

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No.1:08-cr-10086-JDB-egb

JERRY BLANKENSHIP,

Defendant.

**ORDER GRANTING MOTION FOR REFUND OF APPEARANCE BOND AND
DENYING MOTION TO FORFEIT BLANKENSHIP'S APPEARANCE BOND**

Before the Court is a Motion for Refund of Appearance Bond (Doc. 40) filed by Mr. Doug Blankenship ("Mr. Blankenship") on March 11, 2009. Mr. Blankenship appears to have posted cash with this Clerk's Office of the Western District of Tennessee, in the amount of One Thousand dollars (\$1,000) as the required 10% deposit for a Ten Thousand dollar (\$10,000) bond set for the pretrial release of Defendant Jerry Blankenship ("Defendant"). Also before the Court is the Government's Motion to Forfeit Blankenship's Appearance Bond ("Government's Motion" Doc. 41). After consideration of these Motions, as well as the record as a whole, Mr. Blankenship's Motion is GRANTED and the Government's Motion is DENIED.

BACKGROUND

Defendant, by agreement between his attorney and the Government, was granted release on bond at the time of his detention hearing on August 19, 2008. The Order Setting Conditions of Release ordered Defendant not to violate the law, to advise officials of any change of address and to appear at all proceedings as required. There were eight additional requirements which included

executing a bond to forfeit upon failure to appear as required, and to post with the registry of the Court One Thousand dollars (\$1,000). Finally, the Order stated that if the Defendant knowingly failed to appear as required by the conditions of release, he may be prosecuted and, if convicted, sentenced to additional imprisonment. The Order also warned “a failure to appear may result in the forfeiture of any bond posted.”

As required by the Order Setting Conditions of Release, an Appearance Bond was executed, which contained the name and address of Mr. Blankenship, the surety. The conditions of the Appearance Bond are as follows:

The conditions of this bond are that the defendant, JERRY BLANKENSHIP is to appear before this Court and at such other places as the defendant may be required to appear, in accordance with any and all orders and directions relating to the defendant’s appearance in this case, including appearance for violation of a condition of defendant’s release as may be ordered or notified by this Court or any other United States District Court to which the defendant may be held to answer or the cause transferred. The defendant is to abide by any judgment entered in such matter by surrendering to serve any sentence imposed and obeying any order or direction in connection with such judgment.

On August 19, 2008, after Mr. Blankenship paid the \$1,000 deposit, the Defendant was released. Subsequently, a Report Date of October 10, 2008 was set. Defendant’s attorney appeared for Defendant at this hearing and agreed to reset the matter for December 12, 2008. On the rescheduled Report Date of December 12, 2008, Defendant’s attorney again was present and the Court was advised that Defendant was incarcerated in Fayette County. Mr. Blankenship had been re-arrested in October by the Henderson County Sheriff’s Department on drug charges. On February 10, 2009, this Court revoked Defendant’s bond. Subsequently, Mr. Blankenship filed his Motion for Refund of Appearance Bond and the Government countered with its Motion to Forfeit Blankenship’s Appearance Bond.

ANALYSIS

Rule 46(f)(1) of the Federal Rules of Criminal Procedure states that “[t]he court must declare the bail forfeited if a condition of the bond is breached.” Here, the Government has moved for the Court to enter an order forfeiting Mr. Blankenship’s payment of \$1,000. The Government does not allege that Defendant failed to appear at any hearing, rather, the Government’s Motion is based on Defendant’s re-arrest for possession of Methamphetamine with intent to deliver while on supervised release. The Government simply states that the Defendant did not meet the requirements of the bond. While there is no doubt that possession of Methamphetamine violates the conditions of the Order Setting Conditions of Release, the question under Rule 46(f)(1) is whether Defendant’s actions constituted a breach of a condition of the bond.

