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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Cherokee County
Court of General Sessions

Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2025-000603

JOHN BENDARIAN BONNER .....APPELLANT,

v.

STATE OF SOUTH CAROLINA .....RESPONDENT,

REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Appellant, John Bendarian Bonner, submits the following in reply to the Initial Brief of Respondent. As set forth in greater detail in Appellant's Initial Brief, the sentencing court erred in failing to recuse itself from Appellant's sentencing proceeding. Furthermore, the court made both procedural and substantive errors during the proceeding. Appellant does not repeat the arguments made in the Initial Brief, but offers a few additional points in reply.

I. The trial court was not limited to reconsidering Bonner's sentence and was required to resentence Bonner *de novo*.

A. *The PCR court's order did not limit relief to reconsideration, and any ambiguity must be construed in Bonner's favor.*

Respondent's argument rests on the flawed assumption that, in granting relief, the PCR court clearly limited the remedy to a reconsideration proceeding. It did not.

The PCR court's *written* order—the only legally operative judgment—contains no explicit limitation restricting the remedy to reconsideration. *See Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) (holding the written order controls as the final judgment of the court). Respondent's reliance on the PCR court's oral statement that it was "not ordering a resentencing"—language absent from the written order that the court subsequently issued—is misplaced.

At most, the order is ambiguous as to whether the subsequent proceeding should be treated as a resentencing or a reconsideration. The PCR court granted relief based on counsel's ineffectiveness in depriving Bonner of "any meaningful opportunity to appeal" his sentence, yet also stated relief was granted "solely on the issue of whether [he] may file a motion for resentencing." PCR Order Granting Relief at 3. This language is internally inconsistent and fails to define the scope of the remedy. That confusion persisted below, where the trial court described

the matter as a "de novo hearing" on a motion for reconsideration—an inherently contradictory formulation. Order, *State v. Bonner*, Nos. 2009-GS-11-00824-00829 (Aug. 16, 2024) (Cole, J.), at 1.

Where an order affecting a criminal defendant's rights is susceptible to more than one reasonable interpretation, it must be construed in the defendant's favor. *See State v. Miles*, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017) (the rule of lenity applies when a criminal statute is ambiguous, and any doubt about the statute's scope must be resolved in the defendant's favor). As applied here, the PCR order restored Bonner to the posture that would remedy his counsel's ineffective assistance. The trial court was therefore required to treat the matter as a resentencing and conduct a constitutionally compliant, *de novo* proceeding.

B. *The trial court was required to review Bonner's sentencing de novo, because no other standard of review would remedy his underlying unconstitutional sentence.*

Even if the PCR court intended to limit the remedy in the manner Respondent suggests, that limitation cannot stand as it fails to cure the identified constitutional violation. A reconsideration proceeding that defers to the very sentence infected by counsel's deficiency does not "remedy the precise prejudice," *Rolen v. State,* 384 S.C. 409, 414–15, 683 S.E.2d 471, 474 (2009), or "restore the status quo," *Garza v. Idaho*, 586 U.S. 232, 247 (2019). Respondent's position would permit a court to acknowledge a constitutionally defective sentencing, reopen the judgment, and then reaffirm the same sentence without ever conducting a constitutionally adequate analysis. That result is impermissible.

As Respondent notes, ordinarily the decision to reconsider a sentence "rests solely and exclusively within the discretion of the sentencing judge." *State v. Warren*, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011). But that discretionary standard is wholly incompatible with the

"careful sentencing" mandated by the Eighth Amendment in juvenile cases, which Bonner has never received. *See Jones v. State*, 440 S.C. 14, 25, 889 S.E.2d 590, 596 (2023). When applying the *Aiken* factors, trial courts must do so on a fresh slate. *Aiken* instructed trial judges to "weigh the factors" and then "to sentence juveniles in light of this *new* constitutional jurisprudence." *Aiken v. Byars*, 410 S.C. 534, 545 n.10, 765 S.E.2d 572, 578 n.10 (2014) (emphasis added). It recognized that all that *Graham* and *Miller* had to say, about how "children are constitutionally different from adults for the purposes of sentencing," was the product of a new scientific and social consensus. *See Graham v. Florida*, 560 U.S. 48, 68 (2010) ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."); *Miller v. Alabama*, 567 U.S. 460, 472 n.5 (2012) ("The evidence presented to us in these cases indicates that the science and social science supporting *Roper*'s and *Graham*'s conclusions have become even stronger."). Deferring to a previous sentence that never addressed our modern understanding of juvenility is illogical; it only compounds the error in any initial sentencing. *Cf. Aiken*, 410 S.C. at 543, 765 S.E.2d at 577 (noting even prior sentencing hearings that "touch[ed] on the issues of youth" did not "approach the sort of hearing envisioned by *Miller* where the factors of youth are carefully and thoughtfully considered," and thus resentencing was required).

