

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED  
OCT 31 2017  
SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2017-000967

Steven L. Barnes, ..... Appellant,

v.

South Carolina Department of Corrections, ..... Respondent.

**RESPONDENT’S MOTION TO DISMISS  
THE APPELLANT’S APPEAL AS MOOT**

The Respondent in the instant matter, the South Carolina Department of Corrections [“the Department”], respectfully moves, pursuant to South Carolina Appellate Court Rule [“SCACR”] 240, to dismiss the appeal filed by the Appellant, Steven L. Barnes [“Barnes”], on the grounds that the three (3) issues on appeal Barnes identified in his brief appeal are now moot.

**I. RELEVANT CHRONOLOGY**

By his notice of appeal dated April 18, 2017, Barnes appealed two (2) orders issued by the South Carolina Administrative Law Court [“ALC”], on November 5, 2015 and March 29, 2017. (R. pp. 48 – 55 and pp. 186 – 212).<sup>1</sup>

<sup>1</sup> Barnes, by and through his counsel, filed the Record on Appeal with the Court on October 2, 2017. Accordingly, the Department includes references to the Record in its instant motion whenever possible.

In his brief,<sup>2</sup> Barnes identified the following three (3) issues on appeal, each of which concerned his status as a pre-trial detainee admitted to the Department's custody as a Safekeeper in accordance with S.C. Code Ann. § 24-3-80 and Executive Order No. 2000-11:<sup>3</sup>

- I. Did the ALC err by not remanding to the Department for further fact finding the Department's recommendation for Barnes to be classified as a Safekeeper?
- II. Did the ALC err by not reversing the Department's decision to deny Barnes a specific publication?
- III. Did the ALC err when it determined that Barnes had not established that § 24-3-80 had been unconstitutionally applied?

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<sup>2</sup> See Barnes' Brief, p. 1, and the Department's Brief, p. 1. Obviously, the parties filed their respective initial briefs, and the Department includes references to the parties' briefs whenever possible.

<sup>3</sup> In its entirety, § 24-3-80 (Supp. 2010), which is entitled "Detention of prisoner when authorized by Governor," provides as follows:

The director of the prison system shall admit and detain in [the Department] for safekeeping any prisoner tendered by any law enforcement officer in this State by commitment duly authorized by the Governor, provided, a warrant in due form for the arrest of the person so committed shall be issued within forty-eight hours after such commitment and detention. No person so committed and detained shall have a right or cause of action against the State or any of its officers or servants by reason of having been committed and detained in the state prison system.

The introductory provisions of Executive Order No. 2000-11, which our state's Governor issued February 16, 2000, provide as follows:

WHEREAS, an individual held in a pretrial confinement facility may be transferred to the custody of the [Department] for safekeeping by commitment duly authorized by the Governor pursuant to § 24-3-80; and

...  
NOW, THEREFORE, I hereby establish the following criteria and procedures for approval for the admission and detention in an institution of the [Department] for safekeeping of a prisoner tendered by a law enforcement officer of this State and rescind the previous safekeeping procedures set forth in Executive Order #76-15:

Section 1 of Executive Order No. 2000-11 provides as follows:

An individual held in a county pretrial confinement facility may be transferred to the custody of the [Department] by commitment duly authorized by the Governor pursuant to § 24-3-80, if the individual: (1) is a high escape risk; (2) exhibits extremely violent and uncontrollable behavior; and/or (3) must be removed from the county facility to protect the individual from the general population or from other detainees.

In the first paragraph from the section of his brief entitled “STATEMENT OF THE FACTS,<sup>4</sup>” Barnes provided the following accounting of the events by which he entered the Department’s custody as a Safekeeper:

Beginning February 7, 2014 through April 28, 2015, [Barnes] was housed as a **pre-trial detainee** at the following county jails: Aiken; Laurens; and Greenwood. On or about April 20, 2015, Edgefield County Sheriff Adell Doby petitioned the [Department’s Office of General Counsel] to classify [Barnes] as a “Safekeeper” and transfer him [into the Department’s custody]. **On or about April 28, 2015, [Barnes] was approved by [the Department] as a “Safekeeper.” The Governor then issued an Executive Order on April 28, 2015, also approving [Barnes]’ designation as a “Safekeeper.”** On the same day, [April 28, 2015], [Barnes] was removed from a county jail and transferred to the [Department’s custody] as a Safekeeper (assigned SK #5290). [emphasis supplied].

As the Department explained in its brief,<sup>5</sup> Barnes’ assertions in the above-quoted paragraph that the Department “approved” him as a Safekeeper represented a key factual error, and, by its March 29, 2017 Order, one of the two (2) orders from which Barnes appealed, the ALC correctly described the Department’s action regarding the petition submitted by the Edgefield County Sheriff (R. p. 186):

The Department **recommended** that [Barnes] be designated as a Safekeeper, and the Governor issued an Executive Order on April 28, 2015 **approving** that designation, which was renewed on August 12, 2015. [emphasis supplied].

