

STATE OF SOUTH CAROLINA

COUNTY OF

Iven L. Myers, #201410

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS
RECEIVED

AUG 28 2020

S.C. SUPREME COURT
APPLICATION FOR

POST-CONVICTION RELIEF

BRANDY W. MOORE

18 APR 25 AM 11:21

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

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 Lieber Inst. P.O. Box 205 Ridgeville S.C
2. Name and location of Court which imposed sentence Cherokee County, General Sessions
3. Name(s) of co-defendant(s) (if any) Wade Parris
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 92-OS-11-615 Burglary
 - (b) 92-OS-11-730 Murder
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - a) Burglary - Life Concurrent... September 10 1993
 - b) Murder - Life Concurrent... September 10 1993

(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?

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

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

i. South Carolina Supreme Court

ii. United States District Court for S.C.

iii. _____

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

i. Denied

ii. Dismissed

iii. _____

(c) the date of each such result:

i. N/A

ii. N/A

iii. _____

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

i. N/A

ii. N/A

iii. _____

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

(a) _____

(b) N/A

(c) _____

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

custody unlawfully: Newly Discovery

(a) C. Roper v. Simmons:

(b) Miller v. Alabama

(c) Bear Cloud v. State

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Death Penalty is Unconstitutional For Juveniles

(a) Inability To Deal with Police and Prosecutors

(b) Murder Conviction - Violates (EIGHT AMENDMENT)

(c) _____

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

(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? No

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. S.C. Supreme Court. Direct Appeal

ii. Petition For Writ of Habeas Corpus

iii. _____

iv. _____

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

i. Common Pleas - Cherokee County

ii. S.C. District Court

iii. _____

iv. _____

(c) the disposition thereof:

i. Dismissed

ii. Dismissed

iii. _____

iv. _____
(d) the date of each such disposition:

- i. Unknown
- ii. Unknown
- iii. _____
- iv. _____

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

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

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

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

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:

- (a). Newly Discovered Case LAWS!
- (b) _____
- (c) _____

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? Yes

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. Donald Letteen Public Defender Cherokee County
 - ii. Bill Winter JR. Cherokee County
 - iii. Daniel T. Stacey Chief Attorney
- (b) the proceedings at which each such attorney represented you:
 - i. Trial Sentence
 - ii. Trial Sentence
 - iii. Appeal

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

Murder Charge And Burglary Charge Conviction (Vacated)

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

No

STATE OF SOUTH CAROLINA)

County of Cherokee county)

VERIFICATION

I, ILM, 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.

myra chon

S WORN to and subscribed before me this 20th
day of April, 2018.

Ludson Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

Miller vs AIA

We found that evidence (Particularly) Relevant. More so than it would have been in the case of an adult offender. 455 U.S. at 115. We held: Just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in assessing his culpability. at 116 (IQ of 73) (4th grade Education)

Graham

Indicates that a similar rule should apply when a juvenile confronts a sentence of life and death in Prison. Statutory Instructions sheet 92-GS-11-730 Either Recommend Life In Prison or to Death (Facing Death Penalty)

Eddings, 455 U.S. at 115

Death sentence invalidated. Because judge did not consider evidence of background neglectfulness, Parents Background, MENTAL RETARDED (Mother is Handicap)

Miller vs ALA

Could have been charged and convicted of a lesser offense if not for incompetencies associated with youth for example inability to deal with Police officers or Prosecutors or the incapacity to assist an Attorney's (Forced Confession) See, eg, Graham, 560 U.S. at slip op at 27.

The features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceeding (Lack of maturity) (Lack of Education)

J.D.B. vs N.C. 564 U.S. 2011 slip op at 5-6

Discussing children's responses to interrogation (Held in Police custody for 6 to 7 days Questioned by Sheriff / SIED / Army Specialist)

Gardner vs Florida 430 U.S. 349, 371 (1977)

The Prohibition of Eighth Amendment relates to the character of the Punishment, not the Process by it is imposed

Graham v Florida 560 U.S. (2010) slip op at 10.

