

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA22-802

Filed 02 May 2023

Hoke County, No. 18 CR 51730

STATE OF NORTH CAROLINA

v.

JERMAINE STUBBS, Defendant, and PALMETTO SURETY CORPORATION,
Surety.

Appeal by the Hoke County Board of Education from order entered 17 March 2022 by Judge Warren McSweeney in Hoke County District Court. Heard in the Court of Appeals 7 March 2023.

Tharrington Smith, LLP, by Stephen G. Rawson & Colin A. Shive, for Appellant Hoke County Board of Education.

No brief filed for Palmetto Surety Corporation, for Surety-Appellee.

No brief filed for Jermaine Stubbs, Defendant-Appellee.

CARPENTER, Judge.

The Hoke County Board of Education (the “Board”) appeals from the trial court’s order (the “Order”) granting Jermaine Stubbs’ (“Defendant’s”) motion to set

aside the forfeiture of his bond for release. On appeal, the Board argues the trial court lacked authority to set aside Defendant's bond forfeiture under N.C. Gen. Stat. § 15A-544.5 (2021). After careful review, we agree with the Board. Thus, we vacate the Order and remand the matter to the trial court.

I. Factual & Procedural Background

On 23 November 2018, Defendant was cited for driving while impaired. On 25 September 2019, Defendant failed to appear in district court. Defendant failed to appear in court again on 25 June 2020, and the court ordered a \$6,000 secured bond. Defendant then failed to appear on 15 October 2020, and the court doubled the bond to \$12,000. Defendant failed to appear once again on 3 June 2021, and the court again doubled the bond to \$24,000.

On 18 October 2021, the trial court issued a Conditions of Release and Release Order, indicating Defendant's "second or subsequent failure to appear in this case." Palmetto Surety Corporation ("the Surety") swore to pay the \$24,000 bond on behalf of Defendant on the same day. On 2 December 2021, Defendant, yet again, failed to appear, and the court issued a bond forfeiture. The court doubled the bond once more to \$48,000. Written notice was issued on 9 December 2021, and Judge Don W. Creed, Jr. rendered a final judgment on 1 May 2022.

On 17 March 2022, Defendant filed a motion requesting the court continue the trial date and set aside the bond forfeiture. Pursuant to N.C. Gen. Stat. § 15A-544.5(b), Defendant requested the forfeiture be reversed on the following basis:

“[D]efendant’s failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled[.]” Also on 17 March 2022, Judge Warren McSweeney granted Defendant’s motion, setting aside the bond forfeiture and rescheduling the case. Despite the Order granting Defendant’s motion, the forfeiture remained active in the Civil Case Processing System. Consequently, on 25 April 2022, the Surety moved to set aside the ordered forfeiture.

On 5 May 2022, the Board objected to the Surety’s motion to set aside the forfeiture and moved to strike the 17 March 2022 order. On 15 June 2022, the trial court granted the Surety’s motion and denied the Board’s, finding the Surety established one or more of the exceptions to set aside forfeiture under N.C. Gen. Stat. § 15A-544.5(b). On 11 July 2022, the Board timely gave written notice of appeal.

II. Jurisdiction

This Court has jurisdiction to address the Board’s appeal from a final judgment pursuant to N.C. Gen. Stat § 7A-27(b) (2021) and N.C. Gen. Stat. § 15A-544.5(h) (2021).

III. Issue

The sole issue before this Court is whether the trial court erred in setting aside Defendant’s bond forfeiture.

IV. Standard of Review

“In an appeal from an order setting aside a bond forfeiture, the standard of review for this Court is whether there was competent evidence to support the trial

court's findings of fact and whether its conclusions of law were proper in light of such facts." *State v. Chestnut*, 255 N.C. App. 772, 773, 806 S.E.2d 332, 334 (2017) (citations and quotation marks omitted). We review "[q]uestions of law, including matters of statutory construction, . . . *de novo*." *Id.* at 774, 806 S.E.2d at 334 (citation omitted).

V. Analysis

The Board argues the trial court erred in finding the Surety established one of the justifications for setting aside forfeiture under N.C. Gen. Stat. § 15A-544.5. We agree.

Relief from a bond forfeiture is appropriate when "[t]he defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of the official court record, including an electronic record." N.C. Gen. Stat. § 15A-544.5(b)(1). There is, however, a caveat "provided by subsection (f) of this section[.]" N.C. Gen. Stat. § 15A-544.5(b). Subsection (f) states:

No forfeiture of a bond may be set aside for any reason in any case in which the surety or the bail agent had actual notice before executing a bail bond that the defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed. Actual notice as required by this subsection shall only occur if two or more failures to appear are indicated on the defendant's release order by a judicial official.

N.C. Gen. Stat. § 15A-544.5(f). "[A] properly marked release order is *per se* sufficient evidence of 'actual notice.'" *State v. Hinnant*, 255 N.C. App. 785, 790–91, 806 S.E.2d

346, 350 (2017). This Court concluded in *State v. Adams* that because “defendant’s [two] prior failures to appear were noted on his release order,” the trial court correctly found that the “surety had actual notice as defined by N.C. Gen. Stat. § 15A-544(f).” 220 N.C. App. 406, 411, 725 S.E.2d 94, 97 (2012).

Here, on 18 October 2021, the trial court issued a Conditions of Release and Release Order, indicating Defendant’s “second or subsequent failure to appear in this case.” Later that same day, the Surety executed a bail bond on Defendant’s behalf. Therefore, the Surety “had actual notice before executing a bail bond that the defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed.” See N.C. Gen. Stat. § 15A-544(f); see also *Adams*, 220 N.C. App. at 411, 725, S.E.2d at 97. Thus, Defendant’s bond forfeiture should not have been set aside because the Surety “had actual notice before executing a bail bond that the defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed.” See N.C. Gen. Stat. § 15A-544(f).

Accordingly, the trial court erred in setting aside Defendant’s bond forfeiture because N.C. Gen. Stat. § 15A-544(f) prohibited the court from doing so. See *id.*; see also *Adams*, 220 N.C. App. at 411, 725 S.E.2d at 97.

VI. Conclusion

We hold the trial court erred because it lacked authority to approve the Surety’s motion to set aside the bond forfeiture. See N.C. Gen. Stat. § 15A-544(f). As such, the trial court’s Order must be vacated and remanded.

STATE V. STUBBS

Opinion of the Court

VACATED AND REMANDED.

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).