

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

RESPONDENT,

V.

WAYNE DANIEL MCCOMBS,

PETITIONER.

RECEIVED

JAN 27 2015

Appeal from Dorchester County

S.C. SUPREME COURT

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No.: 2014-002194

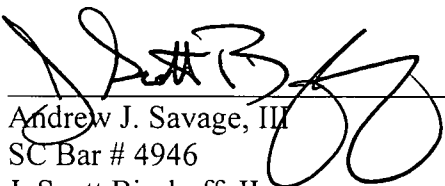
REPLY TO RETURN TO MOTION TO ABATE APPEAL

Petitioner died on November 23, 2014, while awaiting a response from the Supreme Court regarding his Petition for Writ of Certiorari that was filed on October 16, 2014. On January 9, 2015, Counsel for Petitioner filed a Motion to Abate Petitioner's case and withdraw the Court of Appeals decision (Opinion No. 5265) and received the Respondent's reply on January 14, 2015. In response, Counsel for Petitioner asks this Court to recognize that contrary to the Respondent's contention, failing to vacate the Court of Appeals decision (Opinion No. 5265) *would* be contrary to the holding in State v. Anderson, 281 S.C. 198, 314 S.E.2d 597 (1984) and State v. Bixby, 397 S.C. 154, 723 S.E.2d 841 (Ct. App. 2011). At its core, the holding in Bixby mandates withdrawing an opinion that, as here, precedes the death of the appellant because any such appellant

would otherwise be denied the opportunity to completely exercise his appellate rights by having the intermediate appellate court's decision reviewed by a court of last resort. Unlike in Bixby, where the petitioner had been convicted by the trial court and was awaiting a response regarding her Motion to Reconsider *after* certiorari had been granted by the Supreme Court, a hearing had been held, and the Supreme Court had weighed in, Petitioner McCombs had not been tried or convicted and was awaiting a response from the Supreme Court regarding certiorari when he died. Considering the Court of Appeals is an intermediary appellate court and not the court of last resort for appellate purposes, the procedural posture is not the same as in Bixby. Because Petitioner McCombs was awaiting review of the lower appellate court's decision, which by the very nature of our state's appellate review structure was not final, it is proper for this Court to not only abate the appeal, but also withdraw Court of Appeals Opinion No. 5265.

For the aforementioned reasons, counsel for Petitioner respectfully requests this Court grant the Motion to Abate and Withdraw the Court of Appeals Opinion in this case.

Respectfully submitted,



Andrew J. Savage, III
SC Bar # 4946
J. Scott Bischoff, II
SC Bar # 74285
Savage Law Firm
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
Attorneys for Petitioner

January 22, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County

The Honorable Kristi L. Harrington, Circuit Court Judge

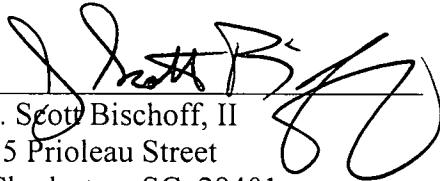
THE STATE,
Respondent,

v.

WAYNE DANIEL MCCOMBS,
Petitioner.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Reply in the above-entitled case has been served upon David Spencer, Esquire, of 1000 Assembly Street, Room 519, Columbia, SC, 29201, by mailing a copy in the United States mail, postage prepaid, this 22nd day of January, 2015.



J. Scott Bischoff, II
15 Prioleau Street
Charleston, SC 29401

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day
of January, 2015.



Notary Public for South Carolina (L.S.)

My Commission Expires: 12/12/2023

SAVAGE LAW FIRM
15 PRIOLEAU STREET
CHARLESTON, SC 29401
TEL. (843) 720-7470 FAX (843) 720-7478
<http://www.savlaw.com>
Video Conferencing Address: 165.166.223.197

ANDREW J. SAVAGE, III
Certified Criminal Trial Advocate - NBTA

J. SCOTT BISCHOFF, II
CAMERON J. BLAZER

January 22, 2015

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

RECEIVED

JAN 27 2015

S.C. SUPREME COURT

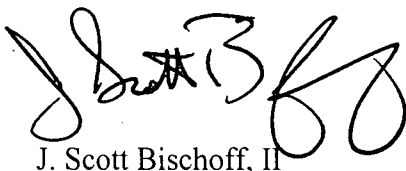
RE: State v. Wayne McCombs
Appellate Case No.: 2014-002194

Dear Mr. Shearouse:

Enclosed please find the Original and six (6) copies of the Reply to the Return to Motion to Abate Appeal Due to Death of Petitioner in the above case.

With best wishes, I remain

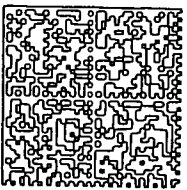
Sincerely,



J. Scott Bischoff, II
JSB,II/Ins


Enclosures

cc: Dave Spencer, Esquire



US POSTAGE
\$ 01.82
First-Class
Mailed From 29401
01/22/2015
032A 0061827245

Savage Law Firm
15 Prioleau Street
Post Office Box 1002
Charleston, SC 29402


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

