

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal from Florence County  
Hon. William H. Seals, Circuit Court Judge  
Appellate Case No. 2019-000521

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**RECEIVED**

**Dec 20 2023**

**S.C. SUPREME COURT**

THE STATE,

Petitioner,

v.

TERRIEL LESHAWN MACK,

Respondent.

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Opinion No. 6031 (S.C. Ct. App. filed July 12, 2023)  
(Withdrawn, Substituted and Refiled November 1, 2023)

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**PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS**

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ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.  
Assistant Attorney General  
S.C. Bar No. 65282

Post Office Box 11549  
Columbia, S.C. 29211-1549  
(803) 734-6305

THE HONORABLE EDGAR L. CLEMENTS  
Solicitor, Twelfth Judicial Circuit

ATTORNEYS FOR PETITIONER

**TABLE OF CONTENTS**

CERTIFICATE OF COUNSEL.....1

QUESTION PRESENTED.....2

STATEMENT OF THE CASE.....3

REASONS FOR GRANTING CERTIORARI.....10

ARGUMENT

    1. The Court of Appeals erred in deciding that the resentencing judge erred in failing to adequately consider whether the Respondent’s crimes were affected by his chronological age and the hallmark features of youth which was displayed on the sentencing order....11

    2. The Court of Appeals erred in deciding that the resentencing judge erred in their interpretation of the Respondent’s home life. The Respondent’s difficulties at home were considered by the resentencing judge, however, these difficulties were overridden by the violence of the crime and Mack’s lack of remorse.....13

CONCLUSION.....15

**CERTIFICATE OR COUNSEL**

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on November 21, 2023.

## **QUESTIONS PRESENTED**

1. Did the Court of Appeals err in deciding that the resentencing court erred in failing to adequately consider whether defendant's crimes were affected by his chronological age and the hallmark features of youth?
2. Did the Court of Appeals err in deciding that the resentencing court erred in its interpretation of the *Aiken* factor regarding the Respondent's home life?

## STATEMENT OF THE CASE

On December 17, 2003, Patrolman Legrand Gowdy, of the City of Florence Police Department, as the end of his shift ended was headed back to headquarters between 6:00 and 6:30 pm. His route took him down Oakland Ave., in the City of Florence. As he passed Oakland Plantation Apartments, he saw three men standing in the parking lot, facing each other, and wearing dark clothes. Seconds later, he heard three “loud bangs,” which sounded like “either gunshots or fireworks.” So, he turned his car around and went to the parking lot to investigate.

By the time Patrolman Gowdy reached the parking lot, two of the three men he had seen were no longer present. He observed Joseph Todd Wilson (victim) lying on the pavement with a gunshot wound to the head. The Victim had a pool of blood around his head, and no pulse. Patrolman Gowdy immediately got on his radio and alerted other patrol officers in the area as to what he had discovered. Officer Bruce Moore arrived shortly and Patrolman Gowdy radioed for investigators to come to the scene.

Ms. Virginia Robinson was at her home only half a block from the crime scene. Gregory Johnson is her stepson, whom she has known since he was twelve. Between 6:30 and 7:00 pm. on December 17, 2003, Johnson came to her house with a man who said his name was “Black.” The man was later identified to be the Respondent Terriell Leshawn Mack (Mack). Both men were wearing dark clothing with long sleeves. Because it was unusual for Johnson to come to her home, Ms. Robinson asked why he was there. He claimed that he was on his way home from a girl’s house.

When she opened the door again, she heard “a lot of hollering and stuff out there.” She asked what had happened and made the comment that “somebody must be got hurt in the projects[,]”

must be got cut up or kill[,] or something.” (Sic). Johnson and Mack just looked at each other and both failed to respond.

Michelle Lane, Johnson’s stepsister, and Ms. Robinson’s granddaughter arrived at Ms. Robinson’s house shortly before 7:00 pm. on December 17, 2003. When she arrived her grandmother, mother, stepfather, Johnson, and another male were there. She was shocked to see Johnson because it was unusual for him to come by. She asked Johnson why he was there and Johnson claimed that he was “just chilling.” She then went into her grandmother’s den and saw that her mother was crying. Michelle asked her mother why. That is when she learned that the victim had been killed.

After briefly stepping outside to investigate, Michelle came back inside and spoke to Johnson and the other man. She asked this man what his name was and he said, “Black.” Michelle tried to speak with Black but he was not very talkative. Michelle later testified that Black was wearing a black hoodie while Johnson was wearing a dark blue hoodie. Johnson thereafter came to the den and asked if he could use her phone to call a cab. She gave him permission to do so, and he and Mack left when the cab got there.

After they left, Michelle went and talked to her grandmother. She learned that the suspects in the victim’s murder were wearing “all dark clothing.” She thought it was suspicious that Johnson and Black “pop[ped] up” wearing dark clothes. So, she called a friend, who had the police contact her. When Sgt. Melvin Godwin showed her two photographic lineups on December 28, 2003, she immediately selected Mack’s photo from State’s Ex. 1 and Johnson’s photograph from State’s Ex. 2. She testified that she did not have any doubt that they were the men that she had seen on December 17<sup>th</sup>.

Gregory “Gangsta Fred” Johnson was also charged with murder and conspiracy in connection with this case. Although his attorney had spoken to the State, he had not been given a deal in exchange for his testimony. Johnson testified that the afternoon of December 17, 2003, he was “walking the hood” until he met up with Horn and Mack in East Florence shortly after 5:30 pm. Horn was driving his Buick and Mack was in the front passenger seat. They agreed to give Johnson a ride and he got into the back seat.

Horn wanted to go see a girl who lived in North Florence but did not know where she lived, Johnson agreed to direct him there. After briefly stopping at the home of Johnson’s mother, the men headed to North Florence. While they were travelling on Oakland Ave., Mack saw the victim and asked Johnson if that was “Todd who snitched on ... White Boy.” Johnson looked but could not see him. Mack and Horn then had a conversation that Johnson could not hear over the loud music in the car. Following this conversation, Horn made a series of right hand turns so that they returned to the victim’s location on Oakland Ave.

Mack and Johnson got out of the car. Mack and the victim were only about an “[a]rm’s length” away from each other and had only spoken for “a couple of seconds” when a shot was fired. Johnson immediately ran past Mack and the victim after the first shot, but he saw Mack shoot the victim “three more times in the back” as he fled the scene. Johnson did not stop running until he was close to Mrs. Robinson’s house.

Mack caught up with him at this point and they went to Mrs. Robinson’s house, where they remained for roughly ninety minutes. He and Mack eventually left in a cab that Mack had called and they went to the residence of Marcus May. Johnson went home roughly thirty minutes later and did not see Mack again until between December 17<sup>th</sup> and his arrest on January 29, 2004.

Johnson corroborated that Mack wore a black hoodie, and that he wore blue jeans and a black shirt on the 17<sup>th</sup>. He also admitted that State's Ex. 33, which police seized when they arrested him, was his .38 caliber revolver. Finally, he gave police a statement on January 29, 2004, implicating Mack as the shooter.

Co-defendant Islam Horn later testified that on December 17, 2003, he met up with Mack, a/k/a "Black," and "Gangsta" Fred Johnson at the home of Maurice Bostic in East Florence. They remained at Bostic's home most of the day before deciding to go to North Florence, so that Horn could see a girl. Both Johnson and Mack rode with him in his blue Buick. By then, it was after 6:00 pm. Horn asked Johnson to go because Johnson knew where the girl lived and Horn did not. Horn drove, Mack sat in the front passenger seat, and Johnson sat in the back seat.

As Horn was driving down Oakland Ave., Mack saw the victim between Oakland Plantation Apartments and a nearby park. Mack told Horn that "he wanted to holler at [the victim] [because he [knew] Todd [sold] drow," which is a type of marijuana. In order to go back to the victim's location, Horn made the series of right-hand turns described by Johnson and parked in the Oakland Plantation parking lot. "Gangsta Fred and Black got out of the car" and Horn heard a gunshot "30 or 40 seconds later."

Horn could not see the shot from where he had parked. However, he started his car and pulled out of the parking lot immediately. When he reached a stop sign, he looked over and saw the victim lying "face down on the ground."

Following the shooting, Horn pulled out onto Oakland Ave. and headed back to his sister's residence in East Florence. Before he left, he saw Patrolman Gowdy's car pull into Oakland Plantation Apartments. Horn was arrested on the night of the murder at the residence of Keith

Johnson. According to Horn, Mack always carried a .38 after his release from jail in November 2003.

The police recovered Horn's .38 caliber pistol from the wheel of a car when he was arrested that night. Police recovered a flattened projectile from the concrete underneath the victim's body. State's Ex. 36. Johnson left Florence shortly after the murder and stayed in Coward, South Carolina for a period of time. As a result, he was not arrested until January 29, 2004. At that time, police recovered his .38 caliber revolver, State's Ex. 33.

Following Mack's arrest, police searched his residence pursuant to a search warrant. They recovered a baggie of marijuana and two weapons: a 9 mm. semi-automatic and a .32 caliber revolver from the crawl space underneath the residence.

At the time of the victim's murder, Florence police were actively working on another homicide that had occurred on the night of December 16<sup>th</sup>. Inv. Smith testified that after working the crime where the shooting had occurred on the 16<sup>th</sup>, he went to the hospital to check on the shooting victims who had been taken there. By the time he arrived, Antonio McCall had died. The other shooting victim was Joseph Todd Wilson, the victim in this case. He identified the person who shot him as White Boy. Inv. Smith later learned that "White Boy" was Marcus Martin.

The State also introduced a written letter by Mack to Horn (State's Ex. 30). This letter contained a detailed account of the murder by Mack including the hollow point bullets he used in this murder. This letter provided evidence of motive and malice, both of which support the sentence of life imprisonment.

Dr. Janice Ross, the forensic pathologist who performed the autopsy on the victim, testified that the victim had four gunshot wounds and that three would have been fatal. The first wound was into his left forehead and was fatal. It then traveled "backwards and across through the brain."

Dr. Ross opined that this was “an intermediate range shot” and that “tattooing” was present. Although not a contact wound, it was fired from between “three or four inches to 18 inches.” The wound “would cause immediate unconsciousness” and the victim would have immediately collapsed.

The second wound was in the victim’s back “just to the left of the middle.” The bullet went underneath the victim’s skin and it was found under the skin in the back of his neck. Because the bullet did not hit any vital organs or arteries, Dr. Ross opined that it would not have been fatal. The third gunshot wound entered the victim’s left back and was also fatal. It travelled “from back to front and a little bit and upward. It “went through the heart and caused a lot of bleeding in the chest cavity.”

The fourth gunshot wound was likewise fatal. This bullet entered the victim’s back, “went through all the lobes of the right lung” before it exited his body. In doing so, it “caused a lot of bleeding internally ... [and] would have been fatal also by itself.” Dr. Ross explained that the third and fourth wounds caused the victim to bleed over a third of the blood in his body into his chest cavity.

Dr. Ross recovered the bullets that caused the first three wounds (State’s Ex. 35) and she provided them to the police. She opined that the cause of death was exsanguination caused by gunshot wounds to the chest and “contusion of the brain due to laceration of the brain,” caused by a gunshot wound to the head. She opined that the manner of death was homicide.

SLED Agent Ira Parnell testified that he was the supervisor of SLED’s firearm and tool mark identification laboratory. Initially, he was asked to determine the caliber of the bullets and to compare the .38 caliber bullets and fragments in State’s Exs. 35 and 36 with Horn’s .38 (State’s Ex. 32). Johnson’s .38 (State’s Ex. 33) was submitted at a later date. Agent Ira Parnell explained

that the bullets were “all consistent with [semi-jacketed] hollow point ammunition, ... which is design[ed] to expend its energy within the first target that it encounters to cause more shock, knock down and not to over penetrate in most cases.” Following his testing, he opined that all of the bullets in State’s Exs. 35 and 36 were fired by the same weapon that neither State’s Ex. 32 nor State’s Ex. 33 fired the bullets.

On October 25, 2005, Mack’s case was called for trial before the Honorable Edward B. Cottingham. Representing Mack was his attorney Scott Floyd, and representing the State of South was Assistant Solicitors Jack Lawson and John Jepertinger of the Twelfth Circuit Solicitor’s office. After two days of testimony a jury of his peers found Mack guilty of murder. Upon the reading of the verdict Mack appeared before the trial court for sentencing. The trial judge sentenced Mack to a period of incarceration for the remainder of his natural life.

On November 12, 2014, this Court decided the case of *Aiken v. Byars*. In *Aiken*, this Court decided that a juvenile cannot be sentenced to a life without parole sentence until a separate hearing was held where certain criteria must be considered. Since Mack was seventeen at the time he committed the offense he filed a motion for resentencing, and a resentencing hearing was held on February 19-20, 2019, before the Honorable William H. Seals. On March 20, 2019, Judge Seals decided to sentence Mack to a period of incarceration for the rest of his natural life without the possibility of parole. Upon being given this life sentence Mack decided to file a notice of appeal before the South Carolina Court of Appeals.

On March 16, 2022, a panel of the Court of Appeals consisting of Judges Geathers, Hill, and Lockemy heard oral arguments. On July 12, 2023, the Court of Appeals issued a published opinion authored by Judge Geathers reversing and remanding the decision of the resentencing judge.

## REASON FOR GRANTING CERTIORARI

According to the South Carolina Appellate Court rules, though not controlling, certain criteria indicates whether certiorari will be considered. The South Carolina Appellate Court Rules specifically state the reasons that can be considered are:

1. Where there are novel questions of law.
2. Where there is a dissent in the decision of the Court of Appeals.
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
4. Where substantial constitutional issues are directly involved.
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242(b)(1-5) SCACR.

Of these five considerations there exists a novel question of law. Did the resentencing court ignore the criteria established in *Aiken v. Byars*<sup>1</sup> when making the decision in sentencing the Respondent to a life sentence without the possibility of parole? Petitioner will argue that certain aspects of the resentencing judge's order was not considered in the Court of Appeals opinion. According to the Court of Appeals the resentencing judge did not consider all of the *Aiken* factors; however, his order revealed he considered all of the *Aiken* factors before imposing the life sentence. Due to the Court of Appeals decision not reflecting all of the considerations made by the resentencing court that was established within the court's sentencing order, the Respondent will argue that this matter should be reviewed by this Court. We would request certiorari be granted on this case.

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<sup>1</sup> *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

## ARGUMENTS

**1. The Court of Appeals erred in deciding that the resentencing judge erred in failing to adequately consider whether Respondent’s crimes were affected by his chronological age and the hallmark features of youth, which was displayed on the sentencing order.**

In the *Aiken v. Byars* decision this Court decided to apply the United States Supreme Court decision of *Miller v. Alabama*, 132 S.Ct. 2455 (2012) on juvenile South Carolina life sentences without parole. Within *Aiken* this court placed five mandatory criteria a sentencing judge is obligated to consider prior to sentencing a juvenile to a life sentence without the possibility of parole. Within this Court of Appeals opinion, they decided that the resentencing judge violated two of the five criteria: the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequences; and the “family and home environment” that surrounded the offender. *Mack*, Op. No. 6031 (S.C. Ct. App. 2023).

The Respondent will now address the first criteria the Court of Appeals decided the resentencing court erred in not following. Petitioner will argue that the resentencing judge did consider the chronological age of the offender which was reflected within his sentencing order.

Within their opinion the Court of Appeals mentioned that the resentencing judge equated the age of the offender at seventeen and at eighteen at the time of sentencing to him being able to enter the military and the fact the Respondent had a driver’s license. However, that was only a portion of what the order entailed. The resentencing judge only mentioned those aspects to reveal that the Respondent was not at such a tender age that he should not have been able to appreciate the consequences of his actions.

According to *Aiken*, the United States Supreme Court in *Miller* established a specific framework and certain factors that must be considered prior to giving a juvenile a life sentence.

The court must examine the “hallmark features of youth.” When considering Mack’s sentence, the judge fully considered the following: the fact that the Respondent was the shooter and he intentionally shot the victim in the head at “point blank range”, and Mack then shot the victim three more times in the back after he was on the ground. The resentencing judge considered the fact that the Respondent wrote a letter bragging about the murder and failing to show any remorse for these crimes. The resentencing judge revealed that Mack had a motive to murder. Mack wanted to kill a witness to another crime, making this murder premeditated. The resentencing judge reflected that Mack through this letter seemed “actually proud of the killing.” All of these aspects reveal that the resentencing judge reflected on the criteria regarding the “hallmark features of youth.” This is because the resentencing judge looked at the lack of remorse and the reasons Mack presented himself as to why he committed this murder. The resentencing judge revealed that this was not a murder that occurred on impulse but it was premeditated in order for Mack to protect other individuals from being prosecuted. This goes deeper than the Respondent’s ability to possibly go into the military or to be legally able to drive an automobile. This goes to Mack’s actual character at the time he committed this murder which is what the sentencing judge is responsible for considering at the time of sentencing according to *Aiken*.

The Court of Appeal was in error only mentioning a portion to the sentencing order and failing to mention the other aspects that the resentencing judge clearly considered in his final decision. Due to the lack of mentioning the other aspects that were revealed in the sentencing order the Petitioner would respectfully request this Court review the final decision of the Court of Appeals.

- 2. The Court of Appeals erred in deciding that the resentencing judge erred in their interpretation of the Respondent's home life. The Respondent's difficulties at home were considered by the resentencing judge, however, these difficulties were overridden by the violence of the crime and Mack's lack of remorse.**

The Court of Appeals considered the argument presented by Mack, that the resentencing judge blamed Mack for not overcoming the obstacles that occurred during his upbringing. The Court of Appeals came up with the identical conclusion due to the fact that within his order the resentencing judge mentioned well known individuals such as Elie Wiesel, Oprah Winfrey, and Tyler Perry. These people who grew up in terrible circumstances, however, overcame these obstacles to become "good law-abiding citizens in their community." The Petitioner argues that this meaning was misunderstood by the Court of Appeals, that the resentencing judge did not mention these famous individuals in order to fault Mack as to his challenged upbringing, but these individuals were mentioned to reveal that there are many people who overcome obstacles to become productive citizens.

Within the rest of his sentencing order the resentencing judge does acknowledge that the Respondent grew up in a bad home environment, whereby he witnessed several traumatic events during his childhood. The resentencing judge admitted that these events affected Mack as well as many other things in his life. *Aiken* allows the sentencing court to consider these criteria, however, it does not make it a certainty that a person who had a traumatic home environment not be given a sentence of life without parole. This is only one of five criteria that must be considered, and Petitioner will argue this criteria as well as the other four were considered.

The resentencing judge felt that the actions of the Petitioner and the violence associated with committing this crime overrode any trauma that may have occurred at home. Within *Aiken v. Byers* this court determined that:

Without question, the judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating circumstances. Our General Assembly has made the decision that juvenile offenders may be sentenced to life without parole, and we honor that decision. However, *Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.

*Aiken*, 410 S.C. at 545, 765 S.E.2d at 578.

Petitioner argues that prior to the sentence of life, all of the criteria was fully explored and considered by the resentencing judge. There exists no abuse of discretion made by the resentencing court.<sup>2</sup> The decision of the Court of Appeals was made in error and it should be subject to review by this Court.

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<sup>2</sup> This court will not disturb the circuit court's findings absent a manifest abuse of discretion. An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support. *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019).

**CONCLUSION**

For the foregoing reasons, Petitioner requests this honorable Court grant certiorari, and ultimately reverse the decision of the Court of Appeals.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.  
Assistant Attorney General  
ID No. 65282

THE HONORABLE EDGAR L. CLEMENTS  
Solicitor Twelfth Judicial Circuit

By: *s/ Tommy Evans, Jr.*  
Tommy Evans, Jr.  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEYS FOR THE PETITIONER

Columbia, South Carolina  
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