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,

v.

Joshua Jeter,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
Bar No. 72555
3710 Landmark Drive, Suite 113
Columbia, SC 29204
(803) 445-1333
elizabeth@franklinbestlaw.com

Ranee Saunders
Elizabeth Franklin-Best, P.C.
Bar No. 100073
3710 Landmark Drive, Suite 113
Columbia, SC 29204
(803) 445-1333
ranee@franklinbestlaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

U.S. Constitution:

Court Rules:

Other Sources:

ARGUMENT

I. The Issues on Appeal are Preserved for Appellate Review

As a threshold matter, State argues that Josh failed to preserve any issue for appellate review. The argument misconstrues the laws of preservation and the appellate court rules.

The State relies heavily on *State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999), and the general proposition that "[a] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review." It is hard to square the State's reasoning with this situation. Josh had no reason to object at the hearing on December 8, 2021, because the court did not rule from the bench, but took it under advisement. He also would have had no basis to object at the hearing August 18, 2022, because the trial court had no jurisdiction to change the sentence. The notice of appeal was filed March 10, 2022, over five months prior to that hearing and therefore jurisdiction was in this Court. Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241."). There is no evidence this Court was divested of exclusive jurisdiction. The State offers no explanation in its brief.

The State also halfheartedly argues Josh should have filed some post-trial motion and the absence of that precludes this appeal. It offers no law supporting that assertion and the argument is abandoned. *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (finding argument abandoned where the appellant failed to "provide arguments or supporting authority for his assertion"). Furthermore, no motion was required. The hearing was held pursuant to a post-

trial motion for resentencing under *Aiken v. Byars*[1]. His options after receiving the order were to file a successive post-trial motion or appeal the decision. The South Carolina Rules of Criminal Procedure do not themselves articulate a mechanism for reconsideration of a motion—there is nothing akin to Rule 59(e), SCRCP instructing a defendant when that might be necessary.[2]

And while criminal procedure may borrow from the civil rules, those rules do not support the State's argument. A motion to reconsider is not required to preserve an argument unless an issue is specifically unaddressed. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review."). Here, the issue was proper sentencing under *Aiken v. Byars*, which was addressed, albeit erroneously, by the sentencing court and is now the subject of this appeal. A motion to reconsider would therefore be permissible, not required. *Elam*, 361 S.C. at 25 n.5, 602 S.E.2d at 781 n.5 ("An aggrieved party who is confident his issues and arguments were sufficiently raised to and ruled on by the trial court may wish to simply file and serve a timely notice of appeal.").

Accordingly, the issues presented in this appeal are properly preserved and any hesitations

---

[1] 410 S.C. 534, 765 S.E.2d 572 (2014).

[2] The different timing for filing civil and criminal appeals is worth mentioning because motions to reconsider that raise the same issues do not toll the time to file a notice of appeal. *See Elam* at 18, 602 S.E.2d at 777. A civil litigant has thirty days to file his notice of appeal. Rule 203(b)(1), SCACR. If he files a 59(e) motion that is determined to not toll the time to appeal, he has a full month to have that erroneously filed motion ruled on or dismissed and still file a timely notice. The criminal defendant does not have that luxury of time. He has ten days to file his notice of appeal. Rule 203(b)(2), SCACR.

the Court may have given the rather unique posture of these sentencing hearings should be resolved in favor of the appellant. "[W]here the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring in part and dissenting in part) ("I do not believe it is our place to scour the records before us for the purpose of avoiding issues or, even worse, to play a 'gotcha' game with attorneys by showcasing their alleged mistakes, at the expense of their clients. This practice ignores the fact that behind every party name on a caption is a life-blood litigant or criminal defendant that depends on the court system to protect their economic and liberty interests.").

II. The State Misunderstands the Constitutional Dimensions of *Aiken v. Byars* Hearings

At the outset, the State either entirely misunderstands the argument in the appeal or it decided to argue a different issue on which it felt more confident it could prevail. The State contends that Josh is no longer entitled to judicial review because he was not sentenced to life without the possibility of parole (LWOP) and proceeds to discuss at length why a term of years sentence for juveniles is not implicated in Eighth Amendment jurisprudence and how "unlike Appellant, Respondent does not find it appropriate to extend its precedent further than its own language." Resp. Br. 40. Respondent does, however, find it appropriate to extend the issues on appeal further than what was argued. Josh quite candidly acknowledged the unsettled nature of this area of Eighth Amendment jurisprudence and does not explore that facet of argument.[3] *See*

[3] The State mentions that a fifty-year sentence would result in Josh's release at age sixty-five, somewhat suggesting this makes the sentence not quite so bad. Resp. Br. 32 n.9. There is hardly comfort in the proposition that a fifty-year sentence to a child is perhaps even *less* severe than it would be for an adult because he would be just barely a senior citizen at his release. All he would have lost is his entire adulthood.

App. Br. 19 n.10.

Still, undergirding the State's argument is a more troubling general proposition—that a juvenile criminal defendant who is sentenced to any term of years instead of LWOP after an *Aiken v. Byars* hearing is barred from appellate review of that sentence. The State freely admits its position that all a court must do to comply with that constitutional mandate is sentence a juvenile defendant to literally anything other than LWOP: "since Appellant received a sentence of fifty years rather than an available life without parole sentence, his concerns and challenges about whether *Aiken v. Byars* and *Miller v. Alabama* were sufficiently complied with are without merit." Resp. Br. 36. This assertion reflects a clear misunderstanding of the jurisprudence. As *Aiken* clarifies, "*Miller* is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution . . . *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." 410 S.C. at 543, 765 S.E.2d at 576–77.

So, the whole point of these constitutionally mandated hearings is to "fully explore" a defendant's youth and how those unique and often mercurial traits should impact the sentence rendered. Josh argues that was not done in his resentencing and whether the circuit court complied with constitutional law is a classic area of appellate review for a criminal defendant. Under the State's reading of the law, the Solicitor could have asked the sentencing court for some lengthy term of years, and if the sentencing court skipped the substance of the hearing and resentenced Josh to fifty-years' or even seventy-years' incarceration, that decision would be unreviewable by this Court.

The appealability of an order, judgment, or sentence depends on whether it is a final order, and whether the appealing party is aggrieved. *State v. Looper*, 421 S.C. 384, 390, 807 S.E.2d 203, 206 (2017). Josh has appealed from a final order sentencing him to fifty-years' incarceration, an order that reflects a failure to ensure his constitutional rights were honored. His constitutional rights and liberty are inarguably substantial rights, and he is therefore aggrieved. *See id.* at 388, 807 S.E.2d at 205 (noting a party is aggrieved if it "is injured in a legal sense or has suffered an injury to person or property").

III. The Sentencing Court's Analysis is Constitutionally Deficient and Not Supported by the Evidence.

Many of the State's misstatements about the facts are addressed in Appellant's Brief, but Josh offers its criticisms on the merits of this brief reply.

The State's comfort with perfunctory treatment of constitutional rights, of children no less, remains deeply troubling. It doubles down on the constitutional significance of three sentences from the Order general stating that the court heard testimony, thought about, and made a decision. *See* Resp. Br. 32, 42. Simply saying testimony was given "careful consideration" just restates the general mandate of the Supreme Court in requiring these hearings. *See Aiken*, 410 S.C. at 543, 765 S.E.2d at 577 (allowing resentencing after hearings where "the factors of youth are carefully and thoughtfully considered"). It does not show anything, and no part of those statements allow meaningful review to this Court. *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).

Still, the State acknowledges (now) that the circumstances of Josh's childhood were traumatic. It then suggests that the "mere fact that Judge Verdin noted 'his father was not present in the home' itself spoke volumes" as to her consideration of this traumatic upbringing. Resp. Br. 43. It may say something, but that is by no means volumes. Growing up with a father "not present in the home" is the life of millions of children in America. *See* National Fatherhood Initiative, https://www.fatherhood.org/father-absence-statistic ("According to the U.S. Census Bureau, 18.4 million children, 1 in 4, live without a biological, step, or adoptive father in the home."). That fact can certainly be part of childhood trauma, but that is not Josh's whole story and not nearly the worst part. That it is the *only* fact stated in the Order magnifies the concern that the Court did not consider the testimony with the care the State yearns to conclude it did. Josh still spent time with his father in his father's home, the real issue was that his father was addicted to crack cocaine, so even when they were together, Josh's father was only further exposing him to dangerous, unstable behavior. (R. 72).

Finally, as to the State's discussion of his taking responsibility, the State lingers on the propriety of an inquiry as to whether Josh was the triggerman. But the State does not know if he was the triggerman and declined to present the case to the jury arguing it *was* Josh. It is only now the State suddenly decided it would demand the facts be viewed this way. The problem is that this does not make it so. The jury concluded both Josh and Lance had a gun. The State does not know who the shooter was and insisting that Josh admit he was as a means of accepting responsibility is inappropriate. The law declines to make a distinction between a principal and an accomplice in situations like Josh's where the jury is charged on accomplice liability. But the law is theory and doctrine. Josh is a person. People do not relate the world and to their experiences through terms

of art like "accomplice liability" and "mere presence"—Josh never says he is not legally culpable. But it cannot be rationally argued that looking at yourself in the mirror daily and knowing you shot and killed a young man and looking at yourself in the mirror and knowing you put yourself in a situation where someone could and did get shot are the same human experiences.

CONCLUSION

"Children have a very special place in life which law should reflect." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). The jurisprudence of the United States Supreme Court is replete with statements emphasizing this truth. It seems so little to ask to give thought and care to the sentence of a man who was told at seventeen that he never gets to have a life. That after surviving a traumatic childhood, he would never even be given the opportunity to mature and attempt to create his own safety and normalcy in life. *Aiken* and *Miller* demand we do more. The Order does not reflect meaningful consideration and all it provides for this Court's review is halfhearted conclusions unsubstantiated in the record. The State may want to treat youth as something it needs to get around to win an LWOP, but the Constitution and the Supreme Court affirm that youth have distinctions in the law that must be accounted for. Because that was not done here, Josh asks that his sentence be vacated, and his case remanded.

Respectfully submitted,
/s/Ranee Saunders
Ranee Saunders
Elizabeth Franklin-Best, P.C.
Bar No. 100073
3710 Landmark Drive, Suite 113
Columbia, SC 29204

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Appellate Case No. 2022-000311

The Honorable Letitia H. Verdin, Circuit Court Judge

The State of South Carolina……Respondent,

v.

Joshua Jeter……Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Reply Brief of Appellant complies with Rule 211 (b), SCACR.

June 5, 2023

/s/ Ranee Saunders
Ranee Saunders
Elizabeth Franklin-Best, P.C.
SC Bar #100073
3710 Landmark Drive, Ste 113
Columbia, South Carolina 29204
(803) 445-1333

CERTIFICATE OF SERVICE

Counsel certifies that she has provided a copy of this motion on Don Zelenka of the South Carolina Attorney General's Office via email on this date, June 5, 2023.

/s/ Ranee Saunders