IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 17-0749

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CHALON MICHAEL KINHOLT,

Defendant,

v.

ASAP BAIL BONDS,

Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Fourteenth Judicial District Court,
Musselshell County, The Honorable Randal Spaulding, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

STATEMENT OF THE ISSUE

Whether the district court abused its discretion in refusing to discharge forfeiture of bail bond.

STATEMENT OF THE CASE AND FACTS

This appeal involves a surety, Michael Nicholson, d.b.a. ASAP Bail Bonds (sole proprietorship), the Appellant, who seeks to recover a $40,000 appearance bond that the district court ordered forfeited because Defendant, Charles Kinholt (Kinholt), failed to make an appearance. The background facts and procedure of this appeal are as follows.

The underlying criminal case began January 29, 2016, in Musselshell County, when Kinholt committed several offenses and the State later charged him with felony criminal endangerment, aggravated DUI (misdemeanor), obstructing peace officer (misdemeanor), duty upon striking fixtures or other property upon highway (misdemeanor), and no insurance (misdemeanor). (D.C. Doc. 4.)[1]

I. Kinholt's first non-appearance in 2016.

On April 20, 2016, the court released Kinholt on his own recognizance subject to the terms, conditions and restrictions. Because Kinholt violated his

[1] For clarity's sake, all references herein by the State to the pleading record will be to Fourteenth Judicial District Court Cause No. DC-16-09.

release terms, the Musselshell/Golden Valley County Attorney moved the court to revoke his release. (D.C. Doc. 20.) On July 15, 2016, the district court issued an arrest warrant (violation of bail conditions). (D.C. Doc. 29, 41.) The court fixed bail for $15,000 to ensure Kinholt's appearance and compliance with the district court's conditions of release on bail. (D.C. Doc. 41.)

On August 8, 2016, at a final pretrial hearing, Kinholt failed to appear. (D.C. Doc 22.5.) The district court then entered an additional arrest warrant for Kinholt for violating the district court's court ordered conditions of release by failing to appear at the final pretrial conference and failing to remain in contact with his attorney. The court fixed bail for $25,000. (D.C. Doc. 28.) The arrest warrant was served on Kinholt on December 1, 2016 at the Hill County Detention Center. (D.C. Docs. 21, 23.)

II. ASAP Bail Bonds bonds Kinholt out in late 2016.

On or about December 22, 2016, Nicholson bonded Kinholt out of jail on a $40,000 security bond. (D.C. Doc. 53.) The bond was issued by Nicholson, d.b.a. ASAP Bail Bonds, and underwritten by United States Fire Insurance Company (USFIC).

III. After Kinholt's second non-appearance on April 24, 2017, and after the State formally requested bond forfeiture, the district court issued its Order of Forfeiture on June 7, 2017.

The criminal proceeding advanced and at the second final pretrial hearing held on April 24, 2017, Kinholt again failed to personally appear as ordered by the district court. (4/24/17 Hr'g Tr. at 2:19.)

On June 7, 2017, the State filed a "Petition to Forfeit Bond" asking the district court the $40,000 surety bond posted by Kinholt and his sureties to be forfeited. (D.C. Doc. 36.) On the same day, the district court entered a "Order and Notice of Forfeiture" declaring the $40,000 bond was forfeited for Kinholt's failure to appear at the April 24, 2017 final pretrial hearing as ordered by the district court. (*Id*. at 37.) The order and notice were duly served on Kinholt, ASAP, and USFIC at their last known addresses. (D.C. Doc. 37 at 2.)

IV. After 90 days elapsed, and ASAP Bail Bonds made no appearance or entered any objection, the State moved for default judgment on the bond forfeiture on September 7, 2017.

The 90th day since the June 7 Order of Forfeiture issued was Tuesday, September 5, 2017. The pleading record shows the only pleading filed, some 92 days later, was on September 7, 2017, when the State filed its "Motion for Default Judgment on the Bail Forfeiture" asking the district court to enter its judgment of forfeiture against ASAP and USFIC for failing to satisfactorily

discharge the forfeiture previously declared by the district court within the time permitted. (D.C. Doc. 38.) The State served its motion on ASAP and USFIC at their last known addresses on September 7, 2017. (D.C. Doc. 38 at 3.) Neither ASAP nor USFIC filed a response to the State's motion within the time permitted by law or at all.

