

**RECEIVED**  
OCT 16 2018  
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions  
Frank R. Addy, Jr., Circuit Court Judge

---

Appellate Case No. 2018-001662

---

THE STATE,

Respondent,

v.

TAVARIOUS SETTLES,

Petitioner.

---

**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

CAROLINE SCRANTOM  
Assistant Attorney General

Post Office Box 11549  
Columbia, South Carolina, 29211  
(803) 734-6305

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
PETITIONER'S QUESTIONS PRESENTED .....	iv
RESPONDENT'S COUNTER-QUESTIONS PRESENTED .....	iv
STATEMENT OF THE CASE.....	1
ARGUMENT .....	4
I. The totality of the circumstances presented at the Denno hearing fail to demonstrate that Petitioner was deprived of his independent decision-making ability by any coercive tactic, even in light of his age.....	4
<i>Standard of Review</i> .....	4
<i>Denno Standard</i> .....	5
<i>This Case</i> .....	6
II. No precedent mandates a particular procedure that the court must follow at a sentencing proceeding concerning an individual who was under the age of eighteen at the time of the crime, and the sentencing court in this case accepted statement in mitigation and gave due consideration to Petitioner's age and other individual characteristics prior to issuing a 45-year, term-of-years sentence.....	12
<i>Standard of Review</i> .....	12
<i>Petitioner's Sentencing Procedure</i> .....	15
CONCLUSION.....	22

## TABLE OF AUTHORITIES

### Cases

<i>Aiken v. Byars</i> , 410 S.C. 534, 765 S.E.2d 572 (2014) .....	7, 12, 13, 14, 15, 16, 17, 18, 21
<i>Berghuis v. Thompkins</i> , 560 U.S. 370, 130 S.Ct. 2250 (2010).....	5
<i>Estelle v. Gamble</i> , 429 U.S. 97, 97 S.Ct. 285 (1976).....	14
<i>Fare v. Michael C.</i> , 442 U.S. 707, 99 S.Ct. 2560 (1979).....	7
<i>Graham v. Florida</i> , 560 U.S. 48, 130 S.Ct. 2011 (2010).....	13, 14, 21
<i>In Interest of Christopher W.</i> , 285 S.C. 329, 329 S.E.2d 769 (Ct. App. 1985).....	6
<i>In re Tracy B.</i> , 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010).....	6
<i>Jackson v. Denno</i> , 378 U.S. 368, 84 S.Ct. 1774 (1964).....	1, 4, 5, 7, 9, 10
<i>Miller v. Alabama</i> , 567 U.S. 460, 132 S.Ct. 2455 (2012).....	7, 13, 14, 15, 16, 17, 18, 21
<i>Mincey v. Arizona</i> , 437 U.S. 385, 98 S. Ct. 2408 (1978).....	7
<i>Miranda v. Arizona</i> , 384 U.S. 436, 86 S.Ct. 1602 (1966).....	5, 8, 9
<i>Montgomery v. Louisiana</i> , — U.S. —, —, 136 S.Ct. 718 (2016) .....	14
<i>Reck v. Pate</i> , 367 U.S. 433, 81 S.Ct. 1541 (1961).....	7
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S.Ct. 1183 (2005).....	13
<i>Schneckloth v. Bustamonte</i> , 412 U.S. 218, 93 S.Ct. 2041 (1973).....	5, 6
<i>State v. Arrowood</i> , 375 S.C. 359, 652 S.E.2d 438 (Ct. App. 2007).....	4, 5
<i>State v. Asbury</i> , 328 S.C. 187, 493 S.E.2d 349 (1997) .....	4
<i>State v. Avery</i> , 374 S.C. 524, 649 S.E.2d 102 (Ct. App. 2007).....	6
<i>State v. Boys</i> , 302 S.C. 545, 397 S.E.2d 529 (1990) .....	6
<i>State v. Dawson</i> , 402 S.C. 160, 740 S.E.2d 501 (2013) .....	12
<i>State v. Ferguson</i> , 221 S.C. 300, 70 S.E.2d 355 (1952) .....	12

<i>State v. Franklin</i> , 267 S.C. 240, 226 S.E.2d 896 (1976) .....	12
<i>State v. Green</i> , 412 S.C. 65, 770 S.E.2d 424 (Ct. App. 2015).....	12, 17, 21
<i>State v. Hicks</i> , 377 S.C. 322, 659 S.E.2d 499 (Ct. App. 2008).....	16
<i>State v. Matthews</i> , 291 S.C. 339, 353 S.E.2d 444 (1986) .....	12
<i>State v. McClure</i> , 312 S.C. 369, 440 S.E.2d 404 (1994) .....	4, 9
<i>State v. Moses</i> , 390 S.C. 502, 702 S.E.2d 395 (2010) .....	5, 6
<i>State v. Parker</i> , 38 S.C. 68, 671 S.E.2d 619 (2008) .....	6, 11
<i>State v. Pittman</i> , 373 S.C. 527, 647 S.E.2d 144 (2007) .....	5, 6
<i>State v. Register</i> , 323 S.C. 471, 476 S.E.2d 153 (1996) .....	6, 7, 10
<i>State v. Salisbury</i> , 330 S.C. 250, 498 S.E.2d 655 (Ct. App. 1998).....	6
<i>State v. Saltz</i> , 346 S.C.114, 136, 551 S.E.2d 240 (2001) .....	4, 5
<i>State v. Smith</i> , 259 S.C. 496, 192 S.E.2d 870 (1972) .....	6
<i>State v. Thompson</i> , 413 S.C. 590, 776 S.E.2d 413 (2015) .....	9
<i>Thompson v. Oklahoma</i> , 487 U.S. 815, 108 S.Ct. 2687 (1988).....	13
<i>Withrow v. Williams</i> , 507 U.S. 680, 113 S.Ct. 1745 (1993).....	6

### Statutes

S.C. Code Ann. § 16-3-20(A) .....	13
S.C. Code Ann. § 16-3-26.....	15
S.C. Code Ann. § 17-3-50(B) .....	15
S.C. Code Ann. § 63-19-20.....	7, 10

### Rules

Rule 242(b), SCACR .....	4, 12
--------------------------	-------

## PETITIONER'S QUESTIONS PRESENTED

- I. Did the Court of Appeals err in deciding that the trial court did not abuse its discretion by failing to suppress the statement made by Settles, a youth under the age of 18, where the statement was obtained during police interrogation outside the presence of a guardian or attorney, there was testimony at the *Jackson v. Denno* hearing that the police misrepresented that Settles was restricted from making a phone call prior to his interrogation, and Settles was not, in fact, offered the opportunity to make a phone call until after his interrogation?
- II. This Court held in *Aiken v. Byars* that individualized and meaningful sentencing hearings are required for youths under the age of 18 at the time of the crime that are subject to a sentence of life imprisonment without the possibility of parole. Settles was under the age of 18 and was subject to a potential sentence of life imprisonment without the possibility of parole. Did the Court of Appeals err in deciding that the trial court did not abuse its discretion by refusing to conduct an individualized and meaningful sentencing hearing and by refusing to allow the testimony of mitigations experts?

## RESPONDENT'S COUNTER-QUESTIONS PRESENTED

- I. Did the Court of Appeals err in affirming the admissibility of Petitioner's statement to law enforcement where the totality of the circumstances as presented at the *Denno* hearing fail to demonstrate the Petitioner was deprived of his independent decision-making ability by any coercive tactic, even in light of his age?
- II. Did the Court of Appeals err in affirming Petitioner's sentencing proceeding where no precedent establishes a particular procedure that the court must follow before sentencing an individual under the age of eighteen to a term-of-years sentence, and where, while the trial court declined to hear individualized, sworn testimony during the sentencing hearing and denied funding for a mitigation investigation, it accepted statements in mitigation and gave due consideration to Petitioner's age and other individual characteristics prior to issuing a 45-year sentence?

## STATEMENT OF THE CASE

Petitioner Tavarious Settles stood trial in Greenwood County for the May 30, 2013, murder of Prudencio Sis and for possession of a weapon during the commission of a violent crime. (App. 487-90). Sis was struck by gunfire five times while walking down the center of Franklin Street in Greenwood. (App. 91-92 and 269-75). Robert Tinsley, Esquire, represented Petitioner at the trial which began March 30, 2015. (App. 23).

At a *Denno*<sup>1</sup> hearing held mid-trial, Petitioner challenged the admissibility of his three-and-a-half minute recorded statement made June 13, 2013. (App. 169). Petitioner made the statement following his arrest by Greenwood Detective Joe Collins. (App. 152). In this statement, as in his trial testimony, Petitioner maintained that he and others planned to rob someone that night, but that he was unarmed and that Lank shot the victim. (App. 321-27; State's Exhibit 34<sup>2</sup>). Lank's trial testimony, however, placed himself alongside Petitioner at the scene and implicated Petitioner as the shooter in a robbery-turned-murder. (App. 52-56).

In favor of suppression, Petitioner argued that the "denial of contact with at least one outside party much older and wiser than he was a clear violation of his constitutional right," amplified by Petitioner's age and status as seventeen-year-old rising high school junior. (App. 183-86). Petitioner additionally cited "[t]he lack of phone call" as a means of undue coercion. (App. 184-88). The trial court considered testimony by Petitioner and the interviewing officer and admitted the statement, finding it voluntary by a preponderance of the evidence. (App. 186-88). The trial court also found credible the Detective's testimony that Petitioner was offered the opportunity to make a phone call and declined to do so. (App. 188).

---

<sup>1</sup> *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774 (1964).

<sup>2</sup> On file with the Court of Appeals. (App. iv).

The jury convicted Petitioner after a four-day trial. (App. 402). At sentencing, Petitioner renewed an earlier motion to cap the sentence at 30 years. (App. 405-07). Petitioner also sought to defer sentencing upon resolution of a separate and unresolved Abbeville County charge, requesting time and funding for a mitigation investigation. (App. 33-35 and 407). The court ruled that the sentencing procedure would go forward on the Greenwood County charge at that time, without any mitigation investigation, and in “the way [he was] accustomed to doing it.” (App. 412-13). That is, by taking testimonials from the victim’s family as offered by the State, and by likewise taking testimonials from any person the defense put forward in mitigation. (App. 414-15). The court did not want sworn, question-and-answer testimony.<sup>3</sup> (App. 415).

Petitioner’s counsel thereafter presented a mitigation case consisting of statements intermixed with question-and-answer testimonials taken from Petitioner and his grandmother. (App. 416-20 and 422-24). Counsel also put forth mitigation in summary form which continually touched upon Petitioner’s youth. (App. 420-22 and 424-26). The Honorable Frank R. Addy, Jr., sentenced Petitioner to 45 years for murder and a concurrent five years on the weapons charge. (App.491-92). The court announced its reasons for the sentence and awarded Petitioner credit for time served. (App. 426-29). In doing so, the court stated “perhaps the best argument against a life sentence is the fact that he was 17 and you indicate to me he had no prior involvement with the law.” (App. 425).

Following sentencing, Petitioner, by and through counsel, moved for the court to reconsider the sentence imposed. (App. 432-33). Judge Addy denied that motion on April 21,

---

<sup>3</sup> Expounding at a later point “I do not believe that a full-blown sentencing hearing is appropriate in these circumstances, but obviously you have spoken to Ms. Settles and other members of the family and I’m happy to hear whatever it is that’s been related to you as opposed to you questioning her.” (App. 418).

2015. (App. 434-35). A few months later, on September 18, 2015, Eighth Circuit Solicitor David Stumbo moved for a sentence reduction on Petitioner's behalf, premising the motion upon Petitioner's substantial assistance to the State by testifying in another matter. (App. 494-95). Judge Addy granted the State's motion, reducing the sentence on the murder charge from 45 to 40 years, and running it concurrent to other charges. (App. 496-97).

Notice of appeal followed imposition of the initial 45-year sentence. (App. 493). Petitioner raised the same issues before the Court of Appeals as presented herein. (App. 531). The Court of Appeals affirmed on both issues, additionally finding abandoned any argument that Petitioner was denied a right to make a phone call before his interview with law enforcement. (App. 1-4). That court denied the petition for rehearing and the petition for a writ of certiorari followed. (App. 5-17). Petitioner is presently serving the reduced 40-year sentence within the custody of the South Carolina Department of Corrections. (App. 491-92 and 496-97).

## ARGUMENT

- I. **The totality of the circumstances presented at the *Denno* hearing fail to demonstrate that Petitioner was deprived of his independent decision-making ability by any coercive tactic, even in light of his age.**

The Court of Appeals affirmed the admission of Petitioner's statement under the proper standard such that certiorari is not warranted. *See* Rule 242(b), SCACR. The facts presented at the *Denno* hearing support the admission of Petitioner's statement. And, Petitioner has failed to present legal authority in support of the conclusion that he was denied a right to make a phone call before his interview. The Court of Appeals accordingly correctly found that argument abandoned. (App. 1-4).

### *Standard of Review*

A trial court ruling regarding the voluntariness of a confession will not be disturbed on appeal unless so "manifestly erroneous as to constitute an abuse of discretion." *State v. Arrowood*, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007). This standard binds the appellate court to the lower court's "fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." *State v. Asbury*, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997). "When reviewing a trial court's ruling concerning voluntariness, this Court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence." *State v. Saltz*, 346 S.C.114, 136, 551 S.E.2d 240, 252 (2001). Similarly, when a determination regarding the voluntariness of a defendant's confession comes down to a question of credibility, the trial court's credibility finding should not be disturbed absent an abuse of discretion. *State v. McClure*, 312 S.C. 369, 371-72, 440 S.E.2d 404, 405-06 (1994).

### Denno Standard

“If a suspect is advised of his *Miranda*<sup>4</sup> rights, but chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived.” *State v. Arrowood*, 375 S.C. at 366-67, 652 S.E.2d at 442; *State v. Saltz*, 346 S.C. at 136, 551 S.E.2d at 252. A voluntary waiver need not be express. Rather, “(1) the waiver must be ‘voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception’ and (2) the waiver must be ‘made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.’” *State v. Moses*, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (2010) (quoting *Berghuis v. Thompkins*, 560 U.S. 370, 382, 130 S.Ct. 2250, 2260 (2010)). “In South Carolina, the test for determining whether a defendant’s confession was given freely, knowingly, and voluntarily focuses upon whether the defendant’s will was overborne by the totality of the circumstances surrounding the confession.” *Id.*; *Schneckloth v. Bustamonte*, 412 U.S. 218, 226, 93 S.Ct. 2041, 2047 (1973).

“[E]ach case requires careful scrutiny of all the surrounding circumstances.” *State v. Pittman*, 373 S.C. 527, 566, 647 S.E.2d 144, 164 (2007). The factors to be considered have been oft-examined and broadly defined by our courts. They include, but are not limited to the: “youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep.” *Id.* (citing *Schneckloth v. Bustamonte*, *supra*). Looking further, our courts have considered the accused’s background, experience, conduct, age, maturity, physical condition, mental health,

---

<sup>4</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966).

misrepresentations by law enforcement, isolation of a minor from a parent, direct or indirect promises (however slight), repeated and prolonged questioning, and exertion of improper influence. *State v. Moses*, 390 S.C. at 513-14, 702 S.E.2d at 401 (citing *Withrow v. Williams*, 507 U.S. 680, 113 S.Ct. 1745 (1993)) (also citing *Schneckloth v. Bustamonte*, *supra*); *State v. Salisbury*, 330 S.C. 250, 272, 498 S.E.2d 655, 666 (Ct. App. 1998) (the existence or nonexistence of police coercion “is a necessary predicate” to determining a statement’s voluntariness).

Our courts have routinely upheld juvenile and young adult confessions. *In re Tracy B.*, 391 S.C. 51, 66, 704 S.E.2d 71, 79 (Ct. App. 2010) (“A confession of a juvenile is not per se involuntary simply because it is obtained without the presence of counsel, a parent, or other interested adult.”) (fourteen-year-old); *State v. Pittman*, *supra* (twelve-year-old); *State v. Register*, 323 S.C. 471, 476 S.E.2d 153 (1996) (eighteen-year-old); *State v. Boys*, 302 S.C. 545, 397 S.E.2d 529 (1990) (seventeen-year-old); *State v. Parker*, 38 S.C. 68, 671 S.E.2d 619 (2008) (sixteen-year-old); *State v. Avery*, 374 S.C. 524, 649 S.E.2d 102 (Ct. App. 2007) (age unlisted in opinion); *In Interest of Christopher W.*, 285 S.C. 329, 329 S.E.2d 769 (Ct. App. 1985) (eleven-year-old); *but see State v. Smith*, 259 S.C. 496, 192 S.E.2d 870 (1972) (thirteen-year-old confession inadmissible because law enforcement did not repeat *Miranda* warnings immediately prior to oral confession). Youth by itself does not render a statement inadmissible. *Id.* The same examination of surrounding circumstances applies even where the confessor is a juvenile. *State v. Parker*, 38 S.C. at 72, 671 S.E.2d at 622.

#### *This Case*

While there exists ample analogous authority to support a compelling comparison for the finding of voluntariness in this case, the “[d]etermination of whether a statement is involuntary

‘requires more than a mere color-matching of cases.’ It requires careful evaluation of all the circumstances of the interrogation.” *Mincey v. Arizona*, 437 U.S. 385, 401, 98 S. Ct. 2408, 2418 (1978) (quoting *Reck v. Pate*, 367 U.S. 433, 442, 81 S.Ct. 1541, 1547 (1961)). Here, the Court of Appeals considered the totality of the circumstances surrounding Petitioner’s statement and aptly found the trial court did not abuse its discretion in admitting the statement. (App. 1-4 and 186-87).

As an initial consideration, Petitioner was seventeen years old at the time of both the crime and interview. (App. 180). Thus, Petitioner was not a juvenile for purposes of determining the voluntariness of an inculpatory statement. S.C. Code Ann. § 63-19-20 (2010) (a “juvenile” is a person less than seventeen years of age); *but see Aiken v. Byars*, 410 S.C. 534, 537 n.1, 765 S.E.2d 572, 573 n.1 (2014) *cert. denied* 135 S. Ct. 2379 (2015) (considering individuals under the age of eighteen as juveniles for the limited purpose of resentencing in light of *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455 (2012)).

Moreover, nothing during the arrest and interrogation process entitles a seventeen-year-old defendant to the comfort and advice of a parent or relative in the interview room. “Although a juvenile’s request for a parent may be considered when determining the voluntariness of the confession, an adult’s request for someone other than an attorney does not invoke a Fifth Amendment right to speak with counsel.” *State v. Register*, 323 S.C. at 477, 476 S.E.2d at 157 (citing *Fare v. Michael C.*, 442 U.S. 707, 99 S.Ct. 2560 (1979)) (a request for a non-attorney third party does not invoke a Fifth Amendment invocation of counsel during custodial police interrogation).

Finally, the *Denno* record demonstrates that the statement met the threshold standard. Only one Detective interacted with Petitioner during questioning. (App. 171). The Detective

testified that he advised Petitioner of his *Miranda* rights and Petitioner completed a written waiver, initialing next to each individual right. (App. 171-72 and 484). According to the Detective, Petitioner appeared to understand their conversation regarding waiver and Petitioner asked no questions before signing. (App. 171-72). The timing of the waiver and confession are not accompanied by any indicators of a drawn-out detention. Petitioner made his formal waiver after being in custody for only 30 to 60 minutes. The Detective questioned Petitioner for less than three-quarters of an hour. (App. 171). The statement itself lasts just over three minutes and does not include a confession. Rather, it states Petitioner's version of the facts. The recording includes little-to-no follow-up questioning or probe for detail. (State's Exhibit 34). It thus appears from the time frame between arrest and booking that both Detective and Petitioner were forthright in their objectives and that law enforcement did not employ lengthy interrogation tactics which may be perceived as unduly coercive.

Petitioner testified only that he felt "uncomfortable" in the interview room. (App. 180). Petitioner did not ask for an attorney at any time during his interrogation. (App. 175). Petitioner did not appear to suffer from the influence of drugs or alcohol. (App. 171). According to the Detective, Petitioner "seemed very calm, relaxed." (App. 173). Petitioner completed the waiver form in its entirety, meaning that he initialed by the common-language waiver of each right and signed in acceptance of the waiver's unequivocal language: ". . . I do NOT wish to have a lawyer here during questioning. My decision to answer questions now, without a lawyer, is made freely and is my own choice. No one has threatened me in any way or promised me special treatment. . . ." (App. 484 (emphasis in original)). Petitioner at no time contested his willing execution of the waiver of rights form. (App. 183). Petitioner instead agreed to provide a recorded version of his statement, and did so at approximately 9:00 PM. (App. 173; State's Exhibit 34). At the outset of

the recording, the Detective established that Petitioner waived his *Miranda* rights by having Petitioner identify his initials and signature on the waiver of rights form. (App. 174; State's Exhibit 34 at 00:21-00:38). According to the Detective, Petitioner's recorded statement varied only slightly from his initial statement, but not materially. (App. 173). The trial court reviewed the recording. (App. 175).

