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Nov 16 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable R. Kirk Griffin, Circuit Court Judge
Appellate Case No. 2022-001444

THE STATE,

Respondent,

v.

BRITTANY V. MARTIN,

Appellant.

**RETURN IN OPPOSITION TO
EMERGENCY MOTION FOR APPEAL BOND**

Respondent, through its undersigned counsel, would respectfully show unto the Court as follows:

I.

Appellant initially served and filed a motion seeking for this Court to grant her an appeal bond on October 14. It was denied because she did not first seek the bond in circuit court. Appellant served and filed the motion in the circuit court, which was denied. (See Order dated November 9 attached as Exhibit A). After denial of her request for bond from the circuit court, Appellant has again sought an emergency appeal bond from this Court. In seeking that extraordinary relief, Appellant maintains: (1) the trial court improperly denied relief on the fact she was convicted of breach of peace of a high and aggravated nature (BOPHAN) and not just breach of peace when breach of peace (BOP) was not presented to the jury; (2) she is pregnant

and battling preterm labor; and (3) she is not a threat to the community and has ties to South Carolina. Her primary argument centers on the care of her unborn child and also her desire for it not to be born while incarcerated.

II.

Pursuant to South Carolina law, a criminal defendant “may” potentially be granted bail during the pendency of an appeal following a conviction. S.C. Code Ann. § 18-1-90. Importantly though, a defendant has no right to an appeal bond, and a court ordinarily will only issue one with “extreme caution.” Nichols v. Patterson, 202 S.C. 352, ___, 25 S.E.2d 155, 156 (1943) (citation and internal quotations omitted). When deciding whether to exercise that discretion, a court should consider the following factors: (1) the probability of success on appeal; (2) the nature and seriousness of the criminal offense committed; (3) the danger the defendant may pose to the community if he or she is released; (4) the likelihood the defendant may forfeit bail or flee if released; (5) the character and circumstances of the defendant; and (6) the defendant’s “personal attitude toward society and government.” Nichols, 202 S.C. at ___, 25 S.E.2d at 156; see also, In re Michael H., 360 S.C. 540, 553, 602 S.E.2d 729, 736 (2004) (“The factors to be considered in admitting a person to bail pending appeal include the probability of reversal, the nature of the crime, the possibility of escape, and the character and circumstances of the appellant.”).

III.

At present, Appellant is serving a sentence of four years incarceration with the South Carolina Department of Corrections after she was convicted by a jury of her peers of breach of peace of a high and aggravated nature. Inmate Search Detail Report for Brittany Valencia Martin, <https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000387949>.

IV.

Appellant's conviction stems from multiple days of aggressive and threatening behavior towards law enforcement as well as other, more peaceful protestors. The State asks this Court to consider the video exhibits presented at trial which provide evidence of Appellant's behavior, and in particular her confrontation with law enforcement on June 3.¹ Additionally, she has multiple charges for threatening the life of a police officer still pending in Sumter County which also resulted from the incidents.

V.

At present, Appellant has not provided the grounds for her appeal or indicated in her Emergency Motion any reason why her appeal is likely to be successful. As a result, one of the primary factors for an appeal bond has not even been placed before this Court for consideration and should be a strong factor in denying her motion.

VI.

Appellant's charge was a serious charge. Whether the trial court was correct in the jury's determination of BOPHAN instead of a lesser included, or whether the lesser included of BOP was never presented to the jury and she was convicted of the only charge the jury considered, it is still significant that it was breach of peace of a high and aggravated nature.

The term "breach of the peace" is a generic one embracing a great variety of conduct destroying or menacing public order and tranquility. In general terms a breach of peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order.

¹ Given the short time for the reply, the State has been unable to obtain a copy of relevant exhibits. The State will endeavor to obtain a copy of the relevant exhibits and provide them to the Court as soon as possible.

State v. Poinsett, 250 S.C. 293, 297, 157 S.E.2d 570, 571 (1967). A BOPHAN is “a breach of the peace that was aggravated, or serious enough, to be ‘waived up’” to circuit court. State v. Simms, 412 S.C. 590, 596 n.3, 774 S.E.2d 445, 448 n.3 (2015). A jury found the circumstances of Appellant’s behavior to be sufficiently serious to be considered aggravated.

VII.

Appellant has clearly demonstrated her inability to conform to societal norms through her numerous arrests and convictions around the country. She has been convicted multiple times of public disorderly conduct—in South Carolina and Wisconsin. She has multiple shoplifting charges or retail theft charges—in South Carolina, Illinois, and Georgia. Appellant has a possession of a short-barreled shotgun in Wisconsin and a leaving the scene of an injury and willfully causing bodily harm in Iowa. The convictions run from 2008-2019 and are detailed in the circuit court’s order denying her motion to reconsider her sentence. (See Order dated October 5, 2022 attached as Exhibit B).

In addition to the fact she has had numerous convictions, she has committed the offenses while on probation for other offenses. As the circuit court noted, she committed the offense underlying this appeal while on probation.

VIII.

Appellant has also failed to demonstrate an ability to conform and has shown a clear disdain for authority even once incarcerated. She has several disciplinaries while incarcerated for a short time. Since her sentence began in April, she has already been disciplined for:

- 1) Threatening to inflict harm on employee;
- 2) Refusing or failing to obey orders;
- 3) A second refusing or failing to obey orders;

- 4) Using obscene, vulgar, profane language or gestures; and, most significantly,
- 5) A recent inciting/creating a disturbance.

See Inmate Search Detail Report for Brittany Valencia Martin, <https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000387949>. As a result, she has demonstrated a lack of character and a clear disdain for society, government, and rules. See Nichols, 202 S.C. at __, 25 S.E.2d at 156 (recognizing a defendant's character, reputation, and attitude toward society and government are relevant considerations when determining whether to grant an appeal bond to a convicted offender).

IX.

Appellant's primary claim warranting the need for an Emergency Appeal Bond relate to her pregnancy and the care she is receiving from the Department of Corrections. The South Carolina Department of Corrections will take the appropriate steps to protect the life of Appellant as well as her unborn child. The Department is providing, and will continue providing, necessary and appropriate care for Appellant. (Affidavit of Stacie Ervin attached as Exhibit C).

X.

For all the foregoing reasons, the collective circumstances of Appellant's case—when properly considered—do not warrant the extraordinary relief of a grant of an appeal bond. Therefore, this Court should exercise the extreme caution warranted by the circumstances and deny Appellant's motion for an emergency appeal bond.

XI.

Finally, although the State firmly believes this Court should deny Appellant's motion for an appeal bond, this Court should impose reasonable bond conditions to protect the community

and ensure Appellant does not abscond in the event it determines Appellant's case is so exceptional it warrants the grant of an appeal bond. Cf. Rule 243(k), SCACR ("If bail is granted, the court may require the posting of a bond and impose other conditions."). Specifically, due to the fact Appellant has been convicted numerous times in the past, and even probation has been insufficient to prevent her from committing further crimes, this Court should—at a minimum—set bond in a dollar amount this Court believes will be sufficient to ensure compliance with all bond conditions, order Appellant to remain on home detention during the pendency of the State's appeal, preclude Appellant from leaving her residence for any purpose other than obtaining medical treatment or attending religious services, require Appellant to submit to electronic monitoring at her own expense, and preclude Appellant from changing her address without prior court approval.


WHEREFORE, Respondent prays this Court will deny Appellant's Motion for Emergency Appeal Bond; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

By: 
William M. Blitch, Jr.
S.C. Bar Number 15608

November 16, 2022

EXHIBIT A

STATE OF SOUTH CAROLINA

RECORDED

COUNTY OF SUMTER

2022 NOV - 9 PH 3:06
JAMES H. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

THE COURT OF GENERAL SESSIONS

THE STATE,

-vs-

BRITTANY MARTIN,

Defendant.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hunt
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER

Case Number: 2021-GS-43-00

RECEIVED

Nov 09 2022

SC Court of Appeals

This matter came before the court pursuant to Defendant's Motion for an Appeal Bond. Defendant was convicted by a jury of one count of Breach of Peace of a High and Aggravated Nature on May 16, 2022. The Defendant was sentenced to four years in the South Carolina Department of Corrections. The Defendant subsequently moved for a Reconsideration of Sentence, which was denied on October 5, 2019. The Court was served with notice of the motion for an Appeal Bond by trial counsel via e-mail on October 19, 2022. In the motion, defense counsel requested an expedited hearing, or in the alternative, an expedited ruling on the motion without a hearing. Rule 29(a) of the South Carolina Rules of Criminal Procedure grants the trial judge discretion to decide post trial motions upon briefs filed by the parties without oral argument. Pursuant to Rule 29 (a) SCRCrim.P, and the request of defense counsel, this Court determines that the motion for appeal bond will be decided without oral argument.

Upon review of the motion, the Court respectfully denies the Defendant's Motion for Appeal Bond. The factors to be considered in admitting a person to bail pending appeal include the probability of reversal, the nature of the crime, the possibility of escape, and the character and circumstances of the appellant. *In re Michael H.*, 360 S.C. 540, 602 S.E.2d. 729 (2004)., *Nichols v. Patterson*, 202 S.C. 352, 25 S.E.2d 155 (1943).

Here, the Court believes the likelihood of reversal is low. The Defendant was found guilty of Breach of Peace High and Aggravated. The jury was presented the lesser included offense of Breach of Peace. The jury found the Defendant guilty of the more serious offense. The Court must consider the nature of the offense for which the Defendant was convicted. Breach of Peace of a High and Aggravated nature is a common law misdemeanor, and carries a sentence of up to ten (10) years in prison. The Court finds that escape is unlikely. In considering the character and the circumstances of the appellant, the Court has considered the Defendant's lengthy prior criminal record, her ties to other states, and the fact that the defendant has committed crimes while on probation. The Court also has considered the fact that the Defendant is currently pregnant. While pregnancy is a less than ideal circumstance for an incarcerated defendant, pregnancy alone is not a sufficient ground for an appeal bond. Balancing these factors, the Court concludes that an appeal bond is not appropriate in this case. Based upon the foregoing, the Defendant's Motion for an Appeal Bond is denied.

November 9, 2022
Sumter, SC

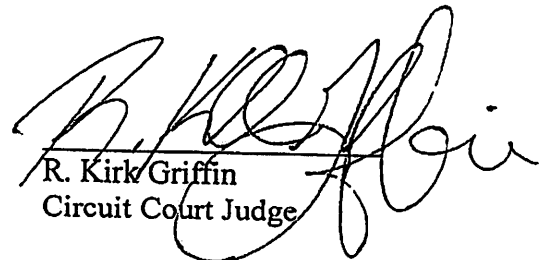

R. Kirk Griffin
Circuit Court Judge

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2022 OCT - 5) AM 11: 29

IN THE COURT OF GENERAL SESSIONS

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Sharon H. Dubois
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

THE STATE,

-vs-

BRITTANY MARTIN,

Defendant.

ORDER

Case Number: 2021-GS-43-0091

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OCT 14 2022

SC Court of Appeals

This matter came before the court pursuant to Defendant's Motion to Reconsider Sentence filed on May 26, 2022. Defendant was convicted by a jury of one count of Breach of Peace of a High and Aggravated Nature on May 16, 2022. The Defendant was sentenced to four years in the South Carolina Department of Corrections. The Court was served with notice of the motion by trial counsel via e-mail on July 18, 2022. The Court directed trial counsel that a hearing on the matter could be scheduled during the week of September 12, 2022, and to coordinate with the Solicitor's Office for an exact date and time, as the Solicitor's Office distributes the docket for General Sessions Non-Jury Matters.

A hearing was scheduled for September 16, 2022 at 3:00PM. Defense counsel never received notice of the hearing and the hearing was postponed. Subsequently, defense counsel requested a ruling on the motion, or in the alternative, an expedited hearing. Rule 29(a) of the South Carolina Rules of Criminal Procedure grants the trial judge discretion to decide post trial motions upon briefs filed by the parties without oral argument. Pursuant to Rule 29 (a) SCRCrim.P, and the request of defense counsel, this Court determines that the motion to alter or amend will be decided on briefs filed by the parties and without oral argument.

RK6#1

Upon review of the briefs submitted by the parties, the Court respectfully denies the Defendant's Motion for Reconsideration of Sentence. The Court's reasons for imposing a four-year sentence were stated in open court, on the record, prior to the Defendant's sentencing on May 16, 2022. The paragraphs which follow outline the primary considerations of the Court in determining the Defendant's sentence.

In deciding the Defendant's sentence, the Court first considered the nature of the offense for which the Defendant was convicted. Breach of Peace of a High and Aggravated nature is a common law misdemeanor, and carries a sentence of up to ten (10) years in prison. Individuals convicted of misdemeanors in South Carolina are eligible for early release on parole. These factors were considered by the Court before sentencing the Defendant.

The Court further considered the Defendant's criminal history. The following prior criminal convictions were presented to the Court:

1. Retail Theft – Illinois – 2008
2. Public Disorderly Conduct – Wisconsin – 2011
3. Possession of Short Barreled Shotgun – Wisconsin – 2011
4. Shoplifting – Georgia – 2014
5. Shoplifting Enhanced – South Carolina – 2015
6. Public Disorderly Conduct – South Carolina – 2015
7. Shoplifting – South Carolina – 2015
8. Leaving the Scene of an Injury or Accident and Willfully Causing Bodily Harm – Iowa – 2019

The Court considered these prior criminal convictions and the Defendant's history of recidivism in sentencing the defendant. Defendant has been on probation many times. Defendant was serving a probationary sentence on June 4, 2020 when the events which led to her conviction began. She was on probation on the date of her conviction. Probation has not been a deterrent to further criminal activities for the Defendant. An active prison sentence was appropriate in this instance.

The Court also considered the seriousness of the offense for which the Defendant was convicted. As the trier of fact, the jury made the determination that the Defendant was guilty of Breach of Peace High and Aggravated. The jury was presented the lesser included offense of

RK6#2

Breach of Peace. The jury found the Defendant guilty of the more serious offense. Based upon the evidence presented at trial, the jury's findings, and the conduct of the Defendant, the Court's sentence was appropriate.

The Court further considered the federal sentences given for convictions resulting from crimes committed at the United States Capitol on January 6, 2021. While these sentences were considered, it is difficult to make a direct comparison these federal convictions and the specifics of this case. The sentence in this case was based on the crime committed, the nature and classification of the offense, the Defendant's prior criminal history/recidivism, and the seriousness of the crime. Based upon the foregoing, the Defendant's Motion for Reconsideration of Sentence is denied.

October 5, 2022
Sumter, SC



R. Kirk Griffin
Circuit Court Judge

DKG#3

EXHIBIT C

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable R. Kirk Griffin, Circuit Court Judge
Appellate Case No. 2022-001444

THE STATE,

Respondent,

vs.

BRITTANY V. MARTIN,

Appellant.

AFFIDAVIT

Personally appeared before me, Stacie Ervin, R.N., who being duly sworn, attests to the following:

I.

I am a Registered Nurse and I serve as the Health Care Authority (“HCA”) for Camille Graham Correctional Institution at the South Carolina Department of Corrections in Columbia, South Carolina.

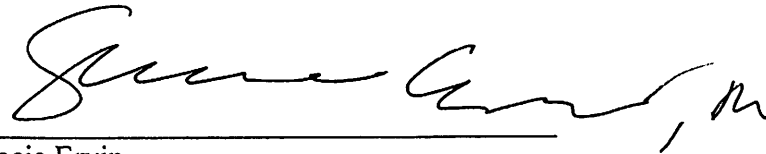
II.

Through my position, I am aware of the policies and procedures of the Department as they relate to the care and treatment of pregnant persons in the custody of the Department. The Department either furnishes the appropriate care or, when necessary, will seek care from medical professionals outside the Department. The Department will take all appropriate steps to protect the life of the person in the custody of the Department and her unborn child.

III.

Brittany Valencia Martin is currently in the custody of the South Carolina Department of Corrections at Camille Graham Correctional Institution. She is currently receiving, and will continue to receive, all necessary, recommended, and appropriate medical treatment related to her pregnancy and the care of her unborn child. Ms. Martin is very close to her delivery date.

WHEREFORE, the undersigned hereby certifies that the above is true to the best of her knowledge and recollection.



Stacie Ervin
Registered Nurse, SCDC

SWORN to before me this 16th day of November 2022.

N-Darlene Hall
Notary Public for South Carolina

My Commission Expires: 3/12/2024

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
Honorable R. Kirk Griffin, Circuit Court Judge
Appellate Case No. 2022-001444

THE STATE,

Respondent,

vs.

BRITTANY V. MARTIN,

Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Return in Opposition to Emergency Motion for Appeal Bond on Appellant by emailing a copy to Appellant's counsel of record, Dr. Sybil Rosado, at her primary email address as provided by the Attorney Information System (AIS).

I further certify all parties required by Rule to be served have been served.
This 16th day of November, 2022.



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: Wednesday, November 16, 2022 4:07 PM
To: sybil@rosado.law
Cc: William Blicht
Subject: The State v. Brittany V. Martin (2022-001444)
Attachments: MARTIN Brittany - Return in Opposition to Emergency Motion for Appeal Bond - 2022-001444 (03156673xD2C78).PDF

Good Afternoon Dr. Rosado,

Attached please find a copy of the Return in Opposition to Emergency Appeal Bound in The State v. Brittany V. Martin (2022-001444). This return 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
P.O. Box 11549 | Columbia, SC 29211
scag.gov



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