[Cite as *Stevens v. Navarre*, 2021-Ohio-551.]

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

Ronald Stevens

Petitioner

v.

Michael J. Navarre,
Lucas County Sheriff

Respondent

Court of Appeals No. L-21-1010

DECISION AND JUDGMENT

Decided: February 22, 2021

* * * * *

Lorin J. Zaner, for petitioner.

Julia R. Bates, Lucas County Prosecuting Attorney, and
Evy M. Jarrett, Assistant Prosecuting Attorney, for respondent.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} On January 20, 2021, Ronald Stevens petitioned for a writ of habeas corpus, alleging that he is being held unlawfully pursuant to an unreasonable pretrial bond of $1.4 million, no ten percent allowed. On January 22, 2021, this court issued the writ and ordered respondent, Michael J. Navarre, Sheriff of Lucas County, to file a return. On

January 27, 2021, respondent filed his return in conjunction with a motion for summary judgment. Stevens filed his response on January 28, 2021. Upon review of the record, arguments, and assertions of the parties, we hold that Stevens has not demonstrated that he is being unlawfully held.

{¶ 2} "In general, persons accused of crimes are bailable by sufficient sureties, and '[e]xcessive bail shall not be required.'" *Chari v. Vore*, 91 Ohio St.3d 323, 325, 744 N.E.2d 763 (2001), quoting Section 9, Article I, Ohio Constitution. "Habeas corpus is the proper remedy to raise the claim of excessive bail in pretrial-release cases." *Id.*

{¶ 3} At the outset, the parties dispute under what standard we should review the trial court's decision to set a cumulative pretrial bond of $1.4 million, no ten percent allowed.[1] Respondent cites precedent from this court that we should review the trial court's imposition of bond for an abuse of discretion. *See Garcia v. Wasylyshyn*, 6th Dist. Wood No. WD-07-041, 2007-Ohio-3951, ¶ 6 ("[O]ur review in a habeas corpus action which challenges the amount of bond, is limited to whether the trial court abused its discretion.").

{¶ 4} Unfortunately, the Ohio Supreme Court has not been clear on this issue. In *In re DeFronzo*, 49 Ohio St.2d 271, 273-274, 361 N.E.2d 448 (1977), the Ohio Supreme Court commented:

[1] The trial court imposed a bond of $100,000 on each of the nine counts of rape, $50,000 on each of the six counts of sexual battery, $40,000 on one count of gross sexual imposition, and $10,000 on the remaining sixteen counts.

> There is an anomaly in original actions which are filed seeking habeas corpus on the grounds of excessive bail because the effect of such cases is an appeal from a decision of the trial court; yet, such cases are also considered as original actions so as to permit hearings and findings of fact. When these cases are considered as appeals, it is reasonable to require some finding of error or abuse of discretion before allowing the writ to issue overturning or modifying the decision of the trial court. When they are considered as original actions, it is just as reasonable to allow the Court of Appeals to make an independent decision based upon the hearing before it and to exercise its own discretion under Crim.R. 46 in the same manner as would the trial judge.

This equivocation between abuse of discretion and independent review has continued over time. *See, e.g., Jenkins v. Billy*, 43 Ohio St.3d 84, 85, 538 N.E.2d 1045 (1989) ("The amount of bail is largely within the sound discretion of the court. * * * Here, petitioner alleges no facts that indicate an abuse of discretion by the trial court or that appropriate grounds for independent review by this court exist."); *Chari*, 91 Ohio St.3d at 328, 744 N.E.2d 763 ("Chari alleged no facts that indicate either an abuse of discretion by the trial court or that appropriate grounds for independent review exist by the court of appeals or this court."); *Hardy v. McFaul*, 103 Ohio St.3d 408, 2004-Ohio-5467, 816 N.E.2d 248 (affirming court of appeals determination in habeas petition that the trial court's imposition of pretrial bail was not an abuse of discretion).

{¶ 5} Recently, however, in *Mohamed v. Eckelberry*, Slip Opinion No. 2020-Ohio-4585, ¶ 4-5, the Ohio Supreme Court appears to have rejected the abuse of discretion standard in favor of a de novo review.

{¶ 6} In *Mohamed*, the sheriff argued that the Ohio Supreme Court endorsed an abuse of discretion standard of review in *Ahmad v. Plummer*, 126 Ohio St.3d 262, 2010-Ohio-3757, 933 N.E.2d 256. In *Ahmad*, the court of appeals conducted a de novo hearing on the habeas corpus petition, and concluded that the imposed bond was not excessive. *Id.* at ¶ 3. The court of appeals continued, "Although this Court may have set bail at a lower amount, we cannot conclude that the trial court abused its discretion in setting bail in the amount of $3,000,000 cash/surety." *Id*. On appeal to the Ohio Supreme Court, Ahmed argued that the court of appeals erred in denying the writ because it "appears as though the court of appeals agreed the bond was excessive, but felt bound by the trial court's order because they could not find an abuse of discretion." *Id.* at ¶ 2. The Ohio Supreme Court disagreed, and held, "Although the court of appeals opined that it may have set a lower amount for the bail, the court also specifically held that based on its de novo review of the habeas corpus claim, Ahmad failed to demonstrate that the pretrial bail is excessive." *Id.* at ¶ 4.

