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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CV 09-0182
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RANDOLPH & COMPANY BAIL BONDS,) Rule 28, Arizona Rules
INC.; and IVORY CROW,) of Civil Appellate
) Procedure)
Appellants.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2006-111568-001 DT

The Honorable Lisa Ann Vandenberg, Commissioner

VACATED AND REMANDED

Andrew P. Thomas, Maricopa County Attorney Phoenix
By Sarah L. Corcoran, Deputy County Attorney
Attorneys for Appellee

Hendrickson Law Firm, P.L.L.C. Tempe
By Troy R. Hendrickson
Attorneys for Appellants

D O W N I E, Judge

¶1 Randolph & Company Bail Bonds ("Randolph") and Ivory Crow appeal the superior court's order forfeiting a \$25,000 appearance bond. For the following reasons, we vacate and remand.

FACTS AND PROCEDURAL BACKGROUND

¶2 In March 2006, criminal charges were filed against Gary Dewayne Miles. Miles repeatedly failed to appear at hearings, resulting in bench warrants and two prior bond forfeitures that are not at issue in this appeal. When Miles again failed to appear on December 19, 2007, a third bench warrant was issued, and bond was set at \$25,000.

¶3 Miles was arrested on September 27, 2008. Randolph, as agent for American Surety Company, posted the \$25,000 appearance bond on October 4, 2008. Two days later, Randolph surrendered Miles and sought exoneration of the bond. On October 8, 2008, Randolph posted a new \$25,000 appearance bond to secure Miles's release. On October 14, 2008, Miles again failed to appear, but was represented by counsel, resulting in a fourth bench warrant and a new bond set at \$70,000.

¶4 On December 16, 2008, Miles failed to appear personally or through counsel. Following the hearing, the superior court exonerated the October 4 bond. The hearing was continued to January 20, 2009, to allow Randolph time to locate and surrender Miles on the October 8 bond.

¶5 On January 20, Crow appeared for the first time, claiming a property interest in the October 8 bond. He requested a continuance, arguing prejudice as an indemnitor because his attorney could not appear due to a scheduling

conflict.¹ Crow submitted an affidavit stating he had paid the deposit for the bond. The superior court denied a continuance, stating:

THE COURT FINDS that there has not been satisfactory demonstration that Mr. Crow has any standing in this proceeding.

Therefore,

IT IS ORDERED DENYING Bond Poster Ivory Crow's Motion to Continue Bond Forfeiture Hearing filed this date.

In addition, the superior court found no reasonable cause for Miles's failure to appear on October 14, 2008, and forfeited the October 8 bond. Crow timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes section 12-2101(B) (2003).

DISCUSSION

¶6 Crow argues the court erred in ruling he lacked standing to contest the bond forfeiture. According to Crow, he established standing by alleging an interest in the property through his affidavit.

¶7 Our recent decision in *State v. Copperstate Bail Bonds*, 222 Ariz. 193, 213 P.3d 342 (App. 2009), which involved the same legal question and the same appellant, is dispositive of this appeal. In that case, the superior court ruled Crow

¹ On January 20, 2009, Crow's attorney filed a notice of appearance and a motion to continue the bond forfeiture hearing because he had a different court hearing scheduled at the same time.

lacked standing to contest forfeiture of an appearance bond he claimed to have posted in a different criminal matter. *Id.* at 194-95, ¶ 9, 213 P.3d at 343-44. We held that “a depositor or indemnitor does have standing to contest the forfeiture of a bond in a bond forfeiture proceeding.” *Id.* at 195, ¶ 14, 213 P.3d at 344. We found Crow had alleged a property interest sufficient to create a factual question about his standing by submitting an “uncontested affidavit, which stated that he posted the bond.” *Id.* at 195-96, ¶¶ 15-16, 213 P.3d at 344-45. We remanded for the superior court “to determine whether Crow had an interest in and thus standing to contest the forfeiture proceedings.” *Id.* at 196 n.5, ¶ 16, 213 P.3d at 345 n.5.

¶8 In the case at bar, Crow likewise submitted an uncontested affidavit stating he paid the deposit for Miles’s bond. Under *Copperstate*, Crow raised a factual issue that the superior court must resolve to determine his standing.²

² We do not reach Crow’s argument he was deprived of due process because his \$2500 deposit was forfeited, and he remains liable for the remaining \$22,500. Crow is not challenging the sufficiency of the notice and hearing procedure for bond forfeiture under Arizona Rule of Criminal Procedure 7.6(c)(1)-(2). He simply contends the continuance denial deprived him of an opportunity to be heard before his property was forfeited. “Due process protection vests only when a person has a property interest that is protectible.” *Shelby Sch. v. Ariz. State Bd. of Educ.*, 192 Ariz. 156, 168, ¶ 55, 962 P.2d 230, 242 (App. 1998) (citation omitted). Whether Crow has a “property interest that is protectible” is the issue to be determined on remand.

CONCLUSION³

¶19 The superior court erred in summarily ruling that Crow lacked standing to challenge the bond forfeiture. We remand for the court to make a factual determination regarding Crow's standing and for further proceedings consistent with this decision.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
MAURICE PORTLEY, Presiding Judge

/s/
LAWRENCE F. WINTHROP, Judge

³ We reject the State's contention that the bond forfeiture must be affirmed simply because Miles failed to appear. Even after a violation, the superior court has discretion to "consider when, and in what amount, to forfeit or exonerate a bond." *State v. Old W. Bonding Co.*, 203 Ariz. 468, 474, ¶ 23, 56 P.3d 42, 48 (App. 2002). See Ariz. R. Crim. P. 7.6(d)(3) ("In all other instances, the decision whether or not to exonerate a bond shall be within the sound discretion of the court."). The court considers several factors, including: "the surety's effort and expense in locating and apprehending the defendant; [] the cost, inconvenience, and prejudice suffered by the state as a result of the violation; [] any intangible costs; [] the public's interest in ensuring a defendant's appearance; [] any other mitigating or aggravating factors." *Old W.* at 475, ¶ 26, 56 P.3d at 49 (citation omitted). The State concedes Crow could have offered relevant information.