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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
The Honorable Alexander Macaulay, Circuit Court Judge
Appellate Case No. 2013-000567

THE STATE,

Respondent,

-vs-

MARIO RAMOS HINOJOS, DEFENDANT, AND RICHARD G. THOMPSON d/b/a ALL-OUT BAIL BONDING, AS SURETY, AND ACCREDITED PROPERTY AND CASUALTY INS., AS SURETY, OF WHOM RICHARD G. THOMPSON d/b/a ALL-OUT BAIL BONDING, AS SURETY, AND ACCREDITED PROPERTY AND CASUALTY ARE,

Appellants.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

S. CREIGHTON WATERS
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT.

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STATEMENT OF THE CASE

On August 18, 2005, Defendant Mario Hinojos was arrested in Greenville County subsequent to a search warrant and charged with several drug related offenses. On August 22, 2005, bond was set on Hinojos in the amount of $200,000.00 surety. Hinojos procured three (3) separate bonding companies to act as bondsman to secure his release: Richard G. Thompson with All Out Bail Bonding (with Accredited Surety and Casualty Company and Insurers as surety) (collectively "All-Out"), Tracy Bowen with Bonds by Gaynell, and Leon Stowers with GiGi's bonding Company (with Palmetto Surety Corporation as surety for the latter two). Each bonding company was responsible for one third of the total bond, $66,666.66. **{R 1}**.

On March 15, 2007, Hinojos made a motion to have the electronic monitoring condition of his bond be removed. The motion was filed with the State Grand Jury Clerk of Court and served upon the Attorney General's Office. However, notice was not provided to the bondsmen or sureties. After hearing presentations by the Defendant and the State, the Honorable Alexander Macaulay ordered that the electronic monitoring be removed. The bondsmen nor sureties were never notified of the hearing; thus they were not present at the hearing. **{R 9-10; 43-47}**.

On November 20, 2007, Hinojos appeared before the Trial Court and entered a guilty plea to various drug offenses. At the plea, sentencing was deferred pending an upcoming trial during the December 10, 2007 term in which Hinojos was to testify, and he requested that the bond be continued until the sentencing. **{R 65}**. The State said it had no opposition to the Defendant's request as long as the bonding companies agreed to

remain on the Defendant's bond. Mike Curlee with All Out Bail Bonding was the only bondsmen present at the guilty plea hearing and consented to remain on the bond until the Defendant was sentenced. **{R 68-71}**.

On December 10, 2007, Defendant failed to appear for court as ordered and a bench warrant was issued on December 13, 2007. **{R 11}**. Subsequently, on January 17, 2008, the State filed a Petition for Estreatment of the Defendant's Bond against all three bondsmen. **{R 13-15}**. A hearing was held on March 25, 2008 and the matter was taken under advisement until such time as the transcript of the guilty plea hearing could be obtained and written briefs could be submitted on the issue. **{R 72}**. That day Defendant was also sentenced in his absence. **{Supp. R. 1}**.

On November 7, 2008, after the transcript of the guilty plea hearing was obtained a second estreatment hearing was held. At that hearing the State conceded that a modification was made to Defendant Hinojos's bond on March 15, 2007 without the notice or consent of the three bondsmen. The State also withdrew its Petition for Estreatment of the Bond against all of the bondsmen except Richard G. Thompson d/b/a All Out Bail Bonding with Accredited Surety and Casualty Company and Insurers since All Out Bail Bonding was the only bondsmen present at the guilty plea hearing and consented to remain on the bond. This Court took the matter under advisement until parties were able to submit written briefs outlining their positions. **{R 82}**.

On April 15, 2009, Judge Macaulay ordered a bond estreatment against All-Out in the amount of $66,666.66. **{R 19}**.

