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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Unpublished Opinion No. 2025-UP-396 (S.C.Ct.App. filed December 3, 2025)
Appeal from Darlington County
Hon. Rodger E. Henderson, Circuit Court Judge

THE STATE, Petitioner,

v.

ERIC ANTON GRAHAM Respondent.

Appellate Case No. 2026-000776

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on February 27, 2026.

QUESTION PRESENTED

Whether the Court of Appeals erred in reversing and remanding for another *Aiken v. Byars* hearing solely on finding an insufficient expression of the judge's opinion on each of the *Aiken* factors in the record where there is no requirement that the judge expressly set out his thoughts on each factor, and the record shows that consideration of the *Aiken* factors was argued and the judge acknowledged the factors while taking the matter under advisement?

STANDARD OF REVIEW

Certiorari Review

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR.

Eighth Amendment Challenge

"In criminal cases, this Court sits solely to review errors of law." *State v. Perez,* 423 S.C. 491, 496–97, 816 S.E.2d 550, 553 (2018) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Specifically, "[w]hen 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." *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) (citing *Perez,* 423 S.C. at 496, 816 S.E.2d at 553). Only if the trial court has abused its discretion[1] is error shown. *Id.* "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." *Id.*

[1] The cited case actually reflects that a "manifest abuse of discretion" is required, but as this Court has held, the "manifest" term "has no meaning in this context and does not impact the standard." *State v. Davis-Kocsis*, 443 S.C. 127, 135, 903 S.E.2d 491, 495 n. 2 (2024).

STATEMENT OF THE CASE

Respondent, Eric Anton Graham (Graham), who was seventeen years old at the time he committed murder, was sentenced in December 1996 to life without parole for the murder of Curtisha Wingate. This appeal stems from an additional sentencing proceeding pursuant to *Aiken v. Byars,* 401 S.C. 534, 765 S.E.2d 572 (2014).

The Crime and Trial

On December 7, 1996, deputies from the Darlington County Sheriff's Office responded to a shooting occurring inside Graham's residence. Once deputies arrived, they saw seventeen-year-old Curtisha Wingate (victim) slumped over on a couch covered with a blanket. (APP. 217, l. 10-13; p. 219, l. 5-10). Graham was the victim's boyfriend who was also seventeen. When deputies arrived they found Graham very emotional on the floor crying being held by his uncle and cousin. (APP. 217, l. 10-13; p. 458, l. 20-24). Graham was transported to headquarters for questioning. After being read his *Miranda* rights he told deputies he was guilty of voluntary manslaughter and that is what he would plead to. (APP. 187, l. 22 – p. 188, l. 2). After making the statement, Graham's father walked into the interrogation room and informed deputies that his son wished to have a lawyer and would not be answering any more questions. (APP. 188). At that time all questioning ceased. (APP. 188).

On August 28, 1998, Respondent's case was called for trial before a jury. The Honorable Paul M. Burch presided. Karl H. Smith, Esq., represented Graham. Assistant Solicitor Billie E. Blackmon represented the State.

During trial, forensic pathologist Dr. Edward Lee Proctor testified that he performed the autopsy on the victim on December 7, 1996. (APP. 385, ll. 24-25). Dr. Proctor determined that the victim died as a result of a gunshot wound to the base of the chin area. The bullet passed through

her brain, causing "extensive swelling and fragmentation and hemorrhaging to the brain matter itself." (APP. 392, ll. 6-10). The jury found Graham guilty of murder. The trial judge sentenced him to a period of incarceration for the remainder of his natural life. (APP. 568).

Aiken v. Byars Proceeding

On June 25, 2012, while Graham was serving his sentence, the Supreme Court of the United States decided *Miller v. Alabama,* 567 U.S. 460 (2012). In *Miller,* the Court held that a mandatory sentence of life imprisonment for a person under eighteen without the hallmark features of youth being fully explored violates the Eighth Amendment prohibition on cruel and unusual punishment. This Court followed *Miller* in *Aiken v. Byars,* 401 S.C. 534, 765 S.E.2d 572 (2014), and provided that any juvenile sentenced to life without parole was allowed to petition the court for an additional sentencing proceeding. 410 S.C. at 545, 765 S.E.2d at 578. Graham sought such a proceeding.

On January 19, 2023, an *Aiken* hearing was conducted before the Honorable Roger E. Henderson. Elizabeth Franklin-Best, Esq., represented Graham. Assistant Solicitor Kelly Jackson represented the State.

