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Rule 13.4(d))

No. 255697

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

WILLIAM KRAMER, Defendant,

and

ALL CITY BAIL BONDS, Appellant

PETITION FOR REVIEW

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PETITION FOR REVIEW

[Rule 10.3(a)]

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I. IDENTITY OF PETITIONER

All City Bail Bonds asks this court to accept review of the Court of Appeals decision designated in Part II of this petition.

II. COURT OF APPEALS DECISION

The decision for which review is sought is the decision of the Washington State Court of Appeals, Division III, filed in the above-entitled matter on November 29, 2007.

A copy of the decision is in the Appendix at pages A-1 through A-9.

III. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals decision for which review is sought is in direct conflict with existing Supreme Court decisions in that it forfeits a bail bond to punish All City Bail Bonds.
2. The Court of Appeals decision for which review is sought has a significant detrimental impact on the substantial public interest in the policy of liberal exoneration of bail bonds because such policy is intended to encourage the giving of bail bonds.

IV. STATEMENT OF THE CASE

On or about June 5, 2005, All City Bail Bonds posted a bail bond for William Kramer to secure his presence at all court hearings. (CP 26). On or about December 19, 2005, Mr. Kramer failed to appear at a scheduled court hearing.

(CP 26). On December 26, 2005, seven (7) days after the missed hearing, the Lincoln County Sheriff apprehended Mr. Kramer his mother's residence. (CP 26-27). Mr. Kramer missed no other court appearances. (CP 28).

All City Bail Bonds' Motion to Vacate Default Judgment and Exonerate Bail Bond was heard on June 22, 2006. (CP 29-31). The trial court Judge held that it is equitable to forfeit a \$20,000 bond because of a seven day absence, and because All City Bail Bonds "didn't do anything." (RP at 18). A written order to that effect was submitted and signed on September 6, 2006. (CP 29-31). All City Bail Bonds filed an appeal with the Court of Appeals, Division III. (CP 32-35). The Court of Appeals affirmed the trial court's denial of All City's motion to vacate the default judgment, holding that "because... All City admits behavior that we agree is egregious, we affirm the court's decision to deny All City's Motion to vacate the default judgment." (App. A-7). This petition for review follows.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The Supreme Court Should Accept Review And Reverse The Court Of Appeals Because The Decision In This Matter Directly Contradicts 90 Years Of Supreme Court And Court Of Appeals Decisions Holding That Bail Bond Forfeiture Cannot Be Used To Punish Sureties Or Generate Revenue.

The Washington State Supreme Court enunciated the fundamental policy behind forfeiture and exoneration of bail bonds by stating:

It is the manifest policy of the [bail bond] statute to encourage the giving of bail in proper cases, rather than to hold in custody at the state's expense persons accused of bailable offenses. The court should so administer cases arising under this statute as to give effect to this manifest policy.

State v. Johnson, 69 Wash. 612, 616, 126 Pac. 56 (1912).

In the landmark case of *State v. Jackschitz*, 76 Wash. 253, 136 Pac. 132 (1913), the Washington State Supreme Court developed a rule for the enforcement of this policy, holding that:

The object of bail is to insure the attendance of the principal and his obedience to orders and judgment of the court. There should be no suggestion of bounty or revenue to the state or of punishment to the surety.

Id. at 255.

This rule has been continuously followed by the Supreme Court and is a firmly established bright-line rule regarding forfeiture of surety bail bonds. Not one published judicial opinion since 1913, save for the opinion in the instant matter, has sought to overturn or diminish this rule. The most important development has been the application of the rule to cases where the defendant was either in custody or appeared within the sixty day stay period currently provided by RCW 10.19.105 and formerly provided by Rem. & Bal. Code, SS 2233 (P.C.

135 SS 1301), both of which are identical. *Compare* Rem. & Bal. Code, SS 2233 (P.C. 135 SS 1301) *with* RCW 10.19.105.

Except for the instant case and one other, in every case since 1912 where the defendant appeared or was in custody within sixty days, the courts have either upheld exoneration of the bond or held that it was an abuse of discretion to refuse to exonerate the bond, less the costs of apprehension by law enforcement. *State v. Reed*, 127 Wash. 166, 219 Pac. 833 (1923) (in custody out of state); *State v. Bailey*, 121 Wash. 413, 209 Pac. 847 (1922) (in custody in state); *State v. Olson*, 127 Wash. 300, 220 Pac. 776 (1923) (appeal bond, conviction affirmed, in custody out of state within 20 days of affirmed conviction); *State v. Seibert*, 170 Wash. 80, 15 P.2d 281 (1932) (appeared in court); *State v. O'Day*, 36 Wn.2d 146, 216 P.2d 732 (1950) (in custody in state); *State v. Heslin*, 63 Wn.2d 957, 389 P.2d 892 (1964) (in custody out of state); *State v. Mullen*, 66 Wn.2d 255, 401 P.2d 991 (1965) (in custody in state). *But see State v. Sullivan*, 172 Wash. 530, 22 P.2d 56 (1933) (appeared eleven days after missed trial date, bail forfeit).

