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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1586-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

AGNIE ADEGOROYE¹,

Defendant,

and

ACCREDITED SURETY & CASUALTY CO., INC.,

Surety-Appellant.

Argued March 1, 2017 - Decided March 28, 2017

Before Judges Fuentes, Carroll and Gooden
Brown.

On appeal from the Superior Court of New
Jersey, Law Division, Hudson County, Docket
No. 12004139-001.

Edgardo F. Galleno argued the cause for
appellant (Perez, Gonzalez & Galleno, LLC,
attorneys; Mr. Galleno, on the brief).

Maria P. Vallejo argued the cause for
respondent (Chasan, Lamparello, Mallon &

¹ Defendant's name alternatively appears as "Adegeroye" and "Adegroye" at various places in the record.

Cappuzzo, PC, attorneys; Ms. Vallejo, of counsel and on the brief).

PER CURIAM

Accredited Surety & Casualty Company, Inc. (Accredited or the surety) appeals from a December 9, 2015 Law Division order denying its motion for remission of a bail forfeiture. For the reasons that follow, we affirm.

This appeal arises from the following facts. On December 30, 2012, defendant Agnie Adegoroye was arrested and charged with aggravated assault, N.J.S.A. 2C:12-1B, and eluding law enforcement, N.J.S.A. 2C:29-2B. On January 4, 2013, defendant was released on a \$25,000 bail bond posted by Accredited.²

The court first issued a bench warrant and order of bail forfeiture when defendant failed to appear for a court-ordered status conference on June 30, 2014. On July 8, 2014, the court reinstated defendant's bail with the written consent of Accredited's agent. The court further ordered that defendant submit to a psychiatric evaluation, followed by a competency hearing.

² Big Lou's Bail Bonds (Big Lou's) acted as the agent for Accredited, and undertook to supervise and keep track of defendant's whereabouts after she was released pursuant to the bail bond.

The trial court again ordered a bench warrant and forfeiture of bail when defendant failed to appear for a pretrial conference on November 10, 2014. The court sent notice of the forfeiture to Accredited, Big Lou's, and defendant on December 18, 2014. On June 1, 2015, the court entered judgment against Accredited and Big Lou's in the amount of \$25,000.

On July 23, 2015, Accredited filed a motion to vacate the judgment and discharge the bail bond. In support of its motion, Accredited submitted a certification of Stefanie Staats, who identified herself as a "Case Monitoring Supervisor" for Big Lou's. In relevant part, Staats stated:

5. It has been verified that [] defendant was arrested in Texas County, Texas on January 17, 2015[,] for the Hudson County, NJ failure to appear and lodged in the Texas County Jail. [] [D]efendant was lodged on these charges only and refused to sign the Waiver of Extradition. Per Sgt. Bank[]s at the Texas County Jail, there was a Governor's Warrant issued by Hudson County and on April 29, 2015[,] they received notification to release [] defendant as Hudson County was not extraditing [her].

6. The bail bond company has confirmed the warrant is not extraditable and cannot apprehend [] defendant in Texas without the warrant extending to Texas.

Attached to Staats's certification was a "monitoring" schedule indicating that defendant "check[ed]-in" once per week from January 18, 2013 through June 25, 2014, but not thereafter.

Assistant Hudson County prosecutor Vando Cardoso submitted a certification in opposition to the motion, in which she explained:

7. Defendant was being uncooperative with the extradition and as a result, the Sheriff's Office required [d]efendant to undergo a psychological evaluation before being transported across state lines back to New Jersey.

8. Defendant would not cooperate with the psychological evaluation.

9. Due to concerns about [d]efendant being a hazard to herself and others (including sheriff's officers) during [an] intrastate transport, the Sheriff's office declined extradition without the completion of a psychological evaluation.

10. The [Hudson County Prosecutor's Office] then reduced the extradition territory to within New Jersey.

11. Defendant remains a fugitive.

After hearing oral argument, Judge Martha T. Royster issued a thorough oral opinion denying Accredited's application. Judge Royster found Accredited's supervision of defendant, and its efforts to locate defendant and return her to New Jersey, to be "virtually non-existent." Elaborating on the surety's lack of supervision, the judge found "[w]hat's more disturbing . . . is rather than increase and intensify the supervision of [] defendant after the first bench warrant on July 10, 2014[,] it appears that [Accredited] completely eliminated any supervision of [] defendant

from July 10, 2014 [until] . . . she absconded again [o]n November 10, 2014." The judge further noted that defendant remained a fugitive, and "there is simply nothing in the record to indicate that a remission would be appropriate in this case." The court entered a memorializing order denying Accredited's motion. This appeal follows.

Accredited argues that it is entitled to relief from the bail forfeiture because defendant was in custody in Texas and extradition was sought and then abandoned by the State. Accredited also points to the modification of the warrant, which limited its geographical scope to New Jersey, as further impeding its efforts to secure defendant's return to New Jersey.

Bail forfeiture and the setting aside of such forfeiture is regulated by Rule 3:26-6. State v. Peace, 63 N.J. 127, 129 (1973). "A party seeking to set aside or remit a forfeiture bears the burden of proving that 'it would be inequitable to insist upon forfeiture and that forfeiture is not required in the public interest.'" State v. Mercado, 329 N.J. Super. 265, 269-70 (App. Div. 2000) (quoting State v. Childs, 208 N.J. Super. 61, 64 (App. Div.), certif. denied, 104 N.J. 430 (1986)).

"[T]he decision to remit bail and the amount of remission are matters within the sound discretion of the trial court to be exercised in the public interest." State v. Harmon, 361 N.J.

Super. 250, 254 (App. Div. 2003); State v. de la Hoya, 359 N.J. Super. 194, 198 (App. Div. 2003).

The exercise of that discretion must, however, be informed by the standards articulated by the courts in State v. Hyers, 122 N.J. Super. 177, 180 (App. Div. 1973), and again in State v. Mercado, [supra, 329 N.J. Super. at 271], and must, moreover, be consistent with the policy concerns we identified in de la Hoya, 359 N.J. Super. at 199. Paramount among them is the necessity to provide a reasonable incentive to the surety to attempt the recapture of the non-appearing defendant and to assure that the onus placed on commercial sureties is not so great as to risk the impairment of a defendant's realistic right to post pretrial bail.

[Harmon, supra, 361 N.J. Super. at 254.]

A bail forfeiture may be set aside by a court where enforcement "is not required in the interest of justice[.]" R. 3:26-6(b). A court may order a remittitur, in whole or in part, subject to an array of principles found in decisional law and the judiciary's guidelines. See, e.g., State v. Ventura, 196 N.J. 203, 213-16 (2008); N.J. Administrative Office of the Courts, Supplement to Directive #13-04, Further Revised Remittitur Guidelines (Nov. 17, 2004) (Nov. 12, 2008), http://www.judiciary.state.nj.us/directive/2008/dir_13-04_Supplement_11_12_08.pdf (Guidelines). Central to the grant of a discretionary remittitur is the proper consideration of all "factors and policies that are relevant to the equitable exercise

of [the court's] discretion." State v. Toscano, 389 N.J. Super. 366, 370 (App. Div. 2007).

The Guidelines list the following pertinent factors as a starting point:

1. Whether the surety has made a reasonable effort under the circumstances to effect the recapture of the fugitive defendant. . . .
2. Whether the applicant is a commercial bondsman.
3. The degree of surety's supervision of the defendant while he or she was released on bail.
4. The length of time the defendant is a fugitive.
5. The prejudice to the State, and the expense incurred by the State, as a result of the fugitive's non-appearance, recapture and enforcement of the forfeiture.
6. Whether the reimbursement of the State's expenses will adequately satisfy the interests of justice. The detriment to the State also includes the intangible element of injury to the public interest where a defendant deliberately fails to make an appearance in a criminal case.
7. The defendant's commission of another crime while a fugitive.
8. The amount of the posted bail. In determining the amount of a partial remission, the court should take into account not only an appropriate percentage of the bail but also its amount.

[Guidelines, supra, at 1-2 (citations omitted).]

We recently addressed the appropriate standards for remission in the analogous context of a defendant who flees the country and the State declines to seek extradition. State v. Munqia, 446 N.J. Super. 318, 323 (App. Div.), certif. denied, ___ N.J. ___ (2016).

We held:

[I]f a defendant becomes a fugitive and flees to a foreign country, there is a presumption against remission. The surety must make every effort to assist in the re-apprehension of the defendant, including by locating the defendant in the foreign country. The failure to extradite a located defendant does not excuse the suret[y] from [its] contract with the State, and generally does not justify remission if the State has no ability to obtain extradition of the defendant. However, if the surety locates the defendant in a foreign country, and extradition is possible, but the State elects not to request that the federal government seek extradition, there is no absolute bar against remission. In that situation, the trial court should consider the general factors governing remission.

[Id. at 323-24.]

In the present case, we agree with the trial court that Accredited has not produced any legal grounds to support a claim for remission. The record contains no credible evidence demonstrating that the surety or its agent exercised any degree of supervision over defendant during the time period between the issuance of the first and second bench warrants. Accredited also

failed to provide any convincing evidence of any significant efforts to recapture defendant.

Moreover, Accredited knew or should have known when it consented to reinstate the bail that there was an issue as to defendant's competency. Notwithstanding, the surety appears to have made no effort either to increase its level of supervision or to locate defendant when she failed to "check in" weekly as she had done previously. It should have come as no surprise to Accredited that defendant's psychological issues impeded the State's ability to safely extradite her back from Texas upon her capture there. Consequently, we cannot conclude that the State's post-flight unwillingness to extradite defendant when confronted with her refusal to submit to a psychological evaluation materially increased the risk to the surety.

Judge Royster's detailed findings fully weighed the applicable factors when considering a request to remit forfeited bail, including the important role of commercial sureties, the amount of the bond, the prejudice to and costs incurred by the State, the length of time defendant was a fugitive, and whether she committed any other crimes while a fugitive. Based on the facts in this record, we do not find that denying any remission reflects an abuse of discretion warranting reversal. As the Court made clear in Ventura, "the Guidelines presume that no remission

is appropriate: 'Where the defendant remains a fugitive when the remission motion is made, the essential undertaking of the surety remains unsatisfied, and the denial of any remission is entirely appropriate.'" Ventura, supra, 196 N.J. at 215 (quoting Harmon, supra, 361 N.J. Super. at 255).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION