STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 26, 2013)

STATE OF RHODE ISLAND	:	
	:	
V.	:	**Case No. P1-2001-1557A**
	:	
RUDOLPH OSEI	:	

DECISION

TAFT-CARTER, J. Rudolph Osei (the "Appellant") appeals the decision (the "Decision") of Magistrate McBurney (the "Magistrate") denying the Appellant's Motion to Reduce Bail in connection with alleged violations of prior sentences and a pending information alleging assault on correctional officers. Jurisdiction is pursuant to G.L. 1956 § 8-2-11.1(d).

I

Facts and Travel

On or around December 23, 2011, the Appellant allegedly struck and caused bodily injury to at least two correctional officers at the Maximum Security Facility of the Adult Correctional Institution (ACI), where the Appellant was incarcerated. On March 22, 2012, the Appellant was charged with four counts of assault stemming from the alleged incident. On May 15, 2012, the Appellant was arraigned and pled not guilty to the charges. Bail was set on those charges at $10,000 with surety. At the time of his arrest, the Appellant was on probation in four cases.

Violation hearings in connection with the Appellant's four prior sentences were scheduled. The Appellant was presented as a violator in each of those cases on May 15, 2012, and soon thereafter the State of Rhode Island (the "State") filed respective 32(f) Violation

Reports. The Violation Reports indicated that the Appellant was considered to be an alleged violator of the terms of his probation for three sentences imposed on February 19, 2003, and one sentence imposed on September 13, 2006. The three sentences imposed on February 19, 2003 related to a conviction for second degree robbery that occurred on May 21, 2001, a conviction for larceny from the person that occurred on May 25, 2001, and a conviction for second degree robbery that occurred on December 24, 2001. The sentence of September 13, 2006 related to an information-waived conviction for second degree robbery, with an offense date of September 13, 2006. As a result, on May 15, 2012, bail was set with respect to each individual violation case at $20,000 with surety. Thus, the overall amount of bail on which the Appellant is held, which includes bail on the March 22, 2012 charges and the Appellant's four pending alleged probation violations, is $90,000 with surety.

On January 30, 2013, the Magistrate held a hearing on the Appellant's Motion to Reduce Bail. The Magistrate denied the Appellant's Motion, finding that the amount of bail was not excessive. On April 4, 2013, the Appellant filed a Notice of Appeal with this Court, seeking review of the Magistrate's decision.

II

Standard of Review

Superior Court review of magistrate decisions is specifically governed by § 8-2-11.1(d). Such section provides:

> A party aggrieved by an order entered by the administrator/magistrate shall be entitled to a review of the order by a justice of the superior court. Unless otherwise provided in the rules of procedure of the court, the review shall be on the record and appellate in nature. The court shall, by rules of procedure, establish procedures for review of orders entered by the administrator/magistrate, and for enforcement of contempt adjudications of the administrator/magistrate.

Superior Court Administrative Order No. 94-12, specifically delineating a magistrate's powers, provides for de novo review of the appellate matter. Said Order provides:

> The Superior Court justice shall make a de novo determination of those portions to which the appeal is directed and may accept, reject, or modify, in whole or in part, the judgment, order or decree of the Master.[1] The justice, however, need not formally conduct a new hearing and may consider the record developed before the Master, making his or her own determination based on that record whether there is competent evidence upon which the Master's judgment, order or decree rests. The justice may also receive further evidence, recall witnesses or recommit the matter to the master with instructions.

Administrative Order, 94-12(h). Thus, a Superior Court justice conducts de novo review of the portions of the record appealed. See Paradis v. Heritage Loan and Investment Co., 678 A.2d 440, 445 (R.I. 1996) (recognizing that Administrative Order 94-12 gives a Superior Court justice "broad discretion in his or her review of the [magistrate's] decision" and finding that "the trial justice's de novo review of the [magistrate's] decision, based solely upon the record was proper"). The record on appeal includes "[t]he original papers and exhibits filed with the clerk of the Superior Court, the transcript of the proceedings, and the docket entries." Administrative Order 94-12(f). The Superior Court justice "may also receive further evidence, recall witnesses," or remand the matter. Administrative Order 94-12(h).

