

STATE OF SOUTH CAROLINA )  
)  
IN THE COURT OF APPEALS )  
State of South Carolina )  
)  
-vs- )  
)  
Darius Stewart, )  
)  
Defendant. )  
\_\_\_\_\_ )

Indictment No.: 2018-GS-46-08147

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SC Court of Appeals

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DAVID HAMILTON  
C.C.P. & G.S.  
YORK COUNTY, SC

**RULE 203(B) EXPLANATION**

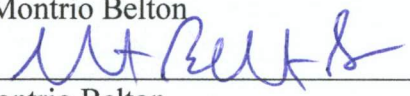
Pursuant to Rule 203(B)(iv), SCACR, the issue to be raised on appeal is whether the trial court abused its discretion when it imposed the twenty (20) year sentence upon the Appellant after he pled guilty to Assault and Battery of a High and Aggravated Nature.

The undersigned does not have a good faith basis to believe that this issue is properly before the Court of Appeals. The undersigned did not object contemporaneously to the sentence because it was a lawful sentence pursuant to SC Code Ann. § 16-003-0600 (B)(1); therefore, there was no legal basis in which to base an objection. However, the undersigned does believe the sentence was excessive-- considering the facts. The undersigned did timely file a Motion to Reconsider that was denied by the Court. (see attached order).

Nevertheless, the undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. *See Frazer v. South Carolina*, 430 F.3d 696, 705 (4<sup>th</sup> Cir. 2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'") (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

Respectfully submitted,

s/Montrio Belton

  
\_\_\_\_\_  
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Attorney for Darius Stewart

York, South Carolina

March 1, 2019

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )  
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State of South Carolina, )  
 )  
-vs- )  
 )  
Darius Stewart, )  
 )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
SIXTEENTH JUDICIAL CIRCUIT  
2018-GS-46-08147

ORDER DENYING DEFENDANT  
MOTION TO RECONSIDER

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SC Court of Appeals

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16th JUDICIAL CIRCUIT  
YORK COUNTY, SC

From an incident that occurred on October 29, 2018, Darius Stewart, was charged with Assault and Battery of a High and Aggravated Nature which carries a penalty of 0 to 20 years in the Department of Corrections, three counts of Throwing Bodily Fluids *each* count carrying a penalty of 0 to 15 years and one count of Resisting Arrest which has a penalty of 0-10 years. Prior to these offenses, Mr. Stewart was out on bond for the Unlawful Neglect of a Child which carries a penalty of 0 to 10 years. Also, per the plea negotiation, Assistant Solicitor Ohayon agreed not to direct indict Defendant for Attempted Murder, which carries a maximum sentence of 30 years. Therefore, Mr. Stewart was facing a potential penalty of 95 years in the Department of Corrections should he proceed forward to trial and be found guilty. Mr. Stewart's attorney, Montrio Belton, competently and wisely negotiated a plea whereby the State would recommend time served on the Unlawful Neglect of a Child, and then dismiss all three counts of Throwing Bodily Fluids, and the Resisting Arrest. Also the State would not indict the Defendant on Attempted Murder. Via the plea deal, Mr. Stewart only faced a plea to the Assault and Battery of High and Aggravated Nature thus his exposure was limited to 20 years. ***This plea was without recommendation or negotiation.***

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YORK COUNTY, SC

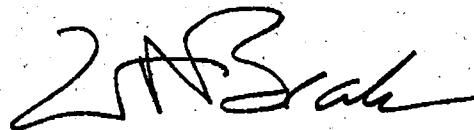
The incident for which Mr. Stewart was being charged involved an act of violence whereby in summary, Mr. Stewart attacked a police officer thereby hitting him twice in the head and further choked the officer for a period of time. Furthermore, Mr. Stewart spit on three officers and was extremely belligerent and unruly using loud profanity throughout the entirety of the event. All of this took place at and in front of parents and children at a youth football game. Same was recorded via police body cams and cell phone recordings as well as documented by witness statements. The court viewed these recordings at the plea and found same violent and shocking. The Solicitor, Kevin Brackett, and Assistant Solicitor Ohayon both emphatically asked the Court for the maximum of 20 years stating that Mr. Stewart already received the benefit of having exposure of 65 years dismissed as a result of the plea negotiations. Furthermore, both Solicitors emphatically stated that a message needed to be sent to society that this kind of lawless behavior is not acceptable and will not be tolerated. Mr. Stewart has a past criminal record of Resisting Arrest, Public Disorderly Conduct, Possession With Intent to Distribute Crack Cocaine Near a School, Assault and Battery, Assault and Battery of a School Employee, Malicious Injury to Personal Property, Manufacturing\Distributing Crack Cocaine, Distributing\Selling Crack Cocaine Near a School. Four of his past eight crimes involve violence and a lack of any respect for lawful authority.

Mr. Stewart entered a plea pursuant to Alford. The Court considered the lengthy presentation by the Solicitor, Mr. Belton's limited mitigation, the violent nature of the offenses, the negotiations, as well as Mr. Stewart's lengthy and violent criminal record. The Court sentenced Mr. Stewart to 20 years. Mr. Belton filed a Motion to Reconsider. After careful and deliberate consideration, this Court finds the sentence as given appropriate.

THEREFORE, Defendant's Motion to Reconsider, is hereby,

**DENIED.**

February 23, 2019  
Marion, SC

A handwritten signature in black ink, appearing to read "W. H. Seals, Jr.", written in a cursive style.

William H. Seals, Jr., Circuit Court Judge