Graham's mother, Bobby-Gene Graham, testified as well as his father, Raymond Graham. They testified how much Graham had loved the victim. (APP. 19-20, 31). They also testified that he was raised in a good home that was actually built by his father. (*See* APP. 22-24, 33, 36). They testified how Graham had attended church regularly. (APP. 23-24). Both asked for mercy for their son. (APP. 20, 32). Mr. Graham testified briefly that Graham, to his knowledge, had not received mental health treatment or support after the murder, or after an earlier incident when he was hospitalized after an attack by a group of young men. (APP. 29-31). Reverend William C. Daniels also testified that both families "had ties" to his church and both were "God-Fearing families. Families of love" and there was "a tight bond among both families." (APP. 36). He also discussed

mercy. (APP. 36-40). Dr. Elizabeth Cauffman also testified for Graham. Dr. Cauffman was presented as a "teaching expert." (APP. 87, ll. 7-9). Dr. Cauffman testified she was present as a developmental psychologist and was there to teach, not to give any diagnoses. (APP. 86, ll. 17-19, p. 107, ll. 13-17). Dr. Cauffman's role was to explain "adolescent development." (APP. 87, ll. 2-6). The doctor testified that her research concentrated legal precedent that pressed juvenile differences to the forefront. (APP. 89). She explained cognitive development, maturity, brain development stages and other concepts in adolescence development. (*See* APP. 90-106).

The State called several witnesses, as well. William Huggins, formerly with the Darlington County Sheriff's Office, testified about coming onto the scene, and seeing the victim covered up on a couch. (APP. 42-44). While he was crying and screaming at the home where the victim was shot, Graham never showed any remorse that Mr. Huggins saw. (APP. 46-47). He testified that guns and ammunition had age restrictions for purchase, thus, neither the gun used in the murder, nor the ammunition, could be acquired legally by a seventeen-year-old. (APP. 50). The State read the testimony from the pathologist who testified at trial that the gunshot wound under the victim's chin was a contact wound. (APP. 57). Further, William Sumner who had been the resource officer for Darlington High School testified about an incident occurring at the school. Graham had brought a gun to school. This gun was taken off campus provided to another person who fired a shot. (APP. 67 l. 4-5). When the car was stopped by law enforcement, it was determined that the car was registered to Graham's father. Officers discovered that Graham was driving with a suspended license, (APP. 154), and a pistol was found under the driver's seat. Notably, the pistol recovered from under the seat was not the gun used in the prior incident. (APP. 71). Graham later confessed

that he threw that gun into a lake near Hartsville. (APP. 68). He was charged with driving under suspension, unlawful possession of a pistol, and armed robbery.[2] (APP. 71).

Several staff members from the South Carolina Department of Corrections also testified. Ernest Ray explained that while in custody, Graham committed twenty-six infractions, eleven major and fifteen minor. Graham was given a "Level III" custody designation which is the Department's "highest level for our inmates," and had been transferred several time, which the Department does to manage difficult or "dangerous" inmates. (APP. 79-83). Francisco Collazo described a September 8, 2020, search of Graham's cell. He testified that Graham engaged in a "scuffle" with officers as he tried to destroyed a cellphone. As it turned out, Graham had two contraband cellphones. Mr. Collazo testified that cellphones are considered just as dangerous as weapons as they allow connection with others for purposes of arranging criminal activity, even outside the jail. (APP. 111- 114). Brian Kendall also testified and described the Level III custody earlier discussed as "close custody, which basically means maximum custody inmates." (APP 115, ll. 20-24). He described how Graham had consistently obtained cellphones which had to be taken from him. He also described the danger as the phones allowed inmates to continue criminal activity. (APP. 117). Graham, who had been transferred several times with the Department, was eventually transferred to another facility in Mississippi. (APP. 117-118). Randall Williams further explained in his testimony that the Mississippi facility is run by a private company, and "it's a management tool," a facility "where we send out most difficult, problematic inmates." (APP. 120, ll. 6-23). Two names were submitted when a bed opened in that secure facility, and Graham was selected over the other for "management purposes." (APP. 121-122).

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[2] The armed robbery was later nolle prossed. (APP. 73).

