

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman
Clerk of Supreme Court

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RICHARD JUSTIN,
dba JUSTIN BROS BAIL BONDS,
and INTERNATIONAL FIDELITY
INSURANCE COMPANY,

CASE NO.

Petitioners,

v.

JANET J. BERRY, IN HER OFFICIAL
CAPACITY AS DEPARTMENT 1 OF
THE SECOND JUDICIAL DISTRICT
OF THE STATE OF NEVADA,

Respondent.

THE STATE OF NEVADA,

Real Party in Interest.

ORIGINAL PETITION FOR WRIT OF MANDAMUS

COMES NOW, Petitioner, Richard Justin, doing business as Justin Bros.
Bail Bonds, on behalf of himself and on behalf of his surety, International Fidelity
Insurance Company by and through the undersigned counsel, and for his Verified
Petition for Writ of Mandamus, alleges, avers and states as follows:

I.

Petitioner, Richard Justin does business in the State of Nevada as Justin Bros. Bail Bonds and was doing business as such in 2013-14. Petitioner has a contractual agent-surety relationship with International Fidelity Insurance Company for the placement of bail bonds for those who are arrested and charged with criminal offenses in northern Nevada.

II.

On September 18, 2013, one Norman Demetrius Dupree was arrested in Reno, Nevada and charged either with domestic battery by strangulation or sale of a schedule one or schedule two controlled substance, second offense. He was also charged with a first domestic battery offense. His total bail originally was set at \$25,000.00, of which \$5,000.00 was attributed to the misdemeanor charge and the remaining \$20,000.00 to the felony charge. Petitioner, on behalf of International Fidelity Insurance Company, posted the requisite bail bond no. 1S30K-151744, and Dupree was released from the custody of the Washoe County Jail.

III.

While Reno Justice Court had jurisdiction over the matter, that Court placed Dupree on a supervised condition of bail. On January 31, 2014 Dupree's supervised bail was revoked due to failure to comply (a dirty urine test). At that

point Dupree was remanded to custody in the Washoe County Jail.

IV.

Pursuant to NRS 178.509(1)(a), NRS 178.522(1) and 178.526(1) the \$25,000.00 bail bond posted as above referenced should have been exonerated by operation of law. However, it was not.

V.

After Dupree was remanded, bail was reset in the amount of \$20,000.00. Bonafide Bail Bonds, not affiliated either with Justin Bros. Bail Bonds or with International Fidelity Insurance Company, posted bail for Dupree on that bond, and Dupree was released.

VI.

On March 18, 2014 Dupree failed to appear at the scheduled arraignment in the Second Judicial District of the State of Nevada, and a Notice of Intent to forfeit the bond was sent to both Justin Bros. and Bonafide Bail Bonds, with a \$50,000.00 cash only warrant issuing per the notice.

VII.

On March 21, 2014, Dupree attempted to surrender himself three times at the Washoe County Sheriff's Office, but to no avail because the Sheriff did not have the warrant in its system.

VIII.

Dupree then turned himself into Bonafide Bail Bonds, who surrendered him to the custody of the sheriff. Bonafide's bond was then exonerated on May 14, 2014, but the reasons unknown to these Petitioners, the \$25,000.00 bond in question was not exonerated.

IX.

As of May 14-16, 2014 the \$50,000.00 cash only warrant had not been filed with an agency, and thus the sheriff's office consequently was not aware of the "cash only" condition. On May 16, 2014 Petitioner posted a \$20,000.00 bond on behalf of Dupree, IS30K-162345, not being aware of the "50,000.00 cash only" requirement. The sheriff erroneously released Dupree, since it did not have the "\$50,000.00 cash only" warrant in its system even as of that date.

X.

On May 27, 2014 Respondent set a status hearing or arraignment for June 10, 2014. Dupree again failed to appear, and the court sent two Notices of Intent to forfeit the bond of \$20,000.00 posted by Bonafide and the first bond of \$25,000.00 and the one that is the subject of this Petition. Thus, the within bond was still in forfeiture status at that point, insofar as Respondent was concerned, even though it should have been exonerated.

XI.

Petitioner made contact with Dupree and arranged for Dupree to turn himself in to custody. Dupree did so. Even so, and notwithstanding NRS 178.509(1)(a), 178.522(1) and 178.526(1), Respondent would not exonerate the \$25,000.00 bond in question.

XII.

When all of this happened, Petitioner filed a Motion to Exonerate the Bond on August 22, 2014, approximately five months after Respondent had filed its “Notice of Intent to Forfeit” to International Fidelity Insurance Company. In response, the real party in interest filed a **non-opposition** to the motion on September 18, 2014 wherein, Respondent simply stated:

“Assuming, for the purposes of this Motion only, the truth of the matter asserted by the bondsman, and reserving all objections of any kind to the same and any future filings, the State has no objection to the Motion for Exoneration of Bond.”

