NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. STANLEY STEPHEN STURGIS APPEAL OF: LIBERTY BAIL BONDS, INC., Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 257 WDA 2013

Appeal from the Order entered October 10, 2012,
in the Court of Common Pleas of Clarion County,
Criminal Division, at No(s): CP-16-CR-0000447-2011

BEFORE: PANELLA, ALLEN, and STRASSBURGER*, JJ.

MEMORANDUM BY ALLEN, J.: FILED JANUARY 28, 2014

Liberty Bail Bonds, Inc. ("Appellant") appeals from the trial court's order denying their petition for relief of bond forfeiture relative to Stanley Stephen Sturgis ("Defendant"). We affirm.

In response to Appellant's petition, the trial court convened an evidentiary hearing, from which it recounted the following:

> On September 14, 2011, after fleeing from the police, both in his vehicle and on foot, the Defendant was arrested and charged with Fleeing or Attempting to Elude a Police Officer, Recklessly Endangering another Person, Possession of a Controlled Substance, Possession of Drug Paraphernalia, and twelve summary offenses. On October 11, 2011, bail was set at $10,000. It was posted that same day by [Appellant]. As a condition of the bail, the Defendant was to appear at all future court dates. On March 26, 2012, the Defendant entered an open plea to all 16 counts and was ordered to appear at court for

*Retired Senior Judge appointed to the Superior Court.

> sentencing on April 18, 2012. On April 18, 2012, the Defendant failed to appear and sentencing was continued to May 2, 2012. The Defendant again failed to appear on May 2, 2012 and the court issued a bench warrant for his arrest.
>
> Based on the Defendant failing to appear at the April 18, 2012 and May 2, 2012 sentencing hearings, the court revoked the Defendant's bond on May 8, 2012 and ordered forfeiture of the bond on June 13, 2012. [Appellant] received a copy of the order forfeiting the bond on June 23, 2012. On July 8, 2012, the Defendant was arrested and lodged in the Philadelphia County Jail and on July 9, 2012, the Clarion County Sheriff's Department placed a detainer on him.
>
> To date the Defendant remains in the Philadelphia County Jail. Clarion County Sheriff Rex Munsee testified that they will release him to Clarion County when his Philadelphia case is complete. At that time, the Clarion County Sheriff's Department will send two deputies to Philadelphia to transfer him back. The estimated costs to the Sheriff Department will be $462.00 in deputy wages, $110.00 in meals, $145.00 for a hotel room, $325.00 for mileage, a $30.00 arrest fee, and a $20.00 committal fee, for a total cost of $1,092.00.

Trial Court Opinion, 10/11/11, at 2.

The trial court denied Appellant's petition for relief of bond forfeiture, and Appellant timely appealed. Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant presents one issue for our review:

> 1. Whether the lower court abused its discretion by ordering forfeiture of the bond posted by the surety, [Appellant], when the defendant was determined to be incarcerated within the twenty day stay of forfeiture period and there is no evidence that the Commonwealth suffered cost, inconvenience or prejudice.

Appellant's Brief at 4.

Pennsylvania Rule of Criminal Procedure 536(A)(2) prescribes the procedure surrounding forfeiture as follows:

> (a) When a monetary condition of release has been imposed and the defendant has violated a condition of the bail bond, the bail authority may order the cash or other security forfeited and shall state in writing or on the record the reasons for so doing.
>
> (b) Written notice of the forfeiture shall be given to the defendant and any surety, either personally or by both first class and certified mail at the defendant's and the surety's last known addresses.
>
> (c) The forfeiture shall not be executed until 20 days after notice of the forfeiture order.
>
> (d) The bail authority may direct that a forfeiture be set aside or remitted if justice does not require the full enforcement of the forfeiture order.

Pa.R.Crim.P. 536(A)(2).

In applying Pa.R.Crim.P. 536(A)(2) to the present case, we are guided by our Supreme Court's recent decision in ***Commonwealth v. Hann***, ---A.3d---, 2013 WL 5827034 (Pa.), in which our standard of review in bond forfeiture cases is stated:

> Our standard of review in bond forfeiture cases is well-settled: 'the decision to allow or deny a remission of bail forfeiture lies with the sound discretion of the trial court.' Trial courts unquestionably have the authority to order the forfeiture of bail upon the breach or violation of any condition of the bail bond. In bond forfeiture cases, an abuse of that discretion or authority will only be found if the aggrieved party demonstrates that the trial court misapplied the law, exercised its judgment in a manifestly unreasonable manner, or acted on the basis of bias, partiality, or ill-will. To the extent the aggrieved party alleges an error of law, this Court will correct that error, and our scope of review in doing so is plenary.

