

**RECEIVED**

FEB 18 2014

**S.C. Supreme Court**

THE STATE OF SOUTH CAROLINA  
In The Court of the Supreme Court

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APPEAL FROM AIKEN COUNTY  
Court of General Sessions Second Judicial Circuit

Doyet A. Early III, Chief Administrative Judge

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Case No. M009183 CP Case No. 2013CP0202671

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Doyet A. Early III Chief  
Administrative Judge of  
Second Judicial Circuit in  
Appearance Bond Judgement,

Respondent,

v.

Joseph Lowe  
(Metro Bail Bonds)  
Willie Council  
(Defendant)  
Lexon Insurance Company  
(Surety)

Appellant.

---

NOTICE OF APPEAL

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**TO THE HONORABLE SUPREME COURT OF APPEALS**

Joseph Lowe (Metro Bail Bonds) respectfully appeals the order [judgment] of the Honorable Doyet A. Early III dated January 08, 2014. Appellant received written notice of entry of this order [judgment] on January 23, 2014.

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

FACTS.....1

REASONS WHY FULL REMISSION SHOULD BE GIVEN.....2

1. ISSUE 1 - UNPAID JUDGMENTS FROM A SEPERATE SURETY BEING USED  
IN DECIDING THE PERCENTAGE IN WHICH ANOTHER SURETY MUST PAY  
ON THEIR JUDGMENTS. ....2

2. ISSUE 2 - CONSIDERING THE COSTS TO THE STATE, COUNTY OR  
MUNICIPALITY FROM NECESSITY TO CONTINUE OR TERMINATE THE  
DEFENDANT'S TRIAL. ....3

3. ISSUE 3 - CONSIDERING THE PURPOSE OF THE BOND  
.....3

CONCLUSION AND PRAYER FOR RELIEF.....5

ATTACHMENTS.....

TABLE OF AUTHORITIES

South Carolina Title 38 Chapter 53 Para. 40

South Carolina Title 38 Chapter 53 Para. 70

Ned Polk Jr. and York County Bail Agent vs Henry Zbigniew Bartinicki., 354 S.C. 10 NO. 3619...  
<http://sccourts.org/opinions/HTMLFiles/COA/3619.htm>

State of South Carolina vs. Lutrell Hall (Defendant) Metro Bail Bonds & Bankers Insurance Company (Surety)., Case No. 2013CP0201400

## FACTS

On or about April 19th, 2012 former surety bail bondsman Tommy Parrish had posted bail for the release of defendant Willie Council. Willie Council had eventually failed to appear and a bench warrant was issued for his arrest on June 27th 2013. Tommy Parrish by this time no longer had any affiliation with the Appellant.

The Appellant had another one of its agent licensed as a surety bail bondsman to make visits (due to other previous cases where defendants had also failed to appear) to Aiken County Clerk of Court where he had taken notice that a bench warrant was not available for pickup according to SC Statute 38-53-70 which states "the court shall make available for pickup by the surety or representative of the surety who executed the bond on their behalf, a true copy of the bench warrant within seven days of its issuance at the clerk of court's office".

Appellant became aware of the bench warrant indirectly due to being served a "Conditional Order to Estreat Bond" on or about the end of November 2013. The Conditional Order stated that "on January 8, 2014, Tommy Parrish representing Metro Bail Bonds, Lexon Insurance Company and Willie H. Council must appear at the Aiken County Judicial Center; to show cause why such forfeiture should not be confirmed finalized, and made absolute".

Upon receiving notification of the "Conditional Order" the Appellant swiftly began the search and apprehension for Willie Council. On or about January 3rd, 2014, Willie Council was surrendered to Aiken County Detention Center on an Affidavit of Surrender to heal the breach which led to a forfeiture, as well satisfy the The Honorable Doyet Early's request to have Willie H. Council appear before the Court. An Affidavit of Surrender (See Exhibit A) was signed by an on shift supervisor who is currently employed by the Aiken County Sheriff's Dept. Detention Division on the 7th of January, 2014 and this was brought to be presented in Court the next morning.

REASONS WHY FULL REMISSION SHOULD BE GIVENISSUE 1

Tommy Parrish a former agent of Metro Bail Bonds could not appear due to no longer being a representative and instead Andrew Chavis a current agent of Metro Bail Bonds (representative of the surety according to 38-53-70 and 38-53-40) appeared.

On January 8th, 2014, Andrew Chavis (Metro Bail Bonds) had presented to the Court that Willie Council was in the custody of Aiken County Detention Center. The Court had decided to estreat the bond in the amount of \$4,000.00 due to strict adherence of 90 day timeframe. However, what was also mentioned in Court by the Court was that another Insurance Company (surety) that is represented by Metro Bail Bonds had previous estreatments that went unpaid. The Appellant is of the belief that prejudice was used in judgment due to what was believed by the Court was unpaid judgments. The Appellant although not liable, keeps track of judgments and directs its Insurers to pay them if one is found. As the Appellant confirmed with the Solicitors office that there were no outstanding previous judgments as believed by the Appellant.

As well according to 38-53-40 Qualifications of a surety, a surety bondsman is not personally liable for a bond (See Exhibit B). The surety is either an insurer, a professional, or an accommodation bondsman. A surety bondsman, which Metro Bail Bonds is, is merely a representative of the surety (one who is liable). Therefore, if one surety did not pay their judgments , this should not be held against another surety for judgment in another case against them.

## ISSUE 2

According to SC Statute 38-53-70 the Court shall consider the costs....

IN MAKING A DETERMINATION AS TO REMISSION OF THE JUDGMENT, THE COURT SHALL CONSIDER THE COSTS TO THE STATE OR A COUNTY OR MUNICIPALITY RESULTING FROM THE NECESSITY TO CONTINUE OR TERMINATE THE DEFENDANT'S TRIAL AND THE EFFORTS OF LAW ENFORCEMENT OFFICERS OR AGENCIES TO LOCATE THE DEFENDANT.

Consideration was not given nor were the costs made available so proper judgment could not be given.

1. The defendant's trial was terminated upon confirming his failure to appear and an issuance of a bench warrant. All costs associated for the defendant's trial going forward were then as well terminated.
  
2. The Appellant argues that there were minimal efforts of law enforcement in the locating of this defendant as they issued a bench warrant on the defendant with knowledge of his whereabouts in Georgia which were not within the jurisdiction of any Aiken County officials to have the capability to even search for this individual. Being that Metro Bail Bonds apprehended the defendant at the address of record, the Appellant is also of the belief that information was not entered into NCIC, nor did Aiken County work with Richmond County, GA law enforcement officials.

## ISSUE 3

The purpose of the bond was not considered. Although the surrender of Willie Council was not within 90 days of the issuance of the bench warrant, the purpose of the bond was fulfilled previous to judgment being rendered. It also satisfied the Honorable Doyet A. Early III's request to have Willie H. Council present in his Court Room (See Exhibit C). According to Appeal 354 S.C. 10 below, the purpose of the bond must be taken into consideration.

Court of Appeals of South Carolina.

Ex parte Ned POLK, Jr. and York County Bail Agent, Appellants,  
In re State of South Carolina, Respondent,  
v.  
Henry Zbigniew Bartinicki, Defendant.

No. 3619.

Submitted Jan. 13, 2003.

Decided March 31, 2003.

After he was released on an appearance bond, defendant failed to appear when his case was called. The Circuit Court, York County, Lee S. Alford, J., ordered estreatment of bond if defendant was not produced within seven days of estreatment hearing. Bail agent appealed. The Court of Appeals held that trial court was required to consider costs to the State in its determination of whether bond forfeiture should be remitted.

Reversed and remanded.

> [5]> [6] Unquestionably, Bartinicki's bond was forfeited and the trial court properly entered judgment on the bond. However, > § 38-53-70 unambiguously provides that the trial court must consider the costs to the State in determining remission of the judgment on a forfeited bond. Therefore, the trial judge abused his discretion in failing to consider the costs to the State. We note, however, that in determining whether [354 S.C. 13] any remission of the judgment is warranted, the trial court is not limited to considering only the actual cost to the State. Our courts have held the following factors, at the least, should be considered in determining whether, and to what extent, the bond should be remitted: (1) the purpose of the bond; (2) the nature and willfulness of the default; (3) any prejudice or additional expense resulting to the State. > Boatwright, 310 S.C. at 287, 423 S.E.2d at 142-43; > Workman, 274 S.C. at 343, 263 S.E.2d at 866.

