

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON A. DAVIS,

APPELLANT

Appellate Case No. 2011-204147

INITIAL ANDERS BRIEF OF APPELLANT

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT

**The plea court reversibly erred in sentencing by interpreting
Appellant’s age as an aggravating factor rather than mitigating factor
where Appellant was sixteen years of age at the time of the incidents.6**

CONCLUSION9

PETITION TO BE RELIEVED AS COUNSEL10

TABLE OF AUTHORITIES

Cases

Graham v. Florida, ___ U.S. ___, 130 S.Ct. 2011 (2010) 6

Miller v. Alabama, ___ U.S. ___, 132 S.Ct. 2455 (2012) 6, 7, 8

Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183 (2005)..... 6

Constitutional Provisions

U. S. Const. amend. VIII..... 6

STATEMENT OF ISSUE ON APPEAL

Whether the plea court reversibly erred in sentencing by interpreting Appellant's age as an aggravating factor rather than mitigating factor where Appellant was sixteen years of age at the time of the incidents?

STATEMENT OF THE CASE

Appellant Brandon Alexander Davis was indicted by the York County grand jury on August 18, 2011 for the following offenses that arose out of two separate incidents: murder; 3 counts of attempted murder; 2 counts of armed robbery; one count of criminal conspiracy; and 4 counts of possession of a firearm during the commission of a violent crime. R. 4, line 4—R. 5, line 19; R. 55-R. 56; R. 59-63 – R. 64, R. 67 – R.68; R. 71 – R. 72; R. 74- R. 75; R. 77 – R. 78; R. 4, lines 22-25; R. 10, lines 16-18. His case proceeded to a guilty plea hearing before the Honorable Lee S. Alford on November 3, 2011. Deon O'Neill (Counsel) represented Appellant, while Kevin Brackett and Jenny Desch represented the State. R. 1.

The negotiated plea offer was for Appellant to plead guilty to one count of voluntary manslaughter, 3 counts of attempted murder, 2 counts of armed robbery, one count of conspiracy, and 2 counts of possession of a firearm during the commission of a violent crime. In return, the State agreed upon a sentencing range of 25 to 40 years, and to dismiss certain accompanying charges. R. 4, line 4—R. 5, line 19; R. 10, line 21—R. 11, line 4. Appellant pled guilty to the charges; after hearing the facts presented by the State, the plea court accepted Appellant's guilty pleas as freely and voluntarily made. However, sentencing was deferred to a later date. R. 16, lines 15-23; R. 17, lines 12-13.

On November 30, 2011, Appellant's case is reconvened before Judge Alford for sentencing. Counsel again represented Appellant, while Kevin Brackett and Jenny Desch again represented the State. R. 1. After hearing the facts of the case by the State, as well as comments by the victims, Appellant, and Appellant's family, the plea court stated the following:

Mr. Davis, it's hard for me to believe that you're only 17 years old, and you're in here on these kind of charges. You know, that disturbs me greatly, it really does, that these were committed when you were 16, 17. It disturbs me. I just don't know how you're capable of that at that age. I just don't understand that. I think I do understand it in a sense.

.....

But I fully believe he doesn't need to be out in general society. I really don't. And it's a shame, it's a real shame at his age, and I hate it because of that. The fact of the matter is someone who can do these kinds of things without any kind of provocation or whatever, just shooting people for no reason whatsoever, who is innocent and in cold blood, you know, deserves the maximum punishment I think that the court can give.

R. 28, line 21—R. 29, line 2; R. 29, line 25—R. 30, line 7. The trial court subsequently imposed the following sentences of incarceration upon Appellant: 30 years for voluntary manslaughter; 5 years consecutive for one count of possession of a firearm during commission of a crime; 5 years consecutive for one count of attempted murder; 30 years concurrent for each of the remaining two counts of attempted murder; 5 years concurrent for the remaining count of possession of a weapon during the commission of violent crime; 30 years concurrent for each of the two counts of armed robbery; and 5 years concurrent for criminal conspiracy. R. 30, line 13—R. 32, line 13; R. 57 – R. 58; R. 61 – R. 62; R. 65 – R. 60; R. 69 – R. 70; R. 73; R. 76; R. 79. Counsel timely filed notice of appeal on November 30, 2011. R. 52 – R. 54.

This appeal follows.

ARGUMENT

The plea court reversibly erred in the sentence phase by interpreting Appellant's age as an aggravating factor rather than mitigating factor where Appellant was sixteen years of age at the time of the incidents.

The trial court reversibly erred by interpreting Appellant's age of sixteen at the time of the offenses as a circumstance of aggravation rather than mitigation when it imposed the maximum punishment in the negotiated range of twenty-five to forty years. See e.g. Miller v. Alabama, ___ U.S. ___, 132 S.Ct. 2455, 2469 (2012). The plea court's imposition of a forty year sentence amounted to a defacto life sentence upon the nineteen year old Appellant, who was a juvenile under eighteen at the time of the offenses, thereby making his youth at the time of the offense even more relevant. Miller, ___ U.S. at ___, 132 S.Ct. at 2469; Graham v. Florida, ___ U.S. ___, 130 S.Ct. 2011, 2026-27 (2010). Accordingly, Appellant respectfully requests his sentences to be vacated, and his case remanded for resentencing.

"The Eighth Amendment's prohibition of cruel and unusual punishment 'guarantees individuals the right not to be subjected to excessive sanctions.'" Miller, ___ U.S. at ___, 132 S.Ct. at 2463 (quoting Roper v. Simmons, 543 U.S. 551, 560, 125 S.Ct. 1183 (2005)). As noted by the United States Supreme Court when it examined "life-without-parole sentences imposed on juveniles, '[t]he concept of proportionality is central to the Eighth Amendment.'" Id. (quoting Graham, ___ U.S. at ___, 130 S.Ct. at 2021) (generally doubting the penological justifications for imposing life without parole on juveniles).

Especially pertinent in determining the sentence of a juvenile offender is his youth itself: "youth is more than a chronological fact. It is a time of immaturity,

irresponsibility, impetuosity, and recklessness. It is a moment and “condition of life when a person may be most susceptible to influence and to psychological damage. And its ‘signature qualities’ are all ‘transient. Miller, ___ U.S. at ___, 132 S.Ct. at 2467. Accordingly, while a sentencing court’s ability to impose life sentences in homicide cases is not foreclosed, “we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” Id. ___ U.S. at ___, 132 S.Ct. at 2469.

In the present case, it is uncontroverted that Appellant was sixteen years of age at the time of the offenses, and 19 years of age at the time of sentencing. R. 11, line 17; R. 16, lines 7-8; R. 19, lines 14-22. It is also uncontroverted that the plea court imposed the maximum sentence in the negotiated range of 40 years. The 40 year sentence imposed by the plea court essentially amounts to a de facto life sentence upon Appellant. Accordingly, the plea court was required “to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” Id. ___ U.S. at ___, 132 S.Ct. at 2469.

Yet, language utilized by the plea court itself at the sentencing hearing indicates that the court interpreted Appellant’s age as a factor militating as an aggravating factor rather than a mitigating circumstance. Specifically, the plea court stated the following:

Mr. Davis, it’s hard for me to believe that your only 17 years old, and you’re in here on these kind of charges. You know, that disturbs me greatly, it really does, that these were committed when you were 16, 17. It disturbs me. I just don’t know how you’re capable of that at that age. I just don’t understand that. I think I do understand it in a sense.

.....

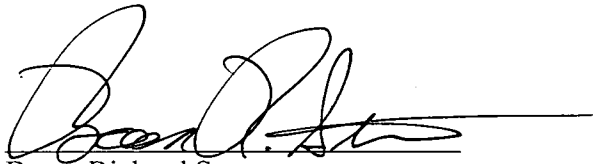
But I fully believe he doesn't need to be out in general society. I really don't. And it's a shame, it's a real shame at his age, and I hate it because of that. The fact of the matter is someone who can do these kinds of things without any kind of provocation or whatever, just shooting people for no reason whatsoever, who is innocent and in cold blood, you know, *deserves the maximum punishment I think that the court can give.*

R. 28, line 21—R. 29, line 2 (emphasis added); R.. 29, line 25—R.. 30, line 7 (emphasis added). Thus, it is clear from the language that the court itself utilized, it based its decision at least in part to impose “the maximum punishment” available because it was disturbed that Appellant was only sixteen at the time of the offenses. In this way, the plea court erred by interpreting and applying Appellant’s youth at the time of the offenses as an aggravating factor rather than a mitigating circumstance when it imposed a de facto life sentence on Appellant. See, e.g., Miller, ___ U.S. at ___, 132 S.Ct. at 2469. Accordingly, Appellant respectfully requests this court to vacate his sentences, and remand his case for resentencing with specific instructions to consider Appellant’s age as a mitigating factor.

CONCLUSION

For the foregoing reasons, Appellant Brandon Davis respectfully requests vacation of his sentences, and remand for resentencing with instructions to consider Appellant's age as a mitigating factor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", with a long horizontal line extending to the right.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of February, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from York County FEB 04 2013

Lee S. Alford, Circuit Court Judge
Court of Appeals

THE STATE,

RESPONDENT,

V.

BRANDON A. DAVIS,

APPELLANT

Appellate Case No. 2011-204147

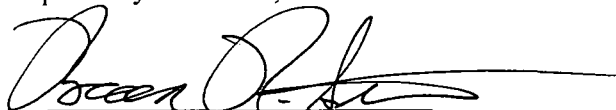
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brandon A. Davis states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Lee S. Alford, which was held on November 30, 2011, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Brandon A. Davis.

Respectfully submitted,



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of February, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON A. DAVIS,

APPELLANT

Appellate Case No. 2011-204147

DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

RECEIVED

FEB 04 2013

Appellant proposes the following be included in the Record on Appeal: **SC Court of Appeals**

- (1) True-billed indictments;
- (2) Plea hearing transcript (Nov. 3, 2011), pp. 1-17;
- (3) Plea hearing transcript (Nov. 30, 2011), pp. 1-33;
- (4) Notice of Appeal;
- (5) Certificate of Service;
- (6) Rule 203(D)(1)(b) Basis;
- (7) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

February 4th, 2013.



Breen Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343
Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

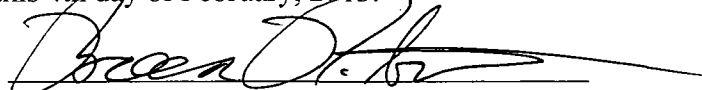
BRANDON A. DAVIS,

APPELLANT

Appellate Case No. 2011-204147

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at P.O. Box 50666, Columbia, SC; and on Mr. Brandon A. Davis, #348800 at Broad River Correctional Institution, this 4th day of February, 2013.



Breen Richard Stevens
Appellate Defender

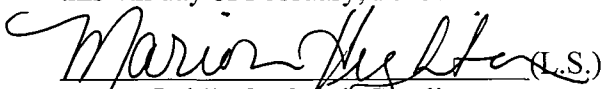
ATTORNEY FOR APPELLANT

RECEIVED

FEB 04 2013

SC COURT OF APPEALS

SUBSCRIBED AND SWORN TO before me
this 4th day of February, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.