



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 30, 2018

RECEIVED
JAN 30 2018
S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29511

Re: George J. Williams v. State
Appellate Case No. 2017-001028

Dear Mr. Shearouse:

Please accept the *pro se* response filed by the above named individual in response to the Johnson Petition for Writ of Certiorari I recently filed with the Court in this case. Petitioner inadvertently mailed his response to our office.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lara M. Caudy
Appellate Defender

LMC/meb

Enclosure

cc: George Williams, #191416

The State Of South Carolina

For The State Supreme Court

George Williams,

Applicant/Appellant

v.

The State Of South Carolina,

Respondent/Appellee

#2017-001028

Appellant Pro Se Brief

George Williams #191416
Lieber Correction Institution
136 Wilboen Drive / W 159
Post Office Box 205/Pro Se
Ridgeville, S.C. 29472

RECEIVED

JAN 29 2018

APPELLATE DEFENSE

VC

Question Presented

Whether Pre-Trial Hearings Under Cronec Constitute As A Critical Stage Of Adversarial Proceedings To Find Counsel Ineffective For Not Challenging Constitutionality Of Statute?

Statement Of Case

A Williamsburg County Grand Jury indicted Petitioner on May 3rd, 2012 for Grand Larceny, on January 17th, 2013, for first degree criminal sexual conduct with a minor, and on May 8th, 2014 for third degree criminal sexual conduct. App. PG 109-114. On January 27th, 2015, the day after his case was called to trial, Petitioner Pled Guilty as indicted before the Honorable George C. James, Jr. App. 1. Assistant Solicitor Kimberly Barr represented state, and Amanda Shuler represented Petitioner. App. PG. 1. Pursuant to sentencing recommendation from the state, Judge James sentenced Petitioner to twenty-five years for first degree criminal sexual conduct with a minor, ten years for third degree criminal sexual conduct, and ten years for Grand Larceny. All sentences were ordered to be served concurrently. App. PG 29; line 1-3; PG 30; lines 1-3

On July 2nd, 2015, Petitioner filed an application for Post conviction relief (PCR) App. PG 32-38. The state filed a return to this application dated October 28th, 2015. App. PG 39-43. With the assistance of counsel, Petitioner filed an amended application on February 16, 2016, raising the claim argued in this Petition. App. PG. 44. An evidentiary hearing was convened on November 7th, 2016, before Honorable Brian M. Gibbons. App. PG 45

Amanda Shuler testified at hearing the state withdrew life sentence in exchange for Petitioner to Plead Guilty to 25 years App. PG 83; lines 8-19. Counsel also testified she explained elements of offense to Petitioner App. PG 79; lines 19-20

Legal Analysis:

Common law teaches that the Sixth amendment views "Critical Stages" of a defendant's Pretrial and trial differently from other Parts. The Supreme Court began developing nationwide critical stage doctrine in earnest in *Hamilton v. Alabama*, 368 U.S. 52 (1961) in which the court unanimously reversed the Alabama Supreme Court's denial of a criminal defendant's writ of error coram nobis in a capital case where defendant's counsel had been absent at his arraignment.

In 1984, the Supreme Court decided *United States v. Cronie*, 466 U.S. 648 (1984) a case of special inquiry and interest. The opinion in this case included a strong statement that no Prejudice need be shown where counsel was absent at a critical stage of a criminal Proceeding. Two Prelatory comments are useful here before we make our extended examination of the decision. First, this case was not about critical stage, nor did it involve an absent lawyer. Second, *Cronie* was handed down the same day as *Strickland v. Washington*, 466 U.S. 668 (1984) from time to time, this has caused confusion. *Strickland* set forth the court's two-part inquiry into ineffective assistance of counsel, requiring that a Petitioner show both ineffectiveness and Prejudice.

Cronie specified circumstances of alleged ineffective assistance of counsel understood by the court to require no showing of Prejudice. Chief among these was absence of counsel at a critical stage. *Strickland* Prejudice analysis covered all other circumstances

Cronie was an appeal from a federal conviction for mail fraud. The defendant's lawyer essentially new to criminal Proceedings, and he had less than a month to Prepare for trial, while the Government had four and a half years to investigate and had examined thousands of Pages of documentation in Preparation for the case. The tenth circuit reversed the conviction, finding it unnecessary to examine the lawyer's

Performance on the Grounds that ineffectiveness could be inferred from a combination of, inter alia, his inexperience, the complexity of case, and the short time he had to get ready.

Counsel herein can make no such claim, as it was counsel duty to ensure her client was not convicted under statute which is facially unconstitutional, which inflicts death as Punishment when no murder has taken Place.

