

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO THE COURT OF APPEALS
Appeal from Spartanburg
The Honorable J. Derham Cole, Post-Conviction Relief Judge

Opinion No. 5372 (S.C. Ct. App. filed December 30, 2015)

Appellate Case No. 2016-000610

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SC SUPREME COURT

FARID A. MANGAL, #320609,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

RETURN TO MOTION FOR BAIL PENDING APPEAL

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

1. On March 16, 2007, Respondent was found guilty of two counts of criminal sexual conduct ("CSC") with a minor, first degree (2004-GS-42-3400; 2006-GS-42-2831) CSC with a minor, second degree (2006-GS-42-4869); lewd act upon a child under sixteen (2006-GS-42-4217); and incest (2006-GS-42-2830). The Honorable J. Mark Hayes, II sentenced Respondent to imprisonment for concurrent terms of thirty years for CSC with a minor, first degree, twenty years for CSC with a minor, second

degree, fifteen years for lewd act on a minor, and one year for incest. On appeal, the South Carolina Court of Appeals affirmed Respondent's convictions and sentences. State v. Mangal, Op. No. 2009-UP-113 (S.C. Ct. App. filed March 2, 2009).

2. Respondent filed an application for post-conviction relief on January 6, 2010. A hearing was held before the Honorable J. Derham Cole on April 7, 2011. An order denying post-conviction relief was filed on January 10, 2012.

3. Respondent filed a notice of appeal with this Court on August 10, 2012, and an appeal was perfected. The Court of Appeals reversed the PCR judge's ruling and remanded the case for a new trial as to all charges. Mangal v. State, Op. No. 5372 (S.C. Ct. App. filed Dec. 30, 2015).

4. Respondent filed a motion for bail pending appellate review with this Court on April 7, 2016.

5. The State argues the motion for bail 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 nature of the relief Respondent will receive if granted, the seriousness of the crime committed, the danger posed to the community if Respondent is released, the character and circumstances of Respondent, and the likelihood that Respondent may flee if released. The State contends exceptional circumstances do not exist in this case to warrant Respondent's release on bail pending appeal. For the reasons set forth below, the State requests that this Court deny Respondent's motion for bond pending appeal.

6. The State asserts it is unlikely Respondent will prevail once this Court has

the opportunity to review the issues on appeal. The State asserts that the issue decided by the Court of Appeals was not preserved and that, regardless, the Court of Appeals erred in reviewing the issue de novo where the post-conviction relief judge did not make findings on the issue, and in finding that certain statements were bolstering and that Respondent satisfied his burden of proving error and prejudice under Strickland v. Washington, 466 U.S. 668 (1984).

7. Respondent was the victim's father. The jury in Respondent's case convicted him of sexually assaulting the victim at various times between the ages of ten and sixteen. The victim in this case and the victim's mother vehemently oppose the granting of an appeal bond. A letter from the victim's mother is attached to this return as "Attachment A," and a letter from the victim is attached as "Attachment B."

8. Respondent's statement that the victim was a virgin is merely inflammatory and has no relevance to his motion for bail.

9. Respondent's spouse, the victim, and the victim's brother testified at Respondent's trial that he was physically and verbally abusive towards his children and his spouse. Respondent has continuously maintained that the victim falsely accused him. If Respondent is released on bond there is high probability he will attempt to have contact with the victim. Therefore, the seriousness of the criminal offenses, and the character and circumstances of Respondent weigh heavily against granting his release.

10. Respondent faces a sentence of thirty years if the State's appeal is successful, or a maximum sentence of eighty-six years upon re-trial if the State's appeal is not successful and consecutive maximum sentences are imposed. Even if this Court does not reverse the Court of Appeals' ruling, the ruling did not exonerate Respondent.

Rather, Respondent still stands accused of all charges listed above, and the Spartanburg County Solicitor's Office will determine how it wishes to proceed in prosecuting Respondent. Respondent testified at trial that, at the time, two of his brothers were living in Germany, and his sister resided in Russia. The chance of forfeiture of bond and flight is high in view of the fact Respondent has little to lose by either committing additional offenses or absconding, especially given that he likely has family members who still reside outside of South Carolina and the United States.

11. Respondent was denied release on bond while he was awaiting trial.

12. Respondent has two prior convictions for driving under the influence.

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

14. Should this Court determine that this is the exceptional case that would permit Respondent's release on bail, the State requests that the Court impose conditions on his release. Specifically, due to the seriousness of his convictions and the risk that he will flee if released, the State requests that, at a minimum, Respondent be placed on the following special conditions in addition to the usual and ordinary conditions of release: home detention pursuant to the county home detention program to include GPS monitoring at Respondent's expense; no change of address without prior court approval; no contact, directly or indirectly, with the victim, any member of the victim's family, or any prosecution witness without prior court approval; and no contact with any minors under eighteen years of age; and no firearms in actual or constructive possession. Furthermore, the State requests that Respondent be prohibited from applying for a passport and must be required to surrender any current passport to the Spartanburg

County Clerk of Court.

WHEREFORE, the State requests this Court deny Respondent's Motion for Bail
Pending Appeal.

Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

April 18th, 2016

STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to the Court of Appeals
Appeal from Spartanburg
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2016-000610

FARID MANGAL,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Return to Motion for Bail Pending Appeal** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Mr. John R. Ferguson, Esquire
Cox & Ferguson
P.O. Box 286
Laurens, SC 29360**

This 18th day of April, 2016



ASHLEY HAWORTH
LEGAL ASSISTANT