

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable Kristi Lea Harrington, Circuit Court Judge

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SC Court of Appeals

The State,

Respondent,

vs.

Kenneth Lamont Robinson, Jr.,

Appellant.

Appellate Case No. 2018-001269

**RETURN IN OPPOSITION TO MOTION
TO HOLD APPEAL IN ABEYANCE AND TO REMAND TO THE COURT OF
GENERAL SESSIONS FOR A HEARING ON A MOTION FOR RESENTENCING
BASED ON AFTER-DISCOVERED EVIDENCE**

After a full trial February 12-15 and 21-22, 2018, a Charleston County jury convicted appellant of multiple crimes against multiple victims: assault and battery first degree (victim Watkins); assault and battery first degree (victim Jackson); assault and battery first degree (victim Nicks); assault and battery first degree (victim Smalls); and murder (victim Brown). The Honorable Kristi Lea Harrington held an expanded sentencing proceeding June 6-7, 2018, in order to consider evidence of appellant's youth and other mitigation.¹ *See generally Aiken v. Byars*, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014) (“*Miller* [v. *Alabama*, 567 U.S. 460

¹ The expanded proceedings under *Aiken v. Byars* were not actually required in this instance as the State was not seeking a life sentence. However, the judge allowed the expanded proceedings and appellant received the benefit of making an extensive presentation specifically regarding his youth.

(2012),] requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.”).

At the conclusion of the hearing, Judge Harrington imposed an aggregate sentence of fifty (50) years: ten years, concurrent, for each of the assault and battery convictions, and fifty (50) years on the murder conviction. (June 7, 2018 sentencing transcript, p. 358).

The evidence at trial showed appellant acted in concert with two other individuals in the same car, Richard Simmons and Keon Anderson. Prior to appellant’s trial, Simmons pleaded guilty to the charges of murder and four counts of attempted murder. The Honorable Roger Young heard and accepted the plea. After appellant’s trial, on November 6, 2018, Judge Young conducted a sentencing proceeding. The solicitor presented a negotiated sentence of thirty years. (November 6, 2018 Sentencing Transcript, p. 2, Motion Exhibit 12). Judge Young sentenced him according to the negotiated terms. (November 6, 2018 Sentencing Transcript, p. 8, Motion Exhibit 12). On November 8, 2018, Keon Anderson pleaded guilty to voluntary manslaughter. Again, Judge Young accepted the plea to voluntary manslaughter and four counts of assault and battery first degree and sentenced Anderson according to the negotiated terms: fifteen years on manslaughter and ten on each assault charge, concurrent. (November 8, 2018 Sentencing Transcript, p. 14, Motion Exhibit 13).

Appellant claims the sentences of Simmons and Anderson constitute “newly discovered” evidence for sentencing, and seeks to return to circuit court.²

² Judge Harrington retired from the bench on June 30, 2018, and the matter cannot be remanded back to the sentencing judge in this instance.

GENERAL STATEMENT OF FACTS OF THE CRIME

The basic facts of the crime are these: Simmons was in his car in front of appellant's residence around midnight on May 9-10, 2015. There were several people present and the group had been talking about going to a party. Appellant was then under house arrest having been adjudicated delinquent on the charges of armed robbery, ABHAN, unlawful carrying and contempt. Simmons indicated he did not think appellant should go with them. While the argument continued, a car drove by and shot at Simmons' car. Several individuals went into the residence and attempted to figure out who had shot at them. There was tension among two gangs, and suspicion quickly focused on their rivals. Several people came together, armed themselves, and started off in pursuit of the shooters. A gun battle ensued with three cars chasing a Chrysler 300, some reaching speeds in excess of one hundred miles per hour. Appellant was in a Honda CRV with Simmons and Anderson. Simmons was driving, appellant was in the passenger seat, and Anderson was in the back. Appellant was shooting during the chase. Simmons eventually pulled up to a Chrysler 300. It was the wrong car. Simmons took a gun from appellant. He shot and killed the innocent driver of the Chrysler 300. (See Trial Transcript, pp. 595-596; 598 (Return Attachment 1); Trial Transcript, pp. 701-740; Motion Exhibit 5).

SENTENCING

2 THE COURT: Thank you. One of the -- and I don't
3 like to say the worst part of my job but the most
4 difficult part of my job is having to craft a sentence
5 considering all of the issues before me. And we heard
6 several times how tragic this case is. And again I am
7 going to reiterate what I believe is the consistent theme
8 of this case is DJJ's colossal failure and society's
9 colossal failure.
10 But what I cannot allow is for us to forget why

11 we're here today. We're here because Mr. Robinson was in
12 a car from which a shot was fired killing Kedena Brown.
13 No matter how many chairs we make or how many
14 certificates we have we should not lose sight of why
15 we're truly here. Mr. Robinson, I am sorry that you had
16 a rough childhood. I think everyone in this room feels
17 that way. I have not ever been in a sentencing or any
18 other type of hearing where I've had as many people come
19 in and say such nice things and truly mean them about
20 anyone. For that you should be very proud because I do
21 truly believe that you have utilized this time to do good
22 things. And don't ever discount those things.
23 But Mr. Robinson you made a choice to get in the
24 car. You were given services. You knew when you got in
25 that car you should not have been in that car. Of all

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1 the people sitting in this room you probably knew more
2 what the impact of losing a parent could be having
3 witnessed shootings in your own neighborhood and in your
4 own home you knew more. Mr. Robinson, please stand.

5 [Whereupon, the defendant stands]

6 THE COURT: I think there is not a person probably
7 in this room who would not allow you the opportunity to
8 go back and to change what happened that night. I know
9 just listening to Mom and sister talk about their
10 daughter, the sister that they have lost they would trade
11 anything to have her back.

12 And I know listening to all those wonderful things
13 there is probably not a person sitting behind you that
14 would not trade a moment or just about anything to allow
15 you to go back. And I can almost guarantee that there is
16 not a person at DJJ who wouldn't wish that they had done
17 something different. But the problem is we found
18 ourselves here today based upon decisions.

19 And I think that it's evident that you have the
20 capability and you did have the capability to understand
21 and make changes. Ms. Ehrlich, you have done an
22 exceptional job representing your client and for that you

23 and Mr. Robinson and Mr. Loignon should be very proud.
24 Mr. Robinson, I am about to sentence you and I want
25 you to understand that you know that you have the range

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1 between 30 years and 50 years. I don't understand what
2 happened. I don't have all the answers. But I do know
3 that you are going to be spending time at the Department
4 of Corrections and so far you have utilized that time
5 well. I wish you the best of luck, Mr. Robinson.

6 It's the order of the court on 2017-GS-10-4878,
7 4879, 4880, 4881 that you be committed to the State
8 Department of Corrections for a term of 10 years. Those
9 will run concurrent. I will give you credit since May
10 14, 2015.

11 It's the order of the court on 2017-GS-10-4882 that
12 you be committed to the State Department of Corrections
13 for a term of 50 years. I will give you credit since May
14 15th of 2015. Mr. Robinson, good luck to you.

(June 7, 2018 Sentencing Transcript, pp. 356-358; Return Attachment 2).

DISCUSSION

Appellant argues that Simmons' thirty year sentence, and Anderson's fifteen year sentence, constitutes new evidence which would probably change the result of his sentencing proceeding. (Motion, pp. 5-7). As a first matter, it is questionable an assertion of "newly discovered evidence" can support a motion for resentencing based in non-capital cases. As is presented more fully below, the case relied upon is a capital case with different sentencing proceedings. Even so, the ages of the parties were known at sentencing. The fact Simmons was the actual shooter was before the judge — he testified at appellant's trial and admitted that he was the shooter. There is simply no logical factual support for appellant's assertion that considering

the cooperating accomplices sentences would have probably/ changed the result of the proceeding.

However, Respondent initially questions whether such assertion can support appellant's motion in non-capital sentencing. Appellant suggests reliance on *State v. South*, 310 S.C. 504, 427 S.E.2d 666 (1993), a capital case where the new evidence was a missed growth on the defendant's brain which was found on a later scan. (See Motion, p. 6). There was no disagreement that the growth was present on prior scans, but was missed. *Id.*, 310 S.C. at 506.

In resolving the appeal issues in *South*, the Court first reviewed the standard for seeking a new trial based on "after-discovered" evidence:

The denial of a motion for a new trial will not be reversed absent an abuse of discretion. *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979); *State v. Wright*, 228 S.C. 432, 90 S.E.2d 492 (1955). To obtain a new trial based on after-discovered evidence, the party must show that the evidence:

- (1) would probably change the result if a new trial is had;
- (2) has been discovered since the trial;
- (3) could not have been discovered before trial;
- (4) is material to the issue of guilt or innocence; and
- (5) is not merely cumulative or impeaching.

South, 310 S.C. at 507, 427 S.E.2d at 668–69.

The Court then considered the evidence in a guilt phase context, ultimately extending the classic new evidence test for application specifically in bifurcated capital sentencing proceedings:

This Court has not addressed whether a different standard should be applied to a motion for a resentencing proceeding in a bifurcated capital case. The factors set forth in *Caskey*, *supra*, apply specifically to the guilt phase of a trial because the fourth factor refers to whether the newly discovered evidence is material to guilt or innocence. We now hold that the factors in *Caskey* apply to motions for resentencing proceedings with a modification of the fourth factor, such that the newly discovered evidence must be material to any mitigating or aggravating circumstances.

South, 310 S.C. at 509, 427 S.E.2d at 669–70.

The bifurcated proceeding for consideration of evidence in aggravation and mitigation is unique to capital cases. Appellant does not cite, and the State cannot find, any authority in South Carolina expanding *South* to non-capital cases. As the Court in *South* noted, the traditional test for a new trial on after discovered evidence is limited to matters “material to the issue of guilt or innocence....” *Id.* See also *State v. Spann*, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (considering evidence offered for the purpose of challenging guilt). At any rate, there is nothing that shows the sentencing proceedings for the accomplices is of the type of evidence to “probably change” the sentencing result, or that the sentencing was in any way tainted.

Appellant suggest the trial court’s sentence appears vindictive. (Motion, p. 9). His argument lacks support factually and legally.

“It is a due process violation to punish a person for exercising a protected statutory or constitutional right.” *State v. Higgenbottom*, 344 S.C. 11, 14, 542 S.E.2d 718, 720 (2001). A presumption will arise if a *trial court* imposes a higher sentence after a successive appeal and retrial if there is in the absence of evidence supporting an increase. *North Carolina v. Pearce*, 395 U.S. 711 (1969). “[W]ithout objective evidence of a proper motivation to increase the sentence, the *Pearce* presumption applies to find a due process violation.” *Higgenbottom*, 344 S.C. at 15, 542 S.E.2d at 720. The presumption cannot apply here where there was not a retrial and resentencing. See also *Alabama v. Smith*, 490 U.S. 794, 799 (1989) (noting presumption applies where “there is a ‘reasonable likelihood,’” ... the increase in sentence is the product of actual vindictiveness *on the part of the sentencing authority.*”) (emphasis added).

Further, there is nothing in sentencing that remotely evidences the trial judge’s consideration of appellant’s decision to go to trial. Compare *Castro v. State*, 417 S.C. 77, 84,

789 S.E.2d 44, 47 (2016) (“reference to the state having to take the defendant to trial” supporting “the trial judge unequivocally *considered* petitioner’s decision to reject a plea offer and proceed to trial as a factor in sentencing petitioner”).

Appellant has improperly blended two distinct acts and actors and attempts to apply a *Pearce* presumption where none can be found. (Motion, p. 8-9). Yet, it is well-established that the prosecution may offer incentives in the bargaining process:

...A guilty plea may justify leniency ... a prosecutor may offer a “recommendation of a lenient sentence or a reduction of charges” as part of the plea bargaining process, and we have upheld the prosecutorial practice of threatening a defendant with increased charges if he does not plead guilty, and following through on that threat if the defendant insists on his right to stand trial ... we have recognized that the same mutual interests that support the practice of plea bargaining to avoid trial may also be pursued directly by providing for a more lenient sentence if the defendant pleads guilty ...

Alabama v. Smith, 490 U.S. 794, 802–03 (1989) (internal citations omitted).

Additionally, when properly considered, the record shows the trial judge overwhelmingly considered the expanded mitigation presentation and found defendant’s culpability and background to warrant the sentence imposed.

“A trial judge is allowed broad discretion in sentencing within statutory limits.” *Brooks v. State*, 325 S.C. 269, 271–72, 481 S.E.2d 712, 713 (1997) (citing *Garrett v. State*, 320 S.C. 353, 465 S.E.2d 349 (1995); *State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2 (1974)). “A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant.” *Brooks*, 325 S.C. at 272, 481 S.E.2d at 713 (citing *Garrett, supra*). Further, appellate courts have “no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the [plea] court, and is not the result of prejudice, oppression or corrupt motive.” *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). This is so even where the evidence of disparate sentencing for co-defendants in the

same matter are before the court. *Edwards v. State*, 392 S.C. 449, 454, 710 S.E.2d 60, 63 n. 1 (2011) (presented with the same circuit judge sentencing one defendant to fifty-five years for offenses including murder and armed robbery after a trial and the other to thirty-five after a plea to the same offenses).

There is no evidence of vindictiveness; no evidence of consideration of improper matters; and the differing circumstances imposed by difference circuit court judge on different procedural and background facts are not facts that would be able to show the result of appellant's sentencing would probably change. He adds nothing new factually to the circumstances of the crime. He adds nothing of significance to Simmons circumstances. Simmons admitted at trial that he had pleaded guilty, he was awaiting sentencing, and that he was hopeful for a reduced sentence. (Trial Transcript, pp. 747-748; Motion Exhibit 5). He adds nothing of significance to Anderson's circumstances. Like Simmons, Anderson also testified at appellant's trial. Anderson testified that he entered a proffer agreement with the state. (Trial Transcript, pp. 864; Motion Exhibit 6). He adds nothing new factually to the mitigation presented as to his background and his circumstances. Rather, he complains that others received lesser time. He makes no comment on the obvious flaw which is Simmons and Anderson were given consideration for their cooperation – a result acknowledged and authorized in *Alabama v. Smith*. Moreover, if appellant is allowed to seek resentencing on this narrow issue of lesser sentences, why would it not be possible for the accomplices to do the same? Applied here or to other cases, this would cause a continuing cycle of challenges to sentencing that is otherwise within the statutory limits. Respondent notes there were multiple individuals who were sentence separately regarding this crime. (See November 6, 2018 Sentencing Transcript, p. 4; Motion Exhibit 12). Such action disrupts the administration of justice.

Judge Young acknowledged the unpleasantness of reduced sentences for the type of crimes committed here; but equally acknowledged the value of cooperation to reach some measure of justice. (November 8, 2018 Sentencing Transcript, p. 13-14; Motion Exhibit 13). In like fashion, the solicitor acknowledged in Simmons' plea:

Thirty years is obviously a pretty significant break for Mr. Simmons,, but he did, as you indicated, enter into a proffer agreement with us and cooperated and really led to us having a much greater understanding of not only what led up to this but to all the parties involved in this case. Testified for me in trial against the co-defendant in February and has been very significant in the prosecution and the seeking of justice against a lot of the parties in this case.

