

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-05-1040

Appellee

Trial Court No. CR-03-01964

v.

Ivory Carter

Defendant

and

You Walk Bail Bond Agency

DECISION AND JUDGMENT ENTRY

Appellant

Decided: December 9, 2005

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and Michael E. Narges,
Assistant Prosecuting Attorney, for appellee.

Ann M. Baronas, for appellant.

* * * * *

PARISH, J.

{¶ 1} This is an appeal of the judgment of the Lucas County Court of Common Pleas which denied appellant's motions to remit bond posted for defendant, Ivory Carter. For the reasons sets forth below, the judgment of the trial court is affirmed.

{¶ 2} On appeal, appellant sets forth a single assignment of error:

{¶ 3} "The trial court abused its discretion in denying appellant's motions for remission of bond."

{¶ 4} The following undisputed facts are relevant to the issue raised on appeal. On April 24, 2003, defendant was indicted for felony breaking and entering and vandalism. Bond was posted by JC Bail Bond. Defendant failed to appear for arraignment on May 6, 2003. On June 3, 2003, the trial court ordered the bond posted by JC Bail Bond forfeited. On September 8, 2003, defendant was arrested. On September 9, 2003, defendant was arraigned and the forfeited bond was remitted in full to JC Bail Bond.

{¶ 5} Following defendant's September 8, 2003 arrest, bond was posted by Blue Collar Bonding. Defendant entered a plea and the case was scheduled for sentencing on January 6, 2004. On January 6, 2004, defendant failed to appear for sentencing. On February 19, 2004, the bond issued by Blue Collar Bonding was ordered forfeited.

{¶ 6} On March 31, 2004, defendant was again arrested. This time, bond was posted by a Detroit area bond company, You Walk Bail Bond. Defendant had failed to appear twice in this case alone at the time You Walk Bail Bond became involved. Defendant again failed to appear for sentencing on April 6, 2004. The bond posted by You Walk Bail Bond was ordered forfeited on June 8, 2004.

{¶ 7} On August 20, 2004, appellant filed an "application for bond." The trial court deemed the application as a motion to remit bond pursuant to R.C. 2937.39. On August 31, 2004, the trial court denied appellant's motion to remit bond concluding that appellant failed to

adequately investigate defendant prior to posting bond. On December 9, 2004, appellant filed a second motion to remit the forfeited bond.

{¶ 8} On December 27, 2004, the court denied appellant's second request for remittance of bond. In its judgment, the trial court expressly enumerated various factors it considered in reaching its decision. The trial court determined that defendant's failure to appear lacked any mitigating circumstances. The trial court reached the following conclusions; defendant's failure to appear was solely to evade punishment, defendant's arrest was without the assistance of appellant, defendant's failure to appear caused prejudice and delay to appellee, and appellant failed to sufficiently investigate defendant's background and was negligent in issuing bond. The motion to remit bond filed by appellant was denied. On January 27, 2005, appellant filed a timely notice of appeal.

{¶ 9} On appeal, appellant sets forth a single assignment of error. Appellant contends the trial court abused its discretion in denying appellant's motions for remission of bond. In support, appellant claims it was inexperienced in the Toledo area and was not familiar with the reputation of defendant's family. In addition, appellant claims it undertook "numerous efforts" to capture defendant such as talking to defendant's mother and girlfriend in an effort to discover his whereabouts. Appellant did not locate or capture defendant. Defendant was caught by local police.

{¶ 10} The statutory procedures pertinent to bond forfeiture are set forth in R.C. Chapter 2937. R.C. 2937.39 establishes: "After judgment has been rendered against surety or after securities sold or cash bail applied, the court or magistrate, on the appearance, surrender, or

rearrest of the accused on the charge, *may* remit all or such portion of the penalty as it deems just." The trial court is vested with express statutory discretion in bond remittance determinations. Ohio courts have consistently considered and relied upon certain factors in weighing whether to remit bond. In analyzing motions to remit, courts examine:

{¶ 11} 1. The circumstances of the accused's reappearance;

{¶ 12} 2. The reason for the failure to appear;

{¶ 13} 3. The prejudice to the prosecution caused by the failure to appear;

{¶ 14} 4. Whether the surety took part in the capture of the defendant;

{¶ 15} 5. Mitigating circumstances; and

{¶ 16} 6. Whether justice requires the entire amount remain forfeited. *State v. Am. Bail Bond Agency* (1998), 129 Ohio App.3d 708, 712-713; *State v. Duran* (2001), 143 Ohio App.3d 601, 604; *State v. Patton* (1989), 60 Ohio App.3d 99, 101.

{¶ 17} Relevant case law shows it is proper to also factor in public policy considerations in reviewing motions for bond remittance. This court has previously acknowledged a compelling public interest in discouraging bail bond companies from posting bond without adequate investigation of the defendant's background and probability of compliance with bond obligations. *State v. Hardin*, 6th Dist. No. L-03-1131, 2003-Ohio-7263, at ¶ 11. Our review of the trial court's decisions on the motions for bond remittance is limited to whether the trial court abused its discretion in its decision. *State v. Rich*, 6th Dist. No. L-04-1102, 2004-Ohio-5678, at ¶ 13. An abuse of discretion is more than a mere error of law or judgment; it implies the trial

court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 18} The single issue presented for review is whether the trial court abused its discretion in its denials of appellant's motions to remit bond. We have thoroughly reviewed the record. Defendant has failed to appear at 66 court hearings in the past. In the course of this case itself, defendant failed to appear on at least three occasions. The purpose of bail is to guarantee the appearance of the criminal defendant at all court hearings. *State v. Hughes* (1986), 27 Ohio St.3d 19, 20. A company engaging in the bail bond business is ultimately engaged in the business of guaranteeing attendance of the defendant at court hearings. Crim.R. 46.

{¶ 19} The trial court engaged in unambiguous and specific analysis of various factors in reaching its determination to deny bond remittance. In addition to emphasizing defendant's past record of not appearing at court hearings, the trial court concluded defendant lacked mitigating circumstances for his failures to appear in this case.

{¶ 20} The trial court correctly noted that appellant did not assist in securing and returning the defendant. Appellant argues that it undertook various efforts to secure the return of defendant. Although appellant's agents did contact defendant's mother and girlfriend, appellant did not secure or assist in securing defendant. Defendant was apprehended by local police. The trial court further found that defendant's failures to appear caused delay to the state. The trial court was thorough and precise in its review of the merits of appellant's motions to remit bond.

{¶ 21} Appellant argues that its lack of experience in the Toledo area somehow supports its motions. By contrast, we would expect a company engaged in the type of business performed by You Walk Bail Bond would actually perform more, not less, investigation of defendants when expanding into new territory. A simple review of defendant's local criminal record would have revealed the high risk of doing business with this defendant.

{¶ 22} The trial court properly analyzed a multitude of factors in weighing the motions and reaching its decisions. This court has reviewed the record and finds no evidence to suggest the trial court's attitude was unreasonable, arbitrary, or unconscionable. There is no evidence the trial court abused its discretion. Appellant's assignment of error is not well-taken.

{¶ 23} On consideration whereof, this court finds appellant was not prejudiced and substantial justice was done.

{¶ 24} Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT AFFIRMED.

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You Walk Bail Bond Agency
C.A. No. L-05-1040

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J.

JUDGE

William J. Skow, J.

JUDGE

Dennis M. Parish, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.