

VERMONT SUPREME COURT
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Case No. 22-AP-025

ENTRY ORDER

FEBRUARY TERM, 2022

State of Vermont v. Paige Wilkins* } APPEALED FROM:
} Superior Court, Bennington Unit,
} Criminal Division
} CASE NO. 21-CR-02986

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

Defendant Paige Wilkins appeals the trial court's denial of her motion to review bail, which sought to amend her conditions of release to remove cash bail. I affirm.

Defendant is charged in this docket with: (1) conspiracy to traffic heroin under 18 V.S.A. § 4233(c); (2) felony conspiracy to sell, deliver, manufacture, or cultivate a regulated drug under 13 V.S.A. § 1404(c)(5); (3) possession of 200 milligrams or more of heroin under 18 V.S.A. § 4233(a)(2); (4) possession of 2.5 grams or more of cocaine under 18 V.S.A. § 4231(a)(2); (5) contributing to juvenile delinquency under 13 V.S.A. § 1301; and (6) violation of conditions of release under 13 V.S.A. § 7559(e).

On April 20, 2021, law enforcement executed a search warrant at defendant's residence and found heroin and cocaine therein. At the time, defendant had been released without cash or surety bond. On pending charges for possession of heroin and dispensing or selling regulated drugs in a dwelling. The conditions of her release for those previous charges included that defendant not purchase, possess, or use regulated drugs.

At defendant's arraignment on April 21, 2021, the trial court set a secured appearance bond of \$15,000 with a cash or surety deposit of \$1500 along with other conditions of release. A little over a month later, on May 28, 2021, defendant moved to suspend the bail bond set and modify her conditions of release so that she could participate in an in-patient, addiction-treatment program. On June 2, 2021, the court suspended cash bail and temporarily modified defendant's conditions of release for the duration of her participation in the addiction-treatment program. These modifications were expressly conditioned on defendant's remaining at the addiction-treatment program facilities, and as such, should she leave the addiction-treatment program, she was required to report back to the correctional facility or to the court. In addition, the court-imposed conditions requiring defendant to follow the addiction-treatment program's rules and recommendations.

The court held a status conference on June 21, 2021, at which defendant did not appear. That same day, the court found defendant had failed to comply with her conditions of release, issued

a mittimus, and modified her conditions of release to remove the addiction-treatment-related conditions and impose a \$10,000 cash or surety bond. The court did not issue a warrant for defendant's arrest at this time; however, when it set a hearing for September 27, 2021, it specified that defendant's participation would be required.

Defendant failed to appear at the September 27 hearing, and as a result, the trial court formally issued an arrest warrant and set bail on the warrant at \$10,000 cash or surety. At some point between June and September, defendant was discharged from the in-patient program without having successfully completed treatment. Upon discharge, she did not return to the correctional facility or report to the court and absconded for five months until she was arrested on November 17, 2021, pursuant to the court's September arrest warrant.¹ Defendant has been incarcerated since her arrest because she cannot afford to post bail.

Defendant filed a motion to review bail on December 10, 2021, requesting the court strike the \$10,000 cash or surety bail bond. Defendant proposed that she was prepared to follow the court's conditions of release. She also explained that she did not leave the community where she lived during the five months she absconded and that the reason she did not report to the correctional facility or the court when she was discharged from the addiction-treatment program was that her daughter was ill. She also disclosed that two of her children are involved in a confidential proceeding with the Vermont Department of Children and Families and that she intends to cooperate to resolve these proceedings. Finally, she stated that she had no failures to appear, violations of probation or parole, or violations of conditions of release prior to her arraignment on April 21, 2021. The State opposed defendant's motion.

The trial court held a hearing on defendant's motion on January 4, 2022. At the hearing, defendant argued she has significant ties to the community because she is a resident, her children are there, and she did not flee the area when she absconded for five months. She explained that she could stay with her mother until finding separate residence if the cash bail were to be removed and provided the court with that address. Defendant also indicated that she would consent to a substance-abuse assessment if the court so ordered. In response, the State emphasized defendant's inability to appear, stay in contact with her attorneys, and comply with court orders, and argued these factors indicated that she was an extreme flight risk and therefore cash bail would be required to mitigate this risk.

Following the hearing, the trial court denied defendant's motion to strike bail and set conditions of release. The court considered all eight factors provided in 13 V.S.A. § 7554(a) and (b) and established the following findings on each.

First, the court addressed the seriousness, number, and evidence in support of the offenses charged. The court noted that defendant is facing serious charges in this docket that total a maximum sentence of sixty years of imprisonment if she is convicted. The court also explained that when she was arrested on these drug charges, she was in her residence with a large quantity of heroin and cocaine and was out on conditions of release for previous charges of heroin possession and dispensing or selling regulated drugs in a dwelling. The court stated that defendant faces six

¹ The parties do not dispute the trial court's finding that defendant in effect absconded from court proceedings for five months. Whether defendant first did not appear as required at a hearing in June or in September does not impact the analysis in this case.

charges in this docket, four of which are felonies and that she faces ten additional charges in other dockets, two of which are felonies. It found that the weight of the evidence was sufficient for probable cause on each charge in this docket.

Moving on to factors relevant to defendant's circumstances, the court found that she is incarcerated, has no employment, and has no significant resources or ability to post bail. It also found that she does not have a recent history of violence but does appear to have a severe substance abuse issue. In terms of her ties to the community, the court found they were strong since she is a longtime resident and has minor children in the area.

Lastly, the court considered defendant's record of appearance at court proceedings or of flight to avoid prosecution. It found that defendant failed to appear for a court hearing in this case in September 2021, and that she has a recent history of flight to avoid prosecution. Focusing on her failure to report to the correctional facility or the court following her discharge from the in-patient addiction-treatment program, it found she effectively absconded for approximately five months until her arrest on November 17, 2021. It found that during those five months, she successfully avoided prosecution and that it is unknown where she was.

The court then concluded that releasing defendant on conditions without an appearance bond would not reasonably mitigate the risk of flight from prosecution. It focused in particular on the seriousness of the charges, the number of charges, defendant's substance abuse issues, and defendant's recent history of failing to appear for a court proceeding. It further noted that though defendant was a candidate for release to an in-patient addiction-treatment facility, she had failed to complete such a program in the past and had not provided any indication that she would comply with similar release conditions the second time around. For these reasons, the court concluded that \$10,000 cash or surety was reasonably necessary to prevent defendant from fleeing to avoid prosecution.

On appeal defendant argues the trial court's decision was not supported by the proceedings below, because cash bail set in an amount defendant cannot meet is reserved for rare cases and that defendant does not fall under that category.² In response, the State argues that the trial court's order was within its discretion and that the court addressed all the required factors for its conclusion.

This Court reviews the trial court's decision for abuse of discretion, State v. Pratt, 2017 VT 9, ¶ 20, 204 Vt. 282, and shall affirm the trial court's order "if it is supported by the proceedings below." 13 V.S.A. § 7556(b).

Under 13 V.S.A. § 7554(a)(1), a defendant must be released pretrial "on personal recognizance or upon the execution of an unsecured appearance bond" unless doing so would "not reasonably mitigate the risk of flight from prosecution." To determine whether the defendant poses

² In addition, defendant proposes that this Court's case law suggests—but has never stated—that in order to satisfy the requirement that conditions of release, including the imposition of bail, be the least restrictive means possible to mitigate the risk of flight from prosecution, there must be a finding that no reasonable jurist could have found less restrictive conditions were available to ensure defendant's appearance at court proceedings. The State asserts this argument is not preserved for appeal. Assuming, without conceding, the argument is preserved for appeal, I decline to adopt such a rule at this time, especially in the absence of any support for this new standard.

a risk of flight from prosecution, the court “shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged.” Id. Should the court determine the defendant is a flight risk, it must “impose the least restrictive” condition(s) “that will reasonably mitigate the risk of flight of the defendant.” Id. In deciding which conditions will meet this objective, the court must consider:

the nature and circumstances of the offense charged; the weight of the evidence against the accused; the accused's employment; financial resources, including the accused's ability to post bail; the accused's character and mental condition; the accused's length of residence in the community; and the accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

Id. § 7554(b)(1).

If the court determines that cash bail is the least restrictive means to reasonably mitigate the defendant’s risk of flight, it must consider the defendant’s financial means. Id. § 7554(a)(1)(E). Although the court is not required to set bail in an amount the defendant can pay, it must set an amount no higher than necessary to ensure the defendant will not flee prosecution. See State v. Duff, 151 Vt. 433, 436, 442. Accordingly, imposition of cash bail is impermissible when its purpose is to keep the defendant in jail. Pratt, 2017 VT 9, ¶ 1. Because pretrial detention “necessarily cuts against the presumption of innocence inherent in our criminal jurisprudence,” trial courts “should be particularly circumspect in exercising their discretion to set bail at a level that a defendant cannot meet. Id. ¶ 17 (quotation omitted). Defendant asserts that she is unable to post bail in any amount.

The court’s finding that defendant posed a risk of flight from prosecution is supported by the proceedings below. See 13 V.S.A. § 7556(b). It considered the seriousness and number of charged offenses, as required under § 7554(a)(1), as well as the factors provided in § 7554(b)(1). On each of these factors it provided findings, none of which are contested on appeal, and it considered all of these factors before reaching its conclusion. In particular, it considered that she was facing up to sixty years in prison in the aggregate for several serious charges, her failure to appear at a hearing, and her absconding for five months until her arrest. Taken together, it was within the court’s discretion to conclude that defendant posed a significant risk of flight based on these factors.

Furthermore, the imposition of \$10,000 cash bail to mitigate the risk of defendant’s flight from prosecution was within the trial court’s discretion. Based on its conclusion that defendant posed a significant risk of flight, the trial court held that a \$10,000 cash or surety bond was “reasonably necessary to prevent flight to avoid prosecution.” In doing so, it explained that it would normally consider releasing her without cash bail to an in-patient treatment facility, but that when it had done so previously in this case, the result was defendant absconding for five months, including her failure to attend a court hearing for this docket. Moreover, it concluded that defendant had not provided evidence to convince the court that the same type of release would garner a different result the second time around. It also considered defendant’s financial circumstances, as required under § 7554(a)(1), and although it found she did not have significant means to post bail, it still concluded that \$10,000 cash bail was reasonably necessary to assure her appearance at court proceedings. See Pratt, 2017 VT 9, ¶ 21 (concluding bail set beyond defendant’s means to pay within court’s discretion where “no indication on the record that the court-imposed bail for any reason other than

to assure [defendant's] appearance"). The trial court was therefore within its discretion when it set cash bail in the amount of \$10,000.

Affirmed.

FOR THE COURT:

Harold E. Eaton, Jr., Associate Justice