

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-000448

RECEIVED

JUL 24 2014

SC Court of Appeals

State of South Carolina,

Respondent,

vs.

Daniel William Spade,

Appellant.

RETURN TO MOTION FOR BOND PENDING APPEAL

Respondent State of South Carolina respectfully submits the following in opposition to Appellant's Motion for Bond Pending Appeal:

1. Appellant Daniel William Spade was charged in Spartanburg County with criminal sexual conduct with a minor in the first degree regarding a **four year old** minor victim. Appellant stood trial before the Honorable R. Keith Kelly, and a jury. Appellant was convicted as charged. He was sentenced on February 26, 2014 to confinement for a period of 35 years.
2. Appellant filed and served notice of appeal on March 4, 2014, and the appeal is currently pending before this Court.

3. Appellant moves this Court for his release from confinement on bond pending the appeal.

4. In support of his request for release from custody on bond pending appeal, Appellant asserts that he has no criminal history in South Carolina prior to his arrest, that he honored the conditions of his bond while the case was pending for trial for over two years, and that the appeal presents the issue of sufficiency of evidence to convict because it was based upon the testimony of the child victim. Specifically, Appellant seems to assert that the victim's account of the incident was unreliable because the victim had not seen Appellant for six months prior to reporting Appellant's criminal sexual misconduct and the victim had not seen Appellant for three years at the time of trial. He also moves on the ground the court reporter received an extension of time to prepare the trial transcript.

5. Respondent submits that this Court should deny the motion for release on bond pending appeal, first, because the sentence Appellant received is in excess of ten (10) years and his release on appeal bond is not permitted. See S.C. Code Ann. Section 18-1-90 (Supp. 2012) ("bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years.").

6. However, should this Court consider the request pursuant to Whitener v State, 225 S.C. 244, 81 S.E.2d 784 (1954), the State asks this Court to exercise its discretion to deny the motion. The State submits that release on bond pending appeal should be exercised with caution and only in exceptional circumstances. In considering a request for release on bond pending appeal, our Supreme Court opines that the following factors should be reviewed. (1) the probability of success on appeal and the relief granted; (2) the seriousness of the crime committed; (3) the danger to the community if Appellant is released; and (4) the character and

circumstances of Appellant. Nichols v. Patterson, 202 S.C. 352, 25 S.E.2d 155 (1943).

Respondent submits that this case does not present the requisite circumstances to warrant Appellant's release on bond pending appeal. In addition to the bar created by S C. Code Ann. Section 18-1-90, Respondent submits that the motion must be denied for the additional reasons set forth below.

7 Respondent contends, first, that the request should be denied because Appellant fails to show he will likely prevail on appeal. He offers no information respecting issues or rulings below that will **likely result in reversal** of the conviction. Appellant only makes a vague assertion regarding the reliability of the child victim. Appellant's vague argument is without merit, however, as the jury below obviously lent credence to child victim's testimony. Furthermore, placing primary reliance on the word of the victim is not unusual in cases of criminal sexual conduct with a minor.

8. Second, Respondent submits that the crime for which Appellant was convicted is extremely serious. Appellant was charged with and convicted of criminal sexual conduct with a minor in the first degree. The severity of this crime is such that it is one of the few crimes in our state to carry a maximum potential life sentence. See S C. Code Ann. Section 16-3-655 (D)(1) (Supp. 2013). Appellant was sentenced to a lengthy sentence of thirty-five (35) years by the trial judge who heard the facts and circumstances of the sexual assault as well as the allocution presented by Appellant at sentencing. The acts necessary to accomplish criminal sexual conduct with a minor in the first degree would likely have been violent and will impact the minor child for the remainder of the child's life. Appellant should not be released during the appeal after conviction for such an offense.

9. Respondent also submits Appellant does not possess the requisite character deserving of his release on bond pending appeal. Appellant may pose a danger to the same victim and community where the crime was committed. Appellant highlights the fact that he has never been convicted of a crime **in South Carolina**. While Appellant may be accurate, Respondent notes that, based upon information and belief, Appellant is not and has never been a resident of South Carolina. As for a prior criminal history and based upon information and belief, it appears Appellant was convicted in Virginia for domestic assault and battery and may have other matters of a nature similar to this conviction outstanding in Virginia. Also, in the statement of opposition to Appellant's Motion for Appeal Bond which is being forwarded by separate letter pursuant to the Victims' Bill of Rights, the child victim's mother expresses concern about the victim's safety as well as her own safety if Appellant is released from custody during the appeal. Appellant is also a flight risk. Appellant is not a resident of South Carolina, fails to show ties to the community, and does not state how he will be able to become a productive member of this State if released on bond pending appeal. In fact, Appellant has no reason to remain in South Carolina or to honor the conditions of bond now that he has been convicted. The child victim was Appellant's only connection to South Carolina, and on information and belief, his parental rights to the victim were terminated in family court prior to the trial in this case. These matters are clear indications this Court should deny Appellant's release from custody on bond pending the appeal

11 Respondent submits the surrounding circumstances of this case call for denial of Appellant's release from custody on bond pending appeal. Appellant's disregard for the rules and laws enacted to maintain and protect all citizens indicates he may pose a similar risk to the

community if he is released on bond pending this appeal. The child victim and the victim's mother should not have to live in fear of Appellant if released during the appeal.

12. The factors this Court considers in determining whether to grant bond pending appeal weigh against Appellant. Appellant will not likely succeed upon appeal, the nature of the crime is violent, Appellant poses a danger to the community, Appellant has no ties to South Carolina, Appellant's character has proven to be harmful, and now that he has been convicted, Appellant has no incentive to comply with conditions of bond, particularly in view of the lengthy sentence he faces.

13. Based upon all the foregoing, Respondent prays that this Court deny Appellant's request for release on bond pending appeal.

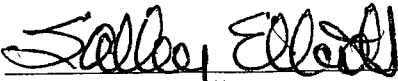
WHEREFORE, Respondent moves this Court to deny Appellant's request for release on appeal bond.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit

By: 
Salley W. Elliott
S.C Bar No. 1871

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ATTORNEYS FOR RESPONDENT

July 24, 2014

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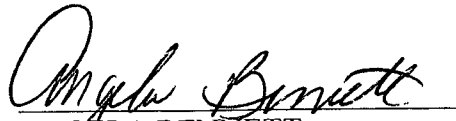
Appellant

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion for Bond Pending Appeal on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Kenneth P. Shabel, Esquire, 104 N/ Daniel Morgan Avenue, Suite 201, Spartanburg, SC 29306

I further certify that all parties required by Rule to be served have been served.

This 24th day of July, 2014.


ANGELA BENNETT
Administrative Assistant

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Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

July 24, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re. The State v. Daniel William Spade
Appellate Case N: 2014-000448

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Motion for Bond Pending Appeal along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S C Bar No. 1871

SWE/ab
Enclosures

cc Kenneth P. Shabel, Esquire
Victim Services

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