20CP-110326

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHEROKEE)

The **STATE** of South Carolina,)
Petitioner,)
v.)
) **ORDER**
for
CONFIRMATION OF JUDGMENT
Cornelius Sentell **MAYBERRY**, as Defendant, and John **STEEN** d/b/a John **STEEN BAIL BONDING**, and **PALMETTO SURETY** CORP., as Surety,)
Respondents.)

Indictment Nos: **2018-GS-11-01402**
2018-GS-11-01403
2018-GS-11-01404

This matter came before the Court for hearing on March 11, 2019, and April 18, 2019 on the State's "Petition for Estreatment of Bond" seeking a finding by this Court that a forfeiture of the recognizance has occurred and a confirmation of judgment against Surety in the amount of $465,000. Appearing on behalf of the sureties was Robert T. Williams, Sr., Esq. Appearing on behalf of the State was Circuit Solicitor Barry J. Barnette.

The circuit solicitor has filed a petition pursuant to S. C. Code Ann. Section 17-15-170 which authorizes the circuit solicitor to seek confirmation of judgment against every party bound in a forfeited recognizance for noncompliance with the conditions of recognizance and for the bound parties to appear at court and show cause, in the event they are able, as to why judgment should not be confirmed against them.

At the "show cause" hearing in this matter, Respondent sureties appeared with counsel asserting that any forfeiture of recognizance was the result of "unavoidable impediment" and not from "wilful default" and therefore the forfeiture should be remitted and no judgment confirmed or entered against them in accordance with S.C. Code Ann. Section 17-15-180.

PERTINENT FACTS

On May 3, 2018, in Cherokee County the defendant Cornelius Sentell Mayberry was arrested on charges of Trafficking in Heroin (>14<28g), Trafficking in Methamphetamine or Cocaine base (>400g), and Unlawful Neglect of Child. Seized along with the drugs were four (4) firearms and $68,000 in United States Currency.

On May 16, 2018 bond on the referenced criminal charges requiring surety was set by a magistrate judge in the amount of $465,000. The bond provided that the defendant:

> "be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the

charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior."

And that the defendant appear:

> "at the term of Court of General Sessions *beginning on July 26, 2018 at 9:00 o'clock, a.m.,* at General Sessions *125 E. Floyd Baker Blvd. / Gaffney,* S.C. / 89342 / (864) 487-2571 and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain there throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court... If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court."

On May 16, 2018, the defendant acknowledged the conditions of release by his signature and the respondent surety John Steen executed by his signature an appearance recognizance securing the release of the defendant from custody pending disposition of his cases which provided that:

> "On the 16th day of May, 2018, personally appeared before the undersigned judge the surety named below [John W. Steen] who acknowledged himself indebted to the State of South Carolina, in the sum of $465,000, such sum to be levied on his land and personal property for the use of the State, should the defendant fail to perform the conditions of this Order.

The appearance recognizance further provided that:

> "[T]he defendant be released from custody on the condition that he will personally appear before the designated court at the place, date, and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without permission of the court and be of good behavior."

The surety required installation of a device to monitor the defendant's location while on release. The defendant was represented by William G. Rhoden, Esq., who appeared on his behalf at his first and second required court appearance dates. On August 14, 2018, Mayberry was indicted by a Federal Grand Jury on essentially the same charges pending in Cherokee County. On August 28, 2018, an arrest of the defendant was attempted by a joint law enforcement task force which was thwarted by the physical resistance of Mayberry. Subsequently, the defendant's cases were docketed and scheduled for disposition during the October 8, 2018 term of General Sessions Court with customary notice being provided to the defendant and his surety in addition to that which appears on the appearance recognizance document itself. On October 15, 2018, after the defendant's failure to appear for disposition of his cases, a Bench Warrant was ordered by the circuit court for arrest of the defendant for his failure to comply with the conditions of release requiring his appearance in court. More than ninety days elapsed after issuance of the bench warrant during which time the defendant did not appear nor did the surety surrender the defendant to custody and therefore the bond was deemed forfeited pursuant to S. C. Code Ann.

Section 38-53-70. On February 19, 2019, the Circuit Solicitor filed a "Petition For Estreatment Of Bond" seeking confirmation of the forfeiture and judgment against the sureties.

TESTIMONY FROM APRIL 18TH HEARING

Cherokee County Deputy Sheriff Lieutenant David Oglesby testified that in addition to his duties with the Sheriff's department he is also assigned to a federal Homeland Security Task Force. On August 28, 2018, he and Cherokee County Sheriff's Department Captain Ronnie Painter were tasked with picking up the defendant on a Federal warrant. They observed the defendant driving a vehicle, made a traffic stop, and informed him of the warrants for his arrest. The defendant attempted to flee in the vehicle, Oglesby is "stuck in the window" trying to stop him, the vehicle veers off the road, flips, and pins Oglesby beneath the vehicle. The defendant and Painter are heard fighting and the defendant runs from the scene. Oglesby was airlifted to a hospital for treatment. The event resulted in surgeries for the repair of two broken ankles, a broken fibula, and damage to his knees and medical expenses including airlift transportation of approximately $115,000.

Cherokee County Sheriff Steve Mueller testified that man hours spent in searching for the defendant for apprehension was 930 hours for Homeland Security personnel at a cost of $64,356 and 990 man hours for Sheriff's department personnel at a cost of $17,958. He further provided that the defendant cut off his ankle monitor.

Cherokee County Sheriff Captain Ronnie Painter testified that he was assisting Oglesby in the arrest of the defendant and was able to place one cuff on the defendant before he drove the vehicle away at an excessive rate of speed, veered off the road, flipped the vehicle, and escaped through the moon roof. Painter was able to grab the defendant who continued to physically resist and place the other cuff on him. The defendant continued to struggle and Painter made the decision to assist Oglesby rather than hold onto the defendant who fled down the street.

Scott Willis with Palmetto Surety Company and others, including Surety John Steen, testified to the extensive efforts made by his company and others to locate the defendant once they had knowledge that the defendant's monitor had been removed and that he was being sought by law enforcement for service of a warrant and the fact that the defendant was surrendered to custody on April 2, 2019, and is now in federal detention.

ARGUMENT OF THE PARTIES

The State's position in this matter as expressed by Circuit Solicitor Barry J. Barnette is quite simple and straightforward, (1) the defendant was released on an appearance recognizance with surety pending trial in this matter; (2) Surety John Steen executed the appearance recognizance as surety, "who acknowledged himself indebted to the State of South Carolina, in the sum of $465,000, such sum to be levied on his real and personal property for the use of the

State, should the defendant fail in performing the conditions" of his release, securing the defendant's release from pre-trial detention; (3) while released on bond the defendant violated the good behavior provision of his release by resisting a lawful arrest resulting in serious injury to a law enforcement officer attempting to serve a Federal warrant; (4) the defendant and his surety were on notice of the defendant's required appearance in court on October 8, 2018; (5) the defendant did not appear as required; (6) a bench warrant was issued for the arrest of the defendant for his failure to appear; (7) 90 days elapsed from the issuance of the bench warrant during which time the defendant did not make an appearance nor was he surrendered to custody by his surety; (8) the recognizance has been forfeited by the default of the defendant; and (9) the forfeiture and judgment in the sum of $465,000 should be confirmed against the surety in accordance with the terms of the bond contract and State law.

Respondents agree that: (1) John Steen executed an appearance recognizance securing the defendant's release from pre-trial detention pending trial; (2) the defendant and surety were on notice of the defendant's required appearance at court during the week of October 8, 2018; (3) the defendant failed to appear as required; (4) a circuit court bench warrant was properly issued for the defendant's arrest; and (5) 90 days elapsed from its issuance without appearance by the defendant or surrender to custody by the surety occurring. Hr'g Tr. 16:5-21, 19:23-20:8, March 11, 2019.

Respondents' counsel argues that any occurrence of a forfeiture of the recognizance was caused by an intervention of federal authorities constituting "an act of law rendering performance impossible" or otherwise an "unavoidable impediment and not from wilful default" and therefore the court should excuse any default, vacate the conditional judgment, or "remit the whole or any part of the forfeiture as may be deemed reasonable" upon consideration of the attendant circumstances in accordance with S. C. Code Ann. Section 17-15-180.

Respondents' counsel asserts that a federal indictment against Mayberry on the same facts and therefore essentially the same charges, "supersedes the State indictment." Hr'g Tr. 17:3-5, March 11, 2019. The arrest or attempted arrest of Mayberry by federal authorities and his elusion or "escape" from custody operates as an "intervening factor" or "cause", "an act of law rendering performance impossible", that prevented Surety from bringing Mayberry to court or surrendering him to custody because he was already in the "custody" of Federal authorities. Counsel asserts "that this is one of the unique situations where because of the fact that there had been a Federal indictment ... there had been steps taken by the U.S. Attorney to have the Sheriff, or have, rather, the jailer of Cherokee County deliver him because there was actuality (sic) a bench warrant which had been signed—this has all been in August—for the pick-up of the individual when he was actually being—he, referring to Mayberry—when Mayberry was being picked up on that particular day, there were two officers on the scene, as we understand it, one of them with dual representation, if you will Your Honor. That's what we discussed about this

gentleman who was—I don't know if he was DEA or if he was—some task force or something like that, but he had affiliation with the Federal Government also." Hr'g Tr. 6:4-24, April 18, 2019. "So the position – one of the positions of the surety is that because of that, the bond which was posted by the bonding company on the State charges should no longer be in effect for estreatment. Because he was being arrested, he was in custody with law enforcement in an attempt to serve – and, in effect, it was done because he was in custody and then he broke custody, or he escaped." Id. at 7:9-17.

Counsel's argument appears two-pronged, the first, being that once the federal indictment was returned and a federal pick-up order for the defendant was issued and he had contact with federal law enforcement officers, the matter became exclusively federal and the state cases were subsumed by the federal action and therefore the state bond rendered a nullilty or at least the Surety's obligation under the bond extinguished. The second, being that the federal action served "as an intervening factor or an intervening cause that participated in this or prevented him from being here. That is the federal authorities issued a warrant, they arrested him, and, at some point in time, he got loose from the federal authorities." Hr'g Tr. 7:7-11, March 11, 2019. Counsel argues that the intervention of Federal authorities was "an act of law rendering performance impossible because they have already taken the position of the bondsman. They have secured the person. He can no longer – *if they had been successful* – [surety] can [no] longer pick him up and bring him before the court . . . ." (emphasis added). Counsel suggests that had it not been for the intervention of the federal authorities, attempting but in failing to secure the detention of the defendant on the federal warrant, the defendant would have been present for court as required.

APPLICABLE LAW

In every case where a defendant is released from custody pending trial,

> "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 citizens of the State . . . ."
> S. C. Code Ann. § 17-15-20(A).

> "If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant . . . . 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."
> S. C. Code Ann. § 38-53-70.

It appears that South Carolina law relating to appearance recognizances and their forfeiture has been well-settled since at least 1911.

In the case of State v. Edens, 88 S.C. 302, 70 S.E. 609 (1911), our Supreme Court, in the interpretation and application of South Carolina statutory law, opined that:

> "The recognizance is itself an instrument in the nature of a conditional judgment of record which may be discharged by the performance of the conditions stated." "Upon breach of the condition, as for instance by failure of the defendant to appear and plead, where that is the condition, the recognizance is forfeited, and becomes an absolute debt of record in the nature of a judgment." "And the statute requires a notice to be issued to summon every party bound in such forfeited recognizance to appear . . . to show cause, if any he has, why judgment should not be confirmed against him . . . showing that the recognizance is regarded as a conditional judgment, which on breach of the condition is to be confirmed, or made absolute, unless the parties therein bound show sufficient cause to the contrary. Of course, the court may in its discretion on a sufficient and satisfactory showing . . . where the forfeiture is caused by ignorance or unavoidable cause, remit the whole or any part of the forfeiture."

The State's right to the estreatment of an appearance recognizance is governed by the agreement and the application of contract law. State v. McIntyre, 307 S.C. 363 (1992). "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 (1976). "Upon breach of a condition of the recognizance, the recognizance is forfeited and the liability of the surety to pay the amount of the penalty becomes fixed 'unless relieved or exonerated by action of the court'". State v. Mitchell, 421 S.C. 365 (2017) (quoting Pride (citing Edens)). "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 (2004).

S. C. Code Ann. Section 17-15-170 provides that:

> "Whenever the recognizance is forfeited by noncompliance with its condition, the . . . solicitor . . . shall issue a notice to summon every party bound in the forfeited recognizance to appear . . . to show cause . . . why judgment should not be confirmed against him. If any person so bound . . . 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."

S. C. Code Ann. Section 17-15-180 provides that:

> "If any person shall forfeit a recognizance from ignorance or unavoidable impediment and not from wilful default, the court of sessions may, on affidavit stating the excuse or cause thereof, remit the whole or any part of the forfeiture as may be deemed reasonable."

The Supreme Court in Mitchell, providing guidance in its discussion of the proper procedure to be employed when the State seeks an estreatment of an appearance recognizance based upon a default in performance pursuant to the pertinent statutes, stated:

> ". . . [W]henever the recognizance is forfeited by noncompliance with its conditions, the State shall immediately notify the party bound in the forfeited

> recognizance to appear and show cause why judgment should not be confirmed against him. At the show cause hearing, if the person so bound 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. S. C. Code Ann. Section 17-15-170.
>
> Thereafter, a second hearing is held to determine the amount, if any, to be remitted. Holloway, 262 S.C. at 555, 206 S.E.2d at 823. The court may remit the whole or any part of the forfeiture as may be deemed reasonable upon affidavit sufficiently stating the forfeiture resulted from ignorance, unavoidable impediment and not from wilfull default. S. C Code Ann. Section 17-15-180 (2014)." Mitchell, 421 S.C. at 371-72.

"The overriding purpose of requiring a criminal defendant to post bond before his release from custody is to insure his appearance at trial." *Ex Parte Polk*, 354 S.C. 8 (Ct. App. 2003). Any person charged with a crime and released from custody pending the trial has an obligation to appear at court when his bond requires it and to be of good behavior. While a defendant's failure to appear when required is the most common default addressed by the courts with regards to appearance recognizances, a professional surety "is certainly aware that an appearance bond carries conditions beyond the defendant's appearance in court." "The bond may also be estreated if the defendant breaches terms or conditions of the bond other than appearance." Mitchell; State v. Workman, 274 S.C. 341 (1980).

Where a recognizance has been forfeited due to a defendant's failure to appear at court when required, the surety's liability on the recognizance is not relieved even though he may subsequently surrender the defendant to custody. "The obligation of a surety is not to the State to produce the defendant, but is rather an obligation to answer, to the extent of the penalty, for the default of the defendant[s], as principal[s]." Id. The Surety's surrender of a defendant to custody after a default has already occurred may be a fact considered by the Court in its decision as to the propriety of a remission of the forfeiture, where the court is granted the discretion to remit, but such a fact does not entitle the surety to any remission of the forfeiture as a matter of right. Id.

There are generally three circumstances where a surety is to be excused from non-performance under an appearance recognizance contractual obligation, (1) an act of God prevents performance, as where the defendant has died and cannot therefore appear; (2) an act of law rendering performance impossible, as where a defendant is in the custody and jurisdiction of another court and cannot therefore be produced by the surety; and (3) the obligee has prevented performance, as where the State extradites a defendant to a foreign jurisdiction and therefore beyond the reach of the surety. State v. Boatwright, 310 S.C. 281 (1992) (Toal, J., dissenting) (citing Taylor v. Taintor, 83 U.S. 366 (1872)).

In the event the court determines that a recognizance has been forfeited and the surety is not to be excused from nonperformance, the court may still consider a remission of the

forfeiture in whole or in part if the nonperformance results from "ignorance or unavoidable impediment and not wifull default". In determining whether a remission should be granted in whole or in part ... the court should, at the least, consider (1) the costs to the State; (2) the purpose of the bond; (3) the nature and wilfulness of the default; and (4) any prejudice or additional expense resulting to the State. S. C. Code Ann. § 38-53-70; Ex Parte Polk. The burden for establishing justification for a remission of forfeiture rests with the one seeking its remission. State v. Holloway, 262 S.C. 552 (1974).

DISCUSSION AND ANALYSIS

Respondents appear to assert that the actions by two separate sovereigns, the United States of America and the State of South Carolina, should be "deemed" to have nullified state law on contracts as well as state statutory law relating to the appearance recognizance surety undertakings, estreatments, and remissions. The basis for this claim seems to be that when a federal judge issued the pick-up order for the defendant as a result of a federal indictment, just as a state court judge had done in issuing a bench warrant, the federal action superseded State action and rendered it a nullity and of no consequence by reason of the Federal Court's preemption. Two sovereigns were acting to bring the defendant before their court, as a matter of exercising their independent jurisdiction in a criminal matter in which either might act under their sovereign laws, each as a sovereign entity. Their actions were, under such circumstances commensurate and cooperative with one another, rather than at odds with one another's efforts. The fact that a deputy sheriff had authority as a local law enforcement officer *and* as part of a federal joint task force is a consideration that reflects a mutuality of state and federal efforts in enforcing the criminal laws of each sovereign.

Where possible, the guiding principle of the courts should be to avoid constitutional entanglements, not to create them where they do not exist. This seems all the more true where, as here, both state and federal sovereigns are acting together in efforts to address a common problem under separate laws pertaining to parallel and independent concerns. See, *Gamble v. United States*, 139 S.Ct. 1960, 1966 (2019) ("A close look at [United Supreme Court cases] reveals how fidelity to the Double Jeopardy Clause's text does more than honor the formal difference between two distinct criminal codes. It honors the substantive differences between two sovereigns in punishing the same act").

An appearance recognizance is not discharged except upon adjudication of the case, a finding of guilt as to the charge, a deferred disposition, or as otherwise provided for by law. S. C. Code Ann. Section 17-15-20. The federal government's decision to criminally indict a defendant for the same conduct which is the subject of a state court indictment does not render the proceedings in state court void nor does the federal action preempt the state proceedings, and

therefore, the appearance recognizance issued by a state court judge remains valid until extinguished by satisfaction of its conditions or operation of law.

Respondents' Counsel relies upon the dissent of Justice Toal in State v. Boatwright, 310 S.C. 281 (1992), for the proposition that an act of law – a federal indictment and attempted arrest of the defendant - rendered performance of the bond impossible as the defendant was within the purview and jurisdiction of federal authorities and the State bond thereby extinguished, or at least the obligations of the Surety excused. As part of his argument counsel contends that law enforcement's effort to arrest Mayberry on a related federal warrant somehow created a basis for an immediate termination of the surety's state contractual obligations under a state bond.

Counsel's reliance upon Boatwright is misplaced. Robert Boatwright, while on bond for a forgery charge and a parole violation from the State of Georgia, was convicted of domestic violence in South Carolina. Subsequently, with the assistance of the State, he was extradited and released to the State of Georgia where he was serving a sentence on a parole revocation at the time he was to appear in court in Aiken County, S. C. on the forgery charge. When the State sought estreatment of the bond for failure of the defendant to appear in Aiken general sessions court, the Court hearing the estreatment matter excused the default on the ground that the defendant was prevented from appearing because of his incarceration in Georgia and therefore not from "wilful default". The Court, however, ordered estreatment of the bond and remission in part for the defendant's violation of the good behavior provision of the bond based upon his conviction for domestic violence.

That scenario is inapposite to the present case. Here, (1) Mayberry was not "in custody" as was Boatwright; (2) Mayberry had not been surrendered to custody by his surety; (3) Mayberry physically resisted and eluded custody by conduct severely injuring a law enforcement officer attempting to place him under a lawful arrest; (4) no action taken by the State prevented the defendant from appearing in court; and (5) only Mayberry's resistance of arrest and elusion from apprehension prevented him from appearing in court or being surrendered to custody by his surety.

Counsel's point that, *"if [the federal authorities] had been successful"* in their attempt to take the defendant into custody on a federal warrant the surety would no longer be able to pick him up and bring him before the court, is well taken. Had they been successful, federal custody of the defendant would have been "an act of law rendering performance impossible" and the surety would have perhaps had a number of options in order to be relieved from his obligation under the bond contract, but, such was not the case. The federal authorities were not successful in securing the defendant and remanding him to custody in a detention facility due to his physical resistance to that arrest and his eluding capture, and thus, there was no "unavoidable impediment" or "act of law" which obstructed the defendant's appearance in state court or otherwise rendering performance of the defendant's bond obligations impossible.

The placing of handcuffs on a person by a law enforcement officer, in order to restrict movement and liberty during the service or attempted service of a warrant or otherwise effecting an arrest for the commission of a criminal offense, may be deemed an "arrest" and "custody" for constitutional considerations relating to rights and protections of a person accused of a crime State v. Williams, 237 S.C. 252 (1960). However, such circumstances alone, should not serve to excuse a surety from his obligations under a contract undertaking to secure the defendant's release from pre-trial detention. In order for a surety to be excused from an obligation arising out of an appearance recognizance undertaking relating to the defendant's failure to appear when required, it must be shown that the defendant was in the actual physical custody of a governmental jurisdiction such that the surety is prevented by that custody from physically producing the defendant at court or surrendering him to custody at an appropriate detention facility.

Respondents claim that Mayberry's failure to appear was the result of "unavoidable impediment and not wilful default" due to "interference with the Federal government in terms of serving a bench warrant, which he was locked up and then he left" is not supported by the presentation. There can be no reasonable argument made that the conduct of Federal officers in an attempt to arrest the defendant on a Federal warrant in this case, was "an act of law rendering performance impossible". Nothing has been presented to this Court tending to show that anything beyond his control prevented the defendant from appearing in court and being of good behavior as required by the appearance recognizance. Nothing has been presented that would tend to show that the defendant's violation of the conditions of release was anything but a wilfull default.

State law authorizes the court to remit a forfeited recognizance in whole or in part "as may be deemed reasonable" if the forfeiture resulted from "ignorance or unavoidable impediment and not from wilful default". S. C. Code Ann. § 17-15-180. A subsequently enacted statute provides that, "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 such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgement". S. C. Code Ann. § 38-53-70.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Charleston Cty. Sch. Dist. v. State Budget & Control Bd., 313 SC 1 (1993). Repeal of statutory law by implication is not favored in the law. Where a subsequent statute appears to be in conflict with a previously enacted statute the courts are required to construe each so as to render them both having effect. No subsequent legislative enactment should be construed as impliedly repealing an earlier one unless no other reasonable construction can be applied. Butler v. Unisun Ins. Co., 323 SC 402 (1996). "Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." Greene v. S. C. Election

Comm'n., 314 SC 449 (1994). "It is presumed that the Legislature is familiar with prior legislation, and if it intends to repeal existing laws it would . . . expressly do so; hence, by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first." Hodges v. Rainey, 341 SC 79 (2000).

In the instant case, the court is able to reconcile S. C. Code Ann. Sections 17-15-180 and 38-53-70 so as to render both effective.

Section 17-15-180 was designed to permit a court to consider particular mitigating circumstances in the remission of a forfeited recognizance, dictated by justice and fairness where the forfeiture resulted from ignorance ("no contact" provision to include a victim's family member but the defendant unaware that a particular person is related to the victim) or an impediment over which the defendant or the surety had no control and could not prevent (defendant in a hospital on a ventilator suffering from a coronavirus) and not caused by a deliberate or wilful failure to perform an obligation under the bond.

Section 38-53-70 was designed to provide a reasonable grace period (90 days) for a surety to locate and surrender a defendant after he is on notice that the defendant did not appear at court as required, before the recognizance is deemed forfeited and then to consider a remission if "justice" requires it. "Justice" is exactly what Section 17-15-180 is designed to allow for where the forfeiture results from "ignorance" or "unavoidable impediment", but not where it results from a deliberate and "wilful default". Nothing appears in Section 38-53-70 that can be read or reasonably interpreted as suggesting that the legislature intended to repeal Section 17-15-180 nor to allow a judge unfettered discretion in the remission of a forfeited recognizance that resulted from a deliberate, knowing, and wilful act of defiance of a court order. The applicable statutes referencing the same subject matter are therefore compatible and easily harmonized as to give effect to both.

