

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Richland County

Honorable R. Knox McMahon, Circuit Court Judge

RECEIVED  
MAR 19 2019  
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

DEMARCO JOHNSON,

APPELLANT

APPELLATE CASE NO. 2018-001424

RECORD ON APPEAL

DAVID ALEXANDER  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General

1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

**INDEX**

INDEX ..... i

TRANSCRIPT (JUNE 1, 2017).....1

MOTION FOR RE-SENTENCING (JULY 1, 2016).....25

MOTION TO DISMISS RE-SENTENCING MOTION W/ EXHIBITS (MAY 24, 2017).....27

ORDER APPOINTING JUDGE MCMAHON (JULY 28, 2016).....38

MEMORANDUM IN SUPPORT OF MOTION FOR RE-SENTENCING (MAY 25, 2017).....40

DEFENDANT’S EXHIBIT #1 (INDICTMENTS).....60

DEFENDANT’S EXHIBIT #2 (WARRANTS).....71

DEFENDANT’S EXHIBIT #3 (INDICTMENTS).....79

DEFENDANT’S EXHIBIT #4 (NOTICE).....87

DEFENDANT’S EXHIBIT #5 (VERDICT FORMS).....88

DEFENDANT’S EXHIBIT #6 (SENTENCING SHEETS).....92

DEFENDANT’S EXHIBIT #7 (INMATE HISTORY).....96

ORDER OF DISMISSAL (JUNE 21, 2018).....98

CERTIFICATE OF COUNSEL .....102

State of South Carolina ) In the Court of General Sessions  
 ) Fifth Judicial Circuit  
 County of Richland ) 2000-GS-40-47714  
 ) 2000-GS-40-47716  
 ) 2000-GS-40-47717  
 ) 2000-GS-40-47718

The State of South Carolina, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Transcript of Record  
 )  
 Demarco Johnson, )  
 )  
 Defendant. )  
 )  
 )  
 )

June 1, 2017  
 Columbia, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge

A P P E A R A N C E S:

Daniel R. Goldberg, Esquire, Assistant Solicitor  
 Attorney for the State

J. Taylor Bell, Esquire  
 Attorney for the Defendant

Elizabeth B. Harris, CVR-M-CM  
 Circuit Court Reporter

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page. . . . .	24

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
D-1	Indictments. . . . .	12
D-2	Warrants . . . . .	13
D-3	Indictments. . . . .	13
D-4	Notice . . . . .	13
D-5	Verdict Forms. . . . .	13
D-6	Sentencing Sheets. . . . .	14
D-7	Inmate History . . . . .	14

1 MR. GOLDBERG: May it please the court, Your Honor?

2 THE COURT: Yes, sir.

3 MR. GOLDBERG: Your Honor, we are here today in the  
4 matter of *State vs. Demarco Johnson*, indictments number  
5 2000-GS-40-47714, 16, 17, and 18. Dan Goldberg for the  
6 state. Mr. Johnson is present, represented by Taylor Bell  
7 of the public defender's office. Your Honor, this case is  
8 before you pursuant to an order from the Supreme Court  
9 vesting exclusive jurisdiction with you to hear this matter  
10 in regards to the issue of whether or not Mr. Johnson is  
11 entitled to a resentencing pursuant to *Aiken vs. Byars*.

12 Just by way of a little bit of background briefly,  
13 Your Honor, Mr. Johnson was born in 1979. In 1995 at the  
14 age of fifteen, he was charged with one count of murder,  
15 two counts of assault and intent to kill, and two counts of  
16 armed robbery. He was later convicted of assault with  
17 intent to kill and attempted robbery at the age of sixteen,  
18 I believe -- excuse me, seventeen. He was sentenced in  
19 general sessions court even though initially the charges  
20 were when he was a juvenile. The charges were adjudicated  
21 in general sessions court. He received twelve years  
22 suspended on eight years active followed by three years  
23 probation.

24 Some time thereafter in December 1999 at the age of  
25 twenty, he was arrested on these charges, charged with

1 armed robbery, burglary, first degree, and kidnapping times  
2 two. And then at the age of twenty-one in February of  
3 2001, a jury trial was held in front of the Honorable Mark  
4 Westbrook. He was convicted at trial. The state, having  
5 served him with notice of their intention to seek life  
6 without parole pursuant to the recidivist statute, Judge  
7 Westbrook sentenced him to life without parole at that  
8 time.

9 Your Honor, after Aiken came out, Mr. Johnson filed a  
10 petition for resentencing in July of 2016 asking for his  
11 sentence to be reconsidered pursuant to Aiken, and as I  
12 indicated, the Supreme Court appointed you to hear this  
13 matter exclusively. I have since filed a motion to dismiss  
14 that petition. Your Honor, I have a copy of that.

15 THE COURT: I do.

16 MR. GOLDBERG: And the defense has countered with a  
17 memorandum in support of the motion for resentencing. I  
18 believe pursuant to a meeting in chambers with Your Honor  
19 just for scheduling purposes -- this matter was discussed  
20 some time ago -- and that led to today's hearing where  
21 essentially we are having a -- I suppose a hearing to  
22 determine whether or not there should be the full  
23 resentencing hearing at a later date. I guess the  
24 appropriate caption of it would be my motion to dismiss.  
25 Should you grant my motion to dismiss, I imagine that would

1 be the end of it. Were you to deny that, then we could  
2 take up the issue of whether or not there would be a full  
3 hearing, but I think the parties are in agreement that if  
4 you were to deny my motion to dismiss and order that a full  
5 hearing was merited, that that would be done at a later  
6 date.

7 Is the correct, Mr. Bell?

8 MR. BELL: That would be correct, Your Honor.

9 MR. GOLDBERG: That being said, we can proceed as you  
10 see fit. I'm prepared to move forward with my motion to  
11 dismiss.

12 THE COURT: All right. Yes, sir.

13 MR. GOLDBERG: Thank you. I've given you a little bit  
14 of the procedural background, how we got here, and in  
15 short, Your Honor, the state feels that this case does not  
16 fall within parameters as outlined in *Aiken vs. Byars*. For  
17 the record, 410 S.C. 534. *Aiken* is a South Carolina  
18 Supreme Court case that addresses the issues raised in  
19 *Miller vs. Alabama*, a United State Supreme Court case, 567  
20 U.S. 460. In *Miller*, the Supreme Court talks about  
21 juveniles who received a sentence of life without parole  
22 and all of the factors that go into how courts should  
23 consider sentencing, factors to be considered in levying  
24 those sentences upon juveniles.

25 *Aiken* references *Miller* a great deal and talks about

1 these five factors that were laid out in *Miller* that are  
2 required if the court is going to consider levying a life  
3 without parole sentence upon a juvenile. If you read  
4 *Aiken*, the entire opinion talks about juveniles being  
5 sentenced. It is solely centered around juveniles who are  
6 being exposed to life without parole and in short, it  
7 suggests that you have to be a juvenile at the time of  
8 sentencing, you have to have been sentenced to life without  
9 parole, and that the sentencing court did not consider  
10 these, quote unquote, hallmarks of youth that were  
11 described in *Miller vs. Alabama* that *Aiken* incorporates.

12 It's our position that this case does not fall within  
13 those guidelines for the simple fact that Mr. Johnson was  
14 not a juvenile at the time he was sentenced to life without  
15 parole. As I indicated to you earlier, at the time of his  
16 arrest on these charges -- the armed robbery, burglary  
17 first degree, and kidnapping charges -- Mr. Johnson was  
18 twenty years old. At the time of his trial, he was  
19 twenty-one years old. So, it's our position that it  
20 doesn't apply because he wasn't a juvenile at that time,  
21 and *Aiken* and *Miller* are solely premised on juveniles being  
22 sentenced to life without parole.

23 I would sit down at this time. However, I know that  
24 counsel has another position in regards to this incident,  
25 and I'd like to address it briefly on the front end. And

1 if you look at the defense memorandum in support and Mr.  
2 Johnson's petition, their position is not that he was a  
3 juvenile when he was sentenced to life without parole. I  
4 don't believe that's an excuse, but rather because the  
5 prior offense that gave rise to him being eligible for life  
6 without parole pursuant to the recidivist statute took  
7 place when he was juvenile, that it triggers the  
8 implication raised in *Miller* and *Aiken*. That's kind of  
9 putting it in a nutshell.

10 Interestingly enough, there's a case on point in South  
11 Carolina that I'd hand up to the court at this time, *State*  
12 *vs. Green*. If I may approach?

13 THE COURT: Yes, sir.

14 MR. GOLDBERG: *State vs. Green*, 412 S.E. 65, and *Green*  
15 is almost identical to the situation that we have here  
16 today. In *Green*, the defendant was guilty at trial of  
17 armed robbery and pursuant to the recidivist statute, he  
18 was sentenced LWOP. There was an initial argument about  
19 whether or not his being a juvenile at the time of his  
20 prior conviction, the first conviction, caused his LWOP  
21 sentence for his second conviction to violate Eighth  
22 Amendment, and the court -- he went on to say that even  
23 though he was twenty years old at the time of the  
24 sentencing and nineteen years old at the time of the  
25 offense, he was only seventeen when he committed the prior

1 offense that served as the triggering offense under the  
2 recidivist statute. Almost identical to the facts in this  
3 case, and the trial court rejected that assertion and  
4 sentenced him to LWOP.

5 Well, on appeal the Court of Appeals took up this  
6 issue and looked at it further. First, they looked at  
7 obviously at the recidivist statute and addressed whether  
8 or not there was a appropriate prior conviction for a most  
9 serious offense, which here we have a similar situation,  
10 same situation. Having established that there were two or  
11 more prior serious convictions, the court looked at whether  
12 or not there was an issue because in *Green*, whether or not  
13 the fact that he was tried in general sessions even though  
14 he was a juvenile led to it being an error giving the LWOP  
15 on the back end, and *Green* looked at it. They reference  
16 case law stating that:

17 It was not cruel and unusual punishment to  
18 sentence a defendant to LWOP using -- utilizing  
19 enhanced penalties for a burglary committed when  
20 the defendant was a juvenile so long as the  
21 defendant was tried and sentenced as an adult to  
22 the triggering offense.

23 Again, in the situation the same exact thing. While  
24 Mr. Johnson was a juvenile in terms of his age at the time  
25 of his initial offense, he was adjudicated in general

1 sessions court, and I believe that Mr. Bell has the  
2 sentencing sheets to reflect that that he will hand up at  
3 the appropriate time.

4 And finally and most interestingly, if the court will  
5 indulge me, the *Green* court in 2015 addressed the  
6 applicability of *Miller*. So, I think that's interesting to  
7 note that *Aiken* was in 2014. *Miller*, I think, was in 2012,  
8 and the *Green* case here in South Carolina was in 2015 after  
9 those had come out. And in *Green* they addressed *Miller*,  
10 the applicability, and found it to be inappropriate by  
11 stating:

12 Although *Miller* held that mandatory LWOP  
13 sentences for juveniles violate the Eighth  
14 Amendment, *Green* was twenty years old at the time  
15 of sentencing. Therefore, he was not a juvenile  
16 when sentenced to LWOP. *Miller's* holding was  
17 based in part on the, quote, recklessness,  
18 impulsivity, and heedless risk taking, end quote,  
19 of children. However, because *Green* was not a  
20 juvenile at the time he committed the current  
21 armed robbery, the policy considerations for  
22 *Miller* are inapplicable.

23 It's the exact same situation in this case, Your  
24 Honor. As I've noted already for the record, he was a  
25 juvenile for the first offense; he was adjudicated and

1 convicted in general sessions court for the first offense.  
2 The second offense for which he was sentenced to life  
3 without parole, he was clearly an adult. In both  
4 instances, if you go back and review both *Aiken* and *Miller*,  
5 they are centered completely around juveniles facing life  
6 without parole. That's not what you have here. You have  
7 an adult clearly who committed a separate set of offenses  
8 from the priors and was sentenced under the recidivist  
9 statute.

10 I would point out one, one final thing. In Mr. Bell's  
11 memorandum, the argument is made towards the end of his  
12 memorandum that because at Mr. Johnson's initial conviction  
13 when he was a juvenile in general sessions court, because  
14 the court in that instance did not take into account his,  
15 quote, juvenility as outlined by *Miller* and *Aiken*, that he  
16 should be entitled to a resentencing because no one ever  
17 considered his youth in any of the instances since they  
18 didn't do it when he was an adult. They didn't do it  
19 either in his first set of charges.

20 Well, again if you go back to the case law that talks  
21 about considering the offender's juvenility and these  
22 factors of youth, i.e. *Aiken* and *Miller*, those are  
23 specifically for situations where juveniles are facing life  
24 without parole. In the first instance where Mr. Johnson  
25 was convicted, he wasn't looking at life without parole.

1 He pled guilty to assault with intent to kill and attempted  
2 armed robbery. Those are not, those are not offenses that  
3 are subject to life without parole. He had initially been  
4 charged with murder, but the murder, I believe, was nolle  
5 prossed; it was nolle prossed as part of the plea. So, the  
6 sentencing court was never tasked with looking at him to  
7 consider his youth in terms of the life sentence.

8 Therefore, it's our position that even if you assume that  
9 those factors should be considered for a juvenile looking  
10 at life on a triggering offense, this would not be one of  
11 those situations because he wasn't looking at life.

12 I thank you for the time. I would ask to be heard  
13 briefly in response if necessary.

14 THE COURT: Thank you. Thank you very much,  
15 Solicitor.

16 Mr. Bell.

17 MR. BELL: Thank you. May it please the court? Your  
18 Honor, I will disagree with Mr. Goldberg. I do believe  
19 that Mr. Johnson's sentence was unconstitutional because it  
20 was a mandated sentence of life without the possibility of  
21 parole based on a predicate juvenile offense which was for  
22 a non-homicide offense at a juvenile age.

23 Your Honor, I'm going to course through a little bit  
24 of Demarco's procedural history and make exhibits if that  
25 is okay with Your Honor.

1 THE COURT: Yes, sir. Of course.

2 MR. BELL: I would make it an exhibit here, the  
3 original indictments that were served on Demarco in 1995.

4 THE COURT: After they've been marked, would you hand  
5 them to me?

6 MR. BELL: Yes.

7 (INDICTMENTS MARKED INTO EVIDENCE AS DEFENDANT'S  
8 EXHIBIT NUMBER 1.)

9 MR. BELL: These were the original indictments for  
10 murder, as well as an indictment for -- two, two  
11 indictments for assault with intent to kill, as well as two  
12 indictments for armed robbery.

13 At the time we agree, as counsel stated, Demarco was  
14 fifteen years old. I have pulled all the records that I  
15 can from the Fifth Circuit Family Court as well as Richland  
16 County Circuit Court General Sessions. I have been unable  
17 to find any order waiving the case from family court to  
18 general sessions. So, I have a lack of records regarding  
19 what actually took place at a sentencing hearing, if a  
20 sentencing -- or at a waiver hearing, if a waiver hearing  
21 took place. I assume it did, but that could be wrong on my  
22 behalf.

23 I do not know what took place there. I do not know  
24 whether he was represented or not at a waiver hearing  
25 because back in 1995 at a waiver hearing, the solicitor had

1 two days to decide whether or not a case is waived from  
2 family court to general sessions. I do not believe that  
3 would have given any time for what is called the *Kent*  
4 factors at a waiver hearing, taking into account which --  
5 where psychologists examine a juvenile before they are  
6 waived up in a two-day process. I don't believe -- I've  
7 searched. I can't find any.

8 I would also like to mark as exhibits, Your Honor, the  
9 warrants that were served on Mr. Johnson in 1999, and I  
10 agree with Solicitor Goldberg that he was twenty at the --  
11 at that time.

12 (WARRANTS MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT  
13 NUMBER 2.)

14 MR. BELL: I'm also going to mark -- just do this all  
15 in order now -- the indictments, the notice of life without  
16 the possibility of parole, the jury verdict forms, and  
17 sentencing sheets for those warrants that I just handed up  
18 just so that we have a procedural posture in the record,  
19 Your Honor.

20 (INDICTMENTS MARKED INTO EVIDENCE AS DEFENDANT'S  
21 EXHIBIT NUMBER 3.)

22 (NOTICE MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT  
23 NUMBER 4.)

24 (VERDICT FORMS MARKED INTO EVIDENCE AS DEFENDANT'S  
25 EXHIBIT NUMBER 5.)

1 (SENTENCING SHEETS MARKED INTO EVIDENCE AS DEFENDANT'S  
2 EXHIBIT NUMBER 6.)

3 MR. BELL: So, we agree with the procedural posture  
4 that Mr. Goldberg stated. He was twenty at the time he was  
5 given a life without the possibility of parole sentence. I  
6 would also ask to be marked as an exhibit Demarco Johnson's  
7 inmate history within the Department of Corrections which  
8 will reflect since he's been in Department of Corrections,  
9 he has had zero disciplinary issues for over seventeen  
10 years since 1999.

