

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

vs.

**RYAN A. SMITH,
Defendant**

:

: No. CR-1008-2012

:

:

: Motion for Actual Nominal Bail

OPINION AND ORDER

The relevant background facts of this case are set forth in this Court's Opinion and Order of January 3, 2013. Said Order granted Defendant's Motion for Nominal Bail. Following said Order neither party filed a Motion for Reconsideration and neither party filed an appeal. Subsequent to that Order, Defendant and counsel proceeded to jury selection on January 10, 2013. Following jury selection, Defendant moved to continue the trial. Said Motion was granted. By Order dated January 12, 2013, Defendant's prior counsel was replaced by Defendant's present counsel.

On January 13, 2013, Defendant's present counsel filed a Motion for Actual Nominal Bail in accordance with Pennsylvania Rule of Criminal Procedure 600 (E). Said Motion alleges that the previously imposed non-monetary conditions of nominal bail result in the actual denial of relief. Defendant alleges that he remains unlawfully incarcerated in violation of Rule 600 (E) and that the Court should amend the prior Order to impose reasonable conditions.

The Commonwealth argues that the Court legally imposed conditions that are reasonable. Alternatively, the Commonwealth argues that the Defendant is not entitled to bail.

In interpreting the express language of Rule 600 (E) as well as the Pennsylvania Supreme Court decision in Commonwealth v. Sloan, 589 Pa. 15, 907 A.2d 460 (2006), the Court holds that it does not have discretion to ignore the Rule 600 (E) mandate. Nonetheless,

the Rule's mandatory remedy of nominal release is not the same as unconditional release. The Rule anticipates and permits the imposition of conditions necessary to ensure Defendant's future appearance and law abidedness.

Given Defendant's history, the Court is not willing to substantially modify the conditions. Indeed, Defendant posits a de facto unconditional release under the guise of reasonableness. Defendant argues that because he cannot obtain a suitable residence, he cannot be placed on intensive supervised bail, electronic monitoring or home detention. Accordingly, Defendant argues that he should be released upon nominal bail with conditions that he report periodically, even once every day, until he obtains a suitable residence. Defendant suggests that seven days is a reasonable timeframe within which to obtain a residence.

Defendant's suggestion, however, does not give adequate assurances that the Defendant will appear or that the community will be protected. As the Sloan Court specifically noted: "Rule 600 (E)'s mandatory remedy of nominal release after 180 days of incarceration is not the same as unconditional release." 907 A.2d at 468. The Court will not "unconditionally" release Defendant for any period of time.

Nonetheless, the Court does agree that the imposed conditions may not result in Defendant's continued incarceration in violation of Rule 600 (E). If the Court does not deny bail, the Court will modify the conditions to release Defendant immediately with conditions to ensure his future appearance and law abidness.

The Court will revisit the Commonwealth's argument that no bail should be set in light of Article 1, Section 14 of Pennsylvania's Constitution which provides that "all prisoners shall be bailable by sufficient surety...unless no condition or combination of

conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great...” Pa. Const. Art. 1, § 14. There may be instances where a trial court deems a defendant too dangerous to be released even subject to consideration of conditions. Sloan, 907 A.2d at 467 n.10, citing Commonwealth v. Jones, 899 A.2d 353 (Pa. Super. 2006).

Unlike at Defendant’s initial Rule 600 (E) hearing when the Commonwealth argued only that Defendant was a flight risk, the Commonwealth now argues that Defendant is indeed too dangerous to be released and that no condition or combination of conditions other than incarceration will reasonably assure the safety of any person and the community.

Defendant argues that the Commonwealth previously had an opportunity to address this issue and that it was decided in connection with the January motion. While the Court did in fact decide the issue with respect to the January motion, there is nothing that the Court is aware of which precludes it from considering the issue now in light of Defendant’s new motion.

The Commonwealth requested the Court to take judicial notice of Defendant’s prior proceedings in the Court of Common Pleas of Lycoming County. The Court will do so.

At 1477-2006, the Defendant pled guilty and was sentenced on a Conspiracy to Commit Theft Count, a misdemeanor of the second degree. Prior to pleading guilty, however, the Defendant bench warranted for failure to appear for a pretrial conference, failure to respond to his lawyer’s communications and failure to communicate his addresses.

At 738-2007, the Defendant pled guilty to Disorderly Conduct, a misdemeanor of the third degree.

Defendant subsequently absconded from supervision on both 1477-2006 and 738-2007. A bench warrant was issued, Defendant's probation was revoked and he was re-sentenced to incarceration at the Lycoming County Prison.

