

## **BAIL**

### **BAIL/CONDITIONS OF RELEASE/FAILURES TO APPEAR**

In re Miller, 2009 VT 36.

Interpreting 13 V.S.A. § 7559(d), relating to failures to appear "in connection with a prosecution," the Court held that the subsection is meant to punish only "failures to appear in court—or at other proceedings that directly advance a pending prosecution." The Court made clear that § 7559(d) does not punish mere failures to report to a police station for an alcohol test or other violations of conditions of release. These later types of violations are subject, instead, to 13 V.S.A. § 7559(e), which punishes conduct less severely. This decision effectively halts prosecutorial overcharging of violations of conditions of release not related to court appearances.

### **BAIL**

State v. Bray, Docket No. 2009-049. March 10, 2009. (*Unpublished.*)

Court remanded Judge Kupersmith's HWO bail decision. Three-judge panel ruled the Franklin District Court could not rely exclusively on an out-of-court sworn statement from the state's star witness when the witness is present at the hearing in person to recant. Supporting case: *State v Passino*, 154 Vt. 377 (1990).

### **BAIL/MOTION TO RETURN**

State v. Hoyt, 2008-014

Defendant charged with two felony counts of sale of narcotics. Defendant posted \$1,000 bail and was released. No evidence that he is a flight risk. Defendant filed motion to return the bail and the trial court denied it. The trial court gave no analysis of its decision. State's claim that defendant will just use the money for drugs is not a sufficient reason to deny the return of the bail. Reversed and remanded and ordered that the \$1,000 be returned to defendant.

### **BAIL/LEAST RESTRICTIVE CONDITIONS**

State v. Howard, 2008-004

Defendant was charged with felony unlawful trespass, impeding a public officer, and misdemeanor unlawful mischief. Court ordered \$20,000 bail on the state's recommendation based on the seriousness of the offenses charged, the defendant's extensive criminal record, and the risk of flight due to defendant's past failure to appear at trial. Defendant appealed arguing the court failed to consider 13 V.S.A. 7554(b) factors, specifically, ongoing employment, prior offenses occurred several years ago, and that defendant had more recently demonstrated his willingness to appear in court and to comply with court orders. The Court affirmed, holding that the decision was not clearly unreasonable and that the court does not have to mention every factor that was not critical to its decision.

### **BAIL/FAILURE TO APPEAR/EXCESSIVE IN AMOUNT**

State v. Lampman, 2008-002

Bail set at \$25,000 on charges of violating existing conditions of release and aiding in the commission of a felony based on 29 prior convictions, 4 failures to appear, and 4 or 5 parole/probation/supervised community sentence violations. Defendant could not afford to post bail. On appeal, defendant challenged court's reliance on failures to appear, which were only failures to pay fines and amounted to a penalty against him for being indigent. The Court dismissed this argument as different from that argued below and because lower court was within its discretion to not find the explanation credible. The Court also rejected the argument that bail was excessive and held that affordability to post bail is not a factor that needs to be considered by the lower court.

## **BAIL/EXCESSIVE IN AMOUNT**

State v. Scott, 2007-489

Defendant charged with assault and robbery with injury, burglary of an occupied dwelling, and simple assault. Bail set at \$250,000. The Court upheld the bail amount, distinguishing State v. Watson, No. 2007-409 (Vt. Oct. 10, 2007) which remanded for new bail hearing where court set bail at \$750,000 but did not sufficiently explain basis for decision. Here, court based decision on fact that defendant already faced 45 years in jail, maintained several identities, had repeated parole violations, had twice been extradited from North Carolina to Vermont, and lacked any meaningful connection to Vermont.

## **BAIL/HOLD WITHOUT**

State v. Taylor, 2007-353

Defendant charged with aggravated sexual assault. Trial court did not abuse its discretion in denying bail where conditions of release could not control his behavior against other children and the charge was serious.

## **BAIL/SERIOUSNESS OF THE OFFENSE**

State v. Watson, 2007-352

Defendant charged with aggravated assault with a weapon, possession of coke and DLS. He has significant ties to the community- lived here for 3 years and owns a business. Trial court set \$750,000 and Justice Johnson found that there was no support for such a high amount. The seriousness of the charges alone cannot support the imposition of high bail. See State v. Duff, 151 Vt. 433, 436 (1989). Reversed and remanded for a new bail hearing.

## **BAIL/DENIAL PENDING VIOLATION OF PROBATION HEARING**

State v. Morrison, 2007-350

Court reversed trial court's denial of bail pending a violation of probation hearing due to failure to consider factors listed in 13 V.S.A. § 7554(b). Violation of probation charge was for failing to verify he attended counseling, failing to complete programming, and acting in a violent or threatening manner. Defendant was also charged with reckless endangerment based on reportedly firing a gun in the vicinity of a residential neighborhood. Court determined that trial court considered few of the statutory factors and that probation violations were not felonies and the new charge was only a misdemeanor. Trial court supported its no bail decision by stating that it did not believe defendant's statements about the current location of the gun used in the alleged incident and feared he would retrieve it if released. J. Dooley held that this was not relevant to the statutory factors and the record did not support defendant's actual mental condition.

## **BAIL/CONDITIONS OF RELEASE/HOUSE ARREST**

State v. Winn, 2007-274

Trial court denied motion to amend conditions of release where defendant charged with aggravated murder and second degree murder was released on \$35,000 bail subject to 24 hour curfew inside his residence with no permission to go outside on the lawn, garden, or to work at his employer's shop. Defendant had sought permission to work outside of the residence. Court affirmed the decision citing the seriousness of the criminal charges, evidence of culpability, and need to assure his appearance.

## **BAIL/PROBATION VIOLATION: DENIAL PENDING HEARING**

State v. Francis, 2006-401 (September 29, 2006). J. Reiber

The defendant was ordered to be held without bail pending a hearing on his charge of violation of conditions of probation. The defendant has no right to bail in this situation, and the trial

court did not abuse its discretion in so ordering in light of the defendant's failure to comply with the express directions of his treatment officer and probation officer, and his previous violation of probation.

### **BAIL/CASH ONLY VIOLATES STATE CONSTITUTION**

State v. Hance, 2006 VT 97, 17 VLW 307 J. Skoglund

Imposition of cash-only bail reversed. 13 V.S.A. § 7554(a)(1)(F), which permits the imposition of cash-only bail, is unconstitutional as it violates Chapter II, § 40 of the Vermont Constitution, which provides that all persons shall be bailable by sufficient sureties. However, the trial court must still determine that the sureties proposed are sufficient and available, adequately guaranteed, and not in any other way deficient, or the court can reject them.

### **BAIL/DENIAL/STRENGTH OF EVIDENCE; DISCRETION**

State v. Avgoustov, 2006 VT 90, 17 VLW 305

Three-justice published bail appeal. Denial of bail on charge of aggravated sexual assault is affirmed. The Court did not need to decide if the trial court erroneously relied upon hearsay statements by the complainant in determining whether the evidence of guilt was great, because the remaining evidence was sufficient to arrive at the same conclusion. The affidavit of probable cause indicates that the defendant confessed to the crime. The statement could be relied upon despite the defendant's claim that he was not provided with a Russian interpreter, because he told the officers that he understood English well enough to have the conversation, and his statements are sufficiently detailed to permit reliance upon them for purposes of the bail hearing. The trial court did not abuse its discretion in denying bail, in view of the defendant's lack of sufficient ties to the community and lack of employment

### **BAIL/CONDITIONS OF RELEASE: RESIDENCY RESTRICTION**

State v. Cook, J. Dooley

The trial court's residency restriction, requiring the defendant to reside with a specific person at a designated address, is affirmed in light of his mental condition and the potential hazard defendant poses to himself and others.

### **BAIL/INSUFFICIENT EVIDENCE TO SUPPORT AMOUNT IMPOSED**

State v. Dixon, J. Dooley

Imposition of \$100,000 bail reversed. Although the defendant was charged with murder, the trial court in its discretion set bail at \$100,000. There is no evidence in the record as to how the court arrived at this figure, and there is no explained relation between the amount of bail set by the court and the risk of flight posed by the defendant, a fifteen year old boy. On this record, it cannot be determined if the bail figure is appropriately supported.

### **BAIL/EXCESSIVE**

State v. Manassa, J. Johnson

The trial court's imposition of \$75,000 bail is excessive given the defendant's age, lack of criminal record, and the single charge of possession against him, and bail is therefore reduced to \$25,000

### **BAIL/REVOCAION FOR INTIMIDATION OF WITNESS REVERSED**

State v. Martin, J. Burgess

Defendant's bail was revoked after he was found to have intimidated and harassed a witness in violation of a condition of release. This finding was not supported by the evidence, since the witness was adamant in his testimony that he was not afraid of the defendant, but merely afraid for

his family as a result of conduct by the defendant's companion. Nor was there sufficient evidence of harassment, which requires repeated acts, and here the multiple threats to the witness were made in the course of a single conversation/encounter. Therefore the order revoking bail is reversed.