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8th Court of Appeals

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE GENERAL SESSIONS COURT  
SEVENTH JUDICIAL CIRCUIT

CARNELL DAVIS, )  
Petitioner, )

**ORDER DENYING PETITION FOR  
RESENTENCING PURSUANT TO  
AIKEN V. BYARS**

v.

Indictments Nos: 1991-GS-42-1126  
1991-GS-42-1723

STATE OF SOUTH CAROLINA, )  
Respondent. )

Warrant Nos: C906699 and C493703

Date of Hearing: 8/27/2018  
Counsel for Petitioner: Clay T. Allen  
Counsel for Respondent: Barry J. Barnette and Octavia Y. Wright  
Court Reporter: Pamela E. Green

2018 OCT 10 11:00 AM  
M. HOPE BLACKBURN

This matter came before the Court on for a hearing on the above referenced petition for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 ( 2014). Petitioner filed his petition on November 19, 2015.

This Court was vested with exclusive jurisdiction to hear the petition by Order of the Chief Justice of the South Carolina Supreme Court dated February 15, 2018. A hearing on the petition was conducted at the Spartanburg County Courthouse on August 27, 2018. The Petitioner was present at the hearing and was represented by The Public Defender for the Seventh Judicial Circuit, Clay T. Allen. The State was represented at the hearing by The Solicitor for the Seventh Judicial Circuit, Barry J. Barnette. South Carolina Probation, Parole, and Pardon Services was represented by their General Counsel, Octavia Y. Wright,

Based on the records before the Court, on February 8, 1991, the Petitioner murdered Thomas Dexter Feaster by shooting him in Spartanburg County. On March 7<sup>th</sup>, 1991, the Petitioner shot Spartanburg City Police Officer, Terry Lee Gory. On April 25<sup>th</sup>, 1991, Petitioner was indicted by the Spartanburg County Grand Jury for Murder and Armed Robbery (1991-GS-42-01126). On April 29<sup>th</sup>, 1991, Petitioner was indicted by the Spartanburg County Grand Jury for Assault and Battery with Intent to Kill (1991-GS-42-1723). On July 9, 1991, the Petitioner pled guilty to the charges of Murder and Assault and Battery with Intent to Kill before the Honorable E.C. Burnett, III, in the Spartanburg County Court of General Sessions. The Petitioner received the following sentences: on the Murder charge (Ind. No. : 1991-GS-42-1126), he received a Life Sentence with parole; and on the Assault and Battery with Intent to Kill charge (Ind. No.: 1991-GS-42-1723) he received a twenty (20) year sentence to run consecutively. At the time of the commission of the crimes, the Petitioner was seventeen (17) years old.

The Petitioner seeks relief pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). However, the law of South Carolina at the time of Petitioner's conviction provided for possibility of parole being granted for persons sentenced to


life terms. Based on information obtained from the South Carolina Department of Probation, Parole, and Pardon Services, since first becoming eligible for parole in 2011, Petitioner has had at least four (4) prior parole hearings on: May 4, 2011; June 19, 2013; August 12, 2015, and October 24, 2017. On October 24, 2019, the Defendant will apparently again be eligible for parole consideration, although as of the date of this Order, that hearing has not yet been set.

The United States Supreme Court considered the retroactivity of its holding in *Miller v. Alabama* in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), as revised (Jan. 27, 2016). After concluding the holding of *Miller* should be applied retroactively, the majority addressed the dissent's claim that making *Miller* retroactive would overly burden State courts by requiring all juveniles sentenced to life to be resentenced in accordance with the "new" mandate of *Miller*. In so holding, the Supreme Court stated,

[G]iving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. See, e.g., Wyo. Stat. Ann. § 6-10-301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years) 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. *Montgomery*, at 736.

Because the Petitioner's original life sentence makes him eligible for parole pursuant to South Carolina law, he is not entitled to resentencing pursuant to *Miller v. Alabama*, 132 S. Ct. 2455 (2012) or *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Accordingly, Mr. Davis's Petition should be, and hereby is, DENIED with prejudice.

IT IS SO ORDERED.

  
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GRACE GILCHRIST KNIE, Judge,  
Circuit Court of South Carolina  
The Seventh Judicial Circuit

October 9th, 2018  
Spartanburg, South Carolina

2018 OCT 19 AM 10:00  
M. HOPE BLANCHETT