

STATE OF SOUTH CAROLINA
In The Supreme Court

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DEC 23 2014

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2013-001269

Daydrian Rouse, #342518,..... Petitioner,

v.

State of South Carolina, Respondent.

**RETURN TO “PETITION FOR BAIL PENDING PCR APPEAL PURSUANT TO RULE
243(k), SCACR”**

Respondent, in its Return to the “PETITION FOR BAIL PENDING PCR APPEAL PURSUANT TO RULE 243(k), SCACR” dated December 18, 2014, and received by Respondent on December 22, 2014, respectfully submits the following in opposition:

1. Petitioner pleaded guilty to assault and battery of a high and aggravated nature (ABHAN) and to hit and run with great bodily injury on August 30, 2010. Petitioner also entered an Alford¹ plea to assault and battery with intent to kill (AWIK) before the Honorable G. Thomas Cooper, Jr. He was sentenced to ten (10) years imprisonment for ABHAN, ten (10) years imprisonment for hit and run, and fifteen (15) years imprisonment suspended upon the service of ten (10) years and five (5) years’ probation on the ABWIK charge. Petitioner filed a

¹ North Carolina v. Alford, 400 U.S. 91 (1970).

motion for reconsideration, a hearing was held, and the motion was denied by Judge Cooper. Petitioner then filed a notice of appeal which he subsequently withdrew.

2. Petitioner filed an application for post-conviction relief (PCR) on March 22, 2011. An evidentiary hearing was held on September 10, 2012. In an order filed April 10, 2013, Judge Kinard denied and dismissed the application. In an order filed May 21, 2013, Judge Kinard denied Petitioner's subsequent motion to alter or amend pursuant to Rule 59(e), SCACR.

3. Petitioner – through his PCR counsel – filed a Petition for Writ of Certiorari on March 25, 2014. Respondent filed its Return on August 25, 2014. Petitioner then submitted this request for bail.

4. In his “PETITION FOR BAIL PENDING PCR APPEAL PURSUANT TO RULE 243(k), SCACR,” Petitioner argues he should be released from the South Carolina Department of Corrections during the pendency of his appeal. Petitioner argues he should be granted an appeal bond despite the fact that his application was denied and dismissed with prejudice. Petitioner argues that he was a twenty (20) year old college student who had no prior criminal record when he pleaded guilty to these offenses.

5. Rule 243(k), SCACR, provides that release on bond pending appeal from a PCR order shall “be exercised with caution and only in exceptional circumstances.” The State submits this case does not present the requisite circumstances to warrant Petitioner's release and asserts Petitioner would represent a danger to the community while on bond. Petitioner has not cited any exceptional circumstance that would necessitate the grant of said motion. The State *strenuously* opposes this motion and requests that this Court deny Petitioner's request for release on bond pending appeal.

6. It is extremely unlikely Petitioner will prevail on appeal. It is of significant note

that the PCR court denied Petitioner's application on all grounds. Petitioner's numerous allegations were denied and were fully ruled on by the PCR court. The PCR judge issued a lengthy order of dismissal in which he ruled upon and denied all issues raised by Petitioner. Further, Petitioner pleaded guilty to ABWIK, ABHAN, and to hit and run. The seriousness and nature of the acts for which Petitioner was convicted are such that they should preclude his release on bond pending appeal as they render him a danger to the community. Granting an appeal bond where relief has been denied on all grounds would set a disturbing precedent.

7. Petitioner faces a fifty (50) year sentence if his appeal is unsuccessful. Accordingly, Petitioner represents a significant flight risk if released.

8. Petitioner pleaded guilty to ABWIK, ABHAN, and hit and run. The incident arose from a party thrown by Omega Psi Phi fraternity at the National Guard Armory on Bluff Road. Petitioner was involved in a physical altercation inside the party where he sustained minor injuries. The party was broken up by the Richland County Sheriff's Department. Codefendant, Torrence Shaw, made some sort of gestures towards the victims before the incident. Petitioner along with codefendant Shaw got into a Honda Accord. While leaving the party, Petitioner initially slowed down to allow the victims and others to cross Bluff Road. Petitioner then radically accelerated the car careening into the victims. One of the victims was struck head on and was thrown into the windshield which was cracked as a result of the collision. The other victim was struck on the arm which resulted in the side mirror being broken off. Petitioner made no attempts to slow the car and did not stop to check on the victims. Petitioner and passenger, codefendant Shaw, proceeded to McDonald's and then drove back by the scene later and again failed to stop. The victim who was hit head on is confined to a wheelchair as a result of the incident, had significant brain injuries, and the left side of his body is paralyzed. As noted supra,

this occurred in full view of several eyewitnesses. The nature of the conviction reflects Petitioner's violent nature, his utter disregard for the law, and an inability to conform his conduct to the requirements of the law.

9. Based upon all the foregoing, the State prays this Court should not exercise its discretion and should not release Petitioner on bond pending appeal of the denial of his PCR application.

10. Petitioner further prays this Court allow the future supplementation of this return in opposition to appeal bond. Upon receipt of this Motion, our office attempted to contact all registered victims about Petitioner's request. These victims may have the desire to submit letters in opposition to Petitioner's release. Should any victims wish to submit letters in opposition, Respondent will immediately forward them to the Court and opposing counsel.

WHEREFORE, having made its Return, the State requests this Court: (1) allow future supplementation of this Return upon receipt of letters from the victim's family and (2) deny and dismiss Petitioner's motion.

Respectfully submitted,

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Deputy Attorney General
S.C. Bar #101443

P.O. Box 11549
Columbia, S.C. 29211

By: 
ATTORNEYS FOR RESPONDENT

December 23, 2014

STATE OF SOUTH CAROLINA
In Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2013-001269

Daydrian Rose,.....Petitioner,

v.

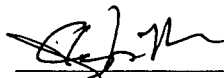
State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Return to Petition for Bail Pending PCR Appeal** has been served upon the applicant by mailing two (2) copy in the United States mail, postage prepaid, addressed to Petitioner's counsel:

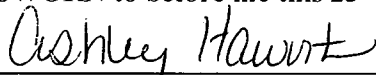
**Ms. Tara Dawn Shurling, Esquire
Law Ofc. Of Tara Dawn Shurling, PA
3614 Landmark Drive Suite A
Columbia, SC 29204**

This 23rd day of December, 2014.



J. CLAYTON MITCHELL, #101443
ATTORNEY FOR RESPONDENT

SWORN to before me this 23th day of December, 2014.



Notary Public for South Carolina.

My Commission Expires: 3-18-23



ALAN WILSON
ATTORNEY GENERAL

December 23, 2014

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DEC 23 2014

S.C. Supreme Court

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

Re: Daydrian Rouse v. The State of South Carolina
Appellate Case No. 2013-001269

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of Respondent's Return to Petition for Bail Pending PCR Appeal.

Sincerely,

J. Clayton Mitchell
Assistant Attorney General
S.C. Bar No. 101443

JCM/sbm
Enclosures

cc: Tara D. Shurling, Esquire
Trisha Allen, Victim's Services