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August 4, 2023

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SC Court of Appeals

Sent Via Email *Only* to ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211-1629

Re: Kenneth Dippel, Appellant v. State of South Carolina, 15th Circuit Solicitor's Office, and SLED, Respondents (Appellate Case No.: 2023-000048)

Dear Madam Clerk:

In accordance with Rule 208(b)(7), SCACR, please accept this correspondence as Respondents' response to Appellant's July 5, 2023 submission. Simply put, none of the authorities provided by Appellant affect or alter the outcome of this appeal or the statutory interpretation of the plain language of S.C. Code Ann. § 22-5-910 as set in Respondents' prior briefing. Further, the materials presented in this filing appear to erroneously argue that Appellant has a right to an expungement based on his prior plea deal. This argument is directly contrary to the applicable jurisprudence in South Carolina. Specifically, South Carolina courts have long acknowledged that expungement is a privilege and not a right, such that the Appellant had no entitlement whatsoever to an expungement based on his plea bargain. *See Gay v. Ariail*, 381 S.C. 341, 344, 673 S.E.2d 418, 419 (2009). ("The mere fact that Gay is entitled to have his application considered does not mean expungement necessarily follows; Gay concedes expungement is a privilege and not a right."). The plain language of S.C. Code Ann. § 22-5-910 also conclusively resolves this issue. Specifically, Paragraph (C) clearly indicates that "[i]f the defendant has had no other conviction, including out-of-state convictions, during the three-year period as provided in subsection (A)... the circuit court *may* issue an order expunging the records including any associated bench warrant." S.C. Code Ann. § 22-5-910. (emphasis added). Accordingly, Respondents reiterate their request that this Court uphold and affirm the trial court's decision in its entirety.

With kind regards, I am
Sincerely,

A handwritten signature in blue ink, appearing to read "Adam L. Whitsett".

Adam L. Whitsett, Esquire
Attorney for Respondents