

Statement

On August 25, 2015, I, Conrad Antonio Allen was indicted in Greenville County for murder, attempted armed robbery, conspiracy, and a weapon charge. App. 109-22. According to the indictments, the date of the offense was November 8, 2013. App. 109-22. My birth year is listed on my sentencing sheet as 1997, which means I was only sixteen (16) years old on the date the crime was committed. App. 109-22. On October 12, 2015, I pled guilty before the Honorable Perry H. Gravely. App. 1. Sloan Ellis and William Timmons represented the State. App. 1. Michael D. Brown of Spartan represented me. App. 1. Judge Gravely sentenced me to a total of fifty-five years imprisonment: forty years for murder, five years for conspiracy, and five years for the weapons charge, to run concurrent; a consecutive fifteen year sentence for attempted armed robbery. App. 44, 11. 4-24. I didn't file no appeal. On January 27, 2016 I filed a PCR application. App. 46. Almost a year later, on January 9, 2017, the Greenville County Clerk of Court ~~me~~ sent me a letter telling me that I had not yet been appointed an attorney. App. 67. On April 25, 2017, R. Mills Ariail, Jr filed a letter handwritten by me which Ariail described as raising "issues ~~to~~ I would like for him to bring before the Court." App. 70-72. On June 28, 2017, the Honorable Daniel Dewitt Hall held a hearing on my PCR application. App. 73. Mr. Ariail represented me and DeShawn Mitchell represented the State. App. 73. Judge Hall denied my application from the bench. App. 98, 11. 1-6. On March 2, 2018, Judge Hall entered a written order denying my application. App. 101. This petition for certiorari follows.

Standard of Review

The standard of review in PCR cases depends on the specific issue before the court. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). The court defers to a PCR court's finding of fact and will uphold them if there is evidence in the record to support them. Id. The court reviews questions of law without deference to trial courts. Id. See also Smalls v. State, 422 S.C. ~~174~~ 174, 810 S.E.2d 836, 839-40 (2018).

Argument

This Court should use its discretion to find that my case is the rare case where, in the interests of justice, a procedural default may be excused, to remand my case ~~then~~ to the PCR court for a determination of whether plea counsel provided ineffective assistance of counsel, violating my rights under the Sixth Amendment, when he failed to object to my fifty-five (55) year de facto life sentence under the Eighth Amendment because I was a juvenile at the time of the time of the offense; and PCR counsel also failed to recognize and raise this claim to the PCR court.

Summary

I, Conrad Antonio Allen ("I") seek mercy from this Court. My crimes were committed when I was a juvenile. I am serving a fifty-five (55) year sentence. The Department of Corrections' lists my release date as November 18, 2071. Miller v. Alabama, 567 U.S. 460 (2012) and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), were decided before I was even indicted, yet neither my attorney at the guilty plea nor my attorney at PCR recognized that I had a substantial constitutional claim that my de facto life sentence violates the Eighth Amendment. My Eighth claim is now procedurally defaulted in State court. See Mangal v. State, 421 S.C. 85, 805, S.E.2d 568 (2017). Mangal recognized that in rare cases where the interests of justice require it, this Court will excuse procedural default and remand cases ~~to~~ for further consideration. Id. at 99-100, 805 S.E.2d at 575-76. I submit my case warrants the extraordinary exercise of this Court's discretion to grant a remand so that I may have my first "bite at the apple" on my Substantial Eighth Amendment claim.

My Eighth Amendment Claim

I ~~my~~ claim that my fifty-five year sentence violates the Eighth Amendment has now been recognized as valid by multiple state and federal courts. The substance of my Eighth Amendment claim arises from a series of cases from the United States Supreme Court dealing with juvenile sentencing that began in 2005 (when I was 8 years old), with Roper v. Simmons, 543 U.S. 551 (2005). Roper ~~had~~ held that the Eighth Amendment prohibits capital punishment for juveniles. In 2010, when I was 13 years old, the Supreme Court decided Graham v. Florida, 560 U.S. 48 (2010), which held that the Eighth Amendment forbids life without parole sentences for juveniles who did not commit homicide and that juvenile nonhomicide offenders must have a meaningful opportunity for release. In 2012, when I was 15 years old, the Supreme Court decided Miller v. Alabama, 567 U.S. 460 (2012), which held that mandatory life without parole sentences for juveniles violated the Eighth Amendment. In Miller, the court also required ~~sentencers~~ sentencers to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison before imposing a penalty of life in prison without parole. Miller, 567 U.S. at 480. When I was 17 years old, this court decided Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (Nov. 12, 2014). The Aiken court determined that Miller applied retroactively. Aiken at 540, 765 S.E.2d at 575. Majority reasoned that "Miller" is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution." Id. at 543, 765 S.E.2d at 576-77. The court stated the factors that the sentencing court must consider. Id. at 577. The requisite factors include:

(1) the chronological age of the offender and ~~the~~ ~~hallmark~~ the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence; (2) the family and home environment that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial peer pressures may have affected me; (4) the incompetencies associated with youth - for example, the offender's inability to deal with police officers, ~~prosecutors~~ or prosecutors (including on a plea agreement) or the offender's incapacity to assist my own attorneys; (5) the possibility of rehabilitation. Id. (citing Miller).

