THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge
Appellate Case No. 2020-001292

Theodore Harrison,Jr. #155651, Appellant,

v.

South Carolina Department of Probation, Parole, and Pardon Services, Respondent.

RECORD ON APPEAL

Theodore Harrison,Jr.
SCDC# 155651
Perry C.I., Q4A 211
430 Oaklawn Road
Pelzer, S.C. 29669

Matthew C. Buchanan,
Esquire
General Counsel, SCDPPPS
P.O. Box 207
Columbia, S.C. 29202

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF GENERAL SESSIONS
FOR THE SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
)
VS.)
)
THEODORE HARRISON, JR.,)
)
DEFENDANT.)

SENTENCING -- LIFE IMPRISONMENT
COURT HAVING FOUND AN AGGRAVATING
CIRCUMSTANCE

90-GS-12-125

Theodore Harrison, Jr., you have been found by the Court to be guilty of the offense of Murder, and the Court has further found the existence of an aggravating circumstance, to wit: Armed Robbery (2 counts) and Kidnapping (2 counts), and recommends that you be sentenced to life imprisonment. I ask you now, do you have anything you wish to say as to why the judgment of the law and the sentence of the Court should not now be pronounced against you?

Theodore Harrison, Jr., it is the judgment of the law and the sentence of this Court that you, Theodore Harrison, Jr., the Prisoner at the Bar, pursuant to 1986 S.C. Acts 2955, are to remain in the custody of the Department of Corrections for the balance of your natural life, without eligibility of parole until the service of thirty (30) years.

DON S. RUSHING
Presiding Judge
Sixth Judicial Circuit

November 12, 1990
Chester, South Carolina

True and correct copy of original paper
On file in this office.
Clerk of Court
Chester County, SC
Date 6/3/2013

STATE OF SOUTH CAROLINA COUNTY OF CHESTER	)	IN THE COURT OF GENERAL SESSIONS THE SIXTH JUDICIAL CIRCUIT
State of South Carolina v. Theodore Harrison, Jr a/k/a Lumumba Incumaa, Defendant	)	1990-GS-12-00119 1990-GS-12-00120 1990-GS-12-00121 1990-GS-12-00122 1990-GS-12-00125 1990-GS-12-00126 RESENTENCING ORDER

This is a criminal resentencing matter of a South Carolina Department of Corrections (SCDOC) double homicide inmate from Chester County who received life sentences as a juvenile. Because at the time of his sentencing, he was already serving a felony sentence arising from the carjacking and abduction by gunpoint of two people in Richland County, his life sentences were deemed to be without the possibility of parole (LWOP).

Pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), cert. denied, and Miller v. Alabama 567 U.S. 460, 135 S. Ct. 2379 (2012), the Defendant, Theodore Harrison, a/k/a Lumumba Incumaa, filed his Motion for Resentencing, stating that because he was sentenced to life without the possibility of parole (LWOP) for an offense committed when he was seventeen (17) years old, he was entitled to a new sentencing hearing in conformity with the state and federal constitutional principles set forth in Miller v. Alabama, 567 U.S. 460, 135 S. Ct. 2379 (2012), and Aiken v. Byars.

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The Court stated "without question" a juvenile homicide offender can be subject to a LWOP sentence in light of other aggravating circumstances. However, the Court stated, Miller requires that before a LWOP sentence is imposed on a juvenile, the offender must receive an individualized hearing where the "mitigating hallmark features of youth are fully explored".

The South Carolina Supreme Court granted to inmates who received LWOP sentences as a juvenile the right to a resentencing hearing where the inmates are allowed "to present evidence specific to their attributes of youth and allow the judge to consider such evidence in light of its constitutional weight."

Resentencing Hearing

On February 12, 2018, and February 16, 2018, the resentencing hearing for this defendant was conducted. Sixth Circuit Solicitor Randy Newman and Assistant Solicitor Karen Fryar represented the State, and Micah Leddy of the Richland County Bar represented the Defendant.

At the hearing, the Defendant presented three (3) witnesses and he made an oral statement to the Court. The defense witnesses were Dr. James Garborino, an expert in Developmental Psychology called primarily as an expert concerning the Miller factors; Dr. Michael Hendricks, an expert in Forensic Psychology, Psychopharmacology, and Suicidology primarily to discuss the Defendant's various mental health issues that arose after his years of solitary confinement; and Jessica Jiminez, the Step-Down Coordinator at the South Carolina Department of Corrections primarily to discuss the Defendant's very favorable and positive conduct while in the step-down program, including his work as a mentor to other inmates. An Inmate Life Expectancy Table and Summary, a copy of Dr. Garborino's written report, and various SCDOC documents, including, but not limited to, incident reports, progress notes, grievance forms, medical notes, certificates and

committee document were also presented into evidence. Subsequent to the hearing, Mr. Leddy supplemented the record with twelve letters from family, friends and potential employers voicing support for the Defendant.

The State presented seven (7) witnesses at the hearing. Lonetta Brawley, one of the victim's in the August 1988 Richland County armed abduction and carjacking incident; Freddie Stewart, a former employee with the Sixth Circuit Solicitors Office who investigated the February 1988 Chester County armed robberies, kidnappings and murders; Donald Max Dorsey, Department of Juvenile Justice (DJJ) Director of Community Program who participated in 1989 pre-waiver evaluation of this Defendant; David Lee Bell, a former Richland County Sheriff investigator who interviewed this Defendant and the Co-Defendant concerning the Richland County August 1988 armed abduction and carjacking incident; William Welch, a South Carolina Department of Corrections officer who investigated the 1995 prison riot; James Cooper, a SCDOC Correction Specialist who was stabbed allegedly by the Defendant during the 1995 prison riot; and SCDOC Assistant Director Dennis Patterson concerning the 1995 prison riot and the Defendant's placement history within the SCDOC. The State also presented twenty-six (26) exhibits.[i]

Over the objection of defense counsel, family members of the deceased victims were allowed to make statements to the Court. Since no jury is involved with this resentencing hearing and therefore no prejudice, this Court's belief is that allowing them to speak demonstrated respect for their losses.