V. The district court entered a Judgment of Forfeiture on October 4, 2017.

On October 4, 2017, the district court entered its Judgment of Forfeiture in favor of the State and against ASAP and USFIC for $40,000. (*Id*. at 41.) Among other matters, the court declared that "no basis for discharge has been provided by Defendant, his bondsman, or his surety. The time for discharge of the forfeiture previously declared by this Court has lapsed without satisfactory cause for discharge having been presented by the Defendant and/or his sureties." (*Id*. at 3:22-25.)

On October 6, 2017, the State filed and served a Notice of Entry of Judgment and copy of the judgment upon ASAP and USFIC. (D.C. Doc 45.) Neither ASAP nor USFIC surrendered Kinholt pursuant to Mont. Code Ann. § 46-9-510 or appeared and satisfactorily excused Kinholt's failure to appear within the 90 days permitted by Mont. Code Ann.§ 46-9-503(3).

VI. Four and one-half (4½) months after the State filed its formal forfeiture request, ASAP Bail Bonds filed its first objection on October 26, 2017.

On October 26, 2017, ASAP through its counsel filed an "Objection to Notice of Entry of Judgment & Entry of Forfeiture and Motion for a Hearing Pursuant to Rule 60" and combined brief along with a supporting affidavit by the ASAP's owner, Michael Nicholson. (D.C. Doc. 52.) On November 14, 2017, the State filed its responsive brief to ASAP's objection. (D.C. Doc. 54.) By an order entered December 14, 2017, the district court rejected ASAP's objection and request for a hearing. (D.C. Doc. 62.) This appeal by ASAP follows. The State will discuss additional record facts in the argument that follows.

SUMMARY OF ARGUMENT

Nicholson cannot show the district court abused its discretion when it failed to discharge the forfeited bond. Nicholson errs in contending that the district court improperly forfeited the bond. Nicholson provides no supporting statutory or decisional law for his theory that the State had a duty to notify the surety immediately of the non-appearance. Nicholson provided no excuse within the time required.

The district court was not required to consider the six factors announced in this Court's *State v. Seybert*, 229 Mont. 183, 187, 745 P.2d 687, 689 (1987) (*Seybert I*), decision because Nicholson never showed the prerequisite excuse.

In any event, the district court ***did*** consider the six *Seybert I* factors conscientiously and found most factors outweighed discharge. The court considered Nicholson's arguments that he had located Kinholt who was apprehended by Colorado authorities. Nicholson's argument that he had no further obligation as bondsman because of Kinholt's post forfeiture incarceration is based on a misreading of the forfeiture statutes. Nicholson's other arguments misinterpret statutory and decisional law, and this Court should reject them.

ARGUMENT

I. The district court properly refused to discharge the bond forfeiture where the surety ASAP/Nicholson provided no excuse for Kinholt's failure to appear as ordered by the court.

Nicholson variously argues that the district court abused its discretion when it failed to discharge the forfeited bond. Nicholson argues that the district court improperly forfeited the bond because the State waited 44 days to ask for the forfeiture and Nicholson did not receive notice of the non-appearance for those 44 days, and in any event, Kinholt was arrested on September 9 which fell within the 90 days thus excusing the forfeiture. (Appellant's Br. at 10, 12, 14.) Nicholson nevertheless argues that the district court should have discharged the forfeiture even where a surety fails to give an excuse but provides just terms. (*See* Appellant's Br. at 8.)

A. Standard of review and applicable law

When an appellant challenges a district court's decision to forfeit a bond, this Court decides, based on a review of the record, whether the district court abused its discretion when it ordered 100 percent forfeiture. *State v. Seybert*, 231 Mont. 372, 374, 753 P.2d 325, 326 (1988) (Seybert II). The test this Court employs for abuse of discretion is whether the district court acted arbitrarily. *Id.*

Lower court decisions in Montana are presumed to be correct, *State v. Aakre*, 2002 MT 101, ¶ 43, 309 Mont. 403, 46 P.3d 648, and an appellant effectively concedes an issue where the appellant offers no analysis or authority regarding why he or she believes the lower court's ruling was incorrect or that the court erred. *See Chor v. Piper, Jaffray & Hopwood*, 261 Mont. 143, 149, 862 P.2d 26, 30 (1993) (concluding that since Chor did not address an issue in her brief to this Court, she effectively conceded);

Substantial evidence should support a district court's bond forfeiture decision which must be based on the consideration of six factors:

1. The willfulness of the defendants' violation of bail conditions;
2. The surety's participation in locating or apprehending the defendants;
3. The cost, inconvenience, and prejudice suffered by the State as a result of the violation;
4. Any intangible costs;
5. The public interest in ensuring a defendant's appearance; and

6. Any mitigating factors.

Seybert I, 229 Mont. at 187, 745 P.2d at 689. Further, when determining the forfeiture of a bail bond, the statute does not limit a district court's discretion to actual damages. *Seybert II*, 231 Mont. at 376, 753 P.2d at 327.

B. The district court correctly forfeited the bond.

Montana Code Annotated §§ 46-9-501 to -512 governs the forfeiture at issue here. If a defendant violates his release conditions, his bail may be forfeited. Nicholson argues that the district court unlawfully forfeited Kinholt's bond due to Kinholt's April 24 non-appearance because the State waited 44 days before notifying Kinholt of the non-appearance. Therefore, the issue of forfeiture is thus disputed, and this Court should address this issue first.

Nicholson's argument fails for several reasons. Kinholt's April 24 non-appearance was a matter of public record for which Nicholson had constructive, if not actual, notice. The Court's minutes filed on April 24 clearly and unambiguously announced, "Defendant is not present in Court." (D.C. Doc. 34, Court Minutes dated April 24, 2017.) There can be few persons with a diligence more heightened than a surety on the hook for a $40,000 appearance bond to learn about a defendant's non-appearance. Yet, the surety here asserts he did not know, and possibly suggests he could not have known, of Kinholt's non-appearance until

44 days later when the State moved for bond forfeiture on June 7, 2017. One phone call to the clerk of court on April 24 would have informed Nicholson he better start looking for Kinholt.

Nicholson's argument is contrary to good sense and very possibly also to time-honored tenets of law about being duly vigilant. *See, e.g.*, Mont. Code Ann. § 1-3-218 (Maxim of jurisprudence regarding vigilance. "The law helps the vigilant before those who sleep on their rights."); *cf. State v. Wirtala*, 231 Mont. 264, 268, 752 P.2d 177, 180 (1988) ("[T]he speedy trial right does not protect a defendant who makes a transparent assertion of the right or sleeps on his rights during the course of a proceeding only to belatedly to claim injustice as the day of reckoning draws near.")

Moreover, Nicholson asserts without any citation to statutory or decisional law, that the State wrongly waited 44 days to file its request for bond forfeiture. Nothing in the statute restricts the State to a timeline in requesting forfeiture. *See* Mont. Code Ann. § 46-9-503(1) ("If a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release."). Without citation to authorities or even a reasonable supporting discussion of his position about the State's 44-day delay, Nicholson waives and thus forfeits his argument that the

State somehow violated the law by the timing of its motion for bond forfeiture. It is not appropriate on direct appeal to make an assertion of law and essentially ask the Court or the State to go figure it out. *See Emery v. Federated Foods*, 262 Mont. 83, 87, 863 P.2d 426, 429 (1993) (failing to brief issue on appeal results in waiver); *State v. Austad*, 197 Mont. 70, 97, 641 P.2d 1373, 1388 (1982) (declaring it will decline to consider "bald assertions" of error). "It is not this Court's job to conduct legal research" for the appellant or to engage in guesswork "or to develop legal analysis that may lend support to that position." *Johansen v. Department of Nat'l Res. & Conserv.*, 1998 MT 51, ¶ 24, 288 Mont. 39, 955 P.2d 653.

Further, this Court should not countenance Nicholson's unsubstantiated conclusory assertions he is entitled to relief because he was prejudiced in those 44 days. Nicholson points to nothing in this record that substantiates his alleged prejudice. In any event, his bald claim of prejudice makes no sense. The critical time frame for a surety facing forfeiture is the 90-day window after receiving formal notice of forfeiture. The State met its statutory burden of proving notice of the forfeiture; it had no duty to notify the surety of the non-appearance as this Court has held, the State is not the surety's surety and has no duty to remedy the surety's breach of contract. *Seybert I*, 229 Mont. at 186, 745 P.2d at 689

(also stating the State need only refrain from obstructing or interfering with surety's efforts, and failure to seek extradition did not constitute such interference).

Seen in the proper light, Nicholson had 44 days to apprehend Kinholt or come forward and make excuses for his non-appearance. Nicholson apparently did not take advantage of his 44 bonus days because he failed to make himself aware of Kinholt's non-appearance or, having had the formal notice, do anything within the statutorily allotted 90 days to take action. Nicholson under these circumstances can hardly sustain even a conclusory claim of prejudice.