Petitioner takes to task conflicting testimony regarding his ability to make a phone call. Petitioner testified that he asked to make a phone call and that "they told [him he] was on phone restriction." (App. 180). Petitioner does not specify who "they" are, but testified that the Detective "didn't give [him] a chance" to call his grandmother and only asked if he wanted a lawyer. (App. 182). Petitioner stated that had he been able he would have called his grandmother, who he lived with at the time, to ask her to come down to the station, provide him with advice, and "talk to a lawyer" on his behalf. (App. 180-81). Conversely, the Detective testified that he offered a phone call and Petitioner refused. (App. 177). Not only did Petitioner not accept an offer to make a phone call, but no testimony offered at the *Denno* hearing demonstrated that he summoned any family member at any point during the interview. (App. 175-77).

The trial court found the Detective's testimony about the phone call more credible than Petitioner's. (App. 188). Here, "the question of the voluntariness of such a confession can come down to a question of credibility, which may be resolved by the trial court in favor of the officers." *State v. Thompson*, 413 S.C. 590, 608, 776 S.E.2d 413, 423 (2015); *State v. McClure*, 312 S.C. at 371-72, 440 S.E.2d at 405-06.

Outside of the trial court's own observations of the witnesses, the *Denno* record provides further support for the credibility determination. Petitioner maintained that he was not charged

until after he was arrested, after he was interviewed, and after he gave his statement. (App. 179 and 182). However, as is apparent from the recorded statement, Petitioner was advised of the charge in conjunction with the interview. (App. 172; State's Exhibit 34). The Detective's testimony similarly recounted that, prior to making his statement, Petitioner was advised he was being questioned about the victim's murder—"he was arrested on warrants just prior to [the Detective] interviewing him." (App. 177).

Additionally, nothing required law enforcement to inquire as to whether Petitioner, an adult, wanted to meet with a relative. *State v. Register*, 323 S.C. at 477, 476 S.E.2d at 157. At the time of his arrest, Petitioner presented as an able-minded seventeen-year-old with an eleventh grade education. *See* S.C. Code Ann. § 63-19-20 (2010). The trial court correctly considered this point in conjunction with Petitioner's age:

[T]he Defendant in this case was [seventeen]. So he's an adult. And I can take into account the fact that he is [seventeen] under the age prong. But as far as whether the State had a legal obligation to provide a guardian ad litem for him or get his parents up there or his grandma up there, I don't know that that's necessarily something that the State is compelled to do under these circumstances.

(App. 187).

Petitioner's *Denno* testimony fails to establish that he was somehow prohibited from independently invoking his right to counsel. The *Denno* record instead demonstrates that the State met its burden: there exists no evidence of police coercion, misrepresentation, concealment of the right to invoke the advice of legal counsel, or immaturity on the part of Petitioner which may have disabled his decision-making at that time. Petitioner's waiver can only be construed as a deliberate choice and Petitioner's testimony fails to dispel the trial court's credibility determination in favor of the Detective. Further, the law does not support any contention that Petitioner was automatically entitled to the advice of a relative. The trial court properly

submitted Petitioner's interview to the jury to "determine whether the statement was given freely and voluntarily beyond a reasonable doubt." *State v. Parker*, 381 S.C. at 75, 671 S.E.2d at 622. The jury was duly charged on that point. (App. 381-83). And the Court of Appeals was correct to affirm and to find abandoned Petitioner's phone call argument. (App. 1-4).

**II. No precedent mandates a particular procedure that the court must follow at a sentencing proceeding concerning an individual who was under the age of eighteen at the time of the crime, and the sentencing court in this case accepted statement in mitigation and gave due consideration to Petitioner's age and other individual characteristics prior to issuing a 45-year, term-of-years sentence.**

Petitioner asks this Court to find that the Court of Appeals erroneously affirmed the sentencing procedure employed by the trial court when it denied funding for a mitigation investigation and imposed a term-of-years sentence upon Petitioner. However, neither the trial court nor the Court of Appeals misapplied this Court's precedent or dicta regarding juvenile sentencing proceedings and there exists no conflict with *Aiken v. Byars*, 410 S.C. 534, 785 S.E.2d 572 (2014) *cert. denied*, 135 S.Ct. 2379 (2015), warranting a grant of certiorari. *See* Rule 242(b), SCACR.

*Standard of Review*

This Court will not overturn a sentence unless it determines the sentencing court abused its discretion in issuing a ruling; that is, the trial court's ruling must amount to an error of law. *State v. Dawson*, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. *State v. Ferguson*, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). Absent "prejudice, oppression, or corrupt motive by the trial court," the appellate court is without authority to disturb a sentence that is within the limit prescribed by statute. *State v. Green*, 412 S.C. 65, 87, 770 S.E.2d 424, 436 (Ct. App. 2015) (citing *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976)).

Additionally, "[a]uthorization for expenditure of funds for expert witnesses is addressed to the sound discretion of the trial judge and will not be disturbed absent an abuse of that discretion." *State v. Matthews*, 291 S.C. 339, 345, 353 S.E.2d 444, 448 (1986).

### *Juvenile Sentencing Procedure After Aiken v. Byars*

South Carolina employs a constitutionally permissible sentencing scheme in which juvenile homicide offenders are subject to a discretionary sentence ranging from a minimum of 30 years to a maximum of life without the possibility of parole. S.C. Code. Ann. § 16-3-20(A); *Aiken v. Byars*, 410 S.C. at 545, 765 S.E.2d at 578; see *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455 (2012) (the Eighth Amendment forbids a juvenile offender's receipt of a life sentence without the possibility of parole when the charge mandates the life sentence); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010) (the Constitution prohibits juvenile non-homicide offenders from receiving a sentence of life without parole); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005) (unconstitutional to subject a juvenile to a capital sentence). This Court has instructed in *Aiken v. Byars* that the sentencing authority must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Aiken* at 543, 765 S.E.2d at 577 (quoting *Miller, supra* at 480, 132 S.Ct. at 2469).

The proscriptions in *Aiken* flow from the collective reexamination of juvenile sentencing proceedings by the judiciary. Courts have in recent years adopted the principle that individuals under the age of eighteen have lessened culpability and are therefore less deserving of the most severe punishments without due consideration of discrete attendant circumstances. *Graham v. Florida*, 560 U.S. at 68, 130 S.Ct. at 2026 (finding that a juvenile defendant “is not absolved of responsibility for his actions” based upon age alone, but that a juvenile’s criminal “transgression ‘is not as morally reprehensible as that of an adult’”) (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S.Ct. 2687, 2699 (1988)). Our judiciary has recognized that the maturity level of a juvenile is subject to special consideration of a youth’s “transient rashness, proclivity for risk, and inability to assess consequences.” *Miller v. Alabama*, 567 U.S. at 472, 132 S.Ct. at 2564

(quoting *Graham v. Florida*, *supra* at 68, 130 S.Ct. at 2026). The appraisal of juvenile sentencing proceedings stems not from history, but rather from “the evolving standards of decency that mark the progress of a maturing society.” *Id.* at 469, 132 S.Ct. at 2463 (quoting *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 290 (1976)).

“Most fundamentally, *Graham* broadly insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.” *Miller v. Alabama*, *supra* at 473, 132 S.Ct. at 2465. “The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question. In this inquiry the Court also considers whether the challenged sentencing practice serves legitimate penological goals” of deterrence, retribution, and rehabilitation. *Graham v. Florida*, *supra* at 67-68, 130 S.Ct. at 2026 (internal citations omitted). Thus, in *Miller*, the United States Supreme Court instituted a procedural component for all juvenile sentencings, requiring the sentencer to “consider a juvenile offender’s youth and attendant characteristics before determining that life without parole is a proportionate sentence.” *Montgomery v. Louisiana*, — U.S. —, —, 136 S.Ct. 718, 734 (2016). “*Miller* did not require trial courts to make a finding of fact regarding a child’s incorrigibility.” *Id.* at —, 136 S.Ct. at 734.

This Court has held only that “*Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.” *Aiken v. Byars*, 410 S.C. at 545, 765 S.E.2d at 578 (emphasis added). *Aiken* otherwise adopted *Miller*’s express considerations related to a juvenile offender’s “hallmark features of youth”:

(1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth—for example, [the offender’s] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorneys”; and (5) the “possibility of rehabilitation.”

*Id.* at 544, 765 S.E.2d at 577 (quoting *Miller v. Alabama*, *supra* at 477-78, 132 S.Ct. at 2468)).

The framework for South Carolina’s post-*Miller* sentencing procedure otherwise lies in dicta. *Aiken*’s majority explicitly declined any “invitation to set out a specific process for trial court judges to follow when considering whether to sentence a juvenile to life without parole.”

*Aiken*, 410 S.C. at 545, n.10, 765 S.E.2d at 578, n.10. The majority furthered:

The United States Supreme Court did not establish a definite resentencing procedure and we likewise see no reason to do so. We have the utmost confidence in our trial judges to weigh the factors discussed herein and to sentence juveniles in light of this new constitutional jurisprudence.

*Id.*

#### *Petitioner’s Sentencing Procedure*

For purposes of *Aiken*’s prospective application, the fact that Petitioner reached seventeen years of age and was statutorily an adult in South Carolina at the time of the crime and sentencing holds no bearing on whether an individualized sentencing hearing should apply because our Supreme Court’s adoption of *Miller* explicitly extended to all defendants under the age of eighteen. *Aiken v. Byars*, *supra* at 537, n.1, 765 S.E.2d at 573, n.1. Furthermore, as to funding for any mitigation presentation, funds for expert services may be authorized only based upon a finding “that investigative, expert, or other services are reasonably necessary for the representation of the defendant.” S.C. Code Ann. § 17-3-50(B); *see* S.C. Code Ann. § 16-3-26 (same application to capital cases).

Also of significance in the assessment of Petitioner's sentencing proceeding is this Court's express statement that their adoption of the *Miller* framework does not suggest "that the sentencing of a juvenile offender subject to a life without parole sentence should mirror the penalty phase of a capital case." *Aiken v. Byars, supra* at 544, 765 S.E.2d at 577. *Miller* has only been interpreted by this Court to contemplate that "the type of mitigating evidence permitted in death penalty sentencing hearing unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above." *Id.* 544-45, 765 S.E.2d at 577 (emphasis added).

However, even given *Aiken's* framework, the trial judge retains broad discretion in imposing a sentence within the statutory limits. "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). Such discretion also indubitably applies to the sentencing hearing. Each trial judge will no doubt reach a sentencing decision after assigning distinct weight to the defendant's age, background, and circumstance.

Practically speaking, *Aiken* mandates no more than the procedure taken up by Petitioner's sentencer, who took due care to comport his sentencing considerations with those prescribed by the applicable case law—and who then imposed a term-of-years sentence. (App. 426-29). The Court of Appeals correctly concluded that Petitioner was not prejudiced by the trial court's sentencing procedure because, prior to issuing a term-of-years sentence, "the trial court considered mitigating factors presented by both parties" and did so "by taking testimonials from

any person the defense put forward . . . .” (App. 3). *Aiken* does not condemn this procedure—the trial court thus exercised its discretion in sentencing procedure absent any error of law. (App. 412-26).

Moreover, Petitioner received a 45-year sentence.<sup>5</sup> (App. 429). Because Petitioner did not receive a sentence of life without the possibility of parole, any issue concerning the trial court’s compliance with *Aiken* is moot. *Aiken v. Byars*, 410 S.C. at 545, 765 S.E.2d at 578 (“*Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.”). The Court of Appeals thus correctly concluded that, because the trial court did not impose a life sentence, a separate sentencing hearing was not required. (App. 3). Absent the imposition of a life sentence, there exists no abuse of discretion or prejudice in the trial court’s refusal to take sworn testimony at sentencing or to authorize funding for mitigation specialists. *See State v. Green, supra* at 87, 770 S.E.2d at 436.

But the trial court’s considerations at sentencing were otherwise compliant with the mandates of *Miller* and *Aiken*. The trial court assigned credence to Appellant’s age and lack of prior criminal record. (App. 424). When the court issued its sentence, it reasoned that Petitioner had available “numerous options that evening for avoiding where [he] found himself today.” (App. 427). The trial court expressly considered Petitioner’s age as an indicator that he was “not fully mature.” (App. 427). But the trial court also had before its consideration Petitioner’s refusal to take responsibility for his involvement in the murder<sup>6</sup> and the crime’s attendant aggravating

---

<sup>5</sup> Later reduced to 40 years. (App. 494-97).

<sup>6</sup> When Petitioner addressed the court sentencing he said he “still remain[s] innocent to [him]self because [he] know[s] what happened.” (App. 422). He apologized, but did not accept sole responsibility. (App. 422-23 and 426). Appellant also answered more questions posed by

circumstances, including the senseless targeting of an unknown pedestrian by a group of young men. The victim sustained several gunshots in an unprovoked attack. (App. 361-70).

At sentencing, Petitioner's grandmother related her mitigation case to the trial court, pleading that Petitioner lacked a criminal record, made a wrong choice, and that she believed that his being caught up in the present offense did not match the remainder of his character. (App. 416). Petitioner's counsel questioned the grandmother at the sentencing presentation and established the following in relation to the factors enunciated for consideration by *Miller* and *Aiken*: Petitioner's April 18, 1993, birthday made him seventeen at the time of the murder; Petitioner showed no tendencies of violence while under his grandmother's roof; Petitioner was not "a troubled child"—he appeared obedient and did not cause his grandmother problems; "he was mature," "good-hearted," "willing to learn," and "getting himself together in school." (App. 416-17).

As defense counsel sought to elicit more testimony on this point, the trial judge reiterated that he appreciated Petitioner's age and the influence associated with the co-defendants in the car with Petitioner before and after the crime, including the dispute regarding who acted as the triggerman. (App. 418). The trial court re-directed defense counsel, who had been questioning the grandmother, to present his mitigation case in the manner the trial court requested. (App. 418). Counsel offered a summary. (App. 418). The court approved. (App. 418). This would be the manner in which the trial court would be most persuaded by the mitigation: "I think that would probably be the best way for the Court to get a true picture of your client if you could summarize where he was emotionally and where he saw himself as far as this entire – I mean,

---

counsel, stating that he did not own a gun, was not a fighter, did get out of the car, and that he felt "like [he] needed to get away from the situation" as it unfolded. (App. 423-24).

you've already touched on a lot of this. But if you would do it in that manner that might be more beneficial[.]” (App. 418).

Counsel continued with the question-and-answer to elicit information that Petitioner's parents never married and did not live together, but that his father remained part of his life “ever since he was born” because the family lived near each other. (App. 419). Petitioner's grandmother stated that “his mother got along with his father. We all love one another. We [are] helping Tavarious.” (App. 419).

Even prior to this portion of the hearing, during the motions leading to the issue on appeal, Appellant's counsel further pled before the sentencing court:

Mr. Settles, of course, has no record. He's currently about to turn to the age of [nineteen]. He was [seventeen] and six weeks when this happened . . . . He felt from the way things occurred that he really didn't have much choice in this matter based upon the fact that he was unable to wrap it all up, and he – I think he's been forthright, honest. He got himself in a situation with an older guy who, I think, had nefarious plans pr[e]ying on youth and he was one of those victims. Case in question, he went to school that day. He was at Ms. Shay's. They burned his phone up until they got him involved. They witnessed against him. Certainly they were together. They put together a plan that would, you know, put Mr. Settles in an awkward not knowing situation that they had put together. . . . There's no question it was [the older co-defendant] Lank's lick. Markece Moore's. This man got out with him, used poor judgment, and finds himself here convicted of murder. But under the prongs of *Miller v. Alabama* and the Eighth Amendment to the Constitution, as well as due process of the Fourteenth Amendment, we submit that a 30 year sentence would be appropriate . . . .

(App. 405-07).

Additionally, the entirety of the trial court's information in mitigation case flows from trial through sentencing—the trial judge presided over the whole presentation. In his case-in-chief, Petitioner put forward his grandmother, adult cousin, and his mother as fact witnesses who also testified about Petitioner's age and maturity. Notably, these witnesses' testimonies breathed life into Petitioner's family circumstance.

Petitioner's mother and grandmother testified about how Petitioner grew up within their care. (App. 286 and 298-99). Petitioner specifically lived with his grandmother for over a year prior to his arrest. (App. 286). Testimony established that Petitioner attended school regularly and was cared for financially, maintaining an allowance from his grandmother as well as a working cell phone. (App. 284-85). Family described Petitioner as a decent student. (App. 285-86 and 300). Petitioner did not complete his tenth grade year with enough credits to elevate to the eleventh grade, but he completed online and after school courses in order to make up those missed credits. (App. 300-01). As a result, Petitioner was only one semester behind the remainder of his classmates. (App. 301). Petitioner's cousin testified that Petitioner cultivated a close relationship with her. He visited her home "on a daily basis" eating, talking, and watching TV. (App. 294-95 and 300). Together, Petitioner's cousins "helped [his mother] look out for him when [she] couldn't be the eyes." (App. 302). The court also learned that Petitioner's grandmother expected to hear from him regularly or when he needed assistance, a sign of dependability from a teenager. (App. 287-89). The court heard that "Tavarious was a pretty responsible person. He was good hearted, caring and giving and he helped [his grandmother] out a good bit. He had a good heart for helping . . . [a]nd he loved his family." (App. 289-90). Ms. Settles furthered that he was "no bad person," the police did not come around looking for him, and he attended church to some extent. (App. 289-90).

Before the court's consideration at the time of sentencing were facts related to Petitioner's age; education level; his family and home environment leading up to and at the time of the offense; the circumstances of the offense including the involvement of co-defendants and the potential that Petitioner acted in response to peer pressure; his inexperience with the criminal justice system; and other hallmarks of youth and maturity developed throughout the duration of

Petitioner's trial and sentencing proceeding. These are the very considerations delegated by *Aiken v. Byars, supra* at 544, 765 S.E.2d at 577 (quoting *Miller v. Alabama, supra* at 477-78, 132 S.Ct. at 2468)). But the trial court also had before its consideration the details of a cold-blooded robbery-turned-murder and Petitioner's hesitancy to take responsibility for the victim's fate. See *Graham v. Florida, supra* at 59, 130 S.Ct. at 2021 (term-of-years sentence must not be grossly disproportionate to the circumstances particular to the case). Ultimately, the court expressly found age a mitigating circumstance requiring the application of a 45-year sentence in lieu of the potential maximum.<sup>7</sup> (App. 425).

Since the trial court expressly considered the hallmarks of Petitioner's youth at sentencing, and since Petitioner did not receive a sentence of life without parole, the Court of Appeals did not err in affirming the sentencing hearing employed in this case. Petitioner did, for the aims of his trial court, receive "a full blown sentencing hearing," a concept *Aiken* purposely left undefined. *Aiken* only encourages the court to consider relevant mitigating factors related to a youthful defendant's crime and circumstance. *Aiken v. Byars, supra* at 544-45, 765 S.E.2d at 577. The trial court here found no necessity to fund a mitigation investigation and was instead prepared to consider circumstances attendant to Petitioner's age and issue a term-of-years sentence. No abuse of discretion results. *State v. Green, supra*.

---

<sup>7</sup> Petitioner received the benefit of a second sentencing decision when he later waived jurisdiction over an unrelated Abbeville County charge and pled guilty in Greenwood County. That plea was heard in tandem with the State's motion to reduce Petitioner's sentence for the present Greenwood County murder due to Petitioner providing substantial assistance to the State in the Abbeville matter. Petitioner ultimately pled guilty for a negotiated forty-year sentence on the Abbeville County charge, to run concurrent with the reduced sentence on the Greenwood conviction. (App. 482-524).

## CONCLUSION

Respondent requests this Court deny the Petition for a Writ of Certiorari. For the reasons discussed above, certiorari is not warranted on the issues making their way before this Court.


Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

CAROLINE SCRANTOM  
Assistant Attorney General

  
CAROLINE SCRANTOM  
SC Bar No. 101357

Office of Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEY FOR RESPONDENT

October 16, 2018  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions  
Frank R. Addy, Jr., Circuit Court Judge

OCT 16 2018

S.C. SUPREME COURT

Appellate Case No. 2018-001662

THE STATE,

Respondent,

v.

TAVARIOUS SETTLES,

Petitioner.

---

**PROOF OF SERVICE**

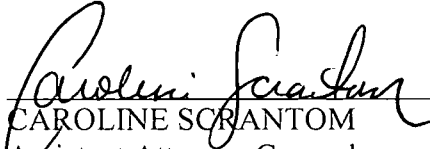
---

I, Caroline Scrantom, counsel for the Respondent, certify that I have served Respondent's *Return to Petition for a Writ of Certiorari* by depositing one copy of the same in the United States mail, postage prepaid, addressed to Petitioner's attorneys of record at:

John W. Roberts, Esq.  
Willoughby & Hoefler, P.A.  
P.O. Box 8416  
Columbia, SC 29202

Robert M. Dudek, Esq.  
SCCID/Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served this 16<sup>th</sup> day of October, 2018.

  
CAROLINE SCRANTOM  
Assistant Attorney General  
SC Bar No. 101357