

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2013-GS-26-05243
Appellate Case No. 2016-001385

RECEIVED
APR 05 2019
SC Court of Appeals

State of South Carolina Respondent,

v.

Heather Elizabeth Sims Appellant.

PETITION FOR BAIL AND APPEAL BOND

Pursuant to Rule 240 (motions and petitions) and Rule 246 (stays in criminal cases) of the South Carolina Appellate Court Rules, Heather Sims respectfully requests this Court admit her to bail while she awaits this Court's issuance of the remittitur or the Supreme Court's decision if a petition for writ of certiorari is filed.

Heather believes the circumstances warrant her release on bail. The factors like probability of reversal and likelihood of re-offense are analyzed below, however, the key reason for this request is Heather's desire to return to her young son as soon as possible. As the Court knows, Heather was convicted of voluntary manslaughter for shooting her husband after he assaulted her. Their son has been raised by Heather's parents since her conviction. Respectfully, there is no good reason to keep Heather in prison or prolong her separation from her child now that this Court has reversed.

Abbreviated Factual Background

This Court is, of course, aware of the case's background given the Court's recent review of the merits. Briefly, Heather was convicted of voluntary manslaughter for the shooting of her husband in their home. She claimed her husband attacked her with a knife and that she acted in self-defense.

The State claimed the killing was murder and that Heather's story about being attacked was untrue. (R.pp.1593-1624) (the State's closing argument). The jury disagreed, acquitting Heather of murder but convicting her of voluntary manslaughter. (R.p.3) (verdict form).

The trial court sentenced Heather to twenty-five years imprisonment but suspended that sentence to 10 years prison and 5 years of probation. (R.p.1699, lines 13-15). The length of the sentence affects a particular statute on bail, as outlined below.

This case has taken an inordinate amount of time to move through the court system.

The shooting occurred in August of 2013, when the couple's son was about four months old. (R.p.1340, line 11) (the son's birthday is in March of 2013). Heather was not tried until November of 2015, over two years later. (R.p.15) (start of trial transcript). The trial court did not deny Heather's motion for a new trial until June of 2016; six months after the trial. (R.p.4).

Heather's son recently turned six years old. He was roughly two-and-half when Heather was convicted and began serving her sentence.

Authority to Grant Bail

This motion for an appeal bond is properly made in this Court because this Court retains jurisdiction over the case until the Supreme Court grants or denies a petition for a writ of certiorari. *In re Michael H.*, 360 S.C. 540, 552, 602 S.E.2d 729, 735 (2004).

This Court may grant bail in any case. *State v. Whitener*, 225 S.C. 244, 248, 81 S.E.2d 784, 786 (1954). A statute says bail is not allowed on a sentence of more than ten years in prison, see S.C. Code Ann. § 18-1-90, but that statute conflicts with the Constitution’s grant of the power to issue extraordinary writs, including “the inherent power to set bond[.]” *Whitener*, 225 S.C. at 248, 81 S.E.2d at 786. This Court has the same authority. S.C. Code Ann. § 14-8-200(a).

The statutory ban on bail applies because Heather’s original sentence of confinement for 25 years is no less a sentence even though it was suspended. *State v. Gibbs*, 353 S.C. 226, 228, 577 S.E.2d 454, 455 (2003). *Whitener* nevertheless applies as well; meaning, this Court may grant bail.

The purpose of bail:

is to relieve the accused of imprisonment, and the state of the burden of keeping him, pending the trial (or pending appeal), and at the same time, to put the accused as much under the power of the court as if he were in the custody of the proper officer, and to secure the appearance of the accused so as to answer the call of the court and do what the law may require of him.

Id. at 229, 577 S.E.2d at 456. A bond “relieves the State of the cost of supervising the [defendant], perhaps unnecessarily, during the appeal process.” *Id.* at 229, 577 S.E.2d at 456. It also “allow[s] the defendant to go free during the pendency of his appeal while assuring his presence upon affirmance of his conviction.” *State v. Workman*, 274 S.C. 341, 343, 263 S.E.2d 865, 866 (1980).

In deciding whether to grant an appeal bond, the Court considers:

[1] the existence of the probability of a reversal, [2] the enormity of the charge, [3] the danger that if freed the accused will commit a crime of like character, [4] the probability of a forfeiture of the bail and escape, [and] [5] the character and reputation of the accused and his surrounding circumstances, such as his recent convictions, if any, of other or similar offenses, as well as his personal attitude toward society and government.

Nichols v. Patterson, 202 S.C. 352, 356, 25 S.E.2d 155, 156 (1943).

(1) The Probability of a Reversal

An appellate court should not allow bail if the record shows that the alleged errors are frivolous, the appeal is taken merely for delay, or where there is no reasonable ground or probable cause for the appeal. *Id.* at 355-56, 25 S.E.2d at 156.

Here, however, this Court has already determined the appeal has more than a reasonable ground; it has a winning ground. That decision is, of course, subject to the Supreme Court's discretionary review. Nevertheless, this Court's reversal illustrates that the appeal is not taken for the purpose of delay.

This Court's decision is also sound. Heather claimed self-defense. The State claimed Heather's story was a complete fabrication and that the killing was a cold-blooded murder. Nobody endeavored to present evidence of voluntary manslaughter or argued a voluntary manslaughter case to the jury. This Court correctly held voluntary manslaughter should not have been charged.

(2) The Enormity of the Charge

Heather was indicted for murder. (R.p.2). The jury acquitted her of that charge but convicted her of voluntary manslaughter. (R.p.3).

There is no question voluntary manslaughter is serious. Still, no authority suggests it is so serious that it counts against granting a bond. Heather was on bond the entire time between her arrest in August of 2013 and her trial more than two years later. (R.p.699, line 22 - p.700, line 19).

(3) The Danger That the Accused Will Commit a Crime of like Character

Nothing suggests there is a danger that Heather will commit a crime of like character if granted bail. She has no criminal history whatsoever.

(4) The Probability of a Forfeiture and Escape

There is no probability that an appeal bond would be forfeited and that Heather would try to evade the court's jurisdiction while out on bond. She grew up in Horry County and returned there after graduating from nursing school. (R.p.1322-1323). At the time of this incident she was gainfully employed as a nurse anesthetist at a hospital near her home. *Id.*

Heather's family resides in the court's jurisdiction and she owns property in the court's jurisdiction. Heather and her deceased husband had a home constructed on land given to Heather by her grandfather. (R.p.1336, line 23 - p.1337, line 2). Heather's parents live next door. (R.p.1466, lines 9-11).

(5) The Character and Reputation of the Accused and His Surrounding Circumstances, Including Recent Convictions of Other or Similar Offenses, as Well as His Personal Attitude Toward Society and Government.

Nothing suggests Heather's character and reputation count against granting her a bond. For the majority of Heather's incarceration she has worked as a teacher's assistant at the high school on the campus of the facility where she is housed. The retired principal of that high school sent a letter supporting Heather's character and work ethic. **Attachment A.** Heather also provided—at the request of counsel—a list of her constructive activities during her incarceration. **Attachment B.** Nothing suggests she has been anything other than a model inmate, if not an exceptional one, and nothing suggests her character or her attitude toward government cut against granting a bond.

**

The circumstances of this case are heartbreaking for all involved. David Sims' death is unquestionably a tragedy. Nothing in this petition should be interpreted as overlooking or diminishing that tragedy.

And while the State has the right to ask the Supreme Court to review this Court's decision, the fact remains that the conviction *has* been reversed. There will be no way to compensate for the additional time spent in prison between now and the time the case is remitted if certiorari is not sought, if certiorari is denied, or if certiorari is granted and this Court is affirmed.

Finally, this Court's decision is sound. There is no evidence Heather lost control of her actions and shot her husband because she had an irresistible urge to do violence. He had a knife, he cut her, and he threatened her. She warned him to stop because she was scared but *he did not stop*. She then shot one time, killing him as he came at her. Other than the State's theory that the killing was murder, that is the only narrative with any evidentiary support. That narrative does not support a charge on voluntary manslaughter.

CONCLUSION

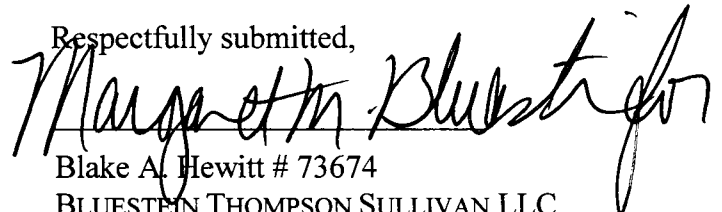
For the foregoing reasons, Heather Sims requests that the Court exercise its discretion to grant her an appeal bond.

April 25, 2019

L. Morgan Martin # 3667
LAW OFFICES OF L. MORGAN MARTIN

B. Alex Hyman # 75416
THE HYMAN LAW GROUP

Respectfully submitted,



Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Appellant

Attachment A

From the Desk of Dr. Pamela Thomas

September 15, 2018

Dear Attorney for Heather Sims:

I previously served as the principal for Sara A. Babb School at the Camille Griffin Graham Correctional Facility. I am writing this letter on behalf of Heather Sims regarding her character and work ethic. Ms. Sims worked as a teacher assistant under my tutelage. Selected based on her advanced academic ability and her willingness to help other inmates, she transitioned into the teacher assistant position and exemplified positive character and superior work ethics.

Ms. Sims showed extraordinary self-initiative, resourcefulness, dependability, and trustworthiness. Through her self-initiative and resourcefulness efforts, she completed assignments and projects without constant direction from the supervising school staff. For example, Ms. Sims made charts, signs, lists and the like that helped to streamline our school operations for daily procedures and during more specific events as school-wide testing.

The school staff showed comfort in assigning student inmates for Ms. Sims to tutor because of her initiative and availability to work around schedules and qualifying events. Furthermore, she showed innovative skills in varied instructional grouping such as one-one-one and small group tutoring. During these tutoring sessions, she illustrated concepts in abstract and concrete ways for ultimate comprehension. She used advanced techniques that built confidence in student inmates who were often unmotivated and oppressed. However, her unique appeal helped many student inmates to attain their academic goal. Often, Ms. Sims instituted instructional strategies during the final phases for student inmates to earn a credential such as a GED.

Finally, I observed Ms. Sims exhibit trustworthy traits as she served as a teacher assistant in working with school staff and student inmates. She showed dependability by giving accurate information in planning and instituting school events. Furthermore, she presented accurate evidence and data regarding student inmate academic needs and progress towards goal completion.

Ms. Sims worked in support of the school operations and assisted us in streamlining operations to best suit the needs of the population. Most importantly, she served the student inmates and motivated them to higher learning. As the former principal, I write this letter with confidence and poise regarding Heather Sims.

Sincerely,



Pamela Thomas, PhD
Retired Principal

Attachment B

March 25, 2019

Blake,

Here is a list of things that I have done while my incarceration from when I got out of receiving (February 2016) til now:

- Held a job position as a Teacher's Assistant for the entire incarceration (3.5 years)
- Taught GED Math to students as well as teachers who were not proficient in the subject
- Taught my own Fast Track WorkKeys Class
- Single handedly coordinated getting numerous people into school who staff members didn't think had enough time to get their GED. I created a schedule and deadlines as to when they had to complete steps so that they could finish their GED before they were released.
- Assisted the guidance counselor and principal in organizing and implementing the waiting list, folders and testing.
- Obtained my WorkKeys and received a Gold in Locating, and Platinums in Reading and Math
- Obtained On the Job Training Certificates in Teacher's Aide I, II and III
- Developed hand written study guides in GED Math that are now used at other mens institutions and has helped several inmates at other institutions pass their Math portion of their GED.
- Assisted with 60 inmates obtaining their GED to date.
- Intervened and helped 3 inmates where were choking, passing out and having an airway obstruction following a seizure. Medical is very slow on our compound, and by the time they arrived, I had corrected the problem.
- Interviewed on the news stations to speak about programs here at Camille Graham such as "A Mother's Voice."
- Converted a Satanist to Christianity, as well as leading 3 other inmates to Christ.
- Helped several inmates create resumes, perform college searches and write parole letters.
- Bible Studies/Groups:
 - Spiritual Warfare Bible Study
 - Bill Glass Bible Study
 - Prison Fellowship Bible Study
 - CIU Bible Study
 - Celebrate Recovery
 - Hannah's Gift (for parents)
 - Stress Management
 - SisterCare Group
 - Dog Training Certificate

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Petition for Bail and Appeal Bond* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

William F. Schumacher, IV
Alan M. Wilson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211



Erin Bridges

April 25, 2019

April 25, 2019

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

APR 25 2019

SC Court of Appeals

RE: State v. Heather Sims
Case Tracking No.: 2016-001385

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Petition for Bail and Appeal Bond* in reference to this case. I have also enclosed a proof of service of this document upon counsel for Respondent. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Erin Bridges

Paralegal to Blake A. Hewitt

Bluestein Thompson Sullivan, LLC

/emb

Enclosures

cc: William F. Schumacher, IV, Esquire
Jimmy A. Richardson, II, Esquire