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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

Respondent,

v.

WILLIAM ARTHUR KELLY,

Appellant.

Appellate Case No. 2024-001153

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

HON. S. RICK HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 East Main Street
Lexington, South Carolina 29072
(803) 785-8285

ATTORNEYS FOR RESPONDENT

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V. Whether the court erred in resentencing Appellant to life without parole for an offense committed while he was a juvenile, where, as to the fifth *Aiken v. Byars* factor, the court failed to take into account evidence regarding rehabilitation, including evidence that Appellant had committed no violent acts in his twenty-five years at SCDC?

STATEMENT OF THE CASE

In November 1996, a Lexington County Grand Jury indicted Appellant William Arthur Kelly for murder, kidnapping, armed robbery, and possession of a weapon during the commission of a violent crime. R. 649. Appellant, who was seventeen years old when the crimes were committed, proceeded to trial before the Honorable Gary E. Clary and a jury from September 14–19, 1998. Solicitors Donald Myers, Francis Humphries, Jr., and Gerald Chase represented the State while Elizabeth Fullwood, Hervery Young, and Wesley Kirkland, Jr. represented Appellant. At the end of the capital trial, Appellant was found guilty of all charges and sentenced as follows: (1) death for murder, (2) thirty years for armed robbery, and (3) five years for possession of a weapon during the commission of a violent crime. State's Exhibit #301, (R. 625, ln. 5—626, ln. 17). No sentence was imposed for the kidnapping charge because Appellant was convicted of murder. (R. 627).

On direct appeal, the South Carolina Supreme Court affirmed the death sentence but was subsequently reversed by the United States Supreme Court based on a jury instruction error during the penalty phase of the trial. *See State v. Kelly*, 343 S.C. 350, 540 S.E.2d 851 (2001), *rev'd and remanded, Kelly v. South Carolina*, 534 U.S. 246 (2002). Shortly thereafter, the United States Supreme Court held that the Eighth and Fourteenth Amendments prohibited the imposition of the death penalty on juvenile defenders. *Roper v. Simmons*, 543 U.S. 551, 568–578 (2005). Following this decision, the Honorable William P. Keesley resentenced Appellant to life without parole for murder on July 14, 2006. (R. 633 (2006 Sentence sheet); R. 628-630 (State's Exhibit #302 (2006 Sentencing hearing)).

Six years later, the United States Supreme Court held in *Miller v. Alabama*, 567 U.S. 460 (2012) that mandatory life without parole for juvenile offenders violated the Eighth Amendment.

Following closely after this decision, our own Supreme Court held in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) that *Miller* required courts to re-evaluate life sentences for juvenile offenders under a five-factor framework.

Pursuant to *Aiken v. Byars*, Appellant moved for resentencing on July 11, 2016. A hearing was then held before the Honorable Brian M. Gibbons from May 20–22, 2024. At the hearing, Appellant was represented by Eleventh Circuit Chief Public Defender, Sarah Mauldin, while Eleventh Circuit Solicitor Rick Hubbard and Deputy Solicitor Suzanne Mayes represented the State. Following the close of testimony and arguments, the court took the matter under advisement. On July 1, 2024, the court issued an order addressing each of the five factors under *Aiken* and resentenced Appellant to life without parole. (R. 643 (Resentencing Order)).

This appeal now follows.

STATEMENT OF FACTS

A. Overview of the Crime & Investigation Generally

In the dark hours of January 5, 1996, Shirley Shealy, a 25-year-old pregnant woman, was violently stabbed to death during the commission of an armed robbery at a Kentucky Fried Chicken (KFC) located in Batesburg-Leesville. Shirley was 23 weeks pregnant with a baby boy and left behind her husband, Neil Shealy, and her six-year-old son, Alex Shealy. (R. 191, ln. 23—R. 192, ln. 17). At the time, Shirley was the manager of the KFC and was the only employee with access to the store's safe. (R. 15). That evening, a co-worker helped Shirley close up the KFC for the evening and the two departed in their own vehicles. (R. 14, ln. 12—R. 18, ln. 4). Shirley was never seen alive again.

Shortly after, a local police officer was out on patrol when he observed Shirley's car in the

parking lot with the lights on, the driver's door opened, and the engine running.[1] (R. 22, ln. 21—R. 23, ln. 24). While pulling into the parking lot, the officer observed "somebody duck down" through the drive-thru window. (R. 24, ll. 12–18).

Upon entering the KFC, officers found Shirley lying face-down in a pool of blood, along with money strewn all over the floor and stuck to her bloody body. (R. 28–31; R. 40–45). Shirley's hands were tied behind her back with duct tape, and it appeared that there was an attempt to restrain her to an office chair with the same tape, also found on the scene. (R. 106, ln. 6—R. 107, ln. 19). The store's floor safe was found looted. (R. 58, ln. 21—R. 59, ln. 21). Police also found a diving knife[2] and the tip of a latex glove attached to one of the pieces of tape. (R. 108–109; 116).

Shirley's injuries were horrific. At trial, the forensic pathologist testified that she was violently stabbed thirty-one times all over her body, chopped on her head hard enough to cut her skull, and her throat was slit from ear to ear—deep enough to sever one of her jugular veins, her windpipe, and her vocal cords. (R. 173, ln. 20—179, ln. 6; R. 187–188). Her autopsy only found 50 ccs of blood remaining inside her body, about a fourth of a cup—the rest had left her body. (R. 179, ll. 18–25). Notably, only five of the wounds were independently fatal. However, even these were not "rapidly fatal," suggesting Shirley suffered immense pain before eventually dying due to blood loss. (R. 188, ln. 23—R. 190, ln. 4; R. 191, ll. 15–22). No defensive wounds were found that might corroborate *one of* Appellant's many versions of events that described Shirley breaking free

[1] Police would also discover a metal gas can in the back of Shirley's car, and items in her backseat appeared to all be pushed over to one side, as well as a coloring book page on the ground next to her car. (R. 48, ln. 22—R. 52, ln. 2). Another witness specifically noted that "[a]t some point the [gas] can was tipped over because there was an odor of gasoline in the car, so some leaked out." (R. 137, ll. 19–25). The State's theory is that Appellant had planned to set fire to the crime scene in order to destroy or obscure evidence. (R. p. 497). However, the facts demonstrate Appellant was interrupted by the patrolling officer.

[2] Appellant would later confess this was the knife used in the homicide. (R. 81, ln. 23—R. 82, ln. 7).

of her bonds and "coming at" him. (R. 133-134; 190).

After conducting interviews with employees and others who were at the KFC that day, police identified Appellant as a prime suspect. Testimony from co-workers and Shirley's family revealed that (1) Appellant was at the KFC that afternoon, (2) Appellant was a former employee at the KFC who personally knew Shirley from growing up, and that (3) Appellant was fired from his job at that KFC roughly a month prior to the murder. (R. 15–16; R. 147, ln. 20—R. 148, ln. 12; R. 153, ln. 10–R. 154, ln. 2; R. 277, ln. 16—R. 279, ln. 12).

When police called his mother that night, she did not know where he was and ultimately filed a missing person report. (R. 56, ln. 8—R. 58, ln. 12). Two days later, on January 8, Appellant's mother called police informing them that they had family in Lowell, Massachusetts and that Appellant was likely headed there. Local police in Lowell were then contacted and given this information. (R. 59, ln. 22—R. 60, ln. 21). Plainclothes detectives then proceeded to the address given by Appellant's mother and found Appellant's car as described by his mother. Detectives found Appellant there and began asking questions regarding the murder after *Mirandizing* him. (R. 64–70). After initially denying involvement, Appellant admitted to stabbing Shirley and taking money from the KFC. (R. 70, ln. 12—R. 71, ln. 8).

After being taken back to the police station in Lowell, Appellant gave a more detailed statement to police wherein he admitted to killing Shirley and stealing money—this statement was then memorialized into a typed, signed confession. (R. 72–85). In this first statement, Appellant claimed that Shirley initiated and maintained a quasi-sexual relationship with him while working at the KFC and that he quit working there because he was "sick of dealing with her." (R. 77, ln. 18—R. 78, ln. 18). In this statement, he referred to Shirley as "ugly," "unattractive," "dirty," "nasty," a "sick bitch," and a "slut." (R. 78, ll. 1–2; R. 82, ll. 12–14). He claimed that on the night

of the murder, he was simply visiting the KFC—after having already spent time there earlier that afternoon—to "say hey to the girls." (R. 79, ll. 4–24). Despite knowing that it was closing time, Appellant stated he went inside and started talking to Shirley in the office. Appellant claimed that Shirley began "coming onto" him and demanding sex, whereafter Appellant bound her hands with duct tape and tried to leave. When Shirley "broke free," Appellant "slit her throat" and started stabbing her and kept "stabbing her until we reached the employees door." After stabbing her, Appellant took the money from the safe and fled the scene.[3] (R. 80–84). In this version of events, the robbery was somewhat of an afterthought to the murder.

When presented to the jury, the collective evidence prompted the capital trial jury to return a guilty verdict on all counts and they recommended a death sentence, finding five statutory aggravating circumstances. *See* R. 618–623).

B. Post-Trial and the Aiken v. Byars Hearing

After being convicted at trial, Appellant gave a second lengthy statement as part of the intake process at the Department of Corrections (SCDC) which was memorialized by an SCDC employee on his intake paperwork. *See* R. p. 611-612 (State's Exhibit #157 at 7–8). In this statement, Appellant stated he went to the KFC to rob it by hiding in the back seat of Shirley's car with a knife. He stated he then forced Shirley at knifepoint out of the car and into the store to open up the KFC safe, restrained her with duct tape in a chair in the office, and then stabbed and killed her when he thought he heard her talking on the phone. (R. 198, ln. 18—R. 199, ln. 25). At the hearing, the SCDC employee noted that these statements were completely voluntary for the inmate

[3] Also, the evidence presented at trial and the hearing demonstrate Appellant took steps to prepare an alibi before committing the murder: i.e. he informed his mother that he was just going to "the Zoo," a club in Columbia, and he had clothing to match the intention. (R. 445; 617 ll. 7–16). Appellant even says in his first statement to law enforcement that going to Columbia was part of his plan. (R. 79; 81). *See also* R. p. 598).

and that such lengthy statements of admission as Appellant's were unusual. (R. 204, ln. 11—R. 205, ln. 11; R. 207, ll. 4–11).

Appellant's disciplinary history while incarcerated is quite revealing. In 2003, Appellant was convicted of possession of a weapon for having two shanks "10 inches" long in his cell. (R. 216, ln. 10—R. 217, ln. 24). In 2006, Appellant was written up for possessing a contraband wooden broom handle in his cell. (R. 223, ln. 17—R. 224, ln. 10). In 2007, he was convicted of possessing a contraband cell phone. (R. 222, ln. 21—R. 223, ln. 2). In 2008, he was convicted of possessing illegal proceeds from a stolen credit card, a "homemade file," and a "modified Allen wrench"—as well as having several "write-ups" for refusing to follow directions from staff. (R. 221, ln. 21—R. 222, ln. 20; R. 240, ln. 8—R. 241, ln. 22). In 2012, he was convicted of possessing two contraband cell phones and in 2013, he was convicted for use/possession of "narcotics or marijuana." (R. 220, ln. 23—R. 221, ln. 13). Finally, in 2021, he was convicted of possessing yet another contraband cell phone, and in 2022 for use/possession of narcotics after failing to submit to a drug test. (R. 218, ln. 24—R. 220, ln. 4). Additionally, trial testimony summarized at the hearing revealed alarming behavior of Appellant while incarcerated pre-trial at the Lexington County Detention Center. Notably, he was charged with attempted escape for damaging a cinderblock in his cell, attempting to conceal the damage with tissue paper, and was charged with possessing a contraband shank. (R. 157, ln. 22—R. 159, ln. 24). Fellow inmates also testified regarding Appellant's desire to take a corrections staff member hostage and his instances of bragging about Shirley's murder. (R. 160–169).

