RECEIVED
Jul 31 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable Grace Gilchrist Knie, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARNELL DAVIS,

APPELLANT.

APPELLATE CASE NO. 2019-001976

RECORD ON APPEAL

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

PRO SE AFFIDAVIT OF FACTS GIVING JUDICIAL NOTICE
FILED NOVEMBER 19, 2015 1

RETURN TO DEFENDANT'S MOTION FOR RESENTENCING
FILED FEBRUARY 28, 2018 12

STATE'S MOTION TO DISMISS PETITIONER'S MOTION FOR RESENTENCING
FILED APRIL 13, 2018 14

STATE'S SUPPLEMENTAL MOTION TO DISMISS PETITIONER'S MOTION FOR
RESENTENCING FILED AUGUST 2, 2018 17

MEMORANDUM OF DEFENDANT FILED AUGUST 27, 2018 21

HEARING TRANSCRIPT DATED AUGUST 27, 2018 30

PETITIONER'S EXHIBIT NO. 1 (LETTERS) 74

PETITIONER'S EXHIBIT NO. 3 (LETTER) 78

PETITIONER'S EXHIBIT NO. 4 (PAROLE BOARD MANUAL) 79

REPLY TO DEFENDANT'S MEMORANDUM DATED AUGUST 21, 2018 101

ORDER DENYING PETITION FOR RESENTENCING FILED OCTOBER 10, 2018 105

STATE'S SECOND SUPPLEMENTAL MOTION TO DISMISS PETITIONER'S
MOTION FOR RESENTENCING FILED JULY 19, 2019 107

DEFENDANT'S POST-TRIAL MOTION TO RECONSIDER PURSUANT TO
RULE 29(A), SCRCRIMP FILED JULY 24, 2019 109

STATE'S RETURN IN OPPOSITION TO DEFENDANT'S POST-TRIAL MOTION TO
RECONSIDER FILED NOVEMBER 4, 2019 116

HEARING TRANSCRIPT DATED NOVEMBER 7, 2019 125

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION FILED
NOVEMBER 25, 2019 151

INDICTMENT.....154

SENTENCE SHEET.....156

CERTIFICATE OF COUNSEL 158

THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

PETITIONER'S EXHIBIT NO. 2 (4 CDS – RECORDINGS OF PAROLE HEARINGS).

State of South Carolina
Spartanburg County

Court of General Sessions
Judicial Circuit

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 19 AM 11:45
M. HOPE BLACKLEY

Carnell Davis
petitioner

vs

case Arrest Warrant
C-900699
Indictment No.
91-GS-42-1126

Affidavit of Facts
Giving Judicial
Notice; motion
for a Sentence
Reconsideration
due to newly

discovered evidence pursuant to recent supreme court ruling

State of South Carolina
Respondent

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 19 AM 11:45
M. HOPE BLACKLEY

In Re: Carnell Davis

To: The Honorable Spartanburg County Court of General Sessions et al,

It is a well established fact that when the State of South Carolina supreme court has made a determination as it pertains to prevailing law and via judicial order

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 18 AM 11:45
M. HOPE BLACKLEY

such determinations are binding upon all lower courts unless compelled to do otherwise by compelling United States Supreme Court precedent. Whereupon all lower courts shall not hesitate to grant relief where Supreme Court ruling or order would mandate such; and failure to do so would produce extreme prejudice and egregious violation of the rights those rulings were designed to protect; Joyner of Florence Inc v Lynch, 314 SC 257, 442 SE2d 611, 615 (1994); (SC Rules of Court annotated 2006 Edition, pg 270);

PANAS v PANAS, SE2d, 2010 WL 10088 164 (SC App 2010); Ex Parte Campbell, 385 SC 643, 685 SE2d 814 (SC App 2009); United States v Peoples, 698 F3d 185 (4th Cir 2012); Holmes v Holmes, SE2d, 2014 WL 3369006 (SC App 2014); In re Joshua R.L., SE2d, 2013 WL 8538696 (SC App 2013); United States v Boston, 539 Fed Appx 209 (4th Cir 2013); Sun v Sun, SE2d, 2014 WL 7789711 (SC App. 2014); In re McDonald, 497 BR 489 Bkrtcy (DSC 2013); Ex Parte Lipscomb, 398 SC 463, 730 SE2d 320 (2012).

FILED
CLERK OF COURT
SPARTANBURG COUNTY
NOV 19 2015
M. HOPE BLACKLEY

It is also well settled and established that where all terms of appeal have been exhausted. The Remittitur shall

be sent back down to the originating lower court. Therefore upon, any matter that arises pursuant to the conviction must be addressed before that lower court, which includes all matters related to sentencing reconsideration where jurisdiction would lie, State v. Rice 401 SC 330, 737 SE2d 485 (SC 2013).

CLERK OF COURT
SPARTANBURG COUNTY
M. HOPE BLACKLEY

Inasmuch, pursuant to appellate case No 2012-213286 Opinion No. 27465 heard January 8, 2014 - filed November 12, 2014. Fifteen juvenile mates who were sentence to life without parole as juveniles petition this court for resentencing in light of the United States Supreme Court

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 19 AM 11:15
M. HOPE BLACKLEY

decisions in Miller v Alabama 132 SCt 2455 (2012). The SC SUPREME COURT held their sentences violate the 8th Amendment under Miller and the petitioners and those similarly situated are entitled to resentencing.

The SC SUPREME COURT further determined that the principles enunciated in Miller v Alabama apply retroactively to these petitioners, to those similarly situated, and prospectively to all juveniles who are offenders and who may be subject to a sentence of life imprisonment without parole

possibility. The court determined that any individual affected by our holdings may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.

CLERK OF COURT
SPARTANBURG COUNTY
M. HOPE BLACKLEY

With this foundation laid, pursuant Rule 29(b) and/or Rule 43(b) the petitioner motions for sentence reconsideration under the holding Aiken v Byars opinion no. 27465. The holdings must also be considered under newly discovered evidence/ provisions since there is no way

it could have been discovered before the holdings were made which contains substance of state's case as it pertains to sentencing under the statute charged. By this determination, such creates mitigating circumstances that are attributed to juveniles where law has been changed by the Supreme Court establishing precedent within the category of convictions the petitioner falls within. Thus, the petitioner motions for sentence reconsideration along the guidelines established by Miller v Alabama, State v Warren, 392 SC 235, 708 SE2d 234 (SC App 2011);

FILED
CLERK OF COURT
SPARTANBURG COUNTY
M. HOPE BLACKLEY

State v Harris, 391 SC 539, 706 SE2d 526 (SC App 2011); State v Sweet, 409 S.C 88, 770 SE2d 436 (SC App. 2015); McCoy v State, 401 SC 363, 737 SE2d 623 (SC 2013); In Re Samuel B. SE2d, 2015 WL 4066651 (SC App. 2015); Wilk v State, 409 SC 214, 761 SE2d 757 (SC 2014); State v Blakeney, 410 SC 244, 763 SE2d 622 (SC App 2014); State v Rice supra.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 19 AM 11:46
HOPE BLACKWELL

Respectfully submitted
Carnell Davis

Carnell Davis

November 14, 2015

UB

Certificate of Service

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 19 AM 11:10
MARY BLACKLEY

I, CARNELL DAVIS, do hereby certify that I have served a copy of an affidavit of facts Giving Judicial Notice; motion for a sentence Reconsideration due to newly discovered evidence pursuant to Receipt Supreme Court Ruling (10) pages dated November 4, 2015 on the Spartanburg court postage prepaid by U.S. mail on that date.

Respectfully,
CARNELL DAVIS
Carnell Davis

November 4, 2015

91-65-42 - 1126

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2259

M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

C906699

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 23 AM 9:35
M. HOPE BLACKLEY

Date: 11-23-15

Name: Carrell Davis

We have received your letter on 11-19-15. The applicable response is checked below.

____ I suggest you contact the Probation Office @180 Library Street, Spartanburg, SC 29306.

____ I suggest you contact the Solicitors Office @ 180 Magnolia Street, Spartanburg, SC 29306.

____ I suggest you contact the Public Defender's Office @ 366 N. Church St., Spartanburg, SC 29306.

____ I suggest you contact the Spartanburg County Jail @950 California Ave., Spartanburg, SC 29303.

____ A copy of your letter has been forwarded to the Public Defender's Office.

____ A copy of your letter has been forwarded to the Solicitor's Office.

____ I suggest you contact your attorney.

____ Please provide us with the original document.

____ The reference case is not a General Sessions case.

____ Grand jury proceedings are held in private.

____ Please provide us with a warrant or indictment number.

____ Due to the large volume of request, this office no longer conducts criminal records research.

____ Case History print-out enclosed.

____ A court date has not been scheduled for your case(s).

____ A Plea/Trial date has been scheduled for _____. *(This date is subject to change)*

____ All copies are $1.00 per page that must be paid in advance. Please submit a cashier's check or money order in the amount of $_____.

✓ Other: paperwork docked + filed. Enclosed is your copy.

If we can be of further assistance to you please let us know.

L. Bare
General Sessions Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Carnell Davis,	)	
	)	
v.	)	RETURN TO DEFENDANT'S MOTION
	)	FOR RESENTENCING
State of South Carolina	)	Indictment(s): 1991-GS-42-1126 and 1723
	)	Warrant(s): C906699
Defendant.	)	
	)	

TO: THE DEFENDANT, CARNELL DAVIS

FILED
2018 FEB 26 AM 9:45

The State, by way of Return to Defendant's Motion for Resentencing, would submit the following in response to Defendant's Motion for Resentencing as well as to more fully develop the record of the proceedings in this case, should there be an appeal from this matter:

1. The Defendant pled guilty to Murder and Assault and Battery With Intent to Kill on July 8, 1991, before the Honorable E.C. Burnett, III in Spartanburg County General Sessions Court. The Defendant received the following sentences: on his Murder charge (Ind. No.: 1991-GS-42-1126) the Defendant received a Life sentence without parole and on his Assault and Battery With Intent to Kill charge (Ind. No.: 1991-GS-42-1723) the Defendant received a twenty (20) year sentence to run consecutive.

2. The State would move into the record all of the evidence and exhibits that were made part of the guilty plea in these cases. The State would also move any statements made in the sentencing of the Defendant into the record of the Motion. The State would also move the criminal juvenile and adult records of the Defendant into the record for this Motion. The State would also enter the Defendant's disciplinary record from the South Carolina Department of Corrections, including but not limited to the following: Possession of Contraband, Threatening to Inflict Harm on Employee, and Possession or attempt to Possess Cell Phone (Attachment #1 - Inmate Search Detail Report dated February 22, 2018). The State will produce additional evidence involving these events as well as additional evidence and testimony in a resentencing hearing, if needed. Additionally, the State will produce evidence concerning prior bad acts which was provided in discovery given to the defense prior to the Defendant's guilty plea.

3. The State would submit the Defendant is not entitled to a Motion for Resentencing because the Life sentence the Defendant received for his Murder conviction is parole eligible. Under South Carolina law in 1983, a Life sentence for Murder is parole eligible after serving ten (10) years of the sentence. The law for Murder changed in 1996 when the "Truth in Sentencing" bill was enacted; a Life sentence since July 1, 1996, is actually a Life sentence without parole. Under *Aiken v. Byars, 410 S.C. 534, 764 S.E. 2d 572 (2014)*, our South Carolina Supreme Court determined that *Miller v. Alabama, 132 S. Ct. 2455 (2012)* applied retroactively in South Carolina as stated in the Defendant's Motion for Resentencing. However, in *Aiken* the Court determined *Miller* only applied to sentences of Life without parole. The Defendant's sentence for the Murder in 1983 is Life with parole, and therefore, neither *Aiken* nor *Miller* should

apply to this case. The Defendant has a projected parole eligibility date of October 24, 2019.

4. In the alternative, the State would submit to this Court that the Life sentence given to the Defendant on his Murder conviction was the proper sentence based on the facts of the case as well as his criminal and disciplinary record as an adult and as a juvenile. The Defendant's ongoing disciplinary records from the South Carolina Department of Corrections also show he will not be able to function outside of prison. He is a criminal who should not be given a sentence any different than the Life with parole ordered by the Honorable E.C. Burnett, III.

5. The State would also argue that any release earlier than a Life sentence would be a danger to the community as shown by other juveniles that have been given earlier releases for their violent crimes. The State will be presenting information on juveniles such as but not limited to Maurice Clemmons. Clemmons was convicted of several felony convictions in Arkansas and sentenced to 95 years in prison as a juvenile in 1989. His sentence was reduced by the Governor of Arkansas to 47 years in prison based on the fact that Clemmons was 17 years old at the time of the offenses. The Arkansas Parole Board unanimously moved to release him in 2000. On November 29, 2009, he murdered four (4) police officers in Parkland, Washington. After evading police for two days following the shooting, Clemmons was shot and killed by a police officer in Seattle, Washington. The State will move to introduce this and other examples of situations in which a juvenile was given an early release which led to additional violent and dangerous crimes.

6. The Defendant in this case murdered Thomas Dexter Feaster on February 8, 1991. On March 7, 1991, the Defendant shot City Police Officer Terry Lee Gory with a shotgun while Officer Gory was in his police car writing a report on an unrelated vandalism case. The Defendant has already killed once and thereafter shot a Spartanburg City Police Officer. He should not be given the opportunity to do either again.

The State would argue and move on behalf of the State of South Carolina that the action be dismissed because *Aiken* and/or *Miller* should not apply to this case.

In the alternative, the State is respectfully asking the Court to resentence the Defendant to a Life Sentence without Parole on the Murder conviction. This Motion is based on the facts stated in the Return as well as any evidence, testimony, and statements that the State would present through this Return as well as in a resentencing hearing before the Court.

By: _____
Barry J. Barnette, Solicitor
Seventh Judicial Circuit

February 22, 2018
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Carnell Davis,	)	
	)	**STATE'S MOTION TO DISMISS THE**
Petitioner,	)	**PETITIONER'S MOTION FOR RESENTENCING**
	)	Indictment Nos.: 1991-GS-42-1126 and 1723
v.	)	Warrant No.: C906699
	)	
State of South Carolina,	)	
	)	
	)	

TO: CLAY ALLEN, ESQ. AND CHIEF PUBLIC DEFENDER FOR THE SEVENTH JUDICIAL CIRCUIT, ATTORNEY FOR THE PETITIONER, AND THE PETITIONER, CARNELL DAVIS:

The State, by way of the State's Motion to Dismiss Petitioner's Motion for Resentencing, would submit the following in response to Petitioner's Motion for Resentencing and hereby moves to fully develop the record of the proceedings in this case, should there be an appeal from this matter:

1. The Petitioner pled guilty to Murder and Assault and Battery with Intent to Kill on July 8, 1991, before the Honorable E.C. Burnett, III in Spartanburg County General Sessions Court. The Petitioner received the following sentences: on his Murder charge (Ind. No.: 1991-GS-42-1126) the Defendant received a Life Sentence with parole and on his Assault and Battery with Intent to Kill charge (Ind. No.: 1991-GS-42-1723) the Defendant received a twenty (20) year sentence to run consecutive.

2. The State would move into the record all of the evidence and exhibits that were entered into evidence in the trial of this case as well as the sentencing phase of the trial and the resentencing of the Petitioner. The State would also move into evidence any appeals or PCR actions as part of the record. The State would also move into evidence any statements made in the sentencing of the Petitioner to be part of the record for State's Motion to Dismiss his Motion for Resentencing.

3. The State would argue that Petitioner is not entitled to a Motion for Resentencing because the Life sentence that he received for his Murder conviction is parole eligible. Under South Carolina law in 1991, a Life sentence for Murder is parole eligible after serving twenty (20) years of the sentence. The law for Murder was changed in 1996 when the "Truth in Sentencing" bill was enacted and any sentence for Murder had to be "day for day" a Life sentence since July 1, 1996, is actually a

Life sentence without parole. Under *Aiken v. Byars*, 410 S.C. 534, 764 S.E.2d 572 (2014), our South Carolina Supreme Court determined that *Miller v. Alabama*, 132 S.Ct. 2455 (2012) applied retroactivity in South Carolina as stated in the Petitioner's Motion for Resentencing. However, it only applied to sentences of Life without parole. The Petitioner's sentence for the Murder in 1984 is for Life with parole, and therefore, neither *Aiken* nor *Miller* should apply to this case. The Petitioner has a projected parole eligibility date of October 24, 2019.

The State would respectfully ask the Court to deny the Petitioner's Motion for Resentencing in this case for the above-mentioned reasons as well as additional information at the Motion Hearing that may be presented by the State.

By: _____
Barry J. Barnette, Solicitor
Seventh Judicial Circuit

April 12, 2018
Spartanburg, South Carolina

2018 APR 13 AM 11:40

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
CARNELL DAVIS,	)	
	)	
Petitioner,	)	
v.	)	**ACCEPTANCE OF SERVICE**
	)	INDICTMENT NOS: 1991-GS-42-1126 and 1723
State of South Carolina,	)	WARRANT NO(S): C906699
	)	
	)	

SERVICE of the **State's Motion to Dismiss the Petitioner's Motion for Resentencing** in the above-referenced matter is hereby accepted on behalf of Clay Allen, Public Defender, this _____ day of April, 2018.

(SIGNATURE)

(PRINT NAME)
SPARTANBUG COUNTY PUBLIC DEFENDER'S OFFICE

SWORN to before me this ____
day of April, 2018.

_____ (SEAL)
Notary Public for South Carolina
My Commission expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Carnell Davis,	)	
	)	
Petitioner,	)	**STATE'S SUPPLEMENTAL MOTION TO DISMISS THE PETITIONER'S MOTION FOR RESENTENCING**
	)	
v.	)	
	)	Indictment Nos.: 1991-GS-42-1126 and 1723
	)	Warrant No.: C906699
State of South Carolina,	)	
	)	

TO: CLAY ALLEN, ESQ. AND CHIEF PUBLIC DEFENDER FOR THE SEVENTH JUDICIAL CIRCUIT, ATTORNEY FOR THE PETITIONER, AND THE PETITIONER, CARNELL DAVIS:

2018 AUG 27 A 9:37
H. HOPE BLACKLEY

The State, by way of this Supplemental Motion to the State's Motion to Dismiss Petitioner's Motion for Resentencing, would submit the following in response to Petitioner's Motion for Resentencing. The State hereby moves to fully develop the record of the proceedings in this case and restates its original grounds in the first three items, should there be an appeal from this matter:

1. The Petitioner pled guilty to Murder and Assault and Battery with Intent to Kill on July 8, 1991, before the Honorable E.C. Burnett, III in Spartanburg County General Sessions Court. The Petitioner received the following sentences: on his Murder charge (Ind. No.: 1991-GS-42-1126) the Defendant received a Life Sentence with parole and on his Assault and Battery with Intent to Kill charge (Ind. No.: 1991-GS-42-1723) the Defendant received a twenty (20) year sentence to run consecutive.

2. The State would move into the record all of the evidence and exhibits that were entered into evidence in the plea of this case. The State would also move into evidence any appeals or PCR actions as part of the record. The State would also move into evidence any statements made in the sentencing of the Petitioner to be part of the record for the State's Motion to Dismiss his Motion for Resentencing.

3. The State would argue that Petitioner is not entitled to a Motion for Resentencing because the Life sentence that he received for his Murder conviction is parole eligible. Under South Carolina law in 1991, a Life sentence for Murder is parole eligible after serving twenty (20) years of his sentence. The law for Murder was changed in 1996 when the "Truth in Sentencing" bill was enacted and any sentence for Murder had to be "day for day." Since July 1, 1996, a life sentence is actually a life sentence without parole. Under *Aiken v. Byars*, 410 S.C. 534, 764 S.E.2d 572 (2014), our South Carolina Supreme Court determined that *Miller v. Alabama*, 132 S.Ct. 2455 (2012) applied retroactivity in South Carolina as stated in the Petitioner's

Motion for Resentencing. However, it only applied to all Life without parole sentences. The Petitioner's sentence for the Murder in 1991 is for Life with parole, and therefore, *Aiken* or *Miller* should not apply to this case. The Defendant has a projected parole eligibility date of October 24, 2019. (He had a previous parole hearing on October 24, 2017 and was denied parole).

4. The State would argue to supplement its original argument that the United States Supreme Court considered the retroactivity of its holding in *Miller* in *Montgomery v. Louisiana*, 136 S.Ct. 718, 193 L.Ed. 2d 599 (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,

> Giving *Miller's* retroactive effect, moreover, does not require States to re-litigate 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. Section 6-10-301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years) allows those offenders to be considered for parole ensures that juvenile 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.

2018 AUG -2 AM 8:37
M. HOPE BLACKLEY
COURT

The State's argument is 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* or *Aiken v. Byars*. (reference in the *Ashby v. State of South Carolina* Court Order issued by Judge Doyet A. Early, III dated March 20, 2017 – please see attachment #1)

The State would respectfully ask the Court to deny the Petitioner's Motion for Resentencing in this case for the above-mentioned reasons, as well as any additional information presented by the State at the Motion Hearing.

By: _____
Barry J. Barnette, Solicitor
Seventh Judicial Circuit

July 31, 2018
Spartanburg, South Carolina

ATTACHMENT #1

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
COUNTY OF AIKEN	SECOND JUDICIAL CIRCUIT
CLARENCE ASHBY, Petitioner, v STATE OF SOUTH CAROLINA, Respondent	**ORDER DENYING PETITION FOR RESENTENCING PURSUANT TO *AIKEN v BYARS*** 1979-GS-02-00268 A 002292 A 002293

This matter came before the Court for a hearing on the above referenced petition for resentencing pursuant to *Aiken v Byars*, 410 S C 534, 765 S E 2d 572 (SC 2014) Defendant filed his petition October 3, 2016

This Court was vested with exclusive jurisdiction to hear the petition by Order of the Chief Justice of the South Carolina Supreme Court dated October 14, 2016 A hearing on the petition was conducted at the Aiken County Courthouse on February 28, 2017 The Petitioner was present for the hearing and was represented by Aiken County Public Defender Grant Gibbons The State was represented at the hearing by Solicitor Strom Thurmond

2018 AUG -2 AM 8:37
M. HOPE BLACKLEY
CLERK OF COURT
AIKEN COUNTY, SC

Based on the records before the Court, on May 6, 1979, the petitioner and a co-defendant robbed Clyde Jordan at gunpoint and thereafter murdered him in Aiken County On July 9, 1979, Petitioner and his co-defendant were indicted by the Aiken County Grand Jury for Murder and Armed Robbery (1979-GS-02-00268) Two days later, on July 1, 1979, the Petitioner and his co-defendant pled guilty to the charges contained in the indictment Both were sentenced to terms of life for Murder, and a consecutive 25 years for the Armed Robbery At the time of the commission of the crimes, the petitioner was seventeen (17) years old

The Petitioner seeks relief pursuant to *Byars*, and *Miller v Alabama*, 132 S Ct 1733 (2012) However, the law of South Carolina at the time of Petitioner's conviction provided for the 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 1998, Petitioner has had at least nine

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert L. Klute, Clerk of Court of Common Pleas and General Sessions for the County aforesaid, do hereby certify that the foregoing is a true and correct copy of the [illegible] as the same appears of record in my office.
Given under my hand and seal of office this
MAY 15 2018
C.C.C.P. & G., Aiken County, S.C.
Deputy Clerk

FILED March 20 2017
CCCP & GS
Deputy Clerk

2-cert copies To P.D
2-cert copies To Sol

(9) prior parole hearings and has waived at least two (2) other parole hearings On April 15, 2017, the Defendant will 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, 193 L Ed 2d 599 (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* or *Aiken v Byars* Accordingly, Mr Ashby's Petition should be, and hereby is, DENIED with prejudice

IT IS SO ORDERED

Doyet A Early, III
Resident Judge,
Second Judicial Circuit

March 20, 2017
Aiken, South Carolina

M. HOPE BLACKLEY
2018 AUG -2 AM 8:37
COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Carnell Davis,	)	Case No. 1991-GS-42-1126
	)	1991-GS-42-1723
Petitioner,	)	
	)	
vs.	)	
	)	**MEMORANDUM OF DEFENDANT**
State of South Carolina,	)	
	)	
Respondent.	)	

The Petitioner, Carnell Davis, whose date of birth is [redacted], was charged with Murder and Assault and Battery with Intent to Kill. These offenses occurred on February 8, 1991, when the Defendant was 17 years of age. On July 9, 1991, the Petitioner pled guilty to both charges and was sentenced to life imprisonment on the indictment for Murder and twenty years, consecutive, on the indictment for Assault and Battery with Intent to Kill. At the time of the Petitioner's offenses, The Court of General Sessions had jurisdiction over juveniles who were 17 years of age at the time of the offenses. Also, the only available punishments for murder in 1991 were death or life imprisonment, with the possibility of parole in twenty years. The Petition became eligible for parole in 2011, and he was denied parole on May 4, 2011; June 19, 2013; August 12, 2015; and October 24, 2017. The Petitioner filed, *pro se*, a motion for resentencing pursuant, in part, to *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

2018 AUG 23 P 1:[illegible]
M. HOPE BLACKLEY

The Petitioner believes that he is entitled to a resentencing hearing pursuant to *Aiken* and *Miller* because he has been sentenced, essentially, to a sentence of life without parole as evidenced by the nature of the parole hearings and the decisions of the Parole Board. Neither the original

sentence as issued by the Court of General Sessions in 1991 nor the decisions of the Parole Board have taken into account the specific attributes of youth, as required in *Miller* and *Aiken v. Byars*.

