RECEIVED

JUL 10 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge
Appellate Case No. 15-0042

Appellate Case No.: 2015-002522

NICHOLAS GEER, #227443,.....RESPONDENT

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES.....PETITIONER

APPENDIX

TOMMY EVANS, JR.
Assistant General Counsel

South Carolina Department of Probation
Parole and Pardon Services
Post Office Box 50666
Columbia, South Carolina 29250
(803) 734-9220

ATTORNEY FOR THE PETITIONER

Other Counsel of Record:

Zoe Jones, Esquire
Emily Paavola, Esquire
Justice 360
900 Elmwood Ave, Suite 200
Columbia, S.C. 29201
(803) 765-1044

ATTORNEY FOR RESPONDENT

INDEX

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge
Case No. 15-ALJ-0042-AP

Appellate Case No. 2015-002522

NICHOLAS M. GEER, #227443.....RESPONDENT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE
AND PARDON SERVICES ..... APPELLANT

RECORD ON APPEAL

Tommy Evans, Jr.
Assistant General Counsel

S. C. Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

ATTORNEY FOR APPELLANT

Nicholas M. Geer, #227443
Perry Correctional Institution
430 Oaklawn Road
Pelzer, S.C. 29669

RESPONDENT

INDEX

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 15-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

NICHOLAS GEER, #227443 .....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ...RESPONDENT

RECORD ON APPEAL

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

ATTORNEY FOR RESPONDENT

INDEX

State of South Carolina

Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9324

July 13, 2015

Nicholas Geer, #227443
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

Dear Mr. Geer:

It is my duty to inform you that South Carolina law prohibits the Board of Probation, Parole, and Pardon Services from granting you parole on the sentence(s) identified below. Section 24-21-640 states: "[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60." Our records indicate that you have been convicted of the following violent crimes:

Violent Crime	Indictment Number	Parolable	Sentence
Murder	95-GS-04-1935	No	11/14/95
ABWIK	95-GS-04-608		06/05/95

Please note that this letter is the Department's "final decision" on this matter. You have the right to appeal this final decision by seeking review by an Administrative Law Judge. Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 3525.c. 594, 576 S.E.2d 146 (2003). In order to file such an appeal, you must follow the instructions on the back of the enclosed "Notice of Appeal" form approved by the Administrative Law Court (ALC). You will also be required to comply with ALC Rules of Procedure for special appeals. Failure to follow the ALC instructions or Rules of Procedure will result in forfeiture of your right to challenge the Department's final decision.

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

COUNTY OF ANDERSON

95-GS-04-1935

NOW COMES THE DEFENDANT

Nicholas Mashuen Deer

Who in open Court pleads guilty to the charge in the warrant or in the within indictment and consents to sentence, this ___ day of _____ 19 ___

Defendant

SENTENCE

The defendant Nicholas Mashuen Deer is committed to the State Dept. of Corrections/~~County~~ for a term of LIFE ~~months/years~~ and/or to pay a fine $ _____; provided upon the service of _____ months/years and/or payment of $ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution Yes/No

For physical injury $ _____

Property damage $ _____

to be paid _____

to clerk for _____

Other conditions _____

Date November 14, 1995

Presiding Judge

*Costs and Assessments

Non-Waivable $ _____

Not waived $ _____

Total $ _____

Clerk of Court

*Pay to Victim's Compensation Fund if subrogated.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
The State)
vs.)
Nicholas Mashuen Geer,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
CASE NUMBER 95-GS-04-1935

INDICTMENT FOR MURDER

VERDICT

1. GUILTY OF MURDER.

Joyce E. Hendricks
FOREPERSON

2. NOT GUILTY.

FOREPERSON

FORM 5 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICTMENT FOR MURDER
16-3-10

At a Court of General Sessions, convened on SEPTEMBER 5, 1995, the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — MURDER

That NICHOLAS MASHUEN GEER did in ANDERSON County on or about JULY 14, 1995, feloniously, wilfully and with malice aforethought, kill one ALEX MEDINA by means of SHOOTING THE VICTIM WITH A HANDGUN and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

George M. Duckworth

SOLICITOR

ARREST WARRANT Jul 21 1 05 PM '95

E- 354922 COMMON PLEAS AND GENERAL SESSIONS

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of ANDERSON

THE STATE

against

FILED-CLERKS OFFICE

NICHOLAS MASHUEN GEES

Jul 21 1 05 PM '95

Address: [redacted]

COMMON PLEAS AND GENERAL SESSIONS

Phone: [redacted] SSN: [redacted]

Sex: ___ Race: ___ Height: [redacted] Weight: ___

DL State: ___ DL #: [redacted]

DOB: [redacted] Agency ORI #: [illegible]

Prosecuting Agency: ANDERSON POLICE DEPARTMENT

Prosecuting Officer: ANY

Offense: MURDER

Offense Code: ___

Code/Ordinance Sec. [illegible]

This warrant is CERTIFIED FOR SERVICE in the ☒ County ☐ Municipality of Anderson. The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date: 7-15-95

RETURN

A copy of this arrest warrant was delivered to defendant Nicholas M. Gees on 07.15.95

Lt. J. Burdette

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

[illegible] JUDGE

101 S MAIN ST

ANDERSON, SC 29621

803-[illegible]

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of ANDERSON

AFFIDAVIT 116

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant SGT. JAMES E. JOHNSON who being duly sworn deposes and says that defendant NICHOLAS MASHUEN GEES did within this county and state on JULY 21, 1995 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of ANDERSON) in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID WITH MALICE AFORETHOUGHT CAUSE THE DEATH OF THE VICTIM BEING ONE ALEX M. AGUIRE BY SHOOTING THE VICTIM WITH A UNKNOWN TYPE HANDGUN. THE INCIDENT OCCURRED ON MARDIN AVE. THE DEFENDANT HAS BEEN IDENTIFIED BY INVESTIGATIVE SOURCES. THIS OFFENSE OCCURRED WITHIN THE CITY LIMITS OF ANDERSON, SC.

Sworn to and subscribed before me on JULY 21, 1995

Signature of Issuing Judge (L.S.)

SGT. James E. Johnson

Signature of Affiant

Affiant's Address 101 S MAIN ST ANDERSON, SC 29621

Affiant's Telephone [illegible]

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of ANDERSON

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on JULY 21, 1995 defendant NICHOLAS MASHUEN GEES did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of ANDERSON) as set forth below:

DESCRIPTION OF OFFENSE: MURDER

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge Code: ___

Judge's Address 101 S MAIN ST ANDERSON, SC 29621

Judge's Telephone [illegible]

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

E-SEARCH [illegible]

WITNESSES

SGT. JAMES JOHNSON, APD

ARREST WARRANT NO. E-354922

ACTION OF GRAND JURY

TRUE BILL

DATE

9 6 95

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury *Date:*

DOCKET NO. 95-GS-04-1935

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 1995

DDW THE STATE

vs.

NICHOLAS MASHUEN GEER

Indictment for Murder

16-3-10

GEORGE M. DUCWORTH, SOLICITOR

Commitment

11-14-95

10

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

95-GS-04-608

NOW COMES THE DEFENDANT

Nicholas M. Geer

Who in open Court pleads guilty to the charge in the warrant or in the within indictment and consents to sentence, this 5 day of June 19 95

Nicholas Geer
Defendant

SENTENCE

The defendant Nicholas M. Geer is committed to the State Dept. of Corrections/County for a term of 90 days + 2/ 6 yr months/years and/or to pay a fine $ _____; provided upon the service of _____ months/years and/or payment of $ _____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for Five 5 ~~months~~/years.

Restitution
(Yes)/No
to be paid

For physical injury $ _____
Property damage $ 700.00

to clerk for Tony Richardson 103 Webb St. Anderson SC 226-4744
Other conditions ~~x~~ to vic
pay $250 F.I.N. and 5 Cmty

Date 6/5/95

Frank Eaves
Presiding Judge

*Costs and Assessments

Non-Waivable $ _____
Not waived $ _____
Total $ _____

Clerk of Court

*Pay to Victim's Compensation Fund if subrogated.

FORM 8 (12/87)

INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL
~~AND POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME~~
16-3-620

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

At a Court of General Sessions, convened on February 28, 1995, the Grand Jurors of Anderson County present upon their oath:

COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL

That NICHOLAS M. GEER did in ANDERSON County on or about December 30, 1994, with malice aforethought commit an assault and battery upon one ANTONIA RICHARDSON BY SHOOTING HIM IN LEFT THIGH WITH A GUN with intent to kill the said victim.

COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

That __________ did in __________ County on or about __________, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: __________, in violation of Code Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[signature]
SOLICITOR

12

WITNESSES

Mike Dickson, APD

ARREST WARRANT NO. E353630

ACTION OF GRAND JURY

TRUE BILL
DATE 2-28-95
Charles L. Cody
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury *Date:*

DOCKET NO. 95-GS-04-608

The State of South Carolina,

County of Anderson

COURT OF GENERAL SESSIONS

February **TERM** 1995

DRW

THE STATE

vs.

NICHOLAS M. GEER

Indictment for Assault and Battery With Intent To Kill and Possession of Firearm or Knife During Commission of or Attempt to Commit Violent Crime

16-3-620

George M. Ducworth, Solicitor

STATE OF SOUTH CAROLINA

COURT GENER[illegible] SESSIONS

COUNTY OF Anderson

June 5 , 1995
Term

STATE

PROBATION ORDER

-VS-

FILED-CLERKS OFFICE
ANDERSON

NICHOLAS MASHAWN GEER
Defendant

JUL 6 2 35 PM 95

No. 95 - GS - 04 - 608

OFFENSE ASSAULT AND BATTERY WITH INTENT TO KILL

GENERAL SESSIONS

The sentence of the court is that the defendant, Nicholas Mashawn Geer, shall be in the custody of the South Carolina Department of Corrections for a term of YOA NTE six (6) yrs XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX the balance of this sentence is hereby suspended and the defendant is hereby ordered to be placed on probation for a period of five (5) years under the supervision of the South Carolina Department of Probation, Parole, and Pardon Services. During this period of probation, the Defendant shall be subject to the laws of South Carolina and the rules and orders of the Department and its agents. This suspended sentence may be revoked or modified at any time after the date of this order. The conditions of supervision are set forth below.

IT IS FURTHERED ORDERED: that the Sheriff or other law enforcement officers who have the custody of the defendant is hereby ordered to deliver said defendant to the Probation Office of this county, or if the defendant is under bond, then such bond shall remain in full force until the defendant reports to the Probation Office. The conditions of probation begin (today/XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX). It is further ordered that the Clerk of Court file this order in his office and that he forthwith forward a certified copy to the County Office of the Department.

This 5th day of June, 19 95

[signature] Frank Eppes Presiding Judge

Anderson, S.C.

Tenth Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years.

You shall be subject to arrest, upon order of the Court, or upon a warrant issued by the Probation Agent. At any time within the period of your probation, the Court may, upon proof of a violation resentence you and impose any sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me this Order of Probation and the Conditions set out herein. I agree to comply with these conditions during the period of my probation. I have received a copy of this court order.

Witnessed by: [signature] Signed: [signature]

Signed this 22nd day of June, 19 95

Probationer

Anderson, S.C.

CONDITIONS ORDERED BY THE COURT:

___ Waive Costs and Assessments. (NOTE: Some costs cannot be waived.)

___ Complete ___ (hours) Public Service Employment.

___ Intensive Supervision for an indeterminate period not to exceed 6 months, as determined by the Department.

___ Home Detention for an indeterminate period not to exceed 6 months, as determined by the Department.

___ Electronically Monitored Home Detention for an indeterminate period not to exceed 90 days, as determined by the Department.

___ Participate and successfully complete an evaluation/referral for alcohol/drug abuse as determined by the Department.

XX Fine/Costs and Assessments payable as directed by the Court.

XX $ 700.00 restitution payable to the Clerk of Court as directed by the Department or its agents.

___ Restitution Center.

___ Community Control Center.

___ Case to end upon Certification by the Clerk of Court that all monies have been paid (Sec. 24-21-550).

XX Other: Pay $250. to PDF; Pay $700. to victim at rate of $50/mth beg 7/1/95;
FOR INFO: Ind # 95-GS-04-663- Resisting arrest - One (1) yr SDP

SCDPPPS Form 2 (1/94)
Page 1 of 2

Additional Conditions of Probation on the Reverse Side

FILED-CLERKS OFFICE

ARREST WARRANT

E- 353723

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
ANDERSON

JAN 24 12 45 PM

COMMON PLEAS AND GENERAL SESSIONS

THE STATE
against

NICHOLAS MASHAWN GEER
Address: [redacted]
Phone: [redacted] SSN: [redacted]
Sex: M Race: B Height: [redacted] Weight: [redacted]
DL State: SC DL#: [redacted]
DOB: [redacted] Agency ORI#: SC0040100
Prosecuting Agency: ANDERSON POLICE DEPARTMENT
Prosecuting Officer: ANY
Offense: RESISTING ARREST
Offense Code:
Code/Ordinance Sec. 16-9-320(A)

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge
Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Nicholas Mashawn Geer on 012395

Janet Brock
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
K M. MATTISON, JUDGE
401 S MAIN ST
ANDERSON, SC 29624
803-231-2271

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
ANDERSON)

AFFIDAVIT

324

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant J T. WILLIAMS who being duly sworn deposes and says that defendant NICHOLAS MASHAWN GEER did within this county and state on January 23, 1995 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ANDERSON) in the following particulars:

DESCRIPTION OF OFFENSE: RESISTING ARREST

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON THE ABOVE DATE AT APPROX. 1241 HRS POLICE DID ATTEMPT TO SERVE ARREST WARRANT NO. E-353630(ABIK) IN FRONT OF APT. 10-D FORTSON HOMES IN THE CITY LIMITS OF ANDERSON SC.AT THE TIME OF THIS ARREST POLICE ALSO ATTEMPTED TO SERVE A FAMILY COURT CUSTODY ORDER ON THE DEFENDANT. THE DEFENDANT DID RESIST ARREST IN WHICH HE FLED FROM THE AREA ON FOOT WITH POLICE IN PURSUIT THE FOOT PURSUIT TOOK PLACE AT APROX.1241 HRS AND ENDED AT APPROX.1311 HRS IN FRONT OF APT.7 FORTSON HOMES WITHIN THE CITY LIMITS OF ANDERSON SC.THE DEFENDANT DID STRUGGLE AND ATTEMPTED TO PULL AWAY IN AN ATTEMPT TO ESCAPE LAWFULL ARREST.

Sworn to and subscribed before me on 01/23/95
Km Matt (L.S.)
Signature of Issuing Judge

James L Williams
Signature of Affiant
Affiant's Address 401 S MAIN ST
ANDERSON, SC 29624
Affiant's Telephone 803-231-2271

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
ANDERSON)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on January 23, 1995 defendant NICHOLAS MASHAWN GEER did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ANDERSON) as set forth below:

DESCRIPTION OF OFFENSE: RESISTING ARREST

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Km Matt (L.S.)
Signature of Issuing Judge
Judge Code: _____

Judge's Address 401 S MAIN ST
ANDERSON, SC 29624
Judge's Telephone 803-231-2271
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

E-353723 Xref #: 94-28969

15

Form 16.1

Form Approved by
S. C Attorney General
Section 17-13-160
March 15, 1978

W-04-96-0011 (1-4-96)
SID #991977-01

STATE OF SOUTH CAROLINA

ARREST WARRANT
Ind. #95-GS-04-608

COUNTY OF Anderson

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF Anderson, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]: Nicholas M. Geer

did on the 4 th day of January, 19 96, violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE

Violation of probation and suspended sentences #95-GS-04-663 pursuant to Section 24-21-450.

Now, therefore, you are empowered and directed to arrest the said defendant and bring Nicholas M. Geer before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Anderson, S. C. this 4th day of January, 19 96.

Auburn Walker (L.S.)
Signature of Probation and Parole Agent

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Anderson

Personally appeared before me, one Auburn Walker, who, first being duly sworn, deposes and says that [name of defendant] Nicholas M. Geer

did within this County and State on the 4 th day of January, 19 96, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

The Defendant has violated the conditions of his probation sentence and his suspended during probation sentence as imposed by the Honorable Judge Frank Eppes at the June 5, 1995 term of General Sessions Court holden in Anderson County, Anderson, South Carolina.

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

By possessing a firearm, in that subject was convicted on 11-14-95 of possessing a deadly weapon while committing a violent crime in Anderson County Court of General Sessions; by violating federal, state or local law in that subject was convicted of murder and possession of firearm or knife during commission of a violent crime for which he received a sentence of life + 5 yrs in Anderson County Court of General Sessions on 11-14-95; by failing to follow the advice and instructions of agent as witnessed by above violations. This constitute violation of conditions #4, 6, and 10 of the probation order.

Sworn to and Subscribed before me this 4 day of Jan, 19 96.

[signature] (L.S.)
Signature of Notary Public

Auburn Walker
Affiant

Address 126 N. McDuffie St.
Anderson, SC 29625

Phone (864) 260-2230

(Form Continues on Back)

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES

State of South Carolina, County of: Anderson

SDP

Indictment No.(s) 95 -GS-04-608 ; 95 -GS-04-663 ; -GS-

Client: Nicholas M. Geer DOB: [redacted] Location:( ) SCDC ( ) County Jail ( ) Community
MM DD YY

SCDC No. SID No. 991977-01

Supervision Program: probation Begins: 06 / 5/95 Ends: 06/4 /2000 Supervision Level High
MM DD YY MM DD YY

Offense: Assault & Battery W/Intent to Kill

Sentencing Judge: Frank Eppes Date of Sentence 06 / 04 / 95
MM DD YY

Sentencing County Anderson

Sentence: YOA NTE 6 yrs; susp., and 5 yrs. probation.

Special Conditions: Pay $250 to Public Defender Fund; pay $700 restitution to victim at rate of $50/mo. beginning 7-1-95.

Reporting: Subject reported as instructed prior to incarceration.

Current Address and Summary of Residence:
Subject currently resides at S.C. Dept. of Corrections prior to this he resided at 417 Greenmeadow CIrcle, Anderson, SC 29624.

revoked in full

Employment Record While Under Supervision:

Employer	Dates (From - To)	Reason for Leaving	Earnings
none			

Financial Conditions:

	Total Amount Ordered	Period Payment ( )	Total Amount Paid	Date Last Paid	Arrearage	Balance Due
						978.50
combined Restitution:	978.50 $700.00	$50/mo.	0	0		$700.00
$250 + 3% Fine: (PDF)	$257.00	$50/mo.	0	0		$257.50
Fee:	$1200.00	$20/mo.	0	0		$1200.00

(over)

22 (4/92)
SCDPPPS

Form 9
State of South Carolina

County of Anderson

STATE

-VS-

Nicholas M Geer
DEFENDANT

SID# 99 1977-01

YOR NTE 6yrs

ORDER

FILED CLERK'S OFFICE

IN THE COURT OF GENERAL SESSIONS

No. 95 -GS- 04 - 608

Assault + Battery with Intent to Kill
Name of Offense

[redacted]
SCDC# or DOB

Whereas the above named defendant has been charged with violating the conditions of probation ordered on Dec 5, 1995 in the Court of General Sessions of Anderson County as set forth in the warrant or citation filed herein.

After hearing the evidence and being duly advised, I find the defendant has violated one or more of the conditions of supervision as set forth in the affidavit filed herein and dated Jan 4, 19 96 a copy of which is incorporated by reference.