All-Out then appealed this decision to this Court. Following briefing and argument,

the Court of Appeals affirmed the fact of estreatment, finding that All-Out was barred by equitable estoppel from asserting a Statute of Frauds defense to liability on the bond. This was based in the fact that All-Out expressly represented to this Court on the record that it would continue on the bond pending sentencing, after the Court detailed the conditions of bond that did not include electronic monitoring. However, this Court remanded the case back to the trial court to expressly consider the Polk factors in determining the amount, if any, to be remitted. State v. Hinojos, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011) (citing Ex parte Polk, 354 S.C. 8, 13, 579 S.E.2d 329, 331 (Ct.App. 2003)).

A hearing on remand was held before Judge Macaulay on August 17, 2012. **{R. 127}**. Lieutenant Max Dorsey from SLED testified as to the fact that Hinojos was still not in custody, that Hinojos assisted in setting up a controlled buy but disappeared before the trial of the two individuals, during which he was supposed to testify, that the State had expended effort in attempting to locate Hinojos, and that Hinojos' absence led the State to resolve the case in a less than favorable manner with regard to the two individuals. **{R 136-43}**. On February 15, 2013, Judge Macaulay filed an Order in which he rejected a new argument made by All-Out as to the fact of estreatment, and found after consideration of the Polk factors that estreatment of the entire amount was warranted. **{R. 33}**.

STATEMENT OF FACTS

The Statement of the Case contains a recitation of all important facts.

ARGUMENT

I. APPELLANT'S CLAIM THAT THE 2012 AMENDMENT DISCHARGED THE BOND IS WITHOUT MERIT, WHERE: (1) THE BOND WAS ALREADY FORFEITED AND LIABILITY FIXED LONG BEFORE THE AMENDMENT; (2) THE FACT OF ESTREATMENT IS THE LAW OF THE CASE AND THE REMAND WAS ONLY TO DETERMINE AMOUNT; (3) EVEN IF THE AMENDED STATUTE APPLIES, THE BOND WAS NOT DISCHARGED GIVEN THAT SENTENCING WAS DEFERRED IN ACCORDANCE WITH THE LEGALLY APPROVED MECHANISM FOR COOPERATING DEFENDANTS; AND (4) APPELLANT IS EQUITABLY ESTOPPED FROM MAKING LEGAL ARGUMENTS DENYING LIABILITY AS THIS COURT ALREADY FOUND IN THE FIRST APPEAL.

Appellant All-Out first contends the trial court erred in estreating the bond following the 2012 amendment to S.C. Code Ann. § 17-15-20 and its applicability to all "existing" bonds. All-Out's arguments fail, as the bond was already forfeited and estreated and that liability fixed long before the amendment at issue. Indeed, this Court in the first appeal already affirmed the fact of estreatment and remanded only to consider the amount – thus, the fact of estreatment is the law of the case and the current procedural posture does not allow for new legal arguments challenging that fact. Even if the amended statute applies to the current situation, the bond was validly in effect until the deferred sentencing, as this was the appropriate way to handle a cooperating defendant under South Carolina law. Regardless, this Court has already affirmed the finding that All-Out equitably estopped from denying liability, and equitable estoppel also precludes them from making their newest legal argument here.

A. Amendment to the Statute and Events Below

As noted before in the Statement of the Case, the trial court ordered estreatment of the full amount by Order dated April 15, 2009. All-Out appealed, and this Court on July 6, 2011 issued an opinion affirming the fact of estreatment but remanding to expressly

consider the amount to be estreated. State v. Hinojos, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011).

In the interim, and with an effective date of February 1, 2012, the General Assembly passed 2012 Act 115, which amended S.C. Code. Ann. § 17-15-20(B), to provide, in part:

> 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.

