

STATE OF SOUTH CAROLINA  
In The Supreme Court

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*On Petition for Writ of Certiorari to the Court of Appeals*  
APPEAL FROM LANCASTER COUNTY  
Brian M. Gibbons, Circuit Court Judge

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Unpublished Opinion No. 2019-UP-318

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S.C. SUPREME COURT

THE STATE,.....RESPONDENT

v.

RONALD YATES HYATT,.....PETITIONER.

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**RETURN TO PETITION FOR A WRIT OF CERTIORARI**  
Appellate Case No. 2019-001979

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### **PETITIONER'S QUESTION PRESENTED**

Whether the Court of Appeals erred in holding Petitioner was not entitled to re-sentencing where he received a *mandatory* sentence of life imprisonment *with* the possibility of parole, which is functional equivalent of life imprisonment *without* the possibility of parole, in light of Petitioner's repeated denials of parole for sixteen consecutive years and the parole statutes not providing for consideration of the hallmark characteristics of youth?

### **RESPONDENT'S COUNTER STATEMENT OF QUESTION PRESENTED**

Whether the Court of Appeals properly affirmed the trial court's ruling that the Petitioner was not entitled to a re-sentencing due to the fact he received a *life with* parole sentence and is eligible for release every year thereby not related to *Aiken v. Byers* decision?

## STATEMENT OF THE CASE

The Petitioner Ronald Yates Hyatt, was sentenced to life *with* the possibility of parole by the Honorable Richard E. Fields on December 16, 1981, for the offenses of murder and armed robbery.<sup>1</sup>(R. p. 44) Petitioner became eligible for parole on April 26, 1998, and has appeared before the board sixteen times each resulting in a denial of parole. (R. p. 33)

The State alleged that the Petitioner, at the age of sixteen with his co-defendant William Robert Horton who was nineteen, killed the victim during the commission of an armed robbery on August 17, 1981. (R. p. 5 lines 1-3; p. 33)

Due to the Petitioner's youth at the time of the commission of this offense, he was originally charged in Lancaster County Family Court. On August 24, 1981, the State moved for the case to be transferred to Lancaster County General Sessions Court. (R. p. 5, lines 4-6; p. 37) A hearing was held before Family Court Judge Roddey L. Bell. During this hearing the Petitioner was represented by attorney Berry Mobley, and Assistant Solicitor Frank Manning represented the State. Upon the conclusion of a hearing the Family Court granted the state's motion on August 25, 1981. (R. p. 5, lines 6-8; p. 40) Within his order Judge Bell determined that based on the seriousness and violence of the crimes; the Petitioner's level of maturity, and other factors such as his "pattern of living" his criminal history, and the "better likelihood of reasonable rehabilitation" the Petitioner should be tried in General Sessions Court.

The Petitioner was later admitted to the South Carolina State Hospital on August 26, 1981. After observing and examining the Petitioner it was determined he was not mentally ill, capable of understanding the nature of his charges, and has the ability to assist his counsel in his defense. (R. p. 41)

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<sup>1</sup> The Petitioner was sentenced to a concurrent twenty-five year sentence for armed robbery.

The Petitioner later appeared before the Honorable Richard E. Fields on December 16, 1981 to plea to the offenses of murder and armed robbery. At the time of his guilty plea he was represented by Tyre Lee. At the conclusion of this appearance the Court sentenced the Petitioner to a term of incarceration for the remainder of his natural life with parole eligibility upon the service of twenty years for the offense of murder<sup>2</sup>, and a concurrent twenty-five years for armed robbery.

On November 11, 2015, the Petitioner submitted a *pro se* motion for re-sentencing pursuant to this Court's decision in *Aiken v. Byers*, 410 S.C. 534, 765 S.E.2d 572 (2014)(R. pp. 18-31). On June 16 2016, a hearing was held in Lancaster County on the Petitioner's motion before the Honorable Brian M. Gibbons. (R. p. 1) The Court appointed Public Defender Mike Lifsey to represent the Petitioner, and the State was represented by Assistant Solicitor Lisa Collins. Upon the conclusion of this hearing the trial Court took this matter under advisement, in order to present his decision at a later date.

On August 15, 2016, the trial Court issued his decision. The trial Court decided to deny the Petitioner's motion, ruling that due to the fact the Petitioner is currently eligible for parole *Aiken* does not apply. (R. pp. 32-35)

Upon receiving this decision, the Petitioner decided to file a notice of appeal before the South Carolina Court of Appeals. Within this appeal the Petitioner argued that he received a mandatory sentence of life *with* parole. However, with his repeated denials it is the functional equivalent of a sentence of life imprisonment *without* the possibility of parole. He alleges that he is not being afforded a meaningful opportunity to parole in violation of the eighth amendment. The Petitioner also argued that the statutory scheme does not provide for a consideration of the

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<sup>2</sup> Due to the application of good time credits the Petitioner became eligible for parole upon the service of seventeen years.

characteristics of youth. The Respondent argued that the trial Court was correct in their decision; and, since the Petitioner is eligible for parole *Aiken* does not apply.

On September 25, 2019, the Court of Appeals issued an unpublished opinion affirming the decision of the trial court. *State v. Hyatt*, 2019-UP-318 (2019)(R. app. pp 1-3). The Court of Appeals found that even though the Respondent received a life sentence as a juvenile, the circuit court sentence afford him parole eligibility. Therefore, the Petitioner is not a member of the class of offenders that fall under the *Aiken* decision as he did not receive a sentence of life imprisonment without the possibility parole. (R. app. p. 3)

The Petitioner now files this petition for writ of certiorari seeking review from this Court. The Respondent argues that the decision of the Court of Appeals does not fall within any of the parameters found in South Carolina Appellate Court rule 242, so this petition should be subject to dismissal. The return of the Respondent follows.

### **WHY CERTIORARI SHOULD BE DENIED**

Pursuant to rule 242 of the South Carolina rules of the Appellate Court, a writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicates the character of reasons which will be considered.

- (1) Where there are novel questions of law;
- (2) Where there is a dissent in the decision of the Court of Appeals;
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court;
- (4) Where substantial constitutional issues are directly involved;

- (5) Where a federal question included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

#### Rule 242 SCACR

In reviewing each of these criteria the present case does not apply. The Court of Appeals properly affirmed the decision of the trial court, which should not be subject to review.

Pursuant to *Aiken v. Byers*, it is unconstitutional for a juvenile to receive a sentence of life without the possibility of parole. The Petitioner does not fall within this class due to the fact he is receiving yearly parole hearings. This Court has recently determined in *State v. Slocumb*, 466 S.C. 297, 827 S.E.2d 148 (2019), that *Graham* nor the Eighth Amendment prohibits the imposition of an aggregate sentence for multiple offenses amounting to a *de facto* life sentence. *Slocumb*, S.C. at 315-316, S.E.2d at 158. So this court decided to issue a declaratory judgment on behalf of the State.

+The Court of Appeals correctly applied *Slocumb* to the present case.<sup>3</sup> The present case should not be considered a *de facto* life sentence due to the fact unlike the Appellant in *Slocumb* he is currently eligible for parole. This court was not inclined to go against the United States Supreme Court in *Slocumb*; so, the identical result should apply to the instant case. This writ should be subject to dismissal.

#### STATEMENT OF FACTS

On August 17, 1981, the Petitioner along with this co-defendant William Robert Horton approached the victim armed with a handgun with the intent to rob him. During this robbery the

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<sup>3</sup> Noting this court's review is confined by the parameters established by the United States Supreme Court and therefore declining to extend the holdings of *Graham* and *Miller* to include de facto LWOP sentences imposed upon juvenile offenders. *State v. Hyatt*, Op. No. 2019-UP-318 (2019), quoting, *State v. Slocumb*, 426 S.C. 297, 306, 314-315, 827 S.E.2d 148, 153, 157 (2019).

victim was shot and later died due to his gunshot wounds. Both defendants were later charged with the offenses of murder and armed robbery. Due to the Petitioner's age at the time he committed this offense he was originally charged in Family Court. A motion for his offense to be waived up to General Sessions Court was later made in family court by then Sixth Circuit Solicitor John R. Justice. (R. p. 37)

A hearing was held in family court before the Honorable Roddey L. Bell. Present was the Petitioner, his parents, his attorney Mr. Berry Mobley, and assistant solicitor Frank Manning. At the conclusion of this hearing the Family Court made the following determination, that the Petitioner was charged with murder and armed robbery; that he has been involved in Family Court since February of the previous year; that the investigation reports completed are a sufficient examination of the parentage and surroundings of the juvenile, his age, habits, history and sufficient inquiry into the home conditions and character of his parents or guardian. (R. p. 38) The Family Court also expressed that he considered: 1) the seriousness of the alleged offenses to the community and that protection of the community requires waiver; 2) the alleged offenses were against a person and not merely against property; 3) the alleged offenses were committed in an aggressive, violent and premediated or willful manner; 4) there is apparent prosecutive merit to the complaint and from the statement of the Solicitor it is likely that a Grand Jury would return an indictment; 6) the juvenile has a prior record in the Family Court and has been involved in probationary sentences and a commitment to Reception and Evaluation Center; 7) the juvenile's previous record makes his prospects for rehabilitation unlikely under the Family Court System; and, 8) there are better prospects for adequate protection of the public and better likelihood of reasonable rehabilitation of the juvenile (if he be convicted) were he to be tried in General Sessions

Court. (R. p. 39) Due to these reasons the Family Court Judge determined that the Petitioner's case should be transferred to General Sessions Court. (R. p. 40)

Upon this determination the Petitioner's was later submitted to the state mental health hospital for a determination of his competency to stand trial. On September 4, 1981, it was determined by Dr. Karl V. Dorskocil, M.D., Superintendent of the South Carolina State Hospital, that the Petitioner was not mentally ill, he was capable of understanding the nature of his charges, and capable of assisting counsel. (R. p. 41)

Upon the determination of his waiver up to General Sessions Court and his competency to stand trial, the Petitioner's later appeared before the Honorable Richard E. Fields to plead guilty to the offenses of murder and armed robbery. On December 16, 1981 the Petitioner was sentenced to a period of incarceration for the remainder of his natural life with parole eligibility upon the service of twenty years for the offense of murder; and twenty-five years for armed robbery. The sentencing Court ordered that these sentences were to be served concurrently. (R. p. 44)

### ARGUMENT

The Court of Appeals correctly affirmed the trial court's order denying the Petitioner's motion for resentencing. The Petitioner is currently serving a sentence allowing yearly parole hearings; therefore, he does not fall under the class of inmates proscribed in the decision of *Aiken v. Byers*. This petition for writ of certiorari should be subject to dismissal.

Petitioner argues that the Court of Appeals erred in affirming the trial court's decision to deny the Petitioner's motion for resentencing. The Petitioner was seeking a resentencing pursuant to this Court's decision in *Aiken v. Byers* in which this court adopted the United States Supreme Court decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012). In *Miller* and *Aiken* it was determined that the sentencing of a juvenile to a period of life incarceration without the possibility of parole shall be considered cruel and unusual punishment in violation of the Eighth Amendment of the

United States Constitution. The Petitioner in the instant case argues that since he has been repeatedly denied parole he has essentially been given a life sentence in violation of the *Miller* and *Aiken* decisions.

The Respondent argues that the Court of Appeals did not err in affirming the decision of the trial court in dismissing this motion, due to the fact the Petitioner does not fall under the class that the *Miller* and *Aiken* cases applies to. He is being considered for parole yearly; therefore, he has a yearly opportunity to be released on parole. The Respondent also argues that the Circuit Court did not have the ability to resentence the Petitioner. This is due to the fact his sentence is not unconstitutional. At the time he committed the offense the only sentence he could receive was a life time period of incarceration with parole eligibility upon the service of twenty years. Any change in the law does not apply to the Petitioner. The Respondent's final argument though not raised by the Court of Appeals, relates to subject matter jurisdiction. The Respondent argues that the Petitioner originally brought this case before the wrong tribunal. This is an administrative matter; therefore, this case should have been originally brought before the Administrative Law Court pursuant to the *Al-Shabbazz, Furtick, and Cooper* decisions. The Circuit Court failed to have subject matter jurisdiction over this cause of action.

The trial court did not abuse its discretion in ruling that the Petitioner did not fall under the class of individuals pursuant to the *Miller* and *Aiken* decisions. The Court of Appeals properly affirmed the trial court's ruling. This petition for writ of certiorari should be subject to dismissal.

#### Standard of Review

In criminal cases, appellate courts only review errors of law. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E2d 216, 220 (2006). When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment, the appellate court's standard of

review extends only to the correction of errors of law. *State v. Finley*, 427 S.C. 419, 424, 831 S.E.2d 158, 160 (Ct. App. 2019). The Supreme Court reviews Court of Appeals by writ of certiorari only where special reasons justify exercise of that power. *Douglas v. State*, 369 S.C. 213, 216, 631 S.E.2d 542, 544 (2006) Issues related to subject matter jurisdiction may be raised at any time. *Carter v. State*, 329 S.C. 355, 364, 495 S.E.2d 773, 777 (1998).

### Analysis

- 1. The Court of Appeals did not err in affirming the decision of the trial court. The Petitioner is eligible for parole so neither the *Miller* nor *Aiken* decisions apply.**

The Petitioner claims that the trial court and the Court of Appeals erred in deciding that he should not be subject to a resentencing. He alleges that due to the fact he was a minor when he committed his offense, and he is currently subjected to what is essentially a life without parole sentence due to the amount of parole rejections he has incurred since he has been incarcerated. The Petitioner attempts to apply the United States Supreme Court decision of *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and its South Carolina Supreme Court equivalent *Aiken v. Byers*, 410 S.C. 534, 765 S.E.2d 572 (2014) to this cause of action.

In *Miller*, the United States Supreme Court decided that the eighth amendment forbids a sentencing scheme that mandates life in prison *without* possibility of parole for juvenile offenders. *Miller*, U.S. at 480, S.Ct. at 2470 (emphasis added). This Court in *Aiken* made the identical determination and applied it to South Carolina juveniles serving sentences of life without the possibility of parole. In the case before this Court, the trial Court and the Court of Appeals were correct in the denial of a resentencing since the Petitioner in this case is eligible for parole. In their plain language both *Miller* and *Aiken* only apply to cases where an inmate received a sentence of life *without* the possibility of parole as a juvenile. That is not what the Petitioner in the present case is serving.

In *Aiken*, this Court quoted *Miller* stating, “before sentencing the court must consider the lack of maturity and the underdeveloped sense of responsibility, to negative influences and outside pressures, including family and peers.” *Aiken*, S.C. at 542, S.E.2d at 576, quoting, *Miller*, at 2464. However, also in *Aiken* this court stated the following:

Thus the *Miller* Court unequivocally held that youth has a constitutional dimension when determining the appropriateness of a *lifetime of incarceration with no possibility of parole*, and that the mandatory penalty schemes at issue prevented the sentencing authority from considering the differences between adult and juvenile offenders before imposing a sentence of *life without parole*.

*Id.* (emphasis added)

It is clear that the *Miller* and *Aiken* decisions were only related to juveniles serving a life sentence without the possibility of parole. That is not the current circumstances of the Petitioner.

The parole hearing itself is the hearing that will consider the lack of maturity and negative influences that this court stated must be considered in *Aiken*. The parole board also gives the Petitioner the opportunity to present not only mitigating evidence revealing his immaturity at the time the offense occurred, but any change and rehabilitation occurring since his incarceration. In *Montgomery v. Louisiana*, the United States Supreme Court ruled:

A state may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. 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 737.

The Petitioner argues that due to the amount of hearings he has been subjected to, and that the criteria does not consider his youth at the time he committed the crime, he is essentially being given a life sentence without parole in violation of the eighth amendment. Pursuant to South

Carolina law the parole board is obligated to consider mandatory criteria found in South Carolina law. In this criteria the record of the inmate that exist before, during after he committed the crime is always considered.<sup>4</sup>

The Board is also responsible for creating their own criteria that must encompass all of the statutory criteria and the inmate's prison record. Within his writ the Petitioner lists these criteria, and he states that none of these criteria considers his youth at the time he committed the offense. However, he ignores the fact that the board must consider "the nature and seriousness of the offender's offense, **the circumstances surrounding that offense**, and the prisoner's attitude toward it." The board is also responsible for, "considering 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." These two criteria not only forces the board to consider the youth and immaturity of the Petitioner at the time the crime was committed, but also they must consider any changes in the maturity of the Petitioner during his incarceration.

There is another criteria that must be considered that takes into consideration the youth of the Petitioner and his increased maturity, this is the mandatory risk assessment. The South Carolina Code of Laws makes it mandatory that the Department develop a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions. S.C. Code Ann. §24-21-10(F)(1)(2018).

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<sup>4</sup> The board must carefully consider the record of the prisoner, **before, during and after** imprisonment. S.C. Code Ann. §24-21-640 (Supp. 2018)(emphasis added)

There are currently sixteen criteria that the board must consider, some relates to the circumstances surrounding the crime that occurred including the mental state of the inmate while committing this crime, others relate to the level of maturity that the inmate has achieve during his period of incarceration. The fact that the Petitioner has yet to receive parole is irrelevant, as long as he is eligible and appears before the board on a yearly basis pursuant to South Carolina law. As long as this occurs he fails fall into the class considered by the *Miller* and *Aiken* decisions.

The Petitioner cites two decisions as an attempt to support his argument, the first is *State v. Ragland*, 836 N.W.2d 107 (2013). In *Ragland*, the court ruled that the governor commuting a sentence to a sixty year parole eligibility is essentially a life without parole sentence. The Supreme Court of Iowa ruled that the District Court resentencing the parole eligibility upon the service of twenty-five years was proper pursuant to *Miller*. *Ragland*, N.W.2d at 123. So in *Ragland*, the Appellant had even longer to serve than the Petitioner prior to becoming eligible for parole, and the Iowa Supreme Court still deemed it sufficient pursuant to *Miller*.

The second decision was *Hawkins v. N.Y. State Dept. of Cor.*, 140 A.D.3d 34. In *Hawkins* the Court decided that hearing transcripts nor the board's written determination revealed that the youth of the Appellant was considered. The criteria listed in the Petitioner writ clearly state that the circumstances surrounding the crime is always considered so this decision does not apply.

It is clear that the *Miller* and *Aiken* decisions only applies if a juvenile has been denied parole eligibility. This is not the case in the present case, so this petition for writ of certiorari should be subject to denial.

**2. The neither the *Miller* nor *Aiken* decisions applies, so the Circuit Court did not have the authority to resentence the Petitioner.**

This Court determined that the principles enunciated in the *Miller* decision retroactively applied to prisoners that were similarly situated and prospectively to all juvenile offenders who

may be subject to a sentence of life imprisonment *without* this possibility of parole. *Aiken*, S.C. at 578, S.E.2d at 545 (emphasis added). Since this did not apply to the Petitioner the trial Court was correct in refusing to grant the Petitioner's motion and give him another sentence.

At the time the Petitioner committed his crime South Carolina law only allowed a life sentence with a twenty year parole eligibility for all persons who committed the offense of murder in which the state decided not to seek the death penalty.<sup>5</sup> In the absence of a controlling statute, the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced. *State v. Varner*, 310 S.C. 264, 265, 423 S.E.2d 133, 134 (1992). This was the punishment that existed at the time he was sentenced. So even though the punishment changed upon the passing of the omnibus crime act of 1996 to a sentence of thirty years to life<sup>6</sup> that was not the punishment existing at the time of sentencing, so it does not apply. A criminal defendant receives the benefit of punishment mitigated by legislative amendment only when the amendment becomes effective before sentence is pronounced. *Id.*

It is clear in the *Miller* opinion that the United States Supreme Court only allowed relief for those juvenile offenders that were serving a sentence of life *without* the possibility of parole. That is not the case with the Petitioner. There exist no United States Supreme Court opinion that allows a resentencing for a person who committed his offense as a juvenile and is now eligible for parole.

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<sup>5</sup> A person who is convicted of or pleads guilty to murder must be punished by death or by imprisonment for life and is not eligible for parole until the service of twenty years. S.C. Code Ann. §16-3-20 (Supp. 1976)

<sup>6</sup> A person who is convicted of or pleads guilty of murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment of thirty years. S.C. Code Ann. §16-3-20 (Supp. 1996).

In *Slocumb*, this court declined to extend the United States Supreme Court decision of *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011 (2010).<sup>7</sup> The Respondent request that this court also not extend the U.S. Supreme Court decision of *Miller v. Alabama*, or their own decision of *Aiken v. Byers*.

The Petitioner is currently eligible for parole which allows him a yearly opportunity to be released on parole so the *Miller* nor *Aiken* decision applies. The Respondent would respectfully request this court to deny the Petitioner's writ for certiorari.

**3. The issue raised by the Petitioner was an administrative matter; therefore, the Circuit Court lacked jurisdiction.**

The Petitioner raises arguments regarding his parole hearing and the procedures set forth in the determination of parole. The Petitioner believes that since the Parole Board did not address his youth and impulsiveness at the time he committed the crime as designated in the *Miller* and *Aiken* decisions, his hearings are in violation of the eighth amendment and he should be allowed a resentencing. Any argument regarding the procedures followed or lack of the considerations made by the parole board during any denial of parole must be considered administrative and can only be determined by the Administrative Law Court (ALC), then by the Court of Appeals or this Court pursuant to the Administrative Procedure Act. The Circuit Court no longer has jurisdiction to determine administrative procedures regarding the sentence or parole of an individual.

The fact that this case has already been appealed has no bearing on raising the lack of subject matter jurisdiction as an issue in this case. It well settled that issues related to subject matter

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<sup>7</sup> The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit a homicide. A state need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term. *Graham*, U.S. at 82, S.Ct. at 2034.

jurisdiction may be raised at any time, including for the first time before the Supreme Court. *Brown v. State*, 343 S.C. 342, 346, 540 S.E.2d 846, 848 (2001).

Though not addressed by the Court of Appeals, there are three South Carolina Supreme Court decisions that determine the ALC is the sole tribunal that can initially review any decision made by the parole board relating to a denial of parole or the denial of parole eligibility, *Al-Shabbaz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000); *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003); and *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008). In *Al-Shabbaz*, this Court made the decision that an inmate held in the department of corrections may only seek a review of a decision in an administrative matter before the ALC and not through post-conviction relief. This Court made the determination that administrative matters can only arise in two ways: 1) when an inmate is disciplined and punishment is imposed; or 2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits or custody status. *Al-Shabbaz*, S.C. at 369, S.E.2d at 750.

In *Furtick*, this court decided that latter applies to the denial of parole eligibility. This Court decided that *Al-Shabbaz* outlined the nature of review available to inmates raising non-collateral issues that implicate liberty interests; those procedures apply equally to inmate affected by final decisions of the Department of Probation, Parole and Pardon Services that affect a liberty interest. *Id.* This Court decided that the permanent denial of parole eligibility implicates a liberty interest sufficient to require at least minimal due process. *Furtick*, S.C. at 598, S.E.2d at 149.

In *Cooper*, this court decided that if the parole board deviates from or renders its decision without consideration of the appropriate criteria, it essentially abrogates an inmate's right to parole eligibility and thus, infringes on a state-created liberty interest. *Cooper*, S.C. at 499, S.E.2d at 112.

The final decision of this court was that if it is shown that the board failed to follow the proper criteria it warrants a review by the ALC and possibly a remand back to the parole board if it is shown that they have failed to apply the mandatory criteria established under South Carolina law<sup>8</sup> and the parole board<sup>9</sup>.

The Petitioner argued that he was essentially being permanently denied parole due to the amount of times he has been denied parole. The Petitioner argues that the parole board within their manual and their criteria never addresses the youth of the Petitioner at the time he committed this crime. This does not go to his sentencing but the administrative nature of the parole hearing how it is held and what is considered. The trial court stated himself, “But whether or not parole is granted is really not the issue, **it’s the process that’s the issue.**” (R. p. 14 lines 18-19) He also stated, “**And if you don’t give somebody that process** by which the trying to get out of jail without that possibility of parole, that’s cruel and unusual because of the hallmarks of youth” (R. pp. 15 lines 23-5, p. 16 line 1) It is clear the trial court determined that this is a procedural matter which lies in the administrative function of the parole board. That decision can only be reviewed by the ALC. The circuit court was not allowed to preside over the determination of whether or not the parole board properly considered the hallmarks of youth as proscribed in the *Miller* and *Aiken* decisions.

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<sup>8</sup> The board must carefully consider the record of the prisoner before during and after imprisonment and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him. S.C. Code Ann. §24-21-640 (2018)

<sup>9</sup> The board must establish written specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner’s disciplinary and other records. S.C. Code Ann. §24-21-640(2018)

The circuit court lacked of subject matter jurisdiction relating to parole board decisions, so this matter should have been presented before the ALC upon the denial of the Petitioner's parole. Due to the circuit court lack of ability to preside over decisions regarding the parole board this case was heard before an improper tribunal and should have been dismissed on those grounds. This court should deny certiorari due to the circuit court's lack of jurisdiction to preside over this cause of action. The issue is not a sentencing issue, but a parole decision.

**CONCLUSION**

Based on the foregoing reasons, Respondent submits Petitioner has failed to show that the question presented warrants certiorari review. The Court should deny the petition for writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court.

Respectfully submitted,

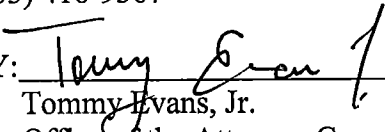
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STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM LANCASTER COUNTY  
The Honorable Brian M. Gibbons, Circuit Court Judge

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Appellate Case No. 2019 -001979  
Unpublished Opinion No. 2019-UP-318

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THE STATE

RESPONDENT,

V.

RONALD YATES HYATT,

PETITIONER.

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**CERTIFICATE OF SERVICE**

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I, Tommy Evans, Jr., counsel for the Respondent, certify that I have served the within Return to Petition for Writ of Certiorari by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorneys of record, Susan B. Hackett, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, South Carolina 29201,

I further certify that all parties required by Rule to be served have been served.

This 22<sup>nd</sup> day of January, 2020.

  
\_\_\_\_\_  
TOMMY EVANS, JR.  
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P. O. Box 11549  
Columbia, South Carolina 29211  
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ATTORNEY FOR RESPONDENT