



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant.*

ENTRY ORDER

NOVEMBER TERM, 2021

State of Vermont v. Pat Wright*	}	APPEALED FROM:
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	CASE NO. 21-CR-08005
		Trial Judges: David R. Fenster,
		Nancy J. Waples

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

On September 20, 2021, defendant Pat Wright was charged with first-degree aggravated domestic assault in violation of 13 V.S.A. § 1043(a)(3). That same day, the State moved to hold defendant without bail pursuant to 13 V.S.A. § 7553a, and the trial court ordered defendant to be preliminarily held without bail pending a weight-of-the-evidence hearing. The trial court held the weight-of-the-evidence hearing on October 18, 2021, and granted the State’s motion to hold defendant without bail on November 5, 2021. Defendant appealed to this Court. See 13 V.S.A. § 7556(d) (entitling defendant held under § 7553a to second, de novo hearing before single Justice of Supreme Court). On appeal, defendant argues that the State has not met its burden of demonstrating that the evidence of guilt is great because certain evidence should not be considered and asks that conditions of release be set for defendant. The Court held a hearing on defendant’s de novo appeal on November 18, 2021.

Because sixty days have elapsed, there is no longer a basis to hold defendant without bail under § 7553a, and defendant is entitled to a bail hearing. Defendant has been held without bail under 13 V.S.A. § 7553a since September 20, 2021. When a defendant is held without bail under § 7553a, the trial must commence within sixty days, unless there is a delay attributable to the defense, or the court must immediately schedule a bail hearing and set bail for the defendant. See 13 V.S.A. § 7553b; Vt. Const. ch. II, § 40. The sixty-day period begins to run when a defendant is first held without bail. State v. Downing, 2020 VT 101, ¶ 18. At the November 18, 2021 hearing, defendant represented that the sixty-day period would expire Friday, November 19, 2021, and the State did not contest that assertion. Because sixty days have passed since defendant was first held without bail, he is therefore entitled to a bail hearing. See State v. Lohr, 2020 VT 41, ¶ 16 (“If the requirements of § 7553b are satisfied, the court must hold a hearing and engage in an analysis under 13 V.S.A. § 7554.”); V.R.Cr.P. 45(a)(1) (“When the period is stated in days or a longer unite of time: (A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period”)*

As the trial court must now hold a hearing and engage in analysis to set bail under § 7554, this appeal is moot. “The mootness doctrine derives its force from the Vermont Constitution, which, like its federal counterpart, limits the authority of the courts to the determination of actual, live controversies between adverse litigants.” Houston v. Town of Waitsfield, 2007 VT 135, ¶ 5, 183 Vt. 543 (mem.) (quotations omitted); see Wood v. Wood, 135 Vt. 119, 120 (1977) (noting that most basic constitutional limitation on this Court “is the prohibition against advisory opinions”). “A case is moot if the reviewing court can no longer grant effective relief.” In re Moriarty, 156 Vt. 160, 163 (1991) (quotations omitted). “Importantly, even if a case was not moot when it was first filed, intervening events since its filing can render it moot.” Paige v. State, 2017 VT 54, ¶ 7, 205 Vt. 287.

Defendant’s only available relief in this appeal is a remand for the trial court to hold a hearing and set bail. Here, an intervening event, the expiration of the sixty-day period, has rendered the appeal moot because defendant is now entitled to that same relief under § 7553b. The Court therefore dismisses the appeal as moot.

Defendant’s appeal is hereby dismissed as moot.

FOR THE COURT:

Cortland Corsones, Superior Judge,
Specially Assigned

* At this Court’s de novo hearing, the State did not dispute defendant’s assertion that the sixty-days would expire at this time.