

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-070140
Plaintiff-Appellee,	:	TRIAL NO. B-9107129
vs.	:	JUDGMENT ENTRY.
WALTER MARKES,	:	
Defendant,	:	
and	:	
ALLEGHENY INSURANCE COMPANY	:	
and	:	
LRJ BONDING COMPANY,	:	
Sureties-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In 1991, Walter Markes was indicted for trafficking in drugs.² Allegheny Mutual Insurance Company and LRJ Bonding Company (“the Bonding Companies”) posted a \$20,000 surety bond. Markes failed to appear at a hearing in January 1992. In June 1992, the trial court ordered the Bonding Companies to forfeit the \$20,000 bond.

Nearly 15 years after Markes had failed to appear, he was rearrested. His new bond was set at \$200,000. A different surety posted the bond. The Bonding Companies filed a motion for relief from the forfeiture judgment and for a refund of the monies paid in partial satisfaction of the judgment. The trial court overruled that motion and later overruled the Bonding Companies’ motion for reconsideration.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2925.02(A)(5).

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The Bonding Companies now appeal, arguing that the trial court abused its discretion by denying their motions because (1) the rearrest of Markes and the new bond relieved them of financial responsibility, and (2) the trial court did not conduct a hearing on whether to grant a motion for bond remission under R.C. 2937.39.

R.C. 2937.39 states, “After judgment has been rendered against surety * * *, the court or magistrate, on the appearance, surrender, or rearrest of the accused on the charge, may remit all or such portion of the penalty as it deems just * * *.” The statute does not require a court to hold a hearing before granting or denying remittance.

We review the trial court’s denial of the Bonding Companies’ motions for an abuse of discretion.³ An abuse of discretion does not merely involve a determination that the trial court made an error; it requires a finding that the trial court’s decision was unconscionable, arbitrary, or unreasonable.⁴ In determining whether to remit a bond, Ohio courts consider (1) the circumstances surrounding the defendant’s reappearance, including the timing and whether the reappearance was voluntary; (2) the reasons the defendant failed to appear; (3) prejudice to the state, including inconvenience, expense, and delay; (4) whether the surety was instrumental in securing the defendant’s reappearance; (5) mitigating circumstances; and (6) whether justice requires that the bail remain forfeited.⁵

The Bonding Companies’ motion for relief from judgment and refund of monies paid was nearly devoid of any reason to remit the bond payment. The factors weighed heavily in favor of the state.

Markes disappeared for nearly 15 years. His reappearance was apparently not voluntary. We do not know why Markes had originally failed to appear. The state was

³ *State v. American Bail Bond Agency* (1998), 129 Ohio App.3d 708, 713, 719 N.E.2d 13.

⁴ *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

⁵ *State v. Smith*, 7th Dist. No. 05 JE 49, 2006-Ohio-4614, ¶36-42.

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prejudiced because it had waited years to try Markes for his crime. (The case against Markes was dismissed for want of prosecution. One of the witnesses was no longer available. It is not clear from the record whether the unavailability led to the case being dismissed.) The state had incurred costs searching for Markes. The record does not indicate that the Bonding Companies had made any effort at all to secure Markes's reappearance. The record reflects only one mitigating circumstance—a new bond had been posted by a new surety.

The trial court did not abuse its discretion. It was not required to hold a hearing. Many years had passed between the court's ordering forfeiture of the bond and Markes's reappearance, and there was no evidence that the Bonding Companies had made any effort to find Markes. For all bail-bond companies, the risk that a defendant will abscond prior to trial is a cost of doing business.

For the foregoing reasons, we affirm the trial court's judgment.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on January 23, 2008
per order of the Court _____
Presiding Judge