STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

THE STATE,

RESPONDENT,

V.

RONALD YATES HYATT,

APPELLANT

APPELLATE CASE NO. 2016-001872

Appeal from Lancaster County

Brian M. Gibbons, Circuit Court Judge

Opinion No. 2019-UP-318

PETITION FOR REHEARING

On September 25, 2019, this Court affirmed the lower court's finding that Appellant, who was sentenced to life with the possibility of parole for murder in 1981, was not entitled to a resentencing hearing. State v. Hyatt, 2019-UP-318 (S.C. Ct. App. filed Sept. 25, 2019). Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter due to significant points overlooked and/or misapprehended by this Court in arriving at its decision.

According to this Court, Appellant was "not a member of the class of offenders contemplated by our precedent" who are entitled to resentencing "as he did not receive an

LWOP sentence." State v. Hyatt, 2019-UP-318 (S.C. Ct. App. filed Sept. 25, 2019). This Court acknowledged that the United State Supreme Court held (1) the Eighth Amendment prohibited imposition of an LWOP sentence on a juvenile offender for a nonhomicide crime, Graham v. Florida, 560 U.S. 48 74 (2010). State v. Hyatt, 2019-UP-318 (S.C. Ct. App. filed Sept. 25, 2019). Further, this Court admitted the United States Supreme Court concluded mandatory LWOP sentences for juvenile offenders who violate the Eighth Amendment, Miller v. Alabama, 567 U.S. 460, 479-280 (2012). State v. Hyatt, 2019-UP-318 (S.C. Ct. App. filed Sept. 25, 2019). Finally, this Court acknowledged the South Carolina Supreme Court held that all juvenile offenders serving a discretionary LWOP sentence were entitled to new sentencing hearings for consideration of the mitigating factors of youth, Aiken v. Byars, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014). State v. Hyatt, 2019-UP-318 (S.C. Ct. App. filed Sept. 25, 2019). Nevertheless, according to this Court, Appellant's sentence "differ[ed] significantly from those at issue in Graham, Miller, and Byars in which the juvenile offenders received sentences of life imprisonment *without* the possibility of parole." State v. Hyatt, 2019-UP-318 (S.C. Ct. App. filed Sept. 25, 2019) (emphasis in original). In other words, this Court held that only individuals sentenced to *literal* LWOP sentences were entitled to resentencing. Interpreting the meaning of the Eighth Amendment's prohibition against cruel and unusual punishment must not be reduced to an argument over semantics.

In December 1981, when Appellant was only sixteen-years-old, he was charged with murder and armed robbery, along with his adult co-defendant, William Robert Horton. R. 5, ll. 1-3; R. 32-36; R. 38-40; R. 44-45. He entered guilty pleas to the offenses. R. 5, ll. 8-10; R. 18; R. 32-36; R. 46. The Honorable Richard E. Fields sentenced Appellant to the only noncapital sentence available for one convicted of murder – life imprisonment with the possibility of parole.

Over three decades later, the United States Supreme Court made clear that "children are constitutionally different from adults for purposes of sentencing." Miller v. Alabama, 567 U.S. 460, 471 (2012).

In Miller, the United States Supreme Court continued the evolution of Eighth Amendment jurisprudence. The Court extended the reasoning of Roper and Graham by holding that mandatory sentences of life without parole for juvenile homicide offenders also violates the Eighth Amendment's prohibition on cruel and unusual punishment. Miller, 567 U.S. at 465. This was a categorical ban. However, the Court further explained that while the decision did not foreclose imposition of a sentence without the possibility of a parole on a juvenile convicted of a homicide offense, the Court required the sentencer "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 479.

The Miller Court reserved ruling on whether juveniles could ever be sentenced to LWOP. Id. at 479. The Miller Court repeatedly focused on the notion that the character traits of children are "more transitory and less fixed." Id. at 470-471. Children by definition lack maturity and responsibility; thus, they are more likely to act with "recklessness, impulsivity, and needless risk-taking." Id. at 471. The Court eloquently explained that due to the innate characteristics of children at large, there is a "great difficulty ... of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." In fact, the Court stated "incorrigibility is inconsistent with youth." Id. at 479. The Court emphasized the potential for reform present in all juveniles. The Court emphasized the mitigating qualities of youth and noted "[i]t is a time of

immaturity, irresponsibility, 'impetuousness[,] and recklessness.'" Id. at 475-476 (quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).

Although the Miller Court did not hold LWOP to be an unconstitutional sentence in non-mandatory sentencing schemes, the Court held Eighth Amendment jurisprudence governing imposition of death sentences applied equally to cases involving juveniles facing the possibility of LWOP. Id. at 480-481. The Court's decision created a presumption against LWOP sentences for juveniles, and most importantly, the Court imported the principles of capital sentencing into cases where juveniles face the possibility of LWOP. Specifically, the court explained that "death is different" and "children are different too." Id. at 481.

"The Eighth Amendment's prohibition of cruel and unusual punishment 'guarantees individuals the right not to be subjected to excessive sanctions.'" Id. at 469 (quoting Roper, 543 U.S. at 560). The Miller Court emphasized that "proportionality is central to the Eighth Amendment." Id. (quoting Graham, 130 S.Ct. at 2021). Focusing on the concept of individualized sentencing, the Court recognized "that children are constitutionally different from adults for purposes of sentencing." Children "have diminished culpability and greater prospects for reform," and therefore, "'they are less deserving of the most severe punishments.'" Id. at 471 (quoting Graham, 560 U.S. at 68). "[T]he distinctive attributes of youth diminish penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." Id. at 472. As a result, "[a]n offender's age is relevant to the Eighth Amendment." Graham, 560 U.S. at 76. In light of the relevance to the ban on cruel and unusual punishment, "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." Miller, 576 U.S. at 474.

Mandatory sentencing prevents the sentencer from considering the juvenile offender's "chronological age and its hallmark features, among them, immaturity, impetuosity, and failure to appreciate risks and consequences," the offender's family and home environment, the extent of the offender's conduct in the offense and the way familial and peer pressures may have affected him. Id. at 477. The Court required sentencers "to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 480. Thus, it is clear that sentencing authorities *must* consider a juvenile offender's age and consideration of such *must* be a mitigating factor.

Following Miller, courts have confronted the question of what constitutes a "life without parole sentence," particularly, in light of the Court's mandate that juvenile offenders *must* be afforded a *meaningful opportunity* for release unless there has been a finding of irreparable corruption.

Not long after the Court's opinion in Miller, our Supreme Court reviewed non-mandatory life sentences for juveniles in South Carolina through the lens of Eighth Amendment jurisprudence. In Aiken v. Byars, 410 S.C. 534, 540-541, 765 S.E.2d 572, 575-576 (2014), the South Carolina Supreme Court held that Miller applied retroactively and to juveniles who were sentenced to non-mandatory terms of life without parole. Finding that "Miller does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered," the Court held the sentencing judge must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" and that this requirement "deserves universal application." Id. at 543, 765 S.E.2d at 577 (internal quotations omitted). The Court held the class of petitioners in the case "and those similarly situated" were "entitled to

resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in light of its constitutional weight." Id. at 544, 765 S.E.2d at 577.

The sentencing court must consider the following factors in crafting a sentence proportional to the offense and the juvenile offender:

> (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 (internal quotations omitted). While not requiring the sentencing proceedings to "mirror the penalty phase of a capital case," the Court determined "the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings," in addition to the Miller factors. Id. at 544-45, 765 S.E.2d at 577.

Important for Appellant's case, in Montgomery v. Louisiana, 136 S.Ct. 718 (2016), the Supreme Court explained that a State "may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." Id. "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." Id.

> Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate

> the truth of Miller's central intuition – that children who commit even heinous crimes are capable of change.

Id. As evidenced by the decision, extending parole eligibility to juvenile offenders convicted of homicide offenses must *not* be viewed as a panacea. In order for parole eligibility to remove a life sentence from the scope of Miller, parole considerations must include the Miller factors, specifically, accepting that "children who commit even heinous crimes are capable of change." In other words, the nature of the crime *alone* must not prevent release in order for the parole scheme to comply with Miller and the Eighth Amendment's prohibition on cruel and unusual punishments.

When citing to State v. Slocumb, 426 S.C. 297, 306, 314-315, 827 S.E.2d 148, 153, 157 (2019), this Court claimed the South Carolina Supreme Court declined "to extend the holdings of Graham and Miller to include *de facto* LWOP sentences imposed upon juvenile offenders." State v. Hyatt, 2019-UP-318 (S.C. Ct. App. filed Sept. 25, 2019). This Court misapprehended the Supreme Court's ruling in Slocumb.

