

Green v. Hofmann, No. 744-10-08 Wncv (Toor, J., Dec. 24, 2008)

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STATE OF VERMONT  
WASHINGTON COUNTY, SS

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ELIJAH GREEN,  
Plaintiff

v.

ROBERT HOFMANN,  
Defendant

SUPERIOR COURT  
Docket No. 744-10-08 Wncv

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ORDER

Plaintiff is an inmate who has brought this habeas action to challenge the Department of Corrections' calculation of his credit. He argues that on January 23, 2004, Judge Keller imposed bail of \$50,000 in all of his then-pending cases. The Department argues that it received a bail mittimus only in one docket. Thus, he is not receiving credit on the other dockets. A status conference was held on December 22.

Counsel for Green has submitted a transcript of the January 23 hearing, as well as docket sheets for all of the cases.<sup>1</sup> The docket sheets reflect that in Dockets 7936-12-02 and 7937-12-02<sup>2</sup>, a total of \$5,000 bail (\$2,500 on each case) was imposed on December 30, 2002. When Green failed to appear in court on May 16, 2003, a notice to forfeit the earlier bail was issued (it was later forfeited) and bail was increased to \$50,000. On

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<sup>1</sup> The documents discussed here were submitted informally without objection at the status conference, and no formal hearing was held or requested by either party. The court thus presumes the Department has no objection to its ruling on the basis of these submittals.

<sup>2</sup> Although they are different docket numbers, the two charges are merely two counts in one case.

January 23, 2004, Green was arrested and the \$50,000 bail was kept in place. A mittimus for failure to post bail was issued. On September 20, 2004, the charges were dismissed by the State.

In Dockets 223-1-03, 224-1-03 and 225-1-03<sup>3</sup>, bail was set in the amount of \$15,000 on January 8, 2003. When Green failed to appear on May 16, 2003, a notice to forfeit that bail was issued and an arrest warrant was issued with bail of \$50,000. On January 23, 2004, defendant was brought in on the arrest warrant. The docket sheet reflects only that a hearing was held. It does not reflect what happened. It does not reflect any mittimus for lack of bail. Green was convicted after trial on October 7, 2004 and held without bail until sentencing, which occurred on December 14, 2004.

In January of 2008 a motion to amend mittimus was filed, and a hearing held on the motion two months later. The docket sheet reflects discussion of amending the mittimus to give Green 257 days of credit. The judge indicated a stipulation to that effect could be submitted. Apparently that never occurred.<sup>4</sup>

The issue in this case is whether the \$50,000 bail applied in all the cases or not. The docket sheets reflect that a mittimus for lack of \$50,000 bail was issued only in one set of cases (7936 and 7937) and not in the other (223, 224 and 225). However, the transcript of the January 2004 hearing for all the cases<sup>5</sup> reflects that the State was asking for \$50,000 bail “on all the cases.” Moreover, the judge refers to the prior bail being \$15,000, which refers to Dockets 223, 224 and 225. In addition, there was already a

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<sup>3</sup> As with the other case, these three docket numbers are all in one case.

<sup>4</sup> A motion to reconsider sentence was submitted and ruled on by the court in September of this year. However, counsel for Green documented at the status conference in this case that the reconsideration was on an entirely different basis.

<sup>5</sup> The cover of the transcript suggests it is only in one case, but the transcript itself reflects it was on all the charges.

\$50,000 arrest warrant in all the cases. Thus, the judge would not have stricken all bail in one set of cases and continued the \$50,000 bail in the others without saying he was doing so.

It is clear to this court that what happened was a clerical error – the staff failed to issue a mittimus in all the dockets even though that was the clear intent of the judge.<sup>6</sup>

The Department acted appropriately in this case, as it had a bail mittimus only for one set of charges and not the other. The problem arose in the District Court. It is thus unclear to the court what order would appropriately be issued by the court in this case. The court is hopeful that the parties can agree on the wording of the order. If not, they will need to brief for the court their respective positions as to the appropriate action for the court in these circumstances.

#### Order

The court finds that the District Court's intent was to impose \$50,000 bail in all the cases on January 23, 2004. Counsel are directed to submit a proposed stipulated judgment or memos of law with regard to the proper relief by January 7.

Dated at Montpelier this 23rd day of December, 2008.

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Helen M. Toor  
Superior Court Judge

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<sup>6</sup> The fact that another judge suggested a stipulation addressing the problem would be acceptable supports this conclusion.