

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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

Appellate Case No: 2015-000595

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**RECEIVED**

AUG 26 2015

**S.C. Supreme Court**

THE STATE,

Respondent,

vs.

ERICK E. HEWINS,

Petitioner.

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**MOTION TO DENY APPELLATE BOND**

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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 a Petition for Appellate Bond in a motion dated July 17, 2015. The State inadvertently overlooked the Petition due to the way the petition was presented.

## II.

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.

## III.

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.

#### IV.

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.

#### V.

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.

#### VI.

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.

VII.

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.

VIII.

Based on all the foregoing, the State prays this Court 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 deny Petitioner's request for release on appeal bond.

Respectfully submitted,

ALAN WILSON  
Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

SUSANNAH R. COLE  
Staff Attorney

BY:   
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Susannah Cole  
S.C. Bar No: 68383

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 26, 2015

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)  
Appellate Case No. 2015-000595

THE STATE,

Respondent,

v.

ERICK E. HEWINS,

Petitioner.

**PROOF OF SERVICE**

I, Anne Mueller, certify that I have served the within Motion to Deny Bond by depositing one copy 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 26th day of August, 2015.



Anne Mueller  
Legal Assistant

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

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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