

ENTRY ORDER

SUPREME COURT DOCKET NO. 2021-027

FEBRUARY TERM, 2021

State of Vermont v. Travis C. Collins, Sr.*	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 796-6-17 Frcr

Trial Judge: Howard E. Van Benthuisen

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

Defendant appeals a January 26, 2021 decision holding him without bail pending a merits decision on a violation of probation complaint (VOP). He argues that the trial court abused its discretion in holding him without bail because, given the constraints on court proceedings due to COVID-19, it failed to consider whether it could provide defendant with a timely in-person merits hearing. For the reasons articulated below, we affirm the hold-without-bail order.

The record indicates the following. In January 2018, defendant pled guilty to first-degree unlawful restraint, 13 V.S.A. § 2407(a)(1). Defendant was sentenced to serve one to five years, which was all suspended except for one year, and was placed on probation under standard and special conditions. On January 8, 2021, the State filed a VOP against defendant, alleging that he violated Condition L, which provided that he “shall not buy, have, or use any regulated drugs unless they are prescribed by a doctor.” The VOP specifically alleged that on three occasions in October 2020, defendant sold crack cocaine to an undercover informant working with local law enforcement.

The court issued a hold-without-bail order on January 8 finding that defendant’s underlying conviction for first-degree unlawful restraint is a violent felony. See 13 V.S.A. § 5301(7)(T) (identifying first-degree unlawful restraint as violent felony); 28 V.S.A. § 301(4) (providing that “[p]ending arraignment for any charge of violation, the probationer shall be detained at a correctional facility” and there is no right to release for probationer on probation for violent felony). That same day, defendant was also arraigned in a separate docket on three new felony charges for selling crack cocaine, 18 V.S.A. § 4231(b). In that docket, the court imposed \$5000 bail and several other conditions, including that defendant not leave the state without the court’s permission.

On January 11, defendant moved to review the hold-without-bail order under 13 V.S.A. § 7554(d).¹ See 28 V.S.A. § 301(4), (5)(A) (providing that after arraignment, court may release probationer convicted of a violent felony pursuant to 13 V.S.A. § 7554). The court held a motion

¹ On January 21, the trial court scheduled a hearing for January 26. Prior to receiving notice of the scheduled hearing, defendant appealed the January 8 hold-without-bail order. Given the trial court’s subsequent January 26 decision, this initial appeal was dismissed as moot on January 28. State v. Collins, No. 2021-018 (Vt. Jan. 28, 2021) (unpub. mem.), <https://www.vermontjudiciary.org/sites/default/files/documents/eo21-018.pdf> [<https://perma.cc/T852-H3T4>].

hearing on January 26 via Webex where defendant argued that he should be released on the same bail and conditions that were imposed on the new felony charges and offered his girlfriend, who testified on his behalf, as a custodian. He argued that these conditions were sufficient to mitigate any risk of flight because he has lived in Vermont for twenty-seven years, currently lives with his teenage children only a few hundred feet from the courthouse, and has a job waiting for him upon release. Due to COVID-19 protocols, defendant also expressed concern that he would not receive a VOP merits hearing within a reasonable time. The State opposed defendant's release, arguing that he posed a threat to public safety based on the facts surrounding his underlying conviction.

In a written order issued on January 26, the court concluded that the hold-without-bail order should be left in place. It explained that it was reasonable to be concerned that defendant would pose a public-safety risk if released, given that his underlying conviction was based on terrorizing a suspected police informant and the new felony charges allege that defendant made cocaine sales to a police informant. Furthermore, the court concluded that defendant's girlfriend was not an appropriate custodian because she does not live with defendant and would be unavailable to supervise him while she was at work. The court indicated its intent to provide defendant with a timely merits hearing and directed the clerk to schedule a hearing within the next forty-five days. Defendant appealed.

