

Brian Diggs #248964

Broad River Correctional Inst. Mu. #71-A  
4460 Broad River Rd.  
Columbia, S.C 29210

April 13, 2016

Daniel E. Shearouse

Clerk of Court

The Supreme Court of South Carolina

P.O. Box 11330

Columbia, S.C 29211

**RECEIVED**

APR 20 2016

**S.C. SUPREME COURT**

Re: Brian Diggs v. State, Appellate Case No. 2016-000666  
Lower Court Case No. 2015CP2901434

Dear Mr. Shearouse,

Please accept this as my response to the letter dated April 5, 2016 in which I received April 12<sup>th</sup> 2016, via prison mail room, requiring me to provide a written explanation as to why the circuit court judge's determination that this action is barred as being successive and/or untimely under the statute of limitations is improper.

Please note that in respect to the 15 day response time noted in your letter, that April 12, 2016 is when I received your letter.

Petitioner was a juvenile when he pleads guilty to murder and attempted armed robbery in which he received a life sentence with a parole eligibility of 30 years as provide by S.C Code Ann 16-3-20 (B) 1993 and a consecutive 10 years in Lancaster County. Petitioner filed his pro se P.C.R application on October 20, 2015. Petitioner initiated this Fourth P.C.R and Motion For Resentencing pursuant to the recent South Carolina Supreme Court decision in Aiken v. Byars 410 S.C 534, 765 S.E 2d 572 (2014).

The judge erred in finding this matter barred because S.C Code Ann sec. 17-27-45(b) extends the PCR statute of limitations by one year for binding constitutional decisions. Under this statute, successive post-conviction applications are the procedure to ask the Court to apply binding constitutional decisions. Petitioner applications were timely filed and grounded in sound legal theory. The Petitioner asserts that his lengthy sentences are effectively life without parole de facto and do not satisfy the components of the "meaningful opportunity" in context of the Eighth Amendment and Art. 1 sec 15 of the South Carolina Constitution. The judge also erred in finding that the petitioner should be restricted from future filings. The Applicant's claim is based on meritorious legal theory in light of U.S Supreme Court recent decision in Montgomery v. Louisiana (2016) 182 77, U.S No. 14 280 98 Cr1362.

The Petitioner has initiated each action and claim in light of how the courts have dramatically altered the legal framework governing criminal sentences which can be imposed upon juveniles offenders in the last decade. The South Carolina Supreme Court did not foreclose or dispel the idea that ~~juvenile~~ <sup>those</sup> who received ~~sentences~~ lengthy sentences as juveniles are barred or precluded from their decision in Akin v. Byars. Moreover, the South Carolina Supreme Court, ~~did not~~ if it was their intent, ~~to~~ would have issued specific language

"that challenge" made contesting de facto L.W.O.P. are not considered in their ruling." However this was not the case.

The record is indisputable that the petitioner was 17 years old at the time of his offense where the State sought the death penalty, and in exchange for his guilty plea, he received a 30 year life sentence and a second sentenced of 10 years to be ran consecutive. The Court handed down this aggregate sentence enhancement to the petitioner that were crafted for adults which exceeds petitioner life expectancy and amount to a (virtual) de facto L.W.O.P. The P.C.R. court erred by looking to the mere theoretical parole availability and ruling that petitioner's claims are meritless and repetitive.

The meaningful opportunity for release requirement in Akin appears to encompass three distinct compounds. (1) a chance for release at a meaningful time; (2) a realistic likelihood for rehabilitation, and (3) a meaningful opportunity to be heard.

Finally, the court erred grossly by not affording petitioner a reasonable opportunity to respond to the states motion requesting to restrict future filings. The PCR court granted the state's motion and restricted petitioner from proceeding without cost without providing petitioner ~~with~~ a reasonable opportunity to respond. I have enclosed a copy of the the mail delivery log from the Department of Correction as evidence that ~~the~~

the P.C.R. court issued its ruling on February 23, 2016. Petitioner did not have the allotted 20 day to oppose the State's request. The P.C.R. court also erred in not moving on petitioner's Motion For Resentering Pursuant to Aiken vs Byars.

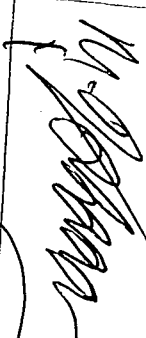


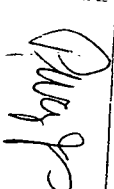
Petitioner contends that his petitions are not numerous and repetitive and that the P.C.R. court abused its discretion in restricting petitioner's future filings without cost.

  
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April 13, 2016

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Office of General Counsel  
LEGATE/PRIVILEGED/CERTIFIED MAIL DELIVERY LOG

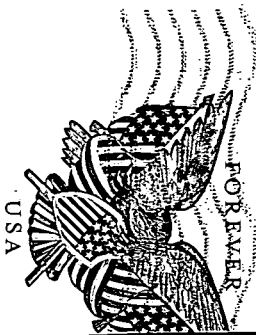
MURRAY

Date Received	Inmate Name and SCDC Number:	Sender's Name and Address	Date Mail/Order to Report Delivered to Inmate	Inmates Recipient's Signature	Inspected/Delivered in Inmate's Presence By:	Comments
2/22/16	Michael Johnson 1937733	Richard Shirley Clerk of Court PO Box 8002 Anderson, SC 29622	2/24/16		Rue	
2/22/16	Carol Edward 217657	Robert Mills Attorney 1728 Main St. Columbia, SC 29201	2/24/16		Rue	
2/22/16	Brian Dwyer 248984	SC Attorney General Office PO Box 11548 Columbia, SC 29211	2/24/16	B n P	Rue	
2/23/16	Jane Simpson 118534	Dept. Probation, Parole, Pardon PABox 5066 Columbia, SC 29220	2/24	Jane Simpson		
2/23/16	David Walker 274195	SC Commissioner's Sec. Office 1332 Lady St. Columbia, SC 29201	2/24	X David Walker		
2/23/16	Jane Bunnell 305475	Law Office Jeremy Thompson PO Box 12891 Columbia, SC 29211	2/24/16			

SCDC FC DRM 10-12 (Revised May 2013)

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COLUMBIA, SC 2900  
15 APR 2015 PM 11



RECEIVED Daniel E. Shearouse Clerk of Court  
Supreme Court of South Carolina

APR 15 2016

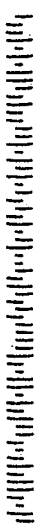
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