

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALONZA DENNIS,

APPELLANT

APPELLATE CASE NO. 2011-192370

RECORD ON APPEAL

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Division of Appellate Defense
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1 MR. GRIMES: There is an ipso facto clause.
2 I think our state Supreme Court has rejected our argument
3 that would be preserved and the US Supreme Court would
4 address that issue in the near future.

5 Nothing further, Your Honor.

6 THE COURT: You want to say anything,
7 Mr. Dennis?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Well, on the
10 conviction for assault and battery with intent to kill,
11 the sentence of the Court is that you spend the rest of
12 your natural life in the Department of Corrections. And
13 on the commission of a violent crime, it's five years, or
14 commission of a violent crime with a weapon, five years.

15 All right. Possession of a weapon,
16 commission of a violent crime. Okay. Five years on
17 that. Life without the possibility of parole on the
18 assault and battery with intent to kill. Okay.

19 Well, I want to thank y'all for your service
20 in getting this done this week, and I thought everybody
21 was very professional and handled it well.

22 MS. SHEALY: Thank you, Your Honor.

23 - - -

24 (Whereupon, the proceedings were concluded.)

25 - - -

Charleston County Sheriff's Office
Advisement of Rights

OCA#: 2009-012231 Date: 06/22/09
 Name: Al Dennis Race: B Sex: M DOB: 08/16/64
 Address: [REDACTED] Phone: 928-3755
 Employment: Santa Rosa Phone: _____
 Social Security #: [REDACTED] Driver's Lic. # 101764868
 State: SC

Det. K. Park has advised me that he is a member of the Charleston County Sheriff's Office, and has further advised me.

- AD 1. That I have the absolute right to remain silent and do not have to answer any questions or give a statement and this fact cannot be used against me.
- AD 2. That if I do answer questions or give a statement, anything I say can and will be used against me in a Court of Law.
- AD 3. That I have the right to consult with a lawyer of my choice before I answer questions or give a statement and also to have him present while I am being questioned.
- AD 4. That if I wish to talk to a lawyer or have him present, but am unable to afford to hire a lawyer, one will be appointed to represent me free of charge.
- AD 5. That if I decide to answer questions or give a statement without having a lawyer present representing me, I have the absolute right during this interview to stop answering questions and remain silent.

I FULLY UNDERSTAND EACH OF THESE RIGHTS WHICH HAVE BEEN EXPLAINED TO ME.

Witnesses: [Signature] 9677
X Alonzo Dennis

WAIVER OF RIGHTS

I fully understand each of these rights which have been explained to me, and having these in mind, I wish to waive these rights and answer questions. No threats, force or promises of any kind have been made to me by anyone to induce or cause me to waive these rights and answer questions.

Witnesses: [Signature] 9677
X Alonzo Dennis

STATE'S EXHIBIT <u>75</u>	COURT'S EXHIBIT NO. <u>2</u> IDENTIFICATION EVIDENCE DKT.# <u>all</u> DATE: <u>3/14/11</u>
-------------------------------------	---

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA # 2009-021231-B

DATE 06/22/09

STATEMENT OF Hlonza Dennis
ADDRESS _____ -D PHONE # _____
EMPLOYER: SAVTEE STR LINE PHONE # _____
RACE: Black SEX: M DATE OF BIRTH: _____

I WAS AT MY MOTHER HOUSE
AT 9:00 CLOCK AND LEFT AT ABOUT
10:30 - AND GOT TO McELLENVILLE
AT 11:00 AND WENT TO WORK
ABOUT 12:00 AND GOT BACK TO McELLENVILLE
AT ABOUT 3:30 AND NEXT
THING I KNEW I WAS UNDER
ARREST AND I DID NOT KNOW
D ~~WHAT~~ WHAT HAPPEN

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES: [Signature] 2677

[Signature] 9477
Signature

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT

[Signature]
Signature

21515
D 1650

Charleston County Sheriff's Office
Advisement of Rights

OCA#: 2009-012231 Date: 6/29/09
 Name: ALONZA DENNIS Race: B Sex: M DOB: [REDACTED]
 Address: _____ Phone: 928-375-5
 Employment: SANTEE STRAW Phone: _____
 Social Security #: [REDACTED] Driver's Lic. # [REDACTED]
 State: SC

DETECTIVE C. LAWRENCE has advised me that he is a member of the Charleston County Sheriff's Office, and has further advised me.

- A.D. 1. That I have the absolute right to remain silent and do not have to answer any questions or give a statement and this fact cannot be used against me.
- A.D. 2. That if I do answer questions or give a statement, anything I say can and will be used against me in a Court of Law.
- A.D. 3. That I have the right to consult with a lawyer of my choice before I answer questions or give a statement and also to have him present while I am being questioned.
- A.D. 4. That if I wish to talk to a lawyer or have him present, but am unable to afford to hire a lawyer, one will be appointed to represent me free of charge.
- A.D. 5. That if I decide to answer questions or give a statement without having a lawyer present representing me, I have the absolute right during this interview to stop answering questions and remain silent.

I FULLY UNDERSTAND EACH OF THESE RIGHTS WHICH HAVE BEEN EXPLAINED TO ME.

Alonzo Dennis

Witnesses:

[Signature] 9677

[Signature]

WAIVER OF RIGHTS

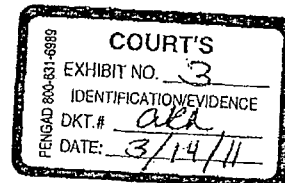
I fully understand each of these rights which have been explained to me, and having these in mind, I wish to waive these rights and answer questions. No threats, force or promises of any kind have been made to me by anyone to induce or cause me to waive these rights and answer questions.

Alonzo Dennis

Witnesses:

[Signature] 9677

[Signature]



CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA # 2009-012231-B

DATE 4/29/09

STATEMENT OF Alonza Dennis

ADDRESS [REDACTED] PHONE # [REDACTED]

EMPLOYER: Santee Straw PHONE # [REDACTED]

RACE: B SEX: M DATE OF BIRTH: [REDACTED]

I was at Queen House and they was telling me about a Robbery that they were going to do and they would like for me to get in on it, but before that, ~~they~~ they didn't need me, so I then ~~got~~ took a ride back to the station and when I got there I was there about 5 minutes and they come behind me and they told me to get in the car the ~~blue~~ ^{blue} crown vick and they had the gun on the back seat and told me to get the gun that the man is right here so we walk up to him and so, one said give ^{use} your money and every thing and he run off and went for his gun ^{first} I only ~~fire~~ shoot ~~that~~ to keep him from shooting me first

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES: [Signature] 9677
 [Signature] 9921

[Signature] Alonza Dennis
Signature

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT [Signature] Alonza Dennis
Signature

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA # 2009-012231-B

DATE 6/29/09

STATEMENT OF Alonzo Dennis

ADDRESS _____ PHONE # _____

EMPLOYER: _____ PHONE # _____

RACE: _____ SEX: _____ DATE OF BIRTH: _____

Q. Who said give us your money?

A. I AM NOT SURE best I think it was Qwan

Q. What did you talk about while at Qwan's house?

A. ~~Every~~^{AD} EVERY ONE was talking about the robbery me, Qwan, the Big gay Dark ~~skin~~ skin and two small gays and they wasn't saying anything and I do not no their names

Q. Would you recognize these persons if you saw them again?

A. yes

Q. Did you walk from Qwan's house initially or did you get a ride?

A. I got a ride with Qwan Grandfather to the same store

Q. What is Qwan's grand father's name?

A. Gibs is what we call him he is about 75 and Drive a white and red truck

Q. How did you meet back up with Qwan and the others?

A. they came at the store

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES: [Signature] 9077

x. Alonzo Dennis
Signature

Top Court 9021

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT x. Alonzo Dennis
Signature

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA # 2009-012231-B

DATE 6/29/09

STATEMENT OF Alonzo Dennis

ADDRESS _____ PHONE # _____

EMPLOYER: _____ PHONE # _____

RACE: _____ SEX: _____ DATE OF BIRTH: _____

Q: Why did you not ride to the store with Quan?

A: they was saying they didn't need me again. The Big was saying they didn't need m.

Q: When did you next see Quan?

A: I saw Quan when I got in the car and when we got out

Q: Who gave you the gun?

A: ~~It~~ It was on the Back seat

Q: What did the gun look like?

A: nickle looking revolver

Q: Who was inside of Quan's car when you got in?

A: Quan, Big guy, little guy

Q: Are those the same people that was discussing robbing the guy at Quan's house?

A: yes

Q: What was you supposed to get out of the deal for robbing the guy?

A: money

Q: Who told you that you would get clothes & money?

A: Quan Big guy

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES: [Signature] 9677
[Signature] #9921

X Alonzo Dennis
Signature

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT X Alonzo Dennis
Signature

CHARLESTON COUNTY SHERIFF'S OFFICE STATEMENT

OCA # 2009-012331A

DATE 6/29/09

STATEMENT OF Alonzo Dennis

ADDRESS _____ PHONE # _____

EMPLOYER: _____ PHONE # _____

RACE: _____ SEX: _____ DATE OF BIRTH: _____

Q. Where was the robbery supposed to occur?

A. Back Road Behind the store

Q. Describe Quin's car.

A. Blue shiny ^{AD} wheel ^{AD} high in the air Crown vick ~~tenent~~ window

Q. Who was driving Quin's car?

A. Quin

Q. Did you see the victims gun?

A. yes, square look gun, Black

Q. How many times did you shoot?

A. 5 times

Q. What did you do with the gun after you shot the guy?

A. hide it in the wooded ^{AD} place

Q. What type of car did the guy have?

A. Station wagon Gray

Q. Why did you lie in your first statement?

A. I was thinking ^{AD} let see what they got first.

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES: [Signature] 9677 [Signature] 9921

X. Alonzo Dennis Signature

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT X. Alonzo Dennis Signature

PAGE 6 OF 6

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT

OCA # 2009-012231-2

DATE 6/29/09

STATEMENT OF Alyssa Dennis

ADDRESS _____ PHONE # _____

EMPLOYER: _____ PHONE # _____

RACE: _____ SEX: _____ DATE OF BIRTH: _____

Q. Is there anything that you want to add?

A. No

Q. Is the above (6) six page statement written by you true and correct to the best of your knowledge?

A. yes

AD
End of Statement
AD

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES: Paul Jc 9677
Rep Lewis 9921

x Alyssa Dennis
Signature

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT Alyssa Dennis
Signature

SUPREME COURT OF THE STATE OF NEW YORK FEE: \$10.00
BRONX COUNTY
265 EAST 161 STREET
BRONX, NY 10451

CERTIFICATE OF DISPOSITION INDICTMENT

DATE: 02/10/2011

CERTIFICATE OF DISPOSITION NUMBER: 36868

PEOPLE OF THE STATE OF NEW YORK
VS.

CASE NUMBER: 01721-86
LOWER COURT NUMBER(S): 6X014396
DATE OF ARREST: 04/06/1986
ARREST #: B86011102
DATE OF BIRTH: [REDACTED]
DATE FILED: 04/28/1986

DENNIS, ALONZO

DEFENDANT

I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS ON FILE IN THIS OFFICE THAT ON 10/06/1987 THE ABOVE NAMED DEFENDANT WAS CONVICTED OF THE CRIME(S) BELOW BEFORE JUSTICE BARRETT, S THEN A JUSTICE OF THIS COURT.

RAPE 1st DEGREE PL 130.35 03 BF
RAPE 1st DEGREE PL 130.35 01 BF

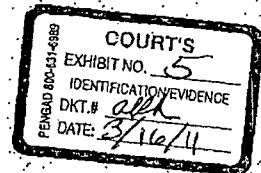
THAT ON 12/21/1987, UPON THE AFORESAID CONVICTION BY PLEA THE HONORABLE BARRETT, S THEN A JUDGE OF THIS COURT, SENTENCED THE DEFENDANT TO

RAPE 1st DEGREE PL 130.35 03 BF
IMPRISONMENT = 6 YEAR(S) TO 18 YEAR(S)

RAPE 1st DEGREE PL 130.35 01 BF
IMPRISONMENT = 6 YEAR(S) TO 18 YEAR(S)

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL ON THIS DATE 02/10/2011.

Luis Diaz
COURT CLERK



FindLaw® FOR LEGAL PROFESSIONALS

N.Y. PEN. LAW § 130.35 : NY Code - Section 130.35: Rape in the first degree

Search N.Y. PEN. LAW § 130.35 : NY Code - Section 130.35: Rape in the first degree

- [Search by Keyword or Citation](#)

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless;

or

3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

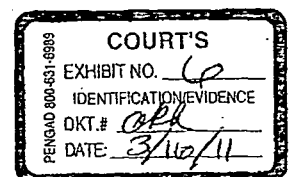
Rape in the first degree is a class B felony.

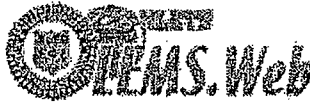
« Prev
Rape in the
second degree

Up
SEX OFFENSES

Next »
Criminal sexual
act in the third
degree

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CR 00085D5252 from NLETS

17-25-45

CHSSL419
.CR.00085D5252.NLETS.20090709 11:20:49
TO: CHSSL419-19043 20090709 11:20:49 00085D5252
FROM: NLETS-6115922 20090709 11:20:49
CR.NYIII0000
08:19 07/09/2009 67560
08:19 07/09/2009 23728 SC010015A
*258A003BC7
TXT

HDR/2L01258A003BC72QR ATN/MCGILLM
PART 1

THE FOLLOWING RECORD PERTAINS TO FBI/576544X3
THIS REPLY TO YOUR QR INQUIRY MUST BE UTILIZED ONLY FOR THE PURPOSE FOR WHICH
IT WAS REQUESTED AND MUST NOT BE UTILIZED FOR EMPLOYMENT OR LICENSING PURPOSES.
IF THE SUBJECT'S RECORD IS SUBSEQUENTLY REQUIRED FOR ANOTHER PURPOSE A NEW
REQUEST MUST BE MADE TO ENSURE THE RECORD USED IS CURRENT AND COMPLETE.
DATE 07-09-09 STATE OF NEW YORK TRAN # III
TIME 1112 DIVISION OF CRIMINAL JUSTICE SERVICES PART 1
FAX #

CONFIDENTIAL TO: AUTHORIZED AGENCY

STATE OF SOUTH CAROLINA

DOB [REDACTED]
RAC BLACK
SEX MALE
HGT 5-08
SOC 2 [REDACTED]
FBI 576544X3
III MULTI SOURCE

NAME DENNIS,ALONZA NYSID: 5629868N

DNA PROFILE IS ON FILE IN THE DNA DATABANK *
IF MORE INFORMATION IS REQUIRED, CALL DCJS OFFICE OF FORENSIC SERVICES
AT 800-262-3257.

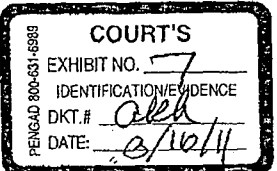
NAMES USED BY SUBJECT

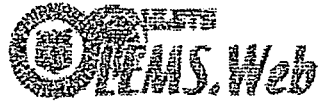
DENNIS,ALONZO DENNIS,ALONZA

<<<<<<< CRIMINAL HISTORY >>>>>>

! ARREST ! ARREST/ARRAIGNMENT ! DISPOSITION AND !
! INFORMATION ! CHARGES ! RELATED DATA !
VIOLENT FELONY ! - - ARREST - - ! - - DISPOSITION - -
ARR DT/PL 04-06-86! RAPE: INTERCOURSE PERSON! 12-21-87 BRONX CO SUP COURT
BRONX !PL 130.35 SUB 03! CASE # 1721-86(X)
!CLASS B FEL NCIC 1199! CONVICTED UPON VERDICT AFTER
CRM DATE: 04-06-86! TRIAL
CRIME PLACE: !SODY:DEV INTRC W/OTHER!
BRONX !PL 130.50 SUB 03! THE FOLLOWING CHARGE(S):
!CLASS B FEL NCIC 1199! RAPE-1ST
ARR#/AGY B86011102! !PL 130.35 NO SUB
NYCPD PCT 042 !ENDANGERING WELFARE OF! CLASS B FEL NCIC 1199
!PL 260.10 NO SUB! SENT: 6 YEARS - 18 YEARS
CRT CON# 10010053M! CLASS A MISD NCIC 3806!
FAX NO B009355 !
ORACLE # 17300912 !
! RAPE: INTERCOURSE PERSON < 11
!PL 130.35 SUB 03

Rape





CR 00085D5252 from NLETS

CHSSL419
.CR.00085D5252.NLETS.20090709 11:20:49
TO: CHSSL419-19043 20090709 11:20:49 00085D5252
FROM: NLETS-6115922 20090709 11:20:49
CR.NYIII0000
08:19 07/09/2009 67560
08:19 07/09/2009 23728 SC010015A
*258A003BC7
TXT

HDR/2L01258A003BC72QR ATN/MCGILLM
PART 1

THE FOLLOWING RECORD PERTAINS TO FBI/576544X3
THIS REPLY TO YOUR QR INQUIRY MUST BE UTILIZED ONLY FOR THE PURPOSE FOR WHICH
IT WAS REQUESTED AND MUST NOT BE UTILIZED FOR EMPLOYMENT OR LICENSING PURPOSES.
IF THE SUBJECT'S RECORD IS SUBSEQUENTLY REQUIRED FOR ANOTHER PURPOSE A NEW
REQUEST MUST BE MADE TO ENSURE THE RECORD USED IS CURRENT AND COMPLETE.
DATE 07-09-09 STATE OF NEW YORK TRAN # III
TIME 1112 DIVISION OF CRIMINAL JUSTICE SERVICES PART 1
FAX #

CONFIDENTIAL TO: AUTHORIZED AGENCY

STATE OF SOUTH CAROLINA

DOB [REDACTED]
RAC BLACK
SEX MALE
HGT 5-08
SOC [REDACTED]
FBI 576544X3
III MULTI SOURCE

NAME DENNIS,ALONZA NYSID: 5629868N

DNA PROFILE IS ON FILE IN THE DNA DATABANK *
IF MORE INFORMATION IS REQUIRED, CALL DCJS OFFICE OF FORENSIC SERVICES
AT 800-262-3257.

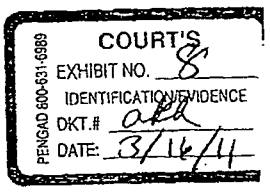
NAMES USED BY SUBJECT

DENNIS,ALONZO DENNIS,ALONZA

<<<<<<< CRIMINAL HISTORY >>>>>>>

Table with 4 columns: ARREST INFORMATION, ARREST/ARRAIGNMENT CHARGES, DISPOSITION AND RELATED DATA. Includes entries for VIOLENT FELONY, RAPE: INTERCOURSE PERSON, and CLASS B FEL NCIC 1199.

rape



```

!CLASS B FEL NCIC 1199
!SENT: 6 YEARS - 18 YEARS
!
!
!
!04-06-86 CRIM CRT BRONX
! CASE # UNKNOWN
!NOT ARRAIGNED
!
!THE FOLLOWING CHARGE(S):
!SODY:DEV INTRC W/OTHER PERS<11
!PL 130.50 SUB 03
!CLASS B FEL NCIC 1199
!
!
!
!04-06-86 BRONX CO SUP COURT
! CASE # UNKNOWN
!CHARGE NOT CONSIDERED BY GRAND
!JURY
!
!THE FOLLOWING CHARGE(S):
!SODY:DEV INTRC W/OTHER PERS<11
!PL 130.50 SUB 03
!CLASS B FEL NCIC 1199
!
!ENDANGERING WELFARE OF CHILD
!PL 260.10 NO SUB
!CLASS A MISD NCIC 3806
!
!
! - - PENAL/PAROLE DATA - -
!DOWNSTATE CORR FAC - ADMISSION
!12-24-87 COMMITTED
!TERM: 6YR - 18YR
!INMATE ID NO 87T1542
!
!
!NYS DEPT CORR - RELEASED
!INMATE ID NO 87T1542
!03-31-98 CONDITIONAL RELEASE
!TO DIVISION OF PAROLE
!
!
!NYS DIV PAROLE
!03-31-98 ON PAROLE
!EXP 03-31-04 ID 87T1542
!ASSIGNED:MANHATTAN VI
!
!
!NYS DIV PAROLE
!11-02-98 PAROLE-REVOKED
!ID NO 87T1542
!
!
!ULSTER CORR FAC - ADMISSION
!11-02-98 RPV AFTER COND RELS
!TERM: 6YR - 18YR
!INMATE ID NO 87T1542
!ADMITTED FOR:

```

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!
!           !RAPE-1ST
!           !PL 130.35      NO SUB
!           !CLASS B FEL  NCIC 1199
!
!
!
!           !
!
!           !NYS DEPT CORR      -  RELEASED
!           !INMATE ID NO 87T1542
!           !07-05-02  CONDITIONAL RELEASE
!           !TO DIVISION OF PAROLE
!
!
!
!           !
!
!           !NYS DIV PAROLE
!           !07-05-02  REPAROLED
!           !EXP 06-08-04  ID 87T1542
!           !ASSIGNED:BRONX II
!
!
!
!           !
!
!           !NYS DIV PAROLE
!           !01-23-03  PAROLE-REVOKED
!           !ID NO 87T1542
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!           !ULSTER CORR FAC      -  ADMISSION
!           !01-23-03  RPV AFTER COND RELS
!           !TERM:   6YR - 18YR
!           !INMATE ID NO 87T1542
!           !ADMITTED FOR:
!           !RAPE-1ST
!           !PL 130.35      NO SUB
!           !CLASS B FEL  NCIC 1199
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!           !NYS DIV PAROLE
!           !10-16-03  REPAROLED
!           !EXP 06-07-04  ID 87T1542
!           !ASSIGNED:BRONX II
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!           !NYS DEPT CORR      -  RELEASED
!           !INMATE ID NO 87T1542
!           !10-16-03  CONDITIONAL RELEASE
!           !TO DIVISION OF PAROLE
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!           !NYS DIV PAROLE
!           !12-03-03  PAROLE-REVOKED
!           !ID NO 87T1542
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!           !ULSTER CORR FAC      -  ADMISSION
!           !12-03-03  RPV AFTER COND RELS
!           !TERM:   6YR - 18YR
!           !INMATE ID NO 87T1542
!           !ADMITTED FOR:
!           !RAPE-1ST
!           !PL 130.35      NO SUB
!           !CLASS B FEL  NCIC 1199
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!           !NYS DEPT CORR      -  RELEASED

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! INMATE ID NO 87T1542
! 06-04-04 EXP OF MAX SENT
!

< < < < < OTHER INFORMATION > > > > >

LATEST UPDATED PERSONAL DESCRIPTORS: EYES/BROWN HAIR/BLACK WGT 145 LBS

NCIC FINGERPRINT CLASSIFICATION PM100716130610081710

SS # ! 249-37-6718

DOB ! 08-16-64

POB ! FLORIDA

NAME/! REPORTED ON ! INFORMATION
ADDR !

!04-06-86! DENNIS,ALONZA
!12-03-03! DENNIS,ALONZO

FILE 15 DCJS ALBANY NY001015Y JULY 09,2009 REPLY

TO: CT006105C

MESA 00000 FILED 07-09-09

CONTINUED FROM PREVIOUS PART

DATE 07-09-09 PART 2

NAME DENNIS,ALONZA NYSID 5629868N TRAN NO III

WHERE AN INDIVIDUAL IS SENTENCED JUNE 1, 1981, OR LATER, ON MORE THAN ONE CHARGE WITHIN A DOCKET, THE SENTENCES MAY BE CONSIDERED TO BE CONCURRENT UNLESS IDENTIFIED AS CONSECUTIVE.

CAUTION: THIS RESPONSE IS NOT BASED ON A FINGERPRINT SEARCH OR IDENTIFICATION AND, AS SUCH, DOES NOT SATISFY THE PROVISIONS OF CPL SECTION 390.10 FOR USE IN PRONOUNCING A SENTENCE.

ALL ENTRIES ARE AS COMPLETE AS THE DATA FURNISHED TO DCJS.
DENISE E. O'DONNELL, COMMISSIONER

END OF RECORD

* * * END OF RECORD * * *

FILED

STATE OF SOUTH CAROLINA 2011 FEB -4 AM 10:07 IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON BY JULIE J. ARMSTRONG CLERK OF COURT NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA -versus- ALONZA DENNIS Defendant. NOTICE OF INTENTION TO SEEK A SENTENCE OF LIFE WITHOUT PAROLE Warrant No(s): K607021; K607022; K607023 Indictment No(s): 2009GS1008108; 2009GS1008112; 2009GS1008113 Charge(s): ABWIK; POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME; ATTEMPTED ARMED ROBBERY

TO: ALONZA DENNIS, DEFENDANT, AND MEGAN EHRLICH, ATTORNEY FOR THE DEFENDANT:

PLEASE TAKE NOTICE that the trial of the above-entitled action, to be scheduled on a date at least ten (10) days hence, of which you will be timely notified, the State will seek the Defendant to be sentenced to a term of imprisonment for life without the possibility of parole, pursuant to the South Carolina Code of Laws Section 17-25-45 (1995) as amended.

Jennifer Kneece Shealy Assistant Solicitor

Charleston, South Carolina

Dated: 2/4, 2011.

COURT'S EXHIBIT NO. 9 IDENTIFICATION EVIDENCE DKT.# alk DATE: 3/16/11

ATTEST: A TRUE COPY JULIE J. ARMSTRONG (SEAL) CLERK, C.P., G.S. & F.C. DEPUTY CLERK

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,) Indictment Nos.: 2009-GS-10-08108
) 2009-GS-10-08112
)

v.)

ALONZA DENNIS,)

DEFENDANT.)

