

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Feb 13 2025

SC Court of Appeals

Appeal from Horry County

The Honorable Benjamin H. Culbertson, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

DON LEEQUIN BROWN,

Appellant.

Appellant Case No. 2023-001336

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUE

Did the trial judge err in refusing to reconsider the forty-five (45) year sentence imposed as a violation of the Eighth Amendment's prohibition on cruel and unusual punishments and South Carolina Constitution's article I, section 15 prohibition against cruel, corporal, or unusual punishment because Appellant was seventeen (17) years old at the time of arrest and faced a sentence of life without parole for murder, but prior to sentencing the judge failed to conduct an individualized sentencing hearing and failed to consider the factors required by *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014)?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE

Did the trial court properly refuse to reconsider Appellant's term of years sentence based on his juvenility without violation of Appellant's right to be free from cruel and unusual punishments under the Eighth Amendment when Appellant was not sentenced to life without the possibility of parole and is therefore not entitled to an individualized hearing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014)?

STATEMENT OF THE CASE

In July of 2022, a Horry County Grand Jury indicted Appellant, 17-year-old Don Leequin Brown, for murder and three counts of attempted murder. (*See* Indictments, R. p. 762). On May 22, 2023, Appellant proceeded to jury trial with co-defendants Che Ransom¹ and Travontae J. Mitchell² before the Honorable Benjamin H. Culbertson.³ Johnny Gardener, Esq. represented Appellant at trial. Assistant Solicitors Nancy Livesay and Christopher Helms of the 15th Circuit Solicitor's Office prosecuted the case.

The jury found Appellant and his co-defendants guilty. Judge Culbertson sentenced Appellant and his co-defendants to 45 years for murder and 30 years for each count of attempted murder, to be served concurrently. (R. p. 757, lines 1-12, *see also* sentence sheets, R. p. 762).

On June 1, 2023, Appellant filed a motion to reconsider his sentencing and a motion for new trial. In the motion to reconsider his sentencing, Appellant argues that the trial court failed to evaluate mitigating factors in comparison with the aggravating factors that were present with co-defendant Whittington, and as such, violated Appellant's due process rights as well as his right to be free from cruel and unusual punishment pursuant to the Eighth Amendment (*See* Defendant's Motion to Reconsider Sentencing R. p. 778). On August 10, 2023, Judge Culbertson heard the motions and arguments on behalf of the parties (*See* August 10, 2023, Transcript R. p. 758). Judge Culbertson denied both motions stating that, "It was hand of one is the hand of all, and the jury found they were all acting together in aiding and abetting one another so therefore, the guilt of one is the guilt of all of them[.]" (August 10, 2023, R. p. 761, lines 17-22).

¹ Che Ransom was 18 years old at the time of the shooting. (R. p. 100, lines 18-19).

² Trevontae Mitchell was 16 years old at the time of the shooting. (R. p. 375, lines 10-17).

³ An additional co-defendant, Tronahz Whittington, proceeded to a jury trial for the murder of Jamie Johnson on February 28, 2023 - March 3, 2023. Whittington was convicted of murder and sentenced to 45 years' imprisonment. (R. p. 748, lines 6-9).

RESPONDENT'S STATEMENT OF FACTS

In the early evening of September 12, 2020, around 6:30 PM, armed with numerous weapons, Tronahz Whittington, Shamontae Graham,⁴ Travontae Mitchell, Che Ransom, Mikkie McLeod,⁵ and Appellant, Don Brown, were all riding in a blue/gray Chevy Caprice that Whittington borrowed from De'Shon Samuel. (R. p. 312, lines 4-23; p. 324, line 18 – p. 325 line 9; p. 415, lines 11-16; *see also* State's Exhibit 53). Appellant was the driver of the vehicle. (R. p. 321, lines 19-20). Approximately 45 minutes later, around 7:11 PM, Appellant, with his five co-defendants inside the Chevy Caprice, drove across town where they identified and followed Jamie Johnson, the murder victim, in his Chevy Tahoe. (R. p. 192, line 4-10; *see also* State's Exhibit 32 & 33). Britney Milam, Jacob Hill, and Orlin Lopez were also in Johnson's Tahoe at the time. (R. p. 169, line 17 - p. 170, lines 1-4).

Prior to the shooting, Whittington had a dispute with Johnson over Johnson taking weed from Whittington. (R. p. 215, line 8 – p. 216, line 1; p. 258, lines 12-19; p. 308, lines 24 – p. 309, line 1). Jacob Hill testified that Whittington and Johnson were messaging on Facebook a few weeks prior to the shooting. (R. p. 178, lines 7-21). One of the co-defendants saw Johnson had weed and money on Snapchat, and they formulated a plan to rob him. (R. p. 443, lines 8-17).

While the defendants were following Johnson, Johnson stopped at a stop sign. Whittington instructed Appellant to "stop the car" and Appellant pulled out in front of the Tahoe, blocking the Tahoe's path forward. (R. p. 335, line 8 – p. 336, line 6). Whittington then got out of the car and fired an AR-15 at Johnson aiming at the Tahoe's windshield. (R. p. 309, lines 9-15; R.

⁴ Shamontae Graham was 22 years old at the time of Appellant's trial. Graham's murder and three attempted murder charges - from the same incident - were pending at the time of Appellant's trial. (R. p. 308, lines 3-10).

⁵ Mikkie McLeod was 16 years old at the time of the shooting. McLeod's murder and three attempted murder charges - from the same incident - were also pending at the time of Appellant's trial. (R. p. 566, lines 5-9; p. 567, lines 15-22).

p. 325, lines 4-5; p. 579, line 2 – p. 580, line 21). Without instruction from Whittington, Ransom, McLeod and Mitchell, also exited the vehicle - Ransom with a .45 and McLeod with a 9mm. (R. p. 325, lines 6-9; p. 331, lines 5-16; p. 336, lines 7-25). Johnson attempted to put the vehicle in reverse, however, he was unable to do so while shots were being fired at the Tahoe. (R. p. 180, lines 1-12).

Britney Milam testified that she saw four individuals with guns get out of the vehicle. (R. p. 249, line 3-21; p. 260, lines 3-10). She testified that the three individuals who exited the vehicle from the backseat each had a gun and “got in a row and just started shooting.” (R. p. 249, lines 3-13). She testified that Johnson was unable to drive left or right because the defendants were all in a line and he would have hit the defendants or their Chevy Caprice. (R. p. 251, lines 8-17). She confirmed that if the Chevy Caprice had not been in front of their vehicle, they could have gotten away. (R. p. 253, line 23 – p. 254, line 1). She testified that Johnson attempted to reverse the Tahoe and when he turned his head around to look behind him, he was shot in the back of the head. (R. p. 243, lines 5-11).

Orlin Lopez testified to seeing “three or four guys” get out of the Chevy Caprice and start shooting at them. (R. p. 268, lines 8-12). He testified that he saw one individual with a gun get out of the front passenger side of the vehicle and two individuals also holding guns get out of the back seat before he ducked down. (R. p. 269, lines 4-25).

Jacob Hill testified that he saw one person get out of the driver’s seat and “three or four” individuals get out of the backseat. He confirmed that he saw the individual who got out of the passenger side with a gun. (R. p. 171, line 8 – p. 172, line 6).

Johnson suffered a fatal gunshot wound to his head. (R. p. 556, lines 12-23). A total of nine shell casings were recovered from the crime scene: seven 9mm Lugers and two .223

Remington FC spent casings. (R. p. 525 line 14 – p. 528 line 1). Due to the fragmentation of the bullet that killed Johnson, it was unable to be collected for testing. (R. p. 528 line 7 – p. 529 line 4).

Appellant, Travontae Mitchell, and Che Ransom did not testify at trial. (R. p. 650 lines 3-24; p. 650, lines 21-22; p. 651, lines 14-15). Judge Culbertson charged the jury on the theory of the hand of one is the hand of all as follows:

If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all, or as it is sometimes said the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal.

Guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement; therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

(R. p. 727, lines 4-20). The jury found Appellant and his co-defendants guilty of murder and three counts of attempted murder. (R. p. 743, line 21 – p. 745, line 20).

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. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) *See State v. Perez*, 423 S.C. 491, 496, 816 S.E.2d 550, 553 (2018). “Therefore, this court will not disturb the circuit court’s findings absent a manifest abuse of discretion.” *Id.* citing *Perez*, 423 S.C. at 496, 816 S.E.2d at 553. “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.” *Id.* citing *Perez*, 423 S.C. at 496–97, 816 S.E.2d at 553; *State v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015).

ARGUMENT

The trial court did not violate Appellant’s right to be free from cruel and unusual punishments under the Eighth Amendment by refusing to reconsider his term of years sentence based on his juvenility when Appellant was not sentenced to life without the possibility of parole and is therefore not entitled to an individualized hearing pursuant to *Aiken v. Byars*.

Appellant contends that the trial judge’s refusal to reconsider his 45-year sentence violates the Eighth Amendment’s prohibition on cruel and unusual punishments pursuant to the holding in *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), in which the United States Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole (LWOP) for juvenile offenders. Appellant contends because he faced the possibility of receiving a LWOP sentence, the trial judge erred in failing to conduct an individualized hearing pursuant to our Supreme Court’s adoption of the *Miller* holding in *Aiken v. Byars*. Simply put, Appellant’s reliance on *Aiken v. Byars* is inapplicable.

Echoing the principles enunciated in *Miller v. Alabama*, the *Aiken* Court recognized that “the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the [*Miller*] factors...” *Aiken*, 410 S.C. 544-545, 765 S.E.2d 577. “*Miller* requires the sentencing authority ‘take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.’” *Aiken*, 410 S.C. 544-545, 765 S.E.2d 577 (quoting *Miller*, 132 S.Ct. at 2469).

“Therefore, pursuant to *Aiken*, trial courts must hold individualized sentencing hearings and consider the mitigating factors of youth discussed in *Miller* before imposing an LWOP sentence on a juvenile.” *State v. Miller*, 433 S.C. 613, 627, 861 S.E.2d 373, 380 (Ct. App. 2021),

aff'd, 441 S.C. 106, 893 S.E.2d 306 (2023). “[A] sentencing court considering life without parole for a juvenile offender must consider:

- (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. 544, 765 S.E.2d 577 (alterations in original) (quoting *Miller*, 567 U.S. at 477–78, 132 S.Ct. 2455). *Aiken*’s extension of *Miller* was primarily aimed at States with mandatory penalty schemes which “prevented the sentencing authority from considering the differences between adult and juvenile offenders before imposing a sentence of life without parole.” *Aiken*, 410 S.C. at 542, 765 S.E.2d at 576 (2014). Considering South Carolina employs a discretionary sentencing scheme, mitigating evidence is considered by the sentencing court regardless. *See* S.C. Code Ann. §§ 16–3–20(A)–85(C). In essence, *Miller* requires sentencing courts, whether discretionary or mandatorily schemed, to fully explore the impact of the defendant’s juvenility *before imposing a sentence of life without parole*.

Such consideration pursuant to *Aiken* is not applicable to Appellant because Appellant receives a term of years sentence pursuant to South Carolina’s discretionary sentencing scheme, rather than life without the possibility of parole. Because LWOP was not imposed, consideration

of the *Aiken* factors does not apply to Appellant's case and an individualized sentencing hearing is not required. Appellant is simply not within the class identified in *Aiken*.

South Carolina precedent repeatedly emphasizes that an *Aiken* hearing is warranted only when the juvenile receives a LWOP sentence. *See State v. Morgan*, 433 S.C. 435, 440, 858 S.E.2d 647, 650 (Ct. App. 2021) (noting that the only published cases after *Aiken* all involved individuals who were not similarly situated to the *Aiken* petitioners, *i.e.*, they did not receive LWOP sentences) *see also State v. Smith*, 428 S.C. 417, 836 S.E.2d 348 (2019) (“finding a mandatory minimum sentence of thirty years’ imprisonment for murder did not violate the Eighth Amendment or *Miller*”); *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019) (finding an eighty year aggregate sentence for multiple crimes committed as a juvenile did not violate the Eighth Amendment pursuant to *Miller*, *Graham v. Florida*,⁶ or *Aiken*); *Finley*, 427 S.C. at 419, 831 S.E.2d at 158 (finding the defendant’s mandatory sentence for life imprisonment but *with* the possibility of parole did not violate the Eighth Amendment and that the defendant was not entitled to resentencing).

In the case at hand, Appellant’s term of years sentence does not entitle him to a reconsideration of his sentence pursuant to the holding in *Aiken*, thus whether an individualized hearing to consider the *Aiken* factors was properly conducted is irrelevant for this Court to consider. Because South Carolina imposes a discretionary sentencing scheme, “[a] judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) citing *Wasman v. United States*, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed.2d 424 (1984). Even considering whether the length of

⁶ 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010).

Appellant's sentence constitutes cruel and unusual punishment, our Supreme Court has held that "lengthy sentences or sentences of life without parole imposed upon juveniles do not violate contemporary standards of decency so as to constitute cruel and unusual punishment." *State v. Standard*, 351 S.C. 199, 205, 569 S.E.2d 325, 329 (2002) See *Hawkins v. Hargett*, 200 F.3d 1279 (10th Cir.1999), *cert. denied* 531 U.S. 830, 121 S.Ct. 83, 148 L.Ed.2d 45 (2000) ("sentence of 100 years without parole for 13 year old defendant convicted of burglary, sodomy, rape, and robbery with a dangerous weapon"); *Harris v. Wright*, 93 F.3d 581 (9th Cir.1996) ("15 year old defendant sentenced to life imprisonment without parole for murder"); *State v. Ira*, 132 N.M. 8, 43 P.3d 359 (2002) ("sentence of 91 & 1/2 years imposed where defendant, at ages 14-15, committed 10 counts of criminal sexual assault against his step-sister"); *State v. Green*, 348 N.C. 588, 502 S.E.2d 819 (1998), *cert. denied*, 525 U.S. 1111, 119 S.Ct. 883, 142 L.Ed.2d 783 (1999).

Judge Culbertson reasonably imposed Appellant's term of years sentence after hearing mitigation efforts, as well as considering Appellant's co-defendant's sentence. Appellant requested the court impose a mandatory minimum of 30 years in consideration of Appellant's young age at the time of the shooting. (R. p. 754, lines 3-9). Prior to Appellant's trial, Appellant's co-defendant, Tronahz Whittington, was found guilty of the murder of Jamie Johnson and sentenced to 45 years' imprisonment. The trial court specifically noted that it did not "see any justifiable reason to sentence [Appellant] to any more than the other co-defendant who was found guilty. Likewise, [the trial court did not] see any justifiable reason to sentence [Appellant] to any less than the co-defendant." (R. p. 757, lines 1-5). Subsequently, at the motion hearing, the court again noted that the jury found Appellant and his co-defendants "were all acting together in aiding and abetting one another, therefore, the guilt of one is the guilt of all." (August 10, 2023, Transcript, R. p. 761, lines 19-20). As such, there is no error on behalf of the trial court's

determination of his imposed sentence. Further, Appellant is not entitled to reconsideration of his sentence pursuant to *Aiken*, and thus his term of years sentence is valid and not in violation of the Eighth Amendment's prohibition on cruel and unusual punishments.

[Conclusion and Signature Page to Follow]

CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to affirm Appellant's conviction and sentence.

Respectfully submitted,

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THE STATE,

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Appellate Case No. 2023-001336

PROOF OF SERVICE

I, Kaylee C. Kemp, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, Kathrine Haggard Hudgins, Esq., via email today, February 13, 2025 to KHudgins@sccid.sc.gov, and to her assistant, Chris Stock to CStock@sccid.sc.gov.

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

This is the 13th day of February 2025.

s/Kaylee C. Kemp
Kaylee C. Kemp
Assistant Attorney General

Brandy Rankin

From: Brandy Rankin
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To: KHudgins@sccid.sc.gov
Cc: Kaylee Kemp; Stock, Chris
Subject: Final Brief of Respondent - The State v. Don Leequin Brown - Appellant Case No. 2023-001336
Attachments: DON BROWN Final Brief of Respondent (complete).pdf

Dear Ms. Hudgins,

Please find attached the Final Brief of Respondent and Proof of Service. These documents will be filed today, February 13, 2025 with the South Carolina Court of Appeals, along with a copy of this email. Thank you!

Sincerely,
Brandy Rankin

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