

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| STATE OF OHIO, | : | APPEAL NO. C-200196 |
| | : | TRIAL NO. B-1804471 |
| Plaintiff-Appellee, | : | |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| JERMEL SPENCER, | : | |
| Defendant, | : | |
| and | : | |
| HARRY DREIBHOLTZ, | : | |
| Appellant. | : | |

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), and this judgment entry is not an opinion of this court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Harry Dreiholtz appeals the trial court's forfeiture of a \$7,000 surety bond, which he posted on behalf of defendant Jermel Spencer.

Upon Spencer's indictment on several drug and weapons charges, a summons on the indictment was served on Dreiholtz and Spencer. However, Spencer failed to appear before the trial court. As a result, the trial court ordered the forfeiture of the bond and issued an arrest warrant. It set a *capias* bond of \$100,000 with no recall.

Dreiholtz and Spencer were then served notices, which stated that they had 45 to 60 days to bring Spencer before the court to show cause as to why judgment on the \$7,000

bond should not be jointly and severally entered against them. In response, Dreibholtz filed a “Motion to be Released as Surety on Bond and Set Aside Forfeiture of Bond.”

The court held a hearing on Dreibholtz’s motion. Spencer did not appear at the hearing. Dreibholtz argued that his office manager, Sabrina Parr, had located Spencer twice and that she had notified law enforcement of his whereabouts on both occasions. The magistrate determined that Dreibholtz had failed to produce Spencer at the hearing and that judgment should be entered against them, jointly and severally, in the amount of \$7,000.

In an April 2020 entry, the trial court adopted the magistrate’s decision because Spencer had failed to appear at the hearing, he was not yet in custody, and he remained at-large as of the date of the court’s judgment entry. The court further determined that Dreibholtz had not satisfied the requirements that allow a surety to be released of its responsibility under R.C. 2937.04(A).

In Dreibholtz’s sole assignment of error, he argues that the trial court erred to Spencer’s prejudice by not granting Dreibholtz’s objection to the magistrate’s decision and by adopting the magistrate’s decision. Dreibholtz contends that the trial court erred when it forfeited the bond without adequately considering the factors required to be considered by the trial court. Specifically, Dreibholtz argues that he was instrumental in the apprehension of Spencer when Parr notified law enforcement of Spencer’s whereabouts. We overrule the assignment of error.

We conduct an abuse-of-discretion review in the forfeiture of bond appeals. *State v. Yount*, 175 Ohio App.3d 733, 2008-Ohio-1155, 889 N.E.2d 162, ¶ 12 (2d Dist.). This court will not reverse the trial court’s decision unless it is found to be unreasonable, arbitrary, or unconscionable. *State v. Leahy*, 1st Dist. Hamilton No. C-090393, 2010-Ohio- 2876, ¶ 8.

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Upon review of the record, we conclude that trial court appropriately considered the factors in determining bond forfeiture. R.C. 2937.35; *see State v. Am. Bail Bond Agency*, 129 Ohio App.3d 708, 719 N.E.2d 13 (10th Dist.1998).

A surety is obligated by law to ensure a defendant's presence in court—unless the surety can be exonerated. *State v. Lott*, 2014-Ohio-3404, 17 N.E.3d 1167, ¶ 8 (1st Dist.). Dreibholtz did not produce Spencer at the show-cause hearing, nor did he request that the clerk of courts issue a warrant for Spencer's arrest. *See State v. Barnes*, 6th Dist. Sandusky No. S-10-025, 2011-Ohio-799, ¶ 24. Dreibholtz also neglected to exercise his legal authority to apprehend Spencer. *See R.C. 2927.07(A)(1)(b); State v. Kole*, 92 Ohio St.3d 303, 304-305, 750 N.E.2d 148 (2001). Additionally, Dreibholtz offered no good cause defense to show that apprehension of Spencer was legally impossible. *See Barnes* at ¶ 31.

We further strike the affidavit that was submitted with Dreibholtz's appeal as it was not made a part of the record below.

We find that the trial court did not abuse its discretion in forfeiting the bond and entering judgments against Dreibholtz and Spencer. The sole assignment of error is overruled and the trial court's judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., WINKLER and HENDON, JJ.

SYLVIA SIEVE HENDON, retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on July 14, 2021,
per order of the court _____.
Administrative Judge