Discussion

Prior Proceeding

The Defendant's original sentences were issued on November 12, 1990, after he entered pleas of guilty to the Chester County February 1988 kidnappings and the murdering of 18 year old Scott

Stephenson (Scotty) and 21 year old Renee Crowl Rollings (Renee) and to two (2) armed robberies charges before the Honorable Donald Rushing, a South Carolina Circuit Judge. The Defendant received consecutive life sentences to the murder charges and consecutive 25 year sentences to the arm robbery charges. Due to the prior felony convictions stemming from the Richland County armed abduction and carjacking, his life sentences were without the possibility of parole (LWOP).

Because the prior sentencing proceeding was conducted consistent with death penalty protocols, a substantial record related to the law and facts exists.[ii] The following is the Judge's announced ruling as to aggravation.

> Gentlemen - - - I find beyond a reasonable doubt and I so conclude that the State has proven beyond a reasonable doubt the existence of the aggravating circumstances, that being in this particular case, that the defendant Robert R. Moore, III and Theodore Harrison, Jr., each of them have committed the crime of murder while in the commission of the crime of kidnapping in regards to the murder and kidnapping of Renee Rollings. I further find that the defendants Robert R. Moore, III and Theodore Harrison did commit the crimes of murder while in the commission of the crime of kidnapping in regards to the murder and kidnapping of Scott Stephenson. I also further find and conclude that each of them, Robert R. Moore, III and Theodore Harrison, Jr., did commit the crime of murder while in the act of larceny while armed with a deadly weapon with regards to the death of Scott Stephenson and Renee Rollings, two separate counts. I further find that each of them, Robert R. Moore, III and Theodore Harrison, Jr., did murder two persons by one act or pursuant to one scheme or one course of conduct, that being the murders of Renee Rollings and Scott Stephenson. The court makes all of these findings based on the evidence presented to it and before it both in the guilt phase and the sentencing phase beyond a reasonable doubt. Murder is the unlawful killing or the killing of another human being with malice aforethought either expressed or implied. I find that all the elements of that crime were presented to the court; further, I find that the crime of kidnapping statutorily involves the abducting of another person away without lawful authority. I find all of those elements and facts to be in the record of this case beyond a reasonable doubt. I find that the crime of armed robbery being the larceny or the taking of the goods or personal property of another taken while under the force or threat of violence being the robbery without their permission and with the use of a deadly weapon, to wit, a pistol, to be proven beyond a reasonable doubt. I further find that the proof of

> the two murders being pursuant to one scheme or one course of conduct, the murders of the two individuals, be proven beyond a reasonable doubt. I make all of these findings and conclusions beyond a reasonable doubt. It has to be the aggravating circumstances in each of these cases and I so further find and conclude.

Judge Rushing's findings and conclusions were not challenged on appeal. Additionally, no evidence was presented at the present hearing to suggest Judge Rushing's findings and conclusions were incorrect or erroneous.

Judge Rushing imposed a life sentence on indictment 125 (murder) and stated this sentence was consecutive to all other sentences. He announced, as to indictment 126 (murder), a life sentence and stated the sentence was consecutive to all other sentences imposed. He announced, as to indictment 122 (armed robbery), a term of 25 years. Again he announced the sentence was consecutive to all other sentences imposed on this Defendant. As to indictment 121 (armed robbery), the sentence was a term of 25 years. Again, he announced that the sentence was consecutive to all other sentences imposed on this Defendant.

Miller and Byars Directive

As previously stated, from Aiken v. Byars, the purpose of the present resentencing hearing is to allow the inmate to present evidence specific to their attributes of youth and to allow the sentencing judge to consider such evidence in the light of its constitutional weight. This Court has examined the evidence presented to it in the frame work stated by Miller including the following factors:

(1) The chronological age of the offender and the hallmark of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence"
(2) The "family and home environment" that surrounded the offender

that on the day of the riot when he arrived, he felt that there was something strange going on due to the way that the inmates were acting. He felt that there was tension within the inmate population due to a recent change in department policy concerning haircuts. Other than the allegations against Harrison for being involved in the riot, including his being stabbed by Harrison, the officer stated that he had no issues arise with this Defendant through the years.

The Sentence

In Aiken v. Byars, the South Carolina Supreme Court granted this Defendant, and other similarly situated inmates who as juveniles received LWOP sentences, the opportunity for an individualized hearing where the mitigating hallmark features of youth could be fully explored. The South Carolina Court adopted the Miller framework and directed that the resentencing court must consider:

(1) the chronological age of the offender and the Hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risk and consequences;
(2) the "family and home environment" that surrounded the offender;
(3) the circumstances of the homicide offense, including the extent of the offenders 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 a plea agreement) or [the offenders] incapacity to assist his own attorneys, including a plea agreement or [the offenders] incapacity to assist his own attorneys"; and
(5) the possibility of rehabilitation.

From Aiken v. Byars and Miller, this Court is required to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison". In performing the individualized review of this Defendant's hallmark features of youth, the Court must, and has, considered the juvenility of this Defendant in its effort of determining the proper prison sentence that punishes this Defendant for the specific criminal offenses he has

committed. In considering the specific evidence of youth attributable to this Defendant and the facts of the specific crimes for which he is being resentenced, this Court concludes that the original sentences as announced by Judge Rushing in 1990, were, and are, the appropriate sentences for this Defendant to receive for the crimes he has committed.

Because of his age (16 years and 9 months) at the time he committed his offenses, the Supreme Court has reasoned that this Defendant categorically was a member of a class of individuals that differ from adult offenders because of his "lack of maturity and underdeveloped sense of responsibility", vulnerability to negative influences and outside peer pressures, including family and peer, and evolving character and personality traits. This Court has taken into account the evidence related to this Defendant's juvenility presented as part of his resentencing and, as a result, cannot counsel against a sentence that will result in this Defendant serving a lifetime in prison.

Even though his age at the time of the crime was 16 years and 9 months, the facts of the crimes for which he is being resentenced were not the result of the hallmark features of youth such as immaturity, impetuosity, and failure to appreciate the risks and consequences. These hallmark factors of youth are antonymous to what the facts of his crimes reflect. The facts of his crimes clearly demonstrate his actions were premeditated, intentional and reflect a callous disregard for human life.

At the time of the 1989 psychological assessment, this Defendant's evaluation showed no psychiatric illnesses, average intellectual functioning for persons his age and a level of sophistication and maturity consistent with other individuals of his age. His activities and interest appeared to be age appropriate. Even though the testing and clinical interview showed he thought in conventional terms, the doctor noted, however;

> "Nevertheless, Theodore is a suspicious and inaccessible young man who distrusts others and is afraid of interpersonal involvement. He displays

little insight, poor judgment and accepts little responsibility for his actions. As for past criminal convictions [the August 1988 Richland County armed abduction and carjacking], Theodore displays no remorse and accepts no responsibility for his role in this incident, placing blame onto his co-defendant. In regard to the offense with which he is currently charged, Theodore maintains complete innocence in this matter also and thus, continues to show a lack of remorse with respect to the current alleged offense. Finally, Theodore expresses no empathy for the victims of either his past crimes or those with which he is currently charged. While he reports feeling distressed, this appears to be related more to concern about the outcome of his legal problems rather than to genuine remorsefulness or concern for the victims."

When a person participates in the execution of two innocent strangers, the statement that "I did not understand the consequences of my actions", even by a 16 year old juvenile, lacks credibility. This statement, "I did not understand the consequences of my actions", if true some 30 years ago when these crimes were committed, is reflective more of a juvenile with a malignant heart and an incorrigible nature. This Court's opinion is that this Defendant's involvement in these crimes cannot be classified as merely "impulsive" and "stupid". Referring to this Defendant's actions as merely "impulsive" and "stupid" is intellectually disingenuous to the facts underlying these crimes.

Very little, if any credible evidence was presented to suggest his family and home environment caused this Defendant to commit his crimes at age 16 years and 9 months or would have predicted his involvement in his crimes. In Dr. Garborino's report, it is reflected that in 1988, this Defendant was a danger to himself and to his community. Dr. Garborino only notes the absence of the father due to alcoholism and severe punishment by the mother and grandmother as the "difficulties" this Defendant experienced. The two factors are only contained in the Doctor's report. Nevertheless, Dr. Garborino also references the CDC's "Adverse Childhood Experiences" that established the circumstances of this Defendant's upbringing resulted in a low score when compared to the higher scores typically associated with murders. Additionally, the record before this Court does not support the conclusion that this Defendant's home environment was dysfunctional.

The circumstances of his criminal offenses are horrific, chilling and terrifying.[ix] This Defendant's crimes were committed with another adolescent teenager. However, no evidence was presented to suggest this Defendant was under duress or coercion. These crimes were not committed while intoxicated; and no medical or psychological defect existed. This Defendant participated in these crimes with his Co-Defendant freely and voluntarily.[x] Other than a categorical explanation of the biological development of an adolescent's brain, this record is void of an explanation of why this Defendant and his Co-Defendant shared a relationship together.

The incompetencies associated with youth did not result in his inability to deal with police and did not prevent him from assisting his attorneys. At the time of his original sentencing hearing, he had already cooperated with the New Jersey police and Richland County authorities and his attorney concerning his involvement with the August 1988 Richland County armed abduction and carjacking. Also, when initially questioned by law enforcement concerning the February 1988 Chester County crimes, he provided the factually false statement that substantially lessened his involvement in the crimes and placed substantial responsibility for the crimes on his Co-Defendant. Subsequently, he created statements substantially altering his involvement. During his plea hearing he provided sworn written and oral affirmation to the facts of the case to the Court (see endnote ii).

This Defendant has shown the possibility of rehabilitation. This Court commends his efforts of rehabilitation. Nevertheless, the possibility of rehabilitation under a Miller analysis alone does not present sufficient mitigation to alter this Court's decision in light of the facts of the crimes when the deficits of his juvenility have not been sufficiently linked to his crimes.

This Court notes that Dr. Garborino was this Defendant's primary witness concerning the Miller analysis. Many of Dr. Garborino's statements concerning this Defendant's personality traits

and factual statements concerning this Defendant's youth and home environment stand in stark contrast to the facts gathered in 1989 by the DJJ professionals when the recommendation was made to transfer the cases from Family Court to General Sessions. These differences may exist due to the investigative process used by Dr. Garborino. His investigation was limited to a single two hour interview with only this Defendant and a review of documents provided to him by defense counsel. Due to an obvious lack of knowledge of the specific facts concerning the crimes; this Court lacks confidence in the Doctor's opinions as he attempts to link this Defendant's specific adolescent characteristics to the crimes for which he is being sentenced.

In his attempt to explain how this Defendant's behavior "could" have arisen from the Defendant's life experiences over 16 years before "the" murder and thereby mitigate this Defendant's criminal responsibility, the doctor states as a fact that this Defendant's "arrest for the extant offense was the only arrest in his record prior to his present incarceration." Clearly the doctor had not been provided the details of this Defendant's involvement in the crimes for which he is being resentenced because he had no knowledge of this Defendant's criminal involvement and guilty plea to the August 1988 Richland County armed abduction and carjacking of two other individuals. At the time of this Defendant's "arrest for the extant 'offense'" he had already been arrested, charged, pled guilty and sentenced to 30 years in prison for the armed abduction of the Richland County couple. Not having been provided a clear understanding of this Defendant's criminal activities as a juvenile may explain why Dr. Garborino's written report seemed to approach this Defendant's criminal behavior as a singular event.

Additionally, in Dr. Garborino's report he quotes this Defendant as saying that "he (Co-Defendant Moore) wanted to play with guns - - - not my thing". Factually, this statement is untrue. Obviously, due to only interviewing just this Defendant, the doctor accepted as true the

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information provided by him. Otherwise, the doctor would have known that this Defendant had previously given false statements to police to minimize his involvement with these crimes and that this Defendant's criminal acts often included guns. This Defendant was seen by independent witnesses brandishing a gun and holster the day of Scotty's and Renee's murders, he admitted to pulling his weapon out as he approached their car and held his gun on them while in the car. He admitted to participating in the murders of Scotty and Renee and to taking possession of and hiding the murder weapon. Additionally, the doctor would also have known, that this Defendant had also admitted to being the first person to introduce a gun into the August 1988 Richland County armed abduction and carjacking.

When information gathered in 1989 is reviewed, the Doctor's conclusions such as, but not limited to, this Defendant was a loner[xi]; his father was an alcoholic; his mother was pre-occupied with work and that she used corporal punishment that can be classified as "whippings or beatings", are not supported by the record before this Court. The factual assertions made by Garborino that are inconsistent with the 1989 information could only have come from this Defendant's interview and are not supported in the record before this Court.

