IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. WILLIAM JOSEPH KRAMER, Defendant, ALL CITY BAIL BONDS, Petitioner.	)	No. 81071-1 En Banc Filed November 19, 2009

MADSEN, J.—This case involves a trial court's discretion to refuse to vacate a default judgment of forfeiture against a surety when the defendant has been returned to custody within the 60 days provided by RCW 10.19.105. This court has long held that bondsmen are entitled to exoneration of bonds whenever a defendant is returned to custody within 60 days. We find the trial court erred in refusing to vacate a default judgment of forfeiture against All City Bail Bonds. All City should have received the

benefit of the equities provided for in RCW 10.19.105. We reverse the Court of Appeals.

FACTS

All City posted a $20,000 appearance bond for William Kramer on June 5, 2005. On December 19, 2005, Mr. Kramer failed to appear at a scheduled court hearing and the bond was immediately forfeited. On December 26, 2005, Mr. Kramer was apprehended by the Lincoln County Sheriff's Department and taken into custody. All City maintained daily contact with Mr. Kramer during his seven day absence, encouraged him to turn himself into law enforcement, and arranged a time when Mr. Kramer would surrender himself to All City.

The day after Mr. Kramer was returned to custody, December 27, 2005, All City mailed a proposed order to the Lincoln County clerk requesting vacation of the default forfeiture. In February 2006, the State filed an opposition to All City's proposed order. A hearing in the matter was held on June 22, 2006. At the hearing, All City forewent a factual hearing on the issue of All City's role in Mr. Kramer's apprehension and instead argued it was by law entitled to exoneration of the entire bond, minus costs to the State, because Mr. Kramer was back in custody within the 60 days envisioned by RCW 10.19.105. Transcript (TR) (June 22, 2006) at 6. The trial court rejected All City's argument and found it was "equitable to forfeit the bond because All City Bail Bonds did not take action to secure the defendant's presence in court." Clerk's Papers (CP) at 30.

All City appealed the ruling to the Court of Appeals, arguing, inter alia, that the laws and policies of Washington State "encourag[e] the giving of bail in proper cases"

and that the trial court's forfeiture of the entire bond amounted to an impermissible "revenue measure in lieu of fine, [serving only] to punish sureties." Br. of Appellant at 16 (citations omitted). The Court of Appeals upheld the trial court's finding, stating, "All City lacked direct responsibility for Mr. Kramer's apprehension under RCW 10.19.140" but remanded for further explanation of the refusal to grant partial exoneration on the basis of a four-factored balancing test crafted by the court for that purpose. *State v. Kramer*, 141 Wn. App. 892, 899, 174 P.3d 1193 (2007).

All City petitioned this court for review, arguing the Court of Appeals decision (1) is in direct conflict with Washington Supreme Court decisions establishing a nearly per se rule of bond exoneration whenever a defendant is returned to custody within 60 days and (2) is in direct conflict with state policy encouraging the giving of bail bonds as required by article I section 20 of the Washington State Constitution.

ANALYSIS

"[A]n application to set aside an order forfeiting a bail bond is addressed to the sound discretion of the [trial] court, and is analogous to a proceeding in equity. . . . [I]n considering appeals from default orders, this court will exercise its own sound discretion, and will reverse the judgment of the trial court if it appears that the discretion of that court was not properly or equitably exercised." *State v. Sullivan*, 172 Wash. 530, 535, 22 P.2d 56 (1933). This state's bail policy is designed to ensure that "[a]ll persons charged with crime shall be bailable by sufficient sureties." Wash. Const. art. I, § 20 (mandating bail in all criminal cases except for capital cases).

