In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-21-00116-CR

EX PARTE ERIN WILSON

On Appeal from the 276th District Court
Titus County, Texas
Trial Court No. 42240

Before Morriss, C.J., Burgess and Stevens, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

On September 1, 2021, Erin Wilson was arrested on two charges of injury to a child and one charge of injury to a child causing serious bodily injury. *See* TEX. PENAL CODE ANN. § 22.04(a)(1), (3) (Supp.). Wilson's bond was set at $100,000.00 on each charge for injury to a child and $300,000.00 for the charge of serious bodily injury to a child. Seventeen days following her arrest, Wilson filed an application for a writ of habeas corpus seeking a reduction of the bond amount. On appeal, Wilson complains of the trial court's October 20, 2021, denial of her application. Because we find that the trial court did not abuse its discretion by denying Wilson's application for habeas relief, we affirm the trial court's order.[1]

[1]"We have jurisdiction over this appeal from the denial of an application for habeas corpus relief even though we would not have jurisdiction to consider a pretrial motion for bail reduction." *Ex parte Smith*, 486 S.W.3d 62, 64 n.4 (Tex. App.—Texarkana 2016, no pet.). "Although both procedural mechanisms seek the same result, only an order denying an application for habeas corpus relief is appealable." *Id.* (citing *Ragston v. State*, 424 S.W.3d 49, 50, 52 (Tex. Crim. App. 2014)). The Texas Court of Criminal Appeals has explained, "The right of appeal occurs [in the habeas proceeding but not the pretrial motion for bail reduction] because the habeas proceeding is in fact considered a separate 'criminal action,' and the denial of relief marks the end of the trial stage of that criminal action and the commencement of the timetable for appeal." *Id.* (quoting *Greenwell v. Court of Appeals for Thirteenth Judicial Dist.*, 159 S.W.3d 645, 649–50 (Tex. Crim. App. 2005) (footnote omitted) (citation omitted)). As a result, "[h]abeas corpus proceedings are separate and distinct proceedings independent of the cause instituted by the presentation of an indictment or other forms of the State's pleadings[, and s]uch habeas proceedings should be docketed separately from the substantive cause and given a different cause number." *Id.* (quoting *Ex parte Carter*, 849 S.W.2d 410, 412 n.2 (Tex. App.—San Antonio 1993, pet. ref'd)).

In this case, Wilson did not file the habeas corpus application as a separate proceeding. Even so, "that fact does not negate our appellate jurisdiction." *Id.* (citing *Ex parte Bui*, 983 S.W.2d 73, 75 (Tex. App.—Houston [1st Dist.] 1998, pet. ref'd) ("The manner in which they were docketed does not affect jurisdiction. No authority was found or cited to this Court for dismissing an appeal because a habeas corpus proceeding was docketed with the underlying action.")). "Essentially, a pretrial application for writ of habeas corpus is still considered a separate action, even when it is filed under the same cause number as the underlying criminal action." *Id.* Therefore, "the trial court's order denying that application is still a final and appealable judgment because it resolves all the issues presented in the habeas proceeding." *Id.*

"A trial court's ruling setting the amount of bail is reviewed for an abuse of discretion."[2] *Ex parte Gomez*, 624 S.W.3d 573, 576 (Tex. Crim. App. 2021) (citing TEX. CODE CRIM. PROC. ANN. art. 17.15); *see Ex parte Gill*, 413 S.W.3d 425, 428 (Tex. Crim. App. 2013) ("[A] decision of a trial judge at a habeas proceeding regarding the imposition or reduction of bail 'will not be disturbed by this Court in the absence of an abuse of discretion.'" (quoting *Ex parte Spaulding*, 612 S.W.2d 509, 511 (Tex. Crim. App. 1981))). A trial court abuses its discretion when it acts arbitrarily or capriciously or "without reference to guiding rules and principles." *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990) (quoting *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985)).

"The burden of proof is on the defendant to show that bail is excessive." *Ex parte Gomez*, 624 S.W.3d at 576 (citing *Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977)). "When reviewing a trial court's ruling on a habeas claim, we view the record in the light most favorable to the ruling." *Id.* (citing *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006)).

