

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-17-00257-CR**

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**EX PARTE WILLIAM GREENWOOD**

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**On Appeal from the 75th District Court**  
**Liberty County, Texas**  
**Trial Cause No. WR01238**

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**MEMORANDUM OPINION**

Appellant William Greenwood appeals the ruling on his pretrial habeas corpus application requesting bail reduction to \$250,000 or less in cause number CR33300. The trial court lowered his bail from \$2.5 million to \$1 million. We affirm.

**Background**

On September 21, 2016, the State indicted Greenwood in cause number CR32772 for continuous sexual abuse of a child, which the State alleged occurred from on or about September 1, 2007, through June 14, 2011. The indictment also alleged a prior final felony conviction for murder. According to both the State's and

Greenwood's appellate briefs, Greenwood had bonded out in cause number CR32772 when he was indicted on June 7, 2017, in cause number CR33300 with indecency with a child by sexual contact, which the State alleged occurred on or about February 7, 2017. The indictment in CR33300 also alleged a prior felony conviction for murder.<sup>1</sup>

The record reflects that in cause number CR33300, the trial court originally set bail at \$2.5 million. Greenwood filed a petition for writ of habeas corpus in the trial court in which he requested a reduction to \$250,000 or less. On June 29, 2017, after conducting an evidentiary hearing, the trial court reduced Greenwood's bail to \$1 million. In reducing the bail to \$1 million, the trial court took judicial notice of the "matters that are contained in the application for habeas under the habeas number" and "also the court's file in 32772 and 33300[,]'" and stated the following:

All right. In arriving at its decision the court has taken into consideration all factors under 17.[1]5 of the Code of Criminal Procedure; but the court is specifically mindful of the nature of the offenses and the circumstances that these offenses occur and the need for safety of the victims -- that is, the allegations in the indictment in 33300 as well as in 32772 -- the need to safeguard those victims in the future as well as society's need for protection.

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<sup>1</sup> The prior conviction for murder alleged in the indictment's enhancement paragraph in cause number CR33300 appears to reference a different prior conviction for murder than the one alleged in the indictment's enhancement paragraph in cause number CR32772.

Greenwood appealed.

### Review of Trial Court's Setting of Bail

We review a trial court's ruling on the setting of bail under an abuse of discretion standard of review.<sup>2</sup> *See* Tex. Code Crim. Proc. Ann. art. 17.15 (West 2015) (affording a trial court discretion to set bail); *Ex parte Rubac*, 611 S.W.2d 848, 850 (Tex. Crim. App. [Panel Op.] 1981). The defendant has the burden to show the bail set by the trial court is excessive. *Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. [Panel Op.] 1980). The trial court's ruling will not be disturbed if it is within the zone of reasonable disagreement. *Clemons v. State*, 220 S.W.3d 176, 178 (Tex. App.—Eastland 2007, no pet.) (citing *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1991) (op. on reh'g)). The United States and Texas Constitutions prohibit excessive bail. U.S. Const. amends. VIII, XIV; Tex. Const. art. I, §§ 11, 13; *Ex parte Sabur-Smith*, 73 S.W.3d 436, 439 (Tex. App.—Houston [1st Dist.] 2002, no pet.). (The right to reasonable bail is protected by the United States and Texas Constitutions.). Additionally, the Code of Criminal Procedure sets forth rules for the trial court in setting bail. *See* Tex. Code Crim. Proc. Ann. art.

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<sup>2</sup> There is no indication in the record and the parties do not argue that at the time of the hearing on the petition for writ of habeas corpus that Greenwood had been detained for more than 90 days in Cause No. CR33300. Tex. Crim. Proc. Ann. art. 17.151 § 1(1) (West 2015).

17.15. Other factors that may be considered in determining the amount of bail include family and community ties, length of residency, aggravating factors involved in the offense, the defendant's work history, the defendant's prior criminal conduct, and previous and outstanding bail. *Ex parte Rubac*, 611 S.W.2d at 849-50.

An appearance bond secures the presence of a defendant in court for trial. *Ex parte Rodriguez*, 595 S.W.2d at 550. The trial court should set bail sufficient to provide reasonable assurance the defendant will appear at trial, but not so high as to be oppressive. *Ex parte Ivey*, 594 S.W.2d 98, 99 (Tex. Crim. App. 1980). Bail is excessive if it is "set in an amount greater than [what] is reasonably necessary to satisfy the government's legitimate interests." *Ex parte Beard*, 92 S.W.3d 566, 573 (Tex. App.—Austin 2002, pet. ref'd) (citing *United States v. Salerno*, 481 U.S. 739, 753-54 (1987)). When setting the amount of bail, the trial court weighs the State's interest in assuring the defendant's appearance at trial against the defendant's presumption of innocence. *Id.* The amount of bail may be deemed oppressive when the trial court sets the bail at an amount "for the express purpose of forcing [a defendant] to remain incarcerated[.]" *Ex parte Harris*, 733 S.W.2d 712, 714 (Tex. App.—Austin 1987, no pet.).

## Analysis

In one appellate issue, Greenwood argues the bail is excessive under the Texas Code of Criminal Procedure and the Texas Constitution. Greenwood contends that he presented proof of ties to the community, and that, although he produced evidence of gainful and long-term employment, he is paid only \$16.50 an hour. Greenwood further argues that “there is an absence of reported Texas cases sustaining bail in the amount of \$1,000,000.00 ‘even in the most egregious capital murder cases.’” Greenwood also argues that a summary he presented to the trial court as an exhibit at the hearing indicates that numerous first and second degree felony offenses have bonds set below \$100,000 in Liberty County, and the exhibit indicates that no bond in Liberty County for a sexual assault offense exceeds \$250,000 except for his.

To determine whether the trial court abused its discretion, we consider the rules found in article 17.15 of the Code of Criminal Procedure as well as the factors set out in *Rubac*. See Tex. Code Crim. Proc. Ann. art. 17.15; *Ex parte Rubac*, 611 S.W.2d at 849-50. The habeas applicant has the burden to establish that the bail is excessive. *Ex parte Rodriguez*, 95 S.W.2d at 550. The Texas Legislature has imposed the following statutory requirements:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

2. The power to require bail is not to be so used as to make it an instrument of oppression.
3. The nature of the offense and the circumstances under which it was committed are to be considered.
4. The ability to make bail is to be regarded, and proof may be taken upon this point.
5. The future safety of a victim of the alleged offense and the community shall be considered.

Tex. Code Crim. Proc. Ann. art. 17.15.

When setting the amount of bail, the trial court may also give consideration to such factors as (1) the accused's work record; (2) the accused's family and community ties; (3) the accused's length of residency; (4) the accused's prior criminal record; (5) the accused's conformity with previous bond conditions; (6) the existence of other outstanding bonds, if any; and (7) aggravating circumstances alleged to have been involved in the charged offense. *See Maldonado v. State*, 999 S.W.2d 91, 93 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd) (citing *Ex parte Rubac*, 611 S.W.2d at 849-50).

Bail has been held to be oppressive when the trial court sets bail at an amount “for the express purpose of forcing appellant to remain incarcerated” pending trial or appeal. *See Ex parte Harris*, 733 S.W.2d at 714. Here, the record contains no indication that the trial court set the amount of bail for the sole purpose of ensuring

that Greenwood remains incarcerated pending trial. *See Montalvo v. State*, 315 S.W.3d 588, 596 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (“Our independent review of the habeas corpus record likewise does not suggest that the trial court deliberately set bail at an excessively high level solely to prevent Montalvo from posting bail.”).

The nature of the offense and the circumstances surrounding the offense are factors in determining what constitutes reasonable bail. Tex. Code Crim. Proc. Ann. art. 17.15(3). In considering the nature of the offense, it is proper to consider the possible punishment. *Ex parte Vasquez*, 558 S.W.2d 477, 479-80 (Tex. Crim. App. 1977). When the nature of the offense is serious and involves aggravating factors, a lengthy prison sentence following trial is probable. *Ex parte Hulin*, 31 S.W.3d 754, 760 (Tex. App.—Houston [1st Dist.] 2000, no pet.). Therefore, the pretrial bail must be set sufficiently high to secure the presence of the accused at trial because the accused’s reaction to the prospect of a lengthy sentence might be to flee and fail to appear. *Id.* at 761.

The record reflects that the State indicted Greenwood for indecency with a child by contact, enhanced by a prior felony conviction for murder. *See* Tex. Penal Code Ann. § 21.11(a)(1) (West 2011). The offense carries a sentence of five to ninety-nine years’ or life imprisonment, and a fine not to exceed \$10,000. *Id.* § 12.32

(West 2011). Thus, the record reflects that the nature of the offense is very serious and it carries a possible life sentence. We note that the amount of the bail set in the present case is similar to that set in other first-degree felony cases. *See, e.g., Ex parte Frazier*, No. 09-11-00620-CR, 2012 Tex. App. LEXIS 650, at \*\*1-9 (Tex. App.—Beaumont Jan. 25, 2012, no pet.) (mem. op., not designated for publication) (affirming \$1.9 million bail set for appellant charged with first-degree felony offense of aggravated robbery); *Ex parte Cuevas, Jr.*, No. 11-03-00402-CR, 2004 Tex. App. LEXIS 2457, at \*\*1, 12, 14 (Tex. App.—Eastland Mar. 18, 2004, no pet.) (not designated for publication) (affirming bail set at \$1 million in case involving first-degree felony offense of engaging in organized criminal activity to commit theft).

