

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE STATE GRAND JURY  
Richland County  
Court of General Sessions

Carmen T. Mullen, Circuit Court Judge

Case No. 2017-GS-47-12, -13, -32

**RECEIVED**  
OCT 05 2018  
SC Court of Appeals

The State,.....Appellant

v.

Richard M. Quinn, Jr.,.....Respondent

APPELLATE CASE NO. 2018-000494

STATE'S RETURN IN OPPOSITION TO  
RESPONDENT'S MOTION TO DISMISS

The State of South Carolina respectfully submits the following Return in Opposition to Respondent's Motion to Dismiss. For the reasons that follow, the Court should hold Respondent's motion in abeyance until final briefs have been completed and this matter is ready for consideration. At that time, the motion should be denied because each of the issues presented in this appeal are within this Court's subject matter jurisdiction over errors of law and are properly within the types of cases appropriate for appeal by the State.

**Discussion**

Respondent's motion misrepresents the facts and the issues presented by the instant appeal. The motion asserts, "[t]his Court lacks jurisdiction because the State cannot appeal a plea

agreement entered by the lower court.” Def. Mot at 3. Simply put, this is not the issue presented to the Court by this appeal. While the State can, in fact, challenge issues relating to plea agreements,<sup>1</sup> the State is not challenging the terms of the plea agreement. The issues presented for appellate review are (1) whether the lower court committed an error of law in sentencing Respondent, (2) whether the lower court committed an error of law by accepting Respondent’s plea in the absence of sufficient factual basis, and (3) whether the conduct of the lower court merits recusal. Despite Respondent’s routine misrepresentation of the terms of the plea agreement, it is not at issue in this appeal. Further, this appeal does not involve a judgment of acquittal.

This Court maintains jurisdiction to correct errors of law in criminal cases. S.C. Code Ann. § 14-3-330. The State’s right to appeal in criminal cases is governed by judicial decisions, which generally prohibit the State from challenging a judgement of acquittal. State v. Holliday, 255 S.C. 142, 145, 177 S.E.2d 541, 542 (1970) (“Based primarily on the double jeopardy provisions of the Constitution, we have long recognized that the State has no right of appeal from a judgement of Acquittal in a criminal case, unless the verdict of acquittal was procured by the accused through fraud or collusion.” (internal citations omitted)); State v. McKnight, 353 S.C. 238, 577 S.E.2d 456 (2003). The rationale for this prohibition is easy to conceive. If the State were to appeal a judgement in favor of the defendant after the attachment of jeopardy, the sole remedy would be a retrial of the defendant that violates the Double Jeopardy Clause. Thus, such an appeal should not be permitted in the first place.

The instant appeal does not implicate the Double Jeopardy Clause and is well within the class of cases the State is permitted to challenge on appeal. Respondent’s motion fails to correctly

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<sup>1</sup> For example, in the seminal case of State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994), the first issue presented for appellate review by the State was the scope of the plea agreement.

identify the issues presented by this appeal, instead arguing that the appeal is barred because the State is required to honor the guilty plea. However, the terms of the plea agreement are not at issue here beyond the question of whether Respondent's guilty plea is valid at all for lack of sufficient factual basis. With respect to the plea itself, the issue presented by this appeal asks,

Does the factual recitation admitted by Respondent that describes only a single ethics violation satisfy the elements of statutory misconduct in office such that a substantial factual basis may exist on those facts alone?

In other words, the State believes that Respondent failed to plead guilty to the underlying charge. The Court's decision to accept Respondent's plea was based on an error of law, and the remedy requested by the State is to overturn the ineffective plea so that the case may be scheduled for trial.<sup>2</sup> It is generally accepted that jeopardy attaches upon the acceptance of a guilty plea. Reed v. Becka, 333 S.C. 676, 681, 511 S.E.2d 396, 399 (Ct. App. 1999). However, in the instant case, acceptance of the plea was based on an error of law and the remedy requested by the State would effectively render the plea void.

With regard to sentencing, the issue presented by this appeal asks the Court to determine if the lower court's sentencing decision was controlled by an error of law, asking,

Did the lower court err in sentencing Respondent based solely on facts offered by defense counsel and concluding that the court was constitutionally prohibited from considering the State's evidence, where Respondent pleaded guilty to an indictment for a continuing offense that encompassed the State's evidence?

As an initial matter, while Respondent's motion does not argue that the State cannot challenge sentencing issues, numerous examples of such challenges demonstrate that sentencing issues are within the State's authority to appeal. See, e.g., State v. Hawes, 411 S.C. 188, 767 S.E.2d

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<sup>2</sup> It should be noted that the State did attempt to object to the plea prior to sentencing, however the lower court refused to permit the State to lodge its objection on the record during the sentencing hearing.

707 (2015) (State appeal of sentencing decision based on erroneous application of law); State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010) (State appeal of circuit court denial of motion to reconsider sentencing); S.C. Dep't of Prob., Parole & Pardon Servs. ex rel. State v. Reynolds, 343 S.C. 465, 540 S.E.2d 480 (Ct. App. 2000) (State appeal of motion to reconsider sentence).

The Double Jeopardy Clause does not bar the government from seeking review of a sentencing decision where success does not result in successive prosecutions. United States v. DiFrancesco, 449 U.S. 117, 132, 101 S. Ct. 426, 435 (1980); Monge v. California, 524 U.S. 721, 728, 118 S. Ct. 2246, 2250, 141 L. Ed. 2d 615 (1998) (“Historically, we have found double jeopardy protections inapplicable to sentencing proceedings because the determinations at issue do not place a defendant in jeopardy for an ‘offense’.” (internal citations omitted)). The remedy sought by the State in reviewing the sentencing considerations of the lower court would not place Respondent in jeopardy for a separate offense, but would merely require the trial court judge to resentence Respondent under the proper legal standard. See DiFrancesco, 449 U.S. at 132, 101 S. Ct. at 435 (“[I]t follows that the Government’s taking a review of respondent’s sentence does not in itself offend double jeopardy principles just because its success might deprive respondent of the benefit of a more lenient sentence.”).

The State has an interest in the full and fair conviction of those who violate the laws of this State. Where a defendant is sentenced in a manner that does not conform to the law, the State must seek review of the sentence to protect its interest in the proper administration of justice. The issue presented here is analogous to a situation in which a defendant is convicted of an offense that carries a mandatory minimum sentence of ten years, yet the trial court sentences the defendant to only two years for the offense. If the State were prohibited from seeking appellate review of the clearly unlawful sentence, no other party would have standing to challenge the erroneous decision,

and statutory sentencing mandates would be rendered meaningless. In the instant case, the sentencing decision handed down by the trial court judge was based on an error of law. To preserve the proper administration of justice, the State must seek appellate review to require the lower court to sentence Respondent according to the proper standard.

Finally, the State asks this Court to determine whether the totality of events occurring before the lower court mandates recusal of the lower court judge from proceedings in this State Grand Jury investigation. Any remedy for this issue clearly would not subject Respondent to successive prosecutions in violation of the Double Jeopardy Clause. Respondent's motion again does not argue that there are any grounds to dismiss this issue, as there are none. The issue of recusal, as well as the validity of the plea and the lawfulness of the sentence, are all properly before this Court.

### **Conclusion**

The instant motion fails to make any argument with regard to the actual issues presented in this appeal or even correctly identify the issues and is merely an attempt by Respondent to avoid briefing on the merits. The issues presented with regard to Respondent's sentencing and recusal of the trial court judge do not seek a remedy that implicates the Double Jeopardy Clause, and the motion should be denied outright with respect to those issues. Regarding the issue of lack of factual basis for the underlying plea, the plea itself was unlawful, thus jeopardy does not attach. But to the extent jeopardy considerations do exist, those issues are so enmeshed with the issue presented in this appeal that they are more appropriately addressed with the merits of this case.

For the foregoing reasons the State respectfully requests the Court withhold consideration of the instant motion until final briefs have been submitted and Order all briefing deadlines to

resume. Once the merits of this case are ready for consideration, the Court should deny Respondent's Motion to Dismiss.

Respectfully submitted,

DAVID M. PASCOE, JR.  
First Circuit Solicitor  
SC Bar No.: 66523

W. BAKER ALLEN  
Assistant Solicitor  
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ATTORNEYS FOR APPELLANT

October 1, 2018  
Orangeburg, South Carolina.

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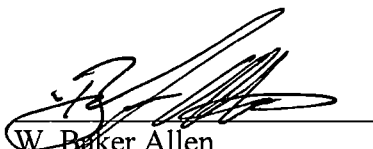
OCT 05 2018

SC Court of Appeals

**PROOF OF SERVICE**

I, W. Baker Allen, certify that I have served the State's Return in Opposition to Respondent's Motion to Dismiss upon counsel for Respondent by depositing a copy of the same in the United States mail, postage prepaid, this 1st day of October, 2018, addressed to:

Matthew Richardson, Esq.  
801 Gervais Street, Suite B  
Columbia, South Carolina 29201



W. Baker Allen  
Assistant Solicitor  
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P.O. Box 1525  
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October 1, 2018

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October 1, 2018

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
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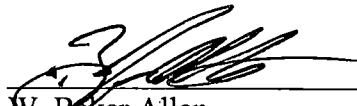
RE: The State v. Richard M. Quinn, Jr.  
Appellate Case No. 2018-000494

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the State's Return in Opposition to Respondent's Motion to Dismiss. We ask that you please send a clocked copy of the return to Post Office Box 1525, Orangeburg, South Carolina 29116.

Please feel free to contact me if you should require anything further.

Sincerely,

  
\_\_\_\_\_  
W. Baker Allen  
Assistant Solicitor  
First Judicial Circuit

Enclosures  
cc: Matthew Richardson

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