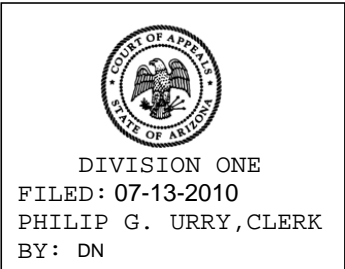


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CV 09-0530
)
 Appellee,) DEPARTMENT D
)
 v.) **MEMORANDUM DECISION**
) (Not for Publication-
 LIBERTY BAIL BONDS and AMERICAN) Rule 28, Arizona Rules
 CONTRACTORS INSURANCE COMPANY,) of Civil Appellate
) Procedure)
 Appellants.)
)
)
)

Appeal from the Superior Court of Maricopa County
Cause No. CR2008-153284-001 DT
The Honorable Brian S. Rees, Judge

AFFIRMED

Clifford Sherr Phoenix
Attorney for Appellants

Davina Bressler Phoenix
Attorney for Appellee

T H O M P S O N, Judge

¶1 Appellants Liberty Bail Bonds (Liberty) and American Contractors Insurance Company (American) appeal from the trial court's forfeiture of a \$25,000 bail bond. For the reasons that follow, we affirm the judgment of the trial court.

¶2 Appellants posted a \$25,000 bond on behalf of defendant

Miguel Madera (Madera) in November 2008. Madera failed to appear for sentencing. The trial court issued a bench warrant and set a bond forfeiture hearing. Subsequently, the trial court quashed the bench warrant, affirmed the bond, and set a new sentencing hearing. The trial court continued the sentencing hearing twice. Madera failed to appear, and the trial court issued a new bench warrant. The trial court set a bond forfeiture hearing, but continued the hearing to allow appellants "time to surrender [Madera] - who had been located in custody, non-bondable in another state on the March 10, 2009 bench warrant." At the June 23, 2009 bond forfeiture hearing, the trial court entered judgment of forfeiture. Appellants timely appealed.

¶13 On appeal, appellants argue that the trial court committed reversible error when it forfeited the entire \$25,000 bond after appellants offered to pay all reasonable costs to have Madera returned to Arizona. We review the trial court's order forfeiting a bail bond for an abuse of discretion, and consider *de novo* the court's interpretation of the court rules pertaining to bail bonds. *State v. Garcia Bail Bonds*, 201 Ariz. 203, 205, ¶ 5, 33 P.3d 537, 539 (App. 2001) (citations omitted).

¶14 Arizona Revised Statutes (A.R.S.) § 13-3974 (2009) provides that "[a] surety may be relieved from liability on an appearance bond if the surety surrenders the defendant into the custody of the sheriff of the county in which the prosecution is pending and the sheriff reports the surrender to the court." In

this case, Madera committed a new offense in the state of Nebraska and the surety was unable to surrender him in Arizona. In ruling to forfeit the bond the trial court stated:

Even if [Madera] was released to go to Nebraska, if he commits a new offense that's within his own control and it would therefore not constitute a reasonable excuse for his failure to appear at the hearing. If he - if we released him knowing - or if there were other charges already pending for which he was then apprehended, that's, I think, the distinction that I was trying to draw.

¶15 We find no abuse of discretion. When a defendant commits a new crime in another jurisdiction, the surety is responsible. *Garcia Bail Bonds*, 201 Ariz. at 205, ¶ 10, 33 P.3d at 539. No surrender of Madera occurred in this case and therefore forfeiture was within the trial court's discretion. See *State v. Affordable Bail Bonds*, 198 Ariz. 34, 6 P.3d 339 (App. 2000) ("'Surrender,' as used in A.R.S. section 13-3974, means the transfer of physical possession of a defendant into the custody of the State").

¶16 The judgment of the trial court forfeiting the bond is

affirmed.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Presiding Judge

/s/

SHELDON H. WEISBERG, Judge