

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

SHELDON LAMAR KELLY,

PETITIONER

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

Sheldon Lamar Kelly, Appellant.

Appellate Case No. 2014-000918

Appeal From Charleston County
Roger M. Young, Sr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-372
Submitted July 1, 2015 – Filed July 29, 2015

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011) ("In

criminal cases, the appellate court sits to review errors of law only. A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law" (internal citation and quotation marks omitted)); S.C. Code Ann. § 17-25-45(A)(1)(a) (2014) (providing except where the death penalty is imposed, "upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has . . . one or more prior convictions for . . . a most serious offense"); S.C. Code Ann. § 17-25-45(C)(1) (2014) (classifying voluntary manslaughter and kidnapping as "most serious" offenses); *State v. Standard*, 351 S.C. 199, 206, 569 S.E.2d 325, 329 (2002) ("[A]n enhanced sentence based upon a prior most serious conviction for a crime which was committed as a juvenile does not offend evolving standards of decency so as to constitute cruel and unusual punishment." (emphasis omitted)).

AFFIRMED.¹

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

SHELDON LAMAR KELLY,

APPELLANT

APPELLATE CASE NO. 2014-000918

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

Opinion No. 2015-UP-372

PETITION FOR REHEARING

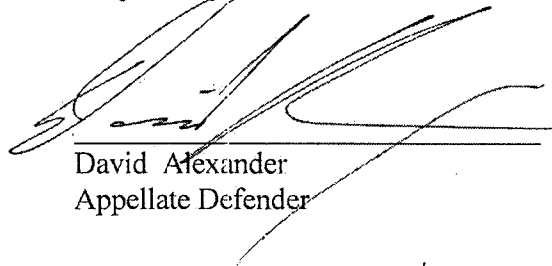
Appellant asks this Court to re-examine its opinion in this case and grant rehearing. Respectfully, this Court's opinion overlooks points that necessitate reversal of appellant's sentence.

Respectfully, the Court erroneously held that State v. Standard, 351 S.C. 199, 569 S.E.2d 325 (2002) remains valid after Miller v. Alabama, 132 S.Ct. 2455 (2012) and Graham v. Florida, 560 U.S. 48, 75 (2010). South Carolina already holds that a juvenile adjudication may not be used as a "strike." State v. Ellis 345 S.C. 175, 179-80, 547 S.E.2d 490, 492 (2001). In 2002, the South Carolina Supreme Court considered the exact question presented by this case. State v. Standard, 351 S.C. 199, 204-07, 569 S.E.2d 325, 328-30 (2002). In Standard, the Court held that if a juvenile had been tried and adjudicated as an adult, that conviction could be used as a strike. Id. Standard

relied on now-invalid reasoning in older United States Supreme Court and federal appellate cases to reach that conclusion. Id. For example, Standard held that “lengthy sentences or sentences of life without parole imposed upon juveniles do not violate contemporary standards of decency so as to constitute cruel and unusual punishment.” Id. at 205, 569 S.E.2d at 329. This holding is no longer good law after Miller and Graham.

Since Miller and Graham have overruled the principles underlying Standard, it is time to correct this practice in South Carolina. While this Court cannot overrule state Supreme Court precedent, it can recognize when such precedent has been rendered invalid by decisions of the United States Supreme Court. The Court should do so in this case and overturn appellant’s LWOP sentence.

Respectfully submitted,



David Alexander
Appellate Defender

This 12th day of August, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

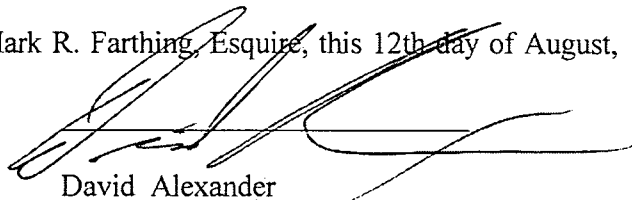
SHELDON LAMAR KELLY,

APPELLANT

APPELLATE CASE NO. 2014-000918

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, this 12th day of August, 2015.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 12th day
of August, 2015.

Walt Juchel (L.S.)
Notary Public for South Carolina

My Commission Expires: July 23, 2023

The South Carolina Court of Appeals

The State, Respondent,

v.

Sheldon Lamar Kelly, Appellant.

Appellate Case No. 2014-000918

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.

Paul W. Thomas

J.

[Signature]

J.

John D. Neath

J.

Columbia, South Carolina

FILED

cc:

- Alan McCrory Wilson, Esquire
- David Alexander, Esquire
- Mark Reynolds Farthing, Esquire
- Scarlett Anne Wilson, Esquire
- The Honorable Roger M. Young, Sr.

September 17, 2015

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SC OFFICE OF APPELLATE DEFENSE