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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
The Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

TRAVONTAE J. MITCHELL,

APPELLANT

RETURN TO PETITION FOR REHEARING
Appellant No. 2023-001323

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ATTORNEYS FOR RESPONDENT

On May 22, 2023, the Appellant appeared before the Honorable Benjamin H. Culbertson for a trial answering to his indictments for the offenses of murder and three counts of attempted murder (R. p. 643-650). Appearing with the Appellant was his trial counsel Clay Pinkerton. The Appellant's trial was held simultaneously with co-defendants Che Leon Ransom (Che) and Don Leequin Brown. Representing the State of South Carolina were Assistant Solicitors, Nancy Livesay and Christopher Helms of the Fifteenth Circuit Solicitor's Office. After four days of testimony a jury of his peers found the Appellant, as well as his co-defendants, guilty of all charges.

After the reading of the verdict, the Appellant and co-defendants appeared before Judge Culbertson for sentencing. A week prior to their trials another co-defendant Tronahz Whittington (Tronahz) was convicted and sentenced to a forty-five (45) year period of incarceration. Judge Culbertson found that there was nothing that was raised during trial that would lead him to believe these defendants should receive a different sentence. Therefore, Judge Culbertson sentenced each defendant to a total of forty-five years incarceration. After the verdict the Appellant filed a motion for reconsideration. On August 9, 2023, a hearing pertaining to this motion was heard before Judge Culbertson. At the conclusion of this hearing Judge Culbertson denied this motion.

While serving his sentence the Appellant filed a timely notice of appeal. On August 12, 2026, this court issued an opinion affirming the decisions of Judge Culbertson. *State v. Mitchell*, Op. No. 2026-UP-405 (S.C. Ct. App. filed August 12, 2026). After this decision the Appellant filed a petition for rehearing on August 27, 2026. On August 28, 2026, this Court issued an order that the Respondent file a response to this petition.

Pursuant to Rule 221(a) of the South Carolina Appellant Court Rules, "A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. The

Respondent argues that the Appellant failed to reveal any matter that was overlooked or misapprehended. The decision of this court was correct the Appellant is not entitled to a rehearing.

This response supporting the Respondent's arguments follows.

ARGUMENTS

- 1. This court did not err in affirming the decision of the trial court when the trial court made it obvious that they did not intend to give the juvenile Appellant a life sentence without parole, thereby, making *Aiken v. Byars* not applicable, and the Appellant failed to present any evidence regarding the hallmark features of youth during the motion to reconsider; therefore, this court's decision that no error in not allowing a reconsideration of Appellant's original sentence was correct.**

After the jury verdict each defendant appeared before Judge Culbertson for sentencing.

During sentencing Judge Culbertson stated:

"Gentlemen, I don't see any justifiable reason to sentence you to any more than the other co-defendant who was found guilty. Likewise, I don't see any justifiable reason to sentence you to any less than the co-defendant." (R. p. 626 l. 1-5).

Appellant was sixteen years old when he committed this offense. According to the South Carolina Supreme Court case of *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), the Supreme Court decided to adopt the United States Supreme Court decision of *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, (2012). In the *Mitchell* opinion this court decided, "Although South Carolina does not mandate an LWOP sentence for murder, our supreme court nonetheless held that *Miller* established 'an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered' before sentencing a juvenile to life without parole (LWOP). The court held that sentencing judges may still sentence a juvenile to LWOP, but they may do so only after an individualized hearing where the judge considers the following criteria:

(1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity and failure to appreciate the risks and consequences"; (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...’ and (5) the ‘possibility of rehabilitation’” *Aiken*, 410 at 544, 765 S.E.2d at 577, quoting *Miller*, 567 U.S. at 477-78.

Mitchell, pg. 3

During sentencing Judge Culbertson stated that he did not intend to give the Appellant any greater sentence than that of his co-defendant, who was serving a forty-five (45) year sentence. During the appeal Respondent argued that the sentencing judge made it clear he did not intend to give the Appellant an LWOP sentence, therefore, the Appellant was not entitled to a hearing pursuant to *Aiken v. Byars*. The South Carolina Supreme Court made it clear that prior to any sentence of LWOP these criteria must be considered. The sentencing judge never intended to give an LWOP sentence, so the consideration of these criteria was not relevant. This court correctly decided that in *Aiken* the criteria must only be considered prior to giving an LWOP sentence which the Appellant did not receive. So, there was no error in the sentencing judge not allowing a hearing pursuant to *Aiken*.

After the Appellant’s original sentencing, but prior to the hearing for reconsideration, the South Carolina Supreme Court issued the opinion of *Jones v. State*, 440 S.C. 14, 889 S.E.2d 590 (2023). In *Jones*, the Supreme Court decided, “juveniles are entitled to careful sentencing under the Eight Amendment, and we direct circuit court judges to consider the mitigating factors of youth articulated in *Aiken v. Byars*. *Id.*, 440 S.C. at 24, 889 S.E.2d at 596. The Appellant argues that this court overlooked or misapprehended their decision because the sentencing judge did not consider the *Aiken* factors within the resentencing hearing. This court decided that the Appellant never requested an individualized hearing and only presented the judge with the “barest information relevant to *Aiken* factors at the reconsideration hearing.” *Mitchell*, pg. 3. During this hearing Judge Culbertson gave the Appellant an opportunity to present any mitigation evidence he wished to

provide. However, Appellant's counsel's entire argument was regarding the mentioning of a separate shooting involving the Appellant; that the Appellant was in a gang; and the fact that this information was given by his co-defendants who were not reliable. (R. p. 631 l. 17-20; p. 632 l. 5-8).

The *Jones* case cannot apply to the original sentencing hearing because the Supreme Court did not make *Jones* retroactive as they did in *Aiken*.¹ The court was also correct in their assessment that during the motion to reconsider counsel for the Appellant failed to request an individualized sentencing hearing, nor presented any evidence in mitigation relating to the chronological age of the Appellant, his family and home environment, the incompetencies associated with youth, or Appellant's ability to rehabilitate. The only thing raised during this reconsideration hearing were facts relating to the crime itself. The mitigation did not focus on the criteria that were found in *Aiken*. Both the state and defendant have a mutual burden of *production* to provide the resentencing court with any evidence and arguments they believe to bear on the *Aiken* factors and otherwise relate to what should be appropriate sentence. *State v. Smart*, 439 S.C. 641, 645, 889 S.E.2d 573, 575 (2023). The Court cannot make a finding on evidence that has not been presented. The resentencing court must consider all the evidence and arguments presented at the resentencing hearing and impose an appropriate sentence. *Id.* The Court during the hearing was presented with evidence that was previously presented during trial. Since the court had no evidence presented through mitigation relating to the *Aiken* factors the trial court made the correct decision in not granting sentence reconstruction. Nothing presented was sufficient to allow the court to reconsider

¹ We hold the principles enunciated in *Miller v. Alabama* apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole. *Aiken*, 410 S.C. at 545, 765 S.E.2d at 578.

the previous sentence or was related to any of the *Aiken* factors. The decision of this court was correct; the opinion did not overlook or misapprehend any of the information given. The Appellant has not revealed a sufficient argument revealing that he is entitled to a rehearing.

2. The confession of Che Ransom just implicated himself in the planning of this robbery with co-defendant Tronahz Whittington, the Appellant was never implicated in the planning so the testimony of Detective Drew Edwards regarding co-defendant Ransom's confession did not violate *Bruton*.

During the trial, Detective Drew Edwards, who questioned co-defendant Che Ransom, was called to testify regarding Che's confession. The Appellant argued that this testimony implicated him in planning of the crime which violates *Bruton v. United States*.² Within the opinion this court decided that Che's confession specifically stated that Tronahz Wittington planned the robbery with him and no one else was implicated in the planning of the robbery. This court also determined that the Appellant admitted that he was in the vehicle when the robbery occurred but did not participate. The fact that Tronahz decided to rob the victim after the group got into the car actually bolstered the Appellant's defense that he was just merely present, and not an accomplice.

In this motion for rehearing the Appellant argues that the word "they" implicated him in the planning of this robbery. However, according to Detective Edwards, Che mentioned that the plan was originated by Tronahz. Che never mentioned that anyone else was part of this plan between himself and Tronahz. The Appellant also argued that Detective Edwards mentioning that Che said, "that plan originated after they were already in the car," implicated the Appellant in the planning of this crime. What this court found was that this revealed that the plan was made prior to the Appellant getting involved, assisting in his argument of mere presence, not hurting it.

² 391 U.S. 123, 88 S.Ct. 1620 (1968).

In the United States Supreme Court decision of *Richardson v. Marsh*, the Court made a distinction between that case and *Bruton*. In *Richardson* the United States Supreme Court decided,

There is an important distinction between this case and *Bruton*, which causes it to fall outside the narrow exception we have created. In *Bruton*, the codefendant's confession "expressly implicat[ed]" the defendant as his accomplice. Thus, at the time that confession was introduced there was not the slightest doubt that it would prove "powerfully incriminating." By contrast, in this case the confession was not incriminating on its face, and became so only when linked with evidence introduced later at trial. (the defendant's own testimony).

Richardson v. Marsh, 481 U.S. 200, 208, 107 S.Ct. 1702, 1707 (1987).

The evidence was clear that this was a plan devised between Che and Tronahz. This is what Che confessed to Detective Edwards. Che never mentioned the Appellant as being involved in the planning of this crime. The Appellant wants to argue that Che saying that the "plan originated when they were already in the car" (R. p. 373 l. 6-8) revealed him being implicated in the planning'; therefore, violating *Bruton*. However, Detective Edwards also testified that Che told him that Tronahz knew the victim from Snapchat, and that he saw the victim had weed money. That is when a plan was formulated by Che and Tronahz to rob the victim for his money and/or weed. R. p. 368 l. 11-17). During his testimony Detective Edwards was asked, "You have uncovered no evidence that indicated the discussions about a robbery with Tronahz Whittington occurred before they got in the vehicle; correct?" and Detective Edwards answered, "I have not." (R. p. 373 l. 9-13). So, like it was stated within the opinion, this evidence assisted in the Appellant's defense that he was just merely present, and not a part of this robbery. Thereby it was not in violation of *Bruton*.

Within his motion for reconsideration, Appellant raised the argument regarding the question asked by the jury during deliberations. The jury asked the Court, "When did the defendants watch the Snapchat? Date? Time?" (R. p. 788 l. 13-17). Che stated to Detective Edwards that he knew the victim from Snapchat that he saw that he had weed money, and a plan

was formulated to rob him for money and/or weed. (R. p. 368 l. 12-15). Since it is up to the jury to judge the facts, that was a question that the court could not answer. There was no evidence presented that Appellant saw the victim on Snapchat. There was also never any testimony stating that Appellant created a plan with Tronahz. Detective Edwards clearly stated that the plan was created between Che and Tronahz. A plan that was put in motion in the car under the order of Tronahz. It was Tronahz who indicated his desire to rob the victim. (R. p. 373 l. 14-17).

Within this motion for rehearing the Appellant also argued that the Court erred in not instructing the jury that the Che Ransom's confession should only be against Che. However, the Court did make the following instruction.

The case each defendant and the evidence and the law concerning that defendant should be considered separately and individually from the evidence and law concerning the other defendants. Your verdict does not have to be the same for all defendants. The fact that you may find one defendant guilty or not guilty should not control your verdict as to the other defendants. Where more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other two, or you may convict two and acquit the third, or you may acquit all three or you may convict all three. Your verdict for each charge against each defendant depends upon your view of the testimony and evidence. You must take each defendant and consider the evidence as to that defendant and my instructions to you on the law. (R. p. 590 l. 6-21).

The confession of Che Ransom never implicated the Appellant in the planning of this crime. Nor did he even mention the Appellant to Detective Edwards. Che only implicated himself in the planning of this his crime. Through his confession Che also placed himself at the crime scene shooting within the vehicle as they fled the scene. (R. p. 367 l. 6-9). Che's statement totally implicated himself in being involved in this crime and had nothing to do with the Appellant.

From the testimony of Detective Edwards, Che confessed that the plan was devised between himself and Tronahz. The Appellant was not even mentioned within his confession. The Appellant was implicated by his own statement placing himself at the scene. There were also

statements of the surviving victims placing a person with white pants shooting. Of the individuals that got out of the car shooting, the only one wearing white pants was the Appellant. So, the jury easily determined that the plan did not originally involve the Appellant; however, he was involved in the shooting. As stated by the South Carolina Supreme Court in *State v. Miller*,

In determining whether any admission of the co-defendant in this case was sufficiently prejudicial to require reversal, the probable impact of the admissions on the minds of the average jury must be determined and, “unless there is a reasonable possibility that the improperly admitted evidence contributed to the conviction, reversal is not required.”

State v. Miller, 266 S.C. 409, 412, 223 S.E.2d 774 (1976), quoting, *Schneble v. Florida*, 405 U.S. 427, 432, 92 S.Ct. 1056, 1060 (1972).

The testimony of Detective Edwards regarding the statement given to him by Che never implicated that the Appellant. Che said himself that Tronahz was the person who came up with the plan and put the plan in motion when they were in the car as soon as he saw the victim. Mentioning “they” was in no way implicating the Appellant in the planning of this crime. The Appellant argued that he was merely present when the crime occurred, so he placed himself at the scene. This conviction was not due to Detective Edwards testimony, but the testimony of the Appellant himself and the other victims who testified that he was one of the shooters. This court was correct that the statement of Che that Tronahz decided to rob the victim after they were in the car bolstered Appellant’s defense not weakened it. So, this court was correct in the determination that this was not a *Bruton* issue. Since the confession of Che only implicated himself, allowing this statement into evidence was not unlawful and did not merit a reversal. This Court was correct in deciding that the decision of the trial court should be affirmed. The Appellant is not entitled to a rehearing. This petition should be subject to dismissal.

CONCLUSION

The Respondent believes that this case was properly decided by this court; therefore, a rehearing is not necessary. The Respondent respectfully request that the Appellant's petition for rehearing be denied.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court Order of April 24, 2024, the Petition for Rehearing, along with the Proof of Service, have been forwarded to Appellant's counsel, Joanna K. Delany via email today, September 8, 2026, to JDelany@sccid.sc.gov and to Ms. Delany's assistant, Catherine Walkup, CWalkup@sccid.sc.gov.

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

This is the 8th day of September 2026.

s/W. Joseph Maye
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