

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**LIBERTY BAIL BONDS
AND LEGAL SERVICES**

APPELLANT

VS.

NO. 2010-CA-0975

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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APPELLEE

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against an Order of the Circuit Court of Rankin County, Mississippi in which relief was denied on the Appellant's motion to set aside judgment nisi.

STATEMENT OF FACTS

One Joshua Timothy Williams entered a plea of guilty to the felony of armed robbery. At the conclusion of the plea colloquy, William's attorney requested that Williams be given until the following Monday "to turn himself in by his girlfriend." The State expressed no objection to the request. The circuit court allowed the request and sentenced Williams to a term of fifteen years imprisonment, with ten years suspended on five years supervised probation, together with a fine and restitution. Williams was to turn himself in, or have his girlfriend turn him in, by noon on the following Monday. The circuit court told Williams that bad things would happen if he failed to turn

himself in. (R. Vol. 2). Bad things happened indeed, though whether to Williams is not clear.

Williams was to present himself for service of sentence on 16 November 2009. He did not do so, and on 19 November 2009 a bench warrant was issued for his arrest. (R. Vol. 1, pg. 30). On that same date, a judgment nisi was entered against Williams and the Appellant, and a writ scire facias issued, returnable on 22 February 2010. (R. Vol. 1, pg.31). The Appellant had issued bond for Williams on 14 August 2008. On 25 February 2010, a final judgment nisi was entered against the Appellant in the amount of twenty - five thousand dollars. (R. Vol. 1, pg. 34).

A “Judgment of Conviction and Sentence Instanter,” dated 9 November 2009, was filed on 18 November 2009. In that judgment, the court accepted Williams’ guilty plea, convicted him, and sentenced him. (R. Vol. 1, pp. 25 - 29).

On 23 April 2010, the Appellant filed a motion to set aside the final judgment nisi. It alleged that it had not been contacted by the circuit court to determine whether the Appellant would be willing to continue its bond for the Appellant after Williams was sentenced. It further alleged that under Mississippi law a surety’s obligations on a bail bond conclude upon the conviction of accused. (R. Vol. 1, pp. 36 - 39).¹

The Appellant’s motion came on for a hearing on 3 June 2010. In the course of that motion, the Appellant asserted that its obligations under the bond issued for Williams terminated upon

¹ The record shows that the Appellant issued a bail bond for Williamson on or about 15 August 2008. In that bond, the charges pending against Williams were said to be conspiracy and embezzlement. (R. Vol. 1, pg. 7). In the course of the hearing to set aside the judgment nisi, no point was made of this, however, and the Appellant and the State and the circuit court proceeded under the fact that a bond in the amount of twenty - five thousand dollars had been issued for Williams. The Appellant at no time asserted in the court below that it had not issued a bond for Williams on a charge of armed robbery, and for that reason was not liable for William’s non-appearance. Consequently, to the extent, if any, that the Appellant would now suggest that it had no liability for William’s non-appearance on this ground, it may not be heard to do so.

Williams' conviction. The Appellant and the State stipulated that the Appellant was not contacted concerning the Appellant's willingness to agree to permit Williams to report at a later date for service of sentence. The Appellant relied upon *Frontier Insurance Co. v. State*, 741 So.2d 1021 (Miss. Ct. App. 1999) in support of the proposition that a bonding company's obligation to ensure the appearance of one criminally accused terminates upon the conviction of the accused.

The State, relying upon *State v. Brooks*, 781 So. 2d 929 and *Moss v. State*, 7 Miss. 298 (1842), asserted that a surety remains liable upon its bond until discharged by operation of law. The State asserted that a surety remains liable on its bond until such time as physical custody of the accused is returned or given over to the State. The Appellant disagreed, of course, asserting that its liability upon its bond ceased upon the entering of a judgment of conviction.

The circuit court found that the Appellant remained liable upon its bond. It reasoned, in part, that the *Frontier* decision was bottomed on the fact that the accused in that case had been found guilty by a jury, which fact greatly increased the risk of flight by that accused. The court noted that the Williams in the case at bar entered a plea of guilty, which, in its view, amounted to a significant difference.

The court further stated that, if the law were to be that a bonding company were to be released from its obligations under its bond any time an accused appeared for some hearing or another in the course of the criminal case, then the courts would be compelled to remand custody of the accused to the sheriff until the bonding company agreed to continue to act as surety.

Then noting that Williams had not been remanded to the custody of the State at the conclusion of the plea colloquy, the court found a further distinction between the facts of the case at bar and the *Frontier* decision. Consequently, the court denied relief on the Appellant's motion. (R. Vol. 3).

