

**RICHLAND COUNTY PUBLIC DEFENDER
RICHLAND COUNTY JUDICIAL CENTER**

1701 MAIN STREET
POST OFFICE BOX 192
COLUMBIA, SC 29201

PHONE (803) 765-2592
FAX (803) 748-5018

June 11, 2019

The South Carolina Court of Appeals
Attn: V. Claire Allen, Deputy Clerk
PO Box 11629
Columbia SC 29201

RECEIVED

JUN 12 2019

SC Court of Appeals

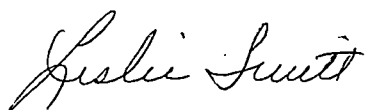
RE: The State v. Charles M. Mitchell
Appellate Case No. 2019-000942

Dear Deputy Clerk Allen:

Per your letter dated June 7, 2019, which I have included, you requested proof of the filing of the above referenced notice of appeal with the Richland County Clerk of Court. Enclosed please find a certified copy of the notice of appeal showing it was filed with the Richland County clerk's office on June 4, 2019.

Please contact our office should you require additional information or have any further questions.

Sincerely,



Leslie Truitt
Paralegal



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
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JUN 10 2019

June 07, 2019

Mr. John Rhodes Bailey, Esquire
1701 Main St
PO Box 192
Columbia SC 29201

Re: The State v. Charles M. Mitchell
Appellate Case No. 2019-000942

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter, or this appeal will be dismissed:

- You must provide proof that a copy of the notice of appeal was filed with the Richland County Clerk of Court.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
William M. Blicht, Jr., Esquire
Richard Vance Eaton, Esquire
Robert Michael Dudek, Esquire

STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUN 12 2019

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

SC Court of Appeals

Clifton Newman, Circuit Court Judge

Case Nos. Indictment Number: 1992 GS 40 02260

RECEIVED

The State,.....Respondent,

v.

Charles M. Mitchell,.....Appellant.

JUN 03 2019
SC Court of Appeals

2019 JUN -4 AM 9:03
RICHLAND COUNTY
FILED
JANETTE W. McBRIDE
C.C.P., G.S., & F.C.

NOTICE OF APPEAL

The defendant, Charles M. Mitchell appeals the Honorable Clifton Newman's decision to grant the State's Motion to dismiss Defendant's Request for Resentencing dated May 29, 2019. On April 29, 2019, a hearing was held in the matter and Judge Newman took the matter under advisement. A certified copy of this Order was provided to defense counsel on May 29, 2019. Defendant respectfully requests this Court to reconsider Judge Newman's ruling and grant him a hearing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765, S.E.2nd 572 (2014).

June 3, 2019

J. Rhodes Bailey
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Other Counsel of Record:

Vance Eaton
Office of the Solicitor, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201
Attorney for Respondent

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Janette W. McBride
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Case Nos. Indictment Number: 1992 GS 40 02260

RECEIVED

JUN 03 2019

The State,.....Respondent,

SC Court of Appeals

v.

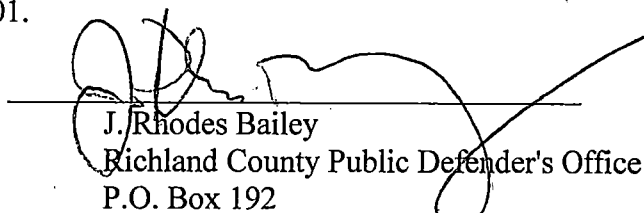
Charles M. Mitchell,.....Appellant.

RICHLAND COUNTY
FILED
2019 JUN -4 AM 9:34
JEANETTE W. MCBRIDE
C.C.P., G.S., & F.A.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Notice of Intent to Appeal the above-referenced case has been served upon opposing counsel by delivering same this date to his office at the Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201.

June 3, 2019



J. Rhodes Bailey
Richland County Public Defender's Office
P.O. Box 192
Columbia, S.C. 29201
(803) 765-2592
Attorney for Appellant

Other Counsel of Record:
Vance Eaton
Office of the Solicitor, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201
Attorney for Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Charles M. Mitchell,)

Petitioner,)

v.)

The State of South Carolina,)

Respondent.)

IN THE COURT OF GENERAL SESSIONS

Indictment Number: 1992-GS-40-2260

Order of Dismissal

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JUN 08 2019

SC Court of Appeals

2019 MAY 29 AM 9:26
SHERIFF J. BRIDGEMAN
C.C.P., G.S., & F.C.

RICHLAND COUNTY
FILED

This matter is before the Court on the Motion of the State to Dismiss the Motion of the Petitioner for a Resentencing Hearing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

On August 4, 1992, the Honorable R. Henry McKellar sentenced the Petitioner, Charles Mitchell, to life imprisonment for murder. The Petitioner filed a Motion for a Resentencing Hearing on December 8, 2014. On August 2, 2016, the Supreme Court of South Carolina vested the Honorable R. Knox McMahan with jurisdiction over this case.

On December 5, 2016, the State filed a Motion to Dismiss the Motion of the Petitioner for a Resentencing Hearing. Although it appears there were sporadic discussions between Judge McMahan and his clerk regarding scheduling a hearing on the pending motions of the State and Petitioner, no hearing occurred. At the request of Judge McMahan, the State submitted a proposed order dismissing the Motion of the Petitioner for a Resentencing Hearing. The State sent the proposed order to Judge McMahan without copying counsel for the Petitioner in the correspondence and without giving notice to Petitioner.

On June 21, 2018, Judge McMahan signed an Order dismissing the Motion of the Petitioner for a Resentencing Hearing. The Order was filed on June 26, 2018. Judge McMahan retired shortly thereafter. Neither party was provided notice that an Order of Dismissal was issued.

When the parties became aware that an Order of dismissal had been issued, the parties agreed to a consent order vacating the Order of dismissal issued by Judge McMahan. On August

2019 JUN 27 AM 10:08
JEANETTE M. MCMAHON
C.C.P., G.S., & F.C.

RICHLAND COUNTY
FILED

22, 2018, the Honorable L. Casey Manning signed a Consent Order vacating the June 26, 2018, Order of Dismissal and ordered that the case be reopened.

On January 9, 2019, this Court became aware that jurisdiction of this matter had been vested in this Court following the retirement of Judge McMahon. A status conference was held on February 21, 2019. The Petitioner was not present at the status conference because he was not transported to the courthouse. A scheduling order was entered shortly after the status conference.

A hearing on the Motion of the State to Dismiss the Motion of the Petitioner for a Resentencing Hearing pursuant to *Aiken v. Byars* was held on April 29, 2019. Assistant Solicitor Vance Eaton appeared for the State, and the Petitioner was represented by Rhodes Bailey and Laura Young.

Having fully considered the motions and arguments of counsel, this Court grants the Motion of the State and dismisses the Motion of the Petitioner for a Resentencing Hearing for the reasons stated below.

In *Aiken v. Byars*, the Supreme Court of South Carolina ordered resentencing hearings for fifteen inmates serving LWOP sentences they received as juveniles. The Court ordered the resentencing hearings based on *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455 (2012). In *Miller*, the Supreme Court of the United States held that the mandatory imposition of LWOP sentences for those under the age of 18 at the time of their crimes violates the prohibition of cruel and unusual punishment in the Eighth Amendment. *Id.*, 567 U.S. at 465, 132 S. Ct. at 2460 (2012). The Court in *Aiken* therefore held that if a juvenile offender received an LWOP sentence and did not present mitigating evidence relating to the youth of the offender, the offender is entitled to a resentencing hearing. *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577.

The Petitioner contends that he should receive relief under S.C. Const. art. I, § 15, which prohibits cruel or unusual or corporal punishment for conviction of a crime, due to the lack of a realistic possibility that he will ever receive parole. The Petitioner argues that his sentence of life is a *de facto* LWOP sentence because it is unlikely that he will ever be granted parole.

The issue of cruel and unusual punishment under the South Carolina Constitution, however, was not addressed in *Aiken v. Byars*. The Court in *Aiken* applied *federal* constitutional protections against cruel and unusual punishment only with regard to LWOP sentences. The authority of the Court to entertain this matter is governed solely by *Aiken v. Byars*, and, as such,

this court is restricted to granting resentencing hearings only to juveniles who received sentences of life without the possibility of parole.

The Petitioner herein did not receive a sentence of life without parole. In 1992, when the Petitioner was sentenced, a life sentence provided for parole eligibility after the service of 20 years. *See*, S.C. Code Ann. § 16-3-20(B) (Supp.1991). The Petitioner is parole eligible and appeared before the parole board in 2012, 2016, and 2018. This Court therefore has no authority to grant a resentencing hearing.


The position of the Court to dismiss the Motion of the Petitioner for a Resentencing Hearing is further supported by the holding in *State v. Slocumb*, wherein the Supreme Court of South Carolina was faced with a constitutional challenge to the aggregate 130-year sentence of Slocumb. --S.E.2d--, 2019 WL 1461584 (S.C. Apr. 3, 2019). Even though Slocumb was not sentenced to life without parole, counsel for Slocumb contended that his 130-year sentence was a *de facto* life sentence. *Id.*, at *1. The Court in *Slocumb* limited its opinion to the singular question of “whether the aggregate term-of-years sentence imposed on Slocumb categorically violates the Eighth Amendment pursuant to the reach of *Graham*.” *Id.* at *9.

In considering whether the aggregate term-of-years sentence violates the Eighth Amendment pursuant to the reach of *Graham*, the Court held that it would not be appropriate for the Supreme Court of South Carolina to “extend federal constitutional protections under the Eighth Amendment beyond the boundaries the Supreme Court set in *Graham*.” *Slocumb*, at *5. *Graham v. Florida* prohibits a court from imposing a life *without parole* sentence on a juvenile offender who did not commit homicide. 560 U.S. 48, 74, 130 S. Ct. 2011, 2030, 176 L. Ed. 2d 825 (2010). As such, the Court declined to grant the petition for a resentencing hearing, holding that “neither *Graham* nor the Eighth Amendment as interpreted by the Supreme Court, currently prohibits the imposition of aggregate sentences for multiple offenses amounting to a *de facto* life sentence on a juvenile nonhomicide offender.” *Id.* at *10.

The Petitioner received a sentence of life *with* the possibility of parole. The Order of the Court in *Aiken v. Byars* does not contemplate resentencing for individuals who are eligible, but have been denied, parole. *Aiken v. Byars* therefore does not apply.

Having fully considered the matter, the Court grants the Motion of the State dismissing the Motion of Petitioner for Resentencing.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

Columbia, South Carolina

May 29, 2019



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RICHLAND COUNTY
PUBLIC DEFENDER
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