BRUCE A. HARRIS
JUDGE
CLERK OF COURT

2011 MAR 25 PM 3:29

FILED

DEFENDANT'S MOTION TO RECONSIDER

TO: JENNIFER SHEALY, ASSISTANT SOLICITOR FOR THE NINTH JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Alonza Dennis, through his undersigned attorneys, Megan Ehrlich and Andrew Grimes, will move before the Honorable Roger Young for an order reconsidering the life sentence of Mr. Dennis.

In support of this motion, Mr. Dennis contends that the Court violated the Sixth Amendment and section 17-25-45 when it considered the computer printouts that were attached to Court's Exhibit 5 to find that Mr. Dennis's 1987 conviction qualified as a most serious offense under South Carolina law. First, the Court violated Mr. Dennis's Sixth Amendment right to have a jury of his peers determine any disputed fact that would increase his sentence when it considered the computer printouts. *See Shepard v. United States*, 544 U.S. 13 (2005); *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Second, the Court violated section 17-25-45 when it did not use the categorical approach to determine whether the 1987 conviction constituted a most serious offense. *See Taylor v. United States*, 495 U.S. 575 (1990); *State v. Lindsey*, 355 S.C. 15, 583 S.E.2d 740 (2003).

In support of this motion, Mr. Dennis relies upon the above-cited cases, the Sixth Amendment, section 17-25-45, a memorandum in support of this motion that will be filed by

Wednesday, March 30, 2011, and any arguments of counsel.

Respectfully submitted,

Megan Ehrlich

Megan Ehrlich
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-1850
Attorney for Alonza Dennis

FILED
2011 MAR 25 PM 3:29
JULIA W. SINGONG
CLERK OF COURT
BY _____

Andrew D. Grimes

Andrew D. Grimes
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-1850
Attorney for Alonza Dennis

Charleston, South Carolina

March 25, 2011

STATE OF SOUTH CAROLINA) FILED
 COUNTY OF CHARLESTON) IN THE COURT OF GENERAL SESSIONS
 2011 MAR 31 PM 12:32)
 STATE OF SOUTH CAROLINA,) CLERK OF COURT)
))
 v.))
))
 ALONZA DENNIS,))
))
 DEFENDANT.))
 _____))

Indictment Nos.: 2009-GS-10-08108
 2009-GS-10-08112

**MEMORANDUM OF LAW IN SUPPORT
 OF THE DEFENDANT'S MOTION TO RECONSIDER**

This matter is before the Court upon Alonza Dennis's motion for the Court to reconsider his sentence. The Court's reliance upon printouts from a computer screen to determine the nature of the Defendant's 1987 conviction for rape violated the Defendant's rights in two respects. First, the Court violated the Defendant's Sixth Amendment right to have a jury of his peers determine any disputed fact that would increase his sentence when it considered the computer printouts. *Shepard v. United States*, 125 S. Ct. 1254 (2005); *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Second, the Court violated section 17-27-45 of the South Carolina Code of Laws when it did not use the categorical approach to determine whether the Defendant's prior conviction for rape constituted either a serious or a most serious offense. *See Taylor v. United States*, 495 U.S. 575 (1990).

I. Background

From March 14, 2011, to March 16, 2011, the State tried Alonza Dennis on the charges of attempted armed robbery, assault and battery with the intent to kill, and use of a weapon during a crime of violence. During the trial, Mr. Dennis testified on his behalf. During his testimony, Mr. Dennis told the jury that he acted like he was involved in the attempted armed robbery because he was afraid of what his co-defendants would do to him if he did not go along with their plan. Mr.

Dennis further testified that he never wanted to rob Moses Alford and that he did not take any actions to threaten Mr. Alford or to try and rob him.

Regarding the assault and battery with the intent to kill charge, Mr. Dennis testified that he shot toward Mr. Alford in an attempt to scare him because he saw Mr. Alford reaching for a gun and thought Mr. Alford was going to shoot him. In his testimony, Mr. Dennis stated that he had nothing against Mr. Alford and was only shooting towards him because he was scared and afraid that Mr. Alford would shoot him.

The lead detective in the case (Detective Lawrence) testified that Mr. Dennis was arrested on June 22, 2009, on the charge of trespassing. Detective Lawrence also testified that he later charged Mr. Dennis with attempted armed robbery, assault and battery with the intent to kill, and use of a weapon during a crime of violence.

On February 4, 2011, the State served its Notice of Intention to Seek a Sentence of Life Without Parole upon Mr. Dennis and his attorney. (Exhibits 1 and 2). After the trial, the jury returned a verdict of not guilty on the charge of attempted armed robbery and on the lesser included charge of attempted strong arm robbery. The jury, however, found Mr. Dennis guilty of the charges of assault and battery with the intent to kill and the use of a weapon during a crime of violence.

After the jury's verdict, the Court held a sentencing hearing. The Court heard from the parties and considered Mr. Dennis's objections to the imposition of a life sentence. The Court overruled Mr. Dennis's objections and sentenced him to life.¹

¹ The Court also noted that Mr. Dennis had ten days in which to file a motion to reconsider in which he could raise additional objections.

II. Discussion

A.

The Court violated Mr. Dennis's Sixth Amendment right to have a jury make any factual finding that would increase a person's sentence when it considered the computer printout to determine whether the 1987 rape conviction constituted a most serious offense.

The Sixth Amendment provides the following:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

In *In re Winship*, 397 U.S. 358 (1970), the Supreme Court of the United States held that due process requires the prosecution to prove every essential element of a criminal offense beyond a reasonable doubt. After *Winship*, the Supreme Court has established that *Winship*'s due process and associated jury protections extend, to some degree, "to determinations that [go] not to a defendant's guilt or innocence, but simply to the length of his sentence." *Almendarez-Torres v. United States*, 523 U.S. 224, 251 (1998) (Scalia, J., dissenting).

The Supreme Court, however, appears to depart from the reasoning in *Winship* when it allowed trial judges to make factual findings on sentencing factors. In *McMillan v. Pennsylvania*, 477 U.S. 79 (1986), the Supreme Court "for the first time, coined the term 'sentencing factor' to refer to a fact that was not found by a jury but that could affect the sentence imposed by the judge." *Apprendi*, 530 U.S. at 485. As noted in *Apprendi*,

McMillan involved a challenge to the State's Mandatory Minimum Sentencing Act. According to its provisions, anyone convicted of certain felonies would be subject to a mandatory minimum penalty of five years imprisonment if the judge found, by a preponderance of the evidence, that the person "visibly possessed a firearm" in the course of committing one of the specified felonies. Articulating for the first time, and

then applying, a multifactor set of criteria for determining whether the *Winship* protections applied to bar such a system, we concluded that the Pennsylvania statute did not run afoul of our previous admonitions against relieving the State of its burden of proving guilt, or tailoring the mere form of a criminal statute solely to avoid *Winship*'s strictures.

