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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY

Court of General Sessions

HONORABLE Robert J. Bonds

Appellate Case No. 2024-001818

The State,.....Respondent

v.

Ryan Lenard Manigo,.....Appellant

**REPLY TO STATE’S RETURN TO APPELLANT’S PETITION FOR SUPERSEDEAS
AND GRAY MEDIA GROUP, INC.’S RETURN TO APPELLANT’S WRIT OF
SUPERSEDEAS**

ARGUMENT IN REPLY

The State¹ and Gray Media Group, Inc. (Gray) seek to avoid this Court addressing a ripe claim that affects not only the Appellant but that has statewide implications involving countless

¹ While the Petitioner has no objection to this Court hearing from a variety of perspectives, it is likely the State does not have standing on this issue. Typically, a dispute involving the release of pretrial detainee communications pursuant to the Freedom of Information Act (FOIA) should involve the person making the communication, a representative from the pretrial detention facility, and a representative from the party requesting the information pursuant to FOIA. Here, while the State has reviewed the calls to determine exemptions, they are not representatives of the pretrial detention facility. Indeed, the State’s review of the communications is likely a violation of the Petitioner’s Fourth Amendment rights pursuant to State v. Ellefson, 226 S.C. 494, 224 S.E.2d 666 (1976).

South Carolina inmates, South Carolina detention centers, the South Carolina court system, and the public at large. The State and Gray largely argue that the Appellant’s Writ of Supersedeas should be dismissed because it does not comply with Rule 241 of the South Carolina Appellate Court Rules. However, the Appellant filed its original Writ of Supersedeas with the Supreme Court of South Carolina pursuant to Article 5, § 5 and § 20 of the South Carolina Constitution and South Carolina common law on November 9, 2023. The case was then transferred to this Court and subsequently dismissed for not being ripe. After the circuit court made final rulings on the single issue that this Court found was not ripe, the Writ of Supersedeas was refiled with this Court on October 28, 2024. The Appellant has never relied on Rule 241, SCACR because, as the State acknowledges in its Return to Appellant’s Petition for Supersedeas, this case is not civil – it is criminal. This Court has the authority to address the merits of the Appellant’s petition under the State Constitution or code of laws.

I. This Court has broad authority to consider the merits of the Appellant’s Writ of Supersedeas.

Article 5, § 5 of the South Carolina Constitution states:

The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs. The Court shall have appellate jurisdiction only in cases of equity, and in such appeals they shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside. The Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly may prescribe.

Article 5, § 20 of the South Carolina Constitution states:

Each of the Justices of the Supreme Court and judges of the Court of Appeals and Circuit Court and of all other courts of record shall have the same power at chambers to issue writs of habeas corpus,

mandamus, quo warranto, certiorari, prohibition, and interlocutory writs or orders of injunction as when in open court. The judges of the Court of Appeals and Circuit Court and other courts of record shall have such additional powers at chambers as the General Assembly may provide, except in matters required to be determined in a public trial.

South Carolina Code Ann. 14-18-200 states:

The [Court of Appeals] shall have the same authority to issue writs of supersedeas, grant stays, and grant petitions for bail as the Supreme Court would have in a similar case.

The purpose of a supersedeas specifically is to prevent an irreparable harm or miscarriage of justice. Andrews v. Sumter Commercial & Real Estate Co., 87 S.C. 301, 301, 69 S.E. 604, 606 (S.C. 1910). It is meant to “preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.” Graham v. Graham, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990).

The Supreme Court of South Carolina pointed to its broad authority to consider writs as recently as 2023. State v. Price, 441 S.C. 423, 895 S.E.2d 633 (2023). While Price was characterized as a common-law writ of certiorari rather than a supersedeas, the power to act remains the same. The Court clearly stated that “[t]he writ of certiorari ... will be granted or denied, in the discretion of the court, according to the circumstances of each particular case, as justice may require.” Id. at 435, 895 S.E.2d at 639 (citing State ex rel. Martin v. Moore, 54 S.C. 556, 32 W.E.700, 701 (1899)). If the Respondents’ only concern is the title of the writ, this Court can act as the Supreme Court of South Carolina did – at the request of the State – in State v. Hill,

and grant the Appellant relief in whatever form it finds appropriate. 314 S.C. 330, 444 S.E.2d 255 (1994).²

II. Irreparable harm and miscarriage of justice.

The irreparable harm that would result from this Court not considering the merits is clear. If the telephone communications are released to the public and it is later determined that this was in error, the telephone communications cannot be removed from public knowledge. His arguments on the applicability of FOIA cannot be reargued in an attempt to make the public unhear the communications. His State and Federal constitutional rights to privacy, a fair trial, equal protection, and due process cannot be put back in the Pandora's box they were released from. His ability to assert statutory exemptions under the FOIA statute will be lost.³

Furthermore, there will be a miscarriage of justice for all of the other parties affected by the weaponization of FOIA to listen in on other citizens' telephone communications. There is not only one party to any telephone communication. There is a person on the other side of the call - a private citizen - who is not told that their telephone communication is subject to release pursuant to FOIA. Even if a warning existed, there is no mechanism in the FOIA statutory scheme to effectively give a private citizen notice of release so that they could attempt to challenge the release

² In State v. Hill, the State asked the Supreme Court of South Carolina to issue a writ of supersedeas to vacate a granting of bail by the circuit court to two defendants in a capital case. The Court denied this request but did find the circuit court committed an error of law by not making specific findings of fact supporting the defendants' release. Because of this error, the Court then granted a writ of certiorari, reversed the orders granting bail, and remanded.

³ In a similar general sessions case currently pending in the Ninth Judicial Circuit, State v. Jamie Komoroski; (2023GS1003982-85) the defendant's communications from the detention center were released pursuant to FOIA without giving the defendant an opportunity to object to their release. In a subsequent order in Gray Media Group, Inc. v. Kristin Graziano, (2023-CP-10-03027) part of the circuit court's order affirming the release of the jail calls pursuant to FOIA was based on the fact that the jail calls had already been released to the public and that the "cat [was] out of the bag." Petitioner hopes to avoid that outcome with this Writ of Supersedeas.

of their private, non-governmental communications. The number of government employees and attorneys, detainee attorneys, private citizen attorneys, judges, and court staff that would be needed to constantly review detention communications between detainees and other citizens into the end of time can not be what the legislature intended when it attempted to shine a light on secret government activity.

III. The circuit court has issued its final ruling.

In the circuit court, the Appellant put forth three bases why detention telephone communications should not be released subject to FOIA. The first is that the communications are not a public record because they do not relate to government activity. There is no government actor that is a part of any of the communications. The circuit court disagreed and held that the communications are public records. Second, the Appellant argued that if released, he would suffer State and Federal constitutional deprivations including his right to privacy, a fair trial, equal protection and due process. The circuit court disagreed and held that he would suffer no deprivations. Third, the Appellant argued that FOIA statutory exemptions should prevent the release of the communications. The circuit court disagreed and created a mechanism for the communications to be reviewed for the purpose of exemptions. The Appellant then filed its original writ which was eventually dismissed by this Court because of a lack of finality on the substance of the exemptions argument. The parties returned to circuit court in a closed hearing and listened to all seventy-two telephone communications. The circuit court held some communications exempt, some partially exempt, and some not exempt. The Appellant's position remains that all communications should be exempt. While there may be tens or hundreds of new communications created since October 2023 that would require review, the circuit court's ruling on these seventy-two communications is, indeed, final.

Conclusion

For the foregoing reasons, this Court should quash the circuit court's order and find that pretrial detention telephone communications are not public records subject to FOIA because they do not involve or implicate government activity. Alternatively, this court should find the Petitioner's State and Federal constitutional rights prevent the release of the communications. Finally, if this Court finds the communications are subject to FOIA and Petitioner's State and Federal constitutional rights afford him no protections from their release, this Court should hold that FOIA's statutory exemptions prohibit the release of the communications.

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