

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
Robert E. Hood, Circuit Court Judge

Appellate Case No. 2014-000598

RECEIVED

SEP 24 2014

SC Court of Appeals

THE STATE,

Respondent,

v.

FRANK TERRANCE SINGLETON, III,

Appellant

**INITIAL BRIEF OF RESPONDENT AND
DESIGNATION OF MATTER**

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES.....ii

APPELLANT’S STATEMENT OF ISSUE ON APPEAL..... 1

COUNTER-STATEMENT OF ISSUE ON APPEAL BY RESPONDENT.....1

RESPONDENT’S STATEMENT OF THE CASE2

STATEMENT OF THE FACTUAL BASIS OF THE GUILTY PLEA.....3

ARGUMENT

 When the murder conviction involved the death of Michael Hayes, the trial court did not abuse its discretion in sentencing the Appellant to thirty (30) years for the kidnappings of other victims than the murder victim. S.C. Code § 16-3-910 does not prevent sentences for the kidnappings of surviving victims Crystal Sheppard and the minor child who were not the subject of the murder conviction.....5

 A. How the Issue Was Raised Before the Sentencing Judge.....6

 B. Statutory Construction Standards.....9

 C. Relevant Statutory Law - §16-3-910.....10

 D. Analysis.....11

CONCLUSION15

DESIGNATION OF MATTER

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases

<i>Grazia v. S.C. State Plastering, LLC</i> , 390 S.C. 562, 703 S.E.2d 197 (2010)	9
<i>Great Games, Inc. v. S.C. Dep't of Revenue</i> , 339 S.C. 79, 529 S.E.2d 6 (2000)	9
<i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000)	9
<i>Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent</i> , <i>Def.</i> , 380 S.C. 219, 670 S.E.2d 371 (2008).....	13
<i>Mid-State Auto Auction of Lexington, Inc. v. Altman</i> , 324 S.C. 65, 476 S.E.2d 690 (1996)	10
<i>Owens v. State</i> , 331 S.C. 582, 503 S.E.2d 462 (1998)	11, 12, 13
<i>Rorrer v. P.J. Club, Inc.</i> , 347 S.C. 560, 556 S.E.2d 726 (Ct.App.2001).....	10
<i>State v. Blackmon</i> , 304 S.C. 270, 403 S.E.2d 660 (1991)	10
<i>State v. Council</i> , 335 S.C. 1, 515 S.E.2d 508 (1999)	11
<i>State v. Elders</i> , 386 S.C. 474,688 S.E.2d 857 (S.C. App. 2010).....	11
<i>State v. Jacobs</i> , 393 S.C. 584, 713 S.E.2d 621 (2011)	10
<i>State v. Mills</i> , 360 S.C. 621, 602 S.E.2d 750 (2004)	10
<i>State v. Standard Oil Co. of N.J.</i> , 195 S.C. 267, 10 S.E.2d 778 (1940)	10
<i>State v. Sweat</i> , 386 S.C. 339, 688 S.E.2d 569 (2010)	12
<i>State v. Vazquez</i> , 364 S.C. 293, 613 S.E.2d 359 (2005)	11, 12
<i>Town of Mt. Pleasant v. Roberts</i> , 393 S.C. 332, 713 S.E.2d 278 (2011)	10, 13
<i>Weathers v. State</i> , S.C. 59, 459 S.E.2d 838 (1995)	3

Statutes

S.C. Code § 16-3-910.....	passim
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Rules

SCACR Rule 203 (d)(1)(B)(iv)	3
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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the court erred in imposing sentences for both murder and kidnapping when the kidnapping statute forbids sentencing on both offenses?

COUNTER-STATEMENT OF ISSUE ON APPEAL BY RESPONDENT

When the murder conviction involved the death of Michael Hayes, the trial court did not abuse its discretion in sentencing the Appellant to thirty (30) years for the kidnappings of other victims than the murder victim. S.C. Code § 16-3-910 does not prevent sentences for the kidnappings of surviving victims Crystal Sheppard and the minor child who were not the subject of the murder conviction.

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, Frank Terrance Singleton, III, was indicted at the May 15, 2013 term of the Court of General Sessions of Kershaw County as amended by a true bill on February 26, 2014 for murder involving the death of Michael Hayes on May 16, 2011 (2013-GS-28-0251), armed robbery of Michael Hayes (2013-GS-28-0253), and the burglary in the first degree of Michael Hayes' dwelling on May 16, 2011 (2013-GS-28-0254). On June 19, 2013, the Appellant was indicted for kidnapping involving the May 16, 2011 kidnapping of Crystal Sheppard (2013-GS-28-0255) and the May 16, 2011 kidnapping of "Minor Child." (2013-GS-28-0256). ROA p. _ .

On March 10, 2014, the Appellant appeared before the Honorable Robert E. Hood, Presiding Judge. He was represented by Jason Kirincich, Assistant Public Defender and Public Defender Douglas Strickler of the Fifth Judicial Circuit. The prosecution was represented by Assistant Solicitors Jo Anna McDuffie, Daniel Coble, and Kathryn Luck Campbell of the Fifth Circuit Solicitor's Office. On that date, Singleton pled guilty to the indictments for murder, armed robbery, burglary in the first degree and two (2) counts of kidnapping. March 10, 2014 Tr. p. 3-37. Sentencing was deferred. March 10, 2014 Tr. 37-38.

On March 12, 2014, the parties again appeared before Judge Hood for sentencing. During the sentencing proceeding, counsel Strickler argued that no sentencing for the kidnapping of Crystal Sheppard and the minor child should be imposed. Sentencing Tr. 76-79. The State opposed. Tr. 81-82. Judge Hood sentenced the Appellant to thirty (30) years on each of the two indictments for kidnapping, armed robbery, and burglary in the first degree. Sentencing Tr. p. 84, ll. 9-19. Sentencing Sheets on Each Indictment. ROA

__. On murder he was sentenced to fifty (50) years. He directed that all sentenced run concurrent, credit for time served. Sentencing Tr. 84.

The Appellant filed a notice of appeal March 25, 2014. In the SCACR Rule 203 (d)(1)(B)(iv) Statement, the Appellant set forth the following explanation for the appeal from guilty plea:

Defense counsel requested that the Court impose no sentence for kidnapping charges in this case due to the language of the Kidnapping Statute. The Court imposed sentence on those charges. Defense counsel is of the belief that imposition of a sentence for the kidnapping charges when the Defendant was also sentenced for murder is contrary to the plain meaning of the statute. Additionally, the Defendant was dissatisfied with his sentence and insists on appealing. Defense counsel is of the opinion that if the client insists on appealing, he is constrained to file an appeal. *Weathers v. State*, S.C. 59, 459 S.E.2d 838 (1995).

This appeal follows.

STATEMENT OF THE FACTUAL BASIS OF THE GUILTY PLEA

During the guilty plea proceeding, the factual basis of the crimes was set out by Assistant Solicitor JoAnna McDuffie. Guilty Plea Transcript, p. 34-36. She stated:

This incident did occur on May 16th, 2011 at 378-A Sand Spur Road which is located . . . in Kershaw County. This defendant, along with Jerome Lewis and Arthur Macklin, did enter the home of Michael Hayes and Crystal [Tr.p. 35] Shepherd, a home that they shared with their five-day-old daughter. They did force entry into the house. When they forced entry, both this defendant and Mr. Jerome Lewis, were armed with a handgun at that point this time. Mr. Lewis and this defendant did take the victim, Mr. Michael Hayes, into a bedroom and demand that he open a safe. While they were in the bedroom with him demanding him to open a safe, Ms. Crystal Shepherd was in the living room with a five-day-old child. Mr. Arthur Macklin picked up a shotgun and was holding them at gunpoint in the living room, Your Honor.

Mr. Hayes did not open the safe fast enough or did not do as this defendant and Mr. Jerome Lewis instructed him to, and at one point, Mr. Hayes tried

to run and escape from this defendant and Mr. Lewis, at which point Mr. Hayes was shot three times which resulted in his death, Your Honor.

[THE KIDNAPPINGS AFTER HAYES DEATH]

These defendants then forced Ms. Shepherd and the five-day-old baby into Ms. Shepherd's car. They took Ms. Shepherd's car and drove from 378-A Sand Spur Road in Kershaw County to a location where they had another codefendant waiting for them to drive them back to where they were staying at that time, Your Honor. [Tr.p. 36] They instructed Ms. Shepherd to lie down, not to move and not to do anything until they left, Your Honor, which she then did, Your Honor. They then loaded the safe in their getaway car, and they drove off.

Ms. Shepherd was able to escape with her five-day-old child and drive back to her residence where she encountered a neighbor, and the neighbor called 9-1-1 and the police were notified.

Guilty Plea Transcript, p. 34, l. 20- p. 36, l. 8. The Solicitor reserved the right to place further facts on the record at sentencing. Tr.p. 36, l. 9-12. ¹

¹ A more extensive factual basis and the potential evidence to have been presented at trial was revealed at the outset of the sentencing proceedings by Assistant Solicitor McDuffie. Sentencing Tr. p. 3-25.

ARGUMENT

When the murder conviction involved the death of Michael Hayes, the trial court did not abuse its discretion in sentencing the Appellant to thirty (30) years for the kidnappings of other victims than the murder victim. S.C. Code § 16-3-910 does not prevent sentences for the kidnappings of surviving victims Crystal Sheppard and the minor child who were not the subject of the murder conviction.

The trial judge sentenced the Appellant for thirty years for the kidnapping of surviving victim Crystal Sheppard and thirty years concurrent for the kidnapping of surviving victim “minor child.” The Appellant contends that these sentences were improper as a matter of law because the Appellant was also convicted of the murder of a different victim – Michael Hayes- and sentenced to 50 years for that crime, although not convicted of the kidnapping of Mr. Hayes. He submits that the statutory prohibition of sentencing for kidnapping when there is a murder conviction is not victim-specific and prevents a court sentencing on separate kidnappings of surviving victims who are obviously not the subject of a murder conviction. In other words, it is Singleton’s position that when a crime involves the murder of victim A and the kidnappings of victims C, D, and E, no sentence is allowed for the kidnapping conviction victims cases. Respondent submits that the trial court was correct in rejecting this misplaced assertion based upon the precedent of the South Carolina Supreme Court and a reasonable interpretation of statutory law.²

² Respondent notes that Singleton has a another appeal involving separate convictions. See *State v. Frank T. Singleton, III*, Appellate Case Number 2014-002004. On September 11, 2014, the Appellant was convicted in Kershaw County before the Honorable D. Craig Brown of murder (2012-GS-28-1452), burglary in the first degree (2012-GS-28-1451), armed robbery (2012-GS-28-1450), and possession of a weapon during a crime of violence. The Appellant was sentenced by Judge Brown to life

HOW THE ISSUE WAS RAISED BEFORE THE SENTENCING JUDGE

During the guilty plea the following occurred:

THE COURT: The next charge that they tell me that you want to plead guilty to is kidnapping. There are actually two counts of kidnapping related to this incident, and that carries between zero and 30 years in prison. Each of them are violent and most serious offenses. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, the kidnapping, the armed robbery and the burglary are all 85 percent offenses. That means you would serve at least 85 percent of the sentence before you would ever be released, but all that will be essentially trumped by the murder which is a day-for-day sentence. Do you understand that?

(Pause.)

(Conferring with attorneys.)

THE DEFENDANT: Yes, sir.

Guilty Plea Tr.p. 19, l. 7-22. After acceptance of the guilty pleas, sentencing was deferred until March 12, 2014.

During the sentencing proceedings while Public Defender Doug Strickler was making his plea in mitigation the following colloquy occurred:

[COUNSEL STRICKLER] So I would join the requests of others before you asking for your mercy in this matter purely as an act of mercy. I would also just bring to the Court's attention, I submit that there should be no

imprisonment to murder, life imprisonment for burglary in the first degree, thirty years for armed robbery, and 1 day for the weapon charge. Judge Brown ordered that each sentence run consecutive to each other. On September 22, 2014, the Appellant served and filed a notice of appeal in the South Carolina Court of Appeals.

sentence imposed on the counts of kidnapping in this matter just as a matter of law.

THE COURT: Now, say that last line again.

MR. STRICKLER: The Court should impose no sentence as to the two counts of kidnapping. The plea is entered. No sentence should be imposed. In that regard, I just refer to 16-3-910, the kidnapping statute which says that the penalty must be imprisonment for a period not to exceed 30 years, unless the sentence for murder as provided in 16-3-20, he is being sentenced today for murder as provided in 16-3-20. There is a huge body of case law to the effect that no sentence is imposed for kidnapping under those circumstances. I'd cite *Owens v. State*, 503 S.E.2d, 6--- 462, a '98 case and just read it briefly, Your Honor. "The Court has summarily vacated life sentences for kidnapping when the defendant received a concurrent sentence under the murder statute." It then goes on to cite about a dozen cases in that regard. This took place -- this case took place after the sentence was changed from a life sentence to 30 years maximum. The Court also notes, "Effective June 5th, '90/'91, the penalty for kidnapping was reduced to a maximum period of 30 years imprisonment. The prohibition against concurrent sentences for murder and kidnapping was retained." So to my knowledge, there is no case law which authorizes this court to impose a sentence for kidnapping when it is imposed -- it is concurrent to a sentence imposed for a murder.

THE COURT: Well, wouldn't that be if the victims were the same?

MR. STRICKLER: Well...

THE COURT: I mean, if the kidnapping charge was on Mr. Hayes --

MR. STRICKLER: I understand, Your Honor.

THE COURT: -- that's one thing, but the kidnapping charge is on Ms. Shepherd and the child. So I guess -- now I'm not reading the statute as you're sitting here quoting it to me -- and I'm not saying that you're quoting it wrong but --

MR. STRICKLER: Yes, sir. That's the very thought I was going over in my mind as I drove over here this morning. I'm unaware of any cases that directly address that. I could be wrong. I'm not aware of any cases that address it.

THE COURT: Well, under statutory construction, the kidnapping offenses would both be separate offenses, separate and distinct from the murder charge upon Mr. Hayes because they involve different victims. Therefore,

they involve different elements. Therefore, they are -- actually, the kidnappings in and of themselves are separate and distinct from each other because of the different victims within. So what you're telling me is that there's no case law on point on that in this state?

MR. STRICKLER: Not that I'm aware of, Your Honor.

THE COURT: Okay.

MR. STRICKLER: It was --

THE COURT: In the case that you quoted me, was the murder victim and the kidnapping victim --

MR. STRICKLER: Yes, sir.

THE COURT: -- the same person?

MR. STRICKLER: Yes, sir.

THE COURT: Okay.

MR. STRICKLER: The issue before the Court was petitioner -- and that's the case. That situation was one in the same person as far as both the murder and the kidnapping. The issue, as the Court frames it, he contends the kidnapping statute prohibits concurrent life sentences where a defendant is also convicted of a murder which occurs during the commission of the kidnapping. We agree, okay. The statute, I don't know what it says, so I'm just putting that on the record at this point in time.

THE COURT: Thank you.

MR. STRICKLER: And I can make it bad law later on.

THE COURT: Thank you. . . .Do you want to respond to that, Ms. Campbell?

...

THE COURT: What's your position on this kidnapping thing?

DEPUTY SOLICITOR CAMPBELL: Your Honor, we agree with your assessment. I would -- I understand what Mr. Strickler was talking about as far as if it's the same victim. However, Your Honor, these are distinct offenses. It's a separate crime with separate victims. There is no similarity, because I believe if you look at the reasoning in those cases, it's because it's the same set of events on this person. . . .

Sentencing Tr.p. 76, l. 6- p. 79, l. 12, p. 81, l. 18-25.

Judge Hood subsequently sentenced the Appellant to thirty (30) years on each of the two indictments for kidnapping, armed robbery, and burglary in the first degree. Sentencing Tr. p. 84, ll. 9-19. Sentencing Sheets on Each Indictment. ROA ___. On murder he was sentenced to fifty (50) years. He directed that all sentenced run concurrent, credit for time served. Tr. 84.

STATUTORY CONSTRUCTION STANDARDS

“The cardinal rule of statutory construction is to ascertain and effectuate legislative intent.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). As such, a court must abide by the plain meaning of the words of a statute. *Id.* When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation. *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 569, 703 S.E.2d 197, 200 (2010). “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581. “ ‘What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.’ ” *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed.1992)). A statute should be read as a whole. *Id.* Further, “[s]tatutes which are part of the same legislative scheme should be read together.” *Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 84, 529 S.E.2d 6, 8 (2000). “Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their

ordinary meaning.” *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996).

Although it is a well-settled principle of statutory construction that penal statutes should be strictly construed against the state and in favor of the defendant, *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991), courts must nevertheless interpret a penal statute that is clear and unambiguous according to its literal meaning. *State v. Mills*, 360 S.C. 621, 624, 602 S.E.2d 750, 752 (2004); *State v. Jacobs*, 393 S.C. 584, 587, 713 S.E.2d 621, 622 - 623 (2011). See *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (“When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant.”). “Furthermore, even though penal statutes are to be strictly construed, ‘the canons of construction certainly allow the court to consider the statute as a whole and to interpret its words in the light of the context.’” *Rorrer v. P.J. Club, Inc.*, 347 S.C. 560, 567, 556 S.E.2d 726, 730 (Ct.App.2001)(quoting *State v. Standard Oil Co. of N.J.*, 195 S.C. 267, 288, 10 S.E.2d 778, 788 (1940)). “We should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.” *Rorrer*, 347 S.C. at 567, 556 S.E.2d at 730.

RELEVANT STATUTORY LAW - §16-3-910

S.C. Code § 16-3-910 provides:

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away **any other person** by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, **upon conviction, must be imprisoned for a**

period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20.

S.C. Code § 16-3-910 (emphasis added).

ANALYSIS

“Generally, when a defendant is convicted for murder, any sentence for the kidnapping of the victim would be vacated.” *State v. Vazquez*, 364 S.C. 293, 302, 613 S.E.2d 359, 363 (2005), citing *Owens v. State*, 331 S.C. 582, 585, 503 S.E.2d 462, 463 (1998) (holding that a sentence for kidnapping should be vacated when the defendant received concurrent sentence under the murder statute). It is error to sentence a defendant for kidnapping of the victim when he is also convicted of the murder of the same victim. *Id.* If imposed, however, the sentence is considered “ineffective.” *State v. Council*, 335 S.C. 1, 6, n. 2, 515 S.E.2d 508, 510, n.2 (1999). *Cf. State v. Elders*, 386 S.C. 474, 483, n. 6, 688 S.E.2d 857, 862, n. 6 (S.C. App. 2010).

Vazquez is pertinent to this case. In *Vazquez*, the defendant was convicted of two counts of murder and four counts of kidnapping among other charges. The Supreme Court vacated the kidnapping sentences related to the two murder victims, but left the remaining sentences for the two surviving victims intact. The Court stated:

Generally, when a defendant is convicted for murder any sentence for the kidnapping of the victim would be vacated. See *Owens v. State*, 331 S.C. 582, 585, 503 S.E.2d 462, 463 (1998) (holding that a sentence for kidnapping should be vacated when the defendant received concurrent sentence under the murder statute).

In the present case, Appellant was convicted and sentenced on two counts of kidnapping for the murder victims. We hold that the judged erred in sentencing Appellant for the kidnapping of the murder victims.

However, the sentences related to the kidnapping of Atkins and Robertson are proper under S. C. Code Ann. § 16-3-910 (2003).

As a result the sentences for kidnapping related to the murder victims, Williams and Walker, are vacated.

State v. Vazquez, supra. (emphasis added).

Like *Vasquez*, the prohibition against sentences in S.C. Code Ann. § 16-3-910, however, is inapplicable to the two separate convictions for kidnapping Crystal Sheppard and the minor child. The prohibition in the statute is intended to proscribe concurrent sentences for kidnapping and murdering the same victim. It is not applicable to the commission of different crimes against different victims. In *Owens v. State*, 331 S.C. 582, 585, 503 S.E.2d 462, 463 (1998), the Supreme Court stated that “[a]llowing the State to elect to try a defendant separately and obtain two sentences where concurrent sentences would otherwise be prohibited circumvents the language of the statute where, as here, the murder occurred during the commission of the kidnapping.” 331 S.C. at 585, 503 S.E.2d at 464 (emphasis added). However, unlike here, in *Owens*, the victim of the kidnapping and the murder was the same person. Here, the murder of Michael Hayes did not even result in a conviction or sentence for the kidnapping of Michael Hayes.³

The Appellant argues that the specific language of §16-3-910 is clear and unambiguous. This is correct if you construe the statute to address the same victim. However, if it extends to non-murder victims, the policy behind the statutory language becomes absurd. “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *State v.*

³ Of course, if it did result in a kidnapping conviction for a kidnapping of Hayes, sentencing would have been precluded by the statute.

Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (quotation marks and citation omitted). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). Appellate courts will not construe a statute in a way which leads to an absurd result or renders it meaningless. See *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def.*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (“In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.”). Applying the statutory language harmonizes the legislative purpose in recognizing the kidnapping and murder of the same victim is addressed by the sentence for murder arising from the kidnapping of the same victim. This is a sound policy and understandable. However, there is no reasoned legislative policy that would have precluded sentences or punishment for any other victim that the criminal defendant has ever kidnapped. Clearly, as implicitly recognized in *Vasquez*, that application of the language in §16-3-910 was not contemplated nor intended by the legislature. To suggest that any future or past sentence for the kidnapping of any surviving victim of any act by a criminal defendant is void because he is convicted of murder of a different is an absurd result which cannot have been intended by the General Assembly. Yet applying the victim’s logic and reliance upon *Owens, supra.*, this is exactly what the Appellant is seeking in asking to precluding sentences for the kidnappings of victims who survive a violent crime spree.

Here, the kidnappings of Sheppard and the five-day old minor child occurred after the murder of Hayes when they were forced into a car and driven away until they were able to escape. Guilty Plea Tr.p. 35, l. 20- p. 36, l. 8. Like *Vasquez*, the sentences for the non-murder victim's kidnapping was proper use of the trial judge's discretion. His claim otherwise must be dismissed.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment and conviction and sentences of the lower court should be affirmed.


Respectfully submitted,

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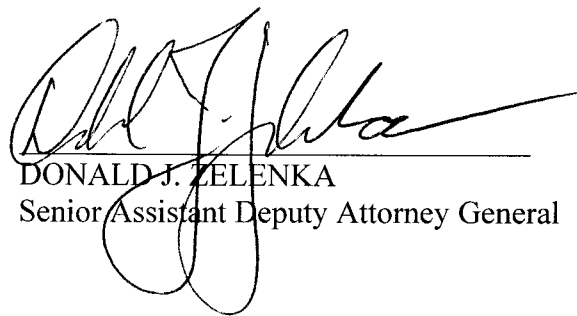
September 24, 2014

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the *Initial Brief of Respondent and Designation of Matter* in the foregoing action by depositing copies in the InterAgency mail to:

Robert M. Pachak, Esquire
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

This 24th day of September, 2014.



DONALD J. ZELENSKA
Senior Assistant Deputy Attorney General

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SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

September 24, 2014

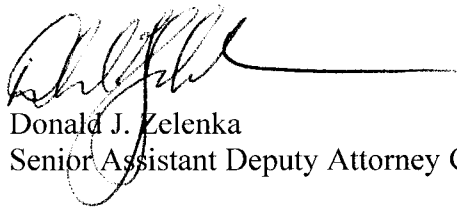
Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
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Re: The State v. Frank Terrance Singleton, III
Appellate Case No. 2014-000598

Dear Ms. Kitchings:

Enclosed please find the Initial Brief of Respondent in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,



Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/ibb
Enclosures

cc: Robert M. Pachak, Esquire
Daniel E. Johnson, Solicitor
Trisha Allen, Victim Assistance

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