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**May 08 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
J. Mark Hayes, II, Circuit Court Judge

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Appellate Case No. 2022-000434

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Daniel W. Spade .....Respondent-Petitioner,

v.

State of South Carolina, .....Petitioner-Respondent.

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**PETITION FOR A SPEEDY APPEAL**

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Pursuant to Article I, Section 9 of the South Carolina Constitution, Daniel Spade moves this Court for a speedy appeal of the State’s appeal of the grant of post-conviction relief (“PCR”).

**I. PROCEDURAL HISTORY.**

Following a hearing on June 29-30, 2009, the Honorable Georgia C. Anderson dismissed Heather and David Jolley’s Family Court petition to terminate Dany Spade’s parental rights on January 13, 2010 and issued a supplemental order on June 29, 2010. Heather Jolley filed another Family Court Action on November 23, 2010.

On May 3, 2011, Investigator Nikki Cantrell and officers of the Prince William County Police Department arrested Mr. Spade at his home in Virginia, charging him with first-degree criminal sexual conduct with a minor involving his daughter (“child”).

On January 9, 2012, the Jolleys amended the November 2010 Family Court complaint to petition to terminate Mr. Spade’s parental rights and to allow David Jolley to adopt the child. N.

Douglas Brannon represented the Jolleys. Kenneth P. Shabel represented Mr. Spade. Alexandria Wolf was the guardian ad litem. Beginning on October 15, 2012, the Honorable James F. Farley, Jr. convened a hearing in the Family Court for Spartanburg County. Judge Farley ultimately terminated Mr. Spade's parental rights and allowed Mr. Jolley to adopt the child.<sup>1</sup> A. 2256-2447.

The State tried Mr. Spade before the Honorable R. Keith Kelly and a jury on February 24-26, 2014. A. 1-346. Barry J. Barnett, Jennifer A.J. Jordan, Kimberly L. Leskanic, and Mr. Brannon represented the State. Mr. Shabel and Shawn M. Campbell represented Mr. Spade. On February 26, 2014, the jurors found Mr. Spade guilty of first-degree criminal sexual conduct with a minor. A. 342. Judge Kelly sentenced Mr. Spade to thirty-five years imprisonment. A. 345.

Mr. Spade appealed to the Court of Appeals. A. 421-1003. C. Rauch Wise and Mr. Shabel represented Mr. Spade. On February 11, 2016, the Court of Appeals convened an oral argument.<sup>2</sup> On July 6, 2016, the Court of Appeals affirmed Mr. Spade's conviction and sentence. *State v. Spade*, (S.C.Ct.App. Op. No. 2016-UP-352) (Filed July 6, 2016). A. 984-32. On August 18, 2016, the Court of Appeals denied Mr. Spade's petition for rehearing. A. 993-1003. On October 6, 2016, Mr. Spade filed a petition for writ of *certiorari* in the South Carolina Supreme Court. A. 1004-33. Mr. Wise represented Mr. Spade. On June 16, 2017, the Supreme Court denied Mr. Spade's petition for a writ of *certiorari*. A. 1062.

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<sup>1</sup> Proceedings on Mr. Spade's Rule 60, SCRCF motion are still pending in the Family Court. Mr. Spade filed the Rule 60 Motion *pro se*. Undersigned counsel subsequently entered an appearance. Mr. Brannon continued to represent the Jolleys but subsequently withdrew because of a conflict of interest. *Matter of Brannon*, 428 S.C. 644, 837 S.E.2d 488 (2019). Scott F. Talley currently represents the Jolleys. A hearing was held on January \*, 2023, but no order has issued.

<sup>2</sup> While the decision was still pending, Mr. Shabel joined Mr. Brannon's law firm and, accordingly, moved to be relieved as counsel, because of the conflict of interest, by petition dated March 11, 2016.

On July 13, 2017, Mr. Spade filed a *pro se* PCR application. A. 1064-73. With the assistance of undersigned counsel, Mr. Spade amended his PCR application on October 2, 2017 (A. 1084-94), December 24, 2018 (A. 1067-78), and May 14, 2019 (A. 1079-89). From May 15-20, 2019, the Honorable J. Mark Hayes, II Court convened an evidentiary hearing. A. 1241-72). By written order dated May 20, 2019, Judge Hayes ordered the South Carolina Department of Social Services (“DSS”) provide the Court with “a complete copy of the DSS file regarding [the child], Daniel W. Spade (father), and Heather Smith a/k/a Heather Smith Jolley.” A. 2678-79. Judge Hayes released a copy of the DSS file to the parties by written order dated August 16, 2019. A. 2688-89.

By written order dated May 7, 2020, Judge Hayes made findings of fact, denied Mr. Spade post-conviction relief, and instructed the Attorney General’s Office to prepare a formal order. A. 2755-64. On July 7, 2020, Mr. Spade served his objections to the Attorney General’s proposed order and proffered a copy of the Attorney General’s proposed order. A. 2830-3027. By written Order dated October 8, 2020, the Court dismissed Mr. Spade’s PCR application. A. 3028-91. On October 19, 2020, Mr. Spade filed his 59(e), SCRCF motion. A. 3092-3111. The State responded on January 13, 2021. A. 3112-47, and Mr. Spade replied on March 30, 2021. A. 3148-67. Following a hearing on March 29, 2021 (A. 3168-3263), Judge Hayes issued an order granting Mr. Spade post-conviction relief, in part, and ordering a new trial. A. 3263-90. On November 29, 2021, the State filed a Rule 59(e), SCRCF motion. A. 3291-3318. On January 24, 2022, Mr. Spade responded. A. 3318-22. On March 11, 2022, Judge Hayes denied the State’s motion. A. 3323-28.

On April 11, 2022, the State noticed this appeal. Subsequently, on April 11, 2022, Mr. Spade noticed the cross-appeal. By November 8, 2022, the parties filed all cert-stage pleadings. On November 15, 2022, the Supreme Court transferred this matter to this Court.

## II. LEGAL ARGUMENT.

“All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.” S.C. Const. art. I, § 9. This “right to a speedy remedy includes the right to a speedy appeal.” *Maner v. Maner*, 278 S.C. 377, 380, 296 S.E.2d 533, 535 (1982). Although Article I, Section 9 applies to civil cases, *State v. Lagerquist*, 254 S.C. 501, 176 S.E.2d 141 (1970), PCR cases are civil matters. S.C. Code Ann. § 17-27-80. *See also Hiott v. State*, 381 S.C. 622, 674 S.E.2d 491 (2009); Rule 71.1, SCRPC.

At the time of the filing of this motion, 206 PCR cases were pending before this Court. Ex. 1. Based on oldest to newest case number, the State’s appeal of Mr. Spade’s case ranks 171 of these 206 cases, even though it has been almost six months since the Supreme Court transferred this appeal to this Court and over a year since the State noticed this appeal. The first 59 cases have 2017, 2018, and 2019 case numbers. It is not uncommon for this Court to take over two years to consider a case after transfer from the Supreme Court.<sup>3</sup>

## III. CONCLUSION.

For the foregoing reasons, this Court should grant Mr. Spade a speedy appeal.<sup>4</sup>

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<sup>3</sup> *See, e.g., Ard v. State*, Appellate Case No. 2019-001925, where the State’s appeal of an order granting a new trial was transferred to this Court on October 27, 2020. This Court denied the State’s petition for a writ of certiorari on March 3, 2023, amended the order denying the State’s Petition for a writ of certiorari on April 10, 2023, and issued the Remittitur on April 26, 2023.

<sup>4</sup> Alternatively, this Court could grant Mr. Spade an appeal bond, which would reduce but not necessarily eliminate, the prejudice from a delayed appeal. Mr. Spade fully complied with the conditions of bond in the three years prior to his jury trial.

Respectfully Submitted,

By s/E. Charles Grose, Jr

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**Certificate of Service**

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I certify that I served this pleading on the State of South Carolina, by email, using counsel’s primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

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