

ORAL ARGUMENT — 3-3-99
98-0784
MELTON V. STATE OF TEXAS

QUALITY OF TAPE(S) WHEN ORAL ARGUMENTS ARE BEING TAPED AWAY FROM OUR COURT ARE SOMETIMES VERY MUFFLED, VERY HARD TO UNDERSTAND. A LOT OF BACKGROUND NOISE IN THIS PARTICULAR TAPE. HARD TO UNDERSTAND QUESTIONS FROM SOME OF THE JUDGES.

HALL: If you're in possession of some property in the State of Texas, and three years go by and nobody makes any claim to it, and you don't know the name and address of the owner of the property, you're required to first report that to the State of Texas and then transfer it. That three-year period is commonly referred to as dormancy period. The court below ruled that with respect to cash bail bonds, the dormancy period begins when final judgment is entered in the underlying case in which the bail bond was posted.

ENOCH: Does that mean the appeal period that's going on doesn't count? I want to know what you mean by final judgment.

HALL: I believe, although that wasn't an issue in this case, that what was contemplated was a final, final judgment after appellate remedies are exhausted.

 The point I wanted to start with is there is no evidence in this record that any of the criminal cases in which these cash bail bonds were posted had proceeded to final judgment; and, therefore, I think that holding is advisory. I think it's inappropriate to issue an opinion about the effect of a final judgment when there is no final judgment evidenced in the record. It's at least imprudent. I have argued and continue to argue that the court below was without authority to issue that opinion. But as to the merits of why it was incorrect in addition to that when this suit was filed §117.002 of the Local Gov't Code had not yet been amended. And when the State filed suit seeking to compel transfer of several million dollars of cash bail bond money, Dallas County said, Well these cash bail bonds are governed by the Code of Criminal Procedure, and none of these cash bail bonds at issue have been released by the TC. And in Art. 17.02 of the Code of Criminal Procedure says, and I'm paraphrasing, That the custodian of the funds is to hold them until ruled to release them to the defendant by the court. Dallas county said, We're not going to release these because the court hasn't ordered us to. And besides that, they can't really be abandoned if the court hasn't released them and the defendants not yet entitled to them.

O'NEILL: But the court can't release them until the defendant petitions the court to do that. And if you can't find the defendant, he can't petition the courts. Under your argument they

could be there in perpetuity?

HALL: Well I think that is the Catch 22, that the State has pointed out. And first of all, that is true in some counties. It tends to vary from county to country.

HECHT: Two million dollars here or is it more?

HALL: It was \$2 million or so, plus interest, I believe is what the actual claim was.

ENOCH: Is there anything that prevents the TC's here from just ordering the release because the property has been abandoned?

HALL: No. And there is nothing to prevent the local custom from releasing the bond at the same time you enter final judgment.

HECHT: But if you don't, then what's the answer to judgment in his question?

HALL: From our point of view is that, yes, there are going to be some occasions when a criminal defendant is entitled to his bond and just disappears and doesn't claim it. And there is no trigger for release of the bond. And presumably the legislature was aware of that eventuality when it devised the system that it devised.

O'NEILL: Isn't that how most DC operate? They provide some sort of movement from the defendant to release the funds. For example: a guardianship situation. There must be some triggering motion or action from the party who deposited the funds to get them released?

HALL: Yes, I agree. And typically it is _____ the final judgment. I don't presume in this case that there are final judgments in these cases. So that's kind of a hypothetical eventuality that I would urge you not to address.

OWEN: But you are taking the position that you get to keep the funds in perpetuity?

HALL: I'm taking the position specifically, that the dormancy period begins, not with final judgment, but when the court orders the release of the funds.

O'NEILL: But there's no mechanism for the court to order release of the bond if they don't do it at the same time the final judgment was entered?

HALL: The person entitled to the release of the bond could come subsequent to that.

OWEN: Suppose they don't ever show up, so you get to keep the money?

HALL: That's correct. I get to keep the money.

GONZALES: If the person dies, does the estate have a claim or what happens if the person dies?

HALL: I think that the estate would have the same _____. And this is just based on general principles. I don't specifically know. I think the estate would have the right to petition the court for the release of their bond.

HECHT: And if you keep the money, you don't have to report to the state or anybody else that you've got it?

HALL: That's correct.

HANKINSON: Is the TC order purely ministerial?

HALL: I believe that the state of the law in Texas is that once the defendant complies with the conditions of the bond, which is primarily appear for trial and final judgment is entered, the TC has little or no basis for withholding the release of the bond. I think ministerial would not be inaccurate. I would have to agree with that.

HECHT: Is it true that you can get the money back without a court order, the defendant?

HALL: I don't believe that is correct.

HECHT: The state says there are some counties if you show up with the judgment, the defendant does, he can get his bond back?

HALL: It may well be that some counties follow that informal procedure. The Code of Criminal Procedure, however, says, Upon order of the court, the custodian releases it.

HANKINSON: Why would it take the judgment being final after appeal as opposed to being final in the TC before the period would start running, if in fact, the defendant is entitled to the money once the TC enters judgment?

HALL: That's a good point, any you may well be right. I think it's a moot point again, because there is no evidence of any final judgment.

HANKINSON: I understand that's the specifics of this case. But for purposes of interpreting the statute...

HALL: I think your point is well-taken. The state has argued, that 117.002 governs the disposition of this case. That statute says, For court registry funds in the possession of a clerk...after three years from final judgment they are to be transferred to the state without further order of the court. Our position was, No, the code of criminal procedure governs these. That's a specific statute which controls over the general. Well apparently the legislature got wind of our little dispute, or at least if there was some disagreement in the state about how this should be addressed, and they amended §117.002...

HECHT: Do other counties disagree?

HALL: I don't know. No one has called me asking for permission to join in on this. They tend to let the big counties make these fights, frankly.

OWEN: Can cash bail bonds ever be abandoned property under the Unclaimed Property Act?

HALL: I think so.

OWEN: And what would be required for it to become abandoned property?

HALL: I think the court has to release the bond and then 3-years pass without a claim to it.

ENOCH: What interest does Dallas County have in this? I guess this is the treasurer and the county clerk who are in fear of being in violation of their courts if they release the funds to the state under this. This is what's going on here?

HALL: I think the treasurer was involved in another dispute that's not part of this part of the appeal that concerns some uncashed checks that were in his possession.

ENOCH: You're really just interested in having the court say so. You don't care if we say, No, the entering the order by the TC is ministerial. You don't really have a concern about what the result is, just as long as the officers are not in contempt of their own courts for releasing these funds?

HALL: I don't really agree with that. I think the Dallas County clerk certainly wants to comply with its court's order in its understanding of the Code of Criminal Procedure. I think that it also wants to give proper effect to the legislative intent as evidenced in the 1997 amendment to 117.002. But beyond that, to be frank with you, Dallas county probably does some draw financial benefit in having this money.

ENOCH: But this is not Dallas county's money? Under the statutory schemes it would

never be their money.

HALL: That's correct. It's money that they are holding, that they may earn some interest on. That they would not be entitled to keep by the way if the defendant showed up and asked for the money other than an administration fee.

HANKINSON: Who is the holder of the money on a day-to-basis?

HALL: I'm not sure. It's in the county depository. Mr. Bullock, has supplied an affidavit that said, The sheriff takes the money, and it goes into the county depository, and I've got a record of it here, and I'm part of the process of refunding it, but I'm not strictly in possession of it.

HANKINSON: If we do have an order entered in a case on a cash bail bond order that it can be delivered it to the defendant, that all conditions of the bond have been met, and the defendant does not claim it and it becomes abandoned property, who has the duty under the statute to report to the state under the reporting requirements? And then, who has the duty to deliver?

HALL: Because Mr. Bullock has made reports in the past, he's the one responsible for making the report. I think the county through its commissioners' court and arguably the county auditor would be responsible for the delivery.

HANKINSON: Is there a gap in this statute some place?

HALL: I think it's partly a function of the unique structure of county government.

HANKINSON: As a follow-up to Justice O'Neill's earlier question, that you could have a circumstance where you have property that has in the practical sense been abandoned. But what you're saying in the technical sense under the statute doesn't constitute abandoned property. It can sit in the Dallas county treasury from now until forever with no one claiming it, and no effort made as the legislature intended under the Unclaimed Property Act to have it returned to its owner?

HALL: Right. And this is precisely what I presume the legislature considered when it made a deliberate decision in 1997 to insert the clause, "Except cash bail bonds," from 117.002. So they've made a deliberate choice, not only to leave these under the jurisdiction of the TC for better or worse, but also to specifically exempt it from 117.001, automatic transfer without an order.

HANKINSON: But perhaps thinking that there would be an order in every case, so it wouldn't be a problem?

HALL: From a policy making point of view, I see that the CA tried to further the purposes of the Unclaimed Property Act. And I'm not saying that their decision was unwise in the abstract. I am saying that the policy is made by the legislature. The legislature apparently made the

decision not to further the Unclaimed Property Act at all costs in this case and that that should have been deferred to.

O'NEILL: You don't believe that the statute inserting "except cash bail bonds," was intended to take cash bail bonds out of the Unclaimed Property Act?

HALL: No, not at all I think it was intended to leave it under the jurisdiction of the TC until the court released it after which it would become subject to the terms of the...

O'NEILL: So they are still funds deposited under this chapter - 117?

HALL: I think that's accurate.

O'NEILL: If they are still funds deposited under this chapter, then the amendment logically only relates to whether they are automatically reported and delivered or not?

HALL: I think that it relates also to when the dormancy period begins. I think that they've made the clear choice to take it outside of 117.002, which says you transfer it without a court order after 3 years from final judgment.

GONZALES: But the provision in the amendment, that only relates to first sentence. It's not in the second sentence that talks about dormancy.

HALL: I think it's part of 1 pack.

OWEN: You said a minute ago you thought that the State got or the legislature got wind of your dispute and you were about to finish that sentence when someone asked you a question.

HALL: I was just going to qualify it by saying that maybe it was a more general understanding that there was a disagreement statewide about whether the Code of Criminal Procedure governs or 117.002. And maybe it wasn't specifically out of this lawsuit.

ENOCH: The Code of Criminal Procedure could apply, but that doesn't necessarily answer the question of the dormancy period does it? I mean they are _____ a lot of funds out there because of contractual agreements or questions of law that it takes some persons affirmative act to release funds that don't belong to them. But they don't know who to release the funds to and so they get released to the state upon the state's claim. It just so happens in the Code of Criminal Procedure the person that's got authorized release is this judge over there, but that somehow doesn't play into when it's abandoned. It's abandoned while sitting in the judge's depository, because the judge doesn't have anybody to release it to. So the state comes along _____ and the judge releases it to the state.

HALL: In this hypothetical scenario, that could happen. We don't know that that's the case with any of these bail bonds. I think that the procedure for allowing the state to go to the TC and petition for release of the bond is inappropriate, because the legislature created the state's rights to unclaimed property and they didn't give them that right. And I think when they create a right and a remedy like that it's exclusive. And that's one of the reasons the court erred.

BAKER: If you answered Judge Gonzalez about the current version of .002, is a package situation, although the second sentence doesn't include "except cash bail bond." But your viewpoint is that it should have that phrase in there to carry out your viewpoint of when the dormancy begins, is that right?

HALL: No, I don't think it would be necessary to actually physically insert it in there. I think it's implied, and I think the CA agreed. They acknowledged that 117.002 by the plain language of the statute says, It's not abandoned, so you don't have to report it or deliver it. And the court said, Yeah, but they must not admit that. So the court below, I think, agreed with my interpretation that except cash bail bond leads to the conclusion that the dormancy period is not triggered by the final judgment. And I think that the court's opinion at 151 says, Generally we would go with the plain language of the statute, but this time we think that leads to an absurd result.

BAKER: Which is?

HALL: Well they didn't specify. They simply said that they didn't think the comptroller should have to take any action before a report had to be made. My position is, they've ignored the irony that they reached an absurd result by creating this category of property that's unclaimed, that's abandoned for the reporting purposes but not abandoned for the delivery purposes.