Apprendi, 530 U.S. at 485-486.

In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Supreme Court shifted the landscape with regard to the findings that comprise a criminal sentence. Concluding that a trial judge could not make factual finding into whether Charles Apprendi committed a hate crime, the Supreme Court held “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.” *Id.* at 490. See also *Dervin v. State*, 386 S.C. 164, 687 S.E.2d 712 (2009) (vacating Dervin’s 25 year sentence for trafficking more than 200 grams of cocaine when trial counsel did not object to the sentence when the jury charge required the jury to find whether Dervin trafficked ten or more grams of cocaine).

On December 22, 1994, Charles Apprendi, Jr., fired several .22-caliber bullets into the home of an African-American family that had recently moved into his neighborhood. He was arrested an hour later. During questioning by police, he admitted that he shot at the house because its occupants were “black in color” and for that reason he did not “want them in the neighborhood.”

Apprendi subsequently pleaded guilty to possession of weapons charges. Each of these counts carried a sentence of between 5 and 10 years in prison. As part of the plea bargain, the prosecution reserved the right to seek an enhanced sentence on the basis that the crime was committed with a biased purpose. This enhancement would have doubled the sentence otherwise imposed for each of the crimes. Apprendi, in turn, reserved the right to challenge the bias crime enhancement.

The trial judge accepted Apprendi's plea. At a later hearing, the trial judge heard testimony from Apprendi himself as well as from psychologists stating that the shooting was not motivated by racial hatred but instead was the result of intoxication. The policeman testified at this hearing that Apprendi's motivation was racial animus. The trial judge found "by a preponderance of the evidence" that Apprendi's crime was motivated by the race of the victims. The trial judge then sentenced Apprendi to 12 years in prison—2 years above the maximum sentence authorized for the weapons charge apart from the race enhancement.

Apprendi appealed his sentence. On appeal, the Appellate Division of the New Jersey Superior Court affirmed the enhancement on the grounds that it was a "sentencing factor" rather than an "element" of the crime, and therefore not subject to the jury-trial and proof-beyond-a-reasonable-doubt requirements of the Constitution. The New Jersey Supreme Court agreed with this conclusion, and also affirmed Apprendi's sentence. Apprendi next appealed to the Supreme Court.

On appeal, the Supreme Court concluded that the trial court violated Apprendi's Sixth Amendment right when the trial court made factual findings that increased his sentence. In arriving at this conclusion, the Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt."

The *Apprendi* decision has been a cornerstone in the modern resurgence in jury trial rights. Since *Apprendi*, the Supreme Court has issued a series of decisions in which it reaffirmed the importance of juries rather than judges in making factual findings that would increase one's sentence. See, e.g., *United States v. Booker*, 543 U.S. 220 (2005) (striking down the provision of the federal sentencing statute that required federal district judges to impose a sentence within the Federal Guidelines range); *Blakely v. Washington*, 542 U.S. 296 (2004) (holding that, in the context of

mandatory sentencing guidelines under Washington law, the Sixth Amendment right to a jury trial prohibited judges from enhancing criminal sentences based on facts other than those decided by the jury or admitted by the defendant); *Ring v. Arizona*, 536 U.S. 584 (2002) (holding that the Sixth Amendment requires a jury to find the aggravating factors necessary for imposing the death penalty).

In June 2009, the police arrested Mr. Dennis on the charges of attempted armed robbery, assault and battery with the intent to kill, and use of a weapon during a crime of violence. On February 4, 2011, the State served its Notice of Intention to Seek a Sentence of Life Without Parole upon Mr. Dennis and his attorney. After the trial on these charges, the jury found Mr. Dennis guilty of ABWIK and the weapon charge. Absent the LWOP notice, the statutory maximum that Mr. Dennis faced was 25 years.

In this case, the trial court did not submit anything to the jury for it to determine whether Mr. Dennis's 1987 conviction was the equivalent of any offense that would constitute a most serious offense under South Carolina law. Thus, the trial court's imposition of a sentence greater than 25 years violated Mr. Dennis's Sixth Amendment rights because the jury never made any findings that would allow the trial court to impose a sentence in excess of 25 years.

The State may argue that *Apprendi* does not apply to this case because it views Mr. Dennis's argument as a challenge to his prior conviction. Such an argument would constitute a misunderstanding of Mr. Dennis's precise argument because Dennis is not challenging that he was convicted in New York in 1987 for rape. Rather, Mr. Dennis contends that he had a right for the jury to determine whether his 1987 conviction constitutes a most serious offense under South Carolina law.

The record shows that Mr. Dennis was convicted of rape in the first degree in New York on October 6, 1987. (Exhibit 3). The record further shows that New York defined rape in the first

degree as follows:

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.

(Attached as Exhibit 5) (copy of N.Y. Pen. Law 130.35).

Evidence showing merely that Mr. Dennis was convicted of rape section 130.35 does not conclusively establish that the New York conviction is the equivalent of a most serious offense under South Carolina law. Specifically, Mr. Dennis could have been convicted for conduct under subsection 2 of section 130.35 (which states, "A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person . . . [w]ho is incapable of consent by reason of being physically helpless."). If so, the 1987 conviction would not constitute a most serious offense because such conduct is the equivalent of South Carolina's statute for criminal sexual conduct in the third degree,² which is not classified as a most serious offense.

² The statute for criminal sexual conduct in the third degree is S.C. Code 16-3-654, and it states the following:

(1) A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.

In this case, the State introduced two exhibits to the trial judge to support the imposition of the LWOP enhancement. The first document was titled Certificate of Disposition Indictment (Exhibit 3). South Carolina precedent shows that this document is insufficient to support the LWOP sentence.

In *State v. Lindsey*, 355 S.C. 15, 583 S.E.2d 740 (2003), the defendant was convicted of criminal sexual conduct in the first degree and sentenced to life because the State had sought a LWOP sentence based upon the defendant's prior record. In seeking the LWOP conviction, the State relied upon the defendant's 1976 rape conviction and merely introduced a "form indictment" as evidence of the defendant's prior conviction.

On appeal, our Supreme Court reversed and vacated the defendant's sentence because the Court found that the indictment was insufficient to show that the defendant's prior rape conviction was a most serious offense. In arriving at this conclusion, the Supreme Court noted that the "form indictment" contained "no details of the facts or circumstances concerning the rape." *Lindsey*, 355 S.C. at 19, 583 S.E.2d at 742. Because of the definition of rape in South Carolina in 1976, the Court concluded that "the 1976 rape may have fallen into the category of third degree CSC, involving a sexual battery using force or coercion, but without aggravating circumstances." *Id.* The Court then reversed the LWOP sentence because "third degree CSC is not a 'most serious offense' for which a life sentence may be imposed pursuant to § 17-25-45." *Id.* at 19-20, 583 S.E.2d at 742.

In this case, the Certificate of Disposition Indictment, like the "form indictment" in *Lindsey*, contains no detailed information on the nature of the 1987 conviction. Rather, the

(b) *The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. (emphasis added).*

Certificate simply shows that Mr. Dennis was “convicted of the crime(s) below before Justice Barrett” on October 6, 1987 and that Justice Barrett sentenced Dennis to a term of imprisonment between 6 and 18 years on December 21, 1987.

During the sentencing hearing, the State realized that evidence merely showing the 1987 conviction was for rape would be insufficient to warrant the imposition of the LWOP enhancement. Realizing the inadequacy of the Certificate of Disposition Indictment, the State introduced computer printouts to show that Mr. Dennis’s conduct did not fall within subsection 2 of section 130.35. (Exhibit 4). Unlike the Certificate of Disposition Indictment, the computer printouts have no official seal and contain no evidence that they are official court documents. The State’s reliance upon these mere computer printouts was improper. *Shepard v. United States*, 544 U.S. 13, 16-17 (2005) (holding that police reports and complaint applications could not be consulted in determining the nature of one’s prior conviction).

The record further shows that over 19 months passed between the time of Mr. Dennis’s arrest and the State’s service of its intention to seek a sentence of life without parole upon Mr. Dennis. Thus, the State had 19 months to obtain the necessary records from New York to establish whether the 1987 conviction constituted a most serious offense. Despite the passage of 19 months, the State did not bother to obtain the arrest warrant, any police reports, the indictments, the transcript of the 1987 trial, the jury instructions of the 1987 trial, the verdict forms, any appellate documents from the 1987 conviction, or any post-conviction challenges to the 1987 conviction. Thus, the State has waived its opportunity to show that the 1987 conviction is a most serious offense under South Carolina law.

The trial judge also realized the merit of Mr. Dennis’s objection concerning the adequacy of the Certificate of Disposition Indictment. Realizing that the Certificate standing alone would be

insufficient to sentence Mr. Dennis to life without the possibility of parole, the trial judge reviewed the computer printouts and relied upon them when it overruled Mr. Dennis's objection and sentenced him to life. The trial court's review of the computer printouts demonstrates that it had to make factual findings about the nature of the 1987 conviction. Thus, the trial judge violated Mr. Dennis's Sixth Amendment rights. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt."); *Dervin v. State*, 386 S.C. 164, 687 S.E.2d 712 (2009) (vacating Dervin's 25 year sentence for trafficking more than 200 grams of cocaine when trial counsel did not object to the sentence when the jury charge required the jury to find whether Dervin trafficked ten or more grams of cocaine).

Accordingly, the Court should grant the motion to reconsider, vacate the life sentence, and hold a sentencing to determine the appropriate sentence that is within the statutory maximum of the offenses that the jury found Mr. Dennis guilty.

B.

The Court violated section 17-25-45 of the South Carolina Code when it failed to use a categorical approach to determine whether Mr. Dennis's 1987 conviction was a most serious offense.

The United States Court of Appeals for the Fourth Circuit has recently discussed the procedure to be used in determining whether a prior conviction can be used to enhance a new conviction. *See United States v. Peterson*, 629 F.3d 432 (4th Cir. 2011). The Fourth Circuit discussed a two-step process to determine whether the prior conviction can be used to enhance a sentence:

Courts employ a categorical approach in determining whether a prior conviction will lead to a sentence enhancement under the Sentencing Guidelines. *Seay*, 553 F.3d at 737 ("In determining whether a conviction qualifies as a crime of violence under the Sentencing Guidelines, we use the 'categorical approach'"); *see also Taylor*

v. United States, 495 U.S. 575, 588 (1990) (“[T]he enhancement provision always has embodied a categorical approach to the designation of predicate offenses.”).

As described in *Taylor*, the categorical approach involves two steps. *First*, a court must distill a “generic” definition of the predicate offense based on how the offense is defined “in the criminal codes of most states.” *Taylor*, 495 U.S. at 598. The *Taylor* Court borrowed the “generic,” “contemporary,” and “modern” definition of burglary from the Model Penal Code and a modern criminal law textbook, which provided similar definitions. *See id.* 598 & n.8. Pointing out the necessity of distilling the generic crime of burglary, the Court rejected simply applying a single State’s form of burglary. It explained that any definition of a predicate offense that would be determined by a single State’s criminal law could result in unacceptable differences in applying federal law in sentencing defendants. *Id.* at 590-91. “That would mean that a person convicted of unlawful possession of a firearm would, or would not [through an enhancement based on a single State’s definition of burglary], receive a sentence enhancement based on exactly the same conduct, depending on whether the State of his prior conviction happened to call that conduct ‘burglary.’” *Id.*

Second, after finding the generic form of the predicate offense, a court must determine whether the defendant’s prior conviction constituted a conviction of the generic offense. That determination is made categorically, not by comparing the defendant’s prior *conduct* with the generic offense, but rather by comparing the *elements* of the crime of conviction with the generic offense. As the *Taylor* Court admonished, the court must “look[] only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions.” *Taylor*, 495 U.S. at 600.

Peterson, 629 F.3d at 435-36.

It does not appear that South Carolina has addressed thoroughly the issue of determining when a prior conviction can be used to enhance a sentence under *Taylor*’s categorical approach. Nonetheless, it appears that South Carolina would follow the categorical approach. *See State v. Lindsey*, 355 S.C. 15, 583 S.E.2d 740 (2003). In *Lindsey*, the Court held a 1976 rape conviction was improperly used to enhance his sentence. *Id.* at 19-20, 583 S.E.2d at 742 (“Here, there is no evidence in the record concerning Lindsey’s 1976 rape conviction. The only indication concerning that conviction is a form indictment, which gives no details of the facts or circumstances concerning the rape.”). Significantly, the Court in *Lindsey* made no mention of comparing Lindsey’s prior conduct with the element of criminal sexual conduct in the first, second, or third degree. Rather, the

Lindsey Court looked at the statutory definition of the 1976 rape laws rather than the facts underlying Lindsey's conviction.

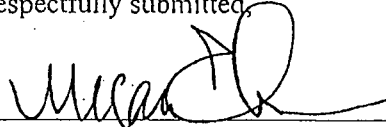
Contrary to *Lindsey* and *Taylor*, the Court in this case looked beyond the elements of section 130.35 of the New York Penal Laws when it considered the computer printouts that the State introduced. The Court erred in relying on the computer printouts during the sentencing hearing for Mr. Dennis. See *Shepard v. United States*, 544 U.S. 13, 16-17 (2005) (holding that police reports and complaint applications could not be consulted in determining the nature of one's prior conviction); *Taylor*, 495 U.S. at 602 ("We think the only plausible interpretation of § 924(e)(2)(B)(ii) is that, like the rest of the enhancement statute, it generally *requires the trial court to look only to the fact of conviction and the statutory definition of the prior offense.*") (emphasis added).

The record properly before the Court on whether the 1987 conviction constitutes a most serious offense is the Certificate of Disposition Indictment. Based upon this record, the 1987 conviction may have fallen into the category of third degree CSC, involving a sexual battery of a physically helpless person. See *State v. Lindsey*, 355 S.C. 15, 583 S.E.2d 740 (2003). Because CSC in the third degree is not a most serious offense for which a life sentence may be imposed pursuant to section 17-25-45, the Court erred in imposing a life sentence. Therefore, the Court should grant Mr. Dennis's motion to reconsider, vacate his life sentence, and hold a new sentencing hearing.

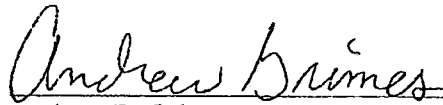
III. Conclusion

For all of the foregoing reasons, Alonza Dennis requests that the Court grant his motion to reconsider, vacate his sentence of life without the possibility of parole, and hold a new sentencing hearing.

Respectfully submitted,



Megan Ehrlich
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-1850
Attorney for Alonza Dennis



Andrew D. Grimes
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-1850
Attorney for Alonza Dennis

Charleston, South Carolina

March 31, 2011

BY _____

JULIE J. MCMSTRONG
CLERK OF COURT

2011 MAR 31 PM 12:33

FILED

FILED

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

MAY 12 PM 3:05
JULIE J. ARMSTRONG
CLERK OF COURT

Case: 2009-GS-10-08108,
2009-GS-10-08112

STATE OF SOUTH CAROLINA

vs.

ALONZA DENNIS,

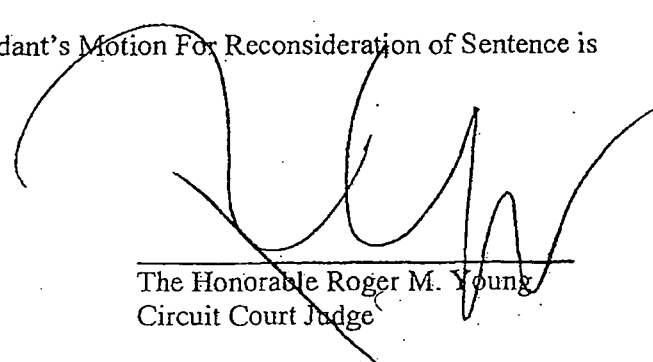
Defendant.

ORDER DENYING
DEFENDANT'S MOTION TO
RECONSIDER

The Defendant through counsel, Andrew Grimes, filed a Motion to Reconsider this Court's previous sentence of a life imprisonment imposed upon the Defendant, Alonza Dennis, on March 16, 2011, pursuant to the above mentioned charges. On February 4, 2011, the State served Notice of Intention of Intention to Seek a Sentence of Life Without Parole upon Mr. Dennis and his attorney. From March 14, 2011 to March 16, 2011, the State tried Alonza Dennis on the charges of attempted armed robbery, assault and battery with the intent to kill, and use of a weapon during a crime of violence. After trial, the jury returned a verdict of not guilty on the charge of attempted armed robbery and on the lesser included charge of attempted strong arm robbery. However the jury found Mr. Dennis guilty of the charges of assault and battery with the intent to kill and the use of a weapon during a crime of violence. After the jury's verdict, the Court held a sentencing hearing and sentenced Alonza Dennis to life without parole.

After thorough review, the Defendant's Motion For Reconsideration of Sentence is respectfully DENIED.

AND IT IS SO ORDERED.



The Honorable Roger M. Young
Circuit Court Judge

5/11, 2011

534 JK \$20090603715

DOCKET NO. 2009GS1008108

WITNESSES
CHARLES LAWRENCE
Charleston County Sheriff

The State of South Carolina
County of Charleston

AGENCY CASE NUMBER
2009012231B

COURT OF GENERAL SESSIONS

October Term 2009

ARREST WARRANT NUMBER
K607021

DATE OF ARREST
June 24, 2009

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: OCT 5 2009

VERDICT
TRUE BILL

Foreperson of Petit Jury
Date:
INDICT

FILED
10/13/2009 9:43:31 AM
JULIE J. ARMSTRONG
CLERK OF COURT

09-3785-1

THE STATE

vs.

ALONZA DENNIS
DOB: [REDACTED]
B/M

Indictment for
Assault and Battery with Intent to Kill

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 5, 2009 the Grand Jurors of Charleston County present upon their oath:

Assault and Battery with Intent to Kill

That in Charleston County, South Carolina, on or about June 22, 2009, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Moses Alford, to wit: the Defendant did shoot the victim; all in violation of the Common Law of South Carolina and Section 16-03-620 of the South Carolina Code of Laws (1976) as amended.

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


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

536

RS20090603715

WITNESSES

CHARLES LAWRENCE
Charleston County Sheriff

AGENCY CASE NUMBER

2009012231B

ARREST WARRANT NUMBER

K607022

DATE OF ARREST

June 24, 2009

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

OCT 05 2009

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1008112

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

October Term 2009

THE STATE

vs.

ALONZA DENNIS
DOB: [REDACTED]
B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

FILED

10/13/2009 9:43:31 AM
JULIE J. ARMSTRONG
CLERK OF COURT

09-3785-2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 5, 2009 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about June 22, 2009, the Defendant, ALONZA DENNIS, did possess a firearm or visibly display what appeared to be a knife during the commission, or attempted commission, of Assault and Battery with Intent to Kill and Attempted Armed Robbery, both a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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

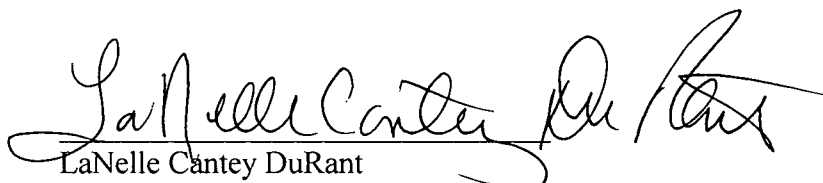

JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

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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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 14th, 2012


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT