In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-22-00028-CR

EX PARTE RICKY CLARDY

On Appeal from the 364th District Court
Lubbock County, Texas
Trial Court No. DC-2021-MC-0085; Honorable William R. Eichman II, Presiding

April 25, 2022

MEMORANDUM OPINION

Before QUINN, C.J., and PIRTLE and DOSS, JJ.

Before us is an appeal of the trial court's decision to deny Appellant, Ricky Clardy, pretrial habeas corpus relief. In April 2020, Appellant was arrested for the first-degree felony offense of murder.[1] The amount of bail was set at $500,000.[2] On December 14, 2021, Appellant filed an *Application for Writ of Habeas Corpus Seeking Bail Reduction*.

[1] TEX. PENAL CODE ANN. § 19.02.

[2] Appellant has another felony case pending for the offense of arson. Bail in that matter was set at $100,000.

A hearing was held, and the application was subsequently denied by the trial court. Via a single issue in this appeal, Appellant contends the trial court abused its discretion in failing to reduce the amount of his bail. We affirm the trial court's order.

BACKGROUND

In April 2020, Appellant was arrested on two counts of murder. Following indictment, his bail was set at $500,000. On December 14, 2021, Appellant filed an *Application for Writ of Habeas Corpus Seeking Bail Reduction* and a hearing was held on December 17, 2021. At the hearing, Appellant requested that his bail be reduced to $150,000 for the murder charges, which he claimed was all he could afford. In support of his request, he presented the testimony of his girlfriend, Tasha. She testified she and Appellant had been dating since sometime in 2019. She told the court Appellant does not have a car, lives with his mother, and is not employed. Tasha stated she and Appellant had never traveled out of the country, she did not believe Appellant had a passport, and he had never discussed leaving the country. She said she maintains contact with his family and that as of the night before the hearing, Appellant's mother told her the family had approximately $6,000 to $7,000 for his bail, an amount that falls short of that needed to post a surety bail bond of $150,000.

Tasha testified she encouraged Appellant to obtain his GED, which he did, and said she would be a motivating influence if he is released. She said she hoped he can find a job and progress and move out of the lifestyle of being in and out of jail. She also said the family would be able to pay for necessities of release, such as GPS monitoring and drug and alcohol testing, and was willing to assist Appellant in complying with the conditions of bond. The State did not present any witnesses but did provide to the court

three exhibits that included the current indictment against Appellant, his criminal history, and offense reports.

Following the presentation of testimony, Appellant's counsel argued for a reduction in bail to $150,000, based on the facts that Appellant was willing to follow conditions imposed by the court and because that is all he could afford. The State, however, noted that it had evidence Appellant killed two people, including a seventeen-year-old girl, shortly after he had been released from his previous incarceration. As such, the State argued against a reduction in bail due to the violent nature of the pending offenses. After reviewing the exhibits provided during the hearing, the trial court denied Appellant's application for a writ of habeas corpus and for a reduction on his bail.

APPLICABLE LAW

Prior to conviction, every citizen accused of a crime has a "strong interest in liberty." *United States v. Salerno*, 481 U.S. 739, 750, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). To protect that interest, the Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. In addition, the Texas Constitution guarantees that "[a]ll prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident . . . ." *See* TEX. CONST. art. I, § 11. This constitutional right to reasonable bail has also been codified. *See* TEX. CODE CRIM. PROC. ANN. art. 1.07 (providing "[a]ll prisoners shall be bailable unless for capital offenses when the proof is evident"). *See also* TEX. CODE CRIM. PROC. ANN. art. 17.15(2) (providing "[t]he power to require bail is not to be used to make bail an instrument of oppression").

A defendant's right to pretrial bail, however, may be subordinated to the greater needs of society. *Salerno*, 481 U.S. at 750-51. In balancing the liberty interest of an accused and safety interests of society, the Texas Legislature has adopted rules and guidelines whereby an accused can obtain pretrial release through the posting of an adequate bail bond. "'Bail'" is the security given by the accused that he will appear and answer . . . the accusation brought against him . . . ." *See* TEX. CODE CRIM. PROC. ANN. art. 17.01. *See also Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977).

The primary purpose of pretrial bail is to secure the appearance of the accused at trial on the offense charged. *See Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. [Panel Op.] 1980). In a proceeding seeking a reduction in the amount of pretrial bail, the burden of proof is on the party seeking that reduction to show that the amount of bail presently being required by the trial court is excessive. *Ex parte Vasquez*, 558 S.W.2d at 479.

Article 17.15 of the Texas Code of Criminal Procedure sets forth rules for fixing the amount of bail required. The dollar amount of that bail and any conditions of bail are matters within the sound discretion of the trial court, governed by the Texas Constitution and the rules stated in article 17.15:

> 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, including whether the offense:
>
> (A) is an offense involving violence as defined by Article 17.03; or

(B) involves violence directed against a peace officer.

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.

6. The criminal history record information for the defendant, including information obtained through the statewide telecommunications system maintained by the Department of Public Safety and through the public safety report system developed under Article 17.021, shall be considered, including any acts of family violence, other pending criminal charges, and any instances in which the defendant failed to appear in court following release on bail.

7. The citizenship status of the defendant shall be considered.

TEX. CODE CRIM. PROC. ANN. art. 17.15.

In determining an appropriate amount of bail, the trial court may also consider factors such as (1) the defendant's work record, (2) family and community ties, (3) length of residency, (4) prior criminal record, (5) conformity with previous bond conditions, (6) the existence of any other bonds outstanding, and (7) aggravating circumstances alleged to have been involved in the charged offense. *Ex parte Rubac*, 611 S.W.2d 848, 849 (Tex. Crim. App. [Panel Op.] 1981); *Ex parte Emery*, 970 S.W.2d 144, 145 (Tex. App.—Waco 1998, no pet.). Simply because an accused cannot meet the amount of bail set by the trial court does not automatically render that amount excessive. *Ex parte Vance*, 608 S.W.2d 681, 683 (Tex. Crim. App. 1980); *Ex parte Scott*, 122 S.W.3d 866, 870 (Tex. App.—Fort Worth 2003, no pet.). When faced with excessive bail, an accused has the right to assert his or her constitutional right to reasonable bail through the use of a pretrial writ of habeas corpus. *Weise v. State*, 55 S.W.3d 617, 619 (Tex. Crim. App. 2001) (citing *Ex parte Keller*, 595 S.W.2d 531, 532-33 (Tex. Crim. App. [Panel Op.] 1980)).

STANDARD OF REVIEW

We review a trial court's decision in a habeas proceeding regarding the imposition or reduction of bail for an abuse of discretion. *Ex parte Rubac*, 611 S.W.2d at 850; *Ex parte Davis*, 147 S.W.3d 546, 548 (Tex. App.—Waco 2004, no pet.). A trial court abuses its discretion if it acts without reference to any guiding rules or principles. *Ex parte Hunt*, 138 S.W.3d 503, 505 (Tex. App.—Fort Worth 2004, pet. ref'd). As such, a reviewing court will not disturb a decision of the trial court if it is within the zone of reasonable disagreement. *Clemons v. State*, 220 S.W.3d 176, 178 (Tex. App.—Eastland 2007, no pet.).

ANALYSIS

Through his sole issue, Appellant contends the bond amount is oppressive because Tasha testified his family was unable to raise the necessary amount and because the State's interests, i.e., that he appear in court, are reasonably satisfied. The State argues this is insufficient to support the contention that the bail amount is excessive. We agree.

