ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-002

JANUARY TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
Francis L. Lampman	}	
	}	DOCKET NOS. 936-8-06 Frcr & 1650-12-07 Frcr

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

Defendant Francis L. Lampman appeals from the conditions of release imposed by the district court following his arraignment on charges of violating his existing conditions of release and aiding in the commission of a felony. At the bail appeal hearing below, the district court found that defendant's criminal history in Vermont comprises twenty-nine convictions—including three felonies—in the past thirty years, four failures to appear, two parole violations, a violation of a supervised community sentence, and "a couple" of violations of probation. Based on these findings, the district court affirmed its earlier order setting concurrent bail of $25,000 on both charges. Defendant is incarcerated for failure to pay.

Defendant contends that the bail amount is not supported by the proceedings below. See 13 V.S.A. § 7556(c) (this Court will reverse a bail amount only if it is not supported by the proceedings below). Specifically, defendant now argues that the trial court improperly relied upon prior "failures to appear" that were in fact failures to pay fines, and that reliance on such failures amounts to a penalty against him for being indigent. This is a different claim than defendant raised below, where he argued that the purported failures to appear "were always times when he would call [the court] and say that he couldn't make it and it got listed as failures to appear," and that some of the failures might have been the result of judicial confusion between his father—who shares his name—and him. It was well within the district court's discretion to choose not to credit these explanations, and to find that defendant had failed to appear four times. That finding, in turn, plainly supports the conclusion that the bail amount imposed is necessary to ensure defendant's appearance.

Defendant also argues that $25,000 bail is excessive because of his very limited assets and income. Although defendant proffered that he could make bail if set at $5,000, that amount appears slight compared to the risk of flight he presents. Affordability is not a factor which need be considered by the trial court when setting bail; the purpose of bail is to ensure defendant's appearance, and "defendant need not be capable of meeting bail in order for the amount to be

supported by the record." State v. Duff, 151 Vt. 433, 436, 563 A.2d 258, 261 (1989). So it is here; the record below amply supports the bail amount, even though defendant may be unable to meet it.

Affirmed.

FOR THE COURT:

Paul L. Reiber, Chief Justice