STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

Opinion No. 2025-UP-195

THE STATE,

RESPONDENT,

V.

TERRY SHAIMEK TYLER,

APPELLANT.

APPELLATE CASE NO. 2021-001316

PETITION FOR REHEARING

On June 11, 2025, this Court affirmed Appellant's sixty-year aggregate sentence holding that it was not an unconstitutional *de facto* life sentence for a juvenile offender under both the United States and South Carolina Constitutions. State v. Tyler, Op. No. 2025-UP-195 (S.C. Ct. App. filed June 11, 2025). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter and consider significant points overlooked and/or misapprehended by this Court as discussed below.

In affirming Appellant's convictions this Court held "the plea court did not abuse its discretion by sentencing Tyler to an aggregate sentence of sixty years' imprisonment because his sentence is not an unconstitutional *de facto* life sentence." Id. This Court continued, "although Tyler relies on State v. Kimbrough[1] in support of his contention that a term-of-years sentence must not exceed the defendant's life expectancy, the circumstances of Kimbrough are distinguishable from the facts at hand." Id. Importantly, Appellant relied upon Kimbrough to show that our Supreme Court has recognized the concept that a term of years sentence can result in a *de facto* life sentence. Appellant does not contend that a term of year sentence must never exceed a defendant's life expectancy. What Appellant contends is that when a term of year sentence is handed down to a nonhomicide juvenile offender that is "for all intents and purposes a life sentence," that sentence must comport with the mandates espoused in Graham v. Florida, 560 U.S. 48 (2010). Specifically, that the Eighth Amendment requires the State to give a juvenile offender *some meaningful opportunity to obtain release* based on the juvenile's demonstrated maturity and rehabilitation. Id.

Appellant is serving two consecutive thirty-year sentences on offenses that are not eligible for parole. Under South Carolina law he must serve fifty-one years in prison before he could have the opportunity to obtain release. A fifty-one-year non-parole eligible term of incarceration for a juvenile offender does not offer the meaningful opportunity to obtain release based on the juvenile's demonstrated maturity and rehabilitation as required by Graham. Appellant's sentence in fact allows no opportunity to obtain release based on his demonstrated growth but instead holds him incarcerated until he is a senior citizen. Such a sentence does not comport with the United States Supreme Court's repeated rulings recognizing that children are

---

[1] 212 S.C. 348, 46 S.E.2d 273 (1948).

"categorically less culpable than the average criminal," Roper v. Simmons 543 U.S. 551, 567 (2005) citing Atkins v. Virginia, 536 U.S. 304, 316 (2002), and their diminished culpability means that children are "less deserving of the most severe punishments," Graham at 68 citing Roper, *supra*, at 569.

This Court also held that Graham does not apply to a term of years sentence such as the one Appellant is serving and relied upon our Supreme Court's opinion in State v. Slocumb, 426 S.C. 297, 827, S.E.2d 148 (2019). However, Slocumb is neither controlling nor dispositive of Appellant's claim. The reasons that counseled against finding that Graham applied to *de facto* life sentences in Slocumb do not apply to the case at hand. First, Appellant's case is factually more similar to Graham than Slocumb's case. Appellant's offenses arose from a single incident that lasted less than an hour and involved one victim that he did not try, or intend, to kill. Like the juvenile in Graham, Appellant has the twice-diminished moral culpability based on his age *and* the nature of his crime.

Second, while the Supreme Court has not explicitly ruled on whether a *de facto* life sentence is violative of the holdings in Graham and Miller, it has repeatedly declined to consider cases where state courts have reached the issue and found that term of years sentences for nonhomicide juvenile offenders are unconstitutional. See e.g., State v. Ramos, 387 P.3d 650 (Wash. 2017), *as amended* (Feb. 22, 2017), *reconsideration denied* (Feb. 23, 2017), *cert. denied* 138 S. Ct. 467 (2017) (applying Miller to defendant's aggregate 85-year sentence); State v. Zuber, 152 A.3d 197 (N.J. 2017), *cert. denied*, 138 S. Ct. 152 (2017) (applying Miller and Graham to defendants 110-year and 75-year sentences); State v. Moore, 76 N.E.3d 1127 (Ohio 2016) *cert. denied*, 138 S.Ct. 62 (2017) (holding that Graham applies to 112-year aggregate sentence for multiple nonhomicide offenses); Henry v. State, 175 So. 3d 675 (Fla. 2015), *cert. denied*, 577 U.S. 1217 (2016),

(holding a 90-year aggregate sentence for multiple nonhomicide offenses unconstitutional because Graham is not limited to the "exclusive term of 'life in prison'" and a juvenile must have a meaningful opportunity to obtain release during his or her natural life); State v. Moore, 76 N.E.3d 1127 (Ohio 2016), *cert. denied*, 138 S. Ct. 62 (2017) (holding that term-of-years prison sentence that exceeds a defendant's life expectancy violates the Eighth Amendment to the United States Constitution pursuant to Graham when it is imposed on a juvenile nonhomicide offender).

