

THE STATE OF SOUTH CAROLINA
In the Supreme Court of South Carolina

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MAR 24 2020

APPEAL FROM THE STATE GRAND JURY
Court of General Sessions
Richland County

S.C. SUPREME COURT

Carmen T. Mullen, Circuit Court Judge

Case No. 2017-GS-47-12, -13, -32

The State,.....Appellant

v.

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

APPELLATE CASE NO. 2018-000494

APPELLANT'S MOTION TO RECONSIDER

DAVID M. PASCOE, JR.
First Circuit Solicitor
SC Bar No.: 66523

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ATTORNEYS FOR APPELLANT

The State of South Carolina, by and through the undersigned, respectfully requests the Court reconsider its March 12, 2020 Order requesting information regarding the Corporate Integrity Agreements (“CIAs”) entered between the State and five corporate entities. As discussed in the State’s contemporaneously filed memorandum addressing the Court’s inquiry, the appropriate judicial authority to review any potential question about the CIAs is the presiding judge of the state grand jury upon motion of an interested party or at the request of the presiding judge as the supervising judicial officer. There has been no challenge to the CIAs by any party in interest, nor has there been a lower court ruling for this Court to review. This Court’s request for briefing in conjunction with Mr. Quinn’s plea is not relevant to the issues properly before the Court and is highly irregular. The Court should reconsider and vacate its Order.

The CIAs arose in the course of investigating Respondent and his father, as well as their family business, Richard Quinn & Associates (“RQA”), when investigators determined that various corporate entities violated state criminal laws as a result of their relationships with RQA. Rather than engage in protracted litigation at great cost to the taxpayers of this State, Solicitor Pascoe began negotiations with those five entities to settle their criminal liability. Solicitor Pascoe utilized his prosecutorial discretion to enter into non-prosecution agreements with these entities in exchange for concessions on their part. State v. Thrift, 312 S.C. 282, 291–92, 440 S.E.2d 341, 346–47 (1994) (the South Carolina Constitution and jurisprudence of this State place “unfettered discretion to prosecute” in the hands of the prosecutor). All parties to the agreements have complied with the terms of the CIAs and no parties are alleging a breach of the contracts.

The funds paid to the State incident to the CIAs have been placed into an escrow account separate from budgetary accounts for the First Circuit Solicitor’s Office. The CIA funds have not been touched and of all funds recovered in State Grand Jury Investigation 2016-257 (the

“Investigation”) remain in escrow. At the conclusion of the Investigation, the State intends to present a request for disbursement to the presiding judge of the state grand jury for approval. Thus, in the absence of a complaint by a party in interest or an order by the presiding judge, review of the CIAs is premature at this stage.

In addition to the premature nature of the issue, the Court’s Order does not include the proper parties in interest to address the CIAs. The Order seeks a brief from Respondent—who is not a party to the CIAs. The Order does not seek input from the University of South Carolina, SCANA, Palmetto Health, SCAJ, or AT&T who are bound by these agreements and have a real interest in their disposition. Any ruling this Court makes would affect the rights and interests of these entities without affording them any due process to protect their positions. If the CIAs are to be subject to litigation in any court in this State, the action must at least include the parties to the agreements.

With respect to Respondent’s inclusion in this matter, this appeal asks whether the lower court improperly sentenced Respondent by cloaking him in the presumption of innocence to facts underlying the indictment to which he pleaded.¹ In addition, this appeal asks whether the plea is supported by a sufficient factual basis in light of the lower court’s rulings and whether the events

¹ The State contends the lower court erroneously concluded she could not consider facts presented by the State in fashioning Respondent’s sentence. While sentencing a defendant *within the statutory range*, a court “may conduct an inquiry broad in scope, largely unlimited either as to the kind of information it may consider or the source from which the information may come” State v. Thomason, 355 S.C. 278, 285, 584 S.E.2d 143, 147 (Ct. App. 2003); State v. Gullede, 326 S.C. 220, 487 S.E.2d 590 (1997); State v. Cantrell, 250 S.C. 376, 158 S.E.2d 189 (1967); cf. Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005); Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 2362–63, 147 L. Ed. 2d 435 (2000) (where a court sentence is greater than the statutory maximum “any fact that increases the penalty for a crime *beyond the prescribed statutory maximum* must be submitted to a jury, and proved beyond a reasonable doubt.” (emphasis supplied)).

surrounding the plea require Judge Mullen’s recusal. None of these issues have any relevance to the agreements negotiated between the State and counsel for the five corporate entities, and Respondent is not a party to any of the agreements. This is particularly evident in light of the fact that the CIAs were negotiated well after Respondent pleaded guilty and this appeal was filed. By inviting Respondent to submit a memorandum in response to the Order, the Court is permitting a citizen who is not affiliated with the government to weigh in on the State’s prosecutorial discretion. Respondent has absolutely no standing to offer an argument on the matter, and the Court should not permit it.

The Order also invites the Attorney General to submit a memorandum addressing the issue. The Attorney General is recused from this investigation due to a conflict of interest he has with targets of the investigation. Pascoe v. Wilson, 416 S.C. 628, 644, 788 S.E.2d 686, 695 (2016) (“We find Pascoe has proven by a preponderance of the evidence that the Attorney General's Office in its entirety was recused from the redacted legislators investigation”). The expediency of the Attorney General’s decision to recuse himself became increasingly clear as the Investigation evolved. The nature of the Attorney General’s conflict is thoroughly treated in the Report of the 28th State Grand Jury. See R. pp. 437–451. To request the Attorney General submit a memorandum addressing a matter from which he is recused would be inappropriate under these circumstances, particularly in the posture of the instant appeal.

Conclusion

For the reasons discussed above, the State respectfully requests this Court reconsider and vacate its March 12, 2020 Order inviting briefs from Respondent and the Attorney General as well as seeking additional oral argument. The CIAs are not relevant to the instant appeal and should not be addressed as part of this appeal. Finally, because no party in interest has raised any issue with

the CIAs and no court has addressed disbursement of the funds, this matter is premature and should not be addressed at this time.

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Respectfully submitted,

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By:


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