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OCT 27 2023

S.C. SUPREME COURT

## The Supreme Court of South Carolina

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October 6, 2023

Louis Gainey, Jr., 00185519  
Tyger River Correctional Institution  
Upper Yard  
200 Prison Road  
Enoree, SC 29335-9308

Re: Louis Gainey, Jr., v. State  
Appellate Case No. 2023-001558

Dear Mr. Gainey,

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals.

The order can be found at

[www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02).

Please note that the responsibility for ensuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

For this matter to proceed, you will need to provide this Court with the following within twenty (20) days of the date of this letter:

(1) Since the order of the circuit court determined that this action is barred as being successive and/or as being untimely under the statute of limitations, Rule 243(c), SCACR, requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter

(2) Since you have filed multiple post-conviction relief applications challenging the underlying criminal conviction, the Court, if it determines that you have failed to provide an adequate explanation under Rule 243(c), SCACR, may decide to prohibit you from filing a post-conviction relief application, habeas corpus action or any other action, motion or petition in the circuit court challenging this conviction and sentence (including a motion under Rule 29 of the South Carolina Rules of Criminal Procedure) without first obtaining the permission of this Court to do so. If you believe that there is some reason(s) why such a prohibition should not be imposed on future filings by you in the circuit court, those reasons should be provided within twenty (20) days of the date of this letter.

Very truly yours,

*Patricia A. Howard*

CLERK

cc: D Russell Barlow, II, Esquire

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4001302

LOUIS GAINEY (SCDC #185519)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other Rule 41(b), SCRPC
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

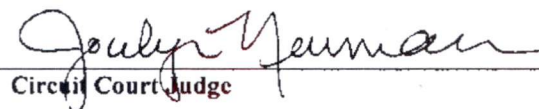
Applicant's Motion for Reconsideration is DENIED.

RICHLAND COUNTY  
FILED  
2023 SEP 15 AM 9:29  
C.C.M. CLERK

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.  
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
Circuit Court Judge

2757  
Judge Code

September 12, 2023  
Date



|                           |   |                                |
|---------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS   |
| COUNTY OF RICHLAND        | ) | FOR THE FIFTH JUDICIAL CIRCUIT |
| Louis Gainey, Jr, #185519 | ) | Case No. 2019-CP-40_1302       |
| Appellant,                | ) |                                |
| v.                        | ) | MOTION FOR RECONSIDERATION     |
| State of South Carolina,  | ) |                                |
| Respondent.               | ) |                                |
| _____                     | ) |                                |

This Cause is before this Court for reconsideration of the order that was filed August 8, 2023 and received by me on September 5, 2023.

Appellant brings to this court attention about the judge failure to ask the defendant if he had anything to say why sentence should not be imposed against him. The Respondent States S.C. Code Ann. §16-3-28, and states, that statute requires, "in any criminal trial where the maximum penalty is death or in a separate sentencing proceeding following such trial, the defendant and his counsel shall have the right to make last argument. Appellant objects, Allocution refers to the common law practice of the court formally inquiring of the defendant whether he has anything to say why sentence and judgment should not be pronounced after the fact finder determines guilt. State v. Stokes, 548 S.E.2d 202 (S.g. 2001). This matter was sum up in Green v. U.S., 365 U.S. 301, 81 S.Ct. 653 (1961), where the Court went to the extreme to clarified the matter.

In Green, the court said to avoid litigation arising out of ambiguous records in order to determine whether the trial judge did address himself to the defendant personally, we think that the problem should be, as if readily can be, taken out of the realm of controversy. This is easily accomplished. Trial judge before sentencing should, as a matter of good judicial administration, unambiguously address themselves to the defendant. hereafter, trial judge should leave no room for doubt that the defendant has been issued a personal invitation to speak prior to sentencing.

In Hill v U.S., 368 U.S. 424, that Court said, Before imposing sentence to afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment. The meaning of this rule was before the Court last term in Green v. U.S., 365 U.S. 301, 81 S.ct. 653.

IN U.S. v. Muhammad, 478 F.3d 247 2007) the court said,

When a defendant was unable to address the court before being sentenced and the possibly remains that an exercise of the right of allocutio could have led to a sentence less that that received, we are of the firm opinion that fairness and integrity of the court proceeding would be brought into serious disrepute were we allow the sentence to stand. Therefore, the court remand for resentencing.

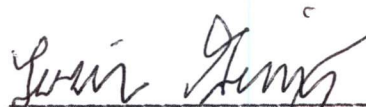
All of South Carolina follow this common law rule to allow the defendat of allocution, why is the appellant different. This court is headed for an equal protection claim if the right of allocuttion is not afored to Appellant.

CONCLUSION

Appellant prays this Court will grant motion for reconsideration.

Dated

September 6, 2023



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Louis Gainey, Jr.  
Tyger River C.I.  
200 Prison RD  
Enoree, SC 29335

CERTIFICATE OF SERVICE

The undersigned hereby certify that he mail motion for reconsideration to D. Russell Barlow, II, Assistant Attorney General, P.O. Box 11549, Columbia, S.C. 29221 and The Honorable Jocelyn Newman, Chief Administrative Judge, Post office Box 192, Columbia, SC 29202 this 7 day of September 2023 By depositing same in the U. S. Mail.

Levin King



LOUIS GAINEY (SCDC #185519)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for :  Plaintiff  Defendant  
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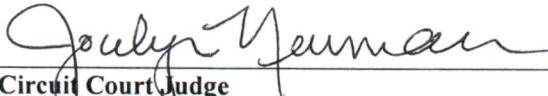
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JEANETTE  
C.C.P., G.S., & P.C.

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Date