

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-121

APRIL TERM, 2005

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| State of Vermont | } | APPEALED FROM: |
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| | } | |
| v. | } | District Court of Vermont, |
| | } | Unit No. 2, Rutland Circuit |
| James L. Miles | } | |
| | } | DOCKET NO. 1074-8-04 Rdcr |

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

Defendant James Miles appeals the district court’s denial of his motion to amend conditions of release. On appeal, defendant argues that the court erred when it ruled that “the Court needs to address competency before it can address the Motion [to amend].” Defendant contends that when a person is unable to meet the bail requirement and is detained, 13 V.S.A. § 7554 allows for bail review as a matter of right. The Court concludes that the trial court must hold a hearing to review the imposed conditions of release. Accordingly, the matter is remanded to the district court with instructions to hold the required hearing.

Defendant has been held at the Vermont State Hospital since August 2004 when he failed to post \$50,000 bail after being charged with attempted aggravated assault with a deadly weapon and two misdemeanor counts for simple assault and negligent driving. At the August arraignment, the trial court ordered a competency evaluation and that defendant be held at the hospital. The initial competency evaluation was filed in September 2004, but as of April 2005, the court has not completed the competency hearing due to various requested continuances. On December 16, 2004, defendant moved to have bail suspended and a two-day Christmas furlough. The district court denied the motion. On February 25, 2005, the Vermont State Hospital sent a letter to defendant and the district court advising them that the least restrictive setting for defendant would be in the Rutland community with assistance from mental health services. Based on this letter, defendant moved to amend conditions of release, suspend bail, and return defendant to Rutland. The district court denied the motion stating that it had to address competency before it addressed the motion and that defendant previously filed a similar motion, which it denied.

Under section 7556(b), this Court must affirm the district court’s order “if it is supported by the proceedings below.” A review of the relevant statutes and proceedings below leads to two conclusions. First, the applicable statutes make clear that a defendant has a right to review of bail and conditions of release. Second, the district court has not held a hearing to review bail and conditions of release.

Once a court has imposed conditions of release and the person is detained as a result of his or her inability to meet the conditions of release, that person is “entitled to have the conditions reviewed by a judge in the court having original jurisdiction of the offense charged,” and “shall be given the opportunity for a hearing.” 13 V.S.A. § 7554(d) (1). The statute’s plain language requires the court to hold a hearing to review conditions of release if requested by a defendant and contains no exceptions related to a competency hearing. The defendant is entitled to reasonable bail and the least restrictive combination of conditions of release that will both assure his appearance at trial and protect the public during his release. *Id.* § 7554(a) & (b); 13 V.S.A. § 4815 (a) & (g) (requiring that examination take place at least restrictive environment and requiring court to determine whether state hospital is the least restrictive setting before

ordering examination at state hospital). Thus, the district court must review the imposed conditions of release to determine whether they are the least restrictive combination that will assure his appearance at trial and protect the public.

Prior to defendant's current motion to amend conditions of release, defendant did not request that the trial court amend conditions of release. The district court seems to reference defendant's December 16 motion for Christmas furlough with bail suspended as the motion that requested review of the imposed conditions of release. In that motion, however, defendant only requested a two-day furlough and did not request that the court amend the conditions of release. Thus, the trial court must hold a hearing to review the conditions of release in the first instance.

The trial court's decision is reversed and the matter remanded for a hearing in accordance with 13 V.S.A. § 7554(d).

FOR THE COURT:

Denise Johnson, Associate Justice