In nearly every case where the defendant was in custody or appeared after the sixty day period, the trial court's decision was upheld regardless of whether the bond was exonerated or forfeited. *State v. Jackschitz*, 76 Wash. 253, 136 P.2d 132 (1913) (exonerated); *State v. Ohm*, 145 Wash. 197, 259 P. 382 (1927) (forfeited); *State v. Jimas*, 166 Wash. 356, 7 P.2d 15 (1932) (forfeited); *State v.*

Van Wagner, 16 Wn.2d 54, 132 P.2d 359 (1942) (forfeited); *State v. Molina*, 8 Wn. App. 551, 507 P.2d 909 (1973). *But see State v. Hampton*, 107 Wn.2d 403, 728 P.2d 1049 (1986) (defendant in custody after 60 day stay, but trial court's failure to give reason for forfeiture constituted abuse of discretion).

In *Hampton*, 107 Wn.2d at 408, the Supreme Court cited this rule with approval, stating:

The court in *State v. Molina*, 8 Wn. App. 551, 553-54, 507 P.2d 909 (1973) held it to be an abuse of discretion to refuse to vacate a forfeiture judgment when the defendant appears or is in custody in another state at the time the forfeiture judgment is entered or within the 60-day stay of execution period.
Hampton, 107 Wn.2d at 408.

In the instant matter, it is uncontested that Mr. Kramer was taken into custody only seven days after his missed hearing. (CP 10-12). It is unarguable, and has been conceded at every level in this matter, that law enforcement is absolutely entitled to recover from All City Bail Bonds the actual costs incurred in capturing Mr. Kramer. (*See* CP 1-37; RP 1-19). The state instead asks for the entire \$20,000.00 bond to be forfeit. (CP 29-31). The state introduced no evidence of the expenses incurred by law enforcement to capture Mr. Kramer. (*See* CP 1-37; RP 1-19). The trial court never asked the state about such expenses, and did not even entertain the argument that the state's recovery could be limited to law enforcement expenses. (*See* RP 1-19). The obvious position of the state and the

trial court was that law enforcement was entitled to the entire \$20,000.00 because Mr. Kramer was absent for a mere seven days.

The truly interesting question is whether the trial judge, who also presided over Mr. Kramer's child molestation trial, would have made the same decision if the seven day absence had not included Christmas. It is clear that both the trial court and the Court of Appeals focused on the fact that Mr. Kramer and All City Bail Bonds had regular telephone communications during which All City Bail Bonds persuaded Mr. Kramer to surrender himself peacefully by December 26 or 27, 2005. (CP 27). What is unclear is how these facts justify the Court of Appeals decision to overturn nine decades of Supreme Court precedent that prohibits punishing sureties by forfeiting bail bonds.

The first test created by the Court of Appeals in the instant matter is for the trial court to balance "egregious facts" against "the equities, responsibility acceptance, and corrective measures suggested by the surety, if any[.]" (App. A-7). This is nothing more than authorization to forfeit bail bonds in order to punish sureties. The Supreme Court has specifically, continually, and undeniably forbidden this practice for nearly a century. *See State v. Jackschitz*, 76 Wash. at 255; *State v. Mullen*, 66 Wn.2d at 259. The Court of Appeals opinion in the instant matter is in direct conflict with existing Supreme Court precedent, and must be overturned.

The second test the Court of Appeals creates is to balance law enforcement's actual expenses against the "goal of avoiding bounty or revenue collection in bail forfeiture situations[.]" (App. A-7). This test allows trial courts to ignore Supreme Court precedent. Avoiding bounty or revenue collection is not a mere goal, it a primary policy foundation of the bail bond statute. The Supreme Court has always been abundantly clear on this issue: "**There should be no suggestion of bounty or revenue to the state or of punishment to the surety.**" *Jackschitz*, 76 Wash. at 255 (emphasis added). The Court of Appeals' holding that avoiding bounty or revenue is a "goal" is a contradiction of clearly established Supreme Court precedent. The decision is in direct conflict with existing Supreme Court precedent, and must be overturned.

The third factor created by the Court of Appeals is to balance "how... the amount forfeited further[s] the goals of insuring defendant attendance and obedience to court orders... with the need to encourage bail release without imposing a fine or punishment[.]" (App. A-7). This rule suggests that increasing the amount of forfeiture over actual expenses is justified if it will somehow increase the likelihood of insuring defendant attendance. This rule conveniently ignores the fact that a forfeiture of more than actual expenses can only be a punishment against the surety. In this case, the question boils down to: How much should All City Bail Bonds be penalized because it did not apprehend Mr. Kramer

within seven days? This is clearly in direct conflict with long established Supreme Court precedent, and must be reviewed and reversed.

Finally, the Court of Appeals creates a rule requiring the courts to inquire: “how does the selected remedy promote the court’s traditional authority in setting release conditions in balance with the local availability of bail services for criminal defendants for whom release is encouraged?” (App. A-7-A-8). It is incomprehensible how the available local bail bond market has any bearing on the decision to forfeit a bail bond. The rule allows the courts to forfeit bail bonds simply because the surety is not local. This is a direct contradiction with firmly established Supreme Court precedent, and must be overturned.

As shown above, the published opinion of the Court of Appeals in the instant matter directly conflicts with nearly a century of Supreme Court precedent. The opinion provides a framework within which trial courts may forfeit bail bonds for sums over and above law enforcement expenses in order to punish sureties. The opinion completely ignores the fact that Mr. Kramer was in custody within a week. (CP 26-27). The opinion completely ignores the fact that the manifest policy of bail bonds was achieved: Mr. Kramer was present at trial. (CP 28). The opinion completely ignores the fact that All City Bail Bonds directed Mr. Kramer to surrender to authorities during every single communication, and actually persuaded Mr. Kramer to peacefully and voluntarily surrender himself.

(CP 27). The Court of Appeals opinion in this matter is nothing more than a roadmap for trial courts to follow if they wish to forfeit bail bonds in order to punish bail bond sureties. The Supreme Court has specifically prohibited using bail bonds as punishments against sureties for nearly a century. This Supreme Court must review and reverse the Court of Appeals decision in this matter.

B. The Supreme Court Should Reverse The Court Of Appeals Decision In The Instant Matter Because Forfeiture Of Bail Bonds As A Punishment To Sureties Is A Violation Of The Fundamental And Manifest Public Policy Of Washington State.

The public policy most critical to the instant matter was set forth by the Washington State Supreme Court, where it held:

The object of bail is to insure the attendance of the principal and his obedience to orders and judgment of the court. There should be no suggestion of bounty or revenue to the state or of punishment to the surety.

Jackschitz, 76 Wash. at 255.

The Court of Appeals opinion in the instant matter is designed to allow the trial court to forfeit the bail bond at issue herein in order to punish All City Bail Bonds. Even aside from the fact that such a decision is in direct conflict with an extremely long history of Supreme Court precedent directly on point, this decision is a frontal assault on the fundamental public policy behind such Supreme Court decisions. The fundamental public policy of liberal exoneration of bail bonds is

critical to our citizens' constitutional right to bail. The Washington State Constitution, Article 1, Section 20, provides that "[a]ll persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great." *Id.*

As the Supreme Court has stated on numerous occasion, the manifest policy of bail bonds is to ensure the presence of the defendant at trial, not to generate revenue or punish sureties. *See e.g. Jackschitz*, 67 Wash. at 255, *Heslin*, 63 Wn.2d at 960, *Mullen*, 66 Wn.2d at 259. It is completely ignored by both the trial court and the Court of Appeals that this manifest policy was actually achieved in the instant case: Mr. Kramer missed one hearing and was taken into custody seven days later. (CP 30; RP 18). Mr. Kramer did not miss any other hearings, was present at trial, convicted, and sentenced. (CP 30).

The Court of Appeals states that "[t]he question remains whether denying any exoneration is an abuse of discretion where a surety collaborates with its principal by withholding information about the principal to delay the principal's return to court." (App. A-7). This is not only a misstatement of the evidence on record, it is the wrong question to ask in terms of public policy. The proper question is whether it is equitable to forfeit \$20,000.00 for a seven day absence, because the policy of the statute enunciated by the Supreme Court is to ensure that defendants are present at trial. In the instant matter, the defendant was present at

trial and was a fugitive for only seven days. At worst, law enforcement apprehended Mr. Kramer one day before he was going to surrender to All City Bail Bonds. (*See* CP 26-28).

