

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Horry County
Benjamin H. Culbertson, Circuit Court Judge

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NOV 28 2017

Appellate Case No. 2017-000567
Case No. 2016-CP-26-1614

SC Court of Appeals

Robert Palmer, Appellant,

v.

State of South Carolina, Horry County,
and David Weaver..... Defendants,

Of Whom, State of South Carolina is Respondent.

**MOTION TO CERTIFY APPEAL
TO SOUTH CAROLINA SUPREME COURT**

The Respondent State of South Carolina hereby moves in accordance with Rule 204(b), SCACR, for certification of this case for the immediate review by the South Carolina Supreme Court.

BACKGROUND

This civil action for monetary relief arises as a result of the Appellant Robert Palmer's acquittal on appeal on criminal charges of homicide by child abuse, aiding and abetting homicide by child abuse and unlawful conduct towards a child. Palmer, together with his live-in companion, Julia Gorman, were both convicted of such offenses for the death of Gorman's seventeen month old grandson. On direct appeal, the South Carolina Court of Appeals reversed Palmer's aiding and abetting conviction but affirmed the convictions on the other charges. *See, State v. Palmer*, 408 S.C. 218, 758 S.E.2d 195 (Ct. App. 2014). Thereafter, on a writ of certiorari, this Court ruled that Palmer was entitled to a directed verdict on both the homicide by child abuse and unlawful conduct towards a child charges. This Court found an absence of evidence to support those convictions. *See, State v. Palmer*, 413 S.C. 410, 776 S.E.2d 558 (2015).

After his acquittal, Palmer filed this civil action on March 7, 2016 against the Respondent State of South Carolina as well as the Defendants Horry County and David Weaver. Palmer alleges a federal cause of action pursuant to 42 U.S.C. § 1983 for violations of his Fifth and Fourteenth Amendment rights. He also alleges state law causes of action for false imprisonment, false arrest, malicious prosecution, and negligence. Finally, Palmer includes a sixth cause of action for a declaratory judgment whereby he "requests the Court find a remedy for wrongful

conviction is available under both the United States and South Carolina Constitutions including the due process clause." As part of that sixth cause of action, Palmer also seeks an award of damages for wrongful conviction based upon a violation of the State Constitution.

The Respondent State filed a motion to dismiss pursuant to Rule 12(b)(6), SCRCF. That motion was heard by Circuit Court Judge Benjamin H. Culbertson on June 14, 2016. By Order entered on November 17, 2016, Judge Culbertson granted the motion and dismissed the State of South Carolina with prejudice. Palmer subsequently filed a Rule 59(e) motion for reconsideration, which was denied by Form Order entered on February 15, 2017.

The Appellant Palmer thereafter filed a timely appeal to the Court of Appeals. The briefing stage of the appeal is completed. The appeal is ready for oral argument.

LEGAL ANALYSIS

Rule 204(b), SCACR, provides that "[i]n any case which is pending before the Court of Appeals, the Supreme Court may ... on motion of any party to the case ... certify the case for review by the Supreme Court before it has been determined by the Court of Appeals." Rule 204(b), SCACR, further provides that "[c]ertification is normally appropriate where the case involves an issue of

significant public interest or a legal principle of major importance." *See*, Rule 204(b), SCACR.

This appeal is appropriate for certification under the standard set out in Rule 204(b). In this appeal, the Appellant generally contends that the United States Constitution and the South Carolina Constitution require that the State of South Carolina provide a civil monetary remedy for wrongful conviction. More specifically, this appeal involves a purely legal question of significant importance, that being whether South Carolina law recognizes a private right of action for money damages for a state constitutional violation. The South Carolina appellate courts have not previously addressed this issue in any published opinion, and as a result, there is no binding precedent.¹ Hence, Palmer's assertion of a private right of action seeking money damages for an alleged violation of the State Constitution presents an issue that warrants immediate consideration and adjudication by this Court.

An instructive analogy may be drawn to S.C. Code § 14-8-200(b)(3), which requires a direct appeal to the Supreme Court for "a final judgment involving a challenge on state or federal grounds to the constitutionality of a state law." *See*,

¹ However, the Court is advised that in a prior unpublished decision in *Gibbs v. South Carolina Department of Probation, Parole, and Pardon Services*, Opinion No. 2002-UP-363 (Ct. App. 2002), the Court of Appeals noted the split in other jurisdictions on the issue and ultimately ruled as follows: "We agree that no viable cause of action exists where, as here, the state Constitution does not provide for a private cause of action for civil rights violations and the legislature has not enacted a statute enabling this type of action." It is further noted that this Court denied a petition for writ of certiorari in *Gibbs* on June 25, 2002.

S.C. Code § 14-8-200(b)(3). *See also, McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 719 S.E.2d 660 (2011) (direct appeal to Supreme Court to review constitutional challenge to local ordinance). While this appeal does not *per se* involve a constitutional challenge to a state law, it does involve a significant issue requiring the interpretation and application of the State Constitution which is certainly comparable. Thus, it seems logical that an important issue of constitutional interpretation should similarly be heard directly by the Supreme Court.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent State of South Carolina respectfully requests that the Supreme Court certify this case for immediate review. Upon information and belief, the Appellant Robert Palmer also agrees to the certification of this appeal to the Supreme Court.

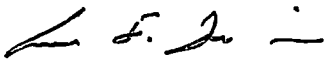
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Columbia, South Carolina

November 28, 2017

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Benjamin H. Culbertson, Circuit Court Judge

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CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent State of South Carolina, does hereby certify that service of the **Motion to Certify Appeal to South Carolina Supreme Court** in the above-captioned matter was made upon the Honorable Jenny Abbott Kitchings via hand delivery and upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 28th day of November 2017:

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201



Gary Trammell

Via U.S. Mail

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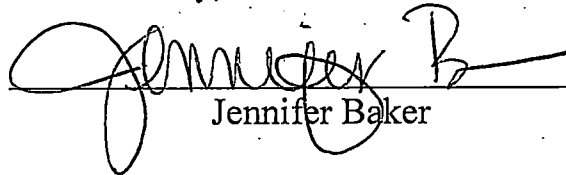
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November 28, 2017

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NOV 28 2017

SC Court of Appeals

RE: Robert Palmer v. State of South Carolina, Horry County, and David Weaver
Appellate Case Number: 2017-000567
Civil Action Number: 2016-CP-26-1614
Claim Number: 19730
Our File Number: 104.10136

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven copies of the **Motion to Certify Appeal to South Carolina Supreme Court** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier. I have not enclosed a filing fee for this motion since the State of South Carolina is exempt from filing fees.

By copy of this letter, I am serving copies on ~~the Honorable Jenny Abbott Kitchings~~ via hand delivery and upon all counsel of record via U.S. Mail. Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Daniel E. Shearouse
November 28, 2017
Page Two

cc: (w/ Enclosure)

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