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**Oct 28 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Orangeburg County  
Honorable R. Markley Dennis, Jr., Circuit Court Judge  
Appellate Case No. 2022-000472

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The State,

Respondent,

vs.

Bowen Gray Turner,

Respondent,

In re: Victim C.B.,

Appellant.

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**INITIAL BRIEF OF RESPONDENT  
STATE OF SOUTH CAROLINA**

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ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 15608

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

JOHN WILLIAM WEEKS  
Solicitor, Second Judicial Circuit

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE.....2

ARGUMENT.....4

    I.    Victim’s appeal should be dismissed as there is no right to appeal afforded a victim. Further, the case is moot as there is no relief which can be granted because the guilty plea is final, and the Court may not reopen the guilty plea to provide Victim her requested relief. ....4

CONCLUSION.....9

## TABLE OF AUTHORITIES

### Cases

<u>Booth v. Grissom</u> , 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975).....	7
<u>Curtis v. State</u> , 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) .....	8
<u>Ex parte Littlefield</u> , 343 S.C. 212, 221, 540 S.E.2d 81, 85 (2000).....	6, 7
<u>Gainey v. Gainey</u> , 279 S.C. 68, 69, 301 S.E.2d 763, 764 (1983) .....	7
<u>McKane v. Durston</u> , 153 U.S. 684, 687, 14 S. Ct. 913, 915, 38 L. Ed. 867 (1894).....	4
<u>Reed v. Becka</u> , 333 S.C. 676, 681, 511 S.E.2d 396, 399 (Ct. App. 1999) .....	5
<u>Richland Cnty. Sch. Dist. 2 v. Lucas</u> , 434 S.C. 299, 306, 862 S.E.2d 920, 924 (2021).....	7
<u>Sloan v. Greenville Cnty.</u> , 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).....	7

### Other Authorities

S.C. Code Ann. § 16–3–1510 (Supp.1997) .....	4
S.C. Const. art. I, § 24 (B) .....	5, 6

## **STATEMENT OF ISSUES ON APPEAL**

- I. Victim's appeal should be dismissed as there is no right to appeal afforded a victim. Further, the case is moot as there is no relief which can be granted because the guilty plea is final, and the Court may not reopen the guilty plea to provide Victim her requested relief.

## STATEMENT OF THE CASE

Bowen Turner sexually assaulted Victim on June 2, 2019. (4/8T. 13; R. \_\_\_\_). He was originally arrested and charged with criminal sexual conduct first degree. On August 5, 2019, Turner was released on bond with strict requirements. (Bond Order dated August 5, 2019; R. \_\_\_\_). On March 25, 2022, the State filed a Motion to Revoke Bond against Turner and a hearing was scheduled on April 8, 2022.

Prior to the hearing, the State and Turner entered plea negotiations which resulted in a plea hearing on April 8, 2022. Prior to the hearing, Victim served and filed a Motion to Enforce Victim's Rights and to be Heard Prior to Guilty Plea seeking to enforce rights under the South Carolina Constitution Article I, section 24, commonly known as the Victim's Bill of Rights. Victim had previously served and filed a Petition for Writ of Mandamus and a Rule to Show Cause related to alleged bond violations by Turner. (4/8T.2; R. \_\_\_\_).

At the April 8 hearing, which occurred before the Honorable R. Markley Dennis, Jr., Judge Dennis refused to consider the filings by Victim, concluding they were untimely. (4/8T. 6; R. \_\_\_\_). At the April 8 hearing, Turner waived presentment to an indictment for assault and battery first degree. (4/8T. 10; R. \_\_\_\_). After a colloquy with the plea court and a recitation of the facts by the solicitor, Turner admitted his guilt to the underlying charge. Prior to the court accepting the plea, the solicitor noted Victim's desire to be heard. The plea court indicated it would hear from the victims fully after he accepted the plea. (4/8T.15-16; R. \_\_\_\_). The plea court then accepted the plea and gave the victims' attorney and the families the ability to speak. After, Judge Dennis refused to accept the recommended sentence and sentence Turner to a YOA sentence for an indeterminate period not to exceed six years with five years' probation, along with other requirements such as complying with the sex offender conditions of probation.

Victim C.B. served and filed a notice of appeal. The State served and filed a motion to dismiss the appeal on May 23, 2022. This Court denied the motion by Order dated July 13, 2022, but allowed the parties to address appealability in their briefs.

## ARGUMENT

- I. **Victim's appeal should be dismissed as there is no right to appeal afforded a victim. Further, the case is moot as there is no relief which can be granted because the guilty plea is final, and the Court may not reopen the guilty plea to provide Victim her requested relief.**

Appellant contends the plea court erred in refusing to entertain her motions and in failing to allow the victims and their families to be heard prior to the plea court accepting Turner's plea. A victim does not have a right to appeal. As a result, this appeal should be dismissed. Additionally, once the plea was accepted and Turner was sentenced, the plea was final, and this Court cannot reopen the plea to provide Victim the relief she seeks. Accordingly, this appeal should be dismissed.

An appeal from a judgment of conviction is not a matter of absolute right, independently of constitutional or statutory provisions allowing such appeal. A review by an appellate court of the final judgment in a criminal case, however grave the offense of which the accused is convicted, was not at common law, and is not now, a necessary element of due process of law. It is wholly within the discretion of the state to allow or not to allow such a review.

McKane v. Durston, 153 U.S. 684, 687, 14 S. Ct. 913, 915, 38 L. Ed. 867 (1894). No South Carolina statute or provision of the Constitution enables an appeal by a victim of a crime. Further, no judicial decision has allowed an appeal of a defendant's criminal conviction and sentence by a victim. As this Court has previous explained:

A victim, as defined in S.C. Code Ann. § 16-3-1510 (Supp.1997), possesses *no* rights in the appellate process. Nothing in our Constitution or statutes provides the "victim" standing to appeal the trial court's order. Additionally, the rights granted by the South Carolina Constitution and statutes are enforceable by a writ of mandamus, rather than direct participation at the trial level.

Reed v. Becka, 333 S.C. 676, 681, 511 S.E.2d 396, 399 (Ct. App. 1999) (italics in original).

Because Victim has no right to appeal the criminal conviction and sentence of Turner, this Court should dismiss the underlying appeal.

Victim indicates the desire to enforce their rights under the Victims' Bill of Rights in the South Carolina Constitution. Initially, the only means of redress if Victim believes a right is not going to be honored is to seek a writ of mandamus.

Nothing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge **to require compliance** by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a wilful failure to comply with a writ of mandamus is punishable as contempt.

S.C. Const. art. I, § 24 (B) (emphasis added). It should also be noted that the constitutional provision provides for a means to "require compliance" with the provisions of the Victims' Bill of Rights and then punishment through contempt only after the writ of mandamus is issued. There is no other mechanism to obtain relief for the failure to comply with the provisions.

In the instant case, Victim sought to "require compliance" with the Victims' Bill of Rights by the circuit court, requiring the court to hear her and others on behalf of Victim prior to accepting Turner's plea.<sup>1</sup> In order to accomplish their desired outcome, the appropriate means was to seek

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<sup>1</sup> The State does not address whether any provision of Article I, Section 24 actually allows a victim or any others to be heard prior to the judge accepting a defendant's plea or whether it only allows a victim or others to be heard at some point prior to sentencing. The Court of Appeals has already determined the rights do not include the right to veto a proposed plea. See Reed, 333 S.C. at 683, 511 S.E.2d at 400 ("Yet, while victims clearly have numerous valuable rights at the trial level protected by our laws and enforceable by *writ of mandamus*, these rights fall short of giving the victim the right to *veto a proposed plea agreement*. *The Solicitor has unfettered discretion in that*

a writ of mandamus from a justice of the South Carolina Supreme Court who could order that the circuit court judge comply with Article I, Section 24(A) of the South Carolina Constitution. Instead, Victim sought a Motion to Enforce Victims' Rights and to be Heard Prior to Guilty Plea from the circuit court. (Motion to Enforce; R.\_\_\_\_). Even if construed as a petition for writ of mandamus, the order was sought from the same judge they were seeking to mandate act in accordance with the Victims' Bill of Rights. As a result, Victim did not seek the appropriate relief contemplated by the Victims' Bill of Rights.

Finally, in the event the rights of a victim are violated, there is no remedy provided in the Constitution except for contempt for violating the writ of mandamus if one is issued. Victim has asked the Court to reopen the plea and allow her and others to be heard prior to the plea being accepted.<sup>2</sup> Our South Carolina Supreme Court has already found nothing in the Victims' Bill of Rights allows a court to reopen a plea once it is finalized--even using a writ of mandamus. See Ex parte Littlefield, 343 S.C. 212, 221, 540 S.E.2d 81, 85 (2000). The Court explained:

Once a criminal case has been resolved and the defendant is sentenced, the alleged victim loses his victim status under the Victims' Bill of Rights. The trial court cannot use the Victims' Bill of Rights to re-open a completed criminal proceeding. Further, even if the solicitor fails to honor the Victims' Bill of Rights during a criminal proceeding, this Court cannot issue a writ of mandamus to re-open a criminal proceeding once it is resolved.

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*regard*. Although victims must be notified of plea offers, the General Assembly has not empowered victims with the right to reject a proposed plea offer and force a prosecutor to trial or back into negotiations.”)(italics in original).

<sup>2</sup> Multiple persons spoke on behalf of Victim, including a family member of Turner's other victims and Victim's attorney. They spoke prior to sentencing and, as a result of what they presented, the circuit court acknowledged he was departing from the recommendation made by the State. (4/8T. 33-35; R.\_\_\_\_).

Id. Victim is seeking to have this Court do through an appeal what is not allowed—reopen a completed criminal proceeding so that she and others can be heard in an attempt to influence the circuit court to not accept Turner’s plea to a lesser charge.<sup>3</sup>

The Supreme Court noted in Littlefield:

[T]he instant case has been resolved. Petitioners are likely unhappy with Williams’ sentence or the restitution ordered. Petitioners do not have a remedy in this matter because this Court cannot order the trial court to re-open this case so Petitioners can attend the plea hearing. A writ of mandamus under the Victims’ Bill of Rights is reserved to enforce its provisions, not to re-open a case when a victim is unhappy with its outcome.

Littlefield, 343 S.C. at 223, 540 S.E.2d at 87.

As in Littlefield, while it is clear Victim is unsatisfied with the outcome in this case, unfortunately there is no relief which can be provided. There is no mechanism to allow Victim to appeal. This Court cannot reopen the finalized guilty plea and sentence, whether based on appeal or writ of mandamus through the Victims’ Bill of Rights.

Accordingly, the case is moot and should be dismissed by this Court. See Sloan v. Greenville Cnty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.” (citation omitted)). “An appellate court will not pass on moot and academic

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<sup>3</sup> If Victim is not seeking to reopen the completed plea, she seeks a purely advisory opinion which is not permitted. See Richland Cnty. Sch. Dist. 2 v. Lucas, 434 S.C. 299, 306, 862 S.E.2d 920, 924 (2021) (“It is elementary that the courts of this State have no jurisdiction to issue advisory opinions.”)(quoting Booth v. Grissom, 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975)); Gainey v. Gainey, 279 S.C. 68, 69, 301 S.E.2d 763, 764 (1983) (“This Court will not issue advisory opinions on questions for which no meaningful relief can be granted.”).

questions or make an adjudication where there remains no actual controversy.” Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

For the reasons detailed above, this Court should decline to address any merits of Victim’s appeal, decline to issue a purely advisory opinion, and dismiss the appeal.

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed and this appeal should be dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 15608

JOHN WILLIAM WEEKS  
Solicitor, Second Judicial Circuit

BY: 

William M. Blitch, Jr.

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 28, 2022

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**PROOF OF SERVICE**

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I, Caroline Collins, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by emailing Appellant's counsel of record including: Sarah A. Ford, Tamika D. Cannon, and Terri Bailey at their primary email addresses as listed by the Attorney Information System (AIS). Additionally, a copy has been served on Respondent Bowen Gray Turner through his counsel of record, Robert M. Dudek, at his primary email address as provided by AIS.

I further certify that all parties required by Rule to be served have been served.  
This 28<sup>th</sup> day of October, 2022.



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CAROLINE COLLINS  
Administrative Coordinator  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727

## Caroline Collins

---

**From:** Caroline Collins  
**Sent:** Friday, October 28, 2022 4:55 PM  
**To:** sarah@scvan.org; tamika@scvan.org; terri@scvan.org  
**Cc:** Matthews, Lindsey; Dudek, Robert; cbhutto@williamsattys.com; William Blich  
**Subject:** The State v. Bowen Gray Turner (In re: Victim C.B.) (2022-000472)  
**Attachments:** TURNER Bowen - Initial Brief of Respondent and Designation of Matter (The State of South Carolina) - 2022-000472 (03139827xD2C78).PDF

Good Afternoon Ms. Ford, Ms. Cannon, and Ms. Bailey,

Attached please find the Initial Brief of Respondent and Designation of Matter for the State of South Carolina in The State v. Bowen Gray Turner (In re: Victim C.B.) (2022-000472). These documents will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

**CAROLINE COLLINS**, Administrative Coordinator  
South Carolina Attorney General's Office  
Criminal Appeals | Office 803-734-3723 | [ccollins@scag.gov](mailto:ccollins@scag.gov)  
P.O. Box 11549 | Columbia, SC 29211  
[scag.gov](http://scag.gov)



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