Filed 1/25/18 P. v. Accredited Surety & Casualty Co. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ACCREDITED SURETY & CASUALTY COMPANY, Defendant and Appellant.	B271859 (Los Angeles County Super. Ct. No. BA433405)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kerry R. Bensinger, Judge. Affirmed.

Law Office of John Rorabaugh, Crystal L. Rorabaugh and John M. Rorabaugh for Defendant and Appellant.

Mary C. Wickham, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and Joanne Nielsen, Principal Deputy County Counsel, for Plaintiff and Respondent.

In this bail forfeiture case, Accredited Surety & Casualty Company (Accredited) appeals from the trial court's order denying relief from bail forfeiture and granting summary judgment on the amount of its bond, plus costs. Accredited contends that the judgment must be reversed because Accredited was entitled to relief from forfeiture (or a tolling or extension of time within which the forfeiture could be set aside) under Penal Code section 1305, subdivisions (g) and (j).[1] In the alternative, Accredited contends that it was entitled to an additional 13-day extension of time under section 1305.4 before summary judgment was appropriate. We conclude that Accredited failed to satisfy subdivision (g), that subdivision (j) is irrelevant as to whether subdivision (g) was satisfied, and that although the trial court's rationale in denying an additional 13-day extension was incorrect, the ruling was correct on the ground that the court lacked jurisdiction to grant an extension. We therefore affirm.

BACKGROUND

As we explain in more detail in our Discussion section below, a surety has a limited time period within which to have a bond forfeiture vacated—185 days after the court mails of notice of bond forfeiture to the surety and the bail agent (§ 1305, (b)(1)), a period often referred to as the "appearance period." Under appropriate circumstances, the

---

[1] Undesignated section references are to the Penal Code. Also, all references to "subdivision (g)" and "subdivision (j)," without a section reference, are to section 1305, subdivisions (g) and (j).

appearance period may be tolled (§ 1305, subds. (e) and (h)), and, for good cause, it may be extended for an additional period not exceeding 180 days from the date of the order granting the extension. (§ 1305.4; see *People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 44-46 (*Financial Casualty 2016*) [decided after trial court's ruling in the instant case, resolving dispute among lower courts on calculation of 180-day extension period].) The surety's motion to set aside the forfeiture must be filed within the appearance period (including any tolling or extension). (§ 1305, subd. (j).) It may be heard within 30 days after the expiration of the appearance period; for good cause the court may extend that 30-day period. (*Ibid.*) If the forfeiture is not set aside within this time frame, the court must enter summary judgment against the surety for the amount of the bond plus costs. (§ 1306, subd. (a).)

The grounds on which a forfeiture may be set aside are purely statutory. One of the statutory grounds is section 1305, subdivision (g), which is applicable when an absconding defendant is out of custody in a foreign jurisdiction. In that circumstance, to have the forfeiture set aside, the surety must show that: (1) the defendant has been "temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located"; (2) the defendant has been "positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury"; and (3) "the prosecuting agency elects not to seek extradition after being informed of the location of the defendant." (§ 1305, subd. (g).)

In the present case, on February 3, 2015, Accredited (through its agent Breakout Bail Bonds (Breakout)) posted bond for the release of defendant Yongzhen Li from custody with a scheduled court appearance date of February 24, 2015. Defendant failed to appear on that date, and the court ordered the bail forfeited. The court clerk certified that notice of the forfeiture was mailed to Accredited and Breakout on February 25, 2015, making the 185th day (the expiration of the appearance period) August 29, 2015.

On August 21, 2015, Accredited moved for an extension of the appearance period under section 1305.4. On September 11, 2015, the court granted the motion, and extended the appearance period to February 25, 2016, a period of 180 days from the expiration of the original 185-day period, but only 167 days from the date of the extension order.

In the meantime, on February 18, 2016, an investigator for Breakout located defendant in Seoul, Korea, temporarily detained him in the presence of a local law enforcement officer in the city of Dong Dae Moon, and obtained an affidavit by that officer positively identifying defendant based on fingerprints, booking photo, and California driver's license.

By letter dated February 22, 2016, a paralegal for Accredited's attorney informed the Los Angeles County District Attorney's Office that defendant had been located in Seoul, Korea, and identified by a sworn peace officer of the city of Dong Dae Moon. The letter asked if the District Attorney's Office wished to seek extradition.

