

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0782**

State of Minnesota,
Respondent,

vs.

Michael Edward White,
Defendant,

Midwest Bonding, LLC,
Appellant.

**Filed February 3, 2020
Reversed and remanded
Jesson, Judge**

Hennepin County District Court
File Nos. 27-CR-15-28151, 27-CR-16-11051, 27-CR-17-6334

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota (for
respondent)

James McGeeney, Doda & McGeeney, P.A., Rochester, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Appellant Midwest Bonding, LLC seeks reinstatement of \$120,000 in bail bonds that it posted on behalf of defendant Michael Edward White. After he failed to appear at his sentencing hearing, Midwest searched for White for more than 12 months and hired a third-party search agency, which followed an ultimately unhelpful tip that White had fled to Georgia. Once White was finally arrested, Midwest asked the district court to reinstate its forfeited bonds. But the district court denied its request. Because we conclude that the district court erred in its analysis, we reverse and remand.

FACTS

The state charged defendant Michael Edward White with felony failure to register as a predatory offender in 2015.¹ And in 2016, he was charged again for the same crime. In August 2016, appellant Midwest Bonding, LLC (Midwest) posted two bonds—\$30,000 and \$40,000—on White’s behalf. Then, for a third time, White was charged with felony failure to register in March 2017. He was again released on a \$50,000 bond, posted by Midwest. The next month, White pleaded guilty² but then failed to appear at his sentencing hearing. Because White failed to appear, the district court ordered that the three bonds, totaling \$120,000, be forfeited.

¹ White is required to register for life as part of his sentence from a 2003 conviction for first-degree criminal sexual conduct and first-degree burglary.

² In return for pleading guilty to the charge from 2016 (in court file number 27-CR-16-11051), the state dismissed the two other charges from 2015 and 2017 (in court file numbers 27-CR-15-28151 and 27-CR-17-6334).

In order to reverse the bond forfeiture, Midwest tried to find White and return him to the authorities.³ Midwest called White using the contact information he provided but was unable to reach him. Nor did the postal service have a forwarding address for him. And Midwest's search of the Minnesota jail registries revealed that White was not in custody. When these efforts were unsuccessful, Midwest hired a professional fugitive-recovery agency, at an additional expense. The agency also tried to locate White using his provided contact information and its investigative software. Then, the agency got a lead from a confidential informant who said that White was in Georgia, where his mother lived. But, after contacting local authorities to help apprehend White there, it learned he left his mother's the month before. Local police in Georgia continued to search for White by canvassing the neighborhood and conducting surveillance. When that search was unsuccessful, Midwest's fugitive recovery agency offered a "substantial financial reward" and advertised White's wanted status on social media. Finally, after about 13 months on the run, police arrested White.⁴

After White was found, Midwest moved to reinstate and discharge the three bonds, totaling \$120,000. In supporting documentation, Midwest described their efforts to find White as outlined above. But the district court denied Midwest's request. The district court noted in its order that Midwest could request a hearing on the decision and Midwest

³ While searching for White, Midwest requested and received multiple extensions from the district court on its deadline to pay the bonds.

⁴ After his arrest, White appeared in district court before being released again on bond, posted by another bail bond company. But White again failed to appear at his rescheduled sentencing hearing. Agents with the other bail bond company eventually found White hiding in the wall of a home in Minneapolis.

did so, asking the court to reconsider reinstatement. The court declined, stating that Midwest did not provide any new information that would warrant reconsideration or a hearing. Midwest appeals.

DECISION

Midwest argues that the district court abused its discretion when it declined to reinstate and discharge White's bail bonds. We review a district court's denial of a petition for reinstatement of forfeited bail bonds for an abuse of discretion. *State v. Askland*, 784 N.W.2d 60, 62 (Minn. 2010). And a district court abuses its discretion when it bases its conclusions on an erroneous view of the law. *Almor Corp. v. County of Hennepin*, 566 N.W.2d 696, 701 (Minn. 1997).

Under Minnesota law, when a defendant is released on a bond and fails to perform on the conditions of the bond, the bond will be defaulted. Minn. Stat. § 629.58 (2018). "The penalty for default is forfeiture of the amount of the bond to the court." *State v. Storkamp*, 656 N.W.2d 539, 541 (Minn. 2003). But, upon request, a district court may forgive the bond forfeiture penalty or reduce the amount forfeited if doing so would be "just and reasonable" under the circumstances of the case. Minn. Stat. § 629.59 (2018). Generally, the surety—here, Midwest—has the burden to show the circumstances that make reinstatement just and reasonable. *In re Shetsky*, 60 N.W.2d 40, 46 (Minn. 1953). And in considering whether to reinstate bond after forfeiture, Minnesota courts balance four factors, taken from *Shetsky*. The factors are:

[1] the *purpose of bail* and the civil nature of the proceedings and the burden of proof as well as the *cause, purpose, and length of defendant's absence*;

[2] the *good faith* of the surety as *measured by the fault or [willfulness] of the defendant*;
[3] the *good faith efforts* of the surety—if any—to *apprehend* and produce the *defendant*; and
[4] the *prejudice*—by way of delay or otherwise—to *the state*, in its administration of justice.

Id. (emphasis added).

Here, the district court determined that the factors, considered together, weighed against reinstatement of the forfeited bond. But we discern the district court erred with regard to two of these factors: the second factor, good faith measured by the fault of the defendant, and the fourth factor, prejudice to the state. Accordingly, we conclude that the district court erred by denying Midwest’s requested reinstatement. We review each of the four *Shetsky* factors below.

Purpose of Bail and Cause, Purpose, and Length of Defendant’s Absence

In considering the purpose of bail, courts seek to ensure prompt administration of justice, *Shetsky*, 60 N.W.2d at 46, and to facilitate that administration by encouraging sureties to locate and return defendants. *State v. Vang*, 763 N.W.2d 354, 358 (Minn. App. 2009). Likewise, “[t]he bail system seeks to reconcile the defendant’s interest in pretrial liberty with the need for assurance that he will return for trial by making his release conditional on his providing financial security for his appearance.” *State v. Super*, 161 N.W.2d 832, 838-39 (Minn. 1968).

Here, Midwest posted White’s bonds and White pleaded guilty but absconded during the sentencing phase of his case. White was on the run from April 2017 to

May 2018. The district court found that this significantly delayed his sentencing, which ran contrary to the purpose of bail.

Yet, Midwest argues that the purpose of bail was fulfilled here because White only absconded after pleading guilty, relying on *Farsdale v. Martinez*, 586 N.W.2d 423 (Minn. App. 1998).⁵ In *Farsdale*, we concluded that forfeiting a bond after the defendant had pleaded guilty would be contrary to the primary purpose of bail, which is to secure a defendant's presence *at trial*. 586 N.W.2d at 425 (emphasis added). We explained that forfeiture after that would be punitive and only serve to increase the state's revenue. See *Shetsky*, 60 N.W.2d at 46 ("The primary purpose of bail in a criminal case is not to increase the revenue of the state or to punish the surety . . ."). But courts also consider the length of a defendant's absence and in *Farsdale*, the defendant was only on the run for two months. 586 N.W.2d at 426. White was on the run for much longer—13 months. And courts consider the cause of a defendant's absence—here, a clear attempt to avoid facing justice for his admitted offense. Therefore, the district court did not abuse its discretion in concluding that this factor weighed against reinstatement.⁶

⁵ Midwest also relies on an unpublished case for this argument, *State v. Stellmach*, No. A14-0920, 2015 WL 134174, at *1-3 (Minn. App. Jan. 12, 2015). There, we concluded "that the purpose of bail was largely accomplished" when the "[d]efendant had already pleaded guilty before failing to appear for sentencing." *Stellmach*, 2015 WL 134174, at *2. But the defendant in that case was absent for only about 90 days as compared to thirteen months here. *Id.* at *1.

⁶ According to Midwest, White was only on the run for eight months. But this is contrary to the record. White failed to appear in April 2017 and he was arrested in May 2018. While we acknowledge that the district court did not file its order forfeiting the bail bonds when White failed to appear in April, this does not require us to ignore the intervening months in our analysis of this factor. And regardless of whether it was thirteen or eight months,

Good Faith Measured by Fault or Willfulness of Defendant

Next, courts consider the good faith of Midwest, as measured by the fault or willfulness of White, because his bad faith is attributable to Midwest. *Shetsky*, 60 N.W.2d at 48. The district court found that this factor weighed “heavily” against reinstatement because White failed to appear in court *twice*. But at the time of White’s second absence, he was out on another company’s bond, not Midwest’s. Therefore, White’s second absence is not attributable to Midwest. Because the district court incorrectly considered White’s second absence as a reflection on Midwest, it erred in its determination on this factor.

Good-Faith Efforts to Find Defendant

Third, courts consider the good-faith efforts of Midwest to find White. *Id.* at 46. Here, the district court credited Midwest’s efforts to locate White and found that this factor weighed “slightly” in favor of reinstatement. Midwest notes that it contacted White’s relatives, hired an outside agency to help find White, and even sought law enforcement’s help when it learned he may be in Georgia. Minnesota courts have credited sureties when they have expended similar efforts. *See, e.g., Farsdale*, 586 N.W.2d at 426 (crediting efforts of a surety that enlisted help from family, friends, and out-of-state law enforcement); *Vang*, 763 N.W.2d at 355-56, 358-59 (crediting efforts when the surety enlisted the help of a recovery agent). The district court acknowledged Midwest’s efforts as notable and concluded that this factor weighs in favor of reinstatement, with which Midwest agrees.

the time that White was absent was substantial and, as the district court noted, significantly delayed White’s sentencing.

Prejudice to State

Finally, courts consider whether the defendant's absence caused any prejudice to the state in prosecuting the defendant. *Askland*, 784 N.W.2d at 62. This includes a delay in administering justice and any expenses incurred in eventually apprehending the defendant. *Shetsky*, 60 N.W.2d at 48. While it is Midwest's burden to prove the first three factors, the burden is on the state to prove this final factor. *Askland*, 784 N.W.2d at 62.

Midwest argues that the state's failure to argue how it was prejudiced means that this factor should weigh in favor of reinstatement and not neutrally, as the district court found. We agree. In considering this final factor, we find the supreme court's reasoning in *Askland* to be particularly instructive. 784 N.W.2d at 60. There, the state did not present evidence that it was prejudiced, it did not argue that any witnesses or evidence were lost during the defendant's absence, and it did not argue that it incurred any undue expense to retrieve or prosecute the defendant. *Id.* at 63. And because of these failures, the court determined that the state failed to carry its burden on this factor. *Id.*

The facts involving prejudice (or lack thereof) in *Askland* are present here as well. In fact, the state failed to respond at all: to Midwest's petition for reinstatement in district court and to this appeal. Under Minnesota caselaw, a district court should find that this factor weighs *against* reinstatement when a state demonstrates prejudice. *See Shetsky*, 60 N.W.2d at 45 ("The general rule is that relief from forfeiture will not be granted where the prosecution has been deprived of proof by delay or has otherwise been adversely affected."). We conclude that the converse is true. Because the state has the burden to demonstrate that it was prejudiced, when it fails to put forth any evidence or argument

about prejudice, it weighs in favor of reinstatement. Thus, the district court erred in concluding that this factor weighed neutrally.

In sum, because we discern that the district court erred in its analysis of two of the *Shetsky* factors, we reverse the district court's order denying reinstatement. And we remand this case back to the district court for it to reconsider (in whole or in part) Midwest's reinstatement request, consistent with our analysis above.⁷

Reversed and remanded.

⁷ On remand, the district court may also consider the fact that two of the bonds, totaling \$80,000, are tied to charges that were dismissed under the state's plea agreement with White.