

**ENTRY ORDER**

2024 VT 61

SUPREME COURT CASE NO. 24-AP-241

SEPTEMBER TERM, 2024

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	Superior Court, Bennington Unit,
	}	Criminal Division
	}	
Kwesi Wilson	}	CASE NO. 24-CR-05310

Trial Judge: Kerry Ann McDonald-Cady

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

¶ 1. Defendant Kwesi Wilson appeals a trial court order holding him without bail pending his criminal trial. He argues that the court erred in concluding that the evidence of guilt was great under 13 V.S.A. § 7553 and in failing to consider the weight of the evidence in its analysis of the § 7554(b) factors for discretionary release. We conclude that defendant’s argument as to the evidence of guilt was not preserved because defendant stipulated that the evidence of guilt was great, and that the court did not abuse its discretion in weighing the § 7554(b) factors. Accordingly, we affirm the hold-without-bail order.

¶ 2. Defendant was charged on May 22, 2024, with two counts of eluding a law enforcement officer, 23 V.S.A. § 1133(b)(2), one count of aggravated operation of a motor vehicle without the consent of the owner, 23 V.S.A. § 1094(b), one count of violating conditions of release, 13 V.S.A. § 7559(e),\* and one count of repeatedly operating a vehicle with a suspended license, 23 V.S.A. § 674(a)(2). The first three counts are felony charges. Because defendant has three prior felony convictions—one each in Vermont, Connecticut, and Massachusetts—the State charged defendant as a habitual offender, which enhances the possible sentence “upon conviction of such fourth or subsequent [felony] to imprisonment up to and including life.” 13 V.S.A. § 11.

¶ 3. Because defendant was charged with an offense punishable by life imprisonment, the State sought an order to hold defendant without bail, pursuant to 13 V.S.A. § 7553. At defendant’s preliminary hearing, the court granted the request to hold defendant without bail pending a weight-of-the-evidence hearing.

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\* We note that 13 V.S.A. § 7559(e) was repealed by the Legislature on May 30, 2024, and that the substantive language has been moved to 13 V.S.A. § 7559(a). 2023, No. 138 (Adj. Sess.), § 5.

¶ 4. At the weight-of-the-evidence hearing, held on June 5, 2024, defendant stipulated that the evidence of guilt was great with respect to the two counts of eluding a law enforcement officer, but asked the court to exercise its discretion in granting conditions of release. Defense counsel elicited testimony from defendant's mother, who indicated that she would be willing to supervise defendant's release and report him if he failed to follow the conditions. However, she stated that she could not "support him a hundred percent" given her work and other family obligations.

¶ 5. The court ruled on defendant's request orally from the bench, weighing the § 7554(b) factors to evaluate defendant's risk of flight and danger to the public. The court emphasized both the number and the severity of the offenses with which defendant was charged and noted that the potential punishment of life imprisonment created a significant risk of flight. The court also noted that the nature of the eluding-law-enforcement charge created both risk of flight and danger to the public, given that defendant fled from police by driving erratically on a public road. On the other factors, the court found that defendant was not working, that he lacked financial resources to pay bail, that he was struggling with drug addiction, and that he had strong ties to the community through his mother. Finally, the court noted that defendant had a history of eleven failures to appear in previous proceedings.

¶ 6. The court then examined the potential conditions of release and concluded that none would adequately mitigate the risk of flight and danger to the public posed by defendant. The court noted that defendant was already on conditions of release at the time of the charged offenses and found that imposing more restrictive conditions would be ineffective "because that has been imposed and it just did not work." It also found that defendant's mother could not serve as a responsible adult because of her work and family responsibilities. Accordingly, the court denied defendant's request, concluding that he had not overcome the presumption in favor of the hold without bail. See State v. Auclair, 2020 VT 26, ¶ 24, 211 Vt. 651, 229 A.3d 1019 (mem.) (stating that where "[d]efendant has conceded that the State has met its burden under the § 7553 weight-of-the-evidence standard . . . the presumption is switched so that the norm is incarceration and not release" (quotation omitted)).

¶ 7. On August 2, 2024, defendant filed a motion to review bail with the trial court, indicating that he had reached a tentative agreement with the State in all other pending cases against him. The motion requested a new bail hearing based on the fact that the court's hold-without-bail order had referenced the other pending cases as a factor in its decision. The court denied the motion without a hearing, concluding that "[d]efendant's agreement to resolve his pending cases in other counties is not a basis to schedule a bail review hearing in this matter to reconsider this Court's decision." Defendant appealed to this Court, indicating that he intended to challenge the court's denial of his motion to review bail.

