

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 16 2015

Appeal from Laurens County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Court of Appeals Appellate Case Tracking No. 2014-001106

SC Court of Appeals

The State,

Respondent,

v.

Ricky Dale Pace,

Appellant.

**MOTION TO CERTIFY APPEAL TO THE SUPREME COURT
AND TO HOLD APPEAL IN ABEYANCE**

Respondent hereby moves pursuant to Rule 204, SCACR, for this Court to certify the above captioned appeal case for review by the South Carolina Supreme Court, and to hold appeal in abeyance pending a decision in State v. Isaac Antonio Anderson, Appellate Case No. 2012-212905. Respondent's Motion is based on the following:

Certification

This appeal arises from Appellant's conviction on two counts of lewd act on a minor. The issue asserted in the Initial Brief of Appellant challenges the constitutionality of S.C. Code Ann §17-23-175 (2014) (admissibility of recordings of child's out of court statements during investigative interview), on the ground it violates the Confrontation Clause of the Sixth Amendment. Pursuant to S.C. Code Ann §14-8-200(b)(3) (Supp. 2014), this Court has exclusive jurisdiction to hear appeals involving constitutional challenges to a state law. Accordingly, certification to this Court is statutorily mandated.

AbeYance


On April 9, 2015, this Court heard oral arguments in The State v. Isaac Antonio Anderson, Appellate Case No. 2012-212905. Anderson presents the exact same issue raised in this case - the constitutionality of §17-23-175 under the Confrontation Clause of the Sixth Amendment, and various United States Supreme Court decisions regarding the Confrontation Clause. The Court's decision in Anderson will directly impact the only issue in this appeal. Therefore, in the interest of judicial economy, Respondent requests this appeal be held in abeyance pending a decision in Anderson, and that all deadlines be held in abeyance pending resolution of this Motion.

WHEREFORE, Respondent prays the Court certify this appeal for consideration, and hold the appeal in abeyance pending the Court decision in Anderson. Respondent further prays all deadlines in this appeal be held in abeyance pending resolution of this Motion, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General


DEBORAH R.J. SHUPE
S.C. Bar No. 5098

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ATTORNEYS FOR APPELLANT

April 16, 2015

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IN THE SUPREME COURT

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PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Motion to Certify Appeal to the Supreme Court and to Hold Appeal in Abeyance on Appellant by depositing a copy in the United States mail, postage prepaid, addressed to.

Lara M. Caudy
Assistant Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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I further certify all parties required by Rule to be served have been served.

This 16th day of April, 2015.

Sally B. Ellison

SALLY B. ELLISON
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

VIA HAND DELIVERY

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

Re. The State v. Ricky Dale Pace
Court of Appeals Appellate Case Tracking No. 2014-001106

Dear Mr. Shearouse:

Enclosed for filing are the original and seven (7) copies of a Motion to Certify Appeal to the Supreme Court, and to Hold Appeal in Abeyance, with proof of service, in the above-referenced appeal.

Sincerely,

Deborah R J Shupe
Senior Assistant Deputy Attorney General

Enclosures

cc: Jenny A. Kitchings, Clerk SC Court of Appeals (one copy)
Lara M Caudy, Assistant Appellate Defender (one copy)
Victim Services