Vermont Rule of Criminal Procedure 32.1 provides that a decision to hold a defendant in custody pending a merits decision on a VOP, "shall be reviewable in the manner provided in 13 V.S.A. §§ 7554 and 7556 for pretrial release." V.R.Cr.P. 32.1(3)(A). Section 7556(b), in turn, provides a right to appeal to a single Justice of the Supreme Court who shall affirm the "order so appealed . . . if it is supported by the proceedings below." 13 V.S.A. § 7556(b); see also State v. Barrows, 172 Vt. 596, 596-97, 776 A.2d 431, 432 (2001) (mem.).

Section 301(4) of Title 28 provides that "[p]ending arraignment for any charge of violation [of probation], the probationer shall be detained." After arraignment, "a court may release a probationer on bail pending the revocation hearing." State v. Breer, 2016 VT 120, ¶ 7, 203 Vt. 649, 160 A.3d 318 (mem.). However, "unless the person is on probation for a nonviolent misdemeanor or nonviolent felony," there is no right to bail or release. 28 V.S.A. § 301(4); see also id. § 301(5)(B) (defining violent felony and violent misdemeanor as listed crime in 13 V.S.A. § 5301(7)); State v. Campbell, 2014 VT 123, ¶ 6, 198 Vt. 627, 110 A.3d 289 (mem.) (explaining that "trial court has discretion to grant bail or release"). In deciding whether to release a probationer, the trial court must consider the factors outlined in § 7554(b). 13 V.S.A. § 7554 (providing that conditions of release may be imposed that "mitigate the risk of flight" and "reasonably protect the public"); Campbell, 2014 VT 123, ¶ 9 ("Rule 32.1(a)(3)(A) expressly requires courts to consider the § 7554(b) factors when determining conditions of release for probationers."). While the trial court must consider all relevant factors, its "discretion is extremely broad, and we will affirm its decision if it is supported by the proceedings below," Campbell, 2014 VT 123, ¶¶ 6, 9-10 (citation omitted).

Defendant argues that the trial court abused its discretion because it failed to consider a relevant factor. He argues that although the trial court acknowledged that defendant might not receive a timely hearing and directed the clerk to schedule a hearing within forty-five days, it failed to consider whether an in-person hearing could be held in that time period given the constraints imposed by Administrative Order 49. See A.O. 49, § 5(d) (declaring a judicial emergency due to COVID-19 and providing that except for hearings in the criminal division, all superior court hearings "must be scheduled for remote participation by parties, witnesses, and other participants"). We conclude that the trial court did not abuse its discretion.

While the trial court acknowledged defendant’s concern about receiving a timely merits hearing—and left open the possibility that it would reconsider its decision if defendant was not provided with a hearing within forty-five days—its decision to hold defendant without bail was not based upon whether he would be provided with an in-person hearing in that time frame. In determining whether to release a defendant, a trial court is required to consider the various factors outlined in § 7554, which generally ask whether a court can impose conditions that “will reasonably mitigate the risk of flight” and “will reasonably ensure protection of the public.” 13 V.S.A. § 7554(a)(1)-(2). Considering these factors in this case, the trial court ordered defendant held without bail because it was concerned that he posed a risk to public safety. It was specifically concerned by the fact that his underlying conviction was based on terrorizing a suspected police informant, and the new felony charges allege that defendant made cocaine sales to a police informant.

Given the trial court’s reason for holding defendant without bail, the question of whether the merits hearing will be in person is not ripe for our consideration. State v. M.W., 2012 VT 66, ¶ 11, 192 Vt. 196, 57 A.3d 696 (“Claims are ripe when there is a sufficiently concrete case or controversy and when the exercise of judicial authority is justified by prudential considerations.” (quotation omitted)). Defendant did not raise the issue below, and the trial court did not purport to address it. In addition, while COVID-19 may make it more difficult to schedule an in-person hearing, Administrative Order 49 does not mandate that all criminal hearings be conducted remotely. While it gives the trial court the discretion to conduct non-evidentiary hearings remotely, it may only conduct evidentiary hearings remotely “upon agreement of all parties.” A.O. 49, § 5(d). At this point, there is simply not a live controversy regarding whether defendant will be provided with an in-person hearing.

Affirmed.

FOR THE COURT:

Karen R. Carroll, Associate Justice