¶ 8. On appeal, however, defendant makes no argument regarding the denial of this motion, but instead focuses entirely on the June hold-without-bail order. In response, the State filed a motion to dismiss, arguing that the appeal of the hold-without-bail order is untimely under Vermont Rule of Appellate Procedure (V.R.A.P.) 4(a)(1). Because we conclude that defendant's challenges to the hold-without-bail order are meritless, we need not decide whether the appeal deadline in V.R.A.P. 4 applies in the context of bail appeals.

¶ 9. Defendant first argues that the trial court erred in concluding that the evidence of guilt was great because the affidavits submitted by the State do not include any sworn statements alleging that he was driving the car at the time of the two eluding-law-enforcement charges. Defendant argues that the evidence therefore failed to meet the standard of Vermont Rule of Criminal Procedure 12(d). See State v. Duff, 151 Vt. 433, 440, 563 A.2d 258, 263 (1989) (adopting Rule 12(d) standard as “the correct standard of review” under § 7553 and stating that “[i]f the State . . . intends to deny bail pursuant to 13 V.S.A. § 7553, the State must show that facts exist that are legally sufficient to sustain a verdict of guilty”).

¶ 10. We decline to review the sufficiency of the evidence here because defendant stipulated at the weight-of-the-evidence hearing that the evidence of guilt was great. At the hearing, defendant and the State agreed that the weight of the evidence was great as to the eluding-law-enforcement charges, but not as to the other charges. “To the extent defendant contested the stipulation, it was his obligation to speak at that time.” State v. Loveland, 165 Vt. 418, 421, 684 A.2d 272, 275 (1996). Instead, defendant’s sole argument at the hearing was that the court should exercise its discretion to release him, notwithstanding the fact that the evidence of guilt was great. Defendant’s argument that the evidence of guilt was not great is therefore not preserved for appeal. See State v. Boyer, 2021 VT 19, ¶ 18, 214 Vt. 633, 252 A.3d 804 (mem.) (“Because defendant did not raise this specific argument in his motion for bail review or in the hearing on his motion, he has failed to preserve it for appeal.”).

¶ 11. Second, defendant argues that the court abused its discretion in denying him bail without examining “the weakness of the prosecution’s case with regards to any risk of flight.” Defendant cites to our decision in Auclair, where we explained that in weighing the § 7554 factors for discretionary release, “the weight-of-the-evidence factor can also refer to the relative strength of the State’s case against the defendant.” 2020 VT 26, ¶ 18; see 13 V.S.A. § 7554(b)(1) (listing various factors that courts may consider in determining which conditions of release to impose, including “the weight of the evidence against the accused”). Defendant argues that the court’s failure to address the “lack of corroboration” that he was the one driving the car constitutes reversible error.

¶ 12. We review a trial court’s decision “on whether to deny bail in accordance with the 7554(b) factors for an abuse of discretion.” State v. Orost, 2017 VT 110, ¶ 6, 206 Vt. 657, 179 A.3d 763 (mem.). “In exercising its discretion to release a defendant, the trial court may look to the factors listed in § 7554, including the weight of evidence against the accused,” but “there is no requirement that a court consider all of the factors listed in § 7554 when exercising its discretion.” State v. Ford, 2015 VT 127, ¶¶ 10-11, 200 Vt. 650, 130 A.3d 862 (mem.) (emphasis added). A court’s discretion in this area “is extremely broad, but its decision cannot be arbitrary.” State v. Avgoustov, 2006 VT 90, ¶ 2, 180 Vt. 595, 907 A.2d 1185 (mem.).

¶ 13. We conclude that the court acted well within its discretion in declining to release defendant under § 7554(b). The court was not required to consider every factor in § 7554 when exercising its discretion. Ford, 2015 VT 127, ¶ 11. Nevertheless, the court did discuss the weight-of-the-evidence factor, noting that defendant “stipulated that the evidence of guilt is great” as to the eluding-law-enforcement charges and describing this as “a factor in favor of continued incarceration.” However, the court placed greater emphasis on other factors, including the nature and circumstances of the offense charged and defendant’s record of appearance at prior court

proceedings. The court did not abuse its discretion either in accepting defendant’s stipulation as to the weight of the evidence or in placing greater emphasis on the other statutory factors. See, e.g., Orost, 2017 VT 110, ¶ 11 (concluding that court’s “discussion of the multiple significant factors that were central to its analysis was sufficient” to deny discretionary release); Auclair, 2020 VT 26, ¶ 21 (affirming court’s denial of discretionary release where it “made clear that its decision was based primarily on two factors, which it found to be controlling”).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Nancy J. Waples, Associate Justice