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Nov 14 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable William H. Seals, Circuit Court Judge
Appellate Case No. 2019-000521

THE STATE,.....RESPONDENT

v.

TERRIEL LESHAWN MACK,.....APPELLANT

RESPONDENT’S PETITION FOR REHEARING

On November 1, 2023, this Court issued a published opinion reversing the decision of the trial court in the Appellant’s conviction for the offense of murder. *State v. Mack*, Op. no. 6031 (S.C. Ct. App. Filed November 1, 2023). In reversing the Appellant’s conviction, this Court found that the trial court erred based on the inadequate consideration of the “hallmark features of youth” and Appellant’s upbringing. Both are listed factors that must be considered in order to sentence a juvenile to life without the possibility of parole pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

Pursuant to Rule 221(a) SCACR, Respondent, respectfully petitions this Court for rehearing because this Court has seemingly overlooked or misapprehended this decision on two critical points.¹ This Court’s opinion intended to highlight factors mentioned in the trial court’s

¹A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. Rule 221(a) SCACR.

order; however, fails to include important factors that were considered and mentioned within the final sentencing order.

This Court decided that the trial court erred by using the Appellant's age as a chronological fact and did not seem to consider the "hallmark features of youth" at all. *Mack*, Op. No. 6031 p. 6 (2023). Within the opinion this Court referenced the following from the sentencing order:

In regards to the age of the offender, [Mack] was 17 years old at the time of the murder, and was 18 years old when he was convicted. The court considered that at the time of the murder [Mack] was within one year of being able to serve in the military to possibly fight and die for this country and had a driver's license. [Mack] was within one year of an age whereby he would have immense responsibilities and be considered an adult by law.

Id.

In *Aiken*, the South Carolina Supreme Court determined that the factors in *Miller*² were those which must be considered during resentencing, such as the offender's age and other features of youth, family life, circumstances of the crime, understanding of the legal process, and the possibility of rehabilitation. *Aiken*, 410 S.C. at 544-545, 765 S.E.2d at 577-578. Respondent argues that these criteria were considered and each consideration could be found in the trial court's sentencing order. In *Aiken*, the South Carolina Supreme Court established that "[t]he United States Supreme Court did not establish a definite resentencing procedure and we likewise see no reason to do so. We have the utmost confidence in our trial judges to weigh the factors discussed herein and to sentence juveniles in light of this new constitutional jurisprudence." *Id.*, at 545 n. 10.

Within his order the trial judge did state that the Appellant was almost at an age where he would be allowed to enter the military and have additional responsibilities as prescribed by law.

² *Miller v. Alabama*, 567 U.S. 460 (2012).

The trial court also found that, “limited mitigating factors are substantially outweighed by areas mentioned above pursuant to *Aiken v. Byars*.” (R. p. 680).

According to *Aiken*, the United States Supreme Court in *Miller v. Alabama* established a specific framework and certain factors must be considered by the trial court prior to sentencing. One of which is, *the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence.”* *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577, *quoting, Miller*, 132 S.Ct. at 2468 (emphasis added). In examining the “hallmark features of youth,” the trial court considered the following: the facts of the murder revealed that Appellant was “the shooter” and intentionally shot the victim in the head at “point blank range;” Appellant shot the victim “three more times in the back while the victim was on the ground;” he wrote a letter to his co-defendant in which he bragged about the murder and failed to show remorse; the motive for the murder was to kill “a witness to another crime so as to benefit an associate;” murder was a “premeditated...cold-blooded assassination,” for which Appellant did not show remorse but was, “actually proud of the killing.” All of these aspects were reflected in the trial court’s order related to the hallmark features of youth. This reveals that the trial court did not only equate the youth of the Appellant to him soon being able to enter the military or an eligibility to vote; but these relate to the hateful nature of his crime, and his callousness toward the murder during its aftermath.

This Court also reversed due to the fact the trial court failed to go into detail about the Appellant’s upbringing and home environment. The trial court within his order mentioned other individuals that went through traumatic upbringings and have become outstanding citizens. However, the trial court within its order also mentioned that the trial court “acknowledges that the Defendant grew up in a bad home environment, whereby he witnessed several traumatic events in his

childhood, and was affected by these events as well as many other things in life.” (R. p. 680). The trial court decided that these events did not override the circumstances of the murder, the lack of remorse of the Appellant, and that the Appellant unwillingness or inability to be rehabilitated. Criteria must be considered pursuant to *Aiken*.

This Court’s opinion only mentioned one reason why the trial court believed the Appellant’s youth should not deny him a life without parole sentence. There was more to the reasoning of the trial court other than a comparison to Elie Wiesel, Oprah Winfrey, and Tyler Perry; or that the Appellant was almost at the age where he can legally defend this country and vote. The trial court mentioned in their order the violent and heinous nature of this killing, and Appellant’s reason for committing this murder. The fact that all of the evidence revealed that the Appellant was the individual that committed this murder, and the total lack of remorse even years after the crime was committed as evidenced by the letter he wrote to his co-defendant. The trial court believed Appellant only revealed any remorse during the *Aiken v. Byars* hearing for his own benefit. (R. p. 680). These are very valid reasons that followed the *Aiken* and *Miller* decisions in order to sentence a juvenile to a life without parole sentence.

The above-mentioned reasons reveal that this Court overlooked or misapprehended important issues that were presented though the trial court’s sentencing order. Respondent believes that there should be a rehearing in order for these issues to be addressed once again and be considered by this Court.

CONCLUSION

For the reasons stated above, Respondent petitions for rehearing pursuant to Rule 221(a) SCACR, and requests this Court reinstate Appellant’s conviction for murder.

Respectfully submitted,

ALAN WILSON
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THE HONORABLE EDGAR L. CLEMENTS
Solicitor Twelfth Judicial Circuit

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ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina
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THE STATE,.....RESPONDENT

v.

TERRIEL LESHAWN MACK,.....APPELLANT

PROOF OF SERVICE

I, Tommy Evans, Jr., the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Petition for Rehearing and Proof of Service has been forwarded to Petitioner’s counsel, Kathrine H. Hudgins, Esq., via email today, November 14, 2023 to KHudgins@sccid.sc.gov, and to her assistant, Chris Stock at CStock@sccid.sc.gov

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

This 14th day of November 2023.

s/Tommy Evans, Jr.
TOMMY EVANS, JR.

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Post Office Box 11549
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ATTORNEY FOR RESPONDENT

Brandy Rankin

From: Brandy Rankin
Sent: Tuesday, November 14, 2023 10:39 AM
To: Hudgins, Kathrine
Cc: Tommy Evans, Jr.; Stock, Chris
Subject: Petition for Rehearing - Terriel Mack - Appellate Case No. 2019-000521
Attachments: Cover Letter (Adobe) (03435994xD2C78).pdf; Petition for Rehearing POS, 11-14-23, Terriel Mack (03435964xD2C78).pdf

Dear Ms. Hudgins,

Please find attached the Respondent's Cover Letter, Petition for Rehearing, and Proof of Service. These documents will be filed with the South Carolina Court of Appeals today, November 14, 2023.

Sincerely,

Brandy Rankin

Brandy Rankin, Legal Assistant to Tommy Evans, Jr.
Office of the Attorney General
Post Office Box 11549
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SC Court of Appeals

November 14, 2023

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *The State v. Terriel LeShawn Mack*
Appeal from Florence County
Appellate Case No. 2019-000521

Dear Ms. Kitchings:

Enclosed for filing please find the electronic copy of the Respondent's Petition for Rehearing, together with Proof of Service in the above-referenced case. If you should have any questions, please feel free to contact me.

Sincerely,

s/Tommy Evans, Jr.
Tommy Evans, Jr.
Assistant Attorney General

TE/bbr

Enclosures

cc: Kathrine Hudgins, Chief Appellate Defender (via email only)