

SUPREME COURT OF VERMONT

State v. Mottolese

199 Vt. 470 (2015) · No. 2014-245 · Decided June 12, 2015

SUMMARY

The Vermont Supreme Court held that a bail-bond surety may be entitled to a reduction of forfeiture when the defendant’s failure to appear results from incarceration in another jurisdiction. The court reversed and remanded for calculation of extradition and delayed-trial costs, directing that the forfeiture be remitted to Allstate Bail Bonds except for those amounts.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Skoglund, J.; Reiber, C.J.; Dooley, J.; Robinson, J.; Eaton, J.
JURISDICTION	Vermont
DECIDED	June 12, 2015
DOCKET	2014-245
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Allstate Bail Bonds appealed the trial court's order granting the State's motion for full forfeiture of a surety bond after the defendant failed to appear because he was incarcerated in New York. Allstate sought remission or reduction of the forfeiture to the costs of extradition and related expenses.
STANDARD OF REVIEW	The decision to forfeit bail is reviewed for abuse of discretion. Questions concerning the interpretation of Vermont's bail statutes and related case law are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Allstate Bail Bonds v. State of Vermont

TOPICS

- bail
- forfeiture
- criminal procedure
- appellate procedure
- remedies

PRACTICE AREAS

- criminal procedure
- bail and bond forfeiture
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether a trial court may reduce or remit bail forfeiture when a defendant's failure to appear results from incarceration in another jurisdiction.
2. Whether Vermont's bail-forfeiture statutes require an absolute rule imposing full forfeiture whenever a defendant fails to appear.
3. What factors govern the amount of bail forfeiture when the defendant's nonappearance is caused by out-of-state incarceration.

HOLDINGS

1. Out-of-state incarceration does not create an absolute rule requiring full bail forfeiture or precluding relief to the surety. The court must examine the totality of the circumstances and may adjust or remit the forfeiture when the interests of justice so require.
2. Allstate was entitled to a reduction of the forfeiture because the defendant's nonappearance was not willful, Allstate acted in good faith to secure his return, the State suffered only minimal prejudice, and any forfeiture beyond extradition and delayed-trial costs would be punitive.
3. The trial court abused its discretion by treating full forfeiture as required and by failing to account for the statutory discretion to remit or reduce the forfeiture.

KEY QUOTATIONS

“forfeiture decisions should be based upon an examination of the totality of the circumstances.” (¶ 16)

“these factors can be used only to determine the amount of forfeiture of bail, if any, appropriate to ensure that bail-bond sureties uphold their duties in good faith, and not as a punitive tool.” (¶ 16)

“Any forfeiture amount above the costs associated with extradition and delayed trial would therefore serve only to punish Allstate—a result we have long proscribed.” (¶ 21)

FACTUAL BACKGROUND

The defendant was released in Vermont on a \$35,000 surety bond issued by Allstate, with permission to reside in New York. Before a required Vermont court appearance, the defendant was incarcerated in New York on unrelated charges and consequently failed to appear. Allstate sought a surety warrant and offered to pay the costs of returning the defendant, but the trial court denied the request and ordered full forfeiture despite Allstate's inability to take custody of the incarcerated defendant.

PROCEDURAL HISTORY

The Bennington Superior Court set bail at \$35,000, which the defendant posted through Allstate. After the defendant failed to appear while incarcerated in New York, the State moved to forfeit the bond. The trial court denied Allstate's request for a surety warrant and later ordered full forfeiture. The Vermont Supreme Court reversed and remanded for calculation of extradition and delayed-trial costs and remission of the forfeiture by those amounts.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Calculate the costs and expenses associated with extradition and delayed trial, then remit the forfeiture to Allstate by returning the forfeited security less those amounts.

CASES CITED

- State v. Brown, 2005 VT 104, ¶ 10, 179 Vt. 22, 890 A.2d 79
- State v. Hutchins, 134 Vt. 441, 443, 365 A.2d 507, 508 (1976)
- In re T.S.S., 2015 VT 55, ¶ 15, ___ Vt. ___, ___ A.3d ___
- State v. Cardinal, 147 Vt. 461, 464, 466, 520 A.2d 984, 986-87 (1986)
- Stack v. Boyle, 342 U.S. 1, 4-5 (1951)
- Hudson v. Parker, 156 U.S. 277, 285 (1895)
- State v. Marsh, 173 Vt. 531, 789 A.2d 939 (2001) (mem.)
- Taylor v. Taintor, 83 U.S. (16 Wall.) 366, 369, 372-73 (1872)
- United States v. Egan, 394 F.2d 262, 265-66 (2d Cir. 1968)
- United States v. Nell, 515 F.2d 1351, 1353 (D.C. Cir. 1975)
- United States v. Gambino, 17 F.3d 572, 574 (2d Cir. 1994)
- United States v. Abernathy, 757 F.2d 1012, 1015 (9th Cir. 1985)
- United States v. Bass, 573 F.2d 258, 260 (5th Cir. 1978)
- United States v. Kirkman, 426 F.2d 747, 752 (4th Cir. 1970)
- State v. Fry, 910 P.2d 164, 167-68 (Idaho Ct. App. 1994)
- Commonwealth v. Hann, 81 A.3d 57, 67-68 (Pa. 2013)
- State v. Korecky, 777 A.2d 927, 934 (N.J. 2001)
- People v. Escalera, 121 P.3d 306, 308 (Colo. App. 2005)
- Ex parte Polk, 579 S.E.2d 329, 331 (S.C. Ct. App. 2003)
- United States v. Nash, 429 F.2d 533, 534 (8th Cir. 1970)
- State v. Two Jinn, Inc., 245 P.3d 1016, 1019 (Idaho Ct. App. 2010)
- State v. Amador, 648 P.2d 309, 313 (N.M. 1982)
- Allison v. People, 286 P.2d 1102, 1104-06 (Colo. 1955) (en banc)