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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
The Honorable Kristi L. Harrington, Circuit Court Judge
Appellate Case No. 2017-000800

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SC Court of Appeals

THE STATE,

Respondent,

vs.

Eric D. McCall,

Appellant.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

When Appellant was 19 years old at the time of the offense, did the circuit court erred in summarily dismissing Appellant's motion for resentencing based solely on his chronological age?

COUNTER-STATEMENT OF ISSUE PRESENTED

Did the trial judge commit an error of law by granting the State's motion to dismiss Appellant's motion for resentencing pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), since he was nineteen years old when he committed the murder for which he was sentenced and neither *Miller* nor *Aiken* applied to his sentencing?

STATEMENT OF THE CASE

Respondent accepts Appellant's Statement of the Case.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The issue of whether a criminal defendant is serving an illegal or unconstitutional sentence constitutes a question of law. *Bordeaux v. State*, 410 S.C. 495, 499, 765 S.E.2d 143, 145 (2014). Therefore, an appellate court considering the lawfulness of a sentence reviews the matter de novo for errors of law. *Id.* See also *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) ("[Appellate courts] are free to decide a question of law with no particular deference to the circuit court").

ARGUMENT

The trial judge did not commit an error of law by granting the State's motion to dismiss Appellant's motion for resentencing pursuant to *Miller v. Alabama*, and *Aiken v. Byars*, since Appellant was nineteen years old when he committed the murder for which he was sentenced and neither *Miller* nor *Aiken* applied to his sentencing.

Notwithstanding Appellant's argument to the contrary, Respondent submits that the trial judge did not commit an error of law by granting the State's motion to dismiss Appellant's motion for resentencing pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), since he was nineteen years old when he committed the murder for which he was sentenced and neither *Miller* nor *Aiken* applied to his sentencing.

A. Proceedings in the trial court.

As noted in Appellant's Statement of the Case, Appellant received a jury trial before the Honorable R. Markley Dennis on charges of murder and carjacking on November 16, 1998. The jury convicted him as charged. Percy Beauford, Esquire, represented him on these charges. ***R. 249-250; 261***. In mitigation of sentence, Mr. Beauford argued that Appellant was "twenty years of age, honorably discharged from the Army, father of a small child, [and] married." ***R. 255***. Appellant asked for mercy. ***R. 255***.

The trial judge made the following comments before he passed sentence:

> THE COURT: All right, sir. My prayer this morning when I awakened, Mr. McCall, was the Lord give me the strength to do what I ask the jury to do, to not be motivated by any emotion in this case and to not let that fact be factored into my decision insofar as the sentence to be imposed.
>
> I've tried numerous times to step away from it because I'll tell you, the jury has spoken, and in the five years almost that I've been on the bench, I don't believe I've ever seen a more cold-blooded act or actions on the part of a group of people than has been testified to in this case.
>
> And it's further compounded by your testimony and now reliance on the fact that you served our country honorably. Quite honestly, sir, I was offended by your

> inference that your response was because of some training that you received. That disgraces all those persons who have served this [C]ountry and -- and been taught and who have come back ... into this society and live lawfully.
>
> But I said you're reacting from emotion. Step away. Look at it fairly and objectively. I have tried to do that, and I certainly believe that an offense of murder -- you know and I know what that carries. I have two options. One is a thirty-year sentence. The other is life.
>
> Quite honestly, given the fact as you stated that you're intelligent, that you have had the benefit of a wonderful mother, who testified here, that you have served this [C]ountry, I cannot understand how I could ever impose a thirty-year sentence if ... if I gave you a thirty-year sentence. I mean I just -- it just simply -- that has to dictate and command and warrant life. I really believe that considering this offense and all aspects of it and the attitudes of all, it warrants it.
>
> In fact, to be honest with you, the punishment aspect of the sentence really demands longer than that, but we know that that's not practical. Life means life.

R. 255-257.

The trial judge then imposed a life sentence for murder and twenty-five years for carjacking. ***R. 257-258.***

B. The hearing on Appellant's motion for resentencing.

On March 24, 2017, the Honorable Kristi Harrington heard the State's motion to dismiss Appellant's motion for resentencing pursuant to *Aiken v. Byars*, *supra*. ***R. 261***. Appellant was present at the hearing and Tristan M. Shaffer, Esquire, represented him. ***R. 262; 278***. The parties agreed that Appellant was nineteen at the time of the murder and carjacking and twenty when he was sentenced. ***R. 264-265.***

Counsel argued that *Aiken* was based on the United States Supreme Court's decision in *Miller*, and that a bright-line test for such a motion had not been established. ***R. 265***. However, Judge Harrington noted that *Aiken* had expanded South Carolina's definition of "juvenile" from seventeen years old to eighteen years old. She added, "... [T]here may be other forms of relief,

but for the purposes of this hearing, I don't believe that there's any -- and if you can point me to the case and where in the case that it says that it applies to somebody over the age of 18, I'm happy to look at that, but I have read extensively that case and I haven't seen it." ***R. 265-266.***

In response to counsel's reliance on an Illinois case, Judge Harrington asked what gave her jurisdiction to resentence someone who was nineteen when the crimes were committed. He pointed to the majority Opinion in *Aiken*, which held that *Miller* was applicable to South Carolina cases, and argued that *Miller* says "the failure of the sentencing court to consider the hallmark features of youth offends the constitution." ***R. 266-267.*** However, Judge Harrington again asked where *Aiken* says that she could consider an age over eighteen for resentencing under *Aiken*. ***R. 267.*** Counsel argued that limiting resentencing pursuant to *Aiken* to those under eighteen would offend both the Fourteenth Amendment to the United States Constitution and the South Carolina Constitution. ***R. 267-268.***

Counsel further observed that *Aiken* was based on the Eighth Amendment because South Carolina did not mandate a sentence of life without parole. Rather, sentencing is discretionary in this jurisdiction. ***R. 268.*** He contended that it would be arbitrary not to apply the factors relating to juvenile sentencing to a nineteen year old. ***R. 268-269.***

Yet, Judge Harrington stated, "I must work within the confines of what Aiken v. Byars is. And ... Aiken v. Byars was very specific and said, we extend from 17 to 18 inclusive. There is no other place in that case ...." ***R. 269.*** When asked whether Appellant was not a juvenile at the time the crime was committed, counsel conceded he was not a juvenile but stated, "[T]he heart of my argument is that there is no rational basis to not apply those hallmarks of youth to someone over the age of 18." ***R. 269-270.*** Judge Harrington found that this was not the purpose of the hearing, and that he was seeking an expansive application of *Aiken*, instead of "following the

law." ***R. 270.***

In response, the State noted that the Court in *Aiken* had considered the factors for juvenile sentencing when it expanded the definition of juvenile to an eighteen year old, and it argued that Appellant was nineteen when the crimes occurred. Also, the majority in *Aiken* did not establish a mandatory sentencing procedure for judges to follow. The State further argued that *Aiken* "only covers mandatory life sentences, and he was not sentenced to a mandatory life sentence." Rather, the trial judge considered a thirty year sentence. The State further argued that Appellant "was not just an ordinary 19-year-old. He had been in the service for three years." ***R. 271-273.***

Judge Harrington found that:

> ... I'm only here because it is my clear reading and very strict reading of Aiken v. Byars that says it only expanded from 17 to 18 years old. So all I have to review, once it is filed under that, is any individual 18 and below.
>
> Mr. McCall -- I have heard no contradictory information that he was anything other than over 18 at the time this sentence was imposed, as well as the time the crime was committed ....

R. 274.

Even though it was not controlling, counsel asked her to consider the reasoning of *People v. House*, 72 N.E.3d 357, 2015 IL App (1st) 110580, appeal denied, judgment vacated, 111 N.E.3d 940 (Ill. 2018). ***R. 276-277.*** However, Judge Harrington adhered to her interpretation of *Aiken* and granted the State's motion to dismiss because she did not believe that Appellant "is the defendant with which Aiken v. Byars was intended to provide relief." **R. 277-278.**

C. Discussion.

There was no legal error in dismissing Appellant's motion. The issue of an incarcerated inmate's eligibility for parole is generally an entirely separate and independent issue from the issue of an appropriate and proper sentence for a defendant convicted of a criminal offense. *State*

v. McKay, 300 S.C. 113, 115, 386 S.E.2d 623, 623 (1989). In South Carolina, the responsibility for determining whether an incarcerated inmate meets the requirements for parole is statutorily assigned to the state's parole board, which is required by law to "carefully consider the record of the prisoner before, during, and after imprisonment" in determining whether parole should be granted. S.C. Code Ann. § 24-21-640 (Supp. 2018); *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 104 (2008) ("[T]he parole board has the sole authority to determine parole eligibility separate and apart from the court's authority to sentence a defendant"). Meanwhile, trial judges in our state are tasked with imposing a criminal defendant's sentence upon conviction and are vested with broad discretion to carry out that duty. *See State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) ("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").

Despite the broad discretion afforded to South Carolina's trial judges in sentencing criminal defendants, the Eighth Amendment of the United States Constitution places limits on a trial judge's sentencing discretion by prohibiting the imposition of cruel and unusual punishment. *See* U.S. Const. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."). Pursuant to the ban on cruel and unusual punishment, a defendant's sentence must not be "barbaric" and must be graduated and proportioned to the offense in order to pass constitutional muster. *Solem v. Helm*, 463 U.S. 277, 284 (1983); *see also Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (instructing it is a precept of justice the punishment for a crime should be graduated and proportioned to the offense).

Importantly, in *Graham v. Florida*, 560 U.S. 48, 81 (2010), a narrow majority of the

United States Supreme Court concluded the imposition of a life sentence *without the possibility of parole* upon a juvenile offender who committed a non-homicide offense violated the Eighth Amendment's prohibition against cruel and unusual punishment. In reaching that conclusion, the Court applied its own "independent judgment" and determined life without parole sentences for juvenile non-homicide offenders were unconstitutional due to the lessened culpability of juveniles, the severity and irrevocable nature of life without parole sentences, and the lack of sufficient penological justifications for the sentencing practice in regard to juveniles. *Id.* at 74.

As a result, the Court in *Graham* held a state must "give [juvenile non-homicide] defendants like Graham some meaningful opportunity for release based on demonstrated maturity and rehabilitation." *Id.* at 75. But, the Court neither placed careful limits on its holding by explaining a state is neither "required to guarantee eventual freedom to a juvenile offender" nor required "to release that offender during his natural life." *Id.*

To the contrary, the Court instructed:

> Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life.

Id.

Subsequently, a narrow majority of the Supreme Court in *Miller* applied *Graham*'s reasoning of the decision to mandatory life without parole sentences for juvenile homicide offenders and the majority held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on "cruel and unusual punishments." *Miller*, 567 U.S. at 465. *See also id.* at 489. In reaching this conclusion, the Court determined that a requirement for a mandatory sentence of life without parole sentence would

doom a juvenile homicide offender to an irrevocable lifetime in jail, without any consideration being given to important factors related to the offender: including the offender's specific chronological age, the hallmark features of youth, the offender's home environment, the particular circumstances of the offender's crime, the effects peer pressure may have had on the crime, the "incompetencies associated with youth," and the possibility for rehabilitation. *Id.* at 477-78.

Accordingly, in light of the irrevocable nature of a life without parole sentence, the Court held that a sentencer must consider an offender's youth and attendant characteristics before imposing the particular penalty of life without parole on a juvenile non-homicide offender. *Id.* at 483. Yet, the Court expressly declined to preclude a sentencer from imposing a life without parole sentence on a juvenile homicide offender, so long as it first took "into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480 (footnote omitted).

In *Aiken*, the South Carolina Supreme Court considered whether *Miller* was applicable to juvenile homicide offenders who had been sentenced to life without parole under South Carolina's non-mandatory sentencing scheme. *See Aiken*, 410 S.C. at 536-37, 765 S.E.2d at 574. In a sharply-divided decision, a two-justice plurality of the Supreme Court concluded "any juvenile offender who receives a sentence of life without the possibility of parole [was] entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment." *Id.* at 544, 765 S.E.2d at 577 (plurality opinion). Agreeing in principle on different grounds, an additional justice joined with the plurality while concurring solely in the result. *Id.* at 545-46, 765 S.E.2d at 578 (Pleicones, J., concurring in result).

Accordingly, through its decision, the Supreme Court permitted "all juvenile offenders

who may be subject to a sentence of life imprisonment without the possibility of parole" to seek resentencing "to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight." *Id.* at 544-545, 765 S.E.2d at 577-78 (plurality opinion). Of important to the present issue, footnote 1 of the plurality opinion states, "In South Carolina, pursuant to Section 63–19–20 of the South Carolina Code (2010), a juvenile is a person less than seventeen years of age. However, Miller extends to defendants under eighteen years of age and therefore for the purposes of this opinion we consider juveniles to be individuals under eighteen. *Aiken*, 410 S.C. at 537 n. 1, 765 S.E.2d at 573 n. 1.

Following those decisions, in *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016), the United States Supreme Court considered whether its decision in *Miller* was entitled to retroactive effect in the cases of juvenile offenders previously sentenced to life without parole and concluded that it was, in fact, retroactively applicable. In reaching that conclusion, the Court carefully explained its determination did *not* require the states "to relitigate sentences, let alone convictions," despite the fact juvenile offenders sentenced before *Miller* likely would not have received the type of sentencing considerations mandated by that decision. *Id.*; *see also Miller*, 567 U.S. at 483 ("Our decision . . . mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing [life without parole]").

Instead, the Court instructed that an unconstitutional sentence imposed upon a juvenile offender could be remedied by permitting the offender to be considered for parole. *Montgomery*, 136 S.Ct. at 736. The Court explained that:

> Allowing those offenders to be considered for parole ensures that

> juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.
>
> . . .
>
> Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change.

Id. Thus, a grant of parole eligibility—as opposed to an individualized sentencing hearing—was expressly recognized as an appropriate means to remedy an Eighth Amendment violation involving a juvenile offender's sentence. *Id.*

Appellant relies on *House* and the unpublished decision in *Cruz v. United States*, No. ll-CV-787 (JCH), (D. Conn. Mar. 29, 2018), in support of his argument. Both cases are readily distinguishable. First, the decision in *House*, which was based on the Illinois constitution, has been vacated by the Illinois Supreme Court. In vacating the Appellate court's decision, the Illinois Supreme Court stated that:

> In the exercise of this Court's supervisory authority, the Appellate Court, First District, is directed to vacate its judgment in People v. House, case No. 1-11-0580 (12/24/15). The appellate court is directed to consider the effect of this court's opinion in People v. Harris, 2018 IL 121932, on the issue of whether defendant's sentence violates the Proportionate Penalties Clause of the Illinois Constitution.

House, 111 N.E.3d 940 (table)

Cruz is likewise distinguishable. In a habeas corpus proceeding brought under 28 U.S.C. § 2255, the United States District Court for the District of Connecticut held that the protections of *Miller* apply to offenders who were eighteen at the time that they committed their offenses. *Cruz*, 2018 WL 1541898, at *25. In *Cruz*, the defendant was 18 years and 20 weeks old at the time of his crime. *Cruz*, 2018 WL 1541898, at *1.

