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DISTRICT II

April 20, 2016

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

2015AP872

In re the forfeiture of bond in: State of Wisconsin v. Robb R.
Neuens (L.C. #2014CF84)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Robb Neuens appeals from a circuit court order forfeiting the \$25,000 bond posted by his parents after he violated the conditions of his bond and from an order denying his motion to reconsider the bond forfeiture. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).¹ We affirm the circuit court.

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

The criminal complaint charged Neuens with stalking T.L. (the victim). At Neuens's initial appearance, the circuit court imposed a \$50,000 cash bond, which Neuens was unable to post. The court also forbade Neuens from having contact with the victim. Thereafter, Neuens agreed to plead no contest.² At the October 22, 2014 plea hearing, Neuens moved the court to reduce his cash bond. The State noted that when facing similar charges in the past, Neuens fled and had to be extradited from Hawaii. The court considered Neuens's past failure on bond and the likely cost of retrieving him should he again flee while on bond. The court reduced the bond to \$25,000 with the same conditions as previously set, including no contact with the victim.

Neuens's parents posted his bond the same day, October 22. On October 30, the victim received a telephone call from Neuens (she recognized his voice), and she reported the call to the police.

At the bond forfeiture hearing, the victim testified about the October 30 telephone call and that Neuens had sent her letters a few weeks before he called her. It is undisputed that Neuens sent the letters after he was charged with stalking the victim and after the court imposed a no contact order.

Neuens's mother testified that she and her husband posted the \$25,000 bond in order to have their son released from jail so that he could obtain mental health treatment. She acknowledged that the October 22 bond form stated that if any bond condition was violated, the

² Although Neuens entered a no contest plea, he later filed a presentencing motion to withdraw that plea. The circuit court denied that motion, but that decision is not before this court on appeal. We address it no further.

bond money could be lost.³ She testified that she was aware that if Neuens “didn’t show up in court or violated a condition of bond, you could lose the \$25,000.” She was aware of the court’s order that Neuens not contact the victim. She was aware that Neuens wanted letters delivered to the victim, and she delivered those letters to a friend to give to the victim. The letters reached the victim after the court imposed a no contact order at Neuens’s initial appearance. She explained the impact on the family’s financial circumstances of incurring debt to raise the bond funds.

Neuens opposed the bond forfeiture, arguing the financial consequences of forfeiting the bond, that posting the bond was his parents’ attempt to get him into treatment for his mental health issues, and that justice required returning the entire bond to the poster. The State argued for forfeiture because Neuens’s violation of the no contact bond condition was intentional, and the poster assisted Neuens in violating that condition.

The circuit court forfeited the entire bond. The court found that Neuens willfully violated the no contact condition of the bond, the poster knew of the no contact bond provision, she should have known that Neuens would violate the bond because she previously assisted Neuens in contacting the victim by letter, and Neuens’s release should have been delayed until arrangements could be made to place him in a setting where he would not have an opportunity to violate his bond conditions. The court found that Neuens “has shown throughout this case that

³ In a document received on March 11, 2016, Neuens argues that his mother told him that she did not mean what she said about the bond form. We take no action on this document for two reasons. First, Neuens is represented on appeal, and he may only appear by counsel. *State v. Debra A.E.*, 188 Wis. 2d 111, 138, 523 N.W.2d 727 (1994). Second, to the extent the document offers new evidence, that material is not properly before this court. We will not consider any material not part of the record before the circuit court. Our role is to correct errors the circuit court made, not to rule on matters the court never considered. *State v. Hanna*, 163 Wis. 2d 193, 201, 471 N.W.2d 238 (Ct. App. 1991).

he doesn't believe the rules apply to him and he's going to do what he wants." The court acknowledged that \$25,000 was a significant bond, but the court set bond in that amount to make sure that Neuens complied with the bond.

On reconsideration, Neuens argued that the fine for stalking is \$10,000, rendering a \$25,000 bond disproportionately excessive and violative of the Eighth Amendment to the United States Constitution. The circuit court declined to reconsider. Neuens appeals.

Forfeiture of a bond under WIS. STAT. § 969.13 is discretionary with the circuit court. *Melone v. State*, 2001 WI App 13, ¶4, 240 Wis. 2d 451, 623 N.W.2d 179 (2000). We will uphold a discretionary decision if the circuit court "examined relevant facts, applied proper legal standards and engaged in a rational decision-making process." *Id.* A court considers a number of factors to determine if justice requires foregoing a bond forfeiture. *Id.*, ¶6. A request to forego a bond forfeiture "is essentially an appeal to the conscience of the court." *Id.*, ¶9 (citation omitted).

We conclude that the circuit court properly exercised its discretion when it forfeited the entire bond. The court found that the poster knew of the no contact condition, had facilitated Neuens's contact with the victim in the past, and posted the bond before there were adequate safeguards in place to maximize Neuens's opportunity to succeed on bond. Even though the poster was liable for a significant bond, the court found that forfeiture was appropriate in light of all of the circumstances. The court's findings echo appropriate considerations under *State v. Ascencio*, 92 Wis. 2d 822, 831-32, 285 N.W.2d 910 (Ct. App. 1979) (from among a non-exclusive list of considerations, *Melone*, 240 Wis. 2d 451, ¶9, the court may consider the "willfulness of the default," "whether the surety knew of a planned default," "whether ... the

surety was aware of conditions that were subsequently violated,” “the face amount of the bond and justifications for setting the original amount,” and “the degree of blatancy ... in the defendant’s default”).

The circuit court did not address Neuens’s Eighth Amendment claim when it denied his motion for reconsideration. We review constitutional issues de novo. *State v. Boyd*, 2000 WI App 208, ¶7, 238 Wis. 2d 693, 618 N.W.2d 251.⁴

For his Eighth Amendment claim, Neuens relies upon *Boyd*, a case involving a WIS. STAT. § 973.075(1)(b)(1m) forfeiture of a vehicle used to commit a felony. Neuens argues that Eighth Amendment excessive fine considerations set out in *Boyd* should apply to the forfeiture of his bond. *Boyd*, 238 Wis. 2d 693, ¶7. In so arguing, Neuens claims that the harm from his violation of the bond condition, a telephone call to the person he was charged with stalking, was “not exactly the crime of the century.”

Neuens minimizes the bond condition and seeks to excuse his willful violation of that condition. Even if the Eighth Amendment considerations in *Boyd* apply to this case, which we do not decide, Neuens has not established that forfeiture of the entire bond was out of proportion to the circumstances of the bond violation. *Id.*, ¶8 (citation omitted). The amount of the bond was tailored to address Neuens’s past failure to comply with bond conditions, the bond conditions were clear to both Neuens and the poster, the poster assisted Neuens in contacting the

⁴ We assume without deciding that Neuens has standing to raise this constitutional claim on behalf of the poster.

victim, and the poster did not take all necessary steps to prepare for Neuens's release on bond before posting the bond.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals