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OCT 26 2020

SC Court of Appeals

State of South Carolina
In the Court of Appeals
Appeal from Spartanburg County
Honorable L. Keith Kelly, Circuit Court Judge

Kenneth Lee Brown, Pro Se,
Appellant,

Vs.

Appellate Case number:

2020-000086

The State
Respondent.

Pro Se Brief

The Appellant Kenneth Lee Brown, Pro Se, is now a 55 year of age Black male, who was sentenced unjustly January 28, 1983 to (5) five life-sentences, plus 30 years.

At the time of the said crimes the Appellant was an 17 year old juvenile, and he had no adult Criminal Record (See Transcript Page 21, 11, 23-24.)

In Support of Appellant Kenneth Lee Brown, claim's, he rely on the {fact's} of supporting truth...

Page (1)

"Attempted Armed Robbery is not a Crime of Violence"
See South Carolina v. Reid, 713 S.E.2d 274, 277 (SC 2011),
Citing South Carolina v. Quirk, 79 S.E.2d 101, 101-102 (SC 1942).
one apprehended as he is about to walk into a bank with
a deadly weapon to commit a robbery, would be guilty
of attempted robbery, even though he did not use
violence force, threaten to use violent force, or attempt
to use violence force. As such, the offense of attempted
armed robbery is not a violent felony under the
force clause, and could only have qualified as such
under the now unconstitutional residual clause.

Burglary is not a Crime of Violence

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 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.

Appellant Brown contends that these Conviction(s) 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 a 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's definitional statutes necessarily remove South Carolina's burglary from the scope of a "generic burglary" Taylor v. United States, 495 U.S. 575, 598 (1990).

South Carolina Code § 16-11-10, the definition of "dwelling house" has not been modified since Brown's Convictions in 1983. South Carolina burglary is not "generic" burglary and is therefore does not qualify as a "violent felony."

Page (3)

Burglary/ Burglary (Committed before 6/20/85)
(no longer used) (See 0079, 0080 and Burglary)

See Attachment... Exhibit (A).

The Appellant Kenneth Lee Brown, Jr, Sr, stood charged with seven (7) indictments at the January 1983 term of Court in Spartanburg County. Five (5) of these indictments were for burglary or a combination of burglary and larceny (grand larceny (83-65-42-19, 20, 21-30, and 31).

The Appellant was a 17 year old juvenile at the time of crimes and was given five (5) life sentences out of corrupt motive.

The shocking dialogue in the plea transcript at page 22-23 reveals that Solicitor Holman Bassett profoundly misinformed the judge that:

"You dont have any other recourse but to give him life, unless I recommend mercy."

To make matters even worse the Appellant's own attorney betrayed him by confirming this erroneous advice to the judge by emphasizing that...

page (4)

"unless the Solicitor recommends mercy for you
(the judge)... it's a mandatory life sentence"
See plea trial transcript pp. 11, 23-25, pp. 22 and
11, 1-18, pp. 23

Watson v. State, 338 S.E.2d 636 (1985) unambiguously
holds that the Appellant had a right to a jury
empowered to determine whether or not mercy should
have been recommended. It was gross error for the
Solicitor to mislead the Court into believing the ineluctable,
that only the State could recommend mercy.
Appellant's own attorney compounded this error.

It's very clear from the Sentencing judge's shocking
question at line 20, of page 17 of the plea
transcript that the Court harbored prejudice and
corrupt motive in fashioning the harsh sentence
imposed upon the Appellant. The Court hesitated before
passing sentence until it had ascertained how many
victims were "white and". This kind of inquiry is
inherently improper and taints the entire Sentencing
process.

Appellant's case, moreover, falls squarely within
the exception carved out in *State v. Cumbrough*, 46-
S.E.2d 273 (1948). The sentence imposed in this
case is manifestly too severe.

The Appellant had no adult Criminal Record
See plea transcript pp. 21, 11, 23-24).

None of the offenses involved loss of life.

The Solicitor, defense attorney, and the Court were each in error that the necessity of life sentences for the five (5) burglary offenses.

Further, Appellant's own attorney promoted (T.I., p. 21) the imposition of a life sentence when he had, contrarily, assured the Appellant that he would receive no more than twenty five (25) years for his guilty plea.