Evidence at the hearing established that Wilson was employed by Kids Care Academy, where the alleged incident occurred. Chris Durant, III, a criminal investigator with the Mount Pleasant Police Department, testified that Kristen Weddle reported that her child had been injured while in Wilson's care. According to Durant, Weddle said that she took her nine-month-old child, X.H., to the emergency room for what she believed was a rash behind his ear and neck

[2]"'[B]ail' and 'bond' as used in Chapter 17 [of the Texas Code of Criminal Procedure] are interchangeable terms." *Ex parte Gomez*, 624 S.W.3d at 577.

and a spot on his head but was informed by doctors that he had suffered injuries and a possible skull fracture.

Durant said that Weddle spoke with another Kids Care Academy employee, McKenna Doss, who produced recordings of "the baby room" where Wilson worked. According to Durant, the recordings showed that X.H. was "pushed down, thumped, [and] his head forcefully punished [sic] into the bottom of the baby bed" by Wilson. Durant also observed that five-month-old J.A. "was struck and then yanked up by one arm out of [a] crib" and that another five-month-old, J.F., was "thumped in the head" and "forcefully" spun around by his legs by Wilson. Durant testified that the children seemed upset and hurt and cried out. During cross-examination, Durant said that diagnostic testing on X.H. had ruled out a skull fracture, that X.H. had a knot on his head, and that none of the children suffered broken bones, dislocated joints, or permanent disfigurement.

Wilson's mother, Cynthia Schoppe, had worked for the City of Mount Pleasant as a police dispatcher for eighteen years and was married to Jackie Schoppe, who worked for W. T. Ballard Railworks, a company that built railroads. Schoppe testified that Wilson, who was twenty-five, had lived in the area for her entire life. Schoppe had moved to Houston and testified that Wilson could live with her in a home she occupied with her husband, her mother, and two grandchildren, who were three and five years old. Schoppe added that Wilson also had a two-year-old child who currently lived with its father, and Schoppe agreed to supervise Wilson if she were around any children. During cross-examination, Schoppe admitted that Wilson would have to stay somewhere else if Child Protective Services concluded that she could not reside in a

home with children but said that Wilson could live with her aunt in Titus County or, alternatively, that she would try to get an apartment for Wilson.

Schoppe testified that she had been unsuccessful in raising funds to post Wilson's bond but that she would be able to post lesser bonds of $25,000.00 for each of Wilson's three charges. Wilson hired her own counsel but did not testify at the hearing. Her only prior criminal history was for possession of marihuana.

After a hearing, the trial court found that residing with Schoppe was not an option for Wilson because she posed a potential danger to the two minor children in Schoppe's home. The trial court determined that Wilson was a flight risk based on the charges filed against her and that, even though the parties stipulated that Wilson's aunt would allow her to reside there, Wilson had "no stable residence if she were released from jail." It further found that "Schoppe's reference to not being able to make the bonds all at once, if all the bonds on all three cases were dropped to $25,000 each, is only a vague reference to what bond the defendant could make" and that Wilson "did not offer evidence as to what specific assets she and her family ha[d] and that said funds and assets had been exhausted in an attempt to make bail." As a result, the trial court concluded that Wilson failed to meet her burden to show that the bonds currently set were excessive and found that the current bonds were required for the future safety of the child victims and for assurance of Wilson's future appearances in court.

Article 17.15 of the Texas Code of Criminal Procedure "sets out rules for fixing the amount of bail." *Gomez*, 624 S.W.3d at 576. The statute states,

> The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:
>
> 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 (Supp.).

The first two statutory factors are interrelated. "The primary purpose or object of an appearance bond is to secure the presence of a defendant in court for the trial of the offense charged." *Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. [Panel Op.] 1980) (orig. proceeding). Even so, bail should not be set so high as to constitute an instrument of oppression. *Ex parte Ivey*, 594 S.W.2d 98, 99 (Tex. Crim. App. 1980). This occurs when the trial court sets bail at an amount based on the "assumption that [the accused cannot] afford bail in that amount and for the express purpose of forcing [the accused] to remain incarcerated pending [trial]." *See Ex parte Harris*, 733 S.W.2d 712, 714 (Tex. App.—Austin 1987, no pet.) (per curiam).

The third statutory factor "implicate[s] the range of punishment." *Gomez*, 624 S.W.3d at 576 (citing *Ex parte Ivey*, 594 S.W.2d at 99). Of all the statutory factors, "[t]he primary factors are the length of the sentence . . . and the nature of the offense." *Ex parte Rubac*, 611 S.W.2d 848, 849 (Tex. Crim. App. 1981). If the nature of the offense is serious and a lengthy sentence is probable, bail should be "set sufficiently high to secure the presence of the accused at trial

because the accused's reaction to the prospect of a lengthy prison sentence might be not to appear." *In re Hulin*, 31 S.W.3d 754, 761 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

The nature of one of Wilson's charged offenses is serious. Injury to a child causing serious bodily injury is a first-degree felony, "when the conduct is committed intentionally or knowingly," and carries a minimum sentence of five years and a maximum sentence of ninety-nine years or life imprisonment, plus a fine of up to $10,000.00. TEX. PENAL CODE ANN. §§ 12.32, 22.04(e). Because this offense was caught on video, it is probable that she will be convicted of intentional or knowing conduct.

Yet, Wilson cites to Durant's testimony during cross-examination, which suggested that the injuries sustained by X.H. were not serious,[3] to establish that it is unlikely that she will be convicted of a first-degree felony. While Durant also spoke of the doctors' concerns about a possible skull fracture after X.H. presented in the emergency room, the skull fracture had been ruled out, the medical records were not made a part of the bond hearing, and no medical testimony was taken during the hearing, which comprised only thirty-four pages of transcript. From the limited testimony at the hearing, we cannot determine whether it is probable that Wilson will be convicted of injury to a child causing serious bodily injury and receive a lengthy sentence, and we cannot, at this stage in the proceeding, rule out the possibility of conviction. Instead, we presume that the trial court weighed Durant's testimony, which was favorable to

[3]"'Serious bodily injury' means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." TEX. PENAL CODE ANN. § 1.07(a)(46).

Wilson, in setting the bond amount and continue our review of the remaining statutory factors to determine whether the $300,000.00 bond was excessive.

As for Wilson's remaining charges, injury to a child is a third-degree felony, "when the conduct is committed intentionally or knowingly," and carries a punishment of imprisonment "for any term of not more than 10 years or less than 2 years" and a fine not to exceed $10,000.00. *See* TEX. PENAL CODE ANN. §§ 12.34, 22.04(f). Because Wilson's offenses were caught on video, it is highly probable that she will be convicted of injuring both J.A. and J.F. intentionally or knowingly and, given that they were both five months old at the time of the offense, the trial court could have found that a sentence at the upper end of the punishment range is possible.

In light of the allegations, nothing shows that the trial court set the bond amounts for the express purpose of forcing Wilson to remain incarcerated. Our conclusion is supported by a review of bond amounts in other cases. Texas courts have found that a $300,000.00 bond is not excessive for first-degree felonies similar to the one Wilson is accused of committing. *See Ex parte Cloninger v. State*, No. 05-13-01663-CR, 2014 WL 1408466, at *4 (Tex. App.—Dallas Apr. 8, 2014, pet. ref'd) (mem. op., not designated for publication) (upholding $500,000.00 bond for injury to a child causing serious bodily injury); *see also Ex parte Flores*, No. 06-20-00124-CR, 2021 WL 744773, at *2 (Tex. App.—Texarkana Feb. 26, 2021, no pet.) (mem. op., not designated for publication); *Ex parte Goodson*, No. 01-15-00288-CR, 2015 WL 1868771, at *3 (Tex. App.—Houston [1st Dist.] Apr. 21, 2015, no pet.) (mem. op., not designated for

publication); *Ex parte Brooks*, 376 S.W.3d 222, 227 (Tex. App.—Fort Worth 2012, pet. ref'd).[4] Likewise, our sister courts have regularly found that a $100,000.00 bond for a third-degree felony offense is not excessive or so high that it constitutes an instrument of oppression. *See Ex parte Bell*, No. 03-09-00037-CR, 2009 WL 1364355, at *4 (Tex. App.—Austin May 12, 2009, no pet.) (mem. op., not designated for publication) (finding bail amount of $100,000.00 for third-degree injury to a child was not an abuse of discretion); *see also Ex parte Anderson*, Nos. 01-20-00572-CR, 01-20-00573-CR, 01-20-00574-CR, 2021 WL 499080, at *17 (Tex. App.—Houston [1st Dist.] Feb. 11, 2021, no pet.) (mem. op., not designated for publication) ($100,000.00 bail for third driving while intoxicated offense was within the trial court's discretion); *Ex parte Miller*, 442 S.W.3d 478, 482 (Tex. App.—Dallas 2013, no pet.) (upholding bail of $200,000.00 for third-degree felony of terroristic threat); *Ex parte Lopes*, No. 05-04-00216-CR, 2004 WL 878295, at *4 (Tex. App.—Dallas Apr. 26, 2004, pet. ref'd) (mem. op., not designated for publication) ("[W]e cannot conclude the $100,000 bond [set on third-degree felony charge of stalking] is an instrument of oppression.").

