

IN THE SUPREME COURT OF THE STATE OF NEVADA

ACCREDITED SURETY & CASUALTY
COMPANY,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
STEVEN P. ELLIOTT, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 47913

FILED

JUL 23 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is an original petition for a writ of mandamus challenging a district court order denying a motion to set aside forfeiture of a bail bond. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

In this original proceeding, petitioner Accredited Surety & Casualty Company seeks a writ of mandamus ordering respondent Second Judicial District Court, Washoe County, to set aside the forfeiture of Accredited's appearance bond number A25-0117591 in the amount of \$20,000. Accredited argues that, under NRCP 60(b)(4), the appearance bond forfeiture should be set aside because the bond is void. Additionally, Accredited asserts that equitable principles require that the bond be determined void by this court because this case presents unique facts where the real party in interest's, the State of Nevada's, actions affected Accredited's ability to perform its duties. We agree. The parties are

familiar with the facts, and we do not recount them here except as necessary for our disposition.

This court has determined that, “[g]enerally, a petition for a writ of mandamus will be the appropriate vehicle for challenging an order entered in an ancillary bail bond proceeding.”¹ This court may issue a writ of mandamus to “compel the performance of an act that the law requires or to control a manifest abuse of discretion.”² Additionally, bail bond proceedings often require the district court to make factual determinations that this court will not disturb “unless they are clearly erroneous and not based on substantial evidence.”³

Although the State’s failure to notify Accredited of Saul Jimenez Dias’ true identity is not a basis for exoneration under NRS 178.509, which sets forth the limited circumstances under which a surety may be exonerated, we determine that the unique circumstances in this case warrant exoneration based on our reasoning in International Fidelity Insurance v. State of Nevada.⁴

In International Fidelity, a bonding company appealed a district court order denying a motion to “exonerate” several bonds used to secure the bailee.⁵ The bailee had failed to appear for his initial

¹International Fid. Ins. v. State of Nevada, 122 Nev. 39, 42, 126 P.3d 1133, 1134 (2006).

²Id.

³Id. at 42, 126 P.3d at 1134-35.

⁴114 Nev. 1061, 967 P.2d 804 (1998).

⁵Id. at 1061-62, 967 P.2d at 804-05.

arraignment.⁶ However, upon his counsel's request, the district court granted a two-week continuance.⁷ When the bailee again failed to appear, the district court began the appropriate procedures to forfeit the bonds.⁸ The bonding company filed a motion for exoneration based upon the district court's failure to comply with NRS 178.508, which the district court denied.⁹

In its appeal, the bonding company argued that the district court's failure to notify it of the bailee's initial non-appearance resulted in prejudice because it gave the bailee a "two-week head start to abscond."¹⁰ We disagreed and held that, since prejudice is not presumed, absent a showing of actual prejudice from the delay, exoneration was not appropriate.¹¹

However, the unique facts in this case demonstrate sufficient prejudice against Accredited to justify the issuance of a writ of mandate setting aside forfeiture of the bond. In this case, the State had knowledge of Dias' true identity as early as April 2003, when the Department of Parole and Probation discovered his true identity during an interview. However, the State failed to take any action except for noting his true

⁶Id. at 1062, 967 P.2d at 804.

⁷Id.

⁸Id. at 1062, 967 P.2d at 804-05.

⁹Id. at 1062, 967 P.2d at 805.

¹⁰Int'l Fidelity Ins. v. State of Nevada, 114 Nev. 1061, 1063, 967 P.2d 804, 805 (1998).

¹¹Id. at 1063-64, 967 P.2d at 805.

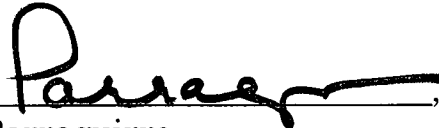
identity in the presentencing report. In May 2003, Dias failed to appear for sentencing and a bench warrant for his arrest was issued under the name David Rosas, even though the State had notice of his true identity and aliases in the presentencing report. In August 2003, Accredited located a David Rosas in Wasco State Prison in California and sought an extension from the district court so that it could have Rosas transported to local custody. However, it was later determined that the David Rosas in custody in California was not the same person as Dias.

In September 2003, Dias was arrested in Carson City. Upon his arrest, Dias told the officers that his name was Saul Diaz, which is also an alias used by Dias that was listed in the May 2003 presentencing report. Because the State did not ask the district court to list "Saul Diaz" or "Saul Jimenez Dias" as aliases in the May 2003 bench warrant, the Carson City Sheriff's Deputy found no outstanding bench warrants against Dias. Accordingly, the Carson City Sheriff's Department released Dias on bail. Thereafter, Dias failed to report to the payment center and apparently remains free to this day. Thus, if the State had listed Dias' true name and any known aliases in the May 2003 bench warrant, Dias would most likely be in custody today. Therefore, we determine that the State's actions in this case prejudiced Accredited's ability to secure and return Dias to the district court to answer for the charge of trafficking in a controlled substance.

Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to set aside the forfeiture of Accredited's appearance bond

number A25-0117591 in the amount of \$20,000 and hold Accredited exonerated.¹²


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Steven P. Elliott, District Judge
Law Offices of Mark Wray
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick /Civil
Division
Washoe District Court Clerk

¹²Accredited raises other arguments in support of its writ petition. In light of this disposition, we decline to reach the merits of those arguments.