

1983 WL 181956 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 29, 1983

*1 Peter D. Hyman, Esquire
Florence County Attorney
Box G
City-County Complex
Florence, SC 29501

Dear Mr. Hyman:

In a letter to this Office you questioned whether a bond can be estreated when a defendant fails to appear upon the return date of a recognizance and it is discovered either before or after the return date that the defendant was incarcerated in a detention facility in a county other than that where the bond was returnable.

Pursuant to [Section 17-15-180, Code of Laws of South Carolina](#), 1976, the power to grant relief from a bond forfeiture is within the discretion of the trial court. See: State v. Holloway, 262 S.C. 552, 206 S.E.2d 882 (1974). Such section specifically states: '[i]f any person shall forfeit a recognizance from ignorance or unavoidable impediment and not from willful default, the court of Sessions may, on affidavit stating the excuse or cause thereof, remit the whole or any part of the forfeiture as may be deemed reasonable.'

It has generally been stated that:

The courts are not agreed as to whether a subsequent arrest and imprisonment, in the same state, of the principal in a criminal bail bond for an offense other than that for which the bond was given, and an actual detention of the principal at the time he is obligated to appear, are grounds for relieving the surety on the bond. On the grounds that by the act of the obligee state for whose protection the bond or recognizance is given, the performance of the condition of the bond is made impossible, that a sentence imposed by another court of the state is an act of law preventing performance, or that the state has the prisoner in its own custody and may produce him for trial, the general rule is that when one is bound as bail for another for his appearance in a particular court at a particular time, and the state, before the time stipulated for the appearance, arrests the principal and detains him, thus preventing him from appearing at the time and place stipulated, performance by the surety is thereby excused, and a forfeiture of the bond will be remitted. . . . [However] . . . In some jurisdictions and under some circumstances, subsequent imprisonment in the same jurisdiction for a different offense is not sufficient excuse for a default in appearance. In several cases relief has been refused on the grounds that the court had not been timely informed of the second arrest and that the sureties had not shown sufficient diligence in having the authorities return the prisoner to attendance before the first court, or on the ground that the surety had not moved for process to enable him to surrender his principal. 8 Am.Jur.2d, Bail and Recognizance, Section 191, pp. 712-713. See also: 4 A.L.R.2d 440-458.

In Breeze v. Elmore, 4 Rich. L. 436 (1851), a decision rendered by the former South Carolina Court of Appeals, the court was faced with a situation where a principal on a bail bond, who was an 'insolvent debtor', was incarcerated in the Orangeburg district at the time a writ on a bail bond was returnable in Charleston. The court ruled that a motion for further time in which the principal could be surrendered should have been granted.

*2 I have found no other cases in this State which discuss the referenced question. Furthermore, it is questionable whether the Breeze decision should be cited as absolute authority for relieving sureties on bonds in your referenced circumstances on

all occasions. Obviously, absent some conclusive finding by the courts in this State as to how such matters must be handled or enactment of a statute governing such matters, an absolute determination cannot be made. Therefore, this Office cannot issue any guidelines as to how such matters should be handled on all occasions. It appears, therefore, that such issue would be one within the discretion of the court as provided by [Section 17-15-180](#), supra. Arguably, it could be asserted that incarceration in another county is an 'unavoidable impediment' which could serve as a basis for relief from bond forfeiture.

I regret that your question could not be more conclusively answered.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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