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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON LEEQUIN BROWN,

APPELLANT

APPELLATE CASE NO. 2023-001336

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

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)?

STATEMENT OF THE CASE

In July of 2022, the Horry County Grand Jury indicted Appellant, Dan Leequin Brown, for murder and three counts of attempted murder, indictments #2022-GS-2891, 2898, 2901, 2902. (R. pp. 762-763; 766-767; 770-771; 774-775). On May 22, 2023, Appellant proceeded to jury trial with co-defendants Che Ransom and Travontae J. Mitchell before the Honorable Benjamin H. Culbertson. Johnny Gardener represented Appellant at trial. Nancy Livesay and Christopher Helms prosecuted the case. The jury found Appellant and his co-defendants guilty. Judge Culbertson sentenced each of the co-defendants to forty-five (45) years for murder and thirty (30) years concurrent for each count of attempted murder. (R. p. 757, lines 1-12). On June 1, 2023, Appellant filed a motion to reconsider sentence and motion for new trial. (R. pp. 778-779; 780-783). On August 10, 2023, Judge Culbertson heard and denied the motion for reconsideration of sentence and motion for new trial. (R. pp.758-761). A timely notice of intent to appeal was served on August 17, 2023. 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) (emphasis added) (citations omitted)." State v. Mack, 441 S.C. 526, 535–36, 894 S.E.2d 820, 825 (Ct. App. 2023).

FACTS

In the early evening of September 12, 2020, Tronahz Whittington fatally shot Jamie Johnson as he was driving his Chevy Tahoe to Henry's gas station. Britney Milan, Jacob Hill, and Orlin Lopez were also in Johnson's Tahoe at the time of the shooting. (R. p. 169, line 17 – p. 170, lines 1-4). Shamontae Graham testified that on the night of the shooting he was in a car with Tronahz Whittington, Che Ransom, Mikkie McLeod, Travontae Mitchell, who is Graham's brother, and Appellant, Don Brown. (R. p. 312, lines 4-23). Graham testified that Appellant was driving the car. (R. p. 321, lines 19-20). Graham told the jury, "Jamie Johnson stopped at a stop sign on D Street. Tronahz then told the driver to pull in front of him. So we pulled in front of the victim's Tahoe. Tronahz opened the door, got out the car, and he fired an AR at the Tahoe and shot the victim's car in the windshield, and that's when I saw the blood from the victim. I saw, like, his head, like go down. Got hit with the gun." (R. p. 309, lines 9-15). Graham testified that Tronahz had an AR-15 weapon. (R. p. 325, lines 4-5). According to Graham, Che Ransom and Mikkie McLeod also got out of the car and Travontae stepped out of the car but quickly got back in. (R. p. 331, lines 5-10). Graham testified that three people fired weapons. (R. p. 331, lies 13-16). According to Graham, Che Ransom had a .45 and Mikkie McLeod had a 9 mm handgun. (R. p. 325, lines 6-9). Graham confirmed that Appellant did not have a weapon. (R. p. 378, lines 4-5). Graham testified that there was no plan to kill Jamie Johnson. (R. p. 378, lines 2-3).

Mikkie McLeod testified that as the six of them were on their way to Tronahz's mother's house, Tronahz recognized Jamie Johnson's Tahoe and said, "There goes Jamie. He owe me money." (R. p. 576, lines 4-18). McLeod confirmed that Appellant was driving the car, he did not have a weapon and he did not get out of the car. (R. p. 580, lines 9-17). McLeod testified

that "Nahz" (Tronahz) had an AR. (R. p. 579, lines 17-21). McLeod testified that "Tip" (Travontae Mitchell R. p. 568, lines 19-21) and Che got out of the car and both had nine mm guns or "nines." (R. p. 580, line 22 – p. 581, lines 1-10).

ARGUMENT

The trial judge erred 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).

When Tronahz Whittington fatally shot Jamie Johnson on September 12, 2020, Appellant, Don Brown, was seventeen (17) years old. Tronahz Whittington was convicted separately in an earlier trial and sentenced to forty-five (45) years. (R. p. 748, lines 6-9). Appellant and his co-defendants, Che Ransom and Travontae Mitchell, were each convicted at their joint trial. At sentencing the judge failed to conduct an individualized sentencing hearing to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The trial judge erred.

There was very little mitigation presented at sentencing. Trial counsel told the judge that while Appellant was on bond he came to every appointment and cooperated with counsel. (R. p. 753, line 21 – p. 754, lines 1-2). Trial counsel told the judge, "At the time of this incident, he [Appellant] was 17 years old. He was just a young guy, Judge. The sentence is going to be almost twice his - - if you do 30 years, it will be almost twice as old as - - as long as they have been alive." (R. p. 754, lines 3-6). Counsel asked the judge to impose the minimum sentence based on his age. (R. p. 754, lines 7-9). Appellant's mother told the judge, "I want to apologize to the Johnson family. My son was an A/B honor roll student. He's not a killer. Please try to be lenient on him, please." (R. p. 754, lines 23-25). No other mitigation was presented.

Prior to imposing the sentences, the judge said, "All right. Gentlemen, I don't see any justifiable reason to sentence you to any more than the other codefendant who was found guilty.

Likewise, I don't see any justifiable reason to sentence you to any less than the codefendant." (R. p. 757, lines 1-5). Appellant and his co-defendants, Che Ransom and Travontae Mitchell, were each sentenced to forty-five (45) years in prison, the same sentence imposed on the more culpable co-defendant, Whittington. (R. p. 757, lines 6-12).

On June 1, 2023, Appellant filed a motion to reconsider sentence. (R. p. 780). In the motion Appellant argued that the judge failed to evaluate mitigating factors including "the fact that the evidence at trial established that co-Defendant Whittington fired the only two shots directed at the victim, including the fatal shot, and did so out of an animus that had been brewing for several weeks." (R. p. 778). Appellant argued, "These facts are not present in analyzing this Defendant's culpability." (R. p. 778). Appellant additionally argued, "As such, the Defendant submits that failure to consider all relevant conduct, including the absence of pre-planning and deadly conduct in his sentencing, violates his rights to due process under the 14th Amendment to the U.S. Constitution and Article I Section 3 of the South Carolina State Constitution, as well as his right to be free from cruel and unusual punishment pursuant to the 8th Amendment of the U.S. Constitution and Article I Section 15 of the South Carolina State Constitution." (R. p. 778).

On August 10, 2023, the judge heard the motion for reconsideration of sentence and motion for new trial. (R. pp.758-761). During the hearing counsel for Appellant told the judge, "We thought 30 years is more appropriate based on his age and criminal record and the involvement in the trial." (R. p. 759, lines 18-20). The prosecutor told the judge that none of the three co-defendants tried together had prior records. (R. p. 756, lines 16-17). The prosecutor also told the judge, "Now, it was conceded by the State he [Appellant] did not have a gun. There was no witness that presented evidence that he had a gun, and we didn't present evidence he had a gun. However, in utilizing the vehicle to block the victims in, he did participate fully in the

murder in this case." (R. p. 760, lines 18-20). Counsel for Appellant argued that there was no plan for Appellant to do any criminal act. (R. p. 761, lines 3-16). At trial Investigator Edwards confirmed that any planning by Whittington to rob Jamie Johnson took place after all of the young men were already in the car. (R. p. 448, lines 1-17).

The judge denied the motion to reconsider sentence stating, "I'm going to deny your motion. I remember this trial. It was hand of one is the hand of all, and the jury found that they were all acting together in aiding and abetting one another; so, therefore, the guilt of one is the guilt of all of them, and I'll deny your motion." (R. p. 761, lines 17-22). The trial judge abused his discretion in sentencing Appellant to forty-five (45) years without conducting an individualized sentencing hearing to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), when Appellant was seventeen (17) years old at the time of arrest and faced a sentence of life without parole for murder. The "hand of one is the hand of all" is a theory of liability not sentencing, especially in light of the individualized requirements for juvenile sentencing.

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 Miller v. Alabama, 567 U.S. 460, 479, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 407 (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 that "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." 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 v. Alabama and Aiken v. Byars apply to Appellant because he was seventeen (17) years of age and was subject to a sentence of life without parole for murder.

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, 132 S.Ct. at 2468; Aiken, 410 S.C. at 544, 765 S.E.2d at 577.

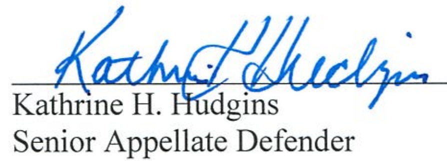
The sentencing hearing in the present case failed to meet the requirements of Miller and Aiken. The judge failed to consider the hallmark features of youth and the attorney mentioned Appellant's age of seventeen (17) as nothing more than a chronological fact in a vague plea for mercy. As noted in Aiken, "[A]lthough some of the hearings touch on the issues of youth, none

of them approach the sort of hearing envisioned by Miller where the factors of youth are carefully and thoughtfully considered. Many of the attorneys mention age as nothing more than a chronological fact in a vague plea for mercy. Miller holds the Constitution requires more." 410 S.C. at 543, 765 S.E.2d at 577. (n. #8 omitted). In State v. Mack, 441 S.C. 526, 544, 894 S.E.2d 820, 830 (Ct. App. 2023), the South Carolina Court of Appeals wrote, "Applying the Aiken factors involves more than repeating the words; it requires applying the substantive content of those factors."The sentencing judge failed to apply the substantive content of the Aiken factors in deciding the sentence to impose.

The judge failed to consider Appellant's home and family environment. The judge failed to consider Appellant's limited role in the offense as reflected when the judge said, "I'm going to deny your motion. I remember this trial. It was hand of one is the hand of all, and the jury found that they were all acting together in aiding and abetting one another; so, therefore, the guilt of one is the guilt of all of them, and I'll deny your motion." (R. p. 761, lines 17-22). The judge sentenced Appellant to the same forty-five (45) year sentence that Whittington, the most culpable of the co-defendants, received. The judge failed to consider the incompetencies associated with youth, and failed to consider the possibility of rehabilitation especially in light of the fact that Appellant had no prior record. The judge failed to consider the factors required by Aiken prior to sentencing Appellant. "Miller is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution." 410 S.C. 534, 543, 765 S.E.2d 572, 576–77 (2014). The failure in the present case violates Appellant's right to be free from cruel and unusual punishment pursuant to the 8th Amendment of the U.S. Constitution and Article I Section 15 of the South Carolina State Constitution. The failure to consider the Aiken factors constitutes an error of law.

CONCLUSION

Based on the above argument this Court should reverse the sentence imposed and remand the case to the circuit court for an individualized sentencing hearing where the judge must consider the factors required by Miller v. Alabama and Aiken v. Byars.



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ATTORNEY FOR APPELLANT

This 18th day of February, 2025.

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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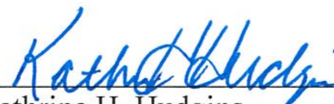
APPELLATE CASE NO. 2023-001336

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 Kaylee Christene Kemp, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 18th day of February, 2025.



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