

SUFFOLK, ss.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-98-0349

COMMONWEALTH vs. TICE

MEMORANDUM

This matter came before me for hearing on July 7, 1998, on the defendant's petition pursuant to G. L. c. 211, § 3, to review revocation of his bail. We are authorized under our general superintendence power to review bail revocations. Comnesso v. Commonwealth, 369 Mass. 368, 372 (1975).

On June 2, 1998, a judge in the Dorchester District Court revoked the defendant's bail. The defendant was charged with several offenses relating to the operation of a motor vehicle, allegedly committed while admitted to bail and released on personal recognizance for previous charges of motor vehicle violations. The judge found, pursuant to G. L. c. 276, § 58, par. 3, that there was probable cause to believe the defendant had committed crimes during his release on the previous charges. He further determined, in the exercise of his discretion under G. L. c. 276, § 58, par. 3, that "this defendant's driving behavior over the past twelve months is out of control[,] that his release had already endangered a nine year old girl[,] . . . that his release will seriously endanger the community and that his detention is necessary to reasonably assure the safety of the community."

The judge also found that neither the docket on the previous

charges nor any paperwork showed that the defendant had been given a "bail warning." The second sentence of G. L. c. 276, § 58, par. 3, provides that "[t]he court shall provide as an explicit condition of release for any person admitted to bail pursuant to this section . . . that should said person be charged with a crime during the period of his release, his bail may be revoked in accordance with this paragraph and the court shall enter in writing on the court docket that the person was so informed and the docket shall constitute prima facie evidence that the person was so informed." The defendant argues that judge erred in revoking the defendant's bail because no evidence was presented that the defendant had received a bail warning. The defendant urges that we construe G. L. c. 276, § 58, to require a predicate finding that a defendant had received a bail warning before a judge may revoke bail. I decline to do so.

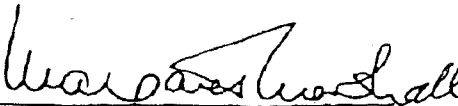
The intent of G. L. c. 276, § 58, is to establish a presumption of releasing defendants on personal recognizance without surety and delineating the circumstances under which bail may be denied. Delaney v. Commonwealth, 415 Mass. 490, 495 (1993). The first two sentences of G. L. c. 276, § 58, par. 3, including the sentence quoted above, speak to the district judge's responsibility to consider releasing a defendant on bail, if a clerk, assistant clerk, bail commissioner or master in chancery has not done so. Beginning with the third sentence, paragraph three spells out factors that the judge is to consider in determining whether to revoke bail in the event that there is

probable cause that a defendant has committed an offense while on release. The notice required in the second sentence when a defendant is first released on bail is not listed among the numerous factors to guide the judge's discretion in whether to revoke the defendant's bail. In Delaney v. Commonwealth, supra at 493-494, we noted that the statute distinguishes between requirements for admitting a defendant to bail and requirements for revoking bail. While formal charges must have been filed in order to admit a defendant to bail, formal charges against a defendant for a crime committed while on release need not have been filed prior to revoking a defendant's bail on that basis. Id. Similarly, a careful reading of the statute suggests that the warning is a requirement only when a judge or other official admits a defendant to bail, not when bail is revoked.

The district court judge in this case referred to two statutes with analogous notice provisions to the warning provision in G. L. c. 276, § 58, at issue here. G. L. c. 278, § 29D, requires that a court warn an alien of potential immigration consequences from a guilty plea. That statute further provides that if the court fails to so warn or record the fact that a warning was given, the court shall vacate the judgment and permit the defendant to withdraw the plea. In contrast, G. L. c. 276, § 58, is silent as to any remedy for the failure of a court to give the defendant the statutory warning. I am not inclined to read into a statute a penalty for a court's failure to provide a defendant a warning, when the Legislature

could so provide and, indeed, has so provided in a different statutory context. The district judge also looked to G. L. c. 90, § 240, for an analogous statutory requirement to the warning required in G. L. c. 276, § 58. G. L. c. 90, § 240, requires that on conviction of offenses in that chapter the defendant receive a written statement of statutory provisions that apply to further violations of the chapter. We have held that failure to provide the § 240 warning does not bar application of the enhancement provisions for repeated violations of G. L. c. 90, nor add an element or create a defense for such crimes. See Commonwealth v. Dowling, 414 Mass. 212, 216-217 (1993). The apparent purposes of the bail revocation provisions in G. L. c. 276, § 58, and the offense enhancement provisions in G. L. c. 90 are to safeguard the community from the dangerousness evidenced by repeated criminal conduct. The warnings provided in both statutes serve the deterrent purposes of the statutes. In contrast, the right to notice of immigration consequences and the express remedy for failure to provide such notice in G. L. c. 278, § 29D, bespeak a different legislative concern -- with the defendant's rights in that statute.

For these reasons, I deny the defendant's petition. The judgment of the district court judge revoking the defendant's bail is affirmed.


Margaret H. Marshall,
Associate Justice

Entered: July 7, 1998