Around the approximate time that Defendant was re-sentenced on the aforesaid criminal Informations, he was found in contempt of a previously issued Protection From Abuse Order at No. 06-21,331.

At 1424-2007, Defendant pled guilty and was sentenced on one count of Intimidation of a Witness, a misdemeanor of the second degree.

Under 242-2008, Defendant pled guilty and was sentenced on one count of Possession of Drug Paraphernalia, an ungraded misdemeanor.

Under Information No. 383-2009, Defendant pled guilty and was sentenced on one count of Driving Under the Influence of Alcohol, an ungraded misdemeanor. Subsequent to being placed on intermediate punishment, Defendant absconded from supervision. A bench warrant was issued for his arrest. Eventually, Defendant's intermediate punishment was revoked and he was re-sentenced to a period of incarceration.

At 968-2011, Defendant pled guilty and was sentenced on one count of Criminal Mischief, a misdemeanor of the third degree. Previously in this case, two bench warrants were issued. The first was issued for Defendant's failure to appear for a hearing on a Motion to Revoke Bail and the second was issued for Defendant's failure to appear for Call of the List. The Commonwealth's Motion to Revoke Bail was granted because Defendant committed another crime while out on bail. Furthermore, upon Defendant's apprehension, the Court refused to set bail.

At 1771-2011, Defendant pled guilty to one count of Possession of Drug Paraphernalia, an ungraded misdemeanor and one count of Driving Under Suspension, a summary offense. A bench warrant was previously issued in this case for Defendant's failure to appear for an arraignment. Upon Defendant's apprehension, the Court refused to set bail.

A summary of Defendant's criminal history indicates that within the past seven years, Defendant has been found guilty of seven misdemeanor offenses and one violation of a PFA Order. In that same amount of time, he has bench warranted six separate times, had his supervision revoked in three separate cases, had his bail revoked in one case, and no bail set in two cases.

Moreover, Defendant has made a habit of writing directly to the Court. The letters that Defendant wrote to the Court subsequent to the Court's January 3, 2013 Order, were all referenced at the recent hearing in this matter.

On January 18, 2013, the Court received a note from Defendant to his attorney requesting that she advise the Court that the Intensive Supervised Bail Coordinator was refusing to see him. The Court responded with a letter to Defendant and his attorney indicating that the Court cannot control the Coordinator's schedule and that the problem was that Defendant did not have a suitable residence to which he could be released.

In response, Defendant sent two letters which the Court received on January 22, 2013. The one indicated that the Coordinator had not done anything and requested that the Court "do something." The other accused the Court of "taking advantage" of Defendant, misrepresenting things to Defendant in Court, "screwing" Defendant, playing on Defendant's intelligence, treating Defendant like a murderer and communicating with the Coordinator via

“code.” Defendant clearly suggested that the Court was purposefully keeping him incarcerated in violation of his rights. Near the end of Defendant’s letter he wrote “Sir, I am not scared of you! Why should I be -- because you are my Judge?”

The last letter the Court received was on February 4, 2013. Defendant again requested that the Court reconsider the Order and let the Defendant “out on just a dollar.” He noted as well that he was extremely stressed out.” He demanded to see the discovery tapes “now.” He also demanded a suppression hearing “now.”

Given the content and tone of the letters, along with Defendant’s criminal history as set forth previously, the Court does not hesitate in concluding that Defendant is a substantial flight risk. The Court cannot conclude, however, on this record that he is too dangerous to be released. Indeed, the Court will fashion an Order addressing the relevant flight and community protection concerns.

ORDER

AND NOW, this ____ day of February 2013, Defendant’s Motion for Actual Nominal Bail is granted in part. Defendant shall be released from the Lycoming County Prison no later than 5:00 p.m. on February 21, 2013. Defendant shall meet with Harry Rogers prior to being released and shall be placed on a global positioning unit or electronic monitor. Defendant shall report every day to the Lycoming County Prison as directed by Mr. Rogers in order that his unit may be downloaded and monitored. Defendant shall be restricted to travel within the city of Williamsport. Defendant shall have until Friday, March 1, 2013 by 12:00 noon to obtain an approved residence. Defendant shall also abide by the conditions set forth in the Court’s January 3, 2013 Order except as modified by this Order. If Defendant fails to

obtain an approved address by March 1, 2013 at 12:00 noon, he shall report to the prison and his bail shall be revoked.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: DA (KO)
Donald F. Martino, Esquire
APO
Prison
Harry Rogers, Prison
Gary Weber, Esquire (Lycoming Reporter)
Work File