STATE OF SOUTH CAROLINA COUNTY OF CHESTER	) IN THE COURT OF GENERAL SESSIONS) THE SIXTH JUDICIAL CIRCUIT	
State of South Carolina v. Theodore Harrison, Jr a/k/a Lumumba Incumaa, Defendant	) 1990-GS-12-00119) 1990-GS-12-00120) 1990-GS-12-00121) 1990-GS-12-00122) 1990-GS-12-00125) 1990-GS-12-00126) RESENTENCING ORDER	RECEIVED SEP 10 2018 SC Court of Appeals

This is a criminal resentencing matter of a South Carolina Department of Corrections (SCDOC) double homicide inmate from Chester County who received life sentences as a juvenile. Because at the time of his sentencing, he was already serving a felony sentence arising from the carjacking and abduction by gunpoint of two people in Richland County, his life sentences were deemed to be without the possibility of parole (LWOP).

Pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), cert. denied, and Miller v. Alabama 567 U.S. 460, 135 S. Ct. 2379 (2012), the Defendant, Theodore Harrison, a/k/a Lumumba Incumaa, filed his Motion for Resentencing, stating that because he was sentenced to life without the possibility of parole (LWOP) for an offense committed when he was seventeen (17) years old, he was entitled to a new sentencing hearing in conformity with the state and federal constitutional principles set forth in Miller v. Alabama, 567 U.S. 460, 135 S. Ct. 2379 (2012), and Aiken v. Byars.

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Miller v. Alabama and Aiken v. Byars Directive

The United States Supreme Court in Miller v. Alabama, held that the Eighth Amendment forbids a sentencing scheme that "mandates" life in prison without the possibility of parole for juvenile homicide offenders. The Supreme Court reasoned that the Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. The justices state that this right flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the "offender" and the "offense".

Because of its concern that punishment must be proportionate both to the offender and the offense, the Miller court reasoned that the "mandatory" sentencing scheme that resulted in LWOP sentences for juveniles mismatched the culpability of a class of offenders (the juveniles) and the severity of a penalty. Miller reasoned that juveniles, as a class of persons, are less culpable than adult offenders because of certain character traits related to youth. The Supreme Court reasoned that juveniles should be treated different from adults for sentencing purposes because of common sense as well as social science. Miller emphasized that the distinctive attributes of youth diminish the penological justification for imposing the harshest sentence on a juvenile, even when they commit terrible crimes. Miller stated that juveniles differ from adults in their general "lack of maturity and underdeveloped sense of responsibility," "vulnerability to negative influences and outside peer pressures, including family and peer," and evolving character and personality traits.

Thus because of this reasoning, the Supreme Court had previously placed a ban on capital punishment for juveniles and a ban of LWOP juvenile sentences for non-homicide offenses. Additionally because the LWOP sentence for a juvenile are likened to a death penalty sentence, Miller mandated an individualized review by the sentencing authority.

The "mandatory" LWOP sentencing schemes denied the juvenile of his right to this individualized review. Therefore, Miller requires the sentencing authority to consider both the characteristics of a juvenile defendant and the details of his offense when considering an LWOP sentence. When the juvenile homicide LWOP offender is afforded an individualized review, the Supreme Court's opinion was that it will be rare for juveniles to spend a lifetime in prison for his crime without the possibility of parole.

The South Carolina Supreme Court held that the principles of Miller apply retroactively to all inmates in South Carolina who received a LWOP sentence as a juvenile and the Court ordered that resentencing hearing be conducted. In so doing, the Court referenced that Miller requires the sentencing authority to "take into account how children are different, and how these differences counsel against irrevocably sentencing them to a lifetime in prison". The South Carolina Supreme Court articulated the Miller framework that the sentencing court must consider at the resentencing hearing:

(1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequences";
(2) the "family and home environment" that surrounded the offender;
(3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familiar or peer pressures may have affected him;
(4) the incompetencies associated with youth --- for examples [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".

The South Carolina Supreme Court also noted that, "the type of mitigating evidence permitted in death penalty" cases unquestionable has relevance in a juvenile LWOP sentencing hearing, "in addition to the factors illustrated above".

The Court stated "without question" a juvenile homicide offender can be subject to a LWOP sentence in light of other aggravating circumstances. However, the Court stated, Miller requires that before a LWOP sentence is imposed on a juvenile, the offender must receive an individualized hearing where the "mitigating hallmark features of youth are fully explored".

The South Carolina Supreme Court granted to inmates who received LWOP sentences as a juvenile the right to a resentencing hearing where the inmates are allowed "to present evidence specific to their attributes of youth and allow the judge to consider such evidence in light of its constitutional weight."

Resentencing Hearing

On February 12, 2018, and February 16, 2018, the resentencing hearing for this defendant was conducted. Sixth Circuit Solicitor Randy Newman and Assistant Solicitor Karen Fryar represented the State, and Micah Leddy of the Richland County Bar represented the Defendant.

At the hearing, the Defendant presented three (3) witnesses and he made an oral statement to the Court. The defense witnesses were Dr. James Garborino, an expert in Developmental Psychology called primarily as an expert concerning the Miller factors; Dr. Michael Hendricks, an expert in Forensic Psychology, Psychopharmacology, and Suicidology primarily to discuss the Defendant's various mental health issues that arose after his years of solitary confinement; and Jessica Jiminez, the Step-Down Coordinator at the South Carolina Department of Corrections primarily to discuss the Defendant's very favorable and positive conduct while in the step-down program, including his work as a mentor to other inmates. An Inmate Life Expectancy Table and Summary, a copy of Dr. Garborino's written report, and various SCDOC documents, including, but not limited to, incident reports, progress notes, grievance forms, medical notes, certificates and

committee document were also presented into evidence. Subsequent to the hearing, Mr. Leddy supplemented the record with twelve letters from family, friends and potential employers voicing support for the Defendant.

The State presented seven (7) witnesses at the hearing. Lonetta Brawley, one of the victim's in the August 1988 Richland County armed abduction and carjacking incident; Freddie Stewart, a former employee with the Sixth Circuit Solicitors Office who investigated the February 1988 Chester County armed robberies, kidnappings and murders; Donald Max Dorsey, Department of Juvenile Justice (DJJ) Director of Community Program who participated in 1989 pre-waiver evaluation of this Defendant; David Lee Bell, a former Richland County Sheriff investigator who interviewed this Defendant and the Co-Defendant concerning the Richland County August 1988 armed abduction and carjacking incident; William Welch, a South Carolina Department of Corrections officer who investigated the 1995 prison riot; James Cooper, a SCDOC Correction Specialist who was stabbed allegedly by the Defendant during the 1995 prison riot; and SCDOC Assistant Director Dennis Patterson concerning the 1995 prison riot and the Defendant's placement history within the SCDOC. The State also presented twenty-six (26) exhibits.[i]

Over the objection of defense counsel, family members of the deceased victims were allowed to make statements to the Court. Since no jury is involved with this resentencing hearing and therefore no prejudice, this Court's belief is that allowing them to speak demonstrated respect for their losses.

Discussion

Prior Proceeding

The Defendant's original sentences were issued on November 12, 1990, after he entered pleas of guilty to the Chester County February 1988 kidnappings and the murdering of 18 year old Scott

Stephenson (Scotty) and 21 year old Renee Crowl Rollings (Renee) and to two (2) armed robberies charges before the Honorable Donald Rushing, a South Carolina Circuit Judge. The Defendant received consecutive life sentences to the murder charges and consecutive 25 year sentences to the arm robbery charges. Due to the prior felony convictions stemming from the Richland County armed abduction and carjacking, his life sentences were without the possibility of parole (LWOP).

Because the prior sentencing proceeding was conducted consistent with death penalty protocols, a substantial record related to the law and facts exists.[ii] The following is the Judge's announced ruling as to aggravation.

> Gentlemen - - - I find beyond a reasonable doubt and I so conclude that the State has proven beyond a reasonable doubt the existence of the aggravating circumstances, that being in this particular case, that the defendant Robert R. Moore, III and Theodore Harrison, Jr., each of them have committed the crime of murder while in the commission of the crime of kidnapping in regards to the murder and kidnapping of Renee Rollings. I further find that the defendants Robert R. Moore, III and Theodore Harrison did commit the crimes of murder while in the commission of the crime of kidnapping in regards to the murder and kidnapping of Scott Stephenson. I also further find and conclude that each of them, Robert R. Moore, III and Theodore Harrison, Jr., did commit the crime of murder while in the act of larceny while armed with a deadly weapon with regards to the death of Scott Stephenson and Renee Rollings, two separate counts. I further find that each of them, Robert R. Moore, III and Theodore Harrison, Jr., did murder two persons by one act or pursuant to one scheme or one course of conduct, that being the murders of Renee Rollings and Scott Stephenson. The court makes all of these findings based on the evidence presented to it and before it both in the guilt phase and the sentencing phase beyond a reasonable doubt. Murder is the unlawful killing or the killing of another human being with malice aforethought either expressed or implied. I find that all the elements of that crime were presented to the court; further, I find that the crime of kidnapping statutorily involves the abducting of another person away without lawful authority. I find all of those elements and facts to be in the record of this case beyond a reasonable doubt. I find that the crime of armed robbery being the larceny or the taking of the goods or personal property of another taken while under the force or threat of violence being the robbery without their permission and with the use of a deadly weapon, to wit, a pistol, to be proven beyond a reasonable doubt. I further find that the proof of

> the two murders being pursuant to one scheme or one course of conduct, the murders of the two individuals, be proven beyond a reasonable doubt. I make all of these findings and conclusions beyond a reasonable doubt. It has to be the aggravating circumstances in each of these cases and I so further find and conclude.

Judge Rushing's findings and conclusions were not challenged on appeal. Additionally, no evidence was presented at the present hearing to suggest Judge Rushing's findings and conclusions were incorrect or erroneous.

Judge Rushing imposed a life sentence on indictment 125 (murder) and stated this sentence was consecutive to all other sentences. He announced, as to indictment 126 (murder), a life sentence and stated the sentence was consecutive to all other sentences imposed. He announced, as to indictment 122 (armed robbery), a term of 25 years. Again he announced the sentence was consecutive to all other sentences imposed on this Defendant. As to indictment 121 (armed robbery), the sentence was a term of 25 years. Again, he announced that the sentence was consecutive to all other sentences imposed on this Defendant.

Miller and Byars Directive

As previously stated, from Aiken v. Byars, the purpose of the present resentencing hearing is to allow the inmate to present evidence specific to their attributes of youth and to allow the sentencing judge to consider such evidence in the light of its constitutional weight. This Court has examined the evidence presented to it in the frame work stated by Miller including the following factors:

(1) The chronological age of the offender and the hallmark of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence"
(2) The "family and home environment" that surrounded the offender

(3) The circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familiar and peer pressures may have affected him;
(4) The "incompetencies associated with youth—for example the offender's inability to deal with the police officers or prosecutors (including on a plea agreement) or the offender's incapacity to assist his own attorneys"
(5) The "possibility of rehabilitation".

When considering the evidence specific to the offender's youth, the sentencing judge must consider youth in determining a proper term of imprisonment, including LWOP, which proportionally punishes the offender for the specific homicide offense, or offenses as in the present case, committed by the juvenile offender.

Therefore, the factual inquiry is to examine the facts of the crime that lead to the LWOP sentences and the individual offender's characteristics of youth that came into play into committing the crimes. After doing so, this Court's duty, under Miller and Aiken v. Byars, is to issue sentences that are proportional both to the offender and to the offenses; and therefore constitutional.

Since Aiken v. Byars granted LWOP juvenile inmates the right to a resentencing hearing and to allow "the inmates to present specific evidence to their attributes of youth", this Court will first examine the evidence presented by the Defendant.

Dr. James Garborino

As stated, Dr. Garborino was the Defendant's primary witness concerning the Miller factors and the Defendant's juvenile characteristics. Dr. Garborino's opinions were presented through his February 12, 2018, testimony and in his February 9, 2018, written report.

During the hearing, Dr. Garborino testified that the Defendant's childhood was "clearly" effected by his father's absence and his father's alcoholism, his mother's pre-occupation with making ends meet and lack of supervision. He classified the Defendant as a loner and so he was

easily disconnected and was primed in adolescence to be drawn into negative relationships with violent and antisocial people. The doctor opined that his father not being around caused the Defendant to feel rejected. He reasoned that it was common for kids to see a parent's absence as rejection. He also shared his feeling about the embarrassing effect having an alcoholic parent which results in low self-esteem. He also spoke about the negative effect of corporal punishment (calling them marks, whippings and beatings) and the negative effect it had on the Defendant. He also mentioned the effect that the lack of supervision had on the Defendant. As indicated in "reports" the Defendant began drinking and using marijuana at 11 or 12, and his lack of interest in school which all lead to his being vulnerable to peer influences. Dr. Garborino also stated, however, that the Defendant's childhood was not as full of negativity as many who end up in this situation but he clearly had difficulties.

In his written report, the doctor begins by stating that (1) he is not offering any clinical diagnosis of the Defendant, (2) that he does not excuse the Defendant's behavior, but rather offers an explanation of "how it could arise" from the Defendant's circumstances and experiences over the course of sixteen years before "the" murder; and (3) that he offers his "developmental analysis" in light of the Miller decision.

Next, the doctor gives his conclusions that he (1) does not believe the Defendant is permanently incorrigible. He further opines (2) that at the heart of the matter is the fact that the criminal nature of Theodore's behavior at 16-years-old could not and did not predict accurately what he could and did become as an adult, because his potential for rehabilitation were masked by his youth at the time of his original sentencing".

Dr. Garborino then provides his developmental analysis using the Miller factors. He states that the issues presented in the case of Theodore Harrison were: (1) his criminal behavior reflected

immature impulsiveness due to his brain development; (2) his criminal behavior was the result, in part, of the dysfunctional family in which he grew up and his underlying temperamental vulnerability; (3) he was drawn into the crime by his Co-Defendant (a youth with a history of anti-social and criminal behavior) as a teenager; (4) he was not equipped to participate fully in his defense (making a short-sighted decision to accept a plea that sentenced his to life without the possibility of parole); and (5) finally the criminal nature of his behavior at 16-years-old could not and did not predict accurately what he could and did become as an adult because his potential for rehabilitation was masked by his youth at the time of his crimes.

Dr. Garborino makes a sweeping statement that, "as a 16-year-old boy", this Defendant "demonstrated immaturity of thought and emotional control, impetuous and impulsive action, and failure to appreciate the full consequences of his behavior". The doctor then provides a general explanation of the adolescent brain's biological development and hormonal influences that, in his opinion, "underlie the Supreme Court's recognition that adolescents are a special class".

The following is the factual information contained in the doctor's written report that is specific to this defendant's youth: this Defendant did not appear to have been the victim of chronic or severe trauma during infancy and early childhood. He experienced difficulties during childhood and early adolescence due to the loss of his father to alcoholism and "severe" physical punishment at the hands of his mother and grandmother. He was not profoundly damaged as he entered adolescence and eventually early childhood.

This Defendant displayed a very passive and detached temperament. This Defendant stated about school, "I was there, but I always wanted to be someplace else.....I just lost interest".

This Defendant began drinking heavily and using marijuana at eleven and stated "I usually drank by myself". He was suspended in the 9th grade for drinking at school and had to repeat that

grade. He dropped out of school at age fifteen, was drifting through life at that point when he began hanging out with his Co-Defendant.

The doctor stated this defendant was "lost" as a teenager and subject to negative influences, including the negative influences of his Co-Defendant. The doctor further stated as a fact that this defendant's "arrest for the extant offense was the only arrest in his record prior to his present incarceration".

The doctor states that this Defendants "behavior" in the murders "appears" to have been linked to the kind of "impulsive" and "stupid" behavior often demonstrated by adolescents in general when in crisis, particularly in the presence of peers - - in his case the negative influence of his Co-Defendant Robert Moore. The doctor reiterates that it was the Co-Defendant's influence, coupled with this Defendant's passive and disconnected temperament that led him to participate in the crime he is being resentenced.

In describing his adolescent "crime", the doctor quotes this Defendant,

> It started when he wanted me to ride to Florida with him. I said okay, so we stole his parent's car and ran out of gas in Florida. It was fun. He called his parents to come get us and they did. Later Robert dropped by in a stolen truck and said we should drive to Columbia. He had a check that he stole from his father - - -, it was his income tax refund check. We tried a bank and a check cashing place, but they wouldn't cash it. Then he used a Sear's credit card to buy stereo equipment and wanted to go to NYC. Then he wanted to play with guns --- not my thing - - - and he wanted to rob a gas station and shoot stuff. Instead I made up a story and we got some gas.

The doctor further quotes this Defendant referencing the crime he is being resentenced as saying, "I had a gut feeling of it not being right, but I still went ahead. I couldn't for the life of me say no to him."

The doctor then explains the "Adverse Childhood Experiences" risk factor analysis approach endorsed by the Center for Disease Control. The doctor explains that assessing developmental damage from childhood experiences, the response to the ten risk factors is relatively low with the general population, but relatively common to have a high number with individuals charged with murder. In applying these "Adverse Childhood Experiences" risk factors to this Defendant, he only had a score of three out of ten. The only risk factors noted by the doctor that applied to this Defendant's youth were (1) parental separation, (2) being physically abused, and (3) being afraid he would be hurt by his punishing mother and grandmother.

In the doctor's conclusion, he states, in part, that this Defendant made "the" bad choice to follow his Co-Defendant's lead in the murder of Bryan Stephenson and Renee Rollings. "This bad choice" the doctor opines, reflects developmental issues that have in many ways been driven by forces over which he had little or no control - - - the immaturity of his adolescent brain, and, most notably, his own biologically-determined temperament that made him vulnerable to the anti-social influences of his Co-Defendant.

The remaining analysis offered in Dr. Garborino's report does not focus on the Defendant's characteristic of youth nor the crime; but rather assesses the Defendant's passage from "adolescence to a more pro-social" young adult in the prison system; including his confinement in solitary confinement after his involvement in a prison riot and his alleged role in the stabbing of a guard. The doctor praises this Defendant's come back from his "brink of psychic extinction" through his intellectual and spiritual development and his participation in numerous and various prison programs. The doctor expresses his view that this Defendant has a "mature" understanding of himself made possible because of the processes of neurobiological maturation.

The doctor expresses his opinion that this Defendant is a good candidate for release from prison "with the guidance and support of release programs developed for and in consultation with him". He, too, references this Defendant's work as a peer mentor as evidence that his life is on a positive trajectory.

In regards to this Defendant's youth, the doctor wrote, "His youth at the time of his crimes made it difficult to justify the conclusion that he was a fully and permanently formed character unlikely to be a good candidate for rehabilitation and a productive pro-social life in adulthood".

The remaining two witnesses called by the defense related only to Miller factor number five (5), the possibility of rehabilitation.

Dr. Michael Hendricks

Dr. Michael Hendricks was presented as an expert in Forensic Psychology, Psychopharmacology and Suicidology. Dr. Hendricks was presented to primarily address issues surrounding this Defendant's attempted suicide and institutionalization while at the SCDOC. He explains the suicide attempt and hallucinations as a normal by product of someone locked in solitary confinement as long as this Defendant was confined.

In explaining the effects of solitary confinement in the human brain, the doctor references several historical research studies including a 19th century German study, a 1950's University of Wisconsin study with monkeys, and a 1963 Stanford prison experiment. [iii]

Dr. Hendricks is somewhat critical of the SCDOC's management of this Defendant while in solitary confinement due to no "mental diagnosis" earlier for this Defendant. The doctor indicates that once this defendant was moved to Special Methods Unit (SMU), the mental issues were

revealed, properly medicated and his symptoms faded. Once this Defendant was off his meds, his symptoms returned and, four months later, he attempted suicide.

The doctor testified that in 2012 that the Defendant was deemed to have grown and emotionally matured since the riot incident. Dr. Hendricks stated that those who attempt suicide are more likely to attempt again, but often do not harm others. He pointed out those with psychotic disorders and depression were no more likely to be dangerous to their community but were more likely to be victims of violence. Dr. Hendricks believes the step-down program is great for rehabilitation. Before the program began, prisoners from solitary would be released into the community and were twice as likely to reoffend as the inmates released from general population.

Dr. Hendricks believes that since Harrison did not get in trouble the entire time he was in solitary confinement that there has been some development. Hendricks further indicates this by the fact that the defendant was able to get his GED within 6 months of beginning the classes was a positive sign indicating progress.

The doctor also acknowledged that a February 2016 report indicated that Harrison was having homicidal thoughts.

Ms. Jessica Jiminez

Ms. Jessica Jiminez, the step-down coordinator at the SCDOC was called to testify for this Defendant. She supervises this Defendant in his capacity as facilitator. The step-down program is used for inmates who are well behaved while in solitary confinement so that they may have an easier transition into general population. The program was created in 2015. She stated she screened the Defendant, and that she admitted him into the program. The Defendant was in the intensive men's program which is designed for inmates serving between 30-40 years. She stated that he did

"extremely well" in the program. This Defendant graduated from the program in a year and had no disciplinary issues. He did so well that he was asked to stay on as a mentor and facilitator for others going through the step-down program.

Since graduating from the program and becoming a facilitator, the Defendant has begun teaching classes. He teaches multiple classes, mentors many inmates, and has had no issues whatsoever. She states he is a hard worker and that he is one of the smartest and most well-behaved inmates there. He prevented an altercation between two inmates. The classes he has successfully completed include life skills, expressive writing, victim impact, anger management, art therapy, creative writing and a business class.

This Defendant gets to go to the law library every day, teach classes, and interact with other inmates. The step-down program goes on within the prison walls with correctional officers there in case something goes wrong. In the step-down program, he gets to eat meals with general population and use canteen privileges of general population. He spends some of his day with them, and his pod is at the same facility where he will be released into someday. Ms. Jiminez indicates, if he desires, he could be a facilitator for the rest of his life in prison.

Theodore Harrison

The defense closed its presentation with this Defendant making a statement to the Court and to the victims' family members.

In his statement, the Defendant apologizes, takes full responsibility for his actions. He states he was unaware of the consequences at the time he committed these acts, but he apologized nonetheless. He apologized to the victims' families and understands they may never forgive him, and he states he is still trying to forgive himself for what he's done.

His statement to the Court moves away from his criminal offenses and turns to himself and his post-sentencing incarceration. He stated when he first went to prison he had to make a choice. Either fall victim to prison traps, drugs, gangs, violence, misery, or advance in life. He alleged that he tried to advance his life by getting his GED and vocational training, and then enrolling in college. He said he pled guilty to the charges that got him into super max because he says he was told that he would be out of there in 6 months. But that did not happen.

While in super max, he realized they were treating the prisoners inhumanely by not providing them with anything outside of 2 books. He said it was "barbaric" and that the inmates there were deprived of a conscious. So, he began studying the law and filed a civil action regarding the denial of books, magazines, or anything that would expand the mind. The Fourth Circuit Court of Appeals agreed to hear his case after it was dismissed by the District Court of South Carolina.

He claims that he was recommended 13 times by the super max committee to be released into general population, over a period of 10 years. However, each time he was ultimately denied by the board.

In 2005 he was released after a week's notice. He stated he was not mentally prepared for the SMU. While there, people would constantly be yelling and banging on the doors and walls. People would throw feces at each other in the showers, and in front of him. He woke up in the middle of the night with "67 bugs crawling" all over him. He saw his shower shoes floating across the floor because people flooded feces and water all across the floor. He started going crazy and thinking that maybe this stuff wasn't really happening. He was hearing things, hearing about plots to kill him, and having visions of people stabbing him to death in the cell. He was committed to Gilliam.

He stated he did well there, taking medication for the problems he was having. He was released back to SMU. Before leaving the nurse told him he would still receive his meds. He said that for

two weeks they refused to give him his meds. He started seeing people jump out of the ceiling with swords and machetes. So he started cutting his arms because it made him start feeling something, because he couldn't feel anything at all. They took him to a holding cell, where he starting hearing things coming through the walls. He found a razor on the floor and had to make the pain go away.

He claims after that, he truly began striving to better himself and to make his mama proud. He began listening to his counselors and psychiatrists who told him to analyze everything before making decisions.

He stated he filed a second lawsuit because the committees would not release him into general population based on his affiliation with the 5%ers. He said it was a violation of his constitutional rights because outside of the prison system, the 5%ers were recognized as a religious group, not a gang. The District Court held that the 5%ers was a religious group, but that because the prisons were using the least restrictive means, they were not violating his constitutional rights. He explained that they said he could practice his religion in solitary confinement. The Fourth Circuit overturned the 14th Amendment Due Process claim (for not giving him a classification hearing for over 11 years) and it is pending trial in the District Court.

He has four classes to go before he completes his paralegal degree. He completed the step-down program. He stated he has a law firm job, and has been offered jobs in other areas. He is researching for the law firm while he is incarcerated.

Lastly, he reiterated that he is sorry for what happened and explained that he understands "firsthand" mental pain. He explained that it burns in the brain. He stated he is truly, truly sorry for the pain.

State's Presentation

As previously stated, the State presented seven (7) witnesses at the hearing and twenty-six (26) various exhibits. The witnesses can be grouped into three (3) separate categories for purposes of the substance of their testimony. Two (2) of the witnesses were called concerning the August 1988 Richland County armed abduction and carjacking to which this Defendant pled guilty and received a thirty (30) year prison sentence. The second category of witnesses concerning the February 1988 Chester County kidnappings, armed robberies and murders which are the subject of the present resentencing hearing. The last category of witnesses come from the SCDOC and presented testimony concerning the 1995 prison riot and also testimony as to this Defendant's placement in the SCDOC.

Lonetta Brawley

Lonetta Brawley was one of the victims in the August 1988 armed abduction and carjacking. She related that on August 12 at about 11:30 p.m. after finishing grocery shopping at the Kroger she and a friend, Andre, were approached by two young men, Mr. Harrison and Mr. Moore, in the parking lot and were asked "Mam, do you know of any happenings around here?". After responding that they did not know, the two young men left the area. However, they returned about three to five minutes later with a shotgun. Ms. Brawley testified the men ordered her and Andre to "get up". She testified she was told to go around to the driver's passenger and her friend, Andre, was told to get in the back seat. According to Ms. Brawley, she first saw the gun when Moore had it in his possession. Ms. Brawley stated that Mr. Moore drove the vehicle and she sat next to him in the passenger seat. Harrison was in the back with a shotgun pointed at Andre. She said that Moore noticed the gas was low and he decided to stop. She said that once Moore got out to pay for the gas, Andre knocked the gun out of Harrison's hands, yanked Harrison out of the car, and

told her to run. She said Moore ran back to the car and got the gun, but Andre was already running. Moore said to Ms. Brawley, pointing the gun at her, "Call him back in" and she called him, but he said "no, you can shoot," and told Ms. Brawley again to run. Harrison was back and then he had the gun, and then she turned and fell out of the car, and the Defendants drove off.

Investigator David Bell

Investigator David Bell of the Richland County Sheriff's Office was called as a witness concerning his investigation into the Richland County August 1988 armed abduction and carjacking.[iv] Investigator Bell testified that he and Investigator Thomas went to the scene of a kidnapping at a Kroger on Decker Boulevard. On their way out of town, the victim, Ms. Brawley, notified the Defendants that they needed to fill up gas or they would run out. They stopped at a Fast Fare and Ms. Brawley and her friend, Andre were able to escape. Defendant Harrison was originally holding the shotgun. Brawley and her friend described the Defendants, the vehicle, and that the Defendants had mentioned going to Florence. Investigator Bell put out an all-points bulletin, or a BOLO and included that the suspects were armed and considered dangerous. The officers tracked the vehicle that was left in the Kroger back to a Robert Moore, Sr. in Chester County. They spoke with a relative who said that Robert Moore, Jr., son of Sr. took his father's car. They spoke with the 11 year old sister of Robert Moore, Jr. (Co-Defendant) and she said that Moore often would hang out with Theodore Harrison, also from Chester County. Inventory of the truck revealed ten 12 gauge shells and seven .22 caliber bullets, $100 in change, a cassette player, bags of clothes, and some other items.

The following day, the Defendants were stopped by New Jersey State Police for crossing the center line, which then led to a BOLO hit. The officers patted down the Defendants, and Mr. Moore

had a shotgun shell on him. They then searched the vehicle and found shotgun shells under Harrison's seat. Ms. Brawley's purse was also located. The search revealed the shotgun in the trunk of the vehicle loaded with four shells, along with the groceries from Kroger. The NJ State Police arrested the Defendants for unlawful possession of a firearm and for possession of a stolen vehicle, and contacted investigator Bell and told them of the situation. NJ State Police transported the Defendants down to South Carolina and Bell and Thomas took the statements of the Defendants.

On August 20 and 22 of 1988, Moore gave statements after being advised of his Miranda rights. Mr. Harrison was read his rights on August 20, but did not give a statement. On August 22, he was reread his rights and produced a statement. Harrison's statement was consistent with that of Mr. Moore, and with those given to NJ state police. Harrison stated that he woke up that morning and while mowing his lawn, Moore rode by in the father's truck. They spoke and agreed to go to Columbia. Harrison specifically said that Moore wanted to go to the beach, so Moore was going to rob someone and steal their car to get there. Harrison said that prior to their arrival in Columbia, while in Simpson/Winnsboro, Moore had stashed some things in the woods, so they stopped there and Moore left, got the things, and came back. However, Moore stated that Harrison knew where they could get a pistol, so after they met at Harrison's house, they went to Simpson to get the pistol, and that both of them went inside a house in the woods to get it. When they went inside, nobody was there, and they found bolt cutters and binoculars. They were leaving and were confronted by a black man who they asked if they could hunt the animals they saw around the property, and he told them no. He did not know that they had already been in his house. Moore stated that they burglarized a house between Simpson and Columbia, and then proceeded to Columbia.

Harrison stated that once in Columbia they decided to "get" a car. They found a "nice" car at the grocery store, parked behind it, asked the couple "where the party was at", and then Harrison pulled out the shotgun and told them to sit down and be quiet, directing them into the car. According to Moore, Harrison had the gun barrel pointed at Andre Chavis, Ms. Brawley's friend, seated in the back seat. They went to the gas station 20-25 minutes down the highway. Once there, Harrison got his wallet out to give $10 for gas money to Moore. Moore left to pay, Harrison reached to put his wallet back in his pocket, and Chavis knocked the gun out of Harrison's hands, running away. Ms. Brawley ran away too, and Harrison and Chavis got into a fight, Harrison got tired so he went back to the car, and then Moore just drove away. Harrison stated that he did not know why Moore wanted the couple to ride with them. He said that he just wanted to steal the car and leave them but Moore insisted on them going for the ride. Harrison said that he loaded the shotgun so that the couple would be scared and obey. He said he never intended to shoot them.

On the way from Columbia to the beach, they stopped at a motel in Ridgeway and stole a Florida license plate off a vehicle.

Regarding the burglaries between Simpson and Columbia the investigator stated that Mr. Moore implicated both himself and Harrison, while Harrison only really implicated Moore.

Bell does not remember which one said it, but one of them, in response to "What were you going to do to these people?" said, "We were going to dump them somewhere." Bell and Thomas connected the dots regarding abandoned vehicles in both crimes, the community of the murder victims and the community of the Defendants in the kidnapping case, and then told the Chester County authorities of the similarities.

Sixth Circuit Solicitor Investigatory Freddy Stewart

Freddy Stewart, who was an investigator with the Sixth Circuit Solicitor's Office in 1988, was called concerning his involvement with the kidnappings and murders of Scotty and Renee. He stated that the two young people disappeared on the night of February 8. His investigation showed that they were out independent of each other in Chester. They had apparently talked earlier and agreed to meet somewhere that night to talk, and apparently they did. They met at a car wash on Lancaster Street just outside the city limits of Chester to talk, and that was the last time that anybody saw them. The female, a Renee Rollings, was in a white Chevrolet Cavalier, a Z-24 model. Brian Scott Stephenson, was in a white Chevrolet Camaro, an Iroc Z-28 Camaro. Both cars were new. Early in the investigation, all the investigators knew was that the two young folks had just vanished. On the afternoon of February 9, the families reported the victims missing to the Sheriff's office. Two separate families made two separate missing person's report.

At the time the two missing person's reports were received, unbeknownst to law enforcement, their cars had already been located and property from the cars had already been located. Some contents from the cars, including two ladies purses, clothing and some work uniforms, had been located the morning of February 9th in some dumpsters in Fairfield County. One of the ladies purses belonged to Ms. Rollins, and the other belonged to a friend of hers that had been with her earlier during the night she disappeared. Ms. Rollings had a four-year-old son at the time and some of his clothes were found in the dumpster. The work uniforms found in the dumpster belonged to Mr. Scott Stephenson.

The cars were actually seen early the morning of February 9th at the interchange of I-77 and 277 in Columbia, wrecked and abandoned, and were tagged by a state trooper. The cars were parked on the shoulder of the interchange because they had been damaged. The cars had been run

together and were damaged enough that they were both inoperable so they had just been left on the shoulder of the road, abandoned. Once the cars were located, officers arrived from SLED Forensic Teams to conduct an investigation. That investigation revealed latent prints from both automobiles. At this point, it was not a murder investigation, but rather two missing persons investigations. After February 10th, this investigation became a big deal in the community. Numerous SLED agents were called in to assist in the case. Law enforcement were investigating it every day, running down every lead that came in. The families put up a reward to try to get some information from the community, but that lead nowhere.

Investigator Stewart testified that "Chester is a pretty small town and things like this don't happen in Chester". He also stated that the community itself would go out and look and see if they could find anything. He also stated that he had a stack of newspaper articles and that the local newspaper ran something on the missing persons every day. He stated that he was getting leads every day, but nothing was panning out.[vi]

Stewart testified that on March 19th a twelve-year-old child was out walking with his father and his uncle along Highway 9 in the Richburg community picking up aluminum cans to sell for scrap. As they walked together, the child ran up a driveway to an old, abandoned home site when he ran up upon the two deceased bodies. The young boy, his father and uncle went to a nearby house and called the Sheriff's office to make the report.

Investigator Stewart, along with other law enforcement personnel, went to the scene of the murders. He stated that it was two bodies lying about 200-feet from the road down a driveway. At this point, Highway 9 was still a two-lane highway and the driveway was to an old home site where only a chimney remained with some type of outbuilding in the back. He stated that he found

two deceased bodies lying right next to each other that appeared to be fully clothed, but they had been there for quite some time.

They were not immediately able to identify the bodies, but he felt like he knew who they were from the description of the clothing they were wearing.[vii] He stated that they were able to make some identification due to the jewelry that they were wearing. Mr. Stephenson's wallet was in his pocket, but it was empty. He stated that he could tell that they had been there for some time due to the state of decomposition that had occurred, and some animal damage. The scene was left untouched until forensic pathologists arrived from Newberry. Both victims appeared to have been shot and the SLED Forensic team recovered a fired projectile from the ground underneath the head of one of the victims.

The bodies were brought back to Newberry where autopsies were performed on the morning of March the 20th by Dr. Joel Sexton. The projectile found at the scene was just beyond and beneath the head of the male victim, it was located twelve-inches from his head and about two-inches into the ground. The autopsy report found that Mr. Stephenson had been shot twice. The first shot was in the area of the right temple. The bullet penetrated and went through his head and then lodged itself under the scalp of the left side of the head. It appeared as though he fell and immediately collapsed after that shot. He fell on his right side, had his arms outstretched, and after he fell he was shot a second time behind and below the left ear. That bullet penetrated up through his head, exited the top of the head, and was located in the ground. Sexton's investigation showed that Ms. Rollings saw what was going to happen because she threw her hand up in a defensive motion to cover her face. She was shot one time, the bullet entered the back of her right hand and it exited just below the index finger of her right hand. It then struck her in the eyebrow region above her right eye and it penetrated about one-inch into her skull. The bullet that was in her skull

and the bullet that was found beneath the scalp of Mr. Stephenson were removed. Investigator Stewart stated that the pathologists felt that Mr. Stephenson and Ms. Rollings had been shot the night that they were abducted, some forty-one days prior to being found.

Stewart testified that even though the case was now a double homicide case, they still lacked information to develop any suspects for the murders. At this point he stated that they had no suspect, no weapon, and no motive, other than the stealing of the cars. However, they now knew that Ms. Rollings and Mr. Stephenson had traveled roughly 10.9 miles to 11 miles from where they were last seen to where they were murdered.

He stated that suspects were developed in early July 1989 after the Attorney General's office was conducting an investigation into a completely separate matter at the Department of Corrections. A member of the Attorney General's staff was told by an inmate that two other inmates in the DOC knew an awful lot about a double murder in Chester and the two names were given to law enforcement. Those names were Robert Moore and Theodore Harrison. Fingerprints from the vehicles were found to have matched these two individuals. After that, Mr. Moore and Mr. Harrison were interviewed.

Investigator Stewart explained the different versions of statements made by this Defendant. In his first version, this Defendant gave a story that he was up here (in Chester) and Robert Moore came and picked him up in a new car. This Defendant asked Robert Moore where he got the car and he said, "I took it" and asked Harrison if he wanted one. That was pretty much the first statement Harrison gave as related by the investigator.[viii]

The investigator explained that in this Defendant's second statement, Harrison admitted that that he had a gun on him in February of 1988.

In his third statement, this Defendant elaborated even more and admitted that he was carrying a .22 and a shoulder holster, and he claimed that Co-Defendant Moore was carrying a .38 revolver. It was not until his third statement where this Defendant really admits to being part of, in the investigator's words, "all of this". In fact, this Defendant states "I was at the passenger side and we drew our guns". It was not until the third statement where this Defendant indicates that they both walked up to the car, they both were armed, and they both pulled their weapons and pointed them at the victims and took the cars. In fact, the investigator notes, that this Defendant talked about how he had walked around Chester that whole day carrying a loaded pistol. The investigator explained that it was in the third statement where this Defendant described how they robbed these folks for their cars.

However, the investigator acknowledged that this Defendant's third statement and the first statement given by his Co-Defendant Moore were almost identical, except each man claimed the other was the gunman who fired the fatal shots. The investigator acknowledged that it was a pretty smart thing for a teenager to know that he cannot admit to being the trigger man.

The investigator acknowledges that in the Co-Defendant's statement, he describes in a little bit more detail the ride, the 10.9 mile ride from the convenience store/carwash to the murder scene. According to Moore, when they initially approached the car, Ms. Rollings was seated at the steering wheel of the Z-24 cavalier. The Z-28, Mr. Stephenson's vehicle, was parked beside Ms. Rollings' vehicle. Mr. Stephenson had left his vehicle and was seated in Ms. Rollings vehicle when the two Defendants drew their guns and approached the vehicle and stated, "We want the car". The Defendants got into the back seat of the car. Moore was seated behind Ms. Rollings while Harrison was seated behind Mr. Stephenson when they forced them to pull away. Mr. Moore said that Mr. Harrison took them out of the car and walked them into the woods. He described as

Mr. Harrison was walking them into the woods, Ms. Rollings was begging for her life "please don't kill us" and that she was crying. It was related that Mr. Moore said that he heard several shots and then Mr. Harrison came back and got in the car and they left. They came back to Chester to get the other car and then they left Chester. After the two men took Mr. Stephenson's Z-28 they went back home, down 321 through their neighborhood. Investigator Stewart stated that Mr. Harrison stated that "we cruised through the neighborhood". Stewart indicated they were showing off these new cars, went to a service station in Winnsboro and gassed up the cars. Right off the 321 bypass, they pulled into the dumpsters and threw away the contents of the cars. Stewart indicated that the Defendants wanted to clean out the cars and tried not to leave anything to tie anybody back to the cars. They emptied the cars, went down Highway 34 to the Interstate, got on the Interstate, and went south towards Columbia. They indicated that they ran the cars together getting off 77 onto 277 and disabled the cars. After the cars were disabled, their plan was to walk about half a mile to a service station and they were going to call someone from a pay phone to pick them up. Mr. Moore's sister lived in Columbia at that time. She came and picked up both of the Defendants at the Gulf Station on Park Lane Road. While they waited for Mr. Moore's sister to pick them up they threw the keys into trashcan in the restroom. Investigator Stewart related that the Defendant's removed a radar detector and fuzz buster from the cars.

The investigator explained that Mr. Harrison had acknowledged carrying the firearms home with him. The guns were located by Mr. Harrison's mother, he offered no explanation why he had taken his Mother's pistol and related to his mother that he was keeping the .38 for "a friend".

Stewart also explained that Mr. Moore had taken a check from the mailbox of his residence. The two Defendants took the check to a check cashing store in Columbia and attempted to cash it and they were refused, and apparently the people at the check cashing place called Mr. Moore's

residence because Mr. Moore's Mother questioned him about the check when she picked them up in Columbia. Once the two men got back to Fairfield County they agreed they were not going to talk about the murders anymore.

Investigator Stewart also related that authorities interviewed other individuals. One such individual was Matthew Cohen. Mr. Cohen acknowledged that he brought both of the Defendants to Chester on February 8. Mr. Cohen says that he saw them with guns. Mr. Cohen's girlfriend, Ms. Rosanne Strong, also stated that she specifically saw Mr. Harrison with a gun.

The investigator explained that he worked closely with the solicitor at the time when the solicitor made the decision in May of 1990 to serve both Defendants and their attorneys with the notice of intent to seek the death penalty. The investigator explained that about two months prior to the date of trial, the solicitor made the decision to seek a plea for life without parole at the time in order to bring the legal matters to an end.

The investigator also indicated that there was no evidence that either the two Defendants knew the victims.

DJJ Specialist Max Dorsey

Max Dorsey, DJJ Program and Project Specialist was called as a witness concerning the Pre-Adjudicatory Transfer (waiver) Evaluation performed on this Defendant in July of 1989. Max Dorsey testified regarding Dr. Craft's report. Dr. Craft was the Community Psychologist with DJJ. Craft conducted multiple tests on Harrison and interviewed Harrison's school's principal and his mother. He determined that Harrison thought in conventional terms and showed no indication of major psychiatric illness at that time. He found Harrison to be a suspicious and inaccessible young man who distrusted other people, accepted little responsibility for his actions, and felt no remorse

for his actions. He laid blame on his Co-Defendant. Harrison accepted no responsibility for his role in the murder nor the similar crime he committed in Richland County. Harrison maintained his innocence at that time. He expressed absolutely no empathy for the victims of either his past crimes or then currently charged crimes. He was reportedly more concerned with his legal outcomes. Harrison was found to have an IQ of 95, which is within the average range of intelligence. Dr. Craft did not find anything unusual regarding Harrison's development or upbringing. Craft found that Harrison had three sisters and none of them had any contact with the DJJ or any court. Harrison's mother's husband at the time of the incidents had never had contact with the court. Harrison's father was a likeable person but had a drinking problem, so Harrison's mother divorced the father. Harrison's father was therefore not around. His father had no criminal record.

There was no evidence of physical abuse from either parent. The mother admitted to using corporal punishment from time to time, but that it was rare. She took the children to Red Hill Baptist Church every week and tried to inspire them to have good morals. Harrison was baptized and was an usher at that church. His mother indicated Mr. Harrison was always in good health and there were no pregnancy issues with him. She also indicated she was not aware of any drug or alcohol abuse but that she had heard he began drinking alcohol sometime in high school, however, it was only occasional. The family participated in activities together such as outings and reunions with relatives. His mother stated Theodore was very helpful in the community with the elderly.

Dorsey testified that Judge Barrineau (the Judge who ordered the transfer of Harrison from family court to general sessions) believed that Harrison was mature and sophisticated enough that he could not be rehabilitated in a juvenile facility.

Assistant Director Dennis Patterson

Dennis Patterson, Assistant Director of Operations at the SCDOC was also called as a witness. His testimony concerned this Defendant's conduct while incarcerated. He related that in 1992, prior to the 1995 prison riot, this Defendant had smashed another inmate's radio. Then, the prison riot in 1995 occurred. The five people who initiated the riot were 5%ers, a group considered to be a "security threat group," or prison gang. Harrison was one of the rioters and a known 5%er. After the riots occurred, he was placed into the maximum security unit of the prison system. Maximum security is for the worst of the worst. Patterson testified that after the riot, Mr. Harrison was considered one of the 50 most dangerous inmates in South Carolina.

At the max security unit, the inmates wear leg irons, belly chains, and cuffs at all times. They wear face shields and body suits. The guards wear extra body armor. They are not permitted to bring firearms or cell door keys beyond the threshold and into the inmate area. Inmates are not allowed to interact with others and their recreation time is spent in an enclosed, self-contained area that is built specially for them.

Prison guards and other inmates are permitted to request separation requirements upon inmates. Separation requirements make it so a prisoner cannot be housed where a prison guard works, or where the other inmate is living. Co-Defendant Moore had a separation requirement with Mr. Harrison. According to Patterson, ten people have this restriction against Mr. Harrison.

Harrison came up each cycle for review in front of the board that determines whether max security inmates should be released back into general population. His reasons for denial included his membership in the 5%ers, and his request for a book that teaches people how to make a bomb. He was denied access to the book as well.

Harrison was released from the maximum security unit in 2015. He spent 20 years there. Harrison is currently in the step-down program, which is a new program that helps those prisoners who have been locked up for long periods of time to be readjusted and re-acclimated to general population prison life.

He also testified that this Defendant was working in the library in 1992 before the riots. He was graded "95" and was noted as a dependable, reliable worker, who works well with other inmates and library clerks. The library clerks were reviewed every 6 months to determine advanced security levels and other things. He was reviewed as an "excellent worker". He was constantly rated as a good worker.

Harrison also completed vocational training where he received "perfect" scores of 99 in all classes. He was the teacher's aide in auto body repair class. The teacher marked Harrison as having a positive attitude, easy to get along with, and he was glad to have him in the department.

Director Patterson explained that in max security, the inmates get one religious book and one other book. They have no cell mate, and there are no cells across the hall from one another. There are no windows into the prison yard, but the window into the hallway is not blacked out. There are 4 levels of incarceration within maximum security, 1 being the strictest. Upon entry into the max security facility, every inmate begins as a 1. At each level you progress to, you get more rec time.

He further explained that in October of 2003, Harrison made it through all of the levels, and a review board allowed him to go to Gilliam Psychiatric Facility in August 2005. In December 2005, he was released from Gilliam and sent to Special Management Unit which is a restricted housing unit. They use special methods to handle disciplinary problems with inmates. He was still receiving his medications. In special methods/management unit, he attempted suicide in May of 2006. He remained at SMU until 2008. After 2008, he worked in the step-down program as a

facilitator until his release in 2015. Facilitators are graduates of the step-down program that are chosen by the step-down administration to remain in the program to help other inmates. This helps the facilitators in their progress towards release into general population.

SCDOC Officers William Welch and James Cooper

William Welch, an investigator with the SCDOC division of police services and James Cooper, a SCDOC special operations officer were also presented. Officer Welch testified concerning the investigation into the April 1995 prison riot. Officer James Cooper was the yard sergeant on the day of the prison riot and testified concerning his involvement as being a stabbing victim during the riot. At this time, this Court notes that the defense objected to the testimony concerning the riot. This Court is aware that this Defendant pled guilty to criminal charges of his involvement in the riot, but that his guilty plea was set aside as a result of a successful post-conviction relief application. This Court is aware that the Richland County Solicitor's Office has not reprosecuted this Defendant for his involvement in the riot. This Court allowed this testimony to be presented since it does have relevancy to the issue of rehabilitation under Miller and no jury is involved in the present proceedings which could be prejudice by its presentation.

Officer Welch explained that the riot lasted for eleven hours and was the longest riot in the history of the SCDOC. The riot occurred at the cafeteria at the Broad River Correctional Institution. Officer Welch identified the five inmates who were subsequently charged with offenses and disciplined. This Defendant was identified as one of the five inmates. Officer Welch stated that this Defendant was involved in the negotiations and was in the cafeteria at the time of the riot. Officer Cooper explained that prior to the April 1995 riot, the 5%ers were considered a religious group, but that at the time of the riots they were considered a security risk. He explained

that on the day of the riot when he arrived, he felt that there was something strange going on due to the way that the inmates were acting. He felt that there was tension within the inmate population due to a recent change in department policy concerning haircuts. Other than the allegations against Harrison for being involved in the riot, including his being stabbed by Harrison, the officer stated that he had no issues arise with this Defendant through the years.

The Sentence

In Aiken v. Byars, the South Carolina Supreme Court granted this Defendant, and other similarly situated inmates who as juveniles received LWOP sentences, the opportunity for an individualized hearing where the mitigating hallmark features of youth could be fully explored. The South Carolina Court adopted the Miller framework and directed that the resentencing court must consider:

> (1) the chronological age of the offender and the Hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risk and consequences;
> (2) the "family and home environment" that surrounded the offender;
> (3) the circumstances of the homicide offense, including the extent of the offenders 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 a plea agreement) or [the offenders] incapacity to assist his own attorneys, including a plea agreement or [the offenders] incapacity to assist his own attorneys"; and
> (5) the possibility of rehabilitation.

From Aiken v. Byars and Miller, this Court is required to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison". In performing the individualized review of this Defendant's hallmark features of youth, the Court must, and has, considered the juvenility of this Defendant in its effort of determining the proper prison sentence that punishes this Defendant for the specific criminal offenses he has

committed. In considering the specific evidence of youth attributable to this Defendant and the facts of the specific crimes for which he is being resentenced, this Court concludes that the original sentences as announced by Judge Rushing in 1990, were, and are, the appropriate sentences for this Defendant to receive for the crimes he has committed.

Because of his age (16 years and 9 months) at the time he committed his offenses, the Supreme Court has reasoned that this Defendant categorically was a member of a class of individuals that differ from adult offenders because of his "lack of maturity and underdeveloped sense of responsibility", vulnerability to negative influences and outside peer pressures, including family and peer, and evolving character and personality traits. This Court has taken into account the evidence related to this Defendant's juvenility presented as part of his resentencing and, as a result, cannot counsel against a sentence that will result in this Defendant serving a lifetime in prison.

Even though his age at the time of the crime was 16 years and 9 months, the facts of the crimes for which he is being resentenced were not the result of the hallmark features of youth such as immaturity, impetuosity, and failure to appreciate the risks and consequences. These hallmark factors of youth are antonymous to what the facts of his crimes reflect. The facts of his crimes clearly demonstrate his actions were premeditated, intentional and reflect a callous disregard for human life.

At the time of the 1989 psychological assessment, this Defendant's evaluation showed no psychiatric illnesses, average intellectual functioning for persons his age and a level of sophistication and maturity consistent with other individuals of his age. His activities and interest appeared to be age appropriate. Even though the testing and clinical interview showed he thought in conventional terms, the doctor noted, however;

> "Nevertheless, Theodore is a suspicious and inaccessible young man who distrusts others and is afraid of interpersonal involvement. He displays

> little insight, poor judgment and accepts little responsibility for his actions. As for past criminal convictions [the August 1988 Richland County armed abduction and carjacking], Theodore displays no remorse and accepts no responsibility for his role in this incident, placing blame onto his co-defendant. In regard to the offense with which he is currently charged, Theodore maintains complete innocence in this matter also and thus, continues to show a lack of remorse with respect to the current alleged offense. Finally, Theodore expresses no empathy for the victims of either his past crimes or those with which he is currently charged. While he reports feeling distressed, this appears to be related more to concern about the outcome of his legal problems rather than to genuine remorsefulness or concern for the victims."

When a person participates in the execution of two innocent strangers, the statement that "I did not understand the consequences of my actions", even by a 16 year old juvenile, lacks credibility. This statement, "I did not understand the consequences of my actions", if true some 30 years ago when these crimes were committed, is reflective more of a juvenile with a malignant heart and an incorrigible nature. This Court's opinion is that this Defendant's involvement in these crimes cannot be classified as merely "impulsive" and "stupid". Referring to this Defendant's actions as merely "impulsive" and "stupid" is intellectually disingenuous to the facts underlying these crimes.

Very little, if any credible evidence was presented to suggest his family and home environment caused this Defendant to commit his crimes at age 16 years and 9 months or would have predicted his involvement in his crimes. In Dr. Garborino's report, it is reflected that in 1988, this Defendant was a danger to himself and to his community. Dr. Garborino only notes the absence of the father due to alcoholism and severe punishment by the mother and grandmother as the "difficulties" this Defendant experienced. The two factors are only contained in the Doctor's report. Nevertheless, Dr. Garborino also references the CDC's "Adverse Childhood Experiences" that established the circumstances of this Defendant's upbringing resulted in a low score when compared to the higher scores typically associated with murders. Additionally, the record before this Court does not support the conclusion that this Defendant's home environment was dysfunctional.

The circumstances of his criminal offenses are horrific, chilling and terrifying.[ix] This Defendant's crimes were committed with another adolescent teenager. However, no evidence was presented to suggest this Defendant was under duress or coercion. These crimes were not committed while intoxicated; and no medical or psychological defect existed. This Defendant participated in these crimes with his Co-Defendant freely and voluntarily.[x] Other than a categorical explanation of the biological development of an adolescent's brain, this record is void of an explanation of why this Defendant and his Co-Defendant shared a relationship together.

The incompetencies associated with youth did not result in his inability to deal with police and did not prevent him from assisting his attorneys. At the time of his original sentencing hearing, he had already cooperated with the New Jersey police and Richland County authorities and his attorney concerning his involvement with the August 1988 Richland County armed abduction and carjacking. Also, when initially questioned by law enforcement concerning the February 1988 Chester County crimes, he provided the factually false statement that substantially lessened his involvement in the crimes and placed substantial responsibility for the crimes on his Co-Defendant. Subsequently, he created statements substantially altering his involvement. During his plea hearing he provided sworn written and oral affirmation to the facts of the case to the Court (see endnote ii).

This Defendant has shown the possibility of rehabilitation. This Court commends his efforts of rehabilitation. Nevertheless, the possibility of rehabilitation under a Miller analysis alone does not present sufficient mitigation to alter this Court's decision in light of the facts of the crimes when the deficits of his juvenility have not been sufficiently linked to his crimes.

This Court notes that Dr. Garborino was this Defendant's primary witness concerning the Miller analysis. Many of Dr. Garborino's statements concerning this Defendant's personality traits

and factual statements concerning this Defendant's youth and home environment stand in stark contrast to the facts gathered in 1989 by the DJJ professionals when the recommendation was made to transfer the cases from Family Court to General Sessions. These differences may exist due to the investigative process used by Dr. Garborino. His investigation was limited to a single two hour interview with only this Defendant and a review of documents provided to him by defense counsel. Due to an obvious lack of knowledge of the specific facts concerning the crimes; this Court lacks confidence in the Doctor's opinions as he attempts to link this Defendant's specific adolescent characteristics to the crimes for which he is being sentenced.

In his attempt to explain how this Defendant's behavior "could" have arisen from the Defendant's life experiences over 16 years before "the" murder and thereby mitigate this Defendant's criminal responsibility, the doctor states as a fact that this Defendant's "arrest for the extant offense was the only arrest in his record prior to his present incarceration." Clearly the doctor had not been provided the details of this Defendant's involvement in the crimes for which he is being resentenced because he had no knowledge of this Defendant's criminal involvement and guilty plea to the August 1988 Richland County armed abduction and carjacking of two other individuals. At the time of this Defendant's "arrest for the extant 'offense'" he had already been arrested, charged, pled guilty and sentenced to 30 years in prison for the armed abduction of the Richland County couple. Not having been provided a clear understanding of this Defendant's criminal activities as a juvenile may explain why Dr. Garborino's written report seemed to approach this Defendant's criminal behavior as a singular event.

Additionally, in Dr. Garborino's report he quotes this Defendant as saying that "he (Co-Defendant Moore) wanted to play with guns - - - not my thing". Factually, this statement is untrue. Obviously, due to only interviewing just this Defendant, the doctor accepted as true the

information provided by him. Otherwise, the doctor would have known that this Defendant had previously given false statements to police to minimize his involvement with these crimes and that this Defendant's criminal acts often included guns. This Defendant was seen by independent witnesses brandishing a gun and holster the day of Scotty's and Renee's murders, he admitted to pulling his weapon out as he approached their car and held his gun on them while in the car. He admitted to participating in the murders of Scotty and Renee and to taking possession of and hiding the murder weapon. Additionally, the doctor would also have known, that this Defendant had also admitted to being the first person to introduce a gun into the August 1988 Richland County armed abduction and carjacking.

When information gathered in 1989 is reviewed, the Doctor's conclusions such as, but not limited to, this Defendant was a loner[xi]; his father was an alcoholic; his mother was pre-occupied with work and that she used corporal punishment that can be classified as "whippings or beatings", are not supported by the record before this Court. The factual assertions made by Garborino that are inconsistent with the 1989 information could only have come from this Defendant's interview and are not supported in the record before this Court.

This Court also notes a disproportionate amount of testimony presented related to the prison riot and this Defendant's grievances about being placed in solitary confinement. Even though the SCDOC witnesses appeared credible at the hearing, whether this Defendant stabbed the officer as alleged or whether he is one of the most dangerous inmates in the DOC is not materially relevant to this Court's Miller review. A Miller review focuses on pre-incarceration conduct. Post-incarceration conduct is material as it relates only to a defendant's juvenility. What is material to a Miller review, is his ability for rehabilitation. Therefore, his post-incarceration conduct is considered for that limited purpose. This Court does not opine whether this Defendant is

rehabilitated or not, and it does not opine whether his community would be safe or at danger if he were released. This Court's opinion is that he is currently making progress at rehabilitation in the step-down program. This Court commends his progress and encourages his effort at making his mother and others in his life proud.

This Court's opinion is that Miller did make the mandatory LWOP aspect of this Defendant's prior sentences unconstitutional.

Nevertheless, after having performed the individualized review as required by Miller and Aiken v. Byars, this Court resentences this Defendant to the same sentences as announced by Judge Rushing in 1990. This Court realizes given the consecutive nature of these sentences, this Defendant will serve the remainder of his life in prison. Notwithstanding, this Court believes that the record before it establishes that these sentences properly and proportionally punish this Defendant for the crimes he has committed under a Miller analysis.

IT IS SO ORDERED.

The Honorable J. Mark Hayes, II
Presiding Judge
Sixth Judicial Circuit

June 14, 2018
Chester, South Carolina

[i] This Court has reviewed all of the exhibits presented by the parties. Evidence such as the gun, bullets and other tangible items were reviewed by the Court with the Clerk of Court while in Chester. Such items were left in the custody of the Clerk of Court.

[ii] The following is a summary of the proceeding. On November, 12, 1990, the Defendant entered pleas to six (6) charges. Two (2) murder charges and two (2) arm robbery charges. The State had served the Defendant with a notice that the death penalty was being sought and was also charged with two (2) counts kidnapping. An agreement was reached that if he entered pleas to the charges, the State, after the sentencing phase of the proceeding, upon a finding of an aggravating circumstance, would not seek the death penalty, thus withdrawing the death penalty notice. Except for the State's agreement to withdraw the death penalty notice, the Defendant acknowledged he had been made no other promises in the case.

The plea hearing was conducted consistent with the formality of death penalty plea. The Defendant was placed under oath and the sentencing Judge made a lengthy and complete record of the proceeding. The in-depth record includes, but not limited to, an examination by the Judge into the Defendant's lack of mental health problems, the Defendant's understanding of the charges against him and the fact the state had filed a notice of its intent to seek the death penalty. The record also reflects the Judge examined the qualifications of his two (2) attorneys, the Defendant's satisfaction of their work. The Judge also established the Defendant's knowledge of and waiver of his constitutional rights, including his waiver of his right to a jury trial at both the guilt and sentencing phase. The Judge also reviewed the plea affidavit with the Defendant and confirmed his understanding of the affidavit and that he did in fact sign the affidavit.

There is nothing from the initial plea proceeding that indicates this Defendant had difficulty, due to characteristics of youth, from understanding, cooperating and participating in the proceeding or with his attorneys. The uncontested facts were presented to the judge and to the Defendant as follows:

"Your honor, may it please the court? As I said in the earlier plea, on February 8th, 1988, at approximately 10:45 P.M., Mr. Scott Stephenson and Renee Crowl Rollings were in Ms. Rollins' Cavalier automobile, Mr. Stephenson having driven his Camaro at a location off Lancaster Street and Columbia, just outside the City limits, just inside the bypass; it's a convenience store and Car Wash. At that point, the two Defendants, each armed, approached Mr. Stephenson and Ms. Rollins in their car and at gun point forced their way into the car and forced Ms. Rollins to drive them out Number 9 to a location near Richburg. At that time, they turned off the road into a field road or old driveway type road and at that time the two young individuals, Ms. Rollins and Mr. Stephenson, were marched down into the woods some hundred feet or more by one or both of these defendants. Mr. Stephenson shot twice, Ms. Rollins once. They then returned to Chester, stole the second automobile, the Camaro, and proceeded to drive to Columbia by way of Winnsboro. In Winnsboro they threw out some of the stolen items from inside the car, some of the identifying items, which we will elaborate on more later. They wrecked the cars on the 277 exit ramp near – I can't think of the name of the exit now – the last exit as you go into Columbia where 277 exits off I-77, Exit 19, I believe it is , there abandon the cars; eventually spend the night in Columbia, made their way back to homes in the Blackstock area."

The Defendant stated to the Judge that he heard the facts as present, agreed with those facts and that those facts were true a statement of what he did.

[iii] He testified about a study done by German psychologists in the 19th century, in which they locked up college students in rooms with only beds. None of them lasted more than a week even though they were supposed to be there for 6 weeks. They said that they couldn't organize or even control their thoughts, experienced audio and visual hallucinations, and one student tried harming himself.

This method of studying solitary confinement was deemed unethical. In the 1950's, psychologist Harry Harley at University of Wisconsin locked up monkeys because they are social animals. It was impossible for the animals to get out. After 24-48 hours the monkeys stopped trying to get out and would just sit on the floor. After a week they started to stare blankly into space, and after a couple of weeks, they began hurting themselves. They were also responding to things that weren't actually there. Upon release, the monkeys

that were let out after just a couple of months were able to begin socializing somewhat quicker than those monkeys that were not released for a whole year.

In 1963, the Stanford prison experiment was conducted. The experiment was considered a failure because the subjects of the experiment could not handle the conditions of confinement and began experiencing psychotic symptoms and severe depression. Three of them had to be let out for medical and mental health reasons and had to be seen professionally. It was considered a "success" because it led to the creation of institutional review boards.

Dr. Hendricks explains the hallucinations experienced in all of these studies by the way our brains react to certain situations. Since we are social animals, when we do not get to socially interact over periods of time, we start hearing voices or seeing different colors on the walls, which get crazier with more time and eventually turn into full on hallucinations. Typically, anything 2 months or longer is considered long term, where the serious issues start happening. Coherent thoughts are no longer possible, depression, mood issues, psychotic symptoms are all common around 2 months in solitary confinement.

[iv] As part of the State's case in aggravation presented to the original sentencing Judge, the Defendant's subsequent criminal history was explained. At the time he became a suspect and was interviewed, he was serving 30 year sentences in the DOC for armed robbery from Richland County that occurred six months after Scotty and Renee's murders. The solicitor noted the striking similarities between the Richland County armed robberies to the event that preceded Scotty and Renee's murders. The solicitor explained that the Defendant and his Co-Defendant approached a couple sitting alone in a parking lot, sitting in a sport car and, at gun point, forced that couple to drive them away. In the latter incident, the couple was able to escape when they had to stop for gas at a Columbia service station.

[v] The following are the facts presented at the original plea hearing. On September 8th, Scotty and Renee each had come to Chester separately with other friends. They were friends and each went about their own way until about ten o'clock that evening when they met up in the vicinity of the convenience store and the car wash. Friends were with Scotty and Renee when they arrived at the car wash but the others left. A friend, Mr. Brawley, who had been with them at the car wash, reported he last saw the cars together around 10:45. The cars were between the convenience store and the car wash and Scotty and Renee sitting and talking. According to his statement to the police, when he came back by the location, no more than five minutes later, Renee's car, the Cavalier was gone. Other witnesses gave statements seeing the two cars leaving the location at approximately 11:45. No one could identify the drivers of the cars.

These independently verified facts are significant when compared to the facts originally provided by the Defendant in his initial statement. The plea hearing transcript also revealed the difficult work performed by law enforcement first to investigate missing person reports and, second, to investigate a double homicide. When Scotty and Renee did not return home, their respective families, the next day, reported them missing to the Sheriff's department. The eighteen month investigation began. The investigation revealed that Mr. Don Smith, a telephone employee, working and staying at the Fairfield Motel in Winnsboro, had found two women's purses in the motel's dumpster at about 7:00 am when he was placing his garbage in the dumpster. Mr. Smith removed the purses and left them in his room with the intent of looking at them later. Also, that same morning a State Trooper had tagged two cars, a Camaro and a Cavalier, on the 277 exit ramp off I-77 in the Columbia area. When Mr. Smith examined the pocketbooks later that evening he found the names of Renee Crowl Rollings and also the name of a friend of hers. The police were notified. The next morning the police and Scotty's father went to examine the dumpster and found additional items, paperwork that had come from one or both or the cars. The State also explained that Scotty's and Renee's cars were found by the highway patrol early on February 9th wrecked in Richland County on the 277 exit ramp and explained that a SLED forensic team conducted an investigation which include the finding of latent finger prints.

[vi] Even though more than twenty SLED agents had been assigned to Chester County and more than 300 people interviewed, dozens polygraphed and the FBI developed a "type of killer" profile, it was not until July of 1989, that SLED received information that an Assistant Attorney General while working on an unrelated

matter received information from a DOC inmate that two other DOC inmates seemed to know "an awful lot about a double murder" in Chester.

[vii] At that point the missing person's investigations turn into homicide investigations. It was noted to the Judge, the partially decomposed bodies were fully clothed lying side by side. The bodies were taken to Newberry for autopsies. It was also noted to the Judge that even the State had evidence that both of the victims had money with them the night of the murders, five dollars was found in Renee's backpack but Scotty's wallet was empty. The bodies were positively identified though the autopsies. The autopsies revealed that Renee had been shot once in the right temple and that she had a defensive wound to her hand as she tried to cover her head before the bullet was fired. Scotty was shot twice in the head once on the right side and the other time behind the left ear. This Court notes that the Scotty's autopsy explains that the bullet that entered at his left ear was consistent with Scotty lying in such a position that this could have been done by "someone standing behind him at the level of his waist as he lay on his right side and shooting down towards his head".

[viii]SLED officer along with the first agent interviewed separately this Defendant and his Co-Defendant on July 5, 1989. They also interviewed this Defendant again on July 10, 1989. The Co-Defendant's July 5th statement was read in to the record during the initial proceedings and then the Defendant's July 10th was read into the record. Two of the statements were substantially similar. Both men had guns with them, both men approached the car where Scotty and Renee were seated, both men got into Renee's car and both men present when the murders took place. After the murders, they returned to get Scotty's car, both men threw items into the dumpster and confirm the subsequent automobile accident and their return to the Chester area the February 9th. The obvious difference is that each claim the other was the shooter.

This Court notes that due to the law enforcement investigations many of the facts contained in these two statements were verified by independent witnesses, including the fact that the two cars were seen at the car wash location at 10:45, only one car seen approximately five minutes later and both car seen leaving together about 11:30. This Court also notes that these two statements and the facts verified independently by law enforcement are substantially differently from the statement given by this Defendant on July 5th. In his July 5th statement, he and another friend had "just come to Chester" when he saw his Co-Defendant. His Co-Defendant asked "do you want a ride". He wrote, Robert walked towards the car wash and I followed. Robert got into a white Z-28 and I got in" and then he followed his Co-Defendant as he walked over to Scotty's car (Z-28). They drove a Winn Dixie, made some purchases and drove back to the Mr. Quick on Lancaster Street and pulled beside the other car. The Co-Defendant gets out of the Scotty's car but this Defendant stays in Scotty's car. His Co-Defendant enters Renee's car with a gun drawn. The Defendant drives Scotty's car as he follows his Co-Defendant to the murder location, stays in Scotty's car and sees only a few shadows from the tail light reflections, hears as many as five or six gun shots, and then he follows his Co-Defendant away from the murder location.

This Court notes that in the Co-Defendant statement, the Co-Defendant stated he sat on the hood of Renee's car while this Defendant shot Scotty and Renee. The hood of Renee's car is the same location where a palm print was identified by the SLED investigator.

[ix] This case does not present a situation where a juvenile chooses to drink or do illegal substances and then drives a car that kills someone. Nor does this case present a situation such as that in Miller v. Alabama, where a Defendant who had been drinking and doing drugs all night with an adult enabler, victim and drug dealer, gets into a fight that leads to the death of the adult enabler, victim and drug dealer. This case does not present a situation as in Jackson v. State, where a juvenile defendant and his friends decide to rob a video store, the juvenile defendant first stayed outside the store, and then entered and may have proclaimed "I thought you all was playin'," shortly before a juvenile Co-Defendant shot and killed the store clerk. 359 Ark. 87, 89, 194 S.W.3d 757, 759 (2004). The facts of this case are vastly different.

[x] The circumstances of the homicide offense and the extent of Harrison's participation in the conduct and family and peer pressure are strikingly dissimilar to the facts surrounding the Miller and Jackson cases. While Evan Miller was the murderer in his case, the circumstances were different as it was a robbery of a

drug dealer that turned into a murder of a drug dealer. In Jackson, the juvenile defendant was, at the most, an aider and abettor, and, at most, was merely aware that a co-defendant had a shot gun. In the case before us, *both* Harrison and Moore got into the back seat of Renee Rollings's vehicle with guns pointed at the victims. *Both* Harrison and Moore forced the victims, at gunpoint, 11 miles out of town. After the long, drawn out drive to an abandoned driveway in the Richburg area, the victims were forced, at gunpoint, deep into the woods by *one or both* of the Defendants, Renee Rollings pleading for her life. *One, or both* of the Defendants shot each of the victims in the head. The other, *or neither* of them, "casually" waited next to the car until the murders were complete. *Both* of them then returned to the site of the robbery to retrieve the second car. *Both* of them paraded around their neighborhood in the stolen vehicles, *both* of them disposed of evidence into dumpsters, *both* of them drove the stolen vehicles towards Columbia, and *both* of them kept these murders a secret until they were caught speaking about it to each other while *both* were already in prison for attempting, *together*, to conduct a very similar crime just a few months later.

[xi] Dr. Garborino was also not provided the supplemental evidence which was presented to this Court that contradicts the assessment that this Defendant was a loner. Melvin Stevenson, a childhood friend of this Defendant, wrote to this Court:

> "February 2, 2018
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> To whom it may concern:
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> Theodore Harrison, Jr. was a close childhood friend of mine and a current friend on mine. He was my Aunt Susie Mae Wray next door neighbor, therefore; this lead to us spending a lot time together. We also attended the same church, Red Hill Missionary Baptist Church. Teddy was a well mannered and very respectful young man growing up. He was definitely the "Yes Sir and No Ma'am" type. I would say he was very quiet and at gatherings sometimes you wouldn't even know he was present. I can't recall him ever getting into trouble at school or on the bus. I use to call him "The Artist" because he had the gift/blessing of being a superb drawer."