



Cocaine, Distribution of Cocaine, and Involuntary Manslaughter. On January 25, 2012, Magistrate Judge Gosnell consolidated Mitchell's bond at \$150,000 and required both house arrest and passive satellite monitoring. House arrest at the address of 4107 Blanton Street, North Charleston, was specified along with other terms and conditions set forth in Judge Gosnell's bond order. (See Exhibit 1). AA Ace Bail by Frances, with Palmetto Surety Corporation, assumed responsibility for both the initial and subsequent bond. (See Exhibit 2) Robinson Monitoring Company provided the satellite monitoring service.

On July 26, 2012, this Court heard a Motion for Reconsideration of Bond filed by Assistant Solicitor James P. Stack on behalf of the Ninth Circuit Solicitor's office. The State sought revocation of Mitchell's bond due to repeated violation of the house arrest requirement over an extended period of time. The Court heard the testimony of Ms. Frances Jenkins, for the bonding insurer; Mr. James F. Robinson, of Robinson Monitoring Company; the defendant, Deangelo Mitchell; and the defendant's uncle.

Testimony indicated that the monitoring company had reported several violations of the house arrest requirement to the bond insurer without results. Specifically, Robinson informed Jenkins that Mitchell was leaving his house each night and spending time at locations known for drug distribution, and it appeared to Robinson that Mitchell was selling drugs. According to Robinson, Jenkins replied that selling drugs was how defendant Mitchell made a living, and he was good at making his payments to her. Robinson further testified that Jenkins refused to put Mitchell back in jail or notify the Solicitor's office of the violations. Robinson eventually circumvented Jenkins and reported the ongoing problem directly to the Solicitor's office.

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During her testimony, Jenkins acknowledged that Robinson had made her aware of the violations and admitted that she did not inform the Solicitor's office. She further acknowledged that she had filed Motions to Vacate on clients in the past for the violation of the good behavior requirement due to a subsequent arrest. Assistant Solicitor Kidd questioned Jenkins about the bond paperwork and the signature that she provides as the surety bondsperson, specifically noting that "it's just that part of your job as a bondsman is to help enforce the conditions of the bond?"

**Frances Jenkins:** Absolutely. I agree 100 percent.

**Assistant Solicitor:** It's just an acknowledgement that you do a little bit more than just appearances?

**Frances Jenkins:** Yes, sir, I suppose.

(7/26/2012 Transcript pp. 40-41).

The Court further inquired of Ms. Jenkins:

**The Court:** You knew he was subject to certain house arrest provisions because that's why you called him and said you need to quit being out at 2 o'clock in the morning, and stay close, correct?

**Frances Jenkins:** Exactly.

(Transcript p. 43).

At the conclusion of the hearing, this Court revoked the defendant's bond, finding him to have been in repeated and willful violation of the terms and conditions of Judge Gosnell's bond order. The defendant was returned to the Sheriff Al Cannon Detention Center and eventually

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pled guilty. Deangelo Mitchell was sentenced on September 6, 2013, to a term of imprisonment with the South Carolina Department of Corrections.

The State gave Notice of Forfeited Recognizance to both the South Carolina Department of Insurance and Palmetto Surety Corporation on August 16, 2012. As a consent agreement could not be reached, this court heard the State's motion for estreatment of Mitchell's bond on September 7, 2012. Arguments were presented and are preserved on the record.

At the hearing, the Court indicated its concern with the deliberate action of the bondswoman, noting that Judge Gosnell's Order required house arrest and satellite monitoring. Frances Jenkins ignored these requirements and intentionally declined to report Mitchell's numerous excursions (in the middle of the night) to areas known for drug activity. Defendant was in obvious violation of the house arrest on multiple occasions, and Jenkins failed to report the violations or to take any action to ensure Mitchell's compliance with Judge Gosnell's bond order. To argue, after the fact, that she only insures "appearance" and not "behavior" is not credible, nor is it supported by South Carolina law. *See e.g. State v. Boatwright*, 310 S.C. 281, 423 S.E.2d 139 (1992) *citing State v. Workman*, 274 S.C. 341, 263 S.E.2d 865 (1980)(bond may be estreated if the defendant breaches terms or conditions of the bond other than appearance).

A subsequent hearing was conducted on October 11, 2012. Assistant Solicitor Stack presented three affidavits reflecting the costs incurred by the State in addressing Mitchell's repeated violations of the "house arrest" condition of his bond. Arguments were also presented as to the willfulness of these violations, the purpose of the bond, and other pertinent factors.

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## LEGAL ANALYSIS

Most estreatments of bond arise from a defendant's failure to appear in court; however, it is also within the discretion of this court to estreat for violations of the "good behavior" provisions set forth in a bond order. *State v. Boatwright* reiterates that "[e]streatment for a violation of the good behavior condition is proper," and that "a professional bondsman... is certainly aware that an appearance bond carries conditions beyond the defendant's presence in court." *Boatwright*, 423 S.E.2d at 140-141; 310 S.C. at 283.

