

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2020-161

JUNE TERM, 2020

State of Vermont	}	APPEALED FROM:
	}	
	}	Superior Court, Criminal Unit,
v.	}	Chittenden Division
	}	
Travis J. Simpson	}	DOCKET NOS. 1246-5-20 Cncr &
	}	1274-5-20 Cncr
Trial Judge: A. Gregory Rainville		

In the above-entitled cause, the Clerk will enter:

Defendant appeals the trial court’s June 8, 2020 decisions denying his motion to modify his conditions of release in Docket No. 1246-5-20 Cncr and imposing conditions in Docket No. 1274-5-20 Cncr. I affirm.

On May 18, 2020, defendant was arraigned on a charge of violation of a relief-from-abuse order in Docket No. 1246-5-20 Cncr. Defendant appeared in court on a citation after posting \$500 bail when he was arrested. The court observed that defendant had allegedly violated a temporary relief-from-abuse order three hours after it was served on him and resisted police attempts to take him into custody. It noted that, “you got a situation where we have a violation of several orders both by law enforcement and the court. This is rather egregious.” When the court proposed a condition that defendant be released into the custody of an adult, defense counsel suggested that “a lesser restrictive means would be a curfew.” As a result, the court imposed the following conditions relevant to this appeal: posting of \$2500 cash bail; a twenty-four-hour curfew at his parents’ address in Monkton; and a prohibition against entering Chittenden County, except for court appearances or court-approved purposes.<sup>1</sup> Defendant posted bail and was released the following day.

On May 21, 2020, defendant filed a stipulated motion to modify these conditions pursuant to 13 V.S.A. § 7554(d)(2). He disclosed that he had signed a lease for an apartment in Winooski with a start date of June 1, 2020, and that he had a job at a Hilton hotel in Williston, but had been furloughed. Defendant requested that the court strike the bail condition, the curfew, and the condition that he not enter Chittenden County. The State did not object. On May 29, 2020, defendant supplemented the stipulated motion to modify conditions of release. He notified the

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<sup>1</sup> Several other conditions not at issue in this appeal were also imposed.

court that his employer would be opening a new hotel in Williston and he would be training and working at that location.

In a May 29, 2020 entry order, the court amended the curfew condition and prohibition against entering Chittenden County to allow defendant to continue his training and work at the Hilton hotel in Williston. The court amended the condition for imposition of \$2500 cash bail and instead required defendant to sign a \$2500 appearance bond.

Defendant filed a second motion to amend his conditions of release on June 1, 2020. He asked the court to strike the recently imposed appearance bond as well as the amended curfew condition and the amended prohibition against entering Chittenden County. The court ordered the clerk to schedule the motion for a hearing.

On June 5, 2020, defendant was arrested and cited for violating the condition of release prohibiting him from entering Chittenden County as ordered in Docket No. 1246-5-20 Cncr.<sup>2</sup> He appeared for an arraignment on June 8, 2020. Prior to this date, however, the State had filed new charges, Docket No. 1274-5-20 Cncr, alleging simple assault and second-degree unlawful restraint based upon an April 2020 incident. Defendant was arraigned on both dockets on June 8 and the court also addressed the pending motion to modify conditions of release in Docket No. 1246-5-20 Cncr.

At this hearing, the court imposed several conditions in Docket No. 1274-5-20 Cncr, including that defendant be released into the custody of a responsible adult and that he observe a twenty-four-hour curfew at his parents' residence. The court heard testimony from defendant's father, who agreed to act as the responsible adult. The court denied the motion to amend conditions of release in Docket No. 1246-5-20 Cncr and struck the modified conditions it imposed in its May 29, 2020 order, resulting in the imposition of the original conditions of a twenty-four-hour curfew and a blanket prohibition against entering Chittenden County.

