IN THE
SUPREME COURT OF SOUTH CAROLINA

Appeal from the Court of General Sessions
State Grand Jury

Carmen T. Mullen, Circuit Judge

Appellate Case No. 2018-000494

The State,..... Appellant,

v.

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

Respondent's Motion to Certify Case for Review And Motion to Dismiss the Appeal

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INTRODUCTION

Respondent Richard M. "Rick" Quinn, Jr., respectfully requests this Court to certify this case for immediate review. Rule 204(b), SCACR. This appeal involves issues of significant public interest and fundamental constitutional rights.[1] Regardless of the court of appeals' decision in this case, this Court will almost certainly be asked to weigh in. Since the final briefs were filed at the court of appeals, Respondent has completed his sentence and been released from the State's supervision. Respondent now seeks finality from this Court, a finality he bargained for in his plea agreement but the State now seeks to unhinge.

Respondent also moves to dismiss the appeal because the State cannot appeal when it prevailed below and the trial court imposed the statutory maximum sentence, which has now been completed making the appeal moot. *See* Rule 240, SCACR.

BACKGROUND

It is rare that a person has to defend his own conviction against the State. That is particularly true when the conviction is derived from the State's negotiated plea deal, which was accepted by the trial court without objection. Here, the State agreed if Respondent pled guilty to one count of statutory misconduct based only on limited facts, then the State would drop all other charges and leave sentencing to the trial

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[1] *See State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) ("[A] plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based. The Court also noted that the government had to be held to a higher degree or responsibility than the defendant for imprecisions or ambiguities." (citing *Santobello v. New York*, 404 U.S. 257 (1971); and *U.S. v. Ringling*, 988 F.2d 504, 506 (4th Cir. 1993))).

court's discretion. Utilizing the framework set forth by the State, the trial court accepted the State's plea terms, including that (1) the plea was based only on the limited factual basis negotiated, and (2) agreed upon by the parties. The trial court then sentenced Respondent to the statutory maximum of one year incarceration suspended on two years of probation and the maximum fine of $1,000.00, plus 500 hours of community service. Respondent completed the sentence and has been released from the State's supervision. The State now seeks to unwind its own plea deal.

For many years, Respondent. served as a member of the South Carolina House of Representatives. In addition to his legislative job, Respondent owned and operated a mail business called Mail Marketing Strategies. Separately, his father, (hereinafter "Father"), owned and operated a political consulting firm. The State alleged (in charges that were dismissed with prejudice) that the businesses were not separate.

In 2015, the Attorney General of South Carolina designated Solicitor David Pascoe to make a prosecutive decision about "two redacted members" of the House of Representatives as part of an ongoing probe. *See generally Pascoe* v. *Wilson*, 416 S.C. 628, 788 S.E.2d 686 (2016). Eventually, the State charged Respondent with statutory and common law misconduct in office, as well as criminal conspiracy. *See* Indictments 2017-GS-47-00012, 2017-GS-47-00032, 2017-GS-47-00013 (R. pp. 357–362). The State also indicted Father for criminal conspiracy. Unsurprisingly, when the charges

became public, Respondent's "political career [was] over" and his "business [was] destroyed." Hearing Tr., Feb. 12, 2018, at 10:1-4 (R. p. 292).[2]

In response to notification of a potential plea agreement, the trial court[3] asked if the parties would agree to *ex parte* communications, an arrangement expressly permitted by rule. *See* Rule 3B(7)(d), Code of Judicial Conduct (requiring no notification and opportunity to respond after receiving parties' consent). All parties consented and had individual discussions with the trial court leading up to the hearing on the guilty plea. Hearing Tr. Feb. 28, 2018, at 46:23–47:7 (R. pp. 340–341); *see also* State's Mot. to Reconsider at 4 n.1 ("The parties consented.") (R. p. 9).

The State offered a plea deal and then negotiated specific limitations on the State to get Respondent's agreement. Specifically, if Respondent resigned from office and pleaded guilty to statutory misconduct based only on limited facts, then the State would dismiss with prejudice all other charges against Respondent and all the charges against Father. The State also agreed on the record that "all the materials and information obtained in the investigation, including searches and seizures by the State, are not to be used in any way by the State against these defendants in exchange for these pleas [a]nd . . . this plea by all defendants today is conditioned on the dismissal with prejudice of all other charges and the closure and end of any further investigation or prosecution by Solicitor Pascoe or the State of [Respondent]and [Father], their businesses, and their families for all past conduct and deeds." Hearing

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[2] Any reference to Defendants in transcripts refers to Respondent and his father.
[3] The case was assigned to the Honorable Carmen Mullen.

Tr., Dec. 13, 2017, at 9:18–10:3 & 11:15–19 (R. pp. 157-59). Respondent took this deal and resigned from public office in reliance on the State's promises.

On December 13, 2017, Respondent appeared before the trial court to plead guilty. At the start of the hearing, the State outlined "the package agreement": "[Respondent] is pleading guilty straight up . . . [to] statutory misconduct in office." Plea Hearing Tr. Dec. 13, 2017, at 6:18–22 (R. p. 154). There was no agreement on sentencing. Father's separate political business waived indictment and pleaded "guilty to one count of failure to register as a lobbyist." *Id.* at 7:21–23 (R. p. 155).

Respondent's attorney then explained Respondent was pleading "guilty to one misdemeanor statutory misconduct in office on [a] limited allocution." *Id.* at 8:16–20 (R. p. 156). This term of the plea agreement was based only on the facts that "in 2016, while a member of the House of Representatives," Respondent "failed to report to the House Ethics Committee the name of USC, which he knew was a lobbyist principal." *Id.* at 10:7–10 (R. p. 158). The year before, USC "leased office space . . . from Capital Investments II, LLC, a business with which [Respondent] was associated." *Id.* at 10:10–13 (R. p. 158). The State agreed, saying it was "fine with the limited allocution." *Id.* at 11:25 (R. p. 159). The trial court carried out the standard plea colloquy with Respondent and "accept[ed] the plea." *Id.* at 20:10 (R. p. 168).

Although the State agreed to the limited factual basis for the guilty plea and that "all the materials and information obtained in the investigation, including searches and seizures by the State, are not to be used in any way by the State against these defendants in exchange for these pleas," the State insisted on giving a lengthy

presentation of more allegations during the sentencing phase of the hearing for the limited purpose of asking the court "to make a determination on whether it should be held against him or not for not accepting responsibility for other acts." *Id.* at 12:3-5 (R. p. 160). The State's limited purpose, for making additional allegations after agreeing to the limited factual basis for the plea, was reiterated when the State asked, at the end of its sentencing presentation, for "the Court to take into consideration that he won't accept responsibility for any of this and more." *Id.* at 43:22-24 (R. p. 191). After the nearly forty-five minute presentation, the trial court asked the State: "If the evidence is as damning in your words, and extensive against [Respondent] and [Father], as you said here . . . why have you dismissed all the charges after four years?" *Id.* at 46:5–14 (R. p. 194). The State referred only to the costs of prosecution and anticipated cooperation from Father with other targets.

Respondent's counsel pointed out that the State's presentation was just one side of a story and that the State's presentation went against the terms of the State's plea agreement. Hearing Tr., December 13, 2017, at 41:6–81:7 (R. pp. 189–229). Defense counsel also refuted the State's allegations as being based on half-truths, misleading documents, and uncertain legal theories. *Id.* Respondent's counsel presented evidence of the good Respondent had done throughout his life: as a family man, a small businessman, a public servant, and a loyal friend. *Id.* at 70–83 (R. pp. 218–31). At the end of the hearing, the trial court reaffirmed it was "going to accept the guilty plea." *Id.* at 85:1–2 (R. p. 233). But the trial court "defer[ed] sentencing for just a bit" due to "the late hour." *Id.* at 84:24–85:16 (R. pp. 232–33).

While awaiting the trial court's sentence, both sides filed sentencing memoranda. Respondent pointed to examples of misconduct in office with much more egregious facts in which Solicitor Pascoe and other state prosecutors did not ask for jail time. *See* Def. Suppl. Sentencing Memo (R. pp. 31–36); Def. Addendum to Suppl. Sentencing Memo (R. pp. 92–94). In its supplemental filings after the guilty plea had been accepted, the State again acknowledged: "As part of the package plea agreement, the State permitted the Defendant to accept responsibility for only a limited factual scenario articulated by his attorney during the hearing." State Sentencing Memo. at 3 (filed Jan. 19, 2018) (R. p. 40).

On February 12, 2018, the trial court held a hearing "for the sole purpose of announcing the sentences of the parties." Order Denying State's Mot. For Reconsideration at 3 (R. pp. 3). But the State got cold feet: "Apparently I am going to have to object to this plea going forward now." Hearing Tr., Feb 12, 2018, at 3:23–25 (R. p. 285). The State then tried to "questio[n] th[e] agreement and the validity of the plea." *Id.* at 7:17–18 (R. p. 289).

The trial court, however, confirmed Respondent had pleaded guilty to "one count of statutory misconduct in office for intentionally failing to report income from USC, a lobbyist principal." *Id.* at 8:11–15 (R. p. 290). The court also noted the State's "theory of political atrocity" but said the State's other allegations outside the plea agreement were not evidence. *Id.* at 8:19–24 (R. p. 290). The court sentenced Respondent to the maximum of one year in prison, suspended to two years' probation,

plus 500 hours of public service and the statutory maximum fine of $1,000. *Id.* at 10:5–10 (R. p. 292).

The State moved for reconsideration, and the trial court held another hearing. The State argued the trial court erred by accepting the plea back in December. "The Court . . . may have been duped," the State claimed, into not taking "into consideration the State's presentation of facts." Motions Hearing Tr., Feb. 28, 2018, at 13:20–23 & 17:3–6 (R. pp. 307 & 311). The State was assured by the court it "heard it, I considered it, and I even think in my sentence I said he may well have done all of those things." *Id.* at 18:19–22 (R. p. 312). Ultimately, the court found the State had not proven those allegations, had agreed to limited terms in the plea agreement, and that Respondent's sentence was proper. *Id.* at 17:16–23 (R. p. 311).

Then the State attacked defense counsel. The court admonished the State to "be careful because in your motion you also said that I said something to you in chambers, which was not correct." *Id.* at 41:16–19 (R. p. 335). The State's apparent trap was sprung, and the prosecutor turned to attack the trial court: "You have now stepped off the curb from being a fair and impartial judge to being a witness in this case. There is no way," the State continued, "you can now stay as the judge on this case and I would ask you to step off of this case, allow the Chief Justice to appoint a fair and impartial judge, and recuse yourself." *Id.* at 42:12–18 (R. p. 336).

Minutes later the State falsely accused the trial court of having "*ex parte* communication without the State's consent." *Id.* at 46:15–22 (R. p. 340). The court calmly explained: "There has been no *ex parte* communications in this case . . . with

anyone . . . other than what was approved prior to the guilty plea hearing, which I asked both of you and I would never have unless you both agreed, and you both agreed to it." *Id.* at 46:23–47:7 (R. pp. 340–41). The State eventually admitted it had consented. *Id.* at 60:19–22 (R. p. 354). Significantly, the State had previously confirmed it in writing too. State Mot. to Reconsider at 4 n.1 (R p. 9).

The trial court denied the State's motion to reconsider. Order, Mar. 6, 2018 (R. pp. 1–5). The trial court noted "[a]s the record reflects, the plea agreement was negotiated and established the factual premise for the guilty plea." *Id.* at 3 (R. p. 3). The order continued: "While the plea agreement includes the State will make allegations of a wider range of conduct, the State incorrectly assumes that in considering this information, the Court must take their averments as fact." *Id.* (R. p. 3). The "Court considered the information provided by the State and the Defendants during the December 13, 2017 hearing and sentenced the Defendants according to the evidence the Court found reliable and relevant." *Id.* at 4 (R. p. 4).

The State appealed the trial court's acceptance of the guilty plea, the sentence, and the recusal. Respondent moved to dismiss the appeal, arguing the State had no authority to appeal a guilty plea it negotiated and which the court had accepted. The court of appeals denied the motion to dismiss but directed that the argument be included in the briefing. Order, Nov. 14, 2018. The appeal is now awaiting consideration.

On May 8, 2019, Respondent completed his sentence and was released from supervision by the Department of Probation, Pardon, and Parole Services. *See*, Letter to S.C. Court of Appeals, May 31, 2019, attached as Exhibit A.

ARGUMENT

This Court should certify this case because it involves issues of significant public interest and a legal principle of major importance. *See* Rule 204(b), SCACR. The Court should also dismiss the appeal because the State cannot appeal a guilty plea where the trial court accepted the State's plea agreement without objection and because Respondent's completion of his sentence makes this appeal moot.

I. This Court should certify this case because it involves issues of significant public interest and important legal principles.

A. This case implicates a number of significant public interests.

This case involves issues of significant public interest including allegations of political corruption of our state government and challenges to the integrity of the criminal justice system. Moreover, without dismissal of the appeal, it could affect all plea bargains in this State going forward.

Turning first to allegations of political corruption, the State charged a sitting representative with misconduct in office and criminal conspiracy. That aspect alone implicates the public's interest in the integrity of the legislature and the political process. *Federal Election Commission* v. *National Conservative Political Action Committee*, 470 U.S. 480, 497 (1985) ("Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their

campaigns."); *Federal Election Commission* v. *National Right to Work Committee*, 459 U.S. 197, 208 (1982) (noting that government interests in preventing corruption or the appearance of corruption "directly implicate the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process"). Indeed, "the importance of the governmental interest in preventing [corruption] has never been doubted." *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 788 n.26 (1978). Given the nature of this case, the public benefits from this Court's review. *See McDonnell* v. *United States*, 136 S. Ct. 2355, 2375 (2016) (deciding a public corruption case involving the federal bribery statute).

The import of this case is further evidenced by the recent release of the grand jury's report regarding Respondent. *See* Report of the Twenty-Eighth State Grand Jury, Grand Jury Investigation 2016-257 (released Oct. 9, 2018), *available at* https://perma.cc/VFP5-GD68. The report accuses Respondent and numerous entities (including the University of South Carolina) of corrupt behavior. And the report criticizes the sitting Attorney General for showing "poor judgment" in his "involvement with [Respondent]." Report of the Twenty-Eighth State Grand Jury at 54. As the State said in releasing the report, the "citizens of a democratic society must be informed about the conduct of those entrusted with governance." *News Release: Solicitor David Pascoe's Statement Concerning the Release of the State Grand Jury Report* (Oct. 9, 2018), *available at* https://perma.cc/VFP5-GD68. And the report has generated countless news reports both in the state and beyond. *E.g.*, John Monk, *Dark Money, Political And Financial Crimes Pollute SC State House, Report Says*,

CHARLOTTE OBSERVER (Oct. 10, 2018); Glenn Smith, *SC Statehouse Corruption Probe Report Questions Attorney General's Ties To Targets*, CHARLESTON POST & COURIER (Oct. 10, 2018). Until this appeal is final, the public interest will not be served.

Second, this case involves serious questions about the integrity of the criminal justice system and warrants this Court's review to ensure the public's confidence in the process. The State claims the lower court was biased and suggests its "faith in the impartiality of the lower court has been irreconcilably shaken." Appellant's Final Brief 41. The State alleges the trial court had inappropriate *ex parte* contacts, "denied [the State] due process to be heard," and instructed the prosecution to "go light on the facts." *Id.* While Respondent and the trial court have explained at length none of that is true and there is no evidence that the trial court was biased, such serious charges by the State certainly merits this Court's attention. *See Pascoe,* 416 S.C. at 634–35, 788 S.E.2d at 689 ("If the public is to have confidence in the integrity of the criminal process in this case . . . ." (quoting letter from Solicitor Pascoe to John W. McIntosh)).

On the other side, the trial court found that the State has cast "a pall on the judicial process." Order, March 6, 2018 (R. p. 5). The trial court suggested the State manufactured the claim of judicial bias to get the result the State wants, and to get out of the deal it made with Respondent. *Id.* ("Curiously, the State's demand for recusal only comes after the Court imposed a sentence different than the State requested."). Because Solicitor Pascoe's limited designation of authority was derived solely from the Attorney General's constitutional authority, which has already been

subject to some scrutiny (*Pascoe*, 416 S.C. 628, 788 S.E.2d 686), the more recent allegations and his behavior in this case further confirms this Court's review is appropriate and necessary. *Cf. Cruz* v. *Abbate*, 812 F.2d 571, 574 (9th Cir. 1987) ("The suggestion that the case assignment process is being manipulated for motives other than the efficient administration of justice casts a very long shadow, touching the entire criminal justice system.").

Third, the people of South Carolina, along with our judicial system, have a vested interest in the legal question presented on appeal—*may a prosecutor appeal a guilty plea of his own making and which the trial court accepted without objection?* This answer is vital to the criminal justice system. If a prosecutor is entitled to appeal under these circumstances, then every plea deal can be eviscerated. It undermines the transparency of the State and the court's authority, and in turn, erodes the people's trust in the system.

Allowing a prosecutor to appeal his own plea deal also undermines a defendant's constitutional rights when he or she has relied on the terms of the plea. As explained below, undoing a valid guilty plea, which itself is a conviction, *see Boykin* v. *Alabama*, 395 U.S. 238, 242 (1969), would place the defendant twice in jeopardy for the same crime. Such action is unsupported by the United States Constitution and the South Carolina Constitution. *See Ohio* v. *Johnson*, 467 U.S. 493, 498 (1984); *State* v. *Holliday*, 255 S.C. 142, 145, 177 S.E.2d 541, 542–43 (1970).

This case questions the integrity of both the political and criminal justice systems. It also presents important, pressing questions: (1) can a prosecutor get out of his plea

deal after inducing detrimental reliance on specific plea terms designed to get a defendant to plead guilty?[4] and (2) has the State attempted to manipulate the justice system and the defendant's constitutional rights through the plea bargaining process? Only this Court can definitively resolve these issues. *See Carnival Corp.* v. *Historic Ansonborough Neighborhood Association*, 407 S.C. 67, 80, 753 S.E.2d 846, 853 (2014) ("Rule 245 is concerned with whether a case should be resolved by this Court in the first instance because of the public interest involved and the need for prompt resolution.").

B. This Case involves important legal principles.

This case also involves a "legal principle of major importance." Rule 204(b). It is imperative that this Court settle whether a prosecutor can appeal a guilty plea of his own design. This issue implicates the double jeopardy clause. In short, a guilty plea is a conviction, and once the trial court accepts that plea jeopardy attaches. That means the defendant cannot be tried again for the crime. But if the State can undo the plea on appeal, the defendant could be retried for the same crime. This Court should accept this case to reject this troubling attempt by the State.

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[4] The State made a disturbing admission, during the reconsideration hearing, as to why it agreed to the specific term in the plea agreement limiting the factual basis for the guilty plea: "The limited allocution was nothing more than a limited set of facts to hopefully maybe -- but I submit not in this case unfortunately, maybe get the defense -- defendant over the threshold of admitting to misconduct in office to take the plea." Hearing Transcript, Feb. 28, 2019, at 12:14-18 (R. p. 306). The State apparently was trying to dupe the defendant and have the trial court ignore the clear term limiting the factual basis for the plea. The trial court then asked: "Why did you make that a part of the record? Why did you allow them to do a limited allocution? Why did you allow them to do a limited admission?" To which the State replied: "To do a limited admission if it got by misconduct . . . . So this Court would give him a year in prison, which is what he deserves." *Id.* at 33:22-34:5 (R. p. 327). *See supra*, note 1.

II. If the Court certifies the appeal, it should dismiss it as to the guilty plea.

If this Court certifies this case, it should dismiss the appeal of the guilty plea. *See Charlotte-Mecklenburg Hospital Authority* v. *South Carolina DHEC*, 387 S.C. 265, 266, 692 S.E.2d 894, 894 (2010) ("We hereby certify the appeals to this Court pursuant to Rule 204(b), SCACR. However, we dismiss the appeals because the order . . . is not immediately appealable."). As set forth above, Respondent respectfully submits that the State does not have the ability to appeal a guilty plea that the State negotiated and asked the trial court to accept and that the trial court accepted without objection. To permit such action, violates the double jeopardy clause. Allowing the State to renege on its deal now would not only put Respondent twice in jeopardy for the same crime, but it would also upend the plea-deal system. No criminal defendant would agree to plead guilty, knowing that the prosecutor could renege on the deal even after sentencing.[5] To protect Respondent's constitutional rights and the rights of future criminal defendants, this Court should dismiss the State's appeal as to the guilty plea.

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[5] *See State* v. *Tillman*, 320 S.C. 61, 63, 463 S.E.2d 94, 96 (Ct. App. 1995) ("Where a guilty plea is induced by prosecutorial promises, those promises must be fulfilled."); *see also State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) ("[A] plea bargain rests on contractual principles, and that each party should receive the benefit of the bargain. The court further stated that a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based. The court also noted that the government had to be held to a higher degree or responsibility than the defendant for imprecisions or ambiguities." (citing *Santobello v. New York*, 404 U.S. 257 (1971); and *U.S. v. Ringling*, 988 F.2d 504, 506 (4th Cir. 1993))).

A. Standard of review.

"Only a party aggrieved by an order, judgment, sentence or decision may appeal." Rule 201(b), SCACR. If a party prevails on an issue below, that party is not "aggrieved" and may not appeal that issue. *Davis* v. *SCDMV*, 420 S.C. 98, 104, 800 S.E.2d 493, 495 (Ct. App. 2017). It is error to address an issue raised by a non-aggrieved party. *Hudson* v. *Lancaster Convalescent Center*, 407 S.C. 112, 121, 754 S.E.2d 486, 490 (2014).

B. The State cannot appeal a guilty plea.

The State cannot appeal a guilty plea of its own design. Such action is unsupported by the law, would be unfair, and cause unjustified outcomes.

"The State's ability to appeal has historically been limited in criminal matters." *State* v. *Wilson*, 387 S.C. 597, 603, 693 S.E.2d 923, 926 (2010). Generally, the State must live with the trial court's judgment (whether or not the State secures conviction). As this Court explained, "when in the trial, or examination, the result amounts to a final determination of the case, the State cannot appeal." *State* v. *Ludlam*, 189 S.C. 69, 69, 200 S.E. 361, 362 (1938). Moreover, under the circumstances in this case,[6] "the State's current dilemma is one of its own creation." *State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994).

This limitation on the State's ability to appeal is mandated by the double jeopardy clauses of the United States and South Carolina Constitutions. *See Johnson*, 467

[6] The Order denying the State's Motion to Reconsider concluded by saying the State had cast "a pall on the judicial process in an unfortunate attempt to vacate a plea agreement that is of [its] own making." Order, March 8, 2018, at 5 (R. p. 5).

U.S. at 498; *Holliday*, 255 S.C. at 145, 177 S.E.2d at 542–43. The ban on double jeopardy "protects against a second prosecution for the same offense after conviction." *Johnson*, 467 U.S. at 498; *see also Holliday*, 255 S.C. at 145, 177 S.E.2d at 542–43. If prosecutors were free to appeal criminal verdicts, defendants could face numerous prosecutions for the same alleged offense, the very danger the double jeopardy clauses are meant to prevent.

This limitation on the State's ability to appeal applies to guilty pleas. "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction." *Boykin* v. *Alabama*, 395 U.S. 238, 242 (1969). And because it is a conviction, "once a court accepts a defendant's guilty plea, jeopardy attaches." *Reed* v. *Becka*, 333 S.C. 676, 681, 511 S.E.2d 396, 399 (Ct. App. 1999). The State thus cannot appeal the plea without putting the defendant in jeopardy for a second time, which is forbidden by the double jeopardy clauses. *Ludlam*, 189 S.C. at 69, 200 S.E. at 362. In this way, "the guarantee" against double jeopardy "serves a constitutional policy of finality for the defendant's benefit." *Brown* v. *Ohio*, 432 U.S. 161, 165 (1977).

There are only a few limited circumstances in which the State may appeal in criminal cases. These exceptions confirm the State cannot appeal a guilty plea, because all the exceptions involve situations where jeopardy has not attached. For example, the State can appeal the quashing of an indictment or the suppression of critical evidence. *Holliday*, 255 S.C. at 145, 177 S.E.2d at 543. Both of these events naturally occur prior to jeopardy attaching. The other exceptions to the no-appeal rule involve obtaining an acquittal through fraud or a reversal of conviction by the

trial court on purely legal grounds. *Id.* Because "double jeopardy is not involved in such situations"—the defendant was never actually in jeopardy—the State can appeal without violating the double jeopardy clause. *Holliday*, 255 S.C. at 145. But where a court has accepted a guilty plea, jeopardy attaches and the State cannot put the defendant in jeopardy again. *See Reed*, 333 S.C. at 681, 511 S.E.2d at 399.

Preventing the State from appealing a guilty plea is also equitable because a criminal defendant is generally barred from appealing a guilty plea. *See Vogel* v. *Myrtle Beach*, 291 S.C. 229, 231, 353 S.E.2d 137, 138 (1987). If the losing side cannot appeal, surely the winning side must also live with the result. Indeed, when the State loses (that is, the jury acquits) the State cannot appeal. *See Fong Foo* v. *United States*, 369 U.S. 141, 143 (1962) (*per curiam*) ("The verdict of acquittal was final, and could not be reviewed without putting the petitioners twice in jeopardy, and thereby violating the constitution."). It would be inequitable to prohibit the State from appealing a loss, but permit it to appeal a win.

The South Carolina Appellate Court Rules support this interpretation. "Only a party aggrieved by an order, judgment, sentence or decision may appeal." Rule 201(b), SCACR. This is a "wise and well-reasoned requirement" because appellate courts are only "concerned with correcting errors that have practically wronged the appealing party." *Cisson* v. *McWhorter*, 255 S.C. 174, 177–78, 178 S.E.2d 603 (1970). If a party prevails on an issue, the party is not an aggrieved party with respect to that issue. *Davis*, 420 S.C. at 103–104, 800 S.E.2d at 495–96. When it comes to guilty pleas, the State is not an aggrieved party. A guilty plea "has the same effect in law

as a verdict of guilt and authorizes the imposition of the punishment prescribed by law." *State* v. *Cantrell*, 250 S.C. 376, 379, 158 S.E.2d 189, 191 (1967). In no way has the State been aggrieved by the trial court's acceptance of the plea agreement. The State negotiated, agreed to, and presented the agreement to the trial court and asked the court to accept the deal and pronouncement its sentence. On the issue of guilt, the State won. The sentence was the maximum within the statute. The State is thus not an aggrieved party and does not have the right to appeal.

In response to these arguments, the State has conceded that jeopardy attaches upon the acceptance of a plea. State's Response to Motion to Dismiss (filed Sept. 25, 2018)). But, the State argues, the trial judge should have rejected Respondent's plea and therefore the plea is "void." *Id.* The State, however, ignores the fact that even if the admitted facts do not add up to a crime it does not invalidate a plea. A "defendant may, as part of a plea bargain, agree to plead guilty to a crime for which he has been indicted (or to which he has waived grand jury presentment), but of which he is *not guilty*." *Rollison* v. *State*, 346 S.C. 506, 510, 552 S.E.2d 290, 292 (2001) (emphasis added). Indeed, in *Anderson* v. *State*, 342 S.C. 54, 535 S.E.2d 649 (2000), the Court "held that an individual could plead guilty to voluntary manslaughter under an indictment charging him with murder, even though the facts would not support such a lesser charge." *Rollison*, 346 S.C. at 510–11, 552 S.E.2d at 292 (discussing *Anderson*). Here, Respondent pled guilty to violating § 8-1-80 based on specific, agreed-upon facts. Thus, even if the stipulated facts do not support the charge, the plea is valid.

