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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2023-000160

THE STATE,……RESPONDENT

v.

ERIC ANTON GRAHAM,……..APPELLANT

RESPONDENT'S PETITION FOR REHEARING

On December 3, 2025, this Court issued an unpublished opinion vacating and remanding the sentence of the Appellant's 1998 conviction for murder. *State v. Graham,* Up. Op. no. 2025-UP-396 (S.C. Ct. App. Filed December 3, 2025). In vacating and remanding the sentence of the Appellant this Court found that the trial judge erred in not stating a finding of fact and conclusion of law pursuant to the South Carolina Supreme Court decision of *Aiken v. Byars,* 410 S.C. 534, 765 S.E.2d 572 (2014).

Pursuant to Rule 221(a), SCACR, Respondent, the State, respectfully petitions for rehearing because this Court appears to have misapprehended the sentencing court's compliance with the *Aiken v. Byars* decision. This decision indicates that the South Carolina Supreme Court did not use the *Aiken v. Byars* standard. The Supreme Court does not state that the trial court must reveal a finding of fact and conclusion of law in the sentencing of the Appellant after the conclusion of an *Aiken v. Byars* sentencing hearing.

In the United States Supreme Court decision of *Miller v. Alabama,* 567 U.S. 460, 132 S.Ct. 2455 (2012), the Supreme Court decided that after the conviction of a juvenile for an offense, prior to sentencing that juvenile to a life sentence without parole, the court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller,* 567 U.S. at 476.

After the *Miller* decision, the South Carolina Supreme Court decided *Aiken v. Byars*. Within *Aiken,* the South Carolina Supreme Court decided to apply the *Miller* factors to South Carolina juveniles who have received life without parole sentences. Within *Aiken* the South Carolina Supreme Court decided that the sentencing of a juvenile to life without parole without considering the hallmark features of youth violates the Eighth Amendment of the United States Constitution.

In *Aiken,* the South Carolina Supreme Court decided that *Miller* established a specific framework and factors the sentencing court must consider during a separate sentencing hearing. 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 attorney's; and (5) the "possibility of rehabilitation."

Aiken, 410 S.C. at 544, *quoting, Miller,* 132 S.Ct. at 2468.

In *Aiken,* the Supreme Court also decided that the principles in *Miller v. Alabama* apply retroactively, and they gave similarly situated offenders the ability to file a motion for resentencing within one year from the filing of that opinion. *Id.*

The Appellant committed his offense on December 7, 1996. His trial began on August 28, 1998. After being found guilty by a jury of his peers, Appellant was sentenced to a term of incarceration for the remainder of his natural life by the Honorable Paul Burch on August 29, 1998. Due to the *Aiken v. Byars* decision the Appellant was allowed to petition the courts for a resentencing hearing. On January 19, 2023, the Appellant along with his counsel Elizabeth Franklin-Best appeared before the Honorable Rodger E. Henderson for a sentencing hearing pursuant to *Aiken v. Byars.* Appearing on behalf of the state of South Carolina was Kelly Jackson Assistant Solicitor for the Fourth Circuit Solicitor's Office. For the hallmark features of youth, Dr. Elizabeth Cauffman, a psychologist and professor of psychological science at UC Irvine, testified. Dr. Cauffman was brought in to explain the hallmark features of youth, how the young brain is different than an adult brain, and how that must be considered during sentencing after the arrest of a juvenile for committing a violent act.

Regarding the family and home environment, the Appellant's mother and father both testified as to the Appellant's home environment and how he was raised. For the circumstances of the offense, former Deputy William Huggins of the Darlington County Sheriff Department testified. He was one of the officers that first arrived at the crime scene. Deputy Huggins testified about what he saw at the crime scene. (R. p. 43 l. 3-8; l. 8). Deputy Huggins was also the law enforcement officer who transported the Appellant to the county detention center. He testified that the Appellant showed no remorse during this transport. (R. p. 47 l. 13-16). Deputy Huggins also read the autopsy report into the record.

For the incompetency of youth factor, it was revealed that the Appellant had no mental health issues, was on no medications, and was not abusing alcohol or drugs. Appellant was also

aware of the criminal justice system and not incompetent. Appellant understood his charges, knew how to deal with law enforcement and had the ability to assist his attorneys.

As for the likelihood of rehabilitation, Mr. Ernest Ray of the South Carolina Department of Corrections testified regarding the Appellant's behavior while incarcerated. Mr. Ray stated that the Appellant had a total of twenty-six (26) infractions. Bryan Kendall, Warden of Leiber Correctional Institution, also testified. Mr. Kendall testified that Appellant had so many infractions it was recommended he be transferred to Mississippi as part of a project to send away their most difficult and problematic inmates. (R. p. 116 l. 24 – p. 117 l. 3; R. p. 120 l. 8-11).

At the conclusion of testimony and the closing arguments, the sentencing judge stated the following:

> "Counsel, and ladies and gentlemen, I am not going to make a decision at this moment. I'm going to, what we call 'take this matter under advisement' and go back and consider all the testimony that I've heard today. I know that's probably disappointing to both sides. I know you want this to be brought to some resolution, but I want you to try put yourself in my shoes and realize what a difficult decision I have before me."
>
> "I have had a chance to review the transcript of the first trial and looked at all the exhibits and whatnot, but I'm thrust, somewhat, in a position of a jury. But there's only one of me and not 12 of me. I want to make sure that I do the right thing. I want to consider this matter carefully, because it's important to everyone, to Eric Graham, and to the Wingate family.
>
> "So if you could put your disappointment aside for a couple of days. I'm not gonna take a long time, because I have a good strong feel for this matter. As I said, I've reviewed everything. I spent all last weekend going through everything. Spent about three days pulling through everything I had and I'm very familiar with the facts and I've an opportunity today hear from both sides and this is a very emotional matter. And for both sides, this is a very tough situation to deal with for the families and quite frankly for me as well."
>
> "And I will follow the law as it has been handed down to me and all other judges."
>
> "With that being said this matter will be taken under advisement. I will let you hear from me very shortly. We've got a weekend coming up, so it may be first couple of days of the week. I don't know if I'll be able to get everything out to the attorneys,

> but I'll certainly be able to get things taken care of, I'll say no later than Tuesday. So that given you some idea, some timeline, as to when you can expect a decision form the Court." (R. p. 161 l. 12 – p. 163 l. 4).

On January 23, 2023, the trial judge issued a sentencing order sentencing the Appellant to a period of incarceration for the remainder of his natural life. (R. pp. 592-593). This decision was appealed to this Court. This Court issued a decision vacating and remanding to the circuit court for another hearing so a finding of fact and conclusion of law would be included pursuant to *Aiken. State v. Graham,* Up. No. 2025-UP-396 (S.C. Ct. App. Filed Dec. 3, 2025).

The Respondent submits this petition for rehearing because *Aiken* does not require that the court issue an order explaining the finding of fact and conclusion of law. The Respondent argues that this decision misapprehends the compliance by the sentencing judge to *Aiken v. Byars*.

In *Jones v. Mississippi,* the United States Supreme Court stated, "In *Miller,* the Court mandated 'only that a sentencer follow a certain process – considering an offender's youth and attendant characteristics – before imposing'" a life-without-parole sentence. *Jones v. Mississippi,* 593 U.S. 98, 141 S.Ct. 1307, 1309 (2021). This hearing was given to the Appellant; he was allowed to present evidence regarding this upbringing and an expert to testify how a juvenile's mind is different than an adult which must be considered by the Court. In *Jones* the United States Supreme Court also stated the following:

> An on-the-record sentencing explanation is not necessary to ensure that a sentencer considers a defendant's youth. Jones's argument to the contrary rests on the assumption that meaningful daylight exists between (i) a sentencer's discretion to consider youth, and (ii) the sentencer's actual consideration of youth. But if the sentencer has discretion to consider the defendant's youth, the sentencer necessarily will consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth. Faced with a convicted murderer who was under 18 at the time of the offense and with defense arguments focused on the defendant's youth, it would be all but impossible for a sentencer to avoid considering that mitigating factor.

Jones, 593 U.S. at 114, 141 S.Ct. at 1319.

The above statements from the trial court reveal that the sentencing judge considered all of the evidence presented from the exhibits to testimony. There is nothing in *Aiken* that requires the court to present a finding of facts or conclusion of law. The Court needs only to consider the evidence during the sentencing hearing which the Judge's statements on the record reveal that he did. The order was signed on January 23, 2023, four days after the hearing concluded. That is ample time for the judge to have considered carefully evidence presented.

The Respondent argues that an *Aiken v. Byars* hearing, as any other sentencing, does not obligate the judge to explain their sentence. All *Miller* or *Aiken* requires is that proper mitigation be allowed to be presented, and considered by the sentencing judge. That was done in this case. Because the Constitution does not require an on-the-record explanation of mitigating circumstances by the sentencer in *death penalty cases*, it would be incongruous to require an on-the-record explanation of the mitigating circumstances of youth by the sentencer in *life-without-parole cases. Id.* 593 U.S. at 117, 141 S.Ct. at 1321-22. (emphasis in original).

If the South Carolina Supreme Court required the sentencing judge to mention a finding of fact and conclusion of law, they would have made that clear in *Aiken v. Byars.* However, that is not in the opinion. In *State v. McCarty,* 437 S.C. 355, 878 S.E.2d 902 (2022), the South Carolina Supreme Court determined that in a "stand your ground" immunity hearing the trial court must place in the record or order, specific credibility or factual findings as to any aspect of the testimony. *McCarty,* 437 S.C. at 372, 878 S.E.2d at 911. The Respondent argues that the South Carolina Supreme Court never forced a sentencing judge to make a finding of fact and conclusion of law as part of the sentence because *Aiken v. Byars* is a sentencing hearing, not a hearing to determine immunity, guilt or innocence. Like any other sentencing, the court is not obligated to explain their sentence. So there should be no expectation in the sentencing of a juvenile. As long as the Appellant

was allowed to present mitigating evidence pursuant to *Aiken v. Byars*, and the sentencing judge considered that evidence, this is all that's required prior to sentencing a juvenile to life without parole.

In *Aiken* the Supreme Court stated, " However, *Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmarks features of youth are fully explored. *Aiken,* 410 S.C. at 545, 765 S.E.2d at 578. The determination in *Aiken* never mentioned that the court must state a finding of fact and conclusion of law in the final decision. The *Aiken* decision states that petitioners and those similarly situated are accordingly entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional right. *Aiken,* 410 S.C. at 544, 765 S.E.2d at 577. Respectfully, this Court misapprehended the judge's compliance with the law, so this case should be revisited.

In the unpublished opinion, this court decided that this case should be vacated and remanded for a new hearing pursuant to *Aiken v. Byars.* Even though the Respondent is not relinquishing any of its previous arguments regarding this court's misapprehension of compliance with the law, if this Court does not to grant this petition, Respondent requests this Court allow the judge to review the transcript and all of the exhibits and to come to a conclusion regarding the sentence of the Appellant without a hearing.[1] The Respondent makes this request due to the burden on victim's family having to testify during any hearing. The Respondent believes it would be unfair for them to rehash all of those emotions again during a new hearing, when the testimony would be the same. The mother of the victim, Wanda Wingate, and the victim's aunt, Krystal Wingate,

[1] Judge Henderson is currently retired from the bench. Another judge needs to be appointed to make this decision.

testified at the last hearing. In the Respondent's opinion it would not be fair for them or any other witness in this hearing to testify identically as in the first hearing. There is no new evidence, and nothing has changed since the initial hearing. Since the only action asked for by the lower court is to create a new order revealing a finding of fact and conclusion of law, that could be easily done by a circuit court judge through reading the transcript and reviewing all of the exhibits submitted. This is done frequently for immunity hearings under Protection of Persons and Property Act, when they are reversed. The same can be accomplished regarding a decision pertaining to an *Aiken v. Byars.*

CONCLUSION

For the reasons stated above, the Respondent petitions this court for a rehearing pursuant to Rule 221(a), SCACR, and requests this Court to reinstate the Appellant's sentence for life without parole.

If this court is not inclined to grant this petition, the Respondent respectfully requests that the newly appointed circuit court judge be allowed to review the transcript and exhibits in order to make a decision. A hearing is not necessary; a circuit court judge can make an informed decision regarding sentencing just from the transcripts and exhibits since no new evidence exists nor was they any change in circumstances.

Respectfully submitted

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
ID No. 14244

TOMMY EVANS, JR.
Assistant Attorney General
ID No. 65282

WILLIAM B. RODGERS, JR.
Fourth Circuit Solicitor

BY: *s/ Tommy Evans, Jr.*
Tommy Evans, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina
December 17, 2025

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2023-000160

THE STATE,……RESPONDENT

v.

ERIC ANTON GRAHAM,……..APPELLANT

PROOF OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court order of April 24, 2024, the Respondent's Petition for Rehearing, along with the Proof of Service have been forward to Appellant's counsel, Joanna Delany, Esquire via email today December 18, 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 17th day of December 2025.

s/Tommy Evans, Jr.
Tommy Evans, Jr.
Assistant Attorney General

Brandy Rankin

From:	Brandy Rankin
Sent:	Thursday, December 18, 2025 11:00 AM
To:	Delany, Joanna
Cc:	Mcinnis, Sara; Tommy Evans, Jr.
Subject:	The State v. Eric Anton Graham - Respondent's Petition for Rehearing - Appellate Case No. 2023-000160
Attachments:	Graham.Eric.Anton.Petition for Rehearing and Proof of Service.pdf

Dear Ms. Delany,

Please find attached the Respondent's Petition for Rehearing together with the Proof of Service, in the above-captioned case. These documents will be filed today, December 18, 2025 in the South Carolina Court of Appeals, along with a copy of this email. Thank you.

Sincerely,

Brandy Rankin

Brandy Rankin, Legal Assistant to Tommy Evans, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305