

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

MAR 15 2013

Appeal from Barnwell County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTWON BYARS,

APPELLANT

APPELLATE CASE NO. 2012-212535

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's sentence of ten years' imprisonment for assault and battery with intent to kill is excessive under the Eighth Amendment?

STATEMENT OF THE CASE

At the January 2011, term, the Barnwell County Grand Jury indicted Appellant for assault and battery with intent to kill. R. 23. On July 9, 2012, appellant pled guilty before the Honorable Doyet A. Early, III. R. 1. Appellant was represented by Michael W. Chesser. R. 1. The State was represented by Susanna M. Ringler. R. 1. Judge Early, sentenced appellant to ten years' imprisonment. R. 20, 1. 22 – 21, 1. 2. On July 18, 2012, appellant filed a notice of appeal with the required explanation. R. 26. This appeal follows.

ARGUMENT

Appellant's sentence of ten years' imprisonment for assault and battery with intent to kill is excessive under the Eighth Amendment.

The solicitor's statement of facts to support the guilty plea alleged that appellant shot Dwayne Smith on September 5, 2009, in front of the Lucky Spot club in Williston, South Carolina. R. 9, ll. 16 – 10, l. 24. At the time of the shooting, appellant was twenty-five years old. R. 13, ll. 2 – 10. Smith was thirty-seven years old and had "a reputation as being a very tough individual." R. 13, ll. 2 – 10. Smith had "a lengthy and continuous record." R. 13, ll. 2 – 10. Smith's record included a murder arrest when he was eighteen to which he pled to involuntary manslaughter. R. 11, l. 21 – 12, l. 3. During the altercation, Smith told appellant that "if he didn't get out of his face he would kill him." R. 12, ll. 15 – 19.

It was apparent from the mitigation presentation that appellant had made significant changes in his life since this incident. R. 17, l. 15 – 19, l. 24. Appellant said that at the time of the crime he was just "living for myself." R. 17, ll. 6 – 12. Since then, he met the woman that he wanted to marry and had two children. R. 17, ll. 6 – 12. He was studying general business at Denmark Tech with a 2.7 grade point average. R. 17, ll. 15 – 21. Appellant had also become disabled after being shot four times during a robbery. R. 17, l. 22 – 19, l. 24. Appellant received a wound that would not close and had a hernia causing his intestines to bulge from his abdomen. R. 18, l. 18 – 19, l. 24. At the time of the guilty plea, he was scheduled for an operation to push his intestines back into his abdomen and attempt to hold them in with a net. R. 20, ll. 1 – 5.

The Eighth Amendment prohibits not only cruel and unusual punishment, but sentences disproportionate to the crime committed. Solem v. Helm, 463 U.S. 277, 284 (1983). When conducting a proportionality analysis, the court should first “look to the gravity of the offense and the harshness of the penalty.” Id. at 291. Next, the court should “compare the sentences imposed on other criminals in the same jurisdiction.” Id. at 291. Finally, the court should “compare the sentences imposed for commission of the same crime in other jurisdictions.” Id. The South Carolina Supreme Court uses these factors to help and its determination whether a sentence is “grossly disproportionate” to the crime. State v. Harrison, No. 27228, ___ S.C. ___, ___ S.E.2d ___, 2013 WL 697077 (Feb. 27, 2013).

In this case, the sentence is grossly disproportionate to the crime when the particular circumstances of both the crime and appellant are considered. Appellant was afraid for his life and felt threatened by a person with a significant criminal record. Appellant also had made significant improvements in his own life since the incident. Despite his attempts to improve himself, he had suffered a grievous injury that will cause him health problems for the rest of his life. Clearly, he poses no future threat to society because his injury has left him disabled. When these facts are considered, a sentence of ten years’ imprisonment is grossly disproportionate to the crime and violates the Eighth Amendment.

CONCLUSION

This court should remand this case for the trial court to consider a sentence of not more than ten years' imprisonment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of March, 2013.

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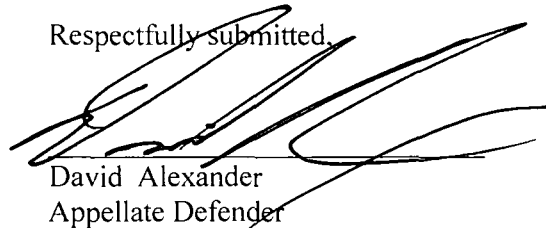
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antwon Byars states:

1. He is 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 Doyet A. Early, III, which was held on July 9, 2012, 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 Antwon Byars.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of March, 2013.

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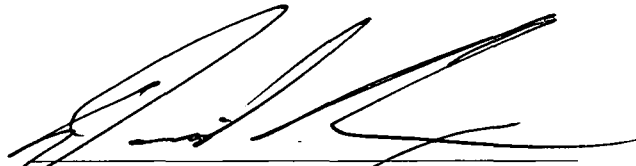
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Guilty Plea Transcript;
- (3) Notice of Appeal and Written Explanation;
- (4) Sentencing sheet

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

March 15th, 2013



David Alexander
Appellate Defender

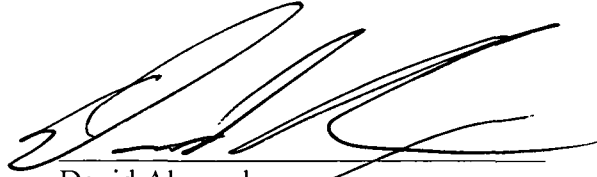
South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

March 15, 2013



David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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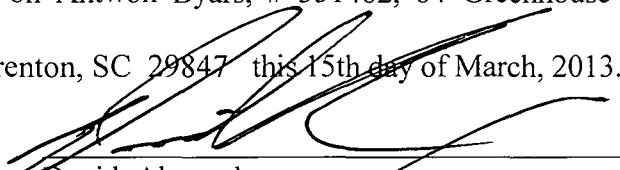
ANTWON BYARS,

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CERTIFICATE OF SERVICE

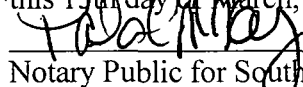
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and on Antwon Byars, # 351482, 84 Greenhouse Road, Trenton Correctional Institution, Trenton, SC 29847 this 15th day of March, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of March, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.