

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT
 COUNTY OF GREENVILLE)
) Indictment No. 1992-GS-23-01420; 1422; 1424-
 The State of South Carolina) 1425
)
 v.)
) **ORDER DENYING MOTION FOR**
) **RESENTENCING**
 Michael Jay Finley,)

FILED-CLERK OF COURT
 PAUL B. WIGENSMAER
 GREENVILLE, CO. SC
 2016 NOV 28 PM 4:09

THIS MATTER comes before the Court on Defendant's Motion for Resentencing. On April 22, 1993, in Greenville County, Michael Jay Finley pled guilty to burglary 1st degree, arson 1st degree, armed robbery, and to the murder of James T. Brockman. He received concurrent sentences of life imprisonment within the South Carolina Department of Corrections for the murder and burglary charges and consecutive, 25 year sentences on the armed robbery and arson charges. Finley timely filed this 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). A hearing on the merits of Finley's motion was held on Friday, October 14, 2016, at the Oconee County Courthouse. Present were Finley and his counsel, Kenneth Gibson, and Elizabeth Gary, Assistant Solicitor, on behalf of the State.

Although Finley was sentenced to life, as opposed to life without the possibility of parole, he moves for resentencing pursuant to both *Miller* and *Aiken*, arguing the aggregate of his sentences amounts to a defacto life without parole sentence. Specifically, he asserts that his "consecutive" sentences for armed robbery and arson will preclude him from appearing before the Parole Board — or bar his release should the Board grant him parole — thus depriving him of the meaningful opportunity to obtain release that is required under these cases to avoid an Eighth Amendment violation. Finley argues that, according to *Miller* and *Aiken*, children are constitutionally different than adults, and absent a specialized hearing at which the sentencer evaluates mitigating evidence presented by the juvenile, any life sentence, with or without the possibility of parole, violates the Eighth Amendment.

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In *Miller v. Alabama*, 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.* Notably, 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 youth and attendant characteristics- before imposing a particular penalty," and allowed for those who did not present such evidence at the time of their sentencing to petition for resentencing *Id.* at 2471, 183 L.Ed.2d at 426.

In *Aiken v. Byars*, the South Carolina Supreme Court held that juveniles who received a sentence of life without the possibility of parole for homicide under the state's discretionary sentencing scheme and did not present the required evidence to the sentencing court are likewise entitled to move for resentencing based on the Eighth Amendment violation. *Aiken* requires that sentencing courts hold a specialized hearing to "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. At the specialized sentencing hearing, the juvenile must have the opportunity to present evidence to the sentencing court regarding (1) the offender's age and maturity level; (2) the circumstances of his family life; (3) the facts surrounding the homicide, including the extent of his involvement; (4) "the incompetencies associated with youth"; and (5) whether rehabilitation is possible. *Id.* at 544, 765 S.E.2d at 577.

Finley's life sentence with the possibility of parole after the service of 30 years does not amount to a de facto life sentence and is not the type of sentence addressed under *Miller* or *Aiken*. Both cases 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 (emphasis added). These cases rest on the principle that life without the possibility of parole is the harshest of all penalties for a juvenile offender. A sentencing court must provide a juvenile who is sentenced to life without the possibility of parole the meaningful opportunity to obtain release through the presentation of specialized, mitigating evidence prior to sentencing because they will not have another opportunity to present such evidence. For those who will become parole eligible, there are multiple opportunities to obtain release— prior to sentencing and every time they appear before the Parole Board.


South Carolina Code subsection §16-3-20 (Supp. 1990), the statute under which Finley was sentenced, provided parole eligibility after the service of 30 years in prison. Finley will become parole eligible on August 11, 2022. At that time, he will be given the opportunity to appear before the Parole Board, which will determine whether he remains incarcerated or is released on parole. After the hearing on the merits in this case, the State provided this Court with an affidavit from the General Counsel of the Department of Probation, Parole, and Pardon, addressing the effect of Finley's "consecutive" sentences on his parole eligibility. Having reviewed it, this Court finds the presence of two "consecutive" sentences on Finley's record will not preclude him from appearing before the Parole Board and, should the Board grant him parole, will not bar his release. *See Major v. State Dep't of Prob., Parole & Pardon Servs.*, 384 S.C. 457, 682 S.E.2d 795 (2009) (A sentencing court is not authorized to determine parole eligibility and cannot, through the use of consecutive sentences, make a parole-eligible sentence ineligible for parole.); *Tilley v. State*, 334 S.C. 24, 511 S.E.2d 689 (2009); and *State v. Atkins*, 303 S.C 214, 399 S.E.2d 760 (1990). Should his request for parole be denied, Finley will have additional opportunities to present his case to the Board in the future. *See Montgomery v. Louisiana*, 136 S.Ct. 718, 736 193, L.Ed. 2d 599, 622 (2016) ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.") Finley will be able to apprise himself of the opportunity to obtain release beginning in 2022.

Michael Jay Finley did not receive a sentence of life imprisonment without the possibility of parole and will become parole eligible in 2022. As such, he is not a member of the class of offenders entitled to resentencing under *Miller* or *Aiken*.

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

IT IS SO ORDERED.

11-21, 2016
Greenville, South Carolina



R. Scott Sprouse, Circuit Court Judge