

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORENTHAL JAMES SIMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53080

FILED

SEP 04 2009

TRACIE LINDEMAN
CLERK OF SUPREME COURT
BY *B. Casillo*
CHIEF DEPUTY CLERK

ORDER DENYING MOTION FOR BAIL PENDING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit a crime, conspiracy to commit kidnapping, conspiracy to commit robbery, burglary while in possession of a deadly weapon, two counts of first-degree kidnapping with the use of a deadly weapon, two counts of robbery with the use of a deadly weapon, and two counts of assault with a deadly weapon. The district court sentenced appellant to 12 months in prison for conspiracy to commit a crime, 12 to 48 months in prison for conspiracy to commit kidnapping, 12 to 48 months in prison for conspiracy to commit robbery, 26 to 120 months in prison for burglary while in possession of a deadly weapon, 5 to 15 years in prison plus a consecutive term of 12 to 72 months for the deadly weapon enhancement for each count of first-degree kidnapping with the use of a deadly weapon, 60 to 180 months in prison plus a consecutive term of 12 to 72 months for the deadly weapon enhancement for each count of robbery with the use of a deadly weapon, and 18 to 72 months in prison for each

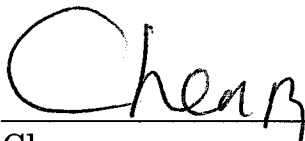
count of assault with a deadly weapon. Appellant has filed a motion for bail pending appeal. The State opposes the motion.


Under Nevada law, this court has authority to allow bail pending appeal. NRS 178.488. In deciding whether to allow bail pending appeal, this court is guided by two factors: whether the appeal is frivolous or taken for delay and whether the defendant's release may pose a risk of flight or danger to the community. Bergna v. State, 120 Nev. 869, 877, 102 P.3d 549, 554 (2004); see also NRS 178.488(1) ("Bail may be allowed pending appeal . . . unless it appears that the appeal is frivolous or taken for delay."). In evaluating these factors, there are several relevant considerations, including the nature and quality of the evidence adduced at trial, the circumstances of the offense, and the defendant's prior criminal record, attempted escapes from confinement, community associations, and employment status. Bergna, 120 Nev. at 877, 102 P.3d at 554. Ultimately, a defendant "who has been convicted of a violent, serious offense and who faces a substantial term of imprisonment will shoulder a heavy burden" to demonstrate that both factors weigh in favor of allowing bail pending appeal. Id.

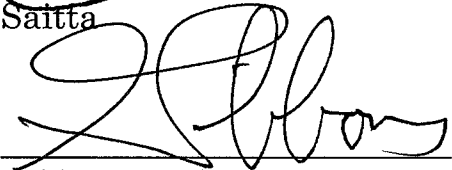
Here, appellant was convicted of serious, nonprobationable, violent offenses, committed with the use of a firearm. And, in denying bail pending appeal, the district court specifically found that appellant faced mandatory sentences and posed a flight risk. Having considered the applicable factors defined in Bergna and the parties' arguments as to each

factor, we are not convinced that appellant has met his burden. Accordingly, we deny the motion for bail pending appeal.

It is so ORDERED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Malcolm LaVergne
The Law Offices of Yale L. Galanter, P.A.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk