

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

JEREMIAH ALLEN,	:	PER CURIAM OPINION
	:	
Petitioner,	:	CASE NO. 2015-T-0065
	:	
- vs -	:	
	:	
THOMAS L. ALTIERE,	:	
TRUMBULL COUNTY SHERIFF, et al.,	:	
	:	
Respondents.	:	

Original Action for Writ of Habeas Corpus.

Judgment: Petition denied.

Matthew O. Williams, 1801 Euclid Avenue, Suite A095, Cleveland, OH 44115 (For Petitioner).

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Respondents).

PER CURIAM.

{¶1} In this habeas corpus action, petitioner, Jeremiah Allen, seeks immediate release from the Trumbull County Jail on the grounds that his pretrial bail in an underlying criminal proceeding is excessive. For the following reasons, the trial court did not abuse its discretion in setting petitioner’s bond at \$1,000,000 cash or surety, and the petition is overruled.

{¶2} Petitioner is the defendant in Trumbull County Court of Common Pleas Case No. 2015-CR-00082. Prior to that case, instituted February 2015, petitioner had been convicted of four felony offenses in three separate criminal actions during 2012. In Case No. 2012-CR-00148, he pled guilty to one count of carrying a concealed weapon, a fourth-degree felony in violation of R.C. 2923.12(A)(2). Initially, he was sentenced to five years of community control; but, after only four months community control was terminated, and an eighteen-month prison term was imposed. In Case No. 2012-CR-00344, petitioner pled guilty to one count of domestic violence, a fourth-degree felony under R.C. 2919.25(A), and was again sentenced to an eighteen-month term. In Case No. 2012-CR-00490, he pled guilty to another count of carrying a concealed weapon and one count of tampering with evidence, a third-degree felony under R.C. 2921.12(A)(1). On these offenses, he was sentenced to an aggregate term of eighteen months, to be served concurrently with the terms in the preceding two cases.

{¶3} In all three of the 2012 cases, petitioner was released on bond at the beginning of each proceeding. In the first two cases, he apparently attended all of the necessary hearings; as a result, his bond was not revoked until he was sentenced in each action. However, during the pendency of the third case, the bonding company informed the trial court it was given information that petitioner intended to flee the state. Thus, a bench warrant was issued for his arrest. Twelve days later, petitioner appeared in the common pleas court and entered his guilty plea.

{¶4} Within only a few months after completing the eighteen-month terms on the four felony convictions, two misdemeanor cases were filed against petitioner in the

Warren Municipal Court. After pleading no contest in both proceedings, he was found guilty in the first case of falsification, a first-degree misdemeanor, and guilty in the second case of criminal damaging/endangering, a second-degree misdemeanor. In both cases, the municipal court placed petitioner on probation for three years.

{¶5} Only three months following the completion of the misdemeanor proceedings, the secret indictment in the underlying case was returned, charging petitioner with having a weapon while under a disability, a third-degree felony under R.C. 2923.13(A)(2), and tampering with evidence, a third-degree felony under R.C. 2921.12(A)(1). The charges were predicated upon an alleged incident in which petitioner shot himself with a firearm. According to the state, the shooting occurred in the restroom of a local laundromat, and petitioner's friends tried to cover-up the crime by moving the firearm from the restroom to a nearby motor vehicle. The police subsequently recovered the gun when the owner of the vehicle consented to a search.

{¶6} On the same day the indictment was issued, petitioner was arraigned on the two charges and entered a plea of not guilty. As part of the arraignment, bond was set at \$25,000, cash or surety. Six days later, the bond was posted by Ace Bail Bonding, and petitioner was released from the county jail.

{¶7} During the three-month period after posting bond and being released, three new criminal actions were brought against petitioner in local municipal courts. First, in the Warren Municipal Court, he was found guilty of drug possession, a first-degree misdemeanor, and was fined \$200. Second, in the Niles Municipal Court, he was found guilty of theft, a first-degree misdemeanor, and was fined \$500, sentenced to thirty days in the county jail, and placed on probation for one year. Third, in the Girard

Municipal Court, he was found guilty of two misdemeanor traffic offenses, speeding and driving while under a suspension, and was fined.

{¶8} In all three of the municipal court cases, petitioner did not appear for at least one of the scheduled proceedings. Therefore, each court issued a *capias* or bench warrant to compel him to attend.

{¶9} As of June 4, 2015, petitioner was again incarcerated in the Trumbull County Jail. On that date, a pretrial conference was held in the underlying case. At the beginning of this proceeding, an assistant prosecutor informed the trial judge of the various criminal acts petitioner had committed since being released on bond and that he was a suspect in several shootings in the area. Arguing that petitioner has no respect for the law, the assistant prosecutor moved the trial judge to revoke bond. The motion to revoke was denied; however, petitioner's bond was increased to \$1,000,000 cash or surety.

{¶10} Unable to post the higher bond, petitioner brought this action for a writ of habeas corpus, asserting that a \$1,000,000 bond is excessive in light of the nature of the two pending charges. For his ultimate relief, he seeks a writ requiring the reinstatement of the original \$25,000 bond and his immediate release from the county jail.

{¶11} In his petition, petitioner named both the trial judge and Trumbull County Sheriff Thomas L. Altieri as respondents. But, prior to the evidentiary hearing, he moved to dismiss the trial judge. Given that a habeas corpus case can only be brought against the individual who has actual custody of the petitioner, see *McGowan v. Tate*, 11th Dist Trumbull No. 99-T-0070, 1999 Ohio App. LEXIS 3883, *3 (Aug. 20, 1999), the

trial judge is not a proper party to this action. As petitioner is being held in the Trumbull County Jail pending his trial in the criminal case, this action can only proceed against Sheriff Altieri. The trial judge has accordingly been dismissed via a separate judgment entry.

{¶12} In support of his claim for relief, petitioner submits: (1) copies of the dockets from his three felony convictions in 2012; (2) a copy of an officer's statement regarding the investigation into the "laundromat" incident; (3) a copy of the docket in the underlying criminal case; and (4) a transcript of the June 4, 2014 pretrial conference in which petitioner's bond was increased to \$1,000,000.

{¶13} Since the trial judge did not issue his judgment raising bond until approximately one month after the pretrial conference, petitioner was unable to attach a copy of that judgment to his petition. However, respondent Altieri provided a copy of that judgment to this court immediately following its issuance. Furthermore, in response to the habeas corpus petition, respondent moved for summary judgment on the sole claim, attaching the following documents: (1) copies of the dockets from the two 2014 Warren Municipal Court cases in which petitioner was placed on probation for misdemeanor offenses; (2) copies of the final judgments in the three misdemeanor cases petitioner was involved in after he was indicted in the underlying action; (3) copies of the dockets from two of the three misdemeanor cases; and (4) a copy of the state's certification of non-disclosure of the identity of an eyewitness, filed in the pending criminal case on June 19, 2015. In the last document, an assistant prosecutor stated that, in light of petitioner's violent criminal history, the safety of a lay witness to the "laundromat" incident would be compromised if her identity was disclosed to

petitioner.

{¶14} After respondent Altieri was afforded the opportunity to file a written response to the petition, an evidentiary hearing was conducted. During that proceeding, respondent agreed to withdraw its motion for summary judgment so that the case could go forward on the final merits, predicated upon the submitted evidence. Neither side presented any witnesses for consideration. Instead, the parties stipulated as to the authenticity of the documents attached to the habeas corpus petition and the summary judgment motion, and agreed that this court could base our final determination upon those documents.

{¶15} The only additional evidence was submitted by petitioner, who presented copies of the dockets of three other Trumbull County criminal cases which did not involve him. Petitioner asserted that the dockets established that the bond in cases involving similar offenses is typically less than \$100,000. Respondent did not contest the authenticity of the dockets, but noted that the underlying facts of those cases were unknown and therefore of little to no relevance. This court accepted the three dockets into evidence noting the respondent's concerns.