Id. at 6 (citations omitted).

As noted above, the decision to allow or deny remission of bail forfeiture lies within the sound discretion of the trial court. ***See also Commonwealth v. Mrozek***, 703 A.2d 1052 (Pa. Super. 1997); ***Commonwealth v. Chopak***, 615 A.2d 696 (Pa. Super. 1992). The bondsman seeking remission has the burden of proving that the apprehension of the defendant was effected by his efforts or that his efforts at least had a substantial impact on the defendant's apprehension and return; mere participation in the search for the defendant is not enough. ***Mrozek***, 703 A.2d at 1053-1054 (where bondsman's investigation did not result or have substantial impact on the defendant's apprehension or return, bondsman was not entitled to remission of bond forfeiture). ***See also Commonwealth v. Reeher***, 369 A.2d 404, 406 (Pa. Super. 1976) (trial court did not abuse its discretion in refusing to remit bail forfeiture where bondsman only presented minimal evidence to prove his efforts to seek return of the accused, and where bondsman's alleged activities had nothing to do with the return of the accused).

Our Supreme Court in ***Hann*** held that the decision concerning bail forfeiture "is one of discretion, and should be exercised on a case by case basis…" ***Id***. at 13. In commenting on the surety's status as a bondsman, the Supreme Court explained:

> Courts have uniformly held that a surety's status as a bondsman tends to lean in favor of forfeiture. 'The driving force behind a surety's provision of a bond is the profit motive.' In making the business decision of whether to take a bail bond, 'it is not unreasonable to conclude that [a bondsman] should have been fully cognizant of his responsibilities and the consequences of [a defendant's] breach of the conditions of the bond.' Indeed, such calculation involves 'a known business risk … for economic gain-the premium paid for the bond.'

Id. at 10 (citations omitted).

Appellant argues that the trial court abused its discretion by ordering forfeiture because Appellant located the Defendant within twenty days of receiving notice of the forfeiture and informed Clarion County of the Defendant's location in the Philadelphia prison system. Appellant's Brief at 9, 12. Although the record does not support this assertion, Appellant correctly notes:

> [T]he twenty day stay of execution on the forfeiture is to 'give the surety time to produce the defendant.' Pa.R.Crim.P. 536 (Comments). The plain language of Rule 536 demonstrates that the twenty day stay is clearly designed to allow the surety to produce the defendant and avoid the forfeiture.

Id. at 12. However, Appellant offers no authority *mandating or requiring* remittance when the defendant is located in the twenty day period between forfeiture and execution. Moreover, Appellant's assertion that *Appellant* located the Defendant is belied by the record. The trial court explained:

> There is no evidence regarding what efforts [Appellant] put forth in their attempts to apprehend the Defendant or that any of [Appellant's] efforts had a part or impact on the Defendant being arrested on July 8, 2012.

Trial Court Opinion, 10/11/12, at 5.

We have reviewed the notes of testimony, which confirm Appellant's failure to offer any evidence that Appellant located the Defendant. The Commonwealth presented the only witness at the hearing, Clarion County Sheriff Rex Munsee. Sheriff Munsee testified that the Defendant was lodged at the Philadelphia County Jail for reasons unrelated to his criminal docket in Clarion County, and discussed the expenses associated with transporting the Defendant, at an unknown future date, back to Clarion County. N.T., 9/28/12, at 11-18. Sheriff Munsee testified that the figures "weren't exact" and that the Defendant could be released "next week, it could be next year." *Id*. at 12, 14. Sheriff Munsee did not testify about who located the Defendant in Philadelphia. Moreover, the following exchange occurred between the trial court and the Commonwealth:

> THE COURT: July 8 [Defendant] was incarcerated because I think that's the date [Appellant] said they found him. They located him.
>
> DISTRICT ATTORNEY: Your Honor, I beg to differ with that. They did not find him. We have no evidence of efforts of the bail bondsman to search for [Defendant], to search in Philadelphia, which is their obligation to do. They did not find [Defendant], he was simply fortuitously lodged in the jail.
>
> THE COURT: Find on my part is the wrong word. I think he said located.

Id. at 20.

Thereafter, Appellant's counsel stated:

> I actually do agree with the two points [the Commonwealth] makes, one is I did not bring any witnesses and I have not put on any evidence because the record does, in fact, speak for itself. The rule gives you 20 days to bring the guy back. He was located within 20 days, whether we look for him all that test is irrelevant and doesn't apply in this circumstance whatsoever. The *Atkins* case does. We find him, where is he, he's incarcerated end of story.

Id. at 24.

Appellant's counsel was wrong. Appellant references ***Commonwealth v. Atkins***, 644 A.2d 751 (Pa. Super. 1994) at the hearing, and again in their brief. *See* Appellant's Brief at 14-15. ***Atkins*** holds that forfeiture was not appropriate where the trial court *knew* the defendant was in another jurisdiction because the trial court had modified the conditions of the defendant's bail to let the defendant return to New Jersey. ***Id***. at 752. While out on bail, the defendant was apprehended and incarcerated in New York. ***Id***. This Court held that the defendant's failure to appear while being held by authorities in another state was not willful and did not justify forfeiture, because the trial court was aware that the defendant was being held in New York. These facts are different from the facts of the present case, where the Defendant failed to appear for sentencing before the trial court on April 18 and May 2, 2012, but was not "held by authorities" until his arrest and placement in the Philadelphia County Jail months later, on July 8, 2012. There is no evidence in this case that the Defendant's failure to appear for sentencing in April and May of 2012 was *not* willful.

Appellant additionally asserts that at the forfeiture remittance hearing, the Commonwealth failed to produce evidence of cost, inconvenience or prejudice, and failed to satisfy the second prong of the ***Mayfield/Ciotti*** test[1], where "the Commonwealth and the lower court misidentified potential, future costs as satisfying the ***Mayfield/Ciotti*** test, and the lower court abused its discretion in ordering a full forfeiture in this matter." Appellant's Brief at 9.

First, the burden in favor of remission was not on the Commonwealth, but on Appellant. ***Hann*** at 12. With regard to the "***Mayfield/Ciotti*** test" referenced by Appellant, our Supreme Court recently commented:

> Preliminarily, we note that the Court has never considered, let alone adopted, the ***Ciotti/Mayfield*** factors as the controlling standard for evaluating whether "justice requires forfeiture" under [Pa.] Rule [of Criminal Procedure] 536(A)(2)(d). To that end, the parties only advocate analysis of this case under the three prongs of ***Ciotti/Mayfield***. We do not fault them in this regard, as the ***Ciotti/Mayfield*** analysis, up to this point, has been binding in the trial and Superior Courts and is thus the only existing framework in the Commonwealth. Moreover, we view the construct as a sufficient starting point for determining the standard under Rule 536(A)2(d).

Id. at 8 (footnote omitted).

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[1] ***See Commonwealth v. Mayfield***, 827 A.2d 462 (Pa. Super. 2003) and ***United States v. Ciotti***, 579 F.Supp. 276 (W.D.Pa. 1984), establishing a three-prong test for determining whether forfeiture, not remittance of forfeiture, is appropriate.

The Supreme Court in ***Hann*** proceeded to determine:

> Nevertheless, for various reasons, in our view the construct has been applied too rigidly by both state and federal trial and intermediate appellate courts. As noted above, the decision to order forfeiture in the first instance belongs solely to the discretion of the trial court.

Id. (citation omitted).

Given the foregoing, Appellant's arguments are unavailing. We further recognize the public policy relative to remission, where this Court has commented:

> '[T]he remission of forfeitures is a practice calculated to encourage bondsmen to actively seek the return of absent defendants. For this reason, the results of a bondsman's efforts as well as the extent of those efforts are prime considerations in the determination of the amount of any remission.' Therefore, the lower court did not abuse its discretion by focusing on this factor because this is precisely the undertaking which every bondsman implicitly agrees to guarantee.

Reeher, 369 A.2d at 406 (quoting the trial court).

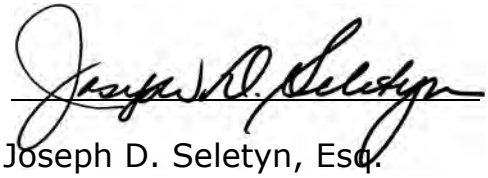
In sum, our review of the record in this case reveals that here, as in ***Reeher***, Appellant failed to produce any evidence that their efforts helped to locate the Defendant or secure his return to Clarion County. *See* Notes of Testimony, 9/28/12. We recognize that ***Hann*** and ***Reeher*** are factually distinguishable from the present case, where the Defendant in the present case was apprehended on July 8, 2012, within twenty days of Appellant, on June 23, 2012, receiving notice of the forfeiture. However, our reading of Pa.R.Crim.P. 536(A)(2), as well the above cited case law, lead us to

conclude that the time of the Defendant's apprehension is not dispositive of Appellant's remission of forfeiture claim under the circumstances of this case. Rather, we are guided by our Supreme Court's sound reasoning in ***Hann***, and find no abuse of discretion or error of law by the trial court.

Order affirmed.

Judge Strassburger files a Dissenting Memorandum.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/28/2014