> [7] In conclusion, we hold, while the decision regarding remission is within the discretion of the trial court, the court should consider, at a minimum, the costs to the State as well as the purpose of the bond and the nature and willfulness of the default in determining whether, and to what extent, a bond forfeiture should be remitted. > (FN1) Accordingly, we reverse and remand the case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

GOOLSBY, HUFF and SHULER, JJ., concur.

<http://sccourts.org/opinions/HTMLFiles/COA/3619.htm>

In a previous case State of South Carolina vs. Lutrell Hall (Defendant) Metro Bail Bonds & Bankers Insurance Company (Surety) Case No. 2013CP0201400, presided over by the Honorable Doyet A. Early III; the purpose of the appearance bond was not fulfilled yet the Second Judicial Circuit Court had negotiated with Metro Bail Bonds & Bankers Insurance Company on a lesser amount at 66% of the bond. The original bond being \$3,000.00 and judgment confirmed at \$2,000.00.

However, in the current judgment was estreated at 80% of the original bond amount and the purpose was fulfilled.

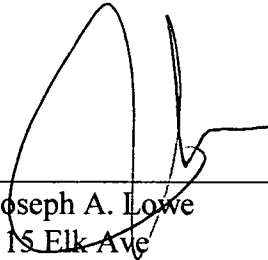
The Appellant would argue that a Surety and/or its representative (surety bondsman) should be rewarded for fulfilling the purpose of the bond (contract), which is bringing the a defendant back to Court when their is a desire or reason not to appear, than not fulfilling the purpose of the bond (contract) and having no defendant in custody to present to the Court in times of judgment.

CONCLUSION AND PRAYER FOR RELIEF

Wherefore, the Appellant respectfully prays this Court to review this case and to issue remission and/or such other relief as to the Court may seem just as based on the beliefs that prejudice was used in judgment, costs were minimal to the State or County or Municipality and were not considered by the Court, and that the purpose of the bond was fulfilled, as well as in a previous case by the same Court a better remission amount was given to the Appellant and the purpose of the bond was not fulfilled.

Respectfully submitted,

January 29, 2014



---

Joseph A. Lowe  
115 Elk Ave  
Rock Hill, South Carolina 29730  
(803) 327-3733  
Owner

Exhibit A

STATE OF SOUTH CAROLINA  
COUNTY OF Aiken

IN THE COURT OF Aiken County

AFFIDAVIT OF SURRENDER OF  
DEFENDANT BY SURETY

Walter H. Canal  
Defendant.

Amount of Bond: 5000  
S.S.N.: 254-21-3080  
D.O.B.: 02-04-1964  
By: \_\_\_\_\_  
Date of Bond: \_\_\_\_\_

Metro Bail Bonds  
Surety

I HAVE PERSONALLY APPEARED BEFORE ME, the undersigned surety/deponent, who being duly sworn, states that he is a duly authorized representative of Metro bail bonds Surety Company, who is contractually bound to surety for the above named defendant on the following  ticket  warrant  indictment number(s) and nature Possession of Cocain 9st - U# M009183

The defendant was incarcerated by surety/deponent for a violation or imminent violation of a specific term(s) of the bail bond contract to wit: Surety/deponent states under penalty of perjury that the information contained in this Affidavit constitutes good cause for the immediate incarceration of defendant.

The defendant was incarcerated by  surety/deponent  law enforcement as the result of a bench warrant for a violation of the conditions of the bail bond as stated in the bench warrant and sworn to below.

Fail to appear B/W

Notary Public for South Carolina  
I am a Notary Public and before me on 11/7/14  
Christina D. Wilkerson  
Notary Public for South Carolina  
My Commission expires 3/26/2023

[Signature]  
Signature of Surety/Deponent  
Metro Bail Bonds  
Surety Company

I have executed copies of the above named defendant pursuant to  immediate incarceration by surety  bench warrant and the defendant will remain in custody until such time as notice concerning defendant is received from a court of competent jurisdiction.

Witness my hand and seal of office at Aiken South Carolina this 11/7/14 day of November 2014  
Christina D. Wilkerson  
Notary Public for South Carolina

Date: 11/7/14  
Notary Public for the County  Municipality of Aiken

## EXHIBIT B

### **SECTION 38-53-40. Qualifications of surety.**

Each surety for the release of a person on bail must be qualified as:

- (a) an insurer and represented by a surety bondsman;
- (b) a professional bondsman; or
- (c) an accommodation bondsman.

NOT ON CAPTIVE

Exhibit C

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
L. Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

IN THE COURT OF GENERAL SESSIONS  
SECOND JUDICIAL CIRCUIT

NOV 25 2013

STATE OF SOUTH CAROLINA

Liz Godard  
C.C.C.P. & G. A., Aiken County, S.C.

CONDITIONAL ORDER TO  
ESTREAT BOND

VS Anita Knoepfle  
Deputy Clerk

Warrant Number: M009183

WILLIE H. COUNCIL,  
Defendant,

CP Case Number: 2013CP0202071

TOMMY PARRISH REPRESENTING,  
METRO BAIL BONDS,  
Surety,

11.22.13  
Liz Godard  
C.C.C.P. & G.S.  
Anita Knoepfle 9:30  
Deputy Clerk

LEXON INSURANCE COMPANY  
Insurance Company.

IT IS ORDERED that the bond amount of Five Thousand and No/100 (\$5,000.00) Dollars posted by Tommy Parrish representing Metro Bail Bonds and Lexon Insurance Company to ensure the presence of Willie H. Council, before the Court upon notice by the Solicitor's Office be estreated in full due to this Defendant's non-compliance with the conditions of bond as outlined in South Carolina Code Annotated §17-15-20.

On January 8, 2014, Tommy Parrish representing Metro Bail Bonds, Lexon Insurance Company and Willie H Council must appear at the Aiken County Judicial Center, 109 Park Avenue S.E., Aiken, South Carolina at 10:00 a.m., or as soon thereafter as a hearing can be held; to show cause as to why such forfeiture should not be confirmed finalized, and made absolute against them pursuant to South Carolina Code Annotated §17-15-180.

IT IS SO ORDERED.

Doyet A Early III  
DOYET A EARLY III  
Chief Administrative Judge  
Second Judicial Circuit

11.21.2013  
Date

Barnwell, South Carolina

Or. Judgement 11.22.13  
4 Cert. Sol. 11.25.13  
1 Cert. G.S. 11.25.13  
1 Clerk of Court 11.25.13  
Acctg 11.25.13



The State of South Carolina  
Office of the Solicitor  
Second Judicial Circuit

*Received  
Jan 23rd  
1:47pm*

J. Strom Thurmond  
Solicitor  
Serving Aiken, Bamberg,  
& Barnwell Counties

Aiken County Judicial Center  
109 Park Avenue, S.E.  
P.O. Drawer 3368  
Aiken, S. C. 29802  
(803) 642-1557  
Fax (803) 642-7530

January 16, 2014

CERTIFIED


Metro Bail Bonds  
115 Elk Avenue  
Rock Hill, SC 29730  
Attn: Joseph Lowe

RE: ORDER FOR THE ESTREAMENT OF BOND:

Dear Mr. Lowe,

Enclosed is a certified copy of the Order for the Estreatment of Bond. If you have any questions, please do not hesitate to contact me.

Sincerely,

  
John W. "Bill" Weeks  
Deputy Solicitor  
Second Judicial Circuit

JWW/smh

Enclosure

Metro Bail Bonds  
115 Elk Avenue  
Augusta, Georgia 30907

STATE OF SOUTH CAROLINA )  
)  
)  
COUNTY OF AIKEN )  
)  
STATE OF SOUTH CAROLINA )  
)  
VS )  
)  
WILLIE H. COUNCIL, )  
Defendant, )  
)  
TOMMY PARRISH REPRESENTING, )  
METRO BAIL BONDS, )  
Surety, )  
)  
LEXON INSURANCE SOMpany, )  
Insurance Company. )

IN THE COURT OF GENERAL SESSIONS  
SECOND JUDICIAL CIRCUIT

ORDER FOR ESTREATMENT BOND

Warrant Number: M009183

CP Case Number: 2013CP0202671

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
Liz Godard, Clerk of Common Pleas  
Sessions for Aiken County, South Carolina  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in the office this

JAN 08 2014

*Liz Godard*  
C.C.P. & G.A., Aiken County, S.C.  
*Arita Knoepfle*  
Deputy Clerk

FILED 1.8.14  
*Liz Godard*  
C.C.P. & G.S.  
*Arita Knoepfle* / 2ash  
Deputy Clerk

This matter comes before the Court on a Conditional Order to Estreat Bond and a Notice of Forfeited Recognizance as to why the bond posted by the above-named Surety should not be estreated in whole or in part. A Conditional Order estreating the entire bond has been issued. It appears that the above-named Surety signed a Five Thousand and No/100 (\$5,000.00) Dollars surety bond filed in the Clerk of Court's Office, the conditions of which having not been complied with:

Said defendant did fail to appear in the Court of General Sessions when duly summoned or did not comply with the provisions of good behavior as required by the bond.

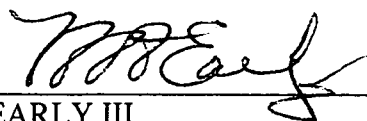
Upon a hearing held January 8, 2014, it further appears that no lawful cause exists for said non-compliance.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment in the amount of Four Thousand and No/100 (\$4,000.00) Dollars be immediately confirmed against the said, Willie H. Council, Tommy Parrish representing Metro Bail Bonds and Lexon Insurance Company.

Or. Judgement 1.8.14  
4 Cert. Sol. 1.8.14  
1 Cert. G.S. 1.8.14  
1 Clerk of Court 1.8.14

*[Signature]*

IT IS SO ORDERED.



---

DOYET A EARLY III  
Chief Administrative Judge  
Second Judicial Circuit

January 8, 2014  
Date

Aiken, South Carolina

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP0202671

South Carolina State Of	Willie H Council Metro Bail Bonds - Surety	Tommy Surety Parrish Lexon Insurance Company - Insurance Company
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order: (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

1/8/2014

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on 1-8-14, and a copy mailed first class or placed in the appropriate attorney's box on 1-8-14, to attorneys of record or to parties (when appearing pro se) as follows:

James Strom Thurmond Jr. PO Drawer 3368 Aiken, SC  
29801 - 4 copies

Liz Godard, GS, Accounting - 1 copy

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Liz Godard by W. Knapp*


Court Reporter

Liz Godard - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

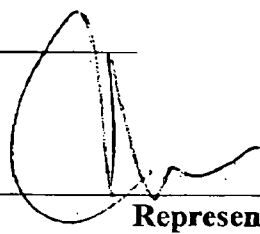
	<b>L I O N</b>	115 Elk Avenue, Rock Hill, SC
	Surety Services	Phone-803-327-3733 Fax-803-327-3722
<b>FAX</b>		
To: The Court of Suprem <sup>ct.</sup>	From: Joseph Lowe	
Fax:	Pages: one	
Phone:	Date: 2/18/14	
Re:	CC:	
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply		
<b>RECEIVED</b> FEB 18 2014 S.C. SUPREME COURT		

STATE OF SOUTH CAROLINA ) IN THE COURT OF THE SUPREME COURT  
 COUNTY OF AIKEN )  
 )  
 THE COURT OF GENERAL SESSIONS ) CERTIFICATE OF SERVICE  
 SECOND JUDICIAL CIRCUIT )  
 )  
 VS. ) CASE NO. M009183 & 2013CP0202671  
 )  
 APPELLANT JOSEPH LOWE )  
 (METRO BAIL BONDS) )  
 LEXON INSURANCE COMPANY )  
 (SURETY) )

This is to certify that the Appellant did cause an Appeal as an Appellant to be served upon:

(x) AIKEN COUNTY SOLICITOR'S Office MAILED Signature if personal delivery

PRINT NAME: \_\_\_\_\_

Signed:  \_\_\_\_\_  
Representative

Sworn To Before me this 18 Day of February, 2014.

Cynthia Combs  
Notary Public for the State of South Carolina

My Commission Expires: January 25th, 2023

**RECEIVED**  
FEB 18 2014  
S.C. SUPREME COURT