

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001224-MR

SHERRILL WOOSLEY

APPELLANT

v. APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 02-CR-00105

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.¹

SCHRODER, JUDGE: The appellant's mother posted a \$10,000.00 appeal bond that not only guaranteed appellant would show up in court but put conditions on his release. Appellant violated one or more of those conditions (but did not fail to appear) and the court not only revoked, but forfeited the entire bond. On appeal, the appellant contends the court abused its discretion in forfeiting the entire bond for anything less than a failure to appear. We opine that where the non-cash conditions of the

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

release on bond are clear, the bond is subject to revocation, and to forfeiture for a breach of those conditions. The circuit court did not abuse its discretion in forfeiting the entire bond, therefore, we affirm.

Sherrill Woosley was originally convicted of Flagrant Non-Support for a \$1,700.00 arrearage, for which he received a three year sentence. Sherrill requested, and was granted, release on bond pending the appeal. The bond was set at \$10,000.00 cash, with conditions for his release. The release form² on its face states, "to be forfeited should you fail to appear as required by the Court," Also, there is a check on the block that says, "Conditions:", and under conditions it says "see attached sheet." The attached sheet lists "Conditions Of Release On Bond", and in bold print states: "Non-Cash Conditions Of Release With Which Defendant Shall Be Required To Comply:". Following the bold print, were these conditions, with a check mark that they applied, and spaces before the condition for both the appellant and the surety to initial to show they understood these conditions applied:

Shall personally appear before the court
each and every time this matter is docketed
for any proceeding unless specifically
excused.
Not to commit any public offenses.
Not to drink, consume or possess any
alcoholic beverages.

² AOC-365 Rev.801.

Not to enter any premises licensed to sell alcoholic beverages except a grocery store, restaurant or pharmacy and only to purchase non-alcoholic items while therein.
Not to possess or use any illegal controlled substances or precursor(s) for the manufacture of controlled substances.
Not to possess any deadly weapons or dangerous instruments.

And

Curfew from 6 pm to 6 am except for employment.
To make all current court ordered child support.

And

Other conditions: Must execute waiver of State & Federal Constitutional Rights, right to remain silent and Fourth Amendment Right against unreasonable search & seizure[.]

The above conditions were checked as applying to Sherrill and Sherrill initialed each condition. Sherrill's mother, Betty Sue Woosley, posted the \$10,000.00 cash bond and also initialed each of the non-cash conditions. In addition, the form contained this unequivocal language:

The Defendant, Sherrill Woosley, and Betty Sue Woosley, as Surety, understand that the Defendant is required to appear at each scheduled Court date and as Surety, I, Betty Sue Woosley, hereby **GUARANTEE** the appearance of the Defendant at each scheduled Court date; S.W. (Defendant's initials) BSW (Surety's initials).

PLUS: The Defendant agrees as a condition of release to comply with the above written NON-CASH conditions which Defendant has initialed. As SURETY, I **GUARANTEE** the Defendant's performance of **ALL**

the NON-CASH CONDITIONS OF RELEASE ON BOND written above which I have initialed.

As SURETY, I stand liable for the payment of \$10,000.00 (full amount of bond) should the Defendant fail to appear at each scheduled Court date and/or if the Defendant violates **any** of the NON-CASH CONDITIONS OF RELEASE ON BOND.

The Defendant and the Surety hereby acknowledge receipt of a signed and completed copy of this Conditions of Release on Bond.

<u>Sherrill Woosley</u> (signed)	<u>Betty Sue Woosley</u> (signed)
Defendant	Surety
<u>8-13-03</u>	<u> </u>
DATE	DATE

Witnessed by:

Elois Downs, D.C. (signed)
Circuit Clerk/Deputy Clerk
8-13-03
DATE

Both the appellant/defendant, Sherrill Woosley, and his mother/surety, Betty Sue Woosley, signed the form on August 13, 2003. In addition, both signed the release form itself which includes this language:

Violation of Conditions:

You are warned that failure to comply with the above provisions will be deemed a violation of the terms and conditions of your release for which a warrant may be issued for your arrest; you may be detained, the release privilege revoked, and any bail bond posted may be forfeited.

Failure to Appear:

For any failure to appear as required before a judge or other judicial officer, you shall be subject to the following penalties:
(IF FELONY CHARGE) A fine to be determined by the Court of not more than \$10,000 and imprisonment for not less than 1 and not more than 5 years;

(IF MISDEMEANOR CHARGE) A fine of not more than \$500 and imprisonment for not more than 1 year.

Sherrill promised his mother, and the court, that if he were released, he would follow the rules. His mother posted the \$10,000.00 cash bond, and Sherrill was released, but not for long. Sherrill was charged with possession of methamphetamine³, manufacturing methamphetamine⁴, possession of drug paraphernalia⁵, and he tested positive for use of methamphetamine. The Commonwealth moved to revoke and forfeit Sherrill's bond.

At the bond revocation and forfeiture hearing, held on May 4, 2004, Sherrill admitted that he had no defense to a bond revocation but questioned the request for a forfeiture because the surety was his 75 year old widowed mother and a forfeiture of the entire bond would be excessive and hurt his mother more than Sherrill. The trial court noted that both KRS 431.545 and RCr 4.42 contemplates bond forfeiture for reasons other than the simple failure to appear in court, which authorizes a court to impose conditions on a defendant's release. The court then found:

This court finds that the Defendant's violation of his appeal bond conditions was willful. The seriousness of the conditions violated that Defendant not commit any public offenses or to violate a curfew is established by the fact the manufacture of

³ KRS 218A.1415.

⁴ KRS 218A.1432.

⁵ KRS 218A.500(2).

methamphetamine charge is a class B felony as a first offense and class A felony as a second or subsequent offense. The deterrence value of the forfeiture is readily apparent. If one may act with impunity while released upon an appeal bond, there will be no deterrent value unless some forfeiture is made. The court has considered the cost, inconvenience, prejudice or potential suffered by the Commonwealth as a result of the breach. The Commonwealth objected to an appeal bond being granted. A forfeiture will vindicate the serious injury to the public interest. The appeal bond amount was appropriate as has been borne out by Defendant's actions subsequent thereto.

The court went on to order the entire \$10,000.00 bond be forfeited.

On appeal, Sherrill contends that the trial court abused its discretion in requiring a forfeiture of the entire \$10,000.00 bond because he was presumed innocent of the subsequent charges until proven guilty, which left only his positive test for methamphetamines. Sherrill does not contest the bond revocation, just the forfeiture.

KRS 431.545(1) and RCr 4.42(1) authorize bond forfeitures for violation of the conditions of release as well as for the failure to appear. In Clemons v. Commonwealth, 152 S.W.3d 256 (Ky.App. 2004), a panel of this Court recently decided that a majority of jurisdictions allow courts to order a forfeiture of a cash bond for the breach of non-financial conditions, and that Kentucky now stands with the majority. The

Clemons Court also recognized that it did not take a subsequent conviction to revoke a bond for a violation of the conditions but "clear and convincing evidence" that a defendant willfully violated a condition of his bond. Id. at 259. Also, our Court does "not have the authority to reverse that decision unless we determine that there has been an abuse of discretion," Id. at 260.

We believe the forfeiture of the entire \$10,000.00 bond was neither excessive nor an abuse of discretion. Sherrill admits he tested positive for use of methamphetamine and admitted he had no defense as to the revocation of the appeal bond. Sherrill's only argument was that the forfeiture was excessive. We agree with the circuit court that Sherrill's willful violation of the conditions of bond were serious violations of the condition that he not commit any public offenses, which justified forfeiture of the entire \$10,000.00 bond.

For the foregoing reasons, the order of the Grayson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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