BAKER: You're speaking about what the CA's did in their particular writing. But you read the plain language and the bail bonds don't need to be reported or delivered without a court order. But the real _____ is when the dormancy period starts?

HALL: That's where I would pend _____.

BAKER: _____ it's triggered by §17.01 rather than this...

HALL: Well 17.02. I think more importantly that that's what I think the legislature determined when it amended 117.002.

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RESPONDENT

POWERS: The overwriting policy of this state for the past 40 years has been the Unclaimed Property Act. The issue raised by this case is, Can the Dallas county court keep in

perpetuity what is \$3 million in accounting of cash bail bond money that has been abandoned in the registry of the court?

The whole case can be summarized by the characterization that the Dallas county clerk asked for an inch, and it has taken a mile with regard to this amendment to the Local Gov't Code.

O'NEILL: How do you respond to your opposing counsel's argument that the CA's holding is purely advisory because there is no evidence that there have been any final judgments?

POWERS: Well I think that's holding in _____. The question is one of statutory construction. And you don't need factual evidence in order to get statutory construction on whether or not the question was, Is cash bail bond money personal property subject to the Unclaimed Property Act? And the reason that the parties presented competing motions for summary judgment on that issue was so that the issue could be decided before we entered into extensive discovery.

Even apart from the fact that I don't think we needed any kind of evidence in order to get an issue of statutory construction decided, there were competing affidavits submitted with the record. And in those affidavits the state said, We have audited Dallas county clerk's office and we have found cash bail bond money that meets the definition of unclaimed property in that a judgment has been entered, and the defendant has not recovered their bail bond money and more than 3 years has passed. In response to that, Dallas county said, Yes, we do have this money on deposit with the clerk, but it's not susceptible to the Unclaimed Property Act because in addition to the judgment the Code of Criminal Procedure requires yet another order to release this money to the defendant.

HECHT: It does seem to say that.

POWERS: The case law under art. 17.02 is clear that an order of release is the judgment. And that is what the practice is in many counties.

OWENS: What about the bill analysis, how do you address that? It seems pretty clear from the bill analysis that the legislature recognized there was a conflict between the local gov't code and the criminal code of procedure. And so we're going to resolve that and say, With respect to cash bail bonds, the code of criminal procedure governs.

POWERS: I will concede the legislature perceived that there was a conflict between the local gov't code and the code of criminal procedure. I don't see it. The Code of Criminal Procedure governs the relationship between the defendant and the party when the case is pending. The Unclaimed Property Act comes into play when the defendant is no longer able or has capacity to enforce his rights under the Code of Criminal Procedure. He's not asking for his bail bond money

back. He doesn't know about it. But it's the judgment that fixed his right to recover that bail bond money.

OWEN: Do you agree that the statutory language doesn't really say that? It intends to say the opposite - You need another order.

POWERS: No, I can't agree with that. I think a judgment is a class of order. So is an order of dismissal. And the practice in many Texas counties is that the judgment serves as the order that entitles the defendant to recover his bail bond money, and that's in the record. At least from the Travis county treasurer all she requires to issue the bail bond money to the defendant is that he present his judgment, his receipt that he posted the bail and positive identification.

OWEN: So you disagree with the Austin CA too then to the extent that Austin said, We would rather have an order and we are going to allow the state to go in and petition the TC for the order?

POWERS: We argued in the CA that the judgment was the only word that was needed.

OWEN: I understand. And the Austin court rejected that apparently and did decide that an order was required, and that's why it gave the state the right to go in and petition the TC for such an order?

POWERS: What I think the Austin CA did was look at the _____ language in the house bill analysis, and come to the conclusion that for whatever reason the legislature is thinking there is another order required, the order to release cash bail bond money to the state in order to effect that transfer. Because it's clear from the purpose language of the house bill that the legislature is assuming the cash bail bond money is subject to the Unclaimed Property Act.

HANKINSON: Is there any authority of the CCA interpreting the statute as to whether or not the judgment is sufficient or that a separate order is required to release the bail bond?

