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Division III
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No. 35841-1-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

Chelan County Superior Court
Cause No. 15-1-00084-6

STATE OF WASHINGTON,
Plaintiff/Appellant,

v.

EDWARD LEE JEGLUM,
Defendant/Respondent.

BRIEF OF APPELLANT

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I. Introduction

This appeal presents a question of timing with respect to forfeiture of bail. Specifically, after a defendant fails to appear in court and a motion is timely made to forfeit cash bail, how long does a trial court have discretion to order forfeiture of cash bail or take the motion under advisement? This appeal does not ask whether the trial court abused its discretion, because the trial court did not believe it had any discretion to exercise.

The procedural history leading to this appeal is unusual. Simplified, the defendant failed to appear in court after posting cash bail in one case and a bail bond in another. The State moved to forfeit the cash bail, but the court reserved, taking the motion under advisement. The bondsman returned the defendant to custody and the bail bond was exonerated. The State renewed its motion to forfeit the cash bail and the court again took the matter under advisement. The defendant pleaded guilty. At sentencing the court neither exonerated, nor forfeited, the cash bail. Instead, the court ordered the defendant's lawyer to note up a hearing to address the bail matter. That hearing never happened due to the defendant filing

to run for office against the assigned judge. Months passed and the case came on for a hearing to clarify the judgment and sentence and in the alternative to forfeit the cash bail. At that later hearing, the court—under a different judge—ruled that there was no discretion either at the time of sentencing or now to forfeit the cash bail.

II. Assignment of Error

The superior court erred as a matter of law in holding that it lacked authority to forfeit the defendant's cash bail when entering the judgment and sentence and again later after having reserved on the State's ongoing motions to forfeit bail.

Issue Presented for Review

Does *State v. Paul*, 95 Wn. App. 775, 976 P.2d 1272 (1999), prohibit trial courts from forfeiting cash bail at the time judgment and sentence is entered or later if the motion is taken under advisement?

III. Facts

On February 10, 2015, the State charged defendant-respondent, Edward Jeglum, with felony stalking – domestic violence and two misdemeanor counts of violation of a no contact

order – domestic violence. CP 2-3. The cause number assigned to those charges was 15-1-00084-6. During most of the proceedings at issue in this case, the defendant had two other felony cases open in Chelan County Superior Court, numbers 13-1-00344-0 and 15-1-00086-2. *See* CP 6-8 (establishing release conditions in all three cases).

On February 12, 2015, the superior court set bail and release conditions in all three cases. CP 6-8. The court set bail in the case on appeal at \$100,000. CP 7. Bail in the other two cases was \$250,000 in 15-1-00086-2 and \$50,000 in 13-1-003440. CP 7. The defendant initially posted \$350,000 of the \$400,000 total bail in cash.¹ On April 8, 2015, the defendant obtained a bond for the \$250,000 in 15-1-00086-2. CP 9. In the case on appeal he remained free on the \$100,000 cash bail. CP 1. When the defendant posted his cash bail, he was warned that failure to appear in court would result in forfeiture of the bail money. CP 1.

On August 3, 2015, the court amended his release conditions to permit travel within the State of Washington for “medical

¹ The defendant posted a \$50,000 bond in 13-1-00344-0 on February 18, 2015.

evaluations and appointments with legal counsel.” CP 10. Previously he had been prohibited from leaving Chelan and Douglas Counties. CP 6. On August 31, 2015, the court modified release conditions again, this time to permit “travel to the State of Arizona during the month of November, 2015 to attend scheduled medical appointments.” CP 11. The order also stated: “Defendant understands that further requests for out-of-state travel will require prior approval from the Court.” CP 11.

On November 20, 2015, the defendant appeared again in court to reset his trial and hearing dates. CP 13. The court set trial for February 9, 2016, and a readiness hearing on January 20, 2016. CP 13. The defendant also knew that he was required to “personally appear in court for all hearings.” CP 7.

But, at the readiness hearing on January 20, 2016, the defendant failed to appear in person or even by telephone. CP 15. His attorney was present by telephone and claimed that Mr. Jeglum was at a medical facility in Arizona and could not be medically released. CP 15. No medical documentation was provided at that time to substantiate the claims. Furthermore, the defendant had not

obtained, or even requested, approval to travel to Arizona a second time, as required by the Court's August 31st order.

On February 17, 2016, the court held another hearing regarding the defendant's unexcused absence from the State in violation of his release conditions. At that hearing, the defendant's lawyer submitted a letter on letterhead from MYDR NOW. CP 16. The letter, ostensibly signed by a nurse practitioner, Jeanne Carver, and a physician, Payam Zamani, stated that the defendant was currently residing in a licensed assisted living home and that "traveling is not recommended." CP 16. The defendant's lawyer also represented to the court that he had been in contact with Dr. Zamani and represented that he was Mr. Jeglum's primary care physician. RP 2 (2-17-16). The name of the facility was never provided, and was apparently separate from MYDR NOW.

However, when the State attempted to call the phone number for the business listed on the letter it turned out to be the number for a storage unit company. CP 18; RP 2-3 (2-17-16). The State requested a warrant and bail forfeiture. CP 18; RP 3-4 (2-17-16).

The court reserved on the warrant and bail forfeiture. RP 9 (2-17-16). Instead, the court said it was going to give the defense one last chance to provide more specific information about the defendant's medical condition and that at the next hearing the defendant's medical provider would have to be available to testify by telephone. CP 18; RP 8-11 (2-17-16). The court scheduled the next hearing for March 3, 2016. CP 18.

About an hour prior to the hearing on March 3rd, the defendant sent a facsimile message to the court. CP 19-22. In that message, the defendant acknowledged his knowledge of the hearing date and time and that his physician, Dr. Zamani (the same doctor from the MYDR NOW letter), was supposed to testify at that hearing about the defendant's medical condition and ability to travel. CP 20. Bizarrely, the defendant now claimed that Dr. Zamani was not his physician, he did not consent to Dr. Zamani to release any patient healthcare information, he had never spoken to Dr. Zamani, he had never been examined by Dr. Zamani, and Dr. Zamani lacked the specialties necessary to speak about the defendant's condition. CP 21.

In other words, the defendant admitted that he had perpetuated a fraud upon the court by having his lawyer submit the MYDR NOW letter when he failed to appear as required on February 17, 2016.

Later that morning on the 3rd, the court heard from Dr. Zamani by telephone and found the testimony to be unhelpful. CP 24; RP 8 (3-3-16). The court had wanted to hear from a medical professional who had actually met the defendant. CP 24; RP 9 (3-3-16). The court thereafter granted the State's request for a warrant. CP 23, 25; RP 15 (3-3-16). However, the court again reserved on the issue of bail forfeiture. CP 24; RP 16 (3-3-16). The bail bondsman on the other matters, Mr. Bender, was present at the hearing and requested the warrant be extraditable. CP 24; RP 20 (3-3-16).

Moreover, the defendant's lawyer had not heard from the defendant in more than a week. CP 24. The defendant's lawyer informed the court he had called the defendant upwards of ten times a day over the last two weeks including several voicemail messages and e-mail messages, but that the defendant had not responded. RP

11 (3-3-16). This was another violation of the defendant's release conditions, which required the defendant to "contact his attorney in person or by telephone at least . . . weekly." CP 7. The court also took notice that the facsimile from earlier that morning demonstrated the defendant's continued ability to contact his lawyer, which showed that the defendant's failure to contact his lawyer was a willful violation of his release conditions. CP 24; RP 17-19 (3-3-16).

Mr. Bender, the bail bondsman, then flew to Arizona, took the defendant into custody, and surrendered him to the Chelan County jail. RP 25 (3-14-16); RP 59, 62-63 (3-22-16). At the defendant's first appearance after arrest on March 14, 2016, the State informed the court what it had learned about the defendant's living arrangements in Arizona from Mr. Bender. Specifically that the defendant had been coming and going from his assisted living facility daily and had been driving around in a van he had purchased while in Arizona. CP 26; RP 27 (3-14-16).

The State requested the court forfeit the defendant's cash bail and requested he be held without bail. CP 26. The court again

reserved on bail forfeiture, and set new bail in the amount of \$1,000,000 in each case. CP 26; RP 31 (3-14-16).

The following week, the defendant pleaded guilty. CP 27-31. The parties recommended 30 days. RP 39 (3-22-16). But the court exercised its discretion and sentenced him to 9 months in jail. CP 28; RP 58 (3-22-16). In issuing its sentence, the court noted that the defendant was away in Arizona without permission, that his medical treatment was never proven to the court, and that he stonewalled all attempts to verify his claims. RP 56 (3-22-16). The court further remarked:

Frankly, Mr. Jeglum, I feel like you have made a mockery of the legal system.

