

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Jun 21 2022
SC Court of Appeals

Appeal from Cherokee County

The Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

Cornelius Sentell Mayberry,

DEFENDANT,

and

John Steen d/b/a John Steen Bail Bonding and Palmetto Surety Corp.,
as Surety,

APPELLANT.

Op. No. 2022-UP-245

APPELLATE CASE NO. 2020-000771

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellant files this petition for rehearing regarding this Court's decision in the above-referenced case. By affirming the Circuit Court's order requiring the estreatment of Cornelius Mayberry's \$465,000 recognizance bond, this Court may have overlooked or misapprehended the following points:

I. The issues regarding whether the Circuit Court erred by asserting it lacked discretion to remit the bond or by failing to make specific factual findings are preserved for appellate review because the Circuit Court ruled upon the issues after they were raised by Appellant’s counsel at both bond estreatment hearings and in a written brief in opposition to bond estreatment.

In its opinion, this Court held that “[w]hether the circuit court erred by asserting it lacked discretion to remit Mayberry’s bond or by failing to make specific factual findings is not preserved for appellate review because these issues were neither raised to nor ruled upon by the circuit court.”

Although an issue is only preserved for appellate review if it is raised to the Circuit Court, “[a] party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground.” State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). In this case, it is clear from the record that Appellant’s counsel argued that the Circuit Court had the discretion to remit Mayberry’s bond and was required to make factual findings pursuant to Ex Parte Polk, 354 S.C. 8, 579 S.E.2d 329 (Ct. App. 2003), and S.C. Code Ann. § 38-53-70.

Appellant raised these issues on three separate occasions before the Circuit Court issued its Order for Confirmation of Judgment.

During the first estreatment hearing, Appellant’s counsel argued that the Circuit Court had to consider the Polk¹ factors in deciding whether, and to what extent, the bond should be estreated. (R. pp. 034-035). Appellant’s counsel concluded his argument as follows: “There has to be some sort of factual determination that Your Honor can draw, from the facts, that would

¹ Although the hearing transcript references the “Pope factors,” it is clear from the record that Appellant’s counsel was discussing the “Polk” factors. (R. pp. 051-052) (Solicitor Barnette cites Ex Parte Polk as the case that has been discussed by Appellant’s counsel.).

lead the Court to make a determination regardless of what would be the appropriate amount of money to, to be estreated, if any should be estreated.” (R. p. 035, lines 14-24).

During the second estreatment hearing, Appellant’s counsel again argued that the Circuit Court should consider the Polk² factors, and S.C. Code Ann. § 38-53-70, in deciding whether, and to what extent, the bond should be estreated. (R. p. 057).

Finally, Appellant argued that the State “failed to provide sufficient evidence to comply with the mandatory Polk Factors” in its Brief in Opposition to Bond Estreatment. (R. p. 025).

Furthermore, in its Order for Confirmation of Judgment, the Circuit Court discussed Polk and S.C. Code Ann. § 38-53-70 before ruling that it had no discretion to remit any portion of the bond as a matter of law. Therefore, the Circuit Court understood the issue of remission was before it for consideration. Polk, 354 S.C. at 11, 579 S.E.2d at 330 (“[W]e disagree with the State’s assertion that Polk failed to raise the issue of remission to the trial court. *Our reading of the record convinces us the trial judge understood the issue of remission to have been before him for consideration* inasmuch as the court ruled on the issue of considering the cost to the State resulting from [the Defendant’s] failure to appear.”) (emphasis added).

Because Appellant argued that the Circuit Court should remit Mayberry’s bond, in whole or in part, after making factual findings pursuant to Polk and S.C. Code Ann. § 38-53-70, Appellant implicitly raised the issue of whether the Circuit Court had the discretion to remit the bond. Therefore, when the Circuit Court failed to make such factual findings and ruled that it had no discretion to remit any portion of the bond, those issues were properly preserved for appellate review.

² Again, although the transcript references the “Poke case” and “Pope,” the record clearly reflects that both parties and the Circuit Court understood that Ex Parte Polk was being discussed. (R. pp. 051-052).

II. The Circuit Court erred by ruling that the entire bond should be estreated based on the “willful default” of the Defendant without considering whether the bondsman’s actions constituted a “willful failure to fulfill [his] obligations as the bondsperson,” pursuant to State v. Mitchell.

In its opinion, this Court held that “[t]he Circuit Court did not abuse its discretion by finding the attempt by federal law enforcement to arrest Mayberry was not an intervening event because the testimony indicating Mayberry evaded arrest, removed his ankle monitor, and was not detained until April 2019 was evidence indicating Mayberry’s failure to appear constituted ‘willful default.’”

Although Mayberry’s actions clearly indicate that he willfully defaulted on the terms of his bond, the Circuit Court failed to consider the willfulness, or lack thereof, of the bondsman’s actions. See S.C. Code Ann. § 17-15-180 (“If *any person* shall forfeit a recognizance from ignorance or unavoidable impediment and not from wilful default, the court . . . may . . . remit the [bond] as may be deemed reasonable.”) (emphasis added); State v. Mitchell, 421 S.C. 365, 373-74, 807 S.E.2d 193, 197 (2017) (“[T]he circuit court may consider evidence of a bondsperson’s willful failure to fulfill their obligations as the bondsperson, in addition to the factors expressed in Polk, in determining whether, and to what extent, a bond forfeiture should be remitted.”).

In this case, law enforcement did not contact Appellant before the officers involved attempted to arrest Mayberry. (R. p. 068–069). However, once Appellant was made aware of Mayberry’s escape, it began working its community, informants, and indemnitors to locate Mayberry. (R. p. 097). Appellant’s efforts eventually resulted in Mayberry’s capture. (R. p. 115).

Therefore, because Appellant’s actions do not constitute a willful failure to fulfill its obligations as the surety, the Circuit Court erred by failing to consider Appellant’s actions before ruling that the bond should be estreated.

CONCLUSION

For the reasons stated above, Appellant requests that this Court grant this Petition, rehear this matter, and remand this matter to the Circuit Court with instructions that it properly exercise its discretion based on the evidence and testimony presented at the second hearing.

Respectfully Submitted,



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Attorneys for Appellant

June 21, 2022.

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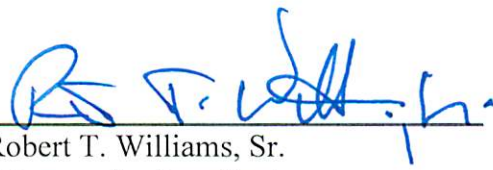
APPELLANT.

Unpublished Opinion No. 2022-UP-245

APPELLATE CASE NO. 2020-000771

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of Appellant's Petition for Rehearing in the above-referenced case has been served on Barry J. Barnette, Esquire, William M. Blicht, Jr., Esquire, Alan McCrory Wilson, Attorney General at the primary email addresses listed in the Attorney Information System (AIS) and by U.S. Mail on June 21, 2022.


Robert T. Williams, Sr.
Attorney for Appellant

Williams, Stitely & Brink, PC

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Robert T. Williams, Sr.
Benjamin A. Stitely
W. Lisa Brink

Anna M. Williams
Jason T. Yonge

June 21, 2022

Alan McCrory Wilson, Attorney General
S.C. Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

Re: The State v. Cornelius Sentell Mayberry, Defendant, and John Steen d/b/a John Steen
Bail Bonding and Palmetto Surety Corp., as Surety
Indictment Nos. 2019-GS-11-01402, 2019-GS-11-01403 and 2019-GS-11-01404
Appellate Case No.: 2020-000771

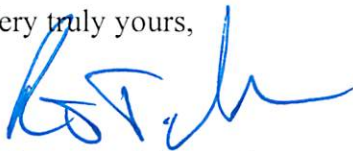
Dear Mr. Wilson:

Please find enclosed Appellant's Petition for Rehearing in the case noted above which I hereby
serve upon you.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,



Robert T. Williams, Sr.

RTW/gma

Enclosure

cc: Jenny Abbott Kitchings, South Carolina Court of Appeals Clerk of Court
William M. Blich, Jr., Asst. Attorney General
Barry J. Barnette, Solicitor
John Steen, d/b/a John Steen Bail Bonding
Palmetto Surety Corp., as Surety

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Benjamin A. Stitely
W. Lisa Brink

Anna M. Williams
Jason T. Yonge

June 21, 2022

Barry J. Barnette, Solicitor
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, South Carolina 29306

Re: The State v. Cornelius Sentell Mayberry, Defendant, and John Steen d/b/a John Steen
Bail Bonding and Palmetto Surety Corp., as Surety
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Appellate Case No.: 2020-000771

Dear Mr. Barnette:

Please find enclosed Appellant's Petition for Rehearing in the case noted above which I hereby serve upon you.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,



Robert T. Williams, Sr.

RTW/gma

Enclosure

cc: Jenny Abbott Kitchings, South Carolina Court of Appeals Clerk of Court
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William M. Blicht, Jr., Asst. Attorney General
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Dear Mr. Blicht:

Please find enclosed Appellant's Petition for Rehearing in the case noted above which I hereby
serve upon you.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,



Robert T. Williams, Sr.

RTW/gma

Enclosure

cc: Jenny Abbott Kitchings, South Carolina Court of Appeals Clerk of Court
Barry J. Barnette, Solicitor
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SC Court of Appeals

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: The State v. Cornelius Sentell Mayberry, Defendant, and John Steen d/b/a John Steen
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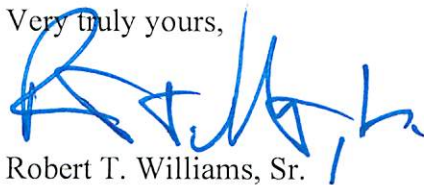
Dear Ms. Kitchings:

Please find enclosed the Appellant's Petition for Rehearing in the case noted above for filing.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,



Robert T. Williams, Sr.

RTW/gma

Enclosure

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William M. Blich, Jr., Asst. Attorney General
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