

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable Perry H. Gravely, Circuit Court Judge

RECEIVED
FEB 08 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MATTHEW THOMAS PICKENS, JR.

APPELLANT

APPELLATE CASE NO 2017-001687

RECORD ON APPEAL

LAURA R. BAER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR APPELLANT

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¹ Petitioner filed two copies of his motion for resentencing, both dated September 9, 2015, each of which contained slight variations from the other, along with two copies of the certificate of service and letter to the clerk. All versions of the filings are included in this Record.

The State of South Carolina
County of Anderson

Matthew T. Pickens, Sr., #131245
Petitioner,

The State
Defendant.

In The Court of General Session¹
Tenth Judicial Circuit

Indictment No. (1982-GS-04-
0477; 0483; 0476; 0478)

Notice and Motion For Resentencing
Pursuant To Aiken v Byars^C
Op. No. 27465 (S.C. Sup. Ct.,
Filed November 12, 2014)

FILED - CLERK'S OFFICE
ANDERSON SC

2015 SEP 14 AM 11:21

COMMISSIONER AND

To: Christina Adams, 10th Judicial Circuit Solicitor.

Now Comes, Matthew T. Pickens, the undersigned petitioner, appearing pro se solely for the filing of the instant motion, hereby notifies the State of South Carolina that he will move before this Honorable Court to be resentenced on the above-captioned Indictment Number in light of the South Carolina Supreme Court decision in Aiken v. Byars, Op. No. 27465, filed November 12, 2014. In support of this motion the ~~Defendant~~^{Petitioner} would show this Honorable Court the following:

1) Petitioner was born in Anderson County on the date November 30, 1970. At the time of the offense and arrest Petitioner was a (17) seventeen year old juvenile in December 14, 1987 the offense happen (14) fourteen day after his 17th birthday.

2) Codefendant Ricky N. Johnson was Mr. Pickens first cousin was seen running from the victim house, the codefendant was (27) years old at the time of arrest, and

3) The record will show that there was no DNA or fingerprints was found of Mr. Pickens nor did the victim witness or identify Petitioner being one of the people inside her

home at the time of crime,

4) Mr. Pickens was sentenced following a jury trial on September 21, 1988 and was found guilty on the above Indictments and received a sentence of "Natural life" pronounced by the Honorable Tom J. Ervin, Circuit Judge;

5) At the end of Mr. Pickens trial the Court made no distinction between defendants whose crimes were committed as an adult. The trial record will show further that counsel mentioned very briefly Mr. Pickens age and his life prior to commission of the crime;

6) On January 13, 1993 Mr. Pickens filed a post-conviction Case No. 91-CP-04-885 at p. 22 line 7th-15, their are testimony by counsel Robert A. Gamble testified that, "their had been a plea offer on ^{the} the above indictments... and that was rejected by Pickens." However, Petitioner at the time had no understanding of no plea offer nor was he educated enough to make a sound decision concerning such matters.

Wherefore, based upon the foregoing facts and in light of Aiken vs. Byars, 410 S.C. 534, 765 S.E. 2d 572 (2014); Bear Creek vs. Wyoming, 2012 WL 2002444 (Oct. 1, 2012) and Miller vs. Alabama 132 S. Ct. 2455 (2012), the undersigned Petitioner, through counsel to be appointed will move for Resentencing of the September 21, 1988 sentence on the above indictments number:

dated September 9, 2015
at Ridgerville, S.C.

Respectfully Submitted,
Matthew T. Pickens
Matthew T. Pickens
Sec# 151245, WC-168
Liber Corr. Inst.
P.O. Box 205
Ridgerville, S.C. 29472

The State of South Carolina
County of Anderson

Matthew T. Pickens, Jr., #151245,
Petitioner,

vs.

The State
Defendants,

In The Court of General
Sessions Tenth Judicial
Circuit

Indictments No (1988-BS-01
0477; 0483; 0476; 0478)

Notice and Motion For
Resentencing Pursuant To

Aiken v. Byars, Sp. No. 274

(S.C. Sup Ct. filed Novem
12, 2014)

FILED-CLERK'S OFFICE
ANDERSON SC

2015 SEP 11 11:11

To: Christina Adams, 10th Judicial Circuit Solicitor.

Now Comes, Matthew T. Pickens, the undersigned Petitioner appearing pro se solely for the filing of the instant Motion, hereby notifies the State of South Carolina that he will move before this Honorable Court to be Resentenced on the above-captioned Indictments Number in light of the South Carolina Supreme Court decision in Aiken vs. Byars, Sp. No. 27465, Filed November 12, 2014. In support of this motion the Petitioner would show this Honorable Court the following:

1) Petitioner was born in Anderson County on the date November 30, 1976. At the time of the offense and arrest Petitioner was a (17) seventeen year old juvenile in December 14, 1987, the offense happen (14) fourteen days after his 17th birthday.

2) Codefendant Ricky Al Johnson was Mr. Pickens first cousin was seen running from the victim house, the codefendant was (27) years old at the time of arrest; and

3) The record will show that there was no DNA or Fingerprints was found of Mr. Pickens nor did the victim

witness or Identify Petitioner being one of the people inside her home at the time of crime;


4). Mr. Pickens was sentenced following a jury trial on September 21, 1988 and was found guilty on the above Indictments and received a sentence of "Natural life" pronounced by the Honorable Tom J. Ervin, Circuit Judge;

5). At the end of Mr. Pickens trial the Court made no distinctions between defendants whose crimes were committed as an adult. The trial record will show further that counsel mentioned very briefly Mr. Pickens age and his life prior to commission of the crime;

b). On January 13, 1993 Mr. Pickens filed a post-conviction Case No. 91-CP-04-885 at pp. 22 line 7-thr-15, their ~~was~~^{are} testimony by counsel Robert A. Gamble testified that "their had been a plea offer on the above indictments... and that was rejected by Pickens." However, Petitioner at the time had no understanding of no plea offer nor was he educated enough to make a sound decision concerning such matters.

Wherefore, based upon the foregoing facts and in light of Aiken vs. Byars, 416 S.C. 534, 76 S.E. 2d 372 (2014); Ben Clark vs. Wyoming, 2012 WL 2002444 (Oct 2, 2012) and Miller vs. Alobe, 132 S. Ct. 2455 (2012), the undersigned Petitioner, through counsel to be appointed will move for Resentencing of the September 21, 1988 sentence on the above indictments number.

dated September 9, 2015

Respectfully Submitted

 Matthew T. Aikens, Jr.
 SCD#151245; WC-168
 Lieber Corr. Inst.
 P.O. Box 205
 Richwood, S.C. 29721

2015

The State of South Carolina
County of Anderson
Matthew T. Pickens, Jr.; #151245,
Petitioner,

vs.

State of South Carolina
Defendant.

In The Court of General¹⁵
Sessions 16th Judicial
Circuit
Indictments No. C1988-BS-
04-0477; 0483; 0476; 0478
Notice and Motion For
Appointment of Counsel For
Aiken v. Byars, Resentencing

Now Comes, Matthew T. Pickens, Jr., the undersigned
Petitioner, appearing pro se solely for the filing of the
instant motion, hereby moves this Honorable Court to appoint
Counsel to represent the petitioner at a resentencing proceeding
to correct the September 21, 1988 sentence imposed by this Court,
in light of the South Carolina Supreme Court decision in Aiken v.
Byars, Op. No. 27465, (filed November 12, 2014). In support of this
motion the petitioner would show this Honorable Court the following:

- 1). The petitioner has entered a motion for resentencing before
this Honorable Court;
- 2). The petitioner was represented at the September 21, 1988
sentencing on the above indictments by Randle Trudwell,
Esquire;
- 3). The Six Amendment of the United States Constitution
guarantees to all criminal defendants the right to the
"Assistance of Counsel" in his defense, see Beckon v. Wainwright,

372 U.S. 335 (1963). The right to counsel attached at the initiation of adversarial judicial proceedings and extends to sentencing proceedings, see Williams v. Taylor, 529 U.S. 362 (2002);

4) That South Carolina Constitution Article I, §14 and South Carolina Code of Laws §17-23-66 (1976) guarantee a criminal defendant the right to counsel; and


5) In South Carolina, sentencing is a critical stage of trial that requires the assistance of counsel, see State v. McQuinn, 268 S.E.112, 232 S.E. 2d 229 (1977).

The Petitioner suggests that, out of an abundance of caution, counsel independent of original counsel be appointed to represent the petitioner at the resentencing proceedings.

Conclusion

Wherefore, based upon the foregoing facts and law, Petitioner respectfully moves this Honorable Court to appoint counsel to represent Petitioner at the resentencing proceedings to be held by this Court in light of Aiken v. Byars.

dated September 9, 2015
at Ridgerville, SC

Respectfully Submitted

Matthew T. Pickens, Sr.
SCDC # 151245; USC-168
Lieber Corr. Inst.
P.O. Box 205
Ridgerville, SC 29742
Petitioner

2/1/16

The State of South Carolina
County of Anderson

Matthew T. Pickens, Jr. #151245
Petitioner,

vs.

The State of South Carolina
Defendant.


In The Court of General Sessions⁷
Tenth Judicial Circuit

Indictment No. (1988-GS-04-047;
0483; 0476; 0478)

Certificate of Service

The undersigned Petitioner, Matthew Thomas Pickens, hereby certifies that he has served a true and correct copy of 1) Notice and Motion for Resentencing pursuant to Aiken v. Byers, and 2) Notice and Motion for Appointment of Counsel on counsel for the State of South Carolina by depositing a copy of same in the United States Mail, first-class postage affixed thereto, this 9 day of September 2015, addressed as follows:

The Honorable Christina Adams
Solicitor, Tenth Judicial Circuit
Post Office Box 8002
Anderson, South Carolina 29622-8002


Matthew T. Pickens, Jr.
SCDC #151245; WSC-168
Lieber Corr Inst.
P.O. Box 205
Ridgerville, SC 29472

FILED-CLERK'S OFFICE
ANDERSON SC

2015 SEP 11 AM 11: 31

COMMON PLEAS AND
GENERAL SESSIONS

8 The State of South Carolina
County of Anderson

Matthew T. Pickens, Jr., #151245,
Petitioner,

vs.

The State of South Carolina
Defendant.

In The Court of General
Sessions Tenth Judicial
Circuit

Indictments No. (1988-GS-0
0477; 0483; 0476; 0478)

Certificate of Service

The undersigned Petitioner, Matthew Thomas Pickens, Jr., hereby certifies that he has served a true and correct copy of 1) Notice and Motion for Resentencing Pursuant To Aiken v. Byars, and 2) Notice and Motion for Appointment of Counsel on Counsel for the State of South Carolina by depositing a copy of same in the United States Mail, First - class postage affixed thereto, this 9 day of September 2013, addressed as follows:

The Honorable Christina Adams,
Solicitor, Tenth Judicial Circuit
Post Office Box 8002
Anderson, South Carolina 29622-8002

Matthew T. Pickens Jr.
Matthew T. Pickens Jr.
SCDC #151245; WC-168
Lieber Corr. Inst.
P.O. Box 205
Ridgexville, S.C.
C 29472

COMMON PLEAS AND
GENERAL SESSIONS

2013 SEP 11 AM 11:20

FILED-CLERK'S OFFICE
ANDERSON SC

Matthew Thomas Pickens, Jr.
SCDC # 151245; WC-168
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472-0205

September 9, 2015

The Honorable Richard A. Shirley
Anderson County Clerk of Court
Post Office Box 8002
Anderson, South Carolina 29622-8002

FILED-CLERK'S OFFICE
ANDERSON SC
COMMON PLEAS AND
GENERAL COURT
2015 SEP 11 AM 11:31

Re: Matthew T. Pickens, Jr. #151245 v. State of South Carolina

Dear Mr. Shirley:

Please find enclosed the following original documents for filing in the above-referenced criminal resentencing matter.

1. Notice and Motion for Resentencing;
2. Motion for Appointment of Counsel; and
3. Certificate of Service.

Please present these documents to the Circuit's Chief Administrative Judge at your earliest convenience.

Also, enclosed is one (1) extra copy of each document, please clock-stamp and return them to me for my files.

Your assistance in this matter is sincerely appreciated.
With kind regards, I am,

cc. Ms. Christina Adams, 10th
Judicial Circuit, Solicitor

Sincerely
Matthew T. Pickens Jr.
Petitioner

Mr. Tiffany Raines (Court Admin.)

Matthew Thomas Pickens, Jr.,
 SLOC #151245; USC-168
 Lieber Correctional Institution
 Post Office Box 265
 Ridgerville, South Carolina 29472-0265

September 9, 2015

The Honorable Richard A. Shirley
 Anderson County Clerk of Court
 Post Office Box 8002
 Anderson, South Carolina 29622-8002

Re: Matthew T. Pickens, Jr. #151245 vs. State of South Carolina

Dear Mr. Shirley:

Please find enclosed the following original document for filing in the above-referenced criminal resentencing matter:

1. Notice and Motion for Resentencing;
2. Motion for Appointment of Counsel; and
3. Certificate of Service

Please present these documents to the Circuit's Chief Administrative Judge at your earliest convenience.

Also, enclosed is one (1) extra copy of each document, please clock-stamp and return them to me for my files.

Your assistance in this matter is sincerely appreciated.

With kind regards, I am,
 Sincerely,

cc:

Ms. Christina Adams, 10th
 Judicial Circuit, Solicitor

Matthew T. Pickens, Jr.

COMMON PLEAS AND
 GENERAL SESSIONS

2015 SEP 11 AM 11:30

FILED-CLERK'S OFFICE
 ANDERSON SC

The Supreme Court of South Carolina

Matthew T. Pickens, Jr.,

Petitioner, (

v.

State of South Carolina,

Respondent.

Anderson County

Docket Nos.: 1988-GS-04-00476-00478 & 00483

ORDER

Petitioner filed a motion on September 11, 2015 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 Perry H. Gravely be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge Gravely 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 Gravely 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.



Costa M. Pleicones
Chief Justice

July 18, 2016
Columbia, South Carolina

The State of South Carolina
County of Anderson

Matthew Thomas Pickens, Sr. Petitioner,

FILED-CLERK'S OFFICE
ANDERSON, SC
Petitioner, AM 11:47

COMMON PLEAS AND
GENERAL SESSIONS

In The Court of General
Sessions Tenth Judicial
Circuit

Motion For Resentencing
Under Aiken vs. Byars

A TRUE COPY

JAN - 3 2018

Stephanie Kuster
CLERK OF COURT

vs.

State of South Carolina
Defendant

Now Come Petitioner in the above matter requesting this Court to be Resentenced under the New Law Aiken vs. Byars, Op No 27465, (filed November 12, 2014).

Petitioner at the time was a (17) year old juvenile when he was sentence to the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County clerk of Court. Petitioner was indicted at April 5, 1988 term of the Anderson County Grand Jury for burglary, 1st degree (1988-GS-04-0477); criminal sexual conduct 1st degree (1988-GS-04-0483). He was represented by Ronald Treadwell, Esquire. On September 21, 1988, Petitioner proceeded to trial by jury before the Honorable Tom J. Ervin, where he was convicted of all charges as indicted. Judge Ervin sentenced Petitioner to life imprisonment for burglary, and thirty (30) consecutive years for criminal sexual conduct.

Petitioner was also indicted for criminal conspiracy (1988-GS-04-0476); and assault and battery of a high and aggravated nature (1988-GS-04-0478). He was convicted of ~~the~~ these offenses and was sentenced to five (5) years and ten (10) years, respectively to be served concurrently. Applicant has maxed out on these sentences, and currently only challenges the burglary and

14 Criminal sexual conduct sentences. Petitioner also like to present in support of his motion for resentencing an Affidavit by the the victim (see attach). The record will show that their was no ~~DNA~~ or Finger prints was found connecting Petitioner to the crime nor did the victim witness or identified Petitioner as being one of the people inside her home at the time of the crime.

Moreover, according to Petitioner January 13, 1993 PCR Case No: 91-CP-04-885 at p. 22, line 7 through 15 Their are testimony by counsel Robert A. Bamble testified that the state offered Petitioner a sentence of no more than 5 or 10 years in exchange for a guilty plea. Petitioner had no understanding of a guilty plea do to his incompetency of the law not know how to make a adult decision concerning such serious matter which led Petitioner to the State penitentiary with a life sentence.

At the end of Petitioner trial the Court made no distinctions between defendants whose crime were committed as a juvenile and those whose crimes were committed as an adult. The trial record will show further that Counsel mentioned very briefly Petitioner age and his life prior to commission of the crime, their was no ~~an~~ ^{MP} argument by counsel and no testimony or other evidence was presented on his behalf, (See Trial transcript of record of September 21, 1988 at p. 427.).

Accordingly, the Supreme Court has established a New Rule of Law that has been held to be Retroactive, that

he is entitled to a New Sentencing Hearing base upon the 15 Retroactive Rule in Aiken vs Byars, No. No 27465 (November 12, 2014 FN 4,6, As his Juvenile sentencing procedure conducted at the time, he was 17 years old when offense was committed December 14, 1987 did not comport with the Individualized sentencing requirements as his life Sentence pur to 1987 statutory Law 16-11-311 for a Non-Homicide Offense, without Individualized sentence consideration violates Both Aiken vs Byars, 132 S.C.T @ 2468 and Bear Cloud vs Wyoming, 2012 USL 2002444 (Oct 2012), Bear Cloud did not receive a Life without parole sentence but based on lack of Individualized sentence considerations for a (17) year old the U.S. Supreme Court remanded In Light of Miller vs. Alabama, 132 S.C.T. 2468 which forms the basis of Aiken vs Byars.

Conclusion

Clearly the Petitioner is entitled to Receive a New Sentencing Hearing based upon retroactive case of Aiken vs Byars, and Bear Cloud vs Wyoming.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

AFFIDAVIT

Re: Matthew T. Pickens) 88-GS-04-476, 88-GS-04-177
Prison #151245) 88-GS-04-478, 88-GS-04-483

PERSONALLY appeared before me Donna Nichelle Williams,
who first being duly sworn makes the following statement:

My age is 37 and I reside in Anderson County, South
Carolina. I was the prosecuting witness in the case of the
State of South Carolina vs. Matthew T. Pickens, who was
convicted of criminal sexual conduct 1st degree, ABANDON
BURGLARY on September 21, 1988.

I am informed that Matthew T. Pickens is eligible for
parole. I wish to inform the parole board that I do not
object to his release on parole and desire that the parole
board give Matthew Pickens an opportunity to be released. I
would like to the Parole Board to know that I believe
Matthew sincerely regrets his part in the assault upon me
and I have no reason to believe that he sexually attacked
me.

I have stayed in contact with Matthew through his
family and I believe that he is no threat to me or the
community. Matthew was only 17 years old at the time of the
attack and it was my ex-boyfriend, Ricky Nelson Johnson, who
was 27 years old, who was the main person attacking me.
Ricky died in prison at McCormick. I ask that you give
Matthew a chance to be with his family and re-build his
life. He has tried to better himself in prison by taking

courses to be a carpenter.

I have been under no pressure or threat in making this statement from anyone and I thank you for considering Matthew Pickens' release.

Pursuant to South Carolina Code Ann. Section 19-1-100, I have been advised that this Sworn Affidavit may not be used at a later date to contradict or impeach my testimony or to attack my credibility unless I receive a copy of the same at the time I sign it. Accordingly, by my signature below, I hereby acknowledge, consent and agree that I was furnished a copy of this Sworn Affidavit at the time I signed it. I further acknowledge, consent and agree that I understand this Sworn Affidavit may be used against me should I attempt to allege facts different than those stated herein in the Sworn Affidavit."

Donna Nichelle Williams
Donna Nichelle Williams

In the Presence of:

Kerduck Turkey
Kelli R. Brooks

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) PROBATE

Personally appeared before me the undersigned Notary Public and made oath that (s)he saw Donna Nichelle Williams sign the above and as and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 7 day of October 2009

Kelli R. Brooks Kerduck Turkey
Notary Public for SC
My Commission Expires: 08/07/2005

9/88

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 MATTHEW THOMAS PICKENS, JR.,)
)
 Petitioner,)
)
 VS.)
)
 THE STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF GENERAL SESSIONS
 TENTH JUDICIAL CIRCUIT
 INDICTMENT NO.: 1988-GS-04-00476-00478
 1988-GS-04-00483

MOTION TO DISMISS

COMMON PLEAS AND
 GENERAL SESSIONS

2018 OCT 20 AM 11:34

FILED-CLERK'S OFFICE
 ANDERSON, SC

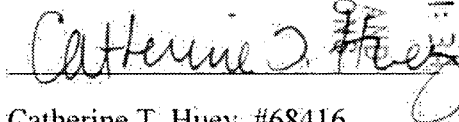
On September 11, 2015, Petitioner filed a Motion for Resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E. 2d 572 (SC 2014). On September 21, 1988, Petitioner was found guilty of Burglary 1st degree, as well as Criminal Sexual Conduct 1st degree. He was sentenced by the Honorable Tom Ervin and received a sentence of Life and Thirty (30) years, respectively. At the time of his conviction and sentencing, Petitioner was a juvenile; however, at the same time, a life sentence in 1988 allowed for parole eligibility. As a result, Petitioner was subsequently released on parole in 2002. While on parole in 2006, Petitioner committed and was later convicted of Check Fraud and Obtaining Goods by False Pretenses which led to his parole revocation. Petitioner was re-incarcerated and remains in custody to this day.

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 re-sentencing 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 was, in fact, paroled in 2006,

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.

FILED-CLERK'S OFFICE
ANDERSON SC
2016 OCT 20 AM 11:30
COMMON PLEAS AND
GENERAL SESSION



Catherine T. Huey, #68416
Assistant Solicitor, Tenth Circuit

October 20, 2016

Anderson, South Carolina

State of South Carolina
County of Anderson

Court of General Sessions

Matthew Thomas Pickens, Jr.,)

v.)

State of South Carolina)
_____)

) Transcript of Record

) 1988-GS-04-00476

) 1988-GS-04-00478

) 1988-GS-04-00483

June 22, 2017

Anderson, South Carolina

B E F O R E:

The Honorable Perry Gravely, Judge.

A P P E A R A N C E S:

Jennifer Johnson, Assistant Public Defender
Attorney for the Defendant

Al Means, Assistant Solicitor
Attorney for the State

Lisa Scott
Circuit Court Reporter

I N D E X

WITNESS

PAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

No Exhibits.

1 actually back in due to a parole revocation in 2006.

2 So it's the State's contention that Mr. Pickens
3 is not entitled to relief under *Aiken v. Byars* where
4 both if in the Federal case from which it flows
5 require or are concerned with people whose freedom
6 has been permanently denied as a juvenile for those
7 who have been sentenced to life without parole.

8 He -- he has had parole. He's eligible for
9 parole again. He is to have another parole hearing
10 relatively soon, possibly even this year. With --
11 with that remedy or that consideration open to him
12 through the state, we just don't believe it applies.

13 THE COURT: And, Ms. Johnson, I'll be glad to
14 hear from you.

15 MS. JOHNSON: Thank you, Your Honor. May it
16 please the Court?

17 Your Honor, I have reviewed this case with
18 Mr. Pickens. Initially, he was represented by Wendy
19 Hallford in my office, who is no longer at the
20 office.

21 I've had a chance to review all pleadings, as
22 well have had an opportunity to speak with
23 Mr. Pickens regarding this matter. He is, indeed,
24 eligible for parole. I think it would be difficult
25 for me to -- to argue before the Court that -- that

1 he falls under this particular kind of resentencing
2 in the Aiken case, which does -- from -- from my
3 reading of those groups of cases does apply to
4 individuals who are life without parole.

5 And although, technically, his sentence is
6 life, he is eligible for parole. He has been
7 paroled and he would be up possibly this November
8 for a parole hearing again.

9 I think the thing that's been so concerning to
10 him and maybe something the Courts get into at some
11 point in the future is, has he had a meaningful
12 opportunity at parole? I think some of these cases,
13 you know, even though the opportunity is there, it's
14 not a meaningful opportunity, so I think that's
15 where his -- his concern lies.

16 I believe he would like to address the Court
17 may -- maybe. No?

18 THE COURT: I'll be glad to hear from you,
19 Mr. Pickens if ---)

20 MS. JOHNSON: If you want to speak, now's the
21 time ---

22 -- (cross-talking) --

23 THE COURT: --- both your attorneys. She's
24 okay. You're fine.

25 MS. JOHNSON: Yes.

1 THE COURT: You drove all the way up -- or you
2 rode all the way up here.

3 THE DEFENDANT: My concern is like Ms. Johnson
4 said, have a meaningful parole hearing in quite some
5 time. What is charged, I didn't commit, but I have
6 evidence also to show that. And that's why I came
7 today and I filed paperwork to see can I get a
8 sentence reduction based on the information -- or
9 the victim, other factors that was in my case, but
10 evidently that's not the case.

11 THE COURT: All right. And you -- and you
12 realize I'm just making sure that you -- and this is
13 just as much for the record -- that -- and I realize
14 your concerns, and they sound like reasonable
15 concerns on your behalf.

16 But the purpose of this hearing and the
17 petition under the *Aiken v. Byars* is that at that
18 time you were sentenced under -- it was a -- it
19 was -- the whole purpose of that order was to
20 address juveniles of a certain -- or sentenced with
21 life without parole without going and submitting
22 some mitigating circumstances in their sentencing
23 phase.

24 And in your case -- and it would have to be
25 very specific to that -- that -- that issue. And in

1 your case, you were sentenced to life, but you did
2 have the right to parole. I think you were out on
3 parole at one time. So that's why that particular
4 case does not apply to you, and that's -- and that
5 was the only issue that this -- that can be heard at
6 this hearing now.

7 You may have some other opportunities or
8 avenues available to you. I'm not sure. But, you
9 know, for this purpose, that's the only thing we can
10 really handle and take up at this time, so...

11 I mean, I believe based on that and I think
12 that y'all -- sounds like y'all kind of agree that
13 this provision under *Aiken v. Byars* doesn't really
14 apply to you, so I'm going to dismiss this petition,
15 and then, you know, like I said, that point
16 shouldn't have any impact on your parole and stuff
17 like that.

18 All right. Anything else?

19 MR. MEANS: Nothing further from the State.

20 THE COURT: Thank you and good luck. And if
21 you get out on parole, maybe you'll do better this
22 time.

23 THE DEFENDANT: Yeah.

24 THE COURT: Because you got out one time
25 before, didn't you?

1 THE DEFENDANT: Yes. Yeah, I should've put in
2 a pardon for the Governor then for that.

3 THE COURT: Well, seriously, good luck to you.

4 THE DEFENDANT: All right. Thank you, sir.

5 MS. JOHNSON: Thank you, Your Honor.

6 THE COURT: All right. If you'll do a little
7 brief order on that.

8 MR. MEANS: Yes, sir.

9 THE COURT: All right. Just e-mail it to me.

10 MR. MEANS: Yes, sir.

11 THE COURT: Thank you.

12 (The proceedings concluded at 2:40 p.m.)

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1 C E R T I F I C A T E O F R E P O R T E R

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF ANDERSON

5

6 I, the undersigned, Lisa Scott, Circuit Court
7 Reporter for the Tenth Judicial Circuit of the State
8 of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Anderson County, South Carolina, on the
14 22nd day of June, 2017.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17

18

October 10, 2017

19

20

/s/Lisa Scott

21

22

Lisa Scott
Circuit Court Reporter

23

24

25

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON)	TENTH JUDICIAL CIRCUIT
MATTHEW THOMAS PICKENS, JR.)	INDICTMENT NO.: 1988-GS-04-00476-478
Petitioner,)	1988-GS-04-00483
VS.)	
THE STATE OF SOUTH CAROLINA,)	ORDER OF DISMISSAL
Respondent,)	
_____)	

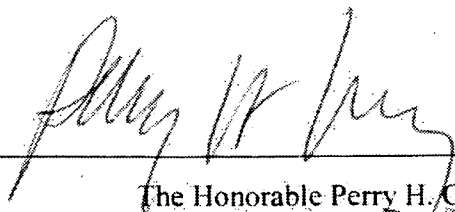
This matter came before the Court on June 22, 2017. The State was represented by Assistant Solicitor Al Means. Jennifer Johnson, Chief Public Defender for the 10th Judicial Circuit, represented the Petitioner. Petitioner had filed a motion for resentencing pursuant to Aiken v. Byars on September 11, 2015, having been found guilty of Burglary 1st Degree and Criminal Sexual Conduct, 1st Degree and sentenced to Life and thirty years respectively on September 21, 1988. This Court was given jurisdiction to hear Petitioner's Aiken v. Byars petition by order of Chief Justice Pleicones on July 18, 2016.

Aiken v. Byars governs the due process due to a juvenile defendant who has been sentenced to life *without the possibility parole*. The holding and requirements of Aiken v. Byars do not extend beyond that circumstance.

All parties agree that Petitioner was a juvenile for the purposes of Aiken v. Byars at the time of his sentencing and he did receive a life sentence. However, it is apparent, and all parties agree, that the petitioner was not sentenced to life *without the possibility of parole*. The Petitioner's record indicates that he was in fact paroled and has been re-incarcerated. Petitioner is currently eligible for parole again.

By its own terms, Aiken v. Byars is not applicable to the Petitioner on two grounds: the original sentence imposed was not the sentence described in Aiken, and Petition is not currently incarcerated directly pursuant to the original sentence. Therefore, the Petitioner is not entitled to the relief provided by Aiken v. Byars. Petitioner's motion for a sentencing hearing pursuant to Byars is thus dismissed.

It is so ordered.



The Honorable Perry H. Gravely
Presiding Judge

July 31, 2017
Anderson, South Carolina

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 ANDERSON SC.
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 CO. ANDERSON PLEAS AND
 CLERK'S OFFICE

WITNESSES

JOE NEW, APD

ARREST WARRANT NO. B993781

ACTION OF GRAND JURY

TRUE BILL
DATE

Stanley F. Cusick APR 05 1988

FOREMAN OF GRAND JURY

VERDICT

Guilty

Charles L. Black

FOREMAN OF PETIT JURY

DATE:

DOCKET NO. 88 CS 04 - 411

THE STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

COURT OF GENERAL SESSIONS

APRIL TERM 1988

20 I 73^v THE STATE

vs.

9 MATTHEW THOMAS PICKENS

J 338
B/W 8-11-88

B/W withdrawn 8-15-88

INDICIMENT FOR
BURGLARY
(DWELLING)

16-11-311

GEORGE M. DUCWORTH, SOLICITOR

The defendant MATTHEW THOMAS PICKENS
is committed to the State Dept. of Corrections/County for a term of his natural life or to pay a fine of \$.....; provided upon t

months/years and/or payment of \$.....
service of months/years and/or payment of \$.....
plus ~~any~~ 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 9/21/88 10m/E
Presiding Judge

*Costs and Assessments
Non-waivable \$.....
Not waived \$.....
Total 88 \$.....
Clerk of Court
**Pay to Victim's Compensation Fund if subrogated.

SC
9-23-88

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICTMENT FOR BURGLARY
(DWELLING)

16-11-311

At a Court of General Sessions, convened on APRIL 5, 1988,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE - BURGLARY IN THE FIRST DEGREE

(DWELLING)

That MATTHEW THOMAS PICKENS
did in ANDERSON County on or about DECEMBER 14, 1987,
wilfully and unlawfully enter the dwelling of DONNA WILLIAMS
without consent and with the intent to commit a crime therein and the
defendant committed the offense in the night and while in the dwelling
did cause physical injury to a person not a participant in the crime.

COUNT TWO - BURGLARY IN THE SECOND DEGREE

(DWELLING)

That _____
did in _____ County on or about _____,
wilfully and unlawfully enter the dwelling of _____
without consent and with the intent to commit a crime therein.

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

WITNESSES

JOE NEW, APD

ARREST WARRANT NO. DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL
DATE

Stanley Z. Creek APR 05 1988
FOREMAN OF GRAND JURY

VERDICT

Guilty

Charles L. Blech
FOREMAN OF PETIT JURY DATE:

DOCKET NO.

88 GS-04 - 483

THE STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

COURT OF GENERAL SESSIONS

APRIL TERM 1988

20 THE STATE

E 74

vs.

9 MATTHEW THOMAS PICKENS

J 359

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT
FIRST DEGREE

16-3-652 160

GEORGE M. DUCWORTH, SOLICITOR

§ 17A-102

The defendant MATTHEW THOMAS PICKENS
committed to the State Dept. of Corrections, 30 for a term of THIRTY months/consecutive years or to pay a fine of \$; provided upon
sentence of months/years and/or payment of \$
plus costs and assessments as applicable, the bail
suspended with probation for months/years.
Restitution For physical injury, \$
Yes / No property damage \$
to be paid
to clerk for
Other conditions

9/21/88
Total and Assessments
Non-reivable \$
Not waived \$
Total \$
*Pay to Victim's Compensation Fund if subrogated.

Tom J. E.
Presiding Judge

Clerk of Court

59
4-25-88

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICIMENT FOR CRIMINAL
SEXUAL CONDUCT FIRST DEGREE

16-3-652 160
At a Court of General Sessions, convened on APRIL 5, 1988,

the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT

FIRST DEGREE

That MATTHEW THOMAS PICKENS did in
ANDERSON County on or about DECEMBER 14, 1987, engage
in sexual battery, to wit: BY INSERTING AN OBJECT INTO THE GENITAL OPENING

upon and with the body of DONNA WILLIAMS without
his/her consent. Such sexual battery was accomplished by the use of force of
a high and aggravated nature, to wit: BY BEATING THE VICTIM IN THE HEAD
REQUIRING TEN STITCHES TO THE TEMPLE AREA AND FRACTURING JAW.

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

George M. Duesworth
SOLICITOR TENTH CIRCUIT

Warrant No. 88-40-044 478

THE STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

COURT OF GENERAL SESSIONS

APRIL TERM 1988

20 THE STATE

I 74
vs.

9 MATTHEW THOMAS PICKENS

Address: J 338

Race/Color

SS #

D.B. #

City

INDICEMENT FOR
ASSAULT AND BATTERY OF A HIGH
AND AGGRAVATED NATURE AND
CARRYING CONCEALED WEAPON
C/L 17-25-30 013

GEORGE M. DUCWORTH, SOLICITOR

ARREST WARRANT NO. Direct Indictment
(See warrant B993782)

ACTION OF GRAND JURY

TRUE BILL
DATE

Stanley F. Creek APR 05 1988
FOREMAN OF GRAND JURY

VERDICT

Guilty

Charles L. Black
FOREMAN OF PETIT JURY DATE:

OFFENSE

The defendant MATTHEW THOMAS PICKENS
committed to the State Dept. of Corrections/County for a term of 10
Year months/years Concurrent or to pay a fine of \$ provided upon
service of months/years and/or payment of \$
plus pay 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 9/21/88

Tom E
Presiding Judge

*Costs and Assessments

Non-waivable \$

Not waived \$

Total \$

**Pay to Victim's Compensation Fund if subrogated.

Clerk of Court

50
923-78

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICTMENT FOR ASSAULT AND BATTERY
OF A HIGH AND AGGRAVATED NATURE
~~AND CARRYING CONCEALED WEAPON~~

C/L 17-25-30 013

At a Court of General Sessions, convened on APRIL 5, 1988,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE - ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE

That MATTHEW THOMAS PICKENS did
in ANDERSON County on or about DECEMBER 14, 1987, commit
an assault and battery upon the victim, DONNA WILLIAMS,
constituting an unlawful act of violent injury to the person of the said
victim, accompanied by circumstances of aggravation, to wit: _____
BY BEATING THE SAID VICTIM IN THE HEAD REQUIRING TEN STITCHES TO THE TEMPLE
AREA AND FRACTURING JAW.

COUNT TWO - CARRYING CONCEALED WEAPON

That _____ did
in _____ County on or about _____, carry
concealed about his person a deadly weapon, to wit: _____

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

George M. Duworth
SOLICITOR TENTH CIRCUIT

WITNESSES

DOCKET NO. 88 GS-04-476

THE STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

COURT OF GENERAL SESSIONS

APRIL TERM 1988

20 THE STATE

I 73

vs.

MATTHEW THOMAS PICKENS

J 239

ARREST WARRANT NO. DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL
DATE

Stanley F. Cribb APR 05 1988
FOREMAN OF GRAND JURY

VERDICT

Guilty

Charles L. Block

FOREMAN OF PETIT JURY

DATE:

INDICTMENT FOR
CRIMINAL CONSPIRACY

16-17-410 940

GEORGE M. DUCWORTH, SOLICITOR

CE

The defendant MATTHEW THOMAS PICKENS is
committed to the State Dept. of Corrections/County for a term of 5
(FIVE) months/years and/or to pay a fine of \$.....; provided upon the
concomit 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 9/21/88

Tom J. E.
Presiding Judge

*Costs and Assessments

Non-waivable \$.....

Not waived \$.....

Total \$.....

**Pay to Victim's Compensation Fund if subrogated.

Clerk of Court

SC 2-23-88

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR CRIMINAL CONSPIRACY

16-17-410 049

At a Court of General Sessions, convened on APRIL 5, 1988,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE - CRIMINAL CONSPIRACY

That MATTHEW THOMAS PICKENS
did in ANDERSON County on or about DECEMBER 14, 1987,
unlawfully and wilfully unite, combine, conspire, confederate, agree and have
Richard Nelson Johnson
tacit understanding with ~~each other~~ and/or with other persons, whose names are
unknown to the Grand Jurors, for the purpose of COMMITTING THE OFFENSE OF
BURGLARY

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

George M Duworth
SOLICITOR TENTH CIRCUIT

224

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

The State, Respondent,

v.

Matthew Thomas Pickens,Appellant.

Appeal From Anderson County
Thomas J. Ervin, Judge

Memorandum Opinion No. 90-MO-137
Heard September 11, 1990 - Filed September 28, 1990

AFFIRMED

Assistant Appellate Defenders M. Anne Pearce and Stephen P. Williams, both of the South Carolina Office of Appellate Defense, of Columbia, for Appellant.

Attorney General T. Travis Medlock, Assistant Attorneys General Harold M. Coombs Jr. and Norman Mark Rapoport, all of Columbia; and Solicitor George M. Ducworth, of Anderson, for Respondent.

PER CURIAM: The Defendant-Appellant Matthew Thomas Pickens was indicted and tried along with Richard Nelson Johnson for (1) burglary in the first degree, (2) criminal sexual conduct in the first degree, (3) assault and battery of a high and aggravated nature, and (4) criminal conspiracy. The joint trial resulted in guilty verdicts on all four counts. Both Defendants were sentenced to confinement for life on the burglary charge, thirty years consecutive for the criminal sexual conduct charge, ten years concurrent for assault and battery of a high and aggravated nature charge and five years concurrent for criminal conspiracy. Pickens does not appeal the conviction and sentence for burglary and criminal sexual conduct. He does appeal the conviction and sentence for criminal conspiracy and assault and battery of a high and aggravated nature on two grounds as taken from his brief as follows:

1. The court erred and denied Appellant due process of law when it refused his motion for a directed verdict on the conspiracy charge.

STATE v. PICKENS

2. The court erred and denied Appellant due process of law when it refused to have his motion to have the charge of assault and battery of a high and aggravated nature dismissed, because this charge was a lesser included offense of criminal sexual conduct in the first degree and Appellant's conviction and sentence for this crime violates the double jeopardy clause of the Fifth Amendment.

The evidence submitted proved satisfactorily to the jury that Pickens and Johnson wrongfully entered the home of the victim and abused her amounting to an assault and battery prior to the actual sexual misconduct. Counsel argues that such assault and battery was a part of the sexual misconduct and accordingly not a separate offense. While oftentimes this would be true, the evidence before the court was susceptible of the inference that an assault and battery took place prior to and independent of the sexual misconduct. Accordingly, we find no error in submitting both offenses to the jury. The law of double jeopardy does not apply.

The evidence is also susceptible of the inference that Pickens and Johnson agreed to violate the law amounting to a conspiracy prior to the actual violations.

Since the life imprisonment sentence and the thirty year sentence is not contested, our opinion becomes somewhat moot. Be that as it may, the Defendant has exercised a right of appeal to which he is entitled, and accordingly, we have ruled upon the issues.

AFFIRMED.

Richard B. Byrd
C. Trent Gentry J.
Donald L. Lingle A.J.

Recorded this 14th day
of January A. D. 19 91
in Vol. 16 Page 224-225
AT 12:31 PM M.

C.C.C.P.
Anderson County, S.C.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

The State,

Respondent,

vs.

Matthew Thomas Pickens,

Appellant.

APPEAL FROM General Sessions

Anderson **County**

Docket NO. 88-GS-04-476
88-GS-04-477
88-GS-04-478
88-GS-04-483

Assistant Appellate Defenders M. Anne Pearce and Stephen P. Williams,
both of the SC Office of Appellate Defense, of Columbia,

For Appellant

Attorney General T. Travis Medlock, Assistant Attorneys General Harold M.
Coombs, Jr., and Norman Mark Rapoport, all of Columbia; and Solicitor

George M. Ducworth, of Anderson,

For Respondent

JUDGMENT

AFFIRMED

Attest:

Reta D. Mims

Clerk.

The State of South Carolina
IN THE COURT OF APPEALS

The State,

Respondent,

vs.

Matthew Thomas Pickens,

Appellant.

JUDGMENT OF THE COURT OF APPEALS

Remitted to General Sessions for
Anderson County,
January 11, 1991

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,



Laura R. Baer
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 8th day of February, 2018.

RECEIVED
FEB 08 2018
SC Court of Appeals