

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

 ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PATRICK STROZIER,

APPELLANT

APPELLATE CASE NO 2017-001109

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in dismissing Appellant's motion for re-sentencing where a life sentence imposed upon an eighteen-year old sharing the same developmental qualities and characteristics as offenders under age eighteen violates the federal and state constitutional requirements of an individualized, proportionate sentence?

STATEMENT OF THE CASE

On November 8, 1983, Sonja Rae Hayes was kidnapped and sexually assaulted. R. 37-38. The state alleged James Oscar Crockett, Maner Lamar Green, and Appellant committed these crimes. R. 37-38. A Spartanburg County grand jury indicted Appellant and the others for these offenses on January 16, 1984. R. 37-38. On February 7, 1984, Appellant entered guilty pleas to kidnapping and criminal sexual conduct in the first degree before the Honorable Paul Moore. R. 3, ll. 21-25; R. 37-38. Judge Moore sentenced Appellant to life imprisonment for kidnapping and thirty years imprisonment for criminal sexual conduct in the first degree. R. 4, ll. 1-3; R. 37-38. Judge Moore ordered the sentences to be served consecutively. R. 4, ll. 1-3; R. 37-38.

On January 22, 2015, Appellant wrote to the South Carolina Supreme Court requesting a re-sentencing hearing pursuant to “the case within the original jurisdiction opinion no. 27465 heard Jan. 8, 2014 – filed Nov. 12, 2014.” R. 11-13. On February 24, 2015, the Supreme Court denied Appellant’s request to file a motion for re-sentencing relying upon an order the Court issued on January 30, 2014, prohibiting Appellant from filing any further collateral actions without first obtaining permission to do so from the Supreme Court. R. 14. On February 1, 2016, Appellant filed a motion for re-sentencing. R. 15-20. On March 25, 2016, Chief Justice Pleicones signed an order assigning the Honorable J. Mark Hayes, II, to consider Appellant’s motion for re-sentencing. R. 21-22. However, on April 19, 2016, Chief Justice Pleicones rescinded the order citing the Court’s February 24, 2015, order. R. 23. Then, on November 16, 2016, Chief Justice Pleicones reinstated the order assigning Judge Hayes to preside over the proceedings related to the motion for re-sentencing. R. 24-25. On January 11, 2017, the state filed a return. R. 26-34.

The matter proceeded to a hearing before Judge Hayes on April 20, 2017. R. 1. Barry Barnette represented the state, and Clay Allen represented Appellant. R. 1. At the conclusion of the hearing, Judge Hayes granted the state's motion to dismiss. R. 6, ll. 11-13. He issued a formal order on April 25, 2017. R. 35-36.

On May 4, 2017, Appellant served his notice of appeal. This brief follows.

ARGUMENT

The trial judge erred in dismissing Appellant's motion for re-sentencing where a life sentence imposed upon an eighteen-year old sharing the same developmental qualities and characteristics as offenders under age eighteen violates the federal and state constitutional requirements of an individualized, proportionate sentence.

Relevant facts

Appellant was born on November 11, 1964. R. 5, ll. 5-6; R. 9-10. Appellant was convicted of two offenses that occurred on November 8, 1983. R. 4, ll. 16-17; R. 37-38. Therefore, at the time of the offense Appellant was only eighteen years old. The sentencing judge sentenced him to serve life imprisonment for one offense and to a consecutive term of thirty years for the second offense. R. 4, ll. 1-3; R. 37-38.

When Appellant moved for re-sentencing, the state argued he was not entitled to re-sentencing because he was over the age of eighteen at the time of the offenses. R. 4, ll. 13-20; R. 26-34. According to the state, the Eighth Amendment prohibited life sentences only for those individuals under the age of eighteen. R. 4, ll. 13-20; R. 26-34. The assigned judge agreed. R. 6, ll. 11-13; R. 35-36. However, the judge offered no analysis or explanation for his decision. R. 35-36.

