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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1658**

State of Minnesota,
Respondent,

vs.

Robert Louis Hodge,
Defendant,

Fokiss, LLC,
Appellant.

**Filed March 20, 2017
Reversed
Smith, John, Judge***

Dakota County District Court
File No. 19HA-CR-15-2030

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Jessica A. Bierwerth, Dominika Kins,
Assistant County Attorney, Hastings, Minnesota (for respondent)

Eric A. Rice, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Smith, John,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We reverse the district court's order denying reinstatement of the appellant surety's bail bond because the district court did not apply the correct legal standard (*Shetsky* factors) in its determination.

FACTS

Appellant Fokiss, LLC, issued a \$20,000 bail bond to the district court on behalf of a defendant (Hodge) in November 2015. Hodge pleaded guilty on March 23, 2016, and the district court scheduled a sentencing hearing on May 19, 2016. Hodge failed to appear for his sentencing hearing. Consequently, the district court forfeited Fokiss's bail bond.

On June 21, 2016, Fokiss received the district court's notification of the forfeiture. The following day, Fokiss located Hodge in custody in Hennepin County, notified the district court, and petitioned the district court to reinstate and discharge the bail bond. The district court held a hearing and granted Fokiss's petition in part, reinstating and discharging \$10,000 of the original \$20,000 bail bond.

DECISION

Fokiss argues that the district court abused its discretion because the *Shetsky* factors entitle it to full reinstatement of its bond. *See In re Shetsky*, 239 Minn. 463, 471, 60 N.W.2d 40, 46 (1953). We review a denial of a petition for reinstatement of a forfeited bail bond for an abuse of discretion. *State v. Askland*, 784 N.W.2d 60, 62 (Minn. 2010). A district court abuses its discretion if "it bases its conclusions on an erroneous view of the law." *Id.* If the district court abused its discretion, we may reverse and reinstate an entire bail bond.

See id. at 64 (reversing and remanding with instruction to reinstate, discharge, and refund forfeited bond).

A district court may forgive or reduce the forfeiture of a bail bond “according to the circumstances of the case and the situation of the party on any terms and conditions it considers just and reasonable.” Minn. Stat. § 629.59 (2016). Four factors (the *Shetsky* factors) guide a district court’s analysis in determining whether to reinstate a bail bond:

- (1) the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant’s absence;
- (2) the good faith of the bond company as measured by the fault or willfulness of the defendant;
- (3) the good-faith efforts of the bond company to apprehend and produce the defendant; and
- (4) any prejudice to the State in its administration of justice.

Askland, 784 N.W.2d at 62 (citing *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46). The party seeking reinstatement of the bond bears the burden of establishing the first three *Shetsky* factors; the burden then shifts to the state to demonstrate prejudice. *Id.* Because the district court only vaguely referred to the *Shetsky* factors in its order, we will analyze each factor in turn.

Purpose of bail and cause, purpose, and length of defendant’s absence

The first *Shetsky* factor examines “the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant’s absence.” *Id.* The district court determined that the purpose of bail was not satisfied because Fokiss took little proactive measures to guarantee Hodge’s appearance prior to the hearing, and he ultimately failed to appear for sentencing. Fokiss contends that the purpose of bail was satisfied

because it quickly located Hodge, enabling prosecution to continue soon after Hodge's failure to appear.

A district court "may not treat bail as a way to increase the revenue of the state or to punish the surety." *State v. Storkamp*, 656 N.W.2d 539, 541-42 (Minn. 2003). Rather, the purpose of bail is two-fold: "relieving the accused of imprisonment and relieving the state of the burden of detaining him pending his trial." *Id.* at 541. The surety, then, guarantees "the accused's presence at trial without in any way impairing or delaying the administration of justice or prejudicing the state in its prosecution." *Id.* Minn. Stat. § 629.58 (2016) encourages "sureties to *locate, arrest, and return defaulting defendants* to the authorities to facilitate the timely administration of justice." *Id.* at 542 (emphasis added).

Here, the cause and length of Hodge's absence support reinstatement of the bail bond. Fokiss called Hodge once before the court appearance from which he failed to appear. Hodge did not answer, so Fokiss left a voicemail. Hodge, who was in custody in Hennepin County on May 19, 2016, was still in custody when he was located by Fokiss, one day after Fokiss received notification that the district court forfeited its bail bond. This is a justified excuse for failing to make a court appearance. *Shetsky*, 239 Minn. at 469 n.3, 60 N.W.2d at 45 n.3. Additionally, Hodge's location was only unknown for about one month; the Minnesota appellate courts have fully reinstated bail bonds in situations where a defendant's location was unknown for greater periods of time. *See Askland*, 784 N.W.2d at 61 (about seven months); *Storkamp*, 656 N.W.2d at 540-41 (about two months); *see also Farsdale v. Martinez*, 586 N.W.2d 423, 424-25 (Minn. App. 1998) (about three months).

The state argues that the purpose of bail was not satisfied because Hodge failed to appear, and sureties should take significant actions to guarantee a defendant's appearance in the first place. *See United States v. Burnett*, 474 F. Supp. 761, 762 (S.D.N.Y. 1979) (denying a motion to set aside forfeiture of bonds, in part, because "those who posted collateral played not the slightest part in [the absconded defendant's] apprehension"); *State v. Werner*, 667 A.2d 770, 775 (R.I. 1995) (same). We reject this argument because the state cites no authority or standards that require sureties to take significant action *prior* to a defendant's scheduled court appearance.

Because Fokiss took sufficient action to locate Hodge and "facilitate the timely administration of justice," we conclude that the purpose of bail was satisfied. *Storkamp*, 656 N.W.2d at 542. Therefore, this factor favors reinstatement.

Good faith of the bond company, measured by defendant's fault or willfulness

The second *Shetsky* factor considers "the good faith of the bond company as measured by the fault or willfulness of the defendant." *Askland*, 784 N.W.2d at 62. Detention in the custody of another jurisdiction is a justifiable cause for failing to appear. *Shetsky*, 239 Minn. at 469 n.3, 60 N.W.2d at 45 n.3. Here, Hodge missed his court appearance because he was in custody in Hennepin County. Because Hodge's detention in Hennepin County is a justifiable excuse for his failure to appear, we conclude that this factor weighs in favor of reinstatement.

Good-faith efforts to produce defendant

The third *Shetsky* factor considers "the good-faith efforts of the bond company to apprehend and produce the defendant." *Askland*, 784 N.W.2d at 62. The state argues that

this factor favors forfeiture because, as the district court stated in its order, sureties should act proactively prior to a court hearing to guarantee Hodge's appearance, and Fokiss made only one phone call to Hodge prior to his failure to appear.

A surety satisfies its good-faith requirement if it acts to apprehend and produce a defendant *after* he or she fails to appear. *Storkamp*, 656 N.W.2d at 541, 543 (concluding that a district court abused its discretion in denying reinstatement of a bail bond, in part, because a surety's actions after a defendant absconded satisfied its duty of good faith effort); *Farsdale*, 586 N.W.2d at 426 (determining that a surety acted in good faith to locate a defendant after he failed to appear and fled to Texas).

Here, Fokiss located Hodge in custody at the Hennepin County Adult Detention Center one day after it learned that the district court forfeited its bail bond due to Hodge's failure to appear at sentencing; it immediately notified the district court of Hodge's location. This factor favors reinstatement of the bail bond because Fokiss acted quickly to locate Hodge and notify the district court.

Prejudice to the state in its administration of justice

The fourth *Shetsky* factor looks at "any prejudice to the State in its administration of justice." *Askland*, 784 N.W.2d at 62. The state alleges that the delay in prosecution prejudiced it. We conclude that the state failed to demonstrate prejudice that would justify the bond forfeiture.

A defendant's absence alone does not satisfy the state's burden of demonstrating prejudice. *Id.* at 63 ("We are not insensitive to the financial predicament that confronted the district court, but the prejudice-to-the-State factor in the *Shetsky* analysis is concerned

solely with prejudice to the State in prosecuting the defendant.”). Here, the state asserts that its prejudice stems from “the time the state and courts spen[t] preparing, reviewing, and waiting for the defendant’s appearance.” But like *Askland*, the defendant pleaded guilty to the charged offenses. *Id.* We conclude that the state failed to meet its burden of proof because the state provides no evidence that Hodge’s failure to appear resulted in a loss of evidence or witnesses that would prejudice its prosecution of Hodge. This favor weighs in favor of reinstating the bail bond.

Because the district court based its decision on an erroneous view of the law, we conclude that the district court abused its discretion and fully reinstate Fokiss’s bail bond. The state failed to establish prejudice, and Fokiss met its burden of proving that the purpose of the bail was satisfied, the cause of Hodge’s failure to appear was justified, and it engaged in good-faith efforts to locate Hodge.

Reversed.