STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of General Sessions

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2017-002559

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RONNIE CARROL TUCKER,

DEFENDANT,

AND

BAIL OUT BONDING, SURETY FOR THE DEFENDANT,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly estreated the defendant's bond where the defendant willfully failed to appear at the February 16, 2016 term of General Sessions and where the defendant's entry into pre-trial intervention did not constitute a "deferred disposition" within the meaning of S.C. Code Ann. § 17-15-20(B).

STATEMENT OF THE CASE

Ronnie Tucker was arrested and subsequently indicted for two counts of unlawful conduct towards a child. (2014-GS-39-2373, 2014-GS-39-2374). On September 4, 2014, he was released on a $10,000 surety bond with Bail Out Bonding signing as surety. Tucker subsequently failed to appear at the February 16, 2016 term of General Sessions Court. Following Tucker's failure to appear, the solicitor's office provided Bail Out Bonding with a notice of forfeited recognizance, informing them the solicitor's office would begin estreatment procedures immediately. The Honorable Perry H. Gravely subsequently issued a Conditional Order to Estreat Bond on November 1, 2017.

On December 15, 2017, a hearing was held before Judge Gravely for consideration of the Conditional Order to Estreat Bond. At the hearing, counsel for Bail Out Bonding argued the bond company's obligations under the terms of the surety agreement were no longer in place because Tucker enrolled in a pre-trial intervention program. Tr. p. 3. Defense Counsel argued:

> [I]t is the bonding companies contention and our position that the bond is no longer - - at least, his obligation on it is no longer in place. In support of that, Your Honor, I'd point the Court's attention to South Carolina Code Section 17-15-20, specifically, Paragraph B. There is a - - the first sentence in that is, Unless a bench warrant is issued, an appearance recognizance or an appearance bond is discharged upon adjudication, a finding of guilty, a deferred disposition, or as otherwise provided by law. In this particular case, Mr. Tucker, Your Honor, was, initially, referred to the pre-trial intervention program. It is our contention and our belief that that constitutes a deferred disposition in the case. It clearly is a program that is - - that where the Prosecution of the case is deferred, depending upon his success or failure in the program. So, Your Honor - - and, like I said, what we contend is that that is a deferred disposition.

Tr. p. 4. Defense Counsel noted Tucker failed out of the pre-trial intervention program after six months. Tr. p. 4. Tucker then subsequently failed to appear when his case was called. Tr. p. 4. Defense Counsel alleged the bondsman thought the case ended once Tucker got into pre-trial intervention. Tr. p. 4. In response, the solicitor argued pre-trial intervention is not a deferred

disposition. Tr. p. 5. The solicitor noted, "When a defendant is sent to PTI, the case is still pending in our office. The Clerk's Office is not notified as they are with, like a conditional discharge." Tr. p. 6. The solicitor further noted, "If a person fails out of PTI, it comes back to us where we would then bond card them into court as is what happened here." Tr. p. 6. The trial judge rejected Defense Counsel's arguments and held that a deferred disposition is, "when you're - - deferred sentencing, and those kind of things. So - - or possibly a conditional discharge." Tr. p. 6. After hearing argument by the solicitor and Defense Counsel on the appropriate estreatment amount, the trial judge estreated twenty-five percent of the bond ($2,500). Tr. p. 8.

ARGUMENT

The circuit court properly estreated the defendant's bond where the defendant willfully failed to appear at the February 16, 2016 term of General Sessions where the defendant's entry into pre-trial intervention did not constitute a "deferred disposition" within the meaning of S.C. Code Ann. § 17-15-20(B).

Appellant contends the trial judge erred in estreating the bond in the present case because the surety's obligation to ensure the defendant's appearance at trial terminated when the defendant entered a pre-trial intervention program. Appellant avers that entry into a pre-trial intervention program constitutes a deferred disposition within the meaning of S.C. Code Ann. § 17-15-20(B). On the contrary, Tucker's entry into a pre-trial intervention program did not constitute a deferred disposition and Tucker remained in the constructive custody of the bondsman. The bondsman was obligated to enforce the conditions of the bond agreement until there was some sort of disposition in the case.

The overriding purpose of requiring a criminal defendant to post bond before his release from custody is to insure his appearance at trial. State v. Boatwright, 310 S.C. 281, 285, 432 S.E.2d 139, 141 (1992). (Toal, J., dissenting). "[T]he State's right to estreatment or forfeiture of a bail bond issued in a criminal case arises from the contract, *i.e.*, the bail bond form signed by the parties." State v. McClinton, 369 S.C. 167, 171, 631 S.E.2d 895, 897 (2006). As guarantor, the surety on an appearance bond undertakes the risk of forfeiture in the event the defendant does not appear for trial. Pride v. Anders, 266 S.C. 338, 341, 223 S.E.2d 184, 186 (1976).

S.C. Code Ann. § 17-15-20(B) provides:

> 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.

S.C. Code Ann. § 17-15-20(B) (2012). Seeing as there was no adjudication or finding of guilt in Tucker's case, the determining critical inquiry is whether Tucker's enrollment in pre-trial intervention constitutes a "deferred disposition."

Appellant's chosen definition of deferred disposition is, "any program that delays or postpones the disposition of a criminal case." Br. of App. p. 2. This definition is overly broad and overlooks the nature of pre-trial intervention. The examples of deferred disposition provided by the trial judge were deferred sentencing or a conditional discharge. Deferred sentencing and conditional discharge both require judicial action, while pre-trial intervention is an agreement between the defendant and the solicitor's office. Judicial action is thus what distinguishes deferred sentencing and a conditional discharge from pre-trial intervention. Notably, the other terms the statute uses when describing when the bondman's duty is charged, "adjudication" and "finding of guilt," both require action on the part of a judge or jury.

"Generally, the decision to grant or deny pretrial diversion is a discretionary one that lies with the prosecuting attorney. A prosecutor's discretion in considering a defendant's application for pretrial intervention arises out of the fundamental responsibility of the prosecutor to decide whom to prosecute." 22A C.J.S. Criminal Procedure and Rights of Accused § 295 (2018). S.C. Code Ann. § 17-22-150(a) provides in relevant part, "In the event an offender successfully completes a pretrial intervention program, the solicitor shall effect a noncriminal disposition of

the charge or charges pending against the offender. . . ." S.C. Code Ann. § 17-22-150(b) provides that in the event the offender violates the conditions of the program, "(1) the solicitor may terminate the offender's participation in the program, (2) the waiver executed pursuant to § 17-22-90 shall be void on the date the offender is removed from the program for the violation and (3) the prosecution of pending criminal charges against the offender shall be resumed by the solicitor." The determination of pre-trial intervention eligibility is a completely discretionary executive decision and is not reviewable by the judicial department. State v. Tootle, 330 S.C. 512, 515, 500 S.E.2d 481, 483 (1998).

Tucker's entry into a pre-trial intervention program did nothing to alleviate the bondsman's obligations under the terms of the bond agreement, as Tucker still had serious criminal charges pending. As noted by S.C. Code Ann. § 17-22-150(a), there is no disposition in the case until the offender has completed the program. In the event the offender fails out of the program, the solicitor's office resumes the prosecution. There was no deferment of a disposition in the case; rather the solicitor, in his discretion, elected to allow Tucker to enter the program and did not seek to prosecute Tucker's case while he sought to complete the program.[1] While there is judicial action in cases where a sentence is deferred or there is a conditional discharge[2], Judge Gravely had no part in Tucker's entry into pre-trial intervention. Because Tucker still had serious charges pending, there was no reason to eliminate the bond agreement just because he entered

[1] While Tucker remained in pre-trial intervention, his case was simply a pending case for which the solicitor was not actively seeking a disposition.

[2] A conditional discharge would clearly constitute a deferred disposition and would merit a bondman's duties being discharged because the judge is placing the defendant on probation upon terms and conditions required by the court. Similarly, deferred sentencing requires judicial action to delay the sentencing and the trial judge would have to ask the bondsman to stay on the bond if the court thought it proper for the defendant to remain on bond. See State v. Hinojos, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011) (bondsman consented to remaining on bond after trial judge deferred sentencing).

pre-trial intervention.[3] Until there was a disposition of some sort in his case, Tucker remained in the constructive custody of the bondsman and they were responsible for ensuring his appearance at all court proceedings. If Bail Out Bonding did not wish to remain on Tucker's bond once he entered pre-trial intervention, they could have physically remanded Tucker to custody. See Boatwright, 310 S.C. 281, 286, 423 S.E.2d 139, 142 (Toal, J., dissenting) ("While the defendant is released on bail, he is in the constructive custody of the bondsman. The bondsman always has the authority to physically remand the defendant to the custody of the jurisdiction holding the bond and relieve himself from the obligation under the bond."). Instead, Tucker remained on bail and, despite the fact that he was enrolled in pre-trial intervention, the reasons for setting the bond in the first place remained. This Court should affirm the trial judge's ruling.

[3] Contrary to Appellant's contention, the fact that the defendant must waive his or her right to a speedy trial and agree to the tolling of all periods of limitation in order to enroll in the program has no bearing on whether pre-trial intervention constitutes a deferred disposition. That provision was enacted to ensure defendants could not raise constitutional challenges based on a lack of a speedy trial simply because they entered PTI. The fact remains that there was no deferment of a disposition simply because the solicitor agreed to enroll Tucker in PTI.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 12, 2018

STATE OF SOUTH CAROLINA
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APPEAL FROM PICKENS COUNTY

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The Honorable Perry H. Gravely, Circuit Court Judge

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PROOF OF SERVICE

I, Destiny Blue, certify that I have served the Initial Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Matthew M. Canady, Esquire, 204 Lavinia Avenue, Greenville, South Carolina 29601.

I further certify that all parties required by Rule to be served have been served.
This 12th day of April, 2018.

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ALAN WILSON
ATTORNEY GENERAL

April 12, 2018

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Ronnie Carrol Tucker (Bail Out Bonding)
Appellate Case No: 2017-002599

Dear Ms. Kitchings:

Enclosed please find the original copy of the Initial Brief of Respondent and Designation of Matter along with proof of service in the above-referenced case.

Sincerely,

V. Henry Gunter
Assistant Attorney General
S.C. Bar No: 102259

VHR/db
Enclosures

cc: Matthew M. Canady, Esquire
Victim Advocacy Division