

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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OCT 10 2018

SC Court of Appeals

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APPEAL FROM THE COURT OF GENERAL SESSIONS  
STATE GRAND JURY

THE HONORABLE CARMEN T. MULLEN, CIRCUIT JUDGE

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Appellate Case No. 2018-000494

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The State,..... Petitioner,

v.

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

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REPLY REGARDING MOTION TO DISMISS

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

*Attorney for Respondent*

The Court should dismiss the State's appeal. The State has offered nothing in response to change the fact that a State cannot appeal a plea deal of its own making. The State also has failed to explain how this Court can hear the State's appeal of Judge Mullen's refusal to recuse herself. The only possible remedy is to undo Quinn's guilty plea. Doing so, however, would place Quinn twice in jeopardy for the same crime. Finally, the State wants to have Quinn resentenced; but that is just an attempt to undo the guilty plea itself. The Court should thus dismiss the State's appeal in its entirety.

**I. The State cannot appeal the guilty plea.**

This Court should dismiss the State's appeal of the guilty plea. The State is barred from appealing a plea agreement of its own making. "When in the trial, or examination, the result amounts to a final determination of the case, the State cannot appeal." *State v. Ludlam*, 189 S.C. 69, 69, 200 S.E. 361, 362 (1938). The trial court reached a final determination by accepting Quinn's guilty plea. Quinn's plea was his conviction. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). And because it was a conviction, "once [the] court accept[ed] [Quinn's] guilty plea, jeopardy attache[d]." *Reed v. Becka*, 333 S.C. 676, 681, 511 S.E.2d 396, 399 (Ct. App. 1999). The State thus cannot appeal the plea without putting the defendant in jeopardy for a second time, which is forbidden by the double jeopardy clauses. *Ludlam*, 189 S.C. at 69, 200 S.E. at 362. The State has offered nothing to change that fact.

Indeed, the State admits that jeopardy attaches upon the acceptance of a plea. But, the State argues (at 3), the trial judge shouldn't have accepted Quinn's plea and

therefore the plea is “void.” The State, however, ignores the fact that even if the admitted facts do not add up to a crime it doesn’t invalidate a plea. A “defendant may, as part of a plea bargain, agree to plead guilty to a crime for which he has been indicted (or to which he has waived grand jury presentment), but of which he is *not guilty*.” *Rollison v. State*, 346 S.C. 506, 510, 552 S.E.2d 290, 292 (2001) (emphasis added). Indeed, in *Anderson v. State*, 342 S.C. 54, 535 S.E.2d 649 (2000), the Supreme Court “held that an individual could plead guilty to voluntary manslaughter under an indictment charging him with murder, even though the facts would not support such a lesser charge.” *Rollison*, 346 S.C. at 510–11, 552 S.E.2d at 292 (emphasis added) (discussing *Anderson*). Here, Quinn pled guilty to violating § 8-1-80. Thus, even if the stipulated facts do not support the charge, the plea is valid.

Moreover, the facts Quinn admitted do support the plea. The missing element, according to the State is intent. The State complains in its initial opening brief (at 34) that Quinn never said he “*intentionally* failed to report USC as a lobbyist’s principal ... or *knew* that he was required to do so.” Br. 34 (emphasis added). But that assertion is belied by the record. At sentencing, the Court asked Quinn:

“Are you guilty of one count of statutory misconduct in office for *intentionally* failing to report income from USC a lobbyist principal[?]”

Mr. Quinn, Jr.: Yes, ma’am.

The Court: The plea is valid.”

Sent. Hrg. Tr. 8:11-16 (emphasis added). Quinn thus pled guilty to intentionally violating § 8-1-80. See *United States v. Lemaster*, 403 F.3d 216, 221 (CA4 2005) (“A defendant’s solemn declarations in open court affirming a plea agreement carry a strong

presumption of verity, because courts must be able to rely on the defendant's statements made under oath during a properly conducted ... plea colloquy.”).

The State also fails to explain how it is an aggrieved party. “Only a party aggrieved by an order, judgment, sentence or decision may appeal.” Rule 201(b), SCACR. If a party prevails on an issue, the party is not an aggrieved party with respect to that issue. *Davis v. SCDMV*, 420 S.C. 98, 103–104, 800 S.E.2d 493, 495–96 (Ct. App. 2017). When it comes to guilty pleas, the State cannot be an aggrieved party. 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 won when it came to guilt; it cannot now complain about winning. The State does say (at 2) that the rules for when the State can appeal in a criminal case are dictated by judicial decisions. The State’s problem, however, is it hasn’t identified a single case where the State was allowed to appeal a guilty plea. Because the State has no authority to appeal a guilty plea, the Court should dismiss the State’s appeal.

## **II. The State cannot appeal Judge Mullen’s refusal to recuse.**

The State is also barred from appealing Judge Mullen’s decision not to recuse herself. Allowing that appeal would put Quinn in double jeopardy just as much as allowing the State to appeal the guilty plea. The State does not specify what remedy it seeks on this claim, but the only possible remedy would be to vacate the guilty plea. Doing so, however, would place Mr. Quinn in jeopardy for a crime for which he has already been convicted. The double jeopardy clause forbids that result. *See Ohio*

*v. Johnson*, 467 U.S. 493, 498 (1984); *State v. Holliday*, 255 S.C. 142, 145, 177 S.E.2d 541, 542-43 (1970). This Court should thus dismiss the appeal as to this issue as well.

### III. The State cannot appeal the sentence.

Finally, the Court should not permit the State to appeal the sentence. The State is merely using its sentencing appeal as a backdoor to invalidate the plea. But “the fact that the judge does not accept” a sentence recommended by the State “does not affect the validity of the plea,” nor does it affect the validity of the sentence. *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982). The Court should thus dismiss the appeal as to the sentence as well. At the very least, however, if the Court does conclude that the State can appeal Quinn’s sentence in this case, the Court should narrow the appeal to that issue alone.

### CONCLUSION

The State has no right to appeal in this case. To protect Mr. Quinn’s constitutional rights and the rights of future criminal defendants, this Court should dismiss the State’s appeal.

Respectfully submitted,



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

*Attorney for Respondent*

October 10, 2018

W Y C H E

Attorneys at Law

October 10, 2018

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

**RECEIVED**  
OCT 10 2018  
SC Court of Appeals

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 Reply to Motion to Dismiss. We ask that you return a clocked copy of the reply.

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

W Y C H E  
PROFESSIONAL ASSOCIATION

801 Gervais Street, Suite B, Columbia, SC 29201-3155  
p: 803.254.6542 | f: 803.254.6544  
www.wyche.com