In the footnote associated with the above-quoted passage from his brief,<sup>6</sup> Barnes added the following relevant information:

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<sup>4</sup> See Barnes’ Brief, p. 3, and the Department’s Brief, pp. 1 – 2.

<sup>5</sup> See the Department’s Brief, p. 2.

<sup>6</sup> See Barnes’ Brief, p. 3, n. 1.

Barnes had previously been incarcerated within SCDC pursuant to a murder conviction and death sentence; however, his case was reversed in January 2014, [*State v. Barnes*, 753 S.E.2d 545 (2014)], and he was remanded on February 7, 2014, by [the Department] to the custody of the Edgefield County jail for re-trial. The Edgefield Sheriff then asked other county jails to house Barnes.

By a letter dated September 28, 2017,<sup>7</sup> Barnes' appellate counsel advised the Clerk of this

Court as follows:

[Barnes' appeal] involves issues related to [his] pre-trial detention [as a Safekeeper within the Department]. **The issues could become moot following [Barnes'] non-capital jury trial which is scheduled to begin October 9, 2017 in Edgefield County.** We would respectfully request the appeal proceedings be delayed until after the trial. I have spoken with [the Department's outside counsel], and he is not opposed to such a delay. [emphasis supplied].

By an order issued October 6, 2017, this Court granted the request made by Barnes' appellate counsel in the above-quoted letter, and it imposed a 30-day abeyance of the proceedings in the instant matter.

On October 13, 2017, an Edgefield County jury convicted Barnes of murder, and the presiding judge sentenced Barnes to life in the Department's custody without the possibility of parole.<sup>8</sup>

Barnes then entered the Department's custody on October 16, 2017, where he remains as of the date of its instant motion.<sup>9</sup>

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<sup>7</sup> The Department respectfully submits a copy of the letter from Barnes' appellate counsel dated September 28, 2017 as Exhibit A in support of its instant motion.

<sup>8</sup> The Department respectfully submits a copy of the sentence sheet (South Carolina Court Administration Form 217) signed October 13, 2017 by the Honorable Diane S. Goodstein that reflects Barnes' conviction and sentence as Exhibit B in support of its instant motion.

<sup>9</sup> The Department respectfully submits a copy of the "Inmate Search Detail Report" secured from its website (<https://public.doc.state.sc.us/scdc-public/>) which reflects Barnes' admission into its custody on October 16, 2017 as Exhibit C in support of its instant motion.

## II. APPLICABLE PRECEDENT

In *Wachesaw Plantation East Community Services Ass'n, Inc., v. Alexander*, 778 S.E.2d 898, 900 (S.C. 2015), our Supreme Court addressed mootness as follows:

**“A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court.”** [*S.C. Ret. Syst. Inv. Comm'n v. Loftis*, 741 S.E.2d 757, 758 (S.C. 2013)]. **“[M]oot appeals result when intervening events prevent a decision on appeal from having an immediate impact on the parties.”** 15 S.C. Jur. *Appeal and Error* § 19 (Supp. 2014). “Appellate court[s] will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” [*Linda Mc Co., Inc. v. Shore*, 703 S.E.2d 499, 506 (S.C. 2010)]. [emphasis supplied]

See also *S.C. Public Interest Foundation v. S.C. Dep't of Trans.*, -- S.E.2d --, 2017 WL 4052370, \*4 (S.C. Sept. 14, 2017). (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” [*Sloan v. Greenville Cnty.*, 670 S.E.2d 663, 667 (S.C. Ct. App. 2009)]”).

In *Shah v. Richland Memorial Hospital*, 564 S.E.2d 681, 687 (S.C. Ct. Ap. 2002), this Court also addressed mootness:

An appellate court “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” [*Mathis v. South Carolina State Highway Dep't*, 195 S.E.2d 713, 714 (S.C. 1973)]. **“A case becomes moot when judgment, if rendered, will have no practical legal effect upon [an] existing controversy. This is true when some event occurs making it impossible for [a] reviewing [c]ourt to grant effectual relief.”** [*Id.*, 195 S.E.2d at 715]. “Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable.” [*Curtis v. State*, 549 S.E.2d 591, 596 (S.C. 2001)]. [emphasi supplied].

In *Shah*, 564 S.E.2d at 687, this Court again quoted *Curtis*, 549 S.E.2d at 596, when it articulated the three (3) general exceptions to the mootness doctrine in the civil context:

**First**, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. **Second**, an

appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. [Third], if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case. [citations omitted by this Court and emphasis supplied by the Department].

