

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

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APR 10 2018

SC Court of Appeals

The Honorable Benjamin H. Culbertson, Trial Judge

The Honorable Paul M. Burch, Post-Conviction Relief Judge

Appellate Case No. 2017-000242

Timothy Young, Respondent,

v.

State of South Carolina, Petitioner.

MOTION FOR BAIL PENDING REVIEW

DAVID B. TARR

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(803) 238-7967

ATTORNEY FOR RESPONDENT

Under Rule 243(k) of the S.C. Appellate Court Rules, Respondent, by and through his undersigned counsel, hereby moves for Bail Pending Review of Judge Burch's finding that Mr. Young's PCR should be granted and his conviction overturned. Judge Burch issued his ruling on January 3, 2017. The State filed a notice of appeal on February 10, 2017. Mr. Young has remained in the S.C. Department of Corrections since his conviction in Horry County on April 7, 2011. However, between his arrest and trial, Tim was out on a \$50,000 surety bond for 26 months. Mr. Young was even allowed to remain out on bond during his trial. During this 26+ months, Tim violated no conditions of his bond. During the pendency of the State's appeal in this case, and in the last 4 months, Tim has lost both his mother and his father to cancer. Not being able to attend either funeral or be with his parents during the end of their lives has been very difficult on Tim. Furthermore, as we stated in our Return to Petition for Writ of Certiorari, we believe Tim is innocent and was wrongfully convicted. If true, then Tim has been incarcerated for seven years as an innocent man and has missed both of his parents' funerals. Evans Bail Bonds (Tim's original bondsman pre-trial) has agreed to go back on the original bond if this Court sees fit to grant him bail. What follows are the reasons we believe Tim is entitled to bail in this matter.

First, it cannot be over-stated that the proper standard of review in a post-conviction relief action is whether "any evidence of probative value" exists to sustain the post-conviction relief court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). Also, the reviewing court will affirm if there is any evidence to support the post-conviction relief court's ruling. Moore v. State, 399 S.C. 641, 732 S.E.2d 871 (2012). The "any evidence" standard should be quite difficult for the State to overcome in any PCR review. In this particular case, we believe State v. White, 382 S.C. 265, 676 S.E.2nd 684 (2009) is controlling and imposes a hard and fast rule for trial judges to apply when analyzing whether to qualify a non-scientific expert. In Tim's trial, two separate witnesses were qualified as experts erroneously. In this case, these errors cannot be harmless due to the paucity of other evidence

of guilt presented at trial. Therefore, Judge Burch's Order Granting Post Conviction Relief is likely to be upheld and the State's appeal found to be without merit.

While the charges Mr. Young was convicted of are very serious, we think it is important for this Court to consider the context of a domestic legal dispute from whence these charges arose, as well as the lack of any physical evidence linking Tim to these egregious allegations. Furthermore, in the context of Mr. Young's criminal history, these sexually related offenses are, to put it lightly, completely out of character. Tim is 51 years old and yet, before these convictions, his only prior criminal record consists of two DUI's from 23 and 25 years ago respectively.

In terms of risk of flight, the risk in this case would be quite minimal. Tim is from Pageland, South Carolina. He has lived in South Carolina his whole life. All of his friends and loved ones reside in South Carolina. Needless to say, his only ties are to individuals in this state. If he were to be granted bail, Tim would reside with his sister Regina Young in Pageland. Furthermore, it bears repeating that Tim spent 26+ months pending and during trial out on bond with no bond violations or issues of any kind.

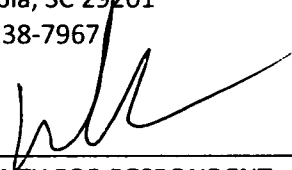
CONCLUSION

For the reasons stated above, this Court should grant Bail Pending Review and allow Mr. Young to post bond during the pendency of the State's appeal.

Respectfully submitted,

DAVID B. TARR
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By: 
ATTORNEY FOR RESPONDENT

April 10, 2018

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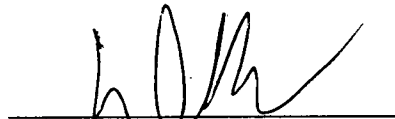
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion for Bail Pending Review has been served upon opposing counsel by hand delivery this 10th day of April, 2018



DAVID B. TARR, #8803