VOL. II OF II

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ZANTRAVIOUS RANDELL HALL,

APPELLANT

APPELLATE CASE NO. 2018-002176

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

<u>OCTOBER 8-12, 2018 TRIAL:</u> STATE'S EXHIBIT #55 (DVD); STATE'S EXHIBIT #93 (REDACTED TELEPHONE CONVERSATIONS APPELLANT HAD ON NOVEMBER 23, NOVEMBER 30, AND DECEMBER 4, 2017 WHILE IN GREENWOOD COUNTY DETENTION CENTER); AND COURT'S EXHIBIT #5 (DVD OF SNAPCHAT)

MR. SHAFFER: Your Honor, we would just put on the -- on the record, in addition to our other grounds, that to use as strike -- or this conviction from whenever he was a juvenile as a strike would violate equal protection. Obviously, in South Carolina a juvenile adjudication would not be used as a strike under our case law.

As applied to -- to Mr. Hall, it is actually an equal protection violation to use a conviction as a strike, as well. We believe that the proper -- I guess, if there should be heightened scrutiny on this due to the fact that, you know, juvenile adjudicate -- adjudication is somewhat of a protected class, but even under the rational basis test, we would submit that even under the rational basis test, there's no rational basis for treating Mr. Hall differently just because of the fact that he got transferred to adult court versus juvenile court.

THE COURT: All right. Thank you very much. Solicitor Thomas, anything in response?

MR. THOMAS: Your Honor, I think the only thing I need to say in response to that, obviously it's basically he's making age sort of the -- the category that he's using here in an equal protection

argument. That's rational basis. I mean, it's not a protected class, age isn't.

You want to look at the -- the compel -- the legitimate state interest. Obviously, there's an interest in some juveniles who have committed atrocious crimes to be waived up to General Sessions Court. That's a -- that's a relevant legitimate state interest.

The statute we've got puts those protections into place, allows for the waiver hearing down there. We've done everything in the most, I guess, rationally related way we could to get there.

I don't know that argument, Your Honor. I found a little bit of case law, not a lot. There is some cases out of California that basically addressed this issue. And they basically found that these equal protection arguments, when we treated juvenile convictions -- or adult convictions of someone, a crime committed while they were a juvenile, when they get waived up, there's not equal protection violations.

THE COURT: Okay. All right. Thank you very much.

MR. SHAFFER: Your Honor, responding to *People versus* -- I'm assuming he's talking about the *People*

v. Cole, a California opinion. Your Honor ---

MR. THOMAS: I actually am, Your Honor.

MR. SHAFFER: I would submit to the Court that there -- there's some differences in the way that we look at it in South Carolina.

One of the -- one of the things is, people get waived up based off of a variety of factors that are not just, you know, the atrociousness of a crime. It doesn't have to necessarily deal with the crime.

Also, if you look at, you know, perhaps he got waived up. And we -- and it's our position that the Court really can't determine exactly why he was waived up because of the lack of description in the waiver order from the lower court, but perhaps, you know, if -- if part of the -- the reason is is that, you know, you can get waived up in South Carolina simply because of the fact that, you know, the -- the Court doesn't find that you're necessarily a great candidate or that, you know, a variety of other reasons.

It can just be the atrociousness of the crime, but that doesn't -- but all of those factors -- I guess what I'm saying is, those factors don't necessarily submit a valid state interest, each and every individual factor does not, for treating these

people differently.

THE COURT: Thank you very much.

Solicitor Brown, you had indicated that I think maybe the victim's mom wanted to either submit a letter or read a letter.

MR. BROWN: Yes, Your Honor. I believe she would like to address the Court.

THE COURT: Okay.

MR. BROWN: She does have a letter that's been typed. We can pass forward a typed form to you, but also she would like to read it, as well. And I do believe they brought a picture of Mr. McDuffie showing how he appeared ---

THE COURT: Okay.

MR. BROWN: --- right before his death.

THE COURT: Okay. All right. Thank you.

Ma'am, I'll need to have you sworn in first before you read or tell me whatever you plan to -- to do.

Madam clerk.

THE CLERK: If you'd raise your right hand.

THE VICTIM: (Complying.)

THE CLERK: Do you solemn -- do you solemnly swear the testimony you're about to give this Court to be the truth, the whole truth, and nothing but

the truth so help you God?

THE VICTIM'S MOTHER: I do.

THE COURT: Okay. And state your name, please, ma'am.

THE VICTIM'S MOTHER: Trista Faye McDuffie.

THE COURT: Okay. Ms. McDuffie, I'll be glad to hear from you.

THE VICTIM'S MOTHER: Okay. "Your Honor, my son, Emyle, was only 23 years old when his life was ended by a cold-blooded, heartless, evil murderer named Tight.

"November 21, 2017, is a day and year I wish I could erase, but I can't.

"My family is broken from the loss of our beloved Emyle. He was kind, loving, happy, humble, affectionate, and most of all, caring. He was a son, father, brother, and friend. Emyle had a smile that would light up a room. He was truly a gift from God.

"I am saddened mostly by the fact that Emyle and his daughter will never experience life together. Emyle's passing has left a hole in my family that will never be filled. I will mourn the loss of my son forever.

"I would like to thank the Solicitor's Office,

the victim advocates for their work and dedication to this case. Our family appreciates everything they have done to bring Tight to justice.

"Your Honor, I would respectfully ask you for a very strict sentence in this case."

THE COURT: Okay. Thank you, ma'am. I'm sorry for your loss.

Anything further from the State?

MR. THOMAS: Your Honor, I've made Court's Exhibit A-1 -- I'm sorry -- 1-A. We had a different court reporter, so we're not sure where we were up to with the other Court's exhibits, but it's 1-A. I know we don't have that, so...

It's a copy, two pages, of the sentencing sheet and the indictment for the prior conviction.

THE COURT: Okay.

MR. THOMAS: Certified copies from the clerk's office.

THE COURT: And what has been handed to me with the sentencing sheets in this case would be the original, which I can -- which I'll return back to the clerk's office.

MR. THOMAS: Okay.

THE COURT: Anything further from the State?

MR. THOMAS: Nothing from the State, Your

Honor.

THE COURT: Anything further from the defense?

MS. NELSON: As to sentencing, Your Honor?

THE COURT: Yes.

MS. NELSON: Your Honor, I -- I -- I don't know what your ruling is at this point on our motion.

THE COURT: Right.

MS. NELSON: So ---

THE COURT: I was just going -- what my plan was, to hear from anybody and everybody. And then -- then certainly before I pronounce sentencing, I will -- I will make a formal ruling on -- on the defense motion. I was just going to go ahead and get everybody to tell me what they really wanted to tell me.

MS. NELSON: Well, I guess -- I guess I don't want -- I would -- can I wait until I hear your ruling?

THE COURT: Okay.

MS. NELSON: Because I -- I'm not going to belabor anything if -- if I -- I don't need to.

THE COURT: Right. Okay. I will -- I will announce my ruling, but the basis for my ruling, I'll do it at the very end, but I will go ahead and inform the State and the defense that I am denying

your motion and ruling in favor of the -- the State and incorporating in my ruling the -- the State's memorandum that was submitted back in October in opposition to your motion. And I'll go into a little bit more detail right -- either prior to my sentencing, but that's -- that's my ruling.

MS. NELSON: Yes, sir, Your Honor. Just -- I just would like to tell the Court that -- that it has been a privilege for all of us to represent -- to represent Zan. He has been courteous and -- and understanding, I think, of his situation this entire time.

I'm sure that his -- his -- his mom, Sheila, is sitting over here. The mother of his child, Myangel, is sitting over here. They -- they love him and are a strong support system for him. They have -- we have talked to them, I think, just as -- just as often and intensely as we've talked to Zan, and I'm sure his mom could say a lot of similar things about him. It -- it's -- it's a tragedy for both ---

THE COURT: Right.

MS. NELSON: --- families and -- and Zan is -- Zan is ready to accept the Court's sentence, Your Honor.

THE COURT: Thank you very much. And I -- I will just -- I know that the families, even though I had to get a little harsh with some of the family members; nonetheless, family members from both sides were -- were, you know, in attendance every day. They were in full support of their respective side and -- and I certainly appreciate that.

I also would note the fine representation from these lawyers. This was not an easy case for the lawyers, and -- and I know that both sides, all four lawyers put -- or five lawyers put an extreme amount of time and preparation for this case and just did -- and I expected nothing less, but both sides did excellent presentation of the case and representation of their respective sides and I appreciate that.

Everybody be at ease for just a moment.

(Brief recess.)

THE COURT: Ms. Nelson, for purposes of the attempted murder charge, I need an amount of credit to go on the sentencing sheet.

MS. NELSON: Yes, Your Honor.

THE COURT: Can you give me that figure?

MS. NELSON: Yes, sir. We'll get it for you.

THE COURT: Thank you.

MS. NELSON: We'll get that right now.
MR. BROWN: Judge, I believe it's 374 days.
THE COURT: Excuse me?
MR. BROWN: I believe it's 374 days.
MS. NELSON: That's what I'm showing, as well.
THE COURT: 374. Thank you.
(Brief recess.)
THE COURT: Okay. I spent a considerable amount of time reviewing this case, reviewing the memorandum, the memorandum in opposition, all the cases cited in -- in -- in support of each position, and I think it's -- I think a proper decision as I've already announced is that the defendant's motion should be denied and that Mr. Hall should be sentenced pursuant to the recidivous statute 17-25-45.
Mr. Hall, if you would please stand.
THE DEFENDANT: (Complying.)
THE COURT: On the murder charge, you were found guilty by a jury on October 12, 2018. The sentence of the Court on the murder charge is that you'd be committed to the State Department of Corrections for a period of life without parole pursuant to 17-25-45.
Concurrent with that is a 30-year sentence as

you have been found guilty by a jury on October 12, 2018, a sentence of 30 years that will run concurrent with the murder charge.

MR. THOMAS: Your Honor, regarding that attempted murder sentence, it's the State's position that that is also a strike under 17-25-45 and we served notice including both of those indictments that we would ---

THE COURT: All right. Your notice included ---

MR. THOMAS: It did, Your Honor. It included both indictment numbers for the murder and the attempted murder.

THE COURT: Okay. Is that correct, Ms. Nelson?

MS. NELSON: I -- I don't see how a -- a simultaneous conviction could be used as a strike for purposes of sentencing on this murder charge. I'd see how the prior -- I understand your ruling on the prior ABWIK charge ---

THE COURT: Right.

MS. NELSON: --- from a number of years ago, but I -- our position would be that -- that convictions from the same day, same course of events would not be used as a prior strike for purposes of the recidivous statute.

THE COURT: Right.

MR. THOMAS: Well, we're not -- we're not using it as a -- we're not using these as two separate strikes. If he had been not convicted of the murder but convicted of the attempted murder, he still would be subject to LWOP.

MS. NELSON: I -- I -- I understand. I'm sorry. I misunderstood. He's -- Josh is saying that they noticed us on both those charges.

THE COURT: Right.

MS. NELSON: That the prior conviction would count toward either of them.

THE COURT: Right. Right. So what you're saying, Solicitor, is that the -- the correct sentence on the attempted murder would be LWOP, as well?

MR. THOMAS: The State's position, Your Honor, is under the recidivous statute that that, in fact, is also a mandatory life sentence.

THE COURT: Okay. All right.

MR. SHAFFER: And, Your Honor, just for clarification. I believe that the memorandum that we submitted was -- actually addressed both, but I just want to confirm because I was trying to go through. I believe I titled it for both of them,

but if not, we're joining our previous motion as to the sentencing for that one, for the attempted murder and the murder, Your Honor.

THE COURT: I'm not sure if I follow you, Mr. Shaffer, and I apologize.

MR. SHAFFER: Okay. I apologize, Your Honor. That may not have been clear.

We were objecting to the sentencing under the recidivous statute in general, not just as to the murder charge. We were objecting to the recidivous statute in general as to both charges.

THE COURT: Right. Right. Notwithstanding your position, would you believe that in light of my ruling in favor of the State that the attempted murder would also carry an LWOP.

MR. SHAFFER: Yeah, that's correct, Your Honor.

THE COURT: Okay. All right.

MS. NELSON: Yes.

THE COURT: Okay. So the -- on the attempted murder, the sentence is amended and that will also be a life commitment pursuant to 17-25-45.

On the failure to stop that you pled guilty to back on October 9th, that will be a time-served sentence.

And there will not be a sentence on the

possession of a weapon during the commission of a violent crime in light of the life sentences. All right?

MS. NELSON: Yes, sir.

THE COURT: Anything further from either side?

MR. THOMAS: Nothing from the State, Your Honor.

THE COURT: All right.

MS. NELSON: No, sir.

THE COURT: Thank you very much.

(The proceedings concluded at 10:06 a.m.)

* * * * *

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF Raven Jackson
COUNTY OF GREENWOOD)

Raven Jackson, being first duly sworn, swears and affirms that the following is true to the best of my knowledge:

1) My name is Raven Jackson. I am 21 years of age and competent to provide this affidavit.

2) I reside at 1091 Parkland Place Road, Swann Meadows Apartments, Unit F-6, Greenwood, South Carolina 29646.

3) Cedric Elmore and I have two children together. Our oldest child is Rayanna Jackson, who's date of birth is [redacted]. Our youngest child is Camdyn Elmore, who was born on [redacted], which was after Cedric was incarcerated.

4) On Tuesday, November 21, 2017, I had to be at work at the new Walmart location, Store 6887, at noon. I left my residence at 11:45 to 11:50 so I could get to work on time. I stopped to get gas on the way to work. I left Rayanna with Cedric at my residence. A copy of my time records is attached showing I clocked in at Walmart at 12:02 p.m.

5) While I was at work, I called several times to check on Rayanna and Cedric. Every time I called, I could tell that Cedric was still at my house with Rayanna. I could hear the Play Station videogame in the background.

6) While I was at work, Cedrick used Snapchat to send photographs and vidios. Attached to this affidavit is a screen shot of my Snapchat stories from Tuesday, November 21, 2017. At the bottom of the page is a photograph captioned "Damn I don't want to go to work today."

RJ
03-01-18

7) Immediately above the photograph captioned "Damn I don't want to go to work today" is a photograph captioned "I'm on a paper chase tho." This photograph was sent after the photograph captioned "Damn I don't want to go to work today." This photograph was received at 2:04 p.m.

8) Immediately above the photograph captioned "I'm on a paper chase tho" is a photograph captioned "This off one play nigga," which was received at 2:07 p.m.

9) The photographs captioned "I'm on a paper chase tho" and "This off one play nigga" show the floor in my living room.

10) Above the photograph captioned "This off one play nigga" are six videos received at 2:23 p.m. showing Cedric and Rayanna in my kitchen.

11) Above the six videos received at 2:23 p.m., there are two videos received at 4:13 p.m. showing Cedric in my kitchen getting ready to leave for work.

12) Although the Snapchat stories does not show the date, attached to this affidavit is a screen shot of the photograph captioned "Damn I don't want to go to work today" that I took at 8:27 on November 21, 2017.

13) I took my work break around 3:00 p.m. The attached time records show that I clocked out at Walmart at 2:59 p.m. After I clocked out at Walmart, I went back to my residence. It takes three to give minutes to get from my work to my house. Cedric was still there with Rayanna. I stayed at my residence for about 15-20 minutes, and then I went to pick up my little sister, Rashanna Jackson. I picked up my other sister, Ramiya Jackson. We stopped my Wendy's, and then I took Rayanna, Rashanna, and Ramiya to my mother's house. I went back to work. My time records show I clocked back in at work at 4:16 p.m.

RJ
03-01-18

Electronic Time Adjustment

Name	JACKSON, RAVEN S
WIN#	222186898
Date Range	11/18/2017 - 11/24/2017

		Clock In	Going to Meal	Back from Meal	Clock Out	Other Hours	Total Hours		
Saturday	11/18/2017							Update	Punch Log
Sunday	11/19/2017	11:58	15:25	16:38	20:59		7.80	Update	Punch Log
Monday	11/20/2017							Update	Punch Log
Tuesday	11/21/2017	12:02	14:59	16:16	20:51		7.54	Update	Punch Log
Wednesday	11/22/2017							Update	Punch Log
Thursday	11/23/2017	08:07	12:00	12:45	16:57		8.09	Update	Punch Log
Friday	11/24/2017	08:05	12:06	14:07	16:54		6.80	Update	Punch Log

Total Week-to-Date Hours 30.23

Back

The falsification of, or failure to record complete and accurate time records, is a violation of company policy and can lead to disciplinary action, up to and including termination. The daily and weekly hour totals displayed here are estimates provided for your reference and can vary slightly from the final payroll records.

RJ

03-01-18

Further affiant sayeth naught.

Raven Jackson

Raven Jackson

Sworn to and subscribed before me

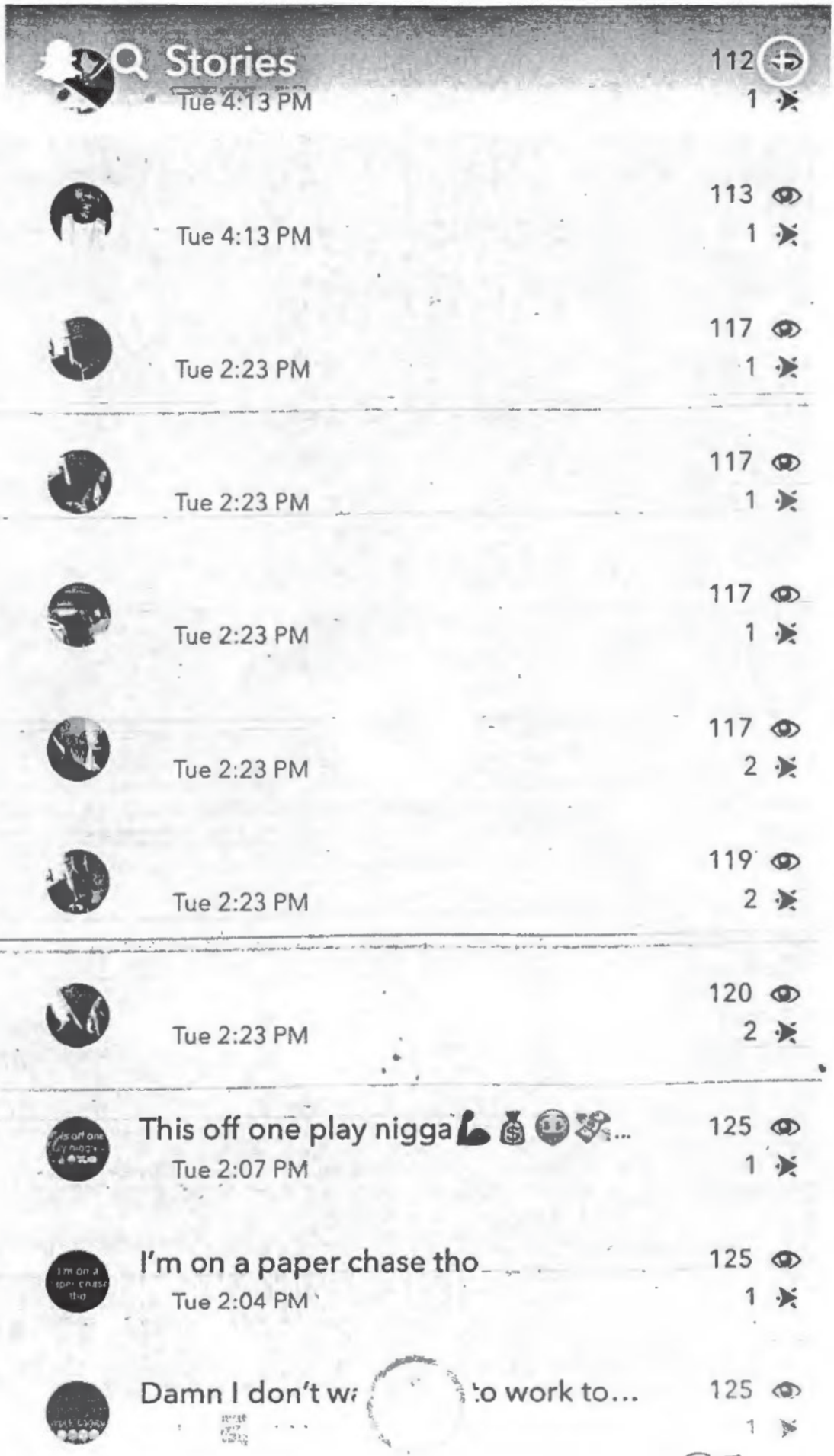
this 21st day of MARCH, 2018

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 5/31/2023

RJ
03-01-18

520



RJ
02-01-18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	
	)	
THE STATE,	)	Case No.: 2017A2420101150;
	)	2018-GS-24-1246
	)	
Plaintiff,	)	MEMORANDUM IN OPPOSITION TO
	)	SENTENCING PURSUANT TO S.C.
	)	CODE § 17-25-45
v.	)	
	)	
ZANTRAVIOUS HALL,	)	
	)	
Defendant.	)	
	)	

On July 26, 2018, the State noticed Defendant, Zantravious Hall, with a notice of life without parole (LWOP) pursuant to S.C. Code § 17-25-45 (hereinafter "recidivist statute"). (See Exhibit A). Defendant asserts that his prior conviction would not qualify as a strike based on the failure of the family court to make adequate findings of fact pursuant to *In re Sullivan*, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980). (See Exhibit B).

Additionally, pursuant to *Graham v. Florida*, Defendant requests that his prior conviction not be considered a strike because the recidivist statute violates the Eighth Amendment and Fourteenth Amendment as applied to Defendant Hall.

Moreover, Defendant hereby requests an individualized sentencing determination pursuant to *Miller v. Alabama*, so the court can determine whether the "hallmarks of youth" contributed to his prior conviction that is used as a strike. To support his position, Defendant would show the following:

FACTS

On February 10, 2009, Defendant was 15 years old. He was in the "low average to borderline range of intellect ability" (Exhibit C, pg. 11). His full scale IQ was only 80. Although he had maturity "consistent with his chronological age", he was "very unsophisticated and immature" in the area of decision making. (Exhibit C, pg. 14). In that area he was "a very unsophisticated and immature juvenile." (Exhibit C, pg. 14).

On February 10, 2009, Defendant was arrested for Burglary in the First Degree and Assault and Battery with Intent to Kill. Pursuant to S.C. Code § 63-3-510, jurisdiction for these charges originated in the Family Court. A pre-transfer evaluation was ordered.

In the pre-transfer evaluation order, the psychologist noted the following:

> [I]n the absence of effective therapeutic interventions and without significant limits placed on his behavior, he is likely to engage in future criminal activity.

(Exhibit C, pg. 14) (emphasis added). The report recommended treatment that will "focus on helping [Defendant] reconnect with his affective experiences while prohibiting the maladaptive pattern of relying on manipulation to achieve personal goals." (Exhibit C, pg. 14).

Had Defendant's case remained in family court, the Department of Juvenile Justice (DJJ), would have confined Defendant. Additionally, had Defendant been adjudicated delinquent in family court, he would have access to "education; addiction treatment substance abuse self-help groups; tutorial programs; vocational rehabilitation programs; independent living skills education groups; and psychiatric and medical services." (Exhibit C, pg. 18). He would have been confined or on community supervision until October 21, 2014.

However, on November 25, 2009, the Family Court waived jurisdiction and transferred the case to the court of General Sessions. Defendant was housed at DJJ until October 21, 2010, at

which time he was transferred to the Greenwood County Detention Center to await disposition of his case.

On December 7, 2011, Defendant plead guilty to Assault and Battery with Intent to Kill before the Honorable Cordell Maddox. Defendant was sentenced to 15 years suspended to 8 years with credit for 1029 days of pretrial detention credit.

For approximately the next 4 years, Defendant was housed in the Department of Corrections (SCDC). While at SCDC, Defendant did not have access to the "education; addiction treatment substance abuse self-help groups; tutorial programs; vocational rehabilitation programs; independent living skills education groups; and psychiatric and medical services" which could have benefited Defendant. So while there were "significant limits placed on his behavior," he received no "effective therapeutic interventions."

Defendant's current charges arise from an arrest on November 22, 2017.

ARGUMENT

I. Defendant's 2011 conviction should not be considered a strike under the recidivist statute because Defendant was 15 years old at the time of the offense and the Family Court failed to follow the proper procedure in its order transferring the case to the Court of General Sessions.

A juvenile adjudication is not a strike for the purposes of the recidivist statute. *See State v. Ellis*, 345 S.C. 175, 179, 547 S.E.2d 490, 492 (2001) ("Since this criminal statute must be given a strict construction in favor of the defendant, and since juvenile adjudications are not among the list of qualifying events, appellant's voluntary manslaughter adjudication cannot be used to invoke the mandatory LWOP provisions of the recidivist statute."). However, in 2002 the South Carolina Supreme Court held that the Eighth Amendment was not violated by allowing juvenile criminal convictions to implicate the recidivist statute. *See State v. Standard*, 351 S.C. 199, 205, 569 S.E.2d 325, 329 (2002).

Defendant's 2011 conviction originated from an arrest when Defendant was 15 years old. At the time of his arrest the family court had exclusive jurisdiction pursuant to S.C. Code § 63-3-510. The State moved to have jurisdiction transferred to the Court of General Sessions pursuant to S.C. Code § 63-19-1210(5).

The Family Court signed an order transferring jurisdiction in an order filed November 25, 2009. Defendant asserts that this order was a nullity. The Family Court Order lacks sufficient findings to transfer jurisdiction. The South Carolina Supreme Court has held the following:

> It is the responsibility of the family court to include in its waiver of jurisdiction order a sufficient statement of the reasons for, and considerations leading to, that decision. Conclusory statements, or a mere recitation of statutory requirements, without further explanation will not suffice. The order should be sufficient to demonstrate that the statutory requirement of full investigation has been met and that the question has received full and careful consideration by the family court. The salient facts upon which the order is based are to be set forth in the order.

In re Sullivan, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980) (emphasis added).

To transfer jurisdiction from the family court to general sessions court, the family court must consider the following factors:

> 1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
> 2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
> 3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
> 4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the United States Attorney).
> 5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.
> 6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

> 7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
> 8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

Kent v. United States, 383 U.S. 541, 566-67, 86 S. Ct. 1045, 1060 (1966).

"The family court must provide a sufficient statement of the reasons for the transfer in its order." *State v. Pittman*, 373 S.C. 527, 559, 647 S.E.2d 144, 160 (2007). "The South Carolina Rules of Civil Procedure require 'in all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon.'" *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 131, 568 S.E.2d 338, 342 (2002) (*quoting* Rule 52(a), SCRCP). The record needs to be sufficiently clear as to the witnesses and record that the court is relying on. *See id.* (remanding a sexually violent predator commitment when the trial court's order left the appellate court "speculating" as to which witness the court found credible).

In Defendant's case, the family court's order indicates that three witnesses testified—Officer Michael Dixon, Crystal Childs, and Dr. Kevin Irmiter. (See Exhibit B). However, there is no credibility finding or any indication in the order as to the substance of their testimony which the family court relied on in making its findings. *Cf. In re Treatment & Care of Luckabaugh*, 351 S.C. at 133, 568 S.E.2d at 343 ("The testimony leads us to speculate if the court below reached its conclusion because it believed Luckabaugh's self-diagnosis over the diagnosis of three medical experts.").

The Family Court's Order consists of the following:

* The Defendant, Zantravious Hall, was born on [redacted], and is currently sixteen (16) years old.
* The Defendant has been charged with Burglary First Degree, Assault and Battery with Intent to Kill (ABWIK), and Possession of a Weapon during the commission of a Violent Crime.
* The alleged offense occurred in Greenwood County on or about February 10, 2009, when the Defendant was fifteen (15) years old.
* There is probable cause to believe the Defendant committed the crime for which he is charged.[1]
* The seriousness of the offense is against persons and is of such gravity as to require waiver for the protection of the community.[2]
* The alleged offense is of an aggressive, violent, premeditated or willful manner.[3]
* There is sufficient merit to warrant the Grand Jury returning a True Bill on the charge.[4]
* The Defendant's younger brother is his co-defendant and that charge has already been adjudicated in Family Court.[5]
* The crime for which the Defendant is charged is of a serious nature and if found guilty, would suggested he is capable of acting without regard for others.[6]
* It is the opinion of the pre-waiver evaluation team that it is not likely the Defendant could be rehabilitated.[7]
* The Court has jurisdiction over this matter pursuant to S.C. Code Ann. Section 63-19-1210.
* Based upon the factors outlined above, the Court concludes that there is little likelihood that Zantravious Hall can be rehabilitated in the Juvenile Justice System.[8]

---

[1] This is a conclusory statement.

[2] The Family Court fails to reference any facts to support this conclusory statement.

[3] There no indication as to why the family court found that there the offense was "an aggressive, violent, premeditated or willful manner."

[4] This is a conclusory statement.

[5] This does not appear to be relevant to Defendant's case or any of the *Kent* factors.

[6] This is a conclusory statement without reference to any facts testified to by any of the witnesses.

[7] *See Spartanburg Reg'l Med. Ctr. v. Oncology & Hematology Assocs. of S.C., LLC*, 387 S.C. 79, 91-92, 690 S.E.2d 783, 789 (2010) ("merely reciting testimony is not the same as the court making an independent finding. To simply recite conflicting testimony is insufficient.").

> * It is in the best interest of Zantravious Hall that he be waived to the Court of General Sessions for proceedings on charges alleged in Petitions 2009-JU24-08, 09, 10.[9]

(Exhibit B).

The order transferring jurisdiction did not place sufficient facts on the record to support its findings. In the absence of a sufficient order transferring jurisdiction to the Court of General Sessions, the jurisdiction remained with the Family Court. Therefore, this Court should not consider his 2011 a strike for the purposes of the recidivist statute. *Cf. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (noting that a juvenile adjudication should not be used as a strike under the recidivist statute).

II. Using Defendant's 2011 conviction as a strike under the recidivist statute would violate the Eighth Amendment pursuant to *Graham v. Florida.*

In 2002, the South Carolina Supreme Court considered whether the Eighth Amendment was violated when a defendant's conviction from a crime occurring when he was 15 was used as a strike under the recidivist statute. *State v. Standard*, 351 S.C. 199, 569 S.E.2d 325 (2002). The Court looked at the evolving standards of decency test for the Eighth Amendment. *See Trop v. Dulles*, 356 U.S. 86, 101, 78 S. Ct. 590, 598 (1958) ("The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."). In holding "an enhanced sentence based upon a prior most serious conviction for a crime which

---

[8] This is statement lacks adequate factual development. Based on the brevity of the order the Court is left to "speculate" on how the court viewed the order. *See Kiawah Prop. Owners Grp. v. PSC*, 338 S.C. 92, 96, 525 S.E.2d 863, 865 (1999). ("On many issues before this Court the PSC does not even recite the testimony in the record of the opposing parties, but merely recites each party's general position on the issue and then announces the one it chooses to follow. As a result, it is impossible for this Court to review the basis of the orders "since the reasons underlying the decision are left to speculation."); Able Commc'ns, Inc. v. S.C. Pub. Serv. Com., 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) ("a recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues.").

[9] This is a conclusory statement with no factual support.

was committed as a juvenile does not offend evolving standards of decency so as to constitute cruel and unusual punishment", the *Standard* Court examined a variety of cases from around the country. After examining the other cases, the Court found the following:

> Based upon sentences imposed in other cases, we find lengthy sentences or sentences of life without parole imposed upon juveniles do not violate contemporary standards of decency so as to constitute cruel and unusual punishment.

Id., 351 S.C. at 205, 569 S.E.2d at 329.

However, in 2010 the United States Supreme Court found that "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." *Graham v. Florida*, 560 U.S. 48, 82, 130 S. Ct. 2011, 2034 (2010).

In 2012, the United States Supreme Court continued the evolution of Eighth Amendment jurisprudence in *Miller v. Alabama*, 567 U.S. 460 (2012). The Court extended the reasoning of *Graham* by holding that a mandatory sentence of life without parole for juvenile homicide offenders also violates the Eighth Amendment's prohibition on cruel and unusual punishment. However, *Miller* did not create a categorical prohibition, but instead, found that the hallmarks of youth should be considered as mitigating when sentencing.

Nearly all of the cases used in *Standard* to determine the "standard of decency" in 2002 were later overruled by *Graham* and *Miller*. As such, the "evolving standard of decency" has evolved in such a way that the Eighth Amendment is offended by an enhanced sentence based upon a prior most serious conviction for a crime which was committed as a juvenile." [10]

[10] Defendant is aware of the South Carolina Court of Appeals holding in *State v. Green*, 412 S.C. 65, 770 S.E.2d 424 (2015). However, Defendant respectfully submits that the Court of Appeals erred in *Green* by only addressing state law and failing to address the "evolving standard of decency" test that is required in Eighth Amendment jurisprudence.

Therefore, Defendant submits that the Court should not use the 2011 conviction as a strike under the recidivist statute.

III. Alternatively, Defendant's 2011 conviction as a strike under the recidivist statute would violate Defendant's Eighth and Fourteenth Amendment rights unless he is afforded an individualized sentencing hearing determination pursuant to *Miller v. Alabama.*

Alternatively, Defendant asserts that prior to using his 2011 strike under the recidivist statute, the court should afford him a hearing to address whether the "hallmarks of youth" contributed to the 2011 conviction. Defendant asserts that if the 2011 conviction was caused by the "hallmarks of youth", it would be unconstitutional to punish him as a defendant with prior "most serious" convictions that occurred when he was a juvenile.

Defendant requests a hearing where the court can consider the following related to his 2011 conviction:

> (1) The hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence" that may have contributed to the offense giving rise to the 2011 conviction;
>
> (2) the "family and home environment" that surrounded the offender which may have contributed to the offense giving rise to the 2011 conviction;
>
> (3) the circumstances of the crime giving rise to the 2011 conviction, "including the extent of the 'offender's participation in the conduct and how familial and peer pressures may have affected him'"; and
>
> (4) Whether 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" contributed to the 2011 conviction.

See Aiken v. Byars, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014).

Defendant requests that his sentencing on these matters be stayed pending a hearing to address these factors. Counsel will request funding to ensure effective assistance of Counsel at such a hearing.[11]

IV. Defendant asserts that a determination concerning the recidivist statute should be stayed pending the outcome of Defendant's recently filed Post-Conviction Relief (PCR) case.

After reviewing juvenile records on October 10, 2017, Defendant indicated that he was not aware that he could have challenged the Family Court order transferring jurisdiction on appeal. Defendant indicated that his attorney for the 2011 conviction indicated that he was "waiving all his rights by pleading guilty." In response to speaking with Counsel Shaffer, Defendant decided to file an Application for Post-Conviction Relief related to the 2011 conviction.[12]

Although this PCR Application was filed more than a year after the 2011 conviction, Defendant submits that his PCR Application is timely. Three out of the four issues raised in the PCR Application are not barred by the statute of limitations. *See Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 583 (2002) ("Just as it was in *Odom*, *Austin*'s policy would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations.). Therefore, Defendant submits that his PCR is not barred by the statute of limitations.

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[11] Such an investigation shall require funding for investigators and experts. Counsel has not yet sought funding due to the fact that Defendant's guilt was still in question.

[12] This application was filled out with the assistance of Mr. Shaffer on a form substantially similar to the "form as prescribed by the Supreme Court." *See* S.C. Code § 17-27-50. As prescribed by the Supreme Court's form, the Application was signed by Defendant.

Defendant would submit that it is premature to sentence him under the recidivist statute. Therefore, his sentencing to the offenses under the recidivist statute should be stayed pending the resolution of his PCR.

Respectfully Submitted,

Janna A. Nelson
Attorney for Defendant
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
(864) 229-9505

Exhibits

A- LWOP Notice

B- Family Court Order

C- Pre-Transfer Evaluation

D- PCR Application

CERTIFICATE OF SERVICE

The undersigned certifies that she has served MEMORANDUM IN OPPOSITION TO SENTENCING PURSUANT TO S.C. CODE § 17-25-45 by hand on opposing counsel on October 12, 2018.

Janna A. Nelson
Attorney for Zantravious Randell Hall

STATE OF SOUTH CAROLINA COUNTY OF GREENWOOD	IN THE COURT OF GENERAL SESSIONS EIGHTH JUDICIAL CIRCUIT
The State of South Carolina v. Zantravious Randell Hall, Defendant.	Indictment Nos. 2018-GS-24-408, -1246 **NOTICE OF INTENT TO SEEK LIFE WITHOUT PAROLE**

Pursuant to S.C. Code § 17-25-45(H) and, e.g., James v. State, 372 S.C. 287, 641 S.E.2d 899 (2007), the State of South Carolina hereby notifies Defendant and his counsel that it intends to seek a sentence of life imprisonment without the possibility of parole.

Defendant is charged in the above captioned indictments with Murder and Attempted Murder. These crimes are classified as "most serious" offenses. S.C. Code Ann. § 17-25-45(C)(1). Defendant was convicted on December 7, 2011, of Assault and Battery with Intent to Kill (Attachment #1). This crime is also classified as a "most serious" offense.[1] Id.

South Carolina Law provides that "upon a conviction for a most serious offense [...] a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has [...] one or more prior convictions for [...] a most serious offense." Id. § 17-25-45(A)(1)(a). A conviction on either of the above captioned indictments[2] would constitute Defendant's second "most serious" conviction, and would require the imposition of a sentence of life without parole.

Respectfully submitted,

Joshua L. Thomas (S.C. Bar No. 100777)
Assistant Solicitor

July 26, 2018
Greenwood, South Carolina

[1] Assault and Battery with Intent to Kill was also considered a "most serious" offense in 2011.

[2] A conviction of the lesser-included offense of Voluntary Manslaughter on Indictment 2018-GS-24-408 would also require the imposition of a life sentence. See S.C. Code Ann. § 17-25-45(C)(1) (defining voluntary manslaughter as a most serious offense).

Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF GREENWOOD	IN THE COURT OF GENERAL SESSIONS EIGHTH JUDICIAL CIRCUIT
The State of South Carolina v. Zantravious Randell Hall, Defendant.	Indictment Nos. 2018-GS-24-408, -1246 **CERTIFICATE OF SERVICE OF LWOP NOTICE**

I hereby certify that I have, this same day, served the within STATE'S NOTICE OF INTENT TO SEEK LIFE WITHOUT PAROLE on Zantravious R. Hall, via hand delivery.

Respectfully Submitted,

Lieutenant Chad Cox
Greenwood County Sheriff's Office
528 Edgefield St.
Greenwood, SC 29646
(864) 942-8600

Date: 07-20-18

I hereby certify that I have, this same day, served the within STATE'S NOTICE OF INTENT TO SEEK LIFE WITHOUT PAROLE on counsel for Defendant, Janna A. Nelson, via hand delivery to the Public Defender's Office.

Respectfully Submitted,

Debbie Grubbs
Eighth Circuit Solicitor's Office
Suite 203 Park Plaza
600 Monument Street
Post Office Box 516
Greenwood, South Carolina 29649
(864) 942-8800

Date: 7/26/18

STATE OF SOUTH CAROLINA)
)
COUNTY OF Greenwood)
STATE VS. Zantravious Randell Hall)
)
AKA:)
Race: Sex: Age:)
)
DOB: [redacted] SS#: 0)
Address: 821 Grandel Avenue)
City, State Zip Greenwood, SC 29646)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 10GS24-0189

A/W#: 10-INFO-24-0006
Date of Offense: 2009-02-10
S.C. Code §: 16-3-620

CDR Code # 0014

SENTENCE SHEET

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ___ CONVICTED OF or X PLEADS TO: Assault and Battery with intent to kill

in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ 17-25-45

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

ATTEST: [signature] 11713 Zantravious R. Hall [signature] 5581
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 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 5 days/months/years and/or payment of $_____ plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12/7/11 Aiken

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. HOLT Aiken

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to SC Code §17-25-135.

Pursuant to 18U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: $ plus 20% fee: $
Payment Terms:
☐ set by SCDPPPS

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 107.5%):		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§35.13 (Public Def/Prob)	$500	$ 500
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§56-21-114(DUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.11 TP (SCCJA Surcharge)	$5	$ 5
3% to County (if paid in installments)		$ 18.90
TOTAL		$ 648.90

☐ Appointed PD or appointed other counsel, §35.13 TP
☒ Requires $500 be paid to Clerk during probation.
Court Reporter: D. Rice
Sentence Date: 12-7-11

[signature]
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE [signature]
Judge Code: 2 1 1 5 1

SCCA217 (1/2009) PCMS SENTENCE

STATE OF SOUTH CAROLINA COUNTY OF LAURENS IN THE INTEREST OF: ZANTRAVIOUS R. HALL DOB: [redacted] A Minor Under the Age Of Seventeen (17) Years	IN THE FAMILY COURT EIGHTH JUDICIAL CIRCUIT ORDER 2009-JU24-08, 09, 10

This matter was before the Court on November 23, 2009 for a waiver hearing. Present were Cade C. Gibson, Assistant Solicitor, Zantravious Hall, the respondent, Sheila Timpson, the Defendant's legal guardian, and the Defendant's attorney, Alexis Bell, Esquire.

Based on the testimony presented by:

Officer Michael Dixon (Greenwood Police Department)

Ms. Crystal Childs (Department of Juvenile Justice)

Dr. Kevin Irmiter (State Coordinator for Family Services)

the pre-waiver evaluation conducted by the Department of Juvenile Justice, and a full investigation pursuant to S.C. Code Ann. Section 63-19-1210, as well as other evidence, the Court finds and concludes:

1. The Defendant, Zantravious Hall, was born on [redacted], and is currently sixteen (16) years old.

2. The Defendant has been charged with Burglary First Degree, Assault and Battery with Intent to Kill (ABWIK), and Possession of a Weapon during the commission of a Violent Crime.

3. The alleged offense occurred in Greenwood County on or about February 10, 2009, when the Defendant was fifteen (15) years old.

(The following findings are based on the criteria listed by the United States Supreme Court in Kent v. United States, 383 U.S. 541 (1966).)

Exhibit B

4. There is probable cause to believe the Defendant committed the crime for which he is charged.

5. The seriousness of the offense is against persons and is of such gravity as to require waiver for the protection of the community.

6. The alleged offense is of an aggressive, violent, premeditated or willful manner.

7. There is sufficient merit to warrant the Grand Jury returning a True Bill on the charge.

8. The Defendant's younger brother is his co-defendant and that charge has already been adjudicated in Family Court.

9. The pre-waiver evaluation report and testimony indicated that the Defendant has been engaging in pseudo-adult activities and therefore has an enhanced level of sophistication and maturity.

10. The crime for which the Defendant is charged is of a serious nature and if found guilty, would suggested he is capable of acting without regard for others.

11. It is the opinion of the pre-waiver evaluation team that it is not likely the Defendant could be rehabilitated.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this matter pursuant to S.C. Code Ann. Section 63-19-1210.

2. Based upon the factors outlined above, the Court concludes that there is little likelihood that Zantravious Hall can be rehabilitated in the Juvenile Justice System.

3. It is in the best interest of Zantravious Hall that he be waived to the Court of General Sessions for proceedings on charges alleged in Petitions 2009-JU24-08, 09, 10.

IT IS THEREFORE ORDERED THAT jurisdiction of this matter shall be transferred to the Court of General Sessions.

IT IS FURTHER ORDERED THAT bail be denied at this time and that bail may be reconsidered by a Circuit Court Judge upon motion of the Defendant.

IT IS SO ORDERED.

Laurens, South Carolina
November 23, 2009

Joseph W. McGowan, III
Presiding Family Court Judge
Eighth Judicial Circuit

SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
SOCIAL SUMMARY

Family Information:

Zantravious Hall is a 15 year old black male from Greenwood, SC. Zantravious's immediate family includes his mother Sheila Timpson (age 36), his sister Kaybresha T. Kaybresha T. (age 17), brother Shyheem H. (age 14), and Ms. Kaybresha T.'s live in boyfriend Demarcus Spearman (age 21). Ms. Timpson stated that Zantravious and Shyheem's biological father is Malcolm Hall and he has very limited involvement in their lives. The same is true for Kaybresha T.'s father Kayree Mosley. Zantravious and Mrs. Timpson described the family dynamics and Ms. Timpson indicated that she is the head of the household. Kaybreisha is well behaved; Zantravious and Shyheem are well behaved at home, but both Ms. Timpson and Zantravious admitted that there are arguments between the two of them when he does not follow her rules for the home. Also, Zantravious and Shyheem have a history of misbehaviors in school that include detentions, suspensions, and expulsions. An example of a misbehavior, given by Ms. Timpson, is that her son will leave home without permission. Ms. Timpson appeared to have no major concerns with the actions of her children, and explained behavior problems as minor, and defended other misbehaviors. Zantravious stated he listens to his mother "most of the time". When asked about his disobedience with his mother, he acknowledged that they argue and he then goes to his room and turn his music up, or walks out of the house without permission.

Ms. Timpson and Zantravious stated no immediate deaths in the family at this time. Ms. Kaybresha T. characterized her relationships with her brothers and sisters as positive. She also stated that her mother died from leukemia some years ago. She has a good relationship with her father, Mr. Henry Timpson. Ms. Kaybresha T. stated her siblings live in the county of Greenwood. She has two sisters Christy and Felisha Timpson; and three brothers, Kendric Timpson, Allan Timpson, and Gregory Calhoun.

Ms. Timpson is 36 and was born in Lincolnton, GA. Mr. Malcolm Hall is 35 or 36 and was born in Greenwood, SC. Kayree Mosley is 37 and was born in Greenwood, SC. Ms. Timpson stated she graduated from high school and believes that Mr. Hall and Mr. Mosley are both high school graduates as well. Ms. Timpson never married. Her current relationship with Mr. Demarcus Spearman has lasted for about 5 years.

Ms. Timpson and Zantravious described their home life as "happy". Zantravious stated that, other then arguments with immediate family members, he enjoys his home life. He noted that most of his disagreements with mother lead to arguments. However, the conflicts with his mother have never become physical; although, he and his siblings have had arguments lead to physical altercations. He denied anyone ever being hurt, and described the altercations as simple fights. Ms. Timpson described a close bond with her son and spoke highly of him, but noted she was upset with his role in the current offenses. It appears that Ms. Timpson cares dearly for her son, and she has been actively involved in assisting all agencies involved with Zantravious. The family unit as a whole appears supportive and Zantravious seems to have a close bond with his younger brother, Shyheem. Ms. Timpson stated she feels unity in the family and her children confide in her, as well as she in them.

Exhibit C

I. REFERRAL STATEMENT

This 15 year, 5 month (when evaluated) old black male was referred for evaluation by the Family Court of Greenwood County, following the waiver evaluation order by the Honorable Joseph W. McGowen. This report has been prepared as part of the Department of Juvenile Justice Waiver Evaluation, and is used by the Evaluation Team to report specific findings to the Court regarding sophistication and maturity, protection of the public, and likelihood of rehabilitation in the juvenile justice system.

Prior to the evaluation, it was explained to Zantravious R. Hall what information would be requested of him, how it would be used in the transfer (waiver) process, and that the results of this evaluation were not confidential and, would be shared with his attorney, the Family Court, and the Solicitor. Zantravious Hall's Rights, and Waiver of Rights, were read to him on April 7, 2009. Zantravious understood the nature and purpose of the evaluation. He had discussed the evaluation with his attorney and signed a statement indicating that he understood his rights and was willing to participate in the evaluation. His responses to the Comprehension of Rights Inventory administered on April 7th indicated that he understood his rights and was capable of waiving them.

Zantravious's attorney did not object to the motion for a pre-transfer (pre-waiver) evaluation, and the Family Court Order (Attachment 3) cited State vs. Hitopoulus, 309 S.E. 2d 747 (1983) and made the stipulation that "any and all oral or written statements made by the Defendant concerning the above charges and communicated to the psychologist in conjunction with the evaluation shall not be admissable as evidence against the Defendant in any criminal trial concerning these charges, excluding the waiver hearing ..." Thus, the juvenile had the freedom to discuss the circumstances associated with the current offenses with which he is charged.

II. SIGNIFICANT HISTORY

A. SOURCES OF INFORMATION

1. Zantravious R. Hall - age 15, Juvenile
2. Sheila L. Timpson - age 36, Mother

B. COURT HISTORY/CRIMINAL RECORD

Zantravious Hall was initially involved with Law Enforcement on October 25, 2005, when at the age of twelve, he was charged with Disturbing School. Approximately one month later, he was charged with Simple Assault and Battery. Both charges were initially diverted with a behavioral contract on January 10, 2006. Before the decision was made to handle the charges in a diversionary manner, school attendance issues were addressed when Zantravious was placed under a court Order to Attend (OTA) school on December 1, 2005.

The 2005 charges were reactivated when Zantravious incurred additional charges. The charge of Willful Obstruction of a Railroad was filed on February 2, 2006. The following additional charges were filed: Simple Assault and Battery on October 18, 2006 and Contempt of Court on

March 12, 2007. On March 28, 2007 he incurred four Second Degree Burglary charges, three Petty Larceny charges, and one Grand Larceny charge. All eight of these charges are still pending. At an adjudicatory hearing on May 1, 2007, Zantravious was committed to the Reception and Evaluation Center (R&E), following a negotiated plea in which one of the Simple Assault and Battery charges, as well as the Willful Obstruction of a Railroad charge were Nol Prossed by the solicitor, and Zantravious entered pleas of guilty to the charges of Disturbing School, Simple Assault and Battery, and Contempt of Court. He incurred a Lynching charge on June 3, 2007, while at R&E.

At his dispositional hearing on June 14, 2007, presided by the Honorable Billy A. Tunstall, Jr. , Zantravious was placed on 12 months probation, placed under a suspended alternative placement, ordered to adhere to a curfew, cooperate with mental health services, and work with an Intensive Family Service provider. The solicitor Nol Prossed the Lynching charge at the dispositional hearing. While on probation, Zantravious incurred the additional charges of Contempt of Court for school attendance issues on November 6, 2007, Resisting Arrest and Littering on January 27, 2008, a probation violation on February 21, 2008, another Resisting Arrest charge on March 15, 2008, and a Disorderly Conduct charge on March 15, 2008. He was given a determinate sentence, suspended upon release to placement, by the Honorable Billy A. Tunstull, Jr. on March 27, 2008.

Following another Probation violation on April 23, 2008, the Honorable Joseph W. McGowen, III committed Zantravious to an Indeterminate Sentence, suspended upon release to placement. On May 23, 2008, he was released from the secure setting and placed at Camp White Pines. However, on May 24, 2008, one day after his placement, Zantravious escaped from the program and was in the community for several hours. He subsequently turned himself in by calling 911. He was then unsuccessfully discharged and returned to DJJ's secure facility. Zantravious was paroled from the institution on November 18, 2008. He had been on parole status for approximately three months, and was within a matter of days of being released from DJJ supervision, when he incurred the most recent charges of Burglary, First, Assault and Battery with Intent to Kill, and Possession of a Weapon During the Commission of a Violent Crime. He has been in the DJJ detention center since he was taken into custody for these charges. While in detention, Zantravious has exhibited angry and defiant behavior, has been involved in a fight, and has threatened another peer.

C. FAMILY DESCRIPTION

Zantravious has always lived with, and been raised by, his mother, Ms. Timpson. He is the middle of three children, who all still live in the home with Ms. Timpson. She has been unemployed for about a year. Her last employment was in a production setting and she was fired for attendance problems, after two years of tenure. Ms. Timpson has been involved in multiple relationships, and began her fifth relationship in October of 2008, with a high school graduate who is working in an industrial capacity. Ms. Timpson noted that her boyfriend gets along well with her children. Since Zantravious has been detained, the home has been comprised of the mother, her seventeen year old daughter, her thirteen year old son, and her boyfriend.
While Ms. Timpson noted times when Zantravious was in conflict with his siblings, she generally noted few problems within the family. Her contention was that his misbehaviors almost always

occurred outside of the home setting and that he rarely had problems within the immediate family setting. However, she did note that Zantravious has always wanted a more involved relationship with his father, but interactions have been limited to a few telephone calls and couple of visits over the last four years. She also reported no contact with the father over the last six months. Thus, the juvenile's family support is limited to his mother and his siblings.

D. DESCRIPTION OF PARENT'S BACKGROUND

According to Ms. Timpson she was raised by her parents, but there were significant problems within her family of origin. She characterized her father as an alcoholic who was physically abusive to his wife. Reportedly, he also incurred criminal charges for assault, writing fraudulent checks, and Criminal Domestic Violence and is incarcerated for these offenses. Ms. Timpson is the second of seven children in her family. Two of her brothers have been physically abusive to the women who have been involved in their lives, and one of the sisters has been involved in an abusive relationship. Another brother has struggled with depression and has spoken of suicidal thoughts. Zantravious's maternal grandmother died from cancer in 2000. Zantravious's father was reportedly the younger of two children born in an intact family. However, the paternal grandparents later divorced. Ms. Timpson did not report any significant issues within the father's family of origin. She also noted that he is a high school graduate who has worked in an industrial capacity for about eight years.

E. FAMILY UNITY AND EMOTIONAL ATMOSPHERE

Ms. Timpson noted that family members get along well with each other, and she denied having significant problems within the home environment. While there are regular sibling conflicts, she indicated that the children are helpful and assume regular responsibilities. There have been three different boyfriends in the home since the parents separated, but Ms. Timpson reported no serious problems associated with the live-in relationships. She reported that her home has rules and limits, and the children are expected to assume household responsibilities. Overall, the family was presented as structured and supportive, and free of serious problems.

F. SOCIAL AGENCIES INVOLVED

There has been minimal involvement with social agencies. Zantravious was classified as learning disabled in early elementary school and has received special educational services since that time. Additionally, the family has faced financial pressures and secured government subsidized housing. No involvement with DSS was reported, but Zantravious received services from the local mental health center for an Attention Deficit Hyperactivity Disorder (ADHD) when he was in elementary school. However, Ms. Timpson reported that the services were limited to medication management, and she ended the services during the summer after her son's sixth grade year. No the other mental health services were reported. The family did receive in-home counseling from a private vendor while Zantravious was on probation. No other involvement with social agencies was reported.

G. PHYSICAL DESCRIPTION

Zantravious Hall was a 15 year, 5 month old black male. He was a tall, muscular juvenile who reported that he is 6' 1" tall and weighs 175 pounds. He appeared to be his stated age and was dressed in prison coveralls during the both evaluative sessions, which took place at the detention center.

III. PSYCHOLOGICAL REPORT

A psychological interview was conducted at the Department of Juvenile Justice Detention Center on April 7, 2009 and psychological testing was conducted on April 8, 2009. Zantravious Hall's mother was interviewed on April 6, 2009 at the Greenwood County Department of Juvenile Justice.

A. SOURCES OF PSYCHOLOGICAL INFORMATION

Clinical Interview
Comprehension of Rights Inventory
Mental Status Examination
Wechsler Intelligence Scale for Children - Third Edition (WISC-III)
Peabody Individual Achievement Test - Revised (PIAT-R)
Millon Adolescent Clinical Inventory (MACI)
Jessness Inventory – Revised (Jessness)
Reynolds Adolescent Depression Scale; 2nd Edition (RADS-2)
Substance Abuse Subtle Screening Inventory (SASSI)
Rotter Incomplete Sentence Blank (ISB)
Bender Visual Motor Gestalt Test (Bender)
Family Genogram
Behavioral Observations

Records Reviewed:

1. DJJ Community File
2. Police Incident Reports and Supplementary Reports
3. Greenwood County Schools Academic and Behavioral Records
4. Greenwood County Schools Psychological Evaluation (03/07/01)
5. R&E Psychological Evaluation (06/06/07)
6. Camp White Pines Discharge Summary (05/24/08)

B. INTERVIEW RESULTS

The following information was obtained from Zantravious Hall (juvenile) and Sheila Timpson (mother).

Zantravious Hall was born in the Greenwood, SC, and has lived there all of his life. He has always lived with his mother, but three different men have shared the home environment since his parents ended their relationship in 1997, four years after Zantravious was born. The home

currently consists of Zantravious, his mother, his seventeen year old sister, his thirteen year old brother, and his mother's current 21 year old boyfriend, Demarcus.

Ms. Timpson noted that Zantravious is cooperative and helpful at home. She reported, "He's good at home", and he complies with her requests. She also said, "I have no problem with him at home; it's always at school". Thus, her contention was that Zantravious only exhibits behavioral problems within the school setting. However, upon further discussion, she did admit that he has some conflicts with his siblings, at times complains when he is told he may not leave the home, and on some occasions, will leave home without her permission. Ms. Timpson estimated that about twenty percent of the time he will leave home even after she has told him he must remain in the house. She also reported that in spite of the numerous behavioral problems he has incurred at school, she only punishes him for school related offenses about fifty percent of the time. The other offenses are managed by her "talking" to him. She indicated the consequences of taking away his cell phone and refusing to give him money are effective disciplinary approaches, but are only enforced about half of the time.

Ms. Timpson noted a tendency for her son to become irritable and to display a negative attitude. She characterized his demeanor when she said, "He stay mad a lot" and noted that he becomes angry with minimal provocation. She offered examples of triggers that can irritate her son such as her requests that he turn his music down or that he decrease the quantity of water that he puts in the bathtub. Ms. Timpson is troubled by her son's negative attitude and said, "Sometime I feel like he get a little too mad about stuff". While she has attempted to manage her son effectively, it appears as if outside influences have negatively affected Zantravious. Ms. Timpson reported that he is very cooperative with the chores she asks him to complete, and even said that he is the "best" of her three children, but also indicated he behaves differently once he leaves the home.

Ms. Timpson maintained that she has attempted to direct his pattern of socialization by asking for who, what, when, and where before he leaves the home. However, he has resisted her control and she expressed concern that he was associating with negative peers. Ms. Timpson is troubled by Zantravious wearing colors associated with gangs, embracing gang paraphernalia, and mimicking gang behavior. She said, "I look at it like he a wanna be thug ... he wanna be thug-like". When she has expressed these concerns to her son, he has denied such associations and has just laughed at her. Generally, he seems to exhibit a more cooperative and pleasant demeanor when in the home environment, but embraces a more negative attitude when he leaves the home. Furthermore, this negative demeanor seems to spill over into the home when Zantravious is set on going out with peers and his mother refuses to grant permission to him to leave. Thus, the absence of permission either leads to his irritable and negative attitude in the home, or he leaves home without permission and the conflicts ensue upon his return. Apparently, the episodic enforcement of standards by the mother, and Zantravious's defiance of her have contributed to the maladaptive behaviors he has exhibited in settings outside the home.

Zantravious was repeating the eighth grade when he was detained for the current pending charges. He was initially evaluated by the school system in March of 2001. At that time, he was classified as a learning disabled student (LD) and has carried the LD classification since that time. The school evaluation indicated that he had cognitive abilities in the low average range,

but he was achieving below his expected level. Testing administered while Zantravious was at R&E confirmed cognitive functioning in the low average range. Historically, behavior problems, attendance problems, and an insufficient effort directed toward school assignments have all contributed to poor academic achievement. Zantravious was expelled from school for behavioral problems during the 06 – 07 academic year. Furthermore, there have been repeated years during which Zantravious has caused problems for school officials. He accumulated twenty referrals before he was expelled during the 06 – 07 year. He incurred seven referrals during the 07 – 08 school year before he was detained for criminal charges.

Zantravious returned to the alternative school in December of 2008. From that time, until he was detained for the current offenses, he incurred three more referrals. Zantravious has faced referrals for attendance problems (which arose from numerous out of school suspensions), disturbing class, refusing to obey authority figures, and general disruptive behavior. He has also been in trouble for fighting in class, exhibiting extremely rude and disrespectful behavior that has been directed toward school officials, and the using profane and offensive language. He clearly indicated to school officials that he did not want to be in school, as noted in his last referral (before being detained). His last offense at school, before he was detained, concluded with him telling a teacher to "just send me home". Zantravious has sufficient ability to progress academically, but his defiance and behavior problems have drastically hampered educational achievement. Given the extensive history of behavior problems that Zantravious has exhibited, his chances of academic success will continue to be thwarted unless he embraces an alternative pattern of behavior and greater commitment to his education.

Ms. Timpson reported that Zantravious was the result of a pregnancy that ended approximately six to eight weeks prematurely. She offered no explanation for the premature birth and characterized gestation as normal and uncomplicated. She also denied all use of cigarettes, alcohol, or drugs during her pregnancy. Zantravious was underweight, had respiratory problems, and remained in the hospital for approximately six weeks following his birth. While Ms. Timpson noted that he reached all developmental milestones within expected limits, she also stated that between eight months and one year of age he began to engage in "head banging". She noted that most of the behaviors were associated with frustration on her son's part, and indicated that his physician was not particularly concerned about the behavior. The doctors reportedly encouraged her to just prohibit such behavior The head banging usually occurred two to three times per week and lasted until he was approximately four or five years old. Ms. Timpson denied that her son suffered from enuresis, encopresis, or any losses of consciousness or seizures. She also denied that he has ever suffered from a major illness or injury, nor has he ever been hospitalized.

According to Ms. Timpson, Zantravious had behavior problems as a small boy and would destroy, or cut up, property when he was irritated and upset. She reported that on one occasion, around the age of nine, he tied an electrical cord around his neck and told her he wanted to kill himself. However, she noted that this behavior occurred in very close proximity to a relative who had committed suicide by hanging. Zantravious was eventually referred to the local mental health center, while in the sixth grade, to address his impulsivity and behavioral problems. He was diagnosed with ADHD and placed on medication. Ms. Timpson stopped the medication the following summer because she did not believe it was making a difference in her

son's behavior. She denied that her son has ever had any other type of mental health intervention.

Zantravious noted that he spends his free time participating in sports, watching movies, and attending sporting events. He also likes going out to eat with his girlfriend or socializing with peers. Additionally, Zantravious noted that he has had an enjoyable life because of the many entertaining activities in which he has been able to participate. He reported that he enjoys many activities because his mother is not overly strict. Zantravious said, "Most teenagers their Momma keep them on lock down" and they do not have the opportunities to enjoy activities such as "partying", going to visit peers' homes, listening to music, and spending time with his "homeboys". He stated that he has had a lot of freedom because "My Momma be strict, but she don't be real strict" and he enjoys "a lot of freedom".

Zantravious has had several girlfriends and indicated he has been sexually active with three of these females. He also noted that he has had an estimated 20 additional partners. While some of his sexual encounters have included the use of condoms for protection, Zantravious admitted that he has regularly engaged in unprotected sexual intercourse with most of his partners. However, he denied that he has ever caused a pregnancy or contracted a sexually transmitted disease. He admitted a similar pattern of sexual activity when he was evaluated by DJJ in the summer of 2007. At that time, he was counseled regarding the use of condoms to protect against sexually transmitted diseases and pregnancies, and his response was, "I don't be worried about that".

He also admitted to regular use of marijuana, starting around the age of eleven and increasing over time. Zantravious stated, "I've been doing marijuana for a really long time". He expressed no interest in ceasing the illegal drug use, although he claimed that he could stop if he "wanted to". He indicated his use peaked at about two blunts per day, and he has usually smoked alone. He also noted that he purchased the drug from many different individuals. While Zantravious did not use this substance while he was committed to DJJ, he acknowledged that he resumed using marijuana about a month after he was released from the institution. Though Zantravious was referred to a substance treatment program upon his release from DJJ, he denied accessing the services and stated that he "didn't worry about it". Consequently, he quickly resumed his pattern of substance abuse shortly after his DJJ release.

Ms. Timpson reported some substance abuse issues within the family system. She noted that her oldest child's father has a history of abusing crack cocaine, and she also indicated that her father was an alcohol abuser. However, she denied that she has any history of substance abuse, and also reported that none of the other four men with whom she has been involved have abused alcohol or drugs. While she did not report specific mental health problems, she noted that her father was physically abusive to her mother. Furthermore, one of her brothers has been abusive to three different girlfriends and incurred multiple Criminal Domestic Violence (CDV) charges. She also reported that a younger sister has been abused by her boyfriend. Additionally, Ms. Timpson's youngest brother has faced CDV charges for assaulting his girlfriend. All history of sexual abuse was denied. Ms. Timpson notes that another brother has struggled with suicidal ideation. Thus, no specific mental health diagnoses were reported, but Ms. Timpson did report issues within the family system that are relevant and have the potential to affect her, and how she has raised her son.

Ms. Timpson is a high school graduate who previously worked in a manufacturing capacity for about two years. However, she reported that she was fired for attendance problems. Presently, she has been out of work for about one year. Her criminal charges include housing authority fraud, driving without a license, and writing "bad checks". She denied ever being incarcerated. Zantravious's father was described as a high school graduate who has worked in a manufacturing capacity for about eight years. Ms. Timpson denied that he has ever incurred criminal charges. However, she admitted that the father of her oldest child, who dropped out of school in the tenth grade, has been in prison for drug related offenses and weapons charges. One additional boyfriend, who was in the home from 1999 to 2000, dropped out of school in the eleventh grade and has been incarcerated for the distribution of drugs. Another boyfriend is a high school graduate, works in the restaurant business, and has no criminal history. Her current boyfriend is a high school graduate who works as a machine operator. He went through the pre-trial diversion program for a weapons charge.

Within her family of origin, Ms. Timpson admitted that her two oldest brothers have been involved in illegal drug sales, but she denied that they have faced criminal charges. The only reported charges within her family are for CDV's faced by her brothers, while two of her sisters have been charged with filing false information with the housing authority and Shoplifting.

C. BEHAVIORAL OBSERVATIONS

Zantravious arrived on time for both the interview and the assessment sessions and appeared well-rested and well-nourished. He entered the examination room without incident, appeared his stated age, displayed a normal gait, and was attentive during the procedures. He was appropriately dressed and showed adequate concern for his personal appearance. No deficits were noted in Zantravious's audition, motor coordination, or psychomotor activity level, and his verbal comprehension was fair. His speech was clear and easily understood, but somewhat simple in context. Zantravious maintained good eye contact throughout the interview, and was attentive to the examiner. His vision was reported as good and he denied the need for corrective lenses. Zantravious was polite and cooperative during the evaluation and appeared to make every effort to answer all questions honestly.

During her portion of the interview, Ms. Timpson presented as slightly evasive and vague when offering some answers, and seemed to respond to some queries in somewhat of a guarded manner. This was especially evident when discussing substance abuse and other historical issues related to her family and her past boyfriends.

Zantravious displayed no evidence of guardedness or constriction during the assessment, and this is judged to be a valid and reliable estimate of his current intellectual and psychological functioning.

D. MENTAL STATUS EXAMINATION

Zantravious was alert and oriented to time, place, person, and situation, and exerted sufficient attention to interview questions and assessment tasks. He performed structured tasks of attention, concentration, and memory with adequate concentration and short term memory.

Verbal reasoning ability was only fair, and Zantravious's ability to think abstractly was limited at well.

Zantravious's answers to questions were simple, goal directed, and relevant. He reported no history of visual or auditory hallucinations. While his thoughts were clear, he struggled with questions and concepts that were abstract in nature.

Zantravious denied any relevant mental health issues. His mood was appropriate for the circumstances, and his range of affect was congruent with the questions presented and the material discussed. He has reportedly had some trouble with his sleeping when ruminating about his offense, but noted he tries to "think about fun stuff" so that he can go to sleep. He denied either a decrease in energy or a loss in appetite since he has been in detention. He also reported that he still participates in rewarding activities. Zantravious has no history of suicide attempts and denied ever wanting to kill himself. He also denied any homicidal thoughts or attempts..

E. EMPATHY, REMORSE, AND RESPONSIBILITY

In order to safeguard pre-transfer (pre-waiver) subjects from self-incrimination during the pre-adjudicatory phase of the proceedings against them, DJJ policy precludes asking them incriminating questions about pending charges, unless the confidentiality of that information is stipulated by Court Order. Such a stipulation was made in the current order. Therefore, Zantravious's senses of empathy, remorse, and responsibility were assessed by asking him questions about his current charges, as well as past behaviors.

During the course of the interview Zantravious offered observations, perceptions, and reflections about his current charges, as well as previous episodes of misbehavior, that offer some insight into how he feels about his actions and how these actions affect others.

Zantravious's perceptions of right and wrong, and beliefs about how victims might feel appeared to be somewhat disjointed and lacking in accuracy. He also displayed a minimal ability to empathize with others and, in particular, the victim of his current offense. He struggled to note an affective response that the victim experienced beyond, "He (the victim) feels sad", and that the victim's family would be "angry at me (Zantravious). He also struggled to broaden the scope of influence his actions have had on others. When he was asked about how often he thinks of his family, and how they feel about his current circumstances, the responses lacked strong indications of empathy. He did express his feelings when he said of his family, "I feel glad that they show love for me even though I'm locked up", and further noted, "They sad because they say I shouldn't of shot him; it could've been avoided".

When asked whether he thinks about the victim, Zantravious's response was, "No, because I don't know him except to think that I shot him". He did admit that he "gets depressed" if he thinks about his actions and "tries to ignore" what he did. He also explained his perception of the offense when he said, "Its life, things happen", and noted that he needs to get ready for the next day and prepare for the worst. He then said, "Everybody gonna make a mistake, but they don't gotta say I'm gonna get life". Additional queries failed to generate other indications of Zantravious experiencing significant levels of empathy for the victim, the victim's family, or his

own family. Most of his responses tended to be singularly focused on himself and he was not adept at imagining what affective experiences others might experience. When he was specifically asked if he "cared" how the victim's family felt, Zantravious's response was "I can't control what they feel". He simply struggled when trying to imagine how others might feel when in various circumstances. However, he was at least able to note that the victim and his family would be angry at him, and that they may wish for him to be "locked up" and want him to "suffer" serious consequences for his actions.

Zantravious did express some remorse for his actions. He noted he thinks about his offense "every night" and this includes "all I did". He indicated that he his sorry for his past aggressive acts and said, "I be feeling sorry because every time I do something somebody be hurt". He also reported that he is sorry for the pain he has caused his mother and said that she is hurt by his actions and "not knowing when I'm gonna come home". Thus, his remorseful response is somewhat self-centered and focused on his own release. When exploring the feelings and reactions to committing criminal acts, Zantravious tended to suggest that offenses are driven by anger and therefore less susceptible to the potential influence of remorse or regret that might be associated with a criminal act. When asked about feelings associated with criminal involvement, Zantravious said, "I don't feel nothing when I be committing a crime; I do feel anger and hatred". He also posited that crimes are done for a "reason" such as wanting something or because one feels angry. He further expounded on this view when he said, "Every time I be mad I'm ready to do something bad", but was unable to offer a further explanation as to why he opts to use crime as a coping mechanism for anger.

His comments suggest that he neither considers the consequences of his actions before committing a crime, nor experiences affective responses that might discourage criminal behavior. Zantravious simply said, "You don't feel nothing" when committing a criminal act. In retrospect, he was able to acknowledge the results of his actions and said, "I've done hurt so many people", and he expressed the desire to not hurt others in the future. With respect to remorse and regret, Zantravious noted, "I've only got regrets; I got no apologies" and suggested that most people will not accept apologies. He also said that an apology has no value because it cannot "replace what I done did". Overall, Zantravious's ability to experience empathy, remorse, and regret seemed tied to his rather concrete approach to life. He tends to not experience strong emotions (beyond anger), and tends to be singularly focused on concrete acts. He then prefers to avoid or withdraw from associated aspects of a particular offense. He simply notes that the act is over, he cannot change the outcome, and is disinterested in exploring or experiencing the emotions intertwined with his actions. He uses withdrawal and avoidance to cope with past actions, and both approaches serve to circumvent affective responding. Consequently, the emotions that usually drive empathy, remorse, and regret are denied, hidden, or repressed. Generally, Zantravious appeared to be unconcerned about how his actions might affect others, or how he himself may be adversely affected.

F. PSYCHOLOGICAL TEST RESULTS AND INTERPRETATIONS

Zantravious Hall is a 15 year old black male functioning in the low average to Borderline range of intellectual ability. He has been evaluated on several occasions, and consistently achieved IQ Scores in the low 80's. The current administration of the WISC-III resulted in a Full Scale IQ score of 80. There was no significant variation between his verbal, academic, and abstract

abilities and his perceptual, spatial, and visual abilities. Furthermore, his achievement scores are consistent with his cognitive functioning, but lower than his grade placement. The Standard Scores on the Piat-R are in the low 80"s and high 70's and reflect a grade range between the fourth and fifth grade. Zantravious has the ability to progress in school, but his chances of earning a high school diploma will likely depend on the effort he puts forth, and the supportive services he receives. Presently, given his current academic status, it may be most beneficial to consider preparation for his GED.

WISC - III Subtest Scale Scores:

Verbal Scale		Performance Scale	
Information:	3	**Picture Completion:**	6
Similarities:	8	**Coding:**	8
Arithmetic:	9	**Picture Arrangement:**	7
Vocabulary:	3	**Block Design:**	10
Comprehension:	7	**Object Assembly:**	8
Digit Span:	8		
Verbal IQ Score:	78	**Performance IQ Score:**	86
Full Scale IQ Score:	80		

Piat-R Achievement Test Scores

	Standard Scores	Grade Level Equivalents
Reading Recognition:	82	4.9
Reading Comprehension:	79	3.9
Total Reading:	79	4.6
Mathematics:	85	5.8
Spelling:	94	8.0

Personality assessment reveals a juvenile who views the world in terms of power and control. Results from the Jessness indicate that Zantravious is likely to manipulate others to meet his own needs, and the pattern of manipulation may become so pervasive that the process may be disadvantageous. Control and power become the preeminent needs, and no consideration may be given to the consequences that may result from the pursuit of these needs. His current offense is a clear example of just this type of behavior. Reportedly, the victim had assaulted Zantravious's younger brother, so he intervened to support his sibling. However, after the incident was finished, Zantravious apparently needed to reassert his power by taking a gun to the victim's house. Zantravious fails to identify, label, and experience the emotions that usually influence behaviors. Affective experiences tend to be excluded from his consciousness, and thus, he rarely questions himself or critiques his own actions. Such was the case with the current offense when he considered no consequences related to his actions and impulsively responded with anger.

MACI results also describes a juvenile who is socially insensitive and prone to engaging in delinquent behaviors. Zantravious will tend to be rather cool and indifferent to the welfare of others and may override their rights as he pursues his own interests. Additionally, he lacks empathy and is willing to break societal norms in pursuit of his own self centered objectives. His assault of the victim in the current offense reflects this tendency to pursue his own goal without regard to consequences to himself or others. While Zantravious may exhibit confidence, self assuredness, and a callous approach to manipulating others, it is likely that these actions likely mask his own insecurities. The repression of his emotions and withdrawal from potentially hurtful relationships aid Zantravious in hiding his own sense of inadequacy. He defends himself with a cocky and cynical approach to life. His insecurities are not likely to be exposed, given that he will alienate and distrust others, and use hostility as a manipulative tool. Whether he rejects authority figures or challenges peers with a hostile and sullen demeanor, Zantravious appears to be a well defended juvenile who will be difficult to reach. He is considered to be an above average risk of failure in treatment and will be prone to commit other criminal acts.

While the RADS-2 does not indicate that Zantravious is clinically depressed, there are indicators of his dissatisfaction with his life. While he outwardly indicates that he has a positive in rewarding life, the anhedonia scale reflects his highest elevation. Thus, his life is not as rewarding as he might lead others to believe. Zantravious is also prone to withdraw from peers and he hesitates to risk involvement in close relationships. Finally, he endorses emotions such as feeling sad, upset, or worried on the RADS-2 that he would not usually acknowledge. He also admits to a negative perception of himself. The admission of such emotions may provide a therapeutic opening for a skilled clinician.

Zantravious' profile with the SASSI-A indicated a high probability for a substance abuse disorder.. He is able to at least acknowledge the consequences of his substance abuse and may do well in an outpatient treatment program. He is detached from his feelings and has little insight into the causes related to his pattern of substance abuse. Thus, the treatment issues that are related to affective expression will need to be highlighted with Zantravious when exploring his substance abuse.

G. SUMMARY

Zantravious Hall is a 15 year old black male functioning in the low average range of intellectual ability. His level of achievement is consistent with his intellectual ability, but well below his current grade placement. He will likely struggle in a conventional classroom and will only earn his high school diploma with a significant effort on his part as well as supportive academic instruction. He may be best served by pursuing his GED and vocational training.

Personality assessment indicates that Zantravious is a juvenile who has deep seated feelings of insecurity and inadequacy. However, he covers his own weaknesses by defining his world in terms of power and control. He is willing to take advantage of others and to manipulate them to meet his own needs. He is also willing to violate societal standards, challenge authority figures, and use aggression and hostility to get what he wants. He unconsciously excludes the relevant emotions that could either promote pro-social behavior or at least do not violate the rights of others. While he does not reach the clinical level of depression, Zantravious experiences emotional turmoil associated with the negative aspects of his life. A substance abuse disorder is

also a probable, and his pattern of marijuana use suggests that he is using this drug as a means to manage problematic aspects of his life. Zantravious will likely be a difficult juvenile to reach, and he is considered to have an above average risk of failure in treatment. Furthermore, in the absence of effective therapeutic interventions and without significant limits placed on his behavior, he is likely to engage in future criminal activity.

H. RECOMMENDATIONS

Zantravious has largely repressed the emotions upon which most individuals rely for behavioral guidance. Additionally, he evaluates the world based on power and control and is willing to use these as tools to manipulate others. Treatment will need to focus on helping this juvenile reconnect with his affective experiences while prohibiting the maladaptive pattern of relying on manipulation to achieve personal goals. A well structured environment that highlights exactly what is expected of Zantravious will give him the greatest opportunity for success. Given his past history of using anger and aggression to solve problems, treatment providers should expect him to have problems managing his temper and plan a strategy for coping with such outbursts when they do arise. Furthermore, since he has regularly relied on manipulation, opportunities for such behavior should be minimized and attention should be given to any efforts that may be used for "conning" the staff. An emphasis will need to be placed on extinguishing the tactics of manipulation and replacing them with choosing positive behaviors that result in positive consequences. Ultimately, the goal is to change a world view which is based on power, while promoting affective responding that encourages insight and pro-social choices. Additionally, participation in a substance abuse treatment program will also be beneficial. Zantravious will need help recognizing how his substance abuse has negatively affected his life and develop strategies for avoiding substance abuse in the future. Finally, Zantravious should be engaged in a discussion about his educational pursuits. He should play an active role in choosing the academic path he wishes to follow.

IV. CONCLUSION

A. LEVEL OF SOPHISTICATION AND MATURITY

Zantravious Hall is a juvenile who exhibits sophistication and maturity that are consistent with his chronological age. However, his repressed emotional responding leads to poor choices and behavioral acting out. His failure to recognize and label relevant emotions results in a rather unsophisticated pattern of interaction with his environment. Zantravious, as previously noted, tends to make decisions based on power and control. Thus, he is at risk of making very immature decisions as he strives to use power and manipulation to achieve his personal goals. In this singular area, Zantravious is a very unsophisticated and immature juvenile. When he fails to get his way, he is prone to use power and manipulation without consideration for the consequences frequently paired with the use of power, aggression, and intimidation. While he will be able to respond and interact with others appropriately when he is not challenged, problems consistently arise when he is faced with a power struggle. During such situations, his unsophisticated and immature approach to difficult situations will consistently lead to problematic consequences.

compliance within this very structured and secure setting suggests that he is less likely to adhere to expected standards and will be more difficult to rehabilitate.

9. Following his relatively recent parole to the community, Zantravious was receiving the services of an Intensive Supervision Officer and was being closely monitored. Furthermore, he was within a matter of weeks of being released from DJJ supervision. If he is adjudicated delinquent of the pending charges, it would suggest that he has not complied with the rehabilitative efforts in the community, and is considered less likely to benefit from other services in the future.

10. Zantravious has a history of substance abuse. Persons who abuse substances can violate societal standards as they facilitate their drug use. Substance abuse, and associated characteristics, can interfere with rehabilitative efforts.

11. Zantravious exhibited only minimal evidence of remorse for his criminal acts. While he made verbal statements of remorse for past antisocial acts, his nonverbal behavior and rather indifferent or nonchalant demeanor while making these statements suggests that his feelings of remorse have been insufficient to deter him from committing additional antisocial acts. He did not report experiencing great sorrow for his actions, and his deficits in this area could interfere with the rehabilitative process.

12. Zantravious struggled to accurately identify and experience empathic responding when reviewing his pattern of maladaptive behaviors. He has not accurately identified how victims feel and the absence of this affective responding has likely contributed to additional maladaptive behaviors. Persons who do not experience relevant levels of empathy will be more likely to struggle with rehabilitative services.

Positive Factors to consider:

1. Zantravious has sufficient intellectual abilities that could aid him in learning more appropriate actions. Persons who have such cognitive skills are more able to benefit from offered rehabilitative services.

2. Zantravious shows no evidence of mental health illness. Persons who are not mentally ill are more able to benefit from rehabilitation.

3. During his assessment interviews, Zantravious was open, disclosing, and willing to share in the exploration of his life. Individuals who are willing to engage in meaningful self-examination are more likely to engage in the rehabilitative process and benefit from such interventions.

4. Zantravious believes in his own skills and abilities and manifest a good level of self-esteem. Persons who have good self-esteem are more able to take advantage of intervention services and to benefit from rehabilitation

5. Zantravious has accepted responsibility for past offenses and did not attempt to blame others for his actions. Persons who accept responsibility for their actions are more likely to benefit from rehabilitation.

6. Although the mother has not always been successful in controlling Zantravious's actions, she has demonstrated a willingness to cooperate with DJJ procedures and recommendations. She presented as genuinely concerned for her son's well being and did not deny the seriousness of his offenses. Persons who have concerned family members that can support them in behavioral changes can be more likely to benefit from rehabilitative services. The family system can also promote behaviors that motivate positive change.

7. At 15 years 5 months of age, and given the parole guidelines of 36 months to 54 months there is sufficient time to work toward rehabilitation within the juvenile justice system.

C. ADEQUATE PROTECTION OF THE PUBLIC

The offenses with which Zantravious is charged are of a serious and violent nature, involving robbery with a gun. If found guilty, this indicates a lack of concern for others, and the need for concern and caution when considering the prospects for adequate protection of society.

If committed to the Department of Juvenile Justice for an offense that would be a criminal offense if committed by an adult, Section 20-7-7810 states that the juvenile may be committed for an indeterminate period not to exceed his 21st birthday. If committed to the Department of Juvenile Justice by the Family Court, Zantravious's parole guidelines for the offense(s) of armed robbery would be 24 to 48 (1 count) or 36 to 54 months (3 counts). If he is not sooner released by the Juvenile Parole Board, at age seventeen (17) he will be transferred to the S. C. Department of Corrections. Upon being transferred to the Department of Corrections at age seventeen (17), the length of time he would remain in secure custody (until age 21) or under community supervision would be within the discretion of the Juvenile Parole Board. During this indeterminate period of incarceration, the public would be adequately protected from any antisocial acts committed by this juvenile.

Community supervision of a juvenile paroled (conditionally released) from the Department of Juvenile Justice or the Department of Corrections can be provided until the juvenile's twenty-first (21st) birthday (Section 20-7-8320). At age twenty-one (21) the State's authority to supervise a juvenile in the community terminates due to the termination of parole. Given the present age of this juvenile and his parole guidelines, if committed to DJJ for these offenses, it is possible that he will be conditionally released by the Juvenile Parole Board prior to his twenty-first (21st) birthday. At age twenty one (21) release must be unconditional.

D. PROCEDURES, SERVICES, AND FACILITIES CURRENTLY AVAILABLE TO THE JUVENILE COURT WHICH WOULD BE OF BENEFIT TO THE JUVENILE

If adjudicated delinquent by the Family Court and placed on probation, the South Carolina Department of Juvenile Justice can provide until the age of eighteen (Section 20-7-400 (B))

probation, aftercare supervision, psychological consultation, and, when appropriate, short-term placement for juveniles in need of non-secure community-based services.

If adjudicated delinquent by the Family Court and committed to the Department of Juvenile Justice, the Department would provide institutional confinement. If necessary, institutional placement includes confinement in a maximum security facility. Within its institutional facilities the Department of Juvenile Justice operates a 12-month continuous educational program for incarcerated juveniles including, if appropriate, a Cities-in-Schools Program. Treatment services potentially available to incarcerated juveniles which could be of benefit to Zantravicus include individual, group, and family therapy; social skills training; anger control training; drug education; addiction treatment substance abuse self-help groups; tutorial programs; vocational rehabilitation programs; independent living skills education groups; and psychiatric and medical services.

Kevin Irmiter, Ph.D.
Licensed Psychologist

Craig S. Williams, PhD
Craig S. Williams, Ph.D.
Supervising Psychologist
Director of Consultation and Evaluation Services

STATE OF SOUTH CAROLINA COUNTY OF GREENWOOD ZANTRAVIOUS HALL, Applicant, vs. THE STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS THE EIGHTH JUDICIAL CIRCUIT Case No.: 2018-CP-24-00936 APPLICATION FOR POST-CONVICTION RELIEF

1. Place of detention: Greenwood County Detention Center

2. Name and location of Court which imposed sentence: Greenwood County Court of General Sessions, the Hon. Cordell Maddox presiding.

3. Name(s) of co-defendant(s) (if any): Shyheem H. ,Kaybresha T. [redacted]

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2010-GS-24-0188 & 2010-GS-24-0189

5. The date upon which sentence was imposed and the terms of the sentence: December 7, 2011.

6. A finding of guilty was made: after a plea of guilty.

7. Did you appeal from the judgment of conviction or the imposition of sentence? No

8. If you answered "yes" to (7), list:

   (a) the name of each Court to which you appealed: South

   (b) the result in each such Court to which you appealed:

   (c) the date of each such result:

Exhibit D

(d) if known, citations of any written opinion or orders entered pursuant to such results:

9. If you answered "no" to (7), state your reasons for not so appealing: Was not advised of right to appeal and was told I was waiving all my rights by pleading guilty.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

    a. Trial Counsel was ineffective when Counsel failed to properly advise me of my right to appeal;

    b. My right to due process was violated because I did not knowingly and intelligently waive my right to appeal;

    c. Trial Counsel failed to properly advise me on my right to appeal the waiver of my case from family court.

    d. Alternatively, trial counsels failed to properly object to the family court's waiver of my case when the family court's order was a "mere recitation of statutory requirements, without further explanation." *See In re Sullivan*, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980).

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

    a. Counsel advised me that I was "waiving all my rights" by pleading guilty I was not properly advised of my right to appeal my guilty plea.

    b. See 11(a).

    c. See 11(a). Additionally, I was not informed that the family court waiver order was deficient because it was a "mere recitation of statutory requirements, without further explanation." *See In re Sullivan*, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980).

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any already specified in (8)? No

(d) any other petitions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or Application: Not Applicable.

14. Has any ground set forth in (10) been previously presented to this or any other State or Federal Court, in any petition, motion or application which you have filed? No.

15. If you answered "yes" to (14) identify: Not Applicable.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: Applicant was not properly informed that he had a right to appeal the family court order and guilty plea.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes.

(b) your trial, if any? N/A

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Applicant has received legal advice related to preparing and drafting this application for PCR.

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Alexis Bell- PO Box 1270, Columbia, SC 29202

ii. Robert J. Tinsley, Sr.- PO Box 49145, Greenwood, SC 29649

iii. Tristan M. Shaffer- PO Box 1027, Chapin, SC 29036

(b) the proceedings at which each such attorney represented you:

i. Plea and Family Court Proceedings

ii. Plea and Sentencing

iii. Preparation of this Application.

19. State clearly the relief you seek in filing this application: a belated direct appeal of my guilty plea and the ability to challenge the family court

20. Are you now under sentence from any other court that you have not challenged? Not currently, however, I am in pre-trial detention.

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Greenwood)

I, Zantravious Hall, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Zantravious Hall
Applicant

SWORN to and subscribed before me this 11th day of October, 2018

(L.S.)
Notary Public

My Commission Expires: 01-14-2019

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Zantravious Hall, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Zantravious Hall
Applicant

SWORN or affirmed to and subscribed before me this
11 TH day of October, 2018.

Jay Bowen
Notary Public

My Commission Expires: 01-14-2019

STATE OF SOUTH CAROLINA COUNTY OF GREENWOOD	)	IN THE COURT OF GENERAL SESSIONS FOR THE EIGHTH JUDICIAL CIRCUIT
State of South Carolina	)	Indictment Nos. 2018GS24-408 and -1246
v.	)	**STATE'S REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO SENTENCING PURSUANT TO S.C. CODE § 17-25-45**
Zantravious R. Hall, Defendant.	)	

On October 12, 2017, a Greenwood County Jury found Defendant guilty of murder and attempted murder in the above captioned indictments. In an effort to avoid a mandatory life sentence as required by the recidivist statute, S.C. Code Ann. 17-25-45, Defendant filed a "Memorandum in Opposition to Sentencing Pursuant to S.C. Code § 17-25-45." For the reasons that follow, this Court should deny the relief sought by Defendant in his memorandum, and should impose a sentence of life imprisonment on the above captioned indictments.

I. Factual Background

On July 26, 2018, the State served Defendant with timely notice pursuant to S.C. Code Ann. § 17-25-45(H) and, e.g., James v. State, 372 S.C. 287, 641 S.E.2d 899 (2007), contending a conviction on either of the above captioned indictments would constitute Defendant's second "most serious" conviction, and would require the imposition of a sentence of life imprisonment. See S.C. Code Ann. § 17-25-45(A)(1)(a) ("[U]pon a conviction for a most serious offense [...] a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has [...] one or more prior convictions for [...] a most serious offense."). The State presents the following summaries of Defendant's two "most serious" convictions in support of its position that the Court must abide by the statutory mandate to sentence Defendant to life imprisonment.

A. Present Convictions

On November 21, 2017, Defendant drove his girlfriend's car to an apartment complex in the City of Greenwood. There, he located the victims in this case, Mr. McDuffie and Mr. Lukie, walking in front of an apartment building. He called out McDuffie's name, then exited the car and began firing a nine millimeter handgun at McDuffie and Lukie. McDuffie was struck nine (9) times, incurring a fatal wound to his upper back and a potentially fatal wound to the back of his head. Lukie was struck once in the left hip. Lukie was able to run away from the scene and seek treatment at the hospital. McDuffie was not so lucky: he was dead on arrival to the hospital. Officers arrived on scene shortly thereafter and recovered thirteen (13) nine millimeter shell casings in the parking lot of the apartment complex.

Defendant drove away from the scene and proceeded to "wipe down" his car, ostensibly to destroy any evidence of the shooting. Witnesses on scene were able to give a description of the vehicle used in the shooting, and officers were able to observe a matching vehicle on surveillance footage from a nearby business. Officers put out a "be on the lookout" notification for the vehicle. Approximately three (3) hours later, officers attempted to pull over a matching vehicle. The vehicle led officers on a brief but dangerous chase before colliding with another car. After a short foot pursuit, officers arrested Defendant for failure to stop for a blue light. Later that day, officers also served Defendant with arrest warrants for the murder of McDuffie.

The next day, officers obtained a search warrant for the vehicle used in the shooting. Under the cowl of the hood, they located a single nine millimeter shell casing that forensic testing later determined was fired from the same gun used in the shooting. Lukie also eventually identified Defendant as the shooter. Officers monitored Defendant's detention center phone calls, and overheard him having several incriminating discussions with various individuals about the crime.

The trial of this case began on October 8, 2018. The trial jury heard the above evidence, and on October 12, 2018, convicted Defendant of murder, attempted murder, and possession of a weapon during the commission of a violent crime. Defendant also entered a guilty plea to the related failure to stop for a blue light charge before the jury began deliberations.

B. Prior Strike

On February 10, 2009, Defendant and his brother went to a young lady's house when her parents did not give her permission to have visitors. Her cousin and some of his friends, including the victim, were in the area and stopped by the house to check on her. The cousin asked Defendant and his brother leave the house. They refused and a verbal argument eventually escalated into a full blown brawl. Defendant and his brother were outnumbered, so they left the area on a moped. Defendant and his brother went back to their house, retrieved a handgun, and went back out looking for the cousin and his friends. Defendant eventually located the victim walking down the sidewalk. The victim saw Defendant on the moped with a handgun in his hand and ran into a nearby house and closed the door behind him. Defendant and his brother, now holding the handgun, followed him into the house and attempted to goad the victim into fighting again. When the victim refused, Defendant encouraged his brother to shoot the victim. When the brother only fired one shot that struck the victim in the wrist, Defendant took the gun and began firing at the victim, striking him in the back. Several witnesses in the house were able to identify Defendant and his brother, and both gave full confessions.

Law enforcement initially issued a juvenile petition on Defendant, who was fifteen (15) years old at the time, for assault and battery with intent to kill, first-degree burglary, and possession of a weapon during the commission of a violent crime. The State sought to have the charges waived from Family Court to the Court of General Sessions. The Honorable Joseph W. McGowan III convened a hearing on the State's motion on November 23, 2009. Based on the testimony presented at the hearing and the evaluation and recommendation of the Department of

Juvenile Justice, Judge McGowan found Defendant's case should be transferred to the Court of General Sessions.

Defendant appeared before the Honorable J. Cordell Maddox Jr. on December 7, 2011, and pled guilty to assault and battery with intent to kill and second-degree burglary (violent). Robert J. Tinsley Sr., Esquire, represented Defendant at his plea.[1] Judge Maddox accepted a recommended plea and sentenced Defendant on both counts to fifteen (15) years of incarceration, suspended upon the service of eight (8) years of incarceration and five (5) years of probation. Defendant did not file a timely appeal or post-conviction relief action challenging this prior conviction. However, Defendant did file a post-conviction relief action challenging this prior conviction on October 11, 2018 – the day before the jury convicted him of the charges discussed in Section I.A., supra.

II. Legal Analysis

Defendant presents numerous grounds to attempt to persuade this Court to ignore the mandate of the recidivist statute to sentence him to life imprisonment.[2] Two of these grounds constitute improper, and unfounded, collateral attacks upon his prior conviction. The other two grounds have been soundly rejected by numerous appellate courts, including the South Carolina Court of Appeal and the United States Court of Appeals for the Fourth Circuit.

A. Improper Collateral Attacks

Any challenges to Defendant's prior conviction must have been timely raised in an appeal or in an application under the Uniform Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10, et al. ("the PCR Act"). Because Defendant essentially waited until after the current conviction to challenge the validity of his prior conviction, his challenges must fail.

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[1] Janna A. Nelson, Esquire, represented Defendant on these charges prior to Defendant retaining Mr. Tinsley.

[2] Defendant uses four subheadings under his "Argument" heading. For ease of reference, the State has combined its response to subheadings I and IV under Section II.A, infra (Improper Collateral Attacks) and its response to subheadings II and III under Section II.B, infra (Eighth Amendment).

1. Improper Forum

The PCR Act created the post-conviction relief action, filed in the Court of Common Pleas, as the exclusive method for any collateral attacks upon a conviction. See Simpson v. State, 329 S.C. 43, 45–46, 495 S.E.2d 429, 430 (1998) ("The Uniform Act encompassed the relief available under the common law writ of habeas corpus, the relief available under the expansion of the writ, and the relief available by collateral attack under any common law, statutory or other writ, motion, petition, proceeding, or remedy." (citations omitted)). Any issues concerning the sufficiency of the Family Court's order regarding Defendant's prior charges should have been challenged in either a direct appeal or a post-conviction relief action. Because Defendant failed to timely file either an appeal or a post-conviction relief action, he is precluded from asking this Court to now explore the validity of his prior conviction. The proper forum to challenge the validity of the prior conviction was the appellate courts or the Court of Common Pleas, not this criminal trial court.

2. Eleventh Hour PCR Application

Defendant filed an action for post-conviction relief challenging his prior conviction on October 11, 2018, the day before the conviction that triggered a mandatory sentence under the recidivist statute. This action, when eventually addressed by the Court of Common Pleas, is likely to be summarily dismissed for failure to comply with the statute of limitations for the PCR Act. S.C. Code Ann. § 17-27-45(a) provides that:

> "An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later."

Defendant pled to the prior conviction on December 7, 2011. He was therefore required to file the action for post-conviction relief before December 7, 2012. Because the action was filed

almost six (6) years after the expiration of the statute of limitations, the Court of Common Pleas is likely to summarily dismiss it.

Furthermore, the Court of Common Pleas is likely to find any action challenging the prior conviction is barred by the doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. See McElrath v. State, 276 S.C. 282, 284, 277 S.E.2d 890, 891 (1981). This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (citing Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979)). Thus, the doctrine of laches bars any post-conviction relief action where the applicant has failed to exercise his rights for an unreasonable period. Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (quoting Hallums v. Hallums, 296 S.C. 195, 371 S.E. 525 (1988)); see also RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 199, 644 S.E.2d 730, 734-35 (2007) ("Laches connotes not only an undue lapse of time, but also negligence and opportunity to have acted sooner." (citing Chambers of South Carolina, Inc. v. County Council for Lee County, 315 S.C. 418, 434 S.E.2d 279 (1993))). Defendant filed the action challenging his prior conviction over six (6) years after his guilty plea. Records and exhibits from the Family Court waiver hearing and the General Sessions guilty plea may no longer be available, and witnesses may be difficult to locate or may have no recollection of events. See, e.g. Rule 607(i), SCACR (court reporter only required to retain records for five (5) years); Rule 1.15(i), Rule 407, SCACR (attorney may destroy files after six (6) years). The State should not be called upon to defend the constitutionality of convictions after such a long delay. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice."). Therefore, the Court of Common Pleas will likely find Defendant's post-conviction relief action should be summarily dismissed for failing to diligently assert his claims.

Finally, the fact Defendant pled an arguably timely collateral claim in his post-conviction relief action does not justify this Court delaying sentencing for that claim to be resolved. Applicant's reliance on the "belated appeal" exemption to the statute of limitations, see Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 583 (2002), will not result in a reversal of his conviction. Even if the Court of Common Pleas finds such a claim is timely and not barred by the doctrine of laches, Defendant will be only entitled to "raise and argue on the 'belated appeal' those issues which could have been raised and argued on a timely direct appeal." McCray v. State, 271 S.C. 185, 187–88, 246 S.E.2d 230, 231 (1978). As Defendant would be appealing a guilty plea where a legal, recommended sentence was imposed, there is likely no preserved issue for appeal. See Kinard v. State, 418 S.C. 478, 481–82, 795 S.E.2d 15, 16–17 (2016) (affirming belated appeal from guilty plea where there were no preserved issues from the plea hearing). In effect, Defendant has pled an arguably valid claim that will result in no relief simply to delay these sentencing proceedings. This Court should reject that attempt to postpone the imposition of justice.

3. Meritless Collateral Attack

Finally, the State submits that, regardless of the untimeliness of the claim, Defendant's collateral challenge to his prior conviction fails on the merits. Judge McGowan issued an order transferring Defendant's prior case to the Court of General Sessions. Defendant does not challenge the propriety of the transfer; instead he claims the order fails to sufficiently set forth facts sufficient to provide meaningful appellate review.[3] However, the order could only be appealed and reviewed after a trial and conviction in the Court of General Sessions. See State v. Lockhart, 275 S.C. 160, 161, 267 S.E.2d 720, 720 (1980) (Family Court order transferring

[3] To the extent Defendant appears to claim the prior conviction should be considered a juvenile adjudication because the General Sessions court did not have subject matter jurisdiction, the State submits such argument is patently without merit. See State v. Rice, 401 S.C. 330, 333, 737 S.E.2d 485, 486 (2013) (erroneous order transferring a juvenile to general sessions court is judicial error, not jurisdictional error).

jurisdiction over a defendant to a Court of General Sessions is interlocutory and not subject to immediate appeal). As noted above, Defendant entered a guilty plea to a recommended sentence. Because he pled guilty, he could not challenge Judge McGowan's order on appeal. See Rice, 401 S.C. at 331, 737 S.E.2d at 485 (declining to entertain challenge to family court waver after plea in General Sessions and reaffirming that "South Carolina does not recognize conditional guilty pleas").

Even if Defendant had proceeded to trial, had been convicted, and had filed an appeal challenging the sufficiency of the waiver order, such an appeal would not have been successful in forcing the State to prosecute him in Family Court. A Family Court order transferring a case to the Court of General Sessions is reviewed for an abuse of discretion. State v. Pittman, 373 S.C. 527, 559, 647 S.E.2d 144, 161 (2007). Such an order must be simply "sufficient to demonstrate that the statutory requirement of full investigation has been met and that the question has received full and careful consideration by the family court." In Interest of Sullivan, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980). While mere "conclusory statements," Id., are frowned upon, the appellate court will not disturb a Family Court order as long as it appears from the record that the Family Court has competently reviewed the waiver request. See Pittman, 373 S.C. at 560, 647 S.E.2d at 161 ("Although the family court's order is not extremely detailed, the order sufficiently demonstrates that a full investigation occurred. Additionally, the record supports the family court's decision."). Even if the order were inadequate, the proper remedy would be to remand to the Family Court for further fact finding, not to overturn the conviction. See State v. Avery, 333 S.C. 284, 297, 509 S.E.2d 476, 483 (1998) (Finney, J., dissenting) (dissenting from a holding of an adequate order and encouraging "remand to the family court for reconsideration of the waiver issue").

As noted in Section II.A.2, supra, it may be difficult to re-create the record from the Family Court hearing. Nevertheless, reviewing courts must entertain a strong presumption of

regularity in lower court proceedings. See, e.g., Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). Here, the Department of Juvenile Justice waiver evaluation report[4] attached to Defendant's memorandum as Exhibit 3 provides sufficient factual basis to conclude Defendant's prior case was properly transferred to the Court of General Sessions. See Pittman, 373 S.C. at 560, 647 S.E.2d at 161 (2007) (holding order adequately supported waiver where, "while there was evidence Appellant was cooperative and capable of rehabilitation, the record also reflects that Appellant engaged in escape plans, made shanks, and caused other disruptions while in the custody of DJJ.").[5] Ultimately, it was Defendant's conduct that persuaded Judge McGowan to waive the case to General Sessions, and that decision was not an abuse of his broad discretion. See Avery, 333 S.C. at 292, 509 S.E.2d at 481 ("The serious nature of the offense is a major factor in the transfer decision." (citations omitted)).

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[4] Indeed, the concerns of Defendant's evaluator about Defendant's potential recidivism and inability to conform his conduct to the expectations of society mirror the concerns legislatures across the nation have sought to address through their recidivist statutes. See Moore v. Missouri, 159 U.S. 673, 677 (1895) ("[T]he statute imposes a higher punishment for the same offense upon one who proves, by a second or third conviction, that the former punishment has been inefficacious in doing the work of reform, for which it was designed [and] that the punishment for the second is increased, because, by his persistence in the perpetration of crime, he has evinced a depravity, which merits a greater punishment, and needs to be restrained by severer penalties than if it were his first offense[.]" (citations omitted)).

[5] See also Graham v. Florida, 560 U.S. 48, 117–18 (Thomas, J., dissenting) ("But research relied upon by the *amici* cited in the Court's opinion differentiates between adolescents for whom antisocial behavior is a fleeting symptom and those for whom it is a lifelong pattern. See Moffitt, Adolescence–Limited and Life–Course–Persistent Antisocial Behavior: A Developmental Taxonomy, 100 Psychological Rev. 674, 678 (1993) (distinguishing between adolescents who are 'antisocial only during adolescence' and a smaller group who engage in antisocial behavior 'at every life stage' despite 'drift[ing] through successive systems aimed at curbing their deviance'). That research further suggests that the pattern of behavior in the latter group often sets in before 18. Id. at 684 ('The well-documented resistance of antisocial personality disorder to treatments of all kinds seems to suggest that the life-course-persistent style is fixed sometime before age 18.'). And, notably, it suggests that violence itself is evidence that an adolescent offender's antisocial behavior is not transient. See Moffitt, A Review of Research on the Taxonomy of Life–Course Persistent Versus Adolescence–Limited Antisocial Behavior, in Taking Stock: the Status of Criminological Theory 277, 292–293 (F. Cullen, J. Wright, & K. Blevins eds. 2006) (observing that 'life-course persistent' males 'tended to specialize in serious offenses (carrying a hidden weapon, assault, robbery, violating court orders), whereas 'adolescence-limited' ones 'specialized in non-serious offenses (theft less than $5, public drunkenness, giving false information on application forms, pirating computer software, etc.)'")

Judge McGowan's order in Defendant's prior case sufficiently complies with the requirements of specificity, and would not have precluded meaningful appellate review had it been timely challenged. Therefore, Defendant cannot now claim his prior conviction was not properly transferred to the Court of General Session and should not be viewed as a prior conviction under the recidivist statute.

B. Eighth Amendment

The Eighth Amendment does not forbid sentencing Defendant to life imprisonment under the recidivist statute. Defendant's prior conviction for a most serious offense constituted a qualifying prior conviction for enhancement purposes under the recidivist statute, and Graham v. Florida, 560 U.S. 48 (2010), and Miller v. Alabama, 567 U.S. 460 (2012), are not applicable to this case.[6]

1. Defendant's Prior Conviction is a Qualifying Strike

A juvenile adjudication in family court does not qualify as a conviction for purposes of sentencing enhancement under the recidivist statute. State v. Ellis, 345 S.C. 175, 179, 547 S.E.2d 490, 492 (2001). However, when a juvenile[7] is tried as an adult in the Court of General Sessions, a resulting conviction or guilty plea is a "conviction" for enhancement purposes. State v. Standard, 351 S.C. 199, 203, 569 S.E.2d 325, 328 (2002).

In Standard, 351 S.C. at 204, 569 S.E.2d at 328, the South Carolina Supreme Court determined the enhancement of a sentence under the recidivist statute with a prior adult conviction for a crime committed while a juvenile did not violate the Eighth Amendment. The

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[6] In his dissent in Miller, 567 U.S. at 509-15, Justice Alito warns that "[f]uture cases may extrapolate from today's holding, and this process may continue until the majority brings sentencing practices into line with whatever the majority views as truly evolved standards of decency." Defendant's attempt to extend Miller to the present case is the embodiment of Justice Alito's fear.

[7] See Aiken v. Byars, 410 S.C. 534, 537 n.1, 765 S.E.2d 572, 573 n.1 (2014) ("In South Carolina, pursuant to Section 63–19–20 of the South Carolina Code (2010), a juvenile is a person less than seventeen years of age. However, Miller extends to defendants under eighteen years of age and therefore for the purposes of this opinion we consider juveniles to be individuals under eighteen.").

Supreme Court held "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." Id. at 206, 569 S.E.2d at 329. Subsequently, the South Carolina Court of Appeals also found the imposition of a sentence of life imprisonment based on a prior adult conviction for a crime committed while a juvenile did not constitute cruel and unusual punishment. State v. Williams, 380 S.C. 336, 348-49, 669 S.E.2d 640, 647 (Ct. App. 2008). Our appellate courts have consistently held that adult convictions for crimes committed as a juvenile are strikes under the recidivist statute, and this Court should not be the first to rule otherwise.

2. Punishing Adult Recidivists is Not Cruel and Unusual

Neither the holding of Graham, nor the holding of Miller, has impacted the underlying holdings of Standard and Williams. In Graham, 560 U.S. at 75, the Supreme Court of the United States (SCOTUS) held a sentence of life without parole to be unconstitutional for a juvenile offender who did not commit a homicide. SCOTUS explained that juveniles have a "'lack of maturity and an underdeveloped sense of responsibility[;]'" they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure[;]" and their characters are "not as well formed." Graham, 560 U.S. at 68 (quoting Roper v. Simmons, 543 U.S. 551 (2005)). SCOTUS further opined that "[j]uveniles are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." Id.

In Miller, SCOTUS held a mandatory sentence of life without parole for a juvenile homicide offender violated the Eighth Amendment. Miller, 567 U.S. at 479-80. SCOTUS, again relying on Roper and Graham, discussed the differences between a juvenile and an adult and held those differences significant because the transition from juvenile to adult is one in which maturing occurs, in which changes occur in the parts of the brain that control behavior, and "as

the years go by and neurological development occurs, [the juvenile's] 'deficiencies will be reformed.'" Id. at 472 (quoting Roper, supra).

The facts of this case are different from those of Graham, and Miller in one significant aspect—Defendant was not a juvenile when he committed the crime for which he must be sentenced to life imprisonment. Defendant had just turned twenty-four (24) years of age at the time he committed the murder and attempted murder in this case. At that age, he can no longer claim diminished responsibility for his actions based on age or maturity. Therefore, there is no rational basis to conclude Defendant should escape the legislatively prescribed sentence in this case. Under the rationale of Roper, Graham, and Miller, as he grew older, Defendant should have matured and his "deficiencies" seen as a juvenile should have been "reformed." Instead, his actions as a recidivist of violent and most serious crimes have shown that Defendant is one of the individuals demonstrating "irretrievably depraved character."[8] Graham and Miller simply do not mandate the exclusion of Defendant's prior conviction to enhance his present sentence.

Additionally, the punishment Defendant receives in this case is not further punishing him for his prior conduct. Instead, it is punishing him as a repeat offender who did not reform his behavior, and instead, demonstrated a continued disrespect for the law and for others. See Gryger v. Burke, 334 U.S. 728, 732 (1948) ("The sentence as a fourth offender or habitual criminal is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes. It is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one."); see also, Solem v. Helm, 463 U.S. 277, 296 (1983) ("[A] State is justified in punishing a recidivist more severely than it punishes a first offender."). In addition, Defendant's enhanced sentence is entirely consistent with the rationale behind recidivist offender statutes, which is to more severely punish offenders who continue to break the law. See United States v. Rodriquez, 553 U.S. 377, 385 (2008) ("[A]n offense committed by a repeat offender is

[8] See Note 5, supra.

often thought to reflect greater culpability and thus to merit a greater punishment. Similarly, a second or subsequent offense is often regarded as more serious because it portends greater future danger and therefore warrants an increased sentence for purposes of deterrence and incapacitation.").

The Eighth Amendment's "[e]volving standards of decency that mark the progress of a maturing society[,]" Standard, 351 S.C. at 204, 569 S.E.2d at 328 (quoting Thompson v. Oklahoma, 487 U.S. 815, 821 (1988)), do not prohibit the imposition of a life sentence in this case. Other courts have considered the impact of Roper, Graham, and Miller on recidivist life sentences and found enhancement from the use of an adult conviction for a crime committed while a juvenile is proper. See United States v. Graham, 622 F.3d 445, 463 (6th Cir. 2010) (finding the imposition of a sentence of life imprisonment under a recidivist statute based upon a prior juvenile conviction was not unconstitutional because the instant offense was committed by an adult offender and not a juvenile with lessened culpability as discussed in Graham); United States v. Scott, 610 F.3d 1009, 1018 (8th Cir. 2010) ("The Court in Graham did not call into question the constitutionality of using prior convictions, juvenile or otherwise, to enhance the sentence of a convicted adult."); see, e.g., United States v. Wilks, 464 F.3d 1240, 1243 (11th Cir. 2006) ("Our conclusion that youthful offender convictions can qualify as predicate offenses for sentencing enhancement purposes remain valid because Roper does not deal specifically – or even tangentially – with sentence enhancement. It is one thing to prohibit capital punishment for those under the age of eighteen, but an entirely different thing to prohibit consideration of prior youthful offenses when sentencing criminals who continue their illegal activity into adulthood. Roper does not mandate that we wipe clean the records of every criminal on his or her eighteenth birthday."). Thus, Defendant has failed to establish a clear or universal rejection of the use of prior juvenile convictions for enhancement purposes under recidivist offender statutes. Cf. Atkins v. Virginia, 536 U.S. 304, 312 ("[T]he 'clearest and most reliable objective evidence of

contemporary values is the legislation enacted by the country's legislatures.'" (quoting Penry v. Lynaugh, 492 U.S. 302, 331(1989))).

The Eighth Amendment's prohibition on sentences which are "grossly out of proportion with the severity of the crime[,]" State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001), is also not applicable. Murder carries a potential life sentence regardless of the defendant's prior record, see S.C. Code Ann. 16-3-10, and the recidivist statute has withstood numerous prior Eighth Amendment challenges. See, e.g. Id. at 55-59, 543 S.E.2d at 544–47 (rejecting a slew of constitutional challenges to the recidivist statute); State v. Brannon, 341 S.C. 271, 281, 533 S.E.2d 345, 350 (Ct. App. 2000) (recidivist statute "is not unconstitutional per se"); see also State v. White, 349 S.C. 33, 37-38, 562 S.E.2d 305, 306–07 (2002) (rejecting Eighth Amendment challenge based on first-degree burglary conviction because, in part, first-degree burglary carries life sentence notwithstanding implications of recidivist statute). In this case, the General Assembly has determined a repeat offender of a violent and most serious crime should be punished severely with life imprisonment. See State v. Washington, 338 S.C. 392, 400, 526 S.E.2d 709, 713 (2000) ("The Legislature has the power, within constitutional limits, to define and punish crimes." (quoting Guinyard v. State, 260 S.C. 220, 226, 195 S.E.2d 392, 395 (1973))). Roper, Graham, and Miller do not invalidate that determination embodied in the recidivist statute.[9]

3. Controlling Precedent

In addition to the courts described above, both the South Carolina Court of Appeals and the United States Court of Appeals for the Fourth Circuit have rejected claims that Miller prohibits the imposition of a life sentence on a recidivist where the enhancement is based on an adult conviction for a crime committed while a juvenile.

[9] See Jones, 344 S.C. at 58, 543 S.E.2d at 546 ("When the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution." (citing State v. Bouye, 325 S.C. 260, 484 S.E.2d 461 (1997))).

In State v. Green, 412 S.C. 65, 74–75, 770 S.E.2d 424, 429 (Ct. App. 2015), the trial jury convicted the defendant of armed robbery and the State sought a life sentence based on a prior conviction for armed robbery committed while he was seventeen (17) years old. The defendant argued that "a sentence of LWOP would violate the Eighth Amendment's ban on cruel and unusual punishment because [...] 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[.]" Id. at 75, 770 S.E.2d at 429. The Court of Appeals rejected this argument. The Court of Appeals, relying on Standard, supra, first held that because the defendant "was tried and adjudicated as an adult, his prior armed robbery conviction is a 'conviction' for purposes" of the recidivist statute. Id. at 84, 770 S.E.2d at 435. Further, the Court of Appeals held that the defendant's Eighth Amendment argument and his reliance on Miller was "misplaced." Id. at 86, 770 S.E.2d at 436. The Court of Appeals specifically held that the defendant

> "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 [the defendant] was not a juvenile at the time he committed the current armed robbery, the policy considerations from Miller are inapplicable. Therefore, [the defendant's] LWOP sentence did not violate the Eighth Amendment."

Id. at 87, 770 S.E.2d at 436.

The United States Court of Appeals for the Fourth Circuit reached a similar result in United States v. Hunter, 735 F.3d 172 (4th Cir. 2013). There, the defendant argued the trial judge "erred in sentencing him as an armed career criminal based on violent felonies he committed as a juvenile." Id. at 173. The Fourth Circuit noted the Eighth Amendment's proportionality and "evolving standards of decency" requirements, but held that

> "[n]one of this helps [the defendant], however, because the sentence he challenges punishes only his adult criminal conduct. When a defendant is given a higher sentence under a recidivism statute ... 100% of the punishment is for the offense of conviction. None is for the prior convictions or the defendant's status as a

> recidivist. Instead, Defendant's enhanced sentence is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because [it is] a repetitive one."

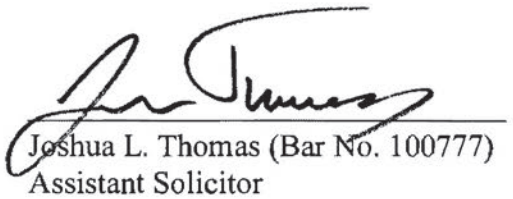
Id. at 175 (4th Cir. 2013) (quoting Rodriquez, supra). Because the defendant was not a juvenile when he committed the crime for which he was sentenced, Miller, with its attendant concerns about juvenile offenders, did not invalidate his sentence. Id. at 176.

The Court of Appeals holding in Green and the Fourth Circuit's holding in Hunter are apposite to and controlling in this case. Both Courts have rejected the same Eighth Amendment claims Defendant now raises to this Court, and this Court should follow suit.

III. CONCLUSION

Defendant has presented no compelling arguments for this Court to abdicate its responsibility to issue a sentence of life imprisonment in this case. Because Defendant's challenges have been untimely raised in an improper forum and have been universally rejected, this Court should decline to entertain his efforts to delay the imposition of justice. Defendant is a repeat offender of violent and serious crimes, and must be sentenced to life imprisonment.

Respectfully Submitted,



Joshua L. Thomas (Bar No. 100777)
Assistant Solicitor
Eighth Circuit Solicitor's Office

October 25, 2018

STATE OF SOUTH CAROLINA COUNTY OF GREENWOOD	)	IN THE COURT OF GENERAL SESSIONS FOR THE EIGHTH JUDICIAL CIRCUIT
State of South Carolina	)	Indictment Nos. 2018GS24-408 and -1246
v.	)	
	)	**CERTIFICATE OF SERVICE**
Zantravious R. Hall, Defendant.	)	

I, Joshua L. Thomas, certify that I have served the within STATE'S REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO SENTENCING PURSUANT TO S.C. CODE § 17-25-45 on Defendant by EMAIL TO HIS COUNSEL OF RECORD this same day.

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

Respectfully Submitted,

Joshua L. Thomas (Bar No. 100777)
Assistant Solicitor
Eighth Circuit Solicitor's Office

OCTOBER 25, 2018

WITNESSES

Mike Dixon

Greenwood Police Department

WARRANT NUMBER

2017A2420101150

TRUE BILL

Julie Wideman

Foreman of the Grand Jury

Date: 3-9-18

VERDICT

Guilty

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2018

Indictment #2018GS24- 0408

THE STATE

vs.

ZANTRAVIOUS RANDELL HALL

INDICTMENT FOR

Murder

SC Code: § 16-03-0010

CDR: 0115

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

Murder
§16-03-0010

At a Court of General Sessions, convened on the 9th day of March, 2018, the Grand Jurors of Greenwood County present upon their oath:

That Zantravious Randell Hett, on or about November 21, 2017, in Greenwood County, did wilfully, feloniously, and with malice aforethought kill Emyle Markial Mcduffie by means of shooting and that the victim did die in Greenwood County as a proximate result thereof on or about that same day, in violation of Section 16-3-10 of the South Carolina Code of Laws and the common law.

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

Joshua L. Thomas
Assistant Solicitor

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE VS.
ZANTRAVIOUS RANDELL HALL
AKA: _____
Race: Black Sex: M Age: 24
DOB: [redacted] SS#: [redacted]
Address: [redacted] Green Street
City, State, Zip: Greenwood, SC 29646
DL# [redacted] SID# _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2018GS24-0408
A/W: 2017A2420101150
Date of Offense: 11/21/2017
S.C. Code §: 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: **Murder**
In violation of § **16-03-0010** of the S.C. Code of Laws, bearing CDR Code # **0116**

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☒ §17-25-45

The charge is ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Joshua L. Thomas, Assistant Solicitor — 100777 SC Bar # — Defendant — Attorney for Defendant — 70306 SC Bar #

LWOP 17-25-45

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of Life ~~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 Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____
Total: $_____ plus 20% fee: _____ $_____ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Recipient: _____ Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$25.00
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% to County (if paid in installments)	$	$3.75
TOTAL		$128.75

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Charles Copeland
Court Reporter: TScott
Presiding Judge: _____
Judge Code: 2167
~~Sentence~~ Date: 12-12-18

Guilty verdict
Sentencing Date 11-30-18

WITNESSES

Mike Dixon

Greenwood Police Department

WARRANT NUMBER

2017A2420101151

TRUE BILL

Julii Wideman

Foreman of the Grand Jury

Date: 3-9-18

VERDICT

Guilty

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2018

Indictment #2018GS24-0409

THE STATE

vs.

ZANTRAVIOUS RANDELL HALL

INDICTMENT FOR

Possession Of A Weapon During The Commission Of A Violent Crime

SC Code: § 16-23-0490

CDR: 0549

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

Possession Of A Weapon During The Commission Of A Violent Crime
§16-23-0490

At a Court of General Sessions, convened on the 9th day of March, 2018, the Grand Jurors of Greenwood County present upon their oath:

The defendant, Zantravious Rardell Hall, did on or about November 21, 2017, in Greenwood County, while committing the violent crime of Murder (or any lesser included violent offense), possess a firearm in furtherance thereof, in violation of Section 16-23-0490, South Carolina Code of Laws.

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

Joshua L. Thomas
Assistant Solicitor

582

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE VS.
ZANTRAVIOUS RANDELL HALL
AKA: _____
Race: Black Sex: M Age: 24
DOB: [redacted] SS#: [redacted]
Address: [redacted] Green Street
City, State, Zip: Greenwood, SC 29646
DL# [redacted] SID# _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2018GS24-0409
A/W: 2017A2420101151
Date of Offense: 11/21/2017
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

No sentencing per statute/case laws

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: **Possession Of A Weapon During The Commission Of A Violent Crime**
In violation of § **16-23-0490** of the S.C. Code of Laws, bearing CDR Code # **0549**

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

The charge is: ☒ As indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State
ATTEST:

Joshua L. Thomas, Assistant Solicitor 100777 SC Bar # | Defendant | Attorney for Defendant 70306 SC Bar #

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 Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____
Total: $_____ plus 20% fee: _____ $_____ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Recipient: _____ Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$_____
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$_____
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% to County (if paid in installments)	$	$_____
TOTAL		$_____

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Charlotte Copeland
Court Reporter: TScott
Presiding Judge: _____
Judge Code: 2167
Sentence Date: 10-12-18

Guilty Verdict
Sentencing Date 11-30-18

SCCA/217 (07/2016)

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

Attempted Murder
§16-03-0029

At a Court of General Sessions, convened on the 13th day of July, 2018, the Grand Jurors of Greenwood County present upon their oath:

The defendant, Zantravious Randell Hall, did on or about November 21, 2017, in Greenwood County unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Michael D. Lukie, in violation of Section 16-03-0029, Code of Laws of South Carolina (1976, as amended).

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

Joshua L. Thomas
Assistant Solicitor

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE VS.
ZANTRAVIOUS RANDELL HALL
AKA: _____
Race: Black Sex: M Age: 24
DOB: [redacted] SS#: [redacted]
Address: [redacted] Green Street
City, State, Zip: Greenwood, SC 29646
DL# [redacted] SID# _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2018GS24-1246
A/W: DIRECT INDICTMENT
Date of Offense: 11/21/2017
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: **Attempted Murder**
In violation of § **16-03-0029** of the S.C. Code of Laws, bearing CDR Code # **3410**

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☒ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.
ATTEST:

Joshua L. Thomas, Assistant Solicitor 100777 SC Bar # | Defendant | Attorney for Defendant 70306 SC Bar #

LWOP 17-25-45

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of ~~30 years~~ life ~~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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2018GS-24-0408

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. credited 374 Days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____
Total: $_____ plus 20% fee: _____ $_____ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Recipient: _____ Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% to County (if paid in installments)	$	$ 3.75
TOTAL		$ 128.75

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____
$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Charlotte Copeland
Court Reporter: TScott
Presiding Judge: _____
Judge Code: 2162
~~Sentence~~ Date: 10-12-18

Guilty 2nd Deg 1st
sentence 11-30-18

SCCA/217 (07/2016)

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,

s/*Susan B. Hackett*
Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 31st day of July, 2020.