III

Analysis

A criminal defendant's right to bail is governed by article 1, section 9 of the Rhode Island Constitution, which states in relevant part:

> All persons imprisoned ought to be bailed by sufficient surety, unless for offenses punishable by imprisonment for life, or for

[1] The term "Master" was amended to "Magistrate" by P.L. 1998, ch. 442 § 1.

> offenses involving the use or threat of use of a dangerous weapon by one already convicted of such offense punishable by imprisonment for life, or for offenses involving the unlawful sale, distribution, manufacture, delivery or possession with intent to manufacture, sell, distribute or deliver any controlled substance punishable by imprisonment for ten (10) years or more, when the proof of guilt is evident or the presumption great.

In addition, article 1, section 8 of the Rhode Island Constitution mandates that "[e]xcessive bail shall not be required." The standards governing a criminal defendant's right to release pending trial are also set forth in statute:

> Every person who is held on any criminal process to answer to any indictment, information, or complaint against him or her shall be released upon giving recognizance with sufficient surety or sureties before a justice of the supreme or superior court or before a justice of the district court, when the complaint is pending in that court or the person is held to answer to that court, in the sum named in the process, if any has been named in it, and if none is named, then in any sum that the justice shall deem reasonable, to appear before the court where the indictment, information, or complaint is pending against him or her, or to which he or she may be bound over to appear, to answer to the indictment, information, or complaint, and to answer to it whenever called upon so to do, and abide the final order of the court, and in the meantime keep the peace and be of good behavior.

Sec. 12-13-1. Moreover, Rule 46(b) of the Rhode Island Superior Court Rules of Criminal Procedure sets forth requirements governing the terms of a defendant's bail:

> If the defendant is admitted to bail, the terms thereof shall be such as in the judgment of the court will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the financial ability of the defendant to give bail, the character of the defendant, and the policy against unnecessary detention of defendants pending trial.

Ruling on the denial of a defendant's motion to reduce bail, our Supreme Court has likewise held that a defendant's financial ability "is but one of a number of factors to be taken into consideration by the court and has no peculiar significance so as to set it apart as a factor having

exceptional merit." Benoit v. Langlois, 96 R.I. 129, 132, 189 A.2d 805, 807 (1963). In determining whether a defendant's bail is excessive, our Supreme Court has also endorsed consideration of the defendant's age when first incarcerated, the nature of the defendant's previous offenses, and the defendant's residence history in this State. Id.

These factors are reinforced by Rhode Island's Bail Guidelines, which set forth general principles and specific considerations involved in the setting of bail.[2] Bail Guideline I provides that "[t]he purpose of bail is to assure that the defendant will appear in court as required and will keep the peace and be of good behavior." In addition, "[b]ail shall not be set in sums that are excessive and for the purpose of pre-trial punishment." Id. Referring to cash or surety bail, Bail Guideline II(3) provides that "[m]onetary conditions shall only be set when it is found that no other conditions will reasonably assure the defendant's appearance in court or adequately protect the community." In addition, Bail Guideline II(4) requires that money bail or surety bail only be imposed under certain conditions. For example, the Court must be "reasonably satisfied that the defendant will not appear as required" or "reasonably satisfied that the defendant will engage in other criminal conduct dangerous to the person or property of others." Bail Guidelines II(4)(a)-(b). Bail Guideline IV sets forth various factors that the justice or officer of the court is entitled to consider in setting bail. These include the defendant's prior criminal record, "including facts indicating that the defendant is likely to be a danger to the community if released without restrictions." Bail Guideline IV(7).

