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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  
FILED: 04/12/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CV 11-0661  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
AMERIBAIL BAIL BONDS; LEXINGTON NATIONAL ) Rule 28, Arizona Rules  
INSURANCE COMPANY; MIDWEST BAIL BONDS, ) of Civil Appellate  
) Procedure)  
Appellants. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-151602-001 DT

The Honorable Brian S. Rees, Commissioner

**AFFIRMED**

William G. Montgomery, Maricopa County Attorney Phoenix  
By Peter S. Spaw, Deputy County Attorney  
And Kathryn E. McCormick, Deputy County Attorney  
Kimberley Felcyn, Deputy County Attorney  
Attorneys for Plaintiff/Appellee

Clifford M. Sherr Attorney At Law Phoenix  
By Clifford M. Sherr  
Attorneys for Defendants/Appellants

G O U L D, Judge

¶1 Appellants Ameribail Bail Bonds, Midwest Bail Bonds,

and Lexington National Insurance Company (collectively, "the Surety") appeal the superior court's judgment forfeiting an appearance bond. For the following reasons, we affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

¶12 On September 30, 2010, the Surety posted a \$22,000 appearance bond on behalf of Eric Alonzo Brown. On May 11, 2011, when Brown failed to appear in court for a final trial management conference, the court issued a bench warrant for his arrest and set a bond forfeiture hearing for June 28, 2011. Brown did not appear at the forfeiture hearing, but the Surety's counsel appeared and moved to continue the hearing. The court found no reasonable cause for Brown's failure to appear on May 11, 2011, but continued the forfeiture hearing to August 23, 2011, "for the purpose of mitigation only." On or about August 5, 2011, Brown was arrested in Chicago, Illinois.

¶13 The Surety then filed a memorandum in support of complete exoneration of the bond, in which it argued that it had complied with Arizona Rule of Criminal Procedure 7.6(d)(2) by providing an affidavit of surrender dated August 8, 2011, to the Maricopa County Sherriff to alert it that Brown had been apprehended in Illinois and was being held there by local authorities. It argued, in the alternative, that only a portion of the bond should be forfeited and offered to pay the cost of

privately transporting Brown from Illinois to Arizona, an estimated cost of \$1,984. The State responded by noting that Rule 7.6(c)(2) and (d)(2) granted the court discretion to forfeit or exonerate all or part of the appearance bond and urged it to exercise that discretion to determine whether total exoneration of the bond would be appropriate.

¶14 At the continued hearing on August 23, 2011, Brown appeared and stated that he had not appeared on May 11, 2011, because he was addressing a childcare issue. He initially claimed he informed his lawyer that he would not be able to appear in court on May 11 and that the lawyer had indicated he would appear on Brown's behalf, but when questioned by the judge admitted that he had not spoken to his lawyer until noon on May 11, after the court had issued the bench warrant for his arrest. When the judge inquired about the circumstances of Brown's arrest, the Surety's counsel conceded that the Surety had not been instrumental to the Illinois authorities' apprehension of Brown. The court rejected Brown's explanation for his failure to appear on May 11 and ordered the forfeiture of the appearance bond. That same day, it entered a forfeiture judgment in favor of Appellee State of Arizona.

¶15 The Surety timely appealed.

¶16 We have jurisdiction pursuant to Arizona Revised

Statutes ("A.R.S.") section 12-2101(A)(1) (Supp. 2011).<sup>1</sup>

#### DISCUSSION

¶7 The Surety argues the superior court misconstrued Arizona Rule of Criminal Procedure 7.6(d)(2), regarding exoneration of the appearance bond, and abused its discretion by failing to exonerate at least a portion of the bond. We view the evidence in the light most favorable to upholding the judgment and review the trial court's order forfeiting the bond for an abuse of discretion, but consider its interpretation of the court rules governing bail bonds de novo. *State v. Garcia Bail Bonds*, 201 Ariz. 203, 205, ¶ 5, 33 P.3d 537, 539 (App. 2001).

