Matthews Thomas Pickens, Jr.
SCDC# 151245; SMU-A-215
Lieber Correctional Institution
P.O. Box 205
Ridgeville, S.C. 29472

September 19, 2014

The Honorable Daniel E. Shearouse
Clerk Of Court
Post Office Box ~~295~~ 11330
Columbia, SC 29211

RECEIVED
SEP 25 2014
S.C. SUPREME COURT

RE: Matthews Thomas Pickens, Jr. vs. State
Appellate Case No. 2014-001869

Dear Mr. Shearouse:

Enclosed please find the original explanation concrening my appeal in the above post-conviction relief action. Will you please send copy to the office of the Attorney General Att: John W. Whitmire, Esquire P.O. Box 11549 Columbia, South Carolina 29211. The reason is that SCDC refuse to make copies of my legal papers. The Court in Hendrick vs. South Carolina Dept. of Corrections, 385 SC 625, 686 S.E. 2d 191 (S.C. 2009) states that, "This Court has caution SCDC that its policy not allowing inmates to make photocopies when he or she is willing and able to do so, See note 5".

Sincerely,
Matthews Pickens Jr.

STATE OF South CAROLINA)
County OF Anderson)

In The Court of Common Pleas
Tenth Judicial Circuit

Matthew T. Pickens, #151245,
Petitioner,

vs.

STATE OF South Carolina,
Defendant.

Proof of Service
Case#: 2011-CP-04-2061

I hereby certifies that I am the Petitioner in the above matter and I did send a copy of This explanation pursuant to 243(c) to Mr. Daniel Shearhouse, Clerk of Court, South Carolina Supreme Court to John Walter Whitmire, Esquire attorney General office by placing same in the United States mail at Lieber, C.I. ~~with~~ on the date of 9-19-2014

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Clerk of Court
Post Office Box 11330
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Re: Matthew T. Pickens, Jr. vs. State
Appellate Case No. 2014-001869

Dear Mr. Shearouse:

I received your letter date September 5, 2014 through Counsel Hugh W. Welborn dated September 12, 2014, I received it Septemb 17, 2014 telling me that I have (20) days from the date of the letter to file a pro se explanation as to why I beleaves that this determination by the Court was improper.

This matter comes before this Court by way of an explanation to provide pursuant to Rule 243(c) from an Application for Post-Conviction relief filed July 5, 2011, Case No. 2011-CP-04-02061.

Procedural History

Applicant the above Man was a (17) seventeen year old juvenile when he was convicted and sentenced in Anderson County and was indicted at the April 5, 1988 term of the Anderson County Grand Jury for Criminal Conspiracy (5) years, Burglary-First Degree (Life), Assault and Battery of

a High and Aggravated Nature (10) years and Criminal Sexual Conduct (30) years First Degree (1988-GS-04-0476/0478/0477/0483). Ronald Treadwell, Esquire along with Robert A. Bramble Esquire, represented Mr. Pickens on the charges. On September 21, 1988 Mr. Pickens proceeded to jury trial before the Honorable Tom J. Ervin where he was convicted of all charges as indicted. Mr. Pickens the above Applicant was born on November 30, 1970 and the incident occurred on December 14, 1987 (15) days after his seventeenth birthday.

Issue

On July 5, 2011 I, Mr. Pickens filed a Post-Conviction Relief 2011-CP-04-02061 and on September 18, 2013 a hearing was scheduled at the Anderson Courthouse. At the hearing, I, Mr. Pickens was told by Judge Mc Intosh that all my issues was denied and when I tried to question him about it, I was told once again that my issues was denied. However, Judge Mc Intosh ask me was there any other issue I would like to bring up. I said yes. I brought up the Fact that my Eighth Amendment to the U.S. Constitution Right was violated under Roper vs. Simmons, 543 U.S. 551; Graham vs. Florida, 560 U.S. _____, Miller vs. Alabama, 132 S. Ct. 2455, 183 L. Ed 2d 407 (2012). I brought up the Fact that, I just had turn (17) at the time of the incident and I was given the most sever penalties for a non-murder offense which is a violation of my Eighth Amendment Right, Post Miller. Post Miller Supr, quoting Roper and Graham establish that children are constitutionally different from adults for sentencing purposes. Their "lack of maturity" and "underdeveloped sense of responsibility" lead to recklessness, impulsivity, and heedless risk-taking, Roper, 543 U.S. at 569. The United States Supreme Court has held on multiple occasions that sentencing practices that are permissible for adults may not be so for children. See Roper, 543 U.S. 551; Graham, 560 U.S. _____.

See also Graham's admonition that "an offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." Id at 10-11, ____ S.W. 3d, at ____ (quoting Graham, 560 U.S., at ____ (slip op., at 25).

The Respondant Mr. Whitmire, agreed at the PCR hearing that, I was a (17) year old juvenile and I do fit the qualifications however, I have a parole date but, Mr. Whitmire ask the Court to hold my PCR in abeyance pending a decision in Aiken vs Byers, in the South Carolina Supreme Court and Judge McIntosh agreed and all parties.

On January 20, 2014, Counsel of record Hugh W. Welborn prensented Mr. Pickens, with a Form 4 Order from Judge McIntosh stating, "Respondent's motion to dismiss is ~~et~~ granted (See so attached). If this Court would reflect to the PCR hearing record you will see that, Mr. Whitmire never motion for this issue to be dismiss, but to hold Mr. Pickens PCR in abeyance pending the decision in Aiken vs. Byers, and all parties agreed. According to the Memorandum of Cheif Justice, dated August 16, 2004 Judge McIntosh Form 4 Order should be dismiss and the Final Order of Dismissal dated August 27, 2014, base on the fact that, "Form 4 orders may not be issued following an evidentiary hearing. Form 4 Orders may be issued for summary disposition of a PCR application. However, the Order should state with particularity the grounds upon which the motion is granted or the application is dismissed. When a Form 4 Order is issued, the Order should state whether a formal order is to follow." Moreover, Judge McIntosh committed Fraud and misrepresentation of the facts trying to mislead this Court too beleave that a Motion to dissmiss this issue was filed by Mr. Whitmire which also violate RCv.P Rule 60 (b), (3), (4), Relief From Judgment or Order. (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; ect.

On motion and upon such terms are just, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the (3) Fraud, misrepresentation, or other misconduct of an party: (4) the judgment is void. I motion this Court for a Rule 60 (b) base on the following facts stated above along with Final Order Of Dismissal dated Aug 27, 2014 signed by Judge MCIntosh which clearly misrepresent the facts showing fraurd by stating, "Mr. Pickens, filed his Application for Post-Conviction Relief (PCR) on the date November 9, 2016 the record will shows I filed July 5, 2011 the record will shows I did not receive Conditional Order of Dismissal dated December 22, 2016, I never pled guilty to burglary, first degree nor criminal sexual conduct, first degree and I never pled or entered a guilty plea one moth short of my eighteenth birthday.

Issu (Two)

I was prohibit from bring up the fact Post Miller, that there had been a plea offer to 5 or 10 years at my PCR hearing at the time of my trial. I never was question or investigated do to my competency level to see did I understand my liabilities or the proceedings that, I was faced with which lead me to doing Life in prison and this also violated my Eighth Amendment Right to the U.S. Constitution, Post Miller vs. Alabama, 132 S.Ct. 2455 (2012). for example, I could have been charged with a lesser offense if not for incompetencies associated with youth - for example, Mr. Pickens inability to deal with polices officers or prosecutors (including on a plea agreement) or my incapacity to assist my own attorney., Graham, 560 U.S. at ___ (slip op., at 27 ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings"); J.D.B. vs. North Carolina, 564 US. ___, ___ (2011) (slip op., at 5-6) (discussing children's

response to interrogation). And finally, this mandatory punishment disregards the possibility of rehablilition even when the circumstances most suggest it.

If this Court would take under Article II Rule 201.(d) Judicial Notice of Adjudicative Facts of Mr. Pickens Jan. 13,1993 post-conviction hearing Mr. Robert A. Gamble testified that, "there had been a plea offer to 5 or 10 years was offered on Assault and Battery, High and Aggravated... and that was rejected by Pickens". (see PCR transcript of record dated Jan 13, 1993 at Pg. 22, line 7-15).

I, Matthew Thomas Pickens, Jr. being duly sworn deposes and say, I had no understanding of the plea offer nor liabilities and the proceedings that I was facted with which lead me receiving a Life sentence, if I would have been an Adult its a grate possibility Mr. Pickens would have made a better choice and excepted the 5 or 10 years.

The United States Supreme Court has continued to issue decisions stating that youthful and less culpable offenders should not be sentenced as harshly as fully culpable adult offenders. See Graham vs. Florida, 130 S.Ct. 2011 (2010) and Miller vs. Alabama, 132 S.Ct. 2455, 183 L.Ed. 2d 407 (2012).

Mr. Pickens, contends base on the following facts, argument and citation to legal authority to shows that there is a arguable ~~bais~~ basis for asserting that the determination by the lower Court was improper. Such reasoning is in line with the United States Supreme Court decision issued in Graham vs. Florida, 130 S.Ct. 2011 (2010) and Miller vs. Alabama, 132 S.Ct. 2455, 183 L. Ed. 2d 407 (2012). In Graham, Justic Anthony Kennedy call life without parole an "especially harsh punishment" for a juvenile and said that while States may be permitted to keep young offenders lock-up, they must

give defendants "some meaningful opportunity to obtain release base on demonstrated maturity and rehabilitation." As such, juvenile offenders could not receive a life sentence for non-muder offenses. The Supreme Court expanded the Graham decision issued in Miller vs. Alabama, 132 S.Ct. 2455, 183 L.Ed. 2d 407 (2012). In Miller, the Eighth Amendment to the United States Constitution forbade a sentencing scheme that mandated life in prison without possibility of parole for juvenile offenders, even for a murder conviction. Id. The United States Courts of Appeals for the Second, Fourth, and Eighth Circuits have granted permission to raise Miller claims in second or successive post-conviction motions because petitioners made a prima facie showing that Miller announced "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court."

As in South Carolina seizing upon the expansion of the need to provide fundamental fairness in sentencing, in Aiken vs. Byers, Appellate Case No. 2012-213 286 which is pending upon this Court awaiting a decision is to be applied retroactively, meaning that even those inmates sentenced prior to the issuance of the Miller decision can obation relief under the decision Aiken vs. Byers, In reaching it decision, "imposition of a State's most Severe penalties on juvenile offenders can not proceed as though they were not children". Mississippi, Louisiana, Illinois and California have also found the Miller decision to apply retroactively. Several other states, as well as the federal Third Circuit, are currently determing the retroactivity of the Miller decision.

Conclusion

Mr. Pickens, contends that he has shown this Court to the best of his ability through sufficient facts, argument and citation to show that there is an arguable basis for asserting that the determination by the lower court was improper, pursuant to Rule 243(c) of the South Carolina Appellate Court Rules.

A court can take judicial notice of its own records, files and proceedings for all purposes including facts established in it's records. Scoss vs Janice C., 383 S.C. 496, 494, 313 S.E. 2d 325, 327 (Ct. App. 1986).

Mr. Pickens. ask this Court to void the judgment, orders or the proceeding of Judge McIntosh along with the Final Order of Dismissal. I ask this Court to continue to hold my Appellate Case No. 2014-001869 in obeyance pending the decision in Aiken vs. Byers, and Mr. Pickens, be taken back to the Lower Court (PCR) to have Issue Two persented on record for Appellate review or give me relief by given Mr. Pickens the five or 10 year of the plea that was offered.

In Final

Mr. Pickens submit, even though I have parole eligible and made parole in November 7, 2001 and was released on parole on January 2, 2002 this has no bearing prior Graham vs. Florida, 138 S.Ct. 2011 (2010) and Miller vs. Alabama, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) and possibly Aiken vs. Byers, which awaits a Ruling from the South Carolina Supreme Court. As it stood when I was convicted and Sentence to Life as a juvenile at the age of (17) years old, I was treated as an Adult and is being treated as such under South Carolina Parole Strandard which violates my Eighth Amendment Rights prior Graham, and Miller. "Today's decision requires

the lower courts to conduct new sentencing hearings where judges will have to consider children's individual character and life circumstances, including age, as well as the circumstances of the crime.

Mr. Pickens would like to remind this Court that his conviction and sentence contravenes Graham's (and also Roper's foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.

The South Carolina Supreme Court hopefully could Rule in Aikens vs. Byers, To Help reduce sentences of juvenile offenders and order the Board of Parole Hearing to conduct a youth offender prior to consider release of offenders who committed specified crimes prior to becoming 18 years of age and were sentence to State prison.

I, Mr. Pickens, thank you for your professional inquiry in this matter and look forward to your disposition concerning this situation.

Sincerely,

Mathew Stevens Pickens Jr.

Matthew Thomas Pickens, Jr.
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