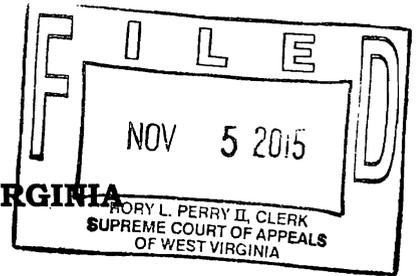


**NO. 15-0409**

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**



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**CHARLESTON, WEST VIRGINIA**

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**IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA**

**STATE OF WEST VIRGINIA,**

**VS.**

**CASE NOS. 14-F-72 & 14-B-149**

**DAVID D. GRIFFY, SR.,**

**DEFENDANT.**

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**REPLY BRIEF OF PETITIONER/SURETY BELOW, ERVIN PAGE, JR.**

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## **I. STATEMENT OF THE CASE**

Of time a Reply is not necessary, but in this case, there are certain things that beg out for a Reply. There are statements made by the Respondent that there simply is no supporting evidence in the record of this matter.

First, the Respondent asserts the Petitioner/Surety Below had counsel at the time of the September 22, 2014 Hearing. This is absolutely not the case and there is nothing in the record to support the same. The fact that there was Motion to Set Aside Bond Forfeiture shortly after the entry of this Default Order was coincidence at best. An argument by the Respondent that the Petitioner/Surety Below had some knowledge of the default and subsequent Hearing is not supported by the record of this matter. The only evidence of any attempts to contact the Petitioner/Surety Below was found in the mailing of three certified mailings, none of which produced evidence by a return receipt that the Petitioner/Surety Below had knowledge of any prior Hearings. In its Statement of the Case, the Respondent attempts to argue that the Petitioner/Surety Below was somehow at fault because he failed to claim a certified mailing. There is no evidence in the record that this act by the Petitioner/Surety Below was intentional in any fashion. The fact of the matter is that the Petitioner/Surety Below had no notice of any prior Hearing to forfeit the bond. The only Hearing that the Petitioner/Surety Below had any representation whatsoever was at the April 17, 2015 Hearing for the Circuit Court to set aside the forfeiture. In its Statement of the Case, the Respondent

attempts to disparage the Petitioner/Surety Below's case by stating that he was incarcerated at the time of the April 7, 2015 Hearing. This has absolutely nothing to do with this issue and was stated here only to attempt to gain favor with this Court.

## **II. ARGUMENT**

The Respondent wants to ignore the law that is applicable to this matter. West Virginia Code §62-1C-8 states that a forfeiture shall be set aside if it appears that justice does not require the enforcement of the forfeiture. In addition, in the case State of W.Va. v. Hedrick, 204 W.Va. 547, 514 S.E.2d 397 (1999), this Supreme Court set out and reiterated a non-exhaustive analysis that must be conducted. See State of W.Va. v. Ratliff, 2012 W.Va. Lexis 686.

If one reads the Order of the Hearing before the Boone County Circuit Court on February 10, 2015 (Order entered April 7, 2015), no such analysis was ever utilized. There was no analysis by the Boone County Circuit Court of the equities involved in this case or whether justice required the forfeiture of very valuable property to the Petitioner/Surety Below. There was no analysis of the cost to the State of West Virginia. What occurred in this case was that David D. Griffy, Sr., the Defendant in the underlying case, absconded and was subsequently apprehended by the State of South Carolina and returned to Boone County, West Virginia. Equity certainly does not require that the Petitioner/Surety Below suffer a dramatic financial loss when David D. Griffy, Sr. has been returned to Boone County, West Virginia and justice has been

served. The Circuit Court made a serious mistake in not weighing this fact in its consideration.

### **III. CONCLUSION**

There certainly has not been enough analysis done by the Boone County Circuit Court to conclude whether justice requires the forfeiture of the bond. See West Virginia Code §62-1C-8.

In addition, there has not been an analysis done by the Boone County Circuit Court in order to allow the reaching of the conclusion that forfeiture should bear some reasonable relation to the cost and inconvenience to the Government and Court. See State of W.Va. v. Hedrick, 204 W.Va. 547, 514 S.E.2d 397.

David D. Griffy, Sr. was returned to Boone County, West Virginia and justice has been served. A third-party surety should not suffer a great substantial loss when there is no corresponding evidence that the Respondent suffered a corresponding loss in apprehending David D. Griffy, Sr.

Justice requires the setting aside of the bond forfeiture and the return of the Petitioner/Surety Below's property.

### **IV. PRAYER FOR RELIEF**

**WHEREFORE**, the Petitioner/Surety Below requests the Supreme Court of Appeals enter an Order reversing the decision of the Circuit Court of Boone County, West Virginia and require the bond forfeiture be set aside. The

Petitioner/Surety Below requests such other and further relief as this Court deems just.

**ERVIN PAGE, JR.**

**By Counsel,**

**CICCARELLO, DEL GIUDICE & LAFON**

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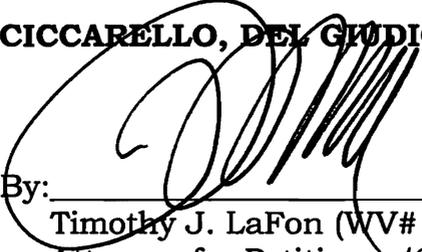
**CERTIFICATE OF SERVICE**

I, Timothy J. LaFon, do hereby certify that the foregoing **“Reply Brief of Petitioner/Surety Below, Ervin Page, Jr.”** has been served upon all parties by depositing a true and exact copy thereof in the U.S. Mail, postage pre-paid and properly addressed as follows, on the 5<sup>th</sup> day of November, 2015:

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