

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2010-CA-00975

LIBERTY BAIL BONDS AND LEGAL SERVICES

APPELLANT

VS.

NO. 2010-CA-00975

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S BRIEF

MERRIDA COXWELL (MB# [REDACTED])  
COXWELL & ASSOCIATES, PLLC  
Post Office Box 1337  
Jackson, Mississippi 39215-1337  
Telephone: (601) 948-1600

### CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualification or refusal.

1. Liberty Bail Bonds and Legal Services  
Appellant
2. State of Mississippi  
Appellants
3. Mérida (Buddy) Coxwell  
Coxwell & Associates, PLLC  
Post Office Box 1337  
Jackson, Mississippi 39215-1337  
Attorneys for Appellant
4. John H. Emfinger, Assistant District Attorney  
Post Office Box 68  
Brandon, Mississippi 39043  
Attorney for Appellee
5. Honorable Samac Richardson  
Rankin County Circuit Court Judge  
Post Office Box 1885  
Brandon, Mississippi 39043

Respectfully submitted,

LIBERTY BAIL BONDS AND LEGAL SERVICES

By: Merrida Coxwell  
MERRIDA (BUDDY) COXWELL

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	i
TABLE OF CONTENTS.....	ii
TABLE OF CASES .....	iii
STATEMENT OF FACTS .....	1-2
STATEMENT OF THE ISSUES.....	3-8
POINT ONE: AMERICAN SURETY COMPANY AND LIBERTY BAIL BONDS WERE DISCHARGED FROM THEIR SURETY ONCE THE DEFENDANT PLEADED GUILTY AND WAS SENTENCED BY THE TRIAL COURT.	
CONCLUSION.....	8
CERTIFICATE OF SERVICE .....	9

## TABLE OF CASES

### CASES:

<i>Frontier Insurance Company v. State of Mississippi</i> , 741 So.2d 1021 (Ms. Ct. Appeal 1999).....	5,7
<i>High Court of Errors and Appeals of Mississippi et al. v. The State of Mississippi</i> , 7 Miss. 298 (1842).....	7
<i>Kinder v. Richeson</i> , 264 S.W. 982 (Mo.1924).....	7
<i>People v. Bartsch</i> , 543 P.2d 1273 (Colo.App.1975).....	7
<i>People v. Hernandez</i> , 902 P.2d 846 (Colo.App1995).....	7
<i>Rodriquez v. People</i> , 554 P.2d 291 (Colo.1976).....	7
<i>State v. Brooks</i> , 781 So.2d 929 (Miss. App. 2001).....	7
<i>State v. Charles</i> , 105 S.W. 609 (Mo.1907).....	7
<i>State v. French</i> , 945 P. 2d 752 (Wash.App.1997).....	7
<i>State v. Johnson</i> , 342 So.2d 863 (La.1977).....	7
<i>State v. Kaerch</i> , 394 So.2d 1172 (La.1980).....	7
<i>State v. Murmann</i> , 28 S.W. 2 (Mo.1894).....	7
<i>State v. Valles</i> , 99 P.3d 679 (N.M.Ct.App.2004).....	7
<i>State v. Wilson</i> , 14 La. Ann. 446 (La.1859).....	7

## INTRODUCTION

### STATEMENT OF FACTS

Mr. Joshua Timothy Williams was arrested in Rankin County, Mississippi, for the charges of conspiracy and embezzlement. On August 15, 2008 Joy Vigoreaux, a bonding agent for Liberty Bail Bonds & Legal Services, LLC, posted with the Rankin County Sheriff's Office an American Surety Company bond. This bond (a/k/a Power A 525-175818) secured Mr. Williams' release from jail pending indictment. (Vol. 1, Pages 7-8)

When the Rankin Grand Jury met an indictment was returned charging Joshua Timothy Williams with armed robbery. (Vol. 1, Pages 4-5). It is not clear in the record if the armed robbery charge arose from the initial conspiracy and embezzlement charges or if it was a new charge. The record is silent and we are left to assume the charge was "upgraded."

Mr. Williams was ordered to appear for arraignment (Vol. 1, Page 9) at which time he waived arraignment, pleaded not guilty, and was appointed Attorney William O. Townsend. (Vol. 1, Pages 10-11)

On November 9, 2009, Mr. Williams appeared in the Rankin County Circuit Court with his attorney, William Townsend. Mr. Williams entered a plea of guilty. (Vol. 1, Pages 15-24) The Circuit Court Judge Samac Richardson went over the Petition to Enter a Plea of Guilty in open court. Mr. Williams was sentenced to fifteen (15) years in the custody of the Mississippi Department of Corrections, 10 years suspended and five (5) years to serve, plus a fine and restitution. (Vol. 2 – Plea Colloquy dated November 9, 2009) During the guilty plea Mr. Williams' lawyer, Mr. Townsend, asked Judge Richardson to permit Mr. Williams to report a week later. Judge Richardson did not defer the acceptance of the guilty plea. Mr. Williams' guilty plea was accepted during the plea and he was orally adjudicated guilty of the crime of

armed robbery. (Vol. 2, Page 10) Judge Richardson then permitted Mr. Williams to leave the custody of the Rankin County Sheriff and court with the understanding Mr. Williams would report to the Rankin County Sheriff's Department on November 16, 2009 at 12:00 noon. (Vol. 2, Pages 14-15). A Judgment of Conviction and Sentence Instante was signed by Judge Richardson on November 9, 2009 and filed on November 18, 2009. (Vol. 2, pages 24-29)

Mr. Williams failed to appear on November 16, 2009 and a bench warrant was issued for his arrest. (Vol. 2, Page 30) Neither Joy Vigoreaux nor Liberty Bail Bonds & Legal Services, LLC were ever informed of Mr. Williams' guilty plea. The Court never informed Mrs. Vigoreaux or Liberty that Mr. Williams would be released *after* his guilty plea. Circuit Judge Samac Richardson did not contact Liberty Bail Bond & Legal Services to ask if the bonding company was willing to accept the risk and continue as a surety for Mr. Williams after Mr. Williams entered his plea and after he was adjudicated guilty by the Circuit Judge.

On November 19, 2009, the Rankin County Circuit Clerk entered a Sine Facias on Forfeited Recognizance demanding that Liberty Bail Bond appear on February 22, 2010. (Vol. 1, Page 32). There is no record of a hearing on February 22, 2010. Thereafter a Final Judgment Nisi was entered on February 25, 2010 against Liberty Bail Bond ordering it to pay the sum of Twenty-Five Thousand Dollars (\$25,000.00). (Vol.1 Page 34).

On April 23, 2010, Liberty Bail Bond through counsel filed a Motion to Set Aside Judgment Nisi. (Vol. 1, Pages 36-50) A hearing was held on June 3, 2010 after which Circuit Judge Samac Richardson denied relief. (Hearing, Vol. 3); (Order denying relief dated June 7, 2010. (Vol. 1, Page 51)

Liberty Bail Bond promptly and properly filed a Notice of Appeal and prepaid costs perfecting its appeal from the Order of Judge Richardson. (Vol. 1, Page 52-54).

## STATEMENT OF ISSUES

Liberty Bail Bonds & Legal Services, LLC was discharged from its obligation as surety after the trial court accepted the Defendant's plea of guilty and sentenced him to the custody of the Mississippi Department of Corrections. The trial Court released the defendant after conviction without requiring a new bond and without asking Liberty to remain as surety for the Defendant. The Trial Court had no authority to order Liberty Bail Bond and American Surety Company to pay the twenty-five thousand dollars (\$25,000.00) as surety because Liberty was released by operation of law after the defendant pleaded guilty.

### POINT ONE: AMERICAN SURETY COMPANY AND LIBERTY BAIL BONDS WERE DISCHARGED FROM THEIR SURETY ONCE THE DEFENDANT PLEADED GUILTY AND WAS SENTENCED BY THE TRIAL COURT.

Liberty Bail Bond & Legal Services, LLC (Liberty) has appealed a Judgment entered by Circuit Court Judge Samac Richardson ordering that it is responsible for a twenty-five thousand dollar (\$25,000.00) surety bond. (Vol. 1, Page 34 & 51). Liberty Bail Bond, acting for American Surety Company, posted a twenty-five thousand dollar (\$25,000.00) bail bond to obtain the release of Joshua Timothy Williams on the charges of conspiracy and embezzlement. (Vol. 1, Page 7-8). Later a Rankin County Grand Jury returned an indictment charging Mr. Williams with armed robbery. The surety bond posted for Mr. Williams' release is dated by the Liberty Bail Bond agent on August 14, 2008 and accepted by the Rankin County Sheriff's Office on August 15, 2008. Mr. Williams was released from custody.

The next significant event for this appeal is Mr. Williams' appearance in Court to enter a plea of guilty. On November 9, 2009, Mr. Williams with the assistance of his attorney filled out a Petition to Plead Guilty. On that same day Mr. Williams in open Court pleaded guilty to armed

robbery. Circuit Court Judge Samac Richardson accepted Mr. Williams' guilty plea and immediately adjudicated him guilty of the crime of armed robbery.

After the guilty plea and before sentencing William Townsend, attorney for Mr. Williams, asked Judge Richardson if Mr. Williams could report to custody on a later date. There is a brief colloquy between Mr. Townsend and Assistant District Attorney John Emfinger about Mr. Williams reporting and whether the Court should go ahead and sentence him. Thereafter the record reflects the following:

THE COURT: All right. Mr. Williams, you'll serve a term of 15 years in the custody of the Mississippi Department of Corrections. The last 10 years suspended, 5 years supervised probation. You'll pay court costs, statutory fees and assessments....(Vol. 2, Pages 14-15).

Before sentencing the Assistant District Attorney stated that he had no objection to the Defendant Williams being allowed to defer his reporting to the custody of the Rankin County Sheriff's Department a week later on November 16, 2009. The final words of Judge Richardson to Mr. Williams are, "If you don't show up, bad things happen." (Vol. 2, Page 15)

The record is very clear that on November 9, 2009, Circuit Judge Samac Richardson accepted Mr. Williams' guilty plea and pronounced his sentence. A Judgment of Conviction and Sentence Instante was dated and signed on November 9, 2009, but not stamped filed until November 19, 2009. (Vol. 2, Page 25-29). Liberty Bail Bond was not present in Court when Mr. Williams pleaded guilty. Judge Richardson accepted the guilty plea **and sentenced** Mr. Williams to the custody of the Mississippi Department of Corrections without contacting Liberty Bail Bond to determine if they would either stay on the original bond or write a new bond for Mr. Williams. (Vol. 3, Page 3) Judge Richardson sentenced Mr. Williams to the custody of the Mississippi Department of Corrections then deferred his reporting date or released him from



custody to report one (1) week later. Once Judge Richardson accepted the plea of guilty and adjudicated Mr. Williams guilty, Liberty Bail Bond was discharged from its surety obligation. Judge Richardson was without the authority to release Mr. Williams **and** hold Liberty Bail Bond liable as surety. Liberty Bail Bond was never contacted by Judge Richardson, the Assistant District Attorney, or Mr. Williams and asked to remain liable as surety **after** the acceptance of the guilty plea and sentencing.

In the case of *Frontier Insurance Company v. State of Mississippi*, 741 So.2d 1021 (Ms. Ct. Appeal 1999) the Court of Appeals dealt with a similar issue. In that case Frontier and Gulf Bonding posted a bond for Deon Roland Russell. Mr. Russell went to trial and was found guilty. His attorney asked the trial judge to permit Mr. Russell to remain free on bond pending sentencing. The judge remanded Mr. Russell to the Sheriff and the same day allowed him to be released on his **existing** appearance bond and an additional bond of ten thousand dollars (\$10,000.00). Mr. Russell was released and failed to appear for sentencing so the trial judge entered a final forfeiture against Frontier (the initial bond) and Big McCloud, the new ten thousand dollar (\$10,000.00) bond.

Frontier filed a Motion to Set Aside the Final Forfeiture arguing that its obligation was discharged upon the conviction of Mr. Russell. The trial judge refused to set aside the final forfeiture and Frontier appealed. The *Frontier* opinion is controlling for this case.

In *Frontier* the Court of Appeals analyzed the Mississippi statutes involving bail “before conviction” and “bail pending appeal.” The Court wrote that “...conviction in and of itself marks the demarcation line regarding bail...” *Frontier*, at 1027.

The only differences between the *Frontier* case and the present case are the fact that Mr. Russell was convicted by a jury while Mr. Williams pleaded guilty. Mr. Russell (defendant in

*Frontier*) was also placed in the custody of the Sheriff before being released. Mr. Williams pleaded guilty on November 9, 2009. The Trial Court adjudicated him guilty and imposed the sentence. The Trial Court sentenced Mr. Williams to the custody of the Mississippi Department of Corrections then allowed Mr. Williams an additional week before reporting. Without determining or arguing whether the trial judge had the authority to defer Mr. Williams' reporting date after the guilty plea was accepted and the sentence imposed, it is clear that once Judge Richardson adjudicated Mr. Williams guilty, Liberty Bail Bond was discharged from its bond by operation of law. The situation might be different if Judge Richardson had contacted Liberty and obtained its agreement to remain on Mr. Williams' bail, but Judge Richardson did not notify or contact Liberty. The Court in *Frontier* noted that conviction increases the risk of flight for a bonding company and a bonding company does not accept that additional risk after an adjudication of guilt. This was a risk Liberty did not agree to accept.

Liberty Bail Bond posted a bond for Mr. Williams for conspiracy and embezzlement. The armed robbery indictment was not the charges for which Liberty Bail Bond agreed to stand as surety. When Judge Richardson accepted and adjudicated Mr. Williams guilty the surety obligation of Liberty Bail Bond ended and Liberty could not be expected nor were they required by law to remain surety.

Judge Richardson did not have the authority to release Mr. Williams **and** hold Liberty Bail Bond liable as surety. When Judge Richardson deferred Mr. Williams' date to report to the Mississippi Department of Corrections, Judge Richardson allowed Mr. Williams to remain free without any surety bond.

The surety bond posted by Liberty Bail Bond was discharged by operation of law when Mr. Williams pleaded guilty. There are many other cases outside of Mississippi that reinforce

the Court's opinion in *Frontier*. In *Rodriquez v. People*, 554 P.2d 291 (Colo.1976), the Court held that the surety's liability terminated when the defendant entered a plea of guilty. Courts of in Louisiana have held that the liability of a surety ended upon conviction. See: *People v. Bartsch*, 543 P.2d 1273 (Colo.App.1975); *State v. Kaerch*, 394 So.2d 1172 (La.1980); *State v. Johnson*, 342 So.2d 863 (La.1977); *State v. Wilson*, 14 La. Ann. 446 (La.1859).

In the case of *State v. Charles*, 105 S.W. 609 (Mo.1907), the Court found that the obligation of the surety was discharged after the defendant entered his guilty plea, even though he failed to appear for sentencing. The Court noted in language similar to *Frontier* that bondsmen could not be expected to accept the additional risk of a defendant's presence after he has pleaded guilty. See: *State v. Murmann*, 28 S.W. 2 (Mo.1894); *Kinder v. Richeson*, 264 S.W. 982 (Mo.1924); *People v. Hernandez*, 902 P.2d 846 (Colo.App.1995); *State v. Valles*, 99 P.3d 679 (N.M.Ct.App.2004); *State v. French*, 945 P. 2d 752 (Wash.App.1997).

When Mr. Williams pleaded guilty the surety obligation of Liberty Bail Bond was discharged. If Liberty Bail Bond had been notified and had agreed to remain on surety this might be a different issue. However, this did not happen. Judge Richardson released Mr. Williams **after** he had been sentenced to the custody of the Mississippi Department of Corrections. Liberty was discharged from it surety and cannot be held financially responsible for Mr. Williams' failure to appear.

The Assistant District Attorney cited the case of *State v. Brooks*, 781 So.2d 929 (Miss. App. 2001) and the *High Court of Errors and Appeals of Mississippi et al. v. The State of Mississippi*, 7 Miss. 298 (1842) as authority for the position that Liberty was still liable as surety. Neither of these cases applies. The case of *Frontier* clearly applies and Liberty cannot be held responsible and liable on Mr. Williams's bond. Mr. Williams pleaded guilty and had been

adjudicated guilty. The Trial Judge did not obtain an agreement from Liberty to remain on as surety after conviction. Liberty was discharged by operation of law.

CONCLUSION

The Appellant moves the Court to reverse and remand the Order of Judge Samac Richardson directing that Liberty was financially liable as surety in the amount of twenty five thousand (\$25,000.00) dollars for Mr. William's failure to report after his guilty plea.

Respectfully submitted,

LIBERTY BAIL BONDS AND LEGAL SERVICES

BY: Merrida Coxwell  
MERRIDA (BUDDY) COXWELL

CERTIFICATE OF SERVICE


I, Merrida (Buddy) Coxwell, attorney for appellant, Liberty Bail Bonds and Legal Services certify that I have this day filed this Brief of Appellant with the clerk of this Court, and have served a copy of this Brief by United States mail with postage prepaid on the following persons at these addresses:

John H. Emfinger  
Assistant District Attorney – Rankin County  
Post Office Box 68  
Brandon, Mississippi 39043

Honorable Samac Richardson  
Rankin County Circuit Court Judge  
Post Office Box 1885  
Brandon, Mississippi 39043

This the 26<sup>th</sup> day of August, 2010.

  
MÉRRIDA (BUDDY) COXWELL

MÉRRIDA (BUDDY) COXWELL (MB   
Attorney for the Appellant  
Coxwell & Associates, PLLC  
P.O. Box 1337  
Jackson, MS 39215-1337  
Telephone: (601)948-1600