

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-317

DECEMBER TERM, 2020

State of Vermont v. Patrick Navarre*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit
	}	Criminal Division
	}	
	}	DOCKET NO. 20-CM-00119

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

On December 4, defendant was held without bail on a fugitive from justice petition based on an outstanding Nevada arrest warrant . He now appeals pursuant to 13 V.S.A. § 7556(e), which provides that “[a] person held without bail prior to trial shall be entitled to review of that determination by a panel of three Supreme Court Justices.” (Emphasis added.) We conclude that defendant is not entitled to appeal pursuant to § 7556(e) because he is not being held pending trial in Vermont and his only remedy is to file a petition for a writ of habeas corpus.

The record indicates the following. In March 2020, defendant was charged in Nevada on one count of sexual assault against a child under the age of fourteen, three counts of lewdness with a child under the age of fourteen, and one count of child abuse or neglect. On December 1, Vermont State Police learned from the United States Marshall Service that defendant was residing in Vermont and there was an active warrant out for his arrest. Two days later, defendant was arrested for being a fugitive from justice. See 13 V.S.A. § 4954 (authorizing arrest of a person without a “warrant upon reasonable information that” person is charged in another state “with a crime punishable by death or imprisonment for a term exceeding one year”). That same day, defendant was released upon posting a \$10,000 cash bond. On December 4, however, the court issued a hold-without-bail order, concluding, based on § 4955, that it had no authority to release a fugitive charged with a life offense. See *id.* § 4955 (providing that a judge “shall commit” a person to jail if it finds that the person (1) is charged with having committed a crime in another state that is an offense punishable by death or life imprisonment, (2) “probably committed the crime,” and (3) “has fled from justice”).

Defendant subsequently filed an emergency motion for reconsideration arguing that the court had inherent authority to consider whether to impose bail. Alternatively, citing 13 V.S.A. § 7575, defendant argued that the court was required to make findings when it revoked defendant’s bail on December 4. While the court was awaiting the State’s response, defendant filed a second motion requesting the court review bail pursuant 13 V.S.A. § 7554(d). On December 17, the court denied defendant’s motion for bail review, concluding, based on § 4955, that it was without authority to review bail, or a denial of bail, for a fugitive of justice charged with a life offense. The trial court explained that §§ 7554 and 7575 were inapplicable because defendant was “a fugitive from justice being held pending demand for extradition,” not “a person charged with an

offense” under Vermont law. Following this decision, defendant withdrew his initial motion for reconsideration.

Defendant now seeks to appeal, based on 13 V.S.A. § 7556(e), the trial court’s December 4 decision denying him bail and its December 17 decision denying his motion for bail review. Section 7556(e) is inapplicable to defendant, however, because a person held under § 4955 is not done so for the purpose of criminal prosecution in Vermont. “There is never any charge, trial, or conviction for the ‘crime’ of being a ‘fugitive from justice.’ ” Lovejoy v. State, 184 Vt. 239, 242, 531 A.2d 921, 923 (1987); In re Iverson, 135 Vt. 255, 256, 376 A.2d 23, 24 (1977). Section 4955 is instead “a unique statutory procedure aimed at implementing the extradition provision of the federal constitution.” Lovejoy, 184 Vt. at 242, 531 A.2d at 923; see also In re James H. Hval, 184 Vt. 544, 546 n.1, 537 A.2d 135, 137 n.1 (1987) (“Vermont’s extradition statute is modeled on the Uniform Criminal Extradition Act, whose purpose is to provide for common standards and procedures in implementing Art. IV, § 2, cl. 2 of the United States Constitution.”). Accordingly, a person is detained under § 4955 for “the sole purpose” of producing him or her for another state based on a violation of that state’s criminal law. Iverson, 135 Vt. at 256, 376 A.2d at 24. To challenge the legality of detention under § 4955, a person must file a petition for writ of habeas corpus in the civil division of the superior court. Lovejoy, 184 Vt. at 243, 531 A.2d at 924.

Because defendant is not being held prior to trial, he is not entitled to appeal pursuant to § 7556(e). His appeal is accordingly dismissed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice