THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Horry County
The Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2011-195906

IN THE MATTER OF THE CARE AND TREATMENT
OF THOMAS SIMMONS,

Appellant.

RESPONDENT'S MOTION TO HOLD APPEAL IN ABEYANCE

Respondent hereby moves to hold the above captioned appeal in abeyance pending resolution of matters currently pending before the South Carolina Supreme Court that may render this appeal moot. In support of this motion, Respondent submits the following:

1. This appeal arises from the jury verdict finding Appellant's mental abnormality of sexual sadism has not so changed he is safe to be at large. Appellant's original 2008 commitment was appealed and affirmed by this Court on March 24, 2011 (Op. No. 2011-UP-121). Appellant's Petition for Writ of Certiorari in the South Carolina Supreme Court was granted in part (on an evidence issue) on May 24, 2012, and is currently in the briefing process before that Court. A decision reversing the original commitment and ordering a new trial will render the pending appeal from Appellant's release trial moot.

2. On or about August 14, 2012, Appellant filed a Petition in the Original Jurisdiction and Petition for Writ of Habeas Corpus in the South Carolina Supreme Court. In those documents, Appellant is seeking release from the Sexually Violent Predator Treatment Program, which is the exact relief he is seeking in the pending appeal. Clearly, a decision in Appellant's favor on those pleadings will render this pending appeal moot.

3. Allowing this appeal to proceed while parallel matters that may directly impact this appeal proceed through the Supreme Court will result in duplication and waste of resources. Given the current posture of this appeal, the matters before the Supreme Court will likely be decided before this appeal will be ready for consideration. If Appellant does not prevail in the Supreme Court, this appeal can proceed, and the State would not oppose an expedited briefing and argument schedule.

4. The undersigned contacted opposing counsel and advised her this motion was forthcoming.

WHEREFORE, for these reasons, the Respondent respectfully requests that this appeal be held in abeyance pending resolution of the matters pending in the South Carolina Supreme Court, and that all deadlines be held in abeyance pending resolution of this motion. If granted, counsel will keep the Court advised as to the status of the Supreme Court proceedings.

Respectfully submitted,

ALAN WILSON
Attorney General

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Chief Deputy Attorney General

DEBORAH R.J. SHUPE
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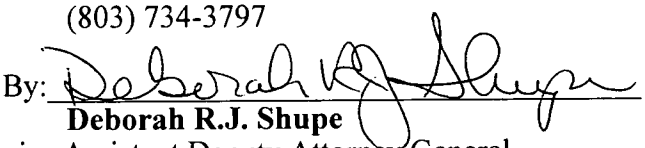
By: 
Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

Attorneys for the Respondent

Columbia, South Carolina

August 23, 2012.

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IN THE COURT OF APPEALS

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The Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2011-195906

IN THE MATTER OF THE CARE AND TREATMENT
OF THOMAS SIMMONS,

Appellant.

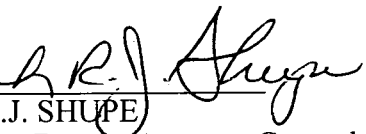
PROOF OF SERVICE

I, Deborah R.J. Shupe, certify I served the Respondent's Motion to Hold Appeal in Abeyance on Appellant by depositing a copy in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant
Assistant Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-15892

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

This 23rd day of August, 2012.



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