

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

CLARENCE ASHBY,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE GENERAL SESSIONS COURT

SECOND JUDICIAL CIRCUIT

**ORDER DENYING PETITION FOR
RESENTENCING PURSUANT TO
AIKEN v. BYARS**

1979-GS-02-00268

A 002292

A 002293

RECEIVED

MAR 28 2017

SC Court of Appeals

This matter came before the Court for a hearing on the above referenced petition for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). Defendant filed his petition October 3, 2016.

This Court was vested with exclusive jurisdiction to hear the petition by Order of the Chief Justice of the South Carolina Supreme Court dated October 14, 2016. A hearing on the petition was conducted at the Aiken County Courthouse on February 28, 2017. The Petitioner was present for the hearing and was represented by Aiken County Public Defender Grant Gibbons. The State was represented at the hearing by Solicitor Strom Thurmond.

Based on the records before the Court, on May 6, 1979, the petitioner and a co-defendant robbed Clyde Jordan at gunpoint and thereafter murdered him in Aiken County. On July 9, 1979, Petitioner and his co-defendant were indicted by the Aiken County Grand Jury for Murder and Armed Robbery (1979-GS-02-00268). Two days later, on July 1, 1979, the Petitioner and his co-defendant pled guilty to the charges contained in the indictment. Both were sentenced to terms of life for Murder, and a consecutive 25 years for the Armed Robbery. At the time of the commission of the crimes, the petitioner was seventeen (17) years old.

The Petitioner seeks relief pursuant to *Byars*, and *Miller v. Alabama*, 132 S.Ct. 1733 (2012). However, the law of South Carolina at the time of Petitioner's conviction provided for the possibility of parole being granted for persons sentenced to life terms. Based on information obtained from the South Carolina Department of Probation, Parole and Pardon Services, since first becoming eligible for parole in 1998, Petitioner has had at least nine

FILED March 20 2017

Robert J. White
Clerk & G.S.

Ann Sanders
Deputy Clerk

2-cert copies
To P.D.
2-cert copies
To Sol

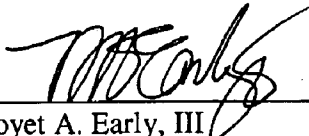
(9) prior parole hearings and has waived at least two (2) other parole hearings. On April 15, 2017, the Defendant will again be eligible for parole consideration, although as of the date of this Order, that hearing has not yet been set.

The United States Supreme Court considered the retroactivity of its holding in *Miller v. Alabama* in *Montgomery v. Louisiana*, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), as revised (Jan. 27, 2016). After concluding the holding of *Miller* should be applied retroactively, the majority addressed the dissent's claim that making *Miller* retroactive would overly burden State courts by requiring all juveniles sentenced to life to be resentenced in accordance with the "new" mandate of *Miller*. In so holding, the Supreme Court stated,

[G]iving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. See, e.g., Wyo. Stat. Ann. § 6-10-301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment. *Montgomery* at 736.

Because the Petitioner's original life sentence makes him eligible for parole pursuant to South Carolina law, he is not entitled to resentencing pursuant to *Miller v. Alabama* or *Aiken v. Byars*. Accordingly, Mr. Ashby's Petition should be, and hereby is, DENIED with prejudice.

IT IS SO ORDERED.



Doyet A. Early, III
Resident Judge,
Second Judicial Circuit

March 20, 2017
Aiken, South Carolina

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF Aiken

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

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]:
Clarence Ashby III

did on the 6th day of May, 19 79, violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE

Murder

RECEIVED

MAR 28 2017

SC Court of Appeals

Now, therefore, you are empowered and directed to arrest the said defendant and bring him 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 Aiken, S. C., this 8th day of May, 19 79.

L. Halley (L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Aiken

Personally appeared before me, a magistrate of this County, one C. G. Heath, who, first being duly sworn, deposes and says that [name of defendant]
Clarence Ashby III

did within this County and State on the 6th day of May, 19 79, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

Murder

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:

that Clarence Ashby III late of the county and state aforesaid on the 6th day of May, 1979 in the year of our lord, with force and arms in Aiken County and in the sate aforesaid in and upon one Clyde Jordan feloniously, wilfully and of malice aforethought did make an assault with a deadly weapon and instrumentality to wit: 38 revolver and him the said Clarence Ashby III in and upon the head and body did shoot and wound feloniously, wilfully and of maltee of forethought and inflict one mortal wound of which mortal wound the said Clyde Jordan then and there died, being in violation of Section 16-3-10 of the 1976 Code of laws for the State of South Carolina, which is,

Sworn to and Subscribed before me

this 8th day of May, 19 79.

L. Halley (L.S.)
Signature of Judge

C. G. Heath
Affiant

Address 251 Laurens St NW
Aiken, S.C. 29801

Phone 648-9506

FILED 5-9-79
Shirley B. Lee
C. C. C. P. & G. S.

FORM CONTINUES ON BACK

ORIGINAL

RETURN

5-8, 19 79
U. J. Ray Jr.
Constable or
Law Enforcement Officer

A copy of this Arrest Warrant was delivered
by me to the following defendant:

CLARENCE Ashby
on the 5-8 day of 5-8,
19 79.

U. J. Ray Jr.
Constable or
Law Enforcement Officer

This Warrant is certified for service in
County. The accused is to be arrested and
brought before me to be dealt with according to
law.

(L.S.)

Signature of Judge

STATE OF SOUTH CAROLINA

County of Aiken
79-65-02-268

THE STATE
against
Clarence Ashby III

ARREST WARRANT

Offense Murder

Code Section _____

Date May 8th, 1979

Officer and Agency _____

Disposition _____

Sentence _____

Co-Defendants _____

INFORMATION ON DEFENDANT

Name _____

Address _____

Phone _____

Sex _____ Race _____ Height _____

Weight _____ Birthdate _____

Social Security Number _____

INFORMATION ON WITNESSES

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

PRELIMINARY HEARING held by

Magistrate _____

on _____, 19 _____,

with _____,
Attorney for Defendant.

Decision: _____

BAIL

Date Set _____, 19 _____

Magistrate _____

Amount _____

Surety _____

79-65-02-268

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

July 116 Term, 1979
16-3-20

THE STATE

vs. *18 years old*

CHRISTOPHER WILDER AND CLARENCE
ASHBY *17 years old*

Ct 1 - Murder as to Wilder & Ashby
Ct 2 - Armed Robbery as to Wilder
& Ashby

INDICTMENT FOR MURDER

& Armed Robbery,
~~Robbery and Grand Larceny.~~

Sylvia W. Westerdahl, Solicitor

True Bill

H. C. Bue Jr. Foreman of Grand Jury

McCAW PRINTERS, 2610 DEVINE ST., COLUMBIA, S. C. 29205

Witnesses

C. G. Heath, APSD

Verdict

Foreman

Christopher Wilder appear in my own proper person and
stand Guilty to the within Indictment AS charged
Witness Sylvia W. Westerdahl
July 11, 1979

Chris Wilder

Clarence Ashby appear in my own proper person and
stand Guilty to the within Indictment AS charged
Witness Sylvia W. Westerdahl
July 14, 1979

Clarence Ashby

The State of South Carolina

County of Aiken

INDICTMENT FOR ARMED ROBBERY,
~~ROBBERY AND GRAND LARCENY~~

At a Court of General Sessions, convened on the 9th day of July,
19 79, the Grand Jurors of Aiken County present upon their oath:

TWO
~~COUNT ONE~~ ARMED ROBBERY

That CHRISTOPHER WILDER AND CLARENCE ASHBY
did in Aiken County on or about the 6th day of May,
19 79, while armed with a deadly weapon, to wit: .38 caliber revolver
feloniously take from the person in the presence of Clyde Jordan

by means of force or intimidation goods or monies of the said Clyde Jordan,
such goods or monies being described: Fifty and no/100 (\$50.00) Dollars in good,
lawful, American monies

Cx. 2

~~COUNT TWO—ROBBERY~~

~~That _____
did in _____ County, on or about the _____ day of _____
19____, feloniously take from the person or presence of _____
by means of force or intimidation goods or monies of the said _____
such goods or monies being described: _____~~

~~COUNT THREE—LARCENY~~

~~That _____
did in _____ County on or about the _____ day of _____
19____, feloniously take and carry away the goods and monies of _____
of a value of _____
described: _____
with intent to deprive the owner permanently of such goods and monies.~~

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

Sylvia W. Westerdaal
Sylvia W. WESTERDAHL
Solicitor

The State of South Carolina

County of _____

COURT OF GENERAL SESSIONS

Term, 19 _____

THE STATE

vs.

INDICTMENT FOR

MURDER

Foreman of Grand Jury

Witnesses

Verdict

Foreman

The State of South Carolina

County of _____ Aiken

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on the 9th day of July,

1979, the Grand Jurors of Aiken County present upon their oath:

ct. 1

That CHRISTOPHER WILDER AND CLARENCE ASHBY

did with malice aforethought in Aiken County on or about the 6th day

of May, 1979, kill one Clyde Jordan

by means of shooting the said Clyde Jordan with a pistol

and that the said Clyde Jordan

did die in Aiken County as a proximate result thereof on or about the 6th

day of May, 1979; thereby constituting the crime of murder.

Against the peace and dignity of the State.

Sylvia W. WesterdaHL

SYLVIA W. WESTERDAHL
Solicitor

STATE OF SOUTH CAROLINA

AS to Count #2

COUNTY OF AIKEN

SENTENCE

The Sentence of the Court is that you Christopher Welder
 be confined at hard labor upon the Public Works of Aiken County or in The State
 Department of Corrections for the Period of 25 yrs to min consecutive
 or pay Fine of \$ To Court #1; provided, that upon the service of
 _____ months-years, or the payment of \$ _____, the balance
 of the sentence shall be suspended, and you be placed on probation for
 _____ months-years. Special Conditions: _____

July 11, 1979

Paul M. Moore

Presiding Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA

AS to Count #2

COUNTY OF AIKEN

SENTENCE

The Sentence of the Court is that you Clarence Ashby
 be confined at hard labor upon the Public Works of Aiken County or in The State
 Department of Corrections for the Period of 25 yrs to min consecutive
 or pay Fine of \$ _____; provided, that upon the service of
 _____ months-years, or the payment of \$ _____, the balance
 of the sentence shall be suspended, and you be placed on probation for
 _____ months-years. Special Conditions: _____

July 11, 1979

Paul M. Moore

Presiding Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA

SENTENCE

COUNTY OF AIKEN

"A"

The Sentence of the Court is that you Christopher Wieder Count # 1
be confined at hard labor upon the Public Works of Aiken County or in The State
Department of Corrections for the Period of your natural life
or a fine of \$ _____; provided, that upon the service of
_____ months-years, or the payment of \$ _____, the balance
of the sentence shall be suspended, and you be placed on probation for
_____ months-years. Special Conditions: _____

July 11, 1979

Paul M. Moran

Presiding Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA

SENTENCE

COUNTY OF AIKEN

"B"

The Sentence of the Court is that you Clarence Ashby Count # 1
be confined at hard labor upon the Public Works of Aiken County or in The State
Department of Corrections for the Period of your natural life
or a fine of \$ _____; provided, that upon the service of
_____ months-years, or the payment of \$ _____, the balance
of the sentence shall be suspended, and you be placed on probation for
_____ months-years. Special Conditions: _____

July 11, 1979

Paul M. Moran

Presiding Judge
Second Judicial Circuit