

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2006-401

SEPTEMBER TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
	}	District Court of Vermont,
v.	}	Unit No. 3, Orange Circuit
	}	
Lonnie Francis	}	
	}	DOCKET NO. 107-3-98 OeCr

Trial Judge: M. Patricia Zimmerman

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

Defendant Lonnie Francis appeals from a September 21, 2006 order by the Orange District Court holding him without bail pending a merits hearing on his alleged violation of probation. We affirm.

Defendant was convicted of sexual assault on a minor in 1998 and received a one-to-eight-year sentence at that time; all but one year of the sentence was suspended. Upon his release, defendant was put on probation, one condition of which was that he participate in sex offender treatment. In 2002 defendant admitted to violating his probation by viewing pornography on the internet and received a sentence of 38 months to 8 years, all but 38 months of which was suspended. At that time, additional conditions were imposed, including that defendant would complete more comprehensive treatment for sexual aggressors, would be required to be an active participant in his probation, and that he would not Ainitiate or maintain contact with minors under the age of 18 at any time without the supervision of an adult approved by the Sex Offender Treatment Team.@

On September 8, 2006, defendant=s probation officer drove by defendant=s home in the early morning and saw a young female standing in front of the home. When asked, the female indicated that she was living in defendant=s trailer. The officer discovered that morning that the female was defendant=s wife=s granddaughter, and that she had been staying in the trailer for two nights. The defendant was reportedly inside the trailer sleeping at the time of this conversation. The officer cited defendant that day for a violation of probation. Defendant was ordered to resume attending weekly sex offender treatment meetings rather than the monthly meetings he had been attending since June 2006.

Defendant was directed, on September 13, 2006, to vacate his home and live with his grandmother to avoid the risk of improper contact with minor children allowed in the home by defendant=s wife. On September 18, 2006, defendant=s probation officer again observed that defendant was living in his wife=s home. Two days later, defendant was suspended from sex offender treatment, as the provider of that treatment found that his moving back into his wife=s home was counter to the provider=s clear directive and indicated that he could not be relied on to protect the minor children in the community. Defendant=s probation officer also learned that defendant had visited his wife=s other daughter=s home, where minor children were present, on two occasions in the summer of 2006 without supervision of an approved adult. Defendant was charged with violating his probation by: (1) residing in his wife=s home with minor children, (2) having unsupervised contact with minor children at his wife=s daughter=s home, and (3) by being suspended from sex offender treatment.

At a Rule 5 hearing on September 21, 2006, defendant denied the violations. At that hearing, the state argued that defendant, as a currently-untreated sex offender with a prior violation of probation, should be held without bail until

the merits hearing. Defendant argued: (1) that his move back into his wife's home was justified by her illness and the necessity that he care for her and the home, (2) that any contacts with children that occurred were *de minimis*, and (3) that there were no children living in the home when defendant moved back in on September 18. The court found that, because of defendant's prior violation of probation and his disregard of express instructions from his probation and treatment officers, he should be held without bail. This appeal followed.

Rule 32.1(a)(3) of the Vermont Rules of Criminal Procedure provides for an appeal for probationers held without bail under the terms set out in 13 V.S.A. " 7554 & 7556. Section 7556(b) provides that any order denying bail to a probationer shall be affirmed if it is supported by the proceedings below. The Legislature has also provided, in 28 V.S.A. ' 301(4), that, while a court may release the probationer pursuant to section 7554 of Title 13 prior to the merits hearing, there is no right to bail or release during that time. In situations where there is no right to bail, we have held that the trial court must exercise its discretion in determining whether to grant bail, and must therefore make findings to indicate how that discretion was exercised. State v. Passino, 154 Vt. 377, 379 (1990).

Here, it appears that the trial court applied the factors set out in 13 V.S.A. ' 7554 and determined that defendant should be held without bail based on his failure to comply with the express directions of his treatment officer and probation officer, and on the fact that defendant had a prior violation of probation. These findings are supported by the limited record before us, and provide sufficient support for the order to hold defendant without bail pending the merits hearing.

Affirmed.

FOR THE COURT:

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Paul L. Reiber, Chief Justice