



RECEIVED

AUG 03 2017

S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

August 1, 2017

The Honorable Daniel E. Shearouse  
Clerk of Court  
The Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**Re: John Burnside v. State of South Carolina**  
**Appellate Case No. 2017-001592 / Lower Case No. 2016CP4202252**

Dear Mr. Shearouse:

I am in receipt of your letter to Mr. Burnside, dated July 26, 2017 regarding the opening of an appellate case in the above referenced Post-Conviction Relief action. As an initial matter, on July 26, 2017, the State received from Mr. Burnside a document captioned, "SCRCP 59(e) Motion to Alter or Amend Judgment." This document and accompanying certificate of service, a copy of which are enclosed herein, are dated July 14, 2017. As of the writing of this letter, the motion has not been received for filing by the Spartanburg County Clerk of Court. I bring this to the Court's attention because in the event Mr. Burnside's 59(e) motion is timely, it should be resolved prior to an appeal proceeding.

Please let me know if you need any further information regarding this matter.

Sincerely,

Valerie Garcia Giovanoli  
Assistant Attorney General  
S.C. Bar No. 102524

Enclosure(s): 59(e) motion  
cc: Johnny Burnside, #271070

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Johnny Burnside, 271070, ) case No. 2016-CP-42-2252  
Applicant, )  
vs. )  
State of South Carolina, )  
Respondent. ) CERTIFICATE OF SERVICE

I certify that I have served my SCRCP 59 (e) motion on Respondent's Counsel of Record South Carolina Attorney General's Office, Rasheeda Cleveland, Esq. P.O. Box 11549, Columbia, SC 29211-1549, by depositing the same in the United States mail, Postage prepaid on this :

This 14<sup>th</sup> day of July 2017.

Johnny Burnside  
Johnny Burnside, 271070

Subscribed to and subscribed before me this  
14<sup>th</sup> day of July, 2017.  
[Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires: 5-18-26

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Johnny Burnside, 271070,

Applicant,

v.

State of South Carolina,  
Respondent,

} IN THE COURT OF COMMON PLEAS  
} SEVENTH JUDICIAL CIRCUIT  
} Case No. 2016-CP-42-2252

} THE HONORABLE MARK Hayes, II

} SCRCP 59(e) MOTION TO  
} ALTER OR AMEND JUDGEMENT.

**COURTS DISCRETION**

The Final Order distorts the fact that the Applicant contends that the Court does have discretion in sentencing criminal defendant's. However, that discretion here would have been as the Statute lays out. The Court could have sentenced Applicant by "Death" or by a mandatory minimum term for<sup>2</sup> thirty years, or by Imprisonment for "life". S.C. Code Ann. 16-3-20, Compare Frazer v. SC 430 F.3d. 696, State v. Sanders 475 S.E.2d. 55, 68 S.C. 192

In all this Honorable Court does have the discretion to either sentence a convicted Defendant For Murder to one of the three options for sentencing, the Order in the top left of page 3 of 4 was incorrect. The Court could have sentenced Applicant to mandatory minimum term For thirty years, or life, or Death. The question begs if that was the intention of this Statute then WHAT WAS THE PURPOSE OF THE 2010 amendment which was clearly changed to reflect THIRTY YEARS "TO" LIFE. The Applicant has

8

<sup>2</sup> For:(Prep) 5.a. used to indicate amount, extent, or duration (walked for miles) b. used to indicate a specific time : a date for two O'Clock.

30. to the extent or amount of: to walk for a mile. (Random House Webster's unabridged dictionary (2nd edition)

Searched the West Law data base here at Turbeville C.I. and has found not one case that supports the States position. That S.C. Code Ann. § 16-3-20 (prior to 2010) allowed a sentencing judge to give a Criminal Defendant more Numerically than thirty years.

Futher, the Statute says (By a Mandatory Minimum term for thirty years) (In part) Specifically the Court's Final Order did not address the issue of the Applicant's [For] Argument that (FOR THIRTY YEARS) (IN PART) the word that proceeds thirty years is For.

By Definition (For (prep) 5a used to indicate amount, extent, or duration (walk for miles) b. used to indicate a specific time: a date for two O'Clock (webster Dictionary) As defined by Webster it does not mean three, four, or, five O'Clock, it means a Specific time (two O'Clock).As the word For which proceeds the thirty years means a specific time for thirty years.. As stated before The State could not find one case to support their proposition. the Statute clearly means that the Honorable Court did have discretion to either sentence Applicant to one of the three options, but the Thirty years as defined by South Carolina Law (Prior to the 2010 amendment) means thirty years day for day. Lastly as stated before, If the Court was authorized to sentence a criminal defendant to numerically more than thirty years, prior to the 2010 amendment, What was the reason for the change in 2010 to reflect (thirty years to life)

#### STATUTE OF LIMITATION

At the time of trial and sentencing Applicant was unaware of this due in part that both trial counsel, solicitor and the trial judge were likewise in the dark about this issue. It was only until 2010 language that would have alerted the Court that there previous application would have been incorrect. However in 2010, S.C.Code Ann. § 16-3-20 was amended to (Thirty years to life). However, this change was not immediately available to applicant through the prison law library. March 2013, when the prison Law

Library was up-dated to include the information discussed herein compare Easterwood v. Champion 213 F.3d. 1231. That exposed the legislature change in the Statutory language from (For thirty years) to (thirty years to life) (2010)

At the time of the update and available in the prison law library Applicant's case was federal Habeas Corpus § 2254. When Applicant found out about the change in 2016, he was appraised and filed this action. In all the Applicants sentence is illegal. As a point of clarity, the Applicant is not seeking a new trial, only to have his sentence changed to comport with what the legislature meant by mandatory minimum term of imprisonment "for" thirty years.

#### EX POST FACTO

The Final order failed to address the Ex-Post-Facto nature of the Application and interpretation of South Carolina Code Ann. § 16-3-20 (Prior to 2010). As Applicant was convicted and sentenced on November 29 2000 . The current application would result in an Ex-Post-Facto violation by applying the 2010 amendment to a conviction from (2000).

#### CONCLUSION

based on the foregoing, Applicant prays this Court alter or amend the final order to address the issues mentioned herein, or Rule that Applicant's sentence should be amended to the Legislative Intent for Mandatory Minimum term "for" thirty years as meant by the Legislature prior to the 2010 amendment which was the applicable Statute at the time of the Offense Trial, and Sentencing. To amend Applicant's sentence to Thirty years "day for day". Or any other remedy that this Court deems just and proper.

RESPECTFULLY, SUBMITTING,

Johnny Burnside

This 14<sup>th</sup> day of July 2017.

**SC Attorney General's Office**

Valerie Garcia, Giovanoli, AAG  
Post Office Box 11549  
Columbia, SC 29211-1549

---

**Honorable Daniel E. Shearhouse  
Supreme Court of South Carolina  
PO Box 11330  
Columbia SC 29211**

