(6)

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lancaster County
Brian M. Gibbons, Circuit Court Judge

THE STATE,

Respondent,

v.

RONALD YATES HYATT,

Appellant.

Appellate Case No. 2016-001872

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General
S.C. Bar No. 101477
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit
P.O. Box 607
Lancaster, South Carolina 29721
(803) 416-9367

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

Other Sources

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

Did the trial judge err in denying appellant's request for re-sentencing where he received a *mandatory* sentence of life imprisonment *with* the possibility of parole, which is the functional equivalent of life imprisonment *without* the possibility of parole, because (1) the sentence does not afford a meaningful opportunity for release as evidenced by his repeated denials of parole for sixteen consecutive years and (2) the statutory scheme does not provide for consideration of the characteristics attendant to youth?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

The trial court did not err in ruling appellant is not entitled to re-sentencing pursuant to *Aiken* as appellant received a life *with* parole sentence and is eligible for release every year, and the court properly found the law only applies to juvenile homicide offenders previously sentenced to life *without* parole and has not been extended to any other sentence. Further, appellant's sentence is the remedy deemed sufficient by the United States Supreme Court to cure an unconstitutional sentence.

STATEMENT OF THE CASE

Appellant, Ronald Yates Hyatt, was sentenced to life with the possibility of parole on December 16, 1981, following a guilty plea to murder.[1] (R*; Tr.p.6, lines 8-10; *Aiken* order, p.2). Appellant became parole eligible on April 26, 1998, and has had sixteen parole hearings since that time. (*Aiken* order, p.2).

The State alleged appellant, then sixteen-years-old, and a co-defendant[2] killed the victim during an armed robbery on August 17, 1981. (Tr.p.6, lines 1-3; Transfer order, p.1; *Aiken* order, pp.1-2).

On August 24, 1981, the State moved to transfer jurisdiction of appellant's case from family court to Lexington County General Sessions court. (Tr.p.6, lines 4-6; Transfer motion). During a hearing on the transfer motion, appellant was represented by Berry Mobley and Frank Manning represented the State. (Transfer order, p.1). The Honorable Roddey L. Bell granted the motion on August 25, 1981. (Tr.p.6, lines 6-8; Transfer order, p.3). Judge Bell's order was based, in part, on the seriousness and violence of the crimes, appellant's level of maturity and other factors such as his "pattern of living," appellant's criminal history, and the "better likelihood of reasonable rehabilitation" for appellant if he were tried in General Sessions court.[3]

---

[1] Appellant was sentenced to a concurrent twenty-five year sentence for armed robbery. (*Aiken* order, pp.1-2).

[2] The co-defendant, William Robert Horton, was nineteen-years-old and an adult at the time of the murder. (Transfer order, p.1; *Aiken* order, p.2).

[3] Judge Bell made numerous findings of fact and conclusions of law in the order. (Transfer order, pp.1-3). Appellant discusses them in the Statement of the Case. (App.Br.pp.2-3). Because the findings relate to appellant's age and maturity level, seriousness of the charges against him, and generally address some of the points at issue in this appeal, respondent believes they are better noted in the Argument section. *See generally* Rule 208(b)(1)(C), SCACR (providing the Statement of the Case "shall contain a concise history of the proceedings" and shall further include "the date of and description of such orders, judgments, decisions and

(Transfer order, p.2).

Appellant was admitted to the South Carolina State Hospital on August 26, 1981. (Mental Capacity report). The hospital staff determined appellant was not mentally ill, capable of understanding the nature of the charges, and capable of assisting counsel in his own defense. (Mental Capacity report).

Subsequently during its December 1981 term, a Lancaster County grand jury indicted appellant for murder. (R.*; 1981-GS-29-829). Appellant was represented by Tyre Lee at his guilty plea hearing. (Tr.p.6, lines 8-10; *Aiken* order, p.2). At the time appellant pled guilty, defendants sentenced to life for murder were eligible for parole after serving twenty years. *See* S.C. Code Ann. § 16-3-20(A) (Supp. 1980 Vol. 8) (providing the punishment for a person who was convicted of or pled guilty to murder shall be death or life imprisonment, and shall not be eligible for parole until the service of twenty years).

On November 11, 2015, appellant moved for re-sentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), and submitted a *pro se* motion. (*Aiken* motion, pp.1-14). On June 16, 2016, a hearing was held in Lancaster on appellant's motion before the Honorable Brian M. Gibbons. (Tr.p.1). Appellant was represented by Mike Lifsey, and the State was represented by Lisa Collins. (Tr.p.1). By order dated August 15, 2016, Judge Gibbons denied appellant's motion for a re-sentencing hearing, finding *Aiken* did not apply to appellant's case. (*Aiken* order, p.3).

This appeal follows.

---

proceedings of the lower court . . . that may have affected the appeal, or may throw light upon the questions involved in the appeal"). Accordingly, respondent examines the judge's findings at greater length below.

ARGUMENT

The trial court did not err in ruling appellant is not entitled to re-sentencing pursuant to *Aiken* as appellant received a life *with* parole sentence and is eligible for release every year, and the court properly found the law only applies to juvenile homicide offenders previously sentenced to life *without* parole and has not been extended to any other sentence. Further, appellant's sentence is the remedy deemed sufficient by the United States Supreme Court to cure an unconstitutional sentence.

Appellant is not entitled to re-sentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), as he received a life *with* parole sentence and is eligible for release every year. The fact appellant has been rejected for parole annually does not create a cognizable claim under *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny. By their plain language *Miller* and *Aiken* apply only to juvenile homicide offenders sentenced to life *without* parole and appellant is not part of that class.

Neither our courts nor the United States Supreme Court have extended the *Miller* rule to apply to any other type of sentence, such as a *de facto* life sentence. Appellant received the sentence the Supreme Court deemed sufficient to remedy an unconstitutional sentence pursuant to *Miller* and is parole eligible. Appellant's lengthy disciplinary history while incarcerated belies his contention that he is serving a *de facto* life without parole sentence because he is continually denied parole. A disciplinary history, which is considered by the parole board, is not evidence of rehabilitation or reform in keeping with the "central intuition" of *Miller* that juveniles who commit even violent crimes are capable of change. Accordingly, appellant's sentence of life *with* parole is not cruel and unusual punishment under the Eighth Amendment, and the trial court did not err in denying appellant's motion for re-sentencing.

Hearing on Motion to Transfer Jurisdiction to General Sessions Court

The State moved to transfer jurisdiction of appellant's case from family court to General

Sessions court. (Transfer motion). During a hearing on the motion held August 25, 1981, appellant, his attorney, and his parents were present. (Transfer order, p.1).

Prior to transferring jurisdiction, Judge Bell considered the evidence before him, including records from the Department of Youth Services (DYS).[4] (Transfer order, p.1). Judge Bell found appellant had been involved with the juvenile justice system since February 1980, and noted his previous charges included housebreaking, larceny and forgery, breaking into a vehicle, and truancy. (Transfer order, p.1). The judge also found appellant was committed to the Reception and Evaluation Center (R&E Center) at DYS in September 1980, where a comprehensive psychological, educational, and social assessment was completed. (Transfer order, p.1). Judge Bell read and examined appellant's assessment, and found "the logged reports of the juvenile's counselor are a sufficient examination of the parentage and surroundings of the juvenile, his age, habits and history and are a sufficient inquiry into the home conditions, habits and character of his parents." (Transfer order, p.1).

In transferring jurisdiction, Judge Bell relied on United States Supreme Court precedent[5] and state statutory provisions to find it was in the best interest of both appellant and the public to grant the motion. (Transfer order, p.2). Specifically, the judge found the seriousness of charges required waiver as they were committed in an aggressive, violent, and premeditated or willful manner. (Transfer order, p.2). Judge Bell further noted appellant's juvenile record, found appellant was sophisticated and mature "in regards to the severity of the offense," and stated he arrived at that finding after "due consideration" of appellant's "home environmental situation,

---

[4] The agency became known as the Department of Juvenile Justice in 1993.

[5] Specifically, the judge relied on *Kent v. U.S.*, 383 U.S. 541 (1966), which sets out the factors a family court must consider when ruling on a motion to transfer jurisdiction. The *Kent* factors are still used by our courts today.

emotional attitude, and pattern of living, all of which [were] reflected in the juvenile's Reception and Evaluation Report." (Transfer order, p.2). Finally, Judge Bell found appellant's previous record made his prospect of rehabilitation unlikely in family court, and there were "better prospects for adequate protection of the public and better likelihood of reasonable rehabilitation" for appellant if he were to be tried in General Sessions court. (Transfer order, p.2). Accordingly, Judge Bell transferred jurisdiction of appellant's case.

Appellant's Motion for Re-Sentencing

Appellant pled guilty to murder and armed robbery on December 16, 1981. (Tr.p.6, lines 8-10). Judge Fields sentenced appellant to life with the possibility of parole. (R.*). At the time appellant pled guilty, defendants sentenced to life for murder were eligible for parole after serving twenty years. *See* S.C. Code Ann. § 16-3-20(A) (Supp. 1980 Vol. 8) (providing the punishment for a person who was convicted of or pled guilty to murder shall be death or life imprisonment, and shall not be eligible for parole until the service of twenty years). Appellant became parole eligible on April 26, 1998, has had sixteen parole hearings since that time, but been denied parole each time. (*Aiken* order, p.2).

On November 11, 2015, appellant moved for re-sentencing pursuant to *Aiken*, and submitted a *pro se* motion. (*Aiken* motion, pp.1-14). In his motion, appellant asserted the life sentence he received as a juvenile was mandatory and unconstitutional because it was the only possible sentence he could receive under the statute. (*Aiken* motion, pp.7-8). Appellant maintained Judge Fields refused to consider his school records, "juvenile records," and "other essential types of mitigating evidence that is relevant to these types of proceedings." (*Aiken* motion, p.2). Appellant argued he "had a very low educational and scholastic scoring level" which may have demonstrated a learning disability or mild intellectual disability, he was "the

product of a violent home life," he was "abandoned by his biological father," and no witnesses testified regarding any of this possible mitigation evidence at the plea hearing. (*Aiken* motion, pp.10-11).

Hearing on *Aiken* Motion

A hearing on appellant's motion was held on June 16, 2016, before Judge Gibbons. (Tr.p.1). The State first noted for the trial court a brief history of the juvenile sentencing cases, including our Supreme Court's decision in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), which held life without parole sentences for juveniles without individualized consideration of youth was cruel and unusual punishment, and applied retroactively. (Tr.p.4, line 24-p.6, line 1). The State argued appellant was not entitled to re-sentencing because he did not receive a sentence of life *without* the possibility of parole, but received a sentence of life *with* the possibility of parole. (Tr.p.6, line 18-p.7, line 4). The State informed the court it had confirmed with the Department of Probation, Parole and Pardon Services (DPPPS) appellant became eligible for parole in 1998, seventeen years into his sentence, and received sixteen parole hearings. (Tr.p.7, lines 4-8).

The State argued the "essential goal" of *Aiken* was to "protect juvenile offenders from cruel and unusual punishment through a sentence of life without the possibility of parole." (Tr.p.7, lines 8-12). The State maintained the fact that appellant had not been granted parole was not the issue. (Tr.p.8, lines 3-5). Rather, the issue was "to whom does the relief set forth in *Aiken v. Byars* apply" and appellant was "quite simply" not within that class because he was parole eligible and considered for release every year. (Tr.p.8, lines 5-12).

Defense counsel argued the "whole focus" of *Aiken* was that "children are different" and a court must consider the "hallmark features of youth" prior to sentencing a juvenile to a life

sentence. (Tr.p.8, line 18-p.9, line 14). Counsel maintained the idea that youth warranted special consideration was a recent development in the law and was "certainly not recognized in 1981" when appellant was sentenced. (Tr.p.9, lines 14-18). Counsel conceded appellant did not fall within the plain language of *Aiken*, but argued appellant warranted a re-sentencing hearing because: (1) a life sentence was the only possibility available at the time appellant was sentenced and the plea judge did not have the option of setting a term-of-years sentence, and (2) appellant was serving a *de facto* life sentence as he had served, at that point, thirty-five years in prison, having been denied parole sixteen times. (Tr.p.9, line 18-p.10, line 9). Counsel again conceded appellant's situation was different than that which was addressed in *Aiken*, but argued the reasoning of *Aiken* extended to someone in appellant's situation who was serving what had "the practical effect of a life sentence." (Tr.p.10, lines 9-22).

Appellant acknowledged his parole eligibility, but told the trial court being denied release for so many years made it seem like he had a life without parole sentence, which was cruel and unusual punishment. (Tr.p.11, lines 5-14).

The State responded that "whether or not this has morphed into a *de facto* life sentence due to the denial of the parole board each year" was not the issue. (Tr.p.13, lines 4-9). The State asserted the "bottom line" was an authority revisited appellant's case every year and looked at factors such as whether he showed remorse or reform to determine if he should be released. (Tr.p.13, line 22-p.14, line 1). Appellant already received relief from what *Aiken* contemplated as cruel and unusual punishment for juveniles because the proper body reconsidered appellant's case every year. (Tr.p.14, lines 1-20).

The trial court asked the parties about the parole rate for "older life sentences" with parole eligibility. (Tr.p.11, lines 15-17). The court noted it could be a factor to consider related

to the argument made regarding whether appellant was serving a *de facto* life sentence. (Tr.p.11, line 24-p.12, line 6). However, the court stated "whether or not parole is granted is really not the issue, it's the process that's the issue" and found *Aiken* held it was cruel and unusual punishment not to consider the hallmarks of youth without also giving the juvenile the process by which to get out of prison. (Tr.p.15, line 18-p.16, line 1).

Order Denying Re-Sentencing Pursuant to *Aiken*

By order dated August 15, 2016, Judge Gibbons denied appellant's motion for a re-sentencing hearing, finding *Aiken* did not apply to appellant's case. (*Aiken* order, p.3). The judge concluded the "essential goal" in *Aiken* "was to protect juvenile offenders from unconstitutional cruel and unusual punishment through a sentence of life in prison without parole – the key element being life in prison without parole." (*Aiken* order, p.3) (emphasis in original). Judge Gibbons found the holding in *Aiken* did not apply to appellant because, while he was sixteen at the time he received a life sentence, he did not receive a life without parole sentence as he was "afforded the opportunity to have his case reviewed every year by the Parole Board, and [was] given the possibility of parole every year." (*Aiken* order, p.3). The judge found appellant was not within the class of juvenile offenders for whom *Aiken* provides for re-sentencing hearings. (*Aiken* order, p.3).

Judge Gibbons specifically rejected the argument that appellant was serving a *de facto* life without parole sentence because he had previously been denied parole. (*Aiken* order, p.3). The judge found *Aiken* cited United States Supreme Court precedent to apply "to juvenile offenders who are serving 'life in prison without possibility of parole.'" (*Aiken* order, p.3) (emphasis in original). Judge Gibbons found because appellant "clearly has the possibility of parole, and that possibility comes to fruition each year when the Parole Board reviews

[appellant's] case and considers him for parole," *Aiken* did not apply to appellant. (*Aiken* order, p.3). The judge dismissed the motion for re-sentencing. (*Aiken* order, pp.3-4).

Analysis

Standard of Review

In criminal cases, appellate courts only review errors of law. *State v. Gamble*, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013) (citing *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)). The appellate court is bound by the lower court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). However, this Court reviews questions of law *de novo*. *State v. Whitner*, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012) (citations omitted).

