

ENTRY ORDER

SUPREME COURT DOCKET NO. 2021-154

JULY TERM, 2021

State of Vermont v. Brian Jackson*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit
	}	Criminal Division
	}	
	}	DOCKET NO. 20-CR-02105

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

On July 14, 2021, this Court received defendant’s pro se notice of appeal—dated July 6, 2021—from the trial court’s December 29, 2020 decision holding him without bail pursuant to 13 V.S.A. § 7553. But see V.R.A.P. 4(a)(1) (directing that defendant in criminal case must file notice of appeal “within 30 days after entry of the judgment or order appealed from”). In an accompanying memorandum of law, defendant argued that the court erred in determining that (1) the evidence of his guilt was great, and (2) no condition or combination of conditions of release could mitigate the risk of flight or ensure public safety. The latter contention is fact-specific and cannot be resolved on the basis of a stale record—but nor may fresh evidence on this point be presented in this venue. See 13 V.S.A. § 7554(b); see also Sweet v. St. Pierre, 2018 VT 122, ¶ 13, 209 Vt. 1, 201 A.3d 978 (holding that trial court is trier of fact and noting that it is not for this Court to weigh evidence or assess witness credibility).

In light of the foregoing considerations, the Court construes defendant’s pro se filing as a request to review the decision holding him without bail rather than a direct appeal from the hold-without-bail decision issued almost seven months ago. See State v. White, 2020 VT 62, ¶ 12, __ Vt. __, 237 A.3d 1235 (mem.) (explaining that trial court has discretion to grant motion to review order holding defendant without bail). In a prior order, defendant was accordingly directed to show cause as to why this matter should not be dismissed on grounds that the arguments raised therein must be presented to the trial court in the first instance. His response was due on or before July 21, 2021; no such response was filed.

The matter is therefore dismissed. Defendant may present his arguments in a motion to review bail filed in the trial court should he so choose.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice