THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. "Jack" Early, III, Circuit Court Judge

Case Number: 2016-000140

The State of South Carolina ..... Respondent,

v.

Julie Ann Getson, Defendant, Christy Nimau, Georgia-Carolina Enterprises, Inc., Surety, and Accredit Insurance Co., Insurance Company,
Of which Georgia-Carolina Enterprises, Inc. is the .....Appellant

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APPELLANT'S FINAL BRIEF

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APPELLANT'S STATEMENT OF THE CASE

This is an appeal of the trial court's estreatment in full of a five thousand dollar ($5000.00) surety bond. On March 13, 2014, Appellant/surety, as agent for Insurance Company, posted that bond to secure Defendant's release pending trial (Bail Proceeding Form II, warrant 2014A0210200244; Record pp. 3-4) on one count of Forgery/Possession of Counterfeit Currency.

On March 16, 2015, Defendant having failed to appear for General Sessions Court in the County of Aiken, a Bench Warrant for her arrest was issued. The State does not dispute that the March 16, 2015 Bench Warrant was entered into the National Criminal Information Center (NCIC) database (NCIC # W133121477) in such a way that Defendant was only to be extradited from the states of South Carolina, Georgia and North Carolina.

In early February of 2015, prior to the issuance of the Bench Warrant, surety discovered that Defendant had left the State of South Carolina, and that the Crossville, Tennessee, Police Department had a counterfeit investigation centering on Defendant with active warrant(s). Surety further discovered that the Tennessee warrant(s) were not being placed into the NCIC. Surety began actively seeking Defendant in order to surrender her to the Aiken County Detention Center, and to seek to be relieved from bond.

In the course of seeking Defendant from April through June of 2015, surety located her at a residence in Lincolnton, North Carolina in May, and sent agents to unsuccessfully seek her recovery. Later they tracked Defendant to Carson City,

Nevada, then to Phoenix, Arizona, then in early June to a specific motel and address in Tulare County, California. It was presented to the Court, and was not disputed by the State in any way, that Surety was not allowed to conduct recovery operations in Arizona, Nevada or California, and that doing so would expose surety and/or its agents to criminal prosecution.

On June 2, 2015, having located Defendant in Tulare County, California, Surety entered into a recovery contract with a California Recovery Agent. California law provides a strict procedure for an out of state bondsman to seek recovery of a fugitive from California. Pursuant to the California Penal Code, the agent confirmed the hotel location, then arranged on June 3, 2015 for the submission of an Affidavit to the Superior Court of California, County of Tulare, who then issued an Order to issue a warrant for the arrest of Defendant.

Surety has done everything possible under the law, which was admitted by the State and commented on repeatedly by the trial Court. Despite the Order, the recovery agent in California has not successfully arrested Defendant. None of the above is disputed by the State.

On June 13, 2015, Surety wrote the Solicitor's Office, and provided them with detailed information about their efforts to recover Defendant, including information about Defendant and aliases she might use, and specific information about her location and known associates in California, along with contact information for the associates. As of that date, the State had specific, detailed information about Defendant's location, but did not update the NCIC to allow for extradition from

California, and the State has made no representation that law enforcement from South Carolina ever contacted California, or made any effort whatsoever to recover Defendant from California.

On July 9, 2015, the Defendant had not been located, and Solicitor filed a Notice of Forfeited Recognizance (Record p.5). Based upon that Notice, the Court entered a Conditional Order to Estreat Bond on the same date (Record, p.6). The Conditional Order set a hearing date for the matter to be heard by the Court. By the terms of the Conditional Order, the hearing was to be held pursuant to S.C. Code Ann. § 17-15-180, which holds "that upon cause, when a recognizance is forfeited from....unavoidable impediment and not from willful default, the court...may remit the whole or any part of the forfeiture as may be deemed reasonable."

After a September 8, 2015 hearing, the Court entered a September 29, 2015 Final Order for Estreatment of Bond (Record pp. 7-8) by which the entire bond was estreated.

Appellant filed and served a Motion to Reconsider the Final Order for Estreatment of Bond (Record pp. 9-13), asserting that the Court should have remitted some portion of the estreatment. The Court allowed hearing on that Motion November 10, 2015. On December 28, 2015, the Court entered an Order Denying Surety's Motion for Reconsideration (Record pp. 14-15). This Appeal followed.

ARGUMENT

I. THE TRIAL COURT ERRED BY FAILING TO CONSIDER THE (LACK OF) COSTS TO THE STATE, AND THE (LACK OF) EFFORTS OF LAW ENFORCEMENT TO LOCATE THE DEFENDANT WHEN ESTREATING DEFENDANT'S BOND IN FULL, AND NOT REMITTING ANY PORTION THEREOF.

AUTHORITY AND DISCUSSION OF AUTHORITY

S.C. Code Ann. § 17-15-170

S.C. Code Ann. § 17-15-180

S.C. Code Ann. § 38-53-70

Ex Parte Polk; 354 S.C. 8; 579 S.E.2d 329 (Ct.App.2003)

State v. Boatwright, 310 S.C. 281; 423 S.E.2d 139 (1992)

While the defendant is released on bail, he is in the constructive custody of the bondsman. When the terms of the bond are breached, the bond is estreated by a conditional order. The bondsman is then entitled to notice and an opportunity to be heard to show cause as to why the estreatment order should not become final. Because the bond has already been estreated by the conditional order, the second hearing is to determine the amount, if any, to be remitted. Boatwright at 285-6 (internal citations omitted); S.C. Code Ann. § 17-15-170 (1976).

