Attachment 1

Appellant's Reply, May 12, 2020

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

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

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 REPLY

The State, by and through the Solicitor of the First Judicial Circuit, has maintained since the inception of State Grand Jury Investigation 2016-257 (the "Investigation") that the Attorney General has a conflict of interest with respect to the individuals involved in the Investigation. The Attorney General's Memorandum in Response to the Court's Order of March 12 highlights the existence of this conflict and illustrates an effort to aid those at the center of the Investigation. This Court asked for memorandum regarding the propriety of the CIA agreements, yet the Attorney General took advantage of the opportunity to relitigate Pascoe v. Wilson, 416 S.C. 628, 788 S.E.2d 686 (2016). Respondent joins with the Attorney General and takes the opportunity to relitigate arguments made previously before a lower court that are irrelevant to this matter. The State respectfully requests this Court reconsider and vacate its March 12, 2020 Order inviting briefs

from Respondent and the Attorney General and take this matter up when it is ripe for consideration before the proper parties.

I. The Attorney General's Memorandum makes misleading assertions.

a. The CIA payments are not "donations" to the First Circuit.

The Attorney General's Memorandum is a thinly veiled effort to insinuate impropriety where none exists. The Attorney General insistently and improperly use the term "donation" to refer to the payments mandated by the CIAs. The State could not have been more clear in its March 23, 2020 Memorandum that these payments are not in any respect "donated to the prosecutor's office," as the Attorney General represents to this Court. AG Memo at 8. As the State's Memorandum explained,

> No portion of the funds have been expended or disbursed and no portion of the funds are designated to be retained by the First Judicial Circuit for any purpose other than reimbursement for actual expenses related to the Investigation and prosecution of the resulting cases. These funds were not collected as a windfall to the First Circuit or as additional compensation to any member of the First Circuit—they were collected to reimburse the citizens of the First Circuit, who have been required to bear the costs incurred for actual, substantiated expenses related to the Investigation and prosecution.

St. Memo at 4. It is disingenuous to argue that this describes "'donations' to the prosecutor's office . . . ." AG Memo at 9.

Operating under an inaccurate assertion that the payments constitute "donations" to the First Circuit, the Attorney General's Office reveals the portrait they have labored to paint by pointing out that, "[r]equiring financial 'donations' to the prosecutor's office is particularly problematic because such a financial contribution creates the appearance of a conflict of interest on the part of the prosecutor." AG Memo at 20. The Attorney General's strategy is reckless and detached from reality. The State has been completely transparent about the nature of the CIAs and fully explained them in the State's Memorandum.

The Attorney General's choice to ignore the facts in the State's Memorandum goes on as he protests, "the amount 'donated' is reimbursement for the costs of the Investigation, with the balance to the Ethics Commission. Yet there is no connection between the amounts donated and those costs. . . . Where these figures were derived, how they bear on figures (or fines) are not explained." AG Memo at 5, 31–32. This is a blatant misrepresentation. The State very clearly explained,

> Each agreement was separately negotiated on the basis of evidence relevant to the entity, and each entity was represented by able counsel throughout the negotiation process. The amounts paid to the State by each entity were negotiated largely on the basis of the retainer payments paid by each entity to RQA.

St. Memo at 13. The CIA payments are not gifts to Solicitor Pascoe or the First Circuit and they certainly are not "donations." The payments are part of binding contractual arrangements intended to promote the ends of justice. Each of the entities subject to the CIAs paid a different retainer fee to RQA and the amount of these retainer payments provided a starting point for negotiation with each entity. The Investigation has not concluded and the total expense of litigating the matter is unknown. The State did not negotiate the CIAs on the basis of litigation expenses; the CIAs were negotiated based upon the size of the unreported liability and upon the strength of the State's case against each entity. The Attorney General is attempting to insinuate impropriety where there is none so that they may support their mendacious conclusion that the Court should intervene.

b. The Attorney General's Memorandum inaccurately infers it has incurred all of the costs of the Investigation.

The Attorney General incorrectly surmises that the State could have no expenses because the State Grand Jury Act requires the Attorney General to foot the bill for the grand jury in Sections 14-7-1780 and -1790. They provide an accounting of the substantial cost associated with each assembly of the grand jurors and proclaim, "the Attorney General's Office supported the costs of

the State Grand Jury; Solicitor Pascoe did not do so." AG Memo at 31. It would appear that the Attorney General has indeed borne the cost of meeting space, allowances to jurors, coffee, and doughnuts. But to represent to this Court that the Attorney General has paid all of the costs associated with this Investigation is at best disingenuous. The funds dispersed from the First Circuit's own budget to cover the costs of this Investigation and prosecution far exceed the set costs claimed by the Attorney General. The Attorney General should be fully aware that an investigation of this magnitude requires expert fees, travel costs, technology fees, and other expenses beyond the "fixed costs for operating the State Grand Jury . . . ." AG Memo at 31.

II. The Attorney General's legal analysis is flawed.

As to the propriety of non-prosecution agreements, the Attorney General's conflict of interest leads to an astounding conclusion that such agreements are impermissible; however, their position is unsupported by the law and the Attorney General's prior opinions. Their brief notes, "[t]o our knowledge, no statute or judicial order authorizes a non-prosecution agreement, particularly the type of 'corporate integrity agreements' which Solicitor Pascoe executed here in which funds are donated to the prosecutor's office in exchange for non-prosecution." AG Memo at 8. This position represents a stark change from the Attorney General's prior stance on a prosecutor's authority to elect to forego prosecution based upon agreed conditions.

a. The Attorney General's prior opinions on the matter.

The Attorney General's position today is that no prosecutor can bind the State in a promise not to prosecute through any agreement other than a plea agreement or the statutory guidelines of the Pre-Trial Intervention program. This conclusion is flawed and inconsistent with prior opinions issued by the Attorney General's Office. If this were the case, a great many immunity agreements and proffer agreements throughout the State must be revisited, including such agreements entered

in this Investigation. The effect of the Attorney General's new position is that prosecutors would not be able to enter into immunity and proffer agreements because these agreements bind the State to non-prosecution of criminal matters, are not specifically authorized by statute, and are not subject to prior approval by the court. There is no authority that mandates that a solicitor may only dispose of a case through a nol pros or a guilty plea, as evidenced by the Attorney General's need to cite foreign jurisdictions and pre-civil war cases to muster support for their predetermined outcome.[1] The Attorney General relies heavily on State v. Peake, 353 S.C. 499, 579 S.E.2d 297 (2003), for the proposition that an agreement not to prosecute cannot be made. This is erroneous because Peake merely stands for the proposition that a person without criminal prosecutive authority, such as a DHEC Water Pollution Control Agent, cannot restrict a prosecutor's discretion in a criminal matter. The decision in Peake only serves to strengthen the State's argument that a prosecutor may enter consensual non-prosecution agreements because the Court made clear that only the criminal prosecutor may decide whether to prosecute and that he therefore has "the authority to grant immunity from criminal prosecution . . . ." Id. at 504, 579 S.E.2d at 300. Solicitor Pascoe is not a DHEC Agent—he is the prosecutor for this Investigation with authority to terminate the prosecution in the manner and under the conditions that he sees fit. The outcome is the same whether Solicitor Pascoe is prosecuting a typical General Sessions case within his judicial circuit

[1] The Attorney General cites Gray v. Seigler, 33 S.C.L. 117 (1847), as authority for his claim that a criminal matter may only be suspended by a nol pros. However, Gray and the cases that cite it concern the prohibition on private litigants contracting to terminate criminal prosecution because this authority is vested solely in the Solicitor or Attorney General. To permit private litigants to interfere in the public's interest in criminal prosecution would "put the Solicitor's office at the beck and call of selfish men, by allowing so extraordinary a privilege of interfering with public rights." Gray, 33 S.C.L. at 122; see also Corley v. Williams, 17 S.C.L. 588 (S.C. App. L. & Eq. 1830); Williams v. Walker, Fleming & Co., 18 S.C. 577 (1883); Liberty Mut. Ins. Co. v. Gilreath, 191 S.C. 244, 4 S.E.2d 126 (1939).

or whether he is prosecuting a State Grand Jury public corruption case with the authority of the Attorney General's Office. Pascoe v. Wilson, 416 S.C. 628, 642 n.15, 788 S.E.2d 686, 694 n.15 (2016) ("Thus, Pascoe was acting as the Attorney General for the purpose of the redacted legislators matter *fully vested with the authority of South Carolina Constitution Article V, § 24*, and, therefore, is not in violation of S.C. Code Ann. § 1–7–380 (2005)." (emphasis added)).

The Attorney General previously agreed that a Solicitor has common law authority to set terms not to prosecute. In June 1996, the Attorney General issued an opinion answering whether "there are any legal problems with a prosecutor's 'deferring prosecutions of offenses under appropriate circumstances upon completion of certain conditions.'" Op. S.C. Att'y Gen., 1996 WL 452687, at *1 (June 3, 1996) (written by Solicitor General Robert Cook). The opinion begins by pointing out, "[t]he general principle that a prosecuting officer has virtually unlimited authority to decide whether or not to prosecute a case in a given instance has been reiterated by our courts as well as opinions of this Office dozens of times in a variety of contexts." Id. The opinion goes on to address the central issue of "whether or not, *without statutory authority*, a prosecutor can impose conditions such as restitution, community service, good behavior, or some other form of pretrial diversion in return for deferral or dismissal of the prosecution." Id. at *2 (emphasis added). Solicitor General Cook writes, "the issue is whether such is recognized at common law. There is authority which concludes that deferral of prosecution and dismissal upon fulfillment of certain conditions is within the prosecutor's inherent prosecutorial discretion . . . ." Id. The sole limitation offered by Solicitor General Cook regarding this broad authority is that "a dismissal may not be done corruptly and capriciously and is subject to the 'general supervision' of the court." Id. at *4. The opinion concludes,

> as a general rule, a prosecutor possesses wide discretion as to whether to proceed with respect to a particular prosecution. Concerning the prosecutor's authority to

> condition the non-prosecution of a case upon the meeting of certain reasonable conditions such as restitution or good behavior, I agree that, generally speaking, such is within the prosecutor's discretion under existing case law. Such authority apparently applies to any prosecutor, be it a Solicitor or in the municipal court, "in the discretion of the individual acting as the prosecutor."

Id. at *5 (quoting Op. Atty. Gen., 1979 WL 42923 (April 12, 1979)).

The current administration at the Attorney General's Office has expressly reaffirmed the position of its 1996 opinion stating,

> Having reviewed the law, we agree with your concern that we do not see statutory authorization for the type of conditional plea you describe. Nevertheless, we affirm that a prosecutor has the authority to condition the non-prosecution of a case, as was outlined in our June 3, 1996 opinion.

Op. Atty. Gen., 2016 WL 2607249 (Mar. 15, 2016) (Reviewed and approved by Solicitor General Robert Cook). The Attorney General reiterated in 2018 that it is the Solicitor who has complete control of the prosecution of cases in his circuit and "where a solicitor directs a decision regarding the prosecution of cases—such as there shall be no pretrial diversion programs established for summary court cases—that decision is binding and must be followed." Op. S.C. Att'y Gen., 2018 WL 3494001 at *3 (July 3, 2018) (emphasis original).

This assessment of the authority of a prosecutor to decline prosecution in exchange for the fulfillment of agreed upon conditions is in stark contrast to the Attorney General's present position on the matter that, "[t]he fact that the non-prosecution agreements. . .have not been authorized by the General Assembly, nor established by judicial order as these other diversion programs have been, is certainly striking—a clear indication that they are not permitted under our law."[2] AG

[2] Indeed, the Attorney General's support for this assertion that because there is no statute specifically authorizing CIAs or similar non-prosecution agreements it is "a clear indication that they are not permitted under our law" makes little sense. The Attorney General cites a statute that requires PTI programs to collect and report data and he appears to imply that it is a complete list of permissible pretrial programs. Then, by a remarkable twist of logic, the Attorney General asserts that any non-prosecution arrangement that is not on that list is not permitted under our law because

Memo at 9. The Attorney General misapplies the law and references concurring opinions from distant jurisdictions, law review articles, and cases written prior to the civil war in an effort to arrive at a self-serving outcome. The Attorney General does not refer the Court to the opinions from his Office by the current Solicitor General in more applicable prior matters. The law has not changed, only the defendants have changed.

b. The Attorney General's Memorandum raises an issue pending before the Court in a separate matter seeking to overturn convictions of Quinn associates.

In its introductory paragraphs the Attorney General's Memorandum claims, "[w]e are not here to quarrel with Pascoe v. Wilson." AG Memo. at 2. The Attorney General then proceeds to do precisely that by parroting the arguments made by Richard Quinn associate Jim Harrison, whose convictions arising from the Investigation are currently pending before this Court. See State v. James H. Harrison, Appellate Case No. 2018-002128. The Attorney General's Memorandum argues that when he recused the office and granted authority to Solicitor Pascoe, he specifically limited the investigation to the "redacted legislators" in such a way that would act as a subsequent limitation on the State Grand Jury's investigative power. The Attorney General claims that the Court's decision in Pascoe v. Wilson, 416 S.C. 628, 788 S.E.2d 686 (2016), operated to limit the

"to express or include one thing implies the exclusion of another, or of the alternative." AG Memo at 9 (quoting Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000)). This assertion simply does not follow. The quoted language from Hodges v. Rainey refers to a statute that enumerates a specific and finite list of officers that are exempt from the Governor's discretionary removal power. See S.C. Code Ann. § 1-3-240. The Court determined that exclusion from that finite list implied that the officer would be subject to the Governor's power. The statutory list of diversion programs cited by the Attorney General is merely a list of examples of diversion programs that, by the very terms of the statute, "shall include, but are not limited to . . . ." S.C. Code Ann. § 17-22-1120. Yet the Attorney General would argue to this Court that because that list—which is not a list authorizing these programs—does not include corporate integrity agreements or non-prosecution agreements it is, "a clear indication that they are not permitted under our law." AG Memo at 9. This argument is, quite simply, absurd.

"scope of Solicitor Pascoe's investigation" to the "redacted legislator's investigation." [3] AG Memo at 12.

The Attorney General and all of the defendants in this investigation place great significance on the reference to the Investigation as "the redacted legislators investigation." However, no one knew at the time Pascoe v. Wilson was decided that investigators would discover criminal conduct by John Courson, Jim Harrison, and others in the course of investigating the redacted portions of the SLED report. The reference to the investigation cannot be read to impose an explicit limitation to only investigate certain individuals and to turn a blind eye to any other criminal conduct. The nature of a criminal investigation dictates that it is not predetermined.

The Attorney General's argument is meritless and has been consistently rejected by the lower courts when made by the other defendants in this grand jury probe because it is simply not reality. All of the targets of this Investigation have related to improper dealings with Rick Quinn's family business, RQA. The Harrell SLED report that raised this concern and formed the basis of the case initiation specifically referred to RQA:

> While Quinn was the Majority Leader of the House, he had his own caucus team that discussed, decided, and produced mailers for candidates and House districts. Like Rep. Merrill, Quinn had his own consulting, advertising and marketing business. **This business (RQ&A) was run by Rick Quinn and/or his father Richard Quinn in Columbia, SC.** Yet unlike Rep. Merrill, Quinn ran his own printing house; therefore, he did not need to send the printing out to another source. Rep. Merrill felt that Quinn, while Majority Leader, sent most, if not all of the caucus mailers to his own business.

R. p. 489 (emphasis added). The above quoted passage is taken directly from the redacted portion of the SLED report. Naturally, investigators obtained and reviewed business records for RQA in

[3] This argument was initially made by John Courson in a motion to dismiss his indictments arguing that Solicitor Pascoe lacked jurisdiction beyond the "redacted legislators." The motion was denied by the lower court. Mr. Harrison later re-submitted the exact same motion, only substituting "John Courson" with "Jim Harrison." The motion was again denied.

the course of the Investigation. As investigators reviewed the RQA financial records, they observed numerous suspicious payments to various current and former legislators as well as retainer payments from lobbyist's principles. They discovered documentary evidence demonstrating that Richard Quinn was lobbying on behalf of these lobbyist's principles with no accountability to the general public, as required by statute and relevant to the CIAs. The investigation also revealed that the payments from RQA to legislators violated state ethics laws. All of this was discovered while the State was investigating Rick Quinn's dealings with RQA.

To demonstrate the absurdity of the Attorney General's argument, one only needs to review the convictions of former Senator Pro Tempore John Courson and former House Judiciary Chairman Jim Harrison. SLED's review of RQA records led to the discovery of RQA illegally laundering Courson for Senate campaign account money back to John Courson personally. Their review also led to the discovery that Jim Harrison was employed at RQA while voting on legislation affecting RQA clients. The Attorney General's position is that SLED and Solicitor Pascoe should have looked the other way, or in the alternative, they would have Solicitor Pascoe send the evidence of criminal activity relating to RQA to the Attorney General.[4] Both options are a ridiculous affront to justice.

[4] See July 10, 2017 Campaign Disclosure, Michael A. Wilson, Attorney General. Mr. Courson was indicted on March 16, 2017 and the Attorney General's campaign disclosure reflects payments to RQA for bookkeeping services through June 2017. Following the indictments of Richard and Rick Quinn in October 2017, the Attorney General's January 2018 disclosures reflect payments to Mr. Quinn's daughter, Rebecca Mustian, rather than RQA for these services. The following quarter's disclosure, April 2018, reflects a switch to using Spring Strategies, which is a new corporation started by the Quinns in October 2017, following the indictments of Richard and Rick Quinn. This continued association with the Quinn family even after the indictments were publicly announced was a source of great frustration for members of the State Grand Jury. See R. pp. 449–450.

While the Attorney General and the defendants in this Investigation complain that Solicitor Pascoe has overextended the authority granted by Pascoe v. Wilson, no party has utilized the judicial oversight manded by the State Grand Jury Act and sought an order of the presiding judge pursuant to Section 14-7-1630(G). Throughout the Investigation the State has operated well within the statutory requirements of the State Grand Jury Act and under the guidance provided by this Court. But if any interested party believed that the State was violating that authority, they could have sought relief from the presiding judge. Alternately, an indicted party could challenge the State's authority before the trial judge. Mssrs. Harrison and Courson raised the issue before the trial court and in each instance the trial court ruled in favor of the State's authority. The Attorney General has never raised his concerns under Section 14-7-1630(G). Instead, the Attorney General acquiesced with Solicitor Pascoe's use of the Statewide Grand Jury to prosecute all crimes uncovered during the course of the Investigation. Now, after Solicitor Pascoe has obtained convictions of Mssrs. Courson and Harrison, and indictments against Mssrs. Quinn, Sr. and Edge, the Attorney General has seized upon the opportunity provided by the Court to file what is essentially an amicus brief on behalf of all of the defendants in the corruption probe for whom the Attorney General maintains a clear conflict of interest.

III. The Attorney General's relationship to the Quinns.

When this Court decided Pascoe v. Wilson the full extent of the Attorney General's conflict of interest was not known. Information revealed in the time since that decision demonstrates the Court's wisdom in holding that the Attorney General's office was recused and Solicitor Pascoe was vested with authority to act as the Attorney General for this Investigation. The members of the 28th State Grand Jury concluded in their Report that "[Attorney General] Wilson put his loyalty to Richard Quinn above the duty and obligations to the citizens of South Carolina to respect and

enforce the State's laws." R. p. 450. After numerous convictions and years of hard fought litigation, it is difficult to comprehend how the Attorney General, whose close relationship with the Quinns led the State Grand Jury to call him as a witness in this Investigation, has now been permitted to lend the weight of his office to issue an opinion on this Investigation. Rather than simply addressing the Court's inquiry, the Attorney General's Memorandum cuts directly to the ultimate issue of whether the prosecutions of individuals involved in the Investigation are valid. The State respectfully implores the Court to reject the Attorney General's attempt to interject himself into the prosecution of his friends.

The Attorney General's conflict of interest is well documented, by the State Grand Jury[5] and media Freedom of Information Act requests.[6] The Attorney General's position would permit SCANA, Palmetto Health, USC, AT&T, and the Trial Lawyer's Association to escape without consequence or responsibility; it would permit John Courson to escape prosecution for laundering his campaign funds through RQA; it would permit Jim Harrison to escape prosecution for accepting nearly one million dollars of undisclosed funds from RQA; and it would permit Richard Quinn himself to escape prosecution for alleged perjury before the State Grand Jury. This shocking position advocated by the Attorney General demonstrates the conflict of interest.

This Investigation arose from revelations in a SLED report concerning then House Speaker Bobby Harrell that was made available to the Attorney General's Office in December 2013. From that moment forward, the Attorney General was on notice that Rick Quinn and RQA were

[5] See R. pp. 439–451.

[6] Glenn Smith, Emails: South Carolina AG coordinated with key figure in statehouse probe on letter booting special prosecutor off case, Post and Courier, Aug. 5, 2017, https://www.postandcourier.com/politics/emails-south-carolina-ag-coordinated-with-key-figure-in-statehouse/article_db600c26-7871-11e7-9109-7bb3a89fa640.html

potentially subject to a criminal investigation. But despite the fact that a criminal investigation by SLED had specifically named Rick Quinn and RQA due to questionable financial transactions, the Attorney General continued to involve both Rick and Richard Quinn in matters concerning that investigation. R. pp. 601–603, 605–606. In some instances, Richard Quinn was involved in drafting letters to Solicitor Pascoe regarding prosecution of the Harrell matter and the prospect of "any other cases related to or arising out of that one." R. pp. 615–617. Notably, this example occurred after Solicitor Pascoe sent an email to the Attorney General on October 1, 2014 expressing his opinion that Rick Quinn should be investigated as part of any corruption investigation.

The events leading to the transfer of authority to Solicitor Pascoe have been thoroughly treated by this Court in Pascoe v. Wilson, and need not be restated here. See Pascoe, 416 at 631–639, 788 S.E.2d at 688–692. However, as the events leading up to that decision played out, Richard Quinn was always in contact with the Attorney General. Indeed, evidence presented to the grand jury is that Mr. Quinn and the Attorney General discussed the Investigation almost every day up to Mr. Quinn's initial indictment. R. p. 611, lines 7–12.

Behind the scenes, the Quinns busily worked to discredit and undermine the Investigation. The State Grand Jury heard testimony that the Attorney General was pressured by a Quinn business associate to get the Investigation under control. R. p. 444. The Quinns drafted press releases for the Attorney General. R. pp. 622–632. Mr. Quinn even submitted purported legal memoranda to the Post and Courier Newspaper in an attempt to muster support for removing Solicitor Pascoe from the Investigation. R. pp. 634–640. The Attorney General's own Public Affairs Director, Adam Piper, asked the Chairman of the Republican Party to join in the attempts to discredit

Solicitor Pascoe, only to have the emails published by the Post and Courier.[7] Mr. Piper—who was being paid by both the Attorney General's Office and RQA at the time—testified before the State Grand Jury that he sent the email because Rick and Richard Quinn were pressuring him. R. p. 445.

Jimmy Merrill testified to the State Grand Jury that as the criminal matters involving the Quinns and Mr. Merrill arose following the Harrell guilty plea, the Attorney General personally reassured him that everything would work itself out. He even informed Mr. Merrill that an opinion was coming out that would be good for him, referring to the December 11, 2015 Attorney General's Opinion. R. pp. 441–442.

The State does not relish calling attention to these matters. However, it is necessary to inform the Court of the significant and pervasive conflict of interest the Attorney General has in this case. While the opinions of the Attorney General's Office are typically viewed as persuasive, in this instance the Attorney General's Memorandum should be viewed with a full understanding of the history of this Investigation.

IV. Respondent's response is irrelevant and unreliable.

In addition to the brief submitted by the Attorney General's Office, Respondent has submitted a memorandum in response to the Court's inquiry "joining in support of the Attorney General's filing . . . ." Resp. Memo at 1. Respondent's memorandum digs deep into the history of the Investigation to pile on more inaccuracies to add to the Attorney General's offering. Essentially all of Respondent's brief is irrelevant to the Court's inquiry and warrants little response.

[7] Glenn Smith, Tony Bartelme, Exchanges reveal contempt for Pascoe[.] Aide plotted with GOP figures before Wilson ripped special prosecutor, texts, emails show, Post and Courier, Apr. 3, 2016, https://www.postandcourier.com/politics/exchanges-reveal-contempt-for-pascoe-aide-plotted-with-gop-figures/article_4e2508ca-e4d1-5c7a-a274-822473645da2.html

As just one example, Respondent raises the same complaints made during litigation over the execution of a search warrant of RQA. Respondent and his father accused the State at that time of seizing and looking at privileged materials; they accused SLED of having no plan for the search; they accused Solicitor Pascoe of prosecutorial misconduct; and they conducted a fishing expedition on direct examination of the SLED case agents to try to drum up any other accusations they could think of. These issues were ruled upon by the Honorable Knox McMahon and found to be completely baseless. In an oral ruling, incorporated into a written order upon the request of defense counsel Judge McMahon ruled that there was a "taint team" search procedure in place to protect investigators from viewing privileged material; that there was no evidence that any member of SLED or the prosecution viewed any items that were seized; and that there was absolutely no misconduct.

V. Issues raised in the concurring opinion of State v. Quinn.

The State respects the Court's decision in State v. Quinn, Op. No. 27966, (S.C.Sup.Ct. filed May 6, 2020) (Davis Adv. Sh. No. 18 at 78–98). Mr. Quinn stands duly convicted of statutory misconduct in office, which was the State's primary concern. The majority concluded that the CIA issue had no bearing on the outcome of that case and the State contends it also has no bearing on the outcome of the Harrison matter. See id. at 87–88 n.8. In light the Court's indication that the matter will be addressed during the Harrison oral argument, the State will address some of the issues raised by the Quinn decision.

With respect to the majority opinion's concern that the Investigation is entering its fifth year, the State would assure the Court that the "probe" aspect of the Investigation concluded long ago. The final meeting of the state grand jury related to the Investigation occurred over one year ago on April 18, 2019. All that remains is disposition of the current indictments and appellate

matters. There are no plans to present further evidence to that body. The Investigation has continued for as long as it has due to many delays associated with hearings, trials, appeals, and document reviews. The concurring opinion's concern that "we do not know whom else" is subject prosecution is unwarranted as all remaining defendants are publicly known.

While the majority is careful not to comment on the unheard and undecided issues regarding the CIAs and Solicitor Pascoe's authority, the concurrence quotes sections of the Attorney General's brief without having the benefit of the State's reply, and thus Justice Few was presumably unaware that the Attorney General's argument that prosecutors lack common law authority to enter into non-prosecution agreements is directly contradicted by two prior South Carolina opinions from his office. Neither the concurrence, nor the defendants in the Investigation, nor the Attorney General have indicated what specific authority has been violated by the State in the conduct of this Investigation. The majority decision in Pascoe v. Wilson was clear in its grant of Article V authority to Solicitor Pascoe for this Investigation. The State has taken no action contrary to the majority's decision and respectfully disagrees with the assertion that the constitutional authority of the Attorney General's Office cannot be transferred where the Attorney General maintains a clear conflict of interest.

The concurrence asserts that Solicitor Pascoe is operating completely unfettered because the Attorney General is not in a supervisory role.[8] However, Solicitor Pascoe is restrained by numerous sources. He is accountable not only to the voters of his circuit—who are citizens of this State and thus interested parties in a statewide corruption probe—but also to his oath as an officer of this State and as an officer of the Court. He is accountable to the courts that oversee the

[8] See section III *supra*. Supervision by the Attorney General in this matter would be inappropriate due to the pervasive conflict of interest.

Investigation. The State Grand Jury Act mandates judicial supervision at various stages and also provides remedies for interested parties to challenge the State's actions. See S.C. Code Ann. § 14-7-1630(G). This Investigation has been conducted according to the procedures and rules provided by the State Grand Jury Act and irrespective of whether the Investigation is conducted by Solicitor Pascoe or by the Attorney General himself, the guidance and oversight mandated by those rules is the same. He is also held accountable to the state grand jurors. A State Grand Jury investigation ultimately belongs to the grand jurors and if they direct the legal advisor to pursue an area of inquiry he is obliged by statute to do so.[9] S.C. Code Ann. § 14-7-1650(A). Finally, he is accountable to SLED. The initiation of the Investigation was co-signed by Chief Mark Keel and the Investigation was conducted as a combined effort with SLED agents who do not work for Solicitor Pascoe.

The State respectfully disagrees with the characterization of the results of this Investigation as a "'prosecutive' mess." Quinn, Op. No. 27966 at 98. As referenced in the grand jury's Report, the former Director of the State Ethics Commission discussed some of the statutory shortcomings that limit the charges available to the grand jury in such cases. See R. pp. 436–437. The manner in which the resulting indictments are prosecuted is the prerogative of the prosecutor and should not be subject to second guessing by a court any more than a prosecutor second guessing a court's discretion. Furthermore, while Mr. Quinn would likely not characterize his punishment as being "scot free[,]" the State asked for a harsh sentence and gave a lengthy sentencing presentation for that purpose. It is now settled that the lower court considered this evidence and used her discretion

[9] To the extent the concurrence is asserting that the State entered into the CIAs against the wishes or without the knowledge of the grand jury, this is not the case. The members of the State Grand Jury, as well as the presiding judge were fully aware of the State's plan to negotiate these agreements.

to mandate a suspended sentence. This is beyond the prosecutor's control, as sentencing is the province of the court. In addition to the conviction against Mr. Quinn, Jr., the Investigation has resulted convictions against other House Majority Leaders, a former Senator Pro Tempore, a former House Judiciary Chairman, and exposed significant issues in the conduct of state legislators and corporate lobbyists. To dismiss this Investigation as a "prosecutive mess" is a mischaracterization that diminishes the challenges of rooting out corrupt practices in this State, which this Investigation has achieved.

Conclusion

SLED's initial December 2013 investigation uncovered legislators along with their political consulting companies violating the public's trust by putting their own interests before the interests of South Carolina's citizens. While the Attorney General's Office did almost nothing with this evidence prior to this Court's ruling that Solicitor Pascoe was "acting as the Attorney General for the purpose of the redacted legislators matter fully vested with the authority of South Carolina Constitution Article V, § 24," SLED, and the First Circuit Solicitor's Office conducted a thorough investigation under the supervision of the presiding judge of the State Grand Jury. Pascoe, 416 S.C. at 642 n.15, 788 S.E.2d at 694 n.15. The Investigation was both costly and time consuming, but well worth these expenditures as it uncovered significant violations of the public trust. For the State Grand Jury, SLED, and Solicitor Pascoe to turn their backs on this blatant corruption would strike a foul blow to justice.

As to the Court's March 12 inquiry regarding the CIA agreements that resolved potential criminal actions against some of the largest corporate entities in the State, those agreement required the payment of funds under conditions permitted by the prosecutor of this Investigation that benefit the State of South Carolina. There is also no statute or judicial decision that prohibits Corporate

Integrity Agreements. The mere fact that they are novel within this State does not prohibit their use by a prosecutor faced with a highly unique and complex scenario. In the absence of authority addressing the use of these non-prosecution agreements, the State ensured that the agreements were entered voluntarily by represented parties and that they are completely transparent. Additionally, the State has preserved the funds paid pursuant to these agreements for judicial review to further promote transparency and oversight. But it cannot be overstated that those agreements are not about the money—they are about putting these entities and others on notice that they cannot pay cash for political influence with no accountability to the general public. Solicitor Pascoe and the First Circuit have no interest in that money beyond reimbursement of substantiated litigation costs, as specified in each agreement and to be direct by the lower court.

Respectfully submitted,

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

W. BAKER ALLEN
Assistant Solicitor
First Judicial Circuit
SC Bar No.: 80237

By: /s/ W. Baker Allen
First Circuit Solicitor's Office
P.O. Box 1525
Orangeburg, SC 29116
(803) 533-6252

ATTORNEYS FOR APPELLANT

May 12, 2020
Orangeburg, South Carolina.