The legislature established guidelines for the application of this constitutional imperative in the Code of 1881. The original enactments are nearly identical to the current provisions RCW 10.19.100 and .105. *Compare* RCW 10.19.100 *with* Code of 1881, ch. 90, § 1138 and RCW 10.19.105 *with* Code of 1881, ch. 90, § 1139. This court extensively discussed the policy and purpose of the original recognizance statutes in our seminal case on bond forfeiture in *State v. Jackschitz*, 76 Wash. 253, 136 P. 132 (1913). Our decision in *Jackschitz* explains the court's role in exoneration with precision and eloquence and warrants repeating at length here:

> Bail is not taken on forfeiture as money is taken for a debt due upon a valid consideration. The object of bail is to insure the attendance of the principal and his obedience to the orders and judgment of the court. There should be no suggestion of bounty or revenue to the state or of punishment to the surety.
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> "The object of an appearance bond is to secure the trial of offenders rather than to fill the state coffers by forced contributions from sureties." *State v. Williams*, 37 La. Ann. 200, 202 [(1885)].
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> These things may result, but *should not be insisted upon when the purpose of the law*—that is, the surrender, conviction and incarceration of the principal—*has been accomplished*.
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> "It is the manifest policy of the statute to encourage the giving of bail in proper cases, rather than to hold in custody at the state's expense persons accused of bailable offenses. The court should so administer cases arising under this statute as to give effect to this manifest policy." *State v. Johnson*, [69 Wash. 612, 616, 126 P. 56 (1912)].
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> In *United States v. Feely*, [25 Fed. Cas. 1055, 1057 (C.C.D. Va. 1813) (No. 15,082)], John Marshall said:
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> "The object of a recognizance is, not to enrich the treasury, but to combine the administration of criminal justice with the convenience of a person accused, but not proved to be guilty. *If the accused has*, under

> circumstances which show that there was no design to evade the justice of his country, forfeited his recognizance, but *repairs the default* as much as is in his power, *by appearing at the succeeding term, and submitting himself to the law, the real intention and object of the recognizance are effected, and no injury is done.* If the accused prove innocent, it would be unreasonable and unjust in government to exact from an innocent man a penalty, *intended only to secure a trial*, because the trial was suspended, in consequence of events which are deemed a reasonable excuse for not appearing on the day mentioned in the recognizance. If he be found guilty, he must suffer the punishment intended by the law for his offense, and it would be unreasonable to superadd the penalty of an obligation entered into only to secure a trial."
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> The right of bail is so fundamental that it is guaranteed in the Bill of Rights. The giving of bail should be encouraged for various reasons: that the state may be relieved of the burden of keeping an accused person; that the innocent shall not be confined pending a trial and formal acquittal; that, in cases of flight, a recapture may be aided by the bondsmen who, it is presumed, will be moved by an incentive to prevent judgment, or, if it has been entered, to absolve it and to mitigate its penalties. To accomplish these things and others, *courts have been liberal in vacating judgments* entered on bail bonds, exercising always a broad discretion and in proper cases preserving the equities of the public by deducting such costs and expenses as may have been incurred by the state. *To hold otherwise would discourage the giving of bail and defeat the manifest purpose of the statute.* Our construction of the statute relied on is that *it undertakes to direct, almost as a matter of right, that a judgment shall be vacated within the sixty-day period*, without limiting the common law power of the court in proper cases.

Jackschitz, 76 Wash. at 255-56 (emphasis added).

Since articulating this framework in *Jackschitz*, Washington courts have consistently interpreted chapter 10.19 RCW liberally and given bondsmen vacation of a judgment of forfeiture when the defendant is produced to the court within 60 days. *State v. Molina*, 8 Wn. App. 551, 553-54, 507 P.2d 909 (1973) ("Where a defendant appears or is in custody in another state at the time the forfeiture judgment is entered, or within the

60-day stay of execution period, it has been generally held to be an abuse of discretion to refuse to vacate the judgment or grant a stay or continuance until the defendant can be returned." (footnote omitted)) (citing *State v. Mullen*, 66 Wn.2d 255, 401 P.2d 991 (1965); *State v. Heslin*, 63 Wn.2d 957, 389 P.2d 892 (1964); *State v. O'Day*, 36 Wn.2d 146, 216 P.2d 732 (1950); *State v. Seibert*, 170 Wash. 80, 15 P.2d 281 (1932); *State v. Reed*, 127 Wash. 166, 219 P. 833 (1923); *State v. Olson*, 127 Wash. 300, 220 P. 776 (1923); *State v. Bailey*, 121 Wash. 413, 209 P. 847 (1922); *Johnson*, 69 Wash. 612).

This right to exoneration whenever a defendant is returned within 60 days has been upheld "*irrespective of who was responsible*" for the defendant's return. *Mullen*, 66 Wn.2d at 259 (emphasis added).

At the hearing on All City's motion to vacate the default judgment, the trial court focused on two factors: (1) All City's failure to apprehend Mr. Kramer before he was picked up by law enforcement, and (2) All City's failure to request a stay of execution of the forfeiture judgment as permitted by RCW 10.19.100. Taking these two omissions by All City together, the trial court concluded All City did "not meet the statutory requirement under RCW 10.19.140 for return of bond." CP at 30.

Consideration of textual language and the interplay of sections .100 and .105 are essential to analyzing the role that a stay of execution plays in a surety's efforts to exonerate a forfeited bond. For this reason, we quote both in full:

> The parties, or either of them, against whom such judgment may be entered in the superior or supreme courts, may stay said execution for sixty days by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment at the expiration of sixty

> days, unless the same shall be vacated before the expiration of that time.

RCW 10.19.100.

> If a bond be given and execution stayed, as provided in RCW 10.19.100, and the person for whose appearance such recognizance was given shall be produced in court before the expiration of said period of sixty days, the judge may vacate such judgment upon such terms as may be just and equitable, otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors.

RCW 10.19.105.

Section .105 is not a *precondition* to vacation of a default judgment: the opening phrase of section .105 states, "[i]f a bond be given and execution stayed" refers to the "giving a bond with two or more sureties" in section .100.[1] The opening phrase must be interpreted "*as provided in RCW 10.19.100*." RCW 10.19.105 (emphasis added). Section .100 permits, but does not require, a surety to request a stay: a surety "may stay said execution . . . by giving a bond . . . *unless* [the default judgment] *shall be vacated before the expiration of that time*." (Emphasis added.) The permissive stay is granted so that "the surety [may receive] temporary relief from the harshness of forfeiture." *State v. Hampton*, 42 Wn. App. 130, 135, 709 P.2d 1221 (1985), *rev'd on other grounds*, 107 Wn.2d 403, 728 P.2d 1049 (1986). However, a surety may simply file for vacation of the judgment outright if the judgment will "be vacated before the expiration" of the statutory 60 days.[2] RCW 10.19.100.

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[1] We have previously referred to this "new bond" as a "stay bond." *Olson*, 127 Wash. at 301.
[2] Sections .100 and .105 may even be read to say that a bond may be filed *only after* 60 days from the date of the judgment of forfeiture and then only if the judgment has not already been vacated. *See* RCW 10.19.100 ("*may* [file a bond and apply for a stay] *unless* [the forfeiture will be vacated within sixty days]" (emphasis added)). However, since no stay bond was filed in this case, the

When a defendant is returned to custody within the statutory 60 days, the default created by his prior absence has been repaired and there is no need for the bondsmen to request a stay. *See Jackschitz*, 76 Wash. at 255 ("'If the accused . . . repairs the default as much as is in his power, by appearing at the succeeding term, and submitting himself to the law, *the real intention and object of the recognizance are effected*, and no injury is done.'" (emphasis added) (quoting *Feely*, 25 F. Cas. at 1057)).

This is not the first time this court has addressed a surety who failed to request a stay of forfeiture. In *State v. Hampton*, 107 Wn.2d 403, 408, 728 P.2d 1049 (1986), this court granted full exoneration, minus the cost to the State in apprehending the defendant, to a surety who *did not apply for a stay* under RCW 10.19.100 and whose defendant was not returned to the state until eight months *after* his missed sentencing.[3] Significantly, the Court of Appeals decision in Hampton's case addressed the precise issue presented here: the surety's failure to seek a stay of execution.