In making the determination as to remission, § 38-53-70 of the South Carolina Code (2010) applies, reading in part:

"the court may direct that the judgment be remitted in whole or in part...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.**" (emphasis added).

The Court in Ex Parte Polk; 354 S.C. 8; 579 S.E.2d 329 (Ct.App.2003), *citing and adopting* Justice Toal's dissent in State v. Boatwright, 310 S.C. 281; 423 S.E.2d 139 (1992), further determined that in applying § 38-53-70 to determine to whether, and to what extent, the bond should be remitted, the trial court is not limited to considering only the actual cost to the State, but should consider the following: (1) the purpose of the bond; (2) the nature and willfulness of the default; (3) any prejudice or additional expense resulting to the State. Polk at 12-13.

"The overriding purpose of requiring a criminal defendant to post bond before releasing the defendant from custody is to insure the defendant's appearance in court. Bail is not a revenue measure[.]" Boatwright at 285. Justice Toal also noted that "South Carolina has long encouraged bondsmen to enter into bail contracts, in order to facilitate the release of defendants whose guilt has yet to be **determined and to relieve the state of the cost of providing for the defendants while in jail.**" Boatwright at 285 (emphasis added).

FACTS AND ARGUMENT

It was error to estreat this bond without considering the lack of costs to the state, and to ignore that law enforcement has taken no efforts to recover the Defendant. It was not contested at any point that there had been no actual cost to the state. The solicitor agreed with that fact (Nov. 10 trans p. 10; Record p. 43), and the Court agreed (Nov. 10 trans. p. 6, 16; Record p. 39, 49).

It is also not contested by the State that law enforcement made absolutely no effort to locate Defendant. That is despite being presented by the Surety with detailed information about her location, and Surety taking all possible steps, including obtaining a California Order and warrant to arrest the Defendant. The State stipulated that the Bench Warrant for Defendant had been entered into NCIC with extradition only from Georgia and North Carolina. The State admits the low value of this case by saying that [Defendant] is "beyond the practical cost range of the State trying to get her" as it would likely cost more than $5,000, and that the State would only go to Georgia or North Carolina to get [Defendant], as it "costs more to go get them than the case is worth[.]" (Nov. Trans p.11-12; Record pp. 44-45). There has been no prejudice to the State, who conceded that the prosecution of this case is not worth the cost of recovering Defendant from California. It is hard to reach any conclusion but that the State would rather have Surety's $5000.00 than the Defendant.

Appellant notes that at the September 8, 2015 hearing which yielded the

Final Order to Estreat, the State expressly represented that "if there's something I can do to help extradite [Defendant], I'm here and I'll do it." (Sep. Trans p.8; Record p.35). It is not in dispute that after that hearing, the State did not change the NCIC entry to allow for extradition from California.

Surety believes that the State's decision, (even after being notified by Surety that Defendant had been tracked, at great expense, to California, and that Surety had obtained an Order for her arrest, and of her probable location and the location of her known associates) not to enter the Bench Warrant into NCIC as extraditable from California demonstrates that getting Defendant to Court was never the State's focus. The State conceded that extraditing Defendant would have yielded actual costs to the State.

Had Defendant been arrested in California, and extradited to South Carolina, ***there would be costs to the State,*** and so the estreatment would be supported by evidence of both costs and efforts of law enforcement. Instead, the State chose to avoid costs, and conceded that they chose not to recover Defendant by extradition, so there should have been remittance to Surety.

CONCLUSION

The law and history of the State is for the bondsman to be a partner to the State in recovering defendants, not to be a source of revenue. The Legislature in § 38-53-70 bases the *bondsman's* financial liability on the *State's* costs and efforts, not the bondsman's. That at first seems inequitable, but the Legislature does not make mistakes, and the fairness is subtle but strong.

Where the State makes efforts to recover a Defendant, and expends costs to do so, (in effect doing the bondsman's job for them) it makes sense to pass those costs to the bondsman. That encourages bondsmen to take all reasonable efforts to locate the defendant before the state can; "the possible forfeiture of bond is incentive for sureties to ensure the appearance of the defendant." Polk at 11.

This case is the opposite. In terms of effort, the trial Court agreed the bondsman "can't do more than what he's done" (Nov. Trans p. 8; Record p. 41), had done "everything" (Nov. Trans p.9; Record p. 42) and had gone "beyond the call of duty," (Nov. Trans. p. 14; Record p. 47). At the same time, the State admits it has incurred no actual costs (in a case they admit has little value). The State has never disputed Appellant's position that Law Enforcement has taken no efforts to recover the Defendant. Appellant notes the State has not even "flipped a switch" in NCIC to seek extradition of the Defendant to South Carolina. Justice requires the Court to remit all or most of the estreated bond to Surety.

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies this Final Brief complies with Rule 211, SCACR.

May 23, 2016

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