

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Richland County

S.C. Supreme Court

DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 5303 (S.C. Ct. App. filed 03/18/15)

96-GS-40-11974, 11979, 11980, 12010, 12004

THE STATE,

RESPONDENT,

V.

CONRAD LAMONT SLOCUMB,

PETITIONER

APPENDIX

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Conrad Lamont Slocumb, Appellant.

Appellate Case No. 2013-000933

Appeal From Richland County
DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 5303
Heard January 6, 2015 – Filed March 18, 2015

AFFIRMED

Appellate Defender Laura Ruth Baer, of Columbia, for
Appellant.

Attorney General Alan M. Wilson, Assistant Attorney
General Mark R. Farthing, and Solicitor Daniel E.
Johnson, all of Columbia, for Respondent.

SHORT, J.: Conrad Lamont Slocumb appeals his aggregate sentence of one hundred thirty years for offenses he committed when he was a juvenile, arguing it is the functional equivalent of a life sentence without parole and violates the Eighth Amendment prohibition against cruel and unusual punishment. We affirm.

FACTS

For offenses committed in 1996, Slocumb was convicted of first-degree burglary, first-degree criminal sexual conduct (CSC 1st), kidnapping, escape, and robbery. At the time the crimes were committed, Slocumb was sixteen years old.

The Honorable James W. Johnson, Jr., sentenced Slocumb to three terms of life imprisonment without parole for burglary, CSC 1st, and kidnapping based on a prior 1993 conviction for CSC 1st. Judge Johnson also sentenced Slocumb to consecutive terms of fifteen years for robbery and five years for escape. Slocumb appealed and in *State v. Slocumb*, 336 S.C. 619, 521 S.E.2d 507 (Ct. App. 1999), this court affirmed his convictions. Our supreme court denied Slocumb's petition for certiorari on June 7, 2000.

While his direct appeal was pending, Slocumb filed post-conviction relief (PCR) actions challenging his 1993 convictions. On November 8, 1999, our supreme court granted relief and found the trial court was without jurisdiction to accept Slocumb's 1993 plea. *Slocumb v. State*, 337 S.C. 46, 50, 522 S.E.2d 809, 811 (1999). In granting PCR, the court found a criminal sexual conduct charge committed by a juvenile under the age of fourteen was not transferrable to general sessions under the statute prevailing at the time. *Id.* That plea was the basis for the life sentences Slocumb received under South Carolina's recidivist statute. *See* S.C. Code Ann. § 17-25-45 (2014) (providing for the imposition of a life sentence on an offender convicted of certain prior crimes).

Slocumb appeared before Judge Johnson again on March 16, 2000, and was resentenced to life imprisonment for burglary, thirty years for kidnapping, thirty years for CSC 1st, fifteen years for robbery, and five years for escape. All terms were to be consecutively served. This court vacated the sentences on March 16, 2000, for lack of jurisdiction because there remained matters pending on Slocumb's direct appeal. Slocumb again appeared before Judge Johnson on February 18, 2004, and was resentenced to life imprisonment for burglary, thirty years for kidnapping, thirty years for CSC 1st, fifteen years for robbery, and five years for escape. All terms were to be consecutively served.

On January 26, 2011, Slocumb filed a Motion for Resentencing in the South Carolina circuit court, requesting to be resentenced in accordance with *Graham v. Florida*, 560 U.S. 48, 82 (2010), which held that life without parole is

unconstitutional when imposed on juvenile nonhomicide offenders.¹ At the time, Slocumb had a Petition for Writ of Habeas Corpus pending in the United States District Court. The Honorable Henry M. Herlong, Jr., Senior United States District Judge, adopted the report of the Honorable Bristow Marchant, United States Magistrate Judge, and ordered Slocumb's habeas petition be granted on the issue of whether he was entitled to have his life sentence for burglary vacated pursuant to *Graham*. The order directed Slocumb "be returned to the state sentencing court for resentencing" on the burglary sentence. The remainder of Slocumb's claims were dismissed without prejudice.

In response to the United States District Court order, Slocumb filed a "Bench Brief in Support of a Reduced Sentence in Light of *Graham v. Florida* and Implications of De Facto Life Sentences" with the circuit court. In the brief and at his resentencing hearing before the Honorable DeAndrea G. Benjamin, Slocumb argued he should be resentenced on all charges rather than just the burglary charge because his term-of-years sentence was the functional equivalent of a life sentence.

Slocumb argued his aggregate sentence of eighty years required him to serve time beyond his life expectancy of sixty-seven years. He further argued the cumulative sentence could not be reconciled with *Graham*, which requires a meaningful opportunity for release. Slocumb was thirty-three years old at the time of the hearing.

In response to Judge Benjamin's query, Slocumb's counsel acknowledged the district court's order solely addressed the burglary charge. Judge Benjamin resentenced Slocumb to fifty years on the burglary conviction, consecutive, and left the remaining sentences intact. This appeal followed.

STANDARD OF REVIEW

In criminal cases, this court reviews errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Thus, on review, the court is limited to determining whether the trial court abused its discretion. *Id.* An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). "This [c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's

¹ Slocumb alleges no court has yet ruled on this motion.

ruling is supported by any evidence." *Edwards*, 384 S.C. at 508, 682 S.E.2d at 822.

LAW/ANALYSIS

Slocumb argues the circuit court erred in failing to find his aggregate sentence of one hundred and thirty years for nonhomicide offenses is the functional equivalent of a life sentence without parole because it does not afford him any "meaningful opportunity to obtain release" within his lifetime in violation of *Graham* and the Eighth Amendment. We disagree.

The general rule is the circuit court has no jurisdiction to reconsider a criminal matter once the term of court has expired. *State v. Warren*, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011). "[A] trial judge has no jurisdiction to review his own sentences and substitute sentences after adjournment of the court." *State v. Patterson*, 272 S.C. 2, 4, 249 S.E.2d 770, 770 (1978) (citing *State v. Best*, 257 S.C. 361, 186 S.E.2d 272 (1972)).

"Th[is] rule has two exceptions: a timely post-trial motion and a motion for a new trial based on after-discovered evidence." *State v. Campbell*, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008) (distinguishing jurisdiction from subject matter jurisdiction and explaining a trial judge is without the power to act under the general rule despite the existence of subject matter jurisdiction). Furthermore, the circuit court on remand has only the jurisdiction and authority mandated by the appellate court. *Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011); see *S.C. Dep't of Soc. Servs. v. Basnight*, 346 S.C. 241, 250-51, 551 S.E.2d 274, 279 (Ct. App. 2001) (stating the "trial court has no authority to exceed the mandate of the appellate court on remand").

Although review of Slocumb's burglary sentence was directed to the circuit court from the federal district court rather than one of our state appellate courts, we find the circuit court was likewise bound by the district court's directive. In this case, the directive included only reconsideration of the sentence for the burglary conviction. The district court dismissed Slocumb's remaining issues in his habeas petition without prejudice. Slocumb informed the circuit court that an independent motion in state court to reconsider all of Slocumb's convictions remained pending. We find no error by Judge Benjamin in refusing to entertain Slocumb's request to reconsider sentencing on all of his convictions.

CONCLUSION

For the foregoing reasons, the order on appeal is

AFFIRMED.

HUFF and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

CONRAD LAMONT SLOCUMB,

APPELLANT

APPELLATE CASE NO. 2013-000933

Appeal from Richland County

DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 5303

PETITION FOR REHEARING

The Appellant, Conrad Lamont Slocumb, respectfully petitions the Court for a rehearing of its Opinion No. 5303 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court:

On appeal, Appellant argued that he was entitled to resentencing where his aggregate 130 year sentence, for non-homicide offenses committed as a juvenile, is the functional equivalent of life without parole because it does not afford him any “meaningful opportunity to obtain release” within his lifetime as required under Graham v. Florida, 130 S. Ct. 2011 (2010).

Issue No. 1

This Court misapprehended the facts and record where the trial court did have jurisdiction to resentence Appellant on all counts despite the federal court's vacating only his burglary conviction and remanding for resentencing on that count "in compliance with Graham" because Appellant's motion counsel filed a timely motion for resentencing in light of the Supreme Court's constitutional decision in Graham and fully argued that motion to the trial court. Though this Court found that the resentencing judge made no error "in refusing to entertain Slocumb's request to reconsider sentencing on all of his convictions," Appellant submits that the resentencing judge did not refuse to entertain the request to resentence Appellant on all counts but rather denied the request.

Traditionally, the two exceptions providing a trial judge with jurisdiction to consider a criminal matter beyond the term of court in which judgment was entered are timely post-trial motions or a motion for new trial based on after-discovered evidence. State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008). Campbell involved the State's attempt to have the defendant resented for non-compliance with his plea agreement, a matter far distinguishable from the subsequent constitutional decision applicable in Appellant's case, which was the basis for his Motion for Resentencing. Id. Here, a motion regarding the unconstitutionality of Appellant's sentence in light of Graham could not be filed within ten days of Appellant's conviction because Graham was not finally decided until July 6, 2010. The constitutional decision in Graham also does not fall squarely within the framework of after discovered evidence because it does not raise any matter material to guilt or innocence. Rather, application of Graham requires Appellant's resentencing because his current sentence is cruel and unusual punishment.

The South Carolina Supreme Court's recent decision in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), is instructive. There, the Court determined that the United States Supreme

Court holding in Miller v. Alabama, 132 S.Ct. 2455 (2012), that mandatory life sentences for juvenile offenders violate the Eighth Amendment ban against cruel and unusual punishment, applies retroactively. 410 S.C. at 538, 765 S.E.2d at 574. The Court noted the two exceptions to the general rule that a new constitutional rule of criminal procedure does not apply to a case that becomes final before the new rule is announced – (1) the new rule is substantive, or (2) the new rule is a “watershed rule” of criminal procedure. Id. at 539-40, 765 S.E.2d at 575. In concluding that Miller created a new, substantive rule, the Court found that “[t]he rule plainly excludes a certain class of defendants—juveniles—from specific punishment—life without parole absent individualized considerations of youth.” Id. at 540-41, 765 S.E.2d at 575-76.

The Aiken Court then further determined that the constitutional principles set forth in Miller v. Alabama, 132 S.Ct. 2455 (2012), are applicable to South Carolina even though Miller itself held only that *mandatory* life sentences for juvenile offenders violate the Eighth Amendment ban against cruel and unusual punishment. Id. at 542-43, 765 S.E.2d at 576-77. Even though South Carolina law permits rather than mandates life without parole for some offenses regardless of age, the Court held that “before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.” Id. at 545, 765 S.E.2d at 578. The Court held that because Miller applies retroactively, other similarly situated offenders can file for resentencing consistent with the Aiken opinion within one year of its filing on November 14, 2014. Id.; see also Dodd v. United States, 545 U.S.353, 125 S.Ct. 2478 (2005) (holding that Title 28 U.S.C.A. § 2255 (f)(3) provides defendants the opportunity to attack their sentence within one year of “the date on which the right asserted was initially recognized by the Supreme Court.”).

While the South Carolina appellate courts have not yet had an opportunity to rule on the retroactivity of Graham, the Aiken Court's reasoning for finding that Miller should apply retroactively certainly points to Graham's retroactivity also. Graham announced a similar constitutional rule, declaring that "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." 560 U.S. at 82, 130 S.Ct. at 2034. The Court further stated that "[a] State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." Id. Thus, the rule announced in Graham excludes a certain class of defendants – juvenile offenders who did not commit homicide – from specific punishment – life imprisonment without a meaningful opportunity for parole, such that it created a new, substantive rule that should apply retroactively. See Aiken, 410 S.C. at 540, 765 S.E.2d at 540 ("A rule is substantive if it prohibits the States from criminalizing certain conduct or prohibits 'a certain category of punishment for a class of defendants because of their status or offense.' New substantive rules apply retroactively on collateral review because they 'necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him.'") (internal citations omitted); see also Danforth v. Minnesota, 552 U.S. 264, 282, 128 S.Ct. 1029, 1042 (2008) (holding that state courts can give broader effect to a new rule of criminal procedure even if such would be deemed "non-retroactive" under Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060 (1989)).¹

¹ The South Carolina Supreme Court noted in Aiken that it has not yet addressed whether it should employ a more expansive analysis for determining retroactivity in light of Danforth. 410 S.C. 534, 539 n. 4, 765 S.E.2d 572, 575 n. 4. The Court did not find it necessary to decide in Aiken because they found that "Miller is clearly retroactive under Teague."

In the present case, while the State suggested that consideration of Appellant's aggregate sentence is not proper on appeal because the circuit court judge only resentenced Appellant on his vacated first-degree burglary conviction, a review of the resentencing hearing transcript reveals that the motion for resentencing on *all offenses* was fully argued to the sentencing court and denied. The argument in the State's Brief ignores Appellant's motion for resentencing in light of Graham filed on January 28, 2011, approximately six and a half months after the United States Supreme Court's decision. Resp't Brief, 25-27; see R. 30. On April 25, 2013, Appellant's counsel filed a Bench Brief in Support of a Reduced Sentence in Light of Graham v. Florida and Implications of De Facto Life Sentences, asking the Court to rule upon her January 28, 2011 motion for resentencing along with the resentencing on the first degree burglary conviction that was vacated and remanded by the federal court following Appellant's *pro se* habeas petition. R. 33. At the resentencing hearing, motion counsel acknowledged that the United States District Court vacated only the first degree burglary sentence of life without parole, but asked the resentencing court to vacate the remaining sentences and to resentence Appellant on all counts "in keeping with the spirit and intent of Graham v. Florida and Miller v. Alabama." R. 7, ll. 1-9; R. 11, l. 17 – 12, l. 13; R. 24, l. 21 – 25, l. 3. The solicitor's initial recitation of the procedural posture of the case stated that they were there "to resentence this Defendant for the charge of burglary in the first degree" pursuant to Graham v. Florida. R. 5, ll. 16-23. However, the State never presented any argument against the propriety of motions counsel's subsequent argument that in order to comply with Graham, the court must vacate the remaining sentences so that the aggregate sentence does not violate Graham.

Instead, the solicitor contended that Appellant's projected parole date is 2046 based on his then current sentences.² R. 12, l. 23 – 13, l. 5. She then gave the factual basis for all of Appellant's 1996 convictions, including the first burglary, criminal sexual conduct, kidnapping, escape, and robbery offenses. R. 14, l. 4 – 17, l. 6. In response to the discussion of Graham by motion counsel, the solicitor only emphasized that Graham does not require that a juvenile non-homicide offender be guaranteed release during his life and that some juveniles may be irredeemable. R. 17, l. 7 – 18, l. 17. The solicitor then described Appellant's many infractions while in the Department of Corrections. R. 19, l. 11 – 20, l. 24.

In response, motion counsel argued that even if her calculations regarding parole eligibility were incorrect due to the different classifications of the offenses, a conservative estimate reveals that Appellant's sentences on the non-burglary offenses require the service of at least sixty-one years prior to parole eligibility. R. 22, ll. 9-24. Thus, those sentences alone put Appellant over his life expectancy prior to parole eligibility. R. 22, l. 24 – 23, l. 2. She also acknowledged that Appellant's misconduct to date is such that he would not likely be granted parole were he eligible that day, but that he may be able to demonstrate the required rehabilitation within his lifetime. However, she emphasized that under his current sentence, Appellant will never have that opportunity. R. 23, l. 3 – R. 24, l. 20.

The Court then heard from the victim and the former solicitor who prosecuted the case in 1996. R. 26, l. 1 – 27, l. 23. The State presented no further argument or testimony. R. 27, l. 15 – R. 28, l. 1. The resentencing judge issued her decision, stating:

² The solicitor provided no documentation to support this contention, which seems unlikely since at the time of resentencing Petitioner was sentenced to consecutive terms of life for first degree burglary; thirty (30) years for kidnapping; thirty (30) years for criminal sexual conduct; fifteen (15) years for robbery; and five (5) years for escape. Regardless, if the court accepted this averment, Appellant would be eligible for parole at age sixty-six.

All right. On Indictment Number 1996-GS-40-11974, sir, you will be sentenced to the State Department of Corrections for 50 years. The sentence will run consecutive to the other sentences. I am not going to remand as to the burglary, *and that is the only one that I am going to entertain today. All sentences will run consecutive.* And of course he will be given credit for the time he has spent in jail. All right, thank you.

R. 28, ll. 2-11 (emphasis added). The court's statement "that is the only one that I am going to entertain today" is not indicative of a failure to rule on Appellant's motion for resentencing such that it is still available for adjudication today. Rather, it was a denial of Appellant's motion for resentencing on the offenses other than burglary. Notably, the court then stated "*all* sentences will run consecutive," indicating her disinclination to change them to run concurrent, which would have brought the aggregate sentence closer to compliance with Graham. Moreover, the court did not mention any inability to consider the motion, and heard argument on the motion repeatedly throughout the resentencing hearing.

Therefore, the trial court did have jurisdiction to resentence Appellant on all counts based on the January 26, 2011 Motion for Resentencing, and the resentencing judge's ruling was a denial of that Motion such that appellate review of the constitutionality of Appellant's aggregate sentence is proper.

Issue No. 2

Contrary to this Court's notation in footnote 1 of its opinion, Appellant did not contend that no court has ruled on the Motion for Resentencing filed January 26, 2011. As explained supra, the motion was fully argued by motions counsel at the resentencing hearing. Nowhere in Appellant's brief does he ever indicate that this motion remains outstanding. Further, appellate counsel never conceded that the motion was not ruled upon by the trial court at oral argument. Audio: Oral Argument, Jan. 6, 2015 (6:15-13:28; 31:35-31:57) ("He never had a separate hearing under her

[motion counsel's] separate motion for resentencing, so I would argue that that hearing was really on both of those, both the federal court's order and on her motion for resentencing that day."). Rather, appellate counsel argued that the motion was fully heard by the resentencing court and that the statement ". . . that is the only one that I am going to entertain today. All sentences will run consecutive" was a denial of the Motion for Resentencing. See R. 28, ll. 2-9. Even if the Court disagrees with Appellant's position, Appellant argued that the Motion for Resentencing was denied and did not "allege[] no court has yet ruled on this motion." Therefore, Appellant respectfully requests that this Court remove footnote 1 from its opinion because it is factually inaccurate.

Issue No. 3

This Court overlooked the fact that even assuming *arguendo* that Appellant could only be resentenced on the burglary count, his fifty-year sentence alone is the functional equivalent of life without parole and affords no meaningful opportunity to obtain release. However, Appellant's sentence cannot be considered in a vacuum because the consecutive nature of his sentences prolong his eligibility for parole even further past his life expectancy to the point that there can be no question that Appellant will die in prison for non-homicidal offenses committed as a juvenile.³

Appellant is currently thirty-five years old, having a birthdate of June 11, 1979. Though he has been incarcerated since age thirteen, he committed the instant offenses on March 6, 1996, at age sixteen, during an escape from custody. Even ignoring the other sentences imposed and looking at only at the fifty year sentence for first degree burglary, such a sentence is still a de facto sentence of life without parole, because Appellant would not be eligible for release until age fifty-eight and a

³ The calculations presented in the State's Brief indicate that as resentenced, Appellant must serve 56 years on the non-burglary offenses and 42.5 years on the burglary offense, a total of 98.5 years before he is eligible for parole. Resp't Brief 29-30. Thus, in light of the reality of his aggregate sentences, Appellant will be eligible for parole at 114.5 years old.

half. However, the other consecutive sentences cannot be legitimately ignored because of their significant impact on Appellant's parole eligibility. According to the Department of Corrections, Appellant is not eligible for parole and his projected release date is November 17, 2109, at which point he will be one hundred thirty years old. Statutory calculations indicate that Appellant will be at least one-hundred ten years old before he is eligible for parole. See supra footnote 2.

Long ago, this Court recognized in State v. Kimbrough, 212 S.C. 348, 357, 46 S.E.2d 273, 277 (1948), that the trial judge imposed a thirty year sentence that was "to all intents and purposes the equivalent of a life sentence." Where the record revealed nothing to justify the trial court's disregarding the jury's recommendation of mercy, this Court held that "[n]o one doubts that the able trial judge conscientiously endeavored to fix a sentence which he thought was fair and just, but under all the circumstances we are constrained to hold that the sentence imposed is manifestly too severe." Id.

The Fourth Circuit recognized de facto life sentencing in United States v. Pileggi, 703 F.3d 675, 678 (4th Cir. 2013), in which it referenced its prior remand for resentencing of Pileggi where the government recommended and the district court imposed "a de facto life sentence" of fifty years contrary to the extradition agreement with Costa Rica. The Seventh Circuit has likewise recognized de facto life sentences. See United States v. Garcia, 754 F.3d 460, 474 (7th Cir. 2014) (stating that the Court is "wary of a de facto life sentence when it was imposed without any explanation despite the district court's rejection of an actual life sentence").

Additionally, other state courts have also recognized that one or multiple term of years sentences can constitute a de facto life sentence. See People v. Caballero, 282 P.3d 291, 295 (Cal. 2012) (considering defendant's total sentence of 100 years for multiple offenses and holding "that sentencing a juvenile offender for a nonhomicide offense to a term of years with a

parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment"); People v. Mendez, 114 Cal.Rptr.3d 870 (Ct. App. 2010) (applying the principles of Graham and traditional proportionality review in finding aggregate sentence of 84 years "is the equivalent of LWOP" and that is cruel and unusual punishment); Floyd v. State, 87 So.3d 45 (Fla. Dist. Ct. App. 2012) ("In this case, common sense dictates that Appellant's [combined] eighty-year sentence, which, according to the statistics cited by Appellant, is longer than his life expectancy, is the functional equivalent of a life without parole sentence."); State v. Ragland, 836 N.W.2d 107, 121-22 (Iowa 2013) (holding "Miller applies to sentences that are the functional equivalent of life without parole" because "[f]or all practical purposes, the same motivation behind the mandates of Miller applies to . . . any sentence that is the practical equivalent to life without parole"); State v. Null, 836 N.W.2d 41 (Iowa 2013) (noting that while the aggregate "52.5 years imprisonment is not technically a life-without-parole sentence, such a lengthy sentence imposed on a juvenile is sufficient to trigger Miller-type protections.").

In February 2014, the United States Sentencing Commission issued a report titled "Life Sentences in the Federal System" in which it compiled statistical data on the imposition of explicit life sentences, de facto life sentences, and sentences for a term beyond the inmate's life expectancy in the federal courts. Patti B. Saris, et al., U.S. Sent. Comm'n, Life Sentences in the federal system (Feb. 2015), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf. In its discussion of de facto life imprisonment sentences, the Commission described these sentences as being "extremely long specific terms of imprisonment" that is, "for all practical purposes, a life sentence and likely was intended to be such by the judge who imposed it." Saris, supra p. 10.

For the purposes of this and any other statistical analysis, the Commission uses a sentence of 470 months (39 years and two months) to identify cases in which a de facto life sentence was imposed, which is consistent with the average life expectancy of federal criminal offenders. Saris, supra p. 10, n. 52 (citing U.S. SENT. COMM'N, 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS S-170 (2014)). Clearly Appellant's 600 month sentence for first degree burglary alone, and even more so his aggregate sentence of 1560 months, would qualify as a de facto life sentence under the United States Sentencing Commission's parameters. Appellant's parole eligibility at age 58.5 for first degree burglary and at age 110 for his aggregate offenses are also both well beyond the average life expectancy of a federal prisoner.

South Carolina's actuarial table indicates that the life expectancy for a thirty-five year old male is 43.05 years, such that he will live to age 78.05. S.C. Code Ann. § 19-1-150. However, it is notable that the statute's table is based on 2001 data and does not account for Appellant's race, incarceration, or age at incarceration. In Bearcloud v. State, 334 P.3d 132, 142 n.7 (Wyo. 2014), the defense presented an ACLU report analyzing life expectancy data obtained regarding youth serving natural life sentences in Michigan's state prisons. The April 2013 report indicates that "life in prison, with its stressors, violence and disease in and of itself significantly shortens one's life expectancy." ACLU of Michigan, Michigan Life Expectancy Data for Youth Serving Natural Life Sentences 1 (April 2013), <http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Michigan-Life-Expectancy-Data-Youth-Serving-Life.pdf>. The report indicated that the average life expectancy for an unincarcerated African-American male is 71.1 years. ACLU of Michigan, supra 2 n.2. However, life expectancy drops to an average of 64 years for incarcerated persons and to 58.1 years for those incarcerated for their natural life. ACLU of Michigan, supra 1-2. Then adjusting for race, the average life expectancy of an African-

American male incarcerated for his natural life is 56 years. ACLU of Michigan, supra 2. Without regard to race, juvenile offenders incarcerated for their natural lives have the lowest life expectancy, 50.6 years. ACLU of Michigan, supra 2. This is approximately eight years earlier than Appellant's potential release date based on a fifty year sentence alone, and it is approximately sixty years prior to Appellant's potential release date based on his aggregate sentence.

It is undeniable that Appellant's race, incarceration, and age at sentencing will result in a lower life expectancy than that of an unincarcerated African-American male. He is unlikely to reach the age of fifty, much less fifty-eight, and will certainly die in prison due to his aggregate sentence. Therefore, his sentence of fifty years, and even more so his aggregate sentence of one-hundred thirty years, constitutes a de facto life sentence without parole such that the principles of Graham are applicable.

CONCLUSION

For the reasons set forth herein, Appellant Conrad Lamont Slocumb respectfully requests that the Opinion of the Court of Appeal be withdrawn and his case be remanded for resentencing in accordance with Graham v. Florida,

Respectfully submitted,



Laura R. Baer
Appellate Defender

This 2nd day of April, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland CountyDeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

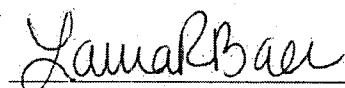
CONRAD LAMONT SLOCUMB,

APPELLANT

APPELLATE CASE NO. 2013-000933

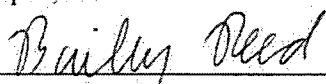
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Conrad Slocumb, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210 this 2nd day of April, 2015.



Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 2nd day
of April, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 24, 2021.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable DeAndrea G. Benjamin, Circuit Court Judge
Appellate Case No. 2013-000933

THE STATE.

Respondent,

vs.

CONRAD LAMONT SLOCUMB.

Appellant.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

On March 18, 2015, this Court issued a published opinion in which it unanimously affirmed the circuit court judge's order resentencing Slocumb to a fifty-year term of imprisonment for first-degree burglary after noting a circuit court generally lacks jurisdiction to reconsider a criminal matter once the term of court expires and after further noting a circuit court has limited jurisdiction in a matter on remand. State v. Slocumb, Op. No. 5303 (S.C. Ct. App. filed March 18, 2015). Pursuant to Rule 221(a), SCACR, Slocumb petitioned this Court for rehearing, and this Court asked Respondent ("the State") to file a return to Slocumb's petition. For the following reasons, Slocumb's petition for rehearing should be denied.

Lack of Jurisdiction of the Circuit Court to Consider Any Matter Other Than Slocumb's Sentence for First-Degree Burglary and Propriety of Slocumb's First-Degree Burglary Sentence

Just as this Court correctly recognized in affirming the circuit court judge's order, our appellate courts have repeatedly and consistently held a circuit court judge has no jurisdiction to

consider or reconsider a criminal matter once the term of court expires unless either a timely post-trial motion is filed or a motion for a new trial based on after discovered evidence is filed. State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008); see State v. Hinson, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”); cf. Tant v. South Carolina Dep’t of Corr., 408 S.C. 334, 759 S.E.2d 398 (2014) (“The judge sent the letter two-and-a-half years after sentencing and at that point no longer had jurisdiction over the case. Therefore, Judge Saunders was **without jurisdiction to make any subsequent pronouncement concerning Tant’s sentence**. Such correspondence may not be considered in determining the length of an inmate’s sentence, even if both the sentencing sheets and the transcript are vague or unclear.” (emphasis added and citation omitted)). Likewise, just as this Court correctly recognized, our appellate courts have repeatedly and consistently held a circuit court judge only has limited jurisdiction when another tribunal remands a matter to the circuit court. Parker v. Shecut, 359 S.C. 143, 152, 597 S.E.2d 793, 798-799 (2004); see Prince v. Beaufort Mem’l Hosp., 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) (recognizing an appellate court’s mandate is jurisdictional and must be followed by the circuit court).

In the case sub judice, the only matter properly before the circuit court judge was the issue of resentencing Slocumb for first-degree burglary in a manner consistent with Graham v. Florida, 560 U.S. 48 (2011), as directed by the United States District Court, and the circuit court judge did, in fact, sentence Slocumb to a sentence consistent with Graham in light of the fact Slocumb’s fifty-year sentence for first-degree burglary was **not** a sentence of life without parole. See Graham, 560 U.S. at 63 (“The instant case concerns only those juvenile offenders sentenced

to **life without parole** solely for a nonhomicide offense.” (emphasis added)); see also Walle v. State, 99 So. 3d 967, 970 (Fla. Dist. Ct. App. 2012) (“The Supreme Court itself limited the scope and breadth of its decision in Graham by stating that its decision ‘concern[ed] only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense.’ From this statement we identify the four necessary analytical factors: (1) the offender was a juvenile when he committed his offense, (2) the sentence imposed applied to a singular nonhomicide offense, (3) the offender was ‘sentenced to life,’ and (4) the sentence does not provide the offender with any possibility of release during his lifetime.” (brackets in original and citations omitted)). As a result, the circuit court judge properly limited her actions in Slocumb’s case to the limited matter before her, and this Court properly affirmed the circuit court judge’s order while declining to address any other matters related to Slocumb’s case that were neither appropriately before the circuit court judge nor appropriately before this Court on appeal. See State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001) (“In criminal cases, the appellate court sits to review errors of law only.”); see also Campbell, 376 S.C. at 215, 656 S.E.2d at 373 (recognizing a trial judge does not have jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires unless a timely post-trial motion is made or a proper new trial motion based on after-discovered evidence is filed).

In seeking rehearing, Slocumb disagrees and contends this Court “misapprehended the facts and record” while asserting the circuit court judge did, in fact, have proper jurisdiction to reconsider all of his sentences for his earlier convictions despite the limited nature of the remand from the United States District Court in his case. In support of that contention, Slocumb claims to have filed a “timely” motion for resentencing while asserting the South Carolina Supreme Court’s recent decision in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), somehow

supports his claim the circuit court judge had jurisdiction to reconsider all of his sentences for all of his crimes. However, Slocumb's motion for resentencing could in no way be considered timely as it was not filed until January 26, 2011, which was **over 2,500 days** after his sentences were imposed on February 18, 2004. See Rule 29(a), SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made **within ten (10) days after the imposition of the sentence.**" (emphasis added)); cf. State v. Warren, 392 S.C. 235, 240, 708 S.E.2d 234, 236 (Ct. App. 2011) ("Warren's motion to reconsider her sentence . . . is subject to the ten day time period prescribed in Rule 29; thus, because the motion was filed more than three years after imposition of the sentence, Warren's motion is not timely."). As a result, the circuit court judge simply had no jurisdiction to act on Slocumb's motion or to take any action in regard to Slocumb's sentences for his non-burglary convictions, and any order in regard to those sentences would have been a nullity had the circuit court judge mistakenly been lulled into issuing one. See Warren, 392 S.C. at 238, 708 S.E.2d at 235 ("Generally, a trial judge is without authority to consider a criminal matter once the term of court during which judgment was entered expires."); see also Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) ("A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on."). Moreover, our Supreme Court's decision in Aiken does not support Slocumb's claims regarding jurisdiction and most certainly did not create a jurisdictional exception to our general rules that would have permitted the circuit court judge, who was otherwise lacking jurisdiction over anything other than the remanded first-degree burglary charge, to act on Slocumb's untimely motion simply because Slocumb based the motion on his belief the Graham decision has retroactively impacted the propriety of his previously-imposed

sentences. Instead, our Supreme Court's decision in Aiken, which was issued after the Supreme Court granted a petition for original jurisdiction, confirms the existence of other proper avenues for Slocumb to seek the relief he believes he is entitled to just as the United States District Court's issuance of an order of remand in response to Slocumb's earlier successful petition for habeas corpus has already confirmed in his case. See generally S.C. Const. art. V, § 5 ("The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs."). However, Slocumb's current challenge to his sentences has not been raised through a proper avenue like a petition for habeas corpus or a petition for original jurisdiction and, thus, has not properly been brought before any court to this point. Accordingly, the circuit court judge committed no error in properly limiting her actions in Slocumb's case to the matter over which she properly and solely had jurisdiction, and this Court committed no error in affirming the circuit court judge's order while declining to address matters related to issues over which the circuit court judge had no jurisdiction. Slocumb's petition for rehearing should be denied.¹

Conclusion

Based on the foregoing coupled with the arguments raised in the Final Brief of Respondent and during the oral argument before this Court, the State respectfully submits Slocumb's petition for rehearing should be denied.

¹ To the extent Slocumb is challenging the constitutionality of his aggregate sentence in his petition for rehearing, the State would reassert its arguments advanced in the Final Brief of Respondent and during oral argument before this Court in response. However, the State notes Slocumb is now contending for the first time in his petition for rehearing his life expectancy is equal to or less than fifty years, which is inconsistent with his assertion to the circuit court judge he had a life expectancy of approximately sixty-seven years. See McClurg v. Deaton, 395 S.C. 85, 87, n. 2, 716 S.E.2d 887, 888 (2011) (rejecting the dissent's reliance on an argument raised for the first time in a petition for rehearing and noting "[i]t is axiomatic that an issue cannot be raised for the first time on rehearing"); see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." (emphasis added)). Furthermore, based on the materials Slocumb presented to the circuit court judge and assuming those materials are accurate, the State notes Slocumb's newly-asserted remaining life expectancy in his petition for rehearing is shorter than his remaining life expectancy would have been if he had lived in the Upper Paleolithic Period. (R. p. 51).

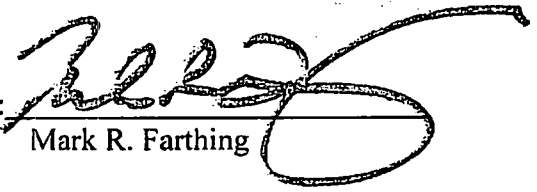
Respectfully submitted,

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April 13, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable DeAndrea G. Benjamin, Circuit Court Judge
Appellate Case No. 2013-000933

THE STATE,

Respondent,

vs.

CONRAD LAMONT SLOCUMB,

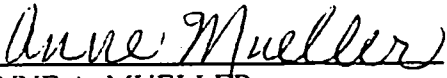
Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Respondent's Return to Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura R. Baer, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.
This 13th day of April, 2015.


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The South Carolina Court of Appeals

The State, Respondent,

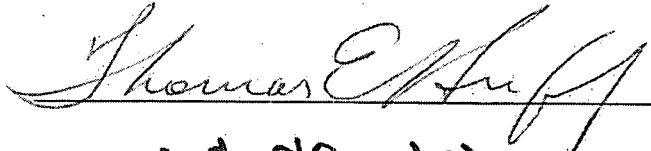
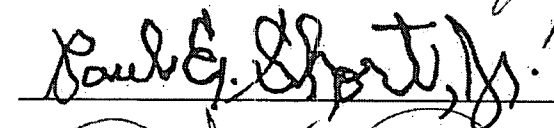
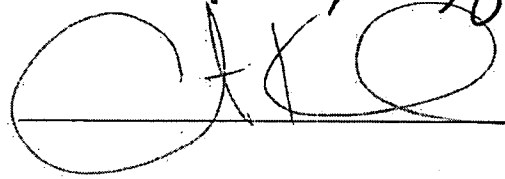
v.

Conrad Lamont Slocumb, Appellant.

Appellate Case No. 2013-000933

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

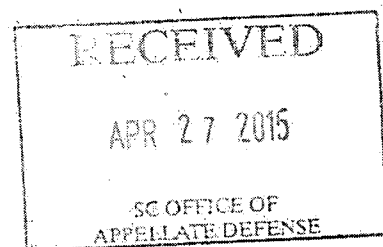
Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Daniel Edward Johnson, Esquire
Laura Ruth Baer, Esquire
The Honorable DeAndrea G. Benjamin

FILED

April 24, 2015



STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CONRAD LAMONT SLOCUMB,

APPELLANT

APPELLATE CASE NO. 2013-000933

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS

1996-GS-40-11974

1996-GS-40-11979

1996-GS-40-11980

1996-GS-40-12010

1996-GS-40-12004

5 The State,)

6 Plaintiff,)

7 vs.)

8 Conrad Lamont Slocumb,)

9 Defendant.)

TRANSCRIPT OF RECORD

10 April 25, 2013

11 Columbia, South Carolina

12
13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

15
16
17 A P P E A R A N C E S:

18 K. LUCK CAMPBELL, ASSISTANT SOLICITOR
19 JOANNA A. MCDUFFIE, ASSISTANT SOLICITOR
Attorneys for the Plaintiff

20 TARA DAWN SHURLING, ESQ.
21 Attorney for the Defendant

22
23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

APRIL 25, 2013

MS. McDUFFIE: The State calls Conrad Slocumb.

MS. SHURLING: Good morning, Your Honor.

THE COURT: Good morning.

Yes, ma'am?

MS. McDUFFIE: Thank you, Your Honor. May it please the Court? Standing before you is Conrad Lamont Slocumb, with his attorney, Tara Shurling, of the private bar.

Your Honor, we are here on Indictment 1996-GS-40-11994. We are here for a resentencing.

This Defendant was originally charged in March of 1996 with one count of burglary in the first degree, one count of CSC in the first degree, one count of kidnapping, one count of armed robbery, and one count of escape.

He was served by the State timely with notice of intent to seek life without parole based on a 1993 conviction for criminal sexual conduct in the first degree for which the Defendant received a sentence of 30 years.

Your Honor, that conviction was overturned by the Supreme Court given -- because of the Defendant's age, and so the State could no longer seek LWOP.

1 Your Honor, he was tried in November of 1996
2 and convicted by a jury on burglary in the first
3 degree, CSC first, kidnapping, strong armed
4 robbery, and escape.

5 As I said, his prior conviction was
6 overturned. And so in the year 2000 he was
7 resentenced. He was given life on burglary, 30
8 years on CSC, 30 years on kidnapping, 15 on strong
9 arm, and five on escape.

10 THE COURT: Okay, one more time. Slow down.

11 MS. McDUFFIE: So he was convicted at trial in
12 1996.

13 THE COURT: Okay.

14 MS. McDUFFIE: Given life on burglary, CSC,
15 and kidnapping, 15 on strong arm, and five on
16 escape.

17 After he was convicted at trial, his
18 underlying conviction, which served as the
19 foundation for the State to serve notice of intent
20 to seek life without parole, was overturned because
21 they found that he was not properly waived, should
22 not have been waived to General Sessions Court on
23 that offense. So then he had to be resentenced
24 because he was given life without parole on those
25 charges.

1 So then in 2000 Judge Johnson resentenced him
2 and again gave him life on the burglary first, 30
3 years on CSC first, 30 years on kidnapping, 15
4 years on strong armed, and five years on escape.

5 The Court subsequently held that at the time
6 the sentencing was done in 2000 that Judge Johnson
7 didn't have jurisdiction to do the sentencing
8 because there were still matters on appeal, so then
9 the case was again returned for resentencing.

10 And Judge Johnson heard that matter on
11 February the 18th of 2004. At that time he was
12 sentenced to life on the burglary in the first
13 degree, 30 years on the CSC first, 30 years on the
14 kidnapping, 15 years on the strong armed robbery,
15 and five years on escape, all to run consecutively.

16 This Defendant then filed a federal habeas
17 action, and that action -- Count Three of that
18 action was granted, and that is what we are here
19 for today. We are here to resentence this
20 Defendant for the charge of burglary in the first
21 degree.

22 The Court has ordered that his sentence be
23 pursuant to Graham versus Florida, Your Honor.

24 THE COURT: So he's been incarcerated for how
25 long?

1 MS. McDUFFIE: He's been incarcerated since
2 this offense occurred. Well, actually he was in --
3 when this offense occurred, he was in DJJ custody.
4 He escaped from DJJ custody, committed this
5 offense, and then shortly after the offense was
6 taken back into custody, and has been incarcerated
7 since March of 1996.

8 THE COURT: On these charges?

9 MS. McDUFFIE: Yes, Your Honor.

10 THE COURT: Ms. Shurling, I will be glad to
11 hear from you, then I'll come back.

12 MS. SHURLING: Thank you, Your Honor. And my
13 thanks to the State for outlining such a convoluted
14 procedural history in this case.

15 For the record, I am court appointed counsel
16 in this matter. I had represented Mr. Slocumb in a
17 previous post-conviction relief matter, so after
18 the Furman case was decided, I was appointed by the
19 court to represent Mr. Slocumb in resentencing.

20 Your Honor, in January, January 26th, 2011, to
21 be precise, I filed a motion for resentencing
22 consistent with Graham.

23 At the time I didn't realize that there was
24 also a petition for a writ of habeas corpus
25 pending in the U.S. District Court.

1 The U.S. District Court has, as the State has
2 outlined, vacated the first degree burglary
3 sentence of life without parole and remanded for
4 sentencing on that charge.

5 My motion was for -- my motion would be for
6 vacation of the remaining sentences as well and for
7 resentencing on everything in keeping with the
8 spirit and intent of Graham v. Florida and Miller
9 versus Alabama.

10 This is sort of a evolving area of the law.
11 As Your Honor knows, in Graham the Court found that
12 a life without parole sentence for a Defendant
13 convicted of anything other than homicide was
14 violative of the Eighth Amendment.

15 More recently in Miller versus Alabama, the
16 Court has found that even in murder cases a
17 mandatory life sentence is violative of the Eighth
18 Amendment.

19 There are cases around the country now
20 addressing the fact of whether or not a life
21 sentence in a state where the sentencing range for
22 murder that includes life and where the life would
23 then be without parole would be logically under an
24 extension of Miller versus Alabama a violation of
25 the Eighth Amendment.

1 What the Graham Court did not address was
2 whether or not a term-of-years sentence that was so
3 lengthy that after the minimum service requirements
4 to the particular state in question the individual
5 would be at or beyond their reasonable life
6 expectancy would likewise violate the Eighth
7 Amendment prohibition against cruel and unusual
8 punishment.

9 Your Honor, I did my best to, in a bench brief
10 that is rather sparse, put together a list of the
11 states that have dealt with this issue.

12 To be candid with the Court, the jurisdictions
13 are split. Some jurisdictions have found that
14 logically where Graham says that a sentence must
15 provide a meaningful opportunity for release based
16 on a demonstration of maturity and rehabilitation,
17 some states have found that common sense dictates,
18 that if you give a juvenile a sentence that is so
19 long that by the time he serves the least amount of
20 time he could possibly have to serve he is already
21 at or beyond his reasonable life expectancy, then
22 the same principles that make an LWOP sentence
23 repugnant to the Eighth Amendment would make that
24 sentence repugnant as well.

25 Other jurisdictions have found that, no,

1 Graham is very narrow, it only addresses LWOP,
2 period. Life without parole is the only
3 prohibition that is addressed by the Graham
4 decision.

5 Still other decisions have recognized that a
6 term-of-years sentence can possibly bring the
7 Eighth Amendment into play, but have vocalized a
8 yearning for the high court to give some guidance
9 in terms of where a line would be drawn with a
10 prohibition on a term-of-years sentence that
11 approached or exceeded a natural life expectancy.

12 For example, in one opinion addressed in my
13 bench memo, a dissenting judge was bemoaning the
14 fact that, where do you draw the line. And do you
15 say, if the sentence results in him not being
16 eligible to get out until right at his life
17 expectancy end, is that repugnant? Does it have to
18 fall short of that somewhere that we don't have
19 guidance on that point? And I understand that
20 concern.

21 However, as a practical matter, this client --
22 and I have outlined these considerations in the
23 bench brief, and I put a chart in the back of the
24 bench brief in terms of sentencing. Your Honor, if
25 his current sentence on the remaining charges

1 stands, he has an 80-year aggregate sentence on the
2 remaining charges. Even if Your Honor gives him a
3 sentence of 80 years concurrent or less,
4 concurrent, he will be required to serve 85 percent
5 of 80 years, which would -- he would be required to
6 serve approximately 68 years before being eligible
7 for release.

8 That means that an 80-year sentence would put
9 him at approximately 84 years and eight months old
10 at the time of his release when the average life
11 expectancy worldwide is now set at 67.2 years.

12 And in one major decision cited in my brief,
13 the Court cited a life expectancy for incarcerated
14 males at 64.3. I don't remember where that
15 statistic came from, Your Honor.

16 So my point being, that even if Your Honor
17 deems it appropriate to give him an 80-year
18 sentence for burglary and runs it concurrent, what
19 that means is that if, once he has served
20 85 percent of that sentence, he is going to be two
21 decades beyond his life expectancy before he is
22 eligible for release.

23 And we would respectfully argue that there is
24 no way to reconcile that outcome with the clear
25 language in Graham versus Florida which requires

1 that there be some reasonable opportunity for
2 release.

3 And I grant you, it says based on demonstrated
4 maturity and rehabilitation. Now, the State is
5 going to point out, and fairly so, it is their job
6 to do so, that my client's disciplinary record thus
7 far at SCDC doesn't look very good.

8 But I would urge the Court to note that he was
9 16 years old and eight months when this offense
10 occurred. And even now, he is only 33. He'll be
11 34 in June. There are many, many years ahead of
12 him during which time he might have the opportunity
13 to have further developed and further matured and
14 have demonstrated beyond where we are today a
15 reason for why he deserves a chance to be returned
16 to society.

17 So I would move, Your Honor, that his
18 remaining sentences be vacated and that Your Honor
19 resentence him on all charges, and that the
20 aggregate term of years imposed by this Court do
21 honor to the spirit and intent if not the letter of
22 the Graham decision by giving him a sentence which
23 provides for some meaningful opportunity for
24 release at some point short of two decades beyond
25 his reasonable life expectancy, Your Honor.

1 And obviously that motion is grounded on the
2 Eighth Amendment prohibition against cruel and
3 unusual punishment.

4 And I thank Your Honor for listening.

5 THE COURT: Ms. Shurling, would you agree that
6 the order that was remanded was as to the burglary?

7 MS. SHURLING: The District Court's remand is
8 purely on the burglary.

9 THE COURT: Okay. I just wondered.

10 MS. SHURLING: But I would also assert that
11 clearly under the Graham decision you have the
12 authority to do what you deem appropriate with
13 regard to the other sentences, Your Honor.

14 THE COURT: All right. Thank you.

15 All right, yes, ma'am?

16 MS. McDUFFIE: Thank you, Your Honor.

17 THE COURT: And I don't have -- of course I
18 was not -- I did not do any of the other sentences,
19 so I don't have any of the factual background as to
20 the --

21 MS. McDUFFIE: Sure, Your Honor. And I will
22 give Your Honor a factual basis.

23 If I could just correct one thing, a
24 misstatement that Ms. Shurling said. According to
25 the Department of Corrections, this Defendant's,

1 given his current sentences, projected parole date
2 is 2046. So that is in 33 years, not the terms
3 that Ms. Shurling just read off. And I do have
4 someone from my office doublechecking with DOC
5 right now about that.

6 MS. SHURLING: I would appreciate that,
7 because if you take 85 percent of 80 years, you
8 don't get that figure.

9 THE COURT: I'm guessing that some of them are
10 not 85 percent. Strong armed robbery is not going
11 to be an 85 percent. The escape is not 85 percent.

12 MS. McDUFFIE: Correct, Your Honor. And what
13 Ms. Shurling --

14 THE COURT: I'm not sure if the kidnapping is
15 85 or not.

16 MS. McDUFFIE: It is 85 percent.

17 THE COURT: And the CSC is 85.

18 MS. McDUFFIE: She has failed to look at the
19 case law that talks about determination of parole
20 eligibility even when judges run sentences
21 concurrent. And there is case law in South
22 Carolina that says that while the judges have run
23 the sentences concurrent -- consecutively, for
24 purposes of parole eligibility, the sentences are
25 treated as one sentence. And that is how DOC

1 calculates it. And I'm happy to pull the case law
2 for Your Honor in support of that position which
3 she has failed to look at.

4 Your Honor, the facts of this case are that on
5 January 2nd of 1993 he pled guilty to CSC in the
6 first degree and was sentenced to 30 years in the
7 Department of Corrections. That is the sentence
8 that was overturned.

9 While he was in the Department of Juvenile
10 Justice, on March 6th of 1996, while in DJJ
11 custody, he was in the custody of Officer Elvin
12 Livingston. And he was instructed to take the
13 Defendant from the Burchwood Campus to Richland
14 Memorial Hospital at Two Medical Park for a
15 doctor's appointment. The Defendant -- his
16 doctor's appointment was that day at 1:30 for an
17 ear infection.

18 Officer Livingston removed his handcuffs upon
19 the ride to the doctor's office. Once they arrived
20 at the doctor's office he also removed the leg
21 irons at the request of the nurse.

22 After the appointment he escorted the
23 Defendant back to his work vehicle. And the
24 Defendant, while stopped at a red light, was able
25 to jump out of the vehicle and started to flee on

1 foot.

2 About ten minutes after his escape he came
3 across the victim, [REDACTED], who is in the
4 courtroom today, Your Honor. She was exiting her
5 black Nissan automobile at her apartment complex
6 located at Drive in Richland County.

7 At first the Defendant asked her, he said he
8 was trying to find an apartment and she tried to
9 help him. She then went to her third floor
10 apartment. She thought that he was gone. She
11 unlocked the door. And as she was walking into her
12 apartment he ran up behind her and shoved her down
13 on the couch inside of the apartment and slammed
14 the door behind him. He told the victim he had a
15 gun.

16 And, Your Honor, it was learned through his
17 own statement that he did obtain a gun, a Glock
18 9-millimeter, while incarcerated at DJJ from his
19 uncle.

20 Once inside the victim's apartment, he
21 disabled the phone that was located in the den. He
22 demanded money and keys to the victim's car. She
23 gave him a \$2 bill and the keys.

24 And she noticed on his clothing it had
25 markings from the Department of Juvenile Justice.

1 He demanded a change of clothes, and she gave him
2 some of her husband's clothes.

3 He then demanded that the victim give him the
4 shirt that she was wearing, at which point the
5 Defendant told the victim that, I'm going to have
6 some sex.

7 The victim said no, and begged the Defendant
8 not to rape her. However, he again threatened the
9 victim with a gun, and then proceeded to rape her.
10 He forced the victim to take her clothes off. He
11 then forced himself on top of the victim. The
12 victim unsuccessfully fought, but he was able to
13 penetrate her. He then forced the victim to stand
14 up and touch her toes as he raped her from behind.
15 He finally stopped raping her and told her to put
16 her clothes back on.

17 He then disabled the phone in the bedroom and
18 continued to gather jewelry and other items of the
19 victim's. He took cigarettes and beer from the
20 refrigerator before finally leaving the apartment.

21 Officer Livingston, whose custody from whom he
22 escaped, was searching the area along with other
23 law enforcement officers. The officer saw him in
24 the apartment complex, and a chase ensued. He was
25 finally cornered by individuals from the Department

1 of Juvenile Justice and was searched. All of the
2 victim's stolen property was on the Defendant. He
3 was placed in handcuffs and then was brought before
4 the Court.

5 Your Honor, he was given a life sentence on
6 the burglary first in 2004.

7 And Ms. Shurling talked about other
8 jurisdictions and mentioned Graham v. Florida. If
9 I could pass Graham v. Florida up and direct Your
10 Honor's attention to Page 18.

11 THE COURT: I have it.

12 MS. McDUFFIE: Your Honor, in Graham v.
13 Florida, the United States Supreme Court says that:

14 A state is not required to guarantee
15 eventual freedom to a juvenile offender
16 convicted of a non-homicide crime. What
17 the state must do, however, is give
18 Defendants a meaningful opportunity to
19 obtain release based on demonstrated
20 maturity and rehabilitation. It is for
21 the state in the first instance to
22 explore the means and mechanisms for
23 compliance. It bears emphasis.

24 However, the Eighth Amendment forbids
25 the state from imposing a life without

1 parole sentence on a juvenile
2 non-homicide offender. It does not
3 require the state to release that
4 offender during his natural life.

5 Again, Your Honor, it does not require the
6 State to release that offender during his natural
7 life.

8 Those who commit truly horrifying crimes
9 as juveniles may turn out to be
10 irredeemable and thus deserving of
11 incarceration for the duration of their
12 lives.

13 The Eighth Amendment does not foreclose
14 the possibility that a person convicted
15 of non-homicide crime committed before
16 adulthood will remain behind bars for
17 life.

18 Your Honor, I believe Ms. Campbell wants to
19 address this Defendant's actions while incarcerated
20 at the Department of Corrections.

21 THE COURT: Yes, ma'am.

22 MS. CAMPBELL: Your Honor, the underlying
23 offense, the criminal sexual conduct for which he
24 pled guilty that was ultimately overturned because
25 there was an issue as to the waiver and that was

1 the only reason it was overturned, involved him
2 sexually assaulting a young woman, shooting her
3 multiple times in the head and leaving her for
4 dead.

5 That case was of course overturned because
6 there was a problem with the waiver procedure that
7 was done and due to his age. And that would be his
8 age.

9 He was incarcerated, however, on that offense
10 when he escaped and committed this offense.

11 As far as his rehabilitation, Your Honor, we
12 did make arrangements last week in order to bring
13 him over for this hearing today. I believe earlier
14 this week our office was contacted by the
15 Department of Corrections who wanted to let us know
16 of his security risk because he has been so
17 horrible and such a security risk while in the
18 Department of Corrections.

19 This is the first time in 23 years that I have
20 been here that anybody has ever contacted us to let
21 us know that the incarcerated inmate was such a
22 security risk.

23 As far as his rehabilitation, Your Honor, and
24 his prognosis, I guess, as far as any programs he
25 has been enrolled with in the Department of

1 Corrections while he's been there in order to
2 rehabilitate himself, there are none. His
3 enrollment has been none. He has participated in
4 none. He has completed none.

5 As far as his disciplinary record, starting
6 back in 1997, he has 218 infractions. And these
7 aren't just contraband infractions, Your Honor.
8 And I will hand this up.

9 Since just 2009, throwing substances on
10 government employees. Possession of contraband.
11 Striking an employee with or without a weapon.
12 Striking an employee without a weapon. Mutilation.
13 Possession of a weapon. Mutilation.
14 Exhibitionism. Public masturbation.
15 Exhibitionism. Public masturbation. Use of
16 obscene, vulgar language. Mutilation.

17 Your Honor, and I will hand this up to the
18 Court, with the Court's permission, at this time.

19 There are 218 similar offenses, which include
20 assaulting officers, throwing things on officers,
21 masturbation, all offenses of that nature.

22 He has done nothing to attempt to rehabilitate
23 himself while he is in a lengthy stay in the
24 Department of Corrections, Your Honor.

25 Your Honor, also present in the courtroom at

1 the appropriate time, the victim is back. Also
2 present in the courtroom is Stacey Haynes, with the
3 U.S. Attorney's Office. She was the prosecutor who
4 originally prosecuted this case. She has been here
5 for every resentencing that this poor victim has
6 had to go through over and over in this case, and I
7 believe she would like to address the Court, as
8 well as the victim, briefly and when it is
9 appropriate, Your Honor.

10 MS. McDUFFIE: Your Honor, when we were
11 talking about the parole eligibility I think I said
12 2046. It is actually 2052, according to the
13 Department of Corrections.

14 THE COURT: Okay.

15 MS. SHURLING: Your Honor, at some point I
16 would like to respond on the law. I don't know
17 whether Your Honor would prefer for me to do that
18 now or after you hear from the victims.

19 Obviously --

20 THE COURT: Give me one second. Give me one
21 second and let me review what they have handed up.

22 (Pause.)

23 MS. SHURLING: For the record, I have not seen
24 that SCDC disciplinary record, Your Honor. I
25 certainly take the Prosecution's word as an officer

1 of the court for its origins, but I would like to
2 get a copy for my file at some point. That appears
3 to be a more extensive version than the one that
4 had been provided to me.

5 (Pause.)

6 THE COURT: I'll be glad to -- well, let me
7 hear from you regarding the law, and then I'll hear
8 from the victims.

9 MS. SHURLING: Thank you, Your Honor. For
10 starters, I do apologize for calculating projected
11 sentences. In fairness to me, it does say that an
12 80-year sentence at 85 percent would yield that
13 result.

14 Just doing the math real quickly, even on the
15 CSC and kidnapping charge, which would be a 60-year
16 sentence, at 85 percent you would get 51 years. On
17 the remaining 15 for burglary and five on the
18 escape charge, I'm told on non-85 percent sentences
19 that it is generally somewhere between 51 and 65
20 percent in terms of service requirement. But even
21 taking a conservative approach and saying
22 50 percent on those would be an additional seven
23 and a half and two and a half years for an
24 aggregate sentence, Your Honor, that is still
25 getting, when combined with his age at the time of

1 the offense, puts him over his life expectancy
2 statistically.

3 The portion of Graham versus Florida that was
4 cited by the State is exactly the portion to which
5 I would draw Your Honor's attention.

6 I am not suggesting in any shape, form or
7 fashion that the State of South Carolina owes it to
8 Conrad Slocumb to guarantee that he will get out of
9 the penitentiary one day.

10 Cleary under Graham, his eventual release will
11 be at the discretion of the authorities with regard
12 to a determination as to whether or not he has made
13 an appropriate showing as to rehabilitation and
14 maturation.

15 Given the record that has been proffered by
16 the State concerning his behavior in SCDC between
17 the age of 16 years and eight months to today, I
18 would venture to agree that he might would have a
19 hard time -- a very hard time meeting that standard
20 if he were being considered for release at some
21 juncture -- at this juncture.

22 However, what Graham says is that there must
23 be a meaningful opportunity for release. And if
24 you are not going to be eligible to be released
25 from the penitentiary even if the Department of

1 Corrections finds you to be an appropriate
2 candidate to re-enter society in the community
3 until you are at or beyond your life expectancy,
4 then I would submit that that violates the
5 principles articulated in Graham in that that is
6 not a meaningful opportunity for release.

7 And clearly given the max-out date that has
8 now been placed on the record by the State and my
9 client's current age of 33, 34 in June, I would
10 submit that his max-out date still puts him well
11 beyond his reasonable life expectancy and therefore
12 provides him no reasonable opportunity for release
13 under the principles set forth in Graham and Miller
14 versus Alabama and other cases for demonstrating
15 his maturity, demonstrating rehabilitation to a
16 degree that he would deserve to be released.

17 He might not can do it now, 33. But he might
18 very well be able to at 50. And under the current
19 sentence, he would not have that opportunity at 50
20 or even 60.

21 So that is why my motion would be for vacation
22 of all of the sentences, Your Honor, and him to be
23 resentenced to a term of years that would give him
24 the opportunity after serving 85 percent on the
25 most serious offenses and a lesser percentage on

1 the remaining charges to be eligible for supervised
2 community release somewhere short of his life
3 expectancy.

4 And as this Court knows, you know, we all talk
5 about the 85 percent rule as though it is a given
6 that somebody is going to get out after they have
7 served 85 percent, but that is not a reality
8 either.

9 A person is eligible for supervised community
10 release after having served 85 percent of their
11 sentence.

12 If the Department of Corrections deems that
13 they have been such a disciplinary problem, that
14 they are a danger to society, and are not subject
15 to realistic control, monitoring, and supervision
16 while on supervised release, they can keep them
17 beyond the 85 percent. They can keep them up to
18 the full hundred percent of the sentence.

19 So the opportunity to be considered for
20 supervised community release after 85 percent of
21 the sentence at an age short of his life expectancy
22 would provide exactly what *Graham v. Florida* calls
23 for, which is a meaningful opportunity for release.

24 Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

1 All right, I'll be glad to hear from the
2 victim.

3 MS. CAMPBELL: Thank you, Your Honor.

4 MS. [REDACTED] My name is [REDACTED]
5 [REDACTED]

6 What happened that day changed my life
7 forever. And I am here today to be sure he will
8 never have the opportunity to do this to someone
9 else.

10 I ask that you sentence him a lengthy term and
11 that the sentence be served consecutive to his
12 other charges.

13 Thank you.

14 THE COURT: Thank you.

15 Yes, ma'am?

16 MS. HAYNES: Thank you, Your Honor. May it
17 please the Court? My name is Stacey Haynes. I was
18 the prosecutor who prosecuted this. And I will
19 tell the Court, in my 21 years of prosecution,
20 Mr. Slocumb is the most violent sexual predator I
21 have ever prosecuted.

22 As Ms. Campbell indicated to the Court, his
23 underlying conviction in Orangeburg stemmed where
24 he left a teacher in the woods to die after he shot
25 her and sexually assaulted her.

1 After he is waived up from family court to
2 adult court on that conviction, housed at the
3 Department of Juvenile Justice, he then inflicts
4 the same traumatic injuries to [REDACTED].

5 And what we didn't hear is that day she came
6 home early from work. She was working a job and
7 came home early to change to go get her wedding
8 dress. She was engaged at the time. That was the
9 only reason she was home in the afternoon. She had
10 come home early to change clothes to go get her
11 wedding dress, one of the most special times in a
12 young lady's life. And it is marred forever by
13 Conrad Slocumb and the actions he took with her
14 that day.

15 She has since that day been at every hearing.
16 Every few years she has to come back to court,
17 relive that nightmare because of Conrad Slocumb.

18 He is a 33-year-old man now and still has over
19 200 infractions in the Department of Corrections.
20 He has not shown any rehabilitation.

21 And we would ask the Court to take all of that
22 into consideration.

23 THE COURT: All right. Thank you.

24 MS. HAYNES: Thank you.

25 THE COURT: Anything from the State?

1 MS. CAMPBELL: Nothing further, Your Honor.

2 THE COURT: All right. On Indictment Number
3 1996-GS-40-11974, sir, you will be sentenced to the
4 State Department of Corrections for 50 years. The
5 sentence will run consecutive to the other
6 sentences. I am not going to remand as to the
7 burglary, and that is the only one that I am going
8 to entertain today. All sentences will run
9 consecutive. And of course he will be given credit
10 for the time he has spent in jail.

11 All right, thank you.

12 MS. McDUFFIE: Thank you, Your Honor.

13 MS. SHURLING: Thank you, Your Honor.

14 (WHEREUPON, the proceedings were concluded.)
15
16
17
18
19
20
21
22
23
24

25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

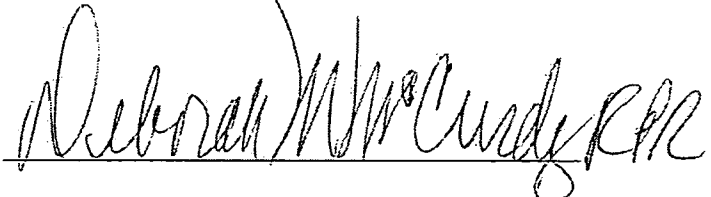
STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 25th day of April, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 11, 2013



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
 FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)

1996-GS-40-11974, 11979, 11980,
 12010, 12004

v.)

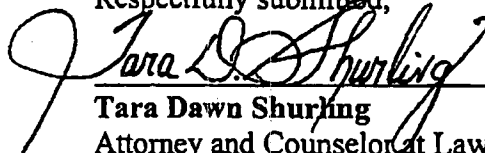
MOTION FOR
 RE-SENTENCING

CONRAD SLOCUMB, 197165.)
 _____)

11 JAN 28 AM 8:37
 JENNIFER M. McBRIDE
 C.C.P. & G.S.

NOW COMES the Defendant in the above-captioned action, acting by and through undersigned counsel, respectfully moving this Honorable Court to schedule a hearing, at its earliest convenience, on the Defendant's Motion for re-sentencing pursuant to the recent United States Supreme Court decision of *Graham v. Florida*, 130 S.Ct. 2011, Opinion Number 08-7412, (May 17, 2010). In *Graham*, the Court held that the Eighth Amendment of the United States Constitution prohibits imposition of a life without parole sentence upon a juvenile offender for non-homicide offenses. The Defendant was 16 years, 8 months and 24 days of age upon commission of the afore-mentioned offense. The Defendant was sentenced to life without parole for the offense of first degree Burglary. In support of this motion the Defendant is attaching the Indictment, his sentencing sheet and a copy of the South Carolina Department of Corrections Inmate Search sheet for the Defendant. For the foregoing reasons, the Defendant moves this Honorable Court to hear his motion for a re-sentencing consistent with the *Graham* decision.

Respectfully submitted,


 Tara Dawn Shurling
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A

Columbia, SC 29204

803-738-8622

803-738-1600 Fax

E-mail: tdslaw@shurlinglaw.com

Attorney for the Defendant

This 26th day of January, 2011.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

v.

CONRAD SLOCUMB, #197165

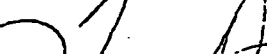
CERTIFICATE OF SERVICE

1996-GS-40-11974, 11979, 11980,
12010, 12004

The undersigned hereby certifies that a true copy of the Motion for Re-Sentencing in the above matter has been served on opposing counsel this 27th day of January, 2011, by mailing one (1) copy in a stamped envelope properly addressed to:

Salley W. Elliott
Assistant Deputy Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been sent to the Richland County Clerk of Court for filing.


TARA DAWN SHURLING
Attorney and Counselor at Law
3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803) 738-8622

ATTORNEY FOR DEFENDANT

SWORN TO BEFORE ME this 27th day of
January, 2011.

January, 2011.
 (L.S.)
 Notary Public for South Carolina

My Commission Expires:

3/12/2013

IN THE COURT OF GENERAL SESSIONS

CERTIFICATE OF SERVICE

1996-GS-40-11974, 11979, 11980,
12010, 12004

CONRAD SLOCUMB, #197165

The Honorable Daniel E. Johnson
Fifth Circuit Solicitor
P. O. Box 192
Columbia, SC 29201

The original having been sent to the Richland County Clerk of Court for filing.

11 JAN 28 AM 8:37.
JEANETTE W. McBRIDE
C.C.P. & G.S.

Jana L. Shurling

TARA DAWN SHURLING
Attorney and Counselor at Law
3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803) 738-8622

ATTORNEY FOR DEFENDANT

SWORN TO BEFORE ME this 27th day of
January, 2011.

Lynne Graham (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF GENERAL SESSIONS
	)	FIFTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA,	)	1996-GS-40-11974,11979,11980,
	)	12010, 12004
	)	
v.	)	BENCH BRIEF IN SUPPORT OF
	)	A REDUCED SENTENCE IN LIGHT
CONRAD SLOCUMB, 197165.	)	OF GRAHAM V. FLORIDA AND
	)	IMPLICATIONS OF DE FACTO LIFE
	)	SENTENCES

COMES NOW the Defendant, CONRAD SLOCUMB, by and through his undersigned counsel, Tara Dawn Shurling, submitting this Bench Brief in Support of Favorable Re-sentencing. This matter comes before the Court by way of an Order issued by District Court of South Carolina on or about June 2, 2011, which adopted the recommendations of the U.S. Magistrate Judge and ordered the vacation of the Defendant's sentence for first degree burglary and his remand to the State court for re-sentencing on that charge. Report and recommendations of the U.S. magistrate, Attachment A and Order of the District Court: Attachment B. For the reasons set forth herein, the Defendant would argue that his sentences on all counts should be vacated and he asks for re-sentencing on all his judgments. In support of favorable re-sentencing, Defendant would respectfully show unto this Court the following:

PROCEDURAL HISTORY

In 1996 Defendant was tried and convicted of burglary, first degree; criminal sexual conduct, first degree; kidnapping; escape; and robbery. At the Defendant's sentencing hearing the trial judge sentenced him to life without the possibility of parole for the charges of kidnapping, criminal sexual conduct, first degree and burglary first degree. Said sentence was predicated upon the finding that the Defendant had a prior conviction for criminal sexual conduct, first

degree, and therefore, was subject to a sentence of life without parole on these offenses which would constitute second "most serious offenses" pursuant to S.C. Code Ann. §17-25-45(A), (1)(a). The Defendant also received a fifteen (15) year, consecutive, sentence for robbery, and a five (5) year, consecutive, sentence for escape.

A direct appeal was perfected on the Defendant's behalf. The Court of Appeals subsequently issued an opinion affirming his 1996 convictions. *State v. Slocumb*, 336 S.C. 619, 521 S.E.2d 507 (Ct. App., 1999). The Defendant's Petition for Rehearing was denied by the Court of Appeals. On November 18, 1999, Defendant filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina which was denied on June 7, 2000.

While his direct appeal was pending, the Defendant was pursuing a PCR action in Orangeburg County, challenging his 1993 plea to criminal sexual conduct. On November 8, 1999, the Supreme Court of South Carolina granted relief and vacated his 1993 plea. *Slocumb v. State*, 337 S.C. 46, 522 S.E.2d 809 (1999). That plea and conviction was the basis for the life sentence received by the Defendant under South Carolina's recidivist statute; §17-25-45. Because that plea was vacated, the Defendant was brought back before the Court for a re-sentencing hearing on March 16, 2000. At that proceeding, the Defendant was sentenced to life imprisonment for burglary; thirty (30) years for kidnapping; thirty (30) years for criminal sexual conduct; fifteen (15) years for robbery; and five (5) years for escape; all said sentences were ordered to be served consecutively.

Next, the South Carolina Court of Appeals vacated the sentences imposed on March 16, 2000, for lack of jurisdiction inasmuch as the Defendant's direct appeal had not yet been completed. On October 15, 2003, the Court of Appeals dismissed the appeal for failure to provide status reports. The Defendant moved to reinstate and on December 3, 2003, the Court of

Appeals rescinded the dismissal and ordered the matter remitted to the lower court for re-sentencing.

On February 18, 2004, Defendant was re-sentenced, yet again, to life for burglary, first, thirty (30) years for criminal sexual conduct, first; thirty (30) years for kidnapping; fifteen (15) for robbery; and five (5) for escape, to all be served consecutively.

On January 26th, 2011, Tara Dawn Shurling filed a Motion for Re-sentencing on behalf of the Defendant and requested the Court re-sentence Defendant in accordance with the decision in *Graham v. Florida*, ___ U.S. ___, 130 S.Ct. 2011(2010). At the time of that filing, Counsel was not aware that the Defendant had a Petition for Writ of Habeas Corpus, pursuant to 28 USCA §2254, pending in the District Court. Said motion has never been ruled upon.

On June 2, 2011, the Honorable Henry M. Hurlong, Jr., U.S. District Court Judge for the District of South Carolina issued an Opinion and Order adopting the Report and Recommendation of U.S. Magistrate Judge Bristow Marchant, ordering Defendant's habeas petition be granted on the sole issue of whether the Defendant was entitled to re-sentencing under the *Graham* decision. He ordered that the Defendant be returned to the state sentencing court for re-sentencing consistent with *Graham*. The re-sentencing hearing for the Defendant has been scheduled for April 25, 2013.

QUESTION OF LAW

Whether a term of years sentence may violate the prohibition against life sentences without parole for juvenile offenders in cases not involving convictions for homicide.

Under the Eighth Amendment, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII. The Eighth Amendment is applicable to the states under the due process clause of the Fourteenth

Amendment. U.S. Const. Amend. XIV, See also *Robinson v. California* 370 U.S. 660, 82 S. Ct. 1417 (1962). Proportionality of punishment is the keystone of Eighth Amendment analysis because it embodies the “precept of justice that punishment for a crime should be graduated and proportioned to [the] offense.” *Graham v. Florida*, 130 S.Ct. 2011, 2021, 176 L.Ed.2d 825 (2010) (citing *Weems v. U.S.*, 217 U.S. 349, 367, 30 S.Ct. 544 (1910)). “The Eighth Amendment’s prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions.” *Miller v. Alabama*, 132 S.Ct. 2455, 2458, 183 L.Ed.2d 407 (internal quotations omitted) (finding that *mandatory* life sentences for juveniles are a violation of the Eighth amendment even where the crime committed was homicide). In *Graham*, the Supreme Court determined that life without parole sentences for juvenile non-homicide offenders violated the Eighth amendment and went on to explain that while there is no guarantee of eventual release for the offender, that the State “*must*, ~~impose~~ impose a sentence that provides ~~some~~ *meaningful opportunity for release* based on demonstrated maturity and rehabilitation.” 130 S. Ct. at 2017. (emphasis added) See also *State v. Bonner*, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012). What the Court did not specifically address, ~~however, is whether lengthy~~ term of years sentences also fall within the purview of *Graham*. Counsel for the Defendant would now respectfully assert that they must.

Term of year sentences that are the functional equivalent of life sentences may not be permissible under the letter and spirit of the *Graham v. Florida*.

Florida is the state greatest affected by the *Graham* decision due to the high concentration of juvenile LWOP cases prior to the *Graham* decision. *Graham*, 130 S.Ct. At 2024. (of the 123 juvenile non-homicide offenders serving life without parole sentences at the time of the *Graham* decision, 77 of those were serving sentences imposed in Florida). With such a large concentration in one state, looking to the evolution of their case law, may inform on the

challenges in determining the validity of term-of-years sentences which may be *the functional equivalent of a life sentence*. States such Arizona and Georgia appear to have reached a determination that under *Graham* a term-of-years sentence is not violative of the Eighth Amendment, while in California, it has been found that a sentence which exceeds the expected life expectancy of the defendant, it is violative. What has arisen in Florida is a direct conflict betwixt the districts as to whether *Graham* even applies to term-of-years sentences, and if so, at what point does a term-of-years sentence become the functional equivalent of life. The Florida Supreme Court has certified the question of the validity of lengthy term-of-year sentences, in *Gridine v. State*, 89 So.3d 909 (2011), though that case is still pending; briefs for both appellant and respondent having not yet been filed.

Some courts have determined that the *Graham* decision is to be narrowly applied, in that since *Graham* specifically enumerated life without parole sentences, that the decision only applies to life sentences and not to term of year sentences. See *Henry v. State*, 82 So.3d 1084, 37 Fla. L. Weekly D195 (Fla. 5th DCA 2012) (holding that a 90 year sentence for a juvenile non-homicide offender was constitutional where the Court was silent on term of year sentencing in the *Graham* case); See also *State v. Kasic*, 265 P.3d 410 (Ariz. Ct. App. 2011) (holding that a combined 139.75 year sentence for a juvenile non-homicide offender was constitutional);

Other courts struggle to find harmony between the Court's requirement of meaningful opportunity of release in *Graham* and permitting lengthy *de facto* life sentences. See *Gridine v. State*, 89 So.3d 909, 37 Fla. L. Weekly D69 (Fla. 1st DCA 2011) (review granted Fla. October 11, 2012) ("at some point, a term-of-years sentence may become the functional equivalent of a life sentence", however, the seventy (70) year sentence of the Defendant did not raise to that level) cf. *United States v. Mathurin*, 2011 WL 2580775 (S.D.Fla. June 29, 2011) (a mandatory minimum sentence of three-hundred and seven years imprisonment for a juvenile was

unconstitutional); *See also People v. Mendez*, 114 Cal. Rptr. 3d 870 (Cal. Ct. App. 2010)(finding an 84 year sentence for a juvenile non-homicide offender was unconstitutional under *Graham* for not providing a meaningful opportunity for release); *See also Adams v. State*, 288 Ga. 695, 707 S.E.2d 359 (Ga. 2011) (finding that the sentence of “life imprisonment for aggravated child molestation, with 25 years to be served and the remainder of the life sentence on probation” did not violate the 8th amendment); *See also Floyd v. State*, 87 So.3d 45, 37 Fla. L. Weekly D871 (Fla. 2012) (reversed two forty-year consecutive sentences as the functional equivalent of a life sentence without parole proscribed in *Graham*); *See also People v. Caballero*, 55 Cal.4th 262, 282 P.3d 291 (Cal. 2012) (finding a sentence of a minimum of 110 years to be served prior to becoming parole eligible falls outside the juvenile offenders life expectancy and is therefore in violation of the Eighth Amendment); *See also People v. Mendez*, 114 Cal. Rptr. 3d 870 (Cal. Ct. App. 2010)(finding an 84 year sentence for a juvenile non-homicide offender was unconstitutional under *Graham* for not providing a meaningful opportunity for release).

In *Henry*, the defendant was convicted of sexual battery, kidnapping, robbery, carjacking, and burglary of a dwelling and was given an aggregate term-of-years sentence totaling ninety (90) years in prison. *Supra*, 82 So.3d at 1085-86. Even with meritorious gain-time, the court found that Henry's sentence would have exceeded his life expectancy of 64.3 years. *Id.* The court noted that Henry's sentence was distinct from *Graham* because Henry had not received an actual life sentence, but rather a lengthy aggregate term-of-years sentence. *Id.* Further the court looked to other jurisdictions such as Arizona, where *State v. Kasic* determined an aggregate 139.75 year sentence was not a violation of *Graham*, and to Georgia where in *Adams v. State* and *Middleton v. State*, sentences of twenty five (25) years incarceration with life probation and thirty (30) years incarceration, respectively, were found not to be violations of *Graham*. *Id.* at 1088. The court noted that the majority opinion of *Graham* does suggest “a juvenile may not receive a sentence

that will cause him to spend his entire life incarcerated without a chance for rehabilitation” but that the Supreme Court in *Graham* “offers no direction whatsoever” for lengthy term-of-years sentences. *Id.* at 1089. “Without any tools to work with... we can only apply *Graham* as it is written.” *Id.* Therefore, under the narrow reading of *Graham* proscribing only life sentences without parole, the court upheld the term-of-years sentence for *Henry*.

In *Gridine*, a juvenile was convicted of attempted first-degree murder and sentenced to seventy years imprisonment. *Supra*, 89 So. 3d at 910. Gridine requested the court find his seventy year sentence was a *de facto* life sentence in violation of *Graham v. Florida*. *Id.* at 911. However, the court noted that *Graham* was specifically limited to “those juvenile offenders sentenced to life without parole solely for a non-homicide offense.” *Id.* (citing *Graham*, 130 S.Ct. At 2023). The court further acknowledged “that at some point, a term-of-years sentence may become the functional equivalent of a life sentence” and cited to *Mathurin* where a three hundred year mandatory minimum was found unconstitutional. *Id.* The stark comparison clearly shows the difference between a sentence well outside any expectation of release to one that may or may not reach the defendant's natural life span. In his dissent, Judge Wolf expressed his concerns as to at what point a term-of-years sentence may violate *Graham*, stating “[a]bsent the option of parole, I am at a loss on how to *apply* the *Graham* decision to a lengthy term of years. Is a 60-year sentence lawful, but a 70-year sentence not? Regardless, it is clear to me that appellant will spend most of his life in prison. This result would appear to violate the spirit, if not the letter, of the *Graham* decision. ... I note that absent a legislative solution, I look for guidance from either the United States or Florida Supreme Courts.” *Id.* (Wolf, J., dissenting). Wolf's dissent acknowledges the conundrum of lengthy term-of-years sentencing where even if courts were to acknowledge that a term-of-years sentence can function as a life sentence equivalent, the

task of curing the sentence of its constitutional violation would be problematic at best without further guidance from the High Court on this difficult issue.

In *Floyd*, the defendant was a 17 year old who was convicted of grand theft auto and two counts of robbery with a firearm. *Supra*, 87 So.3d at 45. He was sentenced to two, consecutive, forty year terms for the two counts of armed robbery. *Id.* at 46. Under Florida's penal code the defendant would be required to serve at minimum 85% of his sentence, meaning he would not be released until age 85 at the earliest. *Id.* While the first district court of Florida had previously faced a term of years *Graham* argument, in those two prior cases the terms were 50 and 70 years and that court did not find those sentences acted as a functional equivalent of a life term. *Id.* While *Floyd* would likely be released at some point, that court acknowledged that *Graham* also cautioned the states from making a judgment at the outset that a defendant would never be fit to reenter society. *Id.* Where *Floyd* would not be released until, at the earliest, age eighty five, that court determined the trial court impermissibly made the determination that *Floyd* would not be fit to reenter society. *Id.* The court noted that "common sense" dictated that the eighty year sentence for *Floyd* was beyond his life expectancy, and therefore the functional equivalent of life without parole. *Id.* at 37.

In *Cabellero*, the defendant was convicted on three counts of attempted murder. *Supra*, 55 Cal.4th 262, 265, 282 P.3d 291 (Cal. 2012). The defendant's total sentence was 110 years to life. *Id.* In that case, the lower court which had upheld the 110 year sentence relied, in part, on Justice Alito's dissenting opinion from *Graham*, stating "[n]othing in the Court's opinion affects the imposition of a sentence to a term of years without the possibility of parole. Indeed, petitioner conceded at oral argument that a sentence of as much as 40 years without the possibility of parole "probably" would be constitutional. *Cabellero*, 55 Cal.4th at 267. See

Graham, 130 S.Ct. at 2058. (ALITO,J., dissenting.) However, when the Court extended the reasoning from *Graham* to the *Miller v. Alabama* case (though not the categorical bar for juveniles), it became clearer that, constitutionally, children were quintessentially different, and that those differences must be taken into account. *Id.* at 267-8. That court then determined, the *Graham* dictate was not a focus on the precise sentence meted out, but rather that the states must provide a juvenile non homicide offender “with some realistic opportunity to obtain release.” *Id.* at 268 (citing *Graham*, 130 S.Ct. at 2034). Therefore, that court determined that the 110 year sentence was a violation of the Eighth Amendment because it had a parole eligibility date outside the juvenile offender’s natural life expectancy. *Id.*

THE CASE BEFORE THE COURT

In the case at hand, under South Carolina law, Slocumb is exposed to a sentence of fifteen (15) years to life for first degree burglary and a potential additional aggregate eighty (80) year sentence. It is clear that the life sentence without parole for burglary must be vacated and the Defendant must be re-sentenced pursuant to *Graham*, inasmuch as his life sentence is violative of the Eighth Amendment. What remains unclear is what term-of-years sentence would be appropriate. In the above cited cases, there is conflicted guidance on the matter. Even in Georgia, where the cases have established a term-of-years sentence to be outside the purview of *Graham*, the sentences involved in the cases that have been reviewed on this point have not involved actual incarceration for a term that would likely span or exceed the defendants' life expectancy. Further, even in cases, such as *Henry*, where the lengthy term of years sentence was not vacated as unconstitutional, the courts have noted language from *Graham* that finds a need for a meaningful opportunity for release while finding that it is precarious to extend that concept to sentences of a term-of-years without further guidance from the high courts or the legislatures.

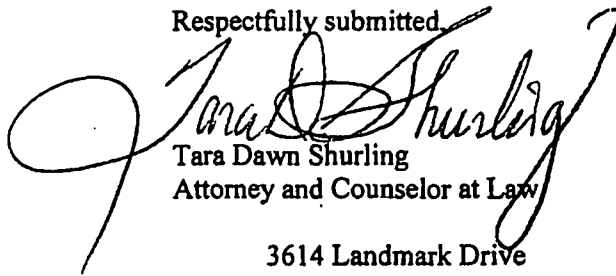
The narrow reading of *Graham*, therefore, appears to be predicated (at least in part) on the difficulty of calculating a sentence that would provide a meaningful opportunity for release in states with no parole provisions for certain categories of offenses. Until such guidance comes however, the Defendant submits that the Court must take the fundamental principals set forth in *Graham* into account in potentially rendering a lengthy term-of-years sentence.

Counsel for the Defendant would respectfully assert that the spirit of the *Graham* decision is not honored by an attempt to pass down a lengthy term-of-years sentence that would get as close as possible to the life expectancy of the defendant, but rather the constitutional values addressed by *Graham* dictate that the Court impose a sentence that would provide the Defendant a meaningful opportunity for release at an age where he would have the ability to re-enter and contribute to society. The Defendant was sixteen (16) years and eight (8) months of age when he committed the crimes in question. The world average life expectancy in 2010 was 67.2 years.¹ The Court in *Henry*, supra, found that Henry had a life expectancy of 64.3 years. Therefore, an aggregate sentence of fifty (50) years, which would be served with an 85% service requirement, would essentially put the Defendant in the position to be released at the very end of his life expectancy after serving approximately 42 years and 6 months of his sentence. The Defendant respectfully asks that this Honorable Court vacate the balance of his sentences and re-sentence him on all his convictions in order that he might receive a sentence that applies *Graham* in a meaningful manner. If the aggregate eighty (80) year sentence the Defendant received on his other charges remains in place, he would have to serve approximately sixty-eight (68) years before being eligible for release, even if he received a concurrent term of equal or shorter duration on the first degree burglary charge. An eighty (80) year sentence would put the

¹ Figure taken from a Wikipedia search under key phrase "life expectancy"; copy of which is attached as Attachment C.

Defendant at approximately eighty-four years and eight months (84 years and 8 months) of age when released, or to put it bluntly, twenty years beyond his life expectancy. Counsel herein would respectfully submit that a sentence which is designed to get you released from custody just in time to die, is not in keeping with the spirit of the *Graham* decision.² Taking into account the fundamental distinctions between juvenile offenders and adults who make the decision to commit crimes, the Defendant begs this Court to consider sentencing him to a term of years which not only reflects an appropriate penalty for the crimes he committed, but also provides him, as a mature adult, a meaningful opportunity for release at an age where he would have the ability to re-enter and contribute to society.

Respectfully submitted



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ATTORNEY FOR THE DEFENDANT

This 24th day of April, 2013.

² For the convenient reference of the Court, Counsel has attached a chart showing what the net service, at 85%, would be for sentences ranging from 100 years to 10 years. Attachment D.

ATTACHMENT A

9:10-cv-01605-HMH Date Filed 05/12/11 Entry Number 20 Page 1 of 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Conrad Lamont Slocumb, #197165,)
aka Conrad L. Slocumb,)

CIVIL ACTION NO. 9:10-1605-HMH-BM

Petitioner,)

v.)

Bernard McKie, Warden,)

Respondent.)

REPORT AND RECOMMENDATION

This action has been filed by the Petitioner, pro se, pursuant to 42 U.S.C. § 2254. The Petitioner raises five grounds for relief in his federal habeas petition.

In Ground Three, Petitioner contends that his sentence is unconstitutional under Graham v. Florida, 130 S.Ct. 2011 (2010). The Respondent concedes that Petitioner is entitled to have his life sentence for burglary first degree vacated pursuant to Graham, and that he should be returned to Richland County General Sessions Court for re-sentencing on the burglary first degree conviction. Therefore, it is recommended that this Court grant Petitioner relief on Ground Three of his Petition, that his sentence for burglary first degree, be vacated, and that the Respondent be directed to facilitate re-sentencing of the Petitioner as set for herein in compliance with Graham.

With respect to the remainder of Petitioner's asserted grounds for relief, the undersigned does not find it appropriate to consider those claims at this time. Until Petitioner has been re-sentenced in state court, it cannot be determined whether Petitioner will elect to proceed to

exhaust further state and federal remedies based upon any issues that arise as a result of his re-sentencing proceedings. Hence, if the Court proceeded to consider Petitioner's other federal claims at this time, it could result in potential successive federal petitions and/or piecemeal consideration of Petitioner's federal claims. Lewis v. Maine, 254 F.Supp.2d 159, 164-165 & n. 5 (D.Me. 2003)[Finding that a piecemeal approach to judgments of conviction does not serve the court's interest in resolving habeas challenges to state court judgments in one coherent, efficient review]; cf. Rose v. Lundy, 455 U.S. 519, 520-521 (1982).

Therefore, the undersigned recommends that the remainder of Petitioner's claims be dismissed, without prejudice. Petitioner may then re-file a petition after re-sentencing, if he believes he has grounds for habeas relief. See United States v. Dodson, 291 F.3d 268, 272-276 (4th Cir. 2002)[Where "convictions and sentences arise from a multi-count indictment, a single judgment of conviction results. Thus, there is a strong presumption that Congress generally intended that convictions and sentences on all counts become a final judgment of conviction"]; see also Magwood v. Patterson, 130 S.Ct. 2788 (2010)[re-sentencing led to a new judgment]; Scott v. Hubert, 635 F.3d 659, 664-665 (5th Cir. 2011)[The question of when a conviction becomes final for federal habeas purposes is purely a question of federal law and final judgment in a criminal case means sentence (the sentence is the judgment)]; Murphy v. United States, 634 F.3d 1303, 1310-1311 (11th Cir. 2011)[Judgment to which Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") refers is the underlying conviction and the most recent sentence that authorizes the petitioner's current detention]. But cf. United States v. Wilson, 256 F.3d 217, 220 (4th Cir. 2001)[Court did not regard the various counts upon which Plaintiff was convicted as a "unified whole" where one count was remanded with instructions to vacate his conviction and sentence on that one count only].

Conclusion

Based on the foregoing, it is recommended that Petitioner's habeas petition be granted with respect to Ground Three only, and that Petitioner be returned to the state sentencing court for re-sentencing as directed herein. It is further recommended that the remaining claims in the petition be dismissed at this time, without prejudice.

The parties are referred to the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

May 12, 2011
Charleston, South Carolina

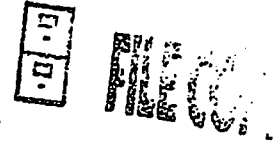
Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Conrad Lamont Slocumb, #197165,
aka Conrad L. Slocumb,

Petitioner,

vs.

Bernard McKie, Warden,

Respondent.

C.A. No. 9:10-1605-HMH-BM

OPINION AND ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Bristow Marchant, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina.

The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1) (2006).

The Petitioner filed no objections to the Report and Recommendation. In the absence of objections to the magistrate judge's Report and Recommendation, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The court must "only satisfy itself that there is no clear error on the face

of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts Magistrate Judge Marchant's Report and Recommendation and incorporates it herein. It is therefore

ORDERED that Petitioner's habeas petition is granted with respect to Ground Three only and that Petitioner be returned to the state sentencing court for resentencing as directed in the Report and Recommendation. It is further

ORDERED that the remaining claims in the petition be dismissed without prejudice. It is further

ORDERED that a certificate of appealability is denied with respect to the dismissed claims. 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
June 2, 2011

NOTICE OF RIGHT TO APPEAL

The Petitioner is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

Life expectancy

From Wikipedia, the free encyclopedia

Life expectancy is the expected (in the statistical sense) number of years of life remaining at a given age.^[1] It is denoted by e_x ,^[a] which means the average number of subsequent years of life for someone now aged x , according to a particular mortality experience. Because life expectancy is an average, a particular person may well die many years before or many years after their "expected" survival. The term "maximum life span" has a quite different meaning. The "median life span" is also a different concept although fairly similar to life expectancy numerically in most developed countries. A 2013 study found a pronounced relationship between economic inequality and life expectancy.^[2]

The term that is known as life expectancy is most often used in the context of human populations, but is also used in plant or animal ecology;^[3] it is calculated by the analysis of life tables (also known as actuarial tables). The term life expectancy may also be used in the context of manufactured objects^[4] although the related term shelf life is used for consumer products and the terms "mean time to breakdown" (MTTB) and "mean time before failures" (MTBF) are used in engineering.

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- 1 Interpretation of life expectancy
- 2 Human life expectancy patterns
 - 2.1 Life expectancy variation over time
 - 2.2 Regional variations
 - 2.3 Economic circumstances
 - 2.4 Sex differences
 - 2.5 Centenarians
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- 3 Evolution and aging rate
- 4 Calculating life expectancies
- 5 Life expectancy forecasting
- 6 Policy uses of life expectancy
- 7 Life expectancy vs. life span
- 8 See also
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Interpretation of life expectancy

It is important to note that life expectancy is an average. In many cultures, particularly before modern medicine was widely available, the combination of high infant mortality and deaths in young adulthood from accidents, epidemics, plagues, wars, and childbirth, significantly lowers the overall life expectancy. But for someone who survived past these early hazards, living into their sixties or seventies would not be uncommon. For example, a society with a life expectancy of 40 may have very few people dying at age 40: most will die before 30 years of age or after 55.

In countries with high infant mortality rates, the life expectancy at birth is highly sensitive to the rate of death in the first few years of life. Because of this sensitivity to infant mortality, simple life expectancy at age zero can be subject to gross misinterpretation, leading one to believe that a population with a low overall life expectancy will necessarily have a small proportion of older people.^[5] For example, in a hypothetical stationary population in which half the population dies before the age of five, but everybody else dies at exactly 70 years old, the life expectancy at age zero will be about 37 years, while about 25% of the population will be between the ages of 50 and 70. Another measure such as life expectancy at age 5 (e_5) can be used to exclude the effect of infant mortality to provide a simple measure of overall mortality rates other than in early childhood—in the hypothetical population above, life expectancy at age 5 would be another 65 years. Aggregate population measures such as the proportion of the population in various age classes should also be used alongside individual-based measures like formal life expectancy when analyzing population structure and dynamics.

Human life expectancy patterns

Humans are expected to live on average 49.42 years in Swaziland^[6] and 82.6 years in Japan, although Japan's recorded life expectancy may have been very slightly increased by counting many infant deaths as stillborn.^[7] An analysis published in 2011 in *The Lancet* attributes Japanese life expectancy to equal opportunities and public health as well as diet.^{[8][9]}

The oldest confirmed recorded age for any human is 122 years (see Jeanne Calment). This is referred to as the "maximum life span", which is the upper boundary of life, the maximum number of years any human is known to have lived.^[10]

Life expectancy variation over time

The following information is derived from *Encyclopædia Britannica*, 1961, and other sources, some with a questionable accuracy. Unless otherwise stated, it represents estimates of the life expectancies of the population as a whole. In many instances life expectancy varied considerably according to class and gender.

Life expectancy at birth takes account of infant mortality but not pre-natal mortality.

Era	Life Expectancy at Birth (years)	Life Expectancy at Older Age
Upper Paleolithic	33	At age 15, life expectancy an additional 39 years (total age 54). ^{[11][12]}
Neolithic ^[13]	20	
Bronze Age and Iron Age ^[14]	26	
Classical Greece ^[15]	28	
Classical Rome ^[15]	28	At age 15, life expectancy an additional 37 years (total age 52).
Pre-Columbian North America ^[16]	25–30	
Medieval Islamic Caliphate ^[17]	35+	
Medieval Britain ^{[18][19]}	30	At age 21, life expectancy an additional 43 years (total age 64). ^[20]
Early Modern Britain ^[14]	25–40	
Early 20th Century ^{[21][22]}	31	
2010 world average ^[23]	67.2	

Life expectancy increases with age as the individual survives the higher mortality rates associated with childhood. For instance, the table above listed life expectancy at birth in Medieval Britain at 30. A male member of the English aristocracy at the same period could expect to live, having survived until the age of 21.^[20]

- 1200–1300 C.E.: 43 years (to age 64)
- 1300–1400 C.E.: 34 years (to age 55) (due to the impact of the Black Death)
- 1400–1500 C.E.: 48 years (to age 69).
- 1500–1550 C.E.: 50 years (to age 71).

In general, the available data indicate that longer lifespans became more common recently in human evolution.^{[12][24]} This increased longevity is attributed by some writers to cultural adaptations rather than genetic evolution,^[25] although some research indicates that during the Neolithic Revolution natural selection favored increased longevity.^[13] Nevertheless, all researchers acknowledge the effect of cultural adaptations upon life expectancy.^[24]

During the early 1600s in England, life expectancy was only about 35 years, largely because two-thirds of all children died before the age of four.^[26] The average life expectancy in Colonial America was under 25 years in the Virginia colony,^[27] and in New England about 40% of children failed to reach adulthood.^[28] During the Industrial Revolution, the life expectancy of children increased dramatically.^[29] The percentage of children born in London who died before the age of five decreased from 74.5% in 1730–1749 to 31.8% in 1810–1829.^{[30][31]}

Public health measures are credited with much of the recent increase in life expectancy. During the 20th century, the average lifespan in the United States increased by more than 30 years, of which 25 years can be attributed to advances in public health.^[32]

In order to assess the quality of these additional years of life, 'healthy life expectancies' have been calculated for the last 30 years. Since 2001, the World Health Organization publishes statistics called Healthy life expectancy (HALE), defined as the average number of years that a person can expect to live in "full health", excluding the years lived in less than full health due to disease and/or injury. Since 2004, Eurostat publishes annual statistics called Healthy Life Years (HLY) based on reported activity limitations. The United States of America uses similar indicators in the framework of their nationwide health promotion and disease prevention plan "Healthy People 2010". An increasing number of countries are using health expectancy indicators to monitor the health of their population.

Further information: Longevity

Regional variations

Further information: List of countries by life expectancy

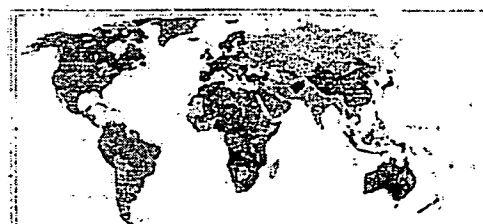
There are great variations in life expectancy between different parts of the world, mostly caused by differences in public health, medical care and diet. Much of the excess mortality (higher death rates) in poorer nations is due to war, starvation, and diseases (AIDS, Malaria, etc.). The impact of AIDS is particularly notable on life expectancy in many African countries. According to the UN^[34] the life expectancy at birth for 2010–2015 (if HIV/AIDS did not exist) would have been:

- 70.7 years instead of 31.6 in Botswana
- 69.9 years instead of 41.5 in South Africa
- 70.5 years instead of 31.8 in Zimbabwe.

As a result, over the past 200 years, countries with African populations have generally not had the same improvements in mortality rates that have been enjoyed by populations of Asian, Latin American or European origin. Notably, even in countries with a majority of European people, such as the United States, Britain, or Ireland, African people still tend to have shorter life expectancies than their European counterparts. For example, in the United States, Euro-Americans are expected to live until age 78.2, but African Americans only until age 73.6.^[35]

In contrast, Asian-Americans live the longest of all ethnic groups in the United States, with a life expectancy of 87 years, almost ten years longer than Euro-Americans.^[36] Latino-Americans are second place among ethnic groups on life expectancy, living on average two years longer than Euro-Americans and seven years longer than African-Americans, with a life expectancy of 80.6 years.^[37] In contrast to the on average lower life expectancy of most Latin American countries. These variations among ethnic groups may be ascribed to differing economic circumstances of the groups, and in the United States, notably differing access to health care. It may also be ascribed to different cultural patterns of eating or diet that may cross international lines and explain the variation within ethnic groups in a multiethnic society such as the United States.

Climate may also have an effect, and the way data is collected may also influence the figures.



World map on life expectancy from WLE
(<http://www.worldlifeexpectancy.com/index.php>)

☐ >80	☐ 60 to 65
☐ 77.5 to 80	☐ 55 to 60
☐ 75 to 77.5	☐ 50 to 55
☐ 72.5 to 75	☐ 45 to 50
☐ 70 to 72.5	☐ 40 to 45
☐ 67.5 to 70	☐ <40
☐ 65 to 67.5	

Economic circumstances

Economic circumstances also affect life expectancy. For example, in the United Kingdom, life expectancy in the wealthiest areas is several years longer than in the poorest areas. This may reflect factors such as diet and lifestyle as well as access to medical care. It may also reflect a selective effect: people with chronic life-threatening illnesses are less likely to become wealthy or to reside in affluent areas.^[39] In Glasgow the disparity is among the highest in the world with life expectancy for males in the heavily deprived Calton standing at 54 – 28 years less than in the affluent area of Lenzie, which is only eight kilometres away.^{[39][40]}

A 2013 study found a pronounced relationship between economic inequality and life expectancy.^[2] However, a study by José A. Tapia Granados and Ana Díez Roux at the University of Michigan found that life expectancy actually increased during the Great Depression, and during recessions and depressions in general.^[41] The authors suggest that when people are working extra hard during good economic times, they undergo more stress, exposure to pollution, and likelihood of injury among other longevity-limiting factors.

Life expectancy is also likely to be affected by exposure to high levels of highway air pollution or industrial air pollution.^[citation needed] This is one way that occupation can have a major effect on life expectancy. Coal miners (and in prior generations, asbestos cutters) often have shorter than average life expectancies. Other factors affecting an individual's life expectancy are genetic disorders, obesity, access to health care, diet, exercise, tobacco smoking, drug use and excessive alcohol use.

Sex differences

Women tend to have a lower mortality rate at every age. In the womb, male fetuses have a higher mortality rate (babies are conceived in a ratio estimated to be from 107 to 170 males to 100 females, but the ratio at birth in the United States is only 105 males to 100 females).^[42] Among the smallest premature babies (those under 2 pounds or 900 g) females again have a higher survival rate. At the other extreme, about 90% of individuals aged 110 are female. The difference in life expectancy between men and women in the United States dropped from 7.8 years in 1979 to 5.3 years in 2005, with women expected to live to age 80.1 in 2005.^[43]

In the past, mortality rates for females in child-bearing age groups were higher than for males at the same age. This is no longer the case, and female human life expectancy is considerably higher than that of men. The reasons for this are not entirely certain. Traditional arguments tend to favor socio-environmental factors: historically, men have generally consumed more tobacco, alcohol and drugs than females in most societies, and are more likely to die from many associated diseases such as lung cancer, tuberculosis and cirrhosis of the liver.^[46] Men are also more likely to die from injuries, whether unintentional (such as occupational or war or car accidents) or intentional (suicide).^[46] Men are also more likely to die from most of the leading causes of death (some already stated above) than women. Some of these in the United States include: cancer of the respiratory system; motor vehicle accidents; suicide; cirrhosis of the liver, emphysema; and coronary heart disease.^[10] These far outweigh the female mortality rate from breast cancer and cervical cancer etc.

Some argue that shorter male life expectancy is merely another manifestation of the general rule, seen in all mammal species, that larger (size) individuals (within a species) tend on average to have shorter lives.^{[47][48]} This biological difference occurs because women have more resistance to infections and degenerative diseases.^[10]

In her extensive review of the existing literature, Kelben concluded that the fact that women live longer than men was observed at least as far back as 1750 and that, with relatively equal treatment, today males in all parts of the world experience greater mortality than females. Of 72 selected causes of death, only 6 yielded greater female than male age-adjusted death rates in 1998 in the United States. With the exception of birds, for almost all of the animal species studied, the males have higher mortality than the females. Evidence suggests that the sex mortality differential in humans is due to both biological/genetic and environmental/behavioral risk and protective factors.^[49]

There is a recent suggestion that mitochondrial mutations that shorten lifespan continue to be expressed in males (but less so in females) because mitochondria are inherited only through the mother. By contrast natural selection weeds out mitochondria that reduce female survival as such mitochondria are less likely to be passed on to the next generation. Therefore it is suggested human females and female animals tend to live longer than males. The authors claim this is a partial explanation.^{[50][51]}

Centenarians

In developed countries, the number of centenarians is increasing at approximately 5.5% per year, which means doubling the centenarian population every 13 years, pushing it from some 455,000 in 2009 to 4.1 million in 2050.^[52] Japan is the country with the highest ratio of centenarians (347 for every 1 million inhabitants in September 2010). Shimane prefecture had an estimated 743 centenarians per million inhabitants.^[53]

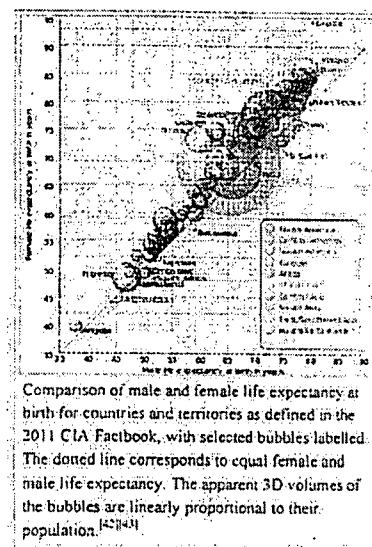
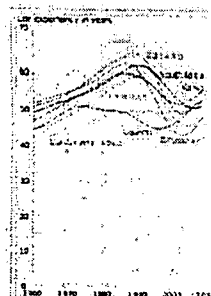
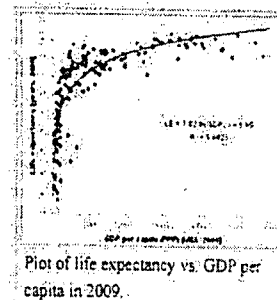
In the United States, the number of centenarians grew from 32,194 in 1980 to 71,944 in November 2010 (232 centenarians per million inhabitants).^[54]

Mentally ill

Adults with serious mental illness (SMI) die about 25 years earlier, on average at age 51 versus 76 for Americans generally, primarily due to cardiovascular disease.^{[55][56]}

Evolution and aging rate

Various species of plants and animals, including humans, have different lifespans. There is an evolutionary theory of aging, and general consensus in the academic community of evolutionary theorists, however the theory doesn't work well in practice, and there are many unexplained exceptions. Evolutionary theory states that organisms that, by virtue of their defenses or lifestyle, live for long periods whilst avoiding accidents, disease, predation, etc., are likely to have genes that code for slow aging — which often translates to good cellular repair. This is theorized to be true because if predation or accidental deaths prevent most individuals from living to an old age, then there will be less natural selection to increase intrinsic life span.^[57] The finding was supported in a classic study of opossums by Austad,^[58] however the opposite relationship was found in an equally prominent study of guppies by Reznick.^{[59][60]}



One prominent and very popular theory attributes aging to a tight budget for food energy called caloric restriction.^[61] Caloric restriction observed in many animals (most notably mice and rats), shows a near doubling of life span due to a very limited caloric intake. Support for this theory has been bolstered by several new studies linking lower basal metabolic rate to increased life expectancy.^{[62][63][64]} This is the key to why animals like Giant Tortoises can live so long.^[65] Studies of humans with 100+ year life spans have shown a link to decreased thyroid activity, resulting in their lowered metabolic rate.^[66]

In a broad survey of zoo animals, no relationship was found between the fertility of the animal and its life span.^[67]

Calculating life expectancies

The starting point for calculating life expectancies is the age-specific death rates of the population members. In the past, a very simple model of age-specific mortality used the Gompertz function, although these days more sophisticated methods are used.^[68]

In cases where the amount of data is relatively small, the most common methods are to fit a mathematical formula, such as an extension of the Gompertz function, to the data, or to look at an established mortality table previously derived for a larger population and make a simple adjustment to it (e.g. multiply by a constant factor) to fit the data.

With a large amount of data, one looks at the mortality rates actually experienced at each age, and applies smoothing (e.g. by cubic splines) to iron out any apparently random statistical fluctuations from one year of age to the next.

While the data required are easily identified in the case of humans, the computation of life expectancy of industrial products and wild animals involves more indirect techniques. The life expectancy and demography of wild animals are often estimated by capturing, marking and recapturing them.^[69] The life of a product, more often termed shelf life is also computed using similar methods. In the case of long-lived components such as those used in critical applications, such as in aircraft methods such as accelerated aging are used to model the life expectancy of a component.^[4]

The age-specific death rates are calculated separately for separate groups of data which are believed to have different mortality rates (e.g. males and females, and perhaps smokers and non-smokers if data is available separately for those groups) and are then used to calculate a life table, from which one can calculate the probability of surviving to each age. In actuarial notation the probability of surviving from age x to age $x + n$ is denoted ${}_n p_x$ and the probability of dying during age x (i.e. between ages x and $x + 1$) is denoted q_x . For example, if 10% of a group of people alive at their 90th birthday die before their 91st birthday, then the age-specific death probability at age 90 would be 10%. Note that this is a probability rather than a mortality rate.

The expected future lifetime of a life age x in whole years (the *curate expected lifetime* of (x)) is denoted by the symbol e_x .^[4] It is the conditional expected future lifetime (in whole years), assuming survival to age x . If $K(x)$ denotes the curate future lifetime at x , then

$$e_x = E[K(x)] = \sum_{k=0}^{\infty} k \Pr(K(x) = k) = \sum_{k=0}^{\infty} k {}_k p_x q_{x+k}.$$

* Substituting ${}_k p_x q_{x+k} = {}_k p_x - {}_{k+1} p_x$ in the sum and simplifying, we get the equivalent formula^[70]

$$e_x = \sum_{k=0}^{\infty} {}_k p_x.$$

If we make the assumption that on average people live a half year in the year of death, then the complete expectation of future lifetime at age x is $e_x + 1/2$.

Life expectancy is by definition an arithmetic mean. It can also be calculated by integrating the survival curve from ages 0 to positive infinity (or equivalently to the maximum lifespan, sometimes called 'omega'). For an extinct or completed cohort (all people born in year 1850, for example), of course, it can simply be calculated by averaging the ages at death. For cohorts with some survivors, it is estimated by using mortality experience in recent years. These estimates are called period cohort life expectancies.

It is important to note that this statistic is usually based on past mortality experience, and assumes that the same age-specific mortality rates will continue into the future. Thus such life expectancy figures need to be adjusted for temporal trends before calculating how long a currently living individual of a particular age is expected to live. Period life expectancy remains a commonly used statistic to summarize the current health status of a population.

However for some purposes, such as pensions calculations, it is usual to adjust the life table used, thus assuming that age-specific death rates will continue to decrease over the years, as they have done in the past. This is often done by simply extrapolating past trends; however some models do exist to account for the evolution of mortality (e.g., the Lee-Carter model^[71]).

As discussed above, on an individual basis, there are a number of factors that have been shown to correlate with a longer life. Factors that are associated with variations in life expectancy include family history, marital status, economic status, physique, exercise, diet, drug use including smoking and alcohol consumption, disposition, education, environment, sleep, climate, and health care.^[10]

Life expectancy forecasting

Forecasting life expectancy and mortality forms an important subdivision of demography. Future trends in life expectancy have huge implications for old-age support programs like U.S. Social Security and pension systems, because the cash flow in these systems depends on the number of recipients still living (along with the rate of return on the investments or the tax rate in PAYGO systems). With longer life expectancies, these systems see increased cash outflow, if these systems underestimate increases in life-expectancies, they won't be prepared for the large payments that will inevitably occur as humans live longer and longer.

Life expectancy forecasting usually is based on two different approaches:

- Forecasting the life expectancy directly, generally using ARIMA or other time series extrapolation procedures: This approach has the advantage of simplicity, but it cannot account for changes in mortality at specific ages, and the forecasted number cannot be used to derive other life table results. Analyses and forecasts using this approach can be done with any common statistical/mathematical software package, like EVIEWS, R, SAS, Stata, Matlab, or SPSS.
- Forecasting age specific death rates and computing the life expectancy from the results with life table methods: This approach is usually more complex than simply forecasting life expectancy because the analyst must deal with correlated age specific mortality rates, but it seems to be more robust than simple one dimensional time series approaches. This approach also yields a set of age specific rates that may be used to derive other measures, like survival curves or life expectancies at different ages. The most important approach within this group is the Lee-Carter model,^[72] which uses the singular value decomposition on a set of transformed age-specific mortality rates to reduce their dimensionality to a single time series, forecasts that time series, and then recovers a full set of age-specific mortality rates from that forecasted value. Software for this approach include Professor Rob J. Hyndman's R package called 'demography' (<http://robjhyndman.com/software/demography/>) and UC Berkeley's LCFIT system (<http://lcfit.demog.berkeley.edu/>).

Policy uses of life expectancy

Life expectancy is one of the factors in measuring the Human Development Index (HDI) of each nation, along with adult literacy, education, and standard of living.^[73]

Life expectancy is also used in describing the physical quality of life of an area.

Life expectancies are also used when determining the value of a life settlement, a life insurance policy sold for a cash asset.

Life expectancy vs. life span

Life expectancy is often confused with life span to the point that they are nearly synonyms; when people hear 'life expectancy was 35 years' they often interpret this as meaning that people of that time or place had short life spans.^[74] One such example can be seen in the *In Search of...* episode "The Man Who Would Not Die" (About Count of St Germain) where it is stated "Evidence recently discovered in the British Museum indicates that St. Germain may have well been the long lost third son of Rákóczi born in Transylvania in 1694. If he died in Germany in 1784, he lived 90 years. The average life expectancy in the 18th century was 35 years. Fifty was a ripe old age. *Ninety...* was forever."

This ignores the fact that the life expectancy generally quoted is the *at birth* number which is an *average* that includes all the babies that die before their first year of life as well as people that die from disease and war. The genetics of humans and rate of aging were no different in preindustrial societies than today, but people frequently died young because of untreatable diseases, accidents, and malnutrition. Many women did not survive childbirth, and individuals who reached old age were likely to succumb quickly to health problems.

It can be argued that it is better to compare life expectancies of the period after adulthood to get a better handle on life span.^[75] Even during childhood, life expectancy can take a huge jump as seen in the Roman Life Expectancy table at the University of Texas (<http://www.utexas.edu/depts/classics/documents/Life.html>) where *at birth* the life expectancy was 25 but at the age of 5 it jumped to 48. Studies like Plymouth Plantation; "Dead at Forty" (<http://web.archive.org/web/20070713083310/http://www.plymouth.org/discover/myth/dead-at-40.php>) and Life Expectancy by Age, 1850–2004 (<http://www.infoplease.com/ipa/A0005140.html>) similarly show a dramatic increase in life expectancy once adulthood was reached.

See also

- Depreciation
- Biodemography
- Calorie restriction
- Demography
- Death test
- DNA damage theory of aging
- Glasgow effect
- Healthcare inequality
- Indefinite lifespan
- Life extension
- Life table
- List of countries by life expectancy
- List of long-living organisms
- Maximum life span
- Medieval demography
- Mitohormesis
- Mortality rate
- Population Pyramid
- Senescence

Increasing life expectancy

- Strategies for Engineered Negligible Senescence (SENS)
- John Sperling
- Life extension
- Longevity
- Rejuvenation
- Public health
- Infant mortality

Notes

a. ^ ^ In standard actuarial notation, *e_x* refers to the expected future lifetime of (*x*) in whole years, while *e_x* with a circle above the *e* denotes the complete expected future lifetime of (*x*), including the fraction.

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56. [^] "Mentally ill die 25 years earlier, on average" from usatoday.com (http://www.usatoday.com/news/health/2007-05-03-mental-illness_N.htm) "comorbidity high in seriously mentally ill" from psychiatryonline.org (<http://ajp.psychiatryonline.org/article.aspx?Volume=163&page=27&journalID=13>)
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60. [^] Mitteldorf J, Pepper J (2007). "How can evolutionary theory accommodate recent empirical results on organismal senescence?". *Theory in Biosciences* 126 (1): 3–8. doi:10.1007/s12064-007-0001-0 (<http://dx.doi.org/10.1007/s12064-007-0001-0>). PMID 18087751 (<http://www.ncbi.nlm.nih.gov/pubmed/18087751>).
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62. [^] <http://physrev.physiology.org/content/87/4/1175.full>
63. [^] <http://www.discoverymedicine.com/S-J-Olschansky/2009/07/25/what-determines-longevity-metabolic-rate-or-stability>
64. [^] <http://genesdev.cshlp.org/content/19/20/2399.full>
65. [^] <http://www.immortalhumans.com/the-longevity-secret-for-tortoises-is-held-in-their-low-metabolism-rate/>
66. [^] <http://www.asiaone.com/Health/News/Story/A1Story20090613-148261.html>
67. [^] Ricklefs RE, Cadena CD (2007). "Lifespan is unrelated to investment in reproduction in populations of mammals and birds in captivity". *Ecol. Lett.* 10 (10): 867–872. doi:10.1111/j.1461-0248.2007.01085.x (<http://dx.doi.org/10.1111/j.1461-0248.2007.01085.x>). PMID 17845285 (<http://www.ncbi.nlm.nih.gov/pubmed/17845285>).
68. [^] Anderson, Robert N. (1999) Method for constructing complete annual U.S. life tables. Vital and health statistics. Series 2, Data evaluation and methods research : no. 129 (DHHS publication ; no. (PHS) 99-1329) PDF (http://www.cdc.gov/nchs/data/series/sr_02/sr02_129.pdf)
69. [^] Linda J Young; Jerry H Young (1998) *Statistical ecology : a population perspective*. Kluwer Academic Publishers. p. 310
70. [^] R. Cunningham, T. Herzog, and R. London (2008). *Models for Quantifying Risk* (Third ed.). Actex. ISBN 978-1-56698-676-2. Text " ignored (help) page 92.
71. [^] Ronald D. Lee and Lawrence Carter. 1992. "Modeling and Forecasting the Time Series of U.S. Mortality." *Journal of the American Statistical Association* 87 (September): 659–671.
72. [^] http://www.soa.org/library/journals/north-american-actuarial-journal/2000/january/nasj0001_5.pdf
73. [^] "International Human Development Indicators — UNDP" (<http://hdrstats.undp.org/indicators/6.html>). Hdrstats.undp.org. Retrieved 2010-11-04
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75. [^] Wanjek, Christopher (2002). *Bad Medicine: Misconceptions and Mistakes Revealed, from Distance Healing to Vitamin O*. Wiley. p. 71. ISBN 0-471-43499-X

Further reading

- Leonid A. Gavrilov & Natalia S. Gavrilova (1991), *The Biology of Life Span: A Quantitative Approach*, New York: Harwood Academic Publisher, ISBN 3-7186-4983-7

External links

- Charts for all countries (http://www.google.com/publicdata/explore?ds=wb-wdi&met=sp_dyn_le00_in&idim=country:CAN&dl=en&hl=en&q=average+life+expectancy+canada#met=sp_dyn_le00_in&idim=country:USA:CHN)
- Global AgeWatch has the latest internationally comparable statistics on life expectancy from 195 countries. (<http://www.helpage.org/global-agewatch/population-ageing-data/>)
- Rank Order - Life expectancy at birth (<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2102rank.html>) from the CIA's World Factbook.
- CDC year-by-year life expectancy figures for USA (<http://www.cdc.gov/nchs/fastats/lifexp.htm>) from the USA Centers for Disease Controls and Prevention, National Center for Health Statistics.
- Life expectancy in Roman times (<http://www.utexas.edu/depts/classics/documents/Life.html>) from the University of Texas.
- Animal lifespans: Animal Lifespans (<http://web.archive.org/web/20060427184844/http://www.tesarta.com/www/resources/library/lifespans.html>) from Tesarta Online (Internet Archive); The Life Span of Animals (<http://www.sonic.net/~petdoc/lifespan.htm>) from Dr Bob's All Creatures Site.

Retrieved from "http://en.wikipedia.org/w/index.php?title=Life_expectancy&oldid=551217526"

Categories: Actuarial science | Ageing | Demography | Population | Gerontology | Demographic economics | Senescence

-
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CONRAD SLOCUMB
NET SERVICE REQUIREMENTS ON
VARIOUS SENTENCING OPTIONS

SENTENCE	85%
100 years	85 years
95 years	80 years 9 months
90 years	76 years 6 months
85 years	72 years 3 months
80 years	68 years
75 years	63 years 9 months
70 years	59 years 6 months
65 years	55 years 3 months
60 years	51 years
55 years	46 years 9 months
50 years	42 years 6 months
45 years	38 years 3 months
40 years	34 years
35 years	29 years 9 months
30 years	25 years 6 months
25 years	21 years 3 months
20 years	17 years
15 years	12 years 9 months
10 years	8 years 6 months

3 8.5
1.6
51.0
7.5
50% 2.5
11.0 0

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

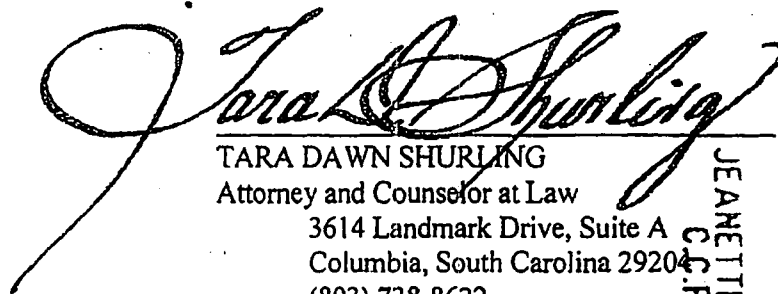
STATE OF SOUTH CAROLINA,)
)
)
 v.)
)
 CONRAD SLOCUMB, #197165)
)
)
)
)
)

CERTIFICATE OF SERVICE

1996-GS-40-11974, 11979, 11980,
 12010, 12004

The undersigned hereby certifies that a true copy of the Bench Brief in Support of a Reduced Sentence in the above matter has been served on opposing counsel this 24th day of April, 2013, by email of this pleading to opposing counsel, Katherine Luck Campbell, Assistant Solicitor for the Fifth Judicial Circuit, addressed to: campbellk@rcgov.us.

The original is to be filed with the Richland County Clerk of Court on April 25, 2013.



TARA DAWN SHURLING
 Attorney and Counselor at Law
 3614 Landmark Drive, Suite A
 Columbia, South Carolina 29204
 (803) 738-8622

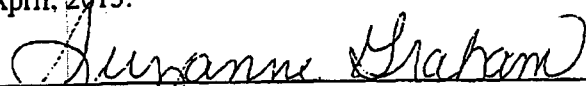
ATTORNEY FOR DEFENDANT

JEANETTE W. MCBRIDE
 C.C.P. & S.S.

2013 APR 25 AM 9:35

RICHLAND COUNTY
 FILED

SWORN TO BEFORE ME this 24th day of
 April, 2013.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/2023

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable DeAndrea G. Benjamin, Circuit Court Judge

1996-GS-40-11974, 11979, 11980, 12010, 12004

RECEIVED

MAY 02 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

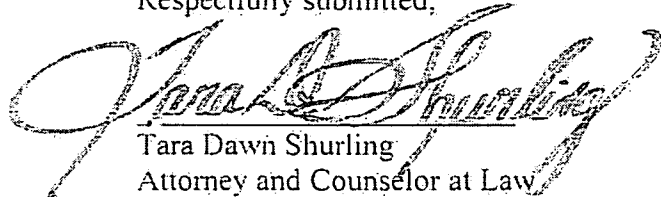
CONRAD LAMONT SLOCUMB,

APPELLANT.

NOTICE OF APPEAL

NOW COMES the Appellant in the above-captioned matter, acting by and through his undersigned counsel, giving notice of his appeal from the sentence imposed by the Court on April 25, 2013 for the offense of First Degree Burglary, previous sentence on said charge having been vacated by Order of the U. S. District Court pursuant to *Graham v. Florida*, 560 U. S. ___, 130 S. Ct. 2011 (2010). The Appellant also gives notice of his appeal from the denial of his motion to vacate the sentences imposed on his remaining charges and his request for re-sentencing on those judgments. Said motion was denied at the April 25, 2013 sentencing proceeding.

Respectfully submitted,


Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 30th day of April, 2013.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable DeAndrea G. Benjamin, Circuit Court Judge

1996-GS-40-11974, 11979, 11980, 12010, 12004

RECEIVED

MAY 02 2013

SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

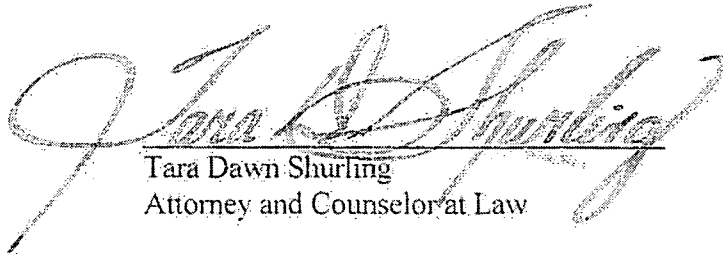
v.

CONRAD LAMONT SLOCUMB,

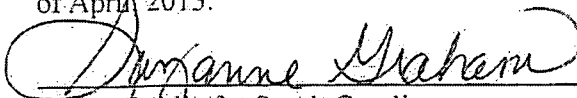
APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Notice of Appeal has been served upon opposing counsel, Katherine Luck Campbell, Assistant Deputy Solicitor, Richland County Solicitor's Office, by U. S. Mail on this the 30th day of April, 2013.


Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE me this 30th day
of April 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/23

WITNESSES

Inv. Brian Metz, RCSD

Don B. Linder

ARREST WARRANT NO. E473730

ACTION OF GRAND JURY

TRUE BILL

W. A. Linder
Foreman of Grand Jury

VERDICT

W. A. Linder
Foreman of Petit Jury*11/11/96*
Date

DOCKET NO.

96-65-40-11974

The State of South Carolina,

County of

RICHLAND

COURT OF GENERAL SESSIONS

#92

MARCH

TERM

1996

THE STATE

vs.

CONRAD LAMONT SLOCUM

Indictment for Burglary

(Dwelling)

FIRST DEGREE

S. C. Code Section 16-11-311(B) Felony

79

FORM 1 (12/87)

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

INDICTMENT FOR BURGLARY
 (DWELLING)
 FIRST DEGREE

At a Court of General Sessions, convened on March 20, 1996
 the Grand Jurors of RICHLAND County present upon their oath:

COUNT ONE — BURGLARY IN THE FIRST DEGREE

(DWELLING)

That CONRAD LAMONT SLOCUMB
 did in Richland County on or about March 6, 1996
 willfully and unlawfully enter the dwelling of Vicky Chapman
 without consent and with the intent to commit a crime therein and the defendant when, in effecting
entry or while in the dwelling or in immediate flight therefrom, caused physical
injury to Vicky Chapman, who was not a participant in the crime; or used or
threatened the use of a dangerous instrument, to wit: a handgun.

COUNT TWO — BURGLARY IN THE SECOND DEGREE

(DWELLING)

That _____
 did in _____ County on or about _____
 willfully and unlawfully enter the dwelling of _____
 without consent and with the intent to commit a crime therein.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Whitney B. Reese
 SOLICITOR

WITNESSES

③ Inv. Brian Metz, RCSD

Brian Metz

ARREST WARRANT NO. E473732

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreman of Grand Jury

VERDICT

[Signature]

Foreman of Petit Jury

11/9/91

Date

DOCKET NO. 96-65 40-1980

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

092 MARCH TERM 1996

THE STATE

vs.

CONRAD LAMONT SLOCUMB

Indictment for
KIDNAPPING

S. C. Code Section 16-3-910 Class A-Felony
946

FORM 12 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)INDICTMENT FOR
KIDNAPPINGAt a Court of General Sessions, convened on March 20, 1996,
the Grand Jurors of RICHLAND County present upon their oath:That CONRAD LAMONT SLOCUMB did in Richland County on or about March 6, 1996,
unlawfully seize and or confine Vicky Chapman by any means whatsoever without
authority of law.Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.Warren B. Giese
SOLICITOR

WITNESSES

③ Inv. Brian Metz, RCSD

Brian Metz

ARREST WARRANT NO. E47373-1

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

[Signature]
Foreman of Petit Jury

Date

DOCKET NO.

96-65-40-11989

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#92 MARCH TERM 1996

THE STATE

VS.

CONRAD LAMONT SLOCUMB

**Indictment for Criminal
Sexual Conduct First Degree**

S.C. Code Section 16-3-652 Class A-Felony
160

FORM 20 (12/87)

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

INDICTMENT FOR CRIMINAL
 SEXUAL CONDUCT FIRST DEGREE

At a Court of General Sessions, convened on March 20, 1996
 the Grand Jurors of RICHLAND County present upon their oath

COUNT ONE -- CRIMINAL SEXUAL CONDUCT
 FIRST DEGREE

That CONRAD TAMONT SLOCUMB did in
Richland County on or about March 6, 1996, engage
 in sexual battery, to wit: sexual intercourse

upon and with the body of Vicky Chapman without
 his/her consent. Such sexual battery was accomplished by the use of force of a high and aggravated
 nature, to wit: threatened the use of a deadly weapon and/or the victim Vicky
Chapman was also the victim of forcible confinement, kidnapping, robbery,
burglary or a similar offense or act

Against the peace and dignity of the State, and contrary to the statute in such case made and
 provided.

Walter B. Lyman
 SOLICITOR

WITNESSES

Inv. Brian Metz, R.C.S.D.

B. Metz

ARREST WARRANT NO.

DP96141

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

[Signature]
Foreman of Petit Jury

11/19/96
Date

DOCKET NO. 96-CS-40-12004

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

92. MARCH TERM 1996

THE STATE

vs.

CONRAD LAMONT SLOCUMB

**Indictment for Armed
Robbery and Robbery**

S.C. Code Section 16-11-330 (A)
CLASS: A Felony

(135)

FORM 20 (1/91)

STATE OF SOUTH CAROLINA)

INDICTMENT FOR ARMED ROBBERY

COUNTY OF RICHLAND)~~ARMED ROBBERY~~

At a Court of General Sessions, convened on March 20, 1996
 the Grand Jurors of Richland County present upon their oath:

COUNT ONE — ARMED ROBBERY

That CONRAD LAMONT SLOCUMB did in
Richland County on or about March 6, 1996 while armed with a deadly
 weapon, to wit: handgun
 feloniously take from the person or presence of Vicky Chapman by means of
 force or intimidation goods or monies of Vicky Chapman such goods or monies being
 described as follows: jewelry and/or clothing and/or U.S. Currency and/or cash
 with intent to deprive the owner permanently of such property.

COUNT TWO — ROBBERY

That _____ did in _____
 County on or about _____ feloniously take from the
 person or presence of _____ by means of
 force or intimidation goods or monies of _____
 such goods or monies being described as follows: _____
 with intent to deprive the owner permanently of such property.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

Warren B. Reese
 SOLICITOR

DOCKET NO. 76 GS-40-12010

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#92 MARCH TERM 1996

THE STATE

vs.

CONRAD LAMONT SLOCUMB

WITNESSES

Inv. Joel Branham DJJ

Joel Branham

ARREST WARRANT NO.

DP 96142

ACTION OF GRAND JURY

TRUE BILL

Alfred S. [Signature]
Foreman of Grand Jury

VERDICT

James I. [Signature]
Foreman of Petit Jury

11/19/96

Date

Indictment for Escape

(IN STATE)

S. C. code Section 24-13-40(B)(D) Class F-Felony
159

FORM 26 (12/81)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT FOR ESCAPE
(IN STATE)

At a Court of General Sessions, convened on March 20, 1996
The Grand Jurors of RICHLAND County present upon their oath:

COUNT ONE -- ESCAPE

That CONRAD LAMONT SLOCUMB
did in Richland County on or about March 6, 1996
unlawfully escape or attempt to escape from lawful confinement or custody, to wit: Department of Juvenile Justice

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

William B. Giese
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Conrad Lamont Slocumb

AKA

Race: BSex: M

DOB

Age: 10

SSN

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

96-GS-40-11974A/W#: E473730Date of Offense: March 6, 1996S.C. Code § : 16-11-311(B)CDR Code #: 0101719

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary 1st Degreein violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

W. Burg
Solicitor

Defendant

Tracy Slocumb
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/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 _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____ months/years and, subject to South Carolina Department of Probation, Parole, and Pardon Services standard conditions of probation, which are incorporated by reference:

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCPPPS

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100% _____ \$

§ 14-1-211 - Surcharge _____ \$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI) _____ \$

County (3%) _____ \$

TOTAL _____ \$

Clerk of Court/Deputy Clerk Barbara A. ScottCourt Reporter Williams

Pink - Clerk

Green - Corrections

Candy - Probation

Pink - Defendant

SCCA/217 (1/99)

PRESIDING JUDGE JudgeJudge Code: 16-1-15Sentence Date: 3-16-00

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Conrad Lamont Stoumb

AKA

Race: BSex: M

DOB

Age: 20

SSN

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

96-GS-40-11980A/W#: E473732Date of Offense: March 6, 1996S.C. Code §: 16-3-910CDR Code #: 0191418

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Kidnappingin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0191418☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

W. B. [Signature]
Solicitor

Defendant

Travis [Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/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 _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3-16-00

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100% _____ \$

§ 14-1-211 - Surcharge _____ \$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI) _____ \$

County (5%) _____ \$

TOTAL _____ \$

Clerk of Court/Deputy Clerk Charla [Signature]Court Reporter: Williams

White - Clerk

Green - Corrections

Yellow - Probation

Pink - Defendant

SCCA217(1/99)

PRESIDING JUDGE [Signature]Judge Code: 16-15-15Sentence Date: 3-16-00

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Conrad Lamont Sloombs

AKA:

Race: BSex: M

DOB: _____

Age: 20

SSN: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#96 -GS- 40 - 11979A/W#: E473731Date of Offense: March 6, 1996S.C. Code § : 16-3-652CDR Code #: 011610

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Criminal Sexual Conduct (1st Degree)in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 011610☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

W. R. [Signature]

Solicitor

Defendant

Tommy [Signature]

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/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 _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3-16-00

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines: _____ \$

§ 14-1-206 - Assessments 100%: _____ \$

§ 14-1-211 - Surcharge: _____ \$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI): _____ \$

County (3%): _____ \$

TOTAL: _____ \$

Clerk of Court/Deputy Clerk [Signature]Court Reporter: [Signature]

White - Clerk

Green - Correctional

Cyan - Probation

Pink - 1st Assistant

LCC-217 (1/99)

PRESIDING JUDGE [Signature]Judge Code: 00515Sentence Date: 3-16-00

036 0-181

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE VS.

CONRAD LAMONT SLOCUMB

AKA:

Race:

B

Sex:

M

DOB:

Age:

20

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#96 -GS- 40 - 12004AAW#: E473730Date of Offense: MAR 6 1996S.C. Code § : 16-11-330 (A)CDR Code #: 01113107

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes no / the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Robbery (Strong Arm)in violation of § 16-11-330 (A) of the S.C. Code of Laws, bearing CDR Code # 01113107☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

TIES:

W. Barry
Solicitor

Defendant

Tommy E. Smith
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/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 days/months/years and/or payment of \$, plus costs and assessments as applicable*, the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for days/months jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3-16-00

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ OrderedTotal \$ plus 20% fee \$

Payment Terms:

☒ set by SCDPPPSRecipient: *Fine: \$§ 14-1-206 - Assessments 100% \$§ 14-1-211 - Surcharge \$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DLI) \$County (3%) \$TOTAL \$Clerk of Court/Deputy Clerk Barbara A. HoltCourt Reporter: WilliamsPTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps 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 FundOther: PRESIDING JUDGE Judge Code: 005-15Sentence Date: 3-16-00

White - Clerk

Green - Corrections

Cyan - Probation

Pink - Defendant

SCCA/217(12)

STATE OF SOUTH CAROLINA

COUNTY OF: Richland

STATE

VS.

Conrad Lamont Stewart

AKA:

Race: BSex: MDOB: 6Age: 20

SSN:

DI#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:96 -GS- 40 - 12010A/V# DIP96142Date of Offense: March 6, 1996S.C. Code §: 24-13-410(B)(D)CDR Code #: 011619

SENTENCE

I PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Escape (in state)in violation of § 24-13-410(B)(D) of the S.C. Code of Laws, bearing CDR Code # 011619☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

W. Berry
Judge

Defendant

T. Berry
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/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 _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3-16-00

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: _____ \$

§ 14-1-206 - Assessments 100% _____ \$

§ 14-1-211 - Surcharge _____ \$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI) _____ \$

County (3%) _____ \$

TOTAL _____ \$

Clerk of Court/Deputy Clerk: B. B. ScottCourt Reporter: Williams

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

PRESIDING JUDGE J. J. ...Judge Code: 01515Sentence Date: 3-16-00

Judge: Clerk

Judge: Corrections

Judge: Probation

Print: Defendant

SCCA(17) (1/99)

Resentencing

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

AKA:

Race:

DOB:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: BURGLARYin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 7, 9☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/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 _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCT ☐ set by

Recipient:

*Fine:

\$14-1-206 ()	payments 107.5%)	\$
\$14-1-211 ()	Conv. Surcharge)	\$100
\$14-1-211 ()	(DUI Surcharge)	\$100
\$56-5-2 ()	Assessment)	\$12
\$35-15 ()	Del/Prob)	\$500
\$73-3, 1C ()	(Law Enforce. Funding)	\$25
\$33-7, 1B TP ()	Drug Court Surcharge)	\$100
\$50-21-114(BU)	Breath Test Fee)	\$50
\$56-5-2942(J)	(Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)		\$
TOTAL		\$

Barbara A. Scott
Clerk of Court/ Deputy Clerk
Court Reporter: D. Helms

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fines may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appoint 1 PD or appoint 1 other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code

Denial Date:

CERTIFIED COPY
OF ORIGINAL FILED

C.C.P. & G.S.

RICHLAND COUNTY
SOUTH CAROLINA

08 SEP 2010

SCCA/217 (7/2003)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

Resentencing

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLANDSTATE CONRAD VS. SLOCUMB

AKA:

Race:

C:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

AW#: 910

Date of Offense:

S.C. Code §:

CDR Code #:

INDICTMENT/CASE#:

CS- 4064-131323/16/4610-13-9100, 0, 9, 5☐ CASE RESTORED

SENTENCE

☐ PLCA ☒ TRAILIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: KIDNAPPINGin violation of 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 9, 5☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
SolicitorConrad C. Slocumb
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/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 _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years 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: 2/18/04☒ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee. \$ _____

Payment Terms:

☐ by SCDPPS

Recipient:

*Fine:

\$14-1-203 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$58-5-2935 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforcement Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$58-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott
Clerk of Court/Deputy ClerkCourt Reporter: D. Helms

PTUP

days/hours Public Service Employment

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:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2/15/15Sentence Date: 2/18/04

CERTIFIED TRUE COPY

OF ORIGINAL FILED,

[Signature]
C.C.C.P.&G.S.

09 SEP 2010

SCCA/217 (7/2003)

White - Clerk

Green - Corrections

Cyan - Probation

Pink - Defendant

RICHLAND COUNTY

SOUTH CAROLINA

Resentencing

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND
STATE CONRAD VS SLOCUMB96 INDICTMENT/CASE#: 11979
-GS- 46
AW#: E4T3731
Date of Offense: 3/6/96
S.C. Code §: 16-03-0652
CDR Code #: 0 1 1 6 1 0AKA: _____
Race: P Sex: M Age: 24
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL#: _____ SID#: _____☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: CSin violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 6 1 0
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] Solicitor Conrad L. Slocumb Defendant [Signature] Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/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 _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years 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: 2/18/04
☒ 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.☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

SPECIAL CONDITIONS:

PTUP

_____ days/hours Public Service Employment

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: _____Recipient: _____
*Fine: _____
§14-1-206 (Assessments 107.5%) _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 _____
§14-1-211(A)(2) (DUI Surcharge) \$100 _____
§58-5-2995 (DUI Assessment) \$12 _____
§35-13 (Public Def/Prob) \$500 _____
§73-3, 1B TP (Law Enforce. Funding) \$25 _____
§33-7, 1B TP (Drug Court Surcharge) \$100 _____
§50-21-114 (BUI Breath Test Fee) \$30 _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea. _____
3% to County (if paid in installments) _____
TOTAL _____☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.Barbara A. Scott
Clerk of Court/Deputy Clerk
Court Reporter: D. HaysCERTIFIED TRUE AND CORRECT
JUDGE: [Signature]
OF ORIGINAL DATE: 0 1 5 15
Sentence Date: 2/18/04S.C.C.R. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

SCCA/217 (7/2005)

09 SEP 2010

Resentencing

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

RICHLAND

AKA:

Race:

DOB:

Address:

City, State, Zip

DL#

SID#

VS

CONRAD SCOCUMB

Sex:

SS#:

Age:

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

INDICTMENT/CASE#:

-GS-

DP 96141

3/6/96

16-11-0336 (A)

011319

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

ARMED ROBBERY

in violation of § 16-11-0336 of the S.C. Code of Laws, bearing CDR Code #

0113190137s

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/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 _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years 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: 2/18/04

☒ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

PTUP

_____ days/hours Public Service Employment

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:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

2/18/04

CERTIFIED TRUE COPY

OF ORIGINAL FILED,

G.C.C.F.S.

RICHLAND COUNTY

SOUTH CAROLINA

While - Clerk

Greer, Corrections

Canary - Probation

RICHLAND COUNTY

SOUTH CAROLINA

SCCA/217 (7/2003)

Rentencing

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

RICHLAND
VS
CONRAD SLOCUMB

96

INDICTMENT/CASE# 12010

AKA:

Race:

DOB:

Address:

City, State, Zip

DL#

SS#:

SID#

Age: 24

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

DP 96142

5/6/96

24-13-0410

2151217

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: ESCAPEIn violation of § 24-13-0410 of the S.C. Code of Laws, bearing CDR Code # 2151217☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/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 days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years 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: 2/18/04☒ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

PTUP

days/hours, Public Service Employment

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 FundOther:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott
Clerk of Court/ Deputy Clerk

Court Reporter: D. Helms

PRESIDING JUDGE

Judge Code:

CERTIFIED TRUE COPY

OF ORIGINAL FILED,

Janetta W. B. B. B.
C.C.C.P.S.S.

09 SEP 2010

White - Clerk

Green - Corrections

Cyan - Probation

RICHLAND COUNTY
SOUTH CAROLINA

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	96-GS-40-11974 Burglary 1 st Degree
	)	96-GS-40-11979 CSC 1 st Degree
	)	96-GS-40-11980 Kidnapping
	)	96-GS-40-12004 Armed Robbery
	)	96-GS-40-12010 Escape
State of South Carolina,	)	
	)	
vs.	)	
	)	AMENDED SENTENCING ORDER
Conrad Slocumb,	)	
	)	
Defendant.	)	

At a re-sentencing hearing held in the above cases on February 18, 2004, the defendant was sentenced to life on the Burglary 1st degree, thirty (30) years on the CSC 1st degree and kidnapping, fifteen (15) years on the Robbery, and five (5) years on the Escape.

As indicated at the hearing, all of these sentences were to run consecutively. The sentencing sheets on the kidnapping charge and the escape charge indicate that they are to run consecutively.

However, the court inadvertently checked both concurrent and consecutive on the CSC 1st degree charge and the Robbery charge. After reviewing my notes as well as the transcript, it is clear that this Court intended that the sentences on the CSC 1st degree charge and the Robbery charge were to run consecutively. IT IS THEREFORE ORDERED that those sentences run consecutively.

Additionally, in reviewing the sentencing sheets in this case, the defendant was charged in Indictment 96-GS-40-12004 with Armed Robbery, CDR Code 0139.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Grand Jury Clerk
C.O.C.R.A.G.S.

09 SEP 2010

RICHLAND COUNTY
SOUTH CAROLINA

However, he was convicted of the lesser offense of Common Law Robbery, CDR Code

0137. To that extent the sentencing sheet on that indictment is amended.

AND IT IS SO ORDERED.


James W. Johnson, Jr.
Presiding Judge
Fifth Judicial Circuit

Laurens, South Carolina
April 30, 2004

CERTIFIED TRUE COPY
OF ORIGINAL FILED
James W. Johnson, Jr.
C.D.C. F.C.C.S.
RICHLAND COUNTY
SOUTH CAROLINA

09 SEP 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

JNTY OF

Richland

ATE

VS.

Conrad Slocumb

KA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Burglary 1st Degree

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)☐ §17-25-45The 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:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 50 days/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 _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years 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.☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP

_____ days/hours Public Service Employment

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: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

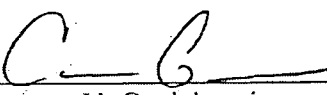
Court Reporter:

SCCA/217 (03/2011)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 28th, 2014



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CONRAD LAMONT SLOCUMB,

APPELLANT

APPELLATE CASE NO. 2013-000933

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Appellant's aggregate one hundred and thirty (130) year sentence for nonhomicide offenses committed when he was a juvenile is the functional equivalent of a life sentence without parole because it does not afford him any "meaningful opportunity to obtain release" within his lifetime as required under the United States Supreme Court's decision in Graham v. Florida, 130 S. Ct. 2011 (2010). Therefore, Appellant is entitled to re-sentencing consistent with the Eighth Amendment and the principles set forth in Graham.

STATEMENT OF THE CASE

On March 20, 1996, Appellant Conrad Lamont Slocumb was indicted by the Richland County Grand Jury for (1) first degree burglary; (2) criminal sexual conduct, first degree; (3) kidnapping; (4) escape; and (5) armed robbery. R. 63 - 71. Appellant was sixteen (16) years, eight (8) months, and twenty-four (24) days of age upon the commission of these offenses. R. 30 [Motion for Re-sentencing.]

In November 1996, Appellant was tried and convicted by a jury on the above-referenced counts. R. 4, ll. 1-4. At Appellant's sentencing hearing, the Honorable James W. Johnson, Jr. sentenced him to life without the possibility of parole for the charges of kidnapping, criminal sexual conduct, first degree, and first degree burglary. This sentence was predicated upon the finding that Appellant had a prior 1993 conviction for criminal sexual conduct, first degree, and therefore, was subject to a sentence of life without parole on these offenses which would constitute second "most serious offenses" pursuant to S.C. CODE ANN. § 17-25-45(A)(1)(a). Appellant also received a fifteen (15) year, consecutive sentence for robbery and a five (5) year, consecutive sentence for escape. R. 3, l. 17 - 4, l. 16.

Appellant appealed his convictions which were affirmed by this Court. State v. Slocumb, 336 S.C. 619, 521 S.E.2d 507 (Ct. App. 1999). While his direct appeal was pending, Appellant was pursuing a post-conviction relief action in Orangeburg County, challenging his prior 1993 plea to criminal sexual conduct. On November 8, 1999, the Supreme Court of South Carolina granted relief and vacated his 1993 plea. Slocumb v. State, 337 S.C. 46, 522 S.E.2d 809 (1999). That plea and conviction was the basis for the life sentence received by Appellant under South Carolina's recidivist statute, § 17-25-45.

Because that plea was vacated, Appellant was brought back before the trial court for a re-sentencing hearing on March 16, 2000. At that proceeding, Appellant was sentenced by Judge Johnson to life imprisonment for burglary; thirty (30) years for kidnapping; thirty (30) years for criminal sexual conduct; fifteen (15) years for robbery; and five (5) years for escape. All sentences were ordered to be served consecutively. R. 72 - 81 [Sentencing sheets]; R. 4, l. 17 - 5, l. 4.

This Court vacated these sentences imposed on March 16, 2000 for lack of jurisdiction because there were still matters pending on Appellant's direct appeal. R. 5, ll. 5-9. On February 18, 2004, Judge Johnson re-sentenced Appellant, again to life for first degree burglary; thirty (30) years for kidnapping; thirty (30) years for criminal sexual conduct; fifteen (15) years for robbery; and five (5) years for escape, all to be served consecutively. R. 5, ll. 10-15.

On January 26, 2011, Appellant filed a Motion for Re-sentencing and requested the court to re-sentence Appellant in accordance with the United States Supreme Court's decision in Graham v. Florida, 130 S. Ct. 2011 (2010) which prohibits the imposition of life without parole sentences on juvenile offenders who did not commit homicide. R. 30 [Motion.]

At the time of that filing, Appellant also had pending a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. R. 44 [Magistrate's Report and Recommendation]; R. 5, ll. 16-21. On June 2, 2011, the Honorable Henry M. Herlong, Jr. issued an Opinion and Order adopting the Report and Recommendation of U.S. Magistrate Judge Bristow Marchant, ordering Appellant's habeas petition be granted on the issue of whether Appellant was entitled to re-

sentencing on his first degree burglary conviction under the Graham decision. Judge Herlong ordered that Appellant be returned to the state sentencing court for re-sentencing consistent with Graham. R. 48, 44 [Opinion and Order; Report and Recommendation]; R. 5, ll. 16-23.

Appellant's re-sentencing hearing was held before the Honorable DeAndrea G. Benjamin on April 25, 2013. R. 1-28. Tara Dawn Shurling represented Appellant, and Assistant Solicitors K. Luck Campbell and Joanna A. McDuffie represented the State. R. 1.

At the hearing, Appellant argued that he should not only be re-sentenced on the burglary conviction for which he was sentenced to life imprisonment, but on all counts because his total term-of-years sentence was the functional equivalent of a life sentence and thus impermissible under the letter and spirit of the United States Supreme Court's Graham decision. R. 33 [Bench Brief in Support of a Reduced Sentence]; R. 6, l. 12 – 12, l. 4.

At the conclusion of the hearing, Judge Benjamin re-sentenced Appellant to fifty (50) years imprisonment on the first degree burglary conviction and left the sentences on the remaining convictions intact, with all sentences to run consecutively. R. 28, ll. 2-10; R. 84 [2013 Sentence Sheet.]

Appellant timely filed and served his Notice of Appeal on April 30, 2013.

ARGUMENT

Appellant's aggregate one hundred and thirty (130) year sentence for nonhomicide offenses committed when he was a juvenile is the functional equivalent of a life sentence without parole because it does not afford him any "meaningful opportunity to obtain release" within his lifetime as required under the United States Supreme Court's decision in Graham v. Florida, 130 S. Ct. 2011 (2010). Therefore, Appellant is entitled to re-sentencing consistent with the Eighth Amendment and the principles set forth in Graham.

Appellant's aggregate sentence for offenses he committed as a juvenile equals one hundred and thirty (130) years. Appellant is not eligible for parole, and with respect to the sentences for burglary, kidnapping, and criminal sexual conduct, he must serve at least 85% of those sentences before even being eligible for any sort of early release. See S.C. CODE ANN. § 24-13-100; § 24-13-150. Therefore, at a minimum he will have to serve ninety-three (93) years on those three offenses. With respect to the armed robbery and escape convictions, taking a very conservative approach and assuming that he only has to serve 50% of those sentences adds an additional ten years to the minimum ninety-three (93) year sentence he has to serve for a total of one hundred and three (103) years. Having begun his sentence at age sixteen, Appellant will be at least one hundred and nineteen (119) years old and possibly older before he is eligible for any sort of release. With this sentence, there is no question that Appellant will die while incarcerated.

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment. Graham v. Florida, 130 S. Ct. 2011, 2021 (2010). "To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to 'the evolving standards of decency that mark the progress of a maturing society.'" Id. (quoting Estelle v. Gamble, 429 U.S. 97, 102 (1976)). "Embodied in the Constitution's ban on cruel and unusual punishment is the 'precept of justice that punishment for the crime should be graduated and proportioned to [the] offense.'" Graham, 130 S. Ct. at 2021 (quoting Weems v. United States, 217 U.S. 349, 367 (1910)).

The Supreme Court's cases addressing the proportionality of sentences fall within two general classifications: the first is concerned with the particular circumstances of the case and whether the defendant's sentence for a term of years is grossly disproportionate given the particular offense. Graham, 130 S. Ct. at 2021-22; Harmelin v. Michigan, 501 U.S. 957, 1005 (1991). The second classification of cases is concerned with categorical rules as applied to either groups of offenses or groups of offenders. Graham, 130 S. Ct. at 2022. For example, Supreme Court categorical rulings related to categories of offenses prohibit the imposition of the death penalty for nonhomicide crimes against individuals. Id. (citing Kennedy v. Louisiana, 554 U.S. 407 (2008)). Categorical rulings related to categories of offenders prior to Graham prohibited the death penalty for defendants who committed their crimes before the age of eighteen, Roper v. Simmons, 543 U.S. 551 (2005), or whose intellectual functioning is in a low range, Atkins v. Virginia, 536 U.S. 304 (2002).

In the cases adopting categorical proportionality rules, the Court first considers "objective indicia of society's standards, as expressed in legislative enactments and state practice" to determine whether there is a national consensus against the sentencing practice at issue. Roper, 543 U.S. at 563. In this phase of the analysis, the Court has regularly relied on social science data and statistics to discern "society's evolving standards of decency." Id. at 560-77. Guided by "the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose," the Court then determines whether the punishment in question violates the Eighth Amendment of the Constitution. Graham, 130 S. Ct. at 2022 (internal citations omitted).

Under this analytical framework, the Supreme Court's Eighth Amendment jurisprudence has evolved toward more protection for the mentally disabled and juvenile offenders. For example,

in 1989, the Court held in Penry v. Lynaugh, 492 U.S. 302 (1989) that the Eighth Amendment did not mandate a categorical exemption from the death penalty for the mentally disabled. In 2002, the Court came to the opposite conclusion in Atkins. In 1989, the Court also held in Stanford v. Kentucky, 492 U.S. 361 (1989) that it was not a violation of the Eighth Amendment to execute a juvenile offender who was older than fifteen when he or she committed the crime. In 2005, the Court reversed course in Roper where it held that it is unconstitutional to impose the death penalty on offenders who were under the age of eighteen at the time of their offense. See People v. Rainer, 2013 WL 1490107, No. 10CA2414, at *7 (Colo. Ct. App. May 9, 2013) (observing evolution of Supreme Court Eighth Amendment jurisprudence).

In Roper, the Supreme Court based its categorical prohibition against the death penalty for juveniles in large part of social science research indicating that youths have a lessened culpability and are less deserving of the most severe punishments. 543 U.S. at 569-75. The Court found that juvenile offenders are fundamentally different from adults for purposes of sentencing for three reasons: (1) they have “[a] lack of maturity and an underdeveloped sense of responsibility;” (2) they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;” and (3) their characters are “not as well formed.” Id. at 569-70 (internal citations omitted). Because of these particular characteristics, the Court noted “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” Id. at 573. Therefore, “juvenile offenders cannot with reliability be classified among the worst offenders.” Graham, 130 S. Ct. at 2026 (internal citations omitted). While a juvenile is not absolved of responsibility for his actions, his transgressions are “not as morally reprehensible as that of an adult.” Id. (internal citations omitted).

Graham is the first Eighth Amendment case where the Supreme Court considered a categorical challenge to a term of years sentence as opposed to the death penalty. In Graham, the Court used the same categorical proportionality analysis employed in Roper, extending it beyond the death penalty to sentences of life without parole for juveniles who have committed nonhomicide offenses.

In Graham, sixteen-year old Terrance Graham was charged with armed burglary and attempted armed robbery of a restaurant in Florida. Graham pled guilty to both charges and was convicted pursuant to a plea agreement. Under the agreement, the trial court withheld adjudication of guilt as to both charges and sentenced Graham to concurrent three-year terms of probation with jail time. 130 S. Ct. at 2018.

Less than six months later, when Graham was seventeen years old, Graham was arrested again after allegedly committing a home invasion and avoiding arrest. His probation officer filed an affidavit stating that Graham had violated the terms of his probation by committing crimes, possessing a firearm, and associating with persons engaging in criminal activity. About a year later, Graham appeared back before the trial court where he maintained he had no involvement in the home invasion. Graham, however, admitting to violating his probation by fleeing arrest, even though the trial court emphasized that the admission could expose him to a life sentence based on his previous charges. Id. at 2018-19.

The trial court ruled that Graham had violated his probation, and at the sentencing hearing, the trial court had the statutory option of sentencing Graham to between five years to life. The trial court sentenced Graham to the maximum sentence of life, stating, “We can’t do anything to deter you” Id. at 2019-20. Florida had abolished its parole system; accordingly, the life sentence gave Graham no possibility of release unless he was granted executive clemency. Id.

Graham challenged his sentence under the Eighth Amendment. The First District Court of Appeal for Florida affirmed Graham's sentence, holding it was not grossly disproportionate to his crimes and that he was incapable of rehabilitation. The Florida Supreme Court denied review, and the United States Supreme Court granted certiorari and reversed. Id. The Supreme Court held that "for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole." Id. at 2030. The Court expounded:

This clear line is necessary to prevent the possibility that life without parole sentences will be imposed on juvenile nonhomicide offenders who are not sufficiently culpable to merit that punishment. Because the age of 18 is the point where society draws the line for many purposes between childhood and adulthood, those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime.

A State is not required to guarantee the eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham *some meaningful opportunity to obtain release* based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. *It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.*

Id. (emphasis added) (internal citations omitted).

In pronouncing this categorical rule, the Court in Graham adopted its analysis in Roper that juvenile offenders are fundamentally different from adults for sentencing purposes, noting "[n]o recent data provide reason to reconsider the Court's observations in Roper about the nature of juveniles":

[De]velopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. Juveniles

are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults. It remains true that from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.

Id. at 2026-27 (internal citations omitted).

The Graham court underscored the severity of a life without parole sentence for juvenile offenders. A life without parole sentence is the "second most severe penalty permitted by law." Id. at 2027 (internal citations omitted). For a juvenile offender, a life without parole sentence "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit [of the convict], he will remain in prison for the rest of his days." Id. (quoting Naovarath v. State, 779 P.2d 944 (Nev. 1989)).

The Graham court further observed that a juvenile offender sentenced to life without parole will on average serve more years and a greater percentage of his life in prison than an adult offender. "A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." Graham, 130 S. Ct. at 2028.

Finally, the Graham court concluded that its new categorical rule "gives all juvenile nonhomicide offenders a chance to demonstrate maturity and reform:

The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. . . . Life in prison without the possibility of parole gives no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. A young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual. . . . A categorical rule against life without parole for juvenile nonhomicide offenders avoids the perverse consequences in which the lack of maturity that led to an offender's crime is reinforced by the prison term.

Id. at 2032-33.

Since Graham, the Supreme Court has continued to provide more constitutional protections for juvenile offenders. In Miller v. Alabama, 132 S. Ct. 2455 (2012), the Court extended the reasoning of Roper and Graham and held that a mandatory sentence of life without parole for juvenile homicide offenders also violates the Eighth Amendment's prohibition on cruel and unusual punishment.

The issue that now arises in this case is whether a lengthy term-of-years sentence for a juvenile that is the functional equivalent of a life without parole sentence is also prohibited under Graham and the Eighth Amendment. A number of cases nationwide have considered this issue of whether the holding in Graham should be extended to prohibit term-of-years sentences that are materially indistinguishable from life without parole.

In several cases, courts have read Graham narrowly and have rejected the argument that Graham applies to lengthy term-of-years sentences that are the functional equivalent of life without parole. See State v. Kasic, 265 P.3d 410, 414 (Ariz. Ct. App. 2011) (concluding Graham only applies to those juvenile offenders sentenced to life without parole for a nonhomicide offense); Henry v. State, 82 So.3d 1084 (Fla. Dist. Ct. App. 2012); Adams v. State, 707 S.E.2d 359 (Ga. 2011).

In a number of cases, however, courts have explicitly or implicitly held that the reasoning in Graham should be extended to apply to term-of-years sentences that result in a de facto life without parole sentence. In these well-reasoned cases, courts have relied on Graham to reverse a juvenile offender's term-of-years sentence on the ground that it was the functional equivalent of life without parole, and thus unconstitutional under the Eighth Amendment. In People v. Caballero, 282 P.3d 291 (Cal. 2012), the Supreme Court of California held that term-of-years sentences that extend beyond a juvenile's life expectancy and are imposed for nonhomicide

offenses, violate the Eighth Amendment pursuant to Graham. In Caballero, the Supreme Court of California reversed an intermediate court, ruling as follows:

Consistent with the high court's holding in Graham... we conclude that sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment. Although proper authorities may later determine that youths should remain incarcerated for their natural lives, the state may not deprive them at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future.

282 P.3d at 295. Consistent with Graham, the court further directed that, when sentencing nonhomicide juvenile offenders, California courts must consider the defendant's age and mental development in order to impose an appropriate time when the juvenile will be able to seek parole from the parole board. Id.

In its reasoning, Caballero drew on People v. Mendez, 114 Cal.Rptr.3d 870, 886 (Ct. App. 2010), a previous California appellate case in which the court held that a sentence of eighty-four (84) years to life for a nonhomicide child offender constituted cruel and unusual punishment because it was the equivalent of life without parole. The court in Mendez acknowledged that Graham was not expressly controlling because Mendez's sentence was "not technically" a life without parole sentence, but stated, "We are nevertheless guided by the principles set forth in Graham" Id. at 883. Noting that the Court in Graham "did not define what constitutes a 'meaningful' opportunity for parole," the Mendez court concluded that "common sense dictates that a juvenile who is sentenced at the age of 18 and who is not eligible for parole until after he is expected to die does not have a meaningful, or as the Court put it, 'realistic,' opportunity of release." Id.

In People v. Nunez, 125 Cal.Rptr.3d 616, 624 (Ct. App. 2011), the court was particularly

concerned with “the failure of any penological theory to rationally justify ‘the severity of life without parole sentences,’ ” (quoting Graham, 130 S. Ct. at 2030). It concluded:

A term of years effectively denying any possibility of parole is not less severe than a LWOP [life without parole] term. Removing the “LWOP” designation does not confer any greater penological justification. Nor does tinkering with the label somehow increase a juvenile's culpability. Finding a determinate sentence exceeding a juvenile's life expectancy constitutional because it is not labeled an LWOP sentence is Orwellian. Simply put, a distinction based on changing a label, as the trial court did, is arbitrary and baseless.

... Absent any penological rationale, the sentence the trial court imposed precluding any possibility of parole for 175 years is unconstitutional under the Eighth Amendment.

Id.

Courts from other jurisdictions have also found that the Graham principles apply to term-of-years sentences for juvenile offenders that are the functional equivalent of a life without parole sentence. See People v. Rainer, 2013 WL 1490107, No. 10CA2414 (Colo. Ct. App. May 9, 2013) (holding aggregate sentence of 112 years for juvenile offender did not offer defendant an opportunity to obtain release before the end of his expected life span and therefore, constituted functional equivalent of a sentence of life without the possibility of parole and thereby violated the Eighth Amendment); United States v. Mathurin, 2011 WL 2580775, No. 09-21075-CR (S.D. Fla. June 29, 2011) (holding a combined sentence of 307 years for a child offender convicted of armed robbery and carjacking constitutionally offensive under Graham); Adams v. State, 2012 WL 3193932, No. 1 D 11-3225 (Fla. Dist. Ct. App. Aug. 8, 2012) (holding that a sentence requiring a nonhomicide juvenile offender to serve at least 58.5 years in prison was a de facto sentence to life because the defendant would not be eligible for release until he was nearly seventy-six years old, which exceeded his life expectancy according to data from the Centers for Disease Control)

(further defining de facto life sentence as “one that exceeds the defendant's life expectancy”); Floyd v. State, 87 So.3d 45 (Fla. Dist. Ct. App. 2012) (holding that child sentenced to combined eighty (80) year sentence for two counts of armed robbery constituted cruel and unusual punishment as the functional equivalent of a life sentence without parole); Thomas v. Pennsylvania, 2012 WL 6678686, No. 10-4537 (E.D. Pa. Dec. 21, 2012) (holding that where juvenile offender was not eligible for parole until the age of eighty-three (83), sentence imposed amounted to cruel and unusual punishment in violation of the Eighth Amendment).

In yet other post-Graham cases, several courts have held that some term-of-years sentences may qualify as the functional equivalent of life sentences for purposes of the Eighth Amendment and Graham, but have declined to invalidate the sentence at issue on the particular facts and circumstances in each of those cases. See Gridine v. State, 89 So.3d 909 (Fla. Dist. Ct. App. 2011) (*review granted* Oct. 11, 2012) (a child's seventy-year sentence for attempted first degree murder was not the functional equivalent of a life sentence, but stating in dicta that some term-of-years sentences may be under Graham); Thomas v. State, 78 So.3d 644 (Fla. Dist. Ct. App. 2011) (child offender's fifty-year sentence was not the functional equivalent of a life sentence, but some term-of-years sentences may be); Angel v. Commonwealth, 704 S.E.2d 386, 401-02 (2011) (three consecutive life sentences did not violate Graham specifically because defendant could petition for parole at age sixty, and, thus his sentence complied with Graham's requirement for a “meaningful” opportunity to obtain release based on demonstrated maturity and rehabilitation).

This Court should likewise adopt the holdings from courts around the country that Graham prohibits de facto life sentences for juvenile offenders which deprive such offenders of any “meaningful opportunity to obtain release.” Like Terrance Graham’s life sentence prior to

the Graham decision, Appellant's one hundred and thirty (130) year sentence, of which he will at least have to serve a minimum of one hundred and three (103) years and possibly more, guarantees that Appellant will die in prison without any meaningful opportunity to obtain release, "no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes. The State has denied him any chance to later demonstrate that he is fit to rejoin society based solely on a nonhomicide crime that he committed while he was a child in the eyes of the law. This the Eighth Amendment does not permit." Graham, 130 S. Ct. at 2033.

Therefore, Appellant requests that this Court vacate his one hundred and thirty (130) year sentence as unconstitutional under the Eighth Amendment and Graham and remand for re-sentencing.

CONCLUSION

For the reasons set forth herein, Appellant Conrad Lamont Slocumb requests that this Court remand for re-sentencing on his convictions for (1) first degree burglary; (2) kidnapping; (3) criminal sexual conduct, first degree; (4) armed robbery; and (5) escape.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of May, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 7th, 2014



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CONRAD LAMONT SLOCUMB,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of May, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of May, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable DeAndrea Benjamin, Circuit Court Judge
Appellate Case No. 2013-000933

THE STATE,

RESPONDENT,

vs.

CONRAD LAMONT SLOCUMB

APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Slocumb's aggregate term-of-years sentence of one hundred and thirty years was not categorically unconstitutional and did not violate the mandates of the United States Supreme Court's decision in Graham v. Florida, 560 U.S. 48 (2011), because that decision was expressly applicable only to life without parole sentences for juvenile non-homicide offenders and not to term-of-years sentences like Slocumb's. However, even assuming the decision in Graham was applicable to Slocumb's sentence, the circuit court judge committed no error in sentencing Slocumb under the unique facts and circumstances of Slocumb's case. Furthermore, to the extent that Slocumb is challenging the constitutionality of the portion of his aggregate sentence related to his non-burglary offenses, that challenge cannot properly be considered on appeal because the circuit court judge only resentenced Slocumb on his vacated first-degree burglary conviction. Moreover, Slocumb's aggregate sentence for his non-burglary crimes was entirely proper and did not constitute cruel and usual punishment even if that sentence somehow could be addressed on appeal.

STATEMENT OF THE CASE

On March 6, 1996, Appellant Conrad Lamont Slocumb was arrested at the age of sixteen following his escape from law enforcement custody and his commission of a litany of crimes that included him raping and robbing a female victim after forcing his way into her home. Later that month, the Richland County grand jury indicted Slocumb for first-degree burglary, first-degree criminal sexual conduct, kidnapping, armed robbery, and escape. On November 12, 1996, a jury trial was commenced in the Richland County court of general sessions with the Honorable James W. Johnson, Jr., circuit court judge, presiding. At the conclusion of trial, the jury convicted Slocumb of first-degree burglary, first-degree criminal sexual conduct, kidnapping, escape, and the lesser-included offense of strong-arm robbery. Following the verdict, Judge Johnson sentenced Slocumb to life without parole pursuant to S.C. Code Ann. § 17-25-45 for first-degree burglary, first-degree criminal sexual conduct, and kidnapping based on Slocumb's prior 1993 conviction for first-degree criminal sexual conduct along with consecutive terms of imprisonment of fifteen years for strong-arm robbery and five years for escape. Slocumb then timely filed and perfected an appeal.

Thereafter, while his direct appeal was pending, Slocumb filed applications for post-conviction in regard to his 1996 convictions and his 1993 conviction. Slocumb's application for post-conviction relief in regard to his 1996 convictions was dismissed without prejudice due to his pending appeal, and his application for post-conviction relief in regard to his 1993 conviction was denied on the merits. Slocumb then timely appealed the denial of his application for post-conviction relief in regard to the 1993 conviction.

Subsequently, on August 16, 1999, the Court of Appeals issued a published opinion unanimously affirming Slocumb's direct appeal in regard to his 1996

convictions. State v. Slocumb, 336 S.C. 619, 521 S.E.2d 507 (Ct. App. 1999).

Thereafter, on November 8, 1999, the Supreme Court issued a published opinion reversing the denial of Slocumb's post-conviction relief application in regard to his 1993 conviction and vacating his 1993 guilty plea to first-degree criminal sexual conduct. Slocumb v. State, 337 S.C. 46, 522 S.E.2d 809 (1999).

As a result of the Supreme Court's decision, a resentencing hearing in regard to Slocumb's 1996 convictions was conducted on March 16, 2000, in the Richland County court of general sessions with the Honorable James W. Johnson, Jr., circuit court judge, again presiding. At the conclusion of the hearing, Judge Johnson resentenced Slocumb to consecutive sentences of life without parole for first-degree burglary, thirty years for first-degree criminal sexual conduct, thirty years for kidnapping, fifteen years for robbery, and five years for escape. Slocumb then timely filed and perfected an appeal.

However, at that time, Slocumb's original direct appeal of his 1996 convictions had not yet concluded. As a result, the Court of Appeals vacated the sentences imposed during the resentencing hearing due to a lack of jurisdiction, and Slocumb's case was remitted to the circuit court on December 3, 2003. Thereafter, on February 18, 2004, another resentencing hearing was held in the Richland County court of general sessions with the Honorable James W. Johnson, Jr., circuit court judge, once again presiding. At the conclusion of the hearing, Judge Johnson resentenced Slocumb to consecutive terms of imprisonment of life without parole for first-degree burglary, thirty years for first-degree criminal sexual conduct, thirty years for kidnapping, fifteen years for robbery, and five years for escape. Slocumb then timely filed and perfected an appeal.

Subsequently, on April 7, 2005, the Court of Appeals dismissed Slocumb's appeal pursuant to Anders v. California, 386 U.S. 738 (1967), and granted his appellate

counsel's petition to be relieved as counsel. Following the dismissal of his appeal, Slocumb filed another application for post-conviction relief in regard to his 1996 convictions, and his application was denied on the merits. Slocumb then timely appealed the denial of his post-conviction relief application and filed a petition for a writ of certiorari in the Supreme Court. On April 21, 2010, that petition was denied.

Thereafter, on June 18, 2010, Slocumb filed a petition for a writ of habeas corpus in the United States District Court for the District of South Carolina. On September 10, 2010, the State filed a return to Slocumb's petition and conceded that Slocumb was entitled to have his life without parole sentence for first-degree burglary vacated pursuant to the United States Supreme Court's decision in Graham v. Florida, 560 U.S. 48 (2010). On May 12, 2011, United States Magistrate Judge Bristow Marchant issued a report and recommendation recommending that Slocumb's life sentence be vacated and that the State be directed to resentence Slocumb in compliance with Graham. Subsequently, on June 2, 2011, Senior United States District Judge Henry M. Herlong, Jr. issued an opinion and order vacating Slocumb's life sentence and directing the State to resentence Slocumb for first-degree burglary.

Based on Judge Herlong's order, a resentencing hearing was conducted on April 25, 2013, in the Richland County court of general sessions with the Honorable DeAndrea G. Benjamin, circuit court judge, presiding. At the conclusion of the hearing, Judge Benjamin resentenced Slocumb to a fifty-year term of imprisonment for first-degree burglary, ordered the sentence to run consecutively to Slocumb's other sentences, and declined to readdress any of those other sentences. Slocumb then timely filed a notice of appeal.

STATEMENT OF FACTS

Facts Related to Slocumb's 1993 Conviction

In October of 1992, Appellant Conrad Lamont Slocumb, who was then a thirteen-year-old male, abducted a female high school teacher at gunpoint from the parking lot of her school. Slocumb v. State, 337 S.C. 46, 47-48, 522 S.E.2d 809, 810 (1999). Slocumb then forced his victim to drive him to a wooded area and attempted to force her into the woods with him. Id. at 48, 522 S.E.2d at 810. When she refused, Slocumb grabbed the victim, roughly squeezed her breast, digitally penetrated her vagina, and shot her five times in the face and head. Id. Slocumb then abandoned the victim on the side of the road and drove off in her car. Id. Miraculously, the victim survived the shooting and was able to walk to a nearby residence and obtain help. Id. Shortly thereafter, Slocumb was arrested and charged with numerous offenses related to the incident, and his case was transferred to the court of general sessions. Id. Subsequently, Slocumb pled guilty to first-degree criminal sexual conduct in exchange for the dismissal of his other charges and was sentenced to a thirty-year term of incarceration. Id. at 47-48, 522 S.E.2d at 810.

Facts Related to Slocumb's 1996 Convictions

On March 6, 1996, an officer from the South Carolina Department of Juvenile Justice transported Slocumb, who was then a sixteen-year-old inmate at that institution, to an off-site doctor's office for medical treatment. State v. Slocumb, 336 S.C. 619, 622, 521 S.E.2d 507, 509 (Ct. App. 1999). Once the treatment was administered, the officer began transporting Slocumb back to the Department of Juvenile Justice. Id. However, before they arrived, Slocumb escaped from the officer's custody and ran to a nearby apartment complex. Id. Slocumb then located a female resident there, asked her to assist him in finding someone in the complex, and forced his way into her apartment after she

helped him. Id. Once inside, Slocumb disconnected the victim's phone, claimed he had a gun, threatened the victim, demanded her car keys and money, and asked her for clothing so he could change out of his prison attire. Id. The victim fully complied with Slocumb's demands, and then he raped her. Id. at 623, 521 S.E.2d at 509. After that, Slocumb stole jewelry and other items from the victim's apartment, left, and was apprehended by law enforcement officers while still in possession of the victim's belongings. Id. Following his arrest, Slocumb was indicted for numerous offenses, and he proceeded to trial. Id. At the conclusion of trial, the jury convicted Slocumb of first-degree burglary, first-degree criminal sexual conduct, kidnapping, robbery, and escape. Id. Following the verdict, the trial judge sentenced Slocumb to three consecutive life sentences for first-degree burglary, first-degree criminal sexual conduct, and kidnapping along with consecutive sentences of fifteen years for robbery and five years for escape. Slocumb, 337 S.C. at 47, n. 1, 522 S.E.2d at 810.

Facts Related to April 2013 Resentencing Hearing

Subsequent to his convictions in 1993 and 1996, Slocumb's 1993 conviction was overturned on appeal based on a jurisdictional issue, and Slocumb's sentences for his 1996 convictions were vacated on several occasions for a variety of reasons. (R. pp. 3-5; pp. 18-19). By April of 2013, Slocumb was serving consecutive sentences of life without parole for first-degree burglary, thirty years for first-degree criminal sexual conduct, thirty years for kidnapping, fifteen years for robbery, and five years for escape based on his 1996 convictions. (R. p. 5). However, a federal district court judge vacated Slocumb's life sentence for first-degree burglary due to the United States Supreme Court's decision in Graham v. Florida, 560 U.S. 48 (2010). (R. p. 5). As a result,

Slocumb's case was once again remanded for resentencing, and a resentencing hearing was held on April 25, 2013. (R. p. 3; p. 5; p. 44; p. 46; pp. 48-49).

At the outset of the hearing, defense counsel acknowledged that Slocumb was before the court to be resentedenced only on his first-degree burglary conviction but nevertheless moved for the circuit court judge to vacate all of Slocumb's other sentences and to resentence him for all of his convictions. (R. pp. 7-8). In support of that request, defense counsel conceded that the United States Supreme Court did not address in its Graham decision whether a lengthy term-of-year sentence that extended beyond a defendant's reasonable life expectancy constituted cruel and unusual punishment. (R. p. 8). However, defense counsel argued that there were some appellate courts in the United States that had extended the reasoning of Graham to cases where juvenile offenders had been sentenced to terms of incarceration that exceeded their projected life expectancies while noting that there were other appellate courts that had declined to do so. (R. pp. 8-9). Advocating for an extension of Graham to the circumstances of Slocumb's case, defense counsel contended that a term of incarceration that would require Slocumb to serve a minimum sentence that exceeded the average worldwide life expectancy of 67.2 years would be irreconcilable with Graham because it would deprive Slocumb of a reasonable opportunity to obtain release based on demonstrated maturity and rehabilitation. (R. pp. 9-11). For that reason, defense counsel asked the circuit court judge to vacate Slocumb's other sentences and to resentence him to an aggregate term of years that honored "the spirit and intent if not the letter of" the Graham decision. (R. p. 11).

After listening to defense counsel's arguments, the circuit court judge sought reaffirmation that Slocumb's case had been remanded solely in regard to the first-degree

burglary conviction, and defense counsel again verified that it had while arguing to the circuit court judge that she had "the authority to do what [she] deem[ed] appropriate with regard to the other sentences[.]" (R. p. 12). The solicitor then recounted the facts of Slocumb's horrendous crimes. (R. pp. 14-17). Following the recitation of the facts, the solicitor noted that the United States Supreme Court specifically stated in Graham that juvenile non-homicide offenders did not have to be released during their natural lives. (R. pp. 17-18). The solicitor additionally noted that Slocumb was classified as a security risk by the Department of Corrections and had not enrolled in, participated in, or completed any rehabilitative programs during his time in prison. (R. pp. 19-20). Furthermore, the solicitor confirmed that Slocumb had committed 218 prison disciplinary infractions between 1997 and the date of the hearing that included striking prison employees, possessing weapons, throwing substances on prison employees, possessing contraband, masturbating, and committing acts of mutilation. (R. p. 20).

In response to the solicitor's remarks, defense counsel conceded that Slocumb would likely be unable to meet a standard of demonstrating maturity and growth at that time due to his behavior subsequent to his incarceration. (R. p. 23). Defense counsel further conceded that Slocumb did not have to be guaranteed release during his lifetime. (R. p. 23). However, she argued that Slocumb would not have a meaningful opportunity for release subsequent to that point based on demonstrated maturity and rehabilitation if his sentences were not vacated and, as a result, again moved for the circuit court judge to vacate all of Slocumb's sentences and to resentence him "to a term of years that would give him the opportunity after serving 85 percent on the most serious offenses and a lesser percentage on the remaining charges to be eligible for supervised community release somewhere short of his life expectancy." (R. pp. 23-25).

Thereafter, Slocumb's victim advised the circuit court judge of the impact that Slocumb's crimes had upon her and requested that Slocumb be resentenced to a lengthy consecutive term of incarceration. (R. p. 26). Following the victim's remarks, the solicitor reiterated that Slocumb had sexually assaulted a teacher, shot her, left her to die, later escaped from Department of Juvenile Justice custody, committed the same type of traumatic acts upon his next victim, and then showed no subsequent signs of rehabilitation, maturity, or growth while repeatedly committing disciplinary infractions during his ensuing years in prison. (R. pp. 26-27). Subsequently, at the conclusion of the hearing, the circuit court judge resentenced Slocumb to a fifty-year term of incarceration for first-degree burglary, ordered the sentence to run consecutively to Slocumb's other sentences, and declined to entertain Slocumb's challenge to his other sentences. (R. p. 28). Following the imposition of the sentence, defense counsel did not object to the sentence and, instead, thanked the circuit court judge. (R. p. 28).

ARGUMENT

Slocumb's aggregate term-of-years sentence of one hundred and thirty years was not categorically unconstitutional and did not violate the mandates of the United States Supreme Court's decision in Graham v. Florida, 560 U.S. 48 (2011), because that decision was expressly applicable only to life without parole sentences for juvenile non-homicide offenders and not to term-of-years sentences like Slocumb's. However, even assuming the decision in Graham was applicable to Slocumb's sentence, the circuit court judge committed no error in sentencing Slocumb under the unique facts and circumstances of Slocumb's case. Furthermore, to the extent that Slocumb is challenging the constitutionality of the portion of his aggregate sentence related to his non-burglary offenses, that challenge cannot properly be considered on appeal because the circuit court judge only resentenced Slocumb on his vacated first-degree burglary conviction. Moreover, Slocumb's aggregate sentence for his non-burglary crimes was entirely proper and did not constitute cruel and unusual punishment even if that sentence somehow could be addressed on appeal.

Slocumb contends that his aggregate one-hundred-and-thirty-year sentence imposed for five different offenses he committed as a juvenile violates the Eighth Amendment's prohibition against cruel and unusual punishment. In support of that contention, Slocumb maintains that his lengthy aggregate term-of-years sentence is the functional equivalent of a life without parole sentence and, for that reason, urges this Court to find his sentence to be categorically unconstitutional in light of the United States Supreme Court's decision in Graham v. Florida, 560 U.S. 48 (2011), which prohibits the imposition of a life without parole upon a juvenile who committed a non-homicide offense. Contrary to Slocumb's contentions, the Supreme Court's decision in Graham was not applicable to the facts and circumstances of his case because the Supreme Court expressly limited its holding and analysis in Graham to juvenile offenders sentenced to life without parole sentences. Since Slocumb did **not** actually receive such a sentence, a sentence like Slocumb's is not categorically prohibited, and Slocumb's aggregate sentence did not constitute cruel and unusual punishment. However, even assuming the decision in Graham was somehow applicable to term-of-years sentences like Slocumb's,

Slocumb's sentence was still not unconstitutional under the unique circumstances of his case. Furthermore, to the extent that Slocumb is challenging the constitutionality of the portion of his aggregate sentence related to his non-burglary crimes, that issue is not appropriately before this Court due to the fact that the circuit court judge only resentenced him for – and had the jurisdiction to resentence him for – his vacated first-degree burglary conviction. However, even assuming the propriety of Slocumb's non-burglary sentence could properly be considered on appeal, Slocumb's aggregate sentence for those crimes was entirely proper. For the foregoing reasons, the circuit court judge committed no error in resentencing Slocumb for his first-degree burglary conviction, and his aggregate one-hundred-and-thirty-year sentence is not categorically unconstitutional. Slocumb's convictions and sentences should be affirmed.

A. Constitutionality of Slocumb's Aggregate One-Hundred-and-Thirty-Year Sentence

In criminal cases, a trial judge has broad discretion in imposing a sentence within the statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974); see State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (“A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.”). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). “Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence

that is within the limits prescribed by statute.” State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

Notwithstanding a trial judge’s authority to impose a sentence falling within the statutory limits, the Eighth Amendment of the United States Constitution prohibits the imposition of cruel and unusual punishment. See U.S. Const. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”). Pursuant to the Eighth Amendment, punishments must not be “inherently barbaric” and must be graduated and proportioned to the offense. Graham v. Florida, 560 U.S. 48, 59 (2011); see Atkins v. Virginia, 536 U.S. 304, 311 (2002) (instructing that it is a precept of justice that punishment for a crime should be graduated and proportioned to the offense). However, “[t]he Eighth Amendment does not require strict proportionality between crime and sentence.” Harmelin v. Michigan, 501 U.S. 957, 1001 (1991). Instead, “it forbids only extreme sentences that are ‘grossly disproportionate’ to the crime.” Id. (citations omitted).

In general, there are two classifications of cases involving challenges raised pursuant to the Eighth Amendment: (1) cases involving a case-specific challenge to a term-of-years sentence based on the circumstances of a particular case; and (2) cases involving a categorical challenge to a particular sentencing practice. Graham, 560 U.S. at 59. Significantly, the analysis to be applied by the court varies and is dependent on the type of challenge being raised in each individual case. Id. at 61-62.

In cases involving a case-specific challenge, the appropriate analysis involves first comparing the gravity of the offense to the severity of the sentence imposed. Harmelin, 501 U.S. at 1004-1005. Then, if that comparison leads to an inference of “gross” disproportionality, the court should compare the defendant’s sentence to the sentences of

offenders who committed the same offense in the defendant's jurisdiction along with the sentences of offenders who committed the same offense in other jurisdictions to determine if the defendant's sentence actually was grossly disproportionate to his crime. *Id.* at 1005. Importantly though, no single factor is dispositive in the proportionality analysis. *See Solem v. Helm*, 463 U.S. 277, 291, n. 17 (1983) (“[N]o single criterion can identify when a sentence is so grossly disproportionate that it violates the Eighth Amendment.”).

In cases involving a categorical challenge to a particular sentencing practice, the appropriate analysis involves the court first considering objective indicia of society's standards to determine whether a national consensus exists against the challenged sentencing practice. *Graham*, 560 U.S. at 61; *see also Trops v. Dulles*, 356 U.S. 86, 101 (1958) (“The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”). In making that determination, the court should look to legislation enacted by the legislatures in the United States because the clearest and most reliable expression of society's contemporary values can be derived from such legislation. *State v. Pittman*, 373 S.C. 527, 563, 647 S.E.2d 144, 162 (2007). Furthermore, the court making such a determination should remember that “[i]t is not the burden of the state to establish a national consensus approving what their citizens have voted to do; rather, it is the heavy burden of the defendant to establish a national consensus against it.” *State v. Williams*, 380 S.C. 336, 347, 669 S.E.2d 640, 646 (Ct. App. 2008); *see Gregg v. Georgia*, 428 U.S. 153, 175 (1976) (“[I]n assessing a punishment selected by a democratically elected legislature against the constitutional measure, we presume its validity. We may not require the legislature to select the least severe penalty possible so long as the penalty selected is not cruelly inhumane or

disproportionate to the crime involved. And a heavy burden rests on those who would attack the judgment of the representatives of the people.”). Next, after determining whether a national consensus exists against a particular sentencing practice, the court “must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution.” Graham, 560 U.S. at 61. Critically, that determination should be “guided by ‘the standards elaborated by controlling precedents and by the Court’s own understanding and interpretation of the Eighth Amendment’s text, history, meaning, and purpose[.]’ ” Id. (quoting Kennedy v. Louisiana, 554 U.S. 407, 421 (2008)).

Recently, in Graham v. Florida, a narrow majority of the United States Supreme Court applied the analysis applicable to categorical challenges to sentencing practices and concluded that the imposition of a life sentence without the possibility of parole upon a juvenile offender who committed a non-homicide offense violates the Eighth Amendment’s prohibition against cruel and unusual punishment. Id., 560 U.S. at 81. In reaching that conclusion, the Supreme Court limited its consideration only to life without parole sentences for juvenile non-homicide offenders and found that a national consensus existed against such sentences for such offenders based on the small number of life without parole sentences that had actually been imposed on juvenile non-homicide offenders in the United States. Id. at 67. The Supreme Court then applied its own “independent judgment” and concluded that life without parole sentences for juvenile non-homicide offenders were unconstitutional due to the lessened culpability of juveniles, the severity of life with parole sentences, and the lack of sufficient penalogical justifications for the sentencing practice in regard to juveniles. Id. at 74. For those reasons, the Supreme Court held:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity for release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid the State from making the judgment at the outset that those offenders never will be fit to reenter society.

Id. at 75.

Subsequent to the decision in Graham, numerous appellate courts across the country have struggled with the question of whether the Supreme Court's holding in that case is applicable to lengthy term-of-years sentences for juvenile non-homicide offenders even though such sentences are not actually sentences of life without parole. Many of the appellate courts considering the question have concluded that the holding in Graham does not apply to term-of-years sentences for juvenile non-homicide offenders due to the fact that the decision in Graham was expressly limited to life without parole sentences. See Bunch v. Smith, 685 F.3d 546, 552 (6th Cir. 2012) (finding that Bunch's eighty-nine-aggregate sentence did not clearly violate Graham even though it may have been the functional equivalent of a life without parole sentence and noting that the Supreme Court's analysis in Graham did not address such a situation); Walle v. State, 99 So. 3d 967, 973 (Fla. Dist. Ct. App. 2012) (declining to apply Graham to an aggregate ninety-two-year term of imprisonment for a juvenile non-homicide offender); Henry v. State, 82 So. 3d 1084, 1089 (Fla. Dist. Ct. App. 2012) (declining to extend Graham beyond the way it was written or to apply it to a ninety-year prison term for a juvenile offender);

Adams v. State, 288 Ga. 695, 701, 707 S.E.2d 359, 365 (Ga. 2011) (finding that the decision in Graham did not categorically bar anything other than life without parole sentences for juvenile non-homicide offenders); State v. Brown, 118 So. 3d 332, 341-342 (La. 2013) (“In our view, Graham does not prohibit consecutive term of year sentences for multiple offenses committed while a defendant was under the age of 18, even if they might exceed a defendant’s lifetime, and, absent any further guidance from the United States Supreme Court, we defer to the legislature which has the constitutional authority to authorize such sentences.”); see also Graham, 560 U.S. at 63 (“The instant case concerns **only** those juvenile offenders sentenced to life without parole solely for a nonhomicide offense.” (emphasis added)). However, a few appellate courts have reached a different conclusion and found that term-of-years sentences carrying the same practical effect as life sentences violate the Graham decision’s explicit prohibition against life without parole sentences for juvenile non-homicide offenders. See People v. Caballero, 55 Cal. 4th 262, 268, 282 P.3d 291, 295 (Cal. 2012) (concluding based on Graham “that sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender’s natural life expectancy constitutes cruel and unusual punishment”); Floyd v. State, 87 So. 3d 45, 46 (Fla. Dist. Ct. App. 2012) (finding an aggregate eighty-year sentence for a juvenile non-homicide offender to be unconstitutional in light of the decision in Graham).

Notably, in State v. Kasic, 228 Ariz. 228, 229, 265 P.3d 410, 411 (Ariz. Ct. App. 2011), the Arizona Court of Appeals considered the impact of the Graham decision upon a situation highly similar to the facts and circumstances of Slocumb’s case. In that case, Kasic argued the reasoning of the Graham decision warranted a finding that his aggregate sentence of nearly one-hundred-and-forty years for offenses he committed as both a

juvenile and an adult was unconstitutional. Id. at 232, 265 P.3d at 414. However, the Court of Appeals rejected that argument. Id. In doing so, the Court of Appeals initially found that Graham did not categorically bar a term-of-years sentence like Kasic's based on the fact that the Supreme Court expressly limited its decision in Graham solely to life without parole sentences for juvenile non-homicide offenders. Id. at 232-233, 265 P.3d at 414-415. Then, after concluding Kasic's aggregate term-of-years sentence was not categorically barred through Graham, the Court of Appeals considered whether Kasic's sentences taken individually and in the aggregate were grossly disproportionate to his crimes. Id. at 233-234, 265 P.3d at 415-416. Upon finding that they were not, the Court of Appeals held "that the Eighth Amendment does not prohibit Kasic's sentences for the crimes he committed as a juvenile." Id. at 234, 265 P.3d at 416.

In the case at bar, Slocumb was **not** sentenced to a life without parole sentence for a non-homicide offense. See Graham, 560 U.S. at 63 ("The instant case concerns only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense."). Instead, like the defendant in Kasic, Slocumb was sentenced to consecutive terms of imprisonment for multiple distinct and highly serious crimes with all of his individual sentences falling within the permissible sentencing limits for those crimes. For that reason, the decision in Graham was not applicable to Slocumb's case. See Walle, 99 So. 3d at 970 ("The Supreme Court itself limited the scope and breadth of its decision in Graham by stating that its decision 'concern[ed] only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense.' From this statement we identify the four necessary analytical factors: (1) the offender was a juvenile when he committed his offense, (2) the sentence imposed applied to a singular nonhomicide offense, (3) the offender was 'sentenced to life,' and (4) the sentence does not provide the

offender with any possibility of release during his lifetime.” (brackets in original and citations omitted)).

In challenging the constitutionality of his aggregate sentence, Slocumb has not suggested that his aggregate sentence is grossly disproportionate to his specific crimes – most likely due to the undeniably egregious nature of his offenses. See Graham, 560 U.S. at 75 (recognizing that a juvenile non-homicide offender can constitutionally receive a sentence for an offense that would result in the offender spending the remainder of his life in jail); see also State v. Johnson, 350 S.C. 543, 547, 567 S.E.2d 486, 488 (Ct. App. 2002) (“[F]ew would argue that first-degree burglary, armed robbery, and kidnapping are anything other than grave offenses of the ‘most serious’ nature.”); see, e.g., Kasic, 228 Ariz. at 233, 265 P.3d at 415 (“[I]f a sentence for a particular offense is not disproportionately long, it does not become so merely because it is consecutive to another sentence for a separate offense or because the consecutive sentences are lengthy in aggregate. This proposition holds true even if a defendant faces a total sentence exceeding a normal life expectancy as a result of consecutive sentences.” (brackets in original and citations omitted)). Instead, Slocumb contends that his aggregate one-hundred-and-thirty-year sentence is unconstitutional because it is the functional equivalent of a life without parole sentence even though he did not actually receive one. Based on that contention, Slocumb asks this Court to extend the Graham decision beyond its express limits, apply it to consecutive term-of-years sentences such as his own, and declare his aggregate sentence to be categorically unconstitutional. However, the Graham decision cannot properly be – and should not be – extended beyond the express limits that the Supreme Court placed upon its holding in that case.

Critically, through its express language, the Supreme Court limited the decision in Graham to life without parole sentences for juvenile non-homicide offenders alone. See Graham, 560 U.S. at 74 (holding that the Eighth Amendment prohibits juvenile non-homicide offenders from being sentenced to life without parole sentences and indicating that the holding is a “clear line”). Because its focus was limited in that manner, the Supreme Court in Graham did not analyze any information regarding the number of jurisdictions with sentencing practices that permitted circuit court judges to sentence juvenile offenders to lengthy or consecutive term-of-years sentences exceeding the offenders’ projected life expectancies, and it was unnecessary for the Supreme Court to do so. See Bunch, 685 F.3d at 552 (“The [United States Supreme Court in Graham] did not analyze sentencing laws or actual sentencing practices regarding consecutive, fixed-term sentences for juvenile non-homicide offenders. This demonstrates that the Court did not even consider the constitutionality of such sentences, let alone clearly establish that they can violate the Eighth Amendment’s prohibition on cruel and unusual punishments.”). Likewise, the Supreme Court in Graham also did not analyze or consider any information regarding the number of juvenile offenders across the country that had already been sentenced to and were actually serving term-of-years sentences that would exceed their natural life expectancies. As a result, since the Supreme Court itself did not consider the constitutionality of term-of-years sentences in the Graham decision, the Supreme Court’s conclusions regarding life without parole sentences in that decision cannot fairly or reasonably be extended to a sentencing practice that was not analyzed, explored, or addressed by the Supreme Court.¹ See Graham, 560 U.S. at 124 (Alito, J.,

¹ Significantly, the Supreme Court’s decision to specifically limit its holding solely to life without parole sentences likely resulted from the fact that its analysis was confined to that type of sentence alone. See Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) (“It is, of course, settled

dissenting) (“Nothing in the Court’s opinion affects the imposition of a sentence to a term of years without the possibility of parole.”).

Because the specific and limited holding of Graham was not applicable to Slocumb’s case, the heavy burden remained on Slocumb in raising his categorical constitutional challenge to lengthy aggregate term-of-years sentences for juvenile non-homicide offenders to establish that a national consensus existed against such sentences. See id. at 61 (indicating that the first step in a categorical constitutional challenge to a particular sentencing practice is to determine whether a national consensus exists against the challenged practice); see also Williams, 380 S.C. at 347, 669 S.E.2d at 646 (“[I]t is the heavy burden of the defendant to establish a national consensus against [a particular sentencing practice].”). Significantly though, Slocumb failed to do so.

Specifically, in seeking an extension of the holding in Graham to a type of sentence not addressed in the decision, Slocumb did not cite to any data regarding the number of juveniles sentenced to sentences similar to his own or present any information regarding the number of jurisdiction that do and do not allow such sentences to be imposed upon offenders like him. However, without such objective indicia of society’s standards, Slocumb cannot show that the particular sentencing practice he is presently challenging has been rejected in the United States on a near universal basis and cannot meet his burden of establishing a national consensus existed against the imposition of

law that ‘a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.’ ” (citations omitted)). Moreover, the Supreme Court may have chosen to limit its holding to avoid the practical complications that would arise in regard to the application of the holding if it was extended to term-of-years sentences in addition to life without parole sentences. See, e.g., Henry, 82 So. 3d at 1089 (“At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: twenty, thirty, forty, fifty, some lesser or greater number? Would gain time be taken into account? Could the number vary from offender to offender based on race, gender, socioeconomic class or other criteria? Does the number of crimes matter? . . . Without any tools to work with, . . . we can only apply Graham as it is written. If the Supreme Court has more in mind, it will have to say what that is.”).

sentences like the one he received. Cf. Walle, 99 So. 3d at 971 (declining to apply the decision in Graham beyond its express limitations to a term-of-years sentence where “[t]he limited record before this court [did] not contain the vast amounts of information regarding societal values, penological theories, or psychological effects that the Supreme Court had at its disposal”). In the absence of a national consensus against sentences like Slocumb’s, there is no proper basis to categorically declare Slocumb’s sentence to be unconstitutional or to categorically extend the limited holding of Graham to his case. See Arkansas v. Sullivan, 532 U.S. 769, 772 (2001) (instructing that state courts cannot interpret an amendment to the United States Constitution to provide greater protections than those provided by the precedent of the United States Supreme Court); see, e.g., Oregon v. Hass, 420 U.S. 714, 719 (1975) (“[A] State is free as far as a matter of its own law to impose greater restrictions on police activity than those this Court holds to be necessary upon federal constitutional standards. But, of course, a State may not impose such greater restrictions as a matter of federal constitutional law when this Court specifically refrains from imposing them.” (citations omitted)). As a result, the circuit court judge committed no error in imposing the fifty-year consecutive sentence on Slocumb, and Slocumb’s aggregate one-hundred-and-thirty-year sentence does not categorically constitute cruel and unusual punishment.

However, even if the Supreme Court’s interpretation of the Eighth Amendment in Graham could somehow properly be extended to apply to a term-of-year sentence that could be considered the functional equivalent of a life without parole sentence, the decision in Graham still would not entitle Slocumb to any relief based on the unique circumstances of his case. Looking to the decision in Graham, the Supreme Court specifically recognized that it is constitutionally permissible for juvenile non-homicide

offenders who turn out to be irredeemable to be incarcerated for the remainder of their lives. See Graham, 560 U.S. at 75 (“[The Eighth Amendment] does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives.”). Importantly though, the Supreme Court placed a key limitation on sentencing judges’ authority to imprison juvenile offenders for the remainder of their lives by explicitly precluding a sentencing judge from making a determination of irredeemability in regard to a juvenile non-homicide offender from the outset without granting that offender an opportunity to demonstrate the maturity and growth that could potentially come as the offender transitioned from adolescence into adulthood. See id. (“The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid the State **from making the judgment at the outset** that those offenders never will be fit to reenter society.” (emphasis added)). Thus, the decision in Graham does not prohibit the imposition of a life without parole sentence on a juvenile non-homicide offender and, instead, simply prohibits such a sentence from being imposed at the outset without the juvenile being afforded a meaningful opportunity for release based on demonstrated maturity and growth.

Significantly, in Slocumb’s case, the circuit court judge did not sentence Slocumb to the consecutive fifty-year sentence that resulted in his aggregate sentence of one-hundred-and-thirty years at the outset of his conviction, which arguably could have violated the mandates of Graham if that decision was applicable to term-of-years sentences constituting the functional equivalent of sentences of life without parole. Instead, at the time the circuit court judge imposed Slocumb’s first-degree burglary

sentence seventeen years after he committed his crimes, Slocumb was thirty-three years old and had been incarcerated for the offense since he was sixteen years old. Resultantly, Slocumb had been afforded a lengthy opportunity to demonstrate maturity and growth during the fifteen years that had elapsed since he reached adulthood, and the circuit court judge was in the unique position to consider his behavior as a juvenile along with his subsequent behavior as an adult when fashioning his sentence. See Williams v. New York, 337 U.S. 241, 247 (1949) (“A sentencing judge . . . is not confined to the narrow issue of guilt. His task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. Highly relevant – if not essential – to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.”).

Turning to information available to her at the time of Slocumb's sentencing hearing, the circuit court judge was aware of the facts of all of Slocumb's appalling crimes, including both the crimes he committed when he was thirteen years old and the crimes he committed when he was a sixteen-year-old inmate at the Department of Juvenile Justice. Furthermore, the circuit court judge was informed of Slocumb's subsequent behavioral record as an adult in the Department of Corrections, and that record of wholly negative behavior, which consisted of hundreds of transgressions and included acts of a violent and sexual nature, established that Slocumb had neither demonstrated any signs of maturity or growth nor taken any steps to rehabilitate himself since reaching adulthood. Therefore, unlike the typical situation in which a circuit court judge is required to sentence a juvenile offender without actual insight into the offender's future potential for growth and maturity, the circuit court judge in Slocumb's case was in an extraordinary, ideal position to impose the appropriate sentence for Slocumb, who was

an adult instead of a juvenile like he had been at the outset of his conviction seventeen years earlier, due to the extra information she had in regard to Slocumb's growth, maturity, and potential for rehabilitation after he had grown out of childhood and advanced well into his adult years. See Wasman v. United States, 468 U.S. 559, 563-564 (1984) ("The sentencing court or jury must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. . . . Allowing consideration of such a breadth of information ensures that the punishment will suit not merely the offense but the individual defendant.").

Armed with the information available to her regarding both Slocumb's horrendous acts as a juvenile and failure to show any subsequent maturity, growth, or rehabilitation as an adult, the circuit court judge sentenced Slocumb to the consecutive sentence that resulted in his aggregate one-hundred-and-thirty-year sentence based on his failure to demonstrate any signs of redeemability after reaching adulthood. At the time the sentence was imposed, Slocumb was no longer a juvenile being sentenced at the outset of his conviction and, instead, was a thirty-three-year-old man who had already had a fifteen-year opportunity to show maturity, growth, and rehabilitation after becoming an adult in the eyes of the law. As a result, the sentence imposed by the circuit court judge did not run afoul of the mandates of Graham. See Graham, 560 U.S. at 75 (specifically recognizing that juvenile offenders who prove to be irredeemable as adults can be imprisoned for life but instructing that juveniles cannot be found to be irredeemable from the outset of their convictions); see also Hicks, 377 S.C. at 325, 659 S.E.2d at 500 ("A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and **must be permitted to consider**

any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” (emphasis added)). For those reasons and assuming the decision in Graham was applicable to a term-of-years sentence like Slocumb’s, the imposition of Slocumb’s consecutive fifty-year sentence for first-degree burglary did not constitute cruel and unusual punishment even though that sentence resulted in Slocumb’s aggregate one-hundred-and-thirty-year term of incarceration. Slocumb’s convictions and sentences should be affirmed.

B. Impropriety of Slocumb’s Request to Be Resentenced On All of His Convictions

“Generally, a [circuit court] judge is without authority to consider a criminal matter once the term of court during which judgment was entered expires.” State v. Warren, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011); see State v. Hinson, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”). However, that general rule is inapplicable when either: (1) a timely post-trial motion is filed; or (2) a motion for a new trial based on after-discovered evidence is filed. State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008). As a result, a circuit court judge lacks the authority to act in a particular matter if either the term of court has ended and a post-trial motion was not made within ten days of sentencing or a proper new trial motion based on an after-discovered evidence claim has not been filed. Id.; see Rule 29(a), SCRCrimP (“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.”).

Furthermore, when a case is properly appealed and later remanded to the circuit court, the circuit court judge has no authority to act in the remanded case in a manner that exceeds the mandates of the appellate court. South Carolina Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 250, 551 S.E.2d 275, 279 (Ct. App. 2001); see Parker v. Shecut, 359 S.C. 143, 152, 597 S.E.2d 793, 798-799 (2004) (instructing that the circuit court obtains jurisdiction to enforce the judgment and take any actions consistent with the appellate court's ruling when an appellate court remits a case to the circuit court). An appellate court's mandate is jurisdictional, and a circuit court judge has a duty to follow the appellate court's directions. Prince v. Beaufort Mem'l Hosp., 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011); see Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) ("It is the duty of the trial court to follow the decision of the appellate court."). Accordingly, when a case is remanded to the circuit court on limited grounds, a circuit court judge commits reversible error by considering an issue outside of the scope of the remand. Ackerman, 324 S.C. at 443, 477 S.E.2d at 268; see Prince, 392 S.C. at 605, 709 S.E.2d at 125 ("When we remand a case, the trial court has only the jurisdiction and authority mandated by this court.").

In the case sub judice, Slocumb contends his entire sentence is unconstitutional and asks this Court to remand his case for resentencing on all of his convictions. However, the issue of the propriety of all of Slocumb's sentences was not properly before the circuit court judge and cannot now appropriately be raised on appeal. Critically, at the resentencing hearing in 2004, Slocumb received a life without parole sentence for first-degree burglary and an aggregate sentence of eighty years for his other convictions. Subsequently, Slocumb unsuccessfully appealed his convictions and unsuccessfully applied for post-conviction relief before he eventually obtained relief through a federal

habeas action in the form of the vacation of his first-degree burglary sentence. Because only the first-degree burglary sentence was vacated, the circuit court judge only had the authority and jurisdiction to resentence Slocumb on remand in regard to his first-degree burglary conviction, and Slocumb's aggregate sentence for the other offenses could not properly be disturbed.² See Basnight, 346 S.C. at 250, 551 S.E.2d at 279 ("[A] trial court has no authority to exceed the mandate of the appellate court on remand."); see also Campbell, 376 S.C. at 215, 656 S.E.2d at 373 (recognizing that a trial judge does not have jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires unless a timely post-trial motion is made or a proper new trial motion based on after-discovered evidence is filed). Therefore, the circuit court judge correctly declined to reconsider Slocumb's existing aggregate eighty-year sentence, and there is no basis for appellate review of that sentence at the present time. See State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001) ("In criminal cases, the appellate court sits to review errors of law only."); cf. Ackerman, 324 S.C. at 443, 477 S.E.2d at 268 ("The decision of the appellate court is final as to all questions decided. It is the duty of the trial court to follow the decision of the appellate court. It was therefore error for the trial court to reconsider the issue of liability in this case in view of the fact this court remanded the case for a determination of damages only. As we read the respondents' brief, they implicitly concede this issue." (citations omitted)).

Moreover, even if Slocumb's appellate challenge to his sentences for his non-burglary offenses was somehow proper, Slocumb's aggregate eighty-year sentence for those offenses is not unconstitutional in any way. Significantly, assuming the decision in

² Tellingly, during the resentencing hearing, defense counsel readily and repeatedly conceded to the circuit court judge that Slocumb's case had only been remanded for resentencing on Slocumb's first-degree burglary conviction. (R. pp. 7-8; p. 12).

Graham was applicable to term-of-years sentences instead of just life without parole sentences, that decision does not prohibit a circuit court judge from sentencing a juvenile non-homicide offender to a term of imprisonment that could result in the offender never being released from prison so long as the offender has some meaningful opportunity for release based on demonstrated maturity and growth. See Graham, 560 U.S. at 75 (“A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity for release based on demonstrated maturity and rehabilitation.”). Notwithstanding his consecutive fifty-year sentence for first-degree burglary, Slocumb’s aggregate eighty-year sentence for his non-burglary offenses would not deny Slocumb such a meaningful opportunity for release during his projected life expectancy as a resident of the United States.

Notably, according to recent statistics compiled by the federal government, the average projected life expectancy in the United States is approximately seventy-eight years. C.D.C. Life Expectancy Data, <http://www.cdc.gov/nchs/fastats/lifexpect.htm>. Additionally, according to data compiled by the Social Security Administration, a United States citizen born on Slocumb’s birthday – June 11, 1979 – is expected to live for roughly forty-seven more years and reach the age of eighty-two.³ S.S.A. Life Expectancy Calculator, <http://ssa.gov/planners/lifeexpectancy.htm>. Furthermore, the General Assembly in South Carolina has determined that a thirty-three-year-old male, which was Slocumb’s age at the time of the resentencing hearing, is expected to live for approximately forty-six more years. See S.C. Code Ann. § 19-1-150 (listing the

³ Importantly, according to the Social Security Administration, Slocumb’s projected life expectancy will continue to climb as he ages, with Slocumb being projected to reach the age of eighty-five if he lives to be sixty-two years old and to reach the age of eighty-seven if he lives to be seventy years old. S.S.A. Life Expectancy Calculator, <http://ssa.gov/planners/lifeexpectancy.htm>.

projected life expectancies of men and women of different ages in a table that can be used “to establish the life expectancy of a person from any period in his life”). Thus, even conservatively projecting Slocumb’s total life expectancy to be only seventy-eight years based on the national average, Slocumb can be expected to live for an additional period of roughly forty-five years from the date of the resentencing hearing.

Looking to Slocumb’s aggregate eighty-year sentence in conjunction with the projected years that he has left to live, Slocumb’s aggregate sentence for his non-burglary offenses would not deprive him of a meaningful opportunity for release within his life expectancy assuming that he ever became capable of demonstrating the growth and maturity needed to qualify him for release according to Graham. Specifically, Slocumb’s aggregate sixty-year sentence for the non-parolable offenses of first-degree criminal sexual conduct and kidnapping would require Slocumb to serve at least fifty-one years before he could be eligible for release. See S.C. Code Ann. § 24-13-150 (stating that offenders convicted of “no parole” offenses must serve at least eighty-five percent of their sentences before being eligible for release). Likewise, because Slocumb’s other offenses of robbery and escape were not “no parole” offenses or violent crimes, Slocumb’s aggregate twenty-year sentence for those crimes would require him to serve at least five years before he could be eligible for parole. See S.C. Code Ann. § 24-21-610 (stating that offenders convicted of non-violent crimes are entitled to be considered for parole after serving one-fourth of their sentences); see also Major v. South Carolina Dep’t of Prob., Parole, & Pardon Servs., 384 S.C. 457, 468, 682 S.E.2d 795, 801 (2009) (“[I]f the consecutive sentence is a non-parolable offense then its sentence must be served and credited first against the aggregated sentence. This is necessary to give effect to the legislative grant of parole eligibility on the parole-eligible offense.”). Thus, Slocumb had

to serve a minimum term of imprisonment of fifty-six years before he could be eligible for release for his non-burglary crimes, and he had already served nearly seventeen years of that sentence at the time of the resentencing hearing. Comparing the remaining thirty-year minimum term of incarceration that Slocumb was facing at the time of the resentencing hearing to Slocumb's forty-five years of projected life remaining at that time, Slocumb's life expectancy when he was resentenced exceeded the number of years he was required to serve before his earliest possible opportunity for release. Accordingly, notwithstanding his consecutive fifty-year term of imprisonment for first-degree burglary, Slocumb would have a meaningful opportunity to be released during his lifetime for his non-burglary crimes if he eventually was able to demonstrate maturity and growth in the future. See Graham, 560 U.S. at 75 (specifically recognizing that juvenile offenders who prove to be irredeemable as adults can be imprisoned for life but instructing that juveniles cannot be found to be irredeemable from the outset of their convictions). Therefore, even if his consecutive first-degree burglary sentence was somehow found to render his total aggregate sentence unconstitutional, Slocumb's aggregate eighty-year sentence for his non-burglary offenses is not itself unconstitutional and does not violate the mandates of Graham. Slocumb's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

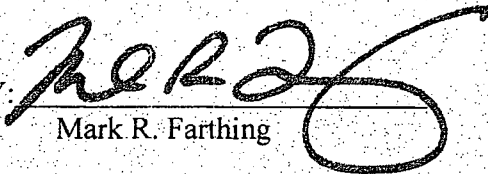
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ATTORNEYS FOR RESPONDENT

April 29, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable DeAndrea G. Benjamin, Circuit Court Judge
Appellate Case No. 2013-000933

THE STATE,

Respondent,

vs.

CONRAD LAMONT SLOCUMB,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 29th day of April, 2014.

Ellen R. DuBois
ELLEN R. DuBOIS
Legal Assistant

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