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Copy

PLEASE be Advised

Donald Eugene Griffin, Jr.
SCDC No: 175349
Lee Correctional Institution
F-1-A Unit, #1158
990 Wisacky Highway
Bishopville, South Carolina
29010

Nov. - 23, 2015

RE:

] STATE OF SOUTH CAROLINA -vs- DONALD E. GRIFFIN
] Case No 1990-GS-40-5107; 5108; 5109; 5110.
] Unconstitution Sentence
] Abuse of Legislative Prerogative
] Violation of the Separation of Powers Act, AND
] DUE PROCESS OF LAW

To Who It May Concern:

This letter is being written to you with a sincere hope that you may consider looking into, and possibly helping me, in the following matter.

I was arrested on July 19, 1990 and remained in the Richland County Detention Center until my trial, on February 11-13, 1991; before the (now retired) Honorable M. Duane Shuler, and a jury. The jury returned a verdict of guilty for: Burglary (1st); Kidnapping; Common Law Robbery; and Assault and Battery.

I received a MANDATORY sentence of LIFE for the Kidnapping conviction;... FIFTEEN years for the Burglary conviction, concurrent with the Kidnapping conviction;... TEN years for the Common Law Robbery conviction, consecutive to the Kidnapping conviction;... and TEN years for the Assault and

Battery conviction, also consecutive to the kidnapping conviction. However, the Robbery and Assault convictions are current to each other.

My sentence on paper reads, LIFE plus TWENTY years. In actual time, and under South Carolina Law, my sentence is only LIFE plus TEN years.

I do not wish to present any form of a challenge to any of those convictions; however, I do wish to present a challenge to the sentence I received for the Kidnapping conviction. My claim is that the "Fixed" MANDATORY LIFE SENTENCE I received for the Kidnapping conviction, under section 16-3-910 (1976-Act No: 684), was an ABUSE OF LEGISLATIVE PREROGATIVE; thus, violating the Constitutional Doctrine to the Separation of Powers Act.

United States Constitution Amendment I, II, III. Also, South Carolina Constitution, Article I, Section VIII

* (Under the 1976 statute, the conviction itself automatically triggered a mandatory life sentence, unless) *

SEE: EXHIBIT [A], S.C. Code Ann. §16-3-910 (Act No: 684, 1976)

This is an abuse of "Legislative Prerogative" which prevents a sentencing authority from considering any circumstances that might reasonably bare on a proper sentence, for a particular defendant, given the crime committed.

In June of 1991, the General Assembly, by Act No: 117, section 1 (1991), amended the sentencing language of S.C. Code §16-3-910 to broaden the range of punishment, which then complies with the Constitutional Doctrine of "Separation of Powers." Thereby, returning to the court its authoritative function of determining the scope and extent of punishment within a statutory

range.

SEE: EXHIBIT [B] S.C. Code Ann §16-3-910, (Act No: 117, § 1 - 1991)

Under South Carolina Law: ("A TRIAL COURT OR OTHER AUTHORITY IS TO BE ACCORDED WIDE DISCRETION IN DETERMINING AN APPROPRIATE SENTENCE AND MUST BE PERMITTED TO CONSIDER ANY AND ALL CIRCUMSTANCES THAT REASONABLY MIGHT BARE ON THE PROPER SENTENCE FOR A PARTICULAR DEFENDANT, GIVEN THE CRIME COMMITTED.) I DID NOT receive the benefit of this CONSTITUTIONAL FUNCTION.

SEE: STATE -vs- HICKS, 659 S.E.2d 499 (S.C. Ct.App.2008).

Throughout my legal battles, NOT ONE of my court appointed attorneys (e.g. trial, appeal, or post-conviction) presented this matter to any court. Nor did any of those courts, "own-its-own" took the time to address this matter, despite their claim that they reviewed my transcripts for error. Apparently, both the "attorneys" and the "courts" approached this matter with a closed-eye view.

May your office be so kind and help me in this matter, to have this claim adequately presented in the court; or point me in a direction where I may obtain assistance.

I look forward in hearing from you in the near future. Please do contact me at the above address.

With kind regards, I'm sincerely entrusted.

Donald E. Griffin Jr.

[Encl.]

CAUSE OF ACTION

Petitioner was arrested on July 19, 1990 in Richland County and charged with the criminal offenses of Kidnapping, S.C. Code Ann. §16-3-910; Burglary (1st), S.C. Code Ann. §16-11-311; Criminal Sexual Conduct, (1st), S.C. Code Ann. §16-3-652; and Robbery, S.C. Code Ann. § C/L 17-25-30.

Petitioner was indicted for those offenses at the September 1990 term of the Richland County Court of General Sessions. Petitioner's case was called for trial on February 11, 1991, before the Richland County Court of General Sessions, Honorable M. Duane Shuler, presiding judge, and a jury.

At trial the jury convicted petitioner of Kidnapping; Strong-Armed Robbery; Burglary (1st); and Aggravated Assault and Battery. Judge Shuler imposed sentences of confinement in the South Carolina Department of Corrections to a natural life sentence, pursuant to the sentencing language under S.C. Code Ann §16-3-910 - 1976 Act No. 684) on the Kidnapping conviction; ten years confinement, consecutive to the life sentence, on the Assault and Battery conviction; ten years confinement, also consecutive to the life sentence, but concurrent to the Assault and battery conviction, on the Strong Armed Robbery conviction; and fifteen years confinement, concurrent to the life sentence, on the Burglary (1st) conviction. A total of life, ... plus ten years.

Petitioner objects to the imposition of the mandatory life sentence for the following reasons:

A... SEPARATION OF POWERS

Petitioner complains the statute under which he was sentenced on February 13, 1991, for the Kidnapping conviction, defines the sentence to be imposed of a life sentence, unless sentenced for murder as provided in §16-3-20. The sentencing decision under said statute is made mandatory. REVIEW: APPENDIX, Exhibit [A], S.C. CODE ANN §16-3-910 (1976 Act No: 684).

Clearly, this version of the statute as passed by the Legislative Branch of government removes all discretion in sentencing from the Judicial Branch. A violation to the Doctrine of Separation of Powers, which provides:

"IN THE GOVERNMENT OF THIS STATE, THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWERS OF GOVERNMENT SHALL BE FOREVER SEPARATE AND DISTINCT FROM EACH OTHER, AND NO PERSON OR PERSONS EXERCISING THE FUNCTIONS OF ONE OF SAID DEPARTMENTS SHALL ASSUME OR DISCHARGE THE DUTIES OF ANY OTHER."

S.C. Const. Art., I, section VIII.

As applied to the Judicial Branch, the statute's

sentencing language, prior to the 1991 amendment, is an unwarranted intrusion upon the inherent and constitutional authority of the courts.

Although subject to statutory and constitutional restrictions, the imposition of sentencing is a Judicial function. STATE -vs- ARCHIE, 322 S.C. 135, 470 S.E..2d 380 (Ct.App.1996).

In the present case, ... the sentencing judge was accorded no leeway or discretion to accommodate mitigating factors. PEOPLE -vs- SUPERIOR COURT, 53 Cal.Rptr.2d 789 (Cal.1996). Likewise, ... the sentencing judge was accorded no leeway or discretion to consider any aggravating factors which would trigger the imposition of a life sentence, other than the conviction itself. REVIEW: STATE -vs- PEREZ, WL1933739 (S.C.App)(April 29, 2015) citing STATE -vs- HICKS, 659 S.E.2d 499 (Ct.App.2008) "A trial court or other authority is to be accorded very wide discretion in determining an appropriate sentence and must be permitted to consider any and all circumstances that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." Also REVIEW: MISTRETTA -vs- UNITED STATES, 488 U.S. 361, 109 S.Ct. 647 (1989) ("the central judgement of the framers of our constitution is that, within our political scheme, the separation of governmental powers into three coordinate branches is essential to the preservation of liberty), citing MORRISON -vs- OLSON, 487 U.S.

654, 685-696, 108 S.Ct. 2597, 2616-2622; BOWSHER -vs- SYNAR, 478 U.S. at 725, 106 S.Ct. at 3188.

The mandatory life sentence set forth in §16-3-910 (1976 - Act No: 684), the statute to which petitioner was sentenced under, precluded the sentencing authority from considering any mitigating and/or aggravating circumstances in determining an appropriate sentence for petitioner, given the crime he was convicted of committing.

In June of 1991, the Legislative Branch by Act No: 117, §1, amended the sentencing language of §16-3-910 to conform with constitutional mandates, REVIEW: APPENDIX, Exhibit [B], S.C. CODE ANN §16-3-910 - 1991 Act No: 117, §1.

THEREFORE, petitioner specifically prays upon this Honorable Court to declare that the sentencing language of section 16-3-910 (1976 -Act No: 684) to which petitioner was sentenced under, MANDATORY LIFE SENTENCE, unless sentenced for murder as provided in §16-3-20, violates the federal and state constitutional protections which mandates a Separation of Powers among the three coordinated branches; and, "ORDER" that petitioner's sentence for Kidnapping under §16-3-910 (1976 - Act No: 684), vacated (unconstitutional) and re-sentenced under the amended 1991 version of §16-3-910 (1991 - Act 117., §1.), whereby the sentencing authority has discretion in determining an appropriate sentence.

B. EXPIRATION OF SENTENCE

Petitioner further complains the South Carolina Supreme Court when reviewing petitioner's case on Direct Review, claim to have reviewed the entire record for error, pursuant to *ANDERS -vs- CALIFORNIA* ____ U.S. ____, (19 ____), but failed (*Sua Sponte*) to acknowledge the government's intrusion into the constitutional rights of petitioner's sentence, presented in section "A" of this petition, and remand the matter back to the lower court for correction under the amended version of section 16-3-910 (1991 - Act No: 117, §1.

In the present case; not if, but when, petitioner's sentence for Kidnapping is conformed to constitutional mandates combined with S.C. Department of Correction's 1991 classification system (earned work credits and gained good time) are applied with appropriate state law, petitioner's sentence would have expired several years prior to the filing of this petition.

THEREFORE, ... for reasons set forth above, petitioner prays this Honorable court to correct petitioner's sentence and direct South Carolina Department of Corrections to apply the appropriate earned work credits and gained good time, to petitioner's corrected sentence, which will reflect petitioner's sentence has expired.

C ... PREJUDICE

Petitioner contends that this governmental intrusion into his constitutional right is due to the Court's "negligence" in upholding constitutional mandates. Both the trial court and appellate court (*Sua Sponte*) had a reasonable opportunity to correct this violation, a violation within the branches of state government, which denied petitioner the constitutional protection of Separation of Powers among the Legislative and Judicial Branch of government.

Clearly, both courts chose to view the matter with a closed eye approach, causing petitioner to spend more time incarcerated in state prison than the actual law required.

↑ Constitutional *

THEREFORE, petitioner is prejudiced even further by each additional day he remains incarcerated.

Petitioner under applicable law demands his immediate release from state prison.

PETITIONER FOREVER PRAYS

Respectfully,

* U.S. Const.
S.C. Const.


Donald Eugene Griffin, Jr.

SCDC No: 175349

WITNESSES

Hughes - RCSD

#42

ARREST WARRANT NO. C 751396

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury

VERDICT

GUILTY

Foreman of Petit Jury

Date

DOCKET NO.

90CS405108

The State of South Carolina,

County of

RICHLAND

COURT OF GENERAL SESSIONS

SEPTEMBER

TERM

1990

THE STATE

vs.

DONALD EDWARD GRIFFIN

Indictment for

KIDNAPPING

S. C. Code §16-3-91C

(095)

bk

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OF ORIGINAL FILED

APPENDIX - PAGE 10

RICHLAND COUNTY

Indictment

SENTENCE

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

CASE NO. 90-GS-5708

The defendant Donald Eugene Gresham is committed to the State Department of Corrections/County for a term of 18 months and/or to 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

Yes

to

For physical injury \$

property damage \$

to clerk for

Other conditions

Date 2/13/91

H. R. Dwyer
Presiding Judge

*Costs and Assessments

Non-waivable \$

Not waived \$

Total \$

Clerk of Court

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

SCCA Form 217 (3/86)

SENTENCING

§ 16-3-810

CRIMES AND OFFENSES

Research and Practice References—
50 Am Jur 2d, Lewdness, Indecency and Obscenity, § 26.
43 CJS, Infants §§ 92 et seq.

ALR and L Ed Annotations—
Validity, construction, and application of statutes or ordinances regulating sexual performance by child. 21 ALR4th 239.

§ 16-3-820. Producing, directing or promoting sexual performance by child; penalty.

(a) It is unlawful for any person to produce, direct, or promote a performance that includes sexual conduct by a child younger than eighteen years of age.

(b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the third degree and upon conviction shall be punished as provided in § 16-3-654.

HISTORY: 1984 Act No. 267.

Research and Practice References—
50 Am Jur 2d, Lewdness, Indecency and Obscenity, § 26.
43 CJS, Infants §§ 92 et seq.

ALR and L Ed Annotations—
Validity, construction, and application of statutes or ordinances regulating sexual performance by child. 21 ALR4th 239.

§ 16-3-830. Reasonable belief as to majority of child as affirmative defense.

It is an affirmative defense to a prosecution under this article defendant, in good faith, reasonably believed that the who engaged in the sexual conduct was eighteen years of der.

: 1984 Act No. 267.

nd Practice References—
ir 2d, Lewdness, Indecency and Obscenity, § 26.
nfants §§ 92 et seq.

Ed Annotations—
construction, and application of statutes or ordinances regulating ormanance by child. 21 ALR4th 239.

840. Methods of judicial determination of age of

t becomes necessary for the purposes of this article to whether a child who participated in sexual conduct was han eighteen years of age, the court or jury may make nination by any of the following methods:
onal inspection of the child;
ection of the photograph or motion picture that shows ngaging in the sexual performance;

OFFENSES AGAINST PERSON

§ 16-3-910

(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;

(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) any other method authorized by law or by rules of evidence.

HISTORY: 1984 Act No. 267.

Research and Practice References—
50 Am Jur 2d, Lewdness, Indecency and Obscenity, § 26.
43 CJS, Infants §§ 92 et seq.

ALR and L Ed Annotations—
Validity, construction, and application of statutes or ordinances regulating sexual performance by child. 21 ALR4th 239.

ARTICLE 9

KIDNAPPING

Sec.
16-3-910. Kidnapping.
16-3-920. Conspiracy to kidnap.

§ 16-3-910. Kidnapping.

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by a parent thereof, shall be guilty of a felony and, upon conviction, shall suffer the punishment of life imprisonment unless sentenced for murder as provided in § 16-3-20.

HISTORY: 1962 Code § 16-91; 1952 Code § 16-91; 1942 Code § 1122; 1937 (40) 137; 1966 (54) 2151; 1974 (58) 2361; 1976 Act No. 684.

Cross references—
As to classification of the crime referred to in this section as a felony, see § 16-1-10.

Research and Practice References—
1 Am Jur 2d, Abduction and Kidnapping §§ 1 et seq.
51 CJS, Kidnapping §§ 1 et seq.
Annual Survey of South Carolina: The Death Penalty. 31 SC L Rev 49.

ALR and L Ed Annotations—
Kidnapping by fraud or false pretenses. 95 ALR2d 450.
What is "harm" within provisions of statutes increasing penalty for kidnapping where victim suffers harm. 11 ALR3d 1053.
Seizure of prison official by inmates as kidnapping. 59 ALR3d 1306.
False imprisonment as included offense within charge of kidnapping. 68 ALR3d 828.

Necessity and sufficiency of showing, in kidnapping prosecution, that detention was with intent to "secretly" confine victim. 98 ALR3d 733.

Kidnapping or related offense by taking or removing of child by or under authority of parent or one in loco parentis. 20 ALR4th 823.

Presumption that kidnapped person has been transported in interstate or foreign commerce, under 18 USCS § 1201(b). 49 ALR Fed 936.

Exhibit "A"

Validity, construction, and application of 18 USC § 2251 penalizing sexual exploitation of children. 99 ALR Fed 643.

§ 16-3-850. Film processor or computer technician to report film or computer images containing sexually explicit pictures of minors.

Any retail or wholesale film processor or photo finisher who is requested to develop film, and any computer technician working with a computer who views an image of a child younger than eighteen years of age or appearing to be younger than eighteen years of age who is engaging in sexual conduct, sexual performance, or a sexually explicit posture must report the name and address of the individual requesting the development of the film, or of the owner or person in possession of the computer to law enforcement officials in the state and county or municipality from which the film was originally forwarded. Compliance with this section does not give rise to any civil liability on the part of anyone making the report.

HISTORY: 1987 Act No. 168 § 4; 2001 Act No. 81, § 3.

Research and Practice References—

Infants § 13.5(1).

WESTLAW Topic No. 211.

50 Am Jur 2d, Lewdness, Indecency and Obscenity §§ 20-24.5, 27 et seq.

10 Am Jur Trials, Obscenity Litigation, 1 et seq.

Annotations—

Processor's right to refuse to process or return film or video tape of obscene subject. 18 ALR4th 1326.

Supreme Court's development, since *Roth v United States*, of standards and principles determining concept of obscenity in context of right of free speech and press. 41 L Ed 2d 1257.

ARTICLE 9

KIDNAPPING.

Sec.
16-3-910. Kidnapping.
16-3-920. Conspiracy to kidnap.

*** § 16-3-910. Kidnapping. ***

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20.

HISTORY: 1962 Code § 16-91; 1952 Code § 16-91; 1942 Code § 1122; 1937 (40) 137; 1966 (54) 2151; 1974 (58) 2361; 1976 Act No. 684; 1991 Act No. 117, § 1.