CONCLUSION

S. C. Code Ann. Section 17-15-170 provides that when an appearance recognizance bond contract has been breached by non-compliance with its conditions, the recognizance is deemed forfeited and a judgment conditionally entered for the amount of the penalty as set by the bond with opportunity being provided any person bound in the forfeited recognizance to appear at court and provide a reason that the court deems sufficient for excusing nonperformance of the recognizance. If such a reason cannot be given that the court deems sufficient, then judgment is confirmed and the court permitted to consider a remission of the forfeiture if the party bound establishes that the default was the result of ignorance or unavoidable impediment and not a wilful default. Where forfeiture of a recognizance has been established by default in a condition, and the only reason provided for excusing nonperformance is a wilful default, the recognizance must be deemed forfeited, the judgment confirmed, and the State entitled to a full estreatment

of the forfeited recognizance as fixed by the contract. S. C. Code Ann. § 17-15-170; State v. Cochran, 358 S.C. 24 (2004).

In the instant case, the defendant was obligated to "personally appear before the court specified to answer the charge or indictment . . . and be of good behavior toward all citizens of the State . . . ." He fulfilled neither of these obligations. The surety undertook the risk of forfeiture in the event the defendant defaulted on the conditions of release. The surety's obligation was not to the State to produce the defendant at court or to insure his good behavior, but to answer, to the extent of the penalty, for any default of the defendant in performance.

After review of the record and the applicable statutory and case law, this Court finds that: (1) the Petition is properly before the Court; (2) the defendant breached the conditions of bond by failing to appear and not being of good behavior; (3) the recognizance has been forfeited by that breach and a conditional judgment properly entered; (4) the surety has been provided an opportunity to show cause and present any excuse for nonperformance and why judgment should not be confirmed; (5) no reason sufficient to this Court has been given excusing nonperformance of the recognizance; (6) the forfeiture of the recognizance was not the result of ignorance, unavoidable impediment, an act of law rendering performance impossible, or other impediment created by the State and beyond the control of the defendant, preventing performance; (7) the forfeiture of the recognizance was by deliberate and wilful default of the defendant; and (8) the conditional judgment entered on the forfeiture is therefore confirmed.

This court has much empathy toward the surety and is sensitive to his plight, in light of the fact that he has presented evidence of significant effort expended in the successful surrender of the defendant. However, the law, upon application to the facts as established by the record, allows this Court no discretion in affording relief by way of a remission of the forfeiture. Should the legislature wish to grant the Court greater discretion in these matters it may do so by enactment or by repeal of Section 17-15-180.

IT IS THEREFORE ORDERED that **JUDGMENT** is **CONFIRMED** in the sum of **FOUR HUNDRED SIXTY-FIVE THOUSAND DOLLARS, ($465,000)** and the Clerk of Court shall enter that judgment against **JOHN W. STEEN** d/b/a JOHN STEEN BAIL BONDING and **PALMETTO SURETY CORPORATION.**

IT IS SO ORDERED!

J. DERHAM COLE, Presiding Judge
The Seventh Judicial Circuit Court

May 5, 2020

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20CP-110326

STATE OF SOUTH CAROLINA
THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

J. DERHAM COLE
JUDGE

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May 5, 2020

The Honorable Brandy W. McBee
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Gaffney, South Carolina 29342

Re: 2018-GS-11-01402; 2018-GS-11-01403; 2018-GS-11-01404
The State of South Carolina v. Cornelius Sentell Mayberry, as Defendant, and John Steen d/b/a John Steen Bail Bonding, and Palmetto Surety Corp., as Surety

Dear Clerk;

Enclosed please find for filing an order(s) with reference to the above-captioned case(s). Upon entry of the order(s), please serve notice upon the affected parties in accordance with *Rule 77(d) of the South Carolina Rules of Civil Procedure.* Thank you in advance for your usual and capable assistance in this matter.

With kindest personal regards, I remain,

Sincerely yours,

J. Derham Cole
Resident Judge
The Seventh Judicial Circuit