

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANTHONY M. ENRIQUEZ,

APPELLANT

APPELLATE CASE NO 2016-002237

RECORD ON APPEAL

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¹ A copy of the plea hearing transcript was also attached to the defense memorandum. For the sake of chronology and to avoid redundancy, Appellant separately designated the plea transcript and is not repeating it again as an exhibit to the memorandum.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF
GENERAL SESSIONS
Case No. 94-GS-10-3056
Case No. 94-GS-10-3057

STATE OF SOUTH CAROLINA)
v.)
ANTHONY ENRIQUEZ)

TRANSCRIPT OF RECORD
OF GUILTY PLEAS
Charleston, South Carolina
December 1, 1994

B E F O R E:

THE HONORABLE CASEY MANNING, Judge.

A P P E A R A N C E S:

R. SPENCER RODDEY, JR., ESQ.
Attorney for the State

WILLIAM L. RUNYON, JR., ESQ.
Attorney for the Defendant

C. RENE A GARZA
Circuit Court Reporter

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INDEX TO WITNESSES

*****NO WITNESSES TESTIFIED*****

INDEX TO EXHIBITS

*****NO EXHIBITS MARKED*****

1 (The following proceedings were held on December
2 1, 1994.)

3 (The defendant, Anthony Enriquez, was duly sworn
4 by the Clerk of Court.)

5 MR. RODDEY: Anthony Enriquez. Your Honor, before
6 we go through with the plea, I think we ought to put on
7 the record, we had a hearing in front of Judge Wilson
8 two weeks ago --

9 THE COURT: Wait a minute, let me stop you. This
10 is in regards to indictments 94-GS-10-3056, the State
11 versus Anthony Enriquez; and Indictment No.
12 94-GS-10-3057, the State versus Anthony Enriquez. Okay.
13 Yes, sir?

14 MR. RODDEY: Your Honor, we had a hearing in front
15 of Judge Wilson when we brought up the potential for
16 there to be a conflict in this case. Mr. Runyon
17 represents Anthony Enriquez, as well as his brother,
18 Jessie Enriquez, they were both charged. There's three
19 co-defendants in this case. They were both charged with
20 murder and armed robbery.

21 I brought that up in front of Judge Wilson, and it
22 appears from my point -- the State's position, as well
23 as from the defense position, that there is no conflict
24 on its face, and Judge Wilson agreed that he didn't see
25 a conflict in that.

1 However, I just would like to get on the record
2 one more time -- I guess the conflict is the defendant
3 can always claim he doesn't want the same lawyer
4 representing him as is representing the co-defendant;
5 and one last time on the record before he pleads guilty,
6 Your Honor, I would like you to make that clear to the
7 defendant that if he wanted another lawyer, that he will
8 be appointed a lawyer by the Court, things of that
9 matter, just for the protection of the record in this
10 case.

11 THE COURT: So you want me to rule on something
12 that Judge Wilson has already ruled?

13 MR. RODDEY: No, no. My position, and I'm sure
14 it's Mr. Runyon's position indicates a defendant -- if
15 he stood up there right now and said he believes there
16 could be a conflict and he doesn't want the same lawyer,
17 I just want it right before we go to do this plea, just
18 to protect the record.

19 THE COURT: All right, sir. I will be happy to do
20 so.

21 Mr. Runyon, do you have anything to say in that
22 connection before I question your client?

23 MR. RUNYON: This is deja vu, Your Honor, we have
24 been through this with Judge Wilson. I think the real
25 conflict is Mr. Enriquez, by tendering his plea today,

1 becomes a witness, a potential witness, whose position
2 would not necessarily favor the State, so I think the
3 conflict is possibly elsewhere, but we have no problem
4 with the Court inquiring.

5 THE COURT: Of course the Solicitor is just doing
6 this out of an abundance of caution.

7 MR. RUNYON: Oh, I understand my friend over
8 there. I just have to put something on the record.

9 THE COURT: Mr. Enriquez, you heard what the
10 Solicitor just said, he expressed some concerns that you
11 might have some reservations about continuing to have
12 Mr. Runyon represent you inasmuch as he represents you
13 and a co-defendant.

14 MR. RODDEY: His brother.

15 THE COURT: Now, if there is a conflict, it's
16 yours, Mr. Enriquez, to waive or raise or do anything
17 you wish. So I ask you do you have any reason you need
18 to bring to my attention as to why you do not feel that
19 Mr. Runyon should continue representing you in this
20 matter?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Do you understand that he
23 is representing both you and your brother and that
24 creates no problem or conflict for you?

25 THE DEFENDANT: No, sir.

1 THE COURT: I mean, you're satisfied with him?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, if you had any doubts at all, I
4 will be happy to appoint somebody else to represent you
5 or entertain anything you would like to say on this
6 subject. My question to you is you know, well ahead of
7 time, that Mr. Runyon is representing you and your
8 brother?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You've known that all along?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you're satisfied with that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You have no problems with that?

15 THE DEFENDANT: No, sir.

16 THE COURT: Anything further you want me to
17 inquire, Solicitor?

18 MR. RODDEY: I think that covers it.

19 MR. RUNYON: Also, for the record, Your Honor,
20 there have been no statements rendered by either my
21 client, Mr. Tony Enriquez, nor his brother, Jessie
22 Enriquez, that have in any way been in conflict, one
23 with the other, about this incident.

24 THE COURT: All right, sir.

25 All right. Mr. Runyon, so you do represent in

1 fact Anthony M. Enriquez; is that correct?

2 MR. RUNYON: Yes, Your Honor.

3 THE COURT: Have you advised Mr. Enriquez of the
4 charges contained in these two indictments and the
5 possible punishments?

6 MR. RUNYON: Yes, Your Honor.

7 THE COURT: In your opinion, does he understand
8 the charges and the possible punishment?

9 MR. RUNYON: Yes, Your Honor.

10 THE COURT: And how does he indicate to you he
11 desires to plead, guilty or not guilty?

12 MR. RUNYON: Subject to the provisions of Alford
13 versus North Carolina and the discussions we'll place on
14 the record later, we'll tender a plea of guilty to the
15 indictments that stand before the Court.

16 THE COURT: He wants to plead guilty to Indictment
17 No. 94-GS-10-3056, the murder indictment?

18 MR. RUNYON: Yes, sir.

19 THE COURT: And he wants to plead guilty under
20 North Carolina versus Alford or Alford versus North
21 Carolina under Indictment 94-GS-10-3057; is that
22 correct?

23 MR. RUNYON: That's correct, Your Honor.

24 THE COURT: Now, Mr. Enriquez, you've heard your
25 lawyer, Mr. Runyon, tell me that you understand the

1 charges and possible punishments contained in these two
2 indictments and that you want to plead guilty to the
3 murder indictment and that you want to plead guilty
4 under Alford versus North Carolina under the armed
5 robbery indictment. I ask you, Mr. Enriquez, is that
6 correct, sir?

7 THE DEFENDANT: Your Honor, I didn't know about
8 the second indictment, armed robbery.

9 THE COURT: Well, do you need an opportunity, Mr.
10 Enriquez, to discuss this with your lawyer? I will be
11 more than happy to give you an opportunity to do so. I
12 surely do not wish that you continue if you have any
13 second thoughts or confusion at all about what we are
14 here for today.

15 MR. RUNYON: Your Honor, I think you better stand
16 him aside until this afternoon.

17 THE COURT: Mr. Enriquez, I'm going to set you
18 aside and give you an opportunity to talk to your lawyer
19 about this matter. I don't know for sure, but all
20 indications to me are that the time is to run concurrent
21 anyway; is it not?

22 MR. RODDEY: Well, there's nothing on that.

23 THE COURT: Okay. Okay. But, please, Mr. Runyon,
24 talk to your client. We can do it maybe right before
25 lunch or right after lunch, but we're going to break at

1. 12:30. Would you rather do it after lunch?

2 MR. RUNYON: Your Honor, I just need to clarify
3 one thing. We don't have any privacy, may we use the
4 jury room

5 THE COURT: Yes, sir, you may use that room.

6 (Brief recess while Mr. Runyon converses with his
7 client, Anthony Enriquez.)

8 MR. RODDEY: Anthony Enriquez.

9 THE COURT: We are back on the record on
10 Indictment 94-GS-10-3057, the State versus Anthony
11 Enriquez.

12 And, Mr. Enriquez, I believe we just covered
13 94-GS-10-3056, the murder indictment which, if I recall
14 correctly, you had no problem with; you understood that,
15 right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You were concerned about the armed
18 robbery indictment. I think you told me on the record
19 that you were unfamiliar with that indictment; is that
20 correct?

21 THE DEFENDANT: Yes.

22 THE COURT: Now you've had an opportunity to speak
23 with your lawyer, Mr. Bill Runyon, and I ask you, sir,
24 have you had a sufficient amount of time to discuss this
25 armed robbery indictment with him?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Are you prepared to go forward?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you need any additional time to
5 consult with Mr. Runyon?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right, sir. So Mr. Runyon had
8 told me that you were familiar with the charges and the
9 possible punishment contained in this indictment and
10 that you were prepared to plead guilty under Alford
11 versus North Carolina on the armed robbery, and I ask
12 you, sir, is that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you absolutely sure about that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Well, this indictment, Mr. Enriquez,
17 is 94-GS-10-3057, it alleges that you did, in Charleston
18 County, on or about the 22nd day of January 1994, while
19 armed with a deadly weapon, to wit, a twelve gauge
20 shotgun, feloniously take from the person or presence of
21 Jeffrey Sewell, by means of force or intimidation, goods
22 or monies of Jeffrey Sewell, such goods or monies being
23 described as follows, a pack of cigarettes.

24 Do you understand that allegation?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: That's what you want to plead guilty
2 to?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You realize that I can give you up to
5 25 years in jail for this offense?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Understanding that, is it still your
8 desire to plead guilty to it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Also, Mr. Enriquez, on Indictment
11 94-GS-10-3056, the State versus Anthony M. Enriquez,
12 it's an indictment for murder. It alleges that you did,
13 in Charleston County, on or about the 22nd day of
14 January 1994, feloniously, willfully, and with malice
15 aforethought kill one Jeffrey Sewell by means of a
16 shotgun blast to the chest, and that the said victim
17 died as a proximate result thereof.

18 Now, do you understand that allegation, Mr.
19 Enriquez?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you want to plead guilty to that
22 allegation, Mr. Enriquez?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You realize that the punishment for
25 murder in this state is life imprisonment?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Understanding that, is it still your
3 desire to plead guilty to this offense?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, Mr. Enriquez, when you plead
6 guilty you give up certain basic constitutional rights,
7 perhaps the most important one of which is the right of
8 trial by jury.

9 Now, do you understand what a jury trial is, Mr.
10 Enriquez?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you want a jury trial, Mr.
13 Enriquez?

14 THE DEFENDANT: No, sir.

15 THE COURT: When you plead guilty, Mr. Enriquez,
16 you waive your right to a jury trial, you admit that you
17 are guilty, and you take it out of the hands of twelve
18 citizens from Charleston County to determine your guilt
19 or innocence one way or the other, you understand that;
20 don't you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Understanding all that, do you still
23 want to waive your right to a jury trial and plead
24 guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Now, Mr. Enriquez, that
2 applies of course as to both these charges, the murder
3 and armed robbery charge; you understand that, don't
4 you, in connection with a jury trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Enriquez, you also give up your
7 right to remain silent. Now, do you understand that
8 right, Mr. Enriquez?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Because when you plead guilty, you of
11 necessity, if you're going to plead guilty, must tell me
12 or admit that you did that, but you're not required to
13 say anything or prove anything.

14 So when you plead guilty you, of necessity, must
15 give up that right to remain silent, and I ask you, sir,
16 is that your desire and intention; that is, to waive or
17 give up your right to remain silent?

