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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Post-Conviction Relief Judge

Appellate Case No. 2020-000574

Maunwell Ervin,Respondent,

v.

State of South Carolina,Petitioner.

**RETURN TO PETITION FOR BOND PENDING PETITION FOR WRIT OF
CERTIORARI**

The State of South Carolina respectfully submits the following return to the petition for appeal bond, served on June 8, 2020, and received by the State on June 11, 2020:

1. Ervin is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenwood County Clerk of Court. During the March 2011 term, the Greenwood County Grand Jury indicted Ervin for possession of marijuana with intent to distribute (2011-GS-24-783), possession with intent to distribute marijuana within proximity of a school or park (2011-GS-24-784), trafficking in cocaine base (100-200 grams) (2011-GS-24-785), and trafficking in cocaine base within proximity of school or park (2011-GS-24-786). During the February 2013 term of the Greenwood County Grand Jury, Ervin was indicted for possession of a controlled substance (2013-GS-24-293). Ervin was represented by Lauren Taylor, Esquire.
2. On July 23-24, 2013, Ervin proceeded to trial before the Honorable Frank Addy, Jr. and was subsequently found guilty by the jury for possession with intent to distribute marijuana

(2011-GS-24-783), possession with intent to distribute marijuana within the proximity of a school or park (2011-GS-24-784) and possession of a controlled substance (2013-GS-24-293). A mistrial was declared on the trafficking charge (2011-GS-24-785) and the corresponding proximity charge (2011-GS-24-786). Judge Addy sentenced Ervin to ten years' imprisonment for possession of marijuana with intent to distribute, a consecutive five years for possession with intent to distribute within proximity of a school or park, and fourteen days' imprisonment for possession of a controlled substance.

3. Following convictions, Ervin appealed and a brief pursuant to Anders v. California, 386 U.S. 738 (1967), was perfected by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense. Ervin argued the trial court erred in refusing to suppress drugs seized from Ervin's apartment because the police lacked sufficient probable cause for the search warrant. In an unpublished opinion, the South Carolina Court of Appeals dismissed Ervin's appeal. State v. Manwell Ervin, 2014-UP-427 (filed November 26, 2014). The Remittitur was sent December 12, 2014.
4. On April 11, 2016, Ervin was again represented by Lauren Taylor, Esquire when he appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty to the lesser included offense of trafficking in cocaine (28-100 grams, 2nd offense). Pursuant to a recommendation, Ervin was sentenced to the mandatory minimum term of imprisonment for seven years. As a result of the guilty plea, the proximity charge (2011-GS-24-786) was dismissed. Ervin did not file a notice of appeal.
5. On December 22, 2015, Ervin filed an application for post-conviction relief (2015-CP-24-01268) alleging ineffective assistance of counsel based on the following grounds:
 - a. Ervin was unconstitutionally subjected to an illegal search and seizure.

- b. The search warrant used by the sheriff's department to conduct the search and seizure at Ervin's apartment on December 9, 2010 was unlawfully obtained.
 - c. Ervin was denied his right to a fair trial.
 - d. South Carolina failed to fulfill its constitutional obligation to provide the Ervin, and indigent felony defendant, with effective assistance of counsel.
 - e. Ervin was unconstitutionally denied and deprived of the right to have the effective assistance of counsel.
 - f. Ervin was unconstitutionally denied and deprived of the right to defend himself in court.
 - g. Ervin was unconstitutionally denied and deprived of the right to confront this prosecution's case head on.
 - h. Ervin was unconstitutionally denied and deprived of the right to challenge the evidence against him.
 - i. Ervin was unconstitutionally denied and deprived of the right to confront the witnesses against him.
 - j. Ervin was unconstitutionally denied and deprived of the right to present evidence in his defense.
 - k. Ervin was unconstitutionally denied and deprived of the right to have meaningful access to the courts.
 - l. Ervin was unconstitutionally denied and deprived of due process.
 - m. Ervin was unconstitutionally denied and deprived of the right to have equal protection of the laws.
6. The State served its return to the application on October 31, 2016, requesting an evidentiary hearing. Ervin filed a second PCR application (2017-CP-24-0641) challenging the same charges and convictions, which was then merged into the current action as an amendment by order signed by the Honorable Eugene C. Griffith, Jr., on September 28, 2017. In the amendment, Ervin alleged the following grounds for relief:
- a. Trial Counsel failed to object to an unconstitutional charge to the jury that the jury may infer his guilt from the fact that the apartment was in his name.
 - b. Trial Counsel failed to object to a charge to the jury that constructive possession means having dominion and control over the premises where the drugs are found.
 - c. Trial Counsel failed to object to the consecutive sentencing of Ervin on the charges of possession with intent to distribute marijuana and possession with intent to distribute marijuana within proximity to a school which violated the double jeopardy provisions of the State and Federal constitutions.
 - d. Trial Counsel failed to object to testimony of the officers involved in this case which was opinion testimony and the officers had not been qualified

as an expert.

- e. Trial Counsel failed to object to the numerous leading questions by the solicitor.
 - f. Trial Counsel failed to object to closing statement of the solicitor which improperly bolstered the testimony of the arresting officers
7. On June 27, 2017, Ervin filed a second application for post-conviction relief (2017-CP-24-00754) after his guilty plea. In his second application, Ervin alleges the following grounds of ineffective assistance of counsel:
- a. Trial counsel was ineffective for failing to raise a double jeopardy argument.
 - b. Trial counsel was ineffective in that she continued to represent me after I filed a request that she be terminated as my attorney and after I had filed a Post-Conviction Relief action alleging she was ineffective in representing me at trial.

On January 25, 2018, the State served a return and motion to dismiss Ervin's application as being filed beyond the statutory one year filing period.

8. An evidentiary hearing into both PCR applications (2015-CP-24-1268) and (2017-CP-24-00754) was convened on March 2, 2018, before the Honorable J. Mark Hayes, II, at the Laurens County Courthouse. Ervin was represented by Rauch Wise, Esquire. Assistant Attorney General Justin Hunter of the Office of the Attorney General represented the State.
9. On June 29, 2018, Judge Hayes issued a Form 4 granting both PCR applications. An order granting the new trials was filed on September 13, 2018. Thereafter, the State filed a motion to reconsider and to alter and amend pursuant to Rule 59(e), SCRPC.
10. On March 4, 2019, while the State's motion to reconsider was pending, Ervin served a petition for appeal bond requesting that the court issue an order releasing him on bond pending the filing of the State's Petition for Writ of Certiorari, as well as the ultimate outcome in this case. In support of his motion for appeal bond, Ervin asserted he should be released so he can begin serving his federal sentence, which was set to run consecutive to his current sentence. Ervin asserted in the event this Court's ruling is reversed by the

appellate courts, the State of South Carolina can issue a hold on Ervin and secure his presence in South Carolina upon release from prison.

11. The State subsequently filed a Return, arguing that Ervin's Petition should be denied because he is unlikely to prevail on appeal.
12. Subsequently, Ervin's Petition for Appeal Bond was denied.
13. With respect to Ervin's 2015 PCR, by Order dated February 14, 2020, and filed February 25, 2020, the court granted the State's motion to reconsider in part, changing the order only to reflect that Counsel was not ineffective for failing to raise the Double Jeopardy issue.
14. With respect to Ervin's 2017 PCR, by Order dated February 14, 2020, and filed February 25, 2020, the court denied the State's motion to reconsider in its entirety.
15. On March 25, 2020, the State filed Notices of Appeal for each of Ervin's PCR matters. On March 30, 2020, Ervin filed a cross-appeal for his 2015 PCR case.
16. On June 8, 2020, the State filed its first extension to file the Petition for Writ of Certiorari and Appendix.
17. On June 8, 2020, Ervin filed this second Petition for Bond Pending Petition for Writ of Certiorari, requesting that this Court issue an order releasing him on bond pending the filing of the State's Petition for Writ of Certiorari. In support of his motion for appeal bond, Ervin once again asserts he should be released so he can begin serving his federal sentence, which was set to run consecutive to his current sentence. Ervin asserts in the event this Court's ruling is reversed by the appellate courts, the State of South Carolina can issue a hold on Ervin and secure his presence in South Carolina upon release from prison.

18. The State asserts it is unlikely Ervin 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.
19. However, should this Court consider Ervin'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 Ervin'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 Ervin's release on bond pending appeal. For the reasons set forth below, the State opposes this motion and requests that this Court deny Ervin's motion for appeal bond pending appeal to the Supreme Court.
20. As stated above, Ervin'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 the record or evidence presented in this case.
21. The State also asserts that Ervin should be precluded from release on bond pending appeal because the sentence of imprisonment Ervin 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.”). Ervin was sentenced to fifteen years’ imprisonment. As a result, granting Ervin’s request for bond would be inappropriate.

22. Based upon all the foregoing, the State prays this Court deny Ervin’s request for release on bond pending appeal.

WHEREFORE, the State requests Ervin’s petition for appeal bond be denied and dismissed.

Respectfully submitted,

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June 17, 2020