

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002412-MR

CHERYL MCCAFFERTY

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 07-CR-00280

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE AND CAPERTON, JUDGES; ROSENBLUM,¹ SPECIAL JUDGE.

CAPERTON, JUDGE: Cheryl McCafferty (McCafferty) appeals the Campbell Circuit Court's denial of her motion for bond reduction. After a thorough review of the record, we affirm.

¹ Retired Judge Paul W. Rosenblum, sitting as Special Judge by Assignment of the Chief Justice Pursuant to Section 110 (5)(b) of the Kentucky Constitution.

McCafferty was indicted by a Campbell County Grand Jury for the offense of first-degree murder for having shot and killed her husband, Robert McCafferty. The Campbell District Court set McCafferty's bond at \$1,000,000.00 cash or property. That decision was affirmed by the Campbell Circuit Court and then appealed to this Court. We remanded with instructions for the circuit court to conduct another bond hearing (*See* 2007-CA-001456-MR). McCafferty again appeals to this Court complaining of an unreasonable bond. We affirm.

McCafferty's arraignment was held in the Campbell County Circuit Court on July 10, 2007. Prior to her arraignment, McCafferty requested that the circuit court lower the bond previously set by the district court to \$180,000 cash or \$245,000 property. The Commonwealth objected and, after a July 11, 2007, hearing on McCafferty's motion, the circuit court refused to reduce the \$1,000,000.00 bond set by the district court, finding it reasonable under the circumstances of the case. In so ruling, the circuit court indicated that it found no error with the district court's analysis in setting the bond, nor any change in circumstances which would justify changing the bond at that time. McCafferty appealed that denial to this Court.

This Court issued an order on September 14, 2007, reversing and remanding with direction to the circuit court to consider the relevant factors in

determining the appropriate bond as set forth by statute and the rules of criminal procedure. In so ruling, this Court stated:

Here, a review of the record reveals that the Campbell Circuit Court failed to consider any of the factors promulgated in RCr 4.16 and *Abraham*. The only issue considered by the circuit court concerning McCafferty's motion to reduce her pre-trial bail was whether a change of circumstances existed from the time the amount of bail was established by the Campbell District Court. The Circuit Court stated that McCafferty's bail would remain unchanged because it appeared that McCafferty's circumstances had not changed since being originally charged with murder, and because the district court had not erred in establishing the amount of her bail. In *Abraham*, a panel of this Court held that a trial court abuses its [sic] discretion with respect to a motion to pre-trial bail decisions when it fails to consider the defendant's length of residency in Kentucky, marital status, employment record, the date and nature of any prior criminal record, or the ability to raise bail. Since the circuit court failed to consider any of the factors promulgated by RCr 4.16 or *Abraham*, that portion of the July 11, 2007 order which denied McCafferty's motion to reduce pre-trial bond must be reversed and remanded to Campbell Circuit Court for proper consideration. *McCafferty v. Commonwealth*, 2007-CA-001456-MR (Ky. App. 2007).

Upon remand, a hearing was held by the trial court on October 26, 2007. Arguments were made by both sides, and written memoranda subsequently filed. Thereafter, on October 31, 2007, an order was entered maintaining the bond at \$1,000,000.00. In so ruling, the trial court found:

The Defendant is employed, she has a residence in Fort Thomas, Kentucky, and has no criminal history. The Defendant is widowed. The Defendant is charged with the murder of her husband, Robert McCafferty. The allegation against the Defendant is that she shot her

husband in bed while he slept. Based on the seriousness of the alleged offense and the difficulty in reasonably anticipating her conduct if she is released, the Court believes that a bond of one million dollars is appropriate and not oppressive.

McCafferty now appeals that Order to this Court.

