



People v. Higuera

2005 | Cited 0 times | California Court of Appeal | April 8, 2005

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INTRODUCTION

Appellants Ranger Insurance Company and Absolute Bonding Corporation appeal from an order granting summary judgment entered after denial of their motion to extend a bail forfeiture expiration date. We find that appellants made a sufficient showing in the trial court explaining their efforts to locate a defendant who failed to appear and why such efforts did not succeed. In light of policies disfavoring forfeiture, favoring return of fleeing defendants to custody, and requiring strict construction of bail forfeiture statutes in favor of the surety to avoid harsh results, we conclude that denial of appellants' motion was an abuse of discretion and reverse the order entering summary judgment.

FACTUAL AND PROCEDURAL HISTORY

On October 23, 2003, defendant Juan de Dios Higuera was arraigned on a felony charge of violating Health and Safety Code section 11379, subdivision (a), sale or transportation of a controlled substance. Bail had been posted on October 8, 2003, in the amount of \$100,000 by surety company Ranger Insurance Company, the appellant. The defendant waived arraignment and pleaded not guilty.

The defendant failed to appear at his next court date on October 28, 2003. The trial court ordered bail forfeited. On November 3, 2003, the clerk mailed a notice of forfeiture to Ranger Insurance Company.

On April 27, 2004, Ranger Insurance Company filed a motion to extend bail forfeiture. The motion sought to extend the statutory period for the 180-day period permitted by Penal Code section 1305.4¹ within which Higuera must voluntarily surrender or be returned to the court's jurisdiction to allow vacating a bond forfeiture order, reinstatement and exoneration of the bond pursuant to section 1305, subdivision (c)(1). The motion alleged that Absolute Bail Bonds had exercised due diligence in attempting to locate Higuera, but needed more time to execute Higuera's arrest. The declaration of Ranger Insurance Company's investigator, David L. Collin, supported the motion requesting extension of time.



People v. Higuera

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Collin's declaration stated he was a retired sheriff's lieutenant employed by Allstate Information Services as Head of Investigations, and was retained by Absolute Bail Bonds to locate defendant Higuera and return him to custody. Collin stated he had investigated the court docket sheet and papers, investigated defendant's location, and assessed circumstances of his failure to appear. Collin stated that the search for Higuera was ongoing since the bail bond was declared forfeited on October 28, 2003, first through search reporting bureaus Experian, US Interlink, Choice Reporting, IQ Data, and InterActive Telcom. Collin stated that investigators spoke to the indemnitor, who stated that at 2:00 a.m. on October 28, 2003, Higuera packed his clothes and left the premises, leaving his wife and children with no indication where he was going. Investigators contacted Higuera's wife and the indemnitor's wife, who stated they did not know where Higuera had gone. Higuera's wife, however, was packing all her belongings and had sold Higuera's car to her brother. Higuera's wife stated she believed Higuera might have gone to be with his girlfriend, his co-defendant. Investigators discovered that Higuera's parents reside in Sinaloa, Mexico, and speculated that Higuera could be hiding with them.

Collin stated that investigators learned that Absolute Bonding Corporation also bailed co-defendant Katrina Delgado, and believed Delgado and Higuera had the same attorney. Collin stated that investigators were "trying to find out what attorney represents the defendant and are going to obtain a Docket Sheet on the case from the court" to identify the attorney of record, whom investigators would contact to see if the attorney had new information on Higuera or Delgado.

Collin stated that investigators set up surveillance where Higuera's wife lived at 2636 E. 110th Street, Lynwood, California, but the surveillance produced nothing. Investigators learned Delgado dropped her children at 15407 Orange in Lynwood, and set up surveillance to find Higuera, and also set up surveillance at Delgado's work location. None of these surveillance efforts succeeded. Investigators ran a social security check on Higuera's social security number, which produced a most recent address of 3161 Euclid Avenue in Lynwood, but no evidence showed Higuera at this location. Investigators again contacted Higuera's wife, who had no new information and believed Higuera had fled to Mexico. Investigators surveilled Higuera's wife for three hours but observed no evidence of Higuera. Investigators checked telephone records of parties in the case, but the only call to Mexico was to Tijuana, not to Sinaloa. Investigators again surveilled previously surveilled locations, with no results.

Collin stated that investigators were not convinced Higuera had fled to Mexico, having received information that he had friends in Compton and might be staying in that area. Investigators found a Compton address where Higuera might occasionally stay, and would continue to surveil that location until they observed Higuera or received additional information. Investigators also attempted to locate Higuera in Mexico, but Higuera's relatives did not provide information about his whereabouts. Investigators had contacted Mexican officials in hopes that they would assist the investigation and facilitate Higuera's return if he was found in Mexico. Investigators also went door-to-door in various neighborhoods where Higuera and his relatives lived to obtain new information. Collin stated his



People v. Higuera

2005 | Cited 0 times | California Court of Appeal | April 8, 2005

belief that with an extension of forfeiture time, investigators would be able to locate, arrest, and surrender Higuera to the court.

