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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE STATE GRAND JURY
Richland County
Court of General Sessions

Carmen T. Mullen, Circuit Court Judge

Case No. 2017-GS-47-12, -13, -32

RECEIVED
MAR 21 2018
SC Court of Appeals

The State of South Carolina.....Appellant

AA

v.

Richard M. Quinn, Jr.....Respondent

NOTICE OF APPEAL

The State of South Carolina appeals the Order of the Honorable Carmen T. Mullen denying the State's Motion to Reconsider, dated March 6, 2018. Specifically, the State appeals the lower court's denial of its motion to reconsider the sentence, its motion to vacate the plea, and its motion to recuse, each of which were encompassed in the lower court's March 6, 2018 Order. Appellant received written notice of entry of the Order forming the basis of this appeal on March 6, 2018.

Statement of Issues Pursuant to Rule 203(d)(1)(B)(iv), SCACR

The issues to be raised on appeal with respect to Respondent's guilty plea are whether a sufficient factual basis existed for the lower court to accept the plea and whether the lower court applied the appropriate standard in sentencing Respondent. The facts relied on by the lower court to establish a factual basis and in sentencing do not rise to a violation of Section 8-1-80 of the South Carolina Code of Laws Annotated, and the lower court erred in determining that sufficient factual basis existed based on these facts alone.

On December 13, 2017, Respondent appeared before the lower court to enter a guilty plea. The plea was made pursuant to a package plea agreement with the State encompassing criminal charges against both Respondent and his father, Richard M. Quinn, Sr. Under the terms of the agreement, Respondent would accept responsibility for what the defense referred to as a "limited allocution" and the State would thereafter present a factual recitation of additional materials gathered throughout the underlying State Grand Jury investigation. Respondent agreed to plead guilty to a violation Section 8-1-80 of the South Carolina Code of Laws Annotated, statutory

misconduct in office. In exchange, the State agreed to dismiss the remaining charges against Respondent once the plea is complete.

While the facts offered by the State during its recitation provided ample factual basis to support the indictment, the lower court made clear during the sentencing hearing—after Respondent had pleaded guilty to statutory misconduct in office—that it did not consider the State’s presentation of State Grand Jury materials relating to the statutory misconduct indictment because, “[a]s far as the Court is concerned he is presumed innocent of those allegations until and unless he is proven guilty.” February 12, 2018 Transcript at 8:21-24. The court reached this conclusion despite the fact that Respondent pleaded guilty to misconduct in office over a period of seven years, between April 2010 and April 2017, as reflected in the indictment. Later, in its Order denying the State’s motion to reconsider, the lower court again indicated that it did not find the State’s presentation “reliable and relevant.” March 6, 2018 Order at 4.


These statements by the lower court demonstrate that the only facts informing its finding of substantial factual basis, as well as the sentence it imposed, were those facts articulated by Respondent’s attorney during the plea hearing and not the facts offered by the State. The plea the lower court allowed to be taken without the consent of the State and the sentence it passed down are not reflective of the charge to which the State allowed Respondent to plead guilty. The State submits the plea is invalid because the facts articulated by defense counsel do not meet the elements of the underlying offense, statutory misconduct in office. Further, while the lower court has discretion in the materials it may consider during sentencing, it erred in basing its decision on an error of law.

The State brought this issue with the plea to the lower court’s attention through a memorandum filed prior to Respondent’s sentencing hearing. At the beginning of the sentencing hearing, the State requested an opportunity to be heard so it could raise its objection to the validity of the plea on the record to preserve the issue for appellate review. However, the lower court denied the State an opportunity to be heard at that time.

At the conclusion of the sentencing hearing, the State again requested an opportunity to state its objection on the record and the lower court again denied the State an opportunity to be heard. Following the sentencing hearing, the State filed a motion to reconsider pursuant to Rule 29(a), SCRCrimP. The State’s motion asked the lower court to reconsider its sentencing decision, taking the State’s factual presentation into account or, alternately, vacate the guilty plea for lack of sufficient factual basis. During a hearing on the State’s motion to reconsider, held in Beaufort County on February 28, 2018, the State again moved to vacate Respondent’s guilty plea. Additional matters came to light during the February 28, 2018 hearing that necessitated the State to move the Judge to recuse herself from this matter. These motions were denied by the lower court in its March 6, 2018 Order, which forms the basis of this appeal.

[Signature page follows]

March 16, 2018



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Attorneys for Respondent

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Indictment Nos. 2017-GS-47-12, -13, -32

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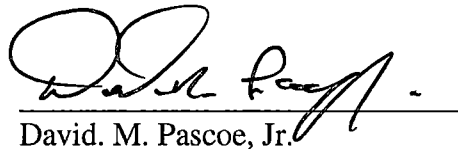
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Richard M. Quinn, Jr. by depositing a copy of it in the United States Mail, postage prepaid, on March 16, 2018, addressed to his attorneys of record at the following addresses:

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March 16, 2018¹⁸



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The State of South Carolina

OFFICE OF SOLICITOR

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March 16, 2018

RECEIVED
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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Richard M. Quinn, Jr., Indictment Nos. 2017-GS-47-12, -13, 32

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order which is to be challenged on appeal.
- (3) A letter to the court reporter requesting the transcript.

Sincerely,

David M. Pascoe, Jr.
First Circuit Solicitor
P.O. Box 1525
Orangeburg, SC 29116
(803) 533-6252
Attorney for Appellant

cc: Gregory P. Harris
Jonathan S. Gasser
Matthew Richardson
Clerk, State Grand Jury
Clerk, Richland County

The State of South Carolina

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SC Court of Appeals

March 16, 2018


The Honorable James R. Parks
Clerk of Court for the State Grand Jury
1000 Assembly Street
Rembert Dennis Building, Suite 519
Columbia, South Carolina 29201

RE: State v. Richard M. Quinn, Jr., Indictment Nos. 2017-GS-47-12, -13, -32

Dear Mr. Parks:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,



David M. Pascoe, Jr.
First Circuit Solicitor
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Attorney for Appellant

cc: Gregory P. Harris
Jonathan S. Gasser
Matthew Richardson
Clerk, Court of Appeals

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Solicitor

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SC Court of Appeals

March 16, 2018

The Honorable Jeanette McBride
Clerk of Court for Richland County
Post Office Box 2766
Columbia, South Carolina 29202

RE: State v. Richard M. Quinn, Jr., Indictment Nos. 2017-GS-47-12, -13, -32

Dear Ms. McBride:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Pascoe, Jr.", written over a horizontal line.

David M. Pascoe, Jr.
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Jonathan S. Gasser
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