The ability of an accused to post bail is also a factor to be considered, but the inability to make the bail set by the trial court does not automatically render the bail excessive. *See Ex parte Vance*, 608 S.W.2d 681, 683 (Tex. Crim. App. [Panel Op.] 1980); *Golden v. State*, 288 S.W.3d 516, 519 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd). Greenwood testified that he owns seven homes in Liberty County and property in San Jacinto County. According to Greenwood, at the time of the hearing, he was renting two of the houses to tenants for a total monthly rental income of \$1,500, but that if he needed to he could rent out another one of his houses. Greenwood explained that one of the homes is valued at about \$22,000 but has a



\$21,000 lien against it, but that he owns the other six homes outright and their value is approximately \$200,000. Greenwood acknowledged he could put the homes and property up for sale. Greenwood testified that his checking account balance is typically \$500 to \$1,000 and that, at the time of the hearing, he had two savings accounts with a total of approximately \$4,500. Greenwood also testified that his 401K account is valued at approximately \$15,000. According to Greenwood he has three vehicles: a 2001 Monte Carlo valued at \$200, a 2009 Dodge Ram 1500, and a 2011 Dodge Challenger worth “[m]aybe \$6,000, \$7,000.” Greenwood testified that he could make bond if it was set between \$150,000 and \$250,000, but that he would not be able to make bond if it was set at \$2.5 million. The accused’s inability to make bail, even to the point of indigence, does not control over the other factors because if the ability to make bail controlled then the role of the trial court would be completely eliminated, and the accused would be in the position of determining his own bail. *See Ex parte Charlesworth*, 600 S.W.2d 316, 317 (Tex. Crim. App. [Panel Op.] 1980); *Ex parte Hunt*, 138 S.W.3d 503, 506 (Tex. App.—Fort Worth 2004, pet. ref’d); *Ex parte Parker*, 26 S.W.3d 711, 712 (Tex. App.—Waco 2000, no pet.).

For a defendant to show that he is unable to make bail, he must generally show that his funds and his family’s funds have been exhausted. *Ex parte Willman*, 695 S.W.2d 752, 754 (Tex. App.—Houston [1st Dist.] 1985, no pet.) (citing *Ex parte*

*Dueitt*, 529 S.W.2d 531, 532 (Tex. Crim. App. 1975)). Unless a defendant has shown that his funds have been exhausted, he must usually show that he made an unsuccessful effort to furnish bail before bail can be determined excessive. *Id.*

As noted previously, a trial court may also consider the defendant's work history, prior criminal record, his family and community ties, length of residency, aggravating factors in the offense, and previous and outstanding bail. *See Ex parte Rubac*, 611 S.W.2d at 849. Greenwood testified that at the time of the hearing he lived in Hull and he had lived there about twenty-five years. As to his work history, Greenwood testified that at the time of the hearing he was earning approximately \$16.50 per hour, and he had worked at his place of employment for more than three years. Prior to his employment there, he worked for another employer for over twenty years.

Greenwood's prior criminal history is a factor that the trial court may have considered. Greenwood testified that he pleaded "no contest" to two counts of murder by strangling two females, was convicted in each case, was sentenced in each case to thirty-six years of confinement to run concurrently, and that he actually served a little over thirteen years in prison for the murders. He testified that, in addition to the charges in cause number CR33300, he had another pending charge in CR32772 in Liberty County for continuous sexual abuse of a child. According to

Greenwood, his bond in cause number CR32772 was set at \$25,000, he bonded out, and then returned to jail after it was alleged that he was around children younger than fourteen years of age, and his bond in CR32772 was increased.

Additionally, the trial court indicated on the record that it considered “the need for safety of the victims -- that is, the allegations in the indictment in 33300 as well as in 32772 -- the need to safeguard those victims in the future as well as society’s need for protection.” *See* Tex. Code Crim. Proc. Ann. art. 17.15(5).

#### Conclusion

Greenwood bears the burden of demonstrating that the amount of the bond is excessive. *See Ex parte Rubac*, 611 S.W.2d at 849; *Ex parte Rodriguez*, 595 S.W.2d at 550. We conclude that Greenwood failed to meet his burden. Based on the evidence before the trial court in this case, the trial court reasonably could have concluded the bond it set was justified by the nature of the offense, the potentially lengthy sentence, Greenwood’s criminal history, and the fact that Greenwood is alleged to have committed another offense while on bond for the offense of continuous sexual abuse of a child, coupled with the need to protect the safety of the victims and the community. We cannot say the trial court’s setting of Greenwood’s bail at \$1 million was outside the zone of reasonable disagreement. Accordingly, the

trial court did not abuse its discretion. We overrule Greenwood's issue on appeal and affirm the trial court's order.

AFFIRMED.

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LEANNE JOHNSON  
Justice

Submitted on October 16, 2017  
Opinion Delivered November 8, 2017  
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.