

**IN THE COURT OF APPEALS 10/1/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-00817 COA**

**AMWEST SURETY INSURANCE CO.**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WILLIAM F. COLEMAN

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

THOMAS E. ROYALS

CYNTHIA A. STEWART

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: CHARLES W. MARIS, JR.

NATURE OF THE CASE: BOND FORFEITURE

TRIAL COURT DISPOSITION: TRIAL COURT GRANTED PARTIAL REMISSION OF BOND  
POSTED BY AMWEST BASED UPON A PRO RATA RULE.

BEFORE THOMAS, P.J., KING, AND PAYNE, JJ.

KING, J., FOR THE COURT:

On July 27, 1994, the Circuit Court of the First District of Hinds County entered an order, which set aside a final judgment *nisi* and authorized the partial remission of bond paid by Appellant, Amwest Surety Insurance Company (Amwest), as surety for Defendant Cedric Russell. The court penalized the Appellant in equal daily pro rata portions of \$13.75 per day and determined that the Appellant was entitled to a return of \$234.00 of the bond. We affirm the decision of the lower court.

### FACTS

On May 2, 1992, Amwest posted an appearance bond, in the amount of \$5,000.00, on behalf of Defendant Cedric Russell, in the Circuit Court of Hinds County, Mississippi. However, Russell failed to appear before the court on August 17, 1992, and the court entered a judgement *nisi*. Subsequently, on November 16, 1992, the court entered a final judgment *nisi* against Russell and Amwest, for the bond amount of \$5,000.00. Amwest paid the amount of the bond, in full, in the sum of \$5,022.00, on April 15, 1993.

On November 2, 1993, Russell made an appearance through counsel, via motions to substitute counsel and discovery. Thereafter, Amwest petitioned the court to set aside the final judgment *nisi* and to authorize the remission of bond paid. Based on Amwest's failure to surrender Russell during the elapsed time, the court assessed a pro rata penalty of \$13.75 per day. The court determined that Amwest was entitled to a return of the bond in the amount of \$234.00. Amwest's objection to the penalty is raised for the first time on this appeal.

I.

#### DID THE TRIAL COURT ERROR IN DETERMINING THE AMOUNT OF BOND FORFEITURE AND REMISSION BASED ON A PRO RATA RULE.

Amwest contends that section 83-39-7 of the Mississippi Code requires specific findings concerning fees incurred by the county, court costs, as well as the reasons for the bonding company's delay in producing the defendant before the court can assess the bonding company on a pro rata basis for each day it fails to surrender the defendant. The statute clearly vests the trial judge with discretion to determine the proper court costs and the remission, if any, of forfeited bond money. The pertinent language of the statute provides:

In the event of a final judgment of forfeiture of any bail bond written under the provisions of this chapter, the amount of money so forfeited by the final judgment of the proper court, less all accrued court costs and excluding any interest charges or attorney's fees, shall be refunded to the bail agent or his insurance company *upon proper showing to the*

*court as to which is entitled to same, provided the defendant in such cases is returned to the sheriff of the county to which the original bail bond was returnable within twelve (12) months of the date of such final judgment, or proof made of incarceration of the defendant in another jurisdiction, and that "hold order" has been placed upon the defendant for return of the defendant to the sheriff upon release from the other jurisdiction, then the bond forfeiture shall be stayed and remission made upon petition to the court, in the amount found in the court's discretion to be just and proper.*

Miss. Code Ann. § 83-39-7 (Supp. 1995). Because section 83-39-7 affords the court discretion in determining the amount of bond forfeiture, our scope of review is limited to an abuse of that discretion.

Amwest paid \$5,022.00 to the clerk of the court, on April 15, 1993, due to its failure to surrender Cedric Russell for an appearance before the court on August 17, 1992. According to the record, Russell made an appearance, through counsel, on November 2, 1993, which was within twelve months of the date of the final judgment *nisi* on the forfeiture of the bond. Therefore, Amwest was entitled to a refund in an amount found in the court's discretion to be just and proper.

The record before us indicates that the court determined the amount of forfeiture and remission based upon a pro rata basis of \$13.75 commencing the day after the final judgment. We find the court exercised the discretion accorded by section 83-39-7. Moreover, Amwest had an obligation to produce evidence in support of any amount inconsistent with the court's determination. Not only did Amwest fail to meet this obligation, it has also failed to provide this Court with any evidence of the trial judge's abuse of discretion, in utilizing the pro rata rule. As a result, we give great deference to the trial court's decision.

Finally, Amwest attempts to analogize *Brown v. State* in support of its argument that the court did not make the proper findings. However, this fails since *Brown* is contextually distinct. In *Brown*, the court did not have any record of the court cost, fees, or costs incurred by Hinds County in apprehending the fugitive. *Brown v. State*, 344 So. 2d 1192, 1193 (Miss. 1977). In the present case, the lower court made a determination, on the record, of the costs and fees. We find that this determination does not warrant interference by this Court.

**THE JUDGMENT OF THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY IS AFFIRMED. ALL COSTS ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**