

IN THE SOUTH CAROLINA SUPREME COURT

BRANDAL SMITH
APPELLANT

V.

STATE OF SOUTH CAROLINA
APPELLEE

RECEIVED

FEB 24 2023

S.C. SUPREME COURT

APPEAL NO: 2021-000939

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Feb 24 2023

SC Court of Appeals

MOTION FOR APPEAL BOND

1. INTRODUCTION

On *August 25th*, 2021, a jury convicted appellant, Brandal Smith, of Trafficking of Illegal Drugs (Fentanyl). By the instant motion, the appellant requests, pursuant to S.C. Appellate Court Rules, that this Honorable Court grant bail pending his appeal to the Court of Appeals for the State of South Carolina.

2. BACKGROUND

The appellant has filed a notice of appeal and pro se brief from his conviction for Trafficking In Illegal Drugs. During the pendency of this appeal, the appellant requests that he receive, by virtue of South Carolina statutory and case law, bail pending appeal. He appellant's attendance at trial and continued presence in Spartunburg County prior to trail, as well as his strong community ties within the County, do not indicate a danger of flight. The appellant's presence in the community does not pose any danger to the safety of the individuals residing therein. Appellant urges this honorable Court to

exercise its statutorily-granted discretion and grant the appellant's request for an appeal bond. In addition, appellant asks the Court to consider that as of date, there is not a criminal statute for trafficking Fentanyl. A fact conceded by the State Legislature of South Carolina.

3. ARGUMENT

Despite South Carolina's acknowledgment that there is no constitutional right to bail pending appeal, South Carolina statutory law nonetheless authorizes Courts to grant such bail as a matter of discretion. The South Carolina Code States, in relevant part, that upon the filing of a notice of appeal, the court of common pleas or court of appeals may suspend execution of a sentence of judgment during the pendency of the appeal and shall determine whether that defendant is entitled to bail. The Court's power is entirely discretionary. Further, the exercise of this power is conditioned upon the absence of danger to the community, or flight by the defendant. This, risk of flight and danger to the community are dis-positive factors in a Court's decision to grant or deny bail pending appeal, and heavily relied upon by reviewing Courts when upholding a denial of such bail. There is nothing in the record to indicate that appellant is a flight risk.

While risk of flight is of primary concern to the Courts in determining whether post-conviction bail is appropriate, an analysis of the convictions and community ties of the appellant in the instant case warrants a conclusion that no such danger exists. Appellant has strong family and social ties in the Spartanburg County community, and is not saddled with debts that could lead to a temptation to flee. Nor does the appellant rely solely on the lack of flight during trial; the aforementioned community connections are highly indicative, above and beyond the absence of prior flight, of his willingness to remain in Spartanburg County. As such, the Court, in exercising its discretionary power to grant bail pending appeal, should not find reasonable grounds for denial by virtue of any risk flight.

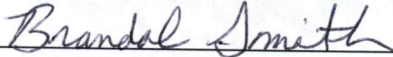
Also, dis-positive in the propriety of post-conviction bail is the absence of any threat of danger to the community emanating from the appellant's release therein. The pretrial actions prove that appellant does not pose any threat to the community. Appellant was a role pretrial participant. During the two years on bond, he did not have any interactions with the law enforcement. Instead, he maintained steady employment.

Moreover, appellant would agree to the use of electronic, GPS monitoring, and other measures the court would just and proper. These added conditions will not only assure the defendant's presence, but will actually increase community safety. Besides, "A petitioner released on bond after conviction and pending execution of sentence is 'in custody.'" Hensley v. Municipal Court, 411 U.S. 345, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973).

4. CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, this Honorable Court is respectfully urged to grant the Defendant's Emergency Motion for Bail Pending Appeal.

Respectfully submitted,



Brandal Smith
4344 Broad River Rd.
Columbia, SC 29210

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CERTIFICATE OF SERVICE

I, Brandal Smith, appellant in this action, certify that I have served the Motion For Appeal Bond with Exhibits upon the following:

- 1. South Carolina Attorney General
P.O. Box 11549
Columbia, SC 29201

Brandal Smith
Brandal Smith
4344 Broad River Rd.
Columbia, SC 29210

Brandal Smith, # 271084
Kirkland Corr. Inst.
#344 Broad River Rd.
Columbia, SC 29210

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Legal Mail

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29201

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S.C. SUPREME COURT

February 20, 2023

Supreme Court of South Carolina
P.O.Box 11330
Columbia, SC 29201

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SC Court of Appeals

Re: Brandal Smith v. State of South Carolina
Appeal No.: 2021-000939

Dear Honorable:

Please find enclosed my Motion for Appeal Bond, and a copy of the same for the clock-stamp filing and return in the self-addressed prepaid envelope.

Thanks in advance.

Respectively submitted,

Brandal Smith
Brandal Smith, #
4344 Broad River Rd.
Columbia, SC 29210

cc: S.C. Attorney General
File