



NUMBER 13-20-00021-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

EX PARTE KEITH ERIC LEE

**On appeal from the 25th District Court
of Lavaca County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Justice Benavides**

Appellant Keith Eric Lee appeals from an order setting his pretrial bond in prosecutions for murder, arson causing bodily injury or death, both first-degree felonies, and tampering or fabricating evidence with the intent to impair a human corpse, a second-degree felony. See TEX. PENAL CODE ANN. §§ 19.02(c), 28.02(d)(1), 37.09(c). By one issue, Lee contends that the trial court abused its discretion in denying his pre-trial petition for writ of habeas corpus and keeping his pretrial bond at \$1,000,000. We affirm.

I. BACKGROUND

On November 19, 2019, Lee was indicted for the murder of Jeremy McAfee, arson of a habitation located in Lavaca County, and tampering with evidence with the intent to impair a human corpse. See *id.* Bond was set in amount of \$1,000,000. Lee filed a petition for writ of habeas corpus seeking a bail reduction in December 2019, alleging that the bond was excessive, oppressive, and beyond Lee's financial means. The trial court held a hearing on Lee's writ on January 14, 2020.

Lee testified that he was twenty-seven years old and a lifelong resident of Victoria, Texas. He stated he did not own a home and resided with his mother, autistic brother, and fiancée. Prior to his arrest, he worked at Caterpillar, and had held other jobs prior to his Caterpillar employment, including being a jailer. Lee said his fiancée worked at Speedy Stop and they did not have any children. Lee had been in custody in isolation for 139 days at the time of the hearing. He testified that he had been on bail for "a little over four years" on a "child porn" case he was arrested on in 2015 in a neighboring county but had never been convicted of a misdemeanor or felony offense. Lee told the court that there was "no way" his family could make the current bond and he had previously lived "paycheck to paycheck." He also stated he was taking medication "for depression and anxiety from the isolation" but previously had no history of mental illness. He explained his experience as a jailer caused him concern about how he could be harmed or killed in prison, and that some days it felt like the "walls were closing in" on him in the jail. He also agreed that he had not been indicted for the 2015 arrest for child pornography.

Amy Lee, Lee's sister, testified next. Amy explained that their mother is working two jobs and has some savings, but she has to support the family. Their mother paid the bond for Lee's child pornography charge and Amy believed that their mother put up "her house and the car, two cars" for the bond. Amy explained that even though she works, Amy was not able to help with funds towards the bond because she has her own family to care for.

Lee's mother, Leslie, also testified. She told the court that she worked "two jobs, and I picked up a second job[sic], and I have little money in savings" to try to make the bond. She explained that she helped her children and supports her autistic son at home, and the previous bond and defense attorney she hired took all the money she had. She said between her checking and savings account, she probably had around \$6,000. Leslie stated that she could try to get a loan of \$20,000 to help towards a lower bond amount.

Rebecca De Luna Perez with the Lavaca County Sheriff's Office talked about Lee as an inmate. Perez stated that Lee was in isolation and has been since he was booked into jail. She explained people are normally in isolation for disciplinary reasons for a thirty-day period, but Lee had been in isolation the entire time for "his safety" and had excellent behavior. Perez agreed that Lee had expressed that he felt the walls were "closing in" and it was a concern that he would cause self-harm.

The State called Lavaca County Sheriff's Office Lieutenant Timothy Pawlik to testify about the underlying charges. Pawlik and other law enforcement officers first met with and recorded an interview with Lee at Caterpillar. Pawlik said they were investigating a fire from March 2019 where a dead body was found inside the trailer that was burned.

Pawlik stated that the autopsy showed the body was deceased prior to the fire starting due to numerous stab wounds to the carotid artery, jugular vein, back of the head, and arm. The body was burned almost beyond recognition but they were able to see there was blood on the carpet. Pawlik testified that Lee made a confession during the interview and expressed thoughts that he and his fiancée might move to Seattle, Washington and was fearful that he would be killed in prison. After he was arrested, Lee was taken to his mother's house to speak with her and his fiancée.

The State produced a transcript of a recording made by Texas Ranger Conde Benoist with a lapel camera and microphone at the home. Pawlik agreed that Lee was under arrest and had been read his statutory warnings prior to this conversation. Lee made statements wondering if people trying to "run to Mexico" was "really a thing," or "Do people actually try to go to the borders?" Lee then said "to escape. I guess when you immigrate it will pop up that you're wanted in another country." Pawlik testified that he had concerns based upon Lee's statements that he would try to flee the jurisdiction if his bond was reduced. Pawlik explained that Lee talked about self-defense and also stated that he burned the body and his clothes to "destroy the evidence" because they were "covered in blood." He also stated that based on his conversations with Lee, he was persuaded that Lee committed the arson and burned down a habitation, which is an act that is dangerous to the community.

Lee additionally stated that he felt "like now I'm going away forever" to the officers and told them he stabbed the deceased. Lee also expressed fears of "going to prison and being killed in prison because [the deceased] was a black person." Lee told them he just

wanted “to go home.” Pawlik agreed that he felt Lee was a flight risk if let out on bond.

Lee’s counsel argued in closing that the \$1,000,000 bond was excessive and he believed the State was using the bond as an instrument of oppression. Defense counsel asked that the trial court reduce the bond to \$75,000. The State responded that if Lee was able to make a high bond, it could be incentive for Lee not to flee and leave his family. The State also asked the trial court to consider the nature of the offense and aggravating factors associated with the case.

The trial court denied the writ based on the evidence presented. This appeal followed. *See Ex parte Smith*, 486 S.W.3d 62, 64 n. 4 (Tex. App.—Texarkana 2016, no pet.) (explaining that appeals courts have jurisdiction over appeals from the denial of habeas corpus relief).

II. BAIL DETERMINATION

A. Standard of Review

An applicant for habeas corpus relief must prove the applicant’s claims by a preponderance of the evidence. *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006). In a habeas challenge to the amount of bail, it is the accused’s burden of proof to show that the bail set by the trial court is excessive. *Ex parte Rubac*, 611 S.W.2d 848, 850 (Tex. Crim. App. [Panel Op.] 1981). We review a trial court’s pretrial bail determination under an abuse of discretion standard. *Ex parte Cardenas*, 557 S.W.3d 722, 729–30 (Tex. App.—Corpus Christi–Edinburg 2018, no pet.); *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); *Ex parte Beard*, 92 S.W.3d 566, 568 (Tex. App.—Austin 2002, pet. denied).

A trial court only abuses its discretion when it acts without reference to any guiding rule or principles; in other words, when the trial court acts in an arbitrary and unreasonable manner. *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990) (en banc) (op. on reh'g); see *Ex parte Digman*, No. 03-04-00088-CR, 2004 WL 1404013, at *2 (Tex. App.—Austin June 24, 2004, no pet.) (mem. op., not designated for publication) (setting out that a reviewing court must “measure the trial court's ruling against the relevant criteria by which the ruling was made”). While a court is permitted to exercise its discretion in setting bail, a reviewing court is guided by the parameters set out in the Texas Code of Criminal Procedure. See TEX. CODE CRIM. PROC. ANN. art. 17.15 (listing factors to consider in setting bail); *Wright v. State*, 976 S.W.2d 815, 819 (Tex. App.—Houston [1st Dist.] 1998, no pet.). It is not an abuse of discretion for the trial court merely to decide a matter within its discretion in a different manner than the appellate court would under similar circumstances. *Ex parte Miller*, 442 S.W.3d 478, 481 (Tex. App.—Dallas 2013, no pet.).

B. Applicable Law and Discussion

The United States and Texas Constitutions protect the right to be free from excessive bail. See U.S. CONST. amend. VIII; TEX. CONST. art. I, § 11. “The chief purpose of bail is to secure the presence of the defendant in court for trial.” *Ex parte Dupuy*, 498 S.W.3d 220, 230 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (citing *Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977)); *Ex parte May*, No. 13-11-00183-CR, 2011 WL 3846834, *3 (Tex. App.—Corpus Christi—Edinburg Aug. 30, 2011, no pet.) (mem. op., not designated for publication). Determining the appropriate bail amount is a

balancing act “between the defendant’s presumption of innocence and the State’s interest in assuring the defendant’s appearance at trial.” *Ex parte Beard*, 92 S.W.3d at 573. While bail should be sufficiently high to give reasonable assurance that the accused will appear, the power to require bail should not be used as an instrument of oppression. *Nguyen v. State*, 881 S.W.2d 141, 143 (Tex. App.—Houston [1st Dist.] 1994, no pet.).

Article 17.15 of the code of criminal procedure instructs the trial court to consider five factors in setting bail: (1) that the bail be set sufficiently high to insure compliance; (2) that the bail not be used as a tool of oppression; (3) the nature of the offense the accused is suspected of having committed and the circumstances under which it was committed; (4) the ability of the defendant to make bail; and (5) the future safety of the victim and the community. See TEX. CODE CRIM. PROC. ANN. art. 17.15; *Ex parte Cardenas*, 557 S.W.3d at 729–30; *DePena v. State*, 56 S.W.3d 926, 927 (Tex. App.—Corpus Christi–Edinburg 2001, no pet.). In addition to the guidelines provided by the article 17.15 factors, seven additional factors should be weighed in determining the amount of the bond: (1) the accused’s work record; (2) the accused’s family and community ties; (3) the accused’s length of residency; (4) the accused’s prior criminal record; (5) the accused’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. *Maldonado v. State*, 999 S.W.2d 91, 93 (Tex. App.—Houston [14th Dist.] 1999, pet. ref’d); see *Rubac*, 611 S.W.2d at 849–50; *Cardenas*, 557 S.W.3d at 729–30.

The ability to make bond is one of many factors to be considered; however, it does not control the amount of bail and will not automatically render an amount excessive. *Ex*

parte Charlesworth, 600 S.W.2d 316, 317 (Tex. Crim. App. [Panel Op.] 1980); *Ex parte Branch*, 553 S.W.2d 380, 382 (Tex. Crim. App. 1977). If the ability to make bond in a specified amount controlled, then the role of the trial court in setting bond would be eliminated, and the accused would be in the position to determine what his bail should be. *Branch*, 553 S.W.2d at 382; *Jobe v. State*, 482 S.W.3d 300, 302 (Tex. App.—Eastland 2016, pet. ref'd).

During the hearing, the trial court received testimony from Lee, his mother, and his sister regarding his life history and financial abilities. Lee explained that he had a job prior to his arrest, was a long-time resident of the area, and had family ties to the area. Lee also testified that he was currently out on bond for a felony child pornography case in a neighboring county and still under the conditions of that bond.

When assessing the reasonableness of bail, the Texas Court of Criminal Appeals has instructed that the “primary factors” are the punishment that can be imposed and the nature of the offense. *Ex parte Temple*, 595 S.W.3d 825, 829 (Tex. App.—Houston [14th Dist.] 2019, pet. ref'd). If convicted, Lee would face lengthy prison sentences. First-degree felonies are punishable between five to ninety-nine years’ or life imprisonment. TEX. PENAL CODE. ANN. § 12.32. When a lengthy prison sentence is probable, the pretrial bail must be set sufficiently high to secure the presence of the accused at trial because the accused’s reaction to the prospect of a lengthy sentence might be to flee. *Ex parte Hulin*, 31 S.W.3d 754, 760–61 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

The trial court also heard testimony from Lieutenant Pawlik regarding the nature of the offenses committed. Pawlik testified that Lee confessed to stabbing McAfee, who

suffered substantial wounds throughout his body. Lee also admitted to setting the trailer home on fire to “get rid of the evidence” because he had stated there was a “lot of blood.” Pawlik also testified that Lee continued to muse about leaving the area and moving to Washington state or trying to flee to Mexico, even prior to his formal arrest on the current charges.

The ability or inability of an accused to make bond does not alone control in determining the amount of bail. *Ex parte Temple*, 595 S.W.3d at 830. Lee did not present evidence at the habeas hearing that the trial court set bail in his case for the express purpose of forcing him to remain incarcerated. While a \$1,000,000 bond may be high, it is within the range of bail amounts that have been upheld for first-degree felony offenses including murder and capital murder. *See id*; *see also e.g., Ex parte Green*, No. 02-13-00474-CR, 2014 WL 584960, at *5 (Tex. App.—Fort Worth Feb. 13, 2014, no pet.) (mem. op., not designated for publication) (affirming \$1,000,000 bond for first-degree murder); *Ex parte Pulte*, No. 02-03-00202-CR, 2003 WL 22674734, at *2 (Tex. App.—Fort Worth Nov. 13, 2003, no pet.) (mem. op., not designated for publication) (\$1,000,000 bail not excessive for solicitation of murder); *Ex parte Saldana*, Nos. 13-01-00360CR, 13-01-00361-CR, 2002 WL 91331, at *6 (Tex. App.—Corpus Christi—Edinburg Jan. 24, 2002, no pet.) (mem. op., not designated for publication) (affirming \$1,000,000 bond for capital murder); *Ex parte Brown*, No. 05-00-00655-CR, 2000 WL 964673, at *2 (Tex. App.—Dallas July 13, 2000, no pet.) (not designated for publication) (concluding \$1,000,000 bail was not excessive for murder).

Even though Lee presented evidence of his ties to the community and lack of financial abilities, the record shows that the trial court was presented with evidence supporting its denial of Lee's writ. There is no evidence that the trial court failed to consider and evaluate each rule and factor in reaching its determination. See *Montgomery*, 810 S.W.2d at 380; see also *Ex parte Comminey*, No. 05-19-00325-CR, 2019 WL 2912239, at *6 (Tex. App.—Dallas July 8, 2019, no pet.) (mem. op., not designated for publication). The trial court did not abuse its discretion in denying habeas relief. We overrule Lee's issue.

III. CONCLUSION

We affirm the trial court's ruling.

GINA M. BENAVIDES,
Justice

Do not publish.
TEX. R. APP. P. 47.2 (b).

Delivered and filed the
4th day of June, 2020.