

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 v.)
)
 CORY SPARKMAN,)
)
 Defendant.)

In the Court of General Sessions
 Ninth Judicial Circuit

**ORDER DENYING DEFENDANT'S
 MOTION FOR RESENTENCING**

Indictment Numbers:
 1993-GS-10-0090
 1993-GS-10-0091
 1993-GS-10-0092

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 SC Court of Appeals

Presiding Judge: Hon. Deadra L. Jefferson
 Counsel for the State: Charles Condon, Esq.
 Counsel for Defendant: Cameron Blazer, Esq.
 Date of Hearing: November 13, 2017
 Court Reporter: Amanda Haffenden

This matter came before the Court on November 13, 2017 pursuant to the Defendant's Motion for Resentencing pursuant to the South Carolina Supreme Court's ruling in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). Present at the hearing was Charles Condon, Esquire on behalf of the State of South Carolina. The Defendant, Corey Sparkman, and his attorney, Cameron Blazer, Esquire, were also present. After reviewing the pleadings, considering the briefs submitted by the parties, and the arguments of counsel at the hearing, Defendant's Motion for Resentencing is DENIED.

FACTUAL BACKGROUND

The Defendant, Corey Sparkman, is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Defendant was indicted at the January 1993 term of the Charleston Grand Jury for two (2) counts of Murder and one (1) count of Armed Robbery. These indictments arise from events occurring on July 9, 1992 whereby the Defendant (then sixteen years of age) was charged with robbing and then

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killing Ronald Ravenel and Michael Gadsden by shooting them in the head with a handgun. On September 27, 1993, the Defendant pled guilty to two counts of Murder and one count of Armed Robbery. The Defendant was sentenced by the Honorable Gerald C. Smoak to life in prison on both charges of Murder, with eligibility for parole, and twenty (20) years for the charge of Armed Robbery to run consecutively.¹ Defendant first became eligible for parole on July 14, 2012, and, according to his counsel, has had three (3) parole hearings since that time, all of which for a myriad of reasons were denied by the parole board.

On April 1, 2016, the Defendant filed a Motion for Re-Sentencing pursuant to Aiken v. Byars. On July 28, 2017, the Court appointed Cameron Blazer, Esquire to serve as counsel for the Defendant in this matter. The State of South Carolina filed a response in opposition to Defendant's Motion for Re-Sentencing on October 11, 2017. The Defendant then filed a Reply in support of his Motion for Re-Sentencing. The Court conducted a hearing on November 13, 2017 to determine whether the Defendant meets the requirements articulated by the South Carolina Supreme Court and is thereby subject to a re-sentencing under Aiken v. Byars.

LAW

The Eighth Amendment of the United States Constitution states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const. amend. VIII. In 2012, the United States Supreme Court held that the Eighth Amendment's prohibition on cruel and unusual punishment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. Miller v. Alabama, 567 U.S. 460, 479, 132 S. Ct. 2455, 2469 (2012). In reaching this decision, the Court reasoned that juveniles are constitutionally different from adults for purposes of sentencing because they have diminished

¹ The statute in effect at the time of the murder, S.C. Code Ann. § 16-3-20(A) provided for parole eligibility after twenty (20) years. See State v. Atkins, 303 S.C. 214, 99 S.E.2d 760 (1990).

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culpability and greater prospects for reform." Id. at 471, 132 S. Ct. at 2464. First, "children have a lack of maturity and an underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking." Id. at 471, 132 S. Ct. at 2464 citing Roper v. Simmons, 543 U.S. 551, 569 125 S. Ct. 1183 (2005). "Children are [also] more vulnerable . . . to negative influences and outside pressures including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." Id. citing Roper, 543 U.S. at 569, 125 S. Ct. at 1219. And lastly, "a child's character is not as "well formed" as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity." Id. citing Roper at 543 U.S. at 570, 125 S. Ct. at 1183. A judge or jury must therefore consider mitigating circumstances before imposing the harshest penalty possible for juveniles. Id. at 489, 132 S. Ct. at 2475.

Subsequent to the Court's ruling in Miller v. Alabama, the South Carolina Supreme Court addressed the applicability of Miller to juveniles who received a life sentence without parole in South Carolina. This case, Aiken v. Byars, upheld the principles enunciated in Miller by holding that "any juvenile offenders who receives a sentence of life without the possibility of parole, whether the sentence is mandatory or permissible, is entitled to the constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment." Aiken, 410 S.C. at 544, 765 S.E.2d at 577. The Court further held that Miller applies retroactively to all juvenile offenders sentenced to life without parole and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole. Id. at 542, 765 S.E.2d at 578. Courts are, thus, required to provide juvenile offenders in South Carolina with individualized hearings where the mitigating hallmark features of youth are fully explored before a life sentence without parole is imposed. Id.

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The U.S. Supreme Court has held that a Miller violation may be remedied by resentencing or by extending parole eligibility to previously ineligible juvenile offenders. See Montgomery v. Alabama, 136 S. Ct. 718, 736 (2016). "A state may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them" thereby ensuring that "juveniles whose crimes reflected only transient immaturity – and who have since matured – will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." Id. The South Carolina Supreme Court held that the appropriate remedy for juvenile offenders sentenced to life without parole is a re-sentencing hearing whereby the offender may present evidence specific to their attributes of youth. See Aiken, 410 S.C. at 544, 765 S.E.2d at 577.

ANALYSIS

The Defendant in the instant case was sentenced to confinement for a period of life with parole eligibility in 1993. Defendant currently seeks re-sentencing of his life sentence in accordance with Aiken v. Byars. In support thereof, Defendant asserts that he falls within the class of juvenile offenders referenced by the Court in Aiken because he was sixteen (16) years old at the time of his crime and sentenced to a term of life imprisonment. Defendant argues that his sentence is, therefore, unconstitutional under Miller v. Alabama and Aiken v. Byars.

The State disputes that Defendant is entitled to re-sentencing under Miller and Aiken on the basis that the Defendant is categorically different from the defendants in these cases since he is eligible for parole and has been since July 14, 2012. It is the State's contention that the holdings of Miller and Aiken solely apply to those juveniles sentenced to life without the possibility of parole. In support of this contention, the State cites to Montgomery v. Alabama in which the U.S. Supreme Court held that a Miller violation may be remedied by re-sentencing the juvenile offender

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or by extending parole eligibility to the offender. See Montgomery, 136 S. Ct. at 736 ("Giving Miller retroactive effect does not require states to re-litigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole rather than by resentencing them."). Because Montgomery provides that states may, in their discretion, remedy Miller violations by extending parole eligibility to juvenile offenders, the State argues that Miller and Aiken do not apply to juveniles who received life sentences with eligibility for parole as Defendant did here.

Defendant concedes that his sentence differs from those of the defendants in Miller and Aiken, but argues that any distinction between his sentence (life with parole eligibility) and those at issue in Miller and Aiken (life without the possibility of parole) is technical in nature. Indeed, Defendant asserts that there is no "material difference" between his sentence and a life sentence without parole because his eligibility for parole does not adequately protect the constitutional protections provided by Miller and Aiken. Defendant contends that all juvenile offenders are entitled to a meaningful review of the impact of age and maturity on their crimes and their potential for rehabilitation pursuant to Miller and Aiken, but maintains that he did not receive this type of meaningful review at his parole hearings. Accordingly, Defendant seeks a specialized hearing before this Court in order to evaluate his sentence in light of Miller and Aiken. In essence, the Defendant is asking this Court to grant him an Aiken hearing for the specific purpose of granting him parole thereby usurping the role of the parole board and their decision-making authority which is delegated to them by statute. This Court finds this request exceeds its authority as well as the purpose and goal of the Aiken decision. This Court does not find any support in the Defendant's reading of the Aiken precedent as a guarantee of the grant of parole versus parole eligibility.

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The Court has fully and carefully considered the documents and exhibits submitted to the Court and the arguments of counsel at the November 13, 2017 hearing. Upon careful and deliberate consideration, the Court hereby denies Defendant's request for re-sentencing under Aiken v. Byars. The Court finds that the Defendant does not fit within the ambit of juvenile offenders eligible for re-sentencing under Miller and Aiken. The Defendant here was sentenced to life with parole as a juvenile whereas the defendants before the Court in both Miller and Aiken were sentenced to life without parole as juveniles. See Miller, 567 U.S. at 465, 132 S. Ct. at 2460 ("The two fourteen-year old offenders [. . .] were convicted of murder and sentenced to life imprisonment without the possibility of parole."); Aiken, 410 S.C. at 536, 765 S.E.2d at 573 ("The [defendants] were all convicted for homicides committed while they were juveniles. All were sentenced to life without parole according to existing sentencing procedures."). Aiken provides that its holding and that of Miller apply retroactively "to those similarly situated" to the defendants in those cases. 410 S.C. at 537, 765 S.E.2d at 573. That is to say, only those defendants sentenced to life without parole as juveniles are eligible for re-sentencing under Miller and Aiken. Because the Defendant here is parole-eligible, the Court finds that the Defendant is not "similarly situated" to those in Miller and Aiken, and is, thus, not a proper candidate for re-sentencing in accordance with the guidelines set forth by these cases. In so ruling, the Court notes this interpretation of Aiken is supported by Montgomery v. Alabama wherein the U.S. Supreme Court held that giving Miller retroactive effect does not require courts to re-litigate sentences in every case where the defendant received life without parole. See Montgomery, 136 S. Ct. at 736. A court may instead elect to extend parole eligibility to juvenile offenders rather than re-sentence them. See id.

The Court finds that the instant case is indeed categorically different from Miller and Aiken; and that, consequently, it lacks authority to reconsider Defendant's sentence under these

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cases. Moreover, because Defendant is presently parole-eligible, he already enjoys one of the potential remedies afforded to juvenile offenders by the U.S. Supreme Court. See Montgomery, 136 S. Ct. at 736 ("A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by re-sentencing them."). Once a defendant is parole eligible, it then becomes the duty of the South Carolina Board of Pardons and Paroles, not this Court, to consider the cases for pardon, parole, and any other form of clemency provided by law. See S.C. Code Ann. § 24-21-13(B). In performing this duty, the parole board considers a number of criteria, including the circumstances surrounding the offense and the potential for rehabilitation.²

Defendant asks this Court to evaluate the criteria relied upon by the parole board in making its determination of the Defendant's parole eligibility for constitutional muster. The parole board is required to establish written, specific criteria for the granting of parole, and this criteria must incorporate all the requirements of S.C. Code § 24-21-640.³ Section 24-21-640 requires the board to carefully consider whether the prisoner has shown a disposition to reform, whether the prisoner is likely to obey the law and lead a correct life in the future, whether the prisoner's conduct has merited a lessening of the rigors of imprisonment, whether society's interest will be impaired by parole, and whether suitable employment has been secured for the inmate. The parole board must also consider the record of the prisoner before, during and, after imprisonment. S.C. Code § 24-21-640.

² Alternatively, even if the Court were to accept the Defendant's argument and grant a re-sentencing hearing there is no guarantee that any potential change of sentence would make any appreciable difference in his parole eligibility, consideration for parole or guarantee the grant of parole. In effect he would maintain his current posture regarding his consideration for parole.

³ The criteria considered by the parole board in making its parole decisions is set forth in the South Carolina Board of Pardons and Pardons Policy and Procedure Manual. See <https://www.dppps.sc.gov/content/download/120663/2749351/file/Parole+Board+Manual+June+7+2017.pdf>

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Defendant contends that the criteria listed above fails to consider the factors of youthfulness and immaturity set forth by Miller, and that as a result, Defendant has been denied "meaningful review" of his sentence as afforded to him by Miller. This contention is solely based upon the fact that Defendant has had three (3) parole hearings since he first became parole eligible in 2012, and has been denied parole all three (3) times. In asking this Court to evaluate the criteria utilized by the parole board in making these decisions, the Defendant is, in effect, asking this Court to review the decisions made by the board as well as the decision-making process itself. The Defendant is in effect asking this Court to usurp the board's statutory decision-making authority and substitute it with its own. Such a request is improper as this Court is without the jurisdiction to sit in judgment of the decisions of the parole board. "The parole board has the sole authority to determine parole eligibility separate and apart from a court's authority to sentence a defendant." Cooper v. S.C. Dep't of Prob., Parole, and Pardon Serv., 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008).

An inmate who wishes to appeal a decision of the parole board must seek review from the Administrative Law Court rather than the Circuit Court.⁴ See Cooper, 377 S.C. at 497, 661 S.E.2d at 110 ("The ALJD has subject matter jurisdiction to hear appeals from the final decision of [the Department] in a non-collateral or administrative matter."); Al-Shabazz v. State, 338 S.C. 354, 376, 527 S.E.2d 742, 754 ("An inmate may seek review of the Department's final decision of an ALJ in a non-collateral or administrative matter under the APA."). However, "parole is a privilege, not a right," and, thus, not all of the Department's decisions are subject to review. See Cooper, 377

⁴ "The name was changed from the Administrative Law Judge Division to the Administrative Law Court by Act No. 202, effective April 26, 2004." James v. S.C. Dep't of Prob., Pardon and Parole Serv., 376 S.C. 392, 656 S.E.2d 399 n. 3 (Ct. App. 2008) (citing Civil Action No.: 2001-CP-32-0711 Carolina Water Serv., Inc. v. Lexington County Joint Mun. Water & Sewer Comm'n, 367 S.C. 141, 625 S.E.2d 227 (Ct. App. 2006)).

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S.C. at 496, 661 S.E.2d at 496; Furtick v. S.C. Dep't of Prob. Pardon and Parole Serv., 352 S.C. 594, 597, 576 S.E.2d 146, 148 (2003). The South Carolina Supreme Court has repeatedly recognized that an inmate has a right to administrative law review of an agency's final decision denying parole eligibility, but does not have the same right to review of a temporary denial of parole. See, e.g., Furtick, 352 S.C. at 598, 576 S.E.2d at 148-49 (holding that "the permanent denial of parole eligibility implicates a liberty interest sufficient to require at least minimal due process."). "The distinction is that review or consideration for parole is a right granted by statute whereas parole is only a privilege." Steele v. Benjamin, 362 S.C. 66, 72, 606 S.E.2d 499, 502 (Ct. App. 2004).

The Defendant has been denied parole by the board three (3) times since he first became parole eligible in 2012, however, the board has never permanently denied Mr. Sparkman parole. Further, a denial of parole, in and of itself, does not mean that the Defendant has been denied a meaningful review. In fact, the parole board is required, by law, to review Defendant's case every twelve (12) months after a negative parole determination. S.C. Code Ann. § 24-21-620 (Supp. 2002). The Defendant is nevertheless asking this Court to review the board's negative parole determination in his case on the basis that the criteria promulgated by the legislature and utilized by the parole board does not comply with Miller, and is, therefore, unconstitutional. This Court recognizes that it has the authority to interpret the statute setting forth the parole criteria, but finds that the Defendant here is effectively asking the Court to usurp the authority of the parole board to make parole determinations, and instead substitute its own judgment as to whether Defendant should have been granted parole. This Court will therefore not render an opinion as to the appropriateness of the parole board's decision. Such a determination is not dispositive as to the applicability of Aiken to the Defendant's sentence. The Court does, however, acknowledge the

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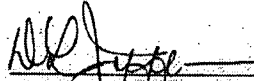
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jurisdiction of the Administrative Law Court to determine whether the parole board's decision was made without consideration of the appropriate criteria, and would encourage the Defendant to seek such relief there if he so desires.

CONCLUSION

In conclusion, the Court finds that Defendant is not entitled to re-sentencing under Aiken v. Byars. **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT Defendant's Motion for Re-Sentencing is hereby DENIED.**

AND IT IS SO ORDERED.


Deadra L. Jefferson
Presiding Judge
9th Judicial Circuit

December ²⁰, 2017
Charleston, South Carolina

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