

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NO. 2021 CA 0466

STATE OF LOUISIANA
VERSUS
RICHARD A. McRAE

Judgment Rendered: DEC 22 2021

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 02-18-0171

The Honorable Kelly E. Balfour, Judge Presiding

William Noland
Candler, North Carolina

Counsel for Defendant/Appellant
Lexington National Insurance
Corporation

Hillar C. Moore, III
District Attorney
Michelle A. Lacoste
Assistant District Attorney
Baton Rouge, Louisiana

Counsel for Appellee
State of Louisiana

BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

mt.
PMc by JEW
JEW

THERIOT, J.

The surety on a bail bond appeals the trial court's judgment of bond forfeiture. For the reasons set forth herein, we reverse and set aside the trial court's judgment.

FACTS AND PROCEDURAL HISTORY

Richard A. McRae was arrested on September 24, 2017, for failure to register and notify as a sex offender in violation of La. R.S. 15:542.1.4. On September 28, 2017, Lexington National Insurance Corporation, a commercial surety company, executed a bail undertaking in the amount of \$5,000.00 on behalf of McRae.

On March 5, 2018, McRae failed to appear in court, and a bench warrant was issued for his arrest. On that same date, the clerk of court sent notice of the arrest warrant and executed and filed the certificate of notice as required by La. C.Cr.P. art. 334. The 180-day period prescribed by La. C.Cr.P. art. 335, during which McRae could make an appearance or be surrendered, expired on September 1, 2018, and at that point the State was eligible to request a judgment of bond forfeiture. Before a rule requesting a bond forfeiture judgment was filed, McRae appeared in court on September 17, 2018, following his arrest for a second charge for failure to register as a sex offender. At this September 17, 2018 court appearance, the district court recalled the bench warrant and set a new bond at \$15,000.00. It appears from the record that McRae did not post a new bond and instead remained in jail. On March 7, 2019, in conjunction with a guilty plea on the second charge, the State of Louisiana dismissed the original charge against McRae, and he was released from his bond obligation as to that charge only.

On May 13, 2020, approximately 620 days after the expiration of the 180-day period, the State of Louisiana filed a rule seeking a bond forfeiture judgment.

Lexington filed a peremptory exception raising the objection of peremption and asserted affirmative defenses.

On December 1, 2020, the court held a contradictory hearing on the rule for bond forfeiture, the peremptory exception, and the affirmative defenses. Following the hearing, the trial court overruled the exception and affirmative defenses and granted the judgment of bond forfeiture. A judgment in accordance with this ruling was signed on December 23, 2020.

Lexington appealed, arguing that the time period for filing a rule to show cause was interrupted by McRae's September 17, 2018 court appearance, and that the dismissal of the bill of information and discharge of the bail obligation on March 7, 2019 precludes a judgment of bond forfeiture.

DISCUSSION

The purpose of bail (and the bond securing bail) is to ensure that the defendant will appear at all stages of the proceedings to answer the charge for which he will be prosecuted. *State v. Ross*, 2020-0446, p. 3 (La.App. 1 Cir. 3/25/21), 322 So.3d 849, 851, *writ not considered*, 2021-00579 (La. 6/22/21), 318 So.3d 44. When a defendant released on bail fails to appear in court at a subsequent scheduled appearance, the State may obtain a forfeiture of the surety bond. *Id.*

The general rule is that bond forfeitures are not favored. *State v. Byrd*, 2020-0447, p. 3 (La.App. 1 Cir. 12/30/20), 318 So.3d 878, 880. A bond forfeiture is basically a civil proceeding; however, it is subject to special rules as set forth in the Louisiana Code of Criminal Procedure. *Id.* See also La. R.S. 15:83(A) (“As criminal bail bonds are contractual and civil in nature, their creation and enforcement are governed both by the laws applicable to civil contracts and by the laws set forth in the statutes and code articles governing criminal procedure.”).

In order to obtain a judgment of bond forfeiture against a surety, the State must strictly comply with the terms of the statutory provisions regulating bond forfeitures. *Ross*, 2020-0446 at p. 3, 322 So.3d at 851. Louisiana Code of Criminal Procedure art. 336 sets forth the necessary proof for the State to obtain bond forfeiture relief. Under the provisions of Article 336, proof of *all* of the following is required in order to obtain a judgment of bond forfeiture: (1) the bail undertaking; (2) the power of attorney, if any; (3) notice to the defendant and the surety; and (4) proof that more than one hundred eighty days have elapsed since the notice of warrant for arrest was sent. La. C.Cr.P. art. 336(A).

In a case where the bail obligation has been discharged following the expiration of the 180-day period but prior to the filing of a rule for bond forfeiture, the State cannot provide the required proof of the bail undertaking in order to obtain a judgment of bond forfeiture. See *Ross*, 2020-0446 at pp. 3-4, 322 So.3d at 851-52 (where the defendant appeared and pled guilty after the expiration of the 180-day period but prior to the filing of the rule for bond forfeiture, the bail undertaking ceased and the surety was relieved of all obligations under the bond, thereby preventing the State from proving the bail undertaking for purposes of obtaining a bond forfeiture). See also *Byrd*, 2020-0447 at p. 4, 318 So.3d at 880 (the defendant's guilty plea following the expiration of the 180-day period established a conviction of the offense for which the bond secured his appearance, which relieved the surety of all obligations under the bail undertaking and prevented the State from later obtaining a judgment of bond forfeiture).

In this case, prior to filing a rule for bond forfeiture, the State dismissed the bill of information on the charge for which McRae's appearance was secured by the bond, and the trial court ordered that McRae be released from his bail obligation on that charge. Accordingly, when the State filed its rule to show cause seeking a judgment of bond forfeiture on May 13, 2020, the bond obligation had

ceased and could not form the basis for a judgment of bond forfeiture.¹ As such, it was error for the court to order forfeiture of the bond, and we reverse and set aside the trial court's judgment.²

CONCLUSION

The December 23, 2020 judgment of the trial court in favor of the State of Louisiana and against Richard A. McRae and Lexington National Insurance Corporation is reversed and set aside. Costs of this appeal in the amount of \$463.00 are assessed against the State of Louisiana.

REVERSED AND SET ASIDE.

¹ Although the holdings in *Ross* and *Byrd* are based on La. C.Cr.P. art. 331(A)(1), which provides that a bail undertaking shall cease and the surety shall be relieved of all obligations thereunder upon conviction, the bail obligation was nonetheless discharged upon dismissal of the bill of information in this case. See La. C.Cr.P. art. 331(B), which provides that where the district attorney dismisses a bill of information and institutes a subsequent information for the same offense or for a lesser offense based on the same facts, the court may only reinstate any bail discharged when the district attorney dismissed the initial information if the surety consents to the reinstatement expressly and in writing. It is undisputed that there was no such consent given in this case.

² Having found that the trial court erred by ordering the forfeiture of the bond, we pretermitted Lexington's argument that McRae's appearance on September 17, 2018 interrupted the time period for obtaining a judgment of bond forfeiture.