

STATE OF SOUTH CAROLINA
In the Court of Appeals

On Writ of Certiorari to Newberry County
Brian M. Gibbons, Post-Conviction Relief Judge
Donald B. Hocker, Trial Court Judge

Appellate Case No. 2019-001220

RECEIVED

May 21 2020

SC Court of Appeals

ROBERT A. WRIGHT,

Respondent,

v.

THE STATE OF SOUTH CAROLINA,

Petitioner.

RETURN TO PETITION FOR APPEAL BOND

The State of South Carolina respectfully submits the following return to the petition for appeal bond, served on May 11, 2020, and received by the State on May 13, 2020:

1. Robert Wright is currently incarcerated with the South Carolina Department of Corrections for current terms of sixteen years for two counts of accessory before the fact to a felony (first-degree burglary and armed robbery).
2. On January 15, 2016, Wright filed a motion for a new trial alleging the trial court lacked subject matter jurisdiction in violation of S.C. Code § 16-1-50 because Wright was tried and convicted of accessory before the fact when he was not tried with the principal felon, nor was his trial after the principal's conviction. Wright moved to renew and reconsider the denial of Wright's motion for a directed verdict, or in the alternative, for a new trial based upon a lack of competent evidence. Finally, Wright moved for a new trial based on

the assistant solicitor's comments during his closing argument on Respondent's right to remain silent.

3. A hearing was held on March 3, 2016, before Judge Hocker. Wright was present and represented by his trial counsel. On May 6, 2016, Judge Hocker denied and dismissed Wright's post-trial motions. Judge Hocker dismissed Respondent's subject matter jurisdiction claim, citing State vs. Blakely, which held "[t]oday, the accessory's culpability no longer shadows that of the principal. Accordingly, an accessory may be convicted even if the principal is not charged, is acquitted, or is not yet prosecuted." State v. Blakely, 402 S.C. 650, 656, 742 S.E.2d 29, 32 (Ct. App. 2013). The court dismissed Wright's motion for new trial based on lack of evidence and Wright's renewal of directed verdict motion based on the oral rulings made on the record at trial. The court dismissed Wright's motion for new trial based on the solicitor's closing argument finding no prejudice resulted when the court gave the jury the standard charge for it not to consider Wright's failure to testify. The court also found the solicitor's argument was, in part, based upon the evidence in the case. The court further found the solicitor's closing did not shift the burden of proof to the defendant.
4. Wright filed a notice of appeal and was represented by Counsel. Wright asserted grounds similar to his post-trial motion. Wright and the State submitted briefs. On November 7, 2016, Wright submitted a consent order signed by himself, Counsel, and Wright that indicated an agreed dismissal of Wright's direct appeal. The Court of Appeals dismissed the appeal by an order filed November 9, 2016. The remittitur was sent November 29, 2016.
5. Wright filed a timely application for post-conviction relief alleging:

Ineffective Assistance of Trial Counsel

- a. “Trial counsel failed to properly investigate the case and prepare an adequate defense based on the evidence in the case;
- b. Trial counsel failed to request a continuance in order to allow her to properly investigate the case and prepare an adequate defense;
- c. Trial counsel failed to move for the suppression of statements and evidence;
- d. Trial counsel failed to make necessary objections during the trial or otherwise properly raise and/or preserve issues for appeal;
- e. Trial counsel failed to effectively cross-examine the State’s witnesses during the trial;
- f. Trial counsel failed to introduce relevant evidence in the defense case in chief, or proffer evidence when necessary;
- g. Trial counsel failed to state and/or argue relevant facts and law to the jury in his statements and arguments to the jury;
- h. Trial attorney failed to properly explain, convey, and advise client on plea offer;
- i. Failed to properly convey, review and advise as to the charges, potential sentences and the evidence.”
- j. “Trial Counsel ineffective for failing to move for pretrial quashing, or post-trial motion for arrest of judgment, of the Conspiracy and Accessory Before the Fact indictments on the grounds the indictments fail to sufficiently allege the critical elements of the offenses...”
- k. “Trial counsel ineffective for failing to move for pretrial quashing, or post-trial motion for arrest of judgment, of the Conspiracy and Accessory Before the Fact indictments on the grounds the indictments are unconstitutionally overbroad and vague...”

Ineffective Assistance of Appellate Counsel

- l. “Appellate counsel failed to properly raise and argue viable issues on appeal.”

“Failure of the State to adequately comply with the rules of discovery”

- m. “The State failed to provide discovery materials that were in its possession or which were known or should have been known to the State or its agents.”

6. A post-conviction relief hearing was convened on February 26, 2019, at the Greenwood County Courthouse where applicant proceeded on four issues: 1) ineffective assistance of counsel for failing to adequately cross-examine the state’s witness; 2) ineffective assistance of counsel for failing to object to references that the Wright was a drug dealer;

3) ineffective assistance of counsel for failing to object to prejudicial comments made by the solicitor during closing argument, and; 4) ineffective assistance of counsel for failing to adequately advise Wright as to plea offers.

7. On May 14, 2019, the post-conviction relief court signed Wright's proposed order granting Wright relief as to allegation number three and denying and dismissing relief as to the remaining allegations. This order was filed by the Newberry Clerk of Court on May 17, 2019. The State was not served with a copy of the signed and clocked order, but discovered the filed order on May 28, 2019. On June 6, 2018, the State filed a motion to alter or amend pursuant to Rule 59(e), SCRCP. The post-conviction relief court denied the State's motion on June 24, 2016. Thereafter, on July 25, 2019, the State filed a notice of appeal. The State filed its Petition for Writ of Certiorari on December 4, 2020.
8. On May 11, 2020, Wright served a petition for appeal bond requesting that this Court issue an order releasing him on bond pending the ultimate outcome in this case. In support of his motion for appeal bond, Wright asserts there is a substantial likelihood he will prevail on appellate review, that he should receive appeal bond because he was not directly involved in the home invasion, and that he is not a danger to the community.
9. The State asserts it is unlikely Wright will prevail as the post-conviction relief court's order granting post-conviction relief is based on errors of law and its findings lack probative evidence to support them. Contrary to Petitioner's assertions, the State's Petition for Writ of Certiorari entails important questions of law and its application in PCR cases, 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. Like many PCR cases argued before this Court, the evaluation of the case depends on the facts of the

case and the testimony from the PCR hearing; however, this does not negate this Court's ability to establish case law on novel issues by way of the arguments and facts of particular PCR matter.

10. The State asserts that Wright should be precluded from release on bond pending appeal because the sentence of imprisonment Wright received is in excess of ten years. See S.C. Code Ann. Section 18-1-90 (Supp. 2011) (“[B]ail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years.”). Wright was sentenced to sixteen years’ imprisonment. As a result, granting Wright’s request for bond would be inappropriate.
11. However, should this Court consider Wright’s request, pursuant to State v. Whitener, 225 S.C. 244, 81 S.E.2d 784 (1945), the State asks this Court to exercise its discretion to deny Wright’s motion. The South Carolina Appellate Court Rules provide that an applicant’s release on bond pending appeal from a post-conviction relief order shall be exercised with caution and only in *exceptional circumstances*. Rule 243(k), SCACR (2015). In deciding whether to exercise the discretionary authority to admit an applicant to bail, the following factors are considered: the probability the applicant will prevail on appellate review and the nature of the relief he or she will receive; the seriousness of the criminal offense committed; the danger the applicant may pose to the community if he or she is released; the likelihood that the applicant may flee if released; and the character and circumstances of the applicant. Id. The State submits this case does not present the requisite circumstances to warrant Wright’s release on bond pending appeal. For the reasons set forth below, the State opposes this motion and requests that this Court deny Wright’s motion for appeal bond pending appeal.

12. As stated above, Wright's request for release on bond pending appeal should be denied because it is unlikely he will prevail on appeal. The State submits the post-conviction relief court's grant of relief is predicated on errors of law and is not supported by probative evidence.
13. Wright's request should also be denied based upon the likelihood that Wright may flee if released. Because Wright is sentenced to imprisonment for sixteen years, he would have a much greater incentive to flee while out on bond. Wright alleges that because he was released on bond prior to his initial trial and appeared before the court during his trial, he should be entitled to bond in this instance. However, the State notes a key distinction between Wright's pre-trial bond release and a potential appellate bond release: prior to trial Wright had not yet been convicted in this case and thus, had not yet received a prison sentence. Now, Wright is fully aware of his current sentence and the potential to receive the same or potentially a longer sentence, should he receive a new trial. In the same vein, even if Wright were to prevail on appeal, the affirmation of the grant of his PCR application would only entitle him to a new trial, not an acquittal. Therefore, facing a maximum sentence of life imprisonment, Wright would have both the motive and opportunity to flee if released on bond.
14. Moreover, Wright argues he is not a danger to the community and, in support of this, argues that he was merely found guilty of accessory before the fact, and did not partake in the principal incident. Wright also attempts to support his argument by providing self-serving statements from friends and family members indicating that he is an upstanding citizen. However, the evidence provided at trial indicates Wright helped orchestrate a home invasion by informing his co-defendant, "had somebody for [Jones] to rob [...] [b]ecause

he was getting in [Wright's] way.” Wright provided details to his co-defendants, such as where the victim's lived, and spoke with his co-defendants “basically every day” about the future robbery. (Trial Tr. 135). Additionally, the evidence indicates Wright's co-defendant asked Wright if the co-defendants should proceed with the robbery, to which Wright directed, “go ahead and kick in the door.” (Trial Tr. 139). While Wright may not have been physically present at the scene of the principal crime, he was involved in an influential capacity in a violent crime. Wright knowingly influenced, encouraged, and orchestrated a home invasion robbery, and as such, Wright's argument that he is not a danger to the community is without merit.

15. The State submits this Court should consider the surrounding circumstances in favor of denial of the Petitioner's motion for appeal bond. Specifically, the Court should consider the victim's comments on the Petitioner's request for bond pending appeal. Victims have the right to be notified of, attend, and comment on any post-conviction proceedings, affecting the probation, parole, or release of the offender. S.C. Code § 16-3-1560(A) (1976). Victims also have the right to make recommendations in cases for which bond is being requested. S.C. Code § 16-3-1525(I)(1) (1976). The victim's family has expressed their emotional distress at the thought of Wright being released on bond pending appellate review. See Attached Letter from Victim.
16. Based upon all the foregoing, the State prays this Court deny Wright's request for release on bond pending appeal.
17. Should this Court determine that this is the exceptional case that would permit Wright's release on bond, the State requests that the Court impose conditions on his release. Specifically, due to the seriousness of his convictions and the risk that he will flee if

released, the State requests that, at a minimum, Wright be placed on the following special conditions in addition to the usual and ordinary conditions of release: home detention pursuant to the county home detention program to include GPS monitoring at Wright's expense; and no change of address without prior court approval. Furthermore, the State requests that Wright be prohibited from applying for a passport and must be required to surrender any current passport to the Newberry County Clerk of Court.

WHEREFORE, the State requests Wright's petition for appeal bond be denied and dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

BRIANNA L. SCHILL
Assistant Attorney General
SC Bar No. 103380

s/ Brianna L. Schill
ATTORNEYS FOR PETITIONER
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803)734-3737

ATTORNEYS FOR PETITIONER

May 21, 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals

On Writ of Certiorari to Newberry County
Brian M. Gibbons, Post-Conviction Relief Judge
Donald B. Hocker, Trial Court Judge

Appellate Case No. 2019-001220

RECEIVED

May 21 2020

SC Court of Appeals

ROBERT A. WRIGHT,

Respondent,

v.

THE STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX TO RETURN TO PETITION FOR APPEAL BOND

CONTENTS

1. Letter from Victim

Trisha Allen

From: Ced Meyers [REDACTED]
Sent: Tuesday, May 19, 2020 1:01 PM
To: Trisha Allen
Subject: Fwd: No release

Begin forwarded message:

From: Ced Meyers [REDACTED]
Subject: No release
Date: May 19, 2020 at 12:33:17 PM EDT
To: tallon@scag.gov

In the matter concerning The State Of South Carolina vs. Robert Wright my family and I would consider it a great injustice for Mr. Wright to be released under any circumstances pending the outcome of any situations or verdicts. Since his incarceration Mr. Wright has received several disciplinaries which leads me to conclude there is little or no change in his behavior. As an citizen of The State it would be greatly appreciated if the safety of my family would be a deciding factor in any decisions made in regards to said individual. We strongly oppose any release.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

CERTIORARI TO NEWBERRY COUNTY

Brian M. Gibbons, Post-Conviction Relief Judge
Donald B. Hocker, Trial Court Judge
Appellate Case No. 2019-001220

RECEIVED

May 21 2020

SC Court of Appeals

ROBERT A. WRIGHT,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Appeal Bond and Appendix to Return to Petition for Appeal Bond has been served upon Respondent by placing one copy in the United States Mail, addressed to each:

Michael Rayfield, Esquire
Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020-1001

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, SC 29601

Additionally, the undersigned hereby certifies a true copy of same has been electronically mailed to Respondent at the following electronic mail addresses provided by Respondent: mrayfield@mayerbrown.com and jfalknerwilkes@gmail.com.

This 21st day of May, 2020.

s/ Brianna L. Schill

Brianna L. Schill
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
briannaschill@scag.gov

From: [Brianna Schill](#)
To: jfalknerwilkes@gmail.com; mrayfield@mayerbrown.com
Cc: [Jennifer Jennison](#); [John Grzymalski](#)
Subject: Robert A. Wright v. State of South Carolina, Appellate Case No. 2019-001220
Date: Thursday, May 21, 2020 1:12:37 PM
Attachments: [WRIGHT Robert - Letter Sending Return to Appeal Bond and Documents \(02283771xD2C78\).pdf](#)

Good afternoon, Mr. Rayfield and Mr. Wilkes:

I hope you are doing well. Please find attached a copy of the State's Return to Petition for Appeal Bond and Appendix to Return to Petition for Appeal Bond for the above-referenced matter, which I will be filing in the South Carolina Court of Appeals today, May 21, 2020, by electronic filing. Hard copies addressed to each of you have been placed in the U.S. mail today, May 21, 2020.

Please let me know if you have any questions.

Best regards,

Brianna L. Schill



Brianna Schill
Assistant Attorney General
SC Attorney General's Office
(803) 734-3843
briannaschill@scag.gov

RECEIVED
May 21 2020
SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

May 21, 2020

RECEIVED

May 21 2020

SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
(Via Electronic Filing)

Re: Robert A. Wright, #334552 v. State of South Carolina
Appellate Case No. 2019-001220

Dear Ms. Kitchings,

Enclosed is a copy of Petitioner's **Return to Petition for Appeal Bond and Appendix to Return to Petition for Appeal Bond** in the above-captioned post-conviction relief appeal for filing with the Court. Respondent is simultaneously being served a copy of this Return.

Thank you for your consideration in this matter. Please let me know if I can provide any additional information for the court.

Sincerely,

s/ Brianna L. Schill

Brianna L. Schill
Assistant Attorney General
SC Bar No. 103380

BLS/jpg
Enclosure(s)

Cc: J. Falkner Wilkes, Esquire (via U.S. mail and email: jfalknerwilkes@gmail.com)
Michael A. Rayfield, Esquire (via U.S. mail and email: mrayfield@mayerbrown.com)