PD-0724&0725-20
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 10/31/2020 10:16 AM
Accepted 11/2/2020 8:16 AM
DEANA WILLIAMSON
CLERK

FILED
COURT OF CRIMINAL APPEALS
11/2/2020
DEANA WILLIAMSON, CLERK

PD-0724-20 and PD-0725-20
In the Court of Criminal Appeals of Texas
At Austin

Nos. 01-20-00004-CR and 01-20-00005-CR
In the Court of Appeals
For the First District of Texas
At Houston

Nos. 1657519 and 1657521
In the 338th District Court
Of Harris County, Texas

***Ex parte* Joseph Gomez**
Appellant

State's Reply Brief on Discretionary Review

Clint Morgan
Assistant District Attorney
Harris County, Texas
State Bar No. 24071454
morgan_clinton@dao.hctx.net

500 Jefferson, Suite 600
Houston, Texas 77002
Telephone: 713 274 5826

Kim Ogg
District Attorney
Harris County, Texas

Crystal Okorafor
Assistant District Attorney
Harris County, Texas

Table of Contents

Table of Contents 2

Index of Authorities 3

The appellant defends the First Court's opinion by describing it as nonresponsive and off-topic. Those are not reasons for this Court to affirm. 4

I. Did the First Court address the State's argument? 5

II. The second part of the appellant's brief does not respond to the trial court's and the State's argument. 8

III. The appellant's "postlude" is just a complaint about being in jail. Jail is where dangerous defendants go. 9

Conclusion 10

Certificate of Compliance and Service 11

Index of Authorities

Cases

Ex parte Gomez
Nos. 01-20-00004-CR and 01-20-00005-CR, 2020 WL 4577148 (Tex. App.—Houston [1st Dist.], August 7, 2020 pet. granted) (mem. op. not designated for publication) 6

Keehn v. State
233 S.W.3d 348 (Tex. Crim. App. 2007) 8

Statutes

TEX. CODE CRIM. PROC. art. 17.09 ..... 5, 7

Rules

TEX. R. APP. P. 47.1 8

The appellant defends the First Court's opinion by describing it as nonresponsive and off-topic. Those are not reasons for this Court to affirm.

The appellant describes the State's "entire argument" as "a blatant misstatement and misrepresentation of the Court of Appeals'[s] decision." (Appellant's Brief at 10). To whatever degree this is true, it's because the State read the First Court's opinion as addressing the State's argument and deciding the case on a relevant statutory provision.

To defend the First Court against the State's apparently scurrilous attacks, the appellant interprets the First Court's opinion as addressing the trial court's and State's argument only by inference. (Appellant's Brief at 13 ("By using the word 'factors,' the [First Court] recognized that it was considering all the grounds for revoking a bond set out in Section 3, including a finding that the original bonds are 'insufficient in amount.'")(emphasis in original)). The appellant also defends the First Court's holding by claiming it's about a statutory provision that was not at issue. (Appellant's Brief at 14 ("[T]hat is all the [First Court] said in that one paragraph: bond could not be revoked under *section 1 of article 17.09*. There is no mention at this point of the

trial court's ability to find the bond 'insufficient in amount' under *section 3 of article 17.09*.")(emphasis in original)).

Neither of these is a reason to affirm or, as the appellant suggests, dismiss this case.

I. Did the First Court address the State's argument?

The trial court's and State's position has been very clear. Code of Criminal Procedure Article 17.09, Section 3, allows a trial court to have a bailed defendant rearrested and required to obtain a new bond if the trial court "finds that the [current] bond is … insufficient in amount …." TEX. CODE CRIM. PROC. art. 17.09 § 3. The trial court and State believed that provision allowed the trial court's actions. (2 RR 24; State's Appellate Brief at 10-15). Neither the trial court nor the State made any other defense of the trial court's actions.

The First Court spent one (1) paragraph addressing whether the trial court could require the appellant to obtain new bonds because it believed his current bonds "insufficient in amount." The First Court pointed out that the appellant's total bail was set at $40,000, and concluded:

> There is no dispute that bail was given in the amount of $40,000 on the two cases. Because it is undisputed that the bonds were not "insufficient in amount" to satisfy the

> amount of bail that was ordered, the trial court could not have properly revoked [the appellant's] bonds and increased the amount of bail under section 1 of article 17.09.

Ex parte Gomez, Nos. 01-20-00004-CR and 01-20-00005-CR, 2020 WL 4577148 at *6 (Tex. App.—Houston [1st Dist.], August 7, 2020 pet. granted) (mem. op. not designated for publication).

In its PDR and brief on the merits, the State omitted the last clause of that paragraph, which referenced Article 17.09, Section 1. (State's Petition at 16; State's Brief at 15). The State has treated the First Court's holding as relating to Article 17.09, Section 3.

The appellant calls this a "blatant … misrepresentation." Most people would probably call it "giving the First Court the benefit of the doubt."

That's because, aside from that single clause, this case has absolutely nothing to do with Article 17.09, Section 1.[1] There was no rea-

---

[1] Section 1 says that a defendant's bail is good for all proceedings of the same cause:

> Where a defendant, in the course of a criminal action, gives bail before any court or person authorized by law to take same, for his personal appearance before a court or magistrate, to answer a charge against him, the said bond shall be valid and binding up on the defendant and his sureties, if any, thereon, for the defendant's personal appearance before the court or magistrate designated therein, therein, as well as before any other court to which same may be transferred, and for any and all subsequent proceedings had relative to the charge, and each such bond shall be so conditioned except as hereinafter provided.

son for the First Court to cite Section 1 aside from a typographical error. Section 1 provides no basis for revoking bonds. The phrase "insufficient in amount" does not appear in Section 1—leaving the First Court's quote apparently without antecedent. This is the only reference to Section 1 in the entire opinion. Neither the trial court nor the State—nor, for his part, the appellant—invoked Section 1. The appellant's brief fails to explain why the First Court discussed Section 1. Interpreting the First Court's opinion as a holding based on Section 1 is nonsense.

Aside from the single "insufficient in amount" paragraph, nothing in the First Court's opinion addressed the trial court's and State's argument that a trial court's determination that a bond is "insufficient in amount" justifies requiring a defendant to obtain a new bond. Instead, the First Court just discussed cases about "other good and sufficient" causes.

The appellant claims that the First Court's reference to the Section 3 "factors" means the First Court considered and rejected the tri-

---

TEX. CODE CRIM. PROC. art. 17.09 § 1.

In its brief on the merits here, the State showed that the purpose of Article 17.09 was to eliminate antiquated procedures—dating back to 1856—that required defendants to obtain new bonds at various points in their prosecutions for no substantive reason. (State's Brief at 23-26).

al court's and State's arguments. But it would be peculiar for an appellate court to issue an 18-page opinion that addressed the losing party's sole argument only by inference. Even if that's what happened, that's not something this Court should tolerate.

The State believes the First Court's actual holding is "that a trial court cannot find a bond 'insufficient in amount' once a defendant has posted the bond." The State believes this holding relates to Section 3 of Article 17.09, because it makes no sense as a holding related to Section 1. If, though, this Court buys the appellant's argument that the First Court's holding relates only to Section 1, it should still reverse because that means the First Court decided the case on an irrelevant statutory provision and failed to address the State's argument. TEX. R. APP. P. 47.1 (court of appeals opinion must address every issue raised and necessary to disposition); *see Keehn v. State*, 233 S.W.3d 348, 349 (Tex. Crim. App. 2007) (reversing intermediate court for failing to address losing party's arguments).

II. The second part of the appellant's brief does not respond to the trial court's and the State's argument.

The appellant spends several pages of his brief pointing out that this case does not match up with prior cases interpreting the phrase

"other good and sufficient cause." (Appellant's Brief at 19-24). This is even less responsive than was the First Court's opinion. Neither the trial court nor the State has ever said there was an "other good and sufficient cause" beyond the trial court's belief that the magistrate had set the appellant's bail too low.

The plain language of Article 17.09, Section 3 allows the trial court to have a defendant rearrested and required to obtain new bonds if the trial court believes the current bonds are insufficient in amount. The appellant's obfuscations show he cannot rebut this obvious point.

III. The appellant's "postlude" is just a complaint about being in jail. Jail is where dangerous defendants go.

The appellant has a "postlude" where he complains about being in jail. (Appellant's Brief at 24-26). But jail is the place society has designated for dangerous criminal defendants who cannot make a sufficient bail to ensure the safety of the community and victim. The appellant snuck into his ex-girlfriend's house, waited in the closet until she went to sleep, and then, while wearing a mask, got on top of her and choked her until someone else intervened. The Code of Criminal Procedure requires the trial court to set bail at an amount that protects

the victim's safety. The trial court did so and the First Court erred by disregarding that decision.

Conclusion

The State asks this Court to reverse the First Court and reinstate the trial court's judgment. Alternatively, this Court should reverse the First Court and remand the case to that court to address the appellant's remaining point.

KIM OGG
District Attorney
Harris County, Texas

/s/ C.A. Morgan
CLINT MORGAN
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
Telephone: 713 274 5826
Texas Bar No. 24071454

Certificate of Compliance and Service

I certify that, according to Microsoft Word, the portion of this brief for which Rule of Appellate Procedure 9.4(i)(1) requires a word count contains 1,394 words.

I also certify that I have requested that efile.txcourts.gov electronically serve a copy of this brief to:

Brent Mayr
bmayr@mayr-law.com

Sierra Tabone
stabone@mayr-law.com

Stanley G. Schneider
stans3112@aol.com

Stacey Soule
information@spa.texas.gov

/s/ C.A. Morgan
Clint Morgan
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
Telephone: 713 274 5826
Texas Bar No. 24071454

Date: October 31, 2020

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Clinton Morgan
Bar No. 24071454
morgan_clinton@dao.hctx.net
Envelope ID: 47705979
Status as of 11/2/2020 8:17 AM CST

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Clint Morgan		morgan_clinton@dao.hctx.net	10/31/2020 10:16:18 AM	SENT
Stacy Soule		information@spa.texas.gov	10/31/2020 10:16:18 AM	SENT

Associated Case Party: Joseph Gomez

Name	BarNumber	Email	TimestampSubmitted	Status
T. BrentMayr		bmayr@mayr-law.com	10/31/2020 10:16:18 AM	SENT
Sierra Tabone		stabone@mayr-law.com	10/31/2020 10:16:18 AM	SENT
Stanley G.Schneider		stans3112@aol.com	10/31/2020 10:16:18 AM	SENT