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FEB 04 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas  
Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2019-001995

In the Matter of the Care and  
treatment of

Roy Lee Wade,

Appellant,

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**NOTICE OF MOTION AND  
MOTION FOR WITHDRAWAL AND DISMISSAL OF APPEAL**

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YOU WILL PLEASE TAKE NOTICE, that appellant's counsel, Adam C. Ness, will move to withdraw the appeal in this matter and have the same dismissed by the Court on the tenth (10) day following service hereof or as soon thereafter as counsel may be heard. This motion is based upon the following:

1. The undersigned was appointed to represent the appellant regarding his annual review in a sexually violent predator matter.
2. A jury trial was conducted in Aiken County, S.C., on October 7-8, 2019, with the Honorable Clifton B. Newman presiding.
3. The jury returned a verdict adverse to the appellant (i.e., a verdict that appellant should remain committed for long term control, care and treatment). As a result, Judge Newman issued an Order of Continued Commitment.
4. On October 17, 2019, the undersigned filed Post-Trial Motion for an Order granting Respondent Judgment non obstante verdicto (JNOV), pursuant to SCRPC, Rule 50(b); for a new trial (in the alternative) in this action, pursuant to

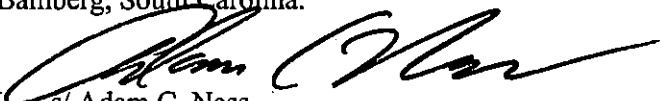
SCRCP, Rule 50(b); or for Reconsideration of the Court's ruling to Respondent's Motion for Mistrial, pursuant to SCRCP, Rule 59; all on the grounds the State's only witness testified to facts specifically disallowed by the trial court, i.e. - results of the PPG test, which was denied by Judge Newman on October 30, 2019.

5. The appellant instructed the undersigned to appeal said verdict and Order.
6. On November 8, 2019, the undersigned served a Notice of Appeal on the State of South Carolina by depositing a copy of the same in the United States Mail, postage prepaid, addressed to the State's attorney of record, James G. Bogle, Jr., Esq., Office of the Attorney General, Post Office Box 11549, Columbia, SC 29211.
7. On that same day, the Notice of Appeal and Certificate of Service was sent by mail, postage prepaid, to the Aiken County Clerk of Court for filing.
8. On that same day, the undersigned requested the transcript from the trial court reporter by email to Brenda Sigwald, at [bsigwald@sccourts.org](mailto:bsigwald@sccourts.org). However, the transcript was delayed due to Ms. Sigwald's death on or about January 14, 2020.
9. On December 2, 2019, the Notice of Appeal, Certificate of Service and a copy of Judge Newman's written Order was sent by mail, postage prepaid, to the Clerk of Court for the South Carolina Court of Appeals for filing.
10. On October 25, 2020, the undersigned received the trial transcript, which was forwarded to this court on November 9, 2020.
11. Following review of the transcript, the undersigned does not believe that any viable issue for appeal exists in this matter and has so informed the appellant.
12. Additionally, Appellant concurs with the undersigned's decision to make this motion, withdrawing and dismissing this appeal.

13. Finally, Respondent's counsel, Deborah R. J. Shupe, Esq., consented to this motion via telephone call on February 2, 2021.

THEREFORE, the undersigned, as attorney for the appellant, and with the consent of the appellant and respondent, prays that this Honorable Court allow the appellant to withdraw this appeal and to have the same dismissed pursuant to Rule 260(c) SCACR.

Dated this 2<sup>nd</sup> day of February, 2021, in Bamberg, South Carolina.

  
BY: s/ Adam C. Ness  
Adam C. Ness, S.C. Bar No. 100707  
NESS & JETT, LLC  
Attorney for Appellant(s)  
P.O. Box 909  
Bamberg, SC 29003  
(803) 245-5178

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Motion and Motion for Withdrawal and Dismissal of Appeal on the State of South Carolina (respondent) by mailing and emailing a copy of the same with the State's attorney of record, Deborah R. J. Shupe, Esq., at her office at the S.C. Attorney General's Office, Rembert Dennis Building, 1000 Assembly Street, Room #519, Columbia, South Carolina 29201, on February 2, 2021.

Dated this 2<sup>nd</sup> day of February, 2021, in Bamberg, South Carolina.

BY:   
s/ Adam C. Ness

Adam C. Ness, S.C. Bar No. 100707  
NESS & JETT, LLC  
Attorney for Appellant(s)  
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**NESS & JETT, LLC**  
ATTORNEYS AT LAW  
P.O. BOX 909  
BAMBERG, SOUTH CAROLINA 29003

2878 MAIN HIGHWAY  
Telephone (803) 245-5178  
Telecopier (803) 245-5384

RICHARD B. NESS†\*  
NORMA A. T. JETT\*

\*CERTIFIED CIRCUIT COURT MEDIATOR  
†AMERICAN BOARD OF TRIAL ADVOCATES

ALISON DENNIS HOOD  
ADAM C. NESS  
R. AARON NESS

JULIUS B NESS  
1916-1991

February 2, 2021

The Honorable Jenny Abbott Kitchings  
S. C. Court of Appeals Clerk of Court  
P. O. Box 11629  
Columbia, SC 29211-1629

Re: Case Name: State v. Wade  
Case No.: 2014-CP-02-02115  
Appeal No.: 2019-001995

Dear Ms. Kitchings:

Enclosed is a Motion for Withdrawal and Dismissal of Appeal dated February 2, 2021, for filing. The same has been served upon opposing counsel by copy of this letter and enclosures. Please return a clocked copy in the enclosed stamped, self-addressed envelope. The Transcript is being requested contemporaneously.

Sincerely,



Adam C. Ness

Enclosures: Motion to Dismiss dated 02/02/2021

CC: Deborah Shupe, Esq.  
Roy Wade  
Christina Sineath (via email only)

Ness & Jett, LLC  
PO Box 909  
Bamberg, SC 29003

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**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
S. C. Court of Appeals Clerk of Court  
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