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This opinion shall not "constitute precedent or be binding upon any court."  
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-2087-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAKEITH CAMPBELL,

Defendant,

and

ALLEGHENY CASUALTY COMPANY,

Defendant-Appellant.

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Submitted January 29, 2018 – Decided April 9, 2018

Before Judges Messano and O'Connor.

On appeal from Superior Court of New Jersey,  
Law Division, Monmouth County, Indictment No.  
14-01-0029.

Richard P. Blender, attorney for appellant.

Malcolm V. Carton, Special County Counsel,  
attorney for respondent.

PER CURIAM

Allegheny Casualty Company (Allegheny) posted a \$10,000 bail bond through its agent, AA Bail Bonds (AA), securing the release of defendant Shakeith Campbell after his arrest for a third-degree offense, the nature of which is undisclosed by the record. Campbell was admitted into the Pre-trial Intervention Program (PTI). However, for reasons also undisclosed by the record, PTI sought to terminate Campbell from the program, and, when Campbell failed to appear in court for the June 7, 2016 termination hearing, a bench warrant was issued and bail was forfeited.

Shortly after it received notice of the forfeiture, Allegheny filed a motion objecting to the entry of judgment and seeking an extension of time to surrender Campbell and move to vacate the forfeiture. Counsel's certification indicated that AA expected to apprehend Campbell in "the immediate future." The owner of AA, Richard Sparano, filed a supplemental certification that included records demonstrating AA's regular telephone contact with Campbell prior to his September 2014 entry into PTI. Since the warrant issued, AA located Campbell, now residing in Texas, and "w[as] making arrangements to have [defendant] arrested there[.]" However, Sparano said he was advised "by Monmouth County authorities that the bench warrant d[id] not extend that far, making it impossible for [AA] to have [Campbell] arrested and extradited back to New Jersey."

At oral argument, the Law Division judge recognized the Monmouth County Prosecutor's Office had adopted a policy not to extradite fugitives charged only with third- or fourth-degree crimes. Counsel for Allegheny argued this policy made it impossible for Allegheny to perform under the surety contract, and, therefore, forfeiture was improper. The judge reasoned, however, that even though Campbell's arrest might be a useless "exercise," Allegheny must "make the effort" to contact the Texas authorities and notify them of the warrant. Absent that effort, the judge believed Allegheny's motion was "simply premature."

Allegheny's counsel said his client refused to do that because it was "fearful of a false arrest charge, a kidnapping charge. Knowing that Monmouth County will not go get him."

Counsel for Monmouth County argued against any further extension of time to surrender Campbell. He noted that Campbell voluntarily went to Texas, apparently without Allegheny's knowledge and without Allegheny taking any steps to bring that to the court's attention. Counsel argued that once Campbell failed to appear, forfeiture was proper and the court should reject Allegheny's claim of impossibility.

The judge denied any further extension of time. Citing the Administrative Directive #13-04, "Remittitur Guidelines for Superior Court and Municipal Courts" (Oct. 9, 2007), as

supplemented in 2008, see Administrative Supplement to Directive #13-04 (Nov. 12, 2008) (collectively, the Guidelines), the judge noted that when the surety makes a remission motion and a defendant remains a fugitive, "the denial of any remission is entirely appropriate." State v. Harmon, 361 N.J. Super. 250, 257 (App. Div. 2003). However, the judge also recognized that the Guidelines permit a court to consider whether remission is appropriate when a defendant is located in out-of-state custody and a detainer is lodged, or whether that relief should await the fugitive's return to New Jersey. See State v. Wilson, 395 N.J. Super. 221, 228-29 (App. Div. 2007).

The judge concluded the "better course" was for Allegheny to notify the Texas authorities of the outstanding warrant, have Campbell arrested and await New Jersey's decision whether it would extradite or refuse to extradite Campbell. He entered the December 8, 2016 order denying Allegheny any further extension of time to surrender Campbell and denying its motion to vacate the forfeiture without prejudice.

The record fails to reveal that Allegheny took any further action. On January 10, 2017, a different Law Division judge entered default judgment against Allegheny.<sup>1</sup> Allegheny then filed

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<sup>1</sup> The form order erroneously states that Allegheny took no action to set aside the forfeiture.

this appeal, seeking review only of the December 8, 2016 order denying its motion to vacate the forfeiture without prejudice.

Before us, Allegheny argues it was entitled to exoneration because the State refused to extradite Campbell, making Allegheny's performance impossible. Allegheny also contends it was entitled to a "substantial remission" under the Guidelines. Monmouth County counters, arguing that because Campbell remained a fugitive, forfeiture was proper and, pursuant to the Guidelines, no remission is appropriate.

Initially, the December 2016 order is the only order under review. See W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008) ("It is clear that it is only the orders designated in the notice of appeal that are subject to the appeal process and review."). The order is clearly interlocutory, since it did not deny Allegheny's motion on the merits, but rather denied it without prejudice to Allegheny bringing a subsequent motion after it notified the Texas authorities of Campbell's whereabouts. If Allegheny wanted to challenge the rationale behind the December 2016 order, i.e., that it was required to do more before the judge would vacate the forfeiture and either exonerate or partially remit the bond, it was required to seek leave to appeal. See, e.g., Grow Co. v. Chokshi, 403 N.J. Super. 443, 460-61 (App. Div. 2008) (citations

omitted) (explaining the lack of finality to orders that hold matters "in abeyance" pending further proceedings).

Nor would the January 2017 default judgment be appealable as of right unless Allegheny first sought relief in the trial court pursuant to Rule 4:50-1. See, e.g., N.J. Div. of Youth & Family Servs. v. T.R., 331 N.J. Super. 360, 363-64 (App. Div. 2000) (citing Haber v. Haber, 253 N.J. Super. 413, 416 (App. Div. 1992) ("The rule in New Jersey is that a direct appeal will not lie from a judgment by default.")).

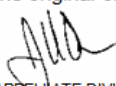
Since Monmouth County has not raised either of these procedural infirmities, we could grant Allegheny leave to appeal out of time and address the merits of its arguments, see Grow Co., 403 N.J. Super. at 463, but we refuse to do so for a simple reason. "The 'decision to remit [forfeited bail] and the amount of remission lies essentially in the discretion of the trial court.'" State v. Mungia, 446 N.J. Super. 318, 327 (App. Div. 2016) (alterations in original) (quoting State v. Ventura, 196 N.J. 203, 213 (2008)). "[T]he decision to remit bail is fact-driven and involves the consideration of a multitude of factors." Ventura, 196 N.J. at 218.

Because the motion judge never conducted this fact-sensitive analysis, nor did Allegheny ever press for it, we have no ability to consider whether the judge mistakenly exercised his discretion.

Rather, faced with Allegheny's admitted failure to notify Texas authorities of Campbell's whereabouts, the judge simply took the wisest course, and refused to consider whether exoneration or remission was appropriate until Allegheny did so. "[T]he 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.'" Id. at 215 (quoting the Guidelines at 2). Here, there was no dispute that Campbell remained a fugitive despite Allegheny's knowledge of his whereabouts.

The appeal is dismissed.

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

  
CLERK OF THE APPELLATE DIVISION