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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County
Honorable Edgar W. Dickson, Circuit Court Judge
Appellate Case No. 2021-000056

THE STATE, Respondent,

vs.

WILLIE YOUNG, Appellant.

RETURN IN OPPOSITION TO MOTION FOR APPEAL BOND

Respondent (the State), through its undersigned counsel, would respectfully show the Court as follows:

I. Case history.

Appellant Willie Young is currently serving a 30-year sentence for a 2002 Armed Robbery conviction in Orangeburg County. Inmate Search Detail Report (https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000285487). (Attachment A). His projected release date is March 7, 2027. Id. Young was convicted and sentenced on June 28, 2002. (Sentencing sheet). (Attachment B). Appellant appealed his conviction and an appeal was perfected in the form of an Anders brief. This Court reviewed the record pursuant to Anders

and dismissed the appeal. State v. Young, No. 2003-UP-564 (Ct. App. September 29, 2003). Appellant subsequently filed four collateral attacks on his conviction, all of which were denied.[1]

On July 26, 2016, Appellant filed a pro se motion for a new trial pursuant to Rule 29(b) SCRCrimP. A hearing was held at the Orangeburg County Courthouse on October 26, 2016, before the Honorable Edgar W. Dickson. Judge Dickson denied the motion and Young appealed. This Court affirmed Judge Dickson's ruling in an unpublished opinion on September 23, 2020. State v. Young, Unpublished Opinion No. 2020-UP-268 (S.C.Ct.App. filed September 23, 2020). (Attachment C). Young filed a Petition for Writ of Certiorari, which was dismissed by the Supreme Court for failure to timely serve. A remittitur was issued, but Young's Petition was subsequently reinstated in an order dated April 20, 2021. (Order). (Attachment D).

On April 20, 2021, Young filed a motion seeking an appeal bond. The State respectfully requests that this Court deny Young's motion. Young has almost no chance to prevail on appeal, has already served 20 years for his conviction for a serious and violent crime, and poses a danger to the community. Accordingly, he should not be granted a bond.

II.

A criminal defendant "may" be granted bail during the pendency of an appeal following a conviction. S.C. Code Ann. § 18-1-90. However, a defendant has no right to an appeal bond, and a court ordinarily will only issue one with "extreme caution." Nichols v. Patterson, 202 S.C. 352, __, 25 S.E.2d 155, 156 (1943) (citation and internal quotations omitted). In cases such as this one—in which a defendant was originally sentenced to a term of imprisonment exceeding ten years—South Carolina's appellate courts alone have discretion to decide whether an appeal bond should be issued. Rule 246(a), SCACR. When deciding whether to exercise that

[1] Young v. State, 2003-CP-38-1585; Young v. Burtt, C.A. No. 6:07-2893-CMC-WMC; Young v. State, 2010-CP-38-1759; Young v. State, 2013-CP-38-00757.

discretion, an appellate court should consider the following factors: (1) the probability of success on appeal; (2) the nature and seriousness of the criminal offense committed; (3) the danger the defendant may pose to the community if he or she is released; (4) the likelihood the defendant may forfeit bail or flee if released; (5) the character and circumstances of the defendant; and (6) the defendant's "personal attitude toward society and government." Nichols, 202 S.C. at __, 25 S.E.2d at 156. However, our legislature has demonstrated a strong preference for an appeal bond *not* to be granted in a case in which a convicted offender has been sentenced to a term of imprisonment exceeding ten years. See S.C. Code Ann. § 18-1-90 ("Bail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense. However, bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years."); see also State v. Whitener, 225 S.C. 244, 248, 81 S.E.2d 784, 786 (1954) (concluding—in a divided opinion—the Supreme Court could "grant bail, in its discretion, where the sentence exceeds ten years" despite the existence of a statutory provision prohibiting a grant of bail under such circumstances).

III.

Young is highly unlikely to prevail on appeal. Young has raised two issues on appeal. First, he alleges the circuit court erred by refusing to appoint counsel to represent him on his motion for a new trial, citing cases involving the constitutional right to counsel. As discussed in the State's brief to the Court of Appeals, Appellant was not entitled to counsel at this proceeding because his motion was a collateral attack on his conviction and the right to counsel extends only to the first appeal of right. See State v. Clinkscales, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995) ("We hold that Clinkscales was not entitled to counsel. Clearly, the New Trial Motion on the ground of after-discovered evidence was not heard and determined at a critical stage.

Moreover, the record does not contain evidence which would support a New Trial for after-discovered evidence."); United States v. Williamson, 706 F.3d 405, 415 (4th Cir. 2013) (collecting cases and explaining "after an appeal has been filed and the window has closed on the record of conviction, Rule 33 'newly discovered evidence' proceedings in the district court are truly collateral proceedings to which the Sixth Amendment right to counsel does not attach"). There is no right to counsel in collateral proceedings. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) ("Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further."). Accordingly, Appellant was not entitled to appointed counsel for his 29(b) motion. The Court of Appeals correctly found the issue was meritless.

Likewise, Young's underlying 29(b) claim is meritless. Though styled as a motion for a new trial based on after-discovered evidence, Young's motion does not allege any newly-discovered facts, much less facts material to guilt or innocence. Instead, it is a legal challenge to the indictment under which Appellant was tried. As such, his motion is not based on after-discovered evidence at all, and is not within the scope of Rule 29(b).

Young alleges the indictment under which he was convicted was "null and void" because it was stamped with a true bill on January 28, 2002. Appellant alleges the Orangeburg County Court of General Sessions lacked jurisdiction at this time, citing S.C. Code §14-5-620, the statute that lays out the minimum terms of court that must be held yearly in each county. In State v. Gentry, our Supreme Court abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid indictment by either a county or state grand jury. State v. Gentry, 363 S.C.93, 101, 610 S.E.2d 494, 499 n.6 (2005) ("We note that a presentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court. However, an indictment is needed to give

notice to the defendant of the charge(s) against him."). The subject matter jurisdiction of the circuit court and the sufficiency of an indictment are two distinct concepts. Id. A defendant has a constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him. Evans v. State, 363 S.C. 495, 509, 611 S.E.2d 510, 518 (2005). However, such a challenge does not implicate the subject matter jurisdiction of the circuit court. Id. Young's claim is meritless.

Finally, the motion is untimely because the alleged defects in the indictment could have been discovered when this case went to trial in 2002 by simply looking at the charging document. The motion is untimely under Rule 29(b) and S.C. Code Ann. § 17-19-90. See S.C. Code Ann. § 17-19-90 ("Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards."); Rule 29(b), SCRCrimP ("A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence."). The appeal is untimely and meritless.

IV.

Finally, Young poses a danger to the community. He was convicted of armed robbery, a serious and violent offense. Moreover, Young has repeatedly been cited for disciplinary violations while incarcerated, including violent infractions. Young was cited in 2009 for "Threatening to inflict harm on an employee." (Attachment A). In 2012, he was cited for "Possession of a weapon." Id. He has been cited four times since 2017 for possession of a cell phone, and was cited in 2011 for an "Out of place" violation. Id. He has failed to demonstrate

good character and a constructive "personal attitude toward society and government." Nichols v. Patterson, 202 S.C. 352, __, 25 S.E.2d 155, 156 (1943).

XI.

For all the foregoing reasons, the circumstances of Young's case do not warrant the extraordinary relief of a grant of an appeal bond. Therefore, this Court should exercise the extreme caution warranted by the circumstances and deny Young's motion.

XII.

If this Court should decide to grant bond, the State's respectfully requests that the Court impose reasonable bond conditions to protect the community and ensure Young does not abscond. Specifically, due to the fact Young has been convicted of a "violent" and "most serious" offense, this Court should—at a minimum—set bond in a dollar amount this Court believes will be sufficient to ensure compliance with all bond conditions, order Young to remain on home detention during the pendency of the his appeal, preclude him from leaving his residence for any purpose other than obtaining medical treatment or attending religious services, direct him not to have any contact in any form with any member of the victim's family, require Young to submit to electronic monitoring at his own expense, and preclude him from changing his address without prior court approval.

WHEREFORE, Respondent prays this Court will deny Young's Motion for Appeal Bond; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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By: _____

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April 30, 2021