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### Justin v. Second Jud. Dist. Ct., 132 Nev. Adv. Op. 47 (June 30, 2016)

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## CRIMINAL LAW

### **Summary**

The plain language of NRS § 178.509 does not provide for automatic exoneration of a surety bond when a defendant is remanded to custody or convicted.

### **Background**

Justin Bros Bail Bonds and International Fidelity Insurance Company (Petitioners) posted a \$25K bond (Bond #1) for Norman Dupree on September 18, 2013. The bond agreement provided Dupree would answer to the charges, or Petitioners would pay the State of Nevada \$25K.

Dupree was remanded to custody for a pretrial supervision violation on January 31, 2014. Bonafide Bail Bonds posted a \$20K bond (Bond #2); Petitioners did not seek to exonerate Bond #1.

When Dupree failed to appear for a March 18 arraignment, the district court issued notices of intent to forfeit. Bonds #1 and #2 would be forfeited in 180 days because of Dupree's breach of agreed-upon bail conditions.<sup>2</sup> Bond #2 was exonerated on May 14, 2014, when Bonafide surrendered Dupree to the Washoe County Sherriff. Petitioners posted another \$20K bond (Bond #3) for Dupree's release pending his June 10 arraignment. Dupree again failed to appear, and the court ordered Bond #3 forfeited.

In August 2014, Petitioners filed for exoneration of Bond #1. The district court denied the motion, observing that Petitioners had taken no earlier action to exonerate, that Dupree remained out of custody despite Petitioners contact with him, and that a bench warrant had been issued. On October 6, 2014, the court entered judgment of forfeiture for Bond #1.

Petitioners filed a motion for reconsideration on October 23, 2014, arguing Bond #1 should have been exonerated after Dupree's release was revoked on January 31. Furthermore, because Dupree received new bail for the same charges, Bonafide's Bond #2 should have automatically exonerated Bond #1. Lastly, Dupree was rebailed with Bond #3, which should have replaced and exonerated the previous bonds.

Dupree surrendered himself on December 8, 2014. His surrender exonerated Bond #3, and was within the 180 statutory forfeiture time limit for Bond #1. The district court, however, denied Petitioners' motion for reconsideration because Petitioners showed no evidence the forfeiture judgment was erroneous. Petitioners appealed.

### **Discussion**

*Nevada law does not provide for automatic exoneration of a bail bond*

The court is prohibited from exonerating a bond without statutory authority. NRS § 178.509 provides that statutory authority, stating that the court "shall not" exonerate a surety, unless: the defendant presents a satisfactory excuse for failing to appear, the defendant shows the

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<sup>1</sup> By Paul George.

<sup>2</sup> See NEV. REV. STAT. §§ 178.506, 178.509, and 178.514.

surety did not aid in his absence, or the surety shows the defendant was unable to appear because of death, illness, insanity, or detention by authorities. After such a showing, the court “may exonerate the surety upon such terms as may be just.”<sup>3</sup>

A court may only exonerate a bond for those reasons set forth in the statute. The “shall not” language of the statute shows legislative intent to limit exoneration to only those conditions listed in the statute.<sup>4</sup> Upon meeting those conditions, the court’s decision to exonerate is discretionary.

Here, the defendant Dupree did not present a valid excuse, nor did the court determine there was a satisfactory excuse for Dupree’s absence. Nor did the district court find that Petitioners did not aid in Dupree’s absence. Contrarily, the district court found Petitioners were in contact with Dupree, but failed to turn him in. Lastly, to grant exoneration on Petitioners’ terms would have been an abuse of discretion, because the court would have exceeded its statutory power.

### **Conclusion**

The Nevada Supreme Court denied petitioners’ writ of mandamus, holding that bond exoneration is only permissible under the statutory conditions set forth under NRS § 178.509.

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<sup>3</sup> NEV. REV. STAT. § 178.509(2).

<sup>4</sup> All Star Bail Bonds v. Eighth Judicial Dist. Ct., 130 Nev., Adv. Op. 45, 326 P.3d 1107, 1110 (2003).