{¶16} In his final argument, petitioner contends that the \$1,000,000 bond is excessive because there was nothing before the trial judge to show that he was a flight risk and would not appear for trial. In support, he emphasizes that a substantial bond was not needed to ensure his appearance in the three 2012 felony cases. While acknowledging that he was arrested three times after his release on the \$25,000 bond in the underlying case, petitioner notes that all three arrests were for misdemeanor offenses. In arguing that a \$1,000,000 bond is not excessive, respondent maintains

that petitioner's criminal history establishes that: (1) he commits violent crimes; (2) he continues to possess firearms even though he is under a disability; (3) he is a suspect in several shootings; and (4) he poses a threat to the community because he continues to commit crimes while released on bond.

{¶17} "Pursuant to Section 9, Article I of the Ohio Constitution, any defendant charged with a noncapital offense has the right to post bond and obtain his release from jail during the pendency of the criminal action. In applying this constitutional provision, the Supreme Court of Ohio has held that a defendant's right to nonexcessive bail in a noncapital case is absolute, and that a writ of habeas corpus will lie to require a defendant's immediate release when the trial court has set excessive bail. See, e.g., *Locke v. Jenkins* (1969), 20 Ohio St.2d 45, 253 N.E.2d 757." *Gallagher v. State*, 129 Ohio App.3d 775, 778 (11th Dist.1998). The Eighth Amendment to the U.S. Constitution also prohibits the imposition of excessive bail.

{¶18} As a general proposition, the setting of a criminal defendant's bail lies within the sound discretion of the trial judge. *Phillips v. Altieri*, 11th Dist. Trumbull No. 2008-T-0084, 2008-Ohio-4511, ¶6. Accordingly, in reviewing a "bail" determination in the context of a habeas corpus action, the court must follow a two-step analysis: "First, that court must determine whether the trial court abused its discretion in setting the amount of bail. Second, if an abuse of discretion is found, that court must weigh the various factors itself and reset the bail at a reasonable amount." *Hamilton v. Collins*, 11th Dist. Lake No. 2003-L-094, 2003-Ohio-4104, ¶4.

{¶19} Under the initial step of the "excessive bail" analysis, we consider the same factors the trial judge is required to apply. *Phillips* at ¶7. Overall, the primary

purposes of bail are to ensure the appearance of the defendant at trial and to provide for public safety. *Gallagher* at 779, citing *State ex rel. Baker v. Troutman*, 50 Ohio St.3d 270 (1990); Crim.R. 46(B)(7). In setting bail, the trial court shall consider all relevant information, including but not limited to: (1) the nature and circumstances of the charged offenses; (2) the weight of the evidence against the defendant; (3) whether the defendant's identity as the perpetrator has been confirmed; (4) the defendant's ties to the local community, his character and mental condition, his financial resources, and his employment history; and (5) whether the defendant was on probation, parole, or bail when the charged offenses were committed. Crim.R. 46(C).

{¶20} Petitioner argues that the fact that he was convicted of multiple new offenses following his initial release on \$25,000 bond is not entitled to any weight in deciding whether to increase the amount of the bond. As noted above, petitioner places heavy emphasis on the point that all of his 2015 convictions were for misdemeanor offenses. However, the relevancy of the three 2015 convictions does not turn upon the relative seriousness of the offenses. Instead, the new convictions are relevant because they demonstrate that petitioner is unable to control his behavior. As to this basic point, this court has stated:

{¶21} "The consideration of whether a defendant is to be released on a new charge necessarily entails a consideration of the nature of the other pending charges against him and whether he was on parole, probation, or bail. Such information is clearly relevant to the setting of bail because it is indicative of the defendant's ability to abide by the conditions of his release; *i.e.*, if a defendant has exhibited the tendency not to abide by the conditions of his release, it follows that the amount of his bail could be

higher.” *Gallagher*, 129 Ohio App.3d at 779-780.