It is clear that the Appellant, a vulnerable adolescent at the time of his plea in January 28, 1983, was exploited by his Counsel and the State. Page 19 of the plea Transcript reveals that

"his IQ is the lower end of borderline function."

under *State v. Arthur*, 374 S.E.2d 291 (1988) and *Butler v. State*, 397 S.E.2d 87 (1990), the Appellant Kenneth Lee Brown is entitled to re-plea.

Burglary (Burglary (Committed before 6/20/85) (no lawyer used) (See 0079, 0080), and Burglary).

Appellant Kenneth Lee Brown, pro se, seeks 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.

It is so clear that Russian roulette was played with the Appellant's life, and the razor was put before the horse, and race played a part. Prejudice, bias, has no place in receiving equal justice under the law.

Whenever there is an injustice and an miscarriage of justice has been displayed it has to be made right in the eye of justice even if it (37 years) later.

Because an Appellant is to be represented at every critical stage of his trial *United States v. Cronk*, 104 S. Ct. 2039 n.25 (1984).

As a juvenile at the time of the crimes, an juvenile should have the opportunity to be completely "free" from the "T⁶" or "L⁶" with parole or without parole life sentence.

The Eighth Amendment prohibition of cruel and unusual punishment forbids a sentencing scheme that requires the imposition of life imprisonment with parole or without parole upon a juvenile for a nonhomicide offense when he was under the age of 18 at the time of the offense.

Appellant Brown, is now a 55 year old man, who is now in Federal Prison. Appellant Brown has (5) life Sentences for offenses that was committed when he was a 17-year old juvenile. All nonhomicide no lost of life, he was Sentence in 1983 of January 28 with parole under South Carolina's Mandatory Sentencing Scheme for Felony Burglary which now Appellant Brown's Burglary Convictions no longer use as felony Burglary see exhibit (A).

Appellant Brown has an exceptional institutional record when he was in South Carolina Department of Corrections, and he has an exceptional institutional record in (BoP), and he the Appellant has taken full advantage of every program available to him, Appellant has earned positions of trust in employment and taken leadership roles in programs to promote alternative to violence within and outside of Prison.

Conclusion

Appellant Kenneth Lee Brown, do so ask this Honorable Court to Resentence him, and have All the life-Sentences removed.

Respectfully Submitted
Kenneth Lee Brown, 56822-004
Federal Correctional Complex (BOP #1)
P.O. Box 1033
Coleman, Florida 33501

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EXHIBIT (A) ---

General Sessions
CASE HISTORY FOR CASE A605884

The State of South Carolina VS Kenneth Lee Brown

FILED DATE: 1/17/1983
INDICTMENT NUMBER: 1983GS4200020

CASE TYPE: GS
ASSIGNED JUDGE: Caldwell, Wylie H. Jr.
DISPOSITION JUDGE: Caldwell, Wylie H. Jr.

STATUS: Disposed

CASE PARTIES:

Defendant Brown, Kenneth Lee

CASE HISTORY FOR CASE A605884

Brown, Kenneth Lee
000000000
Age: Unknown
DL#:
DOB: Unknown
SSN: 000-00-0000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0039 SENTENCING: NATURAL LIFE SENT	Burglary / Burglary (Committed before 6/20/85) (no longer used)(see 0079, 0080 and Burglary) NATURAL LIFE SENT	10/31/1982 Pled Guilty	1/28/1983

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
1/28/1983	12:00 AM	recorded the following Case Note: Date Disposition was Entered 1983-01-28
5/11/2015	9:33 AM	Filing recorded: Letter/Inmate Letter
5/29/2015	9:00 AM	Filing recorded: Letter/Inmate Letter
6/8/2015	2:34 PM	Filing recorded: Letter/Inmate Letter & Answers
12/1/2015	4:58 PM	Filing recorded: Filing/Filing of Inmate Mail
10/14/2016	9:24 AM	Filing recorded: Writ of Error Corum Nobis - Filed by Def
10/17/2016	2:49 PM	Filing recorded: Letter/Inmate Letter
10/3/2017	9:23 AM	Filing recorded: Filing/Return To Defendant's Motion For Resentencing
10/11/2017	3:07 PM	Order/Order
10/17/2017	3:22 PM	Motion/Reconsider
10/18/2017	3:00 PM	Filing recorded: Certificate/Certificate of Service by Mail
10/25/2017	3:20 PM	Return to Def's Motion for Reconsideration
10/26/2017	9:54 AM	Filing recorded: Affidavit of Service Via Internet Email
10/30/2017	12:57 PM	Filing recorded: Service/Acceptance Of Service
11/7/2017	9:41 AM	Filing recorded: Certificate/Certificate of Service
11/7/2017	9:44 AM	Motion to Lift the Stay Previously Imposed in this Case
11/7/2017	9:35 AM	Motion To Lift The Stay Previously Imposed In This Case
11/7/2017	9:38 AM	Filing recorded: Certificate/Certificate of Service

Print Date: 01/24/2019
Print Time: 11:21:04AM
Requested By: C42BHUNTER

Exhibit (A) - - -

General Sessions

CASE HISTORY FOR CASE A651880

The State of South Carolina VS Kenneth Lee Brown

FILED DATE: 1/17/1983
INDICTMENT NUMBER: 1983GS4200019

CASE TYPE: GS
ASSIGNED JUDGE: Caldwell, Wylie H. Jr.
DISPOSITION JUDGE: Caldwell, Wylie H. Jr.

STATUS: Disposed

CASE PARTIES:

Defendant Brown, Kenneth Lee

CASE HISTORY FOR CASE A651880

Brown, Kenneth Lee
000000000
Age: Unknown
DL#:
DOB: Unknown
SSN: 000-00-0000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0039 Burglary / Burglary (Committed before 6/20/85) (no longer used)(see 0079, 0080 and Burglary)	10/31/1982	Pled Guilty	1/28/1983
SENTENCING: LIFELIFE			

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
1/28/1983	12:00 AM	recorded the following Case Note: Date Disposition was Entered 1983-01-28
5/11/2015	9:33 AM	Filing recorded: Letter/Inmate Letter
5/29/2015	9:00 AM	Filing recorded: Filing/Filing Of Inmate Mail
6/8/2015	2:34 PM	Filing recorded: Letter/Inmate Letter & Answers
12/1/2015	4:58 PM	Filing recorded: Filing/Filing of Inmate Mail
10/14/2016	9:24 AM	Filing recorded: Writ of Error Corum Nobis - Filed by Def
10/11/2017	3:07 PM	Order/Order
10/17/2017	3:22 PM	Motion/Reconsider
10/18/2017	3:00 PM	Filing recorded: Certificate/Certificate of Service by Mail
10/25/2017	3:20 PM	Return to Def's Motion for Reconsideration
10/26/2017	9:54 AM	Filing recorded: Affidavit of Service Via Internet Email
10/30/2017	12:57 PM	Filing recorded: Service/Acceptance Of Service
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11/7/2017	9:44 AM	Motion to Lift the Stay Previously Imposed in this Case
11/7/2017	9:35 AM	Motion To Lift The Stay Previously Imposed In This Case
11/7/2017	9:38 AM	Filing recorded: Certificate/Certificate of Service
11/7/2017	12:00 AM	C42CSMITH recorded the following Case Note: filed by Inmate
11/7/2017	12:00 AM	C42BHUNTER recorded the following Case Note: clock ink very light

Print Date: 01/24/2019
Print Time: 11:20:43AM
Requested By: C42BHUNTER

General Sessions

EXHIBIT (A)...

CASE HISTORY FOR CASE A803215

The State of South Carolina VS Kenneth Lee Brown

FILED DATE: 1/17/1983
INDICTMENT NUMBER: 1983GS4200030

CASE TYPE: GS
ASSIGNED JUDGE: Caldwell, Wylie H. Jr.
DISPOSITION JUDGE: Caldwell, Wylie H. Jr.

STATUS: Disposed

CASE PARTIES:

Defendant Brown, Kenneth Lee

CASE HISTORY FOR CASE A803215

Brown, Kenneth Lee

Age: Unknown
DL#:

DOB: Unknown
SSN: 000-00-0000

, 000000000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0139 Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon	11/3/1982	Pled Guilty	1/28/1983
SENTENCING: INCLUDED IN ABOVE SENT INCLUDED IN ABOVE SENT			

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
1/28/1983	12:00 AM	recorded the following Case Note: Date Disposition was Entered 1983-01-28
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11/7/2017	9:35 AM	Motion To Lift The Stay Previously Imposed In This Case

Print Date: 01/24/2019
Print Time: 11:21:22AM
Requested By: C42BHUNTER

Exhibit (A) - - -

General Sessions

CASE HISTORY FOR CASE A764997

The State of South Carolina VS Kenneth Lee Brown

FILED DATE: 1/17/1983
INDICTMENT NUMBER: 1983GS4200010

CASE TYPE: GS
ASSIGNED JUDGE: Caldwell, Wylie H. Jr.
DISPOSITION JUDGE: Caldwell, Wylie H. Jr.

