STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from York County
Honorable William A. McKinnon, Circuit Court Judge

Opinion No. 2025-UP-195 (S.C. Ct. App. Filed June 11, 2025)
Lower Court Case No. 2019-GS-46-01336; 01337; 01338; 01339; 01340; 01336A

THE STATE,

RESPONDENT,

V.

TERRY SHAIMEK TYLER,

APPELLANT.

APPELLATE CASE NO. 2021-001316

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on August 20, 2025. App. 93.

QUESTION PRESENTED

I.

Whether the Court of Appeals erred in determining that Petitioner's aggregate term of sixty years imprisonment for non-homicide offenses he committed as a juvenile during a single incident was not a *de facto* life sentence and that the sentence was not violative of the Eighth Amendment to the United States Constitution?

II.

Whether the Court of Appeals erred in determining that Petitioner's aggregate term of sixty years imprisonment for non-homicide offenses he committed as a juvenile during a single incident was not a *de facto* life sentence and that the sentence was not violative of the Article 1, Section 15 of the South Carolina Constitution?

STATEMENT OF THE CASE

In the early morning hours of February 15, 2019, sixteen-year-old Petitioner, while armed with a handgun, kidnapped, sexually assaulted, and robbed E.P., a student enrolled at Winthrop University. Surveillance cameras captured portions of the incident, including the initial kidnapping and Petitioner driving away in E.P.'s vehicle. R. 24, l. 23-26, l. 19. The Rock Hill Police Department utilized license plate tag readers to track E.P.'s vehicle. When the vehicle was stopped around 11:00 a.m. that same morning, the driver was identified as Petitioner. R. 26, l. 20–27, l. 20. A Sexual Assault Nurse Examination (SANE) kit performed on E.P. and Petitioner revealed Petitioner's D.N.A. inside of E.P. and E.P.'s D.N.A on Petitioner's penis. R. 31, ll. 19-25.

Petitioner was indicted by a York County grand jury in June 2019 for one count each of criminal sexual conduct first degree, possession of a weapon during the commission of a violent crime, kidnapping, armed robbery, grand larceny $10,000 or more, and unlawful possession of a firearm by a minor. R. 236. On July 8, 2021, Petitioner appeared before the Honorable William McKinnon to enter guilty pleas to the charges. R. 1. The state was represented by Sharon Ohayon. Petitioner was represented by Zachary Merritt. R. 1. After a thorough plea colloquy, Judge McKinnon accepted Petitioner's guilty pleas. R. 1-12. On August 16, 2021, the parties reconvened for sentencing. R. 20.

After the state provided a detailed recitation of the facts it requested that Petitioner be given consecutive sentences equaling sixty years, arguing that "[i]f these are the types of crimes he's committing at sixteen, I do not want to see what crimes he is committing as he gets older." R. 24, l. 10–30, l. 9; R. 33, l. 6–34, l. 7. Even Deputy Solicitor Betty Ann Miller addressed the court asking that Petitioner "be separated from the rest of us until he is an old man and not a

danger to anyone anymore." R. 47, ll. 7-12. Counsel Merritt made a motion for a sentencing hearing pursuant to Aiken v. Byars[1] arguing that the sentencing factors expressed in Aiken applied to all juvenile sentencing matters that arose after Aiken was decided. R. 50-55. Counsel Merritt requested that the sentencing court consider the Aiken factors against the seriousness of Petitioner's crimes in fashioning a sentence. R. 49, l. 15–59, l. 7.

Dr. Amanda B. Salas, a board-certified Adult, Child and Adolescent, and Forensic Psychiatrist, was retained to evaluate Petitioner's juvenility and culpability. She produced a five-page report which revealed that although Petitioner had a fairly stable childhood, his first sexual encounter occurred at age seven, when a female ten years older than him sexually abused him. Petitioner did not characterize the incident as abuse, instead seeing the experience from the viewpoint of being wanted/desired by a peer. However, because Petitioner does not recognize himself as having been abused it was unclear what emotional impact the experience has had on him. R. 121-126.

Dr. Salas confirmed Petitioner's prior diagnosis of ADHD. Once Petitioner reached the age where he could decide for himself if he wanted take medication, he opted to stop taking his ADHD medication because kids at school picked on him calling him "crazy." Subsequently, Petitioner went through "an increase in disruptive behaviors, many of which reflected poor impulse control under negative peer influence." Petitioner admitted to continued use of marijuana stating it improved his feelings of anger and aggravation, allowing him to laugh and relax, and because it was acceptable to use marijuana within his peer group. R. 123.

