

Harmon L. Browne v. State

No. 26,864

Court of Criminal Appeals of Texas

160 Tex. Crim. 131; 268 S.W.2d 131

April 7, 1954, Decided

SUBSEQUENT HISTORY: Motion for Rehearing Denied May 19, 1954.

PRIOR HISTORY: Bond Forfeiture. Appeal from the County Court at Law No. 3 of Harris County.

Hon. Phil Peden, Judge Presiding.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant appealed from the judgment of the County Court at Law No. 3 of Harris County (Texas) in a bond forfeiture suit.

OVERVIEW: The condition of the bail bond was that the principal remain in attendance from day to day and term to term until discharged by order of the court. Defendant argued that the condition that the principal remain in attendance from day to day and term to term "until discharged by due order of the court" and "not to depart the court, without leave" was more onerous than required by law and rendered the bond unenforceable. Defendant argued that the law required only that the principal appear before the court from term to term and from day to day until discharged according to law. The court was unable to conclude that there was any substantial difference existing between the instant bond and that which defendant argued was less onerous. In an applicable and controlling case a bond of similar import was held valid, which bond bound the accused not to depart from the court without leave until discharged by due course of law. Therefore, the court affirmed the judgment.

OUTCOME: The court affirmed the judgment setting forth the conditions of the bail bond.

COUNSEL: *E. B. Duggan* and *J. A. Copeland*, Houston, for appellant.

Wesley Dice, State's Attorney, Austin, *William H. Scott*, District Attorney, and *King C. Haynie*, Assistant District Attorney, Houston, for the state.

JUDGES: Davidson, Judge.

OPINION BY: DAVIDSON

OPINION

[*132] [**131] This is a bond forfeiture case.

The condition of the bail bond here involved reads as follows:

"Now, if the said principal shall be and personally appear instanter at the present term of the County Court at Law No. Two, of Harris County, Texas, now in session in and for the County of Harris, at the Court House thereof, in the City of Houston, Texas, there to remain in attendance from day to day and from term to term until discharged by due order of the Court, to answer the State aforesaid on said charge of a misdemeanor and not to depart the Court, without leave, then, and in that case, this bond be null and void, otherwise to remain in full force and effect and in addition thereto, we are bound for the payment of all necessary and reasonable expenses incurred by any and all sheriffs or other

peace **[**132]** officers in re-arresting the principal in the event he fails to appear before the court or magistrate named in the bond at the time stated therein."

It is insisted that the requirement of the bond that the principal remain in attendance from day to day and term to term "until discharged by due order of the Court" and "not to depart **[*133]** the Court, without leave" is more onerous than required by law and renders the bond unenforceable.

Among the requisites of a bail bond is that the defendant will appear before the proper court to answer the accusation against him and remain in attendance upon the court from term to term and from day to day until discharged from further liability according the law. Arts. 272 and 275, C.C.P.

Appellant insists that no authority exists which authorizes the requirement in a bail bond that the principal remain in attendance upon the court until "discharged by due order of the Court" or that the principal not "depart the Court, without leave."

It is appellant's position that the law requires only that the principal is to appear before the court from term to term and from day to day until discharged according to law and that any additional burdens or conditions imposed under the bond render it a nullity.

There is no question but that a bail bond which is more onerous and imposes additional burdens than required by law will not support a judgment of forfeiture. Authorities attesting the rule will be found under Note 10 of Art. 273, Vernon's C.C.P.

So then, was it more onerous to the principal to be obligated to remain in attendance upon the court "until discharged by due order of the Court," as required in the bond, than that he be obligated to remain in attendance upon the court "until discharged from further liability thereon, according to law," as required by statute?

If there be a difference in the two obligations, such lies in the fact that, in one, the obligation is to remain until discharged by order of the court, and, in the other, the obligation is to remain until discharged by law.

As supporting his contention, appellant relies upon *Turner v. State, 14 Texas App. 168*. In that case, the bail bond, in addition to the statutory obligation, required the accused to "abide the final judgment of court." Such bond bound the accused to do more than appear before the court from term to term and from day to day until discharged according to law, as required by the statute, and, for that reason, was held unenforceable.

[*134] Such is not the case here, for the instant bond made no provision that the principal abide the judgment of the court. We are unable to conclude that there is any substantial difference existing between the instant bond and the statute in the particular discussed.

The next contention is that the bond is more onerous than required by law by obligating the principal "not to depart the Court, without leave."

A bond of similar import was held valid in *Thompson, et al, v. State, 34 Texas Cr. Rep. 135, 29 S.W. 789*, which bound the accused "not to depart from said court without leave until discharged by due course of law." The conclusion there expressed that the bond was not more onerous than required by law appears to be applicable and controlling here.

Appellant next contends that there is a fatal variance between the scire facias and the bond, because the scire facias recites that the condition of the bond is that the principal remain from day to day and from term to term of said court until legally discharged, while the bond contains the additional matter which we have heretofore discussed.

The conclusion heretofore reached that there is no difference between the **[**133]** statutory requisites and the bond is sufficient answer to the instant contention. However, note is taken, here, of the fact that, in prescribing the requisites of citation -- which is, in truth and fact, the scire facias, Art. 427, C.C.P. does not require that the conditions of the bond be stated therein. The fact, then, that the instant citation does so state may be treated as surplusage.

The other assignments of error presented are overruled without discussion.

The judgment is affirmed.

Opinion approved by the court.