

The State OF South Carolina

In the Supreme Court

Appeal From Lexington County
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2012-207554

James Curtis Cobbert III, Petitioner,

v.

State of South Carolina, Respondent.

RECEIVED

OCT 18 2013

SC Court of Appeals

Reply To State's Return Opposing SCACR RULE
243 (k) Request for Bail pending Appellate Review.

Petitioner, in it's Reply to the Return for "SCACR Rule 243 (k) Request for Bail Pending Appellate Review" dated October 7th, 2013 and received October 10th, 2013, respectfully submits an reply to State Opposing SCACR Rule 243 (k)

1. SCACR Rule 243 (k) provides that bail will be exercised with caution and only in exceptional cases only.

(A) the probability the applicant will prevail on appellate review and the nature of relief he will receive.

According to law, Double Jeopardy bars Subsequent Prosecution "Failure to stop for Blue lights resulting in death 56-5-750 (c) (2)" if petitioner prevails on Appellate

review Brown v. Ohio, 432 U.S. 161, 169-70 (1977); Also
See (App. p. 35-37) for sentencing.

The probability of prevailing on appellate review is a matter of Statute interpretation. With no applicable case law supporting an conviction for the offense's Reckless Homicide and Failure to stop for blue lights resulting in death. The BlockBurger Test should be employed by the Courts to preclude an factual finding of law. State is consistent with State v. Easter, 327 S.C. 121, 489 S.E. 2d 617 (1997) However, Easter was convicted for Felony Dui. and Reckless Homicide. That case is distinct and does not set precedents over this case.

Respondent in the Return To petition For Writ of Certiorari quoted, "Applying Easter, Petitioner's argument similarly fails a Blockburger analysis. Simply, "Recklessness" is not an element of Failure to stop for blue light result in death. See S.C. Code Ann. § 56-5-750(c)(2). Thus, Petitioner's double jeopardy argument is without merit."

This whole sale defense by Attorney General's office was none meritorious and vague. The word Recklessness is a noun, A word that is used to name a person, place, thing, quality, or action. Presumptuously the word Recklessness would only be used in a statute that can be violated by numerous of acts. See S.C. Code Ann. § 56-5-2910. Failure to stop for blue light result death can be committed only one way. However, when an actor has committed 56-5-750(c)(2) that actor has engaged in operating an vehicle in a reckless disregard. There is no way an actor can commit Failure to stop for blue lights resulting in death without operating his or her vehicle in a reckless disregard. Reckless Homicide is an lesser included offense of Failure to stop for blue lights resulting in death.

(B) The seriousness of the criminal offense committed; the danger the applicant may pose to the community if released; the likelihood that applicant will flee if released

The offense's Reckless Homicide and Failure to stop for blue lights resulting in death are both Non-violent offense. Petitioner, may have shown an extreme indifference to the safety of others that 16th day of Feb 2006. However his actions was without malice, with no intent on harming anyone. It's almost been 8 years since that dreadful day an 21 year old decided to steal, not rob, an jewelry store. Petitioner is aware that because of his actions an family is grieving over a loved one and is apologetic. However, the continuous of letters interfere's in the matters of this Petition for Bond. A Request For Bail Pending Appellate Review SCACR Rule 243 (k) is granted or denied ~~only~~ based only on the merits of the issue, not if the family wants an bond to be granted. This action is a matter of law and any malevolent letters would serve to be prejudicial to the petitioner.

2. (SCACR) Rule 240(c) and Rule 263(B)
(SCACR) Rule 308 and Rule 212

(A) As an initial matter, Respondent's request to supplement the Return, upon the possibility of receipt of letters from the victim's family and Stanley Johnson, is inapposite and contrary to the South Caroline Appellate Court Rules: (SCACR) Rule 240(c) and Rule 263 (b). The Rules provide a method to request the court to enlarge the time to file in

Circumstances deemed, by either the petitioner or the respondent, to require additional time for good cause. The need to contact Mr. Wilson's family is one such example of good cause. Supplementing documents, on the other hand, generally applies under SCACB Rule 208 and Rule 212. The failure of respondent to request additional time to determine whether Mr. Wilson's family will submit letters interjects uncertainty and duration issues to this matter. This unnecessarily complicates Petitioner's Reply to respondent's Return. - Petitioner request that the court deny the entering of these letter's, and if that request isn't granted; To allow Mr. Cobbert to examine the letters and set a definite deadline for the submission of all letter's regarding Mr. Cobbert's bail.

3. Plea counsel testimony at P.C.R.
- (A) Plea counsel testimony at the P.C.R. hearing alleging that under the BlockBurger Test, Petitioner can be convicted of both Reckless Homicide and Failure to stop for blue lights resulting in death.

At the P.C.R. hearing plea counsel testified that under the BlockBurger analysis state had full discretion to prosecute for both crimes. However, plea counsel didn't have any supporting case law to support her opinion.

4. P.C.R judge findings and denial.

Although, P.C.R judge issued an order denying Petitioner's application. P.C.R judge expressively complimented the double jeopardy issue, and openly stated that his ~~determination~~ determination was based on a opinion.

Wherefore, having made its Reply, the Petitioner requests this Court: (1) To not allow the state to supplement the Return upon receipt of letters the victims family and (2) grant Petitioner's "SCACB Rule 243 (k) Request for Bail Pending Appellate Review.

Respectfully submitted,

James Cobbert
4460 Broadriver rd
Columbia Sc 29210



Oct 14, 2013

on the 14th day of October, 2013
Susan H. Frye

My Commission Expires
March 5, 2018

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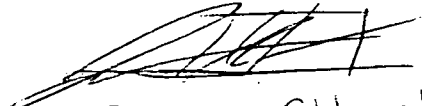
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The State of South Carolina

Respondent

Certificate of Service

I certify that a true copy of the Reply
To State's Return Opposing SCACR Rule
243 (k) Request For Bail pending Appellate
Review has been served on John
Walter Whitmire, Esquire this 14th day
of Oct 2013


James Cobbent
Petitioner

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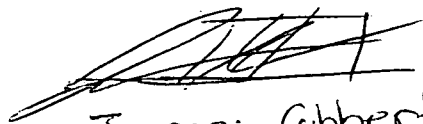
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