

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**S.C. SUPREME COURT**

Supreme Court Case No.: 2012-213692

Appellate Case No.: 2008-111046

Opinion No.: 5038

Howard P. King, Circuit Court Judge

The State of South Carolina,

Petitioner,

v.

Jeremy McMillan,

Respondent.

**RESPONDENT'S MOTION FOR BOND PENDING REVIEW OF THE STATE'S  
PETITION FOR WRIT OF CERTIORARI**

The Respondent, Jeremy McMillan, by and through undersigned counsel, hereby moves for bond pending the review of the State's Petition for Writ of Certiorari in the above-referenced action. In support of this motion, the Respondent would show the following:

**PROCEDURAL HISTORY**

1. On December 11, 2008, McMillan was convicted of two counts of murder and one count of possession of a weapon during the commission of a crime of violence. He was sentenced to life without the possibility of parole. A notice of appeal was timely filed with the South Carolina Court of Appeals.
2. McMillan raised several meritorious issues in his brief with the Court of Appeals and as a result, the Court of Appeals reversed his conviction and remanded the case for a new trial on October 17, 2012. *See State v. McMillan*, 400 S.C. 298, 734 S.E.2d 171 (Ct. App. 2012).

3. The State filed a Petition for Rehearing with the Court of Appeals on November 1, 2012. McMillan filed a response in opposition on November 21, 2012. The Court of Appeals issued an order denying the State's Petition for Rehearing on November 30, 2012.
4. The State filed a Petition for Writ of Certiorari with this Court on March 1, 2013. Respondent filed a return to the petition on March 11, 2013.
5. Respondent now seeks bond pending review by this Honorable Court of the State's Petition for Writ of Certiorari.

#### **MEMORANDUM OF LAW**

This Court retains the power to grant bail to applicants who have been sentenced for a term of imprisonment in excess of ten years. *See State v. Whitener*, 225 S.C. 244, 251-52, 81 S.E.2d 784, 787-88 (1954); Rule 246(a), SCACR. Factors to be considered in admitting a person to bail pending appeal are (a) the existence of the probability of reversal; (b) the enormity of the charge; (c) the danger that if freed the accused will commit a crime of like character; (d) the probability of a forfeiture of the bail and escape; and (e) the character and reputation of the accused and his surrounding circumstances. *Nichols v. Patterson*, 202 S.C. 352, 353, 25 S.E.2d 155, 156 (1943).

First, McMillan's conviction has already been reversed by the Court of Appeals. The Court of Appeals found that the trial court erred in granting the State's *Batson* challenge and that such prejudiced McMillan. The Court of Appeals remanded the case for a new trial on October 17, 2012. *See McMillan*, 400 S.C. 298, 734 S.E.2d 171.

Second, while the charges of murder and possession of a weapon during the commission of a violent crime are serious offenses, the Court of Appeals has reversed McMillan's previous

conviction, reinstating the presumption of innocence. Furthermore, if this Court grants bond in this matter, McMillan will consent to any conditions that this Court deems appropriate.

Third, prior to the instant case, McMillan did not have an extensive criminal record. In fact, he only had two (2) prior convictions, both of which were misdemeanors. Given his minimal criminal record, McMillan would not pose a risk or danger to the safety of the community if released on bond.

Fourth, McMillan was 23 years old at the time of his conviction and sentence. He is now 29 years old. Prior to his conviction, he had been a lifelong resident of Lake City, South Carolina. His family and friends along with his three (3) children reside in Lake City, South Carolina. He has close ties to the community and would not be a flight risk if released on bond.

Finally, McMillan has been incarcerated for over six (6) years since his conviction, two (2) years of which have been since his conviction was reversed by the Court of Appeals. Given the circumstances, Respondent would respectfully request this Court for a reasonable bond and release until the conclusion of the appellate process. Alternatively, Respondent would request transfer to a county jail pending resolution of this matter.

Respectfully Submitted,

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*Attorney for Respondent*

December 18, 2014

STATE OF SOUTH CAROLINA  
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**CERTIFICATE OF SERVICE**

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The undersigned attorney hereby certifies that a true copy of the Respondent's Motion for Bond Pending Review of the State's Petition for Writ of Certiorari in the above-referenced case has been served upon the following via United States mail this 18th day of December, 2014:

Donald J. Zelenka, Esq.  
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Nicole N. Mace, Esq.  
*Attorney for Respondent*