Subsequently, the Legislature passed 2012 Act No. 286, which was effective June 29, 2012, the General Assembly provided as follows:

> SECTION 4. The provisions of Section 1 of Act 115 of 2012 which amended Section 17-15-20 of the 1976 Code and allow sureties to be relieved of an appearance bond under certain designated circumstances are retroactive and apply to all existing and future appearance bonds.
>
> "SECTION 5. Except as provided in SECTION 4, the repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

At the remand hearing on August 17, 2012, All-Out argued that because 2012 Act No. 286 made 2012 Act 115 retroactive to all existing bonds, then its obligation was discharged upon the adjudication or finding of guilt at the plea proceeding, despite the fact that sentencing was deferred until after trial of the codefendant. **{R 130-34}**. The trial court rejected this argument in its order, noting that the bond had already been forfeited by the judge's original order of April 15, 2009, that the fact of estreatment was the law of

the case and the judge's only job on remand was to determine the amount of estreatment, and that All-Out was estopped from denying liability as it had agreed in open court to remain on the bond pending sentencing. **{R 36-39}**.

B. There was no "existing" bond to be discharged by the 2012 amendment because the bond had already been forfeited and liability fixed prior to the amendment.

The trial court was correct. First, as the trial court held, the new statute is inapplicable because at the effective date of 2012 Act No. 286 in June of 2012, there was no "existing" bond to be discharged, as the bond in this case had already been forfeited and estreated by the trial court's original order of April 15, 2009. In describing the estreatment procedure, the South Carolina Supreme Court has stated:

> Under South Carolina law, when the terms of the bond are breached, the bond is estreated by a conditional order. S.C.Code Ann. § 17–15–170 (1976); Pride v. Anders, 266 S.C. 338, 223 S.E.2d 184 (1976); State v. Holloway, 262 S.C. 552, 206 S.E.2d 822 (1974). 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. S.C. Code Ann. § 17–15–170 (1976). **Because the bond has already been estreated by the conditional order, the second hearing is to determine the amount, if any, to be remitted.**

State v. Lara, 386 S.C. 104, 687 S.E.2d 26, 28 (2009) (emphasis in original) (quoting State v. Boatwright, 310 S.C. 281, 423 S.E.2d 139 (1992) (Toal, J., dissenting)). In Lara, the Court concluded that since the surety conceded it had not surrendered the defendant in the required time period, "estreatment had already occurred", and "the sole issue for the trial court's determination was wether or not A-1 could demonstrate sufficient cause to remit all or part of the bond". 386 S.C. at 107-08, 687 S.E.2d at 28.

Here, All-Out still has not delivered Hinojos, and the trial court issued just such a

conditional order holding that "the recognizance . . . is forfeited by the Respondents' noncompliance", with an entry of judgment for the full amount. The order set the hearing for All-Out to appear and argue for remission of all or part of the full judgment amount. **{R 16-17}**. Under Lara, therefore, the bond was already estreated and forfeited, and the only issue remaining was whether or not any amount of the judgment should be remitted, which was handled by the trial court's order of April 15, 2009. **{R 19}**.

Other cases and the statutory language support the conclusion that Hinojos's bond was already estreated and forfeited and thus the fact of liability fixed, long before the amended statute was made applicable to existing bonds. See Pride v. Anders, 266 S.C. 338, 223 S.E.2d 184 (1976) ("Since it was undisputed that the condition of the recognizances had been breached by the failure of the defendants to appear, **the recognizances were forfeited and the liability of appellant-surety to pay the amount of the penalty then became fixed,** unless relieved or exonerated by action of the court." (emphasis added) (cited in State v. Policao, 402 S.C. 547, 741 S.E.2d 774 (Ct. App. 2013)). See generally S.C. Code. Ann. § 17-15-170 (" If any person so bound fails to appear or, upon appearing, does not give a reason for not performing the condition of the recognizance as the court considers sufficient, **then the judgment on the recognizance is confirmed.**") (emphasis added); § 38-53-70 ("If the surety fails to surrender the defendant or place a hold on the defendant's release from incarceration, commitment, or institutionalization within ninety days of the issuance of the bench warrant, **the bond is forfeited.**") (emphasis added).

