

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

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SC Court of Appeals

The State,.....Appellant

v.

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

APPELLATE CASE NO. 2018-000494

APPELLANT'S INITIAL
REPLY BRIEF

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The State of South Carolina respectfully submits the following brief in reply to the Initial Brief of Respondent Richard Quinn, Jr. For the reasons discussed below, and in the Initial Brief of Appellant, the Court should reverse the lower court's Order Denying State's Motion to Reconsider. The trial court's acceptance of Respondent's guilty plea was based on an error of law, and the plea should be invalidated. In addition, the sentencing standard articulated by the trial court was controlled by an error of law. Should this Court decline to remand the case for new trial, Appellant respectfully requests this Court hold that the lower court committed an abuse of discretion in sentencing Respondent, and remand the case for resentencing under the proper standard. Finally, because the totality of actions by the trial court in this State Grand Jury investigation have called the lower court's impartiality into question, this Court should hold that Judge Mullen must be recused and removed from further involvement in Respondent's case.

I. The lack of factual basis invalidated the plea itself.

While the instant case undoubtedly presents a unique circumstance in that the State seeks to invalidate a guilty plea, the State is nevertheless aggrieved when the criminal justice system is not properly implemented. The State negotiated a deal that permitted it to convict a central figure in a statewide corruption scheme while mitigating the risks and costs associated with a lengthy and complicated trial of the matter. In exchange, Respondent received the benefit of a greatly reduced penalty exposure by the dismissal of charges for common law misconduct in office and criminal conspiracy, which carry maximum penalties of ten- and five-year's incarceration respectively. Central to this agreement was Respondent's plea to the underlying charge of statutory misconduct in office, in violation of Section 8-1-80 of the South Carolina Code of Laws Annotated, which would then be followed by a factual recitation by the State meant to inform the trial court of the egregious and corrupt conduct of Respondent and his family. The State gave a

factual presentation lasting approximately forty-five minutes despite Judge Mullen's request in chambers that the State "go light on the facts." In turn, Respondent was permitted to counter the State's factual presentation in mitigation, which he did. However, as the plea currently stands, Respondent did not plead guilty to misconduct in office. The trial court effectively converted the charge to a civil filing violation. While the State generally must abide by a plea agreement, the State must also enforce the terms of an agreement and remedy a proceeding in which the plea terms are not carried out. Respondent's brief makes much of the terms of the plea agreement and presumes that his interpretation of the plea agreement is correct. But Respondent's interpretation that the State's facts were beyond the reach of the trial court is untenable in light of the fact that a material term of the agreement was the State's presentation of additional facts.

If the plea arrangement was carried out as intended, it would certainly place a heavy burden on the trial court, as the court's task would then be to weigh the State's factual recitation against Respondent's mitigation for the purpose of imposing an appropriate sentence. State v. Thomason, 355 S.C. 278, 285, 584 S.E.2d 143, 147 (Ct.App.2003) (citing State v. Gulledege, 326 S.C. 220, 228, 487 S.E.2d 590, 594 (1997) (court has wide discretion in the information it may consider in determining an appropriate sentence)). However, the State did not anticipate that the lower court would depart from typical procedure to accept a plea to a crime without sufficient factual basis and subsequently afford Respondent the presumption of innocence for the crime to which the State permitted him to plead guilty. During the December 13, 2017 plea hearing, the trial court engaged Respondent in a plea colloquy. Following the plea colloquy the trial court noted, "I'm going to accept the plea, obviously" and immediately turned to the State for the factual presentation. (Dec 13, 2017 Transcript at 20:9-10). The court did not make a finding that

the plea was voluntary and supported by a factual basis until *after* the State's presentation, at which point she pronounced,

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

(Dec. 13, 2017 Tr. at 85:1-10).

Thus, the State raised no objection at this time because the factual finding occurred after the presentation, and the State presumed, as is typical procedure in a guilty plea, that the State's facts informed the factual basis for the plea. In the intervening period between the guilty plea and the sentencing hearing, the State reviewed the plea transcript and grew concerned that the trial court never indicated what facts constituted the basis for the plea. While the State's facts are sufficient, Respondent's limited allocution, his responses to the court's question, and statements made in mitigation to the court are woefully insufficient to support a misconduct in office conviction. Further, the court did not review the indictment with Respondent during the plea. To verify the court's finding of a factual basis, the State sought clarification of the factual basis.

a. The State raised the issue regarding validity of the plea at the first opportunity after being denied the right to do so at the sentencing hearing.

Two months after the plea hearing concluded, the trial court called a hearing in Beaufort to hand down Respondent's sentence. As a result of the concern with factual basis, the State sought to accomplish two objectives during the sentencing hearing. First, the State sought to remedy the plea by asking the court to inquire of Respondent whether or not he intentionally committed the crime. But, as explained in the State's initial brief, the trial court's effort to remedy the plea was ineffective because the court added a limitation to the charge for statutory

misconduct that does not appear in the statute or the indictment to which Respondent pleaded guilty. (App. Br. at 36-39). Second, the State sought to lodge an objection to the plea to preserve the issue regarding validity of the plea. However, despite demanding an opportunity to be heard prior to the hearing, at the beginning of the hearing, and at the end of the hearing, the trial court did not permit the State to preserve its objection on the record at any point and instead instructed counsel for the State to “take it up with the Court of Appeals if you believe I am in any way wrong.” (Feb. 12, 2018 Tr. at 11:16-18).

One of the issues that gives rise to the State’s appeal is the lawfully erroneous conclusion stated by the court that Respondent was entitled to the presumption of innocence. (Feb 12, 2018 Tr. at 8:19-9:21). The trial court explained weeks later in its order denying the State’s motion to reconsider that “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.” (March 6, 2018 Order at 3). However, concern regarding the ambiguity in the trial court’s finding of a factual basis led the State to attempt to lodge an objection for preservation purposes during the sentencing hearing, and the State did, in fact, “object to this plea going forward now.” (Feb. 12, 2018 Tr. at 3:23-25). However, the trial court refused the State an opportunity to be heard and address the State’s specific concerns. Pye v. Estate of Fox, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006) (citing Elam v. S. Carolina Dep’t of Trans., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004)) (“Generally, an issue must be raised to and ruled upon by the circuit court to be preserved.”). Therefore, to preserve the issue of whether the trial court’s finding of a factual basis for the plea was sufficient, and obtain a ruling on the issue by the trial court, the State raised the issue at the first available occasion, which was the motion to reconsider. State v. Williams, 303 S.C. 410, 411,

401 S.E.2d 168, 169 (1991) (objection must be made at first opportunity and issue must be ruled on to preserve issue for appellate review).

b. The lack of factual basis rendered the plea invalid despite the trial court's acceptance of the plea.

A guilty plea requires two essential elements, (1) that the plea is voluntary and intelligently made by the defendant, and (2) that the record reflects a factual basis for the plea. State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). The requirement that the plea be given intelligently and voluntarily is a recognition of the important constitutional rights the defendant is relinquishing by pleading guilty. Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 1712, 23 L. Ed. 2d 274 (1969). The factual basis for the plea is also essential because if the record does not reflect sufficient facts that meet the elements of the indicted offense then there is a possibility that the plea was a product of coercion or misunderstanding, which would indicate the plea was not made knowingly and voluntarily. United States v. McCoy, 895 F.3d 358, 364 (4th Cir. 2018), *cert. denied*, No. 18-6304, 2018 WL 5017623 (U.S. Nov. 13, 2018) (citing United States v. Mastrapa, 509 F.3d 652, 659–60 (4th Cir. 2007)).

The importance of a sufficient factual basis is particularly evident in the instant case. Respondent believes that he merely pleaded guilty to a filing violation, and the trial court continuously emphasized a non-existent limitation on the indictment. (See Feb. 12, 2018 Tr. at 6:19–24) (“THE COURT: . . . the State agreed to allow [Respondent] to plead guilty to *a single misdemeanor count* of statutory misconduct in office in violation of South Carolina Code Annotated Section 8-1-80 *for intentionally failing to report the name of USC*”) (emphasis added); (*id.* at 8:11–14) (“THE COURT: Mr. Quinn, are you guilty of one count of statutory misconduct in office *for intentionally failing to report income from USC, a lobbyist principal.*”) (emphasis added). It is apparent from the record that Respondent was not fully aware of the fact

that by pleading guilty he was submitting himself to a conviction upon the State's Indictment 2017-GS-47-12 for misconduct in office, which included the litany of criminal conduct described in the State's presentation. Had he known that, he may not have pleaded guilty. Further, if this Court should determine that the State's facts were properly before the trial court for sentencing, it would necessarily infer that Respondent did not intelligently plead guilty to the underlying charge.

