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To: Barbara Sattler

From: Applicant

RE: State v. Henry Raymond

Date: February 26, 2019

Babarba please find below an attached copy of the Brief in support of Forfeiture of the Bond

Notice

To the above entitled Court and party in opposition: please hereby take notice that the following are the facts and legal authority upon which the People rely upon in it's motion in support of "Forfeiture of the Bond" provided by Oscar Raymond, the Surety, for the release of Henry Raymond, Defendant, in case number 20180016.

Facts

On February 23, 2018, the Defendant Henry Raymond was arrested and booked on felony charges of a narcotic drug, and possession of drug paraphernalia. On March 13, 2018, the trial court set a cash bond requirement of \$45,000 and on March 15, 2018, the defendant's son, Oscar Raymond, posted the \$45,000 cash bond and the defendant was released.

On March 23, 2018, Defendant's counsel advised the trial court that the defendant had fled, nonetheless, the court set a trial date for October 22, 2018. The trial date was postponed on October 22 to January 31, 2019 and the defendant failed to appear at trial during both days that his trial lasted. The trial proceeded without the defendant and the jury acquitted the defendant.

Defendant Henry Raymond has not appeared before the court since his release on March 15, 2018, almost a whole year ago. The Surety to his appearance bond, is

defendant's son Oscar Raymond who is seeking exoneration of the bond. The Surety's sole contention is that because Defendant was acquitted at trial, that the appearance bond be exonerated. The Surety however did not make any effort to find out where his father was, nor did he make any attempts to contacts his father's counsel or Prosecutor to secure his fathers appearance at trial upon learning of his father's flight.

Legal Discussion

A. Forfeiture of the bond is appropriate because the prosecution of Defendant Henry Raymond was not terminated before trial and the defendant failed to appear at trial.

The Court should find that the forfeiture of the appearance bond is appropriate because Defendant's failure to appear at trial frustrates the primary purpose of an appearance bond, the Defendant's appearance at trial.

The primary purpose of an appearance bond is to ensure the defendant's presence at the time of trial. Where a prosecution is terminated before the the trial commences, the primary purpose of the bond no longer exists, and at that point forward there is no further need for the appearance bond. As such, the Surety's liability on the bond is terminated as well. (People v. Weinberger.) Nonappearance for trial creates a presumption of forfeiture. (People v. Nationwide.)

The instant case is clearly distinguishable from Weinberger as the defendant's case in Weinberger was dismissed before trial. The court found that the defendant's flight for a mere matter of hours before dismissal and failure to appear at one pre-trial conference was not sufficient to be prejudicial to the prosecution. It was highly persuasive to the court that as there was very little need for the defendant's presence at the hearings and the dismissal occurred before trial, defendant's presence was not required and forfeiture of the appearance bond was not appropriate because the defendant's appearance was not necessary.

Here, Defendant missed both his trial and a pre-trial conference and failed to appear before the court despite the court's direct orders to do so for a matter of 7 months. This egregious violation of court orders by failing to not appear creates a presumption for forfeiture. Furthermore, the Surety fails to provide an excuse for his father's non appearance which fails to rebut the presumption in anyway. Defendant's appearance at trial was necessary in the chance that the jury did not acquit him and he would have needed to be taken into custody immediately following trial. Such a need not only impedes justice, but would have burdened the state further as Defendant would have

become a fugitive and a manhunt would have needed to be conducted. Such an imperative need for his presence strictly required Defendant's appearance at trial. As such, Defendant's nonappearance necessitated the forfeiture of the bond the moment he failed to appear in court.

B. The Exoneration of the forfeiture of the Appearance Bond is not Justified as the Surety has failed to provide any justification for Defendant's failure to appear and furthermore completely failed to make an attempt to locate the Defendant.

Once there has been a demonstration that by failing to appear the defendant has not complied with the terms of the bond agreement, the surety bears the burden of coming forward with a request for relief from forfeiture and making a necessary showing, by competent evidence, of a legally recognized justification for the failure to appear, either because the statute mandated exoneration or because it should be exonerated in whole or in part in the sound discretion of the court. (People v. Nationwide.) Factors that Columbia courts consider include: the defendant's willfulness in violating the order to appear; whether the surety is a commercial entity; the effort and expense expended by the surety trying to locate and apprehend the defendant to insure the return of the fugitive; the costs, inconvenience and prejudice suffered by the the state by the absence of the defendant; and the public's interest in ensuring a defendant's appearance. (People v. Sainly.)

The court in Sainly notes that it is well settled law in the jurisdiction of Columbia that a surety assumes the risk of a defendant's failure to appear and that no one but the surety has a duty to ascertain the wisdom of contracting with the defendant to post a bond that would secure his appearance in court. (Id.) In the instant case, the Surety has failed to provide any justification as to why the court should provide relief from forfeiture of the appearance bond, the Surety testified as such at the forfeiture hearing. The Surety directly testified that he did not make any effort to find out where his father was, nor did he make any attempts to contacts his father's counsel or Prosecutor to secure his fathers appearance at trial upon learning of his father's flight. While the surety was not a commercial surety, and should be given more latitude (Sainly) his blood relationship should not afford him such lattitude as he has resources such as relatives which could have helped locate his father that a commercial entity would not have. Furthermore, the court in Sainly directly states that a lack of effort by the surety to locate the defendant justifies forfeiture. (Id.) As such, the exoneration of the bond is not justified as the Surety fails to meet any factors favoring exoneration.

Conclusion

For the foregoing reasons, the People respectfully request to deny exoneration of the appearance bond forfeiture as forfeiture was appropriate and exoneration is not justified.

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