Affirmed and Opinion filed January 13, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-01016-CR

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EDUVIGES DEJESUS ALFARO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause No. 822,105

O P I N I O N

Eduviges Dejesus Alfaro (Appellant) appeals from the trial court's habeas corpus judgment. Appellant is being held in the Harris County Jail on the first degree felony charge of possession of more than 400 grams of cocaine, with intent to deliver. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(f) (Vernon Supp. 1999). The trial court set appellant's pre-trial bond at $300,000. Appellant filed a pre-trial application for writ of habeas corpus, contending that the amount of bond is oppressive. Following an evidentiary hearing, the trial court denied appellant's requested relief. This appeal ensued.

BACKGROUND

Appellant's friends and family testified that Appellant is unable to post a $300,000 bond. The maximum bond they could post is $10,000. John Burns is a bondsman in Harris County. He testified that the maximum bond his company can post in Harris County is $225,000 and that, based upon Appellant's limited collateral, the maximum his company would post in this case is $20,000.

Appellant moved to Texas from El Salvador approximately 18 years ago. He is a United States citizen and a resident of Harris County. Appellant leases commercial property in Harris County upon which he operates a gas station and convenience store. He owns a home in Harris County in which his ex-wife resides. Appellant's mother, father and other relatives live in El Salvador. Appellant maintains a passport and has visited his relatives in El Salvador.

DISCUSSION

The primary purpose of an appearance bond is to secure the presence of the accused at trial on the offense charged. *See Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. [Panel Op.] 1980); *Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977); *Ex parte Brown*, 959 S.W.2d 369, 371 (Tex. App.–Fort Worth 1998, no pet.). Bail should be set high enough to give reasonable assurance that the defendant will appear at trial, but it should not operate as an instrument of oppression. *See Ex parte Ivey*, 594 S.W.2d 98, 99 (Tex.Crim.App. 1980); *Vasquez*, 558 S.W.2d at 479. The burden is on the person seeking the reduction to demonstrate that the bail set is excessive. *See Ex parte Charlesworth*, 600 S.W.2d 316, 317 (Tex. Crim. App. [Panel Op.] 1980); *Vasquez*, 558 S.W.2d at 479. Further, the decision regarding a proper bail amount lies within the sound discretion of the trial court. *See Ex parte Brown*, 959 S.W.2d at 372; *see also* TEX. CODE CRIM. PROC. ANN. art. 17.15 (giving the trial court discretion to set the amount of bail).

Article 17.15 of the Texas Code of Criminal Procedure sets forth the following criteria for the trial court to consider in setting bail:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with;
2. The power to require bail is not to be so used as to make it an instrument of oppression;
3. The nature of the offense and the circumstances under which it was committed are to be considered;
4. The ability to make bail is to be regarded, and proof may be taken upon this point; and
5. The future safety of a victim of the alleged offense and the community shall be considered.

TEX. CODE CRIM. PROC. ANN. art. 17.15. The following factors should also be weighed in determining the amount of bond: (1) the accused's work record; (2) the accused's family and community ties; (3) the accused's length of residency; (4) the accused's prior criminal record, if any; (5) the accused's conformity with the conditions of any previous bond; (6) the existence of outstanding bonds, if any; and (7) aggravating circumstances alleged to have been involved in the charged offense. *See Ex parte Rubac*, 611 S.W.2d 848, 849-50 (Tex. Crim. App. [Panel Op.] 1981); *Ex parte Brown*, 959 S.W.2d at 372.

