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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

February 16, 2018

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

Re: Maxwell Sipes v. State of South Carolina
Appellate Case No. 2017-000231
Lower Court Case No. 2012-CP-04-0084

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Motion to Transport Exhibit Under Seal and Motion to Supplement Appendix. By copy of this letter we are serving opposing counsel today.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General
SC Bar No. 79054

LAM/cc
Enclosures

cc: Wanda H. Carter, Esquire (2 copies)

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County
The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2017-000231

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FEB 16 2018

S.C. SUPREME COURT

MAXWELL SIPES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION TO TRANSPORT EXHIBIT UNDER SEAL
AND MOTION TO SUPPLEMENT APPENDIX**

Respondent moves this Court to transport and unseal Applicant's Exhibit 1, medical records pertaining to the minor victim, and for the records to be made a supplement to the Appendix.

In accordance with Rule 240(c), SCACR, undersigned counsel submits the following documents in support of her motion: Exhibit 1 (Order Sealing Records).

In support of its motion, Respondent would respectfully show this Court:

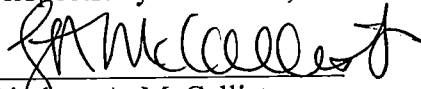
1. Petitioner was indicted at the March 2005 term of General Sessions by an Anderson County Grand Jury for first-degree criminal sexual conduct with a minor. App. 831-32.
2. In March 2007, Petitioner's trial counsel obtained a court order for the release of the minor victim's medical records from various entities including the South

Carolina Department of Juvenile Justice, the Carolina Center for Behavioral Health, and AnMed Health Medical Center. App. 638-39.

3. On March 5-7, 2007, Petitioner was tried and convicted of criminal sexual conduct with the minor victim. App. 1, 607. On January 13, 2012, Petitioner filed a post-conviction relief action, alleging, among other things, that his trial counsel was ineffective for failing to introduce the full set of medical records at trial. App. 617-23. An evidentiary hearing was held before Judge R. Scott Sprouse on June 9, 2016, at which time, Petitioner introduced the minor victim's medical records as Applicant's Exhibit 1. App. 631-32.
4. Respondent moved to seal the medical records, and Petitioner did not object. Judge Sprouse issued an order to that effect which was filed with the Anderson County Clerk of Court on July 5, 2016. See Exhibit 1.
5. As Applicant's Exhibit 1 was considered by the post-conviction relief judge in his decision to deny Petitioner's application, and because the records are directly relevant to Question 1 of the Petition, Respondent respectfully requests Applicant's Exhibit 1 be transported to the Supreme Court, and for the records to be made a supplement to the Appendix, while remaining under seal.
6. Counsel for Petitioner consents to this request.

{Signatures on following page.}

Respectfully submitted,



Lindsey A. McCallister

Assistant Attorney General

S.C. Bar # 79054

Office of the Attorney General

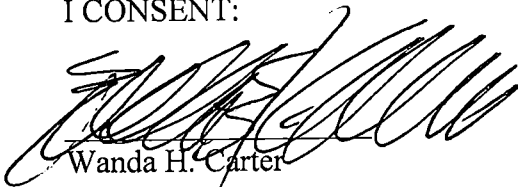
Post Office Box 11549

Columbia, South Carolina 29211

(803) 734-3737

Attorney for Respondent

I CONSENT:



Wanda H. Carter

Attorney for Petitioner

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County
Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2017-000231

MAXWELL SIPES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

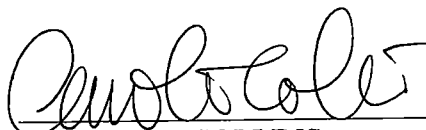
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Motion to Transport Exhibit Under Seal and Motion to Supplement Appendix**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Wanda H. Carter, Esquire
SC Commission on Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589**

This 16th day of February, 2018.



CAROLINE COLLINS
Administrative Coordinator

Exhibit 1

STATE OF SOUTH CAROLINA FILED-CLERK'S OFFICE IN THE COURT OF COMMON PLEAS
ANDERSON SC ANDERSON SC TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON



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Maxwell Sipes, #320502,

COMMON PLEAS AND GENERAL SESSIONS

Case No.: 2012-CP-04-0084

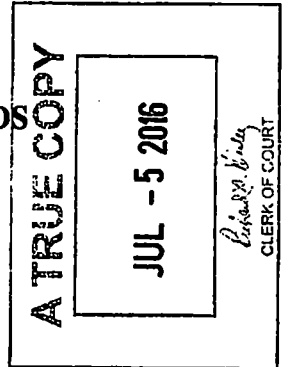
Petitioner,

v.

ORDER SEALING RECORDS

State of South Carolina,

Respondent.



This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 13, 2012. Respondent made a Return on or about March 27, 2013.

This Court convened an evidentiary hearing into the application on June 9, 2016, at the Anderson County Courthouse. J. Faulkner Wilkes, Esquire, appeared on behalf of Applicant. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant moved to admit medical records belonging to the juvenile victim, and Respondent moved for the records to be sealed. Applicant had no objection to the records being sealed.

“Public access to court records may be restricted in certain situations, such as matters involving juveniles, legitimate trade secrets, or information covered by a recognized privilege. Restrictions may be based on a statute or the court's inherent power to control its own records and supervise the functioning of the judicial system.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006); see, e.g. S.C.Code Ann. § 20-7-755 (Supp. 2005) (allowing general public to be excluded from hearings that involve neglected, abused, or delinquent children); *Jessup v. Luther*, 277 F.3d 926, 928 (7th Cir. 2002) (holding when there is a

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compelling interest in secrecy, as in case of the privacy of children, portions, and in extreme cases the entirety, of a trial record may be sealed).

“In deciding whether to seal or unseal a court record, the court must make specific factual findings, on the record, which weigh the need for secrecy against the right of access.” The Court must consider the following factors:

- (1) the need to ensure a fair trial;
- (2) the need for witness cooperation;
- (3) the reliance of the parties upon expectations of confidentiality of the proceeding;
- (4) the public or professional significance of the proceeding;
- (5) the perceived harm to the parties from disclosure;
- (6) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and
- (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

SCRCP 41.1.

“In addition, the court may consider (8) public interest in the proceeding; (9) the private or public status of the litigants and case generally; (10) whether release would enhance the public's understanding of an important historical event; (11) whether the public already has access to information contained in the records; (12) whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 12, 630 S.E.2d at 470.

The case before the Court involves medical records of a juvenile victim of a sexual assault. The medical records were originally part of the underlying criminal case. The victim had an expectation that her medical records would be treated in a confidential manner. There is public significance in the proceeding; however, there is no public significance in the specific medical records. The medical records have been redacted; however, because the victim was related to Applicant, the redactions will do little to preserve the privacy of the victim. Sealing the medical records will prevent the specific medical details linked to the victim from being

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released. Patients have an expectation of privacy as to their medical records. An expectation of privacy is what allows patients to be honest about their medical situations with their health providers; as such, maintaining the privacy of medical records contributes to the public health and safety.

Weighing the need for secrecy against the right of access, this Court finds the factors of Rule 41.1 weigh in favor of sealing the records.

IT IS THEREFORE ORDERED THAT

- The medical records will be sealed.

AND IT IS SO ORDERED this 27 day of June, 2016

HONORABLE R. SCOTT SPROUSE
Presiding Judge
Tenth Judicial Circuit

Walhalla, South Carolina

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COMMON PLEAS AND
GENERAL SESSIONS