

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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OCT 10 2013  
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2012-207554

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OCT 10 2013

James Curtis Cobbert, III, ..... Petitioner,

S.C. SUPREME COURT

v.

State of South Carolina, ..... Respondent.

RETURN TO "SCACR RULE 243(K) REQUEST  
FOR BAIL PENDING APPELLATE REVIEW"

Respondent, in its Return to the "SCACR Rule 243(k) Request for Bail Pending Appellate Review" dated October 1, 2013 and received October 4, 2013, respectfully submits the following in opposition:

1. Cobbert pled guilty as indicted for Failure to Stop for a Blue Light Resulting in Death (2006-GS-32-1447) and Reckless Homicide (2006-GS-32-1445). On October 16, 2008, the Honorable William P. Keesley sentenced Petitioner to consecutive terms of ten years for Reckless Homicide and twenty-five years for Failure to Stop for a Blue Light Resulting in Death.
2. Cobbert did not appeal his convictions or sentences.
3. Fortune filed an application for post-conviction relief (PCR) on January 9, 2011,

2009 (2009-CP-32-0127). An evidentiary hearing was held on November 29, 2011. In an Order filed January 18, 2012, 2012, the Honorable Edward W. Miller denied and dismissed the application.

4. Cobbert – through his PCR counsel – filed the following items at the South Carolina Supreme Court: a notice of appeal. Robert M. Pachak, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected the appeal in a Petition for Writ of Certiorari filed on May 31, 2012.

5. Cobbert filed a pro se document captioned “Motion to Alter Petition For Writ of Certiorari” on August 2, 2012.

6. Respondent filed a Return Motion to Relieve Counsel and to Proceed Pro Se on September 7, 2012.

7. By Order dated September 13, 2012, the South Carolina Supreme Court granted Cobbert’s motion to relieve counsel and to proceed pro se.

8. Cobbert filed a substitute pro se Petition for Writ of Ceriorari on October 16, 2012.

9. Cobbert filed a pro se document captioned “Motion For Entry of Default Judgment” on December 5, 2012.

10. Cobbert filed a pro se document captioned “Motion to Dismiss Request for Extension to File Return” on December 6, 2012.

11. By Order dated December 11, 2012, the South Carolina Supreme Court denied Cobbert’s motion for default judgment.

12. Respondent filed its Return to Petition for Writ of Certiorari on February 5, 2013.

13. Cobbert filed a pro se document captioned “Reply to Return For Petition for Writ

of Certiorari” on February 11, 2013.

14. By Order dated July 29, 2013, the South Carolina Supreme Court transferred this appeal to the South Carolina Court of Appeals.

15. By letter dated September 23, 2013, the South Carolina Supreme Court advised Cobbert to direct his pro se filings Court of Appeals.

16. In his pro se document captioned “Motion For Bail,” Cobbert asserts he should be released from the South Carolina Department of Corrections during the pendency of his appeal.

Cobbert argues:

[t]here is no applicable case law supporting an [sic] legal conviction for the offenses of reckless homicide and failure to stop for a blue light resulting in death in a single proceeding. Based on the merits of the case Petitioner should receive a bond that is reasonable, if not an [sic] PR bond

5. Rule 243(k), SCACR, provides that release on bond pending appeal from a PCR order shall “be exercised with caution and only in exceptional circumstances.” Respondent submits this case does not present the requisite circumstances to warrant Cobbert’s release and asserts Cobbert would represent a danger to the community while on bond. The State requests this Court deny Cobbert’s request for release on bond pending appeal.

6. It is extremely unlikely Cobbert will prevail on appeal. Plea counsel testified the State’s pursuant of both Reckless Homicide and Failure to Stop for a Blue Light did not result in a double jeopardy violation. The PCR judge issued a lengthy order of dismissal in which he ruled upon and denied all issues raised by Cobbert. The seriousness and nature of the acts for which Cobbert was convicted are such that they should preclude Cobbert’s release on bond pending appeal as they render him a danger to the community. Cobbert was on YOA parole and probation at the time of the offenses.

7. Cobbert faces a thirty-five year term of imprisonment if his appeal is unsuccessful. Accordingly, Cobbert represents a significant flight risk if released.

8. Cobbert was convicted of killing Michael Wilson, a Department of Transportation employee, who was operating a State vehicle at the time of his death. Subsequent to committing a robbery in Aiken County, Cobbert fled and was pursued by law enforcement to Lexington County. Cobbert operated his vehicle at speeds that exceeded one hundred miles an hour. During the chase, Cobbert lost control of his vehicle and crashed into Wilson. Both Cobbert and Wilson were ejected from the vehicles. Cobbert continued his flight on foot. Cobbert admitted his guilt at the plea hearing and addressed the court during the mitigation phase of the hearing.

9. Respondent submits that it is of minimal likelihood certiorari will be granted. Cobbert's argument on appeal fails a Blockburger<sup>1</sup> analysis. See State v. Easler, 327 S.C.121, 489 S.E.2d 617 (1997). See Also Respondent's Return to Petition for a Writ of Certiorari.

9. Based upon all the foregoing, Respondent prays this Court should not exercise its discretion and release Cobbert on bond pending appeal of the denial of his PCR application.

10. Respondent further prays this Court allow the future supplementation of this return in opposition to appeal bond. Members of the victim's family were contacted about Cobbert's request and have expressed the desire to submit letters in opposition to his release. Specifically, Stanley Johnson requested the opportunity to submit a letter in opposition. Once the letters have been received by Respondent, they will be forwarded to the Court and to Petitioner.

WHEREFORE, having made its Return, the Respondent requests this Court: (1) allow future supplementation of this Return upon receipt of letters from the victim's family and (2) deny and dismiss Cobbert's "SCACR Rule 243(k) Request for Bail Pending Appellate Review."

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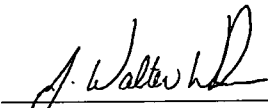
<sup>1</sup> Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180 (1932).

Respectfully submitted,

ALAN WILSON  
Attorney General

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Assistant Attorney General  
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By:   
Attorneys for Respondent

October 7, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED  
OCT 10 2013  
SC Court of Appeals

Appeal from Lexington County

The Honorable Edward W. Miller, Circuit Court Judge

JAMES C. COBBERT, III,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.


**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the Return to "SCACR Rule 243(K) Request for Bail Pending Appellate Review", has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

James C. Cobbert, III  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

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OCT 10 2013  
S.C. SUPREME COURT

This 7<sup>th</sup> day of October, 2013

  
Troyesh Brailey  
LEGAL ASSISTANT for the Respondent