

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

v.

ANTHONY M. ENRIQUEZ,

APPELLANT

APPELLATE CASE NO. 2016-002237

Appeal from Charleston County

Honorable Carmen T. Mullen, Circuit Court Judge

Opinion No. 2019-UP-295

PETITION FOR REHEARING

**RECEIVED**  
AUG 26 2019  
SC Court of Appeals

On August 21, 2019, this Court affirmed the circuit court’s denial of Appellant’s motion to reconsider his sentence pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). State v. Enriquez, 2019-UP-295 (S.C. Ct. App. filed August 21, 2019). Pursuant to Rule 221(a), SCACR, Appellant petitions the Court for rehearing and respectfully submits that this Court misapprehended the holding in Miller v. Alabama, 567 U.S. 460 (2012) and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) in reaching its decision. The Court also wholly ignored Appellant’s argument that a parole hearing in South Carolina does not offer a meaningful opportunity for release under Miller.

In Miller, the United States Supreme Court held that the imposition of a life without parole sentence on a juvenile defendant violated the Eighth Amendment's protections against cruel and unusual punishment because, "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty." Miller, 567 U.S. at 471, 489. The Court in Miller cited Graham v. Florida, 560 U.S. 48, 75 (2010), and held that a juvenile defendant *must* be afforded "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Miller, 567 U.S. at 479. Therefore, before a court can sentence a juvenile to life without parole, the sentencing court must conduct an individualized hearing where it considers the offender's age and maturity. Id. at 477-480.

In Aiken, the South Carolina Supreme Court held that the holding in Miller applied retroactively and outlined considerations that a sentencing court must consider before imposing a life without parole sentence for a juvenile. Aiken, 410 S.C. at 544, 765 S.E.2d at 577. The sentencing court *must* consider: the age of the offender, the family and home environment of the offender, the circumstances of the homicide offense, the "incompetencies" associated with youth, and the possibility of rehabilitation. Id.

In its unpublished opinion in this case, this Court held Appellant was not entitled to resentencing pursuant to Miller and Byars because although Appellant received a mandatory life sentence for murder as a juvenile offender, the circuit court's sentence afforded Appellant parole eligibility after the service of twenty years' imprisonment.<sup>1</sup> Consequently, this Court concluded Appellant's sentence "differs significantly from those at issue in Graham, Miller, and Byars in which the juvenile offenders received sentences of life *without* the possibility of parole." (emphasis in original).

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<sup>1</sup> Appellant became parole eligible on January 23, 2014.

This Court incorrectly interpreted Miller and Byars to limit the prohibition of life sentences imposed on juveniles to only de jure life without parole sentences. Appellant is aware of our Supreme Court's opinion in State v. Slocumb, 426 S.C. 297, 426 S.E.2d 297 (2019), but respectfully argues the holding in Slocumb, that only de jure life without parole sentences imposed on juvenile defendants violate the Eighth Amendment, is not in line with Miller and Graham. See Slocumb, 426 S.C. at 306, 827 S.E.2d at 152.

For whatever reason, this Court wholly ignored Appellant's argument that the opportunity for parole does not create a meaningful opportunity for release in the Miller context because a parole hearing does not afford the inmate with the same protections as a Miller hearing. Specifically, in a parole hearing there is no appointed counsel for the inmate and the parole board is not *mandated* to consider Appellant's "youth and its attendant characteristics." Miller, 567 U.S. at 465. However, during a Miller hearing, the defendant is entitled to the entire gamut of Sixth Amendment protections.

Moreover, the holdings in Miller and Byars require the sentencing court to hold a hearing for the defendant to show evidence of how "youth and its attendant characteristics" should make a lesser sentence "more appropriate" before a life sentence is imposed. Miller, 567 U.S. at 465. This procedure ensures the juvenile defendant has a meaningful opportunity for release prior to the sentence being imposed. Id. at 479. Appellant's past and future parole hearings do not provide the same opportunity for release as a Miller hearing.

The parole process and the considerations involved in determining whether to grant an inmate parole are explained in S.C. Code Ann. § 24-21-640 and in the S.C. Board of Pardons and Paroles Policy and Procedure Manual ("SCBPP Manual"). The parole board manual recognizes there are very little procedural due process protections at a parole hearing. SCBPP Manual, p.


20. A parole hearing does not *require* the parole board to consider Appellant's youth and its attendant characteristics, as a Miller hearing would, nor does a parole hearing provide an appointed attorney. Id.; see S.C. Code Ann. § 24-21-640. Consequently, Appellant's opportunity for a parole hearing in South Carolina does cure the wrongful process by which his life sentence was imposed in violation of Miller because it does not provide a meaningful opportunity for release.

While a parole hearing "can" operate as a "meaningful opportunity for release" it does not *always* suffice to substitute for a Miller hearing. Montgomery v. Louisiana, \_\_\_ U.S. \_\_\_, 136 S.Ct. 718, 734-735 (2016). In South Carolina, the parole process does not offer a meaningful opportunity for release in the Miller context because the parole board is not *required* to consider Appellant's "youth and its attendant characteristics" and Appellant is not entitled to the same Sixth Amendment protections at the parole hearing as he would have been had a proper Miller hearing been conducted, most importantly his right to counsel. Miller, 567 U.S. at 465.

Therefore, Appellant is entitled to a Miller hearing where there would be a *required* examination of his "youth and its attendant characteristics" before being sentenced to life in prison. Miller, 567 U.S. at 465. Appellant respectfully requests this Court grant rehearing and address his argument that a South Carolina parole hearing does not offer a meaningful opportunity for release.

Based on the foregoing, Appellant respectfully requests this Court rehear his case pursuant to Rule 221(a), SCACR, due to the significant legal and factual points overlooked and/or misapprehended by this Court in affirming the circuit court's denial of Appellant's motion to reconsider his sentence.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written in black ink and is positioned above a horizontal line.

LARA M. CAUDY

Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of August, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Charleston County

Honorable Carmen T. Mullen, Circuit Court Judge  
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THE STATE,

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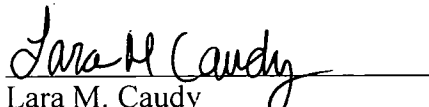
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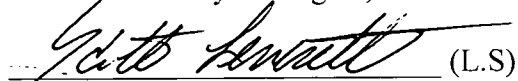
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CERTIFICATE OF SERVICE  
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The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Sherrie Butterbaugh, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Anthony M. Enriquez, #215961, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 26th day of August, 2019.

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE  
ME this 26th day of August, 2019.

  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: September 27, 2028.