

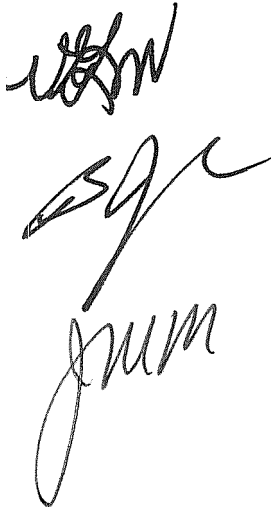
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 2045



STATE OF LOUISIANA

VERSUS

WILLIE JOINTER

Judgment Rendered:

SEP 15 2006

**Appealed from the
Nineteenth Judicial District Court in and for the
Parish of East Baton Rouge, State of Louisiana
Docket Number 03-04-0782**

Honorable Michael R. Erwin, Judge Presiding

**Doug Moreau
Stacy L. Wright
Baton Rouge, LA**

**Counsel for Plaintiff/Appellee
State of Louisiana**

**Julie C. Tizzard
Gretna, LA**

**Counsel for Defendant/Appellant
Bankers Insurance Company**

BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

This appeal challenges a trial court's denial of a surety's motion to set aside a bond forfeiture judgment. We affirm.

BACKGROUND

In December of 2003, Willie Jointer was arrested and charged with the offense of unauthorized entry of an inhabited dwelling. An appearance bond was posted for his release by Bankers Insurance Company through its agent, Sinclair's Bail Bonds, in the amount of \$5,000.00. Two bond forfeiture judgments were entered when Jointer failed to appear in court, but were later set aside after he did appear. On October 26, 2004, while Jointer was present in court, the court continued the case to January 11, 2005, for trial. Jointer failed to appear on that date, and a bond forfeiture judgment in the amount of \$5,000.00 was rendered against Bankers in open court, and later signed by the trial court on January 17, 2005. Notice of the judgment was mailed to Bankers by certified mail on January 11, 2005, and a receipt was signed by Bankers on January 25, 2005.

On June 8, 2005, Bankers filed a motion to set aside the bond forfeiture judgment and a petition for nullity of the judgment. It urged that it was entitled to a judgment decreeing that its bond obligation was satisfied under LSA-C.Cr.P. art. 345(D) due to defendant's incarceration in Florida and its inability to surrender him within the six-month period provided in LSA-R.S. 15:85(10). The trial court disagreed and denied Bankers' motion to set aside the bond forfeiture judgment, concluding that the provision in the "Appearance Bond" that defendant not leave the State of Louisiana without written permission of the court had been violated and that the bond forfeiture was correct, regardless of the provisions of LSA-C.Cr.P. art. 345.

This appeal, taken by Bankers, followed.

DISCUSSION

Pretermitted whether the trial court's underlying reasons for denying the motion were correct, after careful review, we find the court's decision to deny the motion to set aside the bond forfeiture was proper and, accordingly, must be affirmed.

Louisiana Code of Criminal Procedure article 345(D) allows for the release of the surety's bond obligation due to the defendant's incarceration in a foreign jurisdiction during the six-month period provided for the surrender of the defendant in LSA-R.S. 15:85(10). As set forth in LSA-Cr.P. art. 345(D):

If during the six-month period allowed for the surrender of the defendant, the defendant is found to be incarcerated in ... a foreign jurisdiction, the judgment of bond forfeiture is deemed satisfied if all of the following conditions are met:

- (1) The defendant or his sureties file a motion in summary proceeding within the six-month period.
- (2) The defendant's sureties produce to the court adequate proof of defendant's incarceration....
- (3) The defendant's sureties pay the officer originally charged with the defendant's detention, the reasonable cost of returning the defendant to the officer originally charged with the defendant's detention prior to the defendant's return.

A plain reading of article 345(D) requires that when a defendant is found in jail in another state, a surety must meet all three conditions before its obligation is satisfied: (1) the filing of summary proceedings within the six-month period; (2) submission of proof of the defendant's incarceration, and (3) payment of extradition costs by the surety. State v. Davila, 2001-0418, p. 5 (La. App. 1st Cir. 3/28/02), 814 So. 2d 56, 60.

In support of its motion to set aside the bond forfeiture judgment,

Bankers submitted a printout from the Florida Department of Corrections' web site detailing its inmate population. The printout shows that Jointer was incarcerated in Florida on April 13, 2005, and was not scheduled to be released until August 1, 2008. At the hearing on Bankers' motion, the state's attorney noted that there was no proof that Bankers ever tendered funds to cover the extradition costs. Bankers' attorney acknowledged that Bankers was never told that Florida would extradite Jointer, but contended that should it decide to do so, Bankers would pay the extradition costs.

The case law is straightforward on this point: where there is no proof that the surety paid the costs of extraditing the defendant, the surety is not entitled to have the bond forfeiture set aside under article 345(D). State v. Davila, 2001-0418 at pp. 5-6, 814 So. 2d at 60; State v. Matteson, 36,628, p. 6 (La. App. 2nd Cir. 12/11/02), 833 So. 2d 1199, 1203. In this case, the surety did not pay the costs of extraditing Jointer from Florida to Louisiana and therefore could not establish that its bond obligation was satisfied under article 345(D). Accordingly, the trial court correctly ruled that Bankers was not entitled to a judgment setting aside the bond forfeiture.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to Bankers Insurance Company.

AFFIRMED.