

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Williamsburg County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

APPELLANT,

V.

RONALD HAKEEM MACK,

RESPONDENT

APPELLATE CASE NO 2017-002441

EXHIBITS TO RESPONDENT'S MOTION TO DISMISS APPEAL

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**Respondent's Ex. 1,
Guilty Plea Transcript**

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

v.

RONALD HAKEEM MACK)
DEFENDANT.)

TRANSCRIPT OF RECORD
09-GS-45-180
August 24, 2010
Kingstree, South Carolina

BEFORE:

THE HONORABLE CLIFTON NEWMAN, JUDGE

APPEARANCES:

KIMBERLY V. BARR, ESQ.
Assistant Solicitor

LEGRAND CARRAWAY, ESQ.
Attorney for defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 WHEREUPON,

2 **RONALD HAKEEM MACK,**

3 having been duly sworn by the Clerk of Court,

4 testified as follows:

5 MS. BARR: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MS. BARR: The first matter for your
8 consideration is State versus Ronald Hakeem Mack under
9 indictment 2009-GS-45-180. Judge, this is a true bill
10 indictment returned by the grand jury on July 2nd of 2009.
11 Under that indictment Mr. Mack is charged with the offense
12 of murder, burglary in the first degree, criminal
13 conspiracy, and possession of a weapon during a violent
14 crime. Judge, he's here with his lawyer Mr. Carraway.
15 He's gonna enter a guilty plea to counts one and two of
16 the indictment which are the murder and burglary charges.
17 The State's gonna dismiss counts three and four; and other
18 than that, no further recommendations or negotiations from
19 the State.

20 THE COURT: All right. Mr. Mack, you're Ronald
21 H. Mack?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You're here to plead guilty to
24 murder?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you understand that carries a
2 minimum sentence of 30 years in prison, a maximum sentence
3 of life imprisonment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that that's a most
6 serious offense under the law?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And burglary in the first degree.
9 Do you understand that that carries a minimum sentence of
10 15 years and a maximum sentence of life imprisonment?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You understand that is a most
13 serious offense under the law?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Mack, as you stand before me at
16 this moment in time you're presumed to be not guilty of
17 this charge, and you have the right to have a jury trial.
18 Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you were to have a jury trial the
21 State would be required to convince each and every juror
22 who would sit on that jury of your guilt beyond a
23 reasonable doubt. Otherwise, they would be required to
24 find you not guilty. Did you know that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You'd also have the right to have
2 your lawyer, Mr. Carraway, cross-examine any witnesses who
3 may testify against you, to challenge any incriminating
4 statements you may have made, to challenge any of the
5 evidence the State may offer against you, to bring in any
6 witnesses that you may have to testify for you, present
7 any defense that you may have, do you understand those
8 rights?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you do wish to waive those
11 rights and plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And Mr. Carraway, have you reviewed
14 with him his constitutional rights and the allegations by
15 the State and do you believe that he understands it all
16 sufficiently?

17 MR. CARRAWAY: I do, Your Honor.

18 THE COURT: And do you agree with his decision
19 to plead guilty?

20 MR. CARRAWAY: I do, Your Honor.

21 THE COURT: Mr. Mack, has anyone promised you
22 anything to get you to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you satisfied with the help
25 Mr. Carraway has given you in defending you in this case?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you believe he's done everything
3 that he could or should have done to assist you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you know of anything else he can
6 do to assist you?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you been mistreated by anyone
9 in connection with this case, law enforcement, Solicitor's
10 Office, anyone else?

11 THE DEFENDANT: No, sir.

12 THE COURT: And how old are you?

13 THE DEFENDANT: Nineteen.

14 THE COURT: And how far did you go in school?

15 THE DEFENDANT: Eleventh.

16 THE COURT: And do you have any physical or
17 mental problems?

18 THE DEFENDANT: No, sir.

19 THE COURT: And are you today under the
20 influence of any drugs, alcohol, or anything that might
21 affect your ability to understand what's going on?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you understood all of my
24 questions?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And have you answered all of them
2 truthfully?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And understanding the nature of the
5 charge and the possible punishment how do you plead to
6 murder?

7 THE DEFENDANT: Guilty.

8 THE COURT: How do you plead to burglary in the
9 first degree?

10 THE DEFENDANT: Guilty.

11 THE COURT: And are you, in fact, guilty of
12 those two crimes?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And if you were to have a jury trial
15 do you think you would most likely be found guilty of
16 these two crimes?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you understand you have the
19 right to appeal this guilty plea or sentence, but if you
20 do so you must do so within ten days?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And what did you do that makes you
23 guilty of murder?

24 THE DEFENDANT: I committed the act I was
25 charged for. I committed this act.

1 THE COURT: What act did you commit?
2 THE DEFENDANT: Murder on the victim Kenyon
3 Dorsey.
4 THE COURT: Pardon?
5 THE DEFENDANT: On the victim Kenyon Dorsey.
6 THE COURT: Dorsey?
7 THE DEFENDANT: Yeah, yes, sir.
8 THE COURT: What did you do that makes you
9 guilty of burglary in the first degree?
10 THE DEFENDANT: I went into the house after
11 12:00 without permission.
12 THE COURT: You went, broke into his house at
13 12:00, after 12:00?
14 THE DEFENDANT: Yes, sir.
15 THE COURT: And killed him?
16 THE DEFENDANT: Yes, sir.
17 THE COURT: All right. Ms. Barr.
18 MS. BARR: Your Honor, please the Court, this
19 incident occurred at approximately 2:30 a.m. back on the
20 morning of April 5th, 2009. The murder occurred on Jay
21 Byrd Avenue, which is here in Williamsburg County. The
22 victim in the case is Kenyon Dorsey, I believe, 17 years
23 old at the time he died. His mother is Annette Bradshaw.
24 She's seated at the prosecution's table. Judge, she
25 called the police when she was awakened by the sound that

1 she thought was firecrackers inside her home. She
2 indicated that she had opened the door for her son to come
3 in about an hour or so earlier; that she'd gone back to
4 sleep when she heard the noise. She thought her son was
5 on the outside shooting firecrackers. She left out of her
6 bedroom, went around in the house and noticed that the
7 television in the kitchen area was on, and she saw her
8 son's foot and his head laying in the chair. She had
9 assumed he had fallen asleep and initially she thought
10 that she was dreaming after she heard the, what she
11 thought was firecrackers. She indicated that as she
12 approached her son she saw blood spots on the wall.
13 Looked at her son, realized he had been shot, ran from her
14 home to her mother's house and lived next door, called
15 9-1-1. Police came out and observed that the victim had
16 been shot multiple times with a 9-millimeter handgun as
17 well as a rifle, a shotgun.

18 Police conducted their investigations, interviewed
19 several people who were with Kenyon prior to his murder,
20 learned that Mr. Mack was one of the individuals who was
21 with the victim prior to his murder. They initially spoke
22 to Mr. Mack. He denied having any knowledge about --
23 about the murder. Mr. Mack and Mr. Dorsey at some point
24 in time, Judge, were pretty good friends. As a matter of
25 fact, Mr. Mack had spent the night over at the victim's

1 house. Judge, the crime remained unsolved for about five
2 to six weeks. Officers started interviewing folks who
3 were around the victim the day that he died. One of the
4 co-defendants involved in the case later gave a statement
5 indicating that on the night that Kenyon was killed that
6 Mr. Mack had indicated that he had taken care of some
7 business; that he was mad with Mr. Dorsey. The
8 co-defendant testified that Mr. Mack called his mother and
9 her boyfriend. His mother is Tawanda Mack who is also a
10 co-defendant. Called Tawanda Mack's boyfriend Kelvin
11 Bowen, who is also a co-defendant. Judge, they were
12 living in Maryland at the time. He asked Mr. Bowen and
13 his mom to come down. He asked Mr. Bowen to bring
14 firearms with him to help him commit the murder. Both he
15 and his mother gave statements indicating that the mother
16 and Mr. Bowen drove from Maryland on the night of
17 April 4th; that they picked Mr. Mack and his friend
18 Antonio McClary up from a friend's house; that they drove
19 to the victim's residence. Initially they started to kick
20 the door in and one of the defendants, either Mr. Mack or
21 Mr. Bowen said, no, try to open the door. Mr. Mack did
22 not see Kenyon's mom's vehicle at the house and assumed
23 that she was not there. He was aware that she had worked
24 the night shift because she spent the night over at her
25 house a couple of times and she was not there.

1 And in any event, they found it not necessary to
2 forcibly open the door so they just simply pulled open the
3 door a little harder and walked into the house. They
4 originally went into the house going from bedroom to
5 bedroom looking for Mr. Dorsey. One of the co-defendants
6 saw that Mr. Dorsey was actually seated at a recliner in
7 front of the television, and the television set was still
8 on and so that individual pointed Mr. Dorsey out to his
9 co-defendants. Mr. Mack walks behind the chair where
10 Kenyon was by all accounts appeared to have been sleeping.
11 He shoots him three times with a 9-millimeter handgun.
12 And co-defendants indicate that apparently based on his
13 movement, Mr. Bowen said, he's not dead, we need to finish
14 him off. Mr. Bowen then shoots him with a shotgun. They
15 leave the house.

16 And I firmly believe that God was certainly on
17 Ms. Bradshaw's side that night because they didn't think
18 she was there and did not harm her in any way. And I
19 think they realized that if she was here we'd be looking
20 at two murders as opposed to one murder. But in any
21 event, Mr. Mack, Mr. Bowen, Mr. McClary and Ms. Allen,
22 then drive back to the home of the friend where they
23 picked Mr. Mack and Mr. McClary up. There's a
24 conversation between Mr. Mack and his mom talking as if,
25 I'm talking now in terms of how are you doing, how's

1 school going, I'll back in a couple of weeks to get you
2 for spring break. She dropped Mr. McClary off, drops Mr.
3 -- both Mr. Allen and Mr. Bowen, then drive back to
4 Maryland after the defendant gives a statement four or
5 five weeks after the murder implicating all of them.
6 Warrants were later signed against the mother and the
7 boyfriend. By this time, though, this is toward the end
8 of May, Judge, Mr. Mack is now back in Maryland with his
9 mother attending school there. Officers get assistance of
10 police officers in Maryland. Arrest warrants are issued.
11 Mr. Bowen and Mr. Mack are arrested at the residence. His
12 mother Ms. Allen is at her place of employment. A search
13 warrant was executed on the home where Mr. Mack,
14 Mr. Allen, Mr. Bowen were found. The shotgun used to kill
15 Mr. Dorsey was found under the mattress where Ms. Mack --
16 I'm sorry, Ms. Allen and Mr. Bowen slept. That shotgun
17 was conclusively tied to the murder. In addition, there
18 was ammunition from a 9-millimeter gun found in the
19 bedroom as well, although that particular gun used by
20 Mr. Mack was never recovered.

21 THE COURT: Was that all true, Mr. Mack?

22 THE DEFENDANT: Yes, sir, except the computer.

23 My mother and them didn't have nothing do with this.

24 Tawanda and Callie Bowen had nothing do with this.

25 THE COURT: What do you mean, they wasn't there?

1 They weren't there?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right.

4 MS. BARR: And Judge, of course the victim died
5 as a result of the gunshot wounds to him.

6 THE COURT: All right. I accept the guilty
7 plea. Anything else from the State?

8 MS. BARR: Judge, I indicated that, to
9 Ms. Bradshaw, she'd have the opportunity to address the
10 Court.

11 Have you decided whether or not you want to? State
12 your name.

13 MS. BRADSHAW: Annette Bradshaw.

14 THE COURT: Ms. Bradshaw.

15 MS. BRADSHAW: Judge, I just want you to know
16 that Kelvin was a loving son and he was easy to get along
17 with. Ronald take him away from me, church, and school,
18 and everybody who loved him. I just hope he does the rest
19 of his life in prison.

20 THE COURT: All right.

21 MS. BRADSHAW: That's all I have to say.

22 THE COURT: Thank you, Ma'am.

23 MS. BARR: Did any of Kenyon's family want to
24 speak, address the Court?

25 (There was no response.)

1 THE COURT: All right. Anything else in his
2 history?

3 MS. BARR: Judge, he was 17 years old at the
4 time, and he did not have any convictions or arrest on his
5 record. Although, Judge, and I think, you know, even
6 actually all of this stuff is going to come out, Mr. Mack
7 during the course of his statement talked about how he
8 would rob drug dealers, how he'd brag about being in a
9 gang. He talked about one instance where his mother's
10 boyfriend had gone drinking and said something out of the
11 way to her and he was almost bragging about how he beat
12 the guy and kicked them and knocked his feet out. And he
13 talks about how he went up to Maryland, he had to prove
14 how tough he was, and how he would fight people in
15 Maryland. Judge, I think that's, Judge, that part of
16 Maryland where they were in Anne Arundel County,
17 Glenberry, Maryland. What's also troubling to me in this
18 case is the cold-blooded callous nature of this crime. I
19 mean, we see murders happen all the time, unfortunately,
20 but the amount of aforethought that it took to carry out
21 this murder, how they were able to do it and kind of just
22 resume their normal lives. Mr. Mack had enrolled in
23 school in Maryland. It's just unbelievable. And I was
24 listening to his confession over the weekend, his mother's
25 confession, and Judge, it was bone chilling how callous it

1 was. And so I certainly believe that given what he's
2 done, that a life sentence is appropriate for him.

3 THE COURT: Who is the mother's lawyer?

4 MS. BARR: Verdell Barr.

5 THE COURT: Was she the lady who was here
6 yesterday?

7 MS. BARR: Yes, sir.

8 THE COURT: All right, Mr. Carraway.

9 MR. CARRAWAY: Your Honor, Mr. Mack is 19 years
10 old today. I have talked to him quite a few times over at
11 the jail. When I've been with him I've never had a client
12 who was -- who appeared to me to be a nicer and more soft
13 spoken person than him. Any time I've talked to him he is
14 a smart boy and he is an extremely nice fellow. I have
15 never personally in all the times I've talked to him,
16 never heard him brag about anything, or talk about doing
17 anything to anybody. Let me give you a little history on
18 him. What he -- Mary Ridgeway is his grandmother and I
19 think Lee ridgeway is his granddaddy. And his father is
20 one of the first guys I represented on a small drug
21 charge, I believe, when I first got here. Ronald McGee is
22 his father. His mother was born in Florida but was raised
23 here. He was born at McLeod Hospital here. He went
24 through school here. He stayed in Kingstree until he was
25 in the seventh grade. His mother married a man named

1 James Allen and they lived here for -- here for a number
2 of years. He tells me that they lived here in Kingstree
3 and his dad managed the Arby's on the left as you go into
4 Monks Corner. James Allen managed that place. He said
5 when they were -- when he was going the summer before he
6 was going into seventh grade. They moved -- he, his --
7 James Allen and his mom Tawanda Allen moved to Maryland so
8 he started school in the seventh grade up there. And when
9 he was in the ninth grade he tells me his mom and dad
10 separated. They have only recently gotten a divorce, I
11 think, within the past year perhaps since she's been
12 locked up or whatever that may be the case. But he said I
13 believe her name now, she's back to being Mack or
14 whatever.

15 What he tells me happened here, and it makes perfect
16 sense, because now we need to know really why did this
17 happen or whatever. Here was -- was there legal
18 justification for it? Of course there was not. But what
19 he says was (a) what he talks about here and that I have
20 been able to piece together in between what happened here
21 is that he became involved in the Bloods gang. He calls
22 them the Parrows (ph). I said, what gang was this. He
23 said the Parrows. And he says also, he says Mr. Dorsey
24 was in the gang down here. And he said he was involved
25 with them and that he was involved with, was, he was

1 bringing drugs into Williamsburg County, Mr. Mack was.
2 And he was distributing the drugs and to other members of
3 the Bloods down here, whatever, of which Mr. Dorsey was a
4 member. He said there came a time when he was responsible
5 for collecting for the drugs that he distributed down
6 here. He said Mr. Dorsey owed him a tremendous amount of
7 money and the people in Maryland wanted him to collect
8 this money. He said this is up to you to collect this
9 money. We gave this to you, this is up to you to collect
10 this money. He leaves also and he got in a fight maybe a
11 week or two before this with Mr. Dorsey, or whatever. He
12 said I collected some of this money from him. But he
13 tells me 78,000 (ph) dollars is what he owed me. He said
14 the people in Maryland told me, he said, this is your
15 responsibility to collect this money, you know, we
16 entrusted these drugs to you, you distributed them down
17 here, you need to collect this money. Also, he says
18 Mr. Dorsey was telling the people who are sending messages
19 back up to the people in Maryland that he was not treating
20 them right, that he was not giving them all the money that
21 he should give them, or whatever. He said he -- he said
22 after I had this fight with him and did collect some of
23 this money then, or whatever, he became -- he started
24 undermining me back to these guys up in Maryland,
25 whatever, telling them that I wasn't treating them right.

1 They told me, you need to take care of this problem here.
2 If you can't collect this money down here for these drugs
3 that you're distributing here then what have we, you know,
4 you know, we have no business or whatever here. People
5 think they can just get drugs from us and send them and
6 not give us anything back, or whatever, here. He said he
7 was at a basketball park playing basketball. His
8 girlfriend was there and things had gotten to the point
9 between he and Mr. Dorsey that Mr. Dorsey came by with a
10 couple of guys, and they started shooting at him at this
11 basketball court. He said then I knew at that time point,
12 not only are they telling me to collect this money up here
13 from this guy that I need to collect this money, but he's
14 trying to kill me down here. And I don't know what the
15 people from Maryland are telling him as far as like, I
16 don't care which one of you guys survives down here or
17 whatever, but somebody is gonna run things down here and
18 we're gonna get our money here, whatever. So he said they
19 told me I needed to take care of this problem here. Not
20 only that, he owed me this money he had been trying to
21 shoot at me and now he's telling them that I'm cheating
22 them up there, whatever. So that's how he said all this
23 came about, about him going to the house that night or
24 whatever. And that's what he says.

25 I would just ask the Court -- and I make bad

1 decisions. Now I made them when I was 40 years old. I
2 made them when I was 30, or whatever. He was just, when
3 he got involved in all this, he was like 15 or 16 or
4 whatever. He was — he is 19 today, on April 2nd of 2009
5 he was 17 years old here. He doesn't want me to tell this
6 and he denies that his story now is that Mr. Bowen and his
7 mom had nothing do with this. They were up in Maryland
8 whatever but...

9 THE COURT: People who confessed to being here?

10 MR. CARRAWAY: That's right. He says they were
11 both up there, and that's his mother. And that's what
12 he's trying to protect his mother.

13 THE COURT: Despite her saying that she was
14 here.

15 MR. CARRAWAY: Well, she's now of course saying
16 something different. She said she was here. She gave a
17 statement saying she was here and he gave a statement, but
18 anyway, this is his mother. When we had the bond hearing
19 I sat beside him and I know he looked at his mother and
20 told her that he loved her 25 times, if he did it one
21 time. So this is a guy who he got involved in this gang,
22 and they had him brainwashed into all of this, whatever, I
23 would certainly argue here. He would have — I told his
24 daddy yesterday, I said, back at that time he said, he
25 said this guy is a nice guy. I said you're right; he is a

1 nice guy, I've talked to him. But on this particular
2 occasion, you know, he murdered. He cold-bloodily
3 murdered this guy, whatever. He said, that's not the boy
4 I know, or whatever. I said that's not the guy I've
5 talked to either, but I certainly would argue that at the
6 age of 17 I simply wouldn't do things older people told me
7 to do and I was influenced by what seemed to be a
8 glamorous life of doing this and a life of being in the
9 gang, having plenty of money, selling drugs, done all this
10 stuff and being sort of an upper level guy who is
11 distributing the drugs to street level dealers or whatever
12 here. And I don't know -- and he was up at Maryland from
13 I think up until about the tenth grade. He moved back
14 down and he stayed some with his grandmother and then his
15 father. Ronald Mack moved back. Ronald McGee moved back
16 up here, and he lived part of the time with him. But he
17 was already doing, from what he'd been doing up in
18 Maryland, he was their connection down here and had people
19 selling drugs down here or whatever.

20 When I talked to him now about these things, he
21 realizes now that he's had this much time away outside of
22 the influence of all these people and he's been in Horry
23 County is where he's been away from everybody here. He is
24 out of this mindset now and everything, but I mean, back
25 at that time for all this to be going on at that time and

1 for his mother to be involved in this, the boyfriends to
2 be involved in all this, and everybody, every influence,
3 had the person he loved most seemingly going along with
4 all this, whatever, not seemingly going along with all of
5 that, whatever, here.

6 I would ask that you take all this into
7 consideration. And 17 -- imagine -- can you conceive, now
8 we hear all this stuff, well, this brainwashing stuff
9 can't be real, whatever, I don't believe that you can
10 overcome somebody's will. Well, you got a girl walking in
11 Salt Lake City with these people with this religious seal,
12 and his wife. She's walking a mile from her parents'
13 house there walking through the street there so, whatever,
14 walking all along there. It can happen to a degree here.
15 You can get so caught up in this that these guys tell you,
16 look, this gang is your family, or whatever, here and you
17 are to do whatever we tell you to do here.

18 Keep in mind this is not just a drug gang. This is
19 the Bloods is what it is. He -- and I'm telling you when
20 I first talked to him over there that's all he could talk
21 about was the Bloods. I mean, that was the whole thing,
22 right? If the Bloods told him to put a gun in his mouth
23 he would have done it at that time or whatever. I mean,
24 he was totally emersed in whatever they told him or
25 whatever, whatever they told him to do, so it's not just a

1 drug gang. It is not just drugs or a gang; it is a drug
2 gang that he's involved with. And Your Honor, I -- we've
3 had other sentences and before, whatever, and things that
4 have happened and if this had just happened and you take
5 his mother and you take this gang out of this or whatever,
6 if this is just all his idea that I'm gonna be a drug
7 dealer, I'm gonna run this show down here in Williamsburg
8 County, and if anybody challenges me I'm just gonna go in
9 and kill them here whatever, that would be -- I wouldn't
10 be asking any of this. But I'm telling you he was, I
11 promise you, he is completely, whatever, his mother would
12 tell them do. Whatever this gang would tell him to do he
13 would do it. He would put a gun in his mouth if they told
14 him to do it, and he'd be -- he would have been happy to
15 do it. That I've talked to him about now is he's -- he
16 has had time away from this, or whatever. He still loves
17 his mother or whatever, but he is -- he is out of this
18 gang mindset, Your Honor, and I would ask that you
19 consider all this. And if you believe it I wouldn't be
20 here asking you. I'd just leave it up to you, or
21 whatever, here. But I'm asking it and I do believe the
22 ends of justice would be served if he were given the
23 minimum 30 years sentence here considering his mother's
24 involvement and this gang's involvement, those two things.
25 If this was a straight drug deal I wouldn't say a

1 word. I'd just stand right over here and whatever you
2 gave him would, of course, you know, in your wisdom would
3 be, would be. But I wanted you to understand just how
4 strong this mother's connection is. It's beyond belief
5 how that I believe that she could bring him down here.

6 THE COURT: She's in that gang?

7 MR. CARRAWAY: And been involved in this.

8 THE COURT: She's in the gang too?

9 MR. CARRAWAY: I -- well, there was another deal
10 they charged over in Florence County with trying to kill
11 her ex-husband over there. They're charged over there
12 with going -- and he's not involved in that at all, but
13 they are under those charges right now over in Florence
14 County. And it does blow my mind away to think that a
15 mother would assist her son in something like that and not
16 try to shield a 17 year old from something like this and
17 actually take him to that location and do this. That is
18 the stunning part. And I would ask that you consider that
19 now he ain't gonna admit it whatever now, he's not, but he
20 did back at that time and she did back at that time. And
21 I would ask you consider all of these things, Your Honor,
22 and heed all -- consider the minimum sentence for
23 Mr. Mack.

24 THE COURT: All right. Mr. Mack, what do you
25 want to say?

1 THE DEFENDANT: I just ask that you have mercy
2 on me. I know what I done was wrong. I made a mistake.
3 I was misled at the time, you know, I acted out of fear
4 you know. I didn't know no better. I was young at the
5 time. I just didn't know. I was just trying to prove my
6 loyalty to my family, well, what was my family at the
7 time, what I thought was.

8 THE COURT: All right. What you think about all
9 this, Mr. Sheriff?

10 THE SHERIFF: Your Honor, I waive my rights to
11 comment. The family still have concern of the family
12 citizens here, Your Honor, and we stay with the
13 prosecution recommendation.

14 THE COURT: All right, Ms. Barr.

15 MS. BARR: Judge, there are -- there are times
16 when young people in particular make mistakes. We've seen
17 in this court recently, not just recently, since I've been
18 here, where you have three or more people they decide it's
19 a cool idea to go rob somebody, nobody ever expecting that
20 anybody will get hurt. Something goes wrong and somebody
21 is killed and all charged with the murder. This is not
22 one of those situations. They went to that boy's house
23 intending to kill him. This wasn't a drug deal gone bad.
24 This wasn't a armed robbery gone bad. He didn't make a
25 mistake. He did what he intended to do. And when he got

1 back to his car where his mom was he was telling her
2 what's done is done. This is not a mistake. This is --
3 this was what he intended. He established his goal and
4 once he was done he went back to Maryland. He leaves as
5 if nothing happened. And Judge, quite frankly, this case
6 in my mind, you know, this case was at least worth
7 conversation about a death penalty case. The mother of
8 the victim said, you know, I'm personally opposed to the
9 death penalty. We can't give a life so therefore, we
10 shouldn't take a life. But Judge, it's just -- it's
11 troubling. His -- the fact that he was as young as he was
12 to me, that just makes it more disturbing that he was
13 capable of doing what he did. And this was his friend.
14 This was somebody whose house he spent the night in. The
15 victim couldn't have been more defenseless. He was asleep
16 in his chair in his home.

17 THE COURT: Mr. Carraway.

18 MR. CARRAWAY: Your Honor, what distinguishes
19 this is this is not -- he went along with two other
20 friends to this house. This was his mother who took him
21 to that house. She drove him there. She waited down the
22 road while he and the boyfriend -- this is his mother and
23 an older boyfriend who, I guess, appears to be around 40
24 years of age, or whatever. The boyfriend goes along with
25 him. These aren't three kids going to do this to where

1 this is his mother taking him there, directing him
2 basically to do this. That's what makes this completely
3 different than anything else. He's not 25. He was 17
4 years old at the time, and that's what makes a difference
5 here, Your Honor. That's what I guess what — you're not
6 gonna find another case. You can go the whole world over
7 and you're not gonna find a case where a mother is
8 encouraging a son to commit a murder like this. You're
9 not gonna find it anywhere so anything they talk about,
10 well, this is like, this is like — there ain't nothing
11 like this or like that, whatever, Your Honor. There isn't
12 anything like that and I don't have any problem with
13 telling you sincerely that I believe the ends of justice
14 would be served with a minimum 30 year sentence for him to
15 give this man another chance. You can imagine how much
16 he's going to change, how much he's already changed, and
17 away from mom and this gang, the person he will be in just
18 a few years or whatever. He's gonna be in jail until for
19 30 years or whatever, Your Honor, but I would ask that who
20 among us has been cursed enough to have a mother to take
21 us to a murder site.

22 THE COURT: Mr. Mack, you agree with Mr.
23 Carraway, everything that he said?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Pardon me?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What part do you agree with?

3 THE DEFENDANT: Everything. I mean, my mother,
4 I mean, I love my mother. The Lord knows I'd do anything
5 for her, you know. She did play a big, had a big
6 influence on me doing a lot of things that I did. She
7 never really think I got in trouble. She never -- always
8 took my side, you know. She always told me it was all
9 right to do this, it was all right to do that, you know.

10 THE COURT: So she told you it was all right to
11 kill Dorsey?

12 THE DEFENDANT: Naw, she never -- she never
13 tried to stop me or did what I felt as a mother doing
14 duties, you know, stop me like she was supposed to try and
15 sit down and talk to me.

16 THE COURT: She brought you down here to do the
17 murder?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: She and the boyfriend?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And so you say she had nothing to do
22 with it. What do you mean?

23 THE DEFENDANT: She wasn't there. She was just
24 outside, you know.

25 THE COURT: She was -- she brought you to do it,

1 gave you the guns to do it?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: But she had nothing do with it. She
4 wasn't there pulling the trigger.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Who was in the house with you? Who
7 were in the house with you?

8 THE DEFENDANT: Me, Antonio, and Mr. Bowen.

9 THE COURT: Bowen, is that the mother's ---

10 THE DEFENDANT: Boyfriend.

11 THE COURT: ---boyfriend? Why was he interested
12 in killing Dorsey?

13 THE DEFENDANT: He was just there, I guess,
14 another influence.

15 THE COURT: He was just there to ---

16 THE DEFENDANT: I guess to make sure things go
17 smooth.

18 MS. BARR: Judge, he's reportedly has gang ties
19 as well. When they arrested him in Maryland he had on a
20 full red shirt. They -- his nickname was Callie because
21 he was from California. And Judge, Mr. Carraway mentioned
22 the charge in Florence County. Ms. Allen and Mr. Bowen
23 have charges pending in Florence County for assault and
24 battery with intent to kill, criminal conspiracy, and
25 possession of a weapon during a violent crime. That

1 incident, the shooting happened January 25th of '09. This
2 murder happened April the 5th of '09. Ms. Allen gave a
3 statement to Florence County police officers that she and
4 her estranged husband, who is the victim in that Florence
5 County case, had gotten into an argument. She said that
6 he was -- had asked her to borrow 40-dollars and she,
7 after she paid all the bills told him she couldn't do it
8 so they got into an argument. So according to her, Bowen
9 said, well, you want me to kill him. And she said, well,
10 no, I don't want you to kill him but I want you to hurt
11 him, I want him to suffer. And so they -- or again,
12 according to her, drove from Maryland to Florence. They
13 go up to his house. Mr. Bowen pretends like he's trying
14 to find somebody that lives in an adjacent apartment. The
15 victim answers the door and he asked for some anonymous
16 name, Chris. The guy said, I, you know, he don't live
17 here, ain't nobody by that name lives here. The apartment
18 next door is vacant.

19 He comes, according to her, Bowen then goes back to
20 the car and apparently looks at her son and it's like,
21 okay, the guy who answered the door must be the ex-husband
22 because he looks just like the son. So he goes back and
23 the guy answers the door again and he starts shooting him
24 in the leg. And so there was -- after she gives her
25 confession they ask him questions and he starts saying,

1 well, what if I didn't mean to kill him, what if I just
2 meant to shoot him in the leg. And so the officer's like,
3 well, I never told you he was shot in the leg. So I mean,
4 they just have that mindset.

5 THE COURT: He was shot in the leg?

6 MS. BARR: Yes, sir, shot a couple of times in
7 the leg.

8 THE COURT: Is he any relation to Mack?

9 MS. BARR: I think it's just the stepfather.

10 THE COURT: Stepfather?

11 MS. BARR: Yes, sir. But Your Honor, it's our
12 belief that other than assisting Mr. Mack and dealing with
13 the feud he had, Mr. Bowen didn't have a dog in the fight
14 so to speak. He was just happy to provide gun fire and
15 happy to go and help kill him.

16 THE COURT: Well, the purpose of a sentence is
17 to represent what society determines to be justice for a
18 crime and to -- not to send a message to the community,
19 but to do what most law abiding citizens would expect the
20 Court to do. And then in weighing all of this, the fact
21 of the matter is, that the sentence is not about Mr. Mack,
22 not about him and the possibility that he might turn his
23 life around at some point in time between age 19 and age
24 80, if he lives that long. And of course, once he gets a
25 sentence and goes off to the Department of Corrections,

1 the family that he's talking about, the Bloods, he'll find
2 them quite easily, I think, within the Department of
3 Corrections. But it's — the sentence is not about
4 Mr. Mack. I mean, it's — how old is Mr. Dorsey?

5 MS. BARR: Seventeen.

6 THE COURT: It's not about the future years of
7 Mr. Mack. How about the lack of future years of
8 Mr. Dorsey. He's the victim, the victim, victim's family,
9 the victim's loved ones. Mr. Mack is almost a lost cause
10 at this point based on all of the choices that he made.
11 He's a lost cause as far as society is concerned. His
12 future is not within society. His future, your future, is
13 out of society. You've given up your freedom. You've
14 given up the right to walk among free people. Why did you
15 decide to give that up?

16 THE DEFENDANT: I don't know any better, Your
17 Honor.

18 THE COURT: Sir?

19 THE DEFENDANT: I didn't know no better.

20 THE COURT: You didn't know no better?
21 Unfortunately you'll never know any better because you --
22 that's a -- just as you snuffed out his life you snuffed
23 out your future just the same. All of the great things
24 that Mr. Carraway said about you and all he thinks about
25 you, I mean, I'm not questioning at all whether those

1 things are true. But if you are to take advantage of
2 those things it won't be — it will not be out in a free
3 society where you've given up your freedom and your right
4 to anyone to trust you to walk the streets. And you'll
5 have to do those good deeds behind bars. That's just a
6 fact of the matter.

7 For the offense of murder the sentence is that you
8 be committed to the Department of Corrections for a period
9 of 50 years. That's more than you can count. That's the
10 sentence, 50 years. For burglary in the first degree, the
11 sentence is 30 years. Those sentences are to run
12 concurrent with each other. He gets credit for whatever
13 time that's provided. But that's the bed you made,
14 Mr. Mack. Good luck to you.

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16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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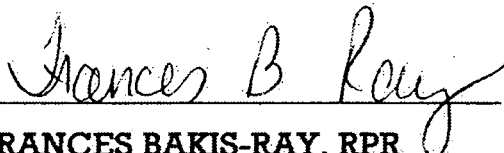
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina,
this 13th day of January, 2011.



FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

**Respondent's Ex. 2,
Defense Motion for Resentencing and
Memorandum**

COPY

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

State of South Carolina,

v.

Ronald Hakeem Mack,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2009-GS-45-180

**MOTION FOR
RE-SENTENCING**

2015 APR 20 AM 11:30
SARON W. STANLEY
CLERK OF COURT
JUDICIAL CIRCUIT
E.S.C.

FILED

Comes now Defendant, Ronald Hakeem Mack, by and through his counsel, Laura R. Baer, and respectfully requests this Honorable Court schedule a hearing, at its earliest convenience, on this Motion for Re-Sentencing pursuant to the South Carolina Supreme Court decision in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).¹ In support thereof, he states as follows:

1. In Aiken, our Supreme Court found that the United States Supreme Court holding in Miller v. Alabama, 132 S.Ct. 2455 (2012), is applicable in South Carolina, such that before a sentencing court may be impose a penalty of life without parole upon a juvenile, he "must receive an individualized hearing where the mitigating hallmark features of youth are fully explored." 410 S.C. at 545, 765 S.E.2d at 578.
2. At the end of its opinion in Aiken, our Supreme Court concluded:

We hold the principles enunciated in *Miller v. Alabama* apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole.

¹ Defendant is also represented by appellate defender Laura R. Baer on appeal from the denial of his application for post-conviction relief. The Petition for Writ of Certiorari was filed in Appellate Case No. 2014-001518 on April 1, 2015. The issue of the unconstitutionality of Defendant's sentence based on the intervening case of Aiken is raised in the Petition despite not being presented to the PCR Court, in the interest of judicial economy. However, Defendant is also filing the instant motion pursuant to the procedure set forth in Aiken.

Accordingly, any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.

Id. (emphasis added). The Aiken opinion was filed on November 12, 2014.

3. Defendant pled guilty to the offenses of murder and first degree burglary before the Honorable Clifton Newman on August 24, 2010.
4. Defendant was seventeen years old on the date of the alleged offenses.
5. Following Defendant's entry of a guilty plea, he was sentenced to concurrent sentences of fifty years incarceration for murder and thirty years incarceration for first degree burglary.
6. Defendant's fifty years incarceration is the functional equivalent of a life sentence and his sentencing hearing did not comply with the individualized sentencing mandate of Aiken, such that Defendant is a person affected by the Aiken decision and entitled to resentencing.²
7. In further support of this Motion, Defendant is filing a Memorandum in Support of Motion for Resentencing and attaching the transcript of the August 24, 2010 hearing (Exhibit 1) and a copy of the South Carolina Department of Corrections Inmate Search sheet for Defendant (Exhibit 2).

For the foregoing reasons, Defendant moves this Honorable Court to grant his motion for

² Please see the accompanying Memorandum in Support of Motion for Resentencing for a discussion of life expectancy statistics for incarcerated juveniles.

re-sentencing consistent with the Aiken decision.

Respectfully submitted,

A handwritten signature in cursive script, reading "Laura R. Baer". The signature is written in dark ink and is positioned above a horizontal line.

Laura R. Baer

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

(803) 734-1343

Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	
	)	
State of South Carolina,	)	2009-GS-45-180
	)	
v.	)	MEMOMRANDUM
	)	IN SUPPORT OF
Ronald Hakeem Mack,	)	MOTION FOR RE-SENTENCING
Defendant.	)	

Comes now Defendant, Ronald Hakeem Mack, by and through his attorney, Laura R. Baer, and submits this Memorandum in Support of his Motion for Resentencing.

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Mack is entitled to resentencing based on cases of Miller v. Alabama, 132 S.Ct. 2455 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), where Mack was a juvenile at the time of the offense and his sentence of fifty years is the functional equivalent of life without parole.

- A. Pursuant to Byars, which applied the principles enunciated in Miller, the Eighth Amendment requires individualized consideration of youth prior to the imposition of a life sentence without parole upon a juvenile offender 7
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2015 APR 20 AM 11:32
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 CLERK OF COURT
 WILLIAMSBURG, S.C.

PROCEDURAL HISTORY

On July 6, 2009, Defendant Ronald H. Mack, along with his three co-defendants, Tawanda Mack Allen, Kelvin Michael Bowen, Jr., and Antonio Lavelle McClary, was indicted by the Williamsburg County Grand Jury for murder, first degree burglary, conspiracy, and possession of a weapon during a violent crime.¹ Mack, born August 24, 1991, was seventeen years old at the time of the alleged crime, April 5, 2009.

On August 24, 2010, Mack appeared before the Honorable Clifton Newman and pled guilty to the offenses of murder and first degree burglary. Tr. 1 – 3. The remaining charges were *nolle prossed*. Tr. 3. Mack was represented by Legrand Carraway, and the State was represented by Assistant Solicitor Kimberly V. Barr. Tr. 1. Judge Newman accepted Mack's guilty plea. Tr. 13. He then sentenced Mack to concurrent sentences of fifty years for murder and thirty years for first degree burglary. Tr. 32, ll. 7-12.

On August 5, 2011, Mack filed his application for post-conviction relief ("PCR") alleging ineffective assistance of counsel and that he was coerced into pleading guilty. The State filed its Return on or about May 18, 2012. An evidentiary hearing was held before the Honorable R. Ferrell Cothran, Jr. on May 27, 2014. Mack was represented by Charles T. Brooks and the State was represented by Assistant Attorney General Croom Hunter.

Judge Cothran's Order of Dismissal denying Mack's PCR application was filed July 1, 2014. Judge Cothran ruled that Mack failed to demonstrate any deficiencies in plea counsel's representation and that Mack's guilty plea was knowingly and voluntarily entered.

¹ Tawanda Mack Allen is Mack's mother, Kelvin Michael Bowen, Jr. is Mack's mother's boyfriend, and Antonio Lavelle McClary is a friend of Mack.

A Petition for Writ of Certiorari was filed on April 1, 2015, and is currently pending, raising the following issues:

- I. Whether Petitioner's case should be remanded for resentencing based on the intervening cases of Miller v. Alabama, 132 S.Ct. 2455 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), where Petitioner was a juvenile at the time of the offense and his sentence of fifty years is the functional equivalent of life without parole?
- II. Whether the PCR Court erred in finding Petitioner's plea counsel provided effective assistance counsel where plea counsel failed to advise Petitioner regarding the strength of the State's case, effectively advised Petitioner that he would not receive a fair trial in South Carolina, and failed to correct the Solicitor's misstatement that she could have pursued the death penalty in Petitioner's case?
- III. Whether the PCR Court erred in finding Petitioner's guilty plea was knowing, intelligent, and voluntary where Petitioner was not advised that he was constitutionally ineligible for the death penalty after the Solicitor stated at the plea hearing that she considered pursuing the death penalty in Petitioner's case?

Pursuant to our Supreme Court's decision in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), Defendant filed the accompanying Motion for Resentencing and the instant Memorandum in Support of the Motion.

ISSUE

Mack is entitled to resentencing based on cases of Miller v. Alabama, 132 S.Ct. 2455 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), where Mack was a juvenile at the time of the offense and his sentence of fifty years is the functional equivalent of life without parole.

RELEVANT FACTS

During the sentencing phase of the August 24, 2010 hearing, the victim's mother, Annette Bradshaw, asked the court to sentence Mack to life in prison. App. 13, ll. 15-19. The solicitor admitted that Mack was seventeen years old at the time of the offense and did not have any prior

arrests or convictions. App. 14, ll. 3-5. However, she mentioned references that Mack made in his statement to police about his gang involvement and prior violent conduct. App. 14, ll. 5-17. She described the killing of Kenyon Dorsey as cold-blooded and callous. App. 14, ll. 17-18. She then requested imposition of a life sentence, stating “I certainly believe that given what he’s done, that a life sentence is appropriate for him.” App. 15, ll. 1-2. She also said that “this case was at least worth conversation about a death penalty case” but did not pursue it due to the victim’s mother’s opposition to the death penalty.² App. 25, ll. 5-11.

Plea counsel, Legrand Carraway, noted that Mack was seventeen at the time of the crime, nineteen at the time of sentencing, and observed him to be a “nice, soft spoken, and intelligent boy.” App. 15, ll. 9-17; App. 19, ll. 2-5. He also provided the court with some background on Mack’s upbringing, being raised in Kingstree by his mother and step-father, James Allen, until the family moved to Maryland when Mack was in seventh grade. App. 15, l. 23 – 16, l. 8. When Mack was in the ninth grade, his mother and Mr. Allen separated and were eventually divorced. App. 16, ll. 8-14. During or after his tenth grade year, Mack moved back to South Carolina living with either his grandmother or step-father while his mother remained in Maryland. App. 20, ll. 12-16.

Regarding the incident itself, Carraway advised that Mack was involved with the Bloods gang in Maryland and that the victim was involved with the same gang in Williamsburg County, South Carolina. App. 16, l. 15 – 17, l. 6; App. 20, ll. 16-19. The victim owed Mack a “tremendous amount of money” related to drug transactions and was relaying negative information about Mack

² The United States Supreme Court held in Roper v. Simmons, 543 U.S. 551 (2005), that the Eighth and Fourteenth Amendments prohibit the imposition of the death penalty upon offenders who were under the age of eighteen when their crimes were committed. Thus, Mack would have been constitutionally ineligible for the death penalty under precedent established prior to his alleged offenses and his sentencing.

to gang members in Maryland. App. 17, l. 6 – 18, l. 6. The victim and other individuals then shot at Mack when he was playing basketball in a park. App. 18, ll. 6-18. The gang members in Maryland told Mack that he “needed to take of this problem here.” App. 18, ll. 18-19. Carraway also noted the attraction of what seems to be a “glamorous” life to any seventeen year old. App. 20, ll. 5-12. In addition to the “brain washing” of the gang that he saw as family, Carraway noted the involvement of Mack’s mother and her boyfriend in the crime. App. 21, l. 1 – 22, l. 24. Mack’s mother drove him and the other co-defendants to the victim’s home to carry out the crime. App. 23, ll. 14-18.

Carraway argued that the involvement of Mack’s mother and her adult boyfriend made this case unusual. App. 25, l. 18 – 26, l. 11. He advised the Court that since being away from these outside influences Mack is out of his previous mindset. App. 20, ll. 20-24; App. 22, ll. 16-19. In asking for the mandatory minimum sentence of thirty years, Carraway averred that Mack would not have taken the same actions were it not for the influence of the gang and his mother. App. 21 – 24. He asked the court to give Mack another chance and imagine how much he has changed and will continue to change away from his mother and the gang. App. 26, ll. 11-18. Carraway concluded his argument by asking “who among us has been cursed enough to have a mother to take us to a murder site?” App. 26, ll. 19-21.

Mack also made a statement during sentencing, in which he asked for mercy. He acknowledged that what he did was wrong and that he was acting out of fear and under the influence of the gang in which he was involved. App. 24, l. 1-7. Mack confirmed that his mother drove him down from Maryland to commit the crime, provided the weapons, waited outside, and never tried to dissuade Mack. App. 27, l. 1 – 28, l. 5. He stated that Bowen, his mother’s boyfriend, was also an influence and accompanied him “to make sure things go smooth.” App. 28,

ll. 9-17. The solicitor confirmed that Bowen had gang ties also and a criminal history including pending charges in Florence County for the shooting of Mack's step-father on January 25, 2009. App. 28, l. 18 – 30, l. 10. However, the solicitor indicated that she did not believe Bowen had a "dog in the fight" with respect to the killing of victim Dorsey, but was rather "just happy to provide gun fire and happy to go and help kill him." App. 30, ll. 11-15.

Judge Newman began the explanation of his sentence with the following:

Well, the purpose of a sentence is to represent what society determines to be justice for a crime and to – not to send a message to the community, but to do what most law abiding citizens would expect the Court to do. And then in weighing all of this, the fact of the matter is, that *the sentence is not about Mr. Mack, not about him and the possibility that he might turn his life around at some point in time between age 19 and age 80, if he lives that long...* But it's – *the sentence is not about Mr. Mack.* I mean, it's – how old is Mr. Dorsey?

App. 30, l. 21 – 31, l. 4. The solicitor responded that the victim, Kenyon Dorsey, was seventeen.

App. 31, l. 5. The judge went on to say:

It's not about the future years of Mr. Mack. How about the lack of future years of Mr. Dorsey. He's the victim, the victim, victim's family, the victim's loved ones. Mr. Mack is almost a lost cause at this point based on all of the choices that he made. *He's a lost cause as far as society is concerned. His future is not within society. His future, your future, is out of society. You've given up your freedom. You've given up the right to walk among free people.*

App. 31, ll. 6-14. After asking the defendant why he decided to give up his future and freedom, the judge stated:

Unfortunately you'll never know any better because you – that's a – just as you snuffed out his life *you snuffed out your future just the same.* All of the great things that Mr. Carraway said about you and all he thinks about you, I mean, I'm not questioning at all whether

those things are true. But if you are to take advantage of those things it won't be – *it will not be out in a free society where you've given up your freedom and your right to anyone to trust you to walk the streets. And you'll have to do those good deeds behind bars.* That's just a fact of the matter.

App. 31, l. 14 – 32, l. 6. Judge Newman then sentenced Mack to concurrent sentences of fifty years for murder and thirty years for first degree burglary and admonished Mack “that’s more than you can count” and “that’s the bed you made.” App. 32, ll. 7-12.

ARGUMENT

Mack is entitled to resentencing based on cases of Miller v. Alabama, 132 S.Ct. 2455 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), where Mack was a juvenile at the time of the offense and his sentence of fifty years is the functional equivalent of life without parole.

- A. Pursuant to *Byars*, which applied the principles enunciated in *Miller*, the Eighth Amendment requires individualized consideration of youth prior to the imposition of a life sentence without parole upon a juvenile offender.

The Eighth Amendment, applicable to the states under the Fourteenth Amendment, prohibits cruel and unusual punishment, guaranteeing individuals the right to be free from excessive sanctions, which “flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense.” Miller v. Alabama, 132 S.Ct. 2455, 2463 (2012) (internal citations and quotations omitted). The United States Supreme Court held in Miller that mandatory life imprisonment without parole for those under the age of eighteen at the time of their crimes violates the Eighth Amendment’s prohibition against cruel and unusual punishment. Id. Subsequently, in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), the South Carolina Supreme Court held that the Miller decision applies retroactively and that life without

parole sentence for juveniles without individualized consideration of youth constituted cruel and unusual punishment.

In Miller, the defendants were both convicted of murder at age fourteen and sentenced to life without the possibility of the parole. 132 S.Ct. at 2460. The laws of both states mandated the imposition of life sentences in those cases, “running afoul of [United States Supreme Court] cases’ requirement of individualized sentencing for defendants facing the most serious penalties.” Id. The Court evaluated two sets of precedent, the first adopting categorical bans on sentencing practices due to the difference in the culpability of the class of offenders and the severity of the penalty and the second requiring sentencing authorities to “consider the characteristics of a defendant and the details of his offense before sentencing him to death.” Id. at 2463-64. The Court determined that the principles established in those two lines of precedent support its conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment. Id. at 2464.

The Court noted that its prior decisions in Roper³ and Graham⁴ established “that children are constitutionally different than adults for purposes of sentencing.” Id. The difference between children and adults is based on children’s lack of maturity and responsibility, increased vulnerability to negative influences and outside pressure, and ability to develop their character and reform. Id. at 2464-65. While the Court noted that Graham distinguished the moral culpability and consequential harm between homicide and non-homicidal offenses, the distinctive characteristics of children remain regardless of the crime committed. Thus, the Court found that “Graham’s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates

³ 543 U.S. 551 (2005).

⁴ 560 U.S. 48 (2010).

only to nonhomicide offenses.” Id. They also noted that because juveniles cannot be sentenced to death, the most severe penalty available for juvenile offenders is life without parole and its imposition “cannot proceed as though they were not children.” Id. at 2466. Moreover, a life sentence for a juvenile shares characteristics with the imposition of the death penalty in that “[i]mprisoning an offender until he dies alters the remainder of his life “by forfeiture that is irrevocable” and is especially harsh for a juvenile who will almost inevitably spend more years and a greater percentage of his life incarcerated than an adult offender. Id.

Due to the similarity between the life sentences for juveniles and capital punishment, the Court found the second line of cases requiring individualized sentencing before imposing the death penalty relevant to its analysis. Id. at 2467. The Court cited in precedent requiring consideration the “mitigating qualities of youth,” noting that “youth is more than a chronological fact” and is the time in one’s life when they are “most susceptible to influence and to psychological damage.” Id. While juveniles deserve punishment for their crimes, the sentencer must examine all of the circumstances before concluding that life without the parole is the proper penalty. Id. at 2469. While Miller did not proscribe a categorical bar on life without parole sentences for juveniles, it advised:

[G]iven all we have said in Roper, Graham, and this decision about children’s diminished culpability and heightened capacity for change, we think *appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon*. That is especially so because of the great difficulty we noted in Roper and Graham of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.

Id. (internal citations and quotations omitted). The Miller opinion “require[s] [a sentence] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” before imposing a penalty of life in prison without parole. Id.

In Aiken v. Byars, the South Carolina Supreme Court determined Miller’s retroactivity and its applicability in South Carolina, which does not have the mandatory sentencing scheme prohibited in Miller. 410 S.C. 534, 765 S.E.2d 572. The Court first determined that Miller “creates a new, substantive rule and should therefore apply retroactively.” Id. at 540, 765 S.E.2d at 575. The new rule is substantive because it prohibits “a certain class of defendants – juveniles – from specific punishment – life without parole absent individualized consideration of youth.” Id. at 541, 765 S.E.2d at 575. Retroactive applicability is proper because a failure to do so “risks subjecting defendants to a legally invalid punishment.” Id. at 541, 765 S.E.2d at 576.

Turning then to Miller’s application in South Carolina, where the statutes do not mandate life sentences for juveniles, the Court noted Miller’s reasoning, discussed supra, and Miller’s statement that “Graham’s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses.” Id. at 542, 765 S.E.2d at 576 (quoting Miller, 132 S.Ct. at 2465). The Aiken majority determined that even though South Carolina’s statutes permit rather than require life sentences for juvenile offenders, the “proportionality rationale integral to Miller’s holding” must be given effect such that youth “must be afford adequate weight in sentencing.” Id. at 542-43, 765 S.E.2d at 576. The majority reasoned that “Miller is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution.” Id. at 543, 765 S.E.2d at 576-77. Thus, it found that Miller did more than prohibit statutory schemes resulting in mandatory life

sentences for juveniles. Id. at 543, 765 S.E.2d at 577. It “establishes an affirmative requirement that courts fully explore the impact of the defendant’s juvenility on the sentence rendered.” Id.

Regarding the practical application of this requirement, the Court referenced the framework outlined in Miller, which articulated the factors that a sentencing court *must* consider. Id. at 544, 765 S.E.2d at 577. The requisite factors 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 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. (citing Miller, 132 S.Ct. at 2468). Further, while not specifically requiring that the sentencing hearing mirror the penalty phase of a capital case, the Court noted that “the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above.” Id. at 544-45, 765 S.E.2d at 577. Thus, while a juvenile may still be sentenced to life without parole in light of other aggravating circumstances, before that sentence may be imposed upon a juvenile, “he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.” Id. at 545, 765 S.E.2d at 578.

- B. The sentencing judge's imposition of a fifty year sentence is a de facto life without parole sentence, and the judge's comments during sentencing indicate his intention that the sentence be the equivalent of life without parole.

Mack is currently twenty-three years old, having a birthdate of August 24, 1991. According to the Department of Probation and Parole, Mack is not eligible for parole and his expected date of release is August 11, 2060. His release date is two weeks prior to his sixty-ninth birthday. The fifty year sentence imposed upon Mack is a de facto sentence of the life without parole.

Long ago, our Supreme Court recognized in State v. Kimbrough, 212 S.C. 348, 357, 46 S.E.2d 273, 277 (1948), that the trial judge imposed a thirty year sentence that was “to all intents and purposes the equivalent of a life sentence.” Where the record revealed nothing to justify the trial court’s disregarding the jury’s recommendation of mercy, the Court held that “[n]o one doubts that the able trial judge conscientiously endeavored to fix a sentence which he thought was fair and just, but under all the circumstances we are constrained to hold that the sentence imposed is manifestly too severe.” Id. The Court also noted that parole eligibility is “an act of grace and a matter of discretion, and may be refused” such that their decision could not be influenced by statutory allowances for good time credits or parole eligibility. Id. at 358, 46 S.E.2d at 277.

In State v. Null, 836 N.W.2d 41 (Iowa 2013), the Iowa Supreme Court held that the principles of Miller apply to juveniles sentenced to a lengthy term of years.⁵ The Court first set forth a lengthy analysis of the application of the Eighth Amendment to juveniles, determining that “Roper, Graham, and Miller directly settled a number of controversies.” Id. at 66. The Court said:

⁵ Though the Iowa Supreme Court made clear that its decision was based on its interpretation of the provision against cruel and unusual punishment in the Iowa Constitution, it also expressed that the language of its state constitution closely tracks that of the Eighth Amendment to the federal constitution. Null, 836 N.W.2d at 69, 70 n. 7.

After these cases, it is clear that the Eighth Amendment prohibits the imposition of the death penalty for crimes committed by juvenile defendants, that life in prison without parole cannot be imposed on a juvenile nonhomicide offender, and that mandatory life without parole cannot be imposed on a juvenile who commits homicide without consideration of the mitigating characteristics of youth. All of these results rested on the notion that juveniles are constitutionally different from adults for purposes of the imposition of harsh punishments.

Id. The Court then considered whether the principles of Miller applied to Null, who was sentenced to a total of 52.5 years based on aggregation of his mandatory minimum sentences for second-degree murder and first-degree robbery. Id. at 71.

In finding Miller applicable and remanding Null's case for resentencing, the Court first noted that Miller emphasized that the differences in children are not "crime specific." Id. It also noted that while "52.5 years imprisonment is not technically a life-without-parole sentence, such a lengthy sentence imposed on a juvenile is sufficient to trigger Miller-type protections." Id. This finding was made despite the Court's recognition that the evidence "does not clearly establish that Null's prison term is beyond his life expectancy," though it noted that incarceration may affect the applicability of generalized mortality tables. Id. Regardless, the Court determined that the application of Miller should not "turn on the niceties of epidemiology, genetic analysis, or actuarial sciences in determining precise mortality dates," *otherwise an offender sentenced to a lengthy term-of-years would be "worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under Miller."* Id. at 72 (emphasis added).

Though recognizing that other courts have applied Miller more narrowly, the Iowa Court found that those cases avoid the "basic thrust" of the Supreme Court precedent that the principles

announced regarding how children are different is not crime specific. Id. at 72-73. Not only is the sentence in Null strikingly similar to that in present case, but the majority's reasoning in Aiken echoes the principles and reasoning emphasized by the Iowa Supreme Court in Null. See also State v. Ragland, 836 N.W.2d 107, 121-22 (Iowa 2013) (holding "Miller applies to sentences that are the functional equivalent of life without parole" because "[f]or all practical purposes, the same motivation behind the mandates of Miller applies to . . . any sentence that is the practical equivalent to life without parole"); People v. Caballero, 282 P.3d 291, 295 (Cal. 2012) (holding "that sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment"); People v. Mendez, 114 Cal.Rptr.3d 870 (Ct. App. 2010) (applying the principles of Graham and traditional proportionality review in finding sentence of 84 years "is the equivalent of LWOP" and that is cruel and unusual punishment); Floyd v. State, 87 So.3d 45 (Fla. Dist. Ct. App. 2012) ("In this case, common sense dictates that Appellant's eighty-year sentence, which, according to the statistics cited by Appellant, is longer than his life expectancy, is the functional equivalent of a life without parole sentence.").

The Fourth Circuit also recognized de facto life sentencing in United States v. Pileggi, 703 F.3d 675, 678 (4th Cir. 2013), in which it referenced its prior remand for resentencing of Pileggi where the government recommended and the district court imposed "a de facto life sentence" of fifty years contrary to the extradition agreement with Costa Rica. The Seventh Circuit has likewise recognized de facto life sentences. See United States v. Garcia, 754 F.3d 460, 474 (7th Cir. 2014) (stating that the Court is "wary of a de facto life sentence when it was imposed without any explanation despite the district court's rejection of an actual life sentence").

In February 2014, the United States Sentencing Commission issued a report titled “Life Sentences in the Federal System” in which it compiled statistical data on the imposition of explicit life sentences, de facto life sentences, and sentences for a term beyond the inmate’s life expectancy in the federal courts. Patti B. Saris, et al., U.S. Sent. Comm’n, Life Sentences in the federal system (Feb. 2015), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf. In its discussion of de facto life imprisonment sentences, the Commission described these sentences as being “extremely long specific terms of imprisonment” that is, “for all practical purposes, a life sentence and likely was intended to be such by the judge who imposed it.” Saris, *supra* p. 10. For the purposes of this and any other statistical analysis, the Commission uses a sentence of 470 months (39 years and two months) to identify cases in which a de facto life sentence was imposed, which is consistent with the average life expectancy of federal criminal offenders. Saris, *supra* p. 10, n. 52 (citing U.S. SENT. COMM’N, 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS S-170 (2014)). Clearly Mack’s sentence of 600 months would qualify as a de facto life sentence under the United States Sentencing Commission’s parameters.

South Carolina’s actuarial table indicates that the life expectancy for a twenty-three year old male is 54.40 years, such that he will live to age 77.4. S.C. Code Ann. § 19-1-150. However, it is notable that the statute’s table is based on 2001 data and does not account for Mack’s race, incarceration, or age at incarceration. In *Bearcloud v. State*, 334 P.3d 132, 142 n.7 (Wyo. 2014), the defense presented an ACLU report analyzing life expectancy data obtained regarding youth serving natural life sentences in Michigan’s state prisons. The April 2013 report indicates that “life in prison, with its stressors, violence and disease in and of itself significantly shortens one’s life expectancy.” ACLU of Michigan, Michigan Life Expectancy Data for Youth Serving

Natural Life Sentences 1 (April 2013), <http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Michigan-Life-Expectancy-Data-Youth-Serving-Life.pdf>. The report indicated that the average life expectancy for an unincarcerated African-American male is 71.1 years. ACLU of Michigan, supra 2 n.2. However, the life expectancy drops to an average of 64 years for incarcerated persons and to 58.1 years for those incarcerated for their natural life. ACLU of Michigan, supra 1-2. Then adjusting for race, the average life expectancy of an African-American male incarcerated for his natural life is 56 years. ACLU of Michigan, supra 2. Though the sample is too small to determine an average based on race, juvenile offenders incarcerated for their natural lives have the lowest life expectancy, 50.6 years. ACLU of Michigan, supra 2. This is eighteen and a half years earlier than Mack's release date.

In the event there was any uncertainty as to whether the sentencing judge intended to impose a de facto life sentence, his comments make clear that he understood that Mack would spend the rest of his life incarcerated. Judge Newman said that Mack is "a lost cause as far as society is concerned," his "future is out of society," he has "given up [his] freedom" and "the right to walk among free people," and he had "snuffed out [his] future." App. 30, l. 21 – App. 31, l. 14. He further told Mack that any improvements he made would not be in society but instead "behind bars" because he has given up his freedom and "right to anyone to trust [him] to walk the streets." App. 31, l. 14 – 32, l. 6. When Judge Newman finally imposed concurrent sentences of fifty years for murder and thirty years for first degree burglary, he told Mack that it was "more than [he] can count" and "the bed [he] made." App. 32, ll. 7-12. Thus, there is no doubt that the sentencing judge intended for Mack to spend the rest of his life incarcerated despite the fact that he did not explicitly write "life imprisonment without parole" on the sentencing sheet.

It is undeniable that Mack's race, incarceration, and age at sentencing will result in a lower life expectancy than that of an unincarcerated African-American male. He is unlikely to reach the age of fifty, much less sixty-nine, and will almost certainly die in prison, as the sentencing judge intended. Therefore, his sentence of fifty years constitutes a de facto life sentence without parole such that the principles of Miller and Aiken are applicable.

C. The sentencing judge did not engage in an individualized consideration of youth before sentencing Mack to the functional equivalent of life without parole.

Aiken v. Byars involved the appeal of fifteen defendants who were sentenced to life without parole as juveniles. 410 S.C. 534, 536, 765 S.E.2d 572, 573. The Court noted that "although some of the hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by Miller where the factors of youth are carefully and thoughtfully considered." Id. at 543, 765 S.E.2d at 577. While Carraway made his best attempt to describe Mack's background and point to the negative influences of the gang and Mack's mother, this too was a far cry from the full exploration of the factors associated with Mack's youth required by Miller and Aiken. Moreover, the record does not reflect that any of the mitigating factors pointed to by Carraway were actually considered by the sentencing court. The sentencing judge made no reference to Mack's youth, except to say that the sentence was "not about the future years of Mr. Mack" but rather the lack of future years of Mr. Dorsey (decedent). Thus, there is no evidence that the sentencing judge actually considered the hallmark features of youth, the environment that surrounded the offender, how familial and peer pressures affected his alleged conduct, the incompetencies associated with youth, or the possibility of rehabilitation. See Aiken, 410 S.C. at 544, 765 S.E.2d at 577.

Instead, Mack's sentence was based purely on retribution and incapacitation, which the Miller court found less applicable to sentences of minors as opposed to adults. 132 S.Ct. at 2464-65. Retribution is less applicable because "the heart of the retribution rationale relates to an offender's blameworthiness." Id. at 2465. Children's "transient rashness, proclivity for risk, and inability to assess consequences" lessen their moral culpability and enhance the prospect that as they continue to develop their "deficiencies will be reformed." Id. at 2464-65. The Court rejected incapacitation as a valid basis for imposing life without parole on juveniles. This is because "[d]eciding that a juvenile offender forever will be a danger to society would require making a judgment that he is incorrigible – but incorrigibility is inconsistent with youth." Id. at 2465 (internal quotations omitted). Miller further recognized that due to their diminished culpability and heightened capacity for change, "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." Id. at 2469.

Because the sentencing court failed to fully explore "the mitigating hallmark features of youth" before imposing a de facto life sentence of fifty years, Mack must be resentenced in accordance with the Aiken. Id. at 545, 765 S.E.2d at 578.

CONCLUSION

Mack is not "the rare juvenile offender whose crime reflects irreparable corruption." Miller, 132 S.Ct. at 2469. He was only seventeen years old at the time that he committed the alleged offenses, and his sentence of fifty years is unquestionable a de facto life sentence. The Aiken decision makes clear that before issuing a sentence of life without the possibility of parole, the harshest penalty available for a juvenile offender, the sentencing judge must engage in "fully

explore the impact of the defendant's juvenility on the sentence rendered." 410 S.C. at 545, 765

S.E.2d at 578. This includes consideration of the following factors:

(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. at 544, 765 S.E.2d at 577 (citing Miller, 132 S.Ct. at 2468). The sentencing judge in Mack's cases did not engage in the requisite analysis. Therefore, Mack is entitled a re-sentencing hearing consistent with the binding decisions of Miller and Aiken.

Respectfully submitted,



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This 16th day of April, 2015.

**Respondent's Ex. 3,
State's Response to Motion for Resentencing**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	
	)	2009 - GS - 45 - 0180
State of South Carolina,	)	
	)	
v.	)	STATE'S RESPONSE TO
	)	DEFENSE MOTION FOR RE-
Ronald Hakeem Mack,	)	SENTENCING
Defendant.	)	

Defendant bases his Motion for re-sentencing on the rulings in Miller v. Alabama, 132 S.Ct. 2455 (2012) and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), which extended the Eighth Amendment to the sentencing of juveniles under the mandatory sentencing guidelines where there is a sentence of life without parole. Under Aiken, children are to be considered differently than adults. Aiken presents five factors a sentencing court must consider during a hearing: "(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 familiar and peer pressures may have affected him; (4) the incompetencies associated with youth and (5) the possibility of rehabilitation." Id. The defendant argues that, without a hearing taking into account his age and the characteristics associated with those similarly situated, his constitutional rights would be violated.

It is argued by the Defendant that the fifty (50) year sentence is equivalent to a sentence of life without parole. Defendant also argues that case law establishes an individualized consideration prior to the imposition of a life sentence without parole of a juvenile defendant examining their maturity level, sense of responsibility, and increased vulnerability to negative influences and outside pressures. The Defendant continuously emphasizes the constitutional differences between adulthood and childhood. The case law presented by Defendant identifies factors that should be considered during this sentencing

evaluation such as (1) the mitigating qualities of youth, (2) the presentation of age more than a chronological fact, and (3) the opinion that children are most susceptible to influence and to psychological damage. The juvenile defendant claims he is entitled to a specialized sentencing hearing because of the fallacies of youthfulness, as set forth in Aiken and Miller.

ARGUMENT

I. The State supported the imposition of a life sentence without parole but there was no formal recommendation for such a sentence.

However, the State asserts that the Defendant's case can be distinguished from the facts in the case law cited because that this Defendant was not sentenced to a term of imprisonment equal to life without parole.

Defendant's case can be distinguished from that of Miller and Aiken in that the State did not make a recommendation of imposing imprisonment for a term of life without parole. The State in addressing the Court did speak of the callousness of the crime and supported a life sentence being imposed, but the State did not make a recommendation to the Court purposing such penalty. Barr TR. at 15. There was also a statement in the record where the mother of the victim asked that the Defendant serve out his life in prison. That was the emotional plea of the victimized family, not a recommendation from the State. Bradshaw TR. at 13. The Defendant was facing imprisonment term of a minimum of thirty (30) years up to life. There was no recommendation made by the State of either. The State left the term of imprisonment solely up to the discretion of the Court.

II. The Court did take into consideration the five (5) factors recent case law says should be considered when sentencing juvenile defendants to a sentence of life without parole.

The case law presented by the Defendant establishes what factors should be considered in these specialized sentencing hearings for juvenile defendants. Defense claims that that the juvenile's age is considered, not just for its chronological significances, but for its developmental significance as well.

Defendant argues that the mitigating qualities of youth be considered along with their susceptibility to outside influences. There were additional factors laid out in Aiken, such as the family and home environment of the juvenile defendant, as well as the circumstances of the homicide. Aiken also expressed that the possibility of rehabilitation should be considered. All these factors were addressed at the plea hearing for the Defendant. Both the State and Defense discussed the Defendant's age and the circumstances surrounding him, such as his family environment and associations. Defendant's age was discussed in its chronological sense, as well as in terms of its implications in regards to cognitive development. The State pointed out that young people make mistakes and gave the example when a robbery ends in an accidental death. However, this case was distinguishable from that scenario because this was a planned murder. Carraway TR. at 18 - 19. Barr TR. at 24. The Defendant came to the victim's house with no other intent but to kill him. The age of the Defendant and the youthful propensity to make unwise decision was addressed.

The State along with the Defendant discussed the home environment as well as the influences the Defendant was subject to at the time prior to and during the crime. The State along with the Defendant pointed out the involvement of his mother and the influence of the gang life. Each of these factors were flushed out and provided to the Court to use in the sentencing phase. The Court was made completely aware of the pressures surrounding the Defendant at the time of the crime. The Court examined such information stating to the Defendant that "in weighing all of this, the fact of the matter is, that the sentence is not about Mr. Mack, not about him and the possibility that he might turn his life around at some point between age nineteen (19) and age eighty (80), if he lives that long." Judge Clifton Newman TR. at 30.

During this plea hearing, Defendant presented the idea that once he is separated from these things that persisted in his environment such as the gang activity, his mother, her boyfriend and others; he would be able to think clearer and refrain from that type of life style. The Court heard that argument responding, "and of course, once he gets a sentence and goes off to the Department of Corrections, the

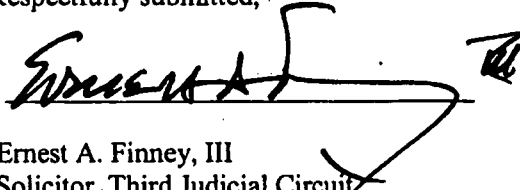
family he's talking about, the Bloods, he'll find them quite easily, I think, within the Department of Corrections. But it's—the sentence is not about Mr. Mack. I mean, it's ---how old is Mr. Dorsey?" Judge Clifton Newman TR. at 30 - 31. The Court addressed the rehabilitative potential of the Defendant.

CONCLUSION

The Court in reviewing those factors presented by the State and the Defendant, sentenced the Defendant accordingly, in light of everything he knew about the case and the Defendant. The sentence was based on the callousness of the crime committed by the Defendant. The Defendant, with the assistance of his mother, planned and carried out the murder of a young man who lay defenseless in his home. The Court heard and considered in this plea hearing all the factors set out in Aiken and Miller. The State is of the opinion that the Defendant's plea hearing was sufficient. In granting a re-sentencing hearing, the Defendant would be presenting what has already been presented and considered in the plea hearing. Regardless of the feelings of the Defendant, in South Carolina a murder sentence is day for day. He received fifty (50) years. Whether he lives to complete those fifty (50) years is not within the power of the State and cannot be viewed as an equivalent to a life sentence. Therefore, the State is opposed to a re-sentencing hearing, and requests the Court to deny motion.

Done this 28th day of April, 2015.
Sumter, South Carolina.

Respectfully submitted,


Ernest A. Finney, III
Solicitor, Third Judicial Circuit

**Respondent's Ex. 4,
Defense Reply to State's Response**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	
	)	
State of South Carolina,	)	2009-GS-45-180
	)	
v.	)	REPLY TO
	)	STATE'S RESPONSE TO
	)	DEFENSE MOTION FOR
Ronald Hakeem Mack,	)	RE-SENTENCING
Defendant.	)	
	)	

Comes now Defendant, Ronald Hakeem Mack, by and through his counsel, Laura R. Baer, and in reply to the State's Response to the Motion for Resentencing, respectfully states as follows:

I. Defendant's sentence is the functional equivalent of a life sentence.

The State argues that Defendant's case is distinguishable from Miller v. Alabama, 132 S.Ct. 2455 (2012) and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), because he was not sentenced to a term of imprisonment equal to life without parole. State's Motion, p. 2.

Notably, the State presented no further argument, analysis, or case law in support of its position that the sentence of fifty years is not equal to life without parole. In its conclusion, the State argues that in South Carolina a murder sentence is day of day and that whether defendant lives to complete his fifty year sentence is not within the power of the State and cannot be viewed as an equivalent to a life sentence. State's Motion, p. 4. Thus, the State is asking this Court not to recognize the concept of a de facto life sentence despite its explicit recognition by the Fourth Circuit Court of Appeals, various state courts, and various other entities. See Defendant's Memorandum, p. 12 – 16.

As more fully discussed in the Memorandum in Support of Motion for Re-Sentencing, Defendant's fifty years incarceration is the functional equivalent of a life sentence. Defendant's Memorandum, Part B, p. 12 – 17. The United States Sentencing Commission describes de facto life sentences as being “extremely long specific terms of imprisonment” that are, “for all practical purposes, a life sentence and likely was intended to be such by the judge who imposed it.” Patti B. Saris, et al., U.S. Sent. Comm’n, Life Sentences in the federal system (Feb. 2015), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf, p. 10. For the purposes of statistical analysis, the Commission uses a sentence of 470 months (39 years and two months) to identify cases in which a de facto life sentence was imposed, which is consistent with the average life expectancy of federal criminal offenders. Saris, supra p. 10, n. 52 (citing U.S. SENT. COMM’N, 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS S-170 (2014)). Clearly, Mack’s sentence of 600 months would qualify as a de facto life sentence under the United States Sentencing Commission’s parameters.

Additionally, Judge Newman’s comments during the imposition of the sentence make clear that he understood that Mack would spend the rest of his life incarcerated. These comments included that Mack is “a lost cause as far as society is concerned,” his “future is out of society,” he has “given up [his] freedom” and “the right to walk among free people,” and he had “snuffed out [his] future.” Tr. 30, l. 21 – 31, l. 14. He further told Mack that any improvements he made would not be in society but instead “behind bars” because he has given up his freedom and “right to anyone to trust [him] to walk the streets.” Tr. 31, l. 14 – 32, l. 6. When Judge Newman finally imposed concurrent sentences of fifty years for murder and thirty years for first degree burglary, he told Mack that it was “more than [he] can count” and “the bed [he] made.” Tr.

32, ll. 7-12. Thus, there is no doubt that the sentencing judge intended for Mack to spend the rest of his life incarcerated despite the fact that he did not explicitly write "life imprisonment without parole" on the sentencing sheet.

Based on the case law and research discussed in Defendant's Memorandum, and common sense, it is undeniable that Mack's race, incarceration, and age at sentencing will result in a lower life expectancy than that of an unincarcerated African-American male. He is unlikely to reach the age of fifty, much less sixty-nine, and will almost certainly die in prison, as the sentencing judge intended. Therefore, his sentence of fifty years constitutes a de facto life sentence without parole such that the principles of Miller and Aiken are applicable.

II. Whether the State specifically requested imposition of a sentence of life without parole is not relevant to the constitutional requirement of the Eighth Amendment that the court engage in an individualized consideration of youth prior to the imposition of a life sentence without parole upon a juvenile offender. Even so, the assistant solicitor did request a life sentence in Defendant's case.

The State argues that Defendant's case is further distinguishable from Miller and Aiken because, while the State supported the imposition of a life sentence without parole, it did not make a formal recommendation as to sentencing.

Neither Miller nor Aiken discussed what recommendation, if any, was made by the prosecutor at the sentencing hearing. In fact, Miller dealt specifically with the mandatory imposition of life without parole. 132 S.Ct. 2455, 2475 (2012). The Aiken majority determined that even though South Carolina's statutes permit rather than require life sentences for juvenile offenders, the "proportionality rationale integral to Miller's holding" must be given effect such that youth "must be afford adequate weight in sentencing." 410 S.C. 534, 542-43, 765 S.E.2d 572, 576 (2014). Aiken provides that while a juvenile may still be sentenced to life without parole in light of other aggravating circumstances, before that sentence may be imposed upon a juvenile,

“he *must* receive an individualized hearing where the mitigating hallmark features of youth are fully explored.” *Id.* at 545, 765 S.E.2d at 578 (emphasis added). This requirement is thus necessitated by the eligibility for and imposition of a sentence of life without parole, not the plea negotiations. Consequently, even if the State were to recommend a sentence of thirty years, before the Court could impose a life sentence or its de facto equivalent, the defendant would still be entitled to the individualized sentencing required under Miller and Aiken.

Moreover, the State’s averment that it “did not make a recommendation to the Court purposing [sic] such penalty” is inaccurate. At the beginning of the plea hearing, assistant solicitor Barr originally said that the State was making no further recommendations or negotiations. Tr. 3, ll. 17-19. However, she later explicitly said “And so I certainly believe that given what he’s done, that a life sentence is appropriate for him.” Tr. 15, ll. 1-2. Thus, it was not only the victim’s mother who requested a life sentence. See Tr. 13, ll. 18-19. Further, Barr even stated that she felt the case “was at least worth conversation about a death penalty case,” implying that Defendant had already received some benefit by the State’s not pursuing the death penalty. Tr. 25, ll. 5-7. Of course, in reality, Defendant was constitutionally ineligible for the death penalty pursuant to the United States Supreme Court’s holding in Roper v. Simmons, 543 U.S. 551 (2005), that the Eighth and Fourteenth Amendments prohibit the imposition of the death penalty upon offenders who were under the age of eighteen when their crimes were committed. Thus, the argument that the State made no recommendation for a life sentence is without merit and contradicted by the plea transcript.

III. The sentencing judge did not engage in an individualized consideration of youth before sentencing Mack to the functional equivalent of life without parole.

The State argues that the sentencing court considered the five (5) factors enumerated in Miller and Aiken such that a resentencing hearing is unnecessary. Those factors 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 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.

Aiken, 410 S.C. at 544, 765 S.E.2d at 577 (citing Miller, 132 S.Ct. at 2468).

The dissenters in Aiken, Chief Justice Toal and Justice Kittredge, averred that the Court should consider the adequacy of the original sentencing hearing and whether the lower courts abused their discretion in sentencing in each of the petitioners' cases. Id. at 548, 765 S.E.2d at 579. They stated that it was "absurd that the majority orders resentencing for *all* petitioners without considering the adequacy of the original hearings." Id. at 552, 765 S.E.2d at 581-82. (emphasis in original). The dissent went on to say that "at least some of the original sentencing hearings were entirely compliant with Miller. For those cases, the majority does not provide any further direction to the resentencing courts regarding how to conduct a new hearing, nor identifies any facts that the courts should consider on remand that were not already considered." Id. at 552-53, 765 S.E.2d at 582.

The Aiken majority recognized that "although some of the [defendants'] hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by Miller where the

factors of youth are carefully and thoughtfully considered.” *Id.* at 543, 765 S.E.2d at 577.

Specifically in response to the dissent’s criticism, it wrote:

The dissent’s discussion of the individual sentencing hearings—in particular its recitation of Angelo Ham’s—does not dissuade us of the accuracy of this statement. Instead it highlights the distinction between its reading of *Miller* and ours—we recognize and give credence to the decision’s command that courts afford youth and its attendant characteristics constitutional meaning. The dissent would simply continue to treat the characteristics of youth as any other fact.

We are likewise unfazed by the dissent’s criticism that we have failed to pinpoint an abuse of discretion; that admonition appears to arise from a fundamental misunderstanding of our holding. *We have determined that the sentencing hearings in these cases suffer from a constitutional defect—the failure to examine the youth of the offender through the lens mandated by Miller.* We decline to denominate the error an abuse of discretion because the sentencing courts in these instances did not have the benefit of *Miller* to shape their inquiries. Those courts will have the opportunity on resentencing to exercise their discretion within the proper framework as outlined by the United States Supreme Court.

Id. at 543 n. 8, 765 S.E.2d at 577 n. 8 (emphasis added). It thus held that “[t]he petitioners and those similarly situated are accordingly 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.” *Id.* at 544, 765 S.E.2d at 577.

Likewise, the sentencing hearing in Defendant’s case was constitutionally deficient. While some argument was presented by Carraway relevant to Defendant’s youth, he did not present any formal evaluation or report, expert testimony, or witnesses. He also failed to point out the diminished penological justifications for imposing the harshest possible sentence upon a juvenile offender. The *Aiken* majority noted that, while not specifically requiring that the sentencing hearing mirror the penalty phase of a capital case, “the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole

sentencing hearings, in addition to the factors illustrated above.” Id. at 544-45, 765 S.E.2d at 577.

Moreover, beyond the deficiencies in the quality and quantity of the evidence presented to the sentencing court, there is no evidence that the sentencing judge gave the requisite individualized *consideration* to Defendant’s youth. Aiken requires more than just the presentation of argument; it requires that “the mitigating hallmark features of youth are fully explored” and weighed by the sentencing judge. Id. at 545 n. 10, 765 S.E.2d at 578 n. 10. In Defendant’s case, the sentencing judge’s only reference to Defendant’s youth was “[i]t’s not about the future years of Mr. Mack” but rather the lack of future years of Mr. Dorsey (decedent). The Aiken court noted, “[a]lthough a court may still sentence a juvenile to life without parole after an individualized hearing, the [Miller] 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. at 539, 765 S.E.2d at 575 (citing Miller, 132 S.Ct. at 2469).

There is no indication as to why Judge Newman determined that Defendant is “a rare juvenile offender whose crime reflects irreparable corruption.” See Miller, 132 S.Ct. at 2469. This is likely because Defendant’s plea and sentencing hearing occurred on August 24, 2010, prior to the decisions in Miller and Aiken. As such, Judge Newman was understandably not aware of the constitutional significance of Defendant’s youth with respect to the imposition of a de facto life sentence such that Defendant’s hearing was not “sufficient.” See State’s Motion, p. 4 (“The State is of the opinion that the Defendant’s plea hearing was sufficient.”). However, as explained in Aiken, the re-sentencing judge will have the opportunity to “exercise their discretion within the proper framework as outlined by the United States Supreme Court.” Id. at 543 n. 8, 765 S.E.2d at 577 n. 8.

For the foregoing reasons, Defendant moves this Honorable Court to grant his motion for re-sentencing consistent with the Aiken decision and schedule a re-sentencing hearing.¹

Respectfully submitted,



Laura R. Baer
Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343
Attorney for Defendant

This 15th day of May, 2015.

¹ Defendant notes that the Supreme Court issued an Order granting the State's motion to stay its opinion in Aiken pending review by the United States Supreme Court. See attached Order. The Petition for Writ of Certiorari was filed with the United States Supreme Court on February 9, 2015, and the Return to the Petition was filed on April 22, 2015. Thus, Defendant does not seek a hearing on his motion for re-sentencing or a re-sentencing hearing until the stay is lifted.

**Respondent's Ex. 5,
State's Supplemental Opposition to
Resentencing**

STATE OF SOUTH CAROLINA)

COUNTY OF WILLIAMSBURG)

The State,)

vs.)

Ronald H. Mack)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment No.: 2009-GS-45-180

A CERTIFIED TRUE COPY

Sharon W. Staggers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

**MOTION IN OPPOSITION TO
 DEFENDANT'S MOTION FOR
 RESENTENCING**

2016 SEP 22 AM 10:00
 FILED

TO: Laura R. Baer, Attorney for the Defendant:

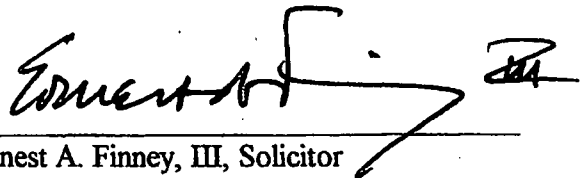
YOU WILL PLEASE TAKE NOTICE that the State in the above-entitled matter, through Solicitor, Ernest J. Finney, III, will move on the tenth day after service of this motion or as soon thereafter as counsel may be heard before the Honorable Michael G. Nettles, for an Order denying the Defendant's motion for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

The holding of our State's Supreme Court in *Aiken v. Byars* allows juvenile offenders who are sentenced to life without the possibility of parole to be heard at a resentencing hearing. At such a resentencing hearing, the juvenile defendant may "present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight." *Byars* at 544. The Court held that a resentencing hearing is available to "any juvenile offender who receives a sentence of life without the possibility of parole." *Id.* Any individual seeking the benefit of such a hearing "may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced." *Byars* at 545.

In the present case, the Defendant was sentenced to a term of 50 years on one count of Murder. (See attachment #1).

While the Defendant's sentence is certainly a harsh one, it is not a sentence of life without the possibility of parole. The Supreme Court's language in *Byars* clearly indicates that the benefit of a resentencing hearing is to be given to "any juvenile offender who receives a sentence of life without the possibility of parole." *Byars*, at 544. However, the Supreme Court did not specify any other sentencing scenarios which would entitle a defendant to a resentencing hearing. Accordingly, even in a situation where a juvenile defendant may very well spend the remainder of his natural life in prison, that defendant is not entitled to a resentencing hearing unless they have been sentenced to a term of life without the possibility of parole. Here, the defendant was sentenced to a term of 50 years, but not a term of life without the possibility of parole.

In summary, the Defendant in this case is not entitled to a resentencing hearing pursuant to *Aiken v. Byars*, because he was not sentenced to life without the possibility of parole. Therefore, the State respectfully asks this Court to deny the defendant's motion for resentencing.

A handwritten signature in black ink, appearing to read "Ernest A. Finney, III", followed by a long horizontal line and a small mark to the right.

Ernest A. Finney, III, Solicitor
Third Judicial Circuit

Sumter, South Carolina
September 16, 2016

**Respondent's Ex. 6,
State's Motion to Dismiss the Motion for
Resentencing**

STATE OF SOUTH CAROLINA)

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER)

The State,)

) Indictment No. 2009-GS-45-180

vs.)

) **MOTION TO DISMISS**
) **DEFENDANT'S MOTION FOR**
) **RESENTENCING**

Ronald H. Mack)

) Defendant)

This matter comes before the Court pursuant to the motion of the defendant filed April 20, 2015 for a resentence hearing because of its interpretation of South Carolina's Supreme Court's holding in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). On September 30, 2016, a status conference was held in Williamsburg County where the Honorable Michael G. Nettles ordered defense counsel to (1) prepare a scheduling order to set forth the details of this order that was placed on the record, (2) an order for production from William L. Carraway and (3) discovery from the Solicitor's Office. In addition, Judge Nettles also ordered the State to submit a motion to dismiss the motion filed by the defendant for the abovementioned resentencing hearing.

On August 24, 2010, the defendant pled guilty to the charges of murder and first degree burglary and was sentenced to concurrent sentences of 50 years for the murder and 30 years for the Burglary in the First Degree. After our State Supreme Court's holding in *Aiken v. Byars*, the defendant filed its motion for resentencing and the State filed its response. The defendant subsequently filed its reply and State then filed its motion in opposition. The following sets forth the State's motion to dismiss the defendant's request for resentencing.

2016 OCT -5 AM 10:38

FILED

Under the holding in *Aiken v. Byars*, juvenile offenders who were sentenced to life without the possibility of parole may file a motion for resentencing within one year of the its holding. The Court held that a resentencing hearing is available to “any juvenile offender who receives a sentence of life without the possibility of parole.” *Byars* at 544. Any individual seeking the benefit of such a hearing “may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.” *Byars* at 545.

In this case at hand, the defendant was sentenced to a term of 50 years on one count of Murder. (See attachment #1). Even though the defendant may end up spending many years in confinement, he did not receive a sentence of life without the possibility of parole. The Supreme Court’s language in *Byars* clearly indicates that the benefit of a resentencing hearing is to be given to “any juvenile offender who receives a sentence of life without the possibility of parole.” *Byars* at 544.

It should be noted that the trial judge considered all relevant information about the defendant, his background and the crime itself before handing down a sentence of 50 years. Accordingly, even though this defendant may spend a significant portion of his life in prison, he has been given every benefit that the law requires since he will not have to spend the balance of his life in prison.

Therefore, the Defendant in this case is not entitled to a resentencing hearing pursuant to *Aiken v. Byars* and the State respectfully asks this Court to dismiss the defendant’s motion for resentencing.

A handwritten signature in black ink, appearing to read "Ernest A. Finney, III", with a stylized flourish extending from the end of the signature.

Ernest A. Finney, III, Solicitor
Third Judicial Circuit

Sumter, South Carolina
October 4th, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG

INDICTMENT/CASE#: 2009-GS-45-0180

STATE VS.

RONALD H. MACK

A/W#: M060836

AKA:

Date of Offense: April 05, 2009

Race: Black

Sex: Male

Age:

S.C. Code §: 16-03-0010, 0020

DOB: August 24, 1991

SS#:

CDR Code #: 0116

Address: 18 Deer Drive, Kingstree, SC 29556

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: MurderIn violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 1 / 1 / 6
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

 8443
Solicitor SC Bar #


Defendant

 13157
Attorney for Defendant SC Bar #
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 50 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. No credit give pursuant to 16-3-2010
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47.12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$100	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90.7 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$100.00

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

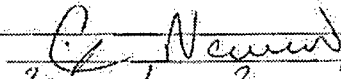
Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:


2 1 2 7
8 1 2 4 1 2 0 1

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE VS.

RONALD H. MACK

AKA:

Race: Black

Sex: Male

Age:

DOB: August 24, 1991

SS#:

Address: 18 Deer Drive, Kingstree, SC 29556

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-45-0180

A/W#: M060834

Date of Offense: April 05, 2009

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Burglary in the First DegreeIn violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Samuel V. Barr 8443
Solicitor SC Bar #Ronald H. Mack
Defendant[Signature] 13157
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$58-5-2995 (DUI Assessment)

\$58-1-286 (DUI Breath Test)

\$47.12 (Public Def/Prob)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$58-5-2942(J) (Vehicle Assessment)

\$90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	\$
\$	\$
\$100	\$
\$100	\$
\$12	\$
\$25	\$
\$500	\$
\$25	\$
\$100	\$
\$50	\$
\$40/ea	\$
\$5	\$
\$	\$
\$	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.Caroline F. Williams
Clerk of Court/ Deputy ClerkCourt Reporter: Frances RayPRESIDING JUDGE [Signature]Judge Code: 212Sentence Date: 8/24/2010

**Respondent's Ex. 7,
Defense Opposition to Motion to Dismiss**

COPY

FILED

STATE OF SOUTH CAROLINA 2016 NOV -7 PM 4:10 IN THE COURT OF COMMON PLEAS
 COUNTY OF WILLIAMSBURG SHARON W. STAGGERS
 CLERK OF COURT
 KINGSTREE, S.C. 2009-GS-45-180

State of South Carolina,

v.

Ronald Hakeem Mack,

Defendant.

**DEFENDANT'S OPPOSITION
 TO THE
 STATE'S MOTION TO DISMISS**

Comes now the Defendant, Ronald Hakeem Mack, by and through his counsel, Laura R. Baer, and in opposition to the State's Motion to Dismiss Defendant's Motion for Resentencing, respectfully states as follows:

By way of background, Mack pled guilty to murder and first-degree burglary on August 24, 2010, for offenses committed when he was seventeen years old.¹ Tr. 1. He was sentenced to concurrent sentences of fifty years for murder and thirty years for burglary. Tr. 32. When imposing the sentence, the sentencing judge told Mack that he was "a lost cause as far as society is concerned," his "future is out of society," he has "given up [his] freedom" and "the right to walk among free people," and he had "snuffed out [his] future." Tr. 30, l. 21 – 31, l. 14. He further told Mack that any improvements he made would not be in society but instead "behind bars" because he has given up his freedom and "right to anyone to trust [him] to walk the streets." Tr. 31, l. 14 – 32, l. 6.

Pursuant to S.C. CODE ANN. § 16-3-20, Mack is not eligible for parole and must serve his fifty year sentence "day for day." S.C. CODE ANN. § 16-3-20 ("No person sentenced to a

¹ The transcript of Mack's August 24, 2010 guilty plea and sentencing hearing is on file with this Court as an exhibit to the Motion for Resentencing.

Sharon W. Staggers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section. “). According to the South Carolina Department of Corrections, **Mack’s projected release date is August 11, 2060, two weeks prior to his sixty-ninth birthday.**

On June 25, 2012, the United States Supreme Court issued its opinion in *Miller v. Alabama*, 132 S.Ct. 2455, 2475 (2012), holding that the imposition of mandatory life without parole (“LWOP”) sentences for homicide offenses committed when the defendant was a juvenile violates the principle of proportionality and the Eighth Amendment’s ban on cruel and unusual punishment absent consideration of the juvenile’s special circumstances in light of the principles and purposes of juvenile sentencing. On November 12, 2014, our Supreme Court ruled that *Miller* applied “retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole.” *Aiken v. Byars*, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014), *cert. denied* 135 S.Ct. 2379 (2015). The Court further ruled that “**any individual affected by our holding** may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.” *Id.* (emphasis added).

On April 20, 2015, Mack, through counsel, filed a Motion for Resentencing pursuant to *Aiken*. The solicitor filed its response on April 28, 2015, and Mack filed a Reply on May 15, 2015.² On July 23, 2015, our Supreme Court issued an Order lifting the stay of *Aiken* following the United

² The solicitor subsequently filed an additional “Motion in Opposition to Defendant’s Motion for Resentencing” on September 22, 2016.

States Supreme Court's denial of the state's petition for writ of certiorari. The Court ordered: "Petitioners and any other individuals affected by our holding in *Aiken* may file a motion for resentencing within one year of the date of this order in the court of general sessions where he or she was originally sentenced." *Exhibit A, July 23, 2015 Supreme Court Order (attached hereto)*. On March 16, 2016, Chief Justice Costa M. Pleicones issued an administrative order regarding the procedures to be followed statewide in the management and disposition of all motions for resentencing filed pursuant to *Aiken*. The Order instructed the Clerk of Court to forward a copy of the motion for resentencing to South Carolina Court Administration, following which the Chief Justice would assign the matter to a circuit court judge other than the original sentencing judge. *Exhibit B, Mar. 16, 2016 Supreme Court Admin. Order (attached hereto)*.

On August 11, 2016, Chief Justice Pleicones issued an Order vesting the Honorable Michael G. Nettles with exclusive jurisdiction over Mack's motion for resentencing. *Exhibit C, Aug. 11, 2016 Supreme Court Order (attached hereto)*. A status conference was held in this case on September 30, 2016, at which time the solicitor was given two weeks to file a formal Motion to Dismiss. The solicitor filed a Motion to Dismiss on October 5, 2016. This opposition follows.

I. Defendant's "day-for-day" fifty-year sentence is the functional equivalent of a life sentence such that he falls within the class of "similarly situated" individuals and is entitled to resentencing pursuant to *Aiken*.

Mack incorporates by reference the arguments contained in his Memorandum in Support of Motion for Re-Sentencing and Reply to State's Response previously filed with this Court. Those pleadings discussed the procedural history of Mack's case and relevant facts, the analysis and holdings of *Miller* and *Aiken*, various state and federal cases regarding *Miller* and *de facto* life without parole sentences, and the constitutional insufficiency of Mack's sentencing hearing. As will be discussed more fully below, since the filing of the memorandum and reply in April 2015,

additional state opinions have been filed relevant to the applicability of *Miller* to *de facto* life sentences. Initially, however, it is important to review the analysis and holding of *Aiken*.

A. Analysis and Holding of *Aiken*

Aiken was brought in the Supreme Court's original jurisdiction by fifteen inmates who were sentenced to life without parole as juveniles and petitioned for resentencing in light of *Miller*. 410 S.C. at 536-37, 765 S.E.2d at 573. The *Aiken* Court considered two questions – first, whether *Miller* applied retroactively, and second, whether *Miller* applied to juveniles who received a non-mandatory sentence of life without parole? *Id.* at 537-38, 765 S.E.2d at 574. The Court answered both questions affirmatively and held that the petitioners' sentences violated the Eighth Amendment such that "the petitioners **and those similarly situated** are entitled to resentencing." *Id.* at 537, 539-45, 765 S.E.2d at 573, 575-78 (emphasis added). Regarding retroactivity, the United States Supreme Court decision in *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), held that *Miller* announced a new substantive constitutional rule that was retroactive on state collateral review, effectively affirming our Supreme Court's retroactivity ruling in *Aiken*.

In finding *Miller* applicable to South Carolina's non-mandatory sentencing scheme, the *Aiken* majority determined that it had to focus on the rationale of *Miller* – "[Y]outh has constitutional significance. As such, it must be afforded adequate weight in sentencing." *Aiken*, 410 S.C. at 542-43, 765 S.E.2d at 576. The *Aiken* Court noted the reasoning behind the categorical bans of the death penalty for all juvenile offenders established in *Roper v. Simmons*, 543 U.S. 551 (2005), and of life without parole for non-homicidal juvenile offenders established in *Graham v. Florida*, 130 S.Ct. 2011 (2010). *Id.* at 541-42, 765 S.E.2d at 576. Both cases "emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."

Id. (quoting *Miller*, 132 S.Ct. at 2464). In determining the breadth of *Miller*, the *Aiken* Court found that *Miller* “unequivocally held that youth has a constitutional dimension when determining the appropriateness of a lifetime of incarceration with no possibility of parole” and “required an individualized sentencing proceeding before imposing a sentence of life without parole on a juvenile offender.” *Id.* at 542, 765 S.E.2d at 576.

While the narrow issue before the *Miller* Court involved mandatory sentencing schemes, the *Aiken* court found that the rationale was more broadly applicable. *Id.* at 542-43, 765 S.E.2d at 576.

The *Aiken* majority wrote:

Miller is clear that it is the failure of a sentencing court to consider the **hallmark features of youth prior to sentencing that offends the Constitution**. Contrary to the dissent’s interpretation, *Miller* does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant’s juvenility on the sentence rendered.

Id. at 543, 765 S.E.2d at 576-77 (emphasis added). The Court acknowledged that life without parole sentences are still possible for juveniles in homicide cases. *Id.* at 543, 765 S.E.2d at 577. However, the Court found that *Miller*’s requirement that the sentencing judge first “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” “deserves **universal application**.” *Id.* (emphasis added).

Thus, the Court wrote:

[A]ny juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment’s guarantee against cruel and unusual punishment. The petitioners **and those similarly situated** are accordingly 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.

Id. at 544, 765 S.E.2d at 577 (emphasis added). The Court provided that “**any individual affected by our holding** may file a motion for resentencing within one year from the filing of

this opinion in the court of general sessions where he or she was originally sentenced.” *Id.* at 545, 765 S.E.2d at 578 (emphasis added).

B. Other Jurisdictions Hold *Miller* Applicable to *De Facto* Life Sentences

The solicitor argues that *Aiken* is limited only to those offenders sentenced expressly to “life without parole.” While neither the United States Supreme Court nor our Supreme Court has expressly ruled that *Miller* is applicable to a term of years sentence that is the functional equivalent of life without parole because the defendant is denied the meaningful opportunity to obtain release, their inclusion in the affected class is implicit in the reasoning explained in *Miller*, *Aiken*, and *Montgomery*. Several other state decisions, discussed *infra*, are persuasive on this issue, as their rationale for finding *Miller* applicable to *de facto* life without parole sentences mirrors our Supreme Court’s rationale in *Aiken* for finding *Miller* applicable to our State’s discretionary sentencing scheme. That is, that *Miller* was focused on the constitutional significance of youth, which must be afforded adequate weight at sentencing. *Aiken*, 410 S.C. at 543, 765 S.E.2d at 576. *Miller* established “an affirmative requirement that courts fully explore the impact of the defendant’s juvenility on the sentence rendered.” *Id.* at 543, 765 S.E.2d at 577. It was on that basis that our Supreme Court found that *Miller* “deserves **universal application**.” *Id.* (emphasis added). The solicitor has not articulated any basis for his assertion that this universal application does not include *de facto* life without parole sentences.

Iowa Supreme Court

As discussed in the Memorandum in Support of Resentencing, the Iowa Supreme Court held that the principles of *Miller* apply to juveniles sentenced to a lengthy term of years in *State v. Null*, 836 N.W.2d 41, 70-74 (Iowa 2013). The Court held that Null’s minimum imprisonment of fifty-two and a half years was “such a lengthy sentence imposed on a juvenile is sufficient to

trigger *Miller*-type protections.” 836 N.W.2d at 71 (emphasis added). The Court found that “[t]he prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a ‘meaningful opportunity’ to demonstrate the ‘maturity and rehabilitation’ required to obtain release and reenter society” *Id.* (emphasis added). The *Null* Court reasoned: “Miller’s principles are fully applicable to a lengthy term-of-years sentence as was imposed in this case because an offender sentenced to a lengthy term-of-years sentence should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under *Miller*.” *Id.* at 72 (emphasis added).

The Iowa Supreme Court reiterated its ruling in *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013), where the Court found that the possibility of parole after sixty years did not cure the unconstitutionality of Ragland’s life without parole sentence. Ragland was originally sentenced to a mandatory term of life without parole for a murder committed when he was seventeen years old. 836 N.W.2d at 109. In an effort to circumvent the requirements of *Miller*, the Iowa governor commuted Ragland’s sentence, along with the sentences of thirty-seven other inmates, to life without parole for sixty years. *Id.* at 110-11. Despite the commutation, the district court proceeded to resentence Ragland to life without parole for twenty-five years, making him immediately parole eligible. *Id.* at 112-13. The state appealed, arguing that *Miller* was no longer applicable to Ragland because the governor commuted his sentence to something less than life without parole. *Id.* at 113.

The *Ragland* Court noted the split in authority regarding whether *Graham* applies to long sentences that are not “technically” life without parole. *Id.* at 120-21. The Court ruled:

[T]he rationale of *Miller*, as well as *Graham*, reveals that the unconstitutional imposition of a mandatory life-without-parole sentence is not fixed by substituting it with a sentence with parole that is the practical equivalent of a life sentence without parole. **Oftentimes, it is important that the spirit of the law not be lost in the application of the law. This is one such time.** The spirit of the constitutional mandates of *Miller* and *Graham* instruct that much more is at stake in the sentencing of juveniles than merely making sure that parole is possible. In light of our increased understanding of the decision making of youths, the sentencing process must be tailored to account in a meaningful way for the attributes of juveniles that are distinct from adult conduct. **At the core of all of this also lies the profound sense of what a person loses by beginning to serve a lifetime of incarceration as a youth.**

In the end, a government system that resolves disputes could hardly call itself a system of justice with a rule that demands individualized sentencing considerations common to all youths apply only to those youths facing a sentence of life without parole and not to those youths facing a sentence of life with no parole until age seventy-eight. Accordingly, we hold *Miller* applies to sentences that are the functional equivalent of life without parole.

Id. at 121-22 (internal citations omitted) (emphasis added). The *Ragland* Court found that the commuted sentence with parole eligibility after sixty years was the functional equivalent of life without parole and amounted to cruel and unusual punishment. *Id.* at 122. Thus, it upheld the district court's resentencing of *Ragland* to life with the possibility of parole after twenty-five years pursuant to *Miller*.

Wyoming Supreme Court

In *Bearcloud v. State*, 334 P.3d 132, 135 (Wyo. 2014), also referenced in the Memorandum in Support of Resentencing, the defendant was originally sentenced to consecutive sentences of life and twenty to twenty-five years and a concurrent sentence of twenty to twenty-five years for homicide and burglary offenses committed when he was sixteen years old. After two remands for resentencing pursuant to *Miller*, Bearcloud's aggregate sentence on appeal was

structured such that his earliest possible meaningful opportunity for release was “in just over 45 years, or when he is 61.” 334 P.3d at 135-36. The Wyoming Supreme Court held “that the teachings of the *Roper/Graham/Miller* trilogy require sentencing courts to provide an individualized sentencing hearing to weigh the factors for determining a juvenile’s diminished culpability and greater prospects for reform when, as here, the aggregate sentences result in the functional equivalent of life without parole.” *Id.* at 141-42 (internal quotations omitted).

The Bearcloud Court wrote: “**To do otherwise would be to ignore the reality that lengthy aggregate sentences have the effect of mandating that a juvenile die in prison** even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life *with* the possibility of parole) more appropriate.” *Id.* at 142 (emphasis added). The Court reasoned that a lengthy sentence results in the same of denial of hope – rendering good behavior and character improvement immaterial because the juvenile offender “will remain in prison for the rest of his days” – as the mandatory life without parole sentences held unconstitutional in *Miller*. *Id.* Thus, the Court ruled:

The United States Supreme Court’s Eighth Amendment jurisprudence requires that a process be followed before we make the judgment that juvenile offenders never will be fit to reenter society. That process must be applied to the entire sentencing package, when the sentence is life without parole, or when aggregate sentences result in the functional equivalent of life without parole.

Id. at 144 (internal quotations and citations omitted) (emphasis added). Consequently, the Court remanded Bearcloud’s case for resentencing.

Connecticut Supreme Court

More recently, in *Casiano v. Commissioner*, 115 A.3d 1031, 1044 (Conn. 2015), the Connecticut Supreme Court held that *Miller* was applicable to the imposition of a **fifty-year sentence without the possibility of parole** on a juvenile offender, requiring the trial court to conduct an individualized sentencing procedure and consider the mitigating circumstances of youth before imposing such a sentence. Like Iowa, the Connecticut Supreme Court acknowledged that some courts have concluded that the requirements of *Graham* and *Miller* apply only to “a literal ‘life’ sentence regardless of whether the sentence exceeds the average life expectancy of a juvenile offender.” 115 A.3d at 1044. However, the *Casiano* Court was not persuaded by those decisions, finding that “**the Supreme Court’s focus in *Graham* and *Miller* was not on the label of a ‘life sentence’ but rather on whether a juvenile would, as a consequence of a lengthy sentence without the possibility of parole, actually be imprisoned for the rest of his life.**” *Id.* (emphasis added).

The *Casiano* Court observed that the Center for Disease Control’s statistics reflect an average life expectancy of seventy-six years for a male in the United States. *Id.* at 1046. However, the Court noted that such statistics do not account for the reduction in life expectancy due to the impact of spending the vast majority of one’s life in prison. *Id.* The Court cited to various studies and court decisions that reflect an average life expectancy of 50.6 years for a juvenile sentenced to natural life, a two-year decline in life expectancy for every year of incarceration, and the overall reduction in life expectancy in prison as compared to the general population. *Id.* A fifty-year no-parole sentence would result in release between the ages of sixty-six and sixty-eight years old. *Id.* Assuming the offender lived to be released, “he will have

irreparably lost the opportunity to engage meaningfully in many of these activities and will be left with seriously diminished prospects for his quality of life for the few years he has left.” *Id.*

The *Casiano* Court found that United States Supreme Court’s view of the concept of “life” in *Miller* and *Graham* was more broad than “biological survival” and “implicitly endorsed the notion that an individual is effectively incarcerated for ‘life’ if he will have no opportunity to truly reenter society or have any meaningful life outside of prison.” *Id.* Thus, the Court ruled: “In light of the foregoing statistics and their practical effect, **a fifty year term and its grim prospects for any future outside of prison effectively provide a juvenile offender with ‘no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.’**” *Id.* (emphasis added). Accordingly, the Court held that “the procedures set forth in *Miller* must be followed when considering whether to sentence a juvenile offender to fifty years imprisonment without parole” and remanded the case for further proceedings consistent with its opinion. *Id.* at 1048.

Florida Supreme Court

After varying decisions reached in the state’s lower courts, the Florida Supreme Court finally addressed the applicability of *Miller* to *de facto* life sentences in *Atwell v. State*, 197 So.3d 1040 (Fla. 2016). *Atwell* was sentenced to life with the possibility of parole after twenty-five years for murder and life without parole for armed robbery. *Id.* at 1043. When *Atwell* was considered for parole eligibility after serving twenty-five years of his sentence, the Commission on Offender Review set *Atwell*’s presumptive parole release date for 2130 – one hundred and forty years after *Atwell*’s crime. *Id.* at 1044. In ruling that *Atwell* was entitled to the protections of *Miller*, the Court cited its prior decision in *Henry v. State*, 175 So.3d 675 (Fla. 2015), in which it held that *Graham* prohibited sentencing juvenile nonhomicide offenders to aggregate prison

terms that ensure those offenders will be imprisoned without obtaining a meaningful opportunity to obtain release. *Id.* at 1045. The Florida Supreme Court noted that it has “consistently followed the spirit of *Graham* and *Miller* rather than a narrow, literal interpretation.” *Id.* at 1046. The *Atwell* Court wrote: “It is thus evident from our case law that this Court has—and must—look beyond the exact sentence denominated as unconstitutional by the Supreme Court and **examine the practical implications of the juvenile’s sentence, in the spirit of the Supreme Court’s juvenile sentencing jurisprudence.**” *Id.* at 1047 (emphasis added). The Court ruled that Atwell’s sentence “effectively resembles a mandatorily imposed life without parole sentence.” *Id.* at 1050. Because Atwell did not receive the type of individualized sentencing consideration *Miller* requires he was entitled to resentencing. *Id.*

California Supreme Court

Like Florida, the California Supreme Court began by ruling that *Graham* applies to sentences that are the functional equivalent of a life without parole sentence. *People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012). Subsequently, in *People v. Franklin*, 370 P.3d 1053, 1059 (Cal. 2016), the Court extended its ruling and held that *Miller* also applies “to such functionally equivalent sentences.” The Court reasoned:

As we noted in *Caballero*, *Miller* extended *Graham*’s reasoning to homicide offenses, observing that none of what *Graham* said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. Because sentences that are the functional equivalent of LWOP implicate *Graham*’s reasoning and because *Graham*’s reasoning implicates any life-without-parole sentence imposed on a juvenile whether for a homicide or nonhomicide offense, a sentence that is the functional equivalent of LWOP under *Caballero* is subject to the strictures of *Miller* just as it is subject to the rule of *Graham*. **In short, a juvenile may not be sentenced to the functional equivalent of LWOP for a homicide offense without the protections outlined in *Miller*.**

370 P.3d at 1059-60 (internal quotations and citations omitted) (emphasis added). Franklin was sentenced to **life with the possibility of parole after fifty years** as a result of his conviction for murder and a personal firearm-discharge enhancement for an offense committed when he was sixteen years old. *Id.* at 1054. Thus, he would first become eligible for parole at age sixty-six. *Id.* at 1060.

Ultimately, the Court did not reach the determination of whether Franklin's original sentence was the functional equivalent of life without parole. *Id.* at 1054. Instead, the Court determined that California legislative reform applicable to Franklin effectively amended his sentence to **life with parole after twenty-five years**, bringing it out of the gamut of *Miller*. *Id.* at 1060-62, 1067. Notably, the South Carolina General Assembly has yet to pass any attempt at legislative resolution in light of *Graham* and *Miller*. See *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016) ("A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.").

Washington Court of Appeals

Though the Washington Supreme Court has not ruled on the issue, the Washington Court of Appeals held that *Miller* is applicable to *de facto* life sentences in *State v. Ronquillo*, 361 P.3d 779 (Wash. Ct. App. 2015). Ronquillo was sentenced to consecutive terms resulting in an aggregate sentence of **fifty-one years and nine months** for murder and other offenses committed when he was sixteen years old. 361 P.3d at 781-82. Due to an error in sentencing guidelines calculation, Ronquillo's case was remanded for resentencing. *Id.* at 782. At the 2014 hearing, Ronquilloa relied on *Miller* and argued that his youth and background were relevant considerations on resentencing. *Id.* at 782-83. The resentencing court rejected those arguments and resentenced him to the same sentence minus 5.25 months to correct the guidelines error. *Id.*

at 784. Relying significantly on the *de facto* analysis by the Iowa Supreme Court, the *Ronquillo* Court held: “Before imposing a term-of-years sentence that is the functional equivalent of a life sentence for crimes committed when the offender was a juvenile, the court must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* The Court found that Ronquillo’s sentence, which contemplates that he will remain in prison until the age of sixty-eight, “is a *de facto* life sentence.” *Id.* As such, Ronquillo’s sentence was reversed and his case was remanded for further proceedings not inconsistent with the opinion. *Id.* at 789.

Colorado Court of Appeals

In *People v. Ellis*, 2015 WL 4760322 *3-6 (Colo. App. Aug. 13, 2015), the Colorado Court of Appeals ruled that *Miller* applies to *de facto* life sentences but that the constitutionality of Ellis’ individual sentence required a factual determination of his parole eligibility and life expectancy. Ellis, who was seventeen years old when he shot at two people, killing one of them, was sentenced to consecutive terms of thirty-two years and life with the possibility of parole after forty years. 2015 WL 4760322 at *1. Because the parties did not agree on any of the figures applicable to Ellis, the Court remanded the case for a determination of his parole eligibility, life expectancy, and whether he would have a meaningful opportunity for release during his lifetime. *Id.* at 4-5. If the lower court determined that there was no meaningful opportunity for release, then it was instructed to resentence Ellis in accordance with *Miller*. *Id.* at 6.

C. “Similarly Situated” Includes *De Facto* Life Sentences

While this Court is not bound by the precedent of these other states, they are certainly instructive. The majority opinion in *Aiken* reflects that South Carolina chose to join Iowa in

holding that *Miller* was retroactive despite contrary holdings by other state courts at the time. *Aiken*, 410 S.C. at 541, 765 S.E.2d at 576. This holding regarding retroactivity was indirectly affirmed by the United States Supreme Court in *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016). South Carolina is also similar to California and Colorado in that it found *Miller* applicable despite the fact life without parole sentences for juveniles were discretionary rather than mandatory. *See Aiken*, 410 S.C. at 541, 765 S.E.2d at 576. In finding *Miller* applicable to South Carolina's discretionary sentencing scheme, our Supreme Court made clear that its intention was to give effect to the spirit and meaning of *Miller*. *Id.* at 541-44, 765 S.E.2d at 576-77.

It is logical to conclude that the *Aiken* Court did not mean to restrict its interpretation of the applicability of *Miller* to only those cases specifically denominated "life without parole" but rather anyone "irrevocably sentenced . . . to a lifetime in prison." *Id.* at 543, 765 S.E.2d at 577 (quoting *Miller, supra*). Like the *Miller* court, the particular class before the *Aiken* Court was made of fifteen inmates who were sentenced to life without parole for homicides committed as juveniles. *Id.* at 536-37, 765 S.E.2d at 573. However, the *Aiken* Court did not restrict the relief it granted to only those members of the class. Instead, the Court held that "the principles enunciated in *Miller v. Alabama* apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." *Id.* at 545, 765 S.E.2d at 578. The Court thus provided that "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced." *Id.*

The solicitor's assertion that Mack "will not have to spend the balance of his life in prison" is untenable. In Mack's Memorandum in Support of Resentencing, he cited various sources regarding life expectancy for persons subject to incarceration. The February 2015

United States Sentencing Commission report titled “Life Sentences in the Federal System” defines a *de facto* life sentence as an “**extremely long specific terms of imprisonment**” that is, “**for all practical purposes, a life sentence and likely was intended to be such by the judge who imposed it.**” Patti B. Saris, et al., U.S. Sent. Comm’n, Life Sentences in the federal system (Feb. 2015), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf (emphasis added). For the purposes of statistical analysis, the Commission uses a sentence of **470 months (39 years and two months)** to identify cases in which a *de facto* life sentence was imposed, which is consistent with the average life expectancy of federal criminal offenders. Saris, *supra* p. 10, n. 52. Additionally, the American Civil Liberties Union of Michigan report from April 2013, reflecting an average life expectancy of **50.6 years** for juvenile offenders incarcerated for their natural lives in Michigan state prisons. ACLU of Michigan, Michigan Life Expectancy Data for Youth Serving Natural Life Sentences 1 (April 2013), <http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Michigan-Life-Expectancy-Data-Youth-Serving-Life.pdf>. Given these statistics, Mack’s death while incarcerated is almost a certainty. In the event he does live to sixty-nine, his geriatric release is not what *Graham* and *Miller* contemplated as a meaningful opportunity for release. See *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013); *Casiano v. Commissioner*, 115 A.3d 1031, 1046 (Conn. 2015).

As referenced *supra* and in Mack’s prior pleadings filed with this Court, if there was any question whether the sentencing judge intended for Mack to spend his life behind bars, the judge’s comments at sentencing should remove any doubt that such was his intent. See Tr. 30, l. 21 – 32, l. 12. Therefore, Mack is an individual “affected” by the *Aiken* holding because his no-parole sentence of fifty years is the functional equivalent of life without parole and the sentencing court

did not fully explore the constitutional significance of Mack's juvenility at sentencing. He is accordingly entitled to resentencing.)

Additionally, if this Court were to find that the interpretation of the Eighth Amendment of the federal constitution in *Miller* and *Aiken* did not apply to functional equivalent of life without parole sentences, Mack asserts that his sentence violates the South Carolina Constitution's prohibition on cruel and unusual punishment. See S.C. CONST. art. I, § 15 ("Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained."); *Aiken*, 410 S.C. at 545-46, 765 S.E.2d at 578 (Pleicones, J., concurring) (stating that he would reach the same result as the *Aiken* majority under S.C. CONST. art. I, § 15).

II. Defendant Mack's sentencing hearing did not comply with constitutional requirements of *Miller* and *Aiken*.

The solicitor asserts that "the trial judge considered all relevant information about the defendant, his background and the crime itself before handing down a sentence of 50 years." State's Motion to Dismiss, p. 2. To the extent this is an allegation that somehow Mack's original sentencing hearing complied with *Miller*, such an argument is specious. As this Court will recall, the sentencing judge began his explanation of Mack's sentence by saying:

Well, the purpose of a sentence is to represent what society determines to be justice for a crime and to – not to send a message to the community, but to do what most law abiding citizens would expect the Court to do. And then in weighing all of this, the fact of the matter is, that **the sentence is not about Mr. Mack, not about him and the possibility that he might turn his life around at some point in time between age 19 and age 80, if he lives that long...** But it's – **the sentence is not about Mr. Mack.** I mean, it's – how old is Mr. Dorsey?

App. 30, l. 21 – 31, l. 4 (emphasis added). The solicitor responded that the victim, Kenyon Dorsey, was seventeen. App. 31, l. 5. The judge went on to say:

It's not about the future years of Mr. Mack. How about the lack of future years of Mr. Dorsey. He's the victim, the victim, victim's family, the victim's loved ones. Mr. Mack is almost a lost cause at this point based on all of the choices that he made. **He's a lost cause as far as society is concerned. His future is not within society. His future, your future, is out of society. You've given up your freedom. You've given up the right to walk among free people.**

App. 31, ll. 6-14 (emphasis added). After asking the defendant why he decided to give up his future and freedom, the judge stated:

Unfortunately you'll never know any better because you – that's a – just as you snuffed out his life you snuffed out your future just the same. All of the great things that Mr. Carraway said about you and all he thinks about you, I mean, I'm not questioning at all whether those things are true. But if you are to take advantage of those things it won't be – it will not be out in a free society where you've given up your freedom and your right to anyone to trust you to walk the streets. And you'll have to do those good deeds behind bars. That's just a fact of the matter.

App. 31, l. 14 – 32, l. 6 (emphasis added). Judge Newman then sentenced Mack to concurrent sentences of fifty years for murder and thirty years for first degree burglary and admonished Mack “that's more than you can count” and “that's the bed you made.” App. 32, ll. 7-12.

Notably, the *Aiken* majority specifically rejected the dissents argument that the Court should have considered the adequacy of the original sentencing hearing and whether the lower courts abused their discretion in sentencing in each of the petitioners' cases. *Id.* at 543, 548, 552-53, 765 S.E.2d at 577, 579, 581-82. The *Aiken* majority ruled that even those cases that “touch[ed] on the issues of youth” were insufficient because they failed “to examine the youth of the offender through the lens mandated by *Miller*.” *Id.* at 543, 765 S.E.2d at 577. The original

sentencing courts simply “did not have the benefit of *Miller* to shape their inquiries.” *Id.* at 543 n. 8, 765 S.E.2d at 577 n. 8.

The United States Supreme Court recently granted certiorari in *Tatum v. Arizona*, No. 15-8850, 2016 WL 1381849 (Oct. 31, 2016), and remanded the case for further consideration in light of *Montgomery*. Justice Sonia Sotomayor authored a concurrence and responded to the dissents argument that remand was unnecessary because the defendant’s youth was already considered at sentencing:

Justice ALITO questions this course, noting that the judges in these cases considered petitioners’ youth during sentencing. **As *Montgomery* made clear, however, “[e]ven if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity.”** On the record before us, none of the sentencing judges addressed the question *Miller* and *Montgomery* require a sentencer to ask: whether the petitioner was among the very “rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”

...
It is clear after *Montgomery* that the Eighth Amendment requires more than mere consideration of a juvenile offender’s age before the imposition of a sentence of life without parole. It requires that a sentencer decide whether the juvenile offender before it is a child “whose crimes reflect transient immaturity” or is one of “those rare children whose crimes reflect irreparable corruption” for whom a life without parole sentence may be appropriate. There is thus a very meaningful task for the lower courts to carry out on remand.

Tatum, 2016 WL 1381849 *1-2 (internal citations omitted) (emphasis added). Similarly here, Mack’s pre-*Miller* sentencing hearing, which resulted in his *de facto* life sentence, did not provide the constitutional protections afforded to him by the federal and state constitutions.

III. Conclusion

In summary, Mack's sentence of fifty years is a *de facto* life sentence. Our Supreme Court's reasoning in *Aiken* reveals that they intended to effectuate the rationale of *Miller*. As such, the Court undoubtedly included offenders serving term of years sentences that are the functional equivalent of life without parole in the category of individuals "similarly situated" and "affected by the [*Aiken*] holding." The decisions reached by other state courts support this interpretation. Mack's original sentencing hearing did not comport with the requirements of *Miller*, which were unknown to both plea counsel and the sentencing judge at the time of Mack's 2010 plea. In light of the jurisprudence regarding how children are constitutionally different from adults in their level of culpability, Mack must be given the opportunity to show his crime did not reflect irreparable corruption; and, if it did not, his hope for some years of life outside prison walls must be restored. *See Montgomery*, 136 S.Ct. at 736-37.

Based on the foregoing and his prior pleadings, Defendant Ronald Hakeem Mack respectfully requests that this Court deny the State's Motion to Dismiss.

Respectfully submitted,



Laura R. Baer
Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343
Attorney for Defendant

This 4th day of November, 2016.

Exhibit A

July 23, 2015 Supreme Court Order

FILED
2016 NOV -7 PM 4:10
CLERK OF COURT
JAMES T. C. S.C.

A CERTIFIED TRUE COPY

Sharon W. Staggers

SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

The Supreme Court of South Carolina

Tyrone Aiken, Matthew Clark, Eric Graham, Bradford M. Haigler, Angelo Ham, J'Corey S. Hull-Kilgore, Damian Inman, Roger Legette, Terriel Mack, Jennifer L. McSharry, Wallace Priester, Davon Reed, Dondre M. Scott, Edgar L. Thomas, James Van, et al., Petitioners,

v.

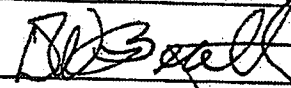
William R. Byars, Jr., Director, South Carolina Department of Corrections, and Alan Wilson, Attorney General of South Carolina, Respondents.

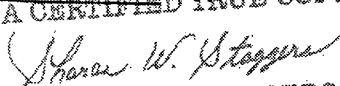
Appellate Case No. 2012-213286

ORDER

Petitioners move this Court to vacate the stay of our opinion issued in this case. Petitioners also request they and others similarly situated be given one year from the date the stay is vacated by order of this Court to file a motion for resentencing. The State opposes the motion on the ground that the stay was effectively lifted when the United States Supreme Court issued its final decision in the matter; therefore, an order vacating the stay is unnecessary. The motion is granted and the stay is hereby lifted. Petitioners and any other individuals affected by our holding in *Aiken* may file a motion for resentencing *within one year of the date of this order* in the court of general sessions where he or she was originally sentenced. There the matters shall proceed pursuant to the guidance provided in *Aiken*.

 C.J.
 J.



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 CLERK OF COURT
 WILLIAMSBURG COUNTY

2016 NOV 7 PM 4:10

FILED
 2016 NOV -7 PM 4:10
 CLERK OF COURT
 WILLIAMSBURG COUNTY



J.

Kittredge, J., not participating

Columbia, South Carolina

July 23, 2015

cc:

John H. Blume, III, Esquire
Keir M. Weyble, Esquire
Elizabeth Anne Franklin-Best, Esquire
Joshua A. Bailey, Esquire
Diana L. Holt, Esquire
Robert Michael Dudek, Esquire
Ernest Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Sheri L. Johnson, Esquire
John Benjamin Aplin, Esquire
Donald J. Zelenka, Esquire
Christopher D. Scalzo, Esquire
Joseph M. McCulloch, Jr., Esquire
Abby C. Johnston, Esquire
Abby F. Rudzin, Esquire
John S. Nichols, Esquire

Exhibit B

Mar. 16, 2016 Supreme Court Admin. Order

FILED
2016 NOV -7 PM 4:11
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CLERK OF COURT
WILLIAMSBURG, S.C.

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SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

The Supreme Court of South Carolina

ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that the following procedures shall be followed statewide in the management and disposition of all motions for resentencing filed pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014).

Upon filing, the Clerk of Court shall forward a copy of the motion for resentencing to South Carolina Court Administration, which shall make recommendations to the Chief Justice for assignment of a judge. The Chief Justice shall issue an order assigning the matter to a circuit court judge. The assigned judge shall be given exclusive jurisdiction to handle that case from beginning to end. In assigning these matters, the Chief Justice shall take into consideration any actual or potential conflicts, and shall refrain from assigning the matter to the original sentencing judge. Once an order has been issued assigning the matter to a judge, copies of that order shall be provided by the clerk of court to counsel of record.

Appointment of an attorney for an indigent petitioner shall first be attempted through the public defender's office. If no public defender is available, the assigned judge shall then determine whether a qualified attorney is available from the contract attorney list, maintained by the South Carolina Commission on Indigent Defense, pursuant to S.C. Code Section 17-3-310(G)(6). If no such attorney is available, the judge shall then determine whether there is a qualified attorney available pursuant to Rule 608 of the South Carolina Appellate Court Rules. If no qualified attorney is available from any of these three sources, then the judge may appoint another qualified attorney.

This Order shall be effective immediately and shall remain in effect until rescinded or modified by Order of the Chief Justice.

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

Columbia, South Carolina
March 16, 2016

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CLERK OF COURT
WILLIAMSBURG COUNTY
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Sharon W. Stagers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

Exhibit C

Aug. 11, 2016 Supreme Court Order

FILED
2016 NOV -7 PM 4:11
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CLERK OF COURT
WILLIAMSBURG S.C.

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Sharon W. Staggars
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

The Supreme Court of South Carolina

Ronald Hakeem Mack, Petitioner,

v.

State of South Carolina, Respondent.

Williamsburg County

Docket No.: 2009-GS-45-00180

ORDER

Petitioner filed a motion on April 20, 2015 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 Michael G. Nettles be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge Nettles 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 he 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 Nettles 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

August 11, 2016
Columbia, South Carolina

A CERTIFIED TRUE COPY

Sharon W. Staggars
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

FILED
2016 NOV -7 PM 1:11
CLERK OF COURT
WILLIAMSBURG COUNTY

**Respondent's Ex. 8,
Defense Notice of Expert Witness**

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

State of South Carolina,

Plaintiff,

v.

Ronald Hakeem Mack,

Defendant.

IN THE COURT OF GENERAL SESSIONS
THE THIRD JUDICIAL CIRCUIT

Case No. 2009-GS-45-180

NOTICE OF DEFENSE EXPERT

Now comes the Defendant, Ronald Hakeem Mack, by and through his attorney, Laura R. Baer, and gives notice of the following:

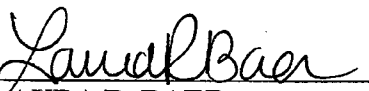
1. A hearing on the state's motion to dismiss the defendant's motion for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), is scheduled to be heard in Florence County on Friday, February 17, 2017, at 2:00 p.m. before the Honorable Michael G. Nettles, specially assigned.

2. At the hearing, the defendant intends to present expert testimony from Ms. Vera Dolan, MSPH, FALU, in the areas of epidemiology and life expectancy.

3. Ms. Dolan analyzed vital statistics data for all men incarcerated in the South Carolina Department of Correction from 1996 to 2015, followed through to 2016, which was procured through Freedom of Information Act requests. Based on this data, Ms. Dolan has calculated mortality rates and ratios for all male inmates, black male inmates only, and white male inmates only and prepared corresponding underlying assumption analysis tables. See Exhibit A (Underlying Assumption Analysis Tables, S.C. Male Inmate Mortality Rates and Ratios). Ms. Dolan has further calculated average life expectancy for all male inmates, black male inmates only, and white male inmates only and prepared corresponding actuarial life tables.

See Exhibit B (S.C. Male Inmate Life Tables). Ms. Dolan is expected to testify regarding: (1) the method used to calculate the mortality rates and ratios and prepare the underlying assumption analysis table; (2) the method used to calculate life expectancy and to prepare the life table; (3) how to interpret the tables (**For example, Ms. Dolan is expected to testify that an African-American male inmate incarcerated in the South Carolina prison population at age eighteen, on average, would have a life expectancy of an additional 38.2 years, which means that, on average, his age at death would be fifty-six years old**); and (4) how these statistics compare with the general population life tables prepared by the National Vital Statistics System. See Exhibit C (U.S. General Male Population Life Tables).

4. Ms. Dolan's curriculum vitae is attached hereto as Exhibit D.

By: 
LAURA R. BAER
SC Bar No. 101076
South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1343
lbaer@sccid.sc.gov

Attorney for Defendant

January 13, 2017

**Respondent's Ex. 9,
Motions Hearing Transcript**

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG)

2009-GS-45-00180

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

February 17, 2017

RONALD HAKEEM MACK,)

Defendant.)

B E F O R E:

Honorable Michael G. Nettles
Florence County Courthouse
Florence, South Carolina

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

Ernest Adolphus Finney, III, Esquire
Attorney for State

Laura Ruth Baer, Esquire
Attorney for Appellate Defendant

Kay H. Richardson
Circuit Court Reporter

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State v. Mack - 2009-GS-45-00180
BY THE COURT

4

1 (FEBRUARY 17, 2017)

2 BY THE COURT:

3 THE COURT: Mr. Finney, I'm gonna recognize you and let
4 you put the caption on the record for us.

5 MR. FINNEY: Thank you, Your Honor. This is the State of
6 South Carolina versus Ronald Hakeem Mack, M-A-C-K. Hakeem is
7 spelled H-A-K-E-E-M. It's a case arising out of Williamsburg
8 County General Sessions Court where a guilty plea was taken in
9 front of the Honorable Clifton Newman on August the 24th,
10 2010, in Kingstree, South Carolina.

11 Today, Your Honor, we are here as a result of a motion by
12 the Defense to afford Mr. Mack a separate new resentencing
13 hearing on the charge of murder and burglary first where Judge
14 Newman sentenced him after a guilty plea to 50 years on the
15 murder charge and 30 years concurrently on the burglary first
16 charge.

17 THE COURT: All right. Well, I'll be glad to hear from
18 the moving party. Yes, ma'am?

19 MS. BAER: Thank you, Your Honor. It's my understanding
20 that what we're here on today is the State's motion to
21 dismiss, so it would be my understanding that they would be
22 the moving party today.

23 THE COURT: That's correct.

24 MS. BAER: I did have one preliminary matter. I wondered
25 if we could -- if you would free one of my client's hands so

State v. Mack - 2009-GS-45-00180
BY THE COURT

5

1 that he can write on the notepad.

2 THE COURT: Yes. Yes, we can do that

3 MS. BAER: Thank you, Your Honor.

4 THE COURT: I knew that we were gonna be addressing that
5 legal issue. I assume it is fashioned in your motion to
6 dismiss and I'll be glad to hear from you in full.

7 Yes, sir?

8 MR. FINNEY: Thank you, Your Honor. Just for the Court
9 Reporter, the indictment number that we have on this is 2009-
10 GS-45-180. We did file a motion to dismiss on October the
11 5th, 2016, and we've set forth our grounds in the motion.
12 Before we begin, I'd just would like to ask the Court, I don't
13 know if you've received a copy of the transcript of record
14 from the guilty plea that took place back in 2010.

15 THE COURT: I'd like to take a look at that. I do not
16 have that.

17 MR. FINNEY: Do you have one, ma'am?

18 MS. BAER: Yes, I do.

19 MR. FINNEY: We'll just make that our first exhibit for
20 this hearing.

21 THE COURT: Okay.

22 STATE'S EXHIBIT NUMBER ONE

23 ADMITTED INTO EVIDENCE

24 MR. FINNEY: If Your Honor please, I may have to add to
25 this as we go along, but basically our case or our motion

State v. Mack - 2009-GS-45-00180
BY THE COURT

6

1 presides or resides on the premise that the case of *Aiken v.*
2 *Byars*, which is the South Carolina case which implemented the
3 *Miller* decision affecting juveniles who were sentenced to life
4 in prison without parole. It is a pretty clear case for our
5 courts to have to interpret. And that out of all the cases
6 that I've got in my circuit, one of these being Mr. Mack's
7 case, Mr. Mack's, is the only case which I felt clearly fell
8 outside of the *Aiken* because Judge Newman at the sentencing
9 hearing did not sentence this young man to life without parole
10 in the State Department of Corrections. He gave him a
11 determinate sentence of 50 years. We feel that based on that
12 fact and based on the fact that the transcript, which is in as
13 an exhibit now, will clearly show you that when the State
14 presented the case to the judge, there were no recommendations
15 made, no negotiations made. That is part of the transcript.
16 Therefore, the judge have the right to sentence between 30
17 years and life on both the burglary and the murder. And
18 therefore could've -- in fact, Mr. Mack could've received two
19 life sentences. Mr. Mack was represented by counsel at the
20 plea, and the transcript will show that he detailed many facts
21 of Mr. Mack's life to the judge at the time.

22 There were -- the transcript will also show, Your Honor,
23 that Mr. Mack participated in the plea, spoke to the judge
24 when questions were presented to him. Judge Newman did, I
25 think, a very good job of asking and keeping the things going.

State v. Mack - 2009-GS-45-00180
BY THE COURT

7

1 In other words, it wasn't compartmentalized where the State
2 presented, the Defense presented and that was the end of it,
3 the judge gave down a sentence. There was a lot of
4 conversation, there was a lot of going back and forth between
5 the bench, Mr. Mack, his lawyer, and the prosecutor at the
6 time. And the judge have a very large target for which he
7 could have sentenced Mr. Mack from. He chose in his
8 discretion and with some guiding words at the end of the
9 transcript, he told Mr. Mack that he had not deserved to spend
10 the rest of his future in open society and that he was gonna
11 sentence him to 50 years.

12 In my opinion, the brief that's been submitted by the
13 Defense takes a position that was not the position of the
14 trial judge at the time of the plea. I believe that this
15 Court will, by looking at the matter and listening to the
16 evidence today, will see that Judge Newman did do a good job
17 of considering the five factors which *Aiken v. Byars* says that
18 the judge must consider.

19 It also says in the case, the *Aiken* cases, that Mr. Mack
20 is not entitled to a death penalty resentencing hearing. This
21 is not that kind of case. We have a lot of information about
22 Mr. Mack and what happened. The judge had that same
23 information. We also have a situation where although the
24 Defense now would like to call all kinds of experts and show a
25 lot of different things, there were a lot of factors present

State v. Mack - 2009-GS-45-00180
BY THE COURT

8

1 that day which the judge considered. And even though he was a
2 young man, even though he was not subject to having had a long
3 and established criminal record, the nature and circumstances
4 involved in the crime, the people he committed the crime with,
5 the victim of the crime was one of his best friends, the
6 victim of the crime was killed in his own house on a Sunday
7 evening at 2:30 in the morning. Those factors, I believe,
8 support the decision of the trial judge to sentence him to a
9 term not only less than life but a lot less than some, some
10 other sentence that he could've given and, in fact, didn't
11 even give the guy a consecutive sentence on the burglary
12 charge. So, Mr. Mack has got a lot of breaks in our opinion.
13 He got a considered sentence by the trial judge. And based on
14 those reasons, we think that the Court should find that *Aiken*
15 *v. Byars* does not apply in this case and that the petition of
16 the Defendant should be dismissed.

17 THE COURT: Mr. Finney, how old was Mr. Mack when he was
18 sentenced?

19 MR. FINNEY: He was, I believe, 19 years old.

20 THE COURT: Okay.

21 MR. FINNEY: My understanding is, Judge, that he was four
22 weeks short of his 18th birthday on the night he committed the
23 crime in July of 2009. He was immediately arrested after an
24 investigation begun. He was arrested in the State of Maryland
25 and brought back here. Pled guilty in August of 2010.

State v. Mack - 2009-GS-45-00180
BY THE COURT

9

1 THE COURT: All right. What do you have to say about the
2 argument that this is effectively a life sentence in that if
3 you look at the median age of inmates in Department of
4 Corrections, there are very few of them that make it. He'll
5 be, what, 69 when he finishes this sentence?

6 MR. FINNEY: We believe he'll be 67, Your Honor.

7 THE COURT: 67, somewhere along in there.

8 MR. FINNEY: Somewhere along in there, but we believe
9 he'll be 67.

10 THE COURT: Wonder how many people in the Department of
11 Corrections who are 67 years old now?

12 MR. FINNEY: Well, Your Honor, I have reviewed the
13 statistical information submitted by the Defense and I'm not a
14 statistician. I don't know and I'm certainly gonna have some
15 questions back and forth today ---

16 THE COURT: I just want to preliminarily let you say what
17 you thought about it.

18 MR. FINNEY: I think that at age 67, when he is released
19 from prison, he'll still have 10 years life expectancy under
20 the statistical information that's out there.

21 THE COURT: Mortality tables.

22 MR. FINNEY: Mortality tables.

23 THE COURT: Do you think prison lowers his life
24 expectancy?

25 MR. FINNEY: The statistics seem to show that, Your

State v. Mack - 2009-GS-45-00180
BY THE COURT

10

1 Honor.

2 THE COURT: Right. All right. Thank you, Mr. Finney.

3 MR. FINNEY: Thank you, Your Honor.

4 THE COURT: All right.

5 Defense is recognized. Yes, ma'am.

6 MS. BAER: Thank you, Your Honor. May it please the

7 Court. I'm Laura Baer, Commission on Indigent Defense,

8 Division of Appellate Defense. I'd like to begin by calling

9 my witness, Vera Dolan.

10 THE COURT: Ms. Dolan, if you could please come forward.

11 MS. BAER: Your Honor, are you fine with me staying here

12 at the table?

13 THE COURT: You can stand anywhere you want to; however,

14 the spirit moves you. If you want to move up closer, that's

15 fine.

16 MS. BAER: Here is what I prefer if that's fine with you.

17 THE COURT: Yeah, that's fine.

18 MS. BAER: Thank you.

19 THE COURT: Yes, ma'am. If you could place your

20 paperwork down and I'm gonna ask if you could to place your

21 left hand on the Bible and raise your right hand as I

22 administer the oath.

23 VERA DOLAN, HAVING BEEN DULY SWORN,

24 TESTIFIES AS FOLLOWS:

25 THE COURT: Watch your step and come around and have a

State v. Mack - 2009-GS-45-00180

11

VERA DOLAN - DIRECT BY BAER

1 seat in the witness chair.

2 I'm gonna ask if you could to pull up real close to that
3 microphone, speak loudly, clearly and slowly in order that we
4 can hear everything that you have to say. And you can just
5 leave that there. You can just leave that there. There you
6 go.

7 All right. Let's start with your full name.

8 MS. DOLAN: My name is Vera Dolan.

9 THE COURT: How do you spell that last name?

10 MS. DOLAN: D-O-L-A-N.

11 THE COURT: Dolan.

12 DIRECT EXAMINATION OF VERA DOLAN BY MS. BAER:

13 Q: Ms. Dolan, please keep your voice up so that I can hear
14 you all the way over here.

15 A: How's this?

16 Q: That's great. Thank you.

17 A: That's a lot better.

18 Q: That's great. Can you tell us about your educational and
19 professional background?

20 A: Yes. I have a Bachelor's in public health from the Johns
21 Hopkins University; I have a Master's of Science in public
22 health in epidemiology from the University of North Carolina
23 at Chapel Hill. I also have the highest credential in life
24 underwriting. I am a fellow of the Academy of Life,
25 Underwriting.

State v. Mack - 2009-GS-45-00180
VERA DOLAN - DIRECT BY BAER

12

1 Q: And what professional work do you do now currently?

2 A: I'm an independent consultant. I provide consulting
3 services to the life insurance industry and related
4 industries, and I also have as a side practice in my business
5 doing expert work.

6 Q: Okay. And can you tell us what the difference is between
7 an epidemiologist and an actuary?

8 A: Yes. And actuary is a professional who creates life
9 tables but they look at the big picture. They're employed in
10 the insurance industry, with Social Security, in the U.S.
11 Vital Statistics Department. They create the large master
12 tables that the insurance industry uses, Social Security uses,
13 Vital Statistics uses, by age, sex and race in the U.S.
14 tables. And in insurance you cannot do life tables or
15 mortality tables using race. So, actuaries in the insurance
16 industry split their analyses by age, sex and smoking.

17 Q: Okay. And what, what ---

18 THE COURT: You said age, sex and what?

19 A: Smoking status.

20 THE COURT: Okay.

21 A: Whether you're a smoker or a nonsmoker. And the
22 epidemiologist is very similar. We have similar origins in
23 science. We come from the same kind of background, but
24 epidemiologists, they specialize in the study of health and
25 disease and populations statistically. They look at the

State v. Mack - 2009-GS-45-00180

13

VERA DOLAN - DIRECT BY BAER.

1 medical conditions and other conditions and risk factors that
2 have to do with death. Actuaries don't have that medical
3 background but epidemiologists do.

4 Q: Okay. And are you a contributor to any peer review
5 literature where you have prepared mortality ratio analysis
6 from raw population data?

7 A: Yes, I have.

8 Q: And how many times have you done that?

9 A: At least 33 articles.

10 MS. BAER: Your Honor, may I approach?

11 THE COURT: Yes.

12 MS. BAER: Thank you. That's Exhibit One.

13 BY MS. BAER:

14 Q: Ms. Dolan, I'm showing you what's been premarked for
15 identification as Defendant's Exhibit One.

16 And, Your Honor, I have a copy for you as well.

17 Ms. Dolan, can you tell me what that document is?

18 A: This is my CV and it is current as of February 6th of
19 2017.

20 Q: And did you prepare that document?

21 A: Yes, I did.

22 Q: Okay. And is everything that's contained within it true
23 and accurate to the best of your knowledge?

24 A: Yes.

25 MS. BAER: Your Honor, I'd move to have Defendant's

1 Exhibit One admitted into evidence.

2 THE COURT: Any objection?

3 MR. FINNEY: No objection.

4 THE COURT: It's into evidence without objection.

5 DEFENDANT'S EXHIBIT NUMBER ONE

6 ADMITTED INTO EVIDENCE

7 BY MS. BAER:

8 Q: As part of your work, do you regularly calculate mortality
9 ratios and prepare life tables?

10 A: I regularly prepare mortality ratios. I am currently a
11 senior research scientist with a clinical reference laboratory
12 in Lenexa, Kansas. They are one of the two providers of
13 laboratory work for the insurance industry. They collect
14 blood and urine samples from all over North America as one of
15 the two vendors who do this for the life insurance industry.
16 And as their senior research scientist, I have conducted
17 cohort mortality studies on their database and have produced
18 many articles doing the -- providing the mortality ratio
19 analysis from the raw data from this insurance population.
20 For life tables, that is a product of my expert work and as an
21 expert I have provided life tables since 2006 for all my life
22 expectancy cases.

23 Q: Okay. And when did you construct your first life table?

24 A: My very first life table was done when I was a student at
25 Chapel Hill. That was before Excel, so I had to construct the

State v. Mack - 2009-GS-45-00180
VERA DOLAN - DIRECT BY BAER

15

1 life table just with a pencil and paper and a calculator.

2 Q: Are there generally accepted methods and practices for
3 doing this work in your field?

4 A: Of course, yes.

5 Q: And do you follow those accepted practices and methods?

6 A: Of course, yes.

7 Q: Okay. And how important is accuracy in your field?

8 A: In my field, especially from the insurance industry,
9 accuracy is extremely important. Billions of dollars depend
10 on the accuracy of risk assessment, getting the mortality
11 ratios right and then following up statistically to see. If
12 we don't meet our targets, we have to change our targets to
13 meet them. So, I come from a discipline where accuracy is
14 paramount.

15 Q: Have you ever been qualified to testify as an expert
16 witness before?

17 A: Yes, I have.

18 Q: How many times?

19 A: I have my Rule 26 with me. I've -- at least eight or nine
20 times in trial.

21 Q: Okay. And in what courts?

22 A: They range from federal court down to state court in
23 different states.

24 Q: Okay. And in what area of expertise have you been
25 qualified as an expert in the past?

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1 A: I have three expertises. The first is life expectancy;
2 the second is life insurance; and the third is epidemiology.

3 MS. BAER: Your Honor, at this time, I would move for Ms.
4 Dolan to be qualified as an expert in the area of life
5 expectancy and epidemiology.

6 THE COURT: Any objection with regard to her
7 qualifications, Mr. Finney?

8 MR. FINNEY: No, Your Honor.

9 THE COURT: Or any query? Do you have any questions
10 about her qualifications?

11 MR. FINNEY: Well, I was going to ask but I think that
12 last question, she's gonna be qualified in both areas of
13 epidemiology and life expectancy.

14 THE COURT: Yes.

15 MR. FINNEY: Okay. No objection.

16 THE COURT: All right. She is so qualified in
17 epidemiology and life expectancy.

18 MS. BAER: Thank you, Your Honor.

19 BY MS. BAER:

20 Q: Ms. Dolan, what does life expectancy mean?

21 A: Life expectancy is the statistical calculation of the
22 average length of life expected for an individual of a certain
23 age, sex, race or other characters -- or other risk factors.

24 Q: And what is a life expectancy table?

25 A: A life table is the, is the layout -- is the data that

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1 shows how these numbers in the statistical calculation is
2 done.

3 MS. BAER: Your Honor, may I approach again?

4 THE COURT: Yes.

5 BY MS. BAER:

6 Q: All right. Ms. Dolan, I'm showing a group of exhibits.
7 This is Defendant's Exhibit Two, Three and Four for
8 identification purposes.

9 Here are your copies, Your Honor.

10 Ms. Dolan, can you tell me what those exhibits are?

11 A: Each of these exhibits are taken from the September 22nd,
12 2015 publication from the National Vital Statistics Bureau.
13 These are life table for males, United States 2011; that's
14 Exhibit Two. The life table for non-Hispanic black males as
15 of 2011; that is Exhibit Three. And non-Hispanic white males
16 as of 2011; that's Exhibit Four.

17 Q: And are you familiar with these tables?

18 A: Yes, I ma'am.

19 Q: Are they generally accepted and relied upon in your field?

20 A: Yes, they are.

21 MS. BAER: Your Honor, at this time, I would move to have
22 Exhibits Two, Three and Four admitted into evidence.

23 MR. FINNEY: No objection.

24 DEFENDANT'S EXHIBIT NUMBERS TWO, THREE AND FOUR

25 ADMITTED INTO EVIDENCE

1 BY MS. BAER:

2 Q: Ms. Dolan, I'd like for to look at Exhibit Two. And
3 utilizing that exhibit, can you tell us what -- where to find
4 the mortality rate on that table?

5 A: The mortality rate, there is many columns here. The first
6 column is age in years and that shows each individual age, you
7 know, as it progresses from year of birth to year to the last
8 age listed, which is 100. Next to the end column, the title
9 of that column is the probability of dying between ages X and
10 X+1. And that underneath is -- they are called mortality
11 rates.

12 Q: Okay. And what is a mortality rate?

13 A: A mortality rate is a metric that says how many people out
14 of a certain population die and it is -- the numerator is the
15 number of deaths and the denominator is the population at risk
16 and you do the calculation and that is what a mortality rate
17 is.

18 Q: Okay. And looking at that far right-hand column,
19 expectation of life at age X, what does that number mean?

20 A: That is the life expectancy, so that is the statistically
21 expected average length of life left for that person. So, at
22 birth, if the expectation of life for a male and, as of 2011,
23 is 76.3 years.

24 Q: And based on Exhibit Two, what is the life expectancy of
25 an average 18-year-old male in the general U.S. population,

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1 not taking into account race?

2 A: Okay. For males, 59.1.

3 Q: Okay. So, in order to determine what the average age of
4 death is, how do you put this table together?

5 A: You would have taken that 59.1, which is the additional
6 years of life expected on average, add that to 18 and you get
7 your result.

8 Q: Okay. And can you -- I'm not sure how good you are math
9 in your head, can you tell us what that result is?

10 A: I -- you know, it's been a long time since I've -- I don't
11 have a calculator with me, but it's ---

12 Q: That's all right. I have 77 years old, is that ---

13 A: Yes.

14 Q: Okay. So, turning now to Exhibit Three and -- Exhibits
15 Three and Four, why is it that we have life tables for the
16 specific races?

17 A: It's been long established that race, as a demographic
18 factor, is a very powerful effect on life expectancy and the
19 -- it is recognized that having separate life tables for each
20 race gets closer to what the actual expected average for that
21 individual would be. Demographics are very powerful
22 predictors of your life expectancy.

23 Q: Okay. So, looking at Exhibit Three, what is the life
24 expectancy of an average 18-year-old black male in the general
25 U.S. population?

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1 A: Fifty-five years old.

2 Q: Okay. So, we add that 55 and 18, 73 years old would be
3 the corresponding average age of death?

4 A: I agree, yes.

5 Q: Okay. Now, are the U.S. General Population tables a
6 reliable indicator of the life expectancy of the male inmates
7 in the South Carolina Department of Corrections?

8 A: Not at all.

9 Q: And why not?

10 A: Because prison has been well recognized as a very
11 significant risk factor on someone's life expectancy.

12 MS. BAER: Your Honor, may I approach?

13 THE COURT: Yes.

14 MS. BAER: Thank you.

15 BY MS. BAER:

16 Q: Ms. Dolan, I'm showing you what -- well, I'll go ahead and
17 show you both of these exhibits, Defense Exhibits Five and
18 Six.

19 Here are your copies, Your Honor.

20 Ms. Dolan, can you ---

21 MS. BAER: Well, actually, Your Honor, for the purposes
22 of Exhibits Five and Six, these are both public records so I'd
23 ask that they be admitted as public records. Exhibit Five is
24 2004 Act Number 209. It's the bill that passed the Statutory
25 Life Tables of South Carolina. Exhibit Six, the South

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1 Carolina Code Annotated Section 19-1-150.

2 THE COURT: Any objection to these being introduced into
3 evidence?

4 MR. FINNEY: No objection.

5 THE COURT: They're into evidence.

6 DEFENDANT'S EXHIBIT NUMBER FIVE AND SIX

7 ADMITTED INTO EVIDENCE

8 MS. BAER: Thank you.

9 BY MS. BAER:

10 Q: Ms. Dolan, looking first at Defendant's Exhibit Five, when
11 you look at Section 2, where does it reflect that our
12 statutory life tables were derived?

13 A: It was derived from the 2001 Commissioners Standard
14 Ordinary Mortality Table.

15 Q: And are those commonly referred as the CSO mortality
16 tables?

17 A: Yes.

18 Q: Are you familiar with those tables?

19 A: Yes.

20 Q: And what is their purpose?

21 A: Their purpose is they were constructed by the Society of
22 Actuaries in conjunction with the National Association of
23 Insurance Commissioners to provide statutory guidance to state
24 insurance commissioners in figuring out what the statutory
25 reserves should be for the insurers in their state. So, this

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1 is the -- the sole intent and purpose of the CSO table was to
2 provide state insurance commissioners a way to figure out what
3 the proper amount of reserves for their insureds in their
4 states would be.

5 Q: Okay. And looking at Defendant's Exhibit Six, which is
6 actual code section, how did the figures that are in the code
7 compare to the 2011 U.S. Life Tables for men?

8 A: They are higher.

9 Q: They're higher. Do you have any concerns about the
10 staleness of the statutory tables?

11 A: I am concerned about the staleness -- yes, I have concerns
12 about the staleness.

13 Q: And if the tables are from 2001, how old is the data in
14 the 2001 tables?

15 A: It's much older than 2001. They were obtained at least a
16 decade or so before that.

17 Q: And is there ---

18 THE COURT: Are we living longer or shorter since 2001?

19 A: We're living longer but there's another concern of mine
20 with these tables..

21 THE COURT: Go ahead.

22 Q: Okay. And is there any differentiation in the South
23 Carolina statutory tables for race?

24 A: I don't see any.

25 Q: And is that significant?

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1 A: Well, there -- it is at odds with what the U.S. general
2 population tables are -- it is at odds with what is being done
3 for the U.S. general population tables.

4 Q: Okay. And in your opinion, do the South Carolina
5 statutory life expectancy tables reliably predict the life
6 expectancy of the general population?

7 A: Not at all.

8 Q: Okay. And why not?

9 A: Because the CSO tables are built on insured lives and
10 that's different than the general population. When you become
11 an insured, you are essentially cherry picked, you're selected
12 out of the general population for the purposes of insurance.
13 So, all the lives that are -- went into building the CSO table
14 are insured lives, not general population lives. These are
15 lives that are much healthier than what would be found in the
16 general population. These rates should never have been
17 applied as a life table for general population use.

18 Q: Okay. In your opinion, are they an accurate reflection of
19 the life expectancy of South Carolina inmates in the
20 Department of Corrections?

21 A: Yes, they are every inaccurate.

22 Q: Inaccurate, okay. In regards to the South Carolina male
23 prison inmate population specifically, by whom are you
24 initially retained and for what purpose?

25 A: I was retained by Diana Holt in the case against Hagler.

1 This was an issue where there was a juvenile sentenced to life
2 without parole. And Diana Holt provided funding for me to
3 conduct an investigation into providing a life table specific
4 to South Carolina prison system inmates in order to find the
5 proper and accurate life expectancy for prisoners.

6 A: Okay. So, in answering her question about life expectancy
7 for a 15-year-old, did you actually determine the life
8 expectancy for the whole range of ages in the South Carolina
9 Department of Corrections?

10 A: Yes. In order to do a life table, you have to provide a
11 table for all ages.

12 Q: Okay. What underlying data were you provided in order to
13 conduct your analysis?

14 A: I was given a file of 68,000 or so inmate records, going
15 back to 1996 all the way through 2015 with a follow-up of
16 mortality through 2016.

17 Q: And do you know from what agency those statistics came
18 from?

19 A: They were from the adult prison population.

20 Q: Okay. So, from the South Carolina Department of
21 Corrections?

22 A: That's correct.

23 Q: Was any of the data provided to you not suitable for
24 analysis?

25 A: There were some exclusions that I made from the 68,000. I

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1 made over 3,000 exclusions of duplicate records, people who
2 had been the same individual but had different times of
3 incarceration. I removed the earlier periods of incarceration
4 and kept the latest one which would be able to uniquely
5 associate with that individual whether they were alive or dead
6 at the end of that term. There was a much, much smaller group
7 of cases that I excluded where the dates of admission and that
8 dates of death or release were incongruent and I removed those
9 cases from the analysis.

10 Q: So, those are people that had died before 1996 or died
11 before their admission date?

12 A: Yeah, the dates did not match up and because of that, I
13 excluded those people.

14 Q: Okay. Was there some sort of identifying number that
15 allowed you to know when you had these duplicate cases?

16 A: Yes, I -- there was no identifying information in the file
17 that I was given other than a unique identifier. And those --
18 that identifier was the one that I used to identify the
19 duplicate cases.

20 Q: And did you report back to SCDC the errors and the
21 duplications in the data that was provided?

22 A: I didn't report to them the duplications but I definitely
23 reported to them the incongruent records.

24 Q: Gotcha, gotcha. Did removal of those duplicate records
25 and the improper admission dates affect your analysis?

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1 A: No, there was no material difference.

2 Q: Okay. So, after synthesizing the duplicate IDs and
3 removing those inmates, how many inmates encompassed the 20
4 years of data that you did analyze?

5 A: It was about -- I'm sorry -- around 64,000.

6 Q: Okay. Was that population a large enough sample for your
7 analysis to be considered reliable?

8 A: Yes. For most of the ages that I looked at, there were.
9 I did not receive any data for prisoners younger than 18, so
10 that information was not available to me.

11 MS. BAER: Your Honor, may I approach?

12 THE COURT: Yes.

13 MS. BAER: Thank you.

14 BY MS. BAER:

15 Q: Ms. Dolan, I am going to hand you what has been pre-marked
16 as Defendant's Exhibits Seven, Eight and Nine.

17 Your Honor, your copies.

18 Ms. Dolan, can you look at Defendant's Exhibits Seven,
19 Eight and Nine and tell me what those are?

20 A: Yes. These are the worksheets that I prepared in doing my
21 analysis before I put together the life tables. What this
22 shows is the results of the analysis of the raw data. And on
23 the farthest left, you see age for each year, then you see
24 under the next column, alive, those were the individuals who
25 are alive in that period of time and so on. Essentially ---

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1 Q: Sorry, before we get to that, and then did you prepare
2 these for all races, blacks only and then whites only?

3 A: Yes, I did.

4 Q: Okay.

5 A: All races combined, and then blacks, which essentially
6 comprised two-thirds of the SCDC population, and then whites
7 which comprised a one-third.

8 Q: And these were all prepared by you?

9 A: Yes. This is correct.

10 MS. BAER: Your Honor, I'd move to have Defense Exhibits
11 Seven, Eight and Nine admitted into evidence.

12 THE COURT: Any objection from Defense?

13 MR. FINNEY: No, objection.

14 THE COURT: Seven, Eight and Nine are into evidence.

15 DEFENDANT'S EXHIBITS NUMBER SEVEN, EIGHT AND NINE

16 ADMITTED INTO EVIDENCE

17 MS. BAER: All right. Thank you.

18 BY MS. BAER:

19 Q: Okay, so back to what you were saying. So, looking at
20 Exhibit Seven, can you explain to us -- let's start with
21 columns one through four. What do those columns represent?

22 A: Okay. Essentially, what I had was a 20-year look back
23 period of what was going in the SCDC population. I had --
24 when you take a look at this, you know, this block of
25 experience, you have people coming in and out at different

1 ages, people who stay for longer periods of time, people who
2 stay for shorter periods of time, people come in when they're
3 young and leave shortly or long, people who come in when
4 they're old. You have all kinds of different people coming
5 and going in that 20-year period of time. So, what I am doing
6 in this particular analysis is saying for all the people
7 during that 20-year period of time, how many people passed
8 through age 18 and did anybody die during age 18. How many
9 passed through 19 and died during that time at that age, and
10 so on and so forth. So, I condensed 20 years of experience
11 and exposure and observation into these experience for each of
12 these ages. So, I would know how many 20-year-olds were
13 there and then how many people who died at age 20. And then
14 you -- as we discussed before in doing a mortality rate, the
15 numerator is the number of deaths, and the denominator is the
16 people exposed at that time. And that is -- those are the
17 numbers in the first four columns. You've got the age, the
18 people who were alive, the people who died during that time,
19 and then the total at risk.

20 Q: Okay. If -- looking at column five, I think you may've
21 just answered this question, but how do you calculate that
22 mortality rate?

23 A: The mortality rate, you take the number of people who are
24 dead, and that's the numerator, and the denominator is the
25 total number of people.

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1 Q: Okay. Looking at column six, the smooth mortality rate,
2 what is the smoothing?

3 A: Smoothing, essentially when you're dealing with statistics
4 and raw data, a lot of times you do get anomalies and bumps
5 and such but what you're trying to do is find the general
6 trend, find out exactly what the trend of the mortality is.
7 And smoothing is done if all life -- with raw data, when do
8 life tables, the Vital Statistics Bureau people do that and I
9 found that I needed to do that here to be consistent.

10 Q: Okay. How about the CSO tables that are in the South
11 Carolina Code, do those have smoothing?

12 A: Yes, they would have smoothing.

13 Q: Can you explain the type of smoothing that you used in
14 this analysis and why?

15 A: Yes. The formula that the people use for the vital
16 statistics of the general population is a very sophisticated,
17 advanced formula that they worked on and perfected on for many
18 years. And I did not want to apply that to this population.
19 I have not seen an analysis of this population before, so I
20 didn't want to introduce any bias from any model that was done
21 to another population. So, what I did was try to find the
22 trend as simply as possible. And what I did was essentially
23 take a moving average of three different ages, just do a
24 moving average of that, and then where the data gets a lot
25 more sparse at the older ages, I used a moving average using

1 five rates. And that essentially finds the trend in these
2 rates and smooths them out. So, I -- so that is exactly what
3 I did.

4 Q: Okay. Where did you derive the U.S. population mortality
5 rate that in column seven?

6 A: The -- those are the rates that we found from Exhibits
7 Two, Three and Four.

8 Q: Okay. And since you conducted your analysis, has the CDC
9 released the 2012 tables?

10 A: Yes, they have.

11 Q: Okay. Is it necessary to update the SCDC tables every
12 time, every year when the new U.S. tables come out?

13 A: That's a lot of work. It would probably be more efficient
14 to switch out the underlying U.S. population mortality rate
15 for the SCDC tables every five years or so. There is a
16 progressive improvement in life expectancy as time goes on in
17 the U.S. general population. But to redo these life tables
18 for the SCDC population, would be burdensome. About five
19 years would account for any material differences there would
20 be in the improvement over the 2011 tables.

21 Q: Okay. So, you wouldn't see anything -- would you expect
22 to see any material change between 2011 and 2012?

23 A: No.

24 Q: Okay. All right. Looking at column eight, what is the
25 mortality ratio?

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1 A: The mortality ratio is a ratio of rates. It compares the,
2 the numerator would be the mortality rate from the SCDC
3 population and the denominator would be the reference
4 population which would be the U.S. population mortality rate.
5 So, the mortality ratio essentially tells you how different
6 the SCDC population is compared to the U.S. population.

7 Q: Okay. Going back to our smooth mortality rate column, why
8 is it that you don't have a smooth mortality rate for ages 15,
9 16 and 17?

10 A: Well, to -- in an analysis like this, you need to have at
11 least five or more deaths to get a reliable mortality rate and
12 I just did not have that information available for those ages.

13 Q: Okay. And is that the same reason that if you turn onto
14 Page 2 of the exhibit, if you go past, it looks like Page --
15 I'm sorry, 81 and above, you don't have anything in that
16 column, is that because you didn't have more than five deaths?

17 A: Yeah, that's correct.

18 Q: Why did you generate separate analysis tables for blacks
19 only and whites only?

20 A: Well, because this is being consistent with the U.S.
21 analysis, whites and blacks do have different levels of
22 mortality and that's significant, so I felt that I really
23 needed to do that analysis as well.

24 Q: Okay. Looking at Defendant's Exhibit Eight, the table for
25 black males only, for what ages were you able to calculate a

1 smooth mortality rate for that population?

2 A: I was able to calculate a smooth mortality rate for
3 between ages 18 and 71.

4 Q: All right. In looking at Exhibit Nine for whites only,
5 what was the range for which you were able to calculate smooth
6 mortality rate?

7 A: I was able to calculate rates between ages 20 and 76.

8 Q: All right. Now, when you prepared the life tables in this
9 case, did you use the mortality rate or the mortality ratio?

10 A: I used the mortality ratio.

11 Q: And why did you do that?

12 A: Because I do not have the mortality rates for all ages
13 from the SCDC population. I am missing the very youngest
14 people and I'm missing the very oldest people. And when you
15 calculate a life table, you need to have all the ages
16 available in order to make it a credible life table. So, I
17 used mortality ratios essentially to adjust the U.S. general
18 population mortality to reflect the SCDC population experience
19 and therefore that creates a life table that's reflective of
20 the information that we know about the SCDC population.

21 Q: Thank you.

22 MS. BAER: Your Honor, may I approach?

23 THE COURT: Yes.

24 MS. BAER: Thank you.

25 BY MS. BAER:

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1 Q: All right. Ms. Dolan, I'm handing you what have been pre-
2 marked as Defendant's Exhibits Ten through Twelve.

3 Your Honor, here's your copy.

4 Ms. Dolan, did you prepare those tables?

5 A: Yes, I did.

6 Q: Okay.

7 MS. BAER: Your Honor, I'd move to have Exhibits Ten,
8 Eleven and Twelve admitted into evidence.

9 THE COURT: Ten, Eleven and Twelve are into evidence
10 without objection from Defense; is that correct?

11 MR. FINNEY: For the State, no, Your Honor, no objection.

12 THE COURT: Okay, yes.

13 MS. BAER: Thank you, Your Honor.

14 DEFENDANT'S EXHIBIT NUMBER TEN, ELEVEN AND TWELVE

15 ADMITTED INTO EVIDENCE

16 BY MS. BAER:

17 Q: All right. Ms. Dolan, looking at Exhibit Ten, can you
18 tell us what this table is?

19 A: Exhibit Ten, this is the U.S. general population male life
20 table that's been adjusted with mortality ratios to reflect
21 the South Carolina Department of Corrections experience.

22 Q: Okay. And where do you look to find the life expectancy
23 for a particular age on that table?

24 A: In the same place that you look for it on the U.S. general
25 population life tables, it's the column all the way to the

1 right under life expectancy.

2 Q: Okay. And so what does life expectancy indicate on this
3 table?

4 A: This indicates the additional expected years of life left
5 on average for a South Carolina Department of Corrections male
6 of all races.

7 Q: Okay. And the mortality risk factor that we see in what
8 would be column three, does that correspond with the risk
9 factors that were in the prior exhibit, the mortality ratio
10 tables?

11 A: Yes. Those are the mortality ratios.

12 Q: Okay. For what age span did you have reliable data to
13 calculate life expectancy?

14 A: Well, okay, all the ages have reliable mortality rates
15 based on the general population. The ages that I had the
16 mortality risk factors specific to the SCDC population for all
17 races ranged from age 18 to age 80.

18 Q: Okay. And is that denoted on this exhibit somehow?

19 A: Yes.. If you look under the mortality risk factor, you can
20 see highlights where it starts at age 18 and it goes all the
21 way through to age 80. And where it is not highlighted, the
22 mortality rates default to the general population mortality.

23 Q: Thank you. How do you calculate the average age of death
24 using this life table?

25 A: You'd have to go through the, the mathematics of the life

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1 table. Did you want me to do that?

2 Q: Not necessarily. So, we would add the age column with the
3 life expectancy column and then that gives you the age of
4 death; is that correct?

5 A: That's correct.

6 Q: Okay. No, we don't need to go through each of them. All
7 right.

8 Excuse me. Looking at Exhibit Eleven for black men only,
9 for what age span did you have reliable data to collect -- to
10 calculate the life expectancy?

11 A: Well, the same, you know, the general population life
12 tables underlying are reliable. But, between age 18 and age
13 71, I was able to find mortality ratios specific to black men
14 in the SCDC in population.

15 Q: Okay. Thank you. And those -- that corresponds with the
16 same -- for both of these tables, it's gonna correspond to the
17 same age span that you were able to calculate mortality ratios
18 for?

19 A: That's correct. I took these mortality ratios directly
20 from the analysis that we discussed.

21 Q: Okay. So, what is the corresponding -- on Exhibit Eleven,
22 what is the corresponding high end of the additional years and
23 low end of the additional years for the span that you could
24 calculate the SCDC mortality ratio?

25 A: Could you repeat that question?

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1 Q: Yes, ma'am. I'm sorry. For what -- what is the low end
2 of the life expectancy and the high end of the life expectancy
3 for just the SCDC population where you have reliable data?

4 A: Okay. If you're asking mortality ratios ---

5 Q: I'm not. I'm asking life expectancy for SCDC inmates.

6 A: Okay. You're gonna have to -- I'm not sure I understand
7 what you're asking.

8 Q: Okay. So, for age 18, that's where you first have
9 reliable SCDC based mortality risks; is that correct?

10 A: That's correct.

11 Q: Okay. So, what is a life expectancy at 18 years old for a
12 black man in SCDC's prison?

13 A: Okay. It would be 38.2 plus 18.

14 Q: Okay. And then turning into the high end of 71 years old,
15 what would be our life expectancy at that?

16 A: Seventy-one years old, at 11.5 additional years plus 71.

17 Q: Okay. Thank you. Looking at Exhibit Twelve for white men
18 only and I'll try to ask my question more artfully this time,
19 it's the same question. But, for your low end where you had a
20 reliable SCDC based mortality risk factor, so that'd be 20
21 years old, what is the life expectancy?

22 A: It would be an additional 34 years.

23 Q: Okay. And the turning then to the high end, 76 years old,
24 what would be the additional life expectancy?

25 A: It would be an additional 9.8 years left.

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1 Q: Thank you. Now, for someone like Ronald, who is an
2 African-American male, who entered SCDC at the age of 18,
3 which table would you use for the most comparable life
4 expectancy analysis?

5 A: The one with black men.

6 Q: Okay. And so that would be Exhibit Eleven?

7 A: That's correct.

8 Q: All right. So, looking at that table, I think you
9 actually answered the life expectancy for 18, so we would add
10 18 to the 38.2, which would give us an average age of 56 years
11 old for that age of death?

12 A: I agree, yes.

13 Q: All right. Now, Ronald is currently 25 years old. So, if
14 we look at his current life expectancy, what life expectancy
15 is that?

16 A: An additional 32.2 years.

17 Q: 32.2, okay. And that gives us an average age of death of
18 57.2 years old?

19 A: I agree, yes.

20 Q: Are there any outliers in these age groups who are going
21 to die before or after the average life expectancy?

22 A: Well, the point of having an average is that it is average
23 and there will always be people above and below that. So, it
24 -- there -- that is a fact.

25 Q: Now, does -- were you able to determine a consistent

1 pattern despite any outliers in the data?

2 A: Yes. Essentially, at the youngest ages, the -- for both
3 white and blacks, the mortality ratios start off fairly low
4 but then they climb to a plateau around between 30 and 40
5 years old, and then after 40, 50 years old, it starts to
6 decline.

7 Q: Okay. So ---

8 THE COURT: Let me ask you one question. With regard to
9 life expectancy for an 18-year-old black man, the life
10 expectancy would be 38.2, according to that chart; is that
11 right?

12 A: Yeah, that's an additional 38.2 years over 18.

13 THE COURT: Yes, yes. And for a white male, it'd be 36;
14 is that correct?

15 A: Yes.

16 THE COURT: Is that generally -- is it generally true
17 that black -- the black population lives longer than the white
18 population?

19 A: Not at all, not in the general population, but I found in
20 this analysis that the people in the white category had much
21 higher mortality ratios than the people in the black portion
22 of this analysis.

23 BY MS. BAER:

24 Q: And were you -- piggybacking onto that question, were you
25 able to determine why it is that the white population in the

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1 SCDC population has a higher mortality rate than ---

2 A: No, this was a very simple straightforward analysis, kind
3 of like a chest x-ray, you go in and get your information and
4 get out. The kind of analysis that you would have to do to
5 find out the why would be a much broader, much more extensive,
6 must more costly endeavor.

7 Q: Now, how confident are you in the accuracy and reliability
8 of the life tables that you've produced in this case?

9 A: I'm very confident.

10 Q: Okay. How often -- I think we touched on it to some
11 extent, but how often do these life tables need to be updated?

12 A: Now, we touched on the -- there's the freshness of the
13 underling base table and then there's the freshness of
14 mortality ratios, and we talked about the freshness of the
15 underlying base table, which for this purpose we -- I
16 recommend every five years. For the freshness of the
17 mortality ratios, since we did the 20-year look back and it
18 did take a lot of analysis to do, I recommend that in another
19 10 years we do a 20-year look back in 10 years which -- to
20 update the mortality ratios to keep those as fresh as possible
21 because you need at least five deaths per each age to do a
22 credible mortality rate. You're going to need, you know, a
23 large span of time like a 20-year look back to do that.

24 Q: Okay. And if we update this data in 10 years, would you
25 go back and use 30 years' worth of data that you would have

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1 now or would you just go back to -- back 20?

2 A: I would go 20, because then what that does is update
3 mortality ratios to be more current.

4 Q: Thank you. All right. Now, can you conduct a reliable
5 comparison between the United States life tables and the SCDC
6 life tables that you prepared?

7 A: Yes. The only difference between the two of them is the
8 mortality ratio is there directly comparable.

9 Q: Okay. And can you tell me what the difference is between
10 -- for all males, what's the difference in life expectancy --
11 we can just go with an 18-year-old -- between the U.S. table
12 and the South Carolina table that you prepared. So, that'll
13 be Defendant's Exhibit Two and Defendant's Exhibit Eleven.

14 A: Okay. For Exhibit Two, which is the straight U.S. life
15 table for all males of all races, at age 18 there's an
16 additional 59.1 years of life left expected on average. And
17 for 18 from the SCDC males ---

18 Q: Yes. I'm sorry, and I shouldn't have said Exhibit Eleven,
19 Exhibit Ten.

20 A: Exhibit Ten, it's an additional 37.3 years.

21 Q: Okay. So, if we wanted to see how -- what the impact is,
22 would we subtract those numbers to see basically how many
23 years prison takes off your life?

24 A: Well, that's -- yeah, that would be a reasonable
25 inference, yes.

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1 Q: Okay. And can you conduct that same comparison with your
2 blacks only tables and the whites only tables that you
3 prepared?

4 A: Yeah, between the U.S. life tables and the adjusted ones
5 with the SCDC population, you can compare them directly.

6 Q: Okay.

7 THE COURT: Am I reading these tables correctly that, if
8 you were 57 years old and a black man, you would have less
9 life expectancy than a 57-year-old white man?

10 A: In the -- are you speaking ---

11 THE COURT: No, I'm talking about in prison.

12 A: Could you say that ---

13 THE COURT: Fifty-seven to fifty-eight, it says a white
14 man is -- has life expectancy of 12.2 and a black man is 11.2.
15 So, the older you get, the longer a white person would live in
16 general?

17 A: It's, it's a reflection of the survival effect, of being,
18 you know, passing through different ages. By the time you
19 reach an old age, I did not do that comparison, sir, but the
20 rates, the mortality ratios decline for both whites and
21 blacks, and so that's how the numbers come out.

22 BY MS. BAER:

23 Q: Ms. Dolan, when you're looking at life expectancy, is it a
24 static decrease that you're going to see over time or does it
25 go up, you know, up and down?

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1 A: If you're talking about the general population, the longer
2 you live, if you get past the various places where people tend
3 to die, like you make it past your youthful days where, you
4 know, young males are at risk, you have a longer life
5 expectancy after you pass through that. Also, through middle
6 age, if you pass -- if you have a bad family history or you've
7 got early heart disease or alcoholism or something like that,
8 those people tend to die out. So, if you make it to your
9 older ages, your life expectancy tends to be long because
10 either you're very healthy or you've been given very good
11 cards in your family background. So, you're -- you tend to
12 have a longer life expectancy if you make it that long. Same
13 thing, it's a selection process.

14 Q: Okay. And what about SCDC, is there a consistent pattern
15 that you saw for the SCDC?

16 A: Yeah. As you get past the high risk middle ages, when you
17 get to the older ages, the mortality ratios go down.

18 Q: Have you been able to compare the South Carolina inmate
19 statistics for life expectancy statistics with any other
20 nations?

21 A: Yeah. There is medical literature out. There was a study
22 in New South Wales, Australia for that population and also the
23 prisoners in New South Wales, Australia, and also an analysis
24 of prisoners in the Province of Ontario in Canada.

25 Q: And how did their pattern in mortality ratios and life

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1 expectancy compare with the South Carolina analysis that you
2 did?

3 A: I'm looking for my notes. Yeah, for Australian males,
4 okay, for -- when I do an average of the mortality ratios that
5 are available for all races, for the SCDC population, that
6 average ended up being 5.6. If you look at the average for
7 mortality ratios for the SCDC population for blacks only, that
8 mortality -- that average is 3.9. If you look at the average
9 of mortality ratios for all whites in the SCDC population,
10 that average is 6.7. If you look at the literature results
11 for New South Wales prisoners in Australia, for males that
12 average is 3.7, which compares reasonably with the blacks of
13 the SCDC population of 3.9. The -- in Canada, the Ontario
14 prison population for all sexes is 4.0. And for the males
15 only, it's 3.2. So, in Australia and Canada, those compare
16 reasonably -- you know, closely with what we're getting for
17 all the blacks in the SCDC population. It's the whites in the
18 SCDC population, the average of 6.7 that's standing out as a
19 striking difference.

20 Q: Okay. In the Canadian study, was there any piece of data
21 that they had that you didn't that, that was different about
22 their study that wasn't included in yours?

23 A: Yes. In the Canadian study, they showed the same kind of
24 pattern of mortality, which is a plateau between 30, 40 and 50
25 and then starting to decline after age 50. That was very

1 apparent -- that's similar that what we found in the SCDC
2 population. However, in the Canadian study, they did have
3 their juvenile group data available and the mortality was very
4 high in that group.

5 Q: Okay.

6 THE COURT: Would you say as a general -- generally,
7 you're saying that when Mr. Mack probably, by virtue of the
8 fact that he's imprisoned, it would take 20 years off of his
9 life, ballpark?

10 A: It looks like that, sir, yes.

11 THE COURT: All right. Very good.

12 BY MS. BAER:

13 Q: Now, if you had the juvenile data for South Carolina
14 inmates, would that change the analysis for the other ages
15 that you've already done?

16 A: No, because the data for the juveniles would impact the
17 life expectancy immediately for those people there. If you've
18 already lived past that time, say you're 25 or so, then what
19 happened to the juveniles would not impact you because you've
20 survived that far. And it's the people older than you that
21 impact your life expectancy with the mortality ratios and the
22 life table.

23 Q: So, ultimately, the effect, and correct me if I'm wrong,
24 but ultimately instead of having to rely for the 15, 16, 17-
25 year-olds on the U.S. ratio, you would be able to actually

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1 have a SCDC specific ratio and complete that picture of the
2 puzzle for us.

3 A: If I were able to get that raw data, then I would be able
4 to analyze that juvenile data in the same way that I did for
5 the adults, put in those mortality ratios and then get a full,
6 fully adjusted life table that reflects all the ages of that
7 are in the SCDC population.

8 Q: But that doesn't affect the life expectancy of a 25-year-
9 old?

10 A: No, because by the time you're 25 you already passed
11 through those younger ages.

12 Q: Have you looked at any medical history or family history
13 or other individual factors that are specific to Ronald?

14 A: No.

15 Q: Assuming that he is an average inmate, should the life
16 expectancy tables that you prepared be applicable to him?

17 A: Yes.

18 Q: Okay. And which table is it that we should look at for
19 him?

20 A: The ones for blacks.

21 Q: Okay. And so the average age of death is gonna be 57.2
22 years old; is that correct? That's Exhibit Eleven.

23 A: So, at age 25 it would be 32.2 plus 25 which would be --
24 yeah, 57.2.

25 Q: Okay. So, if his age at release is 67, that would be 10

1 years beyond his life expectancy; is that correct?

2 A: That's correct.

3 Q: All right. Thank you. That's all the questions I have.

4 THE COURT: We're gonna take about a five-minute recess.

5 (RECESS - 3:22 P.M.)

6 *****OFF THE RECORD*****

7 (On the Record - 3:29 P.M.)

8 THE COURT: Mr. Finney, I know you have some cross
9 examination.

10 MR. FINNEY: Very limited, Your Honor.

11 THE COURT: Very good.

12 MR. FINNEY: I wish I was smart enough to understand all
13 of this.

14 Thank you, Your Honor.

15 CROSS EXAMINATION OF VERA DOLAN BY MR. FINNEY:

16 Q: Ms. Dolan, my name is Chip Finney. I'm the Solicitor for
17 the Third Circuit. I'm pleased to know you.

18 You testified that you had about 64,000 inmate samples
19 that you reviewed to pull your information together?

20 A: That's correct.

21 Q: Out of the 64,000, could you have asked the Department of
22 Corrections to give you all of the black male 17-year-olds
23 that have been part of the prison population for the last 20
24 years?

25 A: I had originally asked for everybody.

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1 Q: Everybody?

2 A: Everybody, oh, yes.

3 Q: From ages 17 to 77?

4 A: From ages 15 and up, yes, sir.

5 Q: Okay. But I'm just saying, at the time you did your
6 calculations, you were not working on this particular case?

7 A: Not this case, no.

8 Q: Okay. So, you had a different agenda when you were going
9 through your analysis?

10 A: I had an assignment, yes, sir.

11 Q: Okay. And what I'm asking is, could you for this
12 particular case, use some of the 44 -- excuse me -- 64,000
13 samples, could you have assessed how many 17-year-old black
14 males have been in the population that you studied since 1996?

15 A: Yes. That information is on Exhibit Eight. And in
16 Exhibit Eight, you can see, you know, ages 15 through 17, the
17 individuals that I had observed in that 20-year span of
18 population, how many who were 15 ---

19 Q: Well, let's just look at 17.

20 A: Seventeen, yes.

21 Q: At the time that you looked at this and presented -- and
22 prepared this document, there were 543 17-year-olds in the
(23 Department of Corrections?

24 A: Yeah, there had been 543 people who had spent age 17 at
25 one point in the prison population; that's correct.

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1 Q: And can you tell us how many of those people had a 50-year
2 prison sentence handed to them at the time they went to
3 prison?

4 A: No, I -- there's -- I can't tell that from my data.

5 Q: Well, but the South Carolina Department of Corrections has
6 that data. They have a databank of what age a person is when
7 they're received and what sentence that person comes through
8 the Department with. Is that right?

9 A: I -- that's -- to my knowledge, yes, they do have that
10 information.

11 Q: But you don't have that information for us -- for the
12 Judge to consider today?

13 A: No, I do not.

14 Q: All right. So, in effect, there are -- and we're talking
15 -- if I'm understanding what you did, in 2016, this data that
16 you're talking about today was compiled and it looked back 20
17 years.

18 A: That's correct.

19 Q: So, the 20 years' worth of data on the 543 individuals
20 would've included Mr. Mack?

21 A: I don't ---

22 Q: Mr. Mack went to prison in 2010.

23 A: It -- I don't have any other ---

24 Q: You don't know.

25 A: I don't know, sir.

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1 Q: All right. So, if Mr. Mack went to prison in 2010 as 17-
2 year-old black man, he would've been included in the 543
3 individuals that were listed on this report?

4 A: If he was from the SCDC database, yes, he would've been in
5 there.

6 Q: All right. Do you know of any reason why you could not
7 have found out how many black men, 17 years old that came into
8 the Department of Corrections received a 50-year sentence or
9 more and what their mortality rate was?

10 A: That was not part of my assignment, sir.

11 Q: All right. And when you had the assignment, it was
12 because you were working on another case?

13 A: Yeah.

14 Q: Yeah.

15 A: My assignment was essentially to find out what the life
16 expectancy of a juvenile would be in the SCDC prison system.

17 Q: So, what I'm asking is for this particular case when this
18 particular lawyer requested your expertise, did you do any
19 further analysis relative to Mr. Mack himself?

20 A: No, I did not.

21 Q: Okay. And I think you answered the question a minute ago,
22 you don't know if Mr. Mack's got diabetes, heart condition or
23 high blood pressure?

24 A: I have no idea.

25 Q: And you don't know if Mr. Mack engages in any drugs or

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1 things like that?

2 A: I have no idea.

3 Q: And so based on the statistical analysis that you
4 performed, you believe that because he's a black 17-year-old
5 who is now 25 and in prison, he would have an additional 35
6 years to live?

7 A: It would be -- yeah, at age 25, where he is now, he has
8 statistically an average of 32.2 additional years life
9 expectancy.

10 THE COURT: So, he's got 57 years?

11 A: Yes.

12 Q: Fifty-seven would be his ---

13 A: Would be -- yeah.

14 Q: --- his life expectancy?

15 A: That's -- would be, yeah, that's correct.

16 Q: Now, could you take that same Exhibit Eleven and look at
17 the column which shows age 66 to 67.

18 A: Okay.

19 Q: If Mr. Mack was released from the South Carolina
20 Department of Corrections at age 67, what would his life
21 expectancy be?

22 A: Another 10 years.

23 Q: 10.1 years?

24 A: That's correct.

25 Q: So, the longer he stays in prison, the more likely he is

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1 to live a longer life?

2 A: The more likely he stays alive in prison that -- if he
3 stays alive. If he makes it to 66, then he would have another
4 10 years. But I don't know what his experience would be
5 between age 25 and 66.

6 Q: And you don't know the experiences of other 25-year-olds
7 who have been in prison for eight or nine years who are black
8 males is either, do you?

9 A: I know statistically on average what it would be but I
10 don't know what it would be for an individual.

11 Q: All right. Let me just ask this final question. We
12 started off the analysis this afternoon with Exhibits One, Two
13 and Three, which were life tables provided by the National
14 Vital Statistics report?

15 A: That's correct. Those are the U.S. life tables.

16 Q: And you used those in your prognostication but you didn't
17 -- these are not numbers you made up; these are numbers that
18 came to you. Is that correct?

19 A: Oh, yes. That's right. These are provided by the U.S.
20 government.

21 Q: Okay. And then Exhibits Seven, Eight and Nine were South
22 Carolina Department of Corrections men, those were the numbers
23 that you analyzed out of the 64,000 records that you reviewed
24 from South Carolina Department of Corrections?

25 A: That's correct.

1 Q: I had a question between the records that came from the
2 U.S. Vital Statistics reports where you were, I thought,
3 talking about mortality rates.

4 A: Right.

5 Q: And then you started talking about mortality ratios.

6 A: Yes.

7 Q: That sounds like you have smoothed over something. I'm
8 not making any bad judgment, I'm just saying it sounds like
9 we're talking apples and oranges now. Mortality rates are
10 exactly the same as mortality ratios?

11 A: No, they are -- mortality ratio is a comparison of two
12 rates.

13 Q: But the comparison of two rates means that you're
14 comparing the South Carolina prison population to the national
15 average.

16 A: That's right.

17 Q: Okay. And based on that comparison, you're getting a
18 number for mortality ratio that's different than a mortality
19 rate?

20 A: Well, that's right. Those are two different metrics.

21 Q: Okay. Very good. And life expectancy on your Exhibits
22 Ten, Eleven and Twelve where you have outlined population of
23 the -- adjusted for South Carolina, that's again taking
24 information from the national statistics and applying it by
25 way of the ratio to the South Carolina population.

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- 1 A: That's correct.
- 2 Q: Do you happen to know whether South Carolina inmates live
3 longer than North Carolina inmates or Georgia inmates?
- 4 A: I have not done the analysis; I have no idea.
- 5 Q: It could've been done? It could've been done?
- 6 A: I don't know. No one has -- no one asked me to do that.
- 7 Q: I think she asked you a question, Ms. Laura asked you a
8 question a minute ago about Canada or Australia or New
9 Zealand.
- 10 A: Right.
- 11 Q: Did you compare the life expectancy of South Carolina
12 inmates to North Carolina or Georgia inmates?
- 13 A: I could not find that information. The information on the
14 Australians and the Canadians were available in the peer
15 review literature.
- 16 Q: All right.
- 17 A: Had there been similar articles published on the prison
18 system, you know, the National Library of Medicine, I would've
19 -- I believe I would've found that.
- 20 Q: All right. So, you don't -- so, for a man like Mr. Mack,
21 who is young now, and you say he's got to get to that plateau?
- 22 A: He's got to live through all that time.
- 23 Q: Right, to get to the plateau.
- 24 A: To live through -- the plateau is the high, high mortality
25 rates and the ratios, high, high mortality ratios. That is

1 the SCDC population compared to the U.S. population. The
2 ratios become very high during age 30 and 40, and then
3 starting about 50, those ratios go down.

4 Q: Okay.

5 A: Which means that the mortality rate of the SCDC population
6 becomes more and more like the U.S. general population.

7 Q: But there are factors inside the statistics that you have
8 given us today which show, for example, that in the United
9 States population, whites live longer than blacks, but in the
10 prison population, blacks live longer than whites.

11 A: The mortality ratios are strikingly different in the white
12 population than the black population. The white population,
13 those mortality ratios are much higher, so that decreases the
14 life expectancy for the whites at those younger ages than --
15 so the whites have a shorter life expectancy than the blacks.

16 MR. FINNEY: I beg the Court's indulgence?

17 BY THE COURT:

18 THE COURT: While you're looking at that, let me ask you
19 a question. Looking at this chart of the South Carolina
20 Department of Corrections men, blacks, 25, there are 7,216
21 black males that are 25 years old in the Department of
22 Corrections over this period of time?

23 A: Can you repeat -- you're looking at Exhibit Eight, sir?

24 THE COURT: It is Exhibit Eight; 7,216, is that the
25 number -- is that how many over a 20-year period?

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1 A: Yeah, over a 20-year period, 7,216 that were 25.

2 THE COURT: All right. And the next number is 46, that
3 means that there are 46 black males who died in prison at 25?

4 A: That's correct.

5 THE COURT: And the white males, there were 2,623 25-
6 year-olds died?

7 A: That's correct, sir, and the mortality ratios reflect
8 that.

9 THE COURT: That's certainly a higher percentage because
10 there's only a third the number of 25-year-old white males but
11 it almost has half the amount of the people who died at 25.

12 A: All right.

13 THE COURT: There are only 2600 white males over this
14 period of time, 23 of them died at 25?

15 A: Right.

16 THE COURT: And there are 7,216 and 46 died. That's only
17 twice the number of people but three times the number of
18 population.

19 A: That's right. The mortality rate is -- the numerator ---

20 THE COURT: And I assume the 25-year-olds are probably
21 getting killed, maybe?

22 A: Could you say that again, sir?

23 THE COURT: I assume that the 25-year-olds, if you die
24 and are 25 years old in prison, it's probably you got killed;
25 is that right?

1 A: I would -- I cannot say, sir, because this 20-year look
2 back includes people who died not only in prison but also
3 after they've been released as well. So, these are people
4 who've -- you know, this is everybody who's ever been in the
5 prison system in these ages between ---

6 THE COURT: Oh, I didn't realize that.

7 A: Yeah. And they were followed up for death.

8 THE COURT: Oh, okay. All right.

9 BY MR. FINNEY:

10 Q: Ms. Dolan, let me ask you one final question. So, during
11 this 20-year period that we looked back, if there was a
12 medical crises in the community, like AIDS, and it affected
13 the number of deaths, it would have a impact on your mortality
14 ratio to make it higher than perhaps a normal look at the
15 population on the American National ---

16 A: If there was an epidemic of something like HIV or
17 Hepatitis C or something like that, it would have an impact on
18 the mortality, if that were the case, but I don't know.

19 Q: And those -- if we had that kind of impact, gang violence,
20 HIV, whatever, drug abuse for a 20-year period, but we didn't
21 have that now because we discovered drugs or there was better
22 prisons or whatever, you wouldn't expect those numbers for the
23 next 20 years to be the same way?

24 A: No. If there was a material change in the environment
25 that changed the mortality rates, you know, in a contemporary

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1 period of time, that would be different than what the last 20
2 years would bring, which is why I recommended that in another
3 10 years, we do another 20-year look back to account for any
4 changes in the prison system that changed the mortality.

5 Q: All right. And you didn't do any study as a result of
6 your work -- I'm asking, did you do any study as a result of
7 your work on what happens to prisoners as they age and get
8 into their 40s or 50s or 60s in terms of how they are treated
9 by the prison population?

10 A: No, I had no data to analyze on that.

11 Q: Thank you very much.

12 Thank you, Your Honor.

13 THE COURT: One thing that causes me a little bit of
14 concern, I kind of stumbled on that. I didn't really realize
15 that. I thought these were -- I didn't realize that. I
16 thought people who were depicted on this graph, who were dead,
17 died in prison, but that's not necessarily so?

18 A: No, that's not necessarily true.

19 THE COURT: So, a number of these people in this huge
20 population may've only gone to Reception and Evaluation and
21 been there for 90 days and gotten out, and they're a part of
22 the data which you used to calculate which would seem to
23 indicate that jail was not really the -- there's no way to
24 determine how jail affects their longevity because there are a
25 number of different things it could affect?

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1 A: Yeah.

2 Q: Like if they were in gangs, they come out and they get
3 killed. So, that really doesn't affect -- I mean, that jail
4 given the way this study is done, jail is -- it's hard to say
5 how jail affects the longevity because there are a number of
6 different things -- it might have to do with criminal
7 activity, it might have to do with lifestyle, a whole bunch of
8 other things. We just don't know.

9 A: We don't know. The -- I can refer to you the articles
10 that were from the New South Wales prison analysis and the
11 Ontario, Canada analysis.

12 THE COURT: Well, I would anticipate you can probably
13 tell me about it. What does it say?

14 A: That -- very quickly in a nutshell, a lot of the deaths
15 had to do with mental illness, had to do with suicide, had to
16 do with overdose. And in one of the studies, they found that
17 within the year after release of prison there was especially
18 high mortality due to suicide or overdose. So, compared with
19 the general population, that's really high.

20 THE COURT: I think really the essence of this
21 presentation on behalf of the Defendant is to say that if a
22 person is in prison for 50 years, he's not gonna live as long
23 as if he were out of prison. This -- these data and these
24 documents don't necessarily say that. That probably is true
25 but this data doesn't really account for that because a lot of

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1 these people aren't even in prison for more than a year.

2 A: I did not do that analysis, sir. I did not ---

3 Q: Well, would you agree with that, that general proposition?

4 A: No, I have no opinion on that, sir.

5 THE COURT: I have no opinion.

6 A: I have no opinion.

7 THE COURT: But you're a statistician in a certain way.

8 A: Yes.

9 THE COURT: And you would agree that the statistics that
10 you used weren't necessarily having to do with a long period
11 of incarceration, which is really what we're here about is
12 because Mr. Mack is gonna be in prison, if this is not
13 changed, for 50 years. And the purpose of your testimony is
14 to say, because he's gonna be in prison for 50 years, he isn't
15 gonna make it.

16 A: All I can offer you, sir, is the life table that I
17 constructed ---

18 THE COURT: Right.

19 A: --- for the SCDC prisoner population. To answer further
20 would require more analysis than I had -- had not prepared.

21 THE COURT: Redirect?

22 MS. BAER: Your Honor, just briefly.

23 REDIRECT EXAMINATION OF VERA DOLAN BY MS. BAER:

24 Q: So, Ms. Dolan, where can we find the total number of
25 inmates that you analyzed the data for on your chart?

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VERA DOLAN - REDIRECT BY BAER

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1 A: The total -- now, if we look at ---

2 Q: Defense Exhibit Seven, I think.

3 A: Defense Exhibit Seven, if you look at the top on the third
4 line, exposure for all races, and which is the statistical
5 means that total population is 64,204 people.

6 Q: Okay. And then if we look at Exhibit Eight, how many of
7 that 64,000 is the black population?

8 A: Okay. In Exhibit Eight on the third line, there's, for
9 blacks only, there were 40,454 blacks. And off Exhibit Nine,
10 there were 22,081 whites. So, those are the individual
11 prisoner that were analyzed, that went into this analysis.

12 Q: So, it was approximately two-thirds black, one-third
13 white?

14 A: That's correct.

15 Q: And is it your understanding that's consistent with the
16 makeup of the current prison population in South Carolina?

17 A: That's my understanding.

18 Q: Now, Mr. Finney asked you if you knew anything about
19 whether Mr. Mack has heart disease, diabetes, uses drugs? If
20 he did, would that increase or decrease his life expectancy?

21 A: If he did anything that, you know, made him sick or at
22 risk, like diabetes, drug use, alcoholism, that would shorten
23 his life expectancy even more.

24 Q: Okay. And now he also asked you about North Carolina and
25 Georgia studies, while certainly I did ask you about

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VERA DOLAN - REDIRECT BY BAER

1 comparison to Canada and Australia. If you found out that
2 Georgia had, you know, a different mortality ratio would that
3 change the mortality ratio for South Carolina?

4 A: No.

5 Q: Okay. And lastly, I do want to get back to Judge Nettles'
6 point. The deaths that you have accounted here, that's not
7 necessarily the deaths in prison, that's deaths anytime during
8 the 20-year period whether they're incarcerated at the time of
9 death or they're not incarcerated during the time of death.

10 A: Right. As of 2016, those are essentially all the deaths
11 that were known for the people that were followed in this
12 population.

13 MS. BAER: All right. I think that's all for me, Your
14 Honor, for Ms. Dolan.

15 THE COURT: All right. Very good.

16 Let me ask you something, is there -- don't you think
17 that it -- I'm not even -- I reckon the appropriate question
18 for me to ask you is, Could you -- have you or could you
19 determine the mortality of individuals who have spent an
20 extended period of time in prison? For instance, younger
21 people who stay in prison or sentenced to life imprisonment or
22 an extended period of time like this, 50 years, and determine
23 how long they live in prison. And that would be a direct
24 relation between how the prison environment affects an
25 individual and their life expectancy which would be a little

1 bit more relevant than just whether or not you've ever been in
2 prison.

3 A: I could -- it's always possible to do analyses of
4 subgroups.

5 THE COURT: Now, in your -- this is kind of your bag,
6 have you ever seen an analysis of that, people who have long
7 periods of time in prison and how it affects their mortality
8 rate? I would anticipate it would reduce it drastically. We
9 know that if anybody's ever been in prison before, that
10 chances are they're gonna live about 20 years shorter but not
11 necessarily because of the prison environment.

12 A: I have not seen that literature but then I wasn't really
13 looking for that particular literature. I was looking for
14 just general mortality ratio comparison between what I found
15 here and other prison populations. You're talking about a
16 very specific subgroup analysis and that was not part of my
17 assignment for Ms. Holt. And it's an analysis that can be
18 done. I mean, it's certainly possible to be done.

19 THE COURT: All right. Very good.

20 MS. BAER: Your Honor, I ask that Ms. Dolan be released
21 at this time unless you have any other questions for her.

22 THE COURT: I can't think of any right now.

23 MS. BAER: All right.

24 THE COURT: Very good. You're free to leave. Thank you,
25 ma'am.

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1 A: Thank you, sir.

2 ARGUMENT OF COUNSEL:

3 MS. BAER: Your Honor, I've made several written filings
4 in this case which I'd like to incorporate into my argument
5 here today. That includes the original motion for
6 resentencing along with a memorandum, the reply that I made to
7 the State's initial opposition, and then also the written
8 opposition that I did to the State's motion to dismiss in this
9 case.

10 Essentially, to me, I think that there are three issues
11 before the Court today. One is, does *Aiken* apply to a de
12 facto life sentence; two, is a 50-year sentence a de facto
13 life sentence; and then three, because the State insists on
14 raising this, even though I think it was dismissed with by the
15 majority in *Aiken*, is whether Mr. Mack at the original
16 sentencing hearing somehow could have complied with *Miller* and
17 *Aiken*.

18 Briefly regarding the underlying facts, I think it's
19 undisputed that Ronald was 17 years old at the time of the
20 offense. He was sentenced by Judge Newman to concurrent terms
21 of 50 and 30 years. I disagree with the Solicitor that the
22 Solicitor did not recommend the sentence, I agree that she
23 said she wasn't going to recommend a sentence and that there
24 were no negotiations but then she recommended life.

25 THE COURT: She proceeded to do it.

1 MS. BAER: Oh, she did. Page 15, life is appropriate for
2 him. That was by Solicitor Barr. She actually says on Page
3 25, this case was at least worth a conversation about a death
4 penalty even though under *Roper v. Simmons* death penalty was
5 not an option for Mr. Mack. And while the Solicitor's office
6 seems to continue the death penalty for children, our United
7 States Supreme Court has said ---

8 THE COURT: Say that again now. Say that last thing
9 again.

10 MS. BAER: The Solicitor's office, at least in this case,
11 seems to think that the death penalty is appropriate for an
12 offense committed by a child, our United States Supreme Court
13 has said that that's unconstitutional.

14 THE COURT: I think probably what she was saying is that
15 there was a statutory aggravated circumstance is probably what
16 she meant.

17 MS. BAER: Well, she said it was worth a conversation
18 about the death penalty but the mother ---

19 THE COURT: Meaning that it could've been -- conversation
20 could mean that there was indeed a statutory aggravating
21 circumstance and therefore we needed to discuss whether it's
22 appropriate, and they have the discretion to do it or not and
23 in this instance, she could not because of the fact that it --
24 that he was a minor.

25 MS. BAER: That's true. She said the reason that she

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1 didn't do it is because the victim's mother was opposed to the
2 death penalty said because you can't give a life, you can't
3 take a life, that's also on Page 25.

4 THE COURT: Okay.

5 MS. BAER: I also think if you want to look -- and
6 perhaps I should just save this for my point three -- but if
7 you look at Judge Newman's sentencing transcript, you can
8 certainly see there that he goes on and on about how this
9 sentence isn't about Mr. Mack and that is completely at odds
10 with *Aiken* and *Miller*. The Defendant -- this sentence is
11 about the Defendant and that's not to take away from the fact
12 that a sentence is about the life that's taken by the victim
13 as well and I do recognize that. But, especially for juvenile
14 offenders, our courts recognize that there is a constitutional
15 significance to their youth and the trial judge could not --
16 or plea judge in this case, sentencing judge, could not
17 possibly have taken that into account.

18 Now, one thing that I want to note is that on SCDC's
19 website they have Ronald's projected release date as August
20 11, 2060. That is because -- and I realized that that number
21 didn't add up. So, I looked back at the sentencing sheets and
22 Judge Newman did not give credit for time served on the murder
23 conviction and he put a notation that that was pursuant to the
24 -- to the murder/sentencing statute. But, if you actually
25 read that statute, it doesn't preclude time served. Under

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1 *Boggs*, we know that you have to give time served in every
2 case, and so I think that was an error. If he actually were
3 to get credit for all of the time served that he's entitled
4 to, his release date should be May 18th, 2059, which is gonna
5 make him 67 years old and nine months. So, I know that -- I
6 originally used the SCDC number in my filing to the Court, so
7 I wanted to correct that, that that's not accurate.

8 THE COURT: And that would best be addressed through an
9 administrative proceeding, I assume.

10 MS. BAER: Yes. I'm not asking Your Honor to fix that.
11 I mean, my hope is that we'll get a resentencing hearing and
12 whatever new sentencing order that you sign, you know, won't
13 have that notation on it. But, if we don't get that far, then
14 that's certainly something that I will help Ronald to address.
15 But for purposes of figuring out whether his sentence is a de
16 facto life sentence, I think it's important to have the
17 accurate date that we're looking that for his age of release
18 because I will get it fixed, no matter how it is that I have
19 to do it.

20 THE COURT: All right.

21 MS. BAER: In answering the first question of whether
22 *Aiken* applies to a de facto life sentence, I think that you
23 have to look at the reasoning in the language of *Aiken*. *Aiken*
24 was brought as a petition in the original jurisdiction of our
25 Supreme Court. It represented a class of inmates who were all

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1 serving life without parole sentences for homicide offenses
2 that were committed when they were juveniles. And the *Aiken*
3 Court had two questions to answer. One, is *Miller*
4 retroactive; and two, does *Miller* apply in our state where our
5 sentencing is discretionary. And the answer to both of those
6 was yes. You really can't understand *Aiken* without looking at
7 our United States Supreme Court's decision that preceded it.
8 We have *Roper* that outlawed -- categorically banned the death
9 penalty for juvenile offenders. Then we had *Graham* that said
10 that life without parole is categorically banned for non-
11 homicidal juvenile offenders. And then we had *Miller* which
12 banned the imposition of mandatory life without parole absent
13 consideration of hallmark features of youth. All of those
14 decisions were based on the neuroscience that children aren't
15 fully formed such that even those who commit heinous crimes,
16 like homicide, are less culpable and are capable of change.
17 Justice Hearn, who authored the majority in *Aiken*, explained
18 why *Miller* is applicable in South Carolina even though we
19 didn't have a mandatory sentencing scheme. If you look at
20 Pages 452 and 453 of her opinion, she says that our Court has
21 to give effect to the proportionality rationale that was
22 integral to *Miller's* holding, which is that youth has a
23 constitutional significance. Thus, *Miller* did more than ban
24 mandatory life sentencing schemes for juveniles. It
25 established an affirmative requirement that courts fully

1 explore the impact of the Defendant's juvenility on a sentence
2 rendered. She said that it's the failure of the sentencing
3 court to consider the hallmark features of youth prior to
4 sentencing that offends the constitution. The Aiken Court
5 held that the principle and enunciated in *Miller* apply
6 retroactively to these petitioners, so that's the petitioners
7 that filed in Aiken, to those similarly situated and
8 prospectively to all juvenile offenders who may be subject to
9 a sentence of life imprisonment without the possibility of
10 parole.

11 In light of that, our Supreme Court set out the mechanism
12 by which we effectuate *Miller*, that's what's brought us here
13 today. The Court ordered that any individual affected by its
14 holding could file a Petition for Resentencing within one year
15 of the opinion. The use of similarly situated by our Court
16 was not an accident. It was intentionally left broad to
17 effectuate the meaning of *Miller*. While our Court had to rule
18 upon the issue that was before it, they're not ignorant of the
19 fact that de facto life sentences are not a new concept. They
20 have been around, not only in South Carolina case law, though
21 limited, but also -- and that's cited in the written filings
22 that I have -- but also around our country. I mean, after
23 *Graham* and *Miller* came out, we see a myriad of litigation
24 throughout the nation talking about de facto life sentences.

25 The United States Sentencing Commission defines a de

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1 facto life sentence as one where the length of the sentence
2 imposed is so long that the sentence for all practical
3 purposes is a life sentence and likely was intended to be so
4 by the judge who imposed it.

5 If our Court wanted to limit *Aiken* to the class of
6 individuals that the State suggests, it could've done so. It
7 could've said that this is the petitioners and any future
8 juvenile offender or past juvenile offender sentenced to a
9 "term of life without parole" but that's not what they did.
10 And the reason for that is that they didn't just rely on the
11 science and the social science, but they also relied on common
12 sense. And I'm not just saying that, that's a direct quote,
13 common sense, you see it in *Miller* and you see it in *Aiken*.
14 When you read the line of cases before *Aiken*, they discuss a
15 meaningful opportunity to obtain release. The Courts used
16 language like a lifetime of incarceration without the
17 possibility of parole, imprisonment of an offender until he
18 dies, and a forfeiture that is irrevocable. And all of those
19 things are applicable to a long term-of-year sentence just as
20 they are applicable to a life without parole sentence.

21 THE COURT: What do you think about the fact that the
22 Supreme Court, obviously they have taken a stance on this type
23 situation and they have -- I think there were probably like 48
24 cases similar to this throughout the state, is that right,
25 about 48 of them?

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1 MR. FINNEY: That's correct.

2 THE COURT: I think I've handled a bunch of them. And
3 they have taken the step to do that and then they did not
4 address de facto and then I expand what they say; what you
5 think about that?

6 MS. BAER: I don't think that it's an expansion, I think
7 it's an effectuation of what they said. I think that they
8 said similar situated intentionally. I mean, I don't think
9 there's any doubt that de factos fall under *Miller*. So, the
10 argument that de factos don't fall under *Aiken*, they're
11 basically saying that maybe instead of filing a motion for
12 resentencing, we have to do another original jurisdiction for
13 de facto life sentences. The takeaway from that is you're not
14 saying that a de facto life sentence is unconstitutional,
15 you're saying that we're not here the right way and I just
16 don't think that that's what our Court is looking for here. I
17 mean, certainly, a PCR wasn't the right way to do this. I
18 don't think they want us to flood the PCR Courts with these
19 resentencings just so they can go up that ladder; do a
20 petition for certiorari and then remand the cases back to
21 General Sessions. I think they knew that this was the most
22 effective mechanism to deal with these cases. They didn't
23 have a de facto life sentence in the class before them. And
24 so I think that's why they used that language similarly
25 situated because they saw the writing on the wall that the de

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1 factos are gonna be the next class here and they wanted to go
2 ahead and provide that mechanism for everyone who fell under
3 *Miller*.

4 Subsequent to ---

5 THE COURT: All right. Let's just assume that at some
6 point in time we get effective data that would show that long-
7 term imprisonment would reduce your life expectancy by 20
8 years.

9 MS. BAER: Yes, sir.

10 THE COURT: What's gonna happen when you get -- when
11 someone takes a look at that in a sentencing proceeding and
12 they give them 17 years? I mean, they give them an amount
13 that would allow them to remain in jail and give them about
14 three years out? They take the life expectancy of a normal
15 person, they reduce it by 20 and then give them three more.

16 MS. BAER: Okay, and then reduce the life. Well, I think
17 they will see potentially some litigation on whether that's
18 constitutional. You know, is three years out a meaningful
19 opportunity for release? I think that is probably the next
20 piece of litigation is, what does a meaningful opportunity
21 mean?

22 THE COURT: Right.

23 MS. BAER: But, you know, I do foresee and I hope that
24 that's what happens is that the judges will -- I mean, if I
25 can get a judge to minus 20, I'll consider that a victory

1 because, unfortunately, what a lot of judges in this state are
2 doing is looking at the South Carolina statutory tables, which
3 Ms. Dolan -- you know, even if you don't think that her
4 analysis on SCDC inmates is entirely complete for the purposes
5 of this case, certainly her testimony regarding the
6 inapplicability of the statutory tables, I think, is credible.
7 And unfortunately, there are a lot of judges who are just
8 gonna back three years off of that, and I don't think that
9 that is a fair reflection of the reality of what a lifetime in
10 the Department of Corrections is going to do, or certainly an
11 extensive term in the Department of Corrections, is going to
12 do to you.

13 Subsequent to *Aiken*, we have *Montgomery v. Louisiana* come
14 out from the United States Supreme Court. And I didn't
15 contain a ton of argument on that in the written filings that
16 I made and I've read it in preparation for today's case and
17 it's really not that lengthy of a majority opinion. It's the
18 opinion that found -- that effectively really affirmed our
19 Court that *Miller* is retroactive, that it is a substantive
20 rule regarding a constitutional significance. And there's
21 great language in there to explain what *Miller* really did. It
22 explains that -- it went beyond the holding of mandatory LWOP,
23 that *Miller* held that life without parole is an excessive
24 sentence for children whose crimes reflect transient
25 immaturity rather than permanent incorrigibility. The Court

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1 wrote that prisoners like Montgomery must be given the
2 opportunity to show that their crime did not reflect
3 irreparable corruption and, if it did not, their hope for some
4 years outside of prison walls must be restored. When you look
5 at *Roper, Graham, Miller, Aiken, Montgomery*, the host of out-
6 of-state cases that I cited in the opposition that I filed,
7 you can see that it's not about the semantics of life without
8 parole or a 50-year sentence, they are about whether the
9 sentence forecloses a meaningful opportunity to obtain
10 release. So, whether you call it 50 years or you call it
11 LWOP, you have the same sense of hopelessness for the
12 Defendant who has the sentence. Under both sentences, there's
13 no meaningful opportunity for release and that's why *Aiken*
14 used the similarly situated language intentionally and why
15 Ronald falls within the class to get relief.

16 THE COURT: Okay.

17 MS. BAER: The second question that brings us here today
18 is whether Ronald's 50-year sentence constitutes a de facto
19 life sentence. There are two ways that we know that it does.
20 First of all, I do want to be clear that his 50-year sentence
21 is a day-for-a-day sentence. There is no parole eligibility,
22 there's no good-time credits, he's serving every day of that
23 50 years. And if you look at Ronald's guilty plea transcript,
24 Pages 31 and 32, you'll see where Judge Newman said his future
25 is not within society. His future is out of society. You've

1 given up your freedom and you've given up the right to walk
2 among free people. Just as you snuffed out his life, you
3 snuffed out your future just the same. All the great things
4 that Mr. Carraway said about you and he thinks about you, if
5 you take advantage of those things, it will not be out in a
6 free society. You've given up your freedom and your right to
7 anyone to trust you to walk the streets. You'll have to do
8 those good deeds behind bars. That's what Judge Newman said
9 when he sentenced him to 50 years, and that's prima facie
10 evidence that Judge Newman intended his 50-year sentence to be
11 a life sentence, he intended for Ronald to spend the rest of
12 his life behind bars, and it turns out that he's right. If
13 you look at the statutory table, the life tables that were
14 prepared by Ms. Dolan, we see that an average 25-year-old
15 black man in SCDC would have a life expectancy of 32.2
16 additional years, giving him an average age of death of 57.2
17 years. And I do understand Your Honor's concern about the
18 fact that those deaths could've been in prison or could've
19 been out of prison. So I guess this idea that, well, maybe
20 you had this risky life outside of prison so those people,
21 maybe they're the ones, you know, people that get out of
22 prison and go back in, go out -- I mean, quite frankly, I
23 think you can watch the news and see the ones that they report
24 of inmates that die in South Carolina prisons. There was just
25 one on Sunday at Lieber, where my client is housed. So, the

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1 idea that people die in prison, even if this data isn't a
2 total reflection of that subset ---

3 THE COURT: Now, I assume that one that died this past
4 weekend was from a homicide?

5 MS. BAER: They say that it was -- there was no foul
6 play.

7 THE COURT: Oh, okay.

8 MS. BAER: So ---

9 THE COURT: But I would think that more of the deaths
10 would be because of sedentary lifestyle, high blood pressure,
11 diabetes and ---

12 MS. BAER: Certainly, I mean, I think common sense
13 dictates that in addition ---

14 THE COURT: --- depression and all the things that go
15 along with that.

16 MS. BAER: Yes, sir. And you know, in addition to
17 violence in the prison, which is certainly one, I think common
18 sense dictates, poor access to healthcare, poor dietary and
19 nutrition, and poor, you know, physical fitness and exercise.
20 You know, all of those things are going to contribute to an
21 earlier death.

22 THE COURT: Let me ask y'all this, would it be
23 inappropriate for me to leave the record open for this lady or
24 someone else to do a -- to find data about people who have
25 spent a long time in prison? I personally believe -- I don't

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1 know this to be the case and I don't think she knows nor do
2 you or Mr. Finney -- but I believe the data of people who have
3 ever been in prison, I think you can take 20 years off their
4 life probably because of lifestyle, in and out of prison. I
5 personally believe that it would be more for someone who goes
6 in at 17 and had to spend a life sentence there. I personally
7 believe that to be the case. I don't know whether data would
8 back that up or not but I think that's the data that the
9 Supreme Court is gonna need to make those type decisions, me
10 personally. What do you think about that, Mr. Finney?

11 MR. FINNEY: Your Honor, I think we've been gracious
12 enough through this process. I think you have afforded the
13 Defense an opportunity to bring forth their expert and the
14 information that was brought was very interesting but it
15 didn't apply to this case. And I understand that we can go
16 and spend a month or two and dig up that information. But,
17 again, we are -- and I think I see what you're saying about
18 the Supreme Court needing that information, but in this ,
19 particular case, you've got to jump over the fact that there's
20 no life sentence. And, you've got to jump over the fact that
21 the Judge had a 32-page transcript where he asked questions,
22 got information, and then in fact covered the five grounds
23 that are delineated in *Aiken v. Byars* and *Miller* and came up
24 with a sentence that nowhere approached life without parole.
25 Didn't even give the guy consecutive sentences on a burglary

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1 first and a home invasion, burglary first and a murder that
2 happened in the victim's home.

3 I will defer to the wisdom of the Court but I think you
4 have enough in the record to say that statistics are not what
5 the real deal here in this case is, that de facto, as you just
6 said was never mentioned in *Miller* or *Aiken v. Byars*, and it
7 should apply in this particular case. We may have 47 other
8 cases where it applies because those people got life. In this
9 case, it doesn't apply.

10 THE COURT: All right. What do you have to say about
11 that?

12 MS. BAER: Well, Your Honor, I will say -- so, Ms. Dolan
13 was retained by Ms. Holt but, you know, part of her funding
14 was, you know, the fact that she was gonna do this analysis
15 and it was gonna be applicable to all of these cases. So, you
16 know, she didn't pull out that subset, I can guarantee you
17 she's gonna want more funding to be able to do that. So, you
18 know, to the extent that the -- that that funding is
19 available, you know, certainly, I would be happy to have her
20 do that. The only table that I know of or study that I know
21 of is the ACLU of Michigan study that's referenced in *Bear*
22 *Cloud v. State*, that's the Wyoming case. And it did find, you
23 know, they didn't have a significant enough sample to
24 distinguish black versus white but it did find that a
25 defendant -- inmates who were sentenced to life without parole

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1 did have significantly lower -- I mean, an even lower life
2 expectancy. So, it did continually decrease. It decreased
3 from your general population, then lesser for white men, then
4 lesser for black men. So, that's different from South
5 Carolina. And then, you know, lessened then again for your
6 juvenile life without parolers. So, that's the only study
7 that I know of, and I believe that found that your average age
8 of death was about 50 years old for juvenile lie without
9 parole. I think it was 50.something but about 50 years old.

10 THE COURT: I think -- I tell you what I think would be
11 appropriate and helpful and I'll ask Mr. Finney if he objects
12 to it, but just let me take judicial notice of that being a
13 publication and read it and put it in -- make it a part of the
14 record for whatever purpose.

15 MS. BAER: Absolutely, Your Honor.

16 THE COURT: What do you think about that, Mr. Finney?

17 MR. FINNEY: You're talking about the Wyoming ---

18 MS. BAER: It's the ACLU of Michigan, it's cited in *Bear*
19 *Cloud*, which is a Wyoming case.

20 MR. FINNEY: I have no objection.

21 THE COURT: All right. Well, let's make that a part of
22 the record for whatever purpose.

23 MS. BAER: Yes, sir. Now, I also -- I'm sorry. Are you
24 ready for me to get back to argument?

25 THE COURT: Yes.

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1 MS. BAER: Okay. I'm not gonna go through all of them
2 individually to discuss the cases but I did cite multiple
3 other jurisdictions that have considered de facto life
4 sentences in the context of *Miller* that are very similar to
5 the number of years that Ronald got and found that they are de
6 facto life sentences and so *Miller* is applicable. That
7 includes *Null* out of Iowa, that was a 52-and-a-half-year
8 sentence; *Ragland* out of Iowa, that was 60 years; *Bear Cloud*
9 in Wyoming was 45; *Casiano* in Connecticut is 50 years old; and
10 *Franklin* in Florida is 50 years old. I also did cite some
11 Court of Appeals opinions, but those ---

12 THE COURT: You mean -- for 50-year sentence, you mean?

13 MS. BAER: Yeah, I'm sorry, 50-year sentence, I
14 apologize, 50-year sentence.

15 THE COURT: Right.

16 MS. BAER: So, these all found that those sentences were
17 de facto life sentences and triggered *Miller*. There were also
18 two Court of Appeals cases from other jurisdictions but those
19 are the Supreme Courts of those lands saying *Miller* applies to
20 de factos. And what's significant ---

21 THE COURT: Name those states again.

22 MS. BAER: Iowa, Wyoming, Connecticut and Florida. And
23 we see that, you know, it's to some degree difficult to --
24 parts agree on *Miller* -- but there are also, while I didn't
25 reflect all of them here, there's lots of *Graham* cases.

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ARGUMENT OF COUNSEL

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1 Because that case came out prior to *Miller*, it's a little bit
2 further along in litigation, that found de facto life
3 sentences can fall under *Graham*. And, depending on the state
4 you're in, you'll see different numbers apply. All -- the
5 common theme between all of those cases, which is why I think
6 they're important and consistent with *Aiken*, is that they all
7 talk about applying the spirit and meaning of *Miller*, and that
8 -- because that's the same basis that was articulated by our
9 Court, I think that's what makes those -- even though I know
10 it's Iowa, which is far away and Connecticut which is far
11 away, you know, it's not Alabama and Georgia -- we keep seeing
12 stuff struck down in Virginia because they keep trying to get
13 around *Miller*. They're still significant and I think more
14 applicable because they follow that same train of thought.
15 All of them referenced the spirit of *Miller* and they recognize
16 that you can't ignore reality. That a term-of-year sentence
17 can have a practical effect of mandating that a juvenile die
18 in prison and that term-of-year sentence is just as offensive
19 to the Constitution as a life-without-parole sentence that
20 mandates that he dies in prison.

21 Regarding the last question, which is whether the
22 original sentencing hearing satisfied *Aiken* and *Miller*, I've
23 already gone over the fact that the State did request life
24 without parole. There's no doubt that if Ms. -- if Ronald
25 were being sentenced today he would be entitled to a *Miller*

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ARGUMENT OF COUNSEL

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1 hearing because he was facing life without parole. The
2 argument that somehow his prior hearing could have satisfied
3 *Miller* was exactly what the dissent in *Aiken* argued and was
4 rejected by the majority. The *Aiken* majority said that even
5 though some of the petitioner's hearings touched on the issues
6 of youth, none of them approached the sort of hearing
7 envisioned by *Miller* where the factors of youth are carefully
8 and thoughtfully considered. In Footnote 8 on Page 543, they
9 explained that the hearings suffered from a constitutional
10 defect. The failure to examine the youth of the offender
11 through the lens mandated by *Miller*.

12 You know, the Solicitor said that Judge Newman did a good
13 job and I'm not here to hate on Judge Newman and say that he
14 did something wrong. What the Court specifically said in that
15 footnote is that we're not finding an abuse of discretion.
16 This isn't because our trial judges are bad trial judges and
17 did something wrong. It's because we have this new law of
18 constitutional significance handed down from the highest court
19 of our land that has said you have to go back, you have to go
20 back and look at these cases because there are a vast number
21 of them where we are potentially housing people
22 unconstitutionally. And it's unfortunate that we have to go
23 back and redo these hearings but it's what you have to do
24 because Mr. Mack has rights. He is a citizen of this country
25 and the Constitution applies to him, and it has to be given

1 effect. So, it's not about an abuse of discretion. And what
2 they said is that on resentencing, that judge will have an
3 opportunity to exercise their discretion within the proper
4 framework.

5 THE COURT: Let me ask you this question.

6 MS. BAER: Yes, sir.

7 THE COURT: Just assume or just hypothetically if he were
8 to get another sentencing hearing, what number would you think
9 would satisfy constitutional muster.

10 MS. BAER: I knew you were gonna ask me that question, so
11 I've been thinking about how to abate it. No, I'm just
12 kidding. I've been thinking about what the real response is
13 to it. The truth is you're only able under our current
14 statutory scheme to give him the mandatory minimum of 30
15 years. That's as low as you can go. I don't mean that you're
16 only enabled to give him that but that's as low as you can go.
17 You can't give him less than that. Now, whether that 30-year
18 sentence may also violate *Miller*, you know, that's a bridge
19 that I guess we'll have to cross in the future as to whether I
20 would appeal that sentence or not. But, I think the question
21 before you today is whether a 50-year sentence is too high and
22 I think based on the tables, common sense, and the case law
23 from other states, that it certainly is. So, you know, if Ms.
24 Dolan's analysis is correct, then releasing him after 30
25 years, he's gonna have about nine years on the outside. So,

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ARGUMENT OF COUNSEL

1 the question is gonna become is that a meaningful opportunity
2 for release. I don't know whether it is or not but I know
3 that all that you're enabled to give him in the low end of 30
4 years. So, I hope that that's a satisfactory answer to your
5 question but it's the best that I can come up thus far.

6 THE COURT: Well, that kinda jives with what you're
7 saying because you're saying that he's -- because he's
8 imprisoned, it's gonna take about 20 years off of his life..

9 MS. BAER: Right.

10 THE COURT: Take 20 off of his sentence and you end up
11 with 30.

12 MS. BAER: Right. But if all you do is take 20 off of
13 his sentence and prison takes 20 off his life, then does he
14 have any life -- what kind of life is he gonna have outside?

15 THE COURT: According to you, nine years.

16 MS. BAER: Right. You know, I think that's really how
17 Ms. Dolan's analysis then does become applicable to us again
18 because they were talking about what's his life expectancy
19 after release because at that point he would be someone who is
20 getting out of prison and is going to have -- you know, what
21 is his risk once he is released? So, that's where her -- you
22 know, that portion of her analysis -- I guess it would be nice
23 if she had split it up into two separate sets of data, those
24 that died in prison and those that died outside so you can
25 compare those. But, you know, I'm not sure that that nine

ARGUMENT OF COUNSEL

1 years -- for him, that's almost a geriatric release. If the
2 life tables are correct that means that all he's got is nine
3 years left. And I know that we've seen -- recently out of the
4 Fourth Circuit, there was -- *LaBlanc* was the case, *Mathena v.*
5 *LaBlanc*, I believe was the case, you know, they struck down
6 Virginia's geriatric release and said, no, you're not gonna
7 get around *Miller* that way. That's not what we mean. You
8 have to go back. And I guess at this point you're talking
9 about after resentencing. You have to give them more
10 consideration than that, a geriatric release. And we're
11 talking about -- and the problem is that the juvenile offender
12 is gonna serve a significantly greater portion of time in
13 prison than an adult offender subject to that same sentence
14 even though the juvenile offender has this constitutional --
15 the constitutional undergirding of why he's less culpable and
16 why the sentencing, the normal sentencing factors are less
17 applicable to him. The adult offender doesn't have that but
18 they oftentimes end up spending less time than a juvenile
19 sentenced to the same thing.

20 THE COURT: Why is that?

21 MS. BAER: Because they don't -- well, again, you have
22 the fact that they don't live as long. So, let's say you have
23 an 18-year-old who lives to serve all of his 20-year sentence
24 but you have a 50-year-old who only lives to serve 15 of that
25 20-year sentence, then he's done more time in prison than the

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ARGUMENT OF COUNSEL

1 50-year-old.

2 THE COURT: Okay. You're just assuming that the older
3 person dies.

4 MS. BAER: I am assuming that the older person dies;
5 that's correct.

6 THE COURT: Okay.

7 MS. BAER: On Pages 30 to 31 of the plea transcript,
8 Judge Newman repeatedly said that the sentence wasn't about
9 Mr. Mack. I pointed that out before. He -- like judges in
10 the underlying cases, he didn't have *Miller* to shape his
11 inquiry. He wasn't operating from the presumption that the
12 sentence -- that a sentence that forecloses any possibility of
13 release is unconstitutionally disproportionate for juvenile
14 offenders and has to be reserved for the worst of the worst.
15 So, again, he applied traditional sentencing theories. And,
16 especially if you read *Miller*, it talks about how each of
17 those four theories, retribution, deterrence, rehabilitation
18 - and I should've known I would forget one -- incapacitation.
19 It explains why each of those is less applicable to juvenile
20 offenders.

21 Like I said, *Montgomery* has wonderful language within it,
22 I think, to explain really what the meaning of *Miller* is, but
23 the quote from it that is applicable to why Judge Newman's
24 sentencing hearing didn't comply with *Miller* is on Page 734.
25 They wrote that even if the Court considers a child's age

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ARGUMENT OF COUNSEL

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1 before sentencing her, him or her, to a lifetime in prison,
2 that sentence still violates the Eighth Amendment where a
3 child whose crime reflects unfortunate yet transient
4 immaturity. *Montgomery* explains that *Miller* found that the
5 sentence of life without parole is disproportionate for the
6 vast majority of juvenile offenders raising a great risk that
7 many are being held in violation of the Constitution. The
8 only way we know whether an individual's sentence is
9 constitutional is to give him an opportunity to show that his
10 crime did not reflect irreparable corruption. And, in our
11 state, that mechanism currently in place is a resentencing
12 hearing.

13 So, for all of those reasons, I'd ask you to deny the
14 State's motion to dismiss and allow Mr. Mack, Ronald, to have
15 his sentencing hearing.

16 THE COURT: Very well presented.

17 Mr. Finney?

18 MR. FINNEY: Your Honor, I do agree that was a great
19 presentation. It just seems like it's all cherry picking to
20 me. She wants us to take the language in *Miller* that applies
21 to life without parole and apply to a case where there is no
22 life without parole. She wants us to take the bulk of
23 information which is preserved in the transcript that the
24 sentencing judge had about a home invasion, about these guys
25 being best friends, about the multiple shots that were fired

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ARGUMENT OF COUNSEL

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1 into the victim, all of those factors, to come up with a
2 sentence, as we've already said before and I hate to repeat
3 myself, didn't even give the guy consecutive time. What
4 bothers me, really, Judge, is that by listening to counsel's
5 argument, you can tell that she's expecting that she couldn't
6 get a day more than 50 years after we have the resentencing
7 hearing. So, that's ---

8 THE COURT: Say that again now.

9 MR. FINNEY: She is expecting that her client could not
10 receive a longer sentence if we give her the resentencing
11 hearing, which is absolutely not true. If you order the
12 resentencing hearing and you listen to all the evidence,
13 you're free to sentence him to life or 80 years or 100 years.
14 That's my understanding of the situation. But she's, she's
15 cherry picking here.

16 THE COURT: That does create an interesting situation,
17 because I was operating under the impression at one time that
18 if there was ever a reconsideration of a sentence that you
19 couldn't give them more than what they initially received and
20 there's some language that seems to indicate if there's a
21 change in circumstance, perhaps you could.

22 MR. FINNEY: Well, I don't know if there would
23 necessarily be ---

24 THE COURT: What is the law on that? Can you get -- can
25 I give him more than 50 years?

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ARGUMENT OF COUNSEL

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1 MS. BAER: May I? Your Honor, I believe that it is
2 possible that on a resentencing that an inmate's sentence can
3 increase. I'd have to go research that to give you a specific
4 case on it. However, it depends on the reason for the
5 increase.

6 THE COURT: It would certainly have to be based in fact.

7 MS. BAER: Exactly. There has to be a reason for the
8 increase because a vindictive increase is absolutely
9 appealable and would not be upheld on appeal. However, yes,
10 there is law out there -- we've had a person pled guilty and
11 then they go to trial and after a new trial, new facts come
12 out of the trial and so at that point, you know, the
13 sentencing judge after that retrial sentences to something
14 higher and it's not because you're penalizing him for coming
15 back and getting a new trial but it's because additional facts
16 came out at that hearing. Obviously, you know, it's a
17 strategic decision for every client whether they want to file
18 for resentencing or not. I know Ronald now. He's been my
19 client for two-and-a-half years. I think ---

20 THE COURT: But if your argument -- if your argument has
21 merit, it really makes no difference whether it's 50 or 100.

22 MS. BAER: That's correct. That's correct. I mean, if
23 Your Honor didn't -- I'll be blunt -- if Your Honor didn't
24 change a sentence beyond 50 years or, you know, or if you
25 increase it to 100, I would still appeal saying that that is a

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ARGUMENT OF COUNSEL

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1 life without parole sentence.

2 THE COURT: But what you're saying is he doesn't have a
3 -- your position is he doesn't really have a whole lot at
4 stack for an increase in sentence because 50 is gonna do it
5 ---

6 MS. BAER: Exactly.

7 THE COURT: --- do it anyway.

8 MS. BAER: Exactly. And, you know, like I said, it's a
9 strategic decision. If you have a client who, you know,
10 you're afraid is going to be found irreparably corrupt, then
11 that would be a reason maybe not to pursue this and let them
12 keep their term of years and pray that they live longer. But,
13 you know, for a client like Mr. Mack, we made the decision
14 that we think this is worth that risk.

15 THE COURT: All right. Mr. Finney?

16 MR. FINNEY: I just would ask you to consider some of the
17 cases that have been presented to the Court and you will find
18 that each and every one of the cases deals with -- and I would
19 just pick the one that she spent the most time on, which was
20 the *Null* case out of Iowa, talks about that there were three
21 different types of cases that the Court had to deal with. One
22 was death penalty with juveniles. The other one was life in
23 prison without parole on a juvenile non-homicide defendant.
24 And finally, mandatory life without parole cannot be imposed
25 on a juvenile who commits a homicide without considering the

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1 mitigating characteristics of youth. All of those situations
2 were different than the case we have here in terms of the fact
3 that the judge did not sentence Mr. Mack to a life sentence.
4 There was no -- I think it's very important that there was no
5 negotiations by the State. Mr. Mack knew when he went in
6 there that he could get a life sentence and he chose to plead
7 guilty instead of exercise his rights. And I think finally,
8 Your Honor, that the fact that they are now alleging that Mr.
9 Mack has a constitutional right to come out into the community
10 to be rehabilitated, it flies in the face of all of the cases
11 that I've ever seen where a judge does consider, no matter
12 what the age is, the actions of the person and the background
13 of the person in giving a sentence. Some judges don't think
14 that rehabilitation is possible. And in certain cases, that
15 sentence is going to be lengthy sentence because you're saying
16 in effect you may not be able to come back out in the
17 community but when you do come out, you're not gonna be a
18 young person riding around with a gun or dealing with drugs.
19 You're gonna be somebody who is gonna sit on the front porch
20 because of your age and judges have done that forever. And I
21 don't see any difference in a case where there is a homicide
22 and a judge gives a young man a sentence that he can go and
23 serve and come back home and be an older, not necessarily
24 productive citizen, but he'll be an older citizen, and I think
25 what's what Mr. Mack got. And the key to this case at the

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1 sentence that the judge gave him is that Mr. Mack's got in his
2 hands the ability to stay out of trouble, serve the sentence
3 and come home. If he doesn't want to do that, then no, he may
4 not get out of prison. That's on him. And Judge Newman said
5 that explicitly in the transcript. Ms. Laura says on Page --
6 I think its Page 16 of her brief that Judge Newman said that
7 Mack is a lost cause as far as society is concerned. That is
8 not correct, Your Honor. The transcript will show that the
9 judge says that Mr. Mack is almost a lost cause. He was
10 giving him the benefit of the doubt and he gave him the
11 benefit of the doubt by giving him a 50-year sentence as he
12 did by arguing that Mr. Mack chose the route he did based on
13 the facts. He didn't make this case up in terms of not
14 applying the facts and the factors that were outlined in the
15 *Miller* case. The judge used each of the fact, the kind of
16 background he had, the kind of family members he had around
17 him, the lack of support from the family; all those factors
18 were taken into consideration when the judge gave up this
19 sentence.

20 And, so, we respectfully ask the Court to grant the
21 motion to dismiss the case because it doesn't apply. *Miller*
22 and *Aiken* don't apply in this particular case, not saying that
23 juveniles are not entitled to a hearing, they are. We want
24 the law to be followed but we want the law to be followed
25 specifically as it was addressed. And to make this de facto

ARGUMENT OF COUNSEL

1 argument now because 35 years, 45 years, all of these numbers
2 now are gonna be de facto cases if the door is opened to this
3 case.

4 THE COURT: How do you envision if -- obviously, this
5 matter is gonna go before the Supreme Court and at some point
6 in time they're either gonna say there is no such thing as de
7 facto, it's either life or not, and how do you think they're
8 gonna address it as far as what is de facto life and what
9 isn't?

10 MS. BAER: As far as where is the cutoff?

11 THE COURT: Yes.

12 MS. BAER: I have a feeling that what the Court is going
13 to do is unfortunately what appellate courts often do, which
14 is just rule on the sentences before them, whether it's de
15 facto or life and probably not give us a clear cut this is the
16 cutoff. And I say that not with any disrespect to the
17 Appellate Courts but I think that, you know, to some degree
18 they have to be careful about ruling on the issue before them
19 and perhaps the question presented would leave them open to
20 that but generally they're gonna rule just on this person.

21 THE COURT: And give them -- give the trial judge who
22 gets to hear it all make that call.

23 MS. BAER: Exactly, exactly. And that's consistent with
24 what's been done around the country. You know, these cases
25 don't say -- none of those cases say and this is your cutoff.

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BY THE COURT

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1 They all say 50 is, 60 is -- I mean, and I shouldn't say they
2 all say but the ones that I'm citing do where they found --
3 where they have found de factos, because there's cases out
4 there that aren't but I wasn't gonna do the full -- State's
5 research for them. You know, there are cases out there that
6 say differently and, you know, and we'll see how those turn
7 out on appeal.

8 BY THE COURT:

9 THE COURT: All right. What I'm gonna ask that each of
10 you do is to write a fairly exhaustive proposed order within
11 the next 30 days and if y'all could forward the original to me
12 with a self-addressed, stamped envelope. And I want to take
13 moment to review these riveting statistics and this transcript
14 and all the law and I want to give it -- certainly, it's a
15 very important matter and I want to give it the proper amount
16 of consideration. And I would like to speak with counsel in
17 chambers before y'all leave.

18 MS. BAER: Your Honor, may I put one more thing on the
19 record?

20 THE COURT: You may.

21 MS. BAER: I know that I'm not the moving party so I'll
22 don't get the last word. But, Page 31, Line 11 is where Judge
23 Newman said he's a lost cause as far as society is concerned.
24 So, if I'm gonna be accused or misrepresenting the transcript,
25 I'd like to correct it for the record.

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BY THE COURT

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1 THE COURT: All right. Mr. Finney, anything you'd like
2 to say?

3 MR. FINNEY: No, Your Honor.

4 THE COURT: All right. I think the transcript speaks for
5 itself and I'll read it, as they say, as Judge Anderson would
6 say in toto. I'll read it in toto.

7 All right. Very good. And we'll stand adjourned.

8 Good luck to you, Mr. Mack.

9 MS. BAER: Thank you, Your Honor.

10 MR. FINNEY: Thank you, Your Honor.

11 (ADJOURNED - 4:38 P.M.)

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**Respondent's Ex. 10,
Supplemental Affidavit of Expert**



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE



COPY

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 16, 2017

The Honorable Michael G. Nettles
Florence City-County Complex
180 North Irby Street, MSC-XX
Florence, SC 29501

Re: State v. Ronald H. Mack, 2009-GS-45-180

Dear Judge Nettles:

Please find enclosed the Supplemental Affidavit of Vera Dolan, which I am mailing to the Williamsburg County Clerk of Court today for filing. As instructed at the original status conference in this case, because none of our offices are located in Williamsburg, I am sending courtesy copies of my filing to your Honor's chambers and Solicitor Finney via e-mail.

As your Honor will recall, on February 17, 2017, a hearing was held on the state's motion to dismiss the defendant's motion for resentencing pursuant to *Aiken v. Byars*. Vera Dolan was qualified as an expert in life expectancy and epidemiology. Ms. Dolan prepared a life table specific to incarcerated male inmates in the South Carolina Department of Corrections ("SCDC"). The underlying data included all men who were incarcerated for any length of time in SCDC during the relevant twenty-year period.

Following Ms. Dolan's testimony, your Honor inquired as to whether it would be proper to leave the record open for Ms. Dolan or some other statistician to analyze the subset of the inmate population who have been sentenced to lengthy incarcerative sentences. I responded that I would welcome the additional time to have Ms. Dolan investigate that further, but that it would require additional funding. I also informed your Honor of an ACLU of Michigan study specific to inmates serving life sentences, which I mailed to you and Solicitor Finney along with the defendant's proposed order.

A CERTIFIED TRUE COPY
Sharon W. Staggers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY
MAY 16 2017
11:15 AM
FILED

Letter to Hon. Michael G. Nettles
May 16, 2017
Page 2 of 2

In in the intervening months since the hearing – and with the assistance of Justice 360, a non-profit organization in Columbia – Ms. Dolan has reviewed the data for inmates sentenced to “life” in SCDC. Thus, this information is now available without the requirement of any further monetary resources. As explained in the enclosed affidavit, Ms. Dolan found that the population of “lifers” was too small to produce a reliable life table for them. However, Ms. Dolan was able to calculate the average difference in the number of years between their actual age at death and their expected age at death based on the U.S. life tables. Her analysis found that a male sentenced to life in SCDC “is at a much higher risk of mortality and has a significantly shorter life expectancy than the general population.” Specifically relevant to the present case, an individual sentenced to life who entered SCDC between the ages of 16 and 19 died while incarcerated an average of **31.8 years earlier** than predicted by the U.S. population life expectancies. See Affidavit, paragraphs 15 to 18. This disparity for “lifers” is ten years greater than the 21.8 year difference in the life expectancy of a nineteen year old male in SCDC (37.3 years) and nineteen year old male in the general U.S. population (59.1 years). Compare Exhibits 5 and 8.

By copy of this letter with enclosures, I am serving a copy of the above documents upon Solicitor Finney.

I hope that this information will aid your Honor in making your decision in this matter. If you require additional information, please contact me.

Sincerely,



Laura R. Baer
Appellate Defender

Enclosures

cc: Hon. Ernest A. Finney, III, Solicitor
Hon. Sharon W. Staggers,
Williamsburg Co. Clerk of Court
Ronald Mack

RECEIVED

MAY 22 2017

APPELLATE DEFENSE

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

State of South Carolina,

v.

Ronald Hakeem Mack,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2009-GS-45-180



COPY

**SUPPLEMENTAL
AFFIDAVIT
OF VERA DOLAN**

Comes now the Defendant, Ronald Hakeem Mack, by and through his attorney, Laura R. Baer, and files the following:

Supplemental Affidavit of Vera Dolan with exhibits.

Respectfully Submitted,

Laura R. Baer
Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330
Attorney for Defendant

RECEIVED

MAY 22 2017

APPELLATE DEFENSE

A CERTIFIED TRUE COPY
Sharon W. Staggers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

2017 MAY 18 PM 12:33
OFFICE OF THE CLERK
WILLIAMSBURG, SC

FILED

STATE OF NEVADA

COUNTY OF CLARK

AFFIDAVIT

Vera F. Dolan who appeared personally before me, affirms and states the following:

1. I, Vera F. Dolan, am an epidemiologist and consultant. My business is located in Las Vegas, Nevada.
2. *Referral Question:* In 2015, I was asked by a lawyer representing a juvenile previously sentenced to life without parole to conduct an investigation and develop a life table with life expectancies specific to male inmates in the South Carolina Department of Corrections ("SCDC"). The question to be answered by my investigation was: what is the proper and accurate life expectancy for a male entering SCDC at the time he was a juvenile?
3. *Qualifications:* I am an epidemiologist¹ with a Bachelor's degree in public health from Johns Hopkins University and a Master's of Science in Public Health in epidemiology from the University of North Carolina, Chapel Hill. I have over 30 years of experience in the life and health insurance industries. I am a Fellow of the Academy of Life Underwriting, which is the highest credential in life insurance underwriting. I am currently a private consultant for the life insurance industry and related industries.
4. I have published over 33 peer reviewed articles in which I prepared a mortality ratio analysis from raw population data. I have prepared life tables for over 35 years, beginning when I was a student studying for my Masters of Science in Public Health. My current curriculum vitae is attached as Exhibit 1.
5. I have been qualified as an expert in life expectancy, life insurance, and epidemiology in state and federal courts throughout the country. In South Carolina, I was qualified as an expert in life expectancy and epidemiology in the Williamsburg County Court of General Sessions. In that court, I testified about my South Carolina study and life expectancy findings for SCDC inmates.
6. *Definition of Relevant Terms:*
 - a. **Life expectancy:** the statistical calculation of the average length of life expected for an individual of a certain age, sex, race, and/or other risk factor.
 - b. **Life table:** data laid out in a table format to show how a statistical calculation of life expectancy is done.

¹ An epidemiologist is similar to an actuary in that both are professionals who create life tables to determine life expectancies for various populations. Epidemiologists, unlike actuaries, have a medical background and specialize in the study of health and disease in populations statistically.

- c. **Mortality rate:** the rate at which people die within a given age, sex, race and/or other risk factor group. A mortality rate is calculated by dividing the number of deaths occurring within a given population by the total number of that population at risk of death.
7. *South Carolina Code Life Expectancy Tables:* The South Carolina legislature adopted life expectancy tables, which are contained in S.C. Code § 19-1-150. The tables found in the South Carolina Code were derived from the 2001 Commissioners Standard Ordinary Mortality Tables ("CSO Mortality Tables"). The CSO Mortality Tables were created by the Society of Actuaries in conjunction with the National Association of Insurance Commissioners to provide statutory guidance to state insurance commissioners in figuring out what statutory reserves should be for insurers in their state. The CSO Mortality Tables do not reliably predict the life expectancy for the general population or an incarcerated population because they are based on the lives of insured people, essentially selecting a portion of the population that is much healthier than the general population. An additional problem with the tables is that they were created in 2001 with data much older than 2001 causing concerns that the data relied upon by the tables is outdated and unreliable.
 8. *Methodology:* To determine life expectancies for male inmates in SCDC, I reviewed approximately 68,000 male inmate records provided to me by SCDC.² The SCDC information included a unique identifier for each inmate (in place of the inmate's name), their date of entry to SCDC, their age at entry, and the date of release or death (where applicable). Those records originally included all inmates incarcerated from 1996-2015 and included follow-up data through the first half of 2016. Of the 68,000 records, I identified 3,000 duplicate records and excluded them from my final data set. I also identified and excluded a small number of records where the dates of admission and dates of death or release were incongruent. After making these exclusions, I reviewed the records of the remaining 64,204 unique inmates. For purposes of this affidavit, the records of the 64,204 inmates reviewed are referred to as the "SCDC Population."
 9. In the SCDC records provided to me was information from the South Carolina Department of Health and Environmental Control ("DHEC") on all of those individuals who died between 1996 and 2016. As part of the preparation of the records provided to me, DHEC used the identifying information provided by SCDC to link the SCDC database with DHEC's information. I was thus provided with the

² I did not receive data from the South Carolina Department of Juvenile Justice, so I did not have sufficient data to calculate the mortality rates of 15, 16, or 17 year olds. This does not affect the accuracy of the reported life expectancies for inmates 18 years old and older because, as discussed below, life expectancy is based on mortality rates for people the same age as the individual and those older than that individual.

date of death and the age at the time of death for each individual within the SCDC population who died at some point after they entered SCDC.³

10. *Mortality Rate Calculation:* To determine life expectancies from the SCDC Population, I first needed to determine the mortality rates for each year of age of people incarcerated in SCDC. Exhibit 2 shows my mortality rate calculations for all individuals incarcerated in SCDC between 1996 and 2015 (Exhibits 3 and 4 show my calculations for black inmates only and white inmates only, respectively). The following is a description of my mortality rate calculations, using column references to the tables in Exhibits 2, 3, and 4.

- a. The first column labeled **Age** lists ages 15 through 97. This range was used because an individual who was incarcerated at SCDC at some point between 1996 and 2015 was alive at each age between 15 and 97.
- b. The second column labeled **Alive** represents the number of men from the SCDC Population who passed through a given age during the time period between 1996 and 2015.
- c. The third column labeled **Dead** provides the number of men within the SCDC Population who died at a given age any time between 1996 and 2016.
- d. The fourth column labeled **Total** provides the total of the “Alive” and “Dead” columns, which is the total population at risk of death during a given age.
- e. The fifth column labeled **Mortality Rate** provides the rate at which men in the SCDC population die at any given age. The mortality rate is calculated by dividing the number of people who died (column three) at a given age by the total number of people at risk of death (column four) during the same age.
- f. The sixth column labeled **Smoothed Mortality Rate** provides the trend of the mortality rate. In statistics, when dealing with raw data like the data relating to the population considered in this case, the rate calculations can have anomalies and bumps such that smoothing is necessary to identify the actual trend over time. To find the trend for the SCDC population mortality

³ The individuals died either during their incarceration or after their release from SCDC. Reliance on mortality information both during incarceration and after release is standard methodology in the actuarial field for calculating the life expectancy of individuals who have been incarcerated. Using this data provides the most reliable calculation for the life expectancy of a juvenile sentenced to a prison term of any length of time. Other analyses, including a study of deaths of incarcerated individuals serving life sentences shows the observed age at the time of death for those individuals who died while incarcerated is substantially lower than the life expectancy calculated from the data obtained from DHEC. See ¶¶ 17-18.

rate, I calculated the three-year moving average of the mortality rates by averaging a given age's mortality rate with the two ages surrounding it. As the data became sparser at the older ages, I used a five-year moving average, which included the mortality rate at a given age and the two ages above and below it. This calculation found the trend in these mortality rates for a more accurate calculation of life expectancies at each age.

11. *Mortality Ratio Calculation:* I next compared the SCDC Population mortality rates with the general United States population mortality rates.

- a. The seventh column on Exhibits 2-4 labeled **US Population Mortality Rate** provides the most current mortality rates by age for males in the US population available at the time of this analysis. These mortality rates were determined by the Centers for Disease Control ("CDC") and is used in life tables published in the CDC's Vital Statistics Reports. The CDC mortality rates are calculated for life tables for the all US males, for black US males only, and for white US males only; these life tables are attached as Exhibits 5, 6, and 7 respectively.⁴ On SCDC Population Mortality Rate tables (Exhibits 2-4) for various races, the US Mortality rate was obtained from the US Life Table for the same race.
- b. The eighth, and final column, on Exhibits 2-4 labeled **Mortality Ratios** compares the smoothed mortality rate from the SCDC Population at a given age with the US Population mortality rate for the same age. The mortality ratio is calculated by dividing the SCDC Population mortality rate by the US Population mortality rate, meaning any mortality ratio over 1.0 indicates the SCDC Population mortality rate is higher than the US Population mortality rate. Mortality ratios are provided only for ages in which there were at least five deaths among the SCDC Population in order to ensure the accuracy of the resulting ratios and life expectancies.

12. *Race Specific Calculations:* I created mortality rate and mortality ratio tables for all races, blacks only, and whites only because doing so is consistent with the CDC analysis of the US population, which shows that race has a significant effect on mortality rates.

13. *Creation of Life Tables:* Life tables provide life expectancies based on mortality rates from a given population. Using the mortality ratios calculated in Exhibits 2-4, I created life tables for the SCDC Population. I created individual life tables for all males, all black males, and all white males, which are attached as Exhibits 8, 9, and 10, respectively. The following is a description of the life expectancy calculations, using column references to the tables in Exhibits 8, 9, and 10.

⁴ The mortality rates on the CDC US Population Life Tables are found in the column labeled **Probability of dying between ages x and x + 1** on Exhibits 5-7.

- a. The first column labeled **Age** lists all ages 0-100.
- b. The second column labeled **Basic Mortality** provides the mortality rate at a given age from the US Population Life Tables (Exhibits 5-7).
- c. The third column labeled **Mortality Risk Factor** is the mortality ratio calculated on the SCDC Population Mortality Rate Tables in Exhibits 2-4.
- d. The fourth column labeled **Adjusted Mortality** provides the US mortality rate for a given age adjusted by the mortality risk factor (mortality ratio) using multiplication.⁵ At ages where there was sufficient mortality data (five or more deaths at any given age) from the SCDC Population, the adjusted mortality rate equals the mortality rate calculated from the SCDC Population data.⁶ At ages where there was insufficient mortality data (four or less deaths at any given age) from the SCDC Population, the adjusted mortality rate equals the US Population mortality rates.
- e. The fifth column labeled **Population at Risk** starts with a hypothetical cohort, or population of 100,000 at age 0. This population is decreased at each successive age by the number of deaths that occurred at the previous age. For example, in the SCDC Life Table for all races (Exhibit 8), the population at risk in age 0-1 is the full hypothetical cohort of 100,000 less 658 deaths that occurred during the first year of life.
- f. The sixth column labeled **Deaths** provides the number of deaths expected to occur at a given age. This number is calculated by multiplying the adjusted mortality rate (column four) by the population at risk (column five).
- g. The seventh column labeled **Interval Person-years** provides the number of years lived by the remaining population during a given age. This is calculated by subtracting one half of the number of deaths during that age from the population at risk during a given age (this assumes the individuals who die during that year live an average of half the year before dying).
- h. The eighth column labeled **Cumulative Person-years** provides the total number of years left to be lived by the entire population surviving to a given

⁵ I used the mortality ratio (comparing the SCDC Population mortality rates to the US Population mortality rates) because I did not have mortality rates for all ages from the SCDC Population data. Specifically, there is not sufficient data for male SCDC inmates at the very youngest and very oldest ages. In order to create a credible life table, one needs to have mortality rates for all of the ages. Use of the mortality ratio to create an adjusted mortality rate is standard practice in the actuarial field when reviewing populations that do not have enough data to calculate credible mortality rates for all ages.

⁶ These ages are designated by highlighting in the Mortality Risk Factor column.

age. This is calculated by totaling the interval-person years for a given age and all of the ages after that age.

- i. The ninth column labeled **Life Expectancy** provides the remaining life expectancy for any SCDC inmate surviving to a given age. It is calculated by dividing the cumulative person-years (column eight) by the population at risk (column five) at a given age.
- j. To use the life expectancy to calculate the age to which an SCDC inmate is expected to live, on average, locate the age of the inmate in the age column and identify the corresponding life expectancy, then add the person's age to the life expectancy. For example, on the Life Table for blacks only (Exhibit 9), a black male inmate in SCDC at age 18 has a remaining life expectancy of 38.2 years. This individual would, therefore, be expected to live to age 56 (18 + 38.2).

14. *Notes on Using Life Tables:* Because race is a risk factor affecting life expectancy, it is most appropriate to use the life table for the race corresponding to the actual inmate to determine the life expectancy for that inmate. For example, a black male inmate's life expectancy is most accurately determined by using the Life Table for black males only (Exhibit 9). A white male inmate's life expectancy is most accurately determined by using the Life Table for white males only (Exhibit 10). Hispanic or Latino inmates' life expectancies are most accurately calculated by using the Life Table for white males only (Exhibit 10) because SCDC classifies them as white.⁷ Life expectancies for inmates of other races can most accurately be calculated by using the Life Table for all races⁸ (Exhibit 8).

15. *Findings:* The SCDC Population Life Tables (Exhibits 8-10) can be compared to the US Population Life Tables (Exhibits 5-7). Comparing the life expectancy for 18 year old males of any race in the general US Population and the SCDC Population reveals that an 18 year old in the general US Population has a remaining life expectancy of 59.1 years (expected death at 77 years old) and an 18 year old male in SCDC has a remaining life expectancy of 37.3 years (expected death at 55 years old). The 18 year old who is incarcerated in SCDC, accordingly, has a life expectancy that is 21.8 years shorter than a male in the general US Population.

⁷ Because SCDC does not classify Hispanic or Latino inmates separately from whites, the white male only mortality rates and life table include data from Hispanic and Latino inmates.

⁸ In addition to classifying inmates as black or white, SCDC uses classifications for Pacific Islander, Asian, American Indian, unknown, and other, but these categories of inmates did not include a sufficient number of inmates to allow for creation of a life table specific to them. Thus, all races are included in the Life Table for all races and that table can be used for inmates who do not fall within the black, white or Hispanic/Latino categories.

16. The Life Tables created based on the SCDC Population clearly indicate that any person who has been incarcerated in SCDC has a lower life expectancy than a person in the general US Population.

17. *Observed Data on Deaths in SCDC:* SCDC also provided me with information on all inmates serving a life sentence who died in SCDC between January 2001 and June 2016. The number of deaths during this period was not sufficient to create a credible life table for inmates serving life sentences who died while incarcerated.⁹ I was, however, able to compare the actual life span of the individuals who died to their expected age of death based on the US Population Life Tables.¹⁰ I grouped these individuals by the age of their last admission to SCDC and calculated the average number of years difference between their actual age at death and their expected age at death in the table below.

Age at Last Admission Group	Average Difference Observed vs Expected Age at Death
16 to 19	-31.8
20 to 24	-26.5
25 to 29	-21.4
30 to 39	-21.7
40 to 49	-16.8
50 to 59	-10.0
60 up	-4.9

As this table shows, the individuals sentenced to life who entered SCDC between the ages of 16 and 19 died while incarcerated an average of 31.8 years earlier than predicted by the US Population life expectancies.

18. The SCDC Population Life Table for all races shows (Exhibit 8) a life expectancy for a 16 year old male incarcerated in SCDC for any length of time is 39.2 years, which is 21.8 years less than the life expectancy of a 16 year old male in the general US Population. The calculations above, based on observed deaths, show the actual

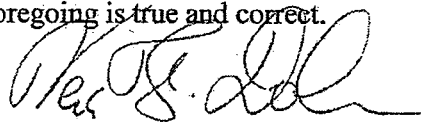
⁹ In order to create a credible life table, the population data must include five deaths at each age. During the period of 2001 to 2016, there were 262 deaths among inmates serving a life sentence. This was insufficient data to create a life table. While the data set is not large enough to create a life table, it is sufficient to show the mortality risk trend of people serving life imprisonment in SCDC as compared to the general US Population.

¹⁰ Because these deaths occurred between 2001 and 2016, I used the life expectancies published in 2000 for the general US Population. Since 2000, the life expectancies for the general population have increased.

life span of a 16 year old serving life imprisonment was 31.8 years less than the life expectancy of a 16 year old male in the general US Population. This demonstrates that a male incarcerated in SCDC for life is at a much higher risk of mortality and has a significantly shorter life expectancy than the general US Population.

19. *Other Notes:* My life expectancy calculations were completed in 2016 with records from 1996 to 2015 and mortality data through 2016. I recommend updating mortality data and mortality ratios every five years. I recommend a full twenty-year look back, as was completed here, be completed again in ten years.

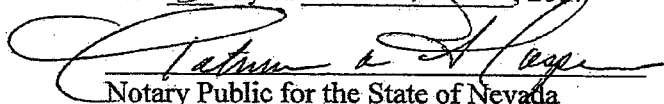
I affirm, under the penalty of perjury, that the foregoing is true and correct.



VERA F. DOLAN

Sworn to and subscribed before me

This 5 day of MAY, 2017



Notary Public for the State of Nevada

My commission expires: 10-18-2020



Exhibit 1

Vera F. Dolan

6238 Belgium Drive, Las Vegas, Nevada 89122-7592
702.476.8500 / dolanvp@consultancy.com

EDUCATION and PROFESSIONAL CERTIFICATIONS

MSPH University of North Carolina at Chapel Hill, Epidemiology, 1981
BA The Johns Hopkins University, Public Health, 1979
FALU Fellow of the Academy of Life Underwriting, 1998
ELS Editor in the Life Sciences, 2003

EXPERIENCE

Principal, VFD Consulting, Inc., 1989 to Present

Providing life and health insurance and related industries mortality and underwriting research, market research, product development, business development and technology, underwriting education and training, and litigation support to multinational clients, including:

AIG American General Life Cos.
American Family Life Insurance Co.
AVS Underwriting
Bank of America
Calypse Biomedical
Canada Life Reinsurance
Charles Schwab & Co.
Clinical Reference Laboratory
decydeWARE
Drinker, Biddle & Reath
Edwards Lifesciences
EMSI (formerly PMSI)
Farmers Mutual Insurance Co.
FaxWatch
Federal Home Loan Bank (San Francisco)
First Financial Underwriting Services
General American Life Insurance Co.
Golden Gateway Financial
Hank George, Inc.
Health Net of California
Heritage Labs
HSBC Insurance Services
Independent Order of Foresters
Insure.com

LabOne
Life Settlement Consulting & Management
Los Angeles County Crime Laboratories
MetLife Canada
MIB Group
Millennium Pharmaceuticals
Mutual of Omaha
North Coast Opportunities
On The Risk – The Journal of the Academy of Life Underwriting
PartnerRe Life (formerly Winterthur Life Reinsurance)
Pacific Blue Cross
PPO Oklahoma
Protective Life Insurance Co.
Safe Harbor Resources
Sagcor Financial Corporation
Society of Actuaries
Thomson Management Solutions
21st Services
Wells Fargo Bank
Western Reserve Life Assurance Co. of Ohio
Xcelerate Corporation

Vera F. Dolan

Curriculum Vitae, continued

Expert witness services provided to the following:

Multiple retentions:

Andres, Andres & Moore, Santa Ana, CA
 Barger & Wolen, Irvine, CA and New York, NY
 County of Hawaii, Hilo, HI
 Donahue Horrow, El Segundo, CA
 Lewis & Roca, Phoenix, AZ

McCue-Pauley & Associates, Dallas, TX
 Taylor Anderson, Denver, CO
 U.S. Department of Justice
 Wilson Elser Moskowitz Edelman & Dicker, Los Angeles and
 San Diego, CA

Expert witness brokers:

AMFS / Medical Experts Nationwide
 Consolidated Consultants
 Insurance Expert Network
 ForensisGroup
 LITILI

Medical Advisors, Inc
 Medical Consultant Services
 The TASA Group
 Thomson Reuters Expert Witness Service

Single cases:

Andrews Kurth, Dallas, TX
 Bolt Keenley Kim, Berkeley, CA
 Campano Law Group, Lancaster, CA
 Carlin & Buchsbaum, Long Beach, CA
 Carmody Torrance Sandak Hennessey, Waterbury, CT
 City of Torrance, Torrance, CA
 Corr Cronin Michelson Baumgardner Preece, Seattle, WA
 Coughlin Law Firm, San Diego, CA
 Cozen O'Connor, Wilmington, DE
 Deitchman & Deitchman, Placerville, CA
 Demas Law Group, Sacramento, CA
 Dressler Law Office, New Haven, CT
 Egan & Pechtel, Kennewick, WA
 Epstein Becker & Green, Los Angeles, CA
 Evan Freirich, Boulder, CO
 Fairchild, Price, Haley & Smith, Nacogdoches, TX
 Fallgatter Farmand & Catlin, Jacksonville, FL
 Ferguson, Skipper, Shaw, Keyser, Baron & Tirabassi, Sarasota, FL
 Friedman, Rubin & White, Anchorage, AL
 Gilchrist & Rutter, Santa Monica, CA
 Graves & King, Riverside, CA
 Greenberg Traurig, Denver, CO
 Greene Broillet & Wheeler, Santa Monica, CA
 The Healy Law Firm, Chicago, IL
 Hinshaw & Culbertson, Los Angeles, CA
 Hoagland, Fitzgerald & Pranaitis, Alton, IL
 Diana Holt, LLC, Columbia, SC
 Jardine Law Office, DeForest, WI
 Kent D. Jensen Law Office, Burley, ID
 Johnson Schachter & Lewis, Sacramento, CA
 Kantor & Kantor, Northridge, CA
 Katten Muchin Rosenman, Los Angeles, CA
 Kitch Drutchas Wagner Valitutti & Sherbrook, Detroit, MI
 Knapp Petersen Clarke, Glendale, CA
 Koch Degn & Gomez, Visalia, CA
 Law Office of Andy Basseri, Beverly Hills, CA
 Law Offices of Benjamin Blakeman, Los Angeles, CA
 Law Offices of Robert A. Brenner, Woodland Hills, CA
 Law Office of Sean Brew, San Diego, CA
 Law Offices of James Matthew Brown, San Diego, CA

Law Offices of Clyde I. Butts, Walnut Creek, CA
 Law Offices of Michael Jay Green, Honolulu, HI
 Law Office of Katherine MacKinnon, St. Louis Park, MN
 Law Office of Stephen W. Penn, Morgan Hill, CA
 Law Office of Charles M. Ray, Newport Beach, CA
 Law Office of Kenneth U. Reyes, Los Angeles, CA
 Law Offices of Cary T. Tanaka, Honolulu, HI
 Law Office of Edward J. Thomas, Bakersfield, CA
 Littler Mendelson, San Jose, CA
 MacMorris & Carbone, Stockton, CA
 Daniel Q. Mahone, Frederick, MD
 McArdle, Frost & Brinton, Chicago, IL
 McDermott Will & Emery, Chicago, IL
 McDowell & Osburn, Manchester, NH
 McFall Burnett & Brinton, Manteca, CA
 Meyers McConnell Reisz Siderman, Los Angeles, CA
 Milavetz Gallop & Milavetz, Edina, MN
 Morris Polich & Purdy, San Francisco, CA
 Myers & Gornel, Las Vegas, NV
 Nicholas & Tomasevic, San Diego, CA
 Norton Rose Fulbright US, Houston, TX
 Ogden Murphy Wallace, Seattle, WA
 Pyle Sims Duncan & Stevenson, San Diego, CA
 Renaud Cook Drury Mesaros, Phoenix, AZ
 Riverside County Public Defender, Riverside, CA
 Saur Law Office, Laguna Hills, CA
 Schumacher Francis & Nelson, Charleston, WV
 Segal and Kirby, Sacramento, CA
 Seyfarth Shaw, Chicago, IL
 SGH Martineau, London, England
 Shook Hardy & Bacon, Kansas City, MO
 Sigelman Law Corporation, Beverly Hills, CA
 Snell & Wilmer, Phoenix, AZ
 South Carolina Commission on Indigent Defense, Columbia, SC
 Stanley Law Offices, Syracuse, NY
 Stennett & Casino, San Diego, CA
 Vaka Law Group, Tampa, FL
 Webb Bordson Law Group, San Diego, CA
 David K. Wilson & Associates, Sherman, TX
 Whitfield & Eddy, Des Moines, IA
 Winters & Associates, San Diego, CA

Vera F. Dolan

Curriculum Vitae, continued

Consulting Projects – Underwriting

- Life Underwriting Requirements Research, 2004 to Present Providing methodologies, analysis and write-up of insurance testing laboratory data to initiate new products and services. Conducting cohort mortality studies to improve life underwriting risk assessment.
- Life Policy and Procedures Manual, 2014 Revised and updated life insurance policy and procedures manual based on current underwriting and business operations.
- Health Medical Underwriting Manual, 2010 Adapted medical underwriting manual for supplemental health insurance products.
- Structured Settlement Underwriting Manual, 2008 Developed underwriting manual for structured settlements based on current processes.
- Life Claims Audit, 2007 Performed random selection of cases and designed case data extraction sheet for large life insurance claims study.
- Critical Illness and Disability Income Training, 2006 Prepared and presented training to life underwriters in critical illness and disability income underwriting.
- Underwriting Manual Research and Writing, 2006 Adapted traditional life underwriting manual for simplified life, disability and waiver of premium products.
- Life Settlement Experience Analysis, 2006 Analysis of life settlement mortality to determine predictive factors.
- Life Underwriting Research, 2001 to 2003 Constructed life tables from medical literature to validate life underwriting guidelines. Produced quantitative and qualitative life underwriting manual guidance.
- Life Settlement Underwriting Research, 1998 to 2004 Provided model and design of automated life expectancy calculation system, data collection instruments, evaluation scoring and impairment risk factor weights.
- Insurance Services Product Development, 1997 to 1998 Provided analysis of disease mortality, incidence and prevalence to develop new insurance services product.
- Pension Underwriting Research, 1994 Provided biostatistical research basis to a multinational consortium for a new type of impaired risk European pension product.

Consulting Projects - Business Development and Technology

- Simplified Products Survey and Report, 2005 Conducted survey of top-selling simplified products for underwriting and business process lessons learned.
- New Business Process Review and Optimization, 2004 to 2005 Examined current life new business processes to identify opportunities for decreasing redundancies, handoffs, and inefficiencies.
- Underwriting Decision Software Development, 2004 to 2005 Product and market development of life underwriting software that uses advanced logic engine
- Freelance Writing and Editing, 2004 Editing and writing summaries of medical articles, medical conferences, and insurance topics for physicians and consumers.
- Underwriting Operations Annual Report, 2004 Assisted in editing, writing and analysis of metrics presented in life underwriting operations report for 2003.
- Business Process Improvement, 2003 Interviewed underwriting and business support staff to prepare future improvement in life insurance business process workflow.

Vera F. Dolan

Curriculum Vitae, continued

Consulting Projects - Banking

- Enterprise Technology Plan, 2000 Collaborated on design of three-year technology plan for a Federal bank.
- Financial Services Experience Analysis and Strategy, 1995 to 1998 Provided statistical analysis and models to select business and consumer customers for acquisition and retention programs. Estimated bank account life expectancies using actuarial life table methods.
- Human Resources Automation Plan, 1993 Collaborated in development of plan and prototype for automated human resources management.

Certificate of Appreciation for 30 Years of Contribution, *On The Risk - Journal of the Academy of Life Underwriting*, May 4, 2016

Associate Editor, *On The Risk - Journal of the Academy of Life Underwriting*, 2004-Present

Contributing Editor, *On The Risk - Journal of the Academy of Life Underwriting*, 1994-1997

Kaiser Foundation Health Plan, Oakland, California

Medical Economics and Statistics, 1988 to 1989

Converted community-based pricing approach to experience-based rating for a \$2.5 billion premium enterprise. Conducted underwriting market study of 20,000 employers. Conducted analyses to determine competitive pricing for 2+ million member optical and pharmaceutical programs.

Transamerica Occidental Life Insurance Company, Los Angeles, California

New Business Underwriting Research, 1985 to 1988

Provided analysis of company data and medical literature to support management and underwriting decisions. Developed original methods for actuarial analyses now used for automated systems underwriting \$1.5 billion in annual business.

Lincoln National Reinsurance, Ft. Wayne, Indiana

Underwriting Research, 1982 to 1985

Provided analysis of company data and medical literature to support management and underwriting decisions.

University of North Carolina, Chapel Hill, North Carolina

Department of Biostatistics, 1981 to 1982

Performed statistical analyses for multinational clinical trials.

National Institute of Occupational Safety and Health, Cincinnati, Ohio

Industrywide Studies Branch, Biometry Section, Summer 1980

Performed proportionate mortality analysis of death certificate data for evidence of excess brain tumors among petrochemical workers. Performed analysis of medical records for evidence of excess birth anomalies among railroad workers exposed to dioxin.

Vera F. Dolan

Curriculum Vitae, continued

PUBLICATIONS - INSURANCE

"Advantages of a Life Expectancy Using Life Insurance Underwriting and Life Settlement Methods in the Legal Setting" VFD Consulting, Inc.

"Highlights of the 2016 CLIMOA Annual Scientific Meeting" On The Risk - Journal of the Academy of Life Underwriting, Vol. 32, No. 4, 2016

"Hemoglobin Screening Independently Predicts All-Cause Mortality" J. Insurance Medicine, Vol. 45, No. 2, 2015, with Michael Fulks and Robert L. Stout

"Adjusting Measured Creatinine for Low Serum Glucose to Improve Mortality Prediction" On The Risk - Journal of the Academy of Life Underwriting, Vol. 31, No. 3, 2015, with Michael Fulks and Robert L. Stout

"Changing the 'Normal Range' for Blood Pressure from 140/90 to 130/any Improves Risk Assessment" J. Insurance Medicine, Vol. 45, No. 1, 2015, with Michael Fulks and Robert L. Stout

"2014 CRL Blood Pressure Study of Life Insurance Applicants" J. Insurance Medicine, Vol. 45, No. 1, 2015, with Michael Fulks and Robert L. Stout

"Which eGFR Calculation Offers the Best Mortality Prediction for Insurance?" On The Risk - Journal of the Academy of Life Underwriting, Vol. 31, No. 2, 2015, with Michael Fulks and Robert L. Stout

"Using Urine Protein Creatinine Ratio Alone or Reflexing to Urine Albumin in the Applicant with HbA1c Elevation" On The Risk - Journal of the Academy of Life Underwriting, Vol. 31, No. 1, 2015, with Michael Fulks and Robert L. Stout

"Basic Laboratory Testing" In: Basic Life Insurance Underwriting, ALU 101 Textbook, Sixth Ed. Academy of Life Underwriting, 2014, with Michael Fulks and Robert L. Stout

"Evaluating the Risk of Renal Disease Using Urine Proteinuria or Urine Albuminuria in the Applicant with HbA1c Elevation" On The Risk - Journal of the Academy of Life Underwriting, Vol. 30, No. 4, 2014, with Michael Fulks and Robert L. Stout

"Advantages of a Life Expectancy Using Life Insurance Underwriting and Life Settlement Methods in the Legal Setting" Defense Research Institute Life, Health and Disability Newsletter, Vol. 25, Issue 2, June 26, 2014

"Serum Globulin Predicts All-Cause Mortality for Life Insurance Applicants" J. Insurance Medicine, Vol. 44, No. 2, 2014, with Michael Fulks and Robert L. Stout

"NT-proBNP as a Predictor of All-Cause Mortality in a Population of Insurance Applicants" On The Risk - Journal of the Academy of Life Underwriting, Vol. 30, No. 2, 2014, with Michael Clark, Valerie Kaufman, Michael Fulks and Robert L. Stout

Vera F. Dolan

Curriculum Vitae, continued

PUBLICATIONS - INSURANCE, continued

"Beware That Low Urine Creatinine!" On The Risk - Journal of the Academy of Life Underwriting, Vol. 30, No. 1, 2014, with Michael Fulks and Robert L. Stout

"NT-proBNP as a Predictor of All-Cause Mortality in a Population of Insurance Applicants" J. Insurance Medicine, Vol. 44, No. 1, 2014, with Michael Clark, Valerie Kaufman, Michael Fulks and Robert L. Stout

"Scoring Life Insurance Applicants' Laboratory Results, Blood Pressure and Build to Predict All-Cause Mortality Risk" J. Insurance Medicine, Vol. 43, No. 3, 2012, with Michael Fulks and Robert L. Stout

"Urine Protein/Creatinine Ratio as a Risk Predictor in Non-Diabetics with Normal Renal Function" J. Insurance Medicine, Vol. 43, No. 2, 2012, with Michael Fulks and Robert L. Stout

"Trends in Mortality of Insurance Applicants with HIV Infection" J. Insurance Medicine, Vol. 43, No. 2, 2012, with Robert L. Stout and Michael Fulks

"PSA: What Values Predict Increased Mortality Risk?" On The Risk - Journal of the Academy of Life Underwriting, Vol. 27, No. 3, 2011, with Michael Fulks and Robert L. Stout

"Letter to the Editor: The Use of Modeling for Associating Test Values and Mortality Risk" J. Insurance Medicine, Vol. 43, No. 1, 2012, with Michael Fulks and Robert L. Stout

"Isolated Hematuria as a Mortality Risk Predictor" On The Risk - Journal of the Academy of Life Underwriting, Vol. 27, No. 4, 2011, with Michael Fulks and Robert L. Stout

"Highlights of the 2011 AHOU Annual Conference" On The Risk - Journal of the Academy of Life Underwriting, Vol. 27, No. 3, 2011

"Correction to article: Association of Cholesterol, LDL, HDL, Cholesterol/HDL and Triglyceride with All-Cause Mortality in Life Insurance Applicants" J. Insurance Medicine, Vol. 42, No. 2-4, 2011, with Michael Fulks and Robert L. Stout

"CDT and Serum Alcohol: What Is the Risk?" On The Risk - Journal of the Academy of Life Underwriting, Vol. 27, No. 1, 2011, with Robert L. Stout and Michael Fulks

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"Mortality Associated with Positive Hepatitis C and B Test Results" On The Risk - Journal of the Academy of Life Underwriting, Vol. 26, No. 3, 2010, with Robert L. Stout and Michael Fulks

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"Juvenile Life Without Parole Sentencing and Resentencing Case Update" CLE presentation (4.5 hours, course no. 168516), University of South Carolina School of Law, Columbia, South Carolina, December 16, 2016

"Isolated Hematuria: What Is the Risk?" Northern California Life Insurance Association, Walnut Creek, California, May 10, 2012

"Positive Cocaine Tests and Mortality" Northern California Life Insurance Association, Berkeley, California, September 17, 2009

Vera F. Dolan

Curriculum Vitae, continued

PRESENTATIONS, continued

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"Research Results: Potential Impact of a Pandemic on the U.S. Health Insurance System" Society of Actuaries Health Spring Meeting, Los Angeles, California, May 28, 2008, with Jim Toole and Jim Walbridge

"How the World Has Changed, and How Medical Underwriting Will Benefit Your Applicants and Your Companies' Bottom Line" Annual Product Development Actuary Symposium, Denver, Colorado, June 26, 2007, with Robert L. Stout

"Non-Underwritten Life Products – Do They Work?" Annual Product Development Actuary Symposium, Denver, Colorado, June 25, 2007, with Jack Simon

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"Underwriting Simplified Issue Life Insurance Products" Group Underwriting Association of America, San Diego, California, October 31, 2006, with Ernie Testa

"The Life Settlements Market" Society of Actuaries Annual Meeting, Chicago, Illinois, October 18, 2006, with Tony Duscio and Jay Vadiveloo

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"Sleep Dysfunction and Disorders" Institute of Caribbean Home Office Underwriters, Almond Beach Resort, Barbados, September 13, 2004

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Vera F. Dolan

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Last update March 31, 2017

Exhibit 2

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for all races; N=64,204

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	All races Dead	Total	Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
15	3	0	3	0.000000		0.000439	
16	90	0	90	0.000000		0.000552	
17	831	0	831	0.000000		0.000675	
18	2,272	6	2,278	0.002634	0.002701	0.000807	3.3
19	4,322	12	4,334	0.002769	0.003011	0.000942	3.2
20	6,585	24	6,609	0.003631	0.003233	0.001085	3.0
21	8,457	28	8,485	0.003300	0.003812	0.001216	3.1
22	9,725	44	9,769	0.004504	0.004359	0.001310	3.3
23	10,374	55	10,429	0.005274	0.005486	0.001353	4.1
24	10,409	70	10,479	0.006680	0.006254	0.001358	4.6
25	10,065	69	10,134	0.006809	0.006646	0.001351	4.9
26	9,552	62	9,614	0.006449	0.007431	0.001349	5.5
27	8,993	82	9,075	0.009036	0.007899	0.001353	5.8
28	8,454	70	8,524	0.008212	0.008922	0.001371	6.5
29	8,014	77	8,091	0.009517	0.009048	0.001399	6.5
30	7,681	73	7,754	0.009414	0.009188	0.001432	6.4
31	7,465	65	7,530	0.008632	0.010131	0.001464	6.9
32	7,199	90	7,289	0.012347	0.010670	0.001496	7.1
33	6,904	77	6,981	0.011030	0.011365	0.001528	7.4
34	6,738	73	6,811	0.010718	0.010614	0.001563	6.8
35	6,473	66	6,539	0.010093	0.010348	0.001613	6.4
36	6,288	65	6,353	0.010231	0.011223	0.001682	6.7
37	5,989	81	6,070	0.013344	0.012599	0.001764	7.1
38	5,823	84	5,907	0.014220	0.014226	0.001857	7.7
39	5,670	87	5,757	0.015112	0.015292	0.001964	7.8
40	5,529	93	5,622	0.016542	0.016436	0.002083	7.9
41	5,286	95	5,381	0.017655	0.017101	0.002227	7.7
42	5,114	89	5,203	0.017106	0.017659	0.002414	7.3
43	5,012	93	5,105	0.018217	0.018047	0.002653	6.8
44	4,901	94	4,995	0.018819	0.019173	0.002939	6.5
45	4,734	99	4,833	0.020484	0.021675	0.003243	6.7
46	4,545	120	4,665	0.025723	0.025268	0.003563	7.1
47	4,164	127	4,291	0.029597	0.027663	0.003922	7.1
48	3,971	113	4,084	0.027669	0.030107	0.004320	7.0
49	3,715	127	3,842	0.033056	0.032962	0.004749	6.9
50	3,453	137	3,590	0.038162	0.038314	0.005193	7.4
51	3,193	146	3,339	0.043726	0.041608	0.005647	7.4
52	2,920	131	3,051	0.042937	0.044710	0.006122	7.3
53	2,669	133	2,802	0.047466	0.045803	0.006630	6.9
54	2,372	117	2,489	0.047007	0.050491	0.007181	7.0
55	2,068	125	2,193	0.057000	0.053517	0.007779	6.9
56	1,852	111	1,963	0.056546	0.055167	0.008415	6.6
57	1,624	89	1,713	0.051956	0.057715	0.009074	6.4
58	1,418	98	1,516	0.064644	0.061413	0.009727	6.3
59	1,213	88	1,301	0.067640	0.069713	0.010371	6.7
60	1,057	88	1,145	0.076856	0.078531	0.011034	7.1
61	878	88	966	0.091097	0.082366	0.011738	7.0
62	733	63	796	0.079146	0.086399	0.012489	6.9
63	635	62	697	0.088953	0.083857	0.013335	6.3
64	549	50	599	0.083472	0.085654	0.014319	6.0
65	444	41	485	0.084536	0.087103	0.015482	5.6
66	379	39	418	0.093301	0.096722	0.016824	5.7
67	324	41	365	0.112329	0.097724	0.018330	5.3
68	271	26	297	0.087542	0.091657	0.019900	4.6
69	234	19	253	0.075099	0.089544	0.021539	4.2

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for all races; N=64,204

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	All races Dead	Total	Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
70	194	23	217	0.105991	0.095649	0.023396	4.1
71	152	20	172	0.116279	0.090170	0.025476	3.5
72	136	14	150	0.093333	0.096203	0.027794	3.5
73	125	8	133	0.060150	0.097922	0.030350	3.2
74	102	12	114	0.105263	0.091534	0.033204	2.8
75	85	11	96	0.114583	0.094742	0.036345	2.6
76	76	7	83	0.084337	0.109378	0.039788	2.7
77	57	7	64	0.109375	0.111855	0.043720	2.6
78	52	8	60	0.133333	0.114580	0.048335	2.4
79	45	6	51	0.117647	0.116462	0.053650	2.2
80	34	5	39	0.128205	0.125356	0.059565	2.1
81	29	3	32	0.093750		0.065848	
82	22	4	26	0.153846		0.072956	
83	20	1	21	0.047619		0.080741	
84	19	0	19	0.000000		0.089357	
85	17	1	18	0.055556		0.099650	
86	14	2	16	0.125000		0.110901	
87	13	1	14	0.071429		0.123146	
88	10	3	13	0.230769		0.136412	
89	13	0	13	0.000000		0.150710	
90	9	0	9	0.000000		0.166038	
91	8	0	8	0.000000		0.182374	
92	7	0	7	0.000000		0.199676	
93	10	0	10	0.000000		0.217880	
94	15	1	16	0.062500		0.236903	
95	2	0	2	0.000000		0.256636	
96	2	0	2	0.000000		0.276954	
97	2	0	2	0.000000		0.297713	

Total deaths 4,239

Exhibit 3

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for blacks only; N=40,454

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	Black Dead	Total	Raw Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
15	2	0	2	0.000000		0.000655	
16	60	0	60	0.000000		0.000822	
17	543	0	543	0.000000		0.001004	
18	1,504	5	1,509	0.003313	0.003033	0.001206	2.5
19	2,898	8	2,906	0.002753	0.003351	0.001421	2.4
20	4,498	18	4,516	0.003986	0.003383	0.001654	2.0
21	5,847	20	5,867	0.003409	0.004059	0.001874	2.2
22	6,867	33	6,900	0.004783	0.004333	0.002041	2.1
23	7,453	36	7,489	0.004807	0.005139	0.002134	2.4
24	7,508	44	7,552	0.005826	0.005656	0.002168	2.6
25	7,216	46	7,262	0.006334	0.005943	0.002186	2.7
26	6,842	39	6,881	0.005668	0.006574	0.002212	3.0
27	6,426	50	6,476	0.007721	0.007412	0.002230	3.3
28	5,938	53	5,991	0.008847	0.008178	0.002245	3.6
29	5,604	45	5,649	0.007966	0.008357	0.002259	3.7
30	5,284	44	5,328	0.008258	0.007893	0.002267	3.5
31	5,059	38	5,097	0.007455	0.008957	0.002276	3.9
32	4,786	54	4,840	0.011157	0.009753	0.002300	4.2
33	4,554	49	4,603	0.010645	0.010648	0.002350	4.5
34	4,392	45	4,437	0.010142	0.010346	0.002426	4.3
35	4,152	43	4,195	0.010250	0.009901	0.002527	3.9
36	3,937	37	3,974	0.009311	0.010548	0.002646	4.0
37	3,679	45	3,724	0.012084	0.012161	0.002772	4.4
38	3,525	54	3,579	0.015088	0.013441	0.002896	4.6
39	3,452	46	3,498	0.013150	0.015186	0.003027	5.0
40	3,291	58	3,349	0.017319	0.015133	0.003179	4.8
41	3,101	47	3,148	0.014930	0.015972	0.003369	4.7
42	3,016	48	3,064	0.015666	0.015002	0.003607	4.2
43	2,941	43	2,984	0.014410	0.014833	0.003902	3.8
44	2,870	42	2,912	0.014423	0.015822	0.004251	3.7
45	2,739	52	2,791	0.018631	0.019842	0.004616	4.3
46	2,611	71	2,682	0.026473	0.024402	0.005016	4.9
47	2,421	70	2,491	0.028101	0.026482	0.005513	4.8
48	2,274	58	2,332	0.024871	0.026654	0.006129	4.3
49	2,127	59	2,186	0.026990	0.028625	0.006838	4.2
50	1,988	70	2,058	0.034014	0.032107	0.007586	4.2
51	1,830	67	1,897	0.035319	0.035336	0.008344	4.2
52	1,681	64	1,745	0.036676	0.038086	0.009145	4.2
53	1,541	68	1,609	0.042262	0.041294	0.010011	4.1
54	1,360	64	1,424	0.044944	0.046430	0.010959	4.2
55	1,183	65	1,248	0.052083	0.049429	0.011995	4.1
56	1,055	57	1,112	0.051259	0.050691	0.013107	3.9
57	937	48	985	0.048731	0.056749	0.014274	4.0
58	794	60	854	0.070258	0.061732	0.015455	4.0
59	677	48	725	0.066207	0.072218	0.016630	4.3
60	585	51	636	0.080189	0.082261	0.017888	4.6
61	466	52	518	0.100386	0.093277	0.019207	4.9
62	363	40	403	0.099256	0.093367	0.020451	4.6
63	320	28	348	0.080460	0.093350	0.021595	4.3
64	269	30	299	0.100334	0.089763	0.022717	4.0
65	206	20	226	0.088496	0.097257	0.023933	4.1
66	183	21	204	0.102941	0.107622	0.025369	4.2
67	152	23	175	0.131429	0.114021	0.027104	4.2
68	116	14	130	0.107692	0.117090	0.029089	4.0
69	95	12	107	0.112150	0.107763	0.031191	3.5

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for blacks only; N=40,454

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	Black Dead	Total	Raw Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
70	78	9	87	0.103448	0.115344	0.033429	3.5
71	60	9	69	0.130435	0.116942	0.035780	3.3
72	55	4	59	0.067797		0.038397	
73	48	3	51	0.058824		0.041254	
74	39	5	44	0.113636		0.044174	
75	30	5	35	0.142857		0.047704	
76	27	2	29	0.068966		0.051047	
77	18	3	21	0.142857		0.054624	
78	17	3	20	0.150000		0.059628	
79	15	2	17	0.117647		0.064976	
80	11	2	13	0.153846		0.070676	
81	9	1	10	0.100000		0.076651	
82	8	0	8	0.000000		0.085516	
83	7	0	7	0.000000		0.092664	
84	6	0	6	0.000000		0.100307	
85	5	0	5	0.000000		0.108460	
86	4	1	5	0.200000		0.117140	
87	5	0	5	0.000000		0.126357	
88	4	0	4	0.000000		0.136120	
89	3	0	3	0.000000		0.146432	
90	2	0	2	0.000000		0.157294	
91	3	0	3	0.000000		0.168701	
92	2	0	2	0.000000		0.180641	
93	3	0	3	0.000000		0.193099	
94	7	0	7	0.000000		0.206052	
95	1	0	1	0.000000		0.219470	
96	1	0	1	0.000000		0.233321	
97	1	0	1	0.000000		0.247561	
Total deaths		2,351					

Exhibit 4

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for whites only; N=22,081

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	White Dead	Total	Raw Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
15	1	0	1	0.000000		0.000414	
16	28	0	28	0.000000		0.000522	
17	268	0	268	0.000000		0.000641	
18	717	1	718	0.001393		0.000773	
19	1,325	4	1,329	0.003010		0.000909	
20	1,944	6	1,950	0.003077	0.003181	0.001053	3.0
21	2,427	8	2,435	0.003285	0.003500	0.001185	3.0
22	2,647	11	2,658	0.004138	0.004806	0.001283	3.7
23	2,697	19	2,716	0.006996	0.006919	0.001333	5.2
24	2,676	26	2,702	0.009623	0.008440	0.001349	6.3
25	2,620	23	2,643	0.008702	0.009056	0.001354	6.7
26	2,466	22	2,488	0.008842	0.010391	0.001365	7.6
27	2,316	32	2,348	0.013629	0.009974	0.001379	7.2
28	2,265	17	2,282	0.007450	0.011864	0.001401	8.5
29	2,173	32	2,205	0.014512	0.011735	0.001432	8.2
30	2,161	29	2,190	0.013242	0.013335	0.001467	9.1
31	2,177	27	2,204	0.012250	0.013876	0.001502	9.2
32	2,195	36	2,231	0.016136	0.013753	0.001536	9.0
33	2,147	28	2,175	0.012874	0.013955	0.001570	8.9
34	2,150	28	2,178	0.012856	0.012136	0.001609	7.5
35	2,131	23	2,154	0.010678	0.011928	0.001665	7.2
36	2,177	27	2,204	0.012250	0.013112	0.001742	7.5
37	2,158	36	2,194	0.016408	0.014128	0.001829	7.7
38	2,156	30	2,186	0.013724	0.016339	0.001921	8.5
39	2,078	40	2,118	0.018886	0.016139	0.002023	8.0
40	2,117	34	2,151	0.015807	0.019133	0.002135	9.0
41	2,066	48	2,114	0.022706	0.019370	0.002273	8.5
42	2,001	40	2,041	0.019598	0.022267	0.002459	9.1
43	1,991	50	2,041	0.024498	0.023331	0.002703	8.6
44	1,956	52	2,008	0.025896	0.024755	0.002997	8.3
45	1,922	47	1,969	0.023870	0.025127	0.003309	7.6
46	1,864	49	1,913	0.025614	0.027223	0.003631	7.5
47	1,684	56	1,740	0.032184	0.030095	0.003984	7.6
48	1,638	55	1,693	0.032487	0.035454	0.004366	8.1
49	1,540	67	1,607	0.041693	0.039239	0.004768	8.2
50	1,428	65	1,493	0.043537	0.046941	0.005179	9.1
51	1,325	78	1,403	0.055595	0.050285	0.005596	9.0
52	1,210	66	1,276	0.051724	0.054307	0.006034	9.0
53	1,104	65	1,169	0.055603	0.052714	0.006508	8.1
54	990	53	1,043	0.050815	0.057024	0.007026	8.1
55	868	60	928	0.064655	0.060073	0.007591	7.9
56	780	54	834	0.064748	0.062302	0.008191	7.6
57	672	41	713	0.057504	0.060358	0.008812	6.8
58	608	38	646	0.058824	0.062585	0.009425	6.6
59	520	40	560	0.071429	0.068333	0.010028	6.8
60	458	37	495	0.074747	0.076123	0.010645	7.2
61	402	36	438	0.082192	0.072227	0.011305	6.4
62	362	23	385	0.059740	0.079569	0.012031	6.6
63	308	33	341	0.096774	0.074694	0.012880	5.8
64	276	20	296	0.067568	0.082340	0.013896	5.9
65	233	21	254	0.082677	0.085880	0.015110	5.7
66	191	18	209	0.086124	0.079940	0.016503	4.8
67	169	18	187	0.096257	0.074702	0.018045	4.1
68	153	11	164	0.067073	0.079705	0.019623	4.1
69	139	6	145	0.041379	0.083840	0.021262	3.9

South Carolina DC men admitted 1996 to 2015, followed to 2016

Last admission only, duplicate IDs removed, admission year errors removed

Exposure for whites only; N=22,081

Mortality rates are smoothed for ≥ 5 deaths (running average of 3 or 5 raw rates, previous age, current age & next age)

Age	Alive	White Dead	Total	Raw Mortality Rate	Smoothed Mortality Rate	US Population Mortality Rate	Mortality Ratios (≥ 5 deaths only)
70	116	14	130	0.107692	0.086566	0.023146	3.7
71	92	11	103	0.106796	0.085347	0.025278	3.4
72	81	10	91	0.109890	0.097071	0.027630	3.5
73	77	5	82	0.060976	0.095204	0.030219	3.2
74	63	7	70	0.100000	0.092364	0.033126	2.8
75	55	6	61	0.098361	0.088990	0.036255	2.5
76	49	5	54	0.092593	0.095477	0.039716	2.4
77	39	4	43	0.093023		0.043757	
78	35	5	40	0.125000		0.048405	
79	30	4	34	0.117647		0.053785	
80	23	3	26	0.115385		0.059839	
81	20	2	22	0.090909		0.066176	
82	14	4	18	0.222222		0.073348	
83	13	1	14	0.071429		0.081302	
84	13	0	13	0.000000		0.090236	
85	12	1	13	0.076923		0.100743	
86	10	1	11	0.090909		0.112235	
87	8	1	9	0.111111		0.124750	
88	6	3	9	0.333333		0.138311	
89	7	0	7	0.000000		0.152931	
90	6	0	6	0.000000		0.168603	
91	5	0	5	0.000000		0.185302	
92	5	0	5	0.000000		0.202980	
93	7	0	7	0.000000		0.221569	
94	8	1	9	0.111111		0.240976	
95	1	0	1	0.000000		0.261085	
96	1	0	1	0.000000		0.281762	
97	1	0	1	0.000000		0.302853	

Total deaths 1,874

EXHIBIT 5

Table 2. Life table for males: United States, 2011

Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table02.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
0-1	0.006575	100,000	658	99,427	7,629,389	76.3
1-2	0.000445	99,342	44	99,320	7,529,961	75.8
2-3	0.000301	99,298	30	99,283	7,430,641	74.8
3-4	0.000240	99,268	24	99,256	7,331,358	73.9
4-5	0.000183	99,244	18	99,235	7,232,101	72.9
5-6	0.000169	99,226	17	99,218	7,132,866	71.9
6-7	0.000150	99,210	15	99,202	7,033,648	70.9
7-8	0.000134	99,195	13	99,188	6,934,446	69.9
8-9	0.000115	99,181	11	99,176	6,835,258	68.9
9-10	0.000097	99,170	10	99,165	6,736,082	67.9
10-11	0.000085	99,160	8	99,156	6,636,917	66.9
11-12	0.000092	99,152	9	99,147	6,537,761	65.9
12-13	0.000132	99,143	13	99,136	6,438,613	64.9
13-14	0.000213	99,130	21	99,119	6,339,477	64.0
14-15	0.000323	99,109	32	99,093	6,240,358	63.0
15-16	0.000439	99,077	43	99,055	6,141,265	62.0
16-17	0.000552	99,033	55	99,006	6,042,210	61.0
17-18	0.000675	98,979	67	98,945	5,943,204	60.0
18-19	0.000807	98,912	80	98,872	5,844,259	59.1
19-20	0.000942	98,832	93	98,785	5,745,387	58.1
20-21	0.001085	98,739	107	98,685	5,646,602	57.2
21-22	0.001216	98,632	120	98,572	5,547,917	56.2
22-23	0.001310	98,512	129	98,447	5,449,345	55.3
23-24	0.001353	98,383	133	98,316	5,350,898	54.4
24-25	0.001358	98,250	133	98,183	5,252,582	53.5
25-26	0.001351	98,116	133	98,050	5,154,399	52.5
26-27	0.001349	97,984	132	97,918	5,056,349	51.6
27-28	0.001353	97,852	132	97,785	4,958,431	50.7
28-29	0.001371	97,719	134	97,652	4,860,646	49.7
29-30	0.001399	97,585	137	97,517	4,762,994	48.8
30-31	0.001432	97,449	140	97,379	4,665,477	47.9
31-32	0.001464	97,309	143	97,238	4,568,098	46.9
32-33	0.001496	97,167	145	97,094	4,470,860	46.0
33-34	0.001528	97,021	148	96,947	4,373,766	45.1
34-35	0.001563	96,873	151	96,797	4,276,819	44.1
35-36	0.001613	96,722	156	96,643	4,180,022	43.2
36-37	0.001682	96,565	162	96,484	4,083,378	42.3
37-38	0.001764	96,403	170	96,318	3,986,894	41.4
38-39	0.001857	96,233	179	96,144	3,890,576	40.4
39-40	0.001964	96,054	189	95,960	3,794,432	39.5
40-41	0.002083	95,866	200	95,766	3,698,472	38.6
41-42	0.002227	95,666	213	95,560	3,602,706	37.7
42-43	0.002414	95,453	230	95,338	3,507,147	36.7
43-44	0.002653	95,223	253	95,096	3,411,809	35.8
44-45	0.002939	94,970	279	94,830	3,316,713	34.9
45-46	0.003243	94,691	307	94,537	3,221,882	34.0
46-47	0.003563	94,384	336	94,216	3,127,345	33.1
47-48	0.003922	94,047	369	93,863	3,033,129	32.3
48-49	0.004320	93,679	405	93,476	2,939,266	31.4
49-50	0.004749	93,274	443	93,052	2,845,790	30.5
50-51	0.005193	92,831	482	92,590	2,752,738	29.7
51-52	0.005647	92,349	522	92,088	2,660,148	28.8
52-53	0.006122	91,827	562	91,546	2,568,060	28.0
53-54	0.006630	91,265	605	90,963	2,476,514	27.1
54-55	0.007181	90,660	651	90,335	2,385,551	26.3
55-56	0.007779	90,009	700	89,659	2,295,216	25.5
56-57	0.008415	89,309	752	88,933	2,205,557	24.7
57-58	0.009074	88,557	804	88,156	2,116,624	23.9
58-59	0.009727	87,754	854	87,327	2,028,469	23.1
59-60	0.010371	86,900	901	86,450	1,941,141	22.3
60-61	0.011034	85,999	949	85,525	1,854,692	21.6

See footnote at end of table.

Table 2. Life table for males: United States, 2011—Con.Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table02.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
61-62	0.011738	85,050	998	84,551	1,769,167	20.8
62-63	0.012489	84,052	1,050	83,527	1,684,616	20.0
63-64	0.013335	83,002	1,107	82,449	1,601,089	19.3
64-65	0.014319	81,895	1,173	81,309	1,518,641	18.5
65-66	0.015482	80,723	1,250	80,098	1,437,332	17.8
66-67	0.016824	79,473	1,337	78,804	1,357,234	17.1
67-68	0.018330	78,136	1,432	77,420	1,278,430	16.4
68-69	0.019900	76,703	1,526	75,940	1,201,010	15.7
69-70	0.021539	75,177	1,619	74,367	1,125,070	15.0
70-71	0.023396	73,558	1,721	72,697	1,050,702	14.3
71-72	0.025476	71,837	1,830	70,922	978,005	13.6
72-73	0.027794	70,007	1,946	69,034	907,083	13.0
73-74	0.030350	68,061	2,066	67,028	838,049	12.3
74-75	0.033204	65,995	2,191	64,900	771,021	11.7
75-76	0.036345	63,804	2,319	62,645	706,121	11.1
76-77	0.039788	61,485	2,446	60,262	643,477	10.5
77-78	0.043720	59,039	2,581	57,748	583,215	9.9
78-79	0.048335	56,458	2,729	55,093	525,467	9.3
79-80	0.053650	53,729	2,883	52,287	470,374	8.8
80-81	0.059565	50,846	3,029	49,332	418,086	8.2
81-82	0.065848	47,817	3,149	46,243	368,754	7.7
82-83	0.072956	44,669	3,259	43,039	322,511	7.2
83-84	0.080741	41,410	3,343	39,738	279,472	6.7
84-85	0.089357	38,066	3,402	36,366	239,734	6.3
85-86	0.099650	34,665	3,454	32,938	203,368	5.9
86-87	0.110901	31,211	3,461	29,480	170,430	5.5
87-88	0.123146	27,749	3,417	26,041	140,950	5.1
88-89	0.136412	24,332	3,319	22,672	114,910	4.7
89-90	0.150710	21,013	3,167	19,429	92,237	4.4
90-91	0.166038	17,846	2,963	16,364	72,808	4.1
91-92	0.182374	14,883	2,714	13,526	56,443	3.8
92-93	0.199676	12,169	2,430	10,954	42,918	3.5
93-94	0.217880	9,739	2,122	8,678	31,964	3.3
94-95	0.236903	7,617	1,804	6,715	23,286	3.1
95-96	0.256636	5,812	1,492	5,067	16,571	2.9
96-97	0.276954	4,321	1,197	3,722	11,505	2.7
97-98	0.297713	3,124	930	2,659	7,782	2.5
98-99	0.318755	2,194	699	1,844	5,123	2.3
99-100	0.339914	1,495	508	1,241	3,279	2.2
100 and over	1.000000	987	987	2,038	2,038	2.1

SOURCE: CDC/NCHS, National Vital Statistics System.

EXHIBIT 6

Table 17. Life table for non-Hispanic black males: United States, 2011Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table17.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
0-1	0.012502	100,000	1,250	98,927	7,173,820	71.7
1-2	0.000674	98,750	67	98,716	7,074,893	71.6
2-3	0.000494	98,683	49	98,659	6,976,177	70.7
3-4	0.000356	98,634	35	98,617	6,877,518	69.7
4-5	0.000316	98,599	31	98,584	6,778,901	68.8
5-6	0.000258	98,568	25	98,555	6,680,317	67.8
6-7	0.000224	98,543	22	98,532	6,581,762	66.8
7-8	0.000193	98,521	19	98,511	6,483,230	65.8
8-9	0.000161	98,502	16	98,494	6,384,719	64.8
9-10	0.000128	98,486	13	98,480	6,286,225	63.8
10-11	0.000107	98,473	11	98,468	6,187,746	62.8
11-12	0.000118	98,463	12	98,457	6,089,278	61.8
12-13	0.000183	98,451	18	98,442	5,990,821	60.9
13-14	0.000310	98,433	31	98,418	5,892,379	59.9
14-15	0.000481	98,402	47	98,379	5,793,961	58.9
15-16	0.000655	98,355	64	98,323	5,695,583	57.9
16-17	0.000822	98,291	81	98,250	5,597,260	56.9
17-18	0.001004	98,210	99	98,160	5,499,010	56.0
18-19	0.001206	98,111	118	98,052	5,400,849	55.0
19-20	0.001421	97,993	139	97,923	5,302,797	54.1
20-21	0.001654	97,854	162	97,773	5,204,874	53.2
21-22	0.001874	97,692	183	97,600	5,107,101	52.3
22-23	0.002041	97,509	199	97,409	5,009,501	51.4
23-24	0.002134	97,310	208	97,206	4,912,092	50.5
24-25	0.002168	97,102	211	96,997	4,814,886	49.6
25-26	0.002186	96,891	212	96,786	4,717,890	48.7
26-27	0.002212	96,680	214	96,573	4,621,104	47.8
27-28	0.002230	96,466	215	96,358	4,524,531	46.9
28-29	0.002245	96,251	216	96,143	4,428,173	46.0
29-30	0.002259	96,035	217	95,926	4,332,030	45.1
30-31	0.002267	95,818	217	95,709	4,236,104	44.2
31-32	0.002276	95,600	218	95,492	4,140,395	43.3
32-33	0.002300	95,383	219	95,273	4,044,904	42.4
33-34	0.002350	95,163	224	95,052	3,949,631	41.5
34-35	0.002426	94,940	230	94,825	3,854,579	40.6
35-36	0.002527	94,709	239	94,590	3,759,755	39.7
36-37	0.002646	94,470	250	94,345	3,665,165	38.8
37-38	0.002772	94,220	261	94,089	3,570,820	37.9
38-39	0.002896	93,959	272	93,823	3,476,730	37.0
39-40	0.003027	93,687	284	93,545	3,382,908	36.1
40-41	0.003179	93,403	297	93,255	3,289,363	35.2
41-42	0.003369	93,106	314	92,949	3,196,108	34.3
42-43	0.003607	92,793	335	92,625	3,103,159	33.4
43-44	0.003902	92,458	361	92,277	3,010,533	32.6
44-45	0.004251	92,097	392	91,901	2,918,256	31.7
45-46	0.004616	91,706	423	91,494	2,826,355	30.8
46-47	0.005016	91,282	458	91,053	2,734,861	30.0
47-48	0.005513	90,824	501	90,574	2,643,807	29.1
48-49	0.006129	90,324	554	90,047	2,553,233	28.3
49-50	0.006838	89,770	614	89,463	2,463,186	27.4
50-51	0.007586	89,156	676	88,818	2,373,723	26.6
51-52	0.008344	88,480	738	88,111	2,284,905	25.8
52-53	0.009145	87,742	802	87,340	2,196,794	25.0
53-54	0.010011	86,939	870	86,504	2,109,454	24.3
54-55	0.010959	86,069	943	85,597	2,022,950	23.5
55-56	0.011995	85,126	1,021	84,615	1,937,352	22.8
56-57	0.013107	84,105	1,102	83,553	1,852,737	22.0
57-58	0.014274	83,002	1,185	82,410	1,769,184	21.3
58-59	0.015455	81,817	1,264	81,185	1,686,774	20.6
59-60	0.016630	80,553	1,340	79,883	1,605,589	19.9
60-61	0.017888	79,213	1,417	78,505	1,525,705	19.3

See footnotes at end of table.

Table 17. Life table for non-Hispanic black males: United States, 2011—Con.Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table17.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
61-62	0.019207	77,796	1,494	77,049	1,447,201	18.6
62-63	0.020451	76,302	1,560	75,522	1,370,151	18.0
63-64	0.021595	74,742	1,614	73,935	1,294,629	17.3
64-65	0.022717	73,128	1,661	72,297	1,220,695	16.7
65-66	0.023933	71,466	1,710	70,611	1,148,398	16.1
66-67	0.025369	69,756	1,770	68,871	1,077,787	15.5
67-68	0.027104	67,986	1,843	67,065	1,008,915	14.8
68-69	0.029089	66,144	1,924	65,182	941,851	14.2
69-70	0.031191	64,220	2,003	63,218	876,669	13.7
70-71	0.033429	62,216	2,080	61,177	813,451	13.1
71-72	0.035780	60,137	2,152	59,061	752,274	12.5
72-73	0.038397	57,985	2,226	56,872	693,214	12.0
73-74	0.041254	55,759	2,300	54,608	636,342	11.4
74-75	0.044174	53,458	2,361	52,278	581,733	10.9
75-76	0.047704	51,097	2,438	49,878	529,456	10.4
76-77	0.051047	48,659	2,484	47,417	479,578	9.9
77-78	0.054624	46,175	2,522	44,914	432,161	9.4
78-79	0.059628	43,653	2,603	42,352	387,246	8.9
79-80	0.064976	41,050	2,667	39,716	344,895	8.4
80-81	0.070676	38,383	2,713	37,026	305,178	8.0
81-82	0.076651	35,670	2,734	34,303	268,152	7.5
82-83	0.085516	32,936	2,817	31,528	233,849	7.1
83-84	0.092664	30,119	2,791	28,724	202,321	6.7
84-85	0.100307	27,328	2,741	25,958	173,597	6.4
85-86	0.108460	24,587	2,667	23,254	147,639	6.0
86-87	0.117140	21,920	2,568	20,637	124,386	5.7
87-88	0.126357	19,353	2,445	18,130	103,749	5.4
88-89	0.136120	16,907	2,301	15,757	85,619	5.1
89-90	0.146432	14,606	2,139	13,537	69,862	4.8
90-91	0.157294	12,467	1,961	11,487	56,326	4.5
91-92	0.168701	10,506	1,772	9,620	44,839	4.3
92-93	0.180641	8,734	1,578	7,945	35,219	4.0
93-94	0.193099	7,156	1,382	6,465	27,274	3.8
94-95	0.206052	5,774	1,190	5,179	20,809	3.6
95-96	0.219470	4,584	1,006	4,081	15,630	3.4
96-97	0.233321	3,578	835	3,161	11,548	3.2
97-98	0.247561	2,743	679	2,404	8,388	3.1
98-99	0.262144	2,064	541	1,794	5,984	2.9
99-100	0.277019	1,523	422	1,312	4,190	2.8
100 and over	1.000000	1,101	1,101	2,878	2,878	2.6

NOTE: This life table is based on death rates that have been adjusted for race and ethnicity misclassification on death certificates.
 SOURCE: CDC/NCHS, National Vital Statistics System.

EXHIBIT 7

Table 14. Life table for non-Hispanic white males: United States, 2011Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table14.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
0-1	0.005524	100,000	552	99,517	7,643,091	76.4
1-2	0.000413	99,448	41	99,427	7,543,575	75.9
2-3	0.000273	99,407	27	99,393	7,444,148	74.9
3-4	0.000229	99,379	23	99,368	7,344,755	73.9
4-5	0.000156	99,357	15	99,349	7,245,387	72.9
5-6	0.000160	99,341	16	99,333	7,146,038	71.9
6-7	0.000146	99,325	14	99,318	7,046,705	70.9
7-8	0.000132	99,311	13	99,304	6,947,387	70.0
8-9	0.000114	99,298	11	99,292	6,848,082	69.0
9-10	0.000095	99,286	9	99,282	6,748,790	68.0
10-11	0.000082	99,277	8	99,273	6,649,509	67.0
11-12	0.000088	99,269	9	99,264	6,550,236	66.0
12-13	0.000125	99,260	12	99,254	6,450,972	65.0
13-14	0.000201	99,248	20	99,238	6,351,718	64.0
14-15	0.000305	99,228	30	99,213	6,252,480	63.0
15-16	0.000414	99,197	41	99,177	6,153,268	62.0
16-17	0.000522	99,156	52	99,130	6,054,091	61.1
17-18	0.000641	99,105	64	99,073	5,954,960	60.1
18-19	0.000773	99,041	77	99,003	5,855,888	59.1
19-20	0.000909	98,964	90	98,920	5,756,885	58.2
20-21	0.001053	98,875	104	98,822	5,657,965	57.2
21-22	0.001185	98,770	117	98,712	5,559,143	56.3
22-23	0.001283	98,653	127	98,590	5,460,431	55.3
23-24	0.001333	98,527	131	98,461	5,361,841	54.4
24-25	0.001349	98,395	133	98,329	5,263,380	53.5
25-26	0.001354	98,263	133	98,196	5,165,051	52.6
26-27	0.001365	98,130	134	98,063	5,066,855	51.6
27-28	0.001379	97,996	135	97,928	4,968,792	50.7
28-29	0.001401	97,860	137	97,792	4,870,864	49.8
29-30	0.001432	97,723	140	97,653	4,773,072	48.8
30-31	0.001467	97,583	143	97,512	4,675,419	47.9
31-32	0.001502	97,440	146	97,367	4,577,907	47.0
32-33	0.001536	97,294	149	97,219	4,480,540	46.1
33-34	0.001570	97,145	153	97,068	4,383,321	45.1
34-35	0.001609	96,992	156	96,914	4,286,252	44.2
35-36	0.001665	96,836	161	96,755	4,189,338	43.3
36-37	0.001742	96,675	168	96,591	4,092,583	42.3
37-38	0.001829	96,506	177	96,418	3,995,992	41.4
38-39	0.001921	96,330	185	96,237	3,899,574	40.5
39-40	0.002023	96,145	195	96,047	3,803,337	39.6
40-41	0.002135	95,950	205	95,848	3,707,290	38.6
41-42	0.002273	95,745	218	95,637	3,611,442	37.7
42-43	0.002459	95,528	235	95,410	3,515,805	36.8
43-44	0.002703	95,293	258	95,164	3,420,395	35.9
44-45	0.002997	95,035	285	94,893	3,325,231	35.0
45-46	0.003309	94,750	313	94,594	3,230,338	34.1
46-47	0.003631	94,437	343	94,266	3,135,744	33.2
47-48	0.003984	94,094	375	93,907	3,041,479	32.3
48-49	0.004366	93,719	409	93,515	2,947,572	31.5
49-50	0.004768	93,310	445	93,088	2,854,058	30.6
50-51	0.005179	92,865	481	92,625	2,760,970	29.7
51-52	0.005596	92,384	517	92,126	2,668,345	28.9
52-53	0.006034	91,867	554	91,590	2,576,220	28.0
53-54	0.006508	91,313	594	91,016	2,484,630	27.2
54-55	0.007026	90,719	637	90,400	2,393,614	26.4
55-56	0.007591	90,081	684	89,739	2,303,214	25.6
56-57	0.008191	89,397	732	89,031	2,213,475	24.8
57-58	0.008812	88,665	781	88,274	2,124,444	24.0
58-59	0.009425	87,884	828	87,470	2,036,169	23.2
59-60	0.010028	87,056	873	86,619	1,948,700	22.4
60-61	0.010645	86,183	917	85,724	1,862,081	21.6

See footnotes at end of table.

Table 14. Life table for non-Hispanic white males: United States, 2011—Con.Spreadsheet version available from: ftp://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/64_11/Table14.xlsx.

Age (years)	Probability of dying between ages x and $x + 1$	Number surviving to age x	Number dying between ages x and $x + 1$	Person-years lived between ages x and $x + 1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
61–62	0.011305	85,265	964	84,783	1,776,357	20.8
62–63	0.012031	84,301	1,014	83,794	1,691,574	20.1
63–64	0.012880	83,287	1,073	82,751	1,607,780	19.3
64–65	0.013896	82,214	1,142	81,643	1,525,029	18.5
65–66	0.015110	81,072	1,225	80,459	1,443,386	17.8
66–67	0.016503	79,847	1,318	79,188	1,362,927	17.1
67–68	0.018045	78,529	1,417	77,821	1,283,739	16.3
68–69	0.019623	77,112	1,513	76,355	1,205,919	15.6
69–70	0.021262	75,599	1,607	74,795	1,129,563	14.9
70–71	0.023146	73,991	1,713	73,135	1,054,768	14.3
71–72	0.025278	72,279	1,827	71,365	981,633	13.6
72–73	0.027630	70,452	1,947	69,478	910,268	12.9
73–74	0.030219	68,505	2,070	67,470	840,789	12.3
74–75	0.033126	66,435	2,201	65,335	773,319	11.6
75–76	0.036255	64,234	2,329	63,070	707,985	11.0
76–77	0.039716	61,905	2,459	60,676	644,915	10.4
77–78	0.043757	59,447	2,601	58,146	584,239	9.8
78–79	0.048405	56,845	2,752	55,470	526,093	9.3
79–80	0.053785	54,094	2,909	52,639	470,623	8.7
80–81	0.059839	51,184	3,063	49,653	417,984	8.2
81–82	0.066176	48,122	3,184	46,529	368,331	7.7
82–83	0.073348	44,937	3,296	43,289	321,802	7.2
83–84	0.081302	41,641	3,385	39,948	278,513	6.7
84–85	0.090236	38,256	3,452	36,530	238,565	6.2
85–86	0.100743	34,804	3,506	33,050	202,035	5.8
86–87	0.112235	31,297	3,513	29,541	168,985	5.4
87–88	0.124750	27,785	3,466	26,052	139,444	5.0
88–89	0.138311	24,319	3,364	22,637	113,392	4.7
89–90	0.152931	20,955	3,205	19,353	90,755	4.3
90–91	0.168603	17,750	2,993	16,254	71,402	4.0
91–92	0.185302	14,758	2,735	13,390	55,149	3.7
92–93	0.202980	12,023	2,440	10,803	41,758	3.5
93–94	0.221569	9,583	2,123	8,521	30,955	3.2
94–95	0.240976	7,459	1,798	6,561	22,435	3.0
95–96	0.261085	5,662	1,478	4,923	15,874	2.8
96–97	0.281762	4,184	1,179	3,594	10,951	2.6
97–98	0.302853	3,005	910	2,550	7,357	2.4
98–99	0.324194	2,095	679	1,755	4,807	2.3
99–100	0.345609	1,416	489	1,171	3,052	2.2
100 and over	1.000000	926	926	1,881	1,881	2.0

NOTE: This life table is based on death rates that have been adjusted for race and ethnicity misclassification on death certificates.
 SOURCE: CDC/NCHS, National Vital Statistics System.

EXHIBIT 8

Appendix A. 2011 U.S. General Population Male Life Table

Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016

All races

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk I_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
0-1	0.006575	1.0	0.0065750	100,000	658	99,427	5,474,009	54.7
1-2	0.000445	1.0	0.0004450	99,342	44	99,320	5,374,582	54.1
2-3	0.000301	1.0	0.0003010	99,298	30	99,283	5,275,262	53.1
3-4	0.000240	1.0	0.0002400	99,268	24	99,256	5,175,979	52.1
4-5	0.000183	1.0	0.0001830	99,244	18	99,235	5,076,723	51.2
5-6	0.000169	1.0	0.0001690	99,226	17	99,218	4,977,488	50.2
6-7	0.000150	1.0	0.0001500	99,209	15	99,202	4,878,271	49.2
7-8	0.000134	1.0	0.0001340	99,194	13	99,188	4,779,069	48.2
8-9	0.000115	1.0	0.0001150	99,181	11	99,176	4,679,882	47.2
9-10	0.000097	1.0	0.0000970	99,170	10	99,165	4,580,706	46.2
10-11	0.000085	1.0	0.0000850	99,160	8	99,156	4,481,541	45.2
11-12	0.000092	1.0	0.0000920	99,152	9	99,148	4,382,385	44.2
12-13	0.000132	1.0	0.0001320	99,143	13	99,137	4,283,238	43.2
13-14	0.000213	1.0	0.0002130	99,130	21	99,120	4,184,101	42.2
14-15	0.000323	1.0	0.0003230	99,109	32	99,093	4,084,982	41.2
15-16	0.000439	1.0	0.0004390	99,077	43	99,056	3,985,889	40.2
16-17	0.000552	1.0	0.0005520	99,034	55	99,007	3,886,833	39.2
17-18	0.000675	1.0	0.0006750	98,979	67	98,946	3,787,827	38.3
18-19	0.000807	3.3	0.0027013	98,912	267	98,779	3,688,881	37.3
19-20	0.000942	3.2	0.0030114	98,645	297	98,497	3,590,103	36.4
20-21	0.001085	3.0	0.0032334	98,348	318	98,189	3,491,606	35.5
21-22	0.001216	3.1	0.0038118	98,030	374	97,843	3,393,417	34.6
22-23	0.001310	3.3	0.0043592	97,656	426	97,443	3,295,574	33.7
23-24	0.001353	4.1	0.0054859	97,230	533	96,964	3,198,131	32.9
24-25	0.001358	4.6	0.0062542	96,697	605	96,395	3,101,168	32.1
25-26	0.001351	4.9	0.0066459	96,092	639	95,773	3,004,773	31.3

Appendix A. 2011 U.S. General Population Male Life Table

Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016

All races

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
26-27	0.001349	5.5	0.0074312	95,453	709	95,099	2,909,001	30.5
27-28	0.001353	5.8	0.0078989	94,744	748	94,370	2,813,902	29.7
28-29	0.001371	6.5	0.0089216	93,996	839	93,577	2,719,532	28.9
29-30	0.001399	6.5	0.0090478	93,157	843	92,736	2,625,956	28.2
30-31	0.001432	6.4	0.0091878	92,314	848	91,890	2,533,220	27.4
31-32	0.001464	6.9	0.0101313	91,466	927	91,003	2,441,330	26.7
32-33	0.001496	7.1	0.0106698	90,539	966	90,056	2,350,328	26.0
33-34	0.001528	7.4	0.0113651	89,573	1,018	89,064	2,260,272	25.2
34-35	0.001563	6.8	0.0106137	88,555	940	88,085	2,171,208	24.5
35-36	0.001613	6.4	0.0103475	87,615	907	87,162	2,083,123	23.8
36-37	0.001682	6.7	0.0112230	86,708	973	86,222	1,995,961	23.0
37-38	0.001764	7.1	0.0125987	85,735	1,080	85,195	1,909,740	22.3
38-39	0.001857	7.7	0.0142256	84,655	1,204	84,053	1,824,545	21.6
39-40	0.001964	7.8	0.0152915	83,451	1,276	82,813	1,740,492	20.9
40-41	0.002083	7.9	0.0164363	82,175	1,351	81,500	1,657,679	20.2
41-42	0.002227	7.7	0.0171008	80,824	1,382	80,133	1,576,179	19.5
42-43	0.002414	7.3	0.0176592	79,442	1,403	78,741	1,496,046	18.8
43-44	0.002653	6.8	0.0180473	78,039	1,408	77,335	1,417,306	18.2
44-45	0.002939	6.5	0.0191735	76,631	1,469	75,897	1,339,971	17.5
45-46	0.003243	6.7	0.0216755	75,162	1,629	74,348	1,264,074	16.8
46-47	0.003563	7.1	0.0252682	73,533	1,858	72,604	1,189,727	16.2
47-48	0.003922	7.1	0.0276631	71,675	1,983	70,684	1,117,123	15.6
48-49	0.004320	7.0	0.0301072	69,692	2,098	68,643	1,046,439	15.0
49-50	0.004749	6.9	0.0329621	67,594	2,228	66,480	977,796	14.5
50-51	0.005193	7.4	0.0383143	65,366	2,504	64,114	911,316	13.9
51-52	0.005647	7.4	0.0416080	62,862	2,616	61,554	847,202	13.5

Appendix A. 2011 U.S. General Population Male Life Table

Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016

All races

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk I_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
52-53	0.006122	7.3	0.0447095	60,246	2,694	58,899	785,648	13.0
53-54	0.006630	6.9	0.0458032	57,552	2,636	56,234	726,749	12.6
54-55	0.007181	7.0	0.0504908	54,916	2,773	53,530	670,515	12.2
55-56	0.007779	6.9	0.0535175	52,143	2,791	50,748	616,986	11.8
56-57	0.008415	6.6	0.0551671	49,352	2,723	47,991	566,238	11.5
57-58	0.009074	6.4	0.0577152	46,629	2,691	45,284	518,248	11.1
58-59	0.009727	6.3	0.0614132	43,938	2,698	42,589	472,964	10.8
59-60	0.010371	6.7	0.0697133	41,240	2,875	39,803	430,375	10.4
60-61	0.011034	7.1	0.0785312	38,365	3,013	36,859	390,573	10.2
61-62	0.011738	7.0	0.0823663	35,352	2,912	33,896	353,714	10.0
62-63	0.012489	6.9	0.0863986	32,440	2,803	31,039	319,818	9.9
63-64	0.013335	6.3	0.0838569	29,637	2,485	28,395	288,780	9.7
64-65	0.014319	6.0	0.0856537	27,152	2,326	25,989	260,385	9.6
65-66	0.015482	5.6	0.0871033	24,826	2,162	23,745	234,396	9.4
66-67	0.016824	5.7	0.0967221	22,664	2,192	21,568	210,651	9.3
67-68	0.018330	5.3	0.0977241	20,472	2,001	19,472	189,083	9.2
68-69	0.019900	4.6	0.0916566	18,471	1,693	17,625	169,612	9.2
69-70	0.021539	4.2	0.0895439	16,778	1,502	16,027	151,987	9.1
70-71	0.023396	4.1	0.0956488	15,276	1,461	14,546	135,960	8.9
71-72	0.025476	3.5	0.0901705	13,815	1,246	13,192	121,415	8.8
72-73	0.027794	3.5	0.0962033	12,569	1,209	11,965	108,223	8.6
73-74	0.030350	3.2	0.0979219	11,360	1,112	10,804	96,258	8.5
74-75	0.033204	2.8	0.0915335	10,248	938	9,779	85,454	8.3

Appendix A. 2011 U.S. General Population Male Life Table

Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016

All races

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
75-76	0.036345	2.6	0.0947418	9,310	882	8,869	75,675	8.1
76-77	0.039788	2.7	0.1093784	8,428	922	7,967	66,806	7.9
77-78	0.043720	2.6	0.1118552	7,506	840	7,086	58,839	7.8
78-79	0.048335	2.4	0.1145796	6,666	764	6,284	51,753	7.8
79-80	0.053650	2.2	0.1164621	5,902	687	5,559	45,469	7.7
80-81	0.059565	2.1	0.1253563	5,215	654	4,888	39,911	7.7
81-82	0.065848	1.0	0.0658480	4,561	300	4,411	35,023	7.7
82-83	0.072956	1.0	0.0729560	4,261	311	4,106	30,612	7.2
83-84	0.080741	1.0	0.0807410	3,950	319	3,791	26,506	6.7
84-85	0.089357	1.0	0.0893570	3,631	324	3,469	22,716	6.3
85-86	0.099650	1.0	0.0996500	3,307	330	3,142	19,247	5.8
86-87	0.110901	1.0	0.1109010	2,977	330	2,812	16,105	5.4
87-88	0.123146	1.0	0.1231460	2,647	326	2,484	13,293	5.0
88-89	0.136412	1.0	0.1364120	2,321	317	2,163	10,809	4.7
89-90	0.150710	1.0	0.1507100	2,004	302	1,853	8,646	4.3
90-91	0.166038	1.0	0.1660380	1,702	283	1,561	6,793	4.0
91-92	0.182374	1.0	0.1823740	1,419	259	1,290	5,233	3.7
92-93	0.199676	1.0	0.1996760	1,160	232	1,044	3,943	3.4
93-94	0.217880	1.0	0.2178800	928	202	827	2,899	3.1
94-95	0.236903	1.0	0.2369030	726	172	640	2,072	2.9
95-96	0.256636	1.0	0.2566360	554	142	483	1,432	2.6
96-97	0.276954	1.0	0.2769540	412	114	355	949	2.3
97-98	0.297713	1.0	0.2977130	298	89	254	594	2.0
98-99	0.318755	1.0	0.3187550	209	67	176	341	1.6
99-100	0.339914	1.0	0.3399140	142	48	118	165	1.2
100+	1.00000	1.0	1.0000000	94	94	47	47	0.5

EXHIBIT 9

Appendix B. 2011 U.S. General Population Non-Hispanic Black Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
Black men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
0-1	0.012502	1.0	0.0125020	100,000	1,250	99,007	5,516,944	55.2
1-2	0.000674	1.0	0.0006740	98,750	67	98,717	5,417,937	54.9
2-3	0.000494	1.0	0.0004940	98,683	49	98,659	5,319,221	53.9
3-4	0.000356	1.0	0.0003560	98,634	35	98,617	5,220,562	52.9
4-5	0.000316	1.0	0.0003160	98,599	31	98,584	5,121,946	51.9
5-6	0.000258	1.0	0.0002580	98,568	25	98,556	5,023,362	51.0
6-7	0.000224	1.0	0.0002240	98,543	22	98,532	4,924,807	50.0
7-8	0.000193	1.0	0.0001930	98,521	19	98,512	4,826,275	49.0
8-9	0.000161	1.0	0.0001610	98,502	16	98,494	4,727,763	48.0
9-10	0.000128	1.0	0.0001280	98,486	13	98,480	4,629,269	47.0
10-11	0.000107	1.0	0.0001070	98,473	11	98,468	4,530,790	46.0
11-12	0.000118	1.0	0.0001180	98,462	12	98,456	4,432,322	45.0
12-13	0.000183	1.0	0.0001830	98,450	18	98,441	4,333,866	44.0
13-14	0.000310	1.0	0.0003100	98,432	31	98,417	4,235,425	43.0
14-15	0.000481	1.0	0.0004810	98,401	47	98,378	4,137,009	42.0
15-16	0.000655	1.0	0.0006550	98,354	64	98,322	4,038,631	41.1
16-17	0.000822	1.0	0.0008220	98,290	81	98,250	3,940,309	40.1
17-18	0.001004	1.0	0.0010040	98,209	99	98,160	3,842,060	39.1
18-19	0.001206	2.5	0.0030332	98,110	298	97,961	3,743,900	38.2
19-20	0.001421	2.4	0.0033507	97,812	328	97,648	3,645,939	37.3
20-21	0.001654	2.0	0.0033826	97,484	330	97,319	3,548,291	36.4
21-22	0.001874	2.2	0.0040591	97,154	394	96,957	3,450,972	35.5
22-23	0.002041	2.1	0.0043329	96,760	419	96,551	3,354,015	34.7
23-24	0.002134	2.4	0.0051386	96,341	495	96,094	3,257,465	33.8
24-25	0.002168	2.6	0.0056559	95,846	542	95,575	3,161,371	33.0
25-26	0.002186	2.7	0.0059428	95,304	566	95,021	3,065,796	32.2

Appendix B. 2011 U.S. General Population Non-Hispanic Black Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
Black men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
26-27	0.002212	3.0	0.0065743	94,738	623	94,427	2,970,775	31.4
27-28	0.002230	3.3	0.0074117	94,115	698	93,766	2,876,349	30.6
28-29	0.002245	3.6	0.0081778	93,417	764	93,035	2,782,583	29.8
29-30	0.002259	3.7	0.0083570	92,653	774	92,266	2,689,548	29.0
30-31	0.002267	3.5	0.0078932	91,879	725	91,517	2,597,282	28.3
31-32	0.002276	3.9	0.0089569	91,154	816	90,746	2,505,765	27.5
32-33	0.002300	4.2	0.0097525	90,338	881	89,898	2,415,019	26.7
33-34	0.002350	4.5	0.0106481	89,457	953	88,981	2,325,122	26.0
34-35	0.002426	4.3	0.0103458	88,504	916	88,046	2,236,141	25.3
35-36	0.002527	3.9	0.0099009	87,588	867	87,155	2,148,095	24.5
36-37	0.002646	4.0	0.0105482	86,721	915	86,264	2,060,941	23.8
37-38	0.002772	4.4	0.0121608	85,806	1,043	85,285	1,974,677	23.0
38-39	0.002896	4.6	0.0134407	84,763	1,139	84,194	1,889,393	22.3
39-40	0.003027	5.0	0.0151857	83,624	1,270	82,989	1,805,199	21.6
40-41	0.003179	4.8	0.0151330	82,354	1,246	81,731	1,722,210	20.9
41-42	0.003369	4.7	0.0159715	81,108	1,295	80,461	1,640,479	20.2
42-43	0.003607	4.2	0.0150020	79,813	1,197	79,215	1,560,019	19.5
43-44	0.003902	3.8	0.0148330	78,616	1,166	78,033	1,480,804	18.8
44-45	0.004251	3.7	0.0158215	77,450	1,225	76,838	1,402,771	18.1
45-46	0.004616	4.3	0.0198424	76,225	1,512	75,469	1,325,934	17.4
46-47	0.005016	4.9	0.0244018	74,713	1,823	73,802	1,250,465	16.7
47-48	0.005513	4.8	0.0264818	72,890	1,930	71,925	1,176,663	16.1
48-49	0.006129	4.3	0.0266542	70,960	1,891	70,015	1,104,738	15.6
49-50	0.006838	4.2	0.0286250	69,069	1,977	68,081	1,034,724	15.0
50-51	0.007586	4.2	0.0321075	67,092	2,154	66,015	966,643	14.4
51-52	0.008344	4.2	0.0353362	64,938	2,295	63,791	900,628	13.9

Appendix B. 2011 U.S. General Population Non-Hispanic Black Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
Black men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
52-53	0.009145	4.2	0.0380858	62,643	2,386	61,450	836,838	13.4
53-54	0.010011	4.1	0.0412941	60,257	2,488	59,013	775,388	12.9
54-55	0.010959	4.2	0.0464298	57,769	2,682	56,428	716,375	12.4
55-56	0.011995	4.1	0.0494287	55,087	2,723	53,726	659,947	12.0
56-57	0.013107	3.9	0.0506911	52,364	2,654	51,037	606,221	11.6
57-58	0.014274	4.0	0.0567492	49,710	2,821	48,300	555,184	11.2
58-59	0.015455	4.0	0.0617318	46,889	2,895	45,442	506,885	10.8
59-60	0.016630	4.3	0.0722177	43,994	3,177	42,406	461,443	10.5
60-61	0.017888	4.6	0.0822606	40,817	3,358	39,138	419,038	10.3
61-62	0.019207	4.9	0.0932768	37,459	3,494	35,712	379,900	10.1
62-63	0.020451	4.6	0.0933672	33,965	3,171	32,380	344,188	10.1
63-64	0.021595	4.3	0.0933499	30,794	2,875	29,357	311,808	10.1
64-65	0.022717	4.0	0.0897633	27,919	2,506	26,666	282,452	10.1
65-66	0.023933	4.1	0.0972571	25,413	2,472	24,177	255,786	10.1
66-67	0.025369	4.2	0.1076218	22,941	2,469	21,707	231,609	10.1
67-68	0.027104	4.2	0.1140207	20,472	2,334	19,305	209,902	10.3
68-69	0.029089	4.0	0.1170901	18,138	2,124	17,076	190,597	10.5
69-70	0.031191	3.5	0.1077634	16,014	1,726	15,151	173,521	10.8
70-71	0.033429	3.5	0.1153442	14,288	1,648	13,464	158,370	11.1
71-72	0.035780	3.3	0.1169415	12,640	1,478	11,901	144,906	11.5
72-73	0.038397	1.0	0.0383970	11,162	429	10,948	133,005	11.9
73-74	0.041254	1.0	0.0412540	10,733	443	10,512	122,058	11.4
74-75	0.044174	1.0	0.0441740	10,290	455	10,063	111,546	10.8

Appendix B. 2011 U.S. General Population Non-Hispanic Black Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
Black men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
75-76	0.047704	1.0	0.0477040	9,835	469	9,601	101,484	10.3
76-77	0.051047	1.0	0.0510470	9,366	478	9,127	91,883	9.8
77-78	0.054624	1.0	0.0546240	8,888	485	8,646	82,756	9.3
78-79	0.059628	1.0	0.0596280	8,403	501	8,153	74,111	8.8
79-80	0.064976	1.0	0.0649760	7,902	513	7,646	65,958	8.3
80-81	0.070676	1.0	0.0706760	7,389	522	7,128	58,313	7.9
81-82	0.076651	1.0	0.0766510	6,867	526	6,604	51,185	7.5
82-83	0.085516	1.0	0.0855160	6,341	542	6,070	44,581	7.0
83-84	0.092664	1.0	0.0926640	5,799	537	5,531	38,511	6.6
84-85	0.100307	1.0	0.1003070	5,262	528	4,998	32,980	6.3
85-86	0.108460	1.0	0.1084600	4,734	513	4,478	27,982	5.9
86-87	0.117140	1.0	0.1171400	4,221	494	3,974	23,505	5.6
87-88	0.126357	1.0	0.1263570	3,727	471	3,492	19,531	5.2
88-89	0.136120	1.0	0.1361200	3,256	443	3,035	16,039	4.9
89-90	0.146432	1.0	0.1464320	2,813	412	2,607	13,005	4.6
90-91	0.157294	1.0	0.1572940	2,401	378	2,212	10,398	4.3
91-92	0.168701	1.0	0.1687010	2,023	341	1,853	8,186	4.0
92-93	0.180641	1.0	0.1806410	1,682	304	1,530	6,333	3.8
93-94	0.193099	1.0	0.1930990	1,378	266	1,245	4,803	3.5
94-95	0.206052	1.0	0.2060520	1,112	229	998	3,558	3.2
95-96	0.219470	1.0	0.2194700	883	194	786	2,561	2.9
96-97	0.233321	1.0	0.2333210	689	161	609	1,775	2.6
97-98	0.247561	1.0	0.2475610	528	131	463	1,166	2.2
98-99	0.262144	1.0	0.2621440	397	104	345	704	1.8
99-100	0.277019	1.0	0.2770190	293	81	253	359	1.2
100+	1.00000	1.0	1.0000000	212	212	106	106	0.5

EXHIBIT 10

Appendix C. 2011 U.S. General Population Non-Hispanic White Male Life Table
Life Expectancies Adjusted for South Carolina DC experience 1996 to 2015, followed to 2016
White men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
0-1	0.005524	1.0	0.0055240	100,000	552	99,517	5,349,849	53.5
1-2	0.000413	1.0	0.0004130	99,448	41	99,428	5,250,332	52.8
2-3	0.000273	1.0	0.0002730	99,407	27	99,394	5,150,905	51.8
3-4	0.000229	1.0	0.0002290	99,380	23	99,369	5,051,511	50.8
4-5	0.000156	1.0	0.0001560	99,357	15	99,350	4,952,143	49.8
5-6	0.000160	1.0	0.0001600	99,342	16	99,334	4,852,793	48.8
6-7	0.000146	1.0	0.0001460	99,326	15	99,319	4,753,459	47.9
7-8	0.000132	1.0	0.0001320	99,311	13	99,305	4,654,141	46.9
8-9	0.000114	1.0	0.0001140	99,298	11	99,293	4,554,836	45.9
9-10	0.000095	1.0	0.0000950	99,287	9	99,283	4,455,544	44.9
10-11	0.000082	1.0	0.0000820	99,278	8	99,274	4,356,261	43.9
11-12	0.000088	1.0	0.0000880	99,270	9	99,266	4,256,987	42.9
12-13	0.000125	1.0	0.0001250	99,261	12	99,255	4,157,722	41.9
13-14	0.000201	1.0	0.0002010	99,249	20	99,239	4,058,467	40.9
14-15	0.000305	1.0	0.0003050	99,229	30	99,214	3,959,228	39.9
15-16	0.000414	1.0	0.0004140	99,199	41	99,179	3,860,014	38.9
16-17	0.000522	1.0	0.0005220	99,158	52	99,132	3,760,835	37.9
17-18	0.000641	1.0	0.0006410	99,106	64	99,074	3,661,703	36.9
18-19	0.000773	1.0	0.0007730	99,042	77	99,004	3,562,629	36.0
19-20	0.000909	1.0	0.0009090	98,965	90	98,920	3,463,626	35.0
20-21	0.001053	3.0	0.0031812	98,875	315	98,718	3,364,706	34.0
21-22	0.001185	3.0	0.0035003	98,560	345	98,388	3,265,988	33.1
22-23	0.001283	3.7	0.0048065	98,215	472	97,979	3,167,601	32.3
23-24	0.001333	5.2	0.0069188	97,743	676	97,405	3,069,622	31.4
24-25	0.001349	6.3	0.0084401	97,067	819	96,658	2,972,217	30.6
25-26	0.001354	6.7	0.0090557	96,248	872	95,812	2,875,559	29.9

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White men only

Age (years)	Basic Mortality q_x	Mortality Risk Factor	Adjusted Mortality q_x	Population at Risk l_x	Deaths d_x	Interval Person-years L_x	Cumulative Person-years T_x	Life Expectancy e_x
26-27	0.001365	7.6	0.0103911	95,376	991	94,881	2,779,747	29.1
27-28	0.001379	7.2	0.0099736	94,385	941	93,915	2,684,867	28.4
28-29	0.001401	8.5	0.0118636	93,444	1,109	92,890	2,590,952	27.7
29-30	0.001432	8.2	0.0117347	92,335	1,084	91,793	2,498,063	27.1
30-31	0.001467	9.1	0.0133350	91,251	1,217	90,643	2,406,270	26.4
31-32	0.001502	9.2	0.0138762	90,034	1,249	89,410	2,315,627	25.7
32-33	0.001536	9.0	0.0137534	88,785	1,221	88,175	2,226,218	25.1
33-34	0.001570	8.9	0.0139552	87,564	1,222	86,953	2,138,043	24.4
34-35	0.001609	7.5	0.0121357	86,342	1,048	85,818	2,051,090	23.8
35-36	0.001665	7.2	0.0119280	85,294	1,017	84,786	1,965,272	23.0
36-37	0.001742	7.5	0.0131122	84,277	1,105	83,725	1,880,487	22.3
37-38	0.001829	7.7	0.0141275	83,172	1,175	82,585	1,796,762	21.6
38-39	0.001921	8.5	0.0163393	81,997	1,340	81,327	1,714,178	20.9
39-40	0.002023	8.0	0.0161387	80,657	1,302	80,006	1,632,851	20.2
40-41	0.002135	9.0	0.0191327	79,355	1,518	78,596	1,552,845	19.6
41-42	0.002273	8.5	0.0193702	77,837	1,508	77,083	1,474,249	18.9
42-43	0.002459	9.1	0.0222673	76,329	1,700	75,479	1,397,166	18.3
43-44	0.002703	8.6	0.0233308	74,629	1,741	73,759	1,321,687	17.7
44-45	0.002997	8.3	0.0247547	72,888	1,804	71,986	1,247,928	17.1
45-46	0.003309	7.6	0.0251269	71,084	1,786	70,191	1,175,942	16.5
46-47	0.003631	7.5	0.0272227	69,298	1,886	68,355	1,105,751	16.0
47-48	0.003984	7.6	0.0300949	67,412	2,029	66,398	1,037,396	15.4
48-49	0.004366	8.1	0.0354544	65,383	2,318	64,224	970,999	14.9
49-50	0.004768	8.2	0.0392386	63,065	2,475	61,828	906,775	14.4
50-51	0.005179	9.1	0.0469414	60,590	2,844	59,168	844,947	13.9
51-52	0.005596	9.0	0.0502853	57,746	2,904	56,294	785,779	13.6

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52-53	0.006034	9.0	0.0543075	54,842	2,978	53,353	729,485	13.3
53-54	0.006508	8.1	0.0527141	51,864	2,734	50,497	676,132	13.0
54-55	0.007026	8.1	0.0570244	49,130	2,802	47,729	625,635	12.7
55-56	0.007591	7.9	0.0600728	46,328	2,783	44,937	577,906	12.5
56-57	0.008191	7.6	0.0623023	43,545	2,713	42,189	532,970	12.2
57-58	0.008812	6.8	0.0603584	40,832	2,465	39,600	490,781	12.0
58-59	0.009425	6.6	0.0625852	38,367	2,401	37,167	451,182	11.8
59-60	0.010028	6.8	0.0683332	35,966	2,458	34,737	414,015	11.5
60-61	0.010645	7.2	0.0761226	33,508	2,551	32,233	379,278	11.3
61-62	0.011305	6.4	0.0722265	30,957	2,236	29,839	347,046	11.2
62-63	0.012031	6.6	0.0795687	28,721	2,285	27,579	317,207	11.0
63-64	0.012880	5.8	0.0746940	26,436	1,975	25,449	289,628	11.0
64-65	0.013896	5.9	0.0823396	24,461	2,014	23,454	264,180	10.8
65-66	0.015110	5.7	0.0858800	22,447	1,928	21,483	240,726	10.7
66-67	0.016503	4.8	0.0799398	20,519	1,640	19,699	219,243	10.7
67-68	0.018045	4.1	0.0747021	18,879	1,410	18,174	199,544	10.6
68-69	0.019623	4.1	0.0797052	17,469	1,392	16,773	181,370	10.4
69-70	0.021262	3.9	0.0838395	16,077	1,348	15,403	164,597	10.2
70-71	0.023146	3.7	0.0865662	14,729	1,275	14,092	149,194	10.1
71-72	0.025278	3.4	0.0853467	13,454	1,148	12,880	135,102	10.0
72-73	0.027630	3.5	0.0970708	12,306	1,195	11,709	122,222	9.9
73-74	0.030219	3.2	0.0952045	11,111	1,058	10,582	110,514	9.9
74-75	0.033126	2.8	0.0923638	10,053	929	9,589	99,932	9.9

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75-76	0.036255	2.5	0.0889904	9,124	812	8,718	90,343	9.9
76-77	0.039716	2.4	0.0954766	8,312	794	7,915	81,625	9.8
77-78	0.043757	1.0	0.0437570	7,518	329	7,354	73,710	9.8
78-79	0.048405	1.0	0.0484050	7,189	348	7,015	66,357	9.2
79-80	0.053785	1.0	0.0537850	6,841	368	6,657	59,342	8.7
80-81	0.059839	1.0	0.0598390	6,473	387	6,280	52,685	8.1
81-82	0.066176	1.0	0.0661760	6,086	403	5,885	46,405	7.6
82-83	0.073348	1.0	0.0733480	5,683	417	5,475	40,521	7.1
83-84	0.081302	1.0	0.0813020	5,266	428	5,052	35,046	6.7
84-85	0.090236	1.0	0.0902360	4,838	437	4,620	29,994	6.2
85-86	0.100743	1.0	0.1007430	4,401	443	4,180	25,375	5.8
86-87	0.112235	1.0	0.1122350	3,958	444	3,736	21,195	5.4
87-88	0.124750	1.0	0.1247500	3,514	438	3,295	17,459	5.0
88-89	0.138311	1.0	0.1383110	3,076	425	2,864	14,164	4.6
89-90	0.152931	1.0	0.1529310	2,651	405	2,449	11,301	4.3
90-91	0.168603	1.0	0.1686030	2,246	379	2,057	8,852	3.9
91-92	0.185302	1.0	0.1853020	1,867	346	1,694	6,796	3.6
92-93	0.202980	1.0	0.2029800	1,521	309	1,367	5,102	3.4
93-94	0.221569	1.0	0.2215690	1,212	269	1,078	3,735	3.1
94-95	0.240976	1.0	0.2409760	943	227	830	2,658	2.8
95-96	0.261085	1.0	0.2610850	716	187	623	1,828	2.6
96-97	0.281762	1.0	0.2817620	529	149	455	1,206	2.3
97-98	0.302853	1.0	0.3028530	380	115	323	751	2.0
98-99	0.324194	1.0	0.3241940	265	86	222	429	1.6
99-100	0.345609	1.0	0.3456090	179	62	148	207	1.2
100+	1.00000	1.0	1.0000000	117	117	59	59	0.5

**Respondent's Ex. 11,
Order Denying State's Motion to Dismiss**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	
	)	
State of South Carolina,	)	2009-GS-45-180
	)	
v.	)	ORDER DENYING STATE'S
	)	MOTION TO DISMISS
Ronald Hakeem Mack,	)	DEFENDANT'S MOTION FOR
Defendant.	)	RESENTENCING

This matter is before the Court upon the State's motion to dismiss the defendant's motion for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). A hearing on the motion was held on February 17, 2017, in Florence County before the Honorable Michael G. Nettles. The State was represented by Solicitor Ernest A. Finney, III, and the defendant was represented by Appellate Defender Laura R. Baer. The Court had before it the transcript of the plea and sentencing hearing, the written and oral arguments of the parties, and the testimony and exhibits presented at the hearing. The Court held the matter *sub curia* pending the submission of proposed orders by both parties. The Court presents its findings and conclusions below.

I. PROCEDURAL HISTORY

On July 6, 2009, the Williamsburg County Grand Jury indicted Defendant Ronald Mack, along with his three co-defendants, Tawanda Mack Allen, Kelvin Michael Bowen, Jr., and Antonio Lavelle McClary, for murder, first degree burglary, conspiracy, and possession of a weapon during a violent crime.¹ Mack, born August 24, 1991, was 17 years old on the date of the incident, April 5, 2009.

¹ Tawanda Mack Allen is Mack's mother, Kelvin Michael Bowen, Jr. was Mack's mother's boyfriend, and Antonio Lavelle McClary was a friend of Mack.

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On August 24, 2010, Mack's nineteenth birthday, he pled guilty before the Honorable Clifton Newman to one count of murder and one count of first-degree burglary. He was sentenced to concurrent terms of fifty and thirty years, respectively. Pursuant to S.C. CODE ANN. § 16-3-20 and § 24-13-100, Mack is not eligible for parole and must serve his fifty-year sentence "day for day."²

No direct appeal was filed from Mack's guilty plea and sentence. On August 5, 2011, Mack filed his application for post-conviction relief ("PCR") alleging ineffective assistance of counsel and that his guilty plea was not knowing, intelligent, and voluntary. The State filed its return on May 18, 2012. An evidentiary hearing was held before the Honorable R. Ferrell Cothran, Jr. on May 27, 2014. Mack was represented by Charles T. Brooks, and the state was represented by assistant attorney general Croom Hunter. On July 1, 2014, Judge Cothran filed an Order of Dismissal denying Mack's PCR application. Mack was represented on appeal by Appellate Defender Laura Baer, who filed a petition for writ of certiorari with the South Carolina Supreme Court on his behalf on April 1, 2015. The state filed its return on August 20, 2015. By Order dated March 29, 2016, the Supreme Court denied the petition for writ of certiorari.

Meanwhile, on June 25, 2012, the United States Supreme Court issued its opinion in *Miller v. Alabama*, 132 S.Ct. 2455, 2475 (2012), holding that the imposition of mandatory life without parole ("LWOP") sentences for homicide offenses committed when the defendant was a

² S.C. CODE ANN. § 16-3-20 ("No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section. "); S.C. CODE ANN. § 24-13-100 ("For purposes of definition under South Carolina law, a 'no parole offense' means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.").

juvenile violates the principle of proportionality and the Eighth Amendment's ban on cruel and unusual punishment absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing. Subsequently, in *Aiken v. Byars*, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014), *cert. denied* 135 S.Ct. 2379 (2015), a class of fifteen inmates in the South Carolina Department of Corrections ("SCDC"), who were sentenced to life without parole for various homicide offenses committed as juveniles, filed a petition in our Supreme Court's original jurisdiction seeking resentencing in light of *Miller*. On November 12, 2014, our Supreme Court ruled that *Miller* applied "retroactively to these petitioners, *to those similarly situated*, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." *Aiken v. Byars*, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014), *cert. denied* 135 S.Ct. 2379 (2015) (emphasis added). The Court further ruled that "*any individual affected by our holding* may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced." *Id.* (emphasis added).

On April 20, 2015, Mack, through counsel, filed a motion for resentencing in Williamsburg County, arguing that Mack's fifty-year sentence was a de facto life sentence such that he was eligible for resentencing under *Aiken*. The solicitor filed his response on April 28, 2015, and Mack filed a reply on May 15, 2015. On July 23, 2015, our Supreme Court issued an Order lifting the stay of *Aiken* following the United States Supreme Court's denial of the state's petition for writ of certiorari. The Court ordered: "*Petitioners and any other individuals affected by our holding in Aiken* may file a motion for resentencing within one year of the date of this order in the court of general sessions where he or she was originally sentenced." *S.C. Supreme Court Order*,

July 23, 2015 (emphasis added). On March 16, 2016, Chief Justice Costa M. Pleicones issued an administrative order regarding the procedures to be followed statewide in the management and disposition of all motions for resentencing filed pursuant to *Aiken*. The Order instructed the Clerk of Court to forward a copy of the motion for resentencing to South Carolina Court Administration, following which the Chief Justice would assign the matter to a circuit court judge other than the original sentencing judge. *S.C. Supreme Court Admin. Order Mar. 16, 2016*.

On August 11, 2016, Chief Justice Pleicones issued an Order vesting this Court with exclusive jurisdiction over Mack's motion for resentencing. *State v. Ronald Mack, Aiken v. Byars Judicial Appointment Order Aug. 11, 2016*. The solicitor filed an additional opposition to defendant's motion for resentencing on September 22, 2016. A status conference was held in Williamsburg County on September 30, 2016, at which time this Court issued an initial scheduling order, which provided the solicitor two weeks to file a formal motion to dismiss. The solicitor filed his motion to dismiss on October 5, 2016, to which Mack filed his opposition on November 4, 2016. At the time of the hearing on the State's motion on February 17, 2017, Mack was 25 years old. The parties agreed that under his current sentence, Mack will be 67 years old on his scheduled date of release. Hr'g Tr. 9, ll. 1-9; Hr'g Tr. 65, l. 18 – 66, l. 19.

II. SUMMARY OF APPLICABLE LAW

The Eighth Amendment to the United States Constitution, applicable to the states under the Fourteenth Amendment, provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend VIII; U.S. Const. amend XIV. The United States Supreme Court has found that because the words of the Eighth Amendment are not precise and their scope is not static, it "must draw its meaning from the

evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

The constitutional requirement for individualized consideration of mitigating and extenuating circumstances at sentencing began with American death penalty jurisprudence. In *Furman v. Georgia*, 408 U.S. 238 (1972), the United States Supreme Court invalidated all then-existing death penalty statutes, finding that they allowed for the arbitrary and capricious imposition of capital punishment. The Supreme Court struck down subsequent attempts by states to cure the defect through mandatory death penalty statutes, holding that “the fundamental respect for humanity underlying the Eighth Amendment, requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.” *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976); see also *Roberts v. Louisiana*, 428 U.S. 325 (1976); *State v. Rumsey*, 267 S.C. 236, 226 S.E.2d 894 (1976). However, the Court upheld Georgia’s bifurcated scheme that separated the guilt and penalty phases of a capital trial because the jury’s discretion was “controlled by clear and objective standards so as to produce non-discriminatory application.” *Gregg v. Georgia*, 428 U.S. 153, 198 (1976). Of particular importance was the jury’s consideration of mitigating evidence and extenuating circumstances. *Id.*

In the ensuing years, the Supreme Court imposed several categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty, reflecting its continued concern with proportionate punishment under the Eighth Amendment. In *Thompson v. Oklahoma*, 487 U.S. 815 (1988), a plurality of the Court prohibited the imposition of the death penalty upon a juvenile offender who was under the age of

sixteen at the time of the offense. Later, the Court banned the imposition of the death penalty upon mentally retarded defendants in *Atkins v. Virginia*, 536 U.S. 304 (2002), and upon offenders who commit non-homicide crimes in *Kennedy v. Louisiana*, 554 U.S. 407 (2008).

Roper v. Simmons

The twenty-first century has seen continued development in the area of Eighth Amendment jurisprudence, especially with respect to juvenile offenders. In *Roper v. Simmons*, 543 U.S. 551 (2005), the United States Supreme Court categorically banned the imposition of the death penalty on juvenile offenders, who were under the age of eighteen at the time of the crime. The *Roper* Court explained that “[c]apital punishment must be limited to those offenders who commit “a narrow category of the most serious crimes” and whose extreme culpability makes them “the most deserving of execution.” 543 U.S. at 568 (quoting *Atkins*, 536 U.S. at 319). The *Roper* Court distinguished youthful offenders from those most deserving of execution based on their lack of maturity and underdeveloped sense of responsibility; their greater susceptibility to negative influences and outside pressures; and the transitory nature of their personality traits. *Id.* at 569-70. As such, a juvenile’s conduct is not as morally reprehensible as that of an adult. *Id.* at 570.

Because of their diminished culpability, the Court observed that the penological justifications for the death penalty apply to youthful offenders “with lesser force than to adults.” *Id.* In rejecting the government’s arguments against a categorical ban, the Court explained: “An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender’s objective immaturity, vulnerability, and lack of true depravity should require

a sentence less severe than death.” *Id.* at 573. Thus, the Court held: “When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.” *Id.* at 573-74.

Graham v. Florida

Six years later, in *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court categorically banned the imposition of life without parole upon juvenile offenders who commit non-homicide offenses. In addition to finding that a national consensus supported such a ban, the Court discussed whether such a categorical ban was necessary in the Court’s “independent judgment.” 560 U.S. at 62-68. Similar to its reasoning in *Roper*, the *Graham* Court’s conclusion was based upon the limited culpability of juvenile non-homicide offenders, the severity of life without parole sentences, and the lack of any penological theory adequate to justify such a sentence. 560 U.S. at 68-75. “When compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability.” *Id.* at 69. Regarding severity, the Court noted that life without parole is the second most severe punishment permitted by law, and, like the death penalty, deprives the offender of his liberty “without giving hope of restoration.” *Id.* at 69-70. For a juvenile, the Court found that a sentence of life without parole is “an especially harsh punishment” because “a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender.” *Id.* at 70. While *Graham* does not require a guarantee of release for a youthful offender convicted of a non-homicide crime, such defendants must be given “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Id.* at 71.

Miller v. Alabama

In 2012, the Court decided another seminal case in juvenile justice. In *Miller v. Alabama*, 132 S.Ct. 2455 (2012), the United States Supreme Court held that the mandatory imposition of a life sentence without parole for youthful offenders was unconstitutional. The *Miller* Court wrote: “*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing.” 132 S. Ct. at 2464. The Court found that while *Graham*’s flat ban on life without parole was for non-homicide crimes, nothing that *Graham* said about children is crime-specific. *Id.* at 2465. Thus, the *Miller* Court recognized that *Graham*’s reasoning implicates any life without parole sentence for a juvenile, even as its categorical bar relates only to non-homicide offenses. *Id.* “Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of *a lifetime of incarceration without the possibility of parole.*” *Id.* (emphasis added). The *Miller* Court found that the mandatory penalty schemes at issue prevented the sentencer from considering youth and from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender. *Id.* at 2466. The Court found that such schemes contravene the foundational principle of *Roper* and *Graham* – “that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Id.*

Thus, the Court held that a sentencer must have the opportunity to consider youth as a mitigating factor just as capital defendants must be afforded the opportunity to present mitigating factors for a sentencer’s consideration. *Id.* at 2467. The *Miller* Court wrote further: “[G]iven all we have said in *Roper*, *Graham*, and this decision about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this

harshest possible penalty will be uncommon.” *Id.* at 2469. “That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.’” *Id.* Thus, the Court ruled: “Although we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.*

Aiken v. Byars

In *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), our Supreme Court considered two questions – first, whether *Miller* applied retroactively, and second, whether *Miller* applied to juveniles who received a non-mandatory sentence of life without parole? 410 S.C. at 536-37, 765 S.E.2d at 573. A plurality of the Court answered both questions affirmatively. *Id.* Regarding retroactivity, the United States Supreme Court’s decision in *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), held that *Miller* announced a new substantive constitutional rule retroactive on state collateral review, effectively affirming our Supreme Court’s retroactivity ruling in *Aiken*.

The *Aiken* Court recognized that in holding that the Eighth Amendment proscribes a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders, the *Miller* Court did not expressly extend its ruling to states such as South Carolina where the imposition of life without parole upon a juvenile offender is permitted but not mandatory. *Id.* at 542, 765 S.E.2d at 576. Rather, because its holding was sufficient to decide the cases before it, the *Miller* Court found it unnecessary to consider the defendants’ alternative argument that the Eighth Amendment requires a categorical bar on life without parole for all

juveniles. *Id.* Even so, the *Aiken* Court determined that it “must give effect to the proportionality rationale integral to *Miller*’s holding—*youth has constitutional significance*. As such, it must be afforded adequate weight in sentencing.” *Id.* at 542-43, 765 S.E.2d at 576 (emphasis added).

The *Aiken* Court reasoned: “*Miller* is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution.” *Id.* at 543, 765 S.E.2d at 576-77. Thus, it found that *Miller* did more than prohibit statutory schemes resulting in mandatory life sentences for juveniles. *Id.* at 543, 765 S.E.2d at 577. It “establishes an affirmative requirement that courts fully explore the impact of the defendant’s juvenility on the sentence rendered.” *Id.* The Court noted that though some of the fifteen petitioners’ sentencing hearings “touch[ed] on the issues of youth, none of them approach[ed] the sort of hearing envisioned by *Miller* where the factors of youth are carefully and thoughtfully considered.” *Id.* at 543, 765 S.E.2d at 577.

Regarding the practical application of *Miller*, the *Aiken* Court referenced the mandatory factors articulated in *Miller* for the sentencer’s consideration, which 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 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. at 544, 765 S.E.2d at 577 (citing *Miller*, 132 S.Ct. at 2468). Further, while not specifically requiring that the sentencing hearing mirror the penalty phase of a capital case, the *Aiken* Court

noted that “the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above.” *Id.* at 544-45, 765 S.E.2d at 577.

The Court acknowledged that life without parole sentences are still possible for juveniles in homicide cases. *Id.* at 543, 765 S.E.2d at 577. However, the Court found that *Miller*’s requirement that the sentencing judge first “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” “deserves *universal application*.” *Id.* (emphasis added). Thus, the Court wrote:

[A]ny juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment’s guarantee against cruel and unusual punishment. The petitioners *and those similarly situated* are accordingly 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.

Id. at 544, 765 S.E.2d at 577 (emphasis added). The Court provided that “*any individual affected by our holding* may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.” *Id.* at 545, 765 S.E.2d at 578 (emphasis added).

Montgomery v. Louisiana

In *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), the United States Supreme Court set forth the true breadth of its decision in *Miller*. In ruling that *Miller* created a substantive rule of constitutional law and applied retroactively, the *Montgomery* Court explained that “*Miller* . . . did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of the distinctive attributes of youth.” 136 S.Ct. at 734 (internal quotations omitted). The

Court ruled: “Because *Miller* determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption it rendered life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.” *Id.* (internal citations and quotations omitted). Thus, the *Montgomery* Court wrote: “Even if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects ‘unfortunate yet transient immaturity.’” *Id.* (internal quotations omitted). The Court ruled that Montgomery and other prisoners like him “must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.” *Id.* at 736-37.

III. SUMMARY OF ARGUMENTS AND EVIDENCE

The defense articulated the issues before the Court as follows: (1) whether *Miller* and *Aiken* are applicable to de facto life sentences; (2) whether a fifty-year sentence constitutes a de facto life sentence; and (3) whether Mack’s original sentencing hearing was sufficient to comply with *Miller* and *Aiken*. See Hr’g Tr. 63, ll. 10-17. Though each party made its respective presentation at the hearing, for ease of reference, the Court will utilize the three-issue structure to discuss the arguments of the parties.

Applicability of *Aiken* to De Facto Life Sentences

In both his written motion and at the hearing, the solicitor argued that Mack is not entitled to relief under *Aiken* because *Aiken* applies only to those defendants sentenced to “life without parole” and not to an offender sentenced to a term of years, even a lengthy one. State’s

Mot. to Dismiss (Oct. 5, 2016); Hr'g Tr. 5, l. 24 – 6, l. 11. The solicitor said that the defense was taking language from *Miller* that applied to life without parole sentences and asking this Court to apply it to a case where there was no life sentence. Hr'g Tr. 76, ll. 18-20; Hr'g Tr. 86, ll. 18-22. He submitted that the constitution prohibits the imposition of the death penalty on juvenile offenders, the imposition of life without parole on non-homicide offenders, and mandatory life without parole on a juvenile who commits a homicide without consideration of the mitigating characteristics of youth. However, he averred that Mack does not fall within any of those categories because he was sentenced to fifty years rather than to life. Hr'g Tr. 89, l. 16 – 90, l. 3.

Further, the solicitor noted that de facto life sentences were not mentioned in *Aiken*. Hr'g Tr. 77, ll. 5-9. In his second response to the motion for resentencing, he wrote:

[T]he Supreme Court did not specify any other sentencing scenarios which would entitle a defendant to a resentencing hearing. Accordingly, even in a situation where a juvenile defendant may very well spend the remainder of his natural life in prison, that defendant is not entitled to a resentencing hearing unless they have been sentenced to a term of life without the possibility of parole.

State's Mot. in Opp. (Sept. 22, 2016). He further argued that the granting of resentencing in this case would open the door to an argument that other term of years sentences are de facto life sentences. Hr'g Tr. 91, l. 20 – 92, l. 3.

The defense argued that the *Aiken* Court intended its ruling to apply to any juvenile whose sentence had the practical effect of being a lifetime in prison without the possibility of parole, *i.e.* de facto life sentences. Hr'g Tr. 66, l. 21 – 71, l. 3; Def.'s Opp. to State's Mot. to Dismiss, pp. 4-17 (Nov. 4, 2016). She pointed to the underlying reasoning of *Roper*, *Graham*, and *Miller*, all of which were based on the neuroscience that children are not fully formed such

that, even those who commit heinous crimes, are less culpable but more capable of change. Counsel further pointed to the *Aiken* Court's finding that *Miller*'s holding went beyond mandatory sentencing schemes to establish "an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." Hr'g Tr. 66, l. 21 – 68, l. 10. She argued that the *Aiken* Court set forth the mechanism to effectuate *Miller* by ordering that any individual affected by its holding could file a petition for resentencing within one year of the opinion. Hr'g Tr. 68, l. 11 – 69, l. 4.

Defense counsel argued that the use of the "similarly situated" and "any individual affected" language was intentional, in light of the litigation around the country surrounding the applicability of *Graham* and *Miller* to de facto life sentences. She suggested that if the Court wanted to limit the relief enunciated in *Aiken* to the narrow class of those serving sentences of "life without parole" that the solicitor suggested, it could have done so. She argued that their use of broader language was intentional, as the Court undoubtedly recognized that there can exist lengthy term of years sentences that leave no meaningful opportunity to obtain release and are just as offensive to the Constitution. Hr'g Tr. 69, l. 5 – 71, l. 3.

Defense counsel admitted that neither the United States Supreme Court nor our Supreme Court has expressly ruled that *Miller* is applicable to a term of years sentence that is the functional equivalent of life without parole. However, she argued that the inclusion of juvenile offenders serving de facto life sentences for homicide in the affected class is implicit in the reasoning explained in *Miller*, *Aiken*, and *Montgomery*. Counsel cited, as persuasive authority, several cases from other jurisdictions that held *Miller* applicable to de facto life sentences whose rationale for finding *Miller* applicable to de facto life without parole sentences mirrored our

Supreme Court's rationale in *Aiken* for finding *Miller* applicable to our State's discretionary sentencing scheme.³ Counsel said: "[Whether] you call it 50 years or you call it LWOP, you have the same sense of hopelessness for the Defendant who has [to serve] the sentence." Hr'g Tr. 73, ll. 10-12. Thus, defense counsel averred that *Miller* and *Aiken* are applicable to de facto life sentences given that their focus was not on the semantics of "life without parole," but rather

³ *State v. Null*, 836 N.W.2d 41, 70-74 (Iowa 2013) (holding that 52.5 year sentence was "such a lengthy sentence imposed on a juvenile is sufficient to trigger *Miller*-type protections" and reasoning that "*Miller*'s principles are fully applicable to a lengthy term-of-years sentence as was imposed in this case because an offender sentenced to a lengthy term-of-years sentence should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under *Miller*."); *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013) (holding that *Miller* applies to sentences that are the functional equivalent of life without parole, noting that "[o]ftentimes, it is important that the spirit of the law not be lost in the application of the law"); *Bear Cloud v. State*, 334 P.3d 132, 135 (Wyo. 2014) ("The United States Supreme Court's Eighth Amendment jurisprudence requires that a process be followed before we make the judgment that juvenile offenders never will be fit to reenter society. That process must be applied to the entire sentencing package, when the sentence is life without parole, or when aggregate sentences result in the functional equivalent of life without parole."); *Casiano v. Commissioner*, 115 A.3d 1031, 1044 (Conn. 2015), *cert. denied*, 136 S.Ct. 1364 (2016) (holding *Miller* was applicable to the imposition of a 50-year sentence without the possibility of parole, ruling that "the Supreme Court's focus in *Graham* and *Miller* was not on the label of a 'life sentence' but rather on whether a juvenile would, as a consequence of a lengthy sentence without the possibility of parole, actually be imprisoned for the rest of his life."); *Atwell v. State*, 197 So.3d 1040 (Fla. 2016) ("It is thus evident from our case law that this Court has—and must—look beyond the exact sentence denominated as unconstitutional by the Supreme Court and examine the practical implications of the juvenile's sentence, in the spirit of the Supreme Court's juvenile sentencing jurisprudence."); *People v. Franklin*, 370 P.3d 1053, 1059 (Cal. 2016), *cert. denied*, 137 S.Ct. 573 (2016) ("[A] juvenile may not be sentenced to the functional equivalent of LWOP for a homicide offense without the protections outlined in *Miller*."); *State v. Ronquillo*, 361 P.3d 779 (Wash. Ct. App. 2015) ("Before imposing a term-of-years sentence that is the functional equivalent of a life sentence for crimes committed when the offender was a juvenile, the court must take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."); *People v. Ellis*, 2015 WL 4760322 *3-6 (Colo. App. Aug. 13, 2015) (holding *Miller* applicable to de facto life sentences but that the constitutionality of *Ellis*' individual sentence required a factual determination of his parole eligibility and life expectancy).

on whether the sentence forecloses a meaningful opportunity for release. Hr'g Tr. 72, l. 13 – 73, l. 15; Def.'s Opp. to State's Mot. to Defense, pp. 6-17 (Nov. 4, 2016).

Fifty Years as a De Facto Life Sentence

The solicitor emphasized that Mack's plea was entered without negotiations such that Mack knew that he could receive a life sentence.⁴ However, he argued that Mack's sentence was not only less than life but less than the maximum sentence he could have received. He said that it "nowhere approached life without parole." Hr'g Tr. 6, ll. 11-19; Hr'g Tr. 76, l. 20 – 77, l. 2; Hr'g Tr. 86, l. 22 – 87, l. 3; Hr'g Tr. 90, l. 7 – 91, l. 13. He noted that Judge Newman could have imposed a higher term of years sentence and/or imposed consecutive sentences, such that Mack had received "a lot of breaks." Hr'g Tr. 8, ll. 7-13. Thus, he contended that Judge Newman gave Mack "the benefit of the doubt" by imposing a fifty-year sentence. Hr'g Tr. 91, ll. 8-13.

The solicitor averred that many judges do not believe in rehabilitation and that a lengthy sentence gives the person an opportunity to come back into society as an older, though not necessarily productive, member of society. Hr'g Tr. 90, l. 7-25. He argued that the fifty-year sentence imposed provides Mack with "the ability to stay out of trouble, serve the sentence and come home." Hr'g Tr. 90, l. 25 – 91, l. 3. "If he doesn't want to do that, then no, he may not get out of prison. That's on him." Hr'g Tr. 91, ll. 3-4. The solicitor admitted that the statistics

⁴ The transcript of the guilty plea hearing reflects that assistant solicitor Barr initially indicated that the plea was being entered without recommendation or negotiation from the State. Plea Tr. 3, ll. 15-19. However, during her sentencing presentation, Ms. Barr said: "And so I certainly believe that given what he's done, that a life sentence is appropriate for him." Plea Tr. 15, ll. 1-2. Her recommendation was echoed by the victim's mother, who said: "I just hope he does the rest of his life in prison." Plea Tr. 13, ll. 18-19. Later the solicitor said that Mack's case "was at least worth [a] conversation about the death penalty" but that the victim's mother was opposed to imposition of the death penalty. Plea Tr. 25, ll. 5-10.

seemed to show that prison lowers life expectancy. However, he argued that if Mack is sixty-seven years old when released, he would still have ten years of life expectancy left. Hr'g Tr. 9, l. 1 – 10, l. 1. He further argued that the SCDC specific life tables, discussed *infra*, did not apply to Mack's case. Hr'g Tr. 76, ll. 12-15; Hr'g Tr. 77, ll. 3-5.

The defense cited both the testimony of Vera Dolan and Judge Newman's comments at sentencing and in support of its argument that a fifty-year sentence is a de facto life sentence. For the purposes of Mack's hearing, Ms. Dolan was qualified as an expert in the areas of life expectancy and epidemiology without objection. Ms. Dolan earned her Bachelors of Arts in Public Health from John's Hopkins University and Masters of Science in Public Health from the University of North Carolina at Chapel Hill. She is also a fellow of the Academy of Life Underwriting. In addition to independent consulting, Ms. Dolan is a senior research scientist with a clinical reference laboratory in Lenexa, Kansas. As part of her work, she regular prepares mortality ratios and corresponding life tables, and she abides by the general accepted methods and practices in her field. Ms. Dolan testified that she has contributed to at least thirty-three peer-reviewed articles in which she prepared mortality ratio analysis from raw population data. Ms. Dolan has previously been qualified as an expert in various state and federal court trials eight times. Her prior qualifications were in the areas of life expectancy, life insurance, and epidemiology. Hr'g Tr. 11, l. 7 – 16, l. 17. Ms. Dolan's curriculum vitae was also admitted into evidence. *See* Defendant's Exhibit 1.

Ms. Dolan's testimony began by explaining the inapplicability of the U.S. general population and S.C. statutory life tables to the inmate population. She defined life expectancy as the statistical calculation of the average length of life expected for an individual based on their

age, sex, race or other risk factors. Hr'g Tr. 16, ll. 20-23. Utilizing the United States National Vital Statistics Bureau's 2011 life tables for all males, non-Hispanic black males, and non-Hispanic white males, Ms. Dolan explained the various components of a life table. *See* Defendant's Exhibits 2 – 4. She explained that a "mortality rate" is a metric of how many people out of a certain population die – the numerator is the number of deaths and the denominator is the population at risk. The mortality rate is utilized to calculate life expectancy, which is the statistically expected average length of life left for an average person at a respective age. Hr'g Tr. 17, l. 6 – 188, l. 23. The average age of death is calculated by simple addition of the age and corresponding life expectancy. For example, an 18-year-old male in the general population of the United States has an average life expectancy of 59.1 years, such that his average age at death is 77.1 years old. Hr'g Tr. 18, l. 24 – 19, l. 13.

Ms. Dolan explained that race, as a demographic factor, has a very powerful effect on life expectancy. The National Vital Statics Bureau produces separate life tables for each race in order to get its analysis closest to what the actual expected average for that individual would be. The average age at death for an 18-year-old black male in the general population decreases to 73 years old. Even so, Ms. Dolan opined that the general population statistics are not a reliable indicator of the life expectancy of the male inmates in SCDC because prison has been well recognized as a very significant risk factor on someone's life expectancy. Hr'g Tr. 19, l. 14 – 20, l. 11.

Turning to the life table codified in S.C. CODE ANN. § 19-1-150, Ms. Dolan opined that such tables should never be used for the general population and would not accurately reflect the life expectancy of inmates in SCDC. She said that the statutory table was derived from the 2001

Commissioners Standard Ordinary Mortality Table ("CSO tables"). *See* Defendant's Exhibits 5 and 6. Ms. Dolan explained that the tables were constructed by the Society of Actuaries in conjunction with the National Association of Insurance Commissioners to provide statutory guidance to state insurance commissioners in determining the statutory reserves necessary to protect insured citizens in their state. Ms. Dolan explained that the CSO tables are built on insured lives, which is different from the general population. "When you become an insured, you are essentially cherry picked, you're selected out of the general population for the purposes of insurance." Thus, they reflect a much healthier segment of the population. Hr'g Tr. 20, l. 16 – 23, l. 21.

Next, Ms. Dolan testified regarding the method that she used to calculate the mortality rates and ratios applicable to male prisoners in SCDC and the corresponding life tables. *See* Defendant's Exhibits 7 – 12. In addition to the general analysis and life tables for all males, Ms. Dolan prepared separate analysis for blacks and non-Hispanic whites. Hr'g Tr. 31, l. 18 – 32, l. 7. Ms. Dolan was provided a file of approximately 68,000 adult male inmate records, spanning from 1996 to 2015, with a follow-up of mortality through 2016, from SCDC. Hr'g Tr. 23, l. 22 – 24, l. 22. She reviewed the data to remove duplicate records where the offender did multiple stints in SCDC, such that only the most recent admission was utilized, and to remove incongruent data where the date of death preceded the date of admission. Hr'g Tr. 24, l. 23 – 25, l. 23.

Ms. Dolan was left with data related to 64,204 current or former male inmates. Hr'g Tr. 25, l. 24 – 26, l. 10; Hr'g Tr. 59, l. 24 – 60, l. 17. The data included all persons who were incarcerated in SCDC during the twenty-year period regardless of their age at entry, length of

incarceration, or whether they were released from prison prior to their death. Ms. Dolan looked at how many people passed through each age and how many of those people died at that age. Hr'g Tr. 27, l. 19 – 28, l. 19. Based on those numbers, Ms. Dolan calculated mortality rates for each age. From there, Ms. Dolan calculated a smoothed mortality rate. Ms. Dolan explained that smoothing is used to find the general trend in data. Even the U.S. life tables and the CSO tables utilize smoothing functions. In this case, Ms. Dolan did not use any predictive formula so as not to inject any bias into the trend. Hr'g Tr. 28, l. 20 – 29, l. 12. Thus, she primarily used a moving average of the rates for three different ages. Where the data was sparser for the older ages, she used a moving average of five rates. Hr'g Tr. 29, l. 13 – 30, l. 3. Like the U.S. life tables, the average age of death is calculated by adding the age to the corresponding life expectancy. Hr'g Tr. 32, ll. 8-20; Hr'g Tr. 33, l. 17 – 37, l. 19.

The life tables reflect that the average life expectancy of an 18-year-old black male who spent time in SCDC is 38.2 years, giving an average age at death of 56 years old. Hr'g. Tr. 37, ll. 8-12. Assuming that Mack is an average inmate, his average life expectancy based on his current age of 25 years old is 32.2 years, giving him an average age at death of 57.2 years. Hr'g Tr. 37, ll. 13-24; Hr'g Tr. 45, l. 12 – 46, l. 2. Ms. Dolan explained that she utilized mortality ratios to create the life tables because she was missing mortality rate information for the very youngest and very oldest inmates. She explained that in order to calculate a reliable mortality rate, there must have been at least five or more deaths at that age. For those ages where such information was not available, Ms. Dolan defaulted to the use of the general population rates, yielding a mortality ratio of 1.0. Hr'g Tr. 31, ll. 7-17. For the rest of the ages, the mortality ratios were calculated by dividing the mortality rate from the SCDC population by the mortality

rate for the general population. Hr'g Tr. 30, ll. 4-7; Hr'g Tr. 30, l. 24 – 31, l. 6. Thus, while there were reliable mortality rates for all ages, only a portion of the age span (delineated on the SCDC life table exhibits with gray highlighting) had mortality rates adjusted for the risk factors specific to the SCDC population experience.⁵

Ms. Dolan found a general pattern that mortality ratios climbed to a plateau of the highest risk from 30 to 40 years old but began to decline again after 50 years old. This reflects a survival affect as you pass through various ages. Hr'g Tr. 37, l. 25 – 38, l. 6; Hr'g Tr. 41, l. 7 – 42, l. 17. Ms. Dolan noted that her analysis found a lower life expectancy for white men than for black men, which is the opposite of what is seen in the general population. Ms. Dolan could not explain the reason for that difference without conducting a much more in-depth and costly analysis. Hr'g Tr. 38, l. 8 – 39, l. 6.

Regarding comparisons, Ms. Dolan opined that prison takes approximately twenty years off of the average inmates life expectancy, as her analysis is directly comparable to the U.S. general population data. Hr'g Tr. 40, l. 4 – 41, l. 5; Hr'g Tr. 44, ll. 6-11. Ms. Dolan also reviewed literature on life expectancy studies conducted on prisoners in New South Wales, Australia, and in Ontario, Canada. She found the average mortality ratios in those studies comparable to the mortality ratios for black males in the SCDC population. Additionally, Ms. Dolan noted that the Canadian study showed a similar pattern of mortality, with a plateau of high risk from ages 30 to 50, with a decline after 50 years old. Hr'g Tr. 42, l. 18 – 43, l. 19. Ms.

⁵ Ms. Dolan testified that obtaining the data for the younger population would not affect her analysis for the older ages for which the mortality rates already reflected the SCDC population experience. Hr'g Tr. 44, l. 13 – 45, l. 11.

Dolan also noted that the Canadian study had data available for their juveniles, for whom mortality was very high. Hr'g Tr. 43, l. 20 – 44, l. 4.

While Ms. Dolan's analysis did not look at cause of death inside and outside of prison, she relayed that the foreign studies revealed that many deaths that occurred after release were the result of mental illness, suicide, and overdose. One study found a high mortality due to suicide and overdose within the first year of release from prison. Hr'g Tr. 54, l. 18 – 56, l. 8; Hr'g Tr. 57, l. 5 – 58, l. 19; Hr'g Tr. 61, ll. 5-12.

On cross-examination, Ms. Dolan explained that her analysis did not look at the length of prison sentence for any of these individuals to examine the specific effect of long-term incarceration on life expectancy. Rather, her focus was on what the life expectancy of a juvenile would be in the SCDC prison system. Hr'g Tr. 46, l. 18 0 49, l. 16; Hr'g Tr. 58, l. 20 – 59, l. 20. Further, Ms. Dolan agreed that she had not conducted any further analysis relative to Mack and did not know if he suffered from diabetes, heart conditions, high blood pressure, or drug use. Hr'g Tr. 49, l. 17 – 50, l. 2. However, she testified on re-direct that any such conditions would tend to decrease life expectancy. Hr'g Tr. 60, ll. 18-23. Regarding the 10.1 year life expectancy for a 66 year old black male in SCDC reflected on the life tables she prepared, Ms. Dolan disagreed with the solicitor's representation that the longer Mack stays in prison, the more likely he is to live a longer life. Rather, she explained that the longer Mack stays alive in prison, the more likely he will continue stay alive. Thus, if he makes it to 66, he would have another 10 years. However, she does not know what experience Mack will have in prison from age 25 to 66. Hr'g Tr. 50, l. 3 – 51, l. 10; Hr'g Tr. 53, l. 20 – 54, l. 15.

Ms. Dolan recommended that the life tables she prepared be updated every five years to account for the improvements in the life expectancy of the U.S. general population, and every ten years to update the prison population data. Hr'g Tr. 50, l. 3 – 51, l. 10; Hr'g Tr. 53, l. 20 – 54, l. 15.

This Court left the record open for defense counsel to provide a copy of the results from an ACLU of Michigan study done on the life expectancy of offenders sentenced to life without parole. Hr'g Tr. 75, l. 22 – 78, l. 22; *see* ACLU of Michigan, Michigan Life Expectancy Data for Youth Serving Natural Life Sentences 1 (April 2013), <http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Michigan-Life-Expectancy-Data-Youth-Serving-Life.pdf>. The study found “a strong correlation between the number of years spent in prison and life expectancy resulting in further diminished life expectancy for those serving a natural life sentence.” The ACLU looked at the data for all individuals 18 and older sentenced to natural life in Michigan who have died in prison, in excess of 400 individuals. They determined that the average age at death for adults incarcerated for natural life sentences in Michigan, was 58.1 years. When adjusted for race, the average age at death for African-American adults, sentenced to natural life, is 56.0 years, and for whites, 60.1 years. Though the sample was not large enough to adjust for race, the average age at death for Michigan youth sentenced to natural life is 50.6 years. The study cited the increase in youth's vulnerability to sexual and physical assault as factors contributing to their decreased life expectancy. ACLU of Michigan, *supra*. Defense counsel noted that a number of cases from other jurisdictions, which found *Miller* applicable to de facto life sentences, considered determinate sentences of and around fifty years to be de facto life

sentences. Hr'g Tr. 79, l. 1 – 80, l. 20; Def's Memo in Support of Resentencing, pp. 12-14 (Apr. 20, 2015); Def's Opp. to State's Mot. to Dismiss, pp. 6-16 (Nov. 4, 2016).

Defense counsel argued that the general population life tables are not an accurate source of life expectancy data because they do not account for the additional risk factors present in the inmate population. Further, she argued that the South Carolina statutory life tables are wholly inapplicable because they represent only the healthiest members of society who have been approved for life insurance. Hr'g Tr. 71, l. 10 – 72, l. 12; Def's Memo in Support of Resentencing, pp. 14-16 (Apr. 20, 2015); Def.'s Reply, pp. 1-3 (May 15, 2015). Based on the life tables prepared by Ms. Dolan, defense counsel averred that Mack's current life expectancy is 32.2 years, giving an average age of death of 57.2 years old. While she recognized that Ms. Dolan's analysis was broad in an effort to be the most use to greatest number of defendants, defense counsel argued that, if anything, it inflates life expectancy for those serving extended sentences in SCDC. In addition to the increased violence in prison, increased risk factors include the sedentary lifestyle, poor nutrition, and poor access to healthcare. As such, she argued that Mack will almost certainly die in prison if his sentence goes unchanged. Hr'g Tr. 74, l. 12 – 75, l. 21; Hr'g Tr. 82, ll. 20-23; Def's Memo in Support of Resentencing, p. 17 (Apr. 20, 2015).

Additionally, defense counsel argued that Judge Newman's comments at the original sentencing hearing were *prima facie* evidence that he intended the fifty-year sentence to be the functional equivalent of a life sentence without parole. Hr'g Tr. 73, l. 23 – 74, l. 12; Def's Memo in Support of Resentencing, p. 16 (Apr. 20, 2015); Def.'s Reply, pp. 2-3 (May 15, 2015). Specifically, Judge Newman said:

It's not about the future years of Mr. Mack. How about the lack of future years of Mr. Dorsey. He's the victim, the victim, victim's family, the victim's loved ones. Mr. Mack is almost a lost cause at this point based on all of the choices that he made. He's a lost cause as far as society is concerned. His future is not within society. His future, your future, is out of society. You've given up your freedom. You've given up the right to walk among free people.

Plea Tr. 31, ll. 6-14 (emphasis added). After asking the Mack why he decided to give up his future and freedom, Judge Newman said:

Unfortunately you'll never know any better because you – that's a – just as you snuffed out his life you snuffed out your future just the same. All of the great things that Mr. Carraway said about you and all he thinks about you, I mean, I'm not questioning at all whether those things are true. But if you are to take advantage of those things it won't be – it will not be out in a free society where you've given up your freedom and your right to anyone to trust you to walk the streets. And you'll have to do those good deeds behind bars. That's just a fact of the matter.

Plea Tr. 31, l. 14 – 32, l. 6 (emphasis added).

Sufficiency of Original Sentencing Hearing

The solicitor argued that all relevant information about the defendant, his background, and the crime itself were considered at the original sentencing hearing conducted by Judge Newman in 2010. Hr'g Tr. 6, l. 11 – 8, l. 16; State's Response, pp. 2-4 (Apr. 28, 2015); State's Mot. to Dismiss, p. 2 (Oct. 5, 2016). The solicitor said that Judge Newman did "a good job of considering the five factors which *Aiken v. Byars* says that the judge must consider." Hr'g Tr. 7, ll. 14-18; H'rg Tr. 76, ll. 20-24; H'rg Tr. 86, l. 22 – 87, l. 2; H'rg Tr. 91, ll. 13-19. He noted that *Aiken* does not require a death penalty sentencing hearing. H'rg Tr. 7, ll. 19-21. He argued that at the original sentencing hearing, Judge Newman had a lot of information about Mack and what happened, including Mack's age and lack of criminal record and the nature and circumstances of the crime. Hr'g Tr. 7, l. 21 – 8, l. 23. He argued that the fifty-year sentence imposed was supported by the facts considered. Hr'g Tr. 8, ll. 7-13; Hr'g Tr. 91, ll. 4-19.

The defense argued that the pre-*Miller* sentencing hearing conducted in Mack's case did not comply with the constitutional requirements set forth in *Miller*, *Aiken*, and *Montgomery*. Defense counsel again pointed again to Judge Newman's comments during sentencing, including that "the sentence is not about Mr. Mack." See Plea Tr. 30 – 31. Counsel further argued that the *Aiken* majority explicitly rejected the dissent's argument that the original sentencing hearings were sufficient. In conclusion, defense counsel argued that Mack's pre-*Miller* sentencing hearing, which resulted in his de facto life sentence, did not provide the constitutional protections afforded to him by the federal and state constitutions. Hr'g Tr. 80, l. 21 – 82, l. 4; Hr'g Tr. 85, l. 7 – 86, l. 15; Def's Memo in Support of Resentencing, pp. 17-18 (Apr. 20, 2015); Def.'s Reply, pp. 5-7 (May 15, 2015); Def's Opp. to State's Mot. to Dismiss, pp. 17-19 (Nov. 4, 2016).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Aiken is Applicable to De Facto Life Sentences

This Court finds that *Miller* and *Aiken* are applicable to de facto life sentences. The Eighth Amendment, applicable to the states under the Fourteenth Amendment, prohibits cruel and unusual punishment, guaranteeing individuals the right to be free from excessive sanctions, which "flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense." *Miller v. Alabama*, 132 S.Ct. 2455, 2463 (2012) (internal citations and quotations omitted). The United States Supreme Court held in *Miller* that mandatory life imprisonment without parole for those under the age of eighteen at the time of their crimes violates the Eighth Amendment's prohibition against cruel and unusual punishment. *Id.* Subsequently, in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), the South Carolina Supreme Court held that the *Miller* decision applies retroactively and that the imposition of life without

parole sentences for juveniles without individualized consideration of youth constituted cruel and unusual punishment.

Similar to *Miller*, the particular class before the *Aiken* Court was limited, being made up of fifteen inmates who were sentenced to life without parole for homicides committed as juveniles. *Id.* at 536-37, 765 S.E.2d at 573. However, the *Aiken* Court did not restrict the relief it granted to only those members of the class. Instead, the Court held that “the principles enunciated in *Miller v. Alabama* apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole.” *Id.* at 545, 765 S.E.2d at 578 (emphasis added). The *Aiken* Court provided that “any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.” *Id.* (emphasis added). Thus, it is logical to conclude that the *Aiken* Court did not mean to restrict its interpretation of the applicability of *Miller* to only those cases specifically denominated “life without parole,” but rather intended to provide relief to anyone “irrevocably sentenced . . . to a lifetime in prison.” *Id.* at 543, 765 S.E.2d at 577 (quoting *Miller, supra*).

The concept of a de facto life sentence is not novel. In *State v. Kimbrough*, 212 S.C. 348, 357, 46 S.E.2d 273, 277 (1948), our Supreme Court remanded for resentencing where it found: “From the evidence the jury evidently concluded that appellant should not receive the maximum punishment of life imprisonment, but the [thirty-year] sentence imposed is to all intents and purposes the equivalent of a life sentence, which is the highest punishment permitted for the most aggravated form of the crime.” The United States Sentencing Commission defines a de facto life sentence as “one where the length of the sentence imposed is so long that the sentence

is, for all practical purposes, a life sentence and likely was intended to be such by the judge who imposed it.” Patti B. Saris, et al., U.S. Sent. Comm’n, Life Sentences in the federal system (Feb. 2015), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf.

In United States v. Pileggi, 703 F.3d 675, 678 (4th Cir. 2013), the Fourth Circuit Court of Appeals referenced its prior remand for resentencing of Pileggi where the government recommended and the district court imposed “a *de facto* life sentence” of fifty years contrary to its extradition agreement with Costa Rica that Pileggi “would not receive a penalty of death or one that requires that he spend the rest of his natural life in prison.” While not binding authority, this Court also notes that various courts around the country have likewise found *Graham* and *Miller* applicable to *de facto* life sentences. See *State v. Null*, 836 N.W.2d 41, 70-74 (Iowa 2013); *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013); *Bear Cloud v. State*, 334 P.3d 132, 135 (Wyo. 2014); *Casiano v. Commissioner*, 115 A.3d 1031, 1044 (Conn. 2015), *cert. denied*, 136 S.Ct. 1364 (2016); *Atwell v. State*, 197 So.3d 1040 (Fla. 2016); *People v. Franklin*, 370 P.3d 1053, 1059 (Cal. 2016), *cert. denied*, 137 S.Ct. 573 (2016); *State v. Ronquillo*, 361 P.3d 779 (Wash. Ct. App. 2015); *People v. Ellis*, 2015 WL 4760322 *3-6 (Colo. App. Aug. 13, 2015).

Thus, this Court finds that the principles of *Miller* and *Aiken* are not limited to just those sentences specifically denominated “life without parole.” Rather, as held by our Supreme Court in *Aiken*, *Miller*’s holding that the sentencing court must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a *lifetime in prison*” “deserves universal application.” 410 S.C. at 543 (emphasis added). This Court is persuaded that defendants who are similarly situated to the offenders in *Aiken* include those

subject to a term of years sentence that constitutes the functional equivalent of life without parole. This interpretation is not an expansion of *Aiken*, but rather an effectuation of its intent.

Fifty Years is a De Facto Life Sentence

This Court finds that the fifty-year sentence imposed in Mack's case constitutes a de facto life sentence. As noted *supra*, the February 2015 United States Sentencing Commission report titled "Life Sentences in the Federal System" defines a de facto life sentence as an "extremely long specific terms of imprisonment" that is, "for all practical purposes, a life sentence and likely was intended to be such by the judge who imposed it." Saris, et al., *supra*. Though the subjective intent of the original sentencing judge is not dispositive, it is notable that Judge Newman spoke of Mack's life behind bars and that his future was outside of society. Plea Tr. 30 – 32.

Beyond the sentencing judge's comments, this Court recognizes the numerous statistical sources regarding life expectancy. This Court does not find that the statutory tables codified in S.C. CODE ANN. § 19-1-150 applicable to the instant case. The Court notes that the tables were derived from 2001 Commissioners Standard Ordinary Mortality Table, which are out dated and do not account for differences in race. More importantly, because it represents only insured lives, the statutory table is not representative of the general population, much less the inmate population in South Carolina. While a necessary point of comparison, the U.S. life tables also fail to account for the risk factors applicable to inmates in SCDC that lower their life expectancy.

While Ms. Dolan's analysis did not focus solely on the limited class of juvenile offenders sentenced to lengthy term of years sentences, her analysis is nonetheless persuasive that *incarceration drastically reduces life expectancy by approximately twenty years*. Her findings

were consistent with those in the Australian and Canadian studies cited in her testimony. The ACLU of Michigan's more narrow analysis of juvenile offenders sentenced to life in prison, found an average age at death of 50.6 years old. That is almost five years less than the average age at death of 55.3 years old for an average 18-year-old male inmate in SCDC, without regard to race. (See Defendant's Exhibit 10). Notably, for purposes of statistical analysis, the U.S. Sentencing Commission uses a sentence of 470 months (39 years and two months) to identify cases in which a de facto life sentence was imposed, consistent with the average life expectancy of federal criminal offenders. Saris, *supra*. Additionally, defense counsel has cited numerous cases from other jurisdictions that found *Graham* and *Miller* applicable to terms of between fifty and sixty years.⁶ See *State v. Null*, 836 N.W.2d 41, 70-74 (Iowa 2013) (finding 52.5 year sentence constituted de facto LWOP); *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013) (finding

⁶ For example, in *Casiano v. Commissioner*, 115 A.3d 1031, 1044 (Conn. 2015), the Connecticut Supreme Court held that *Miller* was applicable to the imposition of a 50-year sentence without the possibility of parole on a juvenile offender. The *Casiano* Court noted that the life tables for the general population do not account for the reduction in life expectancy due to the impact of spending the vast majority of one's life in prison. *Id.* at 1046. The Court cited various studies and court decisions that reflected an average life expectancy of 50.6 years for a juvenile sentenced to natural life, a two-year decline in life expectancy for every year of incarceration, and the overall reduction in life expectancy in prison as compared to the general population. *Id.* The Court found that if the offender lived to be released, "he will have irreparably lost the opportunity to engage meaningfully in many of these activities and will be left with seriously diminished prospects for his quality of life for the few years he has left." *Id.* The *Casiano* Court further found that United States Supreme Court's view of the concept of "life" in *Miller* and *Graham* was more broad than "biological survival" and "implicitly endorsed the notion that an individual is effectively incarcerated for 'life' if he will have no opportunity to truly reenter society or have any meaningful life outside of prison." *Id.* Thus, the Court ruled: "In light of the foregoing statistics and their practical effect, a *fifty year term* and its grim prospects for any future outside of prison effectively provide a juvenile offender with 'no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.'" *Id.* (emphasis added). Accordingly, the Court held that "the procedures set forth in *Miller* must be followed when considering whether to sentence a juvenile offender to fifty years imprisonment without parole" and remanded the case for further proceedings consistent with its opinion. *Id.* at 1048.

life sentence with parole after 60 years constitutes de facto LWOP); *Bear Cloud v. State*, 334 P.3d 132, 135 (Wyo. 2014) (finding life sentence with parole in just over 45 years constituted de facto LWOP); *Casiano v. Commissioner*, 115 A.3d 1031, 1044 (Conn. 2015), *cert. denied*, 136 S.Ct. 1364 (2016) (finding 50 year sentence constituted de facto LWOP); *People v. Franklin*, 370 P.3d 1053, 1059 (Cal. 2016), *cert. denied*, 137 S.Ct. 573 (2016) (finding life with parole after 50 years constituted de facto LWOP); *State v. Ronquillo*, 361 P.3d 779 (Wash. Ct. App. 2015) (finding 51.75 year sentence constituted de facto LWOP).

This myriad of statistical sources support this Court's finding that the practical effect of Mack's fifty-year sentence is that he will remain in prison for the rest of his days, with no meaningful hope of release. While the imposition of such a sentence is not itself unconstitutional, *Miller* and *Aiken* provide that such a sentence cannot be imposed without evaluating the full impact of the defendant's juvenility on the sentence rendered and a finding of irreparable corruption.

Original Sentencing Hearing Was Insufficient

Having found *Miller* and *Aiken* applicable to Mack's fifty-year de facto life sentence, this Court must determine whether Mr. Mack's original sentencing hearing was sufficient to comply with the constitutional requirements of those cases. In finding that it did not, this Court considered both the sentencing transcript and the applicable case law. The *Aiken* Court explained that the underlying sentencing hearings "suffer from a constitutional defect—the failure to examine the youth of the offender through the lens mandated by *Miller*." 410 S.C. at 543, n. 8. Thus, it was not matter of an abuse of discretion by the sentencing judge because the sentencing courts did not have the benefit of *Miller* to shape their inquiries. *Id.* The *Aiken* Court

ruled that on resentencing the judge will have the opportunity to exercise their discretion within the proper framework. *Id.*

While plea counsel Carraway made his best attempt to describe Mack's background and point to the negative influences of the gang and Mack's mother, his truncated presentation fell far below the full exploration of the factors associated with Mack's youth required by *Miller* and *Aiken*. It resembled the ordinary sentencing presentation that one would expect following any adult offender's guilty plea. Moreover, the record does not reflect that any of the mitigating factors pointed to by Carraway were actually considered by the sentencing court. The sentencing judge made no reference to Mack's youth, except to say that the sentence was "not about the future years of Mr. Mack" but rather the lack of future years of Mr. Dorsey (decedent). Thus, there is no evidence that the sentencing judge actually considered the hallmark features of youth, the environment that surrounded the offender, how familial and peer pressures affected his alleged conduct, the incompetencies associated with youth, or the possibility of rehabilitation. *See Aiken*, 410 S.C. at 544, 765 S.E.2d at 577.

Instead, Mack's sentence was based purely on retribution and incapacitation, which the *Miller* court found less applicable to sentences of minors as opposed to adults. 132 S.Ct. at 2464-65. Retribution is less applicable because "the heart of the retribution rationale relates to an offender's blameworthiness." *Id.* at 2465. Children's "transient rashness, proclivity for risk, and inability to assess consequences" lessen their moral culpability and enhance the prospect that as they continue to develop their "deficiencies will be reformed." *Id.* at 2464-65. The *Miller* Court rejected incapacitation as a valid basis for imposing life without parole on juveniles. This is because "[d]eciding that a juvenile offender forever will be a danger to society would require

making a judgment that he is incorrigible – but incorrigibility is inconsistent with youth.” *Id.* at 2465 (internal quotations omitted). *Miller* further recognized that due to their diminished culpability and heightened capacity for change, “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Id.* at 2469.

Moreover, the *Montgomery* Court wrote: “Even if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity” rather than irreparable corruption. 136 S.Ct. at 734. Subsequently, in Justice Sonia Sotomayor’s concurring decision in *Tatum v. Arizona*, she explained:

On the record before us, none of the sentencing judges addressed the question *Miller* and *Montgomery* require a sentencer to ask: whether the petitioner was among the very “rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility It is clear after *Montgomery* that the Eighth Amendment requires more than mere consideration of a juvenile offender’s age before the imposition of a sentence of life without parole. It requires that a sentencer decide whether the juvenile offender before it is a child “whose crimes reflect transient immaturity” or is one of “those rare children whose crimes reflect irreparable corruption” for whom a life without parole sentence may be appropriate. There is thus a very meaningful task for the lower courts to carry out on remand.

137 S.Ct. 11, 12-13 (Mem.) (2016) (J. Sotomayor, concurring). Thus, both our Supreme Court and the United States Supreme Court have made clear that a pre-*Miller* sentencing hearing will not be saved by a review of its contents, even when it reveals some discussion of the defendant’s youth. Accordingly, this Court finds that Mack’s original sentencing hearing did not comply with the constitutional requirements of *Miller*, *Aiken*, and their progeny.

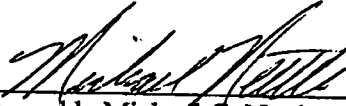
V. CONCLUSION

Based on the foregoing, the Court finds and concludes that *Aiken* is applicable to both defendants sentenced to "life without parole" or a term of years that constitutes the functional equivalent of "life without parole;" that Mack's fifty-year sentence constitutes a de facto life sentence such that his motion for resentencing pursuant to *Aiken* is proper; and that Mack's original sentencing hearing did not comply with the constitutional requirements *Miller*, *Aiken*, and their progeny. Therefore, Mack is entitled to a resentencing hearing where this court can fully explore "the mitigating hallmark features of youth" in accordance with *Aiken*.

IT IS THEREFORE ORDERED THAT:

- A. The State's Motion to Dismiss the Defendant's Motion for Resentencing is DENIED; and
- B. A status conference to determine a scheduling order for the remainder of the case will be held within fifteen (15) days of this Order.

AND IT IS SO ORDERED this 14 day of June, 2016.


 Honorable Michael G. Nettles
 Specially Assigned by Order of Supreme Court
 Twelfth Judicial Circuit

 _____, South Carolina

**Respondent's Ex. 12,
State's Motion to Reconsider**

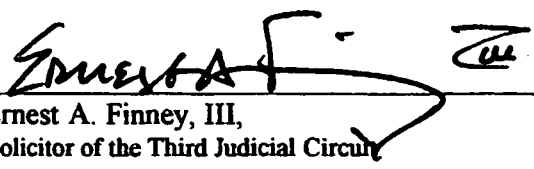
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF WILLIAMSBURG	)	
	)	
The State,	)	Indictment No.: 2009-GS-45-180
	)	
	)	
vs.	)	
	)	MOTION FOR RECONSIDERATION
	)	
Ronald H. Mack,	)	
	)	
Defendant	)	
	)	

TO: Laura R. Baer, Attorney for the Defendant:

YOU WILL PLEASE TAKE NOTICE that the State in the above-entitled matter, through Solicitor, Ernest A. Finney, III, will move on the tenth day after service of this motion or as soon thereafter as counsel may be heard before the Honorable Michael G. Nettles, for a reconsideration of the denial of the State's Motion to Dismiss the Aiken motion filed on behalf of the defendant, pursuant to Rule 29(a), SCRCP, which the court ordered on June 14, 2017

The holding of our State's Supreme Court in *Aiken v. Byars* allows juvenile offenders who are sentenced to life without the possibility of parole to be heard at a resentencing hearing. In the June 14th Order, the Court held that Defendant's sentence to a term of 50 years on one count of Murder was a de facto life sentence and thus triggered the protections of the Aiken case. The State respectfully disagrees with the findings of the Court and requests a hearing for the purpose of reconsidering the matter.

June 23, 2017
Sumter, South Carolina


Ernest A. Finney, III,
Solicitor of the Third Judicial Circuit

**Respondent's Ex. 13,
Defense Response to Motion to Reconsider**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS FOR THE THIRD JUDICIAL
COUNTY OF WILLIAMSBURG	)	CIRCUIT
	)	
State of South Carolina,	)	2009-GS-45-180
	)	
v.	)	DEFENDANT'S RESPONSE
	)	IN OPPOSITION TO
	)	STATE'S MOTION TO DISMISS
Ronald Hakeem Mack,	)	
Defendant.	)	

Comes now the Defendant, Ronald Hakeem Mack, by and through his counsel, Laura R. Baer, and in opposition to the State's motion to reconsider this Court's order denying the State's motion to dismiss the Defendant's motion for resentencing, respectfully states as follows:

1. On April 20, 2015, Mack, through counsel, filed a motion for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), along with a detailed accompanying memorandum. The solicitor filed its response on April 28, 2015, to which the defense filed a reply on May 15, 2015.
2. This case was specially assigned to the Honorable Michael G. Nettles by Order of the South Carolina Supreme Court on August 11, 2016. A status conference was held in Williamsburg County on September 30, 2016, at which time the solicitor was given two weeks to file a formal motion to dismiss.
3. The solicitor filed a motion to dismiss on October 5, 2016. The defense filed a detailed response in opposition to the state's motion on November 4, 2016.
4. On November 23, 2016, a telephone conference was held between Judge Nettles, Solicitor Finney, and defense counsel for the purpose of scheduling a hearing on the state's motion to dismiss. The hearing was set for February 17, 2017 at 2:00 p.m.

5. On January 13, 2017, the defense filed a notice of expert witness, advising of the defense's intention to call Ms. Vera Dolan, MSPH, FALU, as expert in the areas of epidemiology and life expectancy and providing a summary of her analysis. Attached to the notice were the exhibits referenced in Ms. Dolan's testimony and admitted as Defendant's Exhibits 2 thru 4 and 7 thru 12 at the subsequent hearing.

6. On February 17, 2017, the parties appeared for a hearing on the state's motion to dismiss, at which time both parties were given ample opportunity to argue their respective positions. The defense expert, Vera Dolan, testified at the hearing. Further, both the solicitor and the defense submitted written proposed orders to the Court within thirty days of the hearing.

7. On May 16, 2017, the defense filed a Supplemental Affidavit from its expert witness, Vera Dolan. The solicitor did not file any response.

8. On June 14, 2017, Judge Nettles signed the order denying the State's motion to dismiss, which was filed by the Williamsburg County Clerk of Court on June 16, 2017.¹

9. On June 23, 2017, the solicitor mailed its motion for reconsideration.

10. The solicitor's motion includes no substantive basis for reconsideration of this Court's findings, instead stating simply: "The State respectfully disagrees with the findings of the Court and requests a hearing for the purpose of reconsidering the matter." Thus, despite its caption, the solicitor's motion can hardly be considered a motion to reconsider. Nonetheless, the decision of whether to conduct a hearing on a motion to reconsider is within the discretion of the trial court. Rule 29(a), SCRCrimP (A post-trial "motion may, in the discretion of the court, be determined on briefs filed by the parties without oral argument."). If there is any reasonable basis for the decision

¹ The Clerk inadvertently sent both clocked copies of the Order to the solicitor's office, which forward a copy to defense counsel.

not to hold a hearing, the decision will be affirmed on appeal. State v. Garrard, 390 S.C. 146, 153, 700 S.E.2d 269, 273 (Ct. App. 2010).

11. Here, the solicitor had notice of Mack's arguments from the time of the initial filing of the motion for resentencing and accompanying memorandum in April 2015. Defense counsel made additional written filings, discussed *supra*, which further provided an in-depth explanation of the defense's arguments. Thus, the solicitor's office was provided with ample time to prepare for the February 2017 hearing. Their "disagreement" with this Court's well-reasoned findings is not a sufficient reason to provide them an opportunity to present any further argument at another hearing. Moreover, the lack of substance in the motion provides the defense with no notice of what the solicitor may attempt to argue at another hearing, if one were to be granted, such that the defense cannot adequately prepare any necessary response. For these reasons, a hearing on the solicitor's motion to reconsider is not warranted, and this Court should deny the solicitor's motion. See Garrard, 390 S.C. at 153, 700 S.E.2d at 273 (upholding denial of hearing on motion to reconsider where "no additional evidence was offered in the motion to reconsider").

Based on the foregoing, Defendant Ronald Hakeem Mack respectfully requests that this Court DENY the State's Motion to Reconsider.

Respectfully submitted,



Laura R. Baer, Bar No. 101076
Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330
Attorney for Defendant

This 27th day of June, 2017.

**Respondent's Ex. 14,
State's Hearing Waiver and Memorandum**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF SUMTER	)	
	)	
The State of South Carolina,	)	Indictment No.: 2009-GS-45-180
	)	
v.	)	
	)	MEMORANDUM WAIVING THE STATE'S
	)	RECONSIDERATION HEARING AND
	)	IN SUPPORT OF THE STATE'S MOTION
	)	FOR RECONSIDERATION OF THE
	)	COURT'S ORDER DENYING THE
	)	STATE'S MOTION TO DISMISS
	)	THE MOTION FOR RESENTENCING
	)	FILED BY DEFENDANT
	)	
Ronald H. Mack	)	
Defendant.	)	

I. INTRODUCTION

Defendant moved for a reconsideration of his sentences under Aiken v. Byars, 410 S.C. 524, 765 S.E.2d 572 (2014). The State moved to dismiss the motion and a hearing was held on that motion on February 17, 2017. During that hearing, the Court heard testimony and argument of counsel. After considering the matters presented at the hearing, the parties pre-hearing written submissions, and the proposed orders of both parties, the Court issued an order on June 14, 2017, denying the State's motion and setting a status conference. On June 23, 2017, the State filed a Motion for Reconsideration of the Court's June 14, 2017, Order. The Court agreed to hear the motion and scheduled a hearing for July 31, 2017. On the date set for the reconsideration hearing, the defense attorney requested a motion for continuance, which was granted by the Court. In lieu of a reconsideration hearing and as a waiver of a reconsideration hearing, the State submits this memorandum in support of its Motion for Reconsideration. In doing so, the State incorpo-

rates all previously made motions, objections, exhibits, and argument submitted on behalf of the State in support of its opposition to Defendant Mack's request for a resentencing hearing.

II. PROCEDURAL HISTORY

On August 24, 2010, 19-year-old Defendant Mack, who was represented by counsel, pled guilty to a murder and first-degree burglary that occurred on April 5, 2009 (in return for those guilty pleas, the State dismissed indictment counts for criminal conspiracy and possession of a weapon during the commission of a violent crime were dismissed). He was sentenced to concurrent sentences of 50 years for the murder and 30 years for the burglary in the first degree.

On August 5, 2011, the defendant sought post-conviction relief for his convictions. He alleged that he had received ineffective assistance of counsel and was coerced into pleading guilty. The State filed its reply on May 18, 2012. The Court held an evidentiary hearing on May 27, 2014. On July 1, 2014, the Court dismissed the claim of Defendant Mack for failure to demonstrate any deficiencies in the representation of his plea counsel. The Court found that the guilty plea entered by defendant was entered knowingly and voluntarily.

On April 1, 2015, Defendant Mack filed a petition for writ of certiorari with the Supreme Court of South Carolina. One of the three issues presented in the *writ of certiorari* was whether Defendant Mack was entitled to resentencing hearing under Aiken because his sentence was the functional equivalent of a *de facto* life without parole sentence (since Defendant Mack was a juvenile at the time of he committed murder and received a 50-year sentence for his offense). Interestingly, of the three arguments presented to the Supreme Court in the petition – two challenging the trial court's ruling on the alleged ineffectiveness of counsel and the one asserting a right to a resentencing under Aiken – Defendant Mack used approximately 14 pages to argue the resen-

tencing issue (compared to a total of 6 on the ineffectiveness issues, four pages on one and two pages on the other). The State opposed the petition, arguing the Aiken issue was not preserved for appeal (and noting that Defendant Mack had conceded that the petition was not the appropriate mechanism to raise the issue). On March 25, 2016, the Supreme Court denied certiorari.

On April 20, 2015, Defendant Mack, by and through his counsel, filed a Motion for resentencing under Aiken. The State filed its response on April 28, 2015, to which Defendant Mack filed his reply on May 15, 2015. On August 11, 2016, Judge Michael G. Nettles was vested with exclusive jurisdiction over Defendant Mack's Motion for Resentencing.

On September 22, 2016, the State filed its motion in opposition to Defendant Mack's Resentencing. On September 30, 2016 a status conference was held. Pursuant to an order from the Court, the State filed its formal motion to dismiss on October 5, 2016. Defendant Mack then filed his motion in opposition to the motion by the State to dismiss his motion for resentencing. On February 17, 2017 the Court heard both motions and directed each party to submit proposed orders for its consideration.

On June 14, 2017 the Court denied the Motion of the State to Dismiss the Motion for Resentencing filed by Defendant Mack. The Court concluded that: (1) the holding in Aiken applied to determinate term sentences that are the functional equivalent of life without parole; (2) Defendant Mack received a *de facto* life without parole sentence because he was sentenced to a term of fifty years and, thus, was entitled to a resentencing hearing under Aiken; and (3) Defendant Mack is entitled to an Aiken resentencing hearing because his original sentencing hearing did not meet the constitutional requirements of Miller, Aiken, and their progeny. Ct. Order. 34.

On June 23, 2017, the State filed a Motion for Reconsideration which the Court agreed to hear; a hearing for scheduled for August 31, 2017. At the request of the Defendant Mack on August 31, the hearing was continued. The following is hereby submitted in support of the Motion for Reconsideration filed by the State and incorporates all previously filed motions, memorandums concerning this matter.

III. ARGUMENT

This memorandum addresses each of following three issues discussed by the Court, specifically, (1) whether Miller v. Alabama and Aiken v. Byars are applicable to *de facto* life sentences; (2) whether a fifty-year sentence constitutes a *de facto* life sentence; and (3) whether Defendant Mack's original sentencing hearing was sufficient to comply with Miller and Aiken.

A. Both Miller v. Alabama and Aiken are limited specifically to actual sentences of life without parole given to offenders who commit murder while juveniles, and this court is without authority to expand those holdings to cover any other sentences.

The holdings in both Alabama v. Miller, 132 S.Ct. 2455, 2455 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), cert. denied 135 S. Ct. 2379 (2015), have restricted the requirement for Miller-type resentencing to only juveniles sentenced to life without parole. Specifically, the Miller court expressly stated, "We therefore hold mandatory life without parole for these under age 18 at the time of their offenses violates the Eight Amendment's prohibition on 'cruel and unusual punishment'" Miller, 132 S.Ct. at 2461. Subsequently, South Carolina, in Aiken v. Byars, extended Miller to include South Carolina's statutory scheme permits the imposition of a non-parolable life sentence, but does not require such. Aiken, 410 S.C. 534, at 545 765

S.E.2d 572, at 578.¹ Thus, the only difference between these two holdings is that Miller applies solely to mandatory life without parole sentencing schemes. Whereas, as stated above, Aiken applies exclusively to the discretionary life sentencing scheme in South Carolina where a defendant who is sentenced to life is not allowed parole. In neither of these opinions is there an express statement or implication that the holdings are to apply to any other sentencing scheme, such as a term of years or a sentence with parole eligibility.

Further, the fact scenarios used to support the rationale and holdings in Miller and Aiken solely involved defendants who petitioned the court because of the life sentences they received for murders committed while juveniles. Miller, 132 S.C. at 2461 and Aiken, 410 S.E.2d at 534, 765 S.E.2d at 578. None of these defendants received a term of year sentence or were eligible for parole. Thus, the holdings were narrowly tailored to address the particular issue before the courts, specifically, whether life without parole sentences for juvenile offenders imposed without a sentencing procedure that provides for the consideration of the attributes of youth, violated the “cruel and unusual punishment” prohibition of the Eighth Amendment of the United States Constitution.²

Additionally, the rationale in Miller or Aiken cannot support an autonomous extension of the resentencing hearing restricted in Miller for life without parole sentences to those who merely received term-of-years sentences. This stretch would require “breaking new ground” when the

¹A murder conviction carried a mandatory minimum of 30 years to life and there is no parole eligibility. S.C. Code Ann. § 16-3-10, § 16-3-20 and § 24-3-100.

² Aiken v. Byars retroactively applied the resentencing requirement to all defendants who received life without parole for murders committed while juveniles. Aiken, 410 S.C. at 545. The U.S. Supreme Court made Miller retroactive. Montgomery v. Alabama, 136 S.Ct. 718 (2016).

Supreme Court of the United States made clear that it was not "breaking new ground" by invalidating mandatory life without parole sentences for juveniles who commit homicide. Miller, 132 S.Ct. at 2472. The Miller Court emphasized that it was following its prior precedent, which established that children are constitutionally different from adults for the purposes of sentencing because of their diminished culpability and greater prospects for reform and, thus, less deserving of the harshest punishment, i.e., the death penalty and non-individualized life sentences. Id., 132 S.Ct. at 2464, 2467. In keeping with the acknowledgement that children are constitutionally different from adults, Miller understandably imposed a ban on mandatory life without parole for juvenile homicide offenders not because a juvenile offender may not constitutionally be sentenced to life imprisonment, but because judges must have the discretion to consider these differences before sentencing juvenile homicide offenders to life imprisonment without the possibility of parole. Id., at 2464-65.

We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. Cf. Graham, 560 U.S., at 75, 130 S. Ct., at 2030 ("A State is not required to guarantee eventual freedom," but must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"). By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. Because that holding is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. But given all we have said in Roper, Graham, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in Roper and Graham of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects

irreparable corruption.” Roper, 543 U.S., at 573, 125 S. Ct. 1183; Graham, 560 U.S., at 68, 130 S. Ct., at 2026–2027. Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.

Id., at 2469.

While acknowledging that Miller did not apply to South Carolina's statutory scheme that allows for the imposition of a discretionary life without parole sentence, the Court in Aiken reasoned that it “must give effect to the proportionality rationale integral to Miller's holding — youth has constitutional significance. As such, it must be afforded adequate weight in sentencing.” Aiken, 410 S.C. at 542–43. The South Carolina Supreme Court, therefore, adopted the Miller rationale as justification for extending the resentencing requirement to the discretionary life sentencing scheme in South Carolina.

It is important to note that the Supreme Court of the United States, in Miller, stated that its decision did not categorically bar a life sentence for juvenile offenders, but only that a judge consider an offender's youth and attendant characteristics before imposing such. Id., 132 S.Ct. at 2473. The Court acknowledged that, after considering the youthful traits of juvenile offenders, a judge may constitutionally and alternatively sentence a juvenile offender to a lengthy term of years with or without the possibility of parole,³ such as Defendant Mack's 50-year sentence. In other words, a judge should have options when sentencing juvenile offenders.

³ In Miller, the Court – in the context of discussing the process of transferring juveniles from juvenile courts to adult courts for prosecution – discussed the sentencing options available to judges sentencing juvenile offenders in adult court. “Discretionary sentencing in adult court would provide different options: There, a judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term *with* the possibility of parole or a lengthy term of years. It is easy to imagine a judge deciding that a

The courts in Miller and Aiken could have addressed the issue of *de facto* life or term of years sentences, but they did not do so. Neither court in their respective decisions held or otherwise provided any indication that their holdings applied to juvenile offenders sentenced to any sentence other than an actual sentence of life imprisonment regardless of how long the non-life sentences might be. Thus, for this Court to do so in this case requires it to “break new ground” by expanding current precedent, which it does not have the authority to do. See Shea by Reynolds, 279 S.C. 604, 608, 310 S.E.2d 819, 821 (Ct. App. 1983) rev’d on other grds., McCall by Andrews v. Batson, 285 S.C. 243329 S.E.2d 741 (1985). To adequately determine the functional equivalent to life in prison this court would again have to “break new ground” and expand the holdings in both Miller and Aiken. In doing so, this court would be deviating from existing South Carolina law and creating its own precedent and rationale to limit the term of years a defendant may get for a crime, which is clearly beyond its authority. See Id., 279 S.C. at 608, 310 S.E.2d at 821 (“The South Carolina Court of Appeals was made a part of the unified judicial system to address a mounting plethora of appeals and thereby make the appellate process more efficient. The maintenance of a harmonious body of decisional law is essential to the efficient administration of justice. Therefore, if the judicial system is to operate efficiently, this court must be bound by decisions of the Supreme Court. Where, as here, the law is unmistakably clear, this court has no authority to change it.”); see also State v. Slocumb, 412 S.C. 88, 770 S.E.2d 436, 439 (Ct. App. 2015) (noting that a circuit court on remand has only the jurisdiction and authority mandated by the appellate court); Prince v. Beaufort Mem’l Hosp., 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) (same); South Carolina Dep’t of Soc. Servs. v. Basnight, 346 S.C. 241, 250, 551

minor deserves a (much) harsher sentence than he would receive in juvenile court, while still not thinking

S.E.2d 275, 279 (Ct. App. 2001) (instructing a circuit court judge has no authority to act in a remanded case in a manner that exceeds the mandates of the appellate court when a case is properly appealed and later remanded to the circuit court).

B. Even Assuming *Arguendo* that the Holdings of Miller and/or Aiken Apply to “*De Facto*” Life Sentences, the Aggregate 50-Year Term Sentence Received by Defendant Mack is Not a *De Facto* Life Sentence.

In South Carolina, a life sentence requires a defendant to spend his entire life in prison without the possibility of parole, specifically in South Carolina life imprisonment means imprisonment until death of the offender. S.C. Code Ann. §16-3-20. As discussed during the Motion hearing, Defendant Mack has a projected release date and was not sentenced to die in prison.

Also, this Court, in its order quoted State v. Kimbrough as support for its finding that the concept of *de facto* life is not new. Ct. Order. at 27. The South Carolina Supreme Court in Kimbrough noted that the 30-year sentence was for “all intents and purposes the equivalent of a life sentence, which is the highest punishment permitted for the most aggravated form of the crime.” State v. Kimbrough, 212 S.C. 348, 357, 46 S.E.2d 273, 277 (1948). However, this Court has clearly ignored the context in which that statement was made. Kimbrough was convicted of burglary. The statute at the time provided for a sentence of life unless the jury recommended mercy, the jury recommended mercy for Kimbrough, and the judge, despite the fact that the burglary involved absolutely no circumstances of aggravation and there was no additional evidence of aggravation presented at the time of sentencing, imposed a sentence of 30 years imprisonment. In addressing Kimbrough’s challenge to his sentence, the Supreme Court made the quoted statement, which is no more than *dictum*. The Court set aside Kimbrough’s sentence

life-without-parole appropriate.” (Emphasis in original.) Miller, 132 S.Ct. at 2474-2475.

because it was excessive in light of the jury's recommendation and the lack of any evidence of aggravation. To make a blanket rule that Defendant Mack's 50-year sentence is a *de facto* life sentence based upon the *dictum* in Kimbrough requires total disregard of its context and the overall significance of the Kimbrough holding that discretionary sentencing is to be individualized, i.e., based on the offender and offense.

Furthermore, our Supreme Court declined the invitation to rule on this very issue filed by Defendant Mack. On April 1, 2015, Defendant Mack filed a petition for a *writ of certiorari* asking to the Supreme Court to determine whether (1) his 50-year sentence along with his juvenile status at the time of the murder equates to a *de facto* life sentence; (2) he received in effective counsel; and (3) whether his guilty plea was entered into knowingly, intelligently, and voluntarily where he was not advised that he was ineligible for the death penalty after comments made by the solicitor during his guilty plea. However, on March 29, 2016, the South Carolina Supreme denied Defendant Mack the petition for *writ of certiorari*. Here again, the South Carolina Supreme Court refused to rule on this issue.

Additionally, it is not a foregone conclusion that a lengthy term of year sentence is the functional equivalent of life in prison. This Court and Defense Counsel cited to authority from some other states to support a conclusion that a 50-year sentence is the functional equivalent to life in prison.⁴ However, many other states have declined to hold that a term of year sentence is

⁴ See Court's Order, page 25, footnote 3 and Defense Motion in Opposition pages 8 to 14 citing to the following; *State v. Null*, 836 N.W.2d 41, 70-74 (Iowa 2013); *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013); *Bear Cloud v. State*, 334 P.3d 132, 135 (Wyo 2014); *Casino v. Commissioner*, 115 A.3d 1031, 1044 (Conn. 2015), *cert. denied*, 136 S.Ct. 1364 (2016); *Atwell v. State*, 197 So.3d 1040 (Fla. 2016); *People v. Franklin*, 30 P.3d 1053, 1059 (Cal. 2016), *cert. denied*, 137 S.Ct. 573 (2016); *State v. Ronquillo*, 361 P.3d 779 (Wash. Ct. App. 2015); and *People v. Ellis*, 2015 WL 47 60322 *3-6 (Colo. App. Aug 13, 2015).

the functional equivalent to life in prison and have offered persuasive explanations to distinguish Miller (and thus Aiken) from the facts presented in this case.

In People v. Edwards, 32 N.E.3d 116 (Ill. App. 2015), the Illinois Supreme Court held that a 90-year sentence did not amount to *de facto* life in prison because the minimum that defendant could have received was 76 and he received only 24 years over the minimum. As the defendant in Edwards, Defendant Mack could have received many more years in addition to a life sentence for the murder, but the sentencing judge only sentenced him to 50 years in prison.⁵

Further, in McCullough v. State, the Supreme Court of Maryland held that an aggregate sentence of one hundred (100) years for multiple crimes against multiple victims did violate the constitutional ban on a life without parole for non-homicide offenses. McCullough v. State, 233 Md. App. 702, 168 A.3d 1045, 1046 (2016) (citing Graham v. Florida, 560 U.S. 48 (2011)). Here, McCullough was sentenced to twenty-five consecutive years in prison for conviction of four counts of first degree assault against four separate victims. Like this defendant, Defendant Mack was convicted for multiple crimes against multiple victims when he broke into the home of the victim at night and murdered him while the mother of the victim was asleep in her bedroom. However, Defendant Mack only received concurrent sentences. Moreover, his crimes included murder. Whereas, in McCullough the defendant was only charged with four counts of first degree assault, crimes not as grave as murder.

Also, McCullough reasoned that there is no violation if a single sentence by itself is proportional to the crime. Id., 168 A.3d at 1070. This analysis considered (1) the nature of the crime;

(2) the severity of the offense; and (3) the potential for harm. Id. The court held that the maximum of 25 years for each count of first degree assault was constitutional because of heinous nature of the crime where this defendant and his accomplice shot a gun twelve times into a crowd of teenagers outside of a high school. Id. The court also found this to be a grave offense where four victims were seriously injured including one who was permanently paralyzed. Id. Finally, the court concluded that the potential for harm was great because the defendant and his accomplice fired the weapon into a crowd of teenagers and the crime “instilled fear in the community” and “had long-lasting repercussions for the victims, their families and friends.” Id. Similarly, Defendant Mack committed a crime that was (1) heinous when broke into the house of the victims while they were asleep with the only intent to commit murder; (2) of the gravest of crime because he intentionally set out to and did murder the victim while he slept; and (3) the potential for harm was great, because Defendant Mack mistakenly believed that the deceased victim was the only one present in the home, and only fate prevented this case from being about two homicides instead of one.⁶ Thus the 50-year sentence that Defendant Mack received for the murder he committed is not unconstitutional under this analysis. Defendant Mack received much less than the maximum punishment of life allowed in South Carolina and based on this proportionality analysis, the 50-year sentence that Defendant Mack received was not excessive. See also United States v. Walton, 537 Fed. Appx. 430, 437 (5th Cir. 2013); Willbanks v. Dept. of Corrections, 522 S.W.3d 238 (Mo. 2017) (rejecting Miller’s application to a juvenile sentenced for multiple

⁵ Defendant Mack could have received consecutive sentences of the mandatory minim 30 years to life for the murder and 15 years for burglary, first degree that he committed. S.C. Code Ann. §16-3-20 and §16-11-311 (B).

⁶ See previously submitted guilty plea transcript.

offenses and where the aggregate sentences were over 100 years imprisonment); Lucero v. People, 394 P.3d 1128, 1133 (Colo. 2017) (“Multiple sentences imposed for multiple offenses do not become a sentence of life without parole, even though they may result in a lengthy term of incarceration. Life without parole is a specific sentence, imposed as punishment for a single crime, which remains distinct from aggregate term-of-years sentences resulting from multiple convictions.”); State v. Brown, 118 So.3d 332, 342 (La. 2013); State v. Ali, 895 N.W.2d 237, 246 (Minn. 2017); State v. Springer, 856 N.W.2d 460, 470 (S.D. 2014), *cert. denied*, ___ U.S. ___, 135 S.Ct. 1908 (2015); Angel v. Commonwealth, 281 Va. 248, 704 S.E.2d 386, 402 (2011).

The decision of the Sixth Circuit in Bunch v. Smith, 685 F.3d 546 (6th Cir. 2012), where the juvenile was sentenced to 89 years for multiple offenses, further explains why the imposition of a sentence to a term of years totaling beyond a juvenile offender's life expectancy does not violate the Eighth Amendment under Miller. The Graham Court addressed neither sentencing laws nor practices concerning juvenile nonhomicide offenders who were sentenced to multiple fixed-term periods. Id., at 551 n.1. The court concluded, “This demonstrates that the [Supreme] Court did not even consider the constitutionality of such sentences, let alone clearly establish that they can violate the Eighth Amendment's prohibition on cruel and unusual punishments.” Id.

Significantly, the Willbanks court emphasized that, “absent guidance from the Supreme Court, [a court] should not arbitrarily pick the point at which multiple aggregated sentences may become the functional equivalent of life without parole.” Id., 522 S.W.3d at 245. The court continued:

Graham] . . . created a categorical rule for offenders who were under the age of 18 at the time of their offense. . . . Graham itself concluded the age of 18 was an appropriate demarcation line for the imposition of life without parole because ‘18 is the point where

society draws the line for many purposes between childhood and adulthood.' Graham, 560 U.S. at 50 (quoting Roper, 543 U.S. at 574, 125 S.Ct. 1183). There is no similar clear demarcation line at which point juvenile offenders' time in prison denies them meaningful opportunity to obtain release. As the Sixth Circuit opined in Bunch:

At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: twenty, thirty, forty, fifty, some lesser or greater number? Would gain time be taken into account? Could the number vary from offender to offender based on race, gender, socioeconomic class or other criteria? Does the number of crimes matter? There is language in the Graham majority opinion that suggests that no matter the number of offenses or victims or type of crime, a juvenile may not receive a sentence that will cause him to spend his entire life incarcerated without a chance for rehabilitation, in which case it would make no logical difference whether the sentence is "life" or 107 years. Without any tools to work with, however, we can only apply Graham as it is written. Bunch, 685 F.3d at 552.

Willbanks, 522 S.W.3d at 245.

Thus, while over the last decade the United States Supreme Court has stated that youth affects the penological considerations for the following: capital punishment, Roper, 543 U.S. at 571; mandatory life without parole for homicide offenders, Miller, 132 S.Ct. at 2464; and life without parole for nonhomicide offenders, Graham, 560 U.S. at 75, it has never held that sentences totaling beyond a juvenile offender's life expectancy are the functional equivalent of life without parole. As noted in Willbanks,

Warning of "frequent and disruptive reassessments of [the Supreme Court's] Eighth Amendment precedents," the Supreme Court has not looked positively upon lower courts issuing various rulings without precedence from the Supreme Court. Roper, 543 U.S. at 594, 125 S.Ct. 1183 (O'Connor, J., dissenting). "[C]lear,

predictable, and uniform constitutional standards are especially desirable” in the area of the Eighth Amendment. Id.

Willbanks, 522 S.W.3d at 246. This Court, therefore, should not extend the Miller Court’s holdings or Aiken beyond the four corners of the opinions, and it committed error in doing so here.

Also, the comments by the sentencing judge do not support the conclusion by this Court that the judge intended for Defendant Mack to spend the equivalent of life in prison. In support of its finding, this Court cited to a February 2015 United States Sentencing Commission report titled, “Life Sentences in the Federal System,” which defined a *de facto* life sentence as “extremely long specific term of imprisonment” that is, “for all practical purposes, a life sentence and likely was intended to be such by the judge who imposed it.” Ct. Order. at 29. (quoting Saris, et al., supra). In addition, this Court pointed to comments made by the sentencing judge during the sentencing phase, specifically, in the plea transcript, where the judge said:

Unfortunately you’ll never know any better because you — that’s a — just as you snuffed out his life you snuffed out your future just the same. All of the great things that Mr. Carraway said about you and all he thinks about you, I mean, I’m not questioning at all whether those things are true. But if you are to take advantage of those things, it won’t be — it will not be out in a free society where you’ve given up your freedom and right to anyone to trust you to walk the streets. And you’ll have to do those good deeds behind bars. That’s just a fact of the matter.

Plea, Tr. 31, 1. 14—32, 1.6

These comments cannot be read in isolation as the sole means to determine the intent of the sentencing judge, because they are more likely a summation of the impact of the crime on both Defendant Mack, the victim, and the families of those affected by these crimes.⁷ The plea

⁷ Defendant Mack pled guilty to murder and burglary 1st degree.

judge was confined by the minimum punishment allowed for both crimes. The minimum term for murder is 30 years to life, and the mandatory term of years is 15 years for the crime of first-degree burglary for juveniles, which could be consecutive or concurrent to each other. Here, the least that Defendant Mack could have are concurrent sentences of 15 years and 30 years to account for both crimes; the most would have been life for the murder and many more years, for example 60 years, for the first-degree burglary. However, the judge only gave defendant Mack concurrent sentences of 50 years for the murder and 30 years for burglary, first degree.

Also coupled with the constraints of the law, this plea judge presided over the hearings of all co-defendants which included the mother of Defendant Mack, Twanda Allen, her live-in boyfriend, Co-Defendant Kelvin Bowen, and Co-Defendant Antonio McClary, a friend of Defendant Mack. Also, these cases were resolved within about six months of each other, so, there was no time lapse to allow the judge to need any refresher on the facts and circumstances surrounding these crimes.⁸ As noted below, each of the co-defendants received a different sentence.

However, of the four co-defendants, only co-defendant Kelvin Bowen received consecutive term of years such that he may die in prison.

Moreover, these comments were made at the very end of the transcript after the judge heard all the evidence. Plea. Tr. 31 to 32. The judge had a unique opportunity because of the additional insight into life of Defendant Mack since the crimes involved co-defendants with

⁸ On 09/01/2010 Twanda Allen was found guilty at trial and given concurrent sentences of 45 years for murder, 30 years for burglary 1st degree, and 5 years for conspiracy. On 10/14/2010, Defendant Antonio McClary pled guilty and was sentenced to a negotiated sentence of 12 years for violent burglary, 2nd Degree. On 02/04/2011, Kelvin Bowen was found guilty at trial and received consecutive sentences of 99 years for murder, 30 years for burglary, 1st degree, 5 years for criminal conspiracy, and 5 years for possession of a weapon during a violent crime.

intimate ties to Defendant Mack. The judge even made note of the good things put forth by Defense Attorney at the plea hearing. For these reasons, these statements by the judge were not evidence of an intent to sentence Defendant Mack to life in prison. These observations were simply a commentary on the impact of the crime and sentence on Defendant Mack, the murder victim, and the family of the victim.

In addition, the testimony of the expert presented by Defendant Mack is irrelevant and does not support the conclusion by the court that the fifty-year term sentence that Defendant Mack received is the functional equivalent of a life sentence. The underlying study is not applicable because the data merely focused on Black male inmates from ages eighteen to seventy-one over a twenty-year period. Mtn. Tr. 35. It did not focus on any class of inmates who sentenced to life without parole or a lengthy term in prison even though this information was available for the expert to review. Mtn. Tr. 48. In fact, at the time of the analysis, there were only 543 such inmates currently in South Carolina Correctional Institutes whose records could have been reviewed by defense expert. *Id.* Also, this subgroup undoubtedly included Defendant Mack who was incarcerated in 2010. *Id.*

Further, the mortality rate does not remotely reflect the mortality rate for the South Carolina prison population. This mortality figure includes statistics for past twenty years of anyone who has ever been in the South Carolina prison system without regard to length of time in prison or whether the death occurred in or out of prison. Mtn. Tr. 56. For example, someone who has been only in prison for 90 days would be included in this figure regardless how or where that particular inmate died. Mtn. Tr. 57. Moreover, this analysis is especially incomplete and inapplicable to Defendant Mack because it did not include data specific to Defendant Mack even though

this information was accessible and readily available to this expert. Mtn. Tr. 49. Defense expert candidly admitted that she did not do any further analysis relative to Defendant Mack himself. *Id.* Although information on Defendant Mack was readily available through his defense counsel, the expert admitted that she did not know of any factors specific to him that would increase or decrease his life expectancy apart from the general prediction made for South Carolina inmates. *Id.* Additionally, this analysis was undertaken for another project that was unrelated to Defendant Mack and his resentencing petition. Mtn. Hr. 62.

Further, even a perfect calculation of the life expectancy for Defendant Mack is very speculative because this prediction cannot accurately account for future occurrences. As noted by defense expert, there is an improving trend in life expectancy. Mtn. Hr. 30. Such advancement would certainly add even more years to the ten years that Defendant Mack should expect to live outside the prison walls. Defense expert even admitted that there was no way to determine how jail affects longevity because there are "a number of different things" that could affect how long a person lives in prison. Mtn. Tr. 57-58. Therefore, this information provided by Defense Counsel is faulty ground for the conclusion that a fifty-year term of year sentence is *de facto* life in prison.

C: Defendant Mack is not entitled to relief, even if the court expands the South Carolina Supreme Court ruling in *Aiken v. Byars* to grant Defendant Mack a resentencing hearing for his term of years sentence, because he received the benefit of the *Miller* factors during his guilty plea.

In *Miller*, the Court established factors that must be considered by a judge considering sentencing a defendant to life without parole for a murder committed while a juvenile. These factors are to assist the sentencing judge determine whether the defendant is one whose crime indi-

cates transient immaturity or incorrigible character. Miller, 132 S.Ct. at 2468-69; Aiken, 410 S.C. at 544, 765 S.E.2d at 577. The mandatory factors announced in Miller and recognized in Aiken include:

(1) The chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequences; (2) the family and home environment of the offender, (3) the circumstances of the offense, including the extent of the participation of the offender in the conduct and how familial and peer pressures may have influenced the offender; (4) the incompetencies associated with youth such as the ability of the offender to deal with police officers or prosecutors (including on a plea agreement), or the ability of the offender to assist his own attorney; and (5) the possibility of rehabilitation.

Id.

Defendant Mack's plea judge considered at length and in great detail the circumstances surrounding the crimes including his youthfulness and its attendant traits, his family and life background, familial and peer pressure, his involvement in the crime and his ability to assist his defense counsel and participate in the judicial process, and his potential for rehabilitation. Even though the sentencing judge did not have the benefit of Aiken at the time of sentencing, a review of the guilty plea transcript shows that Defendant Mack put forth more than sufficient evidence which was then considered before the sentence was announced. Looking to the Miller/Aiken factors and the transcript of Defendant Mack's guilty pleas, it can be concluded that the factors were – as will be examined more fully below – considered by the plea court and that Defendant Mack received a fair sentence that gives him a “meaningful opportunity for release.”

Also, as stated above, this sentencing judge also presided over the prosecution of the other three codefendants. Thus, not only did the plea judge have the benefit of evidence specific to Defendant, but he also gained more insight into the life of Defendant Mack according to a Miller-

type review because the co-defendants were either intimately related to Defendant Mack or in his circle of friends. Thus, the five factors as delineated in Miller and Aiken were considered by the plea judge.

Moreover, although this Court in its Order found that the plea judge did not consider the five factors under Miller, this Court could not and did not point to any one factor or factors where the plea judge did not have sufficient information to complete a Miller-type analysis. However, the Court averred that, "Moreover, the record does not reflect that any of the mitigating factors pointed to were actually considered by the sentencing court." Court's Order, 32. It is difficult to conclude that the plea judge who had so much information pertaining to Defendant Mack did not consider all of it before sentencing him. The plea judge had information about Defendant Mack from several sources including his family and friends, the crime scene, Defendant Mack himself, and evidence from law enforcement, all of which were considered over the course of four separate prosecutions involving Defendant Mack and which provided insight into possible rehabilitation for Defendant Mack. Moreover, none of these co-defendants received the same sentence. Thus, the plea judge could not help but consider the Miller factors before imposing sentence on this defendant.

Additionally, in all of the motions, evidence, and arguments made by Defense Counsel, there is no mention of any deficiency in the formation provided to the plea judge to satisfy Miller. Also, besides asserting that Defense Counsel did not satisfy the requirements of a Miller re-sentencing hearing, Defense Counsel did not offer any information that could have been offered

on behalf of Defendant Mack, but was not offered on his behalf by his plea Defense Counsel.⁹ It is the inability of the judge or the failure of the plea judge to consider information that triggers the protections of Miller. Here, the judge made his ruling after all of the factors under Miller were considered and weighed appropriately.¹⁰

(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.

Aiken, at 544, 765 S.E.2d at 577 (citing Miller, 132 S.Ct. at 2468).

(1) The chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence

The judge considered that Defendant Mack was almost 18-years-old on the early morning of April 5, 2009 when he and his co-defendants broke into the home of Kenyon Dorsey and murdered Kenyon while his mother slept in her bedroom. Tr. 14. Defendant Mack, born on August 24, 1991, was just four months away from being an adult under South Carolina's laws. Tr. 14 & 18. Just as the Miller Court relied on "common sense" to hold that children are constitutionally different from adults, a court also can rely on common sense to deduce how much impact a person's chronological age can have on his or her cognitive abilities. Miller, 132 S.Ct. at 2464. Be-

⁹ Defendant's Motion for Resentencing filed on April 20, 2015; Defendant's Opposition to the State's Motion to Dismiss Filed on November 4, 2016; and Transcript for Motion Hearing on February 17, 2017.

¹⁰ The comments of the sentencing judge were on the last 2 pages of a thirty-two-page transcript.

cause Defendant Mack was closer in age to an adult than he is to someone who is 14 years of age, his actions should most likely align with that of an adult rather than a juvenile. This is exactly what the evidence in this crime conclusively shows. Defendant Mack's actions surrounding the crime, including the planning and execution phases of crime and his actions after the crime, negate any notion that he was immature, impetuous, and that he did not appreciate the risks and consequences of his actions.

The skill and detail with which Defendant Mack orchestrated this crime show that that he possessed and used the reasoning of an adult. He was initiator and master mind of the entire crime hatched to further his drug dealing business. GP Tr. 16 to 18. In fact, Defendant Mack moved from Maryland to South Carolina and later called his co-defendants to drive down to South Carolina from Maryland to help him commit the murder. GP Tr. 10. He even instructed these co-defendants to bring the murder weapons which were later used and tied to the crimes. Tr. 12.

Further, Defendant Mack had at least eight hours from the time he called reinforcement to change his mind, but he did not. In fact, on the night of the murder, Defendant Mack mentioned to one of the co-defendants, "He had taken care of some business and that he was mad at Kenyon." Tr. 10. When the pair arrived from Maryland, they picked up Defendant Mack, and codefendant, Antonio McClary at a home where they hung out with some friends for the evening. Id. Defendant Mack then directed his mother, codefendant Tawanda Allen, to the home of victim. Id. Defendant Mack fired the first three shots with a hand gun into the victim's head and chest at point blank range, then stood by as another codefendant "finished him off" with a shotgun. Tr. 11.

When Defendant Mack got into the car, he and one of the co-defendants started to converse as though nothing out of the ordinary had happened. Defendant Mack then returned to where he was picked up and the other two co-defendants who immediately drove back to Maryland. Tr. 12.

When the Miller Court discussed the impetuous trait of youth, they were specifically discussing two 14-year-old defendants in companion cases who did not preplan to commit murder, but their actions resulted in homicide. For example, Defendant Miller was caught stealing from an adult victim who passed out after smoking marijuana with Miller and another co-defendant. This co-defendant struck the first blow and Miller followed suit striking other blows. These two defendants returned later to the victim's home and set it on fire. Miller, 132 S.Ct. at 2462.

In the companion case of Jackson v. Hobbs, Defendant Jackson only discovered that one of the other two co-defendants had a sawed-off shot gun as the trio were on their way to rob a convenience store. Id. at 2468. Moreover, Defendant Jackson did not fire the weapon used to murder the store clerk. Id. Unlike these two defendants in Miller whose burglary resulted in murder, Defendant Mack planned and intentionally killed Kenyon Dorsey; murder was the only thing on Defendant Mack's mind when he entered the victim's home. Further, contrary to the defendants in Miller, Defendant Mack took initiative, fired the first shot and led the way in the murder. Based on these facts, admitted to during the guilty plea, there was nothing impulsive about Defendant Mack's actions on the night in question.

Moreover, Defendant Mack knew the consequences of his actions. He knew that killing Kenyon would put him in good standing with his fellow gang members of the Bloods, a national-

ly known criminal organization. Tr. 18. Moreover, Defendant Mack and Kenyon were good friends, a fact given no consideration when Defendant Mack decided to take his friend's life.

Even though Defendant Mack was a juvenile, four months away from his eighteenth birthday, an analysis of the facts with respect to the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence show that Defendant Mack's actions were more in tune with a mature adult than with a youth. The level of planning and sophistication decies any belief that Defendant Mack was immature, impetuous or failed to appreciate the risks and consequences of his actions.

(2) 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

Based on the analysis above, this crime was the mastermind of Defendant Mack. However, other circumstances and facts reveal an even deeper level of the involvement and premeditation from Defendant Mack in the cold-blooded killing of Kenyon Dorsey.

Defendant Mack and the victim were close friends at one point. Tr. 9. In fact, Defendant Mack was with the victim prior to murdering him. Id. Defendant Mack would visit the victim at his home and even spent the night there a couple of times. Tr. 9-10. Defendant Mack also had knowledge that Ms. Bradshaw, the victim's mom, worked the night shift and if her vehicle was not in the drive way of the home then she was at work. Id. Based on these facts, Defendant Mack more than likely also knew that if Kenyon's mom was at work on the night shift, this meant that Kenyon was home alone on the nights that his mom worked. This is exactly the way the crime unfolded. Except, that on the night of the murder, even though Ms. Bradshaw's vehicle was not in the driveway, she was asleep in her room when the defendants broke into her home

and killed her son. The high level of sophistication and aforethought on Defendant Mack's part preceding this crime supports the conclusion that but for Defendant Mack's input, there would be no crime. The other co-defendants were merely "hired hands" in Defendant Mack's plot to kill Kenyon.

The facts of this crime show a lack of peer pressure. One of the co-defendants, Antonio McClary, was a friend of Defendant Mack, but he only went along with the others for the ride. This co-defendant neither had a weapon nor played any significant part in the crimes. On the other hand, the other two co-defendants who came from Maryland and actively followed Defendant Mack's orders were intimately known to him. Co-defendant, Twanda Allen, the driver of the car, is the mother of Defendant Mack. Tr. 9. The other co-defendant, Kelvin Bowen was Ms. Allen's boyfriend. Id. However, the stark truth in this situation is that Defendant Mack was the one in charge of that night's events, not his mother or her boyfriend. In fact, during the guilty plea hearing, the trial judge heard of incidents where Defendant Mack bragged about robbing drug dealers, being part of a gang, and fighting people in Maryland to show his tough character. Tr. 14. There was reference to an incident where the Defendant bragged about beating up a boyfriend of his mother, and kicking him and knocking his feet from under him for saying something out of the way to his mom. Id. Thus, even though two of the co-defendants had family ties to Defendant Mack, these co-defendants did not pressure or demand that Defendant Mack commit any of these crimes. There was abundant evidence to show that Defendant Mack intentionally committed these crimes and the other co-defendants were merely actors in his deadly scheme.

(3) The family and home environment that surrounded the offender

The Miller Court required review of the kind of environment that a juvenile offender was subjected to in order to determine whether there were factors that could explain deviant juvenile behavior, but that a mandatory penalty scheme prevented the sentencer from taking into consideration. Miller. 132 S.Ct. at 2462. Defendant Miller was 14-years-old at the time of his crime. Id. at 2463. Defendant Miller had a very troubling childhood because (1) he was in and out of foster care; (2) his mother suffered from substance abuse and addiction to drugs and alcohol; (3) he also often used drugs and alcohol; and (4) had attempted suicide on four occasions; the first incident occurred when he was only six-years-old. Id.

Contrary to the defendant in Miller, Defendant Mack did not have a troubled childhood. From all indications on the record, Defendant Mack had plenty of family support, but he chose his own life style. Defendant Mack never tried to commit suicide. Defendant Mack was never placed in foster care. Unlike Defendant Miller, Defendant Mack had the support of several family members where he lived in Kingstree, South Carolina. Tr. 15, 20. Defendant Mack had his father, grandfather, and grandmother living in his community. Id. In fact, from 7th to 10th Grade, Defendant Mack lived in Maryland, but moved back to South Carolina while in the 10th grade. He lived for a while with both his father and grandmother. Id.

However, while in Maryland, Defendant Mack became involved in drug and gang activity. Id. When Defendant Mack moved back to South Carolina, he became the link between Maryland and South Carolina for the gang and drug dealers in Maryland. Id. Defendant Mack had others who would sell drugs for him. Id. As such, Defendant Mack's story is not one of a helpless juvenile who had no choices. Defendant Mack deliberately established himself as the link for the

underworlds of Maryland and Kingstree, South Carolina. When Defendant Mack moved back to South Carolina, he could have chosen to leave his Maryland drug ties behind, but he chose instead to continue those ties. As such, Defendant Mack's choices were not a result of poor family and home environment, but rather made of his own volition.

- (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

The above factor speaks to a defendant's ability to understand and participate in the judicial process. At Defendant Mack's guilty plea hearing held on August 24, 2010, he was 19-years-old and was represented by Counsel. Tr. 6. He had also completed the 11th Grade. *Id.* This was in part because he was in Maryland finishing up high school when he was arrested there. Tr. 12. Defendant Mack indicated to the trial judge that he (1) understood the nature of his crimes and that they were most serious, (2) he pled guilty to murder and burglary in the first degree, facing a possibility of up to life on each charge and (3) understood his right to appeal within 10 days. Tr. 4, 7. Defendant Mack also indicated that he understood his rights as it pertains to the presumption of innocence, to a jury trial and unanimity of guilt, the reasonable doubt standard of proof, the right to a defense counsel, the right to challenge incriminating statements, present witnesses and a defense. Tr. 5-6. Defendant then waived his rights, indicated that he was satisfied with the assistance from his defense counsel, that no one promised him anything for his guilty plea, acknowledged that there was nothing else that the defense counsel could have done for him, and that there was no mistreatment by the judicial system. *Id.* Defendant Mack also indicated that he was not on any drugs and that he had no mental or physical impediments. *Id.* Defendant Mack then admitted to committing the crimes as stated detailed by the assistant solicitor

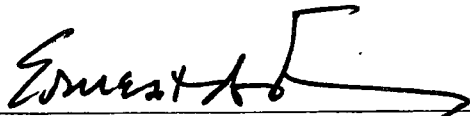
and the judge accepted the guilty plea. Tr. 12-13. Counsel for Defendant Mack confirmed going over the charges with the defendant, and the defense counsel also agreed with the guilty plea. The foregoing evidence demonstrates that the trial court thoroughly examined the guilty plea of Defendant Mack before accepting the plea. Thus, the court finds that Defendant Mack had no incompetencies associated with youth that prevented him from participating in the judicial process as it pertains to dealing with prosecutors (including a plea agreement), police officers, or assisting his defense counsel.

(5) The possibility of rehabilitation

The Miller Court was particularly concerned with the ability of juvenile offender to be rehabilitated and return to society. This factor was analyzed with respect to mandatory life without parole sentences given to juveniles who commit murder. However, this is not the case with Defendant Mack. He was given a term of 50 years. Thus, even though Defendant Mack will spend a significant portion of his life in prison, he received determinate sentences, based upon the circumstances surrounding him and his offenses, that provide a definite release date, that allow him the opportunity to return to and be a contributing member of society. Defendant Mack also has a "meaningful opportunity" for rehabilitation. He has access to the educational and vocational programs available to inmates to equip them to take full advantage of the programs designed to help inmates transition into society. Granted, Defendant Mack will be sixty-seven-years-old. However, with a life expectancy of at least another ten years, no health known issues, and programs to help with reintegration into society, Defendant Mack will have a good amount of his life left to enjoy outside of the prison walls. Therefore, the sentencing judge did consider the potential for rehabilitation when he imposed the sentence upon Defendant Mack.

IV. CONCLUSION

Defendant Mack, based on the facts and circumstances in this case, is not entitled to a resentencing hearing pursuant to Aiken, because: (1) the holdings of both Miller v. Alabama and Aiken v. Byars are limited to actual life sentences; (2) this Court does not have the authority to extend the holdings in Miller or Aiken to apply to non-life sentences; (3), even if this Court did have such authority, the record does not support a finding that Defendant Mack's 50-year sentence is a *de facto* life sentence; and (4), even if this Court has the authority to expand the holdings of Miller and/or Aiken, and even if Defendant Mack's 50-year sentence is a *de facto* life sentence, Defendant Mack's sentencing hearing was sufficient to satisfy the requirements of a Miller resentencing hearing. As such, and for all the foregoing reasons, State respectfully requests that the Court reconsider its ruling and deny Defendant Mack a resentencing hearing.


Ernest A. Finney, III
Solicitor of the Third Circuit Court

Sumter, South Carolina

November 14th, 2017

**Respondent's Ex. 15,
Order Denying Motion to Reconsider**

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

State of South Carolina,

v.

Ronald H. Mack.

) COURT OF GENERAL SESSIONS

) TWELFTH JUDICIAL CIRCUIT

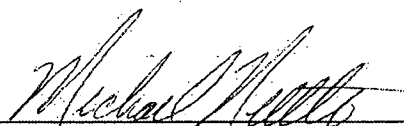
) INDICTMENT: 2009-GS-45-180

ORDER DENYING**RECONSIDERATION HEARING****AND MOTION TO DISMISS THE****STATE'S MOTION TO DISMISS THE****MOTION FOR RESENTENCING**

The motion for reconsideration is denied. Upon review of the record and memoranda, there is no need for a hearing.

IT IS SO ORDERED.

November 15, 2017
 Florence, South Carolina


 Michael G. Nettles
 CIRCUIT COURT JUDGE