

Affirmed as Reformed and Opinion filed May 24, 2001.



In The

Fourteenth Court of Appeals

NO. 14-01-00401-CR

JOHN HENRY GILLEY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 866,362**

O P I N I O N

John Henry Gilley appeals from the trial court's dismissal of his pretrial application for writ of habeas corpus. We reform the judgment to reflect that the trial court granted the application and set bond in the amount of \$100,000 in each of appellant's two trial court causes. As so reformed, we affirm.

The decision to set bail is one within the trial court's discretion. *Maldonado v. State*, 999 S.W.2d 91, 93 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). In this case, appellant was charged with the two offenses of aggravated robbery and murder. Upon the filing of the application in this case, a hearing was held on February 14, 2001, with appellant present. The

record does not indicate that appellant requested the hearing be recorded. Absent a reporter's record, there is no evidence in the record regarding the trial court's decision. Therefore, we are unable to determine whether the trial court abused its discretion. *Gonzalez v. State*, 996 S.W.2d 350, 352 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

Although we are unable to determine whether the trial court abused its discretion in the amount of bond set, we are able to determine that the trial court's judgment dismissing the application as moot was improper. The record indicates that on the same date the trial court signed a judgment dismissing as moot appellant's application for writ of habeas corpus, the trial court set bond in each of trial court cause numbers 849,499 and 850,326 at \$100,000. Thus, the trial court should not have dismissed the application as moot, but should instead have granted the application because appellant received the relief he requested in the application, the setting of pretrial bond.

We reform the trial court's judgment to reflect that appellant's application for pretrial bond was granted and bond was set in trial court cause number 849,499 at \$100,000, and in trial court cause number 850,326 at \$100,000. As so reformed, we affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed May 24, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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