

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2020 CA 0447

STATE OF LOUISIANA

VERSUS

DARNELL NICHOLAS BYRD

DATE OF JUDGMENT: **DEC 30 2020**

J
UOP
JEW
ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 10160518, SECTION 7, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE BEAU HIGGINBOTHAM, JUDGE

* * * * *

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

Counsel for Plaintiff-Appellee
State of Louisiana

William Noland
Brandon, Mississippi

Counsel for Defendant-Appellant
Financial Casualty & Surety, Inc.

* * * * *

BEFORE: WHIPPLE, C.J., WELCH, AND CHUTZ, JJ.

Disposition: REVERSED AND SET ASIDE.

CHUTZ, J.

Defendant-appellant, Financial Casualty & Surety, Inc. (Financial Casualty), appeals the trial court's judgment ordering Financial Casualty as a commercial surety, in solido with criminal defendant, Darnell Byrd, to pay to plaintiff-appellee, the State of Louisiana, the amount of an appearance bond. We reverse and set the judgment aside.

FACTUAL AND PROCEDURAL BACKGROUND

On June 5, 2016, Byrd was charged with second degree battery¹ in the 19th Judicial District Court. Carlus Buckles of Pyramid Bonding, as a bail agent for Financial Casualty, posted a \$12,500.00 appearance bond on behalf of Byrd, number 163481, in East Baton Rouge Parish, through use of its power of attorney number FCS25-1627815. The charge was subsequently amended to domestic abuse battery.²

Byrd appeared in court on January 10, 2017 and again on March 9, 2017. On April 3, 2017, Byrd failed to appear in court despite having received notice. Financial Casualty, who had been notified of the April 3, 2017 proceedings, also failed to appear. The trial court, therefore, issued a bench warrant for Byrd's arrest. On April 4, 2017, the clerk of court issued a notice of warrant for arrest to all parties, and a certificate of notice was filed into the record on April 11, 2017.

Byrd subsequently appeared in court in March 23, 2018, at which time the trial court recalled the bench warrant. A new bond of \$50,000.00 was set; Byrd had a new charge at that time. On June 20, 2018, Byrd pled guilty to domestic abuse battery (misdemeanor) and was sentenced to four months in the parish prison.³

¹ See La. R.S. 14:34.1.

² See La. R.S. 14:35.3.

³ The sentence was ordered to be served concurrently with another sentence he received in case no. 04-18-0295.

The State instituted this proceeding for bond forfeiture relief on June 25, 2019, averring entitlement to a bond forfeiture judgment in the amount of \$12,500.00 for the failure of Byrd to appear in court on April 3, 2017. After a hearing held on September 25, 2019, the trial court granted the State the requested bond forfeiture relief. A judgment ordering Financial Casualty to pay \$12,500.00 to the State in solido with Byrd was signed on December 5, 2019. Financial Casualty appeals.

DISCUSSION

On appeal, Financial Casualty asserts the trial court erred in awarding bond forfeiture relief to the State. Noting that it raised the affirmative defense of extinguishment of the obligation in its answer, Financial Casualty urges that because Byrd pled guilty to the amended charge of domestic abuse battery (misdemeanor) and was sentenced by the trial court prior to the institution of the claim for bond forfeiture relief, the State failed in its burden of proof. We agree.

The general rule is that bond forfeitures are not favored. A bond forfeiture is basically a civil proceeding; however, it is subject to the special rules as set forth in the Code of Criminal Procedure. *State v. Forman*, 2015-1557 (La. App. 1st Cir. 4/27/16), 2016 WL 2840649, at *1, citing *State v. Johnson*, 2013-0133 (La. App. 1st Cir. 11/1/13), 136 So.3d 15, 17. See also La. R.S. 15:83A (“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. *State v. Forman*, 2016 WL 2840649, at *1. La. C.Cr.P. 336 sets forth the necessary proof for the State to obtain bond forfeiture relief, providing in salient part:

A. The court at a contradictory hearing shall forfeit the bail undertaking and sign a judgment of bond forfeiture upon proof of all of the following:

(1) The bail undertaking.

(2) The power of attorney, if any.

(3) Notice to the defendant and the surety....

(4) Proof that more than one hundred eighty days have elapsed since the notice of warrant for arrest was sent.

According to La. C.Cr.P. art. 331A(1), “[u]pon conviction in any case, the bail undertaking shall cease and the surety shall be relieved of all obligations under the bail undertaking.” And it is axiomatic that a guilty plea is a conviction. See *State v. West*, 2018-0868 (La. App. 1st Cir. 5/31/11), 277 So.3d 1213, 1217.

It is undisputed that on June 20, 2018, Byrd pled guilty to domestic abuse battery (misdemeanor), thereby establishing Byrd’s conviction of the offense for which the bond secured his appearance. By operation of the provisions of Article 331A(1), upon that conviction, Financial Casualty’s bail undertaking ceased, and the surety was relieved of all obligations under the bail undertaking.

On June 25, 2019, when the State instituted the rule to show cause requesting rendition of a bond forfeiture judgment, the bail undertaking had ceased and Financial Casualty had been relieved of all obligations under the bail undertaking for over a year. As such, at the September 25, 2019 contradictory hearing, the State was unable to offer the requisite proof of “[t]he bail undertaking” as required by Article 336. The trial court’s implicit finding to the contrary is

erroneous and, therefore, reversed.⁴

DECREE

For these reasons, the trial court's December 5, 2019 judgment of bond forfeiture is hereby reversed and set aside. Appeal costs in the amount of \$548.25 are assessed against the State of Louisiana.

REVERSED AND SET ASIDE.

⁴ After the State instituted its claim for bond forfeiture relief, Financial Casualty filed a peremptory exception raising the objection of peremption. See La. C.Cr.P. arts. 335 ("If the defendant fails to make an appearance ... within [180] days of the execution of the certificate that notice of warrant for arrest was sent, the prosecuting attorney may file a rule to show cause requesting that a bond forfeiture judgment be rendered.") and 337 ("An appearance by the defendant shall interrupt the period for obtaining a bond forfeiture judgment."); La. C.C. art. 3458 ("Peremption is a period of time fixed by law for the existence of a right. Unless timely exercised, the right is extinguished upon the expiration of the preemptive period."). See also *State v. Jones*, 2018-909 (La. App. 3d Cir. 6/5/19), 275 So.3d 34, 40 (finding that pursuant to Article 335, the State had the right to seek a bond forfeiture when the defendant failed to appear within the required 180 days after issuance of his arrest warrant and only his appearance within that 180-day period could serve as an interruption of the time that the State had for obtaining bond forfeiture relief under Article 337). Financial Casualty averred that the in-court appearance by Byrd on March 28, 2018 -- well after the passage of 180 days from the date of the filing into the record of the certificate of notice of the trial court's issuance of a bench warrant for his failure to appear at a hearing on April 3, 2017 -- resulted in the peremption of the State's right to seek bond forfeiture relief. On appeal, Financial Casualty assigns as error the trial court's denial of its peremption exception. The denial of a peremptory exception is an interlocutory determination, see La. C.C.P. art. 1841; *Matter of Robinson*, 2018-0445 (La. App. 1st Cir. 2/6/20), 2020 WL 605164, at *3, and when an unrestricted appeal is taken from a final judgment the appellant is entitled to seek review of all adverse interlocutory rulings prejudicial to it, in addition to the review of the final judgment. See *Bourg v. Safeway Ins. Co. of Louisiana*, 2019-0270 (La. App. 1st Cir. 3/5/20), 300 So.3d 881, 887. But because we have already reversed the trial court's judgment in favor of the State ordering bond forfeiture relief in the amount of \$12,500.00, we decline to address the propriety of the trial court's disposition of the peremption exception and pretermitt such a discussion.