The Graham Court announced a categorical rule, not a fact-specific holding, that the Eighth Amendment prohibits the imposition of any life sentence without the possibility of parole on a juvenile offender. Notably, the sentence at issue in Graham was not termed LWOP but simply "life." The fact that it was without parole was because Florida had abolished its parole system. The categorical rule announced in Graham applies to an entire category of offenders – juveniles convicted of nonhomicide offenses – the factual distinctions within each specific case do not materially alter the application of the rule. If the sentencing practice at issue would see a juvenile offender incarcerated for their life, without a meaningful and realistic opportunity for release, it is violative of the Eighth Amendment's prohibition on cruel and unusual punishment, regardless of what the sentence is labeled. Appellant was a juvenile sentenced for nonhomicide crimes, and his sentence does not provide any meaningful opportunity for release. It therefore violates the United States Constitution's provision against cruel and unusual punishment.

Lastly, this Court declined to find that the South Carolina Constitution offers broader protections than the Eighth Amendment to the United States Constitution because our Supreme Court "has previously noted 'that the United States Supreme Court effectively treats the 'and,' as an 'or' in their Eighth Amendment analysis. State v. Wilson, 306 S.C. 498, 512, 413 S.E.2d 19, 27 (1992). Further, South Carolina courts have "used the Supreme Court of the United States'

analysis of the Eighth Amendment as a guide to interpreting article I, section 15." Owens v. Stirling, 443 S.C. 246, 266, 904 S.E.2d 580, 590 (2024), reh'g denied (Aug. 16, 2024). Respectfully, the circumstances of Wilson and Owens are wholly distinguishable from the facts at hand in Appellant's case.

In Wilson, this issue was whether the State could, within the gambit of the Eight Amendment to the United States Constitution, execute an individual who pled guilty but mentally ill to a capital offense. In that case our Supreme Court specifically wrote that the use of the disjunctive "or" rather than "and" in the South Carolina Constitution was "of no importance *in this case*, since the analysis we employ is the same under both constitutions." State v. Wilson, 306 S.C. 498, 512, 413 S.E.2d 19, 27 (1992). That analysis being "to judge whether the 'nexus between the punishment imposed and the defendant's blameworthiness is proportional.' This is the Court's formulation of a test *of whether the punishment is cruel. To require this analysis in all death penalty cases is to read the 'and' as 'or'*." State v. Wilson, 306 S.C. 498, 512, 413 S.E.2d 19, 27 (1992).

Similarly in Owens, several death row inmates challenged the constitutionality of the execution statute solely under the South Carolina Constitution's prohibition against cruel or unusual punishment. In deciding that case our Supreme Court wrote "[w]e decline to determine the extent to which article I, section 15 [of the South Carolina Constitution] provides "more protection" than the Eighth Amendment because *in this case the inmates made no Eighth Amendment claim*. It is unnecessary, therefore, that this Court compare the two provisions." Owens v. Stirling, 443 S.C. 246, 266, 904 S.E.2d 580, 591 (2024), reh'g denied (Aug. 16, 2024).

In the present matter, Appellant has claimed his rights were violated under both the Eighth Amendment to the United States Constitution and under Article 1, Section 15 of the

South Carolina Constitution, while also asserting that the South Carolina Constitution affords more protections. Appellant is a juvenile nonhomicide offender, not an adult offender facing execution. The United States Supreme Court has made clear that the imposition of traditional adult sentencing schemes on juvenile offenders is improper because "children are constitutionally different from adults for purposes of sentencing." Miller at 471 (2012). Thus, the analysis in Wilson and Owens is not the proper framework under which to analyze Appellant's claim that his sentence violates the South Carolina Constitution.

In requesting a minimum of sixty-years of incarceration the solicitor admitted the sentence she was requesting was unusual. In her twelve years as a prosecutor, she had never required a defendant to plead with no offers while also requesting consecutive time. The State specifically sought a harsher sentence for a juvenile nonhomicide offender because of his young age stating that if he was "on the streets" he would continue to commit more severe crimes. The solicitor continued "[i]f these are the types of crimes he's committing at 16, I do not want to see what crimes he is committing as he gets older." ROA. 33, ll. 6-ROA. 34, l. 7. Instead of considering the constitutional dimensions of youth when sentencing Appellant as required by Miller and Graham, the State and circuit court used his age as grounds to give him one of the harshest sentences in a sexual assault case in York County.

Based on the foregoing arguments, as well as those in the Brief of Appellant, Appellant respectfully requests that this Court rehear this matter and issue a new opinion holding that his term of years sentences is a *de facto* life sentence that does not allow a meaningful opportunity for release in violation of both the United States and South Carolina Constitutions and remand this matter for resentencing.

Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
ATTORNEY FOR APPELLANT

This 26th day of June, 2025.

RECEIVED
Jun 27 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY SHAIMEK TYLER,

APPELLANT.

APPELLATE CASE NO. 2021-001316

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Terry Shaimek Tyler, #385746, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 26th day of June, 2025.

Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

Leverett, Scott

From: Leverett, Scott
Sent: Friday, June 27, 2025 12:00 PM
To: Mark Farthing
Cc: Caroline Collins; Saxon, Jessica
Subject: 2021-001316 - State v. Terry S. Tyler - Petition for Rehearing
Attachments: 2021-001316 - State v. Terry S. Tyler - Petition for Rehearing.pdf

Dear Mr. Farthing,

It has been brought to my attention that page 3 from the Petition for Rehearing was missing in yesterday's filing. Attached please find a corrected Petition that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Jessica Saxon
Appellate Defense