

NO. 07-04-0569-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL D
JULY 11, 2005

ANDY DEWAYNE POSEY,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE 181ST DISTRICT COURT OF RANDALL COUNTY;
NO. 15,058-B; HON. JOHN B. BOARD, PRESIDING

Order on Application for Bail

Before QUINN, C.J., and REAVIS and CAMPBELL, JJ.

By opinion dated May 25, 2005, we reversed the conviction of appellant Andy DeWayne Posey and remanded the cause to the trial court for further proceedings. Pending before us is appellant's application for bail.

When a conviction is reversed and the appellant is in custody, article 44.04(h) of the Texas Code of Criminal Procedure requires that he be "entitled to release on reasonable bail, regardless of the length of term of imprisonment, pending final determination of an appeal by the state or the defendant on a motion for discretionary review." TEX. CODE CRIM. PROC. ANN. art. 44.04(h) (Vernon Supp. 2004-2005). If the defendant requests bail

before a petition for discretionary review has been filed, the Court of Appeals shall determine the amount of bail. *Id.*

We previously asked that appellant provide us with certain information we are required to consider in determining the amount of bail. It includes 1) “the length of the sentence and the nature of the offense,” 2) the applicant’s “work record, family ties, . . . length of residency, ability to make the bond, prior criminal record, and conformity with previous bond conditions,” 3) other outstanding bonds, and 4) the aggravating factors, if any, involved in the offense. *Ex parte Rubac*, 611 S.W.2d 848, 849-50 (Tex. Crim. App. 1981). Appellant seeks bail in the amount of \$5,000 which was the amount set by the trial court. However, the State has requested that bail be set in the amount of \$100,000 due to appellant’s multiple prior convictions, his sentence of 36 years, the fact that the basis for reversal did not relate to the sufficiency of the evidence, and the State’s representation that it has the ability to cure (on retrial of the cause) the defect which resulted in the reversal.

The information before the court indicates that appellant does have ties to the community. Yet, it also indicates that he is a convicted felon and has a long history of engaging in criminal activity. So too must we acknowledge that the sentence levied in this cause was far from *de minimis* and that appellant may well face a long term of incarceration should he again be convicted. This certainly is a consideration when determining whether appellant will appear when the cause is retried. Accordingly, we grant appellant’s request for bail and condition his release on his posting bail in the amount of \$50,000.

Per Curiam

Do not publish.