

STATE OF VERMONT

SUPERIOR COURT
BENNINGTON UNIT

CRIMINAL DIVISION
DOCKET NO. 173-2-19 Bncr

STATE OF VERMONT)
)
 v.)
)
MAX MISCH)

STATE’S MOTION TO AMEND CONDITIONS OF RELEASE

Now comes Assistant Attorney General Ultan Doyle on behalf of the State of Vermont in the above-captioned case to request that this Court amend current conditions of release imposed on Defendant by ordering three additional conditions pursuant to 13 V.S.A. § 7554(a)(2)(D) to protect the public. Additional conditions are needed because the Defendant has continued to engage in a pattern of alleged criminal conduct, including recent charges for aggravated domestic assault, which existing conditions of release have failed to protect against.

FACTUAL BASIS AND MEMO OF LAW

It is the State’s position that the following three specific additional conditions of release should be imposed on Defendant pursuant to 13 V.S.A. § 7554(a)(2)(D): that he be confined to his personal residence 24 hours/day, 7 days per week, that he must not have contact with Elizabeth Yeary, and that he must not abuse or harass Elizabeth Yeary in any way, in order to protect the public.

Defendant has been charged in six matters since conditions of release were first put into effect in February 2019, culminating in the most recent charges on July 7, 2021,

with two counts of Aggravated Domestic Assault 1st Degree and a count of Domestic Assault in case no. 21-CR-05361. There is a clear pattern of concerning behavior that the defendant has exhibited in his failure to follow the Court ordered conditions of release.

On February 7, 2019, Defendant was charged in case no. 173-2-19 Bncr with two counts of Possession of Large Capacity Ammunition Feeding Devices, at which point the Court set a number of conditions of release.

On July 22, 2019, Defendant was charged in case no. 854-7-19 Bncr with one count of Violation of Conditions of Release based on allegedly purchasing a gun in violation of condition 13. The court re-imposed conditions of release including a condition that he abide by all existing conditions of release.

On August 19, 2019, the defendant was charged under the same docket with an additional charge of violations of conditions of release based on his alleged contact with a witness in 173-2-19 Bncr, in violation of condition 14 which prohibited having contact with this witness. The court re-imposed conditions of release including a condition that he abide by all existing conditions of release.

Also on August 19, 2019, Defendant was charged in case 972-8-19 Bncr with Violation of Conditions of Release based on his traveling to New York in violation of condition 6 which prohibited travel out of county without prior permission. The court re-imposed conditions of release including a condition that he abide by all existing conditions of release.

On September 29, 2020, Defendant was charged in case no. 20-CR-01878 Bennington Unit with Disorderly Conduct related to allegations of conduct at a Black

Lives Matter event.

On September 29, 2020, Defendant was charged in case no. 20-CR-01882 Bennington Unit with Disorderly Conduct involving an incident that occurred on the side of the road.

On June 1, 2021, Defendant was charged in case no. 21-CR-04291 Bennington Unit with Violation of Conditions of Release based on his alleged contact with a witness in 173-2-19 Bncr, in violation of condition 14 which prohibited having contact with this witness.

On July 6, 2021, Defendant was charged in case no. 21-CR-05361 Bennington Unit with two felony counts of Aggravated Domestic Assault – 1st degree and a misdemeanor count of Domestic Assault.

It is the State's position that the various accumulating conditions of release have been simply insufficient to protect the public, and pursuant to 13 V.S.A. § 7554(a)(2)(B), confining Defendant to his home as an additional condition of release in the above captioned case (173-2-19 Bncr), is an amendment to conditions appropriate and sufficient to protect the public. Further, two additional conditions that Defendant not have contact with or harass or abuse Elizabeth Neary, should be added to amended conditions in the above-captioned matter in this effort to protect the public.

Defendant's continuing accumulation of new charges, including a felony charge involving alleged domestic violence, constitutes extraordinary circumstances that warrant the imposition of physically restrictive conditions of release, specifically a 24 hours/day, 7 days per week, confinement to his home in order to protect the public from a continuing pattern of behavior that existing conditions of release have failed to protect

against. See 13 V.S.A. 7554(a)2(D) Acknowledging that this action requested of the Court

is a decision to be made in extraordinary circumstances, founded upon adequate findings of fact so that when such a decision is reviewed a determination can be made whether the facts found support the imposition of such conditions. . . . Such conditions should hinder the defendant as little as practicable in gathering evidence, contacting witnesses or otherwise assisting in the preparation of his defense.

State v. Webb, 132 Vt. 418, 422 (1974).

The State believes that the defendant's series of new charges including those of violations of conditions of release constitute and lend themselves to adequate findings of fact that support the imposition of a condition of confinement to the home. The State requests that the Court find that defendant's continued and ongoing alleged criminal behavior seriously affects public safety and the conditions that have been heretofore imposed are insufficient to protect the public. Given these repeated violations, the only condition that can protect the public is a 24 hour, 7 days/week, curfew limiting his ability to continue to engage in flagrant, repeated and ongoing criminal behavior.

As the Court can see from the facts cited above, there is a clear pattern of alleged conduct that obviously jeopardizes public safety. The defendant has been charged with large capacity ammunition related offenses, and since then has allegedly, systematically violated his conditions of release, has been charged with two disorderly conduct offenses, and now has been charged with two felony domestic violence cases.

Therefore, the least restrictive approach in response to this behavior is to impose a physically restrictive condition of release that confines the defendant to his home 24 hours / day, 7 days per week.

WHEREFORE, the State of Vermont requests this court to Order three specific

additional conditions of release be imposed on Defendant pursuant to 13 V.S.A. § 7554(a)(2)(B) ordering that he be confined to his personal residence 24 hours/day, 7 days per week, that he must not have contact with Elizabeth Yeary, and that he must not abuse or harass Elizabeth year in any way, to protect the public.

Dated: July 8, 2021.

STATE OF VERMONT

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