

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
R. Scott Sprouse, Circuit Court Judge

RECEIVED
JUN 19 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHNNY LEE BURTON,

APPELLANT

APPELLATE CASE NO. 2017-001733

RECORD ON APPEAL

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Appellate Defender

South Carolina Commission on Indigent
Defense
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ATTORNEYS FOR RESPONDENT

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1 State of South Carolina
 2 County of Anderson In the Court of General Sessions

3
 4 State of South Carolina,)
 5) 1994-GS-04-824
 6 -vs-) August 9, 2017
 7 Johnny Lee Burton,)
 8 Defendant.)
 9) Transcript of Record

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B E F O R E:
 The Honorable R. Scott Sprouse, Judge

A P P E A R A N C E S:
 Catherine Huey, Esquire
 Attorney for the State
 Jennifer Johnson, Esquire
 Attorney for Defendant

Diane L. Marcengill, RPR, CRR
 Circuit Court Reporter

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 2:09 p.m.)

4 MS. HUEY: Your Honor, may it please the court.

5 We're here on the State's motion to dismiss in the
6 matter of Johnny Lee Burton versus State of South
7 Carolina.

8 Do you have a copy of my motion to dismiss?

9 THE COURT: I have a copy of the motion.

10 MS. HUEY: Thank you.

11 Your Honor, the State filed this motion because --
12 in response to Mr. Burton filing an *Aiken v. Byars*
13 motion claiming that he needed a resentencing hearing.

14 But come to find out, Your Honor, Mr. Burton has
15 been eligible for parole. I believe his first hearing
16 was back in 2014. He had one in 2016. He has been
17 denied parole those times, but he's still eligible for
18 parole, and, therefore, the State feels that he does
19 not fall under auspices of *Aiken v. Byars*.

20 THE COURT: Ms. Johnson.

21 MS. JOHNSON: Thank you, Your Honor. May it
22 please the court.

23 I have reviewed this matter with Mr. Burton. We
24 actually had -- Catherine and I had a similar case a
25 few weeks ago where the individual was eligible for

1 parole.

2 I agree with the State's contention that he is
3 eligible for parole. His problem, Your Honor, is that
4 what is a meaningful chance of parole? I think that
5 goes beyond the scope of this hearing, and it's not a
6 matter of what's before the court. But that is his
7 frustration, how do I present something to the parole
8 board if not given the opportunity to look at the
9 Miller factors that are enunciated in *Aiken vs. Byars*,
10 but the case does appear to specifically apply to
11 individuals who have received a life without the
12 possibility of parole sentence.

13 THE COURT: Do you have any new law or anything
14 that has come down since that opinion?

15 MS. JOHNSON: No, sir.

16 THE COURT: Okay. And that's -- like you, I had
17 this issue come up. I don't think we have had a
18 full-blown hearing on one, but the language of the case
19 itself, I think is pretty clear in that that's why I'm
20 asking you, is there any new case law or anything that
21 you're aware of.

22 MS. JOHNSON: I am not aware of any new case law,
23 Your Honor. I have consulted -- Justice 360 is an
24 organization that has been working on several of these
25 cases statewide. I have consulted with their executive

1 director. At this time there is not a development in
2 that particular area of the law.

3 Obviously, for Mr. Burton and those similarly
4 situated, we hope that that's an area of the law that
5 continues to evolve, and we may receive some sort of
6 reprieve in the future, but as of today's date, the law
7 is *Aiken vs. Byars*.

8 THE COURT: Right. And I don't think that gives
9 me the leeway to keep a case open when there is clear
10 eligibility for parole. I understand Mr. Burton's
11 situation. And, again, it may be that folks in
12 Columbia decide that a different path will be available
13 in the future, but that's outside of this. I'm bound
14 by precedent --

15 MS. JOHNSON: Yes, sir.

16 THE COURT: -- in the case.

17 MS. JOHNSON: Yes, sir.

18 THE COURT: For that reason, in this situation, I
19 don't have any choice but to grant the State's motion.

20 MS. JOHNSON: Thank you, Your Honor.

21 THE COURT: Okay. Good luck to you, Mr. Burton.

22 MS. JOHNSON: Did you want to -- Your Honor, would
23 it be okay if Mr. Burton addresses the court?

24 THE COURT: Yes, sir.

25 THE DEFENDANT: Your Honor, first of all, thank

1 you for giving me the opportunity to address the court.

2 When I came through these gates, I was 17 years
3 old. That same juvenile, part prejudice, not educated
4 at all. I came from a home that was broken, to be
5 honest with you, and I was a product of my peers --
6 what I learned, what I saw, what I was taught. Not to
7 use that as an excuse because I take full
8 responsibility for my actions, and I apologize to the
9 courts for us being here, and I apologize to the victim
10 and the victim witness and the victim's family because
11 this is not something I am proud of. But my mental
12 capacity was the same mental capacity as a juvenile who
13 had life without parole.

14 I ask you humbly and I throw my mercy on the court
15 that you please not dismiss my case for the simple
16 fact, Your Honor, because my sentence of life carries a
17 20-year possibility of parole after serving 20 years,
18 does that give the State the right to deny my
19 individual Medicaid services? Does that give the State
20 the right to deny my ability or was my ability or my
21 mental capacity different from the juvenile who had not
22 life without parole?

23 We are still the same juveniles, and I'm asking
24 you humbly, is there any kind of way that this case can
25 be heard? And one of the main factors that the parole

1 board keep denying me for, at the time of my
2 sentencings, the courts never made a distinction
3 whether I was a juvenile or adult. So every time I go
4 for parole, they deny me. And in prison now, I'm
5 considered as to be a model inmate. I work in the
6 medical facility. I have a high school diploma. I
7 have brick masonry trade. I have Work Keys. I have
8 everything -- I have did all I can. There's nothing
9 else I can do.

10 THE COURT: I'm sympathetic, Mr. Burton, I really
11 am.

12 THE DEFENDANT: My whole life been in here.

13 THE COURT: I hate to see young people get into
14 trouble that affects them the rest of their life. But
15 as I told your lawyer, I am bound as a circuit judge to
16 follow the direction of the appellate courts, and the
17 language of *Aiken vs. Byars* simply -- this court is not
18 a review of what happens at your parole hearing.

19 THE DEFENDANT: I understand.

20 THE COURT: There is a -- that's a different
21 proceeding and a different set of rules. And it may be
22 in the future that the supreme court makes a
23 distinction for persons in your situation. They just
24 haven't up to this point as far as the case is written.

25 Again, I am not unsympathetic to the position you

1 find yourself in today, and I commend you. You have
2 done well and you're a model prisoner, but my hands are
3 tied by the language of this case. I don't have any
4 ability to change what the supreme court has held, so
5 that's why I'm going to have to rule to dismiss this
6 under *Aiken vs. Byars* as it exists today.

7 THE DEFENDANT: Can I ask you this, Your Honor?
8 Is there any kind of way that the parole board can be
9 notified so they can make the distinction that I was a
10 juvenile when I came to prison because that's the main
11 problem that I'm having when I go for parole. The
12 State never made a distinction whether I was a juvenile
13 or adult at my sentencing. They never -- so every time
14 I go for a parole -- this is what Tommy Evans is
15 telling me, the lawyer for the parole board, any kind
16 of way that they can be notified or something so they
17 can see that.

18 THE COURT: Well, he was sentenced as an adult.

19 MS. HUEY: Yes, sir, Your Honor.

20 THE COURT: Well, Ms. Huey, when you prepare the
21 order, why don't you put language in the order about
22 his age at the time and why this was filed as *Aiken vs.*
23 *Byars*.

24 I'm going to -- what I'm going to do is direct the
25 solicitor to prepare an order, and she will outline in

1 the findings of fact your age at the time of the
2 sentencing and the time of the offense. She's going to
3 have to outline why *Aiken vs. Byars* doesn't apply to
4 your situation, but in the findings of fact that might
5 help you as far as dealing with the parole board.

6 MS. HUEY: Your Honor, if I may provide a proposed
7 order, and I have included that language. I've already
8 shown it to Ms. Johnson.

9 THE COURT: Let me see what you've done.

10 Okay. Mr. Burton, the order basically stipulates
11 both parties are agreeing that you were a juvenile at
12 the time, so I'm happy to sign that order, and you can
13 present that as the court taking judicial notice that
14 you were a juvenile at the time, and that might help
15 you. Again, we're not reviewing what the parole board
16 does.

17 THE DEFENDANT: I understand.

18 THE COURT: That's outside this court, but I'll
19 sign the order as written, and that may give you some
20 assistance as far as what they require.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Ms. Huey, I have signed the order.

23 MS. HUEY: Thank you, Judge.

24 THE COURT: Make Ms. Johnson and Mr. Burton a
25 copy.

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And good luck to you, Mr. Burton.
THE DEFENDANT: Thank you so much, Your Honor.
MS. JOHNSON: Thank you, Your Honor.
(WHEREUPON, proceedings concluded at 2:19 p.m.)
END OF REQUESTED TRANSCRIPT OF RECORD

IN THE COURT OF GENERAL SESSIONS
THE TENTH JUDICIAL CIRCUIT

State of South Carolina) Case No.: _____
 County of Anderson)
)
)
 State of South Carolina,)
 Plaintiff.)
)
 v.) MOTION FOR RESENTENCING
)
)
 Johnny Lee Burton,)
 Defendant.)
)

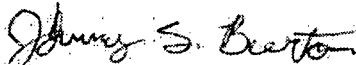
FILED-CLERK'S OFFICE
 ANDERSON SC
 2016 OCT 24 PM 12:54
 COMMON PLEAS AND
 GENERAL SESSIONS

Defendant Johnny Lee Burton pro-se 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 vs. 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 whatever reason, the court ordered that all juveniles sentenced to life without parole in South Carolina 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; 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 in the court of General Sessions where he or she was originally sentenced. Aiken v. Byars, Appellate; the defendant in this case was a second-generation Miller juvenile which made his sentence of life parole eligible after serving twenty years. Appellate was seventeen (17) years old at the time of his offense, conviction and sentence. The South Carolina Probation, Parole and Pardon Services (SCPPPS), the Parole Board, suppose to be the avenue for a meaningful opportunity for second-generation Miller juveniles. This opportunity does not extend to appellate when the Parole Board denies an offender who was convicted when he was a juvenile parole based on "unchangeable circumstances" a meaningful opportunity do not guarantee appellate a secured opportunity for release as contemplated by the Miller decision; Aiken v. Byars, 765 S.E. 2d 572 (2014) or Montgomery v. Louisiana, 135 S.Ct. 1546 (2015). Also address a salient issue here whether all juveniles convicted for a crime will have a guarantee opportunity for release. Given this sea change in the legal rules regulating sentencing hearing in cases where

juveniles have been sentenced to, or face a possible sentence of life without parole, makes appellant similarly situated. Every time the South Carolina Parole Board denies a juvenile offender parole the defendant goes right back to life without parole making the defendant's sentence in violation of the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution. For the foregoing reasons, the defendant requests that counsel be appointed in this case, and that after allowing 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


Johnny Lee Burton

ON THIS 14th DAY OF October, 2016

Pelzer, South Carolina

FILED-CLERK'S OFFICE
ANDERSON SC
2016 OCT 24 PM 12:54
COMMON PLEAS AND
GENERAL SESSIONS

The Supreme Court of South Carolina

Tyrone Aiken, Matthew Clark, Eric Graham, Bradford
M. Haigler, Angelo Ham, J'Corey S. Hull-Kilgore,
Damian Inman, Roger Legette, Terriel Mack, Jennifer L.
McSharry, Wallace Priester, Davon Reed, Dondre M.
Scott, Edgar L. Thomas, James Van, et al., Petitioners,


v.

William R. Byars, Jr., Director, South Carolina
Department of Corrections, and Alan Wilson, Attorney
General of South Carolina, Respondents.


Appellate Case No. 2012-213286

ORDER

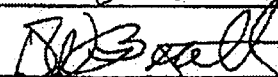
Petitioners move this Court to vacate the stay of our opinion issued in this case. Petitioners also request they and others similarly situated be given one year from the date the stay is vacated by order of this Court to file a motion for resentencing. The State opposes the motion on the ground that the stay was effectively lifted when the United States Supreme Court issued its final decision in the matter; therefore, an order vacating the stay is unnecessary. The motion is granted and the stay is hereby lifted. Petitioners and any other individuals affected by our holding in *Aiken* may 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. There the matters shall proceed pursuant to the guidance provided in *Aiken*.



C.J.



J.



J.

Kaye G. Heam

J.

Kittredge, J., not participating

Columbia, South Carolina

July 23, 2015

cc:

John H. Blume, III, Esquire
Keir M. Weyble, Esquire
Elizabeth Anne Franklin-Best, Esquire
Joshua A. Bailey, Esquire
Diana L. Holt, Esquire
Robert Michael Dudek, Esquire
Ernest Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Sheri L. Johnson, Esquire
John Benjamin Aplin, Esquire
Donald J. Zelenka, Esquire
Christopher D. Scalzo, Esquire
Joseph M. McCulloch, Jr., Esquire
Abby C. Johnston, Esquire
Abby F. Rudzin, Esquire
John S. Nichols, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

State of South Carolina,

Case No. _____

Plaintiff,

CERTIFICATE OF SERVICE

v.

Johanny Lee Burton

Defendant

I, Johnny Lee Burton, SCDC#213281, hereby certify that I have served motion for Resentencing to be filed in the court of Common Pleas for the Tenth Judicial Circuit, dated 14th day of October, 2016, by inserting said motion within an envelope and depositing the same in the United States mail, first class postage prepaid and placed in the hands of the interagency mail service personel of Perry Correctional Institution for mailing to the address listed below which is also written legibly on said envelope, this day, 17th of October, 2016.

Anderson County Courthouse
100 S. Main St.
Anderson, SC 29624

S/ Johnny S. Burton ✓

SWORN TO BEFORE ME this ^{19th} ~~17th~~ day
of October, 2016

Nancy C. Merchant
Notary Public for South Carolina
My Commission Expires: 1-23-2021

RECEIVED
OCT 19 2016
P.C.I. MAILROOM

2016-11-02-01

The Supreme Court of South Carolina

Johnny Lee Burton, Petitioner,

v.

State of South Carolina,
Respondent.

Anderson County

Docket No.: 1994-GS-04-
00823; 1994-GS-04-00825

ORDER

Petitioner filed a motion on October 27, 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 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

November 2, 2016
Columbia, South Carolina

4/94

FILED-CLERK'S OFFICE
ANDERSON SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
JOHNNY LEE BURTON,)
)
Petitioner,)
)
VS.)
)
THE STATE OF SOUTH CAROLINA,)
)
Respondent.)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT
INDICTMENT NO.: 1994-GS-04-824; 825

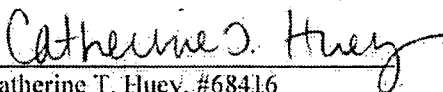
2017 JUL 19 PM 3:25
COMMON PLEAS AND
GENERAL SESSIONS

MOTION TO DISMISS

Petitioner has filed a Motion for Resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E. 2d 572 (SC 2014). On April 12, 1994, Petitioner was found guilty of Murder and the Possession of a Weapon during the Commission a Violent Crime. He was sentenced by the Honorable H. Dean Hall and received a sentence of life and five years, respectively. At the time of his conviction and sentencing, Petitioner was a juvenile; however, at the same time, a life sentence in 1994 allowed for parole eligibility. As a result, Petitioner became eligible for parole after the service of twenty (20) years. Petitioner was most recently denied parole on April 20, 2016, but has another parole hearing set for on or about April 20, 2018.

Petitioner alleges he is entitled to a resentencing pursuant to the provisions of Aiken v. Byars and the United States and South Carolina Constitutions. The Byars case mandates resentencing for juveniles sentenced to life *without* the possibility of parole. Petitioner did not receive a sentence of life without the possibility of parole, as he became parole eligible after the service of twenty (20) years, and remains eligible for parole in the future. Therefore, he does not fall under the auspices of Aiken v. Byars, and as such, his motion should be dismissed and denied with prejudice.

I SO MOVE.


Catherine T. Huey, #68416
Deputy Solicitor, Tenth Judicial Circuit

July 19, 2017
Anderson, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 JOHNNY LEE BURTON,)
)
 Petitioner,)
)
 VS.)
)
 THE STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF GENERAL SESSIONS
 TENTH JUDICIAL CIRCUIT
 INDICTMENT NO.: 1994-GS-04-824; 825

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ORDER OF DIMISSAL AUG 16 2017

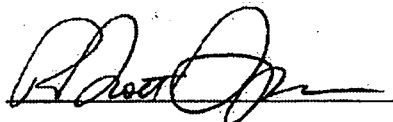
SC Court of Appeals

This matter came before the Court on August 9, 2017. The State was represented by Deputy Solicitor Catherine T. Huey. Jennifer Johnson, Chief Public Defender for the 10th Judicial Circuit, represented the Petitioner. On October 27, 2016, Petitioner filed a motion for resentencing pursuant to Aiken v. Byars having been found guilty of Murder and the Possession of a Weapon during the Commission a Violent Crime and sentenced to life and five years, respectively, by the Honorable H. Dean Hall. This Court was given jurisdiction of this matter by order of Chief Justice Pleicones.

All parties agree that Petitioner was a juvenile for the purposes of Aiken v. Byars at the time of his sentencing and did receive a life sentence. However, all parties further agree that the Petitioner has been eligible for parole since his service of 20 years, although parole has been denied to date, and remains eligible for parole in that he has a parole hearing set for April 20, 2018.

Aiken v. Byars is concerned with the process due to a juvenile defendant who has been sentenced to *life without the possibility parole*. Here, the sentence imposed by the Court did not necessarily impose a permanent loss of the juvenile defendant's freedom. Petitioner has previously been eligible for parole and remains eligible for parole. Therefore, the Petitioner is not entitled to the specific relief provided by Aiken v. Byars. Petitioner's motion for a sentencing hearing pursuant to Byars is thus dismissed.

IT IS SO ORDERED.

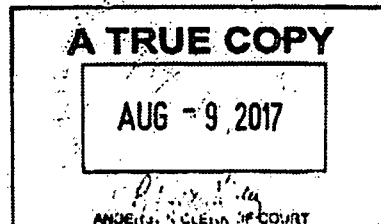


R. Scott Sprouse, Presiding Judge

10th Judicial Circuit

Anderson, South Carolina

August 9, 2017



ARREST WARRANT

D- 919297

STATE OF SOUTH CAROLINA

County/ Municipality of ANDERSON

THE STATE

against

JOHNNY LEE BURTON

Address: 4 BOOKER ST ANDERSON, SC 29624

Phone: 803- SSN:

Sex: M Race: B Height: 5'07" Weight: 142

DL State: SC DL #:

DOB: 02/01/76 Agency ORI #: SC0040100

Prosecuting Agency: Anderson Police Department

Prosecuting Officer: ANY OFFICER

Offense: MURDER

Code/Ordinance Sec. 16-3-10 Offense Code:

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of ANDERSON. The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant JOHNNY LEE BURTON on 25 JAN 78

Signature of Constable/Law Enforcement Officer James F. Blum APD

RETURN WARRANT TO:

K. M. Mattison, Judge 401 South Main Street Anderson, SC 29624 803-231-2271

STATE OF SOUTH CAROLINA

County/ Municipality of Anderson

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 519

20

Personally appeared before me, the affiant SCOTT A. WALKER being duly sworn deposes and says that defendant JOHNNY LEE BURTON did within this county and state on January 22, 1994 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Anderson) 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 probable cause is based on the following facts:

ON THE ABOVE DATE THE DEFENDANT DID WITH MALICE AFORETHOUGHT CAUSE THE DEATH OF SHEDRICK GAINES BY SHOOTING THE VICTIM THREE TIMES WITH A SMALL CALIBER HANDGUN. THIS INCIDENT DID OCCUR APPROXIMATELY 11:35 PM AT 104 EASTVIEW AVE WITHIN THE CITY LIMITS OF ANDERSON SC. DEFENDANT WAS SEEN BY SEVERAL WITNESSES SHOOT THE VICTIM. THE VICTIM DID DIE FROM SAID WOUNDS AT THE ANDERSON AREA MEDICAL CENTER APPROXIMATELY 12:47 PM ON JANUARY 25, 1994.

Sworn to and subscribed before me on 01/25/94 Signature of Issuing Judge K. M. Mattison (L.S.)

Signature of Affiant Scott A. Walker Affiant's Address: 401 South Main Street Anderson, SC 29624 Affiant's Telephone: 803-231-2271

ENTERED

STATE OF SOUTH CAROLINA

County/ Municipality of Anderson

ARREST WARRANT

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

If appearing from the above affidavit that there are reasonable grounds to believe that on January 22, 1994 defendant JOHNNY LEE BURTON did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Anderson) 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.

Signature of Issuing Judge K. M. Mattison (L.S.) Judge's Address: 401 South Main Street Anderson, SC 29624 Judge's Telephone: 803-231-2271 Issuing Court: Magistrate Municipal Circuit

APPEAR IN COURT ON Wednesday, January 26, 1994

D-919297 Ref #: 94-01450

WITNESSES
WALKER, APD

DOCKET NO. 94-GS-04-825

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS
APR 5 1994 TERM

DDW

THE STATE

vs.

JOHNNY LEE BURTON

Y

ARREST WARRANT NO. D919297

ACTION OF GRAND JURY

4-5-94

Jerry S. Phillips
Foreman of Grand Jury

VERDICT

Indictment for Murder

16-3-20

Foreman of Petit Jury

Date:

GEORGE M. DUCWORTH, SOL.

Commitment

4-13-94

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICTMENT FOR MURDER
16-3-20

At a Court of General Sessions, convened on APR 5 1994,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — MURDER

That JOHNNY LEE BURTON
did in ANDERSON County on or about JANUARY 22, 1994,
feloniously, wilfully and with malice aforethought, kill one SHEDRICK GAINES

by means of SHOOTING
and that the said victim died as a proximate result thereof.

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

George M. Duwath
TENTH CIRCUIT

SOLICITOR

NOW COMES THE DEFENDANT

Johnny Lee Burton

Who in open Court [REDACTED] pleads guilty to the charge in the warrant or in the within indictment and consents to sentence,

this ___ day of _____ 19 ___

Defendant

SENTENCE

Johnny Lee Burton

The defendant _____ is committed to the State Dept. of Corrections/Security 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 _____

Date April 12, 1994 A. D. Hall
Presiding Judge

*Costs and Assessments

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

Clerk of Court

ARREST WARRANT

D- 919321

STATE OF SOUTH CAROLINA

County/ Municipality of Anderson

THE STATE against

JOHNNY LEE BURTON

Address: 4 DOOKES ST ANDERSON, SC 29624

Phone: 803- SSN:

Sex: M Race: B Height: 5'07" Weight: 142

DL State: SE DL #:

DOB: 09/01/76 Agency ORI #: 900940100

Prosecuting Agency: Anderson Police Department

Prosecuting Officer: ANY OFFICER

Offense: POSSESSION OF A FIREARM DURING COMMISSION OF VIOLENT CRIME

Code/Ordinance Sec. 16-23-490

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

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

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Johnny Lee Burton on 1-28-94

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

K. K. Mattison, Judge 401 South Main Street Anderson, SC 29624 803-231-2271

STATE OF SOUTH CAROLINA

County/ Municipality of Anderson

157 AFFIDAVIT

Personally appeared before me the affiant SCOTT A. WALKER being duly sworn deposes and says that defendant JOHNNY LEE BURTON did within this county and state on January 22, 1994 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Anderson) in the following particulars:

DESCRIPTION OF OFFENSE: POSSESSION OF A FIREARM DURING COMMISSION OF VIOLENT CRIME

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

ON THE ABOVE DATE THE DEFENDANT DID POSSESS OR VISIBLY DISPLAY FIREARM DURING COMMISSION OF A VIOLENT ACT, TO WIT: MURDER, CAUSING THE DEATH OF SHEDRICK GAINES. THIS INCIDENT DID OCCUR APPROXIMATELY 11:05 PM AT 104 EASTVIEM AVE WITHIN THE CITY LIMITS OF ANDERSON SC. DEFENDANT WAS SEEN BY SEVERAL WITNESSES; SHOOT THE VICTIM.

ENTERED

Sworn to and subscribed before me on 01/27/94

Signature of Issuing Judge (L.S.)

Signature of Affiant Scott A. Walker Affiant's Address 401 South Main Street Anderson, SC 29624 Affiant's Telephone 803-231-2277

STATE OF SOUTH CAROLINA

County/ Municipality of Anderson

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on January 22, 1994 defendant JOHNNY LEE BURTON did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Anderson) as set forth below:

DESCRIPTION OF OFFENSE: POSSESSION OF A FIREARM DURING COMMISSION OF VIOLENT CRIME

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.

Signature of Issuing Judge (L.S.)

Judge Code:

Judge's Address 401 South Main Street Anderson, SC 29624 Judge's Telephone 803-231-2271

Issuing Court: Magistrate Municipal Circuit

APPEAR IN COURT ON ORIGINAL January 28, 1994

D-919321 Xref #: 94-01458

DOCKET NO. 44-GS-04-823

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

APR 5 1994

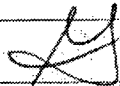
TERM _____

DDW

THE STATE

vs.

JOHNNY LEE BURTON



**Indictment for Assault and
Battery With Intent To Kill
and Possession of Firearm
or Knife During
Commission of or Attempt
to Commit Violent Crime**

GEORGE M. DUCWORTH, SOL.

WITNESSES
WALKER, APD

ARREST WARRANT NO. D919321

ACTION OF GRAND JURY

4-5-94

Jerry S. Phillips
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

Commitment

4-13-94

INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL AND POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

APR 5 1994

At a Court of General Sessions, convened on _____
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL

That _____
did in _____ County on or about _____, with
malice aforethought commit an assault and battery upon one _____
with intent to kill the said victim.

COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

That JOHNNY LEE BURTON
did in ANDERSON County on or about JANUARY 22, 1994, possess or
visibly display a firearm or visibly display a knife during the commission or attempted commission
of a violent crime, to wit: MURDER
in violation of Code Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

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

George M. Duworth
TENTH CIRCUIT
SOLICITOR

NOW COMES THE DEFENDANT

Johnny Lee Burton

Who in open Court [REDACTED] pleads guilty to the charge in the
warrant or in the within indictment and consents to sentence,
this ___ day of _____ 19 ___

Defendant

SENTENCE

Johnny Lee Burton

The defendant _____ is
committed to the State Dept. of Corrections/County for a term of 5
~~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 _____

Date April 12, 1994 _____
Presiding Judge

*Costs and Assessments
Non-Waivable \$ _____
Not waived \$ _____
Total \$ _____

Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

The State)

vs.)

Johnny Lee Burton,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

CASE NUMBER 94-GS-04-825

INDICTMENT FOR MURDER

VERDICT

1. GUILTY OF MURDER.



FOREPERSON

2. GUILTY OF MANSLAUGHTER.

FOREPERSON

3. NOT GUILTY.

FOREPERSON


STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
The State)
vs.)
Johnny Lee Burton,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
CASE NUMBER 94-GS-04-823

INDICTMENT FOR POSSESSION OF A
FIREARM OR KNIFE DURING THE
COMMISSION OF OR ATTEMPT TO
COMMIT A VIOLENT CRIME

VERDICT

1. GUILTY OF POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME.


FOREPERSON


2. NOT GUILTY.

FOREPERSON

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,



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 19th day of June, 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,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 19th day of June, 2018.

RECEIVED

JUN 19 2018

SC Court of Appeals