

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
The Honorable Eugene C. Griffith, Jr., Post-Conviction Relief Judge

Appellate Case No. 2017-001877
Circuit Court Case No. 2014-CP-32-04769

RECEIVED
OCT 20 2017
S.C. SUPREME COURT

LANCE AUSTIN WILLIAMS, #345477,

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 April 1, 2011, Respondent was found guilty of one count of unlawful neglect of a child (2010-GS-43-1860) and one count of criminal sexual conduct ("CSC") with a minor, first degree (2004-GS-32-1861). The Honorable R. Knox McMahon, Circuit Court Judge, sentenced Respondent to imprisonment for ten years for the unlawful neglect of a child conviction, and twenty-five years for the criminal sexual conduct with a minor, first degree conviction, both to be served concurrently. On appeal, the South Carolina Court of Appeals affirmed Respondent’s convictions and sentences. State v. Williams, 405 S.C. 263, 747 S.E.2d 194 (Ct. App. 2013) (filed July 24, 2013). Respondent filed a Petition for Rehearing on August 8, 2013. The Court of Appeals denied this Petition on September 19, 2013. Respondent then petitioned for Writ of

Certiorari on October 21, 2013. By Order dated July 24, 2014, this Court denied the petition, and the Remittitur was issued on August 2, 2014.

2. Respondent filed an application for post-conviction relief on December 31, 2014. An evidentiary hearing was held before the Honorable Eugene C. Griffith, Jr. on January 30-31, 2017. An order granting post-conviction relief was filed on June 20, 2017. Petitioner served its Motion to Alter or Amend Judgment on June 29, 2017. The order denying the motion to alter or amend judgment was filed on August 18, 2017.

3. Petitioner served its notice of appeal on September 13, 2017, and the notice was filed with this Court on the same day.

4. Respondent filed a motion for bail pending appellate review with this Court on October 5, 2017.

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 submits there is no probative evidence in

support of the PCR Court's Opinion and Order granting post-conviction relief, and the grant of relief was based upon multiple errors of law.

7. Respondent was convicted of serious crimes. The victim in this case was Respondent's then girlfriend's daughter. The facts of the case reflect Respondent hit the victim, then fifteen months old, multiple times on the head with enough force to cause bruising. Further, Respondent digitally penetrated the victim's internal genitalia, which caused bruising. The State submits the serious nature of the crime he committed warrants denial of his request for bond pending appeal and early release into the community. The State also submits the nature of the crime is sufficiently serious to suggest that Respondent is a danger to the community.

Unlike cases where a pretrial bond is sought, Respondent does not come before this Court with the cloak of innocence. He was convicted by a jury of criminal sexual conduct with a minor, first degree, and unlawful neglect of a child. Although this Court has found it holds the inherent power to grant bail, the legislature has expressed its clear intent to limit granting bail for serious crimes such as this criminal sexual conduct with a minor, first degree. Pursuant to S.C. Code § 18-1-90 (Supp. 2004), "bail is not allowed when the defendant has been sentenced to . . . imprisonment for more than ten years." But see State v. Whitener, 225 S.C. 244, 81 S.E.2d 784 (1954) (finding statute prohibiting bail pending appeal for sentence of more than ten years did not restrict the Court's inherent power to grant bail).

8. Respondent faces a sentence of twenty-five years if the State's appeal is successful, or a sentence of up to life imprisonment upon re-trial if the State's appeal is not successful. Even if this Court does not reverse the PCR Court's ruling, the ruling did not exonerate Respondent. Rather, Respondent still stands accused of all charges listed above, and the Eleventh Circuit Solicitor's Office will determine how it wishes to proceed in prosecuting Respondent.

9. Respondent's request should also be denied based upon the likelihood that Respondent may flee if released. Because Respondent is sentenced to imprisonment for twenty-five years, he would have a much greater incentive to flee while out on bond. Even if Respondent were to prevail on appeal, the affirmation of the grant of his PCR application would only entitle him to a new trial, not an acquittal. Therefore, facing a potential twenty-five years to life sentence, Respondent would have both the motive and opportunity to flee if released on bond.

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

11. 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.

12. 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 Lexington County Clerk of Court.

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

Respectfully submitted,

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Attorney General

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Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

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By: 

ATTORNEYS FOR RESPONDENT

October 20, 2017

STATE OF SOUTH CAROLINA
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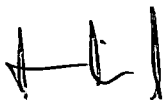
PROOF OF SERVICE

I, Alphonso Simon, Jr., do hereby certify that on this date, I served the *Petitioner's Return to Motion for Bail Pending Appeal*, in the foregoing action on the Respondent by depositing two copies of the same to his attorneys, in the United States mail, first-class postage prepaid, and addressed as follows:

Richard A. Harpootlian, Esq.
P.O. Box 1090
Columbia, South Carolina 29202

Christopher P. Kenney, Esq.
Richard A. Harpootlian, P.A.
P.O. Box 1090
Columbia, South Carolina 29202

This 20th day of October, 2017.



ALPHONSO SIMON, JR.
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ATTORNEYS FOR PETITIONER



ALAN WILSON
ATTORNEY GENERAL

October 20, 2017

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OCT 20 2017

S.C. SUPREME COURT

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

Re: *Lance Austin Williams, #345477 vs. State of South Carolina*
Appeal from Lexington County
Appellate Case No. 2017-001877

Dear Mr. Shearouse:

Enclosed for filing in your office is an original and six (6) copies of Petitioner's Return to Motion for Bail Pending Appeal, and Proof of Service in the above-captioned matter.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS/dmd
Enclosures

cc: Richard A. Harpootlian, Esq. (w/two copies of encls.)
Christopher P. Kenney, Esq. (w/two copies of encls.)
The Honorable S. Rick Hubbard, III, Solicitor, Eleventh Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)