1977 WL 37003 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
December 20, 1977

***1** Robert H. Orr, Jr.
Sheriff
Chester County

QUESTIONS PRESENTED:

1. Does a bail bondsman acting as the surety for a particular principal have the right to surrender the principal to proper authorities and thus be relieved of his obligation under the bond?

2. As to a principal whose case is pending in the Court of General Sessions, must the bail bondsman go before this Court to effect the surrender of the principal?

3. May a local authority refuse to accept the surrender by a surety of a principal?

AUTHORITIES:

Taylor v. Tainter, 16 Wall. 366, 21 L.Ed. 287 (1893);

Watson, Johnston and Company v. E. W. Bancroft, et al., 4 Strob. 218 (1850);

Breeze v. Elmore, 4 Rich. 436 (1851);

Curtis v. Peerless Insurance Company, 299 F.Supp. 429 (D.Minn. 1969);

8 Am.Jur.2d, Bail and Recognizance, Sections 114–119 (1963);

73 ALR 1369–1376;

State v. Prosper Le Cerf, et al., 1 Bailey 410 (1830);

Section 23–13–50, Code of Laws of South Carolina, 1976.

DISCUSSION:

There is no statutory authority in this State for a bail bondsman who acts as the surety on the bond of a particular principal to surrender the principal to a proper authority at any time and thus be relieved of his obligation under the bond. However, because of the nature of the relationship between a surety and a principal, it is generally accepted at common law that the right of a surety on a bail bond to take the principal into custody, deliver him to the proper authority, and be relieved of his obligation under the bond does exist. The United States Supreme Court in Taylor v. Tainter, 16 Wall. 366, 371, 21 L.Ed. 287 (1873) stated: ‘When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if

that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest by the sheriff of an escaping prisoner.' 21 L.Ed. at 290.

There have not been any recent decisions by the courts in this State on the issue. However, early South Carolina cases do acknowledge the right of a bail bondsman to surrender the principal and be relieved of his obligation under the bail bond. See Watson, Johnston and Company v. E. W. Bancroft, et al., 4 Strob. 218 (1850) and Breeze v. Elmore, 4 Rich. 436 (1851). Other courts have similarly ruled. In Curtis v. Peerless Insurance Company, 299 F.Supp. 429 (D.Minn. 1969), a United States District Court indicated:
'I think the common law is clear that a surety on a bail bond, or his appointed deputy, may take his principal into custody wherever he may be found, without process, in order to deliver him to the proper authority so that the surety may avoid liability on the bond.' 299 F.Supp. at 435.

***2** See also 8 Am.Jur.2d, Bail and Recognizance, Sections 114–119 (1963); 73 ALR 1369–1376.

As to the second question, there is no authority that states that a bail bondsman must go before the Court of General Sessions in order that he might be released from his obligation on a bond as to a particular principal whose case is pending in the General Sessions Court. In an early South Carolina case, State v. Prosper Le Cerf, et al., 1 Bailey 410 (1830) the Court was faced with the question of whether a surety for a principal charged with a misdemeanor who had been released on bond could surrender the principal to a deputy sheriff and thus be relieved of his obligation as a surety. The Court indicated:
'Admitting that such a surrender to the high sheriff would be sufficient, which is, by no means, admitted, yet assuredly a surrender to a mere ministerial sub-officer is unauthorized. The surrender of the principal, in such a case must be to some officer, who may commit the principal to jail, or admit him to bail; but the deputy sheriff can do neither . . .. A surrender to a justice of the peace may be legal . . . but his sub-officer, the constable, would have no such right.' 1 Bailey at 410.

However, this particular case has not been used as a precedent in any other recent case and may be questionable authority for present procedure. There does not appear to be any other South Carolina case law which would indicate the procedure of surrender in this particular situation. Also, the Le Cerf case may be of limited value now because of present statutory law which indicate that deputy sheriffs '. . . may perform any and all of the duties appertaining to the office of his principal.' (Section 23–13–50, Code of Laws of South Carolina, 1976).

Although there is at common law a right given to a surety who acts as the surety on the bond of a particular principal to surrender the principal to proper authority and thus be relieved of his obligation under the bond, there is no clear indication as to the exact procedure to be followed by a surety in surrendering the principal. A more definitive understanding of what procedure is proper could perhaps be better accomplished by the enactment of legislation which would establish such a procedure. Such has been done in other states. However, to answer the third question, it would appear that based on the common law right of a surety to surrender his principal, the better practice would be to accept the surrender of the principal.

CONCLUSION:

1. Due to the nature of the relationship between a surety and a principal, it is generally accepted that a surety has the right to take the principal into custody, deliver him to the proper authority, and be relieved of his obligation under the bond.

2. There is no statutory or case law in this State which indicates that a bail bondsman must go before the Court of General Sessions to effect the surrender of the principal.

3. Based on the common law right of a surety to surrender his principal, it appears that the local authority should accept the surrender of the principal.

***3** Charles H. Richardson
Staff Attorney

1977 WL 37003 (S.C.A.G.)