

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

JASON COBB,
Defendant

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No. CR – 1343-2012

CRIMINAL / BAIL FORFEITURE

OPINION AND ORDER

Before the Court is Mr. Kermit Yearick’s petition to set aside or remit the bail forfeiture that was ordered in this case. Following an evidentiary hearing on Mr. Yearick’s petition, and for the reasons that follow, the Court grants the petition for remittitur in part and Orders that the amount of \$7,500 is forfeited and the remainder (\$42,500) is remitted and set aside.

I. Procedural History

On July 18, 2012, Officer J. Paulhamus, of the Williamsport Bureau of Police, filed a criminal complaint against Jason Cobb, charging him with one count of possession with intent to deliver a controlled substance (PWID), two counts of delivery of a controlled substance, two counts of possession of a controlled substance, possession of drug paraphernalia and a summary offense of driving while operating privilege is suspended.¹ The crimes allegedly occurred on June 28, 2012 and July 17, 2012.

On January 8, 2013 the Court accepted a plea by Jason Cobb to all counts. Sentencing was scheduled for April 30, 2013. Cobb failed to appear. The District Attorney applied for a Bench Warrant, revocation of bail, and forfeiture of any monetary bail.² Mr. Yearick was not involved at that point. The Court issued a bench warrant. On June 20, 2013, sheriff deputies apprehended

¹ 35 P.S. § 780-113(a) (30), (16), (32) and 75 Pa. C.S.A. § 1543 (B)(1).

² A \$5,000 bail was set with bail conditions and a surety bond deposited by Scott J. Warner, filed October 23, 2012.

Cobb. On June 21, 2014, the Court vacated the bench warrant, remanded Cobb to the Lycoming County Prison and increased bail to \$50,000.00 cash bail.³

On October 28, 2013, Defendant posted bail and was released upon a monetary condition in the amount of \$50,000. Mr. Yearick signed the bond. The type of security was a surety bond. On November 13, 2013, Mr. Cobb failed to appear for his trial. The Commonwealth applied for a bench warrant, but did not seek forfeiture at that time. On December 24, 2013, Cortney Bower, a paralegal with the District Attorney's Office, notified Mr. Yearick by certified letter that the Commonwealth would execute on the forfeited bond if the defendant was not produced within twenty days. Mr. Yearick contends this was the first time he was notified that Mr. Cobb had failed to appear for trial or had violated the conditions of bail. On January 13, 2014, Mr. Yearick filed an Application for Bail Piece and sought removal as surety. On January 29, 2014, the Commonwealth filed a petition for forfeiture of bail. On February 20, 2014, Cobb was apprehended. On February 27, 2014, the court denied forfeiture. On March 3, 2014, the Commonwealth filed a motion to reconsider the denial of the forfeiture and requested an evidentiary hearing. Following an evidentiary hearing, the motion for reconsideration was granted and the bail bond was forfeited.

Given the nature of the procedural posture at that time, the Court stayed the forfeiture for 20 days pursuant to Pa. R.Crim. P. 536 (2)(c) and further stayed the forfeiture pending a hearing on any petition to set aside or remit the forfeiture. An evidentiary hearing on Mr. Yearick's petition to remit, set aside and otherwise vacate the bail forfeiture was held on July 30, 2014. On May 20, 2014, the Court accepted defendant's open plea of guilty to all counts and imposed sentence on August 6, 2014.

³ On August 6, 2013, the Court granted Cobb's motion to withdraw his guilty plea on the basis that the defendant would not have plead guilty if he had known that the mandatory school zone issue would be decided by a jury. The court reinstated Cobb's bail to \$50,000.00 cash bail, 10% is not approved. The case was placed back on the trial list, with a pretrial scheduled for September 17, 2013. On September 23, 2013, the Court denied Cobb's motion for modification of bail.

II. Findings of Fact.

Background of Mr. Yearick's Commercial Bondsman Business

Mr. Kermit Yearick has been a commercial bondsman since about 1988. Mr. Yearick issues surety bonds, backed by Seneca Insurance Company (Seneca), in which he promises to pay an amount in exchange for a fee. Mr. Yearick typically charges between 5-15% of the bail amount, with 15% being the limit by law, plus he charges a one-time non-refundable fee. Of the amount charged, 2.5 % goes toward fees. Upon forfeiture, Mr. Yearick himself must pay; Seneca is only obligated to pay if Mr. Yearick cannot pay, such as upon his death or bankruptcy. Mr. Yearick only experienced three bail forfeitures which were then remitted in full, except in one instance in which he chose not to bring back a defendant for \$600.

Agreement between Mr. Yearick and Mr. Cobb

Mr. Yearick did not require a background check before signing the bail bond for Mr. Cobb. In addition, Mr. Yearick did not know that there had been a prior bench warrant issued against Mr. Cobb for Cobb's failure to appear for sentencing in this same case. Mr. Yearick relied upon his past experience with Mr. Cobb in which he had no problems. Mr. Yearick met Mr. Cobb in the Lycoming County Prison and went over bail conditions with him. Mr. Yearick signed the bail bond and assumed joint and several liability with the defendant to pay the Commonwealth \$50,000 if the bail bond is forfeited. Mr. Yearick secured an indemnity agreement executed by Mr. Cobb's girlfriend, Heather Entz. Mr. Yearick intends to seek recoupment from her.

Extent of Supervision

After the posting of bail on October 28, 2013, the extent of Mr. Yearick's supervision of Mr. Cobb consisted of texts and telephone contact. Mr. Yearick contacted Mr. Cobb two times via text in October and November. Mr. Yearick contacted Mr. Cobb's girlfriend at least five times between October 28, 2013 and the trial date of November 13, 2013. Mr. Yearick

repeatedly reminded them of the bail conditions and sought the outstanding balance on Yearick's fee that remained unpaid. Mr. Yearick also attempted contact without response by more than ten texts to Mr. Cobb, and more than 20 texts to both of them. Nothing was suspicious. Other than looking at court files, Mr. Yearick does not generally conduct other monitoring. Mr. Yearick does not use computers to monitor defendants.

Efforts at Apprehension.

Upon learning about the defendant's non-appearance for trial, Yearick made the following efforts at apprehension. On January 13, 2014, Yearick applied for a bail piece. Mr. Yearick attempted to contact Cobb and communicated and cooperated with the District Attorney's Office. Mr. Yearick unsuccessfully attempted to contact Mr. Cobb at his former phone number, but maintained daily contact with Ms. Entz. Ms. Entz insisted that she did not know Cobb's whereabouts. Mr. Yearick incorrectly advised Ms. Bower that Cobb was incarcerated on two occasions when he was not. Mr. Yearick also contacted various other people to be on the lookout for Mr. Cobb, including people at the Sheriff's office, the Lycoming County Prison, and Mr. Donald Tressler, who transport's inmates on behalf of the Sheriff.

Most significantly, Mr. Yearick obtained assistance from professionals to locate and attempt to apprehend Mr. Cobb. In January, Mr. Yearick employed the services of Detective Scott Warner (Det. Warner), Andre King, a Bounty Hunter from Princeton, New Jersey, and Constable Hugh Umstead (Const. Umstead). At the direction of Mr. Yearick, Const. Umstead and Det. Warner circled the Memorial Avenue residence on a daily basis.

Det. Warner's efforts to locate and apprehend Mr. Cobb included going to night clubs, printing up posters, relying on relationships with security at clubs and stores. Det. Warner performed an IRB search, credit header accounts for different addresses. Det. Warner also did surveillance on the Memorial Avenue residence. Det. Warner performed low profile surveillance

about eight times, which included sitting in a car watching the residence and door from different locations. Det. Warner performed activity checks at least three days per week, which involved driving by the residence. Det. Warner was unsuccessful in reaching Mr. Cobb by phone. Det. Warner called Ms. Entz, but found her uncooperative.

Mr. Andrea King, the bounty hunter, contacted Entz and Cobb's grandmother. On January 27, 2014, Andrea King drove a van up from Philadelphia with three individuals to look for Mr. Cobb. After eliminating Cobb's former address as vacant, they conducted surveillance of the Memorial Avenue residence. As a result of their surveillance, they knocked on the door and Ms. Entz permitted them entrance to the residence. Their search of the residence revealed pictures of Mr. Cobb on the refrigerator and male clothes, but they did not find Mr. Cobb. Another male was present at the residence. Mr. King conducted an additional four hours of surveillance. Thereafter, Mr. King and his partner had direct communication with Cobb and attempted to get Cobb to surrender. Cobb informed them that he was in Harrisburg and would turn himself in as soon as he returned to Lycoming County. Cobb talked to them daily for three to four days. Mr. King came to town one time, citing the record snowfall as preventing additional trips.

Const. Umstead assisted in looking for Mr. Cobb for a brief period. Const. Umstead attempted to watch the Memorial Avenue residence as much as possible; at times would stay about an hour, about four or five times, possibly more. He met with Det. Warner weekly, Const. Umstead averaged putting eyes on the residence about once a day or about ten times per week. Const. Umstead communicated with the Sheriff's deputy. Indeed, Const. Umstead gave the Sheriff's deputy information a day or two before Mr. Cobb was picked up, explaining where he thought Cobb was living and the efforts and progress.

A U.S. Marshall who works with the Sheriff, Sergeant Eric Spiegel (Sgt. Spiegel), apprehended Mr. Cobb on February 20, 2014. Sgt. Spiegel conducted surveillance on the Memorial Avenue house four or five times before he apprehended Cobb. He observed a green Cadillac in front of the residence and followed it a few blocks. He noticed a black male driving and conducted a vehicle stop. Sgt. Spiegel had contact with a deputy at the Sheriff's Office, but did not have assistance in apprehending Mr. Cobb nor was he approached for assistance.

