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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

The Honorable Alex Kinlaw, Jr., Circuit Court Judge

STEVE LESTER,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellant Case No. 2023-001900

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

KAYLEE C. KEMP
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6307

WILLIAM WALTER WILKINS, III
Thirteenth Circuit Solicitor's Office
305 E. North St.
Ste. 325
Greenville, South Carolina 29601

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUE

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?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE

Did the circuit court properly deny Appellant's motion to reconsider his sentence pursuant to *Aiken v. Byars*, by finding that Appellant was not within the class of offenders entitled to resentencing because Appellant was not sentenced to life without the possibility of parole, and Appellant became parole eligible after serving ten (10) years of his sentence?

STATEMENT OF THE CASE

Appellant, Steve Lester, was indicted at the March 1975 term by the Greenville County Grand Jury for murder while in the commission of armed robbery (1975-GS-23-0430) and two (2) counts each of armed robbery, robbery, and grand larceny (1975-GS-23-0427, -0429). (Indictments). On March 12, 1975, Appellant pled guilty to murder and two (2) counts of armed robbery. (State's Response, p. 1). The Honorable Wade S. Weatherford, Jr. sentenced Appellant to concurrent terms of life imprisonment for murder, thirty (30) years for one count of armed robbery (1975-GS-23-0427), and a consecutive thirty (15) years for the other count of armed robbery (1975-GS-23-0429). (State's Response, p. 1).[1] Appellant was sixteen (16) years old at the time of sentencing. (State's Response, p. 1). Appellant did not file an appeal. Appellant has filed multiple PCR applications[2] and § 2254 Petitions[3] since 1995.[4]

[1] The guilty plea transcript is unavailable due to the age of Appellant's convictions. The procedural facts have been incorporated from the Brief of Defendant, the State's Response, Indictments, Sentence Sheets, S.C. Supreme Court Orders, Letters from S.C. Department of Probation, Parole, and Pardon Services and Appellant's prior collateral actions.

[2] Court records indicate that Appellant has filed PCR actions on: July 5, 1995, (1995-CP-23-1911), March 27, 1998, (l998-CP-23-1108), February 18, 2003 (2003-CP-23-1171), February 5, 2004, (2004-CP-23-0779), March 22, 2006, (2006-CP-23-1917), August 4, 2006, (2006-CP-23-4971), April 16, 2007, (2007-CP-23-2452), February 15 2008, (2008-CP-23-1261), February 13, 2009, (2009-CP-23-1211), May 16, 2011, (2011-CP-23-3285) and September 26, 2013, (2013-CP-23-5191). These applications were denied and dismissed with prejudice, and the denials Appellant appealed were unsuccessful.

[3] *See* Civil Action Nos. 4:99-3122-CWH (dismissed as untimely); 4:03-15- RBH (dismissed as successive and unauthorized); 4:03-3639-HFF (dismissed for lack of proper form); 4:06-1035-HFF (dismissed as successive); 4:14-482-TMC (dismissed as successive and unauthorized).

[4] By Order dated April 17, 2013, the South Carolina Supreme Court prohibited Appellant from filing any further "PCR applications, habeas corpus petitions, or other actions collaterally challenging the above criminal convictions and sentences in the circuit court without first obtaining the permission of this Court to make such a filing."

As a result of the pre 1996 sentencing, Appellant became eligible for parole in 1984 after serving ten (10) years of his life sentence. (State's Response, p. 1). Between 1984 and 2024, Appellant has been denied parole at least nineteen (19) times. (State's Response, p. 1). According to records from S.C. Department of Probation, Pardon and Parole, Appellant's last parole hearing date was April 10, 2024, and Appellant waived his hearing.[5] Appellant will again be eligible for parole on April 10, 2026.[6]

On February 27, 2019, Appellant filed a Motion for Resentencing pursuant to *Miller v. Alabama* 567 U.S. 460, 132 S. Ct. 2455 (2012) and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). (*Pro se* Motion for Resentencing). On March 1, 2023, Appellant filed a subsequent motion requesting a hearing on the matter. (*Pro se* Motion). By Order on March 1, 2019, the South Carolina Supreme Court vested the Honorable Alex Kinlaw, Jr., with exclusive jurisdiction over the Motion for Resentencing. (S.C. Supreme Court Order). The Order directed Judge Kinlaw to issue a scheduling order within sixty (60) days to set forth the schedule that shall be followed, including the date of the hearing on the merits. (S.C. Supreme Court Order).

On December 4, 2020, Judge Kinlaw instructed that the parties submit briefs on their positions regarding whether Appellant is entitled to a hearing pursuant to *Aiken.* (Scheduling Order). On March 4, 2021, Appellant submitted the Brief of Defendant, and on May 28, 2021, the State submitted its response. (Brief of Defendant & State's Response). On November 7, 2023, Judge Kinlaw signed an order denying Appellant's motion for resentencing, finding that Appellant is not entitled to a resentencing hearing pursuant to *Miller* and *Aiken*. (Order denying Motion for Resentencing).

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[5] https://www.dppps.sc.gov/parole-pardon-release-services/hearings/parole/00075259

[6] https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000075259

RELEVANT SUMMARY OF CIRCUIT COURT BRIEFING

Appellant raised two arguments in briefing in the circuit court: (1) Does the Parole Board's refusal to consider the standards set by *Aiken v. Byars* violate due process, and (2) Does Appellant's sentence constitute a disproportionate punishment in violation of the Eighth Amendment's prohibition on cruel and unusual punishments. (Brief of Defendant, p. 1). Appellant argued that the principles echoed in *Miller* and *Aiken* have never been applied to his case, and that the Parole Board has ignored Appellant's demonstrated rehabilitation and effectively converted his sentence to life without parole in direct violation of the Eighth Amendment. (Brief of Defendant, p. 13).

In response, the State argued that *Miller* and *Aiken* are unequivocable in that the remedy they provide is only available to juveniles sentenced to life without the possibility of parole (LWOP). (State's Response, p. 2). The State further argued that Appellant has been afforded the remedy of a *Mille*r violation – had there been one - as enunciated in *Montgomery v. Louisiana*, 577 U.S. 190, 136 S.Ct. 718 (2016) by being considered for parole on nearly two dozen occasions. (State's Response, p. 3). Notably, the State submitted that Appellant appeared to have requested relief from the circuit court in an appellate capacity over the Parole Board, which the circuit court has no jurisdiction to adjudicate. (State's Response, p. 3).

Judge Kinlaw issued an Order denying Appellant's Motion for Resentencing, vacating the previous order that the matter be set for a hearing on the merits. (Order Denying Motion to Reconsider). Judge Kinlaw noted that the petition "may and in fact, must be denied" on the basis that the motion was untimely filed[7], however also denied the motion on the merits. (Order Denying Motion to Reconsider, p. 1). Judge Kinlaw found that *Miller* and *Byars* afforded relief to juveniles

[7] *Aiken* provides that "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.

who were sentenced to life without the possibility of parole, and that Appellant became parole eligible after serving ten (10) years of his sentence and is therefore not entitled to a resentencing hearing required by *Miller* and *Aiken*. (Order Denying Motion to Reconsider, p. 1-2).

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). "Therefore, this court will not disturb the circuit court's findings absent a manifest abuse of discretion." *Id*. "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*.

ARGUMENT

The circuit court properly denied Appellant's motion to reconsider his sentence pursuant to *Aiken v. Byars*, by finding that Appellant was not within the class of offenders entitled to resentencing because Appellant was not sentenced to life without the possibility of parole, and Appellant became parole eligible after serving ten (10) years of his sentence.

Appellant alleges that his life sentence is equivalent to life without the possibility of parole (LWOP) because he has been repeatedly denied parole for "unchangeable reasons," making his life sentence as a juvenile violative of the South Carolina Constitution and the Federal Constitution. Despite Appellant's contentions, Appellant is simply not within the class of offenders that *Miller* and *Aiken* intended such relief to be afforded.

Appellant attempts to expand the protections established in our precedent to apply to juvenile sentences of life imprisonment with the possibility of parole. However, as our supreme court recently noted, this court's ability to provide relief in cases such as this is limited by the parameters set forth by the United States Supreme Court. *State v. Slocumb*, 426 S.C. 297, 314-315, 827 S.E.2d 148, 152-153, 157 (2019) Therefore, as it stands, Appellant is not a member of the class of offenders contemplated by our precedent.

In 2012, the United States Supreme Court issued a landmark decision in *Miller v. Alabama,* 567 U.S. 460, that the Eighth Amendment forbade states from imposing mandatory sentences on juveniles of life without the possibility of parole for homicide offenses, but that the class of offenders was narrow: those sentenced to life without the possibility of parole. *Miller*, 567 U.S. at 479. In setting sentence parameters, the *Miller* Court required that "[a] sentencer must be allowed to consider that 'youth is more than a chronological fact,' and carries with it 'immaturity, irresponsibility, impetuousness[,] and recklessness,' factors as transient as youth itself." *Miller*, 567 U.S. at 476. "Although a court may still sentence a juvenile to life without parole after an

individualized hearing, the Court cautioned that given 'children's diminished culpability and heightened capacity for change' the 'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Aiken*, 410 S.C. at 539, 765 S.E.2d at 574-575 citing *Miller*, 567 U.S. at 476.

In *Aiken,* The South Carolina Supreme Court considered "whether the holding of *Miller* extends to juvenile offenders who received an [LWOP] sentence under a nonmandatory scheme," and held that *Mille*r established an "affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." *Finley*, 427 S.C. at 426, 831 S.E.2d at 161-162 citing *Aiken*, 410, S.C. at 541, 543, 765 S.E.2d at 576-577. Both *Miller* and *Aiken* are unequivocal in that the remedy is only available to juveniles sentenced to life without the possibility of parole.

South Carolina precedent has declined to hold that a de facto life sentence is equivalent to an imposed sentence of life without the possibility of parole. *See Slocumb*, 426 S.C. at 314, 827 S.E.2d at 157 (declining "to provide Slocumb relief from his 130-year sentence stemming from his multiple and violent crimes."). In *Slocumb*, the South Carolina Supreme Court found that "[n]either *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." *Id. See Graham v. Fla*., 560 U.S. 48, 130 S. Ct. 2011 (2010) (implementing a categorical ban of imposing a *LWOP* sentence for a juvenile who did not commit homicide). Importantly, *Slocumb* declined to "extend federal constitutional protections under the Eighth Amendment beyond the boundaries the Supreme Court set in *Graham*." 426 S.C. at 306, 827 S.E.2d at 153. Appellant asserts that *Miller* and *Aiken* apply to him because "he was seventeen of age and was subject to a sentence that is equivalent to life without the possibility of

parole." (Initial Brief of Appellant, p. 7). There is no precedent to support Appellant's position that his life sentence, where he has received ample parole hearings, qualifies him to resentencing to consider the extent of the *Miller/Aiken* factors. Appellant's sentence does not place him in the class of offenders *Aiken* and *Miller* aim to protect. Further, as *Miller* expressly provides, "[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Montgomery,* 577 U.S. 190 at 212; *See Graham*, 560 U.S. at 82 ("A State need not guarantee the offender eventual release, but if it imposes a sentence of life, it must provide him or her with some realistic opportunity to obtain release before the end of that term.").

Appellant appears to challenge the Parole Board's repeated denial of parole by relying on *Buchanan v. S.C. Dep't of Prob., Parole, & Pardon Servs*., 442 S.C. 393, 899 S.E.2d 600 (Ct. App. 2023), *reh'g granted* (Oct. 18, 2023), *cert. denied* (Apr. 16, 2024), noting the Court's concern with the "perfunctory manner in which Buchanan's request for parole was denied." Yet, *Buchanan* was resolved on appeal from the order of the Administrative Law Court, which affirmed the denial of parole, not in the procedural posture which Appellant now attempts to seek relief. This Court lacks jurisdiction to adjudicate appeals from the Parole Board or to direct or oversee the function of the Parole Board in the discharge of its statutorily prescribed duties. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs*., 377 S.C. 489, 661 S.E.2d 106 (2008) (holding the Administrative Law Court has jurisdiction to review an appeal of the denial of parole when a person is challenging the method and procedure used by the Parole Board in reaching its decision). Further, Buchanan was denied relief, and this Court found that "neither the United States Supreme Court nor our supreme court requires specific parole criteria to be considered in determining whether to grant parole, and the Board's denial of parole did not constitute cruel and/or unusual punishment under either

Constitution." *Buchanan*, 442 S.C. at 408, 899 S.E.2d at 608-609. However, the procedure and policy which parole is denied is not at issue. The only relevant issue is if Appellant is within the class of offenders entitled to resentencing prescribed by *Aiken* and *Miller*. Simply stated, Appellant is not.

CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to affirm the circuit court's order denying Appellant's Motion for Resentencing.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

KAYLEE C. KEMP
Assistant Attorney General
S.C. Bar No: 107073

By: Kaylee C. Kemp
KAYLEE C. KEMP

ATTORNEYS FOR THE RESPONDENT

Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6307

April 7, 2025
Columbia, South Carolina