ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-233

JUNE TERM, 2005

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
Michael Lowery	}	
	}	DOCKET NOS. 2074-4-05, 2075-4-05, 2022-4-05, 2021-4-05, 1609-3-05, 1608-3-05, 1549-3-05, 1548-3-05 & 1547-3-05 Cncr

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

Defendant, Michael Lowery, appeals a district court order setting bail at $5000 and imposing a peace bond of $1000. Defendant argues that bail is excessive and that the peace bond requirement erroneously requires money to be deposited.

Defendant has several charges pending against him all involving the same complaining witness, Lorrie Lavallee, with whom defendant shared a domestic relationship for several years. On March 20, 2005, the State charged defendant with domestic assault, unlawful mischief, and operation of an automobile without consent. Defendant was released with conditions, including that he not contact complainant. In addition, complainant obtained a temporary relief from abuse order, which also prohibited defendant from contacting her. Complainant alleges that on March 21, 2005, defendant violated his conditions by repeatedly telephoning her. As a result, defendant was further charged with violating the restraining order and his conditions of release, and again released on conditions. On April 12, 2005, the State charged defendant with burglary for allegedly entering complainant=s bedroom at night and stealing her cell phone and purse.

The State moved to revoke defendant=s bail under 13 V.S.A. ' 7575 for repeatedly violating conditions of release, threatening the integrity of the judicial system, and being charged with a felony. The district court denied the State=s motion to revoke bail. The court concluded, however, that due to defendant=s repeated violations, bail was necessary to insure defendant=s presence, and imposed $5000 bail. The court also concluded that a peace bond was necessary to ensure defendant complied with the no-contact condition of release. Accordingly, the court required the filing of a $1000 peace bond. The State filed a motion to reconsider, which the trial court denied, although it did modify the bail order to some degree without changing its central elements. On appeal, defendant argues that the peace bond improperly requires cash to be deposited. Defendant also contends that bail is impermissibly excessive, designed to obtain defendant=s detention.

On appeal, review is limited to whether the trial court order is Asupported by the proceedings below.@ 13 V.S.A. ' 7556(b). The district court found because of his repeated violations of his conditions of release, his arrest for a felony, and his prior felony conviction that defendant presented a risk of nonappearance. I conclude that the trial court findings support its decision to impose $5000 bail, and that such amount is not excessive. Defendant is entitled to reasonable bail and the least restrictive combination of conditions of release that will assure his appearance at trial. Although defendant does not have a history of nonappearance, other factors, such as disobedience of court orders, a previous criminal record and multiple charges increase the risk of flight. State v. Weller, 152 Vt. 8, 10 (1989). These are precisely the factors present here, and support the trial court=s conclusion that bail was necessary to ensure

defendant=s appearance.

As defendant argues, excessive bail may not be used as a device to effect defendant=s incarceration to protect the public. State v. Cyr, 134 Vt. 460, 462 (1976). On the other hand, the district court has broad discretion to consider the several factors listed in 13 V.S.A. ' 7554(b), and set bail. See State v. Girouard, 130 Vt. 575, 581 (1972) (noting district court has discretion in setting amount of bail). The district court emphasized that defendant=s failure to comply with court orders and the seriousness of the charges against him made defendant a risk of nonappearance. The court=s reasoning supports the amount. Although defendant contends that he cannot meet this amount, mere inability to procure bail does not render it excessive. State v. Duff, 151 Vt. 433, 436 (1989).

The district court also imposed a peace bond of $1000 to ensure defendant=s compliance with condition 14Cno contact with complainant. The statute provides that AA district court may order a person who is arrested for a criminal offense, to find sureties that he will keep the peace, when it is necessary, and may commit him to jail until he complies.@ 13 V.S.A. ' 7573. APeace bond statutes are measures intended to prevent future acts of violence rather than to punish past acts.@ Weller, 152 Vt. at 12. A peace bond may be issued against a person arrested for a criminal offense because of specific findings and evidence. Id. at 14-15. The bond must detail the conduct covered and cannot require defendant to post cash because Aa peace bond requirement is used for prevention rather than for detention.@ Id. at 15.

The district court required a peace bond after a hearing where each party had an opportunity to present evidence. The district court=s original order required Aa sum of $1,000, as a peace bond filed by [defendant=s] father.@ After hearing the motion to reconsider, however, the court revised its ruling slightly and ordered Aa peace bond for $1000 cash or surety to ensure compliance with condition #14,@ with no reference to defendant=s father. The court also imposed a ninety-day time limit on the bond.

Defendant submits that the court=s order impermissibly requires a cash deposit rather than a surety. The State responds that the district court=s order does not require cash. The State relies on the statute, which defines surety as Aa person who agrees to be responsible for guaranteeing that another person complies with the conditions of a peace bond under section 7573 of this title.@ 13 V.S.A. ' 7576(4)(B). I agree with the State that, given the statutory definition, the district court=s order allows defendant=s father to act as the Asurety@ to satisfy the requirements of the bond. Accordingly, I find no merit in defendant=s argument that the court impermissibly required cash to be deposited in this case.

Defendant also argues that the peace bond is unconstitutional because it impinges on defendant=s right to bail. To the extent defendant claims that the peace bond requirement is impermissibly excessive to effect defendant=s detention, in this case, the $1000 surety is not so excessive as to fall into this category. The bond is designed to provide additional guarantee that defendant will abide by the no-contact condition of release. Defendant=s argument also implies that the peace bond is unconstitutional per se. The statutory review of the district court order=s on bail is very limited and must be affirmed Aif it is supported by the proceedings below.@ 13 V.S.A. ' 7556(b). Defendant=s constitutional claim was not raised in the trial court, and I decline to address it for the first time in a single-justice appeal.

Finally, defendant claims that his right to bail was impinged because the court held him without bail for a period of time pending decision on the State=s motion to revoke bail. Because this issue is no longer a live controversy, I do not reach the merits of the claim. An issue becomes moot when the court can no longer grant relief. In re Moriarty, 156 Vt. 160, 163 (1991). The Court can grant defendant no remedy for this alleged wrong; therefore defendant lacks a legal interest in the outcome, and the issue is moot.

Affirmed.

FOR THE COURT:

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John A. Dooley, Associate Justice