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MAR 13 2014

State of South Carolina,
County of Clerdon,

SC Court of Appeals

In The Court of Appeals of The
State of South Carolina

Dwayne Cabbagestalk,
Plaintiff,
pro se,
v.

Case No. 2013-0001378

State of South Carolina,
Respondent,

"Motion to Request for a Appeal Bond,"
"The Bail Reform Act",
18 U.S.C. § 3143 (b)(1)(B).

This is a most humble request for this Honorable Court to review the facts of this case and grant the Plaintiff bail, to pursue "Appeal Bond." Plaintiff avers that his case is in appeal review based upon, lack of tangible evidence, and hearsay testimony brought by the State at trial. Accompanying this motion is a "statement of fact" for this court's review. Plaintiff is currently incarcerated in SCDC, (Turbeville Correctional Institution, P.O. Box 252, Turbeville, S.C. 29162-0252; Warden; Gregory T. Knowlin). Plaintiff prays that this motion is in order and pleases this court to grant bail for an "Appeal Bond."

18 U.S.C. § 3143 (b), "Pending appeal, convicted defendant must provide clear and convincing evidence to overcome presumption of flight and dangerous to community." At trial the victim (Plaintiff's wife), states "she doesn't feel like the victim in this case" (TT pg. 156, lines 10-11), admitted to giving false statements to the police (TT pg. 156, lines 13-15). The Court, when responding to alleged victim agreed that, (Judge Russo) he did not see

her as the victim either (TT pg. 156, lines 18-19), in fact the court viewed that she should be charged for giving false statement to the police (TT pg. 156, lines 19-22), and that she should be prosecuted for putting law enforcement in danger. (TT pg. 156, lines 22-25; 157, lines 1-6).

The standard of review for appeal bail/bond determinations pending appeal is not specified in the Bail Reform Act, but courts that have considered the issue have used standards similar to those used in reviewing pretrial bail determinations, consider: 1. probability of reversal; 2. the nature of the crime; 3. the possibility of escape; 4. the character of the appellate; 5. the circumstances of appellate. In re Michael H., 360 S.C. 540, n.s. 602 S.E. 2d 729 (S.C. 2004); Nichols v. Patterson, 202 S.C. 352, 25 S.E. 2d 155 (1943).

Title 18. Appeals; S.C. Code Ann. § 14-8-200(a) (Supp. 2003) states that, the Court of Appeals shall have the same authority to grant petitions for bail as this Court would have in similar cases. Under S.C. Code Ann. § 18-1-90 (1985) bail shall be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense. "In the exercise of discretion, the presiding judge should take into consideration the existence of the probability of a reversal, and enormity of the charge." Nichols v. Patterson, *supra*.

Purpose of the appeal bond in the criminal case is to allow the defendant to go free during pendency of appeal while assuring his presence upon affirmance of his conviction, or as the court may otherwise direct. State v. Workman, 274 S.C. 341, 343, 263 S.E. 2d 865-66 (S.C. 1980); State v. Policao, 402 S.C. 556, 741 S.E. 2d 780 (n. 13-14), (S.C. App., 2013).

Plaintiff, before being found wrongfully guilty, Plaintiff had a previous pre-trial bail/bond for \$25,000 posted on 12.04.11. Plaintiff's trial was not held until June 17-18, 2013. Plaintiff clearly shows proper character and good-faith. Plaintiff is

-serving a 5yr. conviction for Criminal Domestic Violence (CDV) 3rd., a non-violent charge, however, the supposed victim even states that she lied (TT pg. 156, lines 9-16), so it proves that the Plaintiff is in no way a threat to anyone.

Plaintiff has served 10 months of a 30 month sentence (1/3 of his sentence) and is at a low level security by SCDC Classification, Plaintiff's level is (MR1B) which is considered an open custody level, (no fences required) due to lack of risk of escape, assault or any institutional infractions. Plaintiff is now qualified to be set at (M01B) the lowest level of security.

Plaintiff and alleged victim are in daily contact with each other by phone, and mail, pictures usually accompany the mail (wife and children). Plaintiff and wife are diligently seeking counseling to rectify any animosity or spousal issues, and are consistently in motion to rectify their marriage.

Your attention to this motion is greatly appreciated.

cc:
S.C. Attorney General,
Alan Wilson

Respectfully Submitted,

Dwayne Cabbagestalk

Dwayne Cabbagestalk, S.C.D.C.# 180546

P.O. Box 252, SA-207

Turbeville, S.C. 29162-0252

Appellant/Petitioner pro se

SWORN to and subscribed before me this
17th day of March, 2014.
[Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-27-2016

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cc: S.C. Attorney General,
Alan Wilson

Respectfully Submitted,

Dwayne Cabbagestalk

Dwayne Cabbagestalk, S.C.D.C.# 180546

P.O. Box 252, SA - 207

Turbeville, S.C. 29162-0252

Appellant/Petitioner pro se

SWORN to and subscribed before me this
11th day of March, 2014.
[Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-27-2016

SOUTH CAROLINA COURT OF APPEALS
Jenny Abbott KITCHENING, Clerk
P. O. Box 11629
Columbia, SC 29211

March, 11, 2014

RE: DWAYNE CABBAGESTALK V. THE STATE
APPELLATE CASE NO. 2013-001378

DEAR MRS. ABBOTT:

Will you please file this motion for bond
with courts to be put on the upcoming
court docket. PLEASE STAMP this letter
and send me a copy to let me know
when my court date may be. Thank
you very much!

Sincerely,

Dwayne Lambert Cabbagestalk

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SC Court of Appeals

TURBEVILLE C. I.
MAIL ROOM
BOX 252
TURBEVILLE, S. C. 29162

Dwayne Cabbagestalk 180546
Seloc A 207

SCDC

MAR 11 2014

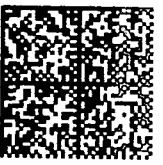
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P.O. Box 11629
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SC Court of Appeals



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FOR ITS CONTENTS.

TURBEVILLE CORRECTIONAL INSTITUTION
S. C. DEPARTMENT OF CORRECTIONS

