

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2013-002075

THE STATE,

Respondent,

vs.

ABDUL FURQUAN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly sentenced Appellant to a sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45 after Appellant was convicted of a second “most serious” offense during his lifetime, and the enhancement of Appellant’s sentence based on his prior 1992 conviction for a “most serious” offense did not render his life without parole sentence unconstitutional in any way.

STATEMENT OF THE CASE

In October of 2011, Appellant Abdul Furquan was arrested following an investigation into a home invasion and shooting that occurred in Myrtle Beach, South Carolina. In May of 2012, the Horry County Grand Jury indicted Appellant for first-degree burglary, attempted murder, and unlawful possession of a firearm by a person convicted of a violent offense. Prior to trial, the solicitor served timely notice on Appellant indicating the State would seek a sentence of life without parole upon conviction based on Appellant's prior conviction for the "most serious" offense of second-degree criminal sexual conduct with a minor. On September 18, 2013, a jury trial was commenced in the Horry County Court of General Sessions with the Honorable Larry B. Hyman, Jr., circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to life without parole pursuant to S.C. Code Ann. § 17-25-45 for the first-degree burglary and attempted murder convictions and a five-year term of imprisonment for the unlawful possession of a firearm by a person convicted of a violent offense conviction. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the night of October 16, 2011, David Moran was playing games on his computer in the living room of his apartment when he heard a knock at the apartment door. (R. p. 14; pp. 126-127). Believing it to be a friend he was expecting to come over, Moran opened the door and encountered two men wearing bandanas over their faces. (R. pp. 126-127; p. 133). Surprised, Moran quickly tried to shut the door, but the men forced their way into the apartment. (R. pp. 127-129). One of the men then suddenly pulled out a silver revolver and shot Moran in the head. (R. p. 128).

Upon hearing the gunshot, Moran's roommate, Eric Collins, immediately grabbed his rifle, ran out of his bedroom, and went to investigate the loud popping noise he heard come from the living room area. (R. pp. 13-14; pp. 19-20). When he entered the living room, he saw the men with bandanas over their faces inside of the apartment, and one of the men was holding a silver revolver while standing over Moran, who was sprawled out on the floor. (R. pp. 14-15; p. 17). At that point, the armed man looked at him and exclaimed, "Oh, shit." (R. p. 14). The intruders then turned and rapidly fled from the apartment. (R. p. 14).

Shortly thereafter, law enforcement officers responded to the scene of the home invasion and shooting, and Moran was quickly transported to the hospital with a fractured skull. (R. pp. 62-63; pp. 129-130). Detective Allen Large of Horry County Police Department then began an investigation into the incident, but he was initially unable to develop any leads as to the identities of the perpetrators. (R. pp. 62-65). However, a few days after the shooting, two individuals, Samantha Topolski and Taylor Smith, voluntarily came forward to the authorities and provided information implicating

Appellant Abdul Furquan and his accomplice, Jeremy Fleming, in the crimes. (R. p. 40; p. 43; p. 57; pp. 60-61; p. 65).

In response, Detective Large obtained arrest warrants for Appellant and Fleming along with a search warrant for the trailer they shared. (R. p. 46; pp. 54-55; pp. 65-67; p. 88; p. 94). The Horry County Police Department's Special Response Team then executed the warrants at the trailer and arrested Appellant and Fleming inside. (R. p. 77). Thereafter, in the ensuing search on the premises, officers located and secured two bandanas, two sets of gloves, and a silver .38-caliber revolver that was thrown from the trailer during the execution of the warrants.¹ (R. pp. 73-74; p. 76; p. 83; p. 106-107). Appellant was subsequently indicted for a number of offenses, including the "most serious" offenses of first-degree burglary and attempted murder, and he proceeded to trial. (R. p. 2; pp. 187-195).

At the outset of trial, defense counsel moved for the trial judge to "dismiss" the State's "attempt" to seek a sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45.² (R. p. 3). In support of that motion, defense counsel argued the recidivist offender statute violated the separation of powers doctrine by permitting the solicitor to make the decision as to whether to pursue a life sentence. (R. pp. 3-4). Furthermore, defense counsel asserted Appellant's prior conviction was too old to be fairly and reasonably used for enhancement purposes since it occurred in 1992 and, upon inquiry from the trial judge, indicated his argument could be based on the cruel and unusual

¹ Upon subsequent analysis, Investigator Jill Domogauer of the Horry County Police Department determined gunshot residue was present on the gloves. (R. pp. 97-98; p. 108).

² Based on Appellant's prior conviction for the "most serious" offense of second-degree criminal sexual conduct with a minor, the solicitor served Appellant with timely notice prior to trial of the State's intention to seek sentences of life without parole pursuant to S.C. Code Ann. § 17-25-45 in the event the jury convicted Appellant of his most recent "most serious" crimes. (R. pp. 4-5; p. 178; pp. 185-186).

punishment clause. (R. p. 4). In response, the solicitor noted Appellant had previously been convicted of the “most serious” offense of second-degree criminal sexual conduct with a minor and, thus, was subject to a life sentence pursuant to the recidivist offender statute regardless of when his prior conviction occurred. (R. p. 4; p. 7). After considering the arguments of counsel, the trial judge took the matter under advisement. (R. p. 6).

Subsequently, during trial, Moran and Collins testified about their terrifying experiences on the night of the incident, and Detective Large recounted the details of his investigation that resulted in Appellant’s arrest along with the discovery of incriminating evidence in Appellant’s home. (R. pp. 13-20; pp. 62-83; p. 108; pp. 126-133). Additionally, Smith, Topolski, and Topolski’s younger brother were all called as witnesses for the State. (R. pp. 21-22). During their testimony, they each confirmed they accompanied Appellant and Fleming to the victim’s apartment building on the night of the incident, Appellant and Fleming left the vehicle they arrived in and went towards the building, they heard a gunshot shortly thereafter, and then Appellant and Fleming quickly ran back to the car.³ (R. pp. 22-24; pp. 29-30; pp. 32-36; p. 42; pp. 50-52). After that, they all indicated Appellant used a silver revolver he was carrying to force Smith to drive them back to his trailer, and they further stated Appellant and Fleming then threatened to kill them if they said anything about what had occurred. (R. pp. 24-25; p. 30; pp. 36-37; pp. 54-55). Furthermore, Appellant’s accomplice, Fleming, testified for the State, acknowledged he went to the victim’s apartment on the night of the incident, claimed he did so to purchase marijuana, and stated he saw Appellant, who was wearing a bandana

³ During her testimony, Smith also noted Appellant and Fleming were wearing bandanas over their faces when they returned to the car after the shooting. (R. p. 53).

and gloves at the time, go towards the victim's apartment with a gun and knock on the door before the shooting occurred. (R. pp. 110-115). After that, Fleming claimed he ran from the scene while also denying he shot the victim. (R. p. 110; pp. 114-115). Fleming further noted he had been convicted of first-degree burglary and attempted murder based on his involvement in the incident. (R. p. 110).

At the conclusion of the State's case, the trial judge addressed and denied Appellant's earlier motion challenging the potential enhancement of his sentence pursuant to S.C. Code Ann. § 17-25-45 based on his prior "most serious" conviction.⁴ (R. pp. 137-138). In denying that motion, the trial judge cited to several cases, including State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004), which rejected a similar challenge to the enhancement of a sentence, and indicated he did not believe Appellant's prior "most serious" conviction was too remote to be used for enhancement purposes in light of the legislative intent behind the recidivist offender statute. (R. p. 137).

Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 177). Following the verdict, the trial judge conducted sentencing proceedings, and the solicitor recounted Appellant's prior record, which included a conviction for the "most serious" offense of second-degree criminal sexual conduct with a minor along with convictions for second-degree burglary, third-degree burglary, indecent exposure, shoplifting, providing false information to a law enforcement officer, several counts of criminal domestic violence, possession of marijuana, and driving under suspension.⁵ (R.

⁴ Later, after the State rested its case, defense counsel renewed his earlier challenge to the application of S.C. Code Ann. § 17-25-45, and the trial judge again denied defense counsel's motion. (R. p. 144).

⁵ Earlier during trial, the solicitor noted Appellant's "most serious" conviction for second-degree criminal sexual conduct with a minor occurred in 1992, which was the same year Appellant was convicted for second-degree burglary, while Appellant's other convictions occurred continuously between 1999 and 2009. (R. p. 136).

p. 177). Defense counsel then renewed his objection to the application of S.C. Code Ann. § 17-25-45, and, once again, the trial judge denied the motion. (R. p. 182). The trial judge then sentenced Appellant to terms of imprisonment of life without parole for first-degree burglary and attempted murder and five years for unlawful possession of a firearm by a person convicted of a violent offense. (R. pp. 183-184).

ARGUMENT

The trial judge properly sentenced Appellant to a sentence of life without parole pursuant to S.C. Code Ann. § 17-25-45 after Appellant was convicted of a second “most serious” offense during his lifetime, and the enhancement of Appellant’s sentence based on his prior 1992 conviction for a “most serious” offense did not render his life without parole sentence unconstitutional in any way.

Appellant contends his sentence of life without parole imposed after he was convicted of a second “most serious” offense during his lifetime constitutes cruel and unusual punishment. In support of that contention, Appellant maintains the trial judge was constitutionally forbidden from sentencing him to a mandatory sentence of life without parole because his prior “most serious” conviction was “very old” and, for that reason, allegedly could not have properly been used to enhance his sentence for his most recent crimes. Contrary to Appellant’s contentions, there is no constitutional prohibition against using a remote prior conviction for a “most serious” offense to enhance the sentence of an offender who chose to continue engaging in criminal conduct and committed a second “most serious” offense during his lifetime. In fact, consideration of prior convictions for “most serious” offenses regardless of their age is fully consistent with the underlying purpose of South Carolina’s recidivist offender statute, which was enacted to deter repeat offenders and protect society by incapacitating offenders who engage in serious criminal behavior on more than one occasion during their lifetimes. Therefore, the trial judge properly and correctly sentenced Appellant to life without parole pursuant to S.C. Code Ann. § 17-25-45 after Appellant, who was a recidivist offender due to his prior conviction for the “most serious” offense of second-degree criminal sexual conduct with a minor, was subsequently convicted of the “most serious” offenses of first-degree burglary and attempted murder. As a result, the trial judge committed no error in sentencing Appellant to life without parole for the “most serious”

crimes he most recently committed, and Appellant's sentence did not violate the constitutional prohibition against cruel and unusual punishment in any way. Appellant's convictions and sentence should be affirmed.

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, both the United States Constitution and the South Carolina Constitution preclude a criminal defendant from being subjected to 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."); S.C. Const. art. I, § 15 ("Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained."). Pursuant to those constitutional provisions, 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 it is a precept of justice punishment for a crime should be graduated and proportioned to the offense). However, the prohibition against cruel and unusual punishment does **not** require strict proportionality between the offense and the 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 prohibition against cruel and unusual punishment: (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. On one hand, the appropriate analysis in cases involving a case-specific challenge 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.”). On the other hand, the appropriate analysis in cases involving a categorical challenge to a particular sentencing practice 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 Trop 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)).

In the case sub judice, Appellant was convicted of the “most serious” offenses of first-degree burglary and attempted murder after he had previously been convicted of the

“most serious” offense of second-degree criminal sexual conduct with a minor on a separate occasion in 1992. See S.C. Code Ann. § 17-25-45(C)(1) (identifying first-degree burglary, attempted murder, and criminal sexual conduct with a minor as “most serious” offenses). Under those circumstances, Appellant qualified as a recidivist offender in South Carolina, and the trial judge was required to sentence Appellant to a term of life imprisonment without the possibility of parole pursuant to our recidivist offender statute. See S.C. Code Ann. § 17-25-45(A)(1) (mandating a person convicted of a “most serious” offense who has previously been convicted of a “most serious” offense on a separate earlier occasion at some point during that person’s lifetime **must** be sentenced to life imprisonment without the possibility of parole). Accordingly, the trial judge properly sentenced Appellant to a term of imprisonment consistent with the sentencing limits established by the legislature for his offenses under the circumstances of his case. See State v. Conally, 227 S.C. 507, 510, 88 S.E.2d 591, 593 (1955) (“This court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute, unless: (a) the statute itself violates the constitutional injunction . . . against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice, oppression, or corrupt motive.”).

Despite that fact, Appellant contends on appeal his sentence of life imprisonment without the possibility of parole was unconstitutional because it allegedly constitutes cruel and unusual punishment. In making that contention, it is unclear from Appellant’s appellate argument whether he is raising a challenge to his individual sentence based on the specific circumstances of his case or raising a categorical challenge to South Carolina’s recidivist offender statute based on the fact it does not restrict a sentencing judge from considering prior convictions that are “remote.” Regardless of the grounds

upon which Appellant is challenging his sentence on appeal, Appellant's sentence of life without parole did not constitute cruel and unusual punishment.

Initially, to the extent Appellant is raising a challenge to his individual sentence based on the specific circumstances of his case, Appellant's sentence of life without parole clearly did not violate the constitutional prohibition against cruel and unusual punishment. Critically, by carrying out his most recent crimes, Appellant committed a number of "grave" offenses that – irrespective of the fact they were committed by a recidivist offender – exposed him to a maximum potential term of imprisonment of life imprisonment plus thirty-five years even without the application of any statutory sentencing enhancement provisions. See S.C. Code Ann. § 16-3-29 (mandating a sentence of up to thirty years for attempted murder); S.C. Code Ann. § 16-11-311 (mandating a term of imprisonment of fifteen years to life for first-degree burglary); S.C. Code Ann. § 16-23-500 (mandating a sentence of up to five years for unlawful possession of a firearm by a person convicted of a violent offense). Considering those circumstances coupled with the fact Appellant was not a first-time offender and, instead, had previously committed a "most serious" offense along with numerous other offenses during his lifetime, his aggregate individual sentence of life without parole was in no way disproportionate – or grossly disproportionate – to the horrendous crimes he most recently committed and did not constitute cruel and unusual punishment despite the fact Appellant had not been convicted of any other "most serious" offenses since 1992. See State v. White, 349 S.C. 33, 37, 562 S.E.2d 305, 306-307 (2002) ("Given that a life sentence is possible for even first offense first-degree burglary convictions, a life sentence without parole for a recidivist with one or more previous convictions of most serious offenses does not constitute cruel and unusual punishment."); see also United

States v. Rodriguez, 553 U.S. 377, 385 (2008) (“[A]n offense committed by a repeat offender is often thought to reflect greater culpability and thus to merit a greater punishment. Similarly, a second or subsequent offense is often regarded as more serious because it portends greater future danger and therefore warrants an increased sentence for purposes of deterrence and incapacitation.”); Lockyer v. Andrade, 538 U.S. 63, 76 (2003) (“The gross disproportionality principle reserves a constitutional violation for only the extraordinary case.”); State v. Rogers, 361 S.C. 178, 188, 603 S.E.2d 910, 915 (Ct. App. 2004) (rejecting Rogers’s contention his life without parole sentence constituted cruel and unusual punishment due to the fact his earlier “most serious” conviction occurred nineteen years earlier); see generally Ewing v. California, 538 U.S. 11, 25 (2003) (“Recidivism has long been recognized as a legitimate basis for increased punishment.”); Solem, 463 U.S. at 296 (“[A] State is justified in punishing a recidivist more severely than it punishes a first offender.”).

Likewise, to the extent Appellant is raising a categorical challenge to S.C. Code Ann. § 17-25-45 based on the fact it permits consideration of a prior conviction for enhancement purposes regardless of the age of the prior conviction, South Carolina’s recidivist offender statute is not unconstitutional and was not applied in an unconstitutional manner in Appellant’s case. Significantly, South Carolina’s recidivist offender statute – like numerous other recidivist offender statutes enacted by legislatures throughout the history of the United States – was designed to deter and incapacitate recidivist offenders who demonstrate their danger to society by engaging in criminal behavior on multiple occasions **throughout their lifetimes**. See Rummel v. Estelle, 445 U.S. 263, 284 (1980) (“[The] primary goals of [a recidivist statute] are to deter repeat offenders and, at some point **in the life of** one who repeatedly commits criminal offenses

serious enough to be punished as felonies, to segregate that person from the rest of society for an extended period of time.” (emphasis added)); see also Parke v. Raley, 506 U.S. 20, 26 (1992) (“Statutes that punish recidivists more severely than first offenders have a long tradition in this country that dates back to colonial times.”). Logically, the statute’s goals of deterrence and incapacitation are not served by ignoring a prior “most serious” offense of an offender such as Appellant, who earned a substantial prison as a result of his prior conviction, simply because of the age of that offense. See State v. Jones, 187 W. Va. 600, 604, 420 S.E.2d 736, 740 (W. Va. 1992) (“Common sense would dictate that the age of a prior conviction should have little bearing in a recidivist proceeding, when the underlying purpose of the statute is considered. . . . Obviously, when the life recidivist statute is invoked, the defendant will have at least two prior felony convictions. If they are serious felonies, the defendant will have served lengthy prison sentences. This means that at the time of the life recidivist trial, one or more of the earlier convictions may be rather old. Yet, the deterrent purpose of the recidivist statute would hardly be served if earlier felony convictions could be excluded because of their age.”). Critically, the fact Appellant failed to modify his criminal behavior following his earlier term of imprisonment, which was over a decade long, and continued to engage in repetitive criminal behavior before committing two more “most serious” offenses demonstrates exactly why a life without parole sentence was warranted in his case and why consideration of his full criminal history versus some smaller sample of it was necessary towards determining an appropriate punishment for him based on his increased level of personal culpability.⁶ For those reasons, neither Appellant’s sentence nor the

⁶ Significantly, Appellant’s prior sentence for his crimes in 1992 was a sixteen-year term of imprisonment. As reflected in the sentencing sheet from his conviction for second-degree criminal sexual conduct with a minor, Appellant received a ten-year sentence consecutive to another sentence. (R. p. 186). As reflected

provisions of S.C. Code Ann. § 17-25-45 permitting consideration of a prior conviction regardless of its age were unconstitutional, and Appellant wholly failed to establish a national consensus exists against the sentencing practices applied in his case. See Oyler v. Boles, 368 U.S. 448, 451 (1962) (“[T]he constitutionality of the practice of inflicting severer criminal penalties upon habitual offenders is no longer open to serious challenge[.]”); see also State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (“When the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution.”); cf. State v. Snyder, 426 N.W.2d 662, 663 (Iowa Ct. App. 1988) (affirming the enhancement of a criminal sentence pursuant to a recidivist offender statute based on the existence of nineteen-year-old and seventeen-year-old prior felony convictions and rejecting the contention “the absence of a time limit on the use of previous felony convictions in a habitual offender determination constitutes cruel and unusual punishment”); State v. Sullivan, 644 S.W.2d 429, 430 (Tenn. Crim. App. 1982) (“The State appeals from a ruling of the trial court dismissing a habitual criminal charge against the defendant on the ground that one of the convictions alleged in the recidivist count was, in effect, too remote to demonstrate ‘habituality.’ . . . The determination of who is to be punished as a habitual criminal is obviously a legislative prerogative. The Tennessee legislature has defined habitual criminality in terms of the number and type of prior convictions that a

in the records contained in the Horry County Public Index, the other sentence to which Appellant’s ten-year sentence was ordered to run consecutively was a six-year sentence for a burglary offense. Records for Tyrone Jenkins, Horry County Fifteenth Judicial Circuit Public Index, <http://publicindex.sccourts.org/Horry/PublicIndex>. Thus, although Appellant contends on appeal he learned from his prior conduct by going a substantial period of time without engaging in “serious criminal activity,” the fact Appellant did not engage in criminal activity for a portion of the time between his earlier “most serious” offense and his most recent “most serious” offenses was largely attributable to the fact Appellant was incarcerated for a substantial period of time during that span.

person has received. Nothing in the definitional section of the statute suggests that the legislature intended to apply a time limitation to the calculation of the qualifying convictions, and we know of no authority granted to the trial court by the legislature to make a ‘policy’ determination such as the one attempted here.” (citation omitted)).

In conclusion, the use of a prior “most serious” conviction for sentencing enhancement purposes – regardless of when during the offender’s lifetime that offense was committed – serves the legitimate penological goals of discouraging and preventing the commission of crimes by habitual offenders and is entirely proper under both the United States Constitution and the South Carolina Constitution. See Solem, 463 U.S. at 296 (recognizing recidivist offenders can be more severely punished than first-time offenders). Therefore, the statutory enhancement of Appellant’s sentence based on his prior “most serious” conviction from 1992 was not unconstitutional, and there was no legitimate reason for the trial judge to ignore Appellant’s prior conviction when considering Appellant’s sentence for his most recent crimes. See generally State v. Brannon, 341 S.C. 271, 280-281, 533 S.E.2d 345, 350 (Ct. App. 2000) (“[T]he severity of the crimes enumerated in § 17-25-45(C)(1) . . . brings a life sentence without possibility of parole within the constitutional bounds of the Eighth Amendment.”). Because Appellant’s sentence was not unconstitutional and was a statutorily proper sentence for his offenses, the trial judge committed no error in sentencing Appellant to life without parole. See S.C. Code Ann. § 17-25-45(A) (mandating a sentencing judge must sentence a defendant to life imprisonment without parole upon conviction for a “most serious” offense when that defendant has either one or more prior convictions for a “most serious” offense or two or more prior convictions for a “serious” offense). Appellant’s convictions and sentence should be affirmed.

CONCLUSION

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

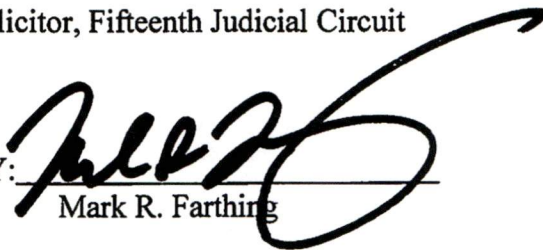
Respectfully submitted,

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April 6, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2013-002075

THE STATE,

Respondent,

vs.

ABDUL FURQUAN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by delivering two copies of the same to:

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I further certify that all parties required by Rule to be served have been served.
This 6th day of April, 2016.


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