When applying the *Aiken* factors—the mechanism for ensuring that juvenile offenders are sentenced properly under the Eighth Amendment—trial judges must do so correctly. *State v. Smart* held that when evaluating "any evidence and arguments [that might] bear on the *Aiken* factors," resentencing courts should "give no deference to the prior sentencing court's decision." 439 S.C. 641, 645, 889 S.E.2d 573, 575 (2023). The trial court's failure to do just that at Bonner's second resentencing was error.

II. Respondent's characterization of *Graham v. Florida* is incorrect.

As a preliminary point, Respondent argues that *Graham v. Florida* does not govern this case. This is wrong. The resentencing proceeding at the heart of this appeal arose from a remand pursuant to *Graham*, after Bonner's original sentence from trial included a life without parole sentence for a nonhomicide offense. *State v. Bonner*, 400 S.C. 561, 567, 735 S.E.2d 525, 528 (Ct. App. 2010). Graham's new constitutional holding applied retroactively to juveniles, like Bonner, who were convicted before *Graham* was decided. *See Moore v. Biter*, 725 F.3d 1184, 1190 (9th Cir. 2013) (*Graham* applies retroactively on collateral review); *In re Sparks*, 657 F.3d 258, 260 (5th Cir. 2011) (same). South Carolina courts must apply substantive rules like *Graham* in post-conviction relief proceedings and have "a duty to grant the relief that federal law requires." *Montgomery v. Louisiana*, 577 U.S. 190, 198, 200 (2016). In *Graham*, that requires juvenile nonhomicide offenders be afforded "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 560 U.S. at 74–75. Failure to grant that remedy perpetuates "punishment barred by the Constitution." *Montgomery*, 577 U.S. at 204. Because juveniles are "entitled to careful sentencing under the Eighth Amendment," *Graham* also applies any time a South Carolina circuit court sentences a juvenile offender. *Jones*, 440 S.C. at 25, 889 S.E.2d at 596.

Bonner's resentencing follows a *Graham*-based remand, and so those constitutional principles necessarily govern these proceedings. Under the law-of-the-case doctrine, issues decided in earlier stages of the same litigation remain binding. *See Lifschultz Fast Freight, Inc. v. Haynsworth, Mation, McKay & Guerard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96–97 (1999). Respondent's suggestion that *Graham* has no relevance here is therefore unfounded.

Respondent further represents that *Graham* asserted a "clear line" about the applicability of the case's holding and principles to only circumstances where a juvenile is given a sentence labeled "life without parole" for a nonhomicide offense. Resp. Brief at 32. This language, however, concerns the legal distinction, at eighteen, between juvenility and adulthood. *Graham*, 560 U.S. at 74–75 ("Because '[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood,' those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime." (quoting *Roper v. Simmons*, 543 U.S. 551, 574 (2005))). Nothing that *Graham* said about juveniles' diminished moral culpability or their capacity for change is limited to sentences that are formally designated as life without parole.[1]

Respondent repeatedly asserts that Bonner committed "numerous heinous crimes" and analogizes his case to *State v. Slocumb,* 426 S.C. 297, 827 S.E.2d 148 (2019). Resp. Brief at 30–32. That comparison fails. While it is true that Bonner received multiple convictions for his actions the night of the offense, all of these convictions arose from a single criminal course of conduct. This bears no resemblance to *Slocumb*, which involved multiple distinct courses of conduct separated by several years. App. Brief at 14–17. The *Slocumb* Court made it clear that its holding was tied to the specific factual circumstances of Slocumb's case. 426 S.C. at 310, 827 S.E.2d at 154–55 ("In emphasizing that Slocumb's situation is beyond the reach of *Graham*, it may be helpful to state the obvious: Slocumb's case is factually distinct . . . . Slocumb committed multiple crimes at two different points in time—the second set after he had escaped from custody.").

[1] As two federal courts of appeal have noted, *Graham* itself involved a de facto life without parole sentence: Terrance Graham was sentenced to "life imprisonment," which amounted to a de facto life without parole sentence because Florida had abolished its parole system. *Moore*, 725 F.3d at 1192 n.3 (9th Cir. 2013); *Budder v. Addison*, 851 F.3d 1047, 1056 (10th Cir. 2017).

Moreover, the *Slocumb* Court did not permanently preclude challenges to de facto life sentences. Rather, the *Slocumb* Court explicitly recognized that the constitutionality of de facto life sentences remains an open constitutional question: "Our holding should in no way be read to signal the end of the debate on the underlying issues raised by aggregate term-of-years sentences imposed on juvenile offenders, whether for homicide or nonhomicide offenses." 426 S.C. at 313, 827 S.E.2d at 156; *see also id.* at 306, 827 S.E.2d at 152 ("[*Graham's*] rationale *may* implicate *de facto* life sentences.").

In an attempt to bolster its misrepresentation of the holdings of *Graham*, *Slocumb*, and the other governing juvenile sentencing case law, Respondent relies on non-binding authority to suggest a national consensus regarding the constitutionality of de facto life sentences for juveniles. This is simply not true. Federal and state courts alike have held that *Graham* and *Miller* apply to sentences that are the effective equivalent of life without parole, even without being labeled as such. *See, e.g.*, *Moore*, 725 F.3d at 1185 ("*Graham*'s focus was not on the label of a 'life sentence'—but rather on the difference between life in prison with, or without, possibility of parole."); *McKinley v. Butler*, 809 F.3d 908, 911 (7th Cir. 2016) (*Miller*'s principles "cannot logically be limited to *de jure* life sentences, as distinct from sentences denominated in number of years yet highly likely to result in imprisonment for life"); *State v. Moore*, 76 N.E.3d 1127, 1140 (Ohio 2016) ("It is consistent with *Graham* to conclude that a term-of-years prison sentence extending beyond a juvenile defendant's life expectancy does not provide a realistic opportunity to obtain release."); *People v. Caballero*, 282 P.3d 291, 268 (Cal. 2012) ("*Graham*'s 'flat ban' on life without parole sentences applies to all nonhomicide cases involving juvenile offenders, including the term-of-years sentence that amounts to the functional equivalent of a life without parole sentence imposed in this case."); *People v. Reyes*, 63 N.E.3d 884, 888 (Ill. 2016)

("[S]entencing a juvenile offender to a mandatory term of years that is the functional equivalent of life without the possibility of parole constitutes cruel and unusual punishment in violation of the eighth amendment."); *State v. Zuber*, 152 A.3d 197, 201 (N.J. 2017) (*Miller* and the Eighth Amendment apply to a 55-year minimum sentence, because "[t]he proper focus belongs on the amount of real time a juvenile will spend in jail and not on the formal label attached to his sentence").

That logic applies even where, as in Bonner's case, the juvenile's aggregate sentence is the product of multiple charges. *See, e.g.*, *Budder*, 851 F.3d at 1057–58 (*Graham* applies "regardless of the number or severity of nonhomicide crimes committed," and states cannot "circumvent the strictures of the Constitution merely by altering the way they structure their charges or sentences"); *State v. Boston*, 363 P.3d 453, 454 (Nev. 2015) (holding that *Graham* applies "when an aggregate sentence imposed against a juvenile defender convicted of more than one nonhomicide offense is the equivalent of a life-without-parole sentence.").

Courts have also held that sentences of comparable length to Bonner's are de facto life without parole, and constitutionally impermissible. *See, e.g.*, *Gridine v. State*, 175 So. 3d 672, 673 (Fla. 2015) (holding that a 70-year prison sentence for a juvenile nonhomicide offender does not provide a meaningful opportunity for future release); *Bear Cloud v. State*, 334 P.3d 132, 141–42 (Wyo. 2014) (a 45-year minimum sentence for a juvenile homicide offender is the functional equivalent of life without parole); *State v. Kelliher*, 873 S.E.2d 366, 370 (N.C. 2022) (a sentence of 40 years before parole eligibility is a de facto life without parole sentence for a juvenile); *Fletcher v. State*, 532 P.3d 286, 319–20 (Alaska Ct. App. 2023) (a sentence where a juvenile offender becomes parole eligible after 45 years is a de facto life without parole sentence); *People v. Eads*, No. 357332, 2025 WL 223470, at *10 (Mich. Ct. App. Jan. 16, 2025) (a 50-year minimum

sentence for a juvenile homicide offender is cruel or unusual, and disproportionate); *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013) (a 52.5-year minimum sentence "is sufficient to trigger *Miller*-type protections, because even "[t]he prospect of geriatric release…does not provide a 'meaningful opportunity' to demonstrate the 'maturity and rehabilitation' required to obtain release and reenter society as required by *Graham*" (quoting 560 U.S. at 75)).

III. Because *Graham* governed, the trial court was required to consider the *Aiken* factors.

Bonner's initial post-conviction relief proceeding, his resentencing, his second post-conviction relief application, and the most recent resentencing proceeding were all governed by *Graham*. The trial court was required to conduct a sentencing that complied with *Graham*'s constitutional mandates. Here, *Graham* required that Bonner receive a resentencing proceeding that considered the *Aiken* factors, and that did so in accordance with precedent from this Court and our state Supreme Court. The Eighth Amendment, *Graham*, and *Aiken* all compel that conclusion.

The *Miller* and *Aiken* Courts did not craft the factors out of thin air; both decisions relied on the holding and constitutional principles recognized in *Graham*. *Graham* identified the same hallmark features of youth as the first *Aiken* factor, including a "lack of maturity" and "an underdeveloped sense of responsibility" that resulted in "impetuous and ill-considered actions and decisions." 560 U.S. at 72. It acknowledged juveniles are "more vulnerable or susceptible to negative influences and outside pressures" in their home environments and among peers, the second and third *Aiken* factors. *Id.* at 68. *Graham* was the first case to recognize what became the fourth *Aiken* factor, juveniles' "limited understandings of the criminal justice system" and how those limitations hinder their participation in their own cases. *Id.* at 78. And *Graham* rested its conclusion on the fact that juvenile offenses are those "most in need of and receptive to rehabilitation," that "a greater possibility exists that a minor's character deficiencies will be

reformed," and they should have "a chance to demonstrate maturity and reform." *Id.* at 74, 68, 73. A resentencing pursuant to *Graham* should use the framework that *Graham* itself relied on.

The reasoning that drove the *Aiken* Court to adopt those factors applies with equal force to both juvenile homicide and nonhomicide offenders. In both cases, the "distinctive attributes of youth" render juveniles less culpable, "even when they commit terrible crimes." 410 S.C. at 542, 765 S.E.2d at 576 (quoting *Miller*, 567 U.S. at 472). In both cases, juvenile offenders sentenced prior to *Aiken* had never been granted an opportunity "to present evidence specific to their attributes of youth." *Id.* at 544, 765 S.E.2d at 577. And in both cases, "[t]he absence of this level of inquiry . . . produced a facially unconstitutional sentence." *Id.* at 543–544, 765 S.E.2d at 577. *Aiken*'s language swept broadly: "[A]ny juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections." *Id.* at 544, 765 S.E.2d at 577. Its remedy—a grant of resentencing, and the opportunity to present evidence of juvenility and have it considered "in light of its constitutional weight"—extended not just to the *Aiken* class but also to "those similarly situated." *Id.*

The *Aiken* factors must therefore be considered *any* time a juvenile offender is sentenced. *Jones*, 440 S.C. at 25, 889 S.E.2d at 596. The factors are the only method the Supreme Court has held "provides sufficient attention to actual juvenility," and consideration of those "mitigating factors of youth" is necessary to ensure that the juvenile receives the "careful sentencing under the Eighth Amendment" to which they "are entitled." *Id.*; *see also State v. Mack*, 441 S.C. 526, 539, 894 S.E.2d 820, 827 (Ct. App. 2023) ("Our supreme court has decided that, in South Carolina, compliance [with the Eighth Amendment] should take the shape of a review of the *Aiken* factors.").

A trial court applying the *Aiken* factors must also do so correctly. The Eighth Amendment establishes an "affirmative requirement that courts fully explore the impact of the defendant's

juvenility on the sentence rendered." *Aiken*, 410 S.C. at 543, 765 S.E.2d at 577. *State v. Mack* held that "affirmative requirement" to mean careful, individualized application of the factors, not rote repetition without substantive analysis. 441 S.C. at 544, 894 S.E.2d at 830.

Bonner has never been sentenced with the *Aiken* factors' guidance. His initial sentencing preceded (and was overturned due to) *Graham*, and his subsequent resentencing preceded *Aiken*. *See State v. Morgan*, 433 S.C. 435, 441–42, 858 S.E.2d 647, 650 (Ct. App. 2021) (noting "a problem of timing," when even a "sentencing judge diligently considered [a defendant's] age and other factors associated with youth," because "it was not possible for the court…to *fully* consider the factors identified" in *Aiken*, when that case "did not exist yet"). No court has ever given Bonner the remedy to which he is constitutionally entitled: a sentencing "where the factors of youth are carefully and thoughtfully considered." *Aiken*, 410 S.C. at 543, 765 S.E.2d at 572. The trial court at his second resentencing was required to give him that consideration.

Both parties presented evidence on the *Aiken* factors and argued their application to the trial court without objection. Solicitor Barnette cross-examined one of Bonner's witnesses on the *Aiken* factors, compared Bonner's resentencing to other *Aiken* sentencings in colloquy with the court, and delivered a closing argument focused on three of the five factors. Resentencing Tr. 57–60, 71, 80. Bonner's counsel presented evidence and argued in closing how all five factors applied in Bonner's case. *Id.* at 75–79. Nonetheless, the trial court's Order did not in any way apply or consider the factors as *Aiken* and the Eighth Amendment require. That was error.

CONCLUSION

For these reasons and those in Appellant's Initial Brief, this Court should vacate Bonner's sentence and remand for resentencing in compliance with *Graham*, *Aiken*, *Jones*, *Smart*, and

Mack. Appellant further requests that on remand, his case be assigned to a different judge.

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