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DEC 07 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
The State of South Carolina)
vs.)
Robert Bernard Campbell,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

Warrant # B278896; B287940; B287941; B350004;
B352028

**ORDER DENYING MOTION FOR
RESENTENCING**

2016 NOV 28 PM 3 28
PAUL B. WICKENS
CLERK OF COURT
C.P. & G.S.
GREENVILLE COUNTY, SC

THIS MATTER comes before the Court on Defendant's Motion for Resentencing. On February 28, 1986, in Greenville County, Robert Bernard Campbell pled guilty to multiple crimes he committed as a seventeen year old — armed robbery, attempted armed robbery, housebreaking, criminal sexual conduct 1st degree, and burglary 1st degree. He received, respectively, sentences of 25 years; 10 years; 10 years; 30 years; and life imprisonment within the South Carolina Department of Corrections. On January 8, 2015, Defendant timely filed a Motion for Resentencing pursuant to *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).

Miller v. Alabama and Aiken v. Byars

In *Miller*, the United States Supreme Court held that mandatory sentences of life without the possibility of parole for juveniles convicted of homicide violate the Eighth Amendment's prohibition against cruel and unusual punishment and pose great risk of imposing a disproportionate sentence. *Miller*, 132 S.Ct. at 246, 183 L.Ed.2d at 424. The Court discussed at length the unique factors attributed to youth, their effect on a juvenile offender, and the constitutional importance of allowing juvenile offenders facing life without the possibility of parole an opportunity to present mitigating evidence to the sentencing court prior to receiving such a sentence. Under *Miller*, a sentencing court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* The Court did not hold that a juvenile cannot receive a life sentence for murder; rather, it "mandate[d] only that a sentencer follow a certain process: considering an offender's

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Paul B. Wickens
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 12/2/16

youth and attendant characteristics- before imposing a particular penalty” and allowed for those who did not present such evidence to petition for resentencing *Id.* at 2471, 183 L.Ed.2d at 426.

The South Carolina Supreme Court in *Aiken* held that juveniles who received a sentence of life without the possibility of parole for homicide under the state’s discretionary sentencing scheme are likewise entitled to move for resentencing based on the Eighth Amendment violation, and created a “requirement that courts fully explore the impact of a defendant’s juvenility on the sentence rendered.” *Aiken*, 410 S.C. at 543, 765 S.E.2d at 577.

Campbell moves for resentencing alleging he was not allowed the opportunity to present mitigating evidence of his youth and immaturity at his original sentencing hearing. Both *Miller* and *Aiken* are unequivocal in that the remedy they provide is only available to juveniles sentenced to life without the possibility of parole for homicide. *Miller*, 132 S.Ct.at 2460, 183 L.Ed.2d at 414; *Aiken*, 410 S.C. at 536, 765 S.E.2d at 573. Campbell was not charged with, nor did he plead guilty to, murder. As such, he is not a member of the class of offenders entitled to resentencing under *Miller* or *Aiken*.

Graham v. Florida

At the hearing on the merits of his motion for resentencing, Campbell asked this Court to find he is entitled to resentencing under *Graham v. Florida*, in which the United States Supreme Court held “[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.” 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). Campbell argued that while he did not receive a sentence of life without the possibility of parole as is contemplated in *Graham*, his sentence is a *de facto* life without parole sentence because he will never be granted parole. Campbell argued that a court sentencing a juvenile to *any* life sentence must provide that juvenile a “meaningful opportunity to obtain release” prior to sentencing. *Id.*

The *Graham* court held the Eighth Amendment does not require a State to release a juvenile non-homicide offender during his natural life; instead, a State must give such offenders “some meaningful opportunity to obtain release.” *Graham*, 130 S.Ct. at 2030, 176 L.Ed.2d at


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830. States may remedy *Miller* and *Graham* violations by allowing juvenile offenders to be considered for parole in lieu of resentencing. *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 193, L.Ed. 2d 599, 622 (2016). Campbell became parole eligible on June 1, 1995, and has since had 18 parole hearings at which his request for parole was denied. Campbell has been afforded multiple opportunities to obtain release.

THEREFORE, Campbell's Motion for Resentencing is respectfully DENIED.

IT IS SO ORDERED.

21 November, 2016
Greenville, South Carolina


R. Keith Kelly, Circuit Court Judge