

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Larry Hyman, Circuit Court Judge

Lower Court Case No. 1996-GS-26-02809

Appellate Case No. 2019-001104

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DEC 02 2019

SC Court of Appeals

The State,

Respondent,

v.

Roger S. Legette,

Appellant.

Motion to Reinstate the Appeal

Pursuant to SCACR Rule 260 (a), the appellant moves this Court to reinstate his appeal for good cause shown.

I. PROCEDURAL HISTORY.

After a jury trial in 1997, Appellant was sentenced to Life for a homicide committed in May of 1996, when Appellant, who was born on August 8, 1980, was sixteen years old. In *Aiken v. Byars*, the Supreme Court of South Carolina determined that *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012) (holding that imposing a life without parole sentence on a juvenile offender without considering the hallmark characteristics of juveniles in general and the particular mitigating circumstances in the defendant's individual case in particular violated the Eighth Amendment), applied retroactively in South Carolina. 410 S.C. at 540, 765 S.E. 2d at

575. The Court next opined that applying the constitutional principles articulated in *Miller* to South Carolina's *pre-Miller* sentencing practices, all life without parole sentences imposed on juveniles in this State prior to *Miller* and *Aiken* constituted cruel and unusual punishment. 410 S.C. at 545, 765 S.E. 2d at 577. For that reason, the Court ordered that all juveniles sentenced to life without parole in South Carolina prior to *Aiken* were "entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight." *Id.* at 544; 765 S.E.2d at 577. Finally, on July 23, 2015, following the United States Supreme Court's denial of the Attorney General's petition for writ of certiorari, the South Carolina Supreme Court entered an order permitting any individual "affected by our holding in *Aiken* [to] file a motion for resentencing within one year of the date of this order in the court of general sessions where he or she was originally sentenced." *Aiken v. Byars*, Appellate Case No. 2012-213286 (July 23, 2015). Appellant timely filed a motion to reconsider sentence. Thereafter, the SC Supreme Court vested the Honorable Larry Hymen, Circuit Court Judge, with exclusive jurisdiction to preside over all aspects of Appellant's resentencing trial.

The resentencing trial judge re-sentenced Appellant to forty years on February 11, 2016. Many motions, including a motion to reconsider the forty year sentence and a motion to relieve counsel followed. The resentencing trial judge granted Appellant's motion to relieve appointed counsel and his motion to withdraw the motion to reconsider sentence on June 4, 2019. Appellant filed a notice of appeal pro se in the SC Supreme Court on June 5, 2019, omitting the proper certificates of service to the appropriate parties and the lower Court. The SC Supreme Court issued an order transferring the appeal to this honorable Court pursuant to Rule 204(a), SCACR on June 10, 2019, and copied the SC Attorney General on the transfer order. Senior

Assistant Deputy Attorney General Melody Brown wrote this Court wherein she acknowledged the appeal and requested that correspondence be directed to the Attorney General's Capital Trial Division.

Once the action was transferred to this Court, it notified appointed counsel and Chief Appellate Defender Robert Dudek that the notice of appeal was deficient due to the failure to serve the notice on all appropriate parties. The Appellant tried to correct the deficiencies on his own. However, the Court addressed the deficiency notices primarily to appointed resentencing trial counsel. This Court did not acknowledge Appellant as a pro se litigant because it had not received the order relieving appointed resentencing trial counsel. Appointed counsel for the resentencing trial were required to obtain a written order relieving them as Appellant's counsel, which they, with their best efforts, were only able to obtain from the resentencing Court on August 5, 2019 and filed with this Court on August 6, 2019. This Court received it on August 7, 2019.

After receiving a deficiency notice, Appellant filed a correction to the deficiency it received on August 8, 2019. On August 19, 2019, this Court sent an "Allowed to Proceed" letter to Appellant. Appellant was unsuccessful in obtaining the outstanding transcript from his resentencing trial hearings because he could not pay the court reporter for the outstanding transcription. Appellant notified this Court that he could not obtain the transcript. This Court notified Appellant that he would need to file motions with appropriate notice to the parties for any action he sought from this Court, and that on that date, his letters would no longer be acted on by this Court. Applicant filed a motion to compel the court reporter to transcribe and produce the necessary transcripts to perfect his appeal. In a letter dated October 4, 2019, this Court notified Appellant that his motion was deficient due to failure to serve the motion to all required

parties, and gave him ten days to correct the deficiency or “[Appellant’s] motion would not be considered.” Appellant corrected the deficiency, which was received and posted on October 14, 2019, within this Court’s deadline for him to do so. This Court made no ruling on the motion. By order dated November 14th, 2019, this Court dismissed Appellant’s appeal pursuant to rule 203(b)(1), because Appellant “failed to provide a proof of service showing timely service of the notice of appeal.” The deadline for filing this motion is December 2, 2019, which requires it to be in Clerk’s office on this day. For that reason, I am honoring my duty to look out for my former client’s best legal interest even after I was relieved as counsel, and at his specific request to help him file this motion.

II. REASONS to REINSTATE the APPEAL

Pursuant to Rule SCACR Rule 260 (a), this Court may reinstate Appellant’s appeal for good cause shown. Appellant offers the following bases on which this Court may find that Appellant has demonstrated good cause:

1. Unless the Court reinstates Appellant’s appeal, he will be deprived of his right to appeal and to his day in Court on this appeal. After receiving notice of the discrepancies regarding the Notice of Appeal, Appellant in good faith corrected the discrepancies within this Court’s deadlines. Although Appellant had difficulties understanding certificates of service to required parties, Appellant did not do so willfully or with the intent to thwart the rules. Instead, Appellant respectfully complied, to the best of his abilities, especially considering the realities of the limitations incarceration that sometimes thwart a pro se litigant’s best efforts to be timely file documents. Despite those limitations, Appellant successfully persevered to correct the deficiencies within the time allotted by this Court in the deficiency notices. Appellant should not be punished for the inadequacies he corrected to the very best of his abilities and in good faith.

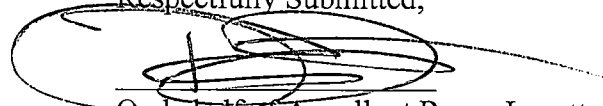
2. The matter of who was actually counsel of record for this appeal was not established until, August 7, 2019, two months after the notice of appeal was filed. This Court treated Appellant as represented party until August 7, 2019. Thereafter, this Court then sent Appellant an "Allowed to proceed letter," on which Appellant relied. In similar situations regarding identifying counsel or appointment of counsel, the SC Supreme Court has shown leniency.

3. Counsel for Respondent was consulted and declined to consent because "notice was not received [by the Solicitor] until August 2019" from the Appellant. While that is true, the Solicitors received actual notice of the appeal from this Court by letter dated July 1, 2019 to former counsel for Appellant. Although the State is not required to do so, it would seem extremely difficult for the it to demonstrate actual prejudice by this Court reinstating Appellant's appeal, especially considering points one and two, *supra*. Because the appeal is not from a plea or plea bargain, and the Appellant was not required to state the bases for the appeal, the notice the State would receive is borders on non-existent.

III. PRAYER FOR RELIEF.

For all the reasons offered, *supra*, Appellant respectfully requests that this Court have mercy on him by reinstating his appeal.

Respectfully Submitted,



On behalf of Appellant Roger Legette, Pro se
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December 2, 2019
Columbia, South Carolina

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Appellant's Motion for Reinstatement of his Appeal in the above-referenced matter has been served upon opposing counsel and other entities as required, by depositing same in the U. S. Mail, postage paid, this 2nd day of December, 2019, addressed as follows:

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Conway, SC 29526

Honorable Renee Elvis,
Clerk of Court for Horry County
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