

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Horry County  
Paul M. Burch, Circuit Court Judge

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Lower Court Case No. 2014-CP-26-7509  
Appellate Case No. 2017-000240

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TIMOTHY YOUNG, #345620,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

**RECEIVED**  
APR 20 2018  
SC Court of Appeals

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**RETURN TO MOTION FOR BAIL**

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The State of South Carolina respectfully submits the following in opposition to the Respondent's motion for bail:

1. Respondent is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Respondent was true bill indicted at the March 2011 term of the Horry County Grand Jury for criminal sexual conduct, first degree (2011-GS-26-01088), and lewd act on a minor (2011-GS-26-01089). Paul V. Cannarella, Esq. represented Respondent, and Candice Lively, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On April 4, 2011, Respondent proceeded to trial before the Honorable Benjamin H. Culbertson and a jury.

The jury found Respondent guilty as indicted on April 7, 2011. Judge Culbertson sentenced Respondent to concurrent terms of imprisonment of 25 years for the CSC, and 10 years for the lewd act on a minor.

2. A timely Notice of Appeal was filed on Respondent's behalf. Laura L. Hiller, Esq. and Jonathan M. Hiller, Esq., represented Respondent on appeal. On June 5, 2013, the South Carolina Court of Appeals affirmed Respondent's conviction and sentence in an unpublished opinion. State v. Young, Op. No. 2013-UP-236 (S.C. Ct. App. filed June 5, 2013). Respondent timely filed a motion to reconsider, which was denied by order of the Court of Appeals filed August 22, 2013. Respondent timely sought certiorari to the South Carolina Supreme Court, which was denied by order dated January 8, 2014. The Remittitur was issued on January 31, 2014.
3. Respondent filed his application for post-conviction relief on November 6, 2011 (2014-CP-26-7509). The State filed its Return on April 4, 2016. An evidentiary hearing was convened at the Horry County Courthouse on May 12, 2016. The Honorable Paul M. Burch granted the application by Order filed January 6, 2017.
4. The State filed a timely Notice of Appeal.
5. Respondent has filed a motion requesting that this Court issue an order releasing him on bail pending the ultimate outcome in this case. In support of his motion for appeal bond, Respondent asserts: his compliance with the terms of bond prior to his trial, the inability to attend family funerals as a result of his incarceration, the willingness of Evans Bail Bonds to agree to bond in the event the grant agrees to grant the motion, the probability that Respondent will prevail on appeal, Respondent's minimal criminal history outside of the present convictions, Respondent's age, Respondent's low flight risk, and Respondent's anticipated living arrangements with his sister if bail is granted.

6. The State asserts it is unlikely Respondent will prevail. The State believes this appeal will be successful as the lower court's Order was controlled by an error of law, and is unsupported by any probative evidence for the reasons already set forth.
7. The State asserts that Respondent should be precluded from release on bond pending appeal because the sentence of imprisonment Respondent received is in excess of 10 years. See S.C. Code Ann. § 18-1-90 ("bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years."). Respondent was sentenced to 25 years. As a result, granting Respondent's request for bond would be inappropriate.
8. However, should this Court consider Respondent's request pursuant to State v. Whitener, 225 S.C. 244, 81 S.E.2d 784 (1945), the State asks this Court to exercise its discretion to deny the Respondent's motion. The South Carolina Appellate Court Rules (SCACR) provide that an applicant's release on bond pending appeal from a post-conviction relief order shall be exercised with caution and only in *exceptional circumstances*. Rule 243(k), SCACR. In deciding whether to exercise the discretionary authority to admit an Respondent to bail, the following factors are considered: the probability the Respondent will prevail on appellate review and the nature of the relief he or she will receive; the seriousness of the criminal offense committed; the danger the Respondent may pose to the community if he or she is released; the likelihood that the Respondent may flee if released; and the character and circumstances of the Respondent. Id. The State submits this case does not present the requisite circumstances to warrant the Respondent's release on bond pending appeal. For the reasons set forth below, the State opposes this motion and requests that this Court deny Respondent's motion for appeal bond pending appeal to the Supreme Court.

9. As stated above, Respondent's request for release on bond pending appeal should be denied because it is unlikely he will prevail on appeal. The State submits there is no probative evidence in support of the PCR judge's order granting Respondent relief, and that its decision was based on an error of law.
10. Respondent's request should also be denied based upon the serious nature of the crime committed and the danger the Respondent poses to the community. The Respondent was convicted of first-degree criminal sexual conduct and lewd act on a minor. The facts of the case indicate Respondent performed oral sex and digitally penetrated his seven-year-old stepdaughter. The State submits the serious nature of the crime he committed warrants denial of his request for bond pending appeal and early release into the community. The State also submits the nature of the crime suggests that the Respondent is sufficiently serious as to be a danger to the community.
11. Respondent's request should also be denied based upon the likelihood that Respondent may flee if released. Because Respondent is not projected for release until 2036 and is already of moderately advanced age (51), he would have a much greater incentive to flee while out on bond. Even if Respondent were to prevail on appeal, the affirmation of the grant of his PCR application would only entitle him to a new trial, not an acquittal. Therefore, facing a sentence of life in prison, Respondent would have both the motive and opportunity to flee if released on bond.
12. Respondent's request should also be denied in the interest of the minor victim and the community. As evidenced by the attached e-mail dated April 18, 2018, from the parents of the minor victim, both she and her parents suffer continuing anguish as a result of Respondent's actions. Respondent's temporary release pending resolution of this appeal

would serve primarily to unnerve and disturb the minor victim, her parents, and the community at large to which Respondent could have ready access.

13. Respondent's request should also be denied given the particular timing and circumstances of his request. Respondent seeks bond at a potentially late stage of the appellate process, as the parties have already submitted a petition for writ of certiorari, return to said petition, and a reply to the return, the last of which was filed August 3, 2017. While it is not within the purview of Petitioner to know precisely when the Court of Appeals will rule on this matter, it stands to reason that a ruling is not far off given the already considerable passage of nearly eight months. Given these circumstances, it would be more appropriate to wait a little longer pending a determination by the Court of Appeals of how to resolve this appeal or further proceed.
14. Based upon all the foregoing, the State respectfully requests an opportunity to supplement its return to motion on appeal bond with any additional letters that may be provided by the victim or his family. Additionally, the State prays this Court deny the Respondent's request for release on bond pending appeal.
15. Should this Court determine that this is the exceptional case that would permit Respondent's release on bond, the State requests that the Court impose conditions on his release. Specifically, due to the seriousness of his convictions and the risk that he will flee if released, the State requests that, at a minimum, Respondent be placed on the following special conditions in addition to the usual and ordinary conditions of release:  
home detention pursuant to the county home detention program to include GPS monitoring at Respondent's expense; no change of address without prior court approval; no contact, directly or indirectly, with the victim, any member of the victim's family, or any prosecution witness without prior court approval; and no contact with any minors

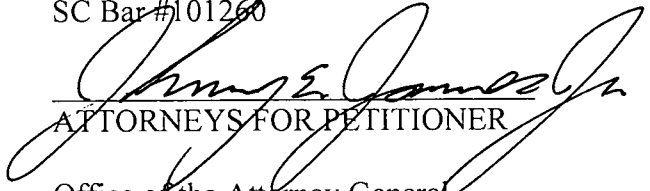
under eighteen years of age. Furthermore, the State requests that Respondent be prohibited from applying for a passport and must be required to surrender any current passport to the Horry County Clerk of Court.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHNNY ELLIS JAMES JR.  
Assistant Attorney General  
SC Bar #101260

*20 April*, 2018

  
ATTORNEYS FOR PETITIONER

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
(803)734-3737

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Horry County  
Court of Common Pleas  
The Honorable Paul M. Burch, Circuit Court Judge

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2014-CP-26-7509  
Appellate Case No. 2017-000240  
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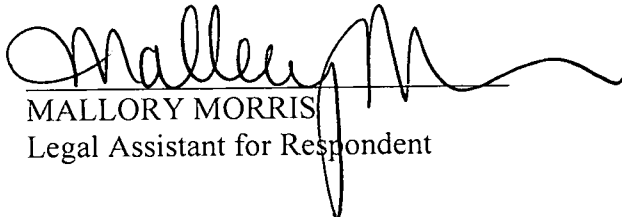
Petitioner.

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**CERTIFICATE OF SERVICE**  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of **Return to Motion for Bail** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**David B. Tarr, Esquire**  
**1313 Elmwood Drive, Suite B**  
**Columbia, SC 29201**

This 20<sup>th</sup> day of April, 2018

  
MALLORY MORRIS  
Legal Assistant for Respondent

**From:** [REDACTED]  
**To:** [Trisha Allen](#)  
**Subject:** Timothy Young Bail  
**Date:** Wednesday, April 18, 2018 6:24:57 PM

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Dear sir or madam:

I am writing this letter to kindly ask you not to grant bail or parole for Mr. Young. While i do not pretend to know the law or the statutes of South Carolina, i do know that this man is a sexual predator. My daughter, **Minor Victim**, is still feeling the effects of the crime he committed on her. Me and my wife have been dealing with this for a long time. The thought of this criminal out on the street is very unnerving for us. I do not know what constitutes an "expert" witness, but I will NEVER forget the pain and agony of sitting in a court room across from this monster as my daughter described in detail what Timothy Young did to her. Everyone in that court room knew he was guilty. I plead with you to keep him in prison where he belongs. I never want someone else to go through this. The sleepless nights, the feelings you let your daughter down, you werent there to protect her, trying your best to comfort her, hearing her scream as the "sex test" was performed on her little body. Again, it is our plea that you will keep my daughters worst nightmare in prison so he does not become some other small girls worst nightmare.

Thank you. Chad and Jennifer Turbeville.

Sent from my Sprint Samsung Galaxy S® 6.



ALAN WILSON  
ATTORNEY GENERAL

April 20, 2018

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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APR 20 2018  
SC Court of Appeals

**Re: Timothy Young v. State of South Carolina**  
**Appellate Case No. 2017-000240**  
**Lower Court Case No. 2014-CP-26-7509**

Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of the **Return to Motion for Bail** in the above-referenced case. By copy of this letter we are serving opposing counsel today. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

Johnny E. James Jr.  
Assistant Attorney General  
SC Bar No. 101260

JEJ/mm

cc: David B. Tarr, Esquire