

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
COURT OF COMMON PLEAS
The Honorable R. Keith Kelly, Circuit Court Judge

Circuit Court Case No. 2014-CP-42-5088

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AUG 15 2016

80 SUPREME COURT

NORMAN LANCE GARNER,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

RETURN TO MOTION FOR BOND 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 August 8, 2013, Norman Lance Garner ("Respondent") was found guilty of lewd act upon a child under the age of sixteen (2012-GS-42-2818). The Honorable Brian M. Gibbons sentenced Respondent to imprisonment for twelve years. A timely Notice of Appeal was filed on Respondent's behalf and on July 30, 2014, Respondent, through counsel, filed a Motion to Dismiss Appeal supported by affidavit. On August 7, 2014, the South Carolina Court of Appeals dismissed Respondent's appeal by written order. The Remittitur was returned on August 25, 2014.

2. Respondent filed an application for post-conviction relief on December 23, 2014. A hearing was held before the Honorable R. Keith Kelly on March 25, 2016. An order granting post-conviction relief was filed on May 16, 2016.

3. The State filed a Notice of Appeal with this Court on June 20, 2016. The Petition for Writ of Certiorari is due to be filed on August 22, 2016.

4. Respondent filed a motion for bail pending appellate review with this Court on August 3, 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 the Post-Conviction Relief Judge erred in finding Respondent satisfied his burden of proving error and prejudice under Strickland v. Washington, 466 U.S. 668 (1984).

7. Respondent was the victim's uncle. The jury convicted Respondent of committing a lewd act upon the victim when she was fifteen years old. The victim in this case and the victim's mother vehemently oppose the granting of an appeal bond. A statement from

the victim's mother is attached to this return as "Attachment A," and a statement from the victim is attached as "Attachment B."

8. Respondent was released on bond while he was awaiting trial for the subject conviction, but violated the conditions of his home detention multiple times while on bond.

9. Respondent has prior convictions, including convictions from 1988 for the rape of three women.

10. Respondent was already listed on the Sex Offender Registry prior to his conviction for the subject offense.

11. Respondent is related to the victim. The victim testified at trial that, in addition to the offense for which Respondent was convicted, Respondent had previously made sexually suggestive comments to her. If Respondent is released on bond there is high probability he will attempt to have contact with the victim. Therefore, the seriousness of the offense, and the character and circumstances of Respondent weigh heavily against granting his release.

12. Even if this Court does not reverse the post-conviction relief judge's ruling, the ruling did not exonerate Respondent. Rather, Respondent still stands accused of the offense, and the Spartanburg County Solicitor's Office will determine how it will proceed in prosecuting Respondent. He faces a potential sentence of fifteen years. Therefore, Respondent's prior convictions and home detention violations in addition to the severity of his punishment if convicted weigh against granting his release pending appeal. In addition, 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.

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 bond, the State requests that the Court impose conditions on his release. Specifically, 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 Bond Pending Appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

ALICIA A. OLIVE
Assistant Attorney General
S.C. Bar # 102089

Post Office Box 11549
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(803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

August 15th, 2016

ATTACHMENT A

Alicia Olive

From: Neeka Davis <neeka.davis@yahoo.com>
Sent: Monday, August 08, 2016 6:28 PM
To: Marie Higgins
Subject: Norman Garner

To whom it may concern. I feel that Mr. Garner is a threat to my daughter if he is released on bond. My daughter's life has been changed since this incident happened to her. My daughter fears this man to death. If he is released on bond she fear he will try to find her and finish what he started. I hope that my daughters SAFETY is considered in the decision of his bond release.

Nolita Davis

ATTACHMENT B

Alicia Olive

From: Victim
Sent: Sunday, August 07, 2016 4:21 PM
To: Marie Higgins
Subject: Norman Garner

I'm writing because I don't think it's safe to let Norman out. What he did to me was very life changing. I couldn't imagine someone else having to go through the same thing I went through as a teen. I feel unsafe around him. I don't think it's fair either. I should not have to be scared to live freely because someone who suppose to be in jail is living freely as well. Please consider my safety.

Victim

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The Honorable R. Keith Kelly, Circuit Court Judge

NORMAN LANCE GARNER,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

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

**Kenneth P. Shabel, Esquire
Kennedy & Brannon, P.A.
Post Office Box 3254
Spartanburg, South Carolina 29304**

This 15th day of August, 2016


BRIANNA ARNONE
LEGAL ASSISTANT



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AUG 15 2016

SC SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

August 15, 2016

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Norman Lance Garner v. State of South Carolina
Lower Court Case No. 2014-CP-42-5088

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Motion for Bond Pending Appeal. By copy of this letter we are serving opposing counsel today.

Sincerely,

Alicia A. Olive
Assistant Attorney General
SC Bar No. 102089

AAO/bea
Enclosures

cc: Kenneth P. Shabel, Esquire (2 copies)