

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

RECEIVED

Sep 21 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KENNETH LEE BROWN,

APPELLANT.

APPELLATE CASE NO. 2020-000086

RECORD ON APPEAL

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Exhibit (E)

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Spartanburg)
Lenarth Brown #114440)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)

IN THE COURT OF COMMON PLEAS

2015-CP-42-2548

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention FCC. Coleman usp 1. P.O. Box 1033
Coleman, FL 33521
2. Name and location of Court which imposed sentence Spartanburg
County Courthouse, Spartanburg, South Carolina
3. Name(s) of co-defendant(s) (if any) None
None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 83-65-42-6-10-19-20-21-30-31
 - (b) Burglary, larceny, burglary, larceny, burglary

(c) larceny, receiving stolen goods, Criminal Sexual Conduct 1st Degree.

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) January 28, 1983
- (b) 5 life sentence, 20 years
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

(c) the date of each such result:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) my attorney said not to
- (b) _____

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

- (a) New law says anyone who was 17 years of
- (b) age, and sentence to life imprisonment
- (c) is unconstitutional. U.S. Supreme Court.

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

- (a) Petitioner was 17 years old when crime was
- (b) committed, and when he was put in jail.
- (c) did not turn 18 until January 02, 1983.

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

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
- (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, motions or applications in this or any other Court? yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. last conviction relief in Spartanburg
- ii. County Court house. ineffective
- iii. assistant of counsel
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. Spartanburg County Court house
- ii. Spartanburg South Carolina
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Don't know
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Don't know
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

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: It was not law then that being

- (a) Sentence at 17 as a juvenile who was under
- (b) 18 years of age when he committed his crimes.
- (c) Policy of United States Supreme Court says in
unconstitutional, it is see attachment -

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? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Charlie Sanders Spartanburg County
(PDF).
 - ii. Michael Ludusill Attorney Spartanburg
South Carolina.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Jurisdiction / Michael Ludusill
 - ii. for hearing Charlie Sanders (PDF).
 - iii. _____

19. State clearly the relief you seek in filing this application:

To have my life Sentences all (5) of
them overturned and resentence.

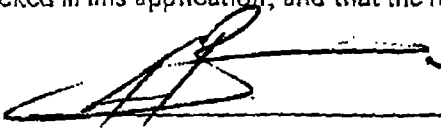
20. Are you now under sentence from any other court that you have not challenged?

I'm under sentence now in Federal
Prison. FCC. Coleman vs P. Coleman, Fl
33521

STATE OF SOUTH CAROLINA)
County of Spartanburg)

VERIFICATION

I, Kenneth Lee Brown #114440, 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.



SWORN to and subscribed before me this _____ day of _____

Notary Public (L.S.)

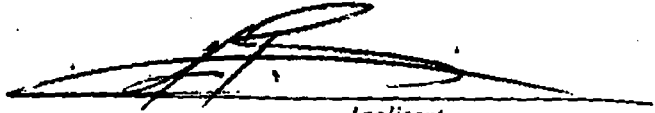
My Commission Expires: _____

original copy

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

I, Kenneth Lee Brown #1144410, 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.



Applicant

SWORN or affirmed to and subscribed before me this _____ day of _____

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA
County of Spartanburg, SC

Kenneth Lee Brown #114440
Petitioner,

Indictment
83-65-42-6-10-
19-20-21-30-31

vs.

State of South Carolina

Memorandum In Support of Petition
for Post Conviction Relief

J. Moore
H. Cassett
M. Ludasill

Trial Judge
Solicitor
Attorney

Cover Sheet

Introduction

Kenneth Brown (hereinafter) petitioner Brown, is a 50 year old male, who has been incarcerated in the South Carolina Department of Correction (SCDC) for 19 1/2 years. The petitioner is now presently confined in Federal Prison, Federal Correctional Complex Coleman vsp 1. Coleman, Florida. In this, post conviction relief petition, he petitioner in his bid to have his January 28, 1983 conviction overturned due to pre-law that was made "retroactive" by the United States Supreme Court, in the ruling of: *Graham vs. Florida*, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) juvenile who was under 18 years of age, when he committed his crime. Ple against mandatory life without parole sentence for juvenile nonhomicide offenders is retroactive on collateral review.

Around June or July of 1982 when
Petitioner Brown was only 17 years
old when said crimes was committed,
in which he received 5-life sentence.
It wasn't until January 28, 1983
after his 18th Birthday which was
January 07, 1983. Did his guilty plea
trial took place. on January 28, 1983,
Petitioner Brown plea guilty to the crimes
for which he was convicted of.
now, Petitioner Brown is requesting for
review and release of his 5-life sentence
while he was a juvenile in (1982).
juvenile that committed rap while
they was a juvenile cannot receive a
"life sentence, it constitute cruel and
unusal punishment which is a violation
of the 8th Amendment. New law
handed down from the United States
Supreme Court (2011) and they made
it "retroactive" on collateral review.

2 of 3...

In *Graham v. Florida*, 560 U.S. ___, 2010 holding that the 8th Amendment prohibits a sentence of life without parole for a nonhomicide crime committed while the defendant was a juvenile, the defendant's sentence of life imprisonment for sexual offenses he committed while a juvenile is quashed and the case is remanded for resentencing.

In petitioner Brown case he was 17 years old at the time he was charged with crime of Criminal Sexual Conduct 1st degree by having a female perform oral sex on him. See dates on indictments and the year. Petitioner Brown was sentenced to 5 consecutive life sentences plus 25 years. Charges were "Attempted. Robbery, attempted armed robbery, Burglary, larceny, burglary and larceny, burglary and larceny, receiving stolen goods.

In the case of Kenneth Young, who was sentenced to a life sentence, the United States Supreme Court ruled that inmates cannot be given life sentences for crimes committed while they were juveniles. The only exemption to the ruling is a murder conviction.

This new ruling gives juveniles throughout the country a second chance. United States Supreme Court rule it is unconstitutional to impose life imprisonment on juveniles who committed nonhomicide crimes "before" their 18th birthday. Petitioner Brown's indictment and record show he was only 17 years old still a juvenile. Petitioner Brown's life sentence is unconstitutional in violation of his 8th Amendment right. I ask this Court to let the law work, after 33 years. Petitioner Brown conviction and sentence demanded for resentencing.

Petitioner Brown's Sentence of (5- Life Sentence, was grossly disproportionate in violation of his eighth Amendment Right. Because Sentencing a juvenile to life imprisonment for nonhomicide offense is unconstitutional. Yes, Brown committed serious offenses, for which he deserves serious punishment, but he was only 17 years of age, and under Court's precedents his youth is one factor among others, that should be considered in deciding whether his punishment was unconstitutional excessive. I ask this Court to agree that petitioner age at the time of crimes 17 years old, with the nature of his criminal activity and the unusual severity of his sentence tip the constitutional balance. This Court in fairness of justice undo the 33 years the violation of Brown's eighth Amendment Right.

Conclusion

Petitioner Brown prays that the relief sought now be granted.
Resentencing order.

This 10th, Day of June 2015

Kenneth Brown #56822-004
FCC. Coleman vsp 1
P.O. Box 1033
Coleman, FL 33501

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
 COUNTY OF SPARTANBURG)
 Kenneth Lee Brown,) Case No.: 2015-CP-42-2548
)
 Applicant,)
)
 v.) **RETURN AND MOTION TO DISMISS**
)
 State of South Carolina,)
)
 Respondent.)

Respondent, in making its Return to the application for post-conviction relief (“PCR”) filed by Kenneth Lee Brown (“Applicant”) on June 10, 2015, would respectfully show this Court:

1.

Applicant is currently confined in the Federal Bureau of Prisons for unrelated convictions. Applicant was indicted at the January 1983 term of the Spartanburg County Grand Jury for the crimes of armed robbery and assault and battery with intent to kill (1983-GS-42-0006); attempted armed robbery (1983-GS-42-0010); three counts of burglary and larceny (1983-GS-42-0019, -0021, and -0031 Counts 1 and 2); burglary (1983-GS-42-0020); burglary, armed robbery, and criminal sexual conduct, first degree (1983-GS-42-0030, Counts 1, 2, and 3). Michael Rudasill, Esquire represented Applicant. On January 28, 1983, Applicant pleaded guilty before the Honorable Paul M. Moore. Judge Moore sentenced Applicant to five consecutive terms of life imprisonment, in addition to consecutive terms of 20 years for attempted armed robbery and 10 years for armed robbery and assault and battery with intent to kill. Applicant did not appeal.

2015 JUN 10 10 32 AM
 CLERK OF COURT
 2015 CP 42 2548

Respondent made its Return and Motion to Dismiss on or about February 21, 2003. An evidentiary hearing into the matter was convened on April 10, 2003. At the hearing, Respondent made a motion to dismiss the application because there is no habeas corpus relief in the circuit court and even if the petition were to be construed as a PCR application, it would have been successive and time barred. In an Order dated June 5, 2003, the Honorable J. Derham Cole issued a Final Order dismissing the matter with prejudice. Applicant did not appeal.

Current Application

In his current application, Applicant alleges he is being held unlawfully for the following reasons:

1. "New law says anyone who was 17 years of age and sentenced to life imprisonment is unconstitutional. U.S. Supreme Court."
 - a. "Petitioner was 17 years old when crime was committed and when he was put in jail. [Applicant] didn't turn 18 until January 07, 1983."

Attached to and incorporated herein are the Spartanburg County Clerk of Court records regarding the subject convictions, the records of Applicant's State Habeas application,¹ the PCR application, and the return. Respondent reserves the right to amend this Return upon receipt of relevant information.

II.

Respondent submits the allegation related to Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455 (2012) must be dismissed. On November 12, 2014, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The

¹ Respondent's records of Applicant's first and second PCR actions have been destroyed pursuant to agency retention policy and in compliance with the mandates of S.C. Code Ann. §§ 30-1-10 to 180, and S.C. Code of Regs. R.12-321.

South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced." Id. at 545, 765 S.E.2d at 578 (emphasis added). As such, any challenges under Miller are not properly heard in a PCR action and this allegation must be summarily dismissed.

III.

To the extent the Applicant raises any allegations apart from those raised pursuant to Miller v. Alabama, this Court should also summarily dismiss the current application because it is successive to the Applicant's previous PCR applications. Successive applications for PCR are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive PCR applications are forbidden unless the Applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds

in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. at 246, 262 S.E.2d at 737.

With the exception of the Miller v. Alabama claim, the Applicant could have raised any new grounds for relief in his prior PCR applications. The Applicant has failed to present any reasons why he could not have raised such allegations in his previous PCR application. Accordingly, to the extent the Applicant raised any additional issues in his application, Respondent moves for a summary dismissal of the application as successive.

IV.

Furthermore, to the extent Applicant raises any issues aside from the Miller v. Alabama claim, Respondent submits this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act ("the PCR Act"). S.C. Code Ann. §17-27-10 to -160. Subsection 17-27-45(a) provides:

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.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pleaded guilty to the offenses he challenges in this Application on January 28, 1983. This Application was filed on June 10, 2015, well beyond the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994).

Additionally, § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, to the extent the Applicant raised claims in his current application aside from his allegations pursuant to Miller v. Alabama, the Respondent asks this Court to summarily dismiss this PCR application for failure to file within the time mandated by the PCR Act.

V.

Each and every allegation contained within the application not expressly admitted, qualified or explained herein is denied.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application as because it is successive, time-barred, and not properly before the Court of Common Pleas.

Respectfully submitted,

ALAN WILSON
Attorney General

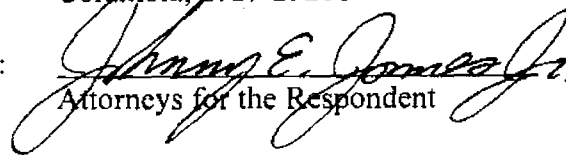
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Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

2016 SEP 22 AM 8:49

Columbia, South Carolina
Sept. 19th, 2016

State of South Carolina
County of Spartanburg

Kenneth Lee Brown, *Pro Se*,
Applicant.

Case No.: 2015-CP-42-2548

v.

Motion for Sent
Resentencing

State of South Carolina,
Respondent.

2016 OCT 14 AM 10:12
M. HOPE BRACKLEY

Applicant Kenneth Lee Brown, who is a *Pro Se*, applicant, is making this Motion for the Court to Grant him his Resentencing Hearing. Because his *fel* application was not time barred, it was made before November 12, 2015, because on November 12, 2014, the South Carolina Supreme Court held Sentences of life without the possibility of Parole that were imposed on "juveniles" violated the eighth Amendment under Miller and that these individuals are "entitled" to "Resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

the South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the Court of General Sessions where he or she was originally sentenced."

In all fairness the applicant wasn't giving no-notice or did he receive notice from his attorney Michael Rodasill who represented the applicant on January 28, 1983, or did the courts give applicant notice under these extraordinary circumstances this Honorable Court in the interest of due process of law should construe the fee application as the motion for resentencing, and also the fee application was file timely within the one year limit which started on November 12, 2014, and the applicant fee application was filed in June of 2015. This case marked a far-reaching step in the advance of human liberties.

M. HOPE BLACKLEY

2016 OCT -4 AM 10:12

The Respondent acknowledge in their Return and Motion to Dismiss, that the Applicant was 17 years of age at the time his Crimes were Committed and didn't turn 18 until January 07, 1983, and Sentenced to five consecutive life-terms with an additional 30 years. It's now 33 years later and this Constitutional law was made retroactive in "All" States Courts.

Accordingly, on the basis of the decision of the United States Supreme Court, and the South-Carolina Supreme Court held Sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment, and that those individuals are entitled to resentencing pursuant to the United States Constitution. The Applicant Kenneth Lee Brown, was Sentence and the Crimes were nonhomicide, and Applicant was under the age of 18. The above made finding of fact, the Court should grant the Applicant's motion to the extent of vacating

216 OCT -4 AM 10:12
HOPKES LACKLEY

the sentences that he is now serving and
thereupon bringing him before the Court
for the imposition of new sentences.

This is the course of action the Court
should follow if the facts are found in the
applicant's favor.

Additionally 17-27-70 (c) authorizes the Court
to "grant a motion by either party for summary
disposition of an application when it appears
from the pleadings... that there is no genuine
issue of material fact and the moving party
is entitled to judgment as a matter of law".
Therefore, to the injustice of the applicant,
this Court should grant the for application
as a timely motion for resentencing, and
it was file timely within the one-year.
Review the Court records, it took the
Respondent almost a year to reply back.
They are the one who are time barred.
Retrospectively in all states Courts applies state
Courts are Constitutionally Compelled to apply
Teague, Committed the Crime at age 17.

2016 OCT -4 AM 10:12
M. HOPE BLACKLEY

Applicant file his file application on June 10, 2015. The one year deadline wasn't until November 12, 2015, so there was five months in-between then for the office of the Attorney General Post-Conviction Relief Division to inform the applicant what steps needed to be made, but they didn't, so therefore the Court should construe the file-application as a timely file motion for resentencing, in the interest of Due Process of Law.

The Applicant motion should be granted on the facts. Fourteenth Amendment, Due Process.

Respectfully Submitted:
Kenneth Lee Brown, Jr.
Applicant

Coleman vsp #1

P.O. Box 1033

Coleman, Florida 33521

This 26th, Day of September, 2016.

M. HOPE BLACKLEY

2016 OCT -4 AM 10:12

33521001

Page 5 of 5.

original copy

State of South Carolina
County of Spartanburg

Kenneth Lee Brown, Pro Se,
Applicant,

vs.

State of South Carolina,
Respondent.

In the Court of
Common Pleas for
the Seventh Judicial
Circuit

Case No.: 2015-CF-42-2548

Requesting order to
Grant Resentencing

Comes the Applicant before the Court by way of an application for relief that is stated in post-conviction application for resentencing due to new law that was made retroactive by the United States Supreme Court, and the South Carolina Supreme Court on November 12, 2014 held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Miller v. Byars 410 S.C. 534, 765 S.E.2d 572 (2014).

Page 1 of 4

Respondent acknowledge in its Conditional order of Dismissal on page 3:

"Petitioner was 17 years old when crime was committed and when he was put in jail, didn't turn 18 until January 07, 1983."

Respondent also acknowledge in its Conditional order of Dismissal on page 1:

("Pet") filed by Kenneth Lee Brown ("Applicant") on June 10, 2015.

2016-09-09 PM:54

Applicant, Pet request, clearly for a resentencing, due to new law that was made retroactive, this new law as known now wasn't available 33 years ago.

The only challenges been made is what South Carolina Supreme Court on November 17, 2014 entitle me to, and it was timely file on June 10, 2015, that's five months before one year deadline.

The Material and language in the
 Post-Conviction fee application should
 be construed as a motion for resentencing.
 See Gordon v. Leake, 574 F.2d 1147, 1151 (4th Cir. 1978).
 This Court is charged with liberally construing
 a pleading filed by a pro se litigant to
 allow for the development of a potentially
 meritorious claim. See Boyd v. MacDougal,
 454 U.S. 364, 365, 102 S.Ct. 700, 70 L.Ed.2d 551
 (1982). This Court should construe the
 Applicant Post-Conviction motion liberally
 as a resentencing motion. The Applicant
 had one year to file, and before
 November 12, 2015, Applicant file on June 10,
 2015. Was properly raised on time.
 Applicant, request that this Honorable Court
 construe (PCC) applicant as his timely file
 motion for resentencing. Liberally construe
 Applicant motion in (PCC) to challenge
 the validity of his conviction, which is
 his constitutional rights. On November 12, 2015,
 the South Carolina Supreme Court held sentences
 of life without the possibility of parole that
 were imposed on juveniles violated the

original copy

Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Allen v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the Court of General Sessions where he or she was originally sentenced."

2016 NOV -9 PM 1:54

Kenneth Lee Brown 56822-004
 FCC Coleman vsp-1
 P.O. Box 1033
 Coleman, FL 33521-1033

This 31 day of October 2016.

Page 4 of 4.

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 Kenneth Lee Brown,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2015-CP-42-2548

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 10, 2015. The Respondent made its return on September 19, 2016, requesting the application the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive applications, and because Applicant's claim is not properly before the Court of Common Pleas pursuant to the ruling in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed September 23, 2016, and filed September 23, 2016, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 26, 2016, serving the above mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Requesting Order to Grant Resentencing" and filed on November 9, 2016, Applicant argues that he is entitled to "resentencing due to new law that was made retroactive by the United States Supreme Court."

2016 DEC 30 PM 2:10
 H. LOPEZ-DIAZ/ALLEN

In a document captioned "Motion Granting Resentencing" that was not filed with the clerk's office, Applicant argues that he is entitled to a resentencing hearing because his PCR application is not time barred due to Aiken.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on January 28, 1983. As this action was filed on June 10, 2015, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's *third* application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on May 23, 1986. See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). ("[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

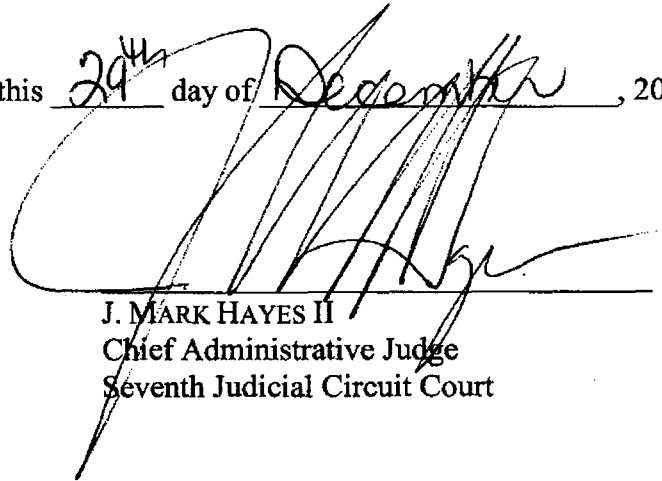
[Remainder of page left intentionally blank]

2016 DEC 30 PM 2:41
M. HOPE BLAOKLEY

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 29th day of December, 2016.



J. MARK HAYES II
Chief Administrative Judge
Seventh Judicial Circuit Court

Spartanburg, South Carolina.

2016 DEC 30 PM 2:41
M. HOPE BLACKLEY

Note: check in and mail back to the Applicant #33
EXHIBIT A

State of South Carolina
County of Spartanburg

In the Court of Common Pleas
For the Seventh Judicial Circuit

Kenneth Lee Brown, f.o. se,
Applicant,

Case No. 2015-CF-42-2548

v.

"Notice of Appeal"

State of South Carolina
Respondent.

The Applicant is hereby serving notice of
Appeal in Case no. 2015-CF-42-2548
Concerning Final order of Dismissal that
was dated December 20, 2016.

this 27th, Day of December 2016.

Respectfully Submitted
Kenneth Lee Brown #56822-004
USP Coleman I
P.O. Box 1033
Coleman, Florida 33521

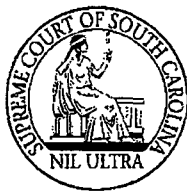
cc: Clerk's office
cc: Kenneth Lee Brown, f.o. se.

1 of 1.

RECEIVED

MAY 18 2017

S.C. SHIPMENTS



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

June 6, 2017

Mr. Kenneth Lee Brown 56822-004
Federal Correctional Complex USP #1
P.O. Box 1033
Coleman FL 33521

Re: Kenneth L. Brown v. State
Appellate Case No. 2017-001193
Lower Court Case

Dear Mr. Brown:

Since the order of the circuit court determined that this action is barred as being successive and as being untimely under the statute of limitations, Rule 243(c) of the South Carolina Appellate Court Rules requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

Please provide the explanation required by Rule 243(c) within twenty (20) days of

the date of this letter. I have enclosed a copy of Rule 243 for your convenience.

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

Enclosure

cc: Alicia A. Olive, Esquire

original copy

The Supreme Court of South Carolina

Kenneth Lee Brown, Pro Se,

v.

Appellate Case No.

2017-001193

State

Lower Court Case

RECEIVEDPetition
Written Explanation

JUN 26 2017

S.C. SUPREME COURT

now comes the Applicant Brown, before the South Carolina Supreme Court, by way of the Seventh Judicial Circuit State of South Carolina, County of Spartanburg. The Applicant file for resentencing due to a Court ruling on November 12, 2014, by the South Carolina Supreme Court that held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution.

Page 1 of 2.

Citation of Authority

Graham vs. Florida, 130 S.Ct. 2011,
 176 L. ed. 2d 825 (2010);
 Aiken v. Byars, 410 S.C. 534, 765 S.E. -
 2d 572 (2014);
 Teague v. Lane, 489 U.S. 288 (1989);
 Noble v. Barnett, 24 F.3d 582 n.6 -
 4th Cir. (1994);
 Rufferran v. State of West Virginia -
 Department of Corrections, 174 Fed. -
 Appx. 168; 2006 U.S. App. Lexis 8264 (2006);
 Evanston Ins. Co. v. Agape Senior Living
 Care, Inc 636 Fed. Appx. 871 U.S. Court -
 of Appeal for the Fourth Circuit (2015);
 Miller v. Alabama, — U.S. —, 139 S.Ct. 2455
 (2017); 8th Amendment Violation

Aiken v. Byars, 410 S.C. 534, 765 S.E.2d - 572 (2014). The Supreme Court of South Carolina specifically ordered "any individual affected by our holding may file a motion for resentencing, within one year from the filing of this opinion in the Court of General Session where he or she was originally sentenced. Id. at 545, 765 S.E.2d at 578 (emphasis added).

First Argument: Applicant Brown did file for his resentencing within the one-year, he file on June 10, 2015, that's around (5)-months before the deadline cut-off. Applicant Brown, was 17-year of age at the time his crimes was committed retroactively. In (ALL) states courts applies state court are constitutionally compelled to apply Teague, committed the crime at age 17. Teague v. Lane, 489 U.S. 288 (1989).

See Appendix Exhibit (A) Final order -
of Dismissal; See Exhibit (B) —
Conditional order of Dismissal, page 3,

"New law says anyone who was 17 years
of age and sentence to life imprisonment
is unconstitutional U.S. Supreme Court."

"Petitioner was 17 years old when crime
was committed and when he was put
in jail. didn't turn 18 until January -
02, 1983."

Applicant Brown was affected by the
holding, and file a motion for his
resentencing within the one year.

The Court records shows it was file
June 10, 2015.

The lower court should have construed
the 44 application as motion for the
resentencing of Applicant Brown
See Appendix Exhibit (C) 44 Application.

The Court must liberally construe, *pro se*, filings as been motion for resentencing. *Noble v. Barnett*, 24 F.3d 582 n.6 (4th Cir. 1994); *Kyllerman v. State of West Virginia Department of Corrections*, 174 Fed. Appx. 168, 2006 U.S. App. Lexis 8264 (2006); *Everston Ins. Co. v. Arape Senior Primary Care, Inc.*, 636 Fed. Appx. 871 U.S. Court of Appeal for the Fourth Circuit (2015).

Guided by the foregoing principles Applicant's June 10, 2015 application should properly be construed as timely file motion for his resentencing. At the post conviction stage, the Court can construe the application in the light most favorable to the Applicant. The Applicant clearly requested for resentencing in his Fed application nothing else.

Conclusion

Applicant Kenneth Lee Brown, pro se, ask this Honorable Court to order a new-sentencing hearing for Applicant by construing his file application as a timely file motion for sentencing hearing.

This 19th, Day of June 2017.

Kenneth Lee Brown #56822-004
Coleman vsp-#1
P.O. Box 1033
Coleman, FL 33571

cc: SC Supreme Court Clerk.
cc: Alicia A. Olive, Esquire.
cc: Kenneth Lee Brown, pro se.

Page 6 of 1.

The Supreme Court of South Carolina

Kenneth Lee Brown, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001193

ORDER

In the explanation required by Rule 243(c) of South Carolina Appellate Court Rules (SCACR), petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

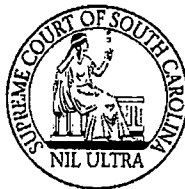


FOR THE COURT C.J.

Columbia, South Carolina
August 18, 2017

cc:

Valerie Garcia Giovanoli, Esquire
Kenneth Lee Brown 56822-004



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

September 06, 2017

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: Kenneth L. Brown v. State
Lower Court Case No. 2015CP4202548
Appellate Case No. 2017-001193

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc:
Valerie Garcia Giovanoli, Esquire
Kenneth Lee Brown 56822-004

The Supreme Court of South Carolina

Re: Kenneth Lee Brown v. State

Lower Court Case No. 2015CP4202548

Appellate Case No. 2017-001193

RECEIVED

SEP 22 2017

Petition For Rehearing

S.C. SUPREME COURT

The above petitioner Kenneth Lee Brown, is hereby petition this Court for a rehearing.

On November 12, 2014, this Court, the South Carolina Supreme Court held sentences of life without the possibility of parole that was imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution.

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

Page 1 of 2.

The petitioner Kenneth Brown, who is a pro se petitioner file a fcl application requesting for a resentencing hearing due to the November 12, 2014, South Carolina Supreme Court decision, which specifically ordered: "Any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the Court of general sessions where he or she was originally sentenced."

on June 10, 2015 petitioner (fcl) was clock into the Spartanburg County Courthouse that's (5) months before the November 12, 2015 deadline for filing. The fcl application should of clearly been construe as merely file motion, for motion for resentencing.

Kenneth L. Brown #56822-004

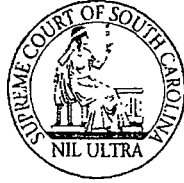
FCC Coleman usp #1

P.O. Box 1033

Coleman, FL 33521

Page 2 of 1.

This 18th Day of Sept. 2017.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

September 25, 2017

Mr. Kenneth Lee Brown 56822-004
Federal Correctional Complex USP #1
P.O. Box 1033
Coleman, FL 33521

Re: Kenneth L. Brown v. State
Appellate Case No. 2017-001193

Dear Mr. Brown:

This responds to your petition for rehearing dated September 18, 2017. No action will be taken on this petition for two reasons.

First, since the order denying the petition for a writ of certiorari was filed on August 18, 2017, any petition for rehearing had to actually be received by this Court on or before September 4, 2017. Rule 221 of the South Carolina Appellate Court Rules. Therefore, your petition for rehearing is untimely.

Second, when no timely petition for rehearing was received, the remittitur was sent to the circuit court on September 6, 2017. The sending of the remittitur ended appellate jurisdiction over this case. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

Very truly yours,

CLERK

cc: Alicia A. Olive, Esquire

2017-08-24-01

The Supreme Court of South Carolina

Kenneth Lee Brown, Petitioner,

v.

State of South Carolina, Respondent.

Spartanburg County

Docket Nos.: 1983-GS-42-00006

1983-GS-42-00010

1983-GS-42-00019; 00021; 00031

1983-GS-42-00020

1983-GS-42-00030

ORDER

By order dated August 18, 2017, the Supreme Court dismissed Kenneth Lee Brown's notice of appeal from a decision dismissing Mr. Brown's third application for post-conviction relief. However, because Mr. Brown sought, by way of that application, a resentencing hearing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), and the application was filed within one year of the date of the Supreme Court's order of July 23, 2015, lifting the stay of the decision in *Aiken*, the application is considered a timely motion for a resentencing hearing. Now, therefore, pursuant to SC CONST. Art. V, § 4,

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

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

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

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

s/Donald W. Beatty

Donald W. Beatty

Chief Justice

August 24, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 The State,)
)
 v.)
)
 Kenneth Lee Brown,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOR THE SEVENTH JUDICIAL CIRCUIT

**RETURN TO DEFENDANT'S MOTION
 FOR RESENTENCING**

Indictment No.: 1983-GS-42-0006, 0010,
 0019, 0020, 0021, 0030, and 0031

3-11-16
 8 AM

TO: THE DEFENDANT, KENNETH LEE BROWN:

The State, by way of Return to Defendant's Motion for Resentencing, would submit the following in response to Defendant's Motion as well as to fully develop the record of the proceedings in this case, should there be an appeal from this matter:


1. The Defendant received the following sentences on each charge: on his Burglary First (1st) Charge (Ind. No.: 83-GS-42-0019), the Defendant received a Life Sentence with parole consecutive; on his Burglary First (1st) Charge (Ind. No.: 83-GS-42-0021), the Defendant received a Life Sentence with parole; on his Burglary First (1st) Degree charge (Ind. No.: 83-GS-42-0030), the Defendant received a Life Sentence with parole; on his Burglary First (1st) Degree charge (Ind. No.: 83-GS-42-0031), on his Attempted Armed Robbery (Ind. No.: 83-GS-42-10), the Defendant received a twenty (20) year with parole consecutive; and on his Receiving Stolen Goods charge (Ind. No.: 83-GS-42-0006), the Defendant received a ten (10) year with parole consecutive sentence from the Honorable Paul Moore in Spartanburg County General Sessions Court. The defendant received parole on these charges on May 1, 2002. The South Carolina Supreme Court dismissed the defendant's notice of appeal from a decision dismissing the defendant's third application for post-conviction relief (PCR). The South Carolina Supreme Court ruled that because the defendant sought, by way of that application, a resentencing hearing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), and the application was filed within one year of the date of the Supreme Court's order of July 23, 2015, lifting the stay of the decision in Aiken, because the application is considered a timely motion for a resentencing hearing. Please see attachment #1.
2. The State would move into the record all of the testimony, evidence, and exhibits that were made part of the plea of this case. The State would also move any statements made in the sentencing of the Defendant into the record of the Motion. The State would move all appeals, response to the appeals, and all rulings into the record. The State would also move the criminal record of the Defendant into the record for this motion as well as any disciplinary actions taken against the defendant while in

custody of the South Carolina Department of Corrections and the United States Federal Penitentiary System. The defendant is presently in Federal Custody at the United States Penitentiary Coleman I in Wildwood, Florida with a release date of February 10, 2058. Please see attachment #2- the NCIC of the Defendant and attachment #3- the South Carolina Public Sex Offender Registry. It appears that the defendant has already been released on parole on all of his state charges on May 1, 2002 and reoffended in Florida and was charged and convicted of his current Federal charges. The State will also produce additional evidence involving these events in the full resentencing hearing if needed. The State will reserve the right to present further evidence if needed.

3. The State would submit the Defendant is not entitled to a Motion for Resentencing because the Life sentence the Defendant received for his Murder conviction is parole eligible. Under South Carolina law in 1983, a Life sentence for Burglary First (1st) Degree is parole eligible after serving ten (10) years of the sentence. The law for Murder was changed in 1996 when the "Truth in Sentencing" bill was enacted and a Life sentence since July 1, 1996 is actually a Life sentence without parole. Under Aiken v. Byars, 410 S.C. 534, 764 S.E.2d 572 (2014), our South Carolina Supreme Court determined that Miller v. Alabama, 132 S.Ct. 2455 (2012) applied retroactivity in South Carolina as stated in the Defendant's Motion for Resentencing. However, it only applied to all Life without parole sentences. The Defendant's sentence for the Burglary First (1st) Degree in 1983 is for Life with parole, and therefore, Aiken or Miller should not apply to this case. This defendant has also received parole concerning these charges in 2002.
4. The State would argue and move on behalf of the State of South Carolina that the action should be dismissed because Aiken and/or Miller should not apply to this case.

The State would respectfully ask the Court to deny the Defendant's Motion for Resentencing in this case and/or dismiss this action.

By: _____


Barry J. Barnette
Solicitor
Seventh Judicial Circuit

October 3, 2017
Spartanburg, South Carolina

2017 OCT -3 AM 8:52

The Supreme Court of South Carolina

Kenneth Lee Brown,

Petitioner,

v.

State of South Carolina,

Respondent.

Spartanburg County

Docket Nos.: 1983-GS-42-00006

1983-GS-42-00010

1983-GS-42-00019; 00021; 00031

1983-GS-42-00020

1983-GS-42-00030

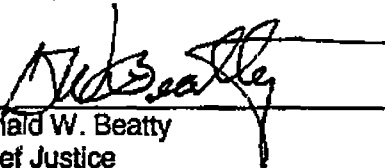
ORDER

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

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

If necessary, to resolve issues related to the appointment of counsel, a hearing shall be conducted within thirty (30) days of this order. Within sixty (60) days of the date of this order, Judge Kelly shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary.



Donald W. Beatty
Chief Justice

August 24, 2017
Columbia, South Carolina

ATTACHMENT 2



ICHS 003F817EDB from SCCH

SPTSL410
.ICHS.003F817EDB.SCCH.20170919 14:20:31
TO: SPTSL410-9241 20170919 14:20:31 003F817EDB
FROM: SCCH-8486619 20170919 14:15:25
ICHS/QH INQUIRY OF SCLED CCH FILES USING:
ATN-BARNETTE, BARRY
ORI-SC042015A PUR-C
NAM-BROWN, KENNETH LEE
SEX-M RAC-B DOB- [REDACTED]

DATE-09/19/2017 TIME-14:15 PAGE-01 OF 02
ORI-SC042015A
SCLED IDENT RESPONSE TO ICHS/QH INQUIRY
THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-BROWN, KENNETH SEX-M RACE-B
HEIGHT-508 WEIGHT-150 EYES-BRO HAIR-BLK SKIN-DRK BORN-GA
FPC: HENRY- M 32 W MMM NCIC-FMDMPMPMPMPMPMPMPI
M 32 W MMM
SID-SC01079272 FBI-494909XA6
PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS
DATE RECORD ENTERED--09/16/1996 DATE OF LAST UPDATE--04/03/2007

ALIAS NAMES-BROWN, KENNTH BROWN, PATRICK AMOS

BIRTH DATES- [REDACTED]

MARKS, ETC-TAT CHEST TAT UL ARM SC UL ARM TAT LF ARM

SOC SEC NUMBERS- [REDACTED]
SCLED CJIS RECORD INDICATES SUBJECT HAS OUT-OF-STATE ARREST INFORMATION

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** END OF IDENT **

NAME-BROWN, KENNY LEE SEX-M RACE-B
HEIGHT-508 WEIGHT-180 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC: HENRY-19 L 1 U OOO 16 NCIC-19121414161413151610
M 1 U OOO
SID-SC00361657 FBI- 677700X2
PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

Print LEMS.Web Message ICHS 003F817EDB from SCCH

Page 2 of 2

DATE RECORD ENTERED--04/06/1982 DATE OF LAST UPDATE--07/09/2003

ALIAS NAMES-BROWN, KENNETH LEE

BROWN, KENNY

BIRTH DATES-

SCLED CJIS RECORD INDICATES SUBJECT HAS OUT-OF-STATE ARREST INFORMATION

>>> *** NOTICE *** <<<
>SUBJECT OF RECORD IS A REGISTERED SEXUAL OFFENDER<

** END OF IDENT **

(MORE PAGES TO FOLLOW)

TO A CRIME OF VIOLENCE 2 COUNTS
Severity Unknown

Court Disposition (Cycle 2)
 Court Case Number
 Court Agency
 Charge 1
 Charge Literal 18:21139A] & (D) ARMED BANK ROBBERY 2 COUNTS
 Charge Description Charge Severity:Unknown
 Disposition (; 746 M/5 Y SRT)
 ***** INDEX OF AGENCIES *****

Agency USM; SCUSM0100;





Agency US PEN-BIG SANDY; KY080017C;

* * * END OF RECORD * * *

Triple I Status: Multi-state

ATTACHMENT 3

Geographic Search	Name Search	Community	FAQs	Resources	Contact Us
		Notifications			

-  [Return to Search Results](#)
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-  [Submit a Tip](#)
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BROWN, KENNETH LEE

[Main](#)
 [Other Addresses](#)
 [Scars](#)
 [Marks](#)
 [Tattoos](#)
 [Vehicle Information](#)



Picture Date: 1/1/1900

Name:
First Name: KENNETH
Middle Name: LEE
Last Name: BROWN

Aliases:
No records found.

Gender/Race/DOB:
Gender: Male
Race: Black
Date of Birth: [REDACTED]

Primary Address:
 FEDERAL PRISON

OFFENDER TYPE:
ADULT TIER III

Physical Description:
Height: 5 FT 10 IN
Weight: 180 LBS
Hair Color: Black
Eye Color: Brown

Offenses:			
Conviction Date	Conviction State	Statute	Offense
01/28/1983	SC	SECTION 16-3-652	<u>CRIMINAL SEXUAL CONDUCT IN THE 1ST DEGREE</u>

If you believe the listed information is in error, you may contact us via the "Submit a Tip" button above.

THE INFORMATION PROVIDED ON THIS SITE IS INTENDED FOR COMMUNITY SAFETY PURPOSES ONLY AND SHOULD NOT BE USED TO THREATEN, INTIMIDATE, OR HARASS. MISUSE OF THIS INFORMATION MAY RESULT IN CRIMINAL PROSECUTION.

Emailed @ 9:37 am

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

State of South Carolina,

vs.

Kenneth Lee Brown,

Defendant.

IN THE COURT OF GENERAL SESSIONS

SEVENTH JUDICIAL CIRCUIT

Indictment Nos.: 1983-GS-42-00006
1983-GS-42-00010, 1983-GS-42-00019,
1983-GS-42-00021, 1983-GS-42-00031,
1983-GS-42-00020, 1983-GS-42-00030

ORDER

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 OCT 11 AM 9:32
M. HOPE BRADLEY

On August 24, 2017 the South Carolina Supreme Court issued an order vesting this court with exclusive jurisdiction to review Petitioner Kenneth Lee Brown's Motion for Resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Upon investigation by the Court, the South Carolina Attorney General, the Seventh Circuit Solicitor's Office and the Seventh Circuit Public Defender's Office, it appears that Petitioner's motion should be stayed until he is released from federal custody.

The undersigned met with Derrick Balsa, Principal Deputy Solicitor for the Seventh Judicial Circuit and Clay Allen, Public Defender for the Seventh Judicial Circuit. The Supreme Court's order set forth certain timelines including appointment of counsel and a scheduling order. The undersigned learned that Petitioner is a federal inmate with a projected release date of 10 February 2058. Further, he is housed at USP Coleman in Sumterville, Florida. Mr. Allen wrote a detailed letter to Petitioner advising him that the Seventh Circuit Public Defender's office may have a conflict of interest in representing him because Petitioner testified against one of Mr. Allen's

RKK

former clients. As such, Mr. Allen requested that the Court not appoint the Seventh Circuit Public Defender's office as counsel for Petitioner.


The Court finds and concludes that where, as here, Petitioner is in federal custody, transporting Petitioner to and from South Carolina while in federal custody is impractical and the appointment of counsel would likely require a lawyer from the Office of Indigent Defense, it is in the interest of judicial economy Petitioner's motion be STAYED pending his release from federal custody and he is returned to South Carolina.

IT IS THEREFORE ORDERED THAT Petitioner's motion is STAYED pending his release from federal custody and he is returned to South Carolina.

IT IS SO ORDERED.

GIVEN under my hand and the Seal of this Court this 10th day of October 2017

at Spartanburg, South Carolina.


R. Keith Kelly
Judge of the Circuit Court
Seventh Judicial Circuit

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 OCT 11 AM 9:32
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
THE SEVENTH JUDICIAL CIRCUIT
Case No. 1983-GS-42-0006, 1983-GS-42-0010,
1983-GS-42-0019, 1983-GS-42-0020,
1983-GS-42-0021, 1983-GS-42-0030,
1983-GS-42-0031

Kenneth Lee Brown,)
Petitioner,)
)
vs.)
)
State of South Carolina,)
Respondent.)

MOTION TO RECONSIDER

2017 OCT 17 PM 2:49

CKA

Although not appointed to represent the Petitioner, the undersigned counsel hereby moves the Court to reconsider its Order dated October 10, 2017, and filed October 11, 2017. Notice of the order was delivered to the undersigned by an email from the Court's law clerk. No notice of the order was delivered to the Petitioner; therefore, in order to make a timely motion to reconsider so that the rights of the Petitioner are protected, the undersigned counsel hereby moves for a reconsideration of the above described order and asks the Court to withdraw its Order of October 11, 2017, and appoint counsel for the Petitioner prior to the issuance of a scheduling order or any other orders in this matter.

This motion is based upon the following information:

1. On August 24, 2017, the South Carolina Supreme Court issued its order vesting the Honorable R. Keith Kelly with exclusive jurisdiction over the Petitioner's Motion for Resentencing (which the Supreme Court had deemed a timely motion by an order dated August 18, 2017). The Supreme Court also provided that this Court should hold a hearings to resolve issues related to the appointment of counsel and to issue a scheduling order.

2. The Petitioner is incarcerated; therefore, the undersigned presumes that he is indigent and is entitled to received appointed counsel.

3. On or about September 11, 2017, the undersigned advised the Court that he believed that he a conflict of interest in representing the Petitioner and that he had sent a letter to the Petitioner concerning this matter and the Petitioner's desires about representation. The Court subsequently acknowledged that the undersigned may have a conflict and directed the undersigned to determine how the Office of Indigent Defense desired to handle the appointment of conflict counsel in this matter. (Copies of emails of September 11, 2017, and September 13, 2017, are attached.)

CTA
4. On September 26, 2017, the Court advised the undersigned of its intention to set this matter aside until 2058. The undersigned then advised the Court that a private attorney had agreed to be appointed to represent the Petitioner on this resentencing matter. Furthermore, the undersigned suggested that the Petitioner may want to proceed on the resentencing matter before 2058. (Copies of the emails of September 26, 2017, are attached.)

5. Although the Court received some information concerning this matter and concerning the Petitioner by email and conferences in chambers, this Court held no hearings and has not appointed counsel for the Petitioner. The Court was not made aware that the undersigned has received, after September 26, 2017, communication from the Petitioner indicating his desire to proceed in his motion for resentencing. The undersigned continues to believe that a conflict of interest may exist between him and the Petitioner and that an attorney should be appointed to represent the Petitioner.

6. The undersigned believes that the Petitioner may receive a benefit by proceeding forward in a resentencing hearing and not in delaying his case because the

Petitioner, if resentenced, may receive credit towards that sentence while serving a sentence in federal custody. *Robinson v. State*, 329 S.C. 65, 495 S.E.2d 433 (1998). Such service may assist the Petitioner in receiving parole in the future. If the Court delays his resentencing proceeding until his release from federal custody, then the Petitioner may not receive any credit towards his South Carolina state sentence while serving his federal sentence.

7. Although the Court has received some information about the Petitioner's date of release from federal custody, the Petitioner has not had an opportunity to respond to this information and has not had the assistance of an appointed counsel to assist him in responding to this information. Because the undersigned has not been appointed and is awaiting a determination of the conflict of interest issue, he has not been as fully involved in this matter to advocate for the Petitioner's hearing.

WHEREFORE, the undersigned, on behalf of the Petitioner and pursuant to Rule 29(a), SCRCrimP, moves for reconsideration of this Court's Order of October 11, 2017, and requests that the Court vacate that order, hold a hearing to determine the issue of the Petitioner's representation, and then consider the scheduling of this matter.



Clay T. Allen
 SC Bar #328
 Seventh Judicial Circuit Public Defender
 366 North Church Street, Suite 3000
 Spartanburg, South Carolina 29303
 864-596-2561

October 17, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

The State,)
v.)
Kenneth Lee Brown,)
Defendant.)

**RETURN TO DEFENDANT'S MOTION
FOR RECONSIDERATION**

Indictment No.: 1983-GS-42-0006, 0010,
0019, 0020, 0021, 0030, and 0031

TO: THE DEFENDANT, KENNETH LEE BROWN AND CLAY T. ALLEN, SEVENTH
JUDICIAL CIRCUIT PUBLIC DEFENDER:

The State, by way of Return to Defendant's Motion for Reconsideration, would re-submit the following in response to Defendant's Motion and additional grounds as well as to fully develop the record of the proceedings in this case, should there be an appeal from this matter:

1. The Defendant received the following sentences on each charge: on his Burglary First (1st) Charge (Ind. No.: 83-GS-42-0019), the Defendant received a Life Sentence with parole consecutive; on his Burglary First (1st) Charge (Ind. No.: 83-GS-42-0021), the Defendant received a Life Sentence with parole; on his Burglary First (1st) Degree charge (Ind. No.: 83-GS-42-0030), the Defendant received a Life Sentence with parole; on his Burglary First (1st) Degree charge (Ind. No.: 83-GS-42-0031) received a life with parole sentence, on his Attempted Armed Robbery (Ind. No.: 83-GS-42-10), the Defendant received a twenty (20) year with parole consecutive; and on his Receiving Stolen Goods charge (Ind. No.: 83-GS-42-0006), the Defendant received a ten (10) year with parole consecutive sentence from the Honorable Paul Moore in Spartanburg County General Sessions Court. The defendant received parole on these charges on May 1, 2002. The South Carolina Supreme Court dismissed the defendant's notice of appeal from a decision dismissing the defendant's third application for post-conviction relief (PCR). The South Carolina Supreme Court ruled that because the defendant sought, by way of that application, a resentencing hearing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), and since the application was filed within one year of the date of the Supreme Court's order of July 23, 2015, lifting the stay of the decision in Aiken, because the application is considered a timely motion for a resentencing hearing.
2. The State would move into the record all of the testimony, evidence, and exhibits that were made part of the plea of this case. The State would also move any statements made in the sentencing of the Defendant into the record of the Motion. The State would move all appeals, responses to the appeals, and all rulings into the record. The State would also move the criminal record of the Defendant into the record for this


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motion as well as any disciplinary actions taken against the defendant while in custody of the South Carolina Department of Corrections and the United States Federal Penitentiary System. The defendant is presently in Federal Custody at the United States Penitentiary Coleman I in Wildwood, Florida with a release date of February 10, 2058. It appears that the defendant has already been released on parole on all of his South Carolina charges on May 1, 2002 and reoffended in Florida where he was charged and convicted of his current Federal charges. The State will also produce additional evidence involving these events in the full resentencing hearing if needed. The State will reserve the right to present further evidence if needed.

3. The State would submit the Defendant is not entitled to a Motion for Resentencing because the Life sentence the Defendant received for his Burglary First (1st) conviction is parole eligible. Under South Carolina law in 1983, a Life sentence for Burglary First (1st) Degree is parole eligible after serving ten (10) years of the sentence. The law for Murder was changed in 1996 when the "Truth in Sentencing" bill was enacted and a Life sentence since July 1, 1996 is actually a Life sentence without parole. Under Aiken v. Byars, 410 S.C. 534, 764 S.E.2d 572 (2014), our South Carolina Supreme Court determined that Miller v. Alabama, 132 S.Ct. 2455 (2012) applied retroactivity in South Carolina as stated in the Defendant's Motion for Resentencing. However, it only applied to all Life without parole sentences. The Defendant's sentence for the Burglary First (1st) Degree in 1983 is for Life with parole; therefore, Aiken nor Miller does not apply to this case. This defendant has also received parole concerning these charges in 2002.
4. The State would argue and move on behalf of the State of South Carolina that the action should be dismissed because Aiken and/or Miller do not apply to this case.
5. The State in the alternative agrees with the Court Order dated September 26, 2017 to set aside this matter until 2058 because of the defendant should not receive any credit for his actions. He received parole on his state sentences and then violated his parole when he committed his Federal offenses in which he will have to serve until 2058 in federal custody. The State should not bear the expense and the danger of transporting him to Spartanburg, South Carolina from federal custody until he has served his federal sentence for a hearing in which the State believes should be dismissed as stated above.

2017 OCT 25 AM 10:54
M. ROSE BLANCHLEY

The State would respectfully ask the Court to deny the Defendant's Motion for Reconsideration in this case.

By: 
Barry J. Barnette
Solicitor
Seventh Judicial Circuit

October 25, 2017
Spartanburg, South Carolina

2017 OCT 25 AM 10:54
M. HOFF BLANCHET

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

KENNETH LEE BROWN, PRO SE,
PETITIONER,

CASE No: 1983-gs-42-0019,
1983-gs-42-0010, 1983-gs-42-0019
1983-gs-42-0020, 1983-gs-42-0021
1983-gs-42-0030, 1983-gs-42-0031.

v.

STATE OF SOUTH CAROLINA,
RESPONDENT.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 NOV - 7 AM 8:49
M. HOPE BLACKLEY

MOTION TO LIFT THE STAY PREVIOUSLY
IMPOSED IN THIS CASE

This motion is based on the following facts. On August 24, 2017, ... The South Carolina Supreme Court issued its order vesting R. Keith Kelly Circuit Court Judge for the Seventh Judicial Circuit over the Petitioner's Motion for Resentencing-which The Supreme Court deemed as a timely filed motion. By an Order dated August 18 2017. The Petitioner receive notice concerning an Order issued by R. Keth Kelly, Judge for the Circuit Court Seventh Judicial Circuit who met with Derrick Bulsa, Principal Deputy solicitor, and Clay Allen, Public Defender, who is not by the way the Petitioner's Counsel, al due to a Conflict of interest. A decision was made by them without the Petitioner having Representation at the table. The Order Stayed Petitioner's Motion for Resentencing Hearing until February 10, 2058.

The Sixth Amendment gives Petitioner the Right to enjoy the right to a speedy and Public trial. Therefore the Petitioner is being made to suffer Cruel and Unusual Punishment in violation of his Sixth Amendment and Eighth Amendment Rights, by Scheduling Petitioner's Motion for Resentencing until February 10, 2058.

Determining the nature and judicial method of the Archie Bunker Jim Crowism Racial Discrimination. The Constitution requires that a Defendant be Represented at every Critical Stage of his trial. United States v. Cronin, 466 U.S. 659, 80 L.Ed.2d 657, 104 S.Ct. 2039 n.25 (1984). However while the State Court must weigh the interest of the parties, the party seeking a stay must justify it by clear and convincing circumstances outweighing potential harm to the party against whom it is operative.

February 10, 2058, is when Respondent wants to hold Resentencing Hearing on the motion of Petitioner's deliberately avoiding the process of Due process of law. Petitioner Brown opposes the Order to Stay his motion for resentencing until February 10, 2058.

Arguing primarily that he may not be living - then, he may be dead. Therefore Petitioner's case is factually distinct that such that Staying his Motion for resentencing hearing will not serve a Judicial Economy, but it will serve a violation of Petitioner's rights to speedy trial and due process of law.

The Petitioner will agree to have his resentencing hearing by Tele-Conference or Phone Conference, and to have his Five(5) life sentence's reduced to 30 years on each count to run concurrent with each other.

The Petitioner is entitled to seek declaratory and injunctive relief and a declaration that South Carolina Code for sentencing Juvenile to life with parole or without parole are.


Unconstitutional under the Eighth Amendment. If a Juvenile offender's life sentence, while ostensibly, labeled as one with parole is the functional equivalent of a life sentence with parole or with parole then the State has denied that offender the meaningful opportunity to be released from his life sentence which the Eighth Amendment demands.

Petitioner is an adult inmate of the South Carolina Department of Correction, and is serving Five(5) life sentences for offenses he committed when he was a Juvenile. The Petitioner was sentenced to five(5) life sentences with parole under South Carolina's Mandatory Sentencing Scheme.

Petitioner Brown has an exceptional Institutional record in (DOC) and (BOP), and has taken advantage of every program available to him, earned his GED, and position of trust in employment and taken leadership role in programs to promote alternative to Violence within and outside (DOC and BOP).

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

A Categorical rule gives all Juvenile's Nonhomicide offender's a chance to demonstrate maturity and reform. The Juvenile should not be deprived of the opportunity to achieve maturity of Judgment and self-recognition of human worth and potential. The Constitution prohibits the imposition of life sentence on a Juvenile offender who did not commit homicide. As a kid at the age of 5 or 6 years of age the Petitioner was diagnosed with attention deficit hyperactivity disorder, and Eye QO below the broader line. All this information was brought up during the Petitioner's guilty plea trial. Petitioner motion to lift the Stay previously imposed in this case. Judicial Economy should not determine the justice the Petitioner receives in this life time or the next.


 S-----
 Kenneth Lee Brown 568-004
 FCC USP 1
 p.o. box 1033
 Coleman, FL 33521

c

This 1st, Day of October 2017.

FILED
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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

o/c:

cur

State of South Carolina
County of Spartanburg

Kenneth Lee Brown, Pro Se,
Petitioner,

VS.

State of South Carolina,
Respondent.

In The Court of General Session
Seventh Judicial Circuit

C/N: 1983-GS-42-0010;
1983-GS-42-0019, 1983-GS-42-0020
1983-GS-42-0021; 1983-GS-42-0030
1983-GS-42-0031

PETITION FOR SPEEDY TRIAL

Speedy Trial: /spe-de-/ n: a trial conducted according to prevailing rules and procedures that take place without unreasonable or undue delay or within a statutory period. The right to a speedy trial is guaranteed to criminal defendants by the Sixth Amendment to the U.S. Constitution. The purposes of the right as explained by the U.S. Supreme Court are to keep a person who has yet been convicted from serving lengthy jail time, to lessen the time that the accused must endure the anxiety and publicity of the impending trial, and to minimize the damage that delay might cause to the person's ability to present a defense.

By order dated August 18, 2017, the Supreme Court ORDERED that the Honorable R. Keith Kelly be vested with exclusive jurisdiction over the Petitioner's Motion For Resentencing in the above captioned matter.

There are important matter's of Law that the Chief Justice outline to be resolve issue's as related to the appointment of Counsel, and that a hearing shall be conducted within (30) days of the Order. Within sixty (60) days of the date of Order Judge Kelly shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits.

On September 26, 2017, the Court advised Clay T. Allen, Public-Defender for the Seventh Judicial Circuit that its intention to set Petitioner's Resentencing Hearing aside until his release date of February 10, 2058. This in itself is a Clear Violation of the Eighth Amendment. And, on top of all this the Petitioner was NOT did not receive adequate representation at ORDER HEARING as outline in the State of South Supreme Court Order.

(1)

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

The Constitution requires that a defendant be represented at "Every Critical Stage of his trial", U.S. V. Cronin, 466 U.S. 659, 80 L.Ed.2d 657, 104 S.Ct. 2030 n.25 (1984).

By them meaning Judge Kelly, Derrick Bulsa, Principal Deputy Solicitor for the Seventh Judicial Circuit and Clay T. Allen who is not my appointed Counsel are is he on record as been my appointed Counsel because of a serious conflict of interest as Stated on Court record by Clay T. Allen himself. Disobedience of Chief Justice Donald W. Beatty Order or directive in the Courtroom violate Due Process of Law. The Misbehavior of Judge R. Keith Kelly, Derrick Bulsa, Principal Deputy Solicitor, and Clay T. Allen, Public Defender (A)ll of their actions Constitutes direct Criminal Contempt. Because they must follow the ethices rule of justice not injustice.

Its clear that the Petitioner was and is still been denied the Due process of Law in violation of his Fourteenth Amendment Right ("nor shall any State deprive any person of life, or liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".).

A Categorical rule gives all juvenile and this means the Petitioner Kenneth Lee Brown who was a juvenile at the time of his crimes which was nonhomicide a chance to demonstrate maturity and reform. The Petitioner, juvenile at time of his crimes should not be deprived of the opportunity to achieve maturity of Judgment and Self-recognition of Human worth and potential. The Petitioner is entitle to seek declaratory and injunctive relief, and declaration that South Carolina Code for Sentencing Juvenile to life, with or without parole are UnConstitutional under the Eighth Amendment. If a Juvenile offender's life sentence with ostensible labeled as one with parole is the functional equivalent of a life sentence without parole, then the State has denied that offender the meaningful opportunity to be release from his life sentence which the Eighth Amendment Demands The Petitioner is now (52) years of age, and lets look at truth in this situation February 10, 2058, Petitioner will not be living this truth Petitioner has an exceptional institutional record in Department of Correction (SCDC) and while in (BOP). Petitioner has taken advantage of every program available to him, earned position of trust in employment, and taken leadership role in programs to promote alternative to violence within and outside (SCDC), and (BOP)

(2)

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SOUTH CAROLINA
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M. HOPE BLACKLEY

Steps need to be made toward unraveling the mysteries of withholding justice from Petitioner Kenneth Lee Brown. The actions of the Seventh Judicial Circuit Solicitor's office are opprobrious. The issues of law can be resolve in the fairness of law by dismissing the Petitioner case altogether, or to have his (5)life Sentences reduced to (30)years each and to run Concurrent. Steps can be made without brinning Petitioner back to Court. Petitioner is also requesting that another Judge be appointed to oversee his Resentencing Motion, that will not display Bias or Prejudice.

CERTIFICATE of SERVICE

A copy of this petition for Speedy Trial has been placed in the United States Mail postage prepaid and served upon the below person's as named concerning this case:

The Honorable R.Keith Kelly
Judge South Carolina Circuit Court
Cherokee County Courthouse
125 East Floyd Baker Boulevard
Gaffney, SC 29303

Valerie Garcia Giovanoli
Esquire, assistant
Attorney General's office
P.O. BOX 11549
Columbia, SC 29211-1549

Barry J. Barnette, Solicitor
Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, SC 29306

Clay T. Allen
Public Defender office
366 North Church St.
Spartanburg, SC 29303

Submitted By *Kenneth Lee Brown*
Kenneth Lee Brown, Pro Se
FCC Coleman USP 1
P.O. BOX 1033
Coleman, FL 33521

12/06/2017

(3)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 DEC 11 PM 2:06
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

State of South Carolina,

vs.

Kenneth Lee Brown,

Defendant.

) IN THE COURT OF GENERAL SESSIONS

) SEVENTH JUDICIAL CIRCUIT

) Indictment Nos.: 1983-GS-42-00006
) 1983-GS-42-00010, 1983-GS-42-00019,
) 1983-GS-42-00021, 1983-GS-42-00031,
) 1983-GS-42-00020, 1983-GS-42-00030

ORDER

On August 24, 2017 the South Carolina Supreme Court issued an order vesting this court with exclusive jurisdiction to review Petitioner Kenneth Lee Brown's Motion for Resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

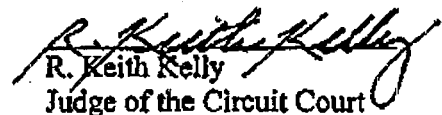
This court previously issued an order to stay the proceedings in this matter on October 11, 2017. In response, a Motion to Reconsider was filed by Clay Allen Esq. on October 17, 2017. The Defendant, Kenneth Lee Brown filed a Motion to Lift Stay on November 7, 2017 and a Motion for Speedy Trial on December 11, 2017.

After consideration of the motions filed by both the Defendant and his previously appointed counsel, this court now denies the Motion to Reconsider, Motion to Lift Stay and Motion for Speedy Trial.

IT IS THEREFORE ORDERED THAT the Defendant's motions are **DENIED**.

IT IS SO ORDERED.

July 25, 2018
Spartanburg, SC


R. Keith Kelly
Judge of the Circuit Court
Seventh Judicial Circuit

State of South Carolina
County of Spartanburg

Indictment #5

1983-65-42-6, 10,

Kenneth Lee Brown, Petitioner

19, 20, 21, 30, 31

vs.

State of South Carolina

In the Court of General Sessions, Seventh
Judicial Circuit

2019 JAN 24 AM 11:22

COURT
CLERK
SPARTANBURG COUNTY

Petitioner is hereby petitioning the Court for dismissal of all charges in the Indictment 1983-65-42-6, 10, 19, 20, 21, 30, 31. The petition was lodged in Dec. 11, 2017. The Supreme Court of South Carolina issued an order for petitioner to have resentencing hearing, at which there was a motion filed in the Court of General Sessions, Seventh Judicial Circuit to stay the resentencing until Feb. 10, 2018, was made. Petitioner's Criminal Case an open case, and therefore, the Criminal Case falls under the Speedy Trial Statute's time period. August 24, 2017, order issue by the Supreme Court of South Carolina.

1 of 2.

State of South Carolina County of Spartanburg

Kenneth Lee Brown, Pro Se,
Petitioner,

vs.

State

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SPARTANBURG COUNTY
2019 JAN 24 AM 11:36

In the Court of General Sessions
Indictment / Case # 1983-65-42-00006,
1983-65-42-00010, 1983-65-42-00019,
1983-65-42-00021, 1983-65-42-00031,
1983-65-42-00020, 1983-65-42-00030.

Motion for New Trial
for Due Process Violations
of Law, and Constitutional
Rights, 14th Amendment.

The Petitioner should respectfully show this Court that he is being unlawfully confined for the reasons hereinbelow, thus justifying the issuance of the Great Writ. under authority of — Bullock v. State, 397 S.E.2d 87 (1990), the Petitioner has suffered violations of law which constitute a denial of fundamental fairness, shocking to the universal sense of justice. In support of his contention, the Petitioner should show the following unlawful confinement on his burglary convictions:

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SPARTANBURG COUNTY
2019 JAN 24 AM 11:36

Statements of Facts

Burglary in South Carolina prior to its codification in 1985, was defined as "the breaking and entering the dwelling house of another in the nighttime with

Page 2 of 1.

the intent to commit a felony therein.
South Carolina v. Brooks, 283 S.E.2d 830,
 830 (SC 1981). "Dwelling house" is, and
 was at that time defined in [the] case
 of burglary" as follows:

any house, outhouse, apartment, building,
 erection, shed or box in which there
 sleeps a proprietor, tenant, watchman,
 clerk, laborer or person who lodges there
 with a view to the protection of property
 shall be deemed a dwelling house, and of
 such a dwelling house or of any other
 dwelling house all houses, outhouses,
 buildings, sheds and erections which are
 within two hundred yards of it and
 are appurtenant to it or to the same
 establishment of which it is an
 appurtenance shall be deemed parcels.
 SC Code Ann. § 16-11-10.

Page 3 of 1

CLERK OF COURT
 SPARTANBURG COUNTY
 2019 JAN 24 AM 11:37

2019 JAN 24 11:13
 SPARTANBURG COUNTY
 COURT

Brown contends that these convictions for burglary, prior to 1985, do not qualify as violent felonies. First, South Carolina's burglary is not an enumerated offense. South Carolina burglary is an overbroad and indivisible offense and does not qualify as "generic burglary" under the enumerated offenses clause. South Carolina burglary, prior to codification in 1985, does not meet the definition of "generic" burglary. South Carolina Code § 16-11-10, the definition of "dwelling house" has not been modified since petitioner Brown's convictions in 1983. Accordingly, South Carolina burglary is not "generic" burglary and is therefore does not qualify as a "violent felony." Additionally, none of the elements of burglary meets the requirements of receiving a life sentence. Therefore, a South Carolina conviction for burglary is unconstitutional.

Page 4 of 1.

Conclusion

Petitioner is entitled to an issuance
of this Court's writ of Habeas Corpus.

All of which is respectfully Submitted.

Kenneth Lee Brown
#56822-004
FCC Coleman vsp #1
P.O. Box 1033
Coleman, Florida 33507

CLERK OF COURT
SAN JUAN BURG COUNTY
JAN 24 AM 11:37

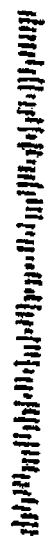
Page 5 of 1.

*Joseph Lee Brown #33271-0033
Federal Circuit Court Complex
P.O. Box 3483
Spartanburg, SC 29304-3483*



TAMPA FL 335
SAINT PETERSBURG FL
30 JUL 2018 PM 3 L

*Wesley
Clerk of Court
P.O. Box 3483
Spartanburg SC 29304-3483*

25304-348393 

Conclusion

Petitioner is entitled to an issuance
of this Court's writ of Habeas Corpus.

All of which is respectfully Submitted.

Kenneth Lee Brown
#56822-004
FCC Coleman vsp#1
P.O. Box 1033
Coleman, Florida 33507

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SPARTANBURG COUNTY
JAN 24 AM 11:37

Page 5 of 1.

ORIGINAL COPY.

STATE of South Carolina, County of Spartanburg
 Kenneth Lee Brown, pro se,

Petitioner,

Indictment Number's

Vs.

1983-85-42-0006, 0010

0019, 0020, 0021

State of South Carolina.

0030, 0031

2015 12:33 PM 12:33

In support of petitioner Brown claims, he rely on several recent decision of Supreme Court bar, as unconstitutional sentences for juvenile offenders. These cases include:

Montgomery vs. Louisiana, 577 U.S. — 136 S.Ct. 718, 734, 193 L.Ed.2d 599 (2016);

Miller vs. Alabama, 567 U.S. —, 132 S.Ct. 2455, 2469, 183 L.Ed.2d 407 (2012); and

Graham v. Florida, 560 U.S. 48, 82, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); Teague v. Lane,

489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989).

LeBlanc vs. Mathena, 2015 U.S. Dist. Lexis 86090 (4th Cir. July 01, 2015).

①

Petitioner Brown, seeks declaratory and injunctive relief, and a declaration that South Carolina Code for Sentencing Juvenile to life without parole or life imprisonment with parole are unconstitutional under the Eighth Amendment.

Petitioner shall be granted (amicus curiae) status in this case.

Petitioner Kenneth Lee Brown, is an adult prisoner at the South Carolina Department of Corrections, and is serving life sentences for offenses he committed as an juvenile. Petitioner Brown, was sentenced to life with parole under South Carolina's mandatory sentencing scheme for Felony Burglary. Petitioner Brown has an exceptional institutional record in (Doc) and in (Bop), and has taken advantage of every program and earned his GED, earned positions of Trust in employment, and taken leadership role in programs to promote alternative to violence within and outside (Doc) and (Bop).

In the state of Florida, Hillsborough Circuit Court Judge Tom Sited on the Case Concerning Inmate Leonard Edwards.

On Inmate, Leonard Edwards 17th Birthday he went to Florida State Prison, he was given a life sentence for Sexual Battery and two Counts of Armed Robbery.

However, as a result of a United States Supreme Court ruling Edwards and other juveniles were give a chance at freedom.

Crime Committed July 06, 1972, Edwards now 62 years old after serving 46 years of incarceration.

Hillsborough Circuit Court Judge Tom Baber Comments.

In the Case of Petitioner Kenneth Lee Brown it's clear that Russian Roulette was played with his life when he was an juvenile. They clearly put the wagon before the horse, and race played a part. Bias and Prejudice has no place in justice, because than an innocent person goes to jail for the guilty person.

(3)

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wherever an injustice, an miscarriage of justice has been displayed it has to be corrected even if it's 37 years latter. Because an defendant is to be represented at every critical stage of his trial United States vs. Gonsky, 466 U.S. 659, 80 L.Ed.2d 657, 104 S.Ct. 2039 n. 25 (1984).

(juvenile) a teenager, in the teens inexperienced, immature, young'un who sat behind the cars

Petitioner Brown's Attorney Michael Ludasill didn't have petitioner Brown's best interest at hand, attorney Michael Ludasill, was petitioner Brown guilty plea attorney. Throughout the Criminal process he gave petitioner Brown bad advice, by having him plea guilty, by telling him he was going to receive (25-years).

This was violation of petitioner Brown's Sixth Amendment right to effective assistance of Counsel.

(47)

The United States Constitution requires that a defendant be represented at every critical stage of his trial
United States vs. Gonic, 104 S.Ct. 2039
 n. 25 (1984).

Guilty Plea trial judge subjected his own personal views in petitioner Brown's trial, when he ask the question how many of the victims were white and how many were black. This kind of inquiry is inherently improper and taints the entire sentencing process.

Petitioner's case, moreover, falls squarely within the exception carried out in State vs. Kimbrough, 46 S.D. 2d 273 (1998).

The sentence imposed in petitioner Brown's case is manifestly too severe.

The petitioner had no adult criminal record (Transcript page 21, ll. 23-24).

(5)

Conclusion

Based upon the facts of the records,
 He is entitled to Re-plead his case,
 and have resentencing hearing to
 remove all (5) life sentences.

Respectfully Submitted

[Signature]

Kenneth Lee Brown #56822-004

Fcc Coleman uspr 1

P.O. Box 1033

Coleman, Florida 33521

01-31-2019

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⑥

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Kenneth Lee Brown,

Petitioner.

vs.

State of South Carolina,

Respondent.

IN THE COURT OF GENERAL SESSIONS
THE SEVENTH JUDICIAL CIRCUIT

Case No. ^{AR03217} 1983-GS-42-0006, 1983-GS-42-0010, ^{AT16497}
^{AL051880} 1983-GS-42-0019, 1983-GS-42-0020, ^{AL05824}
^{AL05825} 1983-GS-42-0021, 1983-GS-42-0030 ^{AR03215}
1983-GS-42-0031

^{AL05832}
ORDER APPOINTING COUNSEL

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SPARTANBURG COUNTY
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This matter comes before me for the appointment of counsel for Petitioner Kenneth Lee Brown. The Petitioner requests appointment of counsel to represent him in connection with his request for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). In *Aiken*, the South Carolina Supreme Court held that all juveniles (individuals less than eighteen years old at the time of their offense) sentenced to life without parole prior to the *Aiken* decision are "entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight." *Id.* at 544, 765 S.E.2d at 577.

The Petitioner filed a an application for post conviction on June 10, 2015, in which the Petitioner sought a resentencing hearing pursuant to *Aiken v. Byars, supra*. The South Carolina Supreme Court, by its order of August 27, 2017, considered the Petitioner's application for post conviction relief as a timely motion for a resentencing hearing, and vested this Court with exclusive jurisdiction over the Petitioner's Motion for Resentencing. Subsequently, this Court issued a stay of the proceedings on October 10, 2017. The Supreme Court has recently lifted the stay and has asked this Court to appoint an attorney to represent the Petitioner.

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Clay T. Allen, the Seventh Judicial Circuit Public Defender, has advised the Court that he has a conflict in representing the Petitioner because the Petitioner has previously testified as a witness for the State against a client whom Mr. Allen was representing. I find that Mr. Allen has a potential conflict of interest and that neither he nor the Seventh Judicial Circuit Public Defender's Office should be appointed to represent the Petitioner. This Court has been informed that Robin C. File, Esquire, of the Spartanburg County Bar has agreed to represent the Petitioner on this matter.

This Court finds that Mr. File is "qualified and experienced counsel." See S.C. Code § 17-3-20.

IT IS THEREFORE ORDERED that Robin C. File, Esquire, is appointed as counsel for Defendant Kenneth Lee Brown in connection with his motion for resentencing pursuant to *Aiken*.

AND IT IS SO ORDERED.


R. Keith Kelly
Judge, Seventh Judicial Circuit

June 12, 2019

Spartanburg, South Carolina

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SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

Kenneth Lee Brown,
Petitioner,

v.

State of South Carolina,

**STATE'S ^{Ad}SECOND SUPPLEMENTAL
MOTION TO DISMISS THE PETITIONER'S
MOTION FOR RESENTENCING**

Indictment Nos.: 1983-GS-42-0006,
1983-GS-42-0010, 1983-GS-42-0019,
1983-GS-42-0020, 1983-GS-42-0021,
1983-GS-42-0030, and 1983-GS-42-0031

Warrant Nos.: A803217, A764997,
A6051880, A605884, A605885, A803215,
and A605882

**TO: ROBIN C. FILE, ESQ., ATTORNEY FOR THE PETITIONER, AND THE
PETITIONER, KENNETH LEE BROWN:**

The State, by way of addition to its ~~Second~~ ^{Ad} Motion to Dismiss Petitioner's Motion for Resentencing, submits the following in response to Petitioner's Motion for Resentencing. In doing so, the State re-states by implication its original grounds in opposition as if fully set forth herein. This Motion would now also add by reference and discussion herein-below the recent decision of the South Carolina Court of Appeals in *State v. Finley*, (Ct App. Op. No. 5665, filed 7/17/19) (copy of case marked as Attachment #1 hereto).

In *State v. Finley*, Finley argued his mandatory sentence of life with the possibility of parole after service of thirty (30) years was a *de facto* LWOP, functionally equivalent to a sentence of life imprisonment without the possibility of parole (LWOP), and therefore a violation of the Eighth Amendment's prohibition against cruel and unusual punishments. Finley also contended the mandatory sentencing scheme rendered his life sentence unconstitutional because it prevented consideration of his juvenile status as required by *Miller v. Alabama*, 567 U.S. 460 (2012) and *Byars*.

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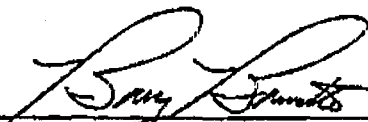
The Court of Appeals found that the Appellant in *Finley* was not entitled to resentencing pursuant to *Miller* and *Byars*. The Court stated:

Although Finley received a mandatory life sentence for murder as a juvenile offender, the circuit court's sentence afforded Finley parole eligibility after the service of thirty years' imprisonment. See S.C. Code Ann. § 16-3-20(A) (1992) (providing that a person who is convicted of or pleads guilty to murder must be punished by (1) death; (2) life imprisonment with the possibility of parole after twenty years; or (3) life imprisonment with the possibility of parole after thirty years if the State sought the death penalty and an aggravating circumstance was found but a recommendation of death was not made). This sentence differs significantly from those at issue in *Graham*, *Miller*, and *Byars* in which the juvenile offenders received sentences of life imprisonment without the possibility for parole. See *Graham*, 560 U.S. at 82 ("The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." (emphasis added)); *Miller*, 567 U.S. at 479 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." (emphasis added)); *Byars*, 410 S.C. at 545, 765 S.E.2d at 578 ("We hold the principles enunciated in *Miller* . . . apply . . . to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." (emphasis added)). As our supreme court recently noted in *Slocumb*, this court's review is confined by the parameters established by the United States Supreme Court. See 426 S.C. at 306, 827 S.E.2d at 153. Therefore, as it stands, Finley is not a member of the class of offenders contemplated by our precedent. Furthermore, the Supreme Court indicated in *Graham* and *Montgomery* that a sentencing court may remedy any potential Eighth Amendment violations by permitting a juvenile offender to be considered for parole. See *Graham*, 560 U.S. at 82 ("A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term."); *Montgomery*, 136 S. Ct. at 736 ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them."). As Finley's sentence afforded him parole eligibility, we find any potential Eighth Amendment violation was cured. (Case cites: *Graham v. Florida*, 560 U.S. 59 (2010); *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019); and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016)).

The South Carolina Court of Appeals found that the circuit court did not err in denying Finley's motion for resentencing and affirmed the circuit court's order

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The State would respectfully ask the Court to deny the Petitioner's Motion for Resentencing in this case for the above-mentioned reasons and in light of the holding and reasoning of our Court of Appeals in *State v. Finley*, and for reasons stated in the State's previous motions.

By: 
Barry J. Barnette
Solicitor
Seventh Judicial Circuit

July 22, 2019
Spartanburg, South Carolina

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SPARTANBURG COUNTY
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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
 4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
 5 PLAINTIFF,) OF
 6 VS.) RECORD
 7 KENNETH LEE BROWN,) 1983-GS-42-6, 10
 8 DEFENDANT.) 1983-GS-42-19 - 21
) 1983-GS-42-30, 31

9
 10 December 17th, 2019
 11 Spartanburg, South Carolina

12
 13 B E F O R E :

14 THE HONORABLE R. KEITH KELLY, Judge.

15
 16 A P P E A R A N C E S :

17 BARRY BARNETTE
 18 SOLICITOR
 Attorney for the State

19 ROBIN FILE
 20 ESQ.
 Attorney for the Defendant

21
 22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 Seventh Judicial Circuit

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I N D E X O F W I T N E S S E S

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(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

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SOLICITOR BARNETTE: May it please the Court, Your Honor?

THE COURT: Yes, sir.

SOLICITOR BARNETTE: This is the case of State versus Kenneth Lee Brown, Your Honor. Involved Indictments 1983-GS-42-6, 10, 19, 20, 21, 30, and 31, Your Honor.

Your Honor, he was granted a motion under Aiken versus Byars, and I believe Your Honor was vested jurisdiction with this case.

Your Honor, we filed a Return to the motion -- to the Defendant's motion in this case, Your Honor. I've actually filed a supplemental motion also. The original -- and basically it's a Motion to Dismiss the Aiken versus Byars case, Your Honor. I filed it back on October 25th, 2017, the original return to his motion. Then I did a supplemental motion, Your Honor, on July 22nd, 2019, Your Honor, in that case.

Just to give a little bit of background, Your Honor, he was convicted on burglary first, Your Honor, which he, he received the life sentence with parole, Your Honor, in that case on a burglary first, Your Honor, and then he also had an attempted armed robbery. He got 20 years consecutive on that, Your Honor, receiving stolen goods, Your Honor, 10

1 years consecutive to that, and the other charge, Your Honor.

2 He received parole on this, Your Honor, on May 1st, two
3 2000 -- I mean 2002, Your Honor. At that time, he had filed
4 different motions for appeals and PCR. They all been
5 denied, Your Honor.

6 Basically, the Court ordered, I believe it was
7 July 23rd, 2015, in order to have the Aiken, I think you had
8 set it aside at one point, Your Honor, because he is in
9 Florida now. He was granted parole, went to Florida, and
10 got convicted of several bank robberies in Federal Court in,
11 in Florida, Your Honor. Matter of fact, he is in custody
12 under the Federal Court, Your Honor, until February 10th,
13 2018, in this case, Your Honor.

14 And I filed the supplemental, Your Honor, because State
15 versus Finley came out in the mean time, and that is -- cite
16 on that is 427 S.C. 419, 831 S.E.2d 158, Your Honor, 2019
17 case by the South Carolina Court of Appeals, Your Honor, in
18 that case, and basically, Your Honor, and I can go through
19 everything, I put it in my supplemental motion, all the case
20 law and all the cites that the Court cites in Finley, Your
21 Honor, but basically he was given a parole sentence, and
22 that is not a life without parole -- a true life without
23 parole situation that was considered by Aiken versus Byars
24 as well as the other cases that's been decided in this case
25 concerning Aiken versus Byars type of defendant, Your Honor.

1 And this one's even different because a lot of them
2 I've dealt with before, they were eligible for parole, has
3 not been given parole. This Defendant has been given
4 parole. Therefore, he actually had his chance, was out, and
5 obviously threw it away. He went and committed more crimes
6 down in the State of Florida, and is serving his time for
7 that, Your Honor. I believe they've actually filed a, a
8 parole violation on him that will be taken care of, I guess,
9 once he's ever out -- if he ever gets out of the Federal
10 system in Florida, Your Honor, in this case.

11 I think, under State versus Finley, Your Honor, and
12 other cases I have cited in my return in the two different
13 forms I've done, Your Honor, he is not eligible under Aiken
14 versus Byars, and I'd ask that his action be dismissed, Your
15 Honor, based off that.

16 THE COURT: Mr. File.

17 MR. FILE: Your Honor, for the record, I was appointed
18 to represent the Defendant here due to the fact that the
19 public defender had a conflict. I believe Mr. Brown had
20 testified against a previous defendant they represented in
21 a, in a murder or, or a death penalty case.

22 First of all, I wanted to put on the record my client
23 and -- I've corresponded with my client several -- a number
24 of times since my appointment, and he indicated to me, and,
25 and you had asked me to, to reaffirm this, that he is in the

1 Federal DOC in Florida, and that under no circumstances did
2 he want to be here. So, he -- we are waiving his presence.

3 Second, another thing I need to put on the record is
4 just, this past weekend, when I came to work Monday and
5 checked my mailbox, he had sent me a letter indicating that
6 he wished to relieve -- have me relieved as his attorney.
7 That was after I had informed him of the law adverse to his
8 case. But he wished to relieve me as his attorney.

9 I don't know if the Court has received any filings on
10 that or not. He did -- I did receive something from the
11 Supreme Court in -- indicating he had -- it looked to me
12 like he was refiling his motion to have his sentence
13 converted to something less than life with the Supreme
14 Court, and he -- and, and all and they sent it back to him
15 telling he had to file that with the Circuit Court since the
16 case was remanded back to, to this Court, and he -- and all.
17 But I have not seen anything else from him.

18 And, and, also -- but anyway he did indicate he wished
19 to relieve me as his attorney. We brought that to your
20 attention yesterday, and you had indicated you were going to
21 go forward with the case at this time. So --.

22 THE COURT: Yes, and I'll put that on the record so it
23 protects you, Mr. File. You shared that with me. It said
24 he was filing a motion, and I've, I've not seen a motion.
25 Nothing has been, been sent to me, and if, if it had been, I

1 would deny it. He's just -- he doesn't like the advice that
2 you told him and the status of the law.

3 So, he waived -- and, and he waived his right to be
4 here. So --.

5 MR. FILE: Thank you, Your Honor.

6 THE COURT: Make sure you put all that on the record.

7 MR. FILE: Your Honor, this case was initiated by my
8 client filling a pro se filing with the Supreme Court.

9 As you're well aware, he was -- the Supreme Court
10 interpreted his motion as being a motion for resentencing
11 under Aiken v. Byars. They sent it back to Your Honor. You
12 stayed it until 2058, but then they issued an order saying
13 that you needed to have a hearing on it.

14 So, so, I -- Your Honor, he -- he's alleging that he's
15 entitled to a resentencing under Aiken v. Byars because he's
16 received a life sentence at the age of 17 in 1983 when he
17 was a juvenile. He was sentenced on several burglary cases,
18 armed robbery, and I believe there was an assault with
19 intent to kill in one of those as well. He, he also was
20 sentenced on some grand larceny charges, burglary and grand,
21 grand larceny, and criminal sexual conduct in the first
22 degree, and, and he -- we will concede that he was granted
23 parole.

24 However, he's, he's asking for resentencing anyway
25 under the Eighth Amendment, and also alleging that this

1 sentence was excessive per State v. Kimbrough, which I have
2 a copy of that case law if Your Honor wants to see it. But
3 he, he is -- I have made him aware of the law adverse to his
4 case. However, he -- it's -- he did -- and he made parole.
5 However, he, he wishes to proceed with a request that this
6 Court consider resentencing, and he's indicated he thinks
7 his sentence was excessive for him being a juvenile with no
8 prior record at that time, and he's asking, throughout the
9 documents he has filed, and, and also in correspondents with
10 me, he -- he's asking the Court to resentence him to a 30
11 year sentence concurrent with what he's now serving in the
12 Federal DOC. And that's what I gathered from all the
13 documents.

14 THE COURT: All right. Any, any reply, solicitor?

15 SOLICITOR BARNETTE: Your Honor, just briefly, or
16 whatever.

17 Like I said, if it was life -- if it was after 1996, it
18 was a true life sentence day for day or whatever. That's
19 not the case in his situation. I know the Court understands
20 that.

21 In 1983 he was parole eligible. He actually had got
22 parole. So, therefore, I don't think it applies in this
23 case, and I'd ask the Court to dismiss his action.

24 THE COURT: Okay. I understand that he was on parole
25 when he committed the, the offenses that caught him a

1 significant sentence in the Bureau of Prison.

2 SOLICITOR BARNETTE: Yes, sir, that's correct.

3 THE COURT: Okay. All right. It's under advisement.

4 The motion is under advisement and watch your email.

5 MR. FILE: Thank you.

6 SOLICITOR BARNETTE: Thank you, Your Honor.

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9 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 17th day of December, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 17th, 2020



PAMELA E. GREEN, Court Reporter

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STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 Kenneth Lee Brown,)
 Petitioner.)
 v.)
 The State of South Carolina,)
 Respondent.)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

RECEIVED
 JAN 16 2020
 SC Court of Appeals

**ORDER GRANTING RESPONDENT'S MOTION
TO DISMISS AND DENY PETITIONER'S
MOTION FOR RESENTENCING**

Indictment No.: 1983-GS-42-0006, 0010,
0019, 0020, 0021, 0030, and 0031

On December 17, 2019, this Court held a motion hearing regarding Petitioner's *Aiken v. Byars* Motion for Resentencing and the State's related Motion to Dismiss and Deny. The State was represented by Barry Barnette, Solicitor for the Seventh Judicial Circuit. The Petitioner was represented by Robin File, Esq. Pamela Green was the Court Reporter for the hearing. Mr. File had been appointed to represent the Petitioner because the Seventh Judicial Circuit Public Defender's Office has a conflict with any representation of him. The Petitioner had previously testified as a witness for the State of South Carolina against a client that Clay Allen, the Seventh Circuit Public Defender, had represented. The Court appointed Mr. File to represent the Petitioner on June 12, 2019, after considering Mr. Allen's potential conflict of interest.

Prior to the hearing being scheduled for December 17, 2019, Mr. File notified the Court and the State that his client was waiving his presence at the hearing. At the start of the December 17th hearing, Mr. File also stated on the record that his client had notified him that he would waive his presence at the hearing. Additionally, Mr. File also notified the Court that he apprised his client of new case law from the South Carolina Court of Appeals decided since the filing of Petitioner's *Aiken v. Byars* Motion, and after doing so Mr. File had received another handwritten

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letter indicating the Petitioner wanted Mr. File relieved from representing him and new counsel appointed because Mr. File was not representing him as he should.

The Court first considered the history of this case as stated in the matters before the Court. The Petitioner pled guilty on January 28, 1983, and received the following sentences on each charge: on his Burglary First (1st) Degree charge (Ind. No.: 83-GS-42-0019) the Petitioner received a life sentence with parole consecutive; on his Burglary First (1st) Degree charge (Ind. No.: 83-GS-42-0021) the Petitioner received a life sentence with parole; on his Burglary First (1st) Degree charge (Ind. No.: 83-GS-42-0030) the Petitioner received a life sentence with parole; on his Burglary First (1st) Degree charge (Ind. No.: 83-GS-42-0031) the Petitioner received a life with parole sentence; on his Attempted Armed Robbery charge (Ind. No.: 83-GS-42-10) the Petitioner received a twenty (20) year with parole consecutive sentence; and on his Receiving Stolen Goods charge (Ind. No.: 83-GS-42-0006) the Petitioner received a ten (10) year with parole consecutive sentence from the Honorable Paul Moore in Spartanburg County General Sessions Court. The Petitioner was released on parole on May 1, 2002. Thereafter the Petitioner was charged with numerous offenses involving bank robberies in the state of Florida and was convicted of and sentenced for those federal offenses. The Petitioner is presently in federal custody at the United States Penitentiary Coleman I in Wildwood, Florida with a release date of February 10, 2058.

On August 18, 2017, the South Carolina Supreme Court ordered this resentencing matter be heard; Judge R. Keith Kelly was assigned exclusive jurisdiction to review this matter on August 24, 2017. The Court prior to this hearing had ordered a stay of this matter on October 10, 2017, because the Court learned from both parties that the Petitioner was a federal inmate housed at USP Coleman in Wildwood, Florida with a projected release date of February 10, 2058. The South Carolina Supreme Court on January 15, 2019, granted the Petitioner's request for extraordinary

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SOUTH CAROLINA

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relief by his *pro se* petition. The South Carolina Supreme Court vacated the Court's orders imposing a stay and remanded the matter to Judge Kelly to rule on the merits of the Respondent's Motion to Dismiss and, if the Motion to Dismiss is denied, to consider the Petitioner's Motion for Resentencing.

At the December 17, 2019 hearing, prior to the hearing on the Motion to Dismiss, the Court heard on the record the Petitioner's Motion to Relieve Mr. File from representation and denied it because Mr. File was only keeping his client informed of current case law and properly representing him. The Court then considered the Motion to Dismiss and the Supplemental Motion to Dismiss made by the Respondent. The Court heard from both parties on the Respondent's motions and further considered the Motion for Resentencing made by the Petitioner with arguments made by Mr. File on the behalf of the Petitioner and arguments made by Mr. Barnette on behalf of the State.

After considering arguments made at the hearing and in submitted materials, the Court grants the Respondent's Motion to Dismiss and denies the Petitioner's Motion for Resentencing under *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). The Court finds the Petitioner is not entitled to a Motion for Resentencing because the life sentence the Petitioner received for his Burglary First (1st) Degree convictions is parole eligible. Under South Carolina law in 1983, a life sentence for Burglary First (1st) Degree is parole eligible after serving ten (10) years of the sentence. The law for Murder was changed in 1996 when the "Truth in Sentencing" bill was enacted and a life sentence since July 1, 1996, is actually a life sentence without parole. Under *Aiken v. Byars* our South Carolina Supreme Court determined that *Miller v. Alabama*, 569 U.S. 460, 132 S.Ct. 2455 (2012), applied retroactively in South Carolina as stated in the Petitioner's Motion for Resentencing. However, it only applied to life without parole sentences. The

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Petitioner's sentences for Burglary First (1st) Degree in 1983 are for life with parole, therefore, neither *Aiken* nor *Miller* apply to this case. The Petitioner also received parole concerning these charges in 2002.

The Court also finds that the United States Supreme Court considered the retroactivity of its holding in *Miller* in *Montgomery v. Louisiana*, 136 S.Ct. 718, 193 L.Ed. 2d 599 (2016), *as revised* (Jan. 27, 2016). After concluding the holding of *Miller* should be applied retroactively, the majority in *Montgomery* addressed the dissent's claim that making *Miller* retroactive would overly burden State courts by requiring all juveniles sentenced to life be resentenced in accordance with the "new" mandate of *Miller*. In so holding, the United States Supreme Court stated,

Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity – and who have since matured – will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.

Id. at 736 (citation omitted).

The Petitioner's original life sentence makes him eligible for parole pursuant to South Carolina law; he is not entitled to resentencing pursuant to *Miller* or *Byars*.

The Court holds that the case of *State v. Finley* also applies to this case. 427 S.C. 419, 831 S.E.2d 158 (Ct. App. 2019). In that case, Finley argued his mandatory sentence of life with the possibility of parole after service of thirty (30) years was a *de facto* LWOP, functionally equivalent to a sentence of life imprisonment without the possibility of parole (LWOP), and therefore a violation of the Eighth Amendment's prohibition against cruel and unusual punishments. Finley also contended the mandatory sentencing scheme rendered his life sentence unconstitutional because it prevented consideration of his juvenile status as required by *Miller* and *Byars*.

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SPRINGFIELD COUNTY
MAY 11 2019

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RRK

The South Carolina Court of Appeals found that the Appellant in *Finley* was not entitled to resentencing pursuant to *Miller* and *Byars*. The Court stated:

Although Finley received a mandatory life sentence for murder as a juvenile offender, the circuit court's sentence afforded Finley parole eligibility after the service of thirty years' imprisonment. See S.C. Code Ann. § 16-3-20(A) (1992) (providing that a person who is convicted of or pleads guilty to murder must be punished by (1) death; (2) life imprisonment with the possibility of parole after twenty years; or (3) life imprisonment with the possibility of parole after thirty years if the State sought the death penalty and an aggravating circumstance was found but a recommendation of death was not made). This sentence differs significantly from those at issue in *Graham*, *Miller*, and *Byars* in which the juvenile offenders received sentences of life imprisonment *without* the possibility for parole. See *Graham*, 560 U.S. at 82 ("The Constitution prohibits the imposition of a life *without* parole sentence on a juvenile offender who did not commit homicide." (emphasis added)); *Miller*, 567 U.S. at 479 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison *without possibility of parole* for juvenile offenders." (emphasis added)); *Byars*, 410 S.C. at 545 ("We hold the principles enunciated in *Miller* . . . apply . . . to all juvenile offenders who may be subject to a sentence of life imprisonment *without the possibility of parole*." (emphasis added)). As our supreme court recently noted in *Slocumb*, this court's review is confined by the parameters established by the United States Supreme Court. See 426 S.C. at 306, 827 S.E.2d at 153. Therefore, as it stands, Finley is not a member of the class of offenders contemplated by our precedent. Furthermore, the Supreme Court indicated in *Graham* and *Montgomery* that a sentencing court may remedy any potential Eighth Amendment violations by permitting a juvenile offender to be considered for parole. See *Graham*, 560 U.S. at 82 ("A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term."); *Montgomery*, 136 S. Ct. at 736 ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them."); As Finley's sentence afforded him parole eligibility, we find any potential Eighth Amendment violation was cured.

Id. at 427-428.¹

The South Carolina Court of Appeals found that the circuit court did not err in denying Finley's motion for resentencing and affirmed the circuit court's order.

¹ Full case citations omitted in quote: *Graham v. Florida*, 560 U.S. 59 (2010); *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019).

FILED
2020 JAN 14 AM 11:21
CLERK OF COURT
PARTANBURG COUNTY
AMY W. COX

5
FKK

IT IS THEREFORE ORDERED that the Respondent's Motion to Dismiss and Deny.
Petitioner's Motion for Resentencing is granted based on the above findings of the Court.

AND IT IS SO ORDERED.

R. Keith Kelly
The Honorable R. Keith Kelly
The Seventh Judicial Circuit Court

January 13, 2020
Spartanburg, South Carolina

FILED
2020 JAN 14 AM 11:24
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

83-DS-42-6
The State of South Carolina
County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17 Term, 1983

THE STATE

VS.

Kenneth Lee Brown

INDICTMENT FOR

Armed Robbery &
A & B W/Intent to Kill

Claude A. Taylor, Jr.

Foreman of Grand Jury

JACQUES PRINCEPS

COLUMBIA, S. C. 29206



I, Kenneth Lee Brown
heretby appear in my own proper person and plead
guilty to Receiving Stole Goods

On the within indictment.

Witness: Kenneth Lee Brown

K.R. Stuchaley
Clerk of Court
Dale Moffitt

After being fully advised as to
my legal rights, I hereby waive
presentment to the Grand Jury.

Sign Kenneth Lee Brown

The sentence of the Court is that you
Kenneth Lee Brown
be confined in the S. C. Department of
Corrections for a period of 10 yrs.
Consecutive

Paul M. zero
Presiding Judge

1-28-83
(Date).

1983GS0006
Box: C0000119440

000008484

STANDARD TELETYPE UNIT

Access
Communication Products

STD
8/28/2017
2:00 PM

CUSTOMER GSH139960 WORK 8852690

PARENT: C0000119440
LOCATION: JH21051904F
Ref1 1983GS0006
Ref2:
Ref3: 9250
Ref4: 4746
Ref5: 9250



The State of South Carolina

INDICTMENT FOR

County of Spartanburg

Armed Robbery & A & B W/Intent to Kill

At a Court of General Sessions, convened on the 17th day of January,
1983, the Grand Jurors of Spartanburg County present upon their oath:

That Kenneth Lee Brown

did in Spartanburg County on or about the 14th day of October,
1982, did willfully and unlawfully, while armed with a deadly weapon, to-wit: a
pistol, commit the offense of armed robbery by feloniously and forcibly taking
a sum of money, a billfold with contents and a watch from Weldon Burnett by putting
him in fear of losing his life or sustaining serious bodily harm in violation of
Section 16-11-330 (1) of the 1976 Code of Laws of S. C.

Count II - A & B W/I/Kill

That Kenneth Lee Brown did in Spartanburg County on or about the 14th day of October
1982, with malice aforethought commit an assault and battery upon one Weldon Burnett
with intent to kill the said Weldon Burnett by beating him in the head with a cement
block.

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

[Handwritten signatures and official stamps, including a date stamp that appears to read "JAN 19 1983"]

The State of South Carolina

County of Spartanburg



000014972

1983GS0010

Rev. Comm. 119440
JANUARY 17

Term, 19 83

THE STATE

VS.

Kenneth Lee Brown

INDICTMENT FOR

and

Attempted Armed Robbery

Claude A. Taylor, Jr.

Foreman of Grand Jury

William D. Kelly

WPAW PRINTERS

COLOMBIA, S. C.



F0000550294

I, Kenneth Lee Brown
herby appear in my own proper person and plead
guilty to Attempted Armed Robbery
On the within indictment.

Witness: Kenneth Lee Brown

K. R. Hutchaby
Clerk of Court
Mail Hopper CC

The sentence of the Court is that you
Kenneth Lee Brown
be confined in the S. C. Department of
Corrections for a period of 20 yrs.
Consecutive

Paul M. [Signature]
Presiding Judge

1-28-83
(Date)



STD
8/28/2017
2:00 PM

CUSTOMER GSH139960 - WO# 8852690

PARENT: C0000119440
LOCATION: JH21051904F
Ref1 1983GS0010
Ref2.
Ref3: 9250
Ref4: 174
Ref5: 9250



F0000550294

Printed From SC-SouthCarolina

J. J.
FORM 5

The State of South Carolina

INDICTMENT FOR

County of Spartanburg

} _____ AND
} Attempted Armed Robbery

At a Court of General Sessions, convened on the 17th day of January,
1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE

That Kenneth Lee Brown

_____ did in Spartanburg County on or about the 6th day of October,
1982,

did willfully and unlawfully while armed with a deadly weapon, to-wit: a pistol, attempt to rob Buddy Murray in violation of Section 16-11-330 (2) of the 1976 Code of Laws of S. C.

COUNT TWO

That _____

_____ did in _____ County or about the _____ day of _____,
19____,

83-BS-42-19

The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17

THE 1983GS0019
Rov. C0000119440

VS.

Kenneth Lee Brown

INDICTMENT FOR

Burglary and Larceny

Claude A. Taylor, Jr.

Foreman of Grand Jury

James R. ...

F0000550297

I, Kenneth Lee Brown

hereby appear in my own proper person and plead guilty to Burglary & Grand Larceny

On the within indictment.

Witness: Kenneth Lee Brown

K.R. Huchalay
Clerk of Court
Hail Hoppert cc

The sentence of the Court is that you Kenneth Lee Brown be confined in the S. C. Department of Corrections for a period of your Natural Life Consecutive

[Signature]
Presiding Judge

1-28-83
(Date)

Access

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CUSTOMER: CESH 130960 WOF 8852690

PARENT: C0000119440

LOCATION: JH121051904E

R Ref 1: 1983GS0019

R Ref 2:

R Ref 3: 9250

R Ref 4: 174

R Ref 5: 9250

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A copy by m. f. g. Form 11

The State of South Carolina

County of Spartanburg

INDICTMENT FOR BURGLARY AND LARCENY

At a Court of General Sessions, convened on the 17th day of January 1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — BURGLARY

That Kenneth Lee Brown did in Spartanburg County on or about the 30th day of October 1982, in the nighttime, break and enter the dwelling house of another, to wit: Martha Simuel with intent to commit a felony therein.

COUNT TWO — LARCENY

That Kenneth Lee Brown did in Spartanburg County on or about the 30th day of October 1982, feloniously take and carry away the personal goods of Martha Simuel of the value of more than fifty dollars, described as follows: a purse and contents with intent to deprive the owner(s) permanently of such property.

83-45-42-20

The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17 Term, 19 83

THE STATE

VS.

Kenneth Lee Brown

INDICTMENT FOR

Burglary 1st/2nd/3rd/4th/5th

Claude A. Taylor, Jr.

Foreman of Grand Jury

William R. Kelly
W. R. Kelly

1983GS0020
Rev. 000011944N

000014974

I, Kenneth Lee Brown
hereby appear in my own proper person and plead
guilty to Burglary

On the within indictment.

Witness: Kenneth Lee Brown

K.P. Stuchel
Clerk of Court
Gail Moppett CC

The sentence of the Court is that you

Kenneth Lee Brown

be confined in the S. C. Department of

Corrections for a period of your

Natural Life consecutive

[Signature]
Presiding Judge

1-28-83
(Date)

INFORMATION SYSTEMS DIVISION

Access
Information Protected

CUSTOMER GSH139960

PARENT: C0000119440

LOCATION: JH21051904F

Ref1 1983GS0020

Ref2: N/A

Ref3: 9250

Ref4: 174

Ref5:

STD
3/28/2017
2:00 PM

WORK 8852690



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Form 11

The State of South Carolina

County of Spartanburg

**INDICTMENT FOR
BURGLARY AND LARCENY**

At a Court of General Sessions, convened on the 17th day of January,
1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — BURGLARY

That Kenneth Lee Brown

did in Spartanburg County on or about the 25th day of October,

1982, in the nighttime, break and enter the dwelling house of another, to wit: _____

Annie McDowell

with intent to commit a felony therein.

COUNT TWO — LARCENY

That _____

did in _____ County on or about the _____ day of _____,

19____, feloniously take and carry away the personal goods of _____

of the value of more than fifty dollars, described as follows: _____

with intent to deprive the owner(s) permanently of such property.

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

83-115-42-21

The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17 Term, 1983

THE STATE

VS.

Kenneth Lee Brown

INDICTMENT FOR

Burglary and Larceny

Claude A. Taylor, Jr.

Foreman of Grand Jury

1983GS0021
Pov: C0000119440

000014975



I, Kenneth Lee Brown
hereby appear in my own proper person and plead

guilty to Burglary & Grand Larceny

On the within indictment.

Witness: Kenneth Brown

K.P. Guchall
Clerk of Court
Gail Hoppitt cc

The sentence of the Court is that you
Kenneth Lee Brown
be confined in the S. C. Department of
Corrections for a period of you
Natural Life Consecutive

Paul M. Ross
Presiding Judge

1-28-83
(Date)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 00

Access
Information Provided

CUSTOMER GSH139960
PARENT: C0000119440
LOCATION: JH21051904F
Ref1: 1983GS0021
Ref2: N/A
Ref3: 9250
Ref4: 174
Ref5:

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8/28/2017
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WO# 8852690



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Picked From SC South Carolina

The State of South Carolina
County of Spartanburg

INDICTMENT FOR
BURGLARY AND LARCENY

At a Court of General Sessions, convened on the 17th day of January,
1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — BURGLARY

That Kenneth Lee Brown
did in Spartanburg County on or about the 26th day of October,
1982, in the nighttime, break and enter the dwelling house of another, to wit: Robert McFarlin

with intent to commit a felony therein.

COUNT TWO — LARCENY

That Kenneth Lee Brown
did in Spartanburg County on or about the 26th day of October,
1982, feloniously take and carry away the personal goods of Robert McFarlin

of the value of more than ^{\$200} ~~five~~ dollars, described as follows: a sum of money, a watch and a Visa card

with intent to deprive the owner(s) permanently of such property.

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

83-115-42-30 T-1 (G)

The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17 Term, 19 83

THE STATE

VS.

Kenneth Lee Brown

Julia Legimore, Ck.

INDICTMENT FOR

Burglary, Armed Robbery Criminal Sexual Conduct, 1st Degree

Claude A. Taylor, Jr.

Foreman of Grand Jury

W. W. ... Foreman of Grand Jury ...

1983GS0030



I, Kenneth Lee Brown hereby enter in my own proper person and plead

guilty to Burglary, Armed Robbery & Criminal Sexual Conduct 1st Degree On the within indictment.

Witness: Kenneth Lee Brown

K.R. ... Clerk of Court Dail Moffett cc

The sentence of the Court is that you Kenneth Lee Brown be confined in the S. C. Department of Corrections for a period of your natural life

Access Information Protected

CUSTOMER GSH139960 PARENT: C0000119440 LOCATION: JH21051904F Ref1 1983GS0030 Ref2 Ref3: 9250 Ref4: 174 Ref5: 9250

STD 8/28/2017 2:00 PM

WO# 8852690

Presiding Judge

1-28-83 (Date)



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FORM 6

The State of South Carolina

County of Spartanburg

INDICTMENT FOR

Burglary, Armed Robbery & Criminal Sexual Conduct, 1st. Deg.

At a Court of General Sessions, convened on the 17th day of January, 1983, the Grand Jurors of Spartanburg County present upon their oath:

That Kenneth Lee Brown

did in Spartanburg County on or about the 20th day of August, 1982, in the nighttime, break and enter the dwelling house of another, to-wit: Beatrice Murphy with intent to commit a felony therein.

Count II - Armed Robbery

That Kenneth Lee Brown did in Spartanburg County on or about the 20th day of August 1982 did willfully and unlawfully, while armed with a deadly weapon, to-wit: a knife, commit the offense of armed robbery by feloniously and forcibly taking a sum of money from Beatrice Murphy by putting her in fear of losing her life or sustaining serious bodily harm in violaion of Section 16-11-330 (1) of the 1976 Code of Laws of S. C.

Count III - Criminal Sexual Conduct, 1st Deg.

That Kenneth Lee Brown did in Spartanburg County on or about the 20 th day of August 1982 willfully and unlawfully commit first degree criminal sexual conduct against Beatrice Murphy in that he caused her to perform oral sex with him in violation of Section 16-3-651 and more specifically Section 16-3-652 of the 1978 Cumulative Supplement to the Code of Laws of S. C., 1976.

83-15-42-31

The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

JANUARY 17 Term, 19 83

THE STATE

VS.

Kenneth Lee Brown

INDICTMENT FOR
Burglary and Larceny

Claude A. Taylor, Jr.

Foreman of Grand Jury

M. W. Stealy

W. R. Rio

1983GS0031
Rox. COMM119440

000014977



I, Kenneth Lee Brown

herby appear in my own proper person and plead

guilty to Burglary & Grand Larceny

On the within indictment.

Witness: Kenneth Lee Brown

K. R. Huchalay

Clerk of Court

Hail Moffett cc

The sentence of the Court is that you

Kenneth Lee Brown

be confined in the S. C. Department of

Corrections for a period of your

Natural Life consecutive

[Signature]
Presiding Judge

1-28-83

(Date)

Access

MEMBER
01/26/83
2:00 PM

CUSTOMER: GCSH109960
PARENT: 0000119440
LOCATION: JHICARR0806
Ref1: 1983GS0031
Ref2: BROWN
Ref3: 9250
Ref4: 1174
Ref5: 9250

0000550296

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Form 11

The State of South Carolina
County of Spartanburg

INDICTMENT FOR
BURGLARY AND LARCENY

At a Court of General Sessions, convened on the 17th day of January,
1983, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — BURGLARY

That Kenneth Lee Brown
did in Spartanburg County on or about the 25th day of October,
1982, in the nighttime, break and enter the dwelling house of another, to wit: Caroleen J. Banks

with intent to commit a felony therein.

COUNT TWO — LARCENY

That Kenneth Lee Brown
did in Spartanburg County on or about the 25th day of October,
1982, feloniously take and carry away the personal goods of Caroleen J. Banks

less than \$200
of the value of more than fifty dollars, described as follows: A sum of money and car keys and a 1976 Datsun

with intent to deprive the owner(s) permanently of such property.

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

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.”

RECEIVED
Sep 21 2020
SC Court of Appeals

Respectfully Submitted,

s/ Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 21st day of September, 2020.