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IN THE
COURT OF APPEALS OF INDIANA

Timothy O'Connor,
Appellant-Petitioner,

Umesh Kaushal,
Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 23, 2021

Court of Appeals Case No.
21A-CR-220

Appeal from the Marion Superior
Court

The Honorable Sheila A. Carlisle,
Judge

The Honorable Stanley E. Kroh,
Magistrate

Trial Court Cause No.
49D29-1508-F4-28287

Weissmann, Judge.

[1] Bail bondsman Timothy O'Connor claims he is entitled to the release of a \$20,000 bond he posted on behalf of defendant Umesh Kaushal, who departed the United States before his sentencing in Indianapolis and has not returned. The trial court ordered the bond forfeited and billed O'Connor \$20,000 after rejecting his claim that the bond had expired two years earlier. We agree the bond expired, leaving no bond to forfeit, and therefore reverse the trial court's judgment.

Facts

[2] Kaushal, a citizen of India and a legal resident of the United States in 2015, was charged with Level 4 felony child molesting in Marion County. On August 9, 2015, O'Connor posted a \$20,000 recognizance surety bond on behalf of Kaushal, leaving Kaushal free pending trial.

[3] The prosecution languished over the next five years, with Kaushal pleading guilty, withdrawing that plea, pleading guilty again, unsuccessfully seeking to withdraw from that plea, and then appealing that denial twice. After Kaushal's final appeal proved unsuccessful, Kaushal did not appear for a scheduled court hearing in December 2019. On December 27, 2019, the trial court ordered O'Connor and the surety to surrender Kaushal or prove within 120 days that Kaushal's absence was due to his illness or death, that Kaushal was in government custody, or that notice was deficient. App. Vol. II, p. 164.

[4] Nearly a year later, O'Connor filed a "Petition to Release Surety" in which he argued only that the bond had expired under Indiana law in August 2018—that

is, three years after it was posted for Kaushal and prior to Kaushal's failure to appear in December 2019. On January 6, 2021, the trial court ordered the bond forfeited.

- [5] O'Connor filed a motion to reconsider, asserting he could not produce Kaushal because Kaushal was living in India, his visa had lapsed, and officials were refusing to extradite him. The trial court denied O'Connor's motion, ruling that it "is not convinced by a preponderance of the evidence that surety has met the statutory requirements...." *Id.* at 185.

I. Standard of Review

- [6] A trial court's denial of a motion for release from a bail bond is reviewed for an abuse of discretion. *Amwest Surety Ins. Co. v. State*, 750 N.E.2d 865, 867 (Ind. Ct. App. 2001). An abuse of discretion occurs only when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Turner v. State*, 953 N.E.2d 1039, 1045 (Ind. 2011).

II. The Bond Expired Prior to Forfeiture

- [7] O'Connor argues the trial court violated Indiana Code § 27-10-2-3(c) by forfeiting the bond. That statute provides:

Any undertaking written after August 31, 1985, shall expire thirty-six (36) months after it is posted for the release of a defendant from custody. This section does not apply to cases in which a bond has been declared to be forfeited and the surety and bail agent have been notified as described in section 12 of this chapter.

- [8] O'Connor claims that under that bond expiration statute, the bond expired in August 2018—36 months after it was posted—because no forfeiture proceedings had been initiated as of that expiration date. If the bond had already expired by the time the court initiated forfeiture proceedings, O'Connor contends the trial could not order the bond forfeited.
- [9] Arguing waiver, the State notes O'Connor first raised the bond expiration statute as a defense in his petition to release surety filed December 22, 2020—nearly eight months after expiration of the 120-day deadline set by the trial court for O'Connor to either surrender Kaushal or prove a statutory justification for such failure.
- [10] The State's argument turns on deadlines imposed under Indiana Code § 27-10-2-12(b) (the bond revocation statute), which allows escalation of late fees for a surety's failure to respond to a court's directive to produce a defendant on a surety bond. Whether O'Connor timely raised the expiration of the bond is instead resolved by the bond expiration statute – Indiana Code § 27-10-2-3(c). The bond expiration statute allows a surety to argue the bond has expired up until the time the bond “has been declared to be forfeited and the surety and bail agent have been notified....” *Id.*
- [11] Though the trial court initiated bond forfeiture proceedings on December 27, 2019, the court did not order the bond forfeited until January 6, 2021. App. Vol. II, p. 164. O'Connor raised the issue of the bond's expiration on December

22, 2020, which was prior to the forfeiture order. Therefore, O'Connor timely raised his bond expiration defense.

[12] As waiver does not apply, we turn to the merits of O'Connor's argument that the bond had already expired by December 2019 when the court began forfeiture proceedings.¹ The State argues that the terms of the bond show the parties intended the bond to extend until the prosecution ended, and that the agreement trumps the bond expiration statute.

[13] A bond is a contract and is construed in the same manner as other contracts. *Germann v. Tom's 24-Hour Towing*, 776 N.E.2d 932, 934-35 (Ind. Ct. App. 2002); *Amwest*, 750 N.E.2d at 868. In a criminal case, the bond is in the nature of a contract between the government on one side and the defendant and surety on the other. *Amwest*, 750 N.E.2d at 868. The liability incurred by the parties to a bond is fixed by the contract terms, which are construed according to their ordinary and reasonable meaning. *Germann*, 776 N.E.2d at 935.

[14] The bond specified that, if Kaushal would appear in the Marion Superior Court to answer the charge "from day to day and from term to term thereof, and abide

¹ Bond forfeiture proceedings are governed by Indiana Code § 27-10-2-12 which requires a trial court, within 29 days of a defendant's failure to appear, to issue a warrant for the defendant's arrest and to order the bail agent and surety to surrender the defendant to the court immediately.

The bail agent and surety have 365 days to produce the defendant or show why he/she cannot be produced such that bond would not be forfeited (i.e. death or refusal of authorities to extradite). Bail agents or sureties suffer potentially significant financial penalties for failing to respond within the first 120 days. The trial court can then declare the bond forfeited 365 days after ordering surrender of the defendant. I.C. § 27-10-2-12(d).

the order of the Court, until such cause is determined and not depart therefrom without leave, then this recognizance shall be void, else to remain in full force.” App. Vol. II, p. 23. The bond further provided that if Kaushal failed to appear, the court would order O’Connor to produce Kaushal or provide justification for that failure within 365 days after notice or suffer forfeiture. *Id.*

[15] That is the exact language used in the sample bond form in Indiana Code § 27-10-2-10, which specifies that “[r]ecognizances for the appearance of prisoners shall in all cases and in all courts . . . be substantially in [this] form.” The legislature codified the sample bond form and the bond expiration statute on the same day. *See* 1985 Ind. Acts 2028. At its enactment, the bond expiration statute provided for an extension of the 36-month expiration date, conditioned on the court clerk providing notice to the bail agent and surety that the case is still active. *See* 1985 Ind. Acts 2028. That extension language was deleted from Indiana Code § 27-10-2-3(c) in 1989, and the statute has changed little since. 1989 Ind. Legis. Serv. S. 550 (West). The bond form in Indiana Code § 27-10-2-10 also has not changed significantly since its enactment.

[16] When construing statutes, our primary concern is to determine and give effect to the true intent of the legislature. *Adult Grp. Props., Ltd., et al. v. Imler*, 505 N.E.2d 459, 463 (Ind. Ct. App. 1987), *reh’g denied, trans. denied*. Laws passed at the same session of the legislature relating to the same subject matter are *in pari materia* and should be construed together, especially when they are approved on the same day. *Id.*

[17] When construed together, the bond expiration statute and the bond form statute reasonably provide that a bond incorporating the language in the bond form statute expires 36 months after the bond is posted. To rule otherwise would render the bond form statute in conflict with the bond expiration statute even though both were enacted simultaneously by the legislature. Such a result is inconsistent with our duty to construe all related statutes so as to give each full effect and render them harmonious if that can be accomplished by any fair and reasonable construction. *Id.*

[18] In light of these circumstances, the language at issue in Kaushal’s bond—“from day to day and from term to term thereof . . . until such cause is determined”—cannot be construed reasonably as an agreement to extend the bond beyond the 36-month statutory expiration date. By law, Kaushal’s bond expired on August 9, 2018, which was 36 months after it was posted. Consequently, the forfeiture proceedings initiated on December 27, 2019, were invalid because by that time there was no bond left to forfeit.

[19] The judgment of the trial court is reversed.

[20] Kirsch, J., and Altice, J., concur.