

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Florence County
The Honorable D. Craig Brown, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2017-000102

KENDRIS R. BROWN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

SUPPLEMENTAL APPENDIX

WANDA H. CARTER
Appellate Defender

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Attorney General

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Division of Appellate Defense
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ATTORNEYS FOR PETITIONER

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

State of South Carolina,

vs.

Kendris Richard Brown,

Defendant.

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IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT

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NOTICE OF MOTION AND MOTION
FOR RESENTENCING

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Case No. 2012-GS-21-1250

TO: EDGAR L. CLEMENTS, III, SOLICITOR

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his undersigned counsel, will move before the Court of General Sessions on the 30th day of November 2015, or as soon thereafter as counsel may be heard, for an Order granting a resentencing hearing and the funding to conduct a pre-sentencing investigation and evaluation.

This motion is based upon the applicable statutes and case law of the State of South Carolina, and is made upon the grounds that the Defendant is entitled to a resentencing due being a minor when sentenced to life in prison on April 5, 2013. This motion is further based upon the following particulars:

1. The Defendant pled guilty to Murder on April 5, 2013.
2. The Defendant was sixteen (16) years of age at the time he pled guilty.
3. The United States Supreme Court has held that sentences of life without the possibility of parole that are imposed on juveniles violates the Eighth Amendment and that those sentenced as such are entitled to a resentencing pursuant to the United States Constitution. Miller v. Alabama, 132 S.Ct. 2455 (2012), Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572

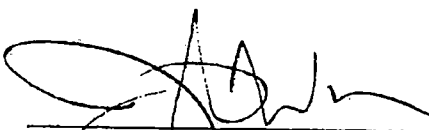
(2014).

4. The South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced. Id. At 545, 765 S.E.2d at 578.

Based upon the above reasons, and due to the sentencing considerations that the Miller court imposed, the Defendant hereby moves this court for an Order granting him a resentencing during a hearing at a to-be-determined date and time, and also for the funding to conduct an investigation and evaluation in preparation for presenting evidence of the sentencing considerations to the sentencing court.

Respectfully submitted,

By: _____



Jonathan D. Waller
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ATTORNEY FOR THE DEFENDANT

November 9, 2015

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

State of South Carolina,

vs.

Kendris Richard Brown,

Defendant.

IN THE COURT OF GENERAL SESSIONS
TWELFTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

Case No. 2012-GS-21-1250

I certify that on this date I served the Defendant's Notice of Motion and Motion for Resentencing in this case on counsel for the State by delivering a copy of same to the Solicitor for Florence County by delivering by the United States Postal Service, in a sealed envelope clearly bearing a return address with adequate first class postage affixed thereon, said copy to his office located at 180 N. Irby Street, Room 1101, Florence, SC 29501, and addressed to his attention.

Charlotte Giese
Charlotte Giese

Columbia, South Carolina

This 9 day of November, 2015

THE

GIESE

LAW FIRM, LLC

November 9, 2015

The Honorable Connie Reel-Shearin
Clerk of Court, Florence County
180 N. Irby St., MSC-E
Florence, SC 29501

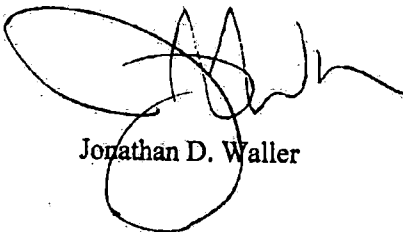
Re: State of South Carolina vs. Kendris Richard Brown
Indictment No: 2012-GS-21-1250

Dear Madam Clerk:

Please find enclosed one (1) original and two (2) copies of Defendant's Notice of Motion and Motion for Resentencing in the above referenced case. Please file the original and return the clocked copy to me in the enclosed envelope. By copy of this letter I am serving a copy of the motion on the Solicitor for Florence County.

If you have any questions, please do not hesitate to ask. My telephone number is 803-708-6767.

Sincerely,



Jonathan D. Waller

Cc: Edgar L. Clements, III, Solicitor, Florence County

Enclosures

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OFFICE OF SOLICITOR
12TH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
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 COUNTY OF Florence County)
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 State of South Carolina)
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 Plaintiff,)
)
 vs.)
)
 Kendris Richard Brown,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2012-GS-21-1250A
 2012-GS-21-1250E

MOTION FOR RESENTENCING

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The Defendant, Kendris Richard Brown, hereby moves for a new sentencing proceeding pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), *cert. denied*, ___ U.S. ___, 135 S.Ct. 2379 (2015).

In *Aiken v. Byars*, the Supreme Court of South Carolina determined that *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012) (holding that imposing a life without parole sentence on a juvenile offender without considering the hallmark characteristics of juveniles in general and the particular mitigating circumstances in the defendant's individual case in particular violated the Eighth Amendment), applied retroactively in South Carolina. 410 S.C. at 540, 765 S.E. 2d at 575. The Court next opined that applying the constitutional principles articulated in *Miller* to South Carolina's pre-*Miller* sentencing practices, all life without parole sentences imposed on juveniles in this State prior to *Miller* and *Aiken* constituted cruel and unusual punishment. 410 S.C. at 545, 765 S.E. 2d at 577. For that reason, the Court ordered that all juveniles sentenced to life without parole in South Carolina prior to *Aiken* were "entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight." *Id.* at 544;

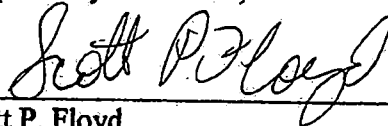
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Amie Reel Stearns
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

765 S.E.2d at 577. Finally, on July 23, 2015, following the United States Supreme Court's denial of the Attorney General's petition for writ of certiorari, the South Carolina Supreme Court entered an order permitting any individual "affected by our holding in *Aiken* [to] file a motion for resentencing within one year of the date of this order in the court of general sessions where he or she was originally sentenced." *Aiken v. Byars*, Appellate Case No. 2012-213286 (July 23, 2015) (copy of order attached).

The defendant in this case is eligible for the benefit of *Aiken v. Byars*, because he was sentenced to life without parole for an offense committed when he under eighteen (18) years of age, and this motion is timely filed. Therefore, he is entitled to a new sentencing proceeding conducted in conformity with the state and federal constitutional principles set forth in *Miller* and *Aiken v. Byars*.

For the foregoing reasons, the defendant requests that after allowing appointed counsel adequate time to conduct an appropriate investigation for the purpose of gathering and marshaling all evidence relevant to a reliable determination of the appropriate sentence, this Court conduct a new sentencing hearing.

Respectfully Submitted,



Scott P. Floyd
Twelfth Circuit Public Defender
Box MSC-N, Florence County Complex
Florence, South Carolina 29501

Date: July 6, 2016

The Supreme Court of South Carolina

Kendris Richard Brown, - Petitioner,

v.

State of South Carolina, Respondent.

Florence County

Docket No.: 2012-GS-21-01250A; 01250E

ORDER

Petitioner filed a motion on July 6, 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 DeAndrea G. Benjamin be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge Benjamin 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 she 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 Benjamin 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

July 11, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
KENDRIS RICHARD BROWN,)
)
PETITIONER,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
DOCKET NOS.: 2012-GS-21-01250A; 01250E

ORDER OF APPOINTMENT

Petitioner filed his Motion for Resentencing pursuant to *Aiken v. Byers*, 410 S.C. 534, 765 S.E.2d 572 (2014) on July 6, 2016. This matter is properly before the Court pursuant to the July 11, 2016 Special Order of the Supreme Court of South Carolina vesting me with exclusive jurisdiction in all circuits of this state to dispose of matters relating to Petitioner's Motion. With this exclusive jurisdiction comes the authority to resolve issues related to the appointment of counsel.

The Court finds that the appointment of counsel for the Petitioner is necessary to fully dispose of the matters relating to this Motion. The Court further finds that the Florence County Public Defender's Office does not have any conflicts with this case. The Court additionally finds that the Florence County Public Defender's Office should be appointed to represent the Petitioner in matters relating to this Motion.

It is, therefore, Ordered that the Florence County Public Defender's Office is appointed to represent the Petitioner in all matters relating to this Motion.

AND IT IS SO ORDERED.

CERTIFIED: A TRUE COPY
Donna Paulina
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
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CORRECTIONAL INSTITUTION
CCCP & GS
FLORENCE COUNTY, SC