

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED
MAY 06 2019
SC Court of Appeals

Appellate Case No. 2016-001385

THE STATE,RESPONDENT,

v.

HEATHER ELIZABETH SIMS,APPELLANT.

RETURN TO PETITION FOR APPEAL BOND

The State of South Carolina respectfully submits the following return to the petition for appeal bond, served on April 25, 2019, and received by the State on April 29, 2019:

1. Petitioner Heather Sims is currently incarcerated with the South Carolina Department of Corrections for a term of twenty-five years' incarceration, suspended to ten years' of active service and five years' probation following her conviction for voluntary manslaughter in Horry County.
2. Following her conviction, Sims appealed, arguing the jury improperly found her guilty of voluntary manslaughter because no evidence supporting such a conviction was presented at trial. The South Carolina Court of Appeals agreed and reversed Sims's conviction and

sentence. State v. Sims, Op. No. 5631 (S.C. Ct. App. filed February 27, 2019) (Shearouse Adv. Sh. No. 9 at 109).

3. On March 14, 2019, the State filed a petition for rehearing of the case, arguing:
 - a. This Court, by viewing the evidence in the light most favorable to Sims, applied the incorrect standard of review to the case.
 - b. The Courts opinion ignored much of the evidence presented at trial, including Sims's own inconsistent statements to law enforcement officers which described voluntary manslaughter scenarios.
 - c. The Court improperly found the State could not retry Petitioner for involuntary manslaughter, because the jury, which could not have reached a verdict on involuntary manslaughter due to reaching a verdict on voluntary manslaughter, did not acquit Petitioner of that charge.
4. After requesting a return from Sims, the Court of Appeals denied the motion through an order filed April 19, 2019.
5. In her petition, Sims argues an appeal bond is appropriate pursuant to the factors set forth in Nichols¹, because:
 - a. The Court of Appeals found there was no evidence of voluntary manslaughter presented at trial, and review of the case by the Supreme Court is in that Court's discretion.

¹ When deciding whether to grant an appeal bond, our courts consider:

[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).

- b. Voluntary manslaughter is serious, but “no authority suggests it is so serious that it counts against granting a bond.
 - c. “Nothing suggests there is a danger that Heather will commit a crime of like character if granted bail.”
 - d. “There is no probability that an appeal bond would be forfeited and that [Sims] would try to evade the court’s jurisdiction while out on bond” because she grew up in Horry County and lived there throughout most of her life.
 - e. “Nothing suggests Sims’s character and reputation count against granting her a bond”; “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.”
6. On May 3, 2019, the Court of Appeals issued an order demanding “[t]he South Carolina Department of corrections . . . immediately process [Sims]’s release.” Notably, this order did not reference an appeal bond or place any restrictions on Sims’s release. Further, the order was issued eight days after Sims’s appellate counsel mailed the appeal to the Court of Appeals and the State, and only four days after it was actually received by the latter. Pursuant to Rule 240(e), SCACR, any party opposing a motion has ten days from the date of service thereof to file a return to such a motion. A court may, in its discretion, enlarge or limit the time for filing that return, but the State was not informed of any such decision.
7. Following the State’s receipt of said order, it filed emergency motions to vacate the order for Sims’s release in both the Court of Appeals and Supreme Court. The order filed in the Supreme Court also requested that court assume original jurisdiction of the matter pursuant to Rule 245(a), SCACR.

8. By way of this return, the State argues the following facts and considerations should weigh against granting the release of Sims.

The Probability of Reversal

Sims claims an appeal bond should be granted because the Court of Appeals correctly found no evidence of self-defense was presented to the trial judge. However, as noted by the State in its petition for rehearing, the Court of Appeals ruling was incorrect for several reasons. First and foremost, the Court of Appeals applied an incorrect standard of review in its opinion: it reviewed the evidence in the light most favorable to Sims, despite the fact that Sims was the party who objected to the charges of voluntary and involuntary manslaughter. Then, applying this standard, the Court focused its opinion on Sims's own self-serving trial testimony and ignoring the inconsistent and outright incorrect statements she made in her 9-1-1 call and in her police interview hours after the shooting.

Further, it is possible that the Supreme Court grant certiorari and reverse the Court of Appeals' decision as to the State's ability to retry Sims on the charge of involuntary manslaughter.

The Enormity of the Charge

Voluntary manslaughter is one of the most serious crimes a person may be charged with. Further, the State originally charged Sims with murder and provided evidence of such a trial. While the State agrees the enormity of the charge, by itself, is not dispositive of the propriety of an appeal bond, the seriousness of her charges should weigh against a decision to release her from custody.

The Danger that the Accused Will Commit a Crime of Like Character

Certainly, the State acknowledges it seems unlikely that Sims would be placed into position, while on bail, in which she would commit another voluntary manslaughter. However, a jury panel of twelve disinterested individuals listened to the evidence presented for and against Sims's guilt and found her guilty of voluntary manslaughter. By finding her guilty of such a crime, the jury implicitly found Sims capable of extreme violence upon provocation. If twelve unbiased jurors could reach this conclusion after hearing the evidence, including Sims's testimony, first-hand, the Court of Appeals should not discount that possibility that Sims could commit other violent crimes upon release.

The Probability of Forfeiture and Escape

Sims claims there is "no probability" her appeal bond would be forfeited and she would try to evade the court's jurisdiction while out on bond. This bold proclamation ignores the facts of Sims's situation: Sims began her incarceration on November 16, 2015. Heather still has the majority of her sentence to serve. Further, any misbehavior while serving her five year probation could lead to her serving a full twenty-five year sentence. If it appears the Supreme Court will reinstate her conviction, Sims has strong motivation to escape the jurisdiction. Plus, due to her prior employment as a nurse anesthetist, she likely has the financial resources to attempt such an escape.

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

In her petition for an appeal bond, Sims argues "nothing suggests she has been anything other than a model inmate, if not an exceptional one" or that her character and reputation should count against granting her an appeal bond. While such a statement may have been true at the

time the petition was filed, it is not true at this point. It has come to the State's attention that Sims has been disciplined. While the exact nature of such infraction has not been placed on her record yet, her online records do indicate that she was moved to a disciplinary unit at the Graham facility and that she was terminated from her position as a teacher's aide as a result. (Attachment A). The State believes this demonstrates Sims prior behavior while incarceration was a façade, one she dropped the moment she believed she would be released from prison.

Further, Sims's reputation for dishonesty is evident in the record of this case. Appellant's representation of the events surrounding the shooting changed among the several times she recalled the events. The story she provided to the 9-1-1 operator and in her police interview were significantly different than her testimony at trial. Unsurprisingly, her trial testimony was what painted her actions in the most beneficial light. The State also presented evidence that the crime scene was manipulated after the shooting. In addition to forensic evidence presented by the State, Sims admitted to police that she "probably" moved the knife and that she moved his body. Regardless, her recent misbehavior and documented misrepresentations indicate that Sims is dishonest and could easily disregard any conditional release.

Other Considerations

As noted Sims, her condition has been reversed by the Court of Appeals. If the Supreme Court denies certiorari, her release from prison is all but assured. It is the State's opinion that Sims is attempting to obtain immediate release because she recognizes the very real possibility the Supreme Court grants certiorari in this matter.

Finally, it is critical that this Court, before granting an appeal bond, consider the wishes of the victim's family members, who are themselves victims of this terrible shooting. In their letters (Attachments B and C), the family members have noted numerous concerns with Sims's

behavior, including her unwillingness to allow for a paternity test of her and victim's soon. Despite her 2015 conviction, she has resisted a non-invasive paternity process well into the appellate process.

Without question, Sims's release would place a great strain upon victim's family members. The State requests the Court of Appeals withhold granting an appeal bond and order Sims's release only after final resolution of this case.

ALAN WILSON
Attorney General

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BY: 

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ATTORNEYS FOR RESPONDENT

May 6, 2019

Attachment A

INMATE SEARCH DETAIL REPORT

SIMS, HEATHER ELIZABETH (00366198)



INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	FEMALE	SCDC ID:	00366198
RACE:	WHITE	SID:	SC02117755
HEIGHT:	5' 08"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	176 lbs.	ADMISSION DATE:	11/25/2015
AGE:	37	LOCATION:	GRAHAM R&E
CITIZENSHIP:	CITIZEN - NATIVE BORN	DORM-ROOM-BUNK:	CRE-1214-B
BUILD:	MEDIUM	EWC LEVEL:	
COMPLEXION:	FAIR	EEC LEVEL:	
HAIR COLOR:	BROWN	PROJECTED RELEASE DATE:	05/25/2024
EYE COLOR:	BROWN	PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
PICTURE DATE:	11/25/2015	SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
VOLUNTARY MANSLAUGHTER	ADULT-STRAIGHT SENTENCE	10	0	0	HORRY	11/16/2015	V	4	13GS26-05243	ACTIVE

ESCAPES

NO ESCAPES DURING CURRENT INCARCERATION

DISCIPLINARY SANCTIONS SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

NO DISCIPLINARIES DURING CURRENT INCARCERATION

MOVEMENT

MOVEMENT DATE	TO LOCATION	STATUS	REASON
04/29/2019	GRAHAM R&E	INCARCERATED	DISCIPLINARY
09/18/2018	GRAHAM	INCARCERATED	ADMINISTRATIVE
09/18/2018	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/14/2017	GRAHAM	INCARCERATED	ADMINISTRATIVE
09/14/2017	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
06/19/2017	GRAHAM	INCARCERATED	ADMINISTRATIVE
06/19/2017	LEXINGTON CO	AUTH ABSENCE (AWL)	MEDICAL
01/28/2016	GRAHAM	INCARCERATED	ADMINISTRATIVE
12/16/2015	GRAHAM R&E	INCARCERATED	RETURN FROM COURT
12/16/2015	ANDERSON CO	AUTH ABSENCE (AWL)	TO COURT
11/25/2015	GRAHAM R&E	INCARCERATED	NEW ADMISSION

EARNED WORK CREDITS

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
TEACHER AIDE	05/20/2016	04/29/2019	DISCIPLINARY/LOCK-UP	2F5
TEACHER AIDE	02/02/2016	05/19/2016	MI ELIGIBLE FOR LEVEL 2	3F5

EARNED EDUCATION CREDITS

NO EARNED EDUCATION CREDITS DURING CURRENT INCARCERATION

Attachment B

May 3, 2019

To The Court

Re: Appeal Bond for Heather Sims

We have been asked to write this letter concerning the request for parole by Heather Sims. We are the parents of David, our only son, who was killed by this defendant. We have one daughter, Destiny.

First of all, we are of the opinion that she should be given no consideration at all as she premeditatedly planned and killed our son then attempted to blame him for her crime by fabricating his trying to stab her. We know our son would never stab anyone or hurt anyone especially his wife and the mother of his child. Dr. Werner Spitz, as an expert witness, testified that the wounds on her were self-inflicted in an attempt to make it look like David had done it.

The day before the murder our son was at our home in Florence and let us know that the relationship with Heather was such that he needed to come back and live with us. He and Heather and the child lived in Conway. She killed him the very next day as he was packing to move home.

The last witness the state was going to put up was me, his mother, and I was prepared to say that as a result of his visit with us the day before she shot him, I was preparing his room upstairs in our house for him to come live with us. For some reason the state decided to rest without my testimony. The jury came out at one point and asked for the definitions of murder and manslaughter to be given to them again indicating they were considering murder.

Heather had stayed on him continuously through text messages which were introduced at the trial to take out a life insurance policy shortly before she killed him payable to her for \$750,000.00. He only paid two premiums, one at time of application and one was drafted from his bank account.

We believe it is very significant the fact that Heather is afraid to have a paternity test performed which we have been attempting to get for almost three years.

We were told by a Guardian ad Litem that she was required during one of our few visitation periods to be careful and not allow the child out of her sight for fear we would obtain evidence to get a paternity test done. We were always suspicious why she would intentionally kill the loving father of her child if, in fact, it really was David Jr.'s. That raised our concern as to why she would be so afraid of a simple, noninvasive paternity test. She has fought hard and spent thousands of dollars on attorney's fees fighting a simple paternity test and succeeded in her goal of delaying the test until the appellate court heard her case. We can only assume she either knows it is not David's child or is unsure and is afraid the appellate justices would learn the

results of a test that may indicate that the child is not David's. The delays in attempting to get this test have been unbelievable, months between simple motions etc. and numerous attorneys.

Just this week we got notice that Heather had committed some violation in prison and has been put in lockup. This seems contrary to the glowing picture she presents in her motion for bond and we hope the details of this are discovered and considered before any further decisions are made pertaining to Heather Sims.

Since we lost our only son, there are no words to describe how our lives have forever changed. Our hearts ache with each breath we take. We will never be able to see him again on this earth. The one and only thing that keeps us going is that we know he is in heaven and that one day we will see him again.

Heather has never in any way expressed or shown any remorse.

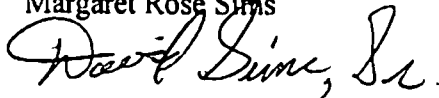
We do not feel safe in her being released from prison, as she has already taken one life.

We are asking the court to deny the appeal bond.

Respectfully,



Margaret Rose Sims



David Sims, Sr.

Attachment C

May 3, 2019

To The Court

Re: Appeal Bond for Heather Sims

- Heather Sims shot and killed her husband David Sims on 8/11/13.
- Heather had demanded David take out a life insurance policy in the amount of (\$750,000) just weeks prior to killing him. He had only made two payments on the policy. All of this was confirmed in the trial through text messages and the life insurance company.
- A Stand Your Ground Hearing was held before Judge Maddox. It was determined this was NOT self-defense and, therefore, would go to a jury trial.
- Jury trial took place in November 2015. A jury of her peers found her GUILTY. They had the option of not guilty, however, after all the evidence was presented they determined she was GUILTY, that she deliberately killed David.
- Judge sentenced her to 25 years, reduced to 10 years and 5 years probation, a small price to pay for taking a life.
- Currently she is in disciplinary lock up in prison.

This alleged technicality over whether it was appropriate for a charge of Voluntary manslaughter is just that, a legal technicality that the defense and the state are disputing. We understand that the State is going to ask the Supreme Court to reconsider this case. We only want Justice for David, as he has no voice now. Heather needs to remain in custody until such time. She has taken a life and been found guilty, I am not sure what other evidence should be needed to keep her in prison.

August 11, 2013 changed our lives forever. Her selfish decision to kill David has ruined many lives. She took my brother, my best friend. She took my parents only son. She took my child's uncle. Not a day goes by that this ordeal does not impact our lives. She has never had consequences in her life and she thought her father could once again pay her way out of this mess. No matter what we do, we can never bring David back to be here on this earth with us.

We would feel very uneasy with her being released from prison, as she has already taken one life and has never shown or expressed any remorse in any way.

We ask the court to deny this appeal bond.

Respectfully,

Destiny Studzinski (sister)

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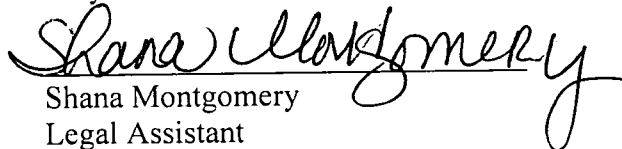
HEATHER ELIZABETH SIMS,APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Respondent's Return to Petition for An Appeal Bond on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Blake A. Hewitt, Esquire
Bluestein, Thompson, Sullivan LLC
Post Office Box 7965
Columbia, SC 29202

I further certify that all parties required by Rule to be served have been served this 6th day of May, 2018.



Shana Montgomery
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