

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 11 2016

CERTIORARI TO THE SUPREME COURT

SC SUPREME COURT

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

Unpublished Opinion No. 2016-UP-070 (S. C. CT.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.

APPENDIX

ALAN M. WILSON
Attorney General

V. Henry Gunter
Assistant Attorney General
Post Office Box 11549
Columbia, S.C. 29211

ATTORNEYS FOR RESPONDENT

ROBERT T. WILLIAMS, SR. #6149
BENJAMIN A. STITELY, #75339
Williams, Stitely & Brink, P.C.
200 East Main Street
Post Office Box 2390
Lexington, S.C. 29071
(803) 359-9000

ATTORNEYS FOR PETITIONER

INDEX

	<u>Page</u>
COURT OF APPEALS DECISION	1-4
PETITION FOR REHEARING	5-10
ORDER DENYING PETITION FOR REHEARING	11-12

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Deangelo Mitchell, Defendant,

and

AA Ace Bail by Frances and Palmetto Surety Corp.,
Sureties for the Defendant, Appellants.

Appellate Case No. 2014-001516

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

Unpublished Opinion No. 2016-UP-070
Heard January 7, 2016 – Filed February 17, 2016

AFFIRMED

Robert T. Williams, Sr. and Benjamin Allen Stitely, both
of Williams Hendrix Steigner & Brink, PA, of Lexington,
for Appellants.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Vann Henry Gunter, Jr., both of

Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: AA Ace Bail by Frances and Palmetto Surety Corporation (collectively, Bond Company) appeal the estreatment of an appearance recognizance bond issued to secure the release of Deangelo Mitchell pending trial. Bond Company argues the estreatment was improper because its obligation under the bond was satisfied when Bond Company produced Mitchell for his bond revocation hearing. Further, Bond Company asserts if the estreatment was proper, the amount of the estreatment was arbitrary and capricious. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the estreatment was improper: *State v. Lara*, 386 S.C. 104, 107, 687 S.E.2d 26, 28 (2009) ("An appellate court reviews the circuit court's ruling on the forfeiture or remission of a bail bond for abuse of discretion."); S.C. Code Ann. § 17-15-20(A) (2014) (providing an "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" (emphases added)); S.C. Code Ann. § 17-15-170 (2014) (providing when the conditions of a bond are breached, the State shall seek a judgment against the parties bound by the bond); *State v. Boatwright*, 310 S.C. 281, 283, 423 S.E.2d 139, 140 (1992) ("Estreatment for a violation of the good behavior condition is proper."); *State v. Workman*, 274 S.C. 341, 343, 263 S.E.2d 865, 865-66 (1980) (affirming the estreatment of a bond for violating the good behavior condition when the defendant was convicted of an unrelated charge while on an appeal bond but remanding for reconsideration of the amount of estreatment); *Boatwright*, 310 S.C. at 282-83, 423 S.E.2d at 140-41 (finding proper a bond estreatment for violating the good behavior condition when the defendant was subsequently charged and pled guilty to an unrelated charge while on bond).

2. As to whether the estreatment amount was arbitrary and capricious: *Ex parte Polk*, 354 S.C. 8, 13, 579 S.E.2d 329, 331 (Ct. App. 2003) ("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; [and] (3) any prejudice or additional expense resulting to the State."); *id.* at 12-13, 579 S.E.2d at 331 ("We note, however, that in determining whether any remission of the judgment is warranted,

the trial court is not limited to considering only the actual cost to the State."); *State v. Holloway*, 262 S.C. 552, 557, 206 S.E.2d 822, 824 (1974) ("[T]he burden [is on the defendant] to show lack of prejudice on the part of the State"); *Jeffers v. United States*, 588 F.2d 425, 427 (4th Cir. 1978) ("Two competing principles control remission. First, a forfeiture should bear some reasonable relation to the cost and inconvenience to the government and the courts. Second, if a violation of a condition of release is more than technical, the court may require a substantial forfeiture to deter not only the defendant but others from future violations." (citation omitted)).

AFFIRMED.

FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.

4

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.

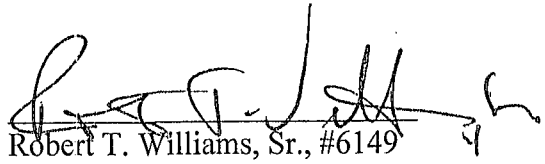
2. The Court overlooked essential elements of the Appellant's appeal by affirming the Trial Court's decision regarding the amount of the estreatment ordered.

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



Robert T. Williams, Sr., #6149
Benjamin A. Stitely, #75339
Williams, Hendrix, Steigner & Brink, P.A.
206 East Main Street
Post Office Box 849
Lexington, South Carolina 29071
(803) 359-1550

Attorneys for Appellant

The South Carolina Court of Appeals

The State, Respondent,

v.

Deangelo Mitchell, Defendant,

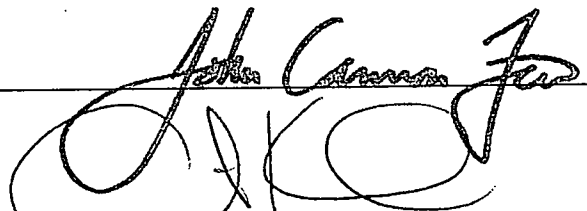
and

AA Ace Bail by Frances and Palmetto Surety Corp.,
Sureties for the Defendant, Appellants.

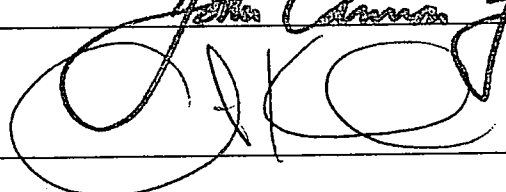
Appellate Case No. 2014-001516

ORDER

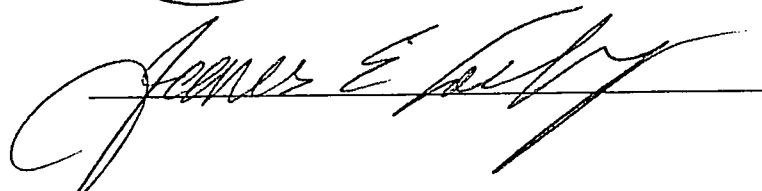
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

FILED

cc:

4/22/16

Scarlett Anne Wilson, Esquire
Alan McCrory Wilson, Esquire
Robert T. Williams, Sr., Esquire
Benjamin Allen Stitely, Esquire
Vann Henry Gunter, Jr., Esquire