POWERS: There is nothing on that point. In *McConathy*, out of the CCA, is the one that establishes that a judgment vests in the defendant the absolute right to recover their bail bond money.

HANKINSON: But in terms of interpreting the Code of Criminal Procedure the way the Austin CCA did in this instance and the way the legislature did in this instance apparently thought it was written to require an order, there's not any case law in Texas that says whether or not a separate order is required?

POWERS: There's not.

HANKINSON: Is there anything in this record with respect to what the regular practice is of

the trial judges in Dallas county? Do they typically enter orders releasing bail bonds or does the judgment suffice as a matter of practice in Dallas County?

POWERS: There is nothing in the record with regard to Dallas county. My understanding is they do require a separate order. They have at least since 1995.

HANKINSON: So what position does that put the Dallas county clerk and Dallas county treasurer in if the TC's are saying to him: Sorry you can't have the money because we have to have an order under the Code of Criminal Procedure; and the State of Texas is saying turn it over.

POWERS: I can tell you what the practice has been. Until this date, the clerks all over the state have recorded and delivered the funds in the registry of the court without an order from the judge in the underlying case.

HANKINSON: In Dallas county have they been regularly reporting cash bail bonds without an order from the TC, or has that not been regularly reported?

POWERS: It has not been regularly reported.

HANKINSON: And so apparently the clerk and treasurer of Dallas county have determined that they can't do anything with this money until a trial judge over at Crowley says, This money is being released and is now available to the defendant. So what should they do under those circumstances when the trial judges are saying, We're not going to allow you to have this money and you can't release it without an order of the State of Texas saying - Turn it over. Who prevails under those circumstances if you are a public official found in those circumstances?

POWERS: I would assume that's where we are with this. The Dallas county officials told us they weren't going to turn over the money. And so we sued them to turn over the money.

ENOCH: And so does it solve your problem if we go with the Austin CA that says, You can petition those courts to release the money. And so they release the money and so we all go away.

POWERS: It's a burdensome remedy, but it's one that we feel we can effect perhaps with most counties either by just implementing a standing order that all courts will...

ENOCH: Mr. Hall says it's almost nearly a ministerial act. So it seems to me, Yeah, just a form order you have. You fill in the case number and ship up and ask the court to enter it.

POWERS: That's what we anticipate.

ENOCH: And the clerks would deliver the money to you.

POWERS: Exactly.

HECHT: If that's what the legislature thought, what were they accomplishing in the 1991 amendment to the local gov't code?

POWERS: In 1991 the legislature was furthering the purpose of getting abandoned cash money out of the court's registry and transfer it to...

HECHT: And how would they do that? If they thought another order was required why would they pass this amendment? It looks like this _____ to the counties?

POWERS: There is a couple of reasons why they aren't letting it go to the counties. The first would be, I would cite to the purpose language of the HB, which assumes that it is unclaimed property, but simply being to go through another step of getting the court in the underlying case to release it.

HECHT: It looks like they would say, Any funds and especially cash bail bonds would be under this statute rather than do it the other way and say, Or if any funds except cash bail bond.

POWERS: I think what it says for clarification, Cash bail bond money is exempt from transfer until released by the court. So what it is assuming is, yes, this is unclaimed abandoned property, but it's not going to the state until it's released.

HECHT: By a second order?

POWERS: By a second court order. I think that's what the Austin CA understood it to mean.

HECHT: But that's your position, that's what the legislature thought?

POWERS: Yes, and that's our position here. We are seeking affirmance of the Austin CA's decision.

GONZALES: Is there anything in the code of criminal procedure that requires an order for accounting reports of these kind of assets?

POWERS: No.

GONZALES: The amendment to the local gov't code, do you agree that the purpose of that amendment was to resolve an apparent conflict to the code of criminal procedure and the local gov't code regarding the disposition of these kinds of assets?

POWERS: I will agree that that's what the legislature perceived when it passed that amendment.

GONZALES: Is there an obligation in the code of criminal procedure to report the assets?

POWERS: No, the code of criminal procedure doesn't address the Unclaimed Property Act at all.

GONZALES: Where is the obligation then to have a court order before you report these assets?

