

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia,
Petitioner Below, Respondent**

vs) **No. 11-1468** (Webster County 10-F-47)

**Delbert Ratliff, Defendant Below
and
A1 Walton's Bonding Incorporated,
Petitioner**

FILED

September 24, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner A1 Walton's Bonding Incorporated, as surety for Delbert Ratliff¹ (defendant below), by counsel Christopher S. Moorehead, appeals the Circuit Court of Webster County's order entered on August 22, 2011, denying the return of bail proceeds posted by petitioner on behalf of Defendant Ratliff. The State of West Virginia, by counsel Barbara H. Allen, has filed its response.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner A1 Walton's Bonding Incorporated ("A1") paid a \$10,000 bond on behalf of Defendant Delbert Ratliff. Defendant Ratliff did not appear at a hearing on January 10, 2011, but the circuit court noted that it received a letter indicating that Defendant Ratliff was undergoing medical treatment and should be excused from said hearing. Ten days later, Defendant Ratliff again failed to appear for a hearing. At that time, the circuit court issued a capias warrant for Defendant Ratliff, and ordered that he be placed on home confinement once apprehended. In the capias order, the circuit court set a hearing for February 2, 2011, and stated that "Walton Bonding Company shall appear to show cause why the bond posted in this matter should not be forfeited." The capias order was sent to Petitioner A1 twice via facsimile, and once via first class mail. Prior to the February 2, 2011, hearing, the West Virginia State Police apprehended Defendant Ratliff. Without conferring with counsel, Petitioner A1 chose not to appear for the February 2, 2011, hearing, and on February 16, 2011, the circuit court entered an order requiring the bond company to forfeit the bond. Petitioner A1 paid the bond to the circuit court, and moved

¹ While Delbert Ratliff is the named defendant in this matter, the true party in interest is A1 Walton's Bonding Incorporated, as surety for Ratliff. Thus, A1 Walton Bonding will be referred to as the petitioner herein.

for the return of forfeited bail proceeds. After a hearing, the circuit court denied the motion, and found that the bail bondsman did not return the defendant to custody in this matter and that the bondsman had adequate notice of the forfeiture proceedings in this matter, but failed to show cause as to why he should not be required to forfeit the bond.

“A trial court's decision on whether to remit, under Rule 46(e)(4) of the West Virginia Rules of Criminal Procedure, a previously forfeited bail bond will be reviewed by this Court under an abuse of discretion standard.” Syl. Pt. 1, *State v. Hedrick*, 204 W.Va. 547, 514 S.E.2d 397 (1999). Moreover, the Court has found that “[t]he surety bears the burden of establishing that the trial court abused its discretion in refusing to remit, pursuant to Rule 46(e)(4) of the West Virginia Rules of Criminal Procedure, all or part of a previously forfeited bail bond.” Syl. Pt. 2, *id.*

On appeal, petitioner first argues that the circuit court erred in denying motion for the return of forfeited bail proceeds, because the bail bondsman did not take Ratliff into custody, and because of the late filing of petitioner’s motion. Petitioner argues that West Virginia Code § 62-1C-12(b) is ambiguous, as it states “bail bondsman returns the defendant to the custody of the court,” but does not specify whether the bondsman must physically acquire custody of the defendant or if simply causing the defendant to be brought into custody is sufficient. Petitioner asserts that the legislative intent was for the fugitive to be recovered, and that it should not matter who actually recovers him. Moreover, petitioner argues that the circuit court could have remitted part of the \$10,500 bond pursuant to *Hedrick*. Petitioner also argues that there is no time frame for pursuing the return of forfeited bail proceeds, and that West Virginia Code § 62-1C-12(b) provides that the money can be recovered within two years.

In response, the State first notes that petitioner did not refer to *Hedrick* below, and therefore cannot complain that a full *Hedrick* analysis was not performed in this matter. The State also argues that even if a *Hedrick* analysis was proper, the circuit court did not abuse its discretion in denying the bonding company’s motion for relief. The State notes that petitioner merely secured a bail piece, after Ratliff was apprehended. In contrast, in *Hedrick*, the bonding company conducted a diligent search for the defendant at its own expense, but the *Hedrick* Court still found that this was insufficient to justify remission of bail. The State argues that even if the circuit court erred in concluding that petitioner’s failure to return the defendant to custody made petitioner ineligible to seek relief under West Virginia Code § 62-1C-12(b), the error was harmless.

Secondly, petitioner argues that the case had numerous procedural errors, including the failure of the State to file a motion to revoke or forfeit the bail bond; the failure of the circuit court to find that petitioner willfully failed to appear; and the fact that the circuit court gave insufficient notice between the January 20, 2011, hearing and the February 2, 2011, show cause hearing. Petitioner argues that the bond was seemingly revoked by the circuit court’s own initiative. Additionally, at no time did the circuit court make a finding that petitioner willfully failed to appear. Defendant Ratliff alleges that he was told by an attorney other than his criminal attorney that he did not need to appear for the January 20, 2011, hearing, and he had documented health problems during this period. Petitioner A1 also complains that there was insufficient

notice provided between the two hearings, as Petitioner A1 was only provided seven days' notice of the date of the show cause hearing, instead of the required ten days.

In response, the State admits that the circuit court never made a finding that the petitioner's failure to appear was willful or without just cause; however, petitioner waived the right to complain by failing to appear at the forfeiture hearing, despite having actual notice of the show cause order commanding petitioner's appearance. The State argues that *Hedrick* supports its argument, because petitioner in this matter is a professional bonding company which had no excuse for not attending the hearing. As to the timing of the show cause hearing, the State argues that petitioner was given thirteen days' notice, and that the order was sent via facsimile to petitioner twice on the day it was entered. Thus, regardless of whether notice was sent via certified mail, petitioner had timely notice pursuant to West Virginia Code § 62-1C-9.

Finally, petitioner argues that the surety never received proper notice of the show cause hearing, other than by facsimile, and was never provided an opportunity to object to the entry of the February 2, 2011, order, nor any of the prior orders related to the forfeiture of the bail bond. Petitioner argues that it was entitled to notice via certified mail. Further, petitioner argues that pursuant to Rule 24.01(c) of the West Virginia Trial Court Rules, it was entitled to a copy of the proposed order in this matter, which was never given.

The State argues that petitioner had actual notice of the hearing via two different facsimiles. Thus, regardless of whether notice was sent certified mail, petitioner had timely notice pursuant to West Virginia Code § 62-1C-9. The State again argues that by not appearing, petitioner forfeited its right to complain, as it is undisputed that petitioner had actual notice of the hearing. The State also argues that although petitioner did not receive a copy of the circuit court's forfeiture order until thirteen days after it was entered, it did not file either a motion for relief from judgment pursuant to West Virginia Rules of Civil Procedure Rule 60(b) or an appeal from the order. By the time the circuit court was put on notice of the alleged irregularities in the forfeiture proceedings, the funds were already disbursed to the State Treasurer. Moreover, since the company elected not to attend the forfeiture hearing, it was not required under Rule 24.01 of the West Virginia Trial Court rules to receive a copy of the order with the opportunity to note objections thereto.

In relation to a motion to remit bond, this Court has found as follows:

When a trial court is asked to remit all or part of a previously forfeited bail bond, pursuant to Rule 46(e)(4) of the West Virginia Rules of Criminal Procedure, the court shall consider the following criteria to the extent that they are relevant to the particular case under consideration: (1) the willfulness of the defendant's breach of the bond's conditions; (2) the cost, inconvenience and prejudice suffered by the government as a result of the breach; (3) the amount of delay caused by the defendant's default and the stage of the proceedings at the time of his or her disappearance; (4) the appropriateness of the amount of the bond; (5) the participation of the bondsman in rearresting the defendant; (6) whether the surety is a professional or a friend or member of the defendant's family; (7) the public interest and necessity of effectuating the appearance of the defendant; and (8) any

explanation or mitigating factors presented by the defendant. These factors are intended as a guide and do not represent an exhaustive list of all of the factors that may be relevant in a particular case. All of the factors need not be resolved in the State's favor for the trial court to deny remission in full or in part. Moreover, it is for the trial court to determine the weight to be given to each of these various factors.

Syl. Pt. 3, *id.* Upon examination of these factors, this Court finds no error in the circuit court's denial of petitioner's request to remit bond. Petitioner is a professional bond company and admits that it failed to rearrest the defendant. This Court finds no merit in petitioner's alleged procedural errors and notes that petitioner had actual notice of the show cause hearing, but admits that it chose not to attend.

For the foregoing reasons, we affirm the circuit court's decision.

Affirmed.

ISSUED: September 24, 2012

CONCURRED IN BY:

Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum
Justice Brent D. Benjamin