RECEIVED
Apr 23 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

v.

MARK HAMILTON,

Appellant.

Appellate Case No. 2025-001185

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

R. BRANDON LARRABEE
Assistant Attorney General
State ID No. 104865

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6307

SCARLETT WILSON
Ninth Circuit Solicitor's Office
101 Meeting Street, Suite 400
Charleston, South Carolina 29401

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in denying Hamilton a resentencing hearing under *Miller v. Alabama* and *Aiken v. Byers* when Hamilton, sentenced as a juvenile to life imprisonment, has been repeatedly denied parole based on immutable offense characteristics, rendering the sentence a functional equivalent of life without parole in violation of the Eighth Amendment?

II. Did the trial court err in holding that South Carolina's parole system provides constitutionally adequate review under *Montgomery v. Louisiana*, *Miller v. Alabama*, and *Aiken v. Byars* when the Parole Board's framework systematically ignores *Miller* factors, has never been updated to comply with *Montgomery*, and cannot provide the individualized sentencing assessment that only the sentencing court can properly conduct?

III. Did the trial court err in holding that resentencing would usurp the Parole Board's authority when a resentencing hearing is the necessary constitutional remedy for Eighth Amendment violations that cannot be cured through a parole process structurally incapable of providing review compliant with Miller?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Did the resentencing court properly determine that Hamilton was not entitled to be resentenced because he was not sentencing to life without parole, and so his sentence is not subject to legal precedents concerning juveniles sentenced to LWOP?

II. Did the resentencing court properly deny Hamilton's attempt to apply Miller, Aiken, and Montgomery to South Carolina's parole system because nothing in any of those decisions indicate they are intended to apply to parole?

III. Did the resentencing court properly find it should deny Hamilton's motion because he was attempting to circumvent the parole process through resentencing?

STATEMENT OF THE CASE

Mark Hamilton was indicted on a murder charge. (Indictments). Hamilton proceeded to trial in front of the Honorable Luke N. Brown and a jury. (Trial Tr. p. 1).[1] The trial was conducted June 14 and 16, 1993. (Trial Tr. p. 1). Hamilton was represented by John Crumrine, Esq., and the State was represented by Solicitor David Schwacke, Esq. (Trial Tr. p. 1). Hamilton was convicted of murder. (Trial Tr. p. 335, l. 22–p. 336, l. 3). The trial court sentenced him to prison for life. (Trial Tr. p. 339, ll. 21–24).

Hamilton filed a motion for resentencing on January 30, 2023. (Resentencing Court Ruling, at 2). On April 8, 2025, the motion was heard by the Honorable Deadra L. Jefferson. (Resentencing Court Ruling, at 1). The resentencing court denied Hamilton's motion. (Resentencing Court Ruling, at 1, 10). This appeal follows.

[1] The copy of the transcript that counsel for Respondent is working from has two different sets of pagination and is not always perfectly legible. Counsel has made his best effort, where relevant, to cite to the pagination he believes Appellant's counsel used. However, in regard to this page, that pagination does not visibly appear and it is virtually impossible to reconcile it with the later pagination. Counsel for Respondent will make sure all page numbers align with the record when it is provided.

STANDARD OF REVIEW

"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. Therefore, this court will not disturb the circuit court's findings absent a manifest abuse of discretion." *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) (internal citation omitted).

ARGUMENT

Relevant Facts

The facts of the case below are only relevant in the broadest sense. One witness testified to hearing Hamilton ask another individual in his group "if he was down to slap" the victim, Gary Sineth. (Trial Tr. p. 194, ll. 17–18). Hamilton also apparently called out for one member of his group to "stop" the victim. (Trial Tr. p. 195, ll. 2–8; p. 209, ll. 16–23). After the victim was slapped, he apparently ran away from the group. (Trial Tr. p. 196, ll. 21–24). Eventually, Hamilton and at least one other individual started kicking the victim, who at some point produced a box cutter. (Trial Tr. p. 198, ll. 7–22; p. 211, l. 23–p. 212, l. 2). The victim apparently cut Hamilton. (Trial Tr. p. 200, ll. 2–6; p. 211, l. 23–p. 212, l. 2). At that point, Hamilton's group—but apparently not Hamilton—began attacking the victim with sticks and poles. (Trial Tr. p. 200, ll. 2–17; p. 212, l. 21–p. 213, l. 2).[2] The victim died from blunt force trauma. (Trial Tr. p. 173, ll. 18–19).

Hamilton filed a motion for resentencing in 2023. (Resentencing Court Ruling, at 2). He argued that his life sentence was unconstitutional under a line of juvenile sentencing authority that included the United States Supreme Court decision in *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); the South Carolina Supreme Court decision in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014); and the United States Supreme Court decision in *Montgomery v. Louisiana*, 577 U.S. 190, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016). The resentencing court denied his motion for resentencing. (Resentencing Court Ruling, p. 1, 10). This appeal followed.

---

[2] Some of the testimony, most of it from young witnesses, seems to garble the order of events. One witness, for example, seemed to indicate that the young men started beating the victim before Hamilton was cut. (Trial Tr. p. 220, l. 21–p. 221, l. 15).

I. The circuit court properly determined that Hamilton, who was not sentenced to life without parole, was not covered by the constitutional restrictions on sentencing juveniles to life without parole.

Hamilton first argues that he should be resentenced because he was less than 18 at the time of the murder. In his view, his life sentence is the "functional equivalent" of LWOP, and for that reason he is entitled to the individualized sentencing consideration required by *Miller* and *Aiken*. He didn't receive that, he contends, and so he should receive that now.

Our courts have heard many of these arguments before and have rejected them for a simple reason: There is nothing in *Miller*, *Aiken*, or *Montgomery* to support them, and in some respects the language of those decisions flatly contradicts them. Hamilton doesn't make a convincing case for this Court to change course now.

Start with *Miller*. There, the United States Supreme Court was remarkably clear about its holding. It is spelled out at the end of the first paragraph. "We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Miller*, 567 U.S. at 465, 132 S. Ct. at 2460.

Hamilton argues that limiting the application of *Miller* to formal LWOP sentences is "arbitrary" and "untethered from the constitutional concerns underlying *Miller*." Init. Br. App. at 9. That's wrong; in fact, it's not just wrong, it turns Miller upside down. The unique characteristics of a life without parole sentence was one of the Court's central concerns in *Miller*. The Court there talked at length about how sentencing juveniles to spend the rest of their lives in prison without parole ignored the capacity of children to change with age, weakening arguments that ground penalties in both the state's interest in incapacitating certain criminals and the need for rehabilitation. *See Miller*, 567 U.S. at 471–73, 132 S. Ct. at 2464–65. "Life without parole

'forswears altogether the rehabilitative ideal.' It reflects 'an irrevocable judgment about [an offender's] value and place in society,' *at odds with a child's capacity for change*." *Id.* at 473, 132 S. Ct. at 2465 (emphasis added) (internal citation omitted) (quoting *Graham v. Florida*, 560 U.S. 48, 74, 130 S. Ct. 2011, 2030, 176 L. Ed. 2d 825 (2010)).

And the Court added another reason to weigh the possibility of LWOP sentences for juveniles differently—the dimensions of the punishment when applied to a juvenile. "Life-without-parole terms, the Court wrote, 'share some characteristics with death sentences that are shared by no other sentences.' Imprisoning an offender until he dies alters the remainder of his life 'by a forfeiture that is irrevocable.'" *Miller*, 567 U.S. at 474–75, 132 S. Ct. at 2466 (citation omitted) (quoting *Graham*, 560 U.S. at 69, 130 S. Ct. at 2027); *see id.* at 476–77, 132 S. Ct. at 2467–68 (pointing out that not only does mandatory LWOP mean juveniles and adults convicted of homicide get the same sentence, but that the sentence is "really, as *Graham* noted, a *greater* sentence than those adults will serve").

So, *Miller* drew the line between LWOP and other sentences. Not on an arbitrary basis, but because the very chance for a younger offender to change supports the notion that the offender should get an opportunity for parole. *See id.* at 472–73, 132 S. Ct. at 2465.

Nor is there a ruling forbidding life with parole sentences lurking in *Aiken*. In that case, our supreme court was considering whether South Carolina's discretionary LWOP sentencing scheme was affected by the *Miller* decision. *See Aiken*, 410 S.C. at 541–44, 765 S.E.2d at 576–77. The *Aiken* plurality found that the scheme did require a court to consider five factors when deciding whether to sentence a juvenile to LWOP. But like the U.S. Supreme Court in *Miller*, the *Aiken* plurality demonstrated that its concern was on the potential that juveniles would be sentenced to life without parole without regard for the offender's youth. *See id.* at 544, 765 S.E.2d at 577 ("In

our view, whether their sentence is mandatory or permissible, any juvenile offender *who receives a sentence of life without the possibility of parole* is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment." (emphasis added)). All of the *Aiken* plurality's language—for example, its statement that *Miller* "establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered"—must be read against that backdrop. *Id.* at 543, 765 S.E.2d at 577.[3]

Any lingering doubt about whether there is a constitutional line between life with parole and LWOP sentences was wiped away by *Montgomery*. In *Montgomery*, the United States Supreme Court found that *Miller*'s holding was substantive and retroactive because "it rendered life without parole an unconstitutional penalty for 'a class of defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth." *Montgomery*, 577 U.S. at 208, 136 S. Ct. at 734 (quoting *Penry v. Lynaugh*, 496 U.S. 302, 330, 109 S. Ct. 2934, 2953, 106 L. Ed. 2d 256 (1989)).[4]

But *Montgomery* did not stop there. The Court then suggested one way states with LWOP sentencing schemes that hadn't yet fallen in line with *Miller* could fix the problem.

> A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. See, *e.g.,* Wyo. Stat. Ann. § 6–10–301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years).

---

[3] In his concurrence, Justice Pleicones specifically noted that he agreed with the dissent on whether Miller applied to discretionary schemes like South Carolina's—but "would reach the same result" under the South Carolina Constitution. *See id.* at 545–46, 765 S.E.2d at 578 (Pleicones, J., concurring).

[4] The United State Supreme Court defined the class of juveniles covered by *Miller* slightly differently than the *Aiken* plurality. *Compare Aiken*, 410 S.C. at 540–41, 765 S.E.2d at 575 (holding that *Miller* "plainly excludes a certain class of defendants—juveniles—from specific punishment—life without parole absent individualized considerations of youth") *with Montgomery*, 577 U.S. at 208, 136 S. Ct. at 734 (defining the class as "juvenile offenders whose crimes reflect the transient immaturity of youth" sentenced to LWOP).

> Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.

Id. at 212, 136 S. Ct. at 736.

But neither *Aiken* nor *Montgomery* were the last words from the respective courts.

In *Jones v. Mississippi*, the United States Supreme Court returned to the question of LWOP sentences for juveniles. *See* 593 U.S. 98, 141 S. Ct. 1307, 209 L. Ed. 2d 390 (2021). There, the Court explained that neither *Miller* nor *Montgomery* required "a separate factual finding of permanent incorrigibility." *Id.* at 104, 141 S. Ct. at 1313. Instead, the Court held, "[i]n a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Id.* at 105, 141 S. Ct. at 1313. *But see State v. Mack*, 441 S.C. 526, 539, 894 S.E.2d 820, 827 (Ct. App. 2023) (holding that because the *Jones* Court left how to comply with *Miller* to the states, the juvenile's claims about the consideration of the *Aiken* factors still needed to be considered).

Our supreme court has been asked several times to consider the application of *Miller*, *Aiken*, and similar cases to situations distinct from the sentencing of a juvenile to LWOP. And that court has found that the protections afforded to juveniles under Eighth Amendment precedent are to be narrowly applied. For example, in *Slocumb*, the defendant argued that a combination of term-of-years sentences that almost certainly meant he would spend the rest of his natural life in prison went against the spirit of *Graham* and *Miller*. *See State v. Slocumb*, 426 S.C. 297, 299, 827 S.E.2d 148, 149 (2019). The *Slocumb* Court found that the defendant's contention was "arguably a reasonable extension of *Graham* and *Miller*." *Id.* Still, the Court affirmed the sentence in *Slocumb* because "precedent dictates that only the Supreme Court may extend and enlarge the protections guaranteed by the United States Constitution." *Id.* The Court explained that "while we are duty-

bound to enforce the Eighth Amendment consistent with the Supreme Court's directives, our duty to follow binding precedent is fixed upon case-specific holdings rather than general expressions in an opinion that exceed the scope of any particular holding[.]" *Id.* at 307, 827 S.E.2d at 153.

Not long after, in *State v. Smith*, our supreme court faced the issue of whether a mandatory minimum sentence interfered with the sentencing court's discretion because, while the sentencing court conducted an *Aiken* hearing, it could not sentence the juvenile to less than the minimum. *See State v. Smith*, 428 S.C. 417, 420, 836 S.E.2d 348, 349 (2019). As it was "again being asked to ignore the confines of the holdings of the Supreme Court and instead extend the rationale underlying the holdings," the court "decline[d] the invitation and [left] resolution of the reach of the Eighth Amendment, including any possible extensions, to the Supreme Court." *Id.* at 420–21, 836 S.E.2d at 350.[5]

More recently, in *Jones v. State*, our supreme court ruled that the portion of the law providing for certain juveniles to be tried in circuit court rather than first appearing before family court did not violate the constitution.[6] *See Jones v. State*, 440 S.C. 14, 18–19, 889 S.E.2d 590, 593 (2023). True enough, the *Jones* court did "direct circuit courts to consider the mitigating factors of

---

[5] In a concurrence, Justice Hearn—who authored the plurality opinion in *Aiken*—observed that the defendant in *Smith* received a "thorough hearing" on his youth but argued that "mandatory minimum sentences unconstitutionally restrict the trial court's ability to analyze the *Miller* factors." *See id.* at 422, 836 S.E.2d at 350–51 (Hearn, J., concurring). She noted her agreement with the majority on the constitutionality of mandatory minimum sentences. "While enabling trial courts to exercise more discretion in juvenile sentencing may be sound policy, I agree with the majority that the United States Supreme Court has not spoken on this issue." *Id.* at 422, 836 S.E.2d at 351 (Hearn, J., concurring).

[6] *See* S.C. Code Ann. § 63-19-20 (West) ("'Child' or 'juvenile' does not mean a person seventeen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more."). When Jones was sentencing, 16-year-olds could also be tried in circuit court under this section. *See Jones*, 440 S.C. at 20, 25, 889 S.E.2d at 594, 596–97.

youth in sentencing juveniles falling under the ambit of subsection 63-19-20(1)," *id.* at 29, 889 S.E.2d at 598, and found that the court sentencing Jones had done so, *id.* at 29–31, 889 S.E.2d at 599–600. Acting Justice Hearn, in a concurrence joined by Justice Few, disagreed with the Court on that count. *Id.* at 31–32, 889 S.E.2d at 600 (Hearn, J., concurring). Still, Acting Justice Hearn noted that the circuit court had imposed concurrent, minimum sentences, "thus, a more thorough hearing in this case could not have led to a lesser sentence." *Id.* at 33, 889 S.E.2d at 600–01 (Hearn, J., concurring).

Summing up, then, federal and state constitutional law makes a few things clear. First, a juvenile cannot be sentenced to LWOP under a mandatory scheme. *See Miller*, 567 U.S. at 465, 132 S. Ct. at 2460. Second, a juvenile sentenced to LWOP under a discretionary scheme—like South Carolina's—is allowed to have some consideration given to his or her youth in sentencing. *See Aiken*, 410 S.C. at 544, 765 S.E.2d at 577. Further, relief is retroactive because the decision in Miller was substantive. *See Montgomery*, 577 U.S. at 208, 136 S. Ct. at 734. One form of relief is to provide parole. *See id.* at 212, 136 S. Ct. at 736. And South Carolina courts should not extend the rulings in cases like *Miller* and *Montgomery* beyond the boundaries set by the United States Supreme Court. *See Slocumb*, 426 S.C. at 299, 827 S.E.2d at 149; *Smith*, 428 S.C. at 420–21, 836 S.E.2d at 350.

Given that, it's not surprising that this Court has already rejected claims very similar to Hamilton's. *See State v. Finley*, 427 S.C. 419, 420–21, 831 S.E.2d 158, 158–59 (Ct. App. 2019). In *Finley*, the defendant argued that (1) his sentence was a de facto LWOP sentence; and (2) the court could not properly consider the *Miller* and *Aiken* factors because of what was at the time a mandatory sentence of life with the possibility of parole. *See id.* at 424, 831 S.E.2d at 160. This Court, though, found that because the defendant was not sentenced to LWOP, he was "not a

member of the class of offenders contemplated by our precedent." *Id.* at 428, 831 S.E.2d at 162. Additionally, the Court noted that Montgomery provided on its face for states complying with Miller by allowing juveniles an opportunity for parole. *See id.* at 428, 831 S.E.2d at 162–63. "As [the defendant's] sentence afforded him parole eligibility we find any potential Eight Amendment violation was cured." *Id.* at 428, 831 S.E.2d at 163.

And it's not only South Carolina; other courts have issued similar holdings. *See Lewis v. State*, 428 S.W.3d 860, 863 (Tex. Crim. App. 2014) ("The mandatory nature of a sentencing scheme is not the aspect that precludes rehabilitation; rather, the sentencing scheme in *Miller* was unconstitutional because it denied juveniles convicted of murder all possibility of parole, leaving them no opportunity or incentive for rehabilitation."); *State v. Brooks*, 247 So. 3d 1071, 1074 (La. App. 2 Cir. 2018) ("Granting parole eligibility to juveniles found guilty of murder satisfies the requirements of *Miller.*"); *State v. Gulley*, 505 P.3d 354, 366 (Kan. 2022) ("Unlike life without parole and the death penalty, life with parole offers 'hope of restoration' because it provides an opportunity for release within an offender's lifetime. Consequently, *Miller* is inapplicable." (internal citation omitted) (quoting *Graham*, 560 U.S. at 70, 130 S.Ct. at 2027)) (collecting cases).

In this case, Hamilton was never sentenced to life without parole. *Miller* does not apply. Even if it did, the fact that Hamilton is eligible for parole would cure any error that existed. *See Montgomery*, 577 U.S. at 212, 136 S. Ct. at 736; *Finley*, 427 S.C. at 428, 831 S.E.2d at 163. And even if the rationale behind *Miller* and *Montgomery* could be found to extend to claims like this one, the South Carolina Supreme Court has been clear that our state courts should not be the ones to make that determination. *See Slocumb*, 426 S.C. at 299, 827 S.E.2d at 149; *Smith*, 428 S.C. at 420–21, 836 S.E.2d at 350.

Finally, the State agrees with at least one statement in Hamilton's brief. "Despite three decades of imprisonment, during which he has had ample opportunity to demonstrate rehabilitation and maturity, the Board has denied his release seven times." Init. Br. App. at 8. That is precisely the point. *Miller*, *Aiken*, and *Montgomery* all stand for the principle that most offenders under the age of 18 when they commit their crimes must have the opportunity to demonstrate that they have earned parole despite those criminal actions. Hamilton has been given that opportunity; in the view of the parole board—more on this later—he has not taken advantage of it. The decisions of our supreme court and the United States Supreme Court provide that most juveniles should have the opportunity to earn parole; they do not guarantee that parole (or even that opportunity) for all juveniles. Even if Hamilton were to fall into the category of offenders who cannot be sentenced to life without parole—even if a court found he was not permanently incorrigible—the most that our cases stand for is that the opportunity for parole is constitutionally required and constitutionally sufficient.

As a result, this Court should find that the circuit court did not abuse its discretion. Its ruling should be affirmed.

II. The circuit court properly denied Hamilton's attempt to apply *Miller*, *Aiken*, and *Montgomery* to South Carolina's parole system because nothing in federal or state case law requires it.

Next, Hamilton argues that South Carolina's parole system is constitutionally deficient because it does not require the parole board to explicitly weigh the *Miller* or *Aiken* factors before deciding whether to grant parole to juveniles sentenced to life with the possibility of parole. Additionally, Hamilton argues that because the aspects of his offense are "fixed," it is improper for the board to focus on that rather than Hamilton's potential for change. Hamilton is incorrect.

Nothing in any of the case law regarding juvenile sentences purports to extend the requirements of sentencing to parole determinations. Even if it did, Hamilton appears to have chosen the wrong forum for his argument.

Hamilton spends a significant portion of his brief explicating this Court's ruling in *Buchanan v. S.C. Dep't of Prob., Parole, and Pardon Servs.*, 442 S.C. 393, 899 S.E.2d 600 (Ct. App. 2023). What he doesn't provide is much reason to conclude that the Court should rule any differently here. This Court did voice some sympathy with the inmate in *Buchanan*, but it ultimately affirmed the order of the Administrative Law Court. *See id.* at 395, 899 S.E.2d at 601–02.

Hamilton's argument for changing the outcome in this case is that the previous case was a review of a decision by the ALC and this case is coming from the Court of General Sessions. But that cuts *against* Hamilton, not in his favor, because the resentencing court was not the proper place to raise this claim. The court's role in sentencing and the board's role in determining parole eligibility are distinct, and Hamilton is attempting here to meld the two.

Our supreme court said as much in *Major v. S.C. Department of Probation, Parole & Pardon Services*.

> Confined by these legislative enactments, and the doctrine of separation of powers, *a sentencing court is not authorized to determine parole eligibility*. Instead, a court's final judgment in a criminal case is the pronouncement of the sentence which includes the ability to designate whether sentences run concurrent or consecutive, subject to statutory restrictions.

384 S.C. 457, 465–66, 682 S.E.2d 795, 799–800 (2009). As if to emphasize the point, the *Major* Court went on to say: "Our law, however, is well-established that a sentencing judge does not have the authority to determine parole eligibility through sentencing." *Id.* at 466, 682 S.E.2d at 800.

This also fatally undermines Hamilton's argument that the resentencing court here had to resentence Hamilton rather than "delegate[]" the task of complying with *Miller*, *Aiken*, and *Montgomery* to the parole board. Again, the considerations of both are separate; the resentencing court is not supposed to use sentencing to correct the parole board. *See Major*, 384 S.C. at 466, 682 S.E.2d at 800.

But even if the resentencing court or this court (in this case) could pronounce that the parole board should follow *Miller*, *Aiken*, and *Montgomery*, none of them say anything about the standards for granting parole. This Court dismissed similar arguments in *Buchanan*, holding that "neither the United States Supreme Court nor our supreme court requires specific parole criteria to be considered in determining whether to grant parole, and the Board's denial of parole did not constitute cruel and/or unusual punishment under either Constitution." *Buchanan*, 442 S.C. at 408, 899 S.E.2d at 608–09.

And, again, other courts have found much the same. *See Brown v. Precythe*, 46 F.4th 879, 886 (8th Cir. 2022) ("The *Miller* factors, however, apply as a constitutional matter only to a judge's decision at sentencing whether to impose a term of life imprisonment without parole for a juvenile homicide offender."); *id.* ("*Miller* and *Montgomery* did not purport to go further and direct federal courts to scrutinize in a civil rights action whether a State's parole procedures afford 'some meaningful opportunity' for release of a juvenile homicide offender."); *Bowling v. Dir., Virginia Dep't of Corr.*, 920 F.3d 192, 198 (4th Cir. 2019) ("Given this disagreement" among federal circuit courts "about the application of the protections announced in *Miller* and its lineage to sentences that are practically equivalent to life without parole, we are satisfied that *those protections have not yet reached a juvenile offender who has and will continue to receive parole consideration*." (emphasis added)).

As the resentencing court found, if Hamilton wanted to challenge the board's denial of parole, there was an avenue for him to do so. But the resentencing court was not that road. The decision of the resentencing court should be affirmed.

III. The circuit court properly found it should not grant Hamilton's motion because Hamilton was attempting to circumvent the parole process through sentencing, which is not permitted; and if he was not, his claim is meritless for the reasons explained above.

Finally, Hamilton argues that the resentencing court was incorrect in ruling that its resentencing decision should not infringe on the parole board's authority. Hamilton argues that it would not usurp the parole board's authority to provide him with a full *Aiken* hearing. But, as addressed above, he has not proven that he is entitled to a full *Aiken* hearing. *See State v. Finley*, 427 S.C. at 428, 831 S.E.2d at 162 (holding that, because the defendant was not sentenced to LWOP, he was "not a member of the class of offenders contemplated by our precedent.").

To the extent that Hamilton was trying to get the resentencing court to fix what he argues is his inability to get parole through South Carolina's parole system, the court is not supposed to do that. "Our law . . . is well-established that a sentencing judge does not have the authority to determine parole eligibility through sentencing." *Major*, 384 S.C. at 466, 682 S.E.2d at 800.

As to Hamilton's argument that the resentencing court "treated Hamilton's request for resentencing as an intrusion on the Board's authority rather than a request for a judicial remedy that *Aiken* expressly provides," Init. Br. App. at 21, that's incorrect on two fronts.

First, the court did consider, at some length, whether Hamilton was eligible for parole under *Aiken* and similar cases. (Resentencing Court Ruling, at 4–7). If there is some commingling of concerns, it is Hamilton who has repeatedly referred to his parole proceedings in his arguments to the resentencing court and this Court.

Second, as discussed above, *Aiken* does not expressly provide a remedy for Hamilton. *Aiken* expressly provides a remedy for juveniles who were sentenced to life without parole. *See Aiken*, 410 S.C. at 544, 765 S.E.2d at 577 ("In our view, whether their sentence is mandatory or permissible, any juvenile offender *who receives a sentence of life without the possibility of parole* is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment." (emphasis added)).

The resentencing court did not abuse its discretion in finding that Hamilton was asking for relief that was not warranted simply because he has not yet received parole. The resentencing court should be affirmed.

CONCLUSION

Hamilton has not shown any abuse of discretion on the part of the resentencing court. The court's order 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

R. BRANDON LARRABEE
Assistant Attorney General
S.C. Bar No. 104865

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

By: s/*R. Brandon Larrabee*
R. BRANDON LARRABEE
ATTORNEYS FOR RESPONDENT

April 22, 2026.