

2019 WL 7875164

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United States District Court, C.D. California.

U.S.A.

v.

Joseph Michael GIFFORD

Case No. CR 19-109-JFW

|
Filed 11/20/2019

Synopsis

Background: Defendant was charged with distribution of methamphetamine. Government moved for order forfeiting bail and correcting clerical error, and for summary adjudication of obligation with respect to defendant and surety.

[Holding:] The District Court, [John F. Walter, J.](#), held that forfeiture of defendant's bail bond had to be set aside in its entirety in interest of justice.

Motion granted in part and denied in part.

West Headnotes (10)

[1] Bail



Bail forfeiture is mandatory if a condition of the bond is breached. [Fed. R. Crim. P. 46\(f\)\(1\)](#).

[2] Bail



The principal purpose of a bail bond is to ensure the accused's appearance at the appointed time. [Fed. R. Crim. P. 46](#).

[3] Bail



Bail forfeiture is not limited to an accused's failure to appear in court, but applies equally to an accused's violations of other conditions of his or her release. [Fed. R. Crim. P. 46](#).

[4] Bail



A court has wide discretion in determining whether to grant relief from a bail forfeiture. [Fed. R. Crim. P. 46\(f\)\(2\)](#).

[5] Bail



In deciding whether to grant relief from bail forfeiture, a court considers: (1) the defendant's willfulness in breaching a release condition; (2) the sureties' participation in apprehending the defendant; (3) the cost, inconvenience, and prejudice suffered by the government; (4) mitigating factors; (5) whether the surety is a professional or a member of the family or a friend; and (6) the appropriateness of the amount of the bond. [Fed. R. Crim. P. 46\(f\)\(2\)](#).

[6] Bail



Forfeiture of defendant's bail bond had to be set aside in its entirety in interest of justice after he tested positive for drugs in violation of his pre-trial release conditions; although defendant's breach was willful and bond was appropriate, principal purpose of bail bond was to ensure defendant's appearance in court, defendant did not abscond, surety did not assist defendant in committing violations of his bond conditions, any inconvenience to government from defendant's violations was minor, surety thought that bond could be forfeited only in event defendant fled or did not appear for court proceedings, and surety

was defendant's sister, not professional bondman. [Fed. R. Crim. P. 46\(f\)\(2\)](#).

[7] **Bail**



A defendant's willfulness in breaching a release condition is not directly applicable to the decision of whether to grant relief from bail forfeiture where the defendant has not absconded. [Fed. R. Crim. P. 46\(f\)\(2\)](#).

[8] **Bail**



One of the mitigating factors that a court considers in deciding whether to grant relief from bail forfeiture is whether the sureties were aware of their obligations under the bond agreement. [Fed. R. Crim. P. 46\(f\)\(2\)](#).

[9] **Bail**



Setting aside a bond forfeiture is favored when deciding whether to grant relief from bail forfeiture if a surety is a defendant's family member or friend, rather than a professional bondsman. [Fed. R. Crim. P. 46\(f\)\(2\)](#).

[10] **Bail**



When deciding whether to grant relief from bail forfeiture, the appropriateness of the amount of the bond is entitled to relatively little weight when a defendant breaches a term of release other than reappearance in court. [Fed. R. Crim. P. 46\(f\)\(2\)](#).

Attorneys and Law Firms

Joseph Michael Gifford, Not Present, [Carlos L. Juarez](#), CJA, Not Present, Attorneys for Defendant.

Katherine S. Gifford, [Peter Berlin](#), Attorney for Objector.

