

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 17 2014

S.C. Supreme Court

THE STATE,

Respondent,

vs.

AKEEM ALIM-NAFI ABDULLAH-MALIK,

Petitioner.

RETURN TO MOTION TO BE HEARD AND BROUGHT BEFORE THE COURT

Respondent, by and through undersigned counsel, and making return to Petitioner's "Motion to be Heard [and] Brought Before the Honorable Court," 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 moved for rehearing of the order dismissing his appeal. Rehearing was denied by order of the Court of Appeals filed October 24, 2014.

4. 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. The petition is currently pending before this Court. He also submitted a motion to be released on bond during appeal to this Court. Respondent made return to the bond request on December 1, 2014.

5. Petitioner now moves to be personally brought before this Court to be heard on his motion for bail and "reply motions." In support of the motion, Petitioner asserts that this Court has inherent power to allow his release from custody on bond and reiterates he should be released on bond pending appeal as was requested in the motion pending before this Court. He moves to be brought before this Court to provide testimony from himself and other witnesses, including expert witnesses, to establish due process and equal protection violations as well as explore the availability of veterans care if his request for release is granted. He asks for subpoenas for this purpose. He also might also state that the circuit court has already denied his request for appeal bond.

6. Respondent submits that this Court must deny the motion. Petitioner's appeal has been dismissed for failure to timely serve the notice of appeal and there is simply no jurisdiction for

this Court's consideration of his motions for bail and to be brought before the court to elicit testimony in support of his request. 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. Third, petitions for writ of certiorari must be considered without oral argument and Respondent submits that any matter arising from the petition should be treated similarly. See Rule 242(i), SCACR (stating the petition for writ of certiorari shall be considered by the Supreme Court without oral argument).

7. Respondent also submits that Petitioner's appearance will not aid the Court in resolving the request. See Rule 215, SCACR (stating the appellate court may decide the case without oral argument if it determines argument will not aid its resolution of the issue). Respondent incorporates herein its previous return to Petitioner's request for appeal bond.

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

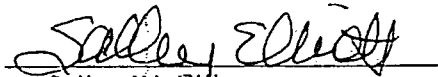
Respectfully submitted,

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

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

ATTORNEYS FOR RESPONDENT.

December 17, 2014

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THE STATE,

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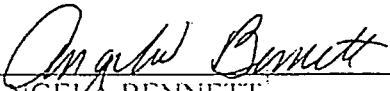
Petitioner.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return Petitioner's Motion to be Heard and Brought Before the Court 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 17th 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 17, 2014

RECEIVED

DEC 17 2014

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 Motion to be Heard and Brought Before the Court 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