

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Nov 23 2020**

**S.C. SUPREME COURT**

Appeal from Kershaw County  
Honorable Alison Renee Lee, Circuit Court Judge  
Appellate Case No. 2020-001084

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MYLES JAMES DUNNE,

Respondent,

vs.

THE STATE,

Petitioner.

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**MOTION TO WITHDRAW APPEAL**

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Petitioner (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

In November of 2017, the Kershaw County Grand Jury indicted Respondent Myles James Dunne for one count of possession of heroin. On November 13, 2017, Dunne pleaded guilty to those charges in the Kershaw County Court of General Sessions before the Honorable Lee S. Alford, circuit court judge. Dunne additionally waived presentment to the grand jury and pleaded guilty to second-degree burglary—nonviolent and possession of cocaine. Following entry of the pleas, the plea judge imposed a deferred sentence for Dunne to participate in the Drug Court program. Judge Alford additionally ordered Dunne to pay \$200 in restitution on the second-degree burglary charge.

Dunne failed to successfully complete the Drug Court program and pay restitution. On April 5, 2019, the case proceeded to a sentencing hearing before the Honorable DeAndrea G. Benjamin. At sentencing, the State recommended Dunne receive probation and pay the previously ordered \$200 restitution. Judge Benjamin sentenced Dunne to serve concurrent terms of two years imprisonment, suspended upon service of eighteen months' probation, on the drug charges; and seven years' imprisonment, suspended upon the service of eighteen months' probation and restitution of \$200 for second-degree burglary.

## **II.**

Subsequent to the plea hearing, Dunne did not appeal his convictions or sentence and, instead, filed an application for post-conviction relief. However, because he pleaded guilty, the Department of Immigration and Customs Enforcement (ICE) placed a detainer on Dunne. In response to Dunne's application for post-conviction relief, the State filed a return requesting an evidentiary hearing on the matter, and an evidentiary hearing was conducted on May 18, 2020, via Cisco WebEx Virtual Platform, by consent of all parties, before the Honorable Alison Renee Lee, circuit court judge, presiding. At the conclusion of the hearing, the post-conviction relief judge granted Dunne's application, and vacated his convictions. On May 20, 2020, the post-conviction relief judge signed a written order memorializing the ruling. Following the issuance of the written order, the State filed a timely motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Ultimately, the post-conviction relief judge denied the State's motion. On August 7, 2020, the State initiated an timely appeal of the post-conviction relief judge's ruling.

## **III.**

Subsequent to the State's initiation of the appeal, the State—after further review of the record and the post-conviction relief judge's order—has now determined an appeal of the grant of

post-conviction relief is not warranted under the specific and unique circumstances of Dunne’s case. Therefore, pursuant to Rule 260(c) of the South Carolina Appellate Court Rules, the State asks this Court to withdraw the State’s appeal and allow the matter to be promptly remanded to the Kershaw County Court of General Sessions for any further proceedings that may potentially be necessary in light of the post-conviction relief judge’s ruling. See Rule 260(c), SCACR (“An appeal or other proceeding may be dismissed on motion of the appellant or petitioner upon such terms as may be fixed by the court.”).

**IV.**

**WHEREFORE**, Petitioner prays this Court will withdraw the State’s appeal in the case of Myles James Dunne v. State, Appellate Case No. 2020-001084; issue remittitur; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

MICHAEL D. DAVIDSON  
Assistant Attorney General

By: s/Michael D. Davidson  
MICHAEL D. DAVIDSON

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

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