

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANGELO JOHNSON,

Defendant-Appellant.

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FOR PUBLICATION

June 14, 2011

No. 295664

Wayne Circuit Court

LC No. 09-011104-01

Before: WHITBECK, P.J., and O'CONNELL and WILDER, JJ.

WILDER, J. (*concurring*).

I concur in the lead opinion's reasoning and result with respect to defendant's sufficiency of the evidence and ineffective assistance of counsel claims. However, I respectfully disagree with the lead opinion's conclusion that defendant was not "on bond" for purposes of MCL 777.56(1)(d) when he committed the sentencing offense.

The primary goal of statutory interpretation is "to discern and give effect to the Legislature's intent." *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006), quoting *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999). "We begin by examining the plain language of the statute; where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written." *Id.* If a statute is ambiguous, judicial construction is appropriate. *People v Gardner*, 482 Mich 41, 50; 753 NW2d 78 (2008).

MCL 777.56 provides, in relevant part:

(1) Prior record variable 6 is relationship to the criminal justice system. Score prior record variable 6 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

\* \* \*

(d) The offender is on probation or delayed sentence status or on bond awaiting adjudication or sentencing for a misdemeanor 5 points

“On” is defined as “so as to be or remain supported by or suspended from” and “subject to.” “Bond” is defined as “An obligation; a promise.” Black’s Law Dictionary (9th ed). Therefore, the phrase “on bond” in MCL 777.56(1)(d) can be interpreted to mean “subject to an obligation.”

The Manual for District Court Magistrates provides, “The posting of the bail requires the creation of a contract between the defendant, the bail poster (a third party or a surety), and the court. This contract is known as a bond.” The manual further provides, “There are three types of bail for which a bond is required: [1] cash bail (which includes the posting of 10 percent), [2] secured bail, or [3] unsecured bail (personal recognizance).” While bail is the security required by the court for release, bond is the obligation or contract between the defendant, the bail poster, and the court.

A pretrial release on an unsecured bail is subject to the following conditions: “that the defendant *will appear as required*, will not leave the state without permission of the court, and will not commit any crime while released.” See MCR 6.106(C) and MCR 6.106(D) (the court may designate other conditions as well) (emphasis added). MCR 6.106(E) provides, in relevant part:

(E) Money Bail. If the court determines for reasons it states on the record that the defendant’s appearance or the protection of the public cannot otherwise be assured, money bail, with or without conditions described in subrule (D), may be required.

Even if the trial court opts to only require money bail under subrule (E), and not other conditions described in subrule (D), appearance remains a condition of the release based on the language, “defendant’s appearance . . . cannot otherwise be assured.” With each type of bail, therefore, the defendant is subject to the minimum obligation to appear as required, which I conclude is the defendant’s bond, obligation, or contract with the court.

MCR 6.106(I)(2) provides, in relevant part, instructions regarding a defendant’s failure to comply with conditions of a release:

(2) If the defendant has failed to comply with the conditions of release, the court may issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited.

Although this rule references the forfeiture of “bail money deposited or the surety bond,” the language does not discharge the defendant’s obligation to appear. Instead, the language gives the trial court discretion to further compel the obligation to appear with an order revoking the release and an arrest warrant. Since forfeiture of bail money or a surety bond does not discharge the defendant’s underlying bond, obligation, or contract with the court to appear as required, I therefore conclude that defendant’s obligation to appear was not discharged at the time of the sentencing offense, and that he was “on bond” for purposes of MCL 777.56(1)(d).

/s/ Kurtis T. Wilder