

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2021-168

AUGUST TERM, 2021

State of Vermont v. Donald Bartlett*	}	APPEALED FROM:
	}	
	}	Superior Court, Essex Unit,
	}	Criminal Division
	}	
	}	DOCKET NOS. 21-CR-00790, 21-CR-
	}	00814, 13-3-20 Excr, 46-8-20 Excr, and
	}	70-12-20 Excr

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

Defendant Donald Bartlett appeals from the denial of a motion to modify conditions of release and appoint his mother as a responsible adult. The notice of appeal cites five separate dockets: 13-3-20 Excr; 46-8-20 Excr; 70-12-20 Excr; 21-CR-790; 21-CR-814. On appeal, defendant argues that the trial court abused its discretion in denying the appointment of defendant’s mother as a custodian and the modification of the relevant conditions. We affirm.

The record reflects the following. On February 9, 2021, defendant was arraigned in two dockets: 21-CR-790 and 21-CR-814. In the first docket, 21-CR-790, defendant was charged with driving with a suspended license and two counts of violating conditions of release requiring that he abide by a 24-hour curfew and that he stay 300 feet away from a home in Concord—both conditions that had been imposed in docket 70-12-20 Excr. In the second docket, 21-CR-814, defendant was charged with two counts of violating a condition of release requiring that he not contact his daughter, the complaining witness in his charge for misdemeanor domestic assault—a condition that had been imposed in the domestic assault charge docket, 13-3-20 Excr. The court found probable cause in both dockets and released defendant on a number of conditions, including condition 6 that defendant live in Vermont, and condition 11 imposing a 24-hour curfew at a court-approved location. Additionally, the court added conditions of release in docket 13-3-20, the misdemeanor domestic assault docket, including conditions 6 and 11, and condition 4, which requires that defendant be released into the custody of a court-approved person, or a “responsible adult.” See 13 V.S.A. § 7554(a) (providing conditions of release that court may impose to mitigate risk of flight from prosecution and protect the public). Because defendant did not have an available responsible adult, he was unable to comply with these conditions and was held until he could comply. Defendant did not seek a bail review hearing. *Id.* § 7554(d)(1) (“A person for whom conditions of release are imposed and who is detained as a result of his or her inability to meet the conditions of release . . . shall, within 48 hours of application, be entitled to have the condition reviewed . . .”).

On July 22, 2021, defendant moved to modify the conditions of release as part of a proposal to appoint his mother as court-approved custodian.<sup>1</sup> See *id.* § 7554(a)(1)(A), (2)(A) (providing condition that defendant be placed “in the custody of a designated person or organization agreeing

---

<sup>1</sup> Defendant had previously moved to modify these conditions to allow defendant to be released to a residential treatment program; however, the treatment facility declined to offer defendant a bed, and thus the motion was struck.

to supervise him or her”). Specifically, in requesting that the court appoint defendant’s mother as a responsible adult, he asked that the court: (1) strike condition 6, requiring that he reside in Vermont, in dockets 21-CR-790 and 21-CR-814;<sup>2</sup> (2) appoint defendant’s mother as custodian for condition 4 in docket 13-3-20; and (3) modify condition 11 imposing a 24-hour curfew in dockets 13-3-20, 46-8-20, and 70-12-20, “to allow for legal, substance abuse treatment and medical appointments.”

The court held a hearing on the motion on July 30, 2021, and heard testimony from defendant’s mother. The mother testified that she was willing to have defendant come live with her, to act as a responsible adult, and to report any violations of conditions of release. She also testified that she worked until 7 or 8 o’clock at night, when she returned home, and mostly worked 7 days a week. And she stated that she was a tenant at will, and that her landlords had told her within the prior two days that defendant could not stay with her in her apartment. The mother testified to an incident that occurred at her home when defendant had contact with his daughter, the complaining witness in connection with the domestic assault charge. The mother stated that she was not aware of the condition in place at the time that prohibited defendant from contacting his daughter. On cross-examination, the mother testified that she did not believe defendant was capable of assaulting his daughter.

The court also heard testimony from the mother of the complaining witness in connection with a different domestic assault charge against defendant. This witness was close with defendant’s daughter—the complainant in the domestic assault case docketed as 13-3-20 Excr. This witness testified that defendant’s daughter told her that defendant’s mother—the proposed custodian—had asked defendant’s daughter to “just stop causing problems for [defendant].”

The court denied defendant’s motion on the record stating that it was denying “this particular release plan” of allowing defendant to move in with his mother in New Hampshire. Defendant appealed the court’s decision, arguing that the court abused its discretion in denying the proposal. See *id.* § 7556(b) (entitling defendant whose motion to amend conditions is denied to appeal before a single Justice of the Supreme Court).

By statute, the standard of review requires that the trial court’s decision be affirmed “if it is supported by the proceedings below.” *Id.* In making this determination, we recognize that the court has a high degree of discretion in analyzing the evidence before it. *State v. Bailey*, 2017 VT 18, ¶ 9, 204 Vt. 294.

In this case, the court’s decision to deny the proposal to appoint defendant’s mother as a responsible adult is supported by the proceedings below. The court identified two reasons it was concerned about whether mother would report violations of conditions, as required of a court-approved custodian. First, the court credited the testimony that defendant’s mother told his daughter, the complaining witness in one of the domestic assault cases (13-3-20 Excr), to stop causing problems for him. And second, defendant’s mother testified that she did not feel defendant was capable of assaulting his own child, as he is alleged to have done in connection with that domestic assault charge. The court also noted its concern that mother’s landlords had told her they did not want defendant living with her and that placing him with her could potentially result in her eviction. Given the court’s consideration of this evidence and its credibility determinations, which are squarely within its discretion, we cannot conclude that it abused its discretion in denying defendant’s placement with his mother and other condition modifications that would have been

---

<sup>2</sup> Defendant was also subject to condition 6 in docket no. 13-3-20, though this docket was not cited in his motion.

required to make that placement possible. See *id.* ¶ 14 (concluding no abuse of discretion where court determined father and girlfriend did not satisfy “responsible adult” provision where there were concerns about whether either would report defendant’s violations of conditions).

We also briefly address defendant’s generic argument on appeal that the combination of conditions imposed on defendant have collectively kept him in detention for more than six months. We emphasize that nothing in the trial court’s decision on this motion precludes defendant from identifying an alternative responsible adult to satisfy condition 4, or from presenting the court with a well-developed alternative release plan that would mitigate the concerns the court has expressed, both in imposing the condition and in denying this particular placement. As we have said before, conditions are not necessarily improper merely because a defendant cannot comply with them. See *State v. Duff*, 151 Vt. 433, 436 (1989) (noting defendant “need not be capable of meeting bail in order for the amount to be supported by the record”).

Affirmed.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "Beth", is written over a horizontal line.

Beth Robinson, Associate Justice