

SUPREME COURT OF VERMONT

State v. Barrows

172 Vt. 596 (2001) · Decided June 1, 2001

SUMMARY

The Vermont Supreme Court affirmed the denial of a probationer's request for release on conditions after he was charged with violating probation conditions prohibiting contact with a crime victim and requiring compliance with a curfew. The court held that although a probationer has no right to bail or release, a court may exercise discretion to grant release, and the record adequately supported the district court's decision to deny it.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	June 1, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the Windsor District Court's denial of his request for release on conditions while he was held on alleged probation violations.
STANDARD OF REVIEW	The district court's order is affirmed if supported by the proceedings below. An abuse of discretion requires a showing that the court failed to exercise its discretion or exercised it for clearly untenable or clearly unreasonable reasons.
PRECEDENTIAL VALUE	published
PARTIES	Anthony Barrows v. State

TOPICS

- bail
- probation
- appellate procedure
- standard of review
- criminal procedure

PRACTICE AREAS

- criminal procedure
- bail
- probation
- appellate procedure

QUESTIONS PRESENTED

1. Whether a probationer charged with violating probation may be released on conditions despite the statutory provision stating that there is no right to bail or release.
2. Whether the district court abused its discretion by denying Barrows release on conditions.

HOLDINGS

1. A probationer charged with a violation of probation has no right to bail or release under 28 V.S.A. § 301(4), although a judicial officer retains discretion to grant release on conditions under V.R.Cr.P. 32.1(a)(3).
2. The district court did not abuse its discretion in denying Barrows release because the record provided an adequate factual basis for the decision and, where no statutory right to bail existed, the decision was not clearly untenable or unreasonable.

KEY QUOTATIONS

“Although defendant is correct that the court has the discretion to grant bail or release to a probationer, it is not required to do so.” (596)

“Where the statute creates no right to bail in the first instance, it cannot be said that the court’s decision was clearly untenable or unreasonable.” (597)

FACTUAL BACKGROUND

Barrows was a probationer subject to a condition prohibiting contact with the victim of the crime for which he had been convicted. Despite that condition, he entered the store where the victim worked and where the prior crime had occurred. He was also stopped by police at approximately 4:30 a.m. and charged with violating a probationary curfew condition.

PROCEDURAL HISTORY

Barrows was charged with violating a no-contact condition of probation by entering a store where the victim worked and with violating a curfew condition after being stopped by police. Following a hearing on his motion to review denial of bail and probable cause under 13 V.S.A. § 7554(d)(1), the district court denied release. The Vermont Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Patch, 145 Vt. 344, 353, 488 A.2d 755, 761 (1985)
- State v. Begin, No. 99-148, slip op. at 1 (Vt. Apr. 8, 1999)

OPINION

PER CURIAM.

Defendant Anthony Barrows appeals from the Windsor District Court's decision denying his request to be released on conditions after he was charged with two violations of his conditions of probation. Despite the existence of a provision prohibiting defendant from contact with the victim of a crime for which he had been convicted, defendant entered the store where the victim worked, and where the crime had been committed.

In addition, at approximately 4:30 a.m. the following morning, defendant was stopped by a police officer and subsequently charged with a violation of a curfew condition of his probation. The court's decision denying release followed a hearing on defendant's motion to review denial of bail and probable cause pursuant to 13 V.S.A. § 7554(d)(1).

On appeal, defendant acknowledges that as a probationer charged with violation of probation he has no right to bail or release pursuant to 28 V.S.A. § 301(4) ("There shall be no right to bail or release."). He asserts, however, that the court erred in exercising its discretion to deny his request that he be released on conditions. See V.R.Cr.P. 32.1(a)(3) (providing that a "probationer held in custody... may be released by a judicial officer pending hearing or appeal") (emphasis added).

Although defendant is correct that the court has the discretion to grant bail or release to a probationer, it is not required to do so. The issue here is not whether the court abused its discretion by failing to consider factors relevant to conditions of release, see V.R.Cr.P. 32.1(a)(3) (in determining conditions of release, the judicial officer shall consider the factors set forth in 13 V.S.A. § 7554(b)), but rather, whether the court abused its discretion in determining that defendant was not entitled to be released.

Any district court order so appealed shall be affirmed if it is supported by the proceedings below. 13 V.S.A. § 7556(b); see also *State v. Patch*, 145 Vt. 344, 353, 488 A.2d 755, 761 (1985) ("To support a claim of error there must be a showing that the court failed to exercise its discretion, or exercised it for reasons clearly untenable or to an extent clearly unreasonable.").

Defendant directs our attention to single justice entry orders reversing and remanding bail decisions inadequately supported by the record. See, e.g., *State v. Begin*, No. 99-148, slip op. at 1 (Vt. April 8, 1999) (reversed and remanded where "no indication in the record that a hearing was held or what the factual basis was for the denial of *597bail").

In the instant case, a hearing was held and a review of the proceedings below present an adequate factual basis for the district court's decision. As noted in its decision, the court reviewed all of the relevant files, and considered the testimony of defendant's sister, arguments by defendant's attorney, and the State's response.

The trial court's decision was further informed by defendant's return to the store where the victim of his prior crime was present. Where the statute creates no right to bail in the first instance, it

cannot be said that the court's decision was clearly untenable or unreasonable. Motion for reargument denied June 28, 2001. Affirmed

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