



**IN THE
TENTH COURT OF APPEALS**

No. 10-15-00424-CR

EX PARTE WILLIAM THOMAS HAMMOND

**From the 18th District Court
Johnson County, Texas
Trial Court No. F49808**

MEMORANDUM OPINION

William Thomas Hammond was charged with two counts of sexual assault of a child and indecency with a child by sexual contact. *See* TEX. PENAL CODE ANN. §§ 22.011; 21.11 (West 2011). His bail was set at \$3,500,000. After a hearing on Hammond's Application for Writ of Habeas Corpus and Motion for Reasonable Bond, the trial court reduced Hammond's bail to \$1,000,000. Because the trial court did not abuse its discretion in reducing Hammond's bail to \$1,000,000 but not to \$200,000 as requested, we affirm the trial court's order.

BACKGROUND

In May of 2015, Hammond was arrested in Arkansas for transporting a minor

from Arkansas to Texas and sexually assaulting that minor before returning her to Arkansas. He posted a \$250,000 bond for that offense. In June of 2015, Hammond was alleged to have committed the underlying offenses in Johnson County against B.H., a 15-year-old minor. Hammond was arrested and his bail was initially set at \$650,000. The trial court denied his motion to reduce that bail amount, and Hammond posted a cash bond two days later. As a condition of bond, Hammond was not to have any contact with the victim or anyone under the age of 17, which included Hammond's 13-year-old son. When the State discovered Hammond had been communicating with his son, the State filed a motion to hold the bond insufficient. A hearing was held on the State's motion, and Hammond's son testified that he had had several communications with his father. In one of those communications, Hammond told his son he was trying to find a way to contact the friend of B.H.'s so the friend could ask B.H. to "tell the truth." The son volunteered to contact B.H.'s friend. Hammond provided the friend's contact information to his son.

It is not clear from the record in this proceeding if the \$650,000 bail was determined to be insufficient, but it appears Hammond remained in custody because after the hearing, the trial court ordered the release of the \$650,000 cash bond Hammond had posted. When Hammond was indicted for the Johnson County offenses, bail was set at \$3,500,000.

BAIL

In one issue, Hammond asserts that the trial court erred in refusing to reduce Hammond's bail from \$3,500,000 to \$200,000 as requested and that the \$1,000,000 bail set by the trial court was excessive or oppressive, or both.

Law

The Texas Constitution guarantees that "all prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident." TEX. CONST. art. I, § 11; *see* TEX. CODE CRIM. PROC. ANN. art. 1.07 (West 2005). Thus, for a non-capital offense, a defendant is entitled to reasonable bail, that is, bail that is not excessive. *See* U.S. CONST. amend. VIII (excessive bail shall not be required); TEX. CONST. art. I, § 13 (same); TEX. CODE CRIM. PROC. ANN. art. 1.09 (West 2005) (same).

Texas Code of Criminal Procedure article 17.15 is a legislative effort to implement the constitutional right to bail. TEX. CODE CRIM. PROC. ANN. art. 17.15 (West 2015); *Ex parte Beard*, 92 S.W.3d 566, 568 (Tex. App.—Austin 2002, pet. ref'd). Article 17.15 commits the setting of bail to the discretion of the court or magistrate, but sets forth five rules that, together with the constitution, govern the exercise of that discretion. *Id.* Bail should be sufficiently high to give reasonable assurance that the undertaking will be complied with, but not so high as to make it an instrument of oppression. *Id.* art. 17.15(1), (2); *see Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977) (primary purpose of pretrial bail is to secure presence of defendant); *Beard*,

92 S.W.3d at 568. The nature of the offense and the circumstances under which it was committed are factors to be considered in setting bail, as is the future safety of the community and the victim of the alleged offense. TEX. CODE CRIM. PROC. ANN. art. 17.15(3), (5) (West 2015). The defendant's ability to make bail also must be considered, but is not of itself controlling. *Id.* art. 17.15(4); *Ex parte Gentry*, 615 S.W.2d 228, 231 (Tex. Crim. App. 1981).

Courts may also consider the following set of factors when assessing whether the amount of bail is reasonable: (1) the defendant's work record; (2) the defendant's family and community ties; (3) the defendant's length of residency; (4) the defendant's prior criminal record; (5) the defendant's conformity with previous bond conditions; (6) the existence of other outstanding bonds, if any; and (7) the aggravating circumstances alleged to have been involved in the charged offense. *See Ex parte Rubac*, 611 S.W.2d 848, 849-50 (Tex. Crim. App. [Panel Op.] 1981).

Standard of Review

We review a trial court's decision that sets a bail amount for an abuse of discretion. *See Rubac*, 611 S.W.2d at 850; *Ex parte Gonzalez*, 383 S.W.3d 160, 161 (Tex. App.—San Antonio 2012, pet. ref'd). We examine the record to determine whether the trial court considered the relevant statutory and common law factors and set a bail amount that was not excessive. *See Gonzalez*, 383 S.W.3d at 161-62; *Montalvo v. State*, 315 S.W.3d 588, 592 (Tex. App.—Houston [1st Dist.] 2010, no pet.). The appellant has the

burden to show that the amount of bail is excessive. *Rubac*, 611 S.W.2d at 849; *Gonzalez*, 383 S.W.3d at 161. If our review shows the trial court exercised its discretion within the constraints of the United States Constitution, the Texas Constitution, the statutory requirements, and the common law factors, we will not overturn its decision. *See Gonzalez*, 383 S.W.3d at 161-62; *Ex parte Hunt*, 138 S.W.3d 503, 505 (Tex. App.—Fort Worth 2004, pet. ref'd) (citing *Montgomery v. State*, 810 S.W.2d 372, 379-80 (Tex. Crim. App. 1990)).

Writ of Habeas Corpus Hearing

At the hearing on Hammond's writ, the trial court was made aware of the Arkansas offenses and made aware that the Federal Government may file charges as well based on those offenses. The testimony from the prior motion to reduce hearing and from Hammond's son on the State's motion to hold Hammond's bail insufficient was also admitted into evidence. Through that testimony, the trial court learned, in addition to the background information listed above, that Hammond had lived in Johnson County most of his life but did not have a steady work history. The trial court also learned that Hammond had several prior arrests, the last one prior to the Arkansas arrest occurring in 1992 for driving while intoxicated. Further, the trial court learned that Hammond had also tried through another person, other than his son, to contact the victim in this case, B.H.

CONCLUSION

Hammond was arrested for sexually assaulting a minor from Arkansas. He posted bond and within the next month, sexually assaulted another minor in Johnson County. He was able to post a \$650,000 cash bond. He then violated his conditions of bond by contacting his son and trying to contact the Johnson County victim. Although Hammond has ties to the community, he does not have a steady work history. The testimony shows that, at the very least, the community and the victim needs protection from Hammond. Moreover, prior bail in the amount of \$650,000 and related conditions of bail were insufficient. Accordingly, based on a review of the record pursuant to the standards set out above, we hold the trial court did not abuse its discretion in failing to reduce bail to \$200,000 as requested and in setting bail at \$1,000,000.

Hammond's sole issue is overruled and the trial court's judgment is affirmed.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed
Opinion delivered and filed February 4, 2016
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