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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
2017 NOV 27 PM 12: 57) FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)

The State,

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

v.

Joshua Kerr Cramer,

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ORDER GRANTING STATE'S MOTION
TO DISMISS DEFENDANT'S REQUEST
FOR RESENTENCING

Indictment No.: 1998-GS-46-1015-1018
1998-GS-46-2192

NOV 30 2017
SC Court of Appeals

This matter was before the Court on November 6, 2017, upon the Motion of the Defendant to be given an individualized sentencing hearing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) and the State's Motion to Dismiss the Defendant's Motion. The Defendant was present and represented by Chief Circuit Public Defender for the Sixteenth Judicial Circuit, Harry A. Dest, and Assistant Public Defender, Melissa A. Inzerillo. The State was represented by the Deputy Solicitor for the Sixteenth Judicial Circuit, Willy Thompson. Pamela Green was the Court Reporter. The hearing was held before Grace Gilchrist Knie, Circuit Court Judge, Seventh Judicial Circuit, at the Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, SC.

PROCEDURAL HISTORY:

The Defendant in 2015 filed a timely Motion for Resentencing, for his case pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) and for the appointment of counsel. The State filed a Return to Defendant's Motion for Resentencing on November 6, 2017, requesting the Defendant's Motion for Resentencing be dismissed on several grounds. The State argued that the Defendant's date of birth is May 2, 1979. The incident date of the convicted crimes of Murder (2 counts), Possession of a Weapon During the Commission of a Violent Crime (2

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counts), Distribution of Marijuana, Arson in the Third Degree, Receiving Stolen Goods, and Accessory Before the Fact to a Felony, is March 2, 1998. The Defendant was eighteen (18) years of age at the time the crimes were committed (18 years and 10 months). The State argued that the Defendant did not qualify for resentencing pursuant to the applicable law.

LAW:

The law of the United States Supreme Court and the law of the Supreme Court of South Carolina is as provided in Aiken v. Byers, 410 S.C. 534, 765 S.E.2d 572 (2014) and Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455 (2012). In 2012, the South Carolina Supreme Court decided in its original jurisdiction whether a class of juveniles could be resentenced under the newly decided case, Miller v. Alabama. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The Supreme Court of the United States mandated in Miller that sentencing courts consider youth as a mitigating factor when crimes were committed by juveniles. Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455 (2012). A small group of plaintiffs were selected as part of a class of juveniles incarcerated at the time serving a life sentence. The questions before the South Carolina Supreme Court were whether the rule in Miller applied retroactively and whether that subclass of plaintiffs could be afforded an individualized sentencing hearing wherein the sentencing court could determine a sentence based on evidence presented on factors associated with youth and the circumstances of the crime. Aiken, 410 S.C. at 537, 538. The Court initially found that Miller was retroactive, paving the way for prior sentences to be reheard. Id. at 540. The Court further defined a juvenile in South Carolina as follows: "In South Carolina, pursuant to Section 63-19-20 of the South Carolina Code (2010), a juvenile is a person less than seventeen years of age. However, *Miller* extends to defendants under eighteen years of age and therefore

for the purposes of this opinion we consider juveniles to be individuals under eighteen." Id. at 535 n.1.

CONCLUSION:

The Defendant was not a juvenile under the age of eighteen (18) years old at the time of the offense. The Defendant did not present any evidence or testimony on the issue of his age at the time of the incident to contest this information at the hearing.

Based upon the State's argument, the Court grants the State's Motion to Dismiss the Defendant's Request for Resentencing because the Defendant was not a juvenile under the age of eighteen (18) years old at the time of the incident.

IT IS SO ORDERED!



The Honorable Grace Gilchrist Knie
Circuit Court Judge
Seventh Judicial Circuit

November 20, 2017
Spartanburg, South Carolina