Thus, Section 4 of 2012 Act No. 286, which applied 2012 Act 115 to "existing"

bonds, does not operate to retroactively discharge this liability that had already been fixed, as the bond had already been forfeited and estreated long before the amendment passed, with the only issue remaining being the amount, if any, of remission of the judgment.

C. The fact of estreatment is the law of the case; moreover, the remand to the trial court was solely to determine the amount of estreatment. As such, All-Out's latest arguments as to the fact of estreatment are procedurally improper.

Moreover, as the trial court found, All-Out cannot challenge the *fact* of estreatment because the fact of estreatment is the law of the case. This Court rejected All-Out's first appeal and affirmed the fact of estreatment, remanding to the trial court only for a determination of the amount to be estreated. The fact of estreatment was finally decided when the Court of Appeals affirmed this Court on that point, and All-Out elected not to appeal that decision any further to the South Carolina Supreme Court. Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010) ("An unappealed ruling is the law of the case and requires affirmance."). The amendment occurred long after the fact of estreatment was finally resolved by action of the trial court and this Court on appeal, and the remand to the trial court from the first appeal did not include a mandate to hear new arguments addressing the fact of estreatment. Accordingly, this current argument is procedurally barred.

D. Even if the amended statute is applicable to this situation, the bond was not discharged under the "deferred disposition" and "as otherwise provided by law" portions of section 17-15-20.

Even assuming that the statute applied to this bond and it was not already forfeited prior to amendment, All-Out still cannot prevail. The new section 17-15-20 provides that an appearance bond can be discharged upon a "deferred disposition", as well "as

otherwise provided by law", and these provisions govern the current situation where the court ordered sentencing to be deferred.

Of course, under South Carolina law, a conviction is not final, and thus one cannot appeal, until sentence is passed. See State v. Gregorie, 339 S.C. 2, 528 S.E.2d 77, 78 (2000). Moreover, the South Carolina Supreme Court has held as a jurisdictional matter that a deferral of sentence is the proper way under the law to handle a defendant who is going to cooperate and testify against his codefendant:

> We note the typical procedure in this situation is that a defendant pleads guilty pursuant to a plea agreement and then the defendant's sentencing is held in abeyance until after the defendant has cooperated at the co-defendant's trial. Had the typical procedure occurred, the plea judge would have had the authority to sentence appellant outside of his plea agreement after he failed to testify at his co-defendant's trial.

State v. Campbell, 376 S.C. 212,217, 656 S.E.2d 371, 373-74 (2008). Here, the trial court ordered sentencing to be deferred pending Hinojos's testimony at an upcoming trial of a codefendant. **{R 68}**.

Thus, the appropriate procedure was followed with the deferred sentencing pending cooperation, and accordingly it would not be until this "deferred disposition" happened – that is, the deferred sentencing – that the appearance bond would be extinguished. Similarly, the bond would only be discharged "as otherwise provided by law" – that is, at a sentencing proceeding following the codefendant's trial under the procedure expressly approved as jurisdictionally correct by the South Carolina Supreme Court in Campbell.

Moreover, even the amended version of the statute contains the provision that "[a]n 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". S.C. Code Ann. § 17-15-20. Here, the court's order setting the bond provided that the "Defendant shall appear at all scheduled hearings", as well as that Hinojos had to appear "as scheduled by the Court" and remain "until final disposition". **{R. 3, 5}**. Of course, as noted before a criminal conviction is not final until sentencing; thus, there is no final disposition until sentencing. Further, the judge specifically continued the bond until sentencing at the plea hearing, with the consent of All-Out. **{R. 70}**. Thus, Hinojos was to appear at sentencing as "enjoined by the Court" under section 17-15-20, and the bond would not be discharged until "as otherwise provided by law" – the law being here the trial court's various orders.

Indeed, to interpret the statute any other way might result in it then being unconstitutional. See Joytime Distributors & Amusement Co., Inc. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999) ("We will not construe statutes to be unconstitutional when susceptible to a constitutional interpretation."). As noted before, an appearance bond is a contract involving the defendant, the surety, and the State. See generally State v. McClinton, 369 S.C. 167, 631 S.E.2d 895, 897 (2006). Of course, both the State and Federal constitutional provisions forbid the making any law that impairs the obligations of contract. U.S. Const. art. I, § 10, cl. 1; S.C. Const. art. I, § 4. In order to violate the Contract Clause, there are three issues for determination: (1) whether there is a contractual relationship; (2) whether the change in the law impairs that contractual relationship; and (3) whether the impairment is substantial. See Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). Obviously, there is a contractual relationship, as set forth in the cases, and to hold by operation of the statute that a party goes from being completely obligated, to

completely free of any obligation whatsoever, would certainly seem to have the effect of a substantial impairment.

Therefore, since the judge specifically continued the bond until the deferred final disposition at sentencing, and the bond orders specifically provided the defendant had to appear at all hearings until final disposition, then the bond was not discharged pursuant to amended 17-15-20's "deferred disposition" or "as otherwise provided by law" provisions.

E. Just as All-Out was equitably estopped in the first appeal from denying liability based on the Statute of Frauds, it is equitably estopped from making its latest legal challenge to liability based on the amended statute.

Even if All-Out can raise new challenges to the fact of estreatment despite the current procedural context, and section 17-15-20(B) meant the bond was discharged at the guilty plea, All-Out's arguments on this point still would fail due to estoppel. Equitable estoppel "applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct. App. 2006) (cited in State v. Hinojos, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011)).

Of course, in the first appeal this Court found that All-Out was estopped from denying liability based on the Statute of Frauds, because All-Out expressly told the trial court at the plea hearing it agreed to remain on the bond until sentencing, and the State relied to its detriment on this representation. **{R 28-32; 69-71}**. There is no reason why the principle of estoppel that led this Court to reject All-Out's legal argument against the fact of liability in the first appeal would not be sufficient to reject All-Out's latest legal argument against the fact of liability. If All-Out was equitably estopped from relying on the

Statute of Frauds – a point which Court has already accepted and which is the law of the case – then it is necessarily equitably estopped from making the current argument about the effect of a statutory amendment over four years after the representation at issue. This is because the point of estoppel is about the representation by one party and the reliance by the other – and a new legal argument does not change the already established fact that both of those occurred.

For multiple and layered reasons, All-Out's new arguments about the amended statute are insufficient to escape a liability already fixed and established by a prior published opinion of this Court.[1]

[1] Similarly, All-Out would also be barred from denying liability under the concept of of judicial estoppel, which precludes a party from taking a position in conflict with one taken earlier in the same or related litigation. See Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202, 208-09 (2002) (generally discussing the concept). Here, All-Out agreed the bond would be in effect until sentencing in open court in an express representation to the trial judge, and thus is judicially estopped from now denying the fact of such liability before the same judge).

II. THE TRIAL COURT EXPRESSLY CONSIDERED EACH *POLK* FACTOR, AND APPELLANT CANNOT MEET THE DEMANDING BURDEN OF SHOWING THE COURT'S ANALYSIS AMOUNTED TO ABUSE OF DISCRETION.

All-Out next contends the trial court erred in ordering estreatment of the full amount of its liability for the bond. However, the trial court carefully and expressly considered every Polk factor, and there is support in the record for its determinations. It cannot be said there was an abuse of discretion on this point.

A. Events below

As noted before, this Court in the first appeal affirmed the fact of estreatment but remanded for the trial court to expressly consider the Polk factors in determining whether all or part of the bond should be remitted. State v. Hinojos, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011) (quoting Ex parte Polk, 354 S.C. 8, 13, 579 S.E.2d 329, 331 (Ct. App. 2003)).

In the order at issue on remand, the trial court expressly went through each factor and determined that estreatment of the entire amount was warranted. As to costs to the State, the trial court credited testimony of man hours spent and effort made to locate the defendant. As to purpose of the bond, the trial court found it had been completely thwarted by Hinojos's flight and continued absence from custody. As to the nature and wilfullness of the default, the trial court found that the default was completely wilful. Finally, the trial court noted the additional expense and prejudice to the State in the form of the effect on existing cases in which Hinojos had agreed to cooperate. **{R 38-40}**.

B. All-Out can not meet its burden of showing an abuse of discretion when the trial court's decision is supported and every factor supports estreatment of the full amount.

Here, All-Out cannot meet the demanding abuse of discretion standard given that the trial court's reasoning as to every Polk factor is supported.

Section 38-53-70 of course provides "[i]n 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." However, 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. Ex parte Polk, 354 S.C. at 12-13, 579 S.E.2d at 331. Rather, the court should consider, at a minimum, the following factors: (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 13, 579 S.E.2d at 331.

An appellate court reviews the circuit court's ruling on the forfeiture or remission of a bail bond for abuse of discretion. An abuse of discretion occurs when the circuit court's ruling is based on an error of law. State v. Lara, 386 S.C. 104, 687 S.E.2d 26 (2009). The burden is on the appellant to show a lack of prejudice to the State. State v. Holloway, 262 S.C. 552, 206 S.E.2d 822 (1974).

As to the costs to the State, the trial court found the factor supported full estreatment, and credited Lieutenant Dorsey, who testified the man hours were spent in attempting to locate Hinojos, including the procuring of an order for technological monitoring, and that efforts to locate him continue to this day. Dorsey noted, though, that

they do not keep time sheets of the time spent looking for an individual. **{R 39, 140-43}**. This Court has recently held that an assessment of actual costs to the State is not dispositive in fugitive cases, as "it would be difficult for the trial court to make a determination of actual costs the State would incur in finding someone whose whereabouts were unknown". State v. Policao, 402 S.C. 547, 741 S.E.2d 774 (Ct. App. 2013). See also State v. Lavender, Unpub. Op. No. 2009-UP-198 (S.C. Ct. App. May 6, 2009) (rejecting any contention that the State needed to submit some sort of detailed time sheet in order to substantiate an amount for estreatment). There are no errors of law here and the trial court's analysis is not an abuse of discretion.

The trial court next considered the purpose of the bond, which it found to have been "completely thwarted" by the failure of the surety to deliver Hinojos. **{R 39}**. Of course, the overriding purpose of a bond is to ensure appearance, see State v. Workman, 274 S.C. 341, 263 S.E.2d 865, 866 (1980), and forfeiture is the incentive for sureties to ensure the appearance of the defendant. Ex parte Polk, 354 S.C. 8, 13, 579 S.E.2d 329, 331 (Ct. App. 2003)). Indeed, the fact that the defendant ultimately surrendered does not entitle the surety to remission as a matter of right. State v. Holloway, 262 S.C. 552, 206 S.E.2d 822 (1974). "[P]rejudice to the State appears when a defendant, without excuse, fails to appear at the time set for trial, thereby obstructing and delaying the orderly administration of justice." Id. "When a bond is violated by the defendant's failure to appear, the State has a right to full estreatment". State v. Cochran, 358 S.C. 24, 594 S.E.2d 844 (2004).

Here, Hinojos absconded and is still at large, and given these statements in the caselaw it cannot be said the trial court committed an error of law in finding that this factor

supported estreatment of the full amount.

Next, the trial court considered the nature and wilfullness of the default, and found the factor also supported full estreatment. **{R 39}**. Again, the judge credited statements by the Assistant Attorney General at the hearing that Hinojos proved to be a proved to be a "big time drug dealer" who was "buying his time so he could flee and be facing no time". **{R 39; Supp. R. 12}**. There is support in the record and thus no abuse of discretion for the trial court's determination on this factor.

