

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00451-CR

EX PARTE WHITNEY FREEMAN

On Appeal from the 356th District Court
Hardin County, Texas
Trial Cause No. 22656

MEMORANDUM OPINION

Whitney Freeman (Freeman) appeals the trial court's order denying an application for writ of habeas corpus requesting bail pending appeal. Tex. Code Crim. Proc. Ann. art. 44.04(g) (West Supp. 2016).¹

According to Freeman's appellate brief, she pleaded guilty in 2015 to the felony offense of prohibited substance in a correctional facility and was sentenced to eight years deferred adjudication probation. According to Freeman, she tested

¹ We cite to the current version of article 44.04 as subsequent amendments do not affect the outcome of this appeal.

positive for the use of methamphetamine and the State filed a motion to revoke her probation in 2016. She pleaded true to the allegations in the motion to revoke, the trial court found her guilty, and the trial court sentenced her to nine years of incarceration. Freeman filed her written notice of appeal and requested an appeal bond. The trial court refused to set an appeal bond and Freeman filed an Application for Writ of Habeas Corpus Seeking Bail on Appeal. After the trial court held a hearing, the trial court denied Freeman's writ and Freeman filed a timely notice of appeal.

Article 44.04 of the Texas Code of Criminal Procedure is entitled, "Bond Pending Appeal[,]" and subsections (b) and (c) provide, in part, the following:

(b) The defendant may not be released on bail pending the appeal from any felony conviction where the punishment equals or exceeds 10 years confinement or where the defendant has been convicted of an offense listed under Article 42A.054(a), but shall immediately be placed in custody and the bail discharged.

(c) Pending the appeal from any felony conviction other than a conviction described in Subsection (b) of this section, the trial court may deny bail and commit the defendant to custody if there then exists good cause to believe that the defendant would not appear when his conviction became final or is likely to commit another offense while on bail, permit the defendant to remain at large on the existing bail, or, if not then on bail, admit him to reasonable bail until his conviction becomes final. . . .

Tex. Code Crim. Proc. Ann. art. 44.04(b),(c). An entry on the docket sheet indicates that the trial court denied bail because the trial court found it had "good cause to

believe [Freeman] will not appear or is likely to commit another offense.” *See id.* art. 44.04(c).

We review the trial court’s decision regarding appeal bonds under an abuse of discretion standard of review. *Ex parte Spaulding*, 612 S.W.2d 509, 511 (Tex. Crim. App. 1981). An appellate court does not substitute its judgment for that of the trial court, but we ask whether the trial court’s decision was made without reference to any guiding rules or principles of law, or in other words, whether it was arbitrary or unreasonable. *See Charles v. State*, 146 S.W.3d 204, 208 (Tex. Crim. App. 2004); *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990). As long as the trial court’s decision is “within the ‘zone of reasonable disagreement[,]’” we must uphold the decision of the trial court even if we would have reached a different result. *Davis v. State*, 71 S.W.3d 844, 846 (Tex. App.—Texarkana 2002, no pet.) (quoting *Montgomery*, 810 S.W.2d at 391).

Convicted felons are not guaranteed the right to bail under the Texas Constitution. *See Ex parte Lowe*, 573 S.W.2d 245, 247 (Tex. Crim. App. 1978); *see also* Tex. Const. art. I, § 11. Article 44.04(b) renders a convicted felon ineligible for bail pending appeal where punishment in excess of ten years confinement has been assessed. *See* Tex. Code Crim. Proc. Ann. art. 44.04(b). In cases where the assessed punishment for a felony conviction is ten years or less, the trial court has discretion

to modify bail, set a reasonable bail, deny bail, revoke existing bail, or impose reasonable conditions on bail. *Id.* art. 44.04(c), (d). The trial court may deny bail if there exists good cause to believe that the defendant would not appear when his conviction became final or is likely to commit another offense while on bail. *Id.* art. 44.04(c). Article 44.04(d) further allows the court to increase or decrease the amount of bail after conviction either upon its own motion or the motion of the State or the defendant. *See id.* art. 44.04(d).

The trial court had discretion to deny bail if the trial court believed Freeman would not appear when the conviction became final or Freeman would be likely to commit another offense while on bail. *See id.* art. 44.04(c). Freeman pleaded guilty to the underlying offense, and at the hearing on the State's motion to revoke, she pleaded true to violating community supervision by testing positive for the use of methamphetamines. In denying bail on appeal, the trial court noted on the docket sheet that there was "good cause to believe [Freeman] will not appear or is likely to commit another offense[.]" and at the hearing on Freeman's Application for Writ of Habeas Corpus Seeking Bail on Appeal the court took judicial notice of the docket sheet. On this record, it does not appear that the trial court acted arbitrarily or unreasonably. We cannot say that the trial court acted without regard to guiding rules

or principles of law in denying Freeman bail on appeal. We affirm the trial court's order.

AFFIRMED.

LEANNE JOHNSON
Justice

Submitted on March 29, 2017
Opinion Delivered April 5, 2017
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Before McKeithen, C.J., Kreger and Johnson, JJ.