Discussion

The Eighth Amendment to the United States Constitution bars "cruel and unusual punishments." U.S. Const. amend VIII. "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. ... The Amendment 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, 100-101 (1958). "To determine whether a punishment is cruel and unusual, courts

must look beyond historical conceptions to ‘the evolving standards of decency that mark the progress of a maturing society.’” Graham v. Florida, 560 U.S. 48, 58 (2010)(quoting Estelle v. Gamble, 429 U.S. 97, 102 (1976)). “Embodied in the Constitution’s ban on cruel and unusual punishment is the ‘precept of justice that punishment for the crime should be graduated and proportioned to [the] offense.’” Id. at 59 (quoting Weems v. United States, 217 U.S. 349, 367 (1910)). Similarly, the South Carolina Constitution prohibits “cruel,” “corporal,” and “unusual punishments.” S.C. Const. art. I, § 15.

Recently, the United States Supreme Court held life sentences for non-homicide crimes committed while the defendant was under the age of eighteen violated the Eighth Amendment to the United States Constitution. Graham, 560 U.S. at 74-76. The Graham Court found that the cruel and unusual punishment clause of the Eighth Amendment forbids the states from determining at sentencing that a juvenile non-homicide offender will never be fit to reenter society. Id. at 74-75. Instead, juvenile non-homicide offenders must be given a meaningful opportunity to obtain release. Id. at 82.

A sentence of life imprisonment without parole “forfeits altogether the rehabilitative ideal.” Such a sentence “is not appropriate in light of a juvenile non-homicide offender’s capacity for change and limited moral culpability.” Id. at 74. The United States Constitution forbids judges from making subjective determinations at sentencing that a juvenile non-homicide offender has demonstrated an “irretrievably depraved character.” Id. at 76. The Court was clear that a state “need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.” Id. at 82.

Following Graham, one of the questions confronting courts has been what constitutes a “juvenile.” In order to answer this question, a review the evolution of the Court’s Eighth Amendment jurisprudence is of assistance and of particular import to Appellant’s appeal.

Over the years, the cases addressing the proportionality of sentences have developed along two general lines. The first is concerned with the particular circumstances of the case and whether the defendant’s sentence for a term of years is grossly disproportionate given the particular offense. Graham, 560 U.S. at 59; Harmelin v. Michigan, 501 U.S. 957, 1005 (1991). The second classification of cases is concerned with categorical rules as applied to groups of offenses or groups of offenders. Graham, 560 U.S. at 60-61. For example, Supreme Court categorical rulings related to categories of offenses prohibit the imposition of the death penalty for non-homicide crimes against individuals. Id. (citing Kennedy v. Louisiana, 554 U.S. 407 (2008)). Categorical rulings prior to Graham prohibited the death penalty for defendants who committed their crimes before the age of eighteen, Roper v. Simmons, 543 U.S. 551 (2005), or whose intellectual functioning is in a low range, Atkins v. Virginia, 536 U.S. 304 (2002). Graham, 560 U.S. at 61.

When adopting categorical proportionality rules, the Court first considers “objective indicia of society’s standards, as expressed in legislative enactments and state practice” to determine whether there is a national consensus against the sentencing practice at issue. Id. at 61 (quoting Roper, 543 U.S. at 572). Generally, the Court has relied on social science data and statistics to discern “society’s evolving standards of decency.” Roper, 543 U.S. at 560-77. “[G]uided by ‘the standards elaborated by controlling precedents and by the Court’s own understanding and interpretation of the Eighth Amendment’s text, history, meaning, and purpose,’” the Court, in the exercise of its own independent judgment, then determines whether the punishment in question

violates the Eighth Amendment of the Constitution. Graham, 560 U.S. at 61 (quoting Kennedy v. Louisiana, 554 U.S. 407, 421 (2008)).

In Roper, the Supreme Court established a categorical ban on the death penalty for juveniles relying in large part on social science research indicating that youths have a lessened culpability and are less deserving of the most severe punishments. 543 U.S. at 569-75. Juvenile offenders are fundamentally different from adults for purposes of sentencing for three reasons: (1) they are immature and have “an underdeveloped sense of responsibility;” (2) they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;” and (3) their characters are “not as well formed” as adults. Id. at 569-70 (internal citations omitted). “It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” Id. at 573. Therefore, “juvenile offenders cannot with reliability be classified among the worst offenders.” Id. While “[a] juvenile is not absolved of responsibility for his actions,” his transgressions are “not as morally reprehensible as that of an adult.” Graham, 560 U.S. at 68 (internal citations omitted).

Sixteen-year old Terrance Graham was charged with armed burglary and attempted armed robbery of a barbeque restaurant. Id. at 53. Graham entered guilty pleas to both charges pursuant to a plea agreement. The trial court withheld adjudication of guilt as to both charges and sentenced Graham to concurrent three-year terms of probation with jail time. Id. at 54. Shortly thereafter, when Graham was seventeen-years old he was arrested again and charged with home invasion robbery. Graham’s probation officer charged Graham with violating the terms of his probation by “possessing a firearm, committing crimes, and associating with persons engaging in criminal activity.” When Graham appeared before the trial court where he maintained he had no

involvement in the home invasion robbery, he admitted to violating his probation by fleeing arrest, even though the trial court emphasized that the admission could expose him to a life sentence based on his previous charges. Id. at 55.

After finding Graham had violated his probation, the trial judge, in his discretion, sentenced Graham to the maximum sentence of life. During the sentencing proceeding, the judge provided his reasoning for the sentence: “We can’t do anything to deter you. This is the way you are going to lead your life.... [T]hat is where we are today is I don’t see where I can do anything to help you any further.” Id. at 56-57. Florida had abolished its parole system; accordingly, the life sentence gave Graham no possibility of release unless he was granted executive clemency. Id. at 57.

The Supreme Court held that “for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.” Id. at 74. Just as the Court did in Roper, the Graham Court, relied upon developments in social science demonstrating the fundamental differences between juveniles and adults:

[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults. It remains true that from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.

Id. at 68 (internal citations omitted).

The Court explained the decision was “necessary to prevent the possibility that life without parole sentences will be imposed on juvenile non-homicide offenders who are not sufficiently culpable to merit that punishment.” Id. at 74. Although “[a] state is not required to guarantee the eventual freedom to a juvenile offender convicted of a non-homicide crime,” the state must “give defendants like Graham some meaningful opportunity to obtain release based on demonstrated

maturity and rehabilitation.” Id. at 75. “[W]hile the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile non-homicide offender, it does not require the state to release that offender during his natural life.” Id. “The Eighth Amendment does not foreclose the possibility that persons convicted of non-homicide crimes committed before adulthood will remain behind bars for life. It does forbid states from making the judgment at the outset that those offenders never will be fit to reenter society.” Id.

While explaining its rationale, the Graham Court noted that a life without parole sentence is the “second most severe penalty permitted by law.” Id. at 69 (internal citations omitted). Additionally, “life without parole sentences share some characteristics with death sentences that are shared by no other sentences.” Such a sentence “alters the offender’s life by a forfeiture that is irrevocable.” Id. For a juvenile offender, a life without parole sentence “means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit [of the convict], he will remain in prison for the rest of his days.” Id. at 70 (quoting Naovarath v. State, 779 P.2d 944 (Nev. 1989)). Additionally, the Graham Court observed that a juvenile offender sentenced to life without parole will on average serve more years and a greater percentage of his life in prison than an adult offender. “A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.” Id.

Finally, the Graham Court concluded that its new categorical rule “gives all juvenile non-homicide offenders a chance to demonstrate maturity and reform.” Id. at 79. “Life in prison without the possibility of parole gives no chance for reconciliation with society, no hope.” Id. However, “[m]aturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. Id. A young person who knows that he or she has no chance to

leave prison before life's end has little incentive to become a responsible individual.” Id. By imposing a “categorical rule against life without parole for juvenile non-homicide offenders,” the Court avoided “the perverse consequences in which the lack of maturity that led to an offender’s crime is reinforced by the prison term.” Id.

In Miller v. Alabama, 567 U.S. 460 (2012), the United States Supreme Court continued the evolution of Eighth Amendment jurisprudence. The Court extended the reasoning of Roper and Graham by holding that a mandatory sentence of life without parole for juvenile homicide offenders also violates the Eighth Amendment’s prohibition on cruel and unusual punishment. This was a categorical ban. However, the Court further explained that while the decision did not foreclose imposition of a sentence without the possibility of a parole on a juvenile convicted of a homicide offense, the Court required the sentencer “to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” Id. at 479.