18 THE DEFENDANT: Can you repeat what you just said?

19 THE COURT: Yes, sir. It's a little bit
20 confusing. You have a right to remain silent; that is,
21 you don't have to say anything, you don't have to prove
22 anything, Mr. Enriquez; but if you plead guilty, you
23 have to admit to me or tell me that you did it. The
24 only way you can tell me that you did it or admit it is
25 to waive your right to remain silent. You understand

1 that; don't you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That's what I meant. Do you
4 understand what I was asking you now?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: So you want to waive or give up your
7 right to remain silent; is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Now, Mr. Enriquez, has anyone
10 promised you anything or threatened you in any manner in
11 order to get you to plead guilty to these two charges?

12 THE DEFENDANT: No, sir.

13 THE COURT: Nobody promised you, threatened you,
14 lied to you, or deceived you in any way in order to get
15 you to plead guilty to these charges?

16 THE DEFENDANT: No, sir.

17 THE COURT: Now, Solicitor, have there been any
18 plea negotiations in this case?

19 MR. RODDEY: Your Honor, in exchange for the State
20 not filing notice to seek the death penalty and to prove
21 an aggravating circumstance, we have agreed to allow him
22 to plead to murder without an aggravating circumstance.
23 That is the only negotiation that we have in this case.

24 THE COURT: Mr. Runyon, is that correct, sir?

25 MR. RUNYON: That is correct, Your Honor. We

1 would like to make the record -- or have the record
2 reflect that this is a somewhat abused from time to
3 time, but this is truly an Alford versus North Carolina
4 case in which the agreement is reached to tender the
5 plea as they stand before the Court in order to avoid --

6 THE COURT: The possibility of the death penalty.

7 MR. RUNYON: -- the possibility of the death
8 penalty. In addition to that, Your Honor, we avoid
9 the --

10 THE COURT: 30 years.

11 MR. RUNYON: -- 30 year mandatory minimum before
12 parole eligibility, and we just wanted the record to be
13 clear with regard to that.

14 THE COURT: Now you can tell me, can you not, Mr.
15 Runyon, that you have explained all this to your client?

16 MR. RUNYON: Yes, Your Honor. We have gone over
17 this -- I have been in this case since very early and we
18 have been over these various options numerable times.

19 THE COURT: So I ask you, Mr. Enriquez, do you
20 understand the plea negotiations that Mr. Runyon has
21 worked out for you and what the Solicitor has
22 recommended that the Court follow?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you realize the implications
25 behind those negotiations?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, sir. Now, are you fully
3 satisfied with the services of Mr. Bill Runyon in
4 representing you on these two charges?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Enriquez, do you have any
7 complaints about Mr. Runyon's representation?

8 THE DEFENDANT: No, sir.

9 THE COURT: Is there anything further you want him
10 to do on your behalf?

11 THE DEFENDANT: No, sir.

12 THE COURT: Anybody else you want him to talk to
13 or interview or any places you want him to go and look
14 at for you?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Do you have any complaints
17 against anyone else involved in this case, sir?

18 What I mean by that, Mr. Enriquez, do you have
19 any complaints against the police, for example, who
20 arrested you?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you have any complaints against the
23 Solicitor's office that is prosecuting you in this case?

24 THE DEFENDANT: No, sir.

25 THE COURT: You don't have any complaints against

1 anyone; is that what you're telling me?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Enriquez, are you today under the
4 influence of any intoxicating liquors or drugs?

5 THE DEFENDANT: No, sir.

6 THE COURT: Mr. Enriquez, do you suffer from any
7 physical or mental infirmity that will prevent you from
8 understanding what you are doing here today?

9 THE DEFENDANT: No, sir.

10 THE COURT: And, Mr. Enriquez, do you understand
11 what you are doing here today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Enriquez, are you pleading guilty
14 of your own free will and accord?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you pleading guilty, when I say
17 guilty, I mean guilty to the murder and guilty under
18 North Carolina versus Alford for the armed robbery; you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: So I ask you, again, are you pleading
22 guilty to 94-GS-10-3056, the indictment for murder,
23 because you did, in fact, here in Charleston County, on
24 or about the 22nd day of January, 1994, willfully and
25 with malice aforethought kill one Jeffrey Sewell?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, sir. And are you pleading
3 guilty under Alford versus North Carolina to Indictment
4 94-GS-10-3057, armed robbery, because you, in fact, did,
5 back on the 22nd day of January, 1994 -- you're pleading
6 under North Carolina versus Alford because you're
7 satisfied, after talking to Mr. Runyon, that a
8 substantial likelihood exists that if you went to trial
9 you could be convicted of armed robbery?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. And part and parcel of
12 that, Mr. Enriquez, is the fact that the Solicitor, in
13 allowing you to plead under North Carolina versus
14 Alford, has agreed as part of the plea negotiations not
15 to seek the death penalty against you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right, sir. Very well, I find
18 your decision to plead guilty to murder is freely,
19 voluntarily, and intelligently made; that you have had
20 the advice of competent counsel, whom you indicate to me
21 you are satisfied with; therefore, I will accept that
22 plea.

23 Also, I find that your decision to plead guilty
24 under Alford versus North Carolina to the armed robbery
25 indictment has been freely, voluntarily, and

1 intelligently made; that, again, you have had the advice
2 of extremely competent counsel; and, therefore, I'm
3 going to accept your plea on both of these indictments,
4 Mr. Enriquez.

5 Solicitor?

6 MR. RODDEY: Thank you, Your Honor. This occurred
7 on January 23rd, 1994, it happened around 12:30 in the
8 early morning hours. The deputies from the Charleston
9 County Sheriff's office were responding to Bucknell
10 Drive in reference to a shooting.

11 When they arrived, they found the body of Jeff
12 Sewell laying in the driveway of the house with his head
13 on the floorboard -- I mean on the door sill of the car
14 on his back with what appeared to be a gunshot wound to
15 his chest.

16 At that time there were several witnesses at the
17 scene who gave them the names of Jessie Enriquez,
18 Anthony Enriquez, and Dan Murphy. They then went
19 looking for those guys, and they also had the car with
20 the tag number, and they spotted the car at the BP
21 Station on Ladson Road.

22 They arrested Dan Murphy with the car there, and
23 did a search of the area there and they found a pack of
24 Newport cigarettes right beside where the car was in the
25 trash can there, crumbled up. I'll fill that in later

1 about what that means.

2 Your Honor, they then were informed that two
3 Hispanic males, fitting the description of the two
4 remaining suspects, were in a cab. They followed the
5 cab and they did -- they stopped the cab and found the
6 defendant, Anthony Enriquez, and his brother in the back
7 seat of the cab of that car. They were arrested. At
8 the time of their arrest, they gave no statements.

9 However, at the time of Dan Murphy's arrest, who
10 is a co-defendant in this, he did say that he was there,
11 but he was on the other side of the road when the
12 shooting happened, and that Anthony Enriquez was the
13 shooter in this case.

14 Your Honor, they then went and started rounding up
15 witnesses and talking to witnesses. And one witness by
16 the name of Derrick Brown said that when he got there,
17 he was riding with the victim in this case, Jeff Sewell,
18 and he knows all the parties involved; and when they
19 arrived at the house, which is sort of -- the house is
20 sort of a party house.

21 A kid, 18-years old, got a sizable amount of money
22 in an insurance settlement and bought this house, and he
23 was having parties there all the time, and there was a
24 lot of people going through it all hours of the night,
25 and runaways, and everything else.

1 Well, he was showing up there for a party with
2 Jeff Sewell. When they got out of the car, the Enriquez
3 brothers came up to him and they asked him if Sewell had
4 any papers on him, and he said he didn't know, he said
5 go ask him yourself.

6 They went over and started talking to him, asking
7 him if he had any papers. At that time he could see
8 what was going on. Dan Murphy was on one side of him,
9 Jessie Enriquez was on the other side of him, and
10 Anthony Enriquez was talking to him.

11 Then Anthony Enriquez walked back to the car and
12 got a sawed-off shotgun with a pistol grip out of the
13 car and walked up to him. At the vantage point that
14 Derrick Brown was, he was at the car that they were in,
15 he was talking to two girls that were in their car.

16 He couldn't see what was exactly was going on, but
17 he saw that Anthony Enriquez walked up to the victim and
18 the next thing he knew he heard a muffled gunshot, and
19 he fell. And then they ran back to the car, told him to
20 get in the car, he got in the car, and they drove off.

21 He also said that when he was there, when he
22 walked up with the shotgun, that Dan Murphy and Jessie
23 Enriquez were going through Jeff Sewell's pockets before
24 he was shot and killed.

25 When they got back in the car, this defendant

1 said, Who loaded the shotgun? And Jessie Enriquez,
2 later on in the conversation, says that he had gotten
3 his cigarettes from him, he had gotten his Newport
4 cigarettes." He was holding a pack of cigarettes, he
5 said, I got his cigarettes.

6 They drove off, they let out Derrick Brown, and
7 there was a girl in the car, they let her out at another
8 place later on down the road; and then they stopped at
9 the BP Station where they were later arrested.

10 Your Honor, there were other witnesses who would
11 testify in this case about Anthony and Jessie Enriquez
12 and Dan Murphy, that they showed up at this house
13 earlier that night, they had the shotgun with them, they
14 walked up to the door.

15 It appears that this -- like I said, this one kid
16 had gotten this hefty insurance settlement, this 18-year
17 old, was carrying around a large amount of money. We
18 would try to introduce in the case, under prior bad
19 acts, that they had robbed a fellow who was holding some
20 of that money for that guy of \$180.00 the week before,
21 and the intent was to come back and rob them again
22 because they knew they were carrying around a large
23 amount of money.

24 They came to the house earlier that night, they
25 placed the shotgun right there at the door when they

1 knocked on the door. When they found out that Eric Rigg
2 and Michael Hickman weren't there, they went back and
3 got in the car and left.

4 There were two girls that were in the car with
5 them, two runaways. They drove around for a while, and
6 the two girls -- there were three girls actually in the
7 car. Two of the girls would testify -- one of the girls
8 was very intoxicated; two of the other girls would
9 testify that they talked about going back to rob Michael
10 Hickman or Eric Rigg at some point. They didn't know
11 who they were, but they talked about going back and
12 robbing them.

13 His brother, Jessie Enriquez had a silver pistol
14 and they also had this sawed-off shotgun with a pistol
15 grip. And Dan Murphy was talking about going on -- they
16 were going to go back to the house and they were going
17 on a duck hunt.

18 Your Honor, the autopsy shows that there was a
19 hard contact wound to the chest, and that it went
20 through his heart. The autopsy would also show that
21 there is a mark, a circular mark on his jaw, that fits
22 perfectly the barrel of the shotgun. The pathologist
23 matched that up.

24 So there was also -- before they actually shot
25 him, he was hit in the face with the barrel of the

1 shotgun, and it left a mark on his face.

2 There were numerous other witnesses that would
3 testify about them seeing the guns on them earlier,
4 about the armed robbery that happened the week before,
5 about the shotgun being sat next to the door when they
6 came to the house earlier that day. All that goes to
7 intent and motive for them coming there.

8 There is no question from any of the witnesses
9 that this is the trigger man and the victims are here.
10 First of all, there's only one sentence in this case,
11 the victims are aware of that. They know that the
12 sentence is life imprisonment. The victim's family is,
13 here in the courtroom.

14 Your Honor, he has a very substantial juvenile
15 record. He had just turned 17 shortly before the
16 shooting. He doesn't have an adult record, but it
17 doesn't matter because there's only one sentence.

18 I don't know whether the victim's family has
19 anything to say. They are aware that there is only one
20 sentence in this case. I don't know if they have
21 anything they would like to tell you. If they do, they
22 are here.

23 THE COURT: Well, I will ask them. I said Sewell,
24 we say Sewell back in Dillon County, Mr. Sewell, so I
25 apologize for that. Is there anything that you or your

1 wife or son would like to tell me?

