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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 REPLY BRIEF OF APPELLANT

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September 1, 2026

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ARGUMENT

The State's brief reduces a weighty constitutional problem to a matter of labels. Taken to its logical conclusion, if this court adopted the position that nominal parole eligibility could categorically satisfy *Miller*, *Aiken*, and *Montgomery*, regardless of what happened at a sentencing or any parole hearings, there would be a class of juvenile offenders, sentenced prior to this state's adoption of its truth-in-sentencing approach for whom the constitutional protections of those cases would be purely illusory.¹

I. This court should reject the practical absurdity that is the logical consequence of the state's argument.

If the State is correct, South Carolina could eliminate Life Without Parole (LWOP) entirely, sentence every juvenile murderer to life with nominal parole eligibility, conduct no individualized inquiry at sentencing, make no changes to the factors to be considered at parole, and still be in full constitutional compliance. Constitutional protection would turn entirely on a legislative drafting choice rather than on whether a juvenile's constitutionally significant characteristics were ever actually weighed, and *Miller* and *Aiken*'s promise would be rendered empty.

Put another way, the state argues that because Hamilton was sentenced to life with the possibility of parole, and because he has had and, presumably, will continue to have parole hearings (albeit unbound by any fealty to the holdings of *Miller* and *Aiken*), the need for the procedural and substantive care required by *Miller* and *Aiken* is eliminated. But when and where should constitutionally appropriate review occur for someone like Mark Hamilton, whose sentence was handed down in a matter of seconds and who spent

¹ *Miller v. Alabama* 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); *Montgomery v. Louisiana* 577 U.S. 190, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016); and *Aiken v. Byars* 410 S.C. 534, 765 S.E.2d 572 (2014).

more than two decades in prison before being granted a handful of cursory hearings before a non-judicial pardon board? The State effectively answers, “Never.”

II. The State relies on cases that undermine its argument.

The State cites *Buchanan v. S.C. Dep’t of Prob., Parole, and Pardon Servs.*, 442 S.C. 393 (Ct. App. 2023) as support while ignoring what that opinion actually says. The *Buchanan* court found the Board's process 'very nearly equivalent to being ineligible for parole' for juvenile offenders, called for legislative reform, and affirmed only because the administrative law standard of review left it no choice — a constraint this Court does not face here.

Here, Hamilton is asking the trial court to set a resentencing hearing, not to weigh in on whether a specific parole board’s decision on any given day was proper under its governing rules and regulations.

State v. Slocumb, 426 S.C. 297 (2019), and *State v. Smith*, 428 S.C. 417 (2019) stand only for the proposition that extending *Miller's* constitutional holdings is the U.S. Supreme Court's prerogative. Neither *Slocumb* nor *Smith* hold that there is no constitutionally adequate review required. *Montgomery*, meanwhile, endorsed parole as a constitutionally sufficient remedy only on the assumption that the review provided would be meaningful — an assumption this Court's own decision in *Buchanan* has already found wanting.

And *Jones v. Mississippi*, 593 U.S. 98 (2021), does not help the State here, either. *Jones* held that a discretionary sentencing system is a constitutionally sufficient method of *Miller* compliance. The Supreme Court in *Jones* addressed how compliance can be achieved, not whether compliance is required at all, and it presupposes that the system chosen actually functions as intended.

III. The state relies on *Major* to argue against a straw man.

Hamilton is not asking the trial court to direct the parole board's conduct, no matter how many times the trial court or the State suggests otherwise.

Because it took the trial court's invitation to misconstrue Hamilton's argument, the State's reliance on *Major v. S.C. Dep't of Prob., Parole, and Pardon Servs.*, 384 S.C. 457 (2009), is misplaced. *Major* considered whether by issuing consecutive sentences a trial court could control a person's later eligibility for parole. The separation of powers issue in *Major* would be moot in any resentencing in this case: At a new hearing he will be eligible to be sentenced under the new law for a term of years with no parole eligibility at all. Resentencing Mark Hamilton in keeping with the juvenile he was at the time of his crime has no bearing on whether judicial sentencing continues to operate separately and without influence over the parole process.

IV. Conclusion

Mark Hamilton is not asking this court to extend *Miller* and its progeny beyond its constitutional moorings. Here, the constitutional obligation recognized by *Miller* and *Aiken* was never satisfied at his sentencing, the parole system is not equipped to satisfy it, and this Court should recognize that the *Aiken* remedy is and should be available to him. To do otherwise would be to hold that *Miller*, *Montgomery*, and *Aiken*, can be satisfied by merely slapping the label of parole eligibility on a sentence, regardless of whether any constitutionally adequate hearing has ever occurred. That is not what those decisions, or the constitutions upon which they are based, stand for. Mark Hamilton has never received the kind of hearing the Constitution requires. He is entitled to one now.

Respectfully Submitted,

Cameron Blazer

By: /s/ Cameron Jane Blazer

ATTORNEY FOR APPELLANT

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CERTIFICATE OF SERVICE

Attorney for Appellant certifies that both the Final Brief of Appellant and Reply Brief of the Appellant in Appellate Case 2025-001185 have been served on all relevant parties via their AIS addresses.

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