Bail Guideline V specifically sets forth standards governing the amount of bail to be set, stating that, "the amount of cash or surety to be imposed shall not exceed the guidelines . . ., unless it can be shown that special circumstances exist to do so." In interpreting the stated

[2] By their own terms, the Bail Guidelines "are guidelines for the District, Family, Superior and Supreme Courts to be used in establishing bail."

guidelines, "[t]he judicial officer should determine whether the charges constitute one incident or several, independent incidents." Bail Guideline V(1), n.2. In making this determination, "[t]he test to be applied is whether the charges can be severed for trial. If so, separate bail may be set on each charge." Id. "However, a defendant should not be required to post additional bail because the state has charged multiple counts based on one incident." Id. In felony cases where the penalty that may be imposed does not exceed twenty years imprisonment, bail should ordinarily be "in an amount no greater than $20,000 with surety, ten percent cash or $2,000 cash." Bail Guideline V(1)(d).

The Appellant argued before the Magistrate that because Bail Guideline V prohibits the Court from imposing bail on "multiple counts stemming from one incident," the overall level of bail set on the new charges and the four alleged violations was excessive. The Appellant contends that the overall amount of bail set on his new charges and four alleged probation violations is excessive and amounts to pre-trial punishment. The Appellant argues that certain factors act to mitigate any perceived need to impose bail in the amount of $90,000. The Appellant stresses that he is a thirty-five year old, lifelong resident of Rhode Island with a large family, all of whose members live in the Rhode Island area. The Appellant also emphasizes that he is indigent, and argues that bail has been set so high as to make it "virtually impossible" for the Appellant to exercise his right of release. Counsel for the Appellant has also represented that the Appellant has no history of failing to make required court appearances.[3]

[3] At the January 30, 2013 hearing before the Magistrate on the Appellant's Motion to Reduce Bail, counsel for the Appellant also indicated that the Appellant had "recently completed a six year sentence[,] [having] [] flattened on that matter back on November 29th of 2012." The Court has found nothing on the docket sheets or in the case files of the matters in which the Appellant is an alleged violator that would indicate the Appellant completed a sentence on that date. If the Appellant completed a sentence on November 29, 2012, on a case in which he was not considered to be an alleged violator, the Court sees little, if any, relevance in that fact.

A

Bail on the New Charges

At the January 30, 2013 hearing, counsel for the Appellant suggested that bail was set in separate amounts on each of the four March 22, 2012 charges, all of which stemmed from the alleged incident in the Maximum Security Facility of the ACI, and amounted to $90,000. Upon inquiry by the Magistrate, however, counsel for the Appellant acknowledged that the bail amount ascribed to the new charges totaled $10,000. The March 22, 2012 charges include two counts for violation of § 11-25-2, prohibiting "assault or escape by a custodial unit inmate." A conviction on that count carries a maximum prison term of twenty years. See § 11-25-2. Thus, the amount of bail imposed on that charge should not exceed $20,000 with surety unless the judicial officer articulates a compelling reason on the record. See Bail Guidelines V(1)(d), V(2). If $90,000 had been set as the amount of bail on these four new charges alleging assault on a correctional officer, this would arguably be a violation of Bail Guideline V, as "a defendant should not be required to post additional bail because the state has charged multiple counts based on one incident." Bail Guideline V(1), n.2. As counsel for the Appellant acknowledges, however, the amount of bail set on the four new charges was $10,000, well within the presumed $20,000 limitation. Therefore, with respect to the charges of March 22, 2012, the amount of bail was not excessive.

B

Bail on the Alleged Violations

The Magistrate set individual bail amounts on each of the four alleged probation violations, totaling $80,000. Bail Guideline V does not contemplate procedures for the setting of bail on probation violations; rather, the focus is upon new charges. See Bail Guideline V(1), n.2

(providing for a situation where "the state has charged multiple counts based on one incident"). The Appellant has been convicted on the charges underlying the alleged violations and is potentially subject to commitment "on the sentence previously imposed." Sec. 12-19-9. Under such circumstances, the State may go so far as to hold the Appellant "without bail for a period not exceeding ten (10) days." Id. (Emphasis added.) Moreover, the Eighth Amendment to the United States Constitution "does not guarantee a right to bail pending revocation of probation." In re Whitney, 421 F.2d 337, 338 (1st Cir. 1970). Importantly, "[a] probation-violation hearing . . . is not part of the criminal-prosecution process; therefore, it does not call for the 'full panoply of rights' normally guaranteed to defendants in criminal proceedings." Hampton v. State, 786 A.2d 375, 379 (R.I. 2001). "The minimum due process requirements of a violation hearing call for notice of the hearing, notice of the claimed violation, the opportunity to be heard and present evidence in defendant's behalf, and the right to confront and cross-examine the witnesses against defendant." State v. Casiano, 667 A.2d 1233, 1239 (R.I. 1995). The ten-day limit on holding alleged probation violators without bail is also '"part of the minimal due-process requirements afforded to"' alleged violators. Hampton, 786 A.2d at 380 (citing State v. Lawrence, 658 A.2d 890, 893 (R.I. 1995)). Because the Appellant was under sentence, "[t]here is no presumption of innocence in the probation revocation process, at least not in the sense in which the phrase is used with reference to the criminal process." In re Whitney, 421 F.2d at 338; cf. Quattrocchi v. Langlois, 100 R.I. 741, 744-46, 219 A.2d 570, 573-74 (1966) (finding no constitutional right to bail after a conviction pending an appeal). Indeed, under the Federal Rules of Criminal Procedure, an alleged violator may be released or detained pending violation hearings, but "[t]he burden of establishing by clear and convincing evidence that the person will not flee or pose a danger to any other person or to the community rests with the person." See Fed. R. Crim. P.

46(d); Fed. R. Crim. P. 32.1(a)(6). Under the commonly accepted view, the amount of bail set pending the Appellant's violation hearings is thus clearly subject to a relaxed standard. The Appellant's four prior convictions, which served as the basis for his alleged violations, stemmed from four separate incidents on four separate dates, and they were crimes that constituted a danger to the community. The Appellant has made no showing that his release would not pose a danger to the community. The Magistrate set bail at $20,000 with surety in each case for which the Appellant is alleged to be in violation of his probation, amounting to $80,000 overall with respect to the violations. The Court finds that the amount of bail set in the four cases pending the Appellant's violation hearings was not presumptively excessive. The Court is satisfied that those amounts are justified to preserve the safety of the community.

C

Overall Amount of Bail

The fact that the Appellant is indigent and appears to have firm roots in Rhode Island does not automatically require a magistrate or trial justice to grant his Motion to Reduce Bail. Our Supreme Court has stressed that there are "a number of factors to be taken into consideration by the court" in determining the amount of bail to be set. Benoit, 96 R.I. at 132, 189 A.2d at 807. A defendant's financial ability is "but one" of those factors and has "no peculiar significance so as to set it apart as a factor having exceptional merit." Id. Setting an amount of bail "should be the result of an individualized decision, taking into account the special circumstances of each defendant." Bail Guideline V(1), n.2. Moreover, bail may be imposed not only to ensure that a defendant will appear in court, but also to assure that the defendant "will keep the peace and be of good behavior." Bail Guideline I. Importantly, the Court is justified in imposing bail if the Court "is reasonably satisfied that the defendant will engage in other

criminal conduct dangerous to the person or property of others." Bail Guideline II(4)(b). The Court is explicitly authorized to "consider prior criminal contacts, e.g., convictions, pleas, or pending, undisposed cases." Id. Given the Appellant's significant criminal history, which involves convictions for crimes of violence for which he was on probation, and given that the Appellant's March 22, 2012 charges also allege crimes of violence, the Magistrate was eminently justified in imposing bail on the basis of maintaining community safety. Likewise, and for all the foregoing reasons, the Court finds that the aggregate amount of bail set by the Magistrate, in the amount of $90,000, was not excessive.

IV

Conclusion

The overall amount of bail set by the Magistrate of $90,000 was appropriate. The Court finds that the amount of bail set on the March 22, 2012 charges by the Magistrate was not excessive. The Court also finds that the amount of bail set by the Magistrate on the Appellant's four alleged probation violations was not excessive. The Magistrate's denial of the Appellant's Motion to Reduce Bail was not in error. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Rudolph Osei

CASE NO: P1-2001-1557A

COURT: Providence Superior Court

DATE DECISION FILED: April 26, 2013

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

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