Moreover, the holding in *Cruz* has been expressly rejected by the United States District Court for the Eastern District of Pennsylvania, see *Commonwealth v. Mabine*, No. 1009 EDA 2018, 2018 WL 5262369, at *3 (Pa. Super. Ct. Oct. 23, 2018) ("We find appellant's reliance on this case, which was decided by a federal trial court, unavailing. Although this court recently certified for en banc review a case involving the application of *Miller* to a defendant who was 18 years and 9 months old at the time of his crime, there is presently no controlling authority in this Commonwealth that has extended the protections of *Miller* to defendants who are 18 years of age or older"), and the United States District Court for the Eastern District of Michigan. See *Heard v. Snyder*, No. 16-14367, 2018 WL 2560414, at *2 (E.D. Mich. June 4, 2018) ("The Court correctly determined the Plaintiffs have not established a deprivation of constitutional rights and the new non-binding case out of the district court of Connecticut does not change this determination. The federal courts, now save one, have drawn a bright line and refused to extend to defendants over the age of eighteen, the Supreme Court's holding in *Miller*, which held that mandatory life without parole for defendants under eighteen at the time of their crimes violated the Eight Amendment"). As noted by the Court in *Heard*, "The Connecticut court's holding is a lone outlier." *Heard*, 2018 WL 2560414, at *3.

In *United States v. Chavez*, 894 F.3d 593, 609 (4th Cir. 2018), *cert. denied*, 139 S.Ct. 278 (2018), and *cert. denied sub nom. Cerna v. United States*, 139 S.Ct. 466 (2018), and *cert. denied sub nom. Benitez v. United States*, 139 S.Ct. 469 (2018), the Fourth Circuit rejected the argument by two defendants that their mandatory life sentences were unconstitutional under *Miller* because they were eighteen and nineteen years old when they committed the murder and other crimes for which they were convicted. The Court reasoned as follows:

Both defendants were convicted of murder in aid of racketeering in violation

> of 18 U.S.C. § 1959(a)(1), which provides for punishment "by death or life imprisonment," and does not permit a district court to impose a shorter sentence regardless of mitigating circumstances. At the time of the crimes of conviction, Cerna was 18 years old and Guevara was 19.
>
> The Supreme Court has held that mandatory life sentences are unconstitutional as to defendants who committed their crimes as juveniles. *See Miller v. Alabama*, 567 U.S. 460, 470, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). But this is no help to the defendants, both of whom were adults at the time they committed murder in aid of racketeering. Contemporary "society draws the line for many purposes between childhood and adulthood" at 18 years old. *Roper v. Simmons*, 543 U.S. 551, 574, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). Guevara and Cerna both emphasize that they were barely over this threshold of adulthood at the time they committed their crimes. It is true, of course, that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18." *Id.* At the same time, "some under 18 have already attained a level of maturity some adults will never reach." *Id.* Individual differences in maturity will necessarily mean that age-based rules will have an element of arbitrariness, particularly when they have such stark differences in effect between those just one week below the cut-off and those just one week above. Nonetheless, rules based on age are historically common and appear in many areas of the law. Consider the legal age requirements for driving, drinking alcohol, registering for the draft, voting, holding certain public offices, and marrying, among other things. The lines drawn by age in all of these examples will be imperfect fits for some individuals. But we cannot say that this makes them unconstitutional.
>
> The Supreme Court has also held that a capital sentence cannot be imposed without individualized consideration by the jury of any mitigating factors. *See Kansas v. Marsh*, 548 U.S. 163, 173–74, 126 S.Ct. 2516, 165 L.Ed.2d 429 (2006). But these defendants were not given death sentences. They were sentenced to life imprisonment, which the Supreme Court has held does not require such individualized consideration. *See Harmelin v. Michigan*, 501 U.S. 957, 994–96, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991). In light of this precedent, the district court correctly applied the mandatory life sentence as written by Congress.

Chavez, 894 F.3d at 609.

The Sixth Circuit in *United States v. Marshall*, 736 F.3d 492, 498 (6th Cir. 2013), held that "[u]nder the Supreme Court's jurisprudence concerning juveniles and the Eighth Amendment, the only type of "age" that matters is chronological age. The Supreme Court's decision [in *Miller*] limiting the types of sentences that can be imposed upon juveniles all

presuppose that a juvenile is an individual with a chronological age under 18." *Id.* The Court in *Marshall* added, "[t]he reasons for according special protections to offenders under 18 cannot be used to extend the same protections to offenders over 18." *Id.* The Court found that "[c]onsideration of efficiency and certainty require a bright line separating adults from juveniles" and that "[f]or purposes of the Eighth Amendment, an individual's eighteenth birthday marks that bright line." *Id.* at 500.

As the Court in *Marshall* adroitly explained,

> Using chronological age as the touchstone for determining whether an individual is a juvenile or an adult is the standard approach in our legal system. "For purposes of [the Juvenile Delinquency Act], a 'juvenile' is a person who has not attained his eighteenth birthday...." 18 U.S.C. § 5031. Chronological age sets the boundaries for determining whether an individual is eligible to drive, vote, marry, buy and drink alcohol, be drafted, watch certain movies, and hold certain political offices. None of these age-based privileges and responsibilities ignore chronological age in favor of mental age.
>
> In almost every state, Marshall could vote, serve on a jury, or marry without his parents' consent when he committed the crime. *See Roper,* [*Roper v. Simmons*, 543 U.S. 551, 569 (2005)]. His immaturity did not render him ineligible for these benefits the law granted him by virtue of his chronological age. Nor does his immaturity excuse him from the punishment the law imposes upon him as a consequence of that age.
>
> The legal system that would emerge from Marshall's proposed approach that defines a juvenile by factors other than chronological age would be essentially unmanageable. Before a court could impose on a defendant over 18 those punishments constitutionally barred from being imposed on juveniles, it would first have to wade through tedious expert testimony to determine whether the defendant's mental age was commensurate with his chronological age. We refuse to impose such a difficult and time-consuming requirement on the district courts.
>
> Additionally, an approach that ignores chronological age in favor of other aspects of maturity should cut both ways. Individuals under 18 with the mental maturity of adults would have to be classified as adults for purposes of the Eighth Amendment. This approach is unthinkable; the Supreme Court would never accept such an end-run around the constitutional protections for chronological juveniles.

Marshall, 736 F.3d at 499.

Further, Respondent would direct the Court's attention to three other cases that have expressly rejected the argument that *Miller* applies to a defendant who was nineteen at time he committed the offenses. See *Janvier v. State*, 123 So.3d 647 (Fla. Dist. Ct.App. 2013); *Commonwealth v. Furgess*, 149 A.3d 90 (Pa. Super. 2016); and *State v. Nolan*, 870 N.W.2d 806 (Neb. 2015).

Notwithstanding Appellant's contrary argument, he was nineteen at the time of the offense. Therefore, neither the United States Supreme Court's decision in *Miller* nor the South Carolina Supreme Court's decision in *Aiken* entitle him to eithe resentencing or parole eligibility. See *Miller*, 567 U.S. at 465; *Aiken*, 410 S.C. at 537 n. 1, 765 S.E.2d at 573 n. 1. *See also Miller*, 567 U.S. at 489. Finally, the above authority makes abundantly clear that there is no merit to Appellant's argument that the failure to resentence him violsates his rights under the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, U.S. Const. amend XIV.

CONCLUSION

Respondent submits that the judgment of the circuit court, granting the dismissal of Appellant's motion for resentencing, should be affirmed for the foregoing reasons.

Respectfully submitted,

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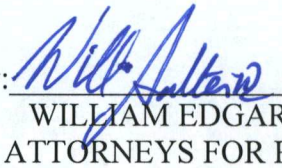
By: 
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 13th day of May, 2019

Respectfully submitted,

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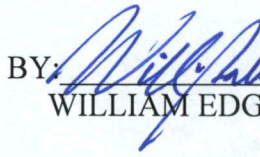
BY: 
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CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Final Brief of Respondent on Appellant by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Tristan M. Shaffer, Esquire, P.O. Box 1027, Chapin, South Carolina 29036.

I further certify that all parties required by Rule to be served have been served.

This 13th day of May, 2019.

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