

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF GENERAL SESSIONS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT  
Case No.: 1998-GS-26-00614

STATE OF SOUTH CAROLINA )

F470573

v. )

ORDER

JESSIE GORMAN, )

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Defendant. )

JUL 18 2017

SC Court of Appeals

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HORRY COUNTY, SC

**THIS MATTER IS BEFORE THE COURT** on Defendant Jessie Gorman's Motion to Reconsider Sentence filed on May 19, 2016. By Order of Chief Justice Costa Pleicones, this Court was "vested with exclusive jurisdiction over Defendant's Motion for Resentencing" on July 14, 2016. The Defendant filed this Motion following the Supreme Court of South Carolina's ruling in *Aiken v. Byars*, which held that the mandatory imposition of Life Without Parole on juvenile defendants constituted cruel and unusual punishment. *Aiken v. Byars*, 410 S.C. 534 (2014). A status conference was held September 1, 2016, and present were Defendant Jessie Gorman with his attorney Tristan Shaffer and Assistant Solicitor Scott Hixson. The State argued Defendant Gorman was not a juvenile at the time the crime was committed and the motion should be dismissed. On November 17, 2016, the Honorable Kristi L. Harrington held a hearing on the Motion, and Defendant Gorman presented evidence to support the claim that Defendant Gorman must be resentenced under *Aiken v. Byars*. The State moved to dismiss Defendant Gorman's Motion to Reconsider Sentence, stating that Defendant Gorman was nineteen years old at the time of sentencing, thus, not a juvenile under South Carolina laws. S.C. Code § 63-19-20.

In *Aiken v. Byars*, the South Carolina Supreme Court considered the application of the United States Supreme Court case *Miller v. Alabama*, which held the imposition of a Life Without

Parole sentence on a juvenile defendant violated the Eighth Amendment. *Aiken v. Byars*, 410 S.C. 534, 538 (2014) (citing *Miller v. Alabama*, 132 S.Ct. 2455, 2461). The *Byars* Court found those juvenile defendants similarly situated in South Carolina were entitled to file a Motion for Resentencing. *Byars*, 410 S.C. at 545. Thus, this Court is vested with the authority to review and resentence a juvenile if *Byars* is applicable.

**I. This Motion may be heard because the *Miller* Court created a new, substantive constitutional rule that applies retroactively to a certain class of defendants, juveniles, sentenced to specific punishment: Life Without Parole.**

An initial concern for this Court is the fact that Defendant Gorman was sentenced on September 10, 1998, over eighteen years ago. In *Byars*, the South Carolina Supreme Court addressed the issue of whether the *Miller* rule should apply retroactively. The United States Supreme Court has held that a new constitutional rule of criminal procedure should not apply to cases that become final before the new rule is announced. *Byars*, 410 S.C. at 539 (citing *Teague v. Lane*, 489 U.S. 288 (1989)). "A new rule may be applied retroactively if the rule is substantive." *Id.* at 540. A rule is substantive if it bars the States from criminalizing certain conduct or prohibits "a certain category of punishment for a class of defendants because of their status or offense." *Id.* at 540 (quoting *Saffle v. Parks*, 494 U.S. 484, 494) (1990). New substantive rules apply retroactively on collateral review because they "necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him." *Id.* (citing *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004)). The *Byars* Court held *Miller* created a new, substantive rule plainly excluding a certain class of defendants, juveniles from specific punishment: life without parole, absent individualized considerations of youth. *Id.* at 541. Thus, this Court may properly hear this matter because *Miller* allows for retroactive application of the law to allow Courts to resentence the applicable juvenile defendants.

**II. Any individual affected by the *Aiken v. Byars* holding may file a motion for resentencing within one year from the filing of the *Aiken v. Byars* opinion.**

"Any juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced. *Byars*, 428 S.C. at 545.

On September 10, 1998, a jury convicted Defendant Gorman of Murder on Indictment 1998 GS-26-0614, pursuant to S.C. Code § 16-3-20. The Honorable Sydney Floyd sentenced Defendant Gorman to fifty years in the State Department of Corrections. At the time of sentencing, the penalty for Murder was a potential sentence of Life Without Parole, pursuant to S.C. Code § 16-3-20.

Defendant Gorman filed a Motion to Reconsider Sentence on May 19, 2016, pursuant to *Aiken v. Byars*. *Byars* was decided November 12, 2014. Thus, Defendant Gorman is ineligible for resentencing based on the failure to timely file his Motion to Reconsider Sentence under the *Byars* mandate of one year from the filing of the opinion.

**III. A mandatory life imprisonment without parole for those under the age of eighteen years old at the time of their crimes violates the Eighth Amendment.**

The *Byars* case mandates resentencing for juveniles sentenced to Life. *Byars* specifically addressed the definition of "juvenile" and relied upon the United States Supreme Court's decision in *Miller*. *Id.* at 537 n.1. *Byars* states, "[F]or the purposes of this opinion, we consider juveniles to be individuals under eighteen." *Id.*

Defendant Gorman's date of birth is July 25, 1978. The date of the offense was September 16, 1997. Defendant Gorman was nineteen years old when the offense was committed. Defendant was sentenced on September 10, 1998, at the age of twenty years old.

Under South Carolina law, the *Miller* analysis, and *Aiken v. Byars*, Defendant Gorman would not be classified as a juvenile, as he was over the age of eighteen at the time of the offense and at the time of sentencing. Thus, Defendant Gorman is ineligible for resentencing based on his age under the *Byars* ruling.

IV. *Miller v. Alabama* is retroactively applicable only with respect to juveniles sentenced to mandatory Life Without Parole, and South Carolina utilized a non-mandatory sentencing scheme.

Following *Miller*, the *Byars* Court was presented with the issue of whether *Miller* would apply to juveniles who received a nonmandatory sentence of Life Without Parole. The *Byars* Court recognized the *Miller* Court did not expressly extend its ruling to "states such as South Carolina, whose sentencing scheme *permits* a life without parole sentence to be imposed on a juvenile offender but does not *mandate* it." *Byars*, 410 S.C. at 541. The *Byars* Court determined that any juvenile who receives a sentence of Life Without Parole was entitled to resentencing, regardless of whether the initial sentence was mandatory or permissible. *Id.* at 544. Further, *Byars* held the purpose of the juvenile defendant's resentencing is to allow the presentation of evidence "specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight." *Id.*

Defendant Gorman was convicted of Murder and sentenced to fifty years in the State Department of Corrections. The penalty for murder at the time of his sentencing was a potential sentence of Life Without Parole, pursuant to S.C. Code §16-3-20. Defendant Gorman is not in the category of defendants designated by *Byars* for resentencing because Defendant Gorman was sentenced to fifty years, not Life Without Parole.

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**V. The *Miller* court establishes a specific framework, articulating that a sentencing court must consider certain factors when sentencing juveniles.**

*Miller* "plainly excludes a certain class of defendants, juveniles, from a mandatory Life Without Parole punishment." *Miller*, 132 S.Ct. at 2460. The *Miller* Court established factors a sentencing court must consider at a hearing: (1) the Defendant's chronological age and the "hallmark features of youth, including 'immaturity, impetuosity, and failure to appreciate the risks and consequences'"; (2) the Defendant's environment, including his family and home; (3) the circumstances of the homicide offense, including the extent of the defendant's participation in the offense, and how he may have been impacted by pressure from family or peers; (4) the "incompetencies associated with youth;" and (5) the "possibility of rehabilitation." *Miller*, 132 S.Ct. at 2468.

*Miller's* holding explicitly relied on the finding that mandatory Life Without Parole penalties for juvenile offenders precluded sentencing judges from considering the offender's age and the multiple characteristics and circumstances that accompany youth as mitigating evidence. *Id.* at 2467. South Carolina employs a discretionary sentencing scheme in which sentencing courts consider all mitigating evidence presented by the criminal defense. *See* S.C. Code Ann. §§16-3-20(A), -85(C). Further, S.C. Code §16-3-20, Murder, does not mandate a sentence of Life Without Parole.

While Defendant Gorman is ineligible for resentencing due to the untimely filing of this Motion under *Byars* and his exclusion from the class of "juvenile defendants" as set forth in both the *Byars* and the *Miller* Courts' analysis, this Court continues its analysis to afford Defendant Gorman every possible constitutional review allowed. This Court further considers the necessity of an individualized hearing.

At Defendant Gorman's trial, testimony was presented to discuss factors the sentencing court used to consider Defendant Gorman's "hallmark features of youth," as mandated under *Miller*. Two psychiatrists gave testimony exploring Defendant Gorman's mental state at the time of the offense. Further, testimony regarding the circumstances of the homicide offense was presented: the victim's husband testified as to the victim's dying declaration that she was shot by Defendant Gorman, Defendant Gorman admitted his guilt, and the evidence demonstrated that Defendant Gorman fired four rounds of ammunition at the victim, striking her multiple times, after he was allowed into her home.

A sentencing judge is presumed to have considered the information presented during the sentencing proceeding before imposing punishment. *State v. Cantrell*, 250 S.C. 376, 379 (1967). The testimony and evidence presented at the trial demonstrates the sentencing court's diligence in thoroughly considering Defendant Gorman's features of youth and the circumstances of the offense as required by *Miller*.

## VI. Conclusion

After careful consideration of Defendant Gorman's Motion, supporting Memorandum, and the arguments presented at the November 17, 2016, hearing, the Court finds that Defendant Gorman has failed to present grounds sufficient to warrant reconsideration of the sentence.

- I. Defendant Gorman is ineligible for resentencing under *Byars* due to the untimely filing of his Motion for Resentencing outside of the *Byars* mandate of one year from the filing of the opinion.

- II. Defendant Gorman is ineligible for resentencing because under South Carolina law, the *Miller* analysis, and *Byars*, he is not classified as a "juvenile" offender, as he was over the age of eighteen at the time of the offense and at the time of sentencing.
- III. Defendant Gorman is ineligible for resentencing because he is not in the category of defendants *Aiken v. Byars* designated, as Defendant Gorman was sentenced to fifty years and not Life Without Parole.
- IV. Defendant Gorman is ineligible for resentencing because there was testimony and evidence presented to demonstrate the sentencing court's diligence in thoroughly considering Defendant Gorman's hallmark features of youth as required by *Miller*.

**THEREFORE, IT IS HEREBY ORDERED** that Defendant Jessie Gorman's Motion to Reconsider Sentence is DENIED.

**IT IS ORDERED!**

March 1, 2017  
Charleston, South Carolina

  
THE HONORABLE KRISTI L. HARRINGTON  
Chief Administrative Judge, 9<sup>th</sup> Judicial Circuit