Filed 7/22/02 P. v. Legion Ins. Co. CA2/2

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. LEGION INSURANCE COMPANY, Defendant and Appellant.	B149841 (Los Angeles County Super. Ct. No. 202908)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael T. Sauer, Judge. Affirmed.

Nunez & Bernstein, E. Alan Nunez for Defendant and Appellant.

Steve Cooley, District Attorney, Brent Riggs and William Woods, Deputy District Attorneys for Plaintiff and Respondent.

Alfonso Ponce pled guilty to one count of the sale of cocaine base. He failed to appear for sentencing, and the court ordered his bail forfeited. Appellant Legion Insurance Company appeals from the subsequent order denying its motion to vacate the forfeiture and exonerate the bail.

Appellant contends that the order of forfeiture should have been set aside and the bond exonerated because the court failed to make findings on whether to allow the defendant to remain at liberty on bail after his conviction, pursuant to Penal Code section 1166.[1] Appellant also urges that since the notice of forfeiture sent to the surety and the bail agent reflected the incorrect amount of the bond forfeited ($15,000, instead of $30,000), the court was deprived of jurisdiction and the bond was exonerated by operation of law. The contentions are without merit.

DISCUSSION

I. Section 1166 applies to verdicts, not to pleas.

According to appellant, the failure of the trial court to comply with the requirements of section 1166 exonerated the bond. Section 1166 provides as follows: "*If a general verdict is rendered against the defendant, or a special verdict is given*, he or she must be remanded, if in custody, *or if on bail he or she shall be committed to the proper officer of the county to await the judgment of the court upon the verdict, unless,* upon considering [(1)] the protection of the public, [(2)] the seriousness of the offense charged and proven, [(3)] the previous criminal record of the defendant, ([4)] the probability of the defendant failing to appear for the judgment of the court upon the verdict, and [(5)]) public safety, the court concludes the evidence supports its decision to allow the defendant to remain out on bail. When committed, his or her bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant or to the

---

[1] Unless otherwise indicated, all statutory references are to the Penal Code.

person or persons found by the court to have deposited said money on behalf of said defendant." (Italics added.)

Appellant reads section 1166 to require that a court must commit a defendant upon conviction, whether after a verdict or upon a plea, unless the court considers evidence on the factors enumerated in the statute and concludes that the evidence supports its decision to allow the defendant to remain free on bail until sentencing. The issue of whether this statute applies only to cases involving a jury verdict or also applies to cases resolved by plea is presently pending before our Supreme Court. (*People v. Ranger Ins. Co.* (2001) 93 Cal.App.4th 1286, review granted Mar. 13, 2002, S103451 [holding section 1166 does not apply to cases resolved by plea]; *People v. Seneca Ins. Co.* (2002) 94 Cal.App.4th 1358, review granted Mar. 13, 2002, S104487 [finding the language in section 1166 ambiguous because a guilty plea is for most purposes the legal equivalent of a guilty verdict, and construing legislative history to conclude the Legislature intended the statute to apply also upon a plea of guilty].) On the face of the statute, it appears that the Legislature determined that one who is out on bail and voluntarily pleads guilty is somewhat less of a flight risk prior to sentencing than one who protests his innocence and proceeds to a jury trial but is then convicted. The difference in treating the two situations is not unreasonable, though the Legislature also could decide to deal identically with both situations.

Not all statutory language, even if flawed, is subject to judicial interpretation of legislative intent. Only if there is an ambiguity may we go behind the plain language of a statute. (See *Wells Fargo Bank v. Bank of America* (1995) 32 Cal.App.4th 424, 433.) "If no ambiguity, uncertainty, or doubt about the meaning of the statute appear, the provision is to be applied according to its terms without further judicial construction." (*Morse v. Municipal* Court (1974) 13 Cal.3d 149, 156.) It is of no consequence that legislative history reveals the Legislature possibly intended to do something other than what is

indicated by the statute's clear and unambiguous language.[2] Barring ambiguous language in the statute that invites statutory construction to determine legislative intent, a drafting error must be corrected by the Legislature, not by the courts rewriting statutory language.

Here, we decline the invitation to divine an ambiguity where none legitimately exists. The Legislature has defined the terms "general verdict" (§ 1151) and "special verdict" (§ 1152), and it is undisputed that the Legislature knows the difference between a jury verdict and a guilty plea (see § 1016). Just because a guilty plea is for most purposes the legal equivalent of a guilty verdict (*People v. Valladoli* (1996) 13 Cal.4th 590, 601), it does not follow that there is any ambiguity created merely by the absence of any reference to guilty pleas in section 1166. Although the law disfavors forfeitures and statutes must be strictly construed in favor of the surety to avoid the harsh result of forfeiture (*County of Los Angeles v. Surety Ins. Co.* (1984) 162 Cal.App.3d 58, 62), the plain and unambiguous language of section 1166 does not warrant any creative judicial construction of the statute.

Accordingly, the mandate of section 1166 that the court commit the defendant to custody, absent the court's conclusion that the factors enumerated in the statute support the defendant's remaining out on bail, does not apply to a defendant convicted after a plea. The trial court acted within the scope of its statutory mandate, and thus did not act

---

[2] As to section 1166, for example, Senate legislative analysis reveals that the "intent of this bill is to assure that a judge has an opportunity to examine the record of a convicted individual who is pending sentencing after conviction or guilty plea." (Sen. Com. on Public Safety, Analysis of Assem. Bill No. 476 (1999-2000) Reg. Sess.) as amended July 6, 1999; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 476 (1999-2000 Reg. Sess.) as amended Aug. 17, 1999.) The Senate legislative analysis does reference a guilty plea, but the language of the analysis is ironically far more ambiguous than the plain language of the statute as enacted. The phrase in the legislative analysis "conviction or guilty plea" is arguably confusing, since a guilty plea is a conviction.

in excess of its jurisdiction. The trial court did not err in denying the motion to vacate the forfeiture and exonerate the bail.

II. An inaccurate statement of the amount of bail in the notice of forfeiture does not affect the validity of the notice for jurisdiction purposes.

Appellant contends that the bail forfeiture should be set aside because it received a defective notice of forfeiture. According to appellant, the notice was ineffective because the form prepared by the court clerk mistakenly stated that the amount to be forfeited was $15,000, when the proper amount was $30,000, and the statutory notice of forfeiture to the surety and the bail agent (§ 1305, subd. (b)) must be accurate to invoke jurisdiction.

"'[W]here a statute requires a court to exercise its jurisdiction in a particular manner, follow a particular procedure, or subject to certain limitations, an act beyond those limits is in excess of its jurisdiction.'" (*People v. Wilshire Ins. Co.* (1975) 46 Cal.App.3d 216, 220.) Section 1305, subdivision (b) provides, in essence, that the court clerk must notify the surety and the bail agent of a forfeiture, and the notice must be mailed within 30 days of the forfeiture. However, the language of the statute does not set forth any particulars as to what information must be contained in the forfeiture notice. Thus, failing to indicate in the forfeiture notice the amount of the bail to be forfeited is not jurisdictional.

Moreover, the purpose of the forfeiture notice is to alert the bail agent and surety to the fact that the defendant has fled the jurisdiction of the court. (*People v. Surety, Ins. Co.* (1984) 158 Cal.App.3d Supp 1, 5.) This information then permits the bail agent or surety to begin efforts to pursue, arrest and return the defendant to court. (*Ibid*.) For this reason, as noted by appellant, courts have relieved the surety from forfeitures where they have not received notice in compliance with the section 1305, subdivision (b). (See, e.g., *People v. American Contractors Indemnity Co.* (2001) 91 Cal.App.4th 799, 806-807 [failure to mail notice within 30 days of forfeiture]; *People v. Earhart* (1972) 28 Cal.App.3d 840, 842 [failure to notify bail agent].)

Here, in contrast to the above-cited cases, the court clerk did provide timely notice to the appropriate parties. The erroneous information as to the amount forfeited, which information need not have been provided at all, did not "detrimentally affect the knowledge which [appellant was] entitled by law to have." (*Gianni v. City of San Diego* (1961) 194 Cal.App.2d 56, 63.) Indeed, the notice properly informed the recipients that the bond, identified by its correct bond number, had "been ordered forfeited by the court" and therefore constituted adequate notice under section 1305.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS.

BOREN, P.J.

We concur:

NOTT, J.

DOI TODD, J.