The Supreme Court held that Graham's explicit holding applied to *de jure* life sentences alone, and that its rationale may implicate *de facto* life sentences. Slocumb, 426 S.C. at 306, 827 S.E.2d at 152. In declining to extend the rationale to Slocumb, the Court emphasized that "Slocumb committed multiple crimes at two different points in time – the second set after he had escaped from custody and, in the short time he was free, committed another strikingly similar set of crimes to the first one three years earlier." Id. at 310, 827 S.E.2d at 155. Thereafter, the Court reasoned that "Slocumb received an average per-crime sentence of twenty-six years' imprisonment." Id. Thus, "[t]he only reason his aggregate sentence exceed[ed] his life expectancy [was] because he committed so many crimes, not because a single sentence [was] disproportionately lengthy." Id.

Contrary to this Court's conclusion that Slocumb stands for the proposition that the Eighth Amendment bars only literal LWOP sentences, the Supreme Court made clear that the only reason Slocumb's *de facto* life sentence passed constitutional muster was because it was an aggregate sentence for multiple crimes on multiple dates.

The South Carolina Supreme Court recognized the concept of a sentence that is the "functional equivalent" of a life sentence in State v. Kimbrough, 212 S.C. 348, 46 S.E.2d 273 (1948). The Court explained that when a judge exercises his discretion in sentencing a defendant following a jury's recommendation of mercy, the judge must sentence the defendant to a term of years that will not exceed the life expectancy of the defendant unless the record disclosed some reasonable basis for disregarding the jury's verdict. Id. at 356, 46 S.E.2d at 277. The jury's recommendation of mercy was a finding that the defendant should not receive the maximum punishment of life imprisonment; however, the judge's sentence of thirty years' imprisonment was for "all intents and purposes the equivalent of a life sentence." Id. at 357, 46 S.E.2d at 277. Where the record revealed nothing to justify the trial court's disregarding the jury's recommendation, the Supreme Court held the sentence was "manifestly too severe." Id. Thus, our Court has recognized that consideration of a defendant's life expectancy is necessary when fashioning a sentence when the intent of the sentence is to allow the defendant a meaningful opportunity to obtain release

Several states examining sentencing schemes involving juveniles have concluded that certain life with parole sentences violate the Eighth Amendment's ban on cruel and unusual punishment.

In State v. Ragland, 836 N.W.2d 107 (Iowa 2013), the Iowa Supreme Court addressed whether a sentence providing for the possibility of parole after sixty years in prison warranted re-sentencing. When Ragland was convicted of murder as a seventeen-year old, he was sentenced

to a mandatory term of LWOP. Id. at 110. After the Miller decision, the governor commuted Ragland's sentence to life with no possibility for parole for sixty years. Id. at 110-111. Ragland argued his sentence, even though less than life without parole, still violated the Constitution. Id. at 113. The Iowa Supreme Court agreed, finding "the rationale of Miller, as well as Graham, reveals that the unconstitutional imposition of a mandatory life-without-parole sentence is not fixed by substituting it with a sentence with parole that is the practical equivalent of a life sentence without parole." Id. at 121. As explained by the court, "it is important that the spirit of the law not be lost in the application of the law," and in this case, the court determined the spirit of Miller and Graham required that "in the sentencing of juveniles than merely making sure that parole is possible." Id. Based upon an "increased understanding of the decision making of youths," the court held the sentencing process must be tailored to account in a meaningful way for the attributes of juveniles that are distinct from adult conduct." Id. The court explained that "a government system that resolves disputes could hardly call itself a system of justice with a rule that demands individualized sentencing considerations common to all youths apply only to those youths facing a sentence of life without parole and not to those youths facing a sentence of life with no parole until age seventy-eight." Thus, the court held Miller applied to sentences that are the "functional equivalent of life without parole." Id. at 121-22.

Following the Ragland decision, the Iowa Supreme Court approved a sentence of life with the opportunity for parole after twenty-five years. State v. Louisell, 865 N.W.2d 590, 600-601 (Wyo. 2015). Louisell asserted "her eligibility for parole [was] illusory, not real." Id. at 601. According to Louisell, only one of Iowa's thirty-eight juvenile offenders originally sentenced to LWOP had been granted parole. Id. This was a conditional release to hospice care

for cancer treatment, and "the parole board reserved the right to revisit its decision if her health improved." Id. Louisell argued that if juveniles were "repeatedly denied parole based on offense severity, there is no realistic opportunity for her to receive parole, no matter how extensively she has been rehabilitated." Id. at 602. However, the question of whether Louisell had been denied parole in violation of the law was not before the Court. Id. Nevertheless, the Court took the opportunity to reaffirm that juveniles "must be afforded a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Id. (internal quotation omitted). Without fully exploring the meaning of the phrase "meaningful opportunity," the Court explained it "must be *realistic*." Id. (emphasis in original). The Court left "for another day the question whether repeated cursory denials of parole deprive juvenile offenders who have shown demonstrable rehabilitation and maturity of a meaningful or realistic opportunity for release." Id.

After remarking that in order for juvenile homicide offenders to be sentenced to life imprisonment, the offenders must be eligible for parole, the Massachusetts Court turned to the question of what was procedurally required in order to protect juvenile homicide offender's meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Diatchenko v. Dist. Attorney for Suffolk Dist., 27 N.E.3d 349, 357-358 (Mass. 2015). The court explained that the parole board must consider the "unique characteristics" of juvenile offenders. Id. at 360. "[G]iven the challenges involved for a juvenile homicide offender serving a mandatory life sentence to advocate effectively for parole release on his or her own, and in light of the fact that the offender's opportunity for release is critical to the constitutionality of the sentence," the court concluded "that this opportunity is not likely to be 'meaningful'" without access to counsel. Id. at 361.

Additionally, the court held "a parole-eligible, indigent juvenile homicide offender," may receive funding for expert witnesses to assist in connection with the initial parole proceeding." Id. at 363. The court noted an expert may be particularly helpful in explaining the "effects of the individual's neurobiological immaturity and other personal circumstances at the time of the crime, and how this information relates to the individual's present capacity and future risk of reoffending." Id.

Finally, the court held that judicial review of a parole decision was available. Id. at 365. Explaining that because "the parole hearing acquires a constitutional dimension for a juvenile homicide offender" as it is "what makes the juvenile's mandatory life sentence constitutionally proportionate," the court determined judicial review was necessary to ensure the board exercised "its discretionary authority in a constitutional manner, meaning that the right of the offender to a constitutionally proportionate sentence was not violated." Id. "[J]udicial review is limited to the question whether the board has carried out its responsibility to take into account the attributes or factors" outlined in Miller "in making its decision." Id.

The New York Supreme Court recently concluded that a juvenile was entitled to a parole release hearing at which his youth would be considered. Hawkins v. New York State Dep't. of Corr. and Cmty. Supervision, 140 A.D.3d 34 (N.Y. App. Div. 2016). In 1979, Hawkins was sentenced "to a prison term of 22 years to life." Id. at 35. He was first eligible for parole in 2000. Id. He was denied parole release nine times. Id. at 36. At his most recent parole hearing, he was "54 years old and had served 36 years of his sentence." Id. The appellate court held "a person serving a sentence for a crime committed as a juvenile ... has a substantive constitutional right not to be punished with a life sentence if the crime reflects transient immaturity." Id. Hawkins' "constitutional right to a meaningful opportunity for release" was denied when the

board "failed to consider the significance of [his] youth and its attendant circumstances at the time of the commission of the crime." Id. "The Board, as the entity charged with determining whether [Hawkins] will serve a life sentence, was required to consider the significance of [Hawkins'] youth and its attendant circumstances at the time of the commission of the crime before making a parole determination." Id. According to the court, this "consideration [was] the *minimal* procedural requirement necessary to ensure the substantive Eighth Amendment protections." Id. (emphasis added).

The court held it was "axiomatic" that a juvenile homicide offender "still has a substantive constitutional right not to be punished with life imprisonment for a crime reflect[ing] transient immaturity." Id. at 38 (alterations in original) (internal quotation omitted). Finding the 'foundational principle' of the Eighth Amendment jurisprudence regarding punishment for juveniles is that the imposition of a state's most severe penalties on juvenile offenders cannot proceed as though they were not children, the court held "[a] parole board is no more entitled to subject an offender to the penalty of life in prison in contravention of this rule than is a legislature or a sentencing court." Id. The court held that the parole release hearing stage must include a procedures analogous to those at the sentencing stage where a juvenile is entitled to a hearing at which his youth and its attendant characteristics are considered. Id. at 38-39. "For those persons convicted of crimes committed as juveniles who, but for a favorable parole determination will be punished by life in prison, the Board must consider youth and its attendant characteristics in relationship to the commission of the crime at issue." Id. at 39. The court held Hawkins was entitled to a de novo parole release hearing. Id. at 40.

According to South Carolina statutory law, the Parole Board "must carefully consider the record of the prisoner before, during, and after imprisonment." S.C. Code Ann. § 24-21-640.

An inmate may *not* be paroled until it appears to the satisfaction of the board: (1) "that the prisoner has shown a disposition to reform;" (2) "that in the future he will probably obey the law and lead a correct life;" (3) "that by his conduct he has merited a lessening of the rigors of his imprisonment;" (4) "that the interest of society will not be impaired thereby;" *and* (5) "that suitable employment has been secured for him." Id. The five-part statutory test for obtaining parole fails to take into the hallmarks of youth and the greater capacity for the youthful offender to change. Although the provisions include consideration of reform, the statute does not involve the rigorous examination of the Miller factors required by the Constitution in sentencing a juvenile.

In addition to the statutory provision, the Parole Board, exercising its regulatory authority, provides additional criteria considered by the Board when determining whether to grant or deny parole. These criteria may be found in the Parole Board Manual. The Parole Board's objectives and mission are important for understanding its decision-making process. According to the Parole Board Manual, the "Board's primary objective is the long-term protection of society." Policy and Procedure, South Carolina Department of Probation, Parole and Pardon Services, Division of Paroles and Pardons, 9 (April 2015), at https://www.dppps.sc.gov/content/download/68278/1576111/file/Parole+Board+Manual-+April+2015.pdf. Also, the first objective of the Board is to ensure its every decision "is based on the risk presented by the offender and is consistent with the goal of protection of the public." Id. In addressing the constitutionally-required procedural requirements, the Board functions under the notion that "very little is required in the way of procedural due process at parole hearings." Id. at 21. Prisoners have the right to be heard, "[f]air written notice of the specific parole criteria," notice of the date, time and place of the hearing, right to be heard by a fair panel,

the "opportunity to present evidence and to have up to three witnesses to speak on their behalf, and to have the Board or panel carefully consider the complete record before, during, and after imprisonment," to have an attorney present at the prisoner's expense, and to written notice of the Board's reasons for denying parole. Id.

The Manual also sets forth the contents of the parole case summary report. Id. at 22. While the report includes the prisoner's criminal history, disciplinary record, and *even* statements from law enforcement, the prosecutor, and the sentencing judge, the report makes no mention of any of the Miller factors or the diminished culpability of youth. Finally, the Board established "specific parole criteria." Id. at 27-28. The Board "will not parole a prisoner unless it determines, based on the ... criteria, as well as any other factors the Board may consider relevant, that the conduct of the offender merits a lessening of the rigors of imprisonment; that the interests of society will not be impaired by granting parole; and that the offender has secured, or will be able to secure, suitable employment and residence." Id. at 27. The specific criteria set out by the Board include:

> The risk that the offender poses to the community;
>
> The nature and seriousness of the offender's offense, the circumstances surrounding that offense, and the prisoner's attitude toward it;
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> The offender's prior criminal record and adjustment under any previous programs of supervision;
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> The offender's attitude toward family members, the victim, and authority in general;
>
> The offender's adjustment while in confinement, including his progress in counseling, therapy, and other similar programs designed to encourage the prisoner to improve himself;
>
> The offender's employment history, including his job training and skills and his stability in the workplace;

> The offender's physical, mental, and emotional health;
>
> The offender's understanding of the causes of his past criminal conduct;
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> The offender's efforts to solve his problems;
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> The adequacy of the offender's overall parole plan, including his proposed residence and employment;
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> The willingness of the community into which the offender will be paroled to receive that offender;
>
> The willingness of the offender's family to allow the offender, if he is paroled, to return to the family circle;
>
> The opinion of the sentencing judge, the solicitor, and local law enforcement on the offender's parole;
>
> The feelings of the victim or the victim's family, about the offender's release;
>
> Any other factors that the Board may consider relevant, including the recommendation of the parole examiner.

Id. at 28. Quite clearly, the Parole Board's considerations do not extend to any matters relative to the youth of the offender at the time of the commission of the offense. Eligibility for parole in South Carolina simply cannot "save" a life sentence from Eight Amendment scrutiny. The judge erred in holding otherwise.

Appellant's sentence of life with parole eligibility after twenty years violates the Eighth Amendment's prohibition on cruel and unusual punishment on its face and as applied. The sentencing judge had no discretion in what sentence to impose upon Appellant. The statute required that he sentence Appellant to life imprisonment with the possibility of parole. The mandatory nature of the sentence makes it immediately suspect under Eighth Amendment jurisprudence as it demonstrates the lack of individualization required by the Constitution. The mandatory nature of the sentence also demonstrates that the sentencer never considered the Miller factors deemed necessary prior to sentencing a juvenile offender. Despite Appellant

receiving a mandatory life sentence, one that is the functional equivalent to LWOP, no sentencer ever determined he was irreparably corrupt as required by the Constitution.

Appellant's sentence is the *functional equivalent* of life imprisonment without the possibility of parole on its face in light of the parole system's failure to consider the Miller factors in rendering its decisions. In fact, the Parole Board does not consider an offender's youth at the time of the offense *at all.* The statutory scheme providing for the circumstances warranting parole and the Parole Board Manual completely fail to account for Miller. In the wake of Miller, Aiken, and Montgomery, a person serving a sentence for a juvenile offense has a substantive constitutional right not to be sentence to life imprisonment. The presumption is against life imprisonment and can only be overcome by a showing and finding of irreparable corruption. Appellant's constitutional right to a meaningful opportunity for release was violated by the Parole Board's failure to consider the significance of his youth at the time of the commission of the offense.. See Greiman v. Hodges, 79 F.Supp.3d 933, 943 (S.D. Iowa 2015) (refusing to accept at the summary judgment stage that the Parole Board's consideration of the "totality of the circumstances" necessarily considered the prisoner's age at the time of the offense, maturation, and rehabilitation). In light of the mandatory nature of Appellant's life with parole sentence, it is the Parole Board that will determine the ultimate length of his sentence. See id. Thus, the requirements of Miller must be fulfilled by the Parole Board. Id.

Appellant's sentence is the functional equivalent of life imprisonment without the possibility of parole as applied to Appellant because he has been denied parole for at least sixteen consecutive years without any consideration of the hallmarks of youth. Due to the Board's cursory, repeated denials of release and the statutory and regulatory procedures not incorporating the Miller factors or anything remotely close, there is an unacceptable likelihood

that the nature of the crime alone, a fact that will never change, works to deny Appellant a meaningful opportunity for release from incarceration. Appellant is entitled to a meaningful opportunity to obtain release, which is something to which adult offenders are not entitled. Thus, the Parole Board's treatment of Appellant in the same manner as adult offenders violates the Constitution. See Hayden v. Keller, 134 F.Supp.3d 1000, 1009 (E.D.N.C. 2015) (holding North Carolina's parole system, which "wholly" failed to provide a juvenile offender any meaningful opportunity for release in light of the system's lack of distinction between parole reviews for juvenile offenders from adult offenders, showing no consideration for children's diminished culpability and heightened capacity for change in the parole determination).

Appellant's mandatory sentence of life imprisonment with the possibility of parole violates the Eighth Amendment. The sentence is the functional equivalent of life imprisonment without the possibility of parole. Appellant has been incarcerated since 1981, serving almost two decades in prison before becoming eligible for parole. Thereafter, he has been denied parole sixteen times. At no time – not during the sentencing proceeding and not during the parole process – has Appellant's youth been considered as required by the Constitution. The Supreme Court has provided a juvenile offender "with substantially more than a possibility of parole or a 'mere hope' of parole." Greiman, 79 F.Supp.3d at 945. The Constitution "creates a categorical entitle to demonstrate maturity and reform, to show that he is fit to rejoin society, and to have a meaningful opportunity for release." Id. (internal citation and quotations omitted). Appellant must be re-sentenced in accordance with the Eighth Amendment and federal and state jurisprudence governing prohibitions on cruel and unusual punishments.

Respectfully Submitted,

SUSAN B. HACKETT
Appellate Defender

This 10th day of October, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONALD YATES HYATT,

APPELLANT

CERTIFICATE OF SERVICE

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 Ronald Yates Hyatt, #109143, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 10th day of October, 2019.

Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 10th day of October, 2019.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: September 30, 2019