

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-110

MARCH TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windsor Circuit
	}	
Dale Porter	}	DOCKET NO. 282-2-06 Wrcr

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

Defendant Dale Porter appeals from the district court=s denial of his motion to amend conditions of release. 13 V.S.A. ' 7556(b). Defendant challenges the conditions requiring him to report to the Windsor Police Department daily to submit to alcohol testing. We affirm.

Defendant is charged with driving under the influence as a third offense. At the arraignment, in addition to certain conditions of release agreed upon by counsel, the district court added two conditions that require defendant to report to the Windsor Police Department daily between 8:00 and 10:00 a.m. and submit to alcohol testing. Defendant moved to amend the conditions of release one week after the arraignment, and the court denied the motion.

This court must affirm the district court order Aif it is supported by the proceedings below.@ 13 V.S.A. ' 7556(b); State v. Ashley, 161 Vt. 65, 68 (1993) (trial court has Abroad discretion in setting conditions of release@).

Upon consideration of the record and the arguments of counsel for the parties, this Court concludes that the proceedings sufficiently support the conditions imposed by the district court. The district court=s concern for public safety prompted it to impose the conditions, and the record supports the court=s assessment that requiring defendant to report daily for alcohol testing is the

At least restrictive . . . condition which will reasonably assure protection of the public. 13 V.S.A. § 7554(a)(2).

The district court imposed the conditions to assure that the public is protected from defendant's drinking and driving, and so wanted to measure compliance with the condition prohibiting consumption of alcohol. Defendant has a significant history of driving under the influence: although the current charge is DUI as a third offense, a felony, defendant actually has four prior DUI convictions. The court also noted that defendant's blood alcohol limit was allegedly 0.206, a very high test significantly beyond the legal limit of 0.08. The affidavit alleges that defendant was driving in an erratic manner at a high speed, that his speech was heavily slurred, and that he acknowledged having had too much to drink. Defendant argues that his driver's license is now under presumptive suspension anyway, but the district court considered that defendant also has a prior conviction of driving with a suspended license. The Court is also not persuaded that the reporting conditions and license suspension create a catch-22 because defendant lives alone seven miles from the police department, and is not allowed to drive but must report daily for testing. There is cab service in the area. The district court concluded that the license suspension and the prohibition on alcohol alone would not reasonably assure the safety of the public; this Court defers to its broad discretion.

Finally, the Court notes that both at the arraignment and again at the motion hearing, the district court said it would revisit the matter after defendant exhibited a period of compliance with the conditions with no violations. While the district court did not disclose when it would reconsider the matter, that is within the reasonable exercise of its discretion.

There is sufficient support in the record for the court-imposed conditions that require defendant to report daily to the police department and submit to alcohol testing.

Affirmed.

FOR THE COURT:

Paul L. Reiber, Chief Justice