Kennedy v. Louisiana 554 U.S. 407, 422 (2008)

Roper v. Simmons 543 U.S. 551, 564 (2005) US senten Permissible For Adults ^{Not child}

Estelle v Gamble 429 U.S. 97, 102 (1976)

Harmelin v. Michigan 501 U.S. 957 Mandatory Life w/o Par For Juveniles Violate 8th Amn

Roper v. Simmons

(2) (For)

(21) Death Penalty is Unconstitutional Juveniles Commencing in (2005). The Supreme Court issued a series of decisions pertaining to the Eighth Amendment's effect on juveniles. Roper v. Simmons 543 US 551, 125 S.Ct. 1183, 161 L.Ed.2d 1168. The Court held that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. Id. 543 US 1255.

at 1200 States Doctor said I knew I was facing Death Sentence. Transcript pg 5 Line 8-22. Doctor says Defendant had Anxiety and Depression, Anxious mood. pg 14 Line 21-22 Defendant was tremulous and tearful.
Transcript Doctor Report ↗

(22) Importantly, the Court discussed differences between juveniles and adult offenders: 1. A Juveniles lack of maturity and an underdeveloped sense of responsibility (2) A Juvenile's increased susceptibility to negative influences and outside pressures, including Peer Pressure" and (3) the character of a juvenile is not as well formed as that of an adult. Personality traits of juveniles are more transitory, less fixed" Id. 543 US. at 569-70, 125 S.Ct. at 1195. These differences between juveniles and adults would play a pivotal role in Miller

Even though I didn't receive Death sentence, I had the Death Penalty trial was told before trial and during trial about possibility of Death sentence. And I was sentenced to Life in Prison w-out-parole. The sentence was changed. Border line mental Retarded Low I.Q and 4th grade Education. Also the 6 or 7 statements, so called confession was taken without a Parent or Attorney present. I was convicted on so called confession. I was only 17 when statements was taken. MY 8th Amendment was totally violated

Roper v. Simmons

I went through Capital Trial (3)

543 U.S. 551, 560

The Eight Amendment Bars Capital Punishment for Children.

A) Eight Amendment's Prohibition of cruel and unusual Punishment (GUARANTEES) individuals the right not to be subjected to excessive sanctions.

The First has adopted categorical bans on sentencing Practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. . . see e.g.

Kennedy v. Louisiana 554 U.S. 407. Several cases in this group have specially focussed on juvenile offenders. Because of their lesser culpability. . . I-Q of 75, Border line of Retardation

Roper and Graham, establish that children are constitutionally different from adults for sentencing purpose. . .

Their LACK OF MATURITY

1. Underdeveloped sense of responsibility,

Roper, 543 U.S. at 569. More vulnerable to negative influence & pressure.

I.d. at 570. Roper and Graham. Distinctive attributes of youth diminish the penological justification for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. CAPITAL Murder Trial.

I was a minor 17 yrs old...

The Police held me for 6 to 7 days for questioning...

During the 6 to 7 day Period APPROX - 6 or 7 statements was taken by ~~me~~ Police / SLED / Special Trained Army officer...

I did not have a Parent or Guardian or Attorney during the 6 to 7 day Period. The Only evidence in my case was the statements, The so called Confession that was corrected by threats / Promise's and was obtained After numerous hours and days of being harrassed by Police, it was not a Voluntary statements...

The Complete trial and conviction was based on statements so called confession...

Miller vs AIA - Lack of inability to deal with Police or - Prosecutors etc...

How I learned about new laws is by newslater articals and Jail house lawyers. And on the 8-5-20 at 12:30 pm I was watching the court TV show about a case in Merriville Indiana, the Parker family the case was Aug 20th 2009. A Police Investigator said on live TV, that the Son and Daughter could not be questioned by Police or Investigators unless the Parents or Attorney was Present during questioning... The same should be in my case!

My arguements to the court is ~~if~~ I had to go through a Death Penalty trial. I was told I'd eather Die ~~in~~ From the Death Penalty or spend my life in Prison. By going through a capital Trial, Death Penalty or Life In Prison my 8th-14 Amendandt was an has been Violated.

I atleast should get a stright 30Yr sentence or be released. I had no lawyer no Parent during questioning, I went through the Death Penalty trial.

8th-14 Amendants Violated...

DR. Luther Diel

Line 18-19. Defendant would not be able to read all words in this statement. So called Confession.

1) DR. Geoffrey R. McKee
CHIEF Psychology

Page #16 Line 5-6 Defendant knows he is facing Death Penalty. 8th Amendment Violated. Proof from (DR)

2) #15 Line 6-10 Family (Mother) Mental Retarded,
Defendant Adjustment disorder with Anxious mood,

Page #15 Line 13-17 Anxiety and depression, Defendant was tremulous And Tearful.

Sentencing stage in trial, Transcript Page 3389
line 5-10 instructing jury to determine if defendant be sentenced to Death or Life in Prison

I had Death Penalty Trial. I did get sentence to Life in Prison w/o Parole at end of trial. Judge dismissed jury, I had a str-8 Life w/o. then trial judge recalled the jury resworn jury back in to correct a so called mistake, the jury came back with a different verdict.

All my rights were Violated

(6)

1 proceeding to determine whether the defendant should
2 be sentenced to death, or life in prison.

3 So our purpose in conducting the proceeding in
4 which we are now engaged is to determine whether the
5 ~~defendant Irven Lee Myers should be sentenced by the~~
6 ~~court to death, or to life imprisonment.~~

7 With respect to your particular role in this
8 proceeding, you will be asked to recommend to the
9 court whether it should sentence the defendant Irven
10 Lee Myers to death, ~~or life imprisonment.~~

11 The court will enforce the recommendation which
12 you make.

13 During this sentencing proceeding, the State
14 and the defendant will have an opportunity to
15 introduce additional evidence in extenuation,
16 mitigation, or aggravation. And both sides will
17 have an opportunity to present arguments for and
18 against the death penalty.

19 Should you recommend a sentence of life
20 imprisonment, or should you recommend a sentence of
21 death, that is the only issue involved here.

22 After the last argument has been made to you
23 concerning the punishment that should be imposed on
24 the defendant, the court will give you certain
25 instructions, and you will then retire to determine

(6)

(7)

S E N T E N C E

Murder

OF SOUTH CAROLINA

CASE NO. 92-GS-11-730

Cherokee COUNTY

The Defendant Juven Lee Myers is committed to the State Department of Corrections/County for a term of life months/years and/or pay a fine of \$ _____; provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years

Restitution For Physical Injury \$ _____

Yes/No Property Damage \$ _____

to be paid _____

to clerk for _____.**

Other Conditions Aggravating circumstances were found by jury therefore the term of imprisonment is thirty (30) years without eligibility for parole until service of said term

Date: Sept. 10, 1993

Gary E. Clary
Presiding Judge, GARY E. CLARY

*Cost and Assessments
Non-waivable \$ _____
Not waived \$ _____
Total \$ _____

Katie W. Baines
Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.

(7)

STATE OF SOUTH CAROLINA (
COUNTY OF CHEROKEE (

IN THE COURT OF GENERAL SESSIONS

THE STATE, (
VS. (
IRVEN LEE MYERS (
DEFENDANT. (

RECOMMENDATION OF SENTENCE
LIFE IMPRISONMENT

92-GS-11-730

WE, THE JURY IN THE ABOVE ENTITLED CASE, RECOMMEND TO THE COURT THAT THE DEFENDANT, IRVEN LEE MYERS, BE SENTENCED TO LIFE IMPRISONMENT.

FORELADY Steve G. Kiser

SEPTEMBER 10, 1993

GAFFNEY, SOUTH CAROLINA

(9)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Irvin L. Myers, #201410,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-11-0685

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed September 26, 2012. Respondent made its Return and Motion to Dismiss.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Cherokee County. The Applicant was indicted at the July 1992 and July 1993 terms of General Sessions for the Cherokee County Grand Jury for Murder (92-GS-11-730) and Burglary in the First Degree (93-GS-11-615). He was represented by Don Leeter, Esquire, and Bill Winter, Esquire. On September 10, 1993, the Applicant proceeded to jury trial and was found guilty as indicted. ~~He was sentenced by the jury and the Honorable Gary B. Clary to confinement for life without the possibility of parole.~~

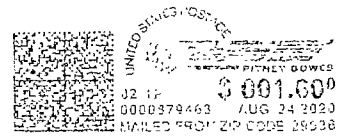
My first sentence was this



The Applicant filed a timely notice of appeal, and Daniel T. Stacey of the South Carolina Office of Appellate Defense perfected an appeal to the South Carolina Supreme Court. The Court affirmed the Applicant's conviction and sentence. State v. Myers, 318 S.C. 549, 459 S.E.2d 304 (1995).

(9)

Irven L. MYERS 201410
Savanna B# 45
Ridgeland Inst
P.O. Box 2039
Ridgeland S.C 29936



Daniel Shearhouse
Clerk of Court
Supreme Court of S.C.
P.O. Box 11330
Columbia S.C 29211

RIDGELAND CONFERENCE
INSTITUTION

AUG 24 2020

Mailroom

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S.C. DEPARTMENT OF CORRECTIONS