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MAR 31 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

State of South Carolina
Plaintiff

v.

Aubrey Tucker
Defendant

Indictment Number 2022 GS 08007 4000 742
Berkeley County Court of General Sessions
Trial Judge Leah Guerry

MOTION FOR PERMISSION TO FILE SUPPLEMENTAL BRIEF

Defendant Aubrey Tucker respectfully moves this Court for permission to file the attached Supplemental Brief in support of his appeal and in support of vacating an illegal sentence.

This motion is made for the following reasons.

First, the legality of a criminal sentence presents a jurisdictional issue that may be raised at any time. Courts have a continuing duty to correct sentences imposed without statutory authority.

Second, the attached Supplemental Brief raises significant legal questions concerning whether a sentence of life imprisonment without parole may be imposed where the State did not file notice of intent to seek the death penalty as required under South Carolina law.

Third, the issues presented involve statutory interpretation of South Carolina Code Section 16-3-20 and constitutional questions involving due process, the right to jury trial, and judicial authority to impose punishment.

Fourth, consideration of these issues will assist the Court in resolving the appeal and ensuring that the sentence imposed complies with statutory and constitutional requirements.

Finally, allowing the filing of the Supplemental Brief will not prejudice the State and will promote the proper resolution of an important sentencing issue.

WHEREFORE, Defendant respectfully requests that this Court grant permission to file the attached Supplemental Brief.

Respectfully submitted,

Aubrey Tucker

Aubrey Tucker
Broad River Correctional Institution
4460 Broad River Road
Columbia South Carolina 29210

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

State of South Carolina
Plaintiff

v.

Aubrey Tucker
Defendant

Indictment Number 2022 GS 08007 4000 742

AFFIDAVIT IN SUPPORT OF MOTION FOR PERMISSION TO FILE
SUPPLEMENTAL BRIEF

I, Aubrey Tucker, being duly sworn, state as follows.

1. I am the Defendant in the above captioned case.
2. I am currently incarcerated at Broad River Correctional Institution.
3. I am proceeding in this appeal without the assistance of counsel.
4. After further review of the record and applicable law, I have identified additional legal issues concerning the legality of the sentence imposed in this case.
5. The attached Supplemental Brief addresses important questions involving statutory sentencing authority and constitutional protections.
6. These issues were not fully presented previously and are necessary to ensure that the Court has a complete understanding of the legal questions involved.
7. I respectfully request permission to file the Supplemental Brief so the Court may consider these issues.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16 day of March 2026.

Aubrey Tucker
Affiant

Aubrey Tucker

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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ORDER

This matter comes before the Court on Defendant Motion for Permission to File Supplemental Brief.

After consideration of the motion and the materials submitted, the Court finds that the motion should be granted.

IT IS THEREFORE ORDERED that Defendant Motion for Permission to File Supplemental Brief is GRANTED.

The Supplemental Brief submitted by Defendant shall be accepted for filing and considered as part of the appellate record.

IT IS SO ORDERED.

Judge, South Carolina Court of Appeals

Date: _____

STATE OF SOUTH CAROLINA
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SUPPLEMENTAL BRIEF IN SUPPORT OF VACATING ILLEGAL SENTENCE

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QUESTIONS PRESENTED

Whether a sentence of life imprisonment without parole is illegal where the State did not file notice of intent to seek the death penalty under South Carolina law.

Whether life imprisonment without parole exists only within the statutory capital sentencing procedures established by South Carolina Code Section 16 3 20.

Whether imposing life imprisonment without parole without prior notice violates constitutional due process.

Whether the trial court lacked jurisdiction to impose life imprisonment without parole where statutory requirements were not satisfied.

Whether disclosure of Defendant prior convictions to the jury violated the constitutional right to a fair trial.

Whether judicial fact finding increasing punishment violates the Sixth Amendment.

Whether the trial court failure to issue a written order prevents meaningful appellate review.

STATEMENT OF FACTS

Defendant Aubrey Tucker was charged with murder in Berkeley County South Carolina.

A jury trial was conducted before the Honorable Leah Guerry in the Court of General Sessions.

The jury returned a verdict finding Defendant guilty of murder.

Following the verdict the court imposed a sentence of life imprisonment without parole.

The State did not file a notice of intent to seek the death penalty before trial.

Defendant filed a Motion to Vacate Illegal Sentence arguing that the sentence imposed exceeded statutory authority and violated constitutional law.

The trial court denied the motion but did not issue a written order explaining the basis of the decision.

This appeal follows.

ARGUMENT

Importance Of Correcting Illegal Sentences

The legality of a criminal sentence is one of the most important questions an appellate court can address.

When a court imposes punishment that the legislature has not authorized the sentence becomes void.

A void sentence undermines the rule of law because criminal punishment must be imposed only according to statutory authority.

For this reason appellate courts treat illegal sentences as jurisdictional defects that must be corrected whenever discovered.

Failure to correct such sentences risks allowing punishment that the legislature never authorized.

Illegal Sentence May Be Corrected At Any Time

South Carolina courts consistently hold that sentences imposed without statutory authority are void.

In *State v Saxon* the Supreme Court held that when a trial court imposes punishment beyond statutory limits the sentence is illegal. The court reasoned that sentencing authority comes entirely from the legislature and courts may not expand that authority.

In *State v Sellars* the court reaffirmed that illegal sentences may be corrected at any time. The court explained that an unlawful sentence is not

protected by procedural rules because courts cannot enforce punishment that the law does not permit.

Similarly in *State v Campbell* the court explained that when a sentencing error results in punishment beyond statutory authority the sentence is void and subject to correction.

These decisions demonstrate that appellate courts have a continuing duty to correct illegal sentences.

Life Without Parole Not Authorized Without Capital Prosecution

South Carolina Code Section 16 3 20 establishes the sentencing structure for murder.

The statute separates murder prosecutions into two categories.

The first category applies where the State does not seek the death penalty. In such cases the sentencing range is thirty years to life imprisonment.

The second category applies only when the State files notice of intent to seek the death penalty. In that circumstance the jury decides whether to impose death or life imprisonment without parole.

In *State v Williams* the Supreme Court held that sentencing courts cannot impose punishment not authorized by statute. The court reasoned that sentencing authority must be strictly confined to legislative authorization.

In *State v Morris* the court explained that where a statute provides specific sentencing limits the court may not exceed them.

In *State v Stone* the court reaffirmed that criminal sentencing statutes must be followed exactly because they reflect legislative policy choices.

Because the State did not seek the death penalty the trial court lacked authority to impose life imprisonment without parole.

Statutory Interpretation Shows Life Without Parole Exists Only In Capital Sentencing Proceedings

The structure of the murder statute demonstrates that life imprisonment without parole exists only in capital sentencing cases.

Under the statute the jury determines whether death or life without parole should be imposed only after a capital sentencing proceeding.

This structure reflects the legislature intent that life without parole be treated as an alternative to the death penalty.

In *State v Sweat* the Supreme Court held that criminal statutes must be strictly construed against the State. The court reasoned that defendants cannot be subjected to punishment unless the statute clearly authorizes it.

In *State v Prince* the court explained that courts may not extend criminal statutes beyond their plain language.

In *State v Whitner* the court emphasized that legislative intent must control statutory interpretation.

These principles confirm that life without parole cannot be imposed outside the capital sentencing framework.

Lack Of Notice Of Life Without Parole Violates Due Process

The Due Process Clause requires that a defendant receive notice of the charges and potential punishment before trial.

A defendant must be informed of the penalties being sought in order to prepare a defense.

In *Cole v Arkansas* the United States Supreme Court held that due process requires notice of the criminal accusation and potential punishment.

In *Oyler v Boles* the Court held that enhanced punishment cannot be imposed without adequate notice.

In *Lankford v Idaho* the Court reversed a death sentence because the defendant was not given notice that the court was considering that punishment.

These decisions recognize that notice is essential to fairness in criminal proceedings.

Because Defendant was never notified that life without parole could be imposed the sentence violates due process.

Trial Court Lacked Jurisdiction To Impose Life Without Parole

Courts derive sentencing authority entirely from statute.

If a statute does not authorize a particular punishment the court lacks jurisdiction to impose it.

In *State v Brown* the Supreme Court explained that appellate courts must correct sentences imposed without statutory authority.

In State v Coats the court emphasized that trial courts are limited by statutory sentencing provisions.

In State v Smalls the court held that sentences exceeding statutory limits are void.

Because the statutory requirements for life imprisonment without parole were not satisfied the trial court acted outside its jurisdiction.

**Disclosure Of Prior Convictions To Jury Violated Right To Fair Trial
Evidence of prior crimes is considered highly prejudicial.**

Such evidence can improperly influence jurors by suggesting that the defendant has a criminal character.

In State v Lyles the Supreme Court established the rule that evidence of other crimes cannot be used to show criminal propensity.

In State v Beck the court emphasized the importance of protecting defendants from the prejudicial impact of prior bad acts evidence.

In State v Gore the court recognized that admission of such evidence may deprive a defendant of a fair trial.

The disclosure of Defendant prior convictions during jury deliberations created a substantial risk of prejudice.

Judicial Fact Finding Increasing Punishment Violates Constitutional Law

The Sixth Amendment guarantees the right to trial by jury.

This right requires that any fact increasing punishment beyond the statutory maximum must be found by a jury.

In *Apprendi v New Jersey* the United States Supreme Court held that sentencing enhancements based on judicial fact finding violate the Sixth Amendment.

In *Alleyne v United States* the Court extended this rule to facts that increase mandatory minimum sentences.

In *Blakely v Washington* the Court emphasized that the jury must determine any fact that increases the legally authorized punishment.

If aggravating facts were used to justify life imprisonment without parole those facts had to be determined by a jury.

Failure To Issue Written Order Prevents Meaningful Appellate Review

Appellate courts require clear findings of fact and conclusions of law to review trial court decisions.

Without such findings appellate courts cannot determine whether the law was properly applied.

In *State v Brown* the Supreme Court held that appellate courts may remand cases where the trial court order lacks sufficient findings.

In State v Baccus the court emphasized that written findings are necessary for meaningful review.

In State v Johnston the court remanded a case where the order failed to explain the trial court reasoning.

Because the trial court issued no written order this Court cannot determine the basis of the denial.

Remand is therefore required.

RELIEF REQUESTED

Defendant respectfully requests that the Court grant the following relief.

Vacate the sentence of life imprisonment without parole as unauthorized by statute.

Remand the case for resentencing within the lawful statutory range.

In the alternative remand the case to the trial court for entry of a written order explaining the denial of the Motion to Vacate Illegal Sentence.

Respectfully submitted

Aubrey Tucker

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Broad River Correctional Institution
4460 Broad River Road
Columbia South Carolina 29210

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CERTIFICATE OF SERVICE SC Court of Appeals

I certify that a copy of the foregoing Motion for Permission to File Supplemental Brief, Affidavit in Support of Motion, Proposed Order, and Supplemental Brief was served by placing the documents in the institutional mail addressed to the following:

Office of the Attorney General
State of South Carolina
1000 Assembly Street
Columbia South Carolina 29201

I certify that the foregoing was served on this 16 day of March 2026.

Aubrey Tucker

Aubrey Tucker

Ahurey Tucker #308809
BRCI 4460 Broad River Rd
Columbia, S.C. 29210

Retail



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