THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Ralph K. Anderson, III, Chief Administrative Law Judge
Case No. 18-ALJ-15-0039-AP

Appellate Case No. 2019-001554

Stewart Buchanan, #69848.....APPELLANT

v.

South Carolina Department of Probation, Parole and
Pardon Services,.....RESPONDENT

RETURN TO PETITION FOR REHEARING

Respondent, the South Carolina Department of Probation, Parole and Pardon Services hereby submits this Return to Appellant's Petition for Rehearing dated September 13, 2023. Respondent would show that this Court's published opinion was ultimately correct in its affirmation of the Administrative Law Court, and therefore this Court should deny the petition. Alternatively, the Court should reissue a nearly identical opinion with the removal of the language stating repeated routine denials of parole based on the same factors is "equivalent to being ineligible for parole."

Appellant has not raised new arguments in his request for reconsideration. The case law he cites, notably *Aiken v. Byars*, 410 S.C. 534 765 S.E.2d 572 (2014) and the U.S. Supreme Court cases *Roper v. Simmons*, 534 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v.*

Alabama, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), all speak to the sentencing of juvenile defendants. Appellant has merely reiterated his argument that he believes these cases should be applied to parole consideration when they clearly only address the sentencing phase, and even then only apply when the court must decide whether the juvenile defendant is facing a life sentence without the possibility of parole. When Appellant committed his offense in 1973, South Carolina law provided for parole eligibility for all offenses, including murder. Therefore, because release to parole is not a sentencing decision and because Appellant is eligible for parole in the first place, the cited cases do not apply to his situation.

"Under *Miller v. Alabama*, an individual who commits a homicide when he or she is under 18 may be sentenced to life without parole, but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment." *Jones v. Mississippi*, 141 S.Ct. 1307 (2021) (citations omitted). The Supreme Court clarified in *Jones* that *Miller* does not require a finding of permanent incorrigibility before sentencing a juvenile defendant to life without parole.

Clearly, this holding does not continue the trend in the "shift in juvenile sentencing law" that Appellant claims has occurred. Even at sentencing judges are not required to make a specific finding of permanent incorrigibility when they sentence a juvenile to life without parole, so this Court correctly ruled that the Board was similarly not required to make a finding of continued incorrigibility when it makes a routine denial of parole when it affirmed the ALC.

Notably, *Graham* distinctly holds that a "State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime." *Id.* at 75. Even though *Graham* prohibits life-without-parole sentences for nonhomicide juvenile offenders, it does not guarantee parole. Instead, just as in *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1 (1979), the Constitution does not guarantee early release from an otherwise legitimate

sentence. Put another way, the Board does not take anything away from a parole-eligible inmate when it denies parole. After a denial, the inmate will again have the opportunity for parole at a subsequent hearing – but not a right to parole.

In light of this axiom, Respondent urges this Court to not only deny the petition, but to also rethink its misgivings over Appellant's repeated denials of parole. *Parole is not a right*. The Board is the absolute authority over parole decisions in South Carolina. *Cooper v. S.C. Dep't of Probation, Parole and Pardon Services*, 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008). Inmates such as Appellant are fond of making the argument that repeated denials by the Board is the equivalent of being permanently denied parole eligibility. This is, of course, a fallacy. Parole-eligible inmates have the right to be considered for parole, but not to be granted parole. Even after repeated denials, they are still parole eligible, and may hope to be paroled at a future hearing. This is particularly true as the Board membership changes over time as new members are appointed by the governor with confirmation by the Senate.

Respondent respectfully urges this Court to not further embolden the line of thinking that suggests simply not being granted parole means that one has been made ineligible for parole. Instead, this Court should affirm that parole is a grace to which no inmate is entitled, and only the Parole Board may grant it at its discretion. Any change in this framework must necessarily come from our Legislature.

Furthermore, Respondent also takes issue with this Court's characterization of the Board's decision as being made in a "perfunctory manner." The Board hears fifty-five to sixty-five requests for parole each hearing day, so time allotted to each hearing is understandably limited. What is frequently overlooked, however, is the time each individual Board member takes in advance of each hearing, reading through the materials prepared by both the Department of Probation, Parole

and Pardon Services, and the inmate and his supporters. Although the Board is required to state the reasons for denial in its rejection letter, the sheer number of inmates heard on a given day necessitate the abbreviated summation of the reasons for denial – such as the nature and seriousness of the offense, indication of violence, and use of a deadly weapon. *Cooper* has held that such reasons are sufficient. *Id.* at 499 n. 5, 661 S.E.2d at 111 n. 5.

Importantly, Appellant cannot say that the Board was not aware of his status as someone who committed his offense as a juvenile. The record clearly shows within the Memorandum in Support of Favorable Parole Recommendation submitted to the Board in advance of the hearing that a great amount of information about Appellant's young life leading up to the offense had been presented to the Board, including his age. Thus, the Board met the requirements of S.C. Code § 24-21-640, in "carefully consider[ing] the record of the prisoner before, during, and after imprisonment." The Board was aware of Appellant's record and age at the time of the offense, yet elected to deny him parole. Respondent respectfully submits that this Court correctly determined that the Board remains the sole authority over parole decisions and affirmed the same holding of the Administrative Law Court. Consequently, this Petition for Rehearing should be denied.

CONCLUSION

Appellant has failed to raise a new argument in his Petition for Rehearing, and instead restates the incorrect assertion that the requirements for judges when weighing the possibility of imposing life without parole sentences to juvenile defendants must also be applied to the Parole Board when considering parole for inmates who committed their offenses as juveniles. Clearly, the cases Appellant relies upon speak only to the sentencing of juvenile defendants, and should not be expanded to parole consideration hearings as there is no precedential basis. Furthermore,

Respondent respectfully urges this Court to affirm the clear fact that repeated denials of parole are not the same as permanent ineligibility for parole, and arguments to that effect hold no weight.

Respectfully submitted,

Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

Columbia, South Carolina
September 19, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Stewart Buchanan, #69848.....APPELLANT

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South Carolina Department of Probation, Parole and Pardon Services,.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, certify that I have served the within Return to *Petition for Rehearing*, dated September 19, 2023, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, this 19th day of September, 2023, addressed to:

Lindsey S. Vann, Esquire
Allison Ann Franz, Esquire
Rosalind Sarah Duval Major, Esquire
Justice 360
900 Elmwood Avenue, Suite 200
Columbia, S.C. 29201

John Blume, III, Esquire
Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853

I further certify that all parties required by Rule to be served have been served.

Dawn K. Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

MELVIN WARREN
Acting Director

293 GREYSTONE BLVD
POST OFFICE BOX 207
COLUMBIA, SOUTH CAROLINA 29202
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

September 19, 2023

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

RE: Stewart Buchanan, #69848 v. SCDPPPS

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the *Return to Petition for Rehearing*, dated September 19, 2023, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Matthew C. Buchanan
General Counsel

Enclosures

cc: Lindsey S. Vann, Esquire
Allison Ann Franz, Esquire
Rosalind Sarah Duval Major, Esquire
John Blume, III, Esquire

State of South Carolina
Department of Probation, Parole, and Pardon Services
293 GREYSTONE BOULEVARD, POST OFFICE BOX 207
COLUMBIA, SOUTH CAROLINA 29202

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The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211