On February 24, 2016, with no decision on extradition having been made, Accredited filed a motion to vacate the forfeiture and exonerate bail under section 1305, subdivision (g), or toll or extend the appearance period until an extradition decision was made. The motion set forth the foregoing evidence by attaching appropriate documentation and declarations. In the alternative, the motion requested that the court extend time to return defendant to custody for 13 additional days under section 1305.4, on the ground that the September 11 extension to February 25, 2016, was only 167 days from the date of the extension order, rather than the authorized 180 days.

The District Attorney's Office opposed the motion. The opposition included a declaration by the assigned deputy district attorney detailing the steps that must be taken before deciding whether to extradite. She declared that she received the surety's section 1305, subdivision (g) packet on February 29, 2016, and had been unable to make an extradition decision before expiration of the appearance period. Based on *People v. Tingcungco* (2015) 237 Cal.App.4th 249 (*Tingcungco*), which held that the prosecutor's indecision on extradition within the appearance period was fatal to relief under (g), the District Attorney argued that the motion for relief from forfeiture should be denied. Also, relying on *People v. Taylor Billingslea Bail Bonds* (1999) 74 Cal.App.4th 1193, since disapproved on this point in *Financial Casualty 2016*, *supra,* 2 Cal.5th at page 43, the District Attorney argued that Accredited had received the maximum 180-day extension under section 1305.4, calculated from the end of the initial 185-day period.

Accredited filed a reply, arguing that *Tingcungco* was wrongly decided and that a decision on extradition could still be made. Accredited reiterated its alternative argument that it was entitled to an additional 13-day extension.

On April 1, 2016, the court denied the motion and granted summary judgment against Accredited on the bond. It ruled that relief was unavailable under *Tingcungco,* and that the maximum 180-day extension is calculated from the date of expiration of the original 185-day period.

DISCUSSION

I. *Relief from Forfeiture*

Accredited contends that even though the prosecution had not decided within the appearance period whether to extradite, Accredited was nonetheless entitled to relief from forfeiture under section 1305, subdivision (g), or to an extension or tolling of the appearance period until a decision on extradition was made. However, the contention is inconsistent with the statutory scheme, the plain meaning of the statutory language, the relevant legislative history, and the three leading cases construing section 1305, subdivision (g): *People v. Seneca Ins. Co.* (2010) 189 Cal.App.4th 1075 (*Seneca*), *People v. Tingcungco, supra,* 237 Cal.App.4th 249, and *People v. Financial Casualty & Surety, Inc.* (2017) 10 Cal.App.5th 369 (*Financial Casualty 2017).*

General Statutory Scheme

We begin with a description of statutory scheme governing bail forfeiture. If an on-bail defendant fails to appear "without sufficient excuse," the court "shall in open court declare forfeited the undertaking of bail." (§ 1305, subd. (a).)[2] Within 30 days after the bond is forfeited, the court must mail notice of the forfeiture to the surety and bond agent, and the clerk must place a certificate of mailing in the court file. (§ 1305, subd. (b)(1).)

Within 185 days from the date the notice is mailed (a period section 1305 consistently refers to as "the 180-day period," but which is extended five days for the mailing of the notice (§ 1305, subd. (b)(1)), the forfeiture must be set aside under certain statutorily prescribed circumstances. It must be set aside on the court's own motion or by operation of law if the defendant appears in court or is returned to custody in the county where the case was filed (§ 1305, subds. (c)(1) and (c)(2); *People v. Indiana Lumbermens Mutual Ins. Co.* (2010) 49 Cal.4th 301, 304-305 (*Indiana Lumbermens*).) It also must be set aside on motion of the surety if the defendant is returned to custody outside the county in which the case was filed (§ 1305, subd. (c)(3); *Indiana Lumbermens, supra*), or on motion of the surety if the surety seeks to invoke any of the grounds set forth in section 1305, subdivision (d)

---

[2] The court may continue the case for a reasonable period without ordering forfeiture if "the court has reason to believe that sufficient excuse may exist for the failure to appear." (§ 1305.1.) Thereafter, "[i]f . . . the defendant, without sufficient excuse, fails to appear on or before the continuance date set by the court, the bail shall be forfeited and a warrant for the defendant's arrest may be ordered issued." (§ 1305.1.)

