

The South Carolina Court of Appeals

The State, Respondent,

v.

John Kenneth Totherow, Appellant.

Appellate Case No. 2023-001483

ORDER

On June 20, 2024, Appellant moved for an order delaying his transfer from the Department of Juvenile Justice to the South Carolina Department Corrections until his eighteenth birthday, or in the alternative, until the completion of his appeal. Respondent filed a return, opposing the request. After careful consideration, we deny Appellant's motion. *See Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 272, 633 S.E.2d 910, 913 (Ct. App. 2006) ("Absent an atypical and significant hardship on the inmate, or an arbitrary, capricious, or biased decision by the prison, the court has no authority to interfere with inmate housing decisions.").

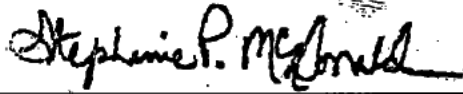
Plea counsel's discussion with the circuit court is helpful to the *Skipper* consideration of whether an "atypical and significant hardship" exists here. Before the circuit court, plea counsel explained:

[W]e have had thorough conversations with the Department of Juvenile Justice where he is going to be housed. It's my understanding [he will be] at essentially the Broad River facility until such time that he turns 17-years-old. At that time he will go to a different unit which is pursuant to Federal Law. There's a statute that says 17-year-olds can not be housed with 18 and above. So from 17 to 18 he will be in a separate part segregated from both the juveniles and the adults and then at 18 will go to SCDC and serve the remainder of

his sentence. So he understands how that's going to work.

The State confirms in its Return that pursuant to an agreement between SCDC and DJJ addressing the housing of sixteen-year-old juveniles sentenced as adults, "SCDC will re-house Totherow after his seventeenth birthday, though his transfer 'may be delayed for a period up to six months beyond the date of the offender's seventeenth birthday.'"¹ The State further confirms that "[p]er SCDC policy, Totherow will be housed with other seventeen-year-olds until his eighteenth birthday."²

For these reasons, Appellant's motion is denied.



FOR THE COURT

Columbia, South Carolina

cc:

William G. Yarborough, III, Esquire
Alan McCrory Wilson, Esquire
Lauren C. Hobbis, Esquire
Joshua Abraham Edwards, Esquire
The Honorable Eugene C. Griffith, Jr.

FILED
Jul 16 2024

¹ See quoted Agreement attached at Exhibit A of the State's Return.

² See SCDC policy GA-06.11B attached at Exhibit B of the State's Return.