POWERS: Well I think what their theory is, that Dallas county says is, If you look at our 17.02, the code of criminal procedure, and you read it the way we do, That an additional court order is required in order for the defendant to recover the bail bond money. And the state stands in the shoes of a defendant when it requests this money to be in the record. Then the state is barred by the same procedural hurdle that we're imposing in front of defendants in order to get their cash bail bond money back. And if the defendants' rights are defeated by this additional court order in order to get their bail bond money back, then so is the state's right to assume custodianship of the money.

HANKINSON: Can anyone else under the code of criminal procedure petition the TC for an order, if in fact, a separate order is required to release bail bonds?

POWERS: Defendants may petition. In practice they can assign their bail bond money to another person. It's common that they assign their bail bond money to their attorney. In practice is for the attorney to go recover the money. So I assume that whoever the defendant assign their money to could petition for it.

HANKINSON: Do you agree though that there is not anything in the code that could be interpreted to give the state of Texas the right to petition the TC or Dallas county for that matter to petition the TC to release?

POWERS: No. And I think it is a mischaracterization of what the CA really intended to do to call a petition, because I think _____ some sort of independent cause of action. I think really all that the CA has done is say - is try to harmonize the Unclaimed Property Act with this amendment.

HANKINSON: But in fact for a third-party to come in and move the TC to release the money there is not anything in the Code of Criminal Procedure that could be interpreted to allow a third-party to come in and do that?

POWERS: Not that I am aware of.

HANKINSON: If in this case we were to disagree with you and determine that a separate order is required, does this record then support the court disposing of the case on the summary judgment motions, or are there fact issues with respect to whether or not there are separate order with respect to a lot of these bail bonds?

POWERS: I don't think there are any fact issues. The money that's in the registry of the court is there because the defendant has never asked for it.

HANKINSON: But if a requirement for it to become abandoned property under the statute is that there be an order out of the TC releasing it?

POWERS: Yes.

HANKINSON: We don't have those orders in all of these cases or any of these cases I presume?

POWERS: I presume it's none of the cases.

HANKINSON: The county also takes the position that even if we agree with you, that some of these bail bonds have in fact already been refunded or forfeited, do you agree or disagree with the status of these particular bonds? There is some dispute between the county and the state as to whether or not the county really has all these bail bonds.

POWERS: There is a dispute over the amounts.

HANKINSON: So summary judgment is not proper in this case with respect to the amount at issue?

POWERS: That's right. What I would like to note for the court is that what Dallas county is representing to the court is that it knows that it's holding the cash bail money of its citizens of people who have complied with the requirements of their bail. They have appeared for judgment. They have failed to request, go that extra step and request their money back. The Dallas county clerk also is stating the fact once the 3 years has passed even the state may not stand in the shoes of the defendant and recover that money. This defeats very important public purposes that the legislature intended with the Unclaimed Property Act. First, that unclaimed property is going to be aggregated in the state's treasury for the benefit of this state. And secondly, the state is under a duty to notify the true owners of the money. And the state accomplishes that by 1) having an internet site where all owners' names are posted, and they can fax us that information at any time; and also every year when new newly recorded owners come into the state, the state publishes all those names in the state's newspapers. The State of Texas has a very successful program with regard to its unclaimed property in that approximately 1/3 of the owners are reunited with their property through this program. What the Dallas county clerk is attempting to do is put this very small amendment that really only

addresses the question of transfer of the bail bond money to the state is say, No this money is not going to be transferred because this ministerial order is not here. This has been tried before with holders, who have come up with the idea that, Well the true owner has really no claim for this money any more because limitations has passed, and if they were to sue us for this money we wouldn't have to turn it over to them. That's the El Paso electric case that was cited by Dallas county for the proposition that this state stands in the shoes of the true owner.

Several of these cases were decided in favor of the holders, that they didn't have to turn the money over to the state. So the legislature went back and amended the Property Code and said, That affirmative defenses in the form of limitations is not going to be the Unclaimed Property Act, and this property is going to be turned over to the state and reported.

