

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

J. Ernest Kinard, Jr., Circuit Court Judge

Case No(s): 2012A2920300279

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2013 DEC 19 PM 1:05
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LANCASTER, SC

The State of South Carolina,

Respondent.

v.

Dyshawyn Foster,

Appellant.

EXPLANATION OF APPEAL

Defendant appeals the sentence imposed in this case. The Defendant pleaded guilty pursuant to *North Carolina v. Alford* to Assault and Battery of a High and Aggravated Nature and a sentence of eighteen (18) years was imposed by the Honorable J. Ernest Kinard, Jr. on December 9, 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 Assault and Battery of a High and Aggravated Nature carries a potential sentence up to a maximum of twenty (20) years and the instant sentence 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 sentence imposed was excessive in light of the mitigating factors considered. In the instant case the undisputed mitigating factors presented by the Defendant during his plea were:

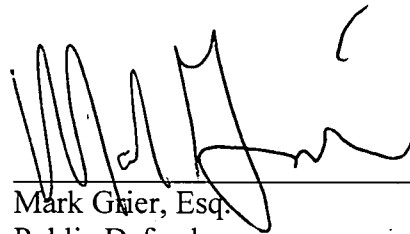
- 1) Defendant was eighteen (18) years of age at the time of the crime; and
- 2) Defendant had no adult criminal record; and
- 3) State did not refute facts argued by the defense during the plea that the victim in the instant case

had attempted to shoot the Defendant and struck another individual.

The mitigating factors present in the instant case would warrant a more favorable sentence for the Defendant. The sentence of eighteen (18) years is close to the maximum sentence of twenty (20) years and would certainly be warranted for an individual with a significant history of transgressions with the law. However, the imposition of an eighteen (18) 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: December 17, 2013



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