

81071-1

No. 25569-7-III

COURT OF APPEALS
DIVISION THREE
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

WILLIAM KRAMER, Defendant.

And

ALL CITY BAIL BONDS, Appellant

BRIEF OF RESPONDENT

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A. APPELLANT'S ASSIGNMENTS OF ERROR

[As restated by Respondent]

1. The trial court's conclusion of law number 1 constitutes an abuse of discretion and an error of law.
2. The trial court's conclusion of law number 2 is an error of law.
3. The trial court's conclusion of law number 3 is an abuse of discretion and an error of law.
4. The trial court's denial of All City Bail Bonds' motion to vacate default judgment and exonerate bail bond is an abuse of discretion and an error of law.

B. STATEMENT OF THE CASE

On June 5, 2005, All City Bail Bonds posted bond for William Kramer to secure his presence at all court hearings. CP 29. On December 19, 2005, Mr. Kramer failed to appear at a scheduled court hearing. CP 30. On December 19, 2005, Mr. Kramer telephoned All City and advised its agent, Charles Stewart, of his failure to appear. CP 27. During that telephone conversation, Stewart “informed the Defendant that he needed to surrender himself either to [Stewart] or to the jail immediately.” CP 27.

On December 19, 2005, the trial judge ordered the bond forfeited and entered judgment against All City in the amount of the bail bond, \$20,000.00. CP 6, 7. The order recited as a basis the defendant’s failure to appear in court and that there was an outstanding warrant issued for violation of conditions of release and that the defendant’s “whereabouts are presently unknown.” CP 6.

On December 20, 2005, All City received written notification from the plaintiff and from the clerk of the court that the defendant had failed to appear. CP 30. From December 19 through December 26, All City was in regular telephone contact with the defendant. CP 30. Beyond

simply advising the defendant that he should surrender himself, All City took no further action to secure his presence before the court. CP 30.

Defendant, or his mother on his behalf, requested of Charles Stewart, All City's agent, that he be allowed to spend Christmas with his family, stating that he would surrender himself immediately after Christmas. CP 27, RP 10. Stewart agreed that he would meet with the defendant either the evening of December 26 or the next morning, December 27, in order that defendant could surrender himself to Stewart and be transported to jail. CP 27.

On December 26, 2005, defendant was apprehended at his mother's residence by Lincoln County Sheriff's deputies and taken into custody. CP 30. All City then moved the court to exonerate bond. CP 27. On February 7, 2006, the plaintiff filed its objection/opposition to All City's motion. CP 28. The trial court heard the motion on June 22, 2006, and denied All City's motion to exonerate. CP 29. On September 6, 2006, the court entered its written order with findings and conclusions. CP 30.

C. ARGUMENT

The forfeiture of recognizance in a criminal matter is governed by statute. RCW Chapter 10.19. The sections of the statute here relevant are:

RCW 10.19.090 provides:

In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments. If the surety is not notified by the court in writing of the unexplained failure of the defendant to appear within thirty days of the date for appearance, then the forfeiture shall be null and void and the recognizance exonerated.

RCW 10.19.140 provides:

If a forfeiture has been entered against a person in a criminal case and the person is returned to custody or produced in court within twelve months from the forfeiture, then 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, shall be remitted to the surety if the surety was directly responsible for producing the person in court or directly responsible for apprehension of the person by law enforcement.

The statute requires the trial court to declare a posted bond forfeited when a criminal defendant fails to appear in court. RCW 10.19.090. The trial court is required to “enter judgment against the

principal and sureties named in such recognizance for the sum therein mentioned . . .” Id. If the trial court fails, within thirty days, to notify the surety in writing of the defendant’s failure to appear, the forfeiture is then null and void and exoneration of the forfeited bond is required. Id.

The trial court followed the letter of the statute, as conceded by the appellant, All City. CP 17-18. All City moved to exonerate the bond, filed a brief in support thereof, and set the matter for hearing. Brief of Appellant 4. On June 22, 2006, All City argued its motion to vacate default judgment and exonerate the forfeited bond. Plaintiff opposed the motion and relied on the provisions of the statute requiring the surety to be “directly responsible for producing the person in court or directly responsible for apprehension of the person by law enforcement.” CP 13, RP 4-6.

All City conceded that “the defendant’s apprehension after his nonappearance was not a result of the surety producing the person in court.” RP 7. All City acknowledged that it was aware at all times of the defendant’s whereabouts. RP 8. All City admits that it colluded with defendant to allow him time to spend Christmas with his family. RP 10-11. Furthermore, All City makes no assertion that it ever communicated with law enforcement or the prosecutor concerning the status of the defendant. RP 13.

All City would have this Court believe that contract law somehow applies to decide the issue whether the bond should be exonerated or damages awarded for breach. In order for the issue of damages to arise, the surety must first satisfy the threshold of being found “directly responsible” for apprehension of the defendant by law enforcement or production of the defendant in court. RCW 10.19.140.

After reviewing All City’s written memorandum and declaration, hearing argument from the parties, and engaging in colloquy with All City’s attorney, the trial court found that All City’s conduct as surety failed to meet that threshold. CP 30, Conclusion of Law No. 2.

The Supreme Court, in State v. O’Day, 36 Wn.2d 146, 159, 216 P.2d 732 (1950), has recognized that:

[T]he matter of forfeiture, nonforfeiture or partial forfeiture of bail rests primarily in the sound discretion of the trial court, and that this court will not interfere with the exercise of that discretion, unless it appears that the court abused its discretion.

The standard of review has long been reiterated with respect to this issue. In State v. Olson, 127 Wn. 300, 301, 220 P. 776 (1923), the court quoted the general rule that in “the absence of evidence of flagrant abuse the appellate court will not interfere.”

The trial court abuses its discretion when its exercise thereof is manifestly unreasonable or based upon untenable grounds or reasons.

Davis v. Globe Mach. Mfg. Co., 102 Wn.2d 68, 77, 684 P.2d 692 (1984).

In refusing to vacate a bail forfeiture the trial court must state its reasons for so doing in order for an appellate court to determine whether there was an abuse of discretion.

State v. Hampton, 107 Wn.2d 403, 408-09, 728 P.2d 1049 (1986).

The trial court's stated reason, as Conclusion of Law No. 2, for refusing to vacate the forfeiture is that "All City Bail Bonds' telephonic advice to the defendant that he should surrender himself to law enforcement does not meet the statutory requirement under RCW 10.19.140 for return of bond."

As evidenced by the Verbatim Report of Hearing on June 22, 2006, the trial court exercised its sound discretion to deny the motion to exonerate. The reviewing court will not interfere with the exercise of that discretion, unless it appears that the court abused its discretion. O'Day, at 159.

All City appears to argue that its advice to the defendant to surrender himself to law enforcement satisfies the statutory requirement that it be "directly responsible" for his appearance in court or apprehension by law enforcement. All City admits it made no effort to communicate with law enforcement or the prosecutor regarding the

defendant's whereabouts or ostensible plans for turning himself over to All City or the sheriff's office after his Christmas holiday. All City admits it agreed with the defendant to allow him to spend Christmas with his family.

No stretch of the imagination would suffice to construe All City's advice to the defendant to turn himself over to law enforcement as satisfaction of the requirement that All City be "directly responsible" for his appearance in court or apprehension by law enforcement. The defendant was, in fact, apprehended by law enforcement wholly unaware of any contact between the defendant and All City. All City did not advise law enforcement of the defendant's whereabouts or their agreement with him to surrender himself after the Christmas holiday. RP 13-18.

The trial court's denial of All City's motion to exonerate was decided after careful review of the facts and attention to the arguments of counsel, to include review of All City's brief and supporting declaration. That is the essence of the exercise of sound discretion.

E. CONCLUSION

The Court should find that the trial court exercised sound discretion in denying All City's motion to exonerate bond. The trial court found that All City's performance fell short of the statutory requirement

that it be "directly responsible" for the defendant's appearance or apprehension.

The facts upon which the court's decision is based are not in dispute. Unless the surety can show "direct responsibility" for the defendant's apprehension or production before the court, the surety fails to make its case for exoneration. All City failed utterly to do so.

All City argues that, since the defendant happened to be present at his mother's house when law enforcement arrived to apprehend him, All City should be credited with the "direct responsibility" for his apprehension based on their telephonic advice to turn himself in. The fact is All City acquiesced, in violation of its responsibility, to the defendant's wishes to remain at large in order for him to enjoy the Christmas holiday with his family.

The respondent, State of Washington, asks the Court to affirm the trial court's order denying the motion to vacate default judgment and exonerate bond.

Dated this 14th day of March, 2007,

Respectfully submitted,



Melvin D. Hoit
Attorney for Respondent
WSBA# 24095

E. CERTIFICATE OF MAILING

I, Melvin D. Hoit, do hereby certify and declare under penalty of perjury of the laws of the State of Washington that, on this 14th day of March, 2007, I caused to be placed in the U. S. Mail, postage prepaid First Class, a true and correct copy of this *Brief of Respondent* addressed to the attorney for appellant as follows:

James L. Studt
Attorney for All City Bail Bonds
901 N. Monroe St., Suite 252
Spokane, WA 99201

Signed this 14th day of March, 2007, at Davenport, Washington.

A handwritten signature in black ink, appearing to read 'MDH', is written over a horizontal line.

Melvin D. Hoit