

RECEIVED

Oct 12 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Orangeburg County

R. Markley Dennis, Circuit Court Judge

The State,

Respondent,

V.

Bowen Gray Turner,

Respondent,

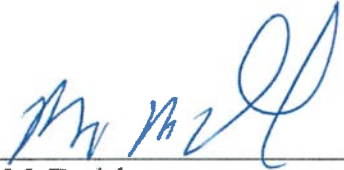
In Re: Victim C.B.,

Appellant.

APPELLATE CASE NO. 2022-000472

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy the motion for an extension of time in which to file the initial brief of respondent and designation of matter in the above-referenced case has been served upon Sarah Anne Ford, Esquire, Tamika D. Cannon, Esquire, Terri Hearn Bailey, Esquire, David Warren Miller, Esquire, and William M. Blich, Jr., Esquire, at their primary e-mail addresses listed in the Attorney Information System (AIS), this 12th day of October, 2022.

  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR  
RESPONDENT BOWEN GRAY TURNER

**From:** [Matthews, Lindsey](#)  
**To:** [SC - BLITCH WILLIAM](#); [sarah@scvan.org](mailto:sarah@scvan.org); [tamika@scvan.org](mailto:tamika@scvan.org); [terri@scvan.org](mailto:terri@scvan.org); [dmiller@aikencountysc.gov](mailto:dmiller@aikencountysc.gov)  
**Cc:** [Dudek, Robert](#); [SC - COLLINS CAROLINE](#)  
**Subject:** 2022-000472 The State v. Bowen Gray Turner (In re Victim C.B., Appellant)  
**Date:** Wednesday, October 12, 2022 12:23:00 PM  
**Attachments:** [2022-000472 The State v. Bowen Gray Turner \(In re Victim C.B., Appellant\) - Motion for Third Extension.pdf](#)

---

Attached is a copy of a motion for third extension which will be filed with the Court of Appeals today in the above-referenced case.

Lindsey M. Matthews  
Administrative Assistant  
SC Commission on Indigent Defense  
Appellate Division  
1330 Lady Street, Suite 401  
P.O. Box 11589  
Columbia, SC 29201  
Phone: (803) 734-1330

COURTESY OF  
LUNA SHARK MEDIA



Nicole McCune &lt;nmccune@scvan.org&gt;

**Fwd: Appellate Case No. 2022-000472**

1 message

Sarah Ford &lt;sarah@scvan.org&gt;

Thu, Nov 9, 2023 at 3:36 PM

To: Rebekah Hiatt &lt;rebekah@scvan.org&gt;, Nicole McCune &lt;nmccune@scvan.org&gt;

----- Forwarded message -----

From: **Court Of Appeals Filings** <ctappfilings@sccourts.org>

Date: Wed, Nov 2, 2022 at 3:58 PM

Subject: RE: Appellate Case No. 2022-000472

To: Michelle Hughes &lt;michelle@scvan.org&gt;, Court Of Appeals Filings &lt;ctappfilings@sccourts.org&gt;

Cc: dmiller@aikencountysc.gov &lt;dmiller@aikencountysc.gov&gt;, wblitch@scag.gov &lt;wblitch@scag.gov&gt;, cbhutto@williamsattys.com &lt;cbhutto@williamsattys.com&gt;, rdudek@sccid.sc.gov &lt;rdudek@sccid.sc.gov&gt;, Sarah Ford &lt;sarah@scvan.org&gt;, Terri Bailey &lt;terri@scvan.org&gt;, awilson@scag.gov &lt;awilson@scag.gov&gt;

Dear Counsel:

The Court has received your filing. A stamped copy is attached for your records.

Thank you.

From: Michelle Hughes &lt;michelle@scvan.org&gt;

Sent: Wednesday, November 2, 2022 3:53 PM

To: Court Of Appeals Filings &lt;ctappfilings@sccourts.org&gt;

Cc: dmiller@aikencountysc.gov; wblitch@scag.gov; cbhutto@williamsattys.com; rdudek@sccid.sc.gov; Sarah Ford &lt;sarah@scvan.org&gt;; Terri Bailey &lt;terri@scvan.org&gt;; awilson@scag.gov

Subject: Appellate Case No. 2022-000472

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Please find attached Appellant's request for extension in the matter of The State vs. Bowen Gray Turner (In re: Victim CB), Appellate Case No. 2022-000472.

By copy of this email I am serving opposing counsel.

Respectfully,

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--

# Sarah A. Ford

Legal Director



PO Box 212863, Columbia, SC 29221

[www.scvanlegal.org](http://www.scvanlegal.org)



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State v. Turner - Ext.pdf  
217K

LUNA'S TESTY OF MEDIA



November 2, 2022

**RECEIVED**

**Nov 02 2022**

**SC Court of Appeals**

**VIA ELECTRONIC FILING**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: The State vs. Bowen Gray Turner (In re: Victim C.B.)  
Appellate Case No. 2022-000472

Dear Ms. Kitchings:

The Reply Brief is due in this matter on Monday, November 10. However, due to conflicting case demands on counsel, we respectfully request a ten day extension in which to serve and file this brief. No prior extension has been requested by Appellant in this matter. Notice of this request is being provided to opposing counsel.

Sincerely,

Tamika D. Cannon  
Senior Staff Attorney

cc:

David Warren Miller, Esquire  
William M. Blicht, Jr., Esquire  
Alan McCrory Wilson, Esquire  
C. Bradley Hutto, Esquire  
Robert Michael Dudek, Esquire  
Sarah Anne Ford, Esquire  
Terri Hearn Bailey, Esquire



Nicole McCune <nmccune@scvan.org>

**Fwd: State v. Turner, In Re Victim CB. 2022-000472**

1 message

Sarah Ford <sarah@scvan.org>

Thu, Nov 9, 2023 at 3:36 PM

To: Rebekah Hiatt <rebekah@scvan.org>, Nicole McCune <nmccune@scvan.org>

----- Forwarded message -----

From: Orr, Jacklyn <jorr@sccourts.org>

Date: Tue, Nov 8, 2022 at 10:39 AM

Subject: State v. Turner, In Re Victim CB. 2022-000472

To: sarah@scvan.org <sarah@scvan.org>, tamika@scvan.org <tamika@scvan.org>, terri@scvan.org <terri@scvan.org>, dmiller@aikencountysc.gov <dmiller@aikencountysc.gov>, cbhutto@williamsattys.com <cbhutto@williamsattys.com>, rdudek@sccid.sc.gov <rdudek@sccid.sc.gov>

Cc: sarahaford@gmail.com <sarahaford@gmail.com>, terri.bailey@icloud.com <terri.bailey@icloud.com>

Attached please find correspondence from the Court of Appeals.

*Jacklyn Orr*

Team Lead- Criminal

South Carolina Court of Appeals

1220 Senate Street

Columbia, SC 29201

Ph: (803) 734-1890

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--

**Sarah A. Ford**

Legal Director



PO Box 212863, Columbia, SC 29221

www.scvanlegal.org



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---

 In Re CB- Letter.pdf  
80K

COURTESY OF  
LUNA SHARK MEDIA



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

November 08, 2022

Ms. Sarah Anne Ford, Esquire  
PO Box 212863  
Columbia SC 29221

Ms. Tamika D. Cannon, Esquire  
212 Talon Court  
Taylors SC 29687

Ms. Terri Hearn Bailey, Esquire  
301 N Kings Grant Dr  
Columbia SC 29209

Re: The State v. Bowen G. Turner (In re: Victim C.B.)  
Appellate Case No. 2022-000472

Dear Counsel:

The Court has received your motion for an extension of time in which to file the reply to the State's initial respondent's brief. The Court will act on your motion once the time for counsel for Mr. Turner's initial brief of respondent to be filed has passed, so that you may file the reply brief for both briefs at once, if you wish.

Very truly yours,

A handwritten signature in blue ink that reads "Jenny A. Kitchings".

CLERK



cc: David Warren Miller, Esquire  
William M. Blich, Jr., Esquire  
Alan McCrory Wilson, Esquire  
C. Bradley Hutto, Esquire  
Robert Michael Dudek, Esquire

**COURTESY OF  
LUNA SHARK MEDIA**



Nicole McCune <nmccune@scvan.org>

**Fwd: 2022-000472 The State v. Bowen Gray Turner (In re Victim C.B., Appellant)**

1 message

Sarah Ford <sarah@scvan.org>

Thu, Nov 9, 2023 at 3:37 PM

To: Nicole McCune <nmccune@scvan.org>, Rebekah Hiatt <rebekah@scvan.org>

----- Forwarded message -----

From: **Warren, Kaylynn** <kwarren@sccid.sc.gov>

Date: Mon, Nov 14, 2022 at 8:36 AM

Subject: 2022-000472 The State v. Bowen Gray Turner (In re Victim C.B., Appellant)

To: William Blitch <wblitch@scag.gov>

Cc: Dudek, Robert <RDudek@sccid.sc.gov>, Caroline Collins <CCollins@scag.gov>, sarah@scvan.org

<sarah@scvan.org>, tamika@scvan.org <tamika@scvan.org>, terri@scvan.org <terri@scvan.org>,

dmiller@aikencountysc.gov <dmiller@aikencountysc.gov>

Good Morning,

Please find attached for service in the above-referenced case the Fourth Motion for Extension and accompanying Certificate of Service which will be filed today, November 14, 2022, with the Court of Appeals via email filing.

Respectfully,

Kaylynn Warren

**Kaylynn Warren**

Administrative Assistant

South Carolina Commission on Indigent Defense

Division of Appellate Defense

(803) 734-1330

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--

# Sarah A. Ford

Legal Director

803-509-6550

PO Box 212863, Columbia, SC 29221

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 **2022-000472 The State v. Bowen Gray Turner (In re Victim C.B., Appellant)- Fourth Motion for Extension IBOR and COS.pdf**  
545K

COURTESY OF LUNA SHARK MEDIA

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Orangeburg County

Honorable R. Markley Dennis, Circuit Court Judge

---

The State,

Respondent,

V.

Bowen Gray Turner,

Respondent,

In. Re: Victim C.B.,

Appellant

APPELLATE CASE NO. 2022-000472

---

MOTION FOR AN EXTENSION OF TIME IN WHICH  
TO FILE THE INITIAL BRIEF OF RESPONDENT

---

Counsel for Bowen Gray Turner respectfully requests a **final extension of thirty (30) days, from November 14, 2022 until December 14, 2022**, in which to file the initial brief of respondent in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. In support of this request, counsel shows:

1. The initial brief of respondent in this case is due to be served and filed today, November 14, 2022. The Court has granted counsel three previous extensions.

2. Counsel for Bowen Gray Turner respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions previously granted and the order in which counsel attempts to manage his caseload, counsel hopes that no further extension requests will be required.

3. Counsel, with co-counsel Kathrine Haggard Hudgins, filed the Motion for a Stay of Execution and for the Appointment of a Post-Conviction Relief Judge in the case of The State v. Jerome Jenkins, Jr. with the Supreme Court on Thursday, November 10, 2022. Counsel, with co-counsel David Alexander and Lara M. Caudy, filed the brief of petitioner in the death penalty case of Marion Alexander Lindsey v. The State with the Supreme Court on November 4, 2022. Counsel intends to file the Brief of Respondent in the case of The State v. Robert Xavier Geter with the Supreme Court on Monday, November 14, 2022. Counsel intends to file the Initial Brief of Appellant and Designation of Matter in the case of The State v. Donovan Brannon with this Court on Friday, November 18, 2022. Counsel filed the petition for writ of certiorari in the case of David M. Dixon v. The State with the Supreme Court on October 31, 2022. Counsel filed the initial brief of appellant and designation of matter in the case of The State v. Dionte J'Chon Habersham with this Court on October 18, 2022. Counsel, with co-counsel Kathrine H. Hudgins, filed the reply brief in the death penalty case of Jerome Jenkins, Jr., v. State, with the United States Supreme Court on October 17, 2022. Counsel filed the brief of petitioner in the case of The State v. Robert Xavier Geter with the Supreme Court on October 7, 2022. Counsel filed the brief of petitioner in the case of The State v. Gregg Pickrell with the Supreme Court on October 7, 2022. Counsel filed the initial brief of appellant and designation of matter in the case of The State v. Dae'Kwon Jaheem Simmons with this Court on September 26, 2022. Counsel presented the Case Law Update PowerPoint presentation

at the Annual Public Defender Conference, in North Myrtle Beach, South Carolina, on September 19-21, 2022.. **Counsel also has extensive administrative duties as the Chief Appellate Defender.**

4. This request is made in good faith, and not for purposes of delay. Counsel intends to continue to work on the cases with more than three extensions first so that the caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

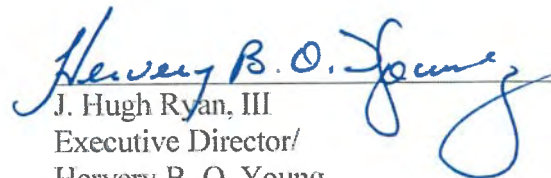
5. Opposing counsel, the Office of the Attorney General, has graciously consented to this extension request by way of the extended thirty-day general consent granted by Deputy Attorney General Donald J. Zelenka for all Appellate Defense extensions through November 30, 2022. That extended, emailed general consent was dated November 1, 2022.

WHEREFORE, the undersigned counsel would respectfully **request a final thirty-day extension from November 14, 2022 until December 14, 2022**, in which to file the initial brief of respondent in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the brief be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Robert M. Dudek  
Chief Appellate Defender



J. Hugh Ryan, III  
Executive Director/  
Hervey B. O. Young  
Deputy Director and General Counsel/  
W. Lawrence Brown  
Deputy General Counsel and Training Director

This 14<sup>th</sup> day of November, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable R. Markley Dennis, Circuit Court Judge

The State,

Respondent,

V.

Bowen Gray Turner,

Respondent,

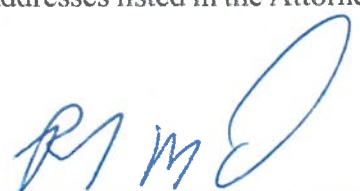
In Re: Victim C.B.,

Appellant

APPELLATE CASE NO. 2022-000472

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the final motion for an extension of time in which to serve and file the initial brief of respondent in the above-referenced case has been served upon Sarah Anne Ford, Esquire, Tamika D. Cannon, Esquire, Terri Hearn Bailey, Esquire, David Warren Miller, Esquire, and William M. Blich, Jr., Esquire, at their primary e-mail addresses listed in the Attorney Information System (AIS), this 14th day of November, 2022.

  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT.



Nicole McCune &lt;nmccune@scvan.org&gt;

**Fwd: State v. Turner In Re Victim C.B 2022-000472**

1 message

Sarah Ford &lt;sarah@scvan.org&gt;

Thu, Nov 9, 2023 at 3:37 PM

To: Rebekah Hiatt &lt;rebekah@scvan.org&gt;, Nicole McCune &lt;nmccune@scvan.org&gt;

----- Forwarded message -----

From: Orr, Jacklyn &lt;jorr@sccourts.org&gt;

Date: Wed, Nov 16, 2022 at 3:20 PM

Subject: State v. Turner In Re Victim C.B 2022-000472

To: dmiller@aikencountysc.gov <dmiller@aikencountysc.gov>, SC - BLITCH WILLIAM <wblitch@scag.gov>, cbhutto@williamsattys.com <cbhutto@williamsattys.com>, rdudek@sccid.sc.gov <rdudek@sccid.sc.gov>, sarah@scvan.org <sarah@scvan.org>, tamika@scvan.org <tamika@scvan.org>, terri@scvan.org <terri@scvan.org>  
Cc: sarahaford@gmail.com <sarahaford@gmail.com>, terri.bailey@icloud.com <terri.bailey@icloud.com>

Good Afternoon,

Attached please find correspondence from the Court of Appeals.

Any parties not included in this email will receive the attached correspondence via US Mail.

**Do not respond to this email. Send all correspondence to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org).***Jacklyn Orr*

Team Lead- Criminal

South Carolina Court of Appeals

1220 Senate Street

Columbia, SC 29201

Ph: (803) 734-1890

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# Sarah A. Ford

Legal Director

803-509-6550

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State v. Turner  
11/10/23, 10:03 AM

# The South Carolina Court of Appeals

The State, Respondent,

v.

Bowen Gray Turner, Respondent.

In re: Victim C.B., Appellant.

Appellate Case No. 2022-000472

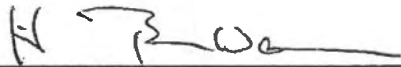
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## ORDER

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Respondent requests an extension to serve and file the initial brief of respondent and designation of matter and alleges there are extraordinary circumstances justifying this extension. The extension is granted until December 14, 2022. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 ([www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01)), any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

FOR THE COURT

 J.

Columbia, South Carolina

cc:

David Warren Miller, Esquire  
William M. Blitch, Jr., Esquire  
Alan McCrory Wilson, Esquire  
C. Bradley Hutto, Esquire  
Robert Michael Dudek, Esquire

**FILED**  
**Nov 16 2022**

Sarah Anne Ford, Esquire  
Tamika D. Cannon, Esquire  
Terri Hearn Bailey, Esquire

**COURTESY OF  
LUNA SHARK MEDIA**



Nicole McCune <nmccune@scvan.org>

**Fwd: The State vs. Bowen Gray Turner (In re: Victim C.B.) Appellate Case No. 2022-000472**

1 message

Sarah Ford <sarah@scvan.org>

Thu, Nov 9, 2023 at 3:38 PM

To: Rebekah Hiatt <rebekah@scvan.org>, Nicole McCune <nmccune@scvan.org>

----- Forwarded message -----

From: **Michelle Hughes** <michelle@scvan.org>

Date: Wed, Jan 11, 2023 at 1:55 PM

Subject: The State vs. Bowen Gray Turner (In re: Victim C.B.) Appellate Case No. 2022-000472

To: <ctappfilings@sccourts.org>

Cc: <dmiller@aikencountysc.gov>, <wblicht@scag.gov>, <cbhutto@williamsattys.com>, <rdudek@sccid.sc.gov>, Sarah Ford <sarah@scvan.org>, Terri Bailey <terri@scvan.org>, <awilson@scag.gov>

Please find attached Appellant's request for extension in the matter of The State vs. Bowen Gray Turner (In re: Victim CB), Appellate Case No. 2022-000472.

By copy of this email I am serving opposing counsel.

Respectfully,

**Michelle Hughes**

Victim Access Coordinator

843-929-4000

PO Box 212863, Columbia, SC 29221

www.scvanlegal.org



**Sarah A. Ford**

Legal Director

803-509-6550

PO Box 212863, Columbia, SC 29221

www.scvanlegal.org



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Extension Request (6).pdf  
119K

1 message

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January 11, 2023

VIA ELECTRONIC FILING

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: The State vs. Bowen Gray Turner (In re: Victim C.B.)  
Appellate Case No. 2022-000472

Dear Ms. Kitchings:

The Reply Brief is due in this matter on Friday, January 13, 2023. However, due to time constraints caused by our office closure during the winter holiday and the increased volume of cases in January, we respectfully request a ten day extension in which to serve and file this brief. Notice of this request is being provided to opposing counsel.

Sincerely,

Tamika D. Cannon  
Senior Staff Attorney

cc:

David Warren Miller, Esquire  
William M. Blich, Jr., Esquire  
Alan McCrory Wilson, Esquire  
C. Bradley Hutto, Esquire  
Robert Michael Dudek, Esquire  
Sarah Anne Ford, Esquire  
Terri Hearn Bailey, Esquire



Nicole McCune <nmccune@scvan.org>

**Fwd: State vs. Bowen Gray Turner (In re: Victim C.B.) Appellate Case No. 2022-000472**

1 message

Sarah Ford <sarah@scvan.org>

Thu, Nov 9, 2023 at 3:38 PM

To: Nicole McCune <nmccune@scvan.org>, Rebekah Hiatt <rebekah@scvan.org>

----- Forwarded message -----

From: **Michelle Hughes** <michelle@scvan.org>

Date: Mon, Jan 23, 2023 at 12:37 PM

Subject: State vs. Bowen Gray Turner (In re: Victim C.B.) Appellate Case No. 2022-000472

To: <ctappfilings@sccourts.org>

Cc: <dmliller@aikencountysc.gov>, <awilson@scag.gov>, <wblicht@scag.gov>, <rdudek@sccid.sc.gov>, <cbhutto@williamsattys.com>, Sarah Ford <sarah@scvan.org>, Tamika Cannon <tamika@scvan.org>, Terri Bailey <terri@scvan.org>

Please find attached Reply Brief of Appellant in the matter of The State vs. Bowen Gray Turner (In re: Victim CB), Appellate Case No. 2022-000472.

By copy of this email I am serving opposing counsel.

## Michelle Hughes

Victim Access Coordinator

843-929-4000

PO Box 212863, Columbia, SC 29221

www.scvanlegal.org



## Sarah A. Ford

Legal Director

803-509-6550

PO Box 212863, Columbia, SC 29221

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COURTESY OF  
LUNA SHARK MEDIA



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of General Sessions

R. Markley Dennis, Jr., General Sessions Judge

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Case No. 2022-000472

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The State,

Respondent,

v.

Bowen Gray Turner,

Respondent,

In re: Victim C.B.,

Appellant.

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REPLY BRIEF OF APPELLANT

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COURTESY OF  
LUNA SHARK MEDIA

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## SCOPE OF REPLY ARGUMENT

This case concerns a crime victim's explicit constitutional rights to present and to be heard, S.C. Const. Art. I, § 24(A)(3), (5), and this Court's duty to ensure that constitutional rights have meaning.

Respondents' attempts to reframe the issues are unavailing. Victim is properly before this Court seeking appellate review of a violation of her constitutional rights—regardless of whether the Court elects to treat the avenue used as an “appeal” or a petition for a writ of mandamus. *See* Notice of Appeal, p. 3. The prejudice suffered by Victim occurred when the trial court denied her right to procedural justice by denying her request to be heard *before* acceptance of the guilty plea. *See* S.C. Const. art. I, § 24(A) (stating the purpose of the enumerated rights is “[t]o preserve and protect victims' rights to justice and due process”).

The relevant underlying facts are not in dispute: Victim did everything possible to assert her rights in a timely manner. The Court is asked to determine whether “the Constitution itself gives [ ] right[s] which the [courts] may deny by failing or refusing to provide a remedy”—*i.e.*, whether the constitutional provisions at issue are merely “a hollow mockery instead of a safeguard for the rights of [victims].” *Chick Springs Water Co. v. State Highway Dep't*, 159 S.C. 481, 157 S.E. 842, 850 (1931), *overruled on other grounds by McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). If the answer to either inquiry is “no,” this Court must address Victim's constitutional rights to present and to be heard and conclude that trial courts must adopt procedural changes to ensure that South Carolina victims are afforded a meaningful opportunity to exercise their rights.

## ARGUMENT

### I. The right to present is not disputed

The South Carolina Constitution contains the “Victims' Bill of Rights” which states in pertinent part:

To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to: . . . (3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present.

S.C. Const. art. I, § 24; S.C. Code Ann. § 16-3-1510 (Supp.2005). This constitutionally protected right to present provides an opportunity for victims to inform the court of their position at the presentation stage of the guilty plea, prior to the Court’s acceptance of the recommended plea. This extra information should be helpful to the courts in their exercise of responsibility to determine that the recommended plea is proper. It does not affect the Solicitor’s discretion to negotiate freely with defendants.

The initial briefs of Respondents do not address the widespread failure of the Circuit Courts to comply with the Victim’s constitutional right to present before the recommended plea is accepted. The State’s tacit admission that a victim has a constitutional right to present at a meaningful stage of the plea process is not an oversight. See Initial Brief of State, Footnote 1, p. 5. The State also accedes in that footnote to Victim’s proposition that victims have a right to present *before* the plea is accepted or rejected. Respondent Turner also agrees that victims have a right to present, as defined in Appellant’s Initial Brief. For example, Respondent Turner frames the issue on appeal as to whether the “Victim’s constitutional right to present and be heard were violated by the trial court.”

Having acceded to the point that a victim has a constitutional right to present, the State’s memorandum and that of Respondent Turner address the mechanism for bringing the issue

before this court: whether a direct appeal or a writ of mandamus is the best vehicle for seeking judicial review of this widespread practice.

**II. This appeal was properly filed as a constructive writ of mandamus**

Appellant initiated this case with the filing of a Notice of Appeal/Notice of Request for Appellate Review. The Notice explained that the Appellant Victim sought direct judicial review or, in the alternative, “the issuance of a writ of mandamus to require compliance with and enforcement of the Victim’s rights, pursuant to S.C. Const. art. I, § 24(A)(3).” Notice of Appeal, p. 3. Because the Notice of Appeal included a request for mandamus as well as a request for direct review, both avenues were fully preserved.

Victim and Respondent State are in agreement that a writ of mandamus is a mechanism to have a violation of victim’s rights reviewed. State’s Br. 6. Accordingly, under the State’s own analysis, this matter is properly filed for review by the simultaneous filing of a Notice of Appeal/Notice of Request for Appellate Review, which incorporated a request for a writ of mandamus.

Respondents point to the Victims’ Bill of Rights, S.C. Const. Art. I, § 24(B), for their argument that a writ of mandamus is a victim’s only recourse. However, this section, which prohibits civil actions to enforce victim rights, does not say that a mandamus is the exclusive avenue for judicial review and does not even mention appeals. It only says that since there is no right to bring a civil action, a writ of mandamus *may* be appropriate:

Nothing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of

these services contained in this section, and a wilful failure to comply with a writ of mandamus is punishable as contempt. S.C. Const. art. I, § 24.

Victims rarely seek review of circuit court actions and the mechanism for review is not well established. With this in mind, Victim styled the request for review as a Notice of Appeal/Notice of Request for Appellate Review and included a request for a Writ of Mandamus. Notice of Appeal, p. 3. For this reason, it should be construed as a notice of appeal or, in the alternative, a constructive petition for a writ of mandamus. Victim submits that this filing provides adequate notice of the relief she is seeking.

In another mandamus case, the Supreme Court found that the action was more properly a request for injunctive relief and, despite the caption, “it is the substance of the requested relief that matters” and not the form in which the petition for relief is framed [et al.]. *Sanford v. South Carolina State Ethics Com’n*, 385 S.C. 483, 496, 685 S.C.2d 600 (2009), *Clarified by Sanford v. South Carolina State Ethics Com’n*, 386 S.C. 274, S.C., Dec. 02, 2009. Likewise, in the instant case, the substance of the Notice of Appeal should be what controls, not the form.

### **III. The proper timing of a petition for a writ of mandamus is at issue**

This case addresses the proper timing for a victim to seek a writ of mandamus. The State claims that a victim seeking redress must seek a writ of mandamus from the South Carolina Supreme Court *before* a right was actually violated. Initial Brief of State, p. 5. Following that approach would force victims to assume the trial judge would not uphold the victim’s constitutional rights, or instead face the risk of having waived the option. This approach would also inundate the Supreme Court with petitions.

This case demonstrates the extreme impracticality of the State’s suggestion that victims be required to seek a writ of mandamus before the recommended guilty plea is presented. Victim actually filed a Petition for Writ of Mandamus two days after learning that a hearing to revoke

Respondent's bond was scheduled. The petition was filed in the manner that Respondent State suggests is proper and requested that the Second Circuit Solicitor's Office and the South Carolina Law Enforcement Division be required to enforce the bond order and place Defendant into custody for nearly fifty (50) bond violations. Petition for Writ of Mandamus. Victim's counsel learned of the guilty plea offer by email from the Assistant Solicitor on April 5, 2022. Victim filed both the Petition for Writ of Mandamus and the Petition for Rule to Show Cause on the following day, April 6, 2022. Victim filed the Motion to Enforce Victims' Rights and to be Heard Prior to Guilty Plea on April 8, 2022. Although Victim promptly filed the Petition for Writ one day after learning of the guilty plea offer, and two days before the guilty plea hearing, the trial judge denied that motion as untimely filed. Transcript at p. 6, l. 7-11. This process exemplifies the challenges that victims would face if this court required that a writ to address victims' rights violations be filed before a violation happens.

Further, Victim was disadvantaged in filing a writ before the guilty plea hearing because it was scheduled as a bond revocation hearing. Motion to Revoke Bond. Victims were informed that a plea offer had been made and a bond revocation would take place; however, they were not notified that a guilty plea hearing would be held instead. The brief period of time between the offer and guilty plea hearing is typical in criminal cases. This short period of time practically guarantees that crime victims, the overwhelming majority of whom are not represented by counsel, are unable to file a petition for a writ of mandamus before the guilty plea hearing is held. This is an impossible proposition, leaving no remedy for the widespread violations of any victim's constitutional right to present.

Lastly, the State reasons that there is no ability to redress a violation of victims' rights after the guilty plea hearing unless a writ was sought during the trial court hearing. If the court



accepts that approach, then victims would be forever foreclosed from any form of redress for a violation of their right to present because sentencing typically occurs, as in this case, immediately after the presentation stage when the guilty plea is accepted.

#### **IV. Review is necessary to safeguard constitutional rights**

Victim is not seeking to veto a guilty plea; she is asking for an opportunity to present: she is seeking to be heard before the Court accepts a recommended plea. The issue at stake is the preservation and upholding of crime victims' constitutional right to present, not veto. This is contrary to Respondent Turner's claim that "our system would completely break down if victims were given a veto power-- including a right to appeal or intervene in an appeal -- any time a prosecutor agrees to allow defendant to plead guilty rather than go to trial." Respondent Turner's Initial Brief, p. 10.

In the hierarchy of our state laws, the South Carolina Constitution is supreme. Appellate review of the trial court's denial of a constitutional right is necessary to safeguard that right. South Carolina courts have frequently found that procedural protections must be afforded to safeguard these rights even when they are not explicitly provided by statute. For example, courts have held that procedural protections are necessary even when not explicitly set out, such as in the right to poll a jury — it is "not in itself a constitutional right but a procedural protection of the defendant's constitutional right to a unanimous verdict." *State v. Pare*, 253 Conn. 611, 755 A.2d 180, 188 (2000). *State v. Wright*, 432 S.C. 365, 369, 852 S.E.2d 468, 470 (Ct. App. 2020), reh'g denied (Jan. 13, 2021), cert. granted (June 28, 2022).

The impossibility of obtaining a writ is further heightened by the "four (4) day rule" which the circuit court mandated as the minimum for consideration. Again, motions move fast

in circuit courts, and there is rarely four days between the denial of a motion to be heard and the entry of the guilty plea.

The Respondents rely on dictum from *Reed v. Becka* that a “victim . . . possesses *no* rights in the appellate process. Nothing in our Constitution or statutes provides the ‘victim’ standing to appeal the trial court's order...” *Reed v. Becka*, 333 S.C. 676, 683, 511 S.E.2d 396, 400 (Ct. App. 1999). The decision in *Becka* was limited to the victim’s rights to discuss the case with the Solicitor and to “be informed of any offers to plea bargain with the defendant.” S.C.Code Ann. § 16–3–1530(C)(10), (12) (1985). Even so, *Becka* does not forestall the possibility that other rights could be affected in future cases; as to those, the court continued that, “This Court is desirous of protecting the rights of victims as mandated by the statutory law and by the South Carolina Constitution. Nothing short of full and complete enforceability of these rights should receive this Court's imprimatur.” *Reed v. Becka*, 333 S.C. 676, 683, 511 S.E.2d 396, 400 (Ct. App. 1999). Further, *Becka* did not forestall the ability of a victim to seek appellate review through a writ of mandamus as sought in this case by Appellant Victim.

**V. Victim was prejudiced by the trial court’s refusal to allow her to present before the guilty plea was accepted**

Respondent Turner argues that the court’s decision to deny Victim the right to present at the guilty plea presentation stage did not cause prejudice because she was heard during the sentencing stage, and the length of probation granted to Respondent Turner was extended as a result. Initial Brief of Respondent Turner, p. 12. The trial court increased the period of sex offender conditions of probation from the two years recommended by the State to five years, after allowing the victims to address the court. Transcript p. 33, l. 17. However, the legal error had already occurred when the trial court accepted the plea and denied Appellant Victim the right

to present. The adjustment of the sentence after acceptance of the guilty plea is a tainted outcome following that error.

At the point the guilty plea was accepted by the trial court, Victim was prejudiced because the State allowed the Respondent to enter a guilty plea to Assault and Battery - First Degree and not to Criminal Sexual Conduct - First Degree, as originally charged. Sentencing was then limited to the penalty range of the lesser offense to which Respondent entered the guilty plea. The prosecutor's recitation of facts to the trial court supported the charge of Criminal Sexual Conduct - First Degree, not a mere Assault and Battery - First Degree. The prosecutor relayed the following facts to the trial court:

The victim reported that Turner pulled her behind a truck that was off to the side of the house, pushed her to the ground, pulled her shirt down and exposed her bra. Turner then pulled her pants and underwear off and forced himself sexually on the victim. Transcript p. 12, l. 16-21.

These facts support the elements of the crime of Criminal Sexual Conduct - First Degree. The inclusion of sex offender supervision and sex offender counseling in the offer reflect that this was a criminal sexual assault. The Assault and Battery - First Degree plea, under the facts of this case, was a fictitious plea. Victim's counsel stated at trial "Your Honor, these victims – and in one of the motions that I presented to Your Honor indicates some of the injuries that these victims sustained. Your Honor, this was not an assault and battery." Transcript p. 17, l. 20-24. The trial judge himself acknowledged ". . . [a]nd the legislature, and I'm not faulting the legislature, I'm just simply making the observation, have determined that assault and battery charges, and I think all of them with the exception of assault and battery of a high and aggravated nature are nonviolent. I don't understand that. Never have." Transcript p. 31, l. 1-7.

After the trial court accepted the fictitious plea, the court was restricted in terms of changes that could be made to the plea. If the court had allowed Appellant Victim to present

before accepting the guilty plea, the court may have learned further information warranting the court's rejection of the guilty plea. Victim was denied the opportunity to present her position to the court and to open the possibility that the guilty plea should have been rejected or modified. The denial harmed Victim by depriving her of other potential outcomes had the trial court rejected the fictitious plea. If the guilty plea had been rejected following Appellant being heard, there would have been numerous other potential outcomes, such as an appropriate sentence for Criminal Sexual Conduct - First Degree.

Contrary to Respondent's claim that there was no prejudice to Victim because the trial judge increased Respondent's term of probation from two years to five years after hearing from the Victim's representative, Victim was prejudiced by the reduction of the crime to Assault and Battery - First Degree, allowing for a sentence of probation.

Appellant Victim was prejudiced because these outcomes were foreclosed when the trial court accepted the guilty plea without giving Appellant the opportunity to present.

Other crime victims in South Carolina are likely to be prejudiced and have their constitutional rights violated if the issues of proper form, whether by appeal or writ, and timing to seek review, are not addressed by this Court.

## CONCLUSION

Based on the above arguments and Appellant's Initial Brief, this Court should find that the trial court erred by not allowing victims in South Carolina to present before a guilty plea is accepted or rejected.

Respectfully submitted:

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**COURTESY OF  
LUNA SHARK MEDIA**

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Case No. 2022-000472

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**APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD  
OF APPEAL**

Appellant proposes the following to be included in the Record of Appeal:

1. Transcript of Record from April 8, 2022 Hearing
2. Order Granting Bond dated August 5, 2019
3. Order Granting Bond Reconsideration dated March 16, 2020
4. Sentencing Sheet for Bowen Gray Turner dated April 8, 2022
5. Petition for Writ of Mandamus dated April 6, 2022
6. Petition for Rule to Show Cause dated April 6, 2022
7. Motion to Enforce Victims' Rights and to be Heard Prior to Guilty Plea dated April 8, 2022
8. Motion to Revoke Bond dated March 25, 2022
9. Warrant for Arrest of Bowen Turner

We certify that this designation contains no matter which is irrelevant to this appeal.

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COURTESY  
LUNA SHARPS



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Respondent,

In re: Victim C.B.,

Appellant.

**PROOF OF SERVICE**

I certify that I have served the Reply Brief of Appellant and Appellant's Designation of Matter by emailing a copy of it on January 20, 2023, to the South Carolina Court of Appeals at [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org); to Deputy Solicitor for Aiken County, David Miller at [DMiller@aikencountysc.gov](mailto:DMiller@aikencountysc.gov); to Alan Wilson of the S.C. Attorney General's Office at [awilson@scag.gov](mailto:awilson@scag.gov); to William Blich of the S.C. Attorney General's Office at [wblitch@scag.gov](mailto:wblitch@scag.gov); to Robert Dudek of the S.C. Commission on Indigent Defense at [rdudek@sccid.sc.gov](mailto:rdudek@sccid.sc.gov); and to and by emailing a copy of it on January 20, 2023, to Respondent Bowen Gray Turner's attorney of record, Bradley Hutto at [cbhutto@williamsattys.com](mailto:cbhutto@williamsattys.com).

*Michelle D. Hughes*

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**Fwd: In Re Victim CB, 2022-000472**

1 message

**Sarah Ford** <sarah@scvan.org>

Thu, Nov 9, 2023 at 3:39 PM

To: Nicole McCune &lt;nmccune@scvan.org&gt;, Rebekah Hiatt &lt;rebekah@scvan.org&gt;

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