Appellant's educational/vocational history while incarcerated is also revealing. Other than obtaining a GED in 2005, Appellant has not engaged in any meaningful educational programming

in his twenty plus years of incarceration, despite his eligibility and opportunity to do so.[4] (R. 244–252). Regarding vocations, the testimony elicited at the hearing suggests that Appellant has similarly not engaged in meaningful opportunities to acquire usable skills despite his ability to do so.[5] (R. 252–261). Ms. Crapps noted that while Appellant was initially limited in his opportunities while on death row, this was no longer the case when he was moved into the general population, especially once he had earned his GED.[6]

After the State's *Aiken v. Byars* presentation elicited the information cited above (including most of the relevant trial testimony), the Defense's presentation first focused on Appellant's childhood abuse by his father—taking testimony from his older brother Micheal and his lifelong friend Jessie Johnson, who attested to physical, verbal, emotional, and sexual[7] abuse occurring in Appellant's household. (R. 320–340; R. 346–374). They also discussed Appellant's social and education-related struggles, particularly his struggles with bullying and maintaining relationships. After this, the Defense called Dr. Susan Knight and discussed her findings regarding Appellant and his case from a forensic psychological perspective, specifically discussing Appellant's case in terms of each of the five *Aiken v. Byars* factors. *See* R. p. 528 (Defense Exhibit #2). As part of her

[4] Rita Crapps, an SCDC employee working in vocations, testified that inmates have access to educational programming on their tablets. A review of Appellant's record showed only a few hours of engagement with these programs. (R. 247, ln. 22—R. 251, ln. 24).

[5] Regarding work specifically, Appellant never meaningfully engaged in opportunities that could allow him to acquire skills, since he often *asked* to be downgraded back to a ward keeper's assistant or general worker or he was removed from more sensitive positions due to disciplinary infractions. (R. 252, ln. 19—R. 257, ln. 9).

[6] Ms. Crapps noted however that programs like the "character dorms" often required being "one-year disciplinary free," therefore this opportunity was likely not available to Appellant due to his many infractions. (R. 260, ln. 2—R. 261, ln. 10).

[7] The sexual abuse appeared to be only directed at Appellant's stepsister. (R. 399, ll. 16–25). The only "evidence" regarding sexual abuse directed at Appellant came in the form of an uncorroborated pre-trial defense memo from a Dr. Morgan who "speculates" saying he "may have also had sexual abuse." This memo was referenced by Appellant over the State's objection. (R. 341, ln. 23—R. 345, ln. 25; R. 409–410).

evaluation, in addition to having access to the entire defense case file going back to the original capital trial, she conducted numerous collateral interviews as well as six interviews with Appellant, conducted between 2018 and 2024. (R. 386, ln. 10—R. 389, ln. 3).

In describing the circumstances of the homicide and armed robbery, Dr. Knight posits an "anger rumination" and escape from father theory—essentially stating that Appellant's brutal killing of Shirley was the result of releasing years of built up anger created as a result of Appellant's physical abuse by his father, and that the armed robbery was originally planned as some form of "escape" from the household.[8] (R. 405, ln. 16—R. 406, ln. 14; R. 407, ln. 8—R. 408, ln. 24).

Regarding rehabilitation, Dr. Knight also discounted the fact that Appellant had been convicted of possessing multiple shanks, instead focusing on the fact that he had never actually used them or that he was "young" and just transferred to an institution that was "pretty violent"—i.e. he *only* had them "in case he needed them." (R. 421, ln. 19—R. 423, ln. 7). Dr. Knight acknowledged that Appellant had made many inconsistent statements over the course of his case. (R. 415, ln. 22—R. 416, ln. 2). On cross-examination, however, Dr. Knight discounted the importance of the fact that Appellant was still making inconsistent statements—especially regarding an ongoing "affair" with Shirley prior to the murder—in his clinical interviews with Dr. Knight from the past years leading up to the *Aiken v. Byars* hearing. (R. 433, ln. 12—R. 451, ln. 2).

At the end of the hearing, Appellant made the following statement to the court:

> Your Honor, no matter what happened during my childhood . . .

[8] This is of course despite the evidence attributing the cause of the crime to Appellant's malice towards Shirley, which the solicitor pointed out during cross-examination was not made part of Dr. Knight's report. *See supra* p. 5 (regarding how he described Shirley in his initial statement to police); R. p. 438-439; p. 464, ln. 19—R. 465, ln. 17) (discounting anger towards Shirley).

> none of that really matters. I know exactly what I did. [N]ot only did I take away a mother, a sister, a daughter, future brother, future son. I didn't take just one life, I took two. I know by all rights and everything equal in this world, I should get the death penalty. I was comfortable with that. I know what I did. I did it to someone I knew, I grew up with, and she trusted me. That type of betrayal on another person, and just the fear and anxiety and looking and everything when . . . I literally slaughtered her. It was not no easy death. . . . [S]he didn't deserve none of it. There was nothing in the world that she could have done to make that happen to her. . . . I've always known that Neil never got married. I know it's because of me. I know everything that has ever happened to that family, that this is going to be a black mark on them, not only from the generations that are here now, but even the generations after that.
>
> By all rights and everything out of this whole situation, I'm the one that faired the best, and I'm still here. My family can still talk to me. I can't give that back. I wish I could, but I can't.
>
> I mean, attorneys tell me I shouldn't even look at them. But . . . I do want to tell them I'm sorry. I know it doesn't make up for anything I did to them, and I know there was so much crap that came out and everything, and it was not my intention for it to come out in the manner it did. . . .
>
> I'm guilty. Point-blank, I'm guilty of one of the most horrific crimes. It changed the town. The whole town I lived in, it changed everybody. It is not something that will ever go away. I know that, Your Honor.
>
> I don't know if they would ever want to talk with me, but if they ever did, I would listen to them. . . . [I]f they had some questions for me, I would talk to them. But I know because the way the law works and everything, and because I'm up here, I mean, you can't trust the situation, and I understand that. . . . I don't want to make it any worse. It can't get no worse.
>
> I am sorry to the victim's family. . . . I knew Alex. I watched him walk in the restaurant several times, so . . . I know there is an effect on him. I know every relationship he'll ever have will be playing back on what I did. I'm not blind to it, Your Honor.
>
> By all rights, you should give me a life sentence, to be honest with you, because it is a life for a life – not one, but two. That's it, Your Honor.

(R. 516, ln. 16—R. 518, ln. 24). On July 1, 2024, the court filed its Order resentencing William Arthur Kelly to life without parole, wherein it provided a procedural and factual recitation of the

case, and a consideration of each of the five factors with an articulation of the evidence the court found persuasive to each.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Miller*, 433 S.C. 613, 625, 861 S.E.2d 373, 379 (Ct. App. 2021), aff'd, 441 S.C. 106, 893 S.E.2d 306 (2023) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "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." *Id*. (citing *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019)). 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." *Id*. (citing *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)). As a result, the lower court's factual findings are binding on the appellate court unless clearly erroneous or controlled by an error of law. *Id*. (citing *State v. Winkler*, 388 S.C. 574, 582–83, 698 S.E.2d 596, 601 (2010). In conducting a review of the five factors articulated by *Aiken v. Byars*, the sentence to be imposed is within the discretion of the resentencing court. *State v. Smart*, 439 S.C. 641, 645, 889 S.E.2d 573, 575 (2023) (citing *State v. Bolin*, 209 S.C. 108, 111, 39 S.E.2d 197, 198 (1946)). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *Miller,* 861 S.E.2d at 379 (citing *State v. Adkins*, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003)).

ARGUMENT

I. The sentencing court thoroughly considered each of the five factors set forth by *Miller* and *Aiken* and found that in consideration of the evidence presented by both parties, a life sentence was appropriate in Appellant's case. There is no basis to demonstrate an abuse of discretion is this matter.

The court's Order sets forth a detailed articulation of the law, the *Miller* factors that must be considered, and its findings under each factor. The court considered the evidence as it pertained to those factors – as it was required to do – and reached findings that collectively demonstrated the propriety of a life sentence in the case of Appellant's crime. This was a deliberate application of *Aiken* and its progeny and it was an appropriate exercise of the discretion by the court. Appellant has failed to demonstrate any error of law or finding of fact that is not supported by the record evidence. Instead, Appellant's arguments attempt to disguise his mere disagreement with the court's conclusions as being tantamount to a failure to appropriately consider the factors and presented evidence. Appellant cannot obtain relief on the basis of a such an argument as there is no indication of an abuse of discretion in this case. As such, and for the reasons set forth below, this Court should affirm the lower court's resentencing.

In 2012, the Unites States Supreme Court handed down its decision in *Miller,* which articulated that a mandatory life without parole sentence for homicides committed by defendants under the age of eighteen at the time of the crime was a violation of the Eighth Amendment prohibition against cruel and unusual punishment. *Miller v. Alabama*, 567 U.S. 460, 489, 132 S. Ct. 2455, 2475, 183 L. Ed. 2d 407, 430 (2012). Our South Carolina Supreme Court responded with its decision in *Aiken v. Byars*, wherein it retroactively applied *Miller* and extended it to include South Carolina discretionary life without parole sentencings, thereby requiring courts to give consideration to the five factors set forth under *Miller* before issuing a LWOP sentence to a juvenile offender. *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). These 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 assist his own attorneys"; and (5) the "possibility of rehabilitation.

Id., at 577 (2014) (quoting *Miller*, 132 S.Ct. at 2468).

In the wake of *Aiken*, there have been a number of cases that have further parsed out what this procedure requires, and what it *does not* require. Notably, *Aiken* made clear that it "is the failure of a sentencing court to *consider* the hallmark features of youth prior to sentencing that offends the Constitution." *Id*. (emphasis added). While there is some precedent for critiquing the errors in reasoning utilized by the sentencing court,[9] there is no obligatory responsibility for the court to weigh the evidence received in any certain way, nor must it accept as mitigatingly definitive any particular fact of the case. While courts are explicitly instructed to give no deference to the prior court's sentence or the prior judge's rationale, there is no specified burden of proof or presumption placed upon either party. *State v. Smart*, 439 S.C. 641, 646, 889 S.E.2d 573, 576 (2023)(noting that while the occasions for LWOP sentences against juveniles will be expectedly uncommon, "[t]he decision belongs to the resentencing court, and this Court will not recognize

[9] See *State v. Mack*, 441 S.C. 526, 541, 894 S.E.2d 820, 828 (Ct. App. 2023), *reh'g denied* (Nov. 21, 2023), *cert. denied* (Sept. 24, 2024) (wherein the court gave consideration to the chronological age of the defendant, but failed to address the other portion of the factor which includes the hallmark features of youth, and where the court's general articulation that other individuals have overcome trauma and abusive homes strayed from the appropriate consideration of how a defendant's individual trauma impacted his individual crime).

any presumption nor impose any burden of proof or persuasion. We trust our circuit judges are well-equipped to make the right decision in each case."). There is also no affirmative duty for a sentencing court to find that a juvenile offender is "irreparably corrupt" before concluding that a LWOP sentence is appropriate for the case. *State v. Miller*, 433 S.C. 613, 627, 861 S.E.2d 373, 380 (Ct. App. 2021), aff'd, 441 S.C. 106, 893 S.E.2d 306 (2023). It is within this framework that our South Carolina Supreme Court has set forth the parameters for circuit court judges to hear evidence under the five factors, and after consideration of the factors, use its discretion to issue a sentence.

In the case at hand, the demonstration of the court's use of discretion is plain. The sentencing court conducted a *three-day Aiken v. Byars* hearing to take in evidence the parties believed pertinent to the five factors that address the hallmark features of youth. See *Aiken*, 765 S.E.d at 577 (noting that though such is not *required* in scope and content, the nature of the proceedings envisioned in *Miller* may appear similar to that of the individualized sentencing procedures for a capital trial). At the conclusion of the hearing, the court articulated its desire and *need* to take the matter under advisement so as to give due consideration to the considerable amount of evidence, testimony, and record materials presented by the parties, before reaching a conclusion as to sentencing. The court also noted its intention not to allow too great an amount of time to pass following the hearing, so as to ensure that a decision is made upon a fresh recollection of the proceedings. (R. p. 520-523). True to his word, Judge Gibbons issued his findings and sentence a little over 30 days after the completion of the hearing. The Order set forth the holding in *Miller* and *Aiken*, articulated that the purpose of the hearing was to ensure that the hallmarks of youth are considered in sentencing a juvenile offender, and noted that the Supreme Court has surmised that life sentences in such review will be uncommon. The Order then set forth findings

that were considerate of the evidence presented and appropriately addressed the five factors set forth by *Miller* and *Aiken*.

While the subject is addressed again under certain factors (*infra*), specific attention was paid by the court to Appellant's own statements offered at his hearing. Appellant conceded the vicious and depraved nature of his murder and articulated that it had no foundation in his childhood experiences. Moreover, he articulated that in light of the extreme nature of his murder – which included the murder of Shirley's unborn child – he found both his former death penalty and his current life without parole sentence to be justified. Appellant weighed in on what he believed his sentence should be and he instructed the court to sentence him life. The court's consideration and findings under *Aiken* were thorough and appropriate, as required under the law. But in considering the total calculus of what sentence Appellant's crime deserved, such was certainly impacted by the nature of the crime and Appellant's own capitulations. See *Aiken v. Byars*, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014) ("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.").

The court's conclusion is reflective of that reality, in addition to the fact that the court found very little *Aiken v. Byars* evidence weighed in Appellant's favor.

a. The court gave due consideration to both the chronological age of Appellant as well as the evidence that addressed the hallmarks of youth in correlation to his crime. Appellant's arguments misconstrue the nature of the factor and do no more than disagree with the court's discretionary conclusion.

Under the first prong, "Chronological Age and Hallmark Features of Youth," the court found that Appellant's expert was credible and offered great insight as to Appellant's childhood. However, the court noted that in weighing the evidence against that presented by the State, it found that not only was Appellant merely five months away from turning eighteen years old (i.e. consideration of chronological age), the Appellant demonstrated many characteristics of maturity

and facts that demonstrated reflective and calculated thinking in relation to the crime. Specifically, the court found that Appellant had demonstrated his maturity in the fact that he had held down multiple jobs so as to provide for himself while still living at home, he obtained his own driver's license and had his own car for travel and commuting, and that he had engaged in adult sexual conduct.[10] The court noted that this was not an exhaustive list, but its list certainly demonstrates that Appellant was able to function with a degree of maturity demanded of adults in the world.

The court went further by adding its view of whether Appellant demonstrated the feature of impetuosity in relation to the crime. While the testimony of Dr. Knight spoke to Appellant's mid-adolescent phase of life, and that Appellant and this phase of life are accompanied by the hallmark features of youth contemplated by *Miller*, it is ultimately Appellant's behaviors in the context of the crime that are persuasive here. The court rightfully concluded that there was overwhelming evidence that Appellant engaged in extensive premeditation and planning of the crime he committed. Such evidence demonstrated that he cultivated a fake alibi, cased the restaurant in advance of his crimes, laid in wait for victim in her car, utilized a deadly weapon to force her compliance, used gloves to prevent his identification by fingerprint, used duct tape to kidnap and restrain the victim, and brought a canister of gasoline with him so as to destroy the crime scene after he was finished. There is nothing "impetuous" about those collective and

[10] Appellant suggests in footnote 4 that this finding is solely indicative of the court's acceptance of at least part of the most recent "affair" version of events espoused by Appellant. (Appellant's Brief, p. 7). Respondent does not contest that such is certainly one possibility, and that sexual conduct between Appellant and victim Shirley, if deemed credible, can be supported by the record. However, Appellant's various explanations also insinuate a seeming familiarity with sexual conduct, a desire to restrict that conduct to individuals whom he finds attractive and alluring (as opposed to the negative descriptions he gave of victim Shirley), as well as the assertion that Shirley exhibited jealousy over his "seeing other girls." (R. p. 441). Additionally, Dr. Knight effectively dodged a direct response to the issue entirely. (R. p. 396). Ultimately, Respondent would argue that the record is subject to more than one strict interpretation of this issue.

coordinated efforts. Instead, his actions demonstrate a striking level of forethought and the ability for future projection, such runs contrary to the generalized testimony offered by Appellant at the hearing. Appellant's crime was not the result of "rash" or "sudden" behavior, such that *Aiken* would support a consideration of leniency to a juvenile offender.

Returning to the issue of chronological age, Appellant misunderstands this portion of the factor. Appellant argues that the court held Appellant's age against him and referenced it multiple times. However, the factor requires *both* the consideration of chronological age and the hallmark features of youth. The fact that Appellant was merely five months away from turning eighteen, as opposed to being much younger in age, is a considerably important *part* of the factor, and it is a fact that should and does weigh heavily against him when taken alongside the other considerations of maturity demonstrated by the court. See *State v. Mack*, 441 S.C. 526, 541, 894 S.E.2d 820, 828 (Ct. App. 2023), reh'g denied (Nov. 21, 2023), cert. denied (Sept. 24, 2024) (citing *Miller*, 567 U.S. at 476–77, 132 S.Ct. 2455) (noting that chronological age is part of the first factor and it is relevant to the inquiry; it simply cannot be considered absent consideration of the hallmark features of youth also set forth in the factor). Moreover, the standard does not insist that any finding of immaturity or youthful features disqualifies the possibility of a life sentence. Appellant's argument seems to suggest that the presentation of evidence by an expert that Appellant was a mid-adolescent who exhibited lesser maturity is tantamount to satisfying a checklist bullet point. Appellant's arguments run dangerously close to circular logic, wherein an expert need only confirm that a juvenile defendant was in fact in a youthful stage of life (a practical prerequisite for this type of proceeding), and that the youthful phase of life exhibits hallmark features of youth. Therefore, the defendant exhibits youthful features that should rescue him from a harsher sentence. *Aiken* may demand careful consideration by lower courts, but it requires no such rigidity or

threshold burdens. (*Supra*). It is appropriately a question of whether such youthful features contributed to the commission of the crime, and here they did not.[11]

The court thoroughly and reasonably considered the first factor under *Miller* and *Aiken*. There is no basis for demonstrating an abuse of discretion.

b. The court thoroughly and appropriately considered the "family and home environment" factor and the "familial pressure" factor, and while there is evidence of abuse in Appellant's life, there is considerable evidence supporting the court's conclusion that Appellant's family dynamic did not contribute to or facilitate Appellant's commission of the crime.

"The second *Aiken* factor requires 'the family and home environment that surrounded the offender' be accounted for in a court's decision on whether to sentence a juvenile to LWOP." *Mack*, 894 S.E.2d at 829 (Ct. App. 2023), reh'g denied (Nov. 21, 2023), cert. denied (Sept. 24, 2024) quoting *Aiken*, 765 S.E.2d at 577). The Court of Appeals in *Mack* further articulated that analysis seeks to determine whether familial dependency and negative influences "may have affected the functioning of the juvenile offender." *Id*., (quoting *State v. Roby*, 897 N.W.2d 127, 146 (Iowa 2017)). In the case presented, there is clear evidence that Appellant suffered abuse at the hands of his father; the solicitor did not seek to contest that factual predicate. However, the evidentiary dispute that arose was between Dr. Knight's assertion that Appellant's anger at his father manifested in his attack upon victim, as opposed to the State's assertion that the abuse was not correlative to Appellant's decision to commit murder.

[11] Appellant also attempts to argue that the court's sentencing rationale was that of a "life for a life." While this first makes no sense facially, as such a rationale would require an execution, it is also taken out of context from the Order. In his closing remarks Appellant's own statements to the court indicated that he believed death was a deserved sentence for his crime, and that at this juncture a life sentence would be appropriate. It is Appellant that articulated the "life for a life" language; the court simply took Appellant's statements into consideration when sentencing Appellant to a life sentence. To an extent, Appellant's comments constitute a rudimentary waiver of sorts, and at minimum they provided the court with highly persuasive grounds for giving a life sentence in this case.

The court's Order demonstrates that it gave due consideration to Appellant's premise. However, it found that the crime was unrelated to the abuse and family circumstances. The court's order reasonably concluded that victim was killed as part of a planned robbery. This finding is supported by the fact that Appellant: 1) was lying in wait for victim in her car, 2) brought the murder weapon with him to complete the crime, and 3) brought gasoline in order to set fire to the crime scene (inferentially with victim's body inside). Moreover, the evidence tended to show that the murder was of a victim who could personally identify him, and that it took place while victim was restrained. It is problematic for Appellant that he has provided multiple versions of events over the years – a fact that the solicitor noted is, in itself, indicative of Appellant not deserving a lessened sentence. However, it is important to note that in none of the versions told by Appellant did he articulate the violence as being impulsive, "rage" induced, or related to the abuses he suffered from his father. Instead, he 1) asserted that he was repulsed by victim's sexual advances, but ultimately committed the killing when she got loose of her duct tape and came to attack him (i.e. self-defense for which there is no corroborating defensive wounds) (R. p. 134; 190), 2) he believed her to be calling the police and he had to kill her to cover up his crime (R. p. 199), and 3) it was a result of victim (as an accomplice) choosing to backout of the plan, which ultimately caused him to panic. (R. p. 449-450). Regardless, none of Appellant's explanations rely upon a "*rage type event*" or provide an avenue to link Appellant's father to the victim. Dr. Knight was also dismissive of the possibility that Appellant simply harbored some anger toward Shirley following his firing and alleged unwanted advances. Even though these were his youthful explanations to the police, such "didn't come up that way in [Dr. Knight's] evaluation, that he was angry with [Shirley]." (R. p. 464-465).

Additionally, and of particular import, the State presented evidence tending to show that

Appellant was *bragging* about his murder of Shirley while in prison, and Appellant himself discounted the family abuse theory in his remarks to the court: "Your Honor, no matter what happened during my childhood or whatever – anything – none of that really matters. I know exactly what I did." (R. p. 516). Appellant discounting the theory of his own expert is debilitating to Appellant's arguments.

The court also noted that there is no connection between Appellant's father *and the robbery*. While Appellant addresses the issue as part of factor three, it is not hard to see how the second factor and the third factor, in sharing a "familial pressures" element, can be overlapped in review. In short, the court is again correct to *not* find in accordance with Dr. Knight's forensic theory.

Dr. Knight again attempted to link Appellant's decision to commit the crime to his anger with his father, his desire to get out of the circumstances of his home, and his inability "to think through a plan that would really work well for him. . . he planned an armed robbery to get money to leave his abusive home, and of course the homicide occurred during that robbery, probably due to some sort – something that went wrong and triggered Mr. Kelly's anger and rage that came out during the homicide." (Appellant's Brief, p. 24). The absence of evidence tending to support the "rage" theory is well argued above, but in similar fashion, the same rationale also defeats the argument that the underlying robbery was a result of familial circumstances.

The record demonstrates that Appellant had aims to commit the murder as part of the robbery from the start, given the presence of a weapon, the can of gasoline, and the fact that he was attacking someone who knew him personally. Nevertheless, Dr. Knight continued to be dismissive of the possibility and chose to instead to attribute the crime to "poor planning" on Appellant's part that happened to result in a murder that came about following an outburst of rage.

This steadfast adherence diminished her credibility as to why the crime was committed, especially in the face of facts that show Appellant was quite adept at thinking through the various elements of his crime and how not to be caught. Appellant's various versions of the crime lack any reference to financial or emotional desperation, nor do they reference familial pressures as a motivation for committing the crime.[12]

In light of this and the other evidence presented, the record supports the court's conclusion that the robbery and murder were not related to the anger Appellant felt for his father or born of a desperation to escape familial pressures. The record provides strong evidentiary support for not adopting Dr. Knight's explanation for why the crime occurred, and by extension finding that the family and home environment factor does not weigh in Appellant's favor.

Appellant attempts to argue to the contrary, but in doing so Appellant reaches for too much in his interpretation of the Order. The court articulated that it found Dr. Knight credible, but it did so *in its discussion of the first element and her discussion of Appellant's childhood*. That finding of credibility is not repeated, nor is it presented in such a way as to insinuate blanket applicability to the entirety of Dr. Knight's testimony and opinions – which the court directly refutes in the next section of the order. It also bears mentioning that the recognition of credibility is not necessarily a concession that a witness's testimony is persuasive or convincing as to the ultimate matters being considered. Appellant also reaches much too far in alleging that what is clearly intended to be a *summary* of the *testimony* presented by the defense, is instead the court adopting the forensic findings of Dr. Knight as its own conclusion. The error of this argument is fairly clear in the fact

[12] It is also worth noting, that Appellant devised a plan to flee in his own car to Massachusetts and stay with family there. These actions, along with his history of finding employment, speak to his ability to escape his circumstances. This is critical in juxtaposition of Dr. Knight's opinion that this robbery was contemplated as his way out.

that the court directly contradicted Dr. Knight's conclusion just one sentence further into the same paragraph and continued to do so for the remainder of the paragraph.

The court's conclusion as to the second factor is well supported by the record and it cannot be deemed an abuse of discretion. There is no basis for reversal on the second *Miller* factor.

c. The court thoroughly and appropriately considered the circumstances of the homicide; Appellant conflates the circumstances of the crime element with the "family and home environment" factor.

The third factor under *Miller* and *Aiken* contemplates the circumstances of the crime, and as articulated by *Aiken,* this can encompass both the nature of the crime itself, the defendant's specific role in the crime, and outside influences that led to the crime. As previously stated, Appellant's argument about familial influence is addressed under subsection (b). However, in addressing the third factor Appellant expectedly fails to address the horrific nature of the crime and how that weighs against his hopes of leniency on the basis of youth.

The third factor, the circumstances of the crime, weighs immeasurably heavily against the Appellant's claims for leniency in sentencing. Appellant took considerable efforts to premeditate and plan this crime in such a way as to avoid discovery, one such measure was ensuring he killed the only eyewitness. He kidnapped, bound, and slaughtered Shirley Shealy, a friend and former coworker, by slitting her throat and stabbing her 31 different times. Expert testimony demonstrated that this was a slow and painful death that he inflicted upon her. Moreover, the record makes clear that *Appellant was aware that Shirley was pregnant*. His actions directly killed her unborn child, and expert testimony revealed that the child could have survived if extracted immediately from the mother and given NICU care. (R. p. 193). This fact takes an already horrific crime and elevates it to one of the most heinous imaginable. This reality was not lost on the sentencing court. In thoroughness the court also noted that Appellant was the sole offender to the crime, such that

culpability rests solely with him. Appellant did not endeavor to address how or why these facts should be overcome by way of considerations of youth, and the Court in *Aiken* is clear: "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*. at 545. This is precisely the type of case contemplated by the Court.

The trial court gave due consideration to the third factor under *Aiken*. While Appellant is entitled to present potentially mitigating circumstances of youth, and while he received such considerations from the court, the various depraved aggravating circumstances of this case make such arguments hollow in comparison.

d. The court appropriately considered and reached well-founded findings under the "incompetency associated with youth" factor.

The fourth factor under *Aiken* addresses the incompetency associated with youth, or stated another way, the incompetency as it corresponds to the legal system as a result of youth. As *Aiken* briefly provides by example, these matters can include the inability to deal with police officers or prosecutors, or the incapacity to assist his own attorneys. *Id*. at 544.[13] The court's articulation of its facts and findings is a clear demonstration that the factor did not weigh in Appellant's favor.

The court reiterated the chronological age of being only a few months from eighteen. This is a relevant and rational connection to how well one would understand the legal system, the role of police, and the assistance of an attorney. The court further demonstrated Appellant's presence of competence by noting that Appellant was able to travel by himself all the way to Massachusetts,

[13] In reference to *State v. Roby*, 897 N.W.2d 127, 146 (Iowa 2017), previously cited favorably by the South Carolina Court of Appeals in *Mack*, this element corresponds to general competency, such as that needed to stand trial, or manifest in ways that would demonstrate the incapacities to withstand police interrogation. It ultimately is surmised as the proposition that youthful offenders are "less able to confront the legal process." *Id*.

despite having to do so in blizzard conditions and possessing only a physical map to guide him. The court further indicated that he had the benefit of two death penalty qualified attorneys and a full defense and mitigation team, which included multiple psychologists. These are seldom the circumstances of all youthful offender murder trials and they demonstrate that Appellant's sentence is not hampered by inadequate ability to assist counsel or identify hindrances in Appellant's capacities.

The record also speaks to the issue. Dr. Knight damaged her credibility yet again by going so far as to say that "he's 17, never heard Miranda before, no experience with the legal system, he's in an [un]familiar[14] place in Massachusetts, he doesn't have an adult present with him as support or for guidance." (R. p. 414). Dr. Knight goes on to suggest that Appellant was incapable of understanding how the waiver of Miranda might impact his case. The assertion by Dr. Knight is a strained one. In 1996, while Miranda warnings "by name" may be unfamiliar, the content of such is an extremely common popular culture reference for television. A complete lack of exposure to the concept seems highly unlikely. Similarly, his experience with the legal system seems fairly astute given the degree to which he premeditated and planned his crime, including a desire to avoid leaving fingerprints and setting up an alibi for himself at a public place. The assertion that consequences of confessing to a murder would not be understood by Appellant, strains credulity. Additionally, he is not in an unfamiliar place without the presence of family support, given that he was at the residence of his sister. Likewise, he was quick to waive his rights under Miranda and give a statement and confession. This demonstrates that such was not the result of a child's youthful nature being overborn by extensive interrogation. Lastly, Dr. Knight could only articulate

[14] This appears to be a transcript error. While Respondent agrees that Appellant's location in Massachusetts is a familiar place for him, Dr. Knight's argument would seem to be suggest it is not.

that Appellant was disengaged and untrusting of his attorneys, whom informed her that they had a difficult time obtaining a consistent explanation of his actions in the crime. That fact cannot be attributable to "youth," given that Appellant is *still* creating new and inconsistent stories about his crime well into his adulthood.

The factor seeks to identify discernable deficiencies of a youthful appellant that led to an unfair utilization of the legal system, either by his own naïve actions or by inability to communicate with counsel. The record suggest that no such circumstances hindered Appellant and the court was right to find that this factor did not weigh in Appellant's favor. There is no basis for an abuse of discretion under the fourth *Aiken* factor.

e. The court appropriately considered and reached well-founded findings under the "possibility of rehabilitation" factor.

The fifth factor under *Aiken* asserts that the sentencing court must consider what evidence demonstrates the defendant's ability or inability to become rehabilitated. The court's order makes clear that the reason for such is that the Supreme Court's prohibition against mandatory life sentences for juveniles is in conflict with the understanding that juveniles are considered to be redeemable. The court goes on to say that it agrees a life sentence for a juvenile should be cautioned given the potential for diminished culpability, as articulated in *Miller*, but a life sentence may still be appropriate in extreme cases where redemption is not possible and society demands a need for protection.

Following its explanation, the court then references the disciplinary infractions that Appellant has committed while incarcerated. These included a disciplinary action for possessing two long shanks, numerous contraband disciplinary actions for items such as cell phones, use/possession/testing of narcotics, and failures to obey correctional officer instructions. Present within the record, but not listed by the court, are also matters of plans of attempted escape which

include the partial destruction of his cell wall (chipping away mortar and concealing it), and the contemplation of kidnapping or assaulting a correctional officer in order to escape.

The court acknowledged that Appellant had received his GED. However, the court noted that he is not excluded from furthering his education or participating in character and personal development programs. He simply has not attempted to do so. Additionally, the record demonstrates that in the case of his work responsibilities, Appellant's failure to advance himself is an active choice. As the court's order demonstrates, these speak loudly to the lack of rehabilitation Appellant has sought.

Contrary to Appellant's argument on appeal, the court not listing out the contrary arguments in its order is not indicative that it failed to consider the Appellant's evidence presented at the hearing. By all accounts, Judge Gibbons heard three days of testimony on this and each other factor, informed the party that he would be reviewing the totality of the record evidence, and gave due consideration to the evidence presented. The failure to itemize the evidence Appellant believes most important, is not indicative of an abuse of discretion.

Appellant has failed to demonstrate an abuse of discretion under the fifth *Miller* factor. The sentence should therefore be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments and resentencing of the circuit court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

SAMUEL R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

By:*s/ W. Joseph Maye*
W. Joseph Maye

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

October 16, 2025

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

Respondent,

v.

WILLIAM ARTHUR KELLY,

Appellant.

Appellate Case No. 2024-001153

PROOF OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court order April 24, 2024, the Final Brief and Proof of Service have been forwarded to Appellant's counsel, Joanna K. Delany, Esquire, via email today, October 16, 2025 to jdelany@sccid.sc.gov and to her assistant, Sara McInnis at SMcinnis@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This is the 16th day of October 2025.

s/W. Joseph Maye
W. Joseph Maye
Assistant Attorney General

Brandy Rankin

From:	Brandy Rankin
Sent:	Thursday, October 16, 2025 2:57 PM
To:	Delany, Joanna
Cc:	Joe Maye; Mcinnis, Sara
Subject:	The State v. William Arthur Kelly - Final Brief of Respondent & Proof of Service - Appellate Case No. 2024-001153
Attachments:	Final Brief Complete with POS.pdf

Dear Ms. Delany,

Please find attached the Respondent's Final Brief and Proof of Service. These documents will be filed today, October 16, 2025, with the South Carolina Court of Appeals along with a copy of this email. Thank you!

Sincerely,

Brandy Rankin

Brandy Rankin, Legal Assistant to W. Joseph Maye
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305

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