



ALAN WILSON  
ATTORNEY GENERAL

September 11, 2014

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RE: State of South Carolina v. Walter Douglas Barclay**  
**Appellate Case No. 2012-212639**

Dear Ms. Kitchings:

Enclosed please find the original **Reply to Appellant's Opposition to Dismissal**, along with **Proof of Service**, in the above-referenced appeal, which I am serving on opposing counsel today.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina Catoe Bigelow  
Assistant Attorney General  
SC Bar No. 73562

cc: John B. Shupper, Esquire  
Post Office Box 90623  
Columbia, SC 29290

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SEP 11 2014

SC Court of Appeals

\_\_\_\_\_  
Appeal from Charleston County  
The Honorable Deadra L. Jefferson, Circuit Court Judge  
Appellate Case No. 2012-212639  
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STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

WALTER DOUGLAS BARCLAY,

APPELLANT.

\_\_\_\_\_  
**REPLY TO APPELLANT'S OPPOSITION TO DISMISSAL**  
\_\_\_\_\_

Appellant was convicted by a jury of felony driving under the influence, death resulting, and was sentenced to twelve years of imprisonment. Appellant timely served and filed a notice of appeal, and the case was briefed and oral argument was heard in this Court on June 5, 2014. This Court has not yet issued an opinion in the case.

On August 22, 2014, the State filed a motion to dismiss the appeal on the ground of mootness in light of the fact that Appellant passed away on August 13, 2014. On September 2, 2014, Appellant's counsel filed a reply opposing the State's motion to dismiss. In his Reply, Appellant's counsel primarily argued that this Court should not dismiss the appeal because the issues in the case are "capable of repetition but evading review." The State submits that Appellant's counsel has misapprehended the law on this point. In Byrd v. Irmo High School, 321 S.C. 426, 468 S.E.2d 861 (1996), our Supreme Court clarified the

principle of “capable of repetition but evading review.” The Supreme Court stated that a court can take jurisdiction, despite mootness, *if the challenged action in its duration was too short to be fully litigated prior to its cessation or expiration* and there is a reasonable expectation that a complaining party might be subjected to the action or constitutional violation again. Byrd at 431-32, 468 S.E.2d at 864.

In Nelson v. Ozmint, 390 S.C. 432, 434, 702 S.E.2d 369, 370 (2010), the Supreme Court explained that the defendant’s complaint regarding the length of his sentence was moot because he had been released from prison. However, the Supreme Court found it appropriate to address his claim despite its mootness because the issue was capable of repetition but will generally evade review because “most inmates will have served the [one] year required by SCDC’s interpretation of the statute before the lawfulness of the interpretation can be reviewed [on appeal].” Nelson at 434-35, 702 S.E.2d at 370.

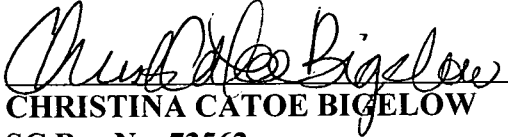
In Appellant’s case, the issues are not capable of repetition but evading review because “the challenged action in its duration” is not “too short to be fully litigated prior to its cessation or expiration.” Byrd at 431-32, 468 S.E.2d at 864. In other words, the issues raised by Appellant are not of the type that will usually become moot before they can be reviewed on appeal. It is Appellant’s death that has rendered this appeal moot; meanwhile other defendants who raise the same issues can have their issues fully and fairly litigated in due course.

Accordingly, the State respectfully requests that this Court dismiss Appellant's appeal.

Respectfully submitted,

ALAN WILSON  
Attorney General

CHRISTINA CATOE BIGELOW  
Assistant Attorney General

  
**CHRISTINA CATOE BIGELOW**  
**SC Bar No. 73562**

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

**ATTORNEYS FOR RESPONDENT**

September 11, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Charleston County  
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STATE OF SOUTH CAROLINA,

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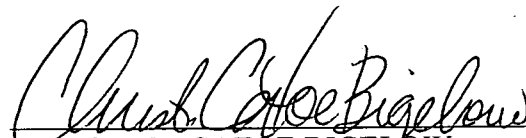
APPELLANT.

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**PROOF OF SERVICE**

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The undersigned attorney hereby certifies that the **REPLY TO APPELLANT'S OPPOSITION TO DISMISSAL** in the above-referenced case has been served upon **JOHN B. SHUPPER**, Post Office Box 90623, Columbia, South Carolina 29290, this **11<sup>th</sup> day of September, 2014.**

  
CHRISTINA CATOE BIGELOW  
Assistant Attorney General

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Post Office Box 11549  
Columbia, SC 29211  
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