

[Cite as *Turner v. Fitzsimmons*, 2015-Ohio-2045.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102881

JOHN L. TURNER, JR.

PETITIONER

vs.

**JUDGE DONNA CONGENI FITZSIMMONS,
ET AL.**

RESPONDENTS

JUDGMENT:
PETITION DENIED

Writ of Habeas Corpus
Order No. 485289

RELEASE DATE: May 27, 2015

FOR PETITIONER

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KATHLEEN ANN KEOUGH, J.:

{¶1} On April 10, 2015, the petitioner, John L. Turner, Jr., commenced this habeas corpus petition against the respondents, Judge Donna Congeni Fitzsimmons and the Cuyahoga County Sheriff on the grounds that he was being held on unreasonable bail.

On April 21, 2015, Turner moved this court to substitute Kelly Stillman, Rocky River Chief of Police, for the Cuyahoga County Sheriff because he had been moved to the Rocky River jail. The court grants that motion and substitutes Kelly Stillman for the Cuyahoga County Sheriff. Sua sponte, for the following reasons, this court denies the petition for a writ of habeas corpus.

{¶2} In the six underlying cases, Turner is facing the following charges: (1) *State of Ohio, City of Rocky River v. Turner*, Rocky River M.C. No. 14 CRB 1651 — theft and criminal damaging; (2) *State of Ohio, City of Rocky River v. Turner*, Rocky River M.C. No. 14 CRB 1652 — criminal damaging /endangering; (3) *State of Ohio, City of Rocky River v. Turner*, Rocky River M.C. No. 14 CRB 1653 — criminal damaging; (4) *State of Ohio, City of Rocky River v. Turner*, Rocky River M.C. No. 14 CRB 1654 — criminal damaging; (5) *State of Ohio, City of Rocky River v. Turner*, Rocky River M.C. No. 14 CRB 1655 — theft and criminal damaging; and (6) *State of Ohio, City of Rocky River v. Turner*, Rocky River M.C. No. 14 CRB 1656 — theft and criminal damaging. The respondent judge imposed a \$5,000 bail for each case, for a total of \$30,000 bail for an aggregation of misdemeanor accounts. This is an admittedly high bond for such offenses.

{¶3} Therefore, Turner moved to reduce bond. In a March 30, 2015 journal entry, the respondent judge denied that motion and stated her reasons for doing so. First, Turner was on parole and on bail and even on a GPS monitor when the offenses were committed. He has a 50-page, criminal-history record, and his offenses include drug charges, weapons offenses, and offenses similar to the theft and damaging offenses he is facing in the underlying cases. He specifically has a charge for assault on a police officer that the respondent judge thought demonstrated an effort to escape apprehension. He has a criminal record outside of the state and has been unemployed for many years. Finally, the prosecutor can confirm Turner's identity as the perpetrator of the pending crimes by Turner's GPS tracking identification.

{¶4} The principles governing habeas corpus in these matters are well established. Under both the United States and Ohio Constitutions, "excessive bail shall not be required." If the offense is bailable, the right to reasonable bail is an inviolable one which may not be infringed or denied. *In re Gentry*, 7 Ohio App.3d 143, 454 N.E.2d 987 (6th Dist.1982), and *Lewis v. Telb*, 26 Ohio App.3d 11, 497 N.E.2d 1376 (6th Dist.1985). The purpose of bail is to secure the attendance of the accused at trial. *Bland v. Holden*, 21 Ohio St. 238, 257 N.E.2d 238 (1970).

{¶5} In Ohio, the writ of habeas corpus protects the right to reasonable bail. *In re Gentry*. A person charged with the commission of a bailable offense cannot be required to furnish bail in an excessive or unreasonable amount. *In re Lonardo*, 86 Ohio App. 289, 89 N.E.2d 502 (8th Dist.1949). Indeed, bail set at an unreasonable amount

violates the constitutional guarantees. *Stack v. Boyle*, 342 U.S. 1, 72 S.Ct.1, 96 L.Ed. 3 (1951). Pursuant to Crim.R. 46, in determining what is reasonable bail, the court must consider all relevant information including but not limited to, the nature and circumstances of the offense charged, the weight of the evidence, confirmation of the defendant's identity, the accused's history of flight or failure to appear at court proceedings, his ties to the community, including his family, financial resources and employment, and his character and mental condition, his record of conviction, and whether the defendant is on probation, community control sanction, parole, or postrelease control. After weighing these factors, the trial court sets the amount of bail within its sound discretion. The discretion to set bail also permits the trial court to change bail as circumstances warrant. *State v. Marte*, 8th Dist. Cuyahoga No. 69587, 1996 Ohio App. LEXIS 2193 (May 23, 1996), and *Hardy v. McFaul*, 8th Dist. Cuyahoga No. 84495, 2004-Ohio-2694. In a habeas corpus action to contest the reasonableness of bond, this court must determine whether the trial court abused its discretion. *Jenkins v. Billy*, 43 Ohio St.3d 84, 584 N.E.2d 1045 (1989); *In re Gentry; Lewis*; and *In re Green*, 101 Ohio App.3d 726, 656 N.E.2d 705 (8th Dist.1995).

{¶6} In the present case, this court rules that the respondent judge did not abuse her discretion in setting a \$30,000 bail. She examined the Crim.R. 45 factors for setting bail and articulated why such a high bail was appropriate. Turner does not have strong financial ties to the community; he has been unemployed for many years. The weight of the evidence against him is strong because of the GPS tracking. He has a very lengthy

criminal record, including crimes committed outside of the state, and his assault on a police officer shows an inclination to flee. The offenses were committed while Turner was on parole and on bail for other offenses. All of the factors listed establish that a high bail is proper.

{¶7} Accordingly, this court denies the petition for a writ of habeas corpus. Petitioner to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶8} Petition denied.

KATHLEEN ANN KEOUGH, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
MELODY J. STEWART, J., CONCUR