You have dragged out these legal proceedings beyond a point that I would have thought would have been possible.

* * *

And I always felt that you were looking for the next way to delay accountability for your actions.

RP 57 (3-22-16).

At sentencing, the court again reserved on the question of forfeiture. RP 59-60 (3-22-16).² The court seemed to suggest that it was inclined to grant the State's motion by putting the onus on the defendant's lawyer to set a hearing to address the forfeiture issue. RP 60 (3-22-16). The court also ordered that all future motions were to be heard by Judge Lesley Allan. CP 32; RP 59 (3-22-16). Judge Allan handled the plea and sentencing, and had also been the judge throughout the Arizona saga. CP 18, 24, 32; RP 57 (3-22-16).

Before Judge Allan could hear and rule on the State's ongoing request to forfeit the cash bail, the defendant filed a declaration of candidacy to run against Judge Allan.³ CP 38. On May 27th, Judge Allan held a hearing on her ability to continue to hear the defendant's cases. CP 39. Finding that the Code of Judicial Conduct likely prohibited her from continuing to hear these matters,

² The Judgment and Sentence originally stated "The bond is hereby exonerated." CP 29. But, the court corrected that scrivener's error that same day, issuing an Amended Judgment and Sentence with that language crossed out. CP 35.

³ Randy Theis, the defendant's retained lawyer on a couple of pending district court cases, hand-delivered the declaration of candidacy for the defendant because the defendant was still incarcerated. The State filed a separate lawsuit to have the defendant removed from the ballot due to him not meeting the legal requirements to serve as judge.

Judge Allan disqualified herself from further proceedings. CP 39. After that hearing, the bail issue languished.

On August 30, 2017, the court held another hearing regarding bail in front of Judge Nakata. CP 40. At that hearing, the defendant requested time to hire a new lawyer to address the issue, and the court continued the hearing to September 13, 2017. On September 13th, the defendant had not retained a lawyer and both parties requested to set the matter over to November 9, 2017. CP 41. On November 9th, Judge Small struck the hearing and asked that it be reset. CP 42.

The matter was next heard on December 14, 2017. CP 43. At that hearing, Judge Small heard preliminary arguments from the State, and set the matter over to January 18, 2018. CP 43.

On January 18th, Judge Small issued his order regarding bail forfeiture. CP 44-45; RP 69-75, 81 (1-18-18). The defendant was still pro se and refused to sign the order. CP 44. The court's order instructed the return of the defendant's cash bail based on the belief that, as a matter of law, *State v. Paul*, 95 Wn. App. 775 (1999), required the return of the defendant's bail. CP 44. Relying on *Paul*,

the court found that it lost the discretion to forfeit the cash bail after the defendant was sentenced. CP 45; RP 72, 75 (1-18-18). The court also noted that the unpublished *Navarro*⁴ decision was also applicable, but that the court could not rely on that case due to it falling outside the bounds of GR 14.1 and because the court disagreed with the *Navarro* decision. CP 45; RP 70 (1-18-18). Importantly, the court stated that it did not believe it had any discretion at this point under *Paul* because the defendant had already been sentenced. RP 81, 74 (1-18-18). The court stayed its decision for 30 days to permit the State to file a notice of appeal. CP 44. On February 5th, the State appealed to this Court. CP 46-47.

IV. Argument

A. Issue and standard of review

This appeal presents a single issue for review: does a superior court lose authority, as a matter of law, to forfeit cash bail at sentencing? This Court reviews *de novo* questions concerning a trial court's authority to act. *E.g. Storedahl Props., LLC v. Clark County*,

⁴ The superior court in doing its own research came upon the case of *State v. Navarro* and discussed it with the parties. *State v. Navarro*, No. 28230-9-III (Unpublished 2010).

143 Wn. App. 489, 496, 178 P.3d 377 (2008) (“We review issues pertaining to constitutional limitations and statutory authority de novo.”); *Dep’t of Soc. & Health Servs. v. Zamora*, 198 Wn. App. 44, 73, 392 P.3d 1124 (2017); *In re Marriage of Vigil*, 162 Wn. App. 242, 246, 255 P.3d 850 (2011).

B. No clear authority exists governing forfeiture of cash bail

No clear guidelines address a court’s authority with respect to cash bail. Article I, § 20, of the Washington State Constitution requires that all criminal defendants be “bailable by sufficient sureties.” However, that provision only addresses bail posted by third parties, not cash bail posted by the defendant. *State v. Barton*, 181 Wn.2d 148, 156, 331 P.3d 50 (2014). As explained most recently in *Barton*:

“The underlying legal theories behind bail bonds and cash bail are different; in bail bonds the law looks to the surety to guarantee the defendant’s appearance, while in cash bail the law looks to the money already in the hands of the state to insure defendant’s appearance.”

Id., quoting *In re Marriage of Bralley*, 70 Wn. App. 646, 653, 855 P.2d 1174 (1993) (quoting 8 C.J.S. *Bail* § 88, at 109 (1988)).

Article I, § 14, of the Washington Constitution and the Eighth Amendment to the United States Constitution both prohibit excessive bail. Neither of these constitutional provisions, nor article I, § 20, address any procedures for bail forfeiture.

Statutorily, chapter 10.19, RCW, provides procedures for bail bonds and their forfeiture. Again, those provisions do not address cash bail posted by a defendant. *In re Marriage of Bralley*, 70 Wn. App. 646, 855 P.2d 1174 (1993). In *Bralley*, the Court of Appeals held that RCW 10.19.090, which governs forfeiture of bail bonds, by its plain terms did not apply to cash bail posted by the subject of the bail. *Bralley*, 70 Wn. App. at 654.

The only applicable forfeiture guideline the State is aware of with respect to cash bail is set forth in CrR 3.2, governing release of accused in criminal cases. CrR 3.2(o) states:

If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

This provision explicitly authorizes trial courts to forfeit cash bail whenever a defendant fails to appear in court or violates a condition of release. But, it does not answer the question presented here of how long the court may take under advisement a motion to forfeit bail.

C. Where existing procedural rules do not govern an issue, trial courts may fashion an appropriate procedure, including setting a matter over until a full evidentiary hearing can be held

Where statutes and court rules fail to specify a particular mode of proceeding, judges are instructed to follow “any suitable process or mode of proceeding . . . which may appear most conformable to the spirit of the laws.” RCW 2.28.150. In this instance, where the court reserves on the question of bail forfeiture until a full hearing can be held and the defendant takes unlawful steps to prevent that hearing from occurring in a timely fashion, there is no legal impediment to the court hearing the issue at a later date.

Implicitly recognizing that there was no statutory or rule guidance on this issue, the superior court looked to case law to try to guide its decision-making, instead of looking to RCW 2.28.150.

Discovering the *Paul* decision, the superior court believed that it had lost the legal ability to even consider bail forfeiture after the plea and sentence. The court reasoned that after the plea and sentence, the defendant has satisfied the bail conditions and bail cannot be forfeit. But, that misstates the issue in *Paul*.

In *State v. Paul*, the court haled the defendant into court post-conviction. *Paul*, 95 Wn. App. at 776. The court brought the defendant back to determine whether the court should sanction her for failure to pay restitution. *Id.* at 776-777. After her preliminary hearing on the matter, the defendant's parents posted \$2500 cash bail for her release. *Id.* at 777. At a later hearing the defendant admitted the failure to pay and the court forfeited the cash bail posted by the parents and applied it to the defendant's outstanding restitution. *Id.*

On appeal, this Court ultimately reversed because “[b]ail is not a revenue measure in lieu of fine.” *Id.* at 778. Explaining further, this Court stated:

In a criminal case, the sole purpose of bail is to ensure the appearance of the accused. When the accused appears, the conditions of the bail have been fulfilled, and the court must give the money back.

Id. (citing *State v. Ransom*, 34 Wn. App. 819, 822-23, 664 P.2d 521 (1983)). But, “[i]f the defendant does not appear, the cash bail is forfeited. If the defendant is subsequently apprehended, the court has the discretion to vacate the bail forfeiture or not.” *Id.*

The defendant in *Paul* never missed a court hearing; thus, she fully satisfied the bail conditions. That important fact is what distinguishes the present case from *Paul*.

The defendant in this case did not even remotely satisfy his bail conditions. He fled the jurisdiction without permission for months after dragging his cases out for years—beyond which the trial court ever thought possible. RP 57 (3-22-16). He refused to return to the jurisdiction. He refused to stay in contact with his lawyer. He refused to call into court—instead sending a facsimile letter the morning of his hearing on March 3, 2016. He perpetuated a fraud upon the court by obtaining a letter from a dubious medical outfit stating that travel was not recommended—as opposed to travel being actually harmful to his health—even though Dr. Zamani never examined him and did not possess the necessary specialized training to examine him. He untruthfully claimed to be receiving round the

clock care in an assisted living facility. The bail bondsman on his other cases had to arrest and retrieve him. The defendant took no actions to remedy the situation or take responsibility for his disruptive behavior. He “made a mockery of the legal system.” RP 57 (3-22-16).

