

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-177

JULY TERM, 2020

State of Vermont	}	APPEALED FROM:
	}	
	}	Superior Court, Criminal Unit,
v.	}	Chittenden Division
	}	
Brandon Brown	}	DOCKET NO. 1121-4-20 Cncr
		Trial Judge: A. Gregory Rainville

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

Defendant Brandon Brown appeals the superior court’s denial of his stipulated motion to modify his conditions of release and his stipulated motion to reconsider. The superior court’s orders are reversed, and the matter is remanded.

Defendant is charged with domestic assault contrary to 13 V.S.A. § 1042 and interference with access to emergency services in violation of 13 V.S.A. § 1031. The affidavit of probable cause avers that defendant “smacked” complainant, his girlfriend, on the cheek during an argument and thereafter prevented her from calling the police. It also declares that defendant has one failure to appear, one violation of court orders, one violation of probation and parole, one misdemeanor conviction, and one felony conviction.

At arraignment, the superior court set conditions of release, among them that defendant not have any contact with complainant. Defendant later filed a stipulated motion to modify the no-contact condition to allow him and complainant to engage in couples and substance-abuse counseling. The court denied the motion without hearing, noting that defendant has “a long history of violating court orders and of engaging in violence.” The court also noted the allegations that complainant was pregnant and operating a motor vehicle at the time of the assault, which caused her injury and emotional harm. These actions, the court found, posed a serious risk of harm to complainant, the unborn child, and the public.

Defendant then filed a stipulated motion to reconsider and added that the counseling would take place remotely, such that there would be no physical contact between him and complainant. The court denied the motion without hearing, again noting defendant’s “longstanding criminal and violent behavior” and a threat of harm to complainant and the child. The court did not address the remote nature of the proposed counseling.

Defendant appeals under 13 V.S.A. § 7556(b) with the State’s support. An order declining to amend conditions of release is affirmed “if it is supported by the proceedings below.” 13 V.S.A. § 7556(b).

Under 13 V.S.A. § 7554(a)(1), if the superior court determines that a defendant presents a risk of flight from prosecution, it must impose conditions of release designed to reasonably mitigate the risk of flight. State v. Lohr, 2020 VT 41, ¶ 16. Under § 7554(a)(2), if the court determines that the conditions imposed to mitigate the risk of flight will not reasonably protect the public, the court may also impose “the least restrictive” condition, or “the least restrictive combination” of conditions, that will “reasonably ensure protection of the public.” 13 V.S.A. § 7554(a)(2). In determining the conditions of release to impose under § 7554(a)(2), the court must consider several factors listed in § 7554(b)(2). The court’s discretion in setting conditions of release is broad, but the decision cannot be arbitrary. State v. Auclair, 2020 VT 26, ¶ 6.

A defendant may move the court to amend conditions of release, and if the conditions are not amended as requested, the court must set forth “a reasonable basis for continuing the conditions imposed.” Id. § 7554(d)(2). “A person applying for review shall be given the opportunity for a hearing.” Id.

The court’s orders in this case denying defendant’s stipulated motions to amend the no-contact condition to allow him and the complainant to engage in remote counseling are not supported by the record. First, it is not clear why the court denied the motions without a hearing when the statute unambiguously provides that a person seeking modification is entitled to a hearing. Second, although the court expressed concern for the safety of complainant, her child, and the public, once the parties stipulated that the counseling would take place remotely with no physical contact, the court failed to explain why the categorical no-contact condition continued to be a necessary part of “the least restrictive combination” of conditions that will “reasonably ensure protection of the public.” Id. § 7554(a)(2). If the court was concerned that even remote contact could result in emotional harm to complainant, the court did not state so, nor did it identify a basis for the concern. Indeed, the parties stipulated that complainant favored the amendment and wished to engage in the counseling. Third, the court failed to explain the basis for its finding that defendant has “a long history of violating court orders and of engaging in violence.” The court did not discuss when the offenses took place or which among them involved violence. The orders must accordingly be reversed and the matter remanded. On remand, the court must hold a hearing, consider the motion to amend anew, and if the condition is not amended, set forth a reasonable basis therefor.

Reversed and remanded.

FOR THE COURT:

William D. Cohen, Associate Justice