

RECEIVED

Sep 01 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2025-001185

THE STATE OF SOUTH CAROLINA,

Respondent,

versus

MARK HAMILTON,

Appellant.

FINAL BRIEF OF APPELLANT

APPELLATE CASE NO: 2025-001185

Cameron J. Blazer
Ninth Circuit Public Defender
101 Meeting St., 5th Floor
Charleston, SC 29401
(843) 958-1850
Attorney for Mark Hamilton

September 1, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES ON APPEAL.....	v
STATEMENT OF THE CASE.....	1
STANDARD OF REVIEW	2
ARGUMENT	2
I. The Trial Court Erred in Denying Hamilton a Resentencing Hearing Under <i>Miller v. Alabama</i> and <i>Aiken v. Byars</i>	5
A. <i>Miller</i> and <i>Aiken</i> Require Individualized Consideration of Youth Before Imposing the Harshest Penalties on Juvenile Offenders	5
B. Hamilton’s Life Sentence is the Functional Equivalent of Life Without Parole.....	6
C. Hamilton is Entitled to a Resentencing Hearing Under <i>Aiken v. Byars</i>	8
II. The Trial Court Erred in Holding That South Carolina’s Parole System Provides Constitutionally Adequate Review Under <i>Montgomery v. Louisiana</i> , <i>Miller v. Alabama</i> , and <i>Aiken v. Byars</i>	10
B. South Carolina’s Parole System Has Never Been Updated to Comply with <i>Montgomery</i> ’s Requirements	15
C. Only the Sentencing Court Can Apply <i>Miller</i> and <i>Aiken</i> Factors	17
III. The Trial Court Erred in Holding that Resentencing Would Usurp the Parole Board’s Authority	19
CONCLUSION	22

TABLE OF AUTHORITIES

CASES

<i>Eddings v. Oklahoma</i> , 455 U.S. 104, 115 (1982)	6
<i>Graham v. Florida</i> , 560 U.S. 48 (2010)	<i>passim</i>
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012)	<i>passim</i>
<i>Montgomery v. Louisiana</i> , 577 U.S. 190 (2016)	4, 6
<i>Roper v. Simmons</i> , 543 U.S. 511 (2005)	3, 5
<i>Trop v. Dulles</i> , 356 U.S. 86 (1958)	3
<i>Aiken v. Byars</i> , 410 S.C. 534 (2014)	<i>passim</i>
<i>Buchanan v. S.C. Dep’t of Probation, Parole, and Pardon Serv’s</i> , 442 S.C. 393 (Ct. App 2023)	12
<i>Cooper v. S.C. Dep’t of Probation, Parole, and Parole Serv’s</i> , 377 S.C. 489 (2008)	11, 19, 20
<i>State v. Finley</i> , 427 S.C. 419 (2019)	2
<i>State v. Johnson</i> , 413 S.C. 458 (2015)	2
<i>State v. McKay</i> , 300 S.C. 113 (1989)	19

CONSTITUTIONAL PROVISIONS

U.S. Const. amend VIII	<i>passim</i>
S.C. Const. art. I, § 15	2

STATUTES

S.C. Code Ann. § 24-21-640	16, 18
----------------------------------	--------

OTHER AUTHORITIES

S.C. Dep’t of Probation, Parole, and Pardon Services, <i>Criteria for Parole Consideration</i> , https://ppp.sc.gov/sites/dppps/files/Documents/Parole%20Pardon%20Release/Criteria_for_Parole_Consideration.pdf (last visited November 1, 2025)	11, 12, 16
---	------------

David M. N. Garavito, Amelia C. Hritz, & John H. Blume, <i>The Youth Tax in Parole Hearings</i> , 75 S.C. L. REV. 841, 846, 871 (2024).....	7, 8
---	------

STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in denying Hamilton a resentencing hearing under *Miller v. Alabama* and *Aiken v. Byers* when Hamilton, sentenced as a juvenile to life imprisonment, has been repeatedly denied parole based on immutable offense characteristics, rendering the sentence a functional equivalent of life without parole in violation of the Eighth Amendment?
- II. Did the trial court err in holding that South Carolina's parole system provides constitutionally adequate review under *Montgomery v. Louisiana*, *Miller v. Alabama*, and *Aiken v. Byars* when the Parole Board's framework systematically ignores *Miller* factors, has never been updated to comply with *Montgomery*, and cannot provide the individualized sentencing assessment that only the sentencing court can properly conduct?
- III. Did the trial court err in holding that resentencing would usurp the Parole Board's authority when a resentencing hearing is the necessary constitutional remedy for Eighth Amendment violations that cannot be cured through a parole process structurally incapable of providing review compliant with *Miller*?

STATEMENT OF THE CASE

In 1993, Mark Hamilton (“Hamilton”) was convicted of murder following a jury trial. Hamilton’s conviction arose from his involvement, along with three other teenage co-defendants, in the beating death of Ralph “Gary” Sineath. R. p. 186. Hamilton was seventeen at the time of the offense but was tried as an adult. The state proceeded at trial under a “hand-of-one-hand-of-all” theory of accomplice liability. The law in effect at the time of his conviction provided only for a sentence of life imprisonment or death. R. p. 190 . Hamilton was sentenced on June 16, 1993, by the Honorable Luke M. Brown to imprisonment “for the balance of your natural life.” *Id.* Hamilton unsuccessfully challenged his conviction and sentence through direct appeal and post-conviction actions.

Hamilton has been continuously incarcerated since his conviction and is presently confined at Perry Correctional Institution in the South Carolina Department of Corrections. Under the law in effect at the time of his arrest, Hamilton became eligible for parole after the service of twenty years of imprisonment and is entitled to a parole hearing every two years. As of this date, Hamilton has been denied parole seven times, most recently on March 12, 2025. R. p. 201.

On January 30, 2023, Hamilton filed a Motion for Resentencing pursuant to *Aiken v. Byars*. On August 22, 2023, the Court appointed counsel to represent Hamilton. The State filed a response in opposition to Hamilton’s Motion for Resentencing on March 12, 2025, arguing that the Motion should be dismissed with prejudice and resolved on the pleadings without a hearing. Hamilton filed a Response to the State’s Motion to Dismiss on April 3, 2025. A hearing on Hamilton’s motion was held on April 8, 2025, before the Court of General Sessions.

On June 4, 2025, the trial court issued an order denying Hamilton’s Motion for Resentencing. That court found that Hamilton, having received a life sentence rather than life

without parole (“LWOP”), did “not fit within the ambit of juvenile offenders eligible for re-sentencing under *Miller* and *Aiken*.” R. p. 253. The trial court further concluded that Hamilton’s opportunity for release was a matter within the authority of the Parole Board, not the court. The court further held that Hamilton’s seven parole denials did not, “in and of itself,” deny Hamilton meaningful review. R. p. 256. Hamilton timely filed his Notice of Appeal on June 13, 2025.

STANDARD OF REVIEW

“When considering whether a sentence violates the Eight 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 (2019). The appellate court will not disturb the circuit court’s findings absent a manifest abuse of discretion, which occurs when the circuit court’s ruling is based on an error of law or grounded in unsupported factual conclusions. *State v. Johnson*, 413 S.C. 458, 466 (2015).

ARGUMENT

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 (emphasis added). South Carolina’s constitutional counterpart provides even broader protection, prohibiting punishment that is cruel *or* corporal *or* unusual. S.C. Const. art. I, § 15. In this vein, sentences that are grossly out of proportion to the severity of the crime are unconstitutional. *Graham v. Florida*, 560 U.S. 48, 59-60 (2010). The scope of Eighth Amendment protections is not static but “must draw its meaning from the evolving standards of decency that

mark the progress of a maturing society.” *Aiken v. Byars*, 410 S.C. 534, 538 (2014) (citing *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)).

Beginning in 2005, the United States Supreme Court recognized that juvenile offenders require different and more protective constitutional considerations at sentencing. *Roper v. Simmons*, 543 U.S. 511, 551 (2005). This recognition was grounded in the understanding that children possess diminished moral culpability and that “only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012). In *Miller*, the Court held that sentencing courts must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 480. The Court identified the difficulty of distinguishing “the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Id.* at 479-80. Before imposing a sentence of LWOP on a juvenile offender, sentencing courts must consider youth as more than a chronological fact; they must consider the defendant’s immaturity, family background, mental and emotional development, the circumstances of the offense, and the possibility of rehabilitation. *Id.* at 476-83.

The South Carolina Supreme Court in *Aiken v. Byars* held 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.” *Aiken*, 410 S.C. at 545. *Aiken* established five factors for courts to consider, mirroring and elaborating on Miller’s requirements. *Id.* at 544. The Court further held that any pre-*Aiken* LWOP sentence was unconstitutional because youth carries special constitutional weight that could not have been properly considered before *Aiken*’s guidance. *Id.* at 543, n.8.

Two years after *Aiken* was decided, the U.S. Supreme Court revisited *Miller* in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), holding as *Aiken* did that *Miller* should be given retroactive effect. The *Montgomery* court endorsed automatic parole consideration for juveniles as an alternative to resentencing: “Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.” This endorsement inherently presupposes that juveniles considered for parole will have their review governed by the principles laid out in *Miller*.

This appeal addresses a critical issue left unresolved by *Miller*, *Aiken*, and their progeny: what remedy is available to a juvenile offender whose life sentence is the functional equivalent of life without parole because of a parole system that has not been adjusted to address the constitutional issues laid out in *Miller*? Hamilton was seventeen years old at the time of his offense. He received a life sentence with parole eligibility after twenty years, but he has now been denied parole seven times over more than a decade of parole-eligible incarceration. The trial court denied Hamilton’s motion for resentencing under *Aiken*, concluding that because his sentence was not technically LWOP, he was ineligible for the individualized sentencing hearing that *Miller* and *Aiken* guarantee. This ruling allows the State to evade constitutional requirements through mere labeling while subjecting Hamilton to a parole system that systematically ignores the features of his youth and renders his sentence indistinguishable from LWOP. At fifty-two years old, Hamilton has still never received the individualized assessment of his juvenility that the Constitution demands. The trial court’s order promotes form over substance and denies Hamilton the meaningful opportunity for release that *Montgomery* requires in the absence of a resentencing hearing.

I. The Trial Court Erred in Denying Hamilton a Resentencing Hearing Under *Miller v. Alabama* and *Aiken v. Byars*

A. *Miller* and *Aiken* Require Individualized Consideration of Youth Before Imposing the Harshest Penalties on Juvenile Offenders

In *Miller*, the Supreme Court held that mandatory LWOP sentences for juveniles violate the Eighth Amendment because they prevent sentencing courts from considering the “mitigating qualities of youth.” *Miller*, 567 U.S. at 476. The Court reasoned that “youth is more than a chronological fact” and that the “imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Id.* at 476-774. *Miller* established as a “substantive rule of constitutional law” that before a court sentences a juvenile to LWOP, it must first conduct an individualized hearing that “take[s] into account how children are different, and how these differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 480; *Montgomery*, 577 U.S. at 208. The purpose of this individualized hearing, where “‘youth and its attendant characteristics’ are considered as sentencing factors,” is to “separate those juveniles who may be sentenced to life without parole from those who may not.” *Montgomery*, 577 U.S. at 208. While *Miller* did not rule out LWOP sentences for juvenile offenders completely, such sentences should be “uncommon” and reserved only for “the rare juvenile offender whose crime reflects irreparable corruption.” *Miller*, 567 U.S. at 479-80 (*quoting Roper* at 573).

Two years after *Miller*, the South Carolina Supreme Court held in *Aiken* that *Miller* applies retroactively and “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.” *Aiken*, 410 S.C. at 540-44. The Court found that “it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution.” *Id.* at 543. Accordingly, juveniles sentenced to LWOP must be given an

opportunity for resentencing to show that their crimes “did not reflect irreparable corruption,” and, if successful, “their hope for some years of life outside prison walls must be restored.” *Montgomery* at 213.

Hamilton was sentenced to a term of life imprisonment in 1993 for an offense he committed at age seventeen, without any individualized hearing examining how his juvenility should impact his sentence. The sentencing judge had no discretion to consider these factors; the law in effect at the time provided only for life imprisonment or death. Hamilton’s age was treated as nothing more than a “chronological fact,” rather than a constitutionally significant factor requiring meaningful consideration. *Miller*, 567 U.S. at 476 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). Indeed, the transcript of the original sentencing hearing reveals nothing more than the most cursory consideration of Hamilton as an individual. R. p. 190. Under *Aiken*, Hamilton is entitled to a resentencing hearing where the court must “fully explore the impact of [his] juvenility on the sentence rendered” and determine whether his crime reflected the “irreparable corruption” necessary to justify a sentence of life imprisonment. *Aiken*, 410 S.C. at 543; *Montgomery*, 577 U.S. at 213. The trial court’s conclusion in denying his bid for resentencing that Hamilton does “not fall within the ambit of juvenile offenders eligible for resentencing under *Miller* and *Aiken*” misapprehends the constitutional violation. It is not the formal label of the sentence, but the absence of individualized consideration of youth that offends Hamilton’s rights under the Eighth Amendment.

B. Hamilton’s Life Sentence is the Functional Equivalent of Life Without Parole

The Eighth Amendment protections guaranteed to juvenile offenders should not depend on a sentence being formally designated as LWOP. In *Miller*, the Court categorized LWOP as akin to the death penalty because both punishments “[i]mprison[] an offender until he dies” and “alter[]

the remainder of his life by a forfeiture that is irrevocable.” *Miller*, 567 U.S. at 474-75. In *Graham*, the Court explained that LWOP “forswears altogether the rehabilitative ideal” and “makes an irrevocable judgment about that person’s value and place in society”—a judgement that “is not appropriate in light of a juvenile...offender’s capacity for change and limited moral culpability.” *Graham*, 560 U.S. at 74. This Court has recognized that under the State’s parole system, juveniles who are “*technically* eligible for parole” may face “the continuing denial of parole based on the same factors, all unchangeable and related to their offenses,” which “gives no guidance to these inmates about what can be done to improve their chances of parole and *is very nearly equivalent to being ineligible for parole.*” *Buchanan v. Dep’t of Probation, Parole, and Pardon Serv’s*, 442 S.C. 393, 406 (2023) (emphasis added). Accordingly, a sentence that theoretically allows for parole but provides no realistic opportunity for release fails to satisfy the constitutional premises of *Miller* and *Aiken*.

Recent research has demonstrated that South Carolina’s parole system systematically denies juvenile offenders a meaningful opportunity for release. A comprehensive study analyzing all South Carolina parole hearings from 2006 to 2016 found that the Parole Board imposed a “youth tax;” they were significantly less likely to grant parole to individuals who committed offenses as juveniles. David M. N. Garavito, Amelia C. Hritz, & John H. Blume, *The Youth Tax in Parole Hearings*, 75 S.C. L. REV. 841, 846, 871 (2024). The Board was 18% less likely to grant parole to juvenile offenders (under age 18) compared to others who committed their first offense at age 18 or older. *Id.* at 871. Even compared to “youthful” offenders (aged 18-20), juvenile offenders faced significantly worse outcomes and were 28% less likely to receive parole. *Id.* This “youth tax” stands in stark contrast to Supreme Court precedent recognizing that the hallmark characteristics of youth warrant additional *protections* for juvenile offenders, not additional

punishment. *Id.* at 846. When a parole system penalizes the very trait that the Constitution demands be treated as mitigating, any theoretical possibility of parole becomes illusory.

South Carolina's parole system has transformed Hamilton's life sentence into the functional equivalent of LWOP. Hamilton, now fifty-two years old, has spent his entire adult life in prison for an offense committed at age seventeen. He became parole-eligible in 2013 and has appeared before the Board seven times. R. p. 202. Despite three decades of imprisonment, during which he has had ample opportunity to demonstrate rehabilitation and maturity, the Board has denied his release seven times. The Board's documented pattern of granting parole to juvenile offenders at a rate nearly 30% lower than comparable adult offenders both explains Hamilton's repeated denials and transforms his life sentence into de facto LWOP. Rather than affording Hamilton the benefit of constitutional principles recognizing youth as a mitigating factor, the State's parole system penalizes him for the very characteristic that should counsel in favor of his release. This makes Hamilton's opportunity for release anything but meaningful and means that he faces an irrevocable sentence that "forswears altogether the rehabilitative ideal" and denies him any realistic hope of life outside prison walls. *Graham*, 560 U.S. at 74. The trial court's conclusion that Hamilton's "opportunity for release was a matter within the authority of the Parole Board, not the court," and that his seven parole denials did not "in and of itself" deny meaningful review ignores the constitutional issues in both his original sentence and the parole system's systemic failure to honor the principles of *Miller* and *Aiken*.

C. Hamilton is Entitled to a Resentencing Hearing Under *Aiken v. Byars*

In *Aiken*, the South Carolina Supreme Court held that "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.” *Aiken*, 410 S.C. at 545. The Court provided that “*any individual affected by our holding* may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.” *Id.* (emphasis added).

The *Aiken* Court’s use of sweeping language– “*any individual affected by our holding*”– reflects an intent to provide meaningful relief to *all* juvenile offenders whose sentences violate the Eighth Amendment as articulated by *Miller*. *Id.* (emphasis added). Restricting *Aiken*’s holding to cases formally denominated as LWOP elevates form over substance and undermines *Miller*’s core premise that sentences for juveniles must account for the constitutional significance of youth, not merely comply with technical labeling requirements. *See Miller*, 567 U.S. at 473-74, 479 (“By removing youth from the balance–by subjecting a juvenile to the same life-without parole sentence applicable to an adult–these laws prohibit a sentencing authority from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender;” “By making youth (and all that accompanies it) irrelevant to the imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment.”) The protections offered by *Miller* should be triggered by the sentence’s practical effect on the juvenile offender, not by its formal designation.

Hamilton falls squarely within the class of “individuals affected by” *Aiken*’s holding. *Id.* He was sentenced to life imprisonment for a crime he committed at age seventeen, under a sentencing scheme that provided only for life or death, affording the trial court no opportunity to consider the mitigating qualities of his youth. Hamilton’s seven parole denials, coupled with the parole system’s documented bias against juvenile offenders, render his sentence the functional equivalent of LWOP. To restrict *Aiken*’s application only to sentences formally labeled as LWOP would create an arbitrary distinction untethered from the constitutional concerns underlying

Miller. The trial court’s conclusion that Hamilton does “not fall within the ambit of juvenile offenders eligible for resentencing under *Miller* and *Aiken*” puts the semantic label of his sentence over its practical reality. This narrow interpretation frustrates the remedial purpose of *Aiken* and *Miller*, denying Hamilton the individualized resentencing hearing to which he is constitutionally owed. Therefore, Hamilton is “entitled to resentencing to allow [him] to present evidence specific to [his] attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight.” *Aiken*, 410 S.C. at 544.

This Court should reverse and remand the decision of the trial court with instructions for Hamilton to be afforded a constitutionally appropriate resentencing hearing.

II. The Trial Court Erred in Holding That South Carolina’s Parole System Provides Constitutionally Adequate Review Under *Montgomery v. Louisiana*, *Miller v. Alabama*, and *Aiken v. Byars*

A. The Parole Board’s Decision-Making Framework Systematically Ignores *Miller* Factors and Disfavors Juvenile Homicide Offenders

Miller requires sentencing authorities “to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Aiken*, 410 S.C. at 544 (*citing Miller*, 567 U.S. at 477-80). The *Miller* framework established five specific factors that *must* be considered:

- 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.”

Id. In contrast, the Board operates under a discretionary framework that includes sixteen factors for evaluating whether an inmate has a “reasonable probability” of not violating the law if released. These sixteen factors include:

- 1) The risk the inmate poses to the community;
- 2) The nature and seriousness of the inmate’s offense, the circumstances surrounding the offense, and the inmate’s attitude toward it;
- 3) The inmate’s prior criminal records and his/her adjustment under any previous programs or supervision;
- 4) The inmate’s attitude toward his/her family, the victim, and authority in general;
- 5) The inmate’s adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
- 6) The inmate’s employment history, including his/her job training and skills and his/her stability in the work place;
- 7) The inmate’s physical, mental and emotional health;
- 8) The inmate’s understanding of the cause of his/her past criminal conduct;
- 9) The inmate’s efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available to inmates to help with their problems;
- 10) The adequacy of the inmate’s overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate’s plans for gainful employment;
- 11) The willingness of the Community into which the inmate will be released to receive the inmate;
- 12) The willingness of the inmate’s family to allow his/her to return to the family circle;
- 13) The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmates’ parole;
- 14) The feelings of the victim’s family, and any witnesses to the crime about the release of the inmate
- 15) The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of Laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
- 16) Other factors considered relevant in a particular case by the Board.

S.C. Dep’t of Probation, Parole, and Pardon Services, *Criteria for Parole Consideration*, https://ppp.sc.gov/sites/dppps/files/Documents/Parole%20Pardon%20Release/Criteria_for_Parol

e_Consideration.pdf (last visited November 1, 2025) [hereinafter *Criteria for Parole Consideration*]. While some of these factors may tangentially relate to the *Miller/Aiken* considerations (i.e., the catch-all provision for “other factors considered relevant in a particular case by the Board”), there is no requirement that the Board consider, discuss, or meaningfully weigh the *Miller* factors regarding youth and diminished culpability. Further, the Board’s Manual lists six permissible reasons for denying parole:

- 1) “Nature and seriousness of the current offense;”
- 2) “Indication of violence in this or a previous offense;”
- 3) “Use of a deadly weapon in this or a previous offense;”
- 4) “Prior criminal record indicates poor community adjustment;”
- 5) “Failure to successfully complete a community supervision program;” and
- 6) “Institutional record is unfavorable.”

S.C. Dep’t of Probation, Parole, and Pardon Services, *Denial of Parole and its Effect*, Policy and Procedure Manual 25 (Nov. 2019)

https://ppp.sc.gov/sites/dppps/files/Documents/Parole%20Pardon%20Release/Board_of_Paroles_and_Pardons_11062019.pdf [hereinafter *Denial of Parole Factors*]. Critically, four of the six reasons for parole denial concern circumstances that the Supreme Court has recognized are “fixed as of the day of the offense and unable to be changed” while an inmate is incarcerated; they focus on the historical facts of the offense rather than the offender’s capacity for change. *Cooper v. S.C. Dep’t of Probation, Parole, and Parole Serv’s*, 377 S.C. 489, 499 (2008). This framework fundamentally conflicts with *Miller*’s requirement that sentencing authorities evaluate the offender’s juvenility and its attendant characteristics, the offense reflected “transient immaturity” or “irreparable corruption,” and whether the offender has demonstrated rehabilitation over time. *Miller*, 567 U.S. at 479-80 (quoting *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at 68).

This Court’s decision in *Buchanan* demonstrates the systemic failure to properly consider *Miller* factors in parole decisions for juvenile offenders. *Buchanan v. S.C. Dep’t of Probation, Parole, and Pardon Serv’s*, 442 S.C. 393 (Ct. App 2023). Buchanan, sentenced to life imprisonment for offenses committed at age seventeen in 1973, was denied parole eighteen times despite presenting a memorandum thoroughly explaining the *Aiken* factors as applied to him, supportive testimony from a forensic psychologist who found him to pose a low risk to the community, and a letter from his attorney urging consideration of expert evidence regarding his youth at the time of the offense. *Id.* at 395-400. The Board, having denied his parole after less than a minute of deliberation, defended that perfunctory review, arguing that “as long as it is revealed that the Board applied the mandatory criteria, the use of the events in the offense as a reason for denial is lawful.” *Id.* at 400. There was no evidence that the specific *Miller* factors regarding youth and diminished culpability were meaningfully discussed or weighed in the decision-making process. *Id.* at 400-01. This Court noted its concerns with “the perfunctory manner in which Buchanan’s request for parole was denied,” observing that “although Buchanan and other juveniles similarly situated are technically eligible for parole, the continuing denial of parole based on the same factors, all unchangeable and related to their offenses, gives no guidance to these inmates about what can be done to improve their chances of parole and is very nearly equivalent to being ineligible for parole.” *Buchanan*, 442 S.C. at 406. This Court stated that “it appears no passage of time served... or showing of rehabilitation...can change his fate before this Board. The public policy behind *Roper*, *Graham*, and *Miller* to restore hope to juvenile offenders for some life outside of prison, is thwarted by the Board’s continued reliance on factors existing at the time of conviction with little or no apparent consideration of subsequent rehabilitation efforts.” *Id.* Ultimately, while this Court “reluctantly” affirmed the Board’s decision, it expressed sympathy to Buchanan’s

argument that juvenile offenders are not given meaningful review and called for the Legislature to review or revise the parole system “to assure the factors of youth are a part of considering parole in these cases rather than permitting the seemingly perfunctory review now standardly given.” *Id.* at 406.

Hamilton’s situation demonstrates the same systemic failure evident in *Buchanan*. Hamilton has been subjected to a parole process that purports to consider statutory factors but contains no mechanism to ensure that the Board meaningfully evaluates the *Miller* factors as applied to him. The circumstances of the underlying offense implicate several *Miller* factors: Hamilton’s chronological age and the hallmark features of youth that may have contributed to his involvement, his immaturity and diminished culpability as a juvenile acting with three other teenage co-defendants; the peer pressures and group dynamics that may have influenced his participation; and his demonstrated capacity for rehabilitation over thirty-two years of incarceration. Yet nothing in the Board’s framework ensures these factors are considered, and there is no evidence that the Board has ever considered these youth-related factors in considering Hamilton’s release. Instead, the Board’s stated reasons for denial focus on immutable characteristics that remain unchanged regardless of Hamilton’s growth, maturity, or rehabilitation since age seventeen. Hamilton is now over fifty years old and has spent his entire adult life in prison, but the Board’s system provides no mechanism to evaluate his constitutionally unique features as a juvenile offender. Without any requirement that the Board address the specific *Miller* factors or give them the constitutional weight they demand, Hamilton’s parole hearings cannot constitute the opportunity for release that the Eighth Amendment requires. *See Miller*, 567 U.S. at 489. The trial court’s conclusion that Hamilton’s seven parole denials do not “in and of itself” deny him meaningful review ignores the systemic problem demonstrated by *Buchanan*: that the

Board operates under a framework that emphasizes static offense-related characteristics while providing no evidence that youth-related mitigating factors receive the constitutional weight that *Miller* and *Aiken* demand. The pattern of repeated denials, coupled with the “youth tax” against juvenile offenders in South Carolina’s parole system, demonstrates that Hamilton’s theoretical parole eligibility provides no realistic path to release and that his sentence operates as de facto LWOP, warranting a resentencing hearing under *Aiken*.

The difference between Hamilton’s case and that of Buchanan is its procedural posture. In Buchanan this Court considered an appeal from denial of parole under the extremely deferential standard given in cases involving administrative law. Here, the Court has the opportunity to correct the systemic issue identified in Buchanan because the matter is on direct appeal from the Court of General Sessions. Under the applicable abuse of discretion standard, this Court can find that by refusing to acknowledge its authority and discretion to engage in the resentencing procedure for Hamilton the lower court committed an abuse of discretion.

B. South Carolina’s Parole System Has Never Been Updated to Comply with *Montgomery*’s Requirements

In *Montgomery*, the Supreme Court held that *Miller* established "a substantive rule of constitutional law" that applied retroactively to cases on collateral review. *Montgomery*, 577 U.S. at 208. The Court explained that "even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects ‘unfortunate yet transient immaturity.’" *Id.* (quoting *Miller*, 567 U.S. at 479). *Montgomery* clarified that *Miller* "requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence" and that "[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." *Id.* at 209-10.

South Carolina's parole system has never been updated to comply with *Montgomery's* requirements. The Board's Policy and Procedure Manual (last updated in November 2019, three years after *Montgomery* was decided) makes no mention of the factors of juvenility highlighted in *Miller*, *Montgomery*, or *Aiken*, and contains no provisions requiring consideration of youth-related factors for juvenile offenders. The general factors for parole consideration and permissible reasons for parole denial predate *Miller* and *Aiken* and were not designed to implement their constitutional requirements. *Criteria for Parole Consideration, supra; Denial of Parole Factors, supra*, at 25. Outside of the statutory requirements in S.C. Code Ann. § 24-21-640, there are no restrictions under South Carolina law on how the Board determines individual cases. The statute allows the Board to create its own decision-making criteria, but neither the statute nor the Board's procedures mandate consideration of the *Miller* factors. *See* S.C. Code Ann. § 24-21-640; *Criteria for Parole Consideration, supra; Denial of Parole Factors, supra*, at 25.

Hamilton's sentence exemplifies the constitutional inadequacy of South Carolina's parole system. Hamilton was sentenced in 1993, nineteen years before *Miller* was decided and twenty-one years before *Aiken*. He became parole-eligible in 2013, one year after *Miller*. Since then, he has appeared before the Board seven times and been denied release each time. There is no evidence in the record that any hearing involved the individualized assessment of youth-related factors that *Montgomery* requires. The Board has never been required to evaluate Hamilton's capacity for rehabilitation or assess whether, after thirty-two years of incarceration, he remains among "the rare juvenile offender" for whom life imprisonment is constitutionally justified. *Miller*, 567 U.S. at 479 (quoting *Graham*, 560 U.S. at 73). Instead, the Board operates under pre-*Miller* procedures that

focus on static factors like the nature and seriousness of the offense while providing no mechanism for the youth-centered analysis that the Constitution demands. The trial court's conclusion that Hamilton's opportunity for release is "a matter within the authority of the Parole Board, not the court" effectively delegates constitutional compliance to a body that has never been structured or required to provide it, leaving Hamilton subject to a system unable to provide constitutionally adequate review.

C. Only the Sentencing Court Can Apply *Miller* and *Aiken* Factors

The Supreme Court's ruling in *Miller* "plainly excludes...juveniles—from specific punishment—life without parole absent individualized considerations of youth." *Aiken*, 410 S.C. at 540-41. "Youth has constitutional significance. As such, it must be afforded adequate weight in sentencing." *Id.* at 543. Life sentences for juvenile offenders passed down before *Miller*, whether mandatory or permissible, absent an inquiry into the characteristics of their youth, are facially unconstitutional. *Id.* at 543-44; *see also Id.* at 540-41 ("Failing to apply the *Miller* rule retroactively risks subjecting defendants to a legally invalid punishment"). Life sentences for juvenile offenders passed down before the Supreme Court's ruling in *Miller*, whether mandatory or permissible, absent an inquiry into the characteristics of their youth, are facially unconstitutional. *Id.* at 543-44. *Aiken* held that such juvenile offenders in South Carolina were entitled to resentencing that allowed them to present evidence specific to their attributes of youth and allowed the judge to consider such evidence in the light of its constitutional weight. *Id.*

When a juvenile offender seeks resentencing pursuant to *Miller* and *Aiken*, those requirements cannot be satisfied by delegating the constitutional analysis to a parole board that operates under a different legal framework with different statutory mandates. The courts, not the Board, are responsible for ensuring that sentences comply with the Eighth Amendment. The

constitutional analysis required by *Aiken* is fundamentally a judicial function that parole boards, operating under separate administrative regulations, are neither designed nor required to perform. Statutorily, the Board focuses on whether the prisoner has "shown a disposition to reform," will "probably obey the law," and whether "the interest of society will not be impaired" by release. S.C. Code Ann. § 24-21-640. These forward-looking, public-safety-oriented criteria differ fundamentally from the backward-looking inquiry that resentencing under *Aiken* requires.

The lower court's conclusion that Hamilton's "opportunity for release was a matter within the authority of the Parole Board, not the court" improperly delegates the court's constitutional responsibility to ensure Eighth Amendment compliance to the Board, which is ill-equipped to apply such factors under its current framework. Hamilton was sentenced in 1993 without any consideration of the *Miller* factors: a constitutional violation that *Aiken* was designed to remedy. The Board cannot cure this defect. The Board is not required, by statute or by its own published framework, to apply the *Miller* factors or evaluate how Hamilton's age, immaturity, family and home environment, the circumstances of his participation in the offense, peer pressures, incompetencies associated with youth, and capacity for rehabilitation should affect the proportionality of his sentence. *Aiken*, 410 S.C. at 544 (citing *Miller*, 567 U.S. at 477-80). By denying Hamilton a resentencing hearing and instead relegating him to a parole system that has systematically failed to implement the principles of *Miller* and *Aiken*, the trial court effectively denied Hamilton the constitutional protections to which he is entitled. Only a resentencing hearing before the court of General Sessions, where the *Miller* factors can be properly considered and where Hamilton can present evidence of his youth-related diminished culpability and capacity for rehabilitation, can satisfy the requirements of *Miller*, *Aiken*, and their progeny.

The appropriate venue for evaluating the propriety of Hamilton’s sentence is the Court of General Sessions. This Court should reverse the order of the trial court and remand the case for a constitutionally appropriate sentencing hearing.

III. The Trial Court Erred in Holding that Resentencing Would Usurp the Parole Board’s Authority

The South Carolina Supreme Court has recognized that “parole is a privilege, not a right” and that the Board has sole authority regarding decisions to grant or deny parole. *Cooper*, 377 S.C. at 496 (2008). However, “the parole board's sole authority to determine parole eligibility is separate and apart from the court's authority to sentence a defendant.” *State v. McKay*, 300 S.C. 113, 115 (1989). Courts retain independent authority to ensure that sentences comply with the Constitution. This judicial function does not encroach upon the Board's administrative authority to make release decisions. The Board "operate[s] within certain parameters" established by the Legislature, but the Supreme Court has emphasized that "we do not believe the Legislature established the Board and intended for it to render decisions without any means of accountability." *Cooper*, 377 S.C. at 499.

A resentencing hearing under *Aiken* requires the court to perform its constitutional duty: determining whether a juvenile offender’s original sentence was imposed in violation of the Eighth Amendment and, if so, fashioning a constitutionally compliant sentence that accounts for the mitigating qualities of youth. *Aiken*, 410 S.C. at 544-45. This judicial determination does not interfere with the Board's separate authority to decide, within the parameters of whatever sentence the court imposes, whether and when an inmate should be released on parole. When a sentence is imposed in violation of the Constitution, courts have the authority to remedy that violation through resentencing. *Id.* The Eighth Amendment's prohibition on cruel and unusual punishment “guarantees individuals the right not to be subjected to excessive sanctions.” *Miller*, 567 U.S. at

469. Constitutional violations in sentencing cannot be remedied through administrative processes that lack the authority to apply constitutional principles or to modify sentences accordingly.

The trial court's concern that resentencing would “usurp the Parole Board's authority” reflects a misunderstanding of Hamilton’s request and the distinct roles of the court and the Board. Hamilton did not ask the trial court to order the Board to grant him parole or to dictate how the Board should exercise its release authority. Rather, Hamilton asked the court to fulfill its constitutional obligation under *Aiken*: to conduct a resentencing hearing that considers the *Miller* factors and determines whether his original life sentence, imposed without any consideration of his youth, violates the Eighth Amendment. *Aiken*, 410 S.C. at 544-45. This is precisely the type of constitutional determination that the court, not the Board, is designed and required to make. After considering the *Miller* factors at resentencing, the court may either impose a different sentence, or Hamilton may remain subject to his current sentence and to the Board’s authority regarding his potential release. Either outcome preserves the proper separation of functions. The trial court’s refusal to conduct a resentencing hearing did not protect the Board's authority; it abdicated the court’s own constitutional responsibility to ensure that Hamilton's sentence complies with the Eighth Amendment.

Hamilton has been repeatedly denied parole based on a system that emphasizes the immutable nature and seriousness of his offense while providing no evidence that youth-related mitigating factors or his demonstrated capacity for rehabilitation have been meaningfully considered. These characteristics are all “fixed as of the day of the offense” in 1993, when Hamilton was seventeen years old, and “unable to be changed.” *Cooper*, 377 S.C. at 499. As a juvenile offender subject to a de facto LWOP sentence given without any individualized hearing,

Hamilton is entitled to resentencing that incorporates the constitutional protections under *Miller* and *Aiken*. His original sentence treated Hamilton "as though [he was] not [a child]" and produced a constitutionally invalid sentence. *Miller*, 567 U.S. at 474. *Aiken* established the remedy: "*any individual* affected by our holding may file a motion for resentencing" to obtain the individualized hearing that *Miller* requires. *Aiken*, 410 S.C. at 545 (emphasis added). This remedy must be judicial because only courts can conduct the Eighth Amendment analysis and decide whether life imprisonment is a proportionate sentence in light of the *Miller* factors. The Board cannot substitute for this judicial function, but granting a resentencing hearing does not disturb its authority.

The trial court treated Hamilton's request for resentencing as an improper intrusion on the Board's authority rather than as a request for the judicial remedy that *Aiken* expressly provides. Hamilton's Motion for Resentencing did not ask the court to second-guess the Board's decisions or to interfere with the Board's release determinations; it asked the court to remedy the constitutional violation that occurred at his sentencing in 1993. The trial court's refusal to conduct this resentencing hearing left Hamilton with no remedy at all. He cannot obtain constitutional compliance through the Board, which has neither the mandate nor the authority to apply *Miller* factors or to determine whether his sentence violates the Eighth Amendment. The only remedy available to Hamilton is precisely what *Aiken* contemplated: a resentencing hearing where the court considers the *Miller* factors and determines whether a constitutionally compliant sentence, considering his youth at the time of the offense, should be something other than life imprisonment. By denying this hearing on the mistaken ground that it would usurp the Board's authority, the trial court answered a question that Hamilton never asked and failed to answer the constitutional question that *Aiken* requires courts to address. The lower court's decision therefore reflects an

abuse of discretion that this Court can and should correct. This Court should reverse the order of the trial court and remand the case for a constitutionally adequate resentencing hearing.

CONCLUSION

The trial court erred in denying Hamilton's motion for resentencing and in concluding that South Carolina's parole system provides constitutionally adequate review for juvenile offenders. For the foregoing reasons, Hamilton respectfully requests this Court reverse the trial court's order and schedule a resentencing hearing at which the unique features of Hamilton's juvenility at the time of the offense can be fairly considered and applied. Hamilton, now 52 years old, is entitled to the individualized assessment of his juvenile culpability that *Miller* and *Aiken* require: an assessment that South Carolina's parole system is structurally incapable of providing and that has been denied to him for over three decades.

Charleston County

September 1, 2026

Respectfully submitted,

/s/ Cameron Jane Blazer

Cameron Jane Blazer
Ninth Circuit Public Defender
101 Meeting St., 5th Floor
Charleston, SC 29401
(843) 958-1850
Attorney for Mark Hamilton