RECEIVED
Nov 20 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

STEVE LESTER,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001900

INITIAL BRIEF OF APPELLANT

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Cases

South Carolina Cases

Constitutional Provisions

STATEMENT OF ISSUE ON APPEAL

Did the circuit court err denying Mr. Lester's motion for resentencing, pursuant to *Miller* and *Aiken*, without a hearing where his life sentence is equivalent to life without the possibility of parole because, although Mr. Lester has been eligible for parole numerous times, he has been summarily denied each time for unchangeable reasons, over which he has no control, making his life sentence as a juvenile violative of both the South Carolina Constitution and the Federal Constitution?

STATEMENT OF THE CASE

On March 12, 1975, Steve Lester pled guilty to murder and two counts of robbery. Mr. Lester was sentenced to concurrent terms of life imprisonment for murder and for one count of armed robbery, and a consecutive term of fifteen years' imprisonment for the second count of armed robbery. Sentence sheet.

Mr. Lester was denied parole twenty times beginning in 1984 and until 2021. S.C. Dept. P.P.P. Letters.

In February 2019, Mr. Lester filed a pro se motion for resentencing, pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012). Motion. On March 1, 2019, the South Carolina Supreme Court ordered The Honorable Alex Kinlaw, Jr., vested with exclusive jurisdiction in the matter. March 1, 2019, Order. On December 4, 2020, Judge Kinlaw, by written order, requested briefs from the state and counsel for Mr. Lester in support of their positions as to whether Mr. Lester was entitled to a hearing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Scheduling Order.

On March 4, 2021, counsel for Mr. Lester filed the brief of defendant. Brief. On May 28, 2021, the state filed its response. Response. On November 7, 2023, Judge Kinlaw signed an order denying Mr. Lester's motion for resentencing without a hearing. Nov. 7, 2023, Order.

This appeal follows.

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. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) (citations omitted). *State v. Mack*, 441 S.C. 526, 535–36, 894 S.E.2d 820, 825 (Ct. App. 2023).

ARGUMENT

The circuit court erred denying Mr. Lester's motion for resentencing, pursuant to *Miller* and *Aiken*, without a hearing where his life sentence is equivalent to life without the possibility of parole because, although Mr. Lester has been *eligible* for parole numerous times, he has been summarily denied each time for unchangeable reasons, over which he has no control, making his life sentence as a juvenile violative of both the South Carolina Constitution and the Federal Constitution.

Relevant facts[1]

Steve Lester committed serious crimes when he was sixteen years old. On March 12, 1975, four months after his arrest, Mr. Lester pled guilty and was sentenced to life imprisonment with the possibility of parole after ten years. The only known mitigation offered at sentencing by defense counsel was Mr. Lester was a drug addict and the crimes were committed in furtherance of his addiction. Brief.

For fifty years Mr. Lester has been continuously incarcerated. He has been before the parole board twenty times. Mr. Lester has been denied every time. Mr. Lester's first denial of parole was November 14, 1984. The reasons listed in his notice of rejection were nature and seriousness of offense, indication of violence in this or previous offense, use of deadly weapon in this or previous offense, background indicates need for medical attention physical and/or mental. Nature and seriousness of the offense, Indication of violence in this or previous offense, and use of deadly weapons in this or previous offense were listed in every rejection since that time. The

---

1 Due to the age of Mr. Lester's case there are no available transcripts of Mr. Lester's guilty plea hearing. Additionally there was no resentencing hearing held. The relevant facts portion of the brief has been incorporated from the Brief of Defendant, Indictments, Sentence Sheets, Order, and Letters from South Carolina Department of Probation, Parole, and Pardon Services (S.C. Dept. P.P.P).

only additional reasons listed were October 16, 1985, November 12, 1986, which both added the reason of disciplinary action and three rejections from the 2000s that stated "institutional record unfavorable." S.C. Dept. P.P.P. Letters.

In the brief of defendant counsel for Mr. Lester argued (1) the parole board's refusal to consider the standards set by *Aiken v. Byars*, violated due process and (2) Mr. Lester's continued incarceration for a crime he committed as a juvenile constituted disproportionate punishment in violation of the Federal and State Constitutions. Brief.

The state argued Mr. Lester's motion to be resentenced should be denied because he is not a member of the class of offenders afforded relief under *Miller v. Alabama*, and *Aiken v. Byars*, where (1) he did not receive a sentence of life without the possibility of parole (LWOP) (2) the imposition of his life sentence was not mandatory, and (3) he has had numerous parole hearings since he became eligible in 1984. State's Response.

In the order denying Mr. Lester's motion Judge Kinlaw first found the motion untimely filed. Judge Kinlaw also denied the motion finding because Mr. Lester became parole eligible after serving ten years of his sentence he was not entitled to resentencing as required by *Miller* and *Aiken*. Nov. 7, 2023, Order.

Discussion

Mr. Lester is entitled to a resentencing hearing pursuant to *Miller* and *Aiken* where his sentence of life, while "*technically*" eligible for parole, is equivalent to a sentence of life without the possibility of parole because he has been continually denied parole "based on the same factors, all unchangeable and related to [his] offenses." *See Buchanan v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 442 S.C. 393, 406, 899 S.E.2d 600, 607 (Ct. App. 2023), reh'g granted (Oct. 18, 2023), cert. denied (Apr. 16, 2024) (Noting, "[a]lthough Buchanan and other juveniles

similarly situated are technically eligible for parole, the continuing denial of parole based on the same factors, all unchangeable and related to their offenses, gives no guidance to these inmates about what can be done to improve their chances of parole and is very nearly equivalent to being ineligible for parole.").

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. The South Carolina Constitution provides that, "Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained." S.C. Const. art. I, § 15.

In *Roper v. Simmons*, the United States Supreme Court held execution of persons who were under the age of eighteen at the time of their capital crimes was prohibited by the Eighth and Fourteen Amendments. 543 U.S. 551 (2005). Five years later in *Graham v. Florida*, the Supreme Court held the Eight Amendment prohibited the imposition of life without the possibility of parole on juvenile offenders who did not commit homicide and the state must give juvenile nonhomicide offenders sentenced to life without the possibility of parole a meaningful opportunity to obtain release. 560 U.S. 48 (2010).

Roper and *Graham* established "children are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 567 U.S. 460, 471 (2012). Children are different from adults because they have "diminished culpability" and "greater prospects for reform" and are thus "less deserving of the most severe punishments. *Id.*

Two years after *Graham*, in *Miller v. Alabama*, 567 U.S. 460 (2012), the United States Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.

In *Aiken v. Byars*, 410 S.C. 534, 540-541, 765 S.E.2d 572, 575-576 (2014), the South Carolina Supreme Court found "*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." The Court found *Miller* clarified that it was the failure of the sentencing court to consider the "hallmark features of youth" prior to sentencing that offends the Constitution. *Id.* at 543, 765 S.E.2d at 576-577.

In *Aiken*, the South Carolina Supreme Court held that the principles enunciated in *Miller v. Alabama* apply ". . . prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." 410 S.C. at 545, 765 S.E.2d at 578. In a footnote the South Carolina Supreme Court wrote, ". . . for the purposes of this opinion, a juvenile was an individual under eighteen years of age." *Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1. The principles of *Miller* and *Aiken* apply to Mr. Lester because he was seventeen of age and was subject to a sentence that is equivalent to life without the possibility of parole.

In this Court's recent opinion in *Buchanan v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, the Court "reluctantly affirm[ed] the [Administrative Law Court's] finding that the [Parole] Board followed the proper procedure when it denied Buchanan parole." 442 S.C. 393, 407, 899 S.E.2d 600, 608 (Ct. App. 2023), reh'g granted (Oct. 18, 2023), cert. denied (Apr. 16, 2024). In that case Mr. Buchanan appealed an order of the ALC, which affirmed the denial of his parole by the Parole Board of the South Carolina Department of Probation, Parole and Pardon Services. 442 S.C. 393, 899 S.E.2d 600 (Ct. App. 2023).

In 1973, at the age of 17, Mr. Buchanan pled guilty to murder and was sentenced to life imprisonment. At the time of his appeal Buchanan had been denied parole eighteen times. This Court expressed concern regarding the "perfunctory manner in which Buchanan's request for

parole was denied." This Court went on to say, "[a]lthough Buchanan and other juveniles similarly situated are technically eligible for parole, the continuing denial of parole based on the same factors, all unchangeable and related to their offenses, gives no guidance to these inmates about what can be done to improve their chances of parole and is very nearly equivalent to being ineligible for parole."

Mr. Lester was not sentenced to life without the possibility of parole when he pled guilty in 1975. However, his sentence has become life without the possibility of parole as he has been continuously denied parole for reasons he cannot change. Mr. Lester should be resentenced pursuant to *Miller* and *Aiken.* Or, at the very least, Mr. Lester should be given a hearing in order to present evidence for a court to consider whether he might be resentenced under *Miller* and *Aiken.*

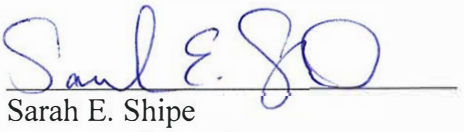
Judge Kinley found Mr. Lester's motion for resentencing untimely where it was not filed until February 27, 2019. The Court should apply equitable tolling to Mr. Lester's motion for resentencing. Equitable tolling has been deemed necessary where: "extraordinary circumstances" prevented the individual from filing despite their diligence; the individual "actively pursued [their] judicial remedies by filing a defective pleading during the statutory period," or the individual, "despite all due diligence, [was] unable to obtain vital information bearing on the existence of [their] claim." *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 620–21 (Ct. App. 2008). Mr. Lester has been continuously incarcerated for fifty years and during that time he was without resources to hire an attorney to advocate effectively on his behalf. While incarcerated Mr. Lester filed numerous applications seeking post-conviction relief in his case but was denied as his claims were not proper or were deemed successive.

Pursuant to *Miller* and *Aiken*, a sentencing court must consider at a hearing: (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." *Miller*, 567 U.S. at 477-478; *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577. The "hallmark features of youth" were not considered at Mr. Lester's 1975 sentencing nor have they been considered at any subsequent parole hearings. None of this evidence has been presented or considered in Mr. Lester's case thus far because Mr. Lester was denied resentencing without a hearing.

The failure in the present case violates Mr. Lester's right to be free from cruel and unusual punishment pursuant to the Eighth Amendment of the U.S. Constitution and Article I Section 15 of the South Carolina State Constitution. The failure to at the very least have a hearing where the *Aiken* factors are considered in Mr. Lester's case constitutes an error of law.

CONCLUSION

Based on the foregoing argument this Court should reverse the circuit court's denial of resentencing without a hearing and remand the case to the circuit court for an individualized sentencing hearing where the circuit court must consider the factors required by *Miller v. Alabama*, and *Aiken v. Byars*.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of November, 2024.