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**Sep 20 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lexington County  
The Honorable Walton J. McLeod, Circuit Court Judge  
Court of Appeals Appellate Case No. 2024-001440

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In the Matter of the Care and Treatment of Phillip Byron Nix,

APPELLANT.

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**RESPONDENT'S MOTION TO DISMISS APPEAL**

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Pursuant to Rule 240, South Carolina Appellate Court Rules, Respondent State of South Carolina, by and through the undersigned, hereby moves to dismiss the appeal filed in the above caption matter on August 28, 2024. This Motion is based on the following:

1. The appeal is from an order in the circuit court issued on August 13, 2024, at the completion of a jury trial.
2. On August 22, 2024, Appellant filed a Motion to Set Aside Verdict and Grant a New Trial in the circuit court (Exhibit A). The State filed a Return to the Motion on September 3, 2024 (Exhibit B). This appeal was filed on August 28, 2024, while the post-trial motion was pending. The post-trial motion is still pending in the circuit court. Accordingly, the order appealed is not a final order for purposes of appeal.
3. Rule 201, SCACR, provides that appeals may be taken from any final judgment, appealable order or decision. Rule 203(b)(1), SCACR, provides that a timely motion for a new trial stays the time for appeal until the motion is resolved.

4. “If a party such as Petitioner has not notified the clerk of the appellate court of the filing of a post-trial motion, the trial court must order that party to notify the clerk of the appellate court of the post-trial motion. The appellate court must then dismiss the previously-filed appeal without prejudice, in accordance with *Hudson*.” Hughes on behalf of Est. of Hughes v. Bank of Am. Nat'l Ass'n, 442 S.C. 113, 898 S.E.2d 102, 115 (2024).

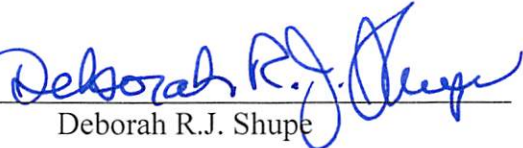
5. The Clerk of the Court has been notified that post-trial motions were pending on the date the Notice of Appeal was filed. Accordingly, pursuant to procedure set forth in Hughes, the pending appeal must be dismissed.

Based on the foregoing, the State submits the above captioned appeal must be dismissed until the pending post-trial motions are resolved.

Respectfully Submitted,

ALAN WILSON  
Attorney General

DEBORAH R.J. SHUPE  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 5098

By:   
Deborah R.J. Shupe

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

ATTORNEYS FOR RESPONDENT

September 23, 2024

# **EXHIBIT A**



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
 )  
 )  
In the Matter of the Care & Treatment of )  
Phillip Nix, )  
Respondent )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

**MOTION TO SET ASIDE VERDICT  
AND GRANT A NEW TRIAL**

Case No.: 2022-CP-32-2497

Pursuant to SCRCP Rule 59, Respondent moves the Court to set aside the verdict and to grant him a new trial because the verdict in the case is contrary to law and to the weight of the evidence and because Respondent did not receive a fair and impartial trial.

RESPECTFULLY SUBMITTED BY  
ATTORNEY FOR THE RESPONDENT



Kindle Johnson  
K. JOHNSON LAW FIRM, LLC  
223 E. Main St., Suite 500  
Rock Hill, SC 29730  
(803) 329-1900  
[kjohnson@kjohnsonlawfirm.com](mailto:kjohnson@kjohnsonlawfirm.com)

August 22, 2024  
Rock Hill, South Carolina

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a copy of the above Motions was delivered via electronic mail (or by First Class Mail, USPS if otherwise indicated below) to: Christopher Runyan, Assistant Attorney General, South Carolina Attorney General's Office, [crunyan@scag.gov](mailto:crunyan@scag.gov), on this 22 August 2024.



Kindle Johnson  
Attorney for the Respondent

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
 )  
 )  
In the Matter of the Care & Treatment of )  
Phillip Nix, )  
Respondent )

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IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

**ORDER**

Case No.: 2022-CP-32-2497

Pursuant to SCRCRCP Rule 59, Respondent has moved this Court to set aside the verdict in his case and to grant him a new trial. Respondent argues that the verdict is contrary to the law and to the weight of the evidence. He further argues that he did not receive a fair and impartial trial.

After a review of the record, Motion and arguments regarding Respondent's Motion, this Court:

( ) Grants Respondent's Motion for a New Trial for the following reasons:

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( ) Denies Respondent's Motion for a New Trial because the evidence and questions of fact submitted to the jury support the jury's verdict that Respondent is a sexually violent predator.

**AND IT IS SO ORDERED.**

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, 2024  
, South Carolina

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**Walton J. McLeod, IV**  
**Presiding Circuit Court Judge**  
**11th Judicial Circuit**

# **EXHIBIT B**

**FILED**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) ELEVENTH JUDICIAL CIRCUIT

2024 SEP -3 PM 1:35

LISA M. COMER  
CLERK OF COURT  
IN THE MATTER OF THE CASE NO. 2022-CP-32-02497  
TREATMENT OF LEXINGTON SC

PHILLIP BYRON NIX, ) STATE'S RETURN TO MOTION TO  
) SET ASIDE VERDICT AND GRANT  
) NEW TRIAL PURSUANT TO RULE 59,  
) SCRPC.  
RESPONDENT. )

The State, by and through the Attorney General's Office, makes the following return in opposition to the Respondent's motion to set aside verdict and grant new trial. Respondent claims the jury verdict was contrary to the law and the weight of the evidence presented and his trial was not fair and impartial. The State respectfully requests the motion be denied. The following is offered in support:

- 1.. On August 13, 2024, a jury of citizens from Lexington County heard the presentation of evidence by both the State and the Respondent and returned a verdict that the Respondent is a sexually violent predator as defined in S.C. Code Ann. Section 44-48-30.
2. "Sexually violent predator" means a person who: (a) has been convicted of a sexually violent offense; and (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long term control, care, and treatment. S.C. Code Ann. Section 44-48-30 (1)(a)(b).
3. "Likely to engage in acts of sexual violence" means that a person is predisposed to engage in acts of sexual violence and more probably than not will engage in acts of sexual violence to such a degree as to pose a menace to the health and safety of others. S.C. Code Ann. Section 44-48-30 (9).

4. The jury heard testimony from the State's witness, Emily Gottfried, Ph.D. and from Respondent's witness, Christopher Gillen, Ph.D. Both witnesses were qualified by the court as experts in Forensic Psychology. Both experts testified they individually performed a psychosexual evaluation of Respondent to determine if he met the criteria to be considered a sexually violent predator.
5. Both Dr. Gottfried and Dr. Gillen testified based on their evaluation of Respondent, he had been convicted of two (2) sexually violent offenses, and the State entered into evidence certified copies of Respondent's qualifying convictions for Criminal Sexual Conduct with a Minor – Second Degree and Sexual Exploitation of a Minor – Third Degree.
6. Both Dr. Gottfried and Dr. Gillen testified based on their evaluation of Respondent, he met the diagnostic criteria and suffered from antisocial personality disorder ["ASPD"]. Both experts testified that Respondent's ASPD predisposed him to engage in acts of sexual violence.
7. Both experts testified they scored actuarial assessments to assess Respondent's risk to sexually reoffend. The State's witness, Dr. Gottfried testified she scored the Static 99-R, Static 2002-R and the Stable 2007 actuarial assessments as a part of her evaluation. Based on the scores, she testified Respondent was in the Well Above Average risk category to reoffend sexually. The Respondent's witness, Dr. Gillen testified he scored the Static 99-R, and the VRS-SO actuarial assessments as a part of his evaluation. Based on the scores, he testified Respondent was in the Above Average risk category to reoffend sexually.
8. Dr. Gottfried testified it was her opinion that Respondent would more probably that not engage in acts of sexual violence to such a degree as to pose a menace to the health and safety of others, while Dr. Gillen testified in was his opinion Respondent's was not likely to reoffend based on the probability scores he assigned to Respondent.

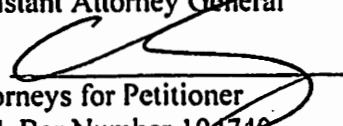
9. It is the sole province of the jury to give weight to the evidence and judge the credibility of witnesses, including expert witnesses. In this case, there was ample evidence submitted to the jury to support the verdict that Respondent is a sexually violent predator as defined by the statute.

WHEREFORE, the State respectfully requests the court deny Respondent's motion to set aside the verdict and deny the request for a new trial.

Respectfully submitted,

ALAN WILSON  
Attorney General

CHRISTOPHER S. RUNYAN  
Assistant Attorney General

By:   
Attorneys for Petitioner  
S. C. Bar Number 104740  
Post Office Box 11549  
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803-734-1173; [crunyan@scag.gov](mailto:crunyan@scag.gov)

August 30, 2024  
Columbia, South Carolina

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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**PROOF OF SERVICE**

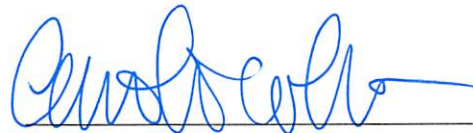
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I, Caroline Collins, certify that I served the Respondent's Motion to Dismiss Appeal on Kindle Johnson, Esq., counsel of record for the Appellant, by sending it to her by electronic mail to the address listed for counsel in AIS.

Kindle Johnson, Esq.  
K. JOHNSON LAW FIRM, LLE  
223 E. Main St., Ste 500  
Rock Hill, SC 29730  
kjohnson@kjohnsonlawfirm.com

I further certify that all parties required by Rule to be served have been served.

This 20<sup>th</sup> day of September, 2024.



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Caroline Collins  
Administrative Support Manager

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727