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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court Of Common Pleas

Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2024-000550

ANGELO HAM, #315014,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT
PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

Did the resentencing court err as a matter of law by sentencing Appellant to life without parole for an offense he committed as a fifteen year old juvenile where the court failed to properly consider and apply the Aiken v. Byars, 410 S.C. 534, 765 S.E2d 572 (2014) factors, particularly where the court misinterpreted several factors and used them as evidence of aggravation instead of evidence mitigating in favor of a sentence less than life?

Respondent's Counterstatement

I. Where Appellant was resentenced to life without the possibility of parole for murder in an Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) resentencing proceeding, and no specific objection was raised to the sentence during the in-person resentencing hearing and no motion to reconsider filed, whether the issues presented here are not preserved for appellate review?

II. Whether the resentencing court erred as a matter of law by resentencing Appellant to life without parole for murder when he was a fifteen-year-old juvenile, where the resentencing court properly considered and applied the Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) factors?

STATEMENT OF THE CASE

On September 14, 2004, the State submitted juvenile petitions accusing Appellant Angelo Ham of murder, armed robbery, and possession of a weapon during the commission of a violent crime for events that took place on September 9, 2004, when Appellant was fifteen years old. (App. p. 1). On that same day, the State filed a motion requesting that the petitions be transferred to the Court of General Sessions. (App. p. 1). On July 18, 2005, a hearing was held before the Honorable Roger E. Henderson to determine whether jurisdiction should be transferred to the Court of General Sessions. (App. p. 2). Henry "Hank" Anderson Jr., Esquire, represented Appellant, and then Assistant Solicitor Kenard Redmond represented the State. (App. p. 2). By order dated August 3, 2005, and filed August 10, 2005, Judge Henderson waived Appellant up to the Court of General Sessions. (App. pp. 50-51).

During its October 2005 term, the Darlington County Grand Jury indicted Appellant for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970), and criminal conspiracy (2005-GS-16-1971). (App. pp. 590-595). On April 17, 2006, Appellant pled guilty to all three charges before the Honorable John M. Milling. (App. p. 52). On April 17, 2006, Judge Milling sentenced Appellant to five (5) years imprisonment for conspiracy. (App. p. 80). Judge Milling deferred sentencing on the murder and armed robbery offenses. On September 14, 2007, Judge Milling a sentencing hearing was held before Judge Milling, and Appellant was sentenced to life without parole for murder and twenty-five (25) years for armed robbery. (App. p. 122).

Appellant filed a timely notice of appeal. On June 2, 2008, by filed affidavit, Appellant withdrew his direct appeal. By order filed June 9, 2008, the Court of Appeals dismissed Appellant's appeal and the Remittitur was returned to the lower court. (App. pp. 125-128).

On September 11, 2007, Appellant filed his first post-conviction relief action (2007-CP-16-00811).[1] (App. pp. 129-133). The State filed its Return and Partial Motion to Dismiss on November 2, 2007. (App. pp. 134-138). On April 23, 2008, Appellant, through counsel, Charles T. Brooks, III, Esquire, filed a motion to amend the application. (App. p. 139). On June 5, 2008, Appellant, through counsel, filed a second amended post-conviction relief application. (App. p. 140). On December 15, 2008, by filed order, the post-conviction relief court issued it Order of Dismissal with Prejudice.[2] (App. pp. 142-143).

On November 21, 2008, Appellant filed an application for post-conviction relief challenging his convictions and sentences for murder and armed robbery. (App. 145-149). The State filed its Return on March 2, 2009. (App. pp. 150-154). On September 13, 2010, an evidentiary hearing was convened before the Honorable Thomas A. Russo. Then, Assistant Attorney General Karen C. Ratigan represented the State, and Gary I. Finklea, Esquire, represented Appellant. On December 10, 2010, by filed order, Judge Russo denied Appellant's post-conviction relief application with prejudice. (App. pp. 156-167).

Appellant filed a timely notice of appeal. Appellant's appeal was perfected by Appellate Defender Robert M. Pachak, Esquire, by filing a Johnson[3] petition. On March 11, 2014, the South Carolina Court of Appeals denied Appellant's petition. (App. pp. 168-169).

On March 20, 2013, Appellant filed a successive application for post-conviction relief (2013-CP-16-00248) asserting he was being held in custody illegally for the following reasons:

> I. [Appellant's] sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution.

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[1] Appellant only challenged the conspiracy conviction in this post-conviction relief action.
[2] Appellant voluntarily withdrew his post-conviction relief application.
[3] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

II. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim.

III. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate.

IV. Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, because Applicant's counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.

(App. pp. 171-181). On the same day Appellant filed his post-conviction relief application, he filed a motion to stay the proceedings until the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). (App. pp. 182-185).

On or about May 14, 2013, the State filed its Return and Motion to Dismiss. (App. pp. 186-192). On or about May 23, 2013, the Honorable J. Michael Baxley issued the Conditional Order of Dismissal. (App. pp. 194-198). On or about May 28, 2013, Appellant made his Response to AG's Return and Motion to Dismiss. (App. pp. 199-203). On or about August 16, 2013, the State made its Return to Applicant's "Response to AG's Response and Motion to Dismiss." (App. pp. 205-207). On or about March 10, 2016, the State made its Amended Return and Motion to Dismiss. (App. pp. 209-216). On or about March 16, 2016, the Honorable Roger E. Henderson issued an Amended Conditional Order of Dismissal. (App. pp. 218-225). By order filed March 16, 2017, Judge Henderson issued the Final Order of Dismissal in light of the South Carolina Supreme Court's holding in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). (App. pp. 226-228).

During the pendency of the 2013 post-conviction relief action, Appellant filed another post-conviction relief action (2014-CP-16-00202) on March 18, 2014. (App. pp. 230-236). On March

15, 2014, the State filed its Return and Motion to Dismiss. (App. pp. 237-244). On March 24, 2016, the Honorable Roger E. Henderson issued the Conditional Order of Dismissal. (App. pp. 246-253). On May 20, 2016, Appellant filed his response to the Conditional Order of Dismissal. (App. pp. 255-265). On February 15, 2017, Judge Henderson issued the Final Order of Dismissal. (App. pp. 266-269). On April 12, 2017, Appellant filed a Rule 59(e), SCRCP, motion to reconsider. (App. pp. 274-295). On April 17, 2017, the State filed its Return to Applicant's Motion Pursuant to Rule 59(e), SCRCP. (App. pp. 296-298). On April 28, 2017, Appellant filed his response to the State's return. (App. pp. 301-304). On May 8, 2017, Judge Henderson denied Appellant's Rule 59(e), SCRCP, motion by filed order. (App. pp. 305-306).

Appelant filed a timely notice of appeal. (App. pp. 307-308). On November 29, 2017, Appellant filed his Appendix. On December 4, 2017, Appellant filed his Petition for Writ of Certiorari. On January 18, 2018, the Court dismissed the appeal for failure to provide an explanation required by Rule 243(c), SCACR. (App. p. 429). On February 2, 2018, the Remittitur was returned to the Darlington County Clerk of Court. (App. p. 430).

On June 8, 2016, Appellant filed a motion for resentencing pursuant to Aiken v. Byars. (App. pp. 431-433). On March 3, 2022, a resentencing hearing was convened before the Honorable Roger E. Henderson. (App. p. 434). Deputy Solicitor Kenard Redmond represented the State, and Robert L. Gailliard, Esquire, represented Appellant. (App. p. 434). At the conclusion of the hearing, Judge Henderson resentenced Appellant to life without parole for murder. (App. p. 531).

While a timely notice of appeal was filed on Appellant's behalf, the South Carolina Court of Appeals dismissed Appellant's appeal because counsel for Appellant failed to timely serve the notice of appeal on the State. (App. p. 560). The South Carolina Court of Appeals denied Appellant's subsequent motion to recall the remittitur. (App. pp. 572-573).

On April 26, 2022, Appellant filed an application for post-conviction relief seeking a belated direct appeal from his resentencing pursuant to White v. State, 236 S.C. 110, 108 S.E.2d 35 (1974). (App. 581-189). The State filed a return to this application on February 8, 2023. (App. pp. 581-589). On March 4, 2024, an evidentiary hearing was convened before the Honorable George McFadden, Jr. (App. p. 596). By order filed March 15, 2024, Judge McFadden granted Appellant a belated appeal. (App. pp. 606-611).

This appeal pursuant to White v. State followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); see also State v. Finley, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) ("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."). Thus, the trial court's factual findings are binding on the appellate court unless clearly erroneous or controlled by an error of law. See State v. Winkler, 388 S.C. 574, 582–83, 698 S.E.2d 596, 601 (2010). On appeal, "[the reviewing court] does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial [court's] ruling is supported by any evidence." State v. Parker, 391 S.C. 606, 611–12, 707 S.E.2d 799, 801 (2011) (quoting State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001)).

ARGUMENT

I. Where Appellant was resentenced to life without the possibility of parole for murder in an Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) resentencing proceeding, and no specific objection was raised to the sentence during the in-person resentencing hearing and no motion to reconsider filed, the issues presented here are not preserved for appellate review.

The arguments raised in Brief of Appellant are not preserved for the appeal. The Appellant, Angelo Ham, for the first time on appeal, challenges the life without parole sentence he received for the crime of murder he committed when he was fifteen years old. Although he did not request reconsideration or make any objection during the March 3, 2022, resentencing proceeding before the Honorable Roger E. Henderson, he now initially complains that Judge Henderson failed to properly consider and apply the Aiken v. Byars factors. Because Appellant's appellate arguments were never presented to the sentencing judge, the sentencing judge was wholly deprived of an opportunity to consider them or rule upon them. Under those circumstances, Appellant's constitutional challenge to his sentence is not properly preserved for appellate review and cannot appropriately be considered or addressed for the first time on appeal. Appellant's conviction and sentence should be affirmed.

Aiken v. Byars Hearing Testimony

At the onset of the hearing before Judge Henderson, Deputy Solicitor Redmond introduced the plea transcript from April 17, 2006, and the sentencing transcript from September 14, 2007, as State's Exhibit Nos. 1 and 2. (App. p. 439).

The first witness called to the stand was Pastor Calvin Daniels (Pastor Daniels). (App. p. 440). Pastor Daniels testified that he knew Appellant through his program, which was geared towards helping troubled youth. (App. p. 440). Pastor Daniels testified that Appellant was placed in the home of some of his parishioners, but he could not remember how old Appellant was at that

time. (App. p. 442). Pastor Daniels testified that while Appellant was living with these parishioners, his attitude and school grades improved. (App. pp. 442-443). Pastor Daniels testified that Appellant was in his program for two to three years and lived with the parishioners for about six to eight weeks. (App. p. 446). Pastor Daniels testified that he could not recall what years it was, but he was sure it was before Appellant went to the Department of Juvenile Justice (DJJ). (App. pp 446-447).

The next witness to testify was Appellant. (App. p. 448). Appellant testified that he was fifteen when the crimes occurred and that he had committed other crimes, but nothing like this one. (App. p. 449). Appellant testified that he had a third-grade reading level and completed the tenth grade. (App. p. 450). Appellant read a letter to the resentencing court that he had prepared, and in relevant parts, he stated:

> I ask for your forgiveness in this matter not only because my mind at that time wasn't fully developed, but I honestly did not know that he was going to kill the victim. I did not know that the victim had a gun. I did not have a gun. Things that night happened so fast and I honestly cannot sit here and tell you every detail about what happened. But what I can say is that I did not intend to hurt or kill anybody nor would I have pled guilty to murder without me knowing that I had to have that intent. I would have pled guilty to a manslaughter because this murder was only done through my negligent actions over assisting someone else in a robbery. Again, I did not kill the victim. Ultimately, that happened and I'm sorry, but I did not kill anyone nor would I have participated in the crime had I known that a murder was going to happen. My thoughts at that time was to go with them specifically just to rob. I never did nothing like this before. Every crime that I've ever committed as a juvenile was never violent nor against anyone, but always against property. I was never a violent person nor am I violent now. I never possessed a weapon during this incident, before, during nor after it. But I thank this Court for starting the process in my life that showed and transformed me into knowing that in order to be productive in this community I have to put myself around productive people. People who are there to encourage me and help me when the help is needed. And most important, me asking and seeking for that help.

(App. p. 452). Appellant then began to go into what he had accomplished while in SCDC, and Deputy Solicitor Redmond indicated that he had already explained to counsel he had no intentions

of going into his record with SCDC, but if he opened the door, then he would address it on cross-examination. (App. pp. 454-455).

The resentencing court agreed that they were there to determine how things were back in 2007 at the sentencing hearing. (App. p. 455). However, the resentencing court also indicated that one of the Aiken v. Byars factors to consider is the possibility of rehabilitation, and if he raises his accomplishments in SCDC in his testimony and opens the door for admission of his disciplinaries, then the resentencing court would possibly have to consider it. (App. pp. 455-456). Counsel Gailliard counseled Appellant to steer clear of that type of testimony. (App. pp. 456-457). The resentencing court then engaged in the following colloquy with Appellant:

> Q. Now, Mr. Ham, I believe that you indicated that you were the youngest in the group of three actually convicted of committing this crime, is that correct?
> A. Yes, sir.
> Q. And in community did you generally hang out with people who were older than you?
> A. Always.
> Q. Always?
> A. Yes, sir.
> Q. And they did not always provide positive influence for you, is that correct?
> A. Yes, sir.
> Q. And so you hung out with a lot older people who have negative influences upon you, is that right?
> A. Yes, sir.

(App. pp. 457-458).

On cross-examination, Appellant reread the portion of his statement regarding the family court not having the resources to rehabilitate him, so he was waived to the general sessions court. (App. pp. 458-459). Appellant testified that he would have pled to manslaughter because he did not have the intent to hurt or kill anyone. (App. p. 459). Appellant testified that he had planned with his two co-defendants to go and rob the Victim. (App. pp. 459-460). Appellant testified in the affirmative that under the hand of one, the hand of all, that they were all responsible for the

murder of the Victim. (App. pp. 460-461). As the colloquy entered into a dispute of the facts in the night in question, Counsel Gailliard objected to the line of questioning as not being germane. Deputy Solicitor Redmond countered that "it goes directly to the issue of whether he shown remorse because at this point, it is obvious in the State's opinion that there's some minimization going on. I think that is absolutely relevant on the issue of whether or not he's, in fact, showing remorse." (App. p. 462). The resentencing court overruled the objection. (App. pp. 462-463).

Appellant testified in the affirmative that the Victim was preparing to close his store when they approached to rob it. (App. p. 463). Appellant testified in the affirmative that it was because the Victim knew him that he opened the door for him and his co-defendant to enter. (App. pp. 463-464). At this point, Deputy Solicitor Redmond attempts to move in some pictures of the store and argues, over objection, that one of the Aiken v. Byars factors is the circumstances surrounding the offense. Deputy Solicitor Redmond further asserted that it was "germane to the nature of the offense." (App. pp. 465-466). The resentencing court overruled the objection, stating that it needed to consider everything relevant and found the pictures to be relevant. (App. p. 466).[4]

The following colloquy occurred regarding Appellant's juvenile record:

> Q. And so in 2001, according to State's Exhibit 9, a conviction for burglary. Let's move to 2002, you had mentioned about damaging property. And, in fact, in April of 2002, do recall getting a indeterminate sentence on damaging a vehicle and malicious injury to a, malicious injury to property?
> A. Yes, sir.
> Q. Okay. And you got an indeterminate sentence on that which means you were sent to the Department of Juvenile Justice?
> A. Yes, sir.
> Q. Okay. So you went to DJJ and it looks like, isn't it true you were paroled around July of 2004?
> A. Yes, sir.

[4] At this point, the State entered State's Exhibit Nos. 3, 4, 5, 6, and 7 over objection. (App. pp. 466-468). Also, the State moved State's Exhibit No. 9, Appellant's DJJ record, into the record. (App. pp. 469-470).

Q. Now, let me stop there for just a minute, so July 2004 –– and Your Honor I forgot to publish this to the court, his juvenile record, State's 9. So in July of 2004, you were paroled from the Department of Juvenile Justice. This incident happened on September 9, 2004, isn't that right?

A. Yes, sir.

Q. So to be clear, less than two months after you got out on parole from the Department of Juvenile Justice, you were involved in this armed, this armed robbery/murder?

A. Yes, sir. And again, the people that I was hanging with, you know, I'm not gonna blame everything on them because I had a mind of my own, but it plays a big part because the people that I'm hanging around is what I'm looking at as friends, who I'm looking at as my associates, but the whole time they really wasn't, you know. But I take, I take ownership of the things that I've done. You know, I'm just here today just trying to, you know, put, put a lot of behind me and speak the truth.

Q. You say you take ownership for things you've done, but you've make clear twice to this court that you think you should have plan to manslaughter as opposed to murder, did I hear something wrong?

A. I'm saying you heard that clearly right.

Q. But yet, you're saying you accept the responsibility?

A. I did.

(App. pp. 470-471).[5]

Next, the State was permitted to make its presentation to the resentencing court. The State pointed out that Appellant attempted to withdraw his guilty plea at the original sentencing hearing. (App. pp. 471-473). The State highlighted that the original sentencing court indicated that Appellant "had expressed no remorse and was actually trying to minimize his responsibility." (App. p. 473). The State further outlined that Appellant attempted to excuse the crimes because they were all high on drugs, and there was a dispute about whether there was even a victim. (App. p. 473). The State further highlighted pages 35-40 in the original sentencing transcript and page 10 of the waiver evaluation. (App. p. 474). The State further provided that Appellant's criminal history was one of escalation and that his ability to be rehabilitated was likely to be difficult. (App. pp. 474-475). The State then highlighted that the Victim was shot at least seven times. (App. p.

[5] At this point, the State entered State's Exhibit No. 8 into the record. (App. p. 472).

476). The State goes on to detail that the co-defendant, Dennis Hunter, cooperated and was willing to testify against the other co-defendant, Anthony Robinson, which led to Robinson pleading guilty. (App. pp. 478-479). The State indicated to the resentencing court that the evidence showed the Victim was shielding himself when he was shot. (App. pp. 478-480).

The last two witnesses called were the Victim's son and daughter.

In closing, Counsel Gailliard addressed the legal differences in sentencing between children and adults. He stressed the importance of individualized sentencing for children, taking into account their unique characteristics, such as immaturity and a developing sense of responsibility. Counsel Gailliard referenced the testimony from Pastor Daniels, illustrating how Appellant, as a troubled youth, experienced academic and social improvements when surrounded by the supportive environment of a church group. However, after returning to a challenging home life, Appellant fell back into negative behaviors. Counsel Gailliard urged the resentencing court to acknowledge Appellant's youth and personal growth, advocating for a reassessment of his sentence that considers his age and the influential factors in his life, thus providing him with an opportunity for positive reintegration into society. (App. pp. 495-497).

In closing, the State expressed concern about how moderating the defendant's sentence based on his statements could also affect the perception of the offense itself. The State discussed the murder, armed robbery, and the subsequent events leading to the capture of the suspects. The State provided details of James Robinson, an employee present prior to the incident, recognized one of the suspects, referred to as "Ham," and noted their suspicious behavior while he was helping to close the store. The State highlighted the vehicle used in the robbery belonged to Anthony Robinson, who had been involved in a shooting the night before and was attempting to flee. The State pointed out that after the robbery, the suspects did not go their separate ways but instead

stayed at the Hartsville Motel, where they were ultimately caught with $1,620 and marijuana. The State highlighted this behavior after the crime was significant evidence for the resentencing court's consideration. (App. pp. 501-503).

The State discussed the considerations regarding a defendant's sentencing in a court case, explicitly referencing the legal standards set by Miller v. Alabama. The State discussed the resentencing court's discretion over the weight of various factors, which must be presented but are not necessarily determinative. The State addressed the defendant's age as a factor, but not the sole issue, and evidence such as a waiver evaluation has been introduced to support this. The State discussed the Appellant's family and home environment, which had been considered but was not dispositive. The State discussed the circumstances of the offense, acknowledging the horrific nature and Appellant's role, with no indication of duress in his actions. The State addressed the possibility of rehabilitation as a significant concern. The State highlighted Appellant's lack of acceptance of responsibility and remorse, as indicated in earlier evaluations, and his demeanor during sentencing, which suggested that Appellant may not be a good candidate for rehabilitation. The State discussed Appellant's criminal history, including the murder and armed robbery that escalated from property crimes to violent offenses. The State emphasized that Appellant willingly participated in the armed robbery, pointing out the impracticality of leaving a victim alive who could identify him. The State mentioned that the Victim was familiar with Appellant and that Appellant did not wear a mask during the incident. The State expressed disbelief that, after 14.5 years, Appellant still minimizes his actions and lacks genuine remorse, questioning his claim that he should have been sentenced for voluntary manslaughter instead. The State argued that the original life sentence was appropriate and should remain unchanged, and asserted that Appellant has shown no acceptance of responsibility for his actions. (App. pp. 503-510).

In consideration of the first factor, the resentencing court stated the following:

> The factors that we had to deal with and you heard the attorneys, excuse me, talk about them, but they, they start out with number one: It says, "the chronological age of the offender and the Hallmark features of youth including immaturity and impetuosity and failure to appreciate the risks and consequences." That's just one of five factors that I have to consider. I mean, when looking at those factors, you know, the Department of Juvenile Justice when they did their evaluation back when he was 15 years-old, 16, I think it was at the time he was actually evaluated, you know, they said he, he was not mature. Said he did not meet expected level of a 16 year-old at that time. But that's just one factor and one thing they said. And in looking at this matter as I pointed out, it's states though, "that you have to consider the failure to appreciate the risk and consequences of his actions." In my opinion, if anybody should ever have understood the risk involved in going in with an armed robbery, forget about the murder, but to go in there and commit an armed robbery, anybody who was thinking about doing that after they had been charged 14 times in the juvenile court. He knew what the risk were in committing a crime because he was sentenced to the Marine Institute. Given an indeterminate sentence. Put on probation. Fourteen times, if I counted correctly. Fourteen! I mean, if you don't learn something after 14 times you're not ever gonna learn it. He knew what he was doing that night. He knew that there were risk involved in committing an armed robbery. He knew that if he got caught and was arrested he was gonna go to jail or at least, have to go to court and let the court determined whether or not he was guilty. So I cannot believe that he did not understand or appreciate the risk and consequences involved. He had to have. Common sense tells you that after his experience with the law. DJJ may have have found him to be immature but some of that immaturity is gone after you've been arrested 14 times.

(App. pp. 512-513).

In consideration of factor two, the family and home environment that surrounded the offender, the resentencing court heard the testimony of Pastor Daniels and the DJJ report and stated that Appellant did not have the best life and "anybody that has reviewed everything would agree with that." The resentencing court emphasized that Appellant did well in foster care and knew how to act in the right environment. The resentencing court expressed that many people come from bad homes, and they do not let that dictate the outcome of their life. The resentencing court emphasized that Appellant came from a bad home and how his mother would not admit to her own wrong doings. (App. pp. 514-515).

In consideration of factor three, "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," the resentencing court emphasized that this was one of the most horrific homicides that the resentencing court had ever dealt with. The resentencing court expressed that there was no doubt as to Appellant's participation, as through his own admissions that he was the person who got the Victim to open the door. The resentencing court indicated that it had read through the transcript that Appellant agreed to the facts presented and now wants to change his story. The resentencing court found that Appellant was one of the main participants in the crimes. The resentencing court found that there was no familial pressure. The resentencing court addressed the possibility of intimidation from the co-defendant with the gun, but highlighted that the case was one of conspiracy. The resentencing court ultimately found Appellant knew precisely what he was doing, but did not find it was due to peer pressure. (App. pp. 515-517).

In consideration of factor four, "incompetencies associated with youth," the resentencing court found Appellant undoubtedly assisted his attorney, and this was plain from the reading of the transcript. The resentencing court found that there was nothing in the DJJ report and no competency evaluation indicating Appellant could not assist his attorney. The resentencing court emphasized that the DJJ report indicated Appellant "demonstrated intellectual capacity." Further, the resentencing court found that there was no showing to that court that Appellant suffered any incapacities. The resentencing court emphasized that Appellant had enough capacity to "try to minimize his involvement" at his original sentencing hearing and at the resentencing hearing. The resentencing court found no indications that Appellant had any issues dealing with his attorney, law enforcement, or the prosecutor in this case. (App. pp. 517-519).

In consideration of factor five, "a possibility of rehabilitation," the resentencing court found:

> Well, I'm looking at a report from DJJ closer in time, obviously, to the time he was sentenced originally. "Angelo had a long history of infractions and persons with such patterns, especially if escalated are more difficult to rehabilitate." Mr Redmond pointed that out in his argument. Well, things certainly escalated. I mean, they escalated from the very first one through 14 different offenses until they did the big one. The murder and the armed robbery. They go on to say, "persons who are guilty but who do not admit their wrongdoing are less likely to rehabilitate very well." Well, you know, he admitted it on his guilty plea. But if you go back and look at your transcript at the sentencing and Judge Milling was concerned about this, he started recanting like crazy. Complaining about his lawyer. One of the best ones in the PD in saying, I –- we were doped up. We were this. We were that. You know, don't know whether it was us in store, you know. Total denial at that point in time. And even today, even today he tries to argue that, and again, goes to the minimization, that what he did was manslaughter. Well, and reason -- and they talk about he doesn't know the intricacies of the law and this and that. Sure he doesn't. You know, like you said some lawyers don't. Law students don't and some lawyers don't understand it either. But he knows that manslaughter is a lesser offense than murder and most anybody would know that, in general. And he's trying to say, you know, what I did was less than murder. So I ought not to have to get the sentence that I've already been given 'cause I wasn't that bad. I didn't do that much. But, you know, we've got the recantation earlier. We've got the minimization now, it continues 17 and a half years later. DJJ's concern about rehabilitation. In Judge Milling's comment about no remorse was shown. Now, he's come in here today and apologize to the family, 17 and a half years too late. I guess if I'd been imprisoned for all this time too I might, I'd be trying to do anything to keep from going back or to get out sooner. You can't blame a man for trying, I guess, but it falls on deaf ears with me.

(App. pp. 519-521).

Ultimately, the resentencing court found that after considering and looking at all the various factors required by Miller v. Alabama and Aiken v. Byars and reviewing the entire record, the resentencing court was satisfied that Judge Milling's sentence of life without parole was appropriate. The resentencing court resentenced Appellant to life without parole. (App. p. 521).

A. Failure to Object to the Sentence and Raise the Specific Concerns to Judge Henderson Defeats the Court's Authority to Consider the Assertions of Error Raised for the First Time in this Appeal.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity "to rule properly after it has considered all relevant facts, law, and **arguments**." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (emphasis added); see generally Unemployment Compensation Comm'n of Alaska v. Aragan, 329 U.S. 143, 155 (1946) ("A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the Commission of an opportunity to consider the matter, make its ruling, and state the reasons for its action.").

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see also JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). If an issue—including a constitutional one—is not presented to and ruled upon by the circuit court judge, it cannot be raised for the first time to the appellate court. State v.

Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled on by the trial court to be preserved for appeal."). Critically, on appeal, an appellant is limited solely to the grounds raised at trial. State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997); see State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

Moreover, in the context of sentencing issues, a criminal defendant is required to contemporaneously object to an alleged sentencing error during trial in order to preserve an issue with a sentence for appellate review. State v. Salisbury, 330 S.C. 250, 276, 498 S.E.2d 655, 669 (Ct. App. 1998); see State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) ("[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review."). Importantly, an appellant's failure to timely object to or seek modification of a sentence in the trial court precludes him from pursuing the issue on appeal. State v. Winestock, 271 S.C. 473, 475, 248 S.E.2d 307, 308 (1978); see State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) ("No objection to sentencing was raised at trial and this issue is not properly before the court."); State v. Shumate, 276 S.C. 46, 47, 275 S.E.2d 288, 288 (1981) ("A defendant's failure to timely object to or seek modification of his sentence in the trial court precludes him from presenting his objection for the first time on appeal. Appellant's contention was not advanced at the probation revocation hearing where the results were most favorable to him. By failing to object to or seek modification of the revocation sentence in the trial court he is now foreclosed from doing so on appeal." (citations omitted)).

Appellant contends that the resentencing court insufficiently and erroneously applied the Aiken v. Byars factors because it "misinterpreted several factors and used them as evidence of

aggravation instead of evidence mitigating in favor of a sentence less than life." (BOA p. 7). Absent any request below when given the opportunity to do so at the March 3, 2022, resentencing hearing with Judge Henderson, Appellant for the first time in this appeal suggests this Court should vacate the sentence and remand for a new resentencing hearing in compliance with Miller and Aiken - a correction or clarification he failed to ask for at the time of the actual sentencing on March 3, 2022. cf. State v. Pearson, 286 Or. App. 110, 111-112, 398 P.2d 506, 506-507 (Or. Ct. App. 2017) (holding a defendant's appellate argument his forty-year sentence for crimes he committed as a juvenile was unconstitutional in light of the United States Supreme Court's decision in Miller was neither preserved for appellate review nor plainly erroneous where the defendant merely argued to the sentencing judge he should receive a shorter sentence and never suggested a forty-year sentence would be unconstitutional in light of his status as a juvenile).

Despite Judge Henderson's statement to the contrary about his consideration of all the factors and going through each of them on the record, Appellant now contends for the first time that nothing other than limited parcels of the evidence was considered and the resentencing judge erroneously applied them to his case. For example, Appellant avers for the first time that the resentencing court in evaluating the first Aiken factor dismissed portions of the record and relied on others to improperly dismiss the hallmark features of youth. Another example, Appellant avers for the first time the resentencing court did not meaningfully consider the second Aiken factor and likens the error to that found by the South Carolina Court of Appeals in State v. Mack, 441 S.C. 526, 894 S.E.2d 820 (Ct. App. 2023). Again, these concerns about alleged errors were ones that should have been raised before Judge Henderson so that he would have had the opportunity to address them at that time.

Because defense counsel did not raise any of the arguments Appellant is now attempting to raise on appeal, the sentencing judge was wholly denied an opportunity to consider, address, or rule upon those arguments in imposing Appellant's sentence. See Queen's Grant, 368 S.C. at 373, 628 S.E.2d at 919 ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." (citations omitted)). Critically, without first giving the sentencing judge an opportunity to address his constitutional claims regarding the propriety of his sentence, Appellant is precluded from raising those claims for the first time on appeal. See State v. McCray, 222 S.C. 391, 394, 73 S.E.2d 1, 2 (1952) (finding McCray's appellate contention the sentence imposed was "cruel and excessive" was unavailable to him on appeal because that particular contention was not raised to the circuit court judge); see also I'On, 338 S.C. at 422, 526 S.E.2d at 724 ("The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred."); see generally In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."). As a result, Appellant's appellate challenge to his sentence is not properly preserved for appellate review and simply cannot appropriately be raised or addressed for the first time on appeal. See Johnston, 333 S.C. at 462, 510 S.E.2d at 425 ("[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review."); State v. Walker, 252 S.C. 325, 327-328, 166 S.E.2d 209, 210 (1969) (declining to address Walker's appellate contention the sentence he received could not have properly been imposed "on the elementary ground that the question was not raised below"); see also State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"); cf. State v. Gulledge, 321 S.C. 399, 404-405, 468 S.E.2d 665, 669 (Ct. App.

1996) ("Gulledge . . . argues the State did not prove she had the resources to pay $210,000.00 in restitution and the trial court failed to state its findings and the underlying facts and circumstances of them. Because this argument was neither raised to nor addressed by the trial court, we need not deal with it.") (citation omitted). Appellant's conviction and sentence should be affirmed.

What is required is for the sentencing court to fully consider the Aiken and Miller factors in sentencing and subject them to individualized sentencing. As documented within our summary of the evidence presented to Judge Henderson, evidence was presented to him which touched upon all five factors in Aiken. Judge Henderson's acknowledgement that he considered all the factors and the failure of Appellant (or the State) to object or suggest otherwise when given the opportunity suggests they recognized the sentence did not abuse Judge Henderson's discretion. See Jones v. Mississippi, 593 U.S. 98, 116-117 (2021) ("Because the Constitution does not require an on-the-record explanation of mitigating circumstances by the sentencer in *death penalty cases*, it would be incongruous to require an on-the-record explanation of the mitigating circumstance of youth by the sentencer in *life-without-parole cases*.").

Since there were no objections to Appellant's sentence and there was no motion to reconsider the sentence made to Judge Henderson, Respondent submits that Appellant's issues are not preserved for appeal and all his grounds for relief from the sentence must be rejected.

II. The resentencing court did not err as a matter of law by sentencing Appellant to life without parole for an offense he committed as a fifteen-year-old juvenile where the court properly considered and applied the Aiken v. Byars factors.

In 2012, the United States Supreme Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Miller v. Alabama, 567 U.S. 460, 465 (quoting U.S. Const. amend. VIII). The South Carolina Supreme Court considered the impact of Miller on South Carolina law in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). Our Supreme Court in

Aiken set forth factors to guide courts in carrying out their duties under the Eighth Amendment. Id.

The Aiken factors include "(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 assists his own attorneys; and (5) the possibility of rehabilitation." Aiken, 410 S.C. at 544, 765 S.E. at 577 (quoting Miller, 567 U.S. at 477-78) (internal quotation marks and alterations omitted).

"Without question, the judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating circumstances." Aiken v. Byars, 410 S.C. at 545, 765 S.E.2d at 578 (2014). "Our General Assembly has made the decision that juvenile offenders may be sentenced to life without parole, and we honor that decision. However, Miller requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored." Id.

Assuming *arguendo* these issues are preserved for consideration by a complete lack of objection or motion for reconsideration (Issue I), it is without merit. The focus of Appellant's challenge is that the resentencing court "misinterpreted several factors and used them as evidence of aggravation instead of evidence mitigating in favor of a sentence less than life." (BOA p. 11). However, what Byars and Miller require is consideration of the hallmarks of youth factors. The

record is clear, Judge Henderson unequivocally declared within the resentencing hearing that he was directed by Aiken v. Byars to consider those five factors and consider the evidence presented to him in the hearing which he declared he did.

> The United States Supreme Court and the Supreme Court of South Carolina has provided you with an opportunity to be re-sentenced under their cases Miller v. Alabama and Aiken vs. Byers here in South Carolina. And I have looked at the various factors which I have discussed. I've covered each one of them here. And when I look over everything and consider all the various factors that I have to at a hearing of this nature, I am satisfied that the original sentence of Judge Milling was appropriate. And in re-sentencing you now at this particular time the offense of murder of Mr. Griggs, I sentence you to life without parole. That's the ruling of the court.

(App. p. 521). Respondent submits that the mandates of Miller were satisfied according to Montgomery[6] and Jones. However, assuming *arguendo* the issues are preserved, Respondent addresses Appellant's arguments in turn.

The first Aiken factor requires the sentencing court to consider "the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence[s]." Aiken, 410 S.C. at 544, 765 S.E. at 577 (quoting Miller, 567 U.S. at 477-78) (internal quotation marks and alterations omitted). Here, Appellant avers that the resentencing court discredited the findings from the waiver evaluation, improperly relied on the DJJ record, dismissed the hallmark features of youth, and did not duly consider the Appellant's youth. Contrary to Appellant's assertion, the resentencing court weighed multiple factors and, within its discretion, made the findings based on the evidence that it clearly reviewed.

The resentencing court noted that the DJJ evaluated Appellant and found he lacked maturity, not meeting the expected level of a 16-year-old at that time. (App. p. 512). However,

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[6] Montgomery v. Louisiana, 577 U.S. 190 (2016).

the resentencing court also considered and weighed the evidence regarding "failure to appreciate the risks and consequences." The resentencing court stated:

> In my opinion, if anybody should have understood the risk involved in going in with an armed robbery, forget about the murder, but to go in there and commit an armed robbery, anybody who was thinking about doing that after they have been charged 14 times in the juvenile court. He knew what the risk were in committing a crime because he was sentenced to the Marine Institute, given an intermediate sentence, put on probation. Fourteen times, if I counted correctly. Fourteen! I mean, if you don't learn something after 14 times you're not ever [going to] learn it. He knew what he was doing that night. He knew that there were risk involved in committing an armed robbery. He knew that if he got caught and was arrested, he was [going to] go to jail or at least, have to go to court and let the court determine whether or not he was guilty. So I cannot believe that he did not understand the risk and consequences involved. He had to have. Common sense tells you that after his experience with the law. DJJ may have found him to be immature but some of that immaturity is gone after you've been arrested 14 times.

(App. p. 513)

Appellant further rests reliance on Johnson v. Texas to support his contention, where the United States Supreme Court recognized that "a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." 509 U.S. 350, 367 (1993). However, the resentencing court's assessment on this factor clearly reflects the court found that Appellant's decision was far from "impetuous," considering he had been arrested 14 times prior. (App. p. 513). The resentencing court found that he knew what he was doing, and he knew what the risks were, which is squarely within the resentencing court's discretion. Id.

Appellant also relies on State v. Mack, 441 S.C. 526, 894 S.E.2d 820 (Ct. App. 2023), where the South Carolina Court of Appeals found the resentencing court erred by addressing Mack's age only as a chronological fact. In this case, unlike in Mack, the resentencing court thoroughly considered all aspects of the factor, and this is evident in the record.

The second Aiken factor is the "family and home environment that surrounded the offender." Aiken, 410 S.C. at 544, 765 S.E. at 577 (quoting Miller, 567 U.S. at 477-78) (internal quotation marks and alterations omitted). Appellant contends that the resentencing court misapprehended this factor and likens it to the resentencing court in Mack. Appellant contends "in the view of the resentencing court, a difficult childhood was simply something to overcome." (BOA p. 13). Contrary to Appellant's contention, the resentencing court acknowledged that based on what was heard from Preacher Daniel, Appellant, and DJJ in their report, that Appellant did not have the best home life. (App. p. 514). Further, the resentencing court also recognized that Appellant did well when he was in foster care, so he knew how to behave when he was in the right environment. Id.

Appellant further argues that the resentencing court transformed Appellant's mitigating evidence into aggravating evidence. However, the record reflects the resentencing court acknowledged this factor "I'll give him a factor that he came from a bad home, you know." (App. p. 515). This clearly suggests that the resentencing court considered his family and home environment to be mitigating evidence. Nonetheless, the resentencing court ultimately concluded that life without the possibility of parole was the appropriate sentence, given the presence of other aggravating circumstances, which the resentencing court is perfectly entitled to assess within its discretion. See Aiken *supra*.

The third factor in Aiken is " 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." Aiken, 410 S.C. at 544, 765 S.E. at 577 (quoting Miller, 567 U.S. at 477-78) (internal quotation marks and alterations omitted). Appellant contends that the resentencing court "wholly failed to consider [Appellant's] role in the armed robbery[,] . . . [Appellant] was not the

shooter, . . . [and] peer pressure likely affected [Appellant]." (BOA p. 14). The record wholly refutes Appellant's contention. The resentencing court definitively discussed Appellant's role and considered the fact that Appellant was one of the main participants in this "horrific" homicide that went to the door so that the Victim would let them inside. (App. p. 515).

Further, the resentencing court found that there was no familial pressure in this case; his mother and stepfather did not pressure him in any way. (App. p. 516). Appellant erroneously argues that "the court also completely dismissed the fact that peer pressure likely affected Appellant." (BOA p. 14). However, the record reflects that the resentencing court fully addressed how peer pressures may have affected Appellant. When addressing the peer pressure aspect, the resentencing court stated:

> You know, if they want to argue that maybe Mr. Robinson, I believe that was his name, you know, intimidated him because he had a gun. You know, they discussed this matter. You know, this was a conspiracy case too at one point in time. That means they all three got together and talked about it and planned what they were [going to] do. You know, you can back out at any point in time……… I don't find that in this particular case that there really was peer pressure to the extent that he committed this crime totally because of peer pressure. He knew what he was doing.

(App. p. 516). Clearly, the record provides the resentencing court specifically addressed the question of whether peer pressure affected Appellant and considered that the co-conspirator had a gun, and did consider how peer pressure may have affected him. (App. p. 516).

The fourth Aiken factor is "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." Aiken, 410 S.C. at 544, 765 S.E. at 577 (quoting Miller, 567 U.S. at 477-78) (internal quotation marks and alterations omitted). Appellant contends that there was no evidence to support that Appellant assisted his attorneys, that the comments he made during his original sentencing hearing were evidence of his incompetencies

associated with youth, and his outbursts should not have been used in aggravation, but rather attributed to his youth. (BOA pp. 16-17). However, while Appellant may not agree with the resentencing court's determinations and discretion in evaluating the factors, the record is clear that the resentencing court, within its discretion, addressed this factor. See Jones v. Mississippi, 593 U.S. at 115 ("It is true that one sentencer may weigh the defendant's youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in a specific case. Some sentencers may decide that a defendant's youth supports a sentence less than life without parole. Other sentencers presented with the same facts might decide that life without parole remains appropriate despite the defendant's youth.").

The resentencing court noted that, upon reviewing the transcript, there was no evidence to suggest that Appellant experienced difficulties in assisting his attorney. (App. p. 517). The resentencing court determined that the DJJ evaluation reports showed no indication that he was unable to assist, nor was there any competency evaluation stating otherwise. The resentencing court cited the DJJ report, which explicitly mentioned that "Angelo demonstrated intellectual capacity." Moreover, the resentencing court highlighted comments from Appellant's mother, who noted that he had been an A/B student in elementary school. (App. pp. 517-518). While the resentencing court recognized that all youth face certain challenges, they concluded that, in this particular instance, those challenges did not excuse Appellant's actions on that specific night. (App. p. 518). The resentencing court found no evidence in the record to suggest that he ever had issues interacting with his attorney or law enforcement. (App. p. 519). Ultimately, the court decided that this factor did not favor Appellant. Id.

In furtherance of Appellant's contention, he cites Grant v. Florida, "juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional

actors within it." 560 U.S. 48,78 (2010). However, the resentencing court addressed numerous times that Appellant had been arrested *fourteen* times prior, and found that at that point, Appellant had some understanding of the criminal justice system and the roles of the institutional actors within it.

The fifth factor in Aiken is "the possibility of rehabilitation." Aiken, 410 S.C. at 544, 765 S.E. at 577 (quoting Miller, 567 U.S. at 477-78) (internal quotation marks and alterations omitted). Appellant contends that the resentencing court dismissed his apology to the family, ignored that he had pled guilty, that he was willing to testify against his co-defendant[7], and that the court ignored that he could be rehabilitated. Once again, the record before this Court is dispositive of these claims.

The resentencing court determined that from looking at the report from DJJ that stated, "Angelo had a long history of infractions and persons with such patterns, especially if escalated are more difficult to rehabilitate," the resentencing court found things "certainly escalated" and they escalated from the very first through the fourteenth offense and up until the murder and armed robbery. (App. p. 519). The resentencing court also addressed the fact that Appellant pled guilty, but then at the original sentencing hearing, the transcript reflects Appellant "started recanting like crazy." (App. p. 519). More specifically, the resentencing court noted Appellant complained about his lawyer, claimed to be doped up, and then said you do not know whether it was us in the store. (App. p. 520). The resentencing court found that to be a total denial at that point and said, "Even

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[7] While Appellant asserts that he was willing to testify against his co-defendant, there is evidence within the record that Appellant was not going to testify against his co-defendant. For instance, Appellant attempted to withdraw his guilty plea at this sentencing hearing. At the resentencing hearing, Deputy Solicitor Redmond told the resentencing court that co-defendant Dennis Hunter was willing to testify and cooperated, which led to co-defendant Robinson pleading guilty. (App. p. 478). Furthermore, Deputy Solicitor Redmond indicated that Appellant's actions gave the State great concern over whether or not he would cooperate. (App. p. 478).

today, he tries to argue this and that, and again, goes to the minimization, that what he did was manslaughter." Id.

Aiken requires "the mitigating hallmark features of youth [were] fully explored." 410 S.C. at 545, 765 S.E.2d at 578. Here, the record undisputedly shows that the resentencing court thoughtfully and thoroughly explored each Aiken factor. "Without question, the judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating circumstances." Id. The resentencing court, after looking "over everything" and considering "all the various factors," determined that it was appropriate to sentence Appellant to life without parole. (App. p. 521).

Respectfully, this Court should deny Appellant's claims and affirm his sentence of life without parole.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

For all the foregoing reasons, the appeal should be dismissed and the sentence affirmed.

Respectfully submitted,

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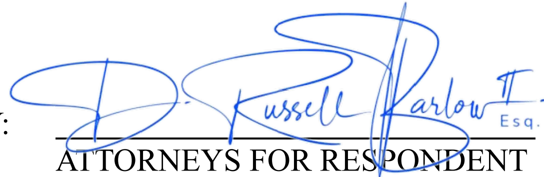
BY: 

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