STATEMENT OF ISSUES

1. DID THE CIRCUIT COURT ERR IN DENYING RELIEF ON THE APPELLANT'S MOTION TO SET ASIDE JUDGMENT NISI?

SUMMARY OF ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE APPELLANT'S MOTION TO SET ASIDE JUDGMENT NISI

ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE APPELLANT'S MOTION TO SET ASIDE JUDGMENT NISI

The facts of this case, essentially, are that the circuit court accepted Williams' guilty plea, convicted Williams on the plea, set a sentence for him, and then, at the request of Williams' counsel, agreed to allow Williams to report for execution of sentence at a later date. It does not appear that the Appellant, Williams' bailman, was contacted about the matter of remanding Williams at a later date; nor does it appear that some new bail bond was issued for Williams. Williams took to his heels and, apparently, remains on the lam. In due course, the court entered a judgment against Williams' bail company, which is the Appellant here.

The Appellant asserts once the circuit court accepted Williams' guilty plea, convicted Williams on it, and sentenced Williams, its obligations and liabilities under the bail bond issued by it for Williams terminated. The Appellant relies upon *Frontier Insurance Company v. State*, 741 So.2d 1021 (Miss. Ct. App. 1999) in support of this proposition, as it did in the circuit court.

The facts in the *Frontier Insurance* case were that the bondsman had issued an appearance bond for the accused. The accused was tried and was convicted by a jury. The court deferred sentencing but remanded the defendant to the custody of the sheriff pending sentencing. Subsequently, the defendant was released by the sheriff on the basis of the original appearance bond

and a new and additional bond. The defendant absconded, and the circuit court entered judgment on both bonds. Frontier Insurance appealed. The Court of Appeals held that the Frontier Insurance's obligation under its bond terminated at the point the defendant was convicted and his custody remanded to the sheriff. 741 So.2d at 1025 - 1026.

The *Frontier Insurance* decision does not hold that conviction and sentence act so as to discharge a bondsman from his liabilities under his bond. The key fact, said the Court of Appeals, is whether a remand (in the case of a conviction, as opposed to a discharge via an acquittal or a dismissal of charges) of the person of the accused to the State occurred, citing *Lee v. State*, 51 Miss 665 (1975). Contrary to what the Appellant argues here, the fact of a conviction, or even imposition of sentence, is not the point at which a bondsman's liability terminates.

A bondsman becomes in effect the custodian of an accused and remains so until the accused is surrendered to the sheriff or ordered into custody of the sheriff. 741 So.2d at 1027. In view of this, then, it is not the fact of conviction or even of imposition of sentence that marks the point at which a bondsman's liability terminates. It is rather the point at which custody of the defendant is transferred from the bondsman to the sheriff. Holding aside the statutory limitation period concerning bail bonds under Miss. Code Ann. Section 99-5-5 (Rev. 2007), a bondsman remains liable on his bond until custody of the accused is returned to the sheriff. *State v. Brooks*, 781 So.2d 929, 934 (Miss. Ct. App. 2001)

In the case at bar, the circuit court did accept the guilty plea, did convict and sentence Williams, but it did not at that point remand William's custody to the State. Remand was to occur some days later. Williams' custody thus remained with the Appellant, and the Appellant remained liable until the time William's custody returned to the sheriff.

The Appellant suggests that the circuit court had no authority to defer or delay remand of

Williams' custody. No authority is cited for this proposition. It requires no response. *Johnson v. State*, 39 So.3rd 14, 21 (Miss. Ct. App. 2010)

The Appellant claims that some other jurisdictions have held that the fact of conviction operates so as to terminate the liability of a bondsman. To the extent that some of those decisions cited suggest this, we will point out that those decisions are no authority here and are, in any event, directly in conflict with what the Court has held in *Frontier Insurance*. On the other hand, in at least one of the cases cited by the Appellant, *State v. Kaerch*, 394 So.2d 1172 (La. 1980), the court made it clear that a bondsman is liable under his bond in an instance in which the defendant fails to appear for execution of sentence. In other instances, such as *Rodriequez v. People*, 191 Colo. 540, 554 P.2d 291 (1976), the result turned upon some express statutory language in those states, language that does not appear in our statutes.

Because custody of Williams was not remanded to the sheriff at the time sentence was pronounced, the Appellant remained liable on its bond until such time as custody was acquired by the sheriff. The circuit court did not err in entering judgment against the Appellant.

CONCLUSION

The order denying relief on the Appellant's motion to set aside judgment nisi should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

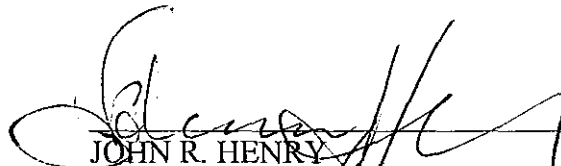
I, John R. Henry, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 29th day of November, 2010.


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