☑ IT IS ORDERED that the suspended sentence be revoked and the ~~above~~ named defendant be required to serve YOR 1-6 ~~months~~/years of the YOR 1-6 ~~months~~ years sentence identified above, and/or pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/~~absence~~) of the defendant.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original _____ months/years sentence (and/or) pay $_____; thereupon to be reinstated on probation as provided in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

☐ IT IS ORDERED that the suspended sentence be revoked and the above named defendant be required to serve _____ months/years (and/or) pay $_____; the defendant is not to be reinstated on probation. This action is taken in the (presence/absence) of the defendant.

☒ The defendant has previously served 0 months/years on this sentence.

☐ IT IS ORDERED that the above named defendant is continued on probation as provided for in the sentence identified above and subject to the conditions set forth therein and not inconsistent with this order. This action is taken in the (presence/absence) of the defendant.

☐ Additional Conditions ordered by the Court:

CC to sentence now serving

[redacted]

This 29 day of February, 1996

Anderson, SC

D. DeBeath, Presiding Judge

10th Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful special conditions it deems proper; or it may extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may, if it sees fit, impose any judgment and sentence it might have imposed in the first instance.

This is to certify that I have read or have had read to me the Order and the Conditions set out therein. I agree to comply with such conditions and the conditions of my probation order identified above during the period of my probation. I have received a copy of this court order and my sentence identified above.

Witnessed by: _____ Signed: _____
Probationer

Signed this _____ day of _____, 19_____, at _____, SC.

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 15-ALJ-15-0042

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

NICHOLAS GEER, #227443 ..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ... RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.

Tommy Evans, Jr.,
Assistant General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

September 21, 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nicholas M. Geer, #227443, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	)	Docket No. 15-ALJ-15-0042-AP **ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the appeal filed by Nicholas M. Geer (Appellant) from a decision of the South Carolina Department of Probation, Parole and Pardon Services (Department) denying him parole. Appellant filed this appeal with the Court on August 12, 2015.

FACTUAL/PROCEDURAL HISTORY

Appellant is in the custody of the South Carolina Department of Corrections. He was born on [redacted]. On December 30, 1994, he committed the offense of assault and battery with intent to kill (ABWIK). On June 5, 1995, Appellant appeared before a judge and was sentenced for ABWIK under the Youthful Offender Act to a term of imprisonment not to exceed six years, five of which were under probation with the remaining year suspended. On July 14, 1995, Appellant committed murder, in violation of his parole and of which he was convicted and sentenced to life imprisonment on November 14, 1995.[1] On July 13, 2015, the Parole Board (Board) informed Appellant that he was ineligible for parole pursuant to Section 24-21-640 based on his murder conviction and prior ABWIK conviction.[2]

---

[1] Appellant states in his brief that he was seventeen years old at the time of his offense (murder), conviction, and sentence. However, the Record reflects that Appellant was eighteen at the time of his conviction and sentence, as he was convicted and sentenced the day after this eighteenth birthday. Nevertheless, because it is the date of the offense and not of the conviction that this Court must consider, Appellant's error is immaterial.

[2] Based on the law at the time of Appellant's offense, he would have become eligible for parole following completion of twenty years of his sentence.

On August 12, 2005, Appellant filed his Notice of Appeal with this Court on the grounds that his ineligibility for a crime he committed when he was a juvenile violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution. Appellant cited to *Miller v. Alabama*, – U.S. –, 132 S.Ct. 2455 (2012) to support his position.

JURISDICTION

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003).

DISCUSSION

Appellant argues that the Department erred in rendering him ineligible for parole. Appellant points out that he was sentenced to life imprisonment without any reference to that sentence being without the possibility of parole and did not have a separate hearing to consider the "mitigating hallmark features of youth." Appellant points out that he was seventeen years old at the time his offense was committed. Appellant also asserts that "the Parole Board is under the erroneous presumption that he was sentenced to a life without the possibility of parole." He further asserts that even had he been sentenced to life without the possibility of parole, the United States Supreme Court in *Miller*, *supra* and the South Carolina Supreme Court in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) have held that it is cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution and Article I, Section 15 § of the S.C. Constitution for a defendant who is under the age of eighteen at the time of his or her offense to be sentenced to life imprisonment without the possibility of parole absent an individualized consideration of youth.

"The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Liberty interests protected by the Fourteenth Amendment may arise from the Constitution itself or from an expectation or interest created by state laws or policies. *Id.*; *Hewitt v. Helms*, 459 U.S. 460, 466 (1983), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). In *Furtick*, the South Carolina Supreme Court held that "the permanent denial of parole eligibility implicates a [state-created] liberty interest sufficient to require at least minimum due process." 352 S.C. at 598, 576 S.E.2d at 149.

In this case, the sentencing court sentenced Appellant to "life," which, absent evidence to the contrary, this Court must interpret as life with the possibility of parole. The Board, in reviewing Appellant's record prior to a parole hearing, relied upon S.C. Code Ann. § 24-21-640 (Supp. 2014) in concluding that Appellant was ineligible for parole. The Department maintains that same position in its brief. The Department even acknowledges in its brief that "Appellant was not originally sentenced to life without parole, [but] was determined not to be eligible for parole due to his prior record." Section 24-21-640 states in pertinent part: "[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60." ABWIK is certainly a violent crime as defined in Section 16-1-60 at the time of Appellant's offense, as is his subsequent offense of murder.[3] However, the question here is not the nature of the crimes committed but rather the denial of the possibility of a parole to a person who was a juvenile at the time he committed the prior and subsequent offense without having first taken his youth into consideration.

The U.S. Supreme Court in *Miller* made it clear that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." 132 S.Ct. at 2464. The Court reasoned that "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 2467. Thus, though the Court did not "foreclose a sentencer's ability" to impose life without the possibility of parole on a juvenile offender, the Court required that the sentencer "take into account how children are different, and how [or to what extent] those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 2469. Moreover, *Miller* was applied to South Carolina in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), including the U.S. Supreme Court's definition of juvenile in these types of cases as being anyone under the age of eighteen.[4] The Court in *Aiken* also applied *Miller* retroactively in South Carolina. *Id.* at 540, 765

---

[3] Neither party appears to challenge the fact that it is Appellant's age at the time of the offense, rather than at the time of the conviction, that is pertinent to the sentencing issue in this case. But for the sake of clarity, the Court considers Appellant's age at the time of the offense to be the proper focus in determining whether he was a juvenile for sentencing purposes. *See State v. Green*, 412 S.C. 65, 86, 770 S.E.2d 424, 435 (Ct. App. 2015) (considering appellant's age **"at the time of the prior offense** . . . that led to his prior conviction" in concluding that he was a juvenile at the time of his prior offense).

[4] The Court in *Aiken* essentially abrogated the statutory definition of "juvenile" set forth in S.C. Code Ann. § 63-19-20 (2010) for purposes of cases such as this. *See Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 574 n.1.

S.E.2d at 575 ("We conclude *Miller* creates a new, substantive rule and should therefore apply retroactively.").

The Department argues that *Miller* does not apply to the present case, because this case involved a deprivation of Appellant's parole eligibility based upon his own actions via his subsequent violation, pursuant to Section 24-21-640, rather than being based on a ruling by the sentencing court. The Department cites to *State v. Standard*, 351 S.C. 199, 569 S.E.2d 325 (2002) to support its position. In *Standard*, our Supreme Court held that it is not cruel and unusual punishment to sentence a defendant to life without the possibility of parole utilizing enhanced penalties for a burglary committed when the defendant was a juvenile so long as the defendant was tried and sentenced as an adult for the triggering offense. 351 S.C. at 204, 569 S.E.2d at 328. The Court stated that "an enhanced sentence based upon a prior most serious conviction for a crime which was committed as a juvenile does not offend evolving standards of decency so as to constitute cruel and unusual punishment." *Id.* at 206, 569 S.E.2d at 329 (emphasis omitted). However, the crucial distinction between this case and *Standard* is that Appellant was a juvenile at the time of the prior offense (ABWIK) **and** the triggering offense (murder). Therefore, the rationale underlying the decision in *Standard* is inapposite, as both offenses were committed by a juvenile in this case.[5]

As to the fact that Appellant was deprived of his parole eligibility because of his own actions rather than by the sentencing court is a difference without a distinction. The Court in *Miller* focused on the "**sentencing scheme** that mandates life in prison without possibility of parole for juvenile offenders." *Id.* (emphasis added). The Court's concern was that this precludes the sentencer from taking youth and its attendant characteristics and circumstances into account. In this case, the sentencing scheme was the Board's application of Section 24-21-640 to declare Appellant, who was a juvenile at the time of both his ABWIK and murder offenses, ineligible for parole. Regardless of whether the sentencing court or the statute took away Appellant's parole eligibility, the pertinent fact remains that Appellant's youth and its attendant characteristics and circumstances were not taken into account prior to the deprivation of his parole eligibility, and the

---

[5] The South Carolina Court of Appeals also recognized this distinction in *Green*, 412 S.C. at 86-87, 770 S.E.2d at 436 ("Although *Miller* held that mandatory LWOP sentences for juveniles violate the Eighth Amendment, . . . because Green was not a juvenile at the time he committed the current armed robbery, the policy considerations from *Miller* are inapplicable). The difference between this case and *Standard* and *Green*, though, is that Appellant was a juvenile at the time he committed both the prior offense and the triggering offense, thus implicating *Miller*.

courts have found that such deprivation is cruel and unusual punishment under the U.S. and S.C. Constitutions.

Curiously, the Department acknowledges that the S.C. Supreme Court in *Aiken* "determined that *Miller* can be applied retroactively, not allowing defendants who committed their crimes as juveniles to serve a life sentence without parole." The Department, however, argues that *Aiken* does not apply in this case, because "Appellant was not considered a juvenile when he committed the current offense" and "[h]e is currently doing a life without parole sentence due to his prior criminal actions." The Department reasons that Appellant was not considered a juvenile at the time he committed his offenses because he was seventeen at the age of his offenses. In support of this argument, the Department cites to S.C. Code Ann. § 63-19-20 (Supp. 2014) of the Juvenile Justice Code, which states that "'[c]hild" or 'juvenile' means a person less than seventeen years of age." However, in the first footnote in *Aiken*, the Court explicitly rejected that definition of "juvenile" in favor of the one set forth in *Miller*, which defines juveniles as individuals under the age of eighteen. *See Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1. As the Department even concedes, Appellant was seventeen years of age when he committed the prior and current offenses. Therefore, Appellant was a juvenile at the time he committed those offenses.

Finally, the Department argues that "[t]he automatic application of a life without parole sentence had been determined a violation of the eighth amendment [in *Miller*] because it does not consider the character and record of the individual offender or the circumstances of the offense." The Department contends that the character and record of Appellant and the circumstances of his offense are why he is not eligible parole, because he shot two people, killing one, within a period of seven months. The Department is correct that the Court in *Miller* did cite *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (plurality opinion) as an example of a line of precedent requiring consideration of "the characteristics of a defendant and the details of his offense . . . ." *Miller*, 132 S.Ct. at 2458. However, this was only part of "the confluence of . . . two lines of precedent" that led the Court to conclude that mandatory life without parole for juveniles violated the Eighth Amendment. The other line of precedent that the Court examined and blended with the rule cited by the Department considered the "mismatches between the culpability of a class of offenders and the severity of a penalty," juveniles having a "lesser culpability." *Id.* This is why the Court adopted the requirement that a sentencer consider a juvenile offender's "youth and its attendant characteristics, along with the nature of his crime . . . ." *Id.* at

2460. It found that "mandatory life-without-parole sentences on juvenile homicide offenders . . ., by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 2467. The Court's decision "d[id] not categorically bar a penalty for a class of offenders or type of crime" but did "mandate[] . . . that a sentencer follow a certain process – considering an offender's youth and attendant circumstances – before imposing a particular penalty."

In this case, because Appellant's youth was not taken into account before he was deprived of the possibility of parole, the deprivation violated the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution.[6]

IT IS THEREFORE ORDERED that the Department's Decision is **REVERSED AND REMANDED** for further findings consistent with this Order.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

December 1, 2015
Columbia, South Carolina

[6] The Court certainly understands the Department's concern that Appellant committed murder within seven months of another violent crime and acknowledges that the General Assembly enacted Section 24-21-640 to **protect** society from especially violent criminals. However, that statute cannot be applied in a way that fails to take Appellant's youth and its attendant characteristics and circumstances into account. The Parole Board in this case could not have taken Appellant's youth and its attendant characteristics and circumstances into account because, by the Department's own admission, Appellant was not considered a juvenile when he committed the triggering offense, which was an error of law.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

December 1, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge
Case No. 15-ALJ-0042-AP

Appellate Case No. 2015-002522

NICHOLAS M. GEER, #227443.....RESPONDENT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE
AND PARDON SERVICES ..... APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 210(c), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007, and contains all material proposed to be included by any of the parties and not any other material.

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

February 29, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge
Case No. 15-ALJ-0042-AP

Appellate Case No. 2015-002522

NICHOLAS M. GEER, #227443.....RESPONDENT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE
AND PARDON SERVICES ..... APPELLANT

FINAL BRIEF OF APPELLANT

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEY FOR THE APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION

STATUTES

STATEMENT OF ISSUES ON APPEAL

1. **Did the Court err in reversing the decision of the Appellant denying the Respondent parole eligibility due to his age when he committed these offenses?**

STATEMENT OF THE CASE

On December 30, 1994, the Respondent shot Antonia Richardson in the left thigh. He was later caught, arrested and charged with the offense of assault and battery with intent to kill (ABIK). On June 5, 1995, the Respondent appeared before the Honorable Frank Epps for this offense. Upon the conclusion of this appearance the Respondent was sentenced under the youthful offender act to a term of incarceration not to exceed six years. (R.p.7-p.10).

On July 14, 1995, the Respondent shot Alex Medina causing his death. He was arrested and was charged with the offense of murder. On November 14, 1995, the Respondent was found guilty by a jury of his peers for the offense of murder. Upon conviction he appeared before the Honorable H. Hall who sentenced the Respondent to a term of incarceration for the remainder of his natural life. (R.p.2-p.6). At the time the Respondent committed this offense South Carolina law allowed a person sentenced to life for murder parole eligibility upon the service of twenty years.

When the Respondent became eligible for parole the Appellant conducted a mandatory investigation to determine parole eligibility. During this investigation it was discovered that the Appellant was previously convicted of ABIK, an offense classified as violent. Therefore, pursuant to South Carolina law the Appellant was not eligible for parole. On July 13, 2015, the Appellant was notified that due to his prior conviction of an offense classified as violent he is not eligible for parole. (R.p.1).

Upon receiving notice of his denial of parole eligibility, the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Respondent argued that due to his youth at the time of the commission of these offenses, a sentence of life without parole should be considered cruel and unusual in violation of the eighth amendment of the United States Constitution.

The Appellant argued that the Respondent committed an offense classified as violent, while being previously convicted of a classified violent offense, so he was rightfully denied parole eligibility. It was the opinion of the Appellant that since the Respondent was not initially sentenced to life without parole, but was determined ineligible due to this own actions, this punishment cannot be considered cruel and unusual. There was no Eighth Amendment violation in the denial of his parole eligibility.

Upon receiving briefs from both parties establishing their arguments, the Honorable Ralph King Anderson, III, Chief Administrative Law Judge issued his opinion. Within his decision Judge Anderson determined that the Appellant did violate the Respondent's eighth amendment rights by denying him parole eligibility. Judge Anderson determined that due to the Respondent's age at the time of these offenses, it would be unconstitutional to permanently deny him an opportunity to be awarded parole. The ALC ordered this case be reversed and remanded for further findings consistent with the order. (R.p.16-p.22).

Upon receiving Judge Anderson's decision the Appellant filed a notice of appeal before this Court. Within this appeal the Appellant alleges that the ALC erred in remanding this case. The Appellant argues that each of the prior cases pertaining to a sentence of a juvenile to a life sentence without the possibility of parole is not identical to the present case. In each of these cases the juvenile was sentenced by the Court to a life sentence without the possibility of parole. No prior actions of the juvenile caused him not to be eligible for parole. In the present case the Respondent committed a previous violent crime, this fact revealed his dangerousness. Therefore, no need existed to have a separate hearing to determine any future dangerousness. The fact he shot someone just months prior to the commission of this murder, revealed his mindset and his danger to society. The denial of parole eligibility was lawful pursuant to South Carolina law. The General

Assembly's intent was for those who commit prior violent crimes not to allowed parole due to their danger to society. The denial of parole followed South Carolina law and was not in violation of the United States Constitution. The Appellant's brief supporting their argument follows.

ARGUMENT

1. **The ALC erred in determining that the Respondent is entitled to parole eligibility due to his age at the time he committed the offense.**

The ALC ruled that since the Respondent was seventeen when he committed the crime of murder requiring him to serve a life sentence without the possibility of parole is cruel and unusual and thereby unconstitutional. The United States constitution specifically states, "excessive bails should not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

The South Carolina Supreme Court reviews three factors in assessing proportionality of the sentence for Eighth Amendment purposes: (1) the gravity of the offense compared to the harshness of the penalty: (2) sentences imposed on other criminals; and, (3) sentences for the same crime in other jurisdictions. *State v. McKnight*, 352 S.C. 635, 576 S.E.2d 168 (2003). Within his ruling the ALC relied on the South Carolina Supreme Court Case of *Aiken v. Byars,* 410 S.C. 534, 765 S.E.2d 572 (2014), who relied on United States Supreme Court case of *Miller v. Alabama,* 132 S.Ct. 2455 (2012). In these cases the Court ruled that an individual who committed the offense of murder as a juvenile cannot be sentenced to life without the possibility of parole.[1] Within *Aiken* and the opinion of the ALJ, the youth of the Respondent should be considered due to the fact the characteristics of youth, and the way they weaken rationales of punishment can render a life without parole sentence disproportionate. *Miller,* at 2466. In both *Aiken* and *Miller* the Court

[1] In South Carolina a person is considered an adult pass the age of seventeen. S.C. Code Ann. §63-19-20(Supp. 2014); however, in *Aiken,* the Court determined that since *Miller* extends to defendants under eighteen for the purpose of that opinion, juveniles are to be individuals under eighteen. *Aiken,* at 537 n. 1

determined that a life without parole sentence cannot be given until the youth and mental state of the Defendant at the time the crime was committed is considered. The Appellant argues that in each of these cases the original sentence was a life without parole sentence that is not the fact in the present case. The Respondent was denied parole due to his prior actions, which not only follows the will of the General Assembly; but, puts his future dangerousness in consideration due to the prior violence he has previously committed.

The Respondent committed the offense of murder while having a previous conviction on his record for the offense of ABIK, both are classified as violent.[2] Pursuant to South Carolina law, an inmate serving a sentence for a violent offense cannot be allowed to become eligible for parole. Section 24-21-640 of the South Carolina Code of Laws specifically state:

> The [parole] board must not grant, nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60.

S.C. Code Ann. §24-21-640 (Supp. 2014).

In determining whether an offender is a subsequent violent offender, the subsequent crime must have been committed after June 3, 1986, and classified as violent at the time of its commission. The prior crime can be committed at any time including after the offense date of the subsequent crime, because the focus is on the date of sentencing not the date of commission.

There are exceptions however, if the subsequent crime was committed between January 1, 1994 and January 12, 1995, the prior crime must have been classified as violent at the time the subsequent crime was committed. With the exception of this window, there exists no ex post facto violation where an inmate is treated as a subsequent violent offender, based in part on a prior

[2] For purposes of definition under South Carolina law, a violent crime includes the offenses of murder (Section 16-3-10);....Assault and Battery with intent to kill (Section 16-3-620) S.C. Code Ann. §16-1-60(Supp. 1986).

conviction which was not defined as violent on the date the prior crime was committed. *Sullivan v. State*, 331 S.C. 479, 504 S.E.2d 110 (1998); see also, *Phillips v. State*, 331 S.C. 482, 504 S.E.2d 111 (1998). This Court also decided that a prior violent offense committed in another state will not preclude a prisoner from parole eligibility. *See, State v. Hinton*, 357 S.C. 327, 592 S.E.2d 335 (2005). It is clear by the reading of the statute a prisoner with a prior violent offense cannot be granted parole. The General Assembly through the statute has ordered the Parole Board not to grant an individual with a prior violent conviction parole. "The Parole Board must not grant," is clearly a part of the statute. The Court never denied the Respondent parole through sentencing. But for his prior violent conviction, the Respondent would have been eligible for parole. It is clear that the legislature did not wish a person in the Respondent position to remove the initial ABIK offense. To allow the Respondent parole this Court would be essentially rewriting the statute, and creating new law.

The Respondent had a prior South Carolina offense of ABIK when he was convicted of murder. The Respondent committed this murder on July 14, 1995. This conviction fails to fall within the above referenced dates to be considered a violation of ex post facto. None of the above referenced exceptions applies to the present case; therefore, the Respondent is a subsequent violent offender. The ruling by the ALJ relies strictly on his youth at the time he committed the offense. The ALJ is of the opinion his future dangerousness was never considered prior to the denial of parole eligibility, which is unconstitutional. It is the opinion of the Appellant that his record alone reveals the Respondent's future dangerousness. The cases used in the ALC's decision does not apply to the present case.

In all of the decisions relating to this matter the defendant was initially sentenced to life without parole. When the Defendant initially received this sentence, there were no further actions

on his behalf causing him not to be eligible for parole, *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011, (2010)(sixteen year old committed armed robbery sentenced to life without parole); *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)(Defendant committed murder at age seventeen, sentenced to death); *Atkins v. Virgina,* 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002)(Mentally ill defendant sentenced to death for a conviction of murder); *Ford v. Wainwright,* 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986)(Defendant committed murder in 1974 was diagnosed as mentally ill, still sentenced to death); *Miller v. Alabama,* 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012)(fourteen year old sentenced to death due to a conviction of murder.) In each of these cases the Sentencing Court sentenced the Defendant to life without the possibility of parole, or death. That was a part of the sentence applied as soon as the Defendant was sentenced, regardless of his prior actions or record. None of that was taken into account prior to being sentenced to death or life without parole. In the present case the Respondent was convicted of shooting a person in the leg just seven months prior to the murder conviction. This reveals his propensity for violence and his treat to the community. It should not be considered indecent for the General Assembly wishing an individual this dangerous to be away from society for the remainder of his life. A decent society protects the innocent from violence. A mature society may determine that this requires removing those guilty of the most heinous murders from its midst, both as protection for its other members and as a concrete expression of its standards of decency. *Miller,* at 2478 (Roberts, J. dissenting).

The ALJ's decision decided that this case does not equate to *State v. Standard,* 351 S.C. 199, 569 S.E.2d 325 (2002). In *Standard,* the South Carolina Supreme Court ruled that lengthy sentences or sentences of life without parole imposed upon juveniles do not violate contemporary standards of decency so as to constitute cruel and unusual punishment. *Standard,* at 329. The ALJ

determined that due to the fact the defendant in *Standard* was not a juvenile when he committed both offenses it does not apply to the present case, the Appellant disagrees. The Appellant argues that the fact the Respondent was a juvenile during both convictions is not relevant. What is relevant, is whether the denial of parole eligibility is graduated and proportioned to the crime and the offense. *Miller*, at 2458. In *Miller,* and the corresponding cases, the Court ruled that applying a life sentence to a juvenile offender is unconstitutional due to the fact a "mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Id.*, at 2468. The Respondent was given a sentence under the Youthful Offender Act for ABIK which is an indeterminate sentence not to exceed six years.[3] The Appellant was given a minor sentence for a violent offense, due to his youth at the time he committed this offense. The youth and immaturity was already taken into consideration when he received this youthful offender sentence. Once released from incarceration the Respondent at the age of seventeen should realize the consequences of committing another violent offense. However, he commits a murder almost immediately upon release from custody. The denial of parole eligibility in this particular case does not subject the Respondent to excessive sanctions; therefore, not a violation of the eighth amendment.

The Respondent committed this offense on July 14, 1995, his date of birth is November 13, 1977. So he committed this murder some four months shy of his eighteen birthday. Not much can change in maturity in a four month time frame. The basic reasoning in *Miller* that a juvenile should not be given a mandatory life sentence without parole is due to the lack of maturity of a juvenile. In *Miller,* the Defendant was fourteen at the time of the offense. He was not seventeen

[3] If the offender is under the age of twenty-one, without his consent, sentence the youthful offender indefinitely to the custody of the department for treatment and supervision pursuant to this chapter until discharged by the division, the period of custody not to exceed six years. S.C. Code Ann. §24-19-50(Supp. 1996).

on the verge of turning eighteen within a few months, and who had just committed a prior violent offense. The second violent offense should deny him parole eligibility as intended by the General Assembly. The cardinal rule of statutory construction is that the Court ascertain and effectuate the actual intent of the legislature. *State v. Cannon,* 336 S.C. 335, 520 S.E.2d 317 (1999). The reasoning that individuals who have committed prior violent offenses are not entitled to parole because it has been revealed through their actions the propensity to commit violent acts, and their dangerousness to society at large. There exists no need for a court or board to determine any danger that may be posed by the Respondent; that has been established by the Respondent's actions himself. Unlike *Miller, Aiken,* and their progeny, the Respondent had a record revealing his dangerousness, this did not have to be discovered by the Courts. In these cases the Courts established that the Eighth Amendment allows the Court to inquire about the youth of the Defendant in order to discover his mindset because of their "lack of maturity" and "underdeveloped sense of responsibility" lead to recklessness, impulsivity, and headless risk-taking." *Miller*, at 2458, *quoting, Roper* at 569. These cases do not say these harsh penalties cannot be imposed, just that youth and immaturity must be considered prior to the sentence. The the Court in *Miller* clearly concluded:

> *Graham, Roper* and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment.

Miller, at 2473.

Due to his prior conviction the characteristics of the Appellant has already been displayed before the Court, and though his actions he has caused himself a denial of any future release from incarceration. Parole is a privilege[4] that has been denied through his actions and not the Courts. Since it is clear in the statute that an individual such as the Respondent who have committed multiple violent offense shall not be allowed the privilege of parole, the Appellant respectfully request the decision of the ALC be reversed.

CONCLUSION

Based on the foregoing reasons the Appellant argues that the ALC erred in its ruling on behalf of the Respondent. The Appellant respectfully request this Honorable Court reverse the decision of the ALC.

Respectfully submitted,

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
February 24, 2016

[4] Parole is a privilege not a right. *Sullivan v. S.C. Dept. of Corrections,* 355 S.C. 437, 586 S.E.2d 124 (2004).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge
Case No. 15-ALJ-0042-AP

Appellate Case No. 2015-002522

NICHOLAS M. GEER, #227443.....RESPONDENT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE
AND PARDON SERVICES ..... APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.

Tommy Evans, Jr.
Assistant General Counsel

February 29, 2016

4/1

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the Administrative Law Court

Ralph King Anderson III, Chief Administrative Law Judge

Case No. 15-ALJ-04-0242-AP

NICHOLAS GIBER, 227495,

RESPONDENT,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES,

APPELLANT

Appellate Case No. 2015-002522

FINAL BRIEF OF RESPONDENT

ZOE JONES
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
zoe@justice360.org

EMILY PAAVOLA
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
emily@justice360.org

Pro Bono Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

CONSTITUTIONAL PROVISIONS

STATUTES

STATEMENT OF THE CASE

Respondent (Nicholas M. Geer) is presently confined in the South Carolina Department of Corrections serving a "life" sentence. Respondent was born on [redacted], thus rendering him a juvenile at the time the offense was committed.

On December 30, 1994, Respondent was arrested for the offense of assault and battery with intent to kill (ABWIK). On June 5, 1995, Respondent was sentenced under South Carolina's Youthful Offender Act to a term of imprisonment, not to exceed six (6) years, five (5) of which were under probation with the remaining year suspended.

On July 14, 1995, Respondent committed the offense of murder, thus violating his (YOA) probation for the prior offense, and was sentenced to "life" imprisonment on November 14, 1995 for the murder. At that time, South Carolina law provided that an individual serving a "life" sentence for murder would be eligible for parole following the completion of twenty (20) years of that sentence.

On July 1, 2015, Respondent was notified and reviewed by the South Carolina Department of Probation, Parole, and Pardon Services in accordance with parole eligibility procedures, after which, Respondent was informed he would receive a notice of the hearing date thirty (30) days prior to his scheduled parole hearing October 11, 2015.

On July 13, 2015, the Parole Board informed Respondent that he was not eligible for parole pursuant to S.C. Code § 24-21-640, based on his murder conviction and the prior ABWIK conviction. R. p. 1.

On August 12, 2015, Respondent appealed his parole ineligibility for a crime he committed when he was a juvenile on the grounds it violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution. Respondent respectfully relies

on *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012), and the South Carolina Supreme Court's decision in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), in support of his position.

After receiving full briefing from both parties, the Honorable Ralph King Anderson, III, Chief Administrative Law Judge issued a decision reversing the Department's decision for further discussions and findings. Judge Anderson found the Appellant did violate Respondent's Eighth Amendment rights by denying him parole eligibility. R. p. 21. Judge Anderson correctly concluded that due to Respondent's age at the time of the offenses, it would be unconstitutional to permanently deny Respondent an opportunity to be awarded parole. In reaching this decision, Judge Anderson ordered the case to be reversed and remanded for further findings consistent with the order. R. p. 21.

After receiving Judge Anderson's order, the Appellant filed a timely notice of appeal with this Court. Within the appeal, the Appellant alleges the ALC erred in remanding the case, arguing that each of the prior cases pertaining to a sentence of juveniles to a life sentence without the possibility of parole is not identical to the present case. Respondent asserts that in each of those cases the juvenile was sentenced to life without the possibility of parole. Appellant advances the proposition that because Respondent committed a previous violent crime, this fact reveals his dangerousness and therefore "no need" exists to have a separate hearing to determine any future dangerousness. Appellant's Brief at 8.

However, Respondent submits the Appellant's assertion is in error and is contrary to the *Miller* Court's reasoning. 132 S.Ct. 2455. Respondent submits that he was in fact a juvenile at the time the offense was committed and parole was available to him after the service of 20 years. However, regardless of the nomenclature used, once parole eligibility was removed, under any circumstances the Respondent undeniably became a juvenile serving life without parole and thus

the underlying sentence would violate the Eighth Amendment consistent with the *Miller* and *Aiken* Courts' sound reasoning. Therefore, the ALC correctly reversed and remanded this case for further findings.

ARGUMENT

I. The ALC Correctly Reversed the Decision of Appellant Denying Respondent Parole Eligibility Due to his Age at the Time he Committed the Offenses.

The ALC correctly ruled that since Respondent was a juvenile when both offenses were committed, requiring Respondent to serve a life sentence without the possibility of parole is cruel and unusual punishment and thereby unconstitutional. The ALC disregarded the Appellant's assertion that Respondent is being deprived of his parole eligibility because of his own actions rather than by the sentencing court and is a difference without distinction. R. p. 19. The Appellant argued that *Miller*, 132 S.Ct. 2455, does not apply to Respondent's case, because the instant case involved a deprivation of Respondent's parole eligibility based on his own actions, via a subsequent violation, pursuant to Section 24-21-640, rather than being a ruling by the sentencing court, while relying on *State v. Standard*, 351 S.C. 199, 569 S.E.2d 325 (2002). Appellant's Brief at 6-7. However, Respondent submits the ALC correctly determined and disregarded Appellant's assertion by finding a "crucial distinction" between the instant case and *Standard*, 351 S.C. 199, 569 S.E.2d 325. Specifically, that Respondent was a juvenile at the time both offenses were committed, the prior offense (ABWIK), and the triggering offense (murder), and therefore the ALC concluded the rationale underlying the decision in *Standard*, 351 S.C. 199, 569 S.E.2d 325, is inapposite, as both offenses in the instant case were committed by a juvenile. R. p. 19.

The ALC found that regardless of whether the sentencing court or statute took away Respondent's parole eligibility, the pertinent fact still remains that Respondent's youth and its attendant circumstances were not taken into consideration prior to the deprivation of his parole

eligibility, and courts have found that such deprivation is cruel and unusual punishment under the U.S. and S.C. constitutions. *Miller*, 132 S.Ct. at 2460; *Aiken*, 410 S.C. at 540-41, 765 S.E.2d at 575-76.

The Eighth Amendment to the United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." In *Miller v. Alabama*, the U.S. Supreme Court unequivocally held that "youth has a constitutional dimension when determining the appropriateness of a lifetime of incarceration with no possibility of parole, and that . . . mandatory penalty schemes at issue prevent[] the sentencing authority from considering the differences between adult and juvenile offenders before imposing a sentence of life without parole"—such is the case here. *Aiken*, 410 S.C. at 542, 765 S.E.2d at 576; *Miller*, 132 S.Ct. at 2463-69. The *Miller* court made it clear that "mandatory life without parole for juveniles violates the Eighth Amendment." 132 S.Ct. at 2473. The Court reasoned that "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 2467.

The *Miller* Court also said that a court may sentence a juvenile to life without parole after an individualized hearing. *Id.* at 2467-69. There has been no hearing in the instant case.

The Appellant takes the off-cited proposition that no hearing needs to be held simply because Respondent committed a previous violent crime. Appellant's Brief at 2. This is not what the *Miller* Court intended.

Moreover, *Miller* was applied to South Carolina in *Aiken v. Byars*, and *Miller* was found to apply retroactively. 410 S.C. at 540, 765 S.E.2d at 575 ("We conclude *Miller* creates a new, substantive rule and should therefore apply retroactively.").

The *Aiken* Court found 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. The *Aiken* Court found 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." *Id.*, 410 S.C. at 543, 765 S.E.2d at 577.

In *Aiken*, the Court said "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," stating *Miller* holds the Constitution requires more. *Id.*, 410 S.C. at 543, 765 S.E.2d at 577. This statement deserves universal application. The *Aiken* court found the "absence of this level of inquiry into the characteristics of youth produce[s] a facially unconstitutional sentence" such as in the instant case. *Id.*, 410 S.C. at 543-44, 765 S.E.2d at 577.

The *Aiken* Court said that in their view, "whether [a] sentence is mandatory or permissible, any 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." *Id.*, 410 S.C. at 544, 765 S.E.2d at 577.

The *Miller* Court focused on "sentencing schemes that mandate life-without-parole sentences for juveniles." 132 S. Ct. at 2484. In the instant case the sentencing scheme was the Parole Board's application of Section 24-21-640 to declare Respondent, who was a juvenile at the time of both his ABWIK and murder offense, ineligible for parole. The fact still remains that Respondent's youth and its attendant characteristics and circumstances were not taken in to consideration prior to the deprivation of his parole eligibility. The ALC was correct in reversing and remanding for further consideration in this matter.

CONCLUSION

WHEREFORE, based on the foregoing reasons, the ALC's ruling reversing the Department's decision and remanding for further findings should be upheld or in the alternative remanded with instructions for a new sentencing hearing, or any relief this Court deems appropriate in the interests of justice.

Respectfully submitted,

By: _____

ZOE JONES
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
zoe@justice360sc.org

EMILY PAAVOLA
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
emily@justice360sc.org

Pro Bono Counsel for Respondent

May 26, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the Administrative Law Court

Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 15-ALJ-0042-AP

NICHOLAS GEER, 227443,

RESPONDENT,

V.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES,

APPELLANT.

Appellate Case No. 2015-002522

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a true copy of the Respondent's Final Brief in the above referenced case has been served upon counsel for appellant by depositing one copy of the same in the United States Mail, first-class postage pre-paid, addressed as follows:

Tommy Evans, Jr.
Assistant General Counsel
South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, SC 29250

This 26 day of May, 2016.

ZOE JONES
Justice 360
900 Elmwood Ave. Suite 200

Columbia, SC 29201
(803) 765-1044
zoe@justice360sc.org

EMILY PAAVOLA
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
emily@justice360sc.org

Pro Bono Counsel for Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the Administrative Law Court

Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 15-ALJ-0042-AP

NICHOLAS GEER, 227443,

RESPONDENT,

V.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES,

APPELLANT.

Appellate Case No. 2015-002522

CERTIFICATE OF COUNSEL

Undersigned counsel hereby certifies that this final brief complies with Rule 211(b), SCACR. Counsel has corrected typographical errors, misspellings, and citation errors that occurred as a result of the *pro se* nature of this brief.

This 26 day of May, 2016.

ZOE JONES
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
zoe@justice360sc.org

EMILY PAAVOLA
Justice 360
900 Elmwood Ave. Suite 200

Columbia, SC 29201
(803) 765-1044
emily@justice360sc.org

Pro Bono Counsel for Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the Administrative Law Court

Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 15-ALJ-00422-AP

NICHOLAS GEBR, 227447,

RESPONDENT,

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,

APPELLANT.

Appellate Case No. 2015-002522

SUPPLEMENTAL BRIEF OF RESPONDENT

ZOE JONES
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
zoe@justice360sc.org

EMILY PAAVOLA
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
emily@justice360sc.org

Pro Bono Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

CONSTITUTIONAL PROVISIONS

STATUTES

MISCELLANEOUS

STATEMENT OF THE CASE

Respondent (Nicholas M. Geer) is presently confined in the South Carolina Department of Corrections serving a life sentence for a conviction of murder. Respondent was 17 years old at the time of the crime.[1] R. p. 16.

On December 30, 1994, prior to the offense at issue, Respondent was arrested for a separate incident. Respondent was charged with assault and battery with intent to kill (ABWIK), and on June 5, 1995, Respondent was sentenced under South Carolina's Youthful Offender Act to a term of imprisonment, not to exceed six (6) years, five (5) of which were under probation with the remaining year suspended. R. p. 16.

On July 14, 1995, the offense at issue occurred.[2] On November 14, 1995, Respondent was convicted of murder and sentenced to life imprisonment. At that time, South Carolina law provided that an individual serving a "life" sentence for murder would be eligible for parole following the completion of twenty (20) years of that sentence. R. p. 16.

On July 13, 2015, twenty years after the offense occurred, Appellant, the South Carolina Department of Probation, Parole and Pardon Services, notified Respondent that he was not eligible

---

[1] Respondent was born on [redacted], thus rendering him a juvenile at the time the offense occurred, on July 14, 1995.

[2] Based on undersigned counsel's review of the record, Respondent shot the victim in the midst of an altercation over a drug deal gone wrong. Respondent's trial counsel, Robert Gamble, was later suspended from the practice of law for "habitually neglect[ing] his duties as Circuit Defender for the Anderson County Public Defender's Office . . . [,] allowing misuse of County and State funds for personal gain and . . . improperly supervising and approving fraudulent or exhorbant [sic] expense reimbursements." *In re Gamble*, 405 S.C. 436, 437, 748 S.E.2d 219 (2013), reinstatement granted, 414 S.C. 580, 780 S.E.2d 263 (2015).

for parole under S.C. Code Ann. § 24-21-640. Appellant stated that Respondent was ineligible for parole because of Respondent's prior ABWIK conviction.[3] R. p. 1.

On August 12, 2015, Respondent appealed his parole ineligibility on the grounds that it violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution because Respondent was a juvenile at the time of the offense and was never afforded an individualized sentencing hearing. R. p. 17. Respondent respectfully relies on *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012), and the South Carolina Supreme Court's decision in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), in support of his position.

After receiving full briefing from both parties, the Honorable Ralph King Anderson, III, Chief Administrative Law Judge, issued a decision reversing Appellant's decision. Judge Anderson held that Appellant did violate Respondent's Eighth Amendment rights by denying him parole eligibility. R. p. 21. Judge Anderson concluded that due to Respondent's age at the time of the offenses and that Respondent did not receive the required individualized sentencing hearing, it would be unconstitutional deny Respondent the possibility of release. R. p. 21. After receiving the Administrative Law Court's (ALC) order, the Appellant filed a timely notice of appeal with this Court.

ARGUMENT

I. Respondent has effectively been sentenced to life without parole.

Under Appellant's application of Section 24-21-640 to this case, Respondent is effectively serving a life sentence without the possibility of parole. Respondent was convicted of murder for

[3] The pertinent part of S.C. Code Ann. § 24-21-640 provides that "[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60." ABWIK is a violent crime as defined by S.C. Code Ann. § 16-1-60.

an offense committed when he was 17 years old. Respondent received a sentence of life imprisonment. Under that "life" sentence, Respondent would be eligible for parole after completing 20 years of his sentence. R. p. 16. However, once Respondent became eligible for parole in 2015, he was informed by the Parole Board that, pursuant to S.C. Code Ann. § 24-21-640, he was ineligible for parole because of his prior conviction for assault and battery with intent to kill (ABWIK), also committed when he 17 years old. R. p. 16.

Appellant acknowledges that under *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012), life without parole sentences for juveniles are barred absent an individualized sentencing hearing. Appellant's Brief at 7. However, appellant argues that *Miller* does not apply to the case at issue because Respondent received his effective life without parole sentence "through his actions" and not by a sentencing court. Appellant's Brief at 6, 9. As noted by the Administrative Law Court (ALC), "the fact that [Respondent] was deprived of his parole eligibility because of his own actions rather than by the sentencing court is a difference without a distinction." R. p. 19. The ALC held that what matters is that the sentencing scheme precludes the possibility of parole without a sufficient hearing, regardless of whether that scheme is the result of a statute or a sentencing court. R. p. 19. Thus, as the ALC held, Respondent is serving a sentence of life imprisonment without the possibility of parole, without ever having been afforded an individualized sentencing hearing, in violation of the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution. R. p. 21.

II. Both the United States Supreme Court and the South Carolina Supreme Court have set forth specific constitutional considerations in the case of a juvenile facing life without parole.

In 2012, the Supreme Court of the United States determined in *Miller v. Alabama*, that states are precluded from imposing life without parole sentences on juvenile offenders without

10

first holding an individualized sentencing hearing. 132 S.Ct. at 2475. And this year, in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718 (2016), the Court reaffirmed the importance of the protections granted in *Miller* by declaring the holding in that case to be "a new substantive rule that, under the Constitution, must be retroactive," and effectively ordered new sentencing proceedings for hundreds of individuals who had been sentenced to mandatory life without parole as juveniles. These cases were grounded in one core Eighth Amendment principle: "children are constitutionally different from adults for purposes of sentencing." *Miller*, 132 S.Ct. at 2464.

The Court in *Miller* explained that all of its recent holdings regarding juveniles hinged on the constitutional maxim that juveniles have both "diminished culpability and greater prospects for reform" and are thus "'less deserving of the most severe punishments.'" *Id.* (quoting *Graham v. Florida*, 560 U.S. 58, 68 (2010)). The lessened culpability and possibility of rehabilitation are grounded in three constitutionally significant differences between juveniles and adults:

- Children are less mature and developed than adults, leading to "recklessness, impulsivity, and heedless risk-taking," *id.*;
- Children are more "vulnerable . . . to negative influences and outside pressures," and have "limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings," *id.* (internal quotations omitted);
- Children's actions are "less likely to be evidence of irretrievable depravity" because "a child's character is not as well formed as an adult's" and "his traits are less fixed," *id.* (internal quotations omitted).

These differences, *Miller* noted, result in part from a consistently growing body of social science and neuroscience research conclusively establishing that: a) only a small percentage of adolescents who commit crimes, even serious crimes, "'develop entrenched patterns of problem behavior,'" *id.* (quoting *Roper v. Simmons*, 543 U.S. 551, 570 (2005)), and, b) there are

fundamental differences between the brains of juveniles and adults in areas "'involved in behavior control.'" *Id.* at 2464-65 (quoting *Graham*, 560 U.S. at 68). Because the brains of juveniles are not "fully mature in regions and systems related to higher executive functions such as impulse control, planning and risk avoidance," juveniles have a constitutionally different level of moral blameworthiness and, for that reason, the penological justifications for any criminal punishment—deterrence and retribution—are inconsistent with juvenile life without parole sentences. *Id.* at 2464 n.5 (quoting Brief of the American Psychological Association et al.). The same characteristics that make this category of offenders less culpable necessarily mean that "'an irrevocable judgment about a [juvenile] offender's value and place in society,' [is] at odds with a child's capacity for change." *Id* at 2465.

In *Aiken v. Byars*, the South Carolina Supreme Court embraced the reasoning of the United States Supreme Court that "youth has constitutional significance" and "must be afforded adequate weight in sentencing." 410 S.C. at 542-543, 765 S.E.2d at 576. After examining the sentencing hearings in cases where juveniles were sentenced to life without parole in this State in light of these decisions, the South Carolina Supreme Court concluded that the Eighth Amendment to the United States Constitution required that they be resentenced. The key defect in South Carolina's sentencing practices noted in *Aiken* was the failure to "fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.*, 410 S.C. at 543, 765 S.E.2d at 577. Notably, the South Carolina Supreme Court vacated the sentences of defendants not only with mandatory sentences of life without parole, but also defendants who had received discretionary sentences of life without parole, thus reaffirming the need for an individualized sentencing hearing where life without parole for a juvenile is even a possibility.

III. Respondent may not be sentenced to life without parole unless he has received an individualized sentencing hearing.

Appellant argues that there was (and remains) no need to hold an individualized sentencing hearing for Respondent. Appellant's Brief at 2. That is true if—but only if—Respondent is eligible for parole. If he does not have a meaningful opportunity for release, however, then the jurisprudence of both the United States Supreme Court and the South Carolina Supreme Court mandate that Respondent must receive an individualized sentencing hearing at which the "hallmark features" of youth are to be considered. *Miller*, 132 S.Ct at 2468; *Aiken*, 410 S.C. at 543-44, 765 S.E.2d at 577. The *Aiken* Court, taking into consideration the rationale in *Miller*, set forth five key factors that must be measured when juvenile life without parole is a possible sentence:

> (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."

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

Appellant argues that because of his prior offense, Respondent proved he was dangerous and thus no hearing was necessary. Appellant's Brief at 2. This overly simplistic view ignores a host of relevant considerations including that both offenses were committed when Respondent was

a juvenile. Furthermore, an individualized hearing for a juvenile facing life without parole considers more than just future dangerousness. That Respondent had a prior violent offense is just one factor of many to take into consideration—in fact, multiple petitioners granted relief in *Aiken v. Byars* had prior violent offenses, however, those offenses do not negate the need for an individualized sentencing hearing. *See* Brief of Petitioners at 2-5, *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) (No. 2012-213286).

Appellant argues further that an individualized sentencing hearing was not required because Respondent was just shy of his eighteenth birthday when he committed this offense. Appellant's Brief at 7-8. Again, this argument is in error. *Miller* and *Aiken* clearly consider the factors of youth to apply to all persons under the age of 18, whether they are 14 years old, or 17 years old. *Miller*, 132 S.Ct. at 2460; *Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1. Studies show that the entire adolescent period is characterized by the type of immaturity, impulsivity, and inability to weigh consequences recognized in *Miller* and *Aiken*. [4]

Appellant relies on *State v. Standard*, 351 S.C. 199, 569 S.E.2d 325 (2002) to support its position. Appellant's Brief at 6-7. *Standard*, however, does not apply to the facts at issue. In *Standard*, the South Carolina Supreme Court held that a juvenile conviction could qualify as a triggering offense under South Carolina's two strikes law (which mandates life without parole). *Standard*, 351 S.C. at 206, 569 S.E.2d at 329. Standard was convicted of a "most serious offense" as a juvenile and sentenced as an adult. Some years later, once he was an adult, Standard

[4] Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 BRAIN AND COGNITION 160, 162 (2010) ("From this perspective, middle adolescence (roughly 14–17) should be a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature. And, in fact, many risk behaviors follow this pattern, including unprotected sex, criminal behavior, attempted suicide, and reckless driving.").

committed a second most serious offense and was sentenced to mandatory life without parole under S.C. Code Ann. § 17-25-45. *Id.*, 351 S.C. at 201, 569 S.E.2d at 326-27. As noted by the ALC, "the rationale underlying the decision in *Standard* is inapposite," because unlike Standard, Respondent was a juvenile at the time of both the ABWIK and murder offenses. R. p. 19. Thus *Miller* and *Aiken*, and not *Standard*, control here.

In sum, Appellant argues that "the fact the Respondent was a juvenile during both convictions is not relevant." Appellant's Brief at 7. In actuality, the fact that Respondent was a juvenile is the single most constitutionally relevant fact in this case under both the United States and South Carolina Constitutions, and his age at the time of the offense requires that the decision of the Administrative Law Court be affirmed. For the reasons noted above, Respondent may not be sentenced to life without parole without an individualized sentencing hearing. Thus, the ALC correctly ruled that the decision of Appellant to deny Respondent the possibility of parole must be reversed. To comply with the federal and state constitutions, Respondent must either be allowed the possibility of parole, or he must be re-sentenced and receive and individualized sentencing hearing.

CONCLUSION

WHEREFORE, for the foregoing reasons, the ALC's ruling reversing the Department's decision and remanding for further findings should be affirmed or in the alternative Respondent should be remanded to the court of General Sessions with instructions to hold a re-sentencing hearing in accordance with *Aiken v. Byars*.

Respectfully submitted,

By: _____
ZOE JONES
Justice 360

65

900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
zoe@justice360sc.org

EMILY PAAVOLA
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
emily@justice360sc.org

Pro Bono Counsel for Respondent

June 9, 2016

66

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the Administrative Law Court

Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 15-ALJ-0042-AP

NICHOLAS GEER, 227443,

RESPONDENT,

V.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES,

APPELLANT.

Appellate Case No. 2015-002522

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a true copy of the Respondent's Supplemental Brief in the above referenced case has been served upon counsel for appellant by depositing one copy of the same in the United States Mail, first-class postage pre-paid, addressed as follows:

Tommy Evans, Jr.
Assistant General Counsel
South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, SC 29250

This 9 day of June, 2016.

ZOE JONES
Justice 360
900 Elmwood Ave. Suite 200

Columbia, SC 29201
(803) 765-1044
zoe@justice360sc.org

EMILY PAAVOLA
Justice 360
900 Elmwood Ave. Suite 200
Columbia, SC 29201
(803) 765-1044
emily@justice360sc.org

Pro Bono Counsel for Respondent

60

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Nicholas M. Geer, Respondent,

v.

South Carolina Department of Probation, Parole and Parden Services, Appellant.

Appellate Case No. 2015-002522

Appeal From The Administrative Law Court
Ralph King Anderson, III, Chief Administrative Law Judge

Unpublished Opinion No. 2018-UP-216
Submitted February 1, 2018 – Filed May 23, 2018

AFFIRMED

Tommy Evans, Jr., of South Carolina Department of Probation, Parole, and Pardon Services, of Columbia, for Appellant.

Emily C. Paavola, Zoe Alexandra Jones, and Lindsey Sterling Vann, all of Justice 360, of Columbia, for Respondent.

PER CURIAM: The South Carolina Department of Probation, Parole and Pardon Services (Department) appeals the administrative law court's (ALC) order reversing the Department's denial of parole to Nicholas M. Geer (Geer). We affirm.

In *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller* at 479; *see Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016) ("The Court now holds that *Miller* announced a substantive rule of constitutional law."). The Supreme Court expounded on the relevance of an offender's age and maturity level to sentencing decisions, noting that "a sentencer misses too much if he treats every child as an adult." *Miller* at 477. The Supreme Court further concluded that

> [b]y requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory-sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment.

Miller at 489.

In *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), the Court applied *Miller* retroactively and extended it to juvenile offenders sentenced in South Carolina to life without parole under a nonmandatory statutory scheme. *See Montgomery*, 136 S.Ct. at 736 ("*Miller* announced a substantive rule that is retroactive in cases on collateral review"). The *Aiken* court held that *Miller* established "an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." *Aiken*, 410 S.C. at 543, 765 S.E.2d at 577. Therefore, in South Carolina, "before a life without parole sentence is imposed upon a juvenile offender, 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. Under the *Aiken* court's interpretation of *Miller*, a sentencing court is to consider the following factors in the individualized hearing:

> (1) the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risk 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 quotation marks omitted); s*ee 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 resentencing them.").

In the case before us, we find no evidence showing that Geer's youth was taken into account before he was deprived of the possibility of parole. Based on the foregoing, the order of the ALC is

AFFIRMED.[1]

HUFF, GEATHERS, and MCDONALD, JJ., concur.

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Administrative Law Court
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge
Case No. 15-ALJ-0042-AP

Appellate Case No. 2015-002522

Nicholas Geer, #227443.....RESPONDENT

v.

South Carolina Department of Probation, Parole and
Pardon Services,.....APPELLANT

PETITION FOR REHEARING

The Appellant, the South Carolina Department of Probation, Parole and Pardon Services respectfully petitions this Court for rehearing pursuant to Rule 221(a), SCACR. The Appellant hereby seeks a rehearing on the grounds that this Court may have misapprehended or overlooked several crucial points in affirming the Administrative Law Court (ALC) decision.

Specifically, the Appellant submits this Court may have misapprehended its determination that the Respondent should be allowed parole eligibility due to his offense being committed while he was a juvenile. The Appellant argues that while this Court made this determination, it failed to discuss the current statute regarding a subsequent violent offender. This statute reveals that the General Assembly clearly wished no inmate to be eligible for parole who has a prior conviction of a crime classified as violent. The ALC and this Court strictly just looked at the age of the offender

at the time the offense was committed and automatically applied prior Court decisions. However, there exist differences between the present case and those prior decisions.

The facts in this case are not in dispute. The Respondent committed the offense of Assault and Battery with intent to kill (ABIK) a violent offense as defined in Section 16-1-60, on December 30, 1994. He appeared before the Court and received a sentence pursuant to the Youthful Offender Act (YOA). While on parole, on July 14, 1995, the Respondent shot and murdered an individual. He was later sentenced to a period of incarceration for the remainder of his natural life with parole eligibility after twenty years incarceration.

At the time the Respondent committed his second violent offense, South Carolina law specifically stated:

> The [parole] board must not grant, nor is parole authorized to **any prisoner** serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60.

S.C. Code Ann. §24-21-640 (Supp. 2014)(emphasis added).

It is clear within this statute that **any prisoner** serving a second sentence for a classified violent crime cannot be granted parole. The Respondent was on parole for the crime of ABIK when he committed the offense of murder both classified as violent offenses.[1] The Respondent was denied parole pursuant to South Carolina law which was the intent of the General Assembly. Through this statute the General Assembly has ordered not to allow anyone serving a second violent offense parole eligibility. The statue clearly states that, "The Parole Board must not grant, nor is parole authorized to any prisoner." To allow parole for this individual the Court would be essentially rewriting the statute, or ignoring it. The General Assembly wished no prisoner be allowed parole

[1] For purposes of definition under South Carolina law, a violent crime includes the offenses of murder (Section 16-3-10); assault and battery with intent to kill (Section 16-3-620) S.C. Code Ann. §16-1-60 (2002).

eligibility upon the conviction of a second violent offense. The cardinal rule of statutory construction is that the Court ascertain and effectuate the actual intent of the legislature. *State v. Cannon*, 336 S.C. 335, 520 S.E.2d 317 (1999). This Court never discussed the certainty of this statute. The General Assembly has made it clear, any prisoner who has committed a second violent offense will not eligible for parole. The fault of the life sentence without parole is not that of the Court, legislature, nor the Department, but of the Respondent himself. But not for the previous violent conviction he would be eligible for parole. That is not the case in all of the previous decisions relied upon by the ALC and this Court. Each of the other cases the life sentence was given by the sentencing Court as a mandatory sentence due to the crime committed and not due to any prior offenses. This is not so in the present case.

The Appellant submits that this Court may have misapprehended or overlooked that in South Carolina, parole eligibility is determined by statute, and not by the Court. At no point may a judge order an inmate to be parole eligible if the statute does not allow for it. "The question of parole eligibility is separate and independent from the Court's authority to sentence an offender." *State v. McKay,* 300 S.C. 113, 115, 386 S.E.2d 623 (1989).

This Court's decision and the decision of the ALC relies upon *Miller v. Alabama*, 567 U.S. 460 (2012). In *Miller,* the United States Supreme Court decided that it is unconstitutional to sentence a minor to a life sentence without the possibility of parole. The South Carolina equivalent, *Aiken v. Byers*, 410 S.C. 534, 765 S.E.2d 527 (2014) made the identical ruling. Neither case relates to an individual being denied parole due to a prior act of criminal violence. The Respondent was not given a sentence of life without parole. In the present case the Respondent is only being denied parole due to his prior violent offense. A prior violent conviction clearly denies parole eligibility for a subsequent violent conviction pursuant to South Carolina law.

Within this Court's decision is the case of *Montgomery v. Louisiana,* 136 S.Ct. 718 (2016) where the United States Supreme Court ruled:

> A state may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. Allowing those offenders to be considered for parole ensures 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.

Montgomery, at 736.

This case allows a juvenile parole eligibility on an offense not allowing parole. In the present case, the statute clearly does not allow an individual serving an additional violent offense parole eligibility. This absolution in the statute was never addressed by this Court. This Court only accepted the reasoning of the ALC, who also never addressed the statute.

The holdings in *Miller* and *Aiken* require the sentencing judge to make an on-the-record finding of "the impact of the defendant's juvenility on the sentence rendered" without addressing the South Carolina rule that the judge cannot make parole eligibility determinations. *Aiken,* at 410 S.C. at 543, 765 S.E.2d at 577. Prior to 1996, the sole sentence for murder was life. The judge could not sentence a defendant to anything lesser or greater.

The Appellant argues that this Honorable Court overlooked the statute that relates to this cause of action. It is clear by the statute that no prisoner in the situation as the Respondent must be allowed to appear before the Board, and even if they happen to appear, the Board is not allowed to grant parole. The Appellant is also of the position that this Court has not considered the differences between the *Miller, Aiken,* and *Montgomery* cases and the present case. It is obvious that these decisions related to a person initially sentenced to a lifetime term of imprisonment without the possibility of parole. This is not the situation in the present case. The Respondent in

this case would be eligible for parole but not for the prior crime he committed. The statute is clear, no prisoner is allowed parole who is currently serving a second sentence of a violent crime. To allow Parole is tantamount to completely changing or ignoring the statute.

This decision was made without the benefit of a hearing. The Court certainly has the authority to make a decision without oral arguments. However, Appellant request this Honorable Court to reconsider this case and allow a hearing so arguments can be made before this Court. If the Court does not wish to allow a hearing, the Appellant requests that the statute and differences between this case and others be considered.

CONCLUSION

The Appellant is of the opinion that this Court may have overlooked some matter relating to the statute that applies to a subsequent violent offender, and the prior decisions mentioned within the Court's decision. The Appellant wishes the Court rehear this case in order to reconsider the above referenced arguments, and possibly schedule a hearing so this case can be argued on the merits.

Respectfully submitted,

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
May 29, 2018

The South Carolina Court of Appeals

Nicholas M. Geer, #227443, Respondent,

v.

South Carolina Department of Probation, Parole and Parden Services, Appellant.

Appellate Case No. 2015-002522

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

J.

Stephanie P. McDonald J.

Columbia, South Carolina

cc:
Tommy Evans, Jr., Esquire
Zoe Alexandra Jones, Esquire
Emily C. Paavola, Esquire

FILED
June 22, 2018