

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 24 2019

Appeal from York County
Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2019-000668

S.C. SUPREME COURT

CHARLIE ELLIS CUTSHAW, JR.,

Respondent,

vs.

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THE STATE,

JUN 26 2019

Petitioner. S.C. SUPREME COL

MOTION TO WITHDRAW APPEAL

Petitioner (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In February of 2015, the York County Grand Jury indicted Respondent Charlie Ellie Cutshaw, Jr. for one count of trafficking in methamphetamine along with one count of possession of methamphetamine with intent to distribute. On January 27, 2016, Cutshaw pled guilty to those charges in the York County Court of General Sessions before the Honorable J. Mark Hayes, II, circuit court judge. Following entry of the pleas, the plea judge imposed a negotiated sentence of concurrent twenty-year terms of imprisonment for the convictions.

II.

Subsequent to the plea hearing, Cutshaw did not appeal his convictions or sentence and, instead, filed an application for post-conviction relief. In response, the State filed a return

requesting an evidentiary hearing on the matter, and an evidentiary hearing was conducted on April 16, 2018, in the York County Court of Common Pleas with the Honorable Roger E. Henderson, circuit court judge, presiding. At the conclusion of the hearing, the post-conviction relief judge granted Cutshaw's application solely in regard to the trafficking in methamphetamine charge, vacated that conviction, and issued a written order memorializing the ruling. Following the issuance of the written order, the State filed a timely motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and Cutshaw filed a return opposing the motion. Ultimately, the post-conviction relief judge denied the State's motion. The State then initiated a timely appeal of the post-conviction relief judge's ruling.

III.

Subsequent to the State's initiation of the appeal, the State—after further review of the record and the post-conviction relief judge's order—has now determined an appeal of the grant of post-conviction relief is not warranted under the specific and unique circumstances of Cutshaw's case. Therefore, pursuant to Rule 260(c) of the South Carolina Appellate Court Rules, the State asks this Court to withdraw the State's appeal and allow the matter to be promptly remanded to the York County Court of General Sessions for any further proceedings that may potentially be necessary in light of the post-conviction relief judge's ruling. See Rule 260(c), SCACR (“An appeal or other proceeding may be dismissed on motion of the appellant or petitioner upon such terms as may be fixed by the court.”).

IV.

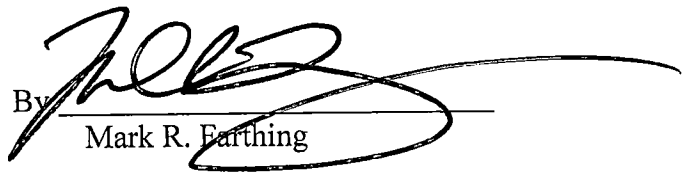
Prior to the filing of this motion, undersigned counsel for the State has consulted with Cutshaw's appellate counsel about this matter, and Cutshaw's appellate counsel has indicated he consents to the State's request for the State's appeal to be withdrawn.

WHEREFORE, Petitioner prays this Court will withdraw the State's appeal in the case of Charlie Ellis Cutshaw, Jr. v. State, Appellate Case No. 2019-000668; issue remittitur; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

By 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
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June 24, 2019

STATE OF SOUTH CAROLINA
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S.C. SUPREME COURT

CHARLIE ELLIS CUTSHAW, JR.,

Respondent,

vs.

THE STATE,

Petitioner.

PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Motion to Withdraw Appeal on Respondent by sending two copies of the same to:

Mario Anthony Pacella, Esquire
Strom Law Firm, LLC
Post Office Box 1635
Brunswick, Georgia 31521

I further certify all parties required by Rule to be served have been served.
This 24th day of June, 2019.



SHANA MONTGOMERY
Legal Assistant
Office of the Attorney General
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Columbia, SC 29211
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ALAN WILSON
ATTORNEY GENERAL

June 24, 2019

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Charlie Ellis Cutshaw, Jr. v. State – Appellate Case No. 2019-000668

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Motion to Withdraw Appeal, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar No. 76901

MRF/
Enclosures

cc: Mario Anthony Pacella, Esquire
Victim Advocacy Division

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