

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

SHAWN PAUL HUMPHRIES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**REPLY TO THE RETURN IN OPPOSITION
TO THE PETITION FOR WRIT OF HABEAS CORPUS**

In its Return, the State either confuses the questions presented or has simply ignored the primary question presented in the Petition. For example, in the very first sentence of the Return, the State asserts that “Humphries initially contends in his first and second questions that his death sentence is disproportionate to that involved in similar cases.” Return at 2. But, as Humphries’ Petition makes clear, proportionality and excessiveness are two separate and distinct issues, involving separate and distinct tests. The State simply does not address those differences. Indeed, it does not address the excessiveness issue at all.

The State then proceeds in its Return to deal only with argument on “[t]he proportionality issue,” Return at 10, asserting that there is “no constitutional requirement that a defendant be granted comparative proportionality review of his sentence,” Return at 12. The State even goes so far as to

suggest that Humphries is arguing “that the Court must open its similar cases to the universe of capital crimes throughout the United States.” Return at 21.

Questions I and II of Humphries’ petition present two separate arguments. For the benefit of the Court, they will be briefly summarized here, and a response made to the State’s principal arguments against review, as follows:¹

I. Excessiveness.

Question I asserts that the death sentence is excessive under the Eighth Amendment to the United States Constitution in light of “the gravity of the offense and the severity of the penalty,” especially in light of the “sentences imposed for other crimes, and . . . sentencing practices in other jurisdictions.” *Pulley v. Harris*, 465 U.S. 37, 42-43 (1984). This determination is constitutionally required by both the Eighth Amendment and S.C. Const. Art. 1, § 15 and is also required by S.C. Code § 16-3-25(C)(3) (this Court “shall determine . . . [w]hether the sentence of death is excessive or

¹Humphries will not reply to the State’s arguments on Question III because the State’s argument appears to be mostly a “cut and paste” lift of the State’s pleadings in federal court that does not really address the argument Humphries has presented in the Petition. The only thing that bears addressing is that Humphries is not asserting that *Hall v. Catoe*, 360 S.C. 353, 601 S.E.2d 335 (2004) was decided incorrectly by this Court. *See* Return at 23. *See also* Return at 25 n.8 (acknowledging that the State previously asserted that this Court decided *Hall* incorrectly). Humphries asserts only that there is no real distinction between the arguments made in *Hall* and in this case and that the argument in this case was just as improper as the argument in *Hall* if not more so.

disproportionate to the penalty imposed in similar cases”). In short, the “excessiveness” determination is separate and distinct from the analysis of whether the sentence is “disproportionate to the penalty imposed in similar cases” and there is a constitutional basis for this question. *See McCleskey v. Kemp*, 481 U.S. 279, 305-06 (1987); *Enmund v. Florida*, 458 U.S. 782, 788 (1982); *Coker v. Georgia*, 433 U.S. 584, 592 (1977).

Second, Humphries is not asserting that this Court must change the universe of cases it considers in determining whether the sentence is “disproportionate to the penalty imposed in similar cases.” What Humphries argues in Question I is that in determining whether the death sentence is constitutionally excessive under the Eighth Amendment in light of the crimes committed and the severity of the punishment, this Court must consider, as the United States Supreme Court did in *Enmund*, other cases which (1) have resulted in execution; and (2) have resulted in death sentences in determining whether there is “a societal consensus that the death penalty is disproportionate” or excessive in these particular circumstances. *McCleskey*, 481 U.S. at 305-06.

Viewed in light of all the relevant factors, as discussed in the Petition, the death penalty is “excessive” as applied to Humphries and must be set aside.

II. Proportionality.

In arguing that Humphries’ death sentence is not disproportionate to the death sentences imposed in other armed robbery murder cases, in addition to addressing the cases already discussed by Humphries in his Petition, the State asserts that the following cases are “similar” to Humphries and reveal that the death sentence is appropriate here. *State v. Shafer*, 340 S.C. 291, 531 S.E.2d 524 (2000); *State v. Huggins*, 336 S.C. 200, 519 S.E.2d 574 (1999); *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760 (1997); *State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996); *State v. Hughes*, 328 S.C.

146, 493 S.E.2d 821 (1997); *State v. Bell*, 305 S.C. 11, 406 S.E.2d 165 (1991); *State v. Sims*, 304 S.C. 409, 405 S.E.2d 377 (1991); and *Green v. Maynard*, 349 S.C. 535, 564 S.E.2d 83 (2002).

First, the death sentences in *Shafer*, *Patterson*, and *Hughes* have been vacated for various reasons and, therefore, *Humphries* submits are not pertinent here.² Second, in the remaining cases (*Huggins*, *George*, *Bell*, *Sims*, and *Green*), there was no evidence that the victim was armed or fought back and there was evidence that the defendant in each case shot the unarmed victims with the clear intent to kill. Furthermore, in *Sims*, there were two murders involved in the crimes in South Carolina and *Sims* also has a separate murder conviction and death sentence in California. Likewise, in *Green*, the state presented evidence in sentencing that, in the year preceding the armed robbery and murder, *Green* had also committed other serious offenses, including (1) an armed robbery in the same parking lot in which the victim was shot in the face after she handed her purse over; (2) shooting a woman in the back of the head in a different mall parking lot; (3) a theft from a car; and (4) an armed robbery in a different store parking lot. Clearly, none of these cases is “similar” to the facts of *Humphries*.

At minimum, this Court should stay *Humphries*’ execution, grant review, and carefully examine this issue.

²Shafer was resentenced to life by a jury. *Hughes* is no longer eligible for a death sentence because he was sixteen years old at the time of his offenses. *See Roper v. Simmons*, 125 S. Ct. 1183 (2005). *Patterson* is pending a retrial on sentence.

Conclusion

For the reasons stated above and in the Petition, this Court should grant review of these issues and impose a life sentence. Alternatively, this Court should order a new sentencing hearing in this matter.

Respectfully submitted,

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