

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from York County  
Court of General Sessions

Honorable Paul Burch, Circuit Court Judge

Appellate Case No. 2014-002344

RECEIVED

DEC - 1 2014

S.C. Supreme Court

THE STATE,

Respondent,

vs.

AKEEM ALIM-NAFI ABDULLAH-MALIK,

Petitioner.

**RETURN TO PETITIONER'S "APPEAL BAIL RESUBMITTED"**

Respondent, by and through undersigned counsel, and making return to Petitioner's request for release from custody on appeal bond, would respectfully show unto this Court:

1. It appears that on March 10, 2014, Petitioner entered guilty but mentally ill pleas to the offenses of third degree burglary (2013-GS-46-04369), criminal conspiracy (2013-GS-46-04371), and petit larceny as the lesser included offense of grand larceny (2013-GS-46-04370). It also appears he was sentenced to five (5) years for burglary, three years and six months, consecutive, for conspiracy, and time served for petit larceny;

2. Petitioner forwarded a pro se notice of appeal to the York County Clerk of Court which was filed on March 14, 2014. On May 19, 2014, Petitioner moved the South Carolina Court of Appeals to file his Notice of Appeal out of time. He also provided a Rule 2039d)(1)(B)(iv),

SCACR, explanation for appealing a guilty plea and served Notice of Appeal on the State by mailing the Notice of Appeal to the prosecuting attorney;

3. By order filed September 11, 2014, the Court of Appeals dismissed Petitioner's appeal because Petitioner failed to timely serve the Notice of Appeal. Petitioner also moved the Court of Appeals for release from custody on bond pending the appeal;

4. Petitioner moved for rehearing of the order dismissing his appeal. Rehearing was denied by order of the Court of Appeals filed October 24, 2014. In the same order, the Court of Appeals also declined to entertain Petitioner's request for appeal bond in view of its dismissal of the appeal;

5. Petitioner thereafter submitted a Petition for Writ of Certiorari asking this Court to review the propriety of the dismissal of his appeal by the Court of Appeals. Respondent made Return to the Petition on November 25, 2014.

6. Petitioner now moves this Court for release on bond pending appeal. In support of his request, Petitioner contends that he was honorably discharged from the armed services, that he is under the care of the Veteran's Administration, that he is a former federal civil service worker and is a student at a community college in North Carolina. He also contends that he was convicted of non-violent charges and lived in Charlotte, North Carolina but has family ties in York, South Carolina. Petitioner asserts he was forced to plead guilty by the plea judge and that he is not a flight risk. He seeks treatment from the Veteran's Administration as an alternative to incarceration. He also indicates that he seeks to support himself "legally as a paralegal, investigator, or a post-conviction attorney support personnel employee."

7. Respondent submits that this Court should deny the motion for release on bond pending appeal. First, it is Respondent's position that Petitioner's request for release from custody on

bond pending appeal is premature. The order of the Court of Appeals concluded Petitioner failed to timely serve Respondent with the notice of appeal. The failure to timely serve the opposing party deprives the appellate court of jurisdiction of the appeal, including the ability to grant an appeal bond if the appeal is improper. Second and pursuant to Rule 246 (a), SCACR, Appellant must make the motion for appeal bond to the circuit court and not the appellate court in view of the fact that his sentence is less than ten (10) years.

8. However, should this Court consider the request pursuant to Whitener v. State, 225 S.C. 244, 81 S.E.2d 784 (1954), Respondent asks this Court to exercise its discretion to deny the motion. Respondent 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, this 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 Petitioner is released; and (4) the character and circumstances of Petitioner. 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 Petitioner's release on bond pending appeal. For the reasons set forth below, Respondent requests that this Court deny the motion for release on bond pending appeal.

9. Respondent asserts that Petitioner offers no information respecting issues or rulings below that were preserved for appellate review as is required by Rule 203(d)(1)(B)(iv), SCACR, and that will likely result in reversal of the convictions. Petitioner's convictions and sentences were the result of pleas of guilty but mentally ill. The Plea Waiver forms attached to Petitioner's motion indicate Petitioner asked to enter a guilty plea, was advised of the charges and penalties, and thereafter knowingly and voluntarily entered the guilty plea as indicated by Petitioner's

initials and Judge Burch's written confirmation and acceptance of the plea. The fact that Petitioner now desires an alternative form of disposition does not present an issue likely to result in reversal of the plea or sentences.

10. While Petitioner states he has ties to York, South Carolina, he also indicates that he was living and attending community college in North Carolina which would put him out of the jurisdiction of this Court if he is released from custody. Petitioner's offenses establish a disregard for the rules of government and the sanctity of the welfare and safety of others. Petitioner circumvented the requirements of the law. Respondent submits Appellant may pose a similar risk to the community if he is released on bond pending this appeal without any indication of where he would live and how he would support himself. Additionally, Petitioner should receive mental health treatment on a regular and consistent basis in view of his guilty but mentally ill plea.

11. The factors weigh against Petitioner's request for release from custody.

12. Based upon all the foregoing, the State prays that this Court deny Petitioner's request.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

KEVIN BRACKETT  
Solicitor, Sixteenth Judicial Circuit

By:



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

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ATTORNEYS FOR RESPONDENT.

December 1, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from York County  
Court of General Sessions

Honorable Paul Burch, Circuit Court Judge

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Appellate Case No. 2014-002344

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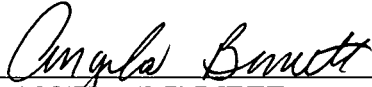
**PROOF OF SERVICE**

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I, Angela Bennett, certify that I have served the Return Petitioner's "Appeal Bail Resubmitted" on petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to him at Akeem Alim-Nafi Abdullah-Malik, #359150, Kershaw Correctional Inst, 4848 Goldmine Highway, Kershaw, South Carolina 29069

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

This 1<sup>st</sup> day of December, 2014.

  
\_\_\_\_\_  
ANGELA BENNETT  
Administrative Assistant

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727



ALAN WILSON  
ATTORNEY GENERAL

December 1, 2014

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S.C. Supreme Court

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
P.O. Box 11330  
Columbia, South Carolina 29211

Re: The State v. Akeem Alim-Nafi Abdullah-Malik  
Appellate Case N: 2014-002344

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Return Petitioner's "Appeal Bail Resubmitted" 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: Akeem Alim-Nafi Abdullah-Malik, #359150  
Ms. Trisha Allen