

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Greenville County
The Honorable G. Edward Welmaker, Circuit Court Judge

AUG 25 2015

Appellate Case No: 2015-000595

S.C. Supreme Court

THE STATE,

Respondent,

vs.

ERICK E. HEWINS,

Petitioner.

**RETURN TO MOTION FOR APPEAL BOND AND RETURN TO MOTION TO
“STRIKE ANY ANSWER, MOTION, OR PLEADING” AND HOLD THE STATE
IN DEFAULT**

The State of South Carolina respectfully requests this Court accept its response and submits the following in opposition to Appellant’s petition for appeal bond:

I.

Petitioner was indicted in Greenville County for trafficking in cocaine base and possession of a schedule IV controlled substance. He proceeded to a jury trial January 14-17, 2013, with the Honorable G. Edward Welmaker, presiding. Petitioner was convicted and sentenced to an aggregate term of twenty-six years’ imprisonment. Petitioner appealed, and the Court of Appeals affirmed his convictions in State v. Hewins, Op. No. 2014-UP-478 (S.C. Ct. App. filed December 23, 2014). On appeal, Robert Dudek, Esquire represented Petitioner.

Petitioner filed two Petitions for Writ of Certiorari, one before the filing deadline and one after the deadline. Mr. Dudek withdrew as counsel May 5, 2015 and in an order dated May 22, 2015, this Court ordered the Petitioner's first Pro Se Petition for Writ of Certiorari be considered. The State filed its Return to Petition for Writ of Certiorari on June 17, 2015. Petitioner filed a Reply Petition for Writ of Certiorari, dated June 25, 2015. Petitioner then filed "Petitioner Motion to Dismiss," asking this Court "to dismiss Respondent Motion to deny petitioner certiorari and vacate court of Appeals decisions." (Motion dated July 17, 2015.) Petitioner also sent an amendment, presumably, in which he asked the Court to "submit to be amended to motion dated on July 17, 2015 recording Respondent argument that petitioner was committing a parking violation." Buried at the end of Petitioner's Motion to Dismiss and amendment, dated July 17, 2015, is a separate "petition for Appellate Bond." Petitioner now requests this Court "strike any answer, motion or pleading and hold state in default due to not responding in a timely manner."

II.

The State respectfully submits Petitioner's procedural history and pro se filings are confusing. Petitioner has filed numerous motions and amendments to pleadings in which the relief sought is unclear. The State responded to Petitioner's Writ of Certiorari in a timely manner but overlooked his "petition for Appellate Bond," which was included at the end of Petitioner's Motion to Dismiss. The State asks now this Court to allow a return to Petitioner's request for appellate bond.

III.

Petitioner moves this Court for bond pending Certiorari to the Supreme Court. The State asks this Court to exercise its discretion to deny the motion. Whitener v. State, 225 S.C. 244, 81 S.E.2d 784 (1954). This Court's consideration of Petitioner's release on bond pending appeal

must be exercised with caution and only in exceptional circumstances. In considering a request for release on bond pending appeal, this Court opines the following factors should be reviewed: (1) probability of success on appeal and the relief granted; (2) the seriousness of the crime committed; (3) the danger to the community if Petitioner is released; (4) the character and circumstances of Appellant; (5) the probability of forfeiture of bail and escape; and (6) the Petitioner's attitude toward society and government. Nichols v. Patterson, 202 S.C. 352, 25 S.E.2d 155 (1943). This case does not present the requisite circumstances to warrant Petitioner's release on bond pending appeal. For the reasons set forth below, the State requests this Court deny the petition for release on bond pending appeal.

IV.

The State contends, first, it is unlikely Petitioner will prevail on appeal from the Court of Appeals' decision. On appeal from a motion to suppress on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse only if there is clear error. State v. Tindall, 388 S. C. 518, 520, 698 S.E.2d 203, 205 (2010). There is substantial evidence to support the trial court's rulings in this regard to the initial detention and subsequent Terry frisk. Petitioner consented to the search of his pocket which yielded a large amount of cash and four pills of clonazepam, a controlled substance. Further, the chain of custody was, as the trial court found, established as far as practicable. On appeal, seasoned attorney and Chief Appellate Defender Robert Dudek represented Petitioner. His success on appeal to the Supreme Court as a pro se litigant is even more unlikely.

V.

Petitioner stands convicted of a third narcotics offense, a crime considered violent and serious. When arrested, the approximately 37-year-old Petitioner was meeting two teenage females. Other than his current convictions, Petitioner has a steady prior criminal history:

- 1992: trespass after notice
- 1993: possession of crack cocaine, assault and battery with intent to kill
- 1995: revocation of probation, distribution of crack cocaine, threatening a law enforcement officer, possession of crack cocaine
- 2000: disorderly conduct
- 2001: operating uninsured vehicle, assault
- 2002: criminal domestic violence
- 2003: indecent exposure, two counts of domestic assault
- 2004: no proof of insurance, driving without a license
- 2005: two counts of criminal domestic violence
- 2006: arrest for failure to appear for court
- 2009: open container, driving under the influence, two counts of possession of marijuana
- 2010: disorderly conduct, driving under the influence
- 2012: driving under suspension, possession of crack cocaine

(Attachment A, Tr. p. 421, line 19 – p. 422, line 23.) Petitioner’s criminal history shows a steady, consistent, uninterrupted pattern of criminal behavior involving drugs, violence against persons, and dangerous operation of a vehicle. Petitioner’s consistent history of criminal convictions establishes his continuing disregard for the rules of government and the sanctity of the welfare and safety of others.

VI.

In addition to Petitioner's prior criminal record, the chance of forfeiture of bail and escape should be considered in light of a prior instance of failure to appear. This chance is heightened in that, in spite of Petitioner's significant criminal record, he has never faced a period of incarceration as serious as that which he now faces. The weight of a twenty-six year sentence must be considered. The State submits Petitioner will pose a risk if released on bond pending this appeal.

VII.

The Petitioner does not possess the requisite character and reputation deserving of his release on bond pending appeal. In addition to Petitioner's prior record, which includes threatening a law enforcement officer, this Court's attention is directed to Petitioner's expletive-filled outbursts directed at the circuit judge, law enforcement, and the solicitor at the close of his trial. (Attachment A, Tr. p. 421, lines 12-15; p. 422, lines 3-4; p. 422, lines 8-10; p. 423, lines 8-11.) Petitioner's behavior in the courtroom shows great disrespect for the authority and administration of law. Petitioner is a repeat offender who would pose danger to any community, and Petitioner's personal attitude toward society and government are clear from his criminal record and actions in the courtroom. These are clear indications this Court should not exercise its discretion and permit the Petitioner's release on bond pending appeal.

VIII.

Unlike a pretrial bond request, Petitioner does not stand before this Court cloaked with a presumption of innocence. Indeed, the evidence of his guilt was overwhelming.

IX.

Based on all the foregoing, the State prays this Court accept this return in response to Petitioner's "Petition for Appellate Bond" and deny Petitioner's motion for release on bond pending his Petition to the Supreme Court for Writ of Certiorari.

WHEREFORE, the State moves this Court to accept this return and deny Petitioner's request for release on appeal bond.

Respectfully submitted,

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BY: 
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ATTORNEYS FOR RESPONDENT

August 25, 2015

A

1 THE COURT: We'll have to wait just a moment
2 until the clerk gets back.

3 All right. Are there any matters before we impose
4 sentence? From the State or Mr. Harbin?

5 MS. MONTS: No, Your Honor.

6 MR. HARBIN: Nothing from the Defense, Judge.

7 THE COURT: All right. If you would come forward
8 with Mr. Hewins, I'd be glad to hear from you and him and
9 anyone else.

10 (WHEREUPON, Ms. Monts, Mr. Harbin and Mr. Hewins
11 approached the bar.)

12 THE DEFENDANT: I'm gonna listen, but on that
13 appeal that you won't win. You ain't by no means fucking
14 with me, man, at all. You know the Judge gonna go with the
15 crooked cops.

16 THE COURT: All right. Mr. Harbin, be glad to --
17 well, let me hear from the State first as far as prior
18 record?

19 MS. MONTS: Your Honor, prior record includes
20 1992, trespass after notice; 1993, possession of crack
21 cocaine, assault and battery with intent to kill; 1995, a
22 probation revocation. Also in 1995 distribution of crack
23 cocaine, threatening law enforcement officer, possession of
24 crack cocaine; 2000, disorderly conduct; 2001, operating
25 uninsured vehicle and assault; 2002, criminal domestic

1 violence; 2003, indecent exposure. And in the State of
2 Tennessee two counts of aggravated assault ---

3 THE DEFENDANT: Wasn't no fucking two counts,
4 bitch.

5 MS. MONTS: 2004, no proof of insurance,
6 operating a non-registered vehicle, driving without a
7 license.

8 THE DEFENDANT: That's all we got ... get to get
9 up there telling mother-fucking lies and these fucking
10 local Judges ---

11 THE COURT: I'll give you a chance. I'll give
12 you a chance to talk. Let me hear from her and I'll
13 certainly give you a chance to talk, Mr. Hewins.

14 MS. MONTS: 2005, two counts of criminal domestic
15 violence; 2006, arrest on a failure to appear for court;
16 2009 ---

17 THE DEFENDANT: Failure to appear 2006, when? On
18 what charge?

19 THE COURT: I'll let you respond to it in a
20 minute. Let me get what she has to say. All right, sir?

21 MS. MONTS: 2009, open container, driving under
22 the influence, possession of marijuana; 2010, disorder
23 conduct, DUI; 2012, DUS, possession of crack cocaine.

24 THE COURT: All right. Mr. Harbin, be glad to
25 hear from you and certainly from your client if he'd like

1 to address the Court.

2 MS. BROWN: Y'all going to take my baby?

3 THE COURT: Yes, ma'am.

4 MS. BROWN: You gonna take my son away?

5 THE COURT: Yes, ma'am. If you'll hang on just a
6 minute, we can only have one person talk at the time, all
7 right?

8 THE DEFENDANT: Local Judges always side with
9 y'all little punks, you see what I'm saying. But according
10 to the law you didn't have no reason to be stopping a black
11 man and fucking with me, boy.

12 THE COURT: Anything you want to tell me, Mr.
13 Hewins?

14 MS. BROWN: I don't understand this?

15 THE DEFENDANT: Not really.

16 THE COURT: All right, sir.

17 THE DEFENDANT: I know you wrong according to the
18 law. I mean, this man didn't have no reasonable suspicions
19 to be stopping that car in front of my car and coming and
20 harassing me. See, what I'm saying.

21 THE COURT: Yes, sir.

22 THE DEFENDANT: But y'all local Judges all going
23 to go with your little police.

24 THE COURT: Well, fortunately you have a ---

25 THE DEFENDANT: I'm most definitely going to put

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Honorable G. Edward Welmaker, Circuit Court Judge

Op. No. 2014-UP-478 (S.C. Ct. App. filed December 23, 2014)
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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within "Return to Motion for Appeal Bond and Return to Motion "to Strike and Answer, Motion, or Pleading and Hold the State in Default" by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Erick E. Hewins, SCDC# 297728
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

I further certify that all parties required by Rule to be served have been served.
This 25th day of August, 2015.


Anne Mueller
Legal Assistant

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