The Miller Court explained “children are constitutionally different from adults for purposes of sentencing.” Id. at 471. The Miller Court reserved ruling on whether juveniles could ever be sentenced to LWOP. Id. at 480. The Miller Court repeatedly focused on the notion that the character traits of children are “more transitory and less fixed” to explain its holding and reasoning. Id. at 471. Children by definition lack maturity and responsibility; thus, they are more likely to act with “recklessness, impulsivity, and needless risk-taking.” Id. The Court eloquently explained that due to the innate characteristics of children at large, there is a “great difficulty ... 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. at 479 (internal quotation omitted). In fact, the Court stated

“incorrigibility is inconsistent with youth.” Id. at 473 (internal quotation omitted). The Court emphasized the potential for reform present in all juveniles. The Court emphasized that “youth is more than a chronological fact” the mitigating qualities of youth and noted “[i]t is a time of immaturity, irresponsibility, ‘impetuosity[,] and recklessness.’” Id. at 476 (quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).

Although the Miller Court did not hold LWOP to be an unconstitutional sentence in non-mandatory sentencing schemes, the Court held Eighth Amendment jurisprudence governing imposition of death sentences applied equally to cases involving juveniles facing the possibility of LWOP. Id. at 481-482. The Court’s decision created a presumption against LWOP sentences for juveniles, and most importantly, the Court imported the principles of capital sentencing into cases where juveniles face the possibility of LWOP. Specifically, the court explained that “death is different” and “children are different too.” Id. at 481.

“The Eighth Amendment’s prohibition of cruel and unusual punishment ‘guarantees individuals the right not to be subjected to excessive sanctions.’” Id. at 471 (quoting Roper, 543 U.S. at 560). The Miller Court emphasized that “proportionality is central to the Eighth Amendment.” Id. (quoting Graham, 130 S.Ct. at 2021). Focusing on the concept of individualized sentencing, the Court recognized “that children are constitutionally different from adults for purposes of sentencing.” Id. Children “have diminished culpability and greater prospects for reform,” and therefore, “they are less deserving of the most severe punishments.” Id. at 469 (quoting Graham, 560 U.S. at 68). “[T]he distinctive attributes of youth diminish penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” Id. at 472. As a result, “[a]n offender’s age is relevant to the Eighth Amendment.” Graham, 560 U.S. at 76. In light of the relevance to the ban on cruel and unusual punishment,

“imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” Miller, 567 U.S. at 474.

Mandatory sentencing prevents the sentencer from considering the juvenile offender’s “chronological age and its hallmark features, among them, immaturity, impetuosity, and failure to appreciate risks and consequences,” the offender’s family and home environment, the extent of the offender’s conduct in the offense and the way familial and peer pressures may have affected him. Id. at 477. The Court required sentencers “to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” Id. at 480. Thus, it is clear that sentencing authorities *must* consider a juvenile offender’s age and consideration of such *must* be a mitigating factor.

Not long after the Court’s opinion in Miller, our Supreme Court reviewed non-mandatory life sentences for juveniles in South Carolina through the lens of Eighth Amendment jurisprudence. In Aiken v. Byars, 410 S.C. 534, 540-541, 765 S.E.2d 572, 575-576 (2014), the South Carolina Supreme Court held that Miller applied retroactively and to juveniles who were sentenced to non-mandatory terms of life without parole. Finding that “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,” the Court held the sentencing judge must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” and that this requirement “deserves universal application.” Id. at 543, 765 S.E.2d at 577. Id. (internal quotations omitted). The Court held the class of petitioners in the case “and those similarly situated” were “entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and

allow the judge to consider such evidence in light of its constitutional weight.” Id. at 544, 765 S.E.2d at 577.

According to the Court, Miller “unequivocally held that youth has a constitutional dimension when determining the appropriateness of a lifetime of incarceration with no possibility of parole.” Id. at 542, 765 S.E.2d at 576. Thus, the Court determined “an individualized sentencing proceeding before imposing a sentence of life without parole on a juvenile offender” was required. Id. Recognizing that Miller “did not expressly extend its ruling to states such as South Carolina whose sentencing scheme *permits* a life without parole sentence to be imposed on a juvenile offender but does not *mandate* it,” the South Carolina Supreme Court held it “must give effect to the proportionality rationale integral to Miller’s holding – youth has constitutional significance.” Id. at 542-543, 765 S.E.2d at 576. Therefore, youth “must be afforded adequate weight in sentencing.” Id. at 543, 765 S.E.2d at 576.

The sentencing court must consider the following factors in crafting a sentence proportional to the offense and the juvenile offender:

- (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 (internal quotations omitted). While not requiring the sentencing proceedings to “mirror the penalty phase of a capital case,” the Court determined “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 Miller factors. Id. at 544-45, 765 S.E.2d at 577.

Two years after the South Carolina Supreme Court’s decision in Aiken, the Supreme Court of the United States addressed the retroactivity question of Miller. Montgomery v. Louisiana, 136 S.Ct. 718 (2016). In line with our Court’s Aiken opinion, the High Court held that Miller announced a new substantive constitutional rule that was retroactive on state collateral review. Montgomery, 136 S.Ct. at 732-36. However, the Court’s opinion answered more than the retroactivity question.

In 1963, Henry Montgomery was seventeen-years old. Id. at 725. He shot and killed a deputy sheriff. Id. He was sentenced to death for the crime, but his conviction was reversed by the state supreme court. Id. Upon re-trial, the jury returned a verdict of guilty without capital punishment. Id. According to state law, the judge was required to impose LWOP. Id. at 726. “The sentence was automatic upon the jury’s verdict, so Montgomery had no opportunity to present mitigation evidence to justify a less severe sentence.” Id. At the time of his appeal to the United States Supreme Court, Montgomery was sixty-nine years old, having “spent almost his entire life in prison.” Id.

When Montgomery challenged his sentence based upon the Miller decision, the state court held he was not entitled to relief because Miller was not retroactive on collateral review. Montgomery, 136 S.Ct. at 727. In deciding that Miller’s prohibition on mandatory life without parole for juvenile offenders announced a new substantive rule that must be retroactive, the Court revealed much about its prior opinion in Miller. Montgomery, 136 S.Ct. at 732. “The ‘foundation stone’ for Miller’s analysis” was the “Court’s line of precedent holding certain punishments disproportionate when applied to juveniles.” Montgomery, 136 S.Ct. at 732. The

“starting premise” is the “principle” “that children are constitutionally different from adults for purposes of sentencing” that “result from children’s diminished culpability and greater prospects for reform.” Id. (internal quotation omitted).

The Court further noted Miller recognized “that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified.” Montgomery, 136 S.Ct. at 733. However, “in light of children’s diminished culpability and heightened capacity for change, Miller made clear that appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” Id. at 733-34 (internal quotations omitted). Therefore, 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.” Id. at 734 (internal quotations omitted).

“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). Miller barred “life without parole” “for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” Id. “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).

“A hearing where youth and its attendant characteristics are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from

those who may not.” Id. at 735. It is the hearing that “gives effect to Miller’s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.” Id. The Court concluded that Montgomery and others 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.

Having set the scene established by the decisions of the Supreme Court of the United States and the South Carolina Supreme Court, the answer to the question initially posed – what constitutes a juvenile – becomes clear. The Eighth Amendment bars not only life sentences for individuals under age eighteen, but it also bars life sentences for individuals over the age of eighteen who share the same developmental qualities and characteristics as individuals under age eighteen.

Appellant readily admits the Supreme Court expressly limited its holding to “those under the age of 18 at the time of their crimes.” Miller, 567 U.S. at 465. When interpreting Miller, the South Carolina Supreme Court, in Aiken, explained that although the relevant state statute defined “a juvenile” “as a person less than seventeen years of age,” the Court considered “juveniles to be individuals under eighteen” in line with the United States Supreme Court’s opinion. Aiken, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1. Thus, Appellant must admit the state supreme court’s opinion limited its scope to those under age eighteen. Importantly, the South Carolina Legislature amended its statute in 2016 to define a child or juvenile as a person less than eighteen years of age, recognizing that the chronological age at which society recognizes a juvenile evolves with the behavioral and social science available. See S.C. Code Ann. § 63-19-20(1)(effective July 1, 2019).

Examining the reasoning in Miller and Graham coupled with the Court's jurisprudence concerning age in the death penalty context supports Appellant's argument for extending the ban on life sentences to those older than eighteen when the individuals share the same characteristics as those under age eighteen. As explained, the impetus for Miller and Graham was not chronological age, but was the characteristics of individuals associated with that age. "The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." Graham, 560 U.S. at 570.

In Stanford v. Kentucky, 492 U.S. 361, 369 (1989), the Supreme Court rejected the notion that the Eighth Amendment prohibited imposition of the death penalty on those between fifteen and eighteen years of age at the time of the offense. Just the year before, the Court concluded the Eighth Amendment prohibited the execution of a person who was under sixteen years of age at the time of his or her offense. Thompson v. Oklahoma, 487 U.S. 815, 836 (1988). The Court found "broad agreement on the proposition that adolescents as a class are less mature and responsible than adults." Id. at 834. The Court "endorsed the proposition that less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult." Id. at 835. "Given the lesser culpability of the juvenile offender, the teenager's capacity for growth, and society's fiduciary obligations to its children," retribution as a goal for imposition of the death penalty "is simply inapplicable to the execution of a 15-year-old offender." Id. at 836. Likewise, the Court found "the deterrence rationale is equally unacceptable" "[f]or such a young offender." Id. After noting the few number of arrests for willful homicide by persons under age sixteen and the consequent improbability that excluding younger persons from the class eligible for the death penalty would diminish the deterrent effect

of capital punishment on the majority of offenders, the Court explained the “potential deterrent value of the death sentence” for those under sixteen was insignificant because (1) “[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility is so remote as to be virtually nonexistent,” and (2) even if a young person engages in such a calculation, “it is fanciful to believe that he would be deterred by the knowledge that a small number of persons his age have been executed during the 20th century.” Id. at 837-838.

Sixteen years later, when the Court confronted the issue of the constitutionality of the death penalty for those under eighteen again, the Court overruled Stanford, finding the Eighth Amendment categorically barred imposition of a death sentence on someone under age eighteen. Roper, 543 U.S. at 575. The Court recognized that “[d]rawing the line at [eighteen] years of age [was] subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns [eighteen]. By the same token, some under [eighteen] have already attained a level of maturity some adults will never reach.... The age of [eighteen] is the point where society draws the line for many purposes between childhood and adulthood.” Roper, 543 U.S. at 574. Thus, the Court concluded it was “the age at which the line for death eligibility ought to rest.” Id. In other words, the Court drew the line at eighteen years of age because that was the question presented in the case and that was where the then-current prevailing societal norms drew the line for adulthood.

The Supreme Court’s trilogy of cases, Roper, Graham, and Miller, emphasized their reliance on the growing body of scientific evidence establishing significant differences between adult and juvenile brains, which the Court deemed to be of constitutional import. Despite the Court’s categorization of juveniles relative to chronological age, the focus of the decisions was

the psychological and behavioral aspects inherent to the age group. Therefore, the decisions must be applied to individuals, regardless of chronological age, who share the psychological and behavioral characteristics that compelled the categorical bar of the death penalty and life sentences on individuals under age eighteen.

The Supreme Court of Washington held “a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on an offender.” State v. O’Dell, 358 P.3d 359, 366 (Wash. 2015). The court explained that based on “advances in scientific literature,” it is known that “age may well mitigate a defendant’s culpability, even if that defendant is over the age of 18.” Id. The court acknowledged that “age is not a per se mitigating factor automatically entitling every youthful defendant to an exceptional sentence.” Id. Nevertheless, the court was compelled to “conclude that youth may, in fact, relate to [a defendant’s] crime” based upon “what we know today about adolescents’ cognitive and emotional development.” Id. (internal citation omitted, alteration in original). The court explained “youth can” “amount to a substantial and compelling factor, in particular cases, justifying a sentence below the standard range.” Id.

The Washington Court recognized that “[u]ntil full neurological maturity, young people in general have less ability to control their emotions, clearly identify consequences, and make reasoned decisions than they will when they enter their late twenties and beyond.” Id. at 364-365. The court accepted the scientific literature revealing the “fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure.” Id. at 364.

“[I]f the neurological research and social science on which Miller was based conclude that cognitive abilities are not fully developed until around age twenty-five, it may be arbitrary

and inconsistent to choose age eighteen as the age after which a defendant may be subject to mandatory life without parole.” Kevin J. Holt, The Inbetweeners: Standardizing Juvenileness and Recognizing Emerging Adulthood for Sentencing Purposes After Miller, 92 Wash. U. L. Rev. 1393, 1396 (2015). “The distinction of adulthood beginning at age eighteen is arguably based on no more than traditional and outdated norms.” Id. “The Courts Eighth Amendment jurisprudence and cognitive science articulated in Miller and its forebears may necessitate legal recognition of a stage of life between adolescence and adulthood often called ‘emerging adulthood,’ during which defendants should be entitled to further special consideration under the Eighth Amendment.” Id.

“Eighteen may be considered too soon for full adulthood.” Id. at 1410. “[C]onsideration of the mitigating characteristics of youth should not stop at such an arbitrary time as an individual’s eighteenth birthday.” Id. “Those circumstances that warrant leniency, and did warrant leniency in Eighth Amendment analyses, do not magically disappear on the individual’s eighteenth birthday.” Id. at 1411. “[T]he research reveals that the brain develops well into a person’s twenties.” Id. “Thus, the analysis for children - - that they are ‘different’ from adults, unable to fully form the same level of culpability, and prone to bouts of poor decision making - - should apply to those under twenty-five, as well.” Id.

“If ‘children are different’ because the human brain does not fully develop until around age twenty-three to twenty-five, then basing the cutoff for the purpose of the Eighth Amendment at eighteen makes little sense.” Id. at 1411-1412. “[T]he social and cognitive science findings show that the human brain is not developed until the mid-twenties; thus, the cutoff is not eighteen.” Id. at 1412.

The judge erred in concluding Appellant was not entitled to re-sentencing based upon his age alone. The Supreme Court's Eighth Amendment jurisprudence relied upon the scientific evidence of differences between adult and juvenile brains, not chronological age. Particularly, the Court focused on the psychological and behavioral studies regarding juveniles unequivocally demonstrating that the human brain continues to develop through age twenty-five. As the Court recognized, "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns [eighteen]." Roper, 543 U.S. at 574. The Court, admittedly, drew the line at age eighteen somewhat arbitrarily. The Court recognized the line would move as greater knowledge about the development of adolescent brains was learned. The Court's decisions must be applied to individuals, regardless of chronological age, who share the psychological and behavioral characteristics that compelled the categorical bar of the death penalty and life sentences on individuals under age eighteen.

CONCLUSION

Appellant respectfully requests this Court remand his case to the circuit court for a re-sentencing hearing during which he may not be sentenced to life imprisonment unless the state proves irreparable corruption beyond a reasonable doubt.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of January, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

RECEIVED
JAN 17 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PATRICK STROZIER,

APPELLANT

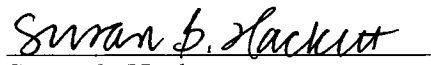
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Patrick Strozier states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's hearing before Judge J. Mark Hayes, II, which was held on April 20, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738, (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Patrick Strozier.

Respectfully Submitted,


Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

This 17th day of January, 2018.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire hearing transcript dated April 20, 2017;
- (2) State's Exhibit #1 (birth certificate);
- (3) Letter dated January 21, 2015, to Supreme Court;
- (4) Supreme Court Order dated February 24, 2015;
- (5) Supreme Court Order dated March 25, 2016;
- (6) Supreme Court Order dated April 19, 2016;
- (7) Motion for re-sentencing;
- (8) Supreme Court Order dated November 16, 2016;
- (9) Return to defendant's motion for re-sentencing;
- (10) Order granting motion to dismiss; and
- (11) True-billed indictment.

I certify that this designation contains no matter which is irrelevant to this appeal.

January 17, 2018

Susan B. Hackett

Susan B. Hackett
Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330
ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 17, 2018.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Patrick Strozier, #119519, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 17th day of January, 2018.

Susan B. Hackett
Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN-TO before me
this 17th day of January, 2018.

[Signature] (L.S)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.