Certainly, this Court recognizes that the circuit court is vested with considerable discretion when determining bail and the record must demonstrate that the trial court actually exercised that discretion in making such a determination. *Abraham v. Commonwealth*, 556 S.W.2d 152, 158 (Ky. App. 1997). Further, the amount and appropriateness of bail will vary depending upon the circumstances of the particular case. *Long v. Hamilton*, 467 S.W.2d 139, 141 (Ky. 1971). Thus, this court will not attempt to substitute its judgment for that of the trial court unless the trial court has abused its discretionary power. *Long v. Hamilton, supra*, and *Clemens v. Commonwealth*, 152 S.W.3d 256, 259 (Ky. App. 2004).

McCafferty now asserts that the circuit court abused its discretion because it did not consider the factors mandated by Kentucky Revised Statutes (KRS) 431.525 and Kentucky Rules of Criminal Procedure (RCr) 4.16. KRS 431.525 sets forth the conditions for the court's consideration when establishing the amount of bail. Those conditions require that bail shall be: (a) sufficient to insure compliance with the conditions of release set by the court; (b) not oppressive; (c) commensurate with the nature of the offense charged; (d)

considerate of the past criminal acts and the reasonably anticipated conduct of the defendant if released; and (e) considerate of the financial ability of the defendant.

Likewise, RCr 4.16(1) also addresses the sufficiency of bail:

(1) The amount of bail shall be sufficient to insure compliance with the conditions of release set by the court. It shall not be oppressive and shall be commensurate with the gravity of the offense charged. In determining such amount the court shall consider the defendant's past criminal acts, if any, the defendant's reasonably anticipated conduct if released and the defendant's financial ability to give bail.

When this matter was initially remanded, the circuit court was directed to make specific findings in accordance with the above provisions. Our review of the record, particularly the October 31, 2007, order issued by the circuit court, indicates that it did indeed consider the factors set forth by rule, by statute, and by the requirements of *Abraham*. Further, during a hearing in this matter on this very issue, the circuit court allowed the parties to thoroughly argue their positions with respect to the issue of bail, and that hearing also included a discussion of the factors outlined above. At the time of the hearing, there was no objection by McCafferty of a failure to consider any relevant factor. After considering all of the foregoing information, the circuit court rendered its decision as to the reasonableness of the bond. Having reviewed the trial court's findings in detail, we find no abuse of discretion.

McCafferty lastly asserts that the circuit court did not adequately consider or explain why \$918,545.00,² the amount that McCafferty proposed to post, was insufficient to insure compliance with the conditions of the release.

Contrary to McCafferty's assertions, it was for the circuit court to review the amount of bail upon return of indictment to determine whether or not that amount was reasonable under the circumstances in light of the aforementioned factors. Certainly, the circuit court could take into consideration the bond set by the district court and continue same as reasonable. The circuit court could also consider any amount suggested by McCafferty or by the Commonwealth in determining a reasonable bond. However, the circuit court is not obligated to explain to the parties why any bond proposed is not reasonable. Such would place an undue burden upon the circuit court to explain its actions. This is in stark contrast to its duty to consider the appropriate factors in forming an opinion as to reasonableness of bond.

Having considered the record in its entirety and applicable law, we hereby affirm the October 31, 2007, Order of the Campbell Circuit Court maintaining McCafferty's bond at \$1,000,000.00.

ACREE, JUDGE, AND ROSENBLUM, SPECIAL JUDGE,
CONCUR IN RESULT ONLY.

² The law is clear that pursuant to KRS 431.535(1), whichever portion of the bond McCafferty wished to post in property must have been twice the amount of the cash bond it replaces. Further, any cash bond amount must have a present face value of the amount set by the court. In this instance, McCafferty proposed \$119,702.41 in cash and/or money market funds, as well as an IRA account with a value of \$323,843.40. As McCafferty herself concedes, the current value of the IRA would be less than the face amount actually in the account at the time of posting, due to the imposition of requisite taxes and penalties. Thus, even the bond amount suggested by McCafferty exceeded her disclosed assets.

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