

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Stephanie P. McDonald, Circuit Court Judge

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SC SUPREME COURT

Unpublished Opinion No. 2016-UP-070 (S.C. Ct. App. February 17, 2016)
(Denial of Rehearing Filed April 22, 2016)

The State of South Carolina Respondent,

v.

Deangelo Mitchell, Defendant,

and

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

PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err by affirming the Trial Court's Order estreating Defendant Mitchell's appearance recognizance bond where the Defendant was made available for all Court proceedings?
2. Did the Court of Appeals err by affirming the Trial Court's Order regarding the amount of estreatment where it was arbitrary and capricious and did not comply with the factors established by Ex Parte Polk?

STATEMENT OF THE CASE

On or about September 19, 2011 Deangelo Mitchell was arrested on warrant M726862 (Possession with Intent to Distribute Cocaine), and subsequently released on a \$25,000.00 surety bond. On or about December 20, 2011 Mr. Mitchell was arrested on warrants M99502 (Trafficking in Cocaine), M995386 (Manslaughter), and M995387 (Distribution of Cocaine) and a \$400,000.00 surety bond was set. During a preliminary hearing on January 25, 2012 Mr. Mitchell's bond was consolidated on all of his pending charges and with the consent of the State a \$150,000.00 surety bond was set with the specific condition of house arrest and electronic monitoring that was to be provided by a third party company. On February 13, 2012, a \$150,000.00 appearance recognizance surety bond was executed by the Petitioner with the Charleston County Clerk of Court.

On July 26, 2012, Deangelo Mitchell was called to Court before the Honorable Stephanie P. McDonald upon request by the State for a hearing to determine whether a revocation of his bond was appropriate as a result of alleged violations to the electronic monitoring element of the \$150,000.00 appearance recognizance surety bond Order issued January 25, 2012. Mr. Mitchell did appear on this date and after hearing testimony and arguments, the Court issued an Order revoking his bond and remanding Mr. Mitchell into custody.

On August 8, 2012 a Notice of Forfeited Recognizance was filed by the State seeking an estreatment of the bond posted by the Appellant. Two hearings were held regarding the State's request for estreatment, one on September 7, 2012 and an additional hearing on October 11, 2012.

Mr. Mitchell remained in the custody of the County Detention Center until he entered a guilty plea on September 16, 2013. Upon entry of his plea, Mr. Mitchell was remanded to the

South Carolina Department of Corrections where he remains currently serving an active sentence.

On July 8, 2014 an Order of Estreatment of Bond was filed by the Honorable Stephanie P. McDonald, said order was received by the Petitioner on July 9, 2014. A Notice of Intent to Appeal was filed by the Petitioner on July 15, 2014. The Court of Appeals issued its ruling on February 17, 2016 and a timely motion to reconsider was filed by the Appellants. The Court of Appeals denied the petition for rehearing by Order on April 22, 2016.

ARGUMENT

- 1. The Court of Appeals erred by affirming the Trial Court's Order estreating Defendant Mitchell's appearance recognizance bond where the Defendant was made available for all Court proceedings.**

The Court of Appeals affirmed the Trial Court's ruling ordering the estreatment of the Defendant's appearance bond in err. The Court's ruling did not address the inherent conflict within our Statutes regarding bonding laws. Specifically, the Court's reliance on Workman is difficult to reconcile with the conflicting statutes dealing with bonds where it would appear that the overriding priority of all bonds is to insure the appearance of a Defendant 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 Petitioner 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 Petitioner 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. The Petitioner further acknowledges that estreatment may be proper upon a violation of bond terms, however

would argue that the estreatment must be conditional and the penalty should be relieved upon the surrender of the Defendant to the State in accordance with the SC Code Ann Sec 38-53-70.

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

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

If the Courts were to hold a Bondsman accountable for all actions of a Defendant while out on bond, without providing any incentive to deliver a Defendant to the Court in compliance with their appearance bond the system would fail. SC Code Ann Sec 38-53-70 exists for just this reason. The fact the Petitioner completed their obligation as an appearance surety prior to the necessity of the State to seek a bench warrant for non-appearance and are now being punitively punished is unconscionable.

If the prior Order of the Court were to remain the law of this case, this would mean that the Petitioner need only wait for the issuance of a bench warrant and the subsequent estreatment order then place a Defendant in custody to suffer no extended financial liability. In essence, the

Order would encourage a lack of diligent and timely action by the Petitioner since acting prior to the issuance of a Bench Warrant results in financial damages.

2. The Court of Appeals erred by affirming the Trial Court's Order regarding the amount of estreatment where it was arbitrary and capricious and did not comply with the factors established by Ex Parte Polk.

While the Petitioner maintains no estreatment was appropriate in his matter, if the Court were to rule in the alternative, a thorough Polk analysis must be considered in all estreatment cases and at a minimum the trial Judge must consider the following Three (3) factors:

1. The purpose of the Bond.
2. The nature and wilfulness of the default.
3. Any prejudice or additional expense resulting the State stemming from the Default.

After careful weighing of these Three (3) factors the Court is to use its discretion in determining a proper estreatment amount.

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 Petitioner or the Defendant to demonstrate a lack of prejudice upon the State. The Petitioner generally agrees on this position however it feels the Court did not fully examine the actual facts as they relate to these concepts.

It is the Appellant's position that the Court did not give the proper examination of these factors and failed to properly address the requirements in its ruling that an estreatment be ordered

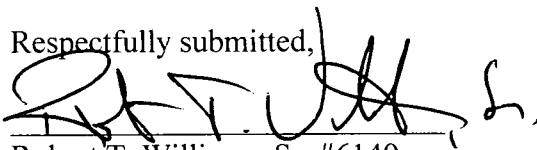
in the amount of Seventy Five Thousand Dollars (\$75,000.00)

In the present matter the Defendant was remitted to the custody of the State by the Petitioner 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.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should grant certiorari, reverse the decision of the Court of Appeals affirming rulings of the Trial Court as it relates to: Order of estreatment of an appearance bond where the Petitioner successfully completed its obligations, and further hold that the estreatment amount ordered represented an arbitrary and capricious amount not congruous with a proper Polk analysis.

The Petitioner respectfully requests the Court overturn the Order of Estreatment and direct the Trial Court to issue an Order in favor of the Petitioner absolving them of any liability, or at a minimum remand the matter for consideration by the Trial Court for a proper examination of the required elements for an estreatment Order.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

May 11, 2016.

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CERTIFICATE OF COUNSEL

The undersigned certifies that a petition for rehearing was made to and finally ruled upon by the Court of Appeals.



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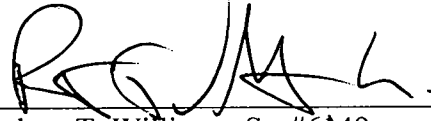
AA Ace Bail by Frances and Palmetto Surety Corp., as Surety, Petitioner.

PROOF OF SERVICE

I certify that I have served the **Petition for Certiorari and Appendix** on the Respondent by depositing copies of it in the United States Mail, postage prepaid, on May 11, 2016, addressed to Alan M. Wilson, Attorney General, Vann Henry Gunter, Jr., Assistant Attorney General, Office of the Attorney General, Post Office Box 11549 Columbia, South Carolina 29211-1549; Scarlett Anne Wilson, 9th Circuit Solicitor, O.T. Wallace Building, 101 Meeting Street Charleston, SC 29401 ; and a copy of the **Petition for Certiorari** was served on Jenny Abbott Kitchings, Clerk of Court, S.C. Court of Appeals, Post Office Box 11629, Columbia, South Carolina, 29211, postage prepaid and deposited in the United States Mail on May 11, 2016.

I further certify that all parties required to be served have been served.

Dated: May 11, 2016



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