

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from the Administrative Law Court
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge
Case No. 15-ALJ-0042-AP

MAR 01 2016
SC Court of Appeals

Appellate Case No. 2015-002522

NICHOLAS M. GEER, #227443.....RESPONDENT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE
AND PARDON SERVICES APPELLANT

RECORD ON APPEAL

**Tommy Evans, Jr.
Assistant General Counsel**

**S. C. Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

**Nicholas M. Geer, #227443
Perry Correctional Institution
430 Oaklawn Road
Pelzer, S.C. 29669**

RESPONDENT

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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RESPONDENT

ATTORNEY FOR APPELLANT

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STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 15-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

NICHOLAS GEER, #227443 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

RECORD ON APPEAL

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

ATTORNEY FOR RESPONDENT

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State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9324

July 13, 2015

Nicholas Geer, #227443
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

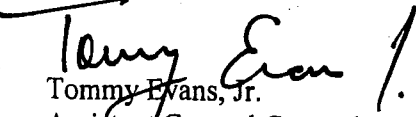
Dear Mr. Geer:

It is my duty to inform you that South Carolina law prohibits the Board of Probation, Parole, and Pardon Services from granting you parole on the sentence(s) identified below. Section 24-21-640 states: "[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60." Our records indicate that you have been convicted of the following violent crimes:

<u>Violent Crime</u>	<u>Indictment Number</u>	<u>Parolable</u>	<u>Sentence</u>
Murder	95-GS-04-1935	No	11/14/95
ABWIK	95-GS-04-608		06/05/95

Please note that this letter is the Department's "final decision" on this matter. You have the right to appeal this final decision by seeking review by an Administrative Law Judge. Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 3525.c. 594, 576 S.E.2d 146 (2003). In order to file such an appeal, you must follow the instructions on the back of the enclosed "Notice of Appeal" form approved by the Administrative Law Court (ALC). You will also be required to comply with ALC Rules of Procedure for special appeals. Failure to follow the ALC instructions or Rules of Procedure will result in forfeiture of your right to challenge the Department's final decision.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

NOW COMES THE DEFENDANT

Nicholas (Markus) Beer

Who in open Court pleads guilty to the charge in the warrant or in the within indictment and consents to sentence, this ___ day of _____ 19 ___

Defendant

SENTENCE

The defendant Nicholas Markus Beer is committed to the State Dept. of Corrections/County for a term of LIFE months/years and/or to pay a fine \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution For physical injury \$ _____
Yes/No Property damage \$ _____
to be paid _____

to clerk for _____
Other conditions _____

Date November 14, 1995 H. P. Hall
Presiding Judge

*Costs and Assessments
Non-Waivable \$ _____
Not waived \$ _____
Total \$ _____

Clerk of Court

*Pay to Victim's Compensation Fund if subrogated.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
The State)
vs.)
Nicholas Mashuen Geer,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
CASE NUMBER 95-GS-04-1935

INDICTMENT FOR MURDER

VERDICT

1. GUILTY OF MURDER.

Jayce E. Hendricks
FOREPERSON

2. NOT GUILTY.

FOREPERSON

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR MURDER
16-3-10

At a Court of General Sessions, convened on SEPTEMBER 5, 1995,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — MURDER

That NICHOLAS MASHUEN GEER
did in ANDERSON County on or about JULY 14, 1995,
feloniously, wilfully and with malice aforethought, kill one ALEX MEDINA
SHOOTING THE VICTIM WITH A HANDGUN
by means of SHOOTING THE VICTIM WITH A HANDGUN
and that the said victim died as a proximate result thereof.

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

George M. T. Duworth

SOLICITOR

ARREST WARRANT Jul 21 1 05 PM '95

E-354922

COMMON PLEAS AND GENERAL SESSIONS

STATE OF SOUTH CAROLINA

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

AFFIDAVIT

116

County/ Municipality of

STATE OF SOUTH CAROLINA County/ Municipality of

Personally appeared before me the affiant [Name] who being duly sworn deposes and says that defendant [Name] did within this county and state on [Date] violate the criminal laws of the State of South Carolina (or ordinance of [County/ Municipality of]) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

I further state that there is probable cause to believe that the defendant named above did commit [Crime] and that probable cause is based on the following facts: [Detailed description of the crime]

THE STATE against

FILED-CLERKS OFFICE

Jul 21 1 05 PM '95

Personal information form for Nicholas Washuen Geer including address, phone, sex, race, height, weight, DL state, DL #, DOB, Agency ORI, Prosecuting Agency, Prosecuting Officer, Offense, and Code/Ordinance Sec.

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of Anderson. The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date: 7-15-95

RETURN

A copy of this arrest warrant was delivered to defendant Nicholas M. Geer on 07-15-95

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: JUDGE 401 S MAIN ST ANDERSON, SC 29624 803-781-2271

Sworn to and subscribed before me on [Date] Signature of Issuing Judge (L.S.)

Signature of Affiant: SGT. James E. Johnson, Affiant's Address, Affiant's Telephone

STATE OF SOUTH CAROLINA County/ Municipality of

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that defendant [Name] did violate the criminal laws of the State of South Carolina (or ordinance of [County/ Municipality of]) as set forth below:

DESCRIPTION OF OFFENSE:

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.) Judge Code:

Judge's Address, Judge's Telephone, Issuing Court: Magistrate, Municipal, Circuit

ORIGINAL

E-354922

WITNESSES

SGT. JAMES JOHNSON, APD

DOCKET NO. 95-ES-04-1935

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 1995

DDW THE STATE

vs.

NICHOLAS MASHUEN GEER

ARREST WARRANT NO. E-354922

ACTION OF GRAND JURY

TRUE BILL

DATE

9595
Charles A. Coody
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

Indictment for Murder

16-3-10

GEORGE M. DUCWORTH, SOLICITOR

Commitment

11-14-95
APD
H

6

NOW COMES THE DEFENDANT

Nicholas M. Geer

Who in open Court _____ pleads guilty to the charge in the warrant or in the within indictment and consents to sentence,

this 5 day of June 19 95

Nicholas M. Geer
Defendant

SENTENCE

The defendant Nicholas M. Geer is committed to the State Dept. of Corrections/County for a term of 40 months + 2/6 yr months/years and/or to pay a fine \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for Five 5 months/years.

Restitution

Yes/No

to be paid _____

For physical injury \$ _____

Property damage \$ 700.00

to clerk for Tony Richardson 103 Webb St. Anderson SC

Other conditions _____

pay \$ To Vic 250 F.I.D. paid by S County 226-4744

Date 6/5/95

Frank Eggen
Presiding Judge

*Costs and Assessments

Non-Waivable \$ _____

Not waived \$ _____

Total \$ _____

Clerk of Court

*Pay to Victim's Compensation Fund if subrogated.

DOCKET NO. 95-GS-04-608

The State of South Carolina,

County of Anderson

COURT OF GENERAL SESSIONS

February _____ TERM 1995

DRW

THE STATE

vs.

NICHOLAS M. GEER

WITNESSES

Mike Dickson, APD

ARREST WARRANT NO. E353630

ACTION OF GRAND JURY

TRUE BILL

DATE 2-28-95

Charles L. Cody
Foreman of Grand Jury

VERDICT

**Indictment for Assault and
Battery With Intent To Kill
and Possession of Firearm
or Knife During
Commission of or Attempt
to Commit Violent Crime**

16-3-620

George M. Ducworth, Solicitor

Foreman of Petit Jury

Date:

COUNTY OF Anderson

June 5, 1995

Term

STATE

PROBATION ORDER

-VS-

FILED-CLERKS OFFICE ANDERSON

NICHOLAS MASHAWN GEER

No. 95 - GS - 04 - 608

Defendant JUL 6 2 35 PM '95

OFFENSE ASSAULT AND BATTERY WITH INTENT TO KILL GENERAL SESSIONS

The sentence of the court is that the defendant, Nicholas Mashawn Geer, shall be in the custody of the South Carolina Department of Corrections for a term of ... the balance of this sentence is hereby suspended and the defendant is hereby ordered to be placed on probation for a period of five (5) years under the supervision of the South Carolina Department of Probation, Parole, and Pardon Services.

IT IS FURTHER ORDERED: that the Sheriff or other law enforcement officers who have the custody of the defendant is hereby ordered to deliver said defendant to the Probation Office of this county, or if the defendant is under bond, then such bond shall remain in full force until the defendant reports to the Probation Office.

This 5th day of June, 19 95 Anderson, S.C.

Frank Eppes Presiding Judge Tenth Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years. You shall be subject to arrest, upon order of the Court, or upon a warrant issued by the Probation Agent.

Witnessed by: [Signature] Signed: [Signature] Probationer Anderson, S.C.

CONDITIONS ORDERED BY THE COURT:

- Waive Costs and Assessments. (NOTE: Some costs cannot be waived.)
Complete (hours) Public Service Employment.
Intensive Supervision for an indeterminate period not to exceed 6 months, as determined by the Department.
Home Detention for an indeterminate period not to exceed 6 months, as determined by the Department.
Electronically Monitored Home Detention for an indeterminate period not to exceed 90 days, as determined by the Department.
Participate and successfully complete an evaluation/referral for alcohol/drug abuse as determined by the Department.
XX Fine/Costs and Assessments payable as directed by the Court.
XX \$ 700.00 restitution payable to the Clerk of Court as directed by the Department or its agents.
Restitution Center.
Community Control Center.
Case to end upon Certification by the Clerk of Court that all monies have been paid (Sec. 24-21-550).
XX Other: Pay \$250. to PDF; Pay \$700. to victim at rate of \$50/mth beg 7/1/95;
FOR INFO: Ind # 95-GS-04-663- Resisting arrest - One (1) yr SDP

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ARREST WARRANT

E- 353723

STATE OF SOUTH CAROLINA

County/ Municipality of ANDERSON

THE STATE against

NICHOLAS MASHAWN GEER

Address: 106-C PARKVIEW HGTS ANDERSON, SC 29624

Phone: 803-231-9804 SSN: 250-37-3050

Sex: M Race: B Height: 5'04" Weight: 142

DL State: SC DL #: 007347572

DOB: 11/13/77 Agency ORI #: SC0040100

Prosecuting Agency: ANDERSON POLICE DEPARTMENT

Prosecuting Officer: ANY

Offense: RESISTING ARREST

Offense Code:

Code/Ordinance Sec. 16-9-320(A)

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (LS.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Nicholas Mashawn Geer on 012395

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: K. M. MATTISON, JUDGE 401 S MAIN ST ANDERSON, SC 29624 803-231-2271

FILED - CLERK'S OFFICE

STATE OF SOUTH CAROLINA

County/ Municipality of ANDERSON

JAN 26 1995

AFFIDAVIT Personally appeared before me the affiant J. T. WILLIAMS being duly sworn deposes and says that defendant NICHOLAS MASHAWN GEER did within this county and state on JANUARY 23, 1995 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of ANDERSON) in the following particulars:

DESCRIPTION OF OFFENSE: RESISTING ARREST

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON THE ABOVE DATE AT APPROX. 1241 HRS POLICE DID ATTEMPT TO SERVE ARREST WARRANT NO. E-353630 (ABIK) IN FRONT OF APT. 10-D FORTSON HOMES IN THE CITY LIMITS OF ANDERSON SC. AT THE TIME OF THIS ARREST POLICE ALSO ATTEMPTED TO SERVE A FAMILY COURT CUSTODY ORDER ON THE DEFENDANT. THE DEFENDANT DID RESIST ARREST IN WHICH HE FLED FROM THE AREA ON FOOT WITH POLICE IN PURSUIT THE FOOT PURSUIT TOOK PLACE AT APPROX. 1241 HRS AND ENDED AT APPROX. 1311 HRS IN FRONT OF APT. 7 FORTSON HOMES WITHIN THE CITY LIMITS OF ANDERSON SC. THE DEFENDANT DID STRUGGLE AND ATTEMPTED TO PULL AWAY IN AN ATTEMPT TO ESCAPE LAWFULL ARREST.

Sworn to and subscribed before me on 01/23/95

Signature of Issuing Judge (LS.) K. M. Mattison

Signature of Affiant James J. Williams Affiant's Address 401 S MAIN ST ANDERSON, SC 29624 Affiant's Telephone 803-231-2271

STATE OF SOUTH CAROLINA

County/ Municipality of ANDERSON

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on January 23, 1995 defendant NICHOLAS MASHAWN GEER

did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of ANDERSON)

DESCRIPTION OF OFFENSE: RESISTING ARREST as set forth below:

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (LS.) K. M. Mattison

Judge's Address 401 S MAIN ST ANDERSON, SC 29624 Judge's Telephone 803-231-2271

Judge Code:

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

E-353723 Xref #: 94-28469

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

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Form Approved by
S. C. Attorney General
Section 17-13-160
March 16, 1978

W-04-96-0011 (1-4-96)

SID #991977-01

STATE OF SOUTH CAROLINA

ARREST WARRANT
Ind. #95-GS-04-608

COUNTY OF Anderson

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF Anderson, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]:
Nicholas M. Geer

did on the 4 th day of January, 19 96,
violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE

Violation of probation and suspended sentences #95-GS-04-663 pursuant to Section 24-21-450.

Now, therefore, you are empowered and directed to arrest the said defendant and bring Nicholas M. Geer before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Anderson, S. C. this 4th day
of January, 19 96.

Chub We (L.S.)
Signature of Probation and Parole Agent

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Anderson

Personally appeared before me, one Auburn Walker,
who, first being duly sworn, deposes and says that [name of defendant]:
Nicholas M. Geer

did within this County and State on the 4 th day of January, 19 96, violate
the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

The Defendant has violated the conditions of his probation sentence and his suspended during probation sentence as imposed by the Honorable Judge Frank Eppes at the June 5, 1995 term of General Sessions Court holden in Anderson County, Anderson, South Carolina.

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

By possessing a firearm, in that subject was convicted on 11-14-95 of possessing a deadly weapon while committing a violent crime in Anderson County Court of General Sessions; by violating federal, state or local law in that subject was convicted of murder and possession of firearm or knife during commission of a violent crime for which he received a sentence of life + 5 yrs in Anderson County Court of General Sessions on 11-14-95; by failing to follow the advice and instructions of agent as witnessed by above violations. This constitute violation of conditions

Sworn to and Subscribed before me #4, 6, and 10 of the probation order.

this 4 day of Jan, 19 96.

RH (L.S.)
Signature of Notary Public

Chub We
Affiant

Address 126 N. McDuffie St.
Anderson, SC 29625

Phone (864) 260-2230

(Form Continues on Back)

State of South Carolina, County of: Anderson

Indictment No.(s) 95 -GS-04-608 ; 95 -GS-04-663 ; -GS- SDP

Client: Nicholas M. Geer DOB: 11 / 13 / 77 Location: () SCDC () County Jail () Community
 MM DD YY

SCDC No. _____ SID No. 991977-01

Supervision Program: probation Begins: 06 / 5 / 95 Ends: 06 / 4 / 2000 Supervision Level High
 MM DD YY MM DD YY

Offense: Assault & Battery W/Intent to Kill

Sentencing Judge: Frank Eppes Date of Sentence 06 / 04 / 95
 MM DD YY

Sentencing County Anderson

Sentence: YOA NTE 6 yrs; susp., and 5 yrs. probation.

Special Conditions: Pay \$250 to Public Defender Fund; pay \$700 restitution to victim at rate of \$50/mo. beginning 7-1-95.

Reporting: Subject reported as instructed prior to incarceration.

Current Address and Summary of Residence:

Subject currently resides at S.C. Dept. of Corrections prior to this he resided at 417 Greenmeadow Circle, Anderson, SC 29624.

revoked in full

Employment Record While Under Supervision:

<u>Employer</u>	<u>Dates (From - To)</u>	<u>Reason for Leaving</u>	<u>Earnings</u>
none			

Financial Conditions:

	<u>Total Amount Ordered</u>	<u>Period Payment ()</u>	<u>Total Amount Paid</u>	<u>Date Last Paid</u>	<u>Arrearage</u>	<u>Balance Due</u>
combined	978.50					978.50
Restitution:	\$700.00	\$50/mo.	0	0		\$700.00
\$250 + 3% Fine: (PDF)	\$257.00	\$50/mo.	0	0		\$257.50
Fee:	\$1200.00	\$20/mo.	0	0		\$1200.00

YOUR NTE COPY

County of Anderson

No. 95-GS-04-608

STATE

-VS-

ORDER
FILED CLERK'S OFFICE

Assault + Battery with Intent to Kill
Name of Offense

11-13-77

SCDC# or DOB

Nicholas M Geer
DEFENDANT
SID# 99 1977-01

Whereas the above named defendant has been charged with violating the conditions of probation ordered on 6-5, 1995 in the Court of General Sessions of Anderson County as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated Jan 4, 1996 a copy of which is incorporated by reference.

IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve 1-6 months/years of the 1-6 months/years sentence identified above, and/or pay \$; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve months/years of the original months/years sentence (and/or) pay \$; thereupon to be reinstated on probation as provided in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve months/years (and/or) pay \$; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

The defendant has previously served 0 months/years on this sentence.

IT IS ORDERED that the above named defendant is continued on probation as provided for in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

Additional Conditions ordered by the Court:

CC to sentence now serving

This 29 day of February, 1996
Anderson, SC

[Signature]
1011, Presiding Judge
Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgment and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order and the Conditions set out therein. I agree to comply with such conditions and the conditions of my probation order identified above during the period of my probation. I have received a copy of this court order and my sentence identified above.

Witnessed by: _____ Signed: _____ Probationer

Signed this _____ day of _____, 19____, at _____, SC.

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APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

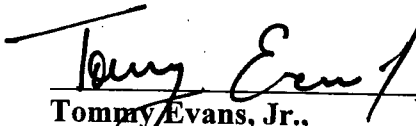
NICHOLAS GEER, #227443 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES; RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.



**Tommy Evans, Jr.,
Assistant General Counsel**

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

September 21, 2015

On August 12, 2005, Appellant filed his Notice of Appeal with this Court on the grounds that his ineligibility for a crime he committed when he was a juvenile violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution. Appellant cited to *Miller v. Alabama*, – U.S. –, 132 S.Ct. 2455 (2012) to support his position.

JURISDICTION

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003).

DISCUSSION

Appellant argues that the Department erred in rendering him ineligible for parole. Appellant points out that he was sentenced to life imprisonment without any reference to that sentence being without the possibility of parole and did not have a separate hearing to consider the "mitigating hallmark features of youth." Appellant points out that he was seventeen years old at the time his offense was committed. Appellant also asserts that "the Parole Board is under the erroneous presumption that he was sentenced to a life without the possibility of parole." He further asserts that even had he been sentenced to life without the possibility of parole, the United States Supreme Court in *Miller, supra* and the South Carolina Supreme Court in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) have held that it is cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution and Article I, Section 15 § of the S.C. Constitution for a defendant who is under the age of eighteen at the time of his or her offense to be sentenced to life imprisonment without the possibility of parole absent an individualized consideration of youth.

"The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Liberty interests protected by the Fourteenth Amendment may arise from the Constitution itself or from an expectation or interest created by state laws or policies. *Id.*; *Hewitt v. Helms*, 459 U.S. 460, 466 (1983), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). In *Furtick*, the South Carolina Supreme Court held that "the permanent denial of parole eligibility implicates a [state-created] liberty interest sufficient to require at least minimum due process." 352 S.C. at 598, 576 S.E.2d at 149.

In this case, the sentencing court sentenced Appellant to “life,” which, absent evidence to the contrary, this Court must interpret as life with the possibility of parole. The Board, in reviewing Appellant’s record prior to a parole hearing, relied upon S.C. Code Ann. § 24-21-640 (Supp. 2014) in concluding that Appellant was ineligible for parole. The Department maintains that same position in its brief. The Department even acknowledges in its brief that “Appellant was not originally sentenced to life without parole, [but] was determined not to be eligible for parole due to his prior record.” Section 24-21-640 states in pertinent part: “[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60.” ABWIK is certainly a violent crime as defined in Section 16-1-60 at the time of Appellant’s offense, as is his subsequent offense of murder.³ However, the question here is not the nature of the crimes committed but rather the denial of the possibility of a parole to a person who was a juvenile at the time he committed the prior and subsequent offense without having first taken his youth into consideration.

