

COMMONWEALTH OF PENNSYLVANIA v. ERIC CORDELL,
Defendant, C.P. Franklin County Branch, Criminal Action, No. 800 of 1994;
COMMONWEALTH OF PENNSYLVANIA
v. JAMES T. CARBAUGH, Defendant, C.P. Franklin County Branch,
Criminal Action, No. 736 of 1997

Remission of Bail Forfeiture

1. Allowance or denial of remittance of bail forfeiture is within the trial court's discretion.
2. Despite his efforts to locate and return fugitive, the bail bondsman was not entitled to a remittance of the bail forfeiture when it was the Pennsylvania State Police that apprehended the fugitive.

Appearances:

Todd R. Williams, Assistant District Attorney
Joseph M. Jachetti, Esq.

OPINION AND ORDER

Walker, P.J., August 31, 2000

Case History

On August 11, 1994, petitioner William Stake posted security in the amount of ten thousand dollars (\$10,000) as surety for Eric Cordell. After Mr. Cordell was found guilty by jury, petitioner posted additional security in the amount of fifteen thousand dollars (\$15,000) on March 21, 1995. Though Mr. Cordell's sentencing was scheduled for May 17, 1995, he did not appear. Consequently, the twenty-five thousand dollar (\$25,000) bond was forfeited by this court on January 29, 1997, and petitioner was informed that if he apprehended Mr. Cordell within four (4) years the court would consider returning the amount of bond forfeited. Mr. Cordell was eventually apprehended and sent to serve his sentence, as a bench warrant was returned on June 5, 2000.

Petitioner also acted as surety for James T. Carbaugh, and on July 10, 1995 he posted five thousand dollars (\$5,000) as security for his appearance before the court. Mr. Carbaugh's mandatory arraignment was scheduled for August 20, 1997, but he did not appear. Therefore, his bond was revoked by this court on February 4, 1998, and petitioner was given sixty (60) days to pay the bond. Petitioner was also informed that he may be able to recover the amount if Mr. Carbaugh was apprehended and the district attorney still had witnesses available to prosecute the case. A bench

warrant was returned on May 11, 2000, and after entering a nolo contendere plea, Mr. Carbaugh was sentenced to a term of seventy-nine (79) days to twenty-three (23) months.

On July 3, 2000, Mr. Stake petitioned the court for a remission of the forfeiture of the bail bond, and a hearing was held on the matter on August 10, 2000.

Discussion

The decision to allow or deny the remission of a bail forfeiture is within the trial court's discretion. *Commonwealth v. Jones*, 245 Pa.Super. 282, 369 A.2d 404 (1981); *Commonwealth v. Fleming*, 485 A.2d 1130 (Pa.Super. 1984).

This court views agreements between bail bondsmen and the court as simple contracts in which the bondsmen, as sureties, promise that the secured defendants will appear in court on a prescribed date. When defendants do not appear, the bondsmen are in breach and the bond itself works as a liquidated damages clause in that the amount of "damages" is the amount posted by the individual bondsman. Further, bail bondsmen are in no unequal bargaining position when they post bond for a defendant. Instead, they willfully assume the risks of the trade and are thus cautioned to make prudent decisions.

Instantly, petitioner posted a total of thirty-thousand dollars (\$30,000) for two defendants and they both fled. Though they were later apprehended and brought to justice, it was not due to the work of petitioner. The court respects the efforts and expenses put forth by petitioner to find both defendants, but the court cannot ignore the fact that he did not deliver these men to the court. Indeed, none of petitioner's toils influenced the return of the defendant in either case. Thus the bail forfeiture shall not be remitted, lest petitioner be unjustly enriched.

ORDER OF COURT

August 31, 2000, having heard the evidence presented at the hearing and having reviewed the parties' briefs, this court hereby denies the petitions for remission of forfeiture of bail bond.