

SIXTH JUDICIAL CIRCUIT
PUBLIC DEFENDER'S OFFICE

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October 31, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: State of South Carolina vs. Joshua Wilks
Appellate Case No. 2013-001827

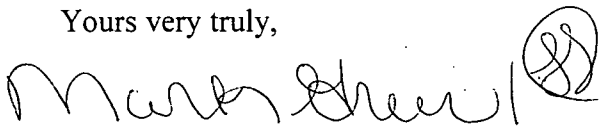
Dear Ms. Kitchings:

Please be advised that with this letter I am filing:

1. Explanation of Appeal and two (2) copies

Please return clocked copies of the Explanation of Appeal in the envelope provided.

Yours very truly,



Mark Grier
Attorney for the Appellant

Enclosures

cc: Douglas Barfield, Solicitor

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NOV 04 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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NOV 04 2013

SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

Paul Burch, Circuit Court Judge

FILED
OFFICE OF CLERK
OF COURT
2013 OCT 31 PM 3:38
CLERK OF COURT
LANCASTER, SC

Case No(s): 2012GS2900550

The State of South Carolina,

Respondent.

v.

Joshua Wilks,

Appellant.

EXPLANATION OF APPEAL

Defendant appeals the sentence imposed in this case. The Defendant pleaded guilty to Armed Robbery and a sentence of 20 years was imposed by the Honorable Paul Burch on August 13, 2013.

Defendant is informed and believes that the sentence imposed is excessive and unconstitutional pursuant to the Eighth Amendment prohibition of "cruel and unusual punishment" espoused in the United States Constitution.

The crime of Armed Robbery carries a potential sentence ranging from a minimum ten (10) years to a potential thirty (30) years and should be vacated due to the failure of the Court to properly apply the Proportionality Principle to the uncontested mitigating factors applicable in this case. The Proportionality Principle was first recognized by the United States Supreme Court in *Weems v. United States*, 217 U.S. 349 (1910). This tenet was interpreted to prohibit sentencing "grossly disproportionate to the nature of the offense" in *Solem v. Helm* 463 U.S. 277 (1983).

The minimum sentence that could have been imposed was ten (10) years and would logically be applicable to cases where there are momentous mitigating factors to be considered. In the instant case the undisputed mitigating factors presented by the Defendant during his plea were:

- 1) Defendant was seventeen (17) years of age at the time of the crime; and
- 2) Defendant had no criminal record; and
- 3) Defendant used a toy gun in the commission of the crime and did not expose the victim to

genuine danger:

The South Carolina Legislature mandated a harsh minimum sentence of ten (10) years for the serious crime of Armed Robbery. It is hard to imagine more significant mitigating factors than are present in the instant case. Therefore the imposition of a twenty (20) year sentence in this case constitutes cruel and unusual punishment prohibited by the Eighth Amendment to the United Constitution and said sentence should be vacated.

Defendant is informed and believes that Arguments were made by counsel presenting all of the mitigating factors stated herein to the Court during the plea of the Defendant and therefore, the issue was properly raised and ruled upon by the Court and is reviewable on Appeal.

Date: October 30, 2013

A handwritten signature in black ink, appearing to read 'Mark Grier', written over a horizontal line.

Mark Grier, Esq.
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S.C. Bar #15145

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