

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 28230-9-III
)	
Respondent,)	
)	
v.)	Division Three
)	
JOSE ANGEL NAVARRO,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, J. — Two years after the defendant had been sentenced, the Adams County Superior Court granted a motion to forfeit cash bail. The motion was based on defendant Jose Navarro’s failure to appear for a pretrial hearing. He appeals that decision, contending that cash bail should be treated the same as a bail bond and returned once he pleaded guilty. Trial courts, however, have discretion with respect to forfeiting cash bail. We conclude that the trial court did not abuse its discretion and affirm.

FACTS

Mr. Navarro was charged with possession of more than 40 grams of marijuana,

No. 28230-9-III
State v. Navarro

fourth degree assault (domestic violence), and unlawful imprisonment. The court set bail on June 5, 2006, at \$10,000 bond or \$1,000 cash. Mr. Navarro was directed to appear at a pretrial hearing on June 26, 2006. Mr. Navarro's mother posted \$1,000 cash on her son's behalf.

Mr. Navarro did not appear at the scheduled hearing. A bench warrant issued. Mr. Navarro was eventually arrested on the warrant and returned to Adams County. He reappeared in court on July 24, 2006. The following week, on July 31, he pleaded guilty to the marijuana and assault charges. The unlawful imprisonment charge was dismissed as part of a plea agreement. The trial court imposed concurrent 30-day sentences.

Two years later, on August 6, 2008, the prosecutor moved to forfeit the cash bail that was still on file with the clerk's office. The basis for the motion was the defendant's failure to appear at the June 26, 2006, pretrial hearing. A series of continuances ensued. Ultimately, the court forfeited the bail on June 22, 2009.

Mr. Navarro then timely appealed to this court.

ANALYSIS

The decision to forfeit either a bail bond or cash bail is reviewed for abuse of discretion. *State v. Banuelos*, 91 Wn. App. 860, 861-862, 960 P.2d 952 (1998) (bond); *In re Marriage of Bralley*, 70 Wn. App. 646, 655, 855 P.2d 1174 (1993) (bail). Discretion

is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Bail or bond may be forfeited when a defendant fails to appear in court as ordered. CrR 3.2(o).

Analogizing to bail bonds, Mr. Navarro argues that the trial court abused its discretion by forfeiting his cash bail. A bail bond may not be forfeited if the defendant is returned to court within 60 days. RCW 10.19.105; *see generally, State v. Kramer*, 167 Wn.2d 548, 219 P.3d 700 (2009). Since Mr. Navarro was recaptured and appeared in court four weeks after his missed court date, he contends that cash bail should not have been forfeited just as a bond would not have been forfeited if he had posted one instead of cash.

Mr. Navarro's analogy fails. The Legislature has enacted a comprehensive scheme regulating bail bonds. Chapter 10.19 RCW. As part of that scheme, bail bondsmen receive certain statutory protections. They also are entitled to return of their bond when the defendant is brought back to court following bond forfeiture. RCW 10.19.090 (notice requirements); RCW 10.19.100 (60-day stay of execution of bond forfeiture); RCW 10.19.105 (vacation of forfeiture within stay period); RCW 10.19.140 (return of funds when defendant produced within one year). The Legislature has not similarly chosen to regulate cash bail. Cash posted on behalf of a criminal defendant is presumed to belong

to the defendant. *State v. Paul*, 95 Wn. App. 775, 778, 976 P.2d 1272 (1999); *Bralley*, 70 Wn. App. at 655. Thus, it is subject to forfeiture when a defendant fails to appear. *Paul*, 95 Wn. App. at 778. The bond statutes do not apply to cash bail. *Id.* Thus, Mr. Navarro's attempt to analogize the two is not a basis for relief.

Mr. Navarro also argues that because the purpose of bail is to ensure court appearances, his bail should not have been forfeited after he returned and was sentenced. Once again, the difference is that a bail bond is statutorily exonerated when a defendant is convicted. RCW 10.64.025(1). There is no parallel statute or rule for cash bail.

The prosecution was entitled to seek forfeiture once Mr. Navarro failed to appear on June 26, 2006. He was able to seek return of the bail once he pleaded guilty on July 31, 2006. Neither side acted. Instead, both parties appear to have forgotten about the money for two years before the prosecutor sought the forfeiture. Once the motion was filed, the matter was left to the considered discretion of the trial court. *Paul*, 95 Wn. App. at 778; *Bralley*, 70 Wn. App. at 656.

A trial court is authorized to forfeit bail when the defendant has failed to appear. CrR 3.2(o). Thus, the trial court had a tenable basis to grant the motion to forfeit. It was not required to do so and could have ruled otherwise. *Bralley*, 70 Wn. App. at 656. However, since there was a tenable basis for ordering the forfeiture, the trial court did not

No. 28230-9-III
State v. Navarro

abuse its discretion.

The decision is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Kulik, C.J.

Brown, J.