Affirmed and Opinion filed December 30, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-99-01161-CR

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WILLIAM KEEN PERRY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 825,176

O P I N I O N

William Keen Perry (Appellant) appeals from the trial court's habeas corpus judgment. Appellant was indicted for the first degree felony offense of solicitation of capital murder. *See* TEX. PENAL CODE ANN. § 15.03(a) (Vernon 1994). Appellant pleaded not guilty. The trial court set Appellant's pre-trial bail at $100,000. Appellant filed a pre-trial application for writ of habeas corpus, contending that the amount of his bail is excessive and requesting that it be lowered to $5,000. Following an evidentiary hearing, the trial court denied Appellant's requested relief. This appeal ensued.

BACKGROUND

Appellant was arrested in October 1998 on charges that he solicited someone to murder his wife. His bond was set at $30,000. His bond was subsequently raised by the trial court on two occasions, first to $75,000, and then to $100,000. During the hearing on Appellant's pre-trial application for writ of habeas corpus, the State presented testimony from an undercover police officer of the Houston Police Department and an audio tape containing statements made by Appellant to the undercover officer. The testimony and audio tape showed that, while incarcerated in the Harris County Jail during March 1999, awaiting trial on solicitation of capital murder charges, Appellant solicited the undercover officer to murder his wife. Thus, the trial court denied Appellant's request to have his bond reduced to $5,000.[1]

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:

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[1] Apart from denying his writ, the trial court raised Appellant's bond to $200,000. However, Appellant has only appealed the judgment denying the reduction of bond and has not assigned error to the bond increase. Thus, we determine only whether the trial court abused its discretion in not granting the habeas corpus relief requested by Appellant; that is, to reduce his pre-trial bond from $100,000 to $5,000.

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.

See 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 to $5,000. He maintains that he has no assets and that his family's financial resources are limited. Appellant presented testimony showing that his family could post a $5,000 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). Furthermore, 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.

In the instant case, the nature of the offense is solicitation of capital murder. Appellant is alleged to have solicited the murder of his wife on two separate occasions, once before he was arrested for that charge and a *second time* while in the Harris County Jail awaiting trial. The future safety of the victim is a relevant consideration in setting the amount of bail. Article 56.02 of the Code of Criminal Procedure provides that the victim of the offense has "the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused." TEX. CODE CRIM. PROC. ANN. art. 56.02(a)(2) (Vernon Supp. 1999); *see also Ludwig v. State*, 812 S.W.2d 232, 325 (Tex.Crim.App. 1991); *Ex parte McDonald*, 852 S.W.2d 730, (Tex.App.–San Antonio 1993, no pet.). The record from the evidentiary hearing clearly shows that the future safety of the victim in this case remains in jeopardy.

Further, the testimony at the evidentiary hearing shows that Appellant does not maintain his own residence and has demonstrated an inability to maintain steady employment. *See Ex parte McDonald*, 852 S.W.2d at 735. Appellant faces a maximum sentence of life imprisonment, if convicted. *See Charlesworth*, 600 S.W.2d at 317; *Vasquez*, 558 S.W.2d at 480

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 $100,000 to $5,000. Considering that Appellant is alleged to have solicited the murder of his wife on two separate occasions, this is an unusual case which justifies a high bail amount. *See Ex parte McDonald*, 852 S.W.2d at 735 n.4.

Appellant has failed to demonstrate that the bond is excessive. The trial court's judgment denying habeas corpus relief is affirmed.

PER CURIAM

Judgment rendered and Opinion filed December 30, 1999.
Panel consists of Justices Edelman, Wittig, and Frost.
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