

Opinion issued July 21, 2020



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-19-00979-CV

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**EX PARTE ZEREK WILEY, Appellant**

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**On Appeal from the 179th District Court  
Harris County, Texas  
Trial court Case No. 1643850**

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**MEMORANDUM OPINION**

Appellant Zerek Wiley was indicted for the offense of aggravated robbery with a deadly weapon and bond was set at \$40,000. Wiley appeals from the denial

of his application for writ of habeas corpus challenging the amount of pretrial bond.<sup>1</sup>

We affirm.

Wiley was charged with the offense of aggravated assault by threatening the complainant with a firearm. The indictment lists a prior felony conviction for robbery. The State moved for high bond because Wiley had a prior felony conviction, used a firearm in the commission of the offense charged, and was accused of a violent crime. The bond order indicates that the State requested bond of \$40,000 and Wiley requested bond in the amount of \$20,000. The trial court set bail at \$40,000.

Appellant filed a pretrial application for writ of habeas corpus, claiming that the bond was excessive, oppressive, and beyond appellant's financial means. The trial court denied the application by order signed on October 23, 2019. Wiley claims that the trial court abused its discretion in denying his application for habeas relief.

The primary purpose of bond is to secure the presence of the accused at trial on the offense charged. *Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. 1980). Bail should be sufficiently high to give reasonable assurances that the

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<sup>1</sup> Wiley filed a notice of appeal only in one trial court cause number, 1643850, even though he was also charged in a related case, trial court cause number 1643849. The clerk's record and supplemental clerk's record in this case contain documents from both cause numbers but because appellant has not appealed the order denying his application for writ of habeas corpus in trial court cause number 1643849, we do not address that order in this opinion.

accused will appear, but the power to require bail should not be used as an instrument of oppression. *Ex parte Ivey*, 594 S.W.2d 98, 99 (Tex. Crim. App. 1980).

The trial court must consider five factors in determining the appropriate 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.
5. The future safety of a victim of the alleged offense and the community shall be considered.

TEX. CODE CRIM. PROC. art. 17.15.

Also pertinent are appellant's family and community ties, prior criminal record, length of residence in the county, conformity with conditions of previous bonds, and any aggravating circumstances of the charged offense. *See Ex parte Rubac*, 611 S.W.2d 848, 849–50 (Tex. Crim. App. 1981).

We review a trial court's decision concerning pretrial bail under an abuse-of-discretion standard. *See id.* at 850. Appellant bears the burden of proving that the amount of bail set by the trial court is excessive. *See id.* at 849.

Wiley's only issue in his application was that the bond amount was excessive, oppressive, and beyond his financial means, but he attached no proof to his application. The trial court did not hold a hearing on Wiley's habeas application, but a hearing is not required. *See Lara v. State*, No. 04-15-00176-CR, 2016 WL 2936548, at \*6 (Tex. App.—San Antonio May 18, 2016, pet. ref'd) (mem. op.; not designated for publication); *Ex parte Cummins*, 169 S.W.3d 752, 757 (Tex. App.—Fort Worth 2005, no pet.); *Ex parte Nwogu*, No. 04-13-00756-CR, 2014 WL 309465, at \*1 (Tex. App.—San Antonio Jan. 29, 2014, no pet.) (mem. op; not designated for publication).

Although the trial court refused to permit a hearing, Wiley's counsel was permitted to make an offer of proof of the testimony he would have presented at a hearing. Wiley's counsel stated on the record that Wiley's family was unable to make the bond and that his family would provide a safe, monitored environment if he were released on bond.

Aggravated assault with a deadly weapon is a violent offense that carries a potential maximum sentence of life imprisonment and a fine of up to \$10,000, and its violent nature supports a higher bond amount. Although Wiley contends that he is unable to afford the bond, the ability of an accused to post bond is only one factor when determining the appropriate bail. *See Brown v. State*, 11 S.W.3d 501, 504 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Wiley has not established that the

trial court's denial of his application for writ of habeas corpus was an abuse of discretion.

Accordingly, we affirm the trial court's order. Any pending motions are dismissed as moot.

**PER CURIAM**

Panel consists of Justices Keyes, Lloyd, and Hightower.

Do not publish. TEX. R. APP. P. 47.2(b).