The true importance of this distinction is made abundantly clear by simply considering an alternate scenario: law enforcement never went to Mr. Kramer's mother's house on December 26, 2007. The uncontested evidence clearly shows that even in the worst case scenario, All City Bail Bonds would have apprehended Mr. Kramer on December 27, 2007. (CP 27). How is it equitable to forfeit a \$20,000.00 bail bond because law enforcement was there only one day before All City Bail Bonds? There is no answer to this question, because it is clearly inequitable to so forfeit the bond. Given the abundantly clear policy for bail bonds, the only equitable answer is that All City Bail Bonds should have to pay the expenses incurred by Lincoln County to apprehend Mr. Kramer. There is no possible justification, other than punishment, for the court to allow Lincoln County to keep \$20,000.00 because Mr. Kramer was missing for seven days. It is completely absurd to even suggest that Lincoln County spent \$20,000.00 looking for Mr. Kramer in one week.

This Court should reverse the Court of Appeals decision in the instant matter because the four part test created therein completely undermines the manifest public policy behind the bail bond statute. Granting the trial courts the

ability to forfeit bail bonds for perceived improprieties is the first step on a slippery slope. The reason that bail bonds are not permitted to be forfeited as a punishment is because allowing this to occur would create an enormous disincentive to even issue bail bonds. Until the instant case, bondsmen had a clear rule by which to determine their conduct: if you do not get the defendant into custody in sixty days, but law enforcement does, then you will have to reimburse law enforcement for the cost of apprehension. *See Hampton*, 107 Wn.2d at 409. The tests proposed by the Court of Appeals in this case completely extinguish this rule of law, and erode the fundamental policy supports for such rule of law.

For example, the first factor created by the Court of Appeals in this matter is whether “the court [has] found egregious facts suggesting a forfeiture level exceeding bare cost recovery....” (App. A-7). This decision is completely contrary to the fundamental principle behind the bail bond statute. The Court of Appeals ruling allows a bail bond to be forfeited simply because the court feels that the bondsman did not act properly, quickly, or aggressively enough. The key fact that was focused on by both the Court of Appeals and the trial court in this matter was that Mr. Kramer agreed to surrender himself to All City Bail Bonds by December 26 or 27, 2005. (CP 27). It is absolutely illogical to describe this agreement as “egregious conduct”, and seek to punish All City Bail Bonds for it, when it promotes public safety by avoiding potential violent confrontation.

Consider the alternative: if Mr. Kramer did not agree to turn himself in, All City Bail Bonds would have had to arrest him by force. This entails not only locating Mr. Kramer, but physically forcing entry into such location and subduing Mr. Kramer and all occupants of that location in order to apprehend Mr. Kramer. Which approach is more conducive to public safety: 1) talking a fugitive defendant into voluntary, peaceful surrender, or 2) physically forcing entry into a private residence and arresting the defendant by main force? Should we as a society be more supportive of violent, vigilante-style apprehension of defendants by bondsman, or should we be more supportive of bondsmen who achieve the same goal through peaceful communication whenever possible? Even further, should we punish a bondsman for achieving a peaceful surrender of a defendant instead of immediately? The Court of Appeals ruling clearly shows that persuasion and negotiation are egregious conduct that should be punished. This Supreme Court should reverse this decision in the interests of public policy.

The second factor created in Court of Appeals opinion in this matter is balancing the increased police, court, and party costs against the “goal of avoiding bounty or revenue collection in bail bond forfeiture situations[.]” (App. A-7). Both the Supreme Court and the Washington State Legislature have dictated that circumstances such as this, bondsmen are required to reimburse the state for all law enforcement costs for apprehension. (*See Mullen*, 66 Wn.2d at 259; RCW

10.19.105). If the bondsman pays the costs, as All City Bail Bonds has consistently offered to do in this matter, then the “goal” of avoiding bounty or revenue collection is already accomplished. To allow a “forfeiture level exceeding bare cost recovery” as suggested by the Court of Appeals in this case would be to completely invalidate the manifest public policy that bail bonds are not a revenue measure or a punishment against sureties. (App. A-7).

The third factor proposed by the Court of Appeals in this matter is to use the amount of forfeiture to “further the goals of insuring defendant attendance and defendant obedience to court orders....” (App. A-7). The Court of Appeals fails to distinguish how the amount of forfeiture can ever be increased above cost recovery without becoming a fine, revenue source, or punishment. The previously existing rules already require bondsmen to pay costs of apprehension if law enforcement apprehends a fugitive defendant. *See Hampton*, 107 Wn.2d at 409. If the bondsman obtains custody of the defendant before law enforcement, then the costs of apprehension are minimal; if not, the bondsman is required to reimburse law enforcement for its costs. This allows a bondsman to make an educated decision as to whether force or negotiation should be used to apprehend the defendant. Instead of risking lives, the bondsman has the choice to risk the forfeiture of law enforcement costs to try to talk a defendant into custody.

It is against the public policy of the bail bond statute to forfeit a greater amount than costs of apprehension when the surety takes action to negotiate the peaceful surrender of a fugitive defendant. The Supreme Court has already held that in an instance where the surety does nothing, it is abuse of discretion to forfeit more than recovery costs when law enforcement apprehends the fugitive within 21 days. *See Mullen*, 66 Wn.2d at 258-259. It is clear that forfeiture of the entire bond when the fugitive defendant is apprehended by law enforcement within the 60 day period does not further the public interest, which is why this Supreme Court should accept review and reverse the lower courts in this matter.

Finally, the Court of Appeals creates a rule of law that the courts should vary the amount of forfeiture in order to “promote the court’s traditional authority in setting release conditions in balance with the local availability of bail services for criminal defendants for whom release is encouraged[.]” (App. A-7-A-8). Astonishingly, the Court of Appeals has created a new rule that allows trial courts to treat local sureties different than non-local sureties when determining whether to forfeit a bail bond. There is absolutely no legitimate reason that the courts should ever be able to even consider where a bondsman is located when deciding a forfeiture question. The alternative is to allow the courts to effectively prevent criminal defendants from exercising their constitutional right to bail by simply banning all non-local bail bondsmen.

However, the most shocking statement is the Court of Appeals' explanation for the application of this rule. The Court of Appeals complains that "[w]e have no record on... the ability of All City to absorb this loss." (App. A-8). **The ability of a surety to bear the loss of a bail bond should have absolutely no relevance to the decision to forfeit or exonerate a bond.** There is no legitimate purpose for considering the financial assets of a bail bond company in ANY question of bail bond exoneration. If trial courts can decide to forfeit a bail bond simply because the surety can afford it, then the trial courts are free to use bail bonds as a source of revenue. This ruling is absolutely contrary to the clearly established public policy behind the bail bond statute. The Supreme Court should accept review and reverse the Court of Appeals to preserve the manifest public policy of bail bonds.

The practical effect of the rules created in the instant matter is to discourage bail bond companies from issuing bail in the first place. The precedent set by the Court of Appeals decision in this case creates an extreme disincentive to even operate a bail bond company. If bail bondsmen are discouraged in this manner, then the constitutional right to bail that is supposed to be guaranteed to the citizens of this state will cease to exist. This is the reason that the Supreme Court held that the bail bond statute "undertakes to direct, almost as a matter of right, that a judgment shall be vacated within the sixty day period..." *Jackschitz*,

76 Wash. at 256. The Supreme Court must not allow this decision to stand, and should accept review and reverse the Court of Appeals.

C. The Supreme Court Should Reverse The Court Of Appeals Decision In The Instant Matter Because Forfeiture Of Bail Bonds As A Punishment Violates Washington State's Prohibition On Punitive Damages Except As Authorized By Statute.

Punitive damages are absolutely prohibited in Washington State except where specifically authorized by the State Legislature through enactment of a statute. *See Spokane Truck & Dray Co. v. Hoefer*, 2 Wash. 45, 50-56, 25 P. 1072 (1891); *Dailey v. N. Coast Life Ins. Co.*, 129 Wn.2d 572, 575, 919 P.2d 589 (1996). The Supreme Court stated that “punitive damages are not recognized in this state and... nothing beyond compensatory damages may be recovered....” *Wood v. Miller*, 147 Wash. 251, 254, 265 Pac. 727 (1928). Chapter 10.19 RCW, the bail bond statute, does not contain any authorization for the imposition of punitive damages upon sureties.

In the instant matter, All City Bail Bonds has acknowledged at every level that the state is entitled to recover its actual damages. (CP 1-37; RP 1-19). The trial court instead ordered the entire \$20,000.00 bond forfeited because Mr. Kramer was a fugitive for seven days. (*See* CP 29-31; RP 18). The Court of Appeals affirmed the trial court's ruling, but remanded for a determination of

whether “egregious facts” can justify “a forfeiture level exceeding bare cost recovery....” (App. A-7). The Court of Appeals is clearly attempting to grant an award of punitive damages to the state for All City Bail Bonds’ actions. The Supreme Court should reverse the Court of Appeals decision in this matter because the Court of Appeals decision violates the Washington State public policy against punitive damages.

VI. CONCLUSION

For over 90 years, the Supreme Court has held that bail bonds cannot be forfeited in order to punish sureties. The Court of Appeals published an opinion upholding the forfeiture of a \$20,000.00 bond, but remanded for a determination of whether partial exoneration is appropriate. (App. A1-9). The Court of Appeals created law that allows trial courts to forfeit bail bonds in amounts greater the state’s actual costs when the trial court dislikes the surety’s behavior. (App. A-7-A-8). This published opinion gives trial courts explicit permission to punish sureties by forfeiture of bail bonds. *Id.* The opinion is in direct conflict with over nine decades of Supreme Court precedent, and should be overturned.

In addition, the public policy implications of the ruling at issue herein are of fundamental constitutional importance. The right to bail in proper cases is one of the most fundamental rights guaranteed to the citizens of Washington State by our Constitution. The Supreme Court has recognized that this constitutional right

is preserved by a policy demanding that bail bonds be exonerated, nearly as a matter of right, if the defendant is in custody or appears in court within sixty days. *See Jackschitz*, 76 Wash. at 256. This rule has been upheld for nearly a century because the contrary rule, the rule proposed by the Court of Appeals herein, will have an enormous detrimental impact on the availability of bail bonds to our citizens. The Supreme Court should review and reverse the Court of Appeals decision in this matter because it violates public policy.

A final thought to consider is the difference between All City Bail Bonds and the surety in *Mullen*. In *Mullen*, the surety did absolutely nothing to apprehend the fugitive defendant, who was apprehended by law enforcement 21 days after a missed hearing. *Id.* at 259. The Supreme Court in *Mullen* held that it was an abuse of discretion to forfeit the bond because “[t]he defendant was made available to the court... only 21 days after his required appearance, irrespective of who was responsible.” *Id.* Here, All City Bail Bonds persuaded Mr. Kramer to surrender, but law enforcement apprehended him first. (CP 27). If All City Bail Bonds did nothing, like the surety in *Mullen*, it would be in a better situation. Instead, All City Bail Bonds stands to be in a worse position for having taking action to apprehend Mr. Kramer. This result is unjust, inequitable, and should not be allowed to stand. The Supreme Court should review this matter, reverse the lower courts, and preserve the equities that have been in place for 90 years.

Respectfully Submitted on this 31 day of December, 2007.



JAMES L. STUDDT, WSBA No. 36820
Attorney for Appellant

APPENDIX

FILED

NOV 29 2007

In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 25569-7-III
)	
Respondent,)	
)	Division Three
v.)	
)	
WILLIAM JOSEPH KRAMER,)	PUBLISHED OPINION
)	
Defendant,)	
)	
ALL CITY BAIL BONDS,)	
)	
Appellant.)	

BROWN, J. — All City Bail Bonds appeals a Lincoln County Superior Court order denying its motion to vacate a default judgment and exonerate William Kramer's \$20,000 bail bond. All City contends forfeiture of the \$20,000 bond is inequitable and punitive, constituting an abuse of discretion. Because the trial court gave tenable grounds for denying All City's motion to vacate the forfeiture, we affirm that decision. However, because the record is inadequate to explain the trial court's balancing in deciding to deny partial exoneration, we remand for further proceedings.

FACTS

In June 2005, All City posted a \$20,000 bail bond to secure Mr. Kramer's presence at all future court hearings. Mr. Kramer failed to appear in court for pre-trial hearings on December 19, 2005. The court ordered bond forfeiture and issued a bench warrant. All City received a formal forfeiture notice from the court clerk on December 20. All City moved to vacate the forfeiture, but did not ask for a stay. Because All City declined the court's offer of an evidentiary hearing, we derive the facts from a scanty record consisting mainly of the declaration of All City's agent, Charles Stewart, the opposing memoranda submitted below, and the June 22, 2006 motion hearing record of proceedings.

Mr. Kramer contacted Mr. Stewart on December 19 and reported he had failed to appear because he could not find his attorney. The record is unclear about the attorney's presence. Mr. Stewart told Mr. Kramer he was in violation of a court order and encouraged Mr. Kramer to turn himself in to the authorities. Mr. Kramer apparently wished to remain with his family until after the Christmas holidays and reportedly agreed with Mr. Stewart to surrender to All City or law enforcement on December 26 or 27. At some point, All City received a call from Mr. Kramer's mother; Mr. Stewart told her not to lie to the police or hide Mr. Kramer if the police arrived. All City did not tell the police of its contacts with Mr. Kramer -- nor did All City inform the court or police of Mr. Kramer's location or its agreement with Mr. Kramer. On December 26, police arrested Mr. Kramer at his mother's home without any input or assistance from All City.

On December 27, All City moved to exonerate the forfeiture, but did not ask for a stay. At the June 2006 motion hearing, the court offered an evidentiary hearing; All City declined. Considering the law with Mr. Stewart's declaration, opposing memoranda, and argument, the court reasoned All City had failed to comply with contractual and statutory obligations, and had no right or authority to decide for the court when Mr. Kramer should reappear. The court concluded All City had the duty to act immediately to bring Mr. Kramer in and All City's inaction caused the police response. All City agreed, but contended it was inequitable to forfeit the entire bond. Instead, All City offered to pay reasonable apprehension expenses. The court denied All City's motion to vacate the forfeiture judgment and denied any exoneration. All City appealed.

ANALYSIS

The issue is whether the trial court abused its discretion when denying All City's request to vacate the forfeiture and equitably exonerate the bail bond. All City contends the trial court incorrectly relied on contract principles in denying vacation, and improperly balanced the equities to impose an unpermitted fine or penalty.

Bond forfeiture issues are reviewed for abuse of discretion. *State v. O'Day*, 36 Wn.2d 146, 159, 216 P.2d 732 (1950). Discretion is abused if it is exercised without tenable grounds or reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Allowing bail bond release is encouraged. *O'Day*, 36 Wn.2d at 153. "The object of bail is to insure the attendance of the principal and his obedience to the orders and

judgments of the court. There should be no suggestion of bounty or revenue to the state or of punishment to the surety." *Id.* (citing *State v. Jackschitz*, 76 Wash. 253, 136 P. 132 (1913)). If a defendant fails to appear at a promised hearing and a default is entered, the recognizance (bail bond) shall be declared forfeited by the court pursuant to RCW 10.19.090, subject to possible exoneration pursuant to RCW 10.19.140.

All City first contends the trial court improperly applied contract law to require it to secure Mr. Kramer's presence. The trial court indicated All City "failed to perform its contractual obligations to secure the defendant's appearance in court." Clerk's Papers at 30. The trial court, however, primarily focused on All City's failure to meet the requirements of RCW 10.19.140. The order and oral record shows the court's contract references merely encapsulate the law and policy underlying bail bonds: "that, in cases of flight, a recapture may be aided by the bondsmen who, it is presumed, will be moved by an incentive to prevent judgment." *Jackschitz*, 76 Wash. at 256. The court correctly noted an expectation that the surety aided in recapturing fleeing criminal defendants.

Where, as here, a bail bond is forfeited pursuant to RCW 10.19.090, the forfeiture may be remitted to the surety where the "person is returned to custody or produced in court within twelve months from the forfeiture . . . *if the surety was directly responsible for producing the person in court or directly responsible for apprehension of the person by law enforcement.*" RCW 10.19.140 (emphasis added). The amount to be remitted to the surety is the "full amount of the bond, less any and all costs determined by the court to have been incurred by law enforcement in transporting, locating,

apprehending, or processing the return of the person to the jurisdiction of the court.” *Id.*

“Where the bonding company is diligent in returning the defendant to the court’s jurisdiction, to forfeit the bail is an abuse of discretion.” *State v. Hampton*, 107 Wn.2d 403, 408, 728 P.2d 1049 (1986) (citing *State v. Mullen*, 66 Wn.2d 255, 401 P.2d 991 (1965)). It is an abuse of discretion to deny the surety’s motion to vacate bond forfeiture where the bondsman acted in good faith, was honest and persistent, at considerable expense endeavored to find the defendant, and ultimately produced the defendant in court so that the purpose of the bail bond was accomplished. *State v. Johnson*, 69 Wash. 612, 616, 126 P. 56 (1912); see also *O’Day*, 36 Wn.2d at 148-49, 159 (holding, trial court erred by denying motion to vacate bond forfeiture where bondsman located defendant in Idaho and immediately returned him to Washington to surrender to law enforcement).

All City relies heavily on *Mullen*, where the defendant was produced in court by the county sheriff within 21 days of his missed sentencing after being apprehended by federal officers on a federal fugitive warrant with no apparent effort or assistance from the surety. *Mullen*, 66 Wn.2d at 258-59. The court held that requiring forfeiture would be inconsistent with the policy of encouraging bail and avoiding fines and punishments to sureties. *Id.* at 259. Accordingly, the surety’s liability was limited to “the costs expended in apprehending and returning the defendant to the custody of the court, together with any costs which resulted to the county and state by reason of the delay in the production of the defendant.” *Id.* *Mullen* is distinguishable.

All City did not behave passively like the surety in *Mullen*. The court reasoned All City was not diligent in failing to produce Mr. Kramer; it intentionally withheld information and acted to aid Mr. Kramer's non-attendance and disobedience to court orders. *O'Day*, 36 Wn.2d at 153.

In the trial court's view, All City knew Mr. Kramer's location for seven-plus days while the police were looking for him. All City improperly withheld Mr. Kramer's location from the police authorities and the court. All City improperly encouraged Mr. Kramer's absence by agreeing with him that he did not need to return to custody until after the Christmas holidays. All City, by this agreement, improperly became complicit with Mr. Kramer in his absence by colluding with him to delay his return to the authorities. All City improperly assumed a judicial role by deciding when Mr. Kramer should return to court authority and when he should be obedient to court orders. Thus, unlike the surety in *Mullen*, All City went well beyond failing to act with diligence in producing Mr. Kramer, which makes this case unique. The facts in balance weigh heavily against All City.

All City candidly acknowledges it claims no "direct responsibility" for Mr. Kramer's ultimate surrender. All City, to its credit, accepts that it acted at risk by allowing Mr. Kramer to spend the holidays with his family. Nevertheless, All City argues equity should limit its responsibility to police out of pocket expenses. Using a contract analogy, All City argues the \$20,000 bond forfeiture was excessive, thus punitive and prohibited. However, the court relied on statutory authority and case law principles before denying the motion to vacate the forfeiture judgment.

No set factors are presented for reviewing our unique facts. The question remains whether denying any exoneration is an abuse of discretion where a surety collaborates with its principal by withholding information about the principal to delay the principal's return to court. The egregious facts extend well beyond those found in *Mullen* or any other case we have found. However, case law and the trial court's commentary suggest certain non-exclusive criteria will aid our review.

First, has the court found egregious facts suggesting a forfeiture level exceeding bare cost recovery, and, if so, has the court balanced those facts with the equities, responsibility acceptance, and corrective measures suggested by the surety, if any? This is a fact-driven, case-by-case inquiry. The facts suggested All City's behavior was egregious to the trial court, and we agree, but the record contains no balancing.

Second, how do the police costs for recovering Mr. Kramer and the increased court and party costs due to disrupted and delayed proceedings balance with the goal of avoiding bounty or revenue collection in bail forfeiture situations? *O'Day*, 36 Wn.2d at 153. Although, the court expressed concern for unnecessary police operations and delayed proceedings, no cost estimates are before us.

Third, how does the amount forfeited further the goals of insuring defendant attendance and defendant obedience to court orders in balance with the need to encourage bail release without imposing a fine or punishment? *Id.*; *Mullen*, 66 Wn.2d at 259. Again, our record is silent on this point.

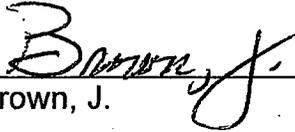
Fourth, how does the selected remedy promote the court's traditional authority in

setting release conditions in balance with the local availability of bail services for criminal defendants for whom release is encouraged? *O'Day*, 36 Wn.2d at 153. We have no record on the availability of other local bail services or the ability of All City to absorb this loss. The trial court was mainly concerned with All City's encroachment into its exclusive decision-making authority, but other court impacts may be relevant as well.

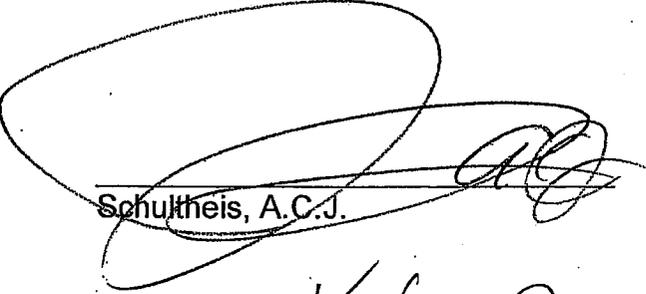
Given all, we hold the court did not err in finding All City lacked direct responsibility for Mr. Kramer's apprehension under RCW 10.19.140. Further, because our facts differ markedly from those found in *Mullen*, and All City admits behavior that we agree is egregious, we affirm the court's decision to deny All City's motion to vacate the default judgment. Whether the court erred in denying any exoneration for All City remains an open question because we lack an adequate record for review. Thus, we remand for the trial court to develop a record of the exoneration facts for our review, if necessary.

In sum, the trial court gave tenable reasons to deny All City's motion to vacate the bond forfeiture and did not err. Therefore, we affirm that decision. We reverse the decision to deny any exoneration and remand to balance relevant facts and determine whether partial exoneration of the bond is appropriate. The trial court is vested with "sound discretion" in deciding "the matter of forfeiture, nonforfeiture or partial forfeiture" and we "will not interfere with the exercise of that discretion, unless it appears [from the record] that the court abused its discretion." *O'Day*, 36 Wn.2d at 159.

Affirmed in part, reversed in part, and remanded for proceedings consistent with
this opinion.


Brown, J.

WE CONCUR:


Schultheis, A.C.J.


Kulik, J.