Vermont Department of State's Attorneys

Vermont Criminal Law Month

June 2021

Vermont Supreme Court Slip Opinions: Full Court Rulings

Includes three-justice bail appeals

SENTENCE RECONSIDERATION MOTION CAN BE FILED 90 DAYS AFTER APPEAL IS DISMISSED

State v. Stearns, 2021 VT 48. MOTION FOR SENTENCE RECONSIDERATION: TIMELINESS.

Dismissal of motion for sentence reconsideration as untimely reversed. The defendant pleaded guilty to five counts of voyeurism and two counts of promoting a recording of sexual conduct. Following sentencing he filed a notice of appeal on February 20, 2020, but later moved to dismiss the appeal. That motion was granted on August 28, 2020. The defendant moved for sentence reconsideration ninety days later, on November 26, 2020. The trial court dismissed the motion because it was filed more than ninety days after the sentence was imposed. Although the motion could have been filed within 90 days after entry of any order or judgment of the Supreme Court upholding a judgment of conviction, the superior court held that the Court's order dismissing the appeal without affirming on the merits was not an order or judgment upholding a judgment of conviction. That ruling is reversed. The Court's entry order dismissing the first appeal and leaving in place the conviction was an order of the Supreme Court upholding a judgment of conviction, and the defendant accordingly had ninety days after the order was entered to move for sentence reconsideration. Doc. 2021-014, June 18, 2021. https://www.vermontjudiciary.org/sites/default/files/documents/op21-014.pdf

INMATE MUST GIVE DNA SAMPLE TO DOC DESPITE EARLIER SUBMISSION TO DIFFERENT AGENCY

State v. Bruyette, 2021 VT 43. DNA SAMPLE: PREVIOUS DNA SAMPLE SUBMISSIONS.

Order compelling defendant to provide a DNA sample for inclusion in the Vermont DNA database is affirmed. The defendant objected to having his DNA taken several

times, where on the earlier occasions it had been taken for inclusion into the DNA databases of the states where he was being housed while serving a Vermont sentence or, possibly, by DOC. 1) 20 V.S.A. Sec. 1933 provides that a DNA sample from an incarcerated person shall be collected or taken at the receiving correctional facility, or at a place and time designated by the Commissioner of Corrections or by a court, "if the person has not previously submitted a DNA sample." This statute contemplates that the DNA sample is to be taken by or at the behest of DOC, and not any other agency or jurisdiction, because of the person's status as an inmate committed to DOC custody. A person who has a DNA sample collected by another agency or jurisdiction is not exempt from this requirement if DOC has not previously collected a sample from that person. Thus the statute entitled DOC to collect the DNA sample of all incarcerated persons required to provide one and to collect one sample as a matter of course. (How many further samples may be taken where DOC has collected a DNA sample and failed to submit it to the Vermont DNA database for reasons not due to DOC's negligence, is not reached in this decision). 2) Here, the record contains insufficient evidence to conclude that the defendant's prior DNA samples were collected by or at the behest of DOC. Therefore the order that he provide a sample is affirmed. 2) This Court previously held that the scope of a sampling-compulsion hearing was limited to whether the defendant was convicted of a designated crime under Section 1933. But the statute was subsequently amended, in part adding the language at issue in this case concerning a previous submission of a sample. At such a hearing the court should consider whether a person is required to provide a DNA sample under any provision in Section 1933. The trial court's contrary ruling was harmless because it did consider and took evidence on the defendant's claim under Section 1933(b) that he had already given the one sample he was required to give. Doc. 2020-166, June 11, 2021. https://www.vermontjudiciary.org/sites/default/files/documents/op20-166.pdf

HOLD WITHOUT BAIL ORDER AFFIRMED AGAINST NUMEROUS CHALLENGES

State v. Blodgett, 2021 VT 47. HOLD WITHOUT BAIL: SUFFICIENCY OF THE EVIDENCE; EXERCISE OF DISCRETION; SPEEDY TRIAL.

Published three-justice bail appeal. Hold without bail order affirmed. The defendant is charged with sexual assault and was ordered held without bail pursuant to Section 7553. 1) The evidence of guilt here was great. The sexual encounter was initially consensual, but once the defendant became violent the victim began asking him to stop. The victim's statement that he tried to forcefully initiate anal sex was sufficient to conclude that there was, at minimum, an intrusion of some degree. Although the defendant did not recall the events, the evidence of his intent was nonetheless sufficient as it could be inferred from his actions. 2) The court did not abuse its discretion in declining to release the defendant even though the prerequisites for a hold without bail were met. The court here set forth numerous factors bearing on its decision not to exercise its discretion to grant the defendant release. Although the court could have been more explicit in connecting its findings to the 7554(b) factors, this Court has never required that the trial court recite each of those factors in the exercise of its broad discretion to release a defendant for whom no presumption in favor of release applies. 3) Although the defendant cannot be brought to trial within 90 days of his arraignment, pursuant to the timeline set forth in Administrative Order 5, that order is part of

the internal operating procedures of the trial courts; it neither binds the courts to its timeframes nor provides defendant with independent procedural or substantive rights. To the extent the defendant cites his right to a speedy trial, a request for release on bail is not an appropriate procedural vehicle for such a challenge. The only possible remedy for such a violation is dismissal of the charge. Doc. 2021-113, June 11, 2021. https://www.vermontjudiciary.org/sites/default/files/documents/eo21-113.pdf

Vermont Supreme Court Slip Opinions: Single Justice Bail Appeals

REVOCATION OF BAIL FOR INTIMIDATION OF WITNESS AFFIRMED

State v. Davis, Doc. 2021-123. BAIL REVOCATION: INTIMIDATION OF WITNESS; CONSIDERATION OF LESS RESTRICTIVE CONDITIONS. HOLD WITHOUT BAIL: DUE PROCESS CHALLENGE.

Single justice bail appeal. Revocation of bail affirmed. 1) The record supports the trial court's conclusion that revocation of bail was warranted under Section 7575(1), permitting revocation where the accused has intimidated or harassed a victim or potential witness in violation of a condition of release. 2) There was no violation of due process in this ruling. The three factors set out in US v. Briggs, 697 F.3d 98 (2d Cir. 2012), support a finding of no due process violation. The evidence supporting revocation was strong – the defendant was released on conditions requiring him to follow a 24/7 curfew and prohibiting him from contacting the complainant, coming within three hundred feet of her or her residence, and abusing or harassing her. The evidence showed that the defendant had continually violated these conditions; his violations began only eight days after he was released; he repeatedly assaulted the complainant, burglarized her, and threatened her life. The complainant credibly testified that she was afraid of the defendant and intimidated by him; the trial court witnessed her inability to testify when she could see and hear him. Second, the delay caused by the suspension of jury trials is attributable to the government, but given the public health emergency posed by the pandemic, the delay was neither intentional nor unwarranted, and was imposed to protect the health and safety of all, including the defendant, and therefore weighed against finding a due process violation. Additionally, the Bennington criminal division has recently been authorized to re-commence jury trials. Finally, the detention to date of eight months is not a long delay for complex felony cases. 3) Where revocation is justified under Section 7575, the court need not consider less restrictive conditions under Section 7554. Doc. 2021-123, Reiber, J. https://www.vermontjudiciary.org/sites/default/files/documents/eo21-123.pdf

WEIGHT OF EVIDENCE HEARING IN HOLD WITHOUT BAIL CASE WAS NOT TIMELY SCHEDULED

State v. Wade, single justice bail appeal. HOLD WITHOUT BAIL: TIMING OF

WEIGHT OF EVIDENCE HEARING.

The defendant was charged with aggravated domestic assault and domestic assault. The State moved to hold the defendant without bail pursuant to Section 7553a, and the trial court ordered that the defendant be held without bail pending further proceedings, and set a weight of the evidence hearing for July 15, 2021, seven and a half weeks later. 1) The State may hold a defendant without bail temporarily pending a weight of the evidence hearing if the court first finds probable cause to believe that a qualifying offense was committed and that the defendant committed. But such a hearing must be scheduled as soon as reasonably possible to protect the defendant's right to bail. A six-day pre-hearing delay has been held to be a reasonable amount of time. But a seven and a half week pre-hearing hold does not meet the constitutional imperative. The trial court is ordered to schedule a weight of the evidence hearing forthwith. 2) Insofar as the defendant appeals the merits of the court's decision to hold him without bail, that appeal is dismissed as premature. The trial court has not yet held the weight of the evidence hearing or made the requisite findings to hold the defendant pursuant to Section 7553a. Doc. 2021-115, June 1, 2021, Robinson, J.
https://www.vermontjudiciary.org/sites/default/files/documents/eo21-115.pdf

U.S. Supreme Court Case of Interest

PURSUIT OF FLEEING MISDEMEANOR SUSPECT DOES NOT ALWAYS JUSTIFY WARRANTLESS ENTRY INTO A HOME.

Lange v. California, 594 U.S. --- (1921): Under the Fourth Amendment, pursuit of a fleeing misdemeanor suspect does not always—that is, categorically—justify a warrantless entry into a home. The Court's Fourth Amendment precedents counsel in favor of a case-by-case assessment of exigency when deciding whether a suspected misdemeanant's flight justifies a warrantless home entry. The Fourth Amendment ordinarily requires that a law enforcement officer obtain a judicial warrant before entering a home without permission. Riley v. California, 573 U. S. 373, 382. But an officer may make a warrantless entry when "the exigencies of the situation," considered in a case-specific way, create "a compelling need for official action and no time to secure a warrant." Kentucky v. King, 563 U. S. 452, 460; Missouri v. McNeely, 569 U. S. 141, 149. The Court has found that such exigencies may exist when an officer must act to prevent imminent injury, the destruction of evidence, or a suspect's escape. When the totality of circumstances shows an emergency—a need to act before it is possible to get a warrant—the police may act without waiting. Those circumstances include the flight itself. But pursuit of a misdemeanant does not trigger a categorical rule allowing a warrantless home entry.

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