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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2025-000603

THE STATE,

Respondent,

vs.

JOHN BENDARIAN BONNER,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

"Whether the trial court erred by failing to conduct a de novo sentencing hearing and failing to consider the juvenile sentencing factors set forth in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), as required by State v. Smart, 439 S.C. 641, 889 S.E.2d 573 (2023); Jones v. State, 440 S.C. 14, 889 S.E.2d 590 (2023); and State v. Mack, 441 S.C. 526, 894 S.E.2d 820 (Ct. App. 2023)."

II.

"Whether the trial court erred in imposing a sixty-year sentence for a nonhomicide offense when imposing such a sentence was the functional equivalent of a life without parole sentence, in violation of Graham v. Florida, 560 U.S. 48 (2010)."

III.

"Whether the trial court erred in denying Appellant's motion for judicial recusal when the judge made two prior sentencing determinations in Appellant's case indicating the judge's bias in favor of imposing the highest possible available sentence."

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Did the trial judge abuse his discretion or otherwise err by conducting a hearing to reconsider Appellant's previously-imposed sentence as opposed to a full resentencing hearing when the post-conviction relief judge did not strike down Appellant's sentence by granting relief and, instead, solely remanded the matter to provide Appellant with an opportunity to seek reconsideration of his aggregate sentence?

II.

Did the trial judge abuse his broad discretion or commit any other error of law by declining to reconsider Appellant's aggregate term-of-years sentence of sixty years after Appellant—who, at the age of seventeen, planned and perpetrated a brutal home invasion and store break-in while armed with a pistol—was convicted of numerous distinct and highly-serious offenses when such a sentence was neither cruel, unusual, nor otherwise unconstitutional under the heinous circumstances involved despite Appellant's age at the time of his crimes?

III.

Did the trial judge abuse his discretion or otherwise err by refusing to recuse himself in Appellant's case when no actual evidence of bias, partiality, or prejudice on his part was shown?

STATEMENT OF THE CASE

In June of 2009, Appellant John Bendarian Bonner, who was then eighteen years old, was arrested after he was tracked down in connection to a brutal home invasion and store break-in that he had committed a little over a year earlier when he was still seventeen years old.[1] In July of 2009, the Cherokee County Grand Jury indicted Appellant for first-degree burglary, kidnapping, armed robbery, assault and battery of a high and aggravated nature ("ABHAN"), second-degree burglary, and grand larceny. On November 17, 2009,[2] a jury trial was commenced in the Cherokee County Court of General Sessions with the Honorable J. Derham Cole, circuit court judge, presiding. At the conclusion of the two-day trial, the jury convicted Appellant as indicted. Following the verdict, Judge Cole sentenced Appellant to life without parole for first-degree burglary. In addition to that, Judge Cole imposed a consecutive ten-year term of imprisonment for ABHAN along with concurrent terms of imprisonment of thirty years for kidnapping, thirty years for armed robbery, fifteen years for second-degree burglary, and five years for grand larceny. Appellant then timely filed a notice of appeal.

On appeal, the Court of Appeals—following briefing and oral argument—issued a published opinion in which it unanimously vacated Appellant's first-degree burglary sentence and remanded for resentencing. State v. Bonner, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012). The State petitioned for rehearing, and the petition was denied. Following that, the State elected

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[1] Notably, at the time of the incident, Appellant was free on bond after having been arrested for and charged with strong arm robbery in connection to an earlier unrelated incident. Records for John Bendarian Bonner, Cherokee County Seventh Judicial Circuit Public Index, https://publicindex.sccourts.org/cherokee/publicindex.

[2] By that point and despite his relatively young age, Appellant was already a convicted felon due to a North Carolina conviction for attempted trafficking in cocaine. (R. p. 400; p. 405).

not to seek further review from the Supreme Court, and, on January 17, 2013, remittitur was issued.

Five days later, a resentencing hearing was held in the Cherokee County Court of General Sessions with Judge Cole again presiding. At the conclusion of that hearing, Judge Cole resentenced Appellant to a sixty-year term of imprisonment for first-degree burglary. Appellant then again filed a timely notice of appeal.

On appeal, Appellant's appellate counsel submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), along with a petition to be relieved as counsel.[3] After reviewing the matter, the Court of Appeals issued an order directing appellate counsel to file a merits brief. Following full briefing, the Court of Appeals issued an unpublished opinion in which it unanimously affirmed Appellant's amended sentence. State v. Bonner, Op. No. 2014-UP-401 (S.C. Ct. App. filed Nov. 12, 2014). Appellant did not seek rehearing, and, on February 25, 2022, remittitur was issued.

Subsequent to the issuance of the remittitur, Appellant timely filed a pro se application for post-conviction relief ("PCR"), and, in response, the State filed a return requesting an evidentiary hearing along with a more definite statement.[4] Appellant—through counsel—then filed a supplement to the PCR application. On November 9, 2016, an evidentiary hearing was conducted in the Spartanburg County Court of Common Pleas with the Honorable Frank R. Addy, Jr., circuit court judge, presiding. At the conclusion of the hearing, the PCR judge issued

[3] The records from the appellate proceedings in the Court of Appeals following resentencing are presently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. John Bonner, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=53108.

[4] The official records from the PCR proceedings are presently available through the Cherokee County Public Index. Records for John Bonner, Cherokee County Seventh Judicial Circuit Public Index, https://publicindex.sccourts.org/cherokee/publicindex.

an oral ruling[5] granting relief and finding defense counsel was constitutionally ineffective for failing to file a motion for reconsideration after resentencing, and that ruling was confirmed through a written order filed on January 30, 2017. The State then timely filed a motion to alter or amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and the PCR judge summarily denied the State's motion through an order filed on February 17, 2017. Following that, the State timely filed a notice of appeal.

On appeal, the State filed a petition for a writ of certiorari in the Supreme Court, and Appellant filed a return opposing the petition.[6] On February 20, 2019, the Supreme Court denied the State's petition. On March 8, 2019, remittitur was issued.

Following the issuance of the most-recent remittitur, the matter was remanded to the Cherokee County Court of General Sessions in a manner consistent with the PCR judge's order granting relief. After that remand, Appellant—through counsel—filed a motion seeking Judge Cole's recusal, and, in response, Judge Cole conducted a hearing on the motion on January 17, 2024. At the conclusion of the hearing, Judge Cole took the matter under advisement. Thereafter, through an order filed on January 31, 2024, Judge Cole declined to recuse himself. Subsequently, on February 8, 2024, Judge Cole conducted a hearing to reconsider Appellant's sentence. At the conclusion of that hearing, Judge Cole once again took the matter under advisement. Several months later, Judge Cole—through an order filed on August 21, 2024—

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[5] As reflected in the transcript from the evidentiary hearing contained in the appellate appendix, the PCR judge stressed his ruling was a "very, very limited" one and expressly affirmed he was "not ordering a resentencing" by finding defense counsel was ineffective for failing to move for reconsideration of the amended sentence. Appellate Records for John B. Bonner v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=64528.

[6] The records from the State's PCR appeal are presently available through the South Carolina Appellate Court Public Index. Appellate Records for John B. Bonner v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=64528.

declined to reconsider or reduce Appellant's sixty-year sentence for first-degree burglary, but he did rule Appellant's ten-year sentence for ABHAN was no longer consecutive to the first-degree burglary sentence. Appellant then filed a motion seeking reconsideration of that ruling. However, through an order filed on March 28, 2025, Judge Cole denied that motion. Appellant then again timely filed a notice of appeal.

STATEMENT OF FACTS

On the night of April 1, 2008, Appellant, who was just seventeen years old at the time, summoned a group of his associates to his home. (R. pp. 251-252; p. 260; pp. 279-280; p. 330; p. 368). Disturbingly, the reason for the gathering was not an innocent one; instead, Appellant had hatched a plan[7] for a robbery he wanted the members of the group—Joshua Manning, Kendrick Tate, Terry Littlejohn, Kwame Douglas, Billy Rodgers, Labrontae Agnew, and Robert Wilson, Jr.—to help him commit. (R. pp. 252-253; pp. 279-280; pp. 331-332; p. 369). More specifically, Appellant had been watching the Corner Store, a convenience store located in Gaffney, South Carolina, and had observed a woman who worked there walk from it to her nearby home at the end of her shift while carrying the store's money bag. (R. p. 253; p. 281). Spotting a nefarious opportunity, Appellant wanted his associates to help him steal that cash, and the group agreed to work together to snatch the money bag from the woman when she left the store to go home that very night. (R. pp. 252-253; p. 281; pp. 331-332; p. 369).

In two separate cars, the eight confederates drove to the vicinity of the store and parked at a nearby apartment complex. (R. pp. 253-254; pp. 281-282; p. 332; p. 369). Two members of the group—Littlejohn and Wilson—then stayed behind with the cars while Appellant and the other five went to lie in wait for their unsuspecting victim behind some bushes outside the store. (R. p. 255; p. 277; p. 282; p. 333; p. 370). As they waited, *two* people—Miseli Patel, who was the store's owner and president, and his employee, Dipali Darji—emerged from the store a little after midnight, and, unexpectedly, they were *not* carrying the store's money bag. (R. p. 283; p. 333; p. 370; pp. 387-388). Their criminal scheme now scuttled, Appellant and the others

[7] Notably, that plan was not spontaneously or haphazardly formed, and, instead, Appellant had been working on it for at least a week by that point. (R. p. 369).

scurried back to the vehicles to regroup while Darji headed inside her nearby home unmolested—for now. (R. pp. 228-229; pp. 283-284; p. 370; pp. 387-388).

After regrouping, Appellant and his accomplices came up with a revised plan. (R. p. 255; pp. 283-284; pp. 333-334; p. 370). Since Darji did not have the money bag with her when she exited the store, they decided to break into her home and steal the cash that way. (R. p. 255; pp. 333-334; pp. 370-371). Appellant and the other five—with their hands and faces covered to hide their identities—then headed over to Darji's house while Littlejohn and Wilson again stayed back with the vehicles. (R. p. 238; pp. 247-248; p. 255; pp. 370-371; p. 393).

Once at the house, Manning climbed through a window and unlocked the door. (R. pp. 284-285; pp. 334-335; p. 371). The six confederates then patiently[8] waited outside for Darji to go to sleep. (R. pp. 335-336; p. 371; p. 389). When she did, Appellant, who was armed with a .22-caliber pistol, entered the house first along with Manning, and Agnew and Douglas quickly followed behind them. (R. p. 286; pp. 335-336; p. 371). Appellant, Manning, and Agnew then headed to Darji's bedroom, kicked in its door, and burst inside with Appellant firing a shot from his pistol into the wall as they did. (R. p. 315; pp. 335-337; p. 371; p. 389). Following that, the group proceeded to restrain, choke, and continuously beat their terrified victim, Darji, while demanding to know where they could find the money. (R. pp. 337-338; pp. 340-341; pp. 389-390). Shockingly, they also stripped off Darji's clothing, positioned her over a chair, and prepared to sexually assault her if she would not tell them what they wanted to know. (R. p. 339; p. 390). At that point, Darji revealed where the keys to the store were located, and Appellant quickly retrieved them. (R. p. 286; p. 339; p. 372; p. 390).

[8] Although they watched Darji leave the store around midnight, Appellant and the other home invaders did not burst into Darji's bedroom until approximately 2:00 a.m. (R. pp. 388-389).

Upon obtaining the keys, Appellant rushed over to the store to steal the cash inside along with Agnew while the others continued ransacking Darji's home.[9] (R. p. 277; pp. 286-287; p. 313; pp. 340-341; pp. 371-372; p. 391). Between the house and the store, Appellant and his confederates plundered approximately $25,000 in cash and jewelry along with Darji's credit card. (R. p. 235; p. 247). However, in doing so, Appellant and Agnew accidentally triggered the store's alarm, which caused all the burglars to frantically flee from the area with their stolen loot. (R. pp. 255-256; p. 287; p. 341; pp. 372-373; pp. 391-392).

In response to the alarm, law enforcement officers from the Gaffney Police Department rushed to the scene. (R. p. 228; p. 230; p. 311). Darji, who was injured and emotional, met them outside her ransacked home and recounted the terrifying events that had transpired. (R. p. 233; pp. 235-236). Based on her injuries, Darji was then swiftly taken to the hospital, and she remained there for two days receiving treatment and care. (R. p. 230; p. 393).

During the ensuing investigation into the incident, a number of suspects were identified, including Appellant. (R. pp. 264-266; p. 268; p. 289; p. 344; pp. 348-349; pp. 373-374; p. 406). However, when questioned, Appellant insisted—falsely—he was not involved and then promptly absconded from the state. (R. p. 406; p. 408). Nevertheless, some of his confederates eventually came clean[10] about what had transpired, and, as a result, they—along with Appellant—were all arrested and charged for their heinous crimes. (R. p. 261; pp. 264-266; pp. 288-291; pp. 293-295; p. 344; pp. 373-374; pp. 621-644).

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[9] During that period, Douglas kept Darji captive at knifepoint. (R. p. 287).

[10] In addition to admitting what he and the others had done, Wilson also led investigators to Darji's credit card, which had been abandoned along the side of a road after the incident. (R. p. 258; pp. 309-310).

During Appellant's ensuing trial on numerous highly-serious charges, Darji recounted the details of the terrifying ordeal she suffered at the hands of Appellant and his confederates, and the law enforcement officers involved in response to the home invasion and store break-in discussed what they uncovered through their investigation into the incident. (R. pp. 228-239; pp. 309-329; pp. 387-393). In addition to that, half of Appellant's accomplices—Wilson, Tate, Douglas, and Rodgers—elected to cooperate and testify of behalf of the prosecution, and, in doing so, they all identified Appellant as one of the primary people involved in planning and perpetrating the terrible crimes that had been carried out by their group.[11] (R. pp. 249-303; pp. 330-353; pp. 368-380). Furthermore, surveillance footage from the store was introduced that depicted Appellant, with his face and hands covered, stealing the cash from that location. (R. pp. 195-202; p. 235; pp. 242-248; p. 326).

Following the presentation of all that testimony and evidence, Appellant elected to testify in his own defense. (R. pp. 401-410). Through his *sworn* testimony, Appellant flatly denied any involvement whatsoever in the incident and insisted—falsely—he had simply been at home that night. (R. pp. 401-406). Appellant further insisted—falsely—the others were all lying when they implicated him in the incident and he was unsure why they would even do so. (R. p. 404). However, he speculated he might have been implicated because "the screws felt like [he] had something to do with it and they were running around hollering [his] name." (R. p. 405). Beyond that, Appellant asserted he had no prior criminal record *aside from* a felony conviction for trafficking in cocaine out of North Carolina, and he explained he had accepted responsibility

[11] At the time of their testimony, each of the cooperating co-defendants was awaiting sentencing after having pled guilty to and been convicted of first-degree burglary, second-degree burglary, kidnapping, grand larceny, ABHAN, and the lesser-included offense of strong arm robbery. (R. p. 261; pp. 290-291; p. 303; p. 343; p. 374).

for that crime because he did, in fact, commit it unlike the crimes for which he was on trial. (R. pp. 405-406).

To support his false alibi, Appellant also offered testimony from his mother, Eva Bonner Lipscomb ("Mother"), and brother Kelvin Bonner ("Brother"). (R. pp. 412-427). Mother testified Appellant was home on the night of the incident from at least 3:00 a.m. to 3:30 a.m., which was when she personally saw him inside the home. (R. pp. 413-414). Meanwhile, Brother, who shared a bedroom with Appellant, claimed Appellant was home when he fell asleep at some point between midnight and 1:00 a.m. on the date of the incident and was likewise there the next morning when he woke up around 9:00 a.m. or 10:00 a.m. (R. pp. 422-424).

Following the presentation of that testimony, the defense rested, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (R. pp. 431-477). The case was then submitted to the jury, and, after roughly two hours of deliberations, the jury convicted Appellant of all the indicted charges. (R. pp. 479-480).

Thereafter, during the sentencing proceedings, defense counsel specifically asked the trial judge to take the "relative age and youth" of Appellant, who was by then eighteen years old,[12] into consideration when imposing the sentence. (R. p. 485). Defense counsel further noted Appellant only had one prior criminal conviction and had a "support network" by virtue of his mother, brothers, and girlfriend. (R. p. 485). Conversely, the solicitor asked the trial judge to consider Appellant's criminal record along with nightmarish circumstances of the incident. (R. p. 486). Upon considering the matter, the trial judge sentenced Appellant to life without parole for first-degree burglary along with various terms of imprisonment for Appellant's other heinous

[12] Defense counsel mistakenly stated Appellant was nineteen years old at that time. (R. p. 485).

offenses, including a *consecutive* ten-year term of imprisonment for ABHAN. (R. pp. 16-21; pp. 486-487).

Following the trial, Appellant initiated an appeal, and, during its pendency, the United States Supreme Court issued its decision in Graham v. Florida, 560 U.S. 48 (2010), which held it was constitutionally improper for a juvenile offender to be sentenced to life without parole for a non-homicide offense. State v. Bonner, 400 S.C. 561, 565, 735 S.E.2d 525, 526-527 (2010). Based on that intervening decision, this Court reversed Appellant's life without parole sentence for first-degree burglary and remanded for resentencing. Id. at 567, 735 S.E.2d at 528.

