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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Dillon County

The Honorable Thomas A. Russo, Plea Judge
The Honorable Brooks P. Goldsmith, PCR Judge

Appellate Case No. 2019-001791

JOHN H. BRIDGES. ..... Petitioner,

v.

STATE OF SOUTH CAROLINA. ..... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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II. The second PCR judge erred in denying petitioner's claim that his de facto life sentence which he received as a juvenile was a violation of the Eighth Amendment.

Respondent's Counterstatement of Issues on Certiorari

I. Respondent concedes the second PCR judge properly granted petitioner's request for a belated appellate review of his previous PCR action per *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

II. The post-conviction relief court correctly found Petitioner's Eighth Amendment Rights were not violated when Petitioner was sentenced to an aggregate sentence of forty-five years because it was not a de facto life sentence and, even if it was a de facto life sentence, there is no general prohibition against life sentences placed on homicidal juveniles or aggregated sentences placed on juveniles that stem from several serious offenses.

STATEMENT OF THE CASE

John H. Bridges (hereafter "Petitioner") is presently confined in the South Carolina Department of Corrections. During its May 2010 term, the Dillon County Grand Jury indicted Petitioner for Murder (2010-GS-17-0473), Possession of a Weapon During a Violent Crime (2010-GS-17-0474), First-Degree Burglary (2010-GS-17-0476), Kidnapping (2010-GS-17-0477), Armed Robbery (2010-GS-17-0478), Larceny or Grand Larceny of $5,000 or more (2010-GS-17-0479), and Criminal Conspiracy (2010-GS-17-0481). Michael Stephens and Richard Jones, Esquires, (hereafter "Counsel") represented Petitioner. Deputy Solicitor Kernard Redmond and Assistant Solicitor Shipp Daniel from the Fourth Circuit Solicitor's Office represented the State. On November 1, 2010, Petitioner pleaded guilty as indicted before the Honorable Thomas A. Russo. On November 4, 2010, Judge Russo sentenced Petitioner to forty years' imprisonment for Murder, thirty years' imprisonment for Armed Robbery, thirty years' imprisonment for Burglary, thirty years' imprisonment for Kidnapping, ten years' imprisonment for Grand Larceny, five years' imprisonment for Criminal Conspiracy, and five years' imprisonment for Possession of a Weapon. All sentences ran concurrently, with the exception of the Possession of a Weapon charge, which ran consecutive to the Murder charge. Petitioner did not file a direct appeal of his conviction or sentence.

First PCR Action: (2012-CP-17-252)

Petitioner timely filed a PCR application on June 20, 2012, alleging:

1. "The State of South Carolina used false evidence in case."
2. "The Solicitor took crooked witnesses for credibility."
3. "Upon multiple offense applicant is violated."
4. "No lie detect[or] test conducted."
5. "Involuntary guilty plea."
6. "The 16-23-490(a) statute is being read incorrectly."
7. "Counsel committed cumulative [*sic*] errors."
8. "Trial counsel was ineffective when counsel failed to challenge Bill 3096 'Truth in

Sentencing' 85% Law."

9. "Applicant was arrested to allege 16 years of age as a child, child means not a [*sic*] adult."

Respondent made its Return on August 23, 2012, requesting the court summarily dismiss the application for untimeliness. Heather M. Cannon, Esquire, (hereafter "Cannon") represented Petitioner. On August 28, 2012, the Honorable Paul M. Burch, Chief Administrative Judge, signed the Conditional Order of Dismissal. Judge Burch executed the Final Order of Dismissal, summarily dismissing the case for untimeliness, on October 31, 2012. The court then issued a Consent Order Vacating the Final Order of Dismissal on January 20, 2013, for failure to properly serve the Conditional Order of Dismissal on Petitioner. Petitioner filed an "Answer of Applicant" on January 31, 2013, stating the statute of limitations should be equitably tolled because he was a teenager at the time, did not know he could file a PCR application, and had a sixth grade education. The court found this was not a sufficient enough reason for why the matter should not be summarily dismissed. Judge Burch executed the Final Order summarily dismissing the case on March 13, 2013. This order was not appealed.

Second PCR Action: (2014-CP-17-0171)

Petitioner filed his second PCR application on April 3, 2014, alleging:

1. "Ineffective Assistance of Counsel; 6th Amendment violation."
    a. "Counsel at trial and plea failed to file direct appeal."
2. Ineffective Assistance of PCR Counsel
    a. "Counsel at PCR failed to file an amended answer to the conditional order of dismissal."
    b. "Counsel at PCR failed to file a 59(e) to alter the final order so that it reflects all issues for appeal."
    c. "Counsel at PCR failed to file appeal to first PCR application."

Respondent filed its return and partial motion to dismiss on September 14, 2015, requesting a hearing on the sole issue of whether Petitioner waived his right to appellate review of his prior PCR action and asking the remaining allegations be summarily dismissed as

successive and untimely. On June 21, 2016, Cannon executed an affidavit stating she did not remember filing a notice of appeal of Petitioner's initial PCR action, nor remember discussing with Petitioner the right to file an appeal. On August 21, 2019, an evidentiary hearing convened before the Honorable Brooks P. Goldsmith, and a hearing was conducted on pursuant to Petitioner's amended allegations, made that same day. In his amended application, Petitioner alleged:

1. "Applicant should receive a belated appeal of his first PCR pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991)."
2. "Applicant was denied his Eighth Amendment right to be free from cruel and unusual punishment when the court sentenced him to a de facto life sentence without first conducting an[] individualized sentencing hearing to consider the hallmarks of youth as proscribed by *Miller v. Alabama*."
3. "Since Applicant was not provided an individualized sentencing hearing to consider the hallmarks of youth, Applicant's sentence violates Article I Section 15 of the South Carolina Constitution."
4. "As an alternate argument, Applicant asserts that he was denied due process when his first PCR attorney did not adequately argue that the statute [of limitations should have been equitably tolled based upon his minor status at the time of sentencing.]"

Tristan M. Shaffer, Esquire, represented Petitioner, and Assistant Attorney General Jacob A. Isenberg represented Respondent. . Judge Goldsmith signed a consent order[1] granting Petitioner leave to petition this Court for belated appellate review of his PCR issues pursuant to *Austin v. State*[2] on August 29, 2019. In the order, the court found:

1. Respondent conceded Petitioner was entitled to belated appellate review of his

[1] Although the order is titled "Consent Order Granting an Appeal Pursuant to *Austin v. State*," the order goes on to address the other issues raised in Petitioner's second application on the merits and denies relief. The consent portion applies only to Petitioner's *Austin* claim. (App. 99-100.) Although the State could have moved to dismiss these additional claims on the grounds of untimeliness and successiveness, the State opted instead to argue the issues on their merits. This Return therefore addresses the propriety of both the PCR court's grant of *Austin* relief and its denial of relief as to all other issues raised. Pursuant to the PCR court's grant of relief under *Austin*, Petitioner has filed a Johnson petition arguing his first PCR action should not have been dismissed as untimely. The State does not plan to file a response to that claim unless directed by this Court.

[2] 305 S.C. 453, 409 S.E.2d 395 (1991).

previous PCR action per *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

2. Petitioner's sentence was not a violation of his Eighth Amendment rights because he was facing a facially numerical sentence that did not properly constitute a de facto life sentence without parole.
3. Petitioner's sentence did not violate Article 1, Section 15 of South Carolina Constitution because he was not entitled to an individualized sentence hearing at the time he was sentenced, he did not receive a life without parole sentence, and Petitioner did not timely file a motion for resentencing.
4. Petitioner was not entitled to equitable tolling of his original application based upon age because this ineffective assistance of PCR Counsel allegation was not properly brought up in PCR court.

Petitioner filed a petition for writ of certiorari on July 27, 2020.

STATEMENT OF FACTS

On August 17, 2009, Petitioner and two co-defendants, Damien and Lorenzo Inman, were casing seventy-six-year-old Mary Stutts' (hereinafter "Stutts") residence. (App. 17-19, 23). When they felt it was time to rob Stutts, they walked through her backyard, approached the door, knocked, and asked for water. (App. 18). Stutts acquiesced to the request. (App. 18).

All three co-defendants conspired together and were present during the incident, but the details of who exactly did what remain unclear due to conflicting narratives. (App. 18). However, either the first or second time Stutts exited the house, she was attacked and beaten in her backyard. (App. 18-19). One co-defendant went inside the house to find something to steal. (App. 19). When unable to find something valuable, they grabbed the keys to her car, took the baby stroller out of the trunk of the car, placed Stutts in the trunk and backed out of the residence. (App. 19). While driving to a desolate location, one co-defendant turned the radio up to drown out Stutts' cries for help. (App. 19). Once they reached a nearby wooded area, they took Stutts out of the car and shot Stutts in the face and the side of the head with a .25 caliber handgun. (App. 19-20). They then dragged Stutts' body into a ditch out of the view from the road and abandoned her. (App. 20).

Thereafter, the co-defendants stole several items in the car and a license plate to replace Stutts' tag on her vehicle. (App. 20). After this, they drove around for several hours. (App. 20). Eventually, Petitioner and Lorenzo dropped off Damien at his home because he had to go to school the next day, then continued riding in the vehicle. (App. 20).

Meanwhile, Stutts' grandson had been calling Stutts' throughout the night to say good night. (App. 22). She did not answer, so he assumed she went to sleep. (App. 22). The next morning, Stutts' son-in-law drove past the residence, noticed the door was open, the car was

gone, and his mother-in-law was missing. (App. 22). He then called law enforcement. (App. 22).

Also on the morning following the incident, Petitioner and Lorenzo went to Lockamy's Scrap Metal to sell the car. (App. 20-21). Lorenzo approached the window, but was unable to sell it because they did not have a title or driver's license. (App. 21). Martha Bridges and Richard Lockamy were at the location and felt something was off about the transaction, so they called the police. (App. 21). Law enforcement issued an all-points bulletin on the vehicle. (App. 21).

Officer Louis Barfield spotted the car and began following it with Lorenzo driving. (App. 21). A chase ensued, Lorenzo crashed the car against some railroad tracks, and both Petitioner and Lorenzo fled. (App. 21). Police apprehended Petitioner before he made it into the woods. (App. 21). However, Lorenzo ran into the woods and went underwater attempting to evade the police. (App. 21). Both men were ultimately arrested. (App. 21). Petitioner was Mirandized and, before giving a written statement, agreed to take the officers to Stutts' body, which was recovered. (App. 21-22).

STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Overall, reviewing courts "give[] great deference to the post-conviction relief court's findings of fact and conclusions of law," *Dempsey v. State*, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005), with the applicant shouldering the burden of proof. Rule 71.1(e), SCRCP; *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Further, the reviewing court will uphold a PCR court's findings if there is "any evidence of probative value sufficient to support them." *Id.* Reversal of the lower court's findings occurs when there is no probative evidence to support the initial finding. *Pierce v. State*, 338 S.C. 139, 526 S.E.2d 222 (2000). Appellate courts must conduct a *de novo* review when evaluating questions of law and are required to reverse the initial holding when the decision is controlled by an error of law. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40; *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

I. Respondent concedes the second PCR judge properly granted petitioner's request for a belated appellate review of his previous PCR action per *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner alleges his first PCR counsel failed to file an appeal from the denial of his first PCR action. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). "Under *Austin*, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal." *Odom v. State*, 337 S.C. 256, 259-60, 523 S.E.2d 753, 755 (1999) (citing *Austin*, 305 S.C. 453, 409 S.E.2d 395).

During the evidentiary hearing, the State conceded Petitioner is entitled to seek belated appellate review of his first PCR action because PCR counsel failed to appeal the PCR judge's Order of Dismissal issued in the case. (App. 92). The PCR Court filed its consent order on September 6, 2019, granting Petitioner a belated PCR appeal pursuant to *Austin*. (App. 111-12). Therefore, probative evidence exists in the record to support the PCR court's finding Petitioner did not knowingly and voluntarily waive his right to appeal the dismissal of his first PCR, and the PCR court properly granted Petitioner's request to petition this Court for belated appellate review of the denial his first PCR action per *Austin*.

II. The post-conviction relief court correctly found Petitioner's Eighth Amendment Rights were not violated when Petitioner was sentenced to an aggregate sentence of forty-five years because it was not a de facto life sentence and, even if it was a de facto life sentence, there is no general prohibition against life sentences placed on homicidal juveniles or aggregated sentences placed on juveniles that stem from several serious offenses.

On appeal, Petitioner argues the first PCR court erred in denying him relief because the aggregate forty-five-year sentence Judge Russo imposed allegedly constitutes a de facto life

sentence,[3] imposed in violation of Petitioner's Eighth Amendment Rights. However, the PCR court correctly rejected this argument, finding Respondent was entitled to judgement as a matter of law because the sentence was facially numerical and Petitioner will be released from prison at age sixty-one. These findings are not controlled by an error of law and are supported by probative evidence in the record. Consequently, this Court should deny certiorari.

Petitioner was not sentenced to life imprisonment in this case. Instead, he was sentenced to forty-five years imprisonment and is scheduled for release at the age of sixty-one. This is not a life sentence nor is it likely to be a de facto life sentence. *See People v. Applewhite*, 409 Ill. Dec. 849, 855, 68 N.E.3d 957, 963 (Ill. Ct. App. 2016) ("[H]is 45-year sentence ***does not*** amount to a de facto life sentence, as he will be eligible for release at the age of 62." (emphasis added)). Petitioner incorrectly conflates the United States Supreme Court's holding in *Miller* establishing a prohibition on the ***mandatory*** imposition of life imprisonment without the possibility of parole on juvenile offenders convicted of murder with a general bar on the imposition of ***any*** lengthy sentence for a juvenile. The sentence imposed, though lengthy, is not a life without parole sentence, nor is it a de facto life sentence. Petitioner will likely be released from prison before the end of his natural life. Thus, Petitioner's claim that he was unconstitutional sentenced to a de facto life sentence is without merit.

Even if a de facto life sentence was imposed, the United States Supreme Court nor this Court have recognized a constitutionally mandated ban on sentences of life without parole for juveniles convicted of murder. To the contrary, such a sentence is explicitly permitted. *See*

[3] "A *de facto* life sentence as one that is expressed as a lengthy term of years, causing the defendant's eligibility for parole or release to fall outside his projected life expectancy." *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148, n. 3 (2019) (citing *Burch v. United States*, 685 F.3d 546, 552 (6th Cir. 2012)).

Montgomery v. Louisiana, 136 S. Ct. 718, 733 (2016) (recognizing a sentencing judge may encounter a rare juvenile offender for whom a life without parole sentence is justified); *Miller*, 567 U.S. 460, 479-80, 483 (2012) (instructing their "decision does not categorically bar a penalty for a class of offenders or type of crime . . . . Instead it mandates only that a sentence follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty."); *Aiken v. Byars*, 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014) (recognizing a sentencing judge "[w]ithout question" may properly determine life without parole is an appropriate sentence for a juvenile murderer following an individualized hearing in which "the mitigating hallmark features of youth" were fully explored and noting the legislature's decision authorizing life without parole sentences for juveniles convicted of murder would be honored on appeal).

Moreover, when a juvenile offender is subject to multiple convictions whose sentences aggregate into a de facto life sentence, this Court has held such a sentence is constitutionally permissible, even if it involves a non-homicide-crime. *See State v. Slocumb*, 426 S.C. 297, 314-15, 827 S.E.2d 148, 157 (2019) (holding that an aggregate one-hundred-thirty-year sentence imposed on a juvenile convicted of non-homicide crimes was constitutionally permissible because he was charged and convicted of multiple serious, violent offenses). Additionally, the court has held a life sentence ***with*** the possibility of parole may be proper in the case of juvenile defendants convicted of murder. *See State v. Finley*, 427 S.C. 419, 427, 831 S.E.2d 158, 162 (2019) (finding it constitutional to sentence a juvenile to life imprisonment with the possibility of parole after thirty years).

Even if Petitioner's forty-five years were a de facto life sentence, both the United States Supreme Court and this Court's precedent clearly permit juvenile offenders to be sentenced to

life imprisonment when convicted of murder.[4] *See e.g. Miller*, 567 U.S. at 479-80, 483; *Finley*, 427 S.C. at 427, 831 S.E.2d at 162; *Aiken*, 410 S.C. at 545, 765 S.E.2d at 578. Additionally, South Carolina law clearly establishes that a de facto life sentence based upon the aggregation of sentences imposed for multiple, distinct serious and violent crimes is constitutional, even in non-homicide cases. *Slocumb*, 426 S.C. at 314-15, 827 S.E.2d at 157. This is a homicide case and, thus, an aggregate sentence of approximately one-third of that received by the non-homicide defendant in *Slocumb* is clearly constitutional. Thus, the PCR court correctly denied relief on this ground, and this Court should deny certiorari.

[4] To the extent it applies, Petitioner is correct in stating the South Carolina Supreme Court held in *Aiken v. Byars* that *Miller* applies retroactively, and a juvenile offender sentenced to life without parole is entitled to a hearing that ensures the sentence imposed reflects "individualized consideration of youth." However, this Court made clear: "any individual affected by our holding [in *Aiken*] 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." 410 S.C. at 545, 765 S.E.2d at 578. Even if this Court were to consider a forty-five-year sentence imposed on a sixteen-year-old as a de facto life sentence, Petitioner's remedy cannot be found in post-conviction relief but, rather, should have been pursued through a motion for resentencing filed on or before November 13, 2015. There is no indication he filed this motion.

CONCLUSION

For the reasons stated above, this court should deny certiorari and affirm the PCR court's finding Petitioner's Eighth Amendment rights were not violated. However, if this Court decides to grant the petition of writ of certiorari, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

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