Appellant seeks to reduce his pre-trial bond from $300,000 to $10,000. The record shows that the assets and financial resources of appellant and his family are limited. Appellant presented testimony showing that his family could post a $10,000 bond. However, the ability of an accused to post bond is merely one factor to be considered in determining the appropriate bail. *See Ex parte Vance*, 608 S.W.2d 681, 683 (Tex. Crim. App. [Panel Op.] 1980). Simply because a defendant cannot meet the bond set by the trial court does not automatically render the bail excessive. "If the ability to make bond in a specified amount controlled, then the role of the trial court in setting bond would be completely eliminated, and the accused would be in the unique posture of determining what his bond should be." *Brown*, 959 S.W.2d at 372. The amount of bail must also be based on the nature of the offense and the circumstances under which it was committed. *See Ex parte Davila*, 623 S.W.2d 408 (Tex. Crim. App. [Panel Op.] 1981). In considering the nature of the offense, it is proper to consider possible punishment. *See Charlesworth*, 600 S.W.2d at 317; *Vasquez*, 558 S.W.2d at 480.

Further, cases, such as this, involving illegal transportation and sale of drugs are unique. In these cases, a high bond may be required because of the very nature of the offense. *See Ex parte Willman*, 695 S.W.2d 752, 753 (Tex.App.–Houston [1st Dist.] 1985, no pet.); *Ex parte Martinez-Velasco*, 666 S.W.2d 613, 616 (Tex.App.–Houston [1st Dist.] 1984, no pet.). The illegal manufacture, transportation, and sale of large quantities of drugs usually require multiple transactions of a transitory nature. *See Martinez-Velasco*, 666 S.W.2d at 616. By the very nature of the operation, participants in the transport and sale of illegal drugs must be highly mobile. *See id.* Moreover, the large amount of cash required to effect these kinds of transactions suggests involvement of monied backers who may consider the cost of bail as a normal business expense, which they may be willing to forfeit and write off as one of the costs of operating this type of business. *See id.*; *Willman*, 695 S.W.2d at 753. Thus, in cases involving large quantities of illegal drugs, such as this case, a high bond may be required to assure the presence of the defendant at trial. Further, we observe that high pre-trial bonds have been upheld in several cases for offenses of possession of a large quantity of a controlled substance. *See Patterson v. State*, 841 S.W.2d 534 (Tex.App.–Houston [1st Dist.] 1992, pet. ref'd) (bond set at $150,000); *Ex parte Bonilla*, 742 S.W.2d 743 (Tex.App.–Houston [1st Dist.] 1987, no pet.) (bond set at $250,000); *Ex parte Willman*, 695 S.W.2d at 754 (bond set at $300,000); *Ex parte Mudragon*, 666 S.W.2d 617 (Tex.App.–Houston [1st Dist.] 1984, no pet.) (bond set at $250,000); *Ex parte Martinez-Velasco*, 666 S.W.2d at 617 (bond set at $375,000).

Other factors that play a role in setting a high pre-trial bond are appellant's significant ties to El Salvador and the range of punishment for the crime with which appellant is charged. The testimony at his evidentiary hearing showed that appellant was born and raised in El Salvador and that his mother, father and sisters live in El Salvador. Appellant maintains a visa and has recently visited El Salvador. While the record shows that appellant is a citizen of the United States and has ties to Harris County in the nature of operating a business and owning a home in which his ex-wife resides, the trial court was very likely persuaded that appellant's ties to El Salvador created a significant flight risk if he were released on a reduced bond. This

factor is particularly relevant when considered in juxtaposition with the possible punishment in this case. If convicted of possession or more than 400 grams of cocaine, with intent to deliver, as is alleged by the State, appellant would be subject to punishment by confinement in the Texas Department of Corrections for life or any term of not more than 99 years or less than 15 years. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(f) (Vernon Supp. 1999). In addition to such imprisonment, appellant may be punished by a fine not to exceed $250,000. *See id.*

Keeping in mind that the primary purpose of an appearance bond is to compel an accused's presence at trial, we hold that the trial court did not abuse its discretion in denying appellant's request to reduce his bond from $300,000 to $10,000. The nature of the offense with which appellant is charged and his significant ties to El Salvador warrant a high pre-trial bond in this case. Appellant has failed to demonstrate that the bond is excessive or that the trial court abused its discretion.

The trial court's habeas corpus judgment denying relief is affirmed.

PER CURIAM

Judgment rendered and Opinion filed January 13, 2000.
Panel consists of Justices Yates, Fowler, and Frost.
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