Kenneth Robinson received a 50-year sentence after trial, and there are a number of other individuals that I believe will plea in front of Your Honor this week as a result of some of the information that Mr. Simmons provided, so he is facing a stiff punishment, but also, I think, a deserved break considering his cooperation.

(November 6, 2018 Sentencing Transcript, pp. 3-4; Motion Exhibit 12).

The actors are not similarly situated. “[W]hen the record clearly reflects an appropriate basis for a disparate sentence, the sentencing judge may impose a different sentence on a co-defendant in a criminal trial.” *State v. Follin*, 352 S.C. 235, 257, 573 S.E.2d 812, 824 (Ct. App. 2002). *See also Edwards, supra*. Appellant has shown no cause to be allowed to go back to circuit court for reconsideration of his sentence.

Moreover, as noted above, appellant made an expanded presentation over two days arguing essentially the same point that he claims now – he argues he was less culpable and he should not receive substantial time. (See June 7, 2018 Sentencing Transcript, pp. 335-345, Return Attachment 2). He also previously moved to reconsider his sentence. (Motion Exhibit 10). Respondent notes Appellant argue disproportionally in sentencing compared to non-related sentencing. (Motion Exhibit 10, p.11).

The State opposed that motion as well. (Return Attachment 3). The State noted “the defendant has clearly indicated through his conduct and choices that his loyalty lies not without community at large but with his gang on the street.” (Return Attachment 3, p. 5; see also Return Attachment 4, June 7, 2018 Sentencing Transcript, pp. 325-332). The sentences for Simmons and Anderson do not mitigate that showing. Again, there is nothing new that would warrant a new proceeding.

WHEREFORE, based on the foregoing, Respondent requests the motion be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 11, 2019.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the *Return in Opposition to Motion to Hold Appeal in Abeyance and to Remand to the Court of General Sessions for a Hearing on a Motion for Resentencing Based on After-Discovered Evidence* on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Susan B. Hackett, Esquire, Office of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 11th day of March, 2019.


ANGELA BENNETT
Administrative Coordinator

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1 work?

2 A. No, it's not. We -- we often have people that would
3 call in with anonymous tips that live inside of some of the
4 neighborhoods that refrain from giving us their name due to
5 safety reasons of their own.

6 Q. Okay. And so you followed up on this. You identified
7 who "BJ" was?

8 A. That is correct.

9 Q. And then what did you do with that information?

10 A. We realized that "BJ" is Kenneth Lamont Robinson, Jr.,
11 that he currently is staying at 2679 Lawrence Street, which
12 is in the Dorchester/Waylyn subdivision.

13 And we also noticed that there was an incident that
14 occurred right in front of his house around midnight the
15 night of May 9th into May 10th, the morning of, where a
16 subject by the name of Richard Simmons' vehicle was shot
17 multiple times.

18 Q. I'm going to show you what's been marked as State's
19 Exhibit 149 real quick. Would you -- and I don't know if
20 you recall it, but do you know which house on that map is
21 Kenneth Robinson's?

22 A. I'm going to be honest with you, I believe it's going
23 to be the first one right there at the corner of Gary and
24 Lawrence. I'm not a hundred percent positive.

25 Q. All right. And so you responded to that location, to

1 2679 Lawrence?

2 A. That is correct.

3 Q. And what did you do at that location?

4 A. Our main objective that day when we did respond was to
5 make contact with anyone inside the residence to see if they
6 may have witnessed the shooting that occurred in front of
7 that house the early morning hours of May 9th, into May
8 10th.

9 Q. And just so we can get our timeline straight.

10 So there was a shooting in front of his house at
11 approximately what time?

12 A. It was around midnight, twelve o'clock in the morning
13 there was a shooting at that location.

14 Q. And approximately what time was Kedena Brown shot?

15 A. It was approximately 1:43 in the morning.

16 Q. All right. So you responded to that location to make
17 contact with someone in the house and what happens when you
18 get there?

19 A. We -- originally when we went there we were met with no
20 one being home. A card was left and about approximately a
21 few minutes later the mother of Kenneth Robinson called us.
22 Her name is Nigeia Brown.

23 Q. Okay. And then what did you do?

24 A. We responded back to that location and made contact
25 with her.

1 school and that if we would wait just a few moments, she
2 would -- he would be home. And we did, in fact, make
3 contact with Kenneth.

4 Q. Did you learn anything else interesting during your
5 conversation?

6 A. During the conversation with both Ms. Brown and Kenneth
7 we learned that Kenneth was currently on an ankle monitor
8 through the Department of Juvenile Justice.

9 Q. What did you do with that information?

10 A. In return I went to the Department of Juvenile Justice,
11 which is located on Rivers Avenue, 3610 Rivers Avenue, I
12 believe, and made contact with a DJJ officer Harris.

13 Q. And what did you do there?

14 A. We were able to obtain the information from his GPS
15 monitoring system that was affixed to his left ankle for the
16 night of May 9th, into the early morning hours of May 10th.

17 Q. And what did you learn from that information?

18 A. We learned from that information that at approximately
19 1:43 in the morning of May 10th Kenneth Robinson was in the
20 exact location of the shooting that ultimately took the life
21 of Ms. Kedena Brown.

22 Q. And that was -- you said that was inconsistent with the
23 story Nigeia Brown had given you?

24 A. That is correct.

25 Q. His mother, "BJ's" mother.

SENTENCING ARGUMENT

BY MS. EHRLICH:

I do have an argument related to sentencing that I can go ahead and move into.

THE COURT: All right.

MS. EHRLICH: You know when Kenneth was committed to the Department of Juvenile Justice that happened in August of 2015. Tammie Coppinger was his attorney and there was desperation on Kenneth's part to move from the Juvenile Detention Center to the Department of Juvenile Justice. She pled him to a violation of his probation because of the electronic monitoring violations. And they made a decision together that he should go to DJJ and be committed.

That decision really freaked me out because I knew he was going to a facility that had rough conditions. I knew that if he went there he could turn into a complete disaster and that there would be absolutely no hope for him moving forward. But he has clearly proven me wrong and proven many people wrong.

I have been doing this for close to 12 years and I don't know that there has ever been a more tragic case. And I feel for Kedena Brown's family. I do. And I know that Kenneth does as well. It was senseless violence that took her away from her family. And she was

1 completely innocent in this. The reason we have brought
2 all these witnesses to the court's attention is to try to
3 provide the court with more information about who Kenneth
4 is. The pictures from when he was 12, 13 those do not
5 define who Kenneth is. And he understands the tragedy
6 and the loss that Kedena Brown's family feels because he
7 has felt the same loss when his own father was killed.
8 And it could not be more strange that his father was
9 killed at the same gas station where Kedena Brown was
10 shot.

11 But Kenneth was socialized at a very young age into
12 a criminal lifestyle by his parents and cousins and
13 uncles. And the life that he led prior to going to DJJ
14 in August of 2015 was truly all he knew. A high school
15 diploma was never within reach. He didn't think that he
16 had any talent or promise and he thought his dad was a
17 king and that all he could hope for was to be just like
18 his dad.

19 And when his father was murdered he was devastated.
20 And that was in January of 2015. And that experience
21 helps him better understand what Ms. Brown's family is
22 going through and how they feel. And we're here to
23 impose a final sentencing on Kenneth. And when I look at
24 everything, the totality of the circumstances I can't
25 think of a case where 30 years would be more appropriate.

