

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-1103

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v.

Nash County
No. 00 CRS 06820

EDDIE LEE SILVER, JR.,
Defendant

Appeal by the Nash-Rocky Mount Board of Education from order entered 5 April 2001 by Judge Cy A. Grant in Nash County Superior Court. Heard in the Court of Appeals 29 April 2002.

Valentine, Adams & Lamar, L.L.P., by L. Wardlaw Lamar and Lewis W. Lamar, Jr., for appellant Nash-Rocky Mount Board of Education.

No brief for appellee Jannet B. Pugh.

MARTIN, Judge.

On 5 June 2000, Eddie Lee Silver, Jr., (defendant) was released from jail pursuant to an appearance bond in the amount of \$1,000.00. After defendant was called in open court and failed to appear on 3 January 2001, the trial court issued a bond forfeiture notice.

On 6 March 2001, the surety (appellee), Jannet B. Pugh, filed a motion to set aside the forfeiture because "defendant was incarcerated in a unit of the Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons

located within the borders of the state at the time of the failure to appear." In support of the motion, appellee attached a letter dated 19 December 2000 from the Winchester Regional Adult Detention Center in Winchester, Virginia. The letter stated defendant had "been incarcerated in our facility from July 21, 2000 to the present date." The Nash-Rocky Mount Board of Education (appellant) filed an objection and notice of hearing on 13 March 2001. Appellant pointed out in its objection and notice that appellee's evidence failed to show defendant was incarcerated on 3 January 2001. Appellee's evidence also did not show defendant was incarcerated in either the Department of Correction or a unit of the Federal Bureau of Prisons located within North Carolina.

Upon finding that appellee had "established one or more of the reasons specified in G.S. 15A-544.5 for setting aside that forfeiture[,]" the trial court allowed appellee's motion and set aside that forfeiture on 5 April 2001. From the trial court's order, appellant appeals.

Appellant contends the trial court erred by setting aside the forfeiture because appellee failed to present a legally sufficient reason under G.S. § 15A-544.5 (2000 Interim Supplement) (effective 1 January 2001). It argues the evidence in the supporting letter presented by appellee did not show defendant was incarcerated either "in a unit of the Department of Correction . . . or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear." N.C. Gen. Stat. § 15A-544.5(b)(6). We agree.

"There shall be no relief from a forfeiture except as provided in this section. The reasons for relief are those specified in subsection (b) of this section." N.C. Gen. Stat. § 15A-544.5(a). Subsection (b) states that "[a] forfeiture shall be set aside for any one of the following reasons, and none other[.]" N.C. Gen. Stat. § 15A-544.5(b). Appellee relied upon the sixth reason in her motion to set aside the forfeiture, that "[t]he defendant was incarcerated in a unit of the Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear." N.C. Gen. Stat. § 15A-544.5(b)(6).

Appellee's supporting letter in the record states that defendant "has been incarcerated in [a Virginia detention center] from July 21, 2000 to the present date [19 December 2000]." However, defendant's failure to appear occurred on the later date of 3 January 2001. In addition, defendant's place of incarceration did not come within the correctional facilities specified in G.S. § 15A-544.5(b)(6). As a result, appellee's evidence was insufficient to support the trial court's finding that she had "established one or more of the reasons specified in G.S. 15A-544.5 for setting aside that forfeiture." Accordingly, the trial court's order is reversed and remanded.

Reversed and remanded.

Judges HUNTER and BRYANT concur.

Report per Rule 30(e).