

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to Marlboro County
Court of Common Pleas
The Honorable Paul M. Burch, Trial Judge
The Honorable George M. McFaddin, Jr., Post-Conviction Relief Judge

Appellate Case No. 2025-000136

Weldon W. Stewart, Jr., #295095,

Petitioner,

v.

State of South Carolina,

Respondent.

**RETURN IN OPPOSITION TO
MOTION FOR APPEAL BOND**

The State, through its undersigned counsel, would respectfully show this Court the following:

I.

On April 2, 2025, this Court considered the explanation provided by Petitioner pursuant to Rule 243(c), SCACR, and issued a letter instructing that the appeal will proceed. On April 24, 2025, Petitioner filed a "Petition for Bail Under Rule 243(k), SCACR" wherein he requests this Court release Petitioner "on bail of his own recognizance pending the resolution of his appeal." (Pet. for Bail p. 13).

II.

Petitioner's SCDC records indicate the "current offenses" he is serving time for are voluntary manslaughter and desecration of human remains. Petitioner is currently serving an aggregate sentence of thirty-nine (39) years following his convictions.

III.

Petitioner's extensive procedural history is as follows:

- During its October 2002 term of the Marlboro County Grand Jury for murder (2002-GS-34-01919), and desecration of human remains (2002-GS-34-01918). On July 28, 2003, Petitioner pled guilty to desecration of human remains and proceeded to trial on the murder charge. The jury found Petitioner guilty of the lesser-included offense of voluntary manslaughter, and Judge Burch sentenced Petitioner to imprisonment for consecutive terms of thirty (30) years for voluntary manslaughter and nine (9) years for desecration of human remains. Petitioner subsequently appealed. On April 20, 2005, Petitioner's convictions and sentences were affirmed in an unpublished opinion. State v. Stewart, Op. No. 2005-UP-284 (S.C. Ct. App. filed April 20, 2005). The Remittitur was returned on May 23, 2005.
- Petitioner filed his *first* application for post-conviction relief on April 18, 2006 (2006-CP-34-00125). Following an evidentiary hearing on November 15, 2006, the post-conviction relief court denied and dismissed the application by written order dated January 8, 2007. Petitioner subsequently filed a notice of appeal and petitioned this Court for certiorari. On March 18, 2009, this Court denied Petitioner's petition by unpublished order. Stewart v. State, S.C. Sup. Ct. Order filed March 18, 2009. The Remittitur was returned on April 3, 2009.
- Petitioner subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 31, 2009 (C.A. No. 8:09-842-SB-BHH). The State filed its Return and Motion for Summary Judgment on July 13, 2009. The Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued on December 10, 2009, a Report and Recommendation that the State's motion for summary judgment be granted. Stewart v. Warden of Lieber Corr. Inst., 8:09-842-SB-BHH, 2009 WL 6322405 (D.S.C. 2009). The Honorable Sol Blatt, Jr., United States District Judge, denied Petitioner's Petition on March 29, 2010, and accepted the Report and Recommendation for summary judgment. Stewart v. Warden of Lieber Corr. Inst., 701 F.Supp.2d 785 (D.S.C. 2010). Petitioner filed a notice of his appeal to the Fourth Circuit Court of Appeals; and the Fourth Circuit dismissed Applicant's appeal on February 17, 2011, for want of a certificate of appealability. Stewart v. Bodison, 412 Fed.Appx. 633 (4th Cir. 2011).

- Petitioner subsequently filed a motion for a new trial dated February 9, 2015. On May 26, 2016, Petitioner appeared before the Honorable Paul M. Burch on that motion. Judge Burch orally denied Applicant's motions from the bench.
- Petitioner subsequently filed another motion for a new trial on or about May 7, 2018. The 2018 motion appears to remain pending on the Marlboro County Public Index.
- On June 5, 2018, Petitioner filed a *second* post-conviction relief application. On July 12, 2019, the State filed its Return and Motion to Dismiss. A hearing was held on August 22, 2019, before the Honorable Brooks P. Goldsmith on Petitioner's motion for discovery and the State's motion to dismiss. At the conclusion of the hearing, Judge Goldsmith denied Applicant's motion for discovery and granted the State's motion to dismiss. Counsel for Petitioner placed a motion to reconsider on the record, and the State reasserted its defenses. Judge Goldsmith denied the motion to reconsider. On December 9, 2019, Petitioner filed a motion for reconsideration. Judge Goldsmith denied Petitioner's motion by filed order on January 9, 2020. Petitioner subsequently filed a timely Notice of Appeal. On June 20, 2020, Counsel filed a motion to be relieved as Petitioner wished to proceed in his appeal *pro se*. On July 10, 2020, Counsel filed the Explanation Pursuant to Rule 243(c), SCACR. On August 10, 2020, this Court dismissed the appeal for failing to show an arguable basis for asserting the determination of the lower court was improper. Counsel filed a Motion to Reinstate on August 24, 2020. That motion was denied by filed order on October 19, 2020. The Remittitur was returned on October 19, 2020.
- Petitioner subsequently filed a *pro se* Motion Under 28 U.S.C. § 2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 U.S.C. §§ 2254 or 2255. On December 1, 2021, the State filed its response to Petitioner's motion. On December 7, 2021, Petitioner filed his reply to the State's response to the motion. On March 9, 2022, the United States Court of Appeals for the Fourth Circuit appointed Dawinder Sidhi to represent Petitioner. On July 25, 2022, Applicant filed his Opening Brief in support of his motion. On August 29, 2022, the State filed its Response Brief Opposing Motion for Authorization Pursuant to 28 U.S.C. § 2244. On September 14, 2022, Petitioner filed his reply to the State's response. On January 26, 2023, oral arguments were held before the Fourth Circuit Court of Appeals Judges Roger L. Gregory, Pamela A. Harris, and A. Marvin Quattlebaum, Jr. On August 21, 2023, by **published** opinion, the Fourth Circuit Court of Appeals denied Applicant's motion to file a successive federal habeas. In re Stewart, 78 F.4th 690 (4th Cir. 2023).
- Petitioner subsequently filed his *third* post-conviction relief application on October 30, 2023. On April 1, 2024, Petitioner filed his Motion for Court to Grant Leave to Conduct Discovery. On April 18, 2024, Petitioner filed his Memorandum of Facts in Support of Motion for Leave to Conduct Discovery. On May 3, 2024, the State filed its Return and Motion to Dismiss. On June 10, 2024, Petitioner filed his Response to Proposed Conditional Order of Dismissal and Denial of Discovery. On August 12, 2024, the post-conviction relief court

filed its Conditional Order of Dismissal and Denial of Motion for Discovery in Successive PCR Action. On September 8, 2024, Petitioner filed his Supplemental Response to Conditional Order of Dismissal and Denial of Discovery. On September 22, 2024, Petitioner filed his Motion for Leave to Supplement Filed Response, a proposed Order of Denial of Summary Dismissal and Granting Applicant Leave to Conduct Discovery, and a proposed Order to Examine Autopsy Materials by Retained Pathologist. On October 15, 2024, the post-conviction relief court issued its Final Order of Dismissal. On November 7, 2024, Petitioner filed his Motion to Alter/Amend Judgement Pursuant to Rule 59(e). On November 20, 2024, the State filed its Return to Applicant's Motion Pursuant to Rule 59(e), SCRCF. On December 3, 2024, Petitioner filed his Reply to Respondent's Return Pursuant to Rule 59(e), SCRCF. On December 13, 2024, the post-conviction relief court filed its Order Denying Applicant's Motion Pursuant to Rule 59(e), SCRCF. This appeal follows.

IV.

Pursuant to South Carolina's appellate court rules, a post-conviction relief applicant "may" be admitted to bail during the pendency of an appeal of a trial court order by either the applicant or the State. Rule 243(k), SCACR. Importantly, though, an applicant has no right to an appeal bond, and a court will only issue one in an "exceptional" case. See id. ("The authority to grant bail will be exercised with caution and only in exceptional cases."); Nichols v. Patterson, 202 S.C. 352, ___, 25 S.E.2d 155, 156 (1943) (instructing the allowance of bail after a conviction is *not* a matter of right) (quoting 8 C.J.S., Bail, § 36, p. 68).

In cases where an applicant was initially sentenced to a term of imprisonment exceeding ten years, South Carolina's appellate courts alone have discretion to decide whether an appeal bond should be issued. Rule 243(k), SCACR. When deciding whether to exercise that discretion, an appellate court should consider the following factors: (1) the probability of success on appeal; (2) the nature of the relief the applicant will receive if successful in his or her case; (3) the seriousness of the criminal offense committed; (4) the danger the applicant may pose to the community if he or she is released; (5) the likelihood the applicant may flee if released; and (6) the character and circumstances of the applicant. Id.

V.

Respondent submits that in a factor analysis, the weight against bond is heavy.

Regarding factors one and two, Petitioner has been granted the opportunity to proceed with a petition for writ of certiorari challenging the summary dismissal of his third post-conviction relief application. The primary focus of this appeal is to determine whether the post-conviction relief court erred in its legal judgment by summarily dismissing Petitioner's application. Even if Petitioner prevails in this appeal, the appropriate action will be to remand the matter back to the lower court for reconsideration of the filings and potentially an evidentiary hearing on the merits of his successive post-conviction relief application. Contrary to Petitioner's assertion that there is a "high probability of his voluntary manslaughter conviction being reversed," it is crucial to note that this appeal does not alter or reverse Petitioner's convictions and sentences.¹ Respondent further submits that based on the record and previous rulings, there is a justified probability that further appellate review may result in affirming the denial of relief.

Regarding factor three, our legislature has demonstrated a strong preference for an appeal bond *not* to be granted in a case in which a convicted offender has been sentenced to a term of imprisonment exceeding ten years. See S.C. Code Ann. § 18-1-90 ("Bail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense. However, bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years."); see also State v. Whitener, 225 S.C. 244, 248, 81 S.E.2d 784, 786 (1954) (concluding—in a divided opinion—the Supreme Court could

¹ Petitioner asserts that the proper remedy in PCR is a vacation of his convictions and dismissal of all charges with prejudice. Petitioner's assertion to this Court that this is a remedy in PCR actions is entirely flawed. See Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial."); Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available).

"grant bail, in its discretion, where the sentence exceeds ten years" despite the existence of a statutory provision prohibiting a grant of bail under such circumstances). Petitioner is serving a thirty-nine (39) year sentence for his crimes, and our legislature has deemed Petitioner's conviction of voluntary manslaughter as "violent" and "most serious." See S.C. Code Ann. § 16-1-60 (identifying voluntary manslaughter as a "violent" offense); S.C. Code Ann. § 17-25-45(C)(1) (classifying voluntary manslaughter as a "most serious" offense). As such, the seriousness of Petitioner's crimes favors a denial of bond.

VI.

Regarding factors four and six, Petitioner highlights that he has not committed any criminal offenses since his incarceration and that his SCDC classification risk assessment score is a four (4) out of thirty-seven (37) at this time. Although it is accurate to state that the Petitioner has not engaged in any criminal offenses, he does possess an extensive record of disciplinary convictions within SCDC. Over the duration of his incarceration at SCDC, the Petitioner has amassed a total of sixty-nine (69) disciplinary actions. (Attachment 1). Of these, he has been convicted of thirty-seven (37). Notably, twenty-nine (29) of these thirty-seven (37) disciplinary convictions are categorized as major offenses. Petitioner further highlights his "low" SCDC risk assessment score and touts that it is between one (1) and four (4). Petitioner fails to mention that four (4) points is the maximum assessment risk points that an inmate in minimum custody may acquire. At five (5) points, the inmate is transferred to a medium custody facility.

What is more, it is not without concern that the victim in this case was a minor child of only fifteen (15) years old when she was murdered by Petitioner, who was a nineteen (19) year old adult man.

In support of the denial of Petitioner's request for an appeal bond, the victim's mother has requested that her statement be presented to this Court for consideration. (Attachment 2). She adamantly and strongly supports the denial of bond.²

VII.

For all the foregoing reasons, the collective circumstances of Petitioner's case—when properly considered—do not warrant the extraordinary relief of a grant of an appeal bond. Therefore, this Court should exercise the extreme caution warranted by the circumstances, deny Petitioner's motion for an appeal bond, and decline to grant release from custody to an offender who was convicted of an offense our legislature has deemed "violent" and "most serious." See S.C. Code Ann. § 16-1-60 (identifying voluntary manslaughter as a "violent" offense); S.C. Code Ann. § 17-25-45(C)(1) (classifying voluntary manslaughter as a "most serious" offense).

Respondent maintains that bond should be denied. If this Court should allow bond, however, the State advocates for the strongest restrictions.³ Respondent would ask this Court to order Petitioner to remain on home detention pursuant to the county home detention program during the pendency of the State's appeal, require Petitioner to submit to electronic monitoring at his own expense, preclude Petitioner from changing his address without prior court approval, direct Petitioner to surrender any passport he may have to the Marlboro County Clerk of Court, and mandate Petitioner to refrain from applying for any new passports until his case is finally resolved.

² Respondent finds no reason to respond to factor five, where the posture of this case is not one that should be ripe for consideration of a bail bond. As stated *supra*, even if Petitioner is successful at this juncture, the appropriate remedy is a remand to the lower court for either further consideration of the filings or an evidentiary hearing.

³ Respondent requests that he be granted a personal recognizance bond, and the State adamantly opposes that request.

WHEREFORE, the State prays this Court will deny Petitioner's Motion for Appeal Bond; and grant such other and further relief as the Court may deem just and proper.

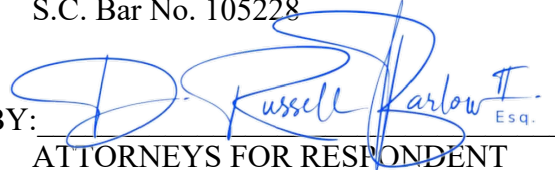
Respectfully submitted,

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