STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

FINAL BRIEF OF APPELLANT

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[1] *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in resentencing Appellant to life imprisonment, where the court did not make any specific findings as to the *Aiken v. Byars*[2] factors or conclusions of law, since the sentencer of a juvenile defendant facing a life without parole sentence must consider the evidence and analyze the *Aiken* factors before imposing sentence?

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2 *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

STATEMENT OF THE CASE

On February 20, 1997, a Darlington County Grand Jury indicted Eric Graham, Appellant, for the December 7, 1996, murder of C.W., Decedent. Appellant was tried before the Honorable Paul M. Burch, and a jury, on or about August 24 – 28, 1998. Karl H. Smith represented Appellant. Billie E. Blackmon prosecuted the case. Appellant was convicted as indicted, and he was sentenced to life without parole. On September 4, 1998, the court heard and denied post-trial motions.[3,4]

On June 9, 2016, Appellant filed a motion for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). On August 17, 2016, the South Carolina Supreme Court filed an order vesting the Honorable Roger E. Henderson with exclusive jurisdiction over the resentencing motion.[5]

On January 19, 2023, a resentencing hearing was held before Judge Henderson. Elizabeth Franklin-Best represented Appellant. Kelley Jackson represented the State. The court heard testimony and argument, and took the matter under advisement. On January 23, 2023, the court

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[3] R. 587; R. 165; R. 166, ll. 1-4; R. 260, ll. 16-19; R. 381, l. 25 – 382, l. 1; R. 570; R. 582-583 (Court's Exhibits #2 – 3).

[4] At the time of the crime, S.C. Code Ann. § 16-3-20 (1996), provided that when the punishment for murder was life imprisonment: "'life imprisonment' means until death of the offender. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section."

[5] R. 590 (*Aiken v. Byars* order).

issued a new sentence sheet, filed January 30, 2023, in which it resentenced Appellant to life without parole.[6]

This appeal follows.

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6 R. 1 – 5; R. 162, l. 21 – 163, l. 4; R. 592 (2023 Sentence Sheet).

STANDARD OF REVIEW

When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments, the appellate court's standard of review extends only to the correction of errors of law. *State v. Mack*, Op. 6031 (S.C. Ct. App. refiled November 1, 2023) (Howard Adv. Sh. No. 43 at 16) (citing *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019)). The appellate courts 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. at 423, 831 S.E.2d at 160.

ARGUMENT

The court erred in resentencing Appellant to life imprisonment, where the court did not make any specific findings as to the *Aiken v. Byars*[7] factors or conclusions of law, since the sentencer of a juvenile defendant facing a life without parole sentence must consider the evidence and analyze the *Aiken* factors before imposing sentence.

The trial court erred when it resentenced Appellant to life without parole. The court did not explain its reasoning for the sentence, and the sentence sheet was insufficient to show compliance with the requirements of *Aiken v. Byars*.

Relevant facts

On the night of December 7, 1996, seventeen-year-old Appellant and his seventeen-year-old girlfriend, C.W., were on the couch watching a movie at the home of Appellant's parents in Darlington County. The young couple had a "lovey-dovey" relationship. No arguments had been observed between the two. Appellant's eighteen-year-old first cousin, Ms. McDonald, was also on the couch—the girls sat at either end of the couch and Appellant sat in the middle.[8]

Around 1:30 a.m., McDonald got up to go to bed, since she was not enjoying the movie they had put on. A shot rang out within seconds of McDonald, who now had her back to the couch, standing up. Appellant began to scream. McDonald turned around and saw smoke coming

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7 *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

8 R. 220, l. 15 – 222, l. 3; R. 236, ll. 13-25; R. 261, ll. 16-21; R. 409, ll. 15-19; R. 413, ll. 22-24; R. 416, ll. 6-25; R. 435, ll. 20-22; R. 124, l. 13.

out of C.W.'s mouth; blood was everywhere. C.W. was dead from a single contact gunshot wound which entered under her chin, and exited the top of her head.[9]

McDonald called 911 and woke Appellant's mother, Mrs. Graham. Mrs. Graham went into the family room; Appellant was screaming and crying and holding C.W. Appellant was hysterical. According to Mrs. Graham, Appellant stated that he had gotten the gun out, C.W. hit his arm, and the gun accidentally went off. "She grabbed the gun." Mr. John Graham, Appellant's uncle, said that Appellant stated, "I'm sorry. Look what I've done. It's my fault." Mr. John Graham said Appellant fell down in front of C.W.'s body and stated, "Look what you made me do."[10]

When law enforcement arrived, two family members were holding Appellant down on the floor; the gun was on the floor a few feet away. The body was seated on the couch covered with a blanket. Officers heard Appellant say, "I shot her, I shot her." Officers heard Appellant's father, Mr. Raymond Graham, Sr., say, "I told you that damn gun was gone get you in trouble." No gunshot residue was found on C.W.'s hands. Appellant was tried for murder. The State proceeded on a theory of *Mouzon*[11] malice. The defense argued accident. Appellant was convicted and sentenced to life imprisonment without the possibility of parole.[12]

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9 R. 216, ll. 10-18; R. 221, ll. 3-23; R. 229, ll. 4-16; R. 239, ll. 12-17; R. 274, l. 17 – 275, l. 9; R. 386, l. 12 – 388, l. 8; R. 418, l. 11 – 424, l. 9.

10 R. 220, ll. 17-21; R. 235, ll. 14-22; R. 240, l. 10 – 241, l. 3; R. 452, l. 23 – 453, l. 3; R. 458, ll. 7-19; R. 480, l. 4 – 485, l. 6; R. 426, l. 20 – 428, l. 8.

11 *State v. Mouzon*, 231 S.C. 655, 99 S.E.2d 672 (1957).

12 R. 217, l. 10 – 219, l. 10; R. 224, l. 22 – 225, l. 22; R. 233, ll. 3-7; R. 247, l. 3 – 248, l. 2; R. 262, l. 22 – 263, l. 6; R. 354, l. 23 – 355, l. 18; R. 512, l. 15 – 513, l. 4; R. 528, l. 8; R. 589 (1998 Sentence Sheet); R. 568, ll. 7-10.

In 2016, Appellant applied for resentencing pursuant to *Aiken v. Byars*. A hearing was convened. Appellant had then been in prison for twenty-six years. He was seventeen at the time of the offense. The circuit court heard testimony and a number of exhibits, including the trial transcript, were entered.[13]

Favorable evidence for Appellant included evidence about his childhood that went to the possibility of rehabilitation, including testimony about his religious upbringing. Appellant was raised going to New Hopewell Missionary Baptist Church. He went to Sunday School, and was in the choir. Appellant had a tight-knit, extensive family that lived close to each other in Darlington County. Twenty-five family members and friends appeared in support of Appellant at the hearing.[14]

Appellant was a smart young man who made good grades in school before he was expelled. Appellant was expelled for carrying a weapon on school grounds prior to the murder. Peers were involved in that weapons offense. Regarding the murder trial, during post-trial motions Appellant's trial counsel stated that Appellant did not follow his repeated advice that Appellant should testify, and he believed Appellant did not comprehend the seriousness of the case.[15]

Appellant and Decedent had a loving relationship. As seen, Appellant was extremely upset, screaming and crying immediately after C.W. was shot. Appellant was remorseful when he addressed the resentencing court. The court heard expert testimony from Dr. Elizabeth

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13 R. 590 (*Aiken v. Byars* order); R. 1; R. 6, l. 9 – 15, l. 17.

14 R. 22, l. 14 – 24, l. 2; R. 35, l. 24 – 37, l. 12; R. 583 (Court's Exhibit #3).

15 R. 24, l. 17 – 25, l. 13; R. 155, l. 23 – 156, l. 3; R. 572, l. 6 – 573, l. 19.

Cauffman, a psychologist whose area of focus was adolescent development and juvenile justice. Dr. Cauffman's testimony included an explanation that impulse control is underdeveloped in seventeen-year-olds, such that an adolescent can know the right thing to do, but still may be unable to self-regulate to do it.[16]

The resentencing court took the matter under advisement. It signed a new sentence sheet four days later, in which it resentenced Appellant to life imprisonment without the possibility of parole.

Discussion

Appellant was entitled to consideration of the mitigating circumstances of his youth in sentencing pursuant to the Eighth Amendment and S.C. Const. art. I, § 15. This Court should remand this case for specific findings of fact and conclusions of law on the *Aiken v. Byars* factors as they apply to him.

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. "[T]he Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions." *Roper v. Simmons*, 543 U.S. 551, 560 (2005). "The provision is applicable to the States through the Fourteenth Amendment." *Id.*

"The United States Supreme Court sequentially has interpreted the protections of the Eighth Amendment to hold that juveniles are entitled to different treatment in sentencing when the death penalty or a life-without-parole sentence is imposed." *Jones v. State*, 440 S.C. 14, 26, 889 S.E.2d 590, 597 (2023). *See Roper v. Simmons*, 543 U.S. at 575 (Eighth Amendment prohibits capital punishment for murder where offenders were under eighteen at time of crime);

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16 R. 19, l. 13 – 20, l. 5; R. 140, l. 21 – 141, l. 3; R. 88, ll. 8-11; R. 86, ll. 3-6; R. 92, l. 7 – 94, l. 13.

Graham v. Florida, 560 U.S. 48, 74 (2010) (Eighth Amendment prohibits life without parole for offenders who were under eighteen and committed nonhomicide offenses); *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (mandatory life without parole for those under age eighteen at time of homicide violates the Eighth Amendment).

It is the "rare juvenile offender whose crime reflects irreparable corruption." *Roper v. Simmons*, 543 U.S. at 57. "[B]ecause juveniles have lessened culpability they are less deserving of the most severe punishments." *Graham v. Florida*, 560 U.S. at 68. "[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Id.* "[A]ppropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Miller v. Alabama*, 567 U.S. at 479. "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*, 567 U.S. at 480.

"[A] judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Miller v. Alabama*, 567 U.S. at 489. "A hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Montgomery v. Louisiana*, 577 U.S. 190, 210 (2016) (quoting *Miller*, 567 U.S. at 465). However, *Miller* did not require the sentencer to make a separate finding of permanent incorrigibility before imposing a life without parole sentence. *Jones v. Mississippi*, 141 S.Ct. 1307, 1316 (2021).

"We have followed United States Supreme Court precedent in interpreting the Eighth Amendment as applied to South Carolina law. *See Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572

(2014) (holding inmates sentenced to life without parole as juveniles before *Miller* were entitled to resentencing because their sentences violated the Eighth Amendment)." *Jones v. State*, 440 S.C. at 27, 889 S.E.2d at 597.[17] "[I]t is for the states, in the first instance, to explore the means and mechanisms for complying with the Eighth Amendment." *State v. Slocumb*, 426 S.C. 297, 313, 827 S.E.2d 148, 156 (2019).

Aiken requires juveniles receive an individualized hearing where the mitigating hallmark features of youth are fully explored before they may be sentenced to life without parole. *State v. Smart*, 439 S.C. 641, 648, 889 S.E.2d 573, 577 (2023).

> *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 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.

Aiken v. Byars, 410 S.C. at 544, 765 S.E.2d at 577 (cleaned up). "[T]he type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above. *Id.*, 410 S.C. at 544-45. "[W]e are mindful that juveniles are entitled to careful sentencing under the Eighth Amendment, and we direct circuit court judges to consider the mitigating factors of youth articulated in *Aiken v. Byars*." *Jones v. State*, 440 S.C. at 25, 889 S.E.2d at 596.

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17 *Cf. Aiken*, 410 S.C. at 546, 765 S.E.2d at 578 (Pleicones, J., concurring) ("the majority exceeds the scope of current Eighth Amendment jurisprudence in ordering relief under *Miller*, I would reach the same result under S.C. Const. art. I, § 15").

There is no burden of proof or persuasion on either party at an *Aiken v. Byars* resentencing hearing, and there is no presumption for or against any sentence. *State v. Smart*, 439 S.C. at 645, 889 S.E.2d at 575. The resentencing court must consider all the evidence and arguments presented at the resentencing hearing and impose an appropriate sentence without any regard to the prior sentencing court's thought process or decision." *Id.*

A "textbook example of what a proper *Aiken* hearing affords" is one in which the resentencing court: listened to testimony from an expert psychologist who examined the defendant and reviewed his records; received testimony from a number of witnesses regarding the circumstances of the crime and the defendant's background; weighed the evidence; considered counsel's arguments; and analyzed the *Aiken* factors before imposing a sentence. *Jones v. State*, 440 S.C. at 32, 889 S.E.2d at 600 (Hearn, Acting J., concurring). *See State v. Mack*, Op. 6031 (S.C. Ct. App. refiled November 1, 2023) (Howard Adv. Sh. No. 43 at 16, 31) ("the resentencing court's order does not reflect a careful and thorough consideration of the *Aiken* factors").

Much favorable evidence was introduced at the hearing. Appellant's religious upbringing and large, close-knit family were positive facts on the possibility of rehabilitation. Dozens of family members and community members were present in support of Appellant at the resentencing hearing. Appellant's intelligence was also a fact in his favor. Appellant's impetuosity and immaturity at the time of the crime were demonstrated by his 1996 expulsion from school for carrying a weapon on school property. Peers were involved in that offense. The spur-of-the-moment nature of the murder also went to Appellant's impetuosity and immaturity.

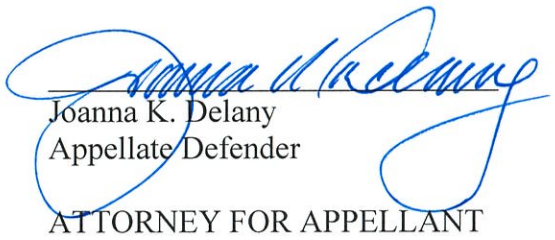
Trial counsel's statements to the trial judge that Appellant did not follow his advice to testify, and that Appellant did not understand the seriousness of the case, went to how the

incompetencies of youth affected the case's outcome. Appellant was remorseful. His age would have caused him to have underdeveloped impulse control, as explained by Dr. Cauffman.

It is not apparent the trial court weighed this information. The court did not rule on the record, and instead only issued a sentence sheet. This order does not reflect that the constitutionally required careful consideration of evidence on the *Aiken v. Byars* factors occurred in determining the appropriate sentence. This Court should remand the matter for the circuit court to make specific findings and conclusions on the *Aiken* factors. U.S. Const. amend. VIII; S.C. Const. art. I, § 15; *Aiken v. Byars*, 410 S.C. at 544, 765 S.E.2d at 577; *Jones v. State*, 440 S.C. at 25, 889 S.E.2d at 596.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse and remand the matter for the circuit court to make specific findings and conclusions in accordance with *Aiken v. Byars*.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of August, 2024.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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This 12th day of August, 2024.

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APPELLATE CASE NO. 2023-000160

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); this 12th day of August 2024.

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