

Stewart first asks the Court to consider the facts upon which he and Respondent agree.

Respondent does not dispute that Stewart raises a credible claim the trial court imposed a sentence on him for voluntary manslaughter without jurisdiction. Respondent also does not challenge the fact that this claim is supported by official statements from two pathology experts, including the State's trial expert, confirming the scientific probability C.A. committed suicide. Respondent does not argue against its failure to comply with the law in preparing orders for the lower court to sign. Respondent offers no contention against the fact that the current action before this Court holds merit. Respondent does not even contend that relief is not warranted in this action, and merely splits hairs about the type of relief Stewart is eligible to receive. *Return p. 5.*

Respondent does not rebut the fact that Stewart has completed 96 percent of his voluntary manslaughter sentence, or that he has only one year remaining to serve to complete this sentence. Respondent also does not rebut that while Stewart's numerical sentence is 39 years, the actual amount of time he has left to serve on this sentence is less than six years and is mostly for a non-violent offense. In essence, Respondent does not rebut any of the specific facts presented by Stewart as mitigating factors to the seriousness of the offense. *See Bail Petition pp. 7-9.*

Respondent does not contest the fact that Stewart has a minimum custody status which allows him to work outside the prison. Respondent merely quibbles hypothetically about the risk assessment points necessary for Stewart to lose this status. *Return p. 6.* Respondent also does not contest the fact that Stewart has held outside job assignments at two different prisons, including a prison located in his hometown.

Respondent does not dispute that Stewart was housed for almost a year in the same

prison with the main prosecution witness whose testimony was used to convict him. *See Bail Petition p. 10 n. 6.* Respondent also does not dispute that, despite their close proximity, Stewart made no attempt to threaten or harm this individual. *Id.* Respondent further does not dispute that Stewart declined a highly coveted outside job offer solely because this job would have required him to work in the community and town where C.A.'s family lives. *Id.*

Stewart next asks the Court to consider that Respondent's arguments opposing bond are primarily general in nature and fail to address the unique circumstances found in Stewart's case.

Respondent contends "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 Stewart's claims. *Return p. 5.* However, Respondent fails to mention such action is necessary *only* because Respondent failed to comply with the law when preparing orders for the lower court to sign. *See Reese v. State, 425 S.C. 108, 109-10, 820 S.E.2d 376, 377-78 (2018)(citing numerous rulings by this Court on this issue).* Respondent now seeks to be rewarded, and Stewart penalized, for Respondent's lack of compliance with the law by the Court denying him bond.

Respondent also contends the only available remedy in Stewart's PCR action would be a new trial. *Return p. 5 n. 1.* First, Respondent fails to demonstrate how this distinction works to Stewart's disadvantage in his request for an appeal bond. Second, the two cases cited by Respondent in support of this contention are clearly distinguishable from Stewart's case. Specifically, both cases involve guilty pleas and resentencing, factors which are not applicable to the facts in Stewart's case. Most importantly, Respondent fails to demonstrate a legal basis for a new trial following a PCR action resolved upon a sufficient showing that no crime was committed related to C.A.'s death.

Respondent's conclusory statement that "further appellate review may result in

affirming the denial of relief" does not coincide with the factual record. *Return p. 5.*

Particularly, no prior court has considered or ruled upon the newly discovered evidence establishing the State's trial pathology expert recanted his trial testimony relating to C.A.'s cause and manner of death in an official sworn statement.

Respondent contends "our legislature has demonstrated a strong preference for an appeal bond not to be granted" for a person whose sentence exceeds ten years. *Return p. 5.*¹ However, Respondent's generalization of legislative intent fails to address the anomalies presented by the unique factors in Stewart's case. Specifically, the amount of time Stewart has left to serve on his sentence does not exceed ten years, he does not pose an escape risk or a danger to the community, and he raises a credible claim his sentence which exceeds ten years was imposed without jurisdiction.

The legislative intent behind *S.C. Code § 18-1-90* is to uphold public safety by preventing high risk offenders from being granted an appeal bond. However, such intent clearly does not apply to a person with Stewart's unique circumstances. Regardless, this Court retains full authority under the South Carolina Constitution to grant an appeal bond in exceptional cases such as this one. *See S.C. Const. Art. 5 § 5; see also State v. Whitener, 225 S.C. 244, 248, 81 S.E.2d 784, 785-86 (1954)(holding "the legislature has no power to take away powers specifically granted to this Court by the Constitution" and that the Court "can grant bail, in its discretion, where the sentence exceeds ten years").*

The Court reasoned that if it failed to exercise its authority to grant bail in such cases, "procedural rights embodied in our Constitution to insure the individual against oppression will

¹ Our legislature has also demonstrated a strong preference for attorneys to prepare adequate orders for PCR judges to sign. *See S.C. Code § 17-27-80. (mandating that PCR orders must contain "specific findings of fact, and...conclusions of law, relating to each issue presented")*. Respondent does not dispute it failed to comply with this legislative mandate at the lower level—the sole reason Stewart is in the current position to request bond. However, Respondent audaciously suggests this Court should place the *purported* legislative preference over its own case precedent as a basis to deny Stewart bond.

become nullities". *Id.* Stewart's case embodies the wisdom of the Court's ruling in Whitener, because without such foresight, he would be forced to remain in prison while appealing a conviction credible new evidence reveals was imposed without jurisdiction for a crime that never occurred. Respondent does not dispute that the Court granting Stewart an appeal bond under these extraordinary circumstances would set a high legal standard that would be extremely difficult for future applicants to meet. *See Bail Petition p. 13.*

Respondent vaguely contends that the legislature has designated voluntary manslaughter as a "violent" and "most serious" offense. *Return p. 6, 7.* However, Respondent fails to mention the uncontested mitigating facts that Stewart has nearly completed his voluntary manslaughter sentence, and the remainder of his consecutive sentence is for a nonviolent offense. Moreover, to adopt Respondent's rationale, the Court would have to disregard the unchallenged official sworn statement from the State's trial pathology expert confirming the reasonable probability Stewart is innocent of voluntary manslaughter.

Respondent offers an equally vague contention about Stewart's prison disciplinary history. Respondent details the number of infractions Stewart received throughout his 24-year incarceration but fails to specify how said infractions establish that Stewart poses an escape risk or a risk to public safety. *Return p. 6.* This omission betrays the fact that Respondent did not find any specific information in Stewart's prison record to support a legitimate claim he poses an escape risk or a danger to the community.

Indeed, such an argument would be futile based on the record before the Court. Specifically, it is undisputed that SCDC classification experts—the most qualified people to interpret Stewart's prison record—have determined he does not pose said risks by awarding him the least restrictive custody status an SCDC inmate can receive. Stewart was forthcoming in his personal letter to this Court about the fact that his disciplinary record is not without blemishes.

However, Respondent even acknowledges that Stewart's imperfections throughout his incarceration have not risen to the level of criminal offense. *Id.*

Respondent emphasizes C.A.'s age at the time of her death. *Id.* However, Respondent fails to mention that C.A. was only fourteen years old, and over four months pregnant, at the time she was forced to undergo a partial birth abortion. This gruesome procedure—which involved C.A. partially delivering her live baby and witnessing the physician kill her child—left C.A.'s young mind severely traumatized. *See S.C. Code Ann. § 44-41-85(B)(1)*. These facts contributed, in part, to the newly discovered pathological finding of credible evidence that C.A. killed herself on the one-year anniversary of this traumatic event—when she was fifteen years old. *See Dr. Harley Sworn Affidavit p. 3.*

Respondent's assertion that C.A. was "murdered" by Stewart (*Return p. 6.*) is outside the scope of Respondent's qualifications or knowledge. Moreover, the person most qualified to make this determination—the pathologist who conducted C.A.'s autopsy—has provided a sworn affidavit confirming the scientific possibility C.A. committed suicide. *See State v. Commander*, 396 S.C. 254, 266, 721 S.E.2d 413, 419 (2011) ("*[I]t is axiomatic that a determination of the cause and manner which led to a person's death is generally scientific in nature and outside the common knowledge of layperson[s]*") (*internal citations omitted*).

Stewart next asks the Court to consider the community support for granting bond and the factual support for the conditions of bond.

There is no significant community objection to the Court granting Stewart an appeal bond. In fact, the only documented community opposition presented by Respondent is from the very person who forced C.A. to undergo the abortion that led to her suicide. *Return p. 7.* Therefore, this person has a clear motive for repeatedly attempting to impede the truth from being revealed in this case. Though these facts are pertinent to the weight and credibility of this

person's opposition to bond, they do not diminish the very real pain this mother feels from losing her child.²

Conversely, Stewart provides abundant documented community support for granting bond. Said documented support comes from multiple sources who share both personal and professional relationships with Stewart. The overwhelmingly wide margin between support and opposition speaks volumes about the community's perception of the minimal risk to public safety associated with Stewart's potential release from prison on bond.

Respondent fails to state any specific grounds for its request that the Court impose the "strongest restrictions" upon granting bond. *Return p. 7*. Conversely, Stewart's demonstrated conduct towards opposing parties in his case establishes that his release on bond will not present a reasonable cause of concern for the safety of these individuals. Specific undisputed instances of said conduct include: (1) Stewart declining an outside job offer to work in the town where C.A.'s family lives, and (2) Stewart was housed for almost a year in the same location with the main prosecution witness against him but made no attempt to threaten or harm this person. *See Bail Petition p. 10 n. 6*.

In addition, if the Court grants bond, Stewart's unique circumstances are such that he can be closely monitored without electronic monitoring devices. First, Stewart is representing himself in this matter which will necessitate him maintaining constant contact with Court officials and opposing counsel. Second, Stewart's charitable work with his cat program will require him to continue to work in close collaboration with prison officials at the Trenton Institution.³ However, if the Court requires electronic monitoring as a condition of bond,

² Stewart asks the Court to also consider that an equally deep and enduring pain is felt by his mother, who for decades has watched her innocent son suffer for a crime that never occurred.

³ Stewart's wife is a law-abiding citizen and a South Carolina resident with a stable household. She also works from home and will be constantly present with him to ensure his compliance with the conditions of bond. Stewart's wife works closely with the Trenton prison staff for the cat program.

Stewart humbly requests that the Court consider these factors as grounds for him to be placed on the less invasive, non-body worn electronic monitoring device.

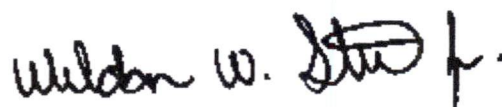
Respondent also provides no specific grounds for “adamantly” opposing Stewart’s request for a personal recognizance bond. *Return p. 7 n. 3.* Conversely, it is undisputed that Stewart has provided credible prima facie proof of his innocence, and that he is diligently working to conclusively prove the same. In essence, Stewart’s manifest desire to prove his innocence in a court of law ensures that he will make every court appearance necessary to achieve this end. However, if the Court sets bail, Stewart humbly requests that said bail be set at a reasonable amount that does not pose an impossible burden on the limited financial resources of his family.

Finally, Stewart and his family are very grateful for the Court’s consideration of this matter and will readily and fully comply with all conditions the Court may set upon granting him an appeal bond.

CONCLUSION

Based on the foregoing, Stewart respectfully renews his request that the Court grant him a personal recognizance appeal bond.

Respectfully submitted,



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