STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2026-UP-215

THE STATE,

RESPONDENT,

V.

DON LEEQUIN BROWN,

PETITIONER

APPELLATE CASE NO. 2023-001336

Petition for Rehearing

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Don Leequin Brown, requests this Court grant rehearing. On May 6, 2026, this Court affirmed the forty-five (45) year sentence imposed for murder when Petitioner was seventeen (17) years old at the time of arrest. State v. Brown, Op. No. 2026-UP-215 (S.C. Ct. App. filed May 6, 2026). Prior to imposing the forty-five (45) year sentence, the trial court failed to conduct an individualized sentencing hearing and failed to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). In affirming the sentence this Court wrote, "We decline to extend the holding in Aiken where a life sentence was not imposed." State v. Brown, Op. No. 2026-UP-215 (S.C. Ct.

App. filed May 6, 2026). Counsel respectfully submits that this Court misapprehended the language in Aiken v. Byars, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014) (n. 10 omitted) (emphasis added) where the South Carolina Supreme Court wrote, "However, Miller requires that **before** a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored." The individualized sentencing hearing where the judge must consider the hallmark features of youth must take place **before** sentencing, not after.

Additionally, counsel respectfully submits that this Court misapprehended the clear language in Aiken v. Byars, (2014), where the Court wrote, "We hold the principles enunciated in Miller v. Alabama apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders **who may be subject to a sentence of life imprisonment without the possibility of parole.**" 410 S.C. at 545, 765 S.E.2d at 578 (emphasis added). Respectfully, the principles of Aiken v. Byars, and Miller v. Alabama apply even when a life sentence is not imposed. The key is whether the juvenile faced a sentence of life without parole. The language in Aiken v. Byars does not require the imposition of a sentence of life without parole as a condition precedent to the requirement of an individualized sentencing hearing to consider the factors required by Aiken v. Byars, and Miller v. Alabama. A procedure where a judge must impose a life sentence **before** considering the hallmark features of youth is contrary to the mandates of Aiken v. Byars, and Miller v. Alabama. Counsel for Petitioner respectfully requests rehearing.

The trial court erred in refusing to reconsider the forty-five (45) year sentence imposed as a violation of the Eighth Amendment's prohibition on cruel and unusual punishments and South Carolina Constitution's article I, section 15 prohibition against cruel, corporal, or unusual punishment because Petitioner was seventeen (17) years old at the time of arrest and faced a sentence of life without parole for murder, but prior to

sentencing the judge failed to conduct an individualized sentencing hearing and failed to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

On September 12, 2020, Petitioner, seventeen-year-old Don Brown, was driving a car with Tronahz Whittington, Che Ransom, Mikkie McLeod, Shamontae Graham, and Travontae Mitchell as passengers. (R. p. 312, lines 4-23; p. 321, lines 19-20). The six were on their way to Tronahz's mother's house when Tronahz recognized Jamie Johnson's Tahoe and said, "There goes Jamie. He owe me money." (R. p. 576, lines 4-18). At trial Graham testified, "Jamie Johnson stopped at a stop sign on D Street. Tronahz then told the driver to pull in front of him. So we pulled in front of the victim's Tahoe. Tronahz opened the door, got out the car, and he fired an AR at the Tahoe and shot the victim's car in the windshield, and that's when I saw the blood from the victim. I saw, like, his head, like go down. Got hit with the gun." (R. p. 309, lines 9-15). Graham testified that Tronahz had an AR-15 weapon. (R. p. 325, lines 4-5). According to Graham, Che Ransom and Mikkie McLeod also got out of the car and Travontae stepped out of the car but quickly got back in. (R. p. 331, lines 5-10). Graham testified that three people fired weapons. (R. p. 331, lies 13-16). Graham testified Che Ransom had a .45 and Mikkie McLeod had a 9 mm handgun. (R. p. 325, lines 6-9). McLeod testified that "Tip" (Travontae Mitchell R. p. 568, lines 19-21) and Che got out of the car and both had nine mm guns or "nines." (R. p. 580, line 22 – p. 581, lines 1-10). Graham confirmed that Petitioner did not have a weapon. (R. p. 378, lines 4-5). Graham testified that there was no plan to kill Jamie Johnson. (R. p. 378, lines 2-3).

Tronahz Whittington was convicted separately in an earlier trial and sentenced to forty-five (45) years. (R. p. 748, lines 6-9). Petitioner and his co-defendants, Che Ransom and Travontae Mitchell, were each convicted at their joint trial and each sentenced to the same forty-five-year sentence as Whittington. While all co-defendants were teenagers, Petitioner was the

unarmed driver with no prior record but received the same sentence as the others. At sentencing the judge failed to conduct an individualized sentencing hearing to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The trial judge erred.

There was very little mitigation presented at sentencing. Trial counsel told the judge that while Petitioner was on bond he came to every appointment and cooperated with counsel. (R. p. 753, line 21 – p. 754, lines 1-2). Trial counsel told the judge, "At the time of this incident, he [Petitioner] was 17 years old. He was just a young guy, Judge. The sentence is going to be almost twice his - - if you do 30 years, it will be almost twice as old as - - as long as they have been alive." (R. p. 754, lines 3-6). Counsel asked the judge to impose the minimum sentence based on his age. (R. p. 754, lines 7-9). Petitioner's mother told the judge, "I want to apologize to the Johnson family. My son was an A/B honor roll student. He's not a killer. Please try to be lenient on him, please." (R. p. 754, lines 23-25). No other mitigation was presented.

Prior to imposing the sentences, the judge said, "All right. Gentlemen, I don't see any justifiable reason to sentence you to any more than the other codefendant who was found guilty. Likewise, I don't see any justifiable reason to sentence you to any less than the codefendant." (R. p. 757, lines 1-5). Petitioner and his co-defendants, Che Ransom and Travontae Mitchell, were each sentenced to forty-five (45) years in prison, the same sentence imposed on the more culpable co-defendant, Whittington. (R. p. 757, lines 6-12).

On June 1, 2023, Petitioner filed a motion to reconsider sentence. (R. p. 780). In the motion Petitioner argued that the judge failed to evaluate mitigating factors including "the fact that the evidence at trial established that co-Defendant Whittington fired the only two shots directed at the victim, including the fatal shot, and did so out of an animus that had been brewing for several weeks." (R. p. 778). Petitioner argued, "These facts are not present in analyzing this

Defendant's culpability." (R. p. 778). Petitioner additionally argued, "As such, the Defendant submits that failure to consider all relevant conduct, including the absence of pre-planning and deadly conduct in his sentencing, violates his rights to due process under the 14th Amendment to the U.S. Constitution and Article I Section 3 of the South Carolina State Constitution, as well as his right to be free from cruel and unusual punishment pursuant to the 8th Amendment of the U.S. Constitution and Article I Section 15 of the South Carolina State Constitution." (R. p. 778).

On August 10, 2023, the judge heard the motion for reconsideration of sentence and motion for new trial. (R. pp.758-761). During the hearing counsel for Petitioner told the judge, "We thought 30 years is more appropriate based on his age and criminal record and the involvement in the trial." (R. p. 759, lines 18-20). The prosecutor told the judge that none of the three co-defendants tried together had prior records. (R. p. 756, lines 16-17). The prosecutor also told the judge, "Now, it was conceded by the State he [Petitioner] did not have a gun. There was no witness that presented evidence that he had a gun, and we didn't present evidence he had a gun. However, in utilizing the vehicle to block the victims in, he did participate fully in the murder in this case." (R. p. 760, lines 18-20). Counsel for Petitioner argued there was evidence the car was not blocked in and had reasonable access to exit. (R. p. 761, lines 8-11). Counsel for Petitioner additionally argued that there was no plan for Petitioner to do any criminal act. (R. p. 761, lines 3-16). At trial Investigator Edwards confirmed that any planning by Whittington to rob Jamie Johnson took place after all of the young men were already in the car. (R. p. 448, lines 1-17).

The judge denied the motion to reconsider sentence stating, "I'm going to deny your motion. I remember this trial. It was hand of one is the hand of all, and the jury found that they were all acting together in aiding and abetting one another; so, therefore, the guilt of one is the

guilt of all of them, and I'll deny your motion." (R. p. 761, lines 17-22). The trial judge abused his discretion in sentencing Petitioner to forty-five (45) years without conducting an individualized sentencing hearing to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), when Petitioner was seventeen (17) years old at the time of arrest and faced a sentence of life without parole for murder. The "hand of one is the hand of all" is a theory of liability, not sentencing, especially in light of the individualized requirements for juvenile sentencing.

The Eighth Amendment to the United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The South Carolina Constitution provides that, "Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained." S.C. Const. art. I, § 15.

In Miller v. Alabama, 567 U.S. 460, 479, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 407 (2012), the United States Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. In Aiken v. Byars, 410 S.C. 534, 540-541, 765 S.E.2d 572, 575-576 (2014), the South Carolina Supreme Court found that "Miller does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." In Aiken, the South Carolina Supreme Court held that the principles enunciated in Miller v. Alabama apply ". . . prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." 410 S.C. at 545, 765 S.E.2d at 578. In a footnote, the South Carolina Supreme Court wrote, ". . . for the purposes of this opinion, a juvenile was an individual under eighteen years of age." Aiken, 410

S.C. at 537 n.1, 765 S.E.2d at 573 n.1. The principles of Miller v. Alabama and Aiken v. Byars apply to Petitioner because he was seventeen (17) years of age and was subject to a sentence of life without parole for murder.

Pursuant to Miller and Aiken, a sentencing court must consider at a hearing: (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." Miller, 132 S.Ct. at 2468; Aiken, 410 S.C. at 544, 765 S.E.2d at 577. The Court in Aiken noted:

> While we do not go so far as some commentators who suggest that the sentencing of a juvenile offender subject to a life without parole sentence should mirror the penalty phase of a capital case, we are mindful that the Miller Court specifically linked the individualized sentencing requirements of capital sentencing to juvenile life without parole sentences. 132 S.Ct. at 2463, 2467–68. Thus, the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above.

410 S.C. at 544–45, 765 S.E.2d at 577 (n. 9 omitted).

The sentencing hearing in the present case failed to meet the requirements of Miller and Aiken. The judge failed to consider the hallmark features of youth. The attorney mentioned Petitioner's age of seventeen (17) as nothing more than a chronological fact in a vague plea for mercy. As noted in Aiken, "[A]lthough some of the hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by Miller where the factors of youth are

carefully and thoughtfully considered. Many of the attorneys mention age as nothing more than a chronological fact in a vague plea for mercy. Miller holds the Constitution requires more." 410 S.C. at 543, 765 S.E.2d at 577. (n. #8 omitted). In State v. Mack, 441 S.C. 526, 544, 894 S.E.2d 820, 830 (Ct. App. 2023), the South Carolina Court of Appeals wrote, "Applying the Aiken factors involves more than repeating the words; it requires applying the substantive content of those factors." The sentencing judge failed to apply the substantive content of the Aiken factors in deciding the sentence to impose.

The judge failed to consider Petitioner's home and family environment. The judge failed to consider Petitioner's limited role in the offense as reflected when the judge said, "I'm going to deny your motion. I remember this trial. It was hand of one is the hand of all, and the jury found that they were all acting together in aiding and abetting one another; so, therefore, the guilt of one is the guilt of all of them, and I'll deny your motion." (R. p. 761, lines 17-22). The judge sentenced Petitioner to the same forty-five (45) year sentence that Whittington, the most culpable of the co-defendants, received. The judge failed to consider the incompetencies associated with youth and failed to consider the possibility of rehabilitation especially in light of the fact that Petitioner had no prior record. The judge failed to consider the factors required by Aiken prior to sentencing Petitioner. "Miller is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution." 410 S.C. 534, 543, 765 S.E.2d 572, 576–77 (2014). The failure in the present case violates Petitioner's right to be free from cruel and unusual punishment pursuant to the 8th Amendment of the U.S. Constitution and Article I Section 15 of the South Carolina State Constitution. The failure to consider the Aiken factors constitutes an error of law.

In affirming the forty-five (45) year sentence imposed on a juvenile who was seventeen (17) years old at the time of arrest without an individualized sentencing hearing to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), this Court wrote, "We decline to extend the holding in Aiken where a life sentence was not imposed." State v. Brown, Op. No. 2026-UP-215 (S.C. Ct. App. filed May 6, 2026). Counsel respectfully submits that this Court misapprehended the language in Aiken v. Byars, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014) (n. 10 omitted) (emphasis added) where the South Carolina Supreme Court wrote, "However, Miller requires that **before** a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored." The individualized sentencing hearing where the judge must consider the hallmark features of youth must take place **before** sentencing, not after.

Additionally, counsel respectfully submits that this Court misapprehended the clear language in Aiken v. Byars, (2014), where the Court wrote, "We hold the principles enunciated in Miller v. Alabama apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders **who may be subject to a sentence of life imprisonment without the possibility of parole.**" 410 S.C. at 545, 765 S.E.2d at 578 (emphasis added). Respectfully, the principles of Aiken v. Byars, and Miller v. Alabama, apply even when a life sentence is not imposed. The key is whether the juvenile faced a sentence of life without parole. The language in Aiken v. Byars does not require the imposition of a sentence of life without parole as a condition precedent to the requirement of an individualized sentencing hearing to consider the factors required by Aiken v. Byars, and Miller v. Alabama. A procedure where a judge must impose a life sentence **before** considering the hallmark features of youth is contrary to the mandates of Aiken v. Byars, and Miller v. Alabama.

After declining to extend the holding in Aiken because a life sentence was not imposed this Court then wrote, "The trial judge gave Petitioner and his attorney an opportunity to present mitigating evidence prior to sentencing and then later granted a hearing on Petitioner's post-trial motion for sentence reconsideration. At the reconsideration hearing, Petitioner presented no evidence or testimony relevant to the Aiken factors other than mentioning Petitioner's youth. Having given the trial judge no relevant information to consider, we find no grounds to set aside the court's sentence." State v. Brown, Op. No. 2026-UP-215 (S.C. Ct. App. filed May 6, 2026).

First, under the analysis made by this Court, the sentencing judge would be under no duty to consider the Aiken factors because a life sentence was not imposed. Respectfully, the analysis by this Court is flawed and as argued above, the Aiken factors must be considered if the juvenile is **facing** the imposition of a life sentence, as Petitioner was. Second, trial counsel should have presented evidence relevant to the Aiken factors. Counsel respectfully submits, however, that the sentencing judge had the obligation to ask about the Aiken factors as sentencing factors he was required to consider. As the South Carolina Supreme Court wrote in Aiken v. Byars, "Miller does more than ban mandatory life sentencing schemes for juveniles; it establishes an **affirmative requirement that courts** fully explore the impact of the defendant's juvenility on the sentence rendered." 410 S.C. at 540-541, 765 S.E.2d at 575-576 (emphasis added). In Jones v. State[1], 440 S.C. 14, 25, 889 S.E.2d 590, 596 (2023), the South Carolina Supreme Court wrote, "However, we 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, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014)." Petitioner did not receive careful sentencing, as required under the Eighth Amendment. The

[1] As noted in n. #2 of the opinion, Jones was decided after Petitioner's trial but prior to the reconsideration hearing.

sentencing judge erred in failing to consider the mitigating factors of youth articulated in Aiken v. Byars.

Based on the above arguments, Petitioner respectfully seeks rehearing, a finding that Petitioner did not receive careful sentencing or a sentencing hearing that complies with the mandates of Miller and Aiken, and a remand for an individualized sentencing hearing where the judge must consider the factors required by Miller and Aiken.

Respectfully submitted,

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ATTORNEY FOR PETITIONER

This 21st day of May, 2026.

RECEIVED
May 21 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON LEEQUIN BROWN,

PETITIONER

APPELLATE CASE NO. 2023-001336

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Don Leequin Brown, #391075, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 21st day of May, 2026.

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Kathrine H. Hudgins
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ATTORNEY FOR PETITIONER

From: Stock, Chris
To: Melody Brown; Angela Brown
Cc: Hudgins, Kathrine
Subject: 2023-001336 - The State v. Don Leequin Brown - Petition for Rehearing
Date: Thursday, May 21, 2026 2:55:00 PM
Attachments: 2023-001336 - The State v. Don Leequin Brown - Petition for Rehearing - AG Cover Letter.pdf
2023-001336 - The State v. Don Leequin Brown - Petition for Rehearing.pdf

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Ms. Brown,

Please find attached for service the Petition for Rehearing for Don Leequin Brown's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

Chris Stock
Administrative Coordinator
Commission on Indigent Defense
Appellate Division
(803) 734-1330