In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00181-CR

EX PARTE ACE ALLEN KRETZER, JR.

On Appeal from the 1-A District Court
Newton County, Texas
Trial Cause No. ND6576

MEMORANDUM OPINION

Appellant, Ace Allen Kretzer, Jr., appeals the trial court's order setting bail at $250,000. In a single issue, Kretzer argues that his bail is excessive under article 17.151 of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 17.151 (West Supp. 2010). We affirm the trial court's judgment.

BACKGROUND

On November 13, 2010, appellant was arrested for the offense of indecency with a child. *See* Tex. Penal Code Ann. § 21.11 (West 2011). The trial court initially fixed appellant's bond at $500,000. In February 2011, a Newton County grand jury indicted appellant with the offense of indecency with a child, alleged to have occurred on June 1,

2010. *See id*. On March 7, 2011, appellant filed an application for habeas relief, which he later amended to request relief under article 17.151. According to the amended application, appellant had been incarcerated for ninety days or more, and during that time, the State was not ready for trial. Appellant asked the trial court to grant his release on a personal bond or reduce his bail.

The court conducted a hearing on appellant's application for writ of habeas corpus. During the hearing, appellant admitted that he had previously been charged by the grand jury for two other offenses of aggravated sexual assault of a child, alleged to have been committed in July and August 2010. Appellant testified that he posted bond for these offenses and was released. While on bond, appellant was arrested for the offense at issue in this case.

Appellant testified he had no ability to hire a bondsman to post the $500,000 bond. Appellant claimed to have no cash or money available to him. However, he testified he could raise a few hundred dollars by selling some of his personal property. Appellant did not know if he could borrow the money he needed, but knew he had no credit to support a loan application with a bank. He testified he would have to rely on family members if he borrowed money. Appellant's grandmother, aunts, uncles and some cousins also resided in the area. Appellant was eighteen years old at the time of the hearing and testified that he had lived in Newton County for seventeen years of his life. Appellant was

unemployed at the time of the hearing. Prior to his arrest, appellant lived with his grandmother and his fiancée.

Appellant's fiancée testified that she is the mother of appellant's alleged victim in this case. She testified that she does not believe her child was actually abused. She testified that CPS has closed the investigation of this matter and that CPS concluded that it could not determine if any abuse occurred. She testified she does not believe appellant was a threat to her child. She believes the paternal grandmother of her child has animosity towards her, which prompted these charges. She testified she was not aware if appellant had access to money or property that he could use to post bond.

Appellant's grandmother testified she adopted appellant at birth and has since raised him. She testified that she sold her land to raise money to post bond for appellant's previous charges and has nothing left to sell. She has no financial ability to hire a bondsman or contribute to appellant's bail.

Appellant asked the trial court to release him on a personal recognizance bond. Following the habeas hearing, the trial court reduced appellant's bond to $250,000.

EXCESSIVE BAIL

Appellant argues that his bail is excessive and that the trial court erred in failing to release him on a personal bond. The burden of proof is on the defendant to show bail is excessive. *Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. 1980). In

reviewing bond settings, we reverse a lower court's determination only if we find an abuse of discretion. *See* Tex. Code Crim. Proc. Ann. art. 17.15. (West 2005).

Section 1 of article 17.151, provides that "[a] defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within [] 90 days from the commencement of his detention if he is accused of a felony[.]" Tex. Code Crim. Proc. Ann. art. 17.151 § 1(1). Even though a defendant's ability to make bail is a factor, it is not alone the controlling factor. *Jones v. State*, 803 S.W.2d 712, 716 (Tex. Crim. App. 1991); *see also Matthews v. State*, 327 S.W.3d 884, 887-88 (Tex. App.—Beaumont 2010, no pet.).

Article 17.15 provides rules for the court to follow in fixing bail amounts. Tex. Code Crim. Proc. art. 17.15. Among other considerations, in exercising its discretion in setting a bail amount, the trial court must consider the future safety of a victim of the alleged offense and the community. *Id.* The courts take this into account even in a case in which article 17.151 applies. *Matthews*, 327 S.W.3d at 888. "By placing a mandatory duty on trial courts to consider the safety of the victim and the safety of the community in fixing bail in all cases, the Legislature requires trial courts to consider a fact that is not related to the amount the defendant can afford to pay." *Id.* at 887.

During the hearing, the trial court heard evidence about appellant's family, his ties to the community and his inability to make bail. The prosecutor did not dispute these

facts. However, the prosecutor asked the court to consider the nature of the charged offense and the future safety of the victims of the offense and of the community. Appellant's alleged involvement in three offenses of indecency with a child shows that, if free on bond pending trial, he might endanger the future safety of the child victims, as well as the future safety of the community.

We hold that the trial court properly considered the future safety of the victims and the community in determining the amount of appellant's bail and did not abuse its discretion by setting appellant's bond at $250,000. *See id.* at 887-88. We overrule appellant's sole issue on appeal and affirm the trial court's order.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on June 22, 2011
Opinion Delivered July 13, 2011
Do not publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.