

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

May 26 2020

CERTIORARI TO NEWBERRY COUNTY
Court of Common Pleas
Hon. Brian M. Gibbons, Circuit Court Judge

SC Court of Appeals

Case No. 2017-CP-36-00509

ROBERT ANTWON WRIGHT

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

Appellate Case No. 2019-001220

**REPLY IN SUPPORT OF
RESPONDENT'S PETITION FOR BAIL
PENDING APPELLATE REVIEW**

1. Robert Wright has been in prison for over four years based on a conviction that was overturned by a post-conviction relief (“PCR”) court over a year ago. The State filed a notice of appeal challenging the PCR court’s decision over 10 months ago, and then filed a petition for certiorari five months ago—after receiving three extensions. Wright should be granted bail. The State’s return to Wright’s bail petition is meritless.

2. The State’s brief is most notable for what it *fails* to say. It does not dispute that Wright is seeking nothing more than the relief typically afforded to defendants detained by the State without a valid conviction. Nor does it address

Wright’s character and circumstances—one of the most critical factors for appellate bail—including the letters from members of Wright’s community who described his commitment to his family, his charitable contributions, and his other qualities. The State maligns these letters as “self-serving statements” (Return ¶ 14) without any basis. Yet the single letter submitted by the *State*—from one of the victims of the robbery—does not even contend that Wright would be a danger to the community.

3. The arguments the State *does* make are entirely conclusory. The State’s position is essentially that *no one* should receive appellate bail if he has received a lengthy sentence. This Court has never endorsed such a proposition, which would defeat the entire purpose of appellate bail.

4. ***Length of sentence.*** The State begins with a puzzling legal argument: “that Wright should be precluded from release on bond pending appeal because the sentence of imprisonment Wright received is in excess of ten years.” Return ¶ 10 (citing S.C. Code Ann. § 18-1-90). But the State acknowledges in the very next paragraph (*id.* ¶ 11) that under *State v. Whitener*, 225 S.C. 244, 81 S.E.2d 784 (1954), no statute may divest courts of their constitutionally-guaranteed power to set bail in any case; “[o]therwise, these procedural rights embodied in our Constitution to insure the individual against oppression will become nullities.” *Id.* at 248. “This Court . . . has the inherent power” to grant bail. *Id.* That is why the Court’s rules expressly contemplate bail petitions for sentences exceeding 10 years. Rule 243(k), SCACR.

5. ***Likelihood of success.*** In his petition for bail, Wright argued that he has a strong probability of success on appeal because the State has not identified any error in the PCR court’s decision, much less one important enough to warrant

certiorari; the State has simply contested the factual findings underlying the PCR court's case-specific application of *Strickland*. Pet. ¶¶ 21-24.

6. The State has *never* offered a substantive response to Wright's arguments. It did not file a reply in support of its certiorari petition, and in its return here, it does little more than badly assert that the PCR court's order "is based on errors of law and its findings lack probative evidence to support them." Return ¶ 9. The State also makes the argument—made *nowhere* in its certiorari petition—that the State's "petition entails important questions of law . . . including under what circumstances comments made by solicitors constitute a prosecutor's opinion such that it is objectionable and whether such comments prejudice a defendant." *Id.* At best, this sentence is merely the State's *characterization* of the issue presented to this Court. But it is not even accurate: The question before the Court is whether it should grant certiorari review to decide whether Wright's counsel rendered ineffective assistance of counsel by failing to object to numerous improper comments made by the State during closing arguments. The State has yet to offer any reason why this case involves "novel issues" (Return ¶ 10) or otherwise warrants review.

7. ***Risk of flight.*** Wright's petition showed that he has deep ties to his community and this State, and that he intends to comply with all applicable conditions of bail—as he did prior to his trial. Pet. ¶¶ 28-29. The State does not address Wright's factual showing. Instead, it argues that despite his full compliance with bail conditions in the past, Wright *now* has an "incentive to flee while out on bond" because he "is sentenced to imprisonment for sixteen years." Return ¶ 13.

8. Taken to its logical conclusion, the State's argument is an attack on

the very idea of appellate bail—which this Court has called one of the “fundamental . . . safeguards upon which each individual in our society has the right to rely.” *Whitener*, 225 S.C. at 248, 81 S.E.2d at 786. If every defendant were deemed a flight risk simply because they face a prison sentence, *no* defendant awaiting the outcome of an appeal could be released on bail. And the State’s argument is particularly flawed here, where Wright’s conviction was *vacated*. It is worth repeating: Wright has been in prison for four years based on a nullified conviction. The only “distinction between Wright’s pre-trial bond release and a potential appellate bond release” (Return ¶ 13) is that Wright was subjected to an unconstitutional trial in the interim. That is a reason to be *more* concerned about Wright’s continued detention, not less.

9. ***Danger to the community.*** Wright argued that he poses no danger to the community because, prior to this case, he was never convicted of any violent felony, and he is not alleged to have personally engaged in any violent acts related to his vacated conviction. Pet ¶¶ 26-27. The State responds by treating as established fact various quotes from the trial testimony of Lorenzo Jones, one of the two men who robbed Wright’s neighbors. Return ¶ 14. The State disregards Jones’ admission at trial that he provided multiple inconsistent accounts of the crime to investigators, including accounts that did not involve Wright at all. Trial Tr. 151-53.

10. But even accepting Jones’ testimony as true, the most Wright did was provide information about the victims to the perpetrators of the robbery. The State does not contend that Wright engaged in any violent acts himself, or that Wright even *ordered* others to commit any violent acts. There is no question that Wright was charged with a very serious crime, but we respectfully submit that it is not the type

of crime that necessarily makes someone a continued danger to the community.

11. *Cedric Mayers email.* Finally, the State includes with its return a four-sentence email from Cedric Mayers, one of the victims of the robbery. *See* Return App'x. The State contends that Mayers and his family have “expressed their emotional distress at the thought of Wright being released on bond pending appellate review.” Return ¶ 15. The email, however, does not say that. It expresses general opposition to Wright’s release—that Mayers “would consider it a great injustice for Mr. Wright to be released,” and that he “strongly oppose[s] any release”—and asks that “the safety of [his] family [] be a deciding factor in any decisions made in regards to [Wright].” Return App'x. But Mayers does not suggest that he believes Wright would be likely to commit crimes against Mayers or his family, or provide any reason to believe that Wright would pose a threat to them if released.

12. Mayers’ letter also references “several disciplinaries” that Wright has received in prison. But as far as the undersigned counsel is aware, the disciplinary sanctions in question are for a pair of three-year-old drug offenses that resulted in a temporary suspension of Wright’s canteen, visitation, and phone privileges. The State does not contend that Wright has committed any violent acts in prison.

13. Wright reiterates that he is willing to comply with any and all conditions of bail this Court deems appropriate, including those proposed by the State. *See* Return ¶ 17. But his continued imprisonment is unjust.

14. The Court should grant Wright’s petition for bail.

On this, the 26th of May, 2020.

BY: /s/ Michael Rayfield

MICHAEL RAYFIELD
NY State Bar No. 4869236
Mayer Brown, LLP
1221 Avenue of the Americas
New York, NY 10020
(212) 506-2560
Email: mrayfield@mayerbrown.com
Pro Hac Vice

J. FALKNER WILKES
SC Bar No. 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Email: jfalknerwilkes@gmail.com

*Attorneys for Respondent Robert
Antwon Wright*

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

May 26 2020

SC Court of Appeals

CERTIORARI TO NEWBERRY COUNTY
Court of Common Pleas
Hon. Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-36-00509

ROBERT ANTWON WRIGHT

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

Appellate Case No. 2019-001220

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Reply in Support of Respondent's Petition for Bail Pending Appellate Review has been served on counsel for the Petitioner by depositing a copy thereof in the United States Mail, postage prepaid, addressed to:

Brianna L. Schill
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

On this, the 26th day of May, 2020.

/s/ Michael Rayfield
Michael Rayfield

FAX COVER SHEET

TO

COMPANY

FAX NUMBER 18037341839

FROM Nathan Blevin

DATE 2020-05-26 13:35:29 EDT

RE Hon. Jenny Abbott Kitchings, Clerk of Court

COVER MESSAGE

Reply in Support of Respondent's Petition for Bail Pending Appellate Review,
Robert Antwon Wright v. State of South Carolina,
App. No. 2019-001220.
Common Pleas No. 2017-CP-36-00509.

May 26, 2020.

Dear Ms. Kitchings,

Please find herewith Respondent Robert Wright's Reply in Support of Respondent's Petition for Bail Pending Appellate Review and certificate of service of the same upon Petitioner in the following matter: Robert Antwon Wright v. State of South Carolina, (App. No. 2019-001220) (Common Pleas No. 2017-CP-36-00509).

Please let us know if there are any issues or if you have any questions. Thank you and best wishes,

On behalf of:

Michael Rayfield,

Mayer Brown, LLP,

T: +1-212-506-2560,

mrayfield@mayerbrown.com

RECEIVED

May 26 2020

SC Court of Appeals