{¶ 7} In rejecting the sheriff's argument, the Ohio Supreme Court in *Mohamed* recognized that *Ahmad* "focused on the court of appeals' 'de novo review of the habeas corpus claim' and its determination that 'Ahmad failed to demonstrate that the pretrial bail is excessive.'" *Mohamed* at ¶ 5, quoting *Ahmad* at ¶ 4. The court then confirmed

that "in an original action, an appellate court may permit a habeas petitioner to introduce evidence to prove his claim and then exercise its own discretion in imposing an appropriate bail amount."[2] *Id.*

{¶ 8} Although the Ohio Supreme Court did not clearly delineate between the review of the pretrial bail set by the trial court, and the exercise of discretion to impose an appropriate bail amount, we glean from *Mohamed* that we must conduct a de novo review in our determination of whether the pretrial bail is excessive.

{¶ 9} Applying that de novo review to the present case, we hold that Stevens has not satisfied his burden to demonstrate that his pretrial bail is excessive. *See Chari*, 91 Ohio St.3d at 325, 744 N.E.2d 763 ("In habeas corpus cases, the burden of proof is on the petitioner to establish his right to release.").

{¶ 10} Crim.R. 46(B) provides that

> [u]nless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the protection or safety of any person or the

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[2] Justice Kennedy in her dissent in *Hartman v. Schilling*, 160 Ohio St.3d 1486, 2020-Ohio-5506, 158 N.E.3d 617, ¶ 4 (Kennedy, J., dissenting), has criticized the standard in *Mohamed* as being unevenly applied: "It is not possible to square our decision in *Mohamed* with today's summary dismissal of Hartman's petition. As I explained in my dissent in *Mohamed*, this court created a new right 'open to all criminal defendants in this state who are dissatisfied with the amount of bail that has been imposed by a trial court' through which this court could exercise its 'sole, unreviewable discretion [and] substitute its judgment for that of the trial court.'").

community, and that the defendant will not obstruct the criminal justice process. If the court orders financial conditions of release, those financial conditions shall be related to the defendant's risk of non-appearance, the seriousness of the offense, and the previous criminal record of the defendant. Any financial conditions shall be in an amount and type which are least costly to the defendant while also sufficient to reasonably assure the defendant's future appearance in court.

In determining the types, amounts, and conditions of bail, the court shall consider:

(1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;

(2) The weight of the evidence against the defendant;

(3) The confirmation of the defendant's identity;

(4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;

(5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order.

Crim.R. 46(C).

{¶ 11} As to the first factor, Stevens is currently facing nine counts of rape in violation of R.C. 2907.02(A)(2) and (B), twelve counts of gross sexual imposition in

violation of R.C. 2907.05(A)(1) and (C), six counts of sexual battery in violation of R.C. 2907.03(A)(7) and (B), and five counts of pandering obscenity to a minor in violation of R.C. 2907.321(A)(5) and (C). Respondent asserts that the charges arise from a pattern of behavior in which Stevens used his position at a local public high school, his position as a coach, and his status as a local parent to target, groom, sexually assault, and rape children in his community. Respondent further asserts that the offenses occurred both at the local school and in Stevens's home. Stevens has not challenged these assertions in his petition for a writ of habeas corpus, in his response to respondent's return, or even in his motion to modify bond that was filed in the trial court. Rather, Stevens focuses on the fact that there is no allegation that a weapon was used in the commission of the offenses. Respondent counters, though, that Crim.R. 46(C)(1) also compels us to consider whether Stevens "had access to a weapon," and that in this case, Stevens has admitted to owning weapons, and a 9 mm bullet was found in his truck when he was arrested.

{¶ 12} Regarding the second factor, respondent asserts that the evidence consists of the testimony of six minors, each of whom has disclosed sexual assault by Stevens. Respondent states that the six witnesses will describe a nearly synonymous process through which Stevens committed the crimes. In addition, respondent identifies the presence of DNA evidence, specifically, that seminal fluid of a minor victim was discovered inside of a sexual toy located in Stevens's bedroom. Stevens has not challenged any of the state's assertions, and other than stating that he has entered a plea of not guilty, has not provided any evidence of his innocence.

{¶ 13} Turning to the third factor, the parties agree that the identity of Stevens is not at issue.

