

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel
ANTHONY SYLVESTER
AAA SLY BAIL BONDS

CASE NO. 2012-1742

ORIGINAL ACTION OF MANDAMUS

Relator

vs.

TIM NEAL
WAYNE COUNTY CLERK OF
COURTS

Respondent

REPLY BRIEF OF REALTOR ANTHONY SYLVESTER

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Anthony Sylvester

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POSTURE

The Relator, Anthony Sylvester/AAA Sly Bail Bonds (“Sylvester”) filed an Original in Mandamus on 10-5-2012. The Respondent filed a motion to dismiss on 11-19-2012 and the Relator responded on 12-27-2012. This Court granted an alternative writ on 2-6-2013 and set the briefing schedule in this matter. On 3-8-2013 the Relator filed their brief and on 3-28-13 the Respondent filed their brief. This is the Relators response to the Respondents brief.

DISCUSSION OF RESPONDENTS STATEMENT OF FACTS

The Respondent states that the Relator is asking this Court to command the Wayne County Clerk of Courts to accept the posting of a surety bond in all cases where a bond is set by the Courts. This is not the Relators position. What the Relator is asking this Court is to find that the Defendant has the option of using a surety to post a bond no matter if the bond is cash/surety or ten percent (10%). This is in keeping with this Courts’ prior rulings, especially *Smith v. Leis* 106 Ohio St 3d 209, 205-Ohio-5125, 835 NE 2d 5.

DISCUSSION OF RESPONDENTS PROPOSITION OF LAW I

The Relator is not stating that Criminal Rule 45 (A) (2) is in violation of the Ohio Constitution. It is the Relators’ position that a Clerk of Courts’ denying a Defendant the option of posting a ten percent (10%) bond by using a surety is a violation of the Ohio Constitution. The Relator is stating that this Courts’ ruling in *Smith v. Leis* is clear, “[o]nce the amount is set, and the accused exercises his **constitutional right** to enlist a surety to post bail on his behalf,... the Clerk of Courts *must* accept surety bond to secure the defendants’ release, provided the sureties thereon are otherwise sufficient and solvent.

Smith v. Leis 106 Ohio St 3d at paragraph 36 quoting *State ex rel Jones v. Hendon* (1993) 66 Ohio St. 3d 115 @ 18, 609 NE 2d 541. (Emphasis mine).

The realtor does not dispute the facts that Crim. Rule 46 set up types of bonds. What he is stating is that by forcing a Defendant to post cash with the court, in the form of a ten percent (10%) bond, the courts are in effect requiring a cash bond by the Defendants. This is exactly what this court held to be unconstitutional in the Ruling in *Smith*. Id. The Respondent wants this court to rely on the 11th District Court of Appeals decision in *State ex rel. Williams v. Fankhouser* to over turn this courts decision in *Smith*. 11th Dist. No. 206P0006 2006-Ohio-621607. This would force this Court to rule on the constitutionality of Criminal Rule 46, we are only asking the Court to uphold it previous decisions in this area and state that once the type and amount of bond has been set by the Court, the accused has the option of how that amount is posted, cash, ten percent or surety. This is consistent with this Courts previous ruling in providing the accused with the greatest constitutional protection. See *Smith v. Lies*, 106 Ohio St. 3d 309, *State ex rel. Jones v. Hendon* (1993), 66 Ohio St.3d 115 and *State ex rel. Baker v. Troutman* (1990), 50 Ohio St.3d 270.

The Respondent incorrectly states the Amicus issue as ten percent (10%) bond being unconstitutional. The issue is if you force an accused to post cash with the Court, and deny them the use of a Surety, then you are forcing them to post a cash bond, which is unconstitutional. This Court has previously stated that, “[w]here provisions of the constitution address the same subject matter, they must be read *in par material* and harmonized if possible.” *State ex rel. Toledo v. Lucas Cty Bd of Elections* (2002), 95 Ohio St.3d 73, 765 NE 2d 854. This is what the Relator is asking this Court to do, read

Criminal Rule 46 to harmonize with the State Constitution. The Court can accomplish this by giving an accused the freedom to post a ten percent (10%) by using a surety.

DISCUSSION OF RESPONDENTS PROPOSITION OF LAW II

It is the Relators' position that Article I, Section 9 of the Ohio Constitution does not prohibit an accused from posting a ten percent (10%) bond pursuant to Criminal Rule 46A2. The Relator agrees that in 1998 this Court amended the Rules of Criminal Procedure to allow a defendant to post a ten percent bond without using a surety. This gave the accused more options and in effect more protection under the constitution. Nowhere in the Rules or Statutes does it state that an accused can not post the ten percent (10%) bond by using a surety. The Relator contends that this Court's ruling in *Smith*, Rule 46 and the Ohio Constitution are not in conflict. This Court only needs to follow its ruling in *Smith* and allow the accused to post a ten percent (10%) using a surety. This avoids any conflict between the rules, statutes and the Ohio Constitution, thus allowing them all to stand as constitutional and be read in harmony. This reading also does not limit the Court in deciding the appropriate form of the bond but gives the accused the freedom to choose how to post the bond.

By saying that a defendant can not use a surety you have in effect made cash only bonds constitutional. The reason is that the only way a defendant can get out is by posting cash with the Courts to the exclusion of anything else. The Respondents position is consistent with their Court refusing to accept posting the full face value of the bond when the bond is set as a ten percent (10%) bond as shown by the Relators affidavit previously filed with the Court. (See Attached). Why would a Court engage in such a practice? The only reason is so the Court can keep a portion of the posted bonds towards fines and

costs. Criminal Rule 46 allows the Court to keep ten percent of the posted bond. The rules do not allow the Court to keep a portion of the bond if the entire amount is posted or if the accused uses a surety. In fact the use of a surety is analogous to the posting of the entire amount in cash. The net effect of posting a surety or the entire amount in cash is the same; the Court cannot keep a portion of the bond money posted. The Respondent has a long discussion as to the definition of a Surety. We are only asking the Court to adopt the definition it uses in *Smith*.

The Relator agrees with the Respondent when they state that the provisions of the State Constitution related to the same subject matter must be read *in pari material* and harmonized if possible. *State ex rel. Toledo v. Lucas Cty Bd of Elections* (2002), 95 Ohio St.3d 73, 765 NE 2d 854. We are asking this Court to read the Constitution, rules and statutes to allow them all to be constitutional. To do that all this Court has to do is to allow the accused to use a surety to post a ten percent (10%) bond. This is consistent with this Courts ruling in *Smith* which is the foundation of this Courts rulings in this area. We are just asking the Court to uphold its prior rulings in this area.

CONCLUSION

The Relator has established that the Clerk of Courts has a duty to accept a bail bond once it is offered in the amount set by the Court. The Clerk cannot determine the manner in which that bond is posted. Thus showing that the Relator has a clear legal right to the relief that he is requesting and that the Clerk of Courts has a clear legal duty to accept the offered bond. The Clerk of Courts is the only entity empowered by rule or statute to collect and process bail bonds in Ohio. This demonstrates that the Relator has no other remedy available to him other than to ask this Court to tell the Clerk of Courts to

due its duty, and accept a surety bond for posting when the Court has ordered a ten percent (10%) bond. The Respondent is arguing that this Court should overturn its prior rulings in this area on a whim thus whipping out over fifty (50) years of precedents. The Relator is just asking this Court to uphold its prior rulings and read the Constitution, Rules and Statutes in harmony with each other finding them all constitutional. Thus allowing the accused the option of using a surety to post a ten percent (10%) bond. Therefore based upon the Relators arguments and this Courts prior rulings the Relators' Petition for a Writ of Mandamus must be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

On *April 4, 2013*, a true and accurate copy of the forgoing was served on Attorney for the Respondent, Nathan R. Shaker, Wayne County Prosecutor's Office 115 West Liberty St., Wooster, Ohio 44691 and Gregory P. Barwell at Wesp/Barwell, LLC, 6400 Riverside Dr., Ste. D, Dublin, Ohio 43017 by regular U.S. Mail.

STATE OF OHIO :
:SS
COUNTY OF STARK :

Affidavit of Anthony Sylvester

Now comes Anthony Sylvester and being first duly sworn according to law, hereby states from personal knowledge as follows:

1. I am over the age of 18 and competent to state the following by first hand knowledge.
2. That I am a duly licensed Surety Bail bondsman in the State of Ohio.
3. That I have been licensed by the State of Ohio Department of Insurance since 6-12-2003 and my license number is 630177.
4. That I am currently in good standing with the Ohio Department of Insurance and can write bail bonds in the State of Ohio.
5. That I currently am the owner of Sly bail bonds and was correctly registered to post bonds in all courts in Wayne County Ohio.
6. That Chris Nickolas is a bail agent of my company
7. That my agent Chris Nickolas tried to post a bond with the Wayne County Clerk of Courts' Tim Neal for Shannon Rowe and was refused because the bond was set as a ten (10) percent bond by the Honorable Mark Weist in case #11CR0347.
8. That on numerous occasions that I or one of my agents has been unable to post a bond with the Wayne County Clerk of Courts Tim Neal because the bond was set as a ten (10) percent bond and they refused to take a surety.
9. That I have offered to pay the entire bond amount instead of the ten (10) percent and have been told no by the Wayne County Clerk of Courts Tim Neal's staff.
10. Further, Affiant sayeth naught.

