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OCT 07 2014

STATE OF SOUTH CAROLINA  
In The Supreme Court

S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2012-213168

Derek S. Carter. . . . . Petitioner,

v.

State of South Carolina. . . . . Respondent.

PETITION FOR REHEARING AND FOR A  
REHEARING EN BANC

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ATTORNEYS FOR RESPONDENT

Petitioner respectfully requests that this Court grant his petition for rehearing and for a rehearing en banc, as it appears the Court may have overlooked or misapprehended Petitioner's arguments alleging unconstitutional issues with regard to the statute under which he pled guilty and was sentenced (App. 323). Petitioner would suggest a rehearing en banc since this petition for writ of certiorari involves a novel question of exceptional importance regarding the application of vague statutes in a criminal context.

Petitioner asserts Section 16-3-85 unconstitutionally violates the due process and equal protection clauses of the South Carolina and United States Constitutions because under its provisions a defendant whose actions may only amount to "aiding and abetting" is subject to vastly different penalties for identical conduct—namely, "child neglect"—depending solely under which section the defendant is charged.

Most reported cases in South Carolina dealing with § 16-3-85 do not squarely address the distinction between (A)(1) and (A)(2). In State v. Smith, 2013 WL 5819275 (S.C.), this Court found "the language of section 16-3-85 unambiguously signals the General Assembly's intent to codify two distinct crimes," and that "the section (A)(2) offense is not a lesser-included offense of section (A)(1)."

However, the Petitioner has introduced sufficient evidence of controlling authority from the original drafting file to support the fact that section (A)(2) was intended by the General Assembly to be a "lesser included offense" (App. 278). This Court is not confined to the literal meaning of the language of this statute; the real purpose and intent of the lawmakers will prevail over the literal imports of the words. Gunnels v. American Liberty Ins. Co., 251 SC 242, 161 SE2d 822 (1968). Section 16-3-85 as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Sparks v.

Palmetto Hardwood, Inc., -- SC --, 738 SE2d 831 (2013). This Court should not construe a statute in a way which leads to a result that is contrary to legislative intent in the face of controlling authority published by the General Assembly. Tempel v. South Carolina State Election Com'n, 400 SC 374, 735 SE2d 453 (2012). Therefore, absent any credible evidence from the General Assembly, this Court must respectfully bow to the "manifest purpose" of section 16-3-85 as explicitly expressed by the drafting file.

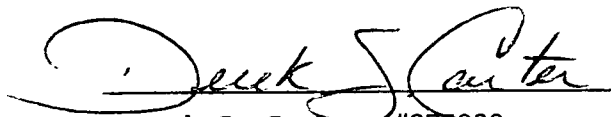
The facts in the record establish Petitioner did not directly commit the act which caused the death (App. 348, Ln. 25—App. 349, Ln. 3). Counsel testified at PCR that there was no evidence Petitioner was the one that struck the blow (App. 353, Lns. 6-12). The record also reflects the sentencing judge recognized that Petitioner was not "physically present nor had struck the final fatal blow" (App. 203, Lns. 20-22). The unconstitutionality of § 16-3-85 comes into play because Petitioner's alleged exact same conduct—namely, "child neglect"—subjected him to both provisions of the statute at the arbitrary discretion of law enforcement and the solicitor. Cf. App. 304, Lns. 11-22 ("directly causing the death..."); also App. 305, Lns. 9-15.

The Court in State v. Smith, 359 SC 481, 491, 597 SE2d 888, 894 (Ct.App 2004) determined "the key facts...were that the defendants were never separated during the time the medical evidence proved the injuries occurred." This Court's discussion of Smith in State v. Hepburn, 406 SC 416, 753 SE2d 402 (2014) should compel this Court to consider the fact that the only inference that can be drawn from the Respondent's case is that Petitioner's co-defendant inflicted the injuries and directly caused the death (App. 304, Ln. 24—App. 305, Ln. 1); see also Supp.App. 154 ("I haven't heard from you in 35 days...So that is why I never told you everything.").

If there is no evidence Petitioner inflicted the injury that directly caused the death, App. 353, Lns. 6-12, and, similar to the cases of State v. Robert Palmer and Julia Gorman, 2014 WL 551581 (S.C.), State v. Lewis, 2013 WL 2017596 (SCApp), and State v. Hepburn, 406 SC 416, 753 SE2d 402 (2014), there is credible evidence in the record Petitioner was not present, App. 203, Lns. 20-22, nor conspired with his co-defendant to commit the crime, Supp.App. 119-122—which, as the cases of Palmer/Gorman, Lewis, and Hepburn concludes, does not constitute aiding and abetting under § 16-3-85(A)(2)—then how can this lack of evidence support an absurd result of "homicide by child neglect" (App. 202, Lns. 8-9), and that the Petitioner is "just as guilty" (App. 306, Ln. 20) as a principal as Petitioner's co-defendant under § 16-3-85(A)(1)?

Petitioner's counsel testified at PCR that he believed the statute is vague, App. 356, Lns. 1-2, and that Petitioner's case is "not a standard case by any means," App. 356, Lns. 21-22, which presents a novel question of law. This Court's one sentence, boilerplate denial of the petition does not establish this Court duly considered the merits of Petitioner's claims, preserving the same for review. Cf. Wilson v. Moore, 999 FSupp 783, affirmed 178 F3d 266, certiorari denied, 120 SCT 191, 528 US 880, 145 LEd2d 160. This Court has an obligation to render a decision on every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the Court in writing, with the reason for the Court's decision. Rule 220, SCACR.

WHEREFORE, Petitioner respectfully asks this Court grant the petition for rehearing and for a rehearing en banc.



Derek S. Carter, #275938  
Kershaw C.I., Unit MA-12  
4848 Goldmine Hwy  
Kershaw, SC 29067

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2012-213168

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Derek S. Carter. . . . . Petitioner,

v.

State of South Carolina. . . . . Respondent.

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a copy of the Petition For Rehearing  
And For A Rehearing En Banc has been served upon the Respondent by mailing a copy  
of the same, postage prepaid, to:

Walt Whitmire  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211

This 6th day of October, 2014.



Derek S. Carter, #275938  
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Kershaw, SC 29067  
Petitioner

October 6, 2014

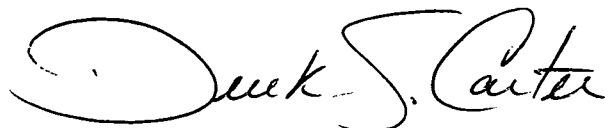
Daniel E. Shearouse  
Clerk, S.C. Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

Re: Carter v. State,  
Appellate Case No. 2012-213168

Dear Mr. Shearouse:

Enclosed, please find an original and one copy of my Petition For Rehearing And For A Rehearing En Banc, which I am submitting today for consideration. Please return a clocked copy for my records.

Thank you. Sincerely, I am,

A handwritten signature in cursive script that reads "Derek S. Carter". The signature is written in black ink and is positioned above the typed name and address.

Derek S. Carter, #275938  
Kershaw C.I., Unit MA-12  
4848 Goldmine Hwy  
Kershaw, SC 29067

/dsc

Enc: As stated

cc: Walt Whitmire  
File

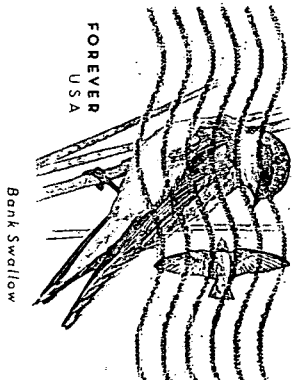
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**S.C. SUPREME COURT**

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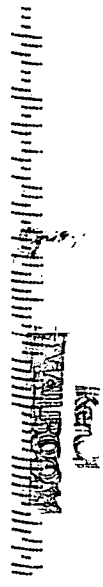


Daniel E. Shearouse  
Clerk, S.C. Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

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