

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 08 2018

S.C. SUPREME COURT

Appeal from York County
J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2017-002355

Kenneth Morris, SCDC # 334303,.....Respondent,

v.

State of South Carolina,Petitioner.

RETURN TO PETITION FOR APPEAL BOND

The State of South Carolina respectfully submits the following in opposition to the Respondent's motion for appeal bond, received by this office on June 4, 2018:

1. Petitioner Kenneth Morris, SCDC # 334303 (Morris) is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Morris was indicted at the July 2008 term of the York County Grand Jury for trafficking ecstasy (MDMA) (2008-GS-46-02837) and possession with intent to distribute (PWID) marijuana (2008-GS-46-02834) after a large quantity of marijuana and ecstasy was discovered hidden inside a rental vehicle he was driving through the state. App. 344-353. Irby Walker, Esquire, and Johnny Gardner, Esquire, represented Applicant. On April 15-17, 2009, Morris proceeded to a jury trial before the Honorable John C. Hayes, III. He was found guilty as indicted for trafficking ecstasy and sentenced

to imprisonment for thirty years. He was found guilty of the lesser included offense of simple possession of marijuana, third offense, and was sentenced to imprisonment for one year. Both sentences were to be served concurrently.

2. A notice of appeal was filed at the South Carolina Court of Appeals and Mr. Gardner perfected the appeal. Morris raised the following issues:

Did the trial court err in finding the officers had reasonable suspicion to expand the scope and length of the traffic stop?
Did the trial court err in finding the search of the trunk was supported by probable cause?

The Court of Appeals affirmed Morris's convictions and sentences by a published opinion on August 17, 2011. State v. Morris, 395 S.C. 600, 720 S.E.2d 468 (Ct. App. 2011). App. 544-553. Regarding the reasonableness of the detention, the Court of Appeals held that Officer Vinesett had reasonable suspicion to extend the length and scope of the traffic stop after the officer detected the odor of marijuana and observed hollowed-out cigars and loose tobacco in Morris's rental vehicle. *Id.* at 608, 720 S.E.2d at 471-472. In reaching that conclusion, the Court of Appeals specifically noted that the trial judge found Officer Vinesett's testimony regarding the smell of marijuana to be credible. *Id.* at 607-608, 720 S.E.2d at 471. Regarding the reasonableness of the search, the Court of Appeals instructed:

The trial court specifically found that in Officer Vinesett's experience blunts are often hollowed to accommodate the smoking of marijuana. Similarly, the loose tobacco in the car indicated the blunts were recently hollowed in the car. Considering these factors in conjunction with the background odor of marijuana, the circumstances are sufficient to warrant a reasonable and prudent person to believe Morris and Nichols possessed marijuana. Accordingly, the officers had probable cause to search anywhere in the vehicle where marijuana could be located. The trial court properly admitted the drug evidence discovered in the trunk.

Id. at 610, 720 S.E.2d at 473.

Morris filed a Petition for Writ of Certiorari to this Court, arguing the Court of Appeals erred in affirming Morris's convictions. This Court granted certiorari and affirmed the decision of the Court of Appeals. State v. Morris, 411 S.C. 571, 769 S.E.2d 854, 856 (2015), reh'g denied (Apr. 9, 2015). App. 696-704. Morris filed a Petition for Rehearing, which was denied by the Court on April 9, 2015. The Remittitur was sent on April 9, 2015.

3. On September 21, 2015¹, Morris filed an application for post-conviction relief (2015-CP-46-2859) alleging ineffective assistance of counsel. On February 2, 2017, Morris filed an Amendment. His grounds are consolidated as follows:

- Trial counsel was ineffective in preparing for trial
- Trial counsel was ineffective in failing to effectively cross-examine the co-defendant
- Trial Counsel was ineffective in not objecting to a burden shifting charge given by the trial judge. The charge also violated the Constitution of the State of South Carolina
- Trial Counsel was ineffective in failing to request a charge of the lesser included offense of Possession of Ecstasy.
- Trial Counsel was ineffective in failing introduce a prior inconsistent statement and to ask the trial judge to instruct the jury that the prior inconsistent statement of co-defendant Brandon Nichols could be considered by the jury as substantive evidence.
- Trial Counsel at trial and in his brief on appeal failed to differentiate a "Philly Blunt" and a "Black and Mild" cigar which created confusion at the appellate level as the South Carolina Supreme Court affirmed the conviction on the factual error that a "Philly Blunt" was found in the automobile.

Petitioner made its Return on or about March 18, 2016. An evidentiary hearing into the matter was convened on February 1, 2017, at the Moss Justice Center in York, South Carolina. Morris was present at the hearing and represented by C. Rauch Wise, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented

¹ Morris also filed a premature application while his direct appeal was pending, which was summarily dismissed without prejudice.

Petitioner. At the hearing, Morris testified on his own behalf. Morris's trial counsel, Johnny Gardner, Esquire, (hereinafter referred to as "Counsel") also testified.

By an order filed June 21, 2017, the PCR court granted relief. App. 806-822. The PCR court found (1) Counsel was ineffective for failing to effectively cross-examine Morris's codefendant concerning the punishment he faced prior to making a deal with the State to testify against Morris; (2) Counsel was ineffective for failing to request a charge of the lesser included offense of possession of ecstasy; (3) Counsel was ineffective for failing to introduce the codefendant's prior statement in evidence; (4) Counsel was ineffective for not objecting to the jury charge on constructive possession; (5) Counsel and Appellate Counsel were ineffective for failing to differentiate between a "Phillies Blunt" and a "Black and Mild"; and (6) cumulative error warranted a new trial. On July 12, 2017, the State filed a Motion to Reconsider. The PCR court denied the motion on November 3, 2017.

4. The State filed a timely Notice of Appeal and served its Petition for Writ of Certiorari on April 4, 2018.
5. On May 30, 2018, Morris, through counsel Wise, served his return to the State's petition for a writ of certiorari, captioned "Brief of Respondent."
6. On May 31, 2018, Morris served a motion requesting that this Court issue an order releasing him on bond pending the State's Petition for Writ of Certiorari, as well as the ultimate outcome in this case. In support of his motion for appeal bond, Respondent asserts that he was successfully released on bond prior to his convictions and if he is released on bond by this Court, he will return to North Carolina to live at the residence of his grandmother. Morris further states that "as a condition of his bond and in

consideration of his returning to North Carolina, [Morris] will sign a waiver of extradition in the event this court reversed the decision of the lower court and re-instates his conviction.”

7. The State asserts it is unlikely Morris will prevail as the post-conviction relief court’s order granting post-conviction relief is based on errors of law and its findings lack probative evidence to support them.
8. The State asserts that Morris should be precluded from release on bond pending appeal because the sentence of imprisonment Morris received is in excess of ten years. See S.C. Code Ann. Section 18-1-90 (Supp. 2011) (“[B]ail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years.”). Morris was sentenced to thirty years’ imprisonment. As a result, granting Morris’s request for bond would be inappropriate.
9. However, should this Court consider Morris’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 Morris’s motion. The South Carolina Appellate Court Rules 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 (2015). In deciding whether to exercise the discretionary authority to admit an applicant to bail, the following factors are considered: the probability the applicant 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 applicant may pose to the community if he or she is released; the likelihood that the applicant may flee if released; and the character and circumstances of the applicant. Id. The State submits this case does not present the

requisite circumstances to warrant Morris's release on bond pending appeal. For the reasons set forth below, the State opposes this motion and requests that this Court deny Morris's motion for appeal bond pending appeal to the Supreme Court.


10. As stated above, Morris's request for release on bond pending appeal should be denied because it is unlikely he will prevail on appeal. The State submits the post-conviction relief court's grant of relief is predicated on errors of law and is not supported by probative evidence.
11. Morris's request should also be denied based upon the likelihood that Morris may flee if released. Because Morris is sentenced to imprisonment for thirty years, he would have a much greater incentive to flee while out on bond—particularly since he is requesting to be released to an out-of-state residence. Even if Morris 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 thirty-year sentence, Morris would have both the motive and opportunity to flee if released on bond.
12. Based upon all the foregoing, the State prays this Court deny Morris's request for release on bond pending appeal.
13. Should this Court determine that this is the exceptional case that would permit Morris'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, Morris 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 Morris's expense; and no change of address without prior court approval. Furthermore, the State

requests that Morris be prohibited from applying for a passport and must be required to surrender any current passport to the York County Clerk of Court.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
SC Bar No. 100108


ATTORNEYS FOR PETITIONER

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6/8, 2018

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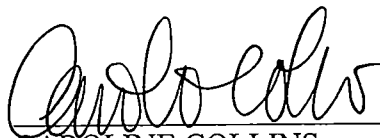
STATE OF SOUTH CAROLINA,..... PETITIONER.

CERTIFICATE OF SERVICE

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

C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

This 8th day of June, 2018



CAROLINE COLLINS
Administrative Coordinator



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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

June 8, 2018

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

RE: Kenneth Morris v. State of South Carolina
Appellate Case No. 2017-002355
Lower Court Case No. 2015-CP-46-2859

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Return to Petition for Appeal Bond** in the above mentioned case.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
SC Bar No. 100108

MHJ/cc

cc: C. Rauch Wise, Esquire