

ORIGINAL

Volume II of II

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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CERTIORARI FROM CHEROKEE COUNTY

S.C. SUPREME COURT

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No: 2017-000758

John B. Bonner,

Respondent,

v.

State of South Carolina,

Petitioner.

APPENDIX

LINDSEY S. VANN
Esquire

Death Penalty Resource & Defense
Center
900 Elmwood Avenue
Suite 200
Columbia, SC 29201
(803) 765-1044

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

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Columbia, SC 29211
(803)734-3727

ATTORNEYS FOR PETITIONER

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Constitutionality under Graham

Even if the issue was preserved and this Court extended the Graham holding to a term-of-years sentence, the sixty-year sentence Appellant received is not unconstitutional as a "de facto life sentence." Graham indicated: "[The Eighth Amendment] does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives." Graham, 560 U.S. at 75. Graham does provide:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Graham, 560 U.S. at 75.⁷

Appellant contends he will not have a meaningful opportunity to obtain release. In this situation, he was sentenced to sixty-years in prison when he was seventeen years of age. He would have to serve eighty-five percent of his sentence, so he would be eligible for release after approximately 51 years on his burglary conviction⁸. Meaning he would be eligible for release on the burglary offense when he is approximately 68 years of age. Appellant would have a meaningful opportunity for release given his life expectancy of 77 under section 19-1-150 of the South Carolina Code. Nothing in Graham guarantees a meaningful life after the opportunity for release. It merely prohibits a state from foreclosing any possibility of release at the time of sentencing.

⁷ Again, the State notes this opinion relates to a life without parole sentence and not to a lengthy term-of-years sentence such as Appellant's.

⁸ As will be discussed in the following pages, the State submits this Court only has jurisdiction to consider Appellant's sixty-year sentence. Consideration of the ten year sentence for ABHAN, which the circuit court ran consecutive to any other sentence, would not be appropriate in this appeal.

Additionally, Appellant raises several other possible life expectancies, some of which are tied to race or other factors, as a basis for arguing Appellant lacked a meaningful opportunity for release. He fails to cite to the United States Social Security Administration which provides a life expectancy calculator based on Appellant's date of birth. Entering his gender and date of birth yields an expected life of 82.1 years.⁹ The fact there is such a wide discrepancy in the projected life expectancy for Appellant indicates the unworkability of what Appellant proposes.

Appellant, even if Graham applies to his sentence, will have a meaningful opportunity for release. He is not foreclosed the possibility of release and is not guaranteed to die in prison as is someone with a sentence of life without parole. Appellant may spend a significant portion of his life in prison, but nothing in Graham forecloses that possibility.¹⁰ Appellant seems to argue the Eighth Amendment requires Appellant be released within his natural life, or even more accurately, be released with some meaningful amount of his life remaining. This is simply not the requirement the USSC has placed on the state. The USSC specifically stated: "[The Eighth Amendment] does not require the State to release that offender during his natural life." Graham, 560 U.S. at 75.

Appellant's sixty-year sentence is not unconstitutional under Graham. He has a meaningful opportunity for release and nothing further is required.

⁹ See <http://www.socialsecurity.gov/cgi-bin/longevity.cgi>

¹⁰ It is important to note that Appellant has not challenged his sentence as being grossly disproportionate to his crimes. His sentence is very fitting the crimes he committed, which were egregious, heinous, and without any concern for his victim. See Graham, 560 U.S. at 75 (recognizing that a juvenile non-homicide offender can constitutionally receive a sentence for an offense that would result in the offender spending the remainder of his life in jail); see also State v. Johnson, 350 S.C. 543, 547, 567 S.E.2d 486, 488 (Ct. App. 2002) ("[F]ew would argue that first-degree burglary, armed robbery, and kidnapping are anything other than grave offenses of the 'most serious' nature.")

Jurisdiction

Appellant asks this Court to consider both his sixty-year sentence for burglary and his consecutive ten-year sentence for ABHAN, arguing his seventy-year sentence violates Graham. This Court, just as the circuit court on remand, is without jurisdiction to address the consecutive ten-year sentence for ABHAN as it was never before either court.¹¹

“Generally, a [circuit court] judge is without authority to consider a criminal matter once the term of court during which judgment was entered expires.” State v. Warren, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011); see State v. Hinson, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”). The circuit court can obtain jurisdiction after an appeal. “Specifically, ‘once the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court’s ruling.’” Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 198, 750 S.E.2d 78, 83 - 84 (2013) (quoting Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 385, 559 S.E.2d 348, 351-352 (Ct. App. 2001)).

The circuit court then only has jurisdiction over the matter remanded to it from the appellate court. As this Court has stated: “[A] trial court has no authority to exceed the mandate of the appellate court on remand.’ The mandate of the appellate court is jurisdictional. The trial court has a duty to follow the appellate court’s directions.” Prince v. Beaufort Memorial Hosp., 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) (internal citations and quotations omitted). Accordingly, the trial court correctly found it

¹¹ The circuit court recognized its lack of jurisdiction of the conviction and sentence for ABHAN and all of Appellant’s remaining charges. Specifically, the court stated: “The only sentence I can impose today is a sentence for burglary in the first degree. That’s the only case that’s been sent back.” (R.344-345).

only had jurisdiction over the sentence for burglary in the first degree as this was the only sentence addressed by this Court's opinion and the only sentence remanded to the circuit court for resentencing.¹²

As this Court knows and recently reiterated, appellate jurisdiction arises from section 14-3-330 of the South Carolina Code. See Levi v. Northern Anderson County EMS, Op. No. 5243 (S.C.Ct. App. Filed June 30, 2014)(Shearouse Adv.Sh. No. 26. at 105). In this case, the only final judgment before this Court is Appellant's resentencing on his burglary conviction. Accordingly, nothing allows this Court to exercise appellate jurisdiction over any other sentence as requested by Appellant.

Accordingly, this Court should find it can only consider the sixty-year sentence imposed by the circuit court for Appellant's conviction of burglary in the first degree. It should then conclude as discussed above the Graham opinion is inapplicable to a term-of-years sentence. In the alternative, the Court should conclude Appellant has failed to demonstrate Graham should be extended or, even if Graham should be extended, his sixty-year sentence is unconstitutional. Finally, even if this Court considered the entire seventy-year sentence, Appellant's aggregate sentence is not unconstitutional.¹³

¹² It should be noted that in his initial appeal to this Court, Appellant specifically acknowledged he only challenged the sentence to his burglary conviction and did not challenge any other conviction or sentence. See State v. Bonner, 400 S.C. 561, 564 n.4, 735 S.E.2d 525, 526 n.4 (Ct. App. 2012).

¹³ Of course the State maintains none of these issues are preserved for review on appeal and believes the Court should not address any of the contentions raised by Appellant in his brief.

CONCLUSION

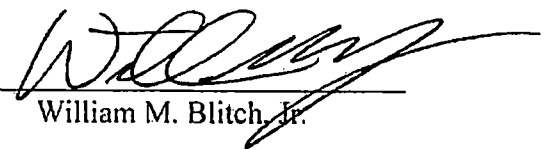
For all the foregoing reasons, it is respectfully submitted that the judgment of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY:


William M. Blitch, Jr.

Office of the Attorney General
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Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 8, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case Tracking No. 2013-000281

The State,

Respondent,

vs.

John Bonner,

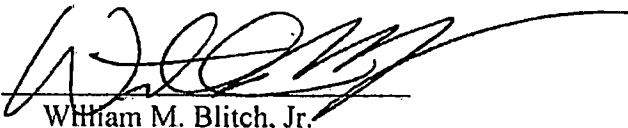
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007; order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 

William M. Blitch, Jr.

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

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The State,

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vs.

John Bonner,

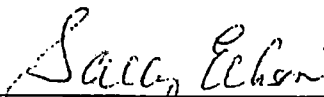
Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 8th day of July, 2014.



SALLY ELLISON
Legal Assistant

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

John Bonner, Appellant.

Appellate Case No. 2013-000281

Appeal From Cherokee County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2014-UP-401
Submitted September 1, 2014 – Filed November 12, 2014

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blicht, Jr., both of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *State v. Shumate*, 276 S.C. 46, 47, 275 S.E.2d

288, 288 (1981) ("A defendant's failure to timely object to or seek modification of his sentence in the trial court precludes him from presenting his objection for the first time on appeal.").

AFFIRMED.¹

WILLIAMS, GEATHERS, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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www.sccourts.org

December 02, 2014

The Honorable Brandy W. McBee
PO Drawer 2289
Gaffney SC 29342-2289

REMITTITUR

Re: The State v. John Bonner
Lower Court Case No. 2009GS1100824, 2009GS1100825,
2009GS1100826, 2009GS1100827, 2009GS1100828, 2011GS1100829
Appellate Case No. 2013-000281

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Susan Barber Hackett, Esquire
Alan McCrory Wilson, Esquire
William M. Blitch, Jr., Esquire
Barry Joe Barnette, Esquire
The Honorable J. Derham Cole

FORM 5

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS
 COUNTY OF Lee CHEROKEE S.C.

John B. Bonner #338030 2015 APR 12 AM 11 30
 Full name and prison number (if any) of Applicant.

BRANDY W. MCBEE

015CP-110381

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correction Institution / 990 Wiscacky Highway
2. Name and location of Court which imposed sentence Cherokee County General Session
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burglary 1st Degree
 - (b) 2nd Degree Burglary
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Resentencing _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Bonner v. State. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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BRANDY W. MCBEE
CHECKED IN ERROR

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CHEROKEE
2015 MAR 12 PM 11 30
BRANDY W. MCBEE

- (a) Whether Resentence of 60 Years Unconstitutional
 (b) Whether Applicant Case Must Be Judged Under Miller
 (c) Whether Applicant Should have had Sentence/Trial Phase

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) This is was not Preserved for appellate review
 (b) The State Supreme Court has ruled 5 factors must be considered
 (c) The trial requires two Phases trial/Sentence as required by Blockly

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. Not Applicable
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. Not Applicable
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. Not Applicable

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BRANDY W. MCBEE

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2015 APR 12 PM 11:30
BRANDY W. MCBEE

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

Not Applicable

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

Not Applicable

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. Whether 10 Year Sentence was excessive
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. Appeal
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

Not Applicable

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

Unseal Sentence

20. Are you now under sentence from any other court that you have not challenged?

No

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CHEROKEE COUNTY, S.C.
2015 MAY 12 AM 11 30
BRANDY W. MCBEE

CLERK IN ERROR

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CHEROKEE COUNTY, S.C.
2015 MAY 12 AM 11 30
BRANDY W. MCBEE

015CP-110381

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John Bonner

SWORN to and subscribed before me this 21
day of April, 2015.

Debra Sures

(L.S.)

Notary Public

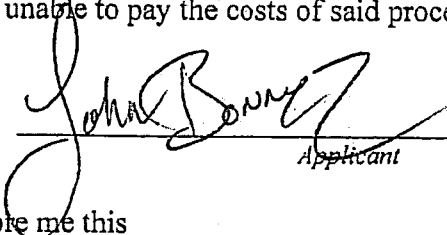
My Commission Expires: 11-4-2015

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2015 MAY 12 PM 11 30
GRANDY W. MCBEE

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
21 day of April, 2015.


Notary Public

My Commission Expires: 11-4-2015

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2015 MAY 12 AM 11 30
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

John B. Bonner #338030,
Plaintiff(s),
-vs-

State of South Carolina,
Defendant(s).

) IN THE COURT OF (Select one.)
) ☒ COMMON PLEAS ☐ FAMILY COURT
) 7th JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-11-0381
) APPOINTMENT OF COUNSEL OR GAL
) (Select one.)
) ☒ ORDER
) ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| ☒ Post-Conviction Relief (PCR)/habeas case | ☐ Adoption | ☐ Juvenile |
| ☐ SVP case | ☐ Custody and/or Visitation | ☐ Abuse and Neglect |
| ☐ Minor Name Change | ☐ Other: | |

It appears that John B. Bonner, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- ☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- ☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☐ Other: _____

Therefore, it is ordered that Steven Epps, hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 10th DAY OF July, 2015.

Brandy H. McBe

☐ Circuit Judge ☒ Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
John B. Bonner, #338030,	)	Case No.: 2015-CP-11-0381
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR A
v.	)	MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on May 12, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Cherokee County. Applicant was indicted at the July 2009 term of the Cherokee County Grand Jury for burglary—1st degree (2009-GS-11-0824), kidnapping (2009-GS-11-0827), armed robbery (2009-GS-11-0828), assault and battery of a high and aggravated nature ("ABHAN") (2009-GS-11-0829), burglary—2nd degree (2009-GS-11-0826) and grand larceny, greater than \$5,000 (2009-GS-11-0825). E. Joshua Schultz, Esquire, represented Applicant. On November 17, 2009, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted. Judge Cole initially sentenced Applicant to imprisonment for a term of life for burglary—1st degree. Additionally, Judge Cole sentenced Applicant to imprisonment for a term of 30 years each for kidnapping and armed robbery, 15 years for burglary—2nd degree, ten years for ABHAN, and five years for grand larceny.

Applicant filed a timely notice of appeal. Tristan M. Shaffer, Esquire, represented Applicant on appeal. The South Carolina Court of Appeals vacated Applicant's sentence of life imprisonment and remanded the matter for new sentencing on the burglary—1st degree charge. State v. Bonner, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012). The remittitur was returned January 17, 2013.

On January 22, 2013, Applicant appeared before Judge Cole for re-sentencing. E. Joshua Schultz, Esquire, represented Applicant. Judge Cole sentenced Applicant to imprisonment for a term of 60 years for burglary—1st degree.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected by Susan B. Hackett, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction on September 1, 2014. State v. Bonner, Op. No. 2014-UP-401 (S.C. Ct. App. filed November 12, 2014). The Remittitur was returned on December 2, 2014.

Attached herewith and incorporated herein by reference are the records of the Cherokee County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, and Applicant's records for the Department of Corrections and appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Whether resentence of 60 years unconstitutional"
 - a. "This is [sic] was not preserved for appellate review"
2. "Whether Applicant case must be judged under Miller"
 - a. "The State Supreme Court has ruled 5 factors must be considered."
3. "Whether Applicant should have had Sentence/Trial Phase"

- a. "The trial requires two phases trial sentence as required by Blakely."

III.

Respondent submits that Applicant's first allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss these allegations.

IV.

Respondent submits the allegation related to Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455 (2012) must be dismissed. On November 12, 2014, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced." Id. at 545, 765 S.E.2d at 578 (emphasis added). As such, any challenges under Miller are not properly heard in a PCR action and this allegation must be summarily dismissed.

V.

Applicant alleges that he is being held in custody unlawfully based on "applicant should have had sentence/trial phase." However, Applicant has wholly failed to set forth any "facts

which support each ground” or to explain with any specificity whatsoever, the actual scenarios or facts upon which these claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to adequately respond. Respondent requests that the application be amended to provide Respondent with a basis to prepare a Return.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRPC. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Filings by Applicant will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

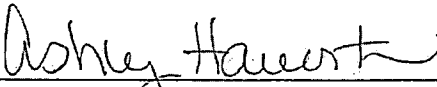
February 16, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	
	)	
	)	2015-CP-11-0381
JOHN B. BONNER, #338030,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Steven D. Epps, Esquire
104-A Franklin Ave., #281
Spartanburg, SC 29301

DATED this 16TH day of February, 2016.



 Ashley Hawthorth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)

John B. Bonner, #338030,

) Case No.: 2015-CP-11-0381
)

) Applicant,
)

) **ORDER OF CONTINUANCE**
)

) v.
)

) State of South Carolina,
)

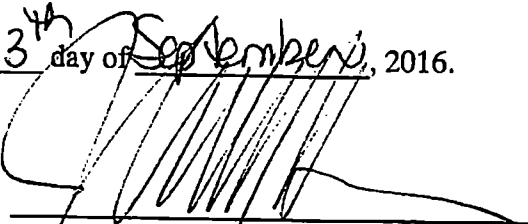
) Respondent.
)
)

This matter comes before the Court by way of an application for post-conviction relief. An evidentiary hearing into the matter was scheduled for September 21, 2016, at the Spartanburg County Courthouse. Petitioner has requested this matter be continued until the November 2016 term. Respondent does not oppose the request. Accordingly, this Court finds that this matter should be continued until the November 2016 term of court for post-conviction relief matters in the Seventh Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and re-scheduled for the November 2016 term of post-conviction relief hearings.

AND IT IS SO ORDERED this 13th day of September, 2016.



THE HONORABLE J. MARK HAYES, II
Chief Administrative Judge
Seventh Judicial Circuit

Cherokee, South Carolina.

FILED
2016 SEP 15 A 10:51
CLERK OF COURT
SEVENTH JUDICIAL CIRCUIT
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-11-0381

John B. Bonner #338030,
Applicant / Petitioner,

v.

State of South Carolina,
Respondent.

**PETITIONER'S NOTICE AND MOTION
TO STAY OR CONTINUE CASE**

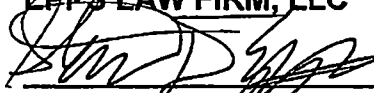
2015-03-26 A 10:41
CHEROKEE COUNTY, S.C.

To: The Honorable Alan Wilson, Attorney General for the State of South Carolina and Assistant Attorneys General John McIntosh, Karen Ratigan, and Alicia Olive, Esquires:

Please take note that the Petitioner, within 10 days or as soon as may be heard, will move before the Court seeking a Stay or Continuance of this matter. The basis of Petitioner's motion is that Petitioner's original sentence(s), resentencing, and results in our appellate courts mirror that of Conrad Slocumb whose aggregate sentence the South Carolina Supreme Court agreed to review when it took the unusual steps of both denying Mr. Slocumb's Writ of Certiorari as it agreed the Court of Appeals had no jurisdiction to review such aggregate sentence and ordering a private member of the Bar to file a Petition for a Writ of Certiorari in its original jurisdiction so that it could review whether Slocumb's aggregate sentence afforded him a meaningful opportunity for release in compliance with Graham and the Eighth Amendment to the U.S. Constitution. That case, Slocumb v. State, Appellate Case 2015-002031, is still before the Court and it has not yet heard arguments or issued a ruling on that case. The unusual action of the South Carolina Supreme Court and the fact that Court has not yet ruled on the Slocumb matter illustrate the instant matter is not yet ripe to be heard until the Court can provide direction to the Bench and Bar regarding Petitioner's sentence and those who are similarly situated. Accordingly, a hearing on Petitioner's PCR at this point could be wasteful of

judicial resources as Slocumb's eventual ruling may dictate revisiting this matter again and/or vacate Petitioner's sentence even if modified by this Court through the PCR process. Therefore, Petitioner requests a Stay or Continuance of this matter until the South Carolina Supreme Court rules on Slocumb v. State as that ruling will likely be dispositive of the issues involved in this matter.

EPPS LAW FIRM, LLC



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steven@eppslawfirm.com

ATTORNEY FOR PETITIONER

Spartanburg, South Carolina
October 26, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	SEVENTH JUDICIAL CIRCUIT
	)	CASE NO.: 2015-CP-11-0381
John B. Bonner #338030,	)	
Applicant / Petitioner,	)	SUPPLEMENTAL PETITION FOR POST-
	)	CONVICTION RELIEF
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	

COMES NOW, Petitioner John B. Bonner, SCDC # 00338030, ("Petitioner") by and through his undersigned counsel who files this Supplemental Petition for Post-Conviction Relief pursuant to South Carolina Code Annotated 17-27-10 et seq. as follows:

Background of Case and Cases Relevant to this Matter

- Petitioner was charged and convicted of Burglary, 1st Degree, Burglary, 2nd Degree, Kidnapping, Armed Robbery, Assault and Battery of a High and Aggravated Nature (ABHAN), and Grand Larceny on November 18, 2009 in Cherokee County. Petitioner was sentenced as follows: Burglary 1st, Life without Parole (LWoP); Burglary 2nd, 15 years; Kidnapping, 30 years; Armed Robbery, 30 years; ABHAN, 10 years; and Grand Larceny, 5 years. All of the above sentences were to run concurrent except for the 10-year sentence on ABHAN which ran consecutive to all sentences.
- On May 17, 2010, the United States Supreme Court issued its decision in Graham v. Florida, 130 S.Ct. 2011 ("Graham"). Among other things, the Court held "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." Graham, 130 S.Ct. ____, 560 U.S. ____ (slip. op. at 32) (2010).

3. After his conviction, Petitioner appealed his sentence of LWoP under his conviction of Burglary 1st by and through his appellate attorney, Susan Hackett. Within that appeal, the State conceded the trial court's LWoP sentence was improper. Further, the Court of Appeals found Bonner's LWoP sentence violated the Eighth and Fourteenth Amendments of the U.S. Constitution as held in Graham. Accordingly, Bonner was remanded for resentencing on November 14, 2012. See State v. Bonner, Op. No. 5048 (S.C. Ct. App. filed November 14, 2012).

4. Within that above appeal, the State further acknowledged Petitioner's sentencing issue could also be raised to the court at a future time by application of a PCR, such as the circumstances before this current Court.

5. Petitioner was resentenced on January 22, 2013 by The Honorable J. Derham Cole, the sitting judge of Petitioner's original trial and sentencing. At the resentencing, Judge Cole sentenced Petitioner to a term of 60 years. Original trial counsel, Joshua Schultz, represented Petitioner at his resentencing.

6. Attorney Schultz subsequently filed a Notice of Appeal as to Petitioner's 60-year sentence. However, the Court of Appeals affirmed that sentence holding no issue had been preserved for appellate review. See State v. Bonner, Op. No. 14-UP-401 (S.C. Ct. App. filed November 12, 2014).

7. On the same day Petitioner's last appellate opinion was filed, November 12, 2014, the South Carolina Supreme Court ruled in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), that when juvenile offenders are sentenced to life without parole, they must receive an "individualized hearing where the mitigating hallmark features of youth are fully explored." Further, the Court held this requirement that juveniles receive such a hearing

was to apply "to those similarly situated...who may be subject to a sentence of life imprisonment without the possibility of parole. Individuals affected by [this] holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he...was originally sentenced". Id. at 545, ____.

8. A stay was put in place regarding the ability for prisoners to move for resentencing pursuant to the ruling in Aiken though that stay was eventually lifted. Upon information and belief, the time limit for such a motion to be filed under Aiken was July 23, 2016. At this point in time, Petitioner has not filed such a motion, has not been informed of such a motion, and no such motion was filed on his behalf.

9. Petitioner is currently confined within the Department of Corrections with a release date of February 5, 2064. At that point in time, Petitioner will be 73 years and 13 days old. He is classified by the Department of Corrections as ineligible for parole as his sentence "max out" date comes before his parole eligibility date.

10. At the time of his resentencing, Petitioner was 21 years old. According to S.C. Code Ann. §19-1-150, Petitioner could be expected to live another 56.29 years at that point in time, making him 77.29 years old at his time of death based upon §19-1-150. However, upon information and belief, the life expectancy tables within the South Carolina Code of Laws are not developed with the consideration of the life expectancy of an incarcerated individual. Further, Petitioner does not have a realistic opportunity as an incarcerated individual to attain a life of 73 years, 13 days, much less 77.29 years, and, as such, the State imposed a sentence upon Petitioner which does not provide any realistic opportunity to obtain release before the end of his sentence term in contravention of Graham.

11. In addition to the above, Petitioner meets the criteria in Aiken as he is “similarly situated” to those who have been/were sentenced to LWoP for crimes committed when they were juveniles because he cannot be reasonably expected to live to 73 years while confined within the Department of Corrections as his current sentence dictates. Accordingly, he is serving a *de facto* life without parole sentence.

12. Petitioner’s original sentence(s), resentencing, and results in our appellate courts mirror that of Conrad Slocumb whose aggregate sentence the South Carolina Supreme Court agreed to review when it took the unusual steps of both denying Mr. Slocumb’s Writ of Certiorari as it agreed the Court of Appeals had no jurisdiction to review such aggregate sentence and ordering a private member of the Bar, Tara Shurling, to file a Petition for a Writ of Certiorari in its original jurisdiction so that it could review whether Slocumb’s aggregate sentence afforded him a meaningful opportunity for release in compliance with Graham and the Eighth Amendment to the U.S. Constitution. That case, Slocumb v. State, Appellate Case 2015-002031, is still before the Supreme Court and it has not yet heard arguments or issued a ruling on that case.

13. The unusual action of the South Carolina Supreme Court and the fact that Court has not yet ruled on Slocumb illustrate the instant matter is not yet ripe to be heard until the Court can provide direction to the Bench and Bar regarding Petitioner’s sentence and those who are similarly situated.

As to Petitioner’s 60-year sentence for Burglary 1st:

14. Petitioner notes the following as a supplemental basis for his Application for Post-Conviction Relief and requests a new trial on the grounds of ineffective assistance of

counsel. Specifically, Petitioner alleges the below counsel were deficient in their performance such that Petitioner was prejudiced for the following reasons:

- a. Trial / Resentencing counsel (Schultz) failed to make an argument that Petitioner's sentence, particularly in light of Graham, both individually as a 60-year sentence and in the aggregate as a potential 70 year sentence with the consideration of the ABHAN charge, violated his rights under the Eighth and Fourteenth Amendment to the U.S. Constitution. Further, Trial / Resentencing counsel (Schultz) did not attempt to provide any information to the resentencing Court to show how an excessive sentence would prevent a meaningful opportunity for Petitioner to be released;
- b. Trial / Resentencing counsel (Schultz) and Petitioner's appellate counsel, Susan Barber Hackett, failed to discuss Aiken's bearing on Petitioner / Petitioner's sentence and/or file a motion on Petitioner's behalf¹.

15. The above illustrate the ineffectiveness of both trial and appellate counsel with the resulting prejudice to Petitioner being his sentence to a term of years which is a *de facto* LWoP sentence in contravention of Graham and the U.S. Constitution, among other things.

As to Petitioner's other sentences:

16. Trial counsel Schultz failed to object to or request the Court reconsider its sentences of Petitioner, including those other sentences beyond Petitioner's former

¹ Petitioner's counsel also candidly admits he did not file any such motion on behalf of the Petitioner though was unaware until recently that such an argument was potentially available to Petitioner as shown in State v. Slocumb, Appellate Case 2015-001127, and now Slocumb v. State, Appellate Case 2015-002031, filed in the original jurisdiction of the South Carolina Supreme Court as the Court directed within State v. Slocumb.

LWoP, now 60-year, sentence for Burglary 1st. Accordingly, those issues were not preserved for appeal.

17. Similar to the arguments above, Petitioner is not reasonably expected to survive through serving a concurrent 30-year sentence for kidnapping or armed robbery and a consecutive 10-year sentence for ABHAN as those sentences would require him to live to the age of 61 while confined within the Department of Corrections before he had a realistic opportunity to obtain release before the end of his sentence. Accordingly, this ineffective assistance of counsel resulted in Petitioner being prejudiced to a term of years sentence which is a *de facto* LWoP sentence in contravention of Graham and the U.S. Constitution, among other things.

Relief

18. Petitioner requests a Stay or Continuance of this matter until the South Carolina Supreme Court rules on Slocumb v. State as that ruling will likely be dispositive of the issues involved in this matter.

19. In the alternative, Petitioner requests a resentencing of all his charges mentioned above. Further Petitioner requests all other relief as the Court deems just and proper.

EPPS LAW FIRM, LLC



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(864) 590-4848 Telephone

steven@eppslawfirm.com

ATTORNEY FOR PETITIONER

Spartanburg, South Carolina
October 26, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

)
)
)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

John B. Bonner, #338030,

)
)

Case No.: 2015-CP-11-0381

Applicant,

)
)

RETURN TO MOTION TO STAY

v.

)
)

State of South Carolina,

)
)

Respondent.

)
)

Respondent, making its Return to Applicant's Motion to Stay or Continue the Case filed on October 26, 2016, would respectfully show this Court:

I.

Applicant filed his application for post-conviction relief filed May 12, 2015. Respondent made its Return and Motion for More Definite Statement on February 16, 2016. On October 26, 2016, Applicant filed a Supplemental Petition for Post-Conviction Relief and a Motion to Stay or Continue the Case. An evidentiary hearing into the matter is scheduled for November 9, 2016, at the Spartanburg County Courthouse. Respondent submits that this Motion should be denied for the reasons that follow.

II.

Applicant alleges in his Supplemental Petition that he received ineffective assistance of counsel, to wit: his resentencing counsel failed to adequately raise or preserve the issue of whether the term-of-years sentence Applicant received upon being resentenced for Burglary, First Degree (60 years), resulted in a de facto life sentence. Applicant asks for a stay or

indefinite continuance on the grounds that the Supreme Court's decision in Slocumb v. State, Appellate Case No. 2015-0023, will impact his case.

Respondent submits Slocumb is inapplicable. In Graham v. Florida, 560 U.S. 48 (2010), the Supreme Court ruled that mandatory life without parole sentences for juveniles convicted of non-capital offenses was unconstitutional. Slocumb argues that Graham should be extended to apply to a term-of-years sentence that, in the aggregate, amounts to a de facto life sentence. In Slocumb's case, he was sentenced to an aggregate term of 130 years. Here, Applicant has only a 60 year sentence. Though that sentence is consecutive to a 10 year sentence, the 10 year sentence is not a no-parole or 85% offense.

Regardless, even if Slocumb is decided adversely to the State, the PCR action is separate and apart. Because it affects so many defendants, the court would fashion a remedy, as it did in Aiken v. Byars,¹ for those individuals to seek redress through resentencing. Therefore, regardless of the outcome of this evidentiary hearing, it will not preclude Applicant from obtaining relief under Slocumb should the Supreme Court decide that case in favor of the Petitioner.

Lastly, the outcome of Slocumb has no bearing on Applicant's claim of ineffective assistance of *appellate* counsel.

III.

WHEREFORE, having made its Return, Respondent requests that the motion to stay or indefinitely continue the evidentiary hearing be denied.

¹ We hold the principles enunciated in *Miller v. Alabama* apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole. Accordingly, any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced. Aiken v. Byars, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014), cert. denied, 135 S. Ct. 2379, 192 L. Ed. 2d 179 (2015)

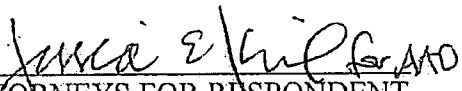
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

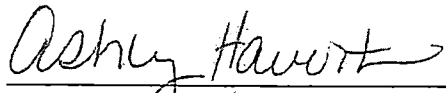
___ November 9 ___, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	
	)	
JOHN B. BONNER, #338030,	)	2015-CP-11-0381
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Steven D. Epps, Esquire
 104-A Franklin Ave., #281
 Spartanburg, SC 29301

DATED this 9TH day of November, 2016.



 Ashley Haworth, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) COMMON PLEAS
3 COUNTY OF SPARTANBURG) OF THE SEVENTH
4) JUDICIAL CIRCUIT
5 JOHN B. BONNER,)
6 Petitioner,) TRANSCRIPT OF RECORD
7 vs.) 2015-CP-11-00381
8 STATE OF SOUTH CAROLINA,)
9 Respondent.)

10

11

November 9, 2016
Spartanburg, South Carolina

12

13

14 B E F O R E:

15 HONORABLE FRANK R. ADDY, Judge.

16

17 A P P E A R A N C E S:

18 STEVEN D. EPPS, ESQUIRE
19 For The Petitioner20 ALICIA A. OLIVE, ESQUIRE
21 For Respondent

21

22

23

Julie A. Ashbrook,
Circuit Court Reporter
Seventh Judicial Circuit

24

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I N D E X

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EXHIBITS

	<u>MARKED</u>	<u>ENTERED</u>
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PLAINTIFF'S EXHIBIT NO. 1		
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1 JOHN BONNER VS. STATE OF SOUTH CAROLINA

2 MS. OLIVE: May it please the Court, Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. OLIVE: This is the case of John Bonner,
5 2015-CP-11-381. Mr. Bonner was indicted in July of 2009
6 for kidnapping, armed robbery and assault and battery of
7 a high and aggravated nature, burglary second and grand
8 larceny. He was represented by Joshua Schultz on those
9 charges.

10 On November 17th, 2009, he proceeded to trial
11 before Judge Cole and a jury. He was found guilty as
12 indicted. Judge Cole initially sentenced him to a term
13 of life imprisonment for burglary first degree. In
14 addition, Judge Cole also sentenced him to imprisonment
15 for 30 years for each count of kidnapping, armed robbery
16 and 15 years for burglary second degree.

17 Subsequently he filed an appeal. He was
18 represented by Kristin Shaffer on that appeal. South
19 Carolina Court of Appeals vacated the sentence of life
20 imprisonment and remanded the matter for resentencing on
21 the burglary first-degree charge.

22 And on January 22, 2013, he appeared before Judge
23 Cole for resentencing. Joshua Schultz represented him
24 on that as well. Judge Cole resentenced him to
25 imprisonment for a period of 60 years for burglary first

1 degree. He did file a notice of appeal and an appeal
2 was perfected by Susan Hackett. The South Carolina
3 Court of Appeals confirmed the conviction on September
4 1st, 2014.

5 He filed this application for post-conviction
6 relief on May 12th of 2015, alleging ineffective
7 assistance of counsel and ineffective assistance of
8 appellate counsel. Mr. Bonner is present in the
9 courtroom today and represented by Mr. Steven Epps. And
10 I will turn it over to him at this time.

11 THE COURT: All right. Mr. Epps --

12 MR. EPPS: Thank you.

13 THE COURT: -- if you will, call your first
14 witness.

15 MR. EPPS: Thank you, Your Honor. May it please
16 the Court, I would call John Bonner to the stand.

17 THE COURT: Sir, if you'll come up, please.

18 (Whereupon, witness comes forward.)

19 All right. Mr. Bonner, if you would just raise
20 your right hand the best you can, please. (Complies.)

21 Swear or affirm the testimony you're about to
22 give is the truth?

23 THE DEFENDANT: Yes, ma'am -- yes, sir.

24 THE COURT: Mr. Epps.

25 MR. EPPS: Thank you, Your Honor.

1 JOHN B. BONNER,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. EPPS:

5 Q. John, we need to develop a little bit of a record
6 here over today's proceedings. Can you tell the Court
7 when your birthday is.

8 A. January 29th, 1991.

9 Q. And you were accused of some crimes that happened
10 in Cherokee County, I believe, in Gaffney. You just
11 heard the Assistant Attorney General go over some -- a
12 couple burglary charges, armed robbery, et cetera. Do
13 you recall how old you were when the crimes you're
14 accused of took place?

15 A. Seventeen years old.

16 Q. And when you were sentenced, when you had your
17 trial and you were sentenced originally on those crimes,
18 how old were you?

19 A. Eighteen years old.

20 Q. You were charged or convicted of burglary first
21 and given a sentence of life without parole, correct?

22 A. Correct.

23 Q. And Mr. Schultz, who is in the courtroom today,
24 represented you in that trial?

25 A. Yes, sir.

1 Q. And then an appeal was had and you were brought
2 back for resentencing?

3 A. Right, yes, sir.

4 Q. And Mr. Schultz represented you in the
5 resentencing as well?

6 A. Yes, sir.

7 Q. Did you and Mr. Schultz have any conversations
8 about your sentencing at the original trial date? When
9 you were sentenced in November of 2009, did you and
10 Mr. Schultz have any conversations after that sentencing
11 was handed down?

12 A. No, sir.

13 Q. And when I say those sentences, I'm talking
14 about, so we could again have a clear record, you're
15 doing a life without parole for burglary first, correct?

16 A. Yes, sir.

17 Q. And then 30 years each on kidnapping and armed
18 robbery?

19 A. Yes, sir.

20 Q. Fifteen years on burglary second?

21 A. Yes, sir.

22 Q. Ten years on AB -- or assault and battery of a
23 high and aggravated nature?

24 A. Yes, sir.

25 Q. Five years on grand larceny?

1 A. Yes, sir.

2 Q. And all of those sentences were to run concurrent
3 except for the ABHAN, which was to run ten years
4 consecutive, correct?

5 A. Yes, sir.

6 Q. All right. Did you and Mr. Schultz have any
7 conversations after those sentences were handed down to
8 you?

9 A. At the day of the sentencing?

10 Q. Well, let me, let me ask a little more. Did you
11 and Mr. Schultz, after you were given those sentences in
12 November of 2009, have any conversations about those
13 sentences being cruel and unusual punishment under the
14 United States constitution?

15 A. No, sir.

16 Q. After your appeal, your first appeal, did you and
17 Mr. -- well, first of all -- yeah, did you and
18 Mr. Schultz have any conversations about why you were
19 having a resentencing?

20 A. Yes, sir.

21 Q. And what were you told?

22 A. Under the -- I was having the resentence due to
23 the Graham Florida case that you can't give a juvenile a
24 life sentence.

25 Q. Were there -- were there any conversations

1 between you two about any other sentence beyond your
2 LWOP charge?

3 A. Yes. We had a conversation after my appeal was
4 granted and I was going up for resentencing. We had a
5 conversation about the sentencing then.

6 Q. Okay. Tell us what that sentence -- tell us what
7 that conversation was.

8 A. Well basically, as you stated, I got like seven
9 charges in all, but on the one charge was brought back
10 down to the lower courts which was first-degree burglary
11 and to have an LWOP done. And he was telling me that I
12 was going up and get resentenced on the LWOP what they
13 had on paper for me to sign. Like this was some kind of
14 plea, that the LWOP that I was getting sentenced on for
15 the burglary first it was going down to the minimum,
16 which was 15 years on that.

17 But I had other charges that was not allowed that
18 was not on my application or brought up to the appeal
19 court of set -- or brought that down to the lower
20 courts, which I had 30 years for kidnapping and armed
21 robbery, which he was telling that's what I would have
22 been left with. The ten years, that wasn't sent back
23 down either, so it would have been 40 years.

24 Q. Let me make sure I understand what you're telling
25 me. Did Mr. Schultz tell you that basically the only

1 reason for your resentencing was to address the LWOP and
2 to get a new sentence on the LWOP?

3 A. Yes, sir.

4 Q. And that there was going to be no discussion or
5 consideration to your other charges beyond the burglary
6 first charge or sentence?

7 A. Not at all.

8 Q. Okay. And you were sentenced to 60 years by
9 Judge Cole at the resentencing, correct?

10 A. Yes, sir.

11 Q. And that sentence was also appealed?

12 A. Yes, sir.

13 Q. And who was your attorney for -- well, Ms.
14 Hackett's sitting here in the courtroom was your
15 attorney for your appeal after the 60-year sentence,
16 correct?

17 A. Yes, sir.

18 Q. Did Ms. Hackett have any conversations with you
19 about either your 60-year term or all of your terms or
20 two-third of your terms, a 15-year term, a 5-year grand
21 larceny, the 10-year consecutive ABHAN charge, any of
22 that?

23 A. No, sir.

24 Q. And you were eventually told that your appeal was
25 not granted?

1 A. Yes, sir.

2 Q. Who told you that?

3 A. I got a letter back it was denied the same day
4 that Aiken v. Byars case came up.

5 Q. Aiken v. Byars, I'm sure you've probably heard
6 about that case in your time at the Department of
7 Corrections.

8 A. Yeah, somewhat.

9 Q. Has Mr. Schultz -- not Mr. Schultz. Has Ms.
10 Hackett ever mentioned anything to you about Aiken vs.
11 Byars?

12 A. No, sir.

13 Q. Has anyone ever approached you about filing any
14 kind of motion or petition on your behalf regarding
15 Aiken vs. Byars?

16 A. No, sir.

17 MR. EPPS: May I approach, Your Honor?

18 THE COURT: Please.

19 BY MR. EPPS:

20 Q. Mr. Bonner, I'm gonna hand you a document, it's
21 called an inmate search detail report, correct? See it
22 there in the upper left-hand corner?

23 A. Yes.

24 Q. And that is the report on yourself, correct?

25 A. Yes, sir.

1 Q. And you see on your copy there's a blue arrow I
2 wrote on there by projected release date. Do you see
3 that?

4 A. Yes, sir.

5 Q. Tell us when your projected release date is.

6 A. February 5th, 2064.

7 Q. And just below that it talks about your parole
8 eligibility. Do you see that?

9 A. Yes, sir.

10 Q. It says you're not eligible; is that correct?

11 A. Yes, sir.

12 Q. And so I'm sure you probably talked with some of
13 the staff at Lee Correctional. Is it your understanding
14 that your sentence, for you to be released you have to
15 serve until your max out date of February 5th, 2064?

16 A. Yes, sir.

17 Q. And that you're not going to be able to have any
18 parole eligibility on these crimes?

19 A. Yes, sir.

20 MR. EPPS: Your Honor, I would ask that this be
21 admitted into evidence.

22 THE COURT: I believe it's already -- is it
23 already part of the record?

24 MS. OLIVE: Your Honor, I believe it is the more
25 updated inmate detail report. However, the information

1 in your packet is -- we would -- our office received
2 directly from SCDC and it's dated July 21st, 2015. It
3 does reflect a different max out date. I have no
4 objection to -- this appears to be printed out from the
5 website through the inmate detail report. And it is
6 dated yesterday's date, so it appears to be an updated
7 max out date.

8 THE COURT: The one that applicant is looking to
9 introduce?

10 MS. OLIVE: Yes, Your Honor.

11 THE COURT: All right, very good. We'll
12 introduce that one then since it's a more recent
13 printout than I have. I have a max out date of 2060.
14 At some point in time we'll mark that as Plaintiff's one
15 and introduce it.

16 (Whereupon, Plaintiff's Exhibit No.1, Inmate
17 Search Detail Report, was marked for identification.)

18 (Whereupon, Plaintiff's Exhibit No. 1 was entered
19 into the record.)

20 BY MR. EPPS:

21 Q. Mr. Bonner, at the time of the crimes you were
22 accused and ultimately convicted of, were you a
23 juvenile?

24 A. Yes, sir.

25 Q. Do you believe that your youth had a role in the

1 crime you were accused of committing?

2 A. Yes, sir.

3 Q. Do you have family outside of -- within the
4 Cherokee County community?

5 A. Yes, sir, of course.

6 Q. And, in fact, you have children?

7 A. Yes, sir.

8 Q. And their ages are eight and 11?

9 A. No. My little boy just turned 11 last month. My
10 little girl will be nine this month.

11 Q. Nine and eleven. Are your parents still alive?

12 A. Yes, sir.

13 Q. And you have two brothers, I believe.

14 A. Yes, sir. I've got two that's alive and one
15 passed away while I was incarcerated.

16 Q. And this came out during your resentencing, but
17 while you were in the Department of Corrections you had
18 obtained your GED?

19 A. Yes, sir.

20 Q. And had taken some classes, I believe, in
21 carpentry?

22 A. Carpentry and electrician.

23 Q. And tell us a little about those classes. What
24 did you do? Did you get a certificate? Did you just
25 learn to use a saw?

1 A. I received, I received a certificate for
2 carpentry. I didn't finish the electrician trade
3 because it got cancelled for the restitution and
4 whatever.

5 Q. Okay.

6 MR. EPPS: That's all I have, at this time.
7 Please answer any questions Ms. Olive may have for you.

8 THE COURT: Attorney General.

9 MS. OLIVE: Thank you, Your Honor. May it please
10 the Court?

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MS. OLIVE:

14 Q. Mr. Bonner, how did you learn about Aiken v.
15 Buyers?

16 A. Through the institution.

17 Q. Okay. And at what point did you learn about
18 Aiken v. Byars?

19 A. The same it came up, which was the same day my
20 case was denied in the appeal courts.

21 Q. Okay. So you learned about it the day that your
22 case came out, but you didn't make -- you didn't file
23 any motion under Aiken v. Byars for resentencing?

24 A. No, ma'am. I wasn't aware of none of that.

25 Q. But you were aware of Aiken v. Byars that day.

1 You learned about it through the institution.

2 A. I mean, the only thing that I was aware of is
3 what the case was. Filing something you have to go by
4 five methods when sentencing, that's all I knew.

5 Q. Did you read it?

6 A. I read some of it. I've got the case over there.

7 Q. You read some of it?

8 A. Yes, ma'am.

9 Q. When did you read it?

10 A. I was just reading it yesterday.

11 Q. When's the first time you read it?

12 A. Hmm, I want to say -- I can't remember exactly
13 the first time I read it. It was a little bit after it
14 came up, but I didn't read all of it. I haven't even
15 read the whole case yet. I've got the whole case over
16 there.

17 Q. Do you know what it means?

18 A. No, ma'am, can you tell me?

19 Q. Are you raising it as an issue in this PCR? You
20 are, are you not?

21 A. I mean, the only thing I knew that it means is
22 you have to go by five methods when sentencing a
23 juvenile. That's all I know about the case. And
24 something about resentencing they can't go back in front
25 of the same judge or some of that sort.

1 Q. So is your testimony today that you do not
2 understand how Aiken v. Byars affects your case?

3 A. No, ma'am, not at all.

4 Q. You don't understand?

5 A. No, I understand how it would affect my case. I
6 just know I haven't read the whole case. I just
7 received the whole case Monday over there in my
8 paperwork and I haven't got a chance to read the whole
9 case.

10 Q. Did you know what your max out date was prior to
11 coming into court today?

12 A. Yes, ma'am.

13 Q. Is it the same that you just read to the Court?

14 A. No, ma'am.

15 Q. What did you think your max out date was before
16 you came in here?

17 A. It was January of, I want to say, the first of
18 January the same year, 2064.

19 Q. Okay. And do you know how old you'll be when
20 you'll be released, if you are in fact released, at your
21 max out date?

22 A. No, ma'am.

23 Q. And at trial you had several witnesses testify
24 against you, correct?

25 A. Yes, ma'am.

1 Q. You testified earlier that you did not have a
2 discussion with your attorney after your sentencing in
3 2009 following your trial.

4 A. Yes, ma'am.

5 Q. But you had to have some conversation because an
6 appeal was filed on your behalf, right?

7 A. An appeal was filed, but I didn't have no
8 conversation.

9 Q. You didn't ask for an appeal?

10 A. Yes, right after the trial we asked for an appeal
11 then.

12 Q. Okay. You didn't discuss it with your attorney
13 asking for an appeal?

14 A. No. I haven't discussed nothing with him after
15 that.

16 Q. Okay. Thank you, that's all the questions I
17 have.

18 MR. EPPS: Real quick, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. EPPS:

21 Q. You may have talked with Josh Schultz about an
22 appeal. One thing I want to make sure we get on the
23 record with some clarity is, have you ever had any
24 substantive conversations with Mr. Schultz about your
25 sentences being a violation of your Eighth Amendment

1 right to not have cruel and unusual punishment imposed
2 on you?

3 A. No, sir, we never had any conversation at all.

4 Q. So you may have asked that your sentence be
5 appealed, but you never asked or never were told that
6 your sentence might be cruel and unusual?

7 A. Yes, sir.

8 MR. EPPS: Nothing further at this time, Your
9 Honor.

10 THE COURT: Go ahead.

11 RE CROSS-EXAMINATION

12 BY MS. OLIVE:

13 Q. So what was your understanding going into your
14 resentencing? Why did you think you were there?

15 A. To be truthful I really didn't have no type of
16 understanding. That's why I was asking the Court could
17 they give me a continuance to continue for further
18 research on the case.

19 Q. But you got your -- the order from the Court of
20 Appeals regarding your case, right, that you said it was
21 being remanded for resentencing?

22 A. Yes, ma'am. That was like a week or two before I
23 even went to court.

24 Q. So your testimony today is that your attorney did
25 not discuss with you at all the resentencing?

1 A. Yes. Before we went into court Mr. Schultz, as I
2 explained, the only case that was sent down was the --
3 the only charge was sent down when they had the LWOP for
4 the burglary first. And while I was in Cherokee County
5 for me to get resentenced. I guess it was some kind of
6 a plea agreement or whatever, but for the actual charge
7 that was sent down was for the burglary first which I
8 received a life sentence for.

9 And some of that was going to be resentenced to
10 15 years, which was leaving the other cases, the charges
11 that was not sent back down to the lower courts open.
12 30 years for armed robbery, 30 years for kidnapping.
13 And consecutive 10 for the assault and battery high and
14 aggravated nature. So I would have been left with
15 40 years.

16 Q. Your testimony ---

17 A. So basically it was a 40-year plea that I didn't
18 sign because I felt it was still, it wouldn't have been
19 right.

20 Q. Is it your testimony your attorney told you, you
21 were pleading to a 15-year sentence on burglary first?

22 A. Yes.

23 MS. OLIVE: That's all the questions I have,
24 thank you.

25 THE COURT: Anything?

1 MR. EPPS: Sorry, no, Your Honor.

2 THE COURT: Okay. Thank you, sir. You can step
3 down.

4 MR. EPPS: If you don't mind, while he's coming
5 down, I'm gonna take this exhibit and hand it to the
6 court reporter.

7 THE COURT: Yes.

8 MR. EPPS: Your Honor, at this point we would
9 call Joshua Schultz to the stand.

10 THE COURT: All right. Mr. Schultz.

11 MR. SCHULTZ: Good morning, Your Honor.

12 THE COURT: Good morning. Swear or affirm the
13 testimony you're about to give is the truth?

14 THE WITNESS: I do, Your Honor.

15 THE COURT: Have a seat. One quick procedural
16 question that occurred to me before you question this
17 witness. I assume there was no direct appeal from the
18 resentencing, correct?

19 MR. EPPS: There was.

20 THE COURT: There was from the resentencing?
21 Okay.

22 MR. EPPS: It was -- I'll probably get into some
23 of those issues.

24 THE COURT: Go ahead. And maybe I just haven't
25 gotten to it yet in the packet, but go ahead.

1 MR. EPPS: That's okay.

2 JOSHUA SCHULTZ,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. EPPS:

6 Q. Mr. Schultz.

7 A. Good morning.

8 Q. Briefly, you're a criminal defense attorney here
9 in Spartanburg?

10 A. I am.

11 Q. And you've been practicing criminal law for how
12 long?

13 A. I received my license in November of 2005.

14 Q. In South Carolina?

15 A. Yes, sir.

16 Q. Prior to that, though, you were an attorney in
17 another state, I think?

18 A. No, sir. I went to law school in the state of
19 New York at the University of Buffalo. Received my
20 juris doctorate there and also my masters in business
21 administration in Buffalo, New York as well.

22 Q. In your practice of criminal defense law, there
23 are a few constitutional provisions that are somewhat
24 relevant specifically to your line of work. For
25 instance, search and seizure, right to have an attorney

1 present, things of that nature, correct?

2 A. Yes.

3 Q. And for this case cruel and unusual punishment is
4 something that you are aware of as being constitutional
5 protection or having your clients being protected from
6 cruel and unusual punishment?

7 A. Absolutely.

8 Q. In this case after Mr. Bonner was originally
9 sentenced and had his burg first LWOP sentence, did you
10 ever have any conversations with him as to whether his
11 LWOP sentence may have been considered cruel and unusual
12 punishment?

13 A. I do not remember a specific conversation that I
14 had with Mr. Bonner right after he got the original
15 sentence. I think I had a brief conversation with him
16 basically saying we're gonna appeal this, but that was
17 it. The more in depth conversation that I had with him
18 was right prior to his resentencing in January of 2013.
19 And he was convicted, obviously, a few years previous to
20 that in November of 2009.

21 Q. During your conversations with Mr. Bonner, did
22 you ever discuss with him the issue that he may also be
23 facing cruel and unusual punishment because he had
24 underlying charges, in this instance the burglary second
25 and even more importantly the armed robbery and the

1 kidnapping, which may be such a term of years that would
2 also constitute cruel and unusual punishment?

3 A. I don't remember specifically using the words
4 cruel and unusual punishment, but I believe the
5 transcript reflects that I brought in the Graham case
6 when I made the argument for resentencing.

7 Q. Do you believe the transcript details all of the
8 work or illustration that you did or presented on
9 Mr. Bonner's behalf to show how the LWOP sentence and
10 the current resentence had to be configured in such a
11 way to comply with Graham in that he had -- the sentence
12 would have to provide Mr. Bonner with some realistic
13 opportunity to obtain release before the end of the term
14 imposed?

15 A. I assume you're referring to the resentencing
16 transcript?

17 Q. Correct. Yes.

18 A. Yes, I believe I did that sufficiently. I quoted
19 the case of Graham, as the transcript reflects. I also
20 quoted the transcript of the oral arguments that were
21 made in front of court. I actually quoted Justice
22 Scalia's questioning of counsel at that time as well,
23 where Justice Scalia asked for a categorical rule when
24 it came to sentencing juveniles to a non-life sentence.

25 And that's why I made the argument to Judge Cole

1 that Graham and its prodigy only give a qualitative
2 analysis of the situation. We do not have a bright line
3 or quantitative analysis from any of the federal courts,
4 nor do we have any categorical or bright line rule in
5 the state courts as well.

6 Q. And you might believe that the Slocumb case would
7 lead to something like that?

8 A. I -- yes. I believe that Slocumb would, as
9 opposed to the Byars case, which to my understanding,
10 was decided about almost approximately two years after
11 the resentencing in January of 2013. I believe Byars, I
12 believe was decided in November of 2014. And Byars only
13 addresses homicides, juvenile homicide.

14 Q. And Mr. Bonner is not -- was not accused of or
15 convicted of a homicide crime.

16 A. Correct.

17 Q. After Mr. Bonner was sentenced to 60 years, and,
18 of course, you -- let me back up a little bit.

19 When Mr. Bonner was sentenced to 60 years, you
20 also realized that because of the sentences he had
21 received in the past, that he was not only looking at
22 60 years, but he also had a ten-year ABHAN sentence that
23 would run consecutive to that, correct?

24 A. Correct.

25 Q. Did you believe after the sentence or the

1 resentence was handed down that the sentence imposed on
2 Mr. Bonner provided him a realistic opportunity to
3 obtain release before the end of the term imposed, the
4 60 year and the 10 year?

5 A. It is my personal belief that that sentence does
6 not. A 70-year sentence does not provide a meaningful
7 opportunity for rehabilitation, if that's what you're
8 asking.

9 Q. It is. And I'm sorry if I'm asking some
10 complicated questions. It's me stumbling over some of
11 the ---

12 A. They're complicated cases.

13 Q. Constitutional case, right?

14 A. Yes, sir.

15 Q. You did file an appeal on Mr. Bonner's behalf
16 after the resentencing.

17 A. Correct.

18 Q. Did you -- and I don't want to trip you up. Let
19 me hand this up to you. Do you recognize this document?
20 I found it in your file.

21 A. I do.

22 Q. And this is your -- it's a document you filed
23 with the Court of Appeals after the resentencing?

24 A. Correct.

25 Q. And it's your explanation of appeal pursuant to

1 Rule 203. And within it you state that no issues were
2 raised during the resentencing but the client,
3 Mr. Bonner, insisted on an appeal, correct?

4 A. Correct.

5 Q. Sitting here today do you believe that there
6 should have been an issue as to the 60-year sentence
7 that was imposed by Judge Cole as to whether that, in
8 fact, complied with the ruling of *Graham v. Florida*?

9 A. Yes. And, also, I believe that what happened
10 after that would provide more precedent for that as
11 well. But *Byars* was decided in 2014. Resentencing was
12 2013.

13 Q. You didn't file a motion for reconsideration
14 after the resentencing was handed down?

15 A. No. And I did not file a motion for a
16 resentencing on the resentencing.

17 Q. And for records purposes or for the purpose of
18 this record, after *Aiken v. Byars* was handed down, did
19 you ever contact Mr. Bonner to discuss that case with
20 him in any way, shape or form?

21 A. No.

22 MR. EPPS: Your Honor, I would ask, just for
23 again purposes of the record, the exhibit that I handed
24 Mr. Schultz be marked as Exhibit Number 2.

25 THE COURT: No objection?

1 MS. OLIVE: Your Honor, it probably is in the
2 record somewhere. I believe he's referring to the
3 notice of appeal. Am I right?

4 MR. EPPS: Well, it's not really a notice. It's
5 an explanation of appeal. I had not seen it before. I
6 found it in Mr. Schultz's file. And to say I haven't
7 seen it before, doesn't mean it's not in your file. I
8 just didn't recall seeing it.

9 THE COURT: Out of an abundance of caution, we'll
10 go ahead and introduce it just in the event it isn't in
11 the direct of appeal on Mr. Bonner's case.

12 MS. OLIVE: Thank you.

13 MR. EPPS: Thank you, Your Honor. Sorry.

14 THE COURT: No, go ahead.

15 MR. EPPS: Thank you, Your Honor. I have no
16 further questions at this time. Please answer any that
17 the Assistant Attorney General may have.

18 THE COURT: Ms. Olive.

19 MS. OLIVE: Thank you.

20 CROSS-EXAMINATION

21 BY MS. OLIVE:

22 Q. Good morning, Mr. Schultz.

23 A. Good morning.

24 Q. Now, the explanation of appeal we were just
25 talking about, did you feel that you had any reason --

1 did you feel there was any issues raised in his
2 resentencing that were right for appeal?

3 A. I went back and forth on it. I mean, I believe I
4 preserved the record adequately when it came to Graham.

5 Q. Okay. And you stated before that we still do not
6 have a bright line rule either in federal court or in
7 state court regarding this issue of a de facto life
8 sentence?

9 A. Yes.

10 Q. Okay.

11 A. At least for juveniles and non-homicide cases.

12 Q. So under those circumstances, at the time would
13 there have been any reason to file -- I mean, in your
14 mind -- excuse me.

15 In writing that explanation, would there have
16 been any reason why he should be granted another
17 resentencing, I guess? I'm sorry that was a confusing
18 question. I'll just withdraw that question. I believe
19 you answered my question already.

20 Based on -- you heard Mr. Bonner testify earlier
21 that he -- his projected max out date, according to the
22 South Carolina Department of Corrections' website, is
23 now 2064.

24 A. Yes.

25 Q. And he was originally sentenced in 2009, correct?

1 A. Correct.

2 Q. So basic math, by my math which may or may not be
3 correct, he'll be 72 when he's released?

4 A. Yes.

5 Q. Is it still your personal belief that that being
6 the age he's gonna be released amounts to a de facto
7 life sentence?

8 A. Yes.

9 Q. Mr. Bonner testified that you did not have any
10 discussions with him about his resentencing. Do you
11 agree with that statement?

12 A. Could you repeat the question?

13 Q. Mr. Bonner testified that you did not have any
14 discussions with him about his resentencing. Apparently
15 that was his testimony; is that correct?

16 A. I had at least one discussion with him prior to
17 resentencing.

18 Q. Okay. Did you discuss with him matters that you
19 might be able to raise in mitigation in that
20 resentencing?

21 A. Yes.

22 Q. Okay. And were those relevant to his youth at
23 the time that he committed the crime?

24 A. Absolutely.

25 Q. Did he --- he understood that he was being

1 resentenced just on the burglary first, correct?

2 A. I believe that was his understanding.

3 Q. You don't recall having discussions with him?

4 Did you have a discussion with him regarding the fact
5 that he was just being resentenced under the burglary
6 first?

7 A. It is my recollection that I did. Whether he
8 adequately understood that or not is another matter.

9 Q. And going back to the appeal, are you familiar
10 with his appeal following his resentencing at all?

11 A. Yes. That was filed on January 29th, 2013.

12 Q. Okay. So there were, despite the explanation you
13 provided to the Court, I mean they did go on to brief
14 the issues, did they not?

15 A. Yes.

16 Q. That specifically related to Graham and this idea
17 the aggregate -- well, the idea of the de facto life
18 sentence?

19 A. Yes. I wasn't appellate counsel, but I think
20 they did address Graham at the next level.

21 Q. Mr. Bonner also mentioned something about a
22 15-year plea deal. Was there ever at any time an offer
23 extended for a 15-year plea deal?

24 A. No. I wish there was, but there was not. I know
25 I would have made a note of that in my file if there

1 was. But to my understanding, before trial back in 2009
2 there was no such offer. And prior to resentencing
3 there was no such offer. I obviously would have liked
4 an offer like that, but there was no offer.

5 Q. Mr. Schultz, how did you prepare for resent --
6 Mr. Bonner's resentencing in general?

7 A. Well, like I said, I talked to him at the
8 Cherokee County jail. I know he was returned from the
9 Department of Corrections. I spent a lot of time, I
10 remember the weekend previous to that. I have a note in
11 my file, I think, that reflects the fact that not only
12 did I go over Graham in consideration, but I also was
13 able to find transcripts of the oral arguments in front
14 of the Supreme Court and I read those. I think that was
15 a couple hundred pages. And I found them very
16 interesting. And I actually brought some quotes up from
17 Justice Scalia and Justice Roberts as to the
18 applicability of the present case at that time.

19 Q. And I believe you already testified to this, but
20 did you read the Court of Appeals opinion that remanded
21 for the original resentencing, that remanded
22 Mr. Bonner's case for the original resentencing?

23 A. In South Carolina?

24 Q. Yes.

25 A. Yes.

1 Q. Okay. Did you try to review any additional case
2 law that might be applicable apart from Graham and Aiken
3 versus Byars?

4 A. Yes.

5 Q. Did you feel prepared for the resentencing
6 hearing?

7 A. Yes. And I brought a couple family members to
8 speak on his behalf too.

9 MS. OLIVE: Thank you, Mr. Schultz, that's all
10 the questions I have.

11 THE WITNESS: Thank you.

12 THE COURT: Any redirect?

13 MR. EPPS: Nothing further, Your Honor, thank
14 you.

15 THE COURT: Just for purposes of the record, the
16 co-defendants involved in this case, do you recall what
17 kind of sentences that they received?

18 THE WITNESS: I do, Your Honor. Could I refer to
19 the transcript briefly?

20 THE COURT: Yes.

21 THE WITNESS: Your Honor, the co-defendant, the
22 other co-defendant, Joshua Manning, he was 23 years old
23 and received a 60-year sentence from, I believe, Judge
24 Hayes. And his co-defendant, LeBron Agnew, received a
25 30-year sentence. And this is reflected on Page 9 of

1 the resentencing transcript. Mr. Barnette told that to
2 Judge Cole at the resentencing hearing. And I do
3 believe that is accurate. I know the other
4 co-defendants in this case received quite a substantial
5 prison sentence.

6 THE COURT: All right. Okay, thank you, sir.

7 THE WITNESS: Thank you, Your Honor.

8 (Whereupon, witness left witness stand.)

9 THE COURT: Any additional witnesses Mr. Epps?

10 MR. EPPS: Ms. Hackett, Your Honor. Susan
11 Hackett.

12 THE COURT: Come on down, please. Ms. Hackett,
13 can you hand that to the court reporter, the document
14 that's up there.

15 THE WITNESS: I'll be happy to.

16 THE COURT: And we'll make that an exhibit.

17 (Whereupon, Plaintiff's Exhibit No. 2, Notice of
18 Appeal, was marked for identification.

19 (Whereupon, Plaintiff's Exhibit No. 2 was entered
20 into the record.)

21 Swear or affirm the testimony you're about to
22 give is the truth?

23 THE WITNESS: I do.

24 THE COURT: Have a seat, please.

25 SUSAN HACKETT,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. EPPS:

4 Q. Ms. Hackett, just to correct something. I think
5 I may have made a typo in my supplemental petition.
6 Well, first of all, before I get to that, you're an
7 attorney with the South Carolina Commission on Indigent
8 Defense?

9 A. That's correct. I work in the office of
10 Appellate Defense.

11 Q. And how long have you handled appeals with SCCID?

12 A. I started at the office of Appellate Defense in
13 2011. However, I have been practicing law since 2003
14 and I've been handling appeals since 2004. I had some
15 time in private practice, as well as the office of
16 disciplinary counsel.

17 Q. All right. Have you ever primarily served as
18 trial counsel as well as appellate counsel?

19 A. I've never handled someone's trial as well as
20 appeal. I've had very little trial work. Primarily
21 I've handled PCR's and appeals.

22 Q. Okay. Your role in representing Mr. Bonner
23 occurred after he had been resentenced by Judge Cole,
24 correct?

25 A. That's correct.

1 Q. You were not involved in his first appeal after
2 he was given the LWOP sentence.

3 A. That's right. He was represented on appeal
4 initially by Tristan Shaffer. And then when Mr. Shaffer
5 left our office, Wanda Carter finished out Mr. Bonner's
6 appeal.

7 Q. All right. When you were first tasked with
8 representing Mr. Bonner and his appellate matter from
9 the resentencing, you filed an Anders brief, correct?

10 A. That's correct.

11 Q. And then you were asked by the Court of Appeals
12 to further brief an issue on appeal, correct?

13 A. That's right.

14 Q. What did that appeal or what was the topic, I'll
15 say, that the Court of Appeals asked you to address?

16 A. Well, essentially, when the case was assigned to
17 me on March 20th, 2013, I, of course, had the notice of
18 appeal that you just introduced as an exhibit. I
19 believe that was Applicant's Number 2. That requires an
20 explanation on appeal under Rule 203 of the appellate
21 court rules.

22 And in that Mr. Schultz stated that there had
23 been no issue on the sentencing. My review of the
24 transcript likewise revealed there had been no objection
25 made to the sentence. So my thinking at the time was I

1 should file an Anders brief because there was no
2 preserved error here.

3 I filed an Anders brief, but raised the issue
4 that Mr. Bonner's 60-year sentence, particularly when
5 coupled with the ten-year sentence to be served
6 consecutively, still violated the Eighth Amendment,
7 particularly under the Graham case, because it was cruel
8 and unusual punishment in that it amounted to a de facto
9 life sentence.

10 The Court of Appeals reviewed my Anders brief and
11 what we call within our office, we call it buff, meaning
12 they send it back to you. And essentially told me to
13 file what we call a merits brief addressing the same
14 issue that I had previously presented.

15 MR. EPPS: Point of housekeeping, Your Honor.
16 Did I get Exhibit 2 marked?

17 THE COURT: It is.

18 MR. EPPS: It is? I just wanted to make sure.
19 Thank you, Your Honor.

20 BY MR. EPPS:

21 Q. When you were appointed to represent Mr. Bonner,
22 did you believe there was any constraints on your
23 ability to represent him at all in that you were an
24 appellate attorney as opposed to someone who might
25 classify him or herself as a general practice attorney?

1 A. I don't believe so. I mean my concern for Mr.
2 Bonner was what could I do with his appeal. Certainly,
3 if Mr. Bonner had required additional legal services, I
4 could not have provided those to him. If he had needed
5 a motion for reconsideration of his sentence, which
6 would have been filed in the Circuit Court, that is not
7 something that I could do for him. That would only be
8 handled out by either, you know, someone in private
9 practice doing criminal defense work or his trial
10 lawyer.

11 Q. Could you, if you saw that that issue needed to
12 be raised or that thing needed to be done, could you
13 advise him that Mr. Bonner, I believe this
14 reconsideration needs to occur, I'm not the attorney for
15 you on that particular task, you need to retain an
16 attorney to assist you with that?

17 A. I think we might be mixing apples and oranges a
18 little bit with that. Had it been a motion for
19 reconsideration under Rule 29 on the Rules of Criminal
20 Procedure, he would need to file that within 10 days.
21 By the time it makes it to my desk, it's been at least
22 60 days in order to permit a court reporter to provide a
23 transcript.

24 So it would have not been advice that I would
25 have given him, at least for a motion for

1 reconsideration. But if we do think of things, such as
2 a motion for resentencing that we have now under Aiken
3 v. Byars or if there had been a suggestion for a
4 petition for writ of certiorari in the original
5 jurisdiction of the Supreme Court, those are things that
6 I could have advised him to do but failed to do so.

7 Q. And that's what I was really getting at. Aiken
8 v. Byars, by some confluence of events, came out the
9 same day as the denial of your -- of the appeal for Mr.
10 Bonner on his last appeal.

11 A. That's right. They both came out in November of
12 2014. And I failed to tell Mr. Bonner about Aiken v.
13 Byars or any implication it could have to his case.

14 Q. And you've reviewed Aiken v. Byars?

15 A. I am extensively aware of Aiken v. Byars. I was
16 aware of it when it was -- when we were trying to get
17 the class of petitioners together. If the Court looks
18 at the list of petitioners in the case, there's an
19 individual named Damian Inman, who was a named
20 petitioner. I represented Mr. Inman. There's a
21 published opinion from Mr. Inman in which I got his
22 convictions reversed on a Batson issue.

23 I was certainly aware of his involvement in the
24 class of petitioners. They could not have done it
25 without my permission. So I was aware of it. I knew

1 what the pleadings were. I've reviewed the pleadings.
2 I've helped put the record on appeal together. Our
3 office was being copied on all the responses and
4 information. So I was aware, according to my
5 information, the certiori petition in Aiken vs. Byars
6 was filed October 29th, 2012. So I was at least aware
7 of the Aiken vs. Byars litigation prior to that date.

8 Q. And you would have also been aware of the ruling
9 being handed down in Aiken v. Byars?

10 A. Yes. I was aware of the day that the Aiken v.
11 Byars decision came down. I had argued a case two weeks
12 after Aiken v. Byars was argued, I argued Tavario D.
13 Brunson. It's an unpublished Supreme Court case in
14 which we got the same type of relief.

15 We had the same issue. It was on direct appeal.
16 And it was preserved. I was very familiar with the
17 arguments that were being made and I failed to make them
18 for Mr. Bonner.

19 Q. Aiken v. Byars concerns petitioners or juveniles
20 who were convicted of homicide crimes, correct?

21 A. That's correct.

22 Q. And in your working with Mr. Bonner and his case
23 you understand that he is not convicted of a homicide
24 crime?

25 A. That's right. Burglary first degree, burglary

1 second, armed robbery, grand larceny and assault and
2 battery of a high and aggravated nature and a
3 kidnapping.

4 Q. In reviewing Aiken v. Byars, though, you have
5 read the opinion where it states that it applies to
6 others similarly situated?

7 A. Yes, sir.

8 Q. Are you aware of any case law that delineates
9 what others who are similarly situated means?

10 A. That's one of the issues being raised in Slocumb,
11 as I understand it. I have -- I was very familiar with
12 Slocumb when it was pending on appeal. Conrad Slocumb's
13 case was pending in our office at the same time that
14 Mr. Bonner's case was pending. I was communicating with
15 Mr. Slocumb's lawyer at that time.

16 We were discussing our individual research regard
17 what other states were doing on this issue. You will
18 see in the brief that I filed, both the Anders and the
19 merits brief, that I go into detail regarding what other
20 states are doing. So we were certainly looking at how
21 not just Graham could impact, but that Miller could
22 impact as well, that being Miller versus Alabama on
23 which Aiken v. Byars is based.

24 Q. And Miller is similarly a juvenile convicted of a
25 homicide crime?

1 A. Yes. Miller versus Alabama is a juvenile
2 convicted of a homicide offense.

3 Q. In preparing your briefs for Mr. Bonner's case,
4 you made some arguments to the court about your belief
5 that he had been sentenced to a de facto life sentence,
6 correct?

7 A. That was the basis of our argument.

8 Q. And in your brief you cite to some factual
9 material that you -- or some research you had done as to
10 life expectancy tables, correct?

11 A. That's correct. Unfortunately, and this was part
12 of our preservation problem, there had been no objection
13 made at trial to the type of sentence and there had been
14 no evidence put forward regarding life expectancy at
15 that time. So what, what some of us were doing on the
16 appellate level was relying upon legal information that
17 had been published that would be relied upon in briefs,
18 even though it's not necessarily specific to inmates in
19 the Department of Corrections.

20 Q. One of the things that you cited in your brief
21 was the 1991 life table of the vital statistics of the
22 United States, correct?

23 A. Yes, I believe that's correct.

24 Q. And let me hand this up to you. Do you -- flip
25 through those pages. Do you recognize that material?

1 And I will tell you it's not the entire packet of the
2 vital statics of the United States, but particularly on
3 page, Page 4.

4 A. I see on Page 17 of the merits brief that I filed
5 that I cited to the National Center for Health
6 Statistics. And this seems to be, I believe, the same
7 document. I want to double check and make sure. I
8 think this is correct, yes, sir.

9 Q. In your brief, what was the National Center of
10 Health Statistics, what was the life expectancy of a
11 black male born in 1991?

12 A. According to what I wrote in the brief, I said
13 64.6 years. And I will double check that if you'd like.
14 Am I correct on that?

15 Q. If you would look on Page 4 of the chart, the
16 Section Six life tables, where it says at birth 1991 and
17 follow down to the second to last column. Under black
18 male, what is the life expectancy for a black male born
19 in 1991?

20 A. Do you mind approaching and showing me what it is
21 you're referring to.

22 Q. I'd be glad to, sorry.

23 A. I apologize for that, Mr. Epps. Yes, I see it.
24 64.6 years, which I believe is the information that I
25 put in the brief. Okay.

1 Q. So is this chart, and we can just pull out this
2 one specific chart if need be, indicative of the
3 research you had done to illustrate the life expectancy
4 of an African/American male born in 1991?

5 A. Yes. These are the national statistics that are
6 maintained by the U.S. Department of Health and Human
7 Services regarding national life expectancy tables. And
8 this was the information -- I apologize. This was the
9 information that we were trying to put forward at the
10 Court of Appeals to let them see past the preservation
11 problem and make a determination that Mr. Bonner had, in
12 fact, an unconstitutional sentence.

13 And although they did order me to file a merits
14 brief, I believe if the court's unpublished opinion is
15 reviewed, they found that the error was unpreserved. So
16 they refused to address the merits of it despite having
17 determined that I could not be relieved, that I needed
18 to file a merits brief, which I did happily. But they
19 ultimately determined they weren't going to touch the
20 issue because it was unpreserved.

21 MR. EPPS: Your Honor, for records purposes, I
22 would ask that this packet be -- or even just this
23 chart. We can slim it down. I will tell you for the
24 Court's purposes, the reason that the pages in the front
25 were produced is because it's really hard to find this

1 material without at least the -- it's like a cover of a
2 book, so to speak. But I would ask that this be marked,
3 introduced and marked as exhibit number three to these
4 proceedings.

5 MS. OLIVE: No objection, Your Honor.

6 THE COURT: That will be Plaintiff's 3 in
7 evidence.

8 (Whereupon, Plaintiff's Exhibit No. 3, Packet on
9 Life Expectancy Data, was marked for identification.)

10 (Whereupon, Plaintiff's Exhibit No. 3 was entered
11 into the record.)

12 MR. EPPS: Thank you, Your Honor.

13 BY MR. EPPS:

14 Q. And, Ms. Hackett, at the time Aiken v. Byars was
15 going on, did you have access to material as to life
16 expectancy, not only as we just talked about in Exhibit
17 3 for African-American males born in 1991? Before I get
18 you to answer that question, so I'm gonna now strike
19 that or hold it.

20 Do you know what year Mr. Bonner was born?

21 A. If I'm not mistaken, he was born January 24th,
22 1991.

23 Q. Thank you. And so in addition to this material
24 we talked about in Exhibit 3, did you also have material
25 that discussed or considered the life expectancy of an

1 African-American male or just males in general who were
2 incarcerated?

3 A. At the time I did not. We were looking for that
4 information to include in our pleadings, but we couldn't
5 find it. However, subsequent to the Aiken v. Byars
6 decision and all the motions for resentencing, I
7 continue to represent Tavarria Brunson in his case in
8 that matter.

9 And what the -- what we have done is we have
10 gathered the data, the raw data from the Department of
11 Corrections regarding life expectancy. And that data
12 has been analyzed by an actuary to look at how do
13 individuals within the Department of Corrections -- how
14 long do individuals within the Department of Corrections
15 live.

16 Q. And so if I understand you correctly, at the time
17 you represented Mr. Bonner and were working at least in
18 part on Aiken v. Byars, there was no data available to
19 you to actually present or discuss how long an
20 incarcerated African-American male could reasonably be
21 expected to live?

22 A. There wasn't anything that was publically
23 available, such as the vital statistics or any other
24 information, like from the National Institutes of Health
25 that was specific to that nature. That would have been

1 anything that's very specific in that respect would have
2 been needed to be developed at the trial level. I would
3 have needed a record to go to the court on. I could not
4 create the record myself on appeal.

5 At the time we were aware in my brief discussion
6 several cases that have considered life expectancy that
7 considered the vital statistics. And courts have
8 routinely struck down the de facto sentences, the
9 sentences that amount to life. There have, since I
10 filed the briefs, been numerous cases in which courts
11 around the country have found sentences at least as low
12 as 65 years that I am aware of to be unconstitutional
13 and violate the Eighth Amendment.

14 Also, subsequent to Miller and Montgomery, court
15 -- excuse me, legislatures, including our own, have been
16 taking a look at our statutes in determining what we can
17 do from a legislative perspective to address this
18 problem, including making juvenile offenders parole
19 eligible after a certain number of years. Multiple
20 states have taken that tact. And our legislature, as I
21 know from this past session, considered a bill as well.

22 Q. Are you aware of anyone receiving relief under
23 Aiken v. Byars who is a juvenile convicted of a
24 non-homicide crime sentenced to a term of life without
25 parole? Or -- yeah.

1 A. In South Carolina I don't believe.

2 Q. Specifically in South Carolina.

3 A. I don't believe that I am. It's very
4 interesting, though. One of the named petitioners in
5 Aiken v. Byars, he's convicted of homicide by child
6 abuse. It is, in fact, I would consider it a homicide.
7 But sometimes I think we're trying to think of these
8 cases as murders only. But that was, in fact, a
9 homicide by child abuse.

10 So we see even from the Aiken v. Byars case,
11 there isn't this stringent hold being placed on what
12 just the Eighth Amendment means by the South Carolina
13 Supreme Court. We actually had our court ahead of the
14 game because they found Miller retroactive and they said
15 it doesn't necessarily have to be a mandatory life
16 without parole sentence. So there's no reason to expect
17 that our South Carolina Supreme Court wouldn't also
18 consider these de facto sentences, which I think they're
19 likely to do so in Slocumb.

20 Q. But as it stands right now, the extra
21 considerations, I'll term it, given to a juvenile facing
22 a life without parole sentence, based on the reported
23 decisions we have now, are so -- that extra
24 consideration only occurs for those who have committed a
25 crime involving homicide?

1 A. The reported decisions except to the extent that
2 we get to debate what does similarly situated mean in
3 the Aiken v. Byars. And we are debating that. That's
4 being debated at the trial level and at the appellate
5 level.

6 Q. I.E. Slocumb?

7 A. Yes, sir.

8 Q. But the only reported decision right now for you
9 to get a resentencing hearing at this point in time,
10 more or less you had to kill somebody?

11 A. It seems that way, which is almost in congruence
12 with what you think it should be, that there being
13 greater protections afforded to juveniles who commit the
14 most --

15 Q. Egregious?

16 A. -- heinous of offenses. Yes, egregious offenses
17 versus those who commit lesser offenses not receiving
18 those substantial protections as well. It boggles the
19 mind to some extent that someone accused of that very
20 harsh crime would receive greater constitutional
21 protections than someone who isn't. And I may be giving
22 away a little bit of our game to the Attorney General,
23 but that is definitely one of our tactics as well.

24 Q. Ms. Hackett, we've talked about the 60-year
25 sentence. You also recognize and realize that Mr.

1 Bonner has been sentenced to other sentences that are
2 laying out there. Specifically he's got two 30-year
3 sentences for kidnapping and armed robbery. Those are
4 running concurrent, but he still has the ABHAN ten-year
5 concurrent that he's facing. Do you believe that those
6 also need to be considered and should be considered
7 under a constitutional analysis?

8 A. Absolutely. The aggregate sentence is just as
9 important in determining whether there's a de facto life
10 sentence, as it would be if it were just a straight term
11 of years or if it were just a single life without parole
12 sentence. The aggregate is something that courts
13 throughout the country are considering as well. And
14 it's also one of the issues that's presented in Slocumb
15 because the way he gets to 134 years is it's an
16 aggregation of his multiple sentences.

17 Q. And that issue was not raised whether by
18 objection or motion for reconsideration at the trial
19 level, the consideration or reconsideration of any
20 sentence beyond the former LWOP now 60-year term?

21 A. Right. It's my understanding that when the judge
22 questioned the parties, that is the only sentence -- the
23 only offense for which resentencing was occurring was
24 burglary first. All the parties agree, yes, Your Honor,
25 that is the only one. And even if we were to assume

1 that that is in fact true, the judge would still have to
2 consider the impact of those other sentences on the
3 sentence in which he was giving a new sentence that day
4 to ensure that his new sentence when considered in the
5 aggregate of the other sentences was not
6 unconstitutional.

7 MR. EPPS: Thank you, Ms. Hackett. Answer any
8 questions the attorney -- Assistant Attorney General may
9 have.

10 THE COURT: Ms. Olive.

11 MS. OLIVE: Thank you.

12 CROSS-EXAMINATION

13 BY MS. OLIVE:

14 Q. Good morning, Ms. Hackett.

15 A. Good morning.

16 Q. It just turned 12 o'clock so it's afternoon. So
17 you testified that you believe he should of raised Aiken
18 versus Byars in Mr. Bonner's appeal?

19 A. Yes. I should have included a discussion of
20 Aiken v. Byars, Miller versus Alabama in the brief that
21 I, that I drafted.

22 Q. So you believe that those cases are more
23 applicable than the Graham case?

24 A. I would not say they're more applicable, but they
25 certainly lend persuasive authority for how the court

1 should address these de facto and aggregate sentences
2 and how sentencing proceedings need to take place when
3 we have juvenile offenders in court, particularly in
4 adult court.

5 Q. But, again, Aiken wasn't decided until the same
6 day that Mr. Bonner's appeal on his resentencing was
7 decided, correct?

8 A. That's the day the decision came out. But I was
9 certainly aware of Miller versus Alabama, which was
10 decided June 25th, 2012, which was prior to my
11 representation of Mr. Bonner. And I was aware of what
12 was going on. I could have easily dropped a footnote
13 that said there is certiori -- or, excuse me, a petition
14 for the writ of certiori in the original jurisdiction
15 pending. That's something very often done on appeals.

16 We often want to let the court know, hey, there's
17 something pending. Especially if we're at the Court of
18 Appeals. It's really a courtesy to the Court of Appeals
19 to let them know that the South Carolina Supreme Court
20 has taken up an issue similar to this, so you might want
21 to hold off on rendering an opinion because you don't
22 want to be automatically different from that. Also, if
23 there are multiple cases at the Court of Appeals pending
24 that discuss the same issue, the Court of Appeals
25 doesn't want panels, panels of three, making decisions

1 that do not align with each other.

2 Q. Okay. But that goes more to judicial economy
3 than actually Mr. Bonner's case, right?

4 A. Of whether I dropped the footnote?

5 Q. To advise the court, right?

6 A. That -- dropping the footnote would have served
7 both purposes.

8 Q. Okay. But, again, Miller versus Alabama dealt
9 explicitly with mandatory life without parole sentences
10 on juveniles, correct?

11 A. Not as interpreted by the courts afterwards, as
12 well as our South Carolina Supreme Court. The South
13 Carolina Supreme Court said Miller versus Alabama
14 applies to discretionary life without parole as well,
15 not mandatory.

16 Q. In Aiken v. Byars, which again, was not decided
17 when you were briefing Mr. Bonner's case, right?

18 A. When I briefed Mr. Bonner's case for the Court of
19 Appeals it had not been decided. There is no reason
20 that I could not have sought discretionary review
21 considering that it came out the same day.

22 Q. So despite being so familiar with the Aiken
23 versus Byars case, why did it not occur to you to
24 include it in the briefing?

25 A. I have no answer to that. I have no idea why it

1 did not occur to me and why I did not do it.

2 Q. Could it be that you thought Graham was a
3 stronger argument?

4 A. It's not because I thought it was a -- that it
5 was so strong that it would have excluded a discussion
6 of Aiken. I cannot tell you why at this moment. I
7 cannot tell you why at this moment, tell you why then I
8 did not think to include it. Is Graham the strongest,
9 the strongest argument? Yes. Is it so strong that it
10 completely overshadows the discussion of Miller and the
11 discussion of Aiken? Absolutely not. And I should have
12 included it and I should have included it based upon my
13 experience and knowledge of the case and I failed to do
14 so.

15 Q. Okay. But Aiken versus Byars, even still, the
16 ruling in Aiken versus Byars has to do with individuals
17 who committed capital offenses, right? Homicide.

18 A. I don't think they're capital offenses. I
19 believe ---

20 Q. Well, I apologize. Homicide offenses.

21 A. Aiken v. Byars says that it applies to
22 individuals who have been convicted of homicide offenses
23 and similarly situated.

24 Q. But they are using Miller versus Alabama in their
25 analysis, correct?

1 A. It uses the Miller versus Alabama case, correct.

2 Q. And Miller was restricted only to those homicide
3 cases, correct?

4 A. Miller decided that judges could not sentence
5 juvenile offenders to life without parole in a mandatory
6 scheme. And they said that life without parole
7 sentences should be reserved for the most unusual cases.
8 They should be only given in the rarest of instances.
9 And they affirmed that same ruling in Montgomery.

10 Q. Okay. And, again, neither one of those cases,
11 Miller versus Alabama or Aiken deal with the term of
12 your sentence; isn't that correct?

13 A. Miller deals with mandatory life without parole.
14 Aiken deals with discretionary life without parole.
15 Nevertheless, it's a game of semantics if we're gonna
16 say ---

17 Q. It's a yes or no question.

18 A. It's a game of semantics if we simply say that it
19 only applies when the court says those three words, life
20 without parole. A term of years serves the same
21 purpose. So my yes or no answer would be no.

22 Q. But, again, here we're talking about in
23 Mr. Bonner's case, Aiken -- in Mr. Bonner's case, as
24 you've testified, Graham was the strongest case in his
25 favor, correct?

1 A. That is the strongest case and it's never been
2 considered by the court because it was unpreserved after
3 resentencing. And it's part of his PCR today as well.
4 The Court of Appeals ---

5 Q. I'm sorry. What had not been preserved? The
6 Graham argument had not been preserved?

7 A. Yes. The Graham argument is not preserved. It's
8 clear on the Court of Appeals decision. They refused to
9 consider it. They held it was unpreserved.

10 THE COURT: How do they do that? Didn't you
11 refer to Graham?

12 THE WITNESS: But there's no objection, Your
13 Honor. South Carolina has what I call rather draconian
14 preservation rules.

15 THE COURT: Right. I understand that. But
16 here's the, here's the quandary. Forgive me for
17 interrupting your cross. Here's the quandary that the
18 Court is in. I'm trying to figure out how trial
19 counsel, counsel at resentencing was ineffective for
20 failing to anticipate a decision that came out the same
21 day as the appeal that you handled. And I'm trying to
22 figure out how you could be ineffective for failing to
23 brief an issue when the Court of Appeals said the issue
24 was not preserved.

25 I realize that puts Mr. Bonner in a rather

1 impossible catch 22, but procedurally and factually that
2 seems to be where we are. That the Supreme Court or the
3 Court of Appeals is saying that trial counsel should
4 have been clairvoyant and they asked me to brief an
5 issue that they ultimately decide is not preserved. And
6 it makes absolutely no sense whatsoever in my mind for
7 this to have this kind of procedural posture.

8 THE WITNESS: If I could provide just a little
9 clarity.

10 THE COURT: Go ahead.

11 THE WITNESS: I think the issue that's
12 unpreserved is the Graham issue. Despite it being
13 discussed at the trial level and before ---

14 THE COURT: He didn't object and ask for
15 resentencing.

16 THE WITNESS: He didn't object to the sentences
17 being a de facto life sentence. And so the Court of
18 Appeals refused to hear the issue because it was not
19 objected to.

20 THE COURT: Even though they asked you to brief
21 it?

22 THE WITNESS: Yes, sir. And what I believe may
23 have been somewhat convincing to the court in asking to
24 brief the issue, and it's discussed in the brief, we
25 often ask for the error preservation rules to be relaxed

1 or excused in unconstitutional sentencing errors. Mr.
2 Bonner's case, the first appeal is one I fight often for
3 this proposition because it wasn't preserved then
4 either.

5 THE COURT: Right.

6 THE WITNESS: There's another case, State versus
7 Vick, where an individual was sentenced for both
8 kidnapping and murder. And, obviously, it's statutorily
9 prohibited to do so. So we generally will ask the court
10 to excuse the error of preservation rules if there's a
11 constitutional sentencing error. And that's what I
12 asked them to do and they refused to do it. They said
13 this is simply unpreserved because there was no
14 objection made at the trial level to that imposition of
15 the sentence. So I think that's really the quandary
16 that we're in procedurally.

17 THE COURT: And a good explanation as to why I
18 have no interest in appellate law. Go ahead.

19 MS. OLIVE: Thank you, Your Honor.

20 BY MS. OLIVE:

21 Q. Ms. Hackett, is that -- is it accurate that they
22 found that the Graham issue wasn't preserved at all or
23 that the argument that the aggregate sentences was not
24 preserved considering Mr. Bonner was only resentenced on
25 the burglary first issue?

1 A. I believe their ruling, this was a firm that is
2 unpublished November 12th, 2014. In order for an issue
3 to be reserved -- preserved for appellate review, it
4 must have been raised to and ruled upon by the trial
5 court, a defendant's failure to timely object to or seek
6 modification of his sentence in the trial court
7 precludes him from presenting an objection for the first
8 time on appeal.

9 So it seems to me that they concluded that the
10 entire issue presented before them whether it's a de
11 facto or an aggregate de facto was completely
12 unpreserved. And I would also refer to the brief of
13 respondent which was handled by Assistant Attorney
14 General William Bligh, in which he further argued, and
15 the court agreed with, that the resentencing court --
16 I'm sorry. The resentencing court did not error in
17 sentencing appellate to 60 years for burglary first.
18 The issue is blatantly not preserved and is entirely
19 without merit. So it was the Attorney General's
20 position at that point that the issue was unpreserved
21 for review.

22 Q. And the court -- since you have a lot of
23 experience with the Court of Appeals, the court, if it
24 can dismiss on a procedural ground, is not gonna address
25 the merits of an argument, correct?

1 A. Generally the court will not address the merits
2 if there's a procedural reason, procedural bar, correct.

3 Q. So just because it was unpreserved doesn't
4 necessarily mean that it was meritorious?

5 A. No. The Court of Appeals made no decision on
6 merit. I think we can perhaps consider the fact that
7 they refused to grant my motion to be relived and
8 ordered me to brief the merits, that that might be some
9 indication that they were willing to look at the merits.

10 MS. OLIVE: Thank you. That's all the questions
11 I have.

12 THE COURT: Did you seek a further appeal to the
13 South Carolina Supreme Court once the opinion came out
14 in the most recent appeal?

15 THE WITNESS: No, sir, I did not.

16 THE COURT: All right, good enough. Thank you.
17 Drive safely back to Columbia.

18 THE WITNESS: I have one more, Your Honor.
19 You're not done with me.

20 THE COURT: You've got more? Great. Okay. I'll
21 see you later then. Anything else?

22 MR. EPPS: Your Honor, that concludes our case.

23 THE COURT: Any witnesses from the State?

24 MS. OLIVE: No witnesses from the State, Your
25 Honor.

1 THE COURT: All right.

2 MR. EPPS: Any questions, Your Honor? I know
3 you've been hit with a lot. If there's anything I can
4 do certainly.

5 THE COURT: No, thank you. All right. Based
6 upon what has been presented to the Court, I'm just
7 gonna go ahead and rule from the bench. Based on the
8 testimony that has been presented here, although the
9 Court feels that trial counsel did an admirable job of
10 trying to offer mitigation evidence at the time of the
11 resentencing, and clearly he went above and beyond the
12 call of duty in trying to make sure that Mr. Bonner
13 received some kind of sentence that would although
14 punish him, perhaps allow him to be released, the fact
15 remains that at no point in time did trial counsel ask
16 for a motion to reconsider the sentence or raise that
17 issue with the trial court. He clearly addressed it
18 under Graham. Well, he clearly addressed Graham at the
19 time of sentencing, but the record's clear that he did
20 not ask for a motion to reconsider or ask for the court
21 to consider the ramifications of Graham and its holding
22 in a motion for reconsideration.

23 So based upon what appellate counsel said, what
24 Ms. Hackett related to the Court, the Court would find
25 that his failure to preserve that issue affected

ORDER OF THE COURT

1 appellate counsel's ability to bring that issue before
2 the Court of Appeals. I decline to find that appellate
3 counsel, however, was ineffective in the manner in which
4 she tried to bring the issue before the Court of
5 Appeals.

6 So the Court on this very, very limited issue,
7 the Court is not ordering a resentencing. The Court is
8 simply finding that trial counsel's ineffectiveness is
9 limited to his failure to file a motion for
10 reconsideration with Judge Cole after the second
11 resentencing. That is the only way that he was
12 ineffective. And the Court does conclude, based upon
13 the Appellate Court's -- this Court's required to
14 conclude, based upon the Appellate Court's opinion,
15 that that was prejudicial to Mr. Bonner because
16 obviously they did not consider the merits of the
17 underlying appeal, which the Court of Appeals asked Ms.
18 Hackett to actually brief. But that's the Court's
19 ruling. Thank you.

20 MS. OLIVE: Thank you, Your Honor.

21 (Whereupon, hearing concluded at 12:16 p.m.)

22

23 --- THIS ENDS REQUESTED TRANSCRIPT ---

24

25

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings and evidence introduced
8 in the hearing and/or trial of the captioned case,
9 relative to appeal, in the Court of Common Pleas for
10 Spartanburg County, South Carolina, on the 9th day of
11 November, 2016.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17
18

19 s/Julie A. Ashbrook.
20 Julie A. Ashbrook
21 Circuit Court Reporter
22 Seventh Judicial Circuit
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-11-0381

John B. Bonner

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before the Court on November 9, 2016. Applicant was present with counsel. Upon consideration of the testimony at the hearing and the record, and having reviewed the applicable law, the Court finds as follows.

The central issue in this PCR relates to an Aiken v. Byars allegation. Applicant was resentenced by Judge Cole on January 22, 2013 pursuant to the holding in Byars, and Applicant received a sentence of sixty (60) years. Counsel did not object to the imposition of this sentence as being a *de facto* life sentence, nor did counsel request reconsideration of this sentence. Accordingly, the issue of whether this sentence operates as a practical matter just like a life sentence was not preserved for appellate review.

Accordingly, the Court finds that counsel was ineffective in failing to object to this sentence and in failing to file a motion for reconsideration of the sixty (60) year sentence. Furthermore, Applicant was prejudiced in that this issue was not preserved for Appellate review. Accordingly, the Court grants Applicant relief on this sole issue.

Notwithstanding the above ruling, Applicant is to remain incarcerated in the South Carolina Department of Corrections pending resolution of the appeal of this order.

Mr. Epps is requested to prepare a more formal order which reflects the Court's findings within thirty (30) days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

602 Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Date

This judgment was entered on the 29th day of Nov, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 29th day of Nov, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

Assistant Attorney General Alicia Olive

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT.

FILED IN THE OFFICE
CLERK OF COURT
2016 NOV 29 A 10:56
GRANDY W. JOBBE
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE) SEVENTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-11-0381

John B. Bonner #338030,
Petitioner,

v.

State of South Carolina,
Respondent.

Order of the Court

FILED IN THE OFFICE
CLERK OF COURT
2017 JAN 30 P 3:23

DATE OF HEARING: Wednesday, November 9, 2016
TRIAL JUDGE: The Hon. Frank R. Addy, Jr.
PETITIONER'S ATTORNEY: Steven D. Epps, Esq.
RESPONDENT'S ATTORNEY: Alicia A. Olive, Esq.
COURT REPORTER: Julie A. Ashbrook

THIS MATTER came before the Court pursuant to Petitioner's application for Post-Conviction Relief (PCR) filed May 12, 2015 which was amended by a Supplemental Petition filed October 26, 2016. This Court reviewed the file and conducted a PCR hearing in this matter on the above date where Petitioner and Petitioner's former attorneys, Joshua Schultz and Susan Hackett, were sworn in and presented testimony. Based upon the evidence presented to the Court and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. Petitioner was charged with various crimes which occurred while he was a juvenile. He proceeded to trial and was convicted of Burglary, 1st Degree, Burglary, 2nd Degree, Kidnapping, Armed Robbery, Assault and Battery of a High and Aggravated Nature (ABHAN), and Grand Larceny on November 18, 2009 in Cherokee County. Petitioner was sentenced as follows: Burglary 1st, Life without Parole (LWoP); Burglary 2nd, 15 years; Kidnapping, 30 years; Armed Robbery, 30 years; ABHAN, 10 years; and Grand

1


Larceny, 5 years. All of the above sentences were to run concurrent except for the 10-year sentence to ABHAN which ran consecutive to all sentences.

2. On May 17, 2010, the United States Supreme Court issued its decision in Graham v. Florida, 130 S.Ct. 2011 ("Graham"). Among other things, the Court held "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." Graham, 130 S.Ct. ____, 560 U.S. ____ (slip. op. at 32) (2010).

3. On appeal, the Court of Appeals found Petitioner's LWoP sentence to his charge of Burglary, 1st degree violated the Eighth and Fourteenth Amendments of the U.S. Constitution pursuant to Graham and remanded that sentence for resentencing on November 14, 2012. See State v. Bonner, Op. No. 5048 (S.C. Ct. App. filed November 14, 2012).

4. Petitioner, represented by his original trial counsel, Joshua Schultz, was resentenced on January 22, 2013 by The Honorable J. Derham Cole. At the resentencing, Judge Cole sentenced Petitioner to a term of 60 years on the Burglary, 1st degree charge. This sentence, in following with the other sentences handed down after the trial, would be followed by a 10-year consecutive sentence on an ABHAN charge, as mentioned above.

5. Attorney Schultz did not object to the 60-year sentence handed down by Judge Cole during Petitioner's resentencing hearing nor did he request a reconsideration of the 60-year sentence. He further did not object to, or request reconsideration of, that

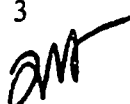
sentence relative to the consecutive 10-year ABHAN sentence which was to be served after it. He did file a Notice of Appeal as to the 60-year sentence but the Court of Appeals affirmed holding no issue had been preserved for appellate review. See State v. Bonner, Op. No. 14-UP-401 (S.C. Ct. App. filed November 12, 2014).

6. Evidence was presented to the Court that Petitioner is currently confined within the Department of Corrections on the above charges with a release date of February 5, 2064. At that point in time, Petitioner will be 73 years and 13 days old. He is classified by the Department of Corrections as ineligible for parole as his sentence "max out" date comes before his parole eligibility date. Therefore, there is a strong possibility that Judge Cole's resentencing of Petitioner to a 60-year sentence on a Burglary 1st degree charge coupled with a 10-year consecutive sentence to ABHAN will result in a *de facto* life sentence depriving Petitioner of a realistic opportunity to obtain release before the end of his prison term in violation of Graham.

Conclusions of Law

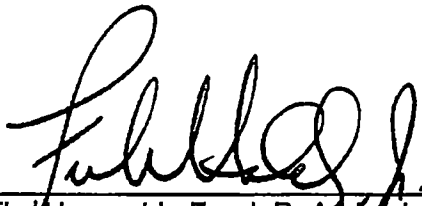
1. These above issues were not preserved for appellate review by attorney Schultz and, thus, the Court of Appeals did not rule upon them. This Court finds Mr. Schultz was ineffective for failing to object to, or file a motion to reconsider, Judge Cole's 60-year resentencing on the LWoP charge, particularly in that there was also a 10-year concurrent sentence for ABHAN after it. This ineffectiveness was prejudicial to Petitioner as it denied him any meaningful opportunity to appeal this 60 + 10 year sentence, as shown above.
2. Accordingly, this Court grants Petitioner's request for relief in this PCR solely on the issue of whether Petitioner may file a motion for reconsideration as to the 60-year sentence for Burglary, 1st degree with a consecutive sentence of 10 years for ABHAN.

FILED IN THE OFFICE
CLERK OF COURT
2017 JAN 10 P 3:23
M. MOORE
JUDGE
CHICAGO COUNTY, SC



AND IT IS SO ORDERED.

Jan. 26, 2017
December 26, 2016
Greenwood, South Carolina


The Honorable Frank R. Addy, Jr.
Circuit Court Judge

FILED IN THE OFFICE
CLERK OF COURT
2017 JAN 30 P 3:23
CLERK OF COURT
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)

John B. Bonner, #338030,

) Case No.: 2015-CP-11-0381
)

Applicant,

) **MOTION TO RECONSIDER**
) **PURSUANT TO RULE 59(e), SCRCP**
)

v.

State of South Carolina,

Respondent.

Respondent, pursuant to Rules 59(a) and (e), SCRCP, would respectfully show unto this Court:

I.

This matter came before the Court by way of an application for Post-Conviction Relief filed May 12, 2015, and amended application and a motion to stay the case filed October 26, 2016. The Court convened an evidentiary hearing into the matter on November 9, 2016 at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Steven D. Epps, Esquire. Alicia A. Olive of the South Carolina Attorney General's Office represented Respondent. By order filed January 30, 2017, the Court granted relief on the basis that Counsel was ineffective for failing to object to, or file a motion to reconsider, Judge Cole's 60-year resentencing. Respondent received a copy of this order on February 2, 2017. Respondent respectfully asks this Court to reconsider its ruling for the following reasons.

A.

Respondent respectfully submits this Court may have misapprehended Graham v. Florida, 560 U.S. 48 (2010) in finding deficiency and prejudice.

The Court in Graham held:

The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, *but if it imposes a sentence of life* it must provide him or her with some realistic opportunity to obtain release before the end of that term.

Graham v. Florida, 560 U.S. 48, 82 (emphasis added). To prove a claim of ineffective assistance of counsel, Applicant was required to prove both deficient conduct and resulting prejudice, i.e., that but for the error, there is a reasonable probability the outcome would have been different. Strickland v. Washington, 466 U.S. 668 (1984).

This Court found that "there is a strong possibility that Judge Cole's sentencing of Petitioner to a 60-year sentence . . . coupled with a 10-year consecutive sentence to ABHAN will result in a *de facto* life sentence depriving Petitioner of a realistic opportunity to obtain release before the end of his prison term in violation of Graham." (Order p. 3). This, however, was not the ruling in Graham. Graham dealt only with an actual sentence of "life without parole" and did not consider whether any particular term-of-years sentence would amount to a "*de facto* life sentence," nor has Applicant pointed to any primary State or Federal authority in which the term *de facto* life sentence has been defined. Accordingly, Respondent respectfully submits that this Court erred in finding that Counsel was deficient for not making such an argument because he had no legal basis for doing so.

B.

Respondent respectfully submits that this Court may have overlooked the fact that, in his direct appeal, Applicant only appealed his conviction and sentence for burglary—1st degree. Therefore, regardless of any argument Counsel might have made, the only conviction that was before the court on resentencing was the burglary—1st degree conviction.

Following the direct appeal from his conviction, the South Carolina Court of Appeals vacated Applicant's sentence of life imprisonment pursuant to the holding in Graham and remanded the matter for new sentencing *only* on the burglary—1st degree charge. State v. Bonner, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012). On January 22, 2013, Applicant appeared before Judge Cole for re-sentencing. E. Joshua Schultz, Esquire, represented Applicant. Judge Cole sentenced Applicant to imprisonment for 60 years for burglary—1st degree. Thereafter, Applicant appealed the resentencing, and Susan B. Hackett, Esquire, perfected the appeal. The South Carolina Court of Appeals dismissed the appeal. State v. Bonner, Op. No. 2014-UP-401 (S.C. Ct. App. filed November 12, 2014).

At resentencing, Applicant was sentenced to a term-of-years sentence of 60 years for burglary—1st degree. This Court's finding that Counsel was ineffective is based largely on the order dismissing Applicant's appeal from his resentencing. The court dismissed the appeal because the issue was not preserved. The mere fact that the Order dismissing Applicant's appeal indicated issues were not preserved for review is not evidence that Counsel's performance was deficient. The ruling in Graham did not provide a basis for reconsideration of anything other than Applicant's sentence to life without parole. Furthermore, Counsel did note to the court that Applicant was concerned about his consecutive sentence for ABHAN. See Tr. p. 6. Respondent submits that there was no basis on which Counsel could have argued that Applicant was entitled to resentencing on the other convictions, and regardless, Graham would not have required that Judge Cole reduce the sentence. Graham specifically applied only to sentences of life without parole. Respondent submits Graham provided no legal basis upon which Counsel could have filed a motion to reconsider, and for that reason, there is no evidence to support the Court's

finding that Counsel was deficient for not filing a motion to reconsider the resentencing, or that there is a reasonable probability that the outcome would have been different.

C.

Respondent respectfully submits this Court may have overlooked facts in the record in reaching its ruling. Counsel stated to the court that Applicant wished to continue the resentencing to have more time to research further whether "the court can grant him any . . . less time on the thirty year sentences . . . and also the ten year sentence on the [ABHAN], which ran consecutive. . . ." Tr. p. 6. The Court stated: "I can't change those sentences. We are all in agreement on that, aren't we?" Tr. p. 6. The Solicitor noted, and the Court of Appeals opinion reflects that Applicant "[did] not challenge his conviction or sentence for any other charge" in his direct appeal. State v. Bonner, 400 S.C. 561, 564 n. 4, 735 S.E.2d 525, 526 (Ct. App. 2012). The Court then reiterated that it could only resentence Applicant on the burglary conviction. Furthermore, Counsel argued at resentencing that Applicant deserved a "meaningful chance at rehabilitation." Tr. p. 10. Counsel referred to Graham multiple times, arguing Applicant was entitled to a "meaningful chance at rehabilitation." Tr. p. 13. He stated "the sentence we are asking for is a sentence that provides some meaningful opportunity for release, based upon demonstrated maturity and rehabilitation." Tr. p. 14. Judge Cole asked Counsel if Graham had provided any guidance as to what sentence would be appropriate, and Counsel advised Judge Cole that Graham had not provided any bright-line or categorical rules to guide the courts, other than that. Tr. p. 16.

The record reflects Counsel did not fail to preserve the issue for review. Rather, the issue was not raised in his direct appeal, therefore, Judge Cole could only sentence Applicant on burglary—1st degree. Accordingly, there was no deficiency. Furthermore, Applicant failed to show there is a reasonable probability he would have prevailed on appeal. Even if Counsel had

made a specific argument that the sixty-year sentence in addition to the ten-year consecutive sentence amounted to a *de facto* life sentence, the issue still would not have been preserved for review following the resentencing. Regardless, there is still no existing legal basis—in Graham or otherwise—under which the appellate court could have granted Applicant *another* resentencing. Therefore, Applicant has failed to show prejudice.

II.

WHEREFORE, Respondent respectfully requests the Court reconsider its finding of ineffective assistance of counsel for the foregoing reasons.

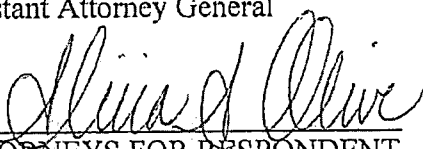
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

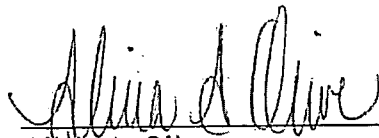
February 13th, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	
	)	
	)	2015-CP-11-0381
JOHN B. BONNER, #338030,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion to Reconsider Pursuant to Rule 59(e)** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Steven D. Epps, Esquire.
Epps Law Firm, LLC
104-A Franklin Avenue, #281
Spartanburg, SC 29301

DATED this 13th day of February, 2017.


Alicia A. Olive
Attorney for Respondent

THE EPPS LAW FIRM, LLC

└ LITIGATION ATTORNEY || LEGAL COUNSELOR ┘

Steven D. Epps, Esquire
864-590-4848 - Office
844EPPSFAX (377-7329) - Fax
steven@eppslawfirm.com

Mailing Address:
104-A Franklin Avenue
281
Spartanburg, SC 29301

February 16, 2017

VIA EMAIL (faddyse@sccourts.org) & U.S. Mail

The Honorable Frank R. Addy, Jr.
528 Monument St., Ste. 210
Greenwood, SC 29646

Re: John B. Bonner v. State (PCR)
Case: 2015-CP-11-0381 (Cherokee County)

Dear Judge Addy:

Please consider this letter my response to Attorney General Olive's Motion for Reconsideration. As she points out in her Motion, Graham v. Florida clearly provides "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term."

Our United States Supreme Court issues rulings that have precedence over the entirety of United States jurisprudence, from the lowliest, backroom magistrate court to the upper reaches of our appellate courts that are figuratively steps away from its own courtrooms. To limit Graham's holding to a requirement that the South Carolina sentencing sheet must reflect the words "life in prison without the possibility of parole" would require continuous exercise of our U.S. Supreme Court reviewing every state's sentencing structure rather than putting faith in the judiciary to use reason when interpreting a ruling. For instance, if John Bonner had been sentenced to 1000 years before the possibility of parole, would there be any doubt he would have received a life sentence? That is literally the decision before your Court and your ruling in this matter was sound. Mr. Bonner's term of "life" was replaced with a sentence of years that constitutes the same thing. While I recognize Mr. Bonner did not appeal his kidnapping sentence, it is impossible to disregard that sentence in light of Graham's ruling and Mr. Bonner's potential "life" re-sentence of 60 years.

With all due respect to him, Mr. Schultz did not object to Judge Cole's resentencing nor did he file a motion for reconsideration. That doomed any opportunity Mr. Bonner had at an argument to appeal his term of years which equals life imprisonment sentence. It is hard to imagine a more prejudicial effect than having a sentence imposed upon you which likely violates the Constitution and no way to effectively bring that argument up for an appellate review.

This Court made the correct ruling and should deny the Attorney General's Motion for Reconsideration.

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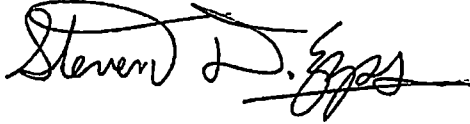
Judge Addy – Deny Mtn for Reconsideration

February 16, 2017

Page 2 of 2

With warm regards, I remain,

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven D. Epps", with a stylized flourish at the end.

Steven D. Epps

SDE/jfm

Cc: Cherokee County Clerk of Court

Client

✓ Alicia Olive, Esq.

Joshua Schultz, Esq.

**STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE**

JOHN B. BONNER,
Applicant

-v-

**STATE OF SOUTH
CAROLINA,**
Defendant.

**IN THE COURT OF COMMON PLEAS
2015-CP-11-381**

**ORDER DENYING STATE'S MOTION FOR
RECONSIDERATION**

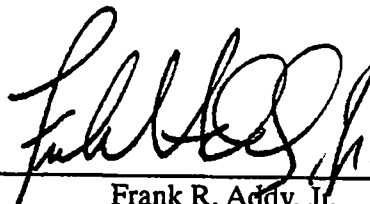
Addy, J.

THIS MATTER CAME BEFORE THE COURT on a motion for reconsideration filed by the State of South Carolina. In a prior order dated January 26, 2017, the Court granted Mr. Bonner a new sentencing hearing for the reasons stated in that order.

The Court has reviewed and considered the arguments of Assistant Attorney General Alicia Olive as contained in the State's Rule 59 (e) motion dated February 13, 2017, as well as Mr. Bonner's arguments presented by Steven Epps, Esq. in his letter dated February 16, 2017. Having fully reviewed and reconsidered the Court's prior rulings, the Court declines to alter or amend the Order of January 26, 2017.

IT IS SO ORDERED.

February 17, 2017
Greenwood, South Carolina



Frank R. Addy, Jr.
Presiding Judge, Seventh Judicial Circuit

FILED IN THE OFFICE
CLERK OF COURT
2017 FEB 22 A 11:01
CHEROKEE COUNTY, SC