### III. ANALYSIS

As a result of his conviction and sentencing on October 13, 2017 and his admission into the Department's custody on October 16, 2017, Barnes is no longer a pre-trial Safekeeper.

Under *Wachesaw Plantation*, 778 S.E.2d at 898, Barnes' October 2017 conviction and sentencing constitutes an "intervening event" that renders impossible any grant of effectual relief to him by this Court on the three (3) issues on appeal he identified in his brief.

Moreover, Barnes's October 2017 conviction and sentencing constitutes an "intervening event" that prevents a decision by this Court on Barnes' pending appeal from the two (2) orders issued by the ALC on November 5, 2015 and March 29, 2017 "from having an immediate impact" on Barnes and the Department. *Id.*

Given his October 2017 conviction and sentencing, any judgment rendered by this Court regarding Barnes' appeal will have no practical legal affect upon the existing controversy between Barnes and the Department, and, accordingly, the Department respectfully asserts that Barnes' appeal is moot. *Id. See also S.C. Public Interest Foundation*, 2017 WL 4052370, \*4; and *Shah*, 564 S.E.2d at 687.

The Department further respectfully asserts that just as in *Shah*, 564 S.E.2d at 687 – 88, none of the three (3) general exceptions to the mootness doctrine applies to any of the three (3) issues on appeal Barnes identified in his brief.

First, none of the three (3) issues Barnes identified on appeal regarding his status as a pre-trial Safekeeper and his treatment by the Department while a pre-trial Safekeeper are capable

of repetition. As he is now incarcerated in the Department while serving a sentence of life without the possibility of parole, Barnes is no longer a pre-trial detainee in the Department's custody as a Safekeeper. Consequentially, the policies promulgated by the Department which address Safekeepers (i.e. Policy Numbers SK-22.02 and OP-22.12) no longer apply to Barnes after his October 2017 conviction and sentencing.<sup>10</sup>

Even if his October 2017 conviction and sentence are overturned on appeal and he again enters the Department's custody as a pre-trial Safekeeper, Barnes may not confront the same issues that lie at the heart of his instant appeal concerning whether he should be classified as a Safekeeper or the Department's treatment of him as a Safekeeper. Even if he confronts the very same issues upon his re-entry into the Department's custody as a pre-trial Safekeeper, Barnes may seek review of such issues by filing a grievance with the Department, and, if the Department denies his grievance, Barnes may appeal the Department's denial to the ALC.

Second, none of the three (3) issues on appeal Barnes identified in his brief constitute "questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest."

Third and finally, neither the ALC's decisions regarding the three (3) issues on appeal identified by Barnes in his brief nor, for that matter, the Department's decisions on the same three (3) issues will affect future events between Barnes and the Department. Likewise, neither the ALC's decisions regarding the three (3) issues on appeal identified by Barnes in his brief nor the Department's decisions on the same three (3) issues will have any collateral consequences for Barnes and the Department.

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<sup>10</sup> See the Department's Brief, pp. 6 – 7.

**IV. CONCLUSION**

As persuasively demonstrated above, the three (3) issues on appeal Barnes identified in his brief are, given his October 2017 conviction and sentencing, now moot.

As also persuasively demonstrated above, none of the three (3) general exceptions to the mootness doctrine apply to Barnes' the three (3) issues on appeal Barnes identified in his brief.

Therefore, the Department respectfully urges this Court to dismiss as moot Barnes' appeal of the orders issued by the ALC on November 5, 2015 and March 29, 2017.

Finally, the Department respectfully requests that this Court continue to hold Barnes' appeal in abeyance pursuant to its October 6, 2017 order until it rules upon the Department's instant motion.

**RESPECTFULLY SUBMITTED,**

BY:



\_\_\_\_\_  
Lake E. Summers

**Malone, Thompson, Summers & Ott LLC**

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Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803) 254-0309

E-mail: summers@mtsolawfirm.com

Counsel for the Respondent

Columbia, South Carolina  
October 31, 2017

STATE OF SOUTH CAROLINA )  
 COUNTY OF Edgefield )  
 STATE VS. )  
Steven Louis Barnes )  
 AKA: \_\_\_\_\_ )  
 Race: Black Sex: M Age: 38 )  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ )  
 Address: \_\_\_\_\_ )  
 City, State, Zip: Augusta, GA 30606 )  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_ )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No  )  
 In disposition of the said indictment comes now the Defendant who was )  
 TO: Murder / Murder )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS1901788  
 A/W#: E17-STR-0016  
 Date of Offense: 12/6/2005  
 S.C. Code § : 16-03-0010  
 CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
 (CSC w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentation to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Sol. Heubland Solicitor SC Bar# \_\_\_\_\_ Defendant Jeff Blinn Attorney for Defendant SC Bar# \_\_\_\_\_  
Edw. McGuire

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of LIFE WITH OUT THE POSSIBILITY OF PAROLE days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

- CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_
- The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
- The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
 Total: \$ \_\_\_\_\_ plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Charles L Reel  
 Court Reporter: Stacy S. Johnson  
 SCCA/217 (07/2016)

\_\_\_\_\_ days/hours Public Service Employment

- Obtain GED
- Attend Voc. Rehab. or Job Corp. \_\_\_\_\_
- May serve W/E beginning \_\_\_\_\_
- Substance Abuse Counseling
- Random Drug/Alcohol testing
- Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: Mr. Barnes's detainer in Ga occurred on 2-12-2002; He was extradited to SC on 5-25-2005

Appointed PD or appointed other counsel, §Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees. Grand J. Gooden  
 Presiding Judge \_\_\_\_\_  
 Judge Code: 2112  
 Sentence Date: Oct 13, 2017

**INMATE SEARCH DETAIL REPORT**



INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	MALE	SCDC ID:	00327117
RACE:	BLACK	SID:	SC01635820
HEIGHT:	6' 01"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	205 lbs.	ADMISSION DATE:	10/16/2017
AGE:	38	LOCATION:	KIRKLAND
CITIZENSHIP:	CITIZEN - NATIVE BORN	DORM-ROOM-BUNK:	A2-0023-B
BUILD:	MEDIUM	SECURITY / CUSTODY:	
COMPLEXION:	DARK BROWN	EWC LEVEL:	
HAIR COLOR:	BLACK	EEC LEVEL:	
EYE COLOR:	BROWN	PROJECTED RELEASE DATE:	
PICTURE DATE:	10/16/2017	PROJECTED PAROLE ELIGIBILITY:	
		SUP. FURLOUGH ELIGIBILITY:	

TO ENSURE SENTENCES ARE RECORDED CORRECTLY, THE DEPARTMENT OF CORRECTIONS REVIEWS ITS RECORDS BEFORE MAKING OFFENDER SENTENCING INFORMATION PUBLICLY AVAILABLE. THE REVIEW PROCESS WILL BE COMPLETED BEFORE THE OFFENDER IS ASSIGNED TO AN INSTITUTION FROM RECEPTION AND EVALUATION. AFTER THE REVIEW IS COMPLETE AND THE INMATE'S SENTENCE IS OFFICIALLY RECORDED, THE OFFICIAL RECORDING OF THE SENTENCE WILL BE AVAILABLE TO THE PUBLIC.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2017-000967

Steven L. Barnes, ..... Appellant,

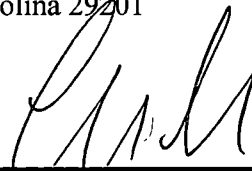
v.

South Carolina Department of Corrections, ..... Respondent.

**RESPONDENT'S MOTION TO DISMISS  
THE APPELLANT'S APPEAL AS MOOT**

I certify that I have served the **RESPONDENT'S MOTION TO DISMISS THE APPELLANT'S APPEAL AS MOOT** on the above-named Appellant by mailing a copy of the same to his counsel of record at the following address:

Shane Goranson, Esquire  
Attorney, Capital Trial Division  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201



LAKE E. SUMMERS

October 31, 2017



SOUTH CAROLINA COMMISSION FOR INDIGENT DEFENSE

Capital Trial Division  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201  
Telephone: 803.734.7818  
Facsimile: 803.734.1668

William S. McGuire, Chief Attorney  
S. Boyd Young, Deputy Attorney  
Shane Goranson, Trial Attorney  
E. Brenton Sadreameli, Investigator  
Claedrika Mulligan-Green, Paralegal

Email: BMcGuire@sccid.sc.gov  
Email: BYoung@sccid.sc.gov  
Email: SGoranson@sccid.sc.gov  
Email: BSadreameli@sccid.sc.gov  
Email: cmulligangreen@sccid.sc.gov

September 28, 2019

The Honorable Jenny Abbott Kitchings,  
Clerk of Court, Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201  
(Via hand delivery)

Mr. Lake Eric Summers,  
339 Heyward Street  
Suite 200  
Columbia, SC 29201

Mr. Stephen Hollis Lunsford, Esquire  
4444 Broad River Road  
Columbia, South Carolina 29221

Re: Steven Barnes v. SCDC  
Appellate Case No. 2017-000967

Dear Ms. Kitchings,

I hope all is well with you. The above captioned case involves issues related to Mr. Barnes's pre-trial detention within SCDC. The issues could become moot following Mr. Barnes's non-capital jury trial which is scheduled to begin October 9, 2017 in Edgefield County. We would respectfully request the appeal proceedings be delayed until after the trial. I have spoken with Mr. Summers and he is not opposed to such a delay. Please do not hesitate to contact me with any questions.

Yours truly,

Shane Goranson

Cc: Bill McGuire, Steven Barnes

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