So I want to come back to is, Dallas County clerk is saying, There is a ministerial order that needs to be entered either for the defendant themselves to recover this money, or for the transfer to be effected to the state. And the state will agree that the CA arrived at a harmonization of these statutes that works to fulfil both purposes of the Unclaimed Property Act in what appears to be the intent behind the amendment of the Local Gov't Code that the legislature believes another order is required in order to effect the transfer to the state.

But the important point that the Austin court kept in mind was that the dormancy period began with the judgment, because that's when the rights were fixed in the owner of the money. And that's Texas law. Judgements fix everyone's rights relative to the money in the registry of the court. And that was the important point that the Austin court reached. The fact that a second order needs to be entered to effect transfer, that's burdensome and _____ but it's not something that is insurmountable and it doesn't permit Dallas county to keep the money in perpetuity.

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REBUTTAL

OWEN: Isn't the defendant's right to get the bail money back a property right?

HALL: I think that's probably a correct statement.

OWEN: And why isn't it a fair construction of the statute to say that after 3 years when the defendant has not exercise that property right that he or she has abandoned that right and the state can stand in the shoes of the defendant and petition for the bail bond money back?

HALL: First of all, again, I respectfully disagree about the state of the record with respect to whether there is any evidence of a final judgment in this case. There isn't any. But to answer your question, I think that while I agree with you in the abstract in terms of general principles of law, the Code of Criminal Procedures says, Upon order of the court. And I would argue that the

right does not vest until the court orders the release of the bail bond money.

OWEN: Assuming I agree with you on that point, and the defendant would have a right to come in and petition for a court order to release the money, what is flawed about the theory that after 3 years the state steps in to the defendant's shoes, that the defendant has abandoned the right to come in and petition to get his or her cash bail bond back. The state then comes in the place of that defendant and takes that abandoned property right and asserts it and asks the TC to enter the second order releasing the cash money to the state who then stands in the shoe of the defendant. What's wrong with that analysis?

HALL: Two things. First of all, I agree that the state stands in the shoes of the defendant. But I don't think that that right comes until the court releases the bond.

ENOCH: If I understand Ms. Powers' argument, it is the entry of the judgment that then entitles the defendant to the money back from the bond. Your argument it seems to me is, No, until the court releases the funds, the defendant is not entitled to the funds. Right? That's your argument?

HALL: That's correct.

ENOCH: So if we go back and we look at the effect of a bond, which is basically conditioned on the defendant showing up at court and we determine that no it's not a judgment after the appeals are done that makes it final, but is the entry of judgment that is the trigger to the defendant's right to have the bond put back, do you lose?

HALL: I don't think so. I started thinking, well it might make a difference if the appeal is by the state on the point of law or by the defendant. If the defendant is appealing a conviction, he might not be entitled to the bond at that point. I'm not sure.

ENOCH: But the state seems to be arguing that a bond is an appearance issue, and when the judgment is entered the conditions of the bond have been satisfied, and all that's left is for the defendant to petition the court. If that is a correct interpretation, then does Dallas county lose?

HALL: I don't think so. I don't agree with the interpretation. But I think the way I would look at it is this, the right to the release of the bond, even if it's ministerial doesn't come until the order is signed. The right to the release of the bond doesn't come on final judgment until the court says, You can have the bond.

ENOCH: But could the court refuse to sign that order?

HALL: In a typical sense of which I am aware it would not and could not. Which reminds me there was a question about, is there a case anywhere that says there has to be a separate order? I am not aware of one. The *DeLeon v. Pennington* case out of the San Antonio CA, is a case

where they ruled the defendant was or maybe it was a surety entitled to the bond. And they instructed the TC to order the custodian to release the bond.

BAKER: She cited *McConathy v. State* as authority for saying that the final judgment fixes the defendant's right to recover the cash bail bond, and _____ that's the order that's contemplated by 17.02?

HALL: I don't read it that way.

BAKER: Was there specific language in a criminal TC final judgment a conviction thing. You're now convicted, you are going to be sent away, but you could comply with the conditions of the bond and have it refunded to you.

HALL: Not necessarily, although I believe that some courts could put that in their judgment.