

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
AUG 01 2018

Appeal from Greenville County
Perry H. Gravely, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-000627

Titus L. Rouse, SCDC # 287818,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 July 23, 2018:

1. Petitioner Titus L. Rouse, SCDC # 287818 (Rouse) is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. In February of 2014, the Greenville County Grand Jury indicted Rouse for trafficking heroin (2012-GS-23-6017), habitual traffic offender (2012-GS-23-6417) and driving under suspension (2013-GS-23-0846). Richard H. Warder, Esquire and C. Rauch Wise, Esquire represented Rouse. On August 6, 2014, Rouse pled guilty before the Honorable Edward W. Miller. Judge Miller sentenced Rouse to concurrent terms of twelve years for trafficking heroin (more than four grams), five years for habitual traffic offender, and six months for driving under suspension (third or subsequent offense). Applicant did not appeal his guilty plea or sentence.

2. On February 9, 2015, Rouse filed an application for post-conviction relief (2015-CP-23-0995) alleging ineffective assistance of counsel. On April 15, 2015, Rouse filed an “Amendment in Application for PCR” making the following allegations:

1. Ineffective assistance of counsel:
 - a. Failed to “move to suppress evidence where an alleged reading of Miranda rights as never admitted into evidence by video.”
 - b. “[I]nducing the guilty plea when the State had failed to meet its burden of establishing any proof of either ‘actual or constructive possession of the alleged drugs in this case.’”
 - c. Failed to “investigate the statement Solicitor Joyce Monts gave in a closed conference before advising the client they could not win which induced the plea of guilty.

On February 4, 2016, Rouse through counsel, filed an “Amended Petition for Post-Conviction Relief” making the following allegations:

1. Appellant alleges omission of ineffective assistance of trial counsel in a cumulative effect; which such error of omission of ineffectiveness; rendered the applicant’s guilty plea involuntary not knowingly of intelligent choice; occur in violation of the applicants sixth and fourteenth Amendment rights of USC; when the applicant’s trial counsel failed to file a notice of an appeal to pursue the applicant’s appeal request from his guilty plea;
2. Ineffective assistance of trial counsel in a cumulative effect; rendered the applicant’s guilty plea involuntary not knowingly and intelligent choice; based on trial counsel erroneous advice; by advising the applicant to plea guilty based on induced erroneous advice of actual information concerning the applicant case at bar;
3. Applicant contends in A-3 of his third supplemental claim of error of omission of ineffective assistance of trial counsel in a cumulative effect; such error of omission of ineffectiveness rendered the applicant’s guilty plea involuntary not knowingly and intelligent choice; when the trial judge imposed a sentence that was different from the one pronounced by the clerk of court; and the one that was agreed upon by the applicant.
4. Applicant contends in his fourth supplemental claim of error of omission of ineffective assistance of trial counsel in a cumulative effect; rendered the applicant’s guilty plea involuntary not knowingly and intelligent choice; based on the applicant’s trial counsel erroneous advice; by advising the applicant to plea guilty; after the applicant's trial counsel discovered that a fourth amendment violation had occurred
5. Applicant contends in his fifth supplemental claim of error of omission of ineffectiveness assistance of counsel in a cumulative effect; rendered the applicant's guilty plea involuntary not knowing and intelligent choice; based on trial counsel erroneous advice; by advising the applicant to enter a plea of guilty; after counsels had learned knowledge of perjury testimony factual evidence information that was

used in the search warrant affidavit in violation of the applicants' fourth Amendment right.

On October 5, 2016, Rouse again through counsel, submitted an "Amendment to Application for PCR" making the following allegations:

1. Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial, to include counsel's representation at the preliminary hearing, which induced an involuntary guilty plea.
2. Ineffective assistance of counsel for failure to effectively make all reasonable pretrial motions and effectively represent Applicant on pre-trial motions made prior to the entry of Applicant's guilty plea.
3. Ineffective assistance of counsel for advising Applicant to forego trial and enter a guilty plea.
4. Ineffective assistance of counsel for failure to ensure that Applicant had a full understanding of the charge he was entering a plea to and failure to ensure that the oral pronouncement of the charge matched the sentencing sheet. Additionally, ineffective assistance of counsel for failure to ensure that Applicant's plea was being made to a proper lesser included offense.