Therefore, when the issue is the constitutionality of a statute, every Presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution. See, *State v. Gaster*, 349 S.C. 545 (2002)

Applicant argues his sentence should be vacated, because the statute is in violation of Eighth and Fourteenth amendment to the constitution under *Kennedy v. Louisiana*, 554 U.S. 409 (2008)

The Eighth Amendment, applicable to the states through the Fourteenth Amendment, provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual Punishments inflicted" The amendment proscribes "all excessive Punishments, as well as cruel and unusual Punishments that may or may not be excessive" *Atkins v. Virginia*, 536 U.S. 304 (2002) The Atkins court explained, that the eighth amendment's protection against excessive or cruel and unusual Punishments flow from the basic "Precept of Justice that Punishment for a crime should be graduated and Proportioned to the offense". See, *Weems v. United States*, 217 U.S. 349 (1910) Whether this requirement has been fulfilled is determined not by the standards that prevailed when eighth amendment was adopted in 1791 but by the norms that "currently prevail" *Atkins*, id. at 311. The Amendment "draws its meaning from the evolving standards of decency that mark the Progress of a maturing society" *Trop v. Dulles*, 356 U.S. 86 (1958) This is because "the standard

of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change." *Furman v. Georgia*, 408 U.S. 238 (1972) (Burger, C.J. Dissenting)

Evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule *Trop*, id. at 100. As we shall discuss, punishment is justified under one or more of three principal rationales; rehabilitation, deterrence, and retribution. See, *Harmelin v. Michigan*, 501 U.S. 957 (1991) It is the last of these, retribution, that most often can contradict the law's own ends. This is of particular concern when the court interprets the meaning of the Eighth Amendment in capital cases. When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint.

For these reasons we have explained that capital punishment must "be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them most deserving of execution. *Roper*, id. at 568; *Atkins*, id. at 319. Though the death penalty is not invariably unconstitutional. See, *Gregg v. Georgia*, 428 U.S. 153 (1976) the court insists upon confining the instances in which the punishment can be imposed.

Applying this principle, we held in *Roper* and *Atkins* that the execution of juveniles and mentally retarded persons are punishments violative of the eighth amendment because the offender had a diminished personal responsibility for the crime. *Roper*, id. at 571-573, *Atkins*, id. at 318. The court further has held that the death penalty can be disproportionate to the crime itself where the crime did not result, or was intended to result, in death of victim. In *Coker v. Georgia*, 433 U.S. 584 (1997) for instance, the court held it would be unconstitutional to execute an offender who had raped an adult woman. See also, *Eberheart v. Georgia*, 433 U.S. 917 (1997) (holding in light of *Coker* unconstitutional sentence of death for kidnapping and rape of an adult woman) and in *Edmund v. Florida*, 458 U.S. 782 (1982) the court overturned the capital sentence of a defendant

who aided and abetted a robbery during which a murder was committed but did not himself kill, attempt to kill, or intend that a killing would take place. On the other hand, in *Tison v. Arizona*, 481 U.S. 137 (1987) the court allowed the defendants death sentences to stand where they did not themselves kill the victims but their involvement in the events leading up to the murders was active, recklessly indifferent, and substantial.

Existence of objective indicia of consensus against making a crime punishable by death was a relevant concern in *Roper*, *Atkins*, *Coker*, and *Edmund*, and follow the approach of those cases here.

In these cases the court has been guided by "objective indicia of society's standards, as expressed in legislative enactments and state practice with respect to executions" *Roper*, id. at 563, *Coker*, id. at 593-97 (finding that both legislatures and juries had firmly rejected the penalty of death for the rape of an adult woman) *Edmund*, id. at 788. (Looking "to historical development of the punishment at issue, legislative judgments, international opinion, and the sentencing decision juries have made)

The inquiry does not end there, however, consensus is not dispositive. Whether the death penalty is disproportionate to the crime committed depends as well upon the standards elaborated by controlling precedents and by the courts own understanding and interpretation of the eighth amendments text, history, meaning and purpose *Edmund*, id. at 797-801; *Gregg*, id. at 182-183; *Coker*, id. at 597-600.

Based on both consensus and our own independent judgment, our holding is that a death sentence for one who raped but did not kill a child, and who did not intend to assist another in killing the child, is unconstitutional under the Eighth and Fourteenth amendments.

Wherefore. it is Prayed Court Grant Wait.

Date: 25 day of January, 2018,

Respectfully Submitted:
George Williams
George Williams / Pro Se

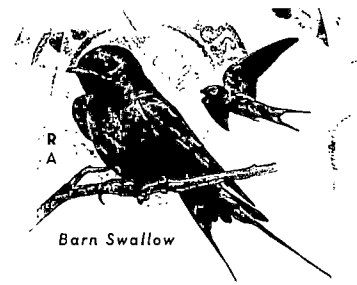
George Williams #191416
Lieber Corr. Inst. WC159
136 Wilborn Drive
Post office Box 205/PM SE
Ridgeville, S.C. 29472

RECEIVED

JAN 29 2018

APPELLATE DEFENSE

UNITED STATES POSTAGE
1P
10835844
LED FROM ZIP CODE 29472
PITNEY BOWES
\$000.210
JAN 26 2018



RECEIVED

JAN 26 2018

MAIL ROOM
LIEBER C.I.

South Carolina Commission on Indigent Defense
DIVISION of Appellate Defense
P.O. Box 11589
Columbia, SC
29211-1589

SCDC
Christmas
Packet