

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: KINGSHILL

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	CRIMINAL NO. 115/1988
	)	
v.	)	
	)	
EDME CHARLES,	)	ASSAULT THIRD DEGREE
Defendant.	)	

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PETERSEN, Judge

MEMORANDUM OPINION
February 24, 1989

This matter is before this Court on the Government's Motion for a Forfeiture of Bail. For the reasons herein stated, the Government's Motion will be granted. However, this Court will exercise its discretion and set aside the forfeiture.

FACTS

Defendant was arrested on felony charges on January 24, 1988. On that same day, bail in the amount of Ten Thousand

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(\$10,000.00) Dollars was set. Defendant's father, Murchison Charles, posted ten percent (10%) of that amount and Defendant was released. A condition of Defendant's bail was that the amount paid would be forfeited if Defendant failed to appear in Court for any scheduled appearance.

Defendant was advised of his rights, and was ordered to appear in Court on June 22, 1988 at 9:00 a.m. for arraignment. However, Defendant did not appear in Court on that date, and a warrant which was issued for his arrest was returned unexecuted for failure to locate him. At the Government's request the case was Dismissed Without Prejudice on November 23, 1988 and on January 3, 1988 the Government filed a Motion for Forfeiture of the Bail. The Defendant has objected thereto.

DISCUSSION

The determination as to whether or not a bond should be forfeited is not within the discretion of the Court. Fed. R. Cr. P. 46(e)(1) provides, "...If there is a breach of condition of a bond, the district court shall declare a forfeiture of the bail. " (emphasis added). In the present case, Defendant Edme Charles breached a condition of his bond. He failed to appear in Court on June 22, as mandated by the terms of his bond. This Court therefore has no choice but to declare a forfeiture of the bail.

Although the Court has no discretion in determining

whether a bond should be forfeited, the Court, pursuant to Fed. R. Cr. P. 46(e)(2) may exercise its discretion and set aside a forfeiture. The pertinent portion of that rule provides that, "...The Court may direct that a forfeiture be set aside in whole or in part upon such conditions as the Court may impose...if it...appears that justice does not require the forfeiture." Fed. R. Cr. P. 46(e)(2).

It is a widely accepted principle that the determination of whether or not to grant relief from forfeiture is within the discretion of the Court. United States v. Stanley, 601 F.2d 380 (9th Cir. 1979). However, when exercising its discretion, the court may consider the willfulness of the Defendant's breach of the bond conditions; the participation of the sureties in apprehending the defendant; the cost, inconvenience and prejudice suffered by the Government as a result of the Defendant's breach and any explanation or mitigating factors. United States v. Frias-Ramirez, 670 F.2d 849 (9th Cir. 1982). The court may also consider whether the sureties were professionals or family and friends of the Defendant, United States v. Bass, 573 F.2d 258 (5th Cir. 1978).

In the present case, Defendant's failure to appear in court on June 22, 1988 was not accidental. However, Defendant's action might not necessarily be considered willful since reasonable minds could find that there was some explanation for

his non-appearance.

Defendant stated under oath that his ailing grandmother who resides in Trinidad "took a turn for the worse" and requested to see him, thereby making it unlikely for him to be present for his scheduled court appearance. He alleges that he sought assistance from the Court and was told by a "clerk" that he should see his attorney. However, Defendant who was in the process of changing his residence, lost the documents bearing his attorney's name. It never occurred to him to get that information from the Court. He, nonetheless, visited his grandmother, returning to the territory about three weeks later.

Knowing that he failed to appear in court on the scheduled date, Defendant failed to contact the Court upon his return from Trinidad to ascertain the status of his case.

There is no doubt that the Government incurred some cost as a result of Defendant's failure to appear in Court. No mention has been made by the Government, however, as to the exact or proximate costs sustained herein. Moreover, the Government has not detailed any major prejudice experienced other than the possible inconvenience of refiling this case.

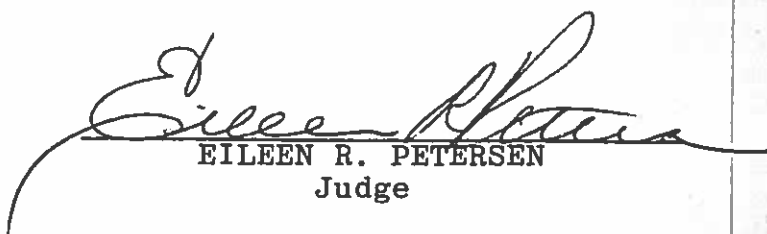
Another factor normally considered by the Court in setting aside a forfeiture is the source of the surety bond. United States v. Bass, 573 F.2d at 260. In this case the surety was not a professional bondsman. There is a further question

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as to whether this surety was fully aware of the repercussions of the Defendant's failure to appear in Court at the prescribed time and would, therefore, take the necessary steps to assure his presence.

It is obvious that the purpose of a bail bond is not punitive, but to secure Defendant's presence in Court. Bond forfeiture will have a punitive effect not on the son, but on a father who was simply attempting to assist his son. See United States v. Bass, 573 F.2d 260. In this case, the Defendant has now appeared. Other cases have considered the ultimate appearance of the Defendant as grounds for remission even if the Defendant failed to appear for prior hearings. United States v. Bass, 573 F.2d at 260 citing Signentos-Romero v. United States, 374 F.2d 620 (5th Cir. 1967).

For the above stated reasons, this Court will set aside the bond forfeiture.



EILEEN R. PETERSEN
Judge