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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

Opinion No. 2025-UP-396

THE STATE,

RESPONDENT,

V.

ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

RETURN TO PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant requests that this Court deny rehearing. The State has not shown any points overlooked or misapprehended. This Court correctly concluded Appellant was entitled to a new hearing and findings of fact and conclusions of law pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

Pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), the South Carolina Supreme Court held in *Aiken v. Byars*, 410 S.C. at 544, 765 S.E.2d at 577, that a circuit court must consider the following factors when sentencing a juvenile to a life without parole sentence: (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.

The State's argument that *Aiken v. Byars* does not require findings of fact or conclusions of law is unavailing. *See* Petition for Rehearing at 5 – 7. Because the circuit court provided neither an on-the-record ruling nor a written order containing findings of fact and conclusions of law, it is unclear whether it properly analyzed the *Aiken* factors, and this Court cannot conduct meaningful appellate review of the circuit court's decision. In *Aiken*, 410 S.C. at 545 n. 10, 765 S.E.2d at 578 n. 10, the Supreme Court noted it would not set out a specific process for trial judges to follow in these cases as it had confidence in the trial judges to weigh the factors and sentence juveniles in light of this new jurisprudence. However, it is clear from case law following *Aiken* that well-meaning and well-informed judges can still make errors in these decisions and that a written order or on-the-record ruling is necessary.

For instance, in *State v. Mack*, 441 S.C. 526, 540, 894 S.E.2d 820, 827 (Ct. App. 2023), *cert. denied*, this Court held the "resentencing court missed the mark" "in considering the *Aiken* factors." There, the resentencing court "erred by failing to adequately consider whether Mack's crimes were affected by his chronological age and the hallmark features of youth", where its order addressed Mack's age only as a chronological fact and did not seem to consider the hallmark features of youth at all. *Mack*, 441 S.C. at 540-43, 894 S.E.2d at 828-29. It "erred in

its interpretation of the *Aiken* factor concerning a defendant's home life", where it did not conduct a specific and individualized inquiry into the impact of the defendant's family and home environment on his crimes. *Id.*, 441 S.C. at 543-44, 894 S.E.2d at 829-30. This Court held that because "the resentencing court's order does not reflect a careful and thorough consideration of the *Aiken* factors", Mack was entitled to reversal. *Id.*, 441 S.C. at 545-46, 894 S.E.2d at 830-31.

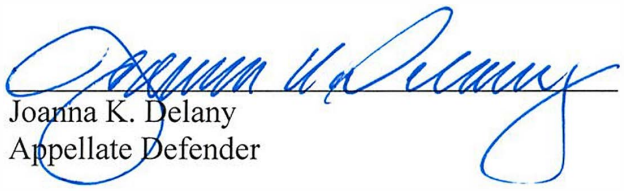
To the contrary, in *State v. Smart*, 439 S.C. 641, 646, 889 S.E.2d 573, 576 (2023), the South Carolina Supreme Court concluded that "[a]fter a careful review of the entire record . . . we are convinced the resentencing court thoroughly considered Smart's background and history in light of the *Aiken* factors." In *Smart*, the resentencing judge issued an extensive oral ruling, which comprised approximately forty pages of transcript, in which it provided findings on each of the *Aiken* factors. *See State v. Smart*, Appellate Case No. 2021-000987, Record on Appeal pp. 357 – 396. Because the resentencing court issued a ruling which contained findings and conclusions, this Court and the Supreme Court were able to review the record and hold no error occurred. Notably, *Smart* and *Mack* were decided after *Jones v. Mississippi*, 593 U.S. 98 (2021).

This Court correctly held "the circuit court abused its discretion when it failed to apply the *Aiken* factors to Graham." *State v. Graham*, Op. No. 2025-UP-396 at 2 (S.C. Ct. App. filed December 3, 2025). "An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support." *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019). In this case, unlike *Mack*, there was no written order containing an analysis of the *Aiken* factors. Unlike *Smart*, there was no on-the-record oral ruling containing an analysis of the *Aiken* factors. Relevant to *Aiken*, *Jones v. Mississippi*, 593 U.S. at 114, held only that a separate finding of permanent incorrigibility is not required. "The plain language of *Jones* provides that the decision is not intended to remove

state-level safeguards for juvenile sentencing." *State v. Mack*, 441 S.C. at 539, 894 S.E.2d at 827. *See Jones v. Mississippi*, 593 U.S. at 120 ("States may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth."). Moreover, Appellant is entitled to meaningful appellate review of this decision, which cannot be performed without a complete record. *Cf. State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (Ct. App. 2007) (new trial is appropriate if appellant establishes the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review). The court erred in failing to provide an order or on-the-record ruling addressing the application of the *Aiken* factors.

The State argues in its petition for rehearing that since the resentencing judge retired, another judge will need to be appointed and that judge should be limited to reviewing the transcripts and exhibits rather than conducting a new hearing. *See* Petition for Rehearing at 7 – 8. This Court correctly determined Appellant is entitled to a new sentencing hearing. *State v. Graham*, Op. No. 2025-UP-396 at 3. Testimony was taken from approximately a dozen witnesses. The circuit judge needs to make credibility determinations in order to apply the *Aiken* factors. A court cannot make credibility determinations from a cold record. *See generally Thompson v. State*, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018) ("While we defer to the PCR court's credibility findings as to witnesses who testified before the PCR court, we do not defer to the PCR court's credibility findings as to witnesses who did not testify before the PCR court. The PCR court reviewing the trial transcript is in no better position than we are to determine the credibility of trial witnesses or otherwise assess the strength of the State's case[.]").

Appellant respectfully requests this Court deny the petition for rehearing.



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ATTORNEY FOR APPELLANT

This 9th day of February, 2026.

STATE OF SOUTH CAROLINA

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Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

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ERIC ANTON GRAHAM,

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APPELLATE CASE NO. 2023-000160

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return to Petition for Rehearing in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Eric Anton Graham, #251687, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 9th day of February, 2026.

Joanna K. Delany
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ATTORNEY FOR APPELLANT