

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

STATE OF SOUTH CAROLINA,

Petitioner,

v.

GARTHAREE HINSON,

Respondent.

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Appellate Case No. 2018-001469

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OCT 22 2020
SC Court of Appeals

MOTION FOR BOND PENDING APPEAL

NOW COMES THE RESPONDENT, GARTHAREE HINSON, by and through the undersigned counsel, and moves this Honorable Court for an order setting bond pending the outcome of this appeal pursuant to the findings in the Post-Conviction Order under appeal in this matter and the substantial risk to the Respondent from the current COVID-19 pandemic. In support of the request, the Respondent submits the following.

This matter is an appeal by the State of a Post-Conviction Order vacating the Respondent's conviction and sentences and that the Respondent is entitled to a new trial. By that certain order of the South Carolina Supreme Court dated July 19, 2019, this appeal was transferred to the South Carolina Court of Appeals. Therefore, this Court has the authority to grant the Respondent a bond pending the outcome of this appeal and/or any new trial of the Respondent.

The factors to be considered in admitting a person to bail pending appeal include the probability of reversal, the nature of the crime, the possibility of escape, and the character and circumstances of the appellant. In the Interest of Michael H., 360 S.C. 540 (2004). As noted by the United States Supreme Court, "[b]ail is 'basic to our system of law.'" Herzog v. United States,

75 S Ct 349, 99 L Ed 1299 (1955). The Respondent submits that as set forth in the Post-Conviction Order and as argued in the Respondent's Return to the Petition for Writ of Certiorari, that the physical evidence against the Respondent in this case is extremely weak and that the linchpin of the State's case against the Respondent was the testimony of the witness who the State improperly vouched for at trial. Therefore, it is likely that the Respondent will be found not guilty of the charges in a new trial if the State in fact does institute a new trial. Further, the Respondent submits that it is doubtful that a new trial will be instituted by the State as the charges against the Respondent's three codefendants have been dismissed.

The Respondent submits that the six years he has already served for his unlawful conviction are an egregious miscarriage of justice and requiring him to serve additional time in prison while awaiting the results of this appeal are patently unfair to the Respondent.

Further, the Respondent requests bail due to the coronavirus outbreak and the effect it has had on inmates in the South Carolina Department of Corrections. The Respondent has contracted COVID-19 while incarcerated which could result in a debilitating illness. Complications from coronavirus include pneumonia in both lungs, organ failure in several organs, and death. Mr. Hinson submits that the health risk to himself and other inmates is heightened in this pandemic given the conditions in the South Carolina jails where it is impossible to practice safe social distancing and proper hygiene. Such conditions further demands that bond be set so that the Respondent can be released and can receive proper medical treatment.

As this Court is no doubt aware, the coronavirus has been especially virulent in South Carolina. As a result, South Carolina Supreme Court Chief Justice Donald Beatty issued a

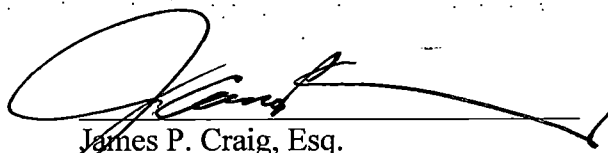
memo to local magistrate and municipal judges which directed courts to release persons charged with non-capital crimes, so long as they did not pose a danger to the public or are an extreme flight-risk.¹ As of September 23, 2020, 2,060 inmates in the South Carolina Department of Corrections have tested positive for coronavirus.² and 27 inmates have died.³ The Respondent would live with his father in Chesterfield County while on bond.

Further, the Respondent's age and the fact that he has served six years for this unlawful conviction makes it less likely that he would commit a crime if released. According to the United States Sentencing Commission, "[r]ecidivism rates decline relatively consistently as age increases," from 35.5% under age 21, to 9.5% overage 50, lessening the need to protect the public from further crimes of the defendant under 3553(a)(2)(C). See, United States Sentencing Commission, Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines.⁴ Mr. Hinson is now thirty-eight years of age, entering the age span where recidivism decreases.

WHEREFORE, in consideration of the foregoing, the Respondent respectfully prays that this Court issue an Order granting bond.

Columbia, S. C.
October 21, 2020

Respectfully submitted,



James P. Craig, Esq.
Attorney for the Respondent
2001 Assembly Street, Suite 201
Columbia, South Carolina 29201

¹ The Supreme Court of South Carolina "Memorandum - March 16, 2020

² <http://doc.sc.gov/covid.html>

³ Id.

⁴ available at ussc.gov/publicat/Recidivism_General.pdf

STATE OF SOUTH CAROLINA
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GARTHAREE HINSON,

RESPONDENT,

VS.

STATE OF SOUTH CAROLINA,

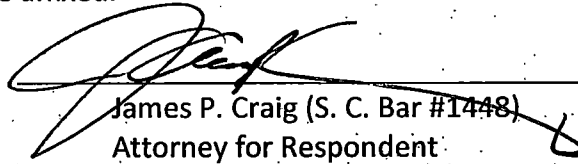
PETITIONER.

Appellate case no. 2018-001469

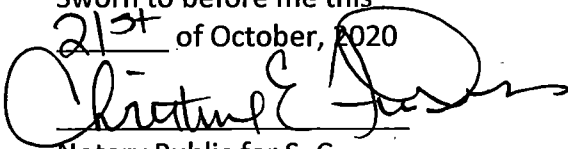
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion for Bond Pending Appeal in the above referenced case has been served upon Johnny James, Esq. at Room 519 Rembert Dennis Building 1,000 Assembly Street Columbia, S. C. 29201; and Joanna K. Delany, Esq. SCCID Division of Appellate Defense 1330 Lady Street, Suite 401 Columbia, S. C. 29201-3332; and Gartharee Hinson (Inmate #272766) Broad River Correctional Inst. 4460 Broad River Road Columbia, S. C. 29210 on this the 21st day of October 2020 by placing a true copy of the pleading in the U. S. Mail with proper postage affixed.


James P. Craig (S. C. Bar #1448)
Attorney for Respondent

Sworn to before me this
21st of October, 2020



Notary Public for S. C.

My Comm. exp: 1-22-2030

Craig Law Firm, P.C.

Attorneys & Counselors at Law

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Columbia, South Carolina 29201

Charlie M. Bru Pender

J. Kevin Craig

Of Counsel: James P. Craig

Phone (803) 252-5178

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October 21, 2020

Hon. Jenny Abbot Kitchings
Clerk of Court
S. C. Court of Appeals
1220 Senate Street
Columbia, S. C. 29201

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SC Court of Appeals

Re: Gartharee Hinson v. South Carolina

Case # 2018-001469

Notice of Special Appearance

Motion for Bond Pending Appeal

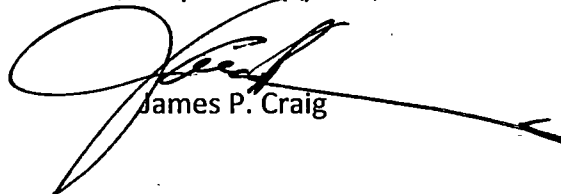
Dear Ms. Kitchings:

Enclosed herewith please find for filing the above referenced documents. By copy of this letter, I have served a copy of these pleadings on Johnny James, Esq.; Joanna Delany, Esq. and the Respondent, Gartharee Hinson. I would appreciate the extra copies of these pleadings be clocked in and returned to me in the self-addressed postage paid envelope I have provided.

Please advise when and how this motion will be heard.

With kindest regards, I am,

Respectfully yours,


James P. Craig

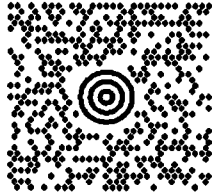
cc: Johnny James, Esq.
Joanna Delany, Esq.
Gartharee Hinson

JAMES P. CRAIG, ESQ.
(803) 252-5178
CRAIG LAW FIRM, P.C.
2001 ASSEMBLY STREET
COLUMBIA SC 29201

LTR

1 OF 1

SHIP TO:
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SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET
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COLUMBIA SC 29201



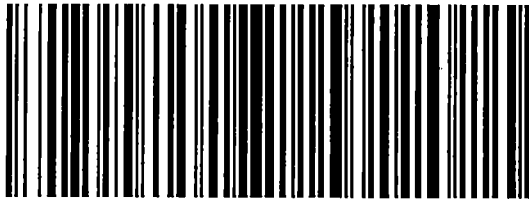
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Reference #1: Gartharee Hinson
Reference #2: Case #2018-001469

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