

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-949

COMMONWEALTH

vs.

SHAWN GLANDEN.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant, Shawn Glanden, appeals from an order of a single justice denying his petition pursuant to G. L. c. 211, § 3, and Committee for Pub. Counsel Servs. v. Chief Justice of the Trial Court (No. 1), 484 Mass. 431, 449 (2020) (CPCS v. Trial Court).<sup>1</sup> In the context of the denial of a petition to a single justice for review of a bail order, our "review of the judgment of the single justice is 'limited to correcting errors of law and abuse of discretion.'" Barbosa v. Commonwealth, 475 Mass. 1009, 1009 (2016), quoting Leo v. Commonwealth, 442 Mass.

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<sup>1</sup> The petition was originally filed with the Supreme Judicial Court for Suffolk County. A single justice of the Supreme Judicial Court transferred the matter to this court in accordance with that court's Standing Order Regarding Transfer of Certain Single Justice Matters During the COVID-19 Pandemic (eff. June 8, 2020). See Rule 1.0 of the Rules of the Appeals Court, as appearing in 97 Mass. App. Ct. 1001 (2020) (formerly known as rule 2:01, as amended, 3 Mass. App. Ct. 805 [1975]).

1025, 1026 (2004). Accord Commeso v. Commonwealth, 369 Mass. 368, 374 (1975). Concluding that the single justice here committed neither an error of law nor an abuse of discretion, we affirm.

The defendant is charged with larceny of a motor vehicle, subsequent offense, G. L. c. 266, § 28 (a), as an habitual offender, G. L. c. 279, § 25; negligent operation of a motor vehicle, G. L. c. 90, § 24 (2) (a); leaving the scene of an accident causing property damage, G. L. c. 90, § 24 (2) (a); operating a motor vehicle after a suspension, subsequent offense, G. L. c. 90, § 23; refusing to stop for a police officer, G. L. c. 90, § 25; and malicious damage to a motor vehicle, G. L. c. 266, § 28 (a). As such, the defendant "is entitled to a rebuttable presumption of release." CPCS v. Trial Court, 484 Mass. at 435 (individual not held without bail and not charged with excluded offense entitled to rebuttable presumption of release). To overcome the presumption, the Commonwealth must establish, "by a preponderance of the evidence, that release would result in an unreasonable danger to the community or that the individual presents a very high risk of flight." Id. at 447. This must be determined by considering:

"the totality of the circumstances, including (1) the risk of the individual's exposure to COVID-19 in custody; (2) whether the defendant, although not held in

preventative detention pursuant to G. L. c. 276, § 58A, nonetheless would pose a safety risk to the victim and the victim's family members, witnesses, the community, or him- or herself if released; (3) whether the defendant is particularly vulnerable to COVID-19 due to a preexisting medical condition or advanced age; (4) for a defendant who is accused of violating a condition of probation, whether the alleged violation is a new criminal offense or a technical violation; and (5) the defendant's release plan."

Id. at 448.

Here, on July 7, 2020, a Superior Court judge denied the defendant's renewed motion for reduction of bail, adopting her prior findings and also noting "low evidence of COVID 19 risk at the facility" and that the defendant "is a clear flight risk." On July 15, 2020, the same judge denied the defendant's motion to reconsider, stating that she had reviewed the defendant's medical records and again adopting her prior rulings. The prior findings acknowledge that the defendant is entitled to a rebuttable presumption of release but note that the defendant has a history of defaults and escape<sup>2</sup> and is facing fifteen years of imprisonment as a habitual offender if convicted. See G. L. c. 266, § 28 (a); G. L. c. 279, § 25.

In light of the defendant's history of defaults and escape and the high sentence faced by the defendant on conviction, a single justice could reasonably conclude that the Superior Court judge had properly found that the Commonwealth had shown the

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<sup>2</sup> The defendant has a prior conviction of escape.

requisite "very high risk of flight" to rebut the presumption of release under CPCS v. Trial Court, 484 Mass. at 447. In his petition, the defendant provided no explanation why his risk of flight is not very high, but merely argued that the Superior Court judge's statement of a "clear risk of flight" was unacceptably different than a "very high risk of flight." In light of the substantial evidence supporting the conclusion that the defendant poses a very high risk of flight, we can discern no error of law or abuse of discretion in the single justice's determination that, notwithstanding the terms used in the Superior Court judge's order, the order "does not constitute an error of law or abuse of discretion."

Order of single justice  
denying motion for bail  
reduction affirmed.

By the Court (Sullivan,  
Blake & Ditkoff, JJ.<sup>3</sup>),

  
Clerk

Entered: September 4, 2020.

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<sup>3</sup> The panelists are listed in order of seniority.