Once this Court's decision became final, the trial judge promptly conducted a resentencing hearing as directed. (R. p. 342). During it, the solicitor noted Appellant was "one of the main instigators" of the incident despite being only seventeen years old at the time of the crimes and had a higher degree of culpability than many of his co-defendants based on his leading role in the incident. (R. p. 496; p. 507). The solicitor further noted Manning, who was twenty-three years old and another of the primary perpetrators of the incident, had received a sixty-year sentence for his crimes while Agnew had received a thirty-year sentence. (R. p. 497). Contrastingly, relying on the Graham decision, defense counsel pointed to the fact Appellant was a juvenile at the time of the incident while insisting he had allegedly matured significantly since then. (R. pp. 499-501). Defense counsel also identified what he perceived as some mitigating circumstances, including by noting Appellant's father had a strained relationship with Appellant, had been in and out of jail, and had separated from Appellant's mother when Appellant was twelve or thirteen years old. (R. p. 498). In addition to that, Appellant personally addressed the court and conceded he "did a lot of bad things in life." (R. pp. 508-509). However, he asserted he was "ready for society *now*." (R. pp. 508-509) (emphasis added). Ultimately, after

considering everything presented, the trial judge resentenced Appellant to a sixty-year term of imprisonment for first-degree burglary. (R. p. 509).

Subsequent to that and following an unsuccessful appeal, Appellant sought relief through the PCR process. (R. pp. 1-3). At the conclusion of those proceedings, the PCR judge found *limited* relief was warranted. (R. p. 3). More specifically, the PCR judge noted defense counsel did not raise any objections to or preserve any issues with Appellant's amended sentence after resentencing. (R. pp. 2-3). Furthermore, the PCR judge concluded there was a "strong *possibility*" Appellant's aggregate seventy-year sentence would result in a de facto life sentence that might violate the United States Supreme Court's decision in Graham. (R. p. 3) (emphasis added). Based on that, the PCR judge found defense counsel was deficient for failing to object to or move for reconsideration of the amended sentence and Appellant was prejudiced by that deficiency by losing any meaningful opportunity to challenge the validity of his aggregate sentence on appeal. (R. p. 3). Accordingly, the PCR judge "grant[ed Appellant]'s request for relief in th[e] PCR solely on the issue of whether [Appellant] may file a motion for reconsideration as to" his sixty-year sentence for first-degree burglary with the consecutive ten-year sentence for ABHAN. (R. p. 3). Stated differently, the PCR judge afforded Appellant an opportunity to seek the sentencing reconsideration defense counsel was constitutionally ineffective for failing to seek. (R. p. 3).

In light of that ruling, Appellant's case was—following an unsuccessful appeal by the State—remanded back to the trial judge for a reconsideration hearing on Appellant's sentence. (R. p. 3; p. 535). However, before such a hearing could take place, Appellant's new defense counsel filed a motion seeking for the trial judge to recuse himself from Appellant's case. (R. pp. 23-26). In support of that request, defense counsel claimed the PCR judge had remanded the

matter for full resentencing[13] as opposed to simply reconsideration of the sentence imposed. (R. p. 24). Defense counsel further contended our Supreme Court's decisions had purportedly "ma[d]e clear" a judge who had made an original sentencing determination was disqualified from rendering a decision on the matter of resentencing. (R. p. 25). To bolster that contention, defense counsel pointed to an administrative order issued in connection to resentencing proceedings being conducted pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). (R. p. 25). Furthermore, defense counsel alleged resentencing before the trial judge in Appellant's case would "raise reasonable questions about the judge's impartiality." (R. p. 25).

During the ensuing hearing on that motion, defense counsel repeated her request for the trial judge to recuse himself, which she confirmed was based exclusively on the fact he had imposed Appellant's earlier sentences. (R. pp. 513-518; p. 527). However, in doing so, defense counsel conceded she was "not suggesting that [the trial judge] wouldn't consider the new information" that was going to be presented as to sentencing. (R. p. 517). Furthermore, defense counsel readily conceded the trial judge had not said anything at any point during his handling of Appellant's case that suggested he was biased against Appellant. (R. pp. 526-527). Along with that, the solicitor noted the trial judge had not received anything extrajudicial or external in Appellant's case that would warrant recusal. (R. pp. 522-523).

After considering the matter, the trial judge declined to recuse himself. (R. pp. 6-9). In declining to do so, the trial judge noted defense counsel was not alleging there was any evidence of bias or prejudice in the record. (R. p. 8). Instead, the trial judge noted defense counsel's

[13] Again, it is important to emphasize the PCR judge—when granting relief—expressly declared he was "not ordering a resentencing" by finding defense counsel was ineffective for failing to move for reconsideration of the amended sentence. Appellate Records for John B. Bonner v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=64528.

request for recusal was focused on the fact he had previously sentenced Appellant, which, if disqualifying, was a fact that would preclude any sentencing judge from ever entertaining a motion for reconsideration of an imposed sentence. (R. p. 8). Meanwhile, the trial judge recognized he had both a duty to reconsider Appellant's sentence in light of any new information presented *and* a duty to preside over the case if not disqualified. (R. pp. 8-9). In light of his duties coupled with the fact no evidence of bias or prejudice had been presented, the trial judge declined to recuse himself. (R. p. 9).

Following that ruling, Appellant's case proceeded forward before the trial judge, and the trial judge conducted a hearing[14] on the matter of whether Appellant's sentence should be reconsidered. (R. p. 535).

During the hearing, the solicitor offered testimony from William Farr, an investigative chief with the Inspector General's Office at the South Carolina Department of Corrections. (R. p. 537). Farr confirmed Appellant had committed *fifty-one* distinct disciplinary violations since he had been imprisoned, including three separate "major" ones that had been committed in the preceding six months. (R. pp. 539-541; pp. 645-654). Notably, Farr further confirmed those violations began just a few months after Appellant was first admitted and had continued throughout his incarceration. (R. pp. 539-541; p. 546). Indeed, according to the information provided, Appellant's most recent "major" violation had occurred only one month earlier. (R. p. 541).

In addition to that, the solicitor—to refresh the trial judge's recollection of the details of the case—introduced the transcript from the trial along with the trial exhibits. (R. p. 536). Furthermore, the solicitor offered testimony from one of Darji's coworkers, who confirmed Darji

[14] At the outset of that hearing, defense counsel renewed her request for recusal, and the trial judge again declined to recuse himself. (R. p. 535).

was battered, bruised, and in "awful" condition in the immediate aftermath of the incident based on what Appellant and his confederates did to her, needed months to physically recover, and was still affected by what had occurred. (R. pp. 549-551).

Following that, defense counsel first offered testimony from Appellant's mother. (R. p. 553). Mother pointed out Appellant's father had been "in and out" of Appellant's life when Appellant was growing up because he went to jail for "[w]riting bad checks." (R. p. 554). Additionally, Mother explained one of Appellant's brothers was diagnosed with cancer when Appellant was a teenager, which was stressful for the family and resulted in her not been able to give Appellant the same amount of attention during that time period. (R. p. 555). Mother also noted the family experienced financial difficulties as a result of that and other issues, which resulted in them moving to a bad neighborhood when Appellant was approximately fifteen or sixteen years old. (R. pp. 555-556; p. 558). Mother opined the neighborhood influences contributed to Appellant's offenses. (R. pp. 556-557). However, Mother claimed Appellant was now a "totally different person" since he had been incarcerated, and she insisted he had matured and become more religious. (R. pp. 557-558). Mother further indicated she believed Appellant would be successful if released and would not commit any other offenses like the ones he had committed ever again. (R. p. 558).

Similarly, Latrice Blanding, who was a "lady friend" of Appellant's, testified on Appellant's behalf. (R. pp. 564-576; p. 580). Blanding indicated she met Appellant when they were teenagers and remembered him as being a "sweetheart" and "super caring" so long as he was not around other people. (R. p. 565). She further indicated she grew distant from Appellant as they got older but stayed in touch with him after he went to prison. (R. pp. 567-568). In her view, Appellant was now totally transformed, was more spiritual and encouraging, and loved and

cared about "people that actually care about him." (R. pp. 570-571; p. 573). Beyond that, Blanding acknowledged she had been visiting Appellant in prison, and she confirmed he got in trouble during one of her visits for touching her in a manner she claimed was *not* "a sexual grab or groping or anything of the sort." (R. p. 572). Blanding further asserted the plan was for Appellant to come live in Greenville if released, her sister intended to help him find a job, and she trusted he would say out of trouble. (R. p. 574). However, Blanding conceded Appellant had never had a job prior to going to prison and had fathered children, including two who were born after he was incarcerated, with three different women by that point. (R. pp. 575-576).

In addition to Mother and Blanding, George Martin, who was—amongst other things—a former warden at the South Carolina Department of Corrections, testified on Appellant's behalf as an expert in "prison systems and inmate behavior." (R. pp. 577-580). In preparing for the hearing, Martin confirmed he reviewed Appellant's case, interviewed Appellant and several others, and reviewed Appellant's inmate records.[15] (R. pp. 579-580). Ultimately, based on his review of the matter and personal belief there was "some element of truth" to the various mitigating claims Appellant had made to him, Martin opined Appellant could make a "satisfactory adjustment" if released. (R. p. 587; p. 592; p. 595). Likewise, he indicated he did not believe Appellant—who was a convicted felon at the time he was convicted of his offenses—would be a repeat offender because, in his view, Appellant did not "strike [him] as being criminally oriented." (R. p. 587; p. 592; p. 595). Martin further suggested Appellant should be credited for not joining a gang, for obtaining his G.E.D. after being incarcerated, and for purportedly accepting responsibility for his crimes. (R. p. 582; p. 584; p. 586). However, Martin

[15] Despite reviewing those records, Martin did not even appear to know something as basic as when Appellant had first been imprisoned and initially incorrectly asserted Appellant was admitted to the South Carolina Department of Corrections when he was seventeen years old. (R. p. 581).

conceded Appellant had a "fairly lengthy history" of disciplinary violations that were committed after he was imprisoned, had been disqualified from being housed in an "honor dorm" based on his behavior, and had continued engaging in infractions—including just a month earlier—despite being aware the defense was attempting to gather mitigation evidence on his behalf. (R. pp. 582-583; p. 593). Likewise, Martin admitted Appellant may not have obtained his G.E.D. in an "entirely voluntary" fashion based on the prison's policies, and he noted Appellant had minimized his own responsibility by claiming his crimes had not been premeditated. (R. p. 584; pp. 591-592). Beyond that, Martin acknowledged Appellant's crimes were heinous, his victim had been seriously injured, and he had *not* been a model inmate up to that point. (R. p. 597; p. 600).

Finally, Appellant personally made a statement[16] to the trial judge and, through it, characterized himself as a "little kid trying to fit in" who had now "outgrown all of this." (R. pp. 601-602). Appellant further claimed he was sorry "about what happened to the victim" and alleged he had only falsely testified during trial because he was "scared." (R. pp. 601-602). However, Appellant also acknowledged none of what happened would have happened if *he* had not "come up with the plan that [he] did." (R. p. 602). Furthermore, Appellant conceded Darji's harrowing account of the incident was an accurate one. (R. p. 603).

After Appellant's remarks concluded, defense counsel argued all Appellant's sentences were again before the trial judge in a de novo capacity. (R. p. 604). And, in order to be constitutionally valid in her view, defense counsel maintained Appellant's aggregate sentence needed to be *lower* than thirty-two years in total due to Appellant's supposed remaining life

[16] Because Appellant's personal presentation was framed as a statement as opposed to testimony, the trial judge did not permit the solicitor to cross-examine Appellant during the hearing. (R. p. 600).

expectancy. (R. p. 605). Defense counsel then identified the following factors at warranting a reduced sentence: (1) Appellant was seventeen years old at the time of his crimes; (2) Appellant was purportedly in a "difficult" situation when he committed his offenses due to his family circumstances, limited finances, imprisoned father, and bad neighborhood; (3) Appellant had *now* accepted responsibility for his crimes; (4) juveniles had been recognized as being susceptible to peer pressure while some of Appellant's accomplices were a few years older than him; (5) Appellant's actions purportedly reflected the incompetencies of youth because he absconded from the state during the investigation into the incident; (6) Appellant, who had been imprisoned since he was convicted, "ha[d] not engaged in [the] kind of criminal activity that landed him in prison in the first place"; and (7) some of Appellant's co-defendants received lesser sentences than him. (R. pp. 605-610).

Conversely, the solicitor contended Appellant—despite his age—came up with a "pretty sophisticated alibi defense" and actively worked with his defense counsel to craft and present his defense at trial. (R. p. 610; p. 615). Furthermore, as far as his rehabilitative prospects, the solicitor noted Appellant had continuously engaged in disciplinary infractions despite now being well into adulthood, including after meeting with a mitigation expert and with a full awareness the reconsideration hearing was going to be held. (R. pp. 616-617).

At the conclusion of the hearing, the trial judge took the matter under advisement. (R. pp. 618-619). Thereafter, upon considering the matter for an extended period of time,[17] the trial judge declined to reconsider Appellant's sentence despite conducting a de novo review of the matter. (R. p. 10; p. 14). As support for that ruling, the trial judge acknowledged juveniles were fundamentally different from adults and had diminished culpability based on their age. (R. pp.

[17] The trial judge's order was issued slightly over six *months* after the hearing. (R. pp. 10-14; p. 531).

11-12). He further acknowledged a juvenile offender could not be constitutionally sentenced to life without parole for a non-homicide offense while a court was precluded from making a judgment *at the outset* that a juvenile offender would never be fit to reenter society. (R. p. 12). However, relying on our Supreme Court's decision in State v. Slocumb, 426 S.C. 297, 827 S.E.2d 148 (2019), the trial judge concluded the Eighth Amendment did not prohibit de facto life sentences for juvenile non-homicide offenders like Appellant. (R. pp. 12-13). With those principles in mind, the trial judge explained he considered everything presented during both the reconsideration hearing and trial and he took that evidence into account while giving consideration to all the relevant sentencing factors that had been set out. (R. pp. 13-14). Based on his review, the trial judge concluded reconsideration of the sentence imposed was not warranted in Appellant's case. (R. p. 14). However, he ruled Appellant's ABHAN sentence was no longer a consecutive one and, thus, Appellant's aggregate sentence was now a sixty-year—instead of seventy-year—term of imprisonment. (R. p. 14).

Following that ruling, defense counsel moved for reconsideration. (R. pp. 126-137). In seeking such relief, defense counsel first maintained the PCR judge supposedly granted a full resentencing hearing as opposed to simply a hearing for reconsideration, which she contended would not have been appropriate relief since the PCR judge had concluded there was a "strong possibility" Appellant's aggregate sentence violated the Eighth Amendment. (R. pp. 126-128). Additionally, defense counsel alleged the trial judge had purportedly failed to consider the case anew, failed to conduct de novo review, and failed to substantively apply the pertinent sentencing factors. (R. p. 128; p. 130; pp. 133-134). Furthermore, defense counsel maintained Appellant demonstrated his aggregate sixty-year sentence was the functional equivalent of a life sentence because he supposedly would only live to be forty-nine years old based on his

remaining life expectancy according to one study but purportedly would have no opportunity for release until he was seventy-seven years old.[18] (R. pp. 135-137).

In rebuttal, the solicitor contended the trial judge should decline to grant reconsideration. (R. pp. 142-150). As support for that contention, the solicitor noted the trial judge afforded Appellant the exact relief granted to him by the PCR judge by conducting a hearing to entertain reconsideration of his sentence and, moreover, had conducted the hearing like a full resentencing hearing even though it was only supposed to be a hearing on a motion to reconsider. (R. pp. 142-143; p. 146). Likewise, the solicitor noted the trial judge properly conducted an individualized sentencing hearing to fully explore the mitigating factors of youth, correctly allowed both sides to present evidence and argument, and appropriately considered all the relevant sentencing factors before issuing his decision concerning the sentence imposed. (R. pp. 146-149). Beyond that, the solicitor contended a proper consideration of the pertinent factors fully justified the trial judge's decision in Appellant's case. (R. pp. 144-146; p. 148).

Ultimately, upon considering the arguments of counsel, the trial judge declined to reconsider his earlier ruling. (R. p. 15). Thus, Appellant was left with an aggregate sixty-year term of imprisonment for his terrible crimes, which included first-degree burglary, kidnapping, armed robbery, and ABHAN. (R. p. 14; pp. 16-22).

[18] According to available information from the South Carolina Department of Corrections, Appellant's current projected release date is May 19, 2060, which would mean he would be a little over sixty-nine years old at the time of his release. Inmate Report for John Bendarian Bonner, S.C. Department of Corrections Incarcerated Inmate Search, https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000338030.

ARGUMENT

I.

The trial judge did not abuse his discretion or otherwise err by properly conducting a hearing to reconsider Appellant's previously-imposed sentence as opposed to a full resentencing hearing because the post-conviction relief judge did not strike down Appellant's sentence by granting relief and, instead, solely remanded the matter to provide Appellant with an opportunity to seek reconsideration of his aggregate sentence.

Appellant contends the trial judge reversibly erred by failing to a conduct a full de novo resentencing hearing after the case was remanded to him following the PCR judge's grant of relief. In support of that contention, Appellant maintains the PCR judge granted relief based on a finding defense counsel provided ineffective assistance at the earlier resentencing hearing and, therefore, the only appropriate remedy for such ineffectiveness was purportedly the grant of a full new resentencing hearing. Moreover, even if the trial judge had been correct in interpreting the PCR judge's grant of relief to have been limited to a remand for a sentencing reconsideration hearing, Appellant nevertheless maintains the trial judge reversibly erred by not conducting that hearing in the same manner that would have been required if it had, in fact, been a full resentencing hearing conducted pursuant to something like the decision in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). Appellant is incorrect, and the trial judge did not abuse his discretion or otherwise err by conducting a proper hearing to reconsider Appellant's sentence, which was the only relief Appellant had been granted by the PCR judge. The trial judge's ruling and Appellant's aggregate sentence should be affirmed.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001); see State v. Branham, 392 S.C. 225, 228, 708 S.E.2d 806, 808 (Ct. App. 2011) ("The appellate court's review in criminal cases is limited to correcting the

order of the circuit court for errors of law."). Based on that, appellate courts in such cases are generally "limited to determining whether the trial judge abused his discretion." Wilson, 345 S.C. at 6, 545 S.E.2d at 829. "An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

Analysis

Pursuant to South Carolina law, a circuit court judge generally "is without authority to consider a criminal matter once the term of court during which judgment was entered expires." State v. Warren, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011); see State v. Hinson, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) ("It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires."). And, when a case is later remanded to a circuit court after a grant of relief by virtue of an appeal or other post-conviction proceeding, the circuit court judge *only* reacquires authority to act in the case in a manner consistent with the mandates of the remanding court. S.C. Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 250, 551 S.E.2d 275, 279 (Ct. App. 2001); see Parker v. Shecut, 359 S.C. 143, 152, 597 S.E.2d 793, 798-799 (2004) (instructing the circuit court obtains jurisdiction to enforce the judgment and take any actions consistent with the appellate court's ruling when an appellate court remits a case to the circuit court). Significantly, a remanding court's mandate is jurisdictional, and a circuit court judge has a *duty* to follow the remanding court's directives. Prince v. Beaufort Mem'l Hosp., 392 S.C.

599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011); see Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) ("It is the duty of the trial court to follow the decision of the appellate court."). Accordingly, when a case is remanded to the circuit court on limited grounds, a circuit court judge commits reversible error by acting in a manner outside of the scope of the remand. Ackerman, 324 S.C. at 443, 477 S.E.2d at 268; see Prince, 392 S.C. at 605, 709 S.E.2d at 125 ("When we remand a case, the trial court has only the jurisdiction and authority mandated by this court.").

With that in mind, the PCR judge—just as the solicitor aptly pointed out to the trial judge—granted *limited* relief in Appellant's case and remanded only on limited grounds. More specifically, the PCR judge did *not* grant relief by striking down Appellant's aggregate sentence or by remanding for the imposition of an entirely new sentence via resentencing. Indeed, in granting relief, the PCR judge expressly stressed he was "not ordering a resentencing." Appellate Records for John B. Bonner v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=64528. Instead of doing so, the PCR judge "grant[ed Appellant]'s request for relief in th[e] PCR *solely* on the issue of whether [Appellant] may file a motion for reconsideration as to" his aggregate sentence. (R. p. 3) (emphasis added). Thus, by virtue of the PCR judge's limited grant of relief, Appellant's aggregate sentence, which was *not* found to be unconstitutional by the PCR judge,[19] remained in place and the matter was only remanded to the trial judge for the limited purpose of conducting a sentencing

[19] Again, as to the propriety of the imposed sentence, the PCR judge only found "there [wa]s a strong *possibility* that [the trial judge]'s resentencing of [Appellant] to a 60-year sentence on a Burglary 1st degree charge coupled with a 10-year consecutive sentence to ABHAN will result in a de facto life sentence depriving [Appellant] of a realistic opportunity to obtain release before the end of his prison term in violation of Graham." (R. p. 3) (emphasis added). After making that finding, the PCR judge concluded defense counsel was deficient for failing to move for reconsideration of Appellant's sentence and that deficiency was prejudicial to Appellant because it deprived him of a meaningful opportunity *to challenge his sentence on appeal*. (R. p. 3).

reconsideration hearing. See United States v. Morrison, 449 U.S. 361, 364 (1981) ("Cases involving Sixth Amendment deprivations are subject to the general rule that remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests."); cf. Rolen v. State, 384 S.C. 409, 414, 683 S.E.2d 471, 474 (2009) ("[W]e hold that counsel was ineffective for failing to move to withdraw [Rolen]'s guilty plea. However we find that granting [Rolen] the relief of an entire new plea hearing is inappropriate. . . . [W]e remand the case to the point in the guilty plea proceeding in which counsel should have sought to withdraw the plea. In our view, this tailored relief remedies the precise prejudice resulting from plea counsel's deficient performance." (citations and footnote omitted)). Therefore, since that was the exact type of hearing conducted by the trial judge following the remand in Appellant's case, he did not abuse his discretion or otherwise err by faithfully adhering to and acting in a manner fully consistent with the limited authority to act granted to him through the limited mandate issued by the remanding court. See Basnight, 346 S.C. at 250, 551 S.E.2d at 279 ("[A] trial court has no authority to exceed the mandate of the appellate court on remand.").

Meanwhile, because the matter was *not* before him for a full resentencing but, instead, was before him solely for a hearing to *reconsider* the sentence that had previously been imposed, the trial judge was under no obligation—and could not logically have been under such an obligation—to refrain from giving any consideration whatsoever to the propriety of the sentence he was being asked to reconsider. Thus, even assuming he considered the sentence that had previously been imposed in carrying out his review of it following the remand, the trial judge did not abuse his discretion or otherwise err by doing so due to what type of matter was—and was not—before him by virtue of the PCR judge's limited grant of relief. Cf. State v. Smart, 439

S.C. 641, 645, 889 S.E.2d 573, 575 (2023) (discussing the appropriate procedure to be followed when conducting an "Aiken resentencing hearing" and explaining "the *resentencing* court may give no deference to the prior sentencing court's decision to impose life without parole" when conducting that specific type of hearing (emphasis added)); State v. Mack, 441 S.C. 526, 546, 894 S.E.2d 820, 830 (Ct. App. 2023) (remanding for "the resentencing court to consider all the Aiken factors" following an actual Aiken resentencing hearing).

And, in conducting his review of the previously-imposed sentence, the trial judge listened to testimony—including expert testimony—from multiple witnesses about Appellant and his behavior in the *decades* since he had reached adulthood, reviewed the records from the trial proceedings, and explicitly gave consideration to each and every one of the mitigating factors of youth that have been identified by our Supreme Court and the United States Supreme Court. See Jones v. State, 440 S.C. 14, 25, 889 S.E.2d 590, 596 (2023) (directing trial judges to consider the mitigating factors of youth when sentencing a juvenile offender but further instructing: "While consideration of the factors enumerated in Aiken provides sufficient attention to actual juvenility, circuit court judges are *not required* to do so in a separate Aiken hearing when sentencing pursuant to this subsection." (emphasis added)). Critically, only after giving de novo consideration to all that evidence and information did the trial judge decide not to alter the previously-imposed sixty-year aggregate sentence.[20] See Warren, 392 S.C. at 237-238, 708 S.E.2d at 235 (explaining a decision as to whether to reconsider or change a previously-imposed sentence rests exclusively within the trial judge's discretion); cf. Smart, 439 S.C. at 648, 889 S.E.2d at 577 (concluding the resentencing judge conduced an appropriate individualized sentencing hearing where he considered the plea transcript and evidence concerning Smart's

[20] Notably, the trial judge's reconsideration of the previously-imposed sentence did result in Appellant's ten-year ABHAN sentence no longer being a consecutive one. (R. p. 14).

crime, heard testimony from an expert and other witnesses, listened to arguments from counsel, and analyzed the pertinent sentencing factors before rendering his decision). Thus, the trial judge did exactly what he was supposed to do following the limited remand in Appellant's case, and he did not abuse his discretion or otherwise err by virtue of the manner in which he handled the matter. See Jones, 440 S.C. at 31 n. 17, 889 S.E.2d at 600 n. 17 (directing trial judges to consider the relevant Aiken factors when sentencing juveniles for offenses such as first-degree burglary and armed robbery but "reiterat[ing]" that directive does not require trial judge to conduct a separate Aiken hearing pursuant to the procedures set out for such hearings); see also Ackerman, 324 S.C. at 443, 477 S.E.2d at 268 (instructing a trial judge has a duty to follow the decision of a remanding court). The trial judge's ruling and Appellant's aggregate sentence should be affirmed.

II.

The trial judge did not abuse his broad discretion or commit any other error of law by declining to reconsider Appellant's aggregate term-of-years sentence of sixty years after Appellant—who, at the age of seventeen, planned and perpetrated a brutal home invasion and store break-in while armed with a pistol—was convicted of numerous distinct and highly-serious offenses because such a sentence was neither cruel, unusual, nor otherwise unconstitutional under the heinous circumstances involved despite Appellant's age at the time of his crimes.

Appellant contends his aggregate sixty-year term-of-years sentence imposed for six different offenses he committed at seventeen years old was and is unconstitutional pursuant to the United States Supreme Court's decision in Graham v. Florida, 560 U.S. 48 (2010), and, thus, the trial judge purportedly erred by imposing—and then declining to reconsider at a point in time *far* later than the outset of the case—such a sentence. In support of that contention, Appellant maintains his sixty-year sentence constitutes a de facto life sentence that will deny him a meaningful opportunity for release in his lifetime and, for that reason, argues his sentence was unconstitutional pursuant to the Eighth Amendment.[21] Importantly though, neither the logic nor holding of the Graham decision was applicable to the facts and circumstances of Appellant's case because the Supreme Court expressly limited its holding and analysis in Graham to cases in which a juvenile offender has been sentenced to an actual life without parole sentence for a non-homicide offense.[22] Since Appellant is not serving such a life without parole sentence and,

[21] Notably, Appellant has *not* challenged the constitutionality of his aggregate sentence on state constitutional grounds. See State v. Jones, 273 S.C. 723, 726, 259 S.E.2d 120, 122 (1979) ("Exceptions not argued in appellants' brief are deemed abandoned.").

[22] Based on statistics compiled by the federal government, the average projected life expectancy at birth in the United States is currently just under seventy-six years for a male. C.D.C. Life Expectancy Data, http://www.cdc.gov/nchs/fastats/life-expectancy.htm. Additionally, according to data compiled by the Social Security Administration, a male citizen born on Appellant's birthday would be expected to reach the age of eighty-one and nearly eighty-two. S.S.A. Life Expectancy Calculator, https://www.ssa.gov/planners/lifeexpectancy.htm. Furthermore, the General Assembly in South Carolina has determined an eighteen-year-old male, which was

instead, received separate term-of-years sentences for his many distinct crimes, a sentence like Appellant's was and is not categorically unconstitutional under the mandates of Graham. Furthermore, just as the trial judge recognized after considering Appellant's age along with all the other pertinent factors, Appellant's aggregate sixty-year sentence was warranted under the heinous circumstances involved despite his age due to the fact his terrible crimes did not reflect the mitigating qualities of youth and his subsequent actions since reaching adulthood did not demonstrate true rehabilitation or growth. As a result, the trial judge did not abuse his discretion or otherwise err by declining to reconsider Appellant's sixty-year term of imprisonment for his numerous crimes, and that aggregate sentence was not unconstitutional in any way. Appellant's aggregate sentence should be affirmed.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only, including when reviewing a challenge to the constitutionality of a sentence. State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). On appeal, an appellate court will only interfere with a trial judge's sentencing decisions in rare and unusual circumstances due to the broad discretion afforded to a trial judge on such matters. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). Meanwhile, when reviewing a sentence to determine whether it is constitutionally proper, an appellate court will not disturb the sentencing judge's findings absent an abuse of

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Appellant's age at the time he was *first* sentenced for his crimes, would be expected to live to the age of approximately seventy-seven years old. See S.C. Code Ann. § 19-1-150 (listing the projected life expectancies of men and women of different ages in a table that can be used "to establish the life expectancy of a person from any period in his life"). Meanwhile, based on the South Carolina statutory provision addressing the availability of release for individuals convicted of "no parole" offenses, Appellant would first be eligible for release after serving approximately fifty-one years of his sentence, which would mean he could be released when he was sixty-nine years old. See S.C. Code Ann. § 24-13-150 (stating offenders convicted of "no parole" offenses must serve at least eighty-five percent of their sentences before being eligible for release).

discretion or the commission of an error of law. State v. Finley, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019).

Analysis

In South Carolina, trial judges are tasked with imposing a defendant's sentence upon conviction and are vested with broad discretion to carry out that duty within the applicable statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). However, despite the broad discretion afforded to South Carolina's trial judges, the Eighth Amendment of the United States Constitution limits a trial judge's sentencing discretion by prohibiting the imposition of cruel and unusual punishment. U.S. Const. amend. VIII. Pursuant to the ban on cruel and unusual punishment, a defendant's sentence must not be "barbaric" and must be graduated and proportioned to the offense in order to pass constitutional muster. Solem v. Helm, 463 U.S. 277, 284 (1983); see Atkins v. Virginia, 536 U.S. 304, 311 (2002) (instructing it is a precept of justice the punishment for a crime should be graduated and proportioned to the offense). Importantly though, the ban "does not require strict proportionality between crime and sentence." Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (plurality opinion) (Kennedy, J., concurring); see State v. Harrison, 402 S.C. 288, 298, 741 S.E.2d 727, 732 (2013) (holding "Justice Kennedy's concurrence is the controlling law of Harmelin"). Instead, "it forbids only extreme sentences that are 'grossly disproportionate' to the crime." Harmelin, 501 U.S. at 1001 (Kennedy, J., concurring) (citations omitted).

In the case sub judice, Appellant has *not* been sentenced to a life without parole sentence for a non-homicide offense. See Graham v. Florida, 560 U.S. 48, 63 (2010) ("The instant case concerns only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense."); cf. Bonilla v. State, 791 N.W.2d 697, 703 (Iowa 2010) (recognizing a juvenile non-

homicide offender's sentence violated the Eighth Amendment of the United States Constitution under Graham because it was a sentence of life without parole). Instead, Appellant received an aggregate sixty-year sentence for a multitude of distinct and gravely-serious crimes with all his individual sentences falling within the permissible sentencing limits for those offenses. See Lucero v. People, 394 P.3d 1128, 1133 (Colo. 2017) ("Multiple sentences imposed for multiple offenses do not become a sentence of life without parole, even though they may result in a lengthy term of incarceration. Life without parole is a specific sentence, imposed as punishment for a single crime, which remains distinct from aggregate term-of-years sentences resulting from multiple convictions. . . . If we were to consider instead the aggregate sentence, as Lucero argues we must, 'the result would be the possibility that a defendant could generate an Eighth Amendment disproportionality claim simply because that defendant had engaged in repeated criminal activity.' " (citation omitted)); see also State v. Johnson, 350 S.C. 543, 547, 567 S.E.2d 486, 488 (Ct. App. 2002) ("[F]ew would argue that first-degree burglary, armed robbery, and kidnapping are anything other than grave offenses of the 'most serious' nature."). In fact, Appellant was only sentenced on average to a *ten-year* term of imprisonment for each offense when his total number of offenses is taken into account. Cf. State v. Slocumb, 426 S.C. 297, 310, 827 S.E.2d 148, 155 (2019) ("For these crimes, Slocumb received an average per-crime sentence of twenty-six years' imprisonment."). Therefore, because Appellant was *not*—after resentencing—sentenced to life without parole for a non-homicide offense, the decision in Graham did not render Appellant's aggregate sentence unconstitutional. See Slocumb, 426 S.C. at 314-315, 827 S.E.2d at 157 (declining to find Slocumb's aggregate one-hundred-thirty-year sentence for multiple offenses was violative of Graham); cf. United States v. Walton, 537 F. App'x 430, 437 (5th Cir. 2013) (recognizing neither the decision in Graham nor the decision in

Miller v. Alabama, 567 U.S. 460 (2012), was applicable to a discretionary term-of-years sentence).

In challenging the constitutionality of his sentence, Appellant—much like Conrad Slocumb before him—contends his aggregate sixty-year sentence was and is unconstitutional because it is purportedly the functional equivalent of a life without parole sentence even though he did not actually receive one. Based on that contention, Appellant—like Slocumb—effectively asks this Court to extend the Graham decision beyond its express limits, apply it to aggregate term-of-years sentences such as his own, and find his aggregate sentence to be categorically unconstitutional. Cf. Willbanks v. Dep't of Corr., 522 S.W.3d 238, 246 (Mo. 2017) ("The Supreme Court has never held that consecutive lengthy sentences for multiple crimes in excess of a juvenile's life expectancy is the functional equivalent of life without parole. The dissent acknowledges that its analysis is an extension of the law."). However, just as a majority of our Supreme Court recognized in its Slocumb decision, the Graham decision cannot properly be—and should not be—extended beyond the express limits the United States Supreme Court placed upon its holding in that case. See Slocumb, 426 S.C. at 307, 827 S.E.2d at 153 (declining to extend the holding of Graham and recognizing "we are duty-bound to enforce the Eighth Amendment consistent with the Supreme Court's directives").

Critically, through its express language, the United States Supreme Court limited the decision in Graham to life without parole sentences for juvenile non-homicide offenders alone. See Graham, 560 U.S. at 74 (holding the Eighth Amendment prohibits juvenile non-homicide offenders from being sentenced to life without parole sentences and indicating the holding is a "clear line"); cf. State v. Moore, 76 N.E.3d 1127, 1134 (Ohio 2016) ("The court did not address in Graham whether a term-of-years prison sentence that extends beyond an offender's life

expectancy—a functional life sentence—falls under the Graham categorical bar."). Because its focus was limited in that manner, the Supreme Court in Graham did not analyze any information regarding the number of jurisdictions with sentencing practices that permitted circuit court judges to sentence juvenile offenders to lengthy or consecutive term-of-years sentences exceeding the offenders' projected life expectancies, and it was unnecessary for the Supreme Court to do so. See Bunch v. Smith, 685 F.3d 546, 552 (6th Cir. 2012) ("The [United States Supreme Court in Graham] did not analyze sentencing laws or actual sentencing practices regarding consecutive, fixed-term sentences for juvenile non-homicide offenders. This demonstrates that the Court did not even consider the constitutionality of such sentences, let alone clearly establish that they can violate the Eighth Amendment's prohibition on cruel and unusual punishments."). Likewise, the Supreme Court in Graham also did not analyze or consider any information regarding the number of juvenile offenders across the country that had already been sentenced to and were actually serving term-of-years sentences that would exceed their natural life expectancies. See Vasquez v. Commonwealth, 781 S.E.2d 920, 925 (Va. 2016) ("Nowhere did Graham address multiple term-of-years sentences imposed on multiple crimes that, by virtue of the accumulation, exceeded the criminal defendant's life expectancy."). As a result, since the Supreme Court itself did not consider the constitutionality of term-of-years sentences in the Graham decision, the Supreme Court's conclusions regarding life without parole sentences in that decision cannot fairly or reasonably be extended to a sentencing practice that was not analyzed, explored, or addressed by the Supreme Court.[23] See Graham, 560 U.S. at 124

[23] Significantly, the United States Supreme Court's decision to specifically limit its holding solely to life without parole sentences likely resulted from the fact its analysis was confined to that type of sentence alone. See Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.' "

(Alito, J., dissenting) ("Nothing in the Court's opinion affects the imposition of a sentence to a term of years without the possibility of parole."); see also Cohens v. Virginia, 19 U.S. 264, 399-400 (1821) ("It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.").

Because the specific and limited holding of Graham is not applicable to Appellant's case, the heavy burden remained and continues to remain on Appellant in raising his categorical constitutional challenge to lengthy term-of-years sentences for juvenile non-homicide offenders to establish a national consensus exists against such sentences. See Graham, 560 U.S. at 61 (indicating the first step in a categorical constitutional challenge to a particular sentencing practice is to determine whether a national consensus exists against the challenged practice); see also State v. Williams, 380 S.C. 336, 347, 669 S.E.2d 640, 646 (Ct. App. 2006) ("[I]t is the heavy burden of the defendant to establish a national consensus against [a particular sentencing practice]."). Significantly though, Appellant did not even attempt to do so during the various proceedings conducted in his case and has likewise failed to do so on appeal.

Specifically, in seeking an extension of the logic and holding in Graham to a type of sentence not addressed in the decision, Appellant has *not* cited to any data regarding the number

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(citations omitted)). Moreover, the Supreme Court may have chosen to limit its holding to avoid the practical complications that would arise in regard to the application of the holding if it was extended to term-of-years sentences in addition to life without parole sentences. See, e.g., Henry v. State, 82 So. 3d 1084, 1089 (Fla. Dist. Ct. App. 2012) ("At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: twenty, thirty, forty, fifty, some lesser or greater number? Would gain time be taken into account? Could the number vary from offender to offender based on race, gender, socioeconomic class or other criteria? Does the number of crimes matter? . . . Without any tools to work with, . . . we can only apply Graham as it is written. If the Supreme Court has more in mind, it will have to say what that is."), quashed, 175 So. 3d 675 (Fla. 2015).

of juveniles sentenced to sentences similar to his own or presented any information regarding the number of jurisdictions that do and do not legislatively allow such sentences to be imposed upon offenders like him. Importantly, without such objective indicia of society's standards, Appellant cannot show and has not shown the particular sentencing practice he is presently challenging has been rejected in the United States on a near universal basis, and he likewise cannot meet and has not met his burden of establishing a national consensus exists against the imposition of sentences like the one he received. Cf. Willbanks, 522 S.W.3d at 243 ("In Graham, the Supreme Court examined federal and state sentencing laws to see how many jurisdictions permitted juvenile nonhomicide offenders to receive life without parole and how many jurisdictions prohibited such punishments. It also looked at the actual number of juvenile offenders serving life without parole sentences, which totaled only 123 nationwide. Obviously, the number of juveniles with multiple fixed-term sentences would number in the thousands. At no point did the Supreme Court consider a juvenile offender sentenced to multiple fixed-term periods and whether such terms, in the aggregate, were equal to life without parole."). In the absence of a national consensus against sentences like Appellant's, there is no proper basis to categorically declare Appellant's sentence to be unconstitutional or to extend the limited holding or logic of Graham to his case. See Arkansas v. Sullivan, 532 U.S. 769, 772 (2001) (instructing state courts cannot interpret an amendment to the United States Constitution to provide greater protections than those provided by the precedent of the United States Supreme Court); cf. Vasquez, 781 S.E.2d at 926 ("We are duty bound to enforce the Eighth Amendment consistent with the holdings of the highest court in the land. But the duty to follow binding precedent is fixed upon case-specific holdings, not general expressions in an opinion that exceed the scope of a specific holding. . . . The only reason that the aggregate sentences [at issue in Vasquez's case] exceeded [the

defendants'] life expectancies was because they committed so many separate crimes. These cases are nothing like Graham, which involved a single crime resulting in a single life-without-parole sentence."). As a result, Appellant's aggregate sixty-year sentence neither violated the mandates of the Graham decision nor is categorically unconstitutional pursuant to the Eighth Amendment. See State v. Soto-Fong, 474 P.3d 34, 43 (Ariz. 2020) ("[C]ourts that have held de facto juvenile life sentences unconstitutional provide a cautionary tale, as they have invariably usurped the legislative prerogative to devise a novel sentencing scheme or otherwise delegated the task to trial court to do so.").

Meanwhile, to the extent Appellant seeks for his sentence to be declared unconstitutional or improper on a case-specific—as opposed to categorical—basis, the trial judge did *exactly* what he was supposed to do when conducting de novo review of the matter to decide whether to reconsider the sentence that had been imposed. Demonstrating that fact, the trial judge—prior to declining to reconsider Appellant's sentence at a point in time far *after* the case began—listened to and considered all the information presented to him and evaluated the circumstances surrounding both Appellant, Appellant's offenses, and Appellant's behavior since he had been convicted. And, in doing so, the trial judge expressly confirmed each and every one of the factors identified in Miller v. Alabama, 567 U.S. 460 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), was considered. See Jones, 440 S.C. at 25, 889 S.E.2d at 596 (instructing "consideration of the factors enumerated in Aiken provides sufficient attention to actual juvenility"); see also Aiken v. Byars, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014) (plurality opinion) ("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.' " (quoting Miller v. Alabama, 567 U.S. 460, 477-478 (2012)). Furthermore, unlike many judges tasked with sentencing a juvenile offender, the trial judge here was in an enhanced position at the time of the sentencing reconsideration hearing because he was not making a sentencing determination at the outset of Appellant's case but, instead, had *more than a decade* of information about Appellant's actions since he reached adulthood, including information about Appellant's dozens and dozens of disciplinary infractions that were inconsistent with true rehabilitation or growth on Appellant's part.[24] See Graham, 560 U.S. at 75 ("The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid the State *from making the judgment at the outset* that those offenders never will be fit to reenter society." (emphasis added)); Kelsey v. State, 206 So. 3d 5, 11 (Fla. 2016) (recognizing an offender resentenced for juvenile crimes based on the Graham decision can receive a life sentence at that time in light of the fact Graham only precluded such sentences from the outset); cf. Slocumb, 426 S.C. at 302, 827 S.E.2d at 150 ("Slocumb's adult prison record of continuing impulsivity and violence belies the general premises of youth[.]"). Thus, the trial judge conducted the proper analysis when deciding whether to reconsider Appellant's sentence, and the

[24] Notably, Appellant's improper behavior appears to have continued even after the sentencing reconsideration hearing. Inmate Report for John Bendarian Bonner, S.C. Department of Corrections Incarcerated Inmate Search, https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000338030.

sentence imposed—although lengthy—was neither disproportionate to the nature and severity of Appellant's crimes, excessive, nor unconstitutional. See Harrison, 402 S.C. at 300, 741 S.E.2d at 733 (recognizing a constitutional proportionality analysis ends unless "a comparison between the sentence and the crime committed gives rise to an inference of *gross* disproportionality" (emphasis added)).

For those reasons, the trial judge did not abuse his broad sentencing discretion or otherwise err by declining to reconsider that constitutionally-permissible sentence after Appellant was convicted of *numerous* heinous crimes and then subsequently failed to demonstrate any meaningful maturity, rehabilitation, or growth that would have warranted any alterations to his sentence. See State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) ("The cruel and unusual punishment clause requires the duration of a sentence not be grossly out of proportion with the severity of the crime."); see also Soto-Fong, 474 P.3d at 41 ("[G]enerally, courts do not permit defendants to 'stack' their crimes to generate an Eighth Amendment claim."). Appellant's aggregate sentence should be affirmed.[25]

[25] In challenging the constitutionality of his sixty-year sentence, Appellant appears to be suggesting the maximum term of imprisonment that *ever* may constitutionally be imposed upon a juvenile offender convicted of a non-homicide offense is a sentence of *less than* thirty-two years. (R. p. 605). Assuming Appellant was resentenced to a thirty-one-year term of imprisonment for his many crimes, it would be possible for him to obtain release under South Carolina law as early as the age of forty-four and in less than ten years from now *regardless* of whether he had—or ever will—demonstrate maturity, rehabilitation, or growth. See S.C. Code Ann. § 24-21-560 (outlining the community supervision release program for which offenders convicted of "no parole" offenses are eligible after serving eighty-five percent of their sentences). Significantly, such a result would be strikingly inconsistent with the decision in Graham, which expressly held a state is *not* required to release a juvenile non-homicide offender during his natural life even for a crime committed when the offender was a juvenile. See Graham, 560 U.S. at 75 (emphasizing the Eighth Amendment "*does not require the State to release [a juvenile non-homicide] offender during his natural life*" (emphasis added)).

III.

The trial judge did not abuse his discretion or otherwise err by refusing to recuse himself in Appellant's case because no actual evidence of bias, partiality, or prejudice on his part was shown and, thus, he had a duty to preside over the matter.

Appellant contends the trial judge reversibly erred by refusing to recuse himself. As support for that contention, Appellant—while heavily relying on an administrative order issued in connection to a different type of proceeding than the one involved in his case[26]—maintains the trial judge was disqualified from the case because he had previously sentenced him in the matter on two earlier occasions, which purportedly "demonstrated a bias toward requiring [Appellant] to spend the rest of his life in prison." To the contrary, the trial judge did not abuse his discretion or otherwise err by declining to recuse himself in Appellant's case because no actual evidence of bias or prejudice was presented or shown. Simply put, the fact the trial judge previously sentenced Appellant did *not* establish he was biased or prejudiced against Appellant and did *not* prevent him from being able to fairly and impartially conduct a sentencing reconsideration hearing. The trial judge's ruling and Appellant's aggregate sentence should be affirmed.

Standard of Review

Regardless of the venue involved, decisions regarding recusal rest in the sound discretion of the circuit court judge. Ness v. Eckerd Corp., 350 S.C. 399, 404, 566 S.E.2d 193, 196 (Ct. App. 2002); see State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009)

[26] That administrative order, which was solely issued by then-Chief Justice Costa M. Pleicones, set the procedures to be "followed statewide in the management and disposition of all motions for resentencing *filed pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (S.C.2014)*." In re Admin. Ord., 415 S.C. 460, 460-461, 783 S.E.2d 534, 534 (2016) (emphasis added). Notably, notwithstanding the fact Appellant's case did *not* involve the disposition of a motion for resentencing filed pursuant to Aiken v. Byars and, thus, could not have been controlled by that administrative order, the trial judge aptly noted a subsequent chief justice had elected not to require the procedure set out in that order to be followed in at least one subsequent case involving resentencing pursuant to Aiken v. Byars. (R. p. 518).

(instructing a circuit court judge should exercise sound discretion in determining whether the judge's partiality might reasonably be questioned under the circumstances involved). In reviewing a circuit court judge's decision not to recuse on appeal, an appellate court will not reverse the judge's failure to recuse *absent evidence of judicial bias or prejudice*. State v. Jackson, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003); see Simpson v. Simpson, 377 S.C. 519, 522, 660 S.E.2d 274, 276 (Ct. App. 2008) ("Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify [herself] will not be reversed on appeal." (citation and internal quotations omitted)).

Analysis

Unquestionably, every criminal defendant—along with any other party to a case—has a right to a fair proceeding presided over by a fair and impartial judge. State v. Langford, 400 S.C. 421, 437, 735 S.E.2d 471, 479 (2012). To safeguard such a right, "a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Jackson, 353 S.C. at 627, 578 S.E.2d at 745. However, recusal is a *drastic* remedy, and, unless a valid reason requiring disqualification truly exists, a circuit court judge has a *duty* to preside over the case. Simpson, 377 S.C. at 525-526, 660 S.E.2d at 278; see Cannon 3, CJC, Rule 501, SCACR ("A judge shall hear and decide matters assigned to the judge except those in which disqualification is *required*." (emphasis added)); see also Belue v. Leventhal, 640 F.3d 567, 575 (4th Cir. 2011) (characterizing recusal as a "drastic remedy").

Importantly, judges are presumed to be unbiased, and that presumption is "more than a pious hope." Langford, 400 S.C. at 438, 735 S.E.2d at 480 (citation and internal quotation marks omitted). "It is not enough for a party seeking disqualification to simply allege bias or prejudice." Jackson, 353 S.C. at 627, 578 S.E.2d at 745. Instead, the burden is upon the party

seeking recusal to show some evidence of that bias or prejudice. Id. Furthermore, "[t]he alleged bias or prejudice must stem from an *extra-judicial* source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge." Id. (emphasis added); see United States v. Grinnell Corp., 384 U.S. 563, 583 (1966) ("The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."); Howard, 384 S.C. at 217, 682 S.E.2d at 45 (instructing the alleged bias must be personal—as opposed to judicial—in nature in order to warrant recusal). Standing alone, judicial rulings *almost never* constitute a valid ground for recusal. Liteky v. United States, 510 U.S. 540, 555 (1994); see Belue, 640 F.3d at 575 ("Dissatisfaction with a judge's views on the merits of a case may present ample grounds for appeal, but it rarely—if ever—presents a basis for recusal.").

In the case at bar, the trial judge had previously presided over Appellant's trial, had sentenced him, and had resentenced him after an intervening decision from the United States Supreme Court rendered the originally-imposed sentence of life without parole unconstitutional. Based on that, the trial judge unquestionably had substantial knowledge of and familiarity with Appellant's case by the time of the sentencing reconsideration hearing. Importantly though, that substantial knowledge of and familiarity with Appellant's case was *not* derived from any external or extrajudicial sources, and the trial judge had no opinions or views concerning Appellant—or Appellant's sentence—that were formed from anything other than what he learned from his participation in the matter. See Grinnell Corp., 384 U.S. at 583 ("The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in

the case."); Howard, 384 S.C. at 218, 682 S.E.2d at 54 ("[T]he alleged bias must be personal, as distinguished from judicial, in nature." (citation and internal quotation marks omitted)).

Meanwhile, as defense counsel candidly conceded to the trial judge during the hearing on the motion seeking recusal, nothing the trial judge said at any point suggested he was biased or prejudiced against Appellant, and there likewise was no actual evidence of bias or partiality on the trial judge's part ever identified or presented by Appellant. Instead, Appellant sought the trial judge's recusal based on the fact the trial judge had previously imposed sentences in Appellant's case that Appellant believed—and apparently continues to believe—were unconstitutional, unwarranted, and too lengthy. Cf. State v. Jacobs, 644 N.W.2d 695, 699 (Iowa 2001) (concluding the trial judge did not abuse his discretion by refusing to recuse himself at a resentencing proceeding even though the defendant contended "it was impossible for [the trial judge] to approaching resentencing with an open mind). However, neither the mere fact the trial judge had previously imposed sentences in Appellant's case nor the fact Appellant disagreed—and continues to disagree—with those sentences constituted evidence of actual bias, prejudice, or partiality on the trial judge's part. See State v. Cabiness, 273 S.C. 56, 57, 254 S.E.2d 291, 292 (1979) (holding the fact the trial judge had sentenced the defendant in a previous criminal proceeding did *not* standing alone require his recusal); see also Haynes v. State, 937 S.W.2d 199, 204 (Mo. 1996) ("The Due Process Clause has never been held to require recusal of a judge at sentencing or in a post-conviction proceeding based solely on critical or hostile comments during sentencing or imposition of a harsh sentence within the range allowed by law."); cf. Langford, 400 S.C. at 439, 735 S.E.2d at 480 ("The contention that a judge was biased *solely* because he ruled against a defendant is untenable and insulting towards the court, and it would set a dangerous precedent were we to sanction it."); Srivastava v. Srivastava, 411 S.C. 481, 500, 769

S.E.2d 442, 452-453 (Ct. App. 2015) ("The fact that a family court judge ultimately rules against a litigant is not proof of prejudice by the judge, *even if it is later held the judge committed error in his rulings*." (emphasis added and citations, brackets, and internal quotations omitted)). Therefore, there was nothing that warranted or required the trial judge to recuse himself in Appellant's case, and Appellant certainly did not meet his burden of presenting actual evidence of bias or prejudice. Jackson, 353 S.C. at 627, 578 S.E.2d at 745; cf. Liteky, 510 U.S. at 556 ("Applying the principles we have discussed to the facts of the present case is not difficult. None of the grounds petitioners assert required disqualification. As we have described, petitioners' first recusal motion was based on rulings made, and statements uttered, by the District Judge during and after the 1983 trial; and petitioner Bourgeois' second recusal motion was founded on the judge's admonishment of Bourgeois' counsel and codefendants.").

Resultantly, since no valid basis for recusal existed in Appellant's case, the trial judge had—just as he personally recognized—a *duty* to preside over the matter and to not recuse himself under the circumstances involved. Cannon 3, CJC, Rule 501, SCACR; see Liteky, 510 U.S. at 555 ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."). Therefore, the trial judge committed no conceivable error by doing just that, and there are no legitimate grounds upon which his decision not to recuse could be reversed on appeal. See Simpson, 377 S.C. at 525-526, 660 S.E.2d at 278 ("When disqualification is not required, the South Carolina Code of Judicial Conduct holds, 'A judge *shall* hear and decide matters assigned to the judge[.]' " (citation omitted)); see also Jackson, 353 S.C. at 627, 578 S.E.2d at 745 ("If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal."). The trial judge's ruling and Appellant's aggregate sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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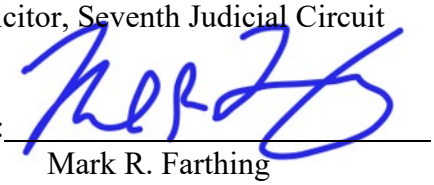
BY: 
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