The People filed opposition to the motion to extend time on May 12, 2004, the date of the hearing.

In the hearing, the trial court found that statements in the Collin's declaration were false, that the declarant lacked credibility, that the declaration did not indicate the dates of actions to which it referred, did not cite facts to support statements in the declaration, and the declaration was full of conclusion, speculation, and hearsay. The trial court found no good cause to extend time. The trial court also denied the moving party's motion for a continuance. The court ordered entry of summary judgment.

Ranger Insurance Company filed a timely notice of appeal from the May 12, 2004, denial of the motion to extend bail forfeiture expiration date and from the summary judgment entered on May 14, 2004. The former order is reviewable on appeal from the latter order. (People v. Seneca Ins. Co. (2004) 116 Cal.App.4th 75, 79.)

ISSUES

Ranger Insurance Company claims on appeal that:

1. Bail statutes and case law favor granting time to bring a defendant to court; and
2. The trial court abused its discretion by misapplying case law.

DISCUSSION

Sections 1305 and 1306 provide that if defendant does not appear, the court may order bail forfeited. "Bail forfeited following a defendant's failure to appear will subsequently be exonerated if the defendant is returned to custody within 185 days of the mailing of the notice of forfeiture. (§ 1305, subds. (b), (c).) Section 1305.4 provides that the trial court may grant an extension of this 185-day time period upon a showing of good cause." (People v. Seneca Ins. Co., supra, 116 Cal.App.4th at p. 81.) A denial of a bail surety's motion pursuant to section 1305.4 for an extension of time is reviewed for abuse of discretion. (Id. at p. 79.) An abuse of discretion occurs only where a court's decision " 'exceeds the bounds of reason, all circumstances being considered.' " (People v. Ranger Ins. Co. (2000) 81 Cal.App.4th 676, 679-680.)

Good cause for granting a motion to extend time requires an explanation of what efforts the surety made to locate the defendant who failed to appear and why such efforts were not successful. (People v. Ranger Ins. Co., supra, 81 Cal.App.4th at p. 681.)



People v. Higuera

2005 | Cited 0 times | California Court of Appeal | April 8, 2005

Appellants' motion relied on David Collin's declaration. Collin's declaration does not state when, during the 185-day period after bail was forfeited, he was retained to locate Higuera, but efforts to locate Higuera produced information about his movements on October 28, 2003, the date of his failure to appear in court. The declaration contained factual details about efforts to locate Higuera, including contact with his wife and his indemnitor, his parents' residence in Mexico, the bail of Higuera's girlfriend and co-defendant and their probable representation by the same attorney, and the surveillance of Higuera's wife, her home, and a location where she dropped off her children. Investigators checked for defendant at his most recent address, checked phone records of all parties in the case, and learned information that Higuera might be located with friends in the Compton area, which location they had surveilled. Investigators also continued attempts to locate Higuera in Mexico and made contact with Mexican officials. *People v. Ranger Ins. Co.*, supra, 81 Cal.App.4th at pages 681-682 found no abuse of discretion in the denial of a motion for extension of time based on a factually deficient "cursory" and "incomplete" "bare-bones declaration" filed by a surety which made no efforts to locate the non-appearing defendant during the 180-day period after forfeiture. In this appeal the declaration shows sufficient diligence, sufficient factual explanation of efforts made to locate Higuera, and sufficient explanation why those efforts were not successful.

Although the trial court questioned the declarant's credibility based on his inconsistent statements about his investigation of the court docket sheet, this does not provide sufficient basis to deny the motions, given the showing that the surety had made a reasonable attempt to locate defendant. (*People v. Alistar Ins. Co.* (2003) 115 Cal.App.4th 122, 129.) Moreover, the People did not provide evidence refuting the existence of good cause to grant an extension. (*Ibid.*) In this circumstance, there was "no reasonable justification for not allowing [appellant Ranger Insurance Company] additional time to locate defendant, particularly since the law disfavors forfeitures and favors returning to custody fleeing defendants. Sections 1305 and 1306 are to be strictly construed in favor of the surety to avoid harsh results." (*Ibid.*)

We conclude that denial of the motion to extend time was an abuse of discretion.

DISPOSITION

The summary judgment entered against Ranger Insurance Company and Absolute Bail Bonds is reversed, and on remand the trial court is directed to vacate its order denying the motion of Ranger Insurance Company and Absolute Bonding Corporation to extend time to set aside bail forfeiture on Bond No. R10011974600 and to grant the motion for a 180-day extension. In the event, pursuant to the summary judgment, Ranger Insurance Company or Absolute Bonding Corporation has paid the State of California for the forfeiture of the bonds, including costs and interest, the trial court is directed to order the State of California to repay this sum and order Ranger Insurance Company and Absolute Bonding Corporation to reissue the bond. Costs on appeal are awarded to Ranger Insurance Company and Absolute Bonding Corporation.



People v. Higuera

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We concur:

CROSKEY, Acting P.J.

ALDRICH, J.

1. Unless otherwise specified, statutes in this opinion will refer to the Penal Code.

