

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

**APPEAL FROM ANDERSON COUNTY
Court of General Sessions**

R. Scott Sprouse, Circuit Court Judge

**Case No. 2017-GS-04-00395
Case No. 2017-GS-04-00396
Case No. 2017-GS-04-00397**

RECEIVED
FEB 23 2018
SC Court of Appeals

The State, Respondent,

v.

Wesley Charles Malmister, Appellant.

EXPLANATION OF REVIEWABLE ISSUE ON APPEAL

This Explanation of Reviewable Issue on Appeal is filed pursuant to Rule 203(d)(B)(iv) of the South Carolina Appellate Court Rules.

Wesley Charles Malmister ("Appellant") is filing a Notice of Appeal with this Court related to the sentence imposed by the Circuit Court on May 16, 2017 in which a Motion for Reconsideration was denied on February 15, 2018. The Appellant had previously pled guilty to two (2) counts of Voluntary Manslaughter and one (1) count of Attempted Armed Robbery. The Appellant's sentence was deferred pending his cooperation with the Anderson County Solicitor's Office in assisting the prosecution and testifying against one of the Appellant's co-Defendants. On or about May 16, 2017, the co-Defendant pled guilty to murder and was sentenced to fifty (50) years.

At the Appellant's sentencing, the prosecutor advised the Circuit Court Judge that the co-Defendant's guilty plea would not have been possible without the Appellant's assistance and that the Appellant was fully cooperative with the Solicitor's Office. The Appellant was sentenced to twenty-five (25) years on each count of

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Voluntary Manslaughter (concurrent) and fifteen (15) years on the count of Attempted Armed Robbery (also concurrent).

In South Carolina, the penalty for Voluntary Manslaughter is a sentence between two (2) and thirty (30) years. S.C. Code Ann. §16-3-50 (Law. Co-op. 2009). Although a presiding judge has discretion in sentencing a Defendant, that sentence must not ignore favorable mitigating factors, nor must that sentence be a significant departure from a normal sentence applying such favorable mitigating factors.

The issue to be raised on appeal is that the sentence imposed on the Appellant violates the Eighth Amendment to the U.S. Constitution in that such sentence was not proportionate to the crimes committed. This issue was raised to or ruled on by the Circuit Court.

The Eighth Amendment prohibits cruel and unusual punishments and requires that sentences must be proportionate to the crime committed. Solem v. Helm, 463 U.S. 277, 284-90 (1983). Any court's proportionality analysis under the Eighth Amendment should be guided by objective criteria. *Id.* at 290-295. The criteria recognized in Solem include (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions. *Id.* at 290-292. These criteria have been used in this State to analyze the proportionality of a sentence to the severity of the crime. See, e.g., State v. Kiser, 288 S.C. 441, 343 S.E.2d 292 (1986); State v. Gamble, 249 S.C. 605, 155 S.E.(2d) 916 (1967).

Although trial courts are competent to judge the gravity of an offense, at least on a relative scale, comparisons can be made in light of the harm caused or threatened to the victim or to society, and the culpability of the offender. Considering the relevant objective criteria, the Appellant's sentence of twenty-five (25) years is significantly disproportionate to his crime, especially when compared with the Appellant's level of cooperation with the Solicitor's Office and is, therefore, prohibited by the Eighth Amendment to the U.S. Constitution.

February 21, 2018



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Other Counsel of Record:

—— David Wagner
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PROOF OF SERVICE

I certify that I have served the Notice of Appeal and the Explanation of Reviewable Issues on Appeal on the Respondent by depositing a copy of the same in the United States Mail, postage prepaid, to David Wagner, Tenth Circuit Solicitor, PO Box 8002, Anderson, SC 29622.

February 21, 2018



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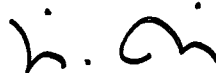
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: State v. Wesley Charles Malmister, Case Nos. 2017-GS-04-395, 396 and 397

Dear Ms. Kitchings:

Please find enclosed an original Notice of Appeal and one (1) copy, an original Explanation of Reviewable Issues on Appeal and one (1) copy, an original Proof of Service and one (1) copy and the Order to be challenged on appeal in the above-captioned case. Please file the originals and return clocked copies to me in the enclosed self-addressed stamped envelope.

Sincerely,



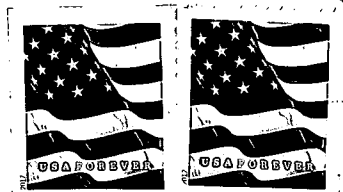
William E. Phillips

WEP/cfp

Enclosures

xc: David Wagner (w/out enclosures)
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