Expense and Fees to Yearick

Mr. Yearick charged Mr. Cobb 6% on \$50,000 bail, equaling \$ 3,000 charged. 2.5% went to other entities as fees, leaving about \$1250 as potential profit. However, Mr. Cobb failed to pay \$650 of that amount, leaving \$600 as potential profit. Mr. Yearick paid Mr. King \$650 and incurred legal fees related to his petition for remittitur. Had Mr. King apprehended Mr. Cobb, then his fee would have been 10% plus expenses. Mr. Yearick did not pay Det. Warner or Const. Umstead, because of their relationships and because neither of them apprehended Mr. Cobb.

Prejudice to Commonwealth

Mr. Cobb failed to appear for trial on November 13, 2013 in violation of a condition of his bail. Mr. Cobb's defense attorney, Robert Cronin, Esq., the Assistant District Attorney and the affiant were present at the time scheduled for trial. However, two female witnesses for the Commonwealth failed to appear. Without those two witnesses, Attorney Cronin testified that it was his opinion that the Commonwealth could *not* have made out its burden of proof. The Court asked the Commonwealth if they wanted to proceed in absentia and the Commonwealth declined to do so. Attorney Cronin did not request a continuance on behalf of Mr. Cobb and was prepared to try the case in absentia. Attorney Cronin testified that - if the Court required that the trial proceed in absentia - the Commonwealth would have requested a continuance. Attorney Cronin

further testified that, in the absence of a continuance, charges may have been withdrawn. Because the matter was not a "controlled buy" situation, Attorney Cronin opined that the witnesses were important to meeting the burden of proof. The matter was scheduled for the call of the list/jury selection for January 7, 2014.

III. Conclusions of Law.

1. "Bail is the security or other guarantee required and given for the release of a person, conditioned upon a written undertaking, in the form of a bail bond, that the person will appear when required and comply with all conditions set forth in the bail bond." Pa. R. Crim. P. 103.
2. "A bail bond is a document whereby the defendant agrees that while at liberty after being released on bail, he or she will appear at all subsequent proceedings as required and comply with all the conditions of the bail bond." Pa. R. Crim. P. 525
3. "Bail before verdict shall be set in all cases as permitted by law. Whenever bail is refused, the bail authority shall state in writing or on the record the reasons for that determination." Pa. R. Crim. P. 520
4. Article I, §14 of the Pennsylvania Constitution provides as follows.

All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it. Pa. Const. Art. I, § 14

5. The Pennsylvania Rules of Criminal Procedures authorize forfeiture as a sanction for a violation of conditions of bail, such as the failure to appear for trial and specifically provides as follows:

2) Forfeiture

(a) When a monetary condition of release has been imposed and the defendant has violated a condition of the bail bond, the bail authority **may** order the cash or other security forfeited and shall state in writing or on the record the reasons for so doing.

(b) Written notice of the forfeiture shall be given to the defendant and any surety, either personally or by both first class and certified mail at the defendant's and the surety's last known addresses.

(c) The forfeiture shall not be executed until 20 days after notice of the forfeiture order.

(d) The bail authority **may** direct that a **forfeiture be set aside or remitted if justice does not require the full enforcement** of the forfeiture order. Pa. R. Crim. P. 536 (a)(2) (emphasis added).

6. The Pennsylvania Rules of Criminal Procedure further provide for exoneration of sureties as follows.

(C) Exoneration

(1) A bail authority, in his or her discretion, may exonerate a surety who deposits cash in the amount of any forfeiture ordered or who surrenders the defendant in a timely manner.

(2) When the conditions of the bail bond have been satisfied, or the forfeiture has been set aside or remitted, the bail authority shall exonerate the obligors and release any bail. Pa. Crim. Rule Proc. 536(C)(1)&(2).

7. As noted in the Rules, forfeiture “may be set aside or remitted as justice requires,” and “[e]quitable principles apply when a court is faced with the decision whether to modify or remit a forfeiture.” Commonwealth v. Gaines, 74 A.3d 1047, 1051 (Pa. Super. 2013), *citing*, Pa.R.Crim.P. 536(A)(2)(d) and Commonwealth v. Nolan, 288 Pa. Super. 484, 432 A.2d 616 (Pa. Super. 1981).
8. It is well-settled that “the decision to allow or deny a remission of bail forfeiture lies with the sound discretion of the trial court.” Commonwealth v. Chopak, 615 A.2d 696, 701 (Pa. 1992)(further citations omitted).

9. In Commonwealth v. Hann, 81 A.3d 57, 63 (Pa. 2013)⁴, the Pennsylvania Supreme Court reviewed the framework for the Court’s consideration of whether to remit forfeited bail under Pa. R.Crim.P. 536. In Hann, the Court re-affirmed the Ciotti/Mayfield⁵ factors, recognized additional factors, rejected a per se requirement that the Commonwealth incur financial costs, and emphasized that factors should not be applied rigidly.
10. The Ciotti/Mayfield factors are: willfulness of the defendant’s breach of the bond, cost, inconvenience and prejudice suffered by the government, and any explanation or mitigating factors.
11. Additional factors “equally relevant” and recognized in Hann, supra, include the following non-exhaustive list:

(1) whether the applicant is a commercial bondsman; (2) the extent of the bondsman’s supervision of the defendant; (3) whether the defendant’s breach of the recognizance of bail conditions was willful; (4) any explanation or mitigating factors presented by the defendant; (5) the deterrence value of the forfeiture; (6) the seriousness of the condition violated; (7) whether forfeiture will vindicate the injury to public interest suffered as a result of the breach; (8) the appropriateness of the amount of the recognizance of bail; (9) the cost, inconvenience, prejudice or potential prejudice suffered by the State as a result of the breach. That list is not exhaustive, and trial courts may consider other factors as interests of justice require. Hann, supra, 81 A.3d at 67-68.

12. In Commonwealth v. Michael D. Wallace, Jr., No. CR-73-2014 (C.P. Lycoming August 7, 2014) the Court found that partial forfeiture was warranted in the amount of ten percent of the bail, or \$2,850.00. In that case, the Court considered Mr. Yearick’s status as a commercial bondman, that he expended funds and apprehended the defendant, but that he only met with the defendant on one occasion, failed to conduct any background check, failed to take efforts to monitor or supervise the defendant, and did

⁴ 1. In Hann, the defendant violated the condition not to commit further crimes by murdering the victim of crimes he had already been charged with committing and then killing himself.

⁵ The Ciotti/Mayfield factors were derived from United States v. Ciotti, 579 F.Supp. 276 (W.D.Pa. 1984) and Commonwealth v. Mayfield, 827 A.2d 462 (Pa.Super. 2003).

not consider the nature of the criminal charges before signing the bond. The Court further considered the willfulness of the defendant's breach of the bail conditions when defendant conducted illegal drug deliveries, exposing the public to potential violence.

IV. Discussion.

The defendant violated a condition of bail by failing to appear for trial and the bond was forfeited. Upon consideration of the factors outlined in Commonwealth v. Hann, supra, the Ciotti/Mayfield factors, and the specific equities of the present case, the Court concludes that a partial remittitur is warranted. Factors weighing in favor of forfeiture are as follows. Mr. Yearick is a commercial bondsman with a goal of earning a profit. Mr. Yearick conducted very little supervision of the defendant, Mr. Cobb, in this case. He was unaware that a prior bench warrant had been issued in this same case and did not take any added precautions as a result of that fact. Mr. Yearick failed to monitor Mr. Cobb on bail, as evidenced by the fact that he was unaware that Mr. Cobb failed to appear for trial until some 44 days later. The phone calls and texts related in part to recovering his outstanding fee. Mr. Cobb's breach of the bail conditions was willful and serious. The defendant did not present any mitigating factors or explanation for missing his trial date. The deterrence value of the forfeiture on defendant will likely be minimal, as the cost will most likely be borne by Mr. Yearick despite the indemnity agreement. The Court believes the forfeiture of \$7,500 will vindicate the injury to the public, which includes Court and attorney time wasted as well as the expense and efforts expended from public funds to apprehend the defendant.

As to remittitur, the Court notes that the defendant was apprehended and ultimately plead guilty, thus saving the Court time on a trial. Unlike the defendants in Hann, supra, and Wallace, supra, the defendant did not commit additional criminal acts endangering the public while on bail. Further, the Court believes that had the defendant appeared for trial, the Commonwealth

would have likely requested a continuance for the failure of two material witnesses to appear as needed for the July 17, 2012 charges. The prejudice to the Commonwealth was mitigated by the fact that the Commonwealth would likely have requested a continuance and the defendant ultimately plead guilty, avoiding a jury trial. The Court further finds that Mr. Yearick expended significant resources and efforts by employing others to apprehend the defendant. Those efforts were similar to the efforts that were effective in apprehending the defendant. In weighing these factors, the Court believes that a partial remittance is warranted.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this day of **September, 2014**, it is hereby ORDERED and DIRECTED as follows.

1. Mr. Yearick's petition to set aside or remit the forfeiture is GRANTED in part and DENIED in part.
2. The amount of \$7,500 is forfeited.
3. The remainder (\$42,500) is remitted and set aside.

BY THE COURT,

September 30, 2014
Date

Richard A. Gray, J.

xc: DA (KO, MW)
PD (RC)
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