Finally, with regard to prejudice or additional expense resulting to the State, the trial court credited the testimony of Lieutenant Dorsey and the statements of the Assistant Attorney General as to the negative effect Hinojos's flight had on existing cases. **{R 38-40; 136-43; Supp. R. 5-6}**. Again, there is support in the record for the trial court's determination in this regard.

Ultimately, there was evidence in the record this defendant pretended to be cooperative but then bided his time until he could flee. He is at large to this day, and efforts are still being made to locate him. There is nothing innocent or inadvertent about the failure to appear here. The trial court expressly considered every Polk factor, and its determination that every factor supports full estreatment has some support in the record and in the caselaw. Appellant's attempts to mitigate or poke at the State's presentation on the Polk factors did not convince the trial judge, and regardless they certainly do not rise to the high level necessary to reverse the trial court for an abuse of discretion – which requires a determination of an error of law, or a decision so unreasonable that no reasonable jurist could have reached it. That certainly is not the case here.

CONCLUSION

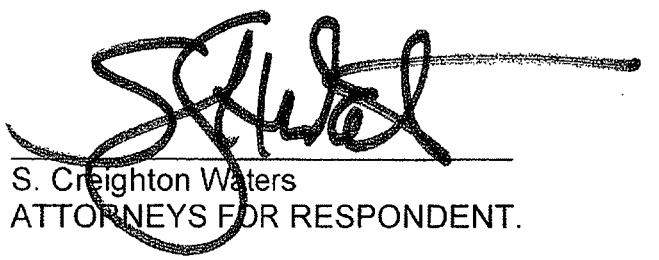
It is respectfully submitted that for the foregoing reasons the decision of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

S. CREIGHTON WATERS
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3693



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-vs-

MARIO RAMOS HINOJOS, DEFENDANT, AND RICHARD G. THOMPSON d/b/a ALL-OUT BAIL BONDING, AS SURETY, AND ACCREDITED PROPERTY AND CASUALTY INS., AS SURETY, OF WHOM RICHARD G. THOMPSON d/b/a ALL-OUT BAIL BONDING, AS SURETY, AND ACCREDITED PROPERTY AND CASUALTY ARE,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR. The undersigned also certifies that the Final Brief is in compliance with the South Carolina Supreme Court's Order of August 13, 2007.

S. CREIGHTON WATERS
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

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October 7, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
The Honorable Alexander Macaulay, Circuit Court Judge
Appellate Case No. 2013-000567

THE STATE,

Respondent,

-vs-

MARIO RAMOS HINOJOS, DEFENDANT, AND RICHARD G. THOMPSON d/b/a ALL-OUT BAIL BONDING, AS SURETY, AND ACCREDITED PROPERTY AND CASUALTY INS., AS SURETY, OF WHOM RICHARD G. THOMPSON d/b/a ALL-OUT BAIL BONDING, AS SURETY, AND ACCREDITED PROPERTY AND CASUALTY ARE,

Appellants.

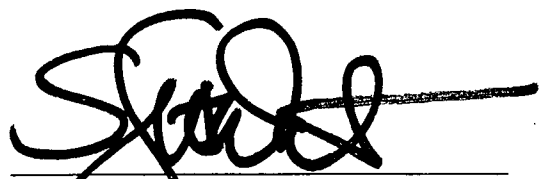
PROOF OF SERVICE

I, S. Creighton Waters, Counsel for Respondent, certify that I have this date served the ***Final Brief of Respondent***, and the **Supplemental Record on Appeal**, both dated October 7, 2013 on Appellant by depositing two copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Benjamin A. Stitely, Esquire
Post Office Box 849
Lexington, South Carolina 29071

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

This 7th day of October, 2013.



S. CREIGHTON WATERS
Assistant Deputy Attorney General
ATTORNEY FOR RESPONDENT

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