DISCUSSION

The United States Supreme Court in *Miller* made it clear that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." 132 S.Ct. at 2464. The Court reasoned that "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 2467. Thus, although the Court did not "foreclose a sentencer's ability" to impose life without the possibility of parole on a juvenile offender, the Court required that the sentencer "take into account how children are different, and how [or to what extent] those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 2469. Moreover, *Miller* was applied to South Carolina in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), including the U.S. Supreme Court's definition of juvenile in these types of cases as being anyone under the age of eighteen. The Court in *Aiken* also applied *Miller* retroactively in South Carolina. *Id.* at 540, 765 S.E.2d at 575 ("We conclude *Miller* creates a new, substantive rule and should therefore apply retroactively.")

2014 AUG 7 ... MHOPPS GLENN ...

As specified in *Miller* and *Aiken*, the factors a sentencing court must consider include the following: "(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 offenders'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.' 132 S.Ct. at 2468." 410 S.C. at 544.

In the Petitioner's case, he has been considered for parole four times. On the first two parole hearings, he was denied parole on the following findings of fact: nature and seriousness of the current offense; indication of violence in this or previous offense; and use of deadly weapon in this or previous offense. In his last two parole hearings, the Petitioner was denied parole with the above-listed findings of fact and an additional finding of fact -- "institutional record is unfavorable." Apparently, the Parole Board has not considered or given any weight to the characteristics of the youthfulness of the Petitioner at the time of the offense or any of the factors as specified in *Miller* and *Aiken*. Therefore, the Petitioner's sentence, although a "paroleable" life sentence violates the Eighth and Fourteenth Amendments of the United States Constitution.

2018 AUG 2 M. HOPE GAGLIARDI

South Carolina's Parole System

According to South Carolina statutory law, the Parole Board "must carefully consider the record of the prisoner before, during, and after imprisonment." S.C. Code Ann. § 24-21-640. An inmate may not be paroled until it appears to the satisfaction of the board: (1) "that the prisoner has shown a disposition to reform:" (2) "that in the future he will probably obey the law and lead a correct life;" (3) "that by his conduct he has merited a lessening of the rigors of his imprisonment;" (4) "that the interest of society will not be impaired thereby;" and (5) "that suitable employment has been secured for him." Id. The five-part statutory test for obtaining parole fails to take into the hallmarks of youth and the greater capacity for the youthful offender to change. Although the provisions include consideration of reform, the statute does not involve

the rigorous examination of the *Miller* factors required by the Constitution in sentencing a juvenile.

In addition to the statutory provision, the Parole Board, exercising its regulatory authority, provides additional criteria considered by the Board when determining whether to grant or deny parole. These criteria may be found in the Parole Board Manual. The Parole Board's objectives and mission are important for understanding its decision-making process. According to the Parole Board Manual, the "Board's primary objective is the long-term protection of society." Policy and Procedure, South Carolina Department of Probation, Parole and Pardon Services, Division of Paroles and Pardons, 9 (April 2015), at https://www.dppps.sc.gov/content/download/68278/1576111/file/Parole+Board+Manual-+April+2015.pdf. Also, the first objective of the Board is to ensure its every decision" is based on the risk presented by the offender and is consistent with the goal of protection of the public." Id. In addressing the constitutionally-required procedural requirements, the Board functions under the notion that "very little is required in the way of procedural due process at parole hearings." Id. at 21. Prisoners have the right to be heard, "[f]air written notice of the specific parole criteria," notice of the date, time and place of the hearing, right to be heard by a fair panel, the "opportunity to present evidence and to have up to three witnesses to speak on their behalf, and to have the Board or panel carefully consider the complete record before, during, and after imprisonment," to have an attorney present at the prisoner's expense, and to written notice of the Board's reasons for denying parole. Id.

2018 AUG 27 P 4:15 CLERK OF COURT
C. HOGE BLACKLEY

The Manual also sets forth the contents of the parole case summary report. Id. at 22. While the report includes the prisoner's criminal history, disciplinary record, and even statements from law enforcement, the prosecutor, and the sentencing judge, the report makes no mention of

any of the *Miller* factors or the diminished culpability of youth. Finally, the Board established "specific parole criteria." Id. at 27-28. The Board "will not parole a prisoner unless it determines, based on the ... criteria, as well as any other factors the Board may consider relevant, that the conduct of the offender merits a lessening of the rigors of imprisonment; that the interests of society will not be impaired by granting parole; and that the offender has secured, or will be able to secure, suitable employment and residence." Id. at 27. The specific criteria set out by the Board include:

> The risk that the offender poses to the community;
>
> The nature and seriousness of the offender's offense, the circumstances surrounding that offense, and the prisoner's attitude toward it;
>
> The offender's prior criminal record and adjustment under any previous programs of supervision;
>
> The offender's attitude toward family members, the victim, and authority in general;
>
> 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;
>
> The offender's employment history, including his job training and skills and his stability in the workplace;
>
> The offender's physical, mental, and emotional health;
>
> The offender's understanding of the causes of his past criminal conduct;
>
> The offender's efforts to solve his problems;
>
> The adequacy of the offender's overall parole plan, including his proposed residence and employment;
>
> The willingness of the community into which the offender will be paroled to receive that offender;
>
> The willingness of the offender's family to allow the offender, if he is paroled, to return to the family circle;

2018 AUG 27 M. HOPE BLACKLEY

> The opinion of the sentencing judge, the solicitor, and local law enforcement on the offender's parole;
>
> The feelings of the victim or the victim's family, about the offender's release;
>
> Any other factors that the Board may consider relevant, including the recommendation of the parole examiner.

Id. at 28. Quite clearly, the Parole Board's considerations do not extend to any matters relative to the youth of the offender at the time of the commission of the offense. Eligibility for parole in South Carolina simply cannot "save" a life sentence from Eighth Amendment scrutiny. The judge erred in holding otherwise.

Petitioner's sentence violates the Eighth Amendment

The Petitioner's sentence of life with parole eligibility after twenty years violates the Eighth Amendment's prohibition on cruel and unusual punishment on its face and as applied. The sentencing judge had no discretion in what sentence to impose upon Petitioner. The statute required that he sentence Petitioner to life imprisonment with the possibility of parole. The mandatory nature of the sentence makes it immediately suspect under Eighth Amendment jurisprudence as it demonstrates the lack of individualization required by the constitution. The mandatory nature of the sentence also demonstrates that the sentencer never considered the *Miller* factors deemed necessary prior to sentencing a juvenile offender. Despite Petitioner receiving a mandatory life sentence, one that is the functional equivalent to LWOP, no sentencer ever determined he was irreparably correct as required by the Constitution.

2018 AUG 27 P 1:0
M. HOPE BLACKLE

Petitioner's sentence is the *functional equivalent* of life imprisonment without the possibility of parole in light of the parole system's failure to consider the *Miller* factors in rendering its decisions. In fact, the Parole Board does not consider an offender's youth at the time of the offense at all. The statutory scheme providing for the circumstances warranting

parole and the Parole Board Manual completely fail to account for *Miller*. In the wake of *Miller*, *Aiken*, and *Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718 (2016), a person serving a sentence for a juvenile offense has a substantive constitutional right not to be sentenced to life imprisonment. The presumption is against life imprisonment and can only be overcome by a showing and finding of irreparable corruption. Petitioner's constitutional right to a meaningful opportunity for release was violated by the Parole Board's failure to consider the significance of his youth at the time of the commission of the offense. In light of the mandatory nature of Petitioner's life with parole sentence, it is the Parole Board that will determine the ultimate length of his sentence. See id. Thus, the requirements of *Miller* must be fulfilled by the Parole Board. Id.

Petitioner's sentence is the functional equivalent of life imprisonment without the possibility of parole as applied to Petitioner because he has been denied parole at least twice without any consideration of the hallmarks of youth. Due to the Board's cursory, repeated denials of release and the statutory and regulatory procedures not incorporating the *Miller* factors or anything remotely close, there is an unacceptable likelihood that the nature of the crime alone, a fact that will never change, works to deny Petitioner a meaningful opportunity for release from incarceration. Petitioner is entitled to a meaningful opportunity to obtain release, which is something to which adult offenders are not entitled. Thus, the Parole Board's treatment of Petitioner in the same manner as adult offenders violates the Constitution.

M. HOPE BLAKE, CLERK 2018 DEC 17 P 1:

Petitioner's mandatory sentence of life imprisonment with the possibility of parole violates the Eighth Amendment. The sentence is the functional equivalent of life imprisonment without the possibility of parole. Petitioner has been incarcerated since 1991, serving two decades in prison before becoming eligible for parole. Thereafter, he has been denied parole at

four times. At no time - not during the sentencing proceeding and not during the parole process - has Petitioner's youth been considered as required by the Constitution. Petitioner must be re-sentenced in accordance with the Eighth Amendment and federal and state jurisprudence governing prohibitions on cruel and unusual punishments.

Petitioner's sentence violates the South Carolina Constitution

In a concurring opinion in *Aiken*, then-Justice Pleicones explained that in his view of the current Eighth Amendment jurisprudence" did not prohibit sentencing juveniles to life imprisonment without the possibility of parole where such a sentence was discretionary for the sentence. *Aiken*, 410 S.C. at 545-546, 765 S.E.2d at 578 (Pleicones, J., concurring). However, Justice Pleicones went on to hold that the South Carolina Constitution forbade sentencing juveniles to life imprisonment without the possibility of parole under South Carolina's statutory scheme permitting such a sentence in the judge's discretion. Id. at 546, 765 S.E.2d at 578. The South Carolina Constitution provides that "cruel," "corporal," and "unusual punishment" shall not be inflected. S.C. Const. art. I, § 15. Thus, it is clear that South Carolina's Constitution affords greater protections than the Eighth Amendment to the United States Constitution. If this Court were to determine that the Eighth Amendment did not prohibit Petitioner's sentence because he has been sentenced to life with the possibility of parole, this Court must consider whether the South Carolina Constitution and its greater protections forbid such a sentence.

2018 AUG 27 PM 4:
HOPE BLACKLEY

"South Carolina, as *parens patriae* protects and safeguards the welfare of its children." *Harris v. Harris*, 307 S.C. 351, 353, 415 S.E.2d 391, 393 (1992). The juvenile justice system in the state is designed "to exempt an infant from the stigma of a criminal conviction and its attendant detrimental consequences." *In re Skinner*, 272 S.C. 135, 137, 249 S.E.2d 746, 746 (1978). In keeping with South Carolina's judicial system as *parens patriae* and working to

protect children, it necessarily follows that the South Carolina Constitution would require that children be treated differently than adults for purposes of sentencing. Further, it necessarily follows that the greater protections afforded by the South Carolina Constitution would require that juveniles sentenced to life with the possibility of parole are entitled to re-sentencing because the sentence was mandatory and does not allow for consideration of the characteristics attendant to youth.

In light of South Carolina's Constitution affording greater rights than the Eighth Amendment to the United States Constitution and South Carolina's continued role as *parens patriae*, this Court must determine that the South Carolina Constitution's bar against cruel and unusual punishment prohibits sentencing a juvenile offender to life imprisonment with the possibility of parole after service of twenty years where the parole board fails to consider the "unique characteristics of youth." Petitioner's sentence must be vacated and re-sentencing conducted.

Conclusion

For the foregoing reasons, the Petitioner asks this Court to grant him a resentencing hearing and to deny the State's Motion to Dismiss.

2018 AUG 27 PM 1:
M. HOPE BLACKLEY

Clay T. Allen
Seventh Judicial Circuit Public Defender
366 North Church Street, Suite 3000
Spartanburg, South Carolina 29306
(864) 596-2561

August 27, 2018

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

CARNELL DAVIS,) TRANSCRIPT
)
PETITIONER,) OF
)
vs.) RECORD
)
STATE OF SOUTH CAROLINA,) 1991-GS-42-1126
) 1991-GS-42-1723
)

August 27th, 2018
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE GRACE GILCHRIST KNIE, Judge.

A P P E A R A N C E S:

CLAY ALLEN
PUBLIC DEFENDER
Attorney for the Petitioner

BARRY BARNETTE and RUSSELL GHENT
SOLICITOR and ASSISTANT SOLICITOR
Attorney for the State

OCTAVIA WRIGHT
ESQ.
Attorney for Probation, Parole, and Pardon Services

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X

WITNESSES	PAGE
CARNELL DAVIS	
Direct examination by Mr. Allen	22
Certificate	44

E X H I B I T S

NOS.	DESCRIPTION	ID	EV
	Petitioner's Exhibits		
P-1	Letters	5	16
P-2	Disks	5	19
P-3	Letter with Disks	5	19
P-4	Parole Board Manual	5	22

NOS.	DESCRIPTION	ID	EV
	State's Exhibits		
S-1	DVD	5	28

P R O C E E D I N G S

THE COURT: Okay. Counsel, you take your time, and y'all get set up, and just let me know when y'all are ready to proceed.

(WHEREUPON, a DVD was marked as State's Exhibit No. 1. A group of letters was marked as Petitioner's Exhibit No. 1. Four disks were marked as Petitioner's Exhibit No. 2. A letter with disks was marked as Petitioner's Exhibit No 3. The Parole Board Manual was marked as Petitioner's Exhibit No. 4. All of the above exhibits were marked for identification purposes only at this time.)

MR. ALLEN: May it please the Court?

THE COURT: Yes. If, if everyone will please identify themselves for the record.

We are on the record with regard to the matter of Carnell Davis versus State of South Carolina, and these are Indictment Numbers 1991-GS-42-1126 and 1723. Mr. Davis is present today represented by the Public Defender, Clay Allen.

Good morning, Mr. Allen.

We also have present the Solicitor, Mr. Barnette.

Good morning, sir.

SOLICITOR BARNETTE: Morning, ma'am. I see Mr. Ghent also here.

Good morning.

SOLICITOR GHENT: Morning, Your Honor.

THE COURT: It's afternoon now. And we also have a representative from Probation Parole and -- Probation and Parole Services.

Yes, ma'am.

MS. WRIGHT: Yes, my name is Octavia Wright representing the South Carolina Department of Probation, Parole, and Pardon Services.

THE COURT: Yes, ma'am.

Okay. Thank you for being here.

All right. Mr. Allen, if you will, sir, give us background as to this matter.

MR. ALLEN: Yes, Your Honor.

If it please the Court.

Again, I'm Clay Allen, Circuit Public Defender.

Carnell Davis was convicted on July 9th of 1991 by pleas of guilty to the charges of murder and assault and battery with intent to kill here in Spartanburg County. He received sentences of life imprisonment on the charge of murder, and 20 years consecutive on the charge of assault and battery with intent to kill.

At the time of his -- at the time of his offenses, which occurred in -- on February 8, 1991, he was 17 years old. In 1991, as I'm sure the Court's aware, the only

available punishments for murder were either life imprisonment or the death penalty. My understanding is this case was not noticed as a death penalty case. Therefore, when he pled guilty, the only sentences available or the only sentence available to the Court for that charge was life imprisonment. However, that was, and we understand and acknowledge, that that was a parolable life sentence after he serves a sentence or after he served 20 years.

The Petitioner became eligible for parole in -- initially in 2011 where he was denied parole, and also he was eligible and denied parole on the succeeding dates of June 19, 2013, August 12, 2015, and October 24 of 2017.

He filed, pro se, a lengthy document, which essentially is his moment for resentencing pursuant to Miller versus Alabama and Aiken versus Byars. I -- Your Honor was subsequently appointed by the Chief Justice of the Supreme Court for all matters concerning this case, and I did look for it prior to the hearing, but I'm pretty sure there's order appointing me to represent Mr. Davis. But I've been representing Mr. Davis since some time after he filed his motion.

The Solicitor has, on behalf of the State, has filed a Motion to Dismiss. I'm not gonna argue his case, but, essentially, I suspect that he will be arguing that Mr. Davis does not qualify under Aiken v. Byars and Miller

versus Alabama for resentencing, but I'll let him speak more specifically to that.

But that's, essentially, where we are in this case. This morning we're here, I believe it's the State's Motion to Dismiss and/or to -- also for us to establish Mr. Davis' right to proceed as an Aiken versus Byars case.

THE COURT: Thank you.

Yes, sir, Mr. Barnette.

SOLICITOR BARNETTE: May it please the Court, Your Honor.

I believe you got a copy of my latest one, the Supplement Motion to Dismiss Petitioner's Motion for Resentencing. I actually filed that on August, I think, 2nd, 2018, Your Honor.

In this case, Your Honor, I know you're familiar with the law and everything from that stance, but Montgomery versus Louisiana was a case that came out in 2016 from our U.S. Supreme Court. It was a 5/4 decision. 136 S.C. 718. 193 L.Ed. 2d 599.

In that case, Justice Kennedy actually wrote the majority in that opinion, Your Honor, and basically they said, talking about Miller, and, of course, it'd be going to Aiken, giving Miller's retroactive effect, moreover, does not require States to re-litigate sentences, let alone convictions, in every case where a juvenile offender

received a mandatory life without parole sentence. A State may remedy a Miller violation by permitting the juvenile homicide offender to be considered for parole, rather by resentencing them. They refer to Wyoming statute concerning that, Your Honor.

Where juvenile homicide offenders is eligible for parole after 25 years. Ours, in South Carolina, prior to 1996, was 20 years. It allows those offenders being considered for parole ensure the juveniles whose crimes reflect only transient immaturity, Your Honor, and who has ever -- has since mature will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment. And that's in Montgomery at 736, Your Honor.

Your Honor, in this case, he's already had four parole hearings. He has another parole hearing coming up in 2019, Your Honor. It has already been scheduled. I believe it's I guess October 24th, 2019, or by that date will be his next parole hearing, Your Honor.

Your Honor, I think our Supreme Court, in U.S. Supreme Court as well as South Carolina Supreme Court, has drawn the line. The problem is once you start doing it in cases that are with parole, then when do you start looking at cases where that 60 years, 70 years, 50 years for juveniles. Where do you draw the line, and I think this line has been drawn.

If you look at Montgomery, and you look at even Miller versus Alabama as well as Aiken versus Byars, they talk without parole. In this case, obviously it's definitely different.

I know Mr. Allen wants to bring up the parole hearings and everything from there. Obviously don't have any problem with bringing up the forum, but any substance involving those parole hearings, I would object to them only because I think it has nothing to do with this Court or nothing done with the legality of those. Basically, the Parole Board is the Executive Branch that handles the decisions involving that. They have areas that they cover.

There's a presentation made by the, the State -- I mean State and the defense, Your Honor. Victims can speak. Defendant can speak, and things like that. The actual decision in those cases, I think, would not be part of this hearing, and shouldn't be part of this hearing. From that standpoint, I'd object and have a continuous objection to anything concerning the substance of those hearings.

Like I said, I don't have a problem with the forum being mentioned that he was denied a parole with those. But the substances, I believe, is out of the area of this Court, and out of the area of the purpose of this hearing in this situation. That's a wholly different matter. Like I said, it's the Executive Branch. It's not a Judicial Branch

function in that case.

From there, Your Honor, I did hand up Montgomery versus Louisiana, Your Honor, and it mentions that in Footnote 35, and the, the opinion, Your Honor, talking about that. Of course, the dissent is very much stronger than that, but that was the majority opinion that I read to the Court from there, Your Honor. In this -- and then the latest thing we've had, it was an unpublished opinion, it's Gear versus South Carolina Department of Parole, Pardon -- and Services, Your Honor. It was actually an unpublished opinion, 218 UP 216, Your Honor.

In that case, Your Honor, I think basically what happened in that case was he was convicted subsequently or before of a valid offense. It made him max out his life sentence, which make it life without parole in that case. But they said, basically, it's -- they, they refer to, on the last page of that opinion, Your Honor, Steve Montgomery, three -- 336 South Carolina -- not South Carolina. Supreme Court Cite 736. The State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole rather than resentencing them.

In the case before us, we find no evidence showing that Greer's youth was taken into account for his -- the possibility of parole in that case, and that was basically because of the valid offense, Your Honor, made him max it

out, Your Honor.

So, we would argue, in this case, Your Honor, that he is given the ability of parole. I have prosecuted people that has been given parole on murder that came back out, and I've actually had to re-prosecute them after they was paroled on the murder offense. Be glad to give that to the Court if the Court would need that information, and we can give a -- but, like I said, there are people that's been convicted of murder, that's been given parole several times I'm sure in this state, and we can provide examples of that.

I'll defer to my cocounsel here to see if she'd like to add, add anything else at this point. But I would object to his four exhibits, Your Honor.

Do I need to continue objecting to those, Your Honor, or just will my one objection count for that?

THE COURT: Your one objection will be fine.

SOLICITOR BARNETTE: Okay. No problem. I just want to make sure I protect the record. I would object to those four---

THE COURT: Yes, sir.

SOLICITOR BARNETTE: ---items.

THE COURT: Yes, sir. Thank you.

Ms. Wright.

MS. WRIGHT: May it please the Court?

THE COURT: Yes, ma'am.

MS. WRIGHT: Judge, I -- I'm, I'm here representing the, the interest of the, of the Department in this matter. We represent the Parole Board executive function.

We would also echo the objections to the content of the parole hearings. There are standard questions that a lot of the Parole Board members typically ask the Defendants when they're going through hearings. Basically they're trying to assess whether the person's gonna reoffend or not, and, and they're gonna -- those are, those are generally standard questions asked of every Defendant regardless of, of the, the offense that they're up for parole for.

The Department also echos Mr. Barnette's motion in terms of asking this Court to dismiss the Petition for an Aiken v. Byars hearing in this case because the Department feels that the sentence does not apply in this case accordingly because this is, this -- the Defendant here received a life sentence, as he stated, rather, rather than life without parole sentence. And so, as such, the Department echos his argument in that, in that vein.

That's all.

THE COURT: Thank you, ma'am.