STATUS: Disposed

CASE PARTIES:

Defendant Brown, Kenneth Lee

CASE HISTORY FOR CASE A764997

Brown, Kenneth Lee	Age: Unknown	DOB: Unknown
000000000	DL#:	SSN: 000-00-0000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0026 Robbery / Attempted armed, or allegedly armed, robbery	10/31/1982	Pled Guilty	1/28/1983

SENTENCING:

20 YRS CONS 20 YRS CONS

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

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11/7/2017	9:35 AM	Motion To Lift The Stay Previously Imposed In This Case
11/7/2017	9:38 AM	Filing recorded: Certificate/Certificate of Service

Print Date: 01/24/2019
Print Time: 11:20:27AM
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State of South Carolina
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Honorable L. Keith Kelly, Circuit Court Judge

Kenneth Lee Brown, *Pro Se*,
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Appellate Case Number:

2020-000086

The State
Respondent.

Pro Se Brief

Affidavit in Support
of *Pro Se* Brief

We believe that faith in God gives meaning and purpose to human life; that the brotherhood of man transcends the sovereignty of nations; that economic justice can best be won by free men through free enterprise; that government should be of laws rather than of men; that earth's great treasure lies in human personality; and that service to humanity is the best work of life.

I long for deeper justice. I want David's confidence in God's constant presence, power, and protection.

"To say 'God is love' implies that all His activity is loving activity. If He creates, He creates in love; if He rules, He rules in love; if He judges, He judges in love. All that He does is the expression of His nature which is - to love."

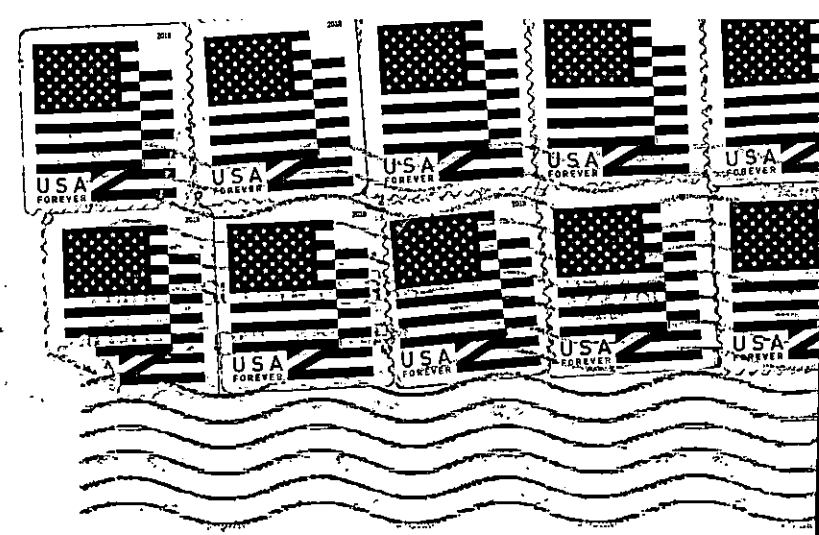
God holds us accountable for the wellbeing of our brothers and sisters, no matter how we try to evade responsibility through feigned ignorance or self-absorbed individualism. Just as Abel's blood cried out that day, innocent blood shed since that time continues to cry out. God heard it then and hears it now.

Is it possible to understand what God's love means for the oppressed without making wrath an essential ingredient of that love? What could love possibly mean in a fascist society except the righteous condemnation of everything fascist?

(James Cone, *A Black Theology of Liberation*, 73)

The oppressed and oppressors cannot possibly mean the same thing when they speak of God. The God of the oppressed is a God of revolution who breaks the chains of slavery. The God of the oppressors is a God of slavery and... is an idol created by fascists and we blacks must perform the iconoclastic task of smashing false images.

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OCT 26 2020
SC Court of Appeals

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211