

# Court of Appeals, State of Michigan

## ORDER

People of MI v Kwame Kilpatrick

Docket No. 287099

LC No. 08-010496

Brian K. Zahra  
Presiding Judge

Michael J. Talbot

Kurtis T. Wilder  
Judges

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The Court orders that the motion to review the release decision is NO LONGER HELD IN ABEYANCE.

The Court further orders that the motion to review the release decision is DENIED.

The trial court had authority under the applicable court rule to act on its own initiative and conduct a de novo review of the terms of defendant's bond. MCR 6.106(H)(2)(b). This Court reviews the trial court's action for an abuse of discretion. MCR 6.106(H)(1). An abuse of discretion may not be found merely because a reviewing court would have exercised its discretion differently. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). The abuse of discretion standard acknowledges that there are circumstances in which there is more than one correct outcome. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). An abuse of discretion may only be found where a result falls outside the range of principled outcomes. *Id.* Here, the trial court stated its reasons for modifying the terms of the bond to allow defendant to travel to the Democratic National Convention. The trial court expressly found that defendant was not a flight risk. See, e.g., *In re Forfeiture of Bail Bond*, 209 Mich App 540, 544; 531 NW2d 806 (“[i]t is well settled that the purpose of a bond is to assure the appearance of a defendant”). On this record we do not find an abuse of discretion.

We disagree with our dissenting colleague's conclusion that the trial court abused its discretion because it “failed to consider the fact that while on bond defendant allegedly committed an assaultive, thus violent, crime.” MCR 6.106(F)(1) sets forth a number of factors for the court to consider in determining release conditions, “including,” but not limited to “facts bearing on the risk of nonappearance or danger to the public,” MCR 6.106(F)(1)(i) (emphasis added). Significantly, MCR

6.106(F)(2) states “the court need not make a *finding* on each of the enumerated factors.” (Emphasis added). Where the court rule frees the trial court from making express findings, the failure to make such findings cannot constitute an abuse of discretion. To the contrary, the reference of some but not all relevant factors applicable in conducting its de novo modification of the prior release decision is evidence of the exercise of discretion; not an abuse of discretion.

Talbot, J., would vacate the August 14, 2008 release decision on the ground that the trial court abused its discretion. In this case, although the trial court had the authority to, on its own initiative, modify the prior release decision, the fact remains that the court was required to consider relevant information, including, “any other facts bearing on the risk of nonappearance or *danger to the public*.” See MCR 6.106(F)(1)(i) (emphasis added); MCR 6.106(H)(2)(b). Here, the trial court focused on the risk of defendant’s nonappearance, but failed to consider the fact that while on bond defendant allegedly committed an assaultive, thus violent, crime. In my opinion, a review of the record establishes that the trial court failed to actually exercise any discretion in reaching a predetermined, desired, result. The failure to exercise discretion when required to do so constitutes an abuse of discretion. *People v Stafford*, 434 Mich 125, 134 n 4; 450 NW2d 559 (1990).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

**AUG 19 2008**

Date

*Sandra Schultz Mengel*

Chief Clerk