¶8 The primary purpose of an appearance bond is to ensure that the defendant appears at court proceedings. *Id.* at 208, ¶ 19, 33 P.3d at 542. If it appears to the trial court that a person released on an appearance bond has violated a condition of the bond, it must issue a bench warrant for that person's arrest and, within 120 days, conduct a bond forfeiture hearing. Ariz. R. Crim. P. 7.6(c)(1). At the forfeiture hearing, the court may, in its discretion, order all or part of an appearance bond forfeited if the violation is not explained or excused.

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<sup>1</sup> We cite to the current version of applicable statutes where no revisions material to this decision have since occurred.

Ariz. R. Crim. P. 7.6(c)(2); *State v. Old West Bonding Co.*, 203 Ariz. 468, 475, ¶ 25, 56 P.3d 42, 49 (App. 2002). The court may also exercise its discretion to exonerate a bond, particularly if the surety has surrendered the defendant to the sheriff of the county in which the prosecution is pending or delivered an affidavit to the sheriff stating that the defendant is incarcerated in this or another jurisdiction. Ariz. R. Crim. P. 7.6(d)(2),(3); A.R.S. § 13-3974 (Supp. 2012); *Old West Bonding Co.*, 203 Ariz. at 474, ¶ 23, 56 P.3d at 48.<sup>2</sup> In determining whether, and in what amount, to order forfeiture, the court may consider all relevant circumstances, including a defendant's willfulness in violating the order to appear, the effort and expense expended by the surety in trying to locate and apprehend the defendant, any intangible costs, and any other aggravating or mitigating factors that prevented the defendant from appearing. *In re Bond Forfeiture in Pima County Cause No. CR-20031154*, 208 Ariz. 368, 370, ¶ 5, 93 P.3d 1084, 1086 (App. 2004) (citing *Old West Bonding Co.*, 203 Ariz. at 475, ¶ 26, 56 P.3d at 49).

¶19 The Surety contends the superior court erroneously believed the Rules of Criminal Procedure required it to forfeit

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<sup>2</sup> The court is only required to exonerate the bond if it determines, before violation, that there is no further need for an appearance bond. Ariz. R. Crim. P. 7.6(d)(1).

the bond once it found that Brown did not have a credible explanation or excuse for his failure to appear on May 11, 2011. It argues that this misinterpretation was an error of law that requires us to vacate the judgment and remand for further proceedings.

¶10 We considered the interaction between Rules 7.6(c)(2) and 7.6(d)(2) in *Old West Bonding Co.*, 203 Ariz. at 475, ¶ 25, 56 P.3d at 49, and held that Rule 7.6(c)(2) does not mandate forfeiture of a bond whenever the violation was not explained or excused because such an interpretation would render Rule 7.6(d)(2) meaningless. *Id.* at 474, ¶ 23, 56 P.3d at 48. Instead, the court has discretion to consider whether, and in what amount, to forfeit a bond pursuant to Rule 7.6(c)(2), and whether any part of the bond not forfeited should be exonerated pursuant Rule 7.6(d)(2) or (3). *Id.* at 475, ¶ 25, 56 P.3d at 49.

¶11 There is no indication that the superior court ordered forfeiture of the bond because it believed that Rule 7.6(c)(2) mandated forfeiture, rather than based on the exercise of its discretion in considering the relevant circumstances. Indeed, the court specifically detailed the reasons for its order, rejecting Brown's explanation for his failure to appear and noting that he had not asked the court to quash the bench

warrant or otherwise surrendered in the intervening months, but instead left the state and was caught driving a vehicle with illegally tinted windows in Illinois.

¶12 Nevertheless, the Surety argues that the court's erroneous belief that Rule 7.6(c)(2) mandated forfeiture once it determined Brown's failure to appear was unexcused is clear because, after discussing Brown's conduct, the court stated, "[a]nd for that reason I am going to forfeit the entire bond in the amount of \$22,000 posted 9/25/2010." The Surety also cites the court's statement that it was "troubled" about forfeiting the entire amount of the bond but did not see any basis for not doing so. We disagree that these statements evidence an erroneous application of the rules. Rather, we believe they demonstrate, along with the court's discussion of the Surety's lack of involvement in returning Brown to Arizona, that the court exercised its discretion by considering all the relevant factors to determine whether to forfeit the entire bond amount or only a portion thereof. *Fuentes v. Fuentes*, 209 Ariz. 51, 58, ¶ 32, 97 P.3d 876, 883 (App. 2004) (appellate court presumes the trial court knows the law and applied the correct standard unless that presumption is rebutted by the record).

