

Franklin County Legal Journal

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Commonwealth v Lucas, Jr.

Commonwealth of Pennsylvania v. Larry Mitchell Lucas, Jr. Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch  
Criminal Action No. 1354-2010

HEADNOTES

*Bail*

1. Excessive bail, fines, and punishment are prohibited under the United States Constitution. Further, all prisoners shall be bailable excluding those that are subject to capital charges or crimes punishable by a sentence of life imprisonment
2. While the reasons for allowing bail are numerous, there is a recurring emphasis on accommodating both the defendant's interest in pre-trial liberty and society's interest in ensuring the defendant's presence at required court appearances.
3. The Pennsylvania Rules of Criminal Procedure allow for the bail authority to determine whether bail may be appropriate in various situations and what conditions are reasonably necessary to ensure the defendant's appearance and compliance with those conditions.

*Forfeiture of Bond*

1. The decision to allow or deny a remission of bail forfeiture lies within the sound discretion of the trial court. The court may order forfeiture, but essentially "set aside" the forfeiture for a certain period of time during which the bail bondsman has an opportunity to attempt to apprehend the defendant. If the bail bondsman cannot apprehend the defendant, he may attempt to prove to the court that the efforts made to apprehend the defendant were reasonable or sufficient to apprehend the defendant as well as attempt to prove that there is a lack of prejudice to the Commonwealth. If all of this can be proved, the forfeiture may be remitted.
2. Where there has been a lack of a showing of prejudice by the Commonwealth and diligence on the part of the Commonwealth to notify the bail bondsman of a defendant's failure to appear, the Court may exercise its discretion to permit the bail bondsman additional time to prove that he is making the anticipated effort expected of a bail agent to apprehend the defendant since he has absconded.

*Application and Statutory Interpretation of the Pennsylvania Rule of Criminal Procedure and Franklin County Local Rule for Forfeiture of Bond*

1. 39th Jud. Dist. R.Crim.P. 39-4016(A)(2) states that "Within fifteen days of the breach of bail as provided in paragraph (1) above, the Franklin County District Attorney shall petition the Court for the issuance upon the principal or the surety, as appropriate, a rule to show cause why the bail bond or recognizance should not be forfeited."
2. When interpreting statutory language, if the words are free and clear of ambiguity then they cannot be disregarded to pursue their spirit, however, one must also listen attentively to what a statute does not say.
3. Franklin County Local Rule 4016 contains no penalty provision and no statement that the Commonwealth should be denied forfeiture because they did not notify the bail agent within 15 days of the breach. Nor does it state the bail bondsman is absolutely excused from ever having to forfeit all or part of the bail due to a lack of action by the Commonwealth within fifteen days of the breach of bail. In fact, the local rule is coupled with a provision for a rule to show cause to be issued upon the bail agent.
4. Although Franklin County Local Rule 4016(A) states that the Commonwealth shall petition the court for a rule to show cause why bail should not be forfeited within 15 days of the breach of bail, thereby placing the bail agent on notice, this does not mean that the Commonwealth is forever barred from seeking forfeiture if they do not do so within 15 days of the breach.

5. The purpose of bail forfeiture is to encourage bondsmen to actively seek the return of absent defendants. Requiring strict compliance with the fifteen day requirement in Local Rule 4016 causes prevention of the very goal sought under Pa.R.Crim.P. 536 and accompanying case law, which is encouraging the bondsman to use reasonable efforts to apprehend the person subject to the conditions of bail so that the bond is not forfeited. Accordingly, this Court interprets Local Rule 4016(A)(2) as establishing a minimum time frame in which the Commonwealth should act and establishes a base line by which this Court can evaluate whether the Commonwealth's actions are timely in relation to the rule.

6. Interpreting the language of a statute requires the court to consider the purpose of the statute as well as the result that is produced. Requiring strict compliance with the fifteen day requirement would mean that the Commonwealth could never seek forfeiture of bail bond if it does not act within fifteen days. Moreover, it disposes of any incentive on the part of the bail agent to pursue and find the persons to whom they provided surety for bail. Such a holding would fly in the face of the fundamental goal of bail, which is to ensure those accused of crime do not languish in jail, but if granted liberty, appear for court. Further, it would relieve the bail bondsmen of any obligation under the bail surety agreement to seek apprehension of their clients. This is an unreasonable interpretation of the local rule that would produce an absurd result.

7. Where the Commonwealth delayed in notifying the bail agent of his client's failure to appear, the court has the discretion to allow the bail agent a fair opportunity to employ whatever resources available to him for a period of six months to attempt to secure the defendant before ordering forfeiture of bail.

Appearances:

Larry Mitchell Lucas, Jr., Defendant

Franklin County District Attorney's Office

Clinton T. Barkdoll, Esq., Attorney for the Defendant

OPINION SUR Pa.R.A.P. 1925(a)

The recorded transcript in this case is rather thin as the central issues focus on interpretation and application of relevant law in bail forfeiture proceedings. There are several facts that do not appear to be in dispute and are set forth in the case file and docket entries. In order to orient the appellate court and the parties to the facts this court believes are not in dispute versus those that may be in question and those that may have no support in the record, this Court will set forth each under a separate heading.

**FACTS NOT IN DISPUTE**

The appellant, Paul Weachter (hereinafter referred to as "Mr. Weachter"), has been and was at all times for the purpose of this case, an authorized bail agent serving Franklin County, Pennsylvania. On or about May 20, 2010, the Defendant, Larry Mitchell Lucas, Jr. (hereinafter referred to as "Mr. Lucas"), was charged with multiple crimes by Officer Kauffman of the Waynesboro Police Department, including Possession With Intent to Deliver, Possession of a small amount of Marijuana, Possession of Drug Paraphernalia, Obstruction of Justice, Resisting Arrest and Disorderly Conduct. The case was docketed by the Magisterial District Judge to CR-114-10. Bail was initially set at \$100,000.00. At the preliminary hearing scheduled on July 6, 2010, Mr. Lucas waived his preliminary hearing and bail was modified to \$25,000.00 secured. On July 8, 2010, Mr. Weachter posted the required bail for Mr. Lucas by providing 10% cash and the balance in a Surety Bond. (Surety Information page, MDJ Transcript). Mr. Lucas appears to have signed the bail bond along with Mr. Weachter. (Bail Bond, MDJ Transcript). Under the terms of the bail bond, the first condition states Mr. Lucas must "appear at all times required until full and final disposition of the case." (Bail Bond, MDJ Transcript). On the surety information page, Mr. Weachter acknowledged that

"I understand that when a monetary condition of release is imposed, if the defendant appears at all times required by the court and satisfies all the other conditions set forth in the bail bond, then upon full and final disposition of the case, this bond shall be void. If the defendant fails to appear or to comply with the terms of conditions of the bail bond, then this bond shall remain in full force, and the sum of the monetary condition of release may be forfeited, the defendant's release may be revoked, and a warrant for the defendant's arrest may be issued."

(Surety Information page, MDJ Transcript).

After the case was processed at the Court of Common Pleas' level, the case was docketed to a new number, CR No. 1354-2010. Mr. Lucas was represented by the Franklin County Public Defender's Office and was granted three continuances of his case. On February 21, 2011, Mr. Lucas entered a plea to Count 1 - Delivery of a Controlled

Substance, and was notified that sentencing was set for June 8, 2011, before the undersigned judge.<sup>[1]</sup>

On June 8, 2011, Mr. Lucas' counsel appeared for sentencing, but he did not. The Court continued the matter one week to June 15, 2011 to allow counsel an opportunity to determine the whereabouts of his client and advise him of the need to appear for sentencing. On June 15, 2011, Mr. Lucas' counsel appeared for sentencing, but Mr. Lucas did not. The court sentenced Mr. Lucas in absentia. The court issued a bench warrant for Mr. Lucas' apprehension that same date. As of the date of the submission of this brief, to the Court's knowledge, and without evidence to the contrary, Mr. Lucas has not been apprehended.

Aside from some administrative filings by the Clerk of Courts and nolle prosequi orders being entered by this court, the docket is devoid of activity until a Petition for Bail Forfeiture was filed by the Commonwealth on May 24, 2012. The Court scheduled the matter for a hearing on July 11, 2012. Mr. Weachter filed an answer to the petition on June 26, 2012. Following a brief hearing on July 11, 2012 the matter was continued to allow the Commonwealth the opportunity to clarify some errors in their petition for forfeiture.<sup>[2]</sup> On August 8, 2012, the Commonwealth filed a brief in response to Mr. Weachter's answer and the Court's order. The Court issued an order on September 14, 2012 directing additional hearing be held and explaining that it considered the Commonwealth's petition for forfeiture to be timely filed.

The Court heard testimony from Mr. Weachter on October 17, 2012. Mr. Weachter testified that he never received any notice from the Court or the Commonwealth that Mr. Lucas failed to appear for sentencing on June 8, 2011 or June 15, 2011. The first Mr. Weachter learned of Mr. Lucas' failure to appear was when he received a copy of the Commonwealth's petition to forfeit bail. N.T. Transcript of Proceedings of Forfeiture of Bond (October 17, 2012) at P. 4-5. Even then, Mr. Weachter characterized the Commonwealth's petition as confusing because of the different bail amounts the Commonwealth requested within its petition and reference to a docket number that did not match those contained in the public dockets. Id. at 10-11). Mr. Weachter testified that he never checked a public docket to learn of his client's status. Id. at 9. The Court asserts that Mr. Weachter's testimony as to his confusion of which bail the Commonwealth was seeking forfeiture in its petition is not credible. Mr. Weachter testified he is a retired Pennsylvania State Trooper. N.T. Transcript of Proceedings of Forfeiture of Bond (October 17, 2012) at P. 5). He has been a bail bondsman for twenty years. He only provided surety for Mr. Lucas on one case. Given his experience and knowledge the Court cannot accept his claim of confusion.

Assistant District Attorney Mills acknowledged that the Commonwealth took no steps to notify Mr. Weachter of Mr. Lucas' failure to appear for court except for requesting a bench warrant for Mr. Lucas' apprehension. Id. at 22-23. The Commonwealth offered no sworn testimony, simply statements by Assistant District Attorney Zachary Mills.

Following hearing, the Court issued an order on December 31, 2012, ordering Mr. Weachter to forfeit the bail in the case as of 180 days from the date of the order if Mr. Lucas was not brought before the court within that time frame or request further hearing. The Court indicated an opinion would issue in support of the order. However, prior to the filing of the opinion, Mr. Weachter filed a Notice of Appeal to the Superior Court. This Court deferred filing its opinion until it could consider the issues raised in Mr. Weachter's Statement of Matters Complained of on Appeal. Mr. Weachter filed a request for the issuance of a bail piece on January 4, 2013 which this court granted on January 7, 2013. Mr. Weachter filed his Statement of Matters Complained of on Appeal which this Court has considered and is prepared to answer why it believes its order of December 31, 2012 should be upheld and his relief should not be granted at this time.

#### **FACTS IN DISPUTE OR NOT KNOWN TO THE TRIAL COURT**

No evidence was provided to any party as to the whereabouts of Mr. Lucas. There was no testimony offered to show Mr. Lucas failed to appear due to a medical condition, lack of transportation, or is deceased. This Court believes his absence must be construed as willful.

No testimony was provided and the Court has no information as to the internal processes followed by the Commonwealth to notify bail agents of defendants who fail to appear for Court. The Court has no information as to what auditing processes or reports Mr. Weachter has to provide his insurer as to the number of defendants for whom he has provided surety or the possible surety exposed to forfeiture claims based on number of the defendants who were compliant or non-compliant with the conditions of their bail. This information would have been helpful in understanding why Mr. Lucas has been allowed a year head start in his efforts to avoid appearing before the court before any apprehension efforts were initiated by the Commonwealth and Mr. Weachter.

#### **DISCUSSION**

In order to answer each of the challenges raised by Mr. Weachter, the Court feels compelled to first discuss the historical

nature and requirement for bail. Under the Amendments of the United States Constitution, commonly referred to as the Bill of Rights, excessive bail, fines, and punishments are prohibited. "Excessive bail should not be required nor excessive fines imposed nor cruel or unusual punishments inflicted." U.S. CONST. amend. VIII. Under Article 1, Section 13 of the Pennsylvania Constitution, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted." Pa. CONST. art. I. § 13. Furthermore, under Section 14, the Commonwealth of Pennsylvania provides "All prisoners shall be bailable by sufficient sureties, unless for capital offenses ..." Pa. CONST. art. I, § 14. Under 42 Pa.C.S.A. § 5701, "all prisoners shall be bailable" excluding those that are subject to capital charges or crimes punishable by a sentence of life imprisonment. 42 Pa.C.S.A. § 5701.

The reasons for bail have been succinctly set forth in a Columbia University School of Law Review article authored by Donald B. Verrilli, Jr., titled the "Eighth Amendment and the Right To Bail: Historical Perspectives." Eighth Amendment and the Right To Bail: Historical Perspectives, 82 COLUM. L. REV. 328 (1982). Bail is the method for which "pre-trial release of a criminal defendant after security has been taken for the defendant's future appearance at trial, has for centuries been the answer of the Anglo-American system of criminal justice to a vexing question: what is to be done with the accused, whose guilt has not been proven, in the "dubious interval," often months long, between arrest and final adjudication." Id. at 329. As Mr. Verrilli points out, the court has identified that bail acts as a reconciling mechanism to accommodate both the defendant's interest in pre-trial liberty and society's interest in ensuring the defendant's presence at trial. In Reynolds v. United States, 80 S.Ct. 30, 32 (1959), the United States Supreme Court observed, "the purpose of bail is to ensure the defendant's appearance and submission to the judgment of the court." In Ex parte Milburn, 34 U.S. 704, 710 (1835), the United States Supreme Court stated that "a recognizance of bail, in a criminal case, is taken to secure the due attendance of the party accused, to answer the indictment, and to submit to a trial, and the judgment of the court thereon." In the event bail is granted, the magistrate is to set forth the monetary amount and the conditions of release which will guarantee the defendant's return for trial.

In reviewing the Pennsylvania Rules of Criminal Procedure that relate to bail, this Court notes that there are several components of various rules relating to bail that reemphasize the importance of bail to ensure that a defendant will appear for required court appearances. Under Pa.R.Crim.P. 521(A)(2)(b), in instances where a defendant's sentence exceeds 3 years, the defendant shall have the same right to bail after verdict as before verdict unless the judge makes a finding that "no one or more conditions of bail will reasonably ensure the defendant will appear and comply with the conditions of the bail bond." Pa.R.Crim.P. 521(A)(2)(b). In subsection (D) of the same rule, entitled "Modification of Bail Order After Verdict or After Sentencing," when the court makes a decision as to "whether to change the type of release on bail or what conditions of release to impose, "it shall be based on the judge's evaluation and the information about the defendant as it relates to the release criteria set forth in Rule 523, "the judge shall also consider whether there is an increased likelihood of the defendant's fleeing the jurisdiction or whether the defendant is a danger to any other person in the community or to himself or herself." Pa.R.Crim.P. 521(D)(2); Pa.R.Crim.P. 523.

Pa.R.Crim.P. 522, entitled "Detention of Witnesses," provides that a court may set bail for any "material witness named in an application, but shall set forth the adequate cause for the court to conclude that a witness will fail to appear when required if not held in custody or released on bail." Pa.R.Crim.P. 522(a). Again, the focus of the bail piece is to ensure the attendance and appearance of the witness in court.

Under Pa.R.Crim.P. 523(A), entitled "Release Criteria," when determining whether to release a defendant and what conditions, if any, to impose, "the bail authority shall consider all available information as that information is relevant to the defendant's appearance or non-appearance at subsequent proceedings or compliance or noncompliance with conditions of the bail bond." Pa.R.Crim.P. 523(A). The other requirements set forth in Rule 523 focus on other elements that may compel the court to pause and to think about whether or not a defendant may likely remain in the jurisdiction and thus appear for court. They include the defendant's employment status and history and other financial conditions, the nature of the defendant's family relationships, the length and nature of the defendant's residence in the community and any past residences, the defendant's age, character, reputation, mental condition, and whether addicted to alcohol or drugs, if the defendant had previously been released on bail, whether he or she appeared as required and complied with conditions of the bail bond, whether the defendant has any record of flight to avoid arrest or prosecution or of escape or attempted escape, defendant's prior criminal record, use of any false identification, and any other factors relevant to whether the defendant will appear as required and comply with the conditions of the bail bond. Pa.R.Crim.P. 523(A).

Under Rule 524, entitled "The Types of Release on Bail," again, the bail authority is required to determine the type or combination of types of release on bail reasonably necessary in the bail authority's discretion to ensure the defendant will appear at all subsequent proceedings to comply with the conditions of the bail bond. Pa.R.Crim.P. 524(A).

Under subsection (C) of Rule 524, entitled "Release on Nonmonetary Conditions," the defendant is permitted to be

released and to comply with nonmonetary conditions which the "bail authority determines are reasonably necessary to ensure the defendant's appearance and compliance with the conditions of the bail bond." Pa.R.Crim.P. 524(C). For release on unsecured bail bond, the release condition upon the defendant's written agreement to be liable for a fixed sum of money if he or she fails to appear as required or fails to comply with the conditions of the bail bond. Pa.R.Crim.P. 524(C) (3). Release on nominal bail provides for the person paying a nominal bail upon the agreement of a designated person, organization, or bail agency to act as surety for the defendant. Pa.R.Crim.P. 524(C)(4).

Regarding release on a monetary condition, the bail authority is instructed that "the amount of the monetary condition shall not be greater than is necessary to reasonably ensure the defendant's appearance and compliance with conditions of the bail bond." Pa.R.Crim.P. 524(C)(5). As part of the comments to the rule, "the bail authority must initially determine whether the defendant is likely to appear at subsequent proceedings and comply with the conditions of the bail bond set forth in Rule 526(A) if released on ROR. Pa.R.Crim.P. 524, Comment. If the court determines that a party will not appear on ROR bail, then the bail authority "should consider which other type or combination or types of release on bail as provided in paragraphs (C)(2)-(5), will be sufficient to reasonably ensure the defendant's appearance and compliance. Id.

1. The trial court abused its discretion by ordering the appellant to forfeit \$25,000 bail. Mr. Weachter avers that the court misapplied the law and/or exercised manifestly unreasonable judgment when ordering the forfeiture to occur. See *Commonwealth v. Hernandez*, 886 A.2d 231, 235 (Pa. Super. 2005) (outlining the abuse of discretion standard of review in bail forfeiture cases).

The trial court submits its decisions are not a misapplication of the law, exercised manifestly unreasonable judgment, or acted on the basis of bias, partiality, or ill-will to that party's detriment. The Pennsylvania Superior Court in *Commonwealth v. Hernandez*, 886 A.2d 231, 235 (Pa. Super. 2005), set forth the relevant standard of review in cases involving a court's decision to grant or deny remission of bond forfeiture. The standard is:

[T]he decision to allow or deny a remission of bail forfeiture lies within the sound discretion of the trial court. Accordingly, our review is limited to [a] determination of whether the court abused its discretion in refusing to vacate the underlying forfeiture order. To establish such an abuse, the aggrieved party must show that the court misapplied the law, exercised manifestly unreasonable judgment, or acted on the basis of bias, partially, or ill-will to that party's detriment. If a trial court erred in its application of the law, an appellate court will correct the error. Our scope of review on questions of law is plenary.

Id. (internal citations omitted).

The trial court ordered forfeiture, but essentially "set aside" the forfeiture for 180 days as permitted under Pa. R. Crim. P. 536(e). The set aside period provided to Mr. Weachter by this court is far greater than the 20 days set forth in Rule 536. After the six months, if Mr. Weachter has shown he has apprehended Mr. Lucas so that he is serving his sentence, or can show the Court that his activities have been reasonable or sufficient to apprehend Mr. Lucas and there is a lack of prejudice to the Commonwealth, then the forfeiture will be remitted. For the foregoing reasons, the trial court suggests that because there has been a lack of a showing of prejudice by the Commonwealth and diligence on the part of the Commonwealth to notify Mr. Weachter of Mr. Lucas' failure to appear, Mr. Weachter is being given time to prove that he is making the anticipated effort expected of a bail agent to apprehend Mr. Lucas since he has absconded. As the trial court stated during the October 17, 2012 hearing, each day a bail agent is not notified of a defendant's non-appearance is another possible day the defendant may be able to travel out of the jurisdiction, hide or secret him or herself from the surety. For the foregoing reasons, the Court is of the opinion Mr. Weachter should continue to pursue Mr. Lucas and let the court decide whether or not the forfeiture should be lifted in due time. After all, the trial court simply wants Mr. Lucas to be taken into custody and serve his sentence. The unexplained delay, this Court finds, falls at the feet of both the Commonwealth and Mr. Weachter. It is apparent from the record and the lack of evidence of the Commonwealth's case that Mr. Lucas has been given a great head start because his case has "slipped through the cracks".

On the other hand, this Court cannot accept that Mr. Weachter believes it is reasonable to exclusively rely upon the Commonwealth to notify him that the defendants he has provided surety for have absconded. Mr. Weachter is a bail agent. He is a surety agent. This Court cannot comprehend that Mr. Weachter does not have to provide his insurer with a status report on an annual basis of the exposures that the insurer may face based on the compliance or non-compliance of those who have been released under the surety bonds authorized and issued by Mr. Weachter. This Court cannot think that a careful insurer would not want to know the status of possible claims. Mr. Weachter could confirm this information by checking the criminal dockets of his clients in the Clerk of Court's office or by calling the District Attorney's office. In the

case sub judice, he did not review the docket for almost a year from the date Mr. Lucas absconded until the Commonwealth filed its petition for forfeiture. If Mr. Weachter exercised a minimal degree of investigation of the public criminal dockets, he would have been alerted to his clients' failure to appear and the bench warrant that was issued for his apprehension. The trial court requests that the appellate court find no abuse of discretion on its part.

2. The trial court failed to properly apply legal standards when considering whether bail forfeiture should occur. Specifically, the court failed to correctly weigh various factors, including: 1) the willfulness of the defendant's breach of the bond, 2) the cost, inconvenience and prejudice suffered by the government, and 3) any explanation or mitigating factors. See Commonwealth v. Mayfield, 827 A.2d 462 (Pa. Super. 2003). Specifically, the Commonwealth failed to follow the Pennsylvania Rules of Civil Procedure and Franklin County Local Rule 29-4016 when invoking the forfeiture. The Commonwealth's extreme delay in notifying Mr. Weachter of the defendant's failure to appear is a mitigating factor in favor of Mr. Weachter.

Mr. Weachter takes the position that Franklin County Local Rule 4016(A) bars the Commonwealth from seeking forfeiture because the rule requires the Commonwealth notify the surety within 15 days when a defendant fails to appear for a required court appearance. 39th Jud. Dist. R.Crim.P. 4016. This Court wishes to point out that there is no penalty provision in the rule. There is no statement that the Commonwealth should be denied the forfeiture because they did not notify the bail agent. If this court accepts Mr. Weachter's premise, then the Commonwealth can never seek forfeiture of bail bond if it does not act within fifteen days and there is no incentive on the part of any bail agent to pursue and find the persons to whom they provided surety for bail. This proposition flies in the face of the fundamental goal of bail, which is to ensure those accused of crime do not languish in jail, but if granted liberty, appear for court and do not flee or hide from the courts, regardless of their motivations, whether it be implicit acknowledgment of guilt, fear or negligence. Quite simply Rule 4016 does not say the Commonwealth must do "X" and if not then the consequence is "Y". As a result, this Court interprets Local Rule 4016(A)(2) as establishing a minimum time frame in which the Commonwealth should act and establishes a base line by which this Court can evaluate whether the Commonwealth's actions are timely in relation to the rule.

A simple question is asked by this Court: "What is the purpose of bail forfeiture?" That has been answered in multiple cases, most succinctly in Commonwealth v. Hernandez, 886 A.2d 231 (Pa. Super. 2005), in which it stated "Remission of forfeitures is a practice calculated to encourage bondsman to seek actively the return of absent defendants." Id. at 236. Mr. Weachter argues that this Court should literally interpret 39th Jud. Dist. R.Crim.P. 39-4016(A)(2) which states that "Within fifteen days of the breach of bail as provided in paragraph (1) above, the Franklin County District Attorney shall petition the Court for the issuance upon the principal or the surety, as appropriate, a rule to show cause why the bail bond or recognizance should not be forfeited." 39th Jud. Dist. R.Crim.P. 39-4016. Mr. Weachter's position is that if the Commonwealth does not take the required action within fifteen days, then the Commonwealth should be barred from seeking forfeiture. This interpretation leads to an absurd result, the prevention of the very goal sought under Pa.R.Crim.P. 536 and accompanying case law, which is encouraging the bondsman to use reasonable efforts to apprehend the person subject to the conditions of bail so that the bond is not forfeited. "For this reason, the results of a bondsman's efforts as well as the extent of these efforts are prime considerations in the determination of the amount of remission. This is precisely the undertaking which every bondsman implicitly agrees to guarantee." Commonwealth v. Hernandez, 886 A.2d 231, 236-37 (Pa. Super. 2005) (citing Commonwealth v. Nolan, 432 A.2d 616 (Pa. Super. 1981)). This Court suggests there is ample authority set forth in 1 Pa.C.S.A. § 1921, entitled "Legislative intent controls," subsections (c)(3)-(4), as well as case law to support this Court's argument. When interpreting the language of a statute, if the words are clear and free of ambiguity then they cannot be disregarded to pursue their spirit. However, as pointed out in Kmonk-Sullivan v. State Farm Mut. Auto. Ins. Co., 788 A.2d 955 (Pa. 2001), authored by Justice Newman, the Pennsylvania Supreme Court has cautioned courts to heed the advice of United Supreme Court Justice Felix Frankfurter, "As a matter of statutory interpretation, although "one is admonished to listen attentively to what a statute says [;][o]ne must also listen attentively to what it does not say." Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527, 536 (1947). In this instance, 39th Jud. Dist. R.Crim.P. 4016 provides no express penalty for the Commonwealth's failure to act within fifteen days nor does it state the bail bondsman is absolutely excused from ever having to forfeit all or part of the bail due to a lack of action by the Commonwealth within fifteen days of the breach of bail. In fact, the rule is coupled with a provision for a rule to show cause to be issued upon the bail agent. In this instance, the rule was not sought, but the court issued an order setting the matter down for a hearing and giving Mr. Weachter ample time to answer and reply to the Commonwealth's petition. A careful review of the record reveals that Mr. Weachter's counsel concedes that he received notice, opportunity to respond, and have hearing on the matter. To add the remedy to 39th Jud. Dist. R.Crim.P. 4016 as requested by Mr. Weachter means that all bail bondsmen are relieved of any

obligation or duty under the bail surety agreement they signed to seek the apprehension of their client. Such an interpretation cannot stand. It is an absurd result based upon an unreasonable interpretation of the local rule. Lower Merion Twp. v. Schenk, 372 A.2d 934 (Pa. Super. 1977).

As a final observation, the Commonwealth, although delinquent in notifying Mr. Weachter of Mr. Lucas' non-appearance, filed its petition, with errors, in June of 2012. Mr. Weachter had notice upon service of the petition that Mr. Lucas was wanted for his failure to appear, despite his alleged "confusion." By the time this Court heard testimony in October 2012, the only action Mr. Weachter took to seek out Mr. Lucas or aid in his apprehension was to call the Franklin County Sheriff's office and provide a possible telephone number of Mr. Lucas' girlfriend. He did not seek a bail piece until January 2013. This Court is dismayed that several months continued to pass from the filing of the petition, and Mr. Weachter appeared more concerned with avoiding the forfeiture of the bond rather than the apprehension of Mr. Lucas. In the end, this Court does not believe it has exhibited any abuse of discretion in its order of December 31, 2012. Given the apparent willful absconding of Mr. Lucas with no evidence offered to the contrary by any party, the prejudice to the Commonwealth and the Court is self-evident. The Court took into account the substantial delay attributed to the Commonwealth to notify Mr. Weachter of his client's failure to appear. The Court determined that Mr. Weachter should be given a fair opportunity to employ whatever resources available to him for a period of six months to try and secure Mr. Lucas. For that reason, the forfeiture was set aside by this Court and Mr. Weachter is given the option of requesting a hearing to offer proof of the actions he had taken and to explain the difficulties he has encountered in apprehending Mr. Lucas. The Court submits it has not misapplied the law, committed an abuse of discretion in its evaluation of orders issued in this case, or exhibited any bias or ill will in its decision.

#### ORDER OF COURT

AND NOW this 31st day of December, 2012, the Court having considered the issues raised by the parties and the Commonwealth's request for forfeiture of bail by the bail agent, Paul Weachter, the Court issues this order to advise the parties of the relief granted, an opinion shall be filed explaining the Court's reasoning hereafter;

IT IS HEREBY ORDERED THAT the bail agent, Paul Weachter, shall forfeit the bail in this case in the amount of \$25,000.00, 180 days from the date of this order in the event the defendant Larry Mitchell Lucas, Jr. has not been brought before this court for a bench warrant hearing to answer for his failure to appear for required court appearances within that time period.

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[1]The Court notes that Mr. Lucas also entered a plea in CR No. 1353-2010, for which Mr. Weachter did not post surety and so is not relevant to this analysis.

[2]The order, although dictated, was not transcribed by the Court stenographer until the error was discovered by this court in preparing this opinion. The order has been transcribed and filed so the docket is complete.