Petitioner's record reflected "circumstances typical of a juvenile in detention with ADHD and substance use – situations arise in the context of being off effective treatment, away from

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[1] 410 S.C. 534, 765 S.E.2d 572

adequate parental supervision, under the influence of alcohol and/or drugs, and under negative peer influence." The charges he had pled to occurred under a similar construct. Dr. Salas opined that Petitioner's charges stemmed "from actions made *not just by an adolescent brain, but one wired to have more pronounced problems with impulse control and ability to manifest restraint in real time*." R. 123 (emphasis added).

The report contained a factual recitation of the incident from Petitioner's point of view wherein he reported that an individual named "Eli" tricked him into meeting up, talked him into stealing a car, gave him a gun, and told him what type of vehicle to steal. E.P. was driving an SUV that was of interest to Eli, so Petitioner followed her and presented the gun. He recounted that she complied with his directions, did not resist walking with him, and did not attempt to gain the attention of others, including police, in the parking lot. According to Petitioner, when they arrived at the train tracks, he ordered E.P. to throw her purse on the ground, at which point she begged him not to hurt or kill her and offered to have sex with him. After the sexual encounter, he returned to the primary goal of getting a vehicle, took her phone and keys, got her SUV, and went looking for Eli. R. 123-124.

Dr. Salas stated that the factors shared in the account given by Petitioner reflected his "immaturity and adolescent nature." She noted that he did not have a plan to accomplish the goal of getting a car and had no plan to use a gun. She wrote "in the heat of the moment, [Petitioner] did not see this as a forced sexual encounter. He was not thinking of sex when they walked to the railroad track. He did not process her offer to have sex with him as a negotiation not to harm her. Instead, [Petitioner] genuinely thought the victim was offering him voluntary sex." R. 124.

Petitioner's "understanding of the criminal behavior in the moment of the crime [was] not sophisticated." His crime was "a reflection of an underdeveloped adolescent brain characterized by immaturity and impulsivity." Petitioner's "aberrant impulsivity made it more challenging for him to demonstrate restraint in the thrill of the moment...In short, lack of brain development compounded by untreated ADHD and acute intoxication with marijuana clouded his perception and impaired his decision-making abilities." R. 124. She wrote that Petitioner's "account of the crime suggests *a diminished real time recognition of his acts as wrong*, although he recognizes the nature of the charges as serious and *reflects on his actions with remorse*." R. 125.

Dr. Salas opined that the Petitioner does not have an underlying sexual deviation or antisocial personality construct. "His unrecognized history of sexual abuse and general biologic sex drive for which he thought there was an opportunity for consensual sex are more influential for his role in the act than characteristics found in an adult sex offender." Dr. Salas continued, "[t]he immaturity of [Petitioner's] adolescent brain is evident by his personal history and account of events. His diagnosis of ADHD compounds the immaturity of normal brain development." This meant that "*his 16-year-old brain is more compatible with the normal development of a brain two or three (or more) years younger such as that of a 13- or 14-year-old adolescent.* As an adolescent, [Petitioner's] personality construct remains unfinished." R. 125 (emphasis added).

Dr. Salas found that Petitioner does have the ability and desire to conform to the bounds of the law, that he does not have an inherent nature to wrong or violate other people, and that he does have the ability to experience empathy and share in the perspective of another person. She found he has factors to consider for rehabilitation, including that his brain will continue to develop until his mid-twenties, that he does not have minimum, much less maximum, effective

treatment of his ADHD and substance use disorders, and that his character is not fully formed. She found that he would benefit from counseling and mental health treatment and concluded that Petitioner was "still impressionable with capacity to become a worthy citizen with positive contributions to society." She further noted that Petitioner expressed "deep remorse for those affected by his actions." R. 125-126.

Dr. Salas's testimony in court mirrored the findings laid out in her written report. The court questioned whether she had corroborated Petitioner's statements about the incident or if she was accepting his statements as fact. Dr. Salas qualified that she does not settle the facts, and that the truthfulness of Petitioner's statements was not up for her to decide. Her assessment was made based on her evaluation of Petitioner, his history, and her review of the discovery. Importantly, Dr. Salas testified that her conclusions were not based on a determination that Petitioner's statements were true. The statements of Petitioner were a way to "get into his brain" and the court could discount parts of the statements if they found them to be untrue. R. 64, l. 22–68, l. 19.

