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Opinion No. 07-150

Liability of Bail Bondsman After Compliance With Tenn. Code Ann. § 40-11-201(c)

QUESTION

Is a bail bondsman relieved from the amount of bond and liable only for the cost of transporting the defendant for court appearance when the bondsman follows all requirements of Tenn. Code Ann. § 40-11-201(c)?

OPINION

Yes. A bail bondsman is relieved from the amount of bond after following the requirements of Tenn. Code Ann. § 40-11-201(c), and is only liable for the cost of transporting the defendant to the trial court.

ANALYSIS

The bail bond statutes codified at Tenn. Code Ann. § 40-11-101 *et seq.* grant the trial court discretionary authority to exonerate a bondsman or surety from liability, however Tenn. Code Ann. § 40-11-201 limits a trial court's authority to enter a conditional judgment once a detainer has been filed. A quick summary of how the statutes will be helpful in this analysis. The Court of Criminal Appeals provided a brief overview of the bonding statutes and how they operate in *State v. Covington*, No. W2001-01575-CCA-R3-CD, 2002 WL 1592704 at *2 (Tenn. Crim. App. July 16, 2002)(copy attached). The court stated:

> Once a defendant has forfeited his bail bond by failing to appear or otherwise violating the conditions of release, "the court having jurisdiction shall enter an order declaring the bail to be forfeited." Tenn. Code Ann. § 40-11-139(a)91997); *see also id.* § 40-11-201(a) (1997)("a conditional judgment may be entered against the defendant and the defendant's sureties . . . ."). Following entry of a conditional judgment, "[a] scrire facias shall issue as heretofore to notify the defendant and the defendant's sureties to show cause why such judgment shall not be made final." *Id*. § 40-11-202 (1997); *see also id.* § 40-11-139. A surety has 180 days from service of the scrire facias to capture and surrender the defendant. *Id*. § 40-11-139(b); *see also* id. § 40-11-132. If the surety is able to surrender the defendant following the conditional judgment of forfeiture, it may be exonerated from liability, although exoneration is discretionary with the trial court. *Id*. § 40-11-203; *Black v. State*, 154

> Tenn. 88, 290 S.W. 20 (1927). Before entering a final order of forfeiture, the court must provide the defendant and his surety with a hearing. *In re Paul's Bonding Co.*, 62 S.W.3d 187, 193 (Tenn. Crim. App. 2001). Thereafter, the court may enter judgment against the defendant and his surety in the amount of bail and costs. Tenn. Code Ann. § 40-11-139(b)(2) (1997).

Thus, a trial court has discretionary power to exonerate a bondsman from liability, but Tenn. Code Ann. § 40-11-201 provides a limitation on a trial court's authority to issue a conditional judgment when the defendant has failed to appear.

Tenn. Code Ann. § 40-11-201(a) provides that "a conditional judgment may be entered against the defendant and the defendant's sureties" when a defendant fails to appear as required. Tenn. Code Ann. § 40-11-201(b) limits a trial court's authority to enter a conditional judgment. The statute reads that no "forfeiture or conditional forfeiture of any appearance or bail bond shall be rendered in any case where a sworn . . . affidavit of the jailer, warden or other responsible officer of a jail, workhouse or penitentiary in which the principal is being detained shall be furnished the court." Thus, a court may not enter a conditional judgment against the surety if the surety provides the court with a sworn affidavit of a jailer stating that the principal is being detained. Tenn. Code Ann. § 40-11-201(c) provides that the bail bond remains in effect "until a detainer is filed with the detaining authority." Once a detainer is filed, the bond is no longer in effect, and the bondsman is no longer liable for the amount of the bond. The statute then limits the surety's liability for the costs of transporting a delinquent defendant back to the court which granted bail. "On the filing of a detainer, the bondsman and sureties shall remain liable for the expenses of returning the principal to this jurisdiction for trial when the principal is released by the detaining authority. The liability of any bondsman or surety shall not exceed the amount of the bail bond."

In a Note following Tenn. Code Ann. § 40-11-201, the commentators on the Tennessee Code cite case law which stated that the bondsman and sureties shall be exonerated upon filing of the detainer. The Note entitled "Filing of Detainer" cites *Blankenship v. State*, 443 S.W.2d 442 (Tenn. 1969) and reads, "[p]rovision that upon filing of the detainer the court 'shall exonerate' the bondsmen and sureties is mandatory." In *Blankenship*, the Tennessee Supreme Court cited Tenn. Code Ann. § 40-1301, which is now Tenn. Code Ann. § 40-11-201. The former law stated, "[o]n the filing of such detainer, the court shall exonerate the bondsman and sureties but said bondsman and sureties shall in any event remain liable for the expenses of returning the principal when said principal is released by the detaining authority." This former language of the statute makes it clear that the bondsman and sureties shall be exonerated upon a filing of a detainer. Although Tenn. Code Ann. § 40-11-201 does not explicitly state that the bondsman shall be exonerated, this is still the effect of the statute. The bond remains in effect "until a detainer . . . is filed." Once the detainer is filed, the bondsman "shall remain liable for the expenses of returning the principal to this jurisdiction[.]" The language "shall remain liable for" shows that the bondsman is released from all other liability outside of the expenses of returning the principal to the jurisdiction of the trial court. This liability cannot exceed the amount of the bond.

The language of Tenn. Code Ann. § 40-11-201 demonstrates that once the detainer is filed, the bondsman is free from all liability outside of the costs of transporting the principal to the trial court. The costs of the transporting the principal cannot exceed the amount of the bond.

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