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FEB 29 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA

COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

The Honorable Stephanie P. McDonald, Circuit Court Judge

The State of South Carolina Respondent,

v.

Deangelo Mitchell, Defendant,

and

AA Ace Bail by Frances and Palmetto Surety Corp., as Surety, Appellants.

Appellate Case No. 2014-001516

PETITION OF REHEARING

On February 17, 2016, this Court issued an opinion which affirmed the decision of the Trial Court on a multitude of rulings made during the Appellant's Bond estreatment in the matter of, State v. Deangelo Mitchell, Defendant and AA Ace Bail by Frances and Palmetto Surety Corp., Sureties for the Defendant, Unpublished Opinion No. 2016-UP-070 (S.C. Ct. App. February 17, 2016). The Appellant respectfully petitions for rehearing.

The Court ultimately affirmed the rulings of the trial court, by citing Rule 220(b), SCACR, and issued rulings as they related to two elements involved in the Appellant's appeal; (1) As to whether the circuit court erred in ruling that the estreatment was proper; and (2) As to whether the circuit court erred in making an arbitrary and capricious decision in the amount of

monies to be estreated.. The Appellant would respectfully submit that in this Court's ruling, the Court did not fully and adequately consider the essential elements of this case. The Court overlooked the language of the conflicting statutes regarding bond estreatment conditions, and failed to properly consider the *Ex parte Polk* elements which were insufficiently and inaccurately considered by the trial court.

1. In this matter, the Court overlooked and did not fully consider the Trial Court's estreatment of an appearance recognizance bond where the Defendant was made available for all Court proceedings..

The essential question in this matter revolves around two conflicting concepts currently existing in the Bonding law. The Court's affirmation of the estreatment relating to a breach of the "good behavior clause" stemming from S.C. Code Ann Section 17-15-170 (2014) does allow a potential for estreatment, but the fact that the bond in this matter was for an appearance is overlooked.

The Court's reliance on Workman is difficult to reconcile with the conflicting statutes when recognizing that the "good behavior clause," is a secondary concern to the overriding purpose of a recognizance bond which is to insure the defendant's appearance in court. State v. Workman, 274 S.C. 341, 263 S.E. (2d) 865 (1980); Town of Mayesville v. McCutcheon, 205 S.C. 241, 31 S.E. (2d) 390 (1944); Saunders v. Hughes, 2 Bailey 504 (1831) The conflict of statutes arises between , SC Code Section 17-15-20 which establishes the premise that bonds allowing the release of a Defendant facing criminal charges are specifically for appearance, and SC Code Section 38-53-70 which address exoneration of a bondsman upon delivery of a Defendant to the custody of the State.

SC Code Section 17-15-20 states:

(A) An appearance recognizance or appearance bond must be conditioned on the person charged personally appearing before the court specified to answer the charge or indictment and to do and receive what is enjoined by the court, and not to leave the State, and be of good behavior toward all the citizens of the State, or especially toward a person or persons specified by the court.

(B) Unless a bench warrant is issued, an appearance recognizance or an appearance bond is discharged upon adjudication, a finding of guilt, a deferred disposition, or as otherwise provided by law. An appearance bond is valid for a period of three years from the date the bond is executed for a charge triable in circuit court and eighteen months from the date the bond is executed for a charge triable in magistrates or municipal court. In order for the surety to be relieved of liability on the appearance bond when the time period has run, the surety must provide sixty days written notice to the solicitor, when appropriate, and the respective clerk of court, chief magistrate, or municipal court judge with jurisdiction over the offense of the surety's intent to assert that the person is no longer subject to a valid appearance bond. If the appropriate court determines the person has substantially complied with his court obligations and the solicitor does not object within the required sixty days by demanding a hearing, the court shall order the appearance bond converted to a personal recognizance bond and the surety relieved of liability.

And SC Code Ann Sec 38-53-70, which states in pertinent part:

At any time before execution is issued on a judgment of forfeiture against a defendant or his surety, the court may direct that the judgment be remitted in whole or in part, upon conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. 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. The court, in its discretion, may permit the surety to pay the estreatment in installments for a period of up to six months; however, the surety shall pay a handling fee to the court in an amount equal to four percent of the value of the bond. If at any time during the period in which installments are to be paid the defendant is surrendered to the appropriate detention facility and the surety complies with the recommitment procedures, the surety is relieved of further liability.

Ultimately, the Appellant maintains that the obligation as a surety for an appearance recognizance bond is satisfied when an individual Defendant appears for Court and ultimately has their criminal case adjudicated. By statute if they did not do this prior to the issuance of a

bench warrant, their obligation is further completed upon delivery of the Defendant to the Court and upon such delivery, the bondsman should be exonerated from any obligation as allowed for under the Statute.

The Appellant agrees with the Court's ruling that an individual who is out on bond must comply with specific requirements relating their release, and that a bond may be revoked for failure of a Defendant to adhere to conditions of release like that of good behavior, and finally the Appellant acknowledges that estreatment may be proper upon a violation of bond terms, however that estreatment must be conditional and the penalty may be relieved upon completion of the surrender of the Defendant to the State in accordance with the Statute. (App. Br. pp 7-8)

In the present matter the Court acknowledges a violation of a condition of the Defendant's bond and further recognized the trial court's apparent ability to order an estreatment, however the Court does not reconcile the order of estreatment with the fact that the Appellant did surrender the Defendant to the Court prior to its execution, and certainly before the establishing an allotted payment period. As such the surety should have been relieved from all further liability.

The Appellant bondsman did as was required and delivered the Defendant to justice after they were informed the State was seeking a bond revocation. The Appellant completed their obligation as an appearance surety fully. Immediately upon completion of the surrender of the Defendant the Appellant should have been relieved from any liabilities under an order of estreatment.

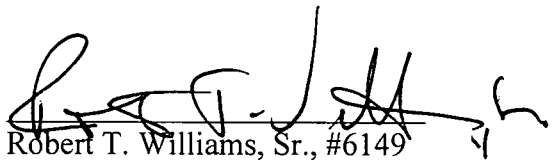
2. The Court overlooked essential elements of the Appellant's appeal by affirming the Trial Court's decision regarding the amount of the estreatment ordered.

In making its ruling regarding the amount of estreatment ordered, the Court focused its *Ex parte Polk* analysis to find that a trial court may consider elements beyond the actual costs to the State. The Court ruled that the trial court can consider the costs and inconvenience to the State as well as seek to provide a deterrent against defendants from future violations. Additionally, the Court laid the burden upon the Appellant or the Defendant to demonstrate a lack of prejudice upon the State. The Appellant generally agrees on this position however it feels the Court did not fully examine the actual facts as they relate to these concepts. (App. Br. pp 8-10)

In the present matter the Defendant was remitted to the custody of the State by the Appellants prior to any actual trial preparation or trial proceedings. There was absolutely no burden placed on the State in his prosecution. The State suffered no real or theoretical prejudice in preparing to seek justice against the Defendant on his outstanding charges where he was in their custody. Subsequent to the Appellant's actions, the State was left in this matter in the exact position they would have been had the Defendant never been bonded out in the first place. No time nor resources were expended to locate the Defendant, re-secure his custody, or have his underlying charges adjudicated. The only costs put forward by the State in this matter were those created in preparing for an attempt to estreat money from the Appellants; and nothing towards the actual prosecution of the Defendant. This consideration would not qualify as the costs contemplated by the *Polk* rationale. (App. Br. pp 10)

In light of the foregoing, the Appellant would respectfully request the Court grant this Petition, withdraw its previous opinion, and reverse the rulings of the Trial Court.

February 29, 2016



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February 29, 2016

Scarlett A. Wilson, Solicitor
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Charleston, South Carolina 29401

Re: State of South Carolina v. Deangelo Mitchell and AA Ace Bail by Frances and Palmetto
Surety Corp., Sureties for the Defendant
Appellate Case No. 2014-001516

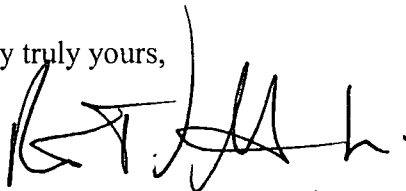
Dear Ms. Wilson and Mr. Stack:

Please find enclosed two (2) copies of the Appellant's Petition of Rehearing relative to the
above-referenced matter which I hereby serve upon you.

If you have any questions, please give me a call.

With kindest regards, I am

Very truly yours,



Robert T. Williams, Sr.

RTW/gma

Enclosure

cc: Palmetto Surety Corp.
Jenny Abbott Kitchings, Clerk of Court

Located in historic downtown Lexington at 206 East Main Street



WILLIAMS, HENDRIX, STEIGNER & BRINK, P.A.

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February 29, 2016

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Salley W. Elliott, Assistant Attorney General
Christina Catoe Bigelow, Assistant Attorney General
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Columbia, South Carolina 29211

Re: State of South Carolina v. Deangelo Mitchell and AA Ace Bail by Frances and Palmetto
Surety Corp., Sureties for the Defendant
Appellate Case No. 2014-001516

Dear Mr. Wilson, Ms. Elliott and Ms. Bigelow:

Please find enclosed two (2) copies of the Appellant's Petition of Rehearing relative to the
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If you have any questions, please give me a call.

With kindest regards, I am

Very truly yours,



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Enclosures

cc: Palmetto Surety Corp.
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P.O. Box 11629
Columbia, SC 29211

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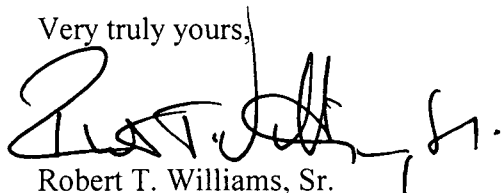
Dear Ms. Kitchings:

Please find enclosed for filing one (1) original and seven (7) copies of the Appellant's Petition of Rehearing in the case noted above. After filing, please return a clocked copy to this office in the envelope provided for your convenience.

If you have any questions, please give me a call.

With kindest regards, I am

Very truly yours,



Robert T. Williams, Sr.

RTW/gma

Enclosures

cc: Alan Wilson, Attorney General
Salley W. Elliott, Assistant Attorney General
Christina Catoe Bigelow, Assistant Attorney General
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