Dr. Salas testified that Petitioner was not antisocial nor without the capacity to experience empathy. She expressed that his immaturity and level of educational development had not progressed to a point where he could articulate his remorse in a satisfactory way. R. 77, l. 17–78, l. 1. She further explained that in her experience, adolescent offenders who premeditate their acts did not leave a trail of physical evidence behind them. While teenagers may not hide evidence in the most sophisticated of ways, they typically did not leave behind a mountain of physical evidence as in Petitioner's case. R. 80, ll. 1-25. Dr. Salas ultimately reiterated that Petitioner was still an adolescent, and that his brain was one "worth saving in terms of having

something that would give an aptitude for morality to contribute positive to society." R. 84, l. 1-6.

In issuing its sentence, the circuit court touched briefly on the factors announced in Aiken v. Byars out of an abundance of caution. The court then stated it found Petitioner's actions to be premeditated, that he knew what he was doing was wrong, and that it was not an impulsive act at all. The court further noted and considered that it saw no evidence of remorse from Petitioner. The court concluded "based on all of these -- all of these factors and the fact that with the -- this is the most heinous case the Court has ever seen with an adult victim other than a murder. And given these facts the Sentence of the Court is going to be 60 years. It's going to be consecutive sentences the state asks for." R. 114, l. 1 – 116, l. 24.

Concurrent to the two thirty-year sentences, Petitioner was additionally sentenced to thirty-years' imprisonment on the kidnapping charge, ten-years' imprisonment on the grand larceny charge, and five years each on the two weapons charges. R. 116, l. 19-117, l. 25. Counsel Merritt filed a motion to reconsider and reduce Petitioner's sentences. R. 127-225. The state filed a motion in opposition. R. 226-228. By written order Judge McKinnon declined to disturb the original sentence and denied the motion to reconsider. R. 229-235.

Petitioner timely filed a notice of appeal challenging the imposition of the sixty-year *de facto* life sentence under both the United States and South Carolina constitutions. The Court of Appeals decided the matter without oral argument and issued an unpublished opinion affirming Petitioner's sentences. State v. Terry Tyler, Opinion No. 2025-UP-195 (S.C. Ct. R. Filed June 11, 2025). Petitioner timely filed for rehearing on June 26, 2025, which was denied on August 20, 2025. This petition for writ of certiorari follows.

ARGUMENT

Petitioner was sixteen years old when he committed the offenses for which he is now incarcerated. He has been in the continual custody of State of South Carolina since February 15, 2019. Should he live long enough to reach his release date in approximately 2073, Petitioner will be in his late-sixties and will have spent most of his life incarcerated. Petitioner's current sentence constitutes a *de facto* sentence of life without the possibility of parole. Petitioner asserts that his sentence violates both the United States Constitution's prohibition of cruel **and** unusual punishment and the South Carolina Constitution's prohibition of cruel **or** corporal **or** unusual punishment because the sentence fails to give Petitioner any realistic, meaningful opportunity to gain release based on maturity and rehabilitation.

I.

The Court of Appeals erred in determining that Petitioner's sentence of an aggregate term of sixty years imprisonment for non-homicide offenses he committed as a juvenile during a single incident was not a *de facto* life sentence and that the sentence was not violative of the Eighth Amendment to the United States Constitution.

In Roper v. Simmons, 543 U.S. 551 (2005), Graham v. Florida, 560 U.S. 48 (2010), and Miller v. Alabama, 567 U.S. 460 (2012), the United States Supreme Court methodically evolved the jurisprudence surrounding the propriety of applying adult sentencing schemes to juvenile offenders. The Roper Court held that, under the Eighth Amendment, the execution of juveniles constituted cruel and unusual punishment. Five years later in Graham, the Supreme Court held that the Eighth Amendment prohibited life without parole (LWOP) sentences for juvenile offenders convicted of nonhomicide offenses **and** that States must give juvenile non-homicide offenders sentenced to LWOP a meaningful opportunity to obtain release. Then in Miller, the

Court held that mandatory LWOP sentences for juvenile homicide offenders violated the Eighth Amendment.

In each of these cases, the Supreme Court issued a new categorical rule that banned the imposition of traditional adult sentencing schemes on juvenile offenders. While the rule in each case was tailored to the circumstances directly before the Court, the underlying analyses and rationales of the decisions were the same. Science, social science, and common-sense dictate that "children are constitutionally different from adults for purposes of sentencing." Miller at 471 (2012). The Supreme Court recognized that children are "categorically less culpable than the average criminal," Roper at 567 citing Atkins v. Virginia, 536 U.S. 304, 316 (2002), and their diminished culpability meant that children were "less deserving of the most severe punishments." Graham at 68 citing Roper, *supra*, at 569.

In reaching its decision, the Roper Court discussed the differences between children and adults concluding, "*[t]hese differences render suspect any conclusion that a juvenile [offender] falls among the worst offenders.*" The Court continued "[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." It noted "the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." Id. at 570 (cleaned up) (emphasis added). Importantly, the Court established that the reasoning it espoused in Roper applied to **all** juvenile offenders. Id. at 571 (emphasis added).

The Graham Court found itself once again determining the propriety of an adult punishment for offenses committed by a child. It held that "*for a juvenile offender who did not commit homicide*

the Eighth Amendment forbids the sentence of life without parole." Graham at 74 (emphasis added). Reflecting on the framework established in Roper, the Court noted that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds...[j]uveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults." Graham at 68. The Court also distinguished the severity of the crime of murder from other offenses writing:

> *The Court has recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers.* There is a line between homicide and other serious violent offenses against the individual ... Although an offense like robbery or rape is a serious crime deserving serious punishment, those crimes differ from homicide crimes in a moral sense. It follows that, when compared to an adult murderer, *a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability.* The age of the offender and the nature of the crime each bear on the analysis.

Id. at 69 (cleaned up) (emphasis added).

Critically, the Graham Court also held that, while a State need not guarantee the juvenile offender's eventual release, it **must** provide the juvenile offender with a **meaningful opportunity to obtain release** based on demonstrated maturity and rehabilitation. Graham at 75. The Court wrote "[t]he Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide **crimes** committed before adulthood will remain behind bars for life. *It does prohibit States from making that judgement at the outset that those offenders never will be fit to reenter society.*" Id. (emphasis added). The Graham Court explained that the categorical ban on LWOP sentences for juvenile non-homicide offenders was "necessary to prevent the possibility that life without parole sentences will be imposed on juvenile nonhomicide offenders who are not sufficiently culpable to merit that punishment." Id. at 75. The Court concluded

> Finally, *a categorical rule gives all juvenile nonhomicide offenders a chance to demonstrate maturity and reform. The juvenile should not be deprived*

of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential ...

Id. at 79.

The Miller Court continued the expansion of protections afforded to juvenile offenders under the Eighth Amendment by holding that mandatory sentences of life without parole for juvenile homicide offenders also violated the Eighth Amendment's prohibition on cruel and unusual punishment. Miller, 567 U.S. at 465. While the decision did not foreclose imposition of a LWOP sentence on a juvenile convicted of a homicide offense, the Court required the sentencer "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 479-480. The Court further recognized that Roper and Graham emphasized that "*the distinctive attributes of youth dimmish the penological justifications for imposing the harshest sentences on juvenile offenders even when they commit terrible crimes.*" Id. at 472 (emphasis added).

Importantly, the Miller Court clarified that while "Graham's flat ban on life without parole applied only to nonhomicide crimes" the reasoning implicated "*any life-without-parole sentence imposed on a juvenile*, even as its categorical bar relates only to nonhomicide offenses." This is because "none of what it said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is **crime-specific**." Id. at 473. The Court determined that "[m]ost fundamentally, Graham **insists** that youth matters in determining the appropriateness of *a lifetime of incarceration without the possibility of parole.*" Based on everything said in the trilogy of cases "about children's diminished culpability and heightened capacity for change" the Miller Court observed that "*appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.* That is especially so because of the great difficulty...of distinguishing at this early age between the juvenile offender whose crime

reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Id. at 479-480 (cleaned up).

In Aiken v. Byars, 410 S.C. 534, 540-541, 765 S.E.2d 572, 575-576 (2014), this Court held that Miller applied retroactively to juveniles who were sentenced to non-mandatory terms of life without parole. According to this Court, Miller "unequivocally held that *youth has a constitutional dimension when determining the appropriateness of a lifetime of incarceration with no possibility of parole.*" Id. at 542, 765 S.E.2d at 576 (emphasis added). This Court determined "an individualized sentencing proceeding before imposing a sentence of life without parole on a juvenile offender" was required. Id. Recognizing that Miller "did not expressly extend its ruling to states such as South Carolina whose sentencing scheme *permits* a life without parole sentence to be imposed on a juvenile offender but does not *mandate* it," this Court held it "*must give effect to the proportionality rationale integral to Miller's holding – youth has constitutional significance.*" Id. at 542-543, 765 S.E.2d at 576 (emphasis added). In giving effect to the rationale in Miller, this Court found "whether their sentence is mandatory or permissible, any juvenile offender who received a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment." Id. at 544, 765 S.E.2d at 577.

In State v. Slocumb, 426 S.C. 297, 827 S.E.2d 148 (2019), this Court clarified that the rationale of Miller and Graham did not apply to an aggregate 130-year sentence for *multiple offenses committed on multiple dates with multiple victims.* Id. at 299, 827 S.E.2d at 149 (emphasis added). While acknowledging the "ostensible merit in Slocumb's argument," Id., and recognizing that "Graham may implicate *de facto* life sentences," this Court declined to extend Graham to cases dealing with aggregate sentences arising from multiple offense committed on

multiple dates absent further input from the Supreme Court for three distinct reasons. Id. at 306, 827 S.E.2d at 152-153. First, this Court found that Supreme Court precedent prohibited it from extending federal constitutional protections beyond the boundaries the Supreme Court itself has set. Id. at 306-307, 827 S.E.2d at 153. Second, this Court observed that while the original issue in Graham was a categorical challenge to a term-of-years sentence the Supreme Court answered a narrow question "by only holding that for a juvenile offender who did not commit homicide, the Eighth Amendment forbids the sentence of life without parole." Id. at 307-308, 827 S.E.2d at 153-154. Third, this Court stated that Slocumb's case was factually distinct from the circumstances presented in Graham. Most notably were the fact that Slocumb's charges arose from two distinct incidents, involving two distinct victims, one of which he intended to kill. Id. at 310-311; 827 S.E.2d at 154-155.

In reaching its decision in Slocumb, this Court noted that the debate on the issue of the constitutionality of an aggregate term-of-years sentence imposed on a juvenile offender was not at an end. "As the Supreme Court stated in *Graham* in the context of *de jure* life sentences for juveniles, *it is for the states, in the first instance, to explore the means and mechanisms for complying with the Eighth Amendment.*" Id. at 313, 827 S.E.2d at 156. Our Court then recognized that our General Assembly had introduced the "Youth Sentencing Act of 2019"[2]

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2 It must be recognized that our General Assembly has yet to accomplish any sentencing reform regarding juvenile offenders since this Court issued Slocumb. The "Youth Sentencing Act of 2019" never made it past the Committee on Judiciary. The bill was reintroduced as the "Youth Sentencing Act of 2021" and again stalled in Committee. A third version of the bill, S0267: "Juvenile Life Without Parole" was introduced during the 2023-2024 legislative session and languished in the Senate Committee on Judiciary. Currently, a fourth version of the bill, S0021: "Juvenile Life Without Parole", has been introduced and appears once again stalled in the Senate Committee on the Judiciary. Meanwhile, the youth of our State continue to be subjected to excessive and disproportional adult sentencing schemes in violation the Eight Amendment to the United States Constitution.

which would modify juvenile sentencing schemes in this state, and presumably, bring them in line with the rationale set forth in Roper, Graham, and Miller. Id. at 314, 827 S.E.2d at 157.

Discussion

Petitioner requests this Court give effect to the rationale integral to the holdings in Roper, Graham, and Miller, and hold that an aggregate term-of-years sentence arising from a single incident that denies a juvenile non-homicide offender a realistic, meaningful opportunity for release is violative of the Eighth Amendment's prohibition on cruel and unusual punishment. In affirming Petitioner's sentences, the Court of Appeals held, "although Tyler relies on State v. Kimbrough[3] 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, Petitioner relied upon Kimbrough to show only two things: 1) that this Court has recognized the concept that a term of years sentence can result in a *de facto* life sentence and 2) that this Court has recognized that consideration of a defendant's life expectancy is necessary when fashioning a sentence when the intent of the sentence is to allow the defendant a meaningful opportunity to obtain release. Id. at 357, 46 S.E.2d at 277.

Petitioner does not contend that a term of years sentence must never exceed a defendant's life expectancy. What Petitioner contends is that when a term of years 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.

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[3] 212 S.C. 348, 46 S.E.2d 273 (1948).

There is no debate that Petitioner was juvenile at the time of the incident. Notably, the information provided by Dr. Salas was not only that Petitioner had an adolescent brain, but "one wired to have more pronounced problems with impulse control and ability to manifest restraint in real time." R. 123. In fact, Dr. Salas concluded that Petitioner's brain was developmentally behind that of the average sixteen-year-old and *more akin to the brain of a thirteen- or fourteen-year-old.* R. 125. Most importantly, Dr. Salas found that Petitioner had not only the ability but the desire to conform his behavior to the bounds of the law and to become a productive member of society.

The circuit court disregarded all of Dr. Salas's findings because it misapprehended the basis of her conclusions. Whether Petitioner's recitation of the events of the evening was true or not was not relevant – his statements were not used as a source of facts but as a "window into understanding the thoughts underlying his behaviors." R. 150. The fact that Petitioner perceived any moment of the events that took place on February 15, 2019, as consensual underscores how underdeveloped his brain was on that night. Science in general, and as applied to Petitioner, reveal that at the time of the incident he was immature and irresponsible, acting under the influences of an underdeveloped brain with untreated ADHD, high on marijuana. He was not an individual of irretrievably depraved character deserving of the most severe punishment. While not an LWOP sentence in name, the solicitor admitted during sentencing that it was the first time in her twelve years of prosecuting that she made no offers and requested consecutive terms of incarceration. R. 33, ll. 8-18. By the state's own admission, Petitioner's sixty-year aggregate sentence is one of the most severe penalties handed down in York County for a sexual assault and robbery case in the last decade.

The Court of Appeals also held that Graham does not apply to a term of years sentence such as the one Petitioner is serving and relied upon this Court's opinion in State v. Slocumb, 426 S.C. 297, 827, S.E.2d 148 (2019). However, Slocumb, *supra*, is neither controlling nor

dispositive of Petitioner's claim. The reasons that counseled against finding that Graham applied to *de facto* life sentences do not apply to the case at hand. First, Petitioner's case is factually more similar to Graham than Slocumb. Petitioner'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, Petitioner 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. 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). Third, application of Graham to the present matter would not result in this Court extending federal constitutional protections beyond those set out in the text of the opinion.

The Graham Court announced a categorical rule, not a fact-specific holding, that the Eighth Amendment prohibits the imposition of a life sentence without the possibility of parole on a juvenile nonhomicide 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 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. Petitioner was a juvenile sentenced for non-homicide crimes, and his sentence does not provide any meaningful opportunity for release.

To find that Petitioner's sentence does not fall under the ambit of the United States Supreme Court precedent merely because it was not termed a "life sentence" is intellectually dishonest. By the time he qualifies for release sometime in his late sixties Petitioner will have lived his entire life inside the walls of a penitentiary. He will have no knowledge or experience of the outside world, nor will he have a chance to raise a family, to pursue a career, or to become a contributing member to society. By imposing consecutive, thirty-year, no parole sentences on Petitioner, the circuit court did what Graham expressly forbade and made the judgment that Petitioner, at age sixteen, would never be fit to reenter society in a meaningful manner.

II.

The Court of Appeals erred in determining that Petitioner's sentence of an aggregate term of sixty years imprisonment for non-homicide offenses he committed as a juvenile during a single incident was not a *de facto* life sentence and that the sentence was not violative of the Article 1, Section 15 of the South Carolina Constitution.

In Aiken, *supra*, this Court adopted the principles stated in Miller, *supra*, and by extension the principles in Roper and Graham, that "youth has constitutional significance." Aiken at 543, 765 S.E. at 576. In the trilogy of Supreme Court cases discussed above, the High Court determined that the Eighth Amendment to the United States' Constitution prohibited the imposition of certain adult punishments schemes on juvenile offenders. Applying the same analytical framework and rationale of the decisions in Roper, Graham, and Miller, this Court should hold that any sentence which subjects a juvenile nonhomicide offender to a lifetime of incarceration with no realistic, meaningful opportunity to gain release based on maturity and rehabilitation, regardless of how the sentence is labeled, violates the probation against cruel or corporal or unusual punishment found in Article 1, Section 15 of the South Carolina Constitution.

In recent years our sister state of North Carolina considered whether a *de facto* sentence of life without parole was cruel and unusual under the federal constitution as well as if it was cruel or unusual under the North Carolina Constitution. In State v. Kelliher, 381 N.C 558, 873 S.E.2d 336 (2022), the North Carolina Supreme Court held that it "violates both the Eighth Amendment to the United States Constitution and article I, section 27 of the North Carolina Constitution to sentence a juvenile homicide offender who has been determined to be "neither incorrigible nor irredeemable" to life without parole." The court further held that *"any sentence*

or combination of sentences which, considered together, requires a juvenile offender to serve more than forty years in prison before becoming eligible for parole is a de facto sentence of life without parole within the meaning of article I, section 27 of the North Carolina Constitution because it deprives the juvenile of a genuine opportunity to demonstrate he or she has been rehabilitated and to establish a meaningful life outside of prison." Id. at 560, 873 S.E.2d at 370 (emphasis added).

Kelliher was seventeen years old when, in 2001, he participated in the murders of Eric Carpenter and Carpenter's pregnant girlfriend, Kelsea Helton. After he pled guilty the United States Supreme Court decided Miller, *supra*, and Kelliher was given a resentencing hearing, during which the court resentenced Kelliher to two consecutive sentences of life with the possibility of parole which required Kelliher to serve a total of fifty years before becoming parole eligible at the age of sixty-seven. Id. at 559, 873 S.E.2d at 369-370.

In examining the claim under the North Carolina constitution, that supreme court first found that the state constitutional provision banning cruel or unusual punishment was distinct from the Eighth Amendment's ban on cruel and unusual punishment because the North Carolina constitution "prohibits punishment that is "cruel *or* unusual," while the Eighth Amendment, prohibits punishment that is "cruel *and* unusual." The Court noted that it presumed "that the words of a statute or constitutional provision mean what they say" and it was therefore "reasonable to presume that when the Framers of the North Carolina Constitution chose the words "cruel *or* unusual," they intended to prohibit punishment that was *either* cruel *or* unusual, consistent with the ordinary meaning of the disjunctive term "or." Id. at 579, 873 S.E.2d at 382 (emphasis in original).

The court continued "that article I, section 27 is textually distinct from the Eighth Amendment suggests that the people of North Carolina intended to provide a distinct set of protections in the North Carolina Constitution than those provided to them by the federal constitution." Id. at 579-580, 873 S.E.2d at 382. Recognizing that the interpretation of the Constitution "always begins with the text" the court concluded that "there is reason to confer interpretive significance on this textual distinction." Id. at 580, 873 S.E.2d at 383.

The court finished its initial analysis by noting that "the nature of the inquiry the United States Supreme Court has adopted in resolving cruel and unusual punishment claims itself suggests *that state courts should not reflexively defer to Supreme Court precedent in assessing similar claims arising under distinct state constitutional provisions" but that a state court should exercise its own independent judgment to determine whether the punishment in question is violative of the state constitution.* Id. at 581, 873 S.E.2d at 383 (emphasis added). The court concluded, "[t]he constitutional text, our precedents illustrating this Court's role in interpreting the North Carolina Constitution, and the nature of the inquiry used to determine whether a punishment violates the federal constitution all militate against interpreting article I, section 27 in lockstep with the Eighth Amendment." Id. The court found it proper to apply the analytical framework announced by the United States Supreme Court in Graham (and others) to determine whether the punishment in questioned violated the North Carolina Constitution. Id. at 584, 873 S.E.2d 385. After applying that analytical framework, the court concluded "that sentencing a juvenile who can be rehabilitated to life without parole is cruel within the meaning of article I, section 27 of the North Carolina Constitution." Id. at 586, 873 S.E.2d 387.

The North Carolina Court then analyzed whether Kelliher's sentence, which was not an actual LWOP sentence but a *de facto* LWOP sentence, was constitutionally barred under the

North Carolina Constitution. The North Carolina Court recognized that the article 1, section 27 prohibition against "the imposition of a sentence of life without parole for almost all juvenile offenders is rooted in the insight that juvenile offenders are different from adult criminal defendants in ways that are significant with respect to extreme sentences." The court continued,

> *What makes the juvenile offender different is the fact that he or she is a child, not the nature or number of the crimes he or she has committed.* Indeed, the fact that the juvenile committed multiple crimes (as opposed to a single offense) itself likely reflects distinctive features of youth. A child who commits multiple criminal offenses is no less a child than a child who commits a single criminal offense or a child who commits none ... *The fact that he committed multiple offenses does not change the fact that he was, at the time he committed those offenses, a child understood to be less morally culpable for his actions than an adult. These distinctive features of youth compel us to recognize that a sentence which deprives a juvenile of any genuine opportunity to earn his or her release by demonstrating that he or she has been rehabilitated is, in effect if not in name, a sentence of life without parole within the meaning of article I, section 27.*

Id. at 587–88, 873 S.E.2d at 387–88 (emphasis added).

Discussion

Article 1, section 15 of the South Carolina Constitution provides in part that "[e]xcessive bail shall not be required, nor shall excessive fines be imposed, **nor** shall cruel **nor** corporal **nor** unusual punishment be inflicted..." S.C. Const. Art I, § 15 (emphasis added). This language is distinct from the language of the Eighth Amendment to the United States Constitution which prohibits "cruel **and** unusual punishment." The use of the disjunctive term "nor" indicates that the South Carolina Constitution contains broader protections for its citizens than those afforded by the Eighth Amendment to the United States Constitution. Considering the plain meaning of the term "nor" it follows that our Constitution prohibits punishments that are *either* cruel **or** unusual (or corporal), and it certainly prohibits punishments that are *both* cruel and unusual. See Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (where the text language is

plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning).

Notably, this Court has found that our state Constitution affords broader protections under other provisions. Most recently in Planned Parenthood S. Atl. v. State, 882 S.E.2d 770 (S.C. 2023), reh'g denied (Feb. 8, 2023), this Court recognized that article I, section 10 of our State Constitution granted a broader right to privacy than the federal Constitution based on the plain language of the text. Further, "it is well settled that the interpretation of the state's constitution is a matter for the [state] courts." Baddourah v. McMaster, 433 S.C. 89, 103, 856 S.E.2d 561, 568 (2021). "State courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution." State v. Easler, 327 S.C. 121, 131 n.13, 489 S.E.2d 617, 622 n.13 (1997), overruled on other grounds by State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018). "This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling." Forrester, 343 S.C. at 643, 541 S.E.2d at 840.

The Court of Appeals declined to find that the South Carolina Constitution offers broader protections than the Eighth Amendment to the United States Constitution because this 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 Petitioner'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 this 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 this 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, Petitioner 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. Petitioner 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 case law relied upon by the Court of Appeals is not the proper framework under which to analyze Appellant's claim that his sentence violates the South Carolina Constitution.

In Roper, Graham, and Miller, *supra*, the United States Supreme Court set the floor for federal constitutional protections for juvenile offenders. The Supreme Court repeatedly recognized that children are constitutionally different from adults for the purposes of sentencing, have diminished culpability and greater prospects for reform, and are therefore less deserving of the harshest punishments. This Court in Aiken, *supra*, adopted that reasoning and recognized the unconstitutionality of non-mandatory LWOP sentences for juvenile offenders. Under that reasoning, any sentence which denies a juvenile nonhomicide offender a meaningful opportunity for release violates the broader prohibition against cruel or unusual punishment found in article I, section 15 of the South Carolina Constitution.

As the North Carolina Supreme Court recognized Kelliher, *supra*, it is not the number of or nature of crimes that distinguishes a juvenile offender but the fact that, in the eyes of the law they are a child when they commit their offense. Because of their juvenility, they are inherently less culpable and should not be subjected to life sentences, be they *de facto* or *de jure*, that preclude them from having a meaningful opportunity to earn release based on their maturity and rehabilitation.

Petitioner is currently serving a *de facto* life without parole sentence for offenses he committed at sixteen. Despite any productive changes he makes to himself while incarnated, he will never have a meaningful opportunity to establish a life outside of prison. There is a distinct possibility he will not live to see his release date in 2073, and if he does, he will have little chance at successfully integrating into society after a lifetime of incarceration. Additionally,

because of his age, he will spend on average more years of his life incarcerated than an adult offender given the same sentence. It cannot be reasonably concluded that our state Constitution allows such disproportion punishment of this state's children.

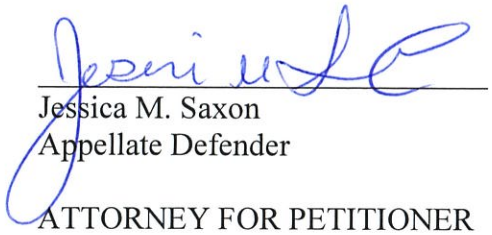
In announcing categorical bans on the death penalty, LWOP for non-homicide offenses and mandatory LWOP sentencing scheme for juvenile offenders, the Supreme Court concluded that an "unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe..." Graham at 78 (cleaned up). This likelihood was realized in Petitioner's case.

The circuit court wholly disregarded Petitioner's juvenility and diminished culpability in sentencing him to a *de facto* LWOP sentence. Despite objective evidence of his underdeveloped brain, transient immaturity, impulsivity, and potential for rehabilitation, the court made the judgment at the outset that he will forever be a danger to society. The circuit court allowed the horrendous nature of the crimes to dominate its sentencing analysis, just as the state requested. The result is that Petitioner has been subjected to a sentence that is both cruel and unusual. It subjects him to a lifetime of incarceration, with no meaningful opportunity for release, based on offenses he committed as a child. Based on the reasoning espoused in Roper, Graham, and Miller, this Court should find that any sentence which subjects a child to a lifetime of imprisonment without providing for a meaningful and realistic opportunity for release violates the broader prohibition against cruel **or** unusual punishment in article I, section 15 of our State Constitution whether the sentence is a *de jure* or *de facto* life sentence.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to the Court of Appeals to allow full briefing on the issues presented.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of September, 2025.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from York County
Honorable William A. McKinnon, Circuit Court Judge

Opinion No. 2025-UP-195 (S.C. Ct. App. Filed June 11, 2025)

Lower Court Case No. 2019-GS-46-01336; 01337; 01338; 01339; 01340; 01336A

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 writ of certiorari to the Court of Appeals and appendix 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 the South Carolina Court of Appeals; and on Terry Shaimek Tyler, #385746, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 19th day of September, 2025.

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