¶13 The Surety next argues the court abused its discretion by failing to exonerate any portion of the bond, citing its

affidavit of surrender to the sheriff and offer to pay the costs of transporting Brown from Illinois to Arizona. The court discussed both issues at the hearing and noted that the Surety was "not instrumental" in Brown's recovery and there was no basis on which to give it credit or mitigation for his return to the jurisdiction. It rejected the idea that the Surety was entitled to an exoneration of all or part of the bond, determining that the independent efforts of the police were responsible for Brown's return to Maricopa County.

¶14 We find no abuse of discretion in the court's ruling. "[S]urrender' . . . means the transfer of physical possession of [the] defendant into the custody of the State." *State v. Affordable Bail Bonds*, 198 Ariz. 34, 39, ¶ 21, 6 P.3d 339, 344 (App. 2000). The Surety clearly did not surrender Brown to the Maricopa County Sheriff and its offer to pay the costs of his return from Illinois did not require the court to mitigate the bond.

¶15 The Surety cites *State v. Amador*, 98 N.M. 270, 648 P.2d 309 (1982), in which the New Mexico Supreme Court held that the trial court abused its discretion by ordering forfeiture of an entire appearance bond when the surety located the defendant in a Texas jail, assured that he was detained by the Texas authorities, and offered to pay all reasonable costs to



transport him back to the jurisdiction. *Id.* at 274, 648 P.2d at 313. The facts in this case are different than those at issue in *Amador*, where the defendant did not appear because he was incarcerated in another state, and that decision does not alter our review of the superior court's exercise of its discretion.

¶16 The Surety contends the superior court failed to consider certain factors we articulated in *Old West Bonding* that would have weighed in favor of exoneration of at least a portion of the bond. In particular, the "costs, inconvenience, and prejudice suffered by the state as a result of the violation," the Surety's "effort and expense in locating and apprehending the defendant," and "the public's interest in ensuring a defendant's appearance." *Id.* at 475, ¶ 26, 56 P.3d at 49. The Surety argues the State suffered no prejudice from Brown's violation of his appearance bond because the delay in his prosecution was less than three months, that it was diligent in its efforts to locate him and ensure his appearance after his capture in Illinois, and that it offered to pay for his return.

¶17 The superior court did not abuse its discretion by refusing to reduce the bond forfeiture amount based upon these factors. The Surety undertook the obligation of ensuring Brown's appearance at the risk of forfeiture of the bond at the amount set by the court. Although Brown was returned to Arizona

prior to entry of the forfeiture judgment, the superior court found that the Surety was not instrumental in his recovery and was not entitled to any credit for his return. Moreover, even the surrender of a defendant by the surety does not require exoneration of the bond. *Old West Bonding*, 203 Ariz. at 473, ¶ 18, 56 P.3d at 47. In addition, although the Surety offered to pay the cost of transporting Brown from Illinois to Arizona, as discussed, the court was not required to reduce the amount of the bond forfeiture based upon that offer. Under the circumstances, the superior court did not abuse its discretion by ordering forfeiture of the entire appearance bond.

¶18 Finally, the Surety argues that bond forfeiture should not be a source of revenue or "windfall" for the State and the amount forfeited should be limited to the State's actual monetary loss - in this case approximately \$2,000 spent to return Brown to Arizona. We reject this argument, as it would undermine the discretion conferred on the court by statute and rule in bond forfeiture proceedings. See A.R.S. § 13-3974; Ariz. R. Crim. P. 7.6.

**CONCLUSION**

¶19 For the foregoing reasons, we affirm.

/S/

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ANDREW W. GOULD, Judge

CONCURRING:

/S/

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MAURICE PORTLEY, Presiding Judge

/S/

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ANN A. SCOTT TIMMER, Judge