THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Robert Hood., Circuit Court Judge

Appellate Case No. 2020-000188

ANTHONY A. JONES, II.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether the automatic waiver provision of *S.C. Code Ann.* §63-19-20 is unconstitutional.

STATEMENT OF THE CASE

Petitioner, Anthony Jones pleaded guilty to armed robbery, 2015A1010202785 for an offense committed in Charleston County. He also pleaded guilty to burglary, 1st degree, 2015A1820500477 for an offense committed in Dorchester County. Jones pleaded guilty to both charges in Charleston county and received a sentence of 10 years for the armed robbery and 15 years for the burglary. The sentences were ordered to be served concurrently. He was represented by David Aylor of the Charleston County bar. Jones did not appeal the judgment of conviction or the imposition of his sentences. Jones then filed an application for post-conviction relief on April 14, 2017 with the assistance of undersigned counsel and alleged ineffective assistance of plea counsel, that the automatic waiver provision of *S.C. Code Ann.* §63-19-20 is unconstitutional (the juvenile waiver provision), and that his 15-year active sentence violates his right to be free from cruel and unusual punishment under the 8th Amendment of the US Constitution and the South Carolina Constitution, Article I, §§3 and 15.

An evidentiary hearing was held in Charleston County before the Honorable Robert Hood on November 18, 2019. The order of dismissal was filed on January 31, 2020.

This petition for writ of certiorari timely follows.

ARGUMENT

I. The automatic waiver provision of *S.C. Code Ann.* §63-19-20 is unconstitutional.

Anthony Jones was automatically treated as an adult pursuant to *S.C. Code Ann.* §63-19-20 which provides, in pertinent part: "'Child' or 'juvenile' does not mean a person 16 years of age or older who is charged with a Class A, B, C, or D felony … or a felony which provides for a maximum term of imprisonment of 15 years or more." Jones was 16 years old at the time of his crimes. This statutory provision is unconstitutional because it does not allow discretion in the sentencing options for a defendant who was a juvenile at the time of the crime in violation of Applicant's right to due process. *See Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama,* 132 S. Ct. 2455 (2012); *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

In recent years the Supreme Court of the United States has dramatically altered the legal framework governing the sentencing of juvenile offenders. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Court held that the Eighth Amendment's prohibition against cruel and unusual punishment prevented States from sentencing juveniles to death. In *Graham v. Florida*, 560 U.S. 48 (2009), the Court went a step further, holding that sentencing juvenile offenders to life imprisonment without the possibility of parole for non-homicide offenses was also barred by the Cruel and Unusual Punishment Clause. In 2012, the Court determined in *Miller v. Alabama*, 567 U.S. 460 (2012), that even in homicide cases, states are precluded from imposing mandatory life without parole sentences on juvenile offenders. And most recently, in

Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718 (2016), the Court held *Miller* to be "a new substantive rule that, under the Constitution, must be retroactive" and effectively ordered new sentencing proceedings for hundreds of individuals who had been sentenced to mandatory life without parole as juveniles. All four cases were grounded in one core Eighth Amendment principle: "children are constitutionally different from adults for purposes of sentencing." *Miller*, 567 U.S. at 471.

In *Aiken v. Byars*, 410 S.C. 534, 542-43, 765 S.E.2d 572, 576 (S.C. 2014), the South Carolina Supreme Court embraced the reasoning of the United States Supreme Court that "youth has constitutional significance" and "must be afforded adequate weight in sentencing." After examining the sentencing hearings in cases where juveniles were sentenced to life without parole in this State in light of these decisions, the South Carolina Supreme Court concluded that the Eighth Amendment required resentencing. The key defect noted in *Aiken* was the failure to "fully explore the impact of the defendant's juvenility on the sentence rendered." 410 S.C. at 543; 765 S.E.2d at 577.

In *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), the South Carolina Supreme Court vacated all life without parole sentences imposed on juvenile offenders concluding that such sentences violated the Eighth Amendment's ban against cruel and unusual punishment. The Court further held that all such defendants were entitled to new sentencing hearings that must be "individualized" and at which "courts [must] fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 545, 765 S.E.2d at 578. The *Byars* Court set forth five

key factors that must be taken into consideration when juvenile life without parole is a possible sentence:

> (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence";
>
> (2) the "family and home environment" that surrounded the offender;
>
> (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him;
>
> (4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and
>
> (5) the "possibility of rehabilitation."

410 S.C. at 544, 765 S.E.2d at 577 (citing *Miller v. Alabama*, 132 S. Ct. at 2468).

The Court in *Miller* explained that all its recent holdings regarding juveniles hinged on the now established constitutional maxim that juveniles have both "diminished culpability and greater prospects for reform" and are thus "'less deserving of the most severe punishments.'" *Id.* at 471 (quoting *Graham*, 560 U.S. at 68). The lessened culpability and possibility of rehabilitation are grounded in three constitutionally significant differences between juveniles and adults:

- Children are less mature and developed than adults, leading to "recklessness, impulsivity, and heedless risk-taking," *id.* at 471;
- Children are more "vulnerable . . . to negative influences and outside pressures," and have "limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings," *id.* at 471 (internal quotation marks omitted);

- Children's actions are "less likely to be evidence of irretrievable depravity" because "a child's character is not as well formed as an adult's" and "his traits are less fixed," *id.* at 471 (internal quotation marks omitted).

These differences, *Miller* noted, result in part from a growing body of social science and neuroscience research conclusively establishing that: a) only a small percentage of adolescents who commit crimes, even serious crimes, "'develop entrenched patterns of problem behavior,'" *id.* at 471 (quoting *Roper*, 543 U.S. at 570), and, b) there are fundamental differences between the brains of juveniles and adults in areas "'involved in behavior control.'" *Id.* at 471-72 (quoting *Graham*, 560 U.S. at 68). Because the brains of juveniles are not "fully mature in regions and systems related to higher executive functions such as impulse control, planning and risk avoidance," juveniles have a constitutionally different level of moral blameworthiness and, for that reason, the penological justifications for any criminal punishment—deterrence and retribution—are inconsistent with life without parole sentences. *Id.* at 472 n.5 (quoting Brief of the American Psychological Association et al.). The same characteristics that make this category of offenders less culpable necessarily mean that "'an irrevocable judgment about a [juvenile] offender's value and place in society,' [is] at odds with a child's capacity for change."[1] *Id* at 472.

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[1] Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 BRAIN AND COGNITION 160, 162 (2010) ("From this perspective, middle adolescence (roughly 14–17) should be a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature. And, in fact, many risk behaviors follow this pattern, including unprotected sex, criminal behavior, attempted suicide, and reckless driving."); Sarah-Jayne Blakemore, *Imaging Brain Development: The Adolescent Brain*, 61 NEUROIMAGE 397 (2012) ("The plentiful data that consistently

Miller reaffirmed what the Court had previously established in *Graham* and *Roper*: "Children are constitutionally different from adults for the purposes of sentencing." *Id.* at 471. That difference led the Court in *Roper* to declare that juveniles may not be sentenced to death regardless of the circumstances of the crime, and in *Graham* to ban life without parole for juveniles convicted of non-homicide offenses, again regardless of the underlying facts of the case. In *Miller*, the Court simply took the next logical step and held that the Eighth Amendment also bars mandatory life without parole sentences in cases involving juveniles found guilty of murder.

S.C. Code Ann. §63-19-20 is unconstitutional because it cabins a judge's ability to consider these Miller factors before a juvenile is automatically waived to adult court where the sentences are much more severe. Instead, as in this case, it was the prosecutor who determined that Jones's crimes were deserving of such a long sentence. As *Aiken* noted, this statute prevents judges from being able to "fully explore the impact of the defendant's juvenility on the sentence rendered." 410 S.C. at 543; 765 S.E.2d at 577. For this reason, it is unconstitutional.

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paint a picture of the adolescent brain as relatively immature might speak against the relatively young age of criminal responsibility and harsh sentences for adolescents.").

CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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