While the Court did not specifically require that the sentencing hearing mirror the penalty phase of a capital case, it stated that "the type of mitigation evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above." Id. at 544-45, 765 S.E.2d at 577. Relying on Roper, Graham, and Miller, multiple states and federal courts have recognized that there is no functional difference between a term-of-years sentence that means the juvenile will die in ~~pr~~ prison and a life without parole sentence. See, e.g. United States v. Grant, 887 F.3d 131 (3rd Cir. 2018); State ex rel. Carr v. Wallace, 527 S.W.3d 55 (Mo. 2017); State v. Zuber, 152 A.3d 197 (N.J. 2017); People v. Reyes, 63 N.E.3d 884 (Ill. 2016); State ex rel. Morgan v. State, 217 So.3d 266 (La. 2016); State v. Riley, 110 A.3d 1205 (Conn. 2015); United States v. Garcia, 754 F.3d 460, 474 (7th Cir. 2014); United States v. Pileggi, 703 F.3d 678 (4th Cir. 2013)

State v. Null, 836 N.W. 2d 41 (~~7th Cir.~~ Iowa 2013);
People v. Caballero, 282 P. 3d 291, 295 (Cal. 2012)
People v. Mendez, 114 Cal. Rptr. 3d 870 (Ct. App. 2010)
But see, e.g., State v. Kasic, 265 P. 3d 410 (Ariz. Ct.
App. 2011). ~~Zuber, 152 A. 3d at~~ In Zuber, the New Jersey
Supreme Court determined that an effective sentence
of fifty-five (55) years - the same sentence as mines -
was a de facto life sentence and violated the Eighth
Amendment. Zuber, 152 A. 3d at 201-02. Many of these
cases were decided before my PCR hearing in 2017.
App. 73

The Failure of my Attorney to Raise my Eighth Amendment Claim

At my sentencing hearing, the solicitor asked for a lengthy sentence because the term "hit a lick" drove him "up the wall." App. 42, 1. 21 - 43, 1. 2. He told Judge Gravely, "There's something that needs to be done in our society where we deter future instances of hitting a lick. I think a lengthy sentence will send a message." ~~App. 43, 1. 13 - 14~~ After App. 43, 1. 2 - 5. Plea counsel Brown told the court of my originally discussed a forty-year sentence with the solicitor, but he "would argue for something much less - but it was never a solid recommendation." App. 43, 1. 13 - 18. After the plea judge sentenced me to a total of fifty-five years, the solicitor confirmed the judge intended consecutive sentences and plea counsel said nothing. App. 44, 1. 2 - 25. At the hearing's outset, plea counsel did ask for a mental health evaluation based on "some mental issue I have." App. 5, 1. 3 - 8. Plea counsel told the court that he had spoken with my family members "this past weekend" and learned that I had been treated for mental health problems. App. 5, 1. 10 - 17. Finally, my plea counsel told the court, that he did find out this morning that as he relates to me that I was on a number of medications, psychotropics that include, but not limited to Seroquel, Prozac, and he said that I was also taking depression medication. App. 5, 1. 18 - 25. Plea counsel presented no ~~testimony, affidavits, or medical records~~ testimony, affidavits, or medical records and Judge Gravely denied the request for an evaluation. App. 4, 1. 16 - 8, 1. 2. Plea counsel spoke on my behalf and asked for leniency, but again presented no doctors or family members to offer any information to the court. App. 33, 1. 1 - 40, 1. 13.

In my PCR application, I wrote, "My allegation is it wasn't justifiable to sentence me to 55 years because Murder is 30 years and a weapon a weapon poss. is 5 to 15 that they over sentence me and I'm trying to give some of this time back." App. 47. In an attachment to the PCR application, I couches my claim about the length of my sentence as that I was misled me about the length of the sentence I was going to receive. App. 54-59. I do not mention the Eighth Amendment. App. 54-59. A year passed before I was appointed a PCR lawyer. App. 67. On April 7, 2017, my attorney, Mills Ariail, filed handwritten claim from me along with Ariail's own typewritten cover letter. App. 70-72. Among the handwritten claims, I wrote, "contend that my sentence of 55 years. Constitutes Cruel and Unusual Punish." App. 71. At the PCR hearing, Ariail made no opening statement before putting me on the stand. App. 76, 11. 3-15. Ariail asked me questions about plea counsel's preparation, how many times he saw plea counsel, and the medication I was taking. App. 76, 1. 16-79, 1. 10. Ariail asked me if I had been diagnosed with any mental health disorders. App. 79, 11. 11-12. Ariail responded, "Okay. You're Schizophrenic?" App. 79, 1. 14. I said, "Yeah. A little bit." App. 79, 1. 15. When he addressed the topic of my sentence, Ariail asked, "Now, as a part of that, I said that there was some issue I had in regards to the sentence I received, correct?" App. 81, 11. 10-16. Confirming that I received a fifty-five year sentence, Ariail then conducted the following examination of ~~me~~ me his client:

