



FILED

APRIL 7, 2015
Court of Appeals
Division III
State of Washington

No. 330753

WASHINGTON STATE COURT OF APPEALS
DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

BENITO C. SEDANO,

Petitioner.

PETITIONER'S OPENING BRIEF

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TABLE OF CONTENTS

	<u>PAGE</u>
1. Introduction.	1
2. Assignment of Error.	1
3. Issue Presented for Review.	2
4. Statement of the Case.	2
5. Argument.	5
5.1 Washington recognizes a fundamental right to bail.	5
5.2 No basis in law exists to refuse a valid property bond.	6
6. Conclusion.	10

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
<u>City of Yakima v. Mollett</u> , 115 Wn.App. 604, 63 P.3d 177 (2003)	6,7,8
<u>State v. Barton</u> , 181 Wn.2d 148, 331 P.3d 50 (2014)	7,8,9
<u>State v. Kramer</u> , 167 Wn.2d 548, 219 P.3d 700 (2009)	5
<u>State ex rel. Jones v. Hendon</u> , 66 Ohio St.3d 115, 609 N.E.2d 541 (1993)	6
<u>State ex. rel Wallen v. Judges Noe, Towne, Johnson</u> , 78 Wn.2d 484, 475 P.2d 787 (1970)	5
<u>U.S. v. Kodelja</u> , 629 F.2d 1330 (9th Cir. 1980)	8
<u>Westerman v. Cary</u> , 125 Wn.2d 277, 892 P.2d 1067 (1995)	5
 <u>STATUTES AND RULES</u>	
CrR 3.2(b)	passim
CrR 3.2(d)	2
12 <u>Wash. Prac. Crim. Prac. & Proc.</u> §415 (3d ed.)	8
 <u>OTHER</u>	
Wash. Const. Art. I §20	5,7

1. Introduction.

The Commissioner accepted discretionary review of this matter on an expedited basis because the trial court committed probable error when it refused to accept a property bond proffered from Mr. Sedano to comply with the Court's order increasing bail from \$250,000 to \$100,000,000 bail in "cash or bond." Mr. Sedano attempted to post \$300,000 in cash and quit claims to unencumbered real property located in Chelan County assessed at over \$700,000, but the Court rejected the proposed bond. The Washington State Supreme Court has recognized as fundamental an incarcerated defendant's constitutional right to bail, which was denied here based on an incorrect interpretation of law to require a third-party surety. Mr. Sedano has since been released by use of such a surety (at a cost of over \$80,000), but this Court should order that Mr. Sedano has the right to now replace that surety with the originally proffered cash and real property bond.

2. Assignment of Error.

Did the trial court err by rejecting a combination of unencumbered real property and cash as an appropriate "bond" for bail, and requiring instead a third-party surety?

3. Issue Presented for Review.

Can a court deny a criminal defendant the right to bail and release from incarceration when the defendant has posted an adequate cash and real property bond in the amount set by the court?

4. Statement of the Case.

The defendant was arrested on December 9, 2014. At the preliminary hearing, bail was set at \$250,000; however there were no conditions of release set at that time, in violation of CrR 3.2(d), and no requirements for how the amount was to be posted. (Order Setting Bail, CP 1; Criminal Minute Entries from December 9, 2014, CP 25) On December 17, 2014, the family of the defendant posted the \$250,000 bail by delivering cash to the Court via electronic wire transfer. However, the defendant was not immediately released and another hearing was held on the same day, ostensibly to set conditions of release. At that hearing, the prosecutor orally moved over objection to increase bail, in addition to proposing conditions of release, which were agreed to by the defendant. The Court granted the prosecutor's motion, bail was quadrupled to \$1,000,000, and conditions of release were imposed. (Order Setting Bail, CP 11; Minute Entry, CP 26) One area of the Court's "concerns" regarding bail for Mr. Sedano was "about the safety of the witnesses if Mr. Sedano were to be released," although there was nothing in the record indicating

any basis to believe such threats existed and no such finding was made at defendant's preliminary appearance in which the lead Detective (Joshua Mathena) testified. (Hearing dated December 17, 2014, RP 12-13) In fact, the same Affidavit of Probable Cause was utilized at both hearings, and no additional facts were offered. (Id., RP 12) These sentiments, however establish that one of the Court's motives in the increased bail setting process was not to ensure the appearance of the defendant if released, but rather to **prevent** the release of Mr. Sedano. (Hearing dated December 17, 2014, RP 12-13) The order setting bail allows for the \$1,000,000 to be paid in "cash or bond." (CP 11)

To satisfy the new amount for bail, the defendant and his wife, Maria Sedano, executed a Secured Property and Cash Bond and Agreement to Forfeit, consisting of five separate pieces of real property they owned free and clear, including their residence, assessed at over \$700,000 and situated within Chelan County, Washington. (See, Appendix F to Petitioner's Motion for Accelerated Discretionary Review)¹ Quit Claim Deeds for each of the five pieces of real property were executed to facilitate the forfeiture of said properties in the event of a

¹ Because the trial court rejected the property bond, neither the bond, quit claim deeds or Lien and Encumbrance Report were filed, and is not contained in the Clerk's Papers; however it is undisputed that they were proffered to the trial court. (RP 23-26, 28-29)

failure to appear by the defendant and a Lien and Encumbrance report establishing free and clear ownership was attached. (See, Appendix G to Petitioner's Motion for Accelerated Discretionary Review) Defendant's family also posted \$300,000 cash with the Superior Court to satisfy the increased bond requirement of \$1,000,000.

However, the State objected to the property bond, and the Court ruled it would accept only a cash and surety bond, citing concerns regarding "foreclosure" of the properties and potential costs to the county should the defendant fail to appear, despite the fact that foreclosure would not be required under the terms of the Agreement to Forfeit, and that the defendant was offering undisputed evidence the properties were unencumbered with no "cloud" on title. (Minute Entry of Decision dated January 12, 2015, CP 27; Order Denying Motion for Security Bond, CP 23-24; Hearing dated January 12, 2015, RP 25-29) The Court further apparently considered whether it may be better to have a third-party surety, in order to have a "bounty hunter" involved to "track down" defendant in the event he failed to appear. (Hearing dated January 12, 2015, RP 26-27) The trial court also found that Washington law was limited to the constitutional right to secure bail via a third-party surety. (Id., RP 27-28) Petitioner thus remained incarcerated for over six weeks

after arrest, despite having twice complied with the Court's demand for bail.

5. Argument.

5.1 Washington recognizes a fundamental right to bail.

Under Washington law "[t]he right to bail is so fundamental that it is guaranteed in the [Washington] Bill of Rights." State v. Kramer, 167 Wn.2d 548, 553, 219 P.3d 700 (2009); see, Wash. Const. Art. I §20. The purpose of bail "in a criminal proceeding...is to free the defendant from imprisonment and to secure his presence before court at an appointed time...it serves to recognize and honor the presumption under law that an accused is innocent until proven guilty." State ex. rel Wallen v. Judges Noe, Towne, Johnson, 78 Wn.2d 484, 487, 475 P.2d 787 (1970); see also, Westerman v. Cary, 125 Wn.2d 277, 291, 892 P.2d 1067 (1995).

Article I, Section 20 of the Washington Constitution provides the right to bail, except bail may be denied when the defendant is accused of a capital crime, or "for offenses punishable by life in prison upon the showing by clear and convincing showing that his release would create a substantial likelihood of danger to the community or any persons..." Art. 1 §20. Defendant is not being tried for a capital offense, and the Court, at both the preliminary hearing and the subsequent hearings regarding bond, did not find sufficient cause to deny the defendant bail.

The Court should not be able to reject sufficient forms of cash and property which satisfies the required amount of bail.

5.2 No basis in law exists to refuse a valid property bond.

Under the Washington State Rules of Criminal Procedure for Superior Court, "if the court determines that the accused is not likely to appear if released on personal recognizance; the court shall impose the least restrictive of conditions that will reasonably assure that the accused will be present for later hearings." CrR 3.2(b). Options for release include the "execution of a bond **or other security...or the execution of a bond with sufficient solvent sureties or the deposit in lieu thereof.**" CrR 3.2(b)(4)(5)(emphasis added). The posting of property to satisfy bail requirements has long been accepted by Washington courts. The Washington Court of Appeals, Division III analyzed a local rule identical to CrR 3.2(b) and agreed with the analysis of the Ohio Supreme Court, which stated that "[o]nce a judge chooses that condition and sets the amount of bond, we find no further purpose in further specifying the form of bond which may be posted." City of Yakima v. Mollett, 115 Wn.App. 604, 609, 63 P.3d 177 (2003) (holding that the rule does not allow for cash only bail to be ordered) (citing State ex rel. Jones v. Hendon, 66 Ohio St.3d 115, 609 N.E.2d 541 (1993)).

The Court in Mollett determined that one type of bail may not be required at the exclusion of another option, stating that "the 'deposit of cash' clause is an option that the trial court may order but not to the exclusion of the bond." Id. at 609.

The Washington Supreme Court also has held that an order restricting the accused's access to a certain option allowed under CrR 3.2(b) was more restrictive than the rule intended and was not allowed unless there was a specific finding that a certain option would not reasonably guarantee the appearance of the accused at later hearings. State v. Barton, 181 Wn.2d 148, 162, 167, 331 P.3d 50 (2014). No such specific finding was made, nor could be made under the present circumstances; the Court's concern here was clearly over issues relating to costs and procedures in the event Mr. Sedano **failed** to appear, not whether the posting of the properties and cash was sufficient to reasonably ensure his appearance. The Court in Barton based their decision on Art. I §20 of the Washington Constitution, as well as CrR 3.2(b), emphasizing that the rule should be read as whole, requiring the least restrictive of options that would guarantee the accused's appearance at a later date. Id. at 168.

A Property and Cash Bond, as offered by the defendant was clearly proper consideration for bail under the term "other security" under CrR 3.2(b)(4). As stated above, the Washington Court of Appeals has

stated that once a bond is ordered, the type of bond to be posted does not need to be specified. See, Mollett, 115 Wn.App. at 609; both the Barton and Mollett cases allude to property being deliverable to the court to satisfy bail requirements. See, Barton, 181 Wn.2d at 167 ("a defendant must be allowed the option of a surety arrangement in addition to the option of depositing cash or property in the registry of the court."); Mollett, 115 Wn.App. at 609 (holding that requiring cash only bail is not allowed under the court rule); see also, U.S. v. Kodelja, 629 F.2d 1330, 1332 (9th Cir. 1980) (recognizing under a previous federal statute, a promissory note secured by two quit claim deeds can be properly accepted as "other security."). Even the Washington Practice Series on the issue also recognizes that "the most common [other] security used as bail is real property." 12 Wash. Prac. Crim. Prac. & Proc. §415 (3d ed.). The same Washington treatise also states that a property bond is of a sufficient amount if the value of the property exceeds any liens by the amount of bail; in fact, forms are provided for the filing of a property bond as bail in Washington Courts in §418. See, id. at §415, §418.

In the Barton case, the least restrictive option on that particular defendant was a surety bond, and court held that he had a right to that option under the rules and the state constitution unless the court found that a surety arrangement would not guarantee his appearance at the court as

required. Id. at 168. In this case, the least restrictive option for the defendant to post the ordered bail is the Property and Cash Bond. Property and Cash Bonds are properly considered "other security" under the Rules of Criminal Procedure, and can be used to post bail so long as it is of a value sufficient to satisfy the ordered bail, which is not disputed here.

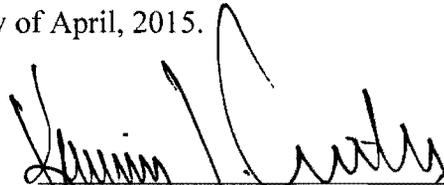
The Court's stated considerations for rejecting the property bond appear to once again be based on incorrect assumptions, such as the fact that there would be "several hoops" to obtain the property, despite the presentment of quit claims on property without encumbrances and an Agreement to Forfeit; that it would be more useful to the County to have a surety so "bounty hunters" could be involved should Mr. Sedano not appear; and that the Supreme Court in Barton is limited to a finding that a defendant may post a surety bond, but that there is no law indicating that Mr. Sedano has a legal right to post a real property bond. (Transcript of hearing dated 1/12/15, pp. 26-29, RP 25-29) By rejecting the defendant's Bond, the court wrongfully rejected the options available to the defendant for posting bail violating the clear requirements of CrR 3.2(b) and applicable case law.

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6. Conclusion.

The court should order the trial court to accept the cash and property bond previously offered for bail.

DATED this 7th day of April, 2015.



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