11 (INMATE HISTORY MARKED INTO EVIDENCE AS DEFENDANT'S  
12 EXHIBIT NUMBER 7.)

13 MR. BELL: I think that's an important fact that needs  
14 to be taken into account. While it was -- it is after the  
15 fact now, I think it's important to take into  
16 consideration, given the policy considerations of *Miller*  
17 and *Aiken*.

18 So, I would like to start with addressing juveniles  
19 and the Eighth Amendment and how our United States Supreme  
20 Court has touched on those, starting back to what was *Roper*  
21 in 2005. In 2005, *Roper* was decided and ruled that  
22 juveniles could not be eligible for the death penalty.  
23 Then in 2010, *Graham* was decided where juveniles could not  
24 be eligible for the death penalty where there was not a  
25 homicidal -- a homicide offense. And then we came down to

1 2012 with *Miller* that decided that juveniles could not be  
2 sentenced to mandatory sentences of life without the  
3 possibility of parole without taking into account the  
4 juvenility of them as individuals and the unique  
5 circumstances. And then South Carolina specifically  
6 decided what was *Aiken vs. Byars*, which Mr. Johnson filed a  
7 pro se motion for resentencing pursuant.

8 *Aiken vs. Byars* extended the policies in *Miller*,  
9 though *Miller* didn't exactly address South Carolina's  
10 situation where there were non-mandatory offenses or  
11 non-mandatory life sentences but did extend it to  
12 individuals who were serving life sentences for juvenile  
13 offenses even where they weren't mandatory because the  
14 factors of youth were not taken into account. There, there  
15 were five factors that were distinguished, laid out in  
16 *Aiken*, and the court said these had to be taken into  
17 account prior to a juvenile being sentenced to life without  
18 the possibility of parole. It did not say that juveniles  
19 cannot be sentenced; it just said these factors have to be  
20 taken into account. And so we have this stretch of decade  
21 where the Eighth Amendment and juveniles are being  
22 addressed by the Supreme Court and the South Carolina  
23 Supreme Court.

24 And state -- the case mentioned by Solicitor Goldberg  
25 was *State vs. Green*. It was decided in 2015. I agree that

1 that was the decision in 2015. However, *State vs. Green* is  
2 predicated on *State vs. Standard*, which was decided in  
3 2002. In 2002, *State vs. Roper* had not been -- or *Roper*  
4 *vs. Simons* had not been decided by the United States  
5 Supreme Court which decided juveniles could not be  
6 sentenced to death. It was -- *Standard* was predicated on  
7 *Thompson vs. Oklahoma*, which said that individuals under  
8 the age of sixteen could not be sentenced to death. And  
9 the difference between *Roper* and *Thompson vs. Oklahoma* was  
10 in *Thompson vs. Oklahoma*, there was no -- the court never  
11 addressed an individual account of proportionality. It  
12 didn't have its own view of proportionality, which in *Roper*  
13 the court said they're allowed to have their own individual  
14 view of proportionality to a sentence apart from the  
15 state's. And they did, and that's when it came down that  
16 those under the age of eighteen could not be sentenced to  
17 death. So, I think *Standard* is bad law, and I think that  
18 *State vs. Green* is bad law because they are predicated on  
19 cases that are no longer controlling by the United States  
20 Supreme Court.

21 And *Green*, as Mr. Goldberg addressed, did address  
22 *Miller*, but it gave sole weight to only the fact that he is  
23 not a juvenile. Well, part of -- and it didn't take into -  
24 - any of the policy considerations which are the feature  
25 hallmarks of youth which *Aiken* mandates to be taken into

1 consideration.

2 So, part of this case law that's come down the last  
3 decade starting 2005, 2010, 2012, and down to *Aiken* in  
4 2014, is based on neuroscience, and that's the science  
5 behind a juvenile's or adolescent's brain. Brain activity  
6 in the prefrontal lobes, the more active it is at stages of  
7 -- in adolescence causes decision-making issues. Makes  
8 rash judgments and this was all starting to be taken into  
9 account when *Roper* was decided, when *Graham* was decided,  
10 and when *Miller* was decided.

11 And I bring that out because crime and youth and  
12 adolescence and the brainwave activity of the neuroscience  
13 follow an inverted U-shaped curve where at the beginning,  
14 very little, very little movement in the brain neurons, and  
15 there's -- goes up in adolescence. They're at the highest  
16 level where risk taking, decision-making is being affected  
17 the most. And as adolescence drops off, better  
18 decision-making, less risk taking occur, and they sort of  
19 match up in the neuroscience. And that's cited in my memo  
20 that I have, much more scientific language regarding it,  
21 but that's the general gist.

22 The crime curve also follows that where at adolescence  
23 crime is very high but as adolescence falls, crime drops  
24 off. And so that's part of what *Miller's* based, that we  
25 have these points in an individual's life where crime would

1 be at a very high rate, but it's also based on just because  
2 of neurological differences between adults and adolescents.

3 I think it's also important to note that South  
4 Carolina even takes into account this difference in  
5 decision-making by an individual at the age of eighteen and  
6 an individual at the age of twenty-one. We in South  
7 Carolina have certain restrictions that an individual at  
8 the age of twenty can do but can't do until they're --  
9 after twenty-one, such as just drink alcohol. You must be  
10 twenty-one years old to drink alcohol, and that's based on  
11 our legislature's decision that individuals under the age  
12 of, under the age of twenty-one don't have the  
13 responsibility to, to control that substance, as well as  
14 other reasons. There's also you can't own a handgun until  
15 after the age of twenty-one. That's based on a judgment by  
16 a legislation that it's not safe because poor decisions are  
17 made by individuals under the age of twenty-one.

18 So, I bring that into account that he is still a  
19 juvenile in some aspects. Not necessarily in the legal  
20 aspect but in the neuroscience, he is still considered in  
21 his adolescence at the age of these offenses that led to a  
22 life without the possibility of parole sentence. And that  
23 never at any point was this juvenility of Mr. Johnson taken  
24 into account by the sentencing court, whether it be at his  
25 first sentence where he was sentenced as an adult. But I

1 think it needs to be noted he was sentenced as an adult  
2 based on him being charged with murder. That charge was  
3 dismissed. If he would not have been charged with murder,  
4 the charges would have never been waived to general  
5 sessions. That made it eligible for it to be waived to  
6 general sessions which the life without possibility of  
7 parole sentence process was predicated on here.

8 I have, as I explained, I have no information of what  
9 took place during a waiver hearing, what was taken into  
10 account, whether or not -- I highly doubt the factors laid  
11 out in Aiken were ever taken into account at the waiver  
12 hearing, which Miller addressed the argument to be made  
13 that, well, at a waiver hearing, an individual can take --  
14 his juvenility can be taken into account. Miller said  
15 that's very, very dangerous and problematic because it's at  
16 the onset. It's -- usually you do not have full  
17 information regarding the individual, the unique  
18 circumstances of the individual, that they may have been in  
19 at the time, and to place it at the onset is very  
20 problematic. So, so, we've dismissed that fact that it  
21 could take that into account prior -- as a basis for  
22 sentencing an individual, a juvenile, to life without the  
23 possibility of parole.

24 So, based on this, Your Honor, I do believe that  
25 Demarco's sentence was unconstitutional and that it did not

1 comply with the Eighth Amendment in that it predicated it  
2 on a juvenile conviction, and it was mandatory. It  
3 shackled the sentencing judge in 1990 -- for the 1999  
4 charges to sentence him to life without the possibility of  
5 parole without taking into account any of his juvenilities  
6 or the hallmarks of youth as outlined in *Aiken*.

7 THE COURT: Let me ask you, Mr. Bell, and perhaps the  
8 solicitor. Was there a petition for cert on *Green*?

9 MR. GOLDBERG: There was.

10 MR. BELL: And it was denied.

11 THE COURT: It was denied. Thank you. Thank you very  
12 much. I had not run the history on it. Thank you.

13 All right, Solicitor.

14 MR. GOLDBERG: Thank you, Your Honor. Briefly to that  
15 last point that Mr. Bell made about Eighth Amendment, I  
16 refer you back to *Green*, the last page of *Green*. The last  
17 point addressed in the *Green* opinion says that -- *Green*  
18 argues that even if the Eighth Amendment's ban on cruel and  
19 unusual punishment doesn't forbid LWOP sentences when the  
20 triggering offense was when the defendant was a juvenile,  
21 that the Eighth Amendment requires that the sentencing  
22 judge conduct some sort of individualized sentencing  
23 decisions, and the court says:

24 We disagree. That the sentence was within the  
25 limits provided for by the statute, and the

1 record does not reveal the sentence was the  
2 result of prejudice or pressure or corrupt motive  
3 by the trial court. Therefore, we have no  
4 authority to review Green's sentence.

5 Again, same thing here. Even if you took that  
6 position, the recidivist statute was properly complied  
7 with. I don't believe there's any argument on that end,  
8 and there's no evidence in the record that there was any  
9 sort of prejudice or pressure or corrupt motive by the  
10 trial court in imposing life without parole at the time of  
11 the second conviction.

12 And finally, I would just refer you back to *Aiken*,  
13 Your Honor. The whole reason we're here is because of the  
14 *Aiken* opinion. All these hearings that have been scheduled  
15 have been scheduled pursuant to the court's ruling, South  
16 Carolina Supreme Court's ruling in *Aiken vs. Byars*. And if  
17 you go to the opinion itself, the issue presented is  
18 whether or not *Miller*, does *Miller* apply to juveniles who  
19 receive a sentence of life without parole.

20 As I stated before, Mr. Johnson is not a juvenile, and  
21 I quote you one last passage from *Aiken* where the court  
22 says:

23 We conclude that *Miller* creates a new,  
24 substantive rule and should, therefore, apply  
25 retroactively. The rule plainly excludes a

1 certain class of defendants, juveniles, from  
2 specific punishment, life without parole, absent  
3 individualized considerations of youth.

4 They laid it out right there. If it's a juvenile and  
5 they're getting life, you got to do these considerations of  
6 youth. That's the issue that was addressed in Aiken.  
7 Aiken is the reason why the petition has been filed. Based  
8 on that and considering that he was not a juvenile at the  
9 time, I respectfully ask that you dismiss the petition.

10 THE COURT: Thank you.

11 MR. GOLDBERG: Thank you.

12 THE COURT: Anything further, Mr. Bell?

13 MR. BELL: Beg the court's indulgence one moment, Your  
14 Honor.

15 THE COURT: Of course.

16 (A PAUSE.)

17 MR. BELL: Your Honor, I'd just remind the court of my  
18 previous arguments that I believe *Standard* and -- *State vs.*  
19 *Standard* and *State vs. Green* are based on bad law. If you  
20 look in *State vs. Standard*, numerous cases cited by *State*  
21 *vs. Standard* have been overruled by *Miller*, by *Graham* as --  
22 so, I believe that *Green* is predicated on *Standard* and  
23 that's bad law.

24 I would note that I'm not -- my argument is not  
25 opening the floodgates. My argument is very narrowly

1 tailored to individuals that were sentenced to life without  
2 the possibility of parole based on a juvenile, non-homicide  
3 offense, which *Graham* addresses non-homicide offenses for  
4 juveniles is inappropriate, in violation of the Eighth  
5 Amendment. And *Miller*, mandatory imprisonment for life  
6 without possibility -- mandatory imprisonment, based on  
7 juvenile commitment, life without possibility of parole,  
8 unconstitutional. That's all I would add.

9 THE COURT: Thank you. Thank you very much, Mr. Bell.  
10 All right, I'll take it under advisement.

11 MR. BELL: Thank you, Judge.

12 THE COURT: Thank you, Solicitor.

13 MR. GOLDBERG: Thank you, Your Honor.

14 --- END OF TRANSCRIPT OF RECORD ---

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED  
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH  
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE  
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE  
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING  
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE  
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON  
THE 1ST DAY OF JUNE, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 10TH, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
	)	
DeMarco Johnson, #241438	)	MOTION FOR RE-SENTENCING
Applicant,	)	PURSUANT TO
	)	AIKEN VS. BYARS
-VS-	)	2012213286
	)	
STATE OF SOUTH CAROLINA	)	
2. Respondent.	)	

JEANETTE BRIDGES  
 C.C.P. & G.S.  
 16 JUL -1 AM 8:43

Because of additional, recently decided binding constitutional decision; the applicant in the above caption moves this Honorable court for a re-sentencing pursuant to Aiken VS. Byars, 410, S.C. 534, 765 S.E. 2d 572 S.C. .

Movant is entitled to a re-sentencing based on the following:  
 Movant received a life without parole (LWOP) for Armed Robbery, Burglary, and Kidnapping. Pursuant to S.C. code ANN. 17-25-45 in 2001. The triggering offense was a conviction in 1997 stemming from crimes commented as a juvenile i.e. Attempted Armed Robbery and Assault and Battery with intent to kill. As mentioned earlier HE was a juvenile.

Movant sentence violates the Fourth Amendment to the U.S. Constitution and the South Carolina Constitution insomuch as it prohibits him from receiving a meaningful opportunity to be released at a meaningful point in time, a realistic likelihood of release for the rehabilitated and meaningful opportunity to be heard. South Carolina Constitution Article 12 section 2.

RELIEF REQUESTED

Movant's sentence entitles him to have the court recognize his Juvenile status in light of aiken and that he is entitled to a re-sentencing that focuses on the fact that children are constitutionally different from adults for purpose of sentencing

RESPECTFULLY SUBMITTED BY,

S. Demarco Johnson

DeMarco Johnson, #241438

BRCI Mur-128

4460 Broad River Rd.

Columbia, SC 29210

Sworn to and subscribed before me

this 1st day of JUNE 2016

Janelle T. Spearman

Notary Public for South Carolina

My commission Expires

JANELLE T. SPEARMAN  
Notary Public - State of South Carolina  
My Commission Expires  
August 26, 2025

JEANETTE H. BRIDGE  
C.C.P. & G.S.  
16 JUL -1 AM 8:43

STATE OF SOUTH CAROLINA ) 51 IN THE COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND )  
C.C.P. & G.S.)

DeMarco Johnson, )

MOTION TO DISMISS

Petitioner, )

-v- )

INDICTMENT NUMBER:  
2000-GS-40-47714, 47716, 47717, 47718

The State of South Carolina; )

Defendant. )

This matter is before the Court on Petitioner's Motion for Re-Sentencing (Ex. 1) pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). On February 7, 2001, after being found guilty of Burglary First Degree, Armed Robbery, and two counts of Kidnapping at a trial by jury, the Honorable Mark Westbrook sentenced the Petitioner to Life in Prison without Parole (LWOP) (see Ex 2). The petitioner filed his petition for re-sentencing on July 1, 2016 and the Supreme Court of South Carolina vested this Court with jurisdiction in the matter on July 28, 2016 (Ex. 3). The State moves this Court to dismiss the Petition because the Petitioner was not a juvenile when he received a sentence of LWOP and therefore does not fall within the purview of *Aiken*.

In *Aiken*, the South Carolina Supreme Court held that *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) applies to juveniles who received a sentence of life without parole under South Carolina's non-mandatory scheme. Thus, the Court in *Aiken* ordered resentencing hearings for fifteen inmates serving LWOP sentences they received as juveniles. The Court ordered this in light of *Miller*, which held that LWOP sentencing hearings for juveniles must take into consideration: (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence"; (2) the "family and home environment" that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the "incompetencies

associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation." 132 S.Ct. at 2468. Thus, if a juvenile offender received an LWOP sentence and did not present mitigating evidence relating to the offender's youth, the offender is entitled to resentencing.

In order for an offender to fall within the purview of *Aiken v. Byars*, the offender must have: 1) been a juvenile at the time of sentencing, 2) received a sentence of life without parole, and 3) received that sentence without the sentencing court considering the "hallmarks of youth" as described in *Miller v. Alabama*.

Petitioner does not fall within the purview of *Aiken v. Byars* because he was not a juvenile at the time his LWOP sentence was imposed. Petitioner was born on [REDACTED] 1979. At the time of his arrest for these offenses on December 15, 1999, he was twenty (20) years old. Further, at the time of his conviction on February 7, 2001, he was twenty-one (21) years old.

Petitioner further claims he is entitled to a re-sentencing due to the fact that he received a LWOP sentence where "the triggering offense was a conviction in 1997 stemming from crimes committed as a juvenile" thus violating "the Fourth Amendment to the U.S. Constitution and the South Carolina Constitution" (Ex. 1). The State submits that Petitioner's claim is without merit and unsupported by law.

In *State v. Green*, 412 S.C. 65, 770 S.E. 2d 424 (Ct. App. 2015), the South Carolina Court of Appeals addressed a nearly identical situation as the one at issue in the Petitioner's Motion for Re-Sentencing. Green was found guilty at trial of Armed Robbery. Pursuant to the recidivist statute, section 17-25-45 of the South Carolina Code, he was sentenced to LWOP as he had been properly served before trial with the State's notice of intent to seek LWOP upon conviction. Green argued that because he was a juvenile at the time of his prior conviction, a sentence of LWOP would violate his Eighth Amendment rights. He went on to assert that "although he was twenty years old at the time of sentencing, and nineteen years old at the time of the current offense, he was only seventeen years old when he committed the prior offense that served as the triggering offense under the recidivist statute." *Id* at 75. The trial court rejected Green's assertion and he was sentenced to LWOP.

On appeal, the South Carolina Court of Appeals took an in depth look at this issue and found that Green's LWOP sentence was not in violation of the Eighth Amendment. The initial analysis focused on the statutory sentencing enhancement prescribed by 17-25-45 which states, in part:

“[E]xcept in cases in which the death penalty is imposed, upon a conviction for a most serious offense[,] ... a person must be sentenced to a term of imprisonment for [LWOP] if that person has ... one or more prior convictions for ... a most serious offense.” Armed robbery is defined as a “most serious offense.” S.C.Code Ann. § 17-25-45(C)(1) (2014).

Having established that two or more most serious convictions makes an offender eligible for LWOP, the court examined the issue of *Green's* prior conviction and determined that because he was tried on the first case as an adult in general sessions court, there was no error in sentencing him to LWOP under the recidivist statute. *Green* at 84 citing *State v. Standard*, 351 S.C. 199, 203, 569 S.E.2d 325, 328 (2002).

The next issue addressed by the *Green* court was whether the sentence, though proper under the recidivist statute, ran afoul of the Eighth Amendment prohibition against cruel and unusual punishment. “In *Standard*, our supreme court held it is not cruel and unusual punishment to sentence a defendant to LWOP utilizing enhanced penalties for a burglary committed when the defendant was a juvenile so long as the defendant was tried and sentenced as an adult for the triggering offense.” *Green* at 85 citing *State v. Standard*, 351 S.C. at 204, 569 S.E.2d at 328. As such, the court held that “the trial court did not err in finding Green's sentence did not constitute cruel and unusual punishment because our appellate courts have rejected the argument that it is cruel and unusual punishment to use prior convictions for offenses committed as juveniles for sentencing enhancement under section 17-25-45.” *Green* at 86; See also *Standard*, 351 S.C. at 204, 569 S.E.2d at 328; *Williams*, 380 S.C. at 345-46, 669 S.E.2d at 645.

Finally, the *Green* court addressed the applicability of *Miller* and found it to be inappropriate:

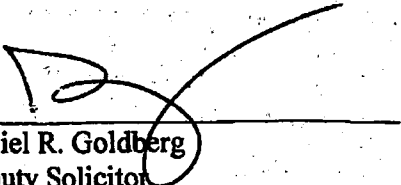
Although *Miller* held that mandatory LWOP sentences for juveniles violate the Eighth Amendment, Green was twenty years old at the time of sentencing; therefore, he was not a juvenile when he was sentenced to LWOP. *Miller's* holding was based, in part, on the “recklessness,

impulsivity, and heedless risk-taking" of children; however, because Green was not a juvenile at the time he committed the current armed robbery, the policy considerations from *Miller* are inapplicable. 132 S.Ct. at 2458; see also *Aiken*, 410 S.C. at 541-42, 765 S.E.2d at 576 ("[T]he Court in *Miller* noted that ... children were constitutionally different from adults for sentencing purposes, a conclusion that was based on common sense as well as science and social science."). Therefore, Green's LWOP sentence did not violate the Eighth Amendment. *Green* at 86-87.

Petitioner's current claim is nearly identical to the scenario in *Green*. At the time of Petitioner's first conviction for a most serious offense, he was a juvenile; however, the conviction occurred in General Sessions court thus exposing him to the consequences of future convictions under the Recidivist statute. Further, at the time of these convictions, and even the arrest for that matter, the Petitioner was no longer a juvenile as he was twenty (20) and twenty-one (21) years old, respectively.

Thus, in light of Petitioner being classified as an adult by virtue of his age at the time of both the incident and the conviction, he does not fall within the class of offenders described in *Aiken v. Byars* and *Miller v. Alabama*. As such, he is not entitled to a re-sentencing and this Court should dismiss his petition with prejudice.

I SO MOVE.



Daniel R. Goldberg  
Deputy Solicitor  
Fifth Judicial Circuit

April \_\_\_\_, 2017  
Columbia, South Carolina

cc: The Honorable R. Knox McMahon, Chief Administrative Judge

J. Taylor Bell, Counsel of Record for the Defendant  
1701 Main Street  
Columbia, SC 29201

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF GENERAL SESSIONS )  
THE FIFTH JUDICIAL CIRCUIT )

DeMarco Johnson, #241438 )  
Applicant, )

MOTION FOR RE-SENTENCING )  
PURSUANT TO )  
AIKEN VS. BYARS )  
2012213286 )

-VS-

STATE OF SOUTH CAROLINA )  
2. Respondent. )

16 JUL -1 AM 8:43  
JEANETTE R. BRIDE  
C.C.P. & G.S.

Because of additional, recently decided binding constitution decision; the applicant in the above caption moves this Honorable court for a re-sentencing pursuant to Aiken VS. Byars, 410, S.C. 534, 765 S.E. 2d 572 S.C. .

Movant is entitled to a re-sentencing based on the following:

Movant received a life without parole (LWOP) for Armed Robbery, Burglary, and Kidnapping. Pursuant to S.C. code ANN. 17-25-45 in 2001. The triggering offense was a conviction in 1997 stemming from crimes commented as a juvenile i.e. Attempted Armed Robbery and Assault and Battery with intent to kill. As mentioned earlier HE was a juvenile.

Movant sentence violates the Fourth Amendment to the U.S. Constitution and the South Carolina Constitution insomuch as it prohibits him from receiving a meaningful opportunity to be released at a meaningful point in time, a realistic likelihood of release for the rehabilitated and meaningful opportunity to be heard. South Carolina Constitution Article 12 section 2.

RELIEF REQUESTED

Movant's sentence entitles him to have the court recognize his Juvenile status in light of aiken and that he is entitled to a re-sentencing that focuses on the fact that children are constitutionally different from adults for purpose of sentencing

RESPECTFULLY SUBMITTED BY,

DeMarco Johnson

DeMarco Johnson, #241438  
ERCI Mur-128  
4460 Broad River Rd.  
Columbia, SC 29210

Sworn to and subscribed before me  
this 15th day of June 2016

Janelle T. Spearman

Notary Public for South Carolina

My commission Expires

JANELLE T. SPEARMAN  
Notary Public, State of South Carolina  
My Commission Expires  
August 26, 2025

JEANELLE T. SPEARMAN  
C.C.P. & G.S.  
16 JUL - 1 AM 8:43

STATE OF SOUTH CAROLINA

COUNTY OF Richland  
STATE VS.

Demarco Johnson

AKA:

Race: B Sex: M Age: 21

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

Columbia, SC

DL# \_\_\_\_\_ SID#: 8C00913437

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#:

00 -GS- 40 - 47714

A/W#: 624691

Date of Offense: 12-14-99

S.C. Code §: 16-11-330 (A)

CDR Code #: 0111319

CASE RESTORED

SENTENCE  
 PLEA  TRIAL

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was Armed Robbery

TO: Armed Robbery  
in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS 17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ARREST: Vana Pelliss  
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of \_\_\_\_\_ days/months/years  Under the Mentally Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_ and/or to perform the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and expenses, if applicable, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated herein. LIFE WITHOUT PAROLE

The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.  
 CONCURRENT or  CONSECUTIVE to sentence on: 2/7/01

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:  
 set by SCDPPPS

Recipient: \_\_\_\_\_  
\*Fine: \_\_\_\_\_ \$  
§ 1-1-206 (Assessments 100%) \_\_\_\_\_ \$  
§ 14-1-211(A)(1) (Surcharge) \_\_\_\_\_ \$  
§ 14-1-211(A)(2) (Surcharge) \_\_\_\_\_ \$  
§ 56-5-2995 (DUI Assessment) \_\_\_\_\_ \$  
3% to County (if paid in installments) \_\_\_\_\_ \$  
TOTAL \_\_\_\_\_ \$

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc Rehab. or Job Corps \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund.  
Other: \_\_\_\_\_

Barbara Scott  
Clerk of Court/ Deputy Clerk

Court Reporter: R. D. Deese  
Blue - Clerk Green - Courtroom

PRESIDING JUDGE [Signature]  
Judge Code: D191612  
Sentence Date: 2/7/01  
Pink - Defendant



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#:

COUNTY OF \_\_\_\_\_  
STATE VS. \_\_\_\_\_

GS- 01-01915

AKA: \_\_\_\_\_

A/W#: \_\_\_\_\_

Race: \_\_\_\_\_ Sex: M Age: 21

Date of Offense: 11-3-70

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

S.C. Code §: 11-3-710

Address: \_\_\_\_\_

CDR Code #: 01-01915

DL# \_\_\_\_\_ SID#: SC06913137

CASE RESTORED

SENTENCE

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO:

in violation of § 11-3-710 of the S.C. Code of Laws, bearing CDR Code # 01-01915

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

Dana Miller  
Solicitor

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of \_\_\_\_\_ days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_ provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

set by SCDPPPS

Recipient: \_\_\_\_\_

\*Fine: ..... \$ \_\_\_\_\_

§14-1-206 (Assessments 100%) ..... \$ \_\_\_\_\_

§14-1-211(A)(1) (Surcharge) ..... \$ \_\_\_\_\_

§14-1-211(A)(2) (Surcharge) ..... \$ \_\_\_\_\_

§56-5-2995 (DUI Assessment) ..... \$ \_\_\_\_\_

3% to County (if paid in installments) ..... \$ \_\_\_\_\_

TOTAL ..... \$ \_\_\_\_\_

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc Rehab. or Job Corps \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund.

Other: \_\_\_\_\_

PRESIDING JUDGE [Signature]

Judge Code: 01-11-012

Sentence Date: 11-3-70

\_\_\_\_\_  
Clerk of Court/ Deputy Clerk

Court Reporter: \_\_\_\_\_

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA-217 (1/2001)

1111 1111

STATE OF SOUTH CAROLINA

COUNTY OF Richland  
STATE VS.

Demareo Johnson

AKA:

Race: B Sex: M Age: 21

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

Columbia, SC

DL# \_\_\_\_\_ SID# SC00913437

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#:

00 -GS- 40 - 47718

A/W#: 6246915

Date of Offense: 12-14-99

S.C. Code §: 16-11-311

CDR Code #: 0101719

CASE RESTORED

SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Burglary 1st

In violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ARREST: Dana Pelluszy  
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of \_\_\_\_\_ days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and assessments as applicable, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. LIFO WITHOUT PAROLE

The Defendant is to be given credit for \_\_\_\_\_ days/months jail/time.  
 CONCURRENT or  CONSECUTIVE to sentence on: 2/7/01

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:  
 set by SCDPPPS

Recipient: \_\_\_\_\_  
\*Fine: ..... \$ \_\_\_\_\_  
§14-1-206 (Assessments 100%) ..... \$ \_\_\_\_\_  
§14-1-211(A)(1) (Surcharge) ..... \$ \_\_\_\_\_  
§14-1-211(A)(2) (Surcharge) ..... \$ \_\_\_\_\_  
§56-5-2995 (DUI Assessment) ..... \$ \_\_\_\_\_  
3% to County (if paid in installments) ..... \$ \_\_\_\_\_  
TOTAL ..... \$ \_\_\_\_\_

Barbara Scott  
Clerk of Court/ Deputy Clerk

Court Reporter: \_\_\_\_\_

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc Rehab. or Job Corps \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund.  
Other: \_\_\_\_\_

PRESIDING JUDGE Dana Pelluszy  
Judge Code: 0101612  
Sentence Date: 2/7/01

Photo - Clerk

Green - Corrections

County - Probation

Post - Defendant

2016-07-28-03

# The Supreme Court of South Carolina

DeMarco Johnson, Petitioner,

v.

State of South Carolina, Respondent.

Richland County

Docket No.: 2000-GS-40-47714; and 47716-47718

---

## ORDER

---

Petitioner filed a motion on July 1, 2016 for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). Now, therefore, pursuant to SC CONST. Art. V, § 4,

IT IS HEREBY ORDERED that the Honorable R. Knox McMahon be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge McMahon shall at all times be vested with concurrent jurisdiction in all circuits of the state to dispose of matters relating to this case, and shall decide all matters pertaining to the Petitioner's Motion, and shall retain jurisdiction over this matter regardless of where he may be assigned to hold court, and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

If necessary, to resolve issues related to the appointment of counsel, a hearing shall be conducted within thirty (30) days of this order.

Within sixty (60) days of the date of this order, Judge McMahon shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary.

s/Costa M. Pleicones

Costa M. Pleicones

Chief Justice

July 28, 2016  
Columbia, South Carolina

# The Supreme Court of South Carolina

DeMarco Johnson,

Petitioner,

v.

State of South Carolina,

Respondent.

Richland County

Docket No.: 2000-GS-40-47714; and 47716-47718

---

## ORDER

---

Petitioner filed a motion on July 1, 2016 for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). Now, therefore, pursuant to SC CONST. Art. V, § 4,

IT IS HEREBY ORDERED that the Honorable R. Knox McMahon be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge McMahon shall at all times be vested with concurrent jurisdiction in all circuits of the state to dispose of matters relating to this case, and shall decide all matters pertaining to the Petitioner's Motion, and shall retain jurisdiction over this matter regardless of where he may be assigned to hold court, and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

If necessary, to resolve issues related to the appointment of counsel, a hearing shall be conducted within thirty (30) days of this order.

Within sixty (60) days of the date of this order, Judge McMahon shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary.



---

Costa M. Pleicones  
Chief Justice

July 28 2016  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 The State of South Carolina, )  
 )  
 vs. )  
 )  
 )  
 Demarco Johnson )  
 )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
 Indictment Numbers: 2000GS4047714,  
 2000GS4047716, 2000GS4047717, 2000GS4047718

MEMORANDUM IN SUPPORT OF MOTION  
 FOR RE-SENTENCING PURSUANT TO  
 AIKEN V. BYARS, 410 S.C. 534 (2014)<sup>1</sup>

Demarco Johnson (D.O.B. [REDACTED]/1979) was arrested and charged with 1 count of Murder, 2 counts of Assault with Intent to Kill, and 2 counts of Armed Robbery for an incident that occurred on or about June 18, 1995. At the time of the incident Demarco was a 15 year old juvenile. At some point in 1995 it appears that based on § 20-7-430(6) S.C. Code of Laws (repealed effective July 1, 1996), Demarco's cases were transferred to Richland County General Sessions court for criminal proceedings to continue against Demarco as an adult with nothing in Richland County Clerk of Court (General Sessions and Family Court) records indicating an adversarial hearing took place prior to transfer.

On March 20, 1996 Demarco was indicted for 1 count of Murder (96-GS-40-7698), 2 counts of Assault and Battery with Intent to Kill (96-GS-40-12218, 96-GS-40-12219), 2 counts of Armed Robbery (96-GS-40-12220, 96-GS-40-12224) all stemming from the same incident that occurred on June 18, 1995. On March 21, 1997 Demarco pled guilty to 1 count of Assault and Battery with Intent to Kill (96-GS-12219) and 2 counts of Attempted Armed Robbery 96-GS-40-12220, 96-GS-40-12224) in Richland County General Sessions court and was concurrently sentenced to 12 years; provided upon the service of 8 years, the balance suspended

<sup>1</sup> Memorandum in support of Demarco Johnson's motion for res-sentencing pursuant to *Aiken v. Byars* based on pro bono outline and research provided by Virginia Gulde, Esq., Amber Hendrick, Esq., Elizabeth Hinson, Esq., and Eric Smith, Esq.

with probation for 3 years. At the time of Demarco's guilty plea, the indictment for Murder (96-GS-40-7689) and 1 indictment for Assault and Battery with Intent to Kill (96-GS-40-12218) were nolle proes.

