

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

STATE OF ARIZONA,
Appellee,

v.

NUÑEZ BAIL BONDS,
Appellant.

No. 2 CA-CV 2015-0179
Filed April 11, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. CR20133769001
The Honorable Lee Ann Roads, Judge Pro Tempore

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Christopher L. Straub, Deputy County Attorney, Tucson
Counsel for Appellee

T. S. Hartzell, Tucson
Counsel for Appellant

STATE v. NUÑEZ BAIL BONDS
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 Nuñez Bail Bonds (Nuñez) appeals from the superior court’s judgment forfeiting a \$15,000 appearance bond posted on behalf of Elizabeth Zaragoza. Nuñez argues the court abused its discretion by denying its request to continue a bond forfeiture hearing made at the hearing in order to access a sealed record in another case. Because we find no abuse of discretion, we affirm.

Factual and Procedural Background

¶2 “We view the record on appeal in the light most favorable to supporting the [superior] court’s judgment.” *In re Bond Forfeiture in Pima County Cause No. CR-20031154*, 208 Ariz. 368, ¶ 2, 93 P.3d 1084, 1085 (App. 2004). In 2013, Zaragoza was arrested on serious drug charges. The Justice Court issued an appearance order, which set bond in the amount of \$15,000. Nuñez posted the appearance bond in that amount.

¶3 While on release, Zaragoza pled guilty to one count of transportation of a narcotic drug for sale. At the same change-of-plea hearing, she also pled guilty in a different case to attempted human smuggling. Over the state’s objection, the trial court deferred the acceptance of each plea until the date of the entry of judgment of guilt and sentencing.

¶4 Zaragoza did not appear at the sentencing hearing on January 21, 2015, and the trial court issued a warrant for her arrest. The court also referred the matter to the Superior Court Hearing Officer (hereafter the forfeiture court) for the commencement of a bond forfeiture hearing. In its June 27 in-chambers order, the forfeiture court noted Nuñez had been unable to locate Zaragoza and set the forfeiture hearing for August 6.

STATE v. NUÑEZ BAIL BONDS
Decision of the Court

¶5 At the forfeiture hearing, Nuñez requested a continuance and an order unsealing the records in the human smuggling case so it could determine whether, based on the language in the plea agreement in that case, the trial court rendered the bond void “by allowing Ms. Zaragoza to remain at liberty on two prison-only pleas.” Nuñez argued the sealing of the record in the human smuggling case prevented it from arguing “a legal basis for the bond . . . being void” and it therefore was entitled to a continuance. The forfeiture court responded by drawing attention to the significant time period that elapsed between when the trial court had allowed Zaragoza to remain on release and when Zaragoza had last attended a hearing; a time period which was over six months. The forfeiture court denied the request for the continuance, denied the motion to unseal the record, and ruled the bond forfeited. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

¶6 Nuñez contends the forfeiture court abused its discretion by denying its motion for a continuance. We review a decision to forfeit a bond for an abuse of discretion. *Bond Forfeiture in Pima County No. CR-20031154*, 208 Ariz. 368, ¶ 2, 93 P.3d at 1085. Similarly, we will reverse a denial of a request for a continuance only if the forfeiture court abused its discretion. *Ornelas v. Fry*, 151 Ariz. 324, 329, 727 P.2d 819, 824 (App. 1986). We will not reverse where the moving party had ample time to prepare before moving for a continuance. *State v. Barr*, 217 Ariz. 445, ¶ 10, 175 P.3d 694, 697 (App. 2008).

¶7 In *Barr*, the trial court denied a motion for a continuance of a presentencing hearing where the moving party had over four months to prepare. *Id.* This court noted, “There is no abuse of discretion in denying a motion to continue when the record reflects that [a party] failed to exercise due diligence in preparing for trial.” *Id.*

¶8 At the forfeiture hearing, Nuñez admitted it had only attempted to access the human smuggling case’s sealed records that week and, consequently, “didn’t have enough time to file a motion

STATE v. NUÑEZ BAIL BONDS
Decision of the Court

to allow [Nuñez] to examine it.” Nuñez did not give the forfeiture court any reasons why it had failed to move to unseal the record in the human smuggling case earlier. Likewise, Nuñez has not explained why it did not request a continuance at any point that week or before. The forfeiture court could have found that Nuñez was requesting a continuance at that point because it had failed to act diligently in preparing for the forfeiture hearing. We conclude it did not abuse its discretion in denying the request for a continuance under these circumstances. *See Barr*, 217 Ariz. 445, ¶ 10, 175 P.3d at 697.¹

Disposition

¶9 For the foregoing reasons, we affirm the judgment of the forfeiture court.

¹Nuñez appears to suggest the “summary” nature of forfeiture hearings creates a custom where continuances are the norm. This argument is unsupported by any citations to authority or the record, and is therefore waived. *See Ariz. R. Civ. App. P. 13(a)(7)* (“An ‘argument’ . . . must contain . . . [a]ppellant’s contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record on which the appellant relies.”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (appellant’s failure to develop and support waives issue on appeal).

Nuñez also suggests the forfeiture court erred by denying Nuñez’s motion to unseal the record in Zaragoza’s smuggling case. Nuñez does not mention this argument in its statement of the issue, nor develop it, nor cite any authority in support of this argument. Thus, the argument is waived. *See Ariz. R. Civ. App. P. 13(a)(7)*; *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2.