SOLICITOR BARNETTE: One more thing, Your Honor.

Just the interest -- and I know you have this in front of you. I've attached -- as, as Attachment 1, which is the opinion on Ashby versus South Carolina, Your Honor. It was

a, a case from, I believe, from Second, Seventh -- the Second Circuit, Your Honor. It was Aiken County, Your Honor. 1979-GS-02-268, Your Honor, where Judge Early ruled and found that, in that situation, Montgomery versus Louisiana applied, and he did dismiss their Aiken versus Byars in there. I just wanted to make sure that's clear on the record.

THE COURT: Yes, sir. Thank you. Thank you for providing that to me. I have, I have reviewed that. Thank you.

Okay. Yes, sir.

MR. ALLEN: Your Honor, if it please the Court.

And, first, I would like to offer to the Court several -- well, one document, and four exhibits. The document I would like to provide the Court is the original copy of my memorandum -- of the Memorandum of Defendant which sets out, in brief, some of the facts surrounding this case and my argument.

Secondly, we do, at this time, offer into evidence Petitioner's Exhibit No. 1, which is four pages consisting of his Notice of Rejection in 2013, 2015. Also, in 2015, a letter advising him that his rehearing or Notice of Appeal has been declined or denied. And then, in 2017, the Notice of Rejection from his parole hearing.

THE COURT: And -- excuse me.

So that is all in Petitioner's Exhibit 1---

MR. ALLEN: That's all---

THE COURT: ---those documents?

MR. ALLEN: ---in Petitioner's Exhibit---

THE COURT: Okay.

MR. ALLEN: ---1.

THE COURT: Mr. Barnette, do you have any objection, sir?

SOLICITOR BARNETTE: I have an objection to the substance. Not that he had four parole hearings or that they were denied and the dates. I don't have no objection to that, but the substance of them, what they say, I do have objections to them.

I'm not -- they're authenticated. I don't have a problem with that. It's just, from a legal standpoint, I'm arguing cause I think that's an Executive Branch. They made their decisions based off that, and it would be in -- not in the province of this Court or the Judicial Branch.

THE COURT: Okay. And, at this time, it is just the written, the written document that's---

MR. ALLEN: Yes, Your Honor.

THE COURT: ---the result?

MR. ALLEN: Yes, Your Honor.

THE COURT: Okay.

MR. ALLEN: The---

THE COURT: I, I will -- let, let me -- okay. And, Mr. Barnette, I, I believe that these documents are just the conclusion, and, and -- and so I will allow them, sir.

Okay.

SOLICITOR BARNETTE: I understand, Your Honor.

THE COURT: And so Petitioner's Exhibit 1 is admitted into evidence.

(WHEREUPON, Petitioner's Exhibit No. 1 was received into evidence at this time.)

THE COURT: Thank you.

MR. ALLEN: Also, Your Honor, I have Petitioner's Exhibit 2, which are four CDs. These are the recordings of Mr. Davis' parole hearings from 2011, 2013, 2015, and 2017. Probably the Court should consider this along with Petitioner's 3, which was an enclosure letter that was sent to me from the Department of Parole, Probation and Pardon Services which definitely -- which specifies the dates of, of his parole hearings.

These recordings are not very long, Your Honor. The longest recording is somewhere between five minutes and a half to five minutes and three-quarters. The shortest is approximately two and a half minutes, and I believe that was the first hearing.

I will acknowledge that the first hearing is particularly hard to hear, and I, I believe, pursuant to our

in chambers conference, the Court desires or would prefer to hear these in camera, and we certainly have no objection to that rather that playing them here. I'm having a little bit of trouble with my electronic stuff over there. I can't seem to get my computer to come all the way up. But, nonetheless, we certainly have no objection to the Court considering these hearings in camera, and I can refer to what I've heard on them---

THE COURT: Okay.

MR. ALLEN: ---as well.

THE COURT: So let me stop again.

And, Mr. Barnette, it is -- is it my understanding that you're objecting to the content of the CDs, which is being offered as Plaintiff's -- Petitioner's Exhibit No. 2, four CDs?

Is that correct, sir?

SOLICITOR BARNETTE: Yes, ma'am, the same, the same objection basically. It's the decision made by the Parole Board.

THE COURT: Yes, sir.

SOLICITOR BARNETTE: I think, from that standpoint, it's an executive function from that standpoint. That has nothing to do with Aiken versus Byars hearings in this stance. That would be something that probably wouldn't even be considered concerning those hearings. So, therefore, I

think they're outside of this realm from that standpoint, and should not be brought into Judiciary.

I think, in the Judiciary Branch, this is just basically a situation where it's a legal argument from that standpoint. Like I said, this is not a resentencing from that standpoint. So, I would object on both those grounds from that standpoint.

THE COURT: Okay. And, and, and that is noted, sir, and would you have the same objection to Petitioner's Exhibit 3, which is the cover letter with those dates?

SOLICITOR BARNETTE: No, I think three I'm okay because the dates---

THE COURT: Okay.

SOLICITOR BARNETTE: ---I don't have any objection to the dates and the number of parole hearings. I don't have -- it's the substance of the tapes themselves, the meeting that they had in deciding parole, and so forth. And, and the other option would be speculation of what the Board was doing from that standpoint. We don't know what each individual was thinking when they voted.

That's the issues I have from the speculation standpoint, from a -- the Executive Branch that, that standpoint, and not being relevant to this hearing.

I don't know if anything you'd like to add to that or not?

MS. WRIGHT: Not right now. Thank you.
THE COURT: Okay. I, I will allow---
SOLICITOR BARNETTE: Thank you.
THE COURT: ---Petitioner's Exhibit 3 into evidence without objection.
(WHEREUPON, Petitioner's Exhibit Nos. 2 and 3 were received into evidence at this time.)
THE COURT: With regard to the CDs, I will listen or attempt to listen to those in camera, and it, it has been represented to me that it may be difficult to hear them, and, and I will assign any weight that I deem appropriate to that understanding that I have the conclusion -- the conclusions here as Exhibit 1.
All right. Yes, sir. Anything else?
MR. ALLEN: Yes, Your Honor.
And, finally, as far as exhibits, Petitioner's Exhibit 4, which is a portion of the Policy and Procedure Manual of the South Carolina Board of Parole and Pardon. Specifically, I've -- this is from June, 2017. This is online at the Department of Probation, Parole, and Pardon Services website from which I got it.
I specifically included the cover page, the table of contents, and basically the Part 2 which deals with parole hearings. And basically I'm offering this to show essentially the con -- what, what the reasons for the denial

of parole are, and the -- basically the procedure by which the Parole Board follows. And it will also tend to make sense when the Court wants to review it as far as the reasons for the parole and -- or the denial of the parole, and I'm offering that into evidence at this time.

I've, I've got the full manual if the Court wants to have the full manual, but I think this is the part that we're concerned with.

THE COURT: Okay. Mr. Barnette. Ms. Wright.

SOLICITOR BARNETTE: I'll let Ms. Wright go first, Your Honor.

MS. WRIGHT: In regards to the, this manual?

THE COURT: Yes.

MS. WRIGHT: Your Honor, the, the Department, again, wants to or basically its position that, you know, the, the manual is, is, is really a guide. There's nothing as, as far as -- I, I mean I do concur with where Mr. Allen found this. This is on our website. It just gives general information in regards to the, the parole and pardon process.

However, again, it is a standard kind of manual, and each case is determined by the Board on an individual case-by-case basis. So -- which, which includes a lot of various factors that may or may not be included within the manual. So, that's, that's my comment in regards to the

admission of this, and I'll defer to counsel.

SOLICITOR BARNETTE: Thank you, ma'am.

My objection would be the same. Really it's for 1, 2, and 4 from that standpoint. We're speculating what, what they used to determine their conclusions. We, we don't know. Each individual, I assume they're seven members of the Board at that time, making those decisions. So it'd be purely speculation what they're doing, and what they're thinking.

It's an Executive part of the Board that's basically handling that branch, Your Honor. Basically parole hearings aren't handled by this Court, and, like I said, it sends in PCRs, appeals, and so, so forth.

If the -- if our Constitution, our Founding Fathers in this State wanted judges to hear parole hearings or those type things, they would of done that, and put that in there. But that's not the purpose of the Executive Branch.

So, I'd ask basically 1, 2, and 4 for the same things, speculation what those findings may have been or what they -- how they found them being under the Executive Branch, not on the Judicial Branch, and, therefore, I don't think it's proper to be in front of this, front of this Court on those matters concerning this type of hearing and Aiken and Byars.

Thank you, Your Honor.

THE COURT: Thank you.

Okay. I, I am going to allow Petitioner's Exhibit 4, and, at this point, I don't think that I need the entire manual, and the, the document that I'm or the portion of the document that I'm looking at is the, I guess, the cover and it says it's June of 2017. And then it looks like I have Pages 1 through 4, and then 20 through 34.

(WHEREUPON, Petitioner's Exhibit No. 4 was received into evidence at this time.)

THE COURT: Okay. All right. Thank you.

MR. ALLEN: Thank you, Your Honor.

And, finally, I think just to make the record complete, I would like to call my client to the stand to basically testify concerning his birthdate, and date of this offense, alleged date of the offense, and that's it.

THE COURT: Yes, sir. Okay.

MR. ALLEN: So, we'd call Carnell Davis to the stand.

THE COURT: All right. Mr. Davis, sir. Good afternoon. If you'll please come around.

(WHEREUPON, the Petitioner complies.)

THE COURT: And, sir, before you seat yourself, if you would raise your right-hand.

CARNELL DAVIS, being first duly sworn, testified as follows:

THE COURT: Please have a seat right there. Make

yourself comfortable.

(WHEREUPON, the Petitioner complies.)

THE COURT: If you would state your full name.

THE WITNESS: I'm Carnell Davis.

THE COURT: All right. Mr. Allen.

MR. ALLEN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ALLEN:

Q Mr. Davis, if you would at least try to speak up loud enough for me to hear way over here if you would.

A Okay.

Q When is your date of birth?

A [redacted].

Q 1973.

You were charged with a murder and assault and battery with intent to kill that occurred in February of 1991.

Is that correct?

A Yes, sir.

Q And, at that time, you were obviously how old?

A Seventeen.

Q Okay. And you subsequently pled guilty to those two charges.

Is that correct?

A Yes, sir.

Q Pled guilty to those charges on July 9th, I believe

it was, in 1991?
A Yes, sir.
Q And you received a sentence of life imprisonment on the murder?
A Yes, sir.
Q And 20 years consecutive on the assault and battery with intent to kill?
A Yes, sir.
Q Are you serving that sentence or those sentences since then?
A That is correct.
Q Okay. And you've had four parole hearings.
Is that correct?
A That's correct.
Q And those hearings were in 2011, '13, '15, and '17.
Is that correct?
A Yeah, that's correct.
Q I previously showed you the letters and Notices of Rejection and the Notice of Appeal that we have offered into evidence as Petitioner's Exhibit 1 believe.
Is that correct?
A Yes. Yes, sir.
Q Where did we get -- I mean where did I get those?
SOLICITOR BARNETTE: Your Honor, just note, note my objection for the record please, ma'am.

THE COURT: Yes. Yes, sir.
SOLICITOR BARNETTE: Thank you.
THE COURT: So noted.
SOLICITOR BARNETTE: I'm sorry.
Q Are those notices that you received?
A Yes, sir.
Q Okay. And, in fact, you provided them to me?
A Yes, I did.
Q We don't have or I don't have one for 2011.
Do you know -- did you receive a notice---
A Yes, I did. Yes, I received one.
Q Okay. A Notice of Rejection?
A Yes, a Notice of Rejection.
Q Okay. And do you know what happened to that Notice of Rejection?
A I filed an, an, an appeal and I attached -- I didn't get a copy, and I attached it to the appeal, but I don't wish -- I don't think I received it back. I don't remember receiving it back.
Q Is that the appeal of the --?
A That's when -- my first appeal. I -- I've appealed each one.
Q Okay. To -- okay. Under -- okay. The -- you appealed not to Court, but to --?
A To the Parole Board.

Q To the Parole Board.

Okay. So, you don't currently have a copy of the Notice of Rejection?

A No, sir.

Q Okay. Do you know when you go back up for parole?

A I'm scheduled to go back up in 2019, I think, in October.

MR. ALLEN: That's all I have at this time, Your Honor.

THE COURT: Thank you, Mr. Allen.

Mr. Barnette, Ms. Wright?

SOLICITOR BARNETTE: No questions from the State, Your Honor.

MS. WRIGHT: No questions, Your Honor.

THE COURT: All right. Mr. Davis, sir, thank you. You may step down. Be careful.

(WHEREUPON, the Petitioner complies.)

THE COURT: All right. Anything else, Mr. Allen?

MR. ALLEN: Not in the way of evidence. We, we rest as far as our showing's concerned. I mean I, I can argue if the Court would like for me to do that at this time or the Court---

THE COURT: Why don't---

MR. ALLEN: ---or I guess the State has the right to put up---

THE COURT: Tell you what?

Why don't I hear from Mr. Barnette and Ms. Wright, and then I'll let both sides make any closing arguments that they would like, but one more thing.

Mr. Allen, you've handed up your memorandum, and, Mr. Barnette, did you get a copy of this?

SOLICITOR BARNETTE: Yes, ma'am, I did.

THE COURT: And, sir, do you want that -- do you want to have it marked or just do you want me just to hold on to this?

MR. ALLEN: I'd like for it to stay in the file. So, if the Court would like for me to have it marked as either Court Exhibit or as a Petitioner's Exhibit, I'll be, be glad to do that.

Mr. Barnette previously filed his---

THE COURT: Right.

MR. ALLEN: ---supplemental responses. So---

THE COURT: Okay.

MR. ALLEN: ---basically it's in that nature.

THE COURT: Okay. We'll just make sure it gets in the record.

All right. Thank you.

MR. ALLEN: Thank you.

THE COURT: All right. Mr. Barnette.

SOLICITOR BARNETTE: Thank you, Your Honor.

I do have as State Exhibit No. 1, which I shared with

Mr. Allen, this is not a complete case file or whatever. But this is basically information concerning the murder and the ABWIK that I -- basically I'm entering this because, obviously, the Parole Board information's been entered, and just note my objections, and I know the Court will---

THE COURT: Yes, sir.

SOLICITOR BARNETTE: ---on previous grounds that I stated before. But I'd like to enter this as State Exhibit 1 for the Court to, to be able to review also with the other information.

THE COURT: Mr. Allen.

MR. ALLEN: No objection.

THE COURT: Okay. So, State's or Respondent's Exhibit No. 1 is in without objection, and has that already been marked, Mr. Barnette?

(WHEREUPON, State's Exhibit No. 1 was received into evidence at this time.)

SOLICITOR BARNETTE: Your Honor, I, I can restate my arguments before. It's in the return or the Motion to Dismiss that I made.

Basically I, I don't think he's entitled to a Aiken versus Byars hearing because he is eligible for parole. Like I said before, other -- we don't know if he'll make parole next time or not, but he easily could. But, like I said, I've known several people whose been convicted of

murder that has made parole over the years. And that's the whole basis for this. And I think, if you do grant him this hearing, where do we stop.

Do we stop anytime we consider a sentence a life sentence?

Sixty year sentence, a 50 year sentence for juveniles?

I, I just don't know where it -- and I think our U.S. Supreme Court has definitely marked that line, and I think our South Carolina Supreme Court meant life without parole, where they had no possibility of getting out.

Like I said, me and Mr. Allen will be hearing a case, State versus Garrett or Garrett versus State, in which he was convicted in 2007, and he's 17-years old. I think that is what he's entitled to a hearing based off the law. But based off of the law that's given by our U.S. Supreme Court in the Montgomery versus Louisiana case, and you can also read Judge Early's Order, which I think is exactly on the money, concerning the case out in Aiken County, I'd ask you to grant the State's motion and dismiss in this case.

THE COURT: Okay. Thank you.

Mrs. Wright.

MS. WRIGHT: Yes, Your Honor.

Again, I, I restate co-counsel's objections, and, in particular, I do want to also add, and, and also restate an objection to speculation into the, the minds of the Parole

Board. The Parole Board in our State Statute, they have an executive right to make a decision on, on each parole case, and it, it appears to me that Mr. Allen is trying to expand the, the, the factors that the Board should consider in granting parole regardless of the kind of sentence that a juvenile offender obtains, whether it's life without parole or, or, or life with parole, as, as his client does have.

And the Department's position is that the Defendant's case here is really moot because, again, he has received parole hearings. The, the decisions of, of Miller and Aiken v. Byars, I believe those Courts intended to, to give those Defendants the, the -- not necessarily the automatic 100 percent right to parole, but parole eligibility to become eligible to receive parole, which is a distinction, and certainly the Defendant here has become eligible to receive parole back in 2011.

He's received his four parole hearings. He has another hearing scheduled next year. And, for those reasons and all the reasons as stated previously, the Department would request that, that you dismiss, dismiss this case.

THE COURT: Thank you.

Okay. Yes, sir. Mr. Allen.

MR. ALLEN: Your Honor, if it please the Court?

Admittedly this is -- this case doesn't or hasn't, so far, come specifically under Miller and Aiken in that, and I

will acknowledge that Miller, and Aiken, and Montgomery versus Louisiana deal with the sentences of life without parole. Miller obviously life -- mandatory life without parole, and that was extended, at least in this State, with Aiken versus Byars and anyone who was sentenced to a sentence of life without parole, whether that was a permissive life without parole within a range of time or mandatory.

However, what I'm trying to demonstrate in this particular case is that, at this point or up to this point and up to the time he's requesting a resentencing hearing, Mr. Davis has not had a forum or a hearing that would consider the requirements as specified in Miller and in Aiken concerning the, the characteristics that attended to youthfulness, and those six factors are stated in Aiken versus Byars, and I believe Miller, which I summarized in, in my memorandum.

Obviously, when he was sentenced in 1991, there was only one decision the Court, at that time, could give him under the circumstances of his plea, and that was a sentence of life, and granted that is a parolable life. But I think, more importantly, as we -- as I've looked at this case, and looked at the reasons for his denials, and it's my -- when I heard the hearing from 2011, his first parole hearing, I believe that, and I think the Court will, if the Court can

get through the buzz, and I, I admit that's the worse recording that was provided to, to us, but, but we take what was done at that time with the equipment that it was done on, but I think it's important to note that, in that hearing and also in the 2013 reasons for his or findings of fact concerning his denial of parole, while they've taken into consideration a variety of things, and the findings of fact deal with matters that, quite frankly, can not be changed for those two hearings. Specifically, the nature and seriousness of the current offense, the indication of violence in this or previous offense, and use of a deadly weapon in this or previous offenses.

Those finding of facts deal with what happened on February I believe it was 8th of 1991, things that obviously can not be changed. And, by the way, I do not mean to be critical of the Parole Board. I don't want the Department or anyone to think I'm being critical of the Parole Board. The point that I'm trying to make is that I believe Miller and Aiken specify that, before someone gets a sentence for which they can serve the rest of their or a -- essentially a life without parole sentence, that they've got to have a hearing to waive various characteristics of youthfulness as specified in that. And, for that to come into play, and to be given some degree of, of weight and, thus far, he hasn't had that.

In his last two parole hearings, Your Honor, he was denied parole based on those three findings of fact, but they also included additional finding of fact, and that additional finding of fact was his institutional record.

The Court, when you're -- the Court hears the recordings from those last two parole hearings, the Court will hear the Board ask him about his disciplinaries, and one of which was possession of contraband I believe. He explained he got cash money to fix radios and TVs, and also possession of a cell phone. In his most recent parole hearing, again they asked him about a disciplinary of which they talked about possession of a cell phone.

Again, things that were current, and I'm not gonna deny that they're important to the Parole Board, but, at no time during these hearings, was he given a realistic opportunity to talk about the characteristics of his youthfulness, and how his youthfulness played into his guilty, trouble, and being convicted of the crimes for which he was convicted.

It was in the fourth hearing, Your Honor, as, as the Court can listens (sic) to the, to the recording of the fourth hearing in 2017, he actually tries to go back and talk about how he has developed and grown over the years, and, and what struck me was, during the course of his presentation, a parole member said well, I appreciate what you're saying, but what I really want to know is what will

you do basically when he gets out on parole.

So, he was -- the Parole Board seemed to be, or at least that member, seemed to be interested in what was his plans for the future. Not necessarily so much concerning what led him and, and how this youthfulness played into what led him to be incarcerated to begin with.

So, Your Honor, what we're proposing to the Court or suggesting to the Court is that Mr. Davis has what amounts to the functional equivalent of a sentence of life without parole. Especially to the extent that the characteristics of his youthfulness and the other factors as enumerated in Aiken v. Byars and Miller are not considered in making decisions about this case.

I know the Solicitor may be concerned about, you know, what will happen if, you know, if, if we expand it or if the Court expands it. I don't know, but I, you know, but I'm, I'm looking at the decisions as of now it's in Miller. Granting they were talking in Miller about a non-parolable life without -- excuse me. I'm being redundant.

They were -- specifically they were looking at a life without parole sentence in Miller as in -- as well as in Aiken. But, nonetheless, I think that if we're looking at what the functional equivalent is, we will have Mr. Davis here in a situation where he's never had the opportunity to make a full presentation of his youthfulness in an attempt

to avoid getting even a life sentence. In this case, a life with parole. He was sentenced to life. Granted it was life with parole. But nothing concerning his youthfulness played into that sentence because the Court only had one choice in 1991.

And, to the extent that the Court was not able to, in sentencing him, to, to the extent that the Court could not make those -- let the, the characteristics of his youthfulness play into his decision on his sentence, and to the extent that the Parole Board does not consider it, I submit to the Court that his sentence is unconstitutional pursuant to both the State and the Federal Constitutions, and, therefore, the State's Motion to Dismiss should be denied, and Mr. Davis should be allowed to proceed in a Aiken versus Byars resentencing hearing.

Thank you.

THE COURT: Thank you.

Anything else?

MS. WRIGHT: Your Honor?

THE COURT: Yes, ma'am, Ms. Wright.

MS. WRIGHT: Yes, it, it just occurred to me, in listening to Mr. Allen's argument, that even assuming arguendo that the Defendant was able to be successful in obtaining his Aiken v. Byars hearing, and he was resentenced, he would then be sentenced to life with, with

parole, as he already has, and he would continue to get parole hearings.

So, you know, again, it's, in my mind, it's, it's -- we're, we're, we're echoing the, the same facts over and over. Regardless of whether or not he is able to persuade the Court that his youthfulness argument makes a difference at the Circuit Court level in terms of ordering our Parole Board to reconsider him again at his next hearing via Aiken v., Aiken v. Byars decision, I, I don't believe the impact on that, that would make on the Board would really make a difference because the Board is still gonna continue, continue to do its business as it normally does in terms of examining all the relevant factors.

As he mentioned, the, the -- you know, the, the, the nature and seriousness of the crime, the violent nature of the crime, the institutional record, all of that will come back into play again.

So, it's just -- that's just something I wanted to get on the record. I, I don't believe that -- that it's gonna make a difference in the ultimate impact of his case.

THE COURT: Thank you.

SOLICITOR BARNETTE: I think Ms. Wright makes a very good point. You can't change the law in 1991. The way the sentence was available to somebody was convicted of murder was life with parole.

So, really what Mr. Allen, he's asked you to expand this. He'd asked you to actually change the law in 1991, which I don't think this Court has that ability to do that to be honest with the Court. I mean to expand beyond the -- what the Appellate Courts have done, all the way up to the U.S. Supreme Court, to ask you to expand it to include these parole hearings and so forth, and to change the actual law that was in 1991, the law was changed obviously in 1996 where it was 30 years to life, that was changed by our Legislature with approval of our Governor. So, that was approved by the Legislative Branch as well as the Executive Branch.

And to ask this Court to grant him a Aiken versus Byars hearing, and ask him to give him a, another life without parole sentence, we would be right back where we're at, which I don't think that the purpose of Aiken versus Byars or the Alabama versus Miller case in this situation, and that's another reason I think this motion should be denied because you -- and I'm not trying to -- the Court has extreme powers. Don't get me wrong. But I don't think it has the power to change the law in 1991, what the sentence was at the time.

So, therefore, I'd ask to deny that motion. Plus, Your Honor, and, and I know I've still got my objections to the 1, 2, and 4 exhibits, Your Honor, from there. But the other

thing I thought was interesting too, and Mr. Allen may correct me if I'm wrong on this, but the Defendant filed pro se. Originally, I think Appellate Defense and several other groups in Columbia went through every possible Defendant to see who qualified and filed Petitions on their behalf. They didn't see this one being one of those petitions to file. He actually filed it himself, and then Mr. Allen was given to him later.

So, I think that's another indication where originally the groups did not think this qualified from that standpoint, and I believe it doesn't for several different reasons that we've just listed in this situation, and I agree with Ms. Wright concerning the, you know, life with parole. We'd be right back where we're at before, and I don't think that's the purpose of this one whatsoever in that case, Your Honor.

So, we would note all our previous objections, our previous grounds for dismissal of this action by the Petitioner, Your Honor.

THE COURT: Thank you.

Yes, sir.

MR. ALLEN: If I may briefly expond (sic)?

THE COURT: Yes, sir.

MR. ALLEN: Respond. Excuse me, Your Honor.

I'm gonna take them in inverse order from the

arguments.

As far as -- yes, he, he did file pro se, and it's my recollection that I did not become aware of this until -- I believe it was until the Supreme Court issued its Order granting the Court the jurisdiction to hear this, and I think that's how I first became aware of that when we had another filing. But, of course, since then -- and, and he did file within the time allowed prior to the expiration of that year as specified in Aiken v. Byars.

But as I've considered this case and looked into it, I mean I've become more convinced that, given the nature of what he has been going through specifically with respect to the denials of parole initially for the matters involving the offense that we can not change, and without any consideration of the characteristics of his youthfulness, that he should be entitled to some relief, and that's why I am willing to advance the arguments that I'm advancing today, and asking the Court to grant him a resentencing hearing.

As far as the ultimate relief to be granted, I don't think we're there yet. But at some point, two things could happen. If the Court is convinced that his sentence was or is unconstitutional to the extent that it does not take into consideration the characteristics of youthfulness, and the six factors as outlined in Aiken v. Byars and Miller, then

the Court could rule that his sentence is unconstitutional and is void, but that would leave a, a, a crime that's been -- for which he's been convicted through a guilty plea, and no sentence, which I think the Court may ultimately view, and most people may view, as a extreme, if not almost ridiculous, approach.

The, the other type of relief that could be granted is to consider him for a term of years along the lines of the '96 amendment to the statute. I don't think the Court could change the parole eligibility nature of any sentence that he should be entitled to. But that's, essentially, if we get -- ever get to that point, that's the, the type of relief that I would be advancing to the Court. Not one that necessarily requires that he receive no punishment, but one that he could receive a form of punishment that we believe, later on, the Legislature considered.

And so that -- I mean to answer both counsel's concerns about the punishment or relief to be granted, I, I see the futility in granting him relief of a parolable life sentence, again, cause that's the very problem that we're dealing with now or at least the way it's being treated. But -- and I, and I understand the Court's got no jurisdiction over the Parole Board or the, the Court doesn't have any jurisdiction over the Executive Branch at least as far as that goes. But that would be the type of relief that

I would ultimately be requesting. But I don't think we're there. I'm just responding to their arguments.

THE COURT: Okay.

MR. ALLEN: Thank you, Your Honor.

THE COURT: Thank you, Mr. Allen.

Anything else?

SOLICITOR BARNETTE: If I can just briefly, Your Honor, talk about, you know, the Parole Board -- the Defendant can present -- he can do his presentation if he wants to of any type from that standpoint. And, you know, I've been in parole hearings. Obviously for the State's side. I've not been for the defense side. But, obviously, it can present those factors to the Parole Board at his next parole hearing.

So, those factors of the youthful and everything, and asking them to consider that, they can even file it ahead of time. We also can file stuff. I know I've sent letters in opposing parole that I send ahead of time. So, that could be something that could be done. And, like I said, that's the reason I objected to all the parole information before cause I don't think it's relevant to this Court. But, obviously, in doing his presentation, he can do a packet and present that to the Parole Board for their consideration.

THE COURT: Thank you.

MS. WRIGHT: I have nothing further.

THE COURT: Okay. Thank you.

Mr. Allen, anything in response to that?

MR. ALLEN: No, Your Honor.

Just for clarity purpose, and so the record is clear, when I indicated that I believe the sentence would -- you know, when I was talking about my Constitutional arguments, I was obviously referring to the Eighth Amendment as applied to the States, and Fourth Amendment of the United States Constitution, and similar provisions of the South Carolina State Constitution, but other than that, no, Your Honor.

THE COURT: Okay. Thank you.

All right. All right. So, Mr. Davis, sir, I, I know a little bit about your case. I've, I've read the -- what was available to me to read before today, and I take this extremely seriously, sir. I know it's very important to you.

I am taking this under advisement, and what that means is I'm not issuing my decision today, sir. I am going to do some research.

Counsel, it -- is -- these are experts in what they do, and they're always very well prepared. And now they've given me a lot more information today that I'm going to look at. All of that, sir, you need to understand is for your benefit.

I do wish you the best of luck, and I will issue a

decision as quickly as possible.

THE DEFENDANT: All right. Thank you.

THE COURT: Yes.

Thank you-all.

SOLICITOR BARNETTE: Thank you, Your Honor.

MR. ALLEN: Thank you, Your Honor.

THE COURT: Nice to see you, Ms. Wright.

MS. WRIGHT: Thank you.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

CERTIFICATE

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 27th day of August, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 12th, 2020

Pamela E. Green

PAMELA E. GREEN, Court Reporter

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

KELA E. THOMAS
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

June 20, 2013

Mr. Carnell Davis #00179330
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

PETITIONER'S EXHIBIT
#1
PENGAD-Bayonne, N. J.

RE: NOTICE OF REJECTION

Dear Mr. Davis:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

Larry Ray Patton, Jr.
Director of Parole Board Support Services

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

JERRY B. ADGER
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

August 13, 2015

Mr. Carnell Davis #00179330
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

RE: NOTICE OF REJECTION

Dear Mr. Davis:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Institutional Record Is Unfavorable

Sincerely,

Larry Ray Patton, Jr.
Director of Parole Board Support Services

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

September 25, 2015

Mr. Carnell Davis (#179330)
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Dear Mr. Davis:

I am receipt of your request for rehearing/notice of appeal concerning your parole consideration hearing. Please be advised that there is no rehearing/appeal process for the routine denial of parole. Therefore, no action will be taken on your request. You will be considered again for parole on or about August 12, 2017.

Sincerely,

Larry Ray Patton, Jr.
Director, Board Support Services

LRP/eaw

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

October 26, 2017

Mr. Carnell Davis #00179330
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

RE: NOTICE OF REJECTION

Dear Mr. Davis:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Use Of Deadly Weapon In This Or Previous Offense
Institutional Record Is Unfavorable
Vote Count: Unanimous To Reject

Sincerely,

Larry Ray Patton, Jr.
Director of Parole Board Support Services

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

August 17, 2018

Clay T. Allen
366 North Church Street
Spartanburg, SC 29303

Dear Mr. Allen:

We are in receipt of your check and/or money order in the amount of $70.00. Please find the duplicate audio CD's for inmate Carnell Davis, SCDC #179330 parole hearing that was held on **May 4, 2011; June 19, 2013; August 12, 2015 and October 24, 2017.**

Sincerely,

Cherie Young
Program Assistant

Enclosure

PETITIONER'S EXHIBIT 3

South Carolina Board of Paroles and Pardons



South Carolina Department of Probation, Parole and Pardon Services
DIVISION OF PAROLES AND PARDONS

June 2017

TABLE OF CONTENTS

PREFACE 5
The Parole System in South Carolina 5
Pardons, Reprieves and Commutations 6
Effective Date 8

MISSION 9
Making the Mission a Reality 9
Objectives 9

PART I

ADMINISTRATIVE PROCEDURES

A. BOARD OF PAROLES AND PARDONS 11
1. Composition of the Board 11
2. Statutory Powers 11
3. Election of Officers 11
4. Training 11
5. Compensation 12
6. Quorum for Conducting Business 12
7. Rules and Regulations for Conducting Business 12

B. PANELS OF THE BOARD 13
1. Composition of Panels 13
2. Statutory Powers 13
3. Meetings of the Panels 13
4. Dual Panels 13

C. CHAIR OF THE BOARD 13
1. Election and Term of Office 13
2. General Responsibilities 13

D. RESPONSIBILITIES OF THE DEPARTMENT DIRECTOR AND STAFF 14
1. Managing the Department 14
2. Scheduling Meetings and Hearings of the Board 14
3. Investigating and Preparing Cases for Review 15
4. Providing Notice of Hearings to Interested Parties 15
5. Executing the Decisions and Orders of the Board 15
6. Informing the Board of Current Parole Law 15
7. Maintaining the Official Records of the Board 15

E. CONFIDENTIALITY AND THE DISCLOSURE OF INFORMATION 16
1. State Law in General 16
2. Matters Exempt from Disclosure under the FOIA 16
3. Information Releasable on Request 17
4. Information Not Listed as Releasable on Request 17
5. Assessment of Costs 17
6. Security and Other Matters of Order at Hearings 17
7. Location of Hearings 18
8. Recusal of a Board Member 18
9. Electronic Information at Hearings 19

PART II

PAROLE PROCESS

A. PAROLE HEARINGS 21
1. Procedural Requirements Under the Constitution 21
2. Notice Requirements 21
3. Preparation of Cases for the Board's Review 22
4. Contents of the Parole Case Summary Report 22
5. Standard Procedure for Conducting Hearings 22
6. The Presence of the Offender and His/Her Attorney 23
7. The Presence of Other Interested Parties 24

B. ELIGIBILITY FOR PAROLE AND DISQUALIFICATION FROM ELIGIBILITY 24
1. General Rules of Eligibility 24
2. Crimes with Specific Eligibility Rules 25
3. Parole Eligibility and Domestic Violence 26
4. Subsequent Violent Offender Analysis 27

C. STANDARDS FOR GRANTING PAROLE 27
1. The Absolute Discretion of the Board 27
2. Parole Criteria Considered by the Board 27
3. Parole for Non-U.S. Citizens 28
4. Psychological Examination of Certain Offenders 28
5. The Effect of Unresolved Detainers and Defaults 29

D. PAROLE DECISIONS 29
1. Parole 29
2. Provisional Parole 30
3. Parole for Medical Reasons 30
4. Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates 30

5. Special Parole of Veterans for Psychiatric Treatment 31
6. Parole to Detainer 31
7. Parole to Another Authority 31
8. Continued or Deferred Cases 31
9. Postponed Cases 32

E. THE DENIAL OF PAROLE AND ITS EFFECT 32
1. Reasons for Denial of Parole 32
2. Subsequent Hearing Following a Denial 32

F. CONDITIONS OF PAROLE 33
1. The Standard Conditions 33
2. Special Conditions 34

PART III

REVOCATIONS, MODIFICATIONS AND RECONSIDERTAIONS

A. REVOCATION OF PAROLE CASES 37
1. Constitutional Requirements of Procedural Due Process 37
2. Procedures for the Final Hearing 38
3. The Final Decision 38
4. The Effect of Revocation 39

B. MODIFICATIONS OF PAROLE CASES 40
1. In General 40
2. Procedure 40

C. RECONSIDERATIONS OF PAROLE CASES 41
1. Reasons for Conducting a Reconsideration 41

PART IV

PARDONS, REPRIEVES, AND COMMUTATIONS

A. PARDON PROCESS 43
1. Persons Eligible to Be Considered for a Pardon 43
2. Filing of Application 44
3. Pardon Investigations 44
4. Review by the Board 44
5. The Order of Pardon 44
6. The Certificate of Pardon 44
7. Rights Restored 44
8. Irrevocable Unless Obtained Through Fraud 45
9. Re-application after a Denial of a Pardon 45

B. REPRIEVES AND COMMUTATIONS 45

Proprietary Disclaimer

This document (including all data and statistical information represented herein) was compiled and reported by the South Carolina Department of Probation, Parole and Pardon Services. Any reproduction or republication of said report, data, or statistics is permitted only if reproduced in its entirety without modification, or omission, and must identify the South Carolina Department of Probation, Parole and Pardon Services as the source.

A. PAROLE HEARINGS

1. PROCEDURAL REQUIREMENTS UNDER THE CONSTITUTION

Because there is no federal constitutional right to parole, and because South Carolina's parole laws leave the decision to grant or deny parole entirely in the discretion of the Board, very little is required in the way of procedural due process at parole hearings. For prisoners eligible to be considered for parole on their sentence the law requires the following:

- The right to be heard for parole if eligible and the right to waive such hearing;
- Fair written notice of the specific parole criteria, which are required to be established by the Board under South Carolina law and which must be made available to all prisoners at the time of their incarceration;
- Fair written notice of the date, time, and place of the parole hearing;
- The opportunity to be heard by a fair and impartial Board or panel;
- The opportunity to present evidence and to have up to three witnesses to speak on their behalf, and to have the Board or panel carefully consider the complete record before, during, and after imprisonment;
- At the offender's own expense, to have an attorney present at the hearing;
- When parole is denied, written notice of the Board's reasons for denying parole.

2. NOTICE REQUIREMENTS

All notices pertaining to parole hearings that are required by law to be given by the Board are given on its behalf by the Department. For the Board's information, these notices are briefly considered below.

a. **Notice to the Offender.** The Board Support Services Director is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the offender.

b. **Notice to Other Interested Parties.** The Department's Director of Victims Services is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the following parties:

- The victim or the victim's immediate family if the victim is deceased;
- The solicitor or his successor in office in the jurisdiction in which the offender was prosecuted;
- The law enforcement agency that made the arrest;
- The judge of the court in which the offender was convicted and sentenced.

c. **Notice of Rejection.** The Board Support Services Director is responsible for providing to offenders who are denied parole a written notice of rejection stating the reasons for that decision and giving the date of the offender's next parole hearing.

d. **Notice of Release.** In certain cases, the Department's Director of Victims' Services is required by law to provide notice to victims and witnesses of the release of an offender on parole.

3. PREPARATION OF CASES FOR THE BOARD'S REVIEW

The Department, through its Division of Field Operations and Office of Board Support Services, prepares cases for the Board's review. Before every hearing of the Board or a panel of the Board, all members receive a list of offenders who will be appearing for a parole hearing, together with the respective parole file on each prisoner. Board Members will receive these files no less than two weeks before the actual date of the hearing.

4. CONTENTS OF THE PAROLE CASE SUMMARY REPORT

Every file that the Department prepares for the Board's review includes, though it is not limited to, the following information:

- The criminal offense and a description of it;
- The sentencing date, the "max-out" date, the parole eligibility date, the date of any previous parole hearings, the names of any co-defendants;
- The offender's criminal record;
- The offender's prison and disciplinary records;
- Risk classification reports;
- A medical history and psychological reports, if any;
- A history of the offender's supervision on probation or parole, if any;
- A proposed place of residence and employment;
- The parole examiner's recommendation(s);
- Any statements from law enforcement;
- Any statement from the prosecuting witness or the prosecuting witness's next of kin, if the witness is deceased;
- Any statement from the solicitor or his successor;
- Any statement from the sentencing judge;
- The offender's social history;
- The offender's employment experience.

5. STANDARD PROCEDURE FOR CONDUCTING HEARINGS

Parole hearings are informal proceedings, and the Board or its panels may properly conduct them within its discretion. Hearings may be conducted as follows:

- The Department, through its Office of Board Support Services, schedules hearings. The names and case numbers of offenders who have been scheduled for a parole hearing are then

published at the respective prisons where they are confined, so that they can begin preparing themselves for their hearing.

- The Department, through its parole examiners, then interviews these offenders, investigates their cases, and submits a recommendation for or against parole.
- At the hearing, the offender or offender's counsel, if any, appears first and presents to the Board or panel. The Department of Corrections sets the limit for family members or other supporters appearing on behalf of the offender, however, the Board may limit the number of speakers.
- Members of the Board or the panel may ask questions of the offender and his witnesses. The Chair or the member presiding over the panel leads the questioning.
- Once the case has been presented, the offender is excused from the hearing room, and those appearing in opposition to parole are given their opportunity to be heard.
- After the witnesses in opposition are heard, they are excused from the hearing room, and the Board or the panel then deliberates.
- After deliberations, a voice and/or electronic vote is cast and documented.
- The offender and the other interested parties are informed of the decision by Department staff. If the offender is rejected for parole, the Department gives a written notice of the reasons for rejection.

6. THE PRESENCE OF THE OFFENDER AND HIS/HER ATTORNEY

Offenders scheduled for a parole hearing must be allowed to appear via videoconferencing. If they are represented by counsel, their counsel must also be allowed to be present. Counsel must appear at the location of the offender. Request for exceptions must be submitted to the Chair two weeks in advance of the hearing date. The Chair has discretion regarding requests for exceptions.

a. **Exceptions**. Exceptions to this rule are given below:
   - The offender is prevented because of illness from attending the hearing, or is confined at a state hospital.
   - The offender has been placed in punitive segregation by the Department of Corrections.
   - The offender has been transferred to prison outside South Carolina, or is otherwise serving a sentence in another state, in which case the Board may decide the case in the offender's absence. If the offender in this case wishes to be present at the hearing, he/she must make arrangements with South Carolina Department of Corrections.
   - The offender has waived appearance at the hearing.

b. **Absence from hearing.** If the offender is unable to be present at his hearing either because of illness or because he is in punitive segregation, the hearing may be postponed until such time as he is able to be present.

c. **Waivers.** In the event that the offender waives his appearance, such waiver shall form the basis for denying parole on an automatic vote of the Board or the panel. In these cases, the parole examiner is responsible for seeing that the signed waiver of the offender is delivered to the Board or the panel. If the offender refuses to sign the waiver and refuses to attend the hearing, the Board

or the panel may deny parole on this basis. These offenders will then be considered for parole one year or two years from the date of this denial, as would normally occur after an offender has been rejected for parole.

7. THE PRESENCE OF OTHER INTERESTED PARTIES

Parole hearings are public hearings. As such, they are open to victims, witnesses, the media and any other members of the general public who may wish to attend.

a. **Victims and witnesses.** Although victims and witnesses are members of the public and must be allowed to attend parole hearings, they are given priority under the South Carolina victims' and witnesses' bill of rights because of their special relation to the offense. The following procedures are designed specifically to accommodate their presence at parole hearings.

- Cases in which victims and witnesses are present should be heard first whenever possible;
- The Board may allow up to three victims and witnesses to be heard in any given parole or pardon case. The Chair has the discretion to allow additional victims and witnesses to be heard if in his/her judgment it is believed the case warrants it;
- Victims and witnesses will be given a reasonable amount of time by the Chair in which to be heard.

b. **The public and other interested parties.** Although parole are open to the public, the number of visitors is limited by the space available and security concerns. To ensure that all hearings proceed in an orderly fashion, the Board has limited the number of persons who may attend parole hearings as follows:

- Administrative staff from the Department who are needed to support the Board or panel;
- An interpreter or translator for any offender or victim;
- Up to three supporters (family, employers, ministers counselors, and so forth as allowed by the Department of Corrections;
- The offender's attorney;
- A representative from the arresting law enforcement agency;
- Victims and witnesses;
- News media;
- Other people, as determined by the Board.

B. ELIGIBILITY FOR PAROLE AND DISQUALIFICATION FROM ELIGIBILITY

1. GENERAL RULES OF ELIGIBILITY

a. **Crimes Committed Prior to June 15, 1981**. The offender has to serve one-third of the sentence before being eligible for parole.

b. **Crimes Committed Between June 15, 1981 and June 3, 1986.** The offender has to serve one-fourth of the sentence before being eligible for parole except burglary first degree and second degree.

- Between June 15, 1981 and June 20, 1985, offenders with burglary first and burglary second degree convictions must serve one-fourth of the sentence before being eligible for parole.
- Between June 20, 1985 and June 3, 1986, offenders with burglary first and burglary second degree convictions must serve one-third of the sentence before being eligible for parole.

c. **Crimes Committed on and after June 3, 1986.** A parolable violent crime requires service of one-third of the sentence before being eligible for parole and non-violent crimes requires service of one-fourth of the sentence before being eligible for parole except for crimes with specific eligibility requirements and certain specific rules.

2. CRIMES WITH SPECIFIC PAROLE ELIGIBILITY RULES

As set forth in the following S. C. Code sections, there is no parole consideration, on the following crimes, until parole eligibility is satisfied. (Note the effect of consecutive sentencing.)

a. First degree sexual exploitation of a minor has a minimum three (3) year parole eligibility. Sentences to be consecutive. §16-15-395. After April 26, 2004, this offense is a no parole offense.

b. Second degree sexual exploitation of a minor has a two (2) year parole eligibility. §16-15-405.

c. Promoting prostitution of a minor has a three (3) year parole eligibility. Sentences to be consecutive. §16-15-415. After April 26, 2004, this offense is a no parole offense.

d. Participating in prostitution of a minor has a two (2) year parole eligibility. Sentences to be consecutive. §16-15-425.

e. Additional Punishment. There is a five year additional punishment for possession of a firearm or knife during the commission or attempt to commit a violent crime. These five (5) years are to be served without parole and without good time or work credits. Sentences may be consecutive or concurrent. §16-23-490. (Effective after June 3, 1986.)

f. Armed Robbery. Must serve at least seven (7) years to be eligible for parole if crime committed prior to January 1, 1996. After January 1, 1996, no parole crime. §16-11-330(A).

g. Manufacturing, Distribution, or PWID under §44-53-370(b) or §44-53-375(b) are parole eligible for first or second offenses. Third offenses are only parole eligible if all prior drug offenses are for possession.

h. Trafficking in drugs under §44-53-370(e) or §44-53-375(c).

(1) Trafficking in drugs under §44-53-370(e) and sentenced to: "a mandatory minimum term of imprisonment of twenty-five years." The no parole provision applies if the crime was committed on or after June 19, 1984, and before January 1, 1994, or on or after January 12, 1995.
(2) Trafficking in drugs under §44-53-370(e) and sentenced to: "a mandatory term of imprisonment of twenty-five years." The no parole provision applies if the crime was committed on or after July 1, 1998, and before January 1, 1994, or on or after January 12, 1995. See Kerr v. State, 345 S.C. 183.547 S. E.2d 494 (2001).
(3) Trafficking in drugs under §44-53-370(e) and sentenced to: "a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years." The no parole provision applies if the crime was committed on or after January 12, 1995.
(4) Trafficking in drugs under §44-53-375(c) and sentenced to: (1) "a mandatory minimum term of imprisonment of twenty-five years;" (2) "a mandatory term of imprisonment of twenty-five years;" or (3) "a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years." The no parole provision applies if the crime was committed on or after January 12, 1995.

i. Murder. For murder convictions after January 1, 1996, the offender is sentenced either to death, life without parole, or a thirty (30) year mandatory minimum without credits or parole eligibility.

j. No Parole Crimes. A no-parole crime is an A, B or C felony or a crime with a penalty of twenty (20) years or more. (Effective date: January 1, 1996.)

k. Most Serious Crimes. Upon a second conviction for a most serious crime, the offender must receive life without parole. §17-25-45(A). (Effective date: January 1, 1996.)

l. Serious Crimes. Upon a third conviction, the offender may, at the solicitor's discretion, receive life without parole. §17-25-45(B). (Effective date: January 1, 1996.) Parole is possible on a life sentence for a serious or most serious crime if SCDC requests the Board to consider the case and the inmate:

- is sixty-five (65) years of age;
- has served thirty (30) years;
- is seventy (70) years of age and has served at least twenty (20) years; or
- has an illness where life expectancy is one year or less.

3. PAROLE ELIGIBILITY AND DOMESTIC VIOLENCE

- S. C. Code 16-25-90 allows the Board to hear an inmate for parole after serving one-fourth of the sentence if the Board finds evidence in the transcript of the guilty plea, nolo contendere or conviction, of a history of domestic abuse against the inmate by the household member. This history can also be taken from a transcript of a post-conviction relief hearing. "Household member" is defined as spouses, former spouses. Prior to January 1, 2004, Household member included persons who have a child in common, and a male and female who are cohabiting or formerly have cohabited.
- If the Board makes a favorable ruling, the inmate gets a one-fourth eligibility calculation, annual parole consideration and a two-thirds vote is required to be granted parole.

- Allows an inmate to obtain a parole hearing after being convicted of a no parole crime.

4. SUBSEQUENT VIOLENT OFFENDER ANALYSIS

a. The following are general rules governing subsequent violent offender analysis:

- The Board must not grant parole to an offender serving a sentence for a second or subsequent violent conviction, following a separate sentencing event for a prior conviction of a violent crime. S. C. Code 24-21-640.
- Crimes committed within one 24-hour period are treated as one offense.
- Crimes committed as one continuous course of conduct are treated as one offense.

b. Determination of continuous course of conduct falls under the Board's jurisdiction, not the Court's. State v. McKay, 386 S.E.2d 623 (1989).

c. The subsequent crime must have been committed after June 3, 1986 and have been defined as violent at the time of commission of the crime.

d. The prior crime can be committed at any time including after the offense date of the subsequent crime because the focus is on the date of conviction.

e. For only the period of January 1, 1994 - January 12, 1995, the prior crime must have been defined as violent at the time the prior crime was committed.

f. Crimes from other jurisdictions are not considered to determine SVO status.

g. Manufacturing Methamphetamine (44-53-375(B)) cannot be a Subsequent Violent Offense.

C. STANDARDS FOR GRANTING PAROLE

1. THE ABSOLUTE DISCRETION OF THE BOARD

Under South Carolina law the Board has the sole and exclusive power to grant or deny paroles.

2. PAROLE CRITERIA CONSIDERED BY THE BOARD

In making its parole decisions, the Board is required by law to carefully consider the record of the prisoner before, during and after imprisonment. In addition, the law also requires the Board to establish written, specific criteria for the granting of paroles. These criteria must be made available to all prisoners at the time of their incarceration, as well as to the general public. The Board will not parole a prisoner unless it determines, based on the following criteria, as well as any other factors the Board may consider relevant, that the conduct of the offender merits a lessening of the rigors of imprisonment; that the interests of society will not be impaired by granting parole; and that the offender has secured, or will be able to secure, suitable employment and residence. The publishing of these

criteria in no way binds the Board to grant a parole in any given case. The Board's specific parole criteria are set out below:

- The risk that the offender poses to the community;
- The nature and seriousness of the offender's offense, the circumstances surrounding that offense, and the prisoner's attitude toward it;
- The offender's prior criminal record and adjustment under any previous programs of supervision;
- The offender's attitude toward family members, the victim, and authority in general;
- 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;
- The offender's employment history, including his job training and skills and his stability in the workplace;
- The offender's physical, mental, and emotional health;
- The offender's understanding of the causes of his past criminal conduct;
- The offender's efforts to solve his problems;
- The adequacy of the offender's overall parole plan, including his proposed residence and employment;
- The willingness of the community into which the offender will be paroled to receive that offender;
- The willingness of the offender's family to allow the offender, if he is paroled, to return to the family circle;
- The opinion of the sentencing judge, the solicitor, and local law enforcement on the offender's parole;
- The feelings of the victim or the victim's family, about the offender's release;
- Any other factors that the Board may consider relevant, including the recommendation of the parole examiner.

3. PAROLE FOR NON U.S. CITIZENS

In considering paroles in the case of non-U.S. citizens, the Board gives the same consideration as it gives to U.S. citizens. When the Board receives requests to parole non-U.S. citizens to their native countries or to the Immigration and Customs Enforcement (ICE) for deportation, the Board considers this factor, along with all the other criteria it normally considers, in making its decision to grant or deny parole.

4. PSYCHOLOGICAL EXAMINATION OF CERTAIN OFFENDERS

S. C. Code 24-21-610

No prisoner who has served a total of ten consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist. The examination itself assesses the inmate's current mental condition and ability to adjust to life outside prison. The class of inmates for whom such an examination is required:

- Any offender who has served a total of ten (10) consecutive years or more in prison.

5. THE EFFECT OF UNRESOLVED DETAINERS AND DEFAULTS

The existence of an outstanding detainer or default against an offender who is eligible for parole does not operate as an automatic bar to parole. The Board may in its discretion parole such offenders in any of the following circumstances:

- An offender who has certain minor defaults (such as minor violations of prison rules) may still be paroled, on the special condition that any such defaults are cleared before release. In these cases, the grant of parole may be particularly desirable when the offender's incarceration on the current sentence has caused the minor defaults to occur. The Board may define what constitutes a "minor" default as it sees fit.
- An offender may be paroled to an in-state detainer or another state's detainer and be allowed to serve out the remainder of his/her sentence concurrently in that state.

D. PAROLE DECISIONS

In addition to the decision to grant or deny parole, the Board or its panels may order a number of other actions as their decision. This section considers not only the decision to grant parole and the various forms that grant of parole may take, but it also considers those other decisions that the Board may make when it wants to do something other than grant parole outright.

1. PAROLE

The full Board or one of its panels votes to grant parole and orders that a Certificate of Parole be prepared and issued by the Department. Voting by proxy or absentee ballot violates due process and is therefore not allowed. The order of parole must include the conditions to be met by the offender during parole. The Board or one of its panels may grant parole on the condition of the occurrence of some future event. For example, parole may be granted on the condition that the offender is accepted into a particular treatment program, or on condition that the offender obtain suitable employment or an approved residence. Whatever the condition upon which parole is contingent, the Board or the panel should indicate that condition in its vote. The case will be referred to the Board if the offender does not meet the conditions for parole.

a. **Vote in the Case of Violent Offenders after 1986.** In the case of violent offenders whose offenses occurred after January 1, 1986, the vote to grant parole must be by at least two-thirds of the members of the Board members present; however, only a quorum must be present to conduct business.

b. **Vote in the Case of Violent Offenders prior to 1986.** In the case of violent offenders whose offenses occurred before January 1, 1986, the vote to grant parole must be by a majority of members of the Board members present. These offenders cannot be considered by a three-member panel.

c. **Vote in the Case of Non-violent Offenders.** In the case of non-violent offenders, the vote to grant parole must be by at least a majority of the members of the Board members present, or by a unanimous vote of a three-member panel.

d. **Case Referred to the Full Board.** If a three-member panel fails to arrive at a unanimous vote, the case is then referred to the full Board for a final decision.

2. PROVISIONAL PAROLE

a. This form of parole may be granted not more than ninety (90) days prior to the initial date of parole eligibility, nor after the initial parole eligibility date. An order of provisional parole must include the conditions to be met by the offender during the provisional parole, as well as the conditions to be met by the offender while on parole.

b. **Administrative Review for Non-violent Offenders.** In the case of non-violent offenders, the Director may appoint an administrative hearing officer to review cases for parole. In this event, the hearing officer must submit to the full Board written findings of fact and recommendations, which shall then form the basis for the Board's decision.

3. PAROLE FOR MEDICAL REASONS

a. Not sooner than one year before the date of any prisoner's parole eligibility, the Board is authorized by law to grant parole for medical reasons. In order to grant such a parole, the Board must first determine on the record the following facts:

- The offender is terminally ill; and
- Because of his illness, the offender cannot be reasonably expected to live for more than one year.

b. As a matter of policy, the Board requires the medical opinion of two licensed physicians, whose prognosis states that the offender is terminally ill and to a reasonable degree of medical certainty cannot be expected to live for more than one year. One of these medical opinions must come from a physician attached to the Department of Corrections; the other may come from any other licensed physician. In no case is the Board ever required to grant a parole for medical reasons.

4. PAROLE FOR TERMINALLY ILL, GERIATRIC, OR PERMANENTLY DISABLED INMATES

S. C. Code 24-21-715 (A) (1) 'Terminally ill' means an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate terminally ill, and that will likely produce death within two years, and that is so debilitating that the inmate does not pose a public safety risk. (2) 'Geriatric' means an inmate who is seventy years of age or older and suffers from chronic infirmity, illness, or disease related to aging, which has progressed so the inmate is incapacitated as determined by a licensed physician to the extent that the inmate does not pose a public safety risk. (3) 'Permanently incapacitated' means an inmate who no longer poses a public safety risk because of a medical condition that is not terminal but that renders him permanently and irreversibly incapacitated as determined by a license physician and which requires immediate and long term residential care. (B) Notwithstanding another provision of law, only the full Board, upon a petition filed by the Director of the Department of corrections, may order the release of an inmate who is terminally ill, geriatric, permanently incapacitated, or a combination of these conditions. (C) The parole order issued by the Board pursuant to this section must include findings of fact that substantiate a legal and medical conclusion that the inmate is terminally ill, geriatric, permanently incapacitated, or

a combination of these conditions, and does not pose a threat to society or himself. It also must contain the requirements for the inmate's supervision and conditions for his participation and removal. (D) An inmate granted a parole pursuant to this section is under the supervision of the Department of Probation, Parole and Pardon Services. The inmate must reside in an approved residence and abide by all conditions ordered by the Board. The department is responsible for supervising an inmate's compliance with the conditions of the Board's order as well as monitoring the inmate in accordance with the department's policies. (E) The department shall retain jurisdiction for all matters relating to the parole granted pursuant to this section and conduct an annual review of the inmate's status to ensure that he remains eligible for parole pursuant to this section. If the department determines that the inmate is no longer eligible to participate in the parole set forth in this section, a probation agent must issue a warrant or citation charging a violation of parole and the Board shall proceeds pursuant to the provisions of Section 24-21-680.

5. SPECIAL PAROLE OF VETERANS FOR PSYCHIATRIC TREATMENT

Any offender who is a veteran and who is otherwise eligible for parole, except that the offender's mental condition is deemed by the Board to be such that he or she should not be released from confinement, may be released on special parole to the custody of the Veterans Administration for psychiatric treatment, subject to its approval. Or, the offender may be released on parole to the custody of a committee appointed to commit such offenders to a Veterans Administration Hospital.

- The Board retains sole discretion to grant this kind of special parole.
- When the Board, in its sole discretion, grants special parole, the offender must be transferred directly from the place of confinement to a Veterans Administration Hospital which provides psychiatric care.
- When any offender who has been paroled to the Veterans Administration for psychiatric treatment is determined to be in suitable mental condition to be released from confinement, he/she may be released to continue their parole under community supervision of the Department, subject to all standard and any special conditions of parole.

6. PAROLE TO DETAINER

The Board or a panel may parole an offender to a detainer in this state or in another state for confinement or otherwise to answer the charges set forth in the detainer. The Board may further order that the parole on the South Carolina sentence run concurrently with any sentence to be served in the state where the detainer originated.

7. PAROLE TO ANOTHER AUTHORITY

The Board or a panel may parole an offender directly to another state for supervision under that state's parole authority.

8. CONTINUED OR DEFERRED CASES

The Board or panel may continue or defer any case to allow for further investigation to be conducted and additional relevant information to be gathered when the interests of fairness and justice seem to require it. Whenever any case is continued or deferred, the Board or the panel must inform the

offender of its reasons for taking that action, and it must also schedule a date when the offender can next be heard. The date on which the hearing is re-scheduled must be fixed on the day the continuance or deferral is ordered, and it should be set on the first available date after the date of the continuance or deferral.

9. POSTPONED CASES

After hearing any parole case, the Board or panel may, where it seems appropriate under the circumstances to do so, postpone giving its final decision for up to one year in order to allow an offender to complete a treatment program, vocational training course, or other similar worthwhile endeavor.

E. THE DENIAL OF PAROLE AND ITS EFFECT

1. REASONS FOR DENIAL OF PAROLE

A denial of parole continues the status quo: the offender remains in prison until his next parole hearing or until he maxes out of his sentence.

Taking these standards and criteria of parole into account in its deliberations, the Board will not as a general rule grant parole when it is reasonably satisfied that the offender does not deserve a lessening of the rigors of imprisonment and that the interests of society will not be best served by granting parole. When the Board or a panel decides to deny parole, due process of law requires it to express its reasons for rejection in writing. To do this, the Board or panel should begin by making some such general introductory statement as the following:

"The Board (or the panel) is reasonably satisfied that (Offender's Name) does not at this time deserve a lessening of the rigors of imprisonment and that the interests of society will not be best served by granting parole now."

After this general statement, the Board or the panel should then enumerate its reasons for denying parole. Due process requires that these reasons be sufficient to explain to the offender why he was denied parole. Further, due process also requires that the reasons for denying parole be rationally related to the written standards and criteria of parole which the Board has adopted and published. The following reasons for denying parole are rationally related to the Board's published parole criteria:

- Nature and seriousness of the current offense
- Indication of violence in this or a previous offense
- Use of a deadly weapon in this or a previous offense
- Prior criminal record indicates poor community adjustment
- Failure to successfully complete a community supervision program
- Institutional record is unfavorable

2. SUBSEQUENT HEARING FOLLOWING A DENIAL

a. **A denial of parole continues the status quo.** The offender remains in prison until his next parole hearing or until he maxes out of his sentence, whichever occurs first.

b. **Subsequent Hearing of non-violent offenders**. Following a denial of parole, offenders serving a sentence for a non-violent crime will have a parole hearing one year after the date of the last hearing in which parole was denied.

c. **Subsequent Hearing of violent offenders.** Following a denial of parole, offenders serving a sentence for a violent crime will have a parole hearing two years after the date of the last hearing in which parole was denied, unless the law provides for annual review.

F. CONDITIONS OF PAROLE

Underlying every parole is the contractual agreement between the State and the parolee. In exchange for the privilege of receiving a parole, the parolee agrees to abide by the terms and conditions of supervision. If the parolee refuses the offer, in whole or in part, then parole is not granted. If the offer is accepted, with all standard and special conditions, then parole is granted.

1. THE STANDARD CONDITIONS

Attached to every grant of parole is a set of ten standard conditions of parole which is always reduced to writing on the formal Certificate of Parole issued by the Department. These are set forth below:

- I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my release or not later than 8:30 a.m. on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.
- I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
- I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor visit establishments whose primary business is the sale and drinking of alcoholic beverages. Furthermore, I shall submit to a urinalysis or a blood test when requested by an Agent of the Department, and I agree that any of these test results may be used as evidence in any hearing.
- I shall not possess or purchase any firearms, knives, or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
- I shall work diligently at a lawful occupation, furthermore, I shall notify my Agent if I become unemployed.
- I shall not violate any federal, state, or local laws, and shall contact my supervising agent if I am ever arrested or questioned by a law enforcement officer for any reason whatsoever.
- I shall pay supervision fees as determined by the department.
- I shall not leave the state without permission from my agent. Furthermore, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court, Board or by a warrant.
- I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.

- I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agent.
- Unless I was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to search or seizure, without a search warrant, with or without cause, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer.

2. SPECIAL CONDITIONS

The Board has discretion to impose additional, special conditions of parole in addition to the standard conditions. These special conditions of parole must be reasonably related to the offender's crime, necessary to further some rehabilitative purpose, and not violate ~~of~~ any state or federal law or public policy. Conditions may not be punitive in nature.

Within these limitations, the Board has a fairly broad power to impose any special conditions that might reasonably serve to further the general purposes of supervision on parole. The special conditions which the Board most commonly imposes are selected from the list of special conditions given below. This list is not exhaustive. Within the limitations referred to above, the Board may impose other special conditions of parole.

- The offender must attend and successfully complete a substance-abuse rehabilitation program for as long as may be necessary to receive treatment, and he must submit to drug tests whenever asked to do so.
- The offender is to be placed on intensive supervision for an indeterminate period not to exceed six (6) months, as determined by the Department.
- The offender must attend a mental-health care program for as long as may be necessary to receive adequate treatment.
- The offender must avoid any contact with the victim or the victim's family while on parole.
- The offender must attend and successfully complete substances abuse program as determined by the Addictions Treatment Unit and attend aftercare program.
- The offender must attend the Parole Employment Program (PEP).
- The offender must be placed under home detention for an indeterminate period not to exceed ninety (90) days, as determined by the Department.
- The offender must be placed on electronic monitoring for an indeterminate period not to exceed six (6) months, as determined by the Department.
- The offender shall be ordered to pay restitution to the victims.
- The offender must pay court ordered fines.
- The offender must secure acceptable residence and employment
- The offender is granted parole, subject to his having undergone a psychological examination and received an acceptable evaluation from a duly qualified psychologist. (This is required for offenders who have served 10 consecutive years and sex offenders.)
- The offender may be paroled to a detainer only.
- The offender must attend and successfully complete the Self Paced In-Class Education Program (SPICE).

- The offender may be paroled to another state for supervision provided approval by receiving state. The offender is exempt from having to pay South Carolina supervision fees while being supervised on parole in another state. The offender may request to return to South Carolina through the SCDPPPS Interstate Compact Office.
- For Provisional Parole. The offender must diligently seek and obtain acceptable employment within 90 days of the grant of his provisional parole or have that parole revoked. Further, the offender must comply with all other conditions of his provisional parole. The offender is exempt from having to pay supervision fees while he is actively and diligently seeking acceptable employment while under provisional parole.
- The offender must participate in the Department of Corrections' Pre-Release Program.
- Exempt supervision fees
- The offender must be placed in a Restitution Center and must comply with the rules and regulations. Recommend 90 days, however, may be extended to 6 months.
- The offender is to complete _hours of Public Service Employment while on parole (up to 100 hours), excepting violent offenders and sex offenders.
- The offender must reimburse the Department for the cost of the psychological evaluation.

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

September 4, 2018

The Honorable Hope Blackley
Spartanburg County Clerk of Court
180 Magnolia Street, Suite 500
Spartanburg, South Carolina 29306

RE: State v. Carnell Davis

Dear Ms. Blackley:

Please find enclosed for filing the original and one copy of the following documents:

1. Reply to Defendant's Memorandum; and
2. Certificate of Service

I have also enclosed a self-addressed stamped envelope for return of a clocked-in copy of these documents. Thank you for your assistance in this matter.

Sincerely,

Matthew C. Buchanan
General Counsel

Enclosures

cc: The Honorable Grace Knie, 7th Circuit Judge
The Honorable Barry Barnette, 7th Circuit Solicitor's Office
The Honorable Clay Allen, 7th Circuit Public Defender's Office

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	Seventh Judicial Circuit
COUNTY OF SPARTANBURG)	
)	Case Numbers: 1991-GS-42-1126
)	1991-GS-42-1723
Carnell Davis, Petitioner,)	
)	
v.)	
)	**CERTIFICATE OF SERVICE**
State of South Carolina,)	
)	

I, Dawn Nichols, Executive Assistant, South Carolina Department of Probation, Parole and Pardon Services, hereby certify that this 4th day of September, 2018, I served the following documents:

1. Reply to Defendant's Memorandum; and
2. Certificate of Service.

by first class mail, postage prepaid as follows.

Clay Allen, Public Defender
366 North Church Street, Suite 3000
Spartanburg, S.C. 29306



Dawn Nichols
Executive Assistant
South Carolina Department of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	Seventh Judicial Circuit
COUNTY OF SPARTANBURG)	
)	Case Numbers: 1991-GS-42-1126
)	1991-GS-42-1723
Carnell Davis, Petitioner,)	
)	
v.)	**REPLY TO DEFENDANT'S**
)	**MEMORANDUM**
State of South Carolina,)	
)	

The South Carolina Department of Probation, Parole and Pardon Services (the Department) through its attorney, Matthew Buchanan, submits this Reply to the Defendant's Memorandum.

Petitioner Carnell Davis is serving a life sentence for a conviction of Murder. He committed the offense on February 8, 1991 when he was seventeen years of age. At sentencing, the Petitioner received a life sentence which, according to the law at the time, was the only sentence the judge could issue for the crime of Murder.

A life sentence for the offense of murder prior to January 1, 1996, also allowed for parole eligibility after the service of twenty years. Petitioner became parole eligible in 2011, and had his first hearing before the Parole Board on May 4, 2011. The Board denied him parole on that date and at three subsequent hearings.

In the Petitioner's memorandum, he asserts that he is effectively serving a life without the possibility of parole sentence in violation of the rulings in Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455 (2012) and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). He claims that the Parole Board's decisions have not taken into account the specific attributes of youth required by Miller and Aiken and that his sentence violates the Eighth Amendment and South Carolina's Constitutional prohibition on cruel and unusual punishment. The Department disagrees.

The Parole Board and the possibility of parole

The Petitioner's memorandum goes to great lengths to make the case that he is effectively serving a life sentence without the possibility of parole. However, no amount of assertion that he is serving the functional equivalent of a no-parole sentence can change the fact that the Petitioner *may* receive parole.

Every two years, the Petitioner goes before the Parole Board and faces a meaningful opportunity to be awarded parole. The Parole Board has the statutory authority to grant parole to inmates. See Article 7, Chapter 21, Title 24. Each time the Petitioner appears before the Board, he could receive parole. To assert that he is serving a life sentence without parole is a gross mischaracterization of South Carolina law. Just because he hasn't received parole yet does not mean that he never will.

The Petitioner seeks to expand the holdings of Miller and Aiken by claiming that the specific attributes of youth must also be criteria that the Parole Board must consider. However, this is not within the holdings of either case. The specific attributes of youth are factors that a *sentencing court* must consider. To equate the Parole Board with the sentencing court is an expansive reading of the opinions.

However, even if this Court should determine that the Parole Board should consider the Miller and Aiken factors, the existing criteria that the Board considers do incorporate the attributes of youth.

Miller and Aiken require that the sentencing court consider, "(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 surround 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 ... ; and (5) the 'possibility of rehabilitation.' 132 S.Ct at 2468." 410 S.C. at 544.

With the exception of (4)[1], these factors are explored by the Board when it considers, "The nature and seriousness of the offender's offense, the circumstances surrounding that offense, and the prisoner's attitude toward it," as well as, "[t]he offender's attitude toward family members, the victim, and authority in general;" "[t]he offender's physical, mental, and emotional health;" and "[t]he offender's understanding of the causes of his past criminal conduct." Parole Board Manual, Page 28.

FILED IN COURT
SPARTANBURG COUNTY
2018 SEP 19 PM 4:44
M. HOWE BACKLEY

The fact that an inmate up for parole for an offense committed while a juvenile is a factor that the Board will consider when they consider the circumstances surrounding the offense and the inmate's growth and development while in the Department of Corrections. Just because the Miller and Aiken factors are not expressly listed – when the holdings of the opinions make no requirement of the Parole Board – does not mean that the Board does not consider them.

Eighth Amendment and S.C. Constitution

The U.S. Supreme Court held that unless the sentencing court considered the factors and hallmarks of youth, a life sentence without the possibility of parole violates the Eighth Amendment's prohibition on cruel and unusual punishment in Miller. The Supreme Court then examined the retroactivity of the decision in Montgomery v. Louisiana, ___ U.S. __, 136 S.Ct.

1 The opinions give examples of the "incompetencies associated with youth" as the inability to deal with police, prosecutors, or to assist counsel with his own defense. Because the Parole Board is not in the position to relitigate the case, this factor is irrelevant to the parole process. Furthermore, by the time the inmate appears before the Board twenty years into his sentence, he would be well into adulthood.

718 (2016), and determined that a state may avoid resentencing the affected inmates by making their life without parole sentences parole eligible. Id. at __, 736.

If, however, a parole-eligible life sentence was the functional equivalent of a no-parole offense, the Supreme Court would have ordered a different remedy.

Furthermore, even if the South Carolina Constitution affords a greater amount of protection than the U.S. Constitution as the Petitioner suggests, the holding in Aiken only holds that life sentences *without* the possibility of parole must be resentenced. Id. at 546, 578.

Conclusion

The Petitioner is receiving parole hearings, and at each hearing he has the opportunity for release. Therefore, he cannot be considered to be serving a life sentence without the possibility of parole. Department records show that the Petitioner has received four parole hearings already, and his upcoming hearing before the Board is tentatively scheduled for fall of 2019. The very fact that he is receiving parole hearings means that he is eligible for parole.

Respectfully submitted,

Matthew C. Buchanan
General Counsel

South Carolina Department of
Probation, Parole, and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina,
August 31, 2018

RECEIVED
DEC 02 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE GENERAL SESSIONS COURT SEVENTH JUDICIAL CIRCUIT
CARNELL DAVIS, Petitioner, v. STATE OF SOUTH CAROLINA, Respondent.	)	**ORDER DENYING PETITION FOR RESENTENCING PURSUANT TO *AIKEN V. BYARS*** Indictments Nos: 1991-GS-42-1126 1991-GS-42-1723 Warrant Nos: C906699 and C493703

2018 OCT 10
M. HOPE BLACKLEY

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

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 7th, 1991, the Petitioner shot Spartanburg City Police Officer, Terry Lee Gory. On April 25th, 1991, Petitioner was indicted by the Spartanburg County Grand Jury for Murder and Armed Robbery (1991-GS-42-01126). On April 29th, 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.

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

October 9th, 2018
Spartanburg, South Carolina

2018 OCT 11 PM 1:11
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF GENERAL SESSIONS FOR THE SEVENTH JUDICIAL CIRCUIT
Carnell Davis, Petitioner, v. State of South Carolina,	)	**STATE'S SECOND SUPPLEMENTAL MOTION TO DISMISS THE PETITIONER'S MOTION FOR RESENTENCING** Indictment Nos.: 1991-GS-42-1126 and 1723 Warrant No.: C906699

TO: CLAY ALLEN, ESQ. AND CHIEF PUBLIC DEFENDER FOR THE SEVENTH JUDICIAL CIRCUIT, ATTORNEY FOR THE PETITIONER, AND THE PETITIONER, CARNELL DAVIS:

The State, by way of addition to its Second Motion to Dismiss Petitioner's Motion for Resentencing, submits the following in response to Petitioner's Motion for Resentencing. In doing so, the State re-states by implication its original grounds in opposition as if fully set forth herein. This Motion would now also add by reference and discussion herein-below the recent decision of the South Carolina Court of Appeals in *State v. Finley*, (Ct App. Op. No. 5665, filed 7/17/19) (copy of case marked as Attachment #1 hereto).

FILED
CLERK OF COURT
SPARTANBURG, SC
2019 AUG 14 PM 3:57

In *State v. Finley*, Finley argued his mandatory sentence of life with the possibility of parole after service of thirty (30) years was a *de facto* LWOP, functionally equivalent to a sentence of life imprisonment without the possibility of parole (LWOP), and therefore a violation of the Eighth Amendment's prohibition against cruel and unusual punishments. Finley also contended the mandatory sentencing scheme rendered his life sentence unconstitutional because it prevented consideration of his juvenile status a required by *Miller v. Alabama*, 567 U.S. 460 (2012) and *Byars*.

The Court of Appeals found that the Appellant in *Finley* was not entitled to resentencing pursuant to *Miller* and *Byars*. The Court stated:

> Although Finley received a mandatory life sentence for murder as a juvenile offender, the circuit court's sentence afforded Finley parole eligibility after the service of thirty years' imprisonment. See S.C. Code Ann. § 16-3-20(A) (1992) (providing that a person who is convicted of or pleads guilty to murder must be punished by (1) death; (2) life imprisonment with the possibility of parole after twenty years; or (3) life imprisonment with the possibility of parole after thirty years if the State sought the death penalty and an aggravating circumstance was found but a recommendation of death was not made). This sentence differs

significantly from those at issue in Graham, Miller, and Byars in which the juvenile offenders received sentences of life imprisonment without the possibility for parole. See Graham, 560 U.S. at 82 ("The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." (emphasis added)); Miller, 567 U.S. at 479 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." (emphasis added)); Byars, 410 S.C. at 545, 765 S.E.2d at 578 ("We hold the principles enunciated in Miller . . . apply . . . to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." (emphasis added)). As our supreme court recently noted in Slocumb, this court's review is confined by the parameters established by the United States Supreme Court. See 426 S.C. at 306, 827 S.E.2d at 153. Therefore, as it stands, Finley is not a member of the class of offenders contemplated by our precedent. Furthermore, the Supreme Court indicated in Graham and Montgomery that a sentencing court may remedy any potential Eighth Amendment violations by permitting a juvenile offender to be considered for parole. See Graham, 560 U.S. at 82 ("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."); Montgomery, 136 S. Ct. at 736 ("A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them."). As Finley's sentence afforded him parole eligibility, we find any potential Eighth Amendment violation was cured. (Case cites: *Graham v. Florida*, 560 U.S. 59 (2010); *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019); and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016)).

The South Carolina Court of Appeals found that the circuit court did not err in denying Finley's motion for resentencing and affirmed the circuit court's order

FILED
CLERK OF COURT
SPARTANBURG
2019 JUL 19 PM 3:46

The State would respectfully ask the Court to deny the Petitioner's Motion for Resentencing in this case for the above-mentioned reasons and in light of the holding and reasoning of our Court of Appeals in *State v. Finley*, for reasons stated in the State's previous motions, as well as the arguments, considerations and reasoning set forth by the State and Probation, Parole and Pardon Services during the previous motion hearing held on August 27, 2018.

By: _____

Barry J. Barnette
Solicitor
Seventh Judicial Circuit

July 19, 2019
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	THE SEVENTH JUDICIAL CIRCUIT
Carnell Davis,	)	Case No. 1991-GS-42-1126
	)	1991-GS-42-1723
Petitioner,	)	
	)	Warrant No. C493703, C906699
vs.	)	
	)	**DEFENDANT'S POST-TRIAL**
State of South Carolina,	)	**MOTION TO RECONSIDER**
	)	**PURSUANT TO RULE 29(a), SCRCrimP**
Respondent.	)	
	)	

FILED
CLERK OF COURT
SPARTANBURG, S.C.
2019 JUL 24 PM 3:3

The Petitioner, by and through undersigned counsel, moves pursuant to Rule 29(a), SCRCrimP, the Court to reconsider its Order Denying Petition For Resentencing Pursuant to *Aiken v. Byars* and further moves the Court to find that the Petitioner is entitled to resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) and *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). The Court's Order Denying Petition for Resentencing was filed with the Clerk of Court for Spartanburg County on October 10, 2018. The Petitioner's attorney was not aware of the Court's ruling or order until July 19, 2019. On July 19, 2019, the Petitioner received the State's Second Supplemental Motion to Dismiss the Petitioner's Motion for Resentencing, which was filed on July 19, 2019. Upon speaking with the Solicitor, the undersigned attorney learned that the Solicitor was also not aware of the Court's Order Denying Petition for Resentencing. Because the undersigned attorney was not aware of the Court's order denying relief and did not receive a copy of such order until July 19, 2019, this motion to reconsider is made timely pursuant to Rule 29(a), SCRCrimP, and Rule 203(b)(2), SCACR.

The motion for reconsideration is based upon the following:

1. Although the Petitioner, who was seventeen years old at the time of the offense, was sentenced to a paroleable life sentence, his sentence violates the requirements of *Miller v. Alabama*, *supra*, because he has been denied parole without the parole board's consideration of the Petitioner's youth and its attendant characteristics. Therefore, the Petitioner does not have a realistic opportunity for release from incarceration.

2. South Carolina's parole system, as specified in the statutes and in the Parole Manual, does not require the Parole Board to consider the Petitioner's youth and its attendant characteristics,

and, therefore, subjects the Petitioner to the equivalent of a "life without parole" sentence in violation of *Miller v. Alabama*, *supra*.

3. The Petitioner's sentence constitutes cruel and unusual punishment, in violation of the Eighth Amendment of the United States Constitution.

4. The Petitioner's sentence constitutes cruel, corporal, and unusual punishment, in violation of the South Carolina Constitution, Article I, Section 15.

FILED
CLERK OF COURT
BARNWELL COUNTY
2019 JUL 24 PM 3:37

DISCUSSION

1. The Petitioner's sentence violates the requirements of *Miller v. Alabama* because he has been denied parole without the parole board's consideration of the Petitioner's youth and its attendant characteristics. Therefore, the Petitioner does not have a realistic opportunity for release from incarceration.

The evidence as presented at the evidentiary hearing on August 27, 2018, demonstrates that the Petitioner has been considered for parole four times. Specifically, Petitioner's Exhibit 2 are the four CD's which contain the recordings of the Petitioner's four parole hearings on May 4, 2011; June 20, 2013; August 13, 2015; and October 26, 2017. Also, Petitioner's Exhibit 1 are notices of rejection of the latter three of the Petitioner's application for parole. On the first two parole hearings, he was denied parole because of 1.) the nature and seriousness of the current offense; 2.) the indication of violence in this or previous offense; and 3.) the use of a deadly weapon in this or previous offense. In his last two parole hearings, the Petitioner was denied parole with the above-listed findings of fact and an additional finding that his "institutional record is unfavorable." Because the Parole Board apparently gives great weight to certain facts about the crime itself without considering the Petitioner's characteristics of his youthfulness at the time of the offense or any of the factors as specified in *Miller* and *Aiken v. Byars*, *supra*, the Petitioner is not given the realistic opportunity of release from his sentence. The Petitioner is unable to change the nature and seriousness of the offense, the violence of the offense, or the use of the deadly weapon in the offense.

The Supreme Court of the United States and the South Carolina Court of Appeals indicate that a juveniles may be sentenced to life imprisonment for murder if they are eligible for parole. *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), and *State v. Finley*, Opinion No. 5665 (S.C. Ct. App., filed July 17, 2019). However, the facts of the *Montgomery* and *Finley* cases do not show that either of those clients had a parole hearing or were eligible for parole at the time of their litigation. In this case, the Petitioner has

demonstrated that he has had four parole hearings since becoming eligible for parole in 2011. In each of his hearings, he did not receive a meaningful opportunity for release because of the Parole Board's emphasis on the facts of the crime itself, without, apparently, taking into consideration the Petitioners's youthfulness and its attendant characteristics, as announced in *Miller* and *Aiken*. Therefore, the Petitioner's sentence, although nominally a "paroleable" life sentence, violates the Eighth and Fourteenth Amendments of the United States Constitution.

FILED
CLERK OF COURT
BARNWELL COUNTY
2019 JUL 24 PM 3:37

2. South Carolina's parole system does not require the Parole Board to consider the Petitioner's youth and its attendant characteristics, and therefore, subjects the Petitioner to the equivalent of a "life without parole" sentence in violation of *Miller v. Alabama, supra.*

Petitioner's Exhibit 4, the Policy and Procedure Manual of the South Carolina Board of Paroles and Pardons (June 2017), and Section 24-21-640, S.C. Code Ann., lists various factors for the Parole Board to consider in granting or denying parole. The five-part statutory test for obtaining parole fails to take into the hallmarks of youth and the greater capacity for the youthful offender to change. Although the provisions include consideration of reform, the statute does not require the examination of the *Miller* factors required by the Constitution in sentencing a juvenile.

CA #3

In addition to the statutory provision, the Parole Board, exercising its regulatory authority, provides additional criteria considered by the Board when determining whether to grant or deny parole. These criteria are found in the Petitioner's Exhibit 4, the Policy and Procedure Manual of the Parole Board. In addressing the constitutionally-required procedural requirements, the Board functions under the notion that "very little is required in the way of procedural due process at parole hearings." Prisoners have the right to be heard, "[f]air written notice of the specific parole criteria," notice of the date, time and place of the hearing, right to be heard by a fair panel, the "opportunity to present evidence and to have up to three witnesses to speak on their behalf, and to have the Board or panel carefully consider the complete record before, during, and after imprisonment," to have an attorney present at the prisoner's expense, and to written notice of the Board's reasons for denying parole. Petitioner's Exhibit 4 at page 20.

The Manual also sets forth the contents of the parole case summary report. Petitioner's Exhibit 4 at page 21. While the report includes the prisoner's criminal history, disciplinary record, and even statements from law enforcement, the prosecutor, and the sentencing judge, the

report makes no mention of any of the *Miller* factors or the diminished culpability of youth. Finally, the Board established "specific parole criteria." Id. at 26-27. The Parole Board's considerations do not extend to any matters relative to the youth of the offender at the time of the commission of the offense. Eligibility for parole in South Carolina simply cannot "save" a life sentence from Eighth Amendment scrutiny.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUL 24 PM 3:37

3. The Petitioner's sentence constitutes cruel and unusual punishment, in violation of the Eighth Amendment of the United States Constitution.

The Petitioner's sentence of life with parole eligibility after twenty years violates the Eighth Amendment's prohibition on cruel and unusual punishment on its face and as applied. The sentencing judge in 1991 had no discretion in sentencing the Petitioner. The statute required him to sentence Petitioner to life imprisonment with the possibility of parole. The mandatory nature of the sentence makes it immediately suspect under Eighth Amendment jurisprudence as it demonstrates the lack of individualization required by the constitution. The mandatory nature of the sentence also demonstrates that the sentencer never considered the *Miller* factors deemed necessary prior to sentencing a juvenile offender. Despite Petitioner's receiving a mandatory life sentence, one that is the functional equivalent to LWOP, no sentencer ever determined he was irreparably corrupt as required by the Constitution.

Petitioner's sentence is the *functional equivalent* of life imprisonment without the possibility of parole in light of the parole system's failure to consider the *Miller* factors in rendering its decisions. In fact, the Parole Board does not consider an offender's youth at the time of the offense at all. The statutory scheme providing for the circumstances warranting parole and the Parole Board Manual (Petitioner's Exhibit 4) completely fail to account for *Miller*. In the wake of *Miller*, *Aiken*, and *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718 (2016), a person serving a sentence for a juvenile offense has a substantive constitutional right not to be sentenced to life imprisonment. The presumption is against life imprisonment and can only be overcome by a showing and finding of irreparable corruption. Petitioner's constitutional right to a meaningful opportunity for release was violated by the Parole Board's failure to consider the significance of his youth at the time of the commission of the offense. In light of the mandatory nature of Petitioner's life with parole sentence and the Parole Board's failure to consider the *Miller* factors, the requirements of *Miller* will not be fulfilled in the Petitioner's case.

Petitioner has been incarcerated since 1991. Thereafter, he has been denied parole four times. At no time - not during the sentencing proceeding and not during the parole process - has Petitioner's youth been considered. Due to the Board's cursory, repeated denials of release and the statutory and regulatory procedures not incorporating the *Miller* factors, there is an unacceptable likelihood that the nature of the crime alone, a fact that will never change, works to deny Petitioner a meaningful opportunity for release from incarceration. Petitioner must be re-sentenced pursuant to *Miller* and *Aiken* in accordance with the Eighth Amendment and federal and state jurisprudence governing prohibitions on cruel and unusual punishments.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUL 24 PM 3:57

4. The Petitioner's sentence constitutes cruel, corporal, and unusual punishment, in violation of the South Carolina Constitution, Article I, Section 15.

The South Carolina Constitution provides that "cruel," "corporal," and "unusual punishment" shall not be inflicted. S.C. Const. art. I, § 15. Thus, South Carolina's Constitution affords greater protections than the Eighth Amendment to the United States Constitution. If this Court were to determine that the Eighth Amendment did not prohibit Petitioner's sentence because he has been sentenced to life with the possibility of parole, this Court must consider whether the South Carolina Constitution and its greater protections forbid such a sentence.

"South Carolina, as *parens patriae* protects and safeguards the welfare of its children." *Harris v. Harris*, 307 S.C. 351, 353, 415 S.E.2d 391, 393 (1992). In keeping with South Carolina's judicial system as *parens patriae* and working to protect children, the South Carolina Constitution requires children to be treated differently than adults for purposes of sentencing. Further, the greater protections afforded by the South Carolina Constitution requires that juveniles sentenced to life with the possibility of parole are entitled to re-sentencing because the sentence was mandatory and did not allow for consideration of the characteristics attendant to youth.

In light of South Carolina's Constitution affording greater rights than the Eighth Amendment to the United States Constitution and South Carolina's continued role as *parens patriae*, this Court must determine that the South Carolina Constitution's bar against cruel and unusual punishment prohibits sentencing a juvenile offender to life imprisonment with the possibility of parole after service of twenty years where the parole board fails to consider the "unique characteristics of youth."

Conclusion

For the foregoing reasons, the Petitioner asks this Court to reconsider its Order Denying Petition for Resentencing and grant him a resentencing hearing. In the alternative, the Petitioner requests a specific ruling on each of its four bases for the motion for reconsideration as listed and argued above.

Clay T. Allen
Seventh Judicial Circuit Public Defender
366 North Church Street, Suite 3000
Spartanburg, South Carolina 29306
(864) 596-2561

July 24, 2019

#6

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUL 24 PM 3:37

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	THE SEVENTH JUDICIAL CIRCUIT
Carnell Davis,	)	Case No. 1991-GS-42-1126
	)	1991-GS-42-1723
Petitioner,	)	
	)	Warrant No. C493703, C906699
vs.	)	
	)	**CERTIFICATE OF SERVICE**
State of South Carolina,	)	**BY MAIL**
	)	
Respondent.	)	
	)	

I hereby certify that I have this day, by placing in the United States Mail, postage prepaid, served upon the persons named below at the addresses given, the Defendant's Post-Trial Motion to Reconsider Pursuant to Rule 29(a), SCRCrimP:

The Honorable Grace Gilchrist Knie
Judge, South Carolina Circuit Court
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306

The Honorable Barry J. Barnette
Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306

Matthew C. Buchanan, Esquire
General Counsel
South Carolina Department of
Probation, Parole, and Pardon Services
Post Office Box 50666
Columbia, South Carolina 29250

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUL 25 PM 1:58

Clay T. Allen
Seventh Judicial Circuit Public Defender
366 North Church Street, Suite 3000
Spartanburg, South Carolina 29303
(864) 596-2561

July 25, 2019
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
Carnell Davis,)	
)	
Petitioner,)	
)	
v.)	**STATE'S RETURN IN OPPOSITION TO THE DEFENDANT'S (PETITIONER'S) POST-TRIAL MOTION TO RECONSIDER PURSUANT TO RULE 29(a) SCRCrimP**
)	
)	
)	
State of South Carolina,)	Indictment Nos.: 1991-GS-42-1126 and 1723
)	Warrant No.: C906699
Respondent.)	
)	

TO: CLAY ALLEN, ESQ. AND CHIEF PUBLIC DEFENDER FOR THE SEVENTH JUDICIAL CIRCUIT, ATTORNEY FOR THE PETITIONER, AND THE PETITIONER, CARNELL DAVIS:

The State, by way of addition to its previous motions, submits the following in response to the Defendant's (Petitioner's) Post-Trial Motion to Reconsider Pursuant to Rule 29(a), SCRCrimP. In doing so, the State re-states by implication its original grounds in opposition as if fully set forth herein. This Return would now also add by reference and discussion herein-below the recent decision of the South Carolina Court of Appeals in *State v. Finley*, (427 S.C. 419, 831 S.E.2d 158 (SC. App. 2019)). (copy of case marked as Attachment #1 hereto).

In *State v. Finley*, Finley argued his mandatory sentence of life with the possibility of parole after service of thirty (30) years was a *de facto* LWOP, functionally equivalent to a sentence of life imprisonment without the possibility of parole (LWOP), and therefore a violation of the Eighth Amendment's prohibition against cruel and unusual punishments. Finley also contended the mandatory sentencing scheme rendered his life sentence unconstitutional because it prevented consideration of his juvenile status a required by *Miller v. Alabama*, 567 U.S. 460 (2012) and *Byars*.

The Court of Appeals found that the Appellant in *Finley* was not entitled to resentencing pursuant to *Miller* and *Byars*. The Court stated:

> Although Finley received a mandatory life sentence for murder as a juvenile offender, the circuit court's sentence afforded Finley parole eligibility after the service of thirty years' imprisonment. See S.C. Code Ann. §16-3-20(A) (1992) (providing that a person who is convicted of or pleads guilty to murder must be punished by (1) death; (2) life imprisonment with the possibility of parole after twenty years; or (3) life imprisonment with the possibility of parole after thirty

FILED
2019 NOV -5 AM 8:48
CLERK OF COURT
SPARTANBURG COUNTY
MARY W. COX

years if the State sought the death penalty and an aggravating circumstance was found but a recommendation of death was not made). This sentence differs significantly from those at issue in Graham, Miller, and Byars in which the juvenile offenders received sentences of life imprisonment without the possibility for parole. See Graham, 560 U.S. at 82 ("The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." (emphasis added)); Miller, 567 U.S. at 479 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." (emphasis added)); Byars, 410 S.C. at 545, 765 S.E.2d at 578 ("We hold the principles enunciated in Miller . . . apply . . . to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." (emphasis added)). As our supreme court recently noted in Slocumb, this court's review is confined by the parameters established by the United States Supreme Court. See 426 S.C. at 306, 827 S.E.2d at 153. Therefore, as it stands, Finley is not a member of the class of offenders contemplated by our precedent. Furthermore, the Supreme Court indicated in Graham and Montgomery that a sentencing court may remedy any potential Eighth Amendment violations by permitting a juvenile offender to be considered for parole. See Graham, 560 U.S. at 82 ("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."); Montgomery, 136 S. Ct. at 736 ("A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them."). As Finley's sentence afforded him parole eligibility, we find any potential Eighth Amendment violation was cured. (Case cites: *Graham v. Florida*, 560 U.S. 59 (2010); *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019); and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016)).

The South Carolina Court of Appeals found that the circuit court did not err in denying Finley's motion for resentencing and affirmed the circuit court's order.

The State would respectfully ask the Court to deny the Defendant's (Petitioner's) Post-Trial Motion To Reconsider Pursuant to Rule 29(a) SCRCrimP in this case for the above-mentioned reasons and in light of the holding and reasoning of our Court of Appeals in *State v. Finley*, for reasons stated in the State's previous motions, as well as the arguments, considerations and reasoning set forth by the State and Probation, Parole and Pardon Services during the previous motion hearing held on August 27, 2018 as well as the Court's Order Denying Petition for Resentencing dated October 18, 2018.

By: _____

Barry J. Barnette, Solicitor
Seventh Judicial Circuit

November 4, 2019
Spartanburg, South Carolina

FILED
2019 NOV -5 AM 8:48
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

ATTACHMENT #1

427 S.C. 419
Court of Appeals of South Carolina.

The **STATE**, Respondent,
v.
Michael Jay **FINLEY**, Appellant.

Appellate Case No. 2016-002480
|
Opinion No. 5665
|
Heard April 2, 2019
|
Filed July 17, 2019
|
Rehearing Denied August 22, 2019

Synopsis
Background: Defendant pled guilty to murder as a juvenile offender. The Circuit Court, Greenville County, R. Scott Sprouse, J., denied defendant's motion to reconsider his sentence. Defendant appealed.

[**Holding:**] The **Court of Appeals**, Williams, J., held that defendant's mandatory life sentence was not prohibited under the Eighth Amendment as cruel and unusual punishment.

Affirmed.

Procedural Posture(s): Post-Conviction Review.

West Headnotes (5)

[1] **Criminal Law**
⚖Sentencing

110Criminal Law
110XXIVReview
110XXIV(L)Scope of Review in General
110XXIV(L)8Sentencing
110k1134.75In general

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. U.S. Const. Amend. 8.

1 Cases that cite this headnote

[2] **Criminal Law**
⚖Discretion of Lower Court

110Criminal Law
110XXIVReview
110XXIV(N)Discretion of Lower Court
110k1147In general

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.

[3] **Sentencing and Punishment**
⚖Excessiveness and Proportionality of Sentence

350HSentencing and Punishment
350HVIICruel and Unusual Punishment in General
350HVII(E)Excessiveness and Proportionality of Sentence
350Hk1480In general

The prohibition against cruel and unusual punishments safeguards an individual's right to protection from excessive sanctions, highlighting the essential principle that courts must consider the human attributes even of those who have committed serious crimes. U.S. Const. Amend. 8.

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

FILED
2019 NOV -5 AM 8:48
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

[4] **Sentencing and Punishment**
Proportionality

350HSentencing and Punishment
350HVIICruel and Unusual Punishment in General
350HVII(E)Excessiveness and Proportionality of Sentence
350Hk1482Proportionality

Sentences that are grossly out of proportion to the severity of the crime are unconstitutional. U.S. Const. Amend. 8.

[5] **Homicide**
Murder
Infants
Sentencing of Minors as Adults
Sentencing and Punishment
Juvenile offenders

203Homicide
203XIVSentence and Punishment
203k1570Life Sentence
203k1572Murder
211Infants
211XVIRights and Privileges as to Adult Prosecutions
211XVI(C)Sentencing of Minors as Adults
211k3011In general
350HSentencing and Punishment
350HVIICruel and Unusual Punishment in General
350HVII(L)Juvenile Justice
350Hk1607Juvenile offenders

Defendant's mandatory life sentence for murder as a juvenile offender was not prohibited under the Eighth Amendment as cruel and unusual punishment, where sentence afforded defendant parole eligibility after service of 30 years' imprisonment. U.S. Const. Amend. 8; S.C. Code Ann. § 16-3-20(A).

1 Cases that cite this headnote

Appeal From Greenville County, R. Scott Sprouse, Circuit Court Judge

Attorneys and Law Firms

Appellate Defender Victor R. Seeger, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody J. Brown and Assistant Attorney General Sherrie Butterbaugh, all of Columbia; and Solicitor William Walter Wilkins, III, of Greenville, all for Respondent.

Opinion

WILLIAMS, J.:

***420** In this criminal appeal, Michael Jay **Finley** appeals the circuit court's denial of his pro se motion to reconsider his sentence pursuant ****159** to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). **Finley** argues his mandatory sentence of life imprisonment with the possibility of parole upon the service of ***421** thirty years' imprisonment is functionally equivalent to a sentence of life imprisonment without the possibility of parole (LWOP), which violates the Eighth Amendment's prohibition of cruel and unusual punishments. We affirm.

FACTS/PROCEDURAL HISTORY

In February 1992, a Greenville County grand jury indicted **Finley** for murder, first-degree burglary, first-degree arson, and armed robbery for his involvement in the death of eighty-year-old James Brockman (Victim). **Finley** was seventeen years old at the time of Victim's murder. On February 25, 1993, **Finley** pled guilty as indicted. At the plea hearing, the **State** provided the following recitation of the facts.

Prior to the night of Victim's murder, **Finley** and his co-defendant, who both lived in Spartanburg, formed a plan to kill Victim for his money. After making preparations, the pair drove to Victim's home in Greenville County on the night of May 6,

FILED
2019 NOV -5 AM 8:38
CLERK OF COURT
SPARTANBURG COUNTY

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

1990. To gain entry to the home, **Finley** and his co-defendant asked Victim if they could use his phone because they were experiencing car trouble. Once inside, the pair robbed Victim at gunpoint, ransacking the home in the process. Before fleeing the scene, **Finley** bound Victim's legs and arms with electrical wire and laid him on his bed. **Finley** then gagged Victim, placing a handkerchief in his mouth and securing it with a necktie. Once Victim was sufficiently secured, **Finley** and his co-defendant placed a pillowcase over Victim's head and proceeded to strangle him with another necktie until he lost consciousness. The pair then used the barrel of a shotgun to repeatedly bludgeon Victim's head.[1] Believing Victim was dead, **Finley** and his co-defendant poured gasoline around the house and set multiple fires before leaving the scene in Victim's car. Police apprehended **Finley** and his co-defendant a few days later. **Finley** ultimately confessed to the crimes and provided a written statement to police. Victim's autopsy showed extreme blunt force trauma to the head and neck, first and second degree burns, and asphyxiation due to smoke inhalation as the cause of death, which suggested Victim was still alive during the fire.

On April 22, 1993, the circuit court sentenced **Finley** to concurrent life sentences for murder and first-degree burglary ***422** with parole eligibility after the service of thirty years' imprisonment.[2] The court additionally sentenced **Finley** to twenty-five years' imprisonment for the charges of first-degree arson and armed robbery, each sentence to be served consecutively to **Finley's** sentence for murder.

On March 17, 2016, **Finley** filed a pro se motion for resentencing pursuant to *Byars*.[3] The circuit court held a hearing on the motion on October 14, 2016. At the hearing, **Finley** argued his sentence constituted a de facto life sentence and, therefore, violated the Eighth Amendment. Specifically, **Finley** asserted that even though his sentence afforded him parole eligibility after the service of thirty years' imprisonment, the **South Carolina** parole process did not provide a meaningful opportunity for release because he would not have counsel at the parole hearings. The **State** argued **Finley** was not within the class of offenders entitled to reconsideration ****160** pursuant to *Byars* and *Miller v. Alabama*[4] because he did not receive a juvenile LWOP sentence. The **State** maintained **Finley** would have a meaningful opportunity for release and to present ***423** mitigating evidence, such as relevant factors of youth, at his first parole hearing in 2022 and at any potential future parole hearings.[5] The **State** further asserted **Finley** could be appointed counsel for his parole hearings upon request.

On November 28, 2016, the circuit court issued an order denying **Finley's** motion for resentencing, finding **Finley** was "not a member of the class of offenders entitled to resentencing." The court explained, *Miller* and *Byars* "rest on the principle that life without the possibility of parole is the harshest of all penalties for a juvenile offender" and are "unequivocal in that the remedy they provide is only available to juveniles sentenced to life without the possibility of parole for homicide." The court found **Finley's** sentence did not amount to a de facto LWOP sentence because he would become parole eligible upon the service of thirty years' imprisonment.[6] Therefore, the circuit court concluded **Finley** did have a meaningful opportunity for release that was not available to the class of juvenile offenders comprehended in *Miller* and *Byars*. This appeal followed.

STANDARD OF REVIEW

[1] [2]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. *See* ***State*** *v. Perez*, 423 S.C. 491, 496, 816 S.E.2d 550, 553 (2018). Therefore, this court will not disturb the circuit court's findings absent a manifest abuse of discretion. *Id.* 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. *Id.* at 496–97, 816 S.E.2d at 553; ***State*** *v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015).

*424 LAW/ANALYSIS

Finley argues his life sentence *with* the possibility of parole upon the service of thirty years' imprisonment constitutes a de facto LWOP

FILED
2019 NOV -5 AM 8:8
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

sentence in violation of the Eighth Amendment, and therefore, he is entitled to resentencing pursuant to *Byars*. Finley further contends the mandatory sentencing scheme rendered his life sentence unconstitutional because it prevented consideration of his juvenile status as required by *Miller* and *Byars*.' We disagree.

**161 [3] [4]The Eighth Amendment to the United States Constitution mandates: "Excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishments inflicted*." U.S. Const. amend. VIII (emphasis added). The incorporated prohibition against "cruel and unusual punishments" safeguards an individual's right to protection from excessive sanctions, highlighting the essential principle that courts must consider "the human attributes even of those who have committed serious crimes." *Graham v. Florida*, 560 U.S. 48, 59, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). In this vein, sentences that are grossly out of proportion to the severity of the crime are unconstitutional. *See id.* In applying this principle to juvenile offenders, the United States Supreme Court has incrementally established parameters to ensure proportional juvenile sentences.

In *Roper v. Simmons*, the Supreme Court addressed whether the Eighth Amendment permitted capital punishment of juvenile offenders. 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). The Court found the death penalty was a disproportionate *425 punishment for an offender who was under the age of eighteen at the time of the crime, reasoning developmental differences between juveniles and adults resulted in diminished culpability. *Id.* at 569–75, 578, 125 S.Ct. 1183. Specifically, the Court noted the predeveloped nature of a juvenile's character often resulted in impetuous decisions due to an underdeveloped sense of responsibility, a lack of maturity, and a greater susceptibility to negative influences and outside pressures. *Id.* at 569–70, 125 S.Ct. 1183.

Five years later in *Graham v. Florida*, the Supreme Court held the Eighth Amendment prohibited the imposition of an LWOP sentence on a juvenile offender for a nonhomicidal crime, finding "a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender" and such a sentence deprives a juvenile offender "the opportunity to achieve maturity of judgment and self-recognition of human worth and potential." 560 U.S. at 70, 79, 82, 130 S.Ct. 2011. The Court expanded upon this rationale in *Miller v. Alabama*, holding mandatory LWOP sentences for juvenile offenders violate the Eighth Amendment. 567 U.S. at 479, 132 S.Ct. 2455. Explaining its reasoning, the Court reiterated its belief that a juvenile offender's greater potential for reform mandates that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty." *Id.* at 471, 489, 132 S.Ct. 2455. Therefore, the Court held that for a sentencing court to issue an LWOP sentence for homicide to a juvenile offender, the court must conduct an individualized hearing in which it considers various factors, such as the offender's age and maturity and the circumstances surrounding the homicide offense, noting life imprisonment is a disproportionate sentence for all but the rarest of children whose crimes reflect "irreparable corruption." *Id.* at 477–80, 132 S.Ct. 2455.

The Supreme Court further defined the scope of the Eighth Amendment's protection regarding juvenile sentencing in *Montgomery v. Louisiana*, holding *Miller* retroactively applied to "juvenile offenders whose convictions and sentences were final when *Miller* was decided." — U.S. —, 136 S. Ct. 718, 725, 732–36, 193 L.Ed.2d 599 (2016). The Court further stated,

> Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every *426 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. Allowing those offenders to be considered

FILED
2019 NOV -5 AM 8:48
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

© 2019 Thomson Reuters. No claim to original U.S. Government Works

> 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. at 736 (citation omitted).

In turn, our supreme court applied these parameters in recent precedent. *See* *Byars*, 410 S.C. 534, 765 S.E.2d 572; ***State*** *v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019). In *Byars*, the court considered whether the holding of *Miller* extends to juvenile offenders ****162** who received an LWOP sentence under a nonmandatory scheme. 410 S.C. at 541, 765 S.E.2d at 576. Although the court found *Miller* did not expressly prohibit an LWOP sentence for a juvenile offender under a nonmandatory scheme, it held *Miller* established "an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 543, 765 S.E.2d at 577. Specifically, the court held a sentencing court considering an LWOP sentence for a juvenile offender must consider:

> (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."

Id. at 544, 765 S.E.2d at 577 (alterations in original) (quoting *Miller*, 567 U.S. at 477–78, 132 S.Ct. 2455).

In *Slocumb*, our supreme court considered whether de facto life sentences violate the Eighth Amendment pursuant to the ***427** principles established in *Roper*, *Graham*, and *Miller*. 426 S.C. 297, 827 S.E.2d 148. Although the court acknowledged Slocumb's 130-year sentence constituted a de facto life sentence, it declined to extend the holdings of *Graham* and *Miller*, **stating** "a long line of Supreme Court precedent prohibits us from extending federal constitutional protections beyond the boundaries the Supreme Court itself has set." *Id.* at 306, 827 S.E.2d at 153. Noting *Graham's* holding only applied to de jure life sentences, the *Slocumb* court **stated,** "Neither *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.

[5]Applying the aforementioned principles to the present case, we find **Finley** is not entitled to resentencing pursuant to *Miller* and *Byars*. Although **Finley** received a mandatory life sentence for murder as a juvenile offender, the circuit court's sentence afforded **Finley** parole eligibility after the service of thirty years' imprisonment. *See* S.C. Code Ann. § 16-3-20(A) (1992) (providing that a person who is convicted of or pleads guilty to murder must be punished by (1) death; (2) life imprisonment with the possibility of parole after twenty years; or (3) life imprisonment with the possibility of parole after thirty years if the **State** sought the death penalty and an aggravating circumstance was found but a recommendation of death was not made). This sentence differs significantly from those at issue in *Graham*, *Miller*, and *Byars* in which the juvenile offenders received sentences of life imprisonment *without* the possibility for parole. *See* *Graham*, 560 U.S. at 82, 130 S.Ct. 2011 ("The Constitution prohibits the imposition of a life *without parole* sentence on a juvenile offender who did not commit homicide." (emphasis added)); *Miller*, 567 U.S. at 479, 132 S.Ct. 2455 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison *without possibility of parole*

FILED
2019 NOV -5 AM 8:
CLERK OF COURT
SPARTANBURG, S.C.

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

for juvenile offenders." (emphasis added));

Byars, 410 S.C. at 545, 765 S.E.2d at 578 ("We hold the principles enunciated in *Miller* ... apply ... to all juvenile offenders who may be subject to a sentence of life imprisonment *without the possibility of parole*." (emphasis added)). As our supreme court recently noted in *Slocumb*, this ***428** court's review is confined by the parameters established by the United States Supreme Court. *See* 426 S.C. at 306, 827 S.E.2d at 153. Therefore, as it stands, **Finley** is not a member of the class of offenders contemplated by our precedent. Furthermore, the Supreme Court indicated ****163** in *Graham* and *Montgomery* that a sentencing court may remedy any potential Eighth Amendment violations by permitting a juvenile offender to be considered for parole. *See*

Graham, 560 U.S. at 82, 130 S.Ct. 2011 ("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.");

Montgomery, 136 S. Ct. at 736 ("A **State** may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them."). As **Finley's** sentence afforded him parole eligibility, we find any potential Eighth Amendment violation was cured. Accordingly, we find the circuit court did not err in denying **Finley's** motion for resentencing.

CONCLUSION

Based on the foregoing, the circuit court's order is

AFFIRMED.

GEATHERS and HILL, JJ., concur.

All Citations

427 S.C. 419, 831 S.E.2d 158

Footnotes

1 Victim's autopsy revealed the beating was so severe that "the stock of the gun broke off and splinters of the stock were found."

2 At the time of **Finley's** sentencing, section 16-3-20 of the **South Carolina** Code (1992) provided that a person who was convicted of or pled guilty to murder was required to be sentenced to (1) death; (2) life imprisonment with the possibility of parole after twenty years' imprisonment; or (3) life imprisonment with the possibility of parole after thirty years' imprisonment if the **State** sought the death penalty and an aggravating circumstance was found but a recommendation of death was not made. In exchange for **Finley's** plea and the stipulation that **Finley** would not be eligible for parole for thirty years, the **State** agreed to withdraw the notice of intent to seek the death penalty filed on January 22, 1991.

3 410 S.C. at 545, 765 S.E.2d at 578 (holding a juvenile offender serving an LWOP sentence could file a motion for resentencing when the sentencing court issued the sentence without considering various mitigating factors of the offender's youth).

4 567 U.S. 460, 479–80, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (holding mandatory LWOP sentences for juvenile offenders violate the Eighth Amendment and for a sentencing court to issue an LWOP sentence for homicide to a juvenile offender, the court must conduct an individualized hearing in which it considers various factors, such as the offender's age and maturity and the circumstances surrounding the homicide offense, noting life imprisonment is a disproportionate sentence for all but the rarest of children whose crimes reflect "irreparable corruption").

5 **Finley** will become eligible for parole on August 11, 2022.

6 At the *Byars* hearing, **Finley** also raised the question of whether a prisoner who received a consecutive sentence following a life sentence could be granted parole. In its order denying **Finley's**

FILED
2019 NOV -5 AM 8:48
CLERK OF COURT
SPARTANBURG COUNTY
AMY V.

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

motion for resentencing, the circuit court found **Finley** would still be eligible for parole in 2022 despite his consecutive sentences. The court based this finding on an affidavit submitted by the General Counsel of the Department of Probation, Parole, and Pardon Services, which **stated Finley's** consecutive sentences would not preclude him from receiving parole hearings beginning in 2022 and should the parole board grant **Finley** parole, the consecutive sentences would not prevent his release.

7 **Finley** additionally contends his parole eligibility does not alleviate any constitutional violations because the **South Carolina** parole process does not provide a meaningful opportunity for release. Specifically, **Finley** asserts the **South Carolina** parole system does not provide appointed counsel and does not mandate consideration of the mitigating factors of youth comprehended in *Miller* and *Byars*. We find **Finley's** argument regarding the parole process is not ripe for appellate review as a parole board has not yet had the opportunity to consider his case and will not have the opportunity until 2022. *See* ***State v. Tucker***, 376 S.C. 412, 420–21, 656 S.E.2d 403, 407–08 (Ct. App. 2008) (finding appellant's claim that the circuit court erred in accepting a plea agreement that waived the right to future post-conviction relief was not ripe for appellate review on direct appeal because appellant had not yet sought post-conviction relief).

8 The *Byars* court also held the *Miller* holding applied retroactively in **South Carolina**. *Id.* at 540–41, 765 S.E.2d at 575–76.

End of Document © 2019 Thomson Reuters. No claim to original U.S. Government Works.

FILED
2019 NOV -5 AM 8:48
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

© 2019 Thomson Reuters. No claim to original U.S. Government Works

STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
COUNTY OF GREENVILLE

Carnell Davis,

Petitioner,

vs. Transcript of Record
1991-GS-42-1126 and 1723

State of South Carolina,

Respondent.

November 7, 2019
Gaffney, South Carolina

B E F O R E:

The HONORABLE GRACE GILCHRIST KNIE

A P P E A R A N C E S:

Barry J. Barnette, Representing the State of South Carolina

Clay T. Allen, Representing Carnell Davis

Matthew Buchanan, Representing Department of Probation and Parole and Pardon Services

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, II

THE COURT: Okay. Good morning. I know that there are a lot of you here in the courtroom for purposes of guilty pleas today. I had previously scheduled, some time ago, this motion for reconsideration for Mr. Davis. And, as you all can imagine, it does take a while to schedule with the solicitor, the public defender, and the representative from our probation office in Columbia because they are all very busy. And so we are going to take this up first.

I believe that this is the defendant, or Carnell Davis, the petitioner in this matter, this is his motion for reconsideration of my order that was issued on the October the 9th of 2018.

Is that correct, counsel?

MR. ALLEN: That's correct, Your Honor.

THE COURT: Okay. And, so for the record, and that our court reporter is not a local court reporter, we have counsel for petitioner, Clay Allen is here, who is our public defender. We have the solicitor, Barry J. Barnette present representing the respondent, the State. And then we have Matthew Buchanan, who is here as general counsel from the Department of Probation and Parole and Pardon Services. Welcome to you all.

And I've told you, please, feel free to take your time. I know this is very important to the petitioner.

MR. ALLEN: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. ALLEN: As an initial matter, a little bit of history about this case and what brought us to today.

As the Court is aware, we had a hearing, essentially, on the State's motion to dismiss Mr. Davis's petition for resentencing. He had filed, I think it was a PCR, which was approved by the Supreme Court for petition for resentencing pursuant to Aiken v. Byars. This is by way of -- this case is in connection with indictments 1991-GS-42-1126 and 1991-GS-42-1723.

He was convicted of murder and was sentenced to life. It was a parole life sentence under the law as it existed in 1991. In considering his life sentencing since that date, he is still in the Department of Corrections.

We had a hearing on the State's motion to dismiss. The evidence was presented, and the Court took it under advisement, and ultimately issued its order on October 10th of 2018.

Subsequent to that, the solicitor filed a grievance -- he filed a second motion to dismiss, or something to that effect, or supplemental motion to dismiss in July, on July 19th of 2019. Quite frankly, that caused me to look at the Court online record to find out where we were on this case and what else had been to filed prior to that date. I wanted to make sure I had everything before I responded. And I learned that the order denying the petition had been filed on or about October 10th of 2018.

I called the solicitor, who took my call, professionally enough, as he typically does, and learned that he also was not aware of the order denying the petition, which also explains why he filed supplemental pleading in this particular case.

So my position has always been that I not become aware of the order until July 19th of 2019, and I received a copy of that order either on or around that date. That was a Friday, if I recall. I know I got it by the following Monday.

I filed a post-trial motion to reconsider in circuit. I filed the post-trial motion to reconsider on July 24 of 2019, and served it on

Your Honor, the solicitor, and Mr. Buchanan on July 25 of 2019.

Therefore, under the rules, the motion to -- the time in which to file the post-trial motion or motion to appeal doesn't begin to run until the party who is filing the motion becomes aware of the order or is served with a copy of the order. And it's -- I think it's pretty well understood that none of the parties here, or the attorneys for the parties, were served with a copy of Your Honor's the order. And, therefore, we did not become of it -- or at least Mr. Barnette and I did not become aware of it until July 19 of 2019.

Therefore, pursuant to Rule 29(a) of South Carolina rules of criminal procedure and the Rule 203(b)(2) of the South Carolina rules of -- the South Carolina appellate rules, excuse me, I was within my time, or I was within my 10 days in which to file this post-trial motion to reconsider.

I did not mean for any of these comments to be casting blame on anybody for why I have not received an order, but that's just basically how we arrived at this post-trial motion being filed what appears to be so late, but, at the same time,

still within these rules, and, therefore, proper for this Court to hear and rule upon. And, of course, as we all know, the rules with which -- or the time in which to file the notice of appeal in a criminal case do not begin to run until the disposition of a timely filed post-trial motion.

THE COURT: Okay. So before you continue, Mr. Allen, let me hear from the State, or from Mr. Barnette, the respondent, with regard to timeliness.

Mr. Barnette.

MR. BARNETTE: Your Honor, may it please the Court? I agree with everything Mr. Allen said. That's what occurred. I have no objection. I think he is timely in filing based on him not receiving the information until July 19th.

THE COURT: All right. And I need to also point out that this is an action that's pending in Spartanburg County, and I do appreciate you all coming over here to hear this -- or to let me hear this because we were trying to get this scheduled and have tried a couple of the times to fit it in with dockets changing and my schedule being around, but thank you all for coming over here.

All right. So with that, Mr. Allen, sir, I'm happy to hear from you as to the merits of your argument.

MR. ALLEN: Thank you, Your Honor. As another matter, in case it's needed, I discussed the venue, that is hearing the case today in Cherokee County, and Mr. Davis agrees to waive the venue for the purpose of this happening.

THE COURT: Mr. Davis, is that correct sir? Good morning.

MR. DAVIS: Yes, ma'am.

THE COURT: Yes, sir.

MR. ALLEN: Thank you, Your Honor.

Your Honor, the basis of my motion is simply this, that even though the Court filed an order to deny the petition, as I read the order, it's primarily based upon -- or is based upon the fact that he received a parolable life sentence for murder in 1991, and, therefore, does not fit within the class of -- contemplated under State vs. Byers.

However, Your Honor, I believe -- and I've raised a couple of other issues during the course of the hearing that I believe need to be -- you know, I ask the Court to consider addressing

those particular issues. I realize that this is certainly what amounts to a nominally aged parolable life sentence, however, I believe that the record, as we presented it -- the evidence as we presented it indicates that he is, essentially, serving a life without parole sentence and should be considered in the class protected by the Miller case and Aiken vs. Byars.

Essentially, my argument is, with respect to how it quite fits under Miller and Aiken vs. Byars is because he -- never in any of the process that he's gone through, whether it be the sentencing process of his original conviction or denials of his parole, none of these procedures have taken into consideration the factors and the characteristics as indicated by the United States Supreme Court in Miller vs. Alabama. Specifically, the consideration of his youthfulness at the time of the commission of the crime and this defendant's characteristics. As we know, in 1991, there was, essentially, only two sentences for murder; one being, life imprisonment, which, at that time, was 20-year parole eligibility, and the death penalty, if the death penalty factors were there and the solicitor

served to seek the death penalty.

But, essentially, there was no consideration of the fact that Mr. Davis was 17 years old at the time of the commission of this particular crime, the murder for which he was convicted.

During the parole hearings, as indicated by the evidence we presented, the exhibits that we presented, and the denials of his parole, none of these characteristics of youthfulness were considered by the parole board. Essentially, the exhibits indicated that he was, essentially, being denied parole based on the factors that -- primarily, that he could not change, that could not be changed. Essentially, he was denied parole based on the nature and seriousness of the current offense, that being the offense of which he was convicted. The indication of violence in this or previous offense, and the use of a deadly weapon in this or previous offense. This was the reason given in his letter, notice of rejection dated June 20th of 2013, which was presented into evidence at the time of the hearing.

We also presented a recording of the first parole hearing he had. His first parole hearing was in 2011, and it was a very short

hearing. As the recording indicates, it was just a few minutes. And they unanimously rejected him. I think they said one, two, and three, which these are the same numbers that were stated in his June 13th parole hearing that he was rejected one, two, and three. This must be their shorthand version of stating the reasons that were listed on the 2013 letter. Therefore, in both of these parole hearings, he was denied parole based on the matters that he cannot change and based solely on the nature and seriousness of the offense, and nothing to do with the characteristics of youthfulness.

In his later parole hearings in August -- in August 2015, and in his parole hearing in October 2017, the same findings of fact appear, as well as an additional finding of fact that his institutional record is unfavorable. But, of course, there is no weighing in these notices of rejection, or there is no weighing in the recorded conversation of the parole hearing, but just simply talking about, essentially, the nature of the offense and some things that he's, while in prison, he's proved himself.

But what we're really getting at, and

what we believe is happening, Your Honor, is that he is not being given a realistic opportunity for release, which is contemplated in parolable sentences where initially excluded in Miller vs. Alabama and Aiken vs. Byars.

Because -- the way I'm looking at it is, because there's nothing to require the parole system to consider the petitioner's youth as defining characteristics, that -- and no one can make them do that, but because they are not required to do that, I'm submitting to the Court that his sentence of life is unconstitutional pursuant to Aiken or to Miller vs. Virginia.

I'm saying that because there never was, and apparently will never be any required consideration of these Miller factors, as we call them lately, the youthfulness and the defining characteristics of youthfulness and how that played into his making certain decisions that ended up in the murder and his participation with law enforcement and in the court system that ended up with a conviction and this sentence.

Because that's never been addressed, and possibly never will be addressed, he can very well, and, apparently, from the way the parole

hearings have been going, could very well serve a non -- a sentence that will not be paroled. He will serve a life sentence for which he may not ever be paroled. And if the parole continues to be denied based primarily upon reasons surrounding the commission of the crime, the violence of a crime, and the use of a deadly weapon during the crime, they may never take into consideration his youthfulness and its defining characteristics.

Consequently, I believe -- so that's why I say in my motion to reconsider that the sentence is unconstitutional under the Eighth Amendment of the United States Constitution, as well as cruel, corporal, and unusual punishment in violation of South Carolina Constitution, Article I, Section 15.

Therefore, Your Honor, we're asking the Court to reconsider this decision in denying his petition and to grant his petition so that we can have a hearing and so that the Court can, pursuant to Miller and pursuant to Aiken v. Byars, consider these characteristics of youthfulness and fashion a sentence that would be appropriate for this man who was a juvenile at the time of the commission of a crime.

If I may respond to the solicitor's most recent supplement, which was based, it seems, on the case of State vs. Finley, which was decided, I think it was, in July of this year.

THE COURT: Yes, sir.

MR. ALLEN: I think Mr. Davis's case is significantly different than Mr. Finley. In Mr. Finley's case, the Court did not extend Miller vs. Aiken, and because he was also serving a parolable life sentence. And, again, they said because he was serving a parolable life sentence, he has an opportunity to be released under the parole system.

But as noted in footnote 7 of that case, Mr. Finley had not been up for parole yet. They stated in footnote 7 in that case that issue was -- whether or not it constituted -- let's see.

Mr. Finley and the board were contending that his parole eligibility does not alleviate the constitutional violations because the parole process did not provide a meaningful opportunity for release claiming that the parole system did not give him the opportunity to have an appointed lawyer, or has not -- and does not mandate consideration to the mitigating factors of

youth contemplated in Miller and Byars. The same issue that I've been addressing here.

But the problem is, the Court said that his argument regarding the parole process is not right for public review because that parole board had yet to have the opportunity to consider his case and would not until 2022. But in Mr. Davis's case, the parole board has had that opportunity four times already, and we see -- or I think I see a pattern of what's happening with him concerning parole. And, therefore, his opportunities at parole are not, in my opinion, a meaningful opportunity for release.

That's why I'm asking the Court to consider granting him the hearing pursuant to Aiken v. Byars so that the Court can make a determination about this sentence after considering the appropriate youthfulness of Mr. Davis at the time of the commission of the crime and the intended characteristics of his youthfulness and grant this.

THE COURT: Thank you.

Okay, Mr. Barnette.

MR. BARNETTE: May it please the Court, Your Honor, like I said in my return, I'd like to

make part of the record the previous arguments, the previous motions the State has made, as well as probation has made in these cases, as well as your order which I thought was the well written back in October 18, 2018 from this standpoint. That was even before we had the State vs. Finley case where you went through and looked at all the factors that were brought up in the previous hearing, Your Honor, and I agree with you.

Basically, he is parole eligible, and that's the standard that's been held by courts throughout the whole thing.

If you go through State vs. Finley, which is 427 S.C. 419, 831 S.E.2d 158, which is, of course, our Court of Appeals, Judge Williams wrote the opinion, Judge Geathers and Judge Hill was the two other judges that was one that opinion also. And they went through talking about Graham vs. Florida, 560 U.S.Supreme Court, 59. That's a 2010 case. Montgomery vs. Louisiana, 136 S.C. Reporter 718, a 2016 case, Your Honor.

And, basically, Judge Williams in his opinion cited these cases and they talked from that standpoint when they looked at the Aiken vs. Byars, as well as Miller, in this

case. And they said, "Furthermore, the Supreme Court indicating Graham and Montgomery that a sentencing court may remedy any potential Eighth Amendment violations by permitting a juvenile offender to be considered for parole." And, of course, at Graham at 560 at page 82, "A State does not guarantee him or her a realistic opportunity to obtain a release before the end of the term," or must give a reasonable opportunity -- or realistic opportunity, and parole does allow that.

In Montgomery at 136 S.C. page 736, "A State may remedy a Miller violation of permitting a juvenile homicide offender to serve parole rather than resentencing them."

And, like it says, Finley's sentence affords parole eligibility, and they found any potential Eighth Amendment violation was cured, and they cite these case from that same point.

And, in this case, I believe State vs. Finley and all these cases affirm what your order has stated from this standpoint. I know Mr. Allen has argued that four different hearings have been held. He has been given an opportunity -- I believe, Mr. Buchanan can correct me, he has a parole hearing next week. He's given the

opportunity, Your Honor. And, of course, parole is determined by the parole eligibilities through the board, and so forth, from that standpoint, what will happen in this case.

I think Mr. Allen, by making the argument, yes, he's brought back up the hearings again where he will present the evidence, you know, through the tapes of the hearings and so forth, and I think Mr. Buchanan has got some information that can be derived, if shown, why he hasn't been paroled, and I think the parole board is well in their established guidelines why he's denied parole based off of his previous conduct in the department of corrections as well as defenses that he's dealt with.

From the standpoint, that I -- the overriding factor, and I argue this from day one in these type cases, they are parole eligible. We have some juveniles that are not that happened in 1996. Those are different type cases from that standpoint. Our court has said that. That's from U.S. Supreme Court. And our courts here in South Carolina has constantly held, if they are parole eligible, that is not an Eighth Amendment violation.

I ask you to deny his motion for

reconsideration. And, obviously, add Finley to your order, from the standpoint, because it definitely supports what you put in your order, and that's what the Court of Appeals has stated also.

I know Mr. Buchanan has got some information he would like to add to my argument also, Your Honor.

MR. ALLEN: If I may, before Mr. Buchanan adds some additional information.

It's my understanding Mr. Buchanan is seeking to offer into evidence a summary of some information concerning my client. And when I was speaking, I was talking about information in evidence that had been presented at the time of the Court's hearing. I thought the time in which to present evidence had ended, so I would object to their attempt to add additional information at this time because I thought the evidentiary part of the hearing had been closed.

Secondly, if you were -- this is the problem that we have with these cases. The information he offers to present, first of all, I didn't become aware until this morning. We don't have any funding to defend him yet because that was part of the hearing because we have to get

over this order, or this petition, or motion to dismiss. I don't have the opportunity to hire a mitigation consultant, a mitigation investigator to get his records, look at his records, and adequately respond to what I think they're trying to offer. So I feel like I got my hands tied behind my back, if that information is being presented now and we don't have an adequate opportunity to respond to those matters. I was speaking on matters that were put on the record at the original hearing.

THE COURT: Yes, sir.

Good morning, Mr. Buchanan. Sir, I will caution you that this hearing is limited to the record that was made at the hearing on August the 27th of 2018. Octavia Wright was present at that hearing ably representing your agency. And I know that you were not present at that hearing, but she was.

MR. BUCHANAN: That's correct.

THE COURT: But I think you're aware of the exhibits there placed in the record regarding the different hearings that had been held for Mr. Davis's benefit while he has been incarceration through your agency.

MR. BUCHANAN: Correct, Your Honor.

THE COURT: But I caution you, sir, and I know Mr. Allen is just trying to preempt anything that we would have to redact, but happy to hear from you with those parameters.

MR. BUCHANAN: I understand, Your Honor. Ultimately, I believe that Mr. Allen, essentially, opened the door when he spoke of -- he says he saw a pattern where these opportunities of parole release was not granted to Mr. Davis.

When -- we actually have in the record the reasons for the denial of parole by the parole board which includes, at least, on two occasions, two of his different hearings. They indicated his institutional record was unfavorable for release.

I simply can, maybe, summarize that he had a large number of disciplinaries.

THE COURT: And, sir, I will tell you, again, there is no jury here. This is me.

MR. BUCHANAN: I understand.

THE COURT: And this is very important, and I understand that if I don't grant this motion, exactly where this is headed. And I don't want there to be any prejudice to Mr. Davis or perceived prejudice that he may think that I am

taking into consideration and considering the request of his counsel and him today.

And so with that, sir, I do remember at the initial hearing, I believe there was correspondence placed into evidence, as well as a recording of a hearing, and so I don't believe that it's necessary for you to place into the record, and I don't think it's appropriate for you to place into the record today specific incidents of conduct that may or may not have contributed to the decision.

MR. BUCHANAN: Understood, Your Honor.

THE COURT: Yes, sir. I'm happy to hear from you if you wish to, again, restate what we heard at the August 27th hearing.

MR. BUCHANAN: Yes. Essentially, Your Honor, and Mr. Barnette variably responded to the State's position which is, ultimately, that he is receiving parole hearings. He is receiving a meaningful opportunity for release. But it is, of course, up to the parole board, which is an independent body. It is not -- they are not run by the Department of Probation Parole and Pardon Services. We support them. They are appointed by the Governor, with the advice -- or with the

consent of the Senate. So this body is entirely independent and has the authority to grant parole.

So every time Mr. Davis appears before them, they are empowered to give him parole. So this de facto life sentence without the opportunity for parole that Mr. Allen is trying to advocate and trying to say is Mr. Davis's situation, is simply not correct.

It's not supported by the laws of South Carolina, the statutes, and the authority granted by the parole board. They have that power. But they also have the power to deny parole. And there is no appeals to that.

So, therefore, essentially, it would be the position of the department that Mr. Davis is receiving what -- meaningful opportunities, but that is entirely within the purview of the parole board whether or not he is granted parole, and, because there is no right to parole in South Carolina, that his rights are being forwarded. The Eight Amendment of the United States Constitution is not being violated by this scenario.

THE COURT: Do you agree with Mr. Barnett's statements as to the Finley case?

MR. BUCHANAN: I do. Yes, Your Honor.

THE COURT: And do you think that that case is distinguished from Mr. Davis's case, sir?

MR. BUCHANAN: Actually, Your Honor, I believe that it does not need to be distinguished. There is an unpublished case, State v. Ronald Yates Hyatt. It's appellate case 2016-001872 that does cite the State v. Finley case. This was -- it was an unpublished opinion filed September 25, 2019. And, in this case, Mr. Hyatt had been denied parole 16 consecutive times. And the department in Mr. Hyatt's case -- obviously, it's unpublished so we can use it as precedent, but we can maybe say that it is instructive that, if someone who was receiving parole hearings had also been denied, and then, in this case, of course, the opinion of Judge Givens which was that Byars -- Aiken v. Byars was not a violation, and it did not apply to Mr. Hyatt's case, that the Court of Appeals upheld Judge Givens's order. We do have that.

That could be instructive in the limited amount of authority that an unpublished can add.

THE COURT: Yes, sir. Thank you.

MR. BUCHANAN: Yes, Your Honor.

THE COURT Mr: Allen.

MR. ALLEN: Your Honor, just one last comment on State vs. Hyatt, which Mr. Buchanan has said, it was not precedential and should not be cited or relied on as precedent on any proceeding except -- under Rule 268 of the appellate rules.

Secondly, we don't know to what extent in Hyatt the record was made concerning what happened at the parole hearing or the reason for the denial of parole of Mr. Hyatt, or anything like that. So, again, I think my case is different.

What happened at the parole, the reasons for the denial of parole are not addressed in the unpublished decision of -- in State vs. Hyatt. That's why we are different and our record is different consequently.

I still maintain that he has not received a meaningful opportunity for release in his parole hearings, and, therefore, his sentence is unconstitutional.

Thank you.

THE COURT: Okay. Thank you all. Anything else?

MR. BUCHANAN: Your Honor, I would just say -- I'm Mr. Buchanan -- the Hyatt case is not

precedent per se, but obviously 16 parole hearings, in each parole hearing similar formats are followed from that standpoint, so, obviously, we just mention that for the Court also.

THE COURT: Thank you.

Okay. I say this mainly for Mr. Davis's benefit, because, of course, counsel understands that I am going to review everything, and I'm going to issue a decision, sir. I have a notebook on this, and my law clerk and I have been reviewing everything in preparation for today, and I appreciate the efforts of counsel in getting me the summaries of their positions, and Mr. Buchanan for being here.

I will issue a decision as soon as I can. I want to review everything again, sir. It's nice to see you again, and nice to see you all. We are adjourned on this matter.

(The hearing was concluded.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the ***hearing of the captioned case, relative to appeal, in the **** Family Court for *** County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

February 19, 2020



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

RECEIVED
DEC 02 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF GENERAL SESSIONS
CARNELL DAVIS,	)	Warrant/Indictment Number(s): 1991- GS-42-1126 ; 1991-GS-42-1723
Petitioner, vs.	)	
STATE OF SOUTH CAROLINA, Respondent.	)	ORDER REGARDING PETITIONER'S MOTION FOR RECONSIDERATION OF ORDER

Hearing Date:	November 7th, 2019
Hearing Judge:	Grace Gilchrist Knie
Counsel for Petitioner:	Clay T. Allen
Counsel for Respondent:	Barry J. Barnette Matthew C. Buchanan
Court Reporter:	Sharon Hardoon

This matter was before the Court on November 7th, 2019, upon the Petitioner's Motion for Reconsideration. The hearing was held in Cherokee County upon agreement of parties. The motion was made by and through counsel for Petitioner, Clay T. Allen, Esq., the Public Defender for the Seventh Judicial Circuit. At the hearing held in this matter, the State was represented by Barry J. Barnette, Esq., the Solicitor for the Seventh Judicial Circuit, and Matthew C. Buchanan, General Counsel for the SC Department of Probation, Parole, and Pardon Services. This matter is before the Court upon Petitioner's Motion for Reconsideration of Order, pursuant to Rule 29, SCRCrP. The State, in response to the Motion, filed a Return requesting that the Court deny the Motion.

FILED
2019 NOV 25 P 12:
CLERK OF COURT
CHEROKEE COUNTY

The issue before the Court is the Petitioner's request to reconsider the Order issued by the Court denying the Petitioner's request for re-sentencing pursuant to *Aiken v. Byars*. At the initial hearing, and at the hearing on the Reconsideration Motion, the State was represented by Barry J. Barnette the Solicitor for the Seventh Judicial Circuit. The petitioner, Carnell Davis, was present

at both hearings and was represented by Clay T. Allen, Esq. the Public Defender for the Seventh Judicial Circuit. Matthew C. Buchanan, General Counsel for the SC Department of Probation, Parole, and Pardon Services was also present. The Court Reporter at the Reconsideration Hearing was Sharon Hardoon.

In support of its motion, Counsel for Petitioner argues that Carnell Davis is entitled resentencing. The Motion for Reconsideration is based upon the following: the Petitioner, who was seventeen years old at the time of the offense, was sentenced to a parole eligible life sentence; however his sentence still violates the requirements of *Miller v. Alabama,* 567 U.S. 460 (2012) because he has been denied parole without the parole board's consideration of the Petitioner's youth and its attendant characteristics. Therefore, the Petitioner does not have a realistic opportunity for release from incarceration. South Carolina's parole system, as specified in the statutes and in the Parole Manual, does not require the Parole Board to consider the Petitioner's youth and its attendant characteristics, and, therefore, subjects the Petitioner to the equivalent of a "life without parole" sentence in violation of *Miller v. Alabama, supra.* The Petitioner's sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. The Petitioner's sentence constitutes cruel, corporal, and unusual punishment, in violation of the South Carolina Constitution, Article 1, Section 15. Petitioner requests that the prior Order of the Court denying the re-sentencing be reconsidered.

Counsel for The State disagrees and relies on the recent decision of the South Carolina Court of Appeals in *State v. Finley*, 427 S.C. 419, 831 S.E.2d 158 (Ct. App. 2019). *Finley* held that the principles enunciated in *Miller*...apply...to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole, and that Finley was not a member of the class of offenders contemplated by the Court's precedent. The Court reasoned that Finley's

FILED
2019 MAY 2 P 2:
CLERK OF COURT
SPARTANBURG COUNTY

sentence afforded him parole eligibility, and it found that any potential Eighth Amendment violation was cured. Furthermore, the U.S. Supreme Court indicated in *Graham v. Florida*, 560 U.S. 48 (2010) and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016) that a sentencing court may remedy any potential Eighth Amendment violations by permitting a juvenile offender to be considered for parole. In conclusion, the State argues that the decision and order of the Court was correct and appropriate.

The Court finds and concludes as follows:

After careful consideration of the able argument and filings of Counsel, review of the record in this matter, and having fully considered the matter, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered;

The Court finds no basis upon which to modify its prior Order. Therefore, The Motion for Reconsideration of Sentence filed on behalf of Petitioner pursuant to Rule 29, SCRCrP is denied.

IT IS SO ORDERED.

The Honorable Grace Gilchrist Knie
Resident Judge, Seventh Judicial Circuit

November 25th, 2019
Spartanburg, SC

FILED
2019 NOV 25 PM 12:26
CLERK OF COURT
SPARTANBURG COUNTY
STATE OF SC

C9061699

DOCKET NO. 91-GS-42-1126

WITNESSES

C. F. Quinn
Spartanburg City Police Dept.
145 Broad St.
Spartanburg, SC 29301

1. SENTENCE SHEET [M]
2. REPORT OF CRIME [M]
3. CARD FOR SID [✓]
4. INDEXING [✓]
5. CHARGE [✓]
6. [illegible] [M]

ARREST WARRANT NO. [illegible]

7. ASSESSMENT AND [illegible]

8. TRAFFIC VIOLATIONS COPY [✓]

ACTION OF GRAND JURY

True Bill

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

The State of South Carolina,

County of Spartanburg (02)

03/08/91

COURT OF GENERAL SESSIONS

APR 29 1991 TERM

THE STATE

vs.

Carnell Davis

Indictment for Murder

Holman C. Gossett, Jr.

I CARNELL DAVIS hereby appear in my own proper person and plead guilty to MURDER

On the within indictment.

Witness: Carnell Davis
K. R. Huebeling

Clerk of Court Martha Smith, S.C.

FORM 5 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF Spartanburg)

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on APR 25 [illegible],

the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE — MURDER

That Carnell Davis

did in Spartanburg County on or about February 8, 1991,

feloniously, wilfully and with malice aforethought, kill one Thomas Dexter Feaster, by shooting the victim in the chest and leg

by means of a pistol,

and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Beverly D Jones

SOLICITOR

SENTENCE

STATE OF SOUTH CAROLINA CASE NO. 91-GS-42-1126

SPARTANBURG COUNTY

The defendant Cornell Davis is committed to the State Department of Corrections/County for a term of Life months/years and/or to pay a fine of $_____; provided upon the service of _____ months/years and/or payment of $_____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution For physical injury $_____

Yes/No property damage $_____

to be paid _____

_____

to clerk for _____.**

Other conditions _____

_____

_____

Date 7-9-91

_____
Presiding Judge

*Costs and Assessments

Non-waivable $_____

Not waived $_____

Total $_____

_____
Clerk of Court

Marta Bridges D.C.

**Pay to Victim's Compensation Fund if subrogated.

SCCA Form 217 (3/86)

S E N T E N C E

STATE OF SOUTH CAROLINA CASE NO. 91-GS-42-1723

SPARTANBURG COUNTY

The defendant Cornell Davis is committed to the State Department of Corrections/County for a term of 20 months/(years) consecutive to 91-112 and/or to pay a fine of $_____; provided upon the service of _____ months/years and/or payment of $_____, plus pay/waive costs and assessments as applicable*, the balance suspended with probation for _____ months/years.

Restitution Yes/No to be paid _____

For physical injury $_____

property damage $_____

to clerk for _____**

Other conditions _____

Date 7-9-91

E. C. Burnett, Jr.
Presiding Judge

*Costs and Assessments

Non-waivable $_____

Not waived $_____

Total $_____

K. R. Arrowsmith
Clerk of Court
Marsha Smith, D.C.

**Pay to Victim's Compensation Fund if subrogated.

SCCA Form 217 (3/86)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

This 31st day of July, 2020.

Respectfully Submitted,

s/ Lara M. Caudy
Appellate Defender

RECEIVED
Jul 31 2020
SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT