

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0132**

State of Minnesota,
Respondent,

vs.

Kevin Lee Anthony,
Defendant,

Midwest Bonding, LLC,
Appellant.

**Filed August 22, 2022
Affirmed
Smith, John, Judge ***

Hennepin County District Court
File No. 27-CR-20-12810

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

Michael O. Freeman, Hennepin County Attorney, Tara Ferguson Lopez, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

James McGeeney, Doda McGeeney, Rochester, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Gaïtas, Judge; and Smith, John,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the denial of the appellant's motion to reinstate a forfeited bond that it posted on behalf of a criminal defendant because the district court properly considered the applicable law and acted within its discretion.

FACTS

In June 2020, respondent State of Minnesota charged defendant Kevin Lee Anthony with four felonies relating to the promotion of prostitution and criminal sexual conduct.¹ Responding to an online advertisement to exchange money for sex, police found Anthony with an adult woman, identified as the complainant, and arrested them both. The district court ordered that Anthony could be released from custody before his trial if he posted a \$100,000 bail bond and agreed to comply with certain conditions, such as not contacting the complainant and being monitored by a GPS device.

In August 2020, appellant Midwest Bonding, LLC, (Midwest) posted a \$100,000 bail bond on Anthony's behalf. Anthony signed a form acknowledging that he was required to appear for court in September when he was released the following day. But Anthony failed to appear in September and remained at large for over a year. The district court originally ordered the bond forfeited in December 2020. But Midwest requested an

¹ The state charged Anthony with two counts of promoting prostitution of an individual in violation of Minn. Stat. § 609.322, subd. 1a(2) (2018), one count of receiving profit derived from prostitution in violation of Minn. Stat. § 609.322, subd. 1a(3) (2018), and one count of third-degree criminal sexual conduct involving force or coercion in violation of Minn. Stat. § 609.344, subd. 1(c) (2018).

extension because it had hired a fugitive-recovery agency to assist with locating Anthony.² The court extended the forfeiture date until February 2021.

Nine days before the extended forfeiture date, Midwest petitioned the district court to either reinstate the bail bond or extend the due date once more. Midwest averred that while it had not yet located Anthony, its agents were tracking down “six different people of interest connected to” him. The state opposed this petition, in part because the complainant had passed away while Anthony was absent.

In October 2021, police arrested Anthony in Florida and transported him back to Minnesota. The district court denied Midwest’s petition to reinstate the bail bond, reasoning that the purpose of bail had not been accomplished and that the state was prejudiced by Anthony’s abscondment.

DECISION

Midwest argues that the district court should have reinstated the bail bond that it posted on behalf of Anthony once he was back in custody. We review a district court’s denial of a petition to reinstate a forfeited bail bond for an abuse of discretion. *State v. Askland*, 784 N.W.2d 60, 62 (Minn. 2010). A district court abuses its discretion if its decision is based on an error of law. *State v. Storkamp*, 656 N.W.2d 539, 541 (Minn. 2003). With this standard in mind, we review the legal requirements for bail-bond forfeiture and then consider the district court’s reasons for denying Midwest’s reinstatement petition.

² In addition, Midwest electronically searched Minnesota jails and contacted members of Anthony’s family.

When a person released from custody on a bail bond fails to conform to the conditions of the bond, the amount of the bond is forfeited to the district court. Minn. Stat. § 629.58 (2020). But when a bond is forfeited, the district court “may forgive or reduce the penalty” according to the equities of the situation. Minn. Stat. § 629.59 (2020). To determine whether the district court abused its discretion by denying a petition to reinstate a forfeited bail bond, we consider four factors (the *Shetsky* factors):

- (1) the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant’s absence; (2) the good faith of the bond company as measured by the fault or willfulness of the defendant; (3) the good-faith efforts of the bond company to apprehend and produce the defendant; and (4) any prejudice to the State in its administration of justice.

Askland, 784 N.W.2d at 62 (citing *In re Shetsky*, 60 N.W.2d 40, 46 (Minn. 1953)). The appellant bears the burden of demonstrating the first three factors, but the state must show prejudice. *Id.*

Here, the district court considered all four *Shetsky* factors. First, the court concluded that the “purpose of bail was not substantially accomplished” based on Anthony’s long absence from supervision. Midwest argues that the purpose of bail *was* accomplished because the state ultimately convicted Anthony. But the purpose of bail is “to insure the prompt and orderly administration of justice without unduly denying liberty to the accused,” and the “use of bail to enable the accused to evade, delay, or cripple the prompt and effective administration of justice is directly contrary to any legitimate purpose.” *Shetsky*, 60 N.W.2d at 46. Anthony’s 13-month absence here was contrary to the purpose of his bail bond.

Second, the district court determined that Anthony “willfully failed to appear and was gone for 13 months,” and that there was “no demonstration the actions of [Midwest] . . . contributed in any way to his apprehension.” Midwest argues that its good-faith efforts to find Anthony outweigh his willful absence from Minnesota. But the second factor is concerned with the willful default of the *defendant*, not the surety. *Id.* And Midwest concedes both that Anthony had no excuse for failing to appear in court as required and that it did not contribute to his capture. Anthony’s long absence weighs against reinstatement.

Third, the district court reasoned that Midwest’s efforts to locate Anthony—including electronically searching jails, hiring a professional fugitive-recovery agency, and skip-tracing efforts—demonstrated Midwest’s good faith even though “these efforts were unsuccessful.” Of the four *Shetsky* factors, the court concluded that only this one weighed “in favor of reinstatement.” We agree.

Fourth, the district court concluded that the state was prejudiced by the delay because the complainant passed away before Anthony could be tried. The state bore the burden of demonstrating prejudice. *Askland*, 784 N.W.2d at 62. When the state demonstrates prejudice, this factor weighs heavily against reinstatement. *Storkamp*, 656 N.W.2d at 542. Midwest argues that the state failed to show prejudice because Anthony was ultimately convicted. But although the district court convicted Anthony of two of the four charged felonies, it acquitted him of the third, and the state dismissed the fourth before

trial.³ The complainant who passed away was the key witness for all four offenses. Midwest presents no caselaw supporting its argument that successfully obtaining convictions on some counts prevents the state from demonstrating prejudice due to a defendant's unlawful absence. The state showed prejudice here.

In sum, three of the four *Shetsky* factors weigh against reinstatement of the bail bond. Because the purpose of bail was not accomplished, Anthony willfully absconded for 13 months, and the state was prejudiced by the complainant's death during that period, the district court acted within its discretion by denying Midwest's petition to reinstate its bond.

Affirmed.

³ The district court convicted Anthony of one count of promoting prostitution of an individual and one count of receiving profits from prostitution, and it acquitted him of the second count of promoting prostitution of an individual. The state dismissed the third-degree criminal-sexual-conduct charge before trial.