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APR 10 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2016-001990

Billy Shane MillerRespondent,

v.

State of South Carolina,Petitioner.

RETURN TO PETITION FOR APPEAL BOND

The State of South Carolina ("the State"), on behalf of the Office of the South Carolina Attorney General and the Seventh Circuit Solicitor's Office, would present the following facts in opposition to the Petition for Appeal Bond:

1. On April 12, 2011, Respondent was convicted of criminal sexual conduct with a minor ("CSC"), second degree (2008-GS-42-2594), CSC, third degree (2008-GS-42-2593), and contributing to the delinquency of a minor (2008-GS-42-2592). The Honorable J. Derham Cole sentenced him to imprisonment for twenty years suspended on the service of twelve years to three years of probation for CSC with a minor, second degree, ten years for CSC, third degree, and three years for delinquency of a minor.

2. Respondent appealed his conviction, and a brief pursuant to Anders v. California, 386

U.S. 738 (1967), was filed on his behalf. Thereafter, pursuant to Respondent's voluntary withdrawal of his appeal, the South Carolina Court of Appeals dismissed the appeal. The Remittitur was returned to the circuit court on September 21, 2012.

3. Respondent filed an application for post-conviction relief (PCR) August 19, 2013. An evidentiary hearing was held on November 9, 2015. The Honorable Larry B. Hyman, Jr., granted Miller's application for PCR by written Order filed January 12, 2016.

4. The State filed a Motion to Reconsider, Alter, or Amend the Judgement pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. A hearing on the motion was convened on July 7, 2016. By written order filed August 24, 2016, Judge Hyman denied the State's motion.

5. The Notice of Appeal in this case was filed September 23, 2016. The State filed its Petition for Writ of Certiorari and Appendix on January 27, 2017.

6. Respondent filed a Petition for Bond Pending Appeal on March 7, 2017, and Supplement to the Motion on March 27, 2017.

7. The State argues the motion for bond must be denied. Rule 243(k), SCACR, provides that the Court's authority to grant bail on appeal in post-conviction relief cases will be exercised with caution and only in exceptional circumstances. In deciding the motion, the Court considers such factors as the probability of Respondent's success on appeal and the nature of the relief he will receive, the seriousness of the offense 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.

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

opportunity to review the issues on appeal. The State asserts Respondent did not prove error and prejudice, as set forth in Strickland v. Washington, 466 U.S. 668 (1984), on any of his issues at the PCR hearing. The State asserts that despite the testimony of several witnesses presented at the PCR hearing, Respondent presented no evidence that his trial counsel was deficient for not interviewing those witnesses or that there was a reasonable probability that the witnesses' testimony would have changed the outcome of the trial, especially where one of the witnesses was a co-defendant who had already pleaded guilty to the same charges.

9. Respondent faces a sentence of twenty years if the State's appeal is successful or a maximum sentence of thirty years upon re-trial if the State's appeal is not successful and consecutive maximum sentences are imposed. Furthermore, even if this Court denies review, the ruling did not exonerate Respondent. Rather, Respondent still stands accused of the charges for which he was granted relief, and the Spartanburg County Solicitor's Office will determine how it wishes to proceed with respect to those pending charges. Accordingly, the nature of the relief Respondent will receive if the State does not prevail on appeal weighs against his release pending appeal.

10. The victim in this case was fourteen years old and Respondent was thirty years old at the time the offenses for which Respondent was convicted occurred. Respondent has never denied that he provided drugs to the victim or that he engaged in sex acts with the victim. He only denies that the victim was mentally incapacitated and that he knew the victim was under the age of sixteen. Therefore, the seriousness of the criminal offenses and the character and circumstances of Respondent weigh heavily against granting his release.

11. Although Respondent has attached exhibits in support of his release, these do not set forth any exceptional circumstances or compelling reasons why bond should be granted in this case.

12. The victim vehemently opposes the granting of an appeal bond. An email from the

victim regarding Respondent's release is attached to this Return as "Attachment A."

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, due to the seriousness of his convictions and the risk that he may 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: 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; 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 Petition for Bond Pending Appeal.

Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

April 10, 2017

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STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

Appeal from Spartanburg
The Honorable Larry B. Hyman, Jr, Circuit Court Judge

Appellate Case No. 2016-001990

BILLY SHANE MILLER,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,


PETITIONER.

CERTIFICATE OF SERVICE

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

Mr. Andrew J. Johnston, Esquire
Post Office Box 3252
Spartanburg, SC 29304-3252

This 10th day of April, 2017



ASHLEY HAWORTH
PARALEGAL

From:
Sent: Wednesday, March 22, 2017 10:09 AM
To:
Subject: Fwd: Appeal

Sent from my iPhone

Begin forwarded message:

From: victim
Date: March 21, 2017 at 10:18:27 PM EDT
To:
Subject: Appeal

This is my appeal bond request. I feel Billy Shane Miller has already got a deal on the year's to be served because not only did he assault me but he let 2 others do so as well. What happened to me can not be taking back. I have to live with it forever. It took alot to get me to where I am now. I went to the hospital multiple times after what had happened, over withdrawal's all due to the meth I was given. I also went to sadac and therapy to cope with all of this. It is hard to believe that I had to go threw this. I now try to live as if it never happened, which is very hard when things like this come up. I just want to remind you of what I (the Victim) haf to go threw. I dont believe Billy Shane Miller has any reason to disagree with the ruling. We hD a fair jury trial. They heard both sides. If it's because he didnt have witnesses. I dont believe that should even be considered if the witnesses weren't there when it happened. If he does get granted a retrial I believe that should be considered double jeopardy. I am now a mother and don't want to relive any of this. I went to therapy to get help. As a mother i cant imagine if any of this happened to my baby. Also please remember after i went to court I was told everything was done and over with.

-victim