Affirmed and Opinion filed September 16, 1999.

In The

Fourteenth Court of Appeals

NO. 14-99-00768-CR

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JOSE LOUIS ESCARENO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 814,293

O P I N I O N

Jose Louis Escareno (appellant) appeals from the trial court's habeas corpus judgment. A grand jury indicted appellant on one count of capital murder. Appellant filed a pre-trial application for writ of habeas corpus seeking to reduce the amount of his bond from $500,000 to either personal recognizance or, alternatively, $50,000. Following an evidentiary hearing, the trial court entered its judgment, reducing appellant's bond to $300,000. Appellant maintains that the amount of his bond remains excessive.

BACKGROUND

The indictment in this case alleges that appellant, while in the course of committing robbery, killed Willie Spencer by shooting him with a firearm. In his written confession, introduced at the habeas corpus hearing, appellant admitted that he robbed, shot and killed Willie Spencer.

According to his confession, appellant and Francisco Alvarado met Spencer at a Houston convenience store. Appellant rode with Spencer to appellant's mother's house. Alvarado followed in his automobile. Appellant and Alvarado were purportedly going to sell approximately 100 pounds of marijuana to Spencer for $57,000. After they entered Appellant's mother's house, Spencer demanded to see the marijuana. Appellant told Spencer that he would have to see the money first. Spencer gave Appellant a bag full of money, and Appellant and Alvarado began counting it. After counting all the money inside the bag, appellant determined that Spencer failed to bring enough money, being approximately $10,000 short. In response to appellant's insinuations that Spencer was being less than honest about having enough money, Spencer pulled a handgun from the front of his pants. Appellant, being quicker to the draw, grabbed his 9 mm handgun and fired approximately 10 bullets toward Spencer. As a result, Spencer was killed.

After appellant cleaned the blood from the floor of his mother's home, appellant and Alvarado wrapped Spencer's body in a blanket and placed it inside Spencer's automobile. Appellant drove Spencer's automobile a relatively short distance away from appellant's mother's home and abandoned it with Spencer's body lying inside. Appellant and Alvarado took the approximate $47,000 that Spencer had with him.

That day, appellant and Alvarado split the money and traveled to Mexico, where they stayed for four days before returning to Houston. Over the course of the next six months, appellant and Alvarado spent all the money they took from Spencer. They were subsequently arrested and charged with capital murder.

Appellant filed an application for writ of habeas corpus, alleging that the $500,000 bond is excessive and violates the "reasonable bond" provisions of the United States Constitution and the Texas Constitution. At the hearing for habeas relief, Jose Escareno, Sr. ("Escareno"), appellant's father, testified that if his son's bond was reduced to $50,000, he and several other family members could raise the $5,000 necessary to pay the fee for appellant's bond. He testified that neither he nor any of his family members possessed the financial resources to pay a $50,000 fee on a $500,000 bond.

Edd Blackwood is a bail bondsman in Harris County. He testified that the highest bond he can write in any case is $250,000. He further testified that based upon appellant's family's financial resources and background, the maximum bond he can issue in this case is $50,000.

The trial court concluded the habeas corpus hearing by granting appellant's motion to reduce bond. The court reduced appellant's bond to $300,000.

DISCUSSION

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 (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 criteria

for the trial court to consider in setting 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. 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 seeks to reduce his bond to either (1) personal recognizance, or (2) $50,000. He maintains that he has no assets and that his family's financial resources are limited. However, the ability of an accused to post bond is merely one factor to be considered in determining the appropriate bail. *See Ex parte Vance*, 608 S.W.2d 681, 683 (Tex. Crim. App. [Panel Op.] 1980). Simply because a defendant cannot meet the bond set by the trial court does not automatically render the bail excessive. "If the ability to make bond in a specified amount controlled, then the role of the trial court in setting bond would be completely eliminated, and the accused would be in the unique posture of determining what his bond should be." *Brown*, 959 S.W.2d at 372. The amount of bail must also be based on the nature of the offense and the circumstances under which it was committed. *See Ex parte Davila*, 623

S.W.2d408 (Tex. Crim. App. [Panel Op.] 1981). Furthermore, in considering the nature of the offense, it is proper to consider the possible punishment. *See Charlesworth*, 600 S.W.2d at 317; *Vasquez*, 558 S.W.2d at 480.

In the instant case, the nature of the offense is a brutal murder in which the victim was allegedly shot by appellant several times with a handgun while appellant was robbing him of approximately $47,000. The circumstances of the offense as set forth in the indictment and appellant's confession depict a violent killing and demonstrate an appalling lack of concern for human life. If convicted, appellant faces life imprisonment or the death penalty. *See* TEX. PEN. CODE ANN. § 12.31(a) (Vernon 1994).

Keeping in mind that the primary purpose of an appearance bond is to compel an accused's presence at trial, we hold that the trial court did not abuse its discretion in only reducing appellant's bond to $300,000. If appellant fails to appear at trial, it is his family's assets and savings that are at risk rather than his own. Appellant was not employed at the time of the offense and maintains no residence of his own. Although he has relatives living in Houston, appellant also has relatives who live in Mexico. Appellant owns no property in Texas. As a result, and in the light of the fact that appellant previously fled to Mexico following the instant offense, we find that appellant does not have sufficient close ties to the community that might assure his appearance at trial. Moreover, appellant gave a written statement admitting that he committed capital murder. As noted above, he faces life in prison or the death penalty if convicted. Under the circumstances of this case, appellant poses a significant flight risk if his bond is reduced any further.

Although the bond amount is high, appellant has failed to demonstrate that the bond is excessive. The trial court's judgment denying habeas corpus relief is affirmed.

PER CURIAM

Judgment rendered and Opinion filed September 16, 1999.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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