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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

NAZARETH N. SANCHEZ-PERALTA,

APPELLANT.

Appellate Case No. 2023-001588

RESPONSE TO AMICI BRIEF

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INTRODUCTION

“The family court must consider eight factors, as approved by the United States Supreme Court in *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966), in making this determination.” *State v. Pittman*, 373 S.C. 527, 558–59, 647 S.E.2d 144, 160 (2007).

In their brief in this case, *amici curiae* Justice 360 and the Cornell Juvenile Justice Project urge this Court to assume the role of our supreme court and overturn South Carolina precedent guiding family court decisions on transferring juveniles to general sessions to face trial as adults. Respectfully, that is not this Court’s job. *See* S.C. CONST. art. V, § 9 (“The decisions of the Supreme Court shall bind the Court of Appeals as precedents.”). *Amici* argue that the *Kent* factors expressly adopted by our supreme court are outdated; that waiver decisions should instead be based on the *Aiken v. Byars*¹ factors used to determine which juveniles convicted of murder should be sentenced to life without parole; and that this Court should also take on the responsibility of changing the form of transfer hearings. Even if *amici* had good arguments on their side—and the State does not concede that they do—it would not be this Court’s place to adopt them. *See* S.C. CONST. art. V, § 4 (“The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts.”).

That is the simplest response to *amici*’s brief, and should be enough under the South Carolina Constitution. But that’s not the only problem *amici* face. Making their argument even more difficult, few if any of the legal authorities they highlight support the changes that *amici* want this Court to make. Most of them do not specifically speak to transfer hearings at all. Rather than join *amici*’s attempt to overhaul South Carolina law regarding transfer hearings, this Court should

¹ *See* 410 S.C. 534, 765 S.E.2d 572 (2014).

follow our supreme court’s precedent and, as a result, Affirm Appellant’s conviction and sentence. A brief response to the *amici* brief follows.

ARGUMENT

I. The requirement that the *Kent* factors control a court’s transfer decision remains good law in South Carolina.

Amici argue that the *Kent* factors are outdated, at least in part because “[s]cience, society, and the law have changed since *Kent* was decided.” Brf. of *Amici*, 5. But that’s not quite right. Science and society might have changed in any number of ways since the United States Supreme Court’s ruling in *Kent*, but the law requiring the use of the *Kent* factors in South Carolina has not. Try as they might, *amici* cannot get past that fact—which should be determinative in this Court.

Our supreme court settled the issue of which factors should be used to decide transfer questions in *Pittman*. Maybe even before then; as *amici* concede, our supreme court observed in *State v. Corey D.* that, in that case, “the family court specifically considered the *Kent* factors, which in previous cases this Court has implicitly approved as appropriate criteria.” 339 S.C. 107, 117–18, 529 S.E.2d 20, 26 (2000). Following suit, this Court has applied the *Kent* factors when considering a court’s decision to transfer jurisdiction in subsequent cases. *See State v. Robinson*, 438 S.C. 421, 432, 882 S.E.2d 883, 889 (Ct. App. 2023) (“Under *Kent*, to transfer jurisdiction, a family court must consider eight factors and make sufficient findings demonstrating careful consideration of the factors.”); *State v. Jones*, 392 S.C. 647, 654, 709 S.E.2d 696, 700 (Ct. App. 2011) (“In this case, we find the family court properly considered all of the *Kent* factors in deciding to waive jurisdiction.”).

The State is aware of no South Carolina case holding that *Pittman* was incorrectly decided, and *amici* have not provided any. As a result, it remains binding on this Court.

The same, coincidentally, is true of our supreme court's decisions instructing that "[t]he serious nature of the offense is a major factor in the transfer decision." *Sanders v. State*, 281 S.C. 53, 56, 314 S.E.2d 319, 321 (1984). To reorder the priorities of the *Kent* factors based on the concerns raised by *amici*—or to set any order at all—would be usurping our supreme court's authority to determine which factors should be particularly significant.

II. Nothing in the juvenile sentencing cases from higher courts suggest that those courts intended to disturb the law on juvenile transfers and our courts have recently been hesitant about expanding those precedents.

Like Appellant, the *amici* attempt to draw on language from the United States Supreme Court and South Carolina Supreme Court's rulings regarding which juveniles are eligible for life without parole. Like Appellant's arguments, their contentions come up short.

There is nothing in the sentencing decisions that indicates that those holdings were meant to reach transfer hearings—not in *Roper v. Simmons*, 543 U.S. 551 (2005); not in *Graham v. Florida*, 560 U.S. 48 (2010); not in *Miller v. Alabama*, 567 U.S. 460 (2012); not in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014); and not in *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

Amici instead distill ideas about juveniles from those decisions, then try to apply them in the transfer context. The United States Supreme Court has found that “juveniles have diminished culpability and greater prospects for reform,” *Miller*, 567 U.S. at 471, and so don't deserve “the most severe punishments,” *id.* (quoting *Graham*, 560 U.S. at 68). Those ideas can then be grafted onto the transfer context, as well, the argument goes, so the transfer decision must account for the same “diminished culpability and greater prospects for reform.”

Not so. That argument puts the sentencing cart before the forum horse. As our supreme court found in declining to extend the holding of *Apprendi v. New Jersey*² to transfer decisions,

² See 530 U.S. 466 (2000).

“the decision whether to waive a juvenile to general sessions court in *no manner determines the juvenile’s guilt, innocence, or punishment*—it merely determines the forum in which the case is to be tried.” *State v. Rice*, 401 S.C. 330, 335, 737 S.E.2d 485, 487 (2013) (emphasis added). Similarly, the Eighth Amendment concerns that animate *Roper*, *Graham*, *Miller*, *Aiken*, and *Montgomery* are about the punishment received by juveniles, not the forum in which the punishment is determined. *See also Pittman*, 373 S.C. at 564, 647 S.E.2d at 163 (finding that the fact that the defendant was exceptionally young to be tried as an adult was not determinative in part because “the argument does not address the Eighth Amendment’s concern, which is punishment[,] not forum of trial”).³

And South Carolina courts have correctly been cautious about expanding the reach of the juvenile sentencing decisions. Our supreme court addressed this in *Slocumb*, noting that “a long line of Supreme Court precedent prohibits us from extending federal constitutional protections beyond the boundaries the Supreme Court itself has set.” *State v. Slocumb*, 426 S.C. 297, 306, 827 S.E.2d 148, 153 (2019). For that reason, despite finding “ostensible merit” in the defendant’s arguments, the court did not apply the reasoning of the sentencing cases to bar a term-of-years sentence that almost certainly amounted to a sentence of life without parole. *Id.* at 299, 827 S.E.2d at 149. And the court pointedly warned against drawing high-level inspiration rather than clear instruction from United States Supreme Court rulings, finding instead that “our duty to follow

³ To be sure, the *Pittman* decision was pre-*Miller* and seemed to dismiss the concepts of juvenility that buttress the later juvenile sentencing decisions, while relying on case law that found no Eighth Amendment violation in sentences of life without parole for juveniles. *See Pittman*, 373 S.C. at 562–65, 647 S.E.2d at 162–64. Still, the *Pittman* Court found that the defendant’s age when he was transferred was “not instructive” on his Eighth Amendment claim for several reasons, one of them being that the forum was not an Eighth Amendment concern. If the court erred in *Pittman*—which is not clear-cut—it was in discussing under what circumstances contemporary standards allow life without parole sentences for juveniles. But the *Pittman* Court did not appear to find that contemporary standards justified the choice of forum, just that the forum was not implicated by the Eighth Amendment in the first place. *Id.*

binding precedent is fixed upon case-specific holdings rather than general expressions in an opinion that exceed the scope of any particular holding.” *Id.* at 307, 827 S.E.2d at 153. *See also State v. Miller*, 433 S.C. 613, 627, 861 S.E.2d 373, 380 (Ct. App. 2021) (“As the court noted in *Slocumb*, we are bound by the constitutional protections implemented by the Supreme Court, which has thus far declined to extend the holding of *Graham* and its progeny to term-of-year sentences.”).

The same problem complicates the argument that the State should be forced to rely solely on admissible evidence at transfer hearings. The United States Supreme Court noted in *Kent* that it was declining to require that the due process protections available at transfer hearings meant “that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing.” *Kent*, 383 U.S. at 562. For example, the Fourth Circuit has found that a juvenile did not need to have the right to cross-examine an agent in a federal transfer proceeding—which the court found to be a civil proceeding—“because ‘the trial itself functions as a corrective for any reliance on inaccurate allegations made at the transfer stage.’” *United States v. Juv. Male*, 554 F.3d 456, 467 (4th Cir. 2009) (quoting *In re Sealed Case*, 893 F.2d 363, 369 (D.C. Cir. 1990).

Any attempt to use the due process clause to impose a requirement that the State prove a transfer is warranted by clear and convincing evidence likewise would stretch “general expressions” beyond “case-specific holdings.” *Slocumb, supra*.

Further, amici split hairs when they sat that “[a]n erroneous, adverse waiver can almost never be corrected” because a juvenile does not have an “equivalent appeal.” Brf. of *Amici*, 27. It’s true, as *amici* say, that the transfer statute does not give the juvenile the same right to an immediate appeal that the State has. *See* S.C. Code Ann. § 63-19-1210(6). And *State v. Lockhart*

found that an appeal on the part of a juvenile was interlocutory. *See* 275 S.C. 160, 161, 267 S.E.2d 720, 720 (1980). But that doesn't mean that our appellate courts can never review the findings of the family court—just that it takes place after the entire process has played out. *See Rice*, 401 S.C. at 336, 737 S.E.2d at 488 (Pleicones, J., concurring in part and dissenting in part) (“It is well-settled that a juvenile who has been waived to general sessions may not immediately appeal that order but must wait, like other criminal defendants, until he has been sentenced.”).

CONCLUSION

Amici have not shown any reason why this Court should reverse precedent from our supreme court, nor have they provided justification for revamping our state's procedure for juvenile transfer hearings. This Court should instead decide this case under our established law and affirm Appellant's conviction and sentence.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court order of April 24, 2024, the Response to Amici Brief, along with Certificate of Service has been forwarded to Petitioner's counsel, Gary H. Johnson, Esquire via email today, July 13, 2026 to ghjohnson@sccid.sc.gov and to his assistant slevertt@sccid.sc.gov .

I further certify that all parties required by Rule to be served have been served.

This 13 day of July 2026.

s/ R. Brandon Larrabee

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Counsel, please find attached, the State's Response to Amici Brief in the above reference appeal. These will be electronically filed with the South Carolina Court of Appeals on today's date,

Thank you,



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