An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-964

Filed: 17 April 2018

Wilson County, No. 16 CR 050835

STATE OF NORTH CAROLINA

v.

CORTEZ HARRIS, Defendant,

and

EDDIE L. MCCOY, Bail Agent,

and

AGENT ASSOCIATES INSURANCE, L.L.C., Surety.

Appeal by Wilson County Board of Education from order entered 5 June 2017 by Judge John J. Covolo in Wilson County District Court. Heard in the Court of Appeals 29 March 2018.

Schwartz & Shaw, P.L.L.C., by Kristopher L. Caudle and Rebecca M. Williams, for plaintiff-appellant Wilson County Board of Education.

No brief filed for defendant Cortez Harris.

No brief filed for bail agent Eddie L. McCoy.

No brief filed for surety Agent Associates Insurance, L.L.C.

ELMORE, Judge.

The Wilson County Board of Education ("Board") appeals from the trial court's order reducing a bond forfeiture amount after denying a surety's motion to set aside the bond forfeiture. After careful review, we vacate the trial court's order and remand for further proceedings consistent with this opinion.

On 1 November 2016, Cortez Harris ("Defendant") failed to appear in Wilson County District Court in an underlying criminal matter. The Wilson County Clerk of Court issued a bond forfeiture notice in the amount of $400.00 to Defendant; Surety Agent Associates Insurance, L.L.C. ("Surety"); and Surety's Bail Agent, Eddie L. McCoy ("Bail Agent"). Notice was mailed to the parties on 4 November 2016.

On 3 April 2017, Bail Agent filed a motion to set aside the bond forfeiture (form AOC-CR-213) on Surety's behalf. Form AOC-CR-213 is a preprinted form which lists the exclusive seven grounds for which a movant may move to set aside a bond forfeiture pursuant to N.C. Gen. Stat. § 15A-544.5 (2017). Bail Agent checked box number 7 on the form, asserting the following ground for its motion:

> The defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was

released prior to the time the motion to set aside was filed.

In support of the motion, Bail Agent attached a handwritten letter stating that "[defendant was] being detained at the Charles Co. Maryland Detention Center with no bond and also has a detainer from V.A." The letter also stated that "[t]hey would not send any info to me at this time." On 5 April 2017, the Board objected to the motion.

Following a hearing on 5 June 2017, the trial court denied Surety's motion to set aside the bond forfeiture, finding that Surety had not established any grounds to set aside pursuant to N.C. Gen. Stat. § 15A-544.5(b). Nonetheless, the trial court ordered Surety to pay a lesser bond forfeiture amount of $200.00. The trial court entered a written order on the same day, and a handwritten notation next to the order states "Surety to pay $200.00." The Board appeals.

On appeal, the Board argues that the trial court erred in reducing the bond forfeiture amount from $400.00 to $200.00. The Board contends that while the trial court correctly denied the motion to set aside, it had no authority to reduce the amount of the bond forfeiture. The Board raises only a question of law, which we review *de novo*. *State v. Knight*, ___ N.C. App. ___, ___, 805 S.E.2d 751, 753 (2017). For the foregoing reasons, we agree with the Board's argument.

We recently addressed this same issue in *State v. Knight*, a case which is factually indistinguishable from the instant case. We held that "when a motion to set

aside a forfeiture is denied under N.C.G.S. § 15A-544.5, an obligor [ ] may not be held liable for less than the amount agreed upon pursuant to the bond it actually executed." *Id.* at ___, 805 S.E.2d at 756.

Section 15A-544.5 provides the exclusive relief for setting aside a bond forfeiture that has not yet become a final judgment. *See Knight*, ___ N.C. App. at ___, 805 S.E.2d at 755. Under this section, a bond forfeiture may only be set aside for one of seven enumerated reasons and "none other." N.C. Gen. Stat. § 15A-544.5(b). Thus, the trial court has no discretion to grant relief for a non-enumerated reason.

Additionally, the section provides that "[i]f at the hearing the court allows the motion, the court *shall* enter an order setting aside the forfeiture." *Id.* § 15A-544.5(d)(6) (emphasis added). If the court does not allow the motion to set aside, "the forfeiture *shall* become a final judgment of forfeiture." *Id.* § 15A-544.5(d)(7) (emphasis added). We held that given this mandatory language, "[t]he only 'relief' authorized under N.C.G.S. § 15A-544.5 is the setting aside of the bond forfeiture," and therefore, "[t]here is no 'partial' relief provided under the plain language of the statute." *Knight*, ___ N.C. App. at ___, 805 S.E.2d at 755.

By contrast, an entirely separate section provides for the exclusive means of seeking relief *after* a final judgment of forfeiture has been entered. *See* N.C. Gen. Stat. § 15A-544.8 (2017). Section 15A-544.8 provides two enumerated reasons for which a movant may seek relief from a final judgment of forfeiture, and the trial court

is afforded more discretion in granting relief. To that end, the trial court "may grant the party *any relief* from the judgment that the court considers appropriate, including *the refund of all or a part* of any money paid to satisfy the judgment." *Id.* § 15A-544.8(c)(4) (emphasis added). Thus, in ruling on a motion for relief from final judgment, the trial court is permitted to reduce the amount of the forfeiture.

We reasoned that because the discretionary language is omitted from Section 15A-544.5, but retained in Section 15A-544.8, the decision appears to be a "conscious choice" on the part of the legislature. *See Knight*, ___ N.C. App. at ___, 805 S.E.2d at 756. Thus, in *Knight*, we held that "the plain language used in N.C.G.S. § 15A-544.5 and the statute's legislative history demonstrate that the General Assembly intended to limit a trial court's authority in setting aside a bond forfeiture before the entry of a final judgment." *Id.* Accordingly, "[u]nder N.C.G.S. § 15A-544.5, a trial court may only grant relief from a forfeiture for the reasons listed in the statute, and the only relief it may grant is the setting aside of the forfeiture." *Id.*

Here, it is undisputed that Surety moved to set aside the forfeiture pursuant to N.C. Gen. Stat. § 15A-544.5(b)(7), which provides as follows:

> The defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as

> evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.

Surety, however, failed to provide any evidence to support the requirements of Subsection (b)(7). The only evidence before the trial court was a handwritten letter indicating that defendant, at some unspecified time, was incarcerated in Maryland. There was no evidence that defendant was incarcerated on the date of the forfeiture, that the district attorney was notified, or that defendant remained incarcerated for a period of ten days following notice. Given the lack of support for N.C. Gen. Stat. § 15A-544.5(b)(7)—the only ground alleged in the motion—we hold that the trial court did not err in denying Surety's motion to set aside the bond forfeiture.

Consistent with *Knight*, we further hold that the trial court erred in reducing the amount of the bond forfeiture from $400.00 to $200.00. Because the trial court denied the motion to set aside, it had no statutory authority under Section 15A-544.5 to grant partial relief by reducing the amount. *Knight*, ___ N.C. App. at ___, 805 S.E.2d at 757. We therefore vacate the trial court's order. On remand, the trial court "shall enter an order directing Surety to pay the amount of the bond as executed, less any amounts already paid." *Id.*

VACATED AND REMANDED.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).