

[Cite as *Miller v. Reid*, 2010-Ohio-6485.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96110

YOLANDA MILLER

RELATOR

vs.

**ROBERT REID, CUYAHOGA
COUNTY SHERRIFF**

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Habeas Corpus
Motion No. 440027
Order No. 440240

RELEASE DATE: December 28, 2010

ATTORNEY FOR RELATOR

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ATTORNEYS FOR RESPONDENT

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MELODY J. STEWART, J.:

{¶ 1} Petitioner, Yolanda Miller, is the defendant in *State v. Miller*, Cuyahoga Cty. Court of Common Pleas Case No. CR-542185. Miller was charged in an information with trafficking under R.C. 2925.03(A)(1), a fifth degree felony. The court of common pleas set bail at \$2,500 and Miller posted bond.

{¶ 2} The court of common pleas held pretrials in Case No. CR-542185 on November 4 and 11, 2010. After each of those pretrials, on November 5 and 11, Miller left a profanity-laced voice mail for a detective assigned to her case, demanding that purported evidence of her guilt be presented. The voice mails were recorded and heard by the judge. On November 29, 2010, a

different judge of the court of common pleas issued a civil stalking protection order ex parte against Miller in *Anderson v. Miller*, Cuyahoga Cty. Court of Common Pleas Case No. CV-742293, and scheduled a full hearing for December 13, 2010.

{¶ 3} On November 30, 2010, the court of common pleas held a hearing in Case No. CR-542185 “to modify the terms and conditions of [Miller’s] bond.” Hearing Transcript (“Tr.”), at 4. The court specifically considered the civil protection order as well as the voice mails for the detective and described the voice mails as “very aggressive,” “foul” and “vulgar.” Tr., at 13.

Citing Crim.R. 46, the court: increased Miller’s bail to \$25,000 cash or surety; referred Miller to the court psychiatric clinic; and scheduled a pretrial for January 6, 2011.

{¶ 4} Miller has filed this action in habeas corpus challenging the new bail as excessive. Respondent has filed a motion for summary judgment and argues that the court of common pleas acted reasonably and within its discretion when it increased Miller’s bail.

{¶ 5} “The principles governing habeas corpus and bail are well established. Under both the United States and Ohio Constitutions, ‘excessive bail shall not be required.’ If the offense is bailable, the right to reasonable bail is an inviolable one which may not be infringed or denied. *In re Gentry*

(1982), 7 Ohio App.3d 143, 454 N.E.2d 987 and *Lewis v. Telb* (1985), 26 Ohio App.3d 11, 497 N.E.2d 1376. The purpose of bail is to secure the attendance of the accused at trial. *Bland v. Holden* (1970), 21 Ohio St. 238, 257 N.E.2d 238.

{¶ 6} “In Ohio, the writ of habeas corpus protects the right to reasonable bail. *In re Gentry*. Pursuant to Crim.R. 46, in determining what is reasonable bail, the court must consider all relevant information including but not limited to, the nature and circumstances of the offense charged, the weight of the evidence, the accused's history of flight or failure to appear at court proceedings, his ties to the community, including his family, financial resources and employment, and his character and mental condition. After weighing these factors, the trial court sets the amount of bail within its sound discretion. The discretion to set bail also permits the trial court to change bail as circumstances warrant. *State v. Marte* (May 23, 1996), 8th Dist. No. 69587 and *Hardy v. McFaul*, 8th Dist. No. 84495, 2004-Ohio-2694. In a habeas corpus action to contest the reasonableness of bond, this court must determine whether the trial court abused its discretion. *Jenkins v. Billy* (1989), 43 Ohio St.3d 84, 584 N.E.2d 1045; *In re Gentry*, *Lewis*; and *In re Green* (1995), 101 Ohio App.3d 726, 656 N.E.2d 705.” *Crosby v. McFaul*, Cuyahoga App. No. 91641, 2008-Ohio-3356, ¶4-5.

{¶ 7} During the November 30 hearing, the court of common pleas considered the stalking protective order, Miller's voice mails to the detective and her demeanor in the courtroom as well as her mental state. Crim.R. 46(C) identifies several factors which a court may consider "[i]n determining the types, amounts, and conditions of bail * * * ." Crim.R. 46(C)(5) authorizes a court to consider "[w]hether the defendant is * * * under a court protection order." The fact of civil stalking protection order in Case No. CV-742293 was not disputed and readily verifiable. A different judge of the same court issued the order.

{¶ 8} Crim.R. 46(C)(4) authorizes a court to consider the defendant's "mental condition." Miller's voice mails to the detective coincided with pretrials in the underlying case. In addition to her repeated use of profanity, the tone of the voice mails was aggressive. The judge hearing Case No. CR-542185 also recounted that she had observed Miller's emotional behavior in the courtroom on a prior occasion. "I mean she was crying tears, head down, making noise when I stopped the courtroom proceedings because I'm concerned about someone." Tr. at 30. The judge also observed that Miller had prior criminal cases. Tr. at 4. See Crim.R. 46(C)(4). All of these considerations are, of course, among the factors expressly included in Crim.R. 46(C).

{¶ 9} As stated above, the setting of bail is within the discretion of the trial judge and we must consider whether the court abused its discretion. “An abuse of discretion connotes more than just an error of law or an error of judgment. A judgment which is arbitrary, unreasonable, tyrannical, unconscionable or clearly against reason and evidence has been defined as an abuse of discretion. In addition, an abuse of discretion has been defined as ‘a view or action that no conscientious judge, acting intelligently, could have honestly taken.’ *State ex rel. Alben v. State Employment Relations Board*, 76 Ohio St.3d 133, 1996-Ohio-120, 666 N.E.2d 1119; *State ex rel. Great Lakes College, Inc. v. State Medical Board* (1972), 29 Ohio St.2d 198, 280 N.E.2d 900; *State ex rel. Wilms v. Blake* (1945), 144 Ohio St. 619, 60 N.E.2d 308.” *Armendariz v. McFaul*, 8th Dist. No. 82703, 2003-Ohio-2327, ¶5.

{¶ 10} There is nothing in the record to indicate that Miller might be a flight risk or would fail to appear for any court dates. To the contrary, Miller has appeared for all of her scheduled court dates in this case. Additionally, Miller does not have a criminal record that is recent or extensive, and while the voice mails left for the detective cannot be characterized as anything less than vile, they seemed to emanate from Miller’s frustration with appearing for court and her case not going forward. However, the trial court found that she has exhibited volatile, emotional and

impulsive conduct in the courtroom and in the recorded voice mails. Further, the court considered that Miller demonstrated a willingness to contact and criticize a witness in her criminal case, and another judge issued a civil stalking protection order against her. During the hearing, the judge in Case No. CR-542185 repeatedly mentioned her observations of Miller's demeanor before the court on different occasions. As Miller states in her Petition, the trial court could have certainly considered "less burdensome conditions", and maybe the court could have warned Miller to cease all inappropriate conduct before being subjected to such a stiff increase in her bond. However, in light of all the circumstances, we cannot conclude that the court abused its discretion by increasing Miller's bond.

{¶ 11} Accordingly, respondent's motion for summary judgment is granted. Petitioner to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ denied.

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
JAMES J. SWEENEY, J., CONCURS