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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable William A. McKinnon, Circuit Court Judge
Appellate Case No. 2021-001316

THE STATE,

Respondent,

vs.

TERRY SHAIMEK TYLER,

Appellant.

INITIAL BRIEF OF RESPONDENT

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II.

"Whether Appellant's sentence to an aggregate term of sixty years imprisonment, a de facto life sentence, for non-homicide offenses he committed as a juvenile during a single incident is violative of the Article I, Section 15 of the South Carolina Constitution?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge did not abuse his broad discretion or commit any other error of law by sentencing Appellant to an aggregate term-of-years sentence of sixty years after Appellant—who, at the age of sixteen, brutally raped and robbed a young female college student at gunpoint—was convicted of numerous distinct and highly-serious offenses when such a sentence was neither cruel, unusual, nor otherwise unconstitutional under the heinous circumstances involved despite Appellant's age at the time of his crimes?

STATEMENT OF THE CASE

In February of 2019, Appellant Terry Shaimek Tyler, who was sixteen years old at the time, was arrested a few hours after he brutally raped and robbed a young female Winthrop University student at gunpoint. In June of 2019, the York County Grand Jury indicted Appellant for first-degree criminal sexual conduct, armed robbery, kidnapping, grand larceny, possession of a weapon during the commission of a violent crime, and possession of a pistol by a person under eighteen. On July 8, 2021, Appellant appeared in the York County Court of General Sessions and entered guilty pleas to all the indicted offenses before the Honorable William A. McKinnon, circuit court judge. At the conclusion of the plea hearing, the plea judge accepted Appellant's guilty pleas and deferred sentencing to a later date. Thereafter, on August 16, 2021, a sentencing hearing was conducted, and, at the end of that hearing, the plea judge sentenced Appellant to consecutive terms of imprisonment of thirty years for both first-degree criminal sexual conduct and armed robbery along with various concurrent terms of imprisonment for the other offenses.[1] Following that, Appellant filed a motion seeking reconsideration of his sentence along with a supporting memorandum and various affidavits, and the State filed a return in opposition to the motion. On October 28, 2021, the plea judge issued an order denying Appellant's motion. Appellant then timely filed a notice of appeal.

[1] Although the distinction is inconsequential in light of the structure of Appellant's aggregate sentence and may simply be the result of a typographical or transcription error, the sentencing hearing transcript reflects a sentence of four years for each of Appellant's firearm-related charges while the two pertinent sentencing sheets indicate the plea judge sentenced Appellant to five-year terms of imprisonment for those offenses. (Sent. Tr. p. 98; Sentencing Sheets).

STATEMENT OF FACTS

On Valentine's Day in 2019, Emily Peters ("Victim"), a young female student at Winthrop University, headed to Charlotte, North Carolina, for a night out with her friends. (Sent. Tr. pp. 5-6). Early the next morning, she returned to her apartment complex located near her school's campus in Rock Hill, South Carolina, and arrived there at approximately 3:51 a.m. (Plea Tr. p. 9; Sent. Tr. pp. 5-6; Surveillance Recording). Unfortunately, as she would soon discover, an armed predator—sixteen-year-old Appellant—dressed all in black was, by his own later admission, waiting in the shadows nearby in search of *anyone* he could victimize, and he intently watched Victim's arrival. (Sent. Tr. p. 6; p. 9; pp. 15-16; p. 20; pp. 73-74; Surveillance Recording).

Once she had parked her vehicle in her assigned spot, Victim began walking toward her apartment building, and, as she did, Appellant, who was lurking next to it, moved to intercept her. (Sent. Tr. p. 6; Surveillance Recording). Just before Victim got to the building, Appellant approached her and asked her if she would "buzz" him inside. (Plea Tr. p. 9; Sent. Tr. p. 6). Assuming Appellant was simply another student who had forgotten his building pass, Victim did as requested and allowed Appellant inside. (Plea Tr. p. 9; Sent. Tr. p. 6). She then began walking up the stairs toward her apartment. (Sent. Tr. p. 6; Surveillance Recording).

Suddenly, Appellant came up from behind Victim, grabbed her by the arm, and pointed a pistol directly at her face. (Plea Tr. p. 9; Sent. Tr. p. 6; Surveillance Recording). He then forced his now-terrified victim back outside at gunpoint while leading her by the arm. (Plea Tr. p. 9; Sent. Tr. p. 6; Surveillance Recording). Notably, as he did, Appellant noticed there was a surveillance camera in the stairwell, and he quickly ducked his head to obscure his face. (Sent. Tr. pp. 9-10; Surveillance Recording).

Once they were outside, Appellant began dragging Victim *by her hair* along some nearby railroad tracks. (Plea Tr. p. 9; Sent. Tr. p. 6). As he did so, Victim pleadingly cried out to God for help. (Sent. Tr. p. 6). Appellant responded by striking her on the top of her head with his pistol to silence her. (Sent. Tr. p. 6; p. 11; Photograph). He then proceeded to drag her to a dark and isolated area farther down the tracks before stopping there. (Sent. Tr. p. 6).

Upon reaching the isolated spot, Appellant forced Victim to get onto her knees and ordered her to "suck him off." (Sent. Tr. p. 6). After the forced oral sex, Appellant then turned Victim around and made her to remove her pants and underwear. (Plea Tr. pp. 9-10; Sent. Tr. p. 7). Following that, Appellant attempted to vaginally rape Victim from behind, and she resisted by keeping her legs as tightly closed as possible. (Sent. Tr. p. 7). In response to her obstructive efforts, Appellant shoved Victim to the ground and made her get on her hands and knees, which effectively prevented any further resistance. (Sent. Tr. p. 7). Appellant then proceeded to vaginally rape her from behind. (Plea Tr. pp. 9-10; Sent. Tr. p. 7).

When he finished raping Victim, Appellant stole her phone, wallet, and vehicle keys. (Plea Tr. p. 10; Sent. Tr. p. 7). He then ordered her to remain in place for an hour and told her he would kill her if she tried to contact the police. (Sent. Tr. p. 7). He also falsely claimed to Victim he was not from Rock Hill in an apparent attempt to convince her any efforts to track him down would be futile. (Sent. Tr. p. 7). Appellant then scurried away while leaving his terrified and partially-nude victim behind and headed to her vehicle. (Plea Tr. p. 10; Sent. Tr. p. 7; Surveillance Footage). Along his way, Appellant discarded Victim's phone and other belongings into a sewer drain. (Sent. Tr. p. 7). He then stole Victim's vehicle and used it to drive away from the area. (Plea Tr. p. 10; Sent. Tr. p. 7; Surveillance Footage).

Once she was sure Appellant was gone, Victim waited for a bit before walking down the railroad tracks and recovering the clothing Appellant had forced her to remove. (Sent. Tr. p. 7). She then carefully made her way to the Winthrop Police Department on foot, and, as she did so, she was in constant fear Appellant might come back and rape her again or kill her. (Sent. Tr. pp. 7-8). When she finally made it to safety, Victim tearfully disclosed the terrible ordeal she had been forced to endure at Appellant's hands. (Sent. Tr. pp. 7-8; Body Camera Recording). An urgent law enforcement investigation was then rapidly initiated, and Victim was quickly taken to the hospital for treatment and a sexual assault examination. (Sent. Tr. pp. 7-8).

While the investigation was getting underway and Victim was being treated at the hospital, Appellant used the vehicle he stole from her at gunpoint to pick up some friends, and he proceeded to drive them all to Charlotte for some fun. (Sent. Tr. p. 8). Once there, the gang—with Appellant at the wheel of the stolen vehicle—cruised around the area for the next few hours searching for girls to pick up and enjoying their joyride. (Sent. Tr. p. 8; p. 20).

Around 11:00 a.m., law enforcement officers spotted Victim's stolen vehicle and initiated a stop. (Plea Tr. p. 10; Sent. Tr. p. 8). Inside, they found Appellant in the driver's seat and five of his friends in the passenger seats. (Plea Tr. p. 10; Sent. Tr. p. 8). At that point, Appellant was swiftly arrested for a litany of terrible crimes. (Plea Tr. p. 10; Sent. Tr. p. 8; Arrest Warrants).

After his arrest, investigators spoke with Appellant, and Appellant agreed to provide a statement about what had purportedly occurred. (Plea Tr. p. 10; Sent. Tr. p. 8). Through that statement, Appellant acknowledged he was at Victim's apartment complex at the time of the incident armed with a pistol and conceded he was the individual depicted in the surveillance footage accosting her. (Plea Tr. p. 10). However, in an apparent effort to minimize those actions, Appellant claimed—falsely—he had witnessed an individual named "Body Bag"

commit a homicide and "Body Bag" responded by requiring him to commit the rape under duress. (Plea Tr. p. 10; Sent. Tr. p. 8). Meanwhile, Appellant—while continuing to insist he was personally a victim—categorically denied penetrating Victim with his penis and insisted he had only digitally penetrated her vagina during the incident. (Sent. Tr. p. 15; p. 20). Furthermore, he insisted to the officers he had his whole life ahead of him since he was only sixteen years old while suggesting his victim, who was just a few years older than him, had already had an opportunity to live out her life. (Sent. Tr. pp. 16-17).

As the investigation continued, officers earnestly attempted to corroborate Appellant's claims. (Sent. Tr. p. 8). In doing so, the officers went to speak with "Body Bag," who was a well-known forty-year-old individual in Rock Hill, and "Body Bag" flatly denied knowing Appellant at all. (Sent. Tr. p. 8). Beyond that, the officers were unable to locate any homicides committed in the area similar to the one Appellant claimed to have witnessed "Body Bag" commit. (Sent. Tr. p. 8; pp. 13-14). However, through forensic testing, the officers were able to conclusively confirm Appellant raped Victim as his DNA was found inside her body and her DNA was found on multiple different locations on his penis. (Sent. Tr. p. 12).

Ultimately, at the conclusion of the investigation into the incident, Appellant was indicted for numerous highly-serious offenses, including first-degree criminal sexual conduct, armed robbery, and kidnapping. (Plea Tr. p. 2; Indictments). After he was indicted, Appellant—with the assistance of defense counsel, who agreed with the decision—elected to enter guilty pleas to each and every one of his charges, and, in doing so, he directly acknowledged he understood the various terms of imprisonment that could be imposed for his many crimes along with the fact his sentences could be consecutive to one another. (Plea Tr. pp. 2-11; Plea Waiver Form). At the

conclusion of the plea hearing, the plea judge accepted Appellant's guilty pleas and deferred sentencing to a later date. (Plea Tr. pp. 11-12).

A little over a month later, the plea judge conducted a hearing to determine and impose Appellant's sentence. (Sent. Tr. p. 5). At the outset of the hearing, the solicitor recounted the "particularly heinous" details of Appellant's numerous offenses stemming from his acts of robbing and raping a stranger at gunpoint. (Sent. Tr. pp. 5-14). In doing so, she—along with one of the detectives involved in Appellant's case—noted Appellant had shown no empathy or remorse after he was caught, Appellant had a pre-existing record at the time of the incident, Appellant's actions evinced premeditation and consciousness of the wrongfulness of what he was doing, Appellant had readily acknowledged he was waiting for a random victim to come along prior to the incident, and Appellant had repeatedly and falsely attempted to minimize his own culpability subsequent to his arrest. (Sent. Tr. pp. 5-17; pp. 20-21). Based on the circumstances involved, the solicitor recommended an aggregate sixty-year term of imprisonment, which—notably—was forty-five years shorter than the maximum term of imprisonment that was statutorily authorized for Appellant's many crimes. (Sent. Tr. p. 5; p. 14).

In addition to those remarks, Victim and her parents also addressed the court and discussed the impact the incident had on them. (Sent. Tr. pp. 22-27). More specifically, Victim indicated she had been forced into therapy as a result of Appellant's brutal actions, now suffered from post-traumatic stress disorder and depression, had experienced bouts of unjustified personal guilt, and had been greatly effected in a lasting negative fashion. (Sent. Tr. p. 23). Likewise, Victim's parents confirmed the incident had been traumatic on Victim and her family and resulted in a multitude of negative consequences for all of them. (Sent. Tr. pp. 24-27).

Following that, defense counsel—while citing to the decisions in Miller v. Alabama, 567 U.S. 460 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014)—asserted the plea judge was required to take into account the differences between juvenile and adult offenders when imposing Appellant's sentence while pointing out sixteen-year-old offenders were less culpable as a class than adults. (Sent. Tr. pp. 34-39). In light of that, defense counsel explained he was simply asking the plea judge to consider the factors identified in those decisions when fashioning the sentence.[2] (Sent. Tr. p. 44). He further suggested a twelve-year term of imprisonment to be followed by probation and a suspended fifteen-year term of imprisonment would be sufficient in Appellant's case. (Sent. Tr. p. 40). As support for that suggestion, he indicated he had spoken was a number of other unidentified lawyers about the matter and asserted it was "[their] view" a consecutive sentence would be "unreasonable." (Sent. Tr. p. 39).

Defense counsel then proffered the testimony of Dr. Amanda Salas, who had conducted an evaluation of Appellant at some unspecified point after the incident and had purportedly prepared a written report that very morning. (Sent. Tr. pp. 45-69). Through her testimony, Dr. Salas noted broadly teenagers are not "small adults," do not yet have fully-developed brains, are more immature and impulsive, and tend to not "necessarily" consider long-term consequences when acting. (Sent. Tr. p. 51; p. 53; p. 60). Meanwhile, regarding Appellant specifically, she indicated her opinion was he had an "adolescent brain" when he was sixteen years old and discussed the various things—including things that allegedly happened when he was seven years old and when he was in middle school—he relayed to her that were suggestive of immaturity,

[2] Prior to the sentencing hearing, defense counsel submitted a written motion through which he similarly requested "the Court fashion a sentence that weights the seriousness of the crime against the proportionality factors laid out in Miller and Byars." (Motion and Supporting Memorandum Requesting Sentencing Pursuant to Aiken v. Byars, p. 6).

impulsivity, and susceptibility to peer influence *if truthful*.[3] (Sent. Tr. pp. 46-48; p. 53; pp. 55-56). Amongst the information provided, she noted Appellant claimed to her—unlike he had earlier claimed to the investigating officers—a past young co-defendant of his named "Eli" had lured him to Winthrop's campus on false pretenses despite his best efforts to avoid him, which purportedly resulted in Appellant "finding his way into [his crimes] via peer directive." (Sent. Tr. p. 46; p. 48; pp. 57-58; Court's Ex. # 1 (Evaluation Report), pp. 3-4). She further suggested Appellant's actions were impacted by him being under the influence of marijuana at the time of the incident because "[h]e told [her] he was high as a kite," but she conceded she truly had no idea what he ingested. (Sent. Tr. pp. 49-50). Additionally, she alleged she believed Appellant possessed the capacity to be empathetic along with an understanding it was wrong to rape someone or steal a car, but she explained Appellant believed—or at least claimed to have believed—during the incident his sexual encounter with Victim was a voluntary one.[4] (Sent. Tr. pp. 58-59; p. 61). However, Dr. Salas conceded she had no idea if any of Appellant's claims were truthful, which she acknowledged would affect whether they should be taken into account, and, despite basing her opinion in part on them, she confirmed she had not pursued any outside

[3] Regarding the examples identified, Dr. Salas noted Appellant claimed he stopped taking his medication for attention-deficit/hyperactivity disorder when he was in the eighth grade because other kids picked on him and called him crazy. (Sent. Tr. p. 53). Furthermore, Dr. Salas indicated Appellant also claimed he had his first sexual encounter at age seven—which, conveniently, no one else had purportedly ever known about until he disclosed it in his evaluation—with an unidentified sixteen-year-old girl, and she further indicated Appellant did not perceive that encounter as problematic. (Sent. Tr. pp. 55-56).

[4] Although Dr. Salas did not state it during her courtroom testimony, Appellant—as reflected in Dr. Salas's report—bolstered the untruthful and offensive consensual sexual encounter claim he made to her during his evaluation by alleging Victim actually *offered* to have sex with him during the incident, which supposedly resulted in him merely accepting what he viewed as a genuine offer. (Court's Ex. # 1, p. 4). Dr. Salas further noted in her report Appellant "emphasized" to her he would never *knowingly* engage in a kidnapping or rape. (Court's Ex. # 1, p. 5). Shockingly, Dr. Salas also suggested in her report Appellant's highly-atypical behavior was actually "[t]ypical of immaturity in teenage brain development." (Court's Ex. # 1, p. 4).

information to verify Appellant's claims due to her view "it's not [her] responsibility to decide the truthfulness of that." (Sent. Tr. pp. 45-47). She further explained she had been retained by the defense in Appellant's case and noted she "do[es] the job for what it is." (Sent. Tr. p. 47).

Subsequent to that testimony, defense counsel again reiterated Appellant was sixteen years old at the time of the incident and indicated he did not personally believe much about the case demonstrated premeditation on Appellant's part. (Sent. Tr. pp. 70-73). He further asserted he did not personally believe the "quality" of Appellant's crimes was indicative of a lack of rehabilitative potential, which he suggested was present in Appellant's case largely due to the fact he had been a juvenile coupled with the absence of any evidence of animal torture, pedophilia, or "difficult" mental health disorders in his past. (Sent. Tr. pp. 74-75; p. 77).

In addition to that, Appellant's sister addressed the court and indicated the incident was unexpected in her view. (Sent. Tr. pp. 78-80). Likewise, Appellant's father stated he had no idea why the incident occurred while pointing out Appellant had both a car and a girlfriend at the time he raped Victim and stole her vehicle. (Sent. Tr. pp. 80-81).

Following all that, the solicitor emphasized the surveillance footage refuted Appellant's claim of being under the influence of another at the time of the incident, and she further noted Appellant's actions clearly demonstrated premeditation. (Sent. Tr. pp. 84-87). Beyond that, the solicitor pointed out Appellant had engaged in criminal behavior in the past, had received rehabilitative services in response, and had clearly not benefited from those services due to his actions during the incident, which reflected a disturbing escalation of his criminal conduct.[5] (Sent. Tr. pp. 90-91).

[5] In response to those remarks, defense counsel noted one of Appellant's prior offenses, which had only been discussed up to that point during off-the-record bench conferences, was second-degree assault and battery. (Sent. Tr. p. 17; p. 21; p. 93).

Ultimately, after reviewing and evaluating all the information presented, the plea judge sentenced Appellant to an aggregate sixty-year term of imprisonment for his many crimes.[6] [7] (Sent. Tr. pp. 97-98). In imposing such a sentence, the plea judge considered and discussed the pertinent factors identified in Miller and Byars. (Sent. Tr. p. 95). Specifically, he confirmed he understood Appellant was only sixteen years old at the time of his offenses and was in agreement juveniles of that age were immature and had less impulse control. (Sent. Tr. p. 95). However, regarding Appellant's family life, he noted Appellant had a "very solid and supportive" family and home environment when he was growing up and was not deprived or subjected to difficult conditions.[8] (Sent. Tr. pp. 95-97). Moreover, he found the circumstances of Appellant's offenses were "exceptionally heinous" and inconsistent with being impulsive in nature. (Sent. Tr. p. 95). Meanwhile, he concluded Appellant's case was not affected or impacted by the incompetencies of youth based on what had been presented to him. (Sent. Tr. pp. 95-96). Furthermore, the plea judge—while explicitly recognizing there was always a possibility for rehabilitation—found Dr. Salas's testimony to be "very unconvincing" and expressly rejected Appellant's self-serving claims regarding "Eli" and the nature of the sexual assault as not "at all credible." (Sent. Tr. p. 96). Beyond that, the plea judge concluded Appellant acted with premeditation, demonstrated awareness of the wrongfulness of his actions through his behavior,

[6] As part of his sentence, Appellant was given credit for 914 days he served in pre-trial custody. (Sent. Tr. p. 99). Notably, during that period of incarceration, Appellant was reported to have engaged in multiple disciplinary infractions. (Affidavit of Dr. Salas, p. 2).

[7] After imposing the sentence, the plea judge specifically noted he did not consider any disputed portions of Appellant's juvenile history. (Sent. Tr. p. 99).

[8] Supporting the plea judge's assessment of that particular factor, Dr. Salas explained "it's not often that [she] find[s] [her]self in the criminal [justice] system evaluating a juvenile where there's a mom, a dad and siblings" like was true for Appellant. (Sent. Tr. p. 64).

and had shown no remorse or contrition, which was strongly demonstrated by his later claim the rape had been consensual. (Sent. Tr. p. 97).

Subsequently, defense counsel timely moved for reconsideration and reduction of the sentence. (Reconsideration Motion, pp. 1-3). As support for that motion, defense counsel alleged—amongst other things—Appellant's sixty-year aggregate sentence was unconstitutional because it purportedly constituted a de facto life sentence, the sentence was allegedly not proportional to Appellant's crimes, and plea judge supposedly failed to "sufficiently" consider the hallmark features of youth in imposing the sentence.[9] (Reconsideration Motion, pp. 1-3; Memorandum, pp. 4-5; p. 8).

However, upon considering the matter, the plea judge disagreed and declined to reconsider the sentence. (Order, pp. 1-6). In doing so, the plea judge noted he fully considered all facts, law, and arguments prior to imposing Appellant's sentence, which he did not find was unlawful or unconstitutional under the circumstances involved. (Order, p. 1). He further noted he expressly considered the factors from Miller and Byars both prior to sentencing Appellant and before denying the motion for reconsideration. (Order, p. 4). Moreover, he indicated he did not observe any remorse from Appellant, which he believed supported his sentencing decision in the matter. (Order, p. 6). Accordingly, for all those reasons, he denied defense counsel's motion. (Order, p. 6).

[9] As support for his de facto life sentence argument, defense counsel conceded Appellant had a statutorily-designated life expectancy of approximately sixty-one years pursuant to South Carolina law and would only be required to serve fifty-one years of his aggregate sentence before being eligible for some form of release. (Memorandum, pp. 4-5). Nevertheless, relying on a 2016 report prepared by an individual who was neither called as a witness during the sentencing hearing nor subjected to cross-examination, defense counsel alleged Appellant's actual life expectancy was only approximately forty years. (Memorandum, p. 5). Notably, in the referenced report, the author acknowledged she "did not have sufficient data to calculate mortality rates of 15, 16, or 17 years olds." (Affidavit of Dolan, p. 2).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only, including when reviewing a challenge to the constitutionality of a sentence. State v. Finley, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019); State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). On appeal, an appellate court will only interfere with a trial judge's sentencing decisions in rare and unusual circumstances in light of the broad discretion afforded to trial judges on such matters. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952); see State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974) ("A broad discretion is allowed the trial judge in imposing sentence within the legal limits."); see also State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("A trial judge generally has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come."); State v. Scates, 212 S.C. 150, 154, 46 S.E.2d 693, 694 (1948) (explaining appellate courts have "no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by law in the discretion of the trial judge, and is not the result of partiality, prejudice, oppression or corrupt motive"). Meanwhile, when reviewing a sentence to determine whether it is constitutionally proper, an appellate court will not disturb the sentencing judge's findings "absent a manifest abuse of discretion" or the commission of an error of law. Finley, 427 S.C. at 423, 831 S.E.2d at 160.

ARGUMENT

The trial judge did not abuse his broad discretion or commit any other error of law by sentencing Appellant to an aggregate term-of-years sentence of sixty years after Appellant—who, at the age of sixteen, brutally raped and robbed a young female college student at gunpoint—was convicted of numerous distinct and highly-serious offenses because such a sentence was neither cruel, unusual, nor otherwise unconstitutional under the heinous circumstances involved despite Appellant's age at the time of his crimes.

Appellant contends his aggregate sixty-year term-of-years sentence imposed for six different offenses he committed at sixteen years old was and is unconstitutional. In support of that contention, Appellant maintains his sixty-year sentence "[u]nquestionably" constitutes a "de facto" life without parole sentence and, for that reason, argues his sentence was categorically unconstitutional pursuant to both the state and federal constitutions. Thus, Appellant—in essence—argues his sentence was unconstitutional because it supposedly did not comport with the holding or logic of the United States Supreme Court's decision in Graham v. Florida, 560 U.S. 48 (2010), which prohibited the imposition of a life without parole sentence upon a juvenile who committed a non-homicide offense. Notwithstanding the fact it is far from certain Appellant's aggregate sixty-year sentence will result in him being incarcerated for the remainder of his life, neither the logic nor holding of the Supreme Court's decision in Graham was applicable to the facts and circumstances of Appellant's case because the Supreme Court expressly limited its holding and analysis in Graham to cases in which a juvenile offender has been sentenced to an actual life without parole sentence for a non-homicide offense. [10] Since

[10] Based on statistics compiled by the federal government, the average projected life expectancy at birth in the United States is currently approximately seventy-three years for a male. C.D.C. Life Expectancy Data, http://www.cdc.gov/nchs/fastats/life-expectancy.htm. Additionally, according to data compiled by the Social Security Administration, a male citizen born on Appellant's birthday would be expected to reach the age of eighty-one. S.S.A. Life Expectancy Calculator, https://www.ssa.gov/planners/lifeexpectancy.htm. Furthermore, the General Assembly in South Carolina has determined an eighteen-year-old male, which was Appellant's age at the time he was sentenced for his crimes, would be expected to live to the age of

Appellant did *not* receive such a life without parole sentence and, instead, received separate consecutive term-of-years sentences for his many distinct crimes, a sentence like Appellant's was and is not categorically unconstitutional under the mandates of Graham. Furthermore, just as the plea judge concluded after considering Appellant's age along with all the other pertinent factors, Appellant's aggregate sixty-year sentence was warranted under the heinous circumstances involved despite his age due to the fact his shocking crimes did *not* reflect the mitigating qualities of youth. As a result, the trial judge did not abuse his discretion or otherwise err by sentencing Appellant to a sixty-year term of imprisonment for his numerous crimes, and Appellant's sentence did not constitute cruel or unusual punishment pursuant to either federal or state law. Appellant's conviction and aggregate sentence should be affirmed.

In South Carolina, trial judges are tasked with imposing a defendant's sentence upon conviction and are vested with broad discretion to carry out that duty within the applicable statutory limits. Sidell, 262 S.C. at 398, 205 S.E.2d at 3. When exercising that broad sentencing authority, the sentencing judge must be accorded "very wide" discretion to determine the appropriate sentence and can properly consider "any and all information that reasonably might bear upon the proper sentence for the particular defendant, given the crime committed." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). Amongst the information that

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approximately seventy-seven years old. See S.C. Code Ann. § 19-1-150 (listing the projected life expectancies of men and women of different ages in a table that can be used "to establish the life expectancy of a person from any period in his life"). Meanwhile, based on the South Carolina statutory provision addressing the availability of release for individuals convicted of "no parole" offenses, Appellant would first be eligible for release after serving approximately fifty-one years of his sentence, which would mean he could be released when he was sixty-seven years old. See S.C. Code Ann. § 24-13-150 (stating offenders convicted of "no parole" offenses must serve at least eighty-five percent of their sentences before being eligible for release); see also Major v. South Carolina Dep't of Prob., Parole, & Pardon Servs., 384 S.C. 457, 468, 682 S.E.2d 795, 801 (2009) ("[I]f the consecutive sentence is a non-parolable offense then its sentence must be served and credited first against the aggregated sentence. This is necessary to give effect to the legislative grant of parole eligibility on the parole-eligible offense.").

may be considered, the sentencing judge can consider such factors as the conduct or demeanor of the defendant and the "atmosphere" of the proceedings if applicable when determining what sentence to impose. See Scates, 212 S.C. at 155, 46 S.E.2d at 695 ("It must be remembered that the demeanor and conduct of the prisoner, and the atmosphere of the trial, are not truly reflected in a cold, written record."). Likewise, the sentencing judge is fully permitted to consider one or more of a variety of legitimate penological justifications—including retribution, incapacitation, deterrence, and rehabilitation—in deciding what sentence is appropriate under the circumstances. See Ewing v. California, 538 U.S. 11, 25 (2003) (plurality opinion) (instructing "[a] sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation[,]" and explaining there is no constitutional mandate requiring adoption of any one penological theory); Jones v. United States, 463 U.S. 354, 368-369 (1983) ("A particular sentence of incarceration is chosen to reflect society's view of the proper response to commission of a particular criminal offense, based on a variety of considerations such as retribution, deterrence, and rehabilitation."). Importantly, so long as the sentence imposed falls within the permissible sentencing limits for an offender's crime, the sentencing judge's decision regarding the appropriate sentence will not be found to be improper unless it was unconstitutional in some manner or resulted from partiality, prejudice, oppression, or corrupt motive. See Garrett v. State, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) ("A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against respondent."); Wood v. State, 257 S.C. 179, 182, 184 S.E.2d 702, 703 (1971) ("It is well settled in this State that this Court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless: (a) the statute

itself violates the constitutional injunction . . . against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or corrupt motive.").

However, despite the broad discretion afforded to South Carolina's trial judges, both the Eighth Amendment of the United States Constitution and Article I, Section 15 of the South Carolina Constitution place limits on a trial judge's sentencing discretion by prohibiting the imposition of cruel and unusual punishment. See U.S. Const. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."); S.C. Const. art. I, § 15 ("Excessive bail shall not be required . . . nor shall cruel, nor corporal, nor unusual punishment be inflicted[.]"); see also State v. Allen, 266 S.C. 175, 187, 222 S.E.2d 287, 292 (1976) (rejecting the suggestion a change to the wording of the South Carolina Constitution's provision banning cruel and unusual punishment from "cruel and unusual punishment" to "cruel, nor corporal, nor unusual punishment" warranted a different conclusion as to the constitutionality of a particular sentencing practice pursuant to state law), overruled on other grounds, Allen v. United States, 432 U.S. 902 (1977). Pursuant to the ban on cruel and unusual punishment, a defendant's sentence must not be "barbaric" and must be graduated and proportioned to the offense in order to pass constitutional muster. Solem v. Helm, 463 U.S. 277, 284 (1983); see Atkins v. Virginia, 536 U.S. 304, 311 (2002) (instructing it is a precept of justice the punishment for a crime should be graduated and proportioned to the offense). Importantly though, the ban "does not require strict proportionality between crime and sentence." Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (plurality opinion) (Kennedy, J., concurring); see State v. Harrison, 402 S.C. 288, 298, 741 S.E.2d 727, 732 (2013) (holding "Justice Kennedy's concurrence is the controlling law of Harmelin"). Instead, "it forbids only extreme sentences

that are 'grossly disproportionate' to the crime." Harmelin, 501 U.S. at 1001 (Kennedy, J., concurring) (citations omitted).

In general, there are two classifications of cases involving constitutional challenges raised to the length of a criminal defendant's sentence: (1) cases involving a case-specific challenge to a term-of-years sentence based on the circumstances of a particular case; and (2) cases involving a categorical challenge to a particular sentencing practice. Graham v. Florida, 560 U.S. 48, 59 (2010). Significantly, the analysis to be applied by the court varies and is dependent on the type of challenge being raised in each individual case. Id. at 61-62.

On one hand, the appropriate analysis in cases involving a case-specific challenge involves first comparing the gravity of the offense to the severity of the sentence imposed. Harmelin, 501 U.S. at 1004-1005 (Kennedy, J., concurring). Then, if that comparison leads to an inference of "gross" disproportionality, the court should compare the defendant's sentence to the sentences of offenders who committed the same offense in the defendant's jurisdiction along with the sentences of offenders who committed the same offense in other jurisdictions to determine if the defendant's sentence actually was grossly disproportionate to his crime. Id. at 1005 (Kennedy, J., concurring). Significantly though, no single factor is dispositive in the proportionality analysis. See Solem, 463 U.S. at 291 n. 17 ("[N]o single criterion can identify when a sentence is so grossly disproportionate that it violates the Eighth Amendment.").

On the other hand, the appropriate analysis in cases involving a categorical challenge to a particular sentencing practice involves the court first considering objective indicia of society's standards to determine whether a national consensus exists against the challenged sentencing practice. Graham, 560 U.S. at 61; see also Trops v. Dulles, 356 U.S. 86, 101 (1958) ("The Amendment must draw its meaning from the evolving standards of decency that mark the

progress of a maturing society."). In making that determination, the court should look to legislation enacted by the legislatures in the United States because the clearest and most reliable expression of society's contemporary values can be derived from such legislation. State v. Pittman, 373 S.C. 527, 563, 647 S.E.2d 144, 162 (2007). Furthermore, the court making such a determination should remember that "[i]t is not the burden of the state to establish a national consensus approving what their citizens have voted to do; rather, it is the heavy burden of the defendant to establish a national consensus against it." State v. Williams, 380 S.C. 336, 347, 669 S.E.2d 640, 646 (Ct. App. 2008); see Gregg v. Georgia, 428 U.S. 153, 175 (1976) ("[I]n assessing a punishment selected by a democratically elected legislature against the constitutional measure, we presume its validity. We may not require the legislature to select the least severe penalty possible so long as the penalty selected is not cruelly inhumane or disproportionate to the crime involved. And a heavy burden rests on those who would attack the judgment of the representatives of the people."). Next, after determining whether a national consensus exists against a particular sentencing practice, the court "must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution." Graham, 560 U.S. at 61. Critically, that determination should be "guided by 'the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the [constitution]'s text, history, meaning, and purpose[.]' " Id. (quoting Kennedy v. Louisiana, 554 U.S. 407, 421 (2008)).

Significantly, in Graham v. Florida, a narrow majority of the United States Supreme Court applied the analysis applicable to categorical challenges to sentencing practices and concluded the imposition of a life sentence without the possibility of parole upon a juvenile offender who committed a non-homicide offense violates the constitutional prohibition against

cruel and unusual punishment.[11] Id., 560 U.S. at 81. In reaching that conclusion, the Supreme Court limited its consideration *only* to actual life without parole sentences for juvenile non-homicide offenders and found a national consensus existed against such sentences for such offenders based upon the small number of life without parole sentences that had actually been imposed on juvenile non-homicide offenders throughout the United States. Id. at 67. The Supreme Court then applied its own "independent judgment" and concluded life without parole sentences for juvenile non-homicide offenders were unconstitutional due to the lessened culpability of juveniles, the severity of life without parole sentences, and the lack of sufficient penalogical justifications for the sentencing practice in regard to juveniles. Id. at 74. For those reasons, the Supreme Court held:

> A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity for release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid the State from making

[11] Regarding the specifics of the criminal activity and sentence involved in Graham, Graham committed armed burglary with assault or battery and attempted armed robbery when he was sixteen years old, and he subsequently pled guilty to those crimes. Id., 560 U.S. at 53-54. Thereafter, Graham received a probationary sentence, was released, and violated the terms of his probation by engaging in additional crimes. Id. at 55-56. Subsequently, based on the probation violation, a trial judge "sentenced [Graham] to the maximum sentence authorized by law on each charge: *life imprisonment for the armed burglary* and 15 years for the attempted armed robbery[,]" and Graham was not eligible for release by any means other than executive clemency under Florida law. Id. at 57 (emphasis added). Thus, Graham—unlike Appellant—received an actual life without parole sentence for the *single* non-homicide offense of armed burglary.

> the judgment at the outset that those offenders never will be fit to reenter society.

Id. at 75.

Subsequent to the decision in Graham, numerous appellate courts across the country have struggled with the question of whether the Supreme Court's holding in that case is applicable to lengthy term-of-years sentences for juvenile non-homicide offenders even though such sentences are not actually sentences of life without parole. Many of the appellate courts considering the question have concluded the holding in Graham does *not* apply to term-of-years sentences for juvenile non-homicide offenders due to the fact the decision in Graham was expressly limited to actual life without parole sentences. See Bunch v. Smith, 685 F.3d 546, 552 (6th Cir. 2012) (finding Bunch's eighty-nine-aggregate sentence did not clearly violate Graham even though it may have been the functional equivalent of a life without parole sentence and noting the Supreme Court's analysis in Graham did not address such a situation); State v. Soto-Fong, 474 P.3d 34, 36 (Ariz. 2020) ("We consider whether consecutive sentences imposed for separate crimes, when the cumulative sentences exceed a juvenile's life expectancy, violate the Eighth Amendment's prohibition against 'cruel and unusual punishment.' We conclude that such de facto life sentences do not violate the Eighth Amendment."); Lucero v. People, 394 P.3d 1128, 1130 (Colo. 2017) (concluding a juvenile offender's aggregate eighty-four-year sentence for multiple non-homicide crimes was not unconstitutional pursuant to Graham); Adams v. State, 707 S.E.2d 359, 365 (Ga. 2011) (finding the decision in Graham did not categorically bar anything other than life without parole sentences for juvenile non-homicide offenders); State v. Brown, 118 So. 3d 332, 341-342 (La. 2013) ("In our view, Graham does not prohibit consecutive term of year sentences for multiple offenses committed while a defendant was under the age of 18, even if they might exceed a defendant's lifetime, and, absent any further guidance from the

United States Supreme Court, we defer to the legislature which has the constitutional authority to authorize such sentences."); Willbanks v. Dep't of Corr., 522 S.W.3d 238, 246-247 (Mo. 2017) (holding a juvenile offender's aggregate sentence for non-homicide crimes that would prevent him from having any opportunity for release until he was eighty-five years old did not violate the Eighth Amendment); Vasquez v. Commonwealth, 781 S.E.2d 920, 925 (Va. 2016) ("Vasquez and Valentin do not contend that their various term-of-years sentences violate the case-by-case approach to judging disproportionate sentences under the Eighth Amendment. They instead argue only that we should expand Graham's prohibition of life-without-parole sentences to non-life sentences that, when aggregated, exceed the normal life spans of juvenile offenders. For several reasons, we decline the invitation to do so."); see also Graham, 560 U.S. at 63 ("The instant case concerns *only* those juvenile offenders sentenced to life without parole solely for a nonhomicide offense." (emphasis added)). Meanwhile, other appellate courts have reached a different conclusion and have found term-of-years sentences carrying the same practical effect as life sentences violate the Graham decision's explicit prohibition against life without parole sentences for juvenile non-homicide offenders. See Budder v. Addison, 851 F.3d 1047, 1057 (10th Cir. 2017) ("[W]e conclude, the sentencing practice that was the Court's focus in Graham was any sentence that denies a juvenile nonhomicide offender a realistic opportunity to obtain release in his or her lifetime, whether or not that sentence bears the specific label 'life without parole.' "); People v. Caballero, 282 P.3d 291, 295 (Cal. 2012) (concluding based on Graham "that sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment"); Henry v. State, 175 So. 3d 675, 679-680 (Fla. 2015) ("Because Henry's aggregate sentence, which totals ninety years and requires him to be imprisoned until he

is at least nearly ninety-five years old, does not afford him this opportunity, that sentence is unconstitutional under Graham."); State v. Boston, 363 P.3d 453, 459 (Nev. 2015) ("[W]e agree with the district court's reasoning—that Graham precludes aggregate sentences that constitute the functional equivalent of life without the possibility of parole against nonhomicide juvenile offenders[.]"); State v. Zuber, 152 A.3d 197, 215 (N.J. 2017) (concluding a juvenile non-homicide offender's aggregate sentence of one-hundred-ten years was unconstitutional); State v. Moore, 76 N.E.3d 1127, 1128-1129 (Ohio 2016) ("We hold that pursuant to Graham, a term-of-years prison sentence that exceeds a defendant's life expectancy violates the Eighth Amendment to the United States Constitution when it is imposed on a juvenile nonhomicide offender.").

Critically, in State v. Slocumb, 426 S.C. 297, 299, 827 S.E.2d 148, 149 (2019), our Supreme Court addressed that question when it was confronted with the issue of whether an aggregate *one-hundred-thirty-year* sentence imposed upon a juvenile offender for multiple distinct non-homicide offenses was unconstitutional. In that case, Slocumb—three years after he was incarcerated for an earlier kidnapping, rape, and shooting he committed at the age of thirteen—escaped from custody and committed a brutal rape and robbery of a woman he stumbled upon at an apartment complex. Id. at 299-300, 827 S.E.2d at 149. Ultimately, in connection to his second set of offenses, Slocumb received an aggregate sentence of one-hundred-thirty years, and he eventually filed a petition for a writ of certiorari in the Supreme Court's original jurisdiction challenging the propriety of that sentence. Id. at 302, 827 S.E.2d at 150-151. Upon considering the matter, the Supreme Court granted the petition and declined to overturn Slocumb's sentence through a divided decision. Id. at 314-315, 827 S.E.2d at 157. In denying relief, the majority concluded neither the United States Supreme Court's decision in Graham nor the Eighth Amendment prohibited the imposition of aggregate sentences for

multiple offenses amounting to a de facto life sentence on a juvenile non-homicide offender. Id. As support for that conclusion, the majority recognized the limited nature of Graham's holding, which categorically barred only de jure life without parole sentences for juvenile non-homicide offenders, and correctly concluded it was bound to adhere to that binding precedent. Id. at 307-308, 827 S.E.2d at 153-154.

In the case sub judice, Appellant was *not* sentenced to a life without parole sentence for a non-homicide offense. See Graham, 560 U.S. at 63 ("The instant case concerns only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense."); cf. Bonilla v. State, 791 N.W.2d 697, 703 (Iowa 2010) (recognizing a juvenile non-homicide offender's sentence violated the Eighth Amendment of the United States Constitution under Graham because it was a sentence of life without parole). Instead, similar to Slocumb, Appellant was sentenced to consecutive terms of imprisonment for a multitude of distinct and gravely-serious crimes with all his individual sentences falling within the permissible sentencing limits for those offenses. See Lucero, 394 P.3d at 1133 ("Multiple sentences imposed for multiple offenses do not become a sentence of life without parole, even though they may result in a lengthy term of incarceration. Life without parole is a specific sentence, imposed as punishment for a single crime, which remains distinct from aggregate term-of-years sentences resulting from multiple convictions. . . . If we were to consider instead the aggregate sentence, as Lucero argues we must, 'the result would be the possibility that a defendant could generate an Eighth Amendment disproportionality claim simply because that defendant had engaged in repeated criminal activity.' " (citation omitted)); see also Coker v. Georgia, 433 U.S. 584, 597 (1977) (plurality opinion) ("[Rape] is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim and for the latter's

privilege of choosing those with whom intimate relationships are to be established. Short of homicide, it is the 'ultimate violation of self.' " (footnote omitted)); State v. Johnson, 350 S.C. 543, 547, 567 S.E.2d 486, 488 (Ct. App. 2002) ("[F]ew would argue that first-degree burglary, *armed robbery*, and *kidnapping* are anything other than grave offenses of the 'most serious' nature." (emphasis added)). In fact, Appellant was only sentenced on average to a *ten-year* term of imprisonment for each offense when his total number of offenses is taken into account. Cf. Slocumb, 426 S.C. at 155, 827 S.E.2d at 310 ("For these crimes, Slocumb received an average per-crime sentence of twenty-six years' imprisonment."). Therefore, because Appellant was *not* sentenced to life without parole for a non-homicide offense, the decision in Graham did not render Appellant's aggregate sentence unconstitutional just as it did not render Slocumb's so. See Slocumb, 426 S.C. at 314-315, 827 S.E.2d at 157 (declining to find Slocumb's aggregate one-hundred-thirty-year sentence for multiple offenses was violative of Graham); cf. United States v. Walton, 537 F. App'x 430, 437 (5th Cir. 2013) (recognizing neither the decision in Graham nor the decision in Miller v. Alabama, 567 U.S. 460 (2012), was applicable to a discretionary term-of-years sentence).

In challenging the constitutionality of his aggregate sentence, Appellant—much like Slocumb before him—contends his aggregate sixty-year sentence was and is unconstitutional because it is purportedly the functional equivalent of a life without parole sentence even though he did not actually receive one. Based on that contention, Appellant—like Slocumb—effectively asks this Court to extend the Graham decision beyond its express limits, apply it to consecutive term-of-years sentences such as his own, and find his aggregate sentence to be categorically unconstitutional. Cf. Willbanks, 522 S.W.3d at 246 ("The Supreme Court has never held that consecutive lengthy sentences for multiple crimes in excess of a juvenile's life expectancy is the

functional equivalent of life without parole. The dissent acknowledges that its analysis is an extension of the law."). However, just as a majority of our Supreme Court recognized in Slocumb, the Graham decision cannot properly be—and should not be—extended beyond the express limits the United States Supreme Court placed upon its holding in that case. See Slocumb, 426 S.C. at 307, 827 S.E.2d at 153 (declining to extend the holding of Graham and recognizing "we are duty-bound to enforce the Eighth Amendment consistent with the Supreme Court's directives").

Critically, through its express language, the United States Supreme Court limited the decision in Graham to life without parole sentences for juvenile non-homicide offenders alone. See Graham, 560 U.S. at 74 (holding the Eighth Amendment prohibits juvenile non-homicide offenders from being sentenced to life without parole sentences and indicating the holding is a "clear line"); cf. Moore, 76 N.E.3d at 1134 ("The court did not address in Graham whether a term-of-years prison sentence that extends beyond an offender's life expectancy—a functional life sentence—falls under the Graham categorical bar."). Because its focus was limited in that manner, the Supreme Court in Graham did not analyze any information regarding the number of jurisdictions with sentencing practices that permitted circuit court judges to sentence juvenile offenders to lengthy or consecutive term-of-years sentences exceeding the offenders' projected life expectancies, and it was unnecessary for the Supreme Court to do so. See Bunch, 685 F.3d at 552 ("The [United States Supreme Court in Graham] did not analyze sentencing laws or actual sentencing practices regarding consecutive, fixed-term sentences for juvenile non-homicide offenders. This demonstrates that the Court did not even consider the constitutionality of such sentences, let alone clearly establish that they can violate the Eighth Amendment's prohibition on cruel and unusual punishments."). Likewise, the Supreme Court in Graham also did not

analyze or consider any information regarding the number of juvenile offenders across the country that had already been sentenced to and were actually serving term-of-years sentences that would exceed their natural life expectancies. See Vasquez, 781 S.E.2d at 925 ("Nowhere did Graham address multiple term-of-years sentences imposed on multiple crimes that, by virtue of the accumulation, exceeded the criminal defendant's life expectancy."). As a result, since the Supreme Court itself did not consider the constitutionality of term-of-years sentences in the Graham decision, the Supreme Court's conclusions regarding life without parole sentences in that decision cannot fairly or reasonably be extended to a sentencing practice that was not analyzed, explored, or addressed by the Supreme Court.[12] See Graham, 560 U.S. at 124 (Alito, J., dissenting) ("Nothing in the Court's opinion affects the imposition of a sentence to a term of years without the possibility of parole."); see also Cohens v. Virginia, 19 U.S. 264, 399-400 (1821) ("It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.").

[12] Significantly, the United States Supreme Court's decision to specifically limit its holding solely to life without parole sentences likely resulted from the fact its analysis was confined to that type of sentence alone. See Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.' " (citations omitted)). Moreover, the Supreme Court may have chosen to limit its holding to avoid the practical complications that would arise in regard to the application of the holding if it was extended to term-of-years sentences in addition to life without parole sentences. See, e.g., Henry v. State, 82 So. 3d 1084, 1089 (Fla. Dist. Ct. App. 2012) ("At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: twenty, thirty, forty, fifty, some lesser or greater number? Would gain time be taken into account? Could the number vary from offender to offender based on race, gender, socioeconomic class or other criteria? Does the number of crimes matter? . . . Without any tools to work with, . . . we can only apply Graham as it is written. If the Supreme Court has more in mind, it will have to say what that is."), quashed, 175 So. 3d 675 (Fla. 2015).

Because the specific and limited holding of Graham is not applicable to Appellant's case, the heavy burden remains on Appellant in raising his categorical constitutional challenge to lengthy aggregate term-of-years sentences for juvenile non-homicide offenders to establish a national consensus exists against such sentences. See Graham, 560 U.S. at 61 (indicating the first step in a categorical constitutional challenge to a particular sentencing practice is to determine whether a national consensus exists against the challenged practice); see also Williams, 380 S.C. at 347, 669 S.E.2d at 646 ("[I]t is the heavy burden of the defendant to establish a national consensus against [a particular sentencing practice]."). Significantly though, Appellant did not even attempt to do so during the sentencing hearing conducted in his case and has likewise failed to do so on appeal.

Specifically, in seeking an extension of the logic and holding in Graham to a type of sentence not addressed in the decision, Appellant has *not* cited to any data regarding the number of juveniles sentenced to sentences similar to his own or presented any information regarding the number of jurisdictions that do and do not legislatively allow such sentences to be imposed upon offenders like him. Importantly, without such objective indicia of society's standards, Appellant cannot show and has not shown the particular sentencing practice he is presently challenging has been rejected in the United States on a near universal basis, and he likewise cannot meet and has not met his burden of establishing a national consensus exists against the imposition of sentences like the one he received. Cf. Willbanks, 522 S.W.3d at 243 ("In Graham, the Supreme Court examined federal and state sentencing laws to see how many jurisdictions permitted juvenile nonhomicide offenders to receive life without parole and how many jurisdictions prohibited such punishments. It also looked at the actual number of juvenile offenders serving life without parole sentences, which totaled only 123 nationwide. Obviously, the number of juveniles with

multiple fixed-term sentences would number in the thousands. At no point did the Supreme Court consider a juvenile offender sentenced to multiple fixed-term periods and whether such terms, in the aggregate, were equal to life without parole."). In the absence of a national consensus against sentences like Appellant's, there is no proper basis to categorically declare Appellant's sentence to be unconstitutional or to extend the limited holding or logic of Graham to his case. See Arkansas v. Sullivan, 532 U.S. 769, 772 (2001) (instructing state courts cannot interpret an amendment to the United States Constitution to provide greater protections than those provided by the precedent of the United States Supreme Court); cf. Vasquez, 781 S.E.2d at 926 ("We are duty bound to enforce the Eighth Amendment consistent with the holdings of the highest court in the land. But the duty to follow binding precedent is fixed upon cased-specific holdings, not general expressions in an opinion that exceed the scope of a specific holding. . . . The only reason that the aggregate sentences [at issue in Vasquez's case] exceeded [the defendants'] life expectancies was because they committed so many separate crimes. These cases are nothing like Graham, which involved a single crime resulting in a single life-without-parole sentence."). As a result, Appellant's aggregate sixty-year sentence neither violated the mandates of the Graham decision nor is categorically unconstitutional pursuant to the federal constitution, and it should similarly not be found to be unconstitutional pursuant to the state constitution, which is particularly true given Appellant's *crimes*—as opposed to his sentences for them—are what could best be described as cruel or unusual in his case.[13] See State v. Brown,

[13] Moreover, the cursory and non-specific manner in which Appellant's state constitutional arguments were raised to the plea judge constitutes a compelling reason for those arguments to be rejected on appeal. See State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (finding an argument to be abandoned because it was raised in a conclusory manner); cf. Burrell v. State, 207 A.3d 137, 143 (Del. 2019) (finding a state constitutional claim to be waived due to the conclusory nature in which it was advanced and explaining the "proper presentation" of a state constitutional claim should include "a discussion and analysis of one or more of the following

284 S.C. 407, 411, 326 S.E.2d 410, 412 (1985) ("Article I, § 15, of our Constitution prohibits the infliction of cruel and unusual punishment."); see also Soto-Fong, 474 P.3d at 43 ("[C]ourts that have held de facto juvenile life sentences unconstitutional provide a cautionary tale, as they have invariably usurped the legislative prerogative to devise a novel sentencing scheme or otherwise delegated the task to trial court to do so.").

Meanwhile, to the extent Appellant seeks for his sentence to be declared unconstitutional or improper on a case-specific—as opposed to categorical—basis, the plea judge did *exactly* what he was supposed to do when imposing Appellant's sentence. Demonstrating that fact, the plea judge— prior to deciding upon Appellant's sentence—listened to and considered all the information presented to him and evaluated the circumstances surrounding both Appellant and Appellant's offenses. And, in doing so, the plea judge considered each and every one of the factors identified in Miller v. Alabama, 567 U.S. 460 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). See Jones v. State, 440 S.C. 14, 25, 889 S.E.2d 590, 596 (2023) (instructing "consideration of the factors enumerated in Aiken provides sufficient attention to actual juvenility"); see also Aiken v. Byars, 410 S.C. 534, 544, 765 S.E.2d 572, 577(2014) (plurality opinion) ("Miller establishes a specific framework, articulating that the factors a sentencing court consider at a hearing 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

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non-exclusive criteria: textual language, legislative history, preexisting state law, structural differences, matters of particular state interest or local concern, state traditions, and public attitudes").

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.' " (quoting Miller v. Alabama, 567 U.S. 460, 477-478 (2012)).

Upon analyzing those factors, the plea judge determined—correctly—they simply did not demonstrate Appellant's crimes were reflective of the hallmark characteristics of youth. More specifically, the plea judge recognized Appellant's age at the time of his crimes was indeed significant to the analysis and meant he was categorically different from an adult. However, the plea judge *also* recognized Appellant—despite being a juvenile—engaged in actions inconsistent with typical youthful immaturity, impetuosity, and lack of appreciation for risks and consequences in light of the fact Appellant—by his own admission—waited in the dark outside of an apartment building he did not reside at while dressed all in black and armed with a pistol in the middle of the night in search of someone he could victimize. And, the plea judge further recognized Appellant—who had previous experience with the juvenile justice system prior to the incident—demonstrated a full awareness of the wrongfulness of his actions, including by attempting to obscure his face from a surveillance camera and threatening the life of his victim in order to discourage her from contacting the police. Likewise, the plea judge considered the fact Appellant—unlike many juveniles who engage in criminal behavior—had a supportive family and home environment, which even his own expert suggested made Appellant far different from the typical juvenile offender involved in the criminal justice system. Furthermore, beyond the truly appalling nature of the crimes themselves, the plea judge properly considered the fact Appellant's actions—unless his various accounts, which were inherently uncredible due to their inconsistent and shifting nature, had been accepted as true, which they expressly were not—were

committed entirely on his own, were chillingly premeditated, and were not undertaken at the direction of or with the assistance of any peers or accomplices, which made them far more serious and problematic. See State v. Pittman, 137 S.C. 75, __, 134 S.E. 514, 526-527 (1926) (noting the existence of the maxim "falsus in uno, falsus in omnibus"). Finally, while acknowledging the potential for rehabilitation that is virtually always present, the plea judge concluded Appellant's prospects for rehabilitation were greatly reduced by the fact he failed to ever show any genuine remorse for his actions. Instead of doing so, Appellant: (1) followed the horrific rape and robbery by getting his friends to accompany him to Charlotte in a vehicle he had stolen and then taken them on a joyride; (2) lied repeatedly after he was apprehended; (3) attempted to suggest his victim *consensually* participated in the sexual assault he perpetrated despite having dragged her by her hair to the isolated location where he raped her; and (4) sought to minimize his own culpability at every available opportunity. Critically, because Appellant's actions were *not* reflective of the hallmark characteristics of youth, the sentence imposed—although lengthy—was neither disproportionate to the nature and severity of Appellant's crimes, excessive, nor unconstitutional in any manner. See Harrison, 402 S.C. at 300, 741 S.E.2d at 733 (recognizing a constitutional proportionality analysis ends unless "a comparison between the sentence and the crime committed gives rise to an inference of *gross* disproportionality" (emphasis added)).

For those reasons, the plea judge did not abuse his broad sentencing discretion or otherwise err by imposing that constitutionally-permissible and warranted sentence after Appellant was convicted of *numerous* heinous crimes that were simply not reflective of the hallmark features of youth, such as immaturity, impetuousness, or a failure to appreciate risks and consequences. See State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) ("The cruel

and unusual punishment clause requires the duration of a sentence not be grossly out of proportion with the severity of the crime."); see also Soto-Fong, 474 P.3d at 41 ("[G]enerally, courts do not permit defendants to 'stack' their crimes to generate an Eighth Amendment claim."); cf. Harrison, 402 S.C. at 303, 741 S.E.2d at 735 ("The trial court's statements at sentencing are the very embodiment of proportionality, and the court performed the analysis envisioned by the statute's broad penalty provision and in sentencing Appellant based on the facts and circumstances of the case."). Accordingly, Appellant's conviction and aggregate sentence should be affirmed.[14]

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[14] In the event Appellant's sixty-year sentence is found to be unconstitutional in some manner, it is not entirely clear from the arguments raised in Appellant's brief what sentence he believes *would* be constitutionally proper for his numerous crimes. However, Appellant has cited to the decision in State v. Kimbrough, 212 S.C. 348, 356-357, 46 S.E.2d 273, 277 (1948), in which our Supreme Court found—under very different circumstances—a thirty-year sentence to be the functional equivalent of a life sentence as support for his contention his own aggregate sentence is unconstitutional. Assuming Appellant was resentenced to a thirty-year term of imprisonment for his crimes, it would be possible for him to obtain release under South Carolina law as early as the age of forty-one *regardless* of whether he had—or ever will—demonstrate maturity, rehabilitation, or growth. See S.C. Code Ann. § 24-21-560 (outlining the community supervision release program for which offenders convicted of "no parole" offenses are eligible after serving eighty-five percent of their sentences). Significantly, such a result would be strikingly inconsistent with the decision in Graham, which expressly held a state is *not* required to release a juvenile non-homicide offender during his natural life even for a crime committed when the offender was a juvenile. See Graham, 560 U.S. at 75 ("It bears emphasis . . . that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, *it does not require the State to release that offender during his natural life*." (emphasis added)). Accordingly, to ensure South Carolina has a means by which to protect its citizens from juvenile offenders who ultimately prove to be irredeemable, a grant of resentencing under existing law while setting some arbitrary judicially-chosen maximum sentencing cap no matter the number or nature of the offenses involved would not truly be a proper remedy in Appellant's—or any other juvenile offender's—case. See Slocumb, 426 S.C. at 324-325 (Hearn, J., dissenting) ("I agree with the majority that this issue is best reserved for the General Assembly because that body is better equipped to fashion an appropriate solution in order to bring our juvenile sentencing scheme into constitutional compliance. To accomplish this task, courts and legislatures across the country have reached differing outcomes, including arbitrarily declaring a specific threshold—such as a 50-year sentence, implementing a parole system, using life expectancy tables, or a combination thereof. At this point, I would decline to adopt a specific approach and would delay implementation of my ruling until January 1, 2020, to

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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provide the General Assembly with ample time to act in this area and to ensure our juvenile sentencing scheme complies with the Eighth Amendment.").