

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF GENERAL SESSIONS  
SECOND JUDICIAL CIRCUIT  
2014-GS-02-01308  
2014-GS-02-01310 through 01312

STATE OF SOUTH CAROLINA,  
vs.  
MICHAEL FULLER,  
Defendant

MOTION TO RECONSIDER SENTENCE  
AND REQUIREMENT TO REGISTER  
AS A SEX OFFENDER

**RECEIVED**

MAR 29 2016

**SC Court of Appeals**

The Defendant in the above-captioned matter respectfully requests that the Court to reconsider the sentence it imposed on the Defendant on Friday, February 19, 2016. The Defendant also respectfully requests that the Court reconsider the decision to deny making a finding that the conviction did not include a criminal sexual offense or attempted criminal sexual offense.

As grounds for the reconsideration, the Defendant urges that the interests of justice will be served by the granting of this request. The Defendant will present further grounds as necessary, by Memorandum and/or in open court and/or *in camera* at such date and time as the Court deems appropriate.

Respectfully submitted,



Wallis Alves  
Attorney for Defendant

Aiken, South Carolina  
February 29, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

29<sup>th</sup> day of Feb. 2016

CCCP. & G. S., Aiken County, S.C.

Deputy Clerk

*Liz Godard*  
LSPH  
*Antonia Trajce Hynes*

STATE OF SOUTH CAROLINA )  
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COUNTY OF AIKEN )

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SECOND JUDICIAL CIRCUIT  
2014-GS-02-01308  
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STATE OF SOUTH CAROLINA,  
vs.  
MICHAEL FULLER,  
Defendant

**MEMORANDUM IN SUPPORT OF  
MOTION TO RECONSIDER SENTENCE  
AND REQUIREMENT TO REGISTER  
AS A SEX OFFENDER**

The Defendant was charged with Kidnapping, Criminal Sexual Conduct, 1<sup>st</sup> degree, Assault & Battery, 1<sup>st</sup> degree, Possession of a Stolen Pistol, Possession of a Pistol during the Commission of a Violent Crime and Unlawful Carrying of a Pistol. He was found guilty of Kidnaping, Possession of a Stolen Pistol, Possession of a Pistol during the Commission of a Violent Crime and Unlawful Carrying of a Pistol. He was found not guilty on the charges of Criminal Sexual Conduct, 1<sup>st</sup> degree and Assault & Battery, 1<sup>st</sup> degree. He received a total sentence of 41 years due to all of the sentences being run consecutive. In addition he was required to register as a sex offender pursuant to 23-3-430(A)(15) due to the Court declining to find that the conviction for kidnapping did not include a criminal sexual offense or attempted criminal sexual offense.

The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). 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.

Wasman v. United States, 468 U.S. 559, 563, 104 S.Ct. 3217

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 29<sup>th</sup> day of Feb 2016  
*Liz Godard*  
C.C.P. & G. S., Aiken County, S.C. *LSPH*  
*Chantya Marjorie Hynes*  
Deputy Clerk

In this situation, the Defendant denied committing the offenses and did not testify. However, his statements made to police and via his jail calls were admitted into evidence giving his explanations for what occurred during the incident.

At the time of the sentencing, the Defendant asked the Court to consider a sentence less than the maximum of 41 years. The Defendant also asked the Court to make a finding that the kidnaping conviction did not involve a criminal sexual offense.

The Defendant was arrested on December 20, 2013 for this charge and has remained incarcerated since that date. As a result of the conviction, he will have to complete 85% of his sentence. Based on the time he is facing, this will amount to a considerable length of incarceration and the Defendant will be significantly older at his release date. At the completion of the sentence, he will be placed on supervised release for up to 2 years. Based on the jury verdicts and the amount of time he will have to serve, the Defendant requests that the Court amend the sentences to run concurrent and reduce the amount of time below the maximum sentence for the Kidnapping..

The Defendant is 25 years old and has 2 children. He has a relationship with his children and other family members who have and will continue to support him. During the trial, he had support from numerous family members. Prior to his incarceration, he attended workshops at the South Carolina Vocational Rehabilitation and was seeking employment. He was raised by his maternal grandparents due to his mother's addictions and other problems. While living with his grandparents, he helped care for his younger siblings. In addition, he completed high school and excelled at playing tennis. He taught tennis at Smith Hazel Community Center in Aiken and other venues. There is clear evidence that the allegations made against him at trial are not indicative of his character and how he lived his life. His paternal grandmother and two members

of the community spoke at sentencing. At this time, the Defense also submits letters in support of this motion. (attached)

The Defendant also asks this Court to reconsider the refusal to find that the Kidnapping conviction did not include a criminal sexual offense or attempted criminal sexual offense.

Section 23-3-430(A)(15) requires that a person convicted of Kidnapping of a person age 18 years or older register as a sex offender except when the Court make a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense. In this case, the Defendant was charged with Criminal Sexual Conduct, 1<sup>st</sup> degree but the jury verdict for that charge was not guilty.

In Cox v. McGraham, 211 S.C. 378 (1947), the Court found that questions of fact should be submitted to the jury when they are in dispute, but the jury must also decide upon the inferences to be drawn from such facts. This has also been upheld in criminal cases.

In U.S. Supreme Court in U.S. v. Booker, 543 U.S. 220 (2005), the Court decided the cases of two separate defendants who were convicted of drug offenses. At sentencing, the respective judges made factual findings which increased the maximum sentence exposure faced by the Defendants. In deciding the cases, the Booker Court, citing In re Winship, 397 U.S. 358, 364 (1970), stated "it has been settled throughout our history that the Constitution protects every criminal defendant against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." The Court also cited U.S. v. Gaudin, 515 U.S. 505, 511 (1995) saying "it is equally clear that the Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged." The Court also relied on the decision in Apprendi v. New Jersey, 530 U.S. 466 (2000) which held that "other than the fact of a prior conviction, any fact that increases

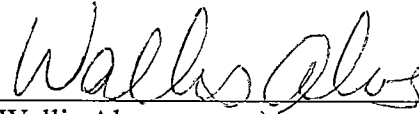
the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt". In this case, as in every other, the jurors were advised that they are the "judges of the facts". It is they who make the decision when the facts are in dispute. The jury made a finding of fact and found the Defendant not guilty of Criminal Sexual Conduct. This finding should not be disturbed or ignored. And the Defendant requests that the Court reconsider the previous ruling and adopt the jury's findings. The Defendant respectfully requests that the Court make a ruling that the Kidnapping conviction does not include a criminal sexual offense or an attempted criminal sexual offense.

The Defense anticipates that the State's response to this argument will be that the requirement to register is not a criminal sanction and does not increase the Defendant's sentence. We would respectfully disagree with this anticipated response and argue that in this case, the sex offender registry serves not only as a collateral consequence of the Kidnapping conviction but it is a severe penalty that the Defendant faces due to the social ramifications, future limitations on residence, additional requirements when he is on supervised release and the criminal penalties he will face if he violates the registration requirements. In Williams v. State, 378 S.C. 511 (2008), the Court of Appeals found that an attorney was not ineffective for failing to advise a client that a plea to Kidnapping would trigger him having to register as a sex offender. The Court discussed the differences between direct and collateral consequences and found that sex offender registry was a collateral consequence of a Kidnapping conviction. The Williams Court decision came two years prior to Padilla v. Kentucky, 559 U.S. 336 (2010), where the Supreme Court found that an attorney was ineffective for failing to correctly advise a client that a drug conviction would result in the collateral consequence of deportation. In Padilla, the Court found that deportation as a consequence of a criminal conviction is a severe penalty and although the

removal proceedings are civil in nature, it is nevertheless intimately related to the criminal process.

The Padilla ruling can be applied here. Because sex offender registration is such a serious consequence of the conviction and the potential does exist for future punishment as a result of Mr. Fuller's inclusion on the registry, it should be considered as closely related to the criminal process. Thus, the jury's finding of not guilty as to the criminal sexual offense should be the basis of the decision of whether a sexual offense occurred.

WHEREFORE, the Defendant prays that the Court reconsider his sentence and order that the sentences be concurrent and less than the maximum sentence. In addition, the Defendant prays that the Court reconsider the previous ruling and make a finding that the Kidnapping conviction did not involve a criminal sexual offense.



Wallis Alves  
Post Office Drawer 2247  
Aiken, SC 29802  
(803) 642-1732  
Attorney for Defendant

Aiken, South Carolina  
February 29, 2016

State v. Michael Fuller

Feb 26, 2016

To whom it may concern,

I am writing this letter on behalf of Michael Fuller. I am requesting reconsideration of the jail time he received recently. I have known Michael since he was 12 years old as a result of his association with my husband, his tennis coach. Through the years, I had many chances to talk with Michael about his future. We also often discussed the bible. I came to know Michael very well. He has spent time in our home and our church. I have come to love him and I think of him as a member of the family.

Michael has made mistakes. We all have. However, I do not feel that Michael is a violent person. I have complete trust in him. If given the opportunity to turn his life around I think that Michael could become a value member of society.

Michael is a young man with so much potential. I plead with you to reconsider his sentence and give him the second chance at life.

Sharon M. Campbell

February 26, 2016

To Whom It May Concern:

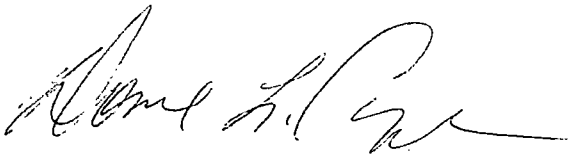
I am writing this letter on behalf of Michael Fuller to request that the courts have mercy on him and consider reducing his sentence from his recent trial. Although Michael like all of us has made mistakes in his life, I have always found him to be a good person.

I first met Michael when he was a participant in an afterschool program that I ran at Smith-Hazel Recreation Center. He was eleven years old at the time and was referred to me by his teacher Dr. Pam Simpson of Chukka Creek Elementary School. Dr. Simpson saw that he was a very respectful young man that she thought needed an additional male role model figure in his life. Dr. Simpson referred four other young men, but Michael was the only one that stayed in our program. Michael was an exceptional athlete and eventually became a very good tennis player. He won numerous United States Tennis Association sanctioned junior tennis tournaments, was a State and Sectional ranked player and played high school varsity tennis from the seventh grade to his senior year at Aiken High School. During his high school career he was also named an all region player and played the number one position for his team. He has also been a tennis instructor in the program and has shared his skills with other young people in learning the game of tennis.

Michael and I have had a long relationship together and I consider him as one of my children. We have traveled together and he has been in my home with my family on numerous occasions. He has also met my 87 year old mother who was saddened to hear of his recent troubles. Michael and I also attended Cumberland A.M.E. Church together where he participated in Bible Study and other church activities. Since his incarceration we have been in communication and he has shared with me his desire to walk closer with Christ and change his way of living. My only regret is that if I could have helped him come to this point in his life sooner, but I feel that it is never too late to make a change for the better.

I feel that if Michael is given a second chance he will be able to continue to turn his life around and make good decisions in his life. If he has to serve the entire time of his sentence I think it will be a much more difficult path for him. Once again I think Michael is a good person and is worth giving the opportunity to prove it.

Respectfully Submitted,



Donnie L. Campbell SR

Rogers Williams  
508 Kissimmee Avenue  
Suffolk, VA 23434

26 February 2016

Honorable G. Thomas Cooper, Jr.  
P. O. Box 192  
Columbia, SC 29202-0192

Dear Judge Cooper,

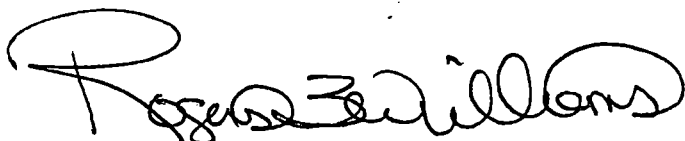
I am Rogers Williams, the father of Michael Fuller. I currently reside in Suffolk, Virginia but talk to my son frequently, at least three times a week. I am aware of the two – weapons charges, as well as the kidnapping charge against Michael. I am writing this letter in regards to the character of Michael in hopes that his sentence may be reduced.

Michael was raised by his grandmother in South Carolina because it was thought to be the best environment for him at the time as his mother was in and out of jail and was battling addiction with illegal drugs. As a young child, Michael was exposed to the game of tennis which he learned to love. He never caused or got into trouble. He engaged younger children into the game, teaching them the fundamentals and things that he knew.

At age 18, Michael moved to Virginia to live with myself, my wife, and four children. He was a caring and loving member of my family. He attended Tidewater Community College, studying to be an electrician and worked at the Norfolk Naval Shipyard. He continued to play and teach tennis. During the 3-years he lived with me he kept out of trouble and was considerate to those around him. Michael moved back to South Carolina to assist his grandmother with her daily living.

Michael Fuller is a good person with a huge heart. I know Michael will do better, and make better choices in the future. Thank you for your consideration in reducing his sentence.

Respectfully

A handwritten signature in black ink that reads "Rogers Williams". The signature is written in a cursive style with a large, looping initial "R".

Rogers Williams

## Wallis Alves

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**From:** Shanell Williams <shanellw24@icloud.com>  
**Sent:** Friday, February 26, 2016 8:01 PM  
**To:** walves@aikenpd.com  
**Subject:** Shanell Williams

Shanell Williams  
418 Linden Ave.  
Suffolk, VA 23434  
(757)-371-4955

Hello! My name is Shanell Williams & I am the mother of Michael Fuller's child, Aniyah Fuller. I've known him for 7 years & he's a loving, caring, & a generous person. Michael always looked out for his family, & friends. He will give the shirt off of his back, & the shoes off of his feet just to make sure you'll have everything, & he'll think about himself later. Michael is a GREAT father to our daughter. Words can't describe how strong their bond is. When Aniyah talks or sees her father she has a very big smile on her face. In most cases, in the black community, there are a lot of motherless & fatherless children, but I'm proud to say that Aniyah is not fatherless nor motherless. Michael always been a big support to our daughter. He made sure she has everything that she needs. Michael always been big on family & he always tells us "Without my family I'm nothing!" Aniyah & I can't imagine our lives without him he's the root to us. Overall Michael is a good companion, brother, grandson, nephew, son, & most of all father!

## Wallis Alves

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**From:** pholland0 <pholland0@yahoo.com>  
**Sent:** Sunday, February 28, 2016 9:24 AM  
**To:** walves@aikenpd.com  
**Subject:** Character letter

When I was ask to write a letter on Michael Fuller behalf concerning his character, I was so elated. I personally have known Michael Fuller for over 15 years, and he has always been upfront and honest with me. I consider him to be like my little brother. When I heard the allegations against him I was distorted in unbelief. I know Micheal as a kind and gentle person, who love life and people. Michael have made some mistakes in life, but not the actions described from others an or the media made him to be. I trust Micheal with my life and believe him when he tell me something. In life people are mistreated, but in this case I truly believe Micheal have had an injustice inflicted on him, if I could open up his heart with a visual display and show you we would see the sincerity and love within him. He had impeccable talents and skills. He really has so much love for the fellow man. I pray that God will intervēne on his behalf and reduce is sentence. May God bless and keep him safe during this journey of his life.

Respectful yours  
Paul Holland

Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

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SECOND JUDICIAL CIRCUIT  
2014-GS-02-01308  
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STATE OF SOUTH CAROLINA,  
vs.  
MICHAEL FULLER,  
Defendant

**CERTIFICATE OF SERVICE**

I, Wallis Alves, did serve the Motion to Reconsider the Sentence and Registration as a Sex Offender and Memorandum in support of the Motion on the following persons by depositing a copy of the Motion and Memorandum in the United States Mail on February 29, 2016 with first class postage affixed thereto.

Honorable G. Thomas Cooper, Jr  
Post Office Box 192  
Columbia, SC 29202

Margaret Bodman  
Fifth Circuit Solicitor's Office  
Post Office 192  
Columbia, SC 29202

*Wallis Alves*

Wallis Alves  
Post Office Box 267  
Barnwell, SC 29812

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

29<sup>th</sup> day of Feb. 2016

*Liz Godard*  
\_\_\_\_\_  
C.C.C.P. & G. S., Aiken County, S.C.

*LSEH*  
*Deatoya Marjorie Hynes*  
\_\_\_\_\_  
Deputy Clerk