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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable Letitia Verdin, Circuit Court Judge

Case No. 2022-000311

The State of South Carolina,

Respondent,

vs.

Joshua Jeter,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Court Undertook an Adequate *Aiken v. Byers* Inquiry.

II. Whether the Court Assumed Facts with no Evidentiary Basis in its Order.

STATEMENT OF THE CASE

A jury convicted Joshua Jeter of murder, armed robbery, and unlawful possession of a pistol by a person under the age of twenty-one March 17, 2006. Ex. 3, sentencing sheets. He was found not guilty of burglary, but guilty of attempted burglary. Ex. 3, Sentencing sheets. He was sentenced to life without the possibility of parole for murder. Trial. 733; sentencing sheet. Josh moved for resentencing on July 27, 2015, after the Supreme Court of South Carolina issued its opinion in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Motion. On August 2, 2016, Chief Justice Pleicones assigned the case to the Honorable Letitia H. Verdin—ordering counsel be appointed within thirty days and a scheduling order including the date of a hearing on the merits be issued within sixty days. Sup. Ct. Order.

STANDARD OF REVIEW

“In criminal cases, appellate courts sit to review errors of law only.” *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019). “A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support.” *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

ARGUMENT

FACTUAL BACKGROUND

Josh was indicted in February 2005 for the murder of Tevaris Howze, and later indicted for burglary, armed robbery, and unlawful possession of a pistol by a person under twenty-one. Indictments. Lance Lyles was similarly charged based on his involvement in Howze's death. At the time of the murder, both defendants were sixteen years old. Trial Tr. 422, 557. The two proceeded to a joint trial before the Honorable J. Derham Cole during March 13–17, 2006.

At trial, the State presented evidence that Josh and Lance went to Clarence Spicer's apartment on the night of December 8, 2004. Spicer testified Lance knocked on the door and when he opened it, he saw Josh behind Lance wearing a ski mask and holding a gun. Trial Tr. 114. He assumed they were there to rob him. Trial Tr. 118. Concerned, Spicer tried to shut the door, but they pressed against it, and a gun went off, striking and killing Howze, who was on the couch inside. Trial Tr. 119. Josh and Lance fled. Trial Tr. 152.

Eventually, police identified Lance and Josh as suspects and a search of Lance's home revealed several .22 copper plated lead bullets, the same type that killed Howze. Trial Tr. 306. 312, 313. Another resident of the apartments indicated he saw two individuals running after he heard gunfire and both defendants had guns. Trial 164. The murder weapon was never discovered.¹

Josh and Lance ultimately proceeded to a joint trial, both testifying in their own defense and offering differing details. They both at least agreed, however, they had gone over to Spicer's house to buy marijuana, and then things got out of hand. Trial. Tr. 442, 549, 552. Although both

¹ It appears from the trial transcript that initially Josh went to trial first, but just as that trial began Josh's mother turned over a gun to the police. Trial Tr. 462. The trial was stopped so the gun could be analyzed. Trial Tr. 462.

Lance's counsel and the solicitor suggested Josh and his family had produced a .25 caliber gun to try to get him out of the murder conviction, Josh and his mother both testified to the contrary. Trial Tr. 442, 477, 481, 483–84.

The jury found both defendants guilty of murder, armed robbery, unlawful possession of a pistol by a person under the age of twenty-one, and attempted burglary. Trial Tr. 724–25. They were each sentenced to life without the possibility of parole on the murder charge. Trial Tr. 733, 735.

Josh moved for resentencing on July 27, 2015, after the Supreme Court of South Carolina issued its opinion in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Motion. On August 2, 2016, Chief Justice Pleicones assigned the case to the Honorable Letitia H. Verdin for resentencing. Sup. Ct. Order. Judge Verdin held Josh's resentencing hearing December 8, 2021.

At the hearing, Josh presented testimony of Janet Vogelsang, who performed a bio-psycho-social assessment of Josh. She discussed how his parents were married when he was born, but around that time his father became addicted to crack cocaine. Sent. Tr. 56. This caused strain on the parent's relationship, which became violent; Josh was even caught in the crossfire. Sent. Tr. 57, 58; 84. Evidence demonstrated that from Josh's infancy he was subjected to instability and conflict at home. Sent. Tr. 59. He also sustained a significant head injury at five months old when he fell from his car seat out of the car and hit his head on the pavement. Sent. Tr. 58. His mother brought him in three days later when he was having trouble breathing and found he had suffered a skull fracture on the parietal bone and possibly on the occipital bone as well. Sent. Tr. 58.

His father's drug addiction ultimately resulted in the dismantling of his family and his mother was forced to support Josh and his older brother alone. Sent. Tr. 59. Ms. Vogelsang observed how "[t]he presence of a parent, the attention of a parent, the guidance of the parent has

everything to do with how children master [the stages of development from birth to twenty-five] and especially how they come to make good choices and to be responsible.” Sent. Tr. 60.

She discussed that his school records reflected a fluctuation in his behavior, which began to decline when his parents divorced. Sent. Tr. 62. However, there were no notes to his mother, recommendations of testing, or police involvement present. Sent. Tr. 62. His grades remained average to above average throughout grades school. Sent. Tr. 60–61. However, he was moved to an alternative middle school in seventh grade and started ninth grade at an alternative high school. Sent. Tr. 63-64.

His situation continued to deteriorate, and he was accused of assaulting a coach, which resulted in his arrest and booking at the South Carolina Department of Juvenile Justice (DJJ). Sent. Tr. 64. DJJ noted the lack of structure and supervision in the home, that he was using marijuana daily, and that he was selling marijuana and crack. Sent. Tr. 65. However, during his DJJ stay, which lasted twenty-one days, he was reportedly respectful, practiced self-control, and did his work. Sent. Tr. 67. Ms. Vogelsang reported this reflected how he was able to thrive when he was given the structure so to do, and that this was common for traumatized children living in high stress homes—the best part of their day is at home. Sent. Tr. 67. DJJ recommended family counseling, and more specific counseling for anger management, decision-making, impulse control, which is typical where a child has sustained head injury like Josh. Sent. Tr. 68. Josh attended a few, but never received the benefit of completing any of this care. Sent. Tr. 68, 78.

Members of Josh’s family also testified. His mother spoke to about the difficulties the family endured in his youth, with her frequent fights with his father and how Josh spent time with his father after they divorced even though she knew he was a bad influence. Sent. Tr. 78, 80. She also stated Josh was home alone for long hours when he was young and that although he asked to

live somewhere else, she had him stay because she hoped they would pull through the hard times sooner. Sent. Tr. 80. She said she was never present when he was questioned by police and the first few times they questioned him, she did not know until afterward. Sent. Tr. 81.

His aunt testified that as a young boy, Josh would frequently come to their house late in the evening—too late for a child to be wandering outside—wanting a place to sleep. Sent. Tr. 85. His cousin, who now works with the Department of Social Services, discussed the impact of growing up in an environment without anyone to talk to in a dangerous neighborhood and how without experiencing it, people have trouble understanding what it was like to deal with on a day-to-day basis the things they did as children. Sent. Tr. 92.

Finally, Josh testified about how growing up he did not feel safe. His mother had to work most of the time and his father did not provide a sense of security or stability. Sent. Tr. 96. He spoke to his remorse but also his belief that God makes no mistakes and if he got out he could be success story, educating people about the violence that landed him in prison and getting to help raise his son. Sent. Tr. 98.

Judge Verdin took the matter under advisement and issued a two-page order December 30, 2021, resentencing Josh to fifty years' incarceration for the murder. Order. This appeal followed.

ANALYSIS

Josh was investigated, charged, tried, and sentenced during a time when the legal protections for our youth had just begun developing.² Our criminal justice system in 2006 operated

² Josh was indicted within weeks of the USSC's decision in *Roper v. Simmons*, 543 U.S. 551 (2005), where it held that the Eighth Amendment forbid the imposition of death on juveniles, and finally began to speak with force as to how the Constitution would not permit states to clip the wings of a youth who had not yet learned what it means to fly. *See id.* at 573–74 (“When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.”).

without understanding for the now well-documented differences in juvenile defendants and how those differences should remain at the forefront of our prosecution of accused youth. Sixteen years later, Josh should finally have received some understanding from the State and the courts that his culpability is shaped by his youth and immaturity when the crimes were committed. What he received instead was a barely a nod at these constitutional principles by the court, which seemed more willing to follow arguments by the State. Those argument reflected a deep failure to comprehend the constitutional significance of youth that has been so fully discussed and emphasized in our highest court’s jurisprudence.³

Josh was convicted of a serious crime, one committed when he was a teenager enduring an adolescence lacking in safety and reliability that was, as his cousin noted, completely unimaginable for most people. He was repeatedly questioned by the police without a parent present, at times under questionable circumstances. He failed to share, even with his attorney, that he still had the gun he carried that night in his possession until his first trial had already started, clearly to his detriment. As our caselaw evolves and the specific implications of certain fundamental rights are expounded upon, we must assume every constitutional officer undertakes to protect and keep

³ Since Josh’ conviction, the USSC’s caselaw has naturally extended to prohibit sentencing juveniles to life without parole for non-homicide crimes, and mandating consideration of age in adjudging the voluntariness of a defendant’s statements. *Graham v. Fla.*, 560 U.S. 48, 76 (2010) (“An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”); *J.D.B. v. North Carolina*, 564 U.S. 261, 265 (2011) (holding a child’s age properly informs the custody analysis pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966)). Then in *Miller v. Alabama*, 567 U.S. 460 (2012), the USSC held mandatory life without parole sentencing schemes for juveniles “prevents those meting out punishment from considering a juvenile’s ‘lessened culpability’ and greater ‘capacity for change,’ and runs afoul [the] requirement of individualized sentencing for defendants facing the most serious penalties” and therefore held “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’” *Id.* at 465 (internal citation omitted).

secure these rights. In response to *Miller*, our Supreme Court of South Carolina recognized the dangers inherent in a sentencing structure lacking acute attentiveness to the juvenility of a defendant, and held in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), that a youthful offender is entitled to an individualized hearing prior to forestalling his hope for a future and redemption. This pronouncement was unequivocal in its directive that courts consider the specified hallmarks of youth. *Id.* at 544, 765 S.E.2d at 577. But that was not done here.

Josh's life deserves more than cursory review, and the Constitution demands it.

I. The Sentencing Court Failed to Perform a Proper *Aiken v. Byers* Inquiry.

The sentencing court's discussion of its constitutionally mandated inquiry is profoundly superficial and incomplete. This failure not only reflects an error of law in the application of caselaw, but also in the imprecision of its holding, which is too vague to allow meaningful appellate review.

Prior to sentencing a defendant who was convicted of a murder committed during his youth to life without parole, a court must conduct an individualized hearing where “the mitigating hallmark features of youth are fully explored.” *Aiken*, 410 S.C. at 545, 765 S.E.2d at 578. Specifically, this inquiry *must* include:

(1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys”; and (5) the “possibility of rehabilitation.”

Aiken, 410 S.C. at 544, 765 S.E.2d at 577 (quoting *Miller*, 567 U.S. at 477–78). Courts are thus required to engage in a meaningful consideration of a defendant's youth and the attendant

considerations that accompany that developmental stage of life. Specifically, *Aiken v. Byars* noted that “*Miller* does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant’s juvenility on the sentence rendered.” *Aiken*, 410 S.C. 534, 543, 765 S.E.2d 572, 577 (2014). These sentiments were echoed with more force by the USSC in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), where it clarified “*Miller*, then, did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of ‘the distinctive attributes of youth.’” *Id.* at 208 (quoting *Miller*, 567 U.S. at 472).

The Order does not reflect this affirmative requirement to reconsider the penological justifications of Josh’s sentence in light of his youth at the time the crime was committed. The barely-two-page order offers a quote from *Aiken v. Byars* and a perfunctory two sentences dedicated to those *five* considerations: “The family and home environment of the Petitioner was not structured, as his father was not present in the home and his mother was often at work leaving Petitioner mostly unsupervised. The Court heard testimony that, in structured environments, Petitioner has, for the more part, done well.” Order 2. Saving for discussion in the next section how these comments are not supported by the record, they only relate to his home life (second factor) and possibly his potential of rehabilitation as to the statement on structured environments (fifth factor). That leaves three entirely unaddressed. Hardly a full exploration of his juvenility.

Because the Order fails to reflect any consideration of most of the factors, it fundamentally fails to provide a platform for review.⁴ For this reason, the court should remand for findings

⁴ Not only does the court fail to meaningfully discuss the *Aiken v. Byars*, but the order fails to rule one way or the other about whether it considered objected-to evidence. The State offered several exhibits into evidence including Josh’s disciplinary record for the South Carolina Department of

consistent with the mandate in *Aiken in Byars*. See generally *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002) (noting that “findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below” and vacating noncompliant order).

II. The Order Assumes Facts with no Evidentiary Basis.

To the extent this Court believes the Order provides sufficient basis for review, the sentencing court similarly abused its discretion by misapprehending evidence relevant to Josh’s youth and relying on the State’s assumptions which are unsupported by the evidence.

Returning to the court’s reference to his childhood, the Order erroneously downplays the tragic circumstances of Josh’s childhood by characterizing it as lacking structure because his mother worked a lot and his father “was not present in the home.” Order. 2. The evidence presented is not simply that he was a latchkey kid with a hardworking single mother. The reality is that Josh’s father was addicted to crack cocaine and the formative years of Josh’s life were characterized by the constant stress his father’s addiction placed on the family. Sent. Tr. 57–59. His parents fought frequently, at times violently, in front of him and even injuring him on occasion. Sent. Tr. 58, 80-81, 84. They divorced when Josh was in third grade and his mother had to support her two sons essentially by herself, which meant she had to work long hours and Josh was left to taking care of himself. Sent. Tr. 59, 77-78. Josh would still see his father some of those afternoons, but his father was still addicted to crack and lived in rough area of town with guns and violence in the streets. Sent. Tr. 62. He was using and dealing in drugs by the time he got to high school. Sent. Tr. 65.

Corrections. Sent. Tr. 7. Counsel objected and the court delayed ruling, instead stating “I’m going to allow the evidence to be presented at this time. I’ll make the final decision on that when I issue my order.” Sent. Tr. 10.

His mother similarly lived in a rough area with break-ins; all his Christmas presents were stolen one year. Sent. Tr. 63. So he grew up without the benefit of safety, comfort, or an adult in whom he could find solace, and instead was surrounded by the instability that engenders hypervigilance and distrust. The Order is unfaithful to the facts and undermines the analysis of this the one factor it spoke to directly.

Furthermore, the sentencing court puts unwarranted weight on the State's arguments, noting it:

also considered arguments from the State that Petitioner has, for the most part, failed to take responsibility for the shooting death which occurred in 2004. Petitioner testified at the hearing that he never intended to rob the victim, that he hadn't brought the gun, and that he was "merely present" at the crime scene. This testimony is inconsistent with the evidence presented at Petitioner's trial.

Order, 2. These conclusions are problematic for several reasons. Initially, it is not quite correct that his statements at sentencing were "inconsistent with the evidence presented at [his] trial." Josh never denies having a gun but stated at the sentencing hearing, entirely consistent with his trial testimony, that he brought a gun the night of the shooting.⁵ Compare Trial Tr. 425, with Sent. Tr. 101. As to his other statements, a review of the trial transcript shows he and Lance both testified they had no intention of robbing anyone when they went to Spicer's house. Trial Tr. 446-47, 555. Josh also testified at trial that he was standing back from Lance as Spicer opened the door and thought they were going to be invited inside to buy marijuana when Lance pulled his gun, Trial Tr. 434, and the judge saw fit to charge the jury on mere presence, Trial Tr. 712. So the jury may not have believed that evidence, but that is not the same as stating that such evidence was not adduced at trial, or suggesting Josh himself was inconsistent.

⁵ To the extent the Order's reference to "the gun" refers more specifically to "the gun that killed the victim," that holding would also be in error for the reasons discussed *infra*.

Furthermore, the court’s reference to the State’s argument as persuasive is concerning. The State repeatedly misstates the record and shifts the narrative of the theory of the case. Specifically, the State is entirely mistaken that Josh conceded at trial that the gun his mother turned in to law enforcement was not the gun Josh had with him that night but was a ploy by the family to exculpate Josh of murder. Sent. Tr. 99 (“Now, we went through the trial and your mother and you both testified under cross that, that wasn’t the gun.”). When Josh tries to correct him during questioning, the State suggests he is lying. The exchange states, in pertinent part:

Q. That wasn’t the gun you had that night; correct?

A. No, sir.

Q. Which is it?

A. It was the gun.

Q. Well, you testified in a courtroom before, back in March 2006, that it wasn’t. You just told me that it wasn’t. . . .

A. Yes, sir, it was. I never said it wasn’t.

Mr. Barnette: The transcript will speak for itself.

Sent. Tr. 100.

The transcript does speak for itself, and wholly fails to support the State’s assertion that Josh’s testimony at the sentencing hearing was inconstant. Under cross-examination by both the State and his co-defendant’s attorney, Josh clarifies his family did not “get a gun” but rather he told them to turn in *his* gun, not any random gun. Trial. 471 (“I had conversations with them about turning in my gun”); 475 (explaining his conversation with his family that he “was really referring to hurry and go to my house and get it”). On redirect he then unequivocally answers the question of “is that the gun that you had with you on December 8th of 2004” with a “Yes, ma’am.” Trial

Tr, 477. His mother also testified at trial that she did not “know where the gun come from[b]ut when [Josh] told [her] to look in the shoe box, it was a gun there.” Trial 487. They never recanted as the State asserted during sentencing.

Additionally, the State suggests that to “come clean,” Josh needed to confess to shooting the victim and his failure to do so was recalcitrance. *See* Sent. Tr. (“And the only witness that saw you there that night, saw you with the gun, not Mr. Lyles. This is your chance to come clean.”). The fact that Josh maintains he did not shoot the victim does not mean he is not taking responsibility. He specifically states: “I take full responsibility for everything I did. . . . I was there. I bought a gun. I had a gun that night. And I was with someone who, who, we did something wrong.” Tr. 100. He further admitted “Sir, I was - - - I was there. A reckless situation occurred. It was no plan, nothing. I was there. Like I said just a reckless disregard for life or whatever. It wasn’t no plan.” Sent. Tr. 102.

To be clear, the State’s theory at trial never concluded Josh was the shooter. The State presented evidence that both defendants had guns. Trial 164; 417. It offered evidence that Lance had access to .22 ammunition. Trial Tr. It did not argue Josh was the shooter during closing but argued it did not matter who the shooter was. Trial Tr. 676. (“[T]he basis of this case though, ladies and gentlemen, is the hand of one is the hand of all. So if Josh pulled the trigger, Lance pulled the trigger. If Lance pulled the trigger, Josh pulled the trigger.”). Moreover, the jury convicted *both* defendants of unlawful possession of a gun. Although generally a jury may be able to find possession of a gun on the theory of accomplice liability, this jury was not charged that way. The trial court specifically stated:

Now, you are further instructed that when a person is accused of a crime such as burglary in the first degree, such as attempted armed robbery, such as murder, that a person may be found guilty of those crimes either as a principal or as an accomplice.

...

Now, in this case the state is alleging that each of these defendants is guilty of the crimes of burglary first degree and attempted armed robbery and murder under the legal theory of principal and accomplice liability.

Trial Tr. 711, 712. Therefore, the jury's conclusion that Lance was also guilty of unlawful possession of a gun necessarily means it concluded he physically had a gun, too. There is no reason offered why the State now, sixteen years after trial, is so convinced Josh was the shooter.⁶ One can only assume it wants to amplify the extent of Josh's participation in hopes that the court would accept the maxim of *malitia supplet aetatem*⁷ in weighing culpability. Distortion of the record only reveals the State overreaching. There is no testimony offered to indicate this murder was anything other than an accidental shooting⁸ and no evidence proving the shooter's identity.

Finally, the State seems unaware of the factors relevant to the *Aiken v. Byars* inquiry, the rationale undergirding them, and even the fact that the USSC has repeatedly spoken on how children are constitutionally different at sentencing. For instance, the State spends significant time interrogating Josh about how he ended up giving multiple statements⁹ to the police after the crime

⁶ It appears Lance has also moved for resentencing pursuant to *Aiken v. Byars*. Spartanburg Cnty. 7th Judicial Cir. Pub. Index, <https://publicindex.sccourts.org/spartanburg/publicindex/> (accept disclaimer; then search case number H878142; then follow case number hyperlink; then open "Actions" tab). It will be interesting to observe whether the State maintains this narrative or pivots to highlight the facts inculcating Lance that it omitted in Josh's hearing.

⁷ Malice supplies age.

⁸ It is, of course, impossible to say that murder is ever anything other than a tragic and serious crime. The pain of losing a promising, deeply loved young man to accidental gun violence is grievous. But these hearings are not designed to downplay the loss suffered or minimize the nature of murder. By design, these hearings occur in murder cases, so the question is that in light of what we know to be true about children, do the actions of the defendant reflect a culpability on par with that of an adult.

⁹ It is questionable whether the statements, which included a statement made at school—"where his presence at school is compulsory and whose disobedience at school is cause for disciplinary action"—would have been found voluntarily given had the suppression hearing been held today. *J.D.B. v. North Carolina*, 564 U.S. 261, 276 (2011); *id.* at 269 (observing how the pressures of

as some indicia of his failure to fess up to the crimes. Sent. Tr. 103–104. Difficulty dealing with adults across the criminal justice system is one of the driving considerations for why the age has constitutional significance. *Miller* speaks specifically to how the “incompetencies associated with youth” may lead to a juvenile’s “inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys” ultimately to his detriment. *Miller*, 567 U.S. at 477–78; *Graham*, 560 U.S. at 78 (“[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings. Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it.”). That Josh proved so obviously unhelpful to himself during the investigation militates against treating him the same as an adult. The State did not have the benefit of those clear pronouncements when Josh was originally sentenced, but it should by now be aware of that aspect of the constitutional framework as it makes its own decisions in prosecution. The Order’s professed reliance on the State as the driving force for its holding was in error because those arguments are inconsistent with both the evidence and the applicable law.

CONCLUSION

As a final note, it will not do to suggest that because he was sentenced to “only” fifty years, there is nothing to complain about. Any such rationale would oblivate the very reasoning expounded by our highest state and federal courts—that youth matters in sentencing. Notably this concept has been acknowledged by the United States Court of Appeals for the Fourth Circuit has recognized. *United States v. Friend*, 755 F. App’x 234, 235 (4th Cir. 2018) (vacating sentence of sixty-five years’ imprisonment and remanding after finding the “district court should have

custodial interrogation, which can “undermine the individual’s will to resist and ... compel him to speak where he would not otherwise do so freely” create heightened risks of misstatements for youth (alternation in original) (quoting *Miranda*, 384 U.S. at 467)).

responded in more detail to appellant’s sentencing arguments” when resentencing him pursuant to *Miller v. Alabama*). Allowing courts to breeze through an *Aiken v. Byars* hearing and negate any subsequent appellate review by sentencing a defendant to literally anything other than a life sentence¹⁰ would sanction hearings more performative than probative.

This resentencing was the opportunity to give Josh back his chance. His chance for a life that was characterized by more than the crimes he committed in his youth. Crimes that were investigated and prosecuted without recognition of the impact of that that constitutionally significant fact, his youth. This was also the criminal justice system’s chance to remedy constitutional missteps in light of now-well-established precedent. Yet Josh only found more disappointing displays of disregard. The sentencing court failed to even give thought to most of the required factors and misspoke to the facts pertaining to the others. This inattentive and inaccurate analysis was an error of law, and this Court should vacate Josh’s sentence and remand for adequate, constitutionally faithful review.

Respectfully submitted,

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¹⁰ Given still-unsettled nature of whether the holdings in *Miller* and *Graham* apply to *de facto* life sentences, this could include a term of years that unquestionably surpasses any given defendants’ life expectancy.

CERTIFICATE OF SERVICE

Counsel certifies that she has provided a copy of this motion on William Blich of the South Carolina Attorney General's Office via email on this date, September 30, 2022.

/s/ Ranee Saunders

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