

22488

NO RESPONDENTS BRIEF FILE

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Administrative Law Court  
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge  
Case No. 15-ALJ-0042-AP

Appellate Case No. 2015-002522

NICHOLAS M. GEER, #227443.....RESPONDENT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE  
AND PARDON SERVICES ..... APPELLANT

**RECORD ON APPEAL**

Tommy Evans, Jr.  
Assistant General Counsel

Nicholas M. Geer, #227443  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, S.C. 29669

S. C. Department of Probation,  
Parole, and Pardon Services  
P. O. Box 50666  
Columbia, South Carolina 29250  
(803) 734-9220

RESPONDENT

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from the Administrative Law Court  
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge  
Case No. 15-ALJ-0042-AP

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RESPONDENT

ATTORNEY FOR APPELLANT

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STATE OF SOUTH CAROLINA  
In The Administrative Law Court  
Docket Number 15-ALJ-15-0042

---

APPEAL OF FINAL DECISION  
Department of Probation, Parole, and Pardon Services

---

NICHOLAS GEER, #227443 .....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND  
PARDON SERVICES, .....RESPONDENT

---

RECORD ON APPEAL

---

Tommy Evans, Jr.  
Assistant General Counsel

South Carolina Department of Probation,  
Parole and Pardon Services  
P. O. Box 50666  
Columbia, South Carolina 29250  
(803) 734-9220

ATTORNEY FOR RESPONDENT

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State of South Carolina  
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY  
Governor



JERRY B. ADGER  
Director

2221 DEVINE STREET, SUITE 600  
POST OFFICE BOX 50666  
COLUMBIA, SOUTH CAROLINA 29250  
Telephone: (803) 734-9220  
Facsimile: (803) 734-9324

July 13, 2015

Nicholas Geer, #227443  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, South Carolina 29669

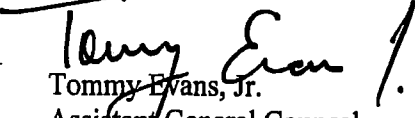
Dear Mr. Geer:

It is my duty to inform you that South Carolina law prohibits the Board of Probation, Parole, and Pardon Services from granting you parole on the sentence(s) identified below. Section 24-21-640 states: "[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60." Our records indicate that you have been convicted of the following violent crimes:

| <u>Violent Crime</u> | <u>Indictment Number</u> | <u>Parolable</u> | <u>Sentence</u> |
|----------------------|--------------------------|------------------|-----------------|
| Murder               | 95-GS-04-1935            | No               | 11/14/95        |
| ABWIK                | 95-GS-04-608             |                  | 06/05/95        |

Please note that this letter is the Department's "final decision" on this matter. You have the right to appeal this final decision by seeking review by an Administrative Law Judge. Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 3525.c. 594, 576 S.E.2d 146 (2003). In order to file such an appeal, you must follow the instructions on the back of the enclosed "Notice of Appeal" form approved by the Administrative Law Court (ALC). You will also be required to comply with ALC Rules of Procedure for special appeals. Failure to follow the ALC instructions or Rules of Procedure will result in forfeiture of your right to challenge the Department's final decision.

Sincerely,

  
Tommy Evans, Jr.  
Assistant General Counsel

95-GS-04-1935

## NOW COMES THE DEFENDANT

Nicholas (Nashua) Geer  
Who in open Court pleads guilty to the charge in the  
warrant or in the within indictment and consents to sentence,  
this \_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

Defendant

## SENTENCE

The defendant Nicholas (Nashua) Geer is  
committed to the State Dept. of Corrections/County for a term of LIFE  
~~months/years~~ and/or to pay a fine \$ \_\_\_\_\_; provided upon the service of  
\_\_\_\_\_ months/years and/or payment of \$ \_\_\_\_\_, plus pay/waive  
costs and assessments as applicable\*, the balance suspended with probation for  
\_\_\_\_\_ months/years.

Restitution

For physical injury \$ \_\_\_\_\_

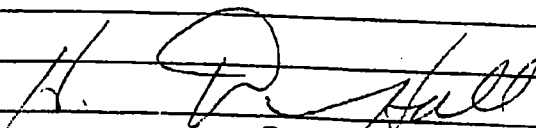
Yes/No

Property damage \$ \_\_\_\_\_

to be paid \_\_\_\_\_

to clerk for \_\_\_\_\_

Other conditions \_\_\_\_\_

Date November 14, 1995  
Presiding Judge

## \*Costs and Assessments

Non-Waivable

\$ \_\_\_\_\_

Not waived

\$ \_\_\_\_\_

Total

\$ \_\_\_\_\_

Clerk of Court

\*Pay to Victim's Compensation Fund if subrogated.

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

The State )

vs. )

Nicholas Mashuen Geer, )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
CASE NUMBER 95-GS-04-1935

INDICTMENT FOR MURDER

VERDICT

1. GUILTY OF MURDER.

Jayce E. Hendricks  
FOREPERSON

2. NOT GUILTY.

\_\_\_\_\_  
FOREPERSON



STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

INDICTMENT FOR MURDER  
16-3-10

At a Court of General Sessions, convened on SEPTEMBER 5, 1995,  
the Grand Jurors of ANDERSON County present upon their oath:

**COUNT ONE — MURDER**

That NICHOLAS MASHUEN GEER  
did in ANDERSON County on or about JULY 14, 1995,  
feloniously, wilfully and with malice aforethought, kill one ALEX MEDINA  
by means of SHOOTING THE VICTIM WITH A HANDGUN  
and that the said victim died as a proximate result thereof.

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

George M. T. Duenworth  
SOLICITOR

ARREST WARRANT JUL 21 1 05 PM '95

E- 354922

COMMON PLEAS AND GENERAL SESSIONS

STATE OF SOUTH CAROLINA

County/ Municipality of

THE STATE  
against

FILED-CLERKS OFFICE

NICHOLAS MACHVEN GEEB

Address: 401 S. MAIN ST.  
ANDERSON, SC 29624

Phone: 252-9904 SSN: 230-21-2000

Sex: Race: Height: Weight:

DL State: DL #:

DOB: Agency ORI #:

Prosecuting Agency: ANDERSON POLICE DEPARTMENT

Prosecuting Officer: AMT

Offense:

Offense Code:

Code/Ordinance Sec. 16-7-10

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

Anderson The accused

is to be arrested and brought before me to be

dealt with according to law

Signature of Judge (L.S.)

Date: 7-15-95

RETURN

A copy of this arrest warrant was delivered to

defendant Nicholas M. Gieb

on 07-15-95

Signature of Constable/Law Enforcement Officer

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CLERK OF COURT

401 S. MAIN ST.

ANDERSON, SC 29624

803-251-2271

STATE OF SOUTH CAROLINA

County/ Municipality of

AFFIDAVIT

Form Approved by  
S.C. Attorney General  
July 26, 1990  
SCCA 518

Personally appeared before me the affiant SGT. JAMES E. JOHNSON who

being duly sworn deposes and says that defendant

did within this county and state on July 14, 1995

violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of )

in the following particulars: MURDER

DESCRIPTION OF OFFENSE:

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

DEFENDANT JIM WITH MALICE AFORESAID CAUSE THE DEATH OF THE VICTIM BEING ONE ALEY M. MESTINA BY

SHOOTING THE VICTIM WITH A UNKNOWN TYPE HANDGUN. THE INCIDENT OCCURRED ON NARDIN AVE. THE DEFENDANT HAS

BEEN IDENTIFIED BY INVESTIGATIVE AGENCIES. THIS OFFENSE OCCURRED WITHIN THE CITY LIMITS OF ANDERSON, SC.

Sworn to and subscribed before me )

on )

)

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

County/ Municipality of

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on July 14, 1995 defendant NICHOLAS MACHVEN GEEB

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of ANDERSON ) as set forth below:

DESCRIPTION OF OFFENSE:

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her 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.

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Judge's Address

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

E-354922 7/21/95 15-10245

WITNESSES

SGT. JAMES JOHNSON, APD

ARREST WARRANT NO. E-354922

ACTION OF GRAND JURY

TRUE BILL

DATE

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 95-ES-04-1935

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 1995

DDW THE STATE

vs.

NICHOLAS MASHUEN GEER

Indictment for Murder

16-3-10

GEORGE M. DUCWORTH, SOLICITOR

Commitment

11-14-95  
APD

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

95-GS-04-608

NOW COMES THE DEFENDANT

Nicholas M. Leen

Who in open Court

pleads guilty to the charge in the

warrant or in the within indictment and consents to sentence,

this 5 day of June 19 95

Nicholas M. Leen  
Defendant

SENTENCE

The defendant Nicholas M. Leen is  
committed to the State Dept. of Corrections/County for a term of 40 A mt + 24 6 yr  
months/years and/or to pay a fine \$ ; provided upon the service of  
months/years and/or payment of \$ , plus pay/waive  
costs and assessments as applicable\*, the balance suspended with probation for  
Five 5 months/years.

Restitution

Yes/No

to be paid

For physical injury \$

Property damage \$

700.00

to clerk for Tony Richardson 103 Webb St. Anderson SC

Other conditions

pay 250 F.I.D. fine 5 Condy 226-4744

Date 6/5/95

Frank Egner  
Presiding Judge

\*Costs and Assessments

Non-Waivable

\$

Not waived

\$

Total

\$

Clerk of Court

\*Pay-to Victim's Compensation Fund if subrogated.

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

INDICTMENT FOR ASSAULT AND  
BATTERY WITH INTENT TO KILL  
~~XXXX POSSESSION OF FIREARM OR~~  
~~XXXX KNIFE DURING COMMISSION OF CR~~  
~~XXXX ATTEMPT TO COMMIT~~  
~~XXXXX TO KILL~~  
16-3-620

At a Court of General Sessions, convened on February 28, 1995,  
the Grand Jurors of Anderson County present upon their oath:

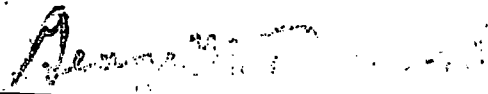
**COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL**

That NICHOLAS M. GEER  
did in ANDERSON County on or about December 30, 1994, with  
malice aforethought commit an assault and battery upon one ANTONIA RICHARDSON  
BY SHOOTING HIM IN LEFT THIGH WITH A GUN with intent to kill the said victim.

**COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION  
OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That \_\_\_\_\_  
did in \_\_\_\_\_ County on or about \_\_\_\_\_, possess or  
visibly display a firearm or visibly display a knife during the commission or attempted commission  
of a violent crime, to wit: \_\_\_\_\_  
in violation of Code Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

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

  
SOLICITOR

WITNESSES

Mike Dickson, APD

ARREST WARRANT NO. E353630

ACTION OF GRAND JURY

TRUE BILL

DATE 2-28-95

*Charles Cody*  
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 95-GS-04-608

The State of South Carolina,

County of Anderson

COURT OF GENERAL SESSIONS

February TERM 1995

DRW

THE STATE

vs.

NICHOLAS M. GEER

Indictment for Assault and  
Battery With Intent To Kill  
and Possession of Firearm  
or Knife During  
Commission of or Attempt  
to Commit Violent Crime

16-3-620

George M. Ducworth, Solicitor

COUNTY OF Anderson

June 5, 1995

Term

STATE

PROBATION ORDER

-VS-

FILED-CLERKS OFFICE  
ANDERSON

NICHOLAS MASHAWN GEER

No. 95 - GS - 04 - 608

Defendant

JUL 6 2 35 PM '95

OFFENSE ASSAULT AND BATTERY WITH INTENT TO KILL

GENERAL SESSIONS

The sentence of the court is that the defendant, Nicholas Mashawn Geer, shall be in the custody of the South Carolina Department of Corrections for a term of YOA NLE SIX (6) yrs and/or pay a fine of XXXXXXXXXXXXXXXXXXXX (and/or) the payment of a fine and costs of XXXXXXXXXXXXXXXXXXXX. The balance of this sentence is hereby suspended and the defendant is hereby ordered to be placed on probation for a period of five (5) years under the supervision of the South Carolina Department of Probation, Parole, and Pardon Services. During this period of probation, the Defendant shall be subject to the laws of South Carolina and the rules and orders of the Department and its agents. This suspended sentence may be revoked or modified at any time after the date of this order. The conditions of supervision are set forth below.

IT IS FURTHER ORDERED: that the Sheriff or other law enforcement officers who have the custody of the defendant is hereby ordered to deliver said defendant to the Probation Office of this county, or if the defendant is under bond, then such bond shall remain in full force until the defendant reports to the Probation Office. The conditions of probation begin (today) XXXXXXXXXXXXXXXXXXXX and shall continue until the expiration of the suspended sentence. It is further ordered that the Clerk of Court file this order in his office and that he forthwith forward a certified copy to the County Office of the Department.

This 5th day of June, 19 95Anderson, S.C.Frank Eppes Presiding JudgeTenth Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years.

You shall be subject to arrest, upon order of the Court, or upon a warrant issued by the Probation Agent. At any time within the period of your probation, the Court may, upon proof of a violation rescind you and impose any sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me this Order of Probation and the Conditions set out herein. I agree to comply with these conditions during the period of my probation. I have received a copy of this court order.

Witnessed by: David Power Signed: Nicholas Geer  
Signed this 22nd day of June, 19 95, Probationer  
Anderson, S.C.

## CONDITIONS ORDERED BY THE COURT:

- ☐ Waive Costs and Assessments. (NOTE: Some costs cannot be waived.)
- ☐ Complete        (hours) Public Service Employment.
- ☐ Intensive Supervision for an indeterminate period not to exceed 6 months, as determined by the Department.
- ☐ Home Detention for an indeterminate period not to exceed 6 months, as determined by the Department.
- ☐ Electronically Monitored Home Detention for an indeterminate period not to exceed 90 days, as determined by the Department.
- ☐ Participate and successfully complete an evaluation/referral for alcohol/drug abuse as determined by the Department.
- ☒ Fine/Costs and Assessments payable as directed by the Court.
- ☒ \$ 700.00 restitution payable to the Clerk of Court as directed by the Department or its agents.
- ☐ Restitution Center.
- ☐ Community Control Center.
- ☐ Case to end upon Certification by the Clerk of Court that all monies have been paid (Sec. 24-21-550).
- ☒ Other: Pay \$250. to PDF; Pay \$700. to victim at rate of \$50/mth beg 7/1/95;

FOR INFO: Ind # 95-GS-04-663- Resisting arrest - One (1) yr SDP

## ARREST WARRANT

E-353723

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
ANDERSON

 THE STATE  
against

NICHOLAS MASHAWN GEER

Address: ANDERSON, SC 29624

 Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Sex: ☒ M Race: ☒ B Height: 5'04" Weight: 142  
 DL State: SC DL #: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency ORI #: SC0040100

Prosecuting Agency: ANDERSON POLICE DEPARTMENT

Prosecuting Officer: ANY

Offense: RESISTING ARREST

Offense Code: \_\_\_\_\_  
Code/Ordinance Sec. 16-9-320(A)
 This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality of

 The accused  
 is to be arrested and brought before me to be  
 dealt with according to law.

Signature of Judge

(L.S.)

Date: \_\_\_\_\_

## RETURN

 A copy of this arrest warrant was delivered to  
 defendant Nicholas Mashawn Geer  
 on 012395

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

K. M. MATTISON, JUDGE

401 S MAIN ST

ANDERSON, SC 29624

803-231-2271

FILED - CLERK'S OFFICE

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
ANDERSON
COMMON  
GENERAL SESSIONS
 Personally appeared before me the affiant J. T. WILLIAMS  
 being ANY sworn deposes and says that defendant NICHOLAS MASHAWN GEER who  
 did within this county and state on JANUARY 23, 1995  
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ANDERSON)  
 in the following particulars:

DESCRIPTION OF OFFENSE: RESISTING ARREST

 I further state that there is probable cause to believe that the defendant named above did commit  
 the crime set forth and that probable cause is based on the following facts:

 ON THE ABOVE DATE AT APPROX. 1241 HRS POLICE DID ATTEMPT TO SERVE ARREST WARRANT NO. E-353630(ABIK) IN  
 FRONT OF APT. 10-D FORTSON HOMES IN THE CITY LIMITS OF ANDERSON SC. AT THE TIME OF THIS ARREST POLICE ALSO  
 ATTEMPTED TO SERVE A FAMILY COURT CUSTODY ORDER ON THE DEFENDANT. THE DEFENDANT DID RESIST ARREST IN  
 WHICH HE FLED FROM THE AREA ON FOOT WITH POLICE IN PURSUIT THE FOOT PURSUIT TOOK PLACE AT APPROX. 1241 HRS  
 AND ENDED AT APPROX. 1311 HRS IN FRONT OF APT. 7 FORTSON HOMES WITHIN THE CITY LIMITS OF ANDERSON SC. THE  
 DEFENDANT DID STRUGGLE AND ATTEMPTED TO PULL AWAY IN AN ATTEMPT TO ESCAPE LAWFULL ARREST.

 Sworn to and subscribed before me  
 on 01/23/95

 Signature of Issuing Judge Km Matt (L.S.)

Signature of Affiant

 Affiant's Address 401 S MAIN ST  
ANDERSON, SC 29624
Affiant's Telephone 803-231-2271

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
ANDERSON

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that  
 on JANUARY 23, 1995 defendant NICHOLAS MASHAWN GEER

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of ANDERSON

DESCRIPTION OF OFFENSE: RESISTING ARREST ) as set forth below:

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her 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.

 Signature of Issuing Judge Km Matt (L.S.)

Judge's Address

Judge Code: \_\_\_\_\_

Judge's Address 401 S MAIN STANDERSON, SC 29624Judge's Telephone 803-231-2271
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

E-353723

Xref #: 94-28469

## AFFIDAVIT

 Form Approved by  
 S.C. Attorney General  
 July 26, 1990  
 SCCA 518

324



## STATE OF SOUTH CAROLINA

COUNTY OF Anderson

W-04-96-0011 (1-4-96)

SID #991977-01

## ARREST WARRANT

Ind. #95-GS-04-608

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

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

Nicholas M. Geerdid on the 4 th day of January, 19 96,  
violate the criminal laws of the State of South Carolina as set forth below:

## DESCRIPTION OF OFFENSE

Violation of probation and suspended sentences #95-GS-04-663 pursuant to Section 24-21-450.

Now, therefore, you are empowered and directed to arrest the said defendant and bring Nicholas M. Geer 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 Anderson, S. C. this 4th day  
of January, 19 96.Chub W. (L.S.)  
Signature of Probation and Parole Agent

## STATE OF SOUTH CAROLINA

## AFFIDAVIT

COUNTY OF AndersonPersonally appeared before me, one Auburn Walker,  
who, first being duly sworn, deposes and says that [name of defendant]  
Nicholas M. Geerdid within this County and State on the 4 th day of January, 19 96, violate  
the criminal laws of the State of South Carolina in the following particulars:

## DESCRIPTION OF OFFENSE

The Defendant has violated the conditions of his probation sentence and his suspended during  
probation sentence as imposed by the Honorable Judge Frank Eppes at the  
June 5, 1995 term of General Sessions Court holden in Anderson County, Anderson,  
South Carolina.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:By possessing a firearm, in that subject was convicted on 11-14-95 of possessing a deadly weapon  
while committing a violent crime in Anderson County Court of General Sessions; by violating  
federal, state or local law in that subject was convicted of murder and possession of firearm or  
knife during commission of a violent crime for which he received a sentence of life + 5 yrs in  
Anderson County Court of General Sessions on 11-14-95; by failing to follow the advice and  
instructions of agent as witnessed by above violations. This constitute violation of conditionsSworn to and Subscribed before me #4, 6, and 10 of the probation order.this 4 day of Jan, 19 96.RH (L.S.)  
Signature of Notary PublicChub W. Affiant  
Address 126 N. McDuffie St.  
Anderson, SC 29625  
Phone (864) 260-2230

(Form Continues on Back)

|                                                                                                                           |  |
|---------------------------------------------------------------------------------------------------------------------------|--|
| State of South Carolina, County of: <u>Anderson</u>                                                                       |  |
| SDP                                                                                                                       |  |
| Indictment No.(s) <u>95 -GS-04-608</u> ; <u>95 -GS-04-663</u> ; <u>-GS-</u>                                               |  |
| Client: <u>Nicholas M. Geer</u> DOB: <u>MM DD YY</u> Location: ( ) SCDC ( ) County Jail ( ) Community                     |  |
| SCDC No. <u>                    </u> SID No. <u>991977-01</u>                                                             |  |
| Supervision Program: <u>probation</u> Begins: <u>06 / 5 / 95</u> Ends: <u>06 / 4 / 2000</u> Supervision Level <u>High</u> |  |
| Offense: <u>Assault &amp; Battery W/Intent to Kill</u>                                                                    |  |
| Sentencing Judge: <u>Frank Eades</u> Date of Sentence <u>06 / 04 / 95</u>                                                 |  |
| Sentencing County <u>Anderson</u>                                                                                         |  |

Sentence: YOA NTE 6 yrs; susp., and 5 yrs. probation.

Special Conditions: Pay \$250 to Public Defender Fund; pay \$700 restitution to victim at rate of \$50/mo. beginning 7-1-95.

Reporting: Subject reported as instructed prior to incarceration.

Current Address and Summary of Residence:

Subject currently resides at S.C. Dept. of Corrections prior to this he resided at 417 Greenmeadow Circle, Anderson, SC 29624.

*revoked on full*

Employment Record While Under Supervision:

| Employer | Dates (From - To) | Reason for Leaving | Earnings |
|----------|-------------------|--------------------|----------|
| none     |                   |                    |          |

Financial Conditions:

|              | Total Amount<br>Ordered | Period<br>Payment ( ) | Total Amount<br>Paid | Date Last<br>Paid | Arrearage | Balance<br>Due |
|--------------|-------------------------|-----------------------|----------------------|-------------------|-----------|----------------|
| combined     | 978.50                  |                       |                      |                   |           | 978.50         |
| Restitution: | \$700.00                | \$50/mo.              | 0                    | 0                 |           | \$700.00       |
| \$250 + 3%   |                         |                       |                      |                   |           |                |
| Fine: (PDF)  | \$257.00                | \$50/mo.              | 0                    | 0                 |           | \$257.50       |
| Fee:         | \$1200.00               | \$20/mo.              | 0                    | 0                 |           | \$1200.00      |

(over)

22 (4/92)  
SCDPPPS



STATE OF SOUTH CAROLINA  
In The Administrative Law Court  
Docket Number 15-ALJ-15-0042

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APPEAL OF FINAL DECISION  
Department of Probation, Parole, and Pardon Services

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NICHOLAS GEER, #227443 .....APPELLANT

v.

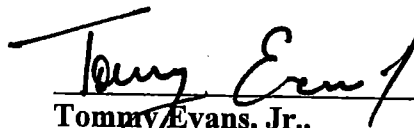
S.C. DEPARTMENT OF PROBATION, PAROLE AND  
PARDON SERVICES, .....RESPONDENT

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***CERTIFICATE OF COUNSEL***

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The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.

  
Tommy Evans, Jr.,  
Assistant General Counsel

South Carolina Department of  
Probation, Parole and Pardon Services  
P. O. Box 50666  
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(803) 734-9220

September 21, 2015

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Nicholas M. Geer, #227443,

Appellant,

vs.

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

Docket No. 15-ALJ-15-0042-AP

**ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the appeal filed by Nicholas M. Geer (Appellant) from a decision of the South Carolina Department of Probation, Parole and Pardon Services (Department) denying him parole. Appellant filed this appeal with the Court on August 12, 2015.

**FACTUAL/PROCEDURAL HISTORY**

Appellant is in the custody of the South Carolina Department of Corrections. He was born on November 13, 1977. On December 30, 1994, he committed the offense of assault and battery with intent to kill (ABWIK). On June 5, 1995, Appellant appeared before a judge and was sentenced for ABWIK under the Youthful Offender Act to a term of imprisonment not to exceed six years, five of which were under probation with the remaining year suspended. On July 14, 1995, Appellant committed murder, in violation of his parole and of which he was convicted and sentenced to life imprisonment on November 14, 1995.<sup>1</sup> On July 13, 2015, the Parole Board (Board) informed Appellant that he was ineligible for parole pursuant to Section 24-21-640 based on his murder conviction and prior ABWIK conviction.<sup>2</sup>

<sup>1</sup> Appellant states in his brief that he was seventeen years old at the time of his offense (murder), conviction, and sentence. However, the Record reflects that Appellant was eighteen at the time of his conviction and sentence, as he was convicted and sentenced the day after this eighteenth birthday. Nevertheless, because it is the date of the offense and not of the conviction that this Court must consider, Appellant's error is immaterial.

<sup>2</sup> Based on the law at the time of Appellant's offense, he would have become eligible for parole following completion of twenty years of his sentence.

**FILED**

December 1, 2015

SC ADMIN. LAW COURT

On August 12, 2005, Appellant filed his Notice of Appeal with this Court on the grounds that his ineligibility for a crime he committed when he was a juvenile violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution. Appellant cited to *Miller v. Alabama*, – U.S. –, 132 S.Ct. 2455 (2012) to support his position.

### **JURISDICTION**

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003).

### **DISCUSSION**

Appellant argues that the Department erred in rendering him ineligible for parole. Appellant points out that he was sentenced to life imprisonment without any reference to that sentence being without the possibility of parole and did not have a separate hearing to consider the “mitigating hallmark features of youth.” Appellant points out that he was seventeen years old at the time his offense was committed. Appellant also asserts that “the Parole Board is under the erroneous presumption that he was sentenced to a life without the possibility of parole.” He further asserts that even had he been sentenced to life without the possibility of parole, the United States Supreme Court in *Miller, supra* and the South Carolina Supreme Court in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) have held that it is cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution and Article I, Section 15 § of the S.C. Constitution for a defendant who is under the age of eighteen at the time of his or her offense to be sentenced to life imprisonment without the possibility of parole absent an individualized consideration of youth.

“The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake.” *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Liberty interests protected by the Fourteenth Amendment may arise from the Constitution itself or from an expectation or interest created by state laws or policies. *Id.*; *Hewitt v. Helms*, 459 U.S. 460, 466 (1983), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). In *Furtick*, the South Carolina Supreme Court held that “the permanent denial of parole eligibility implicates a [state-created] liberty interest sufficient to require at least minimum due process.” 352 S.C. at 598, 576 S.E.2d at 149.

In this case, the sentencing court sentenced Appellant to “life,” which, absent evidence to the contrary, this Court must interpret as life with the possibility of parole. The Board, in reviewing Appellant’s record prior to a parole hearing, relied upon S.C. Code Ann. § 24-21-640 (Supp. 2014) in concluding that Appellant was ineligible for parole. The Department maintains that same position in its brief. The Department even acknowledges in its brief that “Appellant was not originally sentenced to life without parole, [but] was determined not to be eligible for parole due to his prior record.” Section 24-21-640 states in pertinent part: “[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60.” ABWIK is certainly a violent crime as defined in Section 16-1-60 at the time of Appellant’s offense, as is his subsequent offense of murder.<sup>3</sup> However, the question here is not the nature of the crimes committed but rather the denial of the possibility of a parole to a person who was a juvenile at the time he committed the prior and subsequent offense without having first taken his youth into consideration.

The U.S. Supreme Court in *Miller* made it clear that “mandatory life-without-parole sentences for juveniles violate the Eighth Amendment.” 132 S.Ct. at 2464. The Court reasoned that “[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 2467. Thus, though the Court did not “foreclose a sentencer’s ability” to impose life without the possibility of parole on a juvenile offender, the Court required that the sentencer “take into account how children are different, and how [or to what extent] those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 2469. Moreover, *Miller* was applied to South Carolina in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), including the U.S. Supreme Court’s definition of juvenile in these types of cases as being anyone under the age of eighteen.<sup>4</sup> The Court in *Aiken* also applied *Miller* retroactively in South Carolina. *Id.* at 540, 765

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<sup>3</sup> Neither party appears to challenge the fact that it is Appellant’s age at the time of the offense, rather than at the time of the conviction, that is pertinent to the sentencing issue in this case. But for the sake of clarity, the Court considers Appellant’s age at the time of the offense to be the proper focus in determining whether he was a juvenile for sentencing purposes. See *State v. Green*, 412 S.C. 65, 86, 770 S.E.2d 424, 435 (Ct. App. 2015) (considering appellant’s age “at the time of the prior offense . . . that led to his prior conviction” in concluding that he was a juvenile at the time of his prior offense).

<sup>4</sup> The Court in *Aiken* essentially abrogated the statutory definition of “juvenile” set forth in S.C. Code Ann. § 63-19-20 (2010) for purposes of cases such as this. See *Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 574 n.1.

S.E.2d at 575 ("We conclude *Miller* creates a new, substantive rule and should therefore apply retroactively.").

The Department argues that *Miller* does not apply to the present case, because this case involved a deprivation of Appellant's parole eligibility based upon his own actions via his subsequent violation, pursuant to Section 24-21-640, rather than being based on a ruling by the sentencing court. The Department cites to *State v. Standard*, 351 S.C. 199, 569 S.E.2d 325 (2002) to support its position. In *Standard*, our Supreme Court held that it is not cruel and unusual punishment to sentence a defendant to life without the possibility of parole utilizing enhanced penalties for a burglary committed when the defendant was a juvenile so long as the defendant was tried and sentenced as an adult for the triggering offense. 351 S.C. at 204, 569 S.E.2d at 328. The Court stated that "an enhanced sentence based upon a prior most serious conviction for a crime which was committed as a juvenile does not offend evolving standards of decency so as to constitute cruel and unusual punishment." *Id.* at 206, 569 S.E.2d at 329 (emphasis omitted). However, the crucial distinction between this case and *Standard* is that Appellant was a juvenile at the time of the prior offense (ABWIK) and the triggering offense (murder). Therefore, the rationale underlying the decision in *Standard* is inapposite, as both offenses were committed by a juvenile in this case.<sup>5</sup>

As to the fact that Appellant was deprived of his parole eligibility because of his own actions rather than by the sentencing court is a difference without a distinction. The Court in *Miller* focused on the "sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id.* (emphasis added). The Court's concern was that this precludes the sentencer from taking youth and its attendant characteristics and circumstances into account. In this case, the sentencing scheme was the Board's application of Section 24-21-640 to declare Appellant, who was a juvenile at the time of both his ABWIK and murder offenses, ineligible for parole. Regardless of whether the sentencing court or the statute took away Appellant's parole eligibility, the pertinent fact remains that Appellant's youth and its attendant characteristics and circumstances were not taken into account prior to the deprivation of his parole eligibility, and the

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<sup>5</sup> The South Carolina Court of Appeals also recognized this distinction in *Green*, 412 S.C. at 86-87, 770 S.E.2d at 436 ("Although *Miller* held that mandatory LWOP sentences for juveniles violate the Eighth Amendment, . . . because *Green* was not a juvenile at the time he committed the current armed robbery, the policy considerations from *Miller* are inapplicable). The difference between this case and *Standard* and *Green*, though, is that Appellant was a juvenile at the time he committed both the prior offense and the triggering offense, thus implicating *Miller*).



courts have found that such deprivation is cruel and unusual punishment under the U.S. and S.C. Constitutions.

Curiously, the Department acknowledges that the S.C. Supreme Court in *Aiken* “determined that *Miller* can be applied retroactively, not allowing defendants who committed their crimes as juveniles to serve a life sentence without parole.” The Department, however, argues that *Aiken* does not apply in this case, because “Appellant was not considered a juvenile when he committed the current offense” and “[h]e is currently doing a life without parole sentence due to his prior criminal actions.” The Department reasons that Appellant was not considered a juvenile at the time he committed his offenses because he was seventeen at the age of his offenses. In support of this argument, the Department cites to S.C. Code Ann. § 63-19-20 (Supp. 2014) of the Juvenile Justice Code, which states that “[c]hild” or “juvenile” means a person less than seventeen years of age.” However, in the first footnote in *Aiken*, the Court explicitly rejected that definition of “juvenile” in favor of the one set forth in *Miller*, which defines juveniles as individuals under the age of eighteen. See *Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1. As the Department even concedes, Appellant was seventeen years of age when he committed the prior and current offenses. Therefore, Appellant was a juvenile at the time he committed those offenses.

Finally, the Department argues that “[t]he automatic application of a life without parole sentence had been determined a violation of the eighth amendment [in *Miller*] because it does not consider the character and record of the individual offender or the circumstances of the offense.” The Department contends that the character and record of Appellant and the circumstances of his offense are why he is not eligible parole, because he shot two people, killing one, within a period of seven months. The Department is correct that the Court in *Miller* did cite *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (plurality opinion) as an example of a line of precedent requiring consideration of “the characteristics of a defendant and the details of his offense . . . .” *Miller*, 132 S.Ct. at 2458. However, this was only part of “the confluence of . . . two lines of precedent” that led the Court to conclude that mandatory life without parole for juveniles violated the Eighth Amendment. The other line of precedent that the Court examined and blended with the rule cited by the Department considered the “mismatches between the culpability of a class of offenders and the severity of a penalty,” juveniles having a “lesser culpability.” *Id.* This is why the Court adopted the requirement that a sentencer consider a juvenile offender’s “youth and its attendant characteristics, along with the nature of his crime . . . .” *Id.* at

2460. It found that “mandatory life-without-parole sentences on juvenile homicide offenders . . . , by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 2467. The Court’s decision “d[id] not categorically bar a penalty for a class of offenders or type of crime” but did “mandate[] . . . that a sentencer follow a certain process – considering an offender’s youth and attendant circumstances – before imposing a particular penalty.”

In this case, because Appellant’s youth was not taken into account before he was deprived of the possibility of parole, the deprivation violated the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution.<sup>6</sup>

**IT IS THEREFORE ORDERED** that the Department’s Decision is **REVERSED AND REMANDED** for further findings consistent with this Order.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink that reads "Ralph King Anderson, III". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Ralph King Anderson, III  
Chief Administrative Law Judge

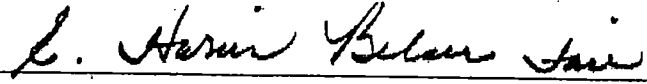
December 1, 2015  
Columbia, South Carolina

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<sup>6</sup> The Court certainly understands the Department’s concern that Appellant committed murder within seven months of another violent crime and acknowledges that the General Assembly enacted Section 24-21-640 to protect society from especially violent criminals. However, that statute cannot be applied in a way that fails to take Appellant’s youth and its attendant characteristics and circumstances into account. The Parole Board in this case could not have taken Appellant’s youth and its attendant characteristics and circumstances into account because, by the Department’s own admission, Appellant was not considered a juvenile when he committed the triggering offense, which was an error of law.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair  
Judicial Law Clerk

December 1, 2015  
Columbia, South Carolina

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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from the Administrative Law Court  
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge  
Case No. 15-ALJ-0042-AP

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Appellate Case No. 2015-002522

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NICHOLAS M. GEER, #227443 .....RESPONDENT

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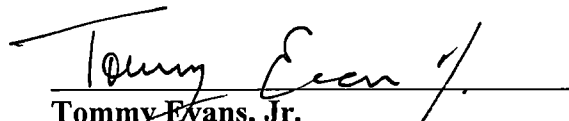
S.C. DEPARTMENT OF PROBATION, PAROLE  
AND PARDON SERVICES ..... APPELLANT

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***CERTIFICATE OF COUNSEL***

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The undersigned certifies that this Record on Appeal complies with Rule 210(c), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007, and contains all material proposed to be included by any of the parties and not any other material.

  
Tommy Evans, Jr.  
Assistant General Counsel

South Carolina Department of  
Probation, Parole and Pardon Services  
P. O. Box 50666  
Columbia, South Carolina 29250  
(803) 734-9220

February 29, 2016

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MAR 01 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court  
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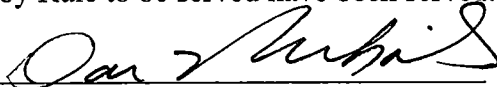
S.C. DEPARTMENT OF PROBATION, PAROLE  
AND PARDON SERVICES ..... APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Appellant, certify that I have served a copy of the *RECORD ON APPEAL*, dated February 29, 2016, on Respondent by depositing the same in the United States mail, postage prepaid, this 29<sup>th</sup> day of February, 2016, addressed to him:

Nicholas M. Geer, #227443  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, S.C. 29669

I further certify that all parties required by Rule to be served have been served.

  
Dawn K. Nichols,  
Executive Administrative Assistant

S. C. Department of Probation,  
Parole, and Pardon Services  
P. O. Box 50666  
Columbia, South Carolina 29250