

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP 22 2015

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2015-001769

Roy James Jenkins, SCDC # 349450,.....Respondent,

v.

State of South Carolina, Petitioner.

RETURN TO MOTION FOR BOND PENDING APPEAL

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

1. On January 27, 2012, Respondent was found guilty of two counts of second-degree criminal sexual conduct with a minor (2008-GS-42-7197, counts 1 and 2). The Honorable John C. Hayes, III sentenced Respondent to concurrent terms of twenty years imprisonment on each count. On appeal, the South Carolina Court of Appeals affirmed Respondent’s convictions and sentences. State v. Jenkins, Op. No. 2013-UP-124 (S.C. Ct. App. filed March 27, 2013).

2. Respondent filed an application for post-conviction relief on November 8, 2013. A hearing was held before the Honorable R. Scott Sprouse on June 12, 2015. An order granting post-

conviction relief was filed on July 28, 2015.

3. The State filed a notice of appeal with this Court on August 21, 2015. Respondent filed a Motion for Bond Pending Appeal dated September 10, 2014.

4. The State argues the petition for appeal bond must be denied. 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 this Court deny Respondent's motion for bond pending appeal.

5. 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 at the PCR hearing. While Respondent notes in his motion that there was no physical evidence, this is hardly surprising as the numerous instances of sexual assault of the minor child (who is now an adult) in this case took place over several years. The State contends the fact that the audio recording was not admitted at trial does not exonerate Respondent under the facts of this case.

6. Respondent was the victim's adoptive father. The jury in Respondent's case convicted him of sexually assaulting the victim at various times between the ages of eleven and

fifteen. The victim in this case vehemently opposes the granting of an appeal bond. I have attached her email on the subject (with her email address redacted) to this return as Attachment A.

7. Respondent faces a sentence of twenty years if the State's appeal is successful or a maximum sentence of forty years upon re-trial if the State's appeal is not successful and consecutive maximum sentences are imposed. The chance of forfeiture of bond and flight is high in view of the fact Respondent has little to lose by either absconding or committing additional offenses.

8. Respondent's sparse petition provides no exceptional circumstance or compelling reason for an appeal bond to be granted in this case. See Rule 243(k), SCACR.

WHEREFORE, the State requests this Court dismiss Respondent's Motion for Bond Pending Appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
S.C. Bar # 68331

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

September 21, 2015

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2015-001769

Roy James Jenkins, Respondent,

v.


State of South Carolina, Petitioner.

CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Return to Motion for Bond Pending Appeal upon Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Kenneth P. Shabel, Esquire
175 Magnolia Street, Suite 201
Spartanburg, South Carolina 29306

I further certify that all parties required by Rule to be served have been served.
This 21st day of September, 2015.


KAREN C. RATIGAN
S.C. Bar # 68331
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ATTORNEY FOR PETITIONER

ATTACHMENT A

Karen Ratigan

To: Karen Ratigan
Subject: FW: RE: Appeal Bond Motion

From: Kayla parris-jenkins [REDACTED]
Sent: Thursday, September 17, 2015 5:57 PM
To: Trisha Allen
Subject: Re: Appeal Bond Motion

To whom this may concern:

It has come to my knowledge that the offender Roy Jenkins has been granted an appeal and is now asking to be bonded out until we retrial! I strongly suggest that you would deny his request for bond. The State is appealing to have his Post confiction relief over turned. I feel strongly that the States attempts will be sucessful. I believe if he is given the oppurtunity to be released be may be a flight risk. No one likes being given a taste of freedom only to have it revoked!

Jenkins home resides within a mile from a school which could put innocent children at risk considering he would not have to be registered as a sex offender since the case is under review!

I as the victim of this crime have lived a worry free life while he has been incarcerated and now if he is bonded out I fear for myself and my children! I am a mother to two little girls age 4 years old and 8 months old, and I also have a 4 year old stepdaughter.

I have worked hard to put my past behind me and because his appeal has been granted it has greatly put myself and my family in distress! I sincerely hope you consider denying his bond request! This man is a great danger to society!

Sincerely,

Kayla Parris

[REDACTED]



ALAN WILSON
ATTORNEY GENERAL

September 21, 2015

RECEIVED
SEP 21 2015
SC Court of Appeals

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

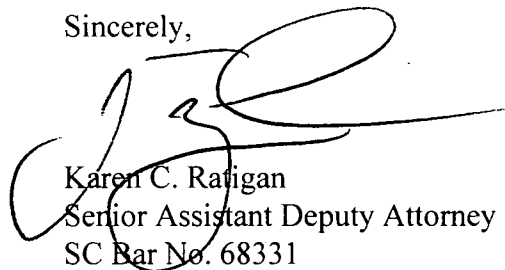
RECEIVED
SEP 22 2015
S.C. Supreme Court

RE: Roy James Jenkins, #349450 v. State of South Carolina
Appellate Case No.: 2015-001769

Dear Ms. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Motion for Bond Pending Appeal** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,



Karen C. Rafigan
Senior Assistant Deputy Attorney General
SC Bar No. 68331

KCR/ah
Enclosures

cc: Kenneth P. Shabel, Esquire
Tricia Allen, Victim Services