decision was "supported by the proceedings below." 13 V.S.A. § 7556(b). Here, the trial court's bail determination was supported by the proceedings and was therefore within the court's discretion.

The Vermont constitution presumes that, except in certain enumerated instances that 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

days); id. § 4967 (allowing "person arrested in this State charged with having committed any crime in another state" to "waive the issuance and service of the warrant" and "consent[] to return to the demanding state").

³ After filing his bail-appeal motion, defendant filed two additional motions with this Court on April 15, 2019 and April 18, 2019. In these motions, defendant contested his detention; alleged that he was assaulted and battered by the police department following his arrest, that his counsel at the trial court was negligent, and that he had experienced violations of his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution; and attempted to discharge Attorney Dodge in the proceedings before this Court. In his motion filed on April 18, 2019, defendant specifically stated that "He[, Attorney Dodge,] does not speak for me." Attorney Dodge filed a motion with this Court on April 16, 2019 explaining that defendant objected to Attorney Dodge representing him in these proceedings and indicating his concern regarding defendant's competency and ability to represent himself in this matter. Attorney Dodge stated that a motion for a competency evaluation is pending before the Chittenden Unit, Criminal Division. In light of the concerns about defendant's competency, we issued an order denying counsel's motion to withdraw. V.R.A.P. 45.1(e)(1), (2) (stating that once counsel is entered on docket, attorney will remain as counsel until Court grants leave to withdraw and granted only for good cause). In our order, dated April 16, 2019, we stated that Attorney Dodge "will continue to represent defendant in the bail appeal before this Court" and explained that "[i]f defendant is later determined to be competent to represent himself, then he may file a motion to modify the conditions of bail at that time." Accordingly, defendant's motion filed on April 18, 2019 seeking to discharge Attorney Dodge is denied. If defendant is deemed competent, he may contest the conditions of bail and may file claims regarding his allegations of counsels' negligence and the issues outlined in his motions to the Court.

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.” 13 V.S.A. § 7554(a)(1). The court may also impose the least restrictive of a statutory list of conditions that will ensure defendant’s appearance. Id.

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 a defendant’s 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).

In this case, the trial court considered the relevant factors when imposing bail on defendant. The court first noted that it had been presented with a fugitive-from-justice complaint out of New Hampshire and that the pending charges against defendant in New Hampshire—criminal threatening behavior with a deadly weapon—are serious. Next, the court considered defendant’s ties to the State of Vermont. The court found that defendant’s ties to the state were “minimal, at best.” The court noted that defendant was staying at a local motel and that the court was “not aware of any family ties” for defendant in the areas. The court accepted the State’s representation that defendant was a recipient of “some form of disability or public assistance.” In sum, the court concluded that “given [defendant’s] limited ties, and given the warrant at issue in New Hampshire, the court does believe that there is a flight risk and that the setting of some type of bail is necessary.” The court set bail for \$10,000, stating that the State’s request for a \$250,000 surety was “excessive under the circumstances.”

The court’s bail determination is supported by the proceedings. As to the question of risk of flight, the court considered the seriousness of the charges, as required under § 7554(a)(1), and it weighed the relevant factors laid out in § 7554(b). Given the seriousness of the charged conduct, the evidence that defendant sought to avoid the New Hampshire charges by coming to Vermont, and defendant’s limited ties to the State and financial means, the court was within its discretion to find defendant posed a significant risk of flight and setting bail at \$10,000.⁴

Affirmed.

FOR THE COURT:

Harold E. Eaton, Jr., Associate Justice

⁴ On appeal, defendant does not dispute either the facts relied upon the by the trial court in reaching its risk-of-flight determination or the amount of bail set by the court. At trial, defendant objected that he was not able to pay the \$10,000 bail set by the court. We note that:

The court does not . . . have to make a finding that the defendant can meet bail in order for the amount to be supported by the record, and it may impose a bail requirement even when the defendant is indigent, as long as the bail decision is supported by findings

Pratt, 2017 VT 9, ¶ 20. The court met that standard here, and its bail determination is supported by the proceedings.