Lastly, the State called two of the victim's family members. Wanda Wingate, the victim's mother, was allowed to address the court. She reminded the court that the victim was seventeen at the time, as well, and she did not use a gun against Graham. (APP. 125). She testified her daughter was her only child, and that she had suffered greatly. (APP. 125-127). She did not support any reduction in the sentence. (APP. 126-127). Krystal Wingate, the victim's aunt, underscored that Graham took the victim not just from her mother, but from a loving, close family. Their pain continued in having to relive that loss, though it was always there. She, also, did not support any reduction in the sentence. (APP. 129-133).

Graham then addressed the court and asserted that he held great remorse, pointing out that what he did, he did "as a boy," and he has since matured and "hold[s himself] accountable for [his] reckless actions." (APP. 134-141).

At the conclusion of testimony, the sentencing judge took all of the evidence under advisement. On January 23, 2023, the sentencing judge issued a sentencing order sentencing the Respondent to a lifetime term of incarceration without the possibility of parole. (APP. 592).

Appeal

On December 3, 2025, after briefing but without oral argument, the Court of Appeals issued an unpublished opinion vacating and remanding for a new hearing and findings of fact and conclusions of law pursuant to *Aiken.* (APP. 673).

ARGUMENT

The Court of Appeals erred in reversing and remanding for another *Aiken v. Byars* hearing solely on finding an insufficient expression of the judge's opinion on each of the *Aiken* factors in the record where there is no requirement that the judge expressly set out his thoughts on each factor, and the record shows that consideration of the *Aiken* factors was argued and the factors were acknowledged by the judge while taking the matter under advisement.

Reason for Granting Certiorari

The Court of Appeals erred in ordering yet another sentencing proceeding. The reversal was based solely on the judge not addressing each *Aiken* factor individually, but that is not a requirement of law. Therefore, there is no error of law to support the Court of Appeals' reversal. Further, the Court of Appeals improperly grafted a requirement onto *Aiken* proceedings that neither this Court nor the Supreme Court of the United States has ever established. This type of error is ripe for certiorari review.

As to this record, Graham was afforded all he was entitled; a hearing specifically focused on factors of youth and potential rehabilitation. Moreover, the record clearly shows the relevant factors were considered in light of the evidence and that the *Aiken* judge expressly acknowledged the factors would guide his decision. (APP. 162). Further, even if it is required that a judge set out his thought process as to each factor (which would truly be a new and novel approach to sentencing), a new hearing – without any finding whatsoever of deficiency in the first hearing – certainly is not.[3] The State respectfully requests this Court grant certiorari, reversed the Court of Appeals, and affirm the lower court.

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[3] Respondent acknowledges that in this case, a successor judge may need to be appointed. A successor judge may review the transcript and determine if any witness should be brought before him or her if necessary, but a new hearing is simply a windfall to the defendant and additional angst and delay for the victim's family.

The Aiken Hearing Focus

The lower court afforded Graham the opportunity to present witness and argument for resentencing and to have his evidence considered in light of the *Aiken* factors. A hearing was held on January 19, 2023, and evidence was received from Graham and from the State. Defense counsel set out that Graham was requesting the Court to consider "all the hallmarks of youth" and would present an expert "to explain how juvenile brains are just so very different from adult brains" describing how "juveniles are not just smaller adults, they're fundamentally wired differently." (APP. 14, ll. 12-22). Later, after the close of evidence, the court also heard argument from Graham and from the State.

Defense counsel argued for mercy, recognizing the horrific nature of the crime, but asking the court to consider Graham was "a young man who was in trouble" having "never received any mental health treatment after a series of traumatic events in this life." (APP. 144, ll. 9-20). Counsel further argued for mercy "based on his family," who demonstrated a good, solid background as "God-fearing, church-going members of this community." (APP. 144, ll, 21-25). Further still, counsel argued for mercy based on Graham's "profound remorse." (APP. 145, ll. 2-5). Notably, counsel thanked the court for "the opportunity and the resources to put this case before you[.]" (APP. 145, ll. 9-12).

The State argued that the Court should consider specifically "the five features of youth" as the purpose of the hearing. (APP. 146, ll. 4-5). The State then listed and argued each of the five factors this Court set out in *Aiken*, discussed, at length, the evidence in relation to those factors, and requested a life sentence. (APP. p. 146, l. 15 – p. 161, l. 8). Defense counsel added nothing further. (APP. 161, l. 11). The judge then took the matter under advisement:

> Counsel, 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 here 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 to 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 had an opportunity today to 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.
>
> I want to commend the attorneys, Ms. Franklin-Best and Mr. Jackson for the outstanding job they have done, here today, presenting this matter to me in covering all the factors that I have to look at and consider in making my decision. 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 days of next 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 gives you some idea, some timeline, as to when you can expect a decision from the Court.

