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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICAH PRESSLEY,

APPELLANT

APPELLATE CASE NO. 2023-001799

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

The imposition of a sentence of life without parole is not a condition precedent to the requirement of an individualized sentencing hearing to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The imposition of the forty (40) year sentence violates 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 fifteenteen (15) years old at the time of the offense 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).

In the conclusion of the majority opinion in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, (2014), the South Carolina Supreme Court wrote, "We hold the principles enunciated in Miller v. Alabama apply retroactively to these petitioners, to those similarly situated, and **prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole.** Accordingly, any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced." 410 S.C. at 545, 765 S.E.2d at 578 (emphasis added). Respondent, however, argues, "If he [the judge] sentenced the Appellant to a life without parole sentence, then *Aiken v. Byars* would apply. However, he sentenced the Appellant to a forty-year sentence; *Aiken v. Byars* does not apply." (IBOR p. 7). Appellant was entitled to an individualized sentencing hearing because he was a juvenile facing a sentence of life without parole.

In support of the State's position that an Aiken hearing is only required when the juvenile is sentenced to life without parole, the State cites State v. Smith, 428 S.C. 417, 836 S.E.2d 348 (2019); and State v. Slocumb, 426 S.C. 297, 827 S.E.2d 148 (2019). These cases do not support

the State's position, contrary to the clear language in Aiken v. Byars, that an Aiken hearing is only required when the juvenile is sentenced to life without parole.

In State v. Smith, 428 S.C. 417, 836 S.E.2d 348, (2019), the South Carolina Supreme Court held that the mandatory minimum sentence of thirty years for murder, imposed on a juvenile, was constitutional. In Smith the Court wrote:

> Following a jury trial, Smith was convicted of murder, attempted murder, and possession of a weapon during the commission of a violent crime. Because Smith was seventeen at the time of the murder and faced a potential sentence of life without the possibility of parole, he was given an individualized sentencing hearing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) (plurality opinion). At the Aiken hearing, a mitigation expert testified at length about each of the five factors of youth identified in Miller and Aiken and how those factors applied to Smith.

428 S.C. at 419, 836 S.E.2d at 349. Smith, like Appellant, was not sentenced to life without parole. Smith was sentenced to thirty-five years for murder and thirty years concurrent for attempted murder. Importantly, Smith, unlike Appellant in the present case, received an individualized sentencing hearing pursuant to Aiken v. Byars. "Because Smith was seventeen at the time of the murder and faced a potential sentence of life without the possibility of parole, he was given an individualized sentencing hearing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) (plurality opinion)." Smith, 428 S.C. at 419, 836 S.E.2d at 349. Smith does not support the State's position that an Aiken hearing is only required when the juvenile is sentenced to life without parole.

State v. Slocumb, 426 S.C. 297, 827 S.E.2d 148 (2019), involved a challenge to a *de facto* life sentence of 130 years for nonhomicide offenses as violating Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (prohibiting courts from imposing a sentence of life without the possibility of parole on a juvenile offender convicted of a nonhomicide

offense). In Slocumb the South Carolina Supreme Court held that, "Neither *Graham* nor the Eighth Amendment, as interpreted by the Supreme Court, currently prohibits the imposition of aggregate sentences for multiple offenses amounting to a *de facto* life sentence on a juvenile nonhomicide offender." 426 S.C.at 314–15, 827 S.E.2d at 157. The issue in the present case does not involve a challenge to the forty-year sentence as a *de facto* life sentence. Instead, the issue in the present case involves sentencing a juvenile who faced a sentence of life without parole without an individualized sentencing hearing in violation of Aiken v. Byars and Miller v. Alabama. Slocumb does not support the State's position that an Aiken hearing is only required when the juvenile is sentenced to life without parole.

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. While the defense attorney mentioned Appellant's age of fifteen (15) twice, it was 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 consider the hallmark features of a fifteen-year-old including immaturity, impetuosity, and failure to appreciate the risks and consequence. The sentencing judge failed to apply the substantive content of the Aiken factors in deciding the sentence to impose. It is difficult to imagine how a judge could decide what

sentence to impose on a juvenile facing a sentence of life without parole without the benefit of a hearing pursuant to Aiken v. Byars.

The sentencing judge failed to consider Appellant's home and family environment. The defense attorney told the judge about the death of Appellant's mother while Appellant awaited trial and mentioned Appellant's grandmother and aunt but did not provide the judge with any additional information about the home and family environment. The judge failed to consider how the conduct of the older co-defendant, who received the same sentence, may have affected Appellant. The judge failed to consider the incompetencies associated with youth including Appellant's inability to assist his attorney. On the third day of trial Appellant refused to come to court from the detention center. (Tr. p. 385, line 23 – p. 386, lines 1-25). The judge failed to consider the possibility of rehabilitation. 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 arguments presented in Appellant's brief and this reply brief, this Court should reverse the conviction and remand to the family court for disposition. Alternatively, this Court should reverse the conviction and remand to the family court for a new evaluation, after obtaining all mental health records, and a new waiver hearing. Alternatively, this Court should reverse the sentence and remand for a sentencing hearing as required by Aiken v. Byars.

Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of March, 2025.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Initial Reply Brief of Appellant and Designation of Matter in the above-referenced case have been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 13th day of March, 2025.

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ATTORNEY FOR APPELLANT

From: Stock, Chris
To: Tommy Evans, Jr.; SC - RANKIN BRANDY
Cc: Hudgins, Kathrine
Subject: 2023-001799 - The State v. Micah Pressley - Initial Reply Brief of Appellant
Date: Thursday, March 13, 2025 11:01:00 AM
Attachments: 2023-001799 - The State v. Micah Pressley - Initial Reply Brief of Appellant.pdf
2023-001799 - The State v. Micah Pressley - Initial Reply Brief of Appellant - AG Cover Letter.pdf

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Mr. Evans,

Please find attached for service the Initial Reply Brief of Appellant for Micah Pressley's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris Stock
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