

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Court of General Sessions
State Grand Jury

The Honorable Carmen T. Mullen, Circuit Judge

RECEIVED

Appellate Case No. 2018-000494

SEP 21 2018

SC Court of Appeals

The State, Appellant,

v.

Richard M. Quinn, Jr., Respondent.

RESPONDENT'S MOTION TO DISMISS
AND
MEMORANDUM IN SUPPORT

Pursuant to Rule 240, SCACR, Respondent Richard M. Quinn, Jr., by and through his undersigned counsel, hereby moves to dismiss this appeal on the grounds that there is no subject matter jurisdiction to review the State's appeal of a guilty plea and that allowing this appeal violates Respondent's constitutional right against double jeopardy. Respondent and the State entered a plea agreement, and the plea was accepted by the trial court. The State is not entitled to challenge or appeal a guilty plea once the trial court accepted the plea. Thus, Respondent's motion to dismiss should be granted.

BACKGROUND

Respondent was a longtime member of the South Carolina House of Representatives and the former majority leader. He also started and ran his own mail business during that time. In 2015, Solicitor David Pascoe was designated by the Attorney General to make a prosecution decision about two members of the House of Representatives as part of an on-going investigation. One of those two House members was Respondent.

Eventually, the State charged Respondent with statutory and common law misconduct in office as well as criminal conspiracy. The State also indicted Respondent's father for criminal conspiracy. The State, through Solicitor Pascoe, then offered Respondent and his father a plea deal. Specifically, the State agreed that if Respondent would plead guilty to one count of statutory misconduct in office and resign his elected office, then the State would dismiss with prejudice all other charges against Respondent and all charges against his father. Subject to this and other specific terms in the final plea agreement, including the State's agreement that Respondent's guilty plea would be based only on specific and limited facts, Respondent took the deal. The State also agreed not to use any other materials or information obtained in the investigation against Respondent and his father. Exhibit A, Plea Hearing Transcript at 8-11.

At the plea hearing, Respondent pled guilty, and Solicitor Pascoe agreed to all terms of the plea agreement for both Respondent and his father. Exhibit A, Plea Hearing Transcript at 8-11, 14 & 20. The trial court accepted Respondent's guilty

plea under the terms of the parties' plea agreement. Exhibit A, Plea Hearing Transcript at 20, lines 9-10 (showing the trial judge stated: "I'm going to accept the plea, obviously . . ."). Then, at the end of the sentencing phase of the plea hearing, the trial court deferred announcing the sentence and stated she would pronounce Respondent's sentence at a subsequent date. Exhibit A, Plea Hearing Transcript at 84-85.

More than one month after the trial court accepted the guilty plea, Solicitor Pascoe became unsatisfied with the guilty plea and then thought the sentence was inadequate punishment. He asked the trial judge to reconsider the sentence, to invalidate the guilty plea, and to recuse. Exhibit B, Order (Mar. 6, 2018). The judge denied all three requests. In an unprecedented step, the State then appealed its own plea agreement.

DISCUSSION

Respondent requests this appeal be dismissed for lack of subject matter jurisdiction. The State is barred from seeking appellate review of its own plea agreement that has been accepted by the trial court. In addition, allowing such an appeal violates Respondent's constitutional rights against double jeopardy.

This Court lacks jurisdiction because the State cannot appeal a plea agreement entered by the lower court. *State v. Wilson*, 387 S.C. 597, 603, 693 S.E.2d 923, 926 (2010) (noting the State's limited ability to appeal in criminal matters); *State v. Ludlam*, 189 S.C. 69, 69, 200 S.E. 361, 362 (1938) ("[W]hen in the trial, or examination, the result amounts to a final determination of the case, the State cannot appeal.").

As this Court is aware, the State may only appeal in a handful of criminal matters, which does not include a plea agreement accepted by the lower court. *See generally State v. Dicapua*, 383 S.C. 394, 680 S.E.2d 292 (2009) (allowing the State to appeal an order granting the defendant a new trial when based on an error of law); *State v. Odom*, 382 S.C. 144, 676 S.E.2d 124 (2009) (noting a pre-trial order granting the suppression of evidence that impairs prosecution may be appealed); *State v. Dasher*, 278 S.C. 395, 297 S.E.2d 414 (1982) (holding the State may appeal an order setting aside a guilty verdict); *State v. Royster*, 181 S.C. 269, 186 S.E. 921 (1936) (holding the State may appeal an order excluding a class of persons from serving on a jury); *State v. Bouknight*, 55 S.C. 353, 33 S.E. 451 (1899) (holding an order quashing an indictment may be appealed); *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (allowing an order to be appealed when the State was prohibited from withdrawing a plea agreement before it was entered by the trial court). In absence of authority to appeal, this Court lacks the necessary jurisdiction to address this matter. *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994) (explaining subject matter jurisdiction is the court's "power to hear and determine cases of the general class to which the proceedings in question belong").¹

¹ In addition, under Rule 201(b), SCACR, only an aggrieved party may appeal. The State is not an aggrieved party to a guilty plea entered by the trial court. Practically, a guilty plea "has the same effect in law as a verdict of guilt and authorizes the imposition of the punishment prescribed by law." *State v. Cantrell*, 250 S.C. 376, 379, 158 S.E.2d 189, 191 (1967). The State negotiated, agreed to, and presented its agreement to the trial court and asked the court to accept the guilty plea and all its terms. The trial accepted the plea and sentenced Respondent within the terms of the plea agreement and within range of appropriate sentences. The State prevailed by getting

Furthermore, allowing this appeal to proceed violates the double jeopardy clauses of the U.S. and South Carolina Constitutions. U.S. Const. amend. V; S.C. Const. Art. I, §12.² It is well settled that once a court accepts a defendant's guilty plea, jeopardy attaches. *State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1992). Further, both the U.S. Supreme Court and this Court have acknowledged that once a defendant pleads guilty and the plea is accepted by the court, "due process requires the plea bargain be honored." *Reed v. Becka*, 333 S.C. 676, 686, 511 S.E.2d 396, 401 (Ct. App. 1999); *see also Santobello v. New York*, 404 U.S. 257, (1971) (noting that once acceptance of the plea occurs the plea agreement must be honored).

Here, Respondent pled guilty, and the trial court accepted the plea. The State, therefore, is barred from appealing this guilty plea after jeopardy attached and is required to honor the agreement that was accepted and entered on the record. *Reed*, 333 S.C. at 686, 511 S.E.2d at 401. This appeal violates Respondent's constitutional rights, and the State's continued prosecution of Respondent under the circumstances is an abuse of power and of the appellate court system and threatens the guilty plea process. Accordingly, this Court should dismiss this appeal.

what it negotiated, agreed to, presented to the trial court, and a lawful sentence. Thus, the State is not an aggrieved party and has no right to appeal.

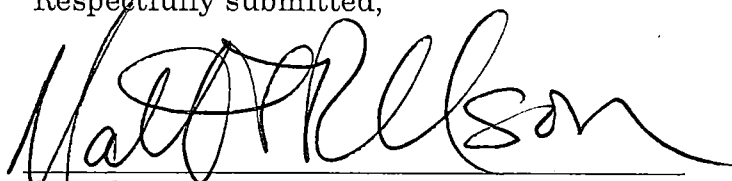
² *See also Ohio v. Johnson*, 467 U.S. 493, 498 (1984); *Benton v. Maryland*, 395 U.S. 784, 794 (1969) ("[T]he double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and . . . [thus applies] to the States through the Fourteenth Amendment."); *State v. Holliday*, 255 S.C. 142, 145, 177 S.E.2d 541, 542-43 (1970).

CONCLUSION

The Court should dismiss this appeal for lack of subject matter jurisdiction. Allowing the State to appeal a guilty plea after the trial court's acceptance of the State's own plea agreement would not only put Respondent twice in jeopardy for the same crime, but it would also unhinge the guilty plea process. No criminal defendant would agree to plead guilty if the prosecutor could renege on the deal after agreement, detrimental reliance by the defendant, and the court's acceptance of the plea and sentencing within the appropriate range.³ To protect Respondent's constitutional rights and the rights of future criminal defendants, as well as the guilty plea system itself, this Court should dismiss the State's appeal.

Moreover, Respondent requests all briefing deadlines be held in abeyance until the Court issues a decision on this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matt Richardson", written over a horizontal line.

Matthew T. Richardson, Esquire
WYCHE, P.A.
Post Office Box 12247
Columbia, SC 29211

Attorney for Respondent

September 20, 2018

³ See, e.g., *State v. Tillman*, 320 S.C. 61, 63, 463 S.E.2d 94, 96 (Ct. App. 1995) (“Where a guilty plea is induced by prosecutorial promises, those promises must be fulfilled.”).

EXHIBIT A

STATE OF SOUTH CAROLINA
FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

RICHARD QUINN, JR.

DEFENDANT

CASE NUMBERS 2017-GS-47-00012
2017-GS-47-00013
2017-GS-47-00032

RICHARD M. QUINN, SR.

DEFENDANT

CASE NUMBERS 2017-GS-47-00042
2017-GS-47-00043

FIRST IMPRESSIONS, D/B/A
RICHARD QUINN & ASSOCIATES;
AGENT, RICHARD QUINN, SR.

DEFENDANT

CASE NUMBER 2017-GS-47-00055

DECEMBER 13, 2017

TRANSCRIPT OF PLEA

COLUMBIA, RICHLAND COUNTY, SOUTH CAROLINA

BEFORE

HON. CARMENT T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

1 Also, as part of that plea, your Honor, the First
2 Impressions, Richard Quinn & Associates, is agreeing to
3 pay \$3,000.00 in restitution in York County for out-of-
4 pocket expenses with regards to this case.

5 THE COURT: Okay. All right. Mr. Gasser, is that
6 your understanding and your agreement, or Mr.
7 Richardson, as to Rick Quinn?

8 MR. RICHARDSON: Thank you, your Honor. There are
9 other terms and conditions agreed upon by the State and
10 by Rick Quinn, Jr., as a court's exhibit. But I'd like
11 -- if your Honor would like, I'm happy to read them into
12 the record, as well.

13 THE COURT: Please.

14 MR. RICHARDSON: Thank you. Quinn, Jr. has
15 resigned from the House as a condition of this plea
16 agreement. He's pleading guilty to one misdemeanor
17 statutory misconduct in office on the limited allocution
18 that we will give below. That's the limited statement
19 of facts, and that's based only on the failure to
20 disclose a name.

21 All other charges against Rick Quinn are dismissed
22 with prejudice, which means all the information and
23 documents contained in this investigation cannot be used
24 against him; and that Solicitor Pascoe has no more
25 authority or jurisdiction over Rick Quinn under the

1 State Grand Jury or in his limited designation for
2 prosecution by the Attorney General in his role as a
3 legislator and in the operation of his businesses to
4 date.

5 Since Solicitor Pascoe is not interested in Rick
6 Quinn, Jr.'s cooperation, both sides agree that Rick
7 Quinn Will not be interviewed or called to the grand
8 jury in this investigation for any resulting
9 prosecution, unless subpoenaed.

10 There are three other terms that cover both
11 defendants and the corporation. These are:

12 Number 1: while we understand Mr. Pascoe's going
13 to make his argument about a wider range of conduct
14 today, Rick Quinn, Jr., Richard Quinn, Sr., and First
15 Impressions, Inc., deny every allegation and inference,
16 except what is in their limited factual allocutions that
17 I'll read in a minute.

18 Number 2: all the materials and information
19 obtained in the investigation, including searches and
20 seizures by the State, are not to be used in any way by
21 the State against these defendants in exchange for these
22 pleas.

23 And Number 3: this plea by all defendants today is
24 conditioned on the dismissal with prejudice of all other
25 charges and the closure and end of any further

1 investigation or prosecution by Solicitor Pascoe or the
2 State of Rick and Richard Quinn, their businesses, and
3 their families for all past conduct and deeds.

4 Your Honor, the limited allocution, which is a
5 statement of facts by which Rick Quinn, Jr. is accepting
6 responsibility and pleading by today is the following:

7 Rick Quinn agrees that in 2016, while a member of
8 the House of Representatives, he failed to report to the
9 House Ethics Committee the name of USC, which he knew
10 was a lobbyist principal, and which in the previous
11 calendar year had leased office space for less than
12 \$30,000.00 total from Capital Investments II, LLC, a
13 business with which Rick was associated as an agent by
14 receiving a benefit from Capital Investments of being
15 relieved from payments on the mortgage note from that
16 property as a guarantor, and also, by helping them
17 negotiate the mortgage note for Capital Investments II.

18 Thank you, your Honor.

19 MS. BARBIER: May it please the Court? Good
20 afternoon, your Honor.

21 Your Honor, as Mr. Pascoe said, all charges against
22 Richard Quinn, Sr. Will be dismissed with the entry of
23 the corporate plea by First Impressions. In doing so,
24 your Honor, Mr. Quinn, Richard Quinn, Sr., is making no
25 admission of any individual wrong doing. He is plead --

1 the corporation is pleading on a limited allocution, as
2 Mr. Richardson indicated.

3 The limited allocution is as follows: Richard
4 Quinn does not admit any individual wrong doing. First
5 Impressions, Inc., has been in business since 1976.
6 Over the past 40 years, First Impressions has had many
7 employees and agents. First Impressions acknowledges
8 that it had a former agent whose activities subjected
9 First Impressions to the registration requirements, and
10 it failed to register under South Carolina Code Section
11 2-17-20.

12 And I understand Mr. Pascoe intends to make other,
13 broader allegations. First Impressions denies those
14 allegations, as well as Richard Quinn, Sr.

15 And the other conditions that have been put to the
16 record, your Honor, are accurate.

17 THE COURT: Thank you. Is that correct, Mr.
18 Pascoe?

19 MR. PASCOE: Yes, your Honor. With regards to Rick
20 Quinn's cooperation, I just want to point out, Mr. Quinn
21 has never reached out and said he wanted to cooperate,
22 which is one of the reasons I said I didn't care to have
23 his cooperation, and for other reasons, which I'll go
24 into during my presentation.

25 Also, I'm fine with the limited allocution.

1 fine with you all, I'm going to talk with Rick Quinn,
2 Jr., if I could, and then you can speak on behalf of the
3 corporation for Mr. Quinn, Sr.

4 But just to begin, for you attorneys, have you
5 explained and does your client understand the charge
6 against him, the possible punishment, and his
7 constitutional rights?

8 MR. GASSER: He does, your Honor.

9 THE COURT: And Mr. Quinn, do you wish to plead
10 guilty or not guilty to this charge of misdemeanor
11 failure to register -- excuse me, I apologize --
12 misdemeanor statutory misconduct in office, sir?

13 MR. RICK QUINN, Jr.: Guilty.

14 THE COURT: All right. Sir, are you pleading
15 guilty because you are in fact guilty?

16 MR. RICK QUINN, JR.: Yes, ma'am.

17 THE COURT: And you understand the possible
18 sentence that it carries, as I told you, with a
19 potential of up to one year in prison and a fine of up
20 to \$1,000.00? Is that correct?

21 MR. RICK QUINN, JR.: Yes, ma'am.

22 THE COURT: All right. Sir, additionally -- yes,
23 sir? I'm sorry?

24 MR. PASCOE: Did you swear him? Did you swear him,
25 your Honor?

1 THE COURT: Thank you. And I appreciate you
2 reminding me of that. Again, there has been a new
3 indictment brought in this case. Originally, the
4 indictments that were brought were against Mr. Quinn,
5 Sr., individually. Those are all being dismissed, Mr.
6 Pascoe, is that correct, as a result of this guilty plea
7 of the corporation, correct?

8 MR. PASCOE: Yes, your Honor.

9 THE COURT: All right. All right. I'm going to
10 accept the plea, obviously. You can go ahead and be
11 seated.

12 MS. BARBIER: Thank you, your Honor.

13 THE COURT: All right, Mr. Pascoe.

14 MR. PASCOE: Ready for the presentation, your
15 Honor?

16 THE COURT: Yes, sir.

17 MR. PASCOE: We have a PowerPoint, your Honor, and
18 while we're turning it on, I'll point out that, since
19 the Court has had an opportunity to already review the
20 PowerPoint, and the defense has had an good opportunity
21 to review it, I'll be able to go through it pretty
22 quickly.

23 THE COURT: Okay.

24 MR. PASCOE: I won't have to hit all the slides to
25 it.

1 it's had an effect on him, it's had an effect on his
2 father, and is having an effect on Amy and it's having
3 an effect on their relationship, but for the first time
4 in thirty years of practicing law, twenty years as a
5 prosecutor and ten years, never have I seen or heard
6 until this case, their children have been bullied at
7 school. Their two children have been bullied at school
8 because their -- those kids that have been doing the
9 bullying whose parents have read about or seen on
10 television have talked to their children about it. And
11 Rick and Amy's kids can't even go to school without
12 their children being collaterally damaged. That's the
13 type of effect. That's the punishment. I know
14 punishment is the state where we're at right now.
15 That's the punishment that he and his family have
16 suffered and have had to deal with. And I've never seen
17 that before in any case.

18 Thank you, your Honor.

19 THE COURT: Well, I want to thank both sides.
20 Obviously, you gave me a very thorough presentation,
21 bordering almost on a trial, certainly, in your
22 presentation. But I understand what the focus is as
23 well, Ms. Barbier, on behalf of Richard Quinn, as well.

24 As you all know, you contacted me Monday and said
25 that you were going to do this. Due to the hour, I am

1 going to defer sentencing. I am going to accept the
2 guilty plea. I do find substantial factual basis for
3 this plea; that your decision to plead guilty has been
4 reasonably and intelligently given. I Will accept it on
5 both behalf of Rick Quinn personally and on behalf of
6 the corporation, First Impressions, doing business as
7 Richard Quinn & Associates. And I am going to defer
8 sentencing for just a bit, and I Will let you all know
9 something. I don't want to prolong this in any way for
10 anyone.

11 Certainly, I know the State has worked very hard
12 and very diligently. And I know the Quinns had to go
13 through a very long and arduous investigation and
14 prosecution, and I certainly recognize they need a close
15 to this. I Will let you all know when I'm ready to go
16 ahead and sentence. Thank you.

17 SOLICITOR PASCOE: Thank you, your Honor.

18 THE COURT: Thank you.

19 END PROCEEDING 6:52 P.M.

20 ITEM IDENTIFIED AS ALLOCUTIONS

21 MARKED COURT'S EXHIBIT NUMBER 1.

22 ITEM IDENTIFIED AS TERMS AND

23 CONDITIONS

24 MARKED COURT'S EXHIBIT NUMBER 2.

25 DOCUMENT TITLED UNANIMOUS

EXHIBIT B

FILED

MAR 6 2018

James R. Parks

Clerk, State Grand Jury

IN THE STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA,

v.

RICHARD M. QUINN, JR.,

Defendant.

INDICTMENT NUMBERS:

2017-GS-47-12

2017-GS-47-13

2017-GS-47-32

STATE OF SOUTH CAROLINA,

v.

RICHARD M. QUINN, SR.,

Defendant.

INDICTMENT NUMBERS:

2017-GS-47-42

2017-GS-47-43

**ORDER DENYING STATE'S MOTION
TO RECONSIDER**

THIS MATTER is before the Court on the State's Motion to Reconsider. For the reasons below, the State's Motion to Reconsider is DENIED.

BACKGROUND

On December 13, 2017, the State, by Solicitor David Pascoe, and Defendants Richard M. Quinn, Sr. and Richard M. Quinn, Jr., appeared before this Court for the purpose of entering guilty pleas. The pleas were the result of a plea agreement entered into by the State and Defendants. As the record reflects, pursuant to the agreement, the State agreed to dismiss all charges against Richard Quinn, Sr. personally, with prejudice, and allow First Impressions, Inc. to plead guilty to a single misdemeanor Failure to Register as a Lobbyist. Additionally, the State agreed to dismiss all charges against Defendant Quinn, Jr. with prejudice in exchange for his guilty plea to a single misdemeanor count of Statutory Misconduct in Office based solely on a limited admission of facts regarding the failure to disclose payments made by a lobbyist principal to a related company. The agreement specifically states Defendants Quinn, Sr. and Quinn, Jr.

and First Impressions, Inc., understand the State plans to make arguments about a wider range of conduct, however they deny every allegation and inference beyond their limited admission. The express terms of the plea agreement (Court Ex. 2) state:

2. He (Rick Quinn, Jr.) is pleading guilty to one misdemeanor statutory misconduct in office on the limited allocation below based only on failure to disclose.
3. All other charges against Rick Quinn will be dismissed with prejudice which means that all information and documents obtained in the investigation cannot be used against him...

The terms of the agreement were then entered into the record to include the limited statement of facts to which the Defendants were entering their plea and to which Solicitor Pascoe indicated his agreement, stating, "Also, I'm fine with the limited allocation." The hearing lasted one hour and forty minutes during which the pleas and sentencing arguments were fully presented by both the State and the Defendants. The Court, having accepted both guilty pleas, finding a substantial factual basis existed, and the decisions to plead guilty were reasonably and intelligently made, deferred sentencing due to the late hour (6:52 p.m.).

Thereafter, both parties filed memorandums for consideration by the Court. In the State's memorandum, Solicitor Pascoe again acknowledged: "As part of the package plea agreement, the State permitted the Defendant to accept responsibility for only a limited factual scenario articulated by his attorney during the hearing."

DISCUSSION

The State's Motion to Reconsider and argument before the Court is Solicitor Pascoe's attempt to invalidate a plea agreement that is of his own making.

I. Validity of Guilty Plea

The State's plea agreement with the Defendants was in writing, fully stated on the record, and made a part of the record as an exhibit. See Court Ex. 2. At the December 13, 2017 plea

②

hearing, Quinn, Jr. admitted his guilt to Statutory Misconduct in Office under a limited statement of facts as agreed upon by the State and accepted as valid by the Court. Additionally, on February 12, 2018, at Quinn Jr.'s sentencing, in an effort to address the State's purported concern raised in its January 25, 2018 letter to the Court, Quinn Jr. once again admitted he was pleading guilty to one count of Statutory Misconduct in Office for intentionally failing to report the name of USC on his ethics disclosure forms, thus providing the State with the relief they sought. I found then, as I do now, that the limited admission of facts Quinn Jr. admitted on the record with the State's agreement, provide a substantial basis for the plea and meet the elements required of Statutory Misconduct in Office.

II. Sentencing Considerations

When sentencing a convicted defendant, in this case by virtue of a guilty plea, a trial court exercises a wide discretion regarding the sources and types of evidence it may use to assist it in determining the kind and extent of punishment to be imposed. "However, the admissibility of evidence is limited by constitutional provisions which require the evidence to be relevant, reliable and trustworthy." *State v. Gullede*, 326 S.C. 220, 487 S.E.2d 590 (1997). Inherent in that consideration is the Court's judicial discretion in determining the particular factual premises upon which a sentence will be based. Vital in this Court's sentencing consideration was the plea agreement entered into by the parties. As the record reflects, the plea agreement was negotiated and established the factual premise for the guilty plea. While the plea agreement includes the State will make allegations of a wider range of conduct, the State incorrectly assumes that in considering this information, the Court must take their averments as fact.

This case is not a typical plea, as the Solicitor suggests, akin to a burglary wherein the Defendant breaks into five houses, pleads guilty to one offense and admits to the other four. The

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charge of Misconduct in Office is far more complex. White collar crimes, such as alleged against Quinn, Jr., often involve fact patterns that are convoluted and controverted. Critical to the State's case was Quinn, Jr.'s involvement in Richard Quinn & Associates, which Quinn, Jr. adamantly denies. While Solicitor Pascoe presented documents and emails suggesting this involvement of Quinn, Jr. with RQA, I am not persuaded to extrapolate the solicitor's inferences to establish such a relationship. What the State presented in its PowerPoint are inferences and conclusions that this Court is not compelled to accept as established facts. This is what the State needed to prove through a trial.

The Court considered the information provided by the State and the Defendants during the December 13, 2017 hearing and sentenced the Defendants according to the evidence the Court found reliable and relevant.

III. Opportunity to Be Heard

The hearing on February 12, 2018 was for the sole purpose of announcing the sentences of the parties, nothing more, and the State and Defense attorneys were both advised accordingly prior to the start of sentencing. All parties were given a full opportunity to argue their case at the December plea hearing. February 12th was not another opportunity for the parties to re-argue their case or pander to the media. A review of the transcript of the December 13, 2017 guilty plea, its exhibits and the filings in this matter before the February 12, 2018 sentencing show that there were no motions before the Court and all that remained was for the Court to issue sentence.

IV. Recusal

During the hearing on the State's Motion, Solicitor Pascoe demanded this Judge recuse herself. To the extent I must address it, the State is unable to demonstrate nor do they have any evidence that the Court's actions have been affected by, or are the product of, bias or prejudice,



because there is none. *Doe v. Howe*, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005). Mr. Pascoe's allegations of improper *ex parte* communications are patently false as his consent to such communications is reflected in the record, to include the State's own filings. *See* State's Mot., Feb. 16, 2018. Most notably here, the fact that a trial judge ultimately rules against a litigant is not proof of prejudice by the judge. *Mortgage Electronic Systems, Inc. v. White*, 384 S.C. 606, 682 S.E.2d 498 (Ct. App. 2009). Curiously, the State's demand for recusal only comes after the Court imposed a sentence different than the State requested. At this point, the plea has been accepted and the sentence imposed. There is nothing pending to recuse from hearing. Solicitor Pascoe's comments impugning the character of both the Court and Defense counsel casts a pall on the judicial process in an unfortunate attempt to vacate a plea agreement that is of his own making.

CONCLUSION

Based on the above, the State's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.



Carmen T. Mullen
Presiding Judge

This 6 day of March, 2018.

RECEIVED

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SEP 20 2018

S.C. SUPREME COURT

APPEAL FROM THE COURT OF GENERAL SESSIONS
STATE GRAND JURY

THE HONORABLE CARMEN T. MULLEN, CIRCUIT JUDGE

RECEIVED

Appellate Case No. 2018-000494

SEP 21 2018

The State,

Petitioner, **SC Court of Appeals**

v.

Richard M. Quinn, Jr.,

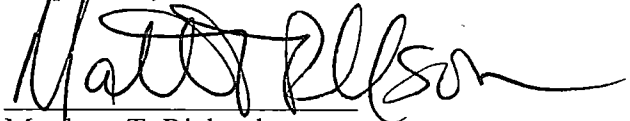
Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on September 20, 2018, he served counsel for Petitioner with *Respondent's Motion to Dismiss and Memorandum in Support* in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

David M. Pascoe
Solicitor, First Judicial Circuit
P.O. Box 1525
Orangeburg, SC 29116

Respectfully submitted,



Matthew T. Richardson
Wyche, P.A.
Post Office Box 12247
Columbia, SC 29211

September 20, 2018

ATTORNEY FOR RESPONDENT

W Y C H E

Attorneys at Law

September 20, 2018

The Honorable Jenny Kitchings
Clerk of South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: State v. Richard M. Quinn, Jr.
Appellate Case No. 2015-000494

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Respondent's Motion to Dismiss. We ask that you return a clocked copy of the motion. Also, enclosed is a check in the amount of \$25.00 to cover the filing fee for the motion.

I request that all filing deadlines be held in abeyance pending a decision on the Motion to Dismiss pursuant to Rule 240(b), SCACR.

Please do not hesitate to contact me if you have any questions or need anything further.

Most respectfully,


Matthew Richardson

Enclosure

cc: Solicitor David Pascoe

RECEIVED

SEP 20 2018

S.C. SUPREME COURT

RECEIVED

SEP 21 2018

SC Court of Appeals

W Y C H E
PROFESSIONAL ASSOCIATION

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