"The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." McMillian v. State, 383 S.C. 480, 485, 680 S.E.2d 905, 907 (2009) (quoting Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)). Thus, the improper sentencing standard applied by Judge Mullen in this case also implicates the validity of the plea itself. If Respondent pleaded guilty without fully appreciating the nature of the charge, then he could not have pleaded guilty knowingly. The plea agreement provided that Respondent would plea guilty "straight up. . . for Indictment Number 2017-GS-47-12. That's the statutory misconduct in office. . . ." (Dec. 13, 2017 Tr. at 6:19-22). In light of the events that ultimately led to the State's motion to reconsider, it has become evident that the trial court permitted Respondent to plead guilty to a single filing violation, rather than to the State's Indictment Number 2017-GS-47-12. The court failed to have Respondent plea "straight up" to Misconduct in Office and impermissibly gave him a presumption of innocence for the charge to which he was supposed to plead guilty.

Jeopardy generally attaches upon the trial court's acceptance of a guilty plea. State v. Wilkins, 310 S.C. 81, 90, 425 S.E.2d 68, 73 (Ct.App.1992). However, the attachment of jeopardy is not absolute, and where circumstances mitigate in favor of the State's right to a full and fair

opportunity to obtain a conviction, the attachment of jeopardy does not prevent a subsequent proceeding. See, e.g., Arizona v. Washington, 434 U.S. 497, 509, 98 S. Ct. 824, 832, 54 L. Ed. 2d 717 (1978) (rule permitting retrial following a deadlocked jury, “accords recognition to society's interest in giving the prosecution one complete opportunity to convict those who have violated its laws.”); State v. Johnson, 248 S.C. 153, 159, 149 S.E.2d 348, 350 (1966) (citing State v. Howell, 220 S.C. 178, 66 S.E.2d 701 (1951)) (verdict procured by fraud and collusion does not put defendant in jeopardy and is not a bar to subsequent prosecution). In the instant case, the State was denied an opportunity to convict Respondent on the charged offense because the trial court, in effect, exchanged the State’s indictment for a lesser charge.

While the law of double jeopardy places special weight upon an acquittal,¹ the instant case does not carry the finality of an acquittal. United States v. DiFrancesco, 449 U.S. 117, 130, 101 S. Ct. 426, 433, 66 L. Ed. 2d 328 (1980) (while the law attaches particular significance to an acquittal, “the result is definitely otherwise where the trial has not ended in acquittal.”) (citations omitted)). The instant case presents a guilty plea that is based on an erroneous application of the plea agreement and elements of the underlying offense. As a result of this error, the State was denied an opportunity to convict on the underlying charge and the validity of the plea itself is called into doubt because Respondent did not have a full understanding of the plea agreement.

Respondent pleaded guilty under the assumption that his “limited allocution” was the sole set of facts before the trial court for the purpose of sentencing, thus his plea was not intelligently given. Because his plea was not given intelligently and with the knowledge that the State’s facts informed the underlying indictment, the plea is not valid. McMillian, 383 S.C. at 485, 680 S.E.2d

¹ See, e.g., Sanabria v. United States, 437 U.S. 54, 64, 98 S. Ct. 2170, 2179, 57 L. Ed. 2d 43 (1978) (double jeopardy bars retrial after acquittal even if the legal rulings underlying acquittal are erroneous).

at 907. The court accepted the plea on the basis of an insufficient factual basis, and that acceptance of the plea was based on an error of law in that the court only took Respondent's facts under consideration for the factual basis. Respondent's facts were insufficient to meet all of the elements of the underlying crime, and therefore the lower court erred in accepting the plea in the first instance. Under these circumstances, the State has been denied a full and fair opportunity to convict and society's interest in allowing a proper conviction weighs heavily against Respondent's jeopardy claim. To remedy this imbalance, the plea should be invalidated and the case should be remanded for trial.

II. The sentence handed down by the trial court was controlled by an error of law.

With respect to the sentencing issue, Respondent's brief misses the mark. The specific issue in question is whether the trial court committed an error of law by affording Respondent the cloak of innocence to the factual basis of an indictment to which he had just pleaded guilty. (App. Br. at 5). The trial court's indication during the sentencing hearing that she was legally prohibited from considering the State's facts when handing down Respondent's sentence is an error of law. State v. Thomason, 355 S.C. at 285-86, 584 S.E.2d at 147 (citing State v. Gullledge, 326 S.C. at 228, 487 S.E.2d at 594) ("the circuit court may conduct an inquiry broad in scope, largely unlimited either as to the kind of information it may consider or the source from which the information may come, to assist it in determining the sentence to be imposed").