Appearance bonds are separate from orders setting conditions of release, each carrying their own conditions and consequences. *U.S. v. Shah*, 193 F.Supp.2d 1091, 1094 (E.D.Wis. 2002). In addition, because an appearance bond is a contract, it must be strictly construed. The Sixth Circuit has stated in a failure to appear case that “[b]ail bonds, which do not always use the same language, are to be strictly construed in favor of the surety and no recovery should be had upon such a bond except upon a clear showing of liability under its express conditions.” *United States v. Eisner*, 323 F.2d 38, 43 (6th Cir. 1963); *see also Shah* at 1095; *Ewing v. U.S.*, 240 F. 241, 246-47 (6th Cir. 1917) (bail bond is a contract; surety can be held liable only within the absolute terms of his undertaking); *Dudley v. U.S.*, 242 F.2d 656, 658 (5th Cir. 1957) (“Bail bonds in criminal cases are contracts which must be strictly construed in accordance with their terms”).

When faced with the issue of allowing forfeiture of appearance bonds for reasons other than a defendant's failure to appear, circuits have reached conflicting results. Compare *Brown v. U. S.*, 410, F2d 212 (5th Cir. 1969) (forfeiture of bail permitted for violation of travel restriction) and *U.S. v. Stanley*, 601 F2d 380 (9th Cir. 1979) (same) with *U.S. v. Shah*, 193 F.Supp.2d 1091, 1094 (E.D.Wis. 2002) (forfeiture of release bond may not be predicated upon violation of release order, rather forfeiture may be imposed only for violation of condition of bond; it is not enough to show violation of terms of order setting conditions of release); and *U.S. v. Pereida*, 75 Fed. Appx. 213 (5th Cir. 2003) (appearance bond not subject to forfeiture on grounds that defendant did not comply with condition of release when such condition was not incorporated into the bond). The Government has not cited, and this Court has not found, case law in this Circuit directly on this issue. It would seem forfeiture as a means of punishing a defendant who has violated bail conditions other than appearance remains an unsettled question.

Nevertheless, in light of the court's mandate in *United States v. Eisner* that bail bonds are to be strictly construed in accordance with their express conditions, and consistent with basic contract law principles, this Court finds that forfeiture is inappropriate in the present case. This Court places significant weight on the fact that the Appearance Bond, the only document applicable to the surety Mr. Blankenship, has as its only condition the Defendant's appearance in court. The Appearance Bond does not include as a condition, and thus Mr. Blankenship did not guarantee, Defendant's compliance with the other terms of the separate release order. Indeed, the conditions of the Appearance Bond specifically include "appearance for violation of a condition of defendant's release," but do not include violation of the other listed conditions of the release order as grounds for forfeiture. Because the Defendant did not violate the express conditions of

the Appearance Bond, forfeiture is inappropriate.

Even if Defendant had breached the terms of the Appearance Bond, however, Rule 46(f)(2)(B) allows the Court to set aside the bail forfeiture if it appears that justice does not require the forfeiture. Justice does not require bail forfeiture based on the facts of this case. Defendant's attorney was present and cooperative at each occasion his appearance was required. Moreover, Defendant is incarcerated and this Court has revoked his bond; thus, there is no danger that he will fail to appear before the Court. The Government has failed to allege that they have suffered any great cost, inconvenience, or prejudice. Quite simply, the Court can find no reason that Defendant's surety, a relative, should be required to forfeit the \$1,000. *See United States v. Scott*, 1994 U.S. App. LEXIS 20218 (6th Cir. Ky. July 29, 1994) (factors courts consider when setting aside forfeiture include the willfulness of the defendant's conduct in failing to appear; mitigating circumstances; the cost, inconvenience, or prejudice to the government; the amount of the bond; and whether the surety was a professional bondsman as opposed to a friend or a relative).

It is therefore ORDERED that Mr. Doug Blankenship's Motion for Refund of Appearance Bond is GRANTED and the Motion to Forfeit Blankenship's Appearance Bond is DENIED.

IT IS SO ORDERED.

s/ Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

DATE: March 27, 2009