In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00015-CR

EX PARTE JULIUS A. OGLESBY

On Appeal from the 1A District Court
Jasper County, Texas
Trial Cause No. 31165

MEMORANDUM OPINION

A Jasper County, Texas, grand jury indicted Julius A. Oglesby for aggravated assault with a deadly weapon. Oglesby's bail was initially set at $25,000. In an application for writ of habeas corpus, Oglesby requested that the trial court grant his release on a personal bond or reduce his bail. Oglesby's application asserts that he had been in jail for more than ninety days, and that during the period he had been jailed, the State was not ready for trial. *See* Tex. Code Crim. Proc. Ann. art. 17.151, § 1(1) (West Supp. 2010). Following a hearing, the trial court reduced Oglesby's bond to $10,000. On appeal, Oglesby complains that his bail is still too high. We affirm the trial court's order.

In a single point of error, Oglesby argues that the trial court must release him on a personal bond or reduce his bail to an amount the record reflects that he can make. *See Rowe v. State*, 853 S.W.2d 581, 582 (Tex. Crim. App. 1993). We review the trial court's decision to set Oglesby's bond at $10,000 under an abuse of discretion standard. *See Ex parte Rubac*, 611 S.W.2d 848, 849 (Tex. Crim. App. 1981).

Because the primary purpose of an appearance bond is to secure the defendant's presence for the trial on the offense for which he is charged, bail should be set high enough to give reasonable assurance that the defendant will appear at trial. *Maldonado v. State*, 999 S.W.2d 91, 93 (Tex. App.—Houston [14th Dist.] 1999 pet. ref'd). A defendant who seeks a reduction in the amount of his bond has the burden of proof to demonstrate that the bond is excessive. *Id.* While the criteria used by trial courts to decide the amount of bail required to assure the defendant's appearance are imprecise, section 17.15 of the Texas Code of Criminal Procedure contains guidelines for trial courts to follow in making a decision about setting a defendant's bail. *See* Tex. Code Crim. Proc. Ann. art. 17.15 (West 2005). These guidelines provide:

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 so used 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.

Id. When setting the amount of a defendant's bail, appellate court opinions offer these additional guidelines for trial courts to consider: the defendant's (1) work record, (2) family and community ties, (3) length of residency, (4) criminal record, (5) conformity with previous bond conditions, (6) other outstanding bonds, if any, and whether there are aggravating factors involved in the offense with which the defendant is charged. *See Ex parte Rubac*, 611 S.W.2d at 849; *Ex parte Wood*, 308 S.W.3d 550, 552 (Tex. App.—Beaumont 2010, no pet.); *Golden v. State*, 288 S.W.3d 516, 519 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd); *Maldonado v. State*, 999 S.W.2d at 93-94.

It appears the trial court considered the relevant statutory and other factors in fixing Oglesby's bail, as the trial court considered Oglesby's criminal record, recent work history, family and community ties, length of residency, ability to make bail, the future safety of Oglesby's victim, and the existence of other outstanding bonds. The evidence concerning Oglesby's criminal history reflects that he has a 2000 conviction for possession of a controlled substance, and that he is also currently charged in a case involving another assault that is pending in a county court. Oglesby advised the trial court that he was out on bond for an assault that he is alleged to have committed in December 2009 in another county.

The trial court also heard evidence about Oglesby's family and community ties. Oglesby testified that he moved to Jasper County approximately three months before his arrest to live with his aunt, who is a teacher, and to work for his uncle, who owns a local construction company. According to Oglesby, he earned approximately $2,800 per month while working for his uncle, netting over two thousand dollars every month after paying his expenses. Oglesby's testimony about whether he had any remaining savings was contradictory. Oglesby stated that he had no money in a bank or in savings; but Oglesby also testified that when arrested, he had some savings, but that he did not know where his money was. Oglesby also testified that he did not own any property or have any way to secure a loan. Regarding making bail, Oglesby stated that he had family members that could put up some money and that he could possibly make a $5,000 bond. No family members were called as witnesses to explain whether they were able and willing to help Oglesby make bail in the amount of $10,000. Additionally, Oglesby did not present any evidence that he had tried to secure a bond with a local bail bondsmen.

Oglesby argues the trial court was required to release him on a personal bond or reduce his bond to an amount that the record reflects he is able to make. While the defendant's ability to make bail is an important factor, it is not controlling. *See Jones v. State*, 803 S.W.2d 712, 716 (Tex. Crim. App. 1991). To show an inability to make bail, a defendant must generally show that his funds and his family's funds have been exhausted. *Milner v. State*, 263 S.W.3d 146, 149 (Tex. App.—Houston [1st Dist.] 2006,

no pet.). Unless he has done so, then a defendant must generally show that he also has made an unsuccessful effort to furnish bail before an appeals court has sufficient evidence to conclude that the defendant's bail is excessive. *Id.* Moreover, when a trial court has lowered the defendant's bail, the defendant is usually required to show that he made an effort to furnish bail in the reduced amount. *See Ex parte Stembridge*, 472 S.W.2d 155 (Tex. Crim. App. 1971).

Oglesby fails to demonstrate that he exhausted both his and his family's funds in an effort to make a $10,000 bond, and he failed to show that a bail bondsman had rejected his request for a $10,000 bond. In the absence of such evidence, and in light of Oglesby's explanation about his net earnings, the trial court could reasonably conclude under the circumstances that a bond in the amount of $10,000 was reasonable.

Conclusion

We hold that the trial court did not abuse its discretion by setting Oglesby's bond at $10,000. We overrule Oglesby's point of error and affirm the trial court's order.

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on April 29, 2011
Opinion Delivered May 18, 2011
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.