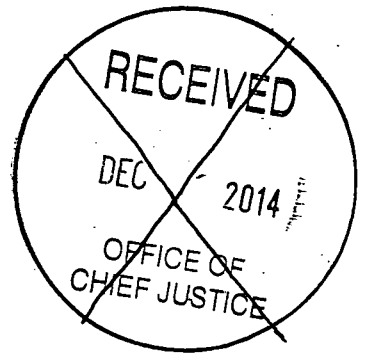
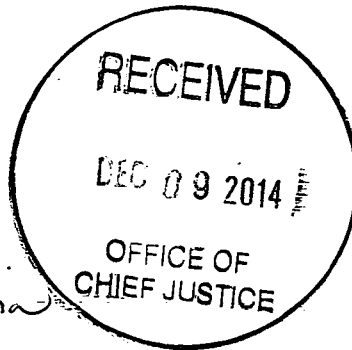


Brian Diggs #248964

Broad River Correctional Inst. Mu. 223-B

4460 Broad River Rd.

Columbia, SC 29210



Chief Justice, Sean H. Toal  
The Supreme Court of South Carolina

P.O. Box 11330  
Columbia S.C. 29211

December 7, 2014

Re: Diggs v. State of SC

App. Case No. 2013-000285

Lower Court Case No. 2011-CP-29-00816

Order denying Petition for Writ of Certiorari

Rehearing request, Aiken v. Byars SE 2d 2014 WL 5836918

**RECEIVED**

DEC 09 2014

**S.C. SUPREME COURT**

Dear Mrs. Toal:

I received your order denying my request for Petition for Writ of Certiorari December 4<sup>th</sup> 2014. I am writing you in regards to your decision to deny my petition in wake of The South Carolina Supreme Court decision in Aiken v. Byars. It is my humble request that you take into account the exceptional circumstances of my case and relax the rules to either rehear, reconsider, or by what ever means reexamine your decision to deny.

In 1995-1996 Notice of intent to seek the death penalty was issued against me for murder and attempt armed robbery by interpretation of Humphreys State v. Humphreys 479 SE 2d 52 SC (1996). I was 17 years old at the time of the offence. Initially I entered a plea of not guilty and rejected the states' plea deal to accept a life sentence pursuant to the 1993-1994 sec. 16-3-20(A). With the unexpected death of my mother, a few months before trial, and the overwhelming pressure from my attorney, the day of the trial I reluctantly folded to the offer. At the plea hearing, the Hon. Paul E. Short noted in the record that the state had withdrawn it's notice of intent. However, during the sentencing, the trial court proceeded to reference the capital sentencing statute and aggravating circumstances of subsection 16-3-20(B)(C).

I was punished via the mandatory language of 1993-1994. 16-3-20 (C) to 30 years to life oppose to 16-3-20 (A) which provides for a 20 year parole eligibility in non-capital proceeding. The 16-3-20 statute of 1993-1994 clearly reserve the 30 year to life sentence for individual whom the state did not with draw notice. The South Carolina Supreme Court clarified this point in 2006 State v. Morgan Op. No. 26116.

In State v. Morgan, The South Carolina Supreme Court indicated that aggravators arises only when the State seeks the death penalty. This guidance was taken from sec. 16-3-20(A). The intervening retroactive law in Roper v. Simmons, 543 U.S. 551 (2005) clarified the sentencing procedures for juveniles in Morgan. In other words, there is a genuine discrepancy in my sentence resulting from being tried and adjudicate via the death penalty statute 16-3-20 (C) 1993-94.

I'm assuming that your decision to deny my petition in the wake of Aiker v. Byars and Miller is based solely on the fact that my sentence reflects a 30-life parole date. However, if you critically look at what occurred at my sentencing as I have described, you can observe the consistent ineffective performance of my attorney failing to object, or otherwise clarify that the withdrawal of the states notice places the sentencing range in the ambit of 20 years to life, 16-3-20(A)

It is imperative that you reconsider your denial and not limit your view solely to J.L.W.O.P sentence for consideration. You ~~who~~ <sup>would</sup> be ignoring the fact that the attorney representing me at the time lack the essential sensitivity and legal training to defend a juvenile who the State seeks to execute. Likewise, the prosecutor places my culpably even ground with a adult and presents it to the grand jury this way. The record can reflect a complete break down ~~of~~ on the part of counsel in my case; failing to secure any finding, social history, testimony from love ones in mitigation, or make any objection at sentencing. The plea hearing reflects frightening similarities ~~is~~ reminiscent of the George Stinney case. It is not possible that a accurate conclusion was made as to the sentence that was appropriate for me as I was ~~subject~~ laboring subject to

the death penalty. My attorney was derelict in his duty to secure mitigation. The atypical horrific poverty and abuse I suffer all my life was ignored; the 28 year old seasoned career criminal co-defendant's recriminating testimony and 5 year sentence. My inexperience (rather no prior experience) with criminal justice system; the fact that the victim was shot once with the bullet entering the hand during the tussle over the weapon; The vow of the victim witness to thwart any chances of me being granted parole; The racial climate and geographical location. These are just a few examples of things that were lost to wonder at the time of my sentencing. That being compounded with my emotional and psychological immaturities as a juvenile contributed to my inability to assist my attorney in preparing a defence in mitigation.

The United States Supreme Court vacated Bear Cloud v. Wyoming Sct 2012 WL 200244 Oct. 1 2012 in light of Miller despite his parole eligibility. Bear Cloud did not receive a "life without parole" sentence. Bear Cloud, 275 P.3d at 387 n.3. There is strong reason to believe that there are grounds to review my case in light of Aiken v. Byars.

In conclusion, I am compelled to bring notice to the irony of never having had meaningful political citizenship in South Carolina, the United States or the world in general raises many questions. My juvenile status has systematically barred me from engaging in civil matters, jury, voting or having any type of meaningful access to the democratic process brings the essence of my citizenship in to question. However, being eligible for the most severe punishment as a juvenile and forced to pick between life and death without review will result in a travesty if it is gone unchecked.

With Best Regards.

Respectfully Submitted

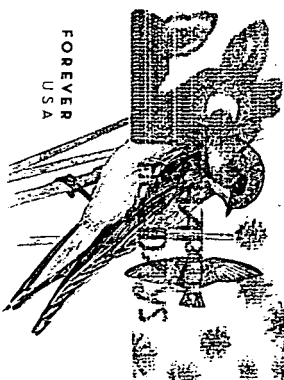
Bruce Dyer

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Chief Justice, Jean H. Toal  
The Supreme Court of South Carolina

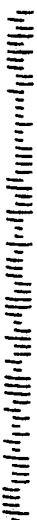
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