The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 12, 2023

Mr. W. Edgar Salter, III, Esquire
South Carolina Attorney General's Office
PO Box 11549
Columbia SC 29211

Ms. Kathrine Haggard Hudgins, Esquire
1330 Lady St., Ste.401
Columbia SC 29201

Re: The State v. Terriel L. Mack
Appellate Case No. 2019-000521

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Catherine Harrison, deputy

CLERK

cc: Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
Melody Jane Brown, Esquire
Edgar Lewis Clements, III, Esquire
The Honorable William H. Seals, Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Terriel Leshawn Mack, Appellant.

Appellate Case No. 2019-000521

Appeal from Florence County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2023-UP-262
Heard March 16, 2022 – Filed July 12, 2023

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Senior Assistant Deputy Attorney General Melody Jane Brown, Deputy Attorney General Donald J. Zelenka, Senior Assistant Attorney General W. Edgar Salter, III, all of Columbia, and Solicitor Edgar Lewis Clements, III, of Florence, all for Respondent.

PER CURIAM: Terriel Leshawn Mack appeals the result of a resentencing hearing under *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Mack argues that the circuit court erred by sentencing Mack to life without parole without making a specific finding that he was irreparably corrupt and by failing to properly consider the factors in juvenile sentencing laid out by our supreme court. We affirm.

In the evening hours of December 17, 2003, Patrolman Otis Gowdy was driving near the Oakland Plantation in Florence when he "heard three loud bangs." Patrolman Gowdy drove to a location where he recently had seen three men standing. Two of the men had now disappeared. Patrolman Gowdy found the body of the third man, Joseph Todd Wilson. Islam Horn, Gregory Johnson and Mack were indicted for murder and conspiracy.[1] Mack was seventeen when the incident occurred.

According to Horn's testimony at Mack's murder trial, Horn and Mack had decided on the day of Wilson's death to drive to North Florence to see a female. Eventually, Mack saw the victim and "wanted to holler at" him. Mack got out of the car, as did Johnson, who by this point had joined Horn and Mack in the vehicle. Not long after, Horn "heard the first gunshot." Moving his car slightly, he saw Mack "stand over [the victim] and shoot him three more times in the back."

At the trial, Horn also read and helped decode an incriminating letter he said Mack wrote to him while the two of them were in jail following the crime. The contents included:

> I got out the car me and [Johnson] and I call [the victim] like, Yo, that my n** Tellie. Then he started walking back towards me. [Johnson] was like, Yo, the jakes is over there.[2] I was like f*** that n**. I ain't got no time to waste. Plus, I don't give a f*** about no jakes anyway. Son, I had hollows in the chamber and I blew that b**** n** brains out. . . . That n** s*** splattered everywhere and he drop like a rag doll, like he had spaghetti legs or some s***, put three in his back.

The letter also suggested that Mack killed the victim "for WB and my n** BG rest in peace . . . ." Mack also allegedly wrote: "I told myself the only thing I was coming

---

[1] Horn and another individual were indicted for accessory after the fact.

[2] According to Horn, "jakes" is a term for law enforcement.

back to jail for was either bricks or bodies and I stuck to my word."[3] During his PCR hearing, Mack denied being the author of the note.

Johnson testified similarly to Horn at Mack's trial. He said Horn and Mack picked him up on the evening of the crime. According to Johnson, when Mack saw the victim, "he ask[ed] me was that Todd who snitched on somebody else[,] a guy by the name of White Boy[.]" Johnson testified that he and Mack exited the car, and a few moments later, Mack shot the victim in the head. Johnson said he was running away by the time Mack fired the last three bullets.

Investigator Ron Smith testified about a previous violent crime in Florence.[4] According to Smith, two men were shot: Antonio McCall, who died, and Joseph Todd Wilson—the victim in this case. Shortly after the incident, Wilson blamed the shooting on "White Boy."

The jury found Mack guilty of murder. The court sentenced Mack to life in prison without parole (LWOP). This court affirmed in an *Anders* appeal.[5]

In 2014, Mack and 14 other individuals challenged the legality of their LWOP sentences in *Aiken*, 410 S.C. at 536–37, 765 S.E.2d at 573. A divided South Carolina Supreme Court found that they were entitled to new sentencing hearings either under the U.S. Supreme Court's recent interpretations of the Eighth Amendment to the U.S. Constitution or under a similar provision of the South Carolina Constitution.[6] *Id.* at 545–46, 765 S.E.2d at 578.

---

[3] We are unable to locate an actual copy of the letter in the record. What is reproduced is based on testimony at Mack's trial.

[4] At the time of the trial, Smith was an investigator for the public defender's office, but had previously been a police officer in Florence.

[5] *See Anders v. California*, 386 U.S. 738, 744 (1967) (finding an attorney's request to withdraw from representing a defendant because of concerns about the merit of an appeal must also file a brief laying out potential issues).

[6] "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII; *see also* S.C. CONST. art. I, § 15 ("Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.").

At Mack's resentencing hearing, the State attempted to portray Mack as a remorseless killer. Mack presented an array of evidence about aspects of his first trial, the offense, and his life both before and after the murder.

Testifying for the State, Detective Melvin Godwin said Mack had confessed to the murder in a statement to police and that Mack said he did so to prevent the victim from testifying against "White Boy," whose real name was Marcus Martin.[7] However, under cross-examination, Godwin was forced to concede that Mack had asked for a lawyer, but law enforcement had continued questioning him anyway.

The State introduced Mack's disciplinary record in prison, which included charges and allegations of weapons and drug possession, fights with guards, threats to guards, property damage, being part of a "security threat group," and eight instances of public masturbation. He once allegedly attempted to bribe a prison guard to bring money into the prison for him. In all, Mack had 27 reports over more than 12 years. Mack was also investigated for homicide, though that appears to have been a wide-ranging investigation related to a riot at Lee Correctional Institute. At his resentencing hearing, Mack said that "some [of the incidents were] entirely my fault"; additional incidents were caused by "misunderstandings"; and other disciplinary actions included times he was "falsely accused and unable to prove my innocence."

Mack presented the testimony of Dr. Geoffrey McKee, a forensic psychologist. Dr. McKee testified that Mack's mother was abused by a man named Nathaniel, who acted as a "father figure" to Mack. Mack was also allegedly abused by his mother on at least one occasion. Another stepfather attempted "to get rid of any reference" to Nathaniel. At the age of twelve, Mack had a sexual encounter with a seventeen-year-old female.[8] Around the same time, Mack began using alcohol and marijuana. Mack once defended his mother from an abuser.

In a statement to the court after the end of testimony and evidence, Mack apologized for "my involvement in the death of" the victim and discussed his views at the time of the murder.

> At the time of my arrest, I was a 17-year-old child that was under the false impression that I was a grown man because at least since the age of 13[,] I have been running around

---

[7] Mack's statement does not appear to have been admitted into evidence at Mack's murder trial.

[8] The seventeen-year-old was a "former babysitter" of Mack's.

> town with people I thought were my friends doing what we thought grownups did[:] alcohol, doing drugs and living every day like life was a game people press restart -- press a restart button on.

Mack also discussed his involvement in the prison ministry, and his efforts to tutor fellow inmates.

Both sides introduced dozens of pages of documentary evidence. A DJJ report prepared when Mack was fifteen and had been charged with petit larceny stated that he was "cool and indifferent to the feelings and welfare of others" and "does not appear interested in developing close relationships with others, and ties to others are generally based on sharing similar antisocial or unempathetic attitudes." The report indicated that Mack had been charged with multiple counts of damaging or tampering with a vehicle and larceny in a December 2001 incident. There were also assorted assault charges listed.[9]

The defense introduced a psychiatric evaluation by Dr. Matthew Gaskins noting an incident in which Mack told a nurse practitioner that "'he was found hanging in the shower' and had to be cut down." Dr. Gaskins also noted that Mack's records included an array of psychiatric diagnoses—including posttraumatic stress disorder, psychosis, antisocial personality disorder, and malingering—and prescriptions. Dr. Gaskins wrote: "His experiences have led him to knowingly push boundaries and break rules in order to 'survive' while incarcerated (i.e. have a potential weapon when limited physically, fight an officer/inmate who disrespects him publicly)."

The resentencing court sentenced Mack to LWOP. The court said it was "extremely concerned by the cold-blooded nature of the killing, and the fact that [Mack] has shown little to no signs of rehabilitation." The court also said that it had "carefully and deliberately considered all the factors as outlined in *Aiken v. Byars*" before reaching its decision. This appeal followed.

"When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments, the appellate court's standard of review extends only to the correction of errors of law. Therefore, this court will not

---

[9] At Mack's murder trial, counsel for the State and the court referred to three counts of assault and battery with intent to kill that were "pending." It is not clear what became of those charges.

disturb the circuit court's findings absent a manifest abuse of discretion." *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) (citation omitted).

In 2012, the United States Supreme Court issued a landmark decision in *Miller v. Alabama*, 567 U.S. 460 (2012). There, the Court held "that 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. In 2014, the South Carolina Supreme Court considered the impact of *Miller* on South Carolina law in *Aiken v. Byars*. There, a plurality of the court found that even South Carolina's discretionary sentencing regime was affected, because "*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 577. The plurality then laid out what are now called the *Aiken* factors to guide courts in carrying out their duties under the Eighth Amendment. *Id.* at 544, 765 S.E.2d at 577. Despite finding that "*Miller* does not require that we grant relief to juveniles who received discretionary life without the possibility of parole (LWOP) sentences," Justice Pleicones concurred, saying he "would reach the same result under S.C. Const. art. I, § 15." *Id.* at 545–46, 765 S.E.2d at 578.

Our task has been complicated because of the continuing evolution in this area of law. There have been at least three rulings by higher courts since Mack's resentencing in 2019.

First, the U.S. Supreme Court found in *Jones v. Mississippi* "that a separate factual finding of permanent incorrigibility is not required. . . . In a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." 141 S. Ct. 1307, 1313 (2021). Unsurprisingly, South Carolina courts have followed suit. *See, e.g., State v. Miller*, 433 S.C. 613, 627, 861 S.E.2d 373, 380 (Ct. App. 2021) ("As to [the appellant's] argument that a trial court must specifically find a juvenile is 'irreparably corrupt' before sentencing him or her to a life sentence, pursuant to *Jones v. Mississippi*, such a finding is not required under the Eighth Amendment."), *cert. granted* (Oct. 7, 2022); *see also State v. Slocumb*, 426 S.C. 297, 299, 827 S.E.2d 148, 149 (2019) ("Once the Supreme Court has drawn a line in the sand, the authority to redraw that line and broaden federal constitutional protections is limited to our nation's highest court."). As a result, we believe that Mack's contention that the resentencing court was required to find him "irreparably corrupt" is without merit.

Even so, we find that Mack's issues related to the resentencing court's consideration of the *Aiken* factors must still be resolved. First, the plain language of *Jones* provides that the decision is not intended to remove state-level safeguards for juvenile sentencing. *See Jones*, 141 S. Ct. at 1323 ("[O]ur holding today does not preclude the States from imposing additional sentencing limits in cases involving defendants under 18 convicted of murder."). Second, courts in South Carolina have continued using post-*Mille*r approaches to consider juveniles' LWOP sentences even after the *Jones* decision. In fact, while our deliberations on this case were underway, our supreme court issued two opinions invoking *Aiken v. Byars*. *See State v. Smart*, Op. No. 28161 (S.C. Sup. Ct. filed June 21, 2023) (Howard Adv. Sh. No. 24 at 17); *Jones v. State*, Op. No. 28164 (S.C. Sup. Ct. filed June 21, 2023) (Howard Adv. Sh. No. 24 at 38).

These opinions guide our decision in this case, as they must. As a result, we affirm the resentencing court's order. However, because *Aiken* continues to govern whether juveniles in South Carolina are sentenced to LWOP in future cases, we note two portions of the court's order that give us pause.

The first is the resentencing court's statement that Mack was "within one year of" adulthood when his crime was committed. We do not wish to leave anyone with the impression that seventeen-year-olds are not covered by *Aiken*; they clearly are. *See Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1 ("However, *Miller* extends to defendants under eighteen years of age and therefore for the purposes of this opinion[,] we consider juveniles to be individuals under eighteen.").

Under *Aiken*, *Miller*, and the entire line of authority about juvenile sentencing, the courts have made clear that seventeen-year-olds are not kind-of juveniles, or sort-of juveniles. They are juveniles. In the words of *Miller* and *Montgomery v. Louisiana*, they are children. *See, e.g.*, *Montgomery*, 577 U.S. 190, 212 (2016) ("The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change."); *Miller*, 567 U.S. at 474 ("[I]mposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."). The fact that an offender is seventeen is relevant. *See Miller*, 567 U.S. at 477 (criticizing mandatory LWOP because "every juvenile will receive the same sentence as every other—the 17–year–old and the 14–year–old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one"); *see also Malvo v. State*, 281 A.3d 758, 816 (Md. 2022) (Hotten, J., dissenting) ("In determining whether Petitioner's crimes were representative of 'transient immaturity,' it is relevant that Petitioner was nearly an adult."). But it does not remove a juvenile from the protection of *Miller* and *Aiken*.

Second, we are concerned by the resentencing court's statement that "many successful people grew up in chaotic and violent environments[] and were able to adhere to the law and become productive members of society." The paths of other people's lives are not what our supreme court was asking sentencing and resentencing courts to consider in *Aiken*. The framework for considering a juvenile's upbringing is certainly not whether that upbringing was comparable to the hardships faced by individuals referenced by the resentencing court, including Elie Wiesel, Oprah Winfrey, or Tyler Perry. Using as a yardstick for this factor the childhood of Elie Wiesel, a Holocaust survivor, would reduce one of the *Aiken* factors required by our supreme court to nothingness. The question under *Aiken* is not how the upbringing of *those individuals* influenced *them*, but how *Mack's* childhood affected *him*.

In any event, our supreme court's two recent decisions have made it clear that our review in this area is narrow and highly deferential. For example, in *Smart*, our supreme court found that neither the State nor the defendant bore the burden in a resentencing hearing pursuant to *Aiken*. *See Smart* (Howard Adv. Sh. No. 24 at 18). In affirming the resentencing court in that case, our court held:

> We acknowledge *there is language in the resentencing court's oral ruling that could be understood to support Smart's claim the court placed an improper burden on him*. After a careful review of the entire record, however, we are convinced the resentencing court thoroughly considered Smart's background and history in light of the *Aiken* factors.

Id. (Howard Adv. Sh. No. 24 at 21) (emphasis added). In undertaking a review of the process that the resentencing court in *Smart* used to come to its decision, our supreme court also carefully noted that it was not "review[ing] the substance of the resentencing court's decision to impose a life sentence." *Id.*

Also telling is the court's decision in *Jones v. State*. In that case, our supreme court held that juvenile offenders can constitutionally be subjected to mandatory minimum sentencing, but circuit courts must nonetheless "consider the mitigating factors of youth in sentencing juveniles" who are subject to the circuit court's jurisdiction because of the charges against them. *See Jones v. State* (Howard Adv. Sh. No. 24 at 49). The majority in *Jones v. State* found that questions at a plea colloquy satisfied the requirements of *Aiken* in that context. *Id.* (Howard Adv. Sh. No. 24 at 50); *see also id.* (Howard Adv. Sh. No. 24 at 40) ("Consideration of these

factors can be done at sentencing; therefore, a separate *Aiken* hearing is not required.").

We find the dividing line between the majority and a concurring opinion authored by Acting Justice Hearn and joined by Justice Few particularly significant. The concurring opinion agreed with the majority because the sentence for the juvenile in that case would have been the same regardless of the circuit court's considerations. However, the concurrence parted company with the majority on the sufficiency of the circuit court's consideration of *Aiken*.

> For example, the court asked about the defendant's age, his criminal record, his employment history, any drugs or medication he may have been on, his satisfaction with his lawyer, and whether he understood the consequences of pleading guilty. I believe *Aiken* requires more because these general questions simply do not equate to the more in-depth and detailed questions that should be asked and answered in order to analyze the "hallmark features of youth" that *Aiken* mandates. In my view, it would be nearly impossible for any hearing where the judge does all the questioning to comply with *Aiken*.

Id. (Howard Adv. Sh. No. 24 at 52–53). The concurrence contrasted that with the "textbook example of what a proper *Aiken* hearing affords" presented by the *Smart* case. *Id.* (Howard Adv. Sh. No. 24 at 52).

Here, despite our misgivings about some of the resentencing court's comments, we find that the court followed the appropriate process under *Aiken*. The resentencing hearing transcript and documentary evidence run for hundreds of pages. The court did not issue its ruling until a month after the hearing. Like the court in *Smart*, the resentencing court here made statements that could at times be read to suggest it was not taking the appropriate factors into account. But it also noted that Mack "presented some mitigating evidence including his immaturity at the time of the murder, some mental health diagnoses, and [his] growing up in a difficult environment[.]"

We also find under our limited appellate review that the resentencing court did not abuse its discretion either in its findings considering whether the "incompetencies associated with youth" hindered Mack's defense or its findings that Mack was not a likely candidate for rehabilitation.

The resentencing court indicated some consideration of the *Aiken* factors. Our task here is not to determine whether we agree with the decision of the resentencing court or whether its considerations are a template for *Aiken* hearings. The sentence is appropriate if the court's order indicates that it considered the *Aiken* factors. Because the court cleared that bar, we affirm.

AFFIRMED.

GEATHERS J., HILL, A.J., and LOCKEMY, A.J., concur.