(defendant suffers from permanent disability preventing his appearance), subdivision (f) (defendant is in custody in a foreign jurisdiction and the prosecutor elects not to seek extradition), or subdivision (g) (defendant is out of custody in a foreign jurisdiction and the prosecution elects not to seek extradition).

The 185-day period is frequently referred to as the "appearance period," and we refer to it as such. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 658; *Tingcungco, supra,* 237 Cal.App.4th at p. 252; but see *Seneca, supra,* 189 Cal.App.4th at p. 1079 ["bail exoneration period"].) The appearance period may be tolled on a showing that the defendant has a temporary disability that prevents his appearance (§ 1305, subd. (e), or, if the surety is seeking relief from forfeiture under subdivision (g), if the bail agent and the prosecutor have agreed additional time is necessary to return the defendant to the court's jurisdiction (§ 1305, subd. (h).) For good cause, the appearance period may be extended for an additional period not exceeding 180 days from the date of the court's order of extension. (§ 1305.4; see *Financial Casualty 2016, supra,* 2 Cal.5th at p. 43.) But it may not be tolled or extended on any other grounds, including non-statutory equitable principles. (*People v. Western Ins. Co.* (2012) 204 Cal.App.4th 1025, 1030-1033 (*Western Ins.*).)

The appearance period coincides with the time within which the surety must make a motion to set aside the forfeiture. Under section 1305, subdivision (j), any motion to set aside the forfeiture must be filed "in a timely manner within the 180-day period" (referring to the

appearance period). (*Indiana Lumberman's, supra,* 49 Cal.4th at p. 312 [construing former subdivision (i), now subdivision (j)].) Although the motion must be filed within the appearance period, it "may be heard within 30 days of the expiration of the 180-day period [meaning the appearance period, including any tolling or extension]," and "[t]he court may extend the 30-day period upon a showing of good cause." (§ 1305, subd. (j); see *People v. Financial Casualty Surety, Inc.* (2017) 14 Cal.App.5th 127, 138.)

If the forfeiture is not set aside within the time period provided in section 1305, the court must enter summary judgment against the surety for the amount of the bond plus costs. (§ 1306, subd. (a).) If the forfeiture is set aside and the bond exonerated, the court "shall impose a monetary payment as a condition of relief to compensate the people for the costs of returning a defendant to custody pursuant to Section 1305, except for cases where the court determines that in the best interest of justice no costs should be imposed. The amount imposed shall reflect the actual costs of returning the defendant to custody." (§ 1306, subd. (b).)

Section 1305, Subdivision (g)

Section 1305, subdivision (g) provides: "In all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as

the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release."

On its face, subdivision (g) thus requires a showing of three elements: (1) the defendant has been "temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located"; (2) the defendant has been "positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury"; and (3) "the prosecuting agency elects not to seek extradition after being informed of the location of the defendant." (§ 1305, subd. (g).) The key issue in the present case involves the third element—whether the inability of the prosecution to make an extradition election within the appearance period, which coincides with the period within which the surety must file its motion to vacate the forfeiture, is fatal to the a showing for relief.

Accredited interprets this element of subdivision (g) as being governed by subdivision (j). That subdivision, as we have noted, provides that "[a] motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period," and that "[t]he court may extend the 30-day period upon a showing of good cause."

According to Accredited, subdivision (g), read in conjunction with subdivision (j), should work like this. The surety must notify the prosecutor that the defendant has been located. It must also offer sworn proof that a bail agent has temporarily detained the defendant in the foreign jurisdiction in the presence of a local law enforcement officer, and that the defendant has been positively identified by that officer. Although the subdivision expressly requires that "the prosecuting agency elect[] not to seek extradition after being informed of the location of the defendant," subdivision (g) itself it does not require that this election be made before expiration of the appearance period. To plug that purported hole, Accredited asserts that subdivision (j), which governs the timing of the motion for relief from forfeiture and the timing of the hearing on the motion, provides the "evaluative period" within which the prosecution must make its decision whether to extradite. Subdivision (j) requires that the surety's motion for relief from forfeiture be made within the appearance period (including any tolling or extension), but also provides that the motion "may be heard within 30 days of the expiration of" the appearance period, a period that may be extended for good cause. Accredited argues that the prosecution must make an extradition decision within this "evaluative period" of subdivision (j), and that if the prosecution fails to do so, the surety is entitled to relief from forfeiture (on the apparent theory that the prosecution's failure to decide within that period is an implied decision under subdivision (g) not to extradite) or is entitled to an extension or tolling of the period within which the court can grant relief from forfeiture under subdivision (g) (on the apparent theory that

the prosecution's failure to decide within the "evaluative period" of subdivision (j) should not frustrate the surety's right to relief from forfeiture under subdivision (g), and thus constitutes good cause for an extension or tolling).

Among the many problems with Accredited's interpretation of subdivisions (g) and (j) is that it finds no support in the plain meaning of those and other relevant statutory provisions. Nothing in subdivision (j) suggests that it was intended to define the time frame within which the prosecution must make an extradition election as required by subdivision (g), or was intended to constitute a method to toll or extend the appearance period. To the contrary, the provision simply governs (as here relevant) when a motion to vacate the forfeiture must be made (within the appearance period) and heard (within 30 days after expiration of the appearance period). (See *Indiana Lumbermens, supra,* 49 Cal.4th at pp. 312-313 [former subdivision (i), now (j), governs the timing of all motions to vacate forfeiture, and under section 1306, subd. (a) "summary judgment is to be entered against the surety after the expiration of the 180-day period unless the forfeiture of bail has been set aside"].) If a motion timely filed within that period under subdivision (j) does not establish valid statutory grounds to set aside the forfeiture under subdivision (g), it must be denied. Further, there is no statutory basis for the court to otherwise toll or extend the appearance period merely because the prosecution has not yet made its decision. (*Western Ins., supra,* 204 Cal.App.4th at pp. 1030-1033 [trial court has no authority to toll or extend appearance period on non-statutory grounds.] Simply put, Accredited's interpretation of

subdivisions (g) and (j) cannot be reconciled with the plain meaning and interworking of section 1305 and related provisions.

Indeed, Accredited's interpretation of section 1305, subdivision (g)—that the prosecution's failure to decide within the appearance period whether to extradite is not fatal to a motion to vacate forfeiture—has been rejected on various grounds by the three leading decisions on that subdivision, *Seneca, supra,* 189 Cal.App.4th 1075, *Tingcungco, supra,* 237 Cal.App.4th 249, and *Financial Casualty 2017, supra,* 10 Cal.App.5th 369.

In *Seneca,* the surety's bail agent detained the absconding defendant in Korea, brought him before a local law enforcement officer, and complied with the identification requirement of subdivision (g). (189 Cal.App.4th at pp. 1078, 1080.) The surety then obtained a 180-day extension of the original appearance period under section 1305.4, and later moved to vacate the forfeiture or toll the statutory period of section 1305 on the ground that the prosecution had represented that it would pursue extradition but had not yet acted. (*Id.* at pp. 1078-1079.) The trial court denied the motion and entered summary judgment on the bond. (*Id.* at p. 1079.)

On appeal, as here relevant, the appellate court rejected the surety's contention that the prosecution, "by not pursuing extradition in a timely fashion after being notified of defendant's location in Korea, effectively 'elect[ed] not to seek extradition' under section 1305, subdivision (g)." (*Seneca, supra*, 189 Cal.App.4th at p. 1081.) The court conceded that "the bail agent complied . . . with the identification

procedures set forth in section 1305, subdivision (g), more than eight months before the end of the bond exoneration period [the period we have referred to as the 'appearance period']; the prosecutor indicated soon thereafter she would seek extradition; and there is no evidence the extradition process was actually initiated by the end of the bond exoneration period." (*Ibid.*, fn. omitted.) But the court held that "[a] bail bond is not exonerated simply because the People have not completed (or even initiated) extradition of the defendant before the end of the bond exoneration period. In the case of an out-of-custody criminal defendant who flees to a foreign jurisdiction and is identified by the bail agent in compliance with section 1305, subdivision (g), the bond is exonerated if the criminal defendant is returned to the court within the bond exoneration period (§ 1305, subd. (c)) or the prosecutor elects not to extradite (§ 1305, subd. (g)). Otherwise, judgment must be entered in the amount of the bond. (§ 1306, subd. (a).) The statutory scheme does not authorize additional extensions or tolling of the bond exoneration period in the circumstances presented." (*Id.* at p. 1082.)

