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Nov 08 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions,

The Honorable William A. McKinnon, Circuit Court Judge

Case No. 2019GS54601336, 1336a, 1337, 1338, 1339, 1340

The State,

Respondent,

v.

Terry Shaimek Tyler,

Appellant.

NOTICE OF APPEAL

Terry S. Tyler appeals his sentence in this case. The sentence was imposed by the Honorable William A. McKinnon on August 16th, 2021. This appeal is taken from the order of the Honorable William A. McKinnon, dated October 28th, 2021, which denied appellant's motion to reconsider the sentence. Defense counsel is not aware of the date that written notice of the entry of judgement was received. Counsel has been out with COVID-19th since October 22nd, 2021, and has just been cleared to work on November 8th, 2021.

Pursuant to Rule 203, defense counsel offers the following written explanation of the grounds for an appeal of this guilty plea. The Defendant requests appellate review of the Court's 60-year consecutive sentence without the opportunity for parole because it amounts to a *de facto* life sentence of a juvenile for a non-homicide offense and therefore constitutes cruel and unusual punishment under the 8th and 14th Amendments of the United States Constitution and Article I, Section 15 of the South Carolina Constitution. Graham v. Fla., 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); State v. Bonner, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012).

The Defendant additionally requests appellate review to the Court's 60-year consecutive sentence because the Court failed to sufficiently consider the hall mark features of youth set forth in Aiken v. Byars and Alabama v. Miller, and therefore issued a sentence that was not proportional to the crime in violation of the Eighth Amendment, the Fourteenth Amendment and the Due Process Clause of the United States Constitution, as well as Article I, Section 15 of the South Carolina Constitution. Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

The Defendant requests review to the Court's sentence because it violates the Equal Protection Clause of 14th Amendment of the United States Constitution as it applies a more severe sentence on the Defendant because of his age and in comparison, to sentences imposed to similarly situated adult defendants.

The Defendant objects to his sentence under the Eighth Amendment and Fourteenth Amendments of the United States Constitution, as well as Article I, Section 15 of the South Carolina Constitution, because it is not proportional under a traditional Eighth Amendment analysis because the sentence is outside the bounds of what is normally given.

The Defendant objects to the Court giving little to no weight to the clinical findings of Defendant's expert, Dr. Amanda Salas, who was qualified to make findings regarding the adolescent mind of the Defendant. The Court erred in finding the expert unreliable based on the incorrect clinical conclusion that the expert's opinions were reliant on the veracity of a statement given by the Defendant. The failure to properly consider the Defendant's expert violates the Eighth Amendment, the Fourteenth Amendment and the Due Process Clause of the United States Constitution, as well as Article I, Section 15 of the South Carolina Constitution.

Because the Defendant was a juvenile as defined by S.C. Code Ann. § 63-1-40 as applied retroactively to the Defendant as of the date of the incident, the Court failed to apply the statutory policy to interpret and apply the laws of this State to provide treatment or rehabilitation for those children in need of it despite the Defendant's mental, social, emotional, physical, developmental, cultural, educational and economic disadvantages when issuing a sentence that would result in the defendant being incarcerated in the South Carolina Department Corrections for the remainder of his foreseeable life.

November 8th, 2021

s/ Zachary Merritt
Zachary M. Merritt
403 East White St.
Rock Hill, South Carolina 29730
(803) 730-1580
Attorney for Appellant

Other Counsel of Record:
Sharon Ohayon
Senior Solicitor
1675 York
Hwy#1A
York, SC 29745
Attorney for Respondent

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The State,

Respondent,

v.

Terry Shaimek Tyler,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Sharon Ohayon and Christopher Epting by emailing a copy pursuant to Supreme Court Order dated August, 25th, 2021 on November 8th, 2021.

November 8th, 2021

s/ Zachary Merritt
Zachary M. Merritt
403 East White St.
Rock Hill, South Carolina 29730
(803) 730-1580
Attorney for Appellant

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SC Court of Appeals

November 8th, 2021

The Honorable David Hamilton
Clerk of Court for York County
20 W Liberty Street
York, South Carolina 29745

RE: The State v. Terry Shaimek Tyler, Case No. 2019GS54601336, 1336a,
1337, 1338, 1339, 1340

Dear Mr. Hamilton:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,

s/ Zachary Merritt
Zachary M. Merritt
403 East White St.
Rock Hill, South Carolina 29730
(803) 730-1580
Attorney for Appellant

Other Counsel of Record
Sharon Ohayon
Senior Solicitor
1675 York Hwy#1A
York, SC 29745
Attorney for Respondent

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SC Court of Appeals

November 8th, 2021

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

RE: The State v. Terry Shaimek Tyler, Case No. 2019GS54601336,
1336a, 1337, 1338, 1339, 1340.

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order which is to be challenged on appeal.

s/ Zachary Merritt

Zachary M. Merritt
403 East White St.
Rock Hill, South Carolina 29730
(803) 730-1580
Attorney for Appellant

Other Counsel of Record:
Sharon Ohayon
Senior Solicitor
1675 York Hwy#1A
York, SC 29745
Attorney for Respondent