THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Administrative Law Court

Honorable Ralph K. Anderson, III, Administrative Law Judge

Appellate Case No. 2019-001554

STEWART BUCHANAN, # 69848 .....APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES .....RESPONDENT.

REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

I. THE UNDERLYING EIGHTH AMENDMENT PRINCIPLES DESCRIBED IN THE *MILLER* TRILOGY AND *AIKEN* EXTEND TO STEWART'S CASE.

Respondent, the South Carolina Department of Probation, Parole, and Pardon Services (PPP), argues that the sea change in juvenile sentencing law mandated by the *Miller-Aiken* line of cases extends only to sentencing proceedings, not to parole hearings. Br. of Resp't 6–7. According to PPP, if *Miller* and *Aiken*'s reasoning extended to parole, the United States Supreme Court in *Miller* or the South Carolina Supreme Court in *Aiken* would have said so, but the Courts "declined to do so." *Id.* at 7.

It is true that *Miller* and *Aiken* (and their progeny) addressed juvenile sentencing, not parole, but that is only because the cases before the courts involved state sentencing schemes. *See Miller v. Alabama*, 567 U.S. 460 (2012); *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). It is axiomatic that appellate courts only resolve the issues before them. *See Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 202, 831 S.E.2d 667, 672 (2018) ("[W]e point out that—as in all cases before this Court—we decide only the issues before us in *this* case."); *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007) ("It is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop."). The assertion that Stewart's claims are foreclosed because *Miller* and *Aiken* are silent on parole, when the issue was not before them, misses the mark.

Similarly, PPP's corollary argument that *Miller* and *Aiken* have no application to Stewart's case ignores the fundamental principle that the state's and the nation's highest courts announce rules whose logic extends to future cases. And the logic underpinning the *Miller* trilogy and *Aiken*—"children are different"—extends to Stewart's case. *See Miller*, 567 U.S. at 481. PPP's

only response is that the South Carolina Supreme Court has not yet ruled on this specific legal claim—a fact that Stewart does not dispute.[1]

Instead, Stewart's argument is that because Stewart was a juvenile when he was sentenced to life in prison, and because no decision-maker has ever considered his juvenile status, the logic from the juvenile sentencing cases dictates that his youth must be given some reasoned consideration by the Board as the state agency which now literally contains the key to his release. As PPP points out, Stewart was sentenced before life without parole was a statutory option. Br. of Resp't at 6 (citing S.C. Code Ann. § 16-3-20 (1976)). There is no logical or equitable reason why a juvenile sentenced post-1996 should receive an entirely new sentencing hearing where he can present evidence of his youth and later rehabilitation, while a juvenile, like Stewart, who was sentenced pre-1996 is treated no differently than an adult and, by PPP's logic, is never entitled to have any state decision-maker consider his youth and later rehabilitation.

The Supreme Court of the United States has made clear that sentencing and parole are not mutually exclusive proceedings. In *Montgomery*, the Court described the two ways states could

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[1] PPP's discussion of *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019), as evidence of "cases that have blocked the 'sea change' in juvenile sentencing" ignores that case's narrow holding. Br. of Resp't at 5–6. PPP fails to acknowledge that *Slocumb* hinged on the Supreme Court of South Carolina's determination that "a long line of Supreme Court precedent prohibits [the Court] from extending federal constitutional protections beyond the boundaries the Supreme Court itself has set." *Id.* at 306, 827 S.E.2d at 153. Declining to extend Graham's holding to *de facto* life sentences, the Court went on to say that "[n]either *Graham* nor the Eighth Amendment, as interpreted by the Supreme Court, currently *prohibits* the imposition of aggregate sentences for multiple offenses amounting to a de facto life sentence on a juvenile nonhomicide offender." *Id.* at 314–15, 827 S.E.2d at 157 (emphasis added). Thus, *Slocumb* merely makes clear that *Miller* and *Aiken* do not prohibit South Carolina from sentencing a juvenile who has committed multiple offenses over an extended period of time to a term of years that is the functional equivalent of life without parole.

In addition to the caselaw cited in Stewart's opening brief, the state legislature, post-*Slocumb*, extended additional protections to juveniles facing adult prison terms. The Raise the Age Law, effective July 1, 2019, changed the definition of "child" from a person under the age of seventeen to a person under the age of eighteen. 2016 Act No. 268, S.B. 916, § 4 (July 1, 2019); *see also* S.C. Code Ann. § 63-19-20(a). The result this law is that courts in the state now have more flexibility when sentencing juvenile offenders and more opportunities to keep young people out of adult prisons.

remedy *Miller* violations going forward: resentencing or parole eligibility. *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016). Whichever route the states opted for, *Montgomery* explained, would remedy the substantive Eighth Amendment violations *Miller* prohibited because "[a]llowing [juvenile] 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.* The underlying point is that, regardless of how states decided to remedy *Miller* violations, the only way to ensure that juveniles are not "forced to serve a disproportionate sentence" is to take into account their youth. *See id.* States cannot remedy a *Miller* violation by making juvenile offenders parole eligible but refusing to consider evidence of rehabilitation because doing so would ignore "the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change." *Id.*

PPP's argument highlights the ways in which the Board has failed to take account of Stewart's youth, without giving an affirmative account of why the logic from *Miller*, *Aiken*, and the rest of the juvenile sentencing cases do not apply to Stewart. PPP acknowledges that the Board gives little weight to the "hallmark features of youth" described in *Miller* and *Aiken* because "[t]he inmate appearing before the Board is clearly no longer a juvenile." Br. of Resp't at 13. But that is just as true for Stewart as it is true for the individuals who, post-*Aiken* and post-*Montgomery* received resentencing hearings: by the time they received new hearings, many of them had served multiple decades of imprisonment and, like Stewart, were "clearly no longer . . . juvenile[s]." *See* Br. of Resp't at 13. Nevertheless, these individuals were entitled to new sentencing hearings because the original sentencing court had not considered their youth (and its attendant characteristics) at the time of the offense, plus any new evidence of rehabilitation. For example, in *Montgomery*, the United States Supreme Court described the claim of the named petitioner, Henry

Montgomery, that he had evolved "from a troubled, misguided youth to a model member of the prison community." *Montgomery*, 136 S. Ct. at 736. The Court detailed Mr. Montgomery's contributions to the prison's silkscreen department, his efforts in founding a prison boxing team, and his role as a guide and support for other inmates—precisely the kind of evidence that parole boards regularly consider. *See id.* This, the Court explained, was "an example of one kind of evidence that prisoners might use to demonstrate rehabilitation." *Id.* Thus, it cannot be the case that because Stewart is "clearly no longer a juvenile," his youth at the time of his offense is no longer "important" in terms of assessing his moral culpability. *See* Br. of Resp't at 13.

Similarly, PPP acknowledges that "the incompetencies associated with youth" get little weight at hearings before the Board because "the Board is not concerned with plea agreements, involuntary confessions, or ineffective assistance of counsel." Br. of Resp't at 13–14. This, too, is an acknowledgement that Stewart's youth has never been given constitutionally appropriate weight. In Stewart's case, the "incompetencies associated with youth" directly impacted his decision to take a plea, to negotiate with prosecutors, and to navigate the court system: Stewart was led to believe that if he pled guilty to murder, he would likely serve no more than ten years. [cite to record]. Stewart's youth and "inability to deal with . . . prosecutors (including on a plea agreement) [and his] incapacity to assist his own attorney" directly impacted the outcome of his criminal proceeding. *See Aiken*, 410 S.C. at 544, 765 S.E.2d at 577.

II. STEWART IS SERVING A DISPROPORTIONATE SENTENCE BECAUSE OF THE BOARD'S ARBITRARY AND CAPRICIOUS PROCESS.

PPP argues that this Court should not consider the Board's past behavior—eighteen parole denials, including fifteen based only on the nature of the offense—as evidence that Stewart's parole-eligible sentence has been converted to a parole-ineligible sentence. Br. of Resp't at 9. In PPP's words, "the Board roster changes over time," so "[j]ust because the Appellant hasn't

received parole yet doesn't mean he never will." *Id.* This argument ignores the fundamental due process obligations the Board owes to putative parolees.

The South Carolina Parole Board is part of PPP, an executive agency, whose power derives solely from a legislative delegation of authority. *See* S.C. Code Ann. § 24-21-10. Accordingly, decisions by the Board are governed by the same standards that govern other executive agencies, including the requirement that the Board provide putative parolees with due process protections. *See Cooper v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008); *see also Compton v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009). Inherent in due process is the requirement that agency decisions not be arbitrary or capricious. S.C. Code Ann. § 1-23-380(5)(f); *see also Cooper*, 377 S.C. at 500, 661 S.E.2d at 112.

PPP's argument that Stewart's only path to release is hoping that the Board's composition changes and new members view the facts of his offense (the only basis for his last fifteen parole denials) differently than past Board members is an implicit acknowledgement that the process is arbitrary as parole hinges on the vagaries of idiosyncratic decision-makers. Stewart's release or continued incarceration after decades of demonstrated rehabilitation cannot legally depend on who sits on the Board because the Board's decisions must be based on the objective criteria promulgated pursuant to S.C. Code Ann. § 24-21-640. *See Cooper*, 377 S.C. at 499–500, 661 S.E.2d at 111–12.

Moreover, the Board's decades-long pattern of denying Stewart parole is strong evidence that his parole-eligible sentence has been impermissibly converted, by the Board, into a parole-ineligible sentence. *See id.* at 495–96, 661 S.E.2d at 110. Stewart has sought parole for thirty-two years and he has already outlived his reasonable life expectancy in SCDC. Despite the Board's

composition changing many times over these three decades, Stewart's parole denials were always based on the nature and seriousness of the offense; the past fifteen denials were solely based on that parole criterion. The consistency of the Board's decision-making—despite Stewart's maturity and rehabilitation, and the Board's changing membership—demonstrates the arbitrariness with how it renders its determinations and reasoning.

III. THIS COURT HAS THE POWER TO REVERSE THE AGENCY'S DECISION AND HOLD THAT THE ONLY LEGALLY PERMISSIBLE OUTCOME IN STEWART'S CASE IS RELEASE.

PPP asserts that this Court lacks the authority to order the Board to release Stewart because, in PPP's view, Stewart "is clearly frustrated with the Board's repeated refusal to grant him parole" and he "has therefore attempted to garner sympathy." Br. of Resp't at 14. According to PPP, this Court has no authority to remedy an unlawful parole determination under any circumstances. *See id.*

This argument ignores both the nature of Stewart's requested remedies and the legal framework from which Stewart has requested those remedies. Stewart's opening brief raises two primary claims and seeks two different remedies. First, Stewart argues that the Board's parole process violates due process; the remedy he seeks is a new parole hearing using a juvenile-specific process. Br. of App. at 13–23. Second, Stewart argues that in the face of overwhelming evidence of his rehabilitation, the Board's refusal to grant him parole on the basis of the nature of the offense violates the Eighth Amendment and Article I, Section 15 of the South Carolina Constitution because his punishment is disproportionate to his moral culpability; the remedy he seeks is an order that his sentence is unconstitutional and that he is therefore entitled to immediate release. *Id.* at 32–37.

This Court has authority under the South Carolina Administrative Procedures Act (APA) to review a final agency decision—including a parole denial—and "reverse or modify" the

agency's decision "if substantial rights of the appellant have been prejudiced" because the agency's decision or factual findings are "in violation of constitutional or statutory provisions"; "made upon unlawful procedure"; "affected by other error of law:" "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record"; or "arbitrary or capricious or characterized by abuse of discretion." S.C. Code Ann. 1-23-380(5). The statute does not limit the nature of relief this Court may order. Instead, it permits this Court to "reverse or modify" decisions from PPP and the Board that are unconstitutional, arbitrary or capricious, or otherwise wrong as a matter of fact or law. Stewart's requested remedy flows directly from this statutory authority: he asks the Court to hold that his continued detention is unlawful and a product of an abuse of the agency's discretion and issue an order to that effect. On remand to the agency, the Board would no simply lack the discretion to deny Stewart parole.

CONCLUSION

For the reasons set forth above, as well as for the reasons presented in Stewart's Opening Brief, this Court should reverse the judgment of the ALC and either order the Board to conduct a new parole hearing that is tailored to Stewart's juvenile offender status or issue an order that Stewart's continued detention is unlawful.

Respectfully submitted,

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May 4, 2020

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Reply Brief of Appellant was served electronically, this 5th day of May 2020, upon the following:

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