Re-Sentencing Only Applies to Life Without Parole Sentences

The Eighth Amendment prohibits cruel and unusual punishment. U.S. Const. amend. VIII. In *Miller v. Alabama*, 567 U.S. 460 (2012), the United States Supreme Court held mandatory life without parole sentences for juvenile offenders who committed murder violated the prohibition against such punishment. 567 U.S. at 470. The Court held a sentencing authority must be allowed to consider youth as "more than a chronological fact," but a factor which carries with it immaturity, irresponsibility, and recklessness. *Id.* at 476. Further, the age of the defendant, along with his family background, and mental and emotional development must be considered in assessing his culpability. *Id.* The Court held a juvenile convicted of murder could still be sentenced to life without parole, but only after an individualized hearing in which the various mitigating factors were considered. *Id.* at 479-80.

Our Supreme Court held *Miller* applied retroactively to juveniles in South Carolina previously sentenced to life without parole. *Aiken*, 410 S.C. at 540-41, 765 S.E.2d at 575. The

Court also held the rule extended to juveniles sentenced under our non-mandatory scheme, and those who received a life without parole sentence were entitled to re-sentencing to allow them "to present evidence specific to their attributes of youth and allow the judge to consider such evidence in light of its constitutional weight." *Id.* at 544, 765 S.E.2d at 577. Further, the Court determined the factors in *Miller* were those which must be considered during the hearings, such as the offender's age, family life, extent of his participation in the murder, and possibility of rehabilitation. *Id.* at 544-45, 765 S.E.2d at 577-78. Just as the *Miller* court held, our Court explained juveniles could still receive life without parole sentences, but only after "an individualized hearing where the mitigating hallmark features of youth are fully explored." *Id.* at 545, 765 S.E.2d at 578.

Two years later, the Supreme Court held its rule in *Miller* was retroactive on state collateral review. *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016). However, the Court also recognized the potential burden on states tasked with re-litigating cases where a juvenile received mandatory life without parole. The Court explained states could remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than re-sentencing them. *Id.* Citing with approval a Wyoming statute which provided for juvenile parole eligibility after twenty-five years, the Court found allowing "those offenders to be considered for parole ensures those 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.* The Court continued:

> 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.

Id. The Court noted petitioner's evidence of rehabilitation and reform since incarceration were claims typically considered by parole boards, but which had not been "tested or even addressed by the State" given petitioner's life without parole sentence. *Id.*

Appellant Not Entitled to Re-Sentencing: He Received Life <u>With</u> Parole Sentence

The trial court did not err in its application of *Miller* or *Aiken* as both cases hold the relief granted extends only to juveniles sentenced to life *without* the possibility of parole. *See Miller*, 567 U.S. at 470 (holding mandatory life without parole sentences for juvenile offenders who committed murder violates the Eighth Amendment); *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577 (holding juveniles who received a life without parole sentence were entitled to re-sentencing to allow them to present evidence specific to their attributes of youth). Appellant received a life *with* parole sentence and the trial court was correct in finding he was not within the class of juvenile offenders who the courts were trying to protect from cruel and unusual punishment. *See Miller*, 567 U.S. at 471 (explaining because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments) (citations omitted). Finding appellant is entitled to relief would impermissibly extend the holdings in *Miller* and *Aiken* beyond their plain language and the trial court properly denied the motion for re-sentencing.

Moreover, the Supreme Court specifically held states could remedy a *Miller* violation—i.e. an unconstitutional sentence—by "permitting juvenile homicide offenders to be considered for parole" rather than re-sentencing them. *Montgomery*, 136 S.Ct. at 736. The Court explained prisoners who showed an inability to reform would continue to serve life sentences, but 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." *Id.* Respondent acknowledges, as the Supreme Court held, fundamental differences between juveniles and adults affect the proportionality analysis under the Eighth Amendment. However, despite appellant's lengthy discussion about the decisions in other jurisdictions, neither our courts nor the United States Supreme Court have ever held the *Miller* rule applied to sentences other than life without parole, such as a *de facto* life sentence. The trial court properly rejected appellant's argument that he was serving the equivalent of a life without parole sentence because he had previously been denied parole. (*Aiken* order, p.3). Every year the proper authority considers and weighs whether appellant is eligible for release. *See James v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 376 S.C. 392, 396, 656 S.E.2d 399, 401 (Ct. App. 2008) ("[A]n inmate has a liberty interest in gaining access to the parole board, although there is no protected right to parole."). Appellant has the meaningful opportunity for release based on demonstrated maturity and rehabilitation when he goes before the parole board every year, and has done so since he became eligible for parole in April 1998. Appellant already received the sentence the Supreme Court found was an appropriate remedy for offenders in his position.

In addition, despite appellant's argument to the contrary, it is not clear from the record before this Court that the parole board, in fact, did not consider factors relative to appellant's youth, or what other evidence the board weighed in denying appellant parole. *See* DPPPS, South Carolina Board of Paroles and Pardons Policy and Procedure Manual, (June 2017), p.20, https://www.dppps.sc.gov/content/download/120663/2749351/file/Parole+Board+Manual+June+7+2017.pdf (providing during a parole hearing, the prisoner has the opportunity to present evidence and have up to three witnesses speak on his behalf) (Parole Board Manual). There are no transcripts from the parole board hearings and none of the rejection letters issued to appellant

following the sixteen previous parole hearings were presented at the hearing before Judge Gibbons. *See id.* (providing when parole is denied, the inmate has the right to written notice of the board's reasons for denying parole). Nor was there any discussion at the hearing regarding what evidence appellant presented to the parole board to demonstrate rehabilitation. The board is required by law to consider an inmate's record before, during, and after imprisonment. S.C. Code Ann. § 24-21-640. Moreover, the board may only grant parole if the inmate "has shown a disposition to reform," he will probably obey the law and "lead a correct life" in the future, his conduct led to "a lessening of the rigors of his imprisonment," the "interest of society will not be impaired" by the inmate's release, and he has secured suitable employment. *Id.*

Appellant's disciplinary record while incarcerated does not show "a disposition to reform" nor is it evidence he will likely obey the law if he is released from prison. Appellant's inmate detail report maintained by the South Carolina Department of Corrections (SCDC) shows a history of disciplinary actions, including multiple charges of possession or attempts to possess a cell phone, multiple counts of drug use, and possession of a weapon. *See* SCDC Inmate Detail Report, http://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000109143 (last visited Sept. 15, 2017).[6] One such disciplinary action was as recent as July 25, 2017. Such a lengthy disciplinary history is not evidence of rehabilitation or reform in keeping with the "central intuition" of *Miller* that children who commit even violent crimes are capable of change. *See Miller*, 567 U.S. at 480 (finding children's diminished culpability and heightened capacity to

[6] This Court can take judicial notice of appellant's online inmate detail report. *See* Rule 201(b)(2), SCRE (providing a judicially noticed fact must be one capable of accurate and ready determination by resorting to sources who accuracy cannot reasonably be questioned); *see also Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (finding courts "may properly take judicial notice of matters of public record"); *Tisdale v. S.C. Highway Patrol*, No. 09-cv-1009-HFF-PJG, 2009 WL 1491409, at *1, n. 1 (D.S.C. May 27, 2009), *aff'd*, 347 F. App'x 965 (4th Cir. Aug. 27, 2009) (finding courts may take judicial notice of factual information located in postings on government websites).

change requires sentencing authorities to take into account how children are different prior to "irrevocably sentencing them to a lifetime in prison"); *see also Montgomery*, 136 S.Ct. at 736 (noting evidence of petitioner's "evolution from a troubled, misguided youth to a model member of the prison community" was relevant and the kind of information prisoners use to demonstrate rehabilitation).

The parole board's manual lists additional criteria considered when determining whether to grant parole. Parole Board Manual, p.27. Such criteria include the inmate's criminal history and risk to the community, general attitude, health, adjustment while confined, and employment history. *Id.* Appellant has had a lengthy employment history while incarcerated, which is also listed in the inmate detail report. While institution transfers and promotions were noted as reasons for termination, more often the job was terminated because appellant received an unsatisfactory job performance review, was in lockup or under custody review, or placed in short term protective custody. *See* SCDC Inmate Detail Report, http://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000109143 (last visited Sept. 15, 2017). Respondent submits this is another example of appellant's failure to demonstrate his capacity to change within the meaning of either *Miller* or *Aiken*.

Finally, appellant's youth and its relevant factors were considered by the family court when transferring jurisdiction. Respondent acknowledges the hearing took place prior to sentencing. However, Judge Bell would have been aware that transferring jurisdiction to General Sessions court would have meant a life with parole sentence for appellant if he were convicted, and the judge carefully considered all the evidence before him when making his decision. (Transfer order, p.1). Judge Bell noted appellant's juvenile criminal history, examined the comprehensive psychological, educational, and social assessment R&E Center at DYS, and

found "the logged reports of the juvenile's counselor are a sufficient examination of the parentage and surroundings of the juvenile, his age, habits and history and are a sufficient inquiry into the home conditions, habits and character of his parents." (Transfer order, p.1). The judge also found it was in the best interest of both appellant and the public to transfer jurisdiction based on the seriousness of the charges, appellant's maturity related to the offenses, and "better likelihood of reasonable rehabilitation" for appellant if he were to be tried in General Sessions court. (Transfer order, p.2). Judge Bell considered the factors specifically noted by the *Miller* court as the "hallmark features" of youth. *See Miller*, 567 U.S. at 477 (listing the factors a court must take into account including the juvenile's immaturity, family life, circumstances of the murder, including the extent of his participation, how peer pressure may have affected him, and his interactions with police and his attorney). Accordingly, it cannot be said no court ever took into account appellant's age and its surrounding circumstances.

Therefore, because appellant was sentenced to life with parole, he is eligible for release every year, and his sentence does not violate the Eighth Amendment, the trial court did not err in denying appellant's motion for re-sentencing pursuant to *Aiken*.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the trial court's decision denying the motion for re-sentencing should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

BY: _____
SHERRIE BUTTERBAUGH

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

September 19, 2017.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lancaster County
Brian M. Gibbons, Circuit Court Judge

THE STATE,

Respondent,

v.

RONALD YATES HYATT,

Appellant.

Appellate Case No. 2016-001872

CERTIFICATE OF SERVICE

I, Sherrie Butterbaugh, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, addressed to his attorney of record: Susan B. Hackett, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 19th day of September, 2017.

SHERRIE BUTTERBAUGH

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

ALAN WILSON
ATTORNEY GENERAL

September 19, 2017

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *The State v. Ronald Yates Hyatt*
Appeal from Lancaster County
Appellate Case No. 2016-001872

Dear Ms. Kitchings:

Enclosed for filing please find the original Initial Brief of Respondent and Designation of Matter, together with Proof of Service in the above-referenced case. If you should have any questions, please feel free to contact me.

Sincerely,

Sherrie Butterbaugh,
Assistant Attorney General

SB/dmd
Enclosures
cc: Susan B. Hackett, Esq. (w/two copies of encls.)
The Honorable Randy E. Newman, Jr., Solicitor 6th Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lancaster County
Brian M. Gibbons, Circuit Court Judge

THE STATE,

Respondent,

v.

RONALD YATES HYATT,

Appellant.

Appellate Case No. 2016-001872

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent agrees with appellant's proposal regarding the designation of matter on appeal. To facilitate the preparation of the Final Brief, respondent requests counsel for appellant retain the page numbers of the hearing transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned certifies this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General

S.C. Bar No. 101477

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit
P.O. Box 607
Lancaster, South Carolina 29721
(803) 416-9367

BY: _____
SHERRIE BUTTERBAUGH

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

September 19, 2017.