



at both hearings and was represented by Clay T. Allen, Esq. the Public Defender for the Seventh Judicial Circuit. Matthew C. Buchanan, General Counsel for the SC Department of Probation, Parole, and Pardon Services was also present. The Court Reporter at the Reconsideration Hearing was Sharon Hardoon.

In support of its motion, Counsel for Petitioner argues that Carnell Davis is entitled resentencing. The Motion for Reconsideration is based upon the following: the Petitioner, who was seventeen years old at the time of the offense, was sentenced to a parole eligible life sentence; however his sentence still violates the requirements of *Miller v. Alabama*, 567 U.S. 460 (2012) because he has been denied parole without the parole board's consideration of the Petitioner's youth and its attendant characteristics. Therefore, the Petitioner does not have a realistic opportunity for release from incarceration. South Carolina's parole system, as specified in the statutes and in the Parole Manual, does not require the Parole Board to consider the Petitioner's youth and its attendant characteristics, and, therefore, subjects the Petitioner to the equivalent of a "life without parole" sentence in violation of *Miller v. Alabama, supra*. The Petitioner's sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. The Petitioner's sentence constitutes cruel, corporal, and unusual punishment, in violation of the South Carolina Constitution, Article 1, Section 15. Petitioner requests that the prior Order of the Court denying the re-sentencing be reconsidered.

Counsel for The State disagrees and relies on the recent decision of the South Carolina Court of Appeals in *State v. Finley*, 427 S.C. 419, 831 S.E.2d 158 (Ct. App. 2019). *Finley* held that the principles enunciated in *Miller*...apply...to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole, and that *Finley* was not a member of the class of offenders contemplated by the Court's precedent. The Court reasoned that *Finley*'s

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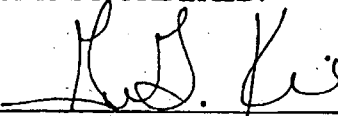
sentence afforded him parole eligibility, and it found that any potential Eighth Amendment violation was cured. Furthermore, the U.S. Supreme Court indicated in *Graham v. Florida*, 560 U.S. 48 (2010) and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016) that a sentencing court may remedy any potential Eighth Amendment violations by permitting a juvenile offender to be considered for parole. In conclusion, the State argues that the decision and order of the Court was correct and appropriate.

The Court finds and concludes as follows:

After careful consideration of the able argument and filings of Counsel, review of the record in this matter, and having fully considered the matter, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered;

The Court finds no basis upon which to modify its prior Order. Therefore, The Motion for Reconsideration of Sentence filed on behalf of Petitioner pursuant to Rule 29, SCRCrP is denied.

IT IS SO ORDERED.



The Honorable Grace Gilchrist Knie  
Resident Judge, Seventh Judicial Circuit

November 25th, 2019  
Spartanburg, SC

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SOUTH CAROLINA

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