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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-2011-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

FELIX A. PEGUERO,

Defendant,

and

U.S. SPECIALTY INS. CO.,

Appellant.

Submitted March 15, 2017 – Decided April 5, 2017

Before Judges Fuentes, Carroll and Gooden
Brown.

On appeal from the Superior Court of New
Jersey, Law Division, Hudson County,
Indictment No. 12-09-0163.

Richard P. Blender, attorney for appellant.

Chasan Lamparello Mallon & Cappuzzo, PC,
attorneys for respondent (Maria P. Vallejo,
of counsel and on the brief).

PER CURIAM

Defendant Felix A. Peguero is a native of the Dominican Republic. U.S. Specialty Insurance Co. (U.S. Specialty), a corporate surety, posted a \$175,000 bail bond for defendant that was forfeited when he failed to appear for sentencing. U.S. Specialty now appeals from the December 9, 2015 order that remitted twenty percent of the bail forfeiture. It asserts that the circumstances warrant substantial remission of the bond. The trial court disagreed. We affirm.

The facts are not in dispute. On April 19, 2012, U.S. Specialty posted the \$175,000 bond to assure defendant's appearance. On August 14, 2013, defendant pled guilty to second-degree conspiracy to operate a drug production facility. The court issued a bench warrant and order for bail forfeiture when defendant failed to appear for sentencing on January 31, 2014. The court sent notice of the forfeiture to U.S. Specialty on June 12, 2014. On September 29, 2014, the court entered judgment against U.S. Specialty and its bail agent, Speedy Bails Bonds, in the amount of \$175,000.

On December 3, 2014, U.S. Specialty filed a motion objecting to the entry of the judgment. It further sought to extend the time to surrender defendant and vacate the bail forfeiture and judgment.

The motion record reveals that U.S. Specialty monitored defendant by requiring him to call the bail agent weekly, without confirming his physical location. Defendant called-in eighty-eight times from April 23, 2012 through January 6, 2014, but not thereafter. In February 2014, the bail agent became aware that defendant failed to appear for sentencing the previous week. It then commenced an investigation, which initially consisted of placing phone calls to defendant, his family and friends, in an attempt to locate defendant. Over the next few months, the bail agent conducted surveillance at several locations where it believed defendant might be staying. On August 26, 2014, the bail agent hired a licensed private detective and bounty hunter, who learned that defendant had absconded to the Dominican Republic during the first week of January 2014. In January 2015, the bail agent hired another fugitive recovery agency, which also confirmed that defendant was residing and operating a business in the Dominican Republic. That same month, the Attorney General's Office (AG) declined to seek extradition, explaining there was a backlog of extradition cases from the Dominican Republic and that homicide cases were given priority. In June 2015, the AG maintained its position and declined extradition without further explanation.

Against this backdrop, the trial court rejected U.S. Specialty's argument that it is entitled to substantial remission

because it provided close ongoing supervision of defendant while he was released on bail, and immediately thereafter made substantial efforts to recapture him. On December 4, 2015, Judge Martha T. Royster issued an oral opinion remitting twenty-percent of the bail forfeiture. The judge found "there was at least minimal supervision on the part of the surety" by virtue of the weekly telephonic monitoring. The judge also found the surety made "some immediate efforts" to locate defendant after he failed to appear for sentencing. However, the judge determined the surety "waited [until] some six months later to decide that they should actually expend funds to use what the [c]ourt views as more substantial efforts to locate [] defendant, which were not, in fact, immediate. They were some six months later." Applying the Bail Remittitur Guidelines,¹ Judge Royster concluded that a twenty-percent remission was appropriate.

On appeal, U.S. Specialty contends it is entitled to substantial remission of at least ninety-five percent of the \$175,000 bail bond. It reiterates its assertion that it provided substantial supervision of defendant prior to his absconding, and undertook immediate, substantial steps to locate him thereafter.

¹ 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).

It also argues that the State's unwillingness to extradite defendant serves as grounds to vacate the forfeiture or, alternatively, warrants substantial remission.

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 Guidelines. See, e.g., State v. Ventura, 196 N.J. 203, 213-16 (2008). 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 where a defendant 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).² 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,

² We note that Munqia had not yet been decided at the time of the trial court's decision in this matter.

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, at the time U.S. Specialty entered into the surety agreement with defendant, it was aware, or should have been aware, that he was a native of the Dominican Republic. U.S. Specialty assumed the risk that defendant could place himself outside the reach of traditional extradition efforts commonly associated with and applicable to extraditions between states. Unlike the circumstances in Ventura, supra, 196 N.J. at 208, where the defendant was deported to the Dominican Republic while incarcerated on an immigration detainer, defendant here voluntarily placed himself outside the reach of local law enforcement authorities while on bail, and he continued his fugitive status after purportedly having been located by the surety's agents.

Moreover, after defendant pled guilty, he was no longer cloaked with the presumption of innocence. Rather, he faced an ordinary term of five to ten years imprisonment for the second-degree offense, N.J.S.A. 2C:43-6a(2), and was subject to a presumption of incarceration, N.J.S.A. 2C:44-1d. Notwithstanding, U.S. Specialty appears to have made no effort to either increase

its level of supervision at that time, or to locate defendant when he failed to call in during the three weeks prior to his sentencing date.

Contrary to U.S. Specialty's argument, the judge was clearly cognizant of the bond amount, and we do not deem the judge's failure to make reference to it in her findings as fatal to her ultimate conclusion that a twenty-percent remission was appropriate. 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 Guidelines, supra, at 6). Consistent with Mungia, rather than forfeiting the entire \$175,000 bail, Judge Royster considered the appropriate factors and ordered a twenty-percent remission. Based on the facts in this record, we find no abuse of discretion in that well-reasoned determination.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION