

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1394-2006
 :
 LAURA COX, : Opinion and Order regarding Bail Forfeiture
 Defendant :

OPINION AND ORDER

By Information filed on September 21, 2006, Defendant was charged with seven different counts of Criminal Conspiracy including Conspiracy to Commit Forgery, Access Device Fraud and Identity Theft

Bail was set at \$15,000.00. A surety bond was posted by Kermit Yearick (hereinafter “surety”) through Seneca Insurance Company, Inc. in the amount of \$15,000.00 on August 7, 2006. Defendant was subsequently released on bail.

On September 25, 2006, a Bench Warrant was issued for Defendant’s arrest as a result of her failure to appear for her scheduled arraignment. The Bench Warrant was filed on September 27, 2006. In connection with the September 27, 2006 Order directing the Clerk to issue a Bench Warrant, the Court also forfeited bail and directed that notice of such be given to the Defendant and surety as directed by Pa. R. Crim. P. 536.

By “Notice of Forfeiture” dated and filed on August 13, 2014, the Commonwealth served notice on the Defendant and the surety of the forfeiture pursuant to Rule 536.

The surety, on September 3, 2014, filed a Motion to Remit and Set Aside the Forfeiture. A hearing on said Motion was held before the Court on October 16, 2014. The

surety argued that the approximate eight-year delay in providing notice, constituted prejudice as a matter of law such that the Commonwealth is precluded from seeking forfeiture. The surety argued that the entire amount of the forfeiture should be set aside.

The parties stipulated that the Application for the Bench Warrant was filed on September 26, 2006 for the Defendant's failure to appear on September 25, 2006 for her arraignment. The Court ordered forfeiture of the bail on September 27, 2006 and directed that notice be given to the Defendant and surety pursuant to Rule 536. Neither the Clerk nor the Commonwealth provided notice to the surety until the surety received the Commonwealth's written Notice of Forfeiture dated and filed August 13, 2014. The parties further stipulated that the Bench Warrant remains outstanding and that the Defendant's whereabouts are unknown.

Subsequent to the hearing, the parties were given an opportunity to provide written legal argument to the Court.

The surety argues that due to the approximate eight-year failure to provide the surety notice of the bail forfeiture, the forfeiture should be dismissed and set aside. The surety argues that its' due process right in the form of notice was violated and that he suffered significant prejudice in connection with such. The surety also argues that forfeiture is precluded pursuant to the statute of limitations and/or the equitable doctrine of laches.

The Commonwealth counters that there is no authority to support the surety's position and at the very least a hearing should be held in order that the Court can take

testimony on the various factors relating to remission of a forfeited bond.

There is no doubt in this case that on September 27, 2006, the Court specifically directed that notice be given to the surety as directed by Rule 536. Rule 536 (A) (2) (b) requires that written notice of a forfeiture be given to the Defendant and surety either personally or by both first class and certified mail. Rule 536 (A) (2) (c) directs that forfeitures not be executed until twenty (20) days after said notice.

As set forth in the comments to the Rule, the Rule provides an automatic twenty (20) day stay on the execution of the forfeiture to give the surety time to produce the Defendant or the Defendant time to appear and comply with the conditions of bail.

The Commonwealth is correct that there is no timeframe within which the notice of forfeiture must be given. As the Court aptly noted in Commonwealth v. Horce, 726 A.2d 1067 (Pa. Super. 1999), “in other words, there is no requirement that notice must be dispatched immediately or within a certain period of days following the forfeiture.” Id. at 1069.

“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. Bail forfeiture, “is a process whereby an individual Defendant surrenders part or all of his bond and is appropriate when he breaches a condition of his bail.” Horce, Id. at 1069, citing Commonwealth v. Chopak, 532 Pa. 227, 615 A.2d 696 (1992).

As noted in the Rules, however, forfeiture “may be set aside or remitted as

justice requires”, and “equitable principles apply when the 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). Furthermore, the decision to allow or deny a remission of bail forfeiture lies within the sound discretion of the trial court. Commonwealth v. Chopak, 615 A.2d 696, 701 (Pa. 1992). (further citations omitted).

In determining the appropriateness of remittance, the Court is directed to consider several factors including but not limited to the interest of justice as required. Commonwealth v. Hann, 81 A.3d 57, 68 (Pa. 2013). The remission of bail forfeitures is a practice calculated to encourage bondsmen to actively seek the return of absent defendants. Commonwealth v. Hernandez, 866 A.2d 231, 236 (Pa. Super. 2005), appeal denied, 587 Pa. 720, 899 A.2d 1122 (2006). In fact, the results of a bondsman’s efforts to secure the return of an absent Defendant, as well as the extent of these efforts, are prime considerations in the determination of the amount of the remission of bail forfeitures. Id.

From an equity standpoint, the Court cannot fathom a more egregious infringement on the surety’s right to notice of the forfeiture in a sufficient period of time to allow the surety to actively seek the return of the absent Defendant. Indeed, given the eight-year lapse of time, it would be virtually impossible for the surety to secure the return of the Defendant absent herculean efforts. The costs alone of seeking the return of a Defendant who has been absent for over eight years would well exceed the value of the bond that was posted in this matter.

While the Court acknowledges that the legislature chose not to impose a time limit on the notice by not requiring that it “be dispatched immediately or within certain period of days”, Horce, Id. at 1069, the Court is convinced that the legislature did not envision a scenario where notice would not be provided for close to eight years.

The remission of forfeiture is based on principles of equity and an overriding factor is the interest of justice. Under these circumstances and based on the stipulated facts, the Court finds that equity requires that the entire amount of the forfeiture be set aside. Under the circumstances of this case, the lone factor relating to the lack of notice for eight years far outweighs any other factor that could be considered by the Court. Simply put, it is intended by the Rules that a bondsman be given a realistic opportunity to secure a Defendant’s presence once that surety becomes aware that the Defendant has failed to appear and his investment is now at risk. Given the eight-year delay, the surety has no means whatsoever to secure his investment through the return of the Defendant.

As well, and in addition, the Court finds the surety’s argument with respect to the equitable doctrine of laches to be convincing. “The equitable doctrine of laches bars an action when one party is one guilty of want or due diligence which results in prejudice to another.” Building Industry Association v. Manheim Township, 710 A.2d 141, 146 (Pa. Cmwlth. 1998). To establish the defense of laches, a party must demonstrate: (1) a delay arising from the petitioner’s failure to exercise due diligence; and (2) prejudice to the Respondent resulting from the delay.” Id. at 146.

In this particular case, the Commonwealth sought the issuance of a Bench

Warrant and presented to the Court a proposed Order forwarding the bail and requiring that notice be given. Despite doing so, the Commonwealth did nothing for close to eight years. Then the Commonwealth actually drafted and served a “Notice of Forfeiture” acknowledging at the very least that it was going to bear some of the responsibility with respect to providing notice. Clearly and as set forth above, the Defendant was prejudiced.

ORDER

AND NOW, this 15th day of January 2015 following consideration of the Petition to Remit and Set Aside as well as the written legal submissions of the parties, the Court GRANTS the Motion to Remit and Set Aside filed by Kermit Yearick. The forfeiture is set aside and any monies forfeited shall be remitted to the surety.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Nicole Spring, Esquire (APD)
Karen Dipalo – Prothon.
David Lindsay, Esquire (counsel for bail bondsman)
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Gary Weber, Esquire (Lycoming Reporter)
Work File