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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT

V.

ANGELO HAM,

APPELLANT

APPELLATE CASE NO. 2024-000550

BRIEF OF APPELLANT PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Did the resentencing court err as a matter of law by sentencing Appellant to life without parole for an offense he committed as a fifteen year old juvenile where the court failed to properly consider and apply the Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) factors, particularly where the court misinterpreted several factors and used them as evidence of aggravation instead of as evidence mitigating in favor of a sentence less than life?

STATEMENT OF THE CASE

On September 14, 2004, the state filed juvenile petitions charging Appellant with murder, armed robbery, and possession of a weapon during the commission of a violent crime for actions that occurred on September 9, 2004, when Appellant was fifteen years old. App. 1. That same day, the state filed a motion requesting the petitions be transferred to the Court of General Sessions. App. 1. On July 18, 2005, a hearing was held before the Honorable Roger E. Henderson to determine whether jurisdiction should be transferred to the Court of General Sessions. App. 2. Then Assistant Solicitor Kenard Redmond represented the state. Henry "Hank" Anderson, Jr. represented Appellant. App. 2. By order dated August 3, 2005, Judge Henderson found it was "in the best interest of Angelo Ham that he be waived up to the Court of General Sessions." App. 50-51.

A Darlington County grand jury indicted Appellant in October 2005 for murder, armed robbery, and criminal conspiracy. App. 590-595. On April 17, 2006, Appellant pled guilty as indicted before the Honorable John Milling. App. 52. Judge Milling sentenced Appellant to five years imprisonment for conspiracy. App. 80, ll. 9-24. However, he deferred sentencing on the murder and armed robbery offenses until after Appellant's codefendant Anthony Robinson, who was served with notice of the state's intent to seek the death penalty, was tried. The state anticipated that Appellant and his codefendant Dennis Hunter would testify against Robinson. App. 56, l. 22 – 57, l. 6.

Appellant's codefendant Anthony Robinson ultimately pled guilty in exchange for a sentence of life without parole. Consequently, Appellant's testimony against Robinson was not needed. On September 14, 2007, a sentencing hearing was held before Judge Milling. At the

conclusion of the hearing, Judge Milling sentenced Appellant to life without parole for murder and twenty-five years for armed robbery. App. 122, ll. 19-21.

Appellant timely filed a notice of appeal. However, with the advice of counsel, Appellant ultimately withdrew his direct appeal. By order filed June 9, 2008, the Court of Appeals dismissed Appellant's appeal. App. 125-128.

On November 21, 2008, Appellant filed an application for post-conviction relief. App. 145-149. The state filed a return to this application dated February 25, 2009. App. 150-154. An evidentiary hearing was convened on September 13, 2010, before the Honorable Thomas A. Russo. Then Assistant Attorney General Karen Ratigan represented the state. Gary Finklea represented Appellant. By order filed December 10, 2010, Judge Russo denied Appellant relief. App. 156-167. On March 11, 2014, the Court of Appeals dismissed Appellant's appeal after a review pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). App. 168-169.

On March 20, 2013, Appellant filed a successive application for post-conviction relief arguing his sentence of life without parole imposed for a crime he committed as a juvenile violated the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution pursuant to Miller v. Alabama, 567 U.S. 460 (2012), where the United States Supreme Court held that mandatory sentences of life without parole for juvenile offenders violate the Eighth Amendment. App. 171-181. On that same day, Appellant filed a motion to stay the proceedings until the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). App. 182-185. By order filed March 16, 2017, the circuit court ultimately dismissed Appellant's application in light of our Supreme Court's holding in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

On June 8, 2016, Appellant filed a motion for resentencing pursuant to Aiken v. Byars. App. 431-433. A resentencing hearing was held on March 3, 2022, before the Honorable Roger E. Henderson. App. 434. Deputy Solicitor Kenard Redmond represented the state. Robert Gailliard represented Appellant. App. 434. At the conclusion of the hearing, Judge Henderson resentenced Appellant to life without parole for murder. App. 521, ll. 13-25.

While a timely notice of appeal was filed on Appellant's behalf, the Court of Appeals dismissed Appellant's appeal because counsel for Appellant failed to timely serve the notice of appeal on the state. App. 560. The Court of Appeals denied Appellant's subsequent motion to recall the remittitur. App. 572-573.

On April 26, 2022, Appellant filed an application for post-conviction relief (PCR) seeking a belated direct appeal from his resentencing pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974). App. 574-580. The state filed a return to this application on February 8, 2023. App. 581-589. An evidentiary hearing was convened on March 4, 2024, before the Honorable George McFadden, Jr. App. 596. Assistant Attorney General D. Russell Barlow represented the state. Steven Fowler represented Appellant. App. 596. By order filed March 15, 2024, Judge McFadden granted Appellant a belated appeal. App. 606-611.

This brief of appellant pursuant to White v. State follows.

STATEMENT OF FACTS

Richard Griggs, the decedent, owned and operated Griggs Thriftway, a small store in Hartsville, South Carolina. On the night of September 9, 2004, after the store had closed, Anthony Robinson and Appellant approached the door of the store. The state alleged the decedent "would open his store even after it had closed for people he knew." The decedent opened the door and allowed Robinson and Appellant inside. After bringing items to the register to supposedly purchase, Robinson, who carried a .22 pistol, shot the decedent several times. Robinson and Appellant then stole over fifteen hundred dollars from the store. Dennis Hunter, who the state alleged conspired with Robinson and Appellant to rob the store, waited outside in the getaway car. The three then went to the Hartsville Motel. Within two hours, they were apprehended by law enforcement at the motel. Officers found the pistol Robinson used to shoot the decedent as well as the stolen cash in the motel room. All three ultimately gave "videotaped confessions" outlining their roles in the robbery and murder. App. 73, l. 2 – 75, l. 25. Neither Appellant nor Hunter were armed. It was undisputed that Robinson was the sole gunman.

The night before the robbery, Robinson, who was nineteen or twenty years old, shot his girlfriend with the same pistol he used to shoot the decedent in this case. App. 42, ll. 2-20. Law enforcement had a warrant for Robinson's arrest and was actively searching for him as a result of this shooting. Robinson was "trying to leave town" to avoid apprehension. Robinson planned the robbery of Grigg's Thriftway with then fifteen year old Appellant and sixteen year old Hunter to obtain money to fund his flight. App. 78, ll. 1-4. The police were able to apprehend Robinson, Appellant, and Hunter so quickly after the robbery because of their previous efforts to locate and arrest Robinson for shooting his girlfriend. App. 74, ll. 11-23.

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. Therefore, 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. Mack, 441 S.C. 526, 535-36, 894 S.E.2d 820, 825 (Ct. App. 2023) (citing State v. Finley, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019)) (emphasis removed).

ARGUMENT

The resentencing court erred as a matter of law by sentencing Appellant to life without parole for an offense he committed as a fifteen year old juvenile where the court failed to properly consider and apply the *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) factors, particularly where the court misinterpreted several factors and used them as evidence of aggravation instead of as evidence mitigating in favor of a sentence less than life.

In 2012, the United States Supreme Court issued a landmark decision in Miller v. Alabama, 567 U.S. 460 (2012). State v. Mack, 441 S.C. 526, 536, 894 S.E.2d 820, 825 (Ct. App. 2023). The Court held "that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Miller, 567 U.S. at 465 (quoting U.S. Const. amend. VIII). "The Court explained this conclusion rested on the nature of human development and the recognition in constitutional law that 'children are different.'" Mack, 441 S.C. at 536, 894 S.E.2d at 825 (citing Miller, 567 U.S. at 479-81). The Court in Miller stated:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

Miller, 567 U.S. at 477-78.

The South Carolina Supreme Court considered the impact of Miller on South Carolina law in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). Mack, 441 S.C. at 537, 894 S.E.2d

at 826. The Court held "Miller affected South Carolina's discretionary sentencing regime because 'Miller does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered.'" Mack, 441 S.C. at 537, 894 S.E.2d at 826 (quoting Aiken, 410 S.C. at 543, 765 S.E.2d at 576-77). Our Supreme Court in Aiken set forth factors to guide courts in carrying out their duties under the Eighth Amendment. Mack, 441 S.C. at 537, 894 S.E.2d at 826 (citing Aiken, 410 S.C. at 544, 765 S.E.2d at 577).

After Aiken, the United States Supreme Court elaborated further on the dimensions of Miller in Montgomery v. Louisiana, 577 U.S. 190 (2016). The Court exclaimed, "Miller, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.' Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'" Montgomery, 577 U.S. at 208 (quoting Miller, 567 U.S. at 472). The Court added: "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." Id. at 210 (quoting Miller, 567 U.S. at 465).

In 2021, the United States Supreme Court again addressed the issue in an effort to clarify the meaning of Miller and Montgomery. In Jones v. Mississippi, 593 U.S. 98, 109 (2021), the Court held, "Miller did not require the sentencer to make a separate finding of permanent incorrigibility before imposing such a sentence." Instead, the majority found that "the Court's precedents require a discretionary sentencing procedure in a case of this kind." Id. at 120.

As emphasized by this Court in Mack, "Our supreme court has decided that, in South Carolina, compliance [with the holdings of Miller and Montgomery] should take the shape of a review of the Aiken factors." Therefore, respectfully, this Court should review the resentencing court's process in considering the Aiken factors in Appellant's case. The Aiken factors 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, 410 S.C. at 544, 765 S.E.2d at 577 (quoting Miller, 567 U.S. at 477-78) (internal quotation marks and alternations omitted).

Recently, in Mack, the Court of Appeals held the resentencing court did not adequately consider and apply the Aiken factors before sentencing Mack to life without parole.[1] In particular, the Court of Appeals held the resentencing court did not properly consider the hallmark features of youth and Mack's upbringing. Mack, 441 S.C. at 546, 894 S.E.2d at 830. The court emphasized that the resentencing court's order addressed Mack's age only as a "chronological fact" and did not seem to consider the "hallmark features of youth" at all. Id. at 540, 894 S.E.2d at 827. The resentencing court noted that Mack was seventeen years old at the time of the murder, which is "within one year of being able to serve in the military and possibly fight and die for this country" and "within one year of an age whereby he would have immense

[1] Our Supreme Court denied the state's petition for writ of certiorari to the Court of Appeals in Mack on September 24, 2024.

responsibilities and be considered an adult by law." Id. at 540-41, 894 S.E.2d at 827-28. The Court of Appeals in Mack held "Miller requires more; it requires 'factors of youth be carefully and thoughtfully considered' in the individualized sentencing proceeding." Id. at 540, 894 S.E.2d at 828. The court concluded, "Simply finding that Mack was almost eighteen . . . does not account for the careful and thoughtful consideration the U.S. Supreme Court considers vital." Id. at 542, 894 S.E.2d at 829.

Moreover, the Court of Appeals held the resentencing court did not meaningfully consider the second Aiken factor: "the family and home environment that surrounded the offender." Id. at 543-44, 894 S.E.2d at 829. The resentencing court found, "Mack 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 his life. However, the court recognizes that many successful people grew up in chaotic and violent environments and were able to adhere to the law and become productive members of society." Id. at 544, 894 S.E.2d at 829. The Court of Appeals concluded the resentencing court "misapprehended the nature of the question this Aiken factor seeks to answer. The inquiry does not ask the court to use the success of others in overcoming their circumstances as the yardstick when considering the defendant's circumstances. ... The inquiry requires the court to consider the impact of *the defendant's* family and home environment *on his crimes*. It is a specific and individualized inquiry." Id. at 544, 894 S.E.2d at 829-30 (emphasis in original). The Court of Appeals emphasized that "the resentencing court did not make findings as to how Mack's childhood affected *him*." Id. at 544, 894 S.E.2d at 830 (emphasis in original). Accordingly, the appellate court reversed and remanded for resentencing.

In this case, like in Mack, the resentencing court erred as a matter of law by sentencing Appellant to life without parole where the court failed to properly consider and apply the Aiken factors. The court misinterpreted several factors and used them as evidence of aggravation instead of as evidence mitigating in favor of a sentence less than life.

The first Aiken factor requires the sentencing court to consider "the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence." The sentencing court noted that Appellant was fifteen years old at the time of the offense and that doctors with the Department of Juvenile Justice found during Appellant's waiver evaluation that Appellant was "not mature" and "did not meet [the] expected level of a 16 year old at that time." However, the court discredited this finding stating, "But that's just one factor and one thing they said." The court went on to conclude that Appellant, despite his age, should have known the risks and consequences of his actions because he had previously been adjudicated delinquent fourteen times. The court asserted, "He [Appellant] knew there were risks involved in committing an armed robbery. He knew that if he got caught and was arrested he was gonna go to jail or at least, have to go to court and let the court determine whether or not he was guilty. So I cannot believe that he did not understand or appreciate the risks and consequences involved. He had to have. Common sense tells you that after his experience with the law. DJJ may have found him to be immature but some of that immaturity is gone after you've been arrested 14 times." App. 512, l. 12 – 513, l. 25.

Based on the resentencing court's statements, the court clearly misinterpreted this Aiken factor. The court summarily dismissed the finding from the waiver evaluation that Appellant, then sixteen, was immature, even for his age. The court also ignored the finding that "despite his long criminal record, and despite his efforts at trying to be grown up, he [Appellant] seemed like

a child trying to make believe that he was an adult." App. 543. The sentencing court also improperly relied on Appellant's juvenile record to find Appellant "had to have" appreciated the risks and consequences involved in participating in the armed robbery. Despite what Miller and Aiken require, the resentencing court summarily dismissed the hallmark features of youth.

Long before Miller, in Johnson v. Texas, 509 U.S. 350, 367 (1993), the United States Supreme Court recognized that a "lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." In Eddings v. Oklahoma, 455 U.S. 104 (1982), the Oklahoma Court of Criminal Appeals refused to consider Eddings' personality disorder and family history as mitigating because, in its view Eddings "knew the difference between right and wrong," and the evidence did not "excuse" the behavior. Eddings, 455 U.S. at 113. The United States Supreme Court admonished the state appellate court from "considering only that evidence to be mitigating which would tend to support a legal excuse from criminal liability." Id. Emphasizing that "the chronological age of minor is a relevant mitigating factor of great weight," the Court held the background and mental and emotional development of a youthful defendant" must be "duly considered in sentencing." Id. at 116. The resentencing court in this case failed to do so.

The second Aiken factor requires the sentencing court to consider "the family and home environment that surrounded the offender." The resentencing court's consideration of this factor is particularly troubling. The court acknowledged Appellant did not "have the best home life" but maintained "that's just one factor." The court asserted, "[H]e did well when he was in the home of the foster people so he knew how to act. He knew how to behave when he was in the right environment. You know, there's a lot of people in this world who came from terrible

situations [and] ha[ve] been successful in life. They don't let that be an excuse for them that I had a bad home. I had a bad step daddy. I had a mama who used drugs and drank and did stuff." App. 514, l. 1 – 515, l. 3.

Like the resentencing court in Mack, the resentencing court here "misapprehended the nature of the question this Aiken factor seeks to answer. The inquiry does not ask the court to use the success of others in overcoming their circumstances as the yardstick when considering the defendant's circumstances." Mack, 441 S.C. at 544, 894 S.E.2d at 829-30. The resentencing court wholly failed to consider how Appellant's childhood affected him and impacted his crime. The evidence from Appellant's waiver evaluation showed Appellant grew up in an abusive and neglectful environment. He rarely saw his biological father. His mother's boyfriend, who "was like a father to Angelo [Appellant]," was physically abusive to Appellant's mother and was a drug dealer. Appellant's mother was addicted to crack cocaine. She stabbed her boyfriend, Appellant's only father figure, seven times and was incarcerated for a significant period of time as a result. Appellant lived with his grandmother during his mother's incarceration and was allowed to "run wild." The evaluation report noted Appellant would benefit from a stable environment that provided structure and a positive peer group. App. 534-543.

Here, in the view of the resentencing court, a difficult childhood was simply something to overcome. The court transformed Appellant's mitigating evidence into aggravating evidence because Appellant was unable to pull himself up by his bootstraps in order to rise above his circumstances. In doing so, the court erred in sentencing Appellant to life because it refused to consider Appellant's unrefuted mitigating evidence and give it the constitutional significance demanded by the Eighth Amendment.

The third Aiken factor requires the sentencing court to consider "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." Again, the court used this factor as evidence of aggravation rather than as evidence mitigating a sentence less than life. The resentencing court emphasized that this was a "horrific" homicide, that the perpetrators "came in and shot this man like a dog." The court noted the state's allegation that the decedent knew Appellant, which is why the decedent opened the door of the store after it had closed, and that "they" took advantage of the decedent's kindness. App. 515, l. 4 – 516, l. 25.

However, the court wholly failed to consider *Appellant's role* in the armed robbery and murder as evidence of mitigation. Specifically, Appellant was not the shooter. Appellant was not even armed during the killing. The court also completely dismissed the fact that peer pressure likely affected Appellant. Notably, the shooter and ringleader of the conspiracy was a nineteen or twenty year old adult, Anthony Robinson. Robinson needed cash to fund his flight from law enforcement after he shot his girlfriend the night before. Robinson recruited Appellant and Dennis Hunter to assist him in the robbery of Griggs Thriftway to obtain the cash he needed. During his interview as part of his waiver evaluation, Appellant admitted "he was affected by peer pressure." App. 540-542. The sentencing court found Appellant did not "commit this crime totally because of peer pressure." While that is likely true, the court improperly dismissed the fact that peer pressure and negative influences clearly played a role.

The fourth Aiken factor requires the sentencing court to consider "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." The resentencing court found Appellant "clearly assisted his attorney" without any

support for this assertion. The court noted there "was no competency evaluation that said he [Appellant] couldn't assist his attorney to trial, so that, that knocks that out." App. 517, ll. 3-18. The court further found "there was no real showing to me of any incapacities of him at that particular age. As a matter of fact, quoting DJJ's report, 'Angelo demonstrated intellectual capacity.'" App. 517, ll. 18-23. The court further asserted, "All youth have incapacities. But in this particular case, they don't rise to the point that he [Appellant] should be excused for what he did on this particular night. No indication that he ever had a problem dealing with his attorney or law enforcement." App. 518, l. 22 – 519, l. 8.

Again, the resentencing court clearly misinterpreted this factor and failed to properly consider how Appellant's "incompetencies associated with youth" affected him and mitigated in favor of a sentence less than life. As recognized by the United States Supreme Court, "The features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings." Graham v. Florida, 560 U.S. 48, 78 (2010). "Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it." Id. As a result, "they are less likely than adults to work effectively with their lawyers to aid their defense." Id. Children have "difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel, seen as part of the adult world a rebellious youth rejects," which leads to "poor decisions by one charged with a juvenile offense." Id.

Here, Appellant's comments during his original sentencing hearing are evidence of his "incompetencies associated with youth." See App. 117, l. 21 – 120, l. 25. Appellant complained about his trial attorney and demonstrated a general distrust of adults that negatively impacted his ability to effectively work with his attorney. Appellant asserted that his attorney was "trying to

get [him] this time." This remark demonstrated Appellant's confusion regarding the role of his attorney. Appellant's additional comments, which the original sentencing court and the resentencing court used as evidence of aggravation, demonstrated Appellant's impulsiveness and his inability to appreciate the long term consequences of his choices, which were a product of Appellant's youth. Appellant's outburst during his original sentencing proceeding should have been associated with his youthful incompetencies, not as evidence of aggravation.

Moreover, Appellant, at then fifteen years old, gave a videotaped confession to law enforcement upon his arrest. As an incompetent youth, Appellant succumbed to the interrogation by law enforcement and provided an incriminating statement. See J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011) ("A reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.").

Lastly, the fifth Aiken factor requires the sentencing court to consider "the possibility of rehabilitation." The resentencing court asserted that Appellant's juvenile offenses "escalated." The court also emphasized the comment in Appellant's waiver evaluation that "persons who are guilty but who do not admit their wrongdoing are less likely to rehabilitate very well." The court maintained that Appellant recanted his original confession and, even during the resentencing proceeding, attempted to minimize his actions by indicating "what he did was manslaughter." App. 519, l. 9 – 521, l. 2. The court dismissed Appellant's apology to the family and completely ignored the fact that Appellant pled guilty to murder, armed robbery, and criminal conspiracy thereby formally admitting his guilt under oath. Appellant accepted responsibility for his actions and was willing to testify against his codefendant Robinson before Robinson likewise pled guilty. Additionally, Appellant's comment about manslaughter merely demonstrated his confusion about the law and likely the theory of accomplice liability, given that Appellant was

not the shooter. The court ignored the other evidence that Appellant could be rehabilitated, including his intelligence and his ability to do well in a structured environment. See App. 543.

The Court of Appeals emphasized in Mack that "applying the Aiken factors involves more than repeating the words; it requires applying the substantive content of those factors." Mack, 441 S.C. at 544, 894 S.E.2d at 830. However, that is precisely what the resentencing court did here. While the court claimed it "looked at" and "considered" the "various factors," the record undisputedly shows that it did not and where it did, the court misinterpreted the meaning or import of the factors. Respectfully, this Court should vacate Appellant's sentence of life without parole and remand for resentencing in compliance with Eighth Amendment jurisprudence, including Miller and Aiken.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court vacate his sentence of life without parole and remand for resentencing in compliance with Miller v. Alabama, 567 U.S. 460 (2012) and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

Respectfully submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of November, 2024.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT

V.

ANGELO HAM,

APPELLANT

APPELLATE CASE NO. 2024-000550

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Appellant Pursuant to White v. State in the above referenced case has been served upon D. Russell Barlow, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 12th day of November, 2024.

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT