

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

FILED

12/18/2017

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. REBECCA PRITCHETT**

**Criminal Court for Shelby County  
No. 17-04050**

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**No. W2017-02190-CCA-R3-CD**

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**ORDER**

This matter is before the Court on the Defendant's motion for reduction of pretrial bail. *See* Tenn. R. App. 8; T.C.A. §40-11-144. The Defendant argues that her bail in the amount of \$30,000.00 is too high and should be reduced or she be released upon her own recognizance.

The Defendant is charged with the Class A felony offense of Especially Aggravated Kidnapping. The allegations in the affidavit of complaint are that the Defendant and a co-defendant kidnapped the victim from his home at gunpoint, forced him into a vehicle and then drove off. While traveling in the car, the victim and the co-defendant began fighting over the gun used in the kidnapping. During the fight, the gun discharged with the bullet striking the co-defendant causing the car to crash. After the crash, the victim obtained control of the gun and held both the Defendant and co-defendant at gunpoint until the police arrived. A bond was set by the General Sessions Court in the amount of \$30,000.00. After the action of the General Sessions Court, the Defendant filed a "pre-indictment motion for bond reduction," which was treated as a petition for writ of certiorari, to the Criminal Court of Shelby County asking the Criminal Court to review the bond. The Criminal Court denied the Petition of the Defendant and she has sought relief from this Court.

Both the United States and the Tennessee constitutions grant an individual the right to bail. U.S. Const. Amend. VIII; Tenn. Const. Art 1 § 1. In recognizing this constitutional right to bail, the Tennessee legislature has adopted statutes to guide the Courts in the setting of bail amounts for the dual purpose of reasonably assuring the appearance of the Defendant while at the same time protecting the safety of the public. Tenn. Code Ann. § 40-11-118(b). The statute provides that "in determining the amount of bond necessary to reasonably assure the appearance of the defendant while at the same

time protecting the safety of the public,” the trial courts shall consider the following factors in setting bail:

- (1) The defendant’s length of residence in the community;
- (2) The defendant’s employment status and history and the defendant’s financial condition;
- (3) The defendant’s family ties and relationships;
- (4) The defendant’s reputation, character and mental condition;
- (5) The defendant’s prior criminal record and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings;
- (6) The nature of the offense and the apparent probability of conviction and the likely sentence;
- (7) The defendant’s prior criminal record and the likelihood that because of such record the defendant will pose a risk of danger to the community;
- (8) The identity of responsible members of the community who will vouch for the defendant’s reliability; . . . ; and
- (9) Any other factors indicating the defendant’s ties to the community or bearing on the risk of the defendant’s willful failure to appear.

T.C.A. § 40-11-118(b).

“The trial court has very wide latitude in setting bail.” *State v. Melson*, 638 S.W.2d 342, 358 (Tenn. 1982). With this wide latitude, this Court reviews the actions of a trial court regarding a defendant’s release under an abuse of discretion standard. *See, e.g.,* T.C.A. § 40-26-103.

The Defendant presents a two pronged argument in support of the reduction of her bail in this matter. Primarily, the Defendant makes a constitutional argument that her constitutional rights under both the Tennessee and United States Constitutions are being violated by denying her pre-trial release by making her pay a “money bail.” The Defendant argues that if a person charged with a crime has no means to make a bail of any kind then the constitution requires they be released upon their own recognizance. However, the Defendant offers no authority to support this position. While the Eighth Amendment to the United States Constitution prohibits excessive bail, there is no explicit right to pre-trial bail created. *United States v. Salerno*, 481 U.S. 739, 754-55 (1987). The Tennessee Constitution addresses bail through two provisions: Article I, Section 15 stating “[T]hat all prisoners shall be bailable by sufficient sureties, unless for capital offenses...” and Article I, Section 16 stating “[T]hat excessive bail shall not be required.” Differing from the United States Constitution, the Tennessee Constitution does guarantee a right to pre-trial bail in most cases, but does not guarantee the right to pre-trial release

upon your own recognizance for persons of limited means. The arguments of the Defendant exceed the constitutional rights granted. While the bail may not be "excessive," there is no absolute right to release. As such, we cannot find that the trial court abused its discretion by failing to release the Defendant on her own recognizance simply due to her financial condition and inability to make any bail.

Additionally, the Defendant argues that the trial court placed undue emphasis on the nature of the offense and likelihood of conviction while overlooking other statutory considerations. Recognizing the aforementioned constitutional provisions, our legislature has adopted a statutory guide for the determination of pre-trial bail amounts. *See* Tenn. Code Ann. §40-11-118. Through her argument, the Defendant seeks to create an interpretation of the bail statute, that currently does not exist, that would require a ranking of the listed factors with the primary determination to be based upon the financial condition of the Defendant. We cannot agree with this argument of the Defendant. The determination of bail is to be made by the court subject to the application of all of the enumerated factors. There is no ranking or emphasis placed on any of the certain factors greater than the others. The court is entitled to use its own discretion in determining the bail amount and we cannot find that the court abused its discretion in this matter. In its order denying the petition of the Defendant, the trial court considered and specifically enumerated all of the factors listed above from Tennessee Code Annotated section 40-11-118 in making its decision. The evidence presented to the trial court establishes that the Defendant has no permanent residence as she is living with a friend, has no job and has not worked for fifteen years, suffers from mental illness and is charged with a violent A felony that would lead to a minimum sentence of 15 years to be served at 100% if convicted. The court was given no information about family, members of the community willing to vouch for the Defendant or any other information about the Defendant's ties to the community. From a review of the evidence presented, this Court cannot find that the trial court abused its discretion in allowing the bail amount to remain at \$30,000.00.

A review of the bond of the Defendant in light of the conditions as set out in Tennessee Code Annotated section 40-11-118 indicates that the trial Court did not abuse its discretion in denying the petition for writ of certiorari. The written Order of the Court sets out a sufficient the basis for the denial of the petition for writ of certiorari.

IT IS HEREBY ORDERED that the Defendant's motion for reduction of pretrial bail is DENIED. As the Defendant appears to be indigent, costs of this appeal are taxed to the State.

PER CURIAM

JOHN EVERETT WILLIAMS, JUDGE  
ALAN E. GLENN, JUDGE  
J. ROSS DYER, JUDGE