{¶22} We will first consider the second and third factors listed in Crim.R. 46(C). First, the evidence supports the conclusion that the state will be able to present substantial evidence showing that petitioner committed the charged offenses. Although the exhibits do not establish that the state has any forensic evidence connecting him to the firearm found in the motor vehicle, the officer’s statement shows that the state has an eyewitness who advised that she saw petitioner go into the restroom by himself prior to the gunshot, and that the friends, thereafter, entered the restroom and left carrying a rolled-up towel or shirt.

{¶23} According to petitioner, the dockets from the three 2012 felony cases show that he can be trusted to remain in the jurisdiction while released on bail. In relation to two of the three dockets, petitioner’s assertion is correct; i.e., in two of the felony cases, the dockets indicate that he voluntarily appeared for trial. However, the docket of Case No. 2012-CR-00490 does not support his assertion. That docket demonstrates that a bench warrant was issued for petitioner’s arrest after the bonding company gave the trial court information indicating that he was planning to flee the county prior to his trial.

{¶24} More importantly, respondent’s evidence readily establishes that, after petitioner was released on the initial \$25,000 bond in the underlying case, other trial courts had to take additional steps to ensure his attendance at criminal proceedings. In each of the 2015 municipal cases, he failed to appear for a scheduled proceeding. As a result, it was necessary for each of the municipal courts to issue a bench warrant or a *capias* to ensure his future attendance.

{¶25} In addition, respondent's evidence demonstrates that when petitioner committed the underlying crimes in the three 2015 municipal cases, he was already on probation from two 2014 misdemeanor cases before the Warren Municipal Court. Accordingly, petitioner's past actions show that he refuses to abide by conditions placed upon his behavior as part of court orders regarding his release.

{¶26} Moreover, the very nature of the pending charges in the underlying criminal case indicate that petitioner cannot be trusted to follow court orders. To be charged with having a weapon while under a disability, a prior court order must exist prohibiting petitioner from possessing a firearm in light of his prior felony convictions. The same point is also demonstrated by the fact that, in one of 2015 misdemeanor cases, petitioner was convicted of driving a vehicle while under a license suspension. Finally, tampering with evidence involves elements of dishonesty, to the extent that the defendant has acted in a way to mislead an investigation or evade prosecution. See *State v. Oliver*, 7th Dist. Mahoning No. 12 MA 212, 2015-Ohio-2684, ¶27.

{¶27} As a separate point, the evidence shows that petitioner has a continuing propensity to commit violent offenses. Besides his 2012 conviction for felony domestic violence, petitioner has been arrested at least ten times for violent offenses, such as aggravated menacing and criminal damaging. In addition, a substantial part of his criminal activity has involved the illegal use of firearms. In 2012 alone, he was convicted of two counts of carrying a concealed weapon.

{¶28} Viewed as a whole, the evidence before this court supports two factual findings. First, petitioner has consistently failed to abide by prior court orders placing restrictions upon his behavior. Consequently, a high bond is necessary to ensure his

attendance at trial in the underlying case. Second, petitioner poses a legitimate threat to public safety. Except for the eighteen-month period in which he was incarcerated, he has engaged in an ongoing series of criminal acts since 2012 and is a suspect in several shootings. Therefore, a high bond is again needed to adequately protect the public.

{¶29} A trial judge abuses his discretion when he fails to engage in sound, reasonable, and legal decision-making. *State v. Clark*, 11th Dist. Trumbull No. 2013-T-0106, 2014-Ohio-5704, ¶65, quoting *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶62. Given the foregoing two findings, the trial judge did not act unreasonably in holding that the circumstances in the underlying case justified an increase in petitioner's bond to \$1,000,000. The trial judge's ruling was consistent with the factors set forth in Crim.R. 46(C) and the case law governing pretrial bail.

{¶30} Petitioner has failed to establish that his incarceration in the Trumbull County Jail is illegal due to excessive bail. Accordingly, the petition for the writ of habeas corpus is denied, and final judgment is hereby entered in favor of respondent.

TIMOTHY P. CANNON, P.J., DIANE V. GRENDALL, J., THOMAS R. WRIGHT, J.,
concur.