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July 14, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State of South Carolina vs. Elias James Walker
Appellate Case No. 2014-001462

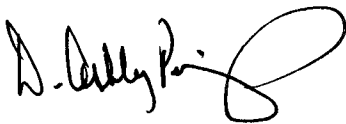
Dear Ms. Kitchings:

I am in receipt of your letter of July 10, 2014. As requested, please find enclosed a redacted copy of Mr. Walker's Sentence Sheet and the Order Denying Application of SC Code § 16-25-90.

Should you have any questions or require any additional information, please feel free to contact me.

With kind regards, I am

Very truly yours,



D. Ashley Pennington
Ninth Circuit Public Defender

DAP/jd

Enclosures as stated

RECEIVED

JUL 16 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
Elias James Walker

INDICTMENT/CASE#: 2013GS1000499
A/W#: 2012A1020900039
Date of Offense: 9/17/2012
S.C. Code § : 16-03-0010, 0020
CDR Code #: 0116

AKA:
Race: Sex: Age:
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:
*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Voluntary Manslaughter

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
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: Wilson, Scarlett A SC Bar# Defendant 30yrs S.S. 18yrs. Attorney for Defendant Penn 78978 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 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 18 days/months year and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 18 months

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:
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. 551 Day
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 PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS
Recipient:

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: JUL 16 2014

Table with 3 columns: Description, Amount, Total. Includes items like Assessments 107.5%, Conv. Surcharge, DUI Surcharge, etc. Total: \$133.90

RECEIVED

SC Court of Appeals

Clerk of Court/ Deputy Clerk: Samuel Conroy
Court Reporter: Amanda Hester
SCCA/217 (03/2011)

Presiding Judge:
Judge Code: 2134
Sentence Date: 3/24/14

they exclude all children who are victims of domestic violence from being parole eligible after a quarter of their sentence is served, or (2) the statute includes children but only those who are a different gender from their abuser. Specifically, the defendant argues that Section 16-25-10 and 16-25-90 violate the Due Process and Equal Protection clauses of the 14th amendment of the United States Constitution and Article I, Section III of the South Carolina Constitution in one of two ways. First, the defendant argues that if the statutes are read as excluding all children, this exclusion is not rationally related to a legitimate state purpose and violates substantive due process under both federal and state constitutions. Second, the defendant argues that if the statutes are read as including children who are cohabiting with a parent, but they only offer relief to those of a different gender than the abusing parent, then such gender discrimination does not serve an important governmental objective nor is it substantially related to the achievement of a legitimate governmental objective. In other words Sections 16-25-10 and 16-25-90 violate equal protection under the law for cohabiting children of the same gender as their batterer. The defendant asks that the court find that the benefit of the statutory section (i.e., parole eligibility after a quarter of sentence service) denied to children of the same gender as their batterer apply to him.

Applicability of Statutory Requirements to Defendant

The facts of this case are uncontroverted. Elias Walker's father abused him his entire life. At the time of the events leading to this conviction, the defendant and his father had been living in a small hotel room for several weeks. Without going into the great detail here, I find there is ample evidence in the record of a history of

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criminal domestic violence against the defendant at the hands of his father as provided in Section 16-25-20. As such, the defendant asks the court to find that he meets the definition of a person cohabiting under Section 16-25-10. However, I find that the defendant does not meet the requirements of the statutory protection provided by section 16-25-90 because Section 16-25-10 defines the protected class of "household members" as spouses, former spouses, people who have a child in common with the batterer, and a male and female who are currently cohabiting or have formally cohabited. I find that prior to 2003 children were included in the class as defined by Section 16-25-10; however, the legislature removed children from the protected class in 2003. Clearly, a court cannot define a class to include someone who used to specifically belong in the class but was later removed from the class by the legislature.

Equal Protection

No person shall be denied equal protection of the law. U.S. CONST. AMEND. XIV, § 1; S.C. CONST. ART. I, § 3; *Sunset Cay, L.L.C. v. City of Folly Beach*, 357 S.C. 414, 428, 593 S.E.2d 462, 469 (2004). "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995). Where an alleged equal protection violation does not implicate a suspect class or abridge a fundamental right, the rational basis test is used. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Dunes W. Golf Club, L.L.C. v. Town of Mt. Pleasant*, 401 S.C. 280, 293, 737 S.E.2d 601, 608 (2013); *Sunset Cay*, 357 S.C. at 428-29, 593 S.E.2d at 469. To prevail under the rational basis standard, a claimant must show similarly



situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose. *Dunes W.*, 401 S.C. at 293–94, 737 S.E.2d at 608; *Bibco Corp. v. City of Sumter*, 332 S.C. 45, 53, 504 S.E.2d 112, 116 (1998).

In *Dunes West*, the South Carolina Supreme Court noted that the equal protection clause does not prohibit different treatment of people in different circumstances under the law. *Dunes W.*, 401 S.C. at 294–95, 737 S.E.2d at 608–09 (quoting *Harbit v. City of Charleston*, 382 S.C. 383, 396, 675 S.E.2d 776, 782–83 (Ct. App. 2009)). Courts give great deference to the General Assembly's decision to create a classification. *Davis v. Cnty. of Greenville*, 313 S.C. 459, 465, 443 S.E.2d 383, 386. Consequently, those who challenge the validity of one under rational basis review must "negate every conceivable basis which might support it." *Lee v. S.C. Dep't of Natural Res.*, 339 S.C. 463, 470 n.4, 530 S.E.2d 112, 115 n.4 (2000). Furthermore, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Id.* The classification also does not need to completely achieve its purpose to withstand constitutional scrutiny. *Id.* Moreover, "[t]he fact that the classification may result in some inequity does not render it unconstitutional." *Davis*, 313 S.C. at 465, 443 S.E.2d at 386. Accordingly, a court's equal protection inquiry revolves around interplay between the specific classification created and the purported basis for it, with a challenger coming under rational basis review facing a steep hill to climb.

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The defendant bears the burden of proving beyond a reasonable doubt that the classifications created are not supported by any rational basis, not just that the scheme as a whole is arbitrary. Indeed, the South Carolina Supreme Court noted that "[w]ere we to examine the rationality of a law irrespective of any classification it creates, we would impermissibly step from our position as the arbiter of a statute's constitutionality and into the seats of the General Assembly." *Cabiness v. Town of James Island*, 393 S.C. 176, 191, 712 S.E.2d 416, 424 (2011). Permitting the defendant to attack these statutes on equal protection grounds without any consideration of the classifications or their relationship to their putative legislative goal therefore would fundamentally alter the core of a court's analysis, which is a step our Supreme Court refused to take. The Defendant's view would even remove our presumption of constitutionality by employing a form of "guilt by association," where potentially valid caps and exemptions are struck down for violating the equal protection clause simply because they happen to be in a larger scheme that may include invalid parts.

The State concedes that there may be a equal protection violation if the definition of a household member under Section 16-25-10 were read to include children as victims of domestic violence when their abusing parent is a different gender but exclude child victims of abuse by same gender parents. However, this court has found above that the statute does not apply to any children, regardless of the gender of their abusive parents.

The State readily concedes that both child abuse and domestic violence among spouses and people who cohabit together are severe problems in South

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Carolina and the United States as a whole. However, the State argues that the abuse of children is often very different than the abuse of an intimate partner. State government has the difficult responsibility of crafting legislation to address the problems of abuse in these differing contexts. In doing so, the legislature has enacted numerous child protection laws in the criminal justice and welfare protection and arenas, and also allows for special treatment of juvenile offenders. Likewise, the legislature has taken steps to address domestic violence amongst adults. The State is not required to choose between attacking every aspect of a problem and not attacking a problem at all. It is sufficient that the States's actions are rationally based and free from invidious discrimination. The law does not prohibit different treatment of people in different circumstances under the law. *Dunes West*, 401 SC at 294– 95, 7 S.E. 2d at 608 – 09.

The parole eligibility statute for victims of domestic abuse appears to be in response to the widely excepted “battered women/spouse syndrome” defenses often raised by defendants who have abusive partners. While both child abuse and domestic abuse may be societal problems, the percentage of parents killed by their children is lower than those killed by battered spouses or partners.

The legislature has chosen to address the relatively more widespread problem of murder amongst intimate partners. The State does not argue that the exclusion of defendants who were victims of child abuse from consideration for early prison release best fulfills relevant social and penal system objectives that the legislature might ideally recognize. See *Dandridge*, 397 US at 497. Indeed, the State agrees that acknowledging children as “household members” who may be victims of

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domestic abuse may bring about a more just and humane result when calculating prison sentences. However, the legislature decided that there is no pressing need to allow early parole to children prosecuted as adults for killing their abusive parents (and can just as easily restore the right as it took it away in 2003). Therefore, I find the defendant has not met his burden of showing this different treatment is not rationally related to valid State interests.

Due Process

"The burden of proving the invalidity of a statute is on the party attacking it, and it is incumbent on respondent to show the arbitrary and capricious character of the ordinance through clear and convincing evidence." *Town of Scranton v. Willoughby*, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991). Therefore, in this case the defendant bears the burden of proving his substantive due process claim under the "arbitrary and capricious" framework.

A regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause. *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (stating that the Due Process Clause is intended in part to protect the individual against "the exercise of power without any reasonable justification in the service of a legitimate governmental objective")); see also *City of Orangeburg v. Farmer*, 181 S.C. 143, 186 S.E. 783, 785 (1936) (striking down an ordinance prohibiting door-to-door sales calls as unconstitutional based on a finding that the ordinance failed to further the public health, safety, or welfare and was therefore unreasonable).

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For the same reasons as stated in the equal protection analysis above, I find the defendant has failed to show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.

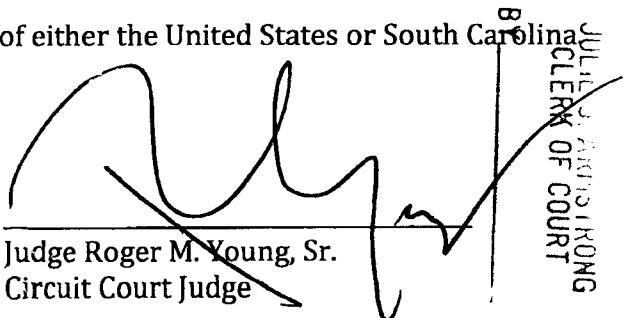
Therefore, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Section 16-25-90 of the South Carolina Code of Laws, which provides that a household member who is a victim of domestic violence from another household member is eligible to seek a court finding that will allow the defendant to apply for a parole with release after a quarter of their sentence is served, does not apply to the defendant because he is not a "household member" as currently defined in section 16-25-10; and
2. The defendant has failed to show that he is a similarly situated person receiving disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose, thus denying him the equal protection of the law under Constitutions of either the United States or South Carolina; and
3. The defendant has failed to show that the inapplicability of Section 16-25-90 to him fails to serve any legitimate governmental objective and is so without any reasonable justification that it deprives him of due process under the Constitutions of either the United States or South Carolina

IT IS SO ORDERED!

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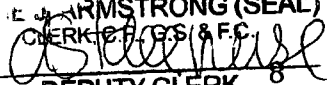
Judge Roger M. Young, Sr.
Circuit Court Judge



JULIE J. ARMSTRONG
CLERK OF COURT

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FILED

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT, S.C. & F.C.

DEPUTY CLERK

CHARLESTON COUNTY PUBLIC DEFENDER
O.T. WALLACE COUNTY OFFICE BLDG.
101 MEETING STREET, 5TH FLOOR
CHARLESTON, SC 29401-2214

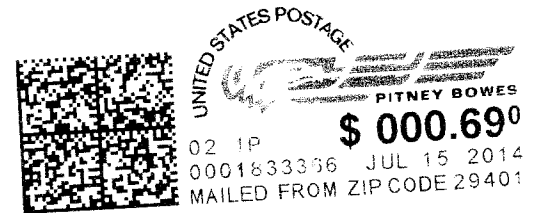
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SC Court of Appeals

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