

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable Alison Renee Lee, Circuit Court Judge
Appellate Case Tracking Number 2016-002210

RECEIVED
DEC 11 2018
SC Court of Appeals

The State,

Appellant,

vs.

Jamie Simpson,

Respondent.

**RETURN TO MOTION TO DISMISS APPEAL AS MOOT AND,
IN THE ALTERNATIVE, MOTION TO SERVE AND FILE
A FINAL REPLY BRIEF OF APPELLANT**

The State of South Carolina respectfully submits the following Return to Respondent's Motion to Amend Final Brief of Respondent:

I.

On October 26, 2018, Respondent filed a Motion to Dismiss Appeal as Moot, maintaining the appeal has become moot because he has served his two year home detention sentence imposed by the circuit court. This Court denied the Motion by Order dated November 19, 2018. The State submits the Motion was properly denied because the appeal is not moot by Respondent's service of home detention, as the central issue on appeal is the court's authority to sentence Respondent to home detention. As addressed in the State's Return to Motion to Dismiss Appeal as Moot, relief may still be granted upon the State's appeal of the case.¹

¹ The State incorporates by reference all arguments presented in its Return to Motion to Dismiss Appeal as Moot filed November 2, 2018.

II.

The appeal is not moot because home detention does not equate to imprisonment as required under 16-15-405, Respondent was not properly sentenced to home detention under 24-13-1530, and relief can still be granted on the State's appeal arguing the sentence his received was improper and an abuse of discretion. Additionally, even if the Court decides the appeal is moot, it can, in its discretion, decide to continue hearing the appeal of the underlying issue because it is clearly capable of repetition yet evading review. As a result, this Court should deny the Motion to Amend Final Brief of Respondent because the issue should be decided without requiring re-briefing.

III.

If this Court grants Respondent's Motion to Amend Final Brief of Respondent, the State asks for the opportunity to serve and file a Final Reply Brief to fully address the issue of Mootness. Additionally, due to the upcoming holidays and prearranged leave, the undersigned counsel for the State will be out of the office from December 20, 2018 through January 2, 2019. The State asks that any Reply Brief not be due to be served or filed until January 11, 2019.

WHEREFORE, the State asks this Court to deny Respondent's Motion to Amend Final Brief of Respondent or in the alternative allow the State to serve and file a Final Reply Brief due no earlier than January 11, 2019.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Attorney General

BY:



William M. Blitch, Jr.

S.C. Bar No: 15608

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ATTORNEYS FOR APPELLANT

December 11, 2018

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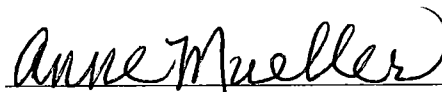
PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the Return to Motion to Dismiss Appeal as Moot and, in the Alternative, Motion to Serve and File a Final Reply Brief of Appellant on Respondent by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 11th day of December, 2018.



ANNE A. MUELLER
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

December 11, 2018

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Jamie Simpson
Appellate Case Tracking No. 2016-002210

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of a Return to Motion to Dismiss Appeal as Moot and, in the Alternative, Motion to Serve and File a Final Reply Brief of Appellant along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blich, Jr.
Senior Assistant Attorney General

Enclosures

cc: Susan B. Hackett, Esquire
Victim Advocacy Division