

DOCKET NO. CV23-5001592-S

STATE OF CONNECTICUT - SUPERIOR COURT  
: SUPERIOR COURT  
: G.A. 19

MICHAEL YOUNG

2024 MAY -8 P 3: 07 JUDICIAL DISTRICT  
: OF TOLLAND

V.

COMMISSIONER OF CORRECTION

MAY 8, 2024

**ORDER ON MOTION FOR SUMMARY JUDGMENT AND EMERGENCY  
MOTION FOR EXTRAORDINARY ORDER OF RELEASE**

Michael Young, the petitioner, filed a motion for an extraordinary order of release and, in the alternative, summary judgment. The court heard argument on his motion on April 26, 2024. The respondent did not file a written objection but opposed the motion during the hearing.

Young filed the pro se petition in this matter on October 5, 2023, raising the singular claim that his sentence enhancement is illegal. The court previously addressed this issue in the context of an identical motion filed by Young in docket number CV21-5000898-S, denying it on August 8, 2023. Young has raised the same motion in this docket number asking for “release pending finality” or, in the alternative, summary judgment in his favor.

Pursuant to Connecticut Practice Book § 23-37, “[a]t any time after the pleadings are closed, any party may move for summary judgment, which shall be rendered if the pleadings, affidavits and any other evidence submitted show that there is no genuine issue of material fact between the parties requiring a trial and the moving party is entitled to judgment as a matter of law.”

The habeas court’s ability to set bail while the petition for writ of habeas corpus has not yet been adjudicated is to be exercised with “great caution,” only when “special circumstances” require it and “rarely” when the “crime is serious.” “The standard for bail pending habeas litigation is a difficult one to meet.” Grune v. Coughlin, 913 F.2d 41, 44 (2d Cir. 1990). A petitioner must demonstrate two things: first, that “the habeas petition raise[s] substantial claims” and second, “that extraordinary circumstances exist[] that make the grant of bail necessary to make the habeas remedy

effective.” Id. Thus, bail pending adjudication of a habeas corpus petition may be granted “only when the petitioner has raised substantial constitutional claims upon which he has a high probability of success, and also when extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.” Calley v. Callaway, supra, 496 F.2d 702; Mapp v. Reno, supra, 241 F.3d 226.<sup>1</sup> See also Aronson v. May, 85 S. Ct. 3, 13 L. Ed. 2d 6 (1964) (*Douglas, J.* on application for bail) (special reason for granting bail requires showing that “the pending appeal presents substantial questions” and also that “there is some circumstance making this application exceptional and deserving of special treatment in the interests of justice.”); Benson v. State of California, 328 F.2d 159, 162 (9th Cir. 1964) (“It would not be appropriate for us at this stage of the proceeding to enlarge this petitioner on bail even if we found that the allegations of his petition for habeas corpus made out a clear case for his release. Something more than that is required before we would be justified in granting bail.”).

The court concludes that based on the record before it, Young has not demonstrated a “substantial constitutional claims upon which he has a high probability of success.” His claim is as follows: Young was arrested on January 10, 2011, for unrelated matters. He posted bond the next day and was at liberty. On May 10, 2011, he was arrested for several other offenses, including, relevant to this motion, assault on a public safety officer in count three and creating a public disturbance in count four. He posted bond again and was at liberty until July 3, 2012. In the meantime, on May 13, 2013, the state filed a substitute information in that second case, now charging him with assault on a public safety officer in both counts three and four. He was no longer

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<sup>1</sup> Some courts separate the Mapp test into three factors: “(1) whether substantial claims are set forth in the habeas corpus petition; (2) whether the petitioner has demonstrated a likelihood of success on the merits of his or her petition; and (3) whether there are extraordinary circumstances attending the petitioner's situation which would require release on bail in order to make the writ of habeas corpus effective.” (Citation omitted.) Hassoun v. Searls, No. 1:19-CV-00370 EAW, 2020 WL 1819670, at \*6 (W.D.N.Y. Apr. 10, 2020).

charged with creating a public disturbance. On that same day, the state filed a part B information, seeking a sentence enhancement pursuant to General Statutes § 53a-40b for committing an offense while on pretrial release. On August 3, 2013, Young entered not guilty pleas to all charges and was advised of the Part B information alleging the sentence enhancement. On August 30, 2013, the jury found him not guilty of counts one, three, five, six and seven but convicted him of counts two and four. He ultimately was sentenced to one year for count two and his sentence for count four was five years. On September 3, 2013, the part B matter was tried to the jury and the jury also found him guilty of the sentence enhancement. Both sentences were enhanced pursuant to § 53a-40b. Count two was enhanced by one year to be served consecutively and count four was enhanced by five years to be served consecutively. Thus, his total effective sentence was twelve years. He appealed his convictions and our Appellate Court affirmed. State v. Young, 161 Conn. App. 552, 129 A.3d 127 (2015).

Young claims that because, at the time of his arrest, he was not charged in count four with assault on a public safety officer and that charge was added only shortly before trial, his sentence cannot be enhanced based on that conviction. This claim has no basis in the law. As this court previously found, the substitute long form information filed on May 13, 2013 and again filed on August 30, 2013, charged Young in count four with committing assault on a public safety officer “on or about the 10<sup>th</sup> day of May, 2011, at approximately 9:00 p.m....” On that date - May 10, 2011, Young was out on bond for another prior criminal case. General Statutes § 53a-40b provides that “[a] person convicted of an offense committed while released pursuant to sections 54-63a to 54-63g, inclusive, or sections 54-64a to 54-64c, inclusive, other than a violation of section 53a-222 or 53a-222a, may be sentenced, in addition to the sentence prescribed for the offense to (1) a term of imprisonment of not more than ten years if the offense is a felony, or (2) a term of imprisonment of not more than one year if the offense is a misdemeanor.”

Young's sentence was enhanced for an act committed on May 10, 2011, which occurred while he was on pretrial release for another offense. He was ultimately convicted of two offenses stemming from those acts.

Thus, Young cannot prove "substantial constitutional claims upon which he has a high probability of success." The motion for summary judgment is also denied as Young has not proven that he is entitled to relief as a matter of law. Therefore, the motion is denied.

  
Bhatt, J.

Copies sent to:

Michael Young - by mail

Attorney Angela Macechiarulo - by JMW  
OCPD-LSU

Judge Bhatt

by: Kathryn Stauspole, First Asst. Clerk

5/8/2024