> The State contends that since [the surety] did not seek a stay of execution under RCW 10.19.100, the court did not abuse its discretion in denying [the surety's] motion to vacate the forfeiture. The State would have the court read RCW 10.19.105 as stating that requesting a stay of execution under RCW 10.19.100 is a prerequisite to subsequent ability to challenge the forfeiture. RCW 10.19.100 was intended to provide the surety with temporary relief from the harshness of forfeiture. *It is not a prerequisite for later relief*. As was held in [*Jackschitz*, 76 Wash. 253], the provisions of RCW 10.19.105, then Rem. & Ball. Code § 2233, are not to be construed as limiting the common law power of the court to vacate a forfeiture of bail even after the expiration of the 60-day period. *Jackschitz*,

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question of whether it would have been permissible to file said bond before 60 days from the date of the judgment of forfeiture is not before us.

[3] The facts recited in our opinion in *Hampton* do not indicate whether or not the surety had petitioned for a stay of execution under RCW 10.19.100. However, it is clear from the Court of Appeals opinion in that case that no stay was sought. *Hampton*, 42 Wn. App. at 135-36.

> [76 Wash.] at 256. Though [the surety's] motion to vacate was made more than 60 days after the order of forfeiture, [the surety] properly sought redress.

Hampton, 42 Wn. App. at 135-36 (emphasis added) (footnote omitted).

The Court of Appeals in *Hampton* granted the surety partial exoneration, allowing the surety to recover its costs in returning the defendant to the state less the expenses incurred by the State in the same endeavor. *Hampton*, 107 Wn.2d at 407. On review, we granted the surety greater relief and adhered to the statutory formula of the amount of the bond minus the expenses to the State in securing the defendant. *Id.* at 409.

Instead of submitting a stay bond to the clerk of the court, All City mailed an order requesting vacation of the default judgment on December 27, 2005, after the defendant had been returned to custody, and well within the 60 day time frame contemplated by the statute. Because of this filing, we find All City was not required to file a stay of the execution of the default judgment.

The trial court requested All City present evidence on the issue of whether its participation in Mr. Kramer's return satisfied the requirements of RCW 10.19.140. TR at 4-5. The trial court was mainly concerned that All City knew of Kramer's location during his seven day absence but failed to notify law enforcement. All City contends they were attempting daily to negotiate Kramer's peaceable surrender and had arranged to pick him up on the day the Lincoln County Sheriff's Department apprehended him. *See* CP at 26-28.

In *Mullen*, 66 Wn.2d at 259, the State argued as it does here, that the petitioner is

not entitled to equitable consideration because "the record shows no effort or assistance on the part of the [petitioner] to return the defendant to the custody of the court." However, in *Mullen* we held because the "defendant was made available to the court . . . only 21 days after his required appearance, *irrespective of who was responsible*, [the surety] should be held accountable, under these circumstances, only for the costs expended in apprehending and returning the defendant to the custody of the court." *Id*. (emphasis added).

Our decision in *Mullen* reinforced the proposition established in *Jackschitz* that bonds are properly exonerated, minus costs to the State, when a defendant is returned within a reasonable time, to wit, the 60 days contemplated by RCW 10.19.105. *Jackschitz*, 76 Wash. at 256 ("Our construction of the statute relied on is that it undertakes to direct, almost as a matter of right, that a judgment shall be vacated within the sixty-day period, without limiting the common law power of the court in proper cases."). The trial court erred in analyzing All City's actions under section .140. Even though All City failed to request a stay of execution, the defendant's mere seven day absence entitled them to the benefit of the equities as provided for by sections .100 and .105.

We now hold as we did in *Mullen*, because Kramer was returned to the custody of the court within 60 days, "to carry out the manifest policy of the statutes, [the surety] should have been given the benefit of the equities, as provided in RCW 10.19.105." *Mullen*, 66 Wn.2d at 259. Because the State produced Mr. Kramer in court, the default

judgment against All City must be vacated.

AUTHOR:
Justice Barbara A. Madsen

WE CONCUR:

Justice Susan Owens

Justice Charles W. Johnson

Justice Richard B. Sanders

Justice Tom Chambers