(APP. 161, l. 12-p. 163, l. 4).

Analysis

In appeal from an *Aiken* proceeding, this Court is mindful that the sentencing "decision belongs to the resentencing court," and has underscored that it considers "our circuit judges are well-equipped to make the right decision in each case." *State v. Smart*, 439 S.C. 641, 646, 889

S.E.2d 573, 576 (2023). With that principle in the forefront, this Court acknowledges that appellate review of this remedial proceeding is limited; it is not on "the substance of the resentencing court's decision to impose a life sentence," but on whether the "proper procedure under *Aiken*" was followed. *Id,* at 647, 889 S.E.2d at 576. That procedure focuses on considering youth and youthful differences before imposing a life sentence. For that, this Court has instructed that our judge may be guided by *Miller*:

> … *Miller* establishes a specific framework, articulating that the factors a sentencing court consider at a hearing must 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."

Aiken, 410 S.C. at 544, 765 S.E.2d at 577 (2014) (quoting *Miller*). Noticeably, there is no requirement for the judge to consider *and also explain his rationale on each point* to have followed proper procedure. Consequently, the Court of Appeals reversed on a legal requirement that does not exist.

Further, the Court of Appeals expressed no logic in their opinion as to why the evidence of record is not sufficient to show the keen focus on the factors. The State reviewed the factors in context of the evidence, (APP. 146-161),[4] and the judge acknowledged on the record that the factors would guide his decision, (APP. 162). There is further indicia that the judge made careful review of the case. He announced his consideration of documents, and that wished to consider the

[4] Graham's counsel focused deeply on mercy, (APP. 144-145), but also underscored in her opening the differences of youth, (APP. 13-14).

evidence carefully again before announcing his decision – a decision that would be guided by the factors: "I want to commend the attorneys… for the outstanding job they have done, here today,, presenting this matter to me in covering all the factors that I have to look at and consider in making my decision. And I will follow the law as it has been handed down to me and all other judges." (APP. 162, ll. 14-20). The prominence in the record of the factors to be considered cannot be denied. And again, an appellate court does not review the record for agreement, but for procedure. This Court in *State v. Smart,* 439 S.C. 641, 889 S.E.2d 573 (2023), underscored the deference to be given the court and record, and that case, though not directly on point, is instructive here.

In *Smart,* at issue was whether there was a burden of proof on either party. This Court resolved that there was no burden of proof assigned to either party, but that each party had a burden of production. The evidence offered could go toward the "*Aiken* factors or otherwise relate to what should be the appropriate sentence." *Id,* at 645, 889 S.E.2d at 575. This Court instructed, though, that "[t]he sentence to be imposed is within the discretion of the resenting court." *Id.* This Court then considered whether the record supported that the *Aiken* judge considered the evidence and factors without assignment or assumption of a burden of proof. Similar to this record, the *Aiken* judge in *Smart* stated that he had "methodically gone through each bit of information that's been provided to me," and the record supported that the attorneys had argued the factors in their presentations, and that the court heard evidence following the points set out in the factors. *Id,* at 647, 889 S.E.2d at 576. Further, the *Aiken* judge in *Smart* noted:

> I have taken all these factors into consideration, and I still believe it's the right decision. Will I lose sleep over it [?] … Probably so,… These decisions aren't easy. Certainly, I have tried. And I have told you all, I typed my own 30 – page transcript in my review of all this stuff. I have tried to hit on each of these points in coming to this conclusion. Again that's not – it wasn't easy.

Id, at 648, 889 S.E.2d at 577. From that passage, this Court concluded,

> In sum, it is clear from the record the resentencing court carefully considered all of the evidence presented at the resentencing hearing by both the State and Smart and correctly treated the proceeding as a de novo sentencing hearing with no burden of proof or persuasion on Smart.

Id.

This gives great insight into whether the strength of the record[5] will show the correct procedure was followed. While true that this Court also noted other examples from the record to show the consideration of the factors, that was to underscore a burden was not recognized. Indeed, this Court began the discussion with the caveat, "While we do not review the substance of the resentencing court's decision to impose a life sentence, to explain out ruling the court followed the proper procedure under *Aiken*, we summarized the thought process the court went through in making its decision." *Id,* at 647, 889 S.E.2d at 576. Notably, this Court also made reference to *Jones v. Mississippi*, 593 U.S. 98 (2021), in a short footnote. *Smart*, at 646, 889 S.E.2d at 576 n.2. *Jones,* too, is instructive here.

While this Court in *Smart* referenced *Jones* for the narrow point that a finding of "permanent incorrigibility is not required before" before a life sentence is handed down, *Jones* covers much more in demonstrating the Court's logic for that conclusion. The Court in *Jones* explained *Miller* and *Montgomery v. Louisiana,* 577 U.S. 190 (2016), in context of Jones's argument that "a sentencer's discretion to impose a sentence less than life without parole does not

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[5] The State would note, in further support of the fairness of the procedure, the record reflects the hearing presentation followed those important *Aiken* factors. Consider that Graham presented evidence from Dr. Cauffman to explain how the young brain is different than an adult brain and his parents and pastor testified to his good family and home. But there was other evidence – evidence that argued against a lesser sentence being appropriate in these circumstances. Evidence of a senseless, brutal crime, and his repeated infractions while incarcerated. At any rate, this follows the description of the *Aiken* hearing this Court referenced in *Smart*, *i.e.,* that the parties may present "the resentencing court with any evidence and arguments they believe bear on the *Aiken* factors or otherwise relate to what should be the appropriate sentence." *Smart*, 439 S.C. at 645, 889 S.E.2d at 575. Again, the record shows no error.

alone satisfy *Miller*." 593 U.S. at 104. The Court set out that had previously said "[i]n *Montgomery*, … that '*Miller* did not impose a formal factfinding requirement….'" *Id,* at 104-105. In further discussion, the Court underscored that precent directed that the sentencer in capital cases must "consider relevant mitigating circumstances" however, "those cases do not require the sentenced to make any particular fact finding regarding those mitigating circumstances." *Id,* at 108. And though a "finding of permanent incorrigibility" was first discussed, the Court continued to Jones's alternative request that a court "must at least provide an on-the-record sentencing explanation with an 'implicit finding' of permanent incorrigibility" and "ensure that the sentencer actually considers the defendant's youth." *Id,* at 113-114. The Court also rejected that argument. *Id,* at 114. The Court set out:

> *First,* and most fundamentally, 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.

Id., at 114. Drawing in large part on its death-penalty jurisprudence, the Court reasoned: "A sentencing explanation is not necessary to ensure that the sentencer in death penalty cases considers the relevant mitigating circumstances. It follows that a sentencing explanation is likewise not necessary to ensure that the sentencer in juvenile life-without-parole cases considers the defendant's youth." *Id,* at 116.

Indeed, this Court did not direct that a court must make "findings of facts and conclusions of law" as to its discretionary decision in an *Aiken* hearing. Much in line with the logic in *Jones,* this Court in *Aiken* cautioned that it was not suggesting a capital sentencing proceeding be "mirror[ed]" to give effect to the *Miller* holding, though "the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance" to such proceeding. *Aiken,* 410 S.C. at 544, 765 S.E.2d at 577. Rather, "*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*." *Id,* at 545, 765 S.E.2d at 578. This Court has expressed that it will not attempt to "extend the reach" of the Eighth Amendment. *State v. Slocumb*, 426 S.C. 297, 306, 827 S.E.2d 148, 153 (2019) ("a long line of Supreme Court precedent prohibits us from extending federal constitutional protections beyond the boundaries the Supreme Court itself has set"). Thus, no report on findings of fact is required nor should it be required considering this precedent.

Again, at issue is whether the *Aiken* judge here followed the procedure he was obliged to follow, *i.e.,* was the *Aiken* judge considering the evidence that Graham presented including that regarding "factors of youth"? The record surely shows the answer to be yes, he did. The Court of Appeals erred in reversing the sentencing decision.

In sum, the record supports fair opportunity to present evidence and argument, and that the *Aiken* judge imposed a life sentence only after careful consideration.[6] Graham is due no more. The Court of Appeals erred in reversing the lower court and erred most egregiously in directing a judge must memorialize findings of facts and conclusions of law in this sentencing proceeding.

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[6] Not only did the *Aiken* judge note his review of evidence before the hearing, and that he would consider the evidence presented at the hearing, the sentencing order was not signed until days later, on June 23, 2023. (App. 592).

CONCLUSION

For the foregoing reasons, Petitioner, the State of South Carolina, requests that this honorable Court grant certiorari, reverse the decision of the Court of Appeals, and affirm the lower court's decision.

Respectfully submitted,

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April 20, 2026

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