

IN THE
SUPREME COURT OF APPEALS
OF
WEST VIRGINIA

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CHARLESTON

IN RE:

No. 23-398
Underlying Proceeding
Case No. 2022-F-47
Webster County Circuit Court

BRIEF

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3. ASSIGNMENTS OF ERROR AND THE MANNER IN WHICH THEY WERE DECIDED

A. WHETHER THE CIRCUIT COURT OF WEBSTER COUNTY, WEST VIRGINIA IMPROPERLY FORFEITED \$1,000.00 OF THE BOND POSTED BY THE PETITIONER WHEN THE BONDING COMPANY WAS NOT GIVEN STATUTORY NOTICE OF THE DEFENDANT FAILING TO APPEAR AND WHEN THE STATE OF WEST VIRGINIA WAS NOT RESPONSIBLE FOR TAKING THE DEFENDANT INTO CUSTODY AND SUFFERED NO EXPENSES.

THE CIRCUIT COURT OF WEBSTER COUNTY, WEST VIRGINIA REQUIRED THE BONDING COMPANY TO FORFEIT ONE THOUSAND

**DOLLARS (\$1,000.00) OF THE TEN THOUSAND DOLLAR (\$10,000.00) BOND
POSTED IN THIS MATTER.**

4. STATEMENT OF THE CASE

Larry Wooten was charged on March 17, 2022 with five (5) counts of failure to register changes in the Sex Offender Registry (Appx pg 1). The Defendant was indicted on September 7, 2022 for One Count of Failure to Register as a Sex Offender 2nd or Subsequent Offense (Appx pg 6). The Defendant was arraigned and a trial date set on 13th day of December, 2022 and a pretrial hearing was scheduled on December 1, 2022 (Appx pg 8). On December 1, 2022 the Defendant did not appear for the pretrial hearing and the Court gave the Defendant until 10:30 a.m. the following morning on December 2, 2022 to appear. The Defendant did not appear and the Circuit Court issued a Bench Warrant/Capias for the Defendant (Appx pg 10). The Court further ordered that the bonding company be notified of the Defendant's failure to appear and that a forfeiture proceeding would be instituted (Appx pg. 10). The State of West Virginia did not provide notice to the Petitioner herein until the following Monday, December 5, 2022 (Transcript Pg. 8). On December 5, 2022 the Defendant voluntarily appeared at the Harrison County Sheriff's Department and turned himself in on the Bench Warrant without the State of West Virginia taking any action to secure or arrest the Defendant and without there being any costs incurred to the State of West Virginia (Transcript Pg. 12). On December 16, 2022 the Petitioner appeared before the Circuit Court of Webster County and moved the Court to dismiss the show cause/bond forfeiture proceedings as the Bonding Company was not given notice within twenty-four (24) hours of the Defendant's failure to appear as

required by W.Va. Code 51-10-5a(d). The Court denied the Petitioner's Motion to Dismiss and set a schedule for the parties to file Memorandums of Law as to the issue (Appendix pg. 23). The Petitioner and the State of West Virginia filed their respective Memorandums of Law (Appendix pg.13, 15). The Court then conducted a evidentiary hearing on May 1, 2023 in which the Petitioner testified to the lack of notice of the Defendant's failure to appear and that the Defendant then voluntarily turned himself in to the authorities without the State of West Virginia taking any action or incurring any expenses. The Court then proceeded to find that "it was not as simple as the Bonding Company wants to believe" the State of West Virginia did not incur any expenses but there was a delay in getting the matter resolved and that there was no mediating evidence as to why the Defendant did not appear. The Court further ordered the Petitioner to pay One Thousand Dollars (\$1,000.00) to the Court as a bond forfeiture (Appendix pg. 26).

There was no prejudice caused to the State of West Virginia for any delay in trial in fact, the Defendant moved to continue the case without objection by the State of West Virginia and then the matter was subsequently resolved by way of a Plea Agreement (Appx pg 2).

It is from the ruling of the Court requiring the Petitioner to pay One Thousand Dollars (\$1,000.00) as bond forfeiture that the Petitioner in this matter appeals.

STANDARD OF REVIEW

" This Court reviews the Circuit Court's Final Order and ultimate disposition under abuse of discretion standard. We review challenges of Findings and Fact under a clearly erroneous

standard; Conclusions of Law are reviewed DeNovo”.

Syl Pt 1, Napoleon S. v. Walker, 617 S.E. 2d 801 W.Va. (2005)

5. STATEMENT REGARDING ORAL ARGUMENT

Petitioner does request Oral Argument in this matter.

6. SUMMARY OF ARGUMENT

The Petitioner asserts that the Circuit Court of Webster County, West Virginia improperly forfeited \$1,000.00 of the bond posted for the Defendant Larry G. Wooten in this matter. The Defendant did not appear for a scheduled pretrial hearing on Thursday, December 1, 2022. The matter was continued until the following day on December 2, 2022 and the Defendant again failed to appear. The Circuit Court issued a Capias/Bench Warrant and then issued a Show Cause for the Petitioner to appear and Show Cause as to why the Ten Thousand Dollar (\$10,000.00) bond posted by the Petitioner should not be forfeited. The State of West Virginia failed to give the Petitioner notice of the Defendant’s failure to appear for pretrial hearing until December 5, 2023 well and excess of the twenty-four (24) hours required by West Virginia Code. The Defendant appeared voluntarily on December 5, 2022, turned himself in and the State of West Virginia incurred no expense, no prejudice as to any delay and no cost in securing the detention of the Defendant. As such, the Petitioner asserts that the State of West Virginia failed to provide sufficient notice under WV Code 51-10-5 and that pursuant to the factors set forth in *State of West Virginia v Hedrick*, 204 W.Va. 547, 514 S.E. 2d 397 (1999) the Circuit Court committed reversal error in requiring a forfeiture of a Thousand Dollar (\$1,000.00) bond.

7. ARGUMENT

I. WHETHER THE CIRCUIT COURT OF WEBSTER COUNTY, WEST VIRGINIA IMPROPERLY FORFEITED \$1,000.00 OF THE BOND POSTED BY THE PETITIONER WHEN THE BONDING COMPANY WAS NOT GIVEN STATUTORY NOTICE OF THE DEFENDANT FAILING TO APPEAR AND WHEN THE STATE OF WEST VIRGINIA WAS NOT RESPONSIBLE FOR TAKING THE DEFENDANT INTO CUSTODY AND SUFFERED NO EXPENSES

The Petitioner, A-Four-Dable Bonding in this matter asserts that the Order requiring the forfeiture of \$1,000.00 of the bond posted for the Defendant, Larry G. Wooten in this matter should be reversed.

In support of the same, Counsel asserts that W.Va. Code 51-10-5(a) “Bonding fee and collateral security required by bail bondsman” provides the procedures to be utilized by bail bonding companies when they receive their fee for bonding a Defendant from jail. Further, said Code Section in paragraph (d) provides “When a bond is to be forfeited, the court is to give notification to the bail bondsman within twenty-four hours of the failure to appear”. In this case, the Defendant failed to appear for a scheduled hearing on December 1, 2022. The Court gave the Defendant until the next day, December 2, 2022, to appear or a capias would be issued. The Defendant failed to appear on the 2nd day of December and the Court ordered that a bond forfeiture proceeding be initiated. The only written notice sent to the Bonding Company of the forfeiture proceeding was a notice that was efiled and mailed by the Prosecuting Attorney to the Bonding Company on December 5, 2022. The Petitioner did receive a telephone call regarding the Defendant’s failure to appear on the 5th day of December, 2022 (Transcript Pgs. 8, 9, 12).

The State of West Virginia incurred no expenses nor did it cause the Defendant to be picked up or incarcerated as the Defendant voluntarily appeared and turned himself in (Transcript Pg. 12).

The Bonding Company had not received notice of there being any problem with the Defendant's failure to appear as the notice of Bond Forfeiture was sent out on Monday, December 5, 2022 more than 24 hours after the Court instructed the State of West Virginia to begin forfeiture proceedings. Accordingly, the bond forfeiture proceeding should have been dismissed. The West Virginia Supreme Court of Appeals has held that clear and ambiguous statutes are to be enforced and given their plain meaning, State v Warner, 172, W.Va 502, 308 S.E. 2d 142 (1983) "Citing State ex rel, Underwood v Silverstein, 167 W.Va. 121, 278 S.E. 2d 886 (1981)" Syl. Pt 2., State v Elder, 152 W.Va. 571, 165 S.E. 2d 108 (1968). In this matter, W.Va. Code 51-10-5(a)(d) is clear in that it requires a Bonding Company to be given notice of intended forfeiture proceeding within twenty-four (24) hours. The legislative intent is clear in that the Bonding Company has to be given immediate/ timely notice of their property being subject to forfeiture to allow the Bonding Company to take the steps to locate the missing Defendant and place him in custody.

The West Virginia Supreme Court of Appeals addressed bond forfeiture in State of West Virginia v Hedrick, 204 W.Va. 547, 514 S.E. 2d 397 (1999). The Court has created a test to analyze a Motion to Remit Bond in which the lower Courts should consider; (1) the willfulness of the Defendant's breach of the bonds 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/her disappearance; (4) the appropriateness of the amount of the bond; (5) the participation of the bondsmen in arresting the Defendant; (6) whether the surety is a professional or friend or member of the Defendant's family;

(7) the public interest and the necessity of effectuating the appearance of the Defendant and (8) any explanation of mitigating factors presented by the Defendant. The Hedrick Court set these tests as a guide for the Court to consider on whether to forfeit a Defendant's bond. Upon analysis of those factors the same weighs heavily in the favor of the Bonding Company in this matter. The Bonding Company argues that the Defendant turned himself in, there was no delay caused by the Defendant's failure to appear as it pertains to the stage of the Court proceedings, and there being no cost, inconvenience or prejudice suffered by the Government as a result of the Defendant's failure to appear. It is also important to note, that the (5th) factor in the Hedrick test involves the participation of the Bonding Company in bringing the Defendant into custody. This factor intends that the Bonding Company is given notice so that the Bonding Company can participate in bringing the Defendant into custody.

The Circuit Court did not address the failure of the State of West Virginia to comply with West Virginia Code 55-10-5 in its ruling and Order and simply stated the Court believes and found that the Bonding Company had sufficient notice. In its analysis of State v. Hedrick, the Court found that the matter is not as simple as the Bonding Company would want one to believe (Transcript pg. 12). The Circuit Court then found that the failure to appear did cause delay in the proceedings and further found there was no mitigating factors as to why the Defendant missed Court. However, pursuant to an Order entered on January 18, 2023 (with the Plea documents filed on January 12, 2023) (Appx. Pg 2), there was no actual delay caused in this matter pursuant to the Defendant missing Court. The Defendant continued the trial without objection from the State of West Virginia and then shortly thereafter entered a guilty Plea. The Court relying on the element of there being no mitigating factors ignores the fact that the Defendant turned himself in the

following judicial/business day.

As such, the Petitioner asserts that the Court forfeiting \$1,000.00 bond was inappropriate and inconsistent with West Virginia Law.

8. CONCLUSION

Wherefore the Petitioner prays that the Court reverse the Circuit Court of Webster County, West Virginia and set aside the Order requiring the Bonding Company to forfeit \$1,000.00 and grant such other relief as deemed appropriate and just.

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By Counsel

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CERTIFICATE OF SERVICE

I, Steven B. Nanners, do hereby certify that on this the 28th day of September, 2023, the foregoing Petitioner's Brief and Appendix was duly served by email and regular mail to the following:

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