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING IN PART, DENYING IN PART UNITED STATES OF AMERICA'S MOTION FOR ORDER FORFEITING BAIL AND CORRECTING CLERICAL ERROR, AND FOR SUMMARY ADJUDICATION OF OBLIGATION WITH RESPECT TO DEFENDANT AND SURETY [filed 8/22/2019; Docket No. 68]

HONORABLE [JOHN F. WALTER](#), UNITED STATES DISTRICT JUDGE

*1 On August 22, 2019, United States of America (the "Government") filed a Motion for Order Forfeiting Bail and Correcting Clerical Error, and for Summary Adjudication of Obligation With Respect to Defendant and Surety ("Motion"). On November 5, 2019, Objector/Surety Katherine S. Gifford ("Ms. Gifford") filed her Opposition. On November 13, 2019, the Government filed a Reply. The Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for December 2, 2019 is hereby vacated and the matter taken off calendar. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Proceedings in *United States v. Gifford*, CR 19-109-JFW

On January 28, 2019, the Government filed a Criminal Complaint against Defendant, charging him with Distribution of Methamphetamine in violation of [21 U.S.C. §§ 841\(a\)\(1\), \(b\)\(1\)\(A\)](#). On February 15, 2019, the Court set bail at \$75,000, with the condition that Defendant provide an Affidavit of Surety in that

amount signed by his sister Katherine S. Gifford which would later be replaced by property. In accepting the conditions of his release, Defendant agreed, in relevant part, that he: (1) would submit to supervision by the U.S. Pretrial Services Agency (“PSA”); (2) would not use or possess illegal drugs; and (3) would submit to drug testing. On February 15, 2019, Defendant's sister, Ms. Gifford, executed an Affidavit of Surety (No Justification) in the amount of \$75,000.

On February 26, 2019, the Government filed an Information against Defendant, charging him with: (1) Conspiracy to Distribute and to Possess with Intent to Distribute Controlled Substances in violation of 21 U.S.C. § 846; (2) Distribution of Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), (b)(1)(B)(viii); and (3) Aiding and Abetting in violation of 18 U.S.C. § 2(a). On March 12, 2019, the Court approved the Bond and Conditions of Release form, which included the same conditions of release that had been previously imposed. Ms. Gifford signed an Affidavit of Surety (Property), which states that she is “worth the amount specified in the bond, to wit \$75,000.00” and that she is the sole owner of real property (a single-family residence) located in Chandler, Arizona and that her equity in the property is \$119,761.56. By signing the Affidavit of Surety (Property), Ms. Gifford acknowledged:

I (We) further state that I (we) understand the provisions of the bond of the defendant named above for which this affidavit supports and I (we) acknowledge and agree that I (we) and my (our) personal representatives are bound, jointly and severally with the defendant and any other sureties, to pay to the United States of America the bond amount specified in the event the bond is forfeited.

Docket No. 43 at 1. The Affidavit of Surety was filed on March 12, 2019.

On April 1, 2019, the Court accepted and entered Defendant's plea of guilty pursuant to a plea agreement filed on March 25, 2019, and set sentencing for June 17, 2019.

B. Proceedings in *United States v. Gifford*, CR 19-215-JFW

*2 On March 26, 2019, the U.S. Attorney's Office for the Western District of Pennsylvania filed an Information against Defendant, charging him with Distribution of 50 Grams or More of Methamphetamine, a Schedule II Controlled Substance in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii). In early April 2019, the case was transferred to this District pursuant to Fed. R. Crim P. 20.

On April 25, 2019, the Court accepted and entered Defendant's plea of guilty in Case No. CR 19-215 JFW pursuant to a plea agreement filed on April 22, 2019, and set sentencing for June 17, 2019.

C. Sentencing in Both Cases

On June 17, 2019, the Court sentenced Defendant in both cases to a term of 36 months to be served concurrently. The Court allowed Defendant to self-surrender by July 22, 2019.

D. Defendant's Violations of Bond Conditions

From February 2019 until his first positive drug test on June 5, 2019, Defendant was in full compliance with all of the terms of his pre-trial release. On July 1, 2019, a PSA officer sent a letter to the Court, alleging in relevant part that: (1) on June 19, 2019, Defendant submitted a urine test which was presumptively positive for cocaine; (2) on June 24, 2019, Defendant failed to appear for a random drug test; and (3) on July 1, 2019, PSA received confirmation from the national laboratory that Defendant's drug test on June 5, 2019 was positive for methamphetamine. As a result, PSA filed a Petition for Action on Conditions of Pretrial Release (“Petition”), requesting that a hearing be scheduled at which Defendant be ordered to show cause why his bond should not be revoked.

The Court set a hearing on the Petition for July 8, 2019. On July 8, 2019 at approximately 9:00 a.m., Defendant voluntarily appeared with counsel for the hearing on the Petition. Defendant freely admitted the violations without requiring the Government or PSA to prove the violations, apologized to the Court, and stated that he was ready to begin serving his sentence in order to seek treatment through a Bureau of Prisons drug treatment program. Although the Court ordinarily would have considered a lesser sanction (such as increased testing or outpatient treatment), in light of the Defendant's willingness to begin serving his sentence and the impending self-surrender date, the Court revoked Defendant's bond and remanded Defendant to the custody of the U.S. Marshals. Because of the unavailability of the U.S. Marshals, the Court ordered Defendant to return to the courtroom at 11:00 a.m. to surrender. Defendant complied, returned to the courtroom, and was taken into custody by the U.S. Marshals.

On July 26, 2019, the Clerk of Court filed a Verification of Surrender form indicating that Defendant had surrendered to the Bureau of Prisons, and that the bond "may be exonerated." The Clerk of Court also sent the "Property Reconveyance Packet" to the Department of Financial Services on July 26, 2019 and the Deed of Trust packet to Ms. Gifford on August 15, 2019.

On August 22, 2019, the Government filed this Motion, seeking an order forfeiting bail, a judgment against Defendant and Ms. Gifford, and an order correcting clerical error¹ on the grounds that Defendant violated the conditions of his bond by using illegal drugs and failing to appear for drug testing. If the Court grants the Government's motion, the Government will undoubtedly foreclose on the deed of trust and take possession of Ms. Gifford's single-family residence in Chandler, Arizona, which is currently occupied by Ms. Gifford's 78-year old mother and her 76-year old aunt, both of whom are in ill-health. In Ms. Gifford's Opposition, Ms. Gifford does not contest that Defendant breached the conditions of his bond. However, she argues, in the interest of justice, that the bail forfeiture should be set aside.

II. LEGAL STANDARD

*3 [1] "The law on bail forfeiture is neither complex nor voluminous." *United States v. Nguyen*, 279 F.3d 1112, 1115 (9th Cir. 2002). Federal Rule of Criminal Procedure 46(f)(1) provides: "The court must declare the bail forfeited if a condition of the bond is breached." Fed. R. Crim. P. 46(f)(1). "The forfeiture is thus mandatory." *Nguyen*, 279 F. 3d at 1115.

[2] [3] "The principal purpose of a bail bond is to ensure the accused's appearance at the appointed time." *United States v. Gladding*, 2010 WL 3075653, at *2 (E.D. Cal. Aug. 5, 2010), report and recommendation adopted, No. 1:09-CR-00265, 2010 WL 3618631 (E.D. Cal. Sept. 13, 2010) (citing *United States v. Toro*, 981 F.2d 1045, 1049 (9th Cir.1992)). "Nonetheless, forfeiture is not limited to an accused's failure to appear in court, but applies equally to an accused's violations of other conditions of his or her release." *Id.* (citing *United States v. Vaccaro*, 51 F.3d 189, 191 (9th Cir.1995)).

[4] Although forfeiture is mandatory if a condition of the bond is breached, pursuant to Federal Rule of Criminal Procedure 46(f)(2):

The court may set aside in whole or in part a bail forfeiture upon any condition the court may impose if:

- (A) the surety later surrenders into custody the person released on the surety's appearance bond; or
- (B) it appears that justice does not require bail forfeiture.

Fed. R. Crim. P. 46(f)(2). "In determining whether or not to grant relief from a forfeiture, a court has wide discretion." *United States v. Stanley*, 601 F.2d 380, 382 (9th Cir. 1979).

[5] In deciding whether to grant relief from bail forfeiture, the Court considers the following factors:

- 1) the defendant's willfulness in breaching a release condition;
- 2) the sureties' participation in apprehending the defendant;

3) the cost, inconvenience, and prejudice suffered by the government; 4) mitigating factors; 5) whether the surety is a professional or a member of the family or a friend; and 6) the appropriateness of the amount of the bond.

Nguyen, 279 F.3d at 1115-16 (quoting  *United States v. Amwest Sur. Ins. Co.*, 54 F.3d 601, 603 (9th Cir. 1995)).

III. DISCUSSION

[6] It is undisputed that Defendant breached a condition of his bond by using illegal drugs. Accordingly, the Court must declare the bail forfeited. However, although the forfeiture of Defendant's bail is mandatory, the Court concludes that the forfeiture should be set aside. Specifically, after weighing all of the relevant factors (as discussed below), the Court concludes that “justice does not require bail forfeiture.” *Fed. R. Crim. P. 46(f)(2)*.

(1) Defendant's willfulness in breaching a release condition

In this case, Defendant tested positive for drugs in violation of his pre-trial release conditions. Ms. Gifford concedes that this breach was willful. Thus, this factor weighs against Ms. Gifford.

(2) Ms. Gifford's participation in apprehending Defendant

[7] In a case such as this, where Defendant has not absconded, this factor is not directly applicable. See *Gladding*, 2010 WL 3075653, at *4 (“When a defendant has breached the conditions of release in a manner other than failing to appear for court proceedings, how a surety could have participated is often unclear. Accordingly, this factor is often irrelevant or of little weight in determining whether forfeiture of bond posted by a third-party is appropriate.”).

*4 However, as suggested by the Government, the Court considers whether Ms. Gifford assisted Defendant in committing the violations. The Government concedes that Ms. Gifford did not assist Defendant in committing the violations of his bond conditions. Accordingly, this factor weighs in favor of Ms. Gifford.

(3) The cost, inconvenience, and prejudice suffered by the Government

Although the Government is not required to provide a bill of costs or itemize the damages caused by Defendant's violations of his bond conditions, see *Nguyen*, 279 F.3d at 1117, the Government has failed to demonstrate that it was inconvenienced or otherwise prejudiced by Defendant's violations. Indeed, Defendant did not abscond or flee, he did not miss any court appearances, and his actions did not require the U.S. Marshals or PSA to search for him. In fact, he voluntarily appeared at the hearing on July 8, 2019, undoubtedly aware that he would be taken into custody. Moreover, at the hearing, Defendant did not require the Government or the PSA officer to prove that he violated the conditions of his pre-trial release. Instead, he accepted responsibility for his actions, admitted the violations, and expressed his willingness to be taken into custody immediately so that he could begin serving his sentence.

The Government contends that it was inconvenienced because a PSA officer had to report the violations to the Court and because the Court had to conduct a hearing. Although the Court and PSA officer may have been inconvenienced, there was no such inconvenience to the Government. In any event, the Court finds that any inconvenience was minor and concludes that this factor weighs heavily in favor of Ms. Gifford.² See *Gladding*, 2010 WL 3075653, at *5 (“Because the government incurred little expense, inconvenience, or prejudice in arresting Defendant after he failed the drug test required as a condition of his release, forfeiture of his \$100,000 bond appears grossly disproportionate and therefore, not required in the interest of justice.”).

(4) Mitigating factors

[8] The Court finds that various mitigating factors favor setting aside the bail forfeiture in its entirety. “One of the mitigating factors that courts consider is

whether the sureties were aware of their obligations under the bond agreement.” *United States v. Martinez*, 2013 WL 6002441, at *7 (S.D. Cal. Nov. 12, 2013). In this case, although Ms. Gifford signed Affidavits of Surety indicating that she understood the provisions of Defendant's bond, Ms. Gifford states that she understood that the bond could only be forfeited in the event Defendant fled or did not appear for court proceedings. See Declaration of Katherine S. Gifford [Docket No. 78-1] at ¶¶ 4-5. Although the Government contends that this self-serving statement should not be credited, the Court disagrees. Ms. Gifford, before she retained the services of an attorney and without knowing the applicable law, made this identical statement. See Opposition/Request for Extension [Docket No. 72] (“[M]y understanding when deciding to post bond was that if Joseph returns to court that the bond would simply be exonerated.”). Accordingly, the Court finds Ms. Gifford's statement credible, and finds that it favors setting aside the forfeiture.