{¶ 14} As to the fourth factor, Stevens puts forth that he has no prior criminal record, and that he has resided in Lucas County for approximately 20 years, and before that lived nearby in Temperance, Michigan. He asserts that he has no mental condition, has no record of avoiding criminal prosecution, and cooperated with law enforcement by submitting to an interview with the Ottawa Hills Police Department. Furthermore, Stevens contends that bond as set is an economic impossibility, particularly in light of the fact that he has not been able to work as he has been held in jail since December 2019. Finally, Stevens asserts that he is not a flight risk, and that he is no danger to the community because the offenses are alleged to have occurred through his position at the school, but he has since been suspended from that position and a no contact order has been put in place. In response, respondent does not dispute Stevens's family history, criminal history, or financial resources. Respondent, however, does note that Stevens is facing over 100 years in prison, and cites the proposition that "The nature and number of counts, as well as the possible sentences if convicted, support the implication that petitioner may indeed be a flight risk and that protection of the community is also necessary." *Garcia*, 6th Dist. Wood No. WD-07-041, 2007-Ohio-3951, at ¶ 8. Respondent also notes that the Lucas County Public Safety Assessment did not recommend release on a pretrial bond.

{¶ 15} Finally, the parties do not dispute that the fifth factor is inapplicable as Stevens has no prior criminal history.

{¶ 16} In support of his petition, Stevens relies on the decision in *Palmer-Tesema v. Pinkney*, 8th Dist. Cuyahoga No. 107025, 2018-Ohio-1852. In that case, the Eighth District found that Palmer-Tesema's pretrial bail of $250,000 was excessive, and reduced it to $100,000, ten percent allowed, with additional conditions. *Id.* at ¶ 12. Palmer-Tesema had been charged with six counts of rape with sexually violent predator specifications, and three counts of kidnapping with sexual motivation specifications and sexually violent predator specifications. The charges pertained to three separate victims. In reducing the amount of pretrial bail, the Eighth District found persuasive Palmer-Tesema's strong family ties to the community, that he had no criminal record, that there were no attempts to avoid prosecution, that he cooperated fully and immediately with the police investigation, and that he informed the police of his need to leave the state of Ohio and his voluntary return. *Id.* at ¶ 10. In addition, the Eighth District found "highly persuasive" the Cuyahoga County Bond Commissioner's recommendation to set bail in at least the amount of $50,000. *Id.* The court further reasoned that the safety of the community, the victims, the witnesses, and law enforcement would best be served by imposing conditions of no contact and electronically monitored home detention, and not by imposing unreasonable bail. *Id.* at ¶ 11.

{¶ 17} Stevens also relies on the decision in *Mohamed*, Slip Opinion No. 2020-Ohio-4585, in which the Ohio Supreme Court found that the pretrial bail of $1,000,000

was excessive. In that case, Mohamed was charged with two counts of attempted murder and two counts of felonious assault. *Id.* at ¶ 6. In reducing the pretrial bail to $200,000, the Ohio Supreme Court reasoned that Mohamed presented alibi evidence, that he could not afford a $1,000,000 bond, that he has family ties to Ohio, and that there "is an open question whether Mohamed is the perpetrator." *Id.* at ¶ 6-13.

{¶ 18} We find the cited cases to be distinguishable from the facts here. Unlike *Palmer-Tesema*, the allegations involve 32 counts against six different victims. More importantly, we find it meaningful that the alleged victims in this case are minors, and that Stevens used his position in the community to facilitate the offenses. In addition, while we are not the ultimate arbiters of Stevens's innocence or guilt, Crim.R. 46(C)(2) compels us to consider the weight of the evidence against Stevens, which includes testimony from the alleged victims as well as DNA evidence. Unlike *Mohamed*, Stevens has not presented any arguments or evidence to demonstrate his innocence. Finally, we recognize that Stevens is facing a potential prison sentence of over 100 years. "The purpose of bail is to secure the attendance of the accused at his trial." *Bland v. Holden*, 21 Ohio St.2d 238, 239, 257 N.E.2d 397 (1970). "[I]f an accused is charged with crimes the conviction for which would result in long incarceration, with little hope of early release or probation, the incentive to abscond is greater and the amount must be such as to discourage the accused from absconding." *Id.*

{¶ 19} In sum, we have reviewed the record, Stevens's petition, respondent's return, and Stevens's response, and we find that there are no material facts in dispute.

Based upon our consideration of the factors in Crim.R. 46 and the arguments of the parties, we hold that Stevens has failed to satisfy his burden to demonstrate that the trial court's imposition of a cumulative $1.4 million pretrial bond with no ten percent allowed is excessive.

{¶ 20} Accordingly, this action is dismissed with prejudice. Costs are assessed to Stevens.

{¶ 21} To the Clerk: Manner of Service.

{¶ 22} The clerk is directed to serve upon all parties in a manner prescribed by Civ.R. 5(B) notice of the judgment and its date of entry upon the journal.

Action dismissed.

Mark L. Pietrykowski, J. _____
JUDGE

Christine E. Mayle, J. _____
JUDGE

Gene A. Zmuda, P.J. _____
CONCUR.
JUDGE