

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Thomas J. Whitlow

Court of Appeals No. E-13-016

Petitioner

v.

Sheriff Paul Sigsworth

DECISION AND JUDGMENT

Respondent

Decided: April 30, 2013

* * * * *

K. Ronald Bailey, for petitioner.

* * * * *

SINGER, P.J.

{¶ 1} This matter is before the court on a “Petition for Writ of Habeas Corpus” filed on April 9, 2013, by petitioner, Thomas J. Whitlow. The facts, taken from the petition and attached copies of the trial court’s journal entries, are as follows.

{¶ 2} On December 13, 2012, petitioner was arrested and ultimately charged with complicity to commit preparation of marijuana and complicity to commit possession of

marijuana, both second degree felonies. His bail was initially set at \$500,000 cash or surety, no ten percent.

{¶ 3} On December 28, 2012, petitioner filed a “motion for reduction in bail.” The state filed an objection citing the fact that petitioner, charged with two felonies, is from out of state. The court denied petitioner’s motion.

{¶ 4} On February 6, 2013, at a pretrial hearing, petitioner’s counsel orally requested a reconsideration of petitioner’s “motion for reduction in bail.” Specifically, counsel asked the court to set petitioner’s bond at ten percent of \$500,000. In support, counsel submitted a letter from a friend of petitioner’s, Dr. Peter Huson of San Diego, California.

{¶ 5} In response, on February 8, 2013, the court raised petitioner’s bond to \$1,000,000 but allowed \$750,000 to be posted by cash, surety or ten percent. In addition, the court allowed a personal recognizance bond in the amount of \$250,000, as long as the bond was co-signed by Dr. Huson. The court specified that Dr. Huson must appear in person to execute the bond as a co-signer.

{¶ 6} On February 27, 2013, petitioner filed a motion to modify the signature bond requesting that his brother, William Whitlow, rather than Dr. Huson, be allowed as a co-signer. The court denied petitioner’s motion.

{¶ 7} Petitioner contends that his bond is arbitrary, unreasonable, excessive, unlawful and in violation of the United States Constitution. He now seeks discharge

from custody on a personal recognizance bond, co-signed by his brother, in the amount of \$500,000.

{¶ 8} Generally, “[w]hoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.” R.C. 2725.01. “The purpose of habeas corpus is to determine the legality of the restraint under which a person is held, not to determine guilt or innocence.” *Young v. Brunsman*, 4th Dist. No. 06CA2938, 2008-Ohio-64, ¶ 15, citing *In re Lockhart*, 157 Ohio St. 192, 194, 105 N.E.2d 35 (1952).

{¶ 9} The purpose of bail is to assure the attendance of a defendant at trial. *Bland v. Holden*, 21 Ohio St.2d 238, 257 N.E.2d 397 (1970); Crim.R. 46(A). A trial court, when determining bail pursuant to Crim.R. 46(A), must consider all relevant information, including but not limited to: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence; (3) confirmation of the defendant’s identity; (4) the defendant’s family ties, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of appearance at court proceedings or of flight to avoid prosecution; and (5) whether the defendant is on probation, a community control sanction, parole postrelease control, or bail. The trial court, following a weighing of the aforesaid factors, sets the amount of bail within its sound discretion.

{¶ 10} This court, through a petition for a writ of habeas corpus, must determine whether the trial court abused its discretion in setting the amount of bail. *Jenkins v. Billy*, 43 Ohio St.3d 84, 538 N.E.2d 1045 (1989); *Lewis v. Telb*, 26 Ohio App.3d 11, 497 N.E.2d 1376 (6th Dist.1985); *In re Gentry*, 7 Ohio App.3d 143, 454 N.E.2d 987 (6th Dist.1982). In order for this court to determine that the trial court abused its discretion in setting bail, we must find that the decision was arbitrarily made, unreasonable in light of the given circumstance, or that no reasonable judge would adopt the view as rendered by the trial court. *Pembaur v. Leis*, 1 Ohio St.3d 89, 437 N.E.2d 1199 (1982); *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980); *State v. Longo*, 4 Ohio App.3d 136, 446 N.E.2d 1145 (8th Dist.1982).

{¶ 11} An allegation of excessive bail can form the basis of a viable habeas corpus claim. *See State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 635 N.E.2d 26 (1994); *Jenkins, supra*. However, where petitioner alleges no facts that indicate an abuse of discretion by the trial court or that appropriate grounds for independent review by this court exist, then the writ must be denied. *See In re DeFronzo*, 49 Ohio St.2d 271, 361 N.E.2d 448 (1977).

{¶ 12} The trial court in this case has entertained multiple motions regarding petitioner's bail and has been presented with suggested options to ensure petitioner's appearance at trial. The court simply did not find petitioner's suggestions acceptable. In that petitioner has been charged with two second degree felonies and the fact that he

resides in Minnesota, we cannot say that the trial court abused its discretion in setting his bail.

{¶ 13} Accordingly, Whitlow's petition for a writ of habeas corpus is dismissed. Petitioner is ordered to pay the costs. It is further ordered that the clerk shall serve upon the parties notice of this judgment and date of entry pursuant to Civ.R. 58(B).

Writ denied.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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