

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) ID#: 0207018007
)
 DONALD L. MILLER)

Date Submitted: January 13, 2003

Date Decided: January 31, 2003

William M. Kelleher, Deputy Attorney General and Marsha J. Epstein, Deputy Attorney General, Wilmington, Delaware, for the State of Delaware.

Kevin P. O'Neill, Esquire, Wilmington, Delaware, for T & H Bail Bonds.

Christopher D. Tease, Wilmington, Delaware, for Defendant.

*Upon the State's Motion for Revocation of Bail and to hold Defendant without Bail:
DENIED in part, GRANTED in part.*

MEMORANDUM OPINION

Gebelein, J.

AND NOW, TO WIT, this 31th day of January, 2003, after briefing and hearing argument for a Motion for Revocation of bail, it is the finding of the Court:

1. Donald L. Miller ("Defendant") was arrested on July 31, 2002, for Possession of a Firearm During the Commission of a Felony, Aggravated Menacing, Terroristic Threatening, Reckless Burning under \$1500, Theft under \$1000, Endangering the Welfare of a Child, and Criminal Impersonation. Two of these offenses, Possession of a Firearm During the Commission of a Felony and Aggravated Menacing, are classified as violent felonies under title 11, section

4201(c).¹

2. A secured bond was posted on these charges immediately following his arrest. On November 5, 2002, while awaiting trial on these original offenses, Petitioner was arrested for additional statutory violent felonies as defined by section 4201.² Petitioner was charged with Possession of a Firearm During the Commission of a Felony, Attempted Robbery 1st (6 counts), Burglary 2nd, Reckless Endangering 1st, Conspiracy 2nd, and Burglary 1st.

3. On July 8, 2002, House Bill 438 was signed and became effective amending title 11, section 2116 of the Delaware Code. On January 9, 2003, the State filed the instant motion requesting that the Court revoke Defendant's bail on his original offenses as mandated by section 2116(b)(1).³

4. Article 1, section 12 of the Delaware Constitution states that "All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is positive or the presumption great..."⁴ (emphasis added). As the court noted in *State v. Matthews*,⁵ because Defendant is not being held for trial on a capital offense, he has a State constitutional right to have bail set. The Legislature cannot by statute supercede the plain language of the Constitution

¹DEL. CODE ANN. tit. 11 § 4201 (2001).

²*Id.*

³DEL. CODE ANN. tit. 11 § 2116(b)(1) (2002).

⁴ Del. Const. art. I § 12. *See also, In Re Steigler*, 250 A.2d 379 *rev'd on other grounds* Del. Supr. 252 A.2d 543 (1960).

⁵*State v. Matthews*, 2002 WL 31814612 (Del. Super. Ct.).

of this State, granting the right to bail pretrial.⁶ It is inconceivable that the provisions of section 12 of article 1 of the Delaware Constitution would permit the legislature to mandate pretrial detention without bail in many drug felony cases (defined by statute as violent) based solely upon an arrest and yet, on the other hand, require the State to offer “proof positive” at a judicial hearing in capital murder cases to hold an accused without bail.⁷

5. Defendant, in this case, posted bail on his original alleged violent offenses subsequent to the enactment of House Bill No. 438 amending title 11, section 2116 of the Delaware Code.

6. The State argues that the Supreme Court in holding that the General Assembly’s enactment of title 11, section 4331 did not violate the Federal or State Constitutions.⁸ Section 4331 revokes a defendant’s right to bail post-conviction for certain offenses and is thus not controlling in a case where Article 1, section 12 is implicated.⁹

7. Separation of powers clearly permits the legislature to set reasonable conditions on bail,¹⁰ however, the legislature by statute may not eliminate a defendant’s right to bail. Nor may a defendant’s right to due process of law be abolished. In *Matthews*, this Court noted concern

⁶ *Id.* The Delaware Constitution is far more explicit in granting this right than the United States Constitution that merely prohibits excessive bail. U.S. Const. amend. VIII. *See* Article 1, § 11 of the Delaware Constitution which is virtually identical to the United States Constitution and prohibits excessive bail. The framers of the Delaware Constitution obviously had more in mind when they added § 12 mandating bail in all but certain capital cases.

⁷ *See* Del. Const. art. I § 12. *See also, In Re Steigler*, 250 A.2d at 381.

⁸ *State v. Flowers*, 330 A.2d 146, 149 (Del. 1974).

⁹ DEL. CODE ANN. tit. 11 § 4331(a) (2001).

¹⁰ E.g. The legislature may set a condition of bail that defendant may not commit any more felonies.

surrounding the “automatic” nature of the finding of probable cause required by House Bill No. 438.¹¹ While it is true that section 2116 includes a due process provision requiring that the Superior Court conduct a hearing to determine if there is probable cause to believe that the accused has committed a subsequent violent offense during a period of secured or unsecured release prior to revocation of bail.¹² Those rights are illusory when the statute creates an irrebuttable presumption based solely upon an arrest, indictment or preliminary hearing.¹³ As written, the statute precludes the court from considering other factors or evidence which may be relevant to the issue of whether the offender has committed a subsequent violent felony.

For the above stated reasons, the State’s Motion for Revocation of Bail and to hold the Defendant without bail is **DENIED**.¹⁴ Bail, however, is increased to \$50,000 cash only on Possession of a Firearm during the Commission of a Felony (Cr.A.# IN02-08-0272). The State’s Motion for Forfeiture of Bail will be considered in a separate opinion.

IT IS SO ORDERED.

The Honorable Richard S. Gebelein

Orig: Prothonotary

¹¹*Matthews*, 2002 WL 318146612, at *1.

¹²DEL. CODE ANN. tit. 11 § 2116(b) (2002).

¹³Tit. 11 § 2116(c).

¹⁴This in no way should be construed as impacting on the issue of bail post conviction. *See State v. Flowers*, Del. Supr., 330 A.2d 146 (1974).

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