This Court also notes a disproportionate amount of testimony presented related to the prison riot and this Defendant's grievances about being placed in solitary confinement. Even though the SCDOC witnesses appeared credible at the hearing, whether this Defendant stabbed the officer as alleged or whether he is one of the most dangerous inmates in the DOC is not materially relevant to this Court's Miller review. A Miller review focuses on pre-incarceration conduct. Post-incarceration conduct is material as it relates only to a defendant's juvenility. What is material to a Miller review, is his ability for rehabilitation. Therefore, his post-incarceration conduct is considered for that limited purpose. This Court does not opine whether this Defendant is

rehabilitated or not, and it does not opine whether his community would be safe or at danger if he were released. This Court's opinion is that he is currently making progress at rehabilitation in the step-down program. This Court commends his progress and encourages his effort at making his mother and others in his life proud.

This Court's opinion is that Miller did make the mandatory LWOP aspect of this Defendant's prior sentences unconstitutional.

Nevertheless, after having performed the individualized review as required by Miller and Aiken v. Byars, this Court resentences this Defendant to the same sentences as announced by Judge Rushing in 1990. This Court realizes given the consecutive nature of these sentences, this Defendant will serve the remainder of his life in prison. Notwithstanding, this Court believes that the record before it establishes that these sentences properly and proportionally punish this Defendant for the crimes he has committed under a Miller analysis.

IT IS SO ORDERED.

The Honorable J. Mark Hayes, II
Presiding Judge
Sixth Judicial Circuit

June 14, 2018
Chester, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Theodore Harrison, Jr., #155651, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 20-ALJ-15-0004-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Theodore Harrison (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. By letter dated February 3, 2020, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that he was ineligible for parole. On February 13, 2020, Appellant filed a Notice of Appeal seeking this Court's review. Upon careful consideration of the matter, the Department's decision is affirmed.

BACKGROUND

In November 1990, Appellant was convicted of murder and was sentenced by the Honorable Don S. Rushing to life without eligibility of parole until the service of thirty (30) years. The Appellant had also been convicted of armed robbery in 1989. In 1996, the Department notified him that he would not be eligible for parole pursuant to S.C. Code Ann. § 24-21-640 which prohibits parole upon the conviction of two violent crimes. In November 2014, the South Carolina Supreme Court decided Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), a case in which 15 inmates who were sentenced to life without parole as juveniles petitioned for resentencing after the United States Supreme Court decision in Miller v. Alabama, 567 U.S. 460 (2012). The South Carolina Supreme Court sent all of the cases back to the circuit courts for "individualized hearings where the mitigating hallmark features of youth are fully explored." After motion by the Appellant, on July 14, 2016, the South Carolina Supreme Court ordered that the Honorable J. Mark Hayes, II, conduct a hearing for resentencing pursuant to Aiken v. Byars.

On June 14, 2018, Circuit Court Judge Mark Hayes issued a resentencing order after a two-day hearing. His order in part states:

> This Court's opinion is that Miller did make the mandatory LWOP aspect of this Defendant's prior sentences unconstitutional.
>
> Nevertheless, after having performed the individualized review as required by Miller and Aiken v. Byars, this Court resentences this Defendant to the same sentences as announced by Judge Rushing in 1990. This Court realizes given the consecutive nature of these sentences, this Defendant will serve the remainder of his life in prison. Notwithstanding, this Court believes that the record before it establishes that these sentences properly and proportionally punish this Defendant for the crimes he has committed under a Miller analysis.

In December 2018, the Department told Appellant that he would be eligible for parole in 2020 because of the decision in Geer.[1] On February 3, 2020, the Department told Appellant that he would not be eligible for parole because of the two convictions for violent offenses. The letter stated that when he was told otherwise in December 2018, the Department was not aware of the order of Judge Hayes or that a Miller analysis had been conducted by Judge Hayes.

ISSUES ON APPEAL

1. Did the resentencing hearing of Judge Hayes in 2018 satisfy the requirements of Aiken v. Byars and of Geer v. South Carolina Department of Probation, Parole and Pardon Services?
2. Did Judge Hayes conclude that a sentence of life without parole for the Appellant who was a juvenile at the time of his crimes was not unconstitutional after an Aiken v. Byars analysis?

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decisions in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals), and Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). The Al-Shabazz decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." Wicker v. S.C. Dep't. of Corr., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Because being granted parole is a privilege and not a right, the routine denial of parole does involve such a liberty interest, and thus is a matter properly before the Court for review. See James v. S.C. Dep't. of Prob. Parole & Pardon

[1] Geer v. South Carolina Department of Probation, Parole and Pardon Services, Op. No. 2018-UP-216 (S.C. Ct. App. filed May 23, 2018), certiorari denied November 9, 2018, is an unpublished opinion from the South Carolina Court of Appeals which affirmed the ruling of Chief Administrative Law Judge Ralph K. Anderson, III, in which the Court held there was "...no evidence showing that Geer's youth was taken into account before he was deprived of the possibility of parole." Id. at 3.

Servs., 376 S.C. 392, 395-96, 656 S.E.2d 399, 401-02 (Ct. App. 2008); see also Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003).

When reviewing a decision of the Department, the Court sits in an appellate capacity. See Furtick, at 599, 576 S.E.2d at 149; Al-Shabazz, at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2019). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

DISCUSSION

The original order of Judge Rushing sentenced Appellant to life in prison without eligibility of parole for 30 years. Several years later, the Department notified Appellant that he would not be eligible for parole under the provisions of S.C. Code Ann. § 24-21-640. The pertinent part of that statute states, "[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60...." Appellant was convicted of armed robbery and subsequently for murder, both of which are violent crimes by statute.

In 2014, the South Carolina Supreme Court decided the case of Aiken v. Byars, following the directive of the United States Supreme Court in Miller v. Alabama, and stated that a life without parole sentence could not be imposed upon an individual who was a juvenile at the time his crime occurred without an individualized hearing where the mitigating hallmark features of youth are fully explored. Aiken, 410 S.C. at 545, 765 S.E.2d at 578. The Respondent was a juvenile at the time his crimes occurred. Judge Hayes conducted a lengthy hearing and issued a 43-page order in which the Appellant's youth at the time of his crimes was explored. This Court concludes that the in-depth hearing conducted by Judge Hayes was sufficient to meet the requirement of an "individualized hearing." There was no condition that it be conducted by the parole board and the South Carolina Supreme Court ordered Judge Hayes to conduct the hearing. Appellant argues in his brief that Geer states the parole board should conduct the hearing. However, Mr. Geer appealed the decision of the parole board to deny eligibility of parole without providing any hearing at all.

Mr. Geer did not have a hearing before a circuit court judge. Therefore, Geer is distinguishable from this case.

On appeal, Appellant contends that the language of the order of Judge Hayes stated that he should have parole eligibility. His arguments rests on the sentence of the order which reads, "[n]evertheless, after having performed the individualized review as required by Miller and Aiken v. Byars, this Court resentences this Defendant to the same sentences as announced by Judge Rushing in 1990." Appellant argues that sentence was not life without parole because Judge Rushing specifically mentioned parole eligibility in 30 years. However, the case cited by the Respondent in its brief – Major v. South Carolina Department of Probation, Parole and Pardon Services, 384 S.C. 457, 682 S.E.2d 795 (2009) – states that it is the Department that is responsible for parole and when it is granted. The Court said previously, "in effectuating a sentencing court's order, the Department has the sole authority to look to the statutes to determine whether a defendant is eligible for parole separate and apart from the court's authority to sentence a defendant." State v. McKay, 300 S.C. 113, 386 S.E.2d 623 (1989). Based on these cases, it is the conclusion of this Court that the portion of Judge Rushing's sentencing order which mentioned parole eligibility was not part of the sentence at all. Only the Department and its parole board have the authority to determine a person's parole eligibility.

Nevertheless, what is important here is whether Judge Hayes meant to affirm that part of Judge Rushing's order, meaning that life without parole was not a proper sentence after his hearing on the matter. Reviewing the order, it is clear that Judge Hayes did not find the features of youth of the Appellant to be mitigating. In Aiken, following Miller, the Court set out factors to be considered at the resentencing hearing. Below are pertinent parts of Judge Hayes's order regarding the factors set out in Aiken, 410 S.C. at 544, 765 S.E.2d at 577, citing Miller, 132 S.Ct. at 2469.

> (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risk and consequences;"
> Judge Hayes - Even though his age at the time of the crime was 16 years and 9 months, the facts of the crimes for which he is being resentenced were not the result of the hallmark features of youth such as immaturity, impetuosity, and failure to appreciate the risks and consequences. These hallmark factors of youth are antonymous to what the facts of his crimes reflect. The facts of his crimes clearly demonstrate his actions were premeditated, intentional and reflect a callous disregard for human life.

(2) the "family and home environment" that surrounded the offender;
Judge Hayes - Very little, if any[,] credible evidence was presented to suggest his family and home environment caused this Defendant to commit his crimes at age 16 years and 9 months or would have predicted his involvement in his crimes.

(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;
Judge Hayes – [t]he circumstances of his criminal offenses are horrific, chilling and terrifying (footnote omitted). This Defendant's crimes were committed with another adolescent teenager. However, no evidence was presented to suggest this Defendant was under duress or coercion. These crimes were not committed while intoxicated; and no medical or psychological defect existed. This Defendant participated in these crimes with his Co-Defendant freely and voluntarily (footnote omitted).

(4) the "incompetencies associated with youth – for example[,] [the offender's inability to deal with police officers or prosecutors] including a plea agreement or [the offender[']s] incapacity to assist his own attorneys;"
Judge Hayes – [t]he incompetencies associated with youth did not result in his inability to deal with police and did not prevent him from assisting his attorneys. At the time of his original sentencing hearing, he had already cooperated with the New Jersey police and Richland County authorities and his attorney concerning his involvement with the August 1988 Richland County armed abduction and carjacking. Also, when initially questioned by law enforcement concerning the February 1988 Chester County crimes, he provided the factually false statement that substantially lessened his involvement in the crimes and placed substantial responsibility for the crimes on his Co-Defendant. Subsequently, he created statements substantially altering his involvement. During his plea hearing he provided sworn written and oral affirmation to the facts of the case to the Court (endnote omitted).

(5) the possibility of rehabilitation.
Judge Hayes – [t]his Defendant has shown the possibility of rehabilitation. This Court commends his efforts of rehabilitation. Nevertheless, the possibility of rehabilitation under a Miller analysis alone does not present sufficient mitigation to alter this Court's decision in light of the facts of the crimes when the deficits of his juvenility have not been sufficiently linked to his crimes.

While this Court does not wish to speculate on the reasons it believes Judge Hayes referred to Judge Rushing's order regarding the sentence being the same, a reading of the order as a whole is clear that Judge Hayes explored the mitigating hallmark features of youth and found that there was nothing in Harrison's youth that would mitigate his punishment of life without parole. Particularly convincing, aside from his language on the factors above, is when he says Miller made Appellant's prior sentences unconstitutional. Then, the next sentence starts... "Nevertheless, ..."

After a very thorough review, it is the conclusion of this Court that Judge Hayes found that the life without parole sentence was not unconstitutional because he found no mitigating factors in Appellant's youth.

I do not find any ambiguity, but inasmuch as the Appellant has a different view, I do note that the South Carolina Supreme Court offered some guidance on this. The case of State v. Bordeaux, 410 S.C. 495, 765 S.E.2d 143 (2014) involved an unambiguous oral sentencing record which was followed by an ambiguous sentencing sheet. The Supreme Court held that what happened in the court hearing was enough to overcome the sentencing sheet. Likewise, the overwhelming discussion by Judge Hayes as to why the Appellant's youth should not mitigate the life without parole sentence was enough to overcome any question about the reference to Judge Rushing's sentence.

ORDER

IT IS THEREFORE ORDERED that the Final Decision of the South Carolina Department of Probation, Parole and Pardon Services is **AFFIRMED**.

AND IT IS SO ORDERED.

Deborah Brooks Durden

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 9, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nicholas M. Geer, #227443, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No. 15-ALJ-15-0042-AP ORDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the appeal filed by Nicholas M. Geer (Appellant) from a decision of the South Carolina Department of Probation, Parole and Pardon Services (Department) denying him parole. Appellant filed this appeal with the Court on August 12, 2015.

FACTUAL/PROCEDURAL HISTORY

Appellant is in the custody of the South Carolina Department of Corrections. He was born on November 13, 1977. On December 30, 1994, he committed the offense of assault and battery with intent to kill (ABWIK). On June 5, 1995, Appellant appeared before a judge and was sentenced for ABWIK under the Youthful Offender Act to a term of imprisonment not to exceed six years, five of which were under probation with the remaining year suspended. On July 14, 1995, Appellant committed murder, in violation of his parole and of which he was convicted and sentenced to life imprisonment on November 14, 1995.[1] On July 13, 2015, the Parole Board (Board) informed Appellant that he was ineligible for parole pursuant to Section 24-21-640 based on his murder conviction and prior ABWIK conviction.[2]

---

[1] Appellant states in his brief that he was seventeen years old at the time of his offense (murder), conviction, and sentence. However, the Record reflects that Appellant was eighteen at the time of his conviction and sentence, as he was convicted and sentenced the day after this eighteenth birthday. Nevertheless, because it is the date of the offense and not of the conviction that this Court must consider, Appellant's error is immaterial.

[2] Based on the law at the time of Appellant's offense, he would have become eligible for parole following completion of twenty years of his sentence.

On August 12, 2005, Appellant filed his Notice of Appeal with this Court on the grounds that his ineligibility for a crime he committed when he was a juvenile violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution. Appellant cited to *Miller v. Alabama*, – U.S. –, 132 S.Ct. 2455 (2012) to support his position.

JURISDICTION

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003).

DISCUSSION

Appellant argues that the Department erred in rendering him ineligible for parole. Appellant points out that he was sentenced to life imprisonment without any reference to that sentence being without the possibility of parole and did not have a separate hearing to consider the "mitigating hallmark features of youth." Appellant points out that he was seventeen years old at the time his offense was committed. Appellant also asserts that "the Parole Board is under the erroneous presumption that he was sentenced to a life without the possibility of parole." He further asserts that even had he been sentenced to life without the possibility of parole, the United States Supreme Court in *Miller*, *supra* and the South Carolina Supreme Court in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) have held that it is cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution and Article I, Section 15 § of the S.C. Constitution for a defendant who is under the age of eighteen at the time of his or her offense to be sentenced to life imprisonment without the possibility of parole absent an individualized consideration of youth.

"The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Liberty interests protected by the Fourteenth Amendment may arise from the Constitution itself or from an expectation or interest created by state laws or policies. *Id.*; *Hewitt v. Helms*, 459 U.S. 460, 466 (1983), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). In *Furtick*, the South Carolina Supreme Court held that "the permanent denial of parole eligibility implicates a [state-created] liberty interest sufficient to require at least minimum due process." 352 S.C. at 598, 576 S.E.2d at 149.

In this case, the sentencing court sentenced Appellant to "life," which, absent evidence to the contrary, this Court must interpret as life with the possibility of parole. The Board, in reviewing Appellant's record prior to a parole hearing, relied upon S.C. Code Ann. § 24-21-640 (Supp. 2014) in concluding that Appellant was ineligible for parole. The Department maintains that same position in its brief. The Department even acknowledges in its brief that "Appellant was not originally sentenced to life without parole, [but] was determined not to be eligible for parole due to his prior record." Section 24-21-640 states in pertinent part: "[t]he board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60." ABWIK is certainly a violent crime as defined in Section 16-1-60 at the time of Appellant's offense, as is his subsequent offense of murder.[3] However, the question here is not the nature of the crimes committed but rather the denial of the possibility of a parole to a person who was a juvenile at the time he committed the prior and subsequent offense without having first taken his youth into consideration.

The U.S. 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, though 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.[4] The Court in *Aiken* also applied *Miller* retroactively in South Carolina. *Id.* at 540, 765

[3] Neither party appears to challenge the fact that it is Appellant's age at the time of the offense, rather than at the time of the conviction, that is pertinent to the sentencing issue in this case. But for the sake of clarity, the Court considers Appellant's age at the time of the offense to be the proper focus in determining whether he was a juvenile for sentencing purposes. *See State v. Green*, 412 S.C. 65, 86, 770 S.E.2d 424, 435 (Ct. App. 2015) (considering appellant's age "**at the time of the prior offense** . . . that led to his prior conviction" in concluding that he was a juvenile at the time of his prior offense).

[4] The Court in *Aiken* essentially abrogated the statutory definition of "juvenile" set forth in S.C. Code Ann. § 63-19-20 (2010) for purposes of cases such as this. *See Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 574 n.1.

S.E.2d at 575 ("We conclude *Miller* creates a new, substantive rule and should therefore apply retroactively.").

The Department argues that *Miller* does not apply to the present case, because this case involved a deprivation of Appellant's parole eligibility based upon his own actions via his subsequent violation, pursuant to Section 24-21-640, rather than being based on a ruling by the sentencing court. The Department cites to *State v. Standard*, 351 S.C. 199, 569 S.E.2d 325 (2002) to support its position. In *Standard*, our Supreme Court held that it is not cruel and unusual punishment to sentence a defendant to life without the possibility of parole utilizing enhanced penalties for a burglary committed when the defendant was a juvenile so long as the defendant was tried and sentenced as an adult for the triggering offense. 351 S.C. at 204, 569 S.E.2d at 328. The Court stated that "an enhanced sentence based upon a prior most serious conviction for a crime which was committed as a juvenile does not offend evolving standards of decency so as to constitute cruel and unusual punishment." *Id.* at 206, 569 S.E.2d at 329 (emphasis omitted). However, the crucial distinction between this case and *Standard* is that Appellant was a juvenile at the time of the prior offense (ABWIK) **and** the triggering offense (murder). Therefore, the rationale underlying the decision in *Standard* is inapposite, as both offenses were committed by a juvenile in this case.[5]

As to the fact that Appellant was deprived of his parole eligibility because of his own actions rather than by the sentencing court is a difference without a distinction. The Court in *Miller* focused on the "**sentencing scheme** that mandates life in prison without possibility of parole for juvenile offenders." *Id.* (emphasis added). The Court's concern was that this precludes the sentencer from taking youth and its attendant characteristics and circumstances into account. In this case, the sentencing scheme was the Board's application of Section 24-21-640 to declare Appellant, who was a juvenile at the time of both his ABWIK and murder offenses, ineligible for parole. Regardless of whether the sentencing court or the statute took away Appellant's parole eligibility, the pertinent fact remains that Appellant's youth and its attendant characteristics and circumstances were not taken into account prior to the deprivation of his parole eligibility, and the

[5] The South Carolina Court of Appeals also recognized this distinction in *Green*, 412 S.C. at 86-87, 770 S.E.2d at 436 ("Although *Miller* held that mandatory LWOP sentences for juveniles violate the Eighth Amendment, . . . because Green was not a juvenile at the time he committed the current armed robbery, the policy considerations from *Miller* are inapplicable). The difference between this case and *Standard* and *Green*, though, is that Appellant was a juvenile at the time he committed both the prior offense and the triggering offense, thus implicating *Miller*.

courts have found that such deprivation is cruel and unusual punishment under the U.S. and S.C. Constitutions.

Curiously, the Department acknowledges that the S.C. Supreme Court in *Aiken* "determined that *Miller* can be applied retroactively, not allowing defendants who committed their crimes as juveniles to serve a life sentence without parole." The Department, however, argues that *Aiken* does not apply in this case, because "Appellant was not considered a juvenile when he committed the current offense" and "[h]e is currently doing a life without parole sentence due to his prior criminal actions." The Department reasons that Appellant was not considered a juvenile at the time he committed his offenses because he was seventeen at the age of his offenses. In support of this argument, the Department cites to S.C. Code Ann. § 63-19-20 (Supp. 2014) of the Juvenile Justice Code, which states that "'[c]hild" or 'juvenile' means a person less than seventeen years of age." However, in the first footnote in *Aiken*, the Court explicitly rejected that definition of "juvenile" in favor of the one set forth in *Miller*, which defines juveniles as individuals under the age of eighteen. *See Aiken*, 410 S.C. at 537 n.1, 765 S.E.2d at 573 n.1. As the Department even concedes, Appellant was seventeen years of age when he committed the prior and current offenses. Therefore, Appellant was a juvenile at the time he committed those offenses.

Finally, the Department argues that "[t]he automatic application of a life without parole sentence had been determined a violation of the eighth amendment [in *Miller*] because it does not consider the character and record of the individual offender or the circumstances of the offense." The Department contends that the character and record of Appellant and the circumstances of his offense are why he is not eligible parole, because he shot two people, killing one, within a period of seven months. The Department is correct that the Court in *Miller* did cite *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (plurality opinion) as an example of a line of precedent requiring consideration of "the characteristics of a defendant and the details of his offense . . . ." *Miller*, 132 S.Ct. at 2458. However, this was only part of "the confluence of . . . two lines of precedent" that led the Court to conclude that mandatory life without parole for juveniles violated the Eighth Amendment. The other line of precedent that the Court examined and blended with the rule cited by the Department considered the "mismatches between the culpability of a class of offenders and the severity of a penalty," juveniles having a "lesser culpability." *Id.* This is why the Court adopted the requirement that a sentencer consider a juvenile offender's "youth and its attendant characteristics, along with the nature of his crime . . . ." *Id.* at

2460. It found that "mandatory life-without-parole sentences on juvenile homicide offenders . . ., 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. The Court's decision "d[id] not categorically bar a penalty for a class of offenders or type of crime" but did "mandate[] . . . that a sentencer follow a certain process – considering an offender's youth and attendant circumstances – before imposing a particular penalty."

In this case, because Appellant's youth was not taken into account before he was deprived of the possibility of parole, the deprivation violated the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution.[6]

IT IS THEREFORE ORDERED that the Department's Decision is **REVERSED AND REMANDED** for further findings consistent with this Order.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

December 1, 2015
Columbia, South Carolina

[6] The Court certainly understands the Department's concern that Appellant committed murder within seven months of another violent crime and acknowledges that the General Assembly enacted Section 24-21-640 to protect society from especially violent criminals. However, that statute cannot be applied in a way that fails to take Appellant's youth and its attendant characteristics and circumstances into account. The Parole Board in this case could not have taken Appellant's youth and its attendant characteristics and circumstances into account because, by the Department's own admission, Appellant was not considered a juvenile when he committed the triggering offense, which was an error of law.

State of South Carolina

Department of Probation, Parole, and Pardon Services

DAVID M. BEASLEY
Governor

WILLIAM E. GUNN
Director

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

August 1, 1996

RE: NON-ELIGIBILITY FOR PAROLE

Mr. Theodore Harrison #155651
Kirland Correctional Inst.

Dear Mr. Harrison:

It is my duty to inform you that South Carolina law prohibits the Board of Probation, Parole, and Pardon Services from granting you parole on the sentence(s) identified below. Section 24-21-640 states: "The Board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60." Our records indicate that you have been convicted of the following crimes:

Violent Crime	Indictment Number	Parolable	Sentence
Armed Robbery	88-GS-40-3980		01/23/89
Armed Robbery	90-GS-12-122	No	11/12/90
Armed Robbery	90-GS-12-121	No	11/12/90
Murder	90-GS-12-125	No	11/12/90
Kidnapping	90-GS-12-119	No	11/12/90

Murder	90-GS-12-126	No	11/12/90
Kidnapping	90-GS-12-120	No	11/12/90

If you have any questions, please contact your Parole Examiner.

Sincerely,

Carla J. Smalls
Deputy Director for
Paroles & Paroles

CJS:rh

cc:Warden
Central Records, SCDC
Operations, SCDC
Parole Examiner
File

Theodore Harrison Jr. #155651
Perry Correctional Institution
430 Oaklawn Road, Q4A, 211
Pelzer, S.C. 29669

November 19, 2018

South Carolina Department of
Probation, Parole and Pardon Services
ATTN: Director
2221 Devine St. , Suite 600
Post Office Box 50666
Columbia, S.C. 29250

RE: Parole Eligibility

Dear Sir or Madam:

My name is Theodore Harrison, Jr. On November 12, 1990 I was convicted of the offense of murder and sentenced to the custody of the South Carolina department of Corrections for Life without eligibility of parole until the service of thirty (30) years for a crime which occurred in February 1988, when I was a juvenile sixteen (16) years old. However, I have been notified by the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS), that they have determined pursuant to S.C. Code § 24-21-640 "the Board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in section 16-1-60" , due to my prior conviction and sentence for Armed Robbery.

My murder offense occurred in February 1988 and my Armed Robbery offense occurred in August of 1988, but I was convicted and sentenced for the Armed Robbery in January 1989 and the murdere in November of 1990.

In accord with the Court's holding in Miller v. Alabama, 132 S.Ct. 2455 (2012); Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572

SCDPPPS cont.

(2014); and Montgomery v. Louisiana, 136 S.Ct. 718 (2016), this determination by the SCDPPPS has rendered my Life sentence with parole eligibility after the service of thirty (30) years, to a Life Without Parole sentence for a conviction of a crime which occurred when I was a juvenile of sixteen (16) years of age; and in accord with the Order of South Carolina Chief Administrative Law Judge Honorable Ralph King Anderson, III in Geer v. South Carolina Department of Probation, Parole and Pardon Services, Docket No. 15-ALJ-15-0042-AP (December 1, 2015), affirmed May 23, 2018, Appellate Case No. 2015-002522, this determination by the SCDPPPS violated my Eighth Amendment right to the U.S. Constitution and Article 1 § 15 Of the S.C. Constitution. The SCDPPPS rendered my parolable Life sentence to a Life Without Parole sentence relying upon S.C. Code § 24-21-640 to do so, failed to take my youth and it's attendant characteristics and circumstances into account prior to their deprivation of my parole eligibility, which is contrary to the Court's holding in Miller v. Alabama, Aiken v. Byars, and Montgomery v. Louisiana.

The SCDPPPS' application of section 24-21-640 was the sentencing scheme which declared me ineligible for parole for an offense which occurred when I was sixteen (16) years old, and prior to doing so, it failed to take my youth and it's attendant characteristics and circumstances into account.

Therefore, based on the foregoing I respectfully request a hearing before the Board of the SCDPPPS to have my youth and it's attendant characteristics and circumstances taken into account before the SCDPPPS deprive me of my parole eligibility pursuant to section 24-21-640 of the S.C. Code of Law.

Respectfully I am,

Theodore Harrison, Jr.
SCDC No: 155651
Perry Corr. Inst. Q4A

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

December 4, 2018

Mr. Theodore Harrison, Jr. #155651
Perry Correctional Institution
430 Oaklawn Rd., Q4A, 211
Pelzer, South Carolina 29669

RE: Parole Eligibility

Dear Mr. Harrison:

This is in response to your letter dated November 19, 2018. Within this letter you revealed concern of being considered a subsequent violent offender. It was your opinion, that due to a recent South Carolina Court of Appeals decision you should be eligible for parole. You felt that our conclusion of your being a subsequent violent offender was made in error.

According to our records you are currently serving a life sentence for the offense of murder. This life sentence was to become parole eligible upon the service of thirty years. However, at the time you were convicted of this offense you had a previous conviction for armed robbery; therefore, the Department determined you were not eligible for parole pursuant to the subsequent violent offender law found in Section 24-21-640 of the South Carolina Code of Laws.

Recently the South Carolina Court of Appeals decided the case of *Geer v. South Carolina Department of Probation, Parole and Pardon Services.* In *Geer* the Court of Appeals affirmed a decision of the Administrative Law court that a permanent denial of parole of a person who committed an offense as a minor was unconstitutional. Since you were seventeen when you committed this offense, you no longer can be considered a subsequent violent offender.

According to records at the Department of Corrections, your sentence began on November 12, 1990. Since you are on a thirty year parole eligibility, you will not become eligible for parole until 2020. I have informed the Department of Corrections of the removal of

the subsequent violent offender status. Your sentence would be recalculated to determine a proposed parole eligibility date.

I hope that this letter has satisfied all of the inquiries you may have relating to this matter. Good luck in all of all your future endeavors. With kind regards I remain,

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

TE:te

State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

293 GREYSTONE BLVD
POST OFFICE BOX 207
COLUMBIA, SOUTH CAROLINA 29202
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

February 3, 2020

Theodore Harrison, Jr. SCDC #155651
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

Dear Mr. Harrison:

It is my duty to inform you that your eligibility for parole has changed. In light of the June 14, 2018 Order from the Honorable J. Mark Hayes, II, you have been determined to be a subsequent violent offender pursuant to S.C. Code Section 24-21-640 and are therefore ineligible for parole.

According to Department records, you are serving a life sentence for the violent offense of murder. At the time you were convicted, you had a prior conviction for armed robbery, also a violent offense. Shortly after the commencement of your sentence, the Department determined you to be a subsequent violent offender under 24-21-640 ("The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60.").

In a letter from Assistant General Counsel Tommy Evans dated December 4, 2018, you were informed that a South Carolina Court of Appeals case, *Geer v. South Carolina Dept. of Probation, Parole and Pardon Services,* required your designation as a subsequent violent offender be overturned because you were a juvenile at the time of your offense.

At the time that letter was written, the Department was unaware of Judge Hayes' order or the fact that he conducted a *Miller*[1] analysis. In that order, Judge Hayes considered the five *Miller* factors against the evidence presented and determined that a life sentence without the possibility of parole did not violate the Eighth Amendment's prohibition on cruel and unusual punishment.

Had the Department been aware of this order, Mr. Evans would not have sent you the letter informing you

1 *Miller v. Alabama*, 567 U.S. 460 (2012).

of your parole eligibility, nor would the Department have changed your designation from a subsequent violent offender and made you parole eligible.

During the standard pre-parole investigation on January 27, 2020, Department investigators found Judge Hayes' order of June 14, 2018. This order gives the Department no choice but to reinstate its decision that you are a subsequent violent offender and consequently ineligible for parole.

Please note that this letter is the Department's "final decision" on this matter. You have the right to appeal this final decision by seeking review by an Administrative Law Judge. *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 3525.c. 594, 576 S.E.2d 146 (2003). In order to file such an appeal, you must follow the instructions on the back of the enclosed "Notice of Appeal" form approved by the Administrative Law Court (ALC). You will also be required to comply with ALC Rules of Procedure for special appeals. Failure to follow the ALC instructions or Rules of Procedure will result in forfeiture of your right to challenge the Department's final decision.

Sincerely,

Matthew C. Buchanan
General Counsel

cc. Christina Catoe Bigelow, Deputy General Counsel, SCDC