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S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

On Petition for Writ of Certiorari to the Court of Appeals

Appeal from Laurens County
Donald B. Hocker, Circuit Court Judge

THE STATE,

Respondent,

v.

ARTHUR JASON BOWERS,

Petitioner

Appellate Case No. 2020-001186

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the trial judge violate the Eighth Amendment's prohibition on cruel and unusual punishment and the South Carolina Constitution's ban on cruel or unusual punishment by sentencing Petitioner to fifty years in prison – the functional equivalent of life without the possibility of parole – for murder where Petitioner was a mere seventeen years old at the time of the offense and thirty-two years old at the time of his trial and the judge failed to conduct an individualized sentencing proceeding?

(Petition, p. 2).

RESPONDENT'S COUNTERSTATEMENT OF QUESTION PRESENTED

Did the Court of Appeals err by rejecting as procedurally barred Petitioner's claim that he suffered a constitutional violation in sentencing when the record shows, and Petitioner admits, that he failed to raise any objection or present any argument on the issue at sentencing?

STATEMENT OF THE CASE

A Laurens County grand jury indicted Petitioner, Arthur Jason Bowers, for murder, armed robbery, and conspiracy in 2017 and 2018. (R. 398-406). The crimes were committed much earlier. The victim, seventy-six-year old James Bolt, was found beaten to death on the floor of the VFW on September 26, 2003. (R. 22-23; .26; and 64-65). Petitioner was seventeen-years old at the time of the murder. (R.14). A jury trial began on April 23, 2018, before the Honorable Donald B. Hocker. Jay Anderson, Esq. represented him at trial. (R.1). On April 26, 2018, the jury convicted as charged. (R. 386-87). Judge Hocker sentenced Petitioner to concurrent terms of fifty years for murder, thirty years for armed robbery, and five years for conspiracy. (R. 397). Petitioner appealed.

In the Court of Appeals, Petitioner raised on issue – that his fifty-year sentence was the

functional equivalent of life without the possibility of parole and the trial judge failed to conduct individualized sentencing. (FBOA p. i). By unpublished opinion issued July 24, 2020, the Court of Appeals affirmed, noting that this Court’s decision in *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019) “directly forecloses the Eight Amendment argument,” but nonetheless found the issue procedurally barred:

We decline to reach Bowers’s argument that his sentence violates the South Carolina Constitution. Bowers did not make a contemporaneous objection below. Thus, there was no argument—either generic or specific—that the sentence was unconstitutional. Multiple authorities recognize that issues may not be raised for the first time on appeal and that error preservation rules apply to constitutional arguments. *See* Rule 220(b), SCACR (stating issues must be preserved in the record to be addressed on appeal); *e.g.*, *State v. Powers*, 331 S.C. 37, 42-43, 501 S.E.2d 116, 118 (1998) (stating “failure to raise constitutional issues at trial results in waiver on appeal”).

(*State v. Bowers*, Unpublished Opinion No. 2020-UP-196 (Ct.App. 2020), [unnumbered] p. 2).¹

Petitioner filed a petition for rehearing on July 9, 2020, which the Court of Appeals denied on August 11, 2020. Petitioner has now filed a petition for writ of certiorari with this Court. This return follows.

STATEMENT OF FACTS

A frantic 911 call led to the discovery of a seventy-six-year old man, beaten to death and bloody on the floor inside the VFW in Laurens. (R.21-23; 26; and 30-31). Blood spatter on the walls and ceiling of the VFW indicated the force used to kill the victim. (R.89). Investigators also saw evidence of a robbery as the register was on the floor, drawer open, and no cash inside, the victim’s pockets were pulled out and empty, and his wallet was never found. (R. 86-88).

The pathologist testified James Bolt had nineteen injuries to the back and side of his head, and the blows broke his dentures and caused cuts to his mouth. (R. 49-59; 62; and.66). In

¹ Petitioner has provided a copy of the opinion with the Petition for Writ of Certiorari.

addition, the victim had bruises on his legs, stomach, arms, and hands some of which the pathologist characterized as defensive wounds from the victim trying to block blows to protect his head. (R. 59-61). The pathologist testified the victim died of blunt force trauma and the injuries were consistent with a hammer. (R. 64-65; 69).

A possible witness testified that, as he was cutting the grass outside the VFW on the night of murder, he saw someone walk out and urinate against the building and, while he could not see his face, he could tell it was a young, white male. (R. 39-41). In an effort to locate suspects, investigator Tony Lynch (Lynch) testified he checked with his drug informants. (R.183-186). Shawn Case (Case) brought up the people working at the carnival in Travelers Rest, and she told Lynch he should talk to one of them staying at her aunt's house. (R. 132-134; 186-188). Case testified she met Petitioner the night before the murder through her cousin, R.G. (R.127-129). The next night, she saw him at a motel where she went to get high. (R.129-130). Petitioner went to Case's room and she noticed a "pretty good bit" of blood on his shirt and pants, and Petitioner asked if could buy crack-cocaine from her. (R. 130, line 17-131, line 17). Petitioner offered money to Case, but she refused to take it because there was blood on it. (R.131-132).

After speaking with Case, Lynch drove by the house where Petitioner was staying, then called Investigator Walter Bentley (Bentley) and the two went over there. (R.188-189). Bentley and Lynch testified Petitioner was at the house and agreed to voluntarily go with them to the police department. (R.153-154; 190-191). Once there, investigators read Petitioner his *Miranda* rights, which he waived. (R.155-162). Petitioner was seventeen years old at the time and had finished the tenth grade, and Bentley testified he did not have any concerns about his intelligence and Petitioner understood the rights he waived. (R.159; 161-165). In Petitioner's first statement given on September 27, 2003, he admitted he was at the VFW on the night of the murder and

told Bentley and Lynch he arrived with two people, he urinated against the back of the building then went inside, but the other two people left. (R.165-167). Petitioner said he only saw Ray-Ray and “the old man” when he got inside the VFW. (R. 167). Petitioner told the investigators the victim went to the bathroom and Ray-Ray followed him in, Petitioner heard a noise, he went to see what it was, and he saw the victim on the floor and blood everywhere, so he ran out. (R. 167-168). Petitioner did not get any money. (R.168). Bentley knew Ray-Ray’s real name (Danny McDaniel) and knew he worked at the carnival, so he followed-up on the lead. He learned Ray-Ray denied involvement, had an alibi, and could not have left the carnival during the time of the murder. (R.168-169). Petitioner was charged with murder and armed robbery because he knew details no one else did, such as the crime happened in the bathroom and someone urinated behind the building around the time of the murder. (R.170-171).

Petitioner gave a second statement on September 29, 2003, because investigators wanted to clear up discrepancies in his first statement. (R.194-200). Petitioner said he was in town to work at the fair and when he went to the VFW with a couple of people, including “Buck,” and when “the old man” would not sell Petitioner beer, he went outside and left, but “Buck” stayed. (R. 206, line 25). Petitioner told investigators “Buck” later admitted he “whacked” the “old man” and took his money. (R.207, lines 1-17). The investigation continued. (R. 207).

Lynch received a phone call several days later that Petitioner wanted to talk to him. (R.207-209). Petitioner gave a third statement which was recorded on October 9, 2003, and played for the jury without objection. (R. 209-211; 214-15). Petitioner admitted he and a group of people were talking the night of the murder about wanting to make some money, so they agreed to go to the VFW. (R. 216). The group included R.G., Case’s cousin. (R. 217). When they got to the VFW, Petitioner urinated outside while everyone except R.G. went inside. (R.

217-18). After going in, Petitioner stood by the bar near the door and watched as the others drug “the old man” into the bathroom, and a few minutes later, they came out and yelled, “run,” so they all took off. (R. 216, lines 10-15). They waited in the car while one man went back inside for a few minutes, he eventually returned, and they left. (R. 216).

Several people were charged in addition to Petitioner; however, the solicitor dismissed the charges with leave to re-indict pending further investigation. (R. 170-71; 231-32). In November 2012, information was developed that led to charges of accessory after the fact to murder against Brenda Roberts (Roberts), R.G.’s grandmother and the owner of the home where Petitioner was staying in 2003. (R. 191; 203; 233). Investigators learned Roberts washed bloody clothes belonging to Petitioner and R.G. just after the murder. (R. 233-34). Roberts was indicted and Petitioner was re-indicted. (R. 239). Roberts was separately tried and found guilty as an accessory after the fact of murder. (R. 234-35).

ARGUMENT

Petitioner fails to show an important reason for this Court to grant his petition for writ of certiorari to review the opinion from the Court of Appeals when the sole issue presented to the Court of Appeals was procedurally barred, and was, at any rate, without merit.

The Court of Appeals correctly declined to address Petitioner’s issue on the merits as it was patently not preserved for review. “Issues not raised to and ruled upon in the trial court will not be considered on appeal.” *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003). “This rule also applies to constitutional arguments.” *State v. Jennings*, 394 S.C. 473, 481–82, 716 S.E.2d 91, 95 (2011) (citing *State v. Owens*, 378 S.C. 636, 664 S.E.2d 80 (2008) (confrontation clause and due process arguments not preserved for review). The procedural rule also applies to any perceived sentencing issues. *State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) (“this Court has consistently held that a challenge to sentencing must be raised

at trial, or the issue will not be preserved for appellate review.”) (citing *State v. Garner*, 304 S.C. 220, 403 S.E.2d 631 (1991); *State v. Shumate*, 276 S.C. 46, 275 S.E.2d 288 (1981); *State v. Winestock*, 271 S.C. 473, 248 S.E.2d 307 (1978)).

Petitioner did not challenge the Court of Appeals’ procedural ruling in his petition for rehearing. Petitioner neither references nor explains the Court of Appeals’ procedural ruling in the petition to this Court. (See Petition, pp. 5-6). This unchallenged ruling is an unchallenged basis to affirm, independent of underlying error in the merits analysis (if any). *See generally Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (failure to appeal alternative grounds “is an abandonment of the issue and precludes consideration on appeal”); *see also generally* Rule 242(d)(2) (“Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a questions presented to the Supreme Court.”); *State v. Williams*, 427 S.C. 148, 157, 829 S.E.2d 702, 706–07 (2019) (failure to appeal a ruling may result in finding the issue “law of the case”).

Petitioner did, however, attempt to show the issue was preserved in his Court of Appeals filing. In his brief, Petitioner acknowledged that “no objection was made at the time of sentencing,” but argued the issue should be considered preserved because “all parties were aware of the Supreme Court’s opinion” in *Miller v. Alabama*, 567 U.S. 460 (2012), in light of comments made as to life without parole eligibility. (FBOA. p. 5).² While only acknowledging the lack of objection by footnote in the petition, Petitioner submits once again that a vague reference to federal law by the solicitor should be enough, or that the Court should just excuse

² From the context of the transcript it appears the parties discussed in chambers a possible sentence and agreed Petitioner would not receive life without parole, but it cannot be said other sentences were discussed or challenged. (R. 395). The argument that Petitioner’s sentence was the functional equivalent of a life sentence was never raised to the trial court.

the deficiency. (Petition, p. 6 n. 2).³ Yet the record remains firm that defense counsel did not object to the sentence. (R. 395). Petitioner’s “knew the precedent” theory to escape procedural deficiency does not relieve the defendant of his duty to properly raise the issue. *See, e.g., Dunbar, supra*. He offers no precedent that would support doing so. His appeal to “judicial economy” is based on two errors of fact: first, that he is somehow plainly entitled to relief, and second that he is in danger of serving his fifty-year sentence before he could litigate the matter by other means. (Petition, p. 6 n. 2). That cannot be. He cites to no case or theory that would suggest that an additional challenge could not be raised within fifty years. One imagines that would be difficult to show. The Court of Appeals correctly considered the issue barred from review on the merits. Regardless, the Court of Appeals also correctly noted that this Court has decided the issue against Petitioner’s position.

Petitioner received a fifty-year sentence for murder. By their plain language, *Miller v. Alabama*, 567 U.S. 460 (2012) and *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) apply only to juvenile homicide offenders sentenced to life without parole. Petitioner, simply, is not part of that class. This Court has expressly declined the call to extend Supreme Court precedent related to juvenile sentencing beyond its “explicit holding” limiting applicability to actual life sentences until given the authority to do so. *State v. Slocumb*, 426 S.C. 297, 306, 827 S.E.2d 148, 152 (2019). Thus, only actual life sentences are implicated, not “*de facto*” life sentence (to the

³ Further, Petitioner’s “knew the precedent” theory is based on assumed knowledge of federal precedent and could not save the vague state constitutional issue Bowers attempts to raise (by passing reference in the question presented and by passing reference in the argument summation). The majority of his argument centers on federal law. It is unlikely that would be considered sufficiently argued if the issue could be procedurally reached. *See State v. Smith*, 428 S.C. 417, 421, 836 S.E.2d 348, 350 n. 5 (2019) (declining to reach the applicability of the state constitution to Smith’s argument, as he mentions the state constitution only in passing in his brief.”).

extent such sentences may be fairly defined and identified).⁴

Moreover, Petitioner received neither a life sentence nor the “functional equivalent” of one. Rather, Petitioner received a valid term-of-years sentence within the statutory range of murder, and (barring future sentences that would run after completion) he will be released at the end of that term. Consequently, though *Miller* is not directly implicated, Petitioner already has the general kind of relief *Miller* contemplates – an opportunity for release. In fact, he has more relief than that contemplated by *Miller* as the term of years will end. However, because he received a term of years, Petitioner does not fall into the class of offenders that *Miller* and *Aiken* reach.

Even so, the record shows that the Court of Appeals correctly considered the issue barred and not reviewable on the merits. This Court should deny the petition for review.

CONCLUSION

For all of the foregoing reasons, the petition should be denied.

Respectfully submitted,

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⁴ In *Slocumb*, this Court could recognize “the obvious” that “Slocumb’s 130-year sentence is a *de facto* life sentence.” *Slocumb*, 426 S.C. at 309, 827 S.E.2d at 154. It is, however, less “obvious” with a term of years less than the 130 years in that case. When the term is reduced to 30, 40, or, as here, 50, it is very much less than clear. That does not factor-in service of the sentence measures which may reduce actual sentences further. But again, this need not be taken up. This Court has already declined to extend the clearly defined Supreme Court precedent interpreting the Eight Amendment. *Id.* at 153.

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⁵ Counsel acknowledges that Sherrie Butterbaugh was formerly the primary counsel for Respondent in this matter, and that Ms. Butterbaugh prepared and presented Respondent's argument in the Court of the Appeals. This Return, in large part and for continuity, repeats much of Ms. Butterbaugh's work from the prior filings in this appeal.