

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of General Sessions

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MAY 14 2021

SC Court of Appeals

Honorable J. Mark Hayes, Circuit Court Judge

Case No(s): 2020GS4203407

The State

Respondent

v.

Derrick Martino Miller

Appellant

Motion for Release Pending Appeal

As attorney for the defendant Appellant Derrick M. Miller, I am filing this motion for Release Pending appeal and the granting of bail.

May 7, 2021

Now comes the Appellant, Derrick M. Miller, through counsel, Daniel James Macdonald III and respectfully moves this Honorable Court for an Order setting reasonable bond pending this appeal.

As grounds therefore counsel asserts:

1. That the Appellant is a legal resident of United States and has been in the United States since 1974.
2. That the Appellant has resided in Greer area since 1974.
3. That the Appellant lives in his present home in Greer, South Carolina in 2000 it was my grandfathers home my mother bought it and renovated it I have lived in the home in 1988 with my mom I still live there today 2021.
4. I am not married I have a 14 yr old son. My sons mother has other children whom I have helped out over those 14 yrs.
5. That I am the only one in my household that works my mother is on a fixed income. I handled the bigger monthly bills, plus miscellaneous bills.
6. That the Appellant has an elderly mother age 87 who I help to care for. She has mentioned its been tougher on her since I've been incarcerated. She has of recently just been in a car accident as of May 3, 2021.
7. That the Appellants continued incarceration will be more of an economic hardship as time passess. My son is Special needs it helps his mother as well if I were to be granted bail. The Appellants Liberty pending Appeal is necessary so that the Appellant can secure employment to help out, as well as help himself.
8. That the Appellants appeal is not frivolous, nor is it taken for the purpose of delay.
9. That the Appellant does not pose a danger by definition of term as used in 18. U.S.C.A. § 3148 statute. Some imminent threat of unlawful conduct. In Sellers vs. United States (1968, U.S) 21, L. Ed 2d 64, 895, CT 36, Mr. Justice Black as an individual justice in an in-chambers opinion stated in an 18. U.S.C.A § 3148 case that the idea that would

be dangerous in general to allow an application for bail (Page 2) pending appeal "must" if it is ever a justifiable ground for denying bail as distinguished from a separate proceeding for bond to keep the peace relate to some kind of danger that so jeopardizes the public that the only way to protect against it would be to keep the applicant in jail. I see the biggest threat to public safety being the pandemic not myself although by potential people could view me as a threat by not being vaccinated yet. See reverse.

10. That the Appellant's release does not constitute a "flight risk." The Appellant's ties to the community are well evidenced by his family obligations, work. Travel isn't great due to the pandemic. I have recently been informed here at Kirkland Correctional Institution that my blood test on "TB" tuberculosis ^{was} positive. I'm not sure about what will transpire from this but considering the length of my sentence and the current pandemic mixed with that I have concerns. There was a case Ex parte McIntosh, 88 Okla. Crim. 162, 201 P. 2d 258 (1948), where he had Acute tuberculosis and was released on bail where shown ~~petitioner~~ ^{he} a poor health condition and his life would be endangered by confinement.

11. That the Appellant has honored himself before in his prior commitments, the latest blemish in all honesty your honor was if I remember correctly the case of cruelty to children if I may explain I was due in family court on the day I was schedule to appear in court in Greer Municipal Court and since I couldn't be in two places at once, Greer issued a warrant for failure to appear but it was for the same charge that I was in Family Court at DSS in Greenville County on physical abuse. So my DSS lawyer Ms. Jennifer Jeffries placed a call to greer to inform them we were in court. They issued the warrant and the family court judge sent the bailiffs over after proceedings anyway after a few minutes passed they released me I went home greer officers told me to come see them. I did but they didn't remove the warrant. The judge said whatever the DSS recommended we went by which was parenting class and anger management. I did parenting thorough DSS, anger management through Greer. But anything prior to that in my youth was not having steady income couldn't afford fines everything else I appeared for crimes, misdemeanors, traffic violations. Once an ankle monitor on which I turned myself in the next day I did not flee. taken I have claim responsibility for my actions by my criminal history. I do not wish or have intention to flee to avoid prosecution. I know what I have been accused of, but ^{wrong}

In respect to the courts decision on bail. In Section 22 of American Law Reports 6th edition 533 (2007). And this case of Domestic Violence of High aggravated nature where the defendant Derrick M. Miller was convicted. He submitted a petition for discretionary review refused, (Oct, 20, 1993). The court says Although a cigarette lighter is not a deadly weapon per se, it can qualify as such through the manner of its use and its capacity to produce death or serious bodily injury, ruled court. In McCray v. State, 358 So.2d 615 (Fla. Dist. Ct. App 1st Dist. 1978) although finding a cigarette lighter was not a deadly weapon used in course of a robbery under facts of the case (310) the court stated that a cigarette lighter might be classified if, by its use or threatened use, death or great bodily harm is likely to be produced. In State v. R.B. "E.", 2004 MT 254, 323 Mont. 62, 97 P.3d 1116, 22 A.R. 6th 833 (2004) a prosecution for assault with a weapon, it was held that a cigarette lighter was a weapon under a statute defining a weapon as an instrument readily capable of being used to produce death or serious bodily injury, even though the lighter unit had been lit in order to heat the metal tip to a temperature that would inflict pain and burn the victim, as the lighter was operable and contained fuel. It has been held under the particular circumstances of other cases that a cigarette lighter did not constitute a deadly or dangerous weapon. In the case of Mr. Miller his defense is self-defense in which the victim was using a cigarette lighter to attempt to burn his clothing inside of his mothers home. So his desired results from her act, became believe he was in imminent danger and shot the victim. He also believes that he was protecting his property and that his mother who was home at the time of the incident. He believes he was attacked in his home by the victim. He believes he was criminally domestic violence psychologically abused by the victim, as by definition in Section 17 of south Carolina Juris prudence Criminal Domestic violence § 7 In types of CDV § 7 being Psychological. His statement to the greer police in this case should align with everything mentioned here for consideration of his character and nature of crime for fact-finder to judge and decide. He believes he was provoked in this case that he is innocent and not a danger to the community or an individual. And that there was not an element of extreme indifference to the value of human life the victim was shot once in the upper thigh and he remained with victim while she called 911 for help and did not flee the scene. He has no further intentions of being with or seeing the victim. He wishes to remain with his family and child. He has no ties with the victim she is on drugs. A crack addict who is unemployed, and not with her children or husband and possibly she is homeless. She is a mental health patient has criminal background history as well fraud and theft, shoplift. She is bad company for Mr. Miller the relationship was toxic. Common experience teaches us that holding an open flame close to something flammable can cause it to ignite and burn. Therefore under circumstances it can be considered that it was used as a weapon.

imposed by this Court's conditions to securing his liberty; that the Appellant will submit himself to the authority of this Court whenever so required, and will not attempt to flee or evade this Court's Jurisdiction. The court may impose any reasonable amount for bail. Thus incarceration is not most reasonable means by which to secure the Appellant's presence before the Court.

Wherefore, the Appellant prays that this Honorable Court grant this Motion and issue an Order directing the release of Appellant pending this appeal, on such terms as this Court deems necessary.

Respectfully Submitted,

Daniel James Macdonald, IV, Esquire
Attorney for Appellant

1. The service of a notice in writing on the solicitor of an intention to appeal is a prerequisite to the granting of bail. State v. Avant (S. C. 1910) 85 S. C. 570, 67 S. E. 908
2. Supreme Court has inherent power to set bond in any case, and can grant bail, in its discretion, where sentences exceed 10 yrs, notwithstanding statute providing that no bail shall be allowed when defendant shall have been sentenced to death, life imprisonment or for a term exceeding 10 yrs [Code 1952 §§ 7-8] State Constitution Section 4 of Article 5, Section 5 of Article 5

Derrick M. Miller, 00384656 F3-218

Kirkland Correctional Institution

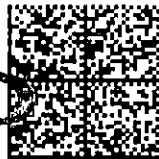
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South Carolina Court of Appeals

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