Tasha testified that Appellant and his family did not have the resources to post bail in the amount set. She said Appellant was not employed before he was incarcerated and thus, did not have a job waiting for him. In fact, she said Appellant was not employed at all during the time they dated. Tasha said she worked as an emergency maintenance dispatcher. She testified that the night before the hearing, Appellant's mother told her they had approximately $6,000 to $7,000 available for the bond amount. Appellant did not provide any other evidence of his financial circumstances or his claimed inability to make bail. *See Ex parte Castellanos*, 420 S.W.3d 878, 883 (Tex. App.—Houston [14th

Dist.] 2014, no pet.) (trial court did not abuse its discretion when it found similar lack of evidence insufficient). Further, "[i]f the ability to make bond in a specified amount controlled, the role of the trial court in setting bond would be completely eliminated and the accused would be in the position to determine what his bond should be." *Milner v. State*, 263 S.W.3d 146, 150 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

In addition to her testimony regarding family finances, Tasha told the trial court Appellant lived in Lubbock prior to the time in which they began dating in 2019, although she was unsure of how long he had lived there, and that if released, he would live with her in Lubbock. Appellant's mother lives in Corpus Christi. Tasha told the court she would help Appellant meet any condition of bond, including weekly reporting and paying for necessary services or testing. From this, the trial court could have determined Appellant did not have a work record and had few family and community ties in Lubbock. From Tasha's testimony, the trial court could have determined she was the only tie Appellant had in Lubbock.[3] *Compare Ex parte Milburn*, 8 S.W.3d 422, 426-27 (Tex. App.—Amarillo 1999, no pet.) (discussing importance of significant family ties in determining bond reduction).

We do acknowledge Tasha also stated Appellant did not have a car, did not drive her car, did not have a passport, and had never discussed traveling or traveled outside the country. At Tasha's suggestion, he obtained his GED while incarcerated, and Tasha testified she would motivate him to pursue a job and change his lifestyle if he were released. While those are positive aspects under these circumstances, we cannot say

[3] It also appears from the record that Appellant was seeing other women in addition to Tasha.

they outweigh the other factors to such a degree that the trial court abused its discretion in denying Appellant's *Application.*

A significant factor the trial court was permitted to consider in deciding whether to reduce the amount of bail previously set was the aggravating nature of the pending charges, i.e., the murder of two people, including a seventeen-year-old girl. The State argued it has evidence that Appellant went to an apartment complex armed and ready to fight over the return of stolen marijuana.[4] During that altercation, Appellant fired a firearm into an apartment, hitting four people and killing two of them. The potential sentence and nature of the crime are significant factors to consider when assessing the reasonableness of a bail amount. *Ex parte Castellanos*, 420 S.W.3d at 883 (citation omitted). "When the offense is serious and involves aggravated factors that may result in a lengthy prison sentence, bail must be set sufficiently high to secure the defendant's presence at trial." *Id.* at 882-83 (citation omitted). Here, Appellant is charged with two separate counts of murder arising from the same criminal episode. At the hearing, the State told the court that under these circumstances, the case could be handled as a capital offense, although it was currently indicted as murder. These are very serious allegations carrying with them the potential for very lengthy prison sentences. *See* TEX. PENAL CODE ANN. § 12.31 (punishment for capital felony); § 12.32 (punishment for first degree felony). When we consider the nature of the alleged offense, we cannot say the trial court abused its discretion in denying Appellant's application for a writ of habeas corpus.

[4] The record indicates there may have been additional reasons for the altercation.

Furthermore, while Appellant cites several cases in which bond reductions were permitted in serious matters, we cannot find the trial court abused its discretion here given the evidence before it of Appellant's criminal history and parole violation. *Milner*, 263 S.W.3d at 151 (noting extensive criminal history is a factor in determining whether trial court abused its discretion in refusing to reduce bail). Appellant had been previously incarcerated and allegedly committed the murders at issue here within a period of months of being released. And, the trial court had before it the information that Appellant also had a pending charge for the felony offense of arson. The trial court was within its discretion to conclude Appellant was a danger to the public and would not abide by conditions of bond if released.

Because the trial court did not err in denying Appellant's request for a reduced amount of bail, his sole issue is overruled.

CONCLUSION

The trial court's *Order Denying Application for Writ of Habeas Corpus* is affirmed.

Patrick A. Pirtle
Justice

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