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Feb 09 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

William A. McKinnon, Circuit Court Judge

Case Nos.: 2019GS54601336, 1336a, 1337, 1338, 1339, and 1340

Terry Shaimek Tyler,

Appellant,

vs.

The State,

Respondent.

MOTION TO REINSTATE APPEAL

The Appellant, Terry Shaimek Tyler, by and through counsel, Zachary M. Merritt, hereby Move the Court for an Order to Reinstate the Appeal in this case. The Defendant was sentenced by the Honorable Judge William A. McKinnon on August 16th, 2021. A timely Motion to Reconsider the sentence was filed by the Defendant. Judge McKinnon denied the Defendant's Motion to Reconsider by written Order dated October 28th, 2021. At that time, defense counsel was positive for COVID and was experiencing significant symptoms. Defense counsel was not cleared to work until November 8th, 2021. Defense counsel filed his Notice of Appeal on November 8th, 2021 and included Notice of the Appeal to the Trial Court. However, this document was not stamped. Defense counsel received written notice of the order on November 11th, 2021, by email from the Deputy Clerk of Court of York County General Sessions. (Exhibit 1).

On December 21, defense counsel received the second deficiency letter from the Court of Appeals by email. On December 28th, 2021, defense counsel responded to that email by attaching the stamped Notice of Appeal to the Trial Court and stating: "Thank

you for the reminder. Please see the attached proof of Notice of Appeal to the Trial Court. Please let me know if you need anything else from me.” (Exhibit 2).

On January 25th, defense counsel received a Notice of Dismissal stating that counsel failed to file proof that the Notice of Appeal to the Trial Court was filed. Therefore, a copy of the stamped version of the Notice of Appeal to the Trial Court is filed with this Motion. Exhibit 3.

The Defendant respectfully requests the Court to reinstate the appeal in this case. Defense counsel mistakenly believed that responding to the deficiency letter by email was sufficient. This oversight is of no prejudice to the opposing party.

Respectfully Submitted,

/S/ ZACHARY M. MERRITT
MLB LAW
Zachary M. Merritt
P.O. Box 1025
Rock Hill, South Carolina 29731
(803) 328.8822
Email: notguilty@mlblaw.com
Attorney for Appellant

February 8, 2022



Zach Merritt <zach@mlblaw.com>

order

1 message

Scoggins, Teresa <teresa.scoggins@yorkcountygov.com>
To: "zach@mlblaw.com" <zach@mlblaw.com>


Thu, Nov 11, 2021 at 4:02 PM

Hi Zach - here is your copy of the order that was filed on 10/28/21 regarding entry of judgment

Thank you
Teresa

Teresa Scoggins
Deputy Clerk of Court
General Sessions
Clerk of Court
York County Government
teresa.scoggins@yorkcountygov.com
Phone:803-628-3036

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2039K



Zach Merritt <zach@mlblaw.com>

The State v. Tyler - Deficiency Letter

Zach Merritt <zach@mlblaw.com>

Tue, Dec 28, 2021 at 12:19 PM

To: "Fuller, Tonisha" <TFuller@sccourts.org>

Cc: "Robert M. Dudek (RDudek@sccid.sc.gov)" <RDudek@sccid.sc.gov>, William Blitch <wblitch@scag.gov>, Caroline Collins <CCollins@scag.gov>, "awilson@scag.gov" <awilson@scag.gov>, "dridings@scag.gov" <dridings@scag.gov>, "sharon.ohayon@yorkcountygov.com" <sharon.ohayon@yorkcountygov.com>

Mrs. Fuller,

Thank you for your reminder. Please see the attached proof of Notice of Appeal to the Trial Court.

Please let me know if you need anything else from me.

Thank you,

Zach Merritt

Zachary M. Merritt
Associate Attorney
Law Offices of Michael L. Brown, Jr.
403 East White Street
Rock Hill, SC 29730
Office: 803-328-8822
Cell: 803-730-1580

[Quoted text hidden]

 **Notice of Appeal.pdf**
1705K



SCANNED

MLBLAW

MICHAEL L. BROWN, JR.

ZACHARY M. MERRITT

CERTIFIED TRUE COPY

2021 NOV 24 AM 9:52

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC



November 9, 2021

Teresa Scoggins
Deputy Clerk of Court
General Sessions
P.O. Box 649
York, South Carolina 29745

Re: State v. Terry Shaimek Tyler, Case No.: 2019GS54601336; 1336(a), 1337, 1338, 1339,
and 1340

Dear Teresa:

Please find enclosed a Notice of Appeal and Proof of Service, along with one (1) copy of each for filing in the above-referenced matter.

I have enclosed a self-addressed stamped envelope for the return of a file-stamped copy. Should you have any questions, please feel free to contact me at the telephone number listed below.

Sincerely,


Tina M. Head
Firm Administrator/Paralegal

/tmh
Enclosures

Cc: Sharon Ohayon, Senior Solicitor

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DAVID HAMILTON
C.O.C.P. & GS
YORK COUNTY, SC

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Nov 08 2021

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

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YORK COUNTY, SC

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CLERK OF COURT
YORK COUNTY, SC

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Nov 08 2021

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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CLERK OF COURT
YORK COUNTY, SC

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
Court of General Sessions

William A. McKinnon, Circuit Court Judge

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

The State,

Respondent,

v.

Terry Shaimek Tyler,

Appellant.

PROOF OF SERVICE

FILED-RECEIVED
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DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

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

CERTIFIED TRUE COPY
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DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

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Nov 08 2021

SC Court of Appeals

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In The Court of Appeals

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
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.

FILED-RECEIVED
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DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

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

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
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