

The State of South Carolina



Office of the Attorney General

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Dear Billy:

In a letter to this Office you raised several questions relating to the collection of a bail bond judgment. Your questions were posed following the rendering of two bail bond estreatment judgments against a bondsman as the result of the failure of certain defendants to appear.

You first asked whether in circumstances where the bondsman subsequently in good faith delivers the defendant to the proper authorities, would the judgment be canceled or could the judgment still be enforced and collected. Section 17-15-180 of the Code states:

(i) if any person shall forfeit a recognizance from ignorance or unavoidable impediment and not from wilful 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.

Such provision should be read in association with Section 17-15-170 of the Code which sets forth the procedure for forfeiture. Section 17-15-170 states that when a recognizance has become forfeited as the result of noncompliance, the surety shall appear at a show cause hearing as to why a judgment should not be confirmed against the surety "at the next ensuing court of sessions." In State v. Holloway, 262 S.C. 552, 206 S.E.2d 822 (1974) the State Supreme Court, referencing Section 17-15-180, stated that such provision

... places the exercise of the power to grant relief from bond forfeitures within

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the discretion of the court; and the exercise of that discretion by the trial judge will not be set aside unless it is made to appear that it was abused.

262 S.C. at 555.

In Holloway, the Court noted that the accused was not surrendered to the court until the time of the bond forfeiture hearing which, of course, was after the time he had been obligated to appear pursuant to the terms of the bond. The Court further noted that the surrender after default did not entitle the surety bondsman to remission of the forfeiture of the bond as a matter of right. The Court determined that

(t)he extent of the remission, if any, to be allowed by virtue of the surrender of the defendant after default was within the discretion of the court, to be determined in the light of all the facts and circumstances.

262 S.C. at 556. See also: State v. Workman, 274 S.C. 341, 263 S.E.2d 865 (1980). As stated by the Court in Pride v. Anders, 266 S.C. 338, 223 S.E.2d 184 (1976), upon the breach of the condition of the recognizance by the failure of a defendant to appear, the recognizance is forfeited. In such circumstances, the surety's liability is fixed unless relieved by the court.

It appears that the provisions of Section 17-15-180 authorizing relief from forfeiture typically come into play prior to the judgment being imposed. As stated in 8 Am.Jur.2d, Bail and Recognizance Section 207 p. 721, "(f)or sureties or a bail bond or recognizance to be relieved from forfeiture for the default of the principal, a timely application must be made." Furthermore, as stated in 8 C.J.S. Bail, Section 91 (b) p. 258, "(t)he time within which the court may remit the penalty of a bail bond is largely governed by statute." However, as further stated by this authority

(a)lthough money may have been paid on a forfeited recognizance, relief may in some cases thereafter be granted and an order may be obtained for its repayment, but it is also held that where the money has been paid into the public treasury and mingled with the general funds, the court cannot order repayment, especially where considerable time has elapsed after the forfeiture.

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8 C.J.S. Bail, Section 91(b) pp. 258-259.

A prior opinion of this Office dated June 11, 1975 dealt with the question of whether a judgment against a bondsman whose principal did not appear and whose bond was thereafter estreated may subsequently be removed. The opinion by former Attorney General McLeod stated

I do not see any basis for allowing the bondsman to have the order of estreatment vacated. Bond forfeiture obtains if the defendant fails to appear at the time scheduled for the proceeding in his case and he is not relieved of liability by a belated appearance after he is subsequently apprehended ... The bondsman had the opportunity to present to the court facts in mitigation of estreatment of the bond at the time the defendant was returned to this jurisdiction; however, inasmuch as it has been five years since the estreated bond was paid into the general funds of the county, it seems to me that he is without a means of relief.

Consistent with the above, I am unaware of any authority in this State which specifically provides for the cancellation of any judgment after it has been rendered where a bondsman subsequently delivers a defendant to the authorities. As indicated, a procedure for relief from forfeiture is authorized by Section 17-15-10 et seq. However, as stated by the Supreme Court in Pride, supra, the condition of the recognizance is breached upon the failure of the defendant to appear. The liability of the surety or the bond is fixed at that point unless relieved by the court. Assuming such relief is not timely granted as authorized by such statutory provisions and a judgment is entered, I am unaware of any basis to cancel the judgment if a bondsman subsequently delivers a defendant to the authorities.

You also asked what procedures should be followed to collect on the referenced judgment. As stated in the letter from this Office dated December 14, 1987 to Solicitor Kolb in response to his question concerning this same matter, "(t)he judgment in an action on a forfeited bail bond or recognizance is ordinarily accorded the same force and effect as any other judgment." 8 Am.Jur.2d, Bail and Recognizance, Section 166 p. 695. The letter advised that presumably it would be the responsibility of the agency or entity which is the beneficiary of the judgment to take such steps as necessary to collect on the judgment.

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In your final question, you asked what liability would there be for a county to repay any recovery made on a judgment in circumstances where a bondsman would capture a defendant a year after collecting on the judgment. Again, consistent with any response to your first question, I am unaware of any authority in this State for a judgment to be cancelled if a bondsman would subsequently deliver a defendant to the authorities in the circumstances described above.

With best wishes, I am

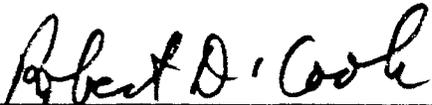
Very truly yours,



Charles H. Richardson  
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CHR/rhm

REVIEWED AND APPROVED BY:



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