Reversed and Opinion filed February 17, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-01179-CR

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BILL WARREN BRILEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 21st District Court
Washington County, Texas
Trial Court Cause No. 12,938-A

O P I N I O N

Bill Warren Briley (Appellant) appeals from the trial court's habeas corpus judgment. Appellant was indicted on several counts for the felony offense of selling unregistered securities. *See* TEX. REV. CIV. STAT. ANN. art. 581-29 (Vernon Supp. 2000). Appellant's pre-trial bond was set at $200,000. Appellant filed an application for writ of habeas corpus seeking to have his bond reduced to either personal recognizance or $10,000. Following an evidentiary hearing, the trial court denied Appellant's requested relief. This appeal followed. We reverse and set Appellant's pretrial bond in the amount of $10,000.

The primary purpose of an appearance bond is to secure the presence of the accused at trial on the offense charged. *See Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex.Crim.App. [Panel Op.] 1980); *Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex.Crim.App. 1977); *Ex parte Brown*, 959 S.W.2d 369, 371 (Tex. App.—Fort Worth 1998, no pet.). Bail should be set high enough to give reasonable assurance that the defendant will appear at trial, but it should not operate as an instrument of oppression. *See Ex parte Ivey*, 594 S.W.2d 98, 99 (Tex.Crim.App. 1980); *Vasquez*, 558 S.W.2d at 479. The burden is on the person seeking the reduction to demonstrate that the bail set is excessive. *See Ex parte Charlesworth*, 600 S.W.2d 316, 317 (Tex.Crim.App. [Panel Op.] 1980); *Vasquez*, 558 S.W.2d at 479. Further, the decision regarding a proper bail amount lies within the sound discretion of the trial court. *See Ex parte Brown*, 959 S.W.2d at 372; *see also* TEX. CODE CRIM. PROC. ANN. art. 17.15 (Vernon Supp. 2000) (giving the trial court discretion to set the amount of bail).

Article 17.15 of the Texas Code of Criminal Procedure sets forth the following rules for fixing the amount of bail:

> 1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with;
> 2. The power to require bail is not to be so used as to make it an instrument of oppression;
> 3. The nature of the offense and the circumstances under which it was committed are to be considered;
> 4. The ability to make bail is to be regarded, and proof may be taken upon this point; and
> 5. The future safety of a victim of the alleged offense and the community shall be considered.

TEX. CODE CRIM. PROC. ANN. art. 17.15 (Vernon Supp. 2000). The following factors should also be weighed in determining the amount of bond: (1) the accused's work record; (2) the accused's family and community ties; (3) the accused's length of residency; (4) the accused's prior criminal record, if any; (5) the accused's conformity with the conditions of any previous bond; (6) the existence of outstanding bonds, if any; and (7) aggravating circumstances alleged to have been involved in the charged offense. *See Ex*

parte Rubac, 611 S.W.2d 848, 849-50 (Tex.Crim.App. [Panel Op.] 1981); *Ex parte Brown*, 959 S.W.2d at 372.

Appellant sought to have his pre-trial bond reduced from $200,000 to either personal recognizance or $10,000. At the evidentiary hearing on his writ, Appellant presented evidence showing that he has substantial ties to the community and an established work record. Specifically, Appellant presented testimony showing that he has been a long-time resident of Washington County and owns a home and real property in Brenham, Texas, where he has lived for almost sixteen years. Concerning his employment history, the record shows that Appellant owned and operated an insurance agency for many years. The record also indicates that Appellant has been married for 32 years. While a resident of Brenham, Appellant has developed and maintained strong ties to his community through participation in various church programs.

The evidence of Appellant's financial resources shows that Appellant and his wife are presently relying on Appellant's residual sales commissions and a small income Appellant's wife earns as an accompanist with the First Baptist Church, together with financial assistance from friends to meet monthly financial obligations. Appellant's wife testified that the maximum bond Appellant could post is $10,000.

The testimony shows that Appellant has a college education and would be able to find suitable employment if released from jail. There was no evidence presented to indicate that Appellant has any previous criminal convictions in this State or elsewhere.

It is appropriate to consider the nature of the offense when setting the amount of a pre-trial bond. *See Ex parte Davila*, 623 S.W.2d 408 (Tex. Crim. App. [Panel Op.] 1981). In considering the nature of the offense, we consider possible punishment. *See Charlesworth*, 600 S.W.2d at 317; *Vasquez*, 558 S.W.2d at 480. If convicted, Appellant would be subject to punishment for each count by confinement in the Texas Department of Corrections for a term of not more than ten years nor less than two years. *See* TEX. REV. CIV. STAT. ANN. art. 581-29A (Vernon Supp. 2000). In addition to imprisonment, Appellant may be punished by a fine not to exceed $5,000 for each offense. *See id.*

There is no evidence to suggest that Appellant is a flight risk, poses any future threat to the community, or that there were any aggravating factors associated with the offenses Appellant is alleged to have committed. *See* TEX. CODE CRIM. PROC. ANN. art. 17.15 (Vernon Supp. 2000); *Ex parte Rubac*, 611 S.W.2d at 849-50. In sum, the record in this case does not support a pre-trial bond in the amount of $200,000. Considering the entire record, therefore, we find that the bond set in this case acts as an instrument of oppression. Therefore, we conclude that the trial court abused its discretion in not reducing Appellant's pre-trial bond.

Accordingly, the trial court's habeas corpus judgment is reversed and Appellant's pre-trial bond is set at $10,000.

PER CURIAM

Judgment rendered and Opinion filed February 17, 2000.
Panel consists of Justices Amidei, Anderson, and Frost.
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