

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

vs.

ANTHONY ENRIQUEZ,

Defendant.

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NOV 18 2016

SC Court of Appeals

) IN THE COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT

) INDICT. NOS.:

) 1994-GS-10-3056 Murder

) 1994-GS-10-3057 Armed Robbery

ORDER DENYING DEFENDANT'S
MOTION FOR RESENTENCING

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2016 OCT 20 PM 4:23

FILED

On January 23, 1994, seventeen-year-old Defendant Anthony Enriquez robbed and murdered Jeffrey Sewell (Victim) in Charleston County. On December 1, 1994, Defendant pled guilty to murder and armed robbery. The Honorable Casey Manning sentenced Enriquez to life in prison, with the possibility for parole. This matter is before the Court on the Defendant's Motion for Resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

A preliminary hearing was held before the Court on July 20, 2016, to determine whether the Enriquez is entitled to an *Aiken v. Byars* resentencing hearing in light of the fact that he is serving a life sentence with the possibility of parole. Enriquez was represented by his attorney, Bentley Price, and the State was represented by the Ninth Circuit Solicitor's Office through Assistant Solicitor Charles Condon. For the reasons set forth below, the Court denies Enriquez's motion for resentencing.

The South Carolina Supreme Court in *Aiken v. Byars* addressed the implications of the Supreme Court's ruling in *Miller v. Alabama*,¹ and held *Miller* applied retroactively and also

¹ In *Miller*, the Supreme Court addressed whether a statutorily mandated sentence of life imprisonment for juvenile homicide offenders violated the Eight Amendment's protections against cruel and unusual punishment. *Miller v. Alabama*, 132 S.Ct. 2455 (2012). The *Miller* court held mandatory life without parole sentences for juvenile offenders violate the Eight Amendment and a sentencer is required to consider "the mitigating qualities of youth," such as

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By DEPUTY CLERK

applied to juveniles sentenced to life without the possibility of parole under a nonmandatory statutory scheme. *Aiken v. Byars*, 410 S.C. 534, 540, 544, 765 S.E.2d 572, 575, 577 (2014). As a result of the Court's ruling in *Aiken v. Byars*, any juvenile sentenced to life without the possibility of parole is entitled to an individualized sentencing hearing, wherein the court must consider:

(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. 577 (quoting *Miller*, 132 S.C. at 2468).

Here, Enriquez was sentenced to life imprisonment *with the possibility* of parole. He was sentenced to life in accordance with the 1990 version of the South Carolina murder statute, which provided "[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 Ann. § 16-3-20(A) (Supp. 1990). Consequently, Enriquez became parole eligible on January 23, 2014.²

"immaturity, irresponsibility, 'impetuousness[.] and recklessness.'" *Id.* at 2467 (alteration in original) (quoting *Johnson v. Texas*, 500 U.S. 350, 367, 368 (1993)).

² Enriquez was denied parole in April 2014. The parole board cited the nature and seriousness of the offense, the use of a deadly weapon to commit the offense, and Enriquez's unfavorable institutional record at SCDC as its reasons for denying parole. Enriquez was scheduled to go before the parole board again on September 21, 2016.

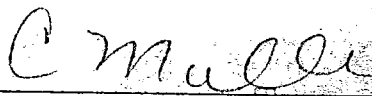


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There is currently no South Carolina case law addressing whether a juvenile defendant sentenced to life imprisonment with the possibility for parole is entitled to the same individualized sentencing hearing as those juvenile defendants sentenced to life without the possibility of parole. This Court finds the Supreme Court's ruling in *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016) instructive. In *Montgomery*, the Supreme Court gave *Miller* retroactive effect and held States may "remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Id.* at 736. The Supreme Court further explained, "[a]llowing 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." *Id.* Because *Montgomery* allows States to remedy unconstitutional life sentences imposed on juveniles by giving such offenders parole eligibility, it logically follows that a life sentence with the possibility for parole—such as the one Enriquez is serving—imposed upon a juvenile defendant is not unconstitutional. Thus, Enriquez is not entitled to a resentencing hearing under *Aiken v. Byars* as *Aiken v. Byars* does not extend to juveniles serving life sentences who are eligible for parole.

IT IS THEREFORE ORDERED that Defendant Anthony Enriquez's Motion for Resentencing is respectfully denied.

IT IS SO ORDERED.


Carmen T. Mullén
Circuit Judge
Ninth Judicial Circuit

October 13, 2016

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 07, 2016

Mr. Bentley D Price, Esquire
Bentley Price Law Firm
78 Ashley Pointe Dr, Suite 103
Charleston SC 29407

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SC Court of Appeals

Re: The State v. Anthony Enriquez
Appellate Case No. 2016-002237

Dear Counsel:

Upon reviewing your Notice of Appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The notice of appeal is not accompanied by a complete copy of the order of Judge Mullen.

Within ten days of the date of this letter you must provide an amended Notice of Appeal specifying the date of the written notice of entry of the order of Judge Mullen.

Very truly yours,

Jenny Abbott Kitchings

CLERK

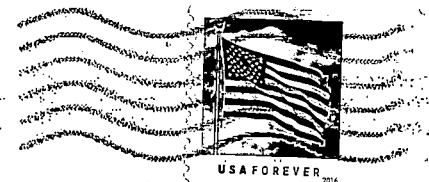
cc: Robert Michael Dudek, Esquire
Scarlett Anne Wilson, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

Bentley Price Law Firm
78 Ashley Pointe Dr., Suite 103
Charleston SC 29407



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Law Firm, LLC

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