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Dec 03 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LILLIAN MAE BATES,

APPELLANT.

APPELLATE CASE NO. 2023-000483

REPLY TO RETURN TO MOTION FOR APPEAL BOND

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

Argument In Reply

Respondent incorrectly suggests that Rule 243(k), SCACR, sets forth the necessary factors to consider. Rule 234(k) applies to individuals seeking bail following the grant or denial of post-conviction relief. Although similar to those found in Rule 243(k), the proper factors are the four factors set forth in In re Michael H., 360 S.C. 540, 553, 602 S.E.2d 729, 736 (2004) and as such, are the ones that Ms. Bates addressed in her original motion.

In arguing that the factors weigh against granting a bond, Respondent argued that “even if Bates were to prevail on appeal, she is not immune from further prosecution. The State would simply re-indict Bates for PWID fentanyl. See S.C. Code Ann. § 44-53-370(b)(1).” Return pg. 3. Respondent’s argument is incorrect because fentanyl is classified as a Schedule II substance¹ and possession with intent to distribute fentanyl could only be prosecuted under S.C. Code Ann. § 44-53-370(b)(2). See 44-53-210(c)(6) listing fentanyl as Schedule II drug.

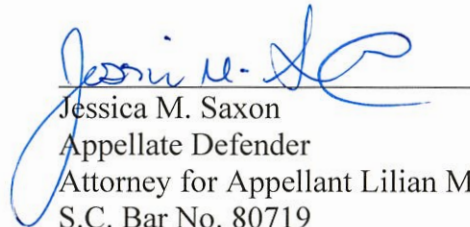
Under S.C. Code Ann. § 44-53-370(b)(2), Ms. Bates would be subject to “not more than five years or fined not more than five thousand dollars, or both,” as this would be a first offense. Based on pre-trial credit, Ms. Bates will have been incarcerated for four years this month. By the time her direct appeal is finalized, Ms. Bates will have served the entire five-year term, day for day, that she could potentially be sentenced to under the possession with intent to distribute statute. The fact that her sentence exposure if the State chose to re-indict her would be, at most, five years weighs in favor of granting an appeal bond.

1 SECTION 44-53-200. Tests for inclusion of substance in Schedule II.

The Department shall place a substance in Schedule II if it finds that:

- (a) It has a high potential for abuse;
- (b) It has a currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (c) Abuse may lead to severe psychic or physical dependence.

Respondent further argues that the nature of the crime (and the danger to the community factor under Rule 243(k)) should weigh against Ms. Bates because the quantity of fentanyl she “sold was enough to kill every person in Greenville County.” Return pg. 3. Critically, Ms. Bates did not sell fentanyl. As the circuit court found, Ms. Bates was the definition of a drug mule. The fact that the State did not pursue the actual drug trafficker who posed a substantial threat to the community, identified as Marquis Little, should not weigh against granting Ms. Bates an appeal bond.



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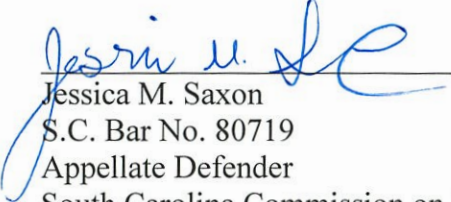
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APPELLATE CASE NO. 2023-000483

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Reply to Return to Motion for Appeal Bond in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Lillian M. Bates, 389553, Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 3rd day of December, 2024.



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ATTORNEY FOR APPELLANT

Leverett, Scott

From: Leverett, Scott
Sent: Tuesday, December 3, 2024 3:56 PM
To: SC - EDWARDS JOSHUA
Cc: Susan Spencer; Saxon, Jessica
Subject: 2023-000483 - State v. Lillian Mae Bates - Reply to Return to Motion for Appeal Bond
Attachments: 2023-000483 - State v. Lillian Mae Bates - Reply to Return to Motion for Appeal Bond.pdf

Dear Mr. Edwards,

Attached please find a copy of the Reply to the Return to the Motion For Appeal Bond that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Jessica Saxon
Appellate Defense