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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of General Sessions
The Honorable Clifton Newman, Circuit Court Judge

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Appellate Case No. 2019-000942

THE STATE,

Respondent,

v.

CHARLES M. MITCHELL,

Appellant.

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# FINAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

The Eighth Amendment forbids mandatory life-without-parole sentences for juveniles. Appellant Charles Mitchell was sentenced as a juvenile to a life sentence for murder, but is eligible for parole. Is he entitled to a resentencing hearing pursuant to Aiken v. Byars?

## STATEMENT OF THE CASE

On December 7, 1991, Appellant Charles Mitchell attempted to rob Steven Hammond as Hammond was walking home on Fisk Street in Columbia. When Hammond refused Mitchell's demand to surrender his property, Mitchell shot him in the back with a handgun, killing him. (R.p.12).

On August 4, 1992, Mitchell pled guilty to murder and received a life sentence. (R.166-68). He was 17 years old at the time. At the sentencing hearing, he admitted he "took somebody's life away for nothing." (R.p.18). Mitchell told the court he understood he would receive a life sentence. (R.p.7). Pursuant to the law applicable at the time, Mitchell became eligible for parole after serving 20 years of his sentence. He has since had three parole hearings and has been denied parole each time. (R.p.57, line 5; p.88-90).

On December 16, 2014, Mitchell filed a motion for resentencing in the Richland County Court of General Sessions, seeking relief pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The South Carolina Supreme Court assigned his case to the Honorable Knox McMahon in an order dated August 4, 2016. Mitchell v. State, 417 S.C. 111, 112, 790 S.E.2d 15, 16 (2016). Following Judge McMahon's retirement, the case was re-assigned to the Honorable Clifton Newman on August 27, 2018.

Judge Newman held a scheduling conference on February 21, 2019, and a hearing on Mitchell's motion was convened on April 29, 2019. Judge Newman subsequently denied Mitchell's motion for resentencing in a written order dated

May 29, 2019. (R.p.158-61). Judge Newman found Mitchell was not entitled to a resentencing hearing because he was not sentenced to life without the possibility of parole (LWOP), and was therefore not a member of the class of individuals entitled to relief under Aiken v. Byars. Mitchell now appeals this order.

## STANDARD OF REVIEW

"When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments, the appellate court's standard of review extends only to the correction of errors of law. Therefore, this court will not disturb the circuit court's findings absent a manifest abuse of discretion. An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support." State v. Finley, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019), reh'g denied (Aug. 22, 2019) (internal citations omitted).

## ARGUMENT

### Mitchell is not entitled to a resentencing hearing because he is eligible for parole.

Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), provides for resentencing hearings for individuals sentenced as juveniles to life without the possibility of parole. Mitchell is eligible for parole, and has already had three parole hearings. Accordingly, Mitchell is not entitled to a resentencing hearing because he is not a member of the class of individuals entitled to relief under Aiken. Mitchell's attempt to have the circuit court perform the functions of the parole board, or invalidate his sentence because of the parole board's supposed defective methodology, is contrary to law. This Court should affirm the trial court's refusal to resentence Mitchell.

### A. Mitchell is not entitled to a resentencing hearing under Aiken because he is not serving a life without parole sentence.

In Graham v. Florida, 560 U.S. 48 (2010), as modified (July 6, 2010), the United States Supreme Court held the Eighth Amendment prohibits LWOP sentences for juveniles for non-homicide offenses. Two years later, in Miller v. Alabama, 567 U.S. 460 (2012), the Court held the Eighth Amendment prohibits mandatory LWOP sentences for juveniles in homicide cases.

In 2014, the South Carolina Supreme Court held Miller required resentencing hearings for juveniles serving LWOP sentences. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The court interpreted Miller as creating an affirmative requirement that sentencing courts consider the characteristics of youth

before sentencing juveniles to LWOP. The court provided that its ruling applied only to the "specific punishment" of life without parole sentences. Aiken v. Byars, 410 S.C. 534, 540–41, 765 S.E.2d 572, 575 (2014).

Mitchell is not entitled to resentencing pursuant to Aiken v. Byars because he did not receive an LWOP sentence. The Aiken opinion is expressly limited to LWOP sentences. Mitchell is not a member of this class of affected persons and therefore cannot claim relief under the opinion. State v. Finley, 427 S.C. 419, 428, 831 S.E.2d 158, 162 (Ct. App. 2019), reh'g denied (Aug. 22, 2019) (explaining parole-eligible inmate "is not a member of the class of offenders contemplated by our precedent").

Not only is his claim outside the scope of Aiken, it ignores the underlying rationale of Aiken, Graham, and Miller. The whole point of Graham and Miller is that LWOP sentences are inherently different from parole-eligible life sentences because the sentence is "irrevocable." Graham v. Fla., 560 U.S. at 69–70. The graveness of the sentence led the Graham court to label it the "second-most severe" penalty possible in this United States, behind the death penalty. Graham v. Fla., 560 U.S. at 72. The Court explained:

> "[An LWOP sentence] means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days."

Graham v. Fla., 560 U.S. at 70 (quoting Naovarath v. State, 105 Nev. 525, 526, 779 P.2d 944 (1989)). An LWOP sentence is particularly severe for juveniles because it removes all incentive for rehabilitation at a young age. Graham v. Fla., 560 U.S. at

79 (explaining "[m]aturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. A young person who knows that he or she has no chance to leave prison before life's end has little incentive to become a responsible individual").

A state can remedy a juvenile LWOP sentence by commuting the sentence to a parole-eligible life sentence. Miller v. Alabama, 567 U.S. at 489 (explaining "a judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term with the possibility of parole or a lengthy term of years") (emphasis in original); Montgomery v. Louisiana, 136 S. Ct. 718, 736 (2016), as revised (Jan. 27, 2016) (explaining "[a] State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them"). This is precisely the type of sentence Mitchell is already serving. In fact, Mitchell has already had three parole hearings, and is entitled to additional future hearings every two years. (R.p.88-90; 162). Aiken simply does not apply to his sentence.

By its terms and underlying rationale, Aiken does not apply to Mitchell's sentence. The trial court correctly concluded his motion for resentencing fails as a matter of law. This Court should affirm.

### B. Mitchell has a meaningful opportunity for release and the circuit court is not an alternate parole board.

In an attempt to make his case seem similar to Aiken, Mitchell claims he does not have a meaningful opportunity for release because the South Carolina Parole Board grants parole at a "really low" rate. (R.p.52, line 24). At his motion hearing, Mitchell supported his claim by presenting a study showing only 8% of

parole hearings in juvenile murder cases result in release. (R.p.52, lines 22–23). He claimed this showed it was "almost impossible" to secure early release. (R.p.58, line 24). He claimed the circuit court should "do what [the parole board] won't do." (R.p.61, line 11).

On appeal, his argument focuses more on his assertion that the parole board does not adequately consider his age at the time of the crime when deciding whether to parole him. He nonetheless continues to claim he is entitled to a resentencing in circuit court hearing rather than appealing the parole board's decisions through the proper channels. His argument fails for several reasons. First, the parole board is the sole authority with the power to grant parole and the circuit court does not have the authority to second-guess its decisions. Second, Mitchell is entitled only to a meaningful opportunity for release; his failure to secure parole does not make his sentence unconstitutional. Third, the relief Mitchell seeks would not cure the supposed deficiencies in the parole process. This Court should affirm.

The parole board is the sole authority with respect to decisions regarding the grant or denial of parole. Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs., 377 S.C. 489, 499, 661 S.E.2d 106, 111 (2008); S.C. Code Ann. § 24-21-640 (Supp. 2019). Mitchell's request for the circuit court to overrule the parole board's decision is plainly contrary to the statute specifically created to govern the parole system. See Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 444–45, 586 S.E.2d 124, 127–28 (2003) (explaining the judiciary takes a "hands off" approach to avoid becoming "micro-

managers of the prison system"). His argument invites an improper exercise of power by the judicial branch, in violation of the separation of powers doctrine. See Major v. S.C. Dep't of Prob., Parole & Pardon Servs., 384 S.C. 457, 466, 682 S.E.2d 795, 800 (2009) (citing the separation of powers doctrine and explaining the "General Assembly has not statutorily authorized the courts or the Department to nullify its power to grant parole or determine parole-eligible offenses"). For this reason alone, his claim should be rejected.

But beyond this, Mitchell's argument badly misunderstands the nature of a sentencing order. A sentence is the "final judgment of the court in a criminal case. . . ." State v. McKay, 300 S.C. 113, 115, 386 S.E.2d 623, 623 (1989). Its terms do not change. Mitchell's sentence allows him to be deemed eligible for parole under the applicable statutes. It does not become retroactively unconstitutional because Mitchell has been unsuccessful in obtaining release.

If Mitchell believes the parole board is failing to perform its statutory duties, he should appeal through the proper channels to the Administrative Law Court. See Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs., 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008). This was the path taken in Hawkins v. New York State Dep't of Corr. And Cmty Supervision, 140 A.D.3d. 34 (N.Y. App. Div. 2016), where the New York appellate court held the parole board was required to consider Hawkins' age in its parole decision, but did not invalidate his sentence or require a resentencing hearing. Mitchell cites Hawkins in his brief, but the case illustrates

the incorrectness of his claim that his sentence is invalid because of the parole board's decision.

In any case, the underlying claim that the parole board must specifically take into account his age at the time of the crime is unsupported by applicable authority. The consideration of age discussed in Graham, Miller, and Aiken is that made by the trial court in sentencing, not that of the parole board. These are entirely different considerations. The Graham, Miller and Montgomery courts recognized that the parole system is based on demonstrated rehabilitation. Montgomery v. Louisiana, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016), as revised (Jan. 27, 2016) (explaining prisoners who "demonstrate rehabilitation" will be good candidates for release while "prisoners who have shown an inability to reform will continue to serve life sentences").

Even if the circuit court had the authority to review the parole board's decisions, Mitchell has a poor prison disciplinary record and has failed to take substantial steps towards rehabilitation. (R.p.29; 163-62; Prisoner Disciplinary Report). It is no wonder he has been denied parole; he has not taken advantage of the opportunity for release afforded him by his parole-eligible sentence. Furthermore, the parole board's criteria for parole consideration reflect the importance of rehabilitation, but also factor in various other concerns such as the "circumstances of the crime" and the applicant's "mental and emotional health." (Criteria for Parole Consideration). This undercuts his assertion that the board did not consider his age at the time of the crime in their denial of parole.

Mitchell's sentence provides he is eligible for parole. The fact that his applications have thus far been denied does not show he has been denied a meaningful opportunity for release; it shows he has not shown the change necessary to warrant release. The parole board's decision to deny parole is not reviewable by the judicial branch and resentencing in this case would do nothing to cure the supposed defects in the parole system. His resentencing motion in circuit court is an improper makeshift attempt to achieve a desired result. This Court should affirm.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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