

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable R. Scott Sprouse, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL JAY FINLEY,

APPELLANT

APPELLATE CASE NO 2016-002480

RECORD ON APPEAL

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South Carolina Commission on Indigent
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C 704514
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C 704516
C 704520

1

STATE OF SOUTH CAROLINA)
County of Greenville)

In the Court of General
Sessions
13th Judicial Circuit

Michael Finley, 198062)
Applicant)

Case Numbers:

Vs.)

92-GS-23-1424,

92-GS-23-1422,

92-GS-23-1425, and

State of South Carolina)
Respondent)

92-GS-23-1420

FILED CLERK OF COURT
PAUL B. WICKENS
GREENVILLE CO. SC
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MOTION FOR RESENTENCING

Applicant respectfully moves this Court for resentencing of his Life Sentence for Murder, Life Sentence for Burglary 1st Degree, Twenty-five Year Sentence for Armed Robbery, and Twenty-five Year Sentence for Arson 1st Degree pursuant to S.C. Supreme Court decision in Aiken v. Byars, Opinion No. 27465, November 12, 2014, and the United States Supreme Court decision in Miller v. Alabama, 132 S. Ct. 2455 (2012).

PROCEDURAL HISTORY

At a Court of General Sessions in Greenville County, which convene on February 25, 1992, Applicant was indicted for Murder, Burglary – 1st Degree, Armed Robbery and Arson – 1st Degree.

On February 25, 1993, Applicant entered a pleas of guilty under Alford to Murder, Burglary 1st Degree, Armed Robbery, and Arson – 1st Degree, receiving sentences of Life, Life (Concurrent), Twenty-five Years (Consecutive), and Twenty-five Years (Consecutive) respectively.

This Motion follows . . .

ARGUMENT

At the time of aforementioned crimes (May 6, 1990), Applicant was a juvenile and lacked the maturity of an adult. He had an underdeveloped sense of responsibility and was vulnerable to negative influences and outside pressures, including, but not limited to, family and peers. Applicant still had an evolving character and personality traits.

At the time of Applicant's crime and plea, S.C. Code § 63-19-20 outlined a juvenile as being a person less than seventeen years of age. However, Miller extends to defendants under eighteen years of age.

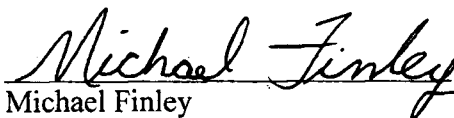
Therefore, Applicant falls under the class of defendants who were juveniles at the time of their crime. Applicant could not effectively deal or assist in dealing with the prosecution or negotiating with the plea agreement.

Furthermore, it was cruel and unusual punishment to receive the functional equivalent of life without parole under the 8th Amendment of the United States Constitution. Thus, Applicant should be resentenced.

At the time of his crime, youth was only a chronological fact and a plea for mercy. However, Aiken and Miller hold youth is a constitutional matter in sentencing.

CONCLUSION

Based on the foregoing reasons and authorities, Applicant should be resentenced.



Michael Finley
SCDC # 198062 – Monticello Unit, # 139
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

Pro se

Thursday, March 10, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	In the Court of General
County of Greenville	)	Sessions
	)	13 th Judicial Circuit
Michael Finley, 198062	)	
Applicant	)	
	)	Case Numbers:
	)	92-GS-23-1424,
Vs.	)	92-GS-23-1422,
	)	92-GS-23-1425, and
State of South Carolina	)	92-GS-23-1420
Respondent	)	

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE CO. SC
2016 MAR 17 AM 9:44

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the State of South Carolina with the Applicant's Motion for Resentencing by mailing a true copy via United States Mail on Thursday, March 10, 2016 to:

_____, Solicitor
13th Judicial Circuit
Greenville County Courthouse
Greenville, SC 29601

Thursday, March 10, 2016
Columbia, SC 29210

Michael Finley
Michael Finley, 198062

SWORN to and subscribed before me this 10
day of March, 2016

Jacqueline Murrell (L.S.)
Notary Public

My Commission Expires: 3-15-16

STATE OF SOUTH CAROLINA

County of Greenville

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

VERIFICATION

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

Michael Finley
Michael Finley
SCDC # 198062 – Monticello Unit, # 139
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

SWORN to and subscribed before me this

day of

Dequene Murrell (L.S.)
Notary Public

My ~~C~~ommission Expires:

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Michael Finley hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefore. In support of my motion 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 therefore.

Michael Finley
Michael Finley
SCDC # 198062 – Monticello Unit, # 139
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

SWORN to and subscribed before me this 10

day of 10th March, 2016

Jacqueline Murrell (L.S.)
Notary Public

My Commission Expires: 3.15.16

The Supreme Court of South Carolina

ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that the following procedures shall be followed statewide in the management and disposition of all motions for resentencing filed pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014).

Upon filing, the Clerk of Court shall forward a copy of the motion for resentencing to South Carolina Court Administration, which shall make recommendations to the Chief Justice for assignment of a judge. The Chief Justice shall issue an order assigning the matter to a circuit court judge. The assigned judge shall be given exclusive jurisdiction to handle that case from beginning to end. In assigning these matters, the Chief Justice shall take into consideration any actual or potential conflicts, and shall refrain from assigning the matter to the original sentencing judge. Once an order has been issued assigning the matter to a judge, copies of that order shall be provided by the clerk of court to counsel of record.

Appointment of an attorney for an indigent petitioner shall first be attempted through the public defender's office. If no public defender is available, the assigned judge shall then determine whether a qualified attorney is available from the contract attorney list, maintained by the South Carolina Commission on Indigent Defense, pursuant to S.C. Code Section 17-3-310(G)(6). If no such attorney is available, the judge shall then determine whether there is a qualified attorney available pursuant to Rule 608 of the South Carolina Appellate Court Rules. If no qualified attorney is available from any of these three sources, then the judge may appoint another qualified attorney.

This Order shall be effective immediately and shall remain in effect until rescinded or modified by Order of the Chief Justice.



Costa M. Pleicones
Chief Justice

March 16, 2016
Columbia, South Carolina

The Supreme Court of South Carolina

Michael Finley,

Petitioner,

v.

State of South Carolina,

Respondent.

Greenville County

Docket Nos.: 1992-GS-23-01420, 1992-GS-23-01422,
1992-GS-23-01424, and 1992-GS-23-01425

ORDER

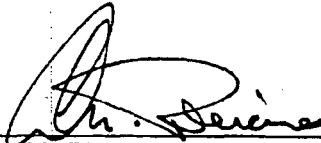
Petitioner filed a motion on March 17, 2016 for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). Now, therefore, pursuant to SC CONST. Art. V, § 4,

IT IS HEREBY ORDERED that the Honorable Edward W. Miller be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge Miller shall at all times be vested with concurrent jurisdiction in all circuits of the state to dispose of matters relating to this case, and shall decide all matters pertaining to the Petitioner's Motion, and shall retain jurisdiction over this matter regardless of where he may be assigned to hold court, and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

If necessary, to resolve issues related to the appointment of counsel, a hearing shall be conducted within thirty (30) days of this order.

Within sixty (60) days of the date of this order, Judge Miller shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary.



Costa M. Pleicones
Chief Justice

March 23, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 THE STATE)
)
 V.)
)
 MICHAEL FINLEY,)
)
 DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
 THIRTEENTH JUDICIAL CIRCUIT

INDICTMENT NOS: 1992-GS-23-01420, -01422,
 -01424, -01425

ORDER APPOINTING COUNSEL

C704520 C704514
 921422 C704516

WHEREAS the defendant has petitioned this Court for resentencing pursuant to Aiken v. Byars,
 410 S.C. 534, 765 S.E.2d 572 (SC 2014) and, currently, is in the custody of the South Carolina
 Department of Corrections serving a life sentence;

IT IS ORDERED that the Greenville County Office of Indigent Defense shall appoint the
 Greenville County Public Defender Office to represent the above-named defendant in this matter.
 IT IS SO ORDERED.


 Edward W. Miller, Circuit Judge

Date: May 7, 2016

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 FILED-CLERK OF COURT
 PAUL B. WICKENS
 GREENVILLE CO. SC

C704520
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C704514
C704516

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS	2016 JUN 21 PM 1:00
	)	THIRTEENTH JUDICIAL CIRCUIT	
COUNTY OF GREENVILLE	)		
	)	Indictment No. 1992-GS-23-01420; 1422; 1424;	
The State of South Carolina	)	1425	
	)		
v.	)		
	)	STATE'S REPLY TO MOTION FOR	
	)	RESENTENCING	
Michael Jay Finley,	)		

On April 22, 1993, in Greenville County, Michael Jay Finley, who was 20 years old at the time, pled guilty to burglary 1st degree¹, arson 1st degree, armed robbery, and to the murder of James T. Brockman. He received concurrent sentences of life imprisonment within the South Carolina Department of Corrections for the murder and burglary charges and consecutive, 25 year sentences on the armed robbery and arson charges. Finley now moves for a resentencing hearing, pursuant to *Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Finley filed his pro se motion on March 10, 2016. Finley's motion was untimely and should not be considered by this Court. Additionally, Finley is not a member of the class of offenders afforded relief under either case, and, accordingly, his motion should be denied.

Finley's motion is untimely

In *Aiken*, the South Carolina Supreme Court provided "any individual affected by [the] holding may file a motion for resentencing within one year from the filing of th[e] 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). *Aiken* was filed on November 12, 2014. Finley filed his motion on March 10, 2016, and as such, his motion is untimely and should be denied.

¹ Finley's motion appears to encompass each of his sentences, despite *Miller* and *Aiken*'s application only to homicide offenders.

Miller v. Alabama and Aiken v. Byars

In *Miller*, the United States Supreme Court held that mandatory life without parole sentences for juveniles violate the Eighth Amendment because they pose a great risk of imposing a disproportionate sentence. *Miller*, 132 S.Ct. at 2469, 183 L.Ed.2d at 424. The Supreme Court discussed at length the unique factors attributed to youth, their effect on a juvenile offender, and the constitutional importance of allowing juvenile homicide offenders facing life without the possibility of parole an opportunity to present mitigating evidence to the sentencing court prior to receiving such a sentence. The Supreme Court held a sentencing court must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* The Court did not hold that a juvenile cannot receive a life sentence for murder, but instead “mandate[d] only that a sentencer follow a certain process- considering an offender’s youth and attendant characteristics- before imposing a particular penalty.” *Id.* at 2471, 183 L.Ed.2d at 426.

In *Aiken v. Byars*, the South Carolina Supreme Court extended the *Miller* holding to our sentencing scheme, which permits, but does not mandate, a life without parole sentence for juveniles accused of murder. *Aiken*, 410 S.C. at 542, 765 S.E.2d at 576. Finding “youth has constitutional significance,” the Court held that juveniles who received a sentence of life without the possibility of parole for murder are entitled to move for resentencing and created an “affirmative requirement that courts fully explore the impact of a defendant’s juvenility on the sentence rendered” as a direct result of *Miller*. *Aiken*, 410 S.C. at 543, 765 S.E.2d at 577. At the specialized sentencing hearing, the juvenile must have the opportunity to present evidence to the sentencing court regarding (1) the offender’s age and maturity level; (2) the circumstances of his

family life; (3) the facts surrounding the homicide, including the extent of his involvement; (4) “the incompetencies associated with youth”; and (5) whether rehabilitation is possible. *Id.* at 544, 765 S.E.2d at 577.

Finley is not entitled to resentencing under *Miller* or *Aiken*

Both *Miller* and *Aiken* are unequivocal in that the remedy they provide is only available to juveniles sentenced to life without the possibility of parole. *Miller*, 132 S.Ct.at 2460, 183 L.Ed.2d at 414; *Aiken*, 410 S.C. at 536, 765 S.E.2d at 573. To find that *Aiken* stands for the proposition that a juvenile sentenced to any type of life sentence for homicide is entitled to move for resentencing would take an otherwise very specific rule and extending it to a class of offenders it was not intended to address. The clear rule from both *Miller* and *Aiken* is that sentencing a juvenile to life *without the possibility of parole*, without first holding a specialized hearing at which the judge specifically considers the unique effects and attributes of juvenility, violates the Eighth Amendment, and only those so situated are entitled to move for resentencing. The State anticipates Finley will argue that a court sentencing a juvenile to *any* life sentence must provide that juvenile the “meaningful opportunity to obtain release” prior to sentencing. Under *Miller* and *Aiken*, that is absolutely true for offenders who receive sentences of life without parole, because their only opportunity to present mitigating evidence in hopes of obtaining release is prior to sentencing. For those who will become parole eligible, like Finley, there are multiple chances to obtain release- prior to sentencing and every time they appear before the parole board. *Aiken* emphasizes the fact that the specialized hearing must occur prior to sentencing because *Aiken* only applies to those offenders who are facing life without the possibility of parole and for whom there is only that one opportunity.

South Carolina Code subsection §16-3-20 (Supp. 1990), the murder statute under which

Finley was sentenced, provided that a person who pled guilty to murder

must be punished by imprisonment for life and is not eligible for parole until the service of twenty years; provided, however, that when the State seeks the death penalty and an aggravating circumstance is specifically found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the court must impose a sentence of life imprisonment without eligibility for parole until the service of thirty years.

S.C. Code Ann. §16-3-20 (1990).

When the circuit judge sentenced Finley to life for murder, the sentence was not a life sentence without the possibility of parole but instead was one under which Finley was required to serve 30 years before becoming parole eligible. Finley is not part of the class of offenders affected by *Miller* or *Aiken* and, thus, is not entitled to move for resentencing.

Parole eligibility as a remedy

Even if this court determines Finley is entitled to move for resentencing under *Miller* and *Aiken*, the State believes his motion should be denied because he will have the opportunity to present the mitigating evidence required under both cases when he becomes parole eligible. Finley would like this court to find that, for sentencing purposes, children are constitutionally different than adults, and absent a specialized hearing at which the sentencer evaluates mitigating evidence presented by the juvenile, *any* sentence involving a life term, with or without the possibility of parole, violates the Eighth Amendment.

Finley will become parole eligible on August 11, 2022. At that time, he will be given the opportunity to appear before the parole board, which will determine whether he remains

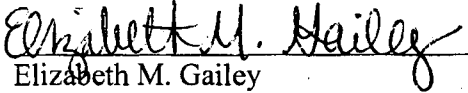
incarcerated or is granted parole. Should his request for parole be denied, he will have another opportunity to present his case to the board in the future. The parole board is a sentencing authority and will assess Finley's case upon his becoming parole eligible. Addressing *Miller* and its progeny, the United States Supreme Court recently said "[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 193, L.Ed. 2d 599, 622 (2016). Finley will be able to apprise himself of the very remedy prescribed by the Supreme Court in 2022.

Conclusion

Finley was not sentenced to life without the possibility of parole, thus disqualifying him from the class of offenders provided for under *Miller* and *Aiken*. The State respectfully requests his motion for resentencing be DENIED.

Respectfully submitted,

June 21, 2016


Elizabeth M. Gailey
Assistant Solicitor
Thirteenth Judicial Circuit

The Supreme Court of South Carolina

Michael Finley, Petitioner,

v.

State of South Carolina, Respondent.