*5 The Court also considers Defendant's “explanation” for his breach of the bond conditions. See *Stanley*, 601 F.2d at 382. Defendant breached the conditions of his bond by using drugs and by failing to appear for drug testing. To his credit, at the bond revocation hearing, Defendant did not hesitate to admit these violations and advised the Court that he was prepared to begin serving his sentence. He apologized to the Court and stated that he had “relapsed” and was looking forward to participating in a drug treatment program once in custody. As a result of the Court's many years of dealing with and attempting to understand defendants who suffer from addiction or substance abuse issues, the Court has discovered that the decision to use drugs is not always rational or completely voluntary. Moreover, it is an unfortunate but not uncommon occurrence for a person with substance abuse issues to relapse. The recommended sanction for violating the conditions of pre-trial or supervised release frequently involves increased testing and/or participation in a treatment program, not revocation of the bond or incarceration. As such, and in light of the fact that the principal purpose of the bail bond was to ensure Defendant's appearance in court, the Court concludes that Defendant's explanation favors setting aside the forfeiture.

(5) Whether the surety is a professional or a member of the family or friend

[9] “If the surety is a defendant's family member or friend, rather than a professional bondsman, this factor weighs in favor of setting aside the bond forfeiture.” *United States v. Martinez*, 2013 WL 6002441, at *7 (S.D. Cal. Nov. 12, 2013). See also *United States v. Castaldo*, 667 F.2d 20, 21 (9th Cir. 1981) (explaining that professional bondsmen are “experienced at bonding criminal defendants” and more likely to be “aware of the risks of executing and filing a bond on [the defendant's] behalf.”). Ms. Gifford is Defendant's sister, not a professional bondsman. As such, this factor favors setting aside the bond forfeiture.³

(6) The appropriateness of the amount of the bond

[10] The Court finds that the amount of the bond -- \$75,000 -- was appropriate to ensure Defendant's appearance in light of the offenses with which Defendant was charged. However, “[b]ecause Defendant breached a term of release other than reappearance in court, ... this factor is entitled to relatively little weight.” *Gladding*, 2010 WL 3075653 at *7.

After weighing all of the relevant factors discussed *supra*, and especially in light of the fact that Defendant appeared for all court proceedings, the Court sets aside forfeiture of the bail in its entirety.

IV. CONCLUSION

For the foregoing reasons, the Government's Motion for Order Forfeiting Bail and Correcting Clerical Error, and for Summary Adjudication of Obligation With Respect to Defendant and Surety is **GRANTED in part, DENIED in part**. The Court declares the bail forfeited. However, the Court sets aside forfeiture of the bail in its entirety. Accordingly, the Court exonerates the surety and releases the bail. See *Fed. R. Crim. P. 46(g)*. In light of the Court's ruling, there is no need to correct any of the clerical errors alleged by the Government.

IT IS SO ORDERED.

All Citations

--- F.Supp.3d ----, 2019 WL 7875164

Footnotes

- 1 Specifically, the Government asks the Court to strike from the Verification of Surrender the following sentence: “The bond may be exonerated pending the verification as to whether the defendant is being electronically monitored by the U.S. Probation Office; confined to the custody of the Bureau of Prisons; or completed their jail time.” See Docket No. 64. The Government also requests an order that the Bond Remark, Docket No. 65, be stricken or set aside and an order that Ms. Gifford return the Clerk's Deed of Trust package to the Clerk of the Court.
- 2 Although minimally relevant, the Government also fails to recognize that Defendant saved the Government and two district courts enormous time, expense, and resources by entering a plea of guilty in two separate criminal cases, one of which was pending in another jurisdiction.
- 3 “Precedent sets forth no clear rule regarding the treatment of family members acting as sureties.” [Gladding, 2010 WL 3075653, at *6](#). Although courts within the Ninth Circuit consider whether the surety is a professional or member of the family or a friend in determining whether to set aside forfeiture, the Ninth Circuit has declined to adopt a “loving relative” exception to forfeiture. See [Nguyen, 279 F.3d at 1117 n.2](#). At the very least, given that Ms. Gifford is not a professional bondsman, this factor is neutral.

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