

COMMONWEALTH V. CARL LEONARD VARNER, C.P.,
Fulton County Branch, Criminal Action No. 57 of 1992.

Action for Collateral Relief - seeking setting of bail following the granting of a new trial pursuant to the Post Conviction Hearing Act - Bail denied.

1. Title 42 Pa.C.S.A. Section 9550(a) which provides for the granting of bail pursuant to the Post Conviction Hearing Act applies where the action for collateral relief was instituted prior to the enactment of the Post Conviction Relief Act.
2. As the defendant was granted a new trial following his post conviction hearing, a court is compelled to consider granting defendant bail pursuant to the pre-verdict standards for setting bail of 42 Pa.R.Crim.P. 4004.
3. A defendant who placed a blanket over an elderly woman's head and severely beat her in the course of a robbery; whose job experience is sparse, whose over-all work history is sporadic, and who has a history of absenteeism; whose immediate family resides out of state; who has an alcohol problem; and who has a history of escape in both the far and near past is a high risk for fleeing the jurisdiction and therefore a high bail risk.

Dwight C. Harvey, Esquire, Specially Appointed Ass. D.A.
David C. Wertime, Esquire, Attorney for Defendant

OPINION & ORDER

WALKER, P.J., April 26, 1995

FINDINGS OF FACT

The defendant, Carl Leonard Varner, was sentenced on June 21, 1983 by the Honorable John W. Keller on three separate counts:

- 1) Fulton County Criminal Action No. 57 of 1982, Count 3, Robbery - 10 years to 20 years computed from August 6, 1982;
- 2) Fulton County Criminal Action No. 57 of 1982, Count 1, Burglary - 1-1/2 years to 20 years to be served consecutively from Criminal Action No. 57 of 1982, Count 3; and
- 3) Franklin County Criminal Action No. 148 of 1983, Escape - 3-1/2 years to 7 years to be served at the expiration of Fulton County Criminal Action No. 57 of 1982, Count 1.

Defendant was granted a new trial on February 2, 1994 on Fulton County Criminal Action No. 57 of 1982 by the Honorable John W. Keller pursuant to a Post Conviction Hearing Act motion filed by the defendant. The Commonwealth appealed to the Superior Court on

the granting of a new trial on February 28, 1994. Defendant also appealed the order of February 2, 1994. These appeals are pending at the present time. No bail has been set currently and defendant continues to remain incarcerated. Defendant has requested that bail be set pending the appeals. As a result of defendant's request, a bail hearing was held on January 17, 1995. The matter is now ripe for disposition.

DISCUSSION

This action for collateral relief was instituted on October 27, 1986. Therefore, 42 Pa.C.S.A. Section 9550(a) which provides for the granting of bail pursuant to the Post Conviction Hearing Act applies. Title 42 Pa.C.S.A. Section 9550(a) provides: "If the court finds in favor of the petitioner, it shall order appropriate relief and issue supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence or other matters that are necessary and proper."

The court has researched the issue presented in this case and cannot find a case which is factually on point. In *Commonwealth v. Bonaparte*, 366 Pa.Super. 182, 530 A.2d 1351 (1987), the defendant requested bail pending his post conviction hearing. Our case is significantly different however, as defendant's post conviction hearing was held and defendant was granted a new trial although appeals are pending as a result of that disposition. As defendant was granted a new trial following his post conviction hearing, this court feels compelled to consider granting defendant bail pursuant to pre-verdict standards for setting bail.

In setting pre-verdict bail, bail shall be such as to insure the presence of the defendant as required by the bond and shall be determined according to the following standards:

- (i) the nature of the offense charged and any mitigating or aggravating factor that may bear upon the likelihood of conviction and possible penalty;
- (ii) the defendant's employment status and history and his financial condition;
- (iii) the nature of his family relationships;

- (iv) his past and present residences;
- (v) his age, character, reputation, mental condition, record of relevant convictions, and whether addicted to alcohol or drugs;
- (vi) if he has previously been released on bail, whether he appeared as required; and
- (vii) any other facts relevant to whether the defendant has strong ties with the community or is likely to flee the jurisdiction.

42 Pa.R.Crim.P. 4004.

Defendant was charged with robbery. During that robbery, defendant threw a blanket over the victim's head and the victim, an elderly woman, was severely beaten.

Defendant has not been approved for parole indicating that defendant has failed to submit a home and work plan that has been appropriate. Although there is some indication that defendant could possibly acquire a job as a nurse's aide as defendant claims to have experience in that field, that experience is very sparse. Secondly, defendant's overall work history has proven to be sporadic; there is also evidence that defendant was dismissed from one particular job partly due to absenteeism.

Although defendant and his wife claim that they have changed their outlook on life, it does not change the fact that defendant has had a history of alcohol abuse. In fact, defendant's outside visitation privileges were revoked when he became intoxicated while in prison during one of the visitations.

Although defendant's wife continues to live in Pennsylvania, there are no other members of defendant's immediate family who live here. Defendant's blood relatives live in Michigan and Florida.

The area of most concern to the court however is defendant's history of escape. In 1975 while in Florida, defendant escaped from a juvenile facility. Defendant was then found guilty of escape in 1979 in Franklin County. Most recently however, defendant attempted to escape the Franklin County Prison in 1983 while being imprisoned on the very charge for which he is now asking to be released on bail.

CONCLUSION

Regardless of which standard the court chose to employ in determining whether defendant is entitled to bail, the result would have been the same. This court is very skeptical that defendant will return to the jurisdiction of this court for a new trial. The court is very concerned that a man who has been imprisoned for over ten years and who has a history of escape will choose to enjoy his freedom rather than risk the chance that his prior conviction will be upheld. For the above enumerated reasons, this court is denying defendant's request for bail to be set.

ORDER OF COURT

April 26, 1995, defendant's request for bail to be set is denied.