To determine the amount of remission, if any, a court is required to consider three factors. S.C. Code Ann. 38-53-70 (1976) unambiguously provides that the trial court must consider the cost to the State in determining remission of the judgment on a forfeited bond. However, the trial court is not limited to considering the actual cost to the State. In determining whether, and to what extent, to remit an estreated bond, the trial court should consider "(1) the purpose of the bond; (2) the nature and wilfulness of the default; [and] (3) any prejudice or additional expense resulting to the State." *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 780 (Ct. App. 2013) citing *Ex-parte Polk*, 354 S.C. 8, 13, 579 S.E.2d 329, 331 (Ct. App. 2003).

Considering these factors, it is clear to this Court that at least a portion of the bond should be estreated here. First, the purpose of the bond in this matter was to assure not only Mr. Mitchell's appearance, but also his good behavior while out on bond. It was for this reason that in addition to the \$150,000.00 surety, Judge Gosnell set forth as conditions "24 hour house arrest at 4107 Blanton Street. N. Charleston, SC, with passive satellite monitoring other than work, medical, atty, court and church escorted with family member/girlfriend." (Conditions of 1/25/2012 Gosnell Bond Order).

Mr. Robinson testified at the bond revocation hearing that his company not only contacted the defendant on a number of occasions but that either he or his employees notified Ms. Jenkins as well and that “[i]t got to where there was just no compliance.” It was at that point that Robinson notified the Solicitor’s Office and provided copies of the GPS report containing the satellite footprints for the defendant. He further testified as to the notifications to Ms. Jenkins. (Transcript pp. 47-55). The violations of the defendant, as well as Ms. Jenkins’ admitted failure to fulfill her obligations as the bondsperson and take appropriate action to address them, were clearly willful. Finally, the State produced affidavits as to the expenses incurred in addressing the violations, and the Court has considered these expenses in conjunction with the additional prejudice to the State and the other *Polk* factors.

As a result of the monitoring problems in this case and in others cases brought to the attention of the Court at a September 7, 2012 hearing, Ninth Circuit Solicitor Scarlett Wilson moved that the Court impose a moratorium on the use of electronic and satellite monitoring as a condition of bond in the Ninth Judicial Circuit, until further notice. Due to the “gross lack of consistency and reliability in the supervision of defendants and the reporting of violations” by multiple bail bond and monitoring companies including AA Ace Bail by Frances and Palmetto Surety Corporation, the Court granted the State’s motion and imposed the moratorium.<sup>1</sup>

On July 1, 2014, after much study and consideration by Solicitor Wilson, the Charleston County Sheriff’s Office, and the Honorable Roger Young, Charleston County resumed the electronic monitoring of appropriate persons as a condition of bond. In light of the monitoring problems presented to the Court, in part as a result of the behavior in this particular case, the monitoring of all Charleston County arrestees will now be conducted by the Charleston County Sheriff’s Office. Violations will be instantly electronically transmitted to the Sheriff’s Office,

<sup>1</sup> See McDonald Administrative Order of September 7, 2012.

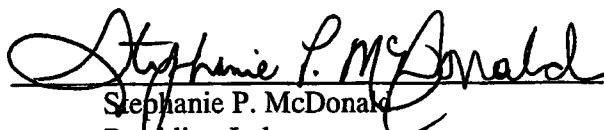
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and the "Sheriff's Office, not the vendor or the bondsman, will make the sole determination whether someone should be picked up for a violations of monitoring conditions." (See the June 17, 2014 Memorandum of the Honorable Roger M. Young).

In sum, both the defendant's behavior and the failure of the bondsperson to report Mitchell's violations of Judge Gosnell's "house arrest" bond condition violated the clear purpose of the bond order, and these violations were willful. The State incurred expenses in addressing not only Mitchell's repeated violations, but also the bondsperson's conscious decision to ignore them. The State was further prejudiced because as a result of this case and the other cases brought to the Court's attention during Solicitor Wilson's study of the electronic monitoring problems in the Ninth Circuit, the imposition of electronic monitoring as a condition of bond was halted in Charleston and Berkeley Counties. It has only recently resumed in Charleston County.

THEREFORE, IT IS HEREBY ORDERED that this bond is estreated in the amount of \$75,000.00, and that unless a consent installment payment plan can be established, a single payment shall be made to the Charleston County Clerk of Court, located at 100 Broad Street, Charleston South Carolina, within thirty (30) days of that date of this order. Failure to make the payment or payments in a timely manner shall result in the full amount of the bond (\$150,000.00) being estreated and immediately due. The Solicitor's office shall schedule a Rule to Show Cause Hearing to address any issues of non-payment.

IT IS SO ORDERED this 8th day of July, 2014.

  
Stephanie P. McDonald  
Presiding Judge  
Ninth Judicial Circuit

July 8, 2014  
Charleston, South Carolina