We conclude that the analysis on the first three factors weighs against an abuse-of-discretion finding. Even though we cannot determine the probability of Wilson being convicted of injury to a child causing serious bodily injury, we find the first three factors to favor the trial court's denial of reduction of the bond amount because of the serious nature of the alleged offense, the possible punishment range, and the fact that, although high, the $300,000.00 bail is

[4]"Although unpublished cases have no precedential value, we may take guidance from them 'as an aid in developing reasoning that may be employed.'" *Rhymes v. State*, 536 S.W.3d 85, 99 n.9 (Tex. App.—Texarkana 2017, pet. ref'd) (quoting *Carrillo v. State*, 98 S.W.3d 789, 794 (Tex. App.—Amarillo 2003, pet. ref'd)).

within the range of bail that has been affirmed by Texas courts evaluating similar felonies. *See Ex parte Lucas*, No. 06-20-00127-CR, 2021 WL 1181202, at *2 (Tex. App.—Texarkana Mar. 30, 2021, no pet.); *Flores*, 2021 WL 744773, at *3. As for Wilson's remaining charges, the nature of the offenses, the high probability of conviction, and the fact that the bond amount is within the range affirmed in other cases evaluating similar felonies all favor the trial court's denial of Wilson's request to reduce the $100,000.00 bond amount for each charge of injury to a child.

Next, we look to Wilson's ability to make bail, while keeping in mind that "[i]t is established that the ability or inability of an accused to make bail does not alone control in determining the amount of bail." *Ex parte Vance*, 608 S.W.2d 681, 683 (Tex. Crim. App. 1980); *see Ex parte Scott*, 122 S.W.3d 866, 870 (Tex. App.—Fort Worth 2003, no pet.); *Maldonado v. State*, 999 S.W.2d 91, 96 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). "[A] defendant generally must show that his funds and his family's funds have been exhausted." *Ex parte McLendon*, 356 S.W.3d 541, 543 (Tex. App.—Texarkana 2011, no pet.). Wilson, who has retained counsel, is not indigent. At the hearing, while Schoppe testified that *she* had been unsuccessful in raising funds to post Wilson's bond, Wilson did not testify. As a result, the trial court found that Wilson "did not offer evidence as to what specific assets she and her family have and that said funds and assets had been exhausted in an attempt to make bail," and we conclude that the record supports the trial court's finding. We find that the fourth factor weighs against an abuse-of-discretion finding.

Next, the trial court's findings of fact establish that it believed Wilson posed a threat to young children, and we find this determination supported by Durant's testimony about Wilson's actions, which were caught on camera. This factor also weighs against an abuse-of-discretion finding.

"Other relevant factors include the defendant's employment history, family ties, length of residency, criminal history, previous bond compliance, other outstanding bonds, and aggravating facts of the charged offense." *Ex parte Gomez*, 624 S.W.3d at 576 (citing *Ex parte Rubac*, 611 S.W.2d at 849–50). Most of these factors favor Wilson. She had lived in Titus County her whole life, had an aunt who lived there with whom she was able to reside, had no prior criminal history, except possession of marihuana, and had no other outstanding bonds. Yet, her employment history was in childcare, it was alleged that Wilson had struck X.H. with such force that doctors were worried about a possible skull fracture, and Wilson's alleged victims were all under twelve months old. We also note that the trial court heard evidence that Wilson's mother lived in Houston and believed Wilson to be a flight risk based on the charges against her.

Based on our review of this record, we find that Wilson has not carried her burden to establish that the bond amounts were excessive. Further, while the $300,000.00 bond for Wilson's first-degree-felony charge may be on the outer edges of what would constitute an appropriate amount of bail considering Durant's favorable testimony, we cannot say that the trial court did not consider the relevant statutory and common-law factors in setting the $300,000.00 bond amount. We also find no abuse of discretion in the $100,000.00 bonds set on Wilson's remaining charges. As a result, we overrule Wilson's sole issue.

For the reasons stated, we affirm the trial court's order denying Wilson's application for a writ of habeas corpus.

Josh R. Morriss, III
Chief Justice

Date Submitted: November 30, 2021
Date Decided: January 7, 2022

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