Affirmed and Memorandum Opinion filed January 27, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-01034-CR

EX PARTE RODELL DEWAYNE POULLARD, Appellant

On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause No. 63,039

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

Appellant has been charged with aggravated robbery with a deadly weapon. The trial court initially set bond at $1,000,000. Appellant filed an application for writ of habeas corpus in the trial court requesting his bond be reduced. On October 18, 2010, the trial court held a hearing and reduced the bond to $250,000. This appeal followed. In a single issue appellant argues the trial court abused its discretion in refusing to reduce his bond further. We affirm.

I. Background

At the hearing, it was stipulated that appellant and three other men were in a car together when they were arrested. Three of the men including appellant were indicted for

aggravated robbery. The bonds for all three men were originally set at $1,000,000. A co-defendant's bond was reduced to $2,500. Appellant's mother testified that she had not talked with a bondsman on behalf of appellant, nor determined what kind of bond she could make. The court explained to her that she would have to produce at least ten percent of the amount of the bond. She testified that she could raise $1,000 for a bond. She testified that appellant was attending Houston Community College before his arrest and was not employed.

Appellant's stepfather testified that he had been married to appellant's mother for 10 years and had known appellant most of his life. He determined that the family could make a $5,000 or $10,000 bond. If appellant made bond, he would live with his mother and stepfather. Appellant's stepfather did not testify about his employment.

At the conclusion of the hearing, the court reduced appellant's bond to $250,000. The court further found that if appellant made bond he was restricted to no contact with the other defendants and subject to a 9:00 p.m. to 6:00 a.m. curfew.

II. Standard of Review

We review a trial court's ruling on the setting of bond under an abuse of discretion standard. *See Ex parte Rubac*, 611 S.W.2d 848, 849, 850 (Tex. Crim. App. 1981). 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).

The primary purpose of an appearance bond is to secure the accused's presence at trial on the charged offense. *Maldonado*, 999 S.W.2d at 93. 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.* 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 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.
>
> 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. 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). Other circumstances and factors to be considered in determining the amount of bail include family and community ties, length of residency, aggravating factors involved in the offense, the defendant's work history, prior criminal record, and previous and outstanding bail. *Rubac*, 611 S.W.2d at 849.

III. Analysis

A. The Nature and Circumstances of the Offense

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). In considering the nature of the offense, it is also proper to consider the possible punishment. *Maldonado*, 999 S.W.2d at 95. 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 appellant is charged with aggravated robbery with a deadly weapon, a first-degree felony. *See* Tex. Penal Code Ann . § 29.03(a)(2). The punishment for that offense ranges from five to 99 years in prison with the possibility of a $10,000 fine. Tex. Penal Code Ann. §§ 12.32. Attached to the State's response to appellant's writ of habeas corpus is the probable cause affidavit filed in this case. The affidavit reflects that appellant and two others are charged with robbing a service station attendant at gunpoint at approximately 2:00 a.m.. When appellant was arrested, a large amount of money in a cashbox and a semi-automatic handgun were found in the vehicle.

B. Ability to Make Bond

The defendant's ability to make bond is merely one factor to be considered in determining the appropriate amount of bail. 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.). Before a complaint can be heard on appeal regarding the amount of bail, appellant must show he has made an effort to furnish bail in the set amount. *See Roy v. State,* 854 S.W. 2d 931 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd). In the absence of some evidence that appellant has unsuccessfully attempted to secure a bond in the amount set by the court, no issue is presented for our review. *Ex parte Williams*, 467 S.W.2d 433, 434 (Tex. Crim. App. 1971).

Appellant's mother testified that appellant does not have a job and that she earns $800 per month. They rent their home and have no savings or retirement accounts. Appellant's stepfather testified that they could only make a $10,000 bond, but did not testify as to whether he was employed, and, if so, the amount of his income. The fact that an accused cannot make bail does not render the bail excessive. *Brown v. State*, 11 S.W.3d 501, 504 (Tex. App.—Houston [14th Dist.] 2000, no pet.). "If the ability to make bond in a specified amount controlled, then the role of the trial court in setting bond would be completely eliminated, and the accused would be in the unique posture of determining what his bond should be." *Id.* (*quoting Ex parte Brown*, 959 S.W.2d at 372).

C. 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. Tex. Crim. Proc. Ann. art 17.15(5). The violent nature of the offense poses a significant risk to the community. This circumstance supports a conclusion that appellant poses a future danger to the victim and the community.

D. Other Factors

The trial court also may 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. There was no evidence about appellant's criminal record or conformity with the conditions of any previous bonds. With regard to his community ties, appellant's mother and stepfather testified that they live in a neighboring county and that if appellant were released he would live with them. Appellant is not employed, but is a student at community college. These factors do not weigh in favor of further reduction in appellant's bond.

IV. Conclusion

After reviewing the record, we conclude appellant did not satisfy his burden to show the bond was excessive. Accordingly, we conclude the trial court did not abuse its discretion in denying appellant's motion to further reduce his bail. We affirm the trial court's order denying appellant's request for further bond reduction.

PER CURIAM

Panel consists of Justices Seymore, Boyce, and Christopher.
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