The court recognized that the surety's interpretation would serve the public policy of avoiding forfeiture of bail bonds and that a prosecutor conceivably could act in bad faith by failing to decide whether to extradite or delaying initiating extradition. But the court found no evidence of bad faith, and no "guarantee[] [the defendant] would have been returned to California before the end of the bail exoneration period if the extradition process had begun promptly." (*Seneca, supra*, 189 Cal.App.4th at p. 1083.) The court added: "More fundamentally, the language of the relevant statutory scheme simply

does not support Seneca's position. Exoneration of the bond is contingent on the return of the criminal defendant to face justice in California, not the initiation of the extradition process. We are loath to impose nonstatutory deadlines on prosecutors to initiate the process of extradition or to otherwise require prosecutors to pursue extraditions on a particular timetable." (*Ibid.*)

In *Tingcungco, supra,* three days before the expiration of the appearance period (which had been extended under section 1305.4), the surety notified the prosecution that the defendant had been located in Mexico, and asked for a decision whether to extradite. The next day, the surety filed a motion requesting that the trial court toll the appearance period while the prosecution deliberated, and then either prolong the tolling while extradition proceedings occurred or vacate the forfeiture. The trial court denied the motion (237 Cal.App.4th at pp. 252-253), and the appellate court affirmed.

In doing so, the appellate court reviewed *Seneca* and the legislative response to that decision. The court observed: "In February 2012, a bill was introduced in the California Senate to amend section 1305, subdivision (g) to accommodate instances where the prosecutor does not make an extradition decision within a reasonable time after the surety notifies it that a fugitive on bail has been located in a foreign country. (Sen. Bill No. 989 (2011–2012 Reg. Sess.) as introduced Feb. 1, 2012.) The proposed amendment would have added the following language to subdivision (g): 'If the prosecuting agency . . . fails to make an extradition decision within a reasonable period of time after receipt of the [notification] affidavit the bond shall be exonerated. The court

shall order the tolling of the 180-day period provided in this section pending the prosecuting agency's . . . extradition decision. If the prosecuting agency . . . proceeds with the extradition, and upon motion by the surety or bail agent, the court shall order the tolling of the 180-day period provided in this section from the date on which the surety or bail agent delivered the affidavit to the prosecuting agency . . . until such time as the bond is exonerated or the extradition process is completed.' (Sen. Bill No. 989 (2011–2012 Reg. Sess.) as introduced Feb. 1, 2012.)

"A bill analysis discussed *Seneca* in detail and cited the author as stating that the bill was needed "'where the prosecutor declines to make a decision about extradition in a timely fashion.'" (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 989 (2011–2012 Reg. Sess.) Apr. 24, 2012, p. 5.) It therefore appears that the bill as introduced was in reaction to *Seneca*.

"However, the bill was amended one week later to eliminate the provision in section 1305, subdivision (g)(1) concerning a prosecutor's delay in deciding whether to extradite and replaced it with a new subdivision (g)(2), which read: 'In cases arising under this subdivision [(g)], if the bail agent and the prosecuting attorney agree that additional time is needed to return the defendant to the jurisdiction of the court, the court may, on the basis of the agreement, toll the 180-day period within which to vacate the forfeiture for the length of time agreed upon by the parties.' (Sen. Bill No. 989 (2011–2012 Reg. Sess.) as amended May 1, 2012, p. 5.)

"An analysis of the amended version of the bill quotes the author as stating that the new version "'would allow a court to toll the 180-day period within which to vacate bail forfeiture, if it is agreed by both the bail agent and prosecuting attorney that additional time to return a fugitive defendant to the jurisdiction of the court is necessary. The bill simply allows both parties to come to an agreement if more time is needed to return a fugitive to custody.'" (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 989 (2011–2012 Reg. Sess.) as amended May 17, 2012, p. 3.) A representative of the bail bond industry was quoted characterizing the new version of Senate Bill No. 989 as a "'modest bill [which] would allow the court to postpone the forfeiture of bail bonds in cases where additional time is necessary to extradite defendants from foreign jurisdictions. Importantly, the forfeiture could be postponed only when the local prosecutor agrees to a postponement. The bill gives district attorneys complete control over whether any postponements will be granted.'" (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 989 (2011–2012 Reg. Sess.) as amended May 17, 2012, p. 4.)

"The version of the bill that was eventually enacted made minor changes to the amended version and relocated it as a separate subdivision (h) in section 1305: 'In cases arising under subdivision (g), if the bail agent and the prosecuting agency agree that additional time is needed to return the defendant to the jurisdiction of the court, and the prosecuting agency agrees to the tolling of the 180-day period, the court may, on the basis of the agreement, toll the 180-day period within which to vacate the forfeiture. The court may order tolling for up to the

length of time agreed upon by the parties.' (Stats. 2012, ch. 129, § 1.)" (237 Cal.App.4th at pp. 255-256.)

In *Tingcungco,* despite this legislative history, the surety argued "that (1) section 1305, subdivision (g) should be read to extend the bond exoneration period while the prosecutor decides whether to extradite, and (2) section 1305, subdivision (h) should be expanded to allow for tolling in that situation as well." (237 Cal.App.4th at p. 258.) The court found the surety's contention "untenable." (*Ibid.*) "As introduced, Senate Bill No. 989 (2011–2012 Reg. Sess.) would have directly addressed and remedied the problem at issue here: the need to further toll the exoneration period while the prosecutor decides whether to extradite a fugitive on bail located in a foreign country. While that version of the bill was still in play, a bill analysis discussed *Seneca* in detail in a manner that suggested the bill was addressing that decision. The bill was then amended to strip out that provision in its entirety and replace it with a far different tolling mechanism. Under the bill as amended and eventually enacted, the trial court could only extend the exoneration period based on an agreement by the prosecutor to do so if more time were needed to extradite the defendant. This language therefore presumes that a decision to extradite was made.

"We recognize that the facts at issue in *Seneca* were different from those here. In *Seneca*, the district attorney had decided to extradite but did not move the process along; whereas here, no decision to extradite had been made. Even so, *Seneca* employed broad language concerning the limited availability of tolling under section 1305, subdivision (g).

According to *Seneca* a bond is not exonerated just because the prosecutor had not completed 'or even initiated' extradition before the bond exoneration period ended. (*Seneca, supra*, 189 Cal.App.4th at p. 1082.) The *Seneca* court also noted that bond exoneration was contingent upon return of the defendant within the exoneration period, not the initiation of extradition proceedings. [Citation.]

"The Senate bill analysis that discussed *Seneca* picked up on this language, characterizing the holding to mean that 'where the prosecution has not made a decision whether or not to seek extradition and the 180-day period before forfeiture runs, the bond must be forfeited.' (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 989 (2011–2012 Reg. Sess.) Apr. 24, 2012, p. 6.) Thus, it appears the Legislature was initially motivated to address that aspect of *Seneca* but deliberately chose not to extend tolling to those situations in which the prosecutor had not made the extradition decision before the 180-day period expired." (237 Cal.App.4th at pp. 257-258.)

The court "acknowledge[d] that our holding may strike some as unfair and could discourage some sureties from pressing their search for a fugitive as the exoneration period deadline approaches. However, as respondent pointed out during oral argument, section 1305, subdivision (g) imposes other requirements that may be beyond a surety's control after a fugitive is located and temporarily detained in another jurisdiction: bringing the fugitive to a local law enforcement officer in that jurisdiction and getting the officer to identify the defendant in an affidavit. It may not be possible to accomplish those tasks when a fugitive is located and detained as close to the end of the

exoneration period as occurred here. At bottom, this was (and may again become) an issue for the Legislature to resolve." (237 Cal.App.4th at p. 259, fn. omitted.)

Finally, in *Financial Casualty 2017,* as here relevant, the surety's investigator and a Mexican peace officer signed affidavits stating, in substance, that they temporarily detained the defendant in Baja California and identified him by his booking and driver's license photos. The surety later provided the affidavits to the prosecution and asked whether it would seek extradition. The prosecution replied that under its office policy, it could not make an election without the defendant's fingerprints or a photograph taken while the defendant was detained. (10 Cal.App.5th at p. 375.) The surety moved to vacate the bond or extend the appearance period to allow it to provide a photograph or fingerprints. (*Id.* at p. 376.) The trial court denied the motion.

On appeal, the appellant court held that "a surety is not entitled to vacatur of a bond's forfeiture under subdivision (g) of section 1305 when the prosecuting agency has not yet 'elect[ed] not to seek extradition,' even if the agency's refusal to elect is based upon its requirement that the surety provide a defendant's fingerprints or photograph in addition to the sworn affidavit 'positively identif[ying]' the defendant otherwise required by subdivision (g)." (10 Cal.App.5th at p. 385.) In construing subdivision (g), the court reasoned: (1) the plain meaning of section 1305, subdivision (g) requires an actual election by the prosecution not to extradite (relying on, among other decisions, *Seneca* and *Tingcungco*) (10 Cal.App.5th at p. 379); (2) the legislative history of subdivision (g) revealed no intention to prescribe

how or when the prosecution must decide whether to extradite (relying in part on *Tingcungco*) (*id.* at p. 380); and (3) prior decisions have uniformly left the timing and factors involved in the extradition decision to the good-faith discretion of the prosecutor (relying, in part, on *Seneca*) (*id.* at pp. 380-381).

The court rejected the surety's argument that the language of subdivision (g) required the prosecution to make a decision on extradition based solely on the affidavit of identity provided by the surety in compliance with subdivision (g). The court found the argument inconsistent with the plain language, which makes the prosecution's election a separate and independent element, and also concluded that "[t]he surety's argument also leads to an absurd result—namely, that the prosecuting agency's decision becomes invalid if the agency (quite reasonably) says it needs corroborative evidence, but its decision remains valid if the agency says nothing." (*Financial Casualty 2017, supra,* 10 Cal.App.5th at p. 382.) As to whether obtaining the defendant's fingerprints or photograph was impossible (the surety submitted evidence that the defendant could not be detained under Mexican law after it was verified he was a Mexican national with no Mexican warrants), the court reasoned in part: "Impossibility of extradition is not a defense in any event. As noted above, a surety is not entitled to vacatur of a forfeited bond when the defendant flees to a country without an extradition treaty. [Citations.] Assuredly, the alleged impossibility here is due to a requirement of the prosecuting agency rather than the absence of an extradition treaty. But that is of no consequence, even under the contract doctrine of impossibility (Civ.

Code, § 1511) that the surety in this case invokes. That doctrine, courts have held, does not entitle a surety to relief even when the impossibility of obtaining relief is due to the prosecuting agency's decisionmaking process regarding extradition [citing *Tingcungco, supra,* 237 Cal.App.4th at pp. 252-253, 258]." (10 Cal.App.5th at p. 383.)

The court also rejected the argument that allowing the prosecutor to require additional information corroborating the defendant's identity undermined the public policy of subdivision (g), which was to create an economic incentive for sureties to track down fleeing defendants in a foreign country, even if they are not in custody, while at the same time, under section 1306, subdivision (b), the prosecution may recover the costs of extradition if the bond is exonerated. The court reasoned: "The surety is correct that allowing prosecuting agencies to require proof of a defendant's presence in a foreign country beyond an affidavit could result in fewer extradition decisions and hence fewer bond exonerations. However, the economic-incentive justification for subdivision (g) is not a trump card; the cases that have refused to interfere with the prosecuting agency's decisionmaking process have recognized the potential harm to this justification but found it not to be controlling. (E.g., *Tingcungco, supra*, 237 Cal.App.4th at p. 258.) We do the same.

"The surety relatedly argues that section 1305 erects a carefully crafted system designed to protect the interests of sureties insofar as a surety is entitled to a postponement of the appearance period if the prosecuting agency elects to extradite and entitled to exoneration of the bond if the agency elects not to extradite. Granting the agency the power *not to decide*, the surety reasons, places a surety in a limbo that

precludes exoneration and thus is at odds with the rest of the system. We reject this argument because section 1305 does not set up the surety-friendly system the surety describes. As explained above, a surety is not entitled to a postponement of the appearance period once the prosecuting agency elects to extradite; instead, it is entirely up to the agency whether to agree to a postponement. (§ 1305, subd. (h).) And there are numerous other situations where the surety cannot recover despite its best efforts, such as when there is no extradition treaty [citation] or when it makes its request for a decision on extradition too close to the end of the appearance period (*Tingcungco, supra*, 237 Cal.App.4th at pp. 256–259). Denying the surety relief because it does not comply with a prosecuting agency's reasonable requirements for making extradition decisions is entirely consistent with the system that section 1305 actually erects." (10 Cal.App.5th at p. 384.)

Accredited seeks to avoid the force of these opinions by arguing that *Tingcungco* mischaracterized *Seneca* and misunderstood the legislative history, and that *Financial Casualty 2017* improperly elevated prosecutorial discretion over the interests of the surety, misapplied contract law, and created an unfair burden on the surety. We find these decisions persuasive, and Accredited's various challenges to the wisdom and the policies supporting them are matters that must be addressed, if at all, by the Legislature. (See *Indiana Lumbermens, supra,* 49 Cal.4th at p. 313 ["Lumbermens and amicus curiae sureties advance a number of policy reasons why a motion for relief under section 1305(c)(3) should be permitted beyond the statutory period.

These arguments would be better addressed to the Legislature. We note, in any event, that the existing statutory scheme has been designed to avoid undue hardship for bail sureties."].) Thus, in the instant case, the trial court did not err in denying relief from forfeiture under subdivision (g), or otherwise tolling or extending the appearance period on the ground that the prosecutor had not yet made an extradition decision.

II. *Section 1305.4 Extension*

As an alternative argument, Accredited contends that it is entitled to a remand for the trial court to grant an additional 13-day extension under section 1305.4. We disagree. Under *Financial Casualty 2016*, *supra*, 2 Cal.5th at pages 44-46, it is true that on Accredited's initial motion for an extension, the maximum extension period was to March 8, 2016, 180 days after the date of the initial extension order (September 11, 2015). Nonetheless, on its face, the extension granted by the court (only 167 days from the date of the order, to February 25, 2016) was legally permissible. The surety is not necessarily entitled to the full 180 days. Section 1305.4 provides that on a showing of good cause, "[t]he court . . . *may* order the period extended to a time *not exceeding 180 days* from its order." (Italics added.)

Here, the initial motion seeking an extension under section 1305.4 is not part of the record, and thus we do not know what showing of good cause Accredited made. The record also fails to contain a reporter's transcript of the proceeding in which the extension was granted. The minute order reflects that the deputy district attorney was present, but

that Accredited did not appear. Thus, the record fails to affirmatively show that the court erred when it granted an extension only to February 25, 2016, rather than to March 8, 2016.

More importantly, in conjunction with its later motion to vacate the bail forfeiture (which is in the record), Accredited moved in the alternative for an additional extension of 13 days under section 1305.4. The court denied the request, reasoning (incorrectly) that Accredited had already received the maximum 180-day extension calculated from expiration of the original 185-day period, rather than counting (as required by *Financial Casualty 2016*) from the date of the initial extension order. However, although the court's reasoning was incorrect, the ruling was proper.

The maximum 180-day extension period, calculated from the date of the initial extension order, expired on March 8, 2016. The motion for an additional extension was not heard until April 1, 2016. *Financial Casualty 2016* makes clear, "section 1305.4's limit of extensions to 180 days 'from its order' is the first order extending the period, rather than any subsequent order, and *that the total allowable extension is thus limited to 180 days from the date of the first extension order, regardless of how many individual extensions the court orders.*" (2 Cal.5th at p. 46, fn. 2, italics added.) As held in *County of Los Angeles v. Allegheny Casualty Co.* (2017) 13 Cal.App.5th 580 (*Allegheny Casualty*), under *Financial Casualty 2016,* although subdivision (j) of section 1305 permits the court to hear the first motion for an extension up to 30 days after the end of the appearance period, subdivision (j) does not apply to

any second extension, and thus a court lacks jurisdiction to grant any additional extension under section 1305.4 after the expiration of 180 days from the date of its first extension order. (13 Cal.App.5th at pp. 582, 586-588; see also *People v. North River Insurance Company* (2017) 18 Cal.App.5th 863.)

Here, because Accredited's motion for an additional 13 days under section 1305.4 was not heard until April 1, 2016, after the expiration of the maximum 180-day extension period on March 8, 2016, the court had no jurisdiction to grant such an extension. Thus, even though the court was incorrect in its rationale when denying an additional extension, its ruling was correct: Accredited was not entitled to an additional 13 days. (*Allegheny Casualty, supra*, 13 Cal.App.5th at pp. 582, 586-588.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J. MANELLA, J.