Filed 5/12/16 P. v. Financial Casualty and Surety CA4/2

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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. FINANCIAL CASUALTY AND SURETY, INC., Defendant and Appellant.	E062743 ORDER MODIFYING OPINION

The opinion filed in this matter on May 11, 2016, is modified as follows:

On page 8, an incorrect signature page was inserted and the correct signatures are as follows:

MILLER
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH

J.

Except for this modification, the opinion remains unchanged. This modification does not affect a change in the judgment.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.

Filed 5/11/16 P. v. Financial Casualty and Surety CA4/2 (unmodified version)

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. FINANCIAL CASUALTY AND SURETY, INC., Defendant and Appellant.	E062743 (Super.Ct.Nos. INF1201091 & PSC1500653) OPINION

APPEAL from the Superior Court of Riverside County. Dale R. Wells, Judge. Affirmed.

John M. Rorabaugh for Defendant and Appellant.

Gregory P. Priamos, County Counsel, and Anita Willis, Karin Watts-Bazan and Sarah K. Moore, Deputy County Counsel, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant Financial Casualty and Surety, Inc. (Financial Casualty) appeals the trial court's order denying Financial Casualty's motion to set aside bail forfeiture and subsequent entry of summary judgment. The trial court ordered forfeiture of bail because Harrison Jamal Hall (defendant) failed to appear in court for a trial readiness conference (TRC) on December 10, 2013.

Financial Casualty argues the trial court was without jurisdiction to forfeit bail because there was no rule or statute requiring defendant personally to appear for the TRC on December 10, 2013. In addition, the trial court did not order defendant to appear on December 10, 2013. We conclude that under *People v. Safety National Casualty Corp.* (2016) 62 Cal.4th 703 (*Safety National*), recently decided after the parties filed their appellate briefs, defendant was required personally to appear at the TRC on December 10, 2013. Therefore forfeiture of his bail was proper and judgment is affirmed.

II

FACTS AND PROCEDURAL BACKGROUND

The People charged defendant with attempted premeditated murder, assault with a deadly weapon, and felon and narcotic addict in possession of a hand gun (case No. INF1201091). On August 6, 2013, Financial Casualty executed a $150,000 bail bond (No. FCS150-1102963). In doing so, Financial Casualty agreed to undertake that

defendant would appear in court on September 18, 2013, and thereafter hold himself amenable to orders and process of the court.

On October 30, 2013, defendant personally appeared at a TRC, which was continued to December 10, 2013. Defendant stated he was agreeable to continuing the TRC to the new date. On December 10, 2013, defendant failed to appear personally in court, resulting in forfeiture of bail and issuance of a bench warrant, with bail set at $300,000. The court clerk served Financial Casualty with notice of bail forfeiture. The notice advised Financial Casualty that under Penal Code section 1305, Financial Casualty was entitled to a hearing to set aside forfeiture, within 180 days of the clerk's notice of bail forfeiture.

In June 2014, Financial Casualty filed a motion to extend time on the bail bond under Penal Code section 1305.4, based on Financial Casualty having been diligent in attempting to locate defendant and obtaining "valuable information" on his likely whereabouts. During the hearing on Financial Casualty's motion to extend time, the People and Financial Casualty stipulated to extending the time on the bond to December 10, 2014.

On December 10, 2014, Financial Casualty filed a motion to set aside bail forfeiture. The People filed opposition.

On January 9, 2015, the trial court heard Financial Casualty's motion to set aside bail forfeiture. Financial Casualty argued defendant was not lawfully required to appear at the TRC on December 10, 2013, the date he failed to appear, resulting in forfeiture of

bail. The People disagreed and further argued defendant did not waive personal appearance at the TRC and, when the court set the TRC, defendant confirmed he was agreeable with the TRC date.

In response to the People's opposition, Financial Casualty argued defendant was not required to appear personally because the TRC was not a statutory TRC, since the TRC was not set within one to 14 days before the trial date, as required under California Rules of Court, rule 4.112.[1] Financial Casualty argued defendant was only required personally to appear at the fundamental hearings listed in Penal Code section 977. After hearing argument, the trial court denied Financial Casualty's motion to set aside bail forfeiture. Financial Casualty filed a notice of appeal from the January 9, 2015 order. On February 4, 2015, the trial court entered summary judgment against Financial Casualty on the bail forfeiture.

III

JURISDICTION OVER BAIL BOND FORFEITURE

Financial Casualty contends the court did not have jurisdiction to declare a forfeiture of bail on December 10, 2013. We disagree.

"If a criminal defendant who is out of custody on a bail bond does not appear at a required hearing or trial, the court may order the bail bond company to forfeit the bond. ([Pen. Code,] § 1305[, subd.] (a).) To effectuate this forfeiture, the trial court must

[1] Undesignated rule references are to the California Rules of Court.

strictly comply with certain statutory requirements. [Citation.] Bail forfeiture statutes are jurisdictional and, if not strictly followed, the court loses jurisdiction to later declare a forfeiture of the bond. [Citations.] Because of the ‘“““harsh results”””’ of a forfeiture, ‘technical violations’ of the bail statutes are not tolerated and will defeat the court’s jurisdiction to order a forfeiture. [Citations.] Additionally, the statutory requirements ‘“are considered inviolable and do not depend on whether or not a party has suffered prejudice.”’ [Citations.] [¶] We apply an abuse of discretion standard in evaluating a trial court’s denial of a motion to vacate bail forfeiture. [Citation.] However, because trial courts exercise a limited statutory discretion in ordering bail forfeitures and the issues are jurisdictional, we are required to carefully review the record to ensure strict statutory compliance. [Citations.]” (*People v. Bankers Ins. Co.* (2009) 171 Cal.App.4th 1529, 1532-1533.)

Under Penal Code section 1305, subdivision (a), “A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:

“(1) Arraignment.

“(2) Trial.

“(3) Judgment.

“(4) Any other occasion prior to the pronouncement of judgment if the defendant’s presence in court is lawfully required.

“(5) To surrender himself or herself in execution of the judgment after appeal.”

If the court has reason to believe that a sufficient excuse may exist for the defendant's nonappearance, "it may continue the case for a reasonable period to enable the defendant to appear without ordering forfeiture of the bond. [Citation.] If the court has no information that a sufficient excuse may exist so as to justify a continuance pursuant to [Penal Code] section 1305.1, the court must declare a forfeiture. If the court fails to do so, it loses jurisdiction and the bond is exonerated by operation of law. [Citations.]" (*People v. Indiana Lumbermens Mutual Ins. Co.* (2011) 194 Cal.App.4th 45, 49 [Fourth Dist., Div. Two] (*Indiana Lumbermens*).) A defendant is required to appear at the arraignment, trial, judgment, and "[a]ny other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required." (Pen. Code, § 1305, subd. (a)(1)-(4).)

"Without an order to appear, [a] court lack[s] jurisdiction to forfeit bail for failure to appear . . . . [Citation.]" (*People v. American Surety Ins. Co.* (2009) 178 Cal.App.4th 1437, 1440.) "[F]or purposes of [Penal Code] section 1305, a defendant's presence at an 'other proceeding[]' under [Penal Code] section 977(b)(l) constitutes a 'lawfully required' appearance for which his or her unexcused absence may justify the forfeiture of bail." (*Safety National, supra,* 62 Cal.4th at p. 716.)

Penal Code section 977, subdivision (b)(1), provides in relevant part: "[I]n all cases in which a felony is charged, the accused shall be personally present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition

of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present. . . ." "[I]f the record is arguably ambiguous as to whether [the defendant's] personal presence was required at all hearings, we must resolve the ambiguity against the surety." (*Indiana Lumbermens, supra,* 194 Cal.App.4th at p. 52.)

"[W]hen a defendant has posted bail, both the defendant and the surety have assumed the responsibility and obligation to ensure his or her presence at all requisite court proceedings, such as those covered by [Penal Code] section 977(b)(1)." (*Safety National, supra,* 62 Cal.4th at p. 715.) "[Penal Code] section 977 may require a defendant's presence at a specific court proceeding, even if the Constitution would allow the proceeding to continue in his or her absence. [Citation.]" (*Ibid.*)

Here, there is no evidence in the record that defendant waived his presence at the December 10, 2013 TRC. Defendant was present on October 30, 2013, along with his attorney, when the trial court continued the TRC to December 10, 2013. The minute order further states: "Defendant ordered to return on any and all future hearing dates." Although the October 30, 2013 reporter's transcript indicates that the trial court did not tell defendant to personally appear in court on December 10, 2013, the trial court asked defendant personally if he was agreeable to continuing the TRC to December 10, 2013. Defendant said he was agreeable to the new date. Defendant therefore had notice of the hearing. In addition, defendant has not demonstrated a sufficient excuse for his absence under Penal Code section 1305.

In *Safety National, supra,* 62 Cal.4th at page 716, the California Supreme Court held that the defendant's failure to appear at the pretrial hearing scheduled in open court, without the execution of a written waiver of his right to be present, justified forfeiture of his bail pursuant to Penal Code section 1305. (See rule 4.112(a)(3) [Defendant's presence required at readiness conferences in felony cases]; *People v. Sacramento Bail Bonds* (1989) 210 Cal.App.3d 118, 121 [No express order of the trial court is required to make mandatory a defendant's appearance at a hearing which, although not denominated a "readiness conference," was when the parties were expected to "'be prepared to discuss the case and determine whether the case [could] be disposed of without trial'"], quoting former rule 227.6 [now rule 4.112].)

We conclude in the instant case that under *Safety National,* the trial court had jurisdiction to order forfeiture of defendant's bail and acted within its discretion in doing so, based on defendant's failure to appear personally at the December 10, 2013 TRC. (Pen. Code, § 977, subd. (b)(1); *Safety National, supra,* 62 Cal.4th at pp. 716-717.)

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.