Affirmed and Memorandum Opinion filed January 13, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00979-CR
NO. 14-10-00980-CR
NO. 14-10-00981-CR
NO. 14-10-00982-CR
NO. 14-10-00983-CR

EX PARTE WILLIAM JACKSON

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause Nos. 1280592, 1280593, 1280594, 1280595, & 1280596

M E M O R A N D U M O P I N I O N

William Jackson has been charged with five felony offenses. After originally denying bail, the trial court set pre-trial bail totaling $810,000. Jackson filed a pre-trial application for writ of habeas corpus seeking a reduction of the bonds. *See* Tex. Code Crim. Proc. art. 11.24. The trial court denied relief, and this appeal followed. *See* Tex. R. App. P. 31. We affirm.

Background

Jackson has been charged with the following: two charges of tampering with governmental records in cause numbers 1187829 and 1187830; engaging in organized criminal activity in cause number 1231219, forgery-fraudulent use or possession of identifying information in cause number 1261302, and being a felon in possession of a firearm in cause number 1261303. Engaging in organized crime is a first degree felony. The tampering and forgery charges are second degree felonies, and the weapon charge is a third degree felony. The State enhanced each indictment, alleging Jackson had twice before committed sequential felony offenses. The trial court originally denied bail after a hearing in May of 2009, and a record of that hearing has been filed in this appeal.[1] At some point not identified in our record, the trial court set pre-trial bail at $80,000 each in cause numbers 1187829 and 118730, $350,000 in cause number 1231219, $200,000 in cause number 1261302, and $100,000 in cause number 1261303, for a total bail amount of $810,000.[2] On July 21, 2010, Jackson filed a pre-trial application for writ of habeas corpus seeking a reduction of the bonds to $30,000, $30,000, $50,000, $30,000, $20,000, respectively, for a total bail amount of $160,000. Jackson has not provided a record from any subsequent hearing on the issue of bail.[3] Our record contains an order stating that on September 17, 2010, the trial court considered and denied Jackson's pre-trial application for writ of habeas corpus seeking a bail reduction. The trial court then signed a judgment denying relief in each cause.

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[1] The trial court originally concluded that Jackson met the requirements under section 11(a) of Article I of the Texas Constitution to be held without bail because he was a habitual offender with sequential felony convictions and the State had made a substantial showing that he had committed additional felony offenses while on a felony bond. *See* Tex. Const. art. I, § 11(a) ("Any person (1) accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor, (2) accused of a felony less than capital in this State, committed while on bail for a prior felony for which he has been indicted, . . . after a hearing, and upon evidence substantially showing the guilt of the accused of the offense . . . may be denied bail pending trial, by a district judge in this State . . . ")

[2] The record does not contain the order setting the bonds that Jackson sought to reduce through this writ proceeding.

[3] The official court reporter confirmed that no record was made of a subsequent hearing on Jackson's writ application.

At the May hearing, the State established that Jackson was arrested in September 2009 while a search warrant was being executed. According to the State, Jackson was creating false checks and fraudulent driver's licenses, and he was in possession of a large number of passport photos and a large amount of cash. Jackson made bond on the original charges.

After reviewing the computer confiscated pursuant to the search warrant, the police discovered evidence of identity theft. During a subsequent search at Jackson's home, police discovered a gun in the nightstand drawer of the room where Jackson slept, and Jackson was arrested again. New charges of forgery and felon in possession of a weapon were filed.

Standard of Review

In two issues, Jackson contends that the trial court abused its discretion in denying his request to lower his bonds. He alleges generally that bail is oppressively high, in violation of the state and federal constitutions, without asserting any specific constitutional arguments.

We review a trial court's ruling on the setting of bond under an abuse of discretion standard of review. *See Ex parte Rubac*, 611 S.W.2d 848, 850 (Tex. Crim. App. 1981); *Milner v. State*, 263 S.W.3d 146, 147 (Tex. App.—Houston [1st Dist.] 2006, no pet.) A defendant who seeks a reduction in the amount of bond has the burden of proof to demonstrate that the bond is excessive. *Maldonado v. State*, 999 S.W.2d 91, 93 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). A writ applicant has the burden to ensure that a sufficient record is presented to show error requiring reversal. *See Ex parte Kimes*, 872 S.W.2d 700, 703 (Tex. Crim. App. 1993). An appellate court may not reduce the trial court's bail amount unless the applicant has satisfied this burden. *Ex parte Welch*, 729 S.W.2d 306, 310 (Tex. App.—Dallas 1987, no pet.) (refusing to reduce bail amount when reviewing court found, after considering evidence and factors relevant to determining amount of bond, that "applicant has failed to satisfy his burden of showing that the trial court abused its discretion in refusing to lower applicant's bond").

Considerations in Settling Bail

The primary purpose of an appearance bond is to secure the accused's presence at trial on the charged offense. *Id.* Bail should be set high enough to give reasonable assurance that the defendant will appear at trial, but it should not operate as an instrument of oppression. *Id.* Bail set at an amount higher than reasonably calculated to fulfill this primary purpose is excessive under the Eighth Amendment. *In re Durst*, 148 S.W.3d 496, 498 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

While the decision regarding a proper bail amount lies within the sound discretion of the trial court, the court is required to consider criteria set forth in article 17.15 of the Texas Code of Criminal Procedure, which provides as follows:

> 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 used so 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.
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> 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 (Vernon 2005); *see Ludwig v. State*, 812 S.W.2d 323, 324 (Tex. Crim. App. 1991) (noting that the court is to be guided by the article 17.15 factors). We measure the trial court's ruling against these criteria. *Ex parte Beard*, 92 S.W.3d 566, 573 (Tex. App.—Austin 2002, pet. ref'd).

In addition to these criteria, the trial court may consider the following factors in determining bail: (1) the accused's work record; (2) the accused's family and community ties; (3) the accused's length of residency; (4) the accused's prior criminal record; (5) the

accused's conformity with previous bond conditions, if any; (6) the existence of any other outstanding bonds; and (7) aggravating circumstances alleged to have been involved in the charged offense. *Maldonado*, 999 S.W.2d at 93.

The Nature and Circumstances of the Offenses

The nature of the offense and circumstances surrounding the crime are primary factors in determining what constitutes reasonable bail. *See Ex parte Davila*, 623 S.W.2d 408, 410 (Tex. Crim. App. 1981); *Ex parte Hunt*, 138 S.W.3d 503, 506 (Tex. App.—Fort Worth 2004, pet. ref'd). In considering the nature of the offense, it is also proper to consider the possible punishment. *Maldonado*, 999 S.W.2d at 95; *Wright v. State*, 976 S.W.2d 815, 820 (Tex. App.—Houston [1st Dist.] 1998, no pet.). When the nature of the offense is serious and involves aggravating factors that may result in a lengthy prison sentence, bail must be set sufficiently high to secure the defendant's presence at trial. *In re Hulin*, 31 S.W.3d 754, 760 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

The record reflects that Jackson has been charged with a first degree felony and four other lesser felonies. Therefore, he could be sentenced to up to 99 years in the Texas Department of Criminal Justice and assessed a $10,000.00 fine if he is convicted. *See* Tex. Penal Code § 12.32. Because of his prior convictions, the State alleges that Jackson is a habitual offender who faces a minimum sentence of twenty-five years up to life in prison. Tex. Penal Code § 12.42(d). Further, because the offenses arose out of two separate incidents, the State asserts that Jackson could receive two life sentences.

These offenses are serious. The State offered evidence that Jackson committed additional felonies while out on bond on the initial felony charges. The nature of these offenses and the range of punishment warrant a bond sufficiently high to secure Jackson's presence at trial. *See Ex parte Welch*, 729 S.W.2d 306, 309 (Tex. App.—Dallas 1987, no pet.).

Ability to Make Bond

The accused's ability to make bond is merely one factor to be considered in determining the appropriate amount of bail. *See* Tex. Code Crim. Proc. Ann. art. 17.15(4); *Ex parte Brown*, 959 S.W.2d 369, 372 (Tex. App.—Fort Worth 1998, no pet.). A defendant's inability to secure bond for the bail set by the trial court does not automatically render the bail excessive. *Id.* If the ability to make bond in a specified amount controlled, the role of the trial court in setting bond would be unnecessary and the accused would be able to set his own bond. *Gonzalez v. State*, 996 S.W.2d 350, 353 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

To show that he is unable to make bail, a defendant generally must show that his funds have been exhausted. *See Ex parte Willman*, 695 S.W.2d 752, 754 (Tex. App. —Houston [1st Dist.] 1985, no pet.). Unless he has shown that his funds have been exhausted, a defendant should show that he made an unsuccessful effort to furnish bail before bail can be determined to be excessive. *Id.*