It is neither the State's nor this Court's duty to argue against a presumptively correct lower court ruling. Because Nicholson provides no factual or legal grounds demonstrating that the district court committed any error, the court's decision that the bond forfeiture was lawful in the instant case remains correct. *See In re T.H.*, 2005 MT 237, ¶ 43, 328 Mont. 428, 121 P.3d 541 (refusing to address an argument not supported by legal authority as required by appellate rules); *see also* Mont. R. App. P. 12(1)(g) (providing that the argument section of an appellant's brief "shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and pages of the record relied on.")

C. Because Nicholson failed to show the prerequisite excuse, the district court correctly denied the requested forfeiture discharge.

Montana Code Annotated § 46-9-503(2) (2017) provides as follows:

> If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address within 10 working days or the bond becomes void and must be released and returned to the surety within 5 working days.

Id. Here, the Notice of the Order of Forfeiture of June 7, 2018, was served on Nicholson on the same day of issuance. (D.C. Doc. 37 at 2.)

Upon forfeiture, a surety may move the district court to discharge the forfeiture under Mont. Code Ann. § 46-9-503(3) (2017). Montana Code Annotated § 46-9-503(3) (2017) imposes two conditions on the surety: (1) appear within 90 days of the forfeiture; ***and*** (2) satisfactorily excuse the bail jumper's failure to appear as ordered by the court. Should Nicholson have met both conditions, the district court in its discretion could have discharged the forfeiture on such terms as may be just. Here, Nicholson failed to take any action and thus met neither of the two statutory requirements.

However, Nicholson asserts he was entitled to the 3-day rule under Mont. R. Civ. P. 6, effectively extending the statutory 90 days starting and ending June 7 to September 5, to ending September 8. Since Kinholt was arrested in Colorado on September 9, Nicholson says he met the excuse required under the statue to

discharge the forfeiture. Multiple flaws plague Nicholson's positions. Kinholt's September 9 arrest was outside the 90 days and outside even the 93 days Nicholson to which Nicholson says he was entitled. Moreover, a defendant's arrest within 90 days does not fulfil the statutory discharge requirements. The statute instructs a surety to appear in court within 90 days and satisfactorily excuse the bail jumper's failure to appear as ordered by the court. A defendant's arrest fulfills neither ground.

Nicholson's 3-day Rule 6 argument is facially erroneous given that Rule 6(a) states its rules apply to "***any statute that does not specify a method of computing time.***" Mont. R. Civ. P. 6(a) (emphasis supplied). Here, the governing forfeiture and forfeiture discharge statute, Mont. Code Ann. § 46-9-503 (2017), most certainly specifies a method of computing time. Section 46-9-503(2) (2017) starts the computation by designating the service of notice of the order of forfeiture. Section 46-9-503(3) (2017) specifies an unqualified timeframe of 90 days from the forfeiture, where if certain consequential actions or non-actions take place, the forfeiture is either made final or is discharged. Since Rule 6(a) states its rules apply to statutory timeframes only if the statute does not specify a method of computing time, Rule 6(a) bars application of the Rule 6(b) 3-day rule to the forfeiture and forfeiture discharge statute.

Nicholson did not attempt to produce excuses for Kinholt's failure to appear on April 24 within the statutory timeframes allowing for discharge. Accordingly, since Nicholson could provide no excuse to the district court, the district court correctly confirmed the absolute bond forfeiture by Order dated December 14, 2018. (D.C. Doc. 62.)

An "excuse" for nonappearance is a prerequisite to a district court's consideration of the six *Seybert I* factors. *Seybert I*, 229 Mont. at 183, 745 P.2d at 688 (confirming the holding in *State v. Musgrove*, 202 Mont. 516, 659 P.2d 285 (1983) (*Musgrove* II) that a defendant or surety has the burden of demonstrating a "satisfactory excuse" before ***any*** discharge may be ordered). The State is not arguing here that a surety must provide a ***complete*** excuse before any discharge may be considered. Nicholson, at minimum, must have provided ***some*** excuse. Here, Nicholson provided none.

Nicholson apparently suggests that the district court could have discharged a forfeiture absent showing any excuse if the terms are just. (Appellant's Br. at 12-15.) As authority for this argument, Nicholson relies on *Musgrove II*. Contrary to Nicholson's assertion, *Musgrove II* does not stand for the rule that a court has power to discharge forfeiture absent ***any*** excuse. (Appellant's Br. at 12.)

The issue before this Court in *Musgrove II* was whether a forfeiture requires a district court to find a ***complete*** excuse before it can order even a partial

discharge. *Musgrove II*, 202 Mont. at 520, 659 P.2d at 287. This Court answered the issue negatively. *Id.* The surety in *Musgrove II* had at least proved a partial excuse that could predicate a partial discharge. *Id.* This holding is distinguishable from the facts here where Nicholson provided entirely no excuse. It follows Nicholson was not entitled to argue any of the six *Seybert I* factors for the diminution of forfeiture. Further, the district court was not required to consider the six *Seybert I* factors and could have summarily granted 100 percent forfeiture without further consideration. This appeal can end here.

Nevertheless, the district court did consider the six *Seybert I* factors. The court's action was superfluous and does not diminish the fact that Nicholson was not entitled to the court's further consideration. *See, e.g., Major v. North Valley Hosp.*, 233 Mont. 25, 28, 759 P.2d 153, 155 (1988) (stating that the inclusion of findings of fact in the district court's summary judgment order was unnecessary and redundant and was not reversible error); *see also* Mont. Code Ann. § 1-3-228 (stating legal maxim that superfluity does not vitiate). The district court's consideration of the six *Seybert I* factors is a testament to the conscientious and reasonable application of its discretion. *Cf. Ingraham v. State*, 284 Mont. 481, 945 P.2d 19, 22 (1997) (stating an abuse of discretion occurs when a district court acts arbitrarily without conscientious judgment or exceeds the bounds of reason).

D. Even if Nicholson had shown the prerequisite excuse, he cannot show any abuse of discretion or arbitrary action by the district court.

For the sake of argument, even if Nicholson were entitled to the consideration of the six *Seybert I* factors, Nicholson cannot show an abuse of discretion. Nicholson argues that he had located Kinholt because of his Colorado arrest and, therefore, the surety had no further obligation as bondsman, relying separately on Mont. Code Ann. § 46-9-503(4) and Mont. Code Ann. § 46-9-510 (2017). The district court considered Nicholson's arrest and delivery of Kinholt. (D.C. Doc. 62 at 5.) The court apparently decided that this factor did not have sufficient weight to overcome Kinholt's nonappearance, Nicholson's failure to offer an excuse, and the necessity of promoting the interests of ensuring defendants appear in court when they are required.

Nicholson's reliance on Mont. Code Ann. §§ 46-9-503(4) and -510 is misplaced. Montana Code Annotated § 46-9-510 states, in pertinent part:

> At any time ***before the forfeiture of bail*** . . . the surety company may arrest the defendant and surrender the defendant to the court.

Id. (Emphasis supplied.) Montana Code Annotated § 46-9-510 (2017) has no application here because that statute merely allows a surety company to arrest Kinholt before forfeiture. Here, Kinholt's reincarceration occurred on September 9, and thus ***after*** the court had ordered forfeiture. (D.C. Doc. 49.)

Nicholson's reliance on Mont. Code Ann. § 46-9-503(4) (2017) is similarly misplaced because Kinholt's bail had been forfeited on June 7, 2016. Forfeiture having occurred, Nicholson had the responsibility to excuse to the court's satisfaction Kinholt's failure to appear. Montana Code Annotated § 46-9-503(4) (2017) does not contemplate that the court exonerate a surety's duties after the bond has been forfeited. The legislature designed the statutory bond forfeiture scheme to ensure a defendant's ***appearance*** in court when ordered by the court. *See Seybert I*, 229 Mont. at 185, 745 P.2d at 688. It would defeat the purpose of the bond forfeiture statute to allow an exoneration of the surety's duties to assure a defendant's appearance if, after a defendant jumps bail, all the surety has to do is return him to incarceration.

Also, bond exoneration is distinguishable from forfeiture discharge. Bond exoneration relieves a surety from his duties in the absence of any breach or when a forfeiture has been discharged. *See generally* 8 Am. Jur. 2d Bail and Recognizance §§125 (2007), 144 (1980) (discussing exoneration and forfeitures); *see also, e.g.,* Fed. R. Crim. P. 46(f) ("When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail."). A forfeiture discharge excuses a

breach. Nicholson's remedy here was to argue for an excuse of his contractual breach, not ask to be discharged from his primary obligation.[2]

The court allowed Nicholson multiple opportunities to discharge the forfeiture. Kinholt himself appeared later in the district court on October 2, 2017. (10/2/17 Hr'g Tr. at 5-8.) He offered no justification or excuse for his failure to appear on April 24, 2017. The court heard Nicholson's untimely motion for reconsideration which again failed to provide any excuse for Kinholt's nonappearance. In sum, the district court properly exercised its discretion when it refused to discharge the forfeiture after Nicholson appeared and failed to provide any excuse.

Nicholson suggests the forfeiture punished him. His arguments are based on the unsupported contention that he did all he could to make sure Kinholt appeared in court and that the State negligently failed to notify Nicholson until 44 days after the non-appearance. This argument is groundless.

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[2] Even had Nicholson surrendered Kinholt before forfeiture, his obligation would not have terminated with surrender. At that point, Nicholson had the duty to ensure that the peace officer to whom Kinholt was surrendered file a certificate, acknowledging the surrender in the court having jurisdiction over Kinholt. At that point, the court would have been in a position to order the bail exonerated. Mont. Code Ann. § 46-9-510(2) (2017). Nicholson failed to comply with any of these requirements.

Nicholson's argument about receiving late notice is curious since he argues he did everything he could to get Kinholt to appear in court. If that were true, one would suppose such investment of effort would compel one to see if the efforts paid off by checking to see if the defendant actually showed up. In any event, Nicholson's remedy was to challenge the bond forfeiture by showing a satisfactory excuse to support discharge. He failed to do so.

Contentions that statutory forfeiture is inequitable should be addressed to the legislature which enacted the law in question and provided its applicability here. *See Hammill v. Young*, 168 Mont. 81, 85, 540 P.2d 971, 974 (1975) (rejecting policy arguments that should be addressed to the legislature). This Court may not omit what has been inserted in legislation, nor insert what has been omitted. Mont. Code Ann. § 1-2-101 (2017) (statutory construction rule). The duty of this Court is simply to construe the law as it finds it. *Hammill*, 168 Mont. at 85, 540 P.2d at 974.

Next, Nicholson complains the court failed to hold an evidentiary hearing. (Appellant's Br. at 15.) The forfeiture statutes did not require the district court to conduct a hearing to consider someone in default of a lawfully entered judgment.

Nicholson's attempt to shift the blame to the State exposes the fallacy of his assertions of unfairness. Nicholson knows his business is inherently risky. *Swanberg v. National Sur. Co.*, 86 Mont. 340, 352-53, 283 P. 761, 767 (1930)

(stating that "there should be no tenderness shown a company organized to act as surety for hire, it being paid to take the risk and, presumably, charging a premium which experience has taught is sufficient for the purpose"). Kinholt was previously a "no show" at the August 8, 2016 final pretrial hearing. (*See* D.C. Doc. 20.) Given Kinholt's "track record" in this proceeding, Nicholson was apparently aware or should have been aware of Kinholt's propensities for bail jumping. Nicholson's business decisions do not operate to invalidate the district court's no discharge determination.

Neither the district court nor the State forced Nicholson to post Kinholt's bond. Kinholt's compliance with the conditions of bail was solely Nicholson's responsibility. *See Seybert I*, 229 Mont. at 186, 745 P.2d at 689. Nicholson was on notice of all consequences of his business and of how the governing statutes relieve the worst of these consequences: absolute forfeiture. *See, e.g.*, *Emerson-Brantingham Implement Co. v. Anderson*, 58 Mont. 617, 626, 194 P. 160, 164 (1920) (stating everyone is presumed to know the law, and is bound to take notice of it). The State need only refrain from obstructing or interfering with the surety's efforts to use this remedy. *See Seybert II*, 229 Mont. at 186, 745 P.2d at 689. No proof shows that the State interfered with Nicholson's obligations to ensure Kinholt appeared in court when the court required him. Nicholson has no one to blame but himself for failing to abide by the statutory discharge remedy.

CONCLUSION

The district court ordered forfeiture because Kinholt failed to appear as ordered. Kinholt's surety was unable to provide satisfactory justification for his absence, as was Kinholt himself. Nicholson posted bond to ensure that Kinholt came to court, so the pending case could be processed as scheduled. The forfeiture should stand. The surety's arguments and claims are meritless. There being no showing of error in this record, this Court should affirm the district court's judgment below.

Respectfully submitted this 29th day of November, 2018.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,688 words, excluding certificate of service and certificate of compliance.

/s/ *C. Mark Fowler*
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CERTIFICATE OF SERVICE

I, C. Mark Fowler, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-29-2018:

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