

Petition For Rehearing

South Carolina Court Of Appeals

The State, Responded,

V.

David Christopher Bernard Mosley, Appellant

Appellant Case No. 2024-001102

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SC Court of Appeals

The Appellant respectfully petitions this court for a rehearing on the grounds, that the court overlooked and/or misapprehended material constitutional issues in affirming the conviction and sentence following the filing of an Anders Brief.

The Fifth and Eighth Amendment Constitutional Issues

The Appellant was 15 years of age at the time of offense and sentencing. Under the Eighth Amendment of the United States Constitution, sentencing courts are required to consider the mitigating qualities of youth before imposing a significant term of imprisonment to a juvenile.

A) In *Miller V. Alabama*, The United States Supreme Court held that a sentencing court must conduct an individualized analysis that considers, a juvenile's age, immaturity and capacity for rehabilitation.

b) In this case, the sentencing court imposed an 18-year sentence without any meaningful discussion of appellants' youth, background, or potential for rehabilitation. The record reflects no individual consideration as required by *Miller V. Alabama*.

C) Accordingly, this issue is not frivolous and should not have been disposed of through an Anders review.

D) The Fifth Amendment to the U.S Constitution provides critical procedural safeguards to protect the rights of criminals accused and to secure life, liberty and property.

E) In this case, the court did not follow the proper procedures of the due process for attempted armed robbery. The appellant was 15 years of age and originally charged with armed robbery and indicted on the 2020 term by a grand jury. In May 2024, one month before the appellants trial, the armed robbery charged was dismissed in exchange for attempted armed robbery which was also indicted by a grand jury.

The Court Misapprehended the Nature of the Sentence Opposed and issues of Double Jeopardy

The Appellant was acquitted of murder and sentenced solely to a non-homicide offense "Attempted Armed Robbery ". Despite this, the appellant received a substantial term of imprisonment for conduct committed at the age of 15 for armed robbery which was a part of the appellants waiving hearing. The state dismissed the armed robbery charge in exchange for attempted armed robbery 5 years later one month before trial, which was not a part of the juveniles waiving hearing. Which is a lack of notice for opportunity to prepare a defense; the delay was unfair which violates the appellant's due process.

A) Under *Graham V. Florida* the Supreme Court emphasized that juveniles convicted of non-homicide convictions are constitutionally different and must be afforded a meaningful opportunity for release, based on demonstrated maturity and rehabilitation

B) The courts' decisions failed to address whether the sentence imposed complies with constitutional principles, of the appellants' Fifth and Eighth Amendment.

C) *State V. Bilton (1930)* the American cases hold generally that there must be a manifest necessity for the discharge of a jury and leave the courts to determine in their discretion under all the circumstances of each case such necessity exist. When such necessity exists, a plea of former jeopardy would not prove a subsequent trial. If the jury discharge without defendants consents for a reason legally insufficient or without an absolute necessity for it, the discharge is equivalent to an acquittal it may be pleaded as a bar to a subsequent indictment.

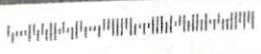
Rehearing Is Necessary

Due to the record presenting a non-frivolous constitutional issue regarding juvenile sentencing and due process. The appellant respectfully withdraws the prior decision and allows full briefing on the merits or appoints a new council.

Conclusion,

For the foregoing reasons, the appellant respectfully requests that this court grant a rehearing.

Respectfully submitted
Appellant, David Christopher Bernard Mosley, pro-se



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