STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
The Honorable Edward W. Miller, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals

Opinion No. 5820 (S.C.Ct.App. filed May 12, 2021)
Court of Appeals Appellate Case No. 2018-001465

THE STATE,

PETITIONER,

v.

ERIC DALE MORGAN,

RESPONDENT.

STATE'S PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF REQUEST FOR REHEARING

Counsel for Petitioner, State of South Carolina, certifies, pursuant to Rule 242(d)(1), SCACR, that Petitioner filed a timely petition for rehearing in the Court of Appeals, (App. pp. 489-97), and that the Court of Appeals denied the petition by final ruling issued June 25, 2021, (App. p. 499).

QUESTION PRESENTED

Did the Court of Appeals err in reversing the circuit court's determination that Morgan was not entitled to another individual resentencing proceeding following *Aiken v. Byars* when the evidence before the circuit court demonstrated that Morgan had previously received two individualized sentencing proceedings – a detailed capital sentencing proceeding and another hearing to consider resentencing from 30 years to life – and the evidence before the circuit court confirmed that the hallmarks of youth and individual background were fully before the sentencer through both of these proceedings?

STATEMENT OF THE CASE

A. General Facts of the Crime:

Respondent, Eric Dale Morgan, murdered convenience store clerk, Jerry Smith, on May 3, 2000. Morgan shot Mr. Smith in the head, then took a bag from him that held over $7,000.00. At the time, Morgan was "16 days short of being 18 years old." (App. p. 53, lines 9-11). The murder was carefully planned with his sixteen-year-old co-defendant: "Appellant and his accomplice, who had been hired at the store a week before the incident, had originally planned to blow a hole in the back wall of the store with a pipe-bomb after it closed." *State v. Morgan*, 367 S.C. 615, 617, 626 S.E.2d 888, 888 (2006). Morgan "admitted shooting the victim once in the head as the victim was

closing the store and then stealing a bag the victim was carrying that contained more than $7000." *Id.*

B. General Procedural History:

The State noticed the case for capital proceedings. A jury trial began on February 28, 2004. On Saturday, March 6, 2004, the jury convicted Morgan of murder, armed robbery, and possession of an explosive device. An individualized sentencing proceeding began on Monday, March 8, 2004. On March 9, 2004, a Spartanburg County jury resolved that death was the appropriate sentence for Morgan. (App. p. 381, lines 15-25). The Honorable J. Derham Cole imposed a death sentence pursuant to the jury's determination. (App. p. 388, lines 2-22). Judge Cole also sentenced Morgan to 30 years for the armed robbery, and 15 years for the possession of an explosive device. Judge Cole ordered the armed robbery sentence be served consecutive to the 15 year sentence. (App. p. 388, line 23- p. 389, line 2).

On March 1, 2005, the Supreme Court of the United States decided *Roper v. Simmons*, 543 U.S. 551 (2005), holding that the Eighth and Fourteenth Amendments prohibit the execution of defendants who were under eighteen years old at the time of the crime. 543 U.S. at 578. Of note, the Court in *Roper* reasoned, "[t]he differences between juvenile and adult offenders *are too marked and well understood* to risk allowing a youthful person to receive the death penalty despite insufficient culpability." *Id.,* at 572-73 (emphasis added).

By Opinion published on February 21, 2006, this Court vacated Morgan's death sentence pursuant to *Roper*. Rejecting the State's argument that Morgan should be sentenced to life imprisonment given the jury had previously found statutory aggravating circumstances, the Court remanded to the circuit court for resentencing. The Court provided that "the trial court may receive additional evidence on the question of whether appellant is entitled to receive a sentence less than

life imprisonment," and directed that the circuit court "decide on a sentence that ranges from a mandatory imprisonment term of thirty years to life imprisonment," consistent with the non-capital sentencing range. *Morgan,* 367 S.C. at 618–19, 626 S.E.2d at 889. The Court left undisturbed the sentences for armed robbery and possession of an explosive device. *Id.,* at 617 n.1, 629 S.E.2d at 889 n.1.

Judge Cole heard the resentencing proceeding for the murder conviction at a hearing held March 17, 2006. The prior capital case record was incorporated, and that evidence considered. (App. p. 56, lines 6-14). At the conclusion of the hearing, Judge Cole sentenced Morgan to life imprisonment. (App. p. 24). Morgan did not appeal. Morgan received no relief in subsequent PCR proceedings. (App. p. 75, line 16 – p. 77, line 13; see also C/A 2007-cp-42-00543, Order of Dismissal filed October 23, 2008).

On July 12, 2016, Morgan sought resentencing again following *Miller v. Alabama*, 567 U.S. 460 (2012). This Court appointed the Honorable Edward W. Miller exclusive jurisdiction over Morgan's motion for resentencing. *Morgan v. State*, 417 S.C. 69, 70, 789 S.E.2d 41 (2016). The State moved to dismiss in these discrete circumstances given that Judge Cole not only considered all the evidence presented at the former individualized sentencing proceedings, he also considered, per this Court's direction, "a sentence that range[d]from a mandatory imprisonment term of thirty years to life imprisonment." *Morgan,* 367 S.C. at 618–19, 626 S.E.2d at 889. (See App. pp. 15-16). The State asserted that Morgan had already received the benefit of a resentencing hearing meeting the requirements of *Aiken* because in his post-*Roper* resentencing, he received the opportunity to present mitigating evidence on the factors of youth for a term less than life. (App. p. 16).

Judge Miller held a hearing on the motion on November 15, 2017. The State submitted all