Q. Okay. Now, tell me, understanding the sentence you received
Me. You said - can you repeat that?

Q. Well, basically, what, I'm asking is I think you got a total of
55 years - actually, 55 and there was a concurrent five years
for the possession of a weapon, another five years for
conspiracy. I think you told me that there was an issue you
had with receiving 40 years for the murder charge.

Me: Due to - yeah. Because Mr. Brown never told me the minimum
of murder charge. He didn't tell me I could have got 30 years for
murder, so I didn't know I could get 30 years for the murder
charge. So -

Q. What did you think you could get for the murder charge?

Me: A lot of time. That's all I understood at the time. But to - I
really just went to law library and really just started
studying, and then I found out the cases and stuff like that.

Q. Right. But you understand you could have gotten life for the
murder charge?

Me. Yeah. 30 to life.

Q. Okay. Well, you got 40, and you're saying he didn't explain to
you the minimum and maximums of those charges?

Me. Yes, sir.

Q. Okay. And you understand you got 40 and didn't get life.

Me: Right.

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LEGAL MAIL

Q. Okay. So what are you saying he did wrong in regards to that?

App. 81, 1.17-82, 1.22 (emphasis added). When I then explained how I thought he could only get thirty years or a life sentence, but nothing in between. App. 82, 1.23-83, 1.6. At no point in the PCR hearing did Ariail mention the Eighth Amendment, juvenile sentencing, or any of the already existing jurisprudence indicating my sentence is unconstitutional. Judge Hall denied my PCR application from the bench. App. 99, 11.1-5. Judge Hall's written order addresses the argument that my sentence "was too harsh," but does not mention the Eighth Amendment as applied to juvenile. App. 105.

This Court Should Excuse the Procedural Default and Remand my Case to the PCR Court

Because of the abysmal Performance of both my plea counsel and my PCR counsel, my claim that my de facto life sentence for a crime that I committed as a juvenile violates the Eighth Amendment is procedurally defaulted. Mangal at 92-93, 805 S.E.2d at 571-72. Mangal left open that a procedural default can be excused in "rare cases" and "situations where the interest of justice require PCR courts to be flexible with procedural requirements before PCR applicants (me) suffer procedural default on substantial claims." Id. at 96, 99-100, 805 S.E.2d at 573, 575-76. Citing Martinez v. Ryan, 566 U.S.1 (2012), this Court recognized "the tension between the right at stake in PCR proceedings and the application of traditional procedural requirements for the presentation and preservation of issues." Id. at 97, 805 S.E.2d at 574. While this court was discussing the excusal of procedural default before the PCR courts, the same reasoning applies to whether this Court should remand my Eighth Amendment claim and give the PCR court the chance to cure any procedural default. When determining whether to excuse Mangal's procedural default, this Court examined the merits of my claim and found them lacking. Id. at 100-01, 805 S.E.2d at 576. The Mangal Court noted that the substance of the claim was not presented at the PCR hearing and that it was likely that trial counsel had a valid strategy for eliciting the doctor's testimony that supposedly constituted improper bolstering. Id.

Here, no valid strategy could exist at either the plea or the PCR hearing for not raising my Eighth Amendment claim. I should have been able to present the sentencing court the relevant information about my individualized circumstances and have the judge consider the Aiken factors. The record at the plea hearing and at the PCR hearing indicates that I, at a minimum, likely has mental health issues that warrant full investigation and consideration by a sentencing judge. But no record has been made. The lack of such a record at the plea and at the PCR hearing in ~~my~~ my case speaks for itself. This Court should excuse my procedural default and remand ~~the case to~~ my case to the PCR court. With a proper record, the PCR court could determine whether I am entitled to an individualized sentencing under Aiken. This Court should exercise its ability to remand extraordinary cases to allow me to have my one bite at the apple.

CONCLUSION

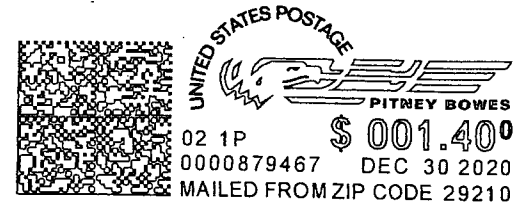
For the foregoing reasons, this Court should remand petitioner's (me) case to the PER court so that I may ~~be~~ raise my Sixth Amendment and Eighth Amendment claims.

Conrad Allen
Conrad Allen

This 21st of December, 2020

CC: copy

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