FILED
2013 NOV -8 PM 1:41
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF GENERAL SESSIONS FOR THE NINTH JUDICIAL CIRCUIT Indictment No.: 2012-GS-10-02229 Warrant No.: I112192
STATE OF SOUTH CAROLINA Plaintiff, vs. KENNETH ORDELL MURRAY, Defendant.	MOTION FOR RECONSIDERATION OF SENTENCE

PLEASE TAKE NOTICE that Kenneth Murray, by and through Alicia Penn, moves this Honorable Court for a reconsideration of the sentence imposed upon Kenneth on November 1, 2013, pursuant to the charge of armed robbery.

The within motion will be made upon the grounds that the sentence is disproportionate to that received by his more culpable codefendant, and that the sentence is unnecessarily severe under the circumstances.

Facts

Kenneth Murray was tried on October 30, 2013 for the armed robbery of a Pizza Hut. On November 1,2013 the jury found him guilty. The charge of armed robbery carries a minimum ten years and a maximum thirty years. He was sentenced to twenty-eight years. The prior offenses on Kenneth's record that were published to the Court were a criminal sexual conduct 3rd degree, for which he received a YOA sentence, a possession with intent to distribute cocaine, and a malicious injury to personal property.

The State's theory at trial was that the robbery was committed by two robbers, Kenneth and his codefendant, Cleveland Major. Major had already pled, before Kenneth's

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

trial, to multiple charges. These charges were the armed robbery charge,[1] a charge of burglary second non-violent (reduced from violent, which he was arrested for after posting bond on the armed robbery charge),[2] and a criminal domestic violence second charge.[3] The State dismissed against Major a possession of cocaine[4] and an unlawful possession of a stolen pistol.[5] Major's prior offenses included possession of cocaine, contributing to the delinquency of a minor (reduced from a criminal sexual conduct with a minor 2nd), and numerous magistrate offenses. His sentence was a negotiated ten years. Major appealed this sentence, but the appeal was denied.[6] During Kenneth's sentencing, the State argued that Major had accepted responsibility for his actions as justification for his negotiated ten year sentence.

During Kenneth's trial a BB gun was introduced. The State told the jury that this gun belonged to Kenneth. Kenneth's statement,[7] which was also introduced at his trial, said that Major had had a nine millimeter gun during the commission of the robbery, and that the robbery was Major's idea.

Not introduced at trial or otherwise brought to the courts' attention were jail recordings of Major's phone conversations. During these calls Major stated that he wished he had not robbed the Pizza Hut, that he was going to get Kenneth to write a statement claiming that Kenneth forced Major to commit the robbery (which Kenneth did and mailed

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[1] Exhibit A
[2] Exhibit B
[3] Exhibit C
[4] Exhibit D
[5] Exhibit E
[6] Exhibit F
[7] Exhibit G

to the solicitor's office),[8] bragging about how he would get his case dismissed, and that Major was going to assault Kenneth.

Kenneth's school records show that he had an IQ of 75. He is described as a sweet child who was easily led by others. During a pre-trial hearing, Kenneth testified that he had been in special education classes starting in the seventh grade, that he had trouble with reading comprehension, and his last job had been doing plasterwork with his father.

Argument

I. Kenneth's imposed twenty-eight year sentence for one charge is disproportionately harsh in comparison to Major's negotiated ten year sentence for three charges.

Kenneth's sentence should not be almost three times as long as Major's because according to the State's theory at trial he was the least dangerous, he was found guilty of fewer charges, and his record is similar to Major's. A codefendant's sentence may be considered in the sentencing of a defendant. "The sentence imposed upon a codefendant for the same offense and upon others for similar offenses are among a wide variety of factors which may be properly considered in determining a proper punishment." *State v. Brewington,* 267 S.C. 97 (S.C. 1976).

A sentence that treats defendants this disparately harms not just Kenneth but society—"grievous inequities in sentences destroy a prisoner's sense of having been justly dealt with, as well as the public's confidence in the even-handed justice of our system." *State v. Roach,* 167 N.J. 565 (N.J. 2001). A defendant's sentence should be somewhat predictable in the interests of fairness and justice and "should not depend on chance or the luck of the judicial draw." *State v. Roach*, 167 N.J. 565 (N.J. 2001).

[8] Exhibit H

In *State v. Roach*, a New Jersey Supreme Court case from 2001, the court found that the sentencing of one codefendant in a felony murder case with a sentence twice as long as the codefendant, by a different judge, was an unjustified "paradigmatic example of non-uniformity." *Id.* at 568. The Court acknowledged that "there was nothing intrinsically wrong" *Id.* at 567, with the longer sentence given to Roach, but that the trial court should have given serious consideration to the codefendant to avoid excessive disparity.

In the present case, consideration of the case facts as presented by the State support a lesser sentence for Kenneth. Of the two codefendants, the gun presented by the State as belonging to Kenneth was a fake gun. The State relied heavily on a statement signed by Kenneth that stated that Major had a nine millimeter gun with him. In addition to having a weapon that was actually dangerous, Major manipulated Kenneth into writing a statement that purports to absolve Major from guilt while placing all the blame on Kenneth. Major did not truly accept responsibility for his actions as was represented by the State to the Court. Instead, he filed a motion to appeal his sentence. Major is the more frightening and blameworthy of the two.

In addition to his actions regarding the Pizza Hut armed robbery, Major's prior record is similar to Kenneth's prior record. Major was originally charged with a criminal sexual conduct 2nd degree, which carries up to twenty years. Kenneth pled to criminal sexual conduct 3rd, which carries up to ten years, but received a sentence under the Youthful Offender's Act.

Furthermore, Major pled to more charges, and he received a significantly shorter sentence. Including the armed robbery Kenneth was found guilty of, Major resolved six cases with the Solicitor's office with his negotiated sentence. Major was originally charged

with the armed robbery of Pizza Hut, the violent burglary of the Golden Bowl Chinese Restaurant, criminal domestic violence second or subsequent, unlawful possession of a stolen pistol, and possession of cocaine. He could have received a sentence of up to fifty years. Instead, the State let him plead to the armed robbery and criminal domestic violence charge, reduced the burglary charge to a non-violent burglary, and dismissed his other charges.

In light of Major's record, the charges Major was charged with and pled to, and Major's role in the robbery, Kenneth's sentence is unjustifiably disproportionate.

II. Kenneth's sentence is unnecessarily severe.

Kenneth is now twenty-nine years old. He has been in special education classes since the seventh grade, and struggles with reading comprehension. His last job was doing plasterwork with his father. The South Carolina Department of Corrections estimates that his release date will be in the year 2037.[9] He will be fifty-three years old. His incarceration for this period of time does not serve the interests of justice, fairness, or rehabilitation.

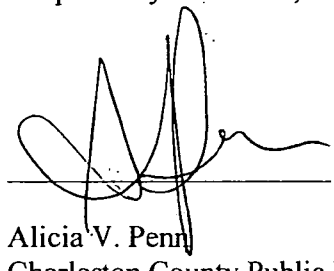
He was sentenced only two years shy of the maximum penalty when no one was physically harmed, the weapon that the state alleges was his was not a real gun, and according to the statement the State used at trial the robbery was Major's idea. Major's sentence is also relevant to the severity of Kenneth's sentence. The State was satisfied with a ten year sentence for Major, even though the State's theory was that he had the real gun and planned the robbery. In light of the facts of this case, and the alleged roles of Major and Kenneth, Kenneth's nearly three times as long sentence is unnecessarily severe for the crime he was found guilty of.

[9] Exhibit I

Conclusion

Based on the above arguments, the Defendant respectfully requests the Court reconsider the sentence imposed.

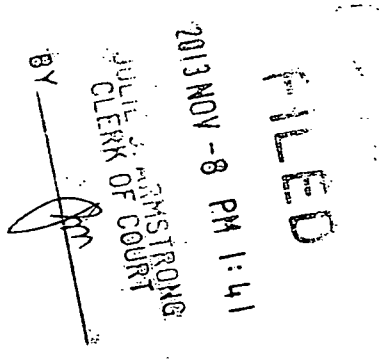
Respectfully submitted,



Alicia V. Penn
Charleston County Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, South Carolina
ATTORNEY FOR Kenneth Ordell Murray

Charleston, South Carolina

November 7, 2013



STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Cleveland Clarence Major)
AKA:)
Race: [redacted] Sex: M Age: [redacted])
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: [redacted])
DL#: [redacted] SID#: [redacted])
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1002228
A/W#: I112190
Date of Offense: 7/22/2011
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Armed Robbery

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Ferguson, Emmanuel — 7143 SC Bar# — Defendant — Attorney for Defendant: Susan T. King — 68630 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 10 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____, plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-GS-10-6153 ; 2013-GS-10-2782
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

Clerk of Court/ Deputy Clerk: Cahill
Court Reporter: Susan Perry

Exhibit "A"

PTUP _____ days/hours
Obtain GED ☐
Attend Voc. Rehab. or J
May serve W/E begining
Substance Abuse Counsel
Random Drug/Alcohol tes
Fine may be pd. in equal, c ...ave weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: ATU if available

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Presiding Judge: [signature]
Judge Code: 2128
Sentence Date: 6/17/13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Cleveland Clarence Major)
AKA:)
Race: [redacted] Sex [redacted] Age: [redacted])
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: [redacted])
DL#: [redacted] SID#: [redacted])
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1002782
A/W#: 2012A1011100026
Date of Offense: 7/9/2012
S.C. Code § : 16-11-0312
CDR Code #: 0080

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Burglary / Burglary (Non-Violent) - Second degree

in violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Ferguson, Emmanuel | 81431 SC Bar# | Defendant | Jason T. King Attorney for Defendant | 68630 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years; ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-GS-10-6153; 2012-GS-10-2228
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job (
May serve W/E begining
Substance Abuse Counselin
Random Drug/Alcohol testi
Fine may be pd. in equal, co
pmts. of $ _____
$ _____ paid to P
Other: ATR if available

Exhibit "B"

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Callahan
Court Reporter: Susan Pearson
Presiding Judge: [signature]
Judge Code: 2128
Sentence Date: 06/17/13

SCCA/217 (03/2011)

JKS20120705210

WITNESSES

Mt. Pleasant Police Department

AGENCY CASE NUMBER

2012P08606

ARREST WARRANT NUMBER

2012A1011100026

DATE OF ARREST

July 13, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAY 7 2013

VERDICT

Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2013GS1002782

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2013

THE STATE

vs.

CLEVELAND CLARENCE MAJOR
DOB: 1978-08-22
B/M

Indictment for

Burglary, 2nd Degree

FILED

5/24/2013 11:40:32 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on May 6, 2013 the Grand Jurors of Charleston County present upon their oath:

Burglary, 2nd Degree

That in Charleston County, on or about July 9, 2012, the Defendant, CLEVELAND CLARENCE MAJOR, did enter the Golden Bowl Restaurant, located at 2700 Hwy 17N, Suite 109, Mount Pleasant, South Carolina, without the consent of the owner, in the nighttime, and with the intent to commit a crime therein in violation of Section 16-11-312(b) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

FILED
2012 AUG 14 PM 1:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	WARRANT: K684680, M611642, K295534, 1112190, 2012-A10-11-100026
- versus -	INDICTMENT: 2011-GS-10-01728, 05842, 06153; 2012-GS-10-02228
	CHARGE: Poss Cocaine, Unlawful Carrying of Pistol, CDV 2nd, Armed Robber, Burglary 2nd Degree
Cleveland Major,	**NOTICE OF MOTION AND MOTION FOR BOND MODIFICATION**
Defendant	

TO: Jason King, Attorney for the Defendant and Cleveland Major, Defendant

Please take notice that on Friday, August 31st, 2012, at 9:00 a.m. or as soon thereafter as this matter can be heard, the State in the above-entitled case will move before the Presiding Judge of the Court of General Sessions for a bond modification.

The motion is based upon the following:

1. On January 1st, 2010, this Defendant was arrested and charged for Possession of Cocaine. The Defendant's initial bond was set at a $5,000 personal recognizance bond. [See attached Document A]
2. On June 1st, 2011, this Defendant was arrested and charged with Unlawful Carrying of a Pistol. The Defendant's initial bond was set at a $10,000 surety bond. [See attached Document B]
3. On June 1st, 2011, this Defendant was rearrested for providing false information to police and also arrested and charged with Criminal Domestic Violence – 2nd Offense. The Defendant's original bond was set at a $10,000 surety bond. [See attached Document C]
4. On July 22nd, 2011, this Defendant was arrested and charged with Armed Robbery. The Defendant's original bond was set at a $50,000 surety bond. [See attached Document D]
5. On July 28th, 2011, Byrd's Bail Bond Surety moved to be relieved on the consolidated $20,000 bond for the Unlawful Carrying of a Pistol and CDV-2 due to the incarceration of the Defendant by law enforcement as the result of a bench warrant for a violation of a specific term(s) of the bail bond with the July 22nd, 2011 arrest. This motion was later revoked on September 14th, 2011. [See attached Documents E and F, respectively]

6. The Defendant's bail bondsman, Eric Wilder with All City Bail Bonds, has informed the 9th Circuit Solicitor's Office that the Defendant has not been reporting to Mr. Wilder as he was required to do so under the terms of the bond agreement; that the Defendant has been leaving the state; and that the Defendant has been recently arrested (detailed below).

7. On May 14th, 2012, this Defendant was arrested and charged with Driving Under the Influence, .16 or higher, 1st Offense. The Defendant's original bond was set at a $2,267 surety bond. [See attached Document G]

8. On July 13th, 2012, this Defendant was arrested and charged with Burglary in the 2nd Degree. The Defendant's original bond was set at $50,000 surety bond. [See attached Document H]

9. On July 13th, 2012, Byrd's Bail Bond Surety moved to be relieved on the consolidated $20,000 bond for the Unlawful Carrying of a Pistol and CDV-2 due to the Defendant violating the conditions of the bond agreement with his July 13th, 2012 arrest for Burglary 2nd. [See attached Document I]

10. For the foregoing reasons, the State hereby moves to revoke the Defendant's bond.

Jennifer Kneece Shealy
ASSISTANT SOLICITOR
Charleston, South Carolina

Service of the above Notice of Motion accepted this 14th day of August, 2012 and a copy retained.

FILED

2012 AUG 31 PM 1:22

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Warrant No(s):
K684680, M611642, K295534, I112190,
2012-A10-11-100026

STATE OF SOUTH CAROLINA)
)
-versus-)
Cleveland Major)
)
Defendant)

Charge(s):
Poss. Cocaine, Unlawful Carrying of Pistol, CDV 2nd
Armed Robbery, Burglary 2nd Degree

ORDER TO REVOKE BOND

UPON MOTION of Assistant Solicitor Jennifer Sheely, bond on the above-captioned individual, is hereby revoked for violating terms of the bond.

AND IT IS SO ORDERED!

JUDGE JEFFERSON

Charleston, South Carolina
Dated: 8/31, 2012

I SO MOVE:

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Cleveland C Major)
AKA:)
Race: [redacted] Sex: [redacted] Age: [redacted])
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: [redacted])
DL#: [redacted] SID#: [redacted])
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1006153
A/W#: K295534
Date of Offense: 5/28/2011
S.C. Code § : 16-25-0020 (B)
CDR Code #: 2672

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Criminal Domestic Violence - 2nd offense

in violation of § 16-25-0020 (B) of the S.C. Code of Laws, bearing CDR Code # 2672
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation ☒ Negotiated Sentence ☐ Recommendation by the State.

ATTEST: Ferguson, Emmanuel | 81431 SC Bar# | Defendant | Joann T. King Attorney for Defendant | 68630 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and/or payment of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-GS-10-2228; 2013-GS-10-2782
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____ _____ days/hou Exhibit "C"
Obtain GED ☐
Attend Voc. Rehab. o
May serve W/E begin
Substance Abuse Cou
Random Drug/Alcoho
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: ATH if available

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: Susan Perron
Presiding Judge
Judge Code: 2128
Sentence Date: 06/17/13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 7, 2011 the Grand Jurors of Charleston County present upon their oath:

Possession Of Cocaine

That in Charleston County, South Carolina, on or about January 7, 2011, the Defendant, CLEVELAND MAJOR, knowingly or intentionally did possess; or did aid, abet, attempt, or conspire to possess a controlled substance or a controlled substance analogue, to wit Cocaine, in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

Exhibit "D"

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

CULVER KIDD
ASSISTANT SOLICITOR

CDD20110100262

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011001007

ARREST WARRANT NUMBER

K684680

DATE OF ARREST

January 7, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date MAR 28 2011

VERDICT

Foreperson of Petit Jury *Date*

INDICT

DOCKET NO. **2011GS1001728**

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2011

THE STATE

vs.

CLEVELAND MAJOR
DOB: 1978-08-22
B/M

Indictment for

Possession Of Cocaine

FILED

3/29/2011 9:07:52 AM
JULIE J. ARMSTRONG
CLERK OF COURT

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment per Form)

Name: **Cleveland Major** Indictment #: **2011GS1001728**

Race: **B** Sex: **M** Case Number: **20110100262**

SSN: **247414917**

Date of Birth: **1978-08-22** Warrant Number: **K684680**

Disposition (Check One) **Reason (Optional):**

4A ☐ Dismissed Reason: _____

4B ☒ Nolle Prosequi Reason: _____

7 ☐ Remanded Charge: _____

Municipal Court:

Magistrate Court: Judge: _____

8B ☐ No Bill

9 ☐ Failure to Appear Date Bench Warrant Issued: _____

FILED
2013 JUN 19 AM 9:50
CLERK OF COURT
BY _____

Trial/Plea Docket Week: _____ Case Pre-filed with _____ Grand Jury.

Authorized by: _____ Date: 06/17/2013
Emmanuel Ferguson

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: _____ DATE: _____

Defense Attorney: King, Jason Thomas

JBN20110603409

WITNESSES

Officer Watkins
North Charleston Police Department

AGENCY CASE NUMBER

2011019865

ARREST WARRANT NUMBER

M611642

DATE OF ARREST

June 1, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury OCT 04 2011
Date:

VERDICT

Foreperson of Petit Jury *Date:*

INDICT.DOT

DOCKET NO. 2011GS1005842

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2011

THE STATE

vs.

CLEVELAND CLARENCE MAJOR
DOB: 1978-08-22
B/M

Indictment for

Unlawful Possession Of A Stolen Pistol

FILED
10/19/2011 10:26:07 AM
JULIE J. ARMSTRONG
CLERK OF COURT

Exhibit "E"

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 3, 2011 the Grand Jurors of Charleston County present upon their oath:

Unlawful Possession Of A Stolen Pistol

That in Charleston County, South Carolina, on or about May 31, 2011, the Defendant, CLEVELAND CLARENCE MAJOR, did unlawfully have in his possession, a firearm with an obliterated serial number, or a stolen firearm to wit: a .380 caliber Bersa Thunder handgun, serial #706845, all in violation of Section 16-23-30 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JESSICA BALDWIN
ASSISTANT SOLICITOR

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment per Form)

Name: **Cleveland Clarence Major**

Indictment #: **2011GS1005842**

Race: **B** Sex: **M**

Case Number: **20110603409**

SSN: **247414917**

Date of Birth: **1978-08-22**

Warrant Number: **M611642**

Disposition (Check One)

Reason (Optional):

4A ☐ Dismissed — Reason: _____

4B ☒ Nolle Prosequi — Reason: _____

7 ☐ Remanded — Charge: _____

Municipal Court:

Magistrate Court: — Judge: _____

8B ☐ No Bill

9 ☐ Failure to Appear — Date Bench Warrant Issued: _____

FILED
2013 JUN 19 AM 9:50
CLERK OF COURT
BY MDL

Trial/Plea Docket Week: _____ Case Pre-filed with _____ Grand Jury.

Authorized by: _____ Date: 06/17/2013
Emmanuel Ferguson

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: _____ DATE: _____

Defense Attorney: King, Jason Thomas

The South Carolina Court of Appeals

The State, Respondent,

v.

Cleveland C. Major, Appellant.

Appellate Case No. 2013-001443

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina

cc:
Robert Michael Dudek
Jason Thomas King
Salley W. Elliott
Alan McCrory Wilson
Emmanuel Joseph Ferguson

Exhibit "F"

MOUNT PLEASANT POLICE DEPARTMENT

PAGE 1 OF: 2 DATE: 08/2/11

OCA #: 2011P09020 TIME: 13:25

Statement of: Kenneth Credell Murray

ADDRESS: 2629 Linen Lane, Mt. Pleasant SC Phone #: (843) 303-2822

PLACE OF EMPLOYMENT: N/A Phone #:

RACE: B SEX: M BIRTH DATE: 05/15/94

This is the written statement of Kenneth Credell Murray, written by Sgt. Justin Hembree. In the robbery of Pizza Hut at Six Mile Road on 17, I had a b.b. gun, that y'all found under my mattress. Bootsie had a 9mm gun. Bootsie was around the neighborhood and asked me if I wanted to go with him on it. We went in Pizza Hut, I think there was about three people inside. We robbed them, and left. We got like $200. We were parked on the side of the building in a blue mitsubishi, a newer model. Bootsie drove us away after the robbery. We were parked at the dealership next door. We left there and went back to my house on Linen Lane.

Exhibit "G"

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: Kenneth Murray

WITNESSES:

I have received a copy of the above statement: Kenneth Murray

1004 4/07

8-3-11

Cleveland MAJOR Was force to go into pizza Hut to grab MONEY by I Kenneth Murray. He really didn't have Anything to do with this robbery I Forced him into this Cause he'de owe me MONEY therefore he'se INNOCENT

Kenneth Murray

Witness

708-2113

EXHIBIT "H"

*267 S.C. 97, *; 226 S.E.2d 249, **;*
*1976 S.C. LEXIS 213, ****

The State, Respondent, v. Lindbergh BREWINGTON, Jr., Appellant

No. 20246

Supreme Court of South Carolina

267 S.C. 97; 226 S.E.2d 249; 1976 S.C. LEXIS 213

June 21, 1976

DISPOSITION: [*1]** The judgment is affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant sought review of the judgment of the trial court (South Carolina), which convicted him of assault and battery of a high and aggravated nature and sentenced him to 10 years, suspended upon service of seven years, with five years probation.

OVERVIEW: Defendant was convicted of assault and battery of a high and aggravated nature. Defendant was sentenced to 10 years, suspended upon service of seven years, with five years probation. Defendant's conviction and sentence were affirmed on appeal. The court found that the prior guilty plea of an accomplice, who attempted to take full blame for the assault at defendant's trial, was properly admitted by the trial court because it was relevant to the determination of defendant's guilt. Since the accomplice sought to accept full responsibility, the court found that the testimony of his previous plea and sentence was properly admitted because it might have affected the accomplice's interest, bias, or motive. The court found that the effect to be given the testimony was for the jury to decide. The court also found that the trial court properly admitted the testimony of a doctor who testified that the injuries to the prosecuting witness could possibly have been fatal because the testimony was relevant to show circumstances of aggravation. Finally, the court found that the trial court properly considered the sentence imposed upon the accomplice as a factor when it sentenced defendant.

OUTCOME: The judgment of the trial court was affirmed.

CORE TERMS: assault and battery, aggravated, sentence, sentence imposed, assault, years of age, youthful offender, accomplice, sentenced, fatal, prosecuting witness, physical condition, codefendant, sentencing, pled guilty, properly admitted, imposing sentence, cross-examination, resentencing, assaulted, causation, doctor, bias

COUNSEL: *Ray P. McClain, Esq.*, of Charleston, *for Appellant*, cites: *As to Appellant's being entitled to a new trial because it was highly prejudicial to disclose to the jury that Leon Bethea, also charged in connection with the assault, had pleaded guilty to assault and battery of a high and aggravated nature, and Appellant was thereby denied a fair trial*: 262 S.C. 517, 205 S.E. (2d) 833; 258 S.C. 369, 188 S.E. (2d) 850; 173 F. (2d) 140; 454 F. (2d) 1337; 332 F. (2d)

117; 436 F. (2d) 606; 502 F. (2d) 759; 257 S.C. 461, 186 S.E. (2d) 421. *As to the trial Judge's erroneously admitting as expert medical opinion evidence testimony speculating upon the "possible" results, rather than "probable" results, of events that never occurred*: 214 S.C. 125, 51 S.E. (2d) 383; 207 S.C. 258, 35 S.E. (2d) 838. *As to Appellant's sentence being vacated and this cause remanded for sentencing under proper consideration of the Youthful Offender Act, since the standards used by the trial Judge do not reflect the proper exercise of discretion in imposing sentence*: South Carolina Code of Laws, 1962, as amended, Section 55-395; 212 S.C. 348, 46 S.E. (2d) 273; 191 S.C. **[***2]** 153, 3 S.E. (2d) 804; Carolina Code of Laws, 1962, as amended, Section 17-553; 232 S.C. 489, 102 S.E. (2d) 873; South Carolina Code of Laws, Section 55-392 (d); No. 75-1780 (4th Cir. Jan. 27, 1976); 418 U.S. 424; 258 S.C. 91, 187 S.E. (2d) 224.

Messrs. Daniel R. McLeod, Atty. Gen., Joseph R. Barker, Asst. Atty. Gen., and Perry M. Buckner, Staff Atty., of Columbia, *and J. DuPre Miller, Sol.*, of Bennettsville, *for Respondent*, cite: *As to the trial Judge's not having erred in permitting the State to cross examine Leon Bethea concerning the fact that he had previously plead guilty to assault and battery of a high and aggravated nature in connection with this incident*: 161 Md. 75, 155 Atl. 164; 213 So. (2d) 900; 140 Ala. 165, 37 So. 265; 117 Ala. 16, 23 So. 77; 4 Okla. Crim. 292, 111 Pac. 825; 3A Wigmore, Evidence, Section 967; 171 Pa. Super 468, 90 A. (2d) 301; 32 N.J. Super 191, 108 A. (2d) 104; 218 S.C. 106, 62 S.E. (2d) 100. *As to the trial Court's not having abused its discretion in admitting the testimony of Dr. John May to the effect that the injuries to the prosecuting witness could possibly have been fatal*: 6A C.J.S. Assault and Batter, Section 121; 245 S.C. **[***3]** 362, 140 S.E. (2d) 527; 225 S.C. 267, 82 S.E. (2d) 63; 6A C.J.S., Assault and Batter, Section 73; 260 S.C. 396, 196 S.E. (2d) 107; 263 S.C. 87, 207 S.E. (2d) 814; 256 S.C. 90, 180 S.E. (2d) 888. *As to the Trial Court's not having abused its discretion in imposing sentence upon the Appellant*: 258 S.C. 91, 187 S.E. (2d) 224; Section 55-395, Code of Laws of South Carolina, 1962, as amended; 262 S.C. 255, 204 S.E. (2d) 12; 262 S.C. 592, 206 S.E. (2d) 882; 262 S.C. 597, 206 S.E. (2d) 885; Opinion No. 20117, filed November 26, 1975; 418 U.S. 424, 41 L. Ed. 855, 94 S. Ct. 3042; 499 F. (2d) 52; 232 S.C. 489, 102 S.E. (2d) 873; Section 17-553, Code of Laws of South Carolina; 254 S.C. 321, 175 S.E. (2d) 227.

Ray P. McClain, Esq., of Charleston, *for Appellant, in Reply*.

OPINION BY: PER CURIAM

OPINION

[*99] **[**250]** Appellant was convicted of assault and battery of a high and aggravated nature and received a sentence of ten (10) years, suspended upon service of seven (7) years, with five (5) years probation. He has appealed, charging that he is entitled to a new trial because of alleged erroneous rulings relative to the admissibility of certain testimony of an accomplice **[*100]** **[***4]** and of the doctor who treated the victim. In the alternative, he asks that the cause be remanded for sentencing under the Youthful Offender Act. While the issues raised require some comment, the clear lack of any meritorious ground of appeal justifies disposition of the matter without oral argument.

On the trial of the case, one Leon Bethea testified in appellant's behalf. Bethea had previously pled guilty to assault and battery of a high and aggravated nature and had been sentenced in connection with the same incident for which appellant was being tried. It was not disputed that appellant was at the scene with Bethea at the time of the attack in question. The evidence was in conflict as to whether appellant had participated in the assault and the extent of the injuries to the victim. The victim testified that both appellant and Bethea assaulted him. However, Bethea testified that he alone had struck the victim and that, to his knowledge, appellant did not participate in the assault.

During cross-examination of Bethea, the solicitor was permitted, over objection, to elicit the

fact that Bethea had previously entered a plea of guilty to assault and battery of a high and aggravated **[***5]** nature in connection with the incident in question and was at that time serving the sentence imposed.

Appellant was indicted for assault and battery with intent to kill, but a directed verdict as to that offense was granted at the close of the State's case, leaving the charge of assault and battery of a high and aggravated nature. The trial judge also submitted the lesser included offense of simple assault and battery.

It is contended that the prior guilty plea of Bethea, the accomplice, was irrelevant to a determination of the guilt of appellant and its admission highly prejudicial since there was a question of the degree of the offense.

Since it is the function of the jury to determine the credibility of witnesses and the weight to be given their testimony, **[*101]** "as a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony," 98 C.J.S. Witnesses § 460; and "on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality" of the witness, 98 C.J.S. Witnesses § 560a.

The testimony showed **[***6]** that Bethea and appellant were present at the time of the assault and, therefore, the extent of participation by each and their relationship became relevant inquiries. As pointed out by the trial judge, Bethea's testimony was for the purpose of exculpating appellant by taking full blame for the assault. Since Bethea was seeking to accept full responsibility, testimony of his previous plea and sentence was properly admitted as it might affect his interest, bias, or motive. Testimony that he had previously pled guilty and had been sentenced might possibly bolster his testimony that he alone committed the crime; or, on the other hand, since he had already been sentenced and had nothing to lose, it could be considered as tempting him **[**251]** to exonerate appellant. The effect to be given the testimony was for the jury to decide.

Appellant next alleges that the trial judge erred in admitting the testimony of Dr. May to the effect that the injuries to the prosecuting witness could "possibly" have been fatal. The prosecuting witness, 84 years of age, was carried to the hospital immediately after he was assaulted. He was seen and treated by Dr. May.

Dr. May testified that the **[***7]** injuries received by the victim caused swelling in the throat, which could have resulted in cutting off the supply of air to the lungs; and that, due to the age and physical condition of the prosecuting witness, such injuries could have been fatal, unless he was given hospital treatment. The victim was accordingly hospitalized.

Appellant contends that the testimony of the doctor, to the effect that the injuries could have *possibly* been fatal, **[*102]** were insufficient to establish medical causation and was therefore irrelevant.

Appellant misconceives the purpose of the foregoing testimony. It was not offered to show causation but to show the seriousness of the attack on a man 84 years of age.

We have held that an assault and battery may be considered aggravated where there is a great disparity between the ages and physical condition of the parties. *State v. Hollman*, 245 S.C. 362, 140 S.E. (2d) 597.

The questioned testimony was relevant to show that the injuries could have been fatal to the victim who was 84 years of age. This was clearly relevant to show circumstances of aggravation and was properly admitted for that purpose.

Finally, appellant contends that **[***8]** improper standards were used by the trial judge in

imposing sentence and that the cause should be remanded for resentencing under the Youthful Offender Act.

The jury in this case returned the following verdict. "Guilty of assault and battery of a high and aggravated nature, but we recommend a light sentence."

The recommendation by the jury of leniency was not binding on the trial judge and there is no contention otherwise.

The contention that appellant should have been sentenced under the Youthful Offender Act is without merit. Appellant was twenty-three (23) years of age at the time of sentence and the sentence imposed constituted an implicit finding that appellant was not a suitable person for sentencing as a youthful offender. *Brown v. State*, 265 S.C. 516, 220 S.E. (2d) 125.

Neither is there merit in the position that the trial judge improperly considered the sentence imposed upon the accomplice in determining the sentence of **[*103]** appellant. The sentence imposed upon a codefendant for the same offense and upon others for similar offenses are among a wide variety of factors which may be properly considered in determining a proper punishment. *U.S. v. Williams* **[***9]** , 1 Cir., 499 F. (2d) 52.

The sentence imposed on the codefendant or accomplice was only one of the factors considered by the trial judge in imposing sentence upon appellant. In his order denying appellant's motion for resentencing, the trial judge revealed ample basis for his sentence when he stated that he "was impressed that two large and strong young men had made a brutal assault on an 84 year old man in his own home for the purpose of robbery."

The judgment is affirmed.

*167 N.J. 565, *; 772 A.2d 395, **;*
*2001 N.J. LEXIS 658, ****

STATE OF NEW JERSEY, PLAINTIFF-RESPONDENT, v. WINSTON ROACH, DEFENDANT-APPELLANT.

A-40 September Term 2000

SUPREME COURT OF NEW JERSEY

167 N.J. 565; 772 A.2d 395; 2001 N.J. LEXIS 658

April 30, 2001, Argued
June 4, 2001, Decided

SUBSEQUENT HISTORY: Post-conviction relief denied at State v. Roach, 2009 N.J. Super. Unpub. LEXIS 1919 (2009)

PRIOR HISTORY: **[***1]** On certification to the Superior Court, Appellate Division. State v. Roach, 146 N.J. 208, 680 A.2d 634, 1996 N.J. LEXIS 969 (1996)

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant sought review of the judgment of the Superior Court, Appellate Division (New Jersey) affirming defendant's sentence which was twice that of his co-defendant, because defendant was sentenced by a different judge than the co-defendant.

OVERVIEW: Defendant and the co-defendant robbed a gas station and were both convicted of two counts each of felony murder, armed robbery, aggravated manslaughter, possession of a weapon for an unlawful purpose, and one conspiracy count. Because defendant and the co-defendant were sentenced by different judges, defendant received two consecutive life sentences with 60 years of parole ineligibility, while the co-defendant received two concurrent life sentences with 30 years of parole ineligibility. On remand, the trial judge refused to alter defendant's sentence to conform with the co-defendant's. Therefore, the reviewing court altered defendant's sentence to conform with the co-defendant's, finding that a disparity may invalidate an otherwise sound and lawful sentence.

OUTCOME: The judgment of conviction was amended to make defendant's sentence conform with that imposed on the co-defendant.

CORE TERMS: sentence, sentencing, co-defendant's, sentences imposed, disparity, consecutive, accomplice, uniformity, sentenced, felony murder, consecutive sentencing, sentencing guidelines, ineligibility, concurrent, excessive, murder, parole, acts of violence, life terms, consecutive sentences, non-uniformity, certification, undertaken, robbery, disown, join

COUNSEL: *Joseph S. Murphy,* argued the cause, for appellant.

Michael J. Williams, Deputy Attorney General, argued the cause for respondent (*John J. Farmer, Jr.,* Attorney General of New Jersey, attorney).

JUDGES: COLEMAN, J., dissenting. Chief Justice PORITZ and Justice VERNIERO join in this opinion. Justices STEIN, LONG, LaVECCHIA and ZAZZALI. Chief Justice PORITZ and Justices COLEMAN and VERNIERO.

OPINION

[*567] [396]** PER CURIAM

The facts of this case are set forth at length in our prior opinion in *State v. Roach*, 146 N.J. 208, 680 A.2d 634 (1996) (*"Roach I"*). Briefly, defendant Winston Roach and two co-defendants, Billy Jackson and Lawrence Wright robbed a gas station in Newark. Two persons were killed during the robbery. Both Roach and Jackson were convicted of two counts of felony murder, two counts of armed robbery, two counts **[***6]** of aggravated manslaughter, conspiracy, and two counts of possession of a weapon for an unlawful purpose. Jackson was sentenced to two concurrent life terms with thirty years of parole ineligibility. Roach, who was thereafter sentenced by a different judge, received two consecutive life terms with a total of sixty years of parole ineligibility, a sentence double that imposed on Jackson. [1] Roach appealed. The Appellate Division affirmed. We granted certification, 142 N.J. 573, 667 A.2d 190 (1995), and ultimately reversed and remanded the case for re-sentencing. 146 N.J. 208, 233, 680 A.2d 634, *cert. denied,* 519 U.S. 1021, 117 S. Ct. 540, 136 L. Ed. 2d 424 (1996).

FOOTNOTES

1 Wright also received consecutive sentences of life with thirty years of parole ineligibility. His case is not before us.

In so doing, we recognized that there was nothing intrinsically wrong with Roach's sentence:

> In sentencing defendant, the trial court conformed to all sentencing guidelines and followed proper sentencing procedures. **[***7]** Further, the trial court's findings of the aggravating and mitigating factors were amply supported by the record. *State v. O'Donnell*, 117 N.J. 210, 216, 564 A.2d 1202 (1989). Moreover, the trial court gave **[*568]** extensive reasons for its sentencing decision. *State v. Kruse*, 105 N.J. 354, 363, 521 A.2d 836 (1987). The trial court acknowledged defendant's role as an accomplice, but determined that the conviction based on accomplice liability did not warrant any greater leniency.
>
> The court followed proper procedures and standards in imposing consecutive, not concurrent, sentences. *N.J.S.A.* 2C:44-5a. Consecutive sentences are not an abuse of discretion when the crimes involve multiple victims and separate acts of violence. *See State v. Louis*, 117 N.J. 250, 254, 566 A.2d 511 (1989) (rejecting consecutive sentencing that was based on cruelty and inhumanity of crime rather than independent nature of victims or violent acts); *State v. Ghertler*, 114 N.J. 383, 392, 555 A.2d 553 (1989) (affirming consecutive sentencing that was based on independent nature of multiple criminal acts). Defendant's sentences **[***8]** were based on two convictions for felony murder. The court's findings suggest that the deaths of the two victims were separate acts of violence caused by distinct types of conduct. **[**397]** Even if the murders occurred in close sequence, consecutive sentencing is not improper. *State v. Brown, supra* 138 N.J. [481] at 560, 651 A.2d 19. The court also did not believe that there should be any difference between the punishments meted out to Jackson or defendant despite the differences in their

> roles in the crimes or because defendant was an accomplice. *See State v. Rogers*, 124 N.J. 113, 115-16, 590 A.2d 234 (1991) (ruling that defendant accomplice who supplied the guns and drove getaway car could be sentenced to two consecutive thirty-year mandatory terms for felony murder convictions).
>
> [*Roach I, supra*, 146 N.J. at 230-31, 680 A.2d 634.]

Relative to Jackson's sentence however, we found that Roach's sentence

> would appear to be a "paradigmatic example of non-uniformity." *State v. Pillot*, 115 N.J. 558, 576, 560 A.2d 634 (1989). The record strongly indicates dissimilar sentences imposed on similar defendants. Moreover, the disparity between the sentences **[***9]** is not minimal--it is huge: thirty additional years in prison.
>
> [*Id.* at 233, 680 A.2d 634.]

Regarding the trial court's explanation for the disparity, we stated:

> The record does not present an acceptable justification of defendant's sentence in light of the sentence imposed on his co-defendant. The trial court was cognizant of the sentences imposed on co-defendant Jackson and defendant but felt that it could disregard the sentences imposed on the co-defendant. The court explained that it had the discretion to sentence defendant more severely than the co-defendant because it had "lateral jurisdiction" and considered the co-defendant to have received "a very lenient sentence."
>
> The court's explanation implies that it considered defendant and the co-defendant to be "similar" but that they did not deserve "similar sentences." A disparate sentenced based solely on those reasons is not justifiable.
>
> **[*569]** [*Ibid.*]

We explained:

> [i]n such circumstances, we hold that the sentencing court must exercise a broader discretion to obviate excessive disparity. The trial court must determine whether the co-defendant is identical or substantially similar to the defendant **[***10]** regarding all relevant sentencing criteria. The court should then inquire into the basis of the sentences imposed on the other defendant. It should further consider the length, terms, and conditions of the sentence imposed on the co-defendant. If the co-defendant is sufficiently similar, the court must give the sentence imposed on the co-defendant substantive weight when sentencing the defendant in order to avoid excessive disparity. Sentencing based on such added considerations will accommodate the basic discretion of a sentencing court to impose a just sentence on the individual defendant in accordance with the sentencing guidelines while fulfilling the court's responsibility to achieve uniform sentencing when that is possible.
>
> [*Id.* at 233-34, 680 A.2d 634.]

Roach I ended with the following language:

> Realistically, sentencing cannot be monolithic when individual judges, no matter how competent and conscientious, impose sentences on individual defendants arising from the commission of separate crimes. If, however, it is feasible to avoid or reduce disparity in circumstances such as presented in this case through the trial and/or sentencing of similar defendants by the same **[***11]** judge, **[**398]**

> that should be undertaken. *See, e.g., State v. Pillot, supra*, 115 N.J. at 576, 560 A.2d 634. If those procedural avenues are not available, then sentencing judges should take into account and give substantive weight to the sentences imposed on similar co-defendants. The overarching goals of uniformity demand that reasonable measures be undertaken to achieve that end.
>
> [*Id.* at 234, 680 A.2d 634.]

Despite that directive, on remand, the trial court stated: "I do not understand it to be the Supreme Court instructions to me that I redo my sentencing. My reasons are now fixed." The trial court went on:

> After much deliberation, and much review, I have come to the conclusion that the only places upon which I could bring this [c]ourt's sentence in parity with the sentence imposed [the trial court on Jackson], would be to completely disown the record that I have made. To completely disown my considered judgment in this case which I feel a just verdict was imposed--just sentence. . . . There would be no other basis which could compel me to act.
>
> . . . .
>
> I have [to] take to heart the goal of achieving uniformity. I understand the [c]ourt expected **[***12]** to do that when I can reasonably do that without abandoning my judgment and my discretion.
>
> **[*570]** In light of the evaluation that I have made, and my statement as to what my sole motivation would be, I consider that to place this [c]ourt in a position of utilizing an extreme measure under the facts and circumstances of this case. As a jurist I was not able to bring myself to do that. That is the best record that I can make. I have given it my best effort, and will be guided by whatever judgment any reviewing court may make.
>
> It is this [c]ourt's intention at this time to reimpose based upon the same record the sentence that I previously imposed and I will submit my record for review.

Roach appealed and the Appellate Division affirmed. We granted certification, 166 N.J. 603, 767 A.2d 482 (2000), and now reverse.

Without belaboring the point, it is clear to us that the trial court failed to engage in the analysis *Roach I* ordered and simply remained faithful to the original sentence that *Roach I* specifically denominated as "unjustifiable."

In so doing, the court not only confounded *Roach I* but also violated the longstanding principles of our jurisprudence that informed **[***13]** it. The fundamental precept of sentencing uniformity is that sentencing should not depend on chance or the luck of the judicial draw. Because "there can be no justice without a predictable degree of uniformity in sentencing," *State v. Hodge*, 95 N.J. 369, 379, 471 A.2d 389 (1984), more than twenty-five years ago we acknowledged that a disparity may invalidate an otherwise sound and lawful sentence. *State v. Hicks*, 54 N.J. 390, 392, 255 A.2d 264 (1969). While "a sentence of one defendant not otherwise excessive is not erroneous merely because a co-defendant's sentence is lighter . . . [,] grievous inequities in sentences destroy a prisoner's sense of having been justly dealt with, as well as the public's confidence in the even-handed justice of our system." *Id.* at 391, 255 A.2d 264 (citations omitted).

Those are the notions that undergirded our decision in *Roach I* and that were not followed by the trial court on the remand. Because our opinion in *Roach I* constituted the law of the case, it

not only settled the trial court's obligation on the remand but **[**399]** directs the outcome here. *State v. Hale*, 127 N.J. Super. 407, 410-411, 317 A.2d 731 (App.Div.1974).

[*14]** **[*571]** In light of the trial court's stance, taken in the face of *Roach I*, we choose to exercise original jurisdiction pursuant to *R.* 2:10-5 and resentence this defendant so that his sentence conforms with that imposed on Jackson. The judgment of conviction should be amended to reflect that the sentences on Counts Six and Seven of Indictment No. 91-11-4687 shall be served concurrently.

JUSTICES STEIN, LONG, LaVECCHIA and ZAZZALI join in this PER CURIAM opinion. JUSTICE COLEMAN filed a separate dissenting opinion joined by CHIEF JUSTICE PORITZ and JUSTICE VERNIERO.

DISSENT BY: COLEMAN

DISSENT

COLEMAN, J., dissenting.

For the reasons expressed by me in *State v. Roach*, 146 N.J. 208, 234-38, 680 A.2d 634 (Coleman, J., concurring in part and dissenting in part), *cert. denied*, 519 U.S. 1021, 117 S. Ct. 540, 136 L. Ed. 2d 424 (1996), I disagree with the Court's determination that defendant's consecutive sentences for two felony murders should be modified on the grounds of disparity and non-uniformity. I would affirm the consecutive sentences substantially for the reasons expressed by the trial court and the Appellate Division. It is an abuse of the standard **[***15]** controlling appellate review of sentences articulated in *State v. Ghertler*, 114 N.J. 383, 388, 555 A.2d 553 (1989), for the Court to reduce a sentence, in the name of disparity, when the sentence complies with all appropriate sentencing guidelines. The guidelines do not mandate that the Court reduce defendant's sentence to make it consistent with a co-defendant's lesser sentence that admittedly was erroneously imposed. The Court's judgment changing the consecutive terms to concurrent terms gives defendant a free murder.

Chief Justice PORITZ and Justice VERNIERO join in this opinion.