

STATE OF MICHIGAN
COURT OF APPEALS

In re FORFEITURE OF BAIL BOND.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES JOVAN STOKES,

Defendant,

and

YOU WALK BAIL BOND AGENCY,

Appellant.

UNPUBLISHED

September 13, 2012

No. 305003

Wayne Circuit Court

LC No. 07-013808-FH

Before: FORT HOOD, P.J., and METER and MURRAY, JJ.

PER CURIAM.

Appellant You Walk Bail Bond Agency appeals as of right from a judgment of bond forfeiture of \$5,000. We reverse.

Defendant Charles Stokes was arrested for carrying a dangerous weapon in a vehicle, MCL 750.227. On August 28, 2007, appellant posted a surety bond. Stokes entered a guilty plea for attempted carrying a concealed weapon and, on November 26, 2007, he was assigned to trainee status under the Holmes Youthful Trainee Act (HYTA), MCL 762.16, and placed on probation for 1-1/2 years, with seven days to be served in jail. On April 3, 2009, the trial court entered an order amending Stokes's probation by extending his probationary term by one year to give him additional time to pay fees. The register of actions indicates that a show cause hearing was held on May 11, 2010, because of Stokes's "[f]ailure to appear." Approximately ten months later, on March 30, 2011, the trial court entered an order revoking Stokes's release and forfeiting his bond. The order directed appellant to appear before the court on May 12, 2011, to show cause why judgment should not enter against it for the full amount of the surety bond. A copy of the order was served on appellant. Appellant's bond apparently was forfeited following a hearing on May 12, 2011. On May 31, 2011, appellant filed a motion to set aside the forfeiture

and discharge the bond. Although the motion was premised on the timeliness of the notice, appellant argued at the hearing that its obligations under the bond ended when Stokes was assigned to youthful trainee status. Counsel further argued that even if a disposition under HYTA is not considered a sentence, the imposition of additional conditions ended its obligations under the bond because it did not consent to the additional conditions. The trial court denied the motion and entered judgment against appellant for \$5,000 and against Stokes for \$15,000.

This Court generally reviews a trial court's decision regarding forfeiture of a bail bond for an abuse of discretion, but reviews de novo a trial court's interpretation and application of statutes and court rules. *In re Forfeiture of Bail Bond*, 276 Mich App 482, 488; 740 NW2d 734 (2007).

Appellant contends that under *People v Brow*, 253 Mich 140; 234 NW 117 (1931), a surety's obligations end when a defendant is convicted and sentenced because at that point the defendant is in the custody of an officer of the law, not the surety. Appellant argues that in this case, when Stokes was placed on probation under the HYTA, Stokes was placed under the supervision of the probation officer and the surety had no further control of him. Therefore, the bond was discharged by operation of law. We agree.

"A bondsman is generally relieved of responsibility on a bond once the principal-defendant is sentenced." *In re Forfeiture of Surety Bond*, 208 Mich App 369, 374; 529 NW2d 312 (1995), citing *Brow*, 253 Mich at 142. In *Brow*, 253 Mich at 142-143, the Court explained:

The defendants' obligations under the conditions of this bond required them to have their principal in court until his case was finally determined. It was terminated when sentence was imposed. The court had no authority to continue the bond in force beyond that time without the consent of the sureties. They were not present when sentence was imposed, and did not consent. Therefore they were not bound by the order of continuance. In *Ex parte Williams*, 114 Ala[] 29[;] 22 So[] 446 [(1897)], it was said:

"The principle of the law is, that when bail is given and accepted, the custody of the prisoner is transferred from the officer of the law to that of his sureties. * * * Whenever a party is convicted and sentenced, he is no longer in the custody of his bail, but is in the custody of the proper officer of the law, and the bail are thereby discharged by the operation of law without a formal order to that effect. The condition of the bond then will have been fully complied with. The mere appearance of the defendant at court for trial, or his presence during trial, or a mistrial, will not operate to discharge the bail. The obligation of a proper bail bond binds the sureties, at least, until after the verdict of the jury; but, when the sentence of the law is pronounced, the officer of the law is charged with its due execution. The bail have no further control over the custody of their principal, and cannot be longer held responsible."

"HYTA is essentially a juvenile diversion program for criminal defendants under the age of 21." *People v Dipiazza*, 286 Mich App 137, 141; 778 NW2d 264 (2009). In *Dipiazza*, this Court summarized the significance of assignment to youthful trainee status as follows:

An assignment to youthful trainee status does not constitute a conviction of a crime unless the court revokes the defendant's status as a youthful trainee. MCL 762.12. If the defendant's status is not revoked and the defendant successfully completes his or her assignment as a youthful trainee, the court "shall discharge the individual and dismiss the proceedings." MCL 762.14(1). A defendant assigned to the status of youthful trainee "shall not suffer a civil disability or loss of right or privilege following his or her release from that status because of his or her assignment as a youthful trainee." MCL 762.14(2). "Unless the court enters a judgment of conviction against the individual for the criminal offense . . . , all proceedings regarding the disposition of the criminal charge and the individual's assignment as youthful trainee shall be closed to public inspection" MCL 762.14(4). [*Id.* at 141-142.]

After the court assigns an individual to trainee status, the court selects the appropriate conditions for the period of the assignment. If the underlying charge is punishable by a term of imprisonment for a term of more than one year, the court may commit the individual to custodial supervision for not more than three years in a specially designated Department of Corrections facility, place the individual on probation for not more than three years, or commit the individual to the county jail for not more than one year. MCL 762.13(1). If the underlying charge is punishable by imprisonment for one year or less, the court must place the individual on probation for not more than two years. MCL 769.13(2). "Thus, the individual assigned to youthful trainee status is nonetheless punished for the crime committed." *People v Rahilly*, 247 Mich App 108, 113; 635 NW2d 227 (2001). The HYTA does not refer to the court's imposition of conditions under MCL 762.13 as "sentencing." Nevertheless, this Court has frequently referred to "sentences" and "sentencing" under the HYTA. See, e.g., *People v Khanani*, 296 Mich App 175; 817 NW2d 655 (2012); *Dipiazza*, 286 Mich App at 140; *People v Giovannini*, 271 Mich App 409, 410; 722 NW2d 237 (2006); *People v Martinez*, 211 Mich App 147, 149; 535 NW2d 236 (1995).

Regardless of whether the imposition of conditions for youthful trainee assignment is properly referred to as "sentencing," the reasoning of *Brow*, 253 Mich at 142-143, is nonetheless applicable. "The principle of the law is, that when bail is given and accepted, the custody of the prisoner is transferred from the officer of the law to that of his sureties." *Id.* at 142, quoting *Ex parte Williams*, 114 Ala at 29. After conviction and sentencing, the prisoner "is no longer in the custody of his bail, but is in the custody of the proper officer of the law, and the bail are thereby discharged by the operation of law without a formal order to that effect." *Id.*, quoting *Ex parte Williams*, 114 Ala at 29. The HYTA states that "[a]n individual placed on probation pursuant to this section shall be under the supervision of a probation officer. Upon commitment to and receipt by the department of corrections, a youthful trainee shall be subject to the direction of the department of corrections." MCL 762.13(3). In this case, when Stokes was placed on probation under the HYTA, he was no longer in the custody of his bail bondsman, but rather was placed under the supervision of a probation officer. Accordingly, the bond was discharged by operation of law. Therefore, the trial court erred in entering judgment against appellant for \$5,000.

In light of our decision, it is unnecessary to address appellant's remaining issues on appeal.

Reversed. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Patrick M. Meter

/s/ Christopher M. Murray