On April 12, 2017, Rouse again through counsel, filed an "Amendment to Application for PCR" making the following allegations:

1. Ineffective assistance of counsel:
 - a. Ineffective assistance of counsel for failure to obtain a canine expert and/or fully investigate the canine evidence and prepare to move to suppress and/or move to suppress testimony and/or evidence derived from the deployment of canines. Ineffective assistance of counsel for errantly advising Applicant regarding testimony and evidence derived from the deployment of canines, which induced an involuntary guilty

Petitioner made its Return on or about June 3, 2015. An evidentiary hearing into the matter was convened on April 21, 2017, at the Greenville County Courthouse before the Honorable Perry H. Gravely. Tricia Blanchette, Esquire, represented Rouse. DeShawn Mitchell, Esquire of the South Carolina Attorney General's Office, represented Petitioner. At the hearing, Rouse testified on his own behalf. The following people also testified: C. Rauch Wise, Esquire, Richard H. Warder, Esquire, the Honorable Robert F.

Simms, Edward Cooper, John Redman and Michael Gould who testified via Skype videoconference. By an order filed December 1, 2017, PCR court denied Rouse relief. On January 8, 2018, Rouse filed a Motion to Reconsider. After consideration, on March 29, 2018, the PCR court issued an order granting relief for Rouse.

3. The State filed a timely Notice of Appeal on April 10, 2018.
4. On July 23, 2018, Rouse 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 attached to his motion the following: GED Diploma, a letter from his Unit Counselor; a letter in support from Tameka Thomas, Nystaysia Washington, and from Minister Antoine D. Paden; an employment letter from Ace of Shine, LLC, and Thomas L. Johnson, Jr.; and a letter from himself.
5. The State asserts it is unlikely Rouse will prevail as the post-conviction relief court's order granting post-conviction relief findings lack probative evidence to support them.
6. The State asserts that Rouse should be precluded from release on bond pending appeal because the sentence of imprisonment Rouse 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."). Amongst other charges, Rouse was sentenced to twelve years' imprisonment for trafficking heroin. As a result, granting Rouse's request for bond would be inappropriate.
7. However, should this Court consider Rouse'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 Rouse'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 Rouse's release on bond pending appeal. For the reasons set forth below, the State opposes this motion and requests that this Court deny Rouse's motion for appeal bond pending appeal to the Supreme Court.

8. As stated above, Rouse'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 not supported by probative evidence.
9. Rouse's request should also be denied based upon the likelihood that Rouse may flee if released. Rouse is currently sentenced to imprisonment for twelve years, and has only served a limited portion of his sentence as such he would have a much greater incentive to flee while out on bond. Even if Rouse 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 and he would be facing a mandatory minimum sentence of twenty five years given his charges. Therefore, given his charges, Rouse would have both the motive and opportunity to flee if released on bond.

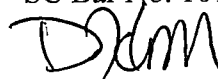
10. Based upon all the foregoing, the State prays this Court deny Rouse's request for release on bond pending appeal.

11. Should this Court determine that this is the exceptional case that would permit Rouse'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, Rouse 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 Rouse's expense; and no change of address without prior court approval. Furthermore, the State requests that Rouse be prohibited from applying for a passport and must be required to surrender any current passport to the Greenville County Clerk of Court.

Respectfully submitted,

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
SC Bar No. 101813



ATTORNEYS FOR PETITIONER

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

August 1, 2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2018-000627

Titus L. Rouse, SCDC # 287818, Respondent,

v.

State of South Carolina, Petitioner.

CERTIFICATE OF SERVICE

I, DeShawn H. Mitchell, certify that I have today served the within Return to Petition for Appeal Bond upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Tricia A. Blanchette, Esquire
Post Office Box 2147
Leesville SC 29070

I further certify that all parties required by Rule to be served have been served. This 1st day of August, 2018.



DESHAWN H. MITCHELL
S.C. Bar # 101813
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ATTORNEY FOR RESPONDENT



ALAN WILSON
ATTORNEY GENERAL

August 1, 2018

RECEIVED

AUG 01 2018

S.C. SUPREME COURT

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

Re: Titus L. Rouse, 287818 v. State of South Carolina
Appellate Case No. 2018-000627
Lower Court Case No. 2015-CP-23-0995

Dear Mr. Shearouse:

Attached are the original and six (6) copies of the *Return to Petition for Appeal Bond*, in the above referenced case for filing in your office.

Sincerely,

DeShawn H. Mitchell
Assistant Attorney General
SC Bar #101813

DHM/jacc
Enclosures

cc: Tricia A. Blanchette, Esquire
Victim Advocacy Division (without enclosure)