On December 14, 1999 Demarco was arrested and charged with 2 counts of Kidnapping (G-246913, G-246914), 1 count of Burglary 1<sup>st</sup> Degree (G-246915), and Armed Robbery (G-246916). At the time of the incident Demarco was 20 years old. On July 12, 2000 Demarco was indicted for Armed Robbery (2000-GS-40-47714), Kidnapping (2000-GS-40-47716), Kidnapping (2000-GS-40-47717), Burglary 1<sup>st</sup> Degree (2000-GS-40-47718). On January 5, 2001 Fifth Judicial Circuit Solicitor filed Notice of Life Without the Possibility of Parole with the Richland County Clerk of Court and Demarco was served such notice on January 19, 2001. At 9:53 a.m. on February 6, 2001 the jury was sworn in and the trial against Demarco began for Armed Robbery (2000-GS-40-47714), Kidnapping (2000-GS-40-47716), Kidnapping (2000-GS-40-47717), Burglary 1<sup>st</sup> Degree (2000-GS-40-47718). At 3:15 p.m. on February 7, 2001 the jury returned the verdict of guilty on all counts and Demarco was mandatorily sentenced to life in prison without the possibility of parole.

On February 12, 2001 Notice of Appeal was filed with the South Carolina Court of Appeals. On May 28, 2002 the South Carolina Court of Appeals affirmed Demarco's conviction and sentence. On February 24, 2003 the South Carolina Supreme Court denied Demarco's petition for writ of certiorari.

On July 1, 2016 Demarco filed a pro se Motion for Resentencing Pursuant to *Aiken v. Byars*, 410 S.C. 534 (2014). On July 28, 2016 the South Carolina Supreme Court issued an order vesting the Honorable R. Knox McMahon with exclusive jurisdiction over Demarco's Motion for Resentencing Pursuant to *Aiken v. Byars*.

**Demarco's mandatory sentence of life without the possibility of parole pursuant to South Carolina's Two-Strike Law (S.C. Code of Laws § 17-25-45) violates the Eighth Amendment's ban on cruel and unusual punishment.**

Demarco mandatory sentence of life without the possibility of parole pursuant to South Carolina's recidivist statute, S.C. Code of Laws § 17-25-45 (1995) as amended violates the Eighth Amendment's ban on cruel and unusual punishment because Demarco was a juvenile (15 years old) at the time of the triggering offense. Therefore, Demarco is entitled to a resentencing hearing that takes into account (1) Chronological age of Demarco and hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequences; (2) the family and home environment that surrounded Demarco; (3) the circumstances of the offense, including the extent of Demarco's participation in the conduct and how familial and peer pressures may have affected him; (4) the incompetencies associated with youth – for example, Demarco's inability to deal with police officers or prosecutors (including on a plea agreement) or incapacity to assist his own attorneys; and (5) the possibility of rehabilitation, as required by *Miller v. Alabama*, 567 U.S. 460 (2012) and *Aiken v. Byars*, 410 S.C. 534 (2014).

**Children are constitutionally different from adults and have special status and protections under the Eighth Amendment's ban on cruel and unusual punishment.**

Children are constitutionally different from adults. *See Miller*, 567 U.S. 460 (2012). During the past decade the Eighth Amendment's ban on cruel and unusual punishment jurisprudence relating to our youth has been a topic of great discussion and evolution by the United States Supreme Court resulting in greater protections from the imposition of overly harsh criminal sentences.

Beginning with its decision in 2005, the United States Supreme Court held that the Eighth Amendment's ban on cruel and unusual punishment prohibits capital punishment for

juveniles. *Roper v. Simmons*, 543 U.S. 551 (2005). Five years later, the United States Supreme Court decided *Graham v. Florida* holding that the Eighth Amendment's ban on cruel and unusual punishment prohibits a juvenile from being sentenced to life without the possibility of parole for a non-homicide offense. 560 U.S. 48 (2010). Then *Miller v. Alabama* was decided in 2012 and the United States Supreme Court held that mandatory life without the possibility of parole sentences for juveniles violates the Eighth Amendment's ban on cruel and unusual punishment. 567 U.S. 460 (2012).

Following the *Miller* decision, the South Carolina Supreme Court decided *Aiken v. Byars*, 410 S.C. 534 (2014). In *Aiken* the South Carolina Supreme Court took up the question of whether or not *Miller* applies to juveniles who received a nonmandatory sentence of life without the possibility of parole. In affirmatively answering this question the South Carolina Supreme Court explained that the United States Supreme Court's recent decisions on the Eighth Amendment's ban on cruel and unusual punishment relating to our youth are based on two lines of precedent: Categorical bans on certain sentences based on the inability to reconcile the class of offenders and the severity of the penalty; and cases that require sentencing authorities to give consideration to the individual characteristics of an offender and the details of his offense prior to imposing a sentence. *See Aiken*, 410 S.C. 534 (2014). The South Carolina Supreme Court went on to quote the United States Supreme Court from *Miller*,

A sentencer must be allowed to consider that youth is more than a chronological fact, and carries with it irresponsibility, impetuosity, and recklessness, factors as transient as youth itself. Although a court may still sentence a juvenile to life without parole after an individualized hearing the Court cautioned that given children's diminished culpability and heightened capacity for change that appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.

*Aiken*, 410 S.C. at 539. The South Carolina Supreme Court went on to acknowledge that while *Miller* was not expressly extended to sentencing schemes such as South Carolina where life without the possibility of parole is permitted but not mandated that it was required to give the effect to the proportionality rationale integral to the holding - youth has constitutional significance and failure of the sentencing court to take into account the hallmark features of your prior to sentencing is a violation of the Eighth Amendment's ban on cruel and unusual punishment. *See Aiken*, 410 S.C. at 543.

These recent decisions by the Supreme Court of the United States and the South Carolina Supreme Court make it clear that our youth have special status and protections under the Eighth Amendment's ban on cruel and unusual punishment, and make it clear these principles laying the foundation of its jurisprudence should be applied generally to our youth within the criminal justice system.

In making the recent decisions relating to our youth and the Eighth Amendment's ban on cruel and unusual punishment the Supreme Court of the United States has begun relying on findings from recent neuroscience studies of adolescents. These recent developments in neuroscience confirmed the "what parent knows" about difference between adults and adolescence. Prior to *Roper*, neuroscience played no role in decisions about developmental difference between our youth and adults. However, beginning with *Roper* during oral arguments and through Amici, and directly addressed in *Miller*, the court began considering and relying on adolescent neuroscience research. Elizabeth Scott, Thomas Grisso, Marsha Levick, & Laurence Steinberg, *The Supreme Court and the Transformation of Juvenile Sentencing 6-7* Trustees of Columbia University in the City of New York (2015).

Adolescents' involvements in criminal activities are specific instances of a more general propensity of our youth for risk-taking and sensation-seeking, and are impulsive acts committed without full thought and consideration for the long-term consequences. *Id.*

Many studies have found that adolescents and individuals in their early 20s are more likely than either children or somewhat older adults to engage in risky behavior; most forms of risk-taking follow an inverted U-shaped curve with age, increasing between childhood and adolescence, peaking in either mid- or late adolescence and declining thereafter.

*Id.* at 7. Criminal activity follows this pattern and is referred to as the "age – crime curve." *Id.*

The United States Supreme Court was influenced by the scientific data supporting this in *Roper*, *Graham*, and *Miller*.

This data shows

[f]indings from developmental neuroscience align well with those from behavioral and psychological studies of age differences in traits like sensation-seeking and impulsivity. Neuroscientists have described a maturational imbalance during adolescence that is characterized by relative immaturity in brain systems that are involved in self-regulation during a time of relatively heightened neural responsiveness to appetitive, emotional and social stimuli. With respect to self-regulation, structural imaging studies using diffusion tensor imaging (DTI) indicate immaturity in neural connections within a fronto-parietal-striatal brain system (localized primarily in the lateral prefrontal cortex, inferior parietal lobe and anterior cingulate cortex) that supports various aspects of executive function. These connections become stronger over the course of adolescence as a result of both maturation and experience, and the strength of these connections is positively correlated with impulse control. Maturation of the structural connectivity (i.e., the physical connections between brain structures) in this brain system is paralleled by increases in functional connectivity (i.e., concurrent activation of multiple brain regions) and by changes with age in patterns of activation during tasks that measure aspects of "executive function," including working memory, planning, and response inhibition (all of which are important for impulse control and thinking ahead), as revealed by functional magnetic resonance imaging (fMRI).

By contrast, numerous fMRI studies show relatively greater neural activity during adolescence than in childhood or adulthood in the brain system that is located mainly in the ventral striatum and ventromedial prefrontal cortex. This system is known to have an important role in the processing for emotional and social information and in the valuation and prediction of reward and punishment. According to what has been referred to as a "dual systems model," the heightened responsiveness of this socio-emotional, incentive-processing system is thought to overwhelm or, at the very least, tax the capacities of the self-regulatory system, compromising adolescents' abilities to temper strong positive and negative emotions and inclining them towards sensation-seeking, risk-taking and impulsive antisocial acts.

*Id.* at 8; *see also* Amicus Brief for the American Psychological Association, American Psychiatric Association, and National Association of Social Workers as Amici Curiae in Support of Petitioners, *Miller v. Alabama*, 567 U.S. 460 (2012) (No. 10-9646, 10-9647).

***State v. Standard* and *State v. Green* are no longer good law.**

In light of these recent developments in the Eighth Amendment's ban on cruel and unusual punishment and the special status of our youth under the Eighth Amendment, *State v. Standard* is no longer good law. In 2002 the South Carolina Supreme Court took up the question whether or not a sentence of life without the possibility of parole constituted cruel and unusual punishment under the Eighth Amendment if the triggering offense was committed at the time the defendant was a juvenile under South Carolina's Two-Strike Law, SC Code § 17-25-45 in *State v. Standard* 351 S.C. 199 (2002). The South Carolina Supreme Court ruled that that an enhanced sentence based upon a prior most serious conviction for a crime which was committed as a juvenile does not offend evolving standards of decency so as to constitute cruel and unusual punishment violating the Eighth Amendment. *Id.* However, the decision in *State v. Standard* was premised on *Thompson v. Oklahoma*, 487 U.S. 815 (1988) which has since been overruled.

In *Thompson*, the United States Supreme Court held that the Eighth Amendment prohibits capital punishment of a person who is under 16 years of age of the time of the offense. *Id.* at 838. The *Thompson* opinion was based on the trend in a majority of jurisdictions and relied on the “evolving standards of decency that mark the progress of a maturing society.” *Id.* at 821. *Thompson* was overruled by *Roper* in 2005 and the United States Supreme Court held that it was unconstitutional to impose capital punishment for offenses committed by an individual under the age of 18. *Roper*, 543 U.S. at 578. The United States Supreme Court in *Roper* rejected the analytic framework used by the South Carolina Supreme Court in *State v. Standard* and instead adopted the analysis of the Eighth Amendment’s ban on cruel and unusual used in *Atkins v. Virginia*, 536 U.S. 304 (2002) in which United States Supreme Court exercised its own independent judgment as to whether punishment imposed was proportionate to the juvenile’s culpability. *Roper*, 543 U.S. at 564-73.

In *State v. Standard* the South Carolina Supreme Court did not apply a proportionality analysis as in *Roper*. See generally *State v. Standard*, 351 S.C. at 204-206. Additionally, cases cited in *State v. Standard* in support of contemporary standards of decency so as to constitute cruel and unusual punishment are no longer of any value as several have since been overruled by *Graham*, and the others do not meet the requirements of *Miller* and in South Carolina *Aiken*. These failures are fatal to the continued validity of *State v. Standard*.

The South Carolina Court of Appeals decision in *State v. Green* was incorrect. In 2015 the South Carolina Court of Appeals briefly considered whether a mandatory life without the possibility of parole sentence pursuant to the recidivist statute violates the Eighth Amendment’s ban on cruel and unusual punishment where the individual was a juvenile at the time of the triggering offense. *State v. Green*, 412 S.C. 65 (S.C. App. 2015). Relying on *State v. Standard*,

the South Carolina Court of Appeals stated the sentence in *State v. Green* “did not constitute cruel and unusual punishment because our appellate courts have rejected the argument that it is cruel and usual punishment to use prior convictions for offenses committed as juveniles for sentencing enhancement under section 17-25-45.” *Id.* at 86. The South Carolina Court of Appeals in *State v. Green* determined that it was bound to sentence the defendant to mandatory life without the possibility of parole because though he was a juvenile at the time of the prior conviction for purposes of the recidivist statute so long as the defendant was tried and sentenced as an adult for the triggering offense it is not cruel and usual punishment even where the defendant had not finished serving the sentence of his first offense prior to committing the second offense that led to the defendant’s life without the possibility of parole sentence – giving the juvenile defendant absolute no opportunity to reform or rehabilitate within the South Carolina criminal justice system. *See id.* at 85-86. Relying on *State v. Standard*, the South Carolina Court of Appeals gave sole weight to the fact that the defendant was not a juvenile when he was sentenced to life without the possibility of parole despite the undisputed fact that the defendant had not finished serving his sentence for the first offense and not taking into consideration the policy considerations and neuroscience studies regarding adolescents compared to fully developed individuals which was considered and relied upon by the United States Supreme Court in *Roper, Graham, and Miller*. *See generally State v. Green*, 412 S.C. at 85-87.

As previously noted, *State v. Standard* was decided a decade before *Miller* and a dozen years before *Aiken* and as such the South Carolina Supreme Court in *State v. Standard* did not consider *Miller* and *Aiken* in reaching its decision. Because *State v. Standard* did not consider *Miller* and *Aiken* in determining whether the Eight Amendment was violated in considering a juvenile conviction as a predicate conviction under South Carolina’s Two-Strike Law, *State v.*

*Green's* reliance on *State v. Standard* is inappropriate and violates the recent line of precedent regarding the consideration of juvenility at sentencing. Further, the South Carolina Supreme Court in *State v. Standard* reached its conclusion based upon precedent that has since been overruled, as such; the foundation upon which the South Carolina Court of Appeals relied on in reaching its conclusion was faulty.

**Evolving standards of decency that mark the progress of a maturing society counsel against the decisions in *State v. Standard* and *State v. Green*, and support a judgment that an individual cannot be penalized with the harshest penalty of life without the possibility of parole based on a juvenile offense, as doing so removes youth from the balance.**

Chief Justice of the United States Supreme Court Earl Warren used the phrase “evolving standards of decency that mark the progress of a maturing society” in *Trop v. Dulles*, 356 U.S. 86, 101 (1958) in deciding what limits are placed on the government by the Eighth Amendment’s ban on cruel and unusual punishment. While not always dispositive, but sometimes helpful in determining evolving standards the courts look to national consensus such as state legislation, and international laws for guidance. *See Roper*, 543 U.S. 551 (2005). State legislation and international laws reflect societal judgment that juvenile offenses do not have the same weight as adult offenses. *See generally* S.B. 9, 2011-2012 Reg. Sess. (Cal. 2013)(allows a person who was under 18 years old at the time of a crime and sentenced to life without the possibility of parole to submit a request to have a new sentencing hearing); S.B. 260, 2013-2014 Reg. Sess. (Cal. 2014)(establishes different criteria for juveniles parole process for juveniles tried/sentenced as adults); C.S./H.B. 7035, Ch. 2014-220 Leg. Sess. (Fla. 2014)(establishes new sentencing guidelines for juveniles in response to *Graham* and *Miller*); H.B. 4210, 2014 Reg. Sess. (W. Va. 2014)(eliminates life without the possibility for juveniles and eligibility for parole no later than 15 years after incarceration); H.B. 2116, 2014 Reg. Sess. (Haw. 2014)(abolishes life without the

possibility of parole for juveniles); U.N. Convention on the Rights of the Child, Fact Sheet: A Summary of the Rights Under the Convention on the Rights of the Child, [https://www.unicef.org/crc/files/Rights\\_overview.pdf](https://www.unicef.org/crc/files/Rights_overview.pdf) (Article 37 – “No one is allowed to punish children in a cruel or harmful way. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without the possibility of release.”). Noteworthy to South Carolina specifically, in 1991 and 1992 the South Carolina House of Representatives adopted the concurrent resolution South Carolina S790 to support the United Nations “Convention on the Rights of the Child” and to request agencies providing services to children to aim to achieve the goals of the convention. This indicates a willingness of the state of South Carolina to follow in the footsteps of the United Nations when it comes to juvenile rights.

**Criminal offenses committed by juveniles, even when prosecuted in General Sessions criminal court, should not be qualifying conviction for the purposes of South Carolina’s Two-Strike Law.**

Precedent from both the United States Supreme Court and the South Carolina Supreme Court make it clear that juvenile crimes are not as severe as crimes committed by adults because their brains have not fully developed and they are not fully able to control their behavior. *See Graham*, 560 U.S. at 68 (noting that there are fundamental differences between juvenile and adult minds as the part of the brain involved in behavior control is not fully matured even in late adolescence); *Roper*, 543 U.S. at 569 (“The susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’”) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)); *Aiken*, 410 S.C. at 543 (“[I]t is the failure of a sentencing court to consider the hallmark features of youth prior to

sentencing that offends the Constitution.”). Because of this, courts have routinely held that when sentencing juveniles for their crimes whether adjudicated in family court or criminal court, courts must consider the specific impact of the defendant’s juvenility on their conduct and take into account the differences in children that counsel against extensive sentences. *See Aiken*, 410 S.C. at 544 (citing *Miller* factors requiring sentencing courts to take into account the age and life circumstances of juvenile offenders and the crime committed); *see also Graham*, 560 U.S. at 73 (“Even if the State’s judgment that Graham was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence [life without the possibility of parole] was still disproportionate because the judgment was made at the outset.”). Further, the fact that many states permit juvenile crimes to be adjudicated in adult criminal court for certain crimes making juveniles eligible to receive the same sentences as adults does not mean that states intended to subject juvenile offenders to the same consequences. *See Graham*, 560 U.S. at 66-67.

Many jurisdictions find that sentencing a defendant under a recidivist statute is not sentencing them for prior crimes, but merely sentencing them for the current crime with a stiffer sentence based on their pattern of conduct. *See Vickers v. State*, 117 A.3d 516, 520 (Del. 2015) (“courts consider it an enhanced punishment for the current offense, not an additional punishment for the earlier offense.”); *United States v. Orona*, 724 F.3d 1297, 1307 (10th Cir. 2013) (noting that habitual offender statutes only penalize the latest criminal offense committed by the defendant); *United States v. Hunter*, 735 F.3d 172, 175 (4th Cir. 2013) (noting that an enhanced sentence under a recidivist statute is merely a stiffened penalty for the most recent crime which is considered an aggravated offense because it is repetitive).

While several jurisdictions permit adjudications of juvenile crimes to serve as “prior convictions” to increase subsequent sentences under recidivist or habitual offender statutes. *See*

*United States v. Wallace*, 663 F.3d 177 (3d Cir. 2011) (permitting juvenile offense adjudicated in adult court under youthful offender statutes to be considered in determining career offender status); *United States v. Orona*, 724 F.3d at 1304 (collecting cases). However, although such reasoning aligns with one aspect of the United States Supreme Court precedent, which finds that recidivism statutes only punish a defendant for last in time offense and not his status as a recidivist, *United States v. Rodriguez*, 533 U.S. 377, 385-86 (2008), it contradicts the line of precedent which finds that juvenile crime is less severe than adult crime because juveniles are less culpable *see Miller*, 567 U.S. 460 (2012).

As a threshold matter, such reasoning makes no sense. If a defendant being sentenced under a recidivist statute for a current criminal offense would not be subjected to a heightened sentence but for his prior criminal offense, then it stands to reason that he is being sentenced for those prior criminal offenses in conjunction with the current criminal offense. But, even if our courts consider increased punishment under a recidivist statute only a punishment for the latest offense that is aggravated because it is repetitive, such conduct cannot be rightfully deemed "aggravated" when the initial offense providing the aggravation is less culpable because committed by a juvenile. As such, when determining prior convictions under a recidivist statute, it is illogical and contrary to precedent to grant the same weight to offenses committed when the defendant was a juvenile as would be granted to any offenses committed once the defendant reached the age of majority.

Furthermore, it is illogical that a circuit solicitor or an assistant circuit solicitor can make a unilateral decision within 2 days (as was required by S.C. Code §20-7-4630 in 1995) to waive a criminal offense committed by a juvenile from Family Court to adult General Sessions Court for disposition without consideration of (1) Chronological age of the juvenile and hallmark features

of youth , including immaturity, impetuosity, and failure to appreciate the risks and consequences; (2) the family and home environment that surrounded the juvenile; (3) the circumstances of the offense, including the extent of the juvenile's participation in the conduct and how familial and peer pressures may have affected him; (4) the incompetencies associated with youth – for example, the juvenile's inability to deal with police officers or prosecutors (including on a plea agreement) or incapacity to assist his own attorneys; and (5) the possibility of rehabilitation, as required by *Miller* and *Aiken* which differ from the factors in *Kent v. United States*, 383 U.S. 541 (1966) and then makes the offense eligible for enhancement under South Carolina's Two-Strike Law.

In the instant case, Demarco entered a guilty plea to 1 count of Assault and Battery with Intent to Kill (96-GS-12219) and 2 counts of Attempted Armed Robbery 96-GS-40-12220, 96-GS-40-12224) in Richland County General Sessions court and was concurrently sentenced to 12 years; provided upon the service of 8 years, the balance suspended with probation for 3 years at the age of 15. It is unknown, because of lack of record keeping in Richland County Family Court or Richland County Circuit Court, whether a waiver hearing in fact took place, and if so what information was taken into account during this waiver hearing. As such, Demarco did not receive any benefit of the juvenile justice system and its focus on rehabilitation. Instead, Demarco was sentenced to a prison term at the age of 15 where he was exposed to harden criminals where rehabilitation for a juvenile would be nonexistent and survival would be the only thing that mattered to Demarco. This fact is important as many cases find that the reasons justifying an enhanced sentence as an adult which takes into account crimes committed as a juvenile is that the juvenile was obviously not rehabilitated by the juvenile justice system. See *People v. Nguyen*, 209 P.3d 946, 956 (Cal. 2009) ("If the *parens patriae* features of the juvenile

justice system have succeeded in rehabilitating a youthful offender, all well and good. But if the person was not deterred, and thus reoffends as an adult, this recidivism is a highly rational basis for enhancing the sentence for the adult offense.”); *see also United States v. Hunter*, 735 F.3d 172, 176 (4th Cir. 2013) (noting that the defendant had the opportunity to demonstrate rehabilitation but elected to continue his course of illegal conduct); *United States v. Hoffman*, 710 F.3d 1228, 1233 (11th Cir. 2013) (noting that courts should be able to consider prior youthful offenses “when sentencing criminal who continue their illegal activity into adulthood.”). However, Demarco did not receive any opportunity for rehabilitation because he was sentenced as an adult and sent to adult prison. A number of studies have determined that “the prosecution of juvenile offenders in adult criminal court significantly increases the likelihood that the youth will commit violent or other crimes in the future.” Emily M. Steiner, *When Psychology Answers Constitutional Questions: The Eighth Amendment and Juvenile Sentencing*, 46 U. Balt. L. Rev. 353, 371 (2017).

It follows that if juvenile crime is less culpable than adult crime, then juvenile crime cannot be and should not be qualifying conviction for the purposes of South Carolina’s Two-Strike Law and therefore Demarco’s mandatory sentence of life without the possibility of parole pursuant to S.C. Code of Laws § 17-25-45 violates the Eighth Amendment’s ban on cruel and unusual punishment.

**South Carolina’s Two-Strike Law unconstitutionally mandated a sentence of life without the possibility of parole based on Demarco’s juvenile convictions which deprived the court from exercising the discretion to consider Demarco’s unique circumstances as required pursuant to *Miller* and *Aiken*.**

South Carolina’s Two-Strike Law unconstitutionally mandated a sentence of life without the possibility of parole based on Demarco’s juvenile convictions which deprived the court from exercising the discretion to consider Demarco’s unique circumstances as required by *Miller* and

*Aiken*. *Miller* requires the sentencing court to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. See *Aiken*, 410 S.C. at 543. *Miller* rejected mandatory penalty schemes that prevent the sentence from considering youth and from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. 567 U.S. at \_ (slip op., at 18-22). Citing United States Supreme Court precedent (*Roper* and *Graham*), *Miller* makes clear that sentencers must be able to consider the mitigating qualities of youth. 567 U.S. at \_ (slip op., at 31).

When adopting *Miller's* holding, the South Carolina Supreme Court said,

The *Miller* Court unequivocally held that youth has a constitutional dimension when determining the appropriateness of a lifetime of incarceration with no possibility of parole; and that the mandatory penalty schemes at issue prevented the sentencing authority from considering the differences between adults and juvenile offenders before imposing a sentence of life without parole.

*Aiken*, 410 S.C. at 542. In adopting *Miller's* holding, the *Aiken* court determined that sentencing hearings suffer from a constitutional defect when the sentencing court fails to examine the youth of the offender through the lens mandated by *Miller*. See *Aiken*, 410 S.C. at 543, n. 8. The *Aiken* court articulated 5 factors that a sentencing court must consider in order for the hearing to be constitutionally sound:

(1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequences"; (2) the "family and home environment" that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the "incompetencies associated with youth – for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation."

*Aiken*, 410 S.C. at 544 (citing *Miller*).

In creating these factors, the *Aiken* court sent a clear message that youth is of significant constitutional significance when determining the imposition of a sentence. As such, it follows that youth maintains that same constitutional dimension even when determining the sentence of an adult based upon a crime committed as a juvenile. Where a mandatory penalty scheme uses a prior conviction to impose a sentence of life without the possibility of parole, to pass constitutional muster youth must be considered by the sentence prior to imposing life without the possibility of parole.

*Miller* made it clear that it was not holding that a judge may not impose life without the possibility of parole. 567 U.S. at \_ (slip op., at 21). *Aiken* echoed this, "Without question, the judge may still determine that life without parole is the appropriate sentence." 410 S.C. at 545. However, the current statutory framework codified S.C. Code. § 17-25-45 shackles judges by mandating life without the possibility of parole based solely upon an individual circuit solicitor or assistant circuit solicitor's decision to file notice they are seeking life without the possibility of parole on an individual. *Miller* requires those shackles to be removed under a narrow set of circumstances – where a juvenile faced mandatory life without the possibility of parole. Similarly, the situation where life without the possibility of parole is imposed solely because of a defendant's prior conviction for a crime committed while a juvenile also presents the court with a narrow set of circumstances. To impose a mandatory sentence of life without the possibility of parole under those circumstances requires one to accept that youth is irrelevant, and poses a risk of disproportionate punishment. *Miller* rejected this, stating, "By making youth (and all that accompanies it) irrelevant to imposition of the harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." 567 U.S. at \_ (slip op., at 21).

Although *Miller* and *Aiken* require that judges be permitted to exercise discretion with respect to sentencing, these cases do not hold that judge should have unfettered discretion.

*Miller* stressed the importance of adhering to a process and following certain guidelines. This process and the guidelines are important because reliance on courts and prosecutors to “sufficiently consider a juvenile defendant’s age, as well as his background and the circumstances of his crime” when making prosecutorial decisions at earlier stages in the process is problematic to say the least. In support, the *Miller* court supplied reasons for using this process: (1) Many states use mandatory transfer systems; (2) Some leave the decision in the hands of the prosecutors, rather than courts; (3) Even where judges have transfer-stage discretion, it has limited utility, because the decision-maker typically will have only partial information about the child or circumstances of his offense; and (4) Limited sentencing options in some juvenile courts mean the transfer decision may present a choice between a light sentence as a juvenile and standard sentencing as an adult. *Miller* 567 U.S. at \_ (slip op., at 26-31). These reasons also support applying the factors and process articulated by *Miller* and *Aiken* to defendants facing life without the possibility of parole under South Carolina’s Two-Strike Law.

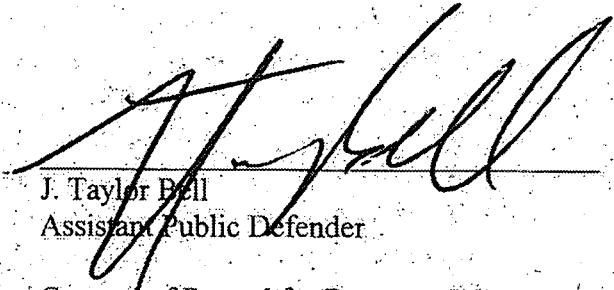
Post-*Miller*, it is possible, but not guaranteed that the *Miller* factors will be applied to juveniles charges as adults when life without the possibility of parole is off the table. See *State v. Zuber*, 152 A.3d 197 (N.J. 2017). Yet, convictions of the juveniles in those cases may be the primary reason that later – even just months or a few years later – to send them away to prison for life, without youth ever being given “sufficient consideration” required by *Miller* and *Aiken*. In other words, the possibility that the defendant’s youth may have been taken into account at some point in the past “cannot substitute for discretion at post-trial sentencing.” *Miller* 567 U.S. at \_ (slip op., at 30). Requiring judicial examination of the defendant’s youth in the context of

prior conviction used to send a person away for life is consistent with *Miller's* holding that juveniles be afforded this process, even if the consideration only comes after the defendant becomes an adult.

In the instant case, when Demarco was initially sentenced for his juvenile criminal offenses, the sentencing court did not take into account his juvenility as required by *Miller* and *Aiken*. Not only was Demarco deprived of his constitutional right to have his sentence reflect his juvenility, but he was also deprived of an opportunity to be rehabilitated and placed in a position contrary to the purposes for which he should have been sentenced. As such, instead of being rehabilitated, he was placed in a position that increased the likelihood that he would reoffend based on studies of juveniles sentenced as adults. Now, following offenses as an adult, he is serving a sentence of life without the possibility of parole based upon juvenile offenses under the assumption that he is somehow irreparable corrupt because he failed to rehabilitate, yet he was given no opportunity to do so – with the possibility of being released, though he has no disciplinary record since being incarcerated in the South Carolina Department of Corrections for nearly 17 years.

Further, at neither sentencing hearing was Demarco given the benefit of his juvenility. Not during the first sentencing hearing for the offenses committed at age 15, and certainly not at the sentencing hearing for offenses that resulted in his mandatory life without the possibility of parole at age 20. The United States Constitution requires that Demarco's juvenility at the time of the "aggravating" crime be given consideration, and it was not. Precedent has determined that such crime is less culpable than adult crimes. To the extent that such crime plays any role in enhancing an adult sentence, it should be accorded less weight than crimes committed as an adult. As such, Demarco is entitled to resentencing that takes into account the lessened

culpability of the crimes to which he entered a plea of guilty at age 15 pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012) and *Aiken v. Byars*, 410 S.C. 534 (2014).



J. Taylor Bell  
Assistant Public Defender

Counsel of Record for Demarco Johnson

May 25, 2017  
Columbia, South Carolina

2017 MAY 25 AM 8:29  
JEANNETTE W. McBRIDE  
C.C.P. & C.S.  
RICHLAND COUNTY  
FILED

cc: The Honorable R. Knox McMahon  
Daniel R. Goldberg, Deputy Solicitor Fifth Judicial Circuit

DEFENDANT'S EXHIBIT  
6-1-17

DOCKET NO. 96-65-40-7698

**The State of South Carolina,**

County of RICHLAND

COURT OF GENERAL SESSIONS

#92      MARCH      TERM      1996

THE STATE

vs.

DEMARCO JOHNSON

*3/21/97. malle posse  
Ship County. Spled  
to other charges*

WITNESSES

Inv. T. Griffin, RCSD

*D. R. Price*

ARREST WARRANT NO. DP95798

ACTION OF GRAND JURY

**TRUE BILL**

*[Signature]*  
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

**Indictment for Murder**

S. C. Code Section 16-3-10 Felony  
116



DOCKET NO. 96 65-40-12218

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

992 MARCH TERM 1996

THE STATE

DEMARCO JOHNSON

*Indictment  
made from 3/11/96  
by  
Judge & Clerk  
for you*

Indictment for Assault and  
Battery With Intent To Kill  
and Possession of Firearm  
or Knife During  
Commission of or Attempt  
to Commit Violent Crime

S. C. Code Section 16-3-620 (1)(a) (C-Felony)

WITNESSES

T. GRIFFIN, RCSD

*[Signature]*

ARREST WARRANT NO. DF96168

ACTION OF GRAND JURY

TRUE BILL

*[Signature]*  
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date

FORM 8 (12/87)

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL AND POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

At a Court of General Sessions, convened on March 20, 1996  
the Grand Jurors of RICHLAND County present upon their oath

COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL

That DEMARCO JOHNSON  
did in Richland County on or about June 18, 1995 with  
malice aforethought commit an assault and battery upon one Corwin Bentley  
with intent to kill the said victim.

COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

That  
did in \_\_\_\_\_ County on or about \_\_\_\_\_ possess or  
visibly display a firearm or visibly display a knife during the commission or attempted commission  
of a violent crime, to wit \_\_\_\_\_  
in violation of Code Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contravention to the statute in such case made and provided.

*Walter B. Lane*  
SOLICITOR

DOCKET NO. 96-65-40-12219

**The State of South Carolina,**

County of RICHLAND

**WITNESSES**

Inv. Jim Stewart, RCSD

One R. P. Prater

**COURT OF GENERAL SESSIONS**

#92 MARCH TERM 1996

**THE STATE**

vs.

DEMARCO JOHNSON

The Prisoner Demarco Johnson  
is put to the bar and arraigned and upon the  
arraignment pleads Guilty as charged.

ATTEST:

Barbara A. Scott Clerk of Court  
Demarco Johnson

3-26-97

ARREST WARRANT NO. DP96167

**ACTION OF GRAND JURY**

**TRUE BILL**

[Signature]  
Foreman of Grand Jury

**VERDICT**

**Indictment for Assault and  
Battery With Intent To Kill  
and Possession of Firearm  
or Knife During  
Commission of or Attempt  
to Commit Violent Crime**

S. C. Code Section 16-3-620 Class C-Felony

14

Foreman of Petit Jury

Date:

FORM 8 (12/87)

INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL AND POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

STATE OF SOUTH CAROLINA )
COUNTY OF RICHLAND )

At a Court of General Sessions, convened on March 20, 1996
the Grand Jurors of RICHLAND County present upon their oath:

COUNT ONE - ASSAULT AND BATTERY WITH INTENT TO KILL

That DEMARCO JOHNSON
did in Richland County on or about June 16, 1995, with
malice aforethought commit an assault and battery upon one Mark Loftis
with intent to kill the said victim.

COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

That
did in County on or about possess or
visibly display a firearm or visibly display a knife during the commission or attempted commission
of a violent crime, to wit:
in violation of Code Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided:

Warren B. Yuse
SOLICITOR

DOCKET NO. 96-GS-40-12220

**The State of South Carolina,**

RICHLAND

County of \_\_\_\_\_

**WITNESSES**

Inv. J. Stewart, RCSD

Das. R. Price

**COURT OF GENERAL SESSIONS**

492 MARCH TERM 1996

THE STATE

vs.

DEMARCO JOHNSON

The Prisoner Demarco Johnson  
is set to the bar and arraigned and  
arraignment pleads Guilty as charged.  
ATTEST:

Barbara A. Scott x Demarco Johnson  
Clerk of Court

3-20-97

ARREST WARRANT NO. DP96166

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreman of Grand Jury

**Indictment for <sup>ATTEMPTED</sup> Armed Robbery and Robbery**

S. C. Code Section 16-11-130(B) Class C-Felony  
26

**VERDICT**

Foreman of Petit Jury

Date:

FORM 20 (1/91)

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

ATTEMPTED  
INDICTMENT FOR ARMED ROBBERY  
~~ARMED ROBBERY~~

At a Court of General Sessions convened on March 20, 1996  
the Grand Jurors of RICHLAND County present upon their oath

**ATTEMPTED  
COUNT ONE — ARMED ROBBERY**

That DEMARCO JOHNSON did in  
Richland County on or about June 16, 1995 while armed with a deadly  
weapon, to wit a handgun  
attempt to  
feloniously take from the person or presence of Mark Loftis by means of  
force or intimidation goods or moneys of Mark Loftis such goods or moneys being  
described as follows: U.S. currency

with intent to deprive the owner permanently of such property

**COUNT TWO — ROBBERY**

That \_\_\_\_\_ did in \_\_\_\_\_  
County on or about \_\_\_\_\_ feloniously take from the  
person or presence of \_\_\_\_\_ by means of  
force or intimidation goods or moneys of \_\_\_\_\_  
such goods or moneys being described as follows \_\_\_\_\_

with intent to deprive the owner permanently of such property

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

*Warren B. Yee*  
SOLICITOR

SENTENCE

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

CASE NO 96 GS-101229  
WARRANT NO DP 96167  
CHARGE ABWIK  
OFFENSE CODE 14  
SC STATUTE OFFENSE PENALTY CODE  
16-3-620

*State Rec. 15 Sep 97*

*D-0 6 16 95*

The defendant Demarco Johnson is committed to the State Department of Corrections/County for a term of 12 months/years and/or to pay a fine of \$       ; provided upon the service of 8 months/years and/or a payment of \$       , plus pay costs and assessments as applicable, the balance is suspended with probation for 3 months/years.

RESTITUTION: YES/NO \_\_\_\_\_ FOR PHYSICAL INJURY \$ \_\_\_\_\_  
PAYABLE TO CLERK FOR: \_\_\_\_\_ PROPERTY DAMAGE \$ \_\_\_\_\_  
(VICTIM) \_\_\_\_\_ TOTAL \$ \_\_\_\_\_

Other Conditions credit for time served

DATE 3/21/97  
D.O.B.       -79  
S.S.N. \_\_\_\_\_  
Def. Atty J. McCulloch  
Sol. Atty C. Truitt

Thomas W. [Signature]  
PRESIDING JUDGE

Barbara A. Scott  
CLERK OF CLERK

B/W/O       M/F

SENTENCE

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

CASE NO 96 GS-40 12220  
WARRANT NO DP 96166  
CHARGE Attempted Armed  
Robbery 26  
OFFENSE CODE \_\_\_\_\_

*State v. Lee 154 (4)*

SC STATUTE OFFENSE PENALTY CODE

16-11-330 (B)

D-0 6-16-95

The defendant Demarco Johnson is committed to the State Department of Corrections/County for a term of 12 months/years and/or to pay a fine of \$ \_\_\_\_\_; provided upon the service of 8 months/years and/or a payment of \$ \_\_\_\_\_, plus pay costs and assessments as applicable, the balance is suspended with probation for 3 months/years.

RESTITUTION: YES/NO \_\_\_\_\_ FOR PHYSICAL INJURY \$ \_\_\_\_\_  
PAYABLE TO CLERK FOR: \_\_\_\_\_ PROPERTY DAMAGE \$ \_\_\_\_\_  
(VICTIM) \_\_\_\_\_ TOTAL \$ \_\_\_\_\_

Other Conditions Waived for term Suspended - Good -

DATE 3/21/97

Thomas W. Roney  
PRESIDING JUDGE

D.O.B. [REDACTED]

S.S.N. \_\_\_\_\_

Def. Atty J. McCulloch

Barbara A. Scott  
CLERK OF CLERK

Sol. Atty C. T. Smith

B/W/O D/E

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND COURT GENERAL SESSIONS  
March 17 19 97  
Term

STATE PROBATION ORDER  
-VS-  
Demarcus Johnson No 96 GS 40 12219  
Defendant

OFFENSE ARIK  
Demarcus Johnson shall be in the custody of the South Carolina Department of Corrections for a term of three years. Upon the service of eight months (and/or) the payment of a fee and costs of \$ 1000, however, the balance of this sentence is hereby suspended and the defendant is hereby ordered to be placed on probation for a period of three years under the supervision of the South Carolina Department of Probation, Parole, and Pardon Services. During this period of probation, the Defendant shall be subject to the laws of South Carolina and the rules and orders of the Department and its agents. This suspended sentence may be revoked or modified at any time after the date of this order. The conditions of supervision are set forth below.

IT IS FURTHER ORDERED: that the Sheriff or other law enforcement officers who have the custody of the defendant is hereby ordered to deliver said defendant to the Probation Office of this county, or if the defendant is under bond, then such bond shall remain in full force until the defendant reports to the Probation Office. The conditions of probation begin today after service of the required portion of the suspended sentence. It is further ordered that the Clerk of Court file this order in his office and that he forthwith forward a certified copy to the County Office of the Department.

This 21st day of March 19 97 James W. [Signature] Presiding Judge of the Fifth Judicial Circuit  
COLUMBIA, S.C.

You are hereby advised that under the law this Court may at any time revoke or modify any conditions of this probation, impose any special conditions it deems proper, or it may extend your period of probation not to exceed five (5) years.  
You shall be subject to arrest, upon order of the Court, or upon a warrant issued by the Probation Agent. At any time within the period of your probation, the Court may, upon proof of a violation re-arrest you and impose any sentence it might have imposed in the first instance.  
This is to certify that I have read or have had read to me this Order of Probation and the Conditions set out herein. I agree to comply with these conditions during the period of my probation. I have received a copy of this court order.

Witnessed by: Richard [Signature] Signed: Demarcus Johnson  
Probationer  
Signed this 21st day of March 19 97 COLUMBIA, S.C.

- CONDITIONS ORDERED BY THE COURT:
- Waive Costs and Assessments. (NOTE: Some costs cannot be waived.)
  - Complete \_\_\_\_\_ (hours) Public Service Employment.
  - Intensive Supervision for an indeterminate period not to exceed 6 months, as determined by the Department.
  - Home Detention for an indeterminate period not to exceed 6 months, as determined by the Department.
  - Electronically Monitored Home Detention for an indeterminate period not to exceed 90 days, as determined by the Department.
  - Participate and successfully complete an evaluation/referral for alcohol/drug abuse as determined by the Department.
  - Fine/Costs and Assessments payable as directed by the Court.
  - \$ \_\_\_\_\_ restitution payable to the Clerk of Court as directed by the Department or its agents.
  - Restitution Center.
  - Community Control Center.
  - Case to end upon Certification by the Clerk of Court that all monies have been paid (Sec. 24-21-550).
  - Other: - w/d. 4 time served.  
- obtain E.E.D.

a/w: Attempted Armed Robbery (3 cr.) - same sentence, ca. ct. -  
(96-12220; 96-12224). Convicted.

8

ARREST WARRANT

G-246913

STATE OF SOUTH CAROLINA

County/  Municipality of  
RICHLAND COUNTY

THE STATE  
against

DEMARCO JOHNSON

Address: [REDACTED]  
COLUMBIA SC 29203 - 0000

Phone: [REDACTED] BSN [REDACTED]

Sex M Race B Height 5 9 Weight 170

DI State DL#

DOB [REDACTED] Agency ORI#

Prosecuting Agency RICHLAND COUNTY SHERIFF'S

Prosecuting Officer ERIC K. BARNES

Offense: KIDNAPPING/KIDNAPPING

Offense Code: 0095

Code/Ordinance Sec 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of

The accused  
is to be arrested and brought before me to be  
dealt with according to law

Signature of Judge (L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to  
defendant DEMARCO JOHNSON  
on 12-15-99

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:  
RICHLAND COUNTY BOND COURT  
201 JOHN MARK DIAL DRIVE  
COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA

County/  Municipality of  
RICHLAND COUNTY

Personally appeared before me the affiant ERIC K. BARNES who  
being duly sworn, deposes and says that defendant DEMARCO JOHNSON  
did within the county and state on 12/14/99 violate the criminal laws of the  
State of South Carolina (or ordinance of  County/  Municipality of )  
in the following particulars:

DESCRIPTION OF OFFENSE: KIDNAPPING/KIDNAPPING

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

THAT ON DECEMBER 14, 1999 WHILE AT [REDACTED] DRIVE IN THE  
DUTCH FORK MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE  
DEMARCO JOHNSON DID COMMIT THE CRIME OF KIDNAPPING IN THAT  
HE DID ALONG WITH CODEPENDANTS, UNLAWFULLY SEIZE AND CONFINE  
NORMAN DORN AT GUNPOINT, WHILE IN THE COMMISSION OF AN ARMED  
ROBBERY. THE DEPENDANT WAS CAUGHT AT THE SCENE AND STATEMENTS  
FROM WITNESSES AND CODEPENDANTS PROVE THE SAME.  
AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME.  
RCSD CASE NUMBER: 99121634

Sworn to and subscribed before me  
on 12/14/99  
Signature of Affiant  
Affiant's Address SHERIFF'S DEPARTMENT  
COLUMBIA SC 29223 - 0000  
Affiant's Telephone 803 651-9000

STATE OF SOUTH CAROLINA

County/  Municipality of  
RICHLAND COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSULTEE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that  
on 12/14/99 defendant DEMARCO JOHNSON  
did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of ) as set forth below:

DESCRIPTION OF OFFENSE: KIDNAPPING/KIDNAPPING

Now therefore you are empowered and directed to arrest the said defendant and bring him or her before  
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
defendant at the time of its execution or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)  
Judge's Address 1400 HUGER ST  
COLUMBIA SC 29202 - 0000  
Judge's Telephone 803-748-3746  
Issuing Court  Magistrate  Municipal  Circuit  
Judge Code GS

ORIGINAL

JH  
Form Approved by  
S.C. Attorney General  
July 28, 1990  
SCA 514

PERIOD 000-651-666  
EXHIBIT  
DEPENDANTS

RECEIVED  
DEC 29 1999  
CLERK OF THE COURT  
CRIMINAL RECORDS

BAIL set by

Judge \_\_\_\_\_  
on \_\_\_\_\_  
Type and Amount \_\_\_\_\_  
Name of Surety \_\_\_\_\_

**PRELIMINARY HEARING** held by

Judge C. L. Hurdell  
on 2/1/60  
Defense Attorney P.D. R. Conant  
Decision C.S.C.

**DISPOSITION** before

Judge \_\_\_\_\_  
on \_\_\_\_\_  
by \_\_\_\_\_  
(indicate jury trial, bench trial, plea, not pros., etc.)  
Disposition \_\_\_\_\_  
Sentence \_\_\_\_\_

**JURORS**

**WITNESSES**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

**CODEFENDANTS**

ARREST WARRANT

G-246914

STATE OF SOUTH CAROLINA

County/  Municipality of RICHLAND COUNTY

THE STATE against

DEMARCO JOHNSON

Address: COLUMBIA SC 29203 - 0000

Phone: SSN

Sex: M. Race: B. Height: 5-9 Weight: 170

Dr. State: DL#

DOB: Agency ORI#

Prosecuting Agency: RICHLAND COUNTY SHERIFF'S

Prosecuting Officer: ERIC K. BARNES

Offense: KIDNAPPING

Offense Code: 0025

Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the  County/  Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant DEMARCO JOHNSON

on 12-15-99 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: RICHLAND COUNTY BOND COURT 201 JOHN MARK DIAL DRIVE COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA

County/  Municipality of RICHLAND COUNTY

AFFIDAVIT

L. Ross Fel

Personally appeared before me the affiant ERIC K. BARNES who being duly sworn deposes and says that defendant DEMARCO JOHNSON did within this county and state on 12/14/99 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE: KIDNAPPING

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON DECEMBER 14, 1999 WHILE AT DRIVE IN THE DUTCH FORK MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE DEMARCO JOHNSON DID COMMIT THE CRIME OF KIDNAPPING IN THAT HE DID ALONG WITH CODEPENDANTS, UNLAWFULLY SEIZE AND CONFINED KETRA HEARON AT GUNPOINT, WHILE IN THE COMMISSION OF AN ARMED ROBBERY. THE DEPENDANT WAS CAUGHT AT THE SCENE AND STATEMENTS FROM WITNESSES AND CODEPENDANTS PROVE THE SAME. AFFAIANT AND OTHERS ARE WITNESS TO PROVE THE SAME. RCSD CASE NUMBER: 99121634

Sworn to and subscribed before me

on 12/14/99 Signature of Issuing Judge C. L. Hudnell (L.S.)

Signature of Affiant Affiant's Address: SHERIFF'S DEPARTMENT COLUMBIA SC 29203 - 0000 Affiant's Telephone: 803 691-9000

STATE OF SOUTH CAROLINA

County/  Municipality of RICHLAND COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OR

it appearing from the above affidavit that there are reasonable grounds to believe that defendant DEMARCO JOHNSON did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of) as set forth below

DESCRIPTION OF OFFENSE: KIDNAPPING

Now therefore you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable.

Signature of Issuing Judge C. L. Hudnell (L.S.) Judge Code: GS

Judge's Address: 400 HUGER ST COLUMBIA SC 29202 - 0000 Judge's Telephone: 803 748-4746 Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

RECEIVED DEC 29 1999 CLERK OF COURT CRIMINAL RECORDS



ARREST WARRANT

G- 246915

STATE OF SOUTH CAROLINA

County: RICHLAND COUNTY

THE STATE

against

DEMARCO JOHNSON

Address: COLUMBIA, SC 29203 - 0000

Phone: SGN

Sex M., Race B., Height 5, Weight 170

DL State DL#

DOB: Agency Off#

Prosecuting Agency RICHLAND COUNTY SHERIFF'S

Prosecuting Officer ERIC K. BARNES

Offense BURGLARY - 1ST DEGREE

Offense Code: UD79

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the County/Municipality of

is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to defendant DEMARCO JOHNSON on 12-5-99

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: RICHLAND COUNTY BOND COURT, 201 JOHN MARK DIAL DRIVE, COLUMBIA, SC 29209 - 0000

STATE OF SOUTH CAROLINA

County: RICHLAND COUNTY

AFFIDAVIT

L. Ross For

Personally appeared before me the affiant ERIC K. BARNES who being duly sworn deposes and says that defendant DEMARCO JOHNSON did within this county and state on 12/14/99 violate the criminal laws of the State of South Carolina (or ordinance of County/Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE: BURGLARY - 1ST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON DECEMBER 14, 1999 WHILE AT [REDACTED] DROVE IN THE DUTCH FORK MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE DEMARCO JOHNSON DID COMMIT THE CRIME OF BURGLARY 1ST IN THAT HE DID, ALONG WITH CODEFENDANTS, UNLAWFULLY ENTER THE DWELLING OF NORMAN BORN WHILE ARMED WITH A HANDGUN WITH THE INTENT TO COMMIT THE CRIME OF ARMED ROBBERY. THE DEFENDANT WAS CAUGHT AT THE SCENE AND STATEMENTS FROM WITNESSES AND CODEFENDANT PROVE THE SAME.

AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME

RUSD CASE NUMBER: 99121634

Sworn to and subscribed before me on 12/14/99

Signature of Affiant: [Signature]

Signature of Affiant: ERIC K. BARNES

Affiant's Address: SHERIFF'S DEPARTMENT, COLUMBIA, SC 29221 - 0000

Affiant's Telephone: 803-531-9900

STATE OF SOUTH CAROLINA

County: RICHLAND COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that on 12/14/99 defendant DEMARCO JOHNSON did violate the criminal laws of the State of South Carolina (or ordinance of County/Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY - 1ST DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable.

Signature of Issuing Judge: [Signature]

Judge's Address: 400 HUGER ST, COLUMBIA, SC 29202 - 0000

Judge's Telephone: 803-746-4746

Signature of Issuing Judge, Judge Code: 122, Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

Form Approved by S.C. Attorney General July 26, 1998 92CA 519

RECEIVED DEC 29 1999 CLERK OF COURT CRIMINAL RECORDS

BAIL set by

Judge \_\_\_\_\_  
on \_\_\_\_\_  
Type and Amount \_\_\_\_\_  
Name of Surety \_\_\_\_\_

PRELIMINARY HEARING held by

Judge C. L. Hubbard  
on 2/1/00  
Defense Attorney P.D. Z. Coxart  
Decision G.S.C.

DISPOSITION before

by \_\_\_\_\_  
on \_\_\_\_\_  
by \_\_\_\_\_  
(indicate jury trial, bench trial, plea, nol. prosc. etc.)  
Disposition \_\_\_\_\_  
Sentence \_\_\_\_\_

JURORS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITNESSES

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

CODEFENDANTS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Form Approved by  
S.C. Attorney General  
July 28, 1990  
SCCA 110

ARREST WARRANT  
G- 246916  
STATE OF SOUTH CAROLINA  
 County/  Municipality of  
RICHLAND COUNTY

THE STATE  
against  
DEMARCO JOHNSON  
Address: [REDACTED]  
COLUMBIA SC 29203 - 0000  
Phone: [REDACTED] SSN: [REDACTED]  
Sex M Race B Height 5 9 Weight 170  
DL State: [REDACTED] DL # [REDACTED]  
DOB: [REDACTED] Agency ORI # [REDACTED]  
Prosecuting Agency: RICHLAND COUNTY SHERIFF'S  
Prosecuting Officer: ERIC K. BARNES  
Offense: ARMED ROBBERY  
Offense Code: 0137  
Code/Ordinance Sec: 16-11-0325

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of [REDACTED]  
The accused  
is to be arrested and brought before me to be  
dealt with according to law  
Signature of Judge (L.S.)  
Date:

RETURN  
A copy of this arrest warrant was delivered to  
defendant DEMARCO JOHNSON  
on 12-15-99  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:  
RICHLAND COUNTY BOND COURT  
201 JOHN MARK DIAL DRIVE  
COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
RICHLAND COUNTY  
AFFIDAVIT  
L. Ross For  
ERIC K. BARNES who  
Personally appeared before me the affiant  
being duly sworn deposes and says that defendant  
DEMARCO JOHNSON did within this county and state on  
12/14/99 violate the criminal laws of the  
State of South Carolina (or ordinance of [REDACTED] County/ [REDACTED] Municipality of [REDACTED])  
in the following particulars:  
DESCRIPTION OF OFFENSE: ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:  
THAT ON DECEMBER 14, 1999 WHILE AT [REDACTED] DRIVE IN THE  
DUTCH FORK MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE  
DEMARCO JOHNSON DID COMMIT THE CRIME OF ARMED ROBBERY IN THAT  
HE DID, ALONG WITH CODEFENDANTS, ROB NORMAN DORN OF U.S. CURRENCY  
WHILE ARMED WITH A HANDGUN. THE DEFENDANT WAS CAUGHT AT THE  
SCENE AND STATEMENTS FROM WITNESSES AND CODEFENDANTS PROVE THE  
SAME. AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME.  
RCSD CASE NUMBER: 991 634

Sworn to and subscribed before me  
on 12/14/99  
Signature of Issuing Judge  
C. L. Hudnell (L.S.)

Signature of Affiant  
Affiant's Address: SHERIFF'S DEPARTMENT  
COLUMBIA SC 29223 - 0000  
Affiant's Telephone: 803 691-9000  
RECEIVED  
Dec 29 1999  
CLERK OF COURT  
CRIMINAL RECORDS

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
RICHLAND COUNTY  
ARREST WARRANT  
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF RICHLAND COUNTY:  
It appearing from the above affidavit that there are reasonable grounds to believe that  
on 12/14/99 defendant DEMARCO JOHNSON  
did violate the criminal laws of the State of South Carolina (or ordinance of [REDACTED] County/ [REDACTED] Municipality of [REDACTED]) as set forth below  
DESCRIPTION OF OFFENSE: ARMED ROBBERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
defendant at the time of its execution or as soon thereafter as is practicable.  
Signature of Issuing Judge: C. L. Hudnell (L.S.)  
Judge's Address: 1400 HUGER ST  
COLUMBIA SC 29202 - 0000  
Judge's Telephone: 803 748-4746  
Issuing Court:  Magistrate  Municipal  Circuit  
Judge Code: GS

ORIGINAL

W

WITNESSES

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Office: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

W

WITNESSES

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Office: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

TESTIMONY OF WITNESSES

*C. H. Walker*  
*Officer*  
*P.P. J. Conroy*  
*B.S.C.*

COMMENTS

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Office: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

COMMENTS

W

W

WITNESSES

E. Barnes, RCSD

*E. Barnes*

ARREST WARRANT NO Q246916

ACTION OF GRAND JURY

**TRUE BILL**

*George B. Hillman*  
Foreman of Grand Jury

VERDICT

*Guilty*

*George C. Stauderone 2-7-01*  
Foreman of Petit Jury Date

DOCKET NO. 2000 GS 40-47714

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#104 JULY TERM 2000

THE STATE

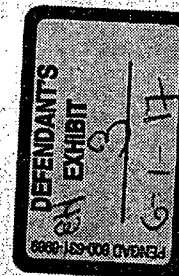
vs.

DEMARCO JOHNSON

Indictment for

ARMED ROBBERY

S. C. Code Section 16-11-330(A) Class A-Felony  
0139



FORM 32 (12/87)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

INDICTMENT FOR  
 ARMED ROBBERY

At a Court of General Sessions, convened on July 12, 2000  
 the Grand Jurors of RICHLAND County present upon their oath:

That DEMARCO JOHNSON did in Richland County on or about the 14th day of December, 1999, commit robbery by feloniously taking from the person or presence of Norman Dorn by means of force or intimidation goods or monies of Norman Dorn such goods or monies being described as U.S. Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Walter B. Meade  
 SOLICITOR

WITNESSES

E. Barnes, RCSD

*E. Barnes*

ARREST WARRANT NO 0246914

ACTION OF GRAND JURY

TRUE BILL

*James R. Allen*  
Foreman of Grand Jury

VERDICT

*Guilty*

*George C. Anderson 2-7-01*  
Foreman of Petit Jury Date

DOCKET NO. *2000-6240-47716*

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#106 JULY TERM 2000

THE STATE

vs.

DEMARCO JOHNSON

Indictment for  
KIDNAPPING

S. C. Code Section 16-3-910 Class A-Felony  
0095



WITNESSES

E. BARNES, RCSD

*Dev. C. H. Barnes*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ARREST WARRANT NO G246913

ACTION OF GRAND JURY

TRUE BILL

*Jimmy R. Sellen*  
Foreman of Grand Jury

VERDICT

*Guilty*

*Mary C. Standness* 2-7-01  
Foreman of Petit Jury Date

DOCKET NO. 2000 GS 40-47717

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#104 JULY TERM 2000

THE STATE

vs.

DEMARCO JOHNSON

Indictment for

KIDNAPPING

S. C. Code Section 16-3-910 Class A-Felony  
0095

FORM 12 (12/87)

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )

INDICTMENT FOR  
 KIDNAPPING

At a Court of General Sessions, convened on July 12, 2000  
 the Grand Jurors of RICHLAND County present upon their oath:

That DEMARCO JOHNSON did in Richland County on or about December 14, 1999,  
 unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any  
 person, to wit: Norman Dorn by any means whatsoever without authority of law.

Against the peace and dignity of the State, and contrary to the statute in such case made and  
 provided.

Walter B. Giese  
 SOLICITOR

WITNESSES

E. Barnes, BCSD

*Dr. E. W. Barnes*

ARREST WARRANT NO. G246915

ACTION OF GRAND JURY

TRUE BILL

*James B. Allen*  
Foreman of Grand Jury

VERDICT

*Guilty*

*Henry C. Stuckman* 2-20-01  
Foreman of Petit Jury Date:

DOCKET NO. 2000-65 40-47718

The State of South Carolina,

RICHLAND

County of

COURT OF GENERAL SESSIONS

#104 JULY TERM 2000

THE STATE

vs.

DEMARCO JOHNSON

Indictment for Burglary  
(Dwelling)

FIRST DEGREE

S. C. Code Section 16-11-311 Felony  
0079

FORM 1 (12/87)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

INDICTMENT FOR BURGLARY  
(DWELLING)  
FIRST DEGREE

At a Court of General Sessions, convened on July 12, 2000  
the Grand Jurors of RICHLAND County present upon their oath:

**COUNT ONE -- BURGLARY IN THE FIRST DEGREE  
(DWELLING)**

That DEMARCO JOHNSON  
did in Richland County on or about December 14, 1999  
willfully and unlawfully enter the dwelling of Norman Dorn  
without consent and with the intent to commit a crime therein and the defendant  
while therein was armed with a ~~shotgun~~ WEAPON 7/14/2/5/0,  
upon Norman Dorn

**COUNT TWO -- BURGLARY IN THE SECOND DEGREE  
(DWELLING)**

That \_\_\_\_\_  
did in \_\_\_\_\_ County on or about \_\_\_\_\_  
willfully and unlawfully enter the dwelling of \_\_\_\_\_  
without consent and with the intent to commit a crime therein.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Chase  
SOLICITOR

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF RICHLAND )

The State of South Carolina )

vs. )

Demarco Johnson, )  
Defendant. )

**NOTICE OF INTENTION TO SEEK A  
SENTENCE OF LIFE WITHOUT PAROLE**

Indictment Numbers: 2000 GS 40 4714,  
47716, 47717, 47714

TO: Demarco Johnson, Defendant  
Sheila Mims, Attorney for the Defendant

01 JAN -5 AM 2001  
BARNEY GIESA  
SOLICITOR  
FIFTH JUDICIAL CIRCUIT

FILED

PLEASE TAKE NOTICE that upon conviction (trial or guilty plea) of the above-entitled action to be scheduled on a date at least ten (10) days hence, of which you will be timely notified, the State will seek a sentence of life imprisonment without the possibility of parole, pursuant to South Carolina Code of Laws, Section 17-25-45 (1995) as amended. The State intends to rely upon the following prior convictions of the defendant to statutorily enhance his punishment:

- (1) Conviction for Assault and Battery With Intent to Kill on March 21, 1997, Indictment Number 96 GS 40 12219;
- (2) Conviction for Attempted Armed Robbery on March 21, 1997, Indictment Number 96 GS 40 12224;
- (3) Conviction for Attempted Armed Robbery on March 21, 1997, Indictment Number 96 GS 40 12220.

See copies of certified convictions.

*W. Barney Giesa*  
W. Barney Giesa, Solicitor  
Fifth Judicial Circuit

*Dana A. Pellizzari*  
Dana A. Pellizzari,  
Assistant Solicitor

Columbia, South Carolina  
This 5<sup>th</sup> day of January 2001

DEFENDANT'S  
EXHIBIT  
4  
6-1-17

Judge : M. Westbrook  
st. : Pascoe / Pellizzari  
Df : S. Mias / A. Sampson  
Ref. : R. DeFrese

Jury Sworn:  
9:53 am  
2-6-01

2-5-01

# FELONY

Challenged by State

Challenged by Defendant

(5)  
(1)

(10) IIII  
(2)

Excused by Court

THE STATE

00-65-40-47714, 716, 717, 718

## INDICTMENT

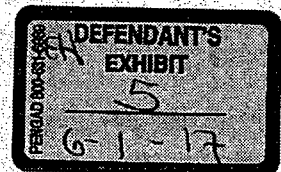
Demarco Johnson

Armed Robbery Kidnapping,  
Kidnapping, Burglary 1st

The prisoner is put to the bar and arraigned, and upon his arraignment pleads not guilty, and for trial puts himself upon God and his country, expresses his readiness to come to trial immediately, and is put upon his trial.

After various challenges, the following jury is formed, viz:

- |                              |                              |
|------------------------------|------------------------------|
| 1. George C. Stoudemire #157 | 7. Judy B. Hammond #157      |
| 2. Kathleen M. Folks #101    | 8. George J. Kenakis #277    |
| 3. Hevan Smith #315          | 9. Dorothy S. Walker #378    |
| 4. Dean H. Felschow #117     | 10. Michael S. Clem #69      |
| 5. Dorothy C. Thompson #336  | 11. Barbara A. Dessasure #26 |



(5)  
(1)

(10) IIII  
(2)

Excused by Court

THE STATE

00-65-40-47714, 716, 717, 718

INDICTMENT

Demarco Johnson

Armed Robbery Kidnapping,  
Kidnapping, Burglary 1st

The prisoner is put to the bar and arraigned, and upon his arraignment pleads not guilty, and for trial puts himself upon God and his country, expresses his readiness to come to trial immediately, and is put upon his trial.

After various challenges, the following jury is formed, viz:

- |                                     |                               |
|-------------------------------------|-------------------------------|
| 1. George C. Stoudemire #35 Foreman | 7. Judy B. Hammond #154       |
| 2. Kathleen M. Folks #101           | 8. George J. Kenakis #377     |
| 3. Levan Smith #315                 | 9. Dorothy S. Walker #378     |
| 4. Dean H. Felschow #117            | 10. Michael S. Clem #69       |
| 5. Dorothy C. Thompson #336         | 11. Barbara A. Dessasure #206 |
| 6. Gerda M. Kahn #200               | 12. Deloris Goins #132        |
|                                     | Alt. Judith A. Daly # 02      |

The following witnesses were sworn:

FOR THE STATE:

FOR THE DEFENCE:

- |                       |    |
|-----------------------|----|
| 1. Norman Van Dorn    | 1. |
| 2. Ketra Hearon       | 2. |
| 3. Michael D. Pearson | 3. |
| 4. Dennis Dodge       | 4. |
| 5. Robert L. Prichard | 5. |

(Over)

The evidence being closed, and argument heard, his Honor, the Judge, sums up, and the Jury retires.

1:10P  
2-7-01

The Jury returns the following verdict: 3:15 pm

Guilty as charged on all counts.

Witnesses for the  
State

---

6. Shawn Swicesood
7. Wendall T. Harris
8. Lonnie Gross, II
9. James Stan Smith



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATE VS.

INDICTMENT/CASE#

Demarco Johnson

00 -GS- 40 - 47714

AKA:

A/W#: G24691

Race: B Sex: M Age: 21

Date of Offense: 12-14-99

DOB: [REDACTED] SS#: [REDACTED]

S.C. Code §: 16-11-330 (A)

Address: [REDACTED]

CDR Code #: 011319

Columbia, SC

CASE RESTORED

DL# \_\_\_\_\_ SID# SC00913437

SENTENCE

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 011319

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State

ATTEST:

Tana Pelluso

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of \_\_\_\_\_ days/months/years,  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_ upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and fees, if applicable, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. LIFE WITHOUT PAROLE

The Defendant is to be given credit for \_\_\_\_\_ days/months/jail time.

CONCURRENT or  CONSECUTIVE to sentence on: 2/7/01

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$

§14-1-206 (Assessments 100%) \_\_\_\_\_ \$

§14-1-211(A)(1) (Surcharge) \_\_\_\_\_ \$

§14-1-211(A)(2) (Surcharge) \_\_\_\_\_ \$

§56-5-2995 (DUI Assessment) \_\_\_\_\_ \$

3% to County (if paid in installments) \_\_\_\_\_ \$

TOTAL \_\_\_\_\_ \$

Barbara Scott  
Clerk of Court/ Deputy Clerk

Court Reporter: R. D. Dease

White - Clerk

Green - Corporator

Canary - Probation

Pink - Defendant

PRESIDING JUDGE

Judge Code: D10161

Sentence Date: 2/7/01

DEFENDANT'S EXHIBIT  
6  
6-1-14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland  
STATE VS.

INDICTMENT/CASE#

Demarco Johnson

00 GS 40-47716

AKA:

A/W# G246914

Race: B Sex: M Age: 21

Date of Offense: 12-14-99

DOB: [REDACTED] SS#: [REDACTED]

S.C. Code § 16-3-910

Address: [REDACTED]

CDR Code #: 0095

Columbia, SC

CASE RESTORED

DL# [REDACTED] SID# 3000913437

SENTENCE

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

Dana Williams  
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of \_\_\_\_\_ days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_ provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and expenses, if applicable, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. LIFE WITHOUT PAROLE.

The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.

CONCURRENT or  CONSECUTIVE to sentence on: 2/7/01

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

set by SCDPPPS

Recipient: \_\_\_\_\_

\*Fine: ..... \$ \_\_\_\_\_

§14-1-206 (Assessments 100%) ..... \$ \_\_\_\_\_

§14-1-211(A)(1) (Surcharge) ..... \$ \_\_\_\_\_

§14-1-211(A)(2) (Surcharge) ..... \$ \_\_\_\_\_

§56-5-2995 (DUI Assessment) ..... \$ \_\_\_\_\_

3% to County (if paid in instalments) ..... \$ \_\_\_\_\_

TOTAL ..... \$ \_\_\_\_\_

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc Rehab. or Job Corps \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund.

Other: \_\_\_\_\_

Emilia Scott  
Clerk of Court/ Deputy Clerk

Court Reporter: R. DeFrees

Plaintiff - Clerk

Green - Corrections

Orange - Probation

Pink - Defendant

PRESIDING JUDGE: [Signature]

Judge Code: 0101915

Sentence Date: 2/7/01

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#

COUNTY OF Richland  
STATE VS

00 GS- 40 - 47717

AKA Demarco Johnson

A/W# 6246913

Race: B Sex: M Age: 21

Date of Offense: 12-14-99

DOB [REDACTED] SS# [REDACTED]

S.C. Code §: 16-3-910

Address: Columbia, SC

CDR Code # 0095

DL# \_\_\_\_\_ SID# SC00913437

CASE RESTORED

SENTENCE

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 010915

NON-VIOLENT  VIOLENT  SERJIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:  
Dana Bellamy  
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of \_\_\_\_\_ days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_ provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_, plus costs and \_\_\_\_\_ as applicable, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. LIFE WITHOUT PAROLE

The Defendant is to be given credit for \_\_\_\_\_ days/months/jail time.  
 CONCURRENT or  CONSECUTIVE to sentence on: 2/7/01

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc Rehab or Job Corps \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund.  
Other: \_\_\_\_\_

Payment Terms:  
 set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_  
\*Fine: \_\_\_\_\_ \$  
§14-1-206 (Assessments 100%): \_\_\_\_\_ \$  
§14-1-211(A)(1) (Surcharge): \_\_\_\_\_ \$  
§14-1-211(A)(2) (Surcharge): \_\_\_\_\_ \$  
§56-5-2995 (DUI Assessment): \_\_\_\_\_ \$  
3% to County (if paid in installments): \_\_\_\_\_ \$  
TOTAL: \_\_\_\_\_ \$

Amara Scott  
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE [Signature]  
Judge Code: D101613  
Sentence Date: 2/7/01

Court Reporter: [Signature]  
White - Clerk Green - Corrections

Cover - Probation Red - Defendant  
SCCA217 (2001)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#

COUNTY OF Richland  
STATE VS.

00 -GS- 40 - 47718

Demarco Johnson

A/W# 6246915

AKA \_\_\_\_\_

Date of Offense: 12-14-99

Race: B Sex: M Age: 21

S.C. Code § 16-11-311

DOB: [REDACTED] SS#: [REDACTED]

CDR Code # 0 / 0 / 7 / 9

Address: [REDACTED]

CASE RESTORED

DL# \_\_\_\_\_ SID# SC00913437

SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Burglary 1st

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 7 / 9

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:  
Dana Pellizz  
Solicitor

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of \_\_\_\_\_ days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. LIFE WITHOUT PAROLE

The Defendant is to be given credit for \_\_\_\_\_ days/months jail/time.  
 CONCURRENT or  CONSECUTIVE to sentence on: 2/7/01

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc Rehab. or Job Corps \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund.  
Other: \_\_\_\_\_

Recipient: \_\_\_\_\_  
\*Fine: \_\_\_\_\_ \$  
§14-1-206 (Assessments 100%) \_\_\_\_\_ \$  
§14-1-211(A)(1) (Surcharge) \_\_\_\_\_ \$  
§14-1-211(A)(2) (Surcharge) \_\_\_\_\_ \$  
§56-5-2995 (DUI Assessment) \_\_\_\_\_ \$  
3% to County (if paid in installments) \_\_\_\_\_ \$  
TOTAL \_\_\_\_\_ \$

[Signature]  
Clerk of Court/Deputy Clerk

PRESIDING JUDGE [Signature]  
Judge Code: 0191612  
Sentence Date: 2/7/01

INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	MALE	SCDC ID:	00241438
RACE:	BLACK	SID:	SC00913437
HEIGHT:	5' 09"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	176 lbs.	ADMISSION DATE:	02/12/2001
AGE:	37	LOCATION:	BROAD RIVER
CITIZENSHIP:	CITIZEN - NATIVE BORN	DORM-ROOM-BUNK:	MA-0215-A
BUILD:	MEDIUM	SECURITY / CUSTODY:	3 / MINIMUM IN
COMPLEXION:	MEDIUM BROWN	EWC LEVEL:	3F5
HAIR COLOR:	BLACK	EEC LEVEL:	
EYE COLOR:	BROWN	PROJECTED RELEASE DATE:	NOT ELIGIBLE
PICTURE DATE:	03/23/2011	PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
		SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

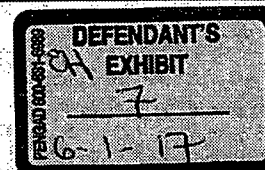
CURRENT OFFENSES											
OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/IV	CAT	INDICT	STATUS	
ATTEMPTED ARMED ROBBERY	ADULT-STRAIGHT SENTENCE	4	0	0	RICHLAND	02/08/2001	V	4	96GS4012224	ACTIVE	
ATTEMPTED ARMED ROBBERY	ADULT-STRAIGHT SENTENCE	4	0	0	RICHLAND	02/08/2001	V	4	96GS4012220	ACTIVE	
ASSLT & BATT W/INTNT KILL	ADULT-STRAIGHT SENTENCE	4	0	0	RICHLAND	02/08/2001	V	4	96GS4012219	ACTIVE	
BURGLARY-1ST DEGREE	ADULT-STRAIGHT SENTENCE	LIFE SENTENCE			RICHLAND	12/14/1999	V	4	00GS4047718	ACTIVE	
KIDNAPPING	ADULT-STRAIGHT SENTENCE	LIFE SENTENCE			RICHLAND	12/14/1999	V	5	00GS4047716	ACTIVE	
ARMED ROBBERY	ADULT-STRAIGHT SENTENCE	LIFE SENTENCE			RICHLAND	12/14/1999	V	4	00GS4047714	ACTIVE	

**ESCAPES**  
NO ESCAPES DURING CURRENT INCARCERATION

**DISCIPLINARIES**  
NO DISCIPLINARIES DURING CURRENT INCARCERATION

MOVEMENT			
MOVEMENT DATE	TO LOCATION	STATUS	REASON
07/13/2016	BROAD RIVER	INCARCERATED	RETURN FROM COURT
07/13/2016	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
11/12/2008	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
02/26/2007	LEE	INCARCERATED	RETURN FROM COURT
02/26/2007	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
12/06/2006	LEE	INCARCERATED	RETURN FROM COURT
12/06/2006	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
10/17/2002	LEE	INCARCERATED	ADMINISTRATIVE
03/08/2001	KERSHAW	INCARCERATED	ADMINISTRATIVE
02/12/2001	KIRKLAND	INCARCERATED	PROBATION VIOLATOR

EMPLOYMENT HISTORY				
JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
CUSTODIAN HELPER	01/26/2016			3F5
INDUSTRIES TRAINEE	06/11/2015	01/25/2016	REDUCTION IN FORCE	3F5
RECREATION ASSISTANT	07/14/2014	06/10/2015	PROMOTION	3F5
RECREATION ASSISTANT	06/29/2013	06/29/2014	PLACED IN ST/SP CUSTODY	3F5
WARDKEEPER ASSISTANT	08/30/2012	08/25/2013	INMATE REQUEST	3F5
CANTEEN OPERATOR HELPER	02/07/2012	08/29/2012	INMATE REQUEST	3F5



EARNED WORK CREDITS				
JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
CHIEF CLERK	08/12/2010	02/06/2012	INMATE REQUEST	3F5
RECREATION AIDE	04/09/2009	08/11/2010	INMATE REQUEST	3F5
WARDKEEPER ASSISTANT	11/13/2008	04/08/2009	INMATE REQUEST	3F5
SCDC INM AD CONL REF	10/23/2008	11/12/2008	INSTIT TRANSFER	3F5
LIBRARY HELPER	07/17/2008	10/22/2008	LATERAL TRANSFER	3F5
CANTEEN OPERATOR	09/06/2007	07/16/2006	LATERAL TRANSFER	3F5
MATERIAL HANDLING EQ OP	03/05/2007	09/05/2007	INMATE REQUEST	3F5
MACHINE OPERATOR	04/25/2006	03/04/2007	PROMOTION	3F5
SENIOR CANTEEN OPERATOR	08/16/2005	04/24/2006	INMATE REQUEST	3F5
CANTEEN OPERATOR	08/09/2005	08/15/2005	INSTIT TRANSFER	3F5
GENERAL WORKER	05/23/2005	08/08/2005	INMATE REQUEST	3F5
MACHINE OPERATOR	01/22/2003	06/22/2005	INMATE REQUEST	3F5
SENIOR CUSTODIAN	10/22/2002	01/21/2003	INMATE REQUEST	3F5
SHIP & RECEIVING CLK HLP	09/11/2001	10/17/2002	INSTIT TRANSFER	3F5
FOOD SERVICE AIDE	03/14/2001	09/10/2001	INMATE REQUEST	2F5

EARNED EDUCATION CREDITS			
EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	02/27/2014	06/25/2014	PLACED IN ST/SP CUSTODY
BONUS 4-7 HRS/WK	05/17/2010	11/13/2013	COMPLETED EDUC PROGRAM



or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation." 132 S.Ct. at 2468. Thus, if a juvenile offender received an LWOP sentence and did not present mitigating evidence relating to the offender's youth, the offender is entitled to resentencing.

In order for an offender to fall within the purview of *Aiken v. Byars*, the offender must have: 1) been a juvenile at the time of sentencing, 2) received a sentence of life without parole, and 3) received that sentence without the sentencing court considering the "hallmarks of youth" as described in *Miller v. Alabama*.

Based upon the arguments presented, I find that Petitioner does not fall within the purview of *Aiken v. Byars* because he was not a juvenile at the time his LWOP sentence was imposed. Petitioner was born on [REDACTED] 1979. At the time of his arrest for these offenses on December 15, 1999, he was twenty (20) years old. Further, at the time of his conviction on February 7, 2001, he was twenty-one (21) years old.

Petitioner further claimed he was entitled to a re-sentencing due to the fact that he received a LWOP sentence where "the triggering offense was a conviction in 1997 stemming from crimes committed as a juvenile" thus violating "the Fourth Amendment to the U.S. Constitution and the South Carolina Constitution" (Ex. 1). The State submitted that Petitioner's claim was without merit and unsupported by law.

In *State v. Green*, 412 S.C. 65, 770 S.E. 2d 424 (Ct. App. 2015), the South Carolina Court of Appeals addressed a nearly identical situation as the one at issue in the Petitioner's Motion for Re-Sentencing. Green was found guilty at trial of Armed Robbery. Pursuant to the recidivist statute, section 17-25-45 of the South Carolina Code, he was sentenced to LWOP as he had been properly served before trial with the State's notice of intent to seek LWOP upon conviction. Green argued that because he was a juvenile at the time of his prior conviction, a sentence of LWOP would violate his Eighth Amendment rights. He went on to assert that "although he was twenty years old at the time of sentencing, and nineteen years old at the time of the current offense, he was only seventeen years old when he committed the prior offense that served as the triggering offense under the recidivist statute." *Id* at 75. The trial court rejected Green's assertion and he was sentenced to LWOP.

On appeal, the South Carolina Court of Appeals took an in depth look at this issue and found that Green's LWOP sentence was not in violation of the Eighth Amendment. The initial analysis focused on the statutory sentencing enhancement prescribed by 17-25-45 which states, in part:

"[E]xcept in cases in which the death penalty is imposed, upon a conviction for a most serious offense[,] ... a person must be sentenced to a term of imprisonment for [LWOP] if that person has ... one or more prior convictions for ... a most serious offense." Armed robbery is defined as a "most serious offense." S.C. Code Ann. § 17-25-45(C)(1) (2014).

Having established that two or more most serious convictions makes an offender eligible for LWOP, the court examined the issue of Green's prior conviction and determined that because he was tried on the first case as an adult in general sessions court, there was no error in sentencing him to LWOP under the recidivist statute. *Green* at 84 citing *State v. Standard*, 351 S.C. 199, 203, 569 S.E.2d 325, 328 (2002).

The next issue addressed by the *Green* court was whether the sentence, though proper under the recidivist statute, ran afoul of the Eighth Amendment prohibition against cruel and unusual punishment. "In *Standard*, our supreme court held it is not cruel and unusual punishment to sentence a defendant to LWOP utilizing enhanced penalties for a burglary committed when the defendant was a juvenile so long as the defendant was tried and sentenced as an adult for the triggering offense." *Green* at 85 citing *State v. Standard*, 351 S.C. at 204, 569 S.E.2d at 328. As such, the court held that "the trial court did not err in finding Green's sentence did not constitute cruel and unusual punishment because our appellate courts have rejected the argument that it is cruel and unusual punishment to use prior convictions for offenses committed as juveniles for sentencing enhancement under section 17-25-45." *Green* at 86; See also *Standard*, 351 S.C. at 204, 569 S.E.2d at 328; *Williams*, 380 S.C. at 345-46, 669 S.E.2d at 645.

Finally, the *Green* court addressed the applicability of *Miller* and found it to be inappropriate:

Although *Miller* held that mandatory LWOP sentences for juveniles violate the Eighth Amendment, Green was twenty years old at the time of sentencing; therefore, he was not a juvenile when he was sentenced to LWOP. *Miller's* holding was based, in part, on the "recklessness,


impulsivity, and heedless risk-taking" of children; however, because Green was not a juvenile at the time he committed the current armed robbery, the policy considerations from *Miller* are inapplicable. 132 S.Ct. at 2458; see also *Aiken*, 410 S.C. at 541-42, 765 S.E.2d at 576 ("[T]he Court in *Miller* noted that ... children were constitutionally different from adults for sentencing purposes, a conclusion that was based on common sense as well as science and social science."). Therefore, Green's LWOP sentence did not violate the Eighth Amendment. *Green* at 86-87.

I FIND THAT Petitioner's current claim is nearly identical to the scenario in *Green*. At the time of Petitioner's first conviction for a most serious offense, he was a juvenile; however, the conviction occurred in General Sessions court thus exposing him to the consequences of future convictions under the Recidivist statute. Further, at the time of these convictions, and even the arrest for that matter, the Petitioner was no longer a juvenile as he was twenty (20) and twenty-one (21) years old, respectively.

THEREFORE, I FURTHER FIND that in light of Petitioner being classified as an adult by virtue of his age at the time of both the incident and the conviction, he does not fall within the class of offenders described in *Aiken v. Byars*; nor the ones in *Miller v. Alabama*, and as such, he is not entitled to a re-sentencing.

IT IS THEREFORE ORDERED adjudged and decreed that the State's Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED.

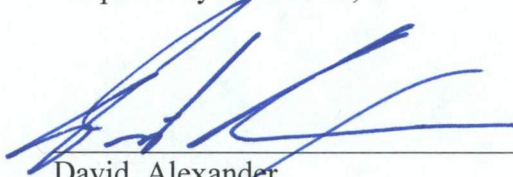
  
 The Honorable R. Knox McMahon  
 Presiding Judge  
 Court of General Sessions

This 21 day of June, 2018.  
 Columbia, South Carolina

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of March, 2019.

**RECEIVED**  
MAR 19 2019  
SC Court of Appeals