XIII.

Notwithstanding all of that, on October 3, 2014 Respondent entered its Order denying the Motion for Exoneration of Bond. Respondent’s reasoning appeared to be: 1) Petitioner did not promptly seek to surrender the \$25,000.00 bond as soon as he could have; 2) Petitioner failed to surrender Dupree to the

proper authorities, thereby preventing the exoneration of the bond; 3) Dupree had not been arraigned by the court and, to the court's knowledge, remained out of custody. Thus, Respondent entered its "bail forfeiture judgment" on October 6, 2014 in favor of the State of Nevada and against International Fidelity Insurance Company in the amount of \$25,000.00.

XIV.

On October 23, 2014, Petitioner filed a Motion for Reconsideration and/or Motion to Set Aside Judgment entered pursuant to NRCP 60(b) to Respondent. There, he pointed out that under these facts the \$25,000.00 bond was exonerated as a matter of law, once pretrial services revoked Dupree's release and he was remanded to custody; and he pointed out another case with an identical factual scenario in Washoe County where that actually happened. Accordingly, the "surrender" of the bond was unnecessary; it was exonerated by operation of law. He further pointed out that because of the mistake of the sheriff's office in not putting the \$50,000.00 cash only warrant into the system, Petitioner was in the position of bailing Dupree out on the \$20,000.00 bond, which should not have happened. The \$50,000.00 cash only bond was not discovered and entered until June 10, 2014, nearly three months after it had been ordered from the bench. Petitioner argued that he should not be punished because of the court's or the

sheriff's mistake.

The State did not oppose the granting of the Motion. Thus, on December 8, 2014, Petitioner filed a reply. He pointed out that as of that date, Dupree was now in the custody of the Washoe County Jail, as Justin's bail enforcement agent had surrendered him on the second \$20,000.00 bond (IS30K-162345), all within the statutory 180-day time limit relative to that bond. However, both IS30K-162345 and IS30K-151744 concern the same charges against the same defendant.

On December 23, 2014 Respondent denied the unopposed Motion for Reconsideration on the grounds that Petitioner had not presented "substantially different evidence" of "persuasive legal authority."

XV.

What Petitioner did not then know, but what Respondent had to know, was that not only was Dupree in custody, **Dupree had plead guilty two weeks prior to the entry of that Order!** And, he remained in custody until he was sentenced on February 5, 2015 by Judge N. Patrick Flanagan.

XVI.

Petitioner appealed to this Court, case no. 67210. After counsel appeared this Court entered an Order to Show Cause pursuant to Inernational Fidelity Insurance Company v. State, 122 Nev. 30, 126 P.3d 1133 (2006). I.e., an ancillary

bail bond proceeding is not appealable; the same can only be attached by a Writ of Mandamus, wherein the standard of review is an abuse of discretion.

This order caused Petitioner to place this case in front of Respondent a third time. This time he filed on February 17, 2015 a Motion entitled “Motion to Declare Judgment of October 6, 2014 unenforceable and/or Completely Satisfied, and to Exonerate Bail Bond No. IS30K-151744.” He attached to that motion documents reflecting: that Petitioners’ Bail Enforcement Agent returned Dupree to custody of the Washoe County Jail on November 6, 2014; that Dupree then pleaded guilty to a felony charge in front of Respondent on December 9, 2014; and Judge Flanagan of the Second Judicial District sentenced Dupree on February 5, 2015. Petitioner argued to Respondent that pursuant to NRS 178.509(1)(a), 178.512(1), 178.514(2), 178.522(2) and 178.526(1) Respondent had no discretion and no legal authority to do anything but exonerate Bond IS30K-151744. Petitioner pointed out cases from California with the same operative facts that mandated exoneration by operation of law.

XVII.

Real Party in Interest did not oppose the Motion per se, but left the situation to the Court’s “best exercise of discretion” - overlooking Petitioner’s point that Respondent had no discretion to exercise. However, Respondent entered an Order

on March 19, 2015, once again denying Petitioner's Motion. Respondent concluded that the legal authority presented was not persuasive, and focused on Petitioner's failure to file prompt, specific motions and surrendering the bonds.

XVIII.

When that happened Petitioners, in order to be able to continue to do business in Washoe County, paid the October 6, 2014 judgment under protest.

XIX.

For reasons stated in the accompanying Memorandum of Points and Authorities: 1) The \$25,000.00 bond was exonerated by operation of law; 2) Respondent (and Real Party in Interest, if they actually were in favor of forfeiture) are estopped from seeking forfeiture in light of their agency, the Washoe County Sheriff's Office's, mistake in releasing Dupree over a \$50,000.00 cash only requirement as ordered by Respondent; 3) The forfeiture judgment cannot be enforced per NRS 178.514(2), since Dupree has been remanded to custody, has pleaded guilty, and now has been sentenced. Accordingly, as a matter of law, Respondent has the ministerial duty to set aside the forfeiture and the judgment based on the forfeiture, and exonerate said bond, and remit the \$25,000.00 paid back to Petitioners.

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XX.

The Nevada Supreme Court has original jurisdiction under NRS 34.160 and under Nevada Constitution, Art. VI, §4, to issue writs of mandamus, also nominated as a Writ of Mandate. To justify the issuance of a Writ of Mandate to enforce the performance of an act by a public officer, the act must be one of performance of which the law requires as a duty resulting from the office, and there must be an actual omission on the part of the officer to perform it. See: Mineral County v. State, Department of Conservation, 117 Nev. 235, 243, 20 P.3d 800 (2001); State ex rel Piper v. Gracey, 11 Nev. 223, 233 (1876). That is so, where the duty is ministerial and not discretionary. See: State Bar v. List, 97 Nev. 367, 368, 632 P.2d 341 (1981); Douglas County Board of County Commissioners v. Pederson, 78 Nev. 106, 108, 369 P.2d 669 (1962).

In this case, the duty claimed is purely ministerial, for reasons stated above.

XXI.

A Writ of Mandate cannot issue unless there is no plain, speedy or adequate remedy in the ordinary course of law. NRS 34.170. That is, issues that are appealable are not appropriately considered in a Petition for Writ of Mandate. Guerin v. Guerin, 114 Nev. 127, 131, 953 P.2d 716 (1998).

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XXII.

In International Fidelity Insurance Co. v. State, 122 Nev. 39, 126 P.3d 1133 (2006), this Court held that it lacked jurisdiction to review orders in ancillary bail bonds proceedings on direct appeal, and the appropriate vehicle for review of orders in ancillary bail bond proceedings is by Petition for Writ of Mandamus. According, Petitioner does not have an adequate remedy at law for that reason. Additionally, however, this Court emphasized it would not grant mandamus in reviewing an ancillary bond forfeiture proceeding when the decision is based on factual determinations and the findings of fact are not clearly erroneous or not based on substantial evidence. (Id. at 42-43) In this case, the facts are undisputed; Real Party in Interest has presented no evidence to controvert them; based on the undisputed facts the Respondent has no legal discretion but to set aside the forfeiture and exonerate the \$25,000.00 bail bond, and remit the tendered \$25,000.00 back to Petitioner; and Real Party in Interest has not disagreed with that legal position. Accordingly, Respondent in fact has abused its discretion in failing to do so.

WHEREFORE, Petitioner prays as follows:

1. That an alternative writ issue, requiring Respondent and real party in interest to appear and show cause, if any cause they have, why the within Petition

should not be granted;

2. That the peremptory Writ issue ultimately, requiring Respondent to set aside the forfeiture judgment of October 6, 2014 and to exonerate bond no. IS30K-151744 in the amount of \$25,000.00, posted by Justin Bros. Bail Bonds on behalf of International Fidelity Insurance Company, and to remit the \$25,000.00 which Petitioners paid under protest back to Petitioners.

DATED this 9th day of April, 2015.

LAW OFFICES OF RICHARD F. CORNELL
150 Ridge Street, Second Floor
Reno, NV 89501

By: 
Richard F. Cornell

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VERIFICATION

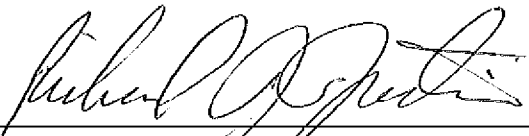
RICHARD JUSTIN, under penalty of perjury, swears and declares as follows:

That he is the Petitioner above-named, doing business as Justin Bros. Bail Bonds;

He has read and reviewed the within Petition before signing it;

That the allegations of facts stated therein are true and correct to the best of Petitioner's knowledge, information and belief.

DATED this 8th day of APRIL, 2015 and signed under penalty of perjury in Reno, Washoe County, Nevada.



Richard Justin

CERTIFICATE OF SERVICE

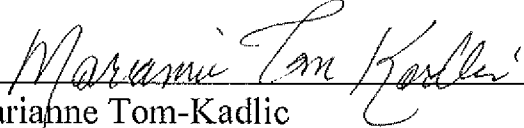
Pursuant to N.R.C.P. 5(b), I certify that I am an employee of LAW
OFFICES OF RICHARD F. CORNELL, and that on this date I caused a true and
correct copy of the foregoing document to be delivered by Reno Carson

Messenger Service, addressed to:

Keith Munro
Washoe County District Attorney's Office
Civil Division
One S. Sierra St., 7th Floor
Reno, NV 89501

The Honorable Janet J. Berry
75 Court Street, Department 1, 3rd Floor
Reno, NV 89501

DATED this 24 day of April, 2015.



Marianne Tom-Kadlic
Legal Assistant