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1 The courts have long recognized that juvenile offenders
2 are different, that they have decreased culpability, that
3 they are more vulnerable to negative influences and
4 outside pressures, that they can't just get themselves
5 out of negative environments, negative home environments.
6 But they've also recognized that a child's character is
7 not as well formed as an adult offender.

8 We submitted to the court a study done by Vera
9 Dolan. The court is familiar with her prior cases which
10 says that the expected death for a 19 year old, because
11 Kenneth is 19 now, entering SCDC is 56.3 years. It
12 would be 73.1 years if he was an average person in the
13 community.

14 If you sentence Kenneth to 30 years he will be 46
15 years old when he gets out of prison and expected to only
16 live another 10 more years. If you sentence him to 30
17 years you're sentencing him to twice his age at the time
18 of the offense. And you cannot ignore his age and the
19 trauma that he endured as a child.

20 And Doctor Elizabeth Coffman [phonetic] in our
21 exhibit 2 goes through her research and the findings
22 about the impact of trauma, the fact that he was an
23 adolescent and how that impacted his behavior. It talks
24 about how his cognitive limitations made him more
25 susceptible to quick decisions especially emotional ones

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1 like having to deal with his father's death and then
2 months later shots being fired in front of your house in
3 front of your mother, in front of your little sister
4 while they are screaming. Doctor Knight did a thorough
5 evaluation outlining the factors at play here; none of
6 which he could escape as far as his home and family
7 environment. That was his life, those were his people,
8 those are his family members and they shaped his early
9 years.

10 There are older peers that exposed him to drugs and
11 family exposed him to crime. And every time Kenneth
12 Robinson has been in trouble it has been with older peers
13 and family members. At the time of his charges he did
14 not know a different life than what had been offered to
15 him.

16 When you consider the circumstances of the crime,
17 when you look at the age of the other people involved
18 Fred Lance, his uncle, was in his mid 30's. Leroy
19 Manigault almost 30 years old, and this is at the time of
20 the offense; I'm not talking about now. Everybody else
21 was in their 20's or age 19. He was the youngest by far.

22 The jury didn't agree that he was just in the car.
23 They agree that he was part of this and for that he is
24 going to pay a serious price because he's been convicted
25 of murder. But it is very clear that he was not the

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1 person who made a decision to fire into Kedena Brown's
2 car and kill her. The most credible testimony at trial
3 came from Keon Anderson [phonetic]. Keon Anderson
4 [phonetic] put a gun in Kenneth Robinson's hand and said
5 he was firing a gun during portions of the chase. If he
6 wanted to just help Kenneth he wouldn't have said any of
7 that.

8 But he also tells a very compelling play by play on
9 what happened after that it was Richard Simmons speeding,
10 that it was Richard Simmons driving and controlling the
11 circumstances. And that it was Richard Simmons who
12 refused to listen to anybody when Kenneth and Keon
13 [phonetic] warned him that is not the car. That is not
14 her; that is a woman. And Richard Simmons pushes Kenneth
15 Robinson out of the way to kill an innocent person.

16 There are multiple people charged in this and I feel
17 certain that many of them will be held accountable for
18 their actions. But I don't understand where a position
19 of a 50 year sentence is appropriate. He is a non-
20 shooter. He told the police when he was interrogated who
21 the real shooter was. Nobody wanted to believe him.
22 That is not his fault.

23 They believed Richard Simmons for years that Kenneth
24 was the shooter. It wasn't until Richard Simmons failed
25 a polygraph that anybody acknowledged that the 15 year

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1 old was being blamed for the decision of a 19 year old.
2 And Richard Simmons is the one who testified that he
3 decided to do that when he was not happy about Kenneth
4 calling his name. Because he was not happy he tried to
5 put all the blame on Kenneth. I think the jury's verdict
6 on the assault and battery charges is also relevant
7 because in that situation it demonstrated that the jury
8 unanimously found that Kenneth did not have intent to
9 kill when shots were fired from the car.

10 Only one person shot to truly kill and he did that
11 successfully and it was Richard Simmons. He did it when
12 the car was stopped when he had time to think. And it
13 was in that moment that Kenneth tried to stop him and he
14 failed. There were strong emotional and peer and family
15 pressures that contributed to Kenneth even getting into
16 that car that night.

17 There has been a complete failure of the system to
18 step in and help Kenneth Robinson and hold Kenneth
19 Robinson accountable when he was a juvenile. There were
20 months and months of time where they failed to supervise
21 him at all. There were months and months of time where
22 he just sat in a facility with no services.

23 From January 2014 until August of 2015 he was
24 offered no services with the exception of seeing a mentor
25 a couple of times and then he is sent for an assessment

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1 for mental health services but received none. There was
2 nothing that he could do as far as services during that
3 time period. But what is more disturbing is that knowing
4 the negative pressures that existed in his community,
5 knowing that his family had enabled the violations he was
6 able to go home. And he went home nobody watched him
7 again and there was no accountability then. And had
8 there been accountability Kenneth Robinson likely would
9 not be here today.

10 And there is no doubt in my mind that his parents
11 loved him but they loved him in a destructive way by not
12 bringing him to the hospital right away when he was shot,
13 by not reporting the violations. His Mom went to jail
14 for not reporting violations. They brought in family
15 members that were negative influences and allowed him to
16 be exposed to those things.

17 But I think the most impressive thing about Kenneth
18 Robinson is that in August of 2015 knowing everything
19 he's been through he made a decision that he was going to
20 make the most out of what was going on in his life. And
21 he went to the Department of Juvenile Justice during a
22 time when there were the types of riots where kids were
23 breaking into girl's dorms and trying to sexually assault
24 them, where juveniles were breaking windows and tearing
25 things off the walls, trying to run people over with

1 cars. But there were riots in the units and that people
2 were running from the units to fight each other. That
3 furniture was being used to shatter glass, that officer's
4 had to hide girls in restrooms to prevent male juveniles
5 from attacking them. This is the DJJ that Kenneth
6 Robinson went to in August. And these riots were going
7 on in February so within months of being at DJJ Kenneth
8 made the decision that he wasn't going to be a part of
9 that.

10 And the court has been provided with exhibit after
11 exhibit of everything he accomplished. You've heard
12 testimony from people who truly believe in what he was
13 doing at the Department of Juvenile Justice. From people
14 who saw his determination to try to change his life. And
15 I think if he could do one thing to redeem himself it's
16 to show that he is willing to try to make a change and
17 live a better life.

18 And I think there is nothing anybody can take away
19 from him as far as his accomplishments at the Department
20 of Juvenile Justice, the fact that he got his GED after
21 failing, the fact that he learned how to use leadership
22 skills to influence other people in positive ways.

23 He was 15 years old when this happened. And I know
24 that he is never going to forget how he feels about the
25 incident itself. When I look at the words of Kenneth

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1 Robinson since benefitting from services when talking
2 about this incident in particular, your conscience won't
3 let you run that long. I thought it was crazy and bad.
4 I felt disgusted. I felt bad. I feel their pain; I've
5 lost a parent too. I know they're mad at me. I'm very
6 sorry for their loss. I feel really bad that someone's
7 Mom -- I made them choices to do wrong so I can only be
8 mad at myself.

9 I was determined to get my GED because I didn't make
10 it out of high school. I learned how to weld really
11 good. I made furniture and learned how to do auto body.
12 I done a lot of things at DJJ I thought I would never do
13 in my lifetime. There is not a time I don't wish I could
14 rewind and start over.

15 That tells me that he is remorseful for this
16 situation. That tells me that he has learned something
17 from this situation. The court in our sentencing
18 memorandum was provided with several other cases where a
19 30 year sentence was found to be appropriate. In none of
20 those cases were those people were the actual shooter or
21 had done the crime themselves and they actually received
22 30 years.

23 When Mr. Kidd talks about he had opportunities to
24 cooperate and failed to do so I would hope that the court
25 does not hold that against Kenneth Robinson. I hope that

1 trying to force him to waive his appeals for a certain
2 sentence would not be held against him. I think our
3 sentencing memorandums cover everything that the court
4 needs to know about Kenneth. I think Doctor Knight's
5 report shows that based on his life history, adolescence,
6 and the circumstances of the crime support that he has
7 diminished culpability and that his post duress
8 functioning provides evidence of a heightened capacity
9 for change.

10 And I would urge the court to give him 30 years.
11 The 30 years is a very substantial sentence for his role
12 in this. There are 11 witnesses that came from the
13 Department of Juvenile Justice in Columbia to talk for
14 him. And they came from all walks of life. And it's
15 true that they only talked about him because that's who
16 they know. And they don't know everything about this
17 case.

18 But I can tell you they don't believe he's faking it
19 because he was there a long time and he had plenty of
20 opportunities to mess up and he didn't. And I think that
21 the court should take that into consideration. He was 15
22 years old. He did not fire the bullet that killed Kedena
23 Brown. And I think that he has proven after an
24 adolescence filled with negative influences and bad
25 decisions and involvement in gang activity that he is

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1 choosing a different path moving forward and that a 30
2 year sentence would be appropriate for him.

3 THE COURT: Anyone else want to address the court
4 Ms. Ehrlich?

5 MS. EHRLICH: No, Your Honor.

6 THE COURT: Mr. Robinson, do you wish to address
7 the court?

8 MR. ROBINSON: No, ma'am.

9 THE COURT: I'm sorry?

10 MR. ROBINSON: No, ma'am.

11 THE COURT: All right, thank you. Do you have the
12 sheets?

13 MR. KIDD: I have one and there was an error on the
14 A&B first sheets and my investigator is bringing those
15 back now. And the other one will be back momentarily.

16 [Off the record momentarily]

17 THE COURT: Mr. Kidd, do you have anything else or
18 we're just waiting on the sentencing sheet?

19 MR. KIDD: No, ma'am.

20 THE COURT: Anything else Ms. Ehrlich?

21 MS. EHRLICH: No, Your Honor, we provided you with
22 the sentencing packet and I know the court has had an
23 opportunity to review it. I don't want to go on and on.

24 THE COURT: All right. Let me know when you're
25 ready.

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1 you 90 years. I just need you to understand what you are
2 standing here facing today.

3 MR. ROBINSON: Yes, ma'am.

4 THE COURT: All right. Anything further from the
5 State?

6 MR. KIDD: No, ma'am.

7 THE COURT: So pursuant to -- we had this hearing,
8 I have a little to read just to make the record
9 abundantly clear so if you want to sit down or remain
10 standing that's fine; it's your preference.

11 So pursuant to Aiken v Byers the court has conducted
12 this individualized hearing for Mr. Robinson in which the
13 defense called several witnesses to attest to Mr.
14 Robinson's character, his inability to treatment and what
15 has been going on since the incident and in the past in
16 Mr. Robinson's life. Doctor Susan Knight was our last
17 witness for today and she was called to testify per her
18 Miller report. All of the exhibits have been made part
19 of the record in this case.

20 The first factor that the court considers is the
21 chronological age and hallmark features of youth
22 including immaturity, failure to appreciate the risk and
23 consequences of the behavior. Mr. Robinson was 15 years
24 old and 11 months at the time of the offense. Doctor
25 Knight testified that he was at the mid-adolescent stage.

1 Hallmark feature of that is the poor appreciation of long
2 range consequences and high susceptibility to peer
3 influence. Mr. Robinson's maturity level compared to his
4 same age peers but it was lower based upon his cognitive
5 function. She testified that while he had strength in
6 processing speed and was able to act quickly he did not
7 have the cognitive resources to first think through his
8 action.

9 The second factor to be considered is the family and
10 home environment of the offender. There was much
11 testimony and examination of the home, the family and the
12 community environment. Much of the information was based
13 on collateral data including police reports. The data
14 spans Mr. Robinson's infancy to the time the crime was
15 committed.

16 There were notes of domestic disputes between the
17 mother and father in the home, a shooting that occurred
18 in the home and that Mr. Robinson did witness his father
19 shoot his mother. Doctor Knight testified to the lack of
20 pro social home environment citing implied dog fighting,
21 presence of drugs in the home and poor supervision.

22 Doctor Knight testified that Mr. Robinson's mother
23 did not monitor him as needed, which was indicated based
24 upon the multiple GPS violations occurring right before
25 the murder. Doctor Knight testified that Mr. Robinson

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1 grew up in a family with a history of criminality
2 specifically references his father's criminal charges and
3 status as a well-known drug dealer in the neighborhood.
4 Mr. Robinson idolized his father and several of the
5 sources noted the impact that father had on the
6 defendant. The extended family including uncles and
7 cousins also has criminal records including charges for
8 drugs and violent offenses.

9 The third factor to be considered is the
10 circumstances of the homicide offense including the
11 extent and the participation and conduct and the way
12 familial and peer pressures may have affected the
13 defendant. Doctor Knight examined the circumstances of
14 the offense and as we know the court sat through the
15 trial so I have heard all of the circumstances
16 surrounding the offense.

17 Doctor Knight specifically noted that the co-
18 defendants were four to 19 years older and that they were
19 all known to him through familial connections. Doctor
20 Knight cited to Judge Cate's order referencing the
21 colossal failure of DJJ in monitoring the individual when
22 he was on the monitor and indicated the numerous
23 violation reports.

24 The defendant has admitted involvement with Young
25 Gunners and indicates that he emotionally identified with

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1 the neighborhood of the Four. Doctor Knight ultimately
2 noted that Mr. Robinson had a limited extent in the
3 participation based upon her review of the information as
4 he was not the shooter and was the youngest person in the
5 car and was not driving. Doctor Knight also noted that
6 the defendant had recently lost his father in a shooting
7 and was diagnosed with PTSD following the loss.

8 The fourth factor is the incompetencies associated
9 with youth such as the inability to deal with police
10 officers or prosecutors or the incapacity to assist his
11 own attorneys. I did not find that there was any
12 inability to work with the police, attorneys, or
13 prosecutors. Doctor Knight's report indicates that the
14 family heavily impacted Mr. Robinson's decision to reject
15 the plea offers and refused to cooperate with the
16 authorities in terms of the incompetencies associated
17 with his age.

18 The fifth and final factor to be considered under
19 this Miller report is the possibility of rehabilitation.
20 The defense has again presented multiple witnesses to
21 attest to his behavior and personal achievements while he
22 has been incarcerated. He has been involved in several
23 programs to support personal development and growth and
24 has used his time to learn trades and skills for the
25 workforce. Doctor Knight has also opined that Mr.

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1 Robinson has a great potential for rehabilitation,
2 heightened capacity for change with a strong amenability
3 for rehabilitation. Did I accurately highlight all of
4 those factors Ms. Ehrlich?

5 MS. EHRLICH: I believe that the court has, Your
6 Honor.

7 THE COURT: Is there anything else that I left out
8 in highlighting the Miller factors or any other
9 considerations that you would like to highlight at this
10 time?

11 MS. EHRLICH: No. The court referenced the people
12 who came and testified on his behalf and I don't believe
13 it's necessary to go through what every single person
14 said about him. But I appreciate the court being
15 thorough on the record, Your Honor.

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SENTENCING

THE COURT: Thank you. One of the -- and I don't like to say the worst part of my job but the most difficult part of my job is having to craft a sentence considering all of the issues before me. And we heard several times how tragic this case is. And again I am going to reiterate what I believe is the consistent theme of this case is DJJ's colossal failure and society's colossal failure.

But what I cannot allow is for us to forget why we're here today. We're here because Mr. Robinson was in a car from which a shot was fired killing Kedena Brown. No matter how many chairs we make or how many certificates we have we should not lose sight of why we're truly here. Mr. Robinson, I am sorry that you had a rough childhood. I think everyone in this room feels that way. I have not ever been in a sentencing or any other type of hearing where I've had as many people come in and say such nice things and truly mean them about anyone. For that you should be very proud because I do truly believe that you have utilized this time to do good things. And don't ever discount those things.

But Mr. Robinson you made a choice to get in the car. You were given services. You knew when you got in that car you should not have been in that car. Of all

1 the people sitting in this room you probably knew more
2 what the impact of losing a parent could be having
3 witnessed shootings in your own neighborhood and in your
4 own home you knew more. Mr. Robinson, please stand.

5 [Whereupon, the defendant stands]

6 THE COURT: I think there is not a person probably
7 in this room who would not allow you the opportunity to
8 go back and to change what happened that night. I know
9 just listening to Mom and sister talk about their
10 daughter, the sister that they have lost they would trade
11 anything to have her back.

12 And I know listening to all those wonderful things
13 there is probably not a person sitting behind you that
14 would not trade a moment or just about anything to allow
15 you to go back. And I can almost guarantee that there is
16 not a person at DJJ who wouldn't wish that they had done
17 something different. But the problem is we found
18 ourselves here today based upon decisions.

19 And I think that it's evident that you have the
20 capability and you did have the capability to understand
21 and make changes. Ms. Ehrlich, you have done an
22 exceptional job representing your client and for that you
23 and Mr. Robinson and Mr. Loignon should be very proud.

24 Mr. Robinson, I am about to sentence you and I want
25 you to understand that you know that you have the range

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1 between 30 years and 50 years. I don't understand what
2 happened. I don't have all the answers. But I do know
3 that you are going to be spending time at the Department
4 of Corrections and so far you have utilized that time
5 well. I wish you the best of luck, Mr. Robinson.

6 It's the order of the court on 2017-GS-10-4878,
7 4879, 4880, 4881 that you be committed to the State
8 Department of Corrections for a term of 10 years. Those
9 will run concurrent. I will give you credit since May
10 14, 2015.

11 It's the order of the court on 2017-GS-10-4882 that
12 you be committed to the State Department of Corrections
13 for a term of 50 years. I will give you credit since May
14 15th of 2015. Mr. Robinson, good luck to you.

15 MR. KIDD: Thank you, Your Honor.

16 THE COURT: All right, we will be down until 10 in
17 the morning.

18 [Whereupon, Mr. Robinson is escorted from the
19 courtroom]

20 MS. EHRLICH: Your Honor, I have to make an
21 objection on the record.

22 THE COURT: Okay. Hold on, let's bring him back.

23 MS. EHRLICH: I can make it outside of his
24 presence, Your Honor.

25 THE COURT: Let's go ahead; I want the record to be

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
STATE OF SOUTH CAROLINA	)	INDICTMENT NUMBERS:
Plaintiff,	)	2017-GS-10-4878
	)	2017-GS-10-4879
vs.	)	2017-GS-10-4880
	)	2017-GS-10-4881
	)	2017-GS-10-4882
KENNETH LAMONT ROBINSON	)	
	)	
Defendant.	)	State's Response to the Defense Motion to
	)	Reconsider
	)	
	)	

The State has been served with a copy of the Defendant's Motion for Reconsideration of the Fifty-Year Sentence imposed by The Honorable Kristi Harrington on June 7, 2018 for Murder and Four counts of Assault and Battery 1st Degree. The State files this response.

Discussion

The Court having presided over the nearly two-week trial of the Defendant was intimately aware of the underlying facts of the case. Facts that cannot be simply reduced to two-word descriptors like "non-shooter" and "accomplice liability". Characterizing the Defendant's involvement in the Death of Kedena Brown in that way ignores the overwhelming facts pointing to the depth of the Defendant's culpability. Facts in which a jury of his peers unanimously agreed.

The Defendant was a gang member¹. He was an active participant in an ongoing gang war between competing factions in the Dorchester Waylyn neighborhoods. A war that continues today.² A war that has taken the lives of six people to date, that the state is aware, and that is credited for countless shootings of individuals, vehicles and residences in the area. Only a fraction

¹ This was not only substantiated at trial through the testimony of Richard Simmons, Keon Anderson, Leroy Manigault and Kelley Green but also corroborated at sentencing with the Defendant's Facebook page containing images and messages depicting continued gang activity.

² See May 23, 2018 killing of Damon Lamar Middleton on W. Surrey Street in North Charleston.

of which were introduced at trial. The Defendant, a self-proclaimed “soldier” for the Madden Block does not get to absolve himself of culpability simply because it was not a bullet leaving his gun that struck and killed an innocent mother of three. Kenneth Robinson set the fateful events of May 10, 2015 into motion and to date the State has yet to see any acceptance of responsibility, remorse, or humility on his behalf. Just the first of many clear indications of the Defendant’s continued embrace of the criminal gang lifestyle and mindset.

Functional Equivalent to LWOP

Although ignored by the defense there is no bar to sentencing juveniles to Life Without the Possibility of Parole (LWOP) sentences in homicide cases. Whether that be an actual LWOP sentence or a “life equivalent” sentence. All that is required under *Miller v. Alabama* and *Aiken v. Byars* is that a mitigation hearing be conducted in which the specific factors attributed to the Defendant’s youth be considered.

While some courts from other jurisdictions in non-homicide cases have held certain term of years sentences de facto life sentences. See *Floyd v. State*, 87 So. 3d 45, 45 (Fla. 1st DCA 2012) (per curiam) (holding unconstitutional two consecutive forty-year terms of imprisonment). Not a single court that the state is aware of has ever held that a fifty-year sentence on a juvenile is a de facto life sentence. In fact to the contrary in *Thomas v. State*, 78 So. 3d 644 (Fla. 1st DCA 2011) the First District Court of Appeal considered a seventeen-year-old offender's concurrent fifty-year sentences for armed robbery and aggravated battery. The court concluded that given Thomas's life expectancy of 70.2 years and his release in his late sixties, his sentence was not the functional equivalent of life without parole. More importantly, and curiously ignored by the Defense, functional equivalent life sentences are not recognized in South Carolina. *State v. Slocumb*, 412 S.C 88, 770 S.E.2d 436 (Ct.App. 2015)(upholding 16 year old Defendant’s 130 year

consecutive sentence for non-homicide offense over objection that it did not provide the Defendant with a meaningful opportunity to obtain release). Accordingly, a fifty-year sentence that would position the Defendant for release at age 66, is not recognized under the law of South Carolina as a Life Sentence.

Meaningful Consideration

Failure to agree with the position advanced by the Defense does not equate to a lack of meaningful consideration of the proffered testimony. The trial court, as it should, considered all relevant facts and circumstances when fashioning its sentence. For the Defendant to argue otherwise is disingenuous and a mere knee jerk reaction to a sentence for which they disagree. In fact, the court recounted each of the *Byars* factors articulated by Dr. Knight and the contentions made by the Defense immediately prior to passing its sentence. A process of which, at the time, the Defense applauded as indicative of the level of attention paid by the court during its presentation of the mitigation. That is an abundantly clear indication that the court considered all of the mitigation presented by the defense over the two-day sentencing hearing. While the defense should be proud of their efforts in presenting the Defendant in the light that they did, mere volume of information does not alone dictate its impact.

Prior Record

The Defense in their motion further alleges the State mischaracterized the Defendant's prior record at sentencing. However, this is an inaccurate accusation. The state was merely highlighting the leniency the Defendant had been previously afforded in his two preceding arrests and the leniency afforded by the negotiated removal of a potential LWOP sentence while also emphasizing the import of the Defendant's prior conduct to the court. The Defendant's prior

arrests, severity of those charges, and accompanying conduct is certainly relevant and appropriate for the court to consider when fashioning a sentence.³

Vindictive Prosecution

The state takes offense to the Defense allegation of vindictive prosecution. In fact, quite to the contrary the state has offered leniency repeatedly to bring finality to this case for all parties. However, as with all offers, in order for one to get he must also give. The Defendant has never been able to give accountability, personal responsibility, assistance, or apology. Perhaps most telling was how after conviction the State approached the Defendant seeking assistance in prosecuting co-defendants and others in an effort to curtail the ongoing neighborhood violence. The Defendant refused to assist law enforcement in exchange for leniency at sentencing. There could be no more clear indication that the Defendant valued his reputation on the street and continued gang involvement more than his personal liberty. In *Roberts v. U.S.*, 445 U.S. 552 (1980) the Court indicated that:

By declining to cooperate, petitioner rejected an "obligatio[n] of community life" that should be recognized before rehabilitation can begin. See *Hart, The Aims of the Criminal Law*, 23 Law & Contemp.Prob. 401, 437 (1958). Moreover, petitioner's refusal to cooperate protected his former partners in crime, thereby preserving his ability to resume criminal activities upon release. Few facts available to a sentencing judge are more relevant to " 'the likelihood that [a defendant] will transgress no more, the hope that he may respond to rehabilitative efforts to assist with a lawful future career, [and] the degree to which he does or does not deem himself at war with his society.' " *United States v. Grayson*, *supra*, 438 U.S., at 51, 98 S.Ct., at 2616, quoting *United States v. Hendrix*, 505 F.2d 1233, 1236 (CA2 1974).

³ In January 2014, the Defendant was arrested for Trafficking Cocaine, Possession of a firearm by a person under 18, Possession of a firearm during a violent crime, Possession with Intent to Distribute Marijuana, and Possession of a stolen firearm. The Defendant's DNA was on a firearm hidden in a bathroom ceiling with 12.5 grams of cocaine. In July of that same year while wearing an ankle monitor the Defendant was charged with Attempted Murder, Attempted Armed Robbery, Possession of a firearm during a violent crime, and Possession of a handgun by a person under 18 years of age. This crime began as an attempt to rob Davin Alken at gunpoint in the Northwood's Mall parking lot in North Charleston. The Defendant shot the victim once in the back and once in the arm. Additionally, he cut off his GPS ankle monitor while fleeing the scene.

The Defendant has never been punished for exercising his rights to a jury trial or rights to appeal. However, the Defendant has clearly indicated through his conduct and choices that his loyalties lie not with our community at large but with his gang on the street. His actions in conjunction with his words on Facebook speak far louder than the many Department of Juvenile Justice personnel who sung his praises, because those actions and words are a window into the Defendant's true intent and irreparable corruption.

Disproportionality of Sentence

No two cases are the same. Without addressing each case mentioned by the defense the state would simply point out that none of the cases the Defense highlights has a significant combination following race neutral sentencing considerations:

- Defendant an admitted gang member
- 1 Murder victim and 4 Assault and Battery 1st victims
- Defendant firing a gun from a vehicle while engaged in a high speed pursuit down major city thoroughfares
- GPS monitor evidence that contradicts mere presence arguments and portrays the Defendant and his Co-Defendants searching for their intended victims
- Prior Criminal Conduct to include offenses such as Trafficking Cocaine, Firearm Charges, Attempted Armed Robbery, and Assault and Battery of a High and Aggravated Nature.
- Continuous refusal to comply with Court Ordered Demands
- Lack of Remorse
- Lack of Acceptance of Responsibility
- Lack of apology
- Refusal of Cooperation

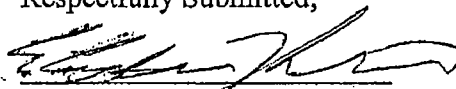
- Indications of continued gang loyalty during the time of alleged reformation

The Defendant has received leniency based on his youth time and time again. However, his youth can no longer be used as an excuse to turn a blind eye. The firm but fair Fifty-Year sentence is necessary to protect this community from the criminal lifestyle adopted and maintained by this Defendant.

Conclusion

The Defendant has outlined no sound reason for this court to change its sentence. The Court afforded the Defendant unlimited time and Attention to present its mitigation. The mere fact that the Court disagrees with the conclusions reached by the Defense does not equate to a failure to consider the information proffered. Pursuant to Rule 29 of the S.C. Rules of Criminal Procedure, the State respectfully requests that this Court summarily deny the Defendant's Motion for Reconsideration without a hearing. If this court does not summarily deny the Defendant's Motion, the State would request prior notice of a hearing on the matter.

Respectfully Submitted,



E. Culver Kidd
Assistant Solicitor

Charleston, South Carolina
June 22, 2018

CLOSING ARGUMENT

BY MR. KIDD:

Thank you, Your Honor. May it please the court?

As I mentioned I'll be brief. I do know that a few of the members of the victim's family will want to address the court when I'm done here. One of the most important things I think that we need to make note of at least to me anyway is that after two days of presentation I don't think I've heard the name Kadena Brown come out anyone's mouth from the defense side.

It's easy to lose perspective of who the true victims are in a case like this when everyone seems to want to focus on the defendant. Kadena Brown was a mother of two. She was a daughter, a sister, and a wife gunned down on Mother's Day; completely innocent. And I know that Kenneth Robinson didn't pull the trigger that fired the fatal bullet but what happened that night is all about Kenneth Robinson.

He was part of the gang. He was a part of the events that took place leading up to that day in the weeks, months, and years beforehand. He was the motive and the reason. He set the course of events that happened that day into motion. He has not accepted any semblance of responsibility for his actions. I have reached out to him on a number of occasions to cooperate

1 pretrial, post-trial with zero interest to cooperate with
2 this investigation or any other investigations that are
3 taking place in that neighborhood. That means one thing
4 to me. It means he is more concerned about being labeled
5 a snitch and his street cred than he is about the prison
6 sentence. What that says to me is that everything people
7 said about reformation and wanting to change his life is
8 a lie. And that a life on the streets is what he knows
9 and what he wants.

10 And while I appreciate everyone at DJJ and what they
11 have said and what they do for a living, because I think
12 their service is invaluable and I don't mean to diminish
13 that. I believe the wool has been pulled over their eyes
14 in this case. I believe the Public Defender's office has
15 done an amazing job in characterizing this young man in a
16 way that is inconsistent with who he is inside. It is
17 inconsistent with the sentence that he deserves.

18 As I said before we started this that I would be
19 amenable to taking life off the table. That is based on
20 much of what they have presented. That's based on his
21 age. This is the first time I've ever convicted someone
22 on murder and not asked for life. It's based on the fact
23 that he was convicted under accomplice liability based on
24 the fact of his age. But I think that the negotiation of
25 capping it at 50 years is what is important. There is no

1 amount of years that can bring Kadena Brown back. We
2 know that. The family knows that. Those wounds will
3 never heal. Mother's Day will never be the same for that
4 family, those children. Kadena Brown is the victim, not
5 Kenneth Robinson. He made his choices. I want to use
6 the overhead real quickly, Judge. A lot of these are
7 clearly photos before his incarceration but these were
8 not produced in trial.

9 [Whereupon, Facebook postings are shown]

10 MR. KIDD: I know it's hard to see in the image
11 there, the court's exhibit but this is Kenneth Robinson.
12 Madden black hat, chopper shirt. These are the people he
13 hangs out with. Gang signs; this is who Kenneth Robinson
14 is. You know a picture is often worth a thousand words.
15 But it's this lifestyle that he took on as his own that
16 took this soul away from us.

17 And I know the family will join me in asking you to
18 sentence him accordingly for what he has done. Sentence
19 him according to his history trafficking cocaine, gun
20 charges; both would be a strike -- well, the trafficking
21 wouldn't be a strike -- attempted armed robbery, ABHAN
22 would have been another strike, murder, four counts of A
23 & B first. You can't overlook the fact that he has --
24 was driving a 100 plus miles an hour down a major
25 thoroughfare in Charleston firing a weapon at four other

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1 individuals; the four assault and battery first degree
2 charges that he is also facing. Judge, I believe that
3 the 50 year sentence is appropriate. I know Ms. Wilson
4 would like to address the court, and I believe Ms. Brown's
5 sister would like to address the court as well when they
6 are able to do so.

7 MS. COLEBROOKE: I'm Cathy Colebrooke. I am Kadena
8 Brown's older sister.

9 THE COURT: I need you to spell your last name for
10 the record.

11 MS. COLEBROOKE: C-O-L-E-B-R-O-O-K-E.

12 THE COURT: And it's Cathy?

13 MS. COLEBROOKE: Yes, with a C. Your Honor,
14 Kenneth has had some amazing accomplishments over the
15 last few years. My sister however has had none. He was
16 able -- he was in junior ROTC and ROTC and he looked
17 really nice in his uniform. My nephew is going to be
18 starting high school next year and he's going to be going
19 to ROTC. But my sister is never going to get to witness
20 him in his uniform. She is never going to get to see him
21 march, salute; anything.

22 I would also like to congratulate Kenneth on his A-B
23 honor roll because my niece joined him this year as she
24 graduated from eighth grade going to ninth grade. So now
25 she is a high school student and she got A-B honor roll

1 but my sister wasn't there to witness that either. She
2 wasn't there to watch her walk across that state. She
3 wasn't there when she walked up the stage and looked into
4 the crowd it was me, it was my mom, it was her dad. Her
5 mom wasn't there. And I'm about to be a grandma so that
6 means that my sister's oldest daughter is pregnant now so
7 my sister is about to be a grandma. But once again she's
8 not going to be here to witness here grandchild being
9 born.

10 She is not going to be here to hold her grandchild,
11 kiss her grandchild, tell my niece what needs to be done
12 to take care of that child or to even direct her as far
13 as to what symptoms she can look forward to you know.
14 Just little simple things like that that my sister is
15 missing because of a choice that somebody else made.

16 Right now Kenneth is living his life to the best of
17 his ability. And he seems to be supposedly trying to
18 make good on some of the things that he has done so
19 wrong. But my sister again the mistakes that she may
20 have made before May 10th or May 9th she will never get
21 to re-do that. She doesn't get a chance to correct any
22 mistakes. She doesn't get a chance to do anything
23 different from when she got in the car from my mom's
24 house and decided that she was going to go home. She
25 doesn't get to rethink or re-do anything because somebody

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June 7, 2018

1 else made another decision. Several people just said
2 that Kenneth is a good person. We're all entitled to our
3 opinions. I say that respectfully. But I was always
4 taught that the definition of a good person is in what
5 they do when nobody is watching. So when nobody was
6 watching what did Kenneth do? Him and his boys jumped in
7 the car, they shot up the neighborhood, they drove down a
8 main thoroughfare shooting.

9 We all heard the 911 calls that people were scared.
10 What if more people had died? There was no regard for
11 life. That's what he did when nobody was looking. To me
12 that doesn't make a good person you know. The decision
13 that he made it took a mother, it took a wife, it took a
14 daughter, it took a sister and an aunt and a friend.
15 Your Honor, he is not a good person. A good person don't
16 -- does not do that. I don't hate him and I don't hate
17 his family, okay. I don't okay, I really don't. But I
18 do feel he needs to pay for the choices that he's made
19 the same way I pay for the choices that I make on a daily
20 basis and so does everybody else in here.

21 We have capped his time at 50 years. We can't give
22 him any more than 50 years. I was going to stand up here
23 and I was going to ask for 50 years. I'm going to leave
24 that decision to you, Your Honor. But please keep in
25 mind that it is my sister that is the victim here, and it

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Closing Argument-Remarks by Mr. Kidd
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1 my nieces and my nephews who I have to explain every
2 Mother's Day why we're not celebrating Mother's Day.
3 Why we're standing over a grave instead of eating dinner.
4 So please take that into consideration. Thank you.

5 MR. KIDD: This is Ms. Brown's mother Marilyn
6 Wilson, W-I-L-S-O-N.

7 MS. WILSON: My name is Marilyn Wilson. I'm Kadena
8 Brown's mother. Thank you for allowing me to speak.
9 This is very hard. I sat here and I wrote something
10 down. I don't even know where it is anymore. But Your
11 Honor I've sat here for two days and I've listened to the
12 people from DJJ just singing Kenneth's praises. And it's
13 impressive. It's really impressive.

14 But what is more troubling to me about those faces
15 is that not one of them said a bad thing about him.
16 Nobody is perfect. I mean not one bad thing was said
17 about him and that is very troubling. I just do not see
18 where this young man could have made such a 360 degree
19 turn in that period of time. I mean I just don't.

20 That Kenneth Robinson that you saw on the -- with
21 his cute little blazer and his khaki pants and the ROTC
22 uniform that's not the Kenneth Robinson that chose to go
23 out on May 10th 2015 and chose to shoot out. That's not
24 him. That's not him. He made some choices. He made
25 some choices and he's going to have to pay for it. Like

1 my daughter said I feel for his family. I have not one
2 day in three years and we have been in the courtroom
3 every time and not one of them has ever said to me I'm
4 sorry for your loss. I've not one day heard anybody call
5 Kadena Brown's name. Kenneth is not the victim here;
6 Kadena Brown is. Kierra [phonetic] and Kavonie
7 [phonetic] is, her twin brother is, her husband is, we
8 are. And like she said we have to go through every
9 Mothers Day, every Mother's Day we spend the day in the
10 cemetery at her grave.

11 Kenneth's parents -- Kenneth's mother will be able
12 to visit him wherever he is. So that is one thing that
13 she can that they can be proud of. I will pray for him
14 like I pray for my children every night I get on my knees
15 that maybe one day he will find redemption. Thank you.

16 MR. KIDD: Nothing further.

17 THE COURT: Do you have the sentencing sheets?

18 MR. KIDD: I thought the clerk had them.

19 CLERK OF COURT: We never got them.

20 MR. KIDD: May I have a moment?

21 THE COURT: Why don't we hear from Ms. Ehrlich and
22 then I'll take a break.

23

24

25



ALAN WILSON
ATTORNEY GENERAL

March 11, 2019

RECEIVED
MAR 11 2019
SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Kenneth Lamont Robinson, Jr.
Appellate Case No: 2018-001269

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the *Return in Opposition to Motion to Hold Appeal in Abeyance and to Remand to the Court of General Sessions for a Hearing on a Motion for Resentencing Based on After-Discovered Evidence* along with proof of service in the above-referenced case.

Sincerely,

Melody J. Brown
Senior Assistant Deputy Attorney General
S.C. Bar No: 14244

MJB/ab
Enclosures

cc: Susan B. Hackett, Esquire
Victim Advocacy Division