

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-066

MARCH TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windsor Circuit
Richard A. Boles	}	
	}	DOCKET NO. 919-7-04 Wrcr &
		1553-12-04 Wrcr

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

Defendant appeals the district court=s decision to hold him without bail pending the merits hearing on his alleged violation of the conditions of his probation. We affirm.

On March 7, 2005, defendant was convicted of DUI #6, driving with a suspended license, and grossly negligent operation. His aggregate sentence on the three charges called for him to serve a twelve-to-twenty-four month sentence in the Intensive Substance Abuse Program (ISAP) followed by an eighteen-to-thirty month suspended sentence. On February 15, 2006, defendant was arraigned in Windsor District Court for violating the terms of his probation on the suspended sentence. The violation of probation complaint included affidavits from a probation officer indicating that defendant tested positive for cocaine on a number of occasions between October 31, 2005 and January 4, 2006.

At the February 15 arraignment, the State requested that defendant be held without bail. Given defendant=s criminal history and the repeated nature of the alleged violations, the State argued that public safety required that defendant be held without bail. Defense counsel opposed the request, arguing that defendant was not driving any longer and thus was not a danger to the public, that he owns property as well as a business in the area, and that he had never missed a court hearing. Thus, defense counsel argued that the court should exercise its discretion and set bail, employing conditions of release to address any public safety concerns.

The court granted the State=s request and ordered defendant held without bail. The court looked to the fact that, as reflected on the docket sheet, the underlying DUI conviction was defendant=s sixth. The court also noted that defendant=s two prior convictions for driving with a suspended license undermined his argument that he was no longer driving. The court reasoned that defendant=s long history of substance abuse and driving while under the influence, prior instances of driving with a suspended license, and current allegations of regulated drug use combined to Aheighten[] [the court=s] concern about his risk to public safety.@ The court ordered him held without bail. Defendant appealed.

Rule 32.1(a)(3) of the Vermont Rules of Criminal Procedure provides that, in the context of a probation revocation proceeding, an order denying bail or changing the terms of release Ashall be reviewable in the manner provided in 13 V.S.A. " 7554 and 7556 for pretrial release.@ Under 13 V.S.A. ' 7556(b), A[a]ny order so appealed shall be affirmed if it is supported by the proceedings below.@ Thus, we must determine whether the court=s decision to deny bail is supported by the proceedings.

Defendant makes essentially two arguments on appeal. First, he claims that he is entitled to bail under Chapter II, Article 40 of the Vermont Constitution. The Legislature, however, concluded that the constitutional right to bail does not apply to probation revocation proceedings because by providing in 28 V.S.A. ' 301(4) that there is no Aright to bail or release@ in such a proceeding. Accordingly, we reject defendant=s first argument.

Second, defendant asserts that the court abused its discretion by denying him bail. We have held that a court has discretion to release a defendant on bail whether or not he has a constitutional right to bail. State v. Passino, 154 Vt. 377, 379 (1990). To that end, we held in Passino that a trial court must make findings to indicate how it exercised its discretion, even if it concludes that the defendant should be held without bail. Id.

The court=s ruling here is consistent with Passino. The transcript makes plain that the court did make findings about defendant=s criminal history, his numerous past DUIs and DLS=s, and the current drug use forming the basis of the violation of probation charge. And those findings are supported by the record. Accordingly, the court=s ruling that defendant posed a sufficient risk to public safety to warrant the denial of bail is supported by the proceedings and must stand on appeal.

Affirmed.

FOR THE COURT:

Marilyn S. Skoglund, Associate Justice