

43

BONDS, RECOGNIZANCE—COURT MAY REMIT OR REDUCE FORFEITED BONDS—§2937.43 R.C.—AFTER PAYMENT, SUCH REMISSION, REDUCTION GIVES SURETY A CLAIM AGAINST THE COUNTY.

SYLLABUS:

1. Section 2937.43, Revised Code, gives the trial court which renders a judgment of forfeiture of a recognizance in a criminal case the authority, in the exercise of its discretion, to remit or reduce the amount of such judgment at any time during or after the term at which such judgment was rendered, and whether or not any part or all of such judgment has been satisfied by payment to the clerk of courts and by him paid to the county auditor and deposited in the general fund.

2. When a judgment has been entered on a forfeited recognizance and the sureties make payment in satisfaction of said judgment, and thereafter the court, under the provisions of Section 2937.43, Revised Code, remits or reduces the judgment, in whole or in part, the surety who made the payment has a collectible claim against the county for the difference between the amount he paid and the amount of the judgment as modified by the court.

Columbus, Ohio, January 21, 1959

Hon. Earl W. Allison, Prosecuting Attorney  
Franklin County, Columbus, Ohio

Dear Sir:

Your predecessor's request for my opinion reads as follows:

"Does Section 2937.43, Revised Code, permit a court to remit the whole or part of a written judgment duly journalized on a forfeited recognizance against a surety company at any time after term even where the money in satisfaction of the judgment has been paid to the county clerk of courts and by him paid to the county auditor for purposes of deposit in the general fund?"

Section 2937.43, Revised Code, to which you refer, provides as follows:

"When a judgment has been rendered against the defendant, either under section 2937.38 of the Revised Code or by civil action, for the whole or part of the penalty of a forfeited recognizance, the court rendering such judgment may remit or reduce the amount thereof, under such section or when after such rendition the accused has been arrested and surrendered to the proper court to be tried on such charge, or to answer the judgment of said court."

Section 2937.38, Revised Code, referred to in Section 2937.43, reads in pertinent part as follows :

“ \* \* \* If good cause is not shown the court shall then enter judgment against the sureties on said recognizance, for such sum as it sees fit, not exceeding the full amount thereof. The court may remit or reduce the whole or part of the penalty, and render judgment thereon according to the circumstances of the case and of the situation of the parties, and upon such terms and conditions as seems just and reasonable. \* \* \* ”

It should be noted, first, from a reading of the above sections of the code, that the matter of remission is wholly within the discretion of the trial court. The Ohio Court of Appeals, 3rd District, in the case of *Rinsel vs.State ex rel. Kreiter*, 10 Ohio Law Abs., 533, says :

“To hold that the court below *must* have granted relief to the applicants, would be to decide that Sec. 13435-23, G. C. (2937.43, R.C.) confers the mandatory duty to remit instead of a discretionary duty in that respect. The section is barren of words which could possibly have that meaning, and there is a vast multitude of cases holding that the common law as well as the statutes in duplication thereof, make the matter one of judicial discretion. And we know of no case or text book, in conflict with that multitude.”

The second thing to be noted from a reading of Section 2937.43, Revised Code, is that there is no time limitation placed upon the court within which it must act to remit or reduce a forfeiture. It is a continuing authority to be exercised by the court whenever the advisability of such action may arise or judicial discretion dictate. The authority conferred by this section of the code is not affected by, related to, or in any way limited by terms of court, journalization of the judgment of forfeiture, or payment in satisfaction of the judgment.

Sections 2937.43 and 2937.38, Revised Code furnish a guide for the exercise of judicial discretion in remitting or reducing the penalty in stating that such remission or reduction of judgment shall be

- (1) According to the circumstances of the case and of the situation of the parties
- (2) upon such terms and conditions as seems just and reasonable, or

- (3) when, after judgment, the accused has been arrested and surrendered to the proper court for trial or sentence.

There is a paucity of case law in Ohio interpreting this section. However, a recent Minnesota case bearing on the question is in point. The Minnesota statutes on bail forfeiture and remission after judgment are quite similar in content to the Ohio provisions. The Supreme Court of Minnesota in *Shetsky vs. Hennepin County*, 60 N. W. 2d 40, (1953) held:

“Surety making voluntary payment on default of defendant in criminal case will not be penalized by being denied all right of remission of forfeiture of bail for justifiable cause.

“In absence of statutory time limitations, inherent power of trial court to remit or mitigate for a surety a forfeiture of bail may be exercised not only before payment of bail money into public treasury, but also thereafter on showing of good cause, if such remission or mitigation can be made without prejudice to the state.”

The rule as to restitution after payment of forfeited bail into the county treasury is summarized in 8 Corpus Juris Secundum, 219, as follows:

“Where, pending an appeal from the judgment on the bond or recognizance, the amount of such judgment is collected and the judgment is subsequently reversed, the county which has collected the same is liable for its restitution; and, as this duty is an obligation imposed by law, it may be enforced by action against the county.”

Citing *Metschan vs. Hyde et al.*, 58 P. 80 (Oregon).

I believe that the legal logic of the above cited authorities is sound and applicable to the proper interpretation of the bail provisions of this state. It is, accordingly, my opinion and you are advised:

1. Section 2937.43, Revised Code, gives the trial court which renders a judgment of forfeiture of a recognizance in a criminal case the authority, in the exercise of its discretion, to remit or reduce the amount of such judgment at any time, during or after the term at which such judgment was rendered, and whether or not any part or all of such judgment has been satisfied by payment to the clerk of courts and by him paid to the county auditor and deposited in the general fund.

2. When a judgment has been entered on a forfeited recognizance and the sureties make payment in satisfaction of said judgment, and thereafter the court, under the provisions of Section 2937.43, Revised Code,

remits or reduces the judgment, in whole or in part, the surety who made the payment has a collectible claim against the county for the difference between the amount he paid and the amount of the judgment as modified by the court.

Respectfully,

MARK McELROY

Attorney General