

VERMONT SUPREME COURT
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Case No. 26-AP-296

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant.*

ENTRY ORDER

AUGUST TERM, 2026

State of Vermont v. Tyrin Smith*	}	APPEALED FROM:
	}	Superior Court, Chittenden Unit,
	}	Criminal Division
	}	CASE NO. 23-CR-04175
		Trial Judge: Robert W. Katims

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

Defendant Tyrin Smith appeals a criminal division order holding him without bail pending resolution of a charge of violating his probation by committing new criminal offenses and possessing a firearm. For the reasons below, I affirm.

On May 3, 2023, the Chittenden County State's Attorney charged defendant with one count of attempted first-degree murder in violation of 13 V.S.A. § 2301, and one count of burglary into an occupied dwelling in violation of 13 V.S.A. §§ 1201(a) and 1201(c)(3)(A). According to the original charging affidavit, on April 29, 2023, defendant, and another individual, wearing masks, goggles, and gloves, entered a residence on Main Street in Burlington by scaling a fire escape, traveling across a roof, and climbing another fire escape, before breaking through a wall into the apartment at which time defendant shot the victim in the chest.

Defendant eventually pleaded guilty to an amended information charging him with burglary into an occupied dwelling with intent to commit an aggravated assault, in violation of 13 V.S.A. §§ 1201(a) and 1201(c)(3)(A), and was sentenced to two to five years all suspended except for one year to serve. Defendant's conditions of probation prohibited him from being convicted of another crime or engaging in criminal behavior and possessing firearms.

On July 30, 2026, the State charged defendant with violating conditions of his probation. The initial probation violation complaint alleged that defendant had been charged with three felonies and two misdemeanors in connection with two fraudulent bank transfers, totaling more than \$18,000, from a victim's checking account. The victim reported that on July 24, 2026, he

had been duped into sharing his banking login credentials during a phone call from someone falsely purporting to be from his bank. The account that the funds were transferred into had been recently opened by a person claiming to be “Caesar Gonzalez,” with a Winooski address, and using a Connecticut driver’s license as proof of identity. The bank provided police with security images of the person who opened the account. When police went to the Winooski address, they encountered defendant, who matched the images provided by the bank, and whose face was on the “Gonzalez” Connecticut driver’s license. Following his arrest, defendant denied knowing anything about the “Gonzalez”-related fraud.

A second probation violation complaint dated July 31, 2026 alleged that, during the execution of a search warrant at defendant’s Winooski residence, police found the Connecticut driver’s license used to open the bank account into which the fraudulently transferred funds were deposited within a backpack. The backpack also contained defendant’s social security card and other credit and debit cards—some bearing defendant’s name, others bearing the “Gonzalez” name. The backpack also contained a Glock 19x 9mm handgun with a loaded magazine. The firearm was determined to have been reported as stolen in March 2025.

Based on the above information, the State represented that defendant was charged with the following offenses: identity theft; access to computer for fraudulent purposes; grand larceny; false pretenses or false tokens; false personation; firearm possession in violation of probation; and buying, receiving, selling, possession, or concealing stolen property. These new offenses amount to five felonies and two misdemeanors.

The State sought to hold defendant without bail pending resolution of the probation-violation charges. On August 5, 2026, the criminal division held a bail-review hearing. At the hearing, defendant requested that the criminal division release him to a responsible adult, who was present and testified, subject to a 24/7 curfew and GPS monitoring. Defendant argued that he had been on probation for over two years and had otherwise been a “good probationer.” Defendant conceded that the allegation of possessing a firearm while prohibited was serious but emphasized that he had not used the gun in the commission of the new charges. Defendant also argued that he was well known in the community, had strong family support, and was not a flight risk.

The criminal division found that defendant had “generally been compliant with probation,” had family ties in the community, and had identified a suitable custodian. On the other hand, the court also considered that defendant was charged with five new felonies and two misdemeanors, and that some of these offenses involved fraud, sophistication, and planning. The court also weighed defendant’s possession of a loaded firearm, which was not only potentially a violation of a condition of probation, but also a new crime.

Under 28 V.S.A. § 301(4), a person such as defendant, who has been convicted of burglary and charged with violating probation, has no statutory or constitutional right to bail or release. Thus, “the presumption is switched so that the norm is incarceration and not release.” State v. Campbell, 2014 VT 123, ¶ 6, 198 Vt. 627 (mem.) (quotation omitted). Under Vermont Rule of Criminal Procedure 32.1(a)(3)(A) and 28 V.S.A. § 301(4), the criminal division has discretion to release someone in defendant’s situation. But “the trial court’s discretion is

extremely broad” and its decision will be affirmed on appeal “if it is supported by the proceedings below.” Campbell, 2014 VT 123, ¶ 6; 13 V.S.A. § 7556.

In making its determination, the trial court must consider the factors set forth in 13 V.S.A. § 7554(b). See V.R.Cr.P. 32.1(a)(3)(A) (directing that court consider factors in 13 V.S.A. § 7554(b) in deciding whether to release probationer pending hearing on probation violation). Those factors include (1) “the nature and circumstances of the offense charged,” (2) “the weight of the evidence against the accused,” (3) “the accused’s family ties, employment, character and mental condition, length of residence in the community, record of convictions, and record of appearance at court proceedings or of flight,” (4) “whether, at the time of the current offense or arrest, the defendant was released . . . on probation,” and (5) “whether, in connection with a criminal prosecution, the defendant is compliant with court orders.” 13 V.S.A. § 7554(b)(2). In determining a defendant’s character and mental condition, the trial court may also consider “recent history of actual violence or threats of violence.” 13 V.S.A. § 7554(b)(2). “[T]he court is not required to consider all the factors listed in § 7554(b) when exercising its broad discretion to impose bail.” State v. Blow, 2020 VT 106, ¶ 20, 213 Vt. 651 (mem.).

On appeal, defendant argues the criminal division abused its discretion by giving insufficient weight to several factors that would support his release. Defendant specifically contends that the criminal division failed to properly consider: his history of compliance with conditions of probation (including completing an assessment that was required by the court), the suitability of the proffered responsible adult as a custodian, his history of employment, his family ties, and the support of his family.

A review of the criminal division’s decision confirms that it in fact considered all of these factors, including the suitability of the proffered custodian, defendant’s significant family support and ties to the community, and his history of complying with conditions.

Against these mitigating factors, however, the criminal division also weighed the seriousness of the newly charged offenses, including that they involved the theft of over \$18,000, and that some of them involved a high degree of sophistication and planning. Further, it emphasized the seriousness of defendant possessing a loaded handgun, in light of the gun-related violence that had been involved in the underlying conviction.

Defendant also argues that the criminal division should have at least given him a chance to be released into the custody of the suitable responsible adult. It is true that defendant has not had the benefit of the suggested release plan previously. But under these circumstances, there is a presumption in favor of incarceration. Campbell, 2014 VT 123, ¶ 6 (explaining that probationer charged with violation of condition “has no constitutional or statutory right to bail or release” if convicted of listed crime and in that situation presumption is switched in favor of incarceration). While the criminal division could have exercised its discretion in favor of that release plan, its decision not to was consistent with defendant’s history of violence, and the seriousness of the newly charged offenses (including obtaining false identification documents, as well as victim login credentials by fraud) and dangerousness (including unlawful possession of a loaded handgun, as well as the theft of over \$18,000).

The criminal division considered both the mitigating and aggravating factors listed in 13 V.S.A. § 7554(b), and its reasoning is supported by the record. The decision to deny bail was well within its broad discretion. Campbell, 2014 VT 123, ¶ 6 (noting trial court's broad discretion in assessing factors and deciding whether to release probationer pending violation hearing).

Affirmed.

FOR THE COURT:

Michael P. Drescher, Associate Justice