THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the Cherokee County
Court of General Sessions

Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2025-000603

STATE OF SOUTH CAROLINA.....RESPONDENT,

v.

JOHN BENDARIAN BONNER .....APPELLANT.

FINAL BRIEF OF APPELLANT

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2. 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).

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

STATEMENT OF THE CASE

In 2009, John Bendarian Bonner was convicted at a jury trial of burglary, 1st degree; kidnapping, 2nd degree; armed robbery; grand larceny, and assault and battery of a high and aggravated nature (ABHAN). Bonner's conviction arose from his involvement with seven co-defendants in a home-invasion robbery during which the perpetrators assaulted the resident of the home and obtained the keys to the next-door convenience store where the victim worked.[1] Several co-defendants left the home and entered the convenience store, ultimately robbing both the home and the store. Bonner was seventeen at the time of the offense. Since his conviction, Bonner has spent years seeking what juvenile nonhomicide offenders are entitled to under *Graham v. Florida*: a meaningful opportunity for release before he dies in prison. 560 U.S. 48 (2010) (holding the Eighth Amendment prohibits sentencing juvenile offenders to life without parole for nonhomicide offenses).

Bonner was initially sentenced by the Honorable J. Derham Cole, who imposed a sentence of life without the possibility of parole ("LWOP") for the burglary, 1st degree charge and concurrent sentences of 15 years for burglary, 2nd degree; 5 years for grand larceny, 30 years for kidnapping; and 30 years for armed robbery. Judge Cole also imposed a consecutive sentence of 10 years for ABHAN. On direct appeal, Bonner's LWOP sentence for first degree burglary was vacated and

[1] Bonner was one of eight individuals arrested for involvement in the offense. Joshua Manning, Labrontae Agnew, Kwane Douglas, Robert Wilson Jr., Kendrick Tate, Billy Rogers, and Terry Littlejohn were also arrested. While Bonner was only 17 at the time, several co-defendants, including Rogers, Wilson, and Tate, were 19 or older at the time. Tate, Willson, Douglas, and Rogers all agreed to cooperate with the State and testify against Bonner in exchange for being able to plea to common law robbery instead of armed robbery with the State informing the sentencing judge about their cooperation. Joshua Manning, who was 22 at the time of the offense, received a sixty-year sentence. Labrontae Agnew received a thirty-year sentence. The other co-defendants (Douglas, Wilson Jr., Tate, Rogers, and Littlejohn) all received sentences of 15 years or less for their involvement in the robberies and have completed those sentences.

remanded for resentencing in light of *Graham*. *State v. Bonner*, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012).

Bonner proceeded to resentencing and on January 23, 2013, Judge Cole imposed a 60-year sentence in place of the life without parole sentence for burglary. All other previously imposed sentences were left in place, including the consecutive 10-year sentence, resulting in a total sentence of 70 years. This sentence was affirmed on appeal after this Court found the issue of whether the newly imposed sentence violated *Graham* had not been preserved for review. *State v. Bonner*, Op. No. 2014-UP-401 (S.C. Ct. App. Nov. 12, 2014).

Bonner then sought post-conviction relief, alleging his resentencing counsel was ineffective in failing to challenge the 70-year sentence as the functional equivalent of life without parole. The post-conviction relief court found resentencing counsel ineffective for failing to object to or file a motion to reconsider Judge Cole's imposition of the 60-year sentence, particularly in light of the 10-year consecutive ABHAN sentence. (R. p. 1–4). The State appealed the grant of post-conviction relief, and certiorari was denied by the Supreme Court of South Carolina. *John B. Bonner v. State of South Carolina*, No. 2017-000758 (S.C. Feb 20, 2019).

Bonner returned to the trial court for his second resentencing proceeding, again in front of Judge Cole. Bonner filed a motion requesting Judge Cole to recuse himself from the proceedings, arguing Judge Cole's impartiality was in question following his prior sentencing deliberations and decisions. In support of this motion, Bonner submitted that this would be the third sentencing proceeding in the same case before the same judge, who would be required to set aside his decisions from not one, but two prior sentencing determinations in conducting a *de novo* resentencing hearing. (R. p. 23). Judge Cole held a hearing on the motion for recusal and denied the motion by written order. (R. p. 511; R. p. 6).

On February 8, 2024, Judge Cole held Bonner's second resentencing hearing.[2] (R. p. 531). At the hearing, the State presented Bonner's incarceration records and the testimony from a friend of the victim. (R. pp. 537–52). Bonner presented evidence relevant to the juvenile sentencing factors set forth in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), through testimony from his mother, a close friend, and an expert in prison systems and inmate behavior, and a letter from one of Bonner's children. (R. pp. 552–600). Bonner also made a statement to the Court. (R. pp. 601–04). At the conclusion of the evidentiary presentation, both Bonner and the State made arguments to the Court regarding sentencing. (R. pp. 604–18). The Court took sentencing under advisement. (R. pp. 618–19).

On August 16, 2024, Judge Cole issued a sentencing order reimposing a 60-year sentence on Bonner for burglary in the first degree and adjusting the 10-year consecutive ABHAN sentence to run concurrently with Bonner's other sentences.[3] (R. p. 10). On September 23, 2024, Bonner filed a motion for reconsideration. In his motion, Bonner asked Judge Cole to reconsider the 60-year sentence because it was the functional equivalent of a life without parole sentence in violation of *Graham* and that in imposing the sentence, the court did not conduct a *de novo* sentencing hearing as required by both the post-conviction relief proceedings and juvenile sentencing law. The State filed its return on February 3, 2025, and on March 20, 2025, Judge Cole denied the motion to reconsider. (R. p. 15). This appeal follows.

[2] On February 5, 2024, in advance of this hearing, Bonner filed a resentencing procedure memorandum outlining relevant juvenile sentencing law and the life expectancies of incarcerated juveniles. (R. p. 27).

[3] The parties were not served with this order until September 12, 2024.

ARGUMENT

I. The trial court erred by failing to conduct a *de novo* resentencing hearing, the only adequate remedy for resentencing counsel's deficient performance, and by failing to consider the *Aiken* factors as required by applicable juvenile sentencing case law.

a. Standard of Review

"In criminal cases, the appellate court sits to review errors of law only. A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law." *State v. Dawson*, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013) (internal citations omitted). A trial court abuses its discretion when its decision is "based on an error of law or grounded in factual conclusions without evidentiary support." *State v. Perez*, 423 S.C. 491, 496–97, 816 S.E.2d 550, 553 (2018).

b. Argument

The trial court erred by failing to treat the matter before it as a *de novo* resentencing hearing, instead treating it as a motion to reconsider. When the PCR court correctly held that sentencing counsel's deficiencies prejudiced Bonner by "den[ying] him of any meaningful opportunity to appeal this 60 + 10 year sentence," (R. p. 3), the only appropriate remedy was a resentencing hearing. Based on existing precedent at the time of Bonner's most recent hearing on sentencing, the trial court was required to review the facts of Bonner's case anew, ignoring any prior sentence imposed. The trial court's failure to do so, and deference to Bonner's prior sentence, unconstitutionally prejudiced Bonner's defense.

i. <u>The trial court erred by failing to treat the matter before it as a resentencing hearing because it was the only constitutionally adequate remedy for resentencing counsel's deficient performance.</u>

When post-conviction relief is granted based on counsel's ineffective assistance, the relief should "remedy the precise prejudice" caused by counsel's deficiency, *Rolen v. State,* 384 S.C.

409, 414-15, 683 S.E.2d 471, 474 (2009), and "restore the status quo that existed before counsel's deficient performance." *See Garza v. Idaho*, 586 U.S. 232, 247 (2019) (remedy for an appeal lost because of counsel's deficient performance is another chance to appeal). Where ineffective assistance is rendered at sentencing, the appropriate remedy is resentencing. *See*, *e.g.*, *Castro v. State*, 417 S.C. 77, 789 S.E.2d 44 (2016) (remanding for resentencing when counsel failed to object to judge's improper consideration of defendant's exercise of jury trial right); *Boan v. State*, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010) (remanding for resentencing when counsel failed to object to discrepancy between oral sentence and written order); *Dervin v. State*, 386 S.C. 164, 169, 687 S.E.2d 712, 714 (2009) (remanding for resentencing when counsel failed to object to a sentence that exceeded the statutory maximum).

In this case, the PCR court granted relief based on counsel's deficient performance at resentencing. As such, the only remedy that would have restored Bonner to the position he was in before the constitutional violation was a new resentencing hearing. In treating the proceeding as a motion for reconsideration, the trial court improperly deferred to Bonner's prior sentence.

ii. Even if the case was properly before the court on a motion for reconsideration, the trial court erred by failing to apply the controlling law in effect at the time of the sentencing hearing.

Regardless of the label placed on the February 8, 2024, hearing, the PCR Court's decision to grant Bonner relief reopened the sentencing judgment, requiring the trial court to apply the case law in effect at the time of the 2024 hearing. *See State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (recognizing that "a court's final judgment in a criminal case is the pronouncement of the sentence"). The trial court erred by failing to apply the requirements for juvenile sentencing set forth in *State v. Smart*, 439 S.C. 641, 889 S.E.2d 573 (2023), *Jones v. State*, 440 S.C. 14, 889

S.C. 590 (2023), and *State v. Mack*, 441 S.C. 526, 894 S.E.2d 820 (Ct. App. 2023) to Bonner's case.

When sentencing a defendant for an offense committed as a juvenile, the court *must* conduct a "specific and individualized" assessment of the "mitigating factors of youth" enumerated by *Aiken*. *Jones*, 440 S.C. at 19, 889 S.E.2d at 593. Specifically, the sentencing court *must* consider five factors:

> "(1) [T]he chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence; (2) the family and home environment that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys; and (5) the possibility of rehabilitation."

Aiken, 410 S.C. at 544, 765 S.E.2d at 577 (citation omitted). As the *Aiken* Court explained, prior proceedings, even if they "touch[ed] on the issues of youth", did not provide "the sort of hearing . . . where the factors of youth are carefully and thoughtfully considered." *Id*. at 543, 765 S.E.2d at 577. In *Jones*, the Supreme Court of South Carolina held that a sentencing court must consider the *Aiken* factors in *any* case where a juvenile is being sentenced in the court of General Sessions. *See id.* at 19, 765 S.E.2d at 593. As such, *Jones* required the trial court to extend *Aiken* to Bonner's case and to conduct "an individualized hearing on [the] mitigating factors of youth." *Jones*, 440 S.C. at 27, 889 S.E.2d at 598. The Supreme Court of South Carolina went on to elaborate in *State v. Smart*, 439 S.C. 641, 889 S.E.2d 573 (2023), on what is required procedurally in juvenile resentencing hearings where the *Aiken* factors are being considered. The *Smart* Court held that resentencing courts may give "no deference to [any] prior sentencing court's decision" and instead must conduct a *de novo* sentencing of the defendant as if for the first time. *Id.* at 645, 889 S.E.2d at 575.

Here, the trial court failed to conduct a *de novo* sentencing as required by *Smart*, explicitly deferring to the prior sentence in its order. While trial court's order started by recognizing that "[t]his matter is before the Court for de novo hearing on the defendant's motion for the Court to reconsider a sentence,"[4] (R. p. 10), the language of the order clearly indicates that the trial court's review of Bonner's case was *anything but de novo*: "[T]his Court finds that the record in this case does not persuade the court to alter or amend the sentence previously imposed for the defendant's conviction for Burglary 1st Degree." (R. p. 14). The trial court's deference to Bonner's prior sentence in plain violation of *Smart* prejudiced Bonner by depriving him of the *de novo* sentencing hearing he is entitled to.

Moreover, by failing to conduct a *de novo* sentencing hearing, the trial court added a second layer of constitutional harm. Since Bonner's initial sentencing and resentencing were prior to *Aiken*, any prior proceeding would not have considered the *Aiken* factors, as it is now required to by *Jones*. Deferring to the prior proceedings simply results in Bonner once again being sentenced without consideration of the hallmark features of youth as required by *Aiken*, *Jones*, and *Smart*.

Additionally, in *State v. Mack*, 441 S.C. 526, 894 S.E.2d 820 (Ct. App. 2023), this Court held that "[a]pplying the *Aiken* factors involves more than repeating the words; it requires applying the substantive content of those factors." *Id.* at 544, 894 S.E.2d at 830. To satisfy this requirement,

[4] At the hearing, the parties agreed the hearing was a resentencing hearing at which the Court was required to consider the *Aiken* factors. When the Court started the hearing by asking, "All right . . . . Motion for reconsideration of sentence?" (R. p. 535). Bonner's counsel responded, "Yes. We're here on a resentencing proceeding for Mr. Bonner." (R. p. 535). Neither the Court nor the State said otherwise. Moments later, Solicitor Barnette referred to the hearing as "this resentencing hearing." (R. p. 536). In closing arguments, Bonner's attorney stated: "It sounds like we all agree that the resentencing hearing is de novo, and I know we discussed that before." (R. p. 604). At no point did the State disagree. In fact, Solicitor Barnette started his closing by agreeing: "I'm just going to focus on the Aiken factors. Also, Your Honor, *I do agree that's where this hearing is going at*. It's basically a hearing concerning that." (R. p. 610) (emphasis added).

the trial court's order must "reflect a careful and thorough consideration of the *Aiken* factors" in coming to its sentencing decision. *Id*. at 545, 894 S.E.2d at 830.

In Bonner's case, the "findings" set forth in the court's order do not even begin to approach the level of consideration required. The trial court's order reflects no effort to apply the *Aiken* factors and is a perfect example of the mere repetition of words this Court prohibited in *Mack*:

> Having considered the evidence presented at the hearing for reconsideration of sentence in mitigation and in aggravation of punishment, including the trial transcript, this Court has taken into account evidence presented relevant to (1) the chronological age of the defendant, (2) the family and home environment surrounding his existence, (3) the nature and circumstances of the offenses for which he was convicted, including the extent of his participation and any peer pressures, (4) his capacity and maturity at the time of the crimes, and (5) his potential for rehabilitation, this Court finds that the record in this case does not persuade the court to alter or amend the sentence previously imposed for the defendant's conviction for Burglary 1st Degree.

(R. p. 13–14). A resentencing court's consideration of a defendant's youth is inadequate when it merely states that it has considered all the *Aiken* factors without addressing "the hallmark features of youth, including 'immaturity, impetuosity, and failure to appreciate [] risks and consequence[s],'" *Mack,* 441 S.C. at 543, 894 S.E.2d at 829, and juveniles' "transient rashness, proclivity for risk, and inability to assess consequences." *Miller v. Alabama*, 567 U.S. 460, 472 (2012). In *Mack*, this Court found the inquiry insufficient where the order only addressed factors with analysis that "could also be said about any seventeen-year-old facing a potential LWOP sentence." 441 S.C. at 540, 894 S.E.2d at 828. Here, the trial court did far less, failing even to mention Bonner's age at sentencing in its order.

As to the second factor, *Aiken* "requires the court to consider the impact of *the defendant's* family and home environment *on his crimes*." *Id.* at 544, 894 S.E.2d at 830 (the resentencing court's order did "not reflect the consideration required by *Aiken*" when it provided that "[the

defendant] grew up in a bad home environment, whereby he witnessed several traumatic events in his childhood[] and was affected by these events as well as many other things in his life" because the court "did not make findings as to how [the defendant's] childhood affected *him*"). Here, the trial court merely stated it had considered Bonner's family and home environment without providing any analysis, despite the substantial evidence that Bonner presented as to this factor: Bonner lacked positive male figures because his father was in and out of prison and absent for most of his youth. (R. p. 590, lines 15–19). Bonner's mother was burdened by financial troubles following an injury that left her unable to work and Bonner's brother's cancer diagnosis. (R. p. 555, lines 6–21; p. 606, line 19–p. 607, line 1). The financial strain that that his brother's treatment placed on the family forced them to move to the West End—a dangerous neighborhood where drug dealing was rampant. (R. p. 555, line 22–p. 556, line 12; p. 607, lines 2–10; p. 566, lines 14–19). At 15, Bonner dropped out of school to care for his newborn son and by 17, he had two children to care and provide for. Driven by the desire to provide for his children and help his mother finance his brother's cancer treatment, Bonner began to associate with "the wrong crowd" of older men who showed him how to make "easy" money and influenced him to participate in criminal activity. (R. p. 607, lines 5–10). The evidence all applies to the second *Aiken* factor but was never considered by the trial court as required under current sentencing law.

Bonner also presented evidence on the remaining *Aiken* factors—the nature of the offense, the defendant's capacity and maturity at the time of the offense, and rehabilitation potential. This evidence included testimony from his mother and friend about his immaturity at the time of the offense compared to Bonner's present maturity level, as well as the testimony of an expert in prison systems and inmate behavior who evaluated Bonner and concluded that "[Bonner] has quite literally grown from adolescence to adulthood while incarcerated in the most difficult prison

environment available. But, like I said, in spite of that he -- he doesn't strike me as being criminally oriented. I don't think he would be a -- a repeat offender." (R. p. 586, line 25–p. 587, line 5). Bonner also presented other facts the trial court could have used to assess these factors: Bonner has obtained his GED, held jobs, developed positive relationships with the correctional officers, and has been housed in character dorms. (R. p. 584, lines 3–25). He has deepened his faith by participating in Bible study and other faith-based programming. (R. p. 570, line 25–p. 571, line 15). He has maintained great relationships with his children, his mother, his girlfriend, and other loved ones and continues to be a loving father who has been as present as possible in his children's lives. (R. p. 557, lines 9–24; p. 569, lines 21–25). Because the trial court made no attempt to expand on any of these factors in Bonner's case, there was certainly no meaningful consideration of them.

The trial court's failure to apply relevant case law and conduct a *de novo* resentencing prejudiced Bonner by depriving him of the constitutional resentencing hearing he was entitled to. For this reason, this Court should reverse the trial court's decision.

II. Appellant's sixty (60) year sentence for nonhomicide offenses committed when he was a juvenile is the functional equivalent of a life without parole sentence because it exceeds his life expectancy and fails to afford him "some meaningful opportunity for release" within his lifetime as required by *Graham v. Florida*.

a. *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, [the appellate] court will not disturb the circuit court's findings absent a manifest abuse of discretion. An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support." *State v. Mack*, 441 S.C. at 535–36, 894 S.E.2d at 825 (quoting *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019)).

b. *Argument*

The trial court's reimposition of Bonner's 60-year sentence violates *Graham v. Florida*, which categorically prohibits juvenile nonhomicide offenders from being sentenced to life without parole and requires they have "some meaningful opportunity to obtain release." 560 U.S. 48. Evidence in the court below established that a 60-year sentence exceeds his life expectancy and fails to provide Bonner with a meaningful opportunity for release. Bonner was 17 at the time of his offense. Sentencing him to 60 years means that he would not have an opportunity for release until he is 77 years old.[5] Life expectancy data clearly establishes that he cannot reasonably expect to live that long. The trial court abused its discretion in imposing this unconstitutional sentence and this Court should reverse.

The Supreme Court has established that juveniles are different from adults for sentencing purposes and may not be subjected to the harshest punishments. In *Roper v. Simmons*, the Supreme Court held that the Eighth Amendment prohibition against cruel and unusual punishment forbid sentencing juveniles to death. 543 U.S. 551 (2005). The Court recognized that juveniles have lessened culpability and are therefore categorically less deserving of the most severe punishments. *Roper*, 543 U.S. at 569. This decision flowed from the basic "precept of justice that punishment for crime should be graduated and proportioned." *Id.* at 560.

Recognizing life without parole is the harshest punishment to which a juvenile may be subjected, the Supreme Court held in *Graham v. Florida* that it violates the Eighth Amendment to

[5] While the Court's order states that the "sentences imposed for Burglary 1st Degree and ABHAN are now deemed to be concurrently and not consecutively imposed," his 60-year sentence still constitutes the functional equivalent of life for the reasons set forth in Bonner's Resentencing Procedure Memorandum, (R. p. 27), and at the hearing. Based on Bonner's life expectancy, a 60-year sentence still deprives Bonner of a meaningful opportunity for release in violation of *Graham*.

sentence juvenile offenders to life imprisonment without the possibility of parole for nonhomicide offenses. 560 U.S. 48 (2010). The Court established in *Graham* that defendants "who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murders." *Id.* at 69. Juvenile nonhomicide offenders thus have "twice diminished moral culpability," requiring a categorical bar against life without parole sentences in such cases. *Id.* The Court also recognized the unique severity of imposing a life without parole sentence on a juvenile offender. "[I]t means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the juvenile offender], he will remain in prison for the rest of his days." *Id.* at 69–70 (citations omitted). Thus, states must give juvenile defendants convicted of nonhomicide offense, "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75 (emphasis added).

The Supreme Court of South Carolina has previously recognized that non-life sentences may be "to all intents and purposes the equivalent of a life sentence" when the sentence exceeds the defendant's "ordinary expectancy of life." *State v. Kimbrough*, 212 S.C. 348, 357, 46 S.E.2d 273, 277 (1948) ("If a defendant convicted of burglary is a man of advanced years, the minimum sentence [of five years] provided by this statute might be equivalent to life imprisonment."). Albeit in a different context, the court recognized that a trial court should take a defendant's life expectancy into consideration when the sentence imposed requires a meaningful opportunity for relief, which *Graham* required the trial court to do in Bonner's case.

Here, the lower court erred in imposing a 60-year sentence on Bonner, as such a sentence is the functional equivalent of a life without parole sentence. By any calculation, such a sentence

would meet or exceed Bonner's life expectancy, denying him any realistic opportunity to obtain release before the end of his life. *Graham*, 560 U.S. at 82.

In the court below, Bonner submitted life expectancy data from an actuarial study commissioned by the South Carolina Commission on Indigent Defense determining the life expectancies of juveniles entering the South Carolina Department of Corrections ("SCDC"). (R. p. 41). This study was conducted by Dr. Vera Dolan, an epidemiologist, who reviewed the SCDC records of every inmate incarcerated from 1996 through 2021, and calculated life expectancies for the entire SCDC population compared to the United States population at large.[6] The results of this actuarial study establish that juveniles who are 17 at the time they enter SCDC can reasonably expect, at most, an additional 32.4 years of life (a total of 49.4 years). (R. p. 111–15).[7] Bonner, who is currently 34, can expect to live about 15 more years. The currently imposed sentence of 60 years therefore significantly exceeds his life expectancy.

Moreover, South Carolina law recognizes that giving a 60-year sentence to a 17-year-old regardless of their incarceration status would be the equivalent of a life sentence. South Carolina Code section 19-1-150 contains life expectancy tables to be used in litigation. According to those tables, the life expectancy for a 17-year-old male is 60.07 additional years of life. S.C. Code § 19-1-150. Should Bonner's sentence remain in place, this would leave him with 00.07 additional years of life outside of prison, which equates to about 25 days. Twenty-five days can hardly be

[6] Her study results are published in tables accompanied by a declaration setting forth her qualifications and methodology for the study. Defendant's Resentencing Procedure Memorandum. (R. p. 41–125).

[7] In reality, this number likely overestimates Bonner's life expectancy in SCDC, as it arises from the data for all races combined. Bonner, a non-Hispanic Black male, can reasonably expect to have an even lower life expectance of 31.8 additional years, given his race. (R. p. 116–20).

considered a "meaningful" opportunity to find "fulfillment outside prison walls," as required by *Graham*. 560 U.S. at 79.

In order to justify imposing a 60-year sentence, the trial court relied on *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019), for the proposition that the Supreme Court of South Carolina "had the opportunity to extend the holding announced in *Graham* to prohibit the imposition of a *de facto* life sentence on a juvenile convicted of a non-homicide offense," and refused to do so. (R. p. 13). Thus, such sentences can never be "*per se* unconstitutional." *Id.* In doing so, the trial court misread and misapplied *Slocumb*. Doing so was legal error.

The *Slocumb* Court "decline[d] to extend *Graham*'s explicit holding . . . to situations *where a juvenile nonhomicide offender commits multiple crimes against multiple victims at multiple points in time*." *Slocumb*, 426 S.C. at 312, 827 S.E.2d at 156 (emphasis added). The *Slocumb* Court denied relief within the narrow set of factual circumstances of Slocumb's case, where a juvenile offender committed "multiple offenses" on "multiple dates" and where there was no evidence of "maturity and rehabilitation." However, the facts of Bonner's case are factually distinct from those in *Slocumb*.

First, the sentences Bonner challenged arise out of a single incident (like in *Graham*) whereas the sentence challenged in *Slocumb* was the accumulation of a series of crimes committed over the course of years. *Id*. at 310, 827 S.E.2d at 155. Slocumb was convicted for two separate sets of conduct. First, he "kidnapped and sexually assaulted a teacher before shooting her in the face and head five times." *Id.* at 299, 827 S.E.2d at 149. Then, three years later, while incarcerated for the initial offense, Slocumb "escaped from custody and raped and robbed another woman in a brutal manner." *Id.* These were distinct offenses, whereas Bonner's case involved a single course of conduct. This distinction makes all the difference, rendering *Slocumb* inapplicable to Bonner's

case. As the justices explicitly noted in the *Slocumb* holding, it applied only "to situations where a juvenile nonhomicide offender commits multiple crimes against multiple victims at multiple points in time." *Id.* at 312, 827 S.E.2d at 156.

Second, Bonner never demonstrated an intent to kill, nor was he convicted of murder or attempted murder. In finding that *Graham* did not protect Slocumb, the *Slocumb* Court noted that there was a "critical difference" in the nature of the offenses committed in *Graham* (armed burglary with assault or battery and attempted armed robbery when he and a co-defendant assaulted a restaurant manager in attempting to rob the restaurant) and by Slocumb (who "kidnapped and sexually assaulted a teacher before shooting her in the face and head five times and leaving her for dead."). *Id.* at 299, 827 S.E.2d at 149. Bonner's offenses are more similar to Graham's than Slocumb's. Bonner and his co-defendants were charged with robbery and assault after they assaulted the victim while robbing her home and to obtain the keys to rob the convenience store next door, with no allegation that the group attempted to or intended to kill the victim.

In light of these differences, the trial court misapprehended the scope of *Slocumb* and erred by reading *Slocumb* to apply in Bonner's case. As a result, the trial court erred in finding Bonner's 60-year sentence did not violate *Graham*'s prohibition against LWOP sentences for juvenile nonhomicide offenders like Bonner.

III. The trial court erred in denying Bonner's motion to recuse.

a. *Standard of Review.*

"Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004).

b. *Argument.*

After twice sentencing Bonner to the maximum sentence he believed allowable under the law, Judge Cole erred in denying Bonner's motion to recuse in Bonner's third sentencing proceeding. Judge Cole's first two sentencing determinations demonstrated a bias toward requiring Bonner to spend the rest of his life in prison. This bias disqualified him and his failure to recuse himself denied Bonner an impartial review of his sentence as required by law.

A judge's failure to disqualify himself may be reversed on appeal where there is "evidence of judicial prejudice." *See Baskin v. Walkup*, 445 S.C. 353, 364, 913 S.E.2d 282, 288 (2025) (quoting *Patel*, 359 S.C. at 524, 599 S.E.2d at 118). "A criminal defendant has a due process right to have his case heard by a fair and impartial judge." *See Schweiker v. McClure*, 456 U.S. 188, 195 (1982) ("[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities."). To uphold this right, the South Carolina Code of Judicial Conduct requires "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Rule 3(E)(1)(a), CJC, Rule 501, SCACR. This includes instances where "the judge has a personal bias or prejudice concerning a party . . . or personal knowledge of disputed evidentiary facts concerning the proceeding." *Id.*; *see also Roche v. Young Bros*., 332 S.C. 75, 84–85, 504 S.E.2d 311, 316 (1998).

Specifically in the juvenile resentencing context, the Supreme Court of South Carolina determined it was improper for the original sentencing judge to sit on a resentencing hearing required under *Aiken*. *In re Administrative Order*, 415 S.C. 460, 461, 783 S.E.2d 534, 534 (2016). As the Court later explained, in the *Aiken* context, "the resentencing court may give no deference to the

prior sentencing court's decision."[8] *Smart*, 439 S.C. at 645, 889 S.E.2d at 575. To avoid any questions of impartiality in resentencing proceedings under *Aiken*, the Court required that in assigning resentencing judges, "the Chief Justice shall take into consideration any actual or potential conflicts, and shall refrain from assigning the matter to the original sentencing judge." *In re Administrative Order*, 415 S.C. at 461, 783 S.E.2d at 534.

Judge Cole erred in denying Bonner's recusal motion by failing to consider the implications of the Supreme Court's juvenile sentencing decisions since *Graham* and *Aiken* that require the trial court to consider the *Aiken* factors *de novo* and the Supreme Court's order assigning new judges to *Aiken* resentencing cases. To provide a true *de novo* consideration of Bonner's sentence, Judge Cole would have been required to set aside two prior deliberations in which he concluded Bonner was not deserving of any opportunity for release—the second time in contravention of *Graham*—which he expressed through imposition of life without parole and seventy-year sentences in Bonner's first two sentencing proceedings. In this way, Judge Cole's prior sentencing decisions are similar to *State v. Atterberry*, in which a judge "expressed at the first trial . . . a decided opinion of the guilt of the accused, and should not have presided at the second trial of the defendant when objection was made." 134 S.C. 392, 392, 133 S.E. 101, 103 (1926). In previously expressing his opinion on the appropriate sentence for Bonner, Judge Cole's decisions "disqualified him to preside at the [subsequent] trial." *Id.*

[8] Though the Court issued this directive in an *Aiken*, as opposed to *Graham* resentencing, the same principles apply to Bonner's case. The *Aiken* juvenile factors must be considered whenever a juvenile is sentenced, regardless of whether the crime was a homicide or non-homicide offense. *Jones*, 440 S.C. at 25, 889 S.E.2d at 596 ("[W]e are mindful that juveniles are entitled to careful sentencing under the Eighth Amendment, and we direct circuit court judges to consider the mitigating factors of youth articulated in *Aiken v. Byars*.").

Psychological research explains why such prior decisions and remarks disqualify a judge. Research indicates it is difficult for an individual to set aside prior considerations and avoid anchoring a new sentence to the original sentence. *See* Birte Enough & Thomas Mussweiler, *Sentencing Under Uncertainty: Anchoring Effects in the Courtroom,* 31 J. APP. SOC. PSYCH. 1535, 1536–37 (2006) (describing the anchoring effect as a form of judgmental bias where an individual relies heavily on the first piece of information they receive in making a judgment). In fact, Judge Cole's anchoring of the "new" sentence to his original sentencing decisions was demonstrated by his decision keep Bonner's sixty-year burglary sentence in place, denying any meaningful opportunity for Bonner's release, and treating Bonner's hearing as a reconsideration rather than a *de novo* hearing. *See supra*, Section I. Judge Cole's erroneous denial of the motion to recuse, therefore, denied Bonner a resentencing hearing free from deference—a hearing he would have received from a new sentencing judge as would have been required if his case were remanded pursuant to *Aiken. See In re Administrative Order*, 415 S.C. at 461, 783 S.E.2d at 534.

CONCLUSION

For the reasons stated above, the trial court erred in imposing a 60-year sentence on Appellant. Appellant respectfully requests this Court vacate his sentence and remand for resentencing conducted in compliance with *Graham*, *Aiken*, *Jones*, *Smart*, and *Mack*. Appellant further requests that on remand, his case be assigned to a different judge.

[Signature block on following page]

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