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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Darlington County
Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

PETITIONER,

V.

ERIC ANTON GRAHAM,

RESPONDENT

Opinion No. 2025-UP-396 (S.C. Ct. App. Filed December 3, 2025)

APPELLATE CASE NO. 2026-000776

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI

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

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE

Whether the Court of Appeals correctly held the trial court erred where it failed to apply the *Aiken v. Byars* factors to Respondent, where the court did not make findings or conclusions regarding the *Aiken* factors, since the sentencer of a juvenile defendant must apply the *Aiken* factors for a life without parole sentence to be permissible?

STATEMENT OF THE CASE

On February 20, 1997, a Darlington County Grand Jury indicted Eric Graham, Respondent, for the December 7, 1996, murder of C.W., Decedent. App. 587. Respondent was tried before the Honorable Paul M. Burch, and a jury, on or about August 24 – 28, 1998. Karl H. Smith represented Respondent. Billie E. Blackmon prosecuted the case. App. 165; App. 166, ll. 1-4; App. 260, ll. 16-19; App. 381, l. 25 – 382, l. 1; App. 569. Respondent was convicted as indicted, and he was sentenced to life imprisonment without the possibility of parole. App. 561, ll. 5-14; App. 568, ll. 7-10. On September 4, 1998, the trial court heard and denied post-trial motions. App. 570 – 581.

On June 9, 2016, Respondent filed a motion for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). On August 17, 2016, this Court issued an order vesting the Honorable Roger E. Henderson with exclusive jurisdiction over the resentencing motion. App. 590 – 591.

On January 19, 2023, a resentencing hearing was held before Judge Henderson. Elizabeth Franklin-Best represented Respondent. Kelley Jackson appeared on behalf of the State. App. 1. The court heard testimony and argument and took the matter under advisement. App. 2; App. 162, l. 21 – 163, l. 4. On January 23, 2023, the court issued a new sentence sheet in which it resentenced Respondent to life without parole. App. 592 – 593.

On January 28, 2023, Respondent served his notice of appeal. On December 3, 2025, the Court of Appeals vacated and remanded to the circuit court for a new hearing and findings of fact and conclusions of law pursuant to *Aiken*. App. 667 – 669. The State served a Petition for Rehearing. App. 670 – 679. The Court of Appeals requested a return to the petition. App. 681. Respondent made his Return to the Petition for Rehearing. App. 682 – 687. On February 27,

2026, the Court of Appeals denied rehearing. App. 668. The State has served its Petition for Writ of Certiorari to the Court of Appeals.[1] This Return follows.

[1] The State has served an Appendix along with its Petition for Writ of Certiorari to the Court of Appeals. For ease of reference, Respondent herein cites to the Appendix page numbers in bold at the bottom of the pages of the record.

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." *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019)). The appellate courts will not disturb the circuit court's findings absent an 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. *Id.*

ARGUMENT

The Court of Appeals correctly held the trial court erred where it failed to apply the *Aiken v. Byars* factors to Respondent, where the court did not make findings or conclusions regarding the *Aiken* factors, since the sentencer of a juvenile defendant must apply the *Aiken* factors for a life without parole sentence to be permissible.

The trial court erred when it resentenced Respondent to life without parole. Pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), the circuit court must consider the *Aiken v. Byars* factors. *Aiken v. Byars*, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014). Because the circuit court provided neither an on-the-record ruling nor a written order containing findings of fact and conclusions of law, the record does not demonstrate the court applied the *Aiken* factors. The Court of Appeals correctly vacated and remanded.

Relevant facts

On the night of December 7, 1996, seventeen-year-old Respondent and his seventeen-year-old girlfriend, C.W., were on the couch watching a movie at the home of Respondent's parents in Darlington County. App. 261, ll. 16-21; App. 216, l. 3 – 222, l. 3; App. 236, ll. 13-25; App. 414, l. 7 – 416, l. 25; App. 125, l. 13. The young couple had a "lovey-dovey" relationship and had not been arguing. App. 413, ll. 22-24; App. 421, ll. 7-17. Respondent's eighteen-year-old first cousin, Ms. McDonald, was with them watching the movie. The girls sat at either end of the couch and Respondent sat in the middle. App. 410, ll. 15-19; App. 221, l. 24 – 222, l. 3; App. 409, ll. 15-24; App. 435, ll. 20-22.

Around 1:30 a.m., McDonald got up to go to bed, since she was not enjoying the movie. A shot rang out within seconds. Respondent began to scream. McDonald turned around and saw smoke coming out of C.W.'s mouth; blood was everywhere. App. 216, ll. 10-18; App. 221, ll. 3-

23; App. 239, ll. 9-17; App. 274, l. 17 – 275, l. 9; App. 418, l. 11 – 424, l. 9; App. 438, l. 22 – 443, l. 4. C.W. was killed by a single contact gunshot wound from a bullet that entered under her chin and exited the top of her head. App. 386, l. 12 – 388, l. 8.

McDonald called 911 and woke Respondent's mother, Mrs. Graham. Mrs. Graham went into the family room where Respondent was screaming and crying and holding C.W. According to Mrs. Graham, Respondent stated that he had gotten the gun out, C.W. hit his arm, and the gun accidentally went off. "She grabbed the gun." App. 220, ll. 17-22; App. 235, ll. 14-22; App. 240, l. 7 – 241, l. 3; App. 426, l. 20 – 428, l. 10; App. 480, l. 4 – 485, l. 6. Mr. John Graham, Respondent's uncle, said that Respondent stated, "I'm sorry. Look what I've done. It's my fault." Mr. John Graham said Respondent fell down in front of C.W.'s body and stated, "Look what you made me do." App. 452, l. 23 – 453, l. 3; App. 458, ll. 7-19.

When law enforcement arrived, two family members were holding Respondent down on the floor; the gun was a few feet away on the floor by the television. The body was seated on the couch covered with a blanket. App. 229, ll. 4-16; App. 217, l. 7 – 219, l. 10; App. 224, l. 22 – 225, l. 22; App. 233, ll. 3-7; App. 247, ll. 12-24. Officers heard Respondent say, "I shot her, I shot her." App. 262, l. 17 – 263, l. 1. Officers heard Respondent's father, Mr. Raymond Graham, Sr., say, "I told you that damn gun was gone get you in trouble." App. 263, ll. 2-6. No gunshot residue was found on C.W.'s hands. App. 354, l. 23 – 355, l. 18.

Respondent was tried for murder. The State argued the malice in the case was malignant recklessness. App. 512, l. 15 – 513, l. 4. The defense argued accident. App. 528, ll. 8-12. Respondent was convicted and sentenced to life imprisonment without the possibility of parole. App. 561, ll. 8-14; App. 568, ll. 7-10. At the time of the crime, S.C. Code Ann. § 16-3-20

(1996), provided that when the punishment for murder was life imprisonment, "life imprisonment" means until the death of the offender.

In 2016, Respondent applied for resentencing pursuant to *Aiken v. Byars*. As seen, he was seventeen at the time of the offense. App. 590 – 591. A hearing was convened. Respondent had then been in prison for twenty-six years. The circuit court heard testimony and a number of exhibits, including the trial transcript, were entered. App. 1 – 5; App. 15, ll. 6-7.

Favorable evidence presented by Respondent included evidence about his childhood which went to the possibility of rehabilitation, including testimony about his religious upbringing. Respondent was raised going to New Hopewell Missionary Baptist Church. He went to Sunday School and was in the choir and youth groups. Respondent had a tight-knit, extensive family that lived close to each other in Darlington County. Twenty-five family members and friends appeared in support of Respondent at the hearing. App. 22, l. 14 – 24, l. 4; App. 35, l. 24 – 37, l. 12; App. 143, ll. 3-6; App. 586.

Respondent was a smart young man who made good grades in school before he was expelled. Respondent was expelled for carrying a weapon on school grounds prior to the murder. He cooperated with the police and helped them with that case. Peers were involved in the offense. App. 24, l. 14 – 25, l. 15; App. 155, l. 23 – 156, l. 5. Regarding the murder trial, during post-trial motions Respondent's trial counsel stated that Respondent did not follow his repeated advice that Respondent should testify, and he believed Respondent did not comprehend the seriousness of the case. Counsel averred he thought Respondent was not competent to assist in his defense. App. 572, l. 6 – 573, l. 19.

Respondent and Decedent had a good relationship. App. 19, l. 13 – 20, l. 5. As seen, Respondent was extremely upset, screaming and crying immediately after C.W. was shot. He

was remorseful when he addressed the resentencing court. App. 140, l. 21 – 141, l. 3. The court heard expert testimony from Dr. Elizabeth Cauffman, a psychologist whose area of focus was adolescent development and juvenile justice. Dr. Cauffman's testimony included an explanation that impulse control is underdeveloped in seventeen-year-olds, such that an adolescent can know the right thing to do but still may be unable to self-regulate to do it. App. 86, l. 3 – 94, l. 13.

The resentencing court took the matter under advisement. App. 162, ll. 21-22. It signed a new sentence sheet four days later, in which it resentenced Respondent to life imprisonment without the possibility of parole. App. 1; App. 592 – 593.

Discussion

The Eighth Amendment prohibits the infliction of cruel and unusual punishments. U.S. Const. amend. VIII. This "guarantees individuals the right not to be subjected to excessive sanctions," and applies to the States through the Fourteenth Amendment. *Roper v. Simmons*, 543 U.S. 551, 560 (2005). In the context of juvenile sentencing, the "United States Supreme Court sequentially has interpreted the protections of the Eighth Amendment to hold that juveniles are entitled to different treatment in sentencing when the death penalty or a life-without-parole sentence is imposed." *Jones v. State*, 440 S.C. 14, 26, 889 S.E.2d 590, 597 (2023). *See Roper v. Simmons*, 543 U.S. at 575 (Eighth Amendment prohibits capital punishment for murder where offenders were under eighteen at time of crime); *Graham v. Florida*, 560 U.S. 48, 74 (2010) (Eighth Amendment prohibits life without parole for offenders who were under eighteen and committed nonhomicide offenses); *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (mandatory life without parole for those under age eighteen at time of homicide violates the Eighth Amendment).

"A hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from

those who may not." *Montgomery v. Louisiana*, 577 U.S. 190, 210 (2016) (quoting *Miller*, 567 U.S. at 465). A sentencer "must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Miller v. Alabama*, 567 U.S. at 489. *Miller* does not require the sentencer to make a separate finding of permanent incorrigibility before imposing a life without parole sentence. *Jones v. Mississippi*, 593 U.S. 98, 109 (2021).

South Carolina has "followed United States Supreme Court precedent in interpreting the Eighth Amendment as applied to South Carolina law." *Jones v. State*, 440 S.C. at 27, 889 S.E.2d at 597 (citing *Aiken*, 410 S.C. 534, 765 S.E.2d 572). *Aiken* requires juveniles receive an individualized hearing where the mitigating hallmark features of youth are fully explored before they may be sentenced to life without parole. *State v. Smart*, 439 S.C. 641, 648, 889 S.E.2d 573, 577 (2023).

> *Miller* establishes a specific framework, articulating that the factors a sentencing court consider at a hearing must include: (1) the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence; (2) the family and home environment that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the incompetencies associated with youth—for example, the offender's inability to deal with police officers or prosecutors (including on a plea agreement) or the offender's incapacity to assist his own attorneys; and (5) the possibility of rehabilitation.

Aiken v. Byars, 410 S.C. at 544, 765 S.E.2d at 577 (cleaned up).

"[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*." *Jones v. State*, 440 S.C. at 25, 889 S.E.2d at 596. "The resentencing court must consider all the evidence and arguments presented at the resentencing

hearing and impose an appropriate sentence without any regard to the prior sentencing court's thought process or decision." *State v. Smart*, 439 S.C. at 645, 889 S.E.2d at 575.

The Court of Appeals correctly held "the circuit court abused its discretion when it failed to apply the *Aiken* factors to Graham." *State v. Graham*, Op. No. 2025-UP-396 (S.C. Ct. App. filed December 3, 2025). App. 668. Although the judge stated he would apply the law, judges always intend to follow the law yet they can still make mistakes. In *State v. Mack*, 441 S.C. 526, 540-44, 894 S.E.2d 820, 828-30 (Ct. App. 2023), *cert. denied*, the resentencing court erred where it did not conduct an inquiry into the impact of the defendant's family and home environment on his crimes and where its order did not consider the hallmark features of youth at all. In contrast, in *State v. Smart*, 439 S.C. at 646, 889 S.E.2d at 576, this Court was "convinced the resentencing court thoroughly considered" the defendant's background and history in light of the *Aiken* factors. There, the resentencing court issued an extensive oral ruling, which comprised approximately forty pages of transcript, wherein it provided findings on each of the *Aiken* factors.[2]

While Respondent does not assert the court must issue a forty-page ruling, it must issue a ruling which demonstrates it applied the *Aiken* factors. The ruling must reflect that the sentence was imposed within the limits prescribed by law (*Aiken*) on the judge's discretion. Absent such a ruling, there can be no meaningful appellate review. *See State v. Smart*, 439 S.C. at 646, 889 S.E.2d at 576 ("After a careful review of the entire record, [] we are convinced the resentencing court thoroughly considered Smart's background and history in light of the *Aiken* factors."); *State v. Mack*, 441 S.C. at 540, 894 S.E.2d at 827 ("we will review the resentencing court's process in considering the *Aiken* factors"); *State v. Miller*, 433 S.C. 613, 628, 861 S.E.2d 373,

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[2] *See State v. Smart*, Appellate Case No. 2021-000987, Record on Appeal pp. 357 – 396.

380 (Ct. App. 2021), *aff'd*, 441 S.C. 106, 893 S.E.2d 306 (2023) ("trial court did not err in its sentencing procedure" where it "considered each factor listed in [*Aiken v.*] *Byars*"). *See generally Kent v. United States*, 383 U.S. 541, 561 (1966) ("Meaningful review requires that the reviewing court should review. It should not be remitted to assumptions."); *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (Ct. App. 2007) (new trial is appropriate if appellant establishes the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review). Juveniles are entitled to different treatment before they may be sentenced to life without parole. Without findings and conclusions, an appellate court cannot conduct review for compliance with *Aiken*. *Smart*, 439 S.C. at 647-48, 889 S.E.2d at 576-77 (resentencing court followed appropriate procedure under *Aiken* where the record supported its findings).

Trial courts make specific findings and conclusions regularly. *E.g.*, *State v. Glenn*, 429 S.C. 108, 123, 838 S.E.2d 491, 499 (2019) ("While we understand that written orders are not always practical given the timing of the immunity hearing, the circuit court, in announcing its ruling, should at least make specific findings on the elements on the record."); *State v. Heyward*, 441 S.C. 484, 493, 895 S.E.2d 658, 663 (2023) (defendant in a criminal trial may not be shackled in the presence of the jury unless the trial court makes specific findings on the record as to the particular reasons the restraints are necessary). In the realm of juvenile punishment, the family court must set forth its findings and conclusions regarding the propriety of a juvenile's disposition and sentencing in adult court in order to comply with constitutional mandates and permit appellate review. *See Kent v. United States*, 383 U.S. at 557-61 (while the juvenile court had considerable latitude in whether to waive or retain jurisdiction over a juvenile defendant, due process requires a statement of reasons for the juvenile court's decision, and the statement "must

set forth the basis for the order with sufficient specificity to permit meaningful review"); *In Interest of Sullivan*, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980) (family court must "include in its waiver of jurisdiction order a sufficient statement of reasons for, and considerations leading to, that decision" to transfer the juvenile to general sessions court). This situation too requires findings.

The State cites *Jones v. Mississippi*, *supra*, to support its argument no on-the-record fact-finding is required. Petition for Writ of Certiorari at 15 – 17. However, *Jones* held a sentencer is not required to make a finding of permanent incorrigibility before imposing a life without parole sentence and is not required to make a finding of permanent incorrigibility on the record. *Jones*, 593 U.S. at 109-115. The "plain language" of *Jones* "provides that the decision is not intended to remove state-level safeguards for juvenile sentencing." *State v. Mack*, 441 S.C. at 539, 894 S.E.2d at 827. *See Jones*, 593 U.S. at 120 ("States may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth."). In South Carolina, compliance with Eighth Amendment obligations in juvenile sentencing "take[s] the shape of a review of the *Aiken* factors." *Mack*, 441 S.C. at 539, 894 S.E.2d at 827.

Additionally, consideration of the *Aiken* factors and appellate review of the process of applying them is required pursuant to the South Carolina Constitution. S.C. Const. art. I, § 15 ("nor shall, cruel, nor corporal, nor unusual punishment be inflicted"). In *Aiken v. Byars*, 410 S.C. at 546, 765 S.E.2d at 578 (Pleicones, J., concurring), Justice Pleicones would have reached the same result under S.C. Const. art. I, § 15. In *State v. Pulley*, 216 S.C. 552, 557, 59 S.E.2d 155, 158 (1950), this Court explained: "The discretion of the trial Judge [in sentencing] is, of course, subject to the constitutional provision relating to cruel and unusual punishment." *See*

State v. Kimbrough, 212 S.C. 348, 356, 46 S.E.2d 273, 277 (1948) (pursuant to S.C. Const. art I, § 19 (1895): "A just sentence is imperative and must not be denied."). "The power of an appellate court to review a sentence for the purpose of determining whether it offends the constitutional provision against cruel and unusual punishment may be sustained under the grant of power to correct errors of law in the judgment appealed from." *Kimbrough*, 212 S.C. at 353, 46 S.E.2d at 275. "Moreover, there exists in every court an inherent power to see that a man's fundamental rights are protected in every case." *Id.* A written order or on-the-record ruling which provides findings and conclusions would comport with article I, section 15 and permit meaningful appellate review.

In this case, mitigating evidence that went towards the Aiken *factors* was introduced at the hearing. *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577. Respondent's religious upbringing and large, close-knit family were positive facts on the possibility of rehabilitation. Dozens of family members and community members were present in support of Respondent at the resentencing hearing. Respondent's intelligence was also a fact in his favor. Respondent's impetuosity and immaturity at the time of the crime were demonstrated by his 1996 expulsion from school for carrying a weapon on school property. Peers were involved in that offense. The spur-of-the-moment nature of the murder also went to Respondent's impetuosity and immaturity. Additionally before the court were trial counsel's statements to the trial judge that Respondent did not follow his advice to testify and was not competent to assist in his defense, went to how the incompetencies of youth affected the case's outcome. Moreover, Respondent was remorseful, and his age would have caused him to have underdeveloped impulse control, as explained by Dr. Cauffman.

The record was insufficient to reflect the court considered the *Aiken* factors and applied them to the evidence to determine the sentence. The court's statement at the conclusion of the hearing that it intended to apply the law was insufficient to ensure the court did apply the law. The Court of Appeals correctly remanded the matter for a new hearing and findings and conclusions pursuant to *Aiken*. *State v. Graham*, Op. No. 2025-UP-396 (S.C. Ct. App. filed December 3, 2025). App. 669. U.S. Const. amend. VIII; S.C. Const. art. I, § 15; *Miller v. Alabama*, 567 U.S. at 477; *Aiken v. Byars*, 410 S.C. at 544, 765 S.E.2d at 577.

CONCLUSION

Based on the foregoing argument, Respondent respectfully requests this Court deny the Petition for Writ of Certiorari.

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This 18th day of June, 2026.