

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

State of Ohio

Court of Appeals No. L-11-1246

Appellee

Trial Court No. CR0200301531

v.

Dante Sanders

Defendant

**DECISION AND JUDGMENT**

[Surety, American Reliable And  
ABC Bail Bonds—Appellant]

Decided: August 24, 2012

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Maureen O. Atkins, Assistant Prosecuting Attorney, for appellee.

Larry W. Zukerman, S. Michael Lear and Richard L. Fenbert,  
for appellant.

\* \* \* \* \*

**SINGER, P.J.**

{¶ 1} Appellant surety appeals the order of the Lucas County Court of Common Pleas denying its motion for remission and release of bond. Because we conclude that the trial court acted within its discretion in denying remission, we affirm.

{¶ 2} On June 17, 2003, Dante Sanders pled no contest and was found guilty of assault and aggravated menacing. The court sentenced him to a three-year term of probation, supervised by the Lucas County Adult Probation Department.

{¶ 3} On May 9, 2006, Adult Probation requested that the court issue a capias for Sanders for failure to report and other violations. The court issued the capias with bond set at \$5,000, no 10 percent allowed. Sanders was arrested on May 28, 2006, and held in lieu of bond. Shortly thereafter, appellant, ABC Bail Bonds/American Reliable Insurance Co., came forward to post bond.

{¶ 4} On July 25, 2006, Sanders failed to appear before the court. The court issued another capias and scheduled a bond forfeiture hearing for August 22, 2006. When neither appellant nor Sanders appeared at that hearing, the court ordered the bond forfeited. Officers arrested Sanders a year later on August 31, 2007. He was subsequently found in violation of the terms of his probation and sentenced.

{¶ 5} In 2011, the Lucas County Clerk of Courts sent appellant a notice requesting payment of the bond. Appellant then moved for remission and release of the bond. The court held a hearing on the motion and found it not well-taken. Appellant now appeals that order, setting forth a single assignment of error:

The trial court abused its discretion in denying Appellant's motion for remission and release of forfeited bond.

{¶ 6} The procedure for the forfeiture of bail is governed by R.C. 2937.36. *State v. Holmes*, 57 Ohio St.3d 11, 14, 564 N.E.2d 1066 (1991). R.C. 2937.36(C) provides

that, upon declaration of bond forfeiture, the magistrate or clerk of the court adjudging bond forfeiture shall

notify the accused and each surety \* \* \* of the default of the accused and the adjudication of forfeiture and require each of them to show cause on or before a date certain to be stated in the notice, and which shall be not less than twenty nor more than thirty days from date of mailing notice, why judgment should not be entered against each of them \* \* \*. If good cause by production of the body of the accused or otherwise is not shown, the court or magistrate shall thereupon enter judgment against the sureties or either of them \* \* \*.

{¶ 7} After judgment has been rendered against the surety or rearrest of the accused, the court “may remit all or such portion of the penalty as it deems just \* \* \*.” R.C. 2937.39. In determining whether to remit some or all of a forfeiture, the court should consider (1) the circumstances of the accused’s reappearance, (2) his or her reason for failing to appear, (3) the prejudice afforded the prosecution by the accused’s absence, (4) whether sureties helped return the defendant, (5) mitigating circumstances, and (6) whether justice requires that the entire amount remain forfeited. *State v. Am. Bail Bond Agency*, 129 Ohio App.3d 708, 712-713, 719 N.E.2d 13 (10th Dist.1998), *State v. Duran*, 143 Ohio App.3d 601, 604, 758 N.E.2d 742 (6th Dist.2001). “Overall, the bond forfeiture should bear a reasonable relationship to the costs and inconvenience in

regaining custody of the accused and again preparing for trial.” *Duran, supra*, at 604, citing *State v. Patton*, 60 Ohio App.3d 99, 101, 573 N.E.2d 1201 (6th Dist.1989).

{¶ 8} Whether to remit a forfeited bond is a matter within the discretion of the court and will not be reversed absent an abuse of that discretion. *Patton, supra*, at 101. An abuse of discretion is more than an error of judgment or a mistake of law; the term connotes that the court’s attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Timely production of the body of the defendant constitutes a showing of good cause as to why a forfeiture judgment may not be entered against a surety. *Holmes, supra*. “This determination comports with the purpose of bail which is to ensure the appearance of a defendant.” *Id.*

{¶ 9} Appellant has provided us with only an excerpt of the remission hearing. In it the court states that it has considered the remission factors and finds (1) Sanders was arrested by police about a year after he failed to appear, (2) there is nothing in the record to suggest why he failed to appear, (3) there was no prejudice to the prosecution from his absence, (4) there was no evidence that the surety was instrumental in securing Sander’s eventual appearance and (5) the only possible mitigating circumstance is that the clerk waited five years to ask for the money. However, appellant waited five years to request remission. The court concluded:

[I]t just seems to me that justice does not require that there be a remittance. The bonding company wrote a bond. They agreed to present

the defendant, you know, for trial. He didn't do it. They didn't do anything and he – apparently serendipitously, a year later, he was arrested.

\* \* \* So in weighing all of these factors that I'm required to weigh, I find that there is no public policy or interests of justice require that there be any remission. The bonding company didn't do what they were supposed to do and when they had a chance five years ago to contest the bond forfeiture, they chose not to appear.

{¶ 10} Given that appellant has provided us with a record containing only the court's findings we must presume their validity. *Knapp v. Edwards Lab.*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). With respect to the court's conclusion that remission was not appropriate, the court has stated its reasons, so the decision was not unreasonable or arbitrary. The court has only ordered appellant to do what it contracted to do, so it is hardly unconscionable. Accordingly, the court's order did not constitute an abuse of discretion. Appellant's sole assignment of error is not well-taken.

{¶ 11} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

\_\_\_\_\_  
JUDGE

Arlene Singer, P.J.

\_\_\_\_\_  
JUDGE

Thomas J. Osowik, 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>.