STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2002
A16-2003

State of Minnesota,
Respondent,

vs.

Andrew James Remer, Defendant (A16-2002),

Daniel Clyde Rothbauer, Jr., Defendant (A16-2003),

Midwest Bonding, LLC,
Appellant.

Filed July 3, 2017
Reversed and remanded
Rodenberg, Judge

Dakota County District Court
File Nos. 19HA-CR-15-1977, 19HA-CR-15-2420

James C. Backstrom, Dakota County Attorney, G Paul Beaumaster, Assistant County Attorney, Hastings, Minnesota (for respondent)

James McGeeney, Doda & McGeeney, P.A., Rochester, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

In these consolidated appeals, appellant bonding company argues that the district court abused its discretion by refusing to reinstate and discharge previously forfeited bail bonds (bonds) in full. Because the district court erred in its application of the factors identified by the Minnesota Supreme Court to guide a district court's exercise of its discretion, we reverse and remand.

FACTS

Andrew Remer and Daniel Rothbauer Jr. were each arrested. Conditions of release were established for each of them by a district court. Appellant Midwest Bonding LLC entered into separate bond agreements with each of them in the amounts of $90,000 and $30,000 respectively. Both were released pretrial based on bonds issued by appellant and posted with the district court; each failed to appear at his respective pretrial hearing. The district court issued warrants and ordered the bonds forfeited.

In Remer's case, appellant moved to reinstate the bond and filed an affidavit explaining that it both attempted to contact Remer before his pretrial hearing and attempted to locate him after he failed to appear. Appellant explained that Remer was located in the custody of another jurisdiction, and that appellant made efforts to ensure that Remer would be brought to Dakota County. The district court reinstated 75% of Remer's bond.

Appellant requested and was granted a hearing on whether the bond should be reinstated and discharged without penalty. Three days before the hearing, the state dismissed all charges against Remer. At the hearing, the state explained that Remer had

been apprehended by federal authorities immediately after his release from the Dakota County jail on the bond. He had been in federal custody since then, accounting for his nonappearance. The district court indicated that the bond would be reinstated, stating, "You have a winner." But the district court later issued a written order requiring forfeiture of 25% of the bond, from which appellant appealed.

In Rothbauer's case, one week after the bond was forfeited for his failure to appear, the Dakota County sheriff's department apprehended him. Rothbauer then pleaded guilty. Appellant moved to reinstate and discharge the bond, and filed an affidavit stating that it had attempted to contact Rothbauer and the indemnitor on the bond one day before the missed hearing. The indemnitor told appellant that Rothbauer was in the custody of another state. The day after the missed hearing, appellant attempted to locate Rothbauer and eventually hired a fugitive recovery agent.

Appellant requested and was granted a hearing on whether the bond should be reinstated and discharged without penalty. Appellant argued that the four-factor test from *In re Application of Shetsky*, 239 Minn. 463, 471, 60 N.W.2d 40, 46 (1953), favored reinstatement of the bond. The state appeared at the hearing, but took no position on the motion and did not argue or present evidence of prejudice. The same district court judge who forfeited the bond in Remer's case issued an order reinstating and discharging 50% of the bond, from which appellant appealed.

We consolidated the two appeals. The state filed no brief in either case.

D E C I S I O N

Appellant argues that the district court abused its discretion in both cases, because the factors from *Shetsky* favor reinstatement of each bond without penalty.

If a defendant released on bail fails to appear and the bail bond is forfeited, "the [district] court may forgive or reduce the penalty 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); *see also* Minn. R. Gen. Pract. 702(f) ("Reinstatement may be ordered on such terms and conditions as the [district] court may require."). We review a district court's denial of a petition to reinstate 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 when it bases its conclusions on an erroneous view of the law." *Id.*

The Minnesota Supreme Court has identified the factors a district court must consider when reinstatement of a bond is requested:

> (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.

Id. (citing *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46). Appellant bears the burden of establishing that these factors weigh in favor of reinstatement, but the state bears the burden of proving any claimed prejudice. *Id.*

"The primary purpose of bail in a criminal case is not to increase the revenue of the state or to punish the surety but to insure the prompt and orderly administration of justice

without unduly denying liberty to the accused whose guilt has not been proved." *Shetsky*, 239 Minn. at 471, 60 N.W.2d a6 46. Bail "secure[s] the attendance of the accused" in order to determine "all questions touching upon his guilt *or innocence*." *Id.* at 470, 60 N.W.2d at 46.

Shetsky recognized that, in some instances, a defendant's failure to appear may be justified by the circumstances, and that a surety should not be penalized in those circumstances. *Id.* at 469, 60 N.W.2d at 45. A defendant may be justified in missing court in cases of serious illness, accident, or "detention in the custody of another jurisdiction, whereby the defendant is prevented from appearing for trial as required by the terms of his bond." *Id.* at 469 n.4, 60 N.W.2d at 45 n.3. But when a defendant "willfully does not meet the conditions of his or her bond without a justifiable excuse, this misconduct is attributable to the surety" and will weigh against forgiveness of a bond penalty. *State v. Storkamp*, 656 N.W.2d 539, 542 (Minn. 2003); *State v. Vang*, 763 N.W.2d 354, 358 (Minn. App. 2009).

Here, the purpose of bail was satisfied in each case. Remer was taken into custody by federal authorities immediately upon leaving the Dakota County jail, and his Dakota County charges were eventually dismissed in favor of federal charges. The state knew where he was. Rothbauer was in the custody of the Dakota County sheriff's department within one week of his missed hearing, and he thereafter pleaded guilty. Appellant's affidavit, which was not contradicted or challenged by the state, suggests that Rothbauer returned to Dakota County after being in the custody of another jurisdiction. Because both defendants were in custody at the time of their Dakota County hearings, their absences were not willful and there is no lack of good faith to attribute to appellant. The

administration of justice was not significantly delayed and all questions concerning the defendants' guilt were resolved in a timely fashion. The first and second *Shetsky* factors weigh in favor of appellant's request for reinstatement and discharge.

The district court identified the third and fourth *Shetsky* factors as justifying the imposed penalties on appellant as surety. The district court found that full mitigation of the forfeitures was not justified under the third factor, because appellant had not put forth sufficient efforts *before* the missed hearings to ensure that the defendants appeared for their hearings. The district court did not believe that calling a defendant and an indemnitor the day before a hearing, to remind the defendant of the hearing, was sufficient under the third *Shetsky* factor.

We are aware of no Minnesota precedent requiring the type of prehearing efforts that the district court required to satisfy the third *Shetsky* factor. When considering the third *Shetsky* factor, Minnesota appellate courts have considered the *posthearing* efforts of the bond company to locate and apprehend the defendant. *See Storkamp*, 656 N.W.2d at 542-43 (indicating that the good-faith efforts of the surety to apprehend an unjustifiably absent defendant will support reinstatement of a bond, if the state experienced no prejudice); *Shetsky*, 239 Minn. at 474, 60 N.W.2d at 48 (affirming the forfeiture because the surety made no effort to arrest or produce the defendant before relieving itself of liability); *Vang*, 763 N.W.2d at 359 (affirming forfeiture of majority of bond where efforts of the surety did not lead to the return of defendant, who remained at large); *Farsdale v. Martinez*, 586 N.W.2d 423, 426 (Minn. App. 1998) (reversing forfeiture of bond based, in part, on the surety's aid in locating the absent defendant); *State v. Due*, 427 N.W.2d 276,

278 (Minn. App. 1988) (affirming forfeiture where a surety was not notified that defendant failed to appear, because this "in no way prevented" the surety from learning of the nonappearance or from attempting to locate and arrest the defendant), *review denied* (Minn. Aug. 16, 1988). Only in *State v. Rodriguez* did we affirm a refusal to reinstate a bond because of a lack of prehearing efforts to ensure that the defendant appeared at trial. 775 N.W.2d 907, 913-14 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010). But in that case, the bond company failed to correctly identify the defendant in its records before posting bond, despite public record of the defendant's multiple aliases, and it also moved for reinstatement while the defendant remained at large. *Id.*

Moreover, because each defendant missed his hearing because he was in custody elsewhere, additional prehearing efforts to ensure attendance would have been unavailing. We appreciate the frustration experienced by a district court when a defendant fails to appear, but it is not the task of this court to extend existing law. *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). The district court's analysis of the third *Shetsky* factor was based on "an erroneous view of the law." *Askland*, 784 N.W.2d at 62.

Appellant established that it put forth good-faith efforts to locate and produce the defendants after they missed their hearings. Remer was located in federal custody. Appellant began searching for Rothbauer the day after the missed hearing and before it received notice that the bond had been forfeited. It hired a fugitive recovery agent. Rothbauer was returned to the custody of the Dakota County sheriff's department within a week of the missed hearing.

As to the final factor, "[t]he general rule is that relief from forfeiture will not be granted where the prosecution has been deprived of proof by delay or has otherwise been adversely affected." *Shetsky*, 239 Minn. at 470, 60 N.W.2d at 45. If the state provides such evidence of prejudice, it will weigh heavily against reinstatement of the bond. *Storkamp*, 656 N.W.2d at 542. Where the prejudice suffered by the state amounts to additional expenses incurred in effectuating the capture of the defendant, the district court may "deduct that amount from the bond remission amount." *Farsdale*, 586 N.W.2d at 426 (reversing forfeiture of $50,000 where the defendant had only been at large for two months, the state only expended $414 in effectuating his capture, and the forfeiture was substantially disproportionate to the claimed prejudice).

The state does not claim prejudice in either of these cases and produced no evidence that expenses were incurred in effectuating the capture of either defendant. Nor were the prosecutions of the defendants prejudiced: no witnesses or evidence were lost in either case. *See Askland*, 784 N.W.2d at 63 (finding no prejudice to the state when there was no claim of loss of evidence, witnesses, or expense in defendant's 177-day absence, and where the defendant pleaded guilty once he was located and returned to court). Neither defendant was at large when the bond company sought reinstatement and discharge of the bonds. *See Vang*, 763 N.W.2d at 359 (affirming forfeiture where defendant remained at large); *Rodriguez*, 775 N.W.2d at 914 (holding that the state was prejudiced because it was unable to proceed with a prosecution in the defendant's absence); *Due*, 427 N.W.2d at 278 (affirming forfeiture when three years had passed without the defendant being located and apprehended). Although the district court identified that the administration of justice is

always prejudiced when a defendant fails to appear, nothing in either record supports a finding of prejudice to the state under existing Minnesota law (and the state made no such claim to the district court and makes none on appeal). Despite some degree of inconvenience to the court and its processes, the state was not prejudiced. This factor favors reinstatement of the bonds.

Because the relevant factors weigh in favor of reinstatement of the bonds, and because the district court's application of those factors was based on an erroneous view of the law, we reverse and remand with instruction to reinstate and discharge the full bond amounts in each case.

Reversed and remanded.