

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Op. No. 5038 - Appellate Case No. 2008-111046
Howard P. King, Circuit Court Judge

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JAN 12 2015

STATE OF SOUTH CAROLINA,

Petitioner,

v.

S.C. Supreme Court

JEREMY McMILLAN,

Respondent

APPELLATE CASE No. 2012-213692

MOTION FOR LEAVE TO FILE RESPONSE TO MOTION FOR BOND PENDING
PETITION FOR WRIT OF CERTIORARI
BY STATE OF SOUTH CAROLINA AS IS ON JANUARY 5, 2015

The State of South Carolina hereby makes a Motion to Allow Filing of A Motion For Bond Pending Petition for A Writ of Certiorari. Respondent State of South Carolina submits that the State's Response to the Petition was filed in this Court on January 5, 2015 in opposition to the motion for bond pending certiorari.

In a Reply to the Response received on January 9, 2015, Respondent Jeremy McMillan asserted in his Reply that Response in opposition to the bond filed Monday January 5, 2015 was out of time asserted the State's Response was due on Friday January 2, 2015. He further asserts that the failure to timely file is a concession under SCACR Rule 240(e). Reply to State's Response, p. 1.

The State of South Carolina respectfully request this Court to relax SCACR Rule 240 and SCACR Rule 263 to allow the Respondent's filing in opposition to bail and bond pending resolution of certiorari. The Respondent McMillan appears correct that the filing was out of time. It is unclear how the opposition pleading was miscalendared for a Response, but it may be that January 2, 2015

was mistakenly assumed to be a holiday making January 5, 2015 the due date as the next business day. Nevertheless, the State of South Carolina requests leave of this Court to allow consideration of its opposition.

The State further opposes the suggestion that SCACR Rule 240(e) *requires* this Court to consider the belated response as “consent” to bond. First, SCACR Rule 240(e) use the term “may,” not “shall” making it discretionary, not mandatory. Further, within the original Motion by McMillan, he requested alternately transfer to a county jail pending resolution of the matter, not release on bail, a matter solely within the authority of the Director of the South Carolina Department of Corrections, not this Court. See S.C. Code Ann. §24-3-20, 30 (1976). Third for the reasons set forth in its response, bail or transfer of McMillan should be denied at this time.

II.

The State of South Carolina respectfully requests leave of this Court to allow the earlier filing of the “RESPONSE TO MOTION FOR BOND PENDING PETITION FOR WRIT OF CERTIORARI BY STATE OF SOUTH CAROLINA” filed in this Court on January 5, 2015.¹

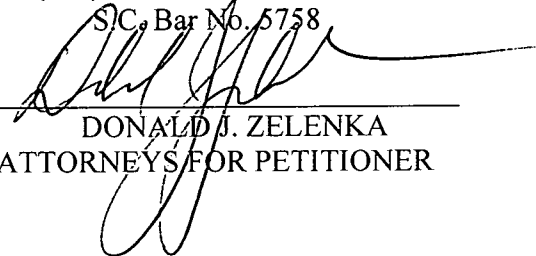
Respectfully submitted,

DONALD J. ZELENKA

Assistant Deputy Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

S.C. Bar No. 5758

By:


DONALD J. ZELENKA
ATTORNEYS FOR PETITIONER

January 12, 2015

¹ The State of South Carolina notes that a review of the on South Carolina Appellate Case Management System shows the State’s Return was filed on January 5, 2015.

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Appeal from Lee County
Howard P. King, Circuit Court Judge**

STATE OF SOUTH CAROLINA,

Petitioner,

v.

JEREMY McMILLAN,

Respondent

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the MOTION FOR LEAVE TO FILE RESPONSE TO MOTION FOR BOND PENDING PETITION FOR WRIT OF CERTIORARI BY STATE OF SOUTH CAROLINA AS IS ON JANUARY 5, 2015 in the foregoing action by depositing two copies in the United States mail, postage prepaid to the following:

Nicole Nicolette Mace, Esquire
The Mace Firm
1341 44th Avenue North, Suite 205
Myrtle Beach, SC 29577

This 12th day of January 2015.



DONALD J. ZELENKA
Senior Assistant Deputy Attorney General



ALAN WILSON
ATTORNEY GENERAL

January 12, 2015

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

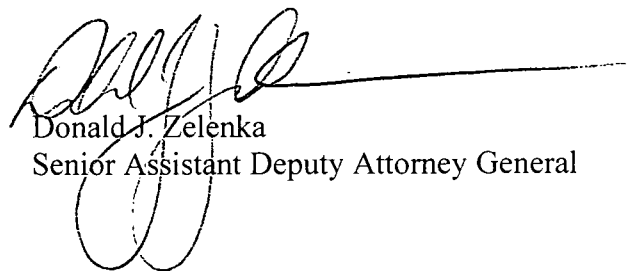
S.C. Supreme Court

Re: The State v. Jeremy McMillan
Appellate Case No. 2012-213692

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Motion for Leave to Allow Response to Motion for Bond Pending Petition for Writ of Certiorari by State of South Carolina as Is On January 5, 2015, in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,


Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/mv
Enclosures

cc: Nicole Nicolette Mace, Esquire
Ernest A. Finney, III, Solicitor
Trisha Allen, Victims Assistance