We have no record of any testimony about Jackson's ability to make bond. Attached to the writ application, Jackson's wife provided a conclusory affidavit that she "tried to post" the bonds, but was unsuccessful. She did not identify any bonding companies that she had contacted. She asserted that each bonding company required ten percent cash for a total of $91,000 with collateral of $900,000, and that Jackson did not have sufficient collateral or funds.[4]

Jackson's wife testified at the May hearing, but she largely contested her husband's guilt instead of addressing factors relative to setting bail. Her testimony addressed the family's finances, but she had difficulty estimating the family's monthly income. She and Jackson operated a used car lot. Initially, she estimated that the monthly income from the car business was $3,500. She receives $3,000 per month from her job at a hospital and she receives child support for her sons. She also testified that her husband had income from a

[4] It is unclear whether these figures are in error because the bonds totaled $810,000.

store he owned with another business partner that she estimated at $1,500, but she did not know the details. She later testified that she was not sure if her husband still owned an interest in the store. She later concluded that they received $12,600 per month from the car lot with an additional $4,500 from other sources. She also testified that she and Jackson received unspecified rental income from some duplexes. She estimated that their expenses were about $5,000 per month.

Even if we considered this evidence from the May hearing, Jackson's wife provided no documentation to show the family income. Her unsupported, vague and conclusory testimony does not justify a reduction in the bonds. *See Ex parte Chavfull*, 945 S.W.2d 183, 186-87 (Tex. App.—San Antonio 1997, no pet.) (affirming refusal to lower bond despite mother's testimony that defendant had no money and family could only raise $1000); *Balawajder v. State*, 759 S.W.2d 504, 506 (Tex. App.—Fort Worth 1988, pet. ref'd) (noting that vague references to inability to make bond do not justify a reduction in the amount set); *Ex parte Miller*, 631 S.W.2d 825, 827 (Tex. App.—Fort Worth 1982, pet. ref'd) (recognizing that it is incumbent on the accused to show that he has made an effort to obtain a bond in the amount set). Because Jackson provided only general information supporting his claimed inability to make bail and efforts to secure bond, the trial court could have properly concluded that the amount of bail was reasonable under the circumstances. *See Scott*, 122 S.W.3d at 870.

Safety of the Victim and the Community

The future safety of both the community and the victim of the alleged offense are to be considered in determining the appropriate amount of bond. *See* Tex. Crim. Proc. art 17.15(5) (Vernon 2005). The trial court may have considered that Jackson continued to commit crimes while on bond and was therefore a continuing danger to the public. In addition, Jackson's possession of a weapon after a previous conviction for robbery weighs against reduction of his bonds. The trial court may have concluded within its discretion that the number of offenses warranted a bail sufficient to ensure the safety of the community as a whole and of the individual victims and witnesses who may testify at trial.

See Chavfull, 945 S.W.2d at 187 (considering defendant's potential danger to the community as a factor in denying reduction of bond).

Other Factors

The trial court may also consider the defendant's work record; family and community ties; length of residency; and his prior criminal record. *Maldonado,* 999 S.W.2d at 93. The very limited evidence from the May hearing shows that Jackson and his wife operate a car lot, but there is no evidence to establish ownership of any specific real property. Jackson's wife testified they had been married six years and lived at a Harris County address for three years. There is also evidence that Jackson has a criminal history, with at least two prior felony convictions. Jackson's wife testified he was on parole for 99 years. The trial court may have determined within its discretion that appellant's ties to the community were insufficient to assure his appearance at trial while he faced two life sentences. *See, e.g., Brown*, 959 S.W.2d at 373 (refusing to lower bond where seriousness of crime and potential punishment together with insufficient ties to the community made applicant a flight risk).

Conclusion

Jackson has the burden to present to this court a sufficient record. We cannot determine the trial court abused its discretion in refusing to reduce bail without a record of what the trial court considered in making the decision. Jackson has not provided a record of any hearing on his application to reduce his bonds.

Jackson has not met his burden to establish that the bonds in these cases are excessive. We hold that the trial court did not abuse its discretion in denying his request to lower the bonds.

Accordingly, we overrule Jackson issues and affirm the trial court's order and judgments.

PER CURIAM

Panel consists of Justices Anderson, Seymore and McCally.
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