

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF GENERAL SESSIONS

The State, )  
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 )  
 vs. )  
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 Eric Dale Morgan, )  
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 Defendant. )  
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Case No.: 2000-GS-42-02680

ORDER

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SC Court of Appeals

This case is initiated on Defendant Eric Dale Morgan's ("Morgan") Motion for Resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (S.C. 2014). On November 15, 2017, the Court heard the State's Motion to Dismiss his Motion for Resentencing. After taking the Motion to Dismiss under advisement, this Court concludes that it should be granted.

**Facts and Procedural History**

Morgan is presently confined in the South Carolina Department of Corrections. He was indicted at the June and July 2000 terms of Spartanburg County Grand Jury for murder (00-GS-42-2680), armed robbery (00-GS-42-2681), and possession of an explosive device (00-GS-42-3165). These charges resulted from the murder and armed robbery of a convenience store employee on May 3, 2000. Morgan admitted to shooting the victim once in the head as the victim was closing the store and then stealing a bag that the victim was carrying which contained more than \$7,000.00. Morgan and his accomplice, who had been hired at the store a week before the incident, originally planned to blow a hole in the back wall of the store with a pipe bomb after the convenience store closed.

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SPARTANBURG COUNTY

Clay T. Allen, James R. Poole, and Karen Quimby represented Morgan at trial and sentencing. He was tried before the Honorable J. Derham Cole and a jury February 28 – March 9, 2004. The jury found Morgan guilty on all counts. Judge Cole sentenced him to 15 years for possession of an explosive device to be run consecutively with 30 years for the armed robbery conviction. Additionally, Judge Cole approved the jury's recommendation of the death sentence for the murder charge.

A timely notice of appeal was filed on Morgan's behalf. Pursuant to the U.S. Supreme Court decision in *Roper v. Simmons*, 543 U.S. 551 (2005), the S.C. Supreme Court vacated Morgan's death sentence and remanded the case to circuit court for resentencing due to the fact that Morgan was just shy of his 18<sup>th</sup> birthday when the murder was committed. *State v. Morgan*, 367 S.C. 615, 626 S.E.2d 888 (S.C. 2006). On March 17, 2006, Judge Cole conducted a resentencing hearing pursuant to the Supreme Court's decision in *State v. Morgan*. Judge Cole resentedenced Morgan to life without parole. Morgan did not appeal this sentence. The record from the 2006 resentencing hearing was destroyed because Morgan did not appeal or make a motion to preserve the transcript. Morgan filed his first application for PCR on February 15, 2007. By written order filed October 23, 2008, Judge Goode denied and dismissed the application. Morgan did not appeal. He filed a motion on July 12, 2016 for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). On July 18, 2016, this Court was granted exclusive jurisdiction over Morgan's motion for resentencing.

In *Aiken v. Byars*, the Supreme Court of South Carolina held that life without parole for juveniles, without consideration of youth, constituted cruel and unusual punishment, and such juveniles are entitled to a resentencing hearing at which certain enumerated factors must be considered when deciding the appropriate sentence. The Supreme Court then listed the factors to be considered when sentencing a juvenile to life without parole. The factors include:

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(1) [T]he chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth – for example, [the offender’s] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorneys”; and (5) the “possibility of rehabilitation.”

*Aiken v. Byars*, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (S.C. 2014) (holding none of the hearings at issue therein approached the sort of hearing mandated by *Miller v. Alabama*, 567 U.S. 460 (2012), where the factors of youth should be carefully and thoughtfully considered).

On November 15, 2007, this Court conducted a hearing on the State’s Motion to Dismiss. The State called the Honorable J. Derham Cole as a witness. Judge Cole testified that at the March 17, 2006 resentencing hearing he relied on the entire trial record as well as his independent memory of Morgan. He testified that he considered Morgan’s youth at the time of the murder and specifically took into account each of the five *Aiken v. Byars* factors. The State specifically asked him if he considered the age of the defendant, premeditation of the crime, the defendant’s thought process given his age, the defendant’s immaturity, the way the defendant interacted with his peers, the circumstance of the crime, the defendant’s participation in the crime, the way the defendant interacted with police officers and his own attorneys, and the possibility of rehabilitation. Judge Cole testified he considered each of the above factors in reaching to his decision to resentence Morgan to life without parole.

Further, the original trial court record supports his testimony and contains a sufficient basis for considering all of the *Aiken v. Byars* factors. For example, the sentencing hearing consisted of testimony from Morgan’s family, friends, and a sociologist. These witnesses described Morgan’s childhood, home environment, and maturity among other aspects of his life. The record showed that Morgan did not have a father figure, moved around as a child, had little ability to read, and was on drugs and alcohol from an early age. A social worker also testified as to Morgan’s childhood, life,

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and his incarceration record. Her testimony as to the incarceration record illustrated his good behavior in prison. The testimony also described Morgan as being respectful to adults and a good friend. Morgan's voluntary statement to police is also a part of the trial record giving Judge Cole insight into how he interacted with authority figures. Not only does the trial record form a basis from which the five *Aiken v. Byars* factors could be considered, Judge Cole also testified that he considered all of the factors. Therefore, there is no legal basis for an additional resentencing hearing.

Further, the rule of comity stands for the proposition that, absent a significant and substantial change in circumstances, judges at the same jurisdictional level cannot overrule each other. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 603, 340 S.E.2d 546, 547 (S.C. 1986) (holding that one circuit court judge does not have the authority to set aside the order of another). Judge Cole properly analyzed and considered the necessary youth characteristics when resentencing Morgan to life without parole. Therefore, the 2006 resentencing hearing conforms to *Aiken v. Byars* and there is no evidence to suggest it was improperly conducted. As such, this Court finds it would be improper to have another resentencing hearing with the objective to either affirm or set aside Judge Cole's 2006 ruling.

This Court has also considered the potential types of evidence that would be presented at a future *Aiken v. Byars* resentencing hearing. Defense counsel asserts that Morgan's incarceration record would be presented at a subsequent hearing. However, this court finds evidence of his incarceration record since he was resentenced in 2006 to the present would be inappropriate for consideration as evidence of any of the *Aiken v. Byars* factors. *Aiken v. Byars* provides five factors that must be considered when sentencing a juvenile to life without parole. This Court's function is to determine whether those factors were considered at the 2006 resentencing hearing and the Court finds that they were considered. Therefore, it would be inappropriate for this Court to consider Morgan's incarceration record from the 2006 resentencing hearing to the present. Consideration of

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Morgan's incarceration record since resentencing would only be appropriate for a clemency hearing. Clemency is a function of the executive branch and not of this Court. The separation of powers doctrine requires that "in the government of this state, the legislative, executive, and judicial power of the government shall forever be separate and distinct from each other." S.C. Const. art. 1, § 8. "The operational effect of this doctrine is to prevent one branch of government from usurping the power and authority of another." *Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 24, 736 S.E.2d 651, 651 (S.C. 2012). As a result, it would be improper for the court to consider any evidence of Morgan's actions or behavior that occurred after he was resentenced in 2006.

It is also unclear what evidence Defense counsel would present in addition to that contained in the original trial record. There is competent and sufficient evidence in the trial record from which Judge Cole considered the five *Aiken v. Byars* factors. Unlike the hearings at issue in *Aiken v. Byars*, where age was only mentioned as a "vague plea for mercy," Judge Cole carefully and thoughtfully considered Morgan's youth at the time of the murder. Moreover, Morgan's original sentencing hearing was a death penalty hearing. The Court in *Aiken v. Byars* concluded that while they "do not go so far as some commentators who suggest that the sentencing of a juvenile offender subject to a life without parole sentence should mirror the penalty phase of a capital case [,] . . . the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to life without parole sentencing hearings." *Id.* Sentencing hearings in capital litigation demand a thorough presentation of mitigating evidence that meets the highest standard. In fact, "the Eighth Amendment demands that a capital defendant be given wide latitude to present any relevant evidence of potentially mitigating value that might convince the jury to impose a sentence of life in prison instead of death." *Bowman v. State*, Opinion No. 27761 (S.C. Jan. 1, 2018). Judge Cole had the benefit of the trial court record complete with the death penalty sentencing hearing when resentencing Morgan in 2006. There is nothing to suggest the original sentencing hearing was

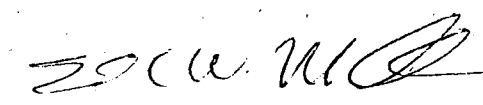
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defective. This conclusion bolsters the Court's ruling that an additional resentencing hearing is unnecessary.

Morgan has had the benefit of three hearings relevant to the issues addressed herein. Initially, he had a full capital case sentencing hearing. The case was then appealed and remanded for resentencing. In 2006, Judge Cole, taking into account the entire trial record, and mitigation allocation at that hearing, resented Morgan to life without parole. In addition, Morgan had the benefit of a PCR hearing. In a PCR hearing, "[t]he United State Supreme Court has set forth a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense." *McHam v. State*, 404 S.C. 465, 473-74, 746 S.E.2d 41, 46 (2013) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Holden v. State*, 393 S.C. 565, 713 S.E.2d 611 (2011)). The result of Morgan's PCR was that he failed to satisfy the *Strickland* test. Morgan did not appeal that decision, and therefore, it becomes the law of the case. There is nothing to suggest the mitigation evidence presented at the original sentencing hearing was deficient or that a deficiency prejudiced the defendant. In all litigation, at some point, for the benefit of interested persons there needs to be finality as to the judicial decisions made.

THEREFORE, the Motion to Dismiss is granted.

IT IS SO ORDERED.



EDWARD W. MILLER  
Presiding Judge  
Seventh Judicial Circuit

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February \_\_\_\_\_, 2018  
Spartanburg, South Carolina