

STATE OF SOUTH CAROLINA

In The Court of Appeals

The State, Respondent,

v.

Eric Terrell Spears, Appellant,

Appellate Case No. 2015-000390

RECEIVED  
JUL 12 2017  
SC Court of Appeals

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Appeal from Richland County  
Robert E. Hood, Circuit Court Judge

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"APPLICATION FOR APPEAL BOND"

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By: Eric Terrell Spears  
BRCI-Wateree Unit  
4460 Broad River Rd.  
Columbia, S.C. 29210

### RELEVANT FACTUAL HISTORY

Appellant Eric Terrell Spears 'appealed' his conviction and sentence to the South Carolina Court of Appeals for trafficking crack cocaine, in the amount of ten to twenty-eight grams. (2015-000390).

On appeal, Appellant argued; "the trial judge erred by denying his motion to suppress drug evidence because he was seized unlawfully within the meaning of the Fourth Amendment, and law enforcement lacked a reasonable suspicion he was engaged in criminal activity". The South Carolina Court of Appeals "AGREED".

By June 15, 2017, the State (Respondent) petitioned this Honorable Court for "REHEARING". Not fully arguing nor believing this Court overlooked or misapprehended any points of authority within its decision to reverse Appellant's conviction and sentence, thus, Appellant posits; "the State's Rehearing not only should be denied, but reviewing this Court's factual and legal conclusions, such rehearing was not taken "in good faith"".

### FACTS AND SUPPORTING ARGUMENT FOR BOND

Under normal circumstances, the purpose of a appeal bond in a criminal case "is to allow the defendant to go free during the pendency of the appeal while assuring his presence upon affirmation of the conviction or as the court may otherwise direct. State v. Workman, 263 S.E.2d 865 (1980)

Pursuant to §18-1-130 ("Review of intermediate orders affecting judgment"), it states; Upon an appeal from a judgment the court may review any intermediate order involving the merits and necessarily affecting the judgment.

Appellant calls the above statute to the attention of this Honorable Court based on "the abnormally" in the context for which Appellant request an appeal bond. In otherwords, Appellant's request is "subsequent to his conviction and sentence being reversed". (See Opinion No. 5489, filed May 31, 2017) That may expose substantial rights pursuant to the "Bail Reform Act". See 18 U.S.C. §3143(b)(2). The Bail Reform Act bestows certain rights under the Eighth Amendment of the United States Constitution, and is applicable within the State of South Carolina.

Under such (similar to South Carolina's §18-1-90) The Bail Reform Act creates certain exceptions to a general rule that is against release pending appeal. Once a defendant is convicted a court must order detention unless it makes two findings. First, the defendant must show by clear and convincing evidence that he or she does not pose a danger to the safety of any person or the community; §3143(b)(1)(A), U.S. v. Bayko, 774 F.2d 516, 521 (1st Cir. 1985). Second, the court must consider and find that the defendant's appeal is not for the purpose of delay and raises a "substantial question of law or fact", U.S. v. Messerlian, 793 F.2d 94, 96 (3rd Cir. 1986)(defendant's motion for bail pending appeal granted because defendant raised substantial legal issue that were "fairly debatable" and "close questions of law").

Courts need only determine whether a new trial, reversal, or reduced sentence is likely if the defendant prevails; they need not determine whether it is likely that the defendant actually will prevail. See U.S. v. Miller, 753 F.2d 19, 23 (3d Cir. 1985)

Most courts, for crimes of violence, capital offenses, and drug offenses with a maximum imprisonment of ten years or more, the Bail Refrom Act directs the court to detain the defendant pending appeal, unless it finds "exceptional reasons" as to why the defendant's detention pending appeal would be inappropriate. See U.S. v. DiSomma, 951 F.2d 494, 497 (2d Cir. 1991)(exceptional reasons existed when defendant filed direct appeal and substantial appeal on factual underpinnings of element of violence upon which the conviction stood); U.S. v. Herrera-Soto, 961 F.2d 645, 646 (7th Cir. 1992)(same); see also U.S. v. Garcia, 340 F.3d 1013 (9th Cir. 2003).

#### APPELLANT'S EXCEPTIONAL REASONS

(a). Appellant posits under the proper phrase used by the court that his "exceptional reasons" is based on the S.C. Court of Appeals having already reversed his conviction on Fourth Amendment grounds in a drug case. In which this Court concluded; "the trial judge erred in admitting the drugs against Appellant". Which effectively suppresses the evidence against him. Even if a court was so inclined to attempt retrial of the case.

Thus, Appellant's "exceptional reasons" is twofold. One, Appellant waited for a favorable ruling prior to requesting a appeal bond; and second, "it is highly unlikely the case would be retried which is further evidenced by this Court's decision, omitting 'a reversal for a new trial' within the May 31, 2017 judgment.

Wherefore, the continuation of Appellant in prison based on the facts of the case coupled with the "reversal", withstanding the State's petition for rehearing. Would simply work to delay Appellant's restored liberty and cause him great stress and potentially further physical harm. As the South Carolina Department of Corrections has become a common place for unprovoked assaults deaths and other atrocities. In which the State cannot guarantee Appellant's safety, or no other inmate for that matter.

Based on the exceptional reasons stated herein, the Appellant respectfully as well as humbly request this Honorable Court to grant a reasonable appeal bond, not to exceed the initial amount set by the magistrate court. And any further reason consistent with such request.

Respectfully Submitted,

/s/

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Eric Terrell Spears  
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4460 Broad River Rd.  
Columbia, S.C. 29210

cc: s.c. attor. gen.  
appeal counsel  
file  
6/27/2017

CERTIFICATE OF SERVICE

I, Eric Terrell Spears, do hereby certify that I have mailed a true and correct copy of this Motion for Appeal Bond, to all parties listed below, with adequate postage first-class, attached thereto, on the 28<sup>TH</sup> day of June 2017.

Ms. LaNelle Cantey DuRant, Esquire  
1330 Lady Street, Suite 401  
P.O. Box 11589  
Columbia, S.C. 29211

Mr. David A. Spencer, Esquire  
P.O. Box 11549  
Columbia, S.C. 29211

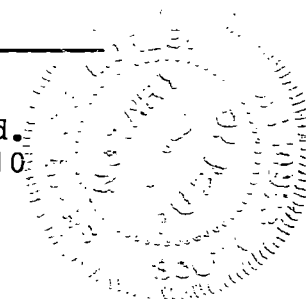
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/s/ 

Eric T. Spears  
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Sworn before me

6/28/17



9/16/2016

cc: filed  
6/27/2017

Eric Spears # 363100

BRCI

4460 Broad RIVER Rd

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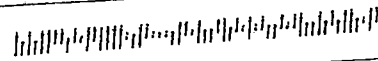


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ATTN: Jenny abbott Kitchings  
CLERK of COURT  
P.O. Box 11629  
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