

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina,

vs.

Marcus Antonio Dawson,

Defendant.

IN THE COURT OF GENERAL SESSIONS

THIRTEENTH JUDICIAL CIRCUIT

Indictment No.: 1990-GS-23-2177

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OCT 21 2016

ORDER

SC Court of Appeals

 PAUL D. WICKENS
 CLERK OF COURT
 GREENVILLE CO. S.C.
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On November 14, 1989, Defendant Marcus Antonio Dawson shot and killed Robert Vernon Watson. On May 9, 1990, Dawson pled guilty to murder and was sentenced to life. He was fifteen years old at the time of his crime. Dawson now moves for a resentencing hearing under *Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), arguing he is entitled to present his youth and its mitigating features to the court.

The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The right to be free from excessive punishment is based on the principle "that punishment for crime should be graduated and proportioned to both the offender and the offense." *Miller*, 132 S.Ct. at 2463 (internal quotation marks omitted). Accordingly, the concept of proportionality is central to the Eighth Amendment. *Graham v. Florida*, 560 U.S. 48, 59 (2010).

In *Miller v. Alabama*, the Supreme Court held the Eighth Amendment prohibits the mandatory imposition of life without parole sentences for juvenile homicide offenders. *Miller*, 132 S.Ct. at 2469. In arriving at this conclusion, the Court examined two strands of precedent

dealing with proportionate punishment. *Id.* at 2463. The first line of cases imposed categorical bars to penalties for certain classes of offenders and types of offenses. *Id.* Thus, the Court has held that the Eighth Amendment bars capital punishment for juveniles. *Roper v. Simmons*, 543 U.S. 551, 568 (2005). The Court later found in *Graham v. Florida* that a sentence of life without parole violates the Eighth Amendment when imposed on juveniles who committed nonhomicide offenses. *Graham*, 560 U.S. at 74. Taken together, these cases teach "that children are constitutionally different from adults for purposes of sentencing." *Miller*, 132 S.Ct. at 2464.

As discussed in *Graham* and *Roper*, the distinctive characteristics of youth lessen the culpability of these offenders and make it more likely they can be reformed. *Id.* This, in turn, weakens the penological justifications for imposing such a harsh sentence—life without the possibility of parole—on children. *Id.* at 2465. *Miller* ultimately found that a sentencing authority must be permitted to take youth into account when assessing whether a sentence of life without parole proportionately punishes such offenders. *Id.* at 2466. It also likened the imposition of this harsh sentence on juveniles to the death penalty in several important respects. *Id.* First, a sentence of life without parole works an irrevocable forfeiture of life and liberty. *Id.* Second, such a penalty is an especially severe punishment for a young offender who usually must serve a greater percentage of his life in prison as compared with an adult. *Id.*

This comparison to the death penalty made relevant a second line of cases reflecting the Court's concern with individualized sentencing. *Id.* at 2467. These rulings prohibited mandatory capital punishment and insisted that courts be allowed to take mitigating circumstances into account. *Id.* See *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Lockett v. Ohio*, 438 U.S. 586 (1978). The convergence of these two lines of precedent led to the conclusion that the Eighth Amendment forbids mandatory sentencing schemes requiring life in prison without the

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possibility of parole for juveniles. *Id.* at 2469. And while the Court did "not foreclose a sentencer's ability to make that judgment in homicide cases, [it required that it] take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*

The South Carolina Supreme Court has extended *Miller* to South Carolina's discretionary sentencing scheme. *Aiken*, 410 S.C. at 544. Seeking to give effect to the proportionality rationale underlying that decision, the South Carolina Supreme Court found that *Miller* "establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 543. In so finding, it was persuaded by the following statement in *Miller*: "*Graham's* reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses." *Miller*, 132 S.Ct. at 2465. Accordingly, it held the petitioner in *Aiken* and those similarly situated were entitled to resentencing hearings in which the sentencing court must consider the following factors:

(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."

Aiken, 410 S.C. at 544 (quoting *Miller v. Alabama*, 132 S.Ct. 2455, 2468, 183 L.Ed.2d 407 (2012)).

Although Dawson was sentenced to life (as opposed to life without parole), he asserts he is entitled to resentencing under *Miller* and *Aiken*. Because he was sentenced under South Carolina's discretionary scheme, Dawson argues that the sentencing judge *could* have sentenced him to life without the possibility of parole, but elected not to do so. Therefore, he should be

afforded the opportunity to present the sentencing court with the mitigating factors of youth discussed above. As ably presented in Dawson's brief to the court, "[i]t is counterintuitive to believe either [*Miller* or *Aiken*] intended to deny a juvenile his or her opportunity to present evidence of his or her youth, simply because the sentencing court only sentenced him or her to life in prison." Memorandum in Support of Defendant's Motion to Reconsider Sentence at 3.

While Dawson's argument may be sound in principle, it does not hold on these facts. Dawson was sentenced to life in accordance with the 1990 version of the South Carolina murder statute, which provided that "[a] person who is convicted of or pleads guilty to murder must be punished by death or by imprisonment for life and is not eligible for parole until the service of twenty years." S.C. Code § 16-3-20 (Supp. 1990). Consequently, Dawson became parole eligible on May 9, 2010, and has come before the Parole Board on three separate occasions.¹

Miller and *Aiken* are limited to scenarios where juvenile homicide offenders have either been sentenced to life without parole or who prospectively may be subject to such a sentence. The logic underlying these cases rests on the understanding that life without the possibility of parole is the harshest of all possible penalties for juveniles. In the present case, life *with* the possibility of parole after twenty years does not amount to a *de facto* life without parole sentence.²

¹ Recently, the Supreme Court stated in *Montgomery v. Alabama*, 136 S. Ct. 718, 724, 193 L. Ed. 2d 599 (2016), *as revised* (Jan. 27, 2016), that a State "may remedy a *Miller* violation by extending parole eligibility to juvenile offenders." Dawson is parole eligible and has been afforded numerous opportunities to demonstrate to the Parole Board that he is "capable of change," as provided for in *Montgomery*. *Id.* Since being parole eligible remedies any potential Eighth Amendment concerns stemming from *Miller* and *Aiken*, it would be unwarranted to resentence Dawson.

² In *McKinley v. Butler*, 809 F.3d 908 (7th Cir. 2016), Judge Posner, writing for the majority in a split decision, reasoned that *Miller* applies where a juvenile was given a 100 year sentence but still had no hope of parole or early release.

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IT IS THEREFORE ORDERED that Dawson's Motion for Resentencing is respectfully denied.

IT IS SO ORDERED.

D. Garrison Hill

D. Garrison Hill
Circuit Judge

June 30, 2016
Greenville, South Carolina

90-GS-23 2177

NOW COMES THE DEFENDANT

Marcus Dawson

Who in open Court pleads guilty to the within indictment;

and consents to sentence this day of MAY 9 1990

ATTEST:

Carolyn W. Mattox
Clerk of Courtx Marcus Dawson

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SC Court of Appeals

SENTENCE

The defendant Dawson
Marcus Dawson is
committed to the State Dept. of Corrections/County for a term of Life
months/years and/or to pay a fine \$; provided upon the service of
 months/years and/or payment of \$, plus pay/waive
costs and assessments as applicable*, the balance suspended with probation for
 months/years.

Restitution

For physical injury \$

Yes / No

Property damage \$ to be paid to clerk for Other conditions Date MAY 9 1990C. Victor Pyle
Presiding Judge

* Costs and Assessments

Non-waivable

\$

Not waived

\$

Total

\$
Clerk of Court

* Pay to Victim's Compensation Fund if subrogated.