As the court in *Paul* noted, if the defendant fails to appear, the cash bail is supposed to be forfeited and when the defendant reappears the court has the *discretion* to decide whether to give that money back or not. *Paul*, 95 Wn. App. at 778. Under *Paul*, the trial court here should have forfeited the cash bail when the defendant failed to appear and then held its hearing upon reappearance on whether to vacate the forfeiture.

Notably, when a defendant out on bond is returned to custody, forfeiture of that bond is dictated by timing and whether the bail bondsperson “was directly responsible for producing the defendant in court or directly responsible for apprehension of the person by law enforcement.” RCW 10.19.140. Although this statute does not apply to cash bail, it would be proper for the court when fashioning a procedure and remedy “conformable to the spirit of the

laws” under RCW 2.28.150 to look to RCW 10.19.140 for guidance. Because the defendant did not return himself to court and did not surrender himself to law enforcement in Washington or in Arizona, exoneration of the bail is discretionary, not mandatory. *Paul*, 95 Wn. App. at 778 (“If the defendant does not appear, the cash bail is forfeited. If the defendant is subsequently apprehended, the court has the discretion to vacate the bail forfeiture or not.”).

Furthermore, unlike the bail bondsperson, a defendant who posts his own bail is entitled to no leniency with regard to return of his bail money when he fails to appear in court as required. *State v. Ohm*, 145 Wash. 197, 259 P. 382 (1927). In *Ohm*, the defendant pleaded guilty, but fled to Oregon prior to sentencing. *Id.* at 197. The trial court forfeited the defendant’s cash bail. *Id.* When the defendant was finally apprehended and sentenced, he sought return of his cash bail, and the court denied his motion. *Id.* On appeal, the Supreme Court noted that different policies apply to bail by surety (i.e. bail bonds) versus cash bail posted by the defendant. With respect to the former, “courts are lenient in relieving bondsmen from a forfeiture where they have been diligent in returning the person

who has forfeited his bail to the processes of the courts.” *Id.* at 198. This is so because doing otherwise would discourage people from offering bail bonds. *Id.* With respect to the latter, “the law is rigorous” and the “offender is entitled to no leniency” where it appears the defendant’s purpose in posting the bail “is to escape the penalties of a crime.” *Id.*

Given the Washington Supreme Court’s admonishment in *Ohm* that defendants are entitled to no leniency regarding bail exoneration after jumping bail, it would seem clear that it would not violate the spirit of the law for the court to hear the State’s forfeiture motion under RCW 2.28.150 under the circumstances presented by this case. Accordingly, this Court should remand to the superior court with instructions to hold the evidentiary hearing that Judge Allan called for before the defendant abused the election system to remove Judge Allan from his case.

V. Conclusion

Based on the foregoing arguments and authorities, the State respectfully requests this Court reverse and remand for the superior court to exercise its discretion. The State does not seek an order

directing how the superior court should exercise that discretion,
merely recognition that discretion exists to forfeit the bail in this
matter.

DATED this 29th day of May, 2018.

Respectfully submitted,

Douglas J. Shae
Chelan County Prosecuting Attorney



By: Andrew B. Van Winkle, WSBA #45219
Deputy Prosecuting Attorney

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	No. 35841-1-III
Plaintiff/Appellant,)	Chelan Co. Superior Court No. 15-1-00084-6
vs.)	DECLARATION OF SERVICE
EDWARD LEE JEGLUM,)	
Defendant/Respondent.)	

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 29th day of May, 2018, I caused the original BRIEF OF APPELLANT to be filed via electronic transmission with the Court of Appeals, Division III, and a true and correct copy of the same to be served on the following in the manner indicated below:

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In addition, Appellant is also mailing a copy of the Verbatim Report of Proceedings along with the Brief of Appellant to Mr. Jegum at the address above indicated.

Signed at Wenatchee, Washington, this 29th day of May, 2018.



 Cindy Dietz
 Legal Administrative Supervisor
 Chelan County Prosecuting Attorney's Office

CHELAN COUNTY PROSECUTING ATTORNEY

May 29, 2018 - 3:44 PM

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