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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2026-UP-215 (S.C. Ct. App. Filed May 6, 2026)

Lower Court Case No. 2022-GS-26-02891

THE STATE,

RESPONDENT,

V.

DON LEEQUIN BROWN,

PETITIONER

APPELLATE CASE NO. 2023-001336

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on October 14, 2026.

QUESTION PRESENTED

Did the Court of Appeals err in failing to apply the holding in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), requiring an individualized sentencing hearing to consider the mitigating hallmark features of youth, because Petitioner, who was seventeen (17) years old at the time of arrest and faced a sentence of life without parole, did not receive a life sentence, instead receiving a forty-five (45) year sentence?

STATEMENT OF THE CASE

In July of 2022, the Horry County Grand Jury indicted Petitioner, Dan Leequin Brown, for murder and three counts of attempted murder, indictments #2022-GS-2891, 2898, 2901, 2902. (R. pp. 762-763; 766-767; 770-771; 774-775). On May 22, 2023, Petitioner proceeded to jury trial with co-defendants Che Ransom and Travontae J. Mitchell before the Honorable Benjamin H. Culbertson. Johnny Gardener represented Petitioner at trial. Nancy Livesay and Christopher Helms prosecuted the case. The jury found Petitioner and his co-defendants guilty. Judge Culbertson sentenced each of the co-defendants to forty-five (45) years for murder and thirty (30) years concurrent for each count of attempted murder. (R. p. 757, lines 1-12). On June 1, 2023, Petitioner filed a motion to reconsider sentence and motion for new trial. (R. pp. 778-779; 780-783). On August 10, 2023, Judge Culbertson heard and denied the motion for reconsideration of sentence and motion for new trial. (R. pp.758-761). A timely notice of intent to appeal was served on August 17, 2023, and the direct appeal perfected. On May 6, 2026, the Court of Appeals affirmed the sentence. State v. Brown, Op. No. 2026-UP-215 (S.C. Ct. App. filed May 6, 2026). A timely petition for rehearing was filed and then denied on October 14, 2026. This petition for writ of certiorari follows.

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.* Therefore, this court will not disturb the circuit court's findings absent a manifest 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.' State v. Finley, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) (emphasis added) (citations omitted)." State v. Mack, 441 S.C. 526, 535–36, 894 S.E.2d 820, 825 (Ct. App. 2023).

REASON WHY CERTIOARI SHOULD BE GRANTED

This Court should grant the petition for writ of certiorari to clarify that a juvenile facing a possible life sentence is entitled to a hearing where the judge must consider the mitigating hallmark features of youth as this Court held in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), even when a life sentence is not imposed.

ARGUMENT

The Court of Appeals erred in failing to apply the holding in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), requiring an individualized sentencing hearing to consider the mitigating hallmark features of youth, because Petitioner, who was seventeen (17) years old at the time of arrest and faced a sentence of life without parole, did not receive a life sentence, instead receiving a forty-five (45) year sentence.

Facts

In the early evening of September 12, 2020, Tronahz Whittington fatally shot Jamie Johnson as he was driving his Chevy Tahoe to Henry's gas station. Britney Milan, Jacob Hill, and Orlin Lopez were also in Johnson's Tahoe at the time of the shooting. (R. p. 169, line 17 – p. 170, lines 1-4). Shamontae Graham testified that on the night of the shooting he was in a car with Tronahz Whittington, Che Ransom, Mikkie McLeod, Travontae Mitchell, who is Graham's brother, and Petitioner, Don Brown. (R. p. 312, lines 4-23). Graham testified that Petitioner was driving the car. (R. p. 321, lines 19-20). Graham told the jury, "Jamie Johnson stopped at a stop sign on D Street. Tronahz then told the driver to pull in front of him. So we pulled in front of the victim's Tahoe. Tronahz opened the door, got out the car, and he fired an AR at the Tahoe and shot the victim's car in the windshield, and that's when I saw the blood from the victim. I saw, like, his head, like go down. Got hit with the gun." (R. p. 309, lines 9-15). Graham testified that Tronahz had an AR-15 weapon. (R. p. 325, lines 4-5). According to Graham, Che Ransom and Mikkie McLeod also got out of the car and Travontae stepped out of the car but quickly got back in. (R. p. 331, lines 5-10). Graham testified that three people fired weapons. (R. p. 331, lies 13-16). According to Graham, Che Ransom had a .45 and Mikkie McLeod had a 9 mm handgun. (R. p. 325, lines 6-9). Graham confirmed that Petitioner did not have a weapon.

(R. p. 378, lines 4-5). Graham testified that there was no plan to kill Jamie Johnson. (R. p. 378, lines 2-3).

Mikkie McLeod testified that as the six of them were on their way to Tronahz's mother's house, Tronahz recognized Jamie Johnson's Tahoe and said, "There goes Jamie. He owe me money." (R. p. 576, lines 4-18). McLeod confirmed that Petitioner was driving the car, he did not have a weapon and he did not get out of the car. (R. p. 580, lines 9-17). McLeod testified that "Nahz" (Tronahz) had an AR. (R. p. 579, lines 17-21). McLeod testified that "Tip" (Travontae Mitchell R. p. 568, lines 19-21) and Che got out of the car and both had nine mm guns or "nines." (R. p. 580, line 22 – p. 581, lines 1-10).

Argument

When Tronahz Whittington fatally shot Jamie Johnson on September 12, 2020, Petitioner, Don Brown, was seventeen (17) years old. Tronahz Whittington was convicted separately in an earlier trial and sentenced to forty-five (45) years. (R. p. 748, lines 6-9). Petitioner and his co-defendants, Che Ransom and Travontae Mitchell, were each convicted at their joint trial. At sentencing the judge failed to conduct an individualized sentencing hearing to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The trial judge erred.

There was very little mitigation presented at sentencing. Trial counsel told the judge that while Petitioner was on bond he came to every appointment and cooperated with counsel. (R. p. 753, line 21 – p. 754, lines 1-2). Trial counsel told the judge, "At the time of this incident, he [Petitioner] was 17 years old. He was just a young guy, Judge. The sentence is going to be almost twice his - - if you do 30 years, it will be almost twice as old as - - as long as they have been alive." (R. p. 754, lines 3-6). Counsel asked the judge to impose the minimum sentence

based on his age. (R. p. 754, lines 7-9). Petitioner's mother told the judge, "I want to apologize to the Johnson family. My son was an A/B honor roll student. He's not a killer. Please try to be lenient on him, please." (R. p. 754, lines 23-25). No other mitigation was presented.

Prior to imposing the sentences, the judge said, "All right. Gentlemen, I don't see any justifiable reason to sentence you to any more than the other codefendant who was found guilty. Likewise, I don't see any justifiable reason to sentence you to any less than the codefendant." (R. p. 757, lines 1-5). Petitioner and his co-defendants, Che Ransom and Travontae Mitchell, were each sentenced to forty-five (45) years in prison, the same sentence imposed on the more culpable co-defendant, Whittington. (R. p. 757, lines 6-12).

On June 1, 2023, Petitioner filed a motion to reconsider sentence. (R. p. 780). In the motion Petitioner argued that the judge failed to evaluate mitigating factors including "the fact that the evidence at trial established that co-Defendant Whittington fired the only two shots directed at the victim, including the fatal shot, and did so out of an animus that had been brewing for several weeks." (R. p. 778). Petitioner argued, "These facts are not present in analyzing this Defendant's culpability." (R. p. 778). Petitioner additionally argued, "As such, the Defendant submits that failure to consider all relevant conduct, including the absence of pre-planning and deadly conduct in his sentencing, violates his rights to due process under the 14th Amendment to the U.S. Constitution and Article I Section 3 of the South Carolina State Constitution, as well as his right to be free from cruel and unusual punishment pursuant to the 8th Amendment of the U.S. Constitution and Article I Section 15 of the South Carolina State Constitution." (R. p. 778).

On August 10, 2023, the judge heard the motion for reconsideration of sentence and motion for new trial. (R. pp.758-761). During the hearing counsel for Petitioner told the judge, "We thought 30 years is more appropriate based on his age and criminal record and the

involvement in the trial." (R. p. 759, lines 18-20). The prosecutor told the judge that none of the three co-defendants tried together had prior records. (R. p. 756, lines 16-17). The prosecutor also told the judge, "Now, it was conceded by the State he [Petitioner] did not have a gun. There was no witness that presented evidence that he had a gun, and we didn't present evidence he had a gun. However, in utilizing the vehicle to block the victims in, he did participate fully in the murder in this case." (R. p. 760, lines 18-20). Counsel for Petitioner argued that there was no plan for Petitioner to do any criminal act. (R. p. 761, lines 3-16). At trial Investigator Edwards confirmed that any planning by Whittington to rob Jamie Johnson took place after all of the young men were already in the car. (R. p. 448, lines 1-17).

The judge denied the motion to reconsider sentence stating, "I'm going to deny your motion. I remember this trial. It was hand of one is the hand of all, and the jury found that they were all acting together in aiding and abetting one another; so, therefore, the guilt of one is the guilt of all of them, and I'll deny your motion." (R. p. 761, lines 17-22). The trial judge abused his discretion in sentencing Petitioner to forty-five (45) years without conducting an individualized sentencing hearing to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), when Petitioner was seventeen (17) years old at the time of arrest and faced a sentence of life without parole for murder. The "hand of one is the hand of all" is a theory of liability not sentencing, especially in light of the individualized requirements for juvenile sentencing.

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. The South Carolina Constitution provides that, "Excessive bail shall not be

required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained." S.C. Const. art. I, § 15.

In Miller v. Alabama, 567 U.S. 460, 479, 132 S. Ct. 2455, 2469, 183 L. Ed. 2d 407 (2012), the United States Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. In Aiken v. Byars, 410 S.C. 534, 540-541, 765 S.E.2d 572, 575-576 (2014), the South Carolina Supreme Court found that "Miller 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." In Aiken, the South Carolina Supreme Court held that the principles enunciated in Miller v. Alabama apply ". . . prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." 410 S.C. at 545, 765 S.E.2d at 578. In a footnote, the South Carolina Supreme Court wrote, ". . . for the purposes of this opinion, a juvenile was an individual under eighteen years of age." Aiken, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1. The principles of Miller v. Alabama and Aiken v. Byars apply to Petitioner because he was seventeen (17) years of age and was subject to a sentence of life without parole for murder.

Pursuant to Miller and Aiken, a sentencing court must consider at a hearing: (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." Miller, 132 S.Ct. at 2468; Aiken, 410 S.C. at 544, 765 S.E.2d at 577. The Court in Aiken noted:

> While we do not go so far as some commentators who suggest that the sentencing of a juvenile offender subject to a life without parole sentence should mirror the penalty phase of a capital case, we are mindful that the Miller Court specifically linked the individualized sentencing requirements of capital sentencing to juvenile life without parole sentences. 132 S.Ct. at 2463, 2467–68. Thus, the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above.

410 S.C. at 544–45, 765 S.E.2d at 577 (n. 9 omitted).

The sentencing hearing in the present case failed to meet the requirements of Miller and Aiken. The judge failed to consider the hallmark features of youth. The attorney mentioned Petitioner's age of seventeen (17) as nothing more than a chronological fact in a vague plea for mercy. As noted in Aiken, "[A]lthough some of the hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by Miller where the factors of youth are carefully and thoughtfully considered. Many of the attorneys mention age as nothing more than a chronological fact in a vague plea for mercy. Miller holds the Constitution requires more." 410 S.C. at 543, 765 S.E.2d at 577. (n. #8 omitted). In State v. Mack, 441 S.C. 526, 544, 894 S.E.2d 820, 830 (Ct. App. 2023), the South Carolina Court of Appeals wrote, "Applying the Aiken factors involves more than repeating the words; it requires applying the substantive content of those factors." The sentencing judge failed to apply the substantive content of the Aiken factors in deciding the sentence to impose.

The judge failed to consider Petitioner's home and family environment. The judge failed to consider Petitioner's limited role in the offense as reflected when the judge said, "I'm going to deny your motion. I remember this trial. It was hand of one is the hand of all, and the jury found

that they were all acting together in aiding and abetting one another; so, therefore, the guilt of one is the guilt of all of them, and I'll deny your motion." (R. p. 761, lines 17-22). The judge sentenced Petitioner to the same forty-five (45) year sentence that Whittington, the most culpable of the co-defendants, received. The judge failed to consider the incompetencies associated with youth and failed to consider the possibility of rehabilitation especially in light of the fact that Petitioner had no prior record. The judge failed to consider the factors required by Aiken prior to sentencing Petitioner. "Miller is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution." 410 S.C. 534, 543, 765 S.E.2d 572, 576–77 (2014). The failure in the present case violates Petitioner's right to be free from cruel and unusual punishment pursuant to the 8th Amendment of the U.S. Constitution and Article I Section 15 of the South Carolina State Constitution. The failure to consider the Aiken factors constitutes an error of law.

In affirming the forty-five (45) year sentence imposed on a juvenile who was seventeen (17) years old at the time of arrest without an individualized sentencing hearing to consider the factors required by Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), the Court of Appeals wrote, "We decline to extend the holding in Aiken where a life sentence was not imposed." State v. Brown, Op. No. 2026-UP-215 (S.C. Ct. App. filed May 6, 2026). The Court of Appeals misapprehended the language in Aiken v. Byars, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014) (n. 10 omitted) (emphasis added) where this Court wrote, "However, Miller requires 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." The individualized sentencing hearing where the judge must consider the hallmark features of youth must take place **before** sentencing, not after.

Additionally, the Court of Appeals misapprehended the clear language in Aiken v. Byars, (2014), where this Court wrote, "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.**" 410 S.C. at 545, 765 S.E.2d at 578 (emphasis added). The principles of Aiken v. Byars, and Miller v. Alabama, apply even when a life sentence is not imposed. The key is whether the juvenile faced a sentence of life without parole. The language in Aiken v. Byars does not require the imposition of a sentence of life without parole as a condition precedent to the requirement of an individualized sentencing hearing to consider the factors required by Aiken v. Byars, and Miller v. Alabama. A judge is unable to determine the proper sentence **before** considering the hallmark features of youth as required by Aiken v. Byars, and Miller v. Alabama.

After declining to extend the holding in Aiken because a life sentence was not imposed the Court of Appeals then wrote, "The trial judge gave Petitioner and his attorney an opportunity to present mitigating evidence prior to sentencing and then later granted a hearing on Petitioner's post-trial motion for sentence reconsideration. At the reconsideration hearing, Petitioner presented no evidence or testimony relevant to the Aiken factors other than mentioning Petitioner's youth. Having given the trial judge no relevant information to consider, we find no grounds to set aside the court's sentence." State v. Brown, Op. No. 2026-UP-215 (S.C. Ct. App. filed May 6, 2026).

First, under the analysis made by the Court of Appeals, the sentencing judge would be under no duty to consider the Aiken factors because a life sentence was not imposed. The analysis by the Court of Appeals is flawed and as argued above, the Aiken factors must be

considered if the juvenile is **facing** the imposition of a life sentence, as Petitioner was. Again, A judge is unable to determine the proper sentence **before** considering the hallmark features of youth as required by Aiken v. Byars, and Miller v. Alabama.

Second, trial counsel should have presented evidence relevant to the Aiken factors. The sentencing judge, however, had the obligation to ask about the Aiken factors as sentencing factors he was required to consider. As the South Carolina Supreme Court wrote in Aiken v. Byars, "Miller 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." 410 S.C. at 540-541, 765 S.E.2d at 575-576 (emphasis added). In Jones v. State[1], 440 S.C. 14, 25, 889 S.E.2d 590, 596 (2023), this Court wrote, "However, we 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, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014)." In Jones this Court found, "the plea court properly considered the mitigating factors of youth and thoroughly explored Jones's juvenility on the record." Jones, 440 S.C. at, 30, 889 S.E.2d at 599[2]. In contrast, in the present case the trial court did not properly consider the mitigating factors of youth and did not explore Petitioner's juvenility on record. In sentencing Petitioner to the same forty-five (45) year sentence imposed on the shooter, the judge disregarded an Aiken factor - the circumstances of the homicide offense and the extent of Petitioner's participation. Petitioner was the unarmed driver. The juvenile sentencing hearing in the present case fell short of the hearing

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[1] As noted in n. #2 of the Court of Appeals opinion, Jones was decided after Petitioner's trial but prior to the reconsideration hearing.

[2] In Jones, two justices found the hearing did not comply with Aiken but concurred because Jones was sentenced to the statutory minimum. Petitioner was not sentenced to the statutory minimum. Instead, Petitioner received the same forty-five (45) year sentence as the shooter.

in Jones and did not come close to the "textbook example" of a proper Aiken hearing as the concurrence in Jones described the sentencing hearing in State v. Smart, 439 S.C. 641, 889 S.E.2d 573 (2023).

An individualized sentencing hearing to consider the mitigating hallmark features of youth is required pursuant to Aiken v. Byars, and Miller v. Alabama, if the juvenile is facing a sentence of life without parole. Petitioner faced a sentence of life without parole. The sentencing judge failed to consider the mitigating hallmark features of youth. Petitioner did not receive careful sentencing, as required under the Eighth Amendment. The sentencing judge erred. The error requires reversal of the sentence and a remand for a sentencing hearing that complies with the law.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully Submitted,



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of November, 2026.