

BAIL

Bail and Pretrial Release -- Bond Forfeiture -- Motion to Set Aside -- County Jail Not a Unit of Department of Correction

State v. Robertson 166 N.C. App. 669 (2004)

The trial court erred by granting respondent surety's motion to set aside a bond forfeiture under N.C.G.S. § 15A-544.5(b)(6), because: (1) on the date of defendant's failure to appear, defendant was not incarcerated in a unit of the Department of Correction (DOC) although he was being held in a county jail on an extradition warrant from Virginia since the jail is a local confinement facility which is not a unit of the DOC; and (2) defendant was not serving a judicially imposed sentence.

Bail and Pretrial Release -- Probationary Sentence – Appeal -- Conditions of Release

State v. Howell 166 N.C. App. 751 (2004)

The superior court could set conditions of release pending defendant's appeal pursuant to N.C.G.S. § 15A-536 where defendant's sentence from his conviction had been stayed pending appeal and he is not in custody. The language of the statute that defendant may be ordered "released" upon conditions means to set or make free from the supervision and control of the court as well as from imprisonment.

(1) Bail and Pretrial Release -- Bond Forfeiture -- Motion to Set Aside -- Constructive Notice

(2) Bail and Pretrial Release -- Bond Forfeiture -- Motion to Set Aside -- Prior Failures to Appear

State v. Poteat 163 N.C. App. 741 (2004)

(1) The trial court did not err by denying a professional bail bondsman's motion to set aside forfeiture of an appearance bond he posted on behalf of defendant for the purpose of securing defendant's appearance in court to answer charges of driving while license revoked and failure to appear, because: 1) N.C.G.S. § 15A-544.5(f) does not require that a surety or bail agent have actual, rather than constructive, notice that a defendant has failed to appear on two or more prior occasions before the surety is precluded from having the forfeiture set aside; 2) a professional bondsman should reasonably be expected to understand an "OFA/FTA" notation on a release order as standing for "order for arrest/failure to appear," and the bondsman could have discovered the earlier bond forfeiture notices, arrest warrants and arrest orders by exercising proper diligence; and 3) the professional bondsman had a duty of inquiring further into the background of this matter before executing the appearance bond at issue. (2) The trial court did not err in a driving while license revoked and failure to appear case by finding that defendant had two prior failures to appear and by denying a professional bail bondsman's motion to set aside the bond forfeiture on this basis even though the bondsman contends that

defendant's failure to appear on 25 September 1995 by citation instead of under a bond should not count as a "failure to appear on two or more prior occasions" for purposes of N.C.G.S. § 15A-544.5(f), because: 1) the plain language of N.C.G.S. § 15A-544.5(f) provides only that the State must prove that defendant had already failed to appear on two or more prior occasions before forfeiture of the bond becomes absolute; and 2) even though the bondsman correctly notes that the subsection title of the statute states "No More Than Two Forfeitures May Be Set Aside Per Case," the language of the title of a statute is not permitted to control expressions in the body of a statute that conflict with it.

Bail and Pretrial Release -- Failure to Appear -- Motion to Dismiss – Sufficiency of Evidence

State v. Dammons 159 N.C. App. 284 (2003)

The trial court did not err by denying defendant's motion to dismiss the charge of failure to appear, because: (1) the secured order signed by defendant in the presence of the magistrate and read to him by a bail bondsman ordered defendant to appear in court for the charges against him; (2) an unsecured release order signed by defendant also ordered defendant to appear in court for the charges against him, and the fact that the magistrate's signature on that order was generated by a computer rather than handwritten was of no consequence; (3) defendant had actual knowledge of his duty to appear in court and he cannot claim ignorance of the law as an excuse; (4) there was evidence from which a jury could find that defendant violated either N.C.G.S. § 5A-12(a) or § 15A-543, and it was within the prosecutor's discretion to decide under which statute the State wished to proceed against defendant; and (5) assuming arguendo that defendant was the only person in the pertinent county to have been prosecuted for failure to appear, defendant failed to demonstrate that the district attorney exercised anything more than ordinary discretion in his prosecution of defendant.

Bail and Pretrial Release -- Domestic Violence -- Unconstitutional Detention -- Effect on Superseding Charges

State v. Clegg, 142 N.C. App. 35 (2001)

The statute permitting detention of a defendant arrested for domestic violence for a period of up to 48 hours to await a hearing before a judge on the conditions of pretrial release, N.C.G.S. § 15A-534.1(b), was unconstitutionally applied to defendant in violation of procedural due process as to the original charge of assault on a female where defendant was not taken before a judge until Monday afternoon some 39 hours after he was arrested although judges were available earlier in the day. However, defendant's unconstitutional detention did not entitle him to dismissal of a superseding indictment charging him with assault with a deadly weapon inflicting serious injury and assault inflicting serious bodily injury because: (1) the defendant's original assault on a female charge was dismissed by the State; (2) the State has a compelling interest in the superseding felony assault charges when the victim's injuries were more serious than had been originally suspected; and (3) defendant has failed to prove he was irreparably

prejudiced in the prosecution of the superseding charges by his unconstitutional detention.

Bail and Pretrial Release -- Remittance of Forfeited Bond -- Death of Defendant After Trial Date -- Extraordinary Circumstances – Factors -- Diligent Pursuit

State v. Coronel, 145 N.C. App. 237 (2001)

The trial court did not abuse its discretion by concluding that the death of two defendants who had fled to Mexico from drug trafficking charges did not constitute sufficient extraordinary cause to warrant remittance of a bail bond judgment. The purpose inherent in the statutory scheme governing remittance suggests that it would be unfair to sureties to deny remittance when they diligently pursue defendants who die through no fault of the surety, even where the defendants die after the execution of judgment of forfeiture. However, extraordinary cause does not exist based solely on the defendant's death; the fact of the defendant's death must be weighed against certain other factors, including the inconvenience and cost to the State and the courts; the diligence of the surety in staying abreast of the defendant's whereabouts prior to the date of appearance and in searching for the defendant prior to his death; the surety's diligence in obtaining information of the defendant's death; the risk assumed by the sureties; the surety's status as private or professional; and the timing of defendant's death. Extraordinary cause did not exist in this case because the sureties' pursuit was not diligent.

Bail and Pretrial Release -- Domestic Violence -- Pretrial Release Hearing -- Reasonable Time -- Procedural Due Process

State v. Jenkins, 137 N.C. App. 367 (2000)

The trial court erred in dismissing the assault on a female charge, based on its conclusion that defendant's procedural due process rights were violated by application of N.C.G.S. § 15A-534.1 regarding a timely pretrial release hearing in a domestic violence case when there was a session of court at 9:30 a.m. and defendant's bond hearing was delayed until 1:30 p.m., because defendant's bond hearing occurred in a reasonably feasible time and promoted the efficient administration of the court system.

(1) Constitutional Law – State -- Domestic Violence – Kidnapping -- Bail and Pretrial Release -- Due Process -- Double Jeopardy

(2) Constitutional Law -- Double Jeopardy -- Bail and Pretrial Release -- Domestic Violence -- Kidnapping

State v. Gilbert, 139 N.C. App. 657 (2000)

(1) N.C.G.S. § 15A-534.1 which relates to bail and pretrial release in domestic violence situations is not facially violative of the North Carolina Constitution's protections relating to due process and double jeopardy because: 1) the North Carolina Supreme Court has

previously found this statute did not violate the Fifth and Fourteenth Amendments to the United States Constitution, and the North Carolina Constitution's law of the land clause has been held equivalent to the Fourteenth Amendment's Due Process Clause; and 2) the double jeopardy guarantees in the United States and North Carolina Constitutions are equivalent, and our Supreme Court has already held that this statute survives a facial constitutional challenge on double jeopardy grounds under the United States Constitution. (2) The trial court did not violate defendant's right to be free from double jeopardy when it applied N.C.G.S. § 15A-534.1 which relates to bail and pretrial release in domestic violence situations to defendant's kidnapping case, because: 1) defendant's detention was only to await hearing before the first available judge; and 2) the judge's order requiring defendant to remain in custody until 2:00 p.m. was merely a condition of defendant's release.

Bail and Pretrial Release -- Domestic Violence -- Pretrial Detention and Release -- Due Process, Double Jeopardy Rights of Defendant

State v. Malette, 350 N.C. 52 (1999)

The statute setting forth the conditions of bail and pretrial release for individuals accused of crimes of domestic violence, N.C.G.S. § 15A-534.1(b), did not violate due process or double jeopardy as applied to defendant where defendant was arrested and taken before a magistrate who ordered that he be brought before a judge pursuant to the statute on the very next day; defendant was in fact brought before a district court judge the following day, and she set a secured bond of \$10,000, which was subsequently reduced to \$1,000; and there is no evidence that the magistrate arbitrarily set a forty-eight-hour limit or that the State did not move expeditiously in bringing defendant before a judge.

Bail and Pretrial Release -- Petition for Partial Remission of Bail Bond -- Applicable Standard

State v. Harkness, 133 N.C. App. 641 (1999)

The denial of a petition for partial remission of a bail bond was reversed where the trial court erred by applying N.C.G.S. § 1-52, rather than the "extraordinary cause" standard under N.C.G.S. § 15A-544(h). N.C.G.S. § 15A-544(e) creates the right to seek remission within ninety days after entry of judgment on an appearance bond; after that time has passed, remission may be granted only when, in the discretion of the court, the requirement of N.C.G.S. § 15A-544(h) for a showing of "extraordinary cause" is met.

(1) Arrest and Bail -- Domestic Violence -- Detention Without Bond -- Not Double Jeopardy

(2) Arrest and Bail -- Domestic Violence -- Detention Without Bond -- Substantive Due Process

(3) Arrest and Bail -- Domestic Violence -- Detention Without Bond -- Procedural Due Process

State v. Thompson, 128 N.C. App. 547 (1998)

(1) The statute permitting pretrial detention without bond for up to forty-eight hours for crimes of domestic violence, N.C.G.S. § 15A-534.1, is regulatory, not punitive in nature, and therefore does not constitute punishment for purposes of double jeopardy. (2) Pretrial detention of defendant for alleged domestic violence without bond for up to 48 hours as authorized by N.C.G.S. § 15A-534.1 did not violate defendant's substantive due process rights. U.S. Const. Amend. V. (3) N.C.G.S. § 15A-534.1 did not violate defendant's procedural due process rights where the statute provides that a defendant arrested for domestic violence shall receive a hearing, have pretrial release conditions determined within 48 hours of arrest, and the officer determining pretrial release conditions must be a judge.

Arrest and Bail -- Bail Bondsman -- Arrest of Defendant -- Failure to Return Premium -- Insufficient Evidence

State v. Ipock, 129 N.C. App. 530 (1998)

The State's evidence was insufficient to support a bail bondsman's conviction of failing to return a bail bond premium pursuant to N.C.G.S. § 58-71-20 after having the defendant arrested and returned to jail where two witnesses testified only that defendant stated that he was not going to return the premium, but there was no testimony by the person to whom the premium refund was due or anyone else that defendant had not returned the premium as of the date of trial.