On appeal, defendant argues that, because he does not pose a risk of flight from prosecution, the court erred in ordering him to post the \$2500 appearance bond. In addition, he submits that the court failed to consider the least restrictive conditions of release when it reimposed the original twenty-four-hour curfew and prohibition against entering Chittenden County in Docket No. 1246-5-20 Cncr and the conditions that he observe a twenty-four-hour curfew and be released into the custody of his father in Docket No. 1274-5-20 Cncr. The State seeks a modified curfew condition of 9:00 p.m. to 6:00 a.m. and does not object to the striking of the other conditions at issue.

Defendant has failed to preserve his argument that the court erred by requiring him to post a \$2500 appearance bond. In his motion to modify conditions of release, defendant argued that he did not present a risk of flight from prosecution. However, when this motion was heard on June 8, defendant made no mention of the appearance bond, nor did he make any argument supporting the issue he raised in the motion to modify with respect to the appearance bond. Instead, counsel focused exclusively on the other conditions of release contested in the motion. As a result, the

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<sup>2</sup> The violation-of-conditions-of-release charge, Docket No. 1401-6-20 Cncr, is not at issue in this appeal.

court did not address the appearance-bond issue and made no findings or ruling thereon. We will not consider issues not raised in the proceeding below. State v. Ovitt, 2005 VT 74, ¶ 13, 178 Vt. 605, 878 A.2d 314. “An issue is not preserved for appeal unless a party raises it with specificity and clarity below, thereby ensuring that the trial court will have an opportunity to fully develop the relevant facts and to reach considered legal conclusions.” Id. Despite the fact that defendant raised a challenge to the appearance bond in the motion to modify, he failed to do so at the hearing, thus depriving the court of the opportunity to develop the facts and reach the required legal conclusions. See State v. Ovitt, 2005 VT 74, ¶ 13, 178 Vt. 605, 878 A.2d 314 (mem.) (“An issue is not preserved for appeal unless a party raises it with specificity and clarity below, thereby ensuring that the trial court will have an opportunity to fully develop the relevant facts and to reach considered legal conclusions.”). Defendant has not preserved the issue.

Likewise, defendant failed to preserve the argument that the court erred when it released him into his father’s custody. At the arraignment on June 8 in Docket No. 1274-5-20 Cncr, the court imposed this condition. Later in the proceeding, defense counsel repeated the conditions to the court in an effort to establish that he was aware of all the conditions that had been imposed. He specifically mentioned this condition and the court confirmed he had ordered it. After this colloquy, defense counsel responded, “[w]e have no objection to those conditions, Your Honor.” Failure to object below precludes review by this Court. Deyo v. Kinley, 152 Vt. 196, 200, 565 A.2d 1286, 1289 (1989).

Finally, defendant argues that the court erred by not granting his motion to modify and to strike the conditions that he observe a modified twenty-four-hour curfew and that he not enter Chittenden County except for work and other exceptions which were imposed in Docket No. 1246-5-20 Cncr. He objects to the court re-imposing the original conditions. Defendant also argues that the court should not have imposed the same curfew condition in Docket No. 1274-5-20 Cncr.<sup>3</sup> Defendant submits that the court abused its discretion by not imposing the least restrictive conditions necessary to protect the public, pursuant to 13 V.S.A. § 7554(a)(2), and that the curfew and prohibition against entering Chittenden County are physically restrictive conditions which can be imposed only under extraordinary circumstances.

At the June 8 hearing on the motion to amend the conditions in Docket No. 1246-5-20 Cncr, defense counsel reminded the court that defendant had put down a deposit on a lease in Winooski prior the arraignment in this docket and was currently working in Chittenden County. Defendant argued that the modified twenty-four-hour curfew and modified prohibition against entering Chittenden County were not the least restrictive conditions available to the court and should be struck. The State argued against relaxing conditions of release. It noted that the new charge of violating a condition of his release showed that defendant did not have a good track

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<sup>3</sup> This argument suffers from the same preservation problem as the argument related to the placement of defendant in his father’s custody and, therefore, it will not be addressed. Here, too, after confirming the conditions that were imposed, counsel indicated there was no objection to the conditions, which included the twenty-four-hour curfew. A few moments later, counsel began to explain that the curfew condition would be a hardship given defendant’s work but never made a specific objection to it. Despite the court’s offer, counsel did not file anything in writing objecting to any of the conditions that were imposed.

record of abiding by conditions. The prosecutor informed the court that, when arrested the night before, defendant was in the custody of a person wanted on an arrest warrant and was leaving the scene of an alleged altercation, leading him to believe that defendant “doesn’t seem like he’s abiding by his conditions in a peaceful manner. And so relaxing the conditions—the State’s concern is that it just gives him the message that he’s free to go basically and do what he wants to do and there’s really no repercussion.”

The court echoed the State’s sentiments. In addition, it noted defendant’s prior conviction for violation of a relief from abuse order, a failure to appear in court, a conviction for escape, and a probation violation. The court was concerned that it had relaxed the curfew condition and the prohibition against entering Chittenden County to allow defendant to work, and concluded that he “blew that” and so the “opportunity [to work] is gone for the time being.” In summary, the court stated: “He’s already shown he’s not going to maintain a curfew. And he’s violated two or three different court orders over time. So I’m not going to allow that.” In the end, the court denied the motion to amend and imposed the original twenty-four-hour curfew and prohibition against entering Chittenden County with minor exceptions such as appearing in court.

The court has broad discretion in setting conditions of release. State v. Ashley, 161 Vt. 65, 68, 632 A.2d 1368, 1370 (1993), superseded by statute, 2003, No. 73 (Adj. Sess.), § 6, as recognized in State v. Tavis, 2009 VT 63, ¶ 6, 186 Vt. 554, 978 A.2d 465 (mem.). Pursuant to 13 V.S.A. § 7556(b) and (c), we review a decision to amend conditions only for abuse of discretion and “[i]f the record shows that the order ‘is supported by the proceedings below,’ we must affirm.” State v. Hoffman, 2007 VT 141, ¶ 5, 183 Vt. 547, 944 A.2d 912 (citing State v. Parda, 142 Vt. 261, 262, 455 A.2d 323, 324 (1982)). The court did not abuse its discretion in denying the motion to strike the two conditions and, instead, making them more restrictive. The decision is supported by the proceedings below.

Defendant was originally charged with violating a relief-from-abuse order within hours of its issuance by going to the complainant’s home in Chittenden County, banging on the door, and entering the apartment. The court imposed conditions pursuant to 13 V.S.A. § 7554(a)(1) which were aimed at public protection, namely that defendant observe a twenty-four-hour curfew and not go to Chittenden County. This decision was not appealed. Shortly thereafter, the court modified the conditions to allow defendant to work in Chittenden County. Just seven days later, defendant was arrested for violating these conditions of release.<sup>4</sup> When considering the motion to strike the modified conditions, the court was reasonably concerned about defendant’s ability to follow them based upon his prior record of violating court orders, the recent alleged violation of the instant conditions, and the nature of that violation. The court did not abuse its discretion in concluding that “[h]e’s not abiding by conditions. And if anything, the Court needs to tighten up conditions.” The decision to not strike the amended conditions and to reimpose the original conditions is supported by the proceedings below. Furthermore, the circumstances surrounding the violation of the abuse-prevention order—including defendant’s resistance when being taken into custody, defendant’s history of not abiding by court orders, and the alleged violation of conditions of

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<sup>4</sup> Although defendant was only charged with violating the prohibition against entering Chittenden County, the State represented at oral argument that he also violated the curfew condition.

release—constitute extraordinary circumstances pursuant 13 V.S.A. § 7554(a)(2)(D), justifying physically restrictive conditions.

Affirmed.

FOR THE COURT:

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Karen R. Carroll