Respondent's brief claims that the court "did consider the State's presentation and said so again and again." (Resp. Br. at 24). However, Respondent thereafter selectively quotes a passage from the sentencing hearing that obviously does not refer to Respondent, but refers to another defendant. (Id.) (quoting Feb. 12, 2018 Tr. at 6:2-5) ("Considering everything before me, the lengthy presentations that were given to me at our hearing on December 13, 2017 on behalf of

both the State and the Defense. . . .”). This citation is misleading at best, as Respondent fails to include the very next phrase which states, “I am sentencing *First Impressions* for one misdemeanor count. . . .” (Feb. 12, 2018 Tr. at 6:5-6.) (emphasis added).

Respondent’s brief goes on to cite statements made by the court during the hearing on the State’s motion to reconsider and in the court’s order denying the same. However, these statements were made after the sentence was handed down and do not change the reasoning given by the court during Respondent’s sentencing. The reasoning given by the court for its sentencing decision—while reading from a prepared script that Judge Mullen took two full months to draft and consider—very clearly indicates her position that the federal and state constitutions mandate Respondent benefit from the presumption of innocence for the charge to which he pleaded guilty:

THE COURT: At the sentencing portion of the hearing the State presented a PowerPoint alleging a theory of political atrocity by Richard Quinn Junior. As far as the Court is concerned he is presumed innocent of those allegations until and unless he is proven guilty.

Now, the United States and the South Carolina Constitution requires no less. Now, the court of public opinion may presume his guilt as to those allegations, but I cannot. If the Solicitor wanted Richard Quinn Junior to be punished for those actions he should have tried him on all counts indicted, or negotiated a different deal. Richard Quinn Junior may be guilty of those charges, but that isn’t the deal that was made and it is not what he plead guilty to.

* * *

Now, for the purpose of sentencing, Mr. Quinn is presumed innocent of all charges except one count of statutory misconduct in office for failing to report rental income from a lobbyist principal.

(Feb 12, 2018 Tr. at 8:19–9:21) (emphasis added).

The State permitted Respondent to plead guilty “as indicted” to a continuing offense ranging from April 1, 2010 through April 15, 2017 for “Misconduct in Office,” CDR Code 0115.

(Sentencing Sheet). The indictment to which he pleaded incorporated the material presented to the State Grand Jury. State v. Gunn, 313 S.C. 124, 130, 437 S.E.2d 75, 78 (1993) (State Grand Jury transcripts of testimony inform the contents of an indictment). That material was then presented to the trial court through the State's presentation. Just as it happens in guilty pleas around the state every day, the State gave the trial court the facts of the charge. However, the trial court permitted Respondent to plea to a fictitious charge.²

The trial court could have taken the State's facts into consideration and given Respondent a harsh sentence, or the trial court could have taken the State's facts into consideration and given Respondent a nominal sentence—this is within her discretion. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). However, the trial court runs afoul of the law when she very clearly indicates that she believed she was Constitutionally forbidden from doing so. Id. (“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”). This issue does not question the reasonability of the sentence handed down, nor does it question whether the trial court found the State's evidence persuasive. Instead, this issue questions the statement by the court that it was constitutionally forbidden from considering the facts given by the State, where Respondent pleaded guilty to an indictment that encompassed those facts, as evidenced by the sentencing sheet signed by Respondent. (Sentencing Sheet).

Finally, Respondent's brief asserts, for the first time, that the State's presentation was beyond the reach of the trial court's consideration due to the provision that “all the materials and information obtained in the investigation. . . are not to be used in any way by the State against

² (See App. Br. at 27; 37-38) (discussing the trial court's repeated, erroneous reference to the charge as “one count of statutory misconduct in office for intentionally failing to report income from USC”). Respondent pleaded guilty to violating Section 8-1-80 of the South Carolina Code of Laws Annotated; he did not plead guilty to a filing violation.

these defendants in exchange for these pleas.” (Dec. 13, 2017 Tr. at 9:18-22). This interpretation is perplexing and untenable in light of the fact that the State provided a copy of the presentation to defense counsel prior to the plea and made very clear that the State would be providing a full discussion of its facts during the plea hearing. The provision of the plea agreement quoted above merely operates to prevent the State from bringing further criminal charges against Respondent and his father related to their involvement in the underlying investigation, which the State has not done.

Plea agreements are governed by contract principles. State v. Miller, 375 S.C. 370, 388, 652 S.E.2d 444, 453 (Ct.App.2007). Respondent’s limited allocution was a material term, and respondent received what he bargained for when he was permitted to accept responsibility for only a small portion of his misdeeds. However, the inclusion of a factual presentation by the State was also a material term of the agreement:

[COUNSEL FOR RESPONDENT]: Number 1: *while we understand Mr. Pascoe’s going to make his argument about a wider range of conduct today, [Respondent and his father] deny every allegation and inference, except what is in their limited factual allocutions that I’ll read in a minute.*

(Dec. 13, 2017 Tr. at 9:12-14) (emphasis added).

[COUNSEL FOR THE STATE]: Also, I’m find with the limited allocution. . . . But you know, of course, what you’ll hear, the Court will get to make a determination on whether it should be held against him or not for not accepting responsibility for other acts, which the State intends to go into today.

(Id. at 11:25–12:6).

Respondent did not, at any point, object to the State’s presentation of facts or indicate any disagreement with the statement of the terms of the plea agreement by the State. The plea agreement did not limit the State’s use of evidence contained in the PowerPoint presentation during the plea hearing. To the extent Respondent now seeks to claim that it does, that argument

is inaccurate, and even if true was waived by Respondent's express recognition that the terms of the agreement include a presentation by the State of a wider range of conduct than the limited allocution. Id. at 9:12-14; T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 398, 450 S.E.2d 87, 93 (Ct.App.1994).

As discussed above, and in the Initial Brief of Appellant, the plea agreement provided that Respondent was "pleading straight up and with the knowledge that the State is asking for prison time for Indictment Number 2017-GS-47-12. That's the statutory misconduct in office, your Honor." (Dec. 13, 2017 Tr. at 6:19-22). That indictment contemplates a seven-year span of conduct that goes well beyond Respondent's limited allocution. The agreement permitted Respondent to accept responsibility for only a limited factual scenario as long as those facts constituted Statutory Misconduct in Office. The agreement also provided that the State would be presenting a lengthier set of facts that support the indictment. The question presented by this issue on appeal are (1) whether the trial court committed an error of law by determining that Respondent enjoyed the Constitutional protection of the presumption of innocence with respect to the facts provided by the State informing the indictment to which Respondent had pleaded guilty, and (2) whether Respondent admits to misconduct in office at all in the totality of his allocution.

III. The totality of conduct by the trial court demonstrates a lack of impartiality.

Recusal is necessary in circumstances in which the court's impartiality might be questioned. State v. Cheatham, 349 S.C. 101, 111, 561 S.E.2d 618, 623 (Ct.App.2002) (citing Parker v. Shecut, 340 S.C. 460, 531 S.E.2d 546 (Ct.App.2000), *rev'd on other grounds*, 349 S.C. 226, 562 S.E.2d 620 (2002)) ("It is well settled judges should recuse themselves where questions of impartiality or impropriety are raised."). The rules concerning *ex parte* communications not

only guard against indiscretion, but also “strive[] to eliminate the appearance of impropriety.” Burgess v. Stern, 311 S.C. 326, 330, 428 S.E.2d 880, 883 (1993). However, on appeal, the movant must demonstrate some evidence of bias or prejudice. Cheatham, 349 S.C. at 111, 561 S.E.2d at 624 (quoting Parker, 340 S.C. at 497, 531 S.E.2d at 566). The State’s initial brief offers numerous examples of conduct by the trial court that not only raise the appearance of impropriety, but also evidence bias against the State throughout the litigation of Respondent’s case. (App. Br. at 39-45).

Respondent’s dismissive and conclusory approach to the recusal issue diminishes the great importance of the public’s faith in the absolute impartiality of the judges who preside over this State’s judicial system. The public’s faith that all convicted criminal defendants shall receive equal treatment by the court is particularly important in cases stemming from a broad statewide corruption probe that has revealed the efforts of Respondent and his family to infect every branch of our state government for their own personal gain.

