

The Supreme Court of South Carolina

The State, Petitioner,

v.

Heather Elizabeth Sims, Respondent.

Appellate Case No. 2019-000737

ORDER

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SC Court of Appeals

Respondent's conviction for voluntary manslaughter was reversed by the court of appeals,¹ and the State's petition for rehearing was denied on April 19, 2019. On April 25, 2019, Respondent served and filed a motion for bail and appeal bond. Prior to the expiration of time for the State to file a return to the motion,² the court of appeals issued an order requiring the South Carolina Department of Corrections to immediately process Respondent's release because a new trial is precluded by the Double Jeopardy Clause.

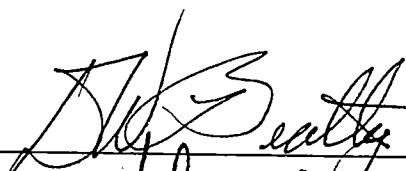
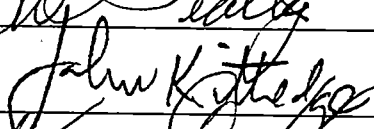
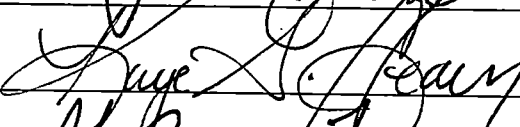
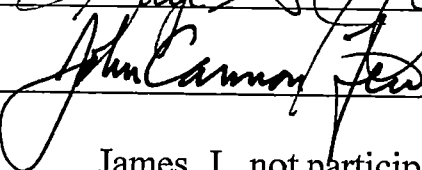
The State has filed an emergency motion in this Court's original jurisdiction asking the Court to vacate the order of the court of appeals ordering Respondent's release, stay the proceedings, and stay any order concerning an appeal bond pending the State's submission of a return to the motion. The State argues the time for filing its return to the motion for bail or appeal bond had not expired when the court of appeals issued its order. In addition, the State notes Respondent did not ask the court of appeals to release her from custody unconditionally, but merely requested she be released on bail pending appeal. Finally, the State indicates it intends to petition this Court for a writ of certiorari to review the decision of the court of appeals. By order dated May 3, 2019, the court of appeals' decision ordering Respondent's release was stayed pending consideration by the full Court.

The State's petition for a writ of certiorari to review the decision of the court of appeals is not due until May 20, 2019. *See* Rule 242(c), SCACR (a petition for

¹ *State v. Sims*, Op. No. 5631 (S.C. Ct. App. filed Feb. 27, 2019).

² *See* Rule 240(e), SCACR (a party opposing a motion shall have ten days from the date of service to serve and file a return to the motion).

writ of certiorari shall be served and filed within thirty days after the petition for rehearing is finally decided by the court of appeals). Because the time for the State to seek a writ of certiorari has not yet expired, the court of appeals' decision is not yet final, and the court of appeals erroneously gave effect to its decision reversing Respondent's conviction when it ordered Respondent's unconditional release from custody. Cf. Rule 221(b), SCACR (the court of appeals shall not send the remittitur to the lower court until the time to petition for a writ of certiorari under Rule 242(c) has expired). Accordingly, the order of the court of appeals ordering the immediate release of Respondent is vacated without prejudice to any decision by the court of appeals to reconsider Respondent's motion for bail and appeal bond after reviewing the State's return to the motion. All other relief requested by the State is denied as moot.


_____ C.J.

_____ J.

_____ J.

_____ J.
James, J., not participating

Columbia, South Carolina

May 13, 2019

cc:
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The Honorable J. Cordell Maddox, Jr.
South Carolina Department of Corrections
The Honorable Jenny Abbott Kitchings

The Supreme Court of South Carolina

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