

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2012-211593

STATE OF SOUTH CAROLINA,

Respondent,

v.

TAVARIO D. BRUNSON,

Appellant.

**RESPONDENT'S OPPOSITION TO
MOTION TO STAY APPEAL PENDING SUPREME
COURT'S DECISION IN Aiken, et al. v. Byars**

The Respondent, above-named, hereby oppose the Motion to Stay Pending the Court's decision in Aiken, et al. v. Byars. Respondent's opposition is based upon whether the issue is preserved where it appears no objection was made in the record to the Appellant's life sentence. Although the Appellant correctly noted the existence of a case pending in the U.S. Supreme Court [Tr. p. 469], he acknowledged that he did not know anything about it. This attempt to preserve an issue is wholly insufficient.

Further, as Respondent notes, the Appellant was not faced with a mandatory life with parole sentence. As the Appellant acknowledged, the trial court could have imposed a minimum sentence of thirty (30) years under S.C. Code Ann. § 16-3-20. Therefore, the issue decided in Miller v. Alabama, ___ U.S. ___, 132 S.Ct. 2455 (2012) is not properly raised in this matter.

For these reasons, the stay pending Aiken should not be granted.

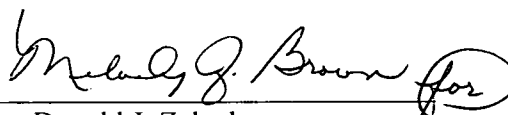
Respectfully submitted,

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JOHN W. McINTOSH
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DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

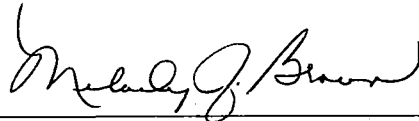
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By: 
Donald J. Zelenka
ATTORNEYS FOR RESPONDENT

January 2, 2013

CERTIFICATE OF SERVICE

I, **Melody J. Brown**, hereby certify that I have served the *Respondent's Opposition to Motion to Stay Appeal Pending Supreme Court's Decision in Aiken, et al. v. Byars* in the foregoing action by depositing copies in the Inter Agency Mail to Susan B. Hackett, Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia SC 29201 this 2nd day of January, 2013.



MELODY J. BROWN
Senior Assistant Attorney General
For Donald J. Zelenka-