

RECEIVED

OCT 02 2014

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable George C. James, Jr., Circuit Court Judge

Case No.: 2013-CP-43-0370
Appellate Case No.: 2014-0014566

Russell Earley #199848,..Respondent,

VS.

State of South Carolina,Petitioner.

PETITION FOR APPEAL BOND

Respondent, through his undersigned counsel, respectfully petitions this Court for an appellate bond pursuant to Rule 240, SCACR, and Rule 243(k), SCACR. The Respondent is requesting an appellate bond during the pendency of the State's appeal of the Order Granting Application for Post Conviction Relief, which was signed by the Honorable George C. James, Jr., on June 30, 2014 and on file with this Court.

POST CONVICTION RELIEF PROCEDURAL HISTORY

This matter came before the lower court by way of an Application for Post Conviction Relief filed in Sumter County on January 7, 2013. The State made its return on or about April 9, 2013.

An evidentiary hearing into the matter was held on February 24, 2014 at the Sumter County Courthouse in front of the Honorable George C. James, Jr.

Respondent was present at the hearing and was represented by Tommy A. Thomas, Esquire. The State was represented by Daniel Gourley, Assistant Attorney General.

During the hearing, Respondent testified on his own behalf. Respondent's counsel also called Charles T. Brooks, III, Esq. Mr. Brooks was the Respondent's trial Counsel. The lower court also had before it a copy of the Application, the State's Return, the records of the Sumter county Clerk of court concerning the subject's conviction, the trial transcript, and Respondent's records from the South Carolina Department of Corrections.

At the close of the hearing, the Honorable George C. James, Jr., took the matter under advisement. Thereafter, the Honorable George C. James, Jr., requested that Respondent and Petitioner's counsel submit Memoranda of Law. On June 30, 2014, the Honorable George C. James, Jr., issued an Order Granting Application for Post Conviction Relief, which was filed on June 30, 2014. On or about July 21, 2014, the State filed a Notice of Intent to Appeal.

GENERAL SESSIONS PROCEDURAL HISTORY

Respondent is presently confined in the South Department of Corrections pursuant to orders of commitment from the Sumter County Clerk of Court. The Applicant was indicted in July, 2009 for Criminal Solicitation of a Minor. He was represented at trial by Charles T. Brooks, III, Esq. On January 5-6, 2009, the Applicant was tried and convicted following a jury trial before the Honorable Benjamin H. Culbertson. Judge Culbertson sentenced the Applicant to eight (8) years

imprisonment. A notice of appeal was timely file, but the appeal was dismissed after the Applicant notified the Court of Appeals he wanted to withdraw his appeal.

GROUND IN SUPPORT OF REQUEST FOR BOND

By way of the Order Granting Application for Post Conviction Relief, the Honorable George C. James, Jr., granted the Respondent relief on the issue of ineffective assistance of trial counsel. In his highly detailed and well-reasoned Order the lower court addressed the issue of Failure to Object to Evidence of Facebook Posting and Failure to Move for Mistrial, the lower court held as follows:

The Applicant testified in his own defense at trial. On cross-examination, the solicitor asked the Applicant if he had had any direct contact with the victim from the day of the incident up to the time of trial, a period of almost four years. The Applicant responded that he had had no contact with the victim during that time; however, the solicitor had been provided with information, presumably by the victim that the Applicant had posted a message on the victim's Facebook "wall" the week before trial. The message said "See ya". After the Applicant denied he had had any contact with the victim, the solicitor confronted the Applicant with the message and the Applicant admitted he had posted the message. During closing, the Solicitor highlighted this exchange to the jury as one reason to find the applicant not credible, arguing that the applicant had lied about having any contact with the victim, and that "It's all about credibility, believability."

Order pp 8-9.

The PCR Court concludes that:

1. The Facebook posting was a statement made by the Respondent.
2. The existence of which was known to the State under Rule 5 (a)(1).
3. The Statement was relevant.
4. That the posting was a paper or document material to the preparation of the

Respondent's defense.

5. That this failure to move for a mistrial based on a Rule 5 violation fell below accepted Professional norms and that a mistrial would have to have been granted.

Respondent would urge this Court to find that there is a good probability that he will prevail on appellate review due to the well-reasoned findings of the lower court as summarized above.

Mr. Earley is currently being housed at Wateree Correctional Institution. He is 44 years of age and is a high school graduate. Mr. Earley has employment with Earley International Securities and will be living with his Mother, Rosylin, and Father, John, at 9422 Plowdenmill Road, Alcolu, SC 29001. Mr. Earley's projected max-out date is August 13, 2016. Mr. Earley will be working with his Brother at Earley International Securities. Mr. Earley's parents and brother will help supervise Mr. Earley and they promise to provide him with assistance and support in the community.

Attached to this Motion are letter from Mr. Earley's parents stating that the Respondent is very caring and hard-working young man. That he is well liked in the community. Other letters of support are from Virginia Kemp, Andrew Earley, Elizabeth Francis, Dorothy Harrison and Gloria Williams.

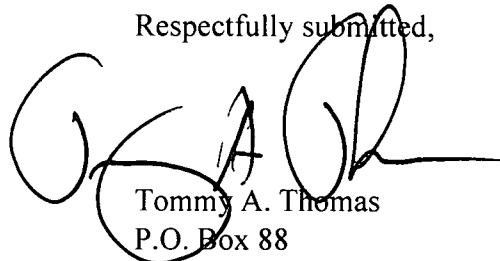
Also enclosed is a letter from Black Cat Bail Bonds, Ms. Theresa Tindal is the owner and operator of Black Cat Bail Bonding located in Florence, South Carolina. Her bonding company posted a \$50,000.00 surety bond on November 25, 2008 on behalf of the Respondent. The Respondent appeared for all required Court appearance and she never had any problems with the surety bond.

In addition, the Respondent had 54 individuals who signed a Petition of support on his behalf for his last parole hearing. These individuals were knowledgeable of the Respondent and were willing to support him for his release.

The Respondent has taken all of the programs available to him within the South Carolina Department of Corrections. Copies of his Substance Abuse Education Completion Certificate, as well as his Completion Certificate for a Character based study program are included with this Motion.

Based upon the strength of the lower court's ruling, the reasons set forth in his letter, his comprehensive plan, and the outpouring of support and affirmation from the community, Respondent submits that his case presents an extraordinary circumstance that warrants the granting of this Petition. Therefore, Respondent would respectfully request that this Court grant his Petition for an Appellate Bond Pursuant to Rule 240, SCACR, and Rule 243(k), SCACR.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. A. Thomas', written over the typed name.

Tommy A. Thomas
P.O. Box 88
Irmo, SC 29063
(803) 732-5507
Attorney for Respondent

September 28, 2014
Irmo, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Post Conviction Relief

The Honorable George C. James, Jr., Circuit Court Judge

Case No.: 2013-CP-43-0370
Appellate Case No.: 2014-0014566

Russell Earley #199848 Respondent,


v.

State of South Carolina Petitioner.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for Appellant in the above action, hereby certify that I placed in the United States Mail, a copy Petition for Appeal Bond with postage prepaid, and the return address clearly shown on said envelope to Daniel Gourley, Esq. at:

Daniel Gourley, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211


Jacquelyn E. Miller, Secretary
TOMMY A. THOMAS
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, South Carolina
September 30, 2014

INFORMATION FOR APPELLATE BOND
RUSSELL EARLEY #199848

Order: Granting Post-Conviction Relief

Prior Bond: Letter from Blackcat Bail Bonds

Petitions: Three pages of signatures showing community support

Residence: John & Rosylin Earley - parents
9422 Plowdenmill Rd.
Alcolu, SC 29001
803-473-5713

Employment: EIS – Earley International Securities
Andrew Earley
4997 Burkeshire Ct.,
N. Charleston, SC 29250
843-305-0577

Letters: Rosilyn Earley & John R. Earley – parents
Gayle Whitt - cousin
Virginia Kemp – aunt
Elizabeth Francis-neighbor
Dorothy Harrison-neighbor
Gloria Williams-neighbor

Certificates: Substance Abuse Education
Character Based Study

Others: Photograph of family & Support

000007