The U.S. Supreme Court in *Miller* made it clear that “mandatory life-without-parole sentences for juveniles violate the Eighth Amendment.” 132 S.Ct. at 2464. The Court reasoned that “[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 2467. Thus, though the Court did not “foreclose a sentencer’s ability” to impose life without the possibility of parole on a juvenile offender, the Court required that the sentencer “take into account how children are different, and how [or to what extent] those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 2469. Moreover, *Miller* was applied to South Carolina in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), including the U.S. Supreme Court’s definition of juvenile in these types of cases as being anyone under the age of eighteen.⁴ The Court in *Aiken* also applied *Miller* retroactively in South Carolina. *Id.* at 540, 765

³ Neither party appears to challenge the fact that it is Appellant’s age at the time of the offense, rather than at the time of the conviction, that is pertinent to the sentencing issue in this case. But for the sake of clarity, the Court considers Appellant’s age at the time of the offense to be the proper focus in determining whether he was a juvenile for sentencing purposes. See *State v. Green*, 412 S.C. 65, 86, 770 S.E.2d 424, 435 (Ct. App. 2015) (considering appellant’s age “at the time of the prior offense . . . that led to his prior conviction” in concluding that he was a juvenile at the time of his prior offense).

⁴ The Court in *Aiken* essentially abrogated the statutory definition of “juvenile” set forth in S.C. Code Ann. § 63-19-20 (2010) for purposes of cases such as this. See *Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 574 n.1.

S.E.2d at 575 (“We conclude *Miller* creates a new, substantive rule and should therefore apply retroactively.”).

The Department argues that *Miller* does not apply to the present case, because this case involved a deprivation of Appellant’s parole eligibility based upon his own actions via his subsequent violation, pursuant to Section 24-21-640, rather than being based on a ruling by the sentencing court. The Department cites to *State v. Standard*, 351 S.C. 199, 569 S.E.2d 325 (2002) to support its position. In *Standard*, our Supreme Court held that it is not cruel and unusual punishment to sentence a defendant to life without the possibility of parole utilizing enhanced penalties for a burglary committed when the defendant was a juvenile so long as the defendant was tried and sentenced as an adult for the triggering offense. 351 S.C. at 204, 569 S.E.2d at 328. The Court stated that “an 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.” *Id.* at 206, 569 S.E.2d at 329 (emphasis omitted). However, the crucial distinction between this case and *Standard* is that Appellant was a juvenile at the time of the prior offense (ABWIK) and the triggering offense (murder). Therefore, the rationale underlying the decision in *Standard* is inapposite, as both offenses were committed by a juvenile in this case.⁵

As to the fact that Appellant was deprived of his parole eligibility because of his own actions rather than by the sentencing court is a difference without a distinction. The Court in *Miller* focused on the “**sentencing scheme** that mandates life in prison without possibility of parole for juvenile offenders.” *Id.* (emphasis added). The Court’s concern was that this precludes the sentencer from taking youth and its attendant characteristics and circumstances into account. In this case, the sentencing scheme was the Board’s application of Section 24-21-640 to declare Appellant, who was a juvenile at the time of both his ABWIK and murder offenses, ineligible for parole. Regardless of whether the sentencing court or the statute took away Appellant’s parole eligibility, the pertinent fact remains that Appellant’s youth and its attendant characteristics and circumstances were not taken into account prior to the deprivation of his parole eligibility, and the

⁵ The South Carolina Court of Appeals also recognized this distinction in *Green*, 412 S.C. at 86-87, 770 S.E.2d at 436 (“Although *Miller* held that mandatory LWOP sentences for juveniles violate the Eighth Amendment, . . . because *Green* was not a juvenile at the time he committed the current armed robbery, the policy considerations from *Miller* are inapplicable). The difference between this case and *Standard* and *Green*, though, is that Appellant was a juvenile at the time he committed both the prior offense and the triggering offense, thus implicating *Miller*.”)

courts have found that such deprivation is cruel and unusual punishment under the U.S. and S.C. Constitutions.

Curiously, the Department acknowledges that the S.C. Supreme Court in *Aiken* “determined that *Miller* can be applied retroactively, not allowing defendants who committed their crimes as juveniles to serve a life sentence without parole.” The Department, however, argues that *Aiken* does not apply in this case, because “Appellant was not considered a juvenile when he committed the current offense” and “[h]e is currently doing a life without parole sentence due to his prior criminal actions.” The Department reasons that Appellant was not considered a juvenile at the time he committed his offenses because he was seventeen at the age of his offenses. In support of this argument, the Department cites to S.C. Code Ann. § 63-19-20 (Supp. 2014) of the Juvenile Justice Code, which states that “[c]hild” or “juvenile” means a person less than seventeen years of age.” However, in the first footnote in *Aiken*, the Court explicitly rejected that definition of “juvenile” in favor of the one set forth in *Miller*, which defines juveniles as individuals under the age of eighteen. *See Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1. As the Department even concedes, Appellant was seventeen years of age when he committed the prior and current offenses. Therefore, Appellant was a juvenile at the time he committed those offenses.

Finally, the Department argues that “[t]he automatic application of a life without parole sentence had been determined a violation of the eighth amendment [in *Miller*] because it does not consider the character and record of the individual offender or the circumstances of the offense.” The Department contends that the character and record of Appellant and the circumstances of his offense are why he is not eligible parole, because he shot two people, killing one, within a period of seven months. The Department is correct that the Court in *Miller* did cite *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (plurality opinion) as an example of a line of precedent requiring consideration of “the characteristics of a defendant and the details of his offense” *Miller*, 132 S.Ct. at 2458. However, this was only part of “the confluence of . . . two lines of precedent” that led the Court to conclude that mandatory life without parole for juveniles violated the Eighth Amendment. The other line of precedent that the Court examined and blended with the rule cited by the Department considered the “mismatches between the culpability of a class of offenders and the severity of a penalty,” juveniles having a “lesser culpability.” *Id.* This is why the Court adopted the requirement that a sentencer consider a juvenile offender’s “youth and its attendant characteristics, along with the nature of his crime” *Id.* at

2460. It found that “mandatory life-without-parole sentences on juvenile homicide offenders . . . , by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 2467. The Court’s decision “d[id] not categorically bar a penalty for a class of offenders or type of crime” but did “mandate[] . . . that a sentencer follow a certain process – considering an offender’s youth and attendant circumstances – before imposing a particular penalty.”

In this case, because Appellant’s youth was not taken into account before he was deprived of the possibility of parole, the deprivation violated the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution.⁶

IT IS THEREFORE ORDERED that the Department’s Decision is **REVERSED AND REMANDED** for further findings consistent with this Order.

AND IT IS SO ORDERED.



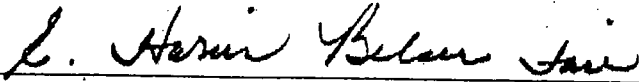
Ralph King Anderson, III
Chief Administrative Law Judge

December 1, 2015
Columbia, South Carolina

⁶ The Court certainly understands the Department’s concern that Appellant committed murder within seven months of another violent crime and acknowledges that the General Assembly enacted Section 24-21-640 to **protect** society from especially violent criminals. However, that statute cannot be applied in a way that fails to take Appellant’s youth and its attendant characteristics and circumstances into account. The Parole Board in this case could not have taken Appellant’s youth and its attendant characteristics and circumstances into account because, by the Department’s own admission, Appellant was not considered a juvenile when he committed the triggering offense, which was an error of law.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

December 1, 2015
Columbia, South Carolina

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge
Case No. 15-ALJ-0042-AP

Appellate Case No. 2015-002522

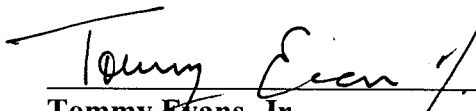
NICHOLAS M. GEER, #227443.....RESPONDENT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE
AND PARDON SERVICES APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 210(c), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007, and contains all material proposed to be included by any of the parties and not any other material.


Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

February 29, 2016

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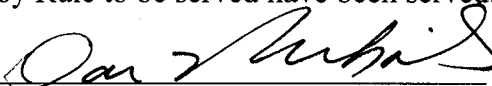
S.C. DEPARTMENT OF PROBATION, PAROLE
AND PARDON SERVICES APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Appellant, certify that I have served a copy of the *RECORD ON APPEAL*, dated February 29, 2016, on Respondent by depositing the same in the United States mail, postage prepaid, this 29th day of February, 2016, addressed to him:

**Nicholas M. Geer, #227443
Perry Correctional Institution
430 Oaklawn Road
Pelzer, S.C. 29669**

I further certify that all parties required by Rule to be served have been served.



**Dawn K. Nichols,
Executive Administrative Assistant**

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SC Court of Appeals

February 29, 2016

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street- 5th Floor
Columbia, South Carolina 29201

RE: Nicholas Geer v. SCDPPPS

Dear Ms. Kitchings:

Please find enclosed for filing the original and fourteen (14) copies of the *Record on Appeal* dated February 29, 2016, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Tommy Evans, Jr.".

Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures

cc: Nicholas Geer



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