Greenville County

Docket Nos.: 1992-GS-23-01420, 1992-GS-23-01422,
1992-GS-23-01424, and 1992-GS-23-01425

ORDER

Petitioner filed a motion on March 17, 2016 for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). By order dated March 23, 2016, the Honorable Edward W. Miller was assigned exclusive jurisdiction over this matter. He has now recused himself from this case. Now, therefore, pursuant to SC CONST. Art. V, § 4,

IT IS HEREBY ORDERED that the Honorable R. Scott Sprouse be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge Sprouse shall at all times be vested with concurrent jurisdiction in all circuits of the state to dispose of matters relating to this case, and shall decide all matters pertaining to the Petitioner's Motion, and shall retain jurisdiction over this matter regardless of where he may be assigned to hold court, and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

If necessary, to resolve issues related to the appointment of counsel, a hearing shall be conducted within thirty (30) days of this order.

Within sixty (60) days of the date of this order, Judge Sprouse shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary.

s/Costa M. Pleicones
Costa M. Pleicones
Chief Justice

June 30, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	Warrant/Indictment Nos.: 1992-GS-23-01420;
THE STATE	)	-1422; -1424; -1425
	)	
v.	)	CONSENT ORDER RELIEVING COUNSEL
	)	AND APPOINTING NEW COUNSEL
MICHAEL JAY FINLEY,	)	C704520 C704514
	)	921422 C704516
<u>DEFENDANT.</u>	)	

This matter is before me pursuant to a consent motion to have defense counsel relieved due to a conflict of interest.

The above listed Defendant petitioned this Court for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 E.2d 572 (SC 2014) and the Thirteenth Circuit Public Defender's Office (Mr. John I. Mauldin) was appointed as counsel for Defendant on May 9, 2016;

It appears the Defendant was represented by the Thirteenth Circuit Public Defender's Office (attorney of record listed as John I. Mauldin) during the course of his original plea and sentencing;

It further appears the Defendant filed a Post Conviction Relief petition against Mr. Mauldin after his guilty plea and sentencing, alleging ineffective assistance of counsel and that he continues to maintain a strong opinion regarding the ineffectiveness of his trial counsel;

Accordingly, it is appropriate to relieve the Thirteenth Circuit Public Defender's Office as counsel of record in this matter and Mr. Kenneth Gibson is hereby appointed as new counsel.

AND IT IS SO ORDERED.


 The Honorable R. Scott Sprouse
 Circuit Judge

Greenville, South Carolina
 This 10 day of August, 2016

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 CLERK OF COURT
 PAUL D. JOHNSON
 GREENVILLE CO. SC

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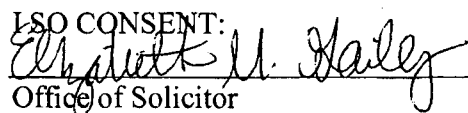


Attorney for Defendant

Parker A. Baxley

Print Name

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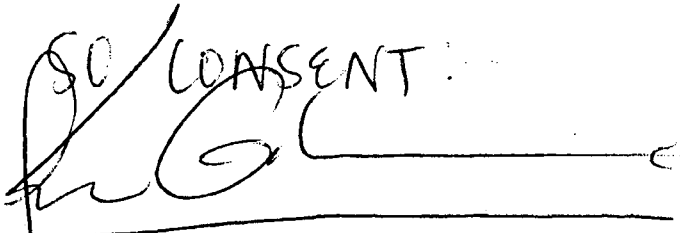


Office of Solicitor

Elizabeth Gailey

Print Name

ISO CONSENT:



Kenneth Gibson

1 State of South Carolina
2 County of Oconee

In the Court of Common Pleas

3
4 State of South Carolina,)

5) 1992-GS-23-01420,
6) 22, 24, 25

7 -vs-)

October 14, 2016

8 Michael Jay Finley,)

9 Defendant.)

Transcript of Record

10

11

12 B E F O R E:

13 The Honorable R. Scott Sprouse, Judge

14

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

16 Elizabeth Gary, Esquire
Attorney for the State

17

18 Kenneth Gibson, Esquire
Attorney for Defendant

19

20

21

22 Diane L. Marcengill, RPR, CRR
23 Circuit Court Reporter

24

25

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:59 a.m.)

4 MS. GARY: May it please the court. Judge, we're
5 here this morning on the State vs. Versus Michael J.
6 Finley, indictment numbers 1992-GS-23-01420, 1422,
7 1424, and 1425 under which Mr. Finley was charged and
8 pled guilty to murder, burglary first degree, armed
9 robbery, and arson in the first degree.

10 We're here this morning for the hearing on the
11 merits of Mr. Finley's resentencing hearing -- excuse
12 me, resentencing motion that he filed pursuant to both
13 *Miller vs. Alabama* from the United States Supreme Court
14 and *Aiken vs. Byars* from the South Carolina Supreme
15 Court.

16 Mr. Finley is represented by Kenneth Gibson, and
17 he is present this morning. And I'm Elizabeth Gary on
18 behalf of the State, Judge.

19 THE COURT: All right. The court has conducted an
20 in-chambers conference with the attorneys, and this is
21 the first part of this procedure.

22 This, as I understand it, is Mr. Gibson's motion.
23 The purpose of this motion will be to determine
24 eligibility for Mr. Finley under *Aiken vs. Byars*, and
25 the State opposes that motion.

1 So, Mr. Gibson, I'll hear from you first, and I'll
2 allow Ms. Gary to respond.

3 MR. GIBSON: Yes, sir. Thank you, Your Honor.

4 Your Honor, Mr. Finley is 43 years old. He has
5 been in jail now since 1992 for a plea of guilty to a
6 charge of murder, burglary first, arson first, and
7 armed robbery. He was initially a death penalty case.
8 He pled guilty and was sentenced to life -- two
9 sentences of concurrent life on the burglary and murder
10 charge, and then consecutive sentences of 25 years and
11 another 25 years on the arson first and armed robbery
12 charge.

13 We are now moving, Your Honor, as I'm sure the
14 court fully understands, for him to be allowed a
15 resentencing hearing pursuant to *Miller* and *Aiken vs.*
16 *Byars*. The basis of that, of our belief in that, Your
17 Honor, is that when he committed these crimes, he was a
18 juvenile. And the sentence that he got, life plus
19 consecutive 25 plus consecutive 25, should be
20 considered a de facto sentence and, therefore, he
21 should be eligible for a resentencing hearing.

22 Your Honor, we believe that the current sentence
23 that he has is violative of the Eighth Amendment for
24 cruel and unusual punishment. It is my understanding,
25 Your Honor, that he is -- he may be eligible for parole

1 in 2022. I'm not sure exactly if that is binding upon
2 the State, but apparently that is their current
3 position.

4 We have some concerns about -- I anticipate that
5 the State will argue that pursuant to a statement that
6 is in *Montgomery vs. Louisiana*, another United States
7 Supreme Court, which I believe Ms. Gary has given you a
8 copy of.

9 MS. GARY: I did.

10 MR. GIBSON: There is a sentence in there which
11 indicates that these sentences or these problems may be
12 fixed by making people eligible for parole. And I
13 anticipate that the State will rely upon that to say
14 that Mr. Finley is not eligible for a resentencing
15 hearing.

16 Our problem with that, Your Honor, is that, one,
17 that statement is dictum. That statement was not
18 controlling upon that court or any court, for that
19 matter. And the reason why we felt that you should
20 consider it fully or feel that you are bound by it is
21 because that's not an issue that was fully litigated at
22 that hearing, to the best of my knowledge, Your Honor.

23 There are a number of reasons why we believe that
24 just because someone may be eligible for parole on
25 paper does not mean that they actually have a

1 meaningful opportunity to get parole. And that is the
2 standard under those cases, a meaningful opportunity
3 for release.

4 And given the situation, Your Honor, the way the
5 parole is done, he would be placed in a situation where
6 he would be arguing for parole without counsel. It
7 would just be him. He would not have a meaningful
8 opportunity, we feel, to explain to the court all of
9 the great things that he has done since he's been
10 incarcerated. And what I mean by that, Your Honor, is
11 he has taken virtually every class that there is. And
12 over those 24 years, he has not had any disciplinary
13 violations whatsoever.

14 But it's our belief, Your Honor, that despite that
15 he might be eligible for parole, if that is binding
16 upon the State, their assertion that he will be
17 eligible in 2022, it does not comport with the
18 standards under *Miller* and *Aiken vs. Byars* to the
19 extent that it is not a meaningful opportunity given
20 the obstacles that he will have in making that case.

21 I want to make sure that I've got everything, like
22 I say, on the record because I think it's my
23 understanding there are a number of these throughout
24 the state, and it's my understanding a number of these
25 will be proceeding towards the court of appeals to be

1 decided. And I just want to make absolutely certain,
2 Your Honor, that I have placed everything -- that I
3 preserve any issue, any and all issues for Mr. Finley
4 in this case.

5 If I may, Your Honor, may I have a minute or two?

6 THE COURT: Yes, sir.

7 (WHEREUPON, an off-the-record discussion was
8 held between the defendant and counsel.)

9 MR. GIBSON: Your Honor, there is also a concern
10 that -- and Mr. Finley has just notified me of this
11 today. And I do not have the code section, but it is
12 his understanding that there may be a code section
13 which states that when someone has a consecutive life
14 sentence, despite their eligibility for parole, they
15 will not be granted parole. And if that is, in fact,
16 the case, the fact that he is eligible for parole in
17 2022 will make no difference because the default
18 position of the parole board will be because he is
19 serving a consecutive sentence, he is not eligible.

20 And I think that's all we have, Your Honor.

21 THE COURT: Okay.

22 MS. GARY: Thank you, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. GARY: May it please the court. Judge,
25 Mr. Gibson is correct. The State's position is not

1 primarily based on the language in *Montgomery vs.*
2 *Louisiana*, but I do think it's bolstered by that
3 language, Judge.

4 Just simply to start, of course the State does
5 oppose Mr. Finley's motion, Judge, primarily because we
6 believe he is not among the class of offenders for whom
7 this decision, I guess, creates the opportunities for
8 resentencing. Judge, that's simply because he did not
9 receive a life without parole sentence. I understand
10 it's not as clear-cut as that, but that is our primary
11 position, Judge.

12 The statute in 1990 under which Mr. Finley was
13 charged and under which he pled provided that a person
14 must serve a specific term of years for a murder
15 conviction, and after that term of years, that person
16 can become parole eligible. In Mr. Finley's case, that
17 term is 30 years. And that's why we arrive at the 2022
18 parole eligibility date.

19 Judge, the intent behind both *Miller vs. Alabama*
20 and *Aiken vs. Byars*, as I'm sure you're well aware, is
21 to ensure that this specific class of offenders,
22 juveniles charged with homicide offenses who are facing
23 the possibility of life without parole, to ensure that
24 their sentencing hearing complies with -- or, I guess,
25 contains the opportunity to present evidence,

1 mitigating evidence, evidence of their youth, their
2 immaturity, their home life, all of those factors and
3 how they -- how their juvenility attributed to their
4 guilt in this case. And the reason why these cases are
5 so concerned with that particular hearing occurring is
6 because for these folks who receive a life without
7 parole sentence, that is their one chance. They have
8 no other opportunities at all, meaningful or not, to
9 present that mitigating evidence to the court.

10 Whether or not that happened in Mr. Finley's case,
11 I have not had a chance to review the original
12 sentencing hearing transcript. I don't even know if it
13 exists in this case.

14 But, again, Judge, our position is that he --
15 whether or not he had that opportunity on the outset,
16 he will have that opportunity again. And it's that
17 meaningful opportunity to present mitigating evidence
18 that both of these cases, *Miller* and *Aiken*, are
19 concerned with. And that is why, Judge, the State
20 believes that he will again have that opportunity.

21 Now, I can tell the judge as an officer of the
22 court I do not have folks from the parole board or the
23 parole department here today. I have spoken with them.
24 This is the third motion of this type that I've handled
25 for our office. I have spoken with that office about

1 each of these individuals. They tell me that -- and
2 I'll tell Your Honor as an officer of the court this is
3 what they told me -- that Mr. Finley will be parole
4 eligible in 2022 is based on that murder charge, that
5 lead charge. And that is how they calculate parole
6 eligibility.

7 They tell me that when he goes before that board,
8 should they determine that he is -- that they want to
9 grant him parole, regardless of those consecutive
10 sentences, he could walk out the doors of SCDC. That
11 is what I was told, and that is the basis of our
12 position, Judge, that parole eligibility as we know
13 from *Montgomery vs. Louisiana* our supreme court has
14 told us remedies these *Miller* violations because that
15 provides this meaningful opportunity to obtain release
16 that they're so concerned with.

17 And I will tell the court, too, in preparing for
18 all these hearings, I asked and actually Judge Kelly
19 inquired after our last hearing about whether or not a
20 person at a parole hearing is entitled to counsel. And
21 we have, in fact, learned that all they have to do is
22 request counsel at that hearing and counsel will be
23 provided for them. That is -- we have been informed
24 about that.

25 So, hopefully, just I basically wanted Mr. Finley

1 to know that that is an option for him, and I hope that
2 is one that he will take for himself, Judge.

3 But, again, I think that having counsel to help
4 represent you at a parole hearing makes the meaningful
5 opportunity to obtain release or makes that opportunity
6 more meaningful when you have a trained, licensed
7 attorney who can help present this mitigating evidence
8 to that parole board, Judge.

9 As to whether or not -- well, I guess, Your Honor,
10 I think we would rely primarily on the fact that he did
11 not receive a life without parole sentence, and his
12 parole eligibility, of course, giving him, again, that
13 second chance, that second meaningful opportunity, other
14 than the first chance that he had at his sentencing
15 hearing.

16 And, of course, we would rely on the language in
17 *Montgomery vs. Louisiana*, Judge, that tells us while a
18 state is not required to guarantee eventual freedom to
19 these offenders, our burden is to make sure -- what we
20 have to do in these cases, Judge, is to ensure that
21 those juveniles whose crimes reflected that fact that
22 they were juveniles and who have rehabilitated
23 themselves or who have matured have the opportunity to
24 present that case to a sentencer. In this case to the
25 parole board. Whether or not they receive parole is

1 not before us today, but it's that opportunity to
2 prepare that case and present that case to a sentencer,
3 to the parole board, that remedies any *Miller* violation
4 in this case. Thank you, Judge.

5 THE COURT: Now, before we go back to Mr. Gibson,
6 so, it is your understanding that a consecutive
7 sentence following the life sentence is not a bar to
8 parole?

9 MS. GARY: That is my understanding, Judge. I'm
10 not aware of a code section that would prohibit or in
11 some way tie the hands of the parole board. Judge, I'm
12 not and I would be happy to be educated on that, but --

13 THE COURT: That's what Mr. Gibson's
14 understanding -- am I correct, Mr. Gibson? Your
15 understanding is if the person has a consecutive
16 sentence after the life sentence, then he's
17 automatically disqualified for parole?

18 MR. GIBSON: That's my client's understanding of
19 what he's articulated to me today.

20 What I'd ask the court, if you would allow me, to
21 give me, say, a week to see if I can find a statute and
22 present something supplemental on that issue to
23 determine whether or not that's actually true or not.
24 I have no reason to dispute anything that Ms. Gary has
25 said today. I mean, she's always had the utmost

1 integrity, impeccable integrity. If she said they told
2 her that, I absolutely believe that.

3 However, Your Honor, given what my client has
4 raised, I would ask for a week or so to determine
5 whether or not that actually exists, whether or not
6 this code section that my client has spoken of to me
7 actually exists that would prohibit or present a bar to
8 his consideration.

9 THE COURT: Okay.

10 Ms. Gary, let me ask you this.

11 MS. GARY: Yes, sir.

12 THE COURT: All right. How do you -- with that
13 issue already discussed about the consecutive
14 sentences, how do you respond to Mr. Gibson's argument
15 about a de facto life without parole? Is that
16 applicable? I understand the State's argument in line
17 with the *Aiken v. Byars* language.

18 MS. GARY: Right.

19 THE COURT: Which, clearly, you read that opinion.
20 It goes through multiple references to life without
21 parole. It's explicit in that case. But how do you
22 respond to a de facto sentence of life without parole?
23 That's what Mr. Gibson is alleging this was.

24 MS. GARY: Yes, sir. There are a number of cases
25 from around the country, Judge, that are obviously not

1 binding on this court but I think are interesting that
2 have brought up this very issue of -- there's one
3 that's *McKinley vs. Butler*, a United States Court of
4 Appeals from the Seventh Circuit, 809 F.3d 908 from
5 2016, from just January of this year. Mr. McKinley in
6 that case received consecutive 50-year terms, one for
7 murder and one for possession of a firearm during the
8 commission of a violent crime.

9 And in that case, that's the very issue that
10 they're litigating is, is this a de facto life sentence
11 for this young man. In that case the court remanded
12 the issue for, basically, a *Miller* hearing, Judge.

13 But in that case, our position would be that
14 Mr. McKinley did not have a meaningful opportunity --
15 or he had no opportunity to obtain release. He was
16 never going to be parole eligible. He was never going
17 to have the opportunity to present any evidence to
18 anyone.

19 And so, I guess, to distinguish that case from
20 this case, Judge, of course, I understand that yes,
21 Mr. Finley might have the opportunity to present
22 evidence to a parole board. Now, what that board will
23 do or what his consecutive sentence will do to his
24 parole eligibility, I can't say that. I'm not a member
25 of that board. But I think that guaranteeing him that

1 meaningful opportunity is what *Miller* requires here.

2 The concerns in *Miller* and, of course, in *Aiken*
3 are, again, with only giving these folks that one
4 opportunity to present that evidence and who at the
5 time, especially in 1990 -- you know, most of these
6 cases are very old because the attorneys, while very
7 sound and very competent, could not have imagined what
8 could be coming down from the supreme court so maybe
9 they did not present evidence in each category that's
10 now required. So because those folks only had that one
11 chance, now we have to go back and give them another
12 chance.

13 Well, in Mr. Finley's case, he will have another
14 chance to present that evidence. Without resolving
15 this issue about the consecutive sentence and what that
16 will do, whether or not that will tie the parole
17 board's hands, I can't speak to that, Judge. But I
18 think that the argument -- our position would be still
19 that it's that meaningful opportunity that he -- that
20 remedies any *Miller* violation in this case.

21 The outcome of that opportunity, I don't believe
22 any of us can predict. But it's giving him the chance
23 to present the fact that he's rehabilitated, the fact
24 that he has no disciplinary infractions whatsoever and
25 all the things that he's accomplished in prison, and

1 how his juvenility was acting on him at the time of his
2 crimes, that opportunity is what we must give him, and
3 I think he will still have that, Judge.

4 THE COURT: Mr. Gibson.

5 MR. GIBSON: Yes, sir.

6 THE COURT: Let me ask you this.

7 MR. GIBSON: Yes, sir.

8 THE COURT: Now, I've heard the term "meaningful
9 opportunity" thrown about by you and from the State.

10 MR. GIBSON: Yes, sir.

11 THE COURT: But is not the standard under *Aiken*
12 *vs. Byars* "without the possibility"? Is that not the
13 language that's used in the case?

14 MR. GIBSON: That is the language that is used in
15 the case, Your Honor.

16 THE COURT: So what I read in the opinion is this
17 court is not to get into any kind of analysis about
18 whether or not the applicant for parole has a
19 likelihood of success or the strength of it, but there
20 has to be a possibility, however slight. Is that your
21 understanding of the case?

22 MR. GIBSON: Yes, Your Honor. But I guess what
23 I'm asking the court to do is make a separate
24 consideration of whether or not the mere fact that he
25 can go before a parole board is, in fact, a meaningful

1 opportunity to be released.

2 And the meaningful opportunity language comes from
3 the *Miller* case that says that a juvenile who's
4 sentenced -- or given such a sentence regardless needs
5 to have a meaningful opportunity to be released one
6 day. And so the ancillary issue that I'm asking the
7 court to consider is whether or not the mere -- the
8 mere fact that someone can go before a parole board, is
9 that a meaningful opportunity for release.

10 THE COURT: I understand your argument.
11 Mr. Gibson, I'm curious about this consecutive sentence
12 issue regarding the parole board.

13 MR. GIBSON: Yes, sir.

14 THE COURT: Because I understand what they told
15 Ms. Gary, and I would like to see if there was some
16 policy.

17 This is what I'm going to do. I'm going to read
18 these cases. And I, again, I'm familiar with them, but
19 I'd like to read them again in light of what you've
20 argued today. But I would like to see if there is any
21 policy or regulation governing consecutive sentences
22 and parole eligibility.

23 MR. GIBSON: Yes, sir.

24 THE COURT: Now, the obvious concern in the case
25 is the clear language of the case.

1 MR. GIBSON: Yes, sir.

2 THE COURT: The clear language of *Aiken vs. Byars*
3 does say "life without possibility of parole," the
4 class created. Now, I would note in reading that case,
5 which I'm sure both of you are familiar, there was a
6 dissent in the case. Because, as you know, *Miller*
7 dealt with mandatory life without parole sentences.
8 And that was the crux of the dispute was that a
9 juvenile was put into a class by virtue of a crime into
10 a mandatory sentence.

11 Now, I think the dissent in the *Aiken vs. Byars*
12 centered around that issue. South Carolina is a
13 discretionary state versus a mandatory state, but the
14 court chose to apply the standard anyway to it. So
15 we've already broadened the class that was created in
16 the *Miller* case to a larger class, but I am -- I'm
17 curious about this parole eligibility in relation to
18 the consecutive sentences.

19 So I'll give each party ten days to supplement the
20 record. And if y'all want to have a joint -- have a
21 conference call together with the Department of
22 Corrections folks, I mean, that would be up to you.
23 But I'll give each of you ten days to supplement the
24 record, and I'll take this under advisement and we'll
25 go from there.

1 MR. GIBSON: Thank you very much, Your Honor.

2 MS. GARY: Thank you, Judge.

3 MR. GIBSON: Your Honor, I have a copy of that
4 *McKinley* case.

5 THE COURT: That might be helpful for me to look
6 at.

7 We'll close the hearing.

8 (WHEREUPON, proceedings concluded at 10:33 a.m.)

9 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
))
) Indictment No. 1992-GS-23-01420; 1422; 1424; 1425
))
State of South Carolina,)
))
vs.) **MEMORANDUM TO SUPPLEMENT**
) **THE RECORD**
))
Michael Jay Finley,)
Defendant.)

FILED-CLERK OF COURT
PAUL B. WOODS
GREENVILLE CO. SC
2016 OCT 25 PM 4:05

ISSUE PRESENTED

Will Finley's 25 year sentences for armed robbery and arson 1st degree, listed only as "consecutive" on their respective sentencing sheets, preclude him from receiving parole hearings beginning in 2022 and, should the Parole Board grant him parole, will they bar his release?

STATEMENT OF THE CASE

On April 22, 1993, in Greenville County, Michael Jay Finley pled guilty to burglary 1st degree, arson 1st degree, armed robbery, and to the murder of James T. Brockman. He received concurrent sentences of life imprisonment within the South Carolina Department of Corrections for the murder and burglary charges and consecutive¹, 25 year sentences on the armed robbery and arson charges. On March 10, 2016, Finley filed a Motion for Resentencing, pursuant to *Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

A hearing on the merits of Finley's Motion for Resentencing was held on Friday, October 14, 2016, at the Oconee County Courthouse. Present were Kenneth Gibson, counsel for Finley,

¹ The sentence for both the armed robbery and arson 1st degree charges is written only as "consecutive." See Exhibit B.

and Elizabeth Gary, Assistant Solicitor, on behalf of the State. At the hearing, Finley, through his counsel, conveyed to the Court his belief that the presence of the two consecutive sentences on his record would preclude him from being considered for parole by the Parole Board. He also conveyed his belief that the two consecutive sentences would bar his release were the Board to grant him parole. While not able to cite a specific rule or statute, Finley was of the belief that such exists that would prohibit the Board from considering cases like his in which an individual becomes parole eligible on one or more charges but has additional charges labeled as "consecutive."

LAW/DISCUSSION

It is the State's position that Finley will be considered for parole when he becomes eligible in 2022 and, should the Board grant him parole, will be released. At the hearing on the merits, the State informed the Court of discussions with multiple sources within the Department of Corrections and the Department of Probation, Parole, and Pardon. Each informed the State that Finley's consecutive sentences would not preclude him from thoughtful consideration by the Parole Board upon eligibility nor would they bar his release should the Board grant him parole.

In support of that position, the State now offers the attached Affidavit from the General Counsel of the Department of Probation, Parole, and Pardon. (See Exhibit A). In addition, the State relies on *Major v. State Dep't of Prob., Parole & Pardon Servs.*, 384 S.C. 457, 682 S.E.2d 795 (2009) (A sentencing court is not authorized to determine parole eligibility and cannot, through the use of consecutive sentences, make a parole-eligible sentence ineligible for parole.); *Tilley v. State*, 334 S.C. 24, 511 S.E.2d 689 (2009); and *State v. Atkins*, 303 S.C. 214, 399 S.E.2d 760 (1990).

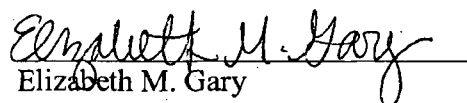
The State would point the Court to South Carolina Code subsection §24-21-640 (Supp. 2012), which provides, in part, "The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60." It is possible this is the statute to which Finley was referring in the hearing on the merits; however, this preclusion does not apply to Finley because, prior to the convictions at issue here, he had no criminal record.

CONCLUSION

The State respectfully requests this Court deny Finley's Motion for Resentencing. Finley will become parole eligible on August 11, 2022. At that time, he will be given the opportunity to appear before the Parole Board, which will determine whether he remains incarcerated or is granted parole. Should his request for parole be denied, he will have another opportunity to present his case to the Board in the future. The Parole Board is a sentencing authority and will assess Finley's case upon his becoming parole eligible. "A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 193, L.Ed. 2d 599, 622 (2016). Finley will be able to apprise himself of the very remedy prescribed by the Supreme Court in 2022 and, should the Board grant him parole, his release will not be barred by the presence of consecutive sentences on his record.

Respectfully submitted,

October 26, 2016


Elizabeth M. Gary
Assistant Solicitor
Thirteenth Judicial Circuit

STATE OF SOUTH CAROLINA) THIRTEENTH JUDICIAL CIRCUIT
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)
) Indictment No. 1992-GS-23-01420; 1422; 1424; 1425
)
The State)
)
)
vs.)
)
)
)
Michael Jay Finley,)
)
Defendant.)
)
DOB 3/11/1973 SCDC # 00198062)

The Affiant, having been sworn, testifies as follows:

1. I am General Counsel at the South Carolina Department of Probation, Parole and Pardon Services.
2. I was asked to review the sentence calculation and parole eligibility in this case.
3. On April 22, 1993, Mr. Finley received concurrent sentences of life imprisonment within the South Carolina Department of Corrections for murder and burglary 1st degree and consecutive, 25 year sentences for armed robbery and arson.
4. Pursuant to the language of South Carolina Code subsection §16-3-20 (Supp. 1990), under which Mr. Finley was charged, he is required to serve 30 years before becoming parole eligible. Mr. Finley will become parole eligible on August 11, 2022.
5. The fact that Mr. Finley has two sentences listed as "consecutive" will not preclude him from receiving parole hearings beginning in 2022. Furthermore, should the Parole Board grant him parole at that time or any time thereafter the "consecutive" sentences will not operate to bar release. There is no rule or section of the South Carolina Code that would prohibit his release based on the fact that two of his sentences are to be consecutive to the lead charge.

FURTHER THE AFFIANT SAYETH NOT.

Matthew Buchanan
South Carolina Department of Probation, Parole and Pardon

SWORN TO AND SUBSCRIBED BEFORE ME

This 25th day of October, 2016

Notary Public for South Carolina

My commission expires: 11/7/24

92-GS-23 1425

NOW COMES THE DEFENDANT

Michael Jay Finley

Who in open Court pleads guilty to the within indictment;

Armed Robbery

and consents to sentence this 25 day of February 1993

ATTEST:

Caroline W. Mattox
Clerk of Court

x Michael Jay Finley

SENTENCE

The defendant Michael Jay Finley is committed to the State Dept. of Corrections/County for a term of 25 months/years and/or to pay a fine \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years. Consecutive

Restitution For physical injury \$ _____
Yes / No Property damage \$ _____
to be paid _____

to clerk for _____ **

Other conditions _____

Date 2-25-93
4-22-93

C. W. B. [Signature]
Presiding Judge

* Costs and Assessments

Non-waivable	\$ _____
Not waived	\$ _____
Total	\$ _____

* Pay to Victim's Compensation Fund if subrogated.

Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 10-25-96

92-GS-23 1420

NOW COMES THE DEFENDANT

Michael Jay Finley

Who in open Court pleads guilty to the within indictment;

ARSON 1STand consents to sentence this 25 day of February 1993

ATTEST:

Caroline W. Mattoz
Clerk of Courtx Michael Jay Finley

SENTENCE

The defendant Michael Jay Finley is
 committed to the State Dept. of Corrections/County for a term of 25
 months/years and/or to pay a fine \$ _____; provided upon the service of
 _____ months/years and/or payment of \$ _____, plus pay/waive
 costs and assessments as applicable*, the balance suspended with probation for
 _____ months/years. Consecutive

Restitution

For physical injury \$ _____

Yes / No

Property damage \$ _____

to be paid _____

to clerk for _____ **

Other conditions _____

Date

2-25-93
4-22-93Charles R. [Signature]
Presiding Judge

* Costs and Assessments

Non-waivable

\$ _____

Not waived

\$ _____

Total

\$ _____

Clerk of Court A Certified Copy

* Pay to Victim's Compensation Fund if subrogated.

Paul B. Whelan
 Clerk of Court C.P. & G.S.
 Greenville County, SC
 Dated 10-25-16

92-GS-23 1422

NOW COMES THE DEFENDANT

Michael Jay Finley

Violent

Who in open Court pleads guilty to the within indictment;

Burglary 1ST

and consents to sentence this 25 day of February 1993

ATTEST:

Caroline W. Mattox
Clerk of Court

x Michael Jay Finley

SENTENCE

The defendant Michael Jay Finley is committed to the State Dept. of Corrections/County for a term of Life months/years and/or to pay a fine \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years. concurrent

Restitution For physical injury \$ _____
Yes / No Property damage \$ _____
to be paid _____

to clerk for _____ **

Other conditions _____

Date 2-25-93
4-22-93

C. V. B. Byrd
Presiding Judge

* Costs and Assessments

Non-waivable \$ _____
Not waived \$ _____
Total \$ _____

* Pay to Victim's Compensation Fund if subrogated.

A. Williams
Clerk of Court
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 10-25-16

92-GS-23 1424

NOW COMES THE DEFENDANT

Michael Jay Finley

Who in open Court pleads guilty to the within indictment;

Murderand consents to sentence this 25 day of February 1993

ATTEST:

Caroline W. Mattoz
Clerk of Courtx Michael Jay Finley

SENTENCE

The defendant Michael Jay Finley is committed to the State Dept. of Corrections/County for a term of Life months/years and/or to pay a fine \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution

For physical injury \$ _____

Yes / No

Property damage \$ _____

to be paid _____

to clerk for _____

Other conditions Credit jail time from 5-7-90 until released on bond
and from 2-25-93 to date on 11-21-90

Date 2-25-934-22-93C. Victor R. [Signature]

Presiding Judge

* Costs and Assessments

Non-waivable

\$ _____

Not waived

\$ _____

Total

\$ _____

* Pay to Victim's Compensation Fund if subrogated.

2016 OCT 25 PM 3:59
FILED-CLERK OF COURT
PAUL B. WICKER
GREENVILLE, SC
Clerk of Court
Greenville County, SC
dated 40-25-16

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT
 COUNTY OF GREENVILLE)
) Indictment No. 1992-GS-23-01420; 1422; 1424;
 The State of South Carolina) 1425
)
 v.)
) **ORDER DENYING MOTION FOR**
) **RESENTENCING**
 Michael Jay Finley,)

FILED-CLERK OF COURT
 PAUL B. WILKINSON
 GREENVILLE, CO. SC

2016 NOV 28 PM 4:09

THIS MATTER comes before the Court on Defendant's Motion for Resentencing. On April 22, 1993, in Greenville County, Michael Jay Finley pled guilty to burglary 1st degree, arson 1st degree, armed robbery, and to the murder of James T. Brockman. He received concurrent sentences of life imprisonment within the South Carolina Department of Corrections for the murder and burglary charges and consecutive, 25 year sentences on the armed robbery and arson charges. Finley timely filed this Motion for Resentencing pursuant to *Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). A hearing on the merits of Finley's motion was held on Friday, October 14, 2016, at the Oconee County Courthouse. Present were Finley and his counsel, Kenneth Gibson, and Elizabeth Gary, Assistant Solicitor, on behalf of the State.

Although Finley was sentenced to life, as opposed to life without the possibility of parole, he moves for resentencing pursuant to both *Miller* and *Aiken*, arguing the aggregate of his sentences amounts to a defacto life without parole sentence. Specifically, he asserts that his "consecutive" sentences for armed robbery and arson will preclude him from appearing before the Parole Board — or bar his release should the Board grant him parole — thus depriving him of the meaningful opportunity to obtain release that is required under these cases to avoid an Eighth Amendment violation. Finley argues that, according to *Miller* and *Aiken*, children are constitutionally different than adults, and absent a specialized hearing at which the sentencer evaluates mitigating evidence presented by the juvenile, any life sentence, with or without the possibility of parole, violates the Eighth Amendment.

RECEIVED

DEC 12 2016

SC Court of Appeals

In *Miller v. Alabama*, the United States Supreme Court held that mandatory sentences of life without the possibility of parole for juveniles convicted of homicide violate the Eighth Amendment's prohibition against cruel and unusual punishment and pose great risk of imposing a disproportionate sentence. *Miller*, 132 S.Ct. at 246, 183 L.Ed.2d at 424. The Court discussed at length the unique factors attributed to youth, their effect on a juvenile offender, and the constitutional importance of allowing juvenile offenders facing life without the possibility of parole an opportunity to present mitigating evidence to the sentencing court prior to receiving such a sentence. Under *Miller*, a sentencing court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* Notably, the Court did not hold that a juvenile cannot receive a life sentence for murder; rather, it "mandate[d] only that a sentencer follow a certain process- considering an offender's youth and attendant characteristics- before imposing a particular penalty," and allowed for those who did not present such evidence at the time of their sentencing to petition for resentencing *Id.* at 2471, 183 L.Ed.2d at 426.

In *Aiken v. Byars*, the South Carolina Supreme Court held that juveniles who received a sentence of life without the possibility of parole for homicide under the state's discretionary sentencing scheme and did not present the required evidence to the sentencing court are likewise entitled to move for resentencing based on the Eighth Amendment violation. *Aiken* requires that sentencing courts hold a specialized hearing to "fully explore the impact of a defendant's juvenility on the sentence rendered." *Aiken*, 410 S.C. at 543, 765 S.E.2d at 577. At the specialized sentencing hearing, the juvenile must have the opportunity to present evidence to the sentencing court regarding (1) the offender's age and maturity level; (2) the circumstances of his family life; (3) the facts surrounding the homicide, including the extent of his involvement; (4) "the incompetencies associated with youth"; and (5) whether rehabilitation is possible. *Id.* at 544, 765 S.E.2d at 577.

Finley's life sentence with the possibility of parole after the service of 30 years does not amount to a de facto life sentence and is not the type of sentence addressed under *Miller* or *Aiken*. Both cases are unequivocal in that the remedy they provide is only available to juveniles

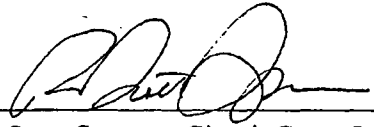
sentenced to life **without the possibility of parole** for homicide. *Miller*, 132 S.Ct.at 2460, 183 L.Ed.2d at 414; *Aiken*, 410 S.C. at 536, 765 S.E.2d at 573 (emphasis added). These cases rest on the principle that life without the possibility of parole is the harshest of all penalties for a juvenile offender. A sentencing court must provide a juvenile who is sentenced to life without the possibility of parole the meaningful opportunity to obtain release through the presentation of specialized, mitigating evidence prior to sentencing because they will not have another opportunity to present such evidence. For those who will become parole eligible, there are multiple opportunities to obtain release— prior to sentencing and every time they appear before the Parole Board.

South Carolina Code subsection §16-3-20 (Supp. 1990), the statute under which Finley was sentenced, provided parole eligibility after the service of 30 years in prison. Finley will become parole eligible on August 11, 2022. At that time, he will be given the opportunity to appear before the Parole Board, which will determine whether he remains incarcerated or is released on parole. After the hearing on the merits in this case, the State provided this Court with an affidavit from the General Counsel of the Department of Probation, Parole, and Pardon, addressing the effect of Finley's "consecutive" sentences on his parole eligibility. Having reviewed it, this Court finds the presence of two "consecutive" sentences on Finley's record will not preclude him from appearing before the Parole Board and, should the Board grant him parole, will not bar his release. *See Major v. State Dep't of Prob., Parole & Pardon Servs.*, 384 S.C. 457, 682 S.E.2d 795 (2009) (A sentencing court is not authorized to determine parole eligibility and cannot, through the use of consecutive sentences, make a parole-eligible sentence ineligible for parole.); *Tilley v. State*, 334 S.C. 24, 511 S.E.2d 689 (2009); and *State v. Atkins*, 303 S.C. 214, 399 S.E.2d 760 (1990). Should his request for parole be denied, Finley will have additional opportunities to present his case to the Board in the future. *See Montgomery v. Louisiana*, 136 S.Ct. 718, 736 193, L.Ed. 2d 599, 622 (2016) ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.") Finley will be able to apprise himself of the opportunity to obtain release beginning in 2022.

Michael Jay Finley did not receive a sentence of life imprisonment without the possibility of parole and will become parole eligible in 2022. As such, he is not a member of the class of offenders entitled to resentencing under *Miller* or *Aiken*.

THEREFORE, Finley's Motion for Resentencing is respectfully DENIED.

IT IS SO ORDERED.



R. Scott Sprouse, Circuit Court Judge

11-21, 2016
Greenville, South Carolina

RETURN

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

Michael Jay Finley
on the 9th day of May, 1990
Douglas W. Kelly
Signature of Constable or Law Enforcement Officer

This warrant is certified for service in
County _____ (Circle one)
Municipality _____

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

Signature of Judge (L.S.)

PRELIMINARY HEARING held by

Judge _____

on _____, 19____

with _____
Attorney for Defendant

Decision: _____

Date Set 5/9 1990
Judge Livingston Wilson

Amount NO Bond

Surety _____

RETURN WARRANT TO:

ARREST WARRANT

No. **C** 704514 Haynsworth
5-11-90

STATE OF SOUTH CAROLINA

County E
GREENVILLE MYRTLE BEACH (Circle one)

THE STATE

against 483
MICHAEL JAY FINLEY
90-73113

Address: BATTLE GROUND RD

CHESNEE, SC

Phone _____ SSN _____

Sex M Race W Height 5'11 Weight 170

DOB _____ DL _____ BRN/BLU _____

Offense MURDER

Offense Code
[] [] []

Code (or Ordinance) § _____

Issuing Judge HAYNSWORTH

Judge Code
[] [] []

Officer L N BELLEW

Agency G'VILLE S O

ORI No.
[] [] [] []

Date of Offense MAY 6, 1990

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

WITNESSES:

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

JURORS

COMPUTER ENTERED
MAY 9 1990
GREENVILLE COUNTY
SHERIFFS OFFICE

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

AFFIDAVIT

Personally appeared before me, judge of the Court, one L.N. BELLEW,
 who being duly sworn, deposes and says that MICHAEL JAY FINLEY (name of defendant) did within this County
 and State on MAY 6 19 90, violate the criminal laws of the State of South Carolina [or ordinance of the municipality
 of _____] in the following particulars:

DESCRIPTION OF OFFENSE

MURDER

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

INVESTIGATORS HAVE A STATEMENT FROM THE DEFENDANT IN WHICH HE ADMITS THAT HE AND A CO-
 DEFENDANT WENT TO THE RESIDENCE OF JAMES T. BROCKMAN AT SELMA ST. GREENVILLE, S.C.
 (GREENVILLE COUNTY) ON MAY 6, 1990 AND BEAT, STRANGLED AND BURNED THE VICTIM DURING THE
 COARSE OF AN ARMED ROBBERY. THE VICTIM WAS DISCOVERED BY EMERGENCY PERSONNEL FIGHTING THE
 FIRE AT THE RESIDENCE DECEASED. AUTOPSY RESULTS INDICATED THAT THE VICTIM DIED AS A RESULT
 OF THE INJURIES AND FIRE CAUSED BY THE DEFENDANTS.

Sworn to and Subscribed before me,

This 9th day of MAY, 19 90.

C.H. Morrow (L.S.)
 Signature of issuing Judge

Address _____

Phone: _____

L.N. Bellew
 Signature of Affiant

Address SHERIFF'S OFFICEPhone: 271-5369

STATE OF SOUTH CAROLINA ARREST WARRANT

COUNTY OF GREENVILLE

[or MUNICIPALITY OF _____]

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

It appearing from the above affidavit that there are reasonable grounds to believe that MICHAEL JAY FINLEY
 (name of defendant) did on MAY 6 19 90, violate the criminal laws of the State of South Carolina [or ordinance
 of the municipality of _____] as set forth below:

DESCRIPTION OF OFFENSE

MURDER

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be
 dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable.

Done at GREENVILLE, S.C.
 on MAY 9, 19 90.

C.H. Morrow (L.S.)
 Signature of Judge

FORM CONTINUES ON BACK
 ORIGINAL

C 704514

RETURN

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

Michael Jay Finley
on the 9th day of May, 19 90
Douglas W. Kelly
Signature of Constable or Law Enforcement Officer

This warrant is certified for service in
County _____ (Circle one)
Municipality _____

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

Signature of Judge (L.S.)

PRELIMINARY HEARING held by

Judge _____

on _____, 19 _____

with _____
Attorney for Defendant

Decision: _____

BAIL
Date Set 5/9, 19 90

Judge J. W. M. Jones

Amount NO Bond

Surety _____

RETURN WARRANT TO:

ARREST WARRANT

No. **C** 704516 *Haynsworth 5-11-90*

STATE OF SOUTH CAROLINA
Greenville County (Circle one)
~~Municipality~~

THE STATE *501*

against
MICHAEL JAY FINLEY
90-73113

Address: BATTLEGROUND RD
CHESNEE, SC

Phone _____ SSN _____

Sex M Race W Height 5'11 Weight 170

DOB _____ DL BRN/BLU

Offense ARMED ROBBERY

Offense Code

Code (or Ordinance) § _____

Issuing Judge HAYNSWORTH
Judge Code

Officer L N BELLEW

Agency G'VILLE S O
ORI No.

Date of Offense MAY 6, 1990

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

WITNESSES:

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

JURORS

COMPUTER ENTERED
MAY 9 1990
GRENVILLE COUNTY
SHERIFF'S OFFICE

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

AFFIDAVIT

Personally appeared before me, judge of the Court, one L.N. BELLEW, who being duly sworn, deposes and says that MICHAEL JAY FINLEY (name of defendant) did within this County and State on MAY 6 19 90, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of _____] in the following particulars:

DESCRIPTION OF OFFENSE

ARMED ROBBERY

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

INVESTIGATORS HAVE A STATEMENT FROM THE DEFENDANT THAT HE AND A CO-DEFENDANT WENT TO THE RESIDENCE OF JAMES T. BROCKMAN, SELMA ST. GREENVILLE, S.C. (GREENVILLE COUNTY) AND ROBBED THE VICTIM, BROCKMAN, OF PERSONAL EFFECTS AND U.S. CURRENCY WHILE ARMED WITH A HANDGUN.

Sworn to and Subscribed before me,

This 9 th day of MAY, 19 90.

L.N. Bellew
Signature of Affiant

Address SHERIFF'S OFFICEPhone: 271-5429

Address _____

Phone: _____

STATE OF SOUTH CAROLINA ARREST WARRANT

COUNTY OF GREENVILLE

[or MUNICIPALITY OF _____]

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

It appearing from the above affidavit that there are reasonable grounds to believe that MICHAEL JAY FINLEY (name of defendant) did on MAY 6 19 90, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of _____] as set forth below:

DESCRIPTION OF OFFENSE

ARMED ROBBERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at GREENVILLE, S.C.
on MAY 9, 19 90.

Ch. Morrow
Signature of Judge (L.S.)

C 704516

RETURN

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

Michael Jay Finley
on the 19th day of May, 1990
Douglas W. Kelly
Signature of Constable or Law Enforcement Officer

This warrant is certified for service in
County _____ (Circle one)
Municipality _____

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

Signature of Judge _____ (L.S.)

PRELIMINARY HEARING held by

Judge _____

on _____, 19____

with _____
Attorney for Defendant

Decision: _____

BAIL

Date Set 5/9 1990

Judge Jimmy Wilson

Amount NO BAIL

Surety _____

RETURN WARRANT TO:

ARREST WARRANT

No. **C** 704520 *Haynsworth*

STATE OF SOUTH CAROLINA *K*

GREENVILLE County Municipality (Circle one)

THE STATE *407*

against 90-73113

Micheal Jay Finley

Address: Battleground Road

Chesnee, S.C.

Phone _____ SSN _____

Sex M Race W Height 5'11" Weight 170

DOB _____ DL _____

Offense ARSON 1st degree

_____ ☐ ☐ ☐

Offense Code

Code (or Ordinance) § 16-11-110

Issuing Judge Haynsworth

☐ ☐ ☐

Judge Code

Officer L.S. Wendelken

Agency G.C.S.O.

☐ ☐ ☐

ORI No.

Date of Offense 5-6-90

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

WITNESSES:

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

JURORS

COMPUTER ENTERED
MAY 9 1990
GREENVILLE COUNTY
SHERIFF'S OFFICE

STATE OF SOUTH CAROLINA

56
COUNTY OF GREENVILLE

AFFIDAVIT

Personally appeared before me, judge of the Court, one INVESTIGATOR L.S. WENDELKEN, who being duly sworn, deposes and says that MICHEAL JAY FINLEY (name of defendant) did within this County and State on 5-6- 1990, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of _____] in the following particulars:

DESCRIPTION OF OFFENSE

ARSON 1st degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts: On May 6, 1990 a fire of incendiary nature heavily damaged the residence at Selma Street, in Greenville County, S.C. Investigators have a statement from the defendant that he and a codefendant went to the residence of the victim, James T. Brockman on 5-6-90, at Selma Street and after robbing, beating, and strangling the victim, intentionally set fire to the residence. The victim was discovered by rescue personnel fighting the fire. Autopsy results indicate the victim died as a result of injuries and fire caused by the defendant.

C 704520

Sworn to and Subscribed before me,

This 9th day of May, 1990

[Signature]
Signature of Affiant

Address 4 McGee Street
Greenville, S.C.
Phone: 271-5384

[Signature] (L.S.)
Signature of Issuing Judge

Address 4 McGee Street
Greenville, S.C.
Phone: 271-5302

STATE OF SOUTH CAROLINA ARREST WARRANT

COUNTY OF Greenville

[or MUNICIPALITY OF _____]

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

It appearing from the above affidavit that there are reasonable grounds to believe that Micheal Jay Finley (name of defendant) did on May 6, 19 90, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of _____] as set forth below:

DESCRIPTION OF OFFENSE

ARSON 1st degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Greenville, S.C.
on May 9, 1990.

[Signature] (L.S.)
Signature of Judge

WITNESSES

JOE WOOD

SHERIFF'S OFFICE

5/9/90

ARREST WARRANT NO. C704516

ACTION OF GRAND JURY

TRUE BILL

D.C. Beekwith III

FOREMAN GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

92 CS 23 1425
DOCKET NO.

The State of South Carolina,
GREENVILLE

County of

4-22-99

COURT OF GENERAL SESSIONS
FEBRUARY 1992

TERM

Deferred
PLEAD GUILTY

THE STATE

vs.

MICHAEL JAY FINLEY

139

Indictment for

ARMED ROBBERY

#161

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on FEBRUARY 25, 1992,
the Grand Jurors of GREENVILLE County present upon their oath:

That MICHAEL JAY FINLEY did in Greenville County on or about the 6th day of May, 1990, while acting in concert with Hoa Qing Zhan a/k/a Daniel Zhan, and while armed with a deadly weapon, to-wit: handguns and shotguns, feloniously take from the person in the presence of James T. Brockman, by means of force or intimidation, goods and money described as follows: U. S. Currency, firearms, and jewelry.

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


SOLICITOR

WITNESSES

JOE WOOD

SHERIFF'S OFFICE

5/9/90

02 GS 23

1120 -

The State of South Carolina,

County of

GREENVILLE

4-2293

COURT OF GENERAL SESSIONS

FEBRUARY

1992

TERM

Deferred trial
PLEAD GUILTY THE STATE

vs.

W/M

MICHAEL JAY FINLEY, 19

DOB 3/11/73

SS # 247-39-0002

231 Walnut Grove

Pauline Rd

Pauline, S.C. 29374

Maldin

Laney

006

4/22/93

Indictment for

Jinda Moffitt

ARSON - 1ST DEGREE

ARREST WARRANT NO. C704520

ACTION OF GRAND JURY

TRUE BILL

J.C. Bushnell III

FOREMAN GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

#162

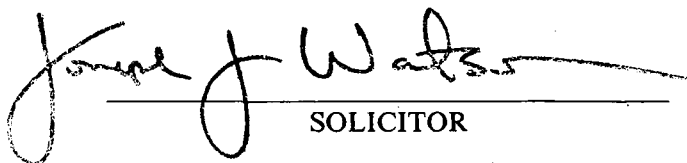
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARSON - 1st DEGREE

At a Court of General Sessions, convened on FEBRUARY 25, 1992,
the Grand Jurors of GREENVILLE County present upon their oath:

That MICHAEL JAY FINLEY did in Greenville County on or about the 6th day of May, 1990, while acting in concert with Hoa Qing Zhan a/k/a Daniel Zhan, wilfully and maliciously set fire to, or burn, or cause to be burned, or did aid, counsel or procure the burning of a dwelling house of James T. Brockman, located at Selma Street, Greenville, South Carolina, resulting in the destruction of said dwelling house. Said burning did cause serious bodily injury or directly or indirectly the death of James T. Brockman and is a violation of §16-11-110 of the South Carolina Code of Law, 1976 (as amended).

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


SOLICITOR

WITNESSES

JOE WOOD

SHERIFF'S OFFICE

5/9/90

ARREST WARRANT NO. NO WARRANT

ACTION OF GRAND JURY

TRUE BILL

S.C. Beckwith III

FOREMAN GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

92-03-23

1422

The State of South Carolina,

County of GREENVILLE

42293

COURT OF GENERAL SESSIONS

FEBRUARY

1992

TERM

Deferred Sent
PLEAD GUILTY
violent

THE STATE

VS.

MICHAEL JAY FINLEY

079

Indictment for

BURGLARY - 1ST DEGREE

#164

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY - 1ST DEGREE

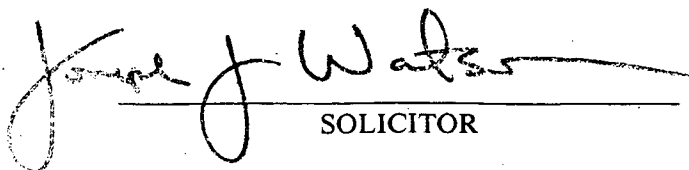
At a Court of General Sessions, convened on FEBRUARY 25, 1992,
the Grand Jurors of GREENVILLE County present upon their oath:

That MICHAEL JAY FINLEY did in Greenville County on or about the 6th day of May, 1990, while acting in concert with Hoa Qing Zhan a/k/a Daniel Zhan, enter the dwelling of James T. Brockman, Selma Street, without the consent of James T. Brockman and with the intent to commit a crime therein. While effecting entry, or while in the dwelling, or in immediate flight therefrom, the defendant or his co-defendant, Hoa Qing Zhan a/k/a Daniel Zhan:

1. Was armed with a deadly weapon,
2. Caused physical injury to James T. Brockman, who was not a participant in the crime,
3. Used or threatened to use a dangerous instrument, to-wit: a shotgun and a pistol,
4. Displayed a pistol.

The entering of the dwelling of James T. Brockman occurred in the nighttime.

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


SOLICITOR

WITNESSES

JOE WOOD

SHERIFF'S OFFICE

5/9/90

ARREST WARRANT NO. C704514

ACTION OF GRAND JURY

TRUE BILL

B.C. Beal III
FOREMAN GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

92-GS-23

DOCKET NO.

1424

The State of South Carolina,

County of

GREENVILLE

422-93

COURT OF GENERAL SESSIONS

FEBRUARY

1992

TERM

THE STATE

vs.

MICHAEL JAY FINLEY

Deferred Sub
PLEAD GUILTY

116

Indictment for

MURDER

#160

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on FEBRUARY 25, 1992,
the Grand Jurors of GREENVILLE County present upon their oath:

That MICHAEL JAY FINLEY did in Greenville County on or about the 6th day of May, 1990, act in concert with Hoa Quing Zhan a/k/a Daniel Zhan in the Armed Robbery of James T. Brockman, and that during the commission of this criminal act, did feloniously, wilfully, and with malice aforethought, murder James T. Brockman by strangulation and by setting said victim on fire. Said James T. Brockman did die in Greenville County as a proximate result thereof on or about the 6th day of May, 1990.

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


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

The State,

vs.

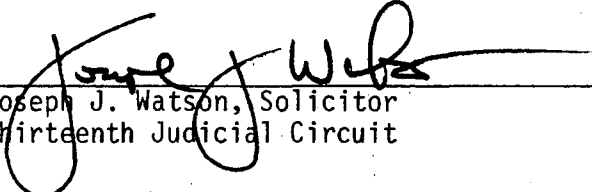
Michael Jay Finley,

Defendant.

**NOTICE OF INTENTION
TO SEEK DEATH PENALTY**

TO: H. F. PARTEE, Attorney for Defendant

PLEASE TAKE NOTICE that at the trial of the above entitled case to be held at least thirty (30) days from the service of this Notice, of which you will be timely notified, the imposition of the sentence of death upon the defendant, Michael Jay Finley, will be sought by the State.


Joseph J. Watson, Solicitor
Thirteenth Judicial Circuit

Greenville, South Carolina

1-22-91, 1991

FILED
CLERK
JAN 22 2 26 PM '91
THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
 :
 COUNTY OF GREENVILLE)

STATE)

-VS-)

Michael Jay Finley)

AFFIDAVIT OF SERVICE

JAN 22 4 39 PM '91
 CLERK OF COURT
 GREENVILLE
 SOUTH CAROLINA

Personally appeared Daniel R. Clyde
 who being duly sworn, says and deposes that he is Investigator, 13th Judicial
Circuit Solicitor's Office
 that he served copy of Intention to Seek Death Penalty

dated January 22, 1991, in the above entitled action, delivering
 to H F Partee, Attorney for Defendant
 personally, and leaving with him copy of the same on the 22 day of January
1991, the deponent is not a party to the action.

Daniel R. Clyde

Sworn to before me this

22 day of January, 19 91.

Carol S. Alderson
 Notary Public for South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

GENERAL SESSIONS

STATE)
-VS-)
Michael Jay Finley)

AFFIDAVIT OF SERVICE

CLERK OF COURT
JAN 22 4 39 PM '91
CLERK OF COURT
JAN 22 4 39 PM '91

Personally appeared Daniel R. Clyde
who being duly sworn, says and deposes that he is Investigator, 13th Judicial
Circuit Solicitor's Office
that he served copy of Intention to Seek Death Penalty

dated January 22, 1991, in the above entitled action, delivering
to H F Partee, Attorney for Defendant, who accepts service for this defendant
personally, and leaving with him copy of the same on the 22 day of January
19 91, the deponent is not a party to the action.

Daniel R. Clyde

Sworn to before me this

22 day of January, 19 91.

Carol A. Glendon
Notary Public for South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GREENVILLE
COUNTY OF GREENVILLE) 93-GS-23-1420, 1422, 1424, 1425,

THE STATE,)

 -VS-) TRANSCRIPT OF RECORD
) GREENVILLE, S. C.
MICHAEL JAY FINLEY,) February 25, 1993

 DEFENDANT.)

BEFORE: THE HONORABLE C. VICTOR PYLE, JR., JUDGE.

APPEARANCES: JOSEPH H. WATSON, SOLICITOR
 13TH JUDICIAL CIRCUIT
 GREENVILLE COUNTY COURTHOUSE
 GREENVILLE, SOUTH CAROLINA 29601

FOR THE STATE.

JOHN I. MAULDIN, ESQUIRE
P. O. BOX 10264, F. S.
GREENVILLE, SOUTH CAROLINA 29603

JEFFERY A. MERRIAM, ESQUIRE
CARTER, SMITH, MERRIAM, TAPP, ROGERS &
TRAXLER
P. O. BOX 10828
GREENVILLE, SOUTH CAROLINA 29603

FOR THE DEFENDANT.

Dorothy A. Laney, Court Reporter
412 Pimlico Road
Greenville, South Carolina 29607

STATE VS. MICHAEL JAY FINLEY - GUILTY PLEA - 2
FEBRUARY 25, 1993 - GREENVILLE COUNTY - JUDGE PYLE

P R O C E E D I N G

CLERK: Michael Finley? Your Honor, this is 92-1420, the State vs. Michael Jay Finley, indicted for arson first degree. Now comes the defendant who in open court pleads guilty to the within indictment and consents to sentence; 92-1422, the State vs. Michael Jay Finley, indicted for burglary, first degree. Now, comes the defendant who in open court pleads guilty to the within indictment and consents to sentence; 92-1424, the State vs. Michael Jay Finley, indicted for murder. Now comes the defendant who in open court pleads guilty to the within indictment and consents to sentence: 92-1425, the State vs. Michael Jay Finley, indicted for armed robbery. Now comes the defendant who in open court pleads guilty to the within indictment and consents to sentence.

THE COURT: Now, Mr. Mauldin, you and Mr. Merriam represent this defendant?

MR. MAULDIN: That's correct, Your Honor.

MR. MERRIAM: Yes, sir.

THE COURT: Have you explained to Mr. Finley the charges which are contained in these indictments?

MR. MAULDIN: Yes, sir.

MR. MERRIAM: Yes, sir.

THE COURT: The possible punishment for each offense?

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1 MR. MAULDIN: Yes, sir.

2 MR. MERRIAM: Yes, sir.

3 THE COURT: And of his constitutional rights,
4 including his right to a trial by jury?

5 MR. MAULDIN: Yes, sir.

6 MR. MERRIAM: Yes, sir.

7 THE COURT: And in your opinion, does this
8 defendant understand those rights, the possible punishment
9 and all of his rights?

10 MR. MAULDIN: Yes, sir.

11 MR. MERRIAM: Yes, sir.

12 THE COURT: And does he indicate to you that he
13 wishes to plead guilty or not guilty?

14 MR. MAULDIN: Guilty, Your Honor.

15 THE COURT: And do you agree with his decision to
16 plead guilty?

17 MR. MAULDIN: Yes, sir.

18 MR. MERRIAM: Yes, sir.

19 THE COURT: From the investigation of the facts and
20 the circumstances of this case by you, do each of you feel
21 that the State could produce sufficient evidence to
22 convince a jury beyond a reasonable doubt of this
23 defendant's guilt and that if he were to stand trial, his
24 conviction would be probable?

25 MR. MAULDIN: Yes, sir.

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1 MR. MERRIAM: Yes, sir.

2 THE COURT: Now, with respect to his competency to
3 plead guilty today, has he received any kind of competency
4 hearing?

5 MR. MAULDIN: He has not received---has not been
6 sent to the State Hospital necessarily, Your Honor, but we
7 have had private psychologists involved in this case and
8 both Jeff and I are satisfied beyond any question that
9 Michael is fully competent and understands the
10 proceedings.

11 THE COURT: All right. Okay, now, Mr. Finley, if
12 you will at this time, please, hold up your right hand. I
13 need to put you under oath, sir.

14 CLERK: Do you swear to tell the truth, the whole
15 truth and nothing but the truth, so help you, God?

16 DEFENDANT: I do.

17 CLERK: State your name for the record?

18 DEFENDANT: Michael Jay Finley.

19 THE COURT: Okay, now, Mr. Finley, if you will
20 speak into this microphone right in front of you so that
21 we all can hear you. You are Michael Jay Finley?

22 DEFENDANT: Yes.

23 THE COURT: Now, Mr. Finley, before I can accept a
24 plea of guilty in this case, it is necessary for me to
25 make sure that your plea of guilty is made freely and

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1 voluntarily and, therefore, I need to ask you some
2 questions and if you do not understand the questions or
3 the words that I use, you should tell me that so that I
4 can try to explain them to you. I also need to tell you
5 that you may consult with your lawyers about any matter
6 during my questions and if you feel that it is necessary,
7 you may ask for an opportunity to talk to them at any
8 time. Do you understand that?

9 DEFENDANT: Yes, sir.

10 THE COURT: And how old are you, sir?

11 DEFENDANT: Nineteen.

12 THE COURT: And how much education have you had?

13 DEFENDANT: I went through the eleventh grade.

14 THE COURT: So you know how to read and write?

15 DEFENDANT: Yes.

16 THE COURT: You're educated?

17 DEFENDANT: Yes.

18 THE COURT: And prior to this involvement, did you
19 work?

20 DEFENDANT: Yes.

21 THE COURT: What kind of work did you do?

22 DEFENDANT: I worked at China Gourmet Restaurant.
23 I was a cashier.

24 THE COURT: Have you ever been treated for alcohol
25 or drug abuse--

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1 DEFENDANT: No, I have not.

2 THE COURT: --or for any mental illness of any type
3 whatsoever?

4 DEFENDANT: No. Unk-uh.

5 THE COURT: Have you taken any medication or any
6 drugs or had any alcohol to drink in the last twenty four
7 hours?

8 DEFENDANT: No, I have not.

9 THE COURT: So at this time, you are completely
10 sober?

11 DEFENDANT: Yes.

12 THE COURT: You know what you're doing?

13 DEFENDANT: Yes.

14 THE COURT: And, now, Mr. Mauldin and Mr. Merriam,
15 do you agree that Mr. Finley knows and understands what
16 he's doing today?

17 MR. MAULDIN: Yes, sir.

18 MR. MERRIAM: Yes, sir.

19 THE COURT: Mr. Finley, are you right at this time
20 aware of any physical, emotional or nervous problem that
21 might keep you from understanding what you're doing?

22 DEFENDANT: No.

23 THE COURT: Now, I believe that you have suffered
24 some kind of illness some time ago which necessitated me
25 letting you out on bond, which you've been since that

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1 time. Has that illness in any way interfered with your
2 ability to---to understand what you're doing?

3 DEFENDANT: No, sir.

4 THE COURT: You're over that now?

5 DEFENDANT: I guess. I believe I am.

6 THE COURT: You've recovered?

7 DEFENDANT: Yeah.

8 THE COURT: And it is not in any way interfering
9 with your ability right at this time to understand what
10 you're doing?

11 DEFENDANT: No, sir.

12 THE COURT: Is that correct?

13 DEFENDANT: (Nodded yes.)

14 THE COURT: Now, you've heard your lawyers tell me
15 that they explained all of your rights to you, all of
16 these charges against you and the possible punishment?

17 DEFENDANT: Yes, sir.

18 THE COURT: And do you understand all of that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Now, you, as I understand, are pleading
21 guilty to murder, to armed robbery, to burglary in the
22 first degree and to arson in the first degree. Now, with
23 respect to---to murder, the mandatory sentence for that is
24 life. Do you understand that?

25 DEFENDANT: Yes, sir.

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1 THE COURT: For armed robbery, twenty five years.

2 Do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: For burglary in the first degree, life.

5 Do you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: And for arson, twenty five years. Do
8 you understand that?

9 DEFENDANT: Yes, sir.

10 THE COURT: And do I understand you to be telling
11 me that you understand the nature of these charges against
12 you and you also understand the maximum sentences which
13 could be imposed on you?

14 DEFENDANT: Yes, sir.

15 THE COURT: You understand that those sentences
16 could be imposed consecutively by me or they could be made
17 to run concurrent by me?

18 DEFENDANT: Yes, sir.

19 THE COURT: You understand that?

20 DEFENDANT: Yes, sir.

21 THE COURT: Now, Mr. Finley, when you plead guilty,
22 you give up certain important constitutional rights which
23 you have when you stand trial by a jury. First of all,
24 you give up your right to remain silent; that is your
25 right against self incrimination, your right to say

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1 nothing at all. Do you understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that you cannot be
4 compelled to testify or present---or provide evidence
5 against yourself?

6 DEFENDANT: Yes, sir.

7 THE COURT: You understand that?

8 DEFENDANT: Yes, sir.

9 THE COURT: Secondly, you give up your right to
10 have a jury trial, that is, your right to have a jury
11 decide whether or not you are guilty beyond a reasonable
12 doubt. The jury would base its decision upon evidence
13 which the State presented and on any evidence that you
14 might want to introduce.

15 DEFENDANT: Yes, sir.

16 THE COURT: In the trial, you would be presumed
17 innocent and the State would have to produce evidence that
18 would convince all twelve members of the jury of your
19 guilt beyond a reasonable doubt. And, third, you give up
20 your right to confront and be confronted by the witnesses
21 against you, that is the right to see, to hear, to cross
22 examine any witnesses that may be called against you and
23 during the trial, the right to subpoena and call witnesses
24 in your own behalf. Do you, son, understand all of those
25 rights?

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1 DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that when you plead
3 guilty, you give up all of these constitutional rights?

4 DEFENDANT: Yes, sir.

5 THE COURT: And is that what you want to do?

6 DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that if I accept your
8 plea of guilty today, then you won't get a trial, or a
9 jury trial at a later time?

10 DEFENDANT: Yes, sir.

11 THE COURT: This will end it, you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: Now, understanding then the nature of
14 the charges against you and the consequences of a guilty
15 plea, do you wish to plead guilty to these charges?

16 DEFENDANT: Yes, sir.

17 THE COURT: And do you understand that when you
18 plead guilty, you admit the truth of the charges which
19 have been made against you?

20 DEFENDANT: Yes, sir.

21 THE COURT: Now, you may have defenses to these
22 charges against you. I don't know about that. But do you
23 understand that if you plead guilty, you will waive or
24 give up any defense or defenses to these charges?

25 DEFENDANT: Yes, sir.

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1 THE COURT: Did you commit these offenses?

2 DEFENDANT: Yes, sir.

3 THE COURT: Now, have there been any plea
4 negotiations in---in the case?

5 SOLICITOR: Yes, sir.

6 THE COURT: All right, sir?

7 SOLICITOR: The State originally filed a death
8 notice on this defendant and his co-defendant. At this
9 time, we are dropping the death notice on this defendant
10 and in that regard, Your Honor, although the Court does
11 not have any control over parole, I would request that
12 some time during the questioning this defendant
13 understands the thirty year parole eligibility.

14 THE COURT: We will. All right, now, Mr. Finley,
15 you have heard the Solicitor relate to me the negotiations
16 which have been entered into between his office and your
17 attorneys. Is that your understanding of the extent of
18 the negotiations?

19 DEFENDANT: Yes, sir.

20 THE COURT: Is there any more to it that you know
21 of?

22 DEFENDANT: None that I know of.

23 THE COURT: And do you still wish to plead guilty?

24 DEFENDANT: Yes, sir.

25 THE COURT: Now, has anyone promised you anything

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1 or held out any hope of reward to get you to plead guilty?

2 DEFENDANT: No, they have not.

3 THE COURT: Has anyone threatened you or used force
4 to get you to plead guilty?

5 DEFENDANT: No.

6 THE COURT: Has anyone used any pressure or
7 intimidation to cause you to plead guilty?

8 DEFENDANT: No, sir.

9 THE COURT: Have you had enough time to make up
10 your mind as to whether or not you want to plead guilty?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you need any more time to talk to
13 your lawyers?

14 DEFENDANT: No, sir.

15 THE COURT: Are you pleading guilty of your own
16 free will and accord?

17 DEFENDANT: Yes, sir.

18 THE COURT: Now, Mr. Finley, are you satisfied with
19 the manner in which your lawyers have advised you and
20 represented you in this case?

21 DEFENDANT: Yes, sir, I am.

22 THE COURT: Have you talked with your lawyers as
23 often and for as long as you feel necessary for them to
24 properly represent you?

25 DEFENDANT: Yes, sir.

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1 THE COURT: Do you need any more time to talk to
2 them?

3 DEFENDANT: No, sir.

4 THE COURT: Have you understood your talks with
5 them?

6 DEFENDANT: Yes, I do.

7 THE COURT: Have they done for you everything that
8 you've asked them to do?

9 DEFENDANT: Yes, they have.

10 THE COURT: Have they done anything that you don't
11 like?

12 DEFENDANT: No, they have not.

13 THE COURT: Are you fully and completely satisfied
14 with their services?

15 DEFENDANT: Yes, sir, I am.

16 THE COURT: Do you have any complaint whatsoever to
17 make against your lawyers?

18 DEFENDANT: No, sir.

19 THE COURT: The solicitor's office?

20 DEFENDANT: No, sir.

21 THE COURT: The law enforcement officers?

22 DEFENDANT: Those will be filed at a later time or
23 something. We sent the letter.

24 MR. MAULDIN: Your Honor, there was some concern
25 about the treatment when that condition came up at the

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1 jail, the medical treatment--

2 THE COURT: All right.

3 MR. MAULDIN: --that Michael did express concern
4 over.

5 THE COURT: All right, that's a complaint you might
6 have against the people who run the jail? Is that
7 correct?

8 DEFENDANT: Yes, sir.

9 THE COURT: Except for that, do you have any other
10 complaint against the arresting officers or any other law
11 enforcement officer?

12 DEFENDANT: No, sir.

13 THE COURT: In other words, what I want to know,
14 son, is have you been treated fairly?

15 DEFENDANT: Yes, sir.

16 THE COURT: Now, Mr. Finley, have you understood
17 all the questions that I've asked you?

18 DEFENDANT: Yes, sir.

19 THE COURT: Is there anything you'd like to ask me
20 about what we've just been over?

21 DEFENDANT: No, sir.

22 THE COURT: And do you understand that you have a
23 right to appeal the guilty plea and sentence of the Court
24 and that you and your attorneys will have to do that
25 within ten days from the date of sentence?

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1 DEFENDANT: Yes, sir.

2 THE COURT: All right, Solicitor, I'm going to, at
3 this time, ask that you relate to me the facts upon which
4 the State rely?

5 SOLICITOR: Yes, sir. Before I do that, can I
6 approach Mr. Mauldin and ask him--

7 THE COURT: Sure.

8 (Conference between counsel outside the hearing of
9 the reporter.)

10 THE COURT: Now, Mr. Finley, I want you to listen
11 to the Solicitor. He's going to relate to me the facts
12 upon which the State relies and when he has concluded
13 these facts, then I'll have some further questions for
14 you. Okay?

15 DEFENDANT: Yes, sir.

16 THE COURT: All right, Solicitor?

17 SOLICITOR: Your Honor, before I do that, let me
18 just ask the court if it wants to inquire---this case is
19 approaching three years old and Mr. Mauldin was only
20 appointed about six months ago. Mr. Partee was his
21 attorney for, I guess, two years or more and I don't know
22 if it's appropriate for you to ask if he's satisfied--

23 THE COURT: I can ask you just to be sure, Mr.
24 Finley, before Mr. Mauldin took over, Mr. Partee was the
25 former Public Defender in Greenville County and he was

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1 handling this matter with---along with Mr. Merriam. Do
2 you recall that?

3 DEFENDANT: Yes.

4 THE COURT: You had many meetings, I'm satisfied,
5 with Mr. Partee. Do you have any complaint that you want
6 to make against him at this time?

7 DEFENDANT: No, sir.

8 THE COURT: You were fully and completely satisfied
9 with his services during the time that he represented you?

10 DEFENDANT: Yes, sir.

11 THE COURT: So you have no complaint whatsoever to
12 make against him?

13 DEFENDANT: No, sir.

14 THE COURT: Is that correct?

15 DEFENDANT: (Nodded yes.)

16 THE COURT: All right, Solicitor?

17 SOLICITOR: Your Honor, the victim in this case was
18 James Brockman who was eighty years old at the time of his
19 death. Mr. Brockman lived at Selma Street, which is
20 located in Greenville County. He had lived at that
21 location for some forty five years. He is survived by
22 numerous family members who are in the jury box. Included
23 amongst them are three children, Jessie Kemp, a daughter,
24 James Brockman, his son, and then Joyce Holcombe, another
25 daughter. As alleged in these indictments, these

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1 incidents occurred on May the 6th and on that date, it was
2 a Sunday, this victim, Mr. Brockman, had gone out to Greer
3 to his daughter's house, Ms. Kemp, for supper. He'd gone
4 out there about four o'clock. He actually kept a garden
5 on some land that was---that they had and worked his
6 garden almost every day and Ms. Kemp usually saw him every
7 day and when he would have supper with them, he would
8 usually go home and then he would call them back and let
9 them know that he had gotten home safely. On this
10 particular Sunday, he came out about four o'clock. He was
11 working in his garden, he had supper, visited a few other
12 people in the neighborhood and then went home about eight
13 thirty. Ms. Kemp did not receive the usual call from him
14 so a little bit later in the evening, she tried to call
15 him and got no answer. Some short time after that, they
16 received a call that they needed to go to Selma Street,
17 that the house was on fire. When they got there, the
18 house was completely engulfed in flames. Some neighbors
19 and some passerbyers, during the late evening hours of the
20 sixth, had seen a fire at the house. Several people had
21 gone up to try to enter it, to help anybody that was
22 there. They were---one person had tried to break out a
23 window. They were driven back by the flames. The fire
24 department was called and when the fire department got
25 there, the fire was still burning. The front area, the

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1 living room or den area in the front, was completely
2 engulfed in flames. The front porch had fallen in. They
3 began tackling the fire with water and they also sent in
4 some people on a search and rescue, with the packs on, to
5 try and see if there was anybody in the house. When they
6 got to one of the bedrooms that was in the back of the
7 house, they found Mr. Brockman in the bedroom. He was on
8 a---he was on a bed in the bedroom. His feet were
9 actually touching the floor and he was lying back on the
10 bed. His hands had been tied behind his back with wire.
11 His feet were tied together, also with some cord,
12 electrical cord wire. His head was covered with a
13 pillowcase. There was blood around the area of the
14 pillowcase. The pillowcase had been tied on him with a
15 necktie. And there was also a broken---pieces of a broken
16 shotgun on the bed next to him. The investigation by the
17 police officers showed that the house had been ransacked,
18 drawers had been pulled out, things were strewn about, not
19 only the bedroom that the victim was found in but the
20 other rooms, the other bedroom in the house and the other
21 rooms. Numerous personal items were on top of the bed.
22 There was an open metal box, a lock box that was in the
23 bedroom. The investigation also found that the---Mr.
24 Brockman's vehicle was missing. As far as the arson
25 investigation, there was a strong smell of gas in the

1 structure when the fireman got there. The fire
2 investigators eliminated any kind of natural cause for the
3 fire. The investigation revealed actually two pour
4 patterns where an accelerant had been poured on the floor,
5 one was in the bedroom leading from the bed where Mr.
6 Brockman was to the doorway of the bedroom. Another pour
7 pattern was in the living room or the den area which would
8 indicate that two separate fires had been independently
9 set. Samples were taken from the charred area and sent to
10 SLED and, in fact, gasoline was found to be the accelerant
11 in the case.

12 An autopsy was performed on Mr. Brockman by Dr.
13 Eugene Cox. It revealed that there was there was extreme
14 trauma to the head inflicted by a blunt object in the head
15 and the neck area, but that did not cause his death. They
16 were also first and second degree burns mainly on the
17 lower extremities of his body, his legs had been hanging
18 off the bed, but that was not the cause of the death. He
19 actually died from asphyxial death from a lack of oxygen.
20 The larynx was broken in two places. The doctor concluded
21 that it was from strangulation but from the carbon---the
22 elevated carbon level in the hemoglobin indicated that the
23 victim was alive during part of the fire because of the
24 carbon that was in the---in the blood.

25 The investigation went on for two or three days and

1 finally on the 9th, things began to break actually in
2 Spartanburg County. The investigation revealed that this
3 defendant, along with a co-defendant, had come to
4 Greenville on Sunday evening. They had come back to
5 Spartanburg. They'd gone by this defendant's uncle's
6 house with the stolen car belonging to Mr. Brockman and
7 also with some items that had been stolen from Mr.
8 Brockman, trying to sell some of these items to this
9 defendant's uncle. Word got passed through the family---
10 this defendant was actually, I believe, living with his
11 grandmother at the time, word got passed from the
12 grandmother to the mother, who---whose boyfriend
13 eventually called the police, which led to the recovery of
14 the car. That led to the police approaching Mr. Finley.
15 They went to his grandmother's house where he was on that
16 same day, the 9th. He was asleep on the sofa. They got
17 him up. He immediately said to the police, "I know what
18 you need to talk to me about." At that time, they read
19 him his---they gave him his Dunaway rights and told him he
20 was not under arrest. He did not have to come to the
21 police station but they did want to talk to him. On the
22 way to the Spartanburg Law Enforcement Center, the
23 defendant gave a statement stating that he and the co-
24 defendant had been at a Waffle House, had seen a man come
25 in and park the car and leave it and get into another car

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1 and that the man left the keys in the car and they had
2 simply taken the car. They got him to the Law Enforcement
3 Center, read him his Miranda rights and he then gave a
4 statement admitting his participation in this crime. I
5 will pass to the Court for the record, a copy, not only of
6 the waiver for the statement, I'll publish the entire
7 statement.

8 THE COURT: Let me ask you. Mr. Finley, now, the
9 Solicitor has told me that you did give a statement to the
10 law enforcement officers and prior to that statement, they
11 advised you of your constitutional rights; that is that
12 you didn't have to make a statement and the statement
13 could be used against you; you had a right to have a
14 lawyer present. You understood those rights?

15 DEFENDANT: Yes, sir.

16 THE COURT: And you signed the waiver?

17 DEFENDANT: I---I suppose so.

18 THE COURT: And then you---you gave the statement
19 to them?

20 DEFENDANT: Yes, sir.

21 THE COURT: Now, I'm looking at this statement
22 here. After you gave the statement to them, did you read
23 it over or have it read to you?

24 DEFENDANT: I wrote it.

25 THE COURT: You wrote it?

1 DEFENDANT: (Nodded yes.)

2 THE COURT: And what you said in the statement is
3 true?

4 DEFENDANT: Yes, sir.

5 THE COURT: They gave you a copy of this statement?

6 DEFENDANT: Not at that time, but I got one.

7 THE COURT: Well, you later got a copy of the
8 statement?

9 DEFENDANT: Un-huh. (Nodded yes.)

10 THE COURT: All right, Solicitor, go ahead.

11 SOLICITOR: Okay. May it please the Court, as I
12 was saying, that on the night on the day they approached
13 him, he did give a written statement. That statement was
14 reduced to typing which he signed all the pages to. It is
15 a six page statement, and, basically, in that statement,
16 he admits that he and Daniel Chang, who is the co-
17 defendant, got together. He---I believe he works at the
18 restaurant owned by the co-defendant's parents. Daniel
19 Chang started talking about going to Greenville and
20 killing an old man. They both talked about how they
21 needed money. They went and got some gas in the vehicle
22 they were driving at that time. They also put gas in a---
23 in an extra can they had. They went and changed clothes
24 at each of their respective houses. They got gloves---or
25 I believe this defendant didn't have gloves. He got some

1 socks to put over his hands. This defendant asked Daniel
2 Chang why we needed the gas and Daniel Chang said they
3 were going to burn everything down after they killed the
4 man. They went to Greenville and decided it was too early
5 to go by the victim's house to---to rob him and to do the
6 other crimes, so they played putt-putt prior to going over
7 there. They eventually went over after dark to this
8 victim's house, Mr. Brockman's house. The way they went
9 into Mr. Brockman's house is they both went to the door.
10 They parked a few houses down. They went to the victim's
11 door and they knocked on the door. Mr. Brockman came to
12 the door. They told him that their car had broken down
13 and that they wanted to use the phone to---to call for
14 some help. One thing I have learned during this entire
15 case in talking with this family is that Mr. Brockman was
16 a very trusting fellow, too trusting. As a matter of
17 fact, I think some of his family members had told him he
18 was too trusting and he would let people come in and out
19 of his house. He was a very generous man, but in any
20 event, on that Sunday evening, he let these two defendants
21 come into his house. After they got in, they pretended to
22 be calling for help and after they were there for a few
23 minutes, Daniel Chang pulled out a pistol---or the co-
24 defendant pulled out a pistol that he has brought with him
25 and they began these series of crimes. They robbed Mr.

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1 Brockman. They made him, in the living room area, pull
2 out his billfold and his car keys and they---he actually
3 dropped the money on the floor. They got that money
4 later. They then took him back to one of the bedrooms in
5 the back. They made him sit on the edge of the bed. One
6 of them stayed there with him with the gun on him while
7 the other ransacked the house. During the course of the
8 robbery, as alleged in the armed robbery indictment,
9 jewelry was taken, also a shotgun of Mr. Brockman's and
10 also another pistol that was owned by Mr. Brockman that
11 they found underneath his mattress or the mattress of one
12 of the beds, was taken. After they ransacked the house
13 and had gotten all the things they wanted to take, they
14 then tied Mr. Brockman up and this defendant is the one
15 who tied him up. He took some electrical cord that was
16 there, tied his hands and tied his legs. At that point in
17 time, the co-defendant saw that the victim was wearing a
18 wedding band and he actually made Mr. Brockman---they took
19 the wedding band off of Mr. Brockman. At that point in
20 time, they stuck a handkerchief in his mouth. They tied a
21 tie, a necktie, around his mouth to gage him. They then
22 put a pillowcase over him and then they took another
23 necktie and with one defendant on one side and one
24 defendant on the other side, they strangled Mr. Brockman.
25 I won't go into all the details of the statement but they-

1 --they---they held it tight, and held it for some length
2 of time until they thought that he was at least passed
3 out. At that point in time, the co-defendant got a
4 shotgun and began to beat Mr. Brockman to make sure he was
5 dead. He beat him, as I indicated from the autopsy
6 report, very severely. So severely was the beating that
7 the stock of the gun broke off and splinters of the stock
8 were found as well as the barrel of the gun. At that
9 point in time, they got the gas can out and this defendant
10 poured the gas on the floor. He then, having secured the
11 keys to Mr. Brockman's car, went outside and the co-
12 defendant lit the fires where they had poured the gas.

13 Just a few follow ups, the evidence the State would
14 have shown in court, this defendant consented to a search
15 of his house where he was staying with his grandmother.
16 His grandmother also consented. Found in this defendant's
17 house were jewelry belonging to the victim, including his
18 gold wedding band and some cufflinks. The gun that was
19 taken and the gas can that were used were secured from the
20 co-defendant's house, Mr. Chang. The co-defendant has
21 also given a written confession in this case. This
22 defendant showed the police where they had thrown---they
23 took the phone and the phone book because they feared they
24 had put---had fingerprints on them and he showed them
25 where they threw the phone, the phone book and the shotgun

1 into the---into a lake on the way back. Hold on just a
2 minute.

3 Those are, in essence, the facts in this case, Your
4 Honor. Without going into all the reasons, the State, at
5 this time, is willing to allow this defendant to plead
6 guilty to these charges in return for dropping the death
7 penalty notice with the understanding that he will receive
8 a life sentence with a thirty year parole eligibility.

9 THE COURT: All right, now, Mr. Finley, you've
10 heard the facts related to me by the solicitor as to what
11 occurred on this day, this night. Is that what happened?

12 DEFENDANT: Yes, sir.

13 THE COURT: Now, you understand with respect to
14 sentencing that upon a finding of---of aggravating
15 circumstances beyond a reasonable doubt that you would not
16 be eligible for parole until the expiration of thirty
17 years? You understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Now, you may have discussed parole with
20 your lawyers, parole eligibility, or with someone else,
21 but I need you to understand that you should assume that
22 you will serve the entire time in jail at the time I
23 sentence you. Do you understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: I can't tell you when you will be

STATE VS. MICHAEL JAY FINLEY - GUILTY PLEA - 27
FEBRUARY 25, 1993 - GREENVILLE COUNTY - JUDGE PYLE

1 eligible for parole. Neither can your lawyers, the
2 solicitor, nobody can tell you that, that I know of,
3 except perhaps the Parole Board itself, if they know, but
4 you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you have any question at all about
7 parole eligibility?

8 DEFENDANT: No, sir.

9 SOLICITOR: Your Honor, as I mentioned in chambers,
10 we, at this time, want to defer sentence until some later
11 date.

12 THE COURT: All right, Mr. Finley, I find that
13 there is a substantial factual basis for your plea to
14 these offenses. I further find that your decision to
15 plead guilty is freely, voluntarily, knowingly and
16 intelligently made, that you have had the advise and
17 counsel of your two attorneys, with whom you've told me
18 you are satisfied, and I, therefore, accept your plea of
19 guilty to these charges, and at the request of the
20 Solicitor and your attorneys, the sentencings will be
21 delayed---deferred. Of course, you understand that, in
22 the meantime, until you are sentenced that you will be in
23 the custody of the sheriff and/or the Detention Center.
24 Anything else now, Solicitor?

25 SOLICITOR: No, sir.

STATE VS. MICHAEL JAY FINLEY - GUILTY PLEA - 28
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1 THE COURT: Anything you need to say, Mr. Mauldin
2 or Mr. Merriam at this time or do you want to--?

3 MR. MAULDIN: Nothing at this time, Your Honor.

4 MR. MERRIAM: No, Your Honor.

5 THE COURT: All right, then we will stand adjourned
6 pending the sentencing.

7 (END OF PROCEEDING)

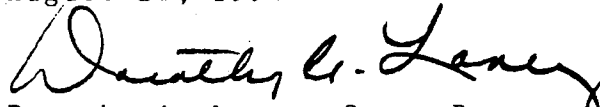
STATE VS. MICHAEL JAY FINLEY - GUILTY PLEA - 29
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C E R T I F I C A T E

I, the undersigned, Dorothy A. Laney, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true and complete transcript of record of all the proceedings had and evidence introduced in the captioned cause, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on February 25, 1993.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 26, 1994


Dorothy A. Laney, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

The State,)

-vs-)

Michael Jay Finley,)

Defendant.)

TRANSCRIPT OF RECORD

92-GS-23-1420;1422;1424;1425

April 22, 1993

Greenville, South Carolina

B E F O R E:

HONORABLE C. VICTOR PYLE, JR., JUDGE

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

JOE WATSON, ESQUIRE
Attorney for the State

JOHN I. MAULDIN, ESQUIRE
JEFFREY A. MERRIAM, ESQUIRE
Attorneys for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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Sentence -- page 3.

1 (Proceedings April 22, 1993)

2 THE COURT: Now, on the 25th of February I accepted the
3 plea of Mr. Finley to the charges of murder, burglary in the
4 first degree, armed robbery and arson in the first degree;
5 and deferred sentencing. The codefendant, Mr. Zhan, has
6 been sentenced, and at this time I will hear from Mr.
7 Finley's attorneys. Mr. Mauldin.

8 MR. MAULDIN: Your Honor, Mike was born the ,
9 . The date of this incident was May -- the first week
10 of May of 1990, and Michael -- it was two months, just less
11 than two months, after Michael's seventeenth birthday. At
12 the time of the incident Michael was in the eleventh grade
13 at Dorman High School. I am going to allow a couple of
14 people to speak for him, and continue if I may, Your Honor.

15 THE COURT: All right, sir.

16 MR. MAULDIN: Your Honor, this is Terry Dempsey. Come
17 forward here, Terry. Terry and her husband have been on
18 Michael's bond and was the home -- maintained the home that
19 Michael was in in the house arrest during the period of time
20 prior to his appearance before the Court for the entry of
21 the plea.

22 Before I allow Terry to make a few comments, I would
23 say in all honesty, Your Honor, that I have hardly ever seen
24 that good samaritan shown to the extent that the Dempsey
25 family performed in this case. This was essentially a

1 stranger to them. They knew Michael through their daughter
2 in a school chorus is how they knew him.

3 They brought him into their home, or allowed him, even
4 with these atrocious charges against him. There is nothing
5 that we would say today that would make this case any less
6 tragic and terrible, but the Dempseys' act of kindness and
7 reaching out in this case is just exemplary of the strongest
8 of faith and strength. I would commend her and her husband
9 for acts that were just beyond description. Terry, take
10 just a moment for the Court.

11 TERRY DEMPSEY: My purpose here today is to tell you a
12 little bit about the Michael Finley that I have known during
13 the last few years. I have come to know him as a warm and
14 gentle young man who longs for affection and for respect.
15 He's an individual who has great value which needs to be
16 recognized. As John said, I did become acquainted with him
17 through the chorus at Dorman High School and always admired
18 his talent and his stage presence there.

19 When I heard of his arrest, I felt a very strong need
20 to communicate with him even if it was only just as part of
21 encouragement or support. Michael responded to my card and
22 we began writing letters and then he asked me to visit him
23 in the detention center.

24 Well, I'm not a person who usually gets involved in the
25 lives of other people, and I have always hated anything that

1 is unfamiliar to me. I don't like hospitals and I had never
2 been in a jail before, but I felt that there was some reason
3 that I needed to do this for Michael.

4 So during the summer of 1990 I visited him on a regular
5 basis and we also communicated by letter and by telephone,
6 and we became friends. Sometime I believe in December,
7 Michael developed Guillain-Barre syndrome which is a very
8 serious illness. He became paralyzed and almost died.

9 His condition didn't seem to be improving, so at that
10 time my husband and I decided to get involved and try to
11 secure bail for Michael so he could get a little bit better
12 treatment in the hospital.

13 We were successful, and we paid his bond. This fact
14 alone shows the faith we were already beginning to have in
15 Michael. We are not rich people and we don't normally do
16 things that are not very conservative. We are pretty
17 conservative people. Michael began to recover gradually and
18 I made regular visits to the hospital and we became better
19 and better acquainted.

20 After he was released from the hospital, Michael
21 continued his rehabilitation at home and worked very hard
22 and really progressed a lot faster than the doctors expected
23 him to. He began to visit our home. I would go and pick
24 him up two or three times a week and bring him over for
25 dinner and a video or a session at the piano. Then I would

1 take him home. On the days when we didn't see each other we
2 usually talked on the telephone at least briefly.

3 Eventually he began to spend the night with us once and
4 a while, and we stayed up late, late in the night, talking.
5 I began to see that he was a very insecure boy whose
6 greatest wish was to be accepted for himself and to be loved
7 unconditionally.

8 In early December of '91 Michael came to live in our
9 home. He and his grandmother had had several arguments, and
10 one night she called me and said that he couldn't stay with
11 her anymore. Michael was very hurt by this, but we never
12 saw any desire to hurt her in return. He would always say
13 that she was his grandmother and he loved her.

14 I didn't want Michael to have to go back to the
15 detention center to await his trial. So he did move in with
16 our family and stayed there until February the 25th when you
17 heard his plea.

18 I would like to tell you just a little about his
19 behavior while he was in our home and the traits that he
20 exhibited. First of all, he was very helpful around the
21 house. He at first was afraid that his presence would be
22 resented, so he tried to do anything that he could to help
23 us, and he soon practically took over all of the cooking
24 duties in the family. He could cook from soup and cornbread
25 to a several-course gourmet dinner.

1 He was trustworthy. We, my husband and I, both worked.
2 He stayed at home alone almost every day and never tried to
3 run away. We trusted him completely, and he proved very
4 worthy of that trust.

5 He is intelligent, creative and resourceful. His
6 thirst for knowledge was strong. He read as many books as
7 he could get a hold of on any subject that he could. He
8 watched a lot of programs on educational TV.

9 He believed that he could learn -- that he could do or
10 learn to do just about anything. He taught himself to play
11 the piano while he was staying with us. His fundamental
12 nature was kind. He was always concerned about his family,
13 especially his brothers and his great-grandmother.

14 I am especially grateful for Michael's help during my
15 husband's illness. He had open-heart surgery in February of
16 '92. Michael was always there when I would come home from
17 the hospital late at night for me to talk to. When Bill
18 came home he took care of him. He went for walks around our
19 yard with him to make sure he took his medicine and cook
20 food he would eat. Generally he made it so that I could go
21 back to work and not worry about my husband being at home
22 there alone.

23 Michael is a planner. He would start planning
24 Christmas gifts in the summer and plan exactly the right
25 gift for each person, and also find ways that he could earn

1 a little bit of money to pay for them.

2 One of his best qualities for me was that he was a good
3 listener. He always knew if I had a problem, and he would
4 never stop until he found out what it was. He would listen
5 uncritically and then he would offer advice and it would be
6 surprisingly good advice from one who was so young. He
7 became my friend. He made me a stronger person and a more
8 open person.

9 There were a lot of slow changes in Michael during the
10 15 months that he lived with us. He came to us kind of
11 hyperactive. He left us a much calmer person. He came
12 insecure and I think left more secure with himself and who
13 he is. He was impulsive when he came; now he is more
14 reflected and thinks about what his actions are going to
15 cause.

16 In conclusion, Michael's life has been decimated. His
17 penalty is severe; his remorse is very real. He's ready to
18 pay his penalty, but his life is still valuable, and I think
19 that some good can result from it. He is not a mean person;
20 he is not violent; he is not malicious.

21 He has always had the talent and the desire to make a
22 contribution to life, and now he has the help of God along
23 with the conditional love of his friends. Thank you.

24 MR. MAULDIN: Your Honor, I would also introduce to you
25 Michael McGee. Mike is the preacher at Morningside Church

1 in Spartanburg. Originally Michael Finley's bond, or at
2 least subsequent to his original bond, there was added a
3 condition that he could participate in the limited
4 activities of Morningside. Mike McGee was instrumental in
5 gaining him that. We would like to give you opportunity to
6 speak at this point to the Court.

7 THE COURT: Mr. McGee.

8 MICHAEL MCGEE: I met Michael before he was able to
9 attend church, before he was allowed to, and had already
10 been keeping up with him through the Dempseys and their
11 relationship. When he had the extension that permitted him
12 to attend our services he began to attend every time the
13 door was opened.

14 Soon thereafter we talked together and I invited him to
15 become a part of our fellowship which he subsequently did
16 and became a very valuable part. We have sorely missed him
17 in our choir. He was probably the best -- Bill Dempsey,
18 don't resent this because you're in the choir too, but he
19 was probably our best musician and has a tremendous talent
20 in that regard. He worked in our kitchen. I brought the
21 cakes he baked every night, every Wednesday night, for our
22 supper, and he was an excellent cook.

23 We as a congregation began to see a person who had made
24 a mistake, and he never once tried to excuse that, but one
25 who was a very humble, a very kind, a very, very genuine --

1 I have been a pastor for 40 years. I think I learned to
2 discern, to understand, personalities. I think the Michael
3 that I see is very real. I don't understand all that has
4 taken place before I knew him, but if you lined up 50 people
5 and told me that one of them had done what he had done, then
6 he would probably be the last one that I would have picked
7 out knowing what I know about him now.

8 I represent a group of about 400 people who love him
9 and who support him and whose prayers are with him every
10 day. He's aware of that.

11 THE COURT: Thank you, sir.

12 MR. MAULDIN: Your Honor, obviously there is nothing
13 that any one of us as supporting witnesses or
14 representatives or whatever can do or say to change the
15 tragic loss. A case of this nature has its impact on the
16 Brockman family. There is nothing that anyone can do now to
17 try to amend that terrible loss. We all maintain the
18 greatest of respect for what that family suffered as a
19 result of what these two young men including Michael did.

20 I certainly would not want our comments to be
21 considered in that way. I want to take a moment, of course,
22 to commend Jeff Merriam and Linda McGrue for their work in
23 this case. It has been absolutely incredible and exemplary
24 and just hundreds of hours spent working to resolve this
25 case in some form reasonably acceptable I guess you could

1 say to all.

2 I don't want to spend a lot of time this afternoon
3 talking about Michael's talent. It's been documented and
4 talked about a lot of his high level of intelligence, but I
5 do want to mention a couple of things, Your Honor, in light
6 of the potential alternatives that this Court has with
7 regard to sentencing. There aren't a lot of alternatives,
8 but I do recognize one or two I would like to mention.

9 When Michael was arrested back in May of 1990 he gave
10 to the law enforcement officers a confession and was
11 cooperative with them. He continued to maintain that level
12 of that cooperative nature throughout the investigation and
13 throughout the entire pending time that this case has been
14 on the docket.

15 He would have entered a plea two or two and a half
16 years ago to this case under these circumstances. He never
17 made any attempt to shirk his responsibility in the fact
18 that he knew he would stand before a court. He never had
19 any idea or thoughts of attempting to go through a trial.
20 We want the Court to be aware that we stood prepared to be
21 cooperative with regard to the prosecution of the
22 codefendant if it had been necessary.

23 We feel like that type of situation merits some
24 consideration for Michael now. He, as you would recall,
25 Your Honor, was in jail six months and 12 days from the time

1 he was originally arrested until the bond arrangement was
2 made. When he pled February the 25th we certainly would ask
3 that the Court give to Michael the credit for the six months
4 and a couple of weeks that he was in jail prior to being
5 released on bond.

6 We believe that the record reflects sufficient
7 distinctions taking into consideration the fact that, for
8 example, he was on bond and not only did not violate any law
9 or rule or anything -- I mean, he essentially was on house
10 arrest and voluntarily made his appearance in this court to
11 enter a plea to a sentence that he knew he was going to
12 receive a 30-year active service.

13 That in and of itself is indicative of his willingness
14 to accept his responsibility for what he did, and we think
15 that is certainly a credit. We ask that the Court consider
16 in light of that to make the sentences on the other offenses
17 run concurrently with the 30-year active life sentence that
18 he will have to serve.

19 That's a long, long time. Michael will be 50 years old
20 in 30 years. That's a long time. Certainly when you
21 consider the incident, it was certainly a tragedy. I make
22 no comment to attempt to demean or lessen the degree of
23 seriousness in the case, but we do have to be realistic in
24 regard to the impact of this sentence and the power of the
25 Court. Jeff, do you have anything you would like to add?

1 THE COURT: Mr. Merriam, anything you need to add?

2 MR. MERRIAM: No, Your Honor. I join in what Mr.
3 Mauldin says in that this certainly is a horrible tragedy. I
4 remember when I read about it in the paper that it was a
5 tragedy then and it's a tragedy now. There is something
6 though that is different about this case than any other case
7 of this type I am aware of. Some good may, may, get to come
8 out of it.

9 THE COURT: Solicitor.

10 MR. WATSON: Your Honor, I just feel a little bit
11 compelled to talk in response to, you know, whether a
12 concurrent or a consecutive sentence is appropriate. I
13 appreciate these people coming and speaking on behalf of Mr.
14 Finley and mitigating his sentence, but since it has been
15 some weeks since the plea let me just remind the Court that
16 as far as the two codefendants.

17 As far as the crime itself, we are talking about equal
18 culpability. They are both very young and both have no
19 prior records. It's not a case where one was a lookout and
20 one did the actual killing.

21 I mean, by this defendant's own admission he took the
22 necktie and pulled for about five minutes on one side where
23 Mr. Zhan took the necktie on the other side and pulled for
24 five minutes and killed this man. So it's a case where both
25 of them struck the fatal blow.

1 By this defendant's own admission, he poured the gas.
2 I don't think you can distinguish between the person who
3 poured the gas or the person who lit the match to the gas
4 which is what Mr. Zhan did.

5 I think it is appropriate to take into consideration
6 that Mr. Finely stood ready to cooperate, and I'm not
7 arguing against a concurrent sentence or for a consecutive
8 sentence, but I just want to remind the Court of his
9 culpability. We are not talking about somebody who was, you
10 know, on the peripheral of this thing. He was right dead in
11 the middle of it. The only other matter I would have is to
12 remind the Court that we need, I think, Judge, to make a
13 specific finding as to aggravating circumstances.

14 THE COURT: Yes, sir. Mr. Finley, now, anything that
15 you have to say, son, before I sentence you?

16 THE DEFENDANT: I hope that someday Mr. Brockman's
17 family can look past all of my sins and forgive me. If that
18 day ever comes, I might be able to forgive myself. There's
19 not really much that I can say except that I am sorry. I'm
20 sorry that I have hurt so many people -- my friends and
21 family, people that I have grown to love and cherish. These
22 last few years -- most of all Mr. Brockman's family and
23 friends. Not a day goes by that I don't think about what
24 happened. The night of one of the most horrible tragedies
25 has been imprinted on my mind to haunt me the rest of my

1 life.

2 THE COURT: All right. Mr. Finley, the only thing that
3 I can say is how unfortunate it is that all of these good
4 things which happened to you since May the 6th, 1990, didn't
5 occur before that time. The fact remains of the horror that
6 you along with Mr. Zhan committed on that date of what was
7 done. If there has ever been a case which fits the intent
8 of the legislature for a sentence of death by electrocution,
9 the facts of this case are certainly the ones. You are
10 indeed fortunate that you were able to plead guilty to these
11 sentences rather than to be electrocuted.

12 I find as a fact beyond a reasonable doubt that the
13 crimes of burglary in the first degree, arson in the first
14 degree and armed robbery were committed during the
15 commission of murder, and the Sentence of the Court is on
16 the murder that you be committed to the State Department of
17 Corrections for a term of life; on the indictment for
18 burglary for life; and on the armed robbery and arson, 25
19 years on each of those. The sentences for armed robbery and
20 arson will run consecutive to the life term for murder. The
21 sentence of life for burglary will run concurrent to the
22 sentence of life. Anything else, solicitor?

23 MR. WATSON: No, sir.

24 MR. MAULDIN: Your Honor, with regard to the
25 application for credit for the time he was in jail---

1 THE COURT: He will be entitled to a credit for his
2 time that he served from the date of arrest until he made
3 bond, and from---

4 MR. MAULDIN: February the 25th until now.

5 THE COURT: ---February the 25th until now, yes.

6 MR. MAULDIN: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 END OF REQUESTED TRANSCRIPT OF RECORD

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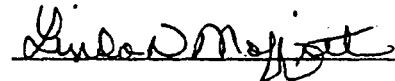
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 22nd day of April 1993.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 25, 1994



Linda D. Moffitt

Circuit Court Reporter

92-GS-23 1420

NOW COMES THE DEFENDANT

Michael Jay Finley

Who in open Court pleads guilty to the within indictment;

ARSON 1STand consents to sentence this 25 day of February 1993

ATTEST:

Caroline W. Mattos
Clerk of Courtx Michael Jay Finley

SENTENCE

The defendant Michael Jay Finley is
 committed to the State Dept. of Corrections/County for a term of 25
 months/years and/or to pay a fine \$ _____; provided upon the service of
 _____ months/years and/or payment of \$ _____, plus pay/waive
 costs and assessments as applicable*, the balance suspended with probation for
 _____ months/years. Consecutive

Restitution

For physical injury \$ _____

Yes / No

Property damage \$ _____

to be paid _____

to clerk for _____ **

Other conditions _____

Date

2-25-93
4-22-93Victor R. [Signature]
Presiding Judge

* Costs and Assessments

Non-waivable

\$ _____

Not waived

\$ _____

Total

\$ _____

Clerk of Court

* Pay to Victim's Compensation Fund if subrogated.

92-GS-23 1422

NOW COMES THE DEFENDANT

Michael Jay Finley

Violent

Who in open Court pleads guilty to the within indictment;

Burglary 1STand consents to sentence this 25 day of February 1993

ATTEST:

Caroline W. Mattos
Clerk of Courtx Michael Jay Finley

SENTENCE

The defendant Michael Jay Finley is committed to the State Dept. of Corrections/County for a term of Life months/years and/or to pay a fine \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years. concurrent

Restitution

For physical injury \$ _____

Yes / No

Property damage \$ _____

to be paid _____

to clerk for _____ **

Other conditions _____

Date 2-25-934-22-93C. V. Pyle
Presiding Judge

* Costs and Assessments

Non-waivable \$ _____

Not waived \$ _____

Total \$ _____

Clerk of Court

* Pay to Victim's Compensation Fund if subrogated.

92-GS-23 1424

NOW COMES THE DEFENDANT

Michael Jay Finley

Who in open Court pleads guilty to the within indictment;

murderand consents to sentence this 25 day of February 1993

ATTEST:

Caroline W. Mattoz
Clerk of Courtx Michael Jay Finley

SENTENCE

The defendant Michael Jay Finley is committed to the State Dept. of Corrections/County for a term of Life months/years and/or to pay a fine \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution

For physical injury \$ _____

Yes / No

Property damage \$ _____

to be paid _____

to clerk for _____

Other conditions

Credit jail time from 5-7-90 until released on bond on 11-21-90
and from 2-25-93 to date

Date

2-25-93
4-22-93Cliff R. [Signature]
Presiding Judge

* Costs and Assessments

Non-waivable

\$ _____

Not waived

\$ _____

Total

\$ _____

Clerk of Court

* Pay to Victim's Compensation Fund if subrogated.

92-GS-23 1425

NOW COMES THE DEFENDANT

Michael Jay Finley

Who in open Court pleads guilty to the within indictment;

Armed Robberyand consents to sentence this 25 day of February 1993

ATTEST:

Caroline W. Mattos
Clerk of Courtx Michael Jay Finley

SENTENCE

The defendant Michael Jay Finley is committed to the State Dept. of Corrections/County for a term of 25 months/years and/or to pay a fine \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years. Consecutive

Restitution

For physical injury \$ _____

Yes / No

Property damage \$ _____

to be paid _____

to clerk for _____ **

Other conditions _____

Date

2-25-93
4-22-93Chick Boyd

Presiding Judge

* Costs and Assessments

Non-waivable

\$ _____

Not waived

\$ _____

Total

\$ _____

Clerk of Court

* Pay to Victim's Compensation Fund if subrogated.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

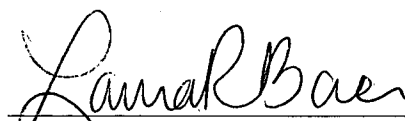
ATTORNEY FOR APPELLANT

This 4th day of January, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
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ATTORNEY FOR APPELLANT

This 4th day of January, 2018.

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SC Court of Appeals