

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Florence County
Hon. William H. Seals, Jr., Circuit Court Judge
Appellate Case Tracking No. 2017-002605

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SC Court of Appeals

The State,

Petitioner-Respondent,

v.

Bryant Christopher Gurley,

Respondent-Petitioner.

Opinion No. 2017-UP-342 (S.C. Ct. App. filed August 9, 2017)

**PETITIONER-RESPONDENT'S
RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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Attorney General

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ATTORNEYS FOR PETITIONER-RESPONDENT

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 I. This Court should deny Gurley’s Petition for Writ of Certiorari because the Court of Appeals has not issued an opinion addressing the issues raised by the Petition. The proper remedy in the event this Court grants the State’s Petition for Writ of Certiorari and reverses the decision of the Court of Appeals would be to remand for consideration of the remaining issues by the Court of Appeals. 3

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STATEMENT OF QUESTIONS PRESENTED

I. This Court should deny Gurley's Petition for Writ of Certiorari because the Court of Appeals has not issued an opinion addressing the issues raised by the Petition. The proper remedy in the event this Court grants the State's Petition for Writ of Certiorari and reverses the decision of the Court of Appeals would be to remand for consideration of the remaining issues by the Court of Appeals.

STATEMENT OF THE CASE

Procedural History

A Florence County Grand Jury indicted Gurley for lewd act on a minor. (App.5-6) On January 26–29, 2015, Gurley proceeded to a trial before the Honorable William H. Seals, Jr., and a jury. Marcus Woodson, Esquire, represented Gurley, and Assistant Solicitor Catherine Wyse, represented the State. The jury found Gurley guilty, and Judge Seals sentenced him to eight years' imprisonment. (App.302-303.)

Gurley filed a timely Notice of Appeal. After briefing and oral argument, the Court of Appeals issued its opinion reversing Gurley's conviction and remanding for a new trial. State v. Gurley, Op. No. 2017-UP-342 (S.C. Ct. App. filed August 9, 2017), in which it only addressed two issues, which were both raised by the State in its Petition for Writ of Certiorari. Both parties timely filed a Petition for Rehearing. Gurley filed his Petition on August 23, 2017, and the State filed its Petition on August 29, 2017. By Order dated November 22, 2017, the South Carolina Court of Appeals denied both Petitions.

Gurley now files his Petition for Writ of Certiorari asking this Court to address issues not addressed by the Court of Appeals. This Return follows.¹

¹ The State incorporates its Factual Background from its Petition for Writ of Certiorari.

ARGUMENT

- I. **This Court should deny Gurley's Petition for Writ of Certiorari because the Court of Appeals has not issued an opinion addressing the issues raised by the Petition. The proper remedy in the event this Court grants the State's Petition for Writ of Certiorari and reverses the decision of the Court of Appeals would be to remand for consideration of the remaining issues by the Court of Appeals.**

Gurley asks this Court to grant a Petition for Writ of Certiorari on four issues never addressed by the Court of Appeals. The Court of Appeals declined to address the issues pursuant to Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (finding an appellate court need not address remaining issues on appeal when its determination of a prior issue is dispositive). Accordingly, this Court should deny the Petition for Writ of Certiorari as to these issues because there is not Court of Appeals Opinion addressing these issues.

Pursuant to the South Carolina Appellate Court Rules: "The Supreme Court, or any two (2) justices thereof, may in its discretion, on motion of any party to the case or on its own motion, issue a writ of certiorari to **review a final decision of the Court of Appeals.**" Rule 242(a), SCACR (emphasis added). In the instant case, Gurley asks this Court to review four issues which are not the subject of a final decision by the Court of Appeals. The Court of Appeals expressly declined to consider the issues. Further, none of the considerations set forth in Rule 242(b), SCACR, are applicable in this case because there is no ruling from the Court of Appeal.

The State submits the appropriate remedy, in the event this Court grants the State's Petition for Writ of Certiorari and reverses the Opinion of the Court of Appeals, is to remand for consideration of the four issues raised by Gurley by the Court of Appeals so that a final decision

can be issued upon which this Court can then consider a Petition for Writ of Certiorari. See e.g., State v. Larmand, 415 S.C. 23, 33, 780 S.E.2d 892, 896 (2015) (finding “because the court of appeals did not address the remainder of Respondent’s arguments on appeal, we remand the matter to the court of appeals for further action not inconsistent with this opinion”); State v. Pinckney, 339 S.C. 346, 350, 529 S.E.2d 526, 528 (2000) (“As the [c]ourt of [a]ppeals reversed Pinckney’s convictions, it did not address his remaining issue whether the trial court erred in denying respondent’s directed verdict motion on the ground of not guilty by reason of insanity. Accordingly, we remand to the Court of Appeals for consideration of this issue.”). Accordingly, this Court should deny Gurley’s Petition for Writ of Certiorari, and in the event the Court reverses the Court of Appeals’ decision, remand to the Court of Appeals for consideration of the remaining issues.²

² In the event this Court wishes to consider the issues raised by Gurley in his Petition for Writ of Certiorari, the State craves reference to the merit discussions of each issue found in its Final Brief of Respondent.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny Gurley's Petition for Writ of Certiorari to the Court of Appeals.

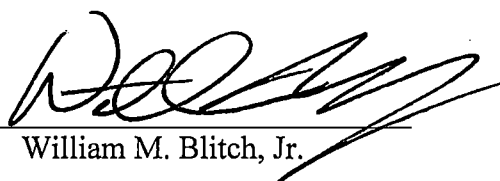
Respectfully submitted,

ALAN WILSON
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BY:



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ATTORNEYS FOR PETITIONER-RESPONDENT

February 5, 2018

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v.

Bryant Christopher Gurley,

Respondent-Petitioner.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Petitioner-Respondent's Return to Petition For Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jack B. Swerling, Esquire
1720 Main Street, Suite 301
Columbia, South Carolina 29201

Katherine Carruth Goode, Esquire
Post Office Box 1175
Winnsboro, South Carolina 29180

I further certify that all parties required by Rule to be served have been served.
This 5th day of February, 2018.



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ALAN WILSON
ATTORNEY GENERAL

February 5, 2018

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Post Office Box 1175
Winnsboro, South Carolina 29180

Re: State v. Bryant Gurley
Appellate Case Tracking No. 2017-002605

Dear Mr. Swerling and Ms. Goode:

I am enclosing two (2) copies of Petitioner-Respondent's Return to Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case.

If you have any questions concerning this matter, please contact me.

Sincerely,

William M. Blich, Jr.
Assistant Attorney General
S.C. Bar No. 15608

cc: Honorable Daniel E. Shearouse (original and six enclosed)
~~Honorable Jenny A. Kitchings~~
Victim Advocacy Division (enclosure)