THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SPARTANBURG COUNTY
Court of General Sessions

Honorable Edward W. Miller, Circuit Court Judge

Appellate Case Number: 2018-001465

THE STATE .....RESPONDENT.

V.

ERIC DALE MORGAN .....APPELLANT.

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

The Respondent's brief advances a falsely limited view of the holding in *Aiken v. Byars* and the underlying Eighth Amendment jurisprudence that gave new constitutional dimension to the principle that "children are different" for sentencing purposes. *See Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014); *Miller v. Alabama*, 567 U.S. 460 (2012). According to Respondent, Morgan's sentencing hearing (proceeding *Aiken* by eight years) precludes relief "because the record demonstrates [he] already received the relief contemplated" in *Aiken* and *Miller*. Initial Br. of Res'p at 14. However, the South Carolina Supreme Court explicitly instructed that *Aiken* applies retroactively to all individuals "similarly situated" to the named petitioners who brought the *Aiken* action, defined as "inmates who were sentenced to life without parole as juveniles" with no exceptions. *Id.* By its explicit terms, Morgan falls within the category eligible for resentencing.

The majority in *Aiken* already considered and rejected Respondent's proposed culling of the group of juveniles eligible for resentencing in response to the dissent's discussion of the Ham case, one of the nineteen cases that made up the *Aiken* petitioners. According to the dissent, Ham's sentencing hearing included a defense mitigation presentation that provided the sentencing court with information regarding Ham's youth, his borderline IQ, records indicating he was susceptible to peer pressures, and Ham's abusive stepfather. *Id.* at 550, 765 S.E.2d at 580 (Toal, J. dissenting). The dissent went on to state "I applaud the sentencing court in conducting such a thorough hearing, one in which it already considered each of the five *Miller* factors." *Id.* at 552, 765 S.E.2d at 581. In rejecting the dissent's invocation of the Ham case, the majority recognized that the *Miller* decision "command[s] that courts afford youth and its attendant characteristics constitutional meaning" and that all pre-*Miller* sentencing hearings suffer from the same "constitutional defect—the failure to examine the youth of the offender though the lens mandated by *Miller*." *Id.* n.8; *see*

also id. at 543-44, 765 S.E.2d at 577 (requiring "universal application" of *Miller*'s command that sentencers "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison"). This language is dispositive in Morgan's case—no matter how much evidence was presented at Morgan's 2006 sentencing hearing and no matter how many of the *Miller* factors Judge Cole recalls considering (before they were announced), Morgan's sentencing hearing still suffers from the "constitutional defect" that Judge Cole did not consider Morgan's "youth and its attendant characteristics . . . through the lens mandated by *Miller*."[1] Accordingly, *Aiken* demands that Morgan be resentenced under current juvenile sentencing laws.[2]

Considering the language in *Aiken*, it is clear the supreme court would reject Respondent's assertion that the fact *Aiken* and *Miller* did not define the exact procedures to be used in conducting juvenile sentencing hearings somehow means a pre-*Miller* sentencing hearing could comply with the new requirements. On the contrary, the *Aiken* court clearly envisioned new sentencing hearings taking place for all juveniles previously sentenced to life without parole, stating the sentences of "inmates who were sentenced to life without parole as juveniles . . . violate the Eighth Amendment

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[1] Respondent's argument further fails because even if Judge Cole did consider all the evidence presented to him relevant to Morgan's youth, Morgan's 2006 sentencing counsel were operating without the benefit of *Miller* and *Aiken* and did not have the same opportunity or incentive to investigate and present evidence relevant to the *Miller* and *Aiken* factors, especially Morgan's youth. Accordingly, there is no way to know what relevant information Judge Cole did not know at the time of the 2006 sentencing hearing and Morgan is entitled to prepare and present evidence relevant to the factors that must now be considered before sentencing him to life without parole.

[2] The Supreme Court of the United States' decision in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), further supports this finding by emphasizing that the only juveniles who may be sentenced to life without parole after *Miller* are juveniles whose crimes are determined to be the result of "irreparable corruption" as opposed to transient immaturity. *Id.* at 736-37. Judge Cole did not make a finding of irreparable corruption (because no such finding was required in 2006) and Morgan is serving an illegal life without parole sentence as a result of the lack of judicial consideration of his youth.

under *Miller* and [they] . . . are entitled to resentencing." *Aiken*, 410 S.C. at 536, 765 S.E.2d at 573. Those resentencing hearings require "trial judges to weigh the factors discussed [in *Aiken*] and to sentence juveniles in light of this *new constitutional jurisprudence*." *Id.* at 543 n.8, 765 S.E.2d at 577 n.8 (emphasis added). There is simply no way for a prior sentencing hearing to comply with the "new constitutional jurisprudence" without allowing for resentencing.

This Court should therefore remand with instructions to conduct an *Aiken*-compliant sentencing hearing.

Respectfully submitted,

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October 14, 2019.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SPARTANBURG COUNTY
Court of General Sessions

Honorable Edward W. Miller, Circuit Court Judge

Case Number: 2018-00146

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

ERIC DALE MORGAN,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Appellant's Initial Reply Brief was served by email this 14th day of October, 2019, due to the federal holiday and will be served by first class United States mail, postage prepaid,upon the following on October 15, 2019:

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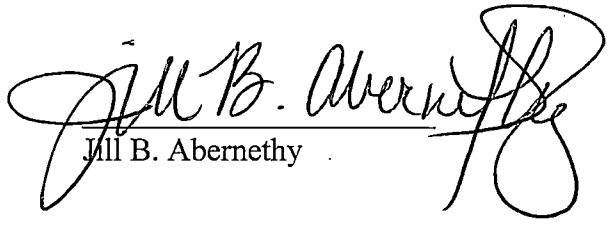

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The Honorable Jenny Abbot Kitchings
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P.O. Box 11629
Columbia, SC 29211
HAND-DELIVERED

RE: *Eric Dale Morgan v. State of South Carolina*
2018-001465

Dear Ms. Kitchings:

Please find enclosed for filing, along with certificate of service, the original and one copy of the Appellant's Initial Reply Brief.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

Jill B. Abernethy
Paralegal

Enclosure

cc: Melody Brown, Esq.
Sherrie Butterbaugh, Esq.