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DISTRICT IV

February 13, 2015

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You are hereby notified that the Court has entered the following opinion and order:

2014AP269

In the matter of the release on bond: State of Wisconsin v.
Demetrius L. Cooper: State of Wisconsin v. Demetrius L. Cooper
(L.C. # 2011CF653)

Before Blanchard, P.J., Higginbotham and Kloppenburg, JJ.

Demetrius Cooper appeals an order that forfeited his bond on a multiple count drug trafficking case, and a subsequent order entered on reconsideration that returned half of the bond to Cooper's brother, but declined to set aside the remaining amount of the forfeiture. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

The forfeiture of bonds is controlled by WIS. STAT. § 969.13, which provides in relevant part:

(1) If the conditions of the bond are not complied with, the court having jurisdiction over the defendant in the criminal action shall enter an order declaring the bail to be forfeited.

(2) This order may be set aside upon such conditions as the court imposes if it appears that justice does not require the enforcement of the forfeiture.

Here, the State moved to forfeit Cooper's bond based upon allegations that Cooper had violated his bond conditions by attempting to shoot a witness in the underlying drug trafficking case. The motion was supported by an affidavit summarizing police reports stating that someone had shot at the witness in his home from a vehicle, and that a car Cooper had rented that day and driven 274 miles matched the description of the shooter's vehicle.

At the initial hearing on the forfeiture motion, the State filed a new complaint charging Cooper with multiple counts of bail jumping arising out of his alleged involvement in the shooting incident.² The district attorney then advised the court that the State had received evidence from two informants linking Cooper to the shooting and also had recovered a GPS system that had been in Cooper's possession and was programmed with an intersection near the witness's residence, and that the State was prepared to present that evidence to the court through the testimony of two police officers. Defense counsel argued that the forfeiture motion was premature because there had not yet been a preliminary hearing to determine whether there was probable cause to support the bail jumping charges, much less a conviction on them. The court

² The district attorney explained that the State would not be charging Cooper for the actual shooting in Rock County, because it had occurred in another county.

decided to grant the forfeiture motion without taking evidence at that time, but noted that it would hold the matter open and permit Cooper to raise the bond issue again at a latter date.

Cooper subsequently entered into a plea agreement pursuant to which the State requested the dismissal of the bail jumping charges from the shooting case, and the court stated that it would offer them as read-in offenses in the drug trafficking case for sentencing purposes.³ At the sentencing hearing, the court also considered the allegations set forth in a separate complaint filed in the county where the shooting occurred, charging Cooper with two counts of attempted first-degree intentional homicide, reckless endangerment, and intimidation of a witness. The court noted that the complaint made a “pretty strong and compelling case” and, when Cooper sought to revisit the forfeiture issue at the end of the sentencing hearing, noting that the bond had actually been posted by Cooper’s family and friends, the court concluded that the alleged conduct of attempting to shoot a witness had been sufficiently established to warrant the forfeiture previously imposed.

Over a year after he was sentenced, Cooper moved the court to reconsider the return of the bond money. The motion, which was supported by an affidavit from Cooper’s brother, alleged that the court’s decision to forfeit the bond without taking evidence had deprived Cooper of the opportunity to present testimony from family members who had been present at the forfeiture hearing regarding the hardship forfeiture would impose on them, and complaining that the court had not considered factors relevant to WIS. STAT. § 969.13(2), as set forth in *State v.*

³ It appears that the circuit court may have misunderstood the parties’ actual agreement as stated by counsel on the record and set forth on the plea questionnaire, which was that the dismissed counts from the drug trafficking case would be read-in, while the bail jumping charges from the shooting case would be dismissed outright.

Ascencio, 92 Wis. 2d 822, 829-30, 285 N.W.2d 910 (1979). The court granted a hearing on Cooper's motion for reconsideration, at which the court explicitly discussed the *Ascencio* factors. The court concluded that the facts that family members had posted the bond, were not alleged to have been involved in the attempted homicide of the witness, and were suffering hardship as a result of the forfeiture weighed in favor of returning a portion of the bond, but that the seriousness of Cooper's conduct weighed against returning all of the bond. The court then issued an order directing that half of the bond be returned to Cooper's brother.

On this appeal, Cooper contends that his constitutional due process rights were violated when the circuit court did not provide him with an opportunity to present witnesses at the initial hearing, and that the court erroneously exercised its discretion at that hearing by ordering a forfeiture without considering relevant factors and without having an adequate factual basis to determine that the alleged conduct had actually occurred. All of Cooper's arguments suffer from the same fatal flaw: they focus on what occurred at the initial forfeiture hearing, without acknowledging that the court subsequently cured all alleged errors at that hearing by reopening the matter and granting Cooper a new hearing. The order that the court issued following the reconsideration hearing superseded the original order, and it is that order that we review on appeal.

At the reconsideration hearing, Cooper acknowledged that he had subsequently been convicted of two counts of attempted first-degree intentional homicide and intimidation of a witness. Therefore, Cooper has no grounds on this appeal to challenge the factual basis for the court's determination under WIS. STAT. § 969.13(1) that Cooper violated a condition of his bond. Additionally, Cooper has no meritorious basis to challenge the court's exercise of its discretion under WIS. STAT. § 969.13(2) regarding whether the interests of justice required forfeiture,

because the transcript demonstrates that the court properly considered all of the relevant factors and reasonably balanced and applied them to the facts of the case.

Therefore,

IT IS ORDERED that the orders forfeiting Cooper's bond and directing the return of half of the bond money to Cooper's brother are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals