

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-11-1189

Appellee

Trial Court No. CRB-11-02853-0102

v.

Kenneth Smith

DECISION AND JUDGMENT

Appellant

Decided: August 29, 2011

* * * * *

Salvatore C. Molaro, Jr., for appellant.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court on the motion of defendant-appellant, Kenneth Smith, for bail and suspension of execution of sentence pending appeal from the Toledo Municipal Court, pursuant to App.R. 8(B) and 6th Dist.Loc.App.R. 17.

{¶ 2} App.R. 8, which governs the stay of execution of sentence and release on bail pending appeal in criminal cases states, in relevant part, that:

{¶ 3} "(B) Application for release on bail and for suspension of execution of sentence after a judgment of conviction shall be made in the first instance in the trial court. Thereafter, if such application is denied, a motion for bail and suspension of execution of sentence pending review may be made to the court of appeals * * *. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee."

{¶ 4} Furthermore, 6th Dist.Loc.App.R. 17 provides:

{¶ 5} "When a party files an application for release on bail and suspension of execution of sentence pursuant to App.R. 8(B), a memorandum in support shall be filed with the application in this court. The party's memorandum shall contain, but is not limited to, the following information, which shall be supported by the papers, affidavits, and portions of the record referred to in App.R. 8(B): (1) confirmation that the motion for release on bail was denied by the trial court, (2) a statement of the offense for which the party was found guilty and the sentence imposed by the trial court, (3) a listing of the party's prior convictions, if any, and if there are none, a statement to that effect, (4) a listing of current charges pending against the party, if any, and if there are none, a statement to that effect, (5) a statement as to whether the party is currently employed, the name of the party's employer and for how long the party has been employed, (6) a statement of the amount of bail the party is requesting and in what manner the bail will be secured, and (7) a statement of defendant's family or other community ties. Failure to comply with this rule may result in the automatic denial of the application."

{¶ 6} Here, appellant's memorandum in support of his motion complies with the requirements of 6th Dist.Loc.App.R. 17. Thus, appellant's motion is decisional.

{¶ 7} "* * * [T]he release of an accused on bail after conviction and pending appeal is not a matter of right but a question to be resolved by an exercise of the sound discretion of the court. Only if there is a patent abuse of such discretion should the decision of the court denying bail be disturbed." *Coleman v. McGettrick* (1965), 2 Ohio St.2d 177, 180, approved by *Christopher v. McFaul* (1985), 18 Ohio St.3d 233, 234.

{¶ 8} In making this determination, we look to the factors set forth in Crim.R. 46(E). These factors include, but are not limited to: the nature and circumstances of the crime charged, the defendant's record of convictions, the flight risk of the defendant, as well as protection orders. In addition, this court has found that, "the danger of flight is inherently greater after conviction than before a guilty verdict." *State v. Baumgartner*, 6th Dist. No. OT-02-029, 2004-Ohio-3908, ¶ 53, quoting *Christopher*, 18 Ohio St.3d at 234.

{¶ 9} After a bench trial, held on July 21, 2011, defendant was convicted of one count of intimidation of a victim/witness and immediately sentenced to a six month term of incarceration. Appellant was also convicted of two counts of menacing, and one count of violating a protection order, with a sentencing date set for August 11, 2011. Furthermore, appellant's record includes numerous disorderly conduct convictions, a menacing conviction, a felony conviction for attempted carrying of a concealed weapon, as well as a domestic violence conviction. Appellant's history concerns this court in

regards to the safety of others associated with this case, as well as the risk of flight to avoid prosecution. Accordingly, appellant's motion for release on bail and suspension of execution of sentence pending appeal is found not well-taken and is denied.

{¶ 10} It is so ordered.

MOTION DENIED.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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