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Court of Appeals
Division III
State of Washington

No. 33075-3-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

Chelan County Superior Court
Cause No. 14-1-00697-8

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

BENITO C. SEDANO,
Defendant/Appellant.

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE ISSUES

- 1. DID THE SUPERIOR COURT VIOLATE ART. I, § 20, WHEN IT REFUSED MR. SEDANO'S CASH AND REAL PROPERTY BOND?**
- 2. DID THE SUPERIOR COURT VIOLATE CrR 3.2 WHEN IT REFUSED MR. SEDANO'S CASH AND REAL PROPERTY BOND?**
- 3. IS MR. SEDANO'S PETITION NOW MOOT?**

II. STATEMENT OF THE CASE

On August 24, 2014, defendant-petitioner Benito Sedano went to a residence in Manson, Washington, to confront Ignacio Ramirez and Jesus Blanco Delgado. CP 2. Mr. Sedano admitted that he and another person (known only as La Pera) went to the residence to confront these two men about some harassing phone calls and a drug debt that was owed to La Pera. CP 2-3.

Mr. Sedano further admitted that during the course of this confrontation he was armed with a revolver. CP 3. Using his revolver, Mr. Sedano forced Mr. Blanco Delgado to turn over his cell phone to Mr. Sedano. CP 2. Mr. Sedano also admitted to

using his revolver to demand Mr. Ramirez's cell phone and to force Mr. Ramirez into a vehicle with him and La Pera. CP 3.

This incident was the last time that anyone heard from Mr. Ramirez alive. Two days later, Mr. Ramirez was found dead, shot four times (twice in the head), and buried in a shallow grave not far from Mr. Sedano's home. CP 3. Mr. Sedano, however, denies any involvement in the shooting death of Mr. Ramirez. CP 3.

Based on these facts, the Chelan County Sheriff's Office arrested Mr. Sedano in December of 2014 based on probable cause to believe that Mr. Sedano had committed the crimes of assault in the first degree and kidnapping in the first degree. CP 2-4.

On December 9, 2014, the superior court held a preliminary appearance hearing addressing probable cause for the arrest, setting bail at \$250,000, and setting a December 11th deadline for the prosecutor to file charges. CP 1, 25.

On December 11, 2014, after reviewing the file, the prosecutor filed an information. CP 5-8. In that information, the prosecutor alleged the two underlying counts that formed the basis for the arrest, and also alleged two new counts of robbery in the first degree and attempted robbery in the first degree, all with

firearm enhancements. CP 6-7. At the same time that the prosecutor was preparing the information, Mr. Sedano's wife attempted to post the required bail in cash. CP 9.

Because of the additional charges, the court did not immediately release Mr. Sedano, and instead set the case for a hearing on December 17, 2014, to discuss the sufficiency of the charges and any changes to the release conditions. At that time, the prosecutor renewed his request for bail to be set at \$1,000,000. CP 26. The court set bail at the requested amount of \$1,000,000, cash or bond. CP 26, 11.

The court made its decision to amend the bail amount under CrR 3.2(k), authorizing a change of bail and the conditions of release at any time based upon a change of circumstances, new information, or other good cause. CP 26; RP 11. The court noted that filing of the information had changed circumstances dramatically because instead of facing ~15 years of prison, Mr. Sedano now faced a low end standard range sentence of ~30 years in prison.¹ CP 26; RP 11-12. For a person of Mr. Sedano's

¹ It is actually closer to 44 years: 1 class A Assault with a score of 3 and seriousness 12 (11 yr 8 mn); 1 class A Kidnapping with a score of 3 and seriousness 10 (6 yr 6 mn), 1 class A Robbery with a score of 3 and seriousness 9 (4 yr 6 mn), and 1 class B Attempted Robbery that gets scored as .75 of a completed Robbery (3 yr 4 mn), and 18 years of firearm enhancements.

age (55), a low end standard range sentence of 30 years is essentially a life sentence, giving Mr. Sedano substantial incentive to flee. *Id.* The extent of Mr. Sedano's incriminating statements to law enforcement also increase his incentive to flee by greatly diminishing his chances of success at trial. The court also recognized the possibility that Mr. Sedano would, if released without sufficient sureties, threaten, intimidate, or harass the witnesses in the case. CP 26; RP 12. This possibility is a real possibility considering Mr. Sedano's admission to using a firearm to commit the crimes with which he is charged. Finally, the court noted some concern about the fact that Mr. Sedano was not a U.S. citizen, and that the court did not have enough information presented to it to feel comfortable with the risk that he might flee to Mexico. RP 12.

Based on all of these facts, the court entered an order finding probable cause for the new crimes and setting conditions of release. CP 12-14. This included an order that Mr. Sedano "execute an appearance bond in the amount of \$1,000,000 with good and sufficient surety or deposit cash in said amount in lieu of said bond." CP 13; RP 13.

On January 12, 2015, Mr. Sedano attempted to post bail. The court held a hearing to determine if it would accept Mr. Sedano's proffered mix of cash and real estate. RP 23-29. Mr. Sedano offered to put up \$300,000 cash and the other \$700,000 in a real property bond² with quitclaim deeds executable in the event of Mr. Sedano's failure to appear. RP 24. The State opposed the property bond because of the cumbersome procedures that would accompany forfeiture of the real property in the event of Mr. Sedano's nonappearance. Even if the State executed the quitclaim deeds, the State would still have to expend its limited resources on an unlawful detainer action to evict Mr. Sedano's family. RP 24. The court expressed its own concerns about not having bail posted through a surety because if Mr. Sedano did abscond, the court wanted the assurance that there would be a bounty hunter looking for him as well. RP 26. The court also expressed concern about the fact that there had not been a title search done, meaning the court did not know if there were any liens or encumbrances on the property for which a quitclaim deed would not cure. RP 28. Given

² Mr. Sedano is a commercial orchard owner with approximately 50-60 acres of active orchard land. RP 9.

the court's expressed concerns and the concerns expressed by the State, the court denied the allowance of a property bond. RP 28.

Thereafter, Mr. Sedano sought discretionary review from this Court. This court granted review. While this case has been pending before this Court, Mr. Sedano has posted the \$1,000,000 bail through a surety bond. CP 28-29.

III. ARGUMENT

Before discussing the merits of this appeal, the State would bring to the Court's attention the different standards at issue in this matter. The court reviews issues concerning bail under Art. I, § 20, using different standards than when it reviews bail under CrR 3.2. The distinction is akin to the separate and distinct standards used when reviewing the right to a speedy trial under Art. I, § 22, and the time for trial rule under CrR 3.3. This is a distinction that Mr. Sedano fails to make in his Petitioner's Brief. However, keeping these standards separate is necessary for the proper disposition of this matter.

1. THE SUPERIOR COURT DID NOT VIOLATE ART. I, § 20, BECAUSE THIS PROVISION ONLY CREATES A RIGHT TO BAIL VIA A SURETY AND MR. SEDANO DID NOT SEEK TO POST A SURETY.

This court generally reviews constitutional errors de novo. *State v. Barton*, 181 Wn.2d 148, 163, 331 P.3d 50 (2014). “Because the federal constitution contains no clause requiring that defendants be bailable by sufficient sureties, this is purely a question of state constitutional law.” *Barton*, 181 Wn.2d at 154.

Article I, section 20, of the Washington State Constitution reads, in relevant part: “All persons charged with crime shall be bailable by sufficient sureties.” Last year in *Barton*, the Supreme Court interpreted this provision for the first time. In interpreting this provision, the Court relied heavily on the legal dictionary definition of “surety” as it exists today and as it existed at the time of the constitution’s enactment. Notably, all of these definitions of “surety” require a third party relationship between the defendant and the court; they require someone else to step in and take responsibility for ensuring the defendant’s appearance. *Barton*, 181 Wn.2d at 155-56.

After reviewing these definitions, the Court went on to explain: “For this reason, we cannot conclude that a surety

arrangement is simply the putting up of cash or property. It involves a third-party promise to fulfill a financial burden in the event of nonperformance or to compel that performance.” *Id.* at 156.

Moreover, in that same opinion, the Court rejected the notion that cash itself could be a surety. “As explained above, a surety has consistently been defined both historically and in modern times as a third-party promise to either incur a financial burden or force performance. It has not been defined as the deposit of cash.” *Id.* at 160 (disagreeing with *Fragoso v. Fell*, 210 Ariz. 427, 111 P.3d 1027, 1032-33 (2005)). Finally, the Court said, “article I, section 20 guarantees the option of seeking to make bail via a surety, which involves a third-party promise **and not merely the deposit of cash or equivalent property with the court.**” *Barton*, 181 Wn.2d at 162 (emphasis added).

Here, Mr. Sedano offered to post bail using a mix of cash and commercial real estate. But, cash and real property, when offered by the defendant, are not sureties. As explained above, the Supreme Court made it abundantly clear that in order to qualify as a surety, there must be a third party who steps forward guaranteeing the defendant’s future appearance. Because the

superior court did not deny Mr. Sedano the option of posting a surety, the superior court did not violate Art. I, § 20.

2. THE SUPERIOR COURT DID NOT VIOLATE CrR 3.2 WHEN IT REFUSED MR. SEDANO'S CASH AND REAL PROPERTY BOND.

Whether or not a judge has violated CrR 3.2—as opposed to the Constitution—is a question that the appellate court reviews for abuse of discretion. *State v. Hunter*, 35 Wn. App. 708, 719, 669 P.2d 489 (1983) (discussing *State v. Smith*, 84 Wn.2d 498, 501, 527 P.2d 674 (1974)); *State v. Reese*, 15 Wn. App. 619, 620, 550 P.2d 1179 (1976). Discretion is abused if its exercise “is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.” *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Furthermore, appellate courts are “always reluctant to disturb a discretionary ruling of the trial court.” *State v. McKenney*, 20 Wn. App. 797, 807, 582 P.2d 573 (1978).

Mr. Sedano uses a good portion of his briefing to argue that a real property bond is a normal form of bond and thus the court erred by rejecting his proffered commercial real estate bond. However, the State does not argue that real property bonds are

impermissible under CrR 3.2(b)(4). More importantly, Mr. Sedano ignores altogether the discretionary nature of this matter.

Chiefly, Mr. Sedano quotes from the Washington Practice Series for authority. Pet'r Br. At 8. Yet, he ignores the next two sentences in the paragraph, recognizing the discretionary and fact-based nature of the inquiry: "The practice of accepting real property as bail may vary from county to county. However, the posting of a property bond usually requires court review and approval." *Ferguson*, 12 WA PRAC. § 415 (3d. Ed. 2004).

Reviewing this case under that proper framework, it is abundantly clear that the superior court did not abuse its discretion when it refused to accept Mr. Sedano's offer of an active commercial orchard.

There was no dispute that the assessed value of Mr. Sedano's home and orchards was in excess of \$700,000. However, the court did not have a title search for the property. Thus, the court did not know whether the property had any liens or encumbrances that would have priority over any interest that Mr. Sedano had in the property.

Next, in the event of Mr. Sedano's nonappearance, mere execution of the quitclaim deeds would give the county ownership

of the property, but it would not give the county possession of the property. The county would still have to go through unlawful detainer proceedings to eject the rest of Mr. Sedano's family, and whoever else might be there, from the property. This is a cumbersome process and a risk that the court was free to accept or not accept in its considered discretion.

Furthermore, this property is an active commercial orchard. Aside from Mr. Sedano's personal residence, it is through this business that the property derives most of its assessed value. Thus, for the county to take possession and dispose of the property at its assessed value, it would have to expend resources going into the orchard business until the property could be sold. During the months that it would take to find a buyer, the county would have to care for the trees, prepare the trees for the next crop, ensure adequate pollination, ensure proper application of pesticides, ensure proper application of herbicides, look for disease, protect the blooms from a late freeze, protect the fruit from an early frost, hire workers, hire fruit pickers, find willing buyers for the fruit, track commodity prices, arrange for packing, transportation, and storage of the fruit, and so forth. To let the orchards go untended for any amount of time would greatly diminish the assessed value of the

property. The county is simply not set up to go into the orchard business in the event of Mr. Sedano's nonappearance, and the court was right to not take that risk.

The court also did not have any information concerning the relationship between Mr. Sedano's orchard business and the real property. The court did not know whether Mr. Sedano leased the land and trees to his business, or if he operated them as a sole proprietorship. In the event that the trees are leased to another entity, the terms and duration of that lease would affect the value of the property in the event that the county was forced to take possession and attempt to dispose of it. Without knowing whether the county would be forced into an unwilling partnership with Mr. Sedano's business in the event of his nonappearance, the court had no reason to accept Mr. Sedano's proffered real property bond.

Finally, if Mr. Sedano jumped bail, but re-appeared within a reasonable period of time, the court could vacate the bail forfeiture and order the county to return the orchards to Mr. Sedano. *State v. Paul*, 95 Wn. App. 775, 778, 976 P.2d 1272 (1999) ("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."). In that event, the

county could be liable to Mr. Sedano for damages if the county did not properly care for the orchards during the intervening time period.

3. THE COURT SHOULD DISMISS MR. SEDANO'S PETITION BECAUSE IT IS MOOT.

"An issue is moot if it is not possible for this court to provide effective relief. Mootness is a jurisdictional concern and may be raised at any time. When an appeal is moot, it should be dismissed." *State v. Deskins*, 180 Wn.2d 68, 80, 322 P.3d 780 (2014) (citations and quotations omitted).

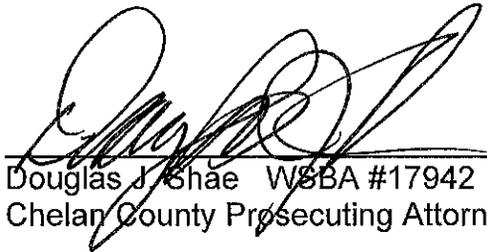
Mr. Sedano asks the court to "order the trial court to accept the cash and property bond previously offered for bail." Pet'r Br. at 10. Mr. Sedano posted the required bail on March 3rd. RP 28-29. Accordingly, this court can no longer provide Mr. Sedano with the relief he has requested. Thus, this court should dismiss Mr. Sedano's petition as moot.

IV. CONCLUSION

Based on the foregoing arguments and authorities, the State respectfully requests this Court to dismiss Mr. Sedano's petition as moot, or to affirm the decision of the lower court.

DATED this 28th day of April, 2015.

Respectfully submitted,



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