Moreover, the facts Respondent admitted do support the plea. The State incorrectly contends that the element of intent is missing from the plea. The State complains in its opening brief (at 33) that Respondent never said he "*intentionally* failed to report USC as a lobbyist's principal . . . or *knew* that he was required to do so." (emphasis added). But that assertion is belied by the record. Prior to the pronouncement of the sentencing, the trial court asked Respondent:[7]

> "Are you guilty of one count of statutory misconduct in office for *intentionally* failing to report income from USC a lobbyist principal[?]
>
> Mr. Quinn, Jr.: Yes, ma'am.
>
> The Court: The plea is valid."

Hearing Tr., Feb. 12, 2018, at 8:11–16 (emphasis added) (R. p. 290).

And in laying out the limited factual allocution at the original plea hearing, Respondent's counsel stated Respondent "failed to report to the House Ethics Committee the name of USC, which he *knew* was a lobbyist principal." Hearing Tr. Dec 13, 2017, at 10:7–10 (R. 158). Respondent thus pled guilty to intentionally violating § 8-1-80. *See United States* v. *Lemaster*, 403 F.3d 216, 221 (4th Cir. 2005) ("A defendant's solemn declarations in open court affirming a plea agreement carry a strong presumption of verity, because courts must be able to rely on the defendant's statements made under oath during a properly conducted . . . plea colloquy.").

The State is not an aggrieved party. "Only a party aggrieved by an order, judgment, sentence or decision may appeal." Rule 201(b), SCACR. The State won

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[7] This is exactly what the State had requested in its January 25, 2018 letter to "satisfy the elements of section 8-1-80 and ensure no issue is raised on appeal." *See* State's Letter Regarding Plea Issues, at 2 (R. p. 91).

and received its desired outcome; it cannot now complain about winning. The State's appeal is unsupported by our jurisprudence. State's Response to Motion to Dismiss 2 (filed Sept. 25, 2018)). The State, has failed to identify a single case where the State was allowed to appeal a guilty plea. In the absence of authority and standing, this appeal should be dismissed.

III. The State's Appeal is now Moot and Should be Dismissed.

Additionally, this appeal is moot and should be dismissed. A challenge to a sentence is moot when the entire sentence has been served. *See, e.g., Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *United States v. Hardy*, 545 F.3d 280 (4th Cir. 2008). Mootness is jurisdictional and should be considered even if it is not raised by the parties. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). "A case becomes moot — and therefore no longer a 'Case' or 'Controversy' for purposes of Article III — when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (internal quotation marks omitted). Because the Court cannot grant any effectual relief to the State, this case should be dismissed.[8]

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[8] Under very limited circumstances, an appellant may ask for application of an exception to mootness, but this appeal by the State of a specific guilty plea negotiated and requested by the State and accepted by the trial court, with a sentence within the statute, does not justify any exception. *See State v. Passmore*, 363 S.C. 568, 581-82, 611 S.E.2d 273 (Ct. App. 2005) (finding exceptions to mootness apply against the State in this case but upholding an unconstitutional sentence where the appellant failed to raise the constitutionality issue to the trial court):

> ... The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation. Accordingly, cases or issues

Here, the State got from the trial court exactly what it wanted in the plea agreement, including a clarification specifically requested by the State. The sentence, which was left by the parties to the discretion of the trial court, was the statutory maximum with a suspended sentence. Respondent has now completed his sentence. *See* Letter to S.C. Court of Appeals, May 31, 2019, attached as Exhibit A. Based on this intervening occurrence, there is no effectual relief the appellate courts could provide the State under these circumstances. Because the plea agreement is enforceable and the sentence has been completed, the appeal is now moot.

> which have become moot or academic in nature are not a proper subject of review.

Id. at 552, 590 S.E.2d at 349 (internal quotation marks and citations omitted).

The mootness doctrine is subject to several exceptions, however. In *Curtis v. State,* 345 S.C. 557, 549 S.E.2d 591 (2001), our supreme court enunciated the three primary exceptions to the doctrine:

> First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. Finally, if a decision by the trial court may affect future events, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.

Id. at 568, 549 S.E.2d at 596 (citations omitted).

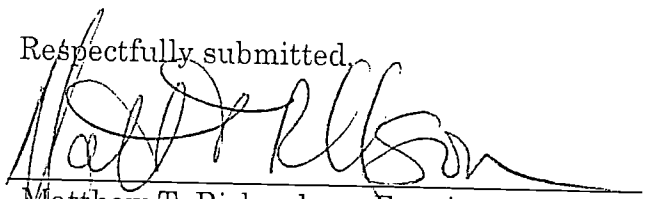
None of the exceptions are warranted here for the State's arguments on appeal and under the circumstances.

CONCLUSION

This Court should certify this case and dismiss the State's appeal. *See Charlotte-Mecklenburg Hospital Authority*, 387 S.C. at 266, 692 S.E.2d at 894 (2010) (certifying and dismissing an appeal). The public has a deep interest in investigating and adjudicating public corruption and also in preserving the integrity of the criminal justice system and the representations and agreements made and relied upon by our courts and by defendants. This case also presents the important legal question of whether the State can undo the deal it made and recommended to the trial court without reservation or objection and that the trial court accepted based on that unqualified recommendation.

Because a State cannot appeal a guilty plea without violating the defendant's right against double jeopardy and because the trial court properly accepted the plea and sentenced the Respondent, this Court should dismiss the appeal. Finally, Respondent has completed his sentence and been released from supervision by the Department of Probation, Pardon, and Parole Services. Because he completed his sentence, the appeal is now moot.

Respectfully submitted,



Matthew T. Richardson, Esquire
WYCHE, P.A.
Post Office Box 12247
Columbia, SC 29211

Attorney for Respondent

June 4, 2019

W Y C H E

Attorneys at Law

May 31, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29211

RE: *State v. Richard M. Quinn, Jr.*—Status Update and Change in Circumstances
Appellate Case No. 2018-000494

Dear Ms. Kitchings:

I am writing to update the Court on the status of this matter due to a change in circumstances. Since filing of the final briefs, Respondent has completed his sentence.

The attached letter confirms the end of the supervision by the Department of Probation, Pardon, and Parole Services.

Thank you for your assistance. Please let me know if you have any questions.

Most Respectfully,

Matthew T. Richardson

MTR/mrp
Enclosure

cc: Solicitor David Pascoe

W Y C H E
PROFESSIONAL ASSOCIATION
PO Box 12247, Columbia, SC 29211-2247
p: 803.254.6542 | f: 803.254.6544

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY MCMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
http://www.dppps.sc.gov/

May 9, 2019

RE: Richard Quinn Jr
SSN:
DOB:

To Whom It May Concern:

According to the Department's records, the above individual completed the required period of supervision on May 8, 2019, and as a result, no longer reports to this Department. This Department does not confirm or guarantee that pending or future criminal sanctions may not occur subsequent to the date of this letter.

The end of supervision removes the disqualification set forth in section 7-5-120 (B) (3) of the Code of Laws of South Carolina 1976 as amended, as it relates to the disqualification for registration to vote. However; the above individual may re-register with the Voter's Registration Office within his/her county of residence.

If you need further assistance, you may contact this office at [803-734-9303].

Sincerely,

Agent McBride

Daniel McKelly

In the
SUPREME COURT OF SOUTH CAROLINA

Appeal from the Court of General Sessions
State Grand Jury

Carmen T. Mullen, Circuit Judge

No. 2018-000494

The State, ... Appellant

v.

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

Certificate of Service

I certify that, on June 4, 2019, **Respondent's Motion to Certify Case for Review and Motion to Dismiss the Appeal** was served on Appellant via United States mail, first class, postage prepaid, addressed as:

David Pascoe
Solicitor, First Judicial Circuit
P.O. Box 1525
Orangeburg, SC 29116

Respectfully submitted,

Matthew T. Richardson
mrichardson@wyche.com
Post Office Box 12247
Columbia, SC 29211-2247

Attorney for Respondent

W Y C H E

Attorneys at Law

June 4, 2018

Via Hand Delivery
The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

RE: *The State vs. Richard M. Quinn, Jr.*
Appellate Case No. 2018-000494

Dear Mr. Shearouse:

Pursuant to Rules 204(b) and 240 of the South Carolina Appellate Court Rules, please find the original and seven (7) copies of a Motion to Certify and to Dismiss Appeal on behalf of Respondent for filing in the above-captioned matter.

By copying of this letter to counsel, I am serving Appellant with a copy of this Motion and enclose a proof of service to that effect. Also by copy of this letter, as well as by separate letter, I have notified the Clerk of Court of the South Carolina Court of Appeals and enclose a copy of the same for your records. We are happy to provide briefs and the Record on Appeal if the Court would like copies.

I would appreciate your acknowledging receipt of the Motion and Exhibits by file stamping the enclosed extra copies of same and returning them to me.

If you have any questions, or require additional information, please do not hesitate to contact me.

Sincerely,

Laura Diaz

Laura H. Diaz
Litigation Paralegal

cc: The Honorable Jenny Abbott Kitchings
Solicitor David Pasco

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W Y C H E

Attorneys at Law

June 4, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: *The State vs. Richard M. Quinn, Jr.*
Appellate Case No. 2018-000494

Dear Ms. Kitchings:

I am writing to inform you that Respondent Richard M. Quinn, Jr. has filed today a Motion for Certification of the above-captioned appeal to the Supreme Court, pursuant to Rule 204(b) of the South Carolina Appellate Court Rules (SCACR).

If you have any questions, or require additional information, please do not hesitate to contact our office.

Sincerely,

Laura H. Diaz
Litigation Paralegal

Enclosures

cc: Solicitor David Pasco

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