2 MR. SEWELL: Sir, from what I have heard today,
3 these boys, they just took my son's life for no reason
4 at all. I can't believe it's over a pack of cigarettes,
5 and I just can't see where the mercy should be showed
6 for them.

7 I stand here today, he's copping a plea of guilty
8 for murder, and that means he's going to get to live.
9 Everyday I got to go and I got to look at my son's grave
10 and his marker, my wife goes up there, and the only
11 remembrance we got is putting our hand on that marker
12 and feeling his name.

13 THE COURT: Mr. Sewell, let me tell you that I can
14 certainly understand and appreciate how you feel of the
15 loss of a son. The only comfort I can offer you is that
16 the legislature has provided, and always has provided in
17 this State, one of the ultimate penalties for the crime
18 that has been committed against you and your family,
19 your son in particular, and this punishment for the
20 crime has been in place ever since I can remember. It
21 goes back to the common law in England, it's almost the
22 ultimate punishment, if there is any resolve for you to
23 receive, be aware that everybody else, every member of
24 the society probably feels about the same way you do,
25 and that's why the penalty is provided for the crime as

1 it is, sir.

2 You have my sympathies. I appreciate your being
3 here. I know there is nothing I can say or do that can
4 bring your son back, no amount of time that Mr. Enriquez
5 may go to jail can bring your son back. You have my
6 understanding and sympathies always. I appreciate your
7 being here.

8 Anything further, Solicitor?

9 MR. RODDEY: Nothing from the State, Your Honor.

10 THE COURT: Mr. Runyon?

11 MR. RUNYON: Your Honor, realizing of course the
12 posture that the Court is in, I of course have always
13 had a problem with, and maybe that's a shortcoming with
14 wanting to address a lot of issues, because it becomes
15 almost an academic discussion.

16 THE COURT: It does to an extent, I understand
17 that.

18 MR. RUNYON: But considering the fact that the
19 Court has two indictments and considering the fact that
20 there is another case to be tried and the Solicitor has
21 postured it in a particular way, just very briefly, I
22 would take the position and tell the Court that we of
23 course disagree with a good many things that the
24 prosecutor has said as to exactly the way things happen.

25 Frankly, this was not a situation where strangers

1 came together and something occurred and what have you.
2 The Solicitor is correct, this was an accident waiting
3 to happen, this house where these young people would
4 come.

5 The victim, with all due respect to his family,
6 was noted by blood test to have had alcohol and cannabis
7 in his system. All these young people knew each other
8 in a manner of speaking, whether they knew each other by
9 name or what have you. They partied together, they
10 drank together, they did drugs together, they swapped
11 drugs.

12 The posture that this was in, on that particular
13 night, Mr. Enriquez and his brother and Mr. Murphy and a
14 few other people, if you went through everything without
15 going through it, for example, Mr. Derrick Brown, he
16 indicates that certain things occurred. For example
17 there was never -- no pistol was ever produced in this
18 whole situation that was in any way utilized.

19 We have taken a posture under Alford versus North
20 Carolina. The Court has now heard this, and I think the
21 Court now knows why this is probably a classic Alford
22 case, hearing from the victim's family, hearing of the
23 circumstances, this is the kind of case where it doesn't
24 matter how you can say it this is not a capital case.
25 There is sufficient evidence that perhaps we could have

1 been noticed. And once noticed we could have been put
2 to trial, and once put to trial, of course, all sorts of
3 things can happen. And so I think the Court now
4 understands the wisdom in taking this course of action.

5 Your Honor, the victim in this case was examined
6 by the medical examiner, had money in his pockets, other
7 property he had was not removed, et cetera. There is
8 this allegation that someone allegedly said they had
9 this pack of cigarettes, and I realize that under the
10 law of this State, that's another problem, under the law
11 in this State, it doesn't matter how much you take, if
12 you take something -- remember there's the famous case
13 of the investigator from the -- at least famous amongst
14 lawyers -- of the investigator from the South Carolina
15 Department of Corrections who met his death and his
16 wallet was allegedly taken after he expired, and the
17 Supreme Court gave a very wise decision in that as to
18 what the jury could conclude.

19 In any event, Your Honor, we would ask the Court
20 to understand that while we stand before the Court under
21 Alford, and we stand before the Court admitting the fact
22 of the weapon and what have you, and the circumstances
23 that we do admit to that occurred that night, that a
24 jury can find him guilty.

25 We do not agree that things were as postured by

1 the prosecution. In any case, the defendant,
2 particularly in this case, has expressed remorse over
3 the months that anything ever happened to Mr. Sewell.
4 And our condolences are extended, on behalf of Mr.
5 Enriquez, to this whole family. It will not bring him
6 back, and for that we are sorry, but we do submit Mr.
7 Enriquez to the judgment of the Court.

8 His family is here. I have explained to them
9 under the circumstances, no matter what we say, there is
10 not a whole lot the Court can do, but at least in the
11 circumstances that he's in, he will have a chance to
12 perhaps rectify the situation one day.

13 THE COURT: Thank you, Mr. Runyon.

14 Mr. and Mrs. Enriquez, anything you would like to
15 tell me?

16 MR. ENRIQUEZ: Okay. Your Honor, what I going to
17 tell you is the truth from the bottom of my heart. That
18 night my son was trying to borrow my car, but I told him
19 I'm going to the bingo parlor. He said, Daddy, I just
20 want to use your car to go to the party. He was
21 training for college preparation next week.

22 When he took me to the bingo parlor I told him you
23 come here to pick me up 11, 11:30; he said, yes, daddy,
24 because I am ready to go to college. Everything is
25 ready, Your Honor. So I believe, he said, Daddy, I

1 promise you.

2 So that night I was surprised, I was trying to
3 call my home, and I can't get in touch, said something
4 happened, and I believe, Your Honor, it is an accident,
5 because when I took my son with me to the bingo parlor,
6 there is nothing in my car, nothing in my car, Your
7 Honor.

8 I work in a civil service job, and I am retired
9 Navy. I put in 23 years, Your Honor, and what I say is
10 the truth, sir. It is an accident.

11 THE COURT: I appreciate the words you have
12 expressed to the Court, Mr. Enriquez. Mrs. Enriquez, is
13 there anything you would like to tell me?

14 MRS. ENRIQUEZ: All I can say that I feel the pain
15 the lady feel because I am a mother of six, and Anthony
16 is my youngest son, and this is a situation where she's
17 fed up and I'm fed up. She lossed her son, but I don't
18 know what going to happen to mine.

19 THE COURT: I understand, Mrs. Enriquez. Thank
20 you for being here on behalf of your son and bringing
21 that to my attention.

22 Now, Anthony Enriquez, is there anything you would
23 like to tell me, sir?

24 THE DEFENDANT: That I'm sorry, and I had no
25 intentions of hurting anybody this night.

1 THE COURT: Again, these are difficult matters.
2 You have someone that has lossed a son, and we have a
3 second loss of life when it comes to this defendant. I
4 probably won't be around when he gets out of jail, I
5 don't know, it will be a long time, but it's an
6 appropriate punishment when a life is taken.

7 I wish you the best of luck, Mr. Enriquez. I
8 thank you, Mr. Runyon, for the way you represented your
9 client. Thank you, Solicitor, for your presentation.

10 So on Indictment 94-GS-10-3056, the State versus
11 Anthony Enriquez, it's an indictment for murder, the
12 sentence of the Court is that you, Anthony M. Enriquez,
13 be committed to the South Carolina Department of
14 Corrections for life,

15 On Indictment No. 94-GS-10-3057, the State versus
16 Anthony M. Enriquez, the indictment for armed robbery,
17 the sentence of the Court is that you, Anthony M.
18 Enriquez, be committed to the South Carolina Department
19 of Corrections for a period of 25 years.

20 Thank you, gentlemen. We'll be in recess until
21 2:15 this afternoon.

22 MR. RODDEY: Your Honor, that's concurrent?

23 THE COURT: Yes, concurrent.

24 (End of proceedings.)
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

C E R T I F I C A T E

I, the undersigned, C. Renea Garza, Circuit Court Reporter for the Ninth Judicial Circuit of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all proceedings had and the evidence introduced in the guilty pleas of the captioned cause, relative to appeal, in the Court of General Sessions for Charleston, South Carolina, on the 1st day of December, 1994.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 10, 1995,
March 25, 1996,

C. Renea Garza
Circuit Court Reporter
Ninth Judicial Circuit

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,)
v.)
BY OS)
ANTHONY ENRIQUEZ,)
Defendant.)

DEC 23 11 8:36 AM
CASE NO. 94-GS-10-3056 and
94-GS-10-3057

MOTION FOR RESENTENCING

The defendant ("Enriquez") respectfully moves this Court for resentencing of his life sentence for murder and twenty-five year sentence for armed robbery pursuant to our S.C. Supreme Court's decision in Aiken v. Byars, Opinion No. 27465, November 12, 2014, and the United States Supreme Court decision in Miller v. Alabama, 132 S.Ct. 2455 (2012).

Procedral History

Enriquez was indicted for murder and armed robbery during the June 1994 term in Charleston County. He entered a plea under Alford to murder and guilty to armed robbery on December 1, 1994, before The Honorable Casey Manning, Judge. Enriquez was sentenced to life for murder and twenty-five years for armed robbery. This Motion follows.

Argument

At the time of the crime (January 22, 1994), Enriquez was seventeen years of age. He was a juvenile and lacked the maturity in which adults have. Enriquez had an underdeveloped sense of responsibility, and he was vulnerable to negative influences and outside pressures, including family and peers. Enriquez

still had an evolving character and personality traits.

At the time of Enriquez's crime and plea, SC Code § 63-19-20 outlined a juvenile is a person less than seventeen years of age. However, Miller extends to defendants under eighteen years of age. Therefore, Enriquez falls under the class of defendants who were juveniles at the time of his crime. Enriquez could not effectively deal or assist in dealing with the prosecution or negotiating with in plea agreement. At his plea hearing, Enriquez did not know he was pleading to armed robbery, and he bulked on that charge until his attorney conferred with him for a few minutes. Enriquez was not properly advised of the direct and collateral consequences of his plea. Thus, Enriquez should be resentenced. At the time of his crime, youth was only a chronological fact and a plea for mercy. However, Aiken and Miller hold youth is a constitutional matter in sentencing.

Conclusion

Based on the foregoing reasons and authorities, Enriquez should be resentenced.

Anthony Enriquez

Anthony Enriquez
SCDC# 215961
4460 Broad River Rd.
Columbia, SC 29210

Pro se

FILED
2014 DEC 03 AM 8:37
JUNIOR HONIG
CLERK OF COURT
December 8, 2014
Columbia, South Carolina
BY

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 STATE OF SOUTH CAROLINA,)
 v.)
 ANTHONY ENRIQUEZ,)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 NINTH JUDICIAL CIRCUIT
 CASE NO. 94-GS-10-3056 and
 94-GS-10-3057
 CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the STATE OF SOUTH CAROLINA with the Defendant's Motion for Resentencing by mailing a true copy via United States Mail on Decmber 18, 2014, to:

Scarlett A. Wilson
 Solicitor's Office for the
 Ninth Judicial Circuit
 101 Meeting St.
 Charleston, SC 29401

FILED

2014 DEC 23 AM 8:37

JUDICIAL CLERK OF COURT

BY: 

By: Anthony Enriquez

December 18, 2014
 Columbia, SC 29210

On the 18th day of December, 2014
 Susan H. Dye

Anthony Enriquez, #215961
4460 Broad River Rd.
Columbia, SC 29210

December 18, 2014

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad St., Suite 106
Charleston, SC 29401-2258

RE: State of South Carolina v. Anthony Enriquez
Case No. 94-GS-10-3056 and 3057

Dear Ms. Armstrong:

Enclosed please find my pro se Motion for Resentencing for filing in this office. Also, enclosed is a copy and a self-addressed envelope. Please send me a clocked-in copy for my records.

Sincerely,

Anthony Enriquez

Anthony Enriquez

Enclosures

cc: Solicitor's Office for the Ninth Judicial Circuit

FILED
2014 DEC 23 AM 8:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY *AS*

The Supreme Court of South Carolina

Anthony Enriquez, Petitioner,

v.

State of South Carolina, Respondent.

Charleston County

Docket No.: 1994-GS-10-03056; 03057

ORDER

Petitioner filed a motion on December 23, 2014 for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). Now, therefore, pursuant to SC CONST. Art. V, § 4,

IT IS HEREBY ORDERED that the Honorable Carmen T. Mullen be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge Mullen shall at all times be vested with concurrent jurisdiction in all circuits of the state to dispose of matters relating to this case, and shall decide all matters pertaining to the Petitioner's Motion, and shall retain jurisdiction over this matter regardless of where she may be assigned to hold court, and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

If necessary, to resolve issues related to the appointment of counsel, a hearing shall be conducted within thirty (30) days of this order.

Within sixty (60) days of the date of this order, Judge Mullen shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary.

s/Costa M. Pleicones
Costa M. Pleicones
Chief Justice

April 6, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

ANTHONY ENRIQUEZ

IN THE COURT OF GENERAL SESSIONS

CASE NO.: 94-GS-10-3056 and 94-GS-10-3057

MEMORANDUM IN SUPPORT OF MOTION FOR RESENTENCING

JULIE J. ARMSTRONG
CLERK OF COURT
DJA

2016 MAR 30 PM 3:25

FILED

The Defendant, Anthony Enriquez, through his undersigned counsel, Bentley Price, Esquire, hereby submits this memorandum in support of his Motion for Resentencing that was filed in this Court on December 23, 2014. Mr. Enriquez pled guilty to Murder and Armed Robbery in 1994 and was concurrently sentenced to Life and 25 years, respectively. Pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014); *Miller v. Alabama*, 132 S.Ct. 2455 (2012); and *Montgomery v. Louisiana*, 577 U.S. ___, (2016), Mr. Enriquez asserts that the sentence imposed on the murder charge violates the Eighth Amendment of the U.S. Constitution and respectfully requests that this Court conduct a new sentencing hearing that comports with the constitutional principles set forth in *Miller* and *Aiken v. Byars*.

I. Factual Background

On December 1, 1994, Anthony Enriquez entered a guilty plea to the charges of Murder and Armed Robbery. The statute in effect at the time of Mr. Enriquez's sentencing states 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 (1985). He was sentenced by the Honorable Casey Manning to Life and 25 years, respectively. At the time of the commission of the crimes, Mr. Enriquez was 17 years old, a juvenile.

Mr. Enriquez, who has served over 20 years in the South Carolina Department of Corrections, was not provided an opportunity to present evidence specific to the attributes of his youth and is therefore, entitled to a re-sentencing pursuant to *Miller v. Alabama*, 132 S.Ct. 2455 (2012). Mr. Enriquez filed his Motion for Resentencing on December 23, 2014.

II. Law

In *Miller*, the Supreme Court of the United States held that imposing a life without parole sentence on a juvenile offender without considering the hallmark characteristics of juveniles in general and the particular mitigating circumstances in the defendant's individual case violated the Eighth Amendment. Moreover, by insisting upon a discretionary sentencing scheme for juveniles convicted of homicide, the Court required states to expand the range of sentencing options for these juvenile offenders. Consequently, *Miller* established a specific framework, articulating that the factors a sentencing court consider at a hearing must include: (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 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. 132 S.Ct. at 2468.

The Court further determined, in *Montgomery v. Louisiana*, that the holding in *Miller* applied retroactively. Prior to the U.S. Supreme Court's holding in *Montgomery*, the Supreme Court of South Carolina ruled that *Miller* applied retroactively and further opined that applying the constitutional principles articulated in *Miller* to South Carolina's pre-*Miller* sentencing practices, all life without parole sentences imposed on juveniles in this State prior to *Miller* and *Aiken* constituted cruel and unusual punishment. For that reason, the Court ordered that all juveniles sentenced to life without parole in South Carolina prior to *Aiken* were "entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight."

Furthermore, post-*Miller*, not only are mandatory juvenile life without parole statutes invalid, even discretionary juvenile life without parole sentences are constitutionally suspect if the sentencer failed to fully consider relevant aspects of the defendant's youth. See, e.g., *State v. Long*, 8 N.E.3d 890, 898-99 (Ohio 2014) (granting resentencing in a discretionary juvenile life without parole sentence, noting "[a]lthough *Miller* does not require that specific findings be made on the record, it does mandate that a trial court consider as mitigating the offender's youth and its attendant characteristics before imposing a sentence of life without parole."); *State v. Riley*, 110 A.3d 1205, 1213 (Conn. 2015) (holding "that the dictates set forth in *Miller* may be violated even when the sentencing authority has discretion to impose a lesser sentence than life without parole if

it fails to give due weight to evidence that *Miller* deemed constitutionally significant before determining that such a severe punishment is appropriate.”).

III. Analysis

Pursuant to *Miller*, *Aiken*, and *Montgomery*, Mr. Enriquez is entitled to a re-sentencing hearing in order for the Court to consider the sentencing factors outlined in *Miller*. At the time of his sentencing, Mr. Enriquez was not given the opportunity to present evidence regarding the characteristics of his youth and any mitigating circumstances from his specific case. Prior to handing down the sentence, the sentencing Judge informed Mr. Enriquez that the penalty for murder in the State of South Carolina is life imprisonment. (Plea Transcript, p. 11, line 24-25). After briefly considering statements from Mr. Enriquez’s lawyer and parents, the sentencing Judge, on the charge of murder, committed Mr. Enriquez to the South Carolina Department of Corrections for life.

In spite of ample available evidence suggesting that his young age and related characteristics mitigated against a life sentence, state law precluded Mr. Enriquez from receiving an individualized sentencing hearing at which a judge could consider such mitigating evidence in determining an appropriate and proportionate sentence. As the sentence was automatic upon the determination of guilty, no judge could give effect to the circumstances of the offense as mitigating the sentence. Evidence about Mr. Enriquez’s age-appropriate immaturity, recklessness, and judgment also were not taken into account for sentencing purposes. The mandatory sentence also precluded the sentencing judge from considering Mr. Enriquez’s family and home environment. Mr. Enriquez’s parents briefly spoke about their love for their son but the Court did not fully

explore the parental relationship and how it may have affected his decision making abilities. Nor could the sentencing judge consider how Mr. Enriquez's incompetencies associated with youth in dealing with the adult criminal justice system, such as his inability to deal with police officers, may have contributed to the serious charges and his ultimate conviction. Finally, the sentencing judge was prevented from considering the possibility of rehabilitation even when the circumstances most suggest it.

Evidence also indicates that Mr. Enriquez has indeed been rehabilitated. As an immature youth entering the South Carolina prison system, Mr. Enriquez originally struggled with his adjustment to prison. In his more than 20 years in prison, Mr. Enriquez has grown and matured. He has obtained a certificate for completing the Bondage to Freedom Seminar as part of the Gospel Express Evangelistic Team and a certificate of achievement for Work Keys - Silver with the Palmetto Unified School District. He has received college course credit through Limestone College and has participated in various alcohol and drug abuse programs. Most significantly, he has obtained a certificate of Legal Assistant/Paralegal from Blackstone School of Law in Dallas, Texas and an associate of science in paralegal studies from Ashworth College. He has also voluntarily participated in various programs for employment readiness. Mr. Enriquez has made substantial efforts in order to seek maximum rehabilitation within the confines of the South Carolina prison system.

The (second and third) prong of the *Miller* holding requires the sentencing judge to consider "the family and home environment that surrounds the offender" and "...how familial and peer pressures may have affected him." His parents had a very difficult separation and divorce. His parents moved him from living in Goose Creek, SC, a

predominantly military, suburban neighborhood, to living in a section 8 apartment in North Charleston, SC. That's when things changed. His two oldest brothers were able to get out of the house and live productive lives before the difficult family break up began. He was the youngest of male siblings. The two brothers who were left were his teachers of the incorrigible behavior. His brother, Jesse, was his codefendant, and he believes was the person who loaded the gun earlier that night. Jesse later approached the deceased, Jeff. Shortly afterwards, he followed Jesse with the gun in his hand to scare Jeff because he noticed a hostile argument ensue between Jesse and Jeff. With respect to the (third) prong, *Miller* requires the sentencing judge to consider the "circumstances of the offense, including the extent of the offender's participation..." There was no intent to kill. The State's two, key eyewitnesses, Wendy Joyner and Derrick Brown, confirm he did not know the gun was loaded when it discharged. See Attached Statements "A". They heard the "excited utterance" which he made regarding his state of mind that he thought the gun was unloaded. The SLED ballistics and trace reports confirm he did not have his finger on the trigger when it accidentally discharged from a gun that would discharge when sliding the pump action. The trigger pull weight was less than a hair trigger. It had only one shell in the tube. It was recovered immediately after the incident with the fatal, spent shell in the gun. The pathologist matched the muzzle of the gun with the contact wounds on the deceased's body which confirmed his version of facts that he struck the deceased with the muzzle of the gun in a poking motion to keep him at bay and scare him. The second strike caused the gun to accidentally discharge.

In regards to the (fourth) *Miller* prong, he balked on the armed robbery charge. See Tr. p. 7, line 23 through Tr. p. 8 line 21. He wrote his attorney within days after his

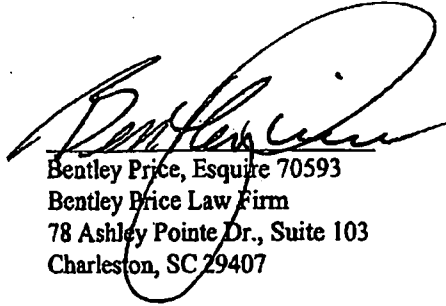
guilty plea when he discovered that his attorney grossly misadvised him that he would be eligible for early release or programs after ten years. See attachment "B". He requested his counsel to withdraw his pleas within ten days from the plea hearing. Counsel refused to do so. He wrote a letter to the Clerk of Court's Office attempting to withdraw his pleas, but it was forwarded to the solicitor's office without action. See Attachments "C". His sibling, Jesse, and he had joint representation. Counsel tried to get Jesse to plead to 35 years, but Jesse requested counsel to be relieved. After a short period with new counsel on the case, Attorney Ashley Pennington negotiated a 3 to 6 years YOA sentence for Jesse. These facts support his "incapacity to assist own attorney." He has been incarcerated for over twenty-two (22) years. Geriatric release is not common in South Carolina, and he should not be released to a death bed or be released when he will have difficulty obtaining employment because employers are reluctant in hiring elders. The life expectancy for an incarcerated youth who serves decades in prison is substantially less than a person in society in light of the stress factors associated with prison life. Therefore, the *Aiken* and *Miller* decisions are applicable in this instance, which is the "functional equivalent" to life without parole. These factors were not considered during his original sentencing proceedings.

Mr. Enriquez is eligible for the benefit of *Aiken v. Byars*, because he was sentenced to life for an offense committed when he was 17 years old. Therefore, he is entitled to a new sentencing proceeding and requests this Court conduct a new sentencing hearing in conformity with the constitutional principles set forth in *Miller* and *Aiken v. Byars*.

Respectfully submitted,


Charleston County, South Carolina

March 31st, 2016



Bentley Price, Esquire 70593
 Bentley Price Law Firm
 78 Ashley Pointe Dr., Suite 103
 Charleston, SC 29407

Attorney for Defendant

2016 MAR 30 PM 3:25
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY 

FILED

CHARLESTON COUNTY SHERIFF'S OFFICE

OCA # 94006017 B

DATE 1-23-94

STATEMENT OF Derrick Lamar Brown SS

EMPLOYMENT: Unemployed PHONE#

RACE: B SEX: M DATE OF BIRTH:

ON Saturday, The 22nd of January at About 1200 AM I ASK JEFF SEWELL TO TAKE ME TO MY GIRLFRIEND'S HOUSE.

HE TOLD ME IT WOULD BE LATER WHEN HE COULD TAKE ME TO HER HOUSE. I ASKED HIM IF HE COULD TAKE ME TO MIKE'S HOUSE. HE SAID YES, I GOT MY JACKET AND WE LEFT.

WHEN WE GOT TO MIKE'S HOUSE I SAW A DARK COLORED CAR PARKED IN MIKE'S DRIVEWAY. I GOT OUT OF JEFF'S CAR AND STARTED WALKING TO THE FRONT DOOR OF THE HOUSE.

WHEN I WAS ABOUT HALF WAY THERE, JESSIE ENRIQUEZ CALLED TO ME. HE SAID "WHO ARE YOU?" I SAID "DERRICK THEN JESSIE CALLED ME TO THEIR CAR. JESSIE ASKED ME IF I WANTED TO

GO WITH THEM AND GET A ROAM AND PARTY. I TOLD HIM NO I HAD TO GO HOME TO MY GIRL'S HOUSE. HE ASKED ME WHO THAT WAS IN THE CAR. I TOLD HIM JEFF. HE ASKED ME IF JEFF HAD ANY PAPERS.

I SAID "I DON'T KNOW" THEN ME AND JESSIE WALKED TO JEFF'S CAR. I ASKED JEFF IF HE HAD ANY PAPERS. JEFF REACHED IN HIS POCKET. JESSIE LOOKED AT ME LIKE TO STAY OUT THAT KIND OF PAPERS.

I TOLD JESSIE THAT JEFF WAS NOT REACHING IN HIS POCKET FOR MONEY BUT FOR ROLLING PAPERS. WE WALKED TO JESSIE'S CAR AND JEFF STAYED IN HIS CAR. I STARTED TALKING TO WENDY JOYNER.

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES: [Signature]
[Signature] DET.

x [Signature]

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT

CHARLESTON COUNTY SHERIFF'S OFFICE

OCA # 9406017 B

DATE 1-23-94

STATEMENT OF Derrick Lamar Brown
 ADDRESS _____ PHONE# _____
 EMPLOYMENT: Same As Above PHONE# _____
 RACE: _____ SEX: _____ DATE OF BIRTH: _____

A white guy and Tony Enriquez got out of Jessie's car. I was talking to Wendy through the window, Jessie and Tony and the white guy went over to Jeff's car. I told Wendy that they were going to Rob h.m. She told me she knew. I looked up and Tony was walking back to the car. He opened the passenger side door and reached across Wendy and grabbed the S&W of Shotgun. He ran back to Jeff's car. They made Jeff stand up and Tony was holding the shotgun pointed at Jeff. Jessie and the white guy were going through Jeff's pockets. I told Wendy they are robbing him. I heard the gun click, then I heard a loud bang shot. I looked over at them and I saw SMOAK and Jeff laying on the ground. The three of them came running back to the car. Tony got in the drivers seat. Jessie told me to get in the car. I did. Me, Jessie and the white guy were in the back seat. Wendy was sitting in the front seat. Tony started driving. Someone said "he's dead". Tony started asking "who loaded the gun?" He said "I didn't know it was loaded". Jessie said I got his cigarettes, they were new packs. We left Northwoods and got on the I. I told them to take me to Donchita Rd.

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES
[Signature]
[Signature] DET.

x [Signature]

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT

PAGE 3 OF 3

CHARLESTON COUNTY SHERIFF'S OFFICE

OCA # 94006017BDATE 1-28-94

STATEMENT OF Derrick Lamar Brown
 ADDRESS _____ PHONE# _____
 EMPLOYMENT: SAME AS PAGE 3 PHONE# _____
 RACE: _____ SEX: _____ DATE OF BIRTH: _____

I GAVE JESSIE TEN DOLLARS BECAUSE HE ASKED ME FOR IT
 SO THEY COULD GET A ROOM. I GOT QUARTERS IN THE CAR AND
 THEY TOOK ME TO DORCHESTER RD. THEY DROPPED ME OFF
 ON DORCHESTER RD. AND I WALKED TO MY GIRLFRIEND'S
 HOUSE. I TOLD MY GIRLFRIEND, JEANIE, WHAT HAPPENED. I RANG
 DENNIS GROVE, HE CALLED BACK, I TOLD HIM TO TELL SCOTTY
 WHAT HAPPENED AND TO GO TO MIKE'S HOUSE TO SEE WHAT
 WAS GOING ON. HE WENT TO MIKE'S AND CALLED ME WHEN
 HE GOT BACK HE TOLD ME THERE WAS A LOT OF POLICE AND A
 AMBULANCE ^{IN} SO I TOLD HIM TO COME GET ME. HE CAME GET ME
 WE STARTED TO GO TO NORTH CHARLESTON POLICE DEPT. BUT WE
 WENT TO DENNIS'S HOUSE. I CALLED MY MAN AND TOLD HIM WHAT
 HAPPENED AND THEN ^{HE} I CALLED NORTH CHARLESTON POLICE.
 THEN MY MAN CALLED ME BACK AND TOLD ME TO STAY THERE
 I WENT TO SLEEP AND WAITED FOR NORTH CHARLESTON POLICE TO
 SEND SOMEBODY TO DENNIS'S TO GET ME.

I REMEMBER WHEN ME AND JEFF FIRST GOT TO MIKE'S
 HOUSE AND JESSIE WAS TALKING TO ME HE TOLD ME THEY
 WERE GOING TO ROB JEFF. I TOLD JESSIE NOT TO ROB
 HIM BECAUSE HE WAS MY FRIEND. END OF STATEMENT

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOL-
 UNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

D. H. [Signature]

Mark [Signature] DET.

X Derrick Brown

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT

PAGE 1 OF 5

taken by Detective D.R. Hale

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT COVER SHEET

OCA# 94-006017 B

DATE 1-23-94

STATEMENT OF Joyner - Wendy Cheryl

ADDRESS Richard Drive, Summerville, SC, 29483

PHONE# (H) _____

EMPLOYMENT unemployed

PHONE# (W) N/A

RACE W

SEX F

DATE OF BIRTH _____

SOCIAL SECURITY # _____

LOCATION OF STATEMENT: Richard Drive, Summerville, SC

TIME 1920 -> 2030

EDUCATION LEVEL Completed 8th grade

On Saturday, January 22nd, 1994, I was at Eric's house on Bucknell Drive. It was about 10:30 PM. I was with Amanda (a white girl) and Emmie (also white) and we needed transportation. Also at the house was Eddie (a black guy), Ivan Boyce, and Mike Hickman. I beeped Tony Enriquez and he telephoned me back right away. I asked him to come pick us up and he said he was coming ~~in~~ in about 30 minutes. He got there about 10:45 PM. Tony was driving his blue Cutlass. Tony's brother Jessie, and two other guys, one white, one black, were in the car. Amanda and Emmie came with me so initially there were seven of us in the car. First we drove to the Terrace Inn on Redbank Road. We were drinking beer in the car; it was Schlitz Malt Liqueur. Tony and Jessie saw some friends at the store next to the Terrace Inn and talked to them for a few minutes. Then we drove to an apartment in Goose Creek. I think it was Tony and Jessie's apartment. Jimmy Enriquez was there with Darius, Monty, and Vince. Jimmy is Puerto Rican; Darius,

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

David R. Hale

SIGNATURE

x Wendy Joyner

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT _____

PAGE 2 OF 5CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT SUPPLEMENT SHEETOCA# 94-006017 BDATE 1-23-94STATEMENT OF Joyner - Wendy Cheryl

Monty and Vince are black. Darius' last name is Judkins, Monty's last name is Seay (I think) and I don't know Umce's last name. We were at the apartment about 15 minutes. The black guys were smoking pot. I drank another beer. We left there and Jessie drove. In the car now were Jessie, Tony, me, Emmie and Amanda, Monty Seay, and the white guy who was with us earlier. There were still seven people in the car. We drove to the Northport Inn off ~~Allen~~^W Aviation and only stayed about 3 minutes. Jimmy Enriquez, Vince and Darius were in Umce's car. It is a big, white, raggedy car. They followed us to Northport. Then we all drove to the Chevron station on Ashley Phosphate (next to the Citgo) and I used the restroom. When we left Jessie was driving. I think Monty got out of the car at the Chevron station, but I'm not positive. Jessie got on Ashley Phosphate and outran Umce. Then we drove back to Erre's house on Bucknell. Tony said that somebody at the house ~~was~~^{is} owed him money. Tony did not say a name of who owed him money. We got to the house and Emmie and Amanda got out and went inside.

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

David R. Hale

SIGNATURE

* Wendy Joyner

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT _____

PAGE 3 OF 5CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT SUPPLEMENT SHEETOCA# 94-006017 BDATE 1-23-94STATEMENT OF Joyner- Wendy Cheryl

I remember sitting in the car the entire time. Tony got the shotgun from the car. I had seen the shotgun since I had been in the car. Tony said something about "playing with them". By this he meant Derek Brown and his friend, the white guy named Jeff Sewell. Derek had driven up with Jeff Sewell while we were sitting in the drive. Derek was sitting in the Cutlass with me. My impression was that Tony Enriquez, Jesse Enriquez, and the other white guy were going to scare Derek's friend Jeff. The three of them went over to Jeff's car, a small red one. A few seconds later I heard a shot, but it was not loud, like it was muffled. The three of them ran back to the Cutlass. Tony had the shotgun. Tony said, "he's not moving". Tony jumped in front and drove. Jesse and the white guy jumped in the back. The white guy was about 17 yrs. old, he was about 150 to 155 lbs. and was about 5'-08" or less in height. Tony said "I've got to run." I'm pretty sure Tony also said "Who loaded the gun?". Tony was hyper, but he wasn't real panicky. Tony put the shotgun in the back seat. We drove away and

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

David R. Hall

SIGNATURE

x Wendy Joyner

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT _____

PAGE 4 OF 5CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT SUPPLEMENT SHEETOCA# 94-006017 BDATE 1-23-94STATEMENT OF Joyner - Wendy

went down Otranto, turned right on Rivers Ave., then turned onto Ashley Phosphate, then got on the interstate. We got on the airport road and drove to ~~Ashley Phosphate~~ ^{was} Dorchester Rd. Derek told Tony to take him to his girlfriend's house. Derek got out at a house somewhere off Dorchester Road. I was worried that Tony might shoot me. I asked Tony to take me to my friend Carla's house. I was scared and told Tony I wouldn't tell anybody what had happened. They dropped me off on Kentucky Drive in College Park subdivision and I walked about two blocks to get to my friend Carla's house, which is on the corner of Kentucky and Savannah. I got there at 11:45 AM. I remember because Carla was mad that I got there ^{late} (I remember that Jessie wanted me to stay with them. Tony said to take me home.) I went to sleep at Carla's house without telling her what had happened. I woke up at 11:00 AM on Sunday. I called Eric's house at about 11:30 and talked to Mike Hickman. He told me that the guy Jeff was dead. Mike told me to talk to the police. I also talked to my aunt,

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

David R. Hale

SIGNATURE

Wendy Joyner

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT _____

PAGE 5 OF 5

CHARLESTON COUNTY SHERIFF'S OFFICE
STATEMENT SUPPLEMENT SHEET

OCAF# 94-006017 B

DATE 1-23-94

STATEMENT OF Joyner - Wendy Cheryl

Tammy I son, who told me to contact the police. My aunt telephoned the Charleston County Sheriff's office and gave her phone number. I talked to Detective Hale at about 12:30 or 1:00 PM on Sunday. He told me he wanted to talk to me around 6:00 or 6:30 PM, and he came over to my mother's trailer at about 7:15 PM. I don't think Tony or Jessie Enrriquez even knew Jeff Sewell. I am pretty sure that Tony Enrriquez shot Jeff Sewell. Tony got the shotgun out of the car and came running back holding the shotgun. Tony seemed the most upset about what happened. Jessie didn't say much at all. End of Statement.

~~was was was was~~

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESSES:

David R. Hale

SIGNATURE Wendy Joyner

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT _____

December 5, 1974

Dear, Mr. Runyon

How are you doing? Ms. these people have things messed upped over here. You know how I said I'd enter the plea because of the (eligibility) of parole in 9 more years. Well, these people over ^{here} The classification says I'm not eligible for parole until 20 years. Can you straighten things out for me. I understood from what you told me I'm eligible for parole in 9 more years that's why I took the plea. Please straighten things out for me as soon as possible because these people over here have things messed upped. They have me scared! Let me know as soon as you straighten things out.

Thank You!
Anthony Enriquez
ANTHONY ENRIQUEZ

Let #1

WILLIAM L. RUNYON, JR.

*Attorney at Law*ONE CARRIAGE LANE
BUILDING B, SUITE 203
CHARLESTON, SOUTH CAROLINA 29407

COPY

FACSIMILE: (803) 766-5085

TELEPHONE: (803) 571-3515

December 7, 1994

Mr. Anthony Enriquez
B Side 109
L.C.I. R & E #215961
P.O. Box 205
Ridgeville, SC 29472

Re: Recent Calls, Letter and Plea

Dear Tony:

Let us recap the situation. You were charged with a murder that gave the prosecution a right to notice the seeking of the death penalty. Merely by noticing you that would have exposed you to a mandatory minimum of thirty years without eligibility for parole or any of the early release programs. You plead to the non-capital murder. This lets you look at twenty years before parole. However, you can, as explained to you, work your way into all sorts of programs. As I explained to you, the computation of good time plus other time incentive programs means that you are looking at ten years minimum before you can start looking at any of the early release, minimum security, and/or trustee programs which could be available to you. Yes, you have already built a year sitting in the County Jail

Now to your request. I am not going to expose you to the possibility of the electric chair. Hire someone else to do that or go get an appointed lawyer. I realize you are "scared" of prison, but at least you are alive.

Please remember you killed someone. Under the law in this State, if the jury believed the State's evidence, they could convict you of murder. It is a much closer question on the armed robbery. I am not vouching for the State's evidence on this issue. However weak it may appear, there is "evidence." The existence of "evidence" in this State compels the Court to submit the matter to a jury. Thus you have an excellent chance to wind up on death row. The deceased's mother and father are calling for your scalp. The entire picture is not the best for the death penalty. However, once you add the local mood and the national mood and the answer becomes clear, one does not risk the electric chair.

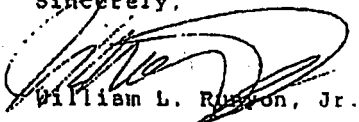
I therefore advise against and respectfully decline to risk your

Mr. Anthony Enriquez
December 7, 1994
Page Two

life. This is not a Burger King system -- you cannot have it your way when someone is dead.

Thanking you, I remain

Sincerely,



William L. Robinson, Jr.

WLR, Jr.:lg

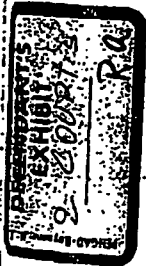
December 13, 1994

Dean, Julie Armstrong (Hiramsville)

JULIE
CLERK

Kello! I'm writing you concerning Post Conviction Relief. I would like you to send me a few applications. I also would like you to send me the commitment papers and the indictments. The indictment numbers are ^{MURDER} 9465103057 ^{ARME ROBBERY} 9465103056

I also would like to know if you can help me on this situation. I entered a plea on December 1, 1994 and I was advised by very competent counsel that I would be eligible for parole in 10 years but comes to find out I find out parole eligibility isn't until 30 years. So, I call and write my attorney William Runyon. I told him I entered the plea because of eligibility of parole in 9 more years because I built a year in the county jail. I asked if I could withdraw my plea on the grounds of entering a plea without understanding of parole eligibility. He says he refuses that I need to hire or get an attorney appointed to accomplish my concern. I'm indigent, I need help on withdrawing my plea. If you can please help me or tell me on how to go about handling my concern. Thanks



You for your times!

I remain, CONCERN

Sincerely,
Anthony Enriquez

MY ADDRESS IS ON ENVELOPE . IF NEEDED TO
CONTACT FAMILY BY PHONE FEEL FREE TO
CALL THESE NUMBERS MOTHER CYNTHIA ENRIQUEZ

767-3934

FATHER RICARDO ENRIQUEZ

HOME # 874-2043

WORK # 764-7563

BROTHER RICARDO ENRIQUEZ

OR KRISI ENRIQUEZ

577-1362

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SENTENCE

GENERAL SESSIONS COURT
Armed Robbery
NC v ALPOD

CASE NO. 94 GS-10-3057

TICKET/WARRANT NO. E053426

TICKET WARRANT NO. _____

The defendant, Anthony M. Enriquez, is committed to the State Dept. of Corrections / County Detention Center under Youthful Offender Act for a term of 25 days/months/year and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus pay/waive costs and assessment as applicable*, the balance suspended with probation for _____ months/years.

Special conditions: CONCURRENT w/ 94-3057

Restitution (YES/NO) \$ _____ /3% Total \$ _____

Weekly/Monthly \$ _____

to Clerk for _____

Public Defender Funds \$ _____

Date: 12-1-94

[Signature]
Resident/Presiding Judge, Ninth Judicial Circuit

- Fine \$ _____
- Law Enforcement and Hall of Fame \$ _____
- Community Corrections Assessment/Waive Indigent \$ _____
- 25% of Fine or \$50.00 \$ _____
- DUI Test, if Applicable \$ _____
- 10.00 G.S. Assessment \$ _____
- 3% County, if Applicable \$ _____
- Indigent Defense Fee \$ _____
- Total \$ _____

INFORMATION ON DEFENDANT

Age: 18 S.S. No. [REDACTED]

M F _____ Married _____ Single

Date of Birth: _____

Attorney: W. Runyon (A)

ALL PAYMENTS MUST BE MADE BY CASH,
MONEY ORDER OR CASHIER CHECK. WE
CANNOT ACCEPT PERSONAL CHECKS.

- Clerk of County/Deputy Clerk
- White copy to Clerk
- Canary to Detention Center
- Pink to Probation
- Goldenrod to Defendant
- Green to Solicitor

CLERK OF COURT
2144 MELBOURNE AVE.
CHARLESTON, SC 29405
740-5700

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SENTENCE

GENERAL SESSIONS COURT

MURDER

DSB 12-1

CASE NO. 94-GS-10-3056

TICKET/WARRANT NO. E053425

TICKET WARRANT NO. _____

The defendant, Anthony M. Enriquez, is committed to the State Dept. of Corrections / ~~County Detention Center / under Youthful Offender Act~~ for a term of LIFE days/months/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus pay/waive costs and assessment as applicable*, the balance suspended with probation for _____ months/years.

Special conditions: _____

Restitution (YES/NO)\$..... /3% Total \$ _____
Weekly/Monthly \$ _____

to Clerk for _____

Public Defender Funds _____

Date: 12-1-94

[Signature]
Resident/Presiding Judge, Ninth Judicial Circuit

~~Fine\$ _____
Law Enforcement and Hall of Fame\$ _____
Community Corrections Assessment/Waive Indigent\$ _____
25% of Fine or \$50.00\$ _____
DUI Test, if Applicable\$ _____
10.00 G.S. Assessment.....\$ _____
3% County, if Applicable.....\$ _____
Indigent Defense Fee\$ _____
Total\$ _____~~

INFORMATION ON DEFENDANT
Age: 18 S.S. No. ~~_____~~
M F _____ Married _____ Single
Date of Birth _____
Attorney: W. Remyon

ALL PAYMENTS MUST BE MADE BY CASH, MONEY ORDER OR CASHIER CHECK. WE CANNOT ACCEPT PERSONAL CHECKS.

Clerk of County/Deputy Clerk
White copyto Clerk
Canaryto Detention Center
Pinkto Probation
Goldenrod.....to Defendant
Greento Solicitor

CLERK OF COURT
2144 MELBOURNE AVE.
CHARLESTON, SC 29405
740-5700

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
)	
STATE OF SOUTH CAROLINA	)	State's Response to Defendant's Motion for Resentencing
)	
vs.)	
	)	INDICTMENT #'s: 1994-GS-10-3056
	)	1994-GS-10-3057
)	
ANTHONY ENRIQUEZ,	)	CHARGES: Murder, Armed Robbery
)	
Defendant.)	
)	

RECEIVED
 1994
 12 18 11 30 AM
 CLERK OF COURT
 CHARLESTON COUNTY
 SOUTH CAROLINA

Proccdural Background

On January 23, 1994, in Charleston County, seventeen year old Defendant Anthony Enriquez robbed and murdered the victim Jeffrey Sewell by shooting him in the chest with a twelve gauge shotgun. On December 1, 1994, the Defendant pled guilty to murder and armed robbery. The Honorable Casey Manning sentenced the Defendant to life in prison, with eligibility for parole. On December 18, 2014, the Defendant Anthony Enriquez filed a motion for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534 (2014).

Legal Reasoning

The United States Supreme Court in *Miller v. Alabama*, 132 S.Ct. 2455 (2015) addressed the issue of whether a statutorily mandated sentence of life imprisonment without the possibility of parole for juveniles violated the Eight Amendment. *Id.* at 2457. The Court held that "*Graham, Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest

possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration *without the possibility of parole*, regardless of their age and age related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eight Amendment's ban on cruel and unusual punishment." *Id.* at 2475 (emphasis added). In reaching the decision, the Court reasoned that juveniles are constitutionally different from adults in that they have "diminished culpability and greater prospects for reform." *Id.* at 2464.

In *Aiken v. Byars*, the South Carolina Supreme Court addressed whether *Miller* applies retroactively to juveniles sentenced to life without the possibility of parole where the life without parole sentence was a discretionary decision made by the judge. *Aiken*, 410 S.C. 534. The South Carolina Supreme Court held that "[o]ur General Assembly has made the decision that juvenile offenders may be sentenced to life without parole, and we honor that decision. However, *Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmarks of youth are fully explored." *Id.* at 578.

1. *Miller* and *Byars* are Inapplicable to this Case because the Defendant is Eligible for Parole.

At issue in *Miller* and *Byars* were juvenile life sentences without the possibility of parole. Here, the same concerns of proportionality addressed in those cases are not invoked as the Defendant is parole eligible after service of 20 years of his sentence¹. He is currently eligible for parole as of January 23, 2014. See SCDC website². Because the sentence is parole eligible, this

¹ Defendant was sentenced under the previous murder statute which provided for parole eligibility after 20 years. See *State v. Atkins*, 303 S.C. 214 99 S.E.2d 760 (1990)

² <http://public.doc.state.sc.us/scdc-public/>

case is categorically different from *Miller* and *Byers*. Here the parole board can take into considerations of youthfulness and immaturity at the time of the crime, rehabilitation, along with other important considerations. See South Department of Probation, Parole and Pardons Services Policies and Procedures Handbook³. Consequently, the concerns of the *Miller* and *Byer* Courts are not present in this scenario where the Defendant is parole eligible.

Therefore, the State respectfully requests that the motion be summarily denied without the necessity of a hearing because *Aiken v. Byers* is inapplicable as the Defendant did not receive a life sentence without the possibility of parole.

Respectfully submitted,

Charles M. Condon, Jr.
Charles M. Condon, Jr., Assistant Solicitor

Date: April 21, 2016

APR 21 11:36
CLERK OF COURT
PAROLE & PARDONS

³ <http://www.dpps.sc.gov/content/download/68278/1576111/file/Parole+Board+Manual+-+April+2015.pdf>

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

ANTHONY ENRIQUEZ

IN THE COURT OF GENERAL
SESSIONSCASE NO.: 94-GS-10-3056 and
94-GS-10-3057DEFENDANT'S RESPONSE TO STATE'S
MEMORANDUM FOR
RESENTENCING

Mr. Price

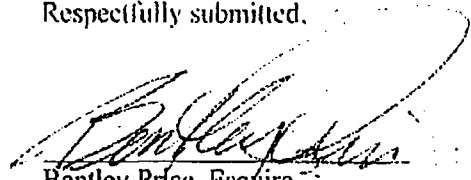
The Defendant, Anthony Enriquez, through his undersigned counsel, Bentley Price, Esquire, hereby submits this Response to the State's Answer to Defendant's Motion for Resentencing that was filed in this Court on December 23, 2014.

The court in *Miller v. Alabama*, 132 S.Ct. 2455 (2012); established the framework that the sentencing judge should consider in juvenile cases (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 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. 132 S.Ct. at 2468.

It is evident by the record that Mr. Enriquez is a quintessential victim of the previous sentencing scheme. Evidenced even by the letters that were sent between Mr. Enriquez and his previous attorney. This alone indicates that Mr. Enriquez was immediately confused as to what his plea deal was and not made fully aware of its consequences. The

State's position that Mr. Enriquez is not entitled to a new hearing due to the fact that he is eligible for parole is precisely the mindset that has negatively affected these defendants. Mr. Enriquez should not be impugned from a fair and adequate sentence based on the mere fact that the sentencing scheme in affect at the time of his plea allowed for parole. The defendant has a Constitutional Right to have the Sentencing Judge consider all factors set out in *Miller* before imposing a life sentence regardless of the Defendant's right to parole or not.

Respectfully submitted,



Bentley Price, Esquire
Bentley Price Law Firm
78 Ashley Pointe Dr., Suite 103
Charleston, SC 29407
843-532-4516

Charleston County, South Carolina

June 30th, 2016

Attorney for Defendant

DUT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
)	
STATE OF SOUTH CAROLINA	)	State's Supplemental Response to Defendant's
	)	Motion for Resentencing
)	
vs.)	
	)	INDICTMENT #'S: 1994-GS-10-3056,
	)	1994-GS-10-3057
)	
ANTHONY ENRIQUEZ,	)	CHARGES: Murder, Armed Robbery
)	
Defendant.)	
)	
)	

Supplemental Response

The Supreme Court in *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016), in addressing the remedy for a *Miller* violation concerning a juvenile who received an automatic life without parole sentence, stated that:

Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. *See, e.g.* Wyo. Stat. Ann § 6-10-301(c)(2013)(juvenile homicide offenders eligible for parole after 25 years). Allowing 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 Eight Amendment.

Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition-- that children who commit even heinous crimes are capable of change.

The State submits that the United States Supreme Court has made it clear that *Miller*, and consequently *Aiken v. Byars*, does not apply to juveniles who receive life with eligibility for

parole sentences. In fact, a remedy for a *Miller* violation is to convert the sentence of life without parole to life with eligibility for parole, the same sentence which the Defendant Enrique received in this case. The Defendant's parole was denied in April 2014 due to (1) nature and seriousness of offense, (2) use of a deadly weapon to commit the offense, and (3) unfavorable institutional record at SCDC. The Defendant will be back before the parole board on September 21, 2016, and can attempt to demonstrate his rehabilitation.

Therefore, for the reasons stated in this and the previous State's response, the Defendant's motion for an *Aiken v. Byars* resentencing should be denied.

Respectfully submitted,

Charles M. Condon, Jr.
Charles M. Condon, Jr., Assistant Solicitor

Date: July 19, 2016

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COLUMBIA, SOUTH CAROLINA

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STATE OF SOUTH CAROLINA)
) Court of General Sessions
 COUNTY OF CHARLESTON) Case No. 1994-GS-10-3056 and 3057
)
)
 STATE OF SOUTH CAROLINA)
)
 vs.) Transcript of Record
)
 ANTHONY ENRIQUEZ,)
)
 Defendant.)
) DATE: July 20, 2016

B E F O R E:

THE HONORABLE CARMEN T. MULLEN

A P P E A R A N C E:

CHARLES CONDON
Attorney for the State

BENTLEY D. PRICE
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

1 (Whereupon, the defendant is present.)

2 THE COURT: Let's go ahead on the record in this
3 case, State of South Carolina vs. Anthony Enriquez. And we
4 are here today to determine as a preliminary matter whether
5 or not we do, in fact, need a *Byars* hearing.

6 So with that said, I guess we can go ahead and start
7 with the State and your position, certainly. I received your
8 briefs, obviously. Certainly, I've read the case law that's
9 related to this. And just go ahead and place it for the
10 record.

11 MR. CONDON: Yes, ma'am. May it please the Court,
12 Your Honor. I believe that the law is pretty clear on this
13 issue. *Aiken vs. Byars* and the Supreme Court *Miller* case
14 make it clear that resentencing only applies to juveniles
15 that are sentenced to life without parole. In this case, the
16 defendant was sentenced to life with parole. Therefore, the
17 implications that the court addresses in those cases aren't
18 invoked here because the parole board could consider the
19 novelties of youth and the other considerations of youth.

20 Furthermore, the Supreme Court recently held in
21 *Montgomery vs. Louisiana* that a possible remedy for a *Miller*
22 violation is the same sentence that the defendant received in
23 this case, which is converting a life without parole sentence
24 to a life with parole. And, therefore, we believe it's
25 unequivocally clear that this is not a violation of *Miller*.

1 THE COURT: Mr. Condon, the question I have for you
2 is, back in 1994, when Mr. Enriquez was sentenced, obviously,
3 a life sentence meant someone was eligible for parole after
4 20 years, which Mr. Enriquez had been up for parole in 2014.
5 I understand it was denied. And I understand he's back up
6 for parole in September 2016. Can you tell me, Mr. Condon,
7 back in 1994, what was the possible punishment for murder?

8 MR. CONDON: My understanding, Your Honor, is it
9 could have been a capital case, which, obviously, would have
10 been death penalty. If they choose not to select capital
11 punishment, it would have been life. And I believe it would
12 have been parole after 30 years, if he had gotten that.

13 In this case, it was pled down without aggravating
14 circumstance, so it is the 20 years.

15 THE COURT: 20 years parole eligible?

16 MR. CONDON: Parole eligible.

17 THE COURT: All right. Do you want to go ahead and
18 respond, Mr. Price?

19 MR. PRICE: You read our briefs. And I understand
20 you understand what situation Mr. Enriquez is currently in.
21 But just based on the briefs themselves and the five criteria
22 set out, Mr. Enriquez is an absolute poster child for what
23 they are discussing. The fact that there's a mandatory
24 sentencing scheme in 1994 that allowed for him to be eligible
25 for parole, we feel like does not detract from his

1 constitutional rights to have an opportunity to continue to
2 be resentenced.

3 Mr. Enriquez is an intelligent person. You read his
4 memorandum and everything he's been able to accomplish. And
5 he understands that even if resentenced, that it could be the
6 same outcome. But we feel like, based on *Miller* and --
7 excuse me, I also want to discuss the *Montgomery vs.*
8 *Louisiana* -- that he fits every single one of those five
9 criteria. We've outlined a lot of that in our memorandum,
10 such as his age and immaturity, you can see based on what's
11 evidenced in the memorandum about how immature he was. He
12 wrote a letter to his lawyer the next day asking that his
13 plea be revoked. And his lawyer, obviously, you've seen it,
14 he wrote him a letter saying that: This isn't Burger King,
15 you don't get to order your way.

16 That's enough evidence to show he doesn't have any
17 idea what he was doing at that age.

18 It also discusses his family and home environment.
19 We don't want to get into that. Hopefully, we'll be able to
20 do that in a hearing.

21 He's here supported by his family. His mother and
22 other siblings are here. His co-defendant only received
23 three to six years YOA, is currently here, and would like to
24 address the Court if we have that opportunity.

25 I'm not going to go through all of the circumstances

1 of the offense. You've seen that. He's had very, very, very
2 good defenses to his case. And not only was it a theory-type
3 case, which as lawyers, that's our job, is to go with a
4 theory that the jury could buy. There's real concrete
5 factual medical key evidence in this case from medical
6 examiners, down to his fingers weren't on the trigger. That,
7 obviously, was a contact wound.

8 All of this showing excellent defense to his case
9 that he was not allowed to present at trial. And I don't
10 think he was ever even told that he would be able to do that
11 by his prior attorney.

12 THE COURT: Why doesn't he go for post-conviction
13 relief?

14 MR. PRICE: I don't know. Did you ever file a PCR?

15 THE DEFENDANT: Yes, I did.

16 MR. PRICE: I wasn't privy to that, Your Honor. I
17 don't know the answer to that question. I'm assuming some of
18 those circumstances were brought up. And, again, at that
19 time, I don't think that we knew about the five-prong test
20 the Supreme Court was going to come up with indicating this
21 is what the sentencing judge should now take into
22 consideration.

23 THE COURT: What you were arguing were things that
24 his attorney didn't do. And that was your argument, what he
25 wasn't allowed to present. So it's a difference. And I'm

1 trying to figure out, did he also have a direct appeal as
2 well?

3 MR. PRICE: He did. Obviously, Your Honor, I was
4 just referring to his attorney, that that could have been PCR
5 as to the third prong. But, again, his inability to deal
6 with his attorney and possibility of rehabilitation is the
7 last.

8 Your Honor, this is a situation -- our argument is
9 this. There is a lot of these same similarly situated
10 defendants. Okay? We are not sure exactly how many.
11 Someone is putting together allegedly right now as to how
12 many there are. And the unfortunate aspect of it is, it's
13 difficult for them to put that together because they are all
14 dying off. And it happens almost on a regular daily basis.
15 He keeps up with that type of information. He relays it to
16 me. But they are having a difficult time because, obviously,
17 their life expectancy is far less than if they were out.

18 The one issue that I wanted to discuss about the
19 argument as to whether *Montgomery v. Louisiana* establishes
20 allowing someone to remove the *Aiken v. Byars* by just simply
21 allowing the them to have parole is -- one, the language is,
22 it may remedy it. It doesn't always remedy it. And the
23 remedy, obviously, is to not have someone be serving a
24 sentence that's unconstitutional.

25 And so the argument becomes, based on *Montgomery vs.*

1 Louisiana, my research is that some states -- because,
2 obviously, this is a Supreme Court decision, parole is so
3 much different than ours. And it's a lot easier to get
4 parole. And I think that the Supreme Court is simply saying,
5 we understand the severity that it would cause to have every
6 state go back and potentially resentence, on the alternative,
7 have some sort of appeal or PCR-type situation, just put him
8 on parole and that will simply solve the problem. But that's
9 not going to solve Mr. Enriquez's problem.

10 There is no harm in having the hearing and having
11 the judge have that opportunity. And here's why. We would
12 like -- this is a benchmark/landmark-type situation. Your
13 Honor, I'm not sure if you ever dealt with it before. I
14 certainly haven't. Obviously, it's extremely new. But our
15 argument is, there is no harm in allowing him to have his
16 hearing. He's waited 22 years for it. He would like to be
17 able to put forward the situation that he was facing when he
18 was 17 years of age. And he understands the conviction
19 stance. But he would like to be heard at his own sentencing
20 about the five prongs that he would like to be able to
21 discuss with the sentencing judge.

22 And if Your Honor feels like the sentence is an
23 appropriate one, he understands that. But we don't feel like
24 there's any prejudice or harm in having that hearing and
25 giving him the opportunity to go through that with Your

1 Honor.

2 THE COURT: I just have a question. If the basis of
3 being able to have the hearing is a constitutional violation,
4 the sentence he received isn't a violation. It isn't a
5 constitutional violation because he was given a life sentence
6 with parole. And he, in fact, has had at least one
7 opportunity of parole.

8 So, Mr. Condon, I don't know if you want to address
9 that.

10 MR. CONDON: Your Honor, I think you nailed the
11 point here, that these cases do not apply to the situation.
12 Again, he was eligible for parole. He's not sentenced to
13 life without parole, which is what all these holdings talk
14 about. Clearly, briefly reading out *Aiken v. Byars* holding,
15 says: We hold the principles enunciated in *Miller v. Alabama*
16 apply retroactively to these petitioners, to receive life
17 without parole prospectively to all juvenile offenders who
18 may be subject to a sentence of life imprisonment without the
19 possibility of parole.

20 Defense says, essentially, that any of these people
21 can apply for a hearing. And, you know, in this case, even
22 parole doesn't fall under that. And also, we touched briefly
23 on *Montgomery v. Louisiana* case. And I just want to point
24 out that the statute that they talked about converting to in
25 that case was parole eligibility after 25 years, which is

1 actually even harsher than the sentence received in this
2 case. And I think it clearly does not fall under this *Aiken*
3 *vs. Byars* holding. And I don't believe there's any kind of
4 authority to have a resentencing or rehearing in this case.

5 MR. PRICE: May I address this briefly? Basically,
6 what is essentially occurring with the opportunity he has for
7 parole is, it's functionally an equivalent life sentence.
8 He's going to die in prison because to this date. We know of
9 no one that has actually been granted parole in his same,
10 similarly situated offense sentence, those type things. For
11 someone to say, hey, it's great that parole board is going to
12 do it one day and basically fix this problem, it's not going
13 to happen. They are going to continue to not parole, parole,
14 parole, like they've done in the past.

15 And there's no one similarly situated to
16 Mr. Enriquez that has been granted parole as of yet. So it
17 is functionally equivalent as life in prison. And that's
18 what I say is a parole violation.

19 THE COURT: Anything else?

20 MR. CONDON: We just ask that our two briefs are
21 incorporated into the record. I can get into the parole
22 stuff and his record at SCDC and how terrible it is. But I
23 don't think it's appropriate at this point.

24 THE COURT: It's not. Okay. I'm going to take it
25 under advisement. And I will let y'all know something.

1 Okay?

2 Okay. Thank you. I appreciate it.

3 MR. CONDON: I will mark this as State's 1 and 2.

4 (State's Exhibit No. 1, Plaintiff's motion, was
5 marked for identification.)

6 (State's Exhibit 2, Plaintiff's motion, was marked
7 for identification.)

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CERTIFICATE OF REPORTER

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3 I, Karen V. Andersen, Registered Merit Reporter,
4 Certified Realtime Reporter for the State of South Carolina
5 at Large, do hereby certify that the foregoing transcript is
6 a true, accurate and complete Transcript of Record of the
7 proceedings.

8 I further certify that I am neither related to nor
9 counsel for any party to the cause pending or interested in
10 the events thereof.

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16 Karen V. Andersen
17 Registered Merit Reporter
18 Certified Realtime Reporter
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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
	)	INDICT. NOS.:
STATE OF SOUTH CAROLINA	)	1994-GS-10-3056 Murder
	)	1994-GS-10-3057 Armed Robbery
)	
vs.)	ORDER DENYING DEFENDANT'S
)	MOTION FOR RESENTENCING
ANTHONY ENRIQUEZ.)	
)	
Defendant.)	

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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

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, 'impetuosity[.]' 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.

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.

October 13, 2016

C. Mullen

 Carmen T. Mullen
 Circuit Judge
 Ninth Judicial Circuit

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC Court of Appeals

Anthony Enriquez, 215961,

Docket No. 16-ALJ-15-0049-AP

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

ORDER

FILED

APR 26 2017

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or court) pursuant to the appeal of Anthony Enriquez (Appellant), an individual incarcerated with the South Carolina Department of Corrections. On September 22, 2016, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Parole Board (Board) had rejected him for parole. The Appellant wrote to ask for reconsideration and received a response stating that there is no appeal process for the routine denial of parole.

ISSUE ON APPEAL

1. Whether the Department complied with procedural due process requirements when denying the Appellant parole.

STANDARD OF REVIEW

The court's jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals), and *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). The *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Because parole is a privilege and not a right, the routine denial of parole does not constitute such a liberty interest. *See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008) (citation omitted). However, where the Department "deviates from or renders its decision without consideration of

the appropriate [statutory] criteria, . . . it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest." *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111. Therefore, the court reviews this matter only for violations of statutory procedure or procedural due process and does not review the Board's substantive decision to deny the Appellant parole.

When reviewing a decision of the Department, the ALC sits in an appellate capacity. See *id.*, 377 S.C. at 497, 661 S.E.2d at 110; *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). The court may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2016). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

Parole is a privilege, not a right. *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) (citing *Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 443 n.4, 586 S.E.2d 124, 127 n.4 (2003)). The discretion to grant parole lies solely with the Board. *Id.*, 376 S.C. at 649, 659 S.E.2d at 104-05 (citing *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623-24 (1989)). If, in denying parole, the Board follows proper procedure and issues a routine denial, then summary dismissal of the case may be appropriate. See *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008); see also *Compton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). The proper procedure includes considering the factors outlined in South Carolina Code Section 24-21-640 and the factors listed in the Department's parole form. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112. Additionally, the Board must utilize an actuarial risk and needs assessment tool, known as COMPAS, as prescribed in South Carolina Code Section 24-21-10(F). The Appellant's first two arguments do not raise statutory procedural requirements or constitutional procedural due process arguments and thus must be dismissed pursuant to *Cooper* and *Compton*.

However, the Appellant's third argument concerns a constitutional argument that this court chooses to address. The Appellant committed his offense when he was seventeen (17) years old. He has remained in prison since that age and is now forty (40) years of age. He avers that he has taken steps to rehabilitate himself, including seeking education and employment. He argues that life expectancies are reduced for juveniles sentenced to life in prison and that without a meaningful opportunity for parole he will die in prison. In support of his position, the Appellant cites constitutional case law from the United States Supreme Court and the Supreme Court of New York.

In *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455 (2012), the United States Supreme Court held that juveniles cannot be sentenced to life without the possibility of parole unless an individualized sentencing hearing is held. The Court stated, "[w]e have by now held on multiple occasions that a sentencing rule permissible for adults may not be so for children." *Id.*, 132 S. Ct. at 2470 (citations omitted). Citing prior precedent, the Court stated that "[a]n offender's age . . . is relevant to the Eighth Amendment," so "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id.*, 132 S. Ct. at 2466 (internal quotation marks and citation omitted).

In *Miller*, the Court reasoned that "the distinctive attributes of youth diminish the penological justification for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." ~~*Id.*, 132 S. Ct. at 2465.~~ A sentence to life without parole "forfeits altogether the rehabilitative ideal" and "reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change." *Id.* (quoting *Graham v. Florida*, 560 U.S. 48, at 74, 130 S. Ct. 2011 at 2030 (2010)). Both common sense and science bear out that an adolescent's moral culpability is lessened and "the case for retribution is not as strong . . ." because there are fundamental differences between juvenile minds and adult minds. *Id.*, 132 S. Ct. at 2465 (internal quotation marks and citation omitted). Adolescents, generally, are prone to "transient rashness, proclivity for risk, and inability to assess consequences" due to a lack of neurological development. *Id.* After neurological development occurs, however, just "a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior" and, in most cases, an adolescent's "deficiencies will be reformed." *Id.* (quoting *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183 (2005)). Likewise, the case for deterrence is much less persuasive, "because the same characteristics that render juveniles less

culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment.” *Id.* (internal quotation marks and citation omitted).

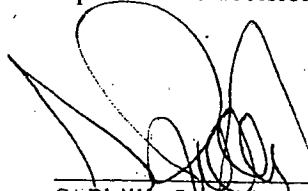
In applying *Miller*, the South Carolina Supreme Court noted that a “sentencer must be allowed to consider that youth is more than a chronological fact, and carries with it immaturity, irresponsibility, impetuosity, and recklessness, factors as transient as youth itself.” *Aiken v. Byars*, 410 S.C. 534, 539, 765 S.E.2d 572, 574–75 (2014) (internal punctuation and citation omitted). Quoting *Miller* the South Carolina Supreme Court stated, “[a]lthough a court may still sentence a juvenile to life without parole after an individualized hearing, the court cautioned that given children’s diminished culpability and heightened capacity for change the appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. *Id.* (internal quotation marks and citation omitted).

Considering the reasoning in *Miller* led the New York Supreme Court, Appellate Division to hold that, in considering an inmate for parole, the board must consider the significance of the inmate’s youth and its attendant circumstances at the time of the commission of the crime. *Matter of Hawkins v. N.Y. State Dep’t of Corrs. & Cmty. Supervision*, 140 A.D.3d 34, 30 N.Y.S.3d 397 (N.Y. App. Div. 2016). The New York Supreme Court noted that “[a]lthough the [U.S. Supreme] Court has not specifically reviewed a case regarding a parole determination for a juvenile homicide offense, it is axiomatic that such an offender still has a substantive constitutional right not to be punished with life imprisonment for a crime ‘reflecting transient immaturity.’” *Id.*, 140 A.D.3d at 38 (quoting *Montgomery v. Louisiana*, 136 S. Ct. 718, 735 (2016), *as revised* (Jan. 27, 2016) (holding, in accord with *Aiken v. Byars*, that *Miller* is retroactive). The court held, “[f]or those persons convicted of crimes committed as juveniles who, but for a favorable parole determination will be punished by life in prison, the Board must consider youth and its attendant characteristics in relationship to the commission of the crime at issue.” *Id.*, 140 A.D.3d at 39 (citations omitted).

This court finds the reasoning in *Hawkins* persuasive. The Appellant’s argument that the maturity of a juvenile who has taken steps to rehabilitate himself in prison should be considered by the Board has merit, in the court’s opinion. Currently, the Board does not consider these factors. However, no existing United States or South Carolina authority requires the South Carolina Parole Board to consider age or immaturity in its decisions. Because, the Appellant received a routine denial of parole consistent with the current statutory and procedural due process requirements under South Carolina law, the court must affirm the Department’s decision.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED**.
AND IT IS SO ORDERED.



S. Philip Lenski, Judge
S.C. Administrative Law Court

April 16, 2017
Columbia, South Carolina

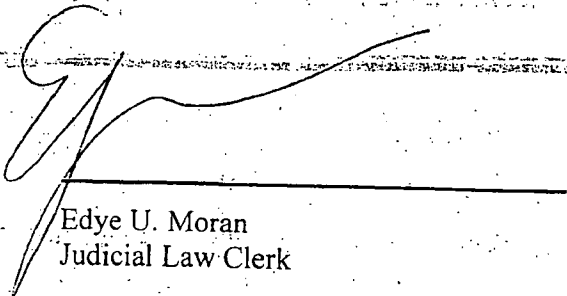
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CERTIFICATE OF SERVICE

SC Court of Appeals

I, Edye U. Moran, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



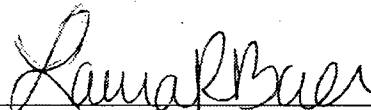
Edye U. Moran
Judicial Law Clerk

April 26, 2017
Columbia, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

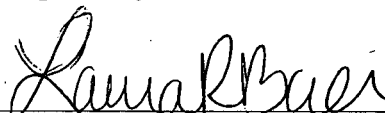
ATTORNEY FOR APPELLANT

This 31st day of October, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 31st day of October, 2017.

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SC Court of Appeals