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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2014-CP-23-0531

Frank Daniel Simpson, SCDC # 354338,Respondent,

v.

State of South Carolina,Petitioner.

RETURN TO PETITION FOR APPEAL BOND

In making its return to petition for appeal bond, the State of South Carolina (“the State”) would present the following facts:

1. On February 13, 2013, Respondent pled guilty to trafficking methamphetamine (28-100 grams), second offense. The Honorable Letitia H. Verdin sentenced Respondent to nine years imprisonment. On March 18, 2014, the Honorable Edward W. Miller reduced Respondent’s sentence to seven years, pursuant to S.C. Code Ann. § 17-25-65.

2. Respondent filed an application for post-conviction relief on January 28, 2014. A hearing was held before the Honorable Eugene C. Griffith, Jr. An amended order of dismissal was filed on March 19, 2015. After Respondent filed a motion to alter or amend pursuant to Rule 59(e),

SCRCF, Judge Griffith filed an order granting the motion (and ordering a new trial) on June 9, 2015.

3. The State filed a notice of appeal with this Court on July 1, 2015. Respondent filed the petition for appeal bond, arguing his case is exceptional and that his "strong family support" would ensure Respondent "is not a danger to escape."

4. The State argues the petition for appeal bond must be dismissed by this Court because it has been improperly filed. As Respondent even acknowledges, this matter must be filed and heard in circuit court. See Rule 243(k), SCACR. As this Court does not have jurisdiction to hear this matter, it should be dismissed.

5. Regardless, even assuming arguendo this Court does review the merits of this petition, it should be dismissed. Rule 243(k), SCACR, provides Respondent's release on bond pending appeal from a post-conviction relief order shall be exercised with caution and only in exceptional circumstances after reviewing factors such as the probability of success on appeal and the relief granted, the seriousness of the crime committed, the danger to the community if Respondent is released, and the character and circumstances of Respondent. The State contends exceptional circumstances do not exist in this case to warrant Respondent's release on bond pending appeal. For the reasons set forth below, the State requests that this Court deny Respondent's petition for appeal bond.

6. The State asserts it is unlikely Respondent will prevail once a petition for writ of certiorari has been filed and this Court has the opportunity to review the issues on appeal. The State asserts Respondent did not prove both error and prejudice under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984) on any of his issues. For example, while plea counsel was found to be

deficient in asking the plea judge to suspend the minimum sentence in this case, Respondent testified at the PCR hearing that (1) he was aware of the mandatory minimum sentence and (2) he knew counsel would ask for the suspended sentence but he did not expect to receive it.

7. Respondent stands convicted of trafficking methamphetamine (28-100 grams), second offense. Respondent had 34.20 grams of methamphetamine in his vehicle when he was arrested. While Respondent argues in the petition that the “evidence in the record confirms that [he] possessed the drugs for personal use,” Respondent admitted to the arresting officer that he was delivering these drugs from Atlanta to North Carolina.

8. Respondent has a prior criminal record that contains various convictions from several other states:

Massachusetts	larceny (1983)
North Carolina	possession of drug paraphernalia – 3 counts (1999)
Vermont	reckless driving (2005)
New Jersey	possession of crack cocaine and paraphernalia (2005)
Tennessee	driving under the influence (2007) failing to submit to breathalyzer (2007)
South Carolina	possession of methamphetamine (2010)

The pattern of the offenses reveals Respondent has been engaged in illegal conduct over the course of several years – and in several states – and that his behavior had escalated. Respondent was, in fact, on probation for the 2010 South Carolina conviction when he was arrested in the current case. (Plea transcript, p.19). Respondent is unlikely to conform his behavior if he is released to the community.

9. Respondent also faces a sentence of seven years if the appeal by the State is successful or a maximum sentence of thirty years upon re-trial if the State’s appeal is not successful.

The chance of forfeiture of bond and escape is high in view of the fact Respondent has little to lose by either absconding or committing additional offenses.

10. Respondent's sparse petition provides no exceptional circumstance or compelling reason for an appeal bond to be granted in this case.

11. Respondent submits a hearing upon the matter is unnecessary. Petitions for appeal bond (as well as returns to such) should be complete enough to be decided upon the pleadings. Furthermore, the State would incur unnecessary expense to have Respondent transported to a hearing and – should this matter be more properly decided in the circuit court – would also incur additional expense in having an attorney travel from Columbia to the hearing location.

WHEREFORE, the State requests this Court dismiss this petition for appeal bond.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 7, 2015

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PROOF OF SERVICE

I, Karen C. Ratigan, Counsel for Petitioner, certify that I have today served the within Return to Petition for Appeal Bond upon Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Charles Grose, Esquire
Grose Law Firm
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served this 7th day of July, 2015.


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