Respondent’s brief focuses primarily on the *ex parte* discussion that occurred immediately prior to the guilty plea and asserts that the State’s consent to *ex parte* discussions the afternoon of the hearing “dooms its claim.” (Resp. Br. at 30). The State has clearly explained the issue regarding the timing of *ex parte* consent both during the February 28, 2018 Motion to Reconsider hearing and in the State’s initial brief,³ yet Respondent continues to fixate on the State’s consent the day of the hearing. The State did consent to *ex parte* discussions during the plea hearing; the State did *not* consent to *ex parte* discussions while in Beaufort prior to the plea. The State’s concern here is that the court indicated on a telephone call *the day before the plea hearing* that consent had been given in Beaufort. Thus, the issue is not whether consent was

³ See (Feb. 28, 2018 Tr. at 46:18–47:14); (App. Br. at 41-43).

given, it is *when* was it given (i.e., during a meeting in Beaufort at which the State was not present) and what was the substance of discussions between the court and defense counsel. (See App. Br. at 41-42). The mediation of the plea agreement and the consent given the day of the plea are simply not the point of this issue. More importantly, to date, the Court still has not relayed the substance discussions with defense counsel in *ex parte* conversations that took place prior to the State's consent. See Canon 3(B)(7)(a), CJC, Rule 501, SCACR.

Beyond the issue regarding *ex parte* discussions, the State's initial brief details other examples of conduct throughout Respondent's case which, taken as a whole, demonstrate a bias against the State. For example, the court's statement in chambers before the plea hearing to "go light on the facts," which was made in the presence of counsel. Irrespective the fact that the State was afforded all of the time it required to make a full presentation of the facts, the mere request by the court to curtail the presentation of the State's facts in a guilty plea—viewed in combination with other conduct by the court and the fact that the State is uninformed about the substance of *ex parte* discussions with defense counsel that occurred prior to the day of the plea hearing—raises the specter of impartiality. As another example, the comments by Judge Mullen's assigned court reporter raise a strong inference of personal bias within Judge Mullen's chambers against the State. These and the other examples in the State's initial brief call into question Judge Mullen's impartiality and evidence a bias against the State.⁴

⁴ Recently, Judge Mullen granted an appeal bond to James Harrison, another defendant in the underlying State Grand Jury investigation, who had been convicted by a jury of misconduct in office and perjury. While not part of the record in the instant appeal, this extraordinary display of mercy to defendant convicted of perjury and corruption only serves to bolster the State's concerns. The State also received information after the Harrison trial that the judge was employed as a staff attorney at the State House while Respondent was a member. A fact never disclosed by the court.

The appearance of complete impartiality is imperative for a judge who sits as “a highly visible symbol of government under the rule of law.” Preamble, CJC, Rule 501, SCACR. This is particularly true in a high-profile political corruption case. The totality of events throughout this case have shaken the State’s faith in the impartiality of the trial court. Therefore, it is incumbent upon the State to raise the issue of recusal to ensure the continued faith of the public in the fair and impartial administration of justice. The State respectfully submits that events described evidence a bias in favor of Respondent by the trial court for which this Court should order Judge Mullen recused from further involvement in Respondent’s case.

Conclusion

This Court should reverse the trial court’s Order Denying the State’s Motion to Reconsider and hold that the guilty plea taken by the trial court was founded upon an error of law due to the lack of sufficient factual basis. The plea should be invalidated and the case should be remanded for trial. Should this Court decline to invalidate the guilty plea, the Court should determine that the trial court’s sentence was controlled by an error of law and remand the case for resentencing. Finally, because the actions of the trial court demonstrate a lack of impartiality and a bias against the State, the Court should recuse Judge Mullen from any further involvement in Respondent’s case.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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ATTORNEYS FOR APPELLANT

December 27, 2018
Orangeburg, South Carolina.

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

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SC Court of Appeals

The State.....Appellant

v.

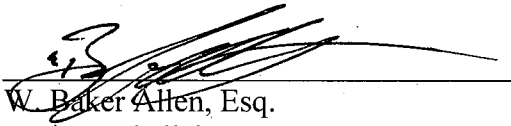
Richard M. Quinn, Jr.....Respondent

APPELLATE CASE NO. 2018-000494

PROOF OF SERVICE

I, W. Baker Allen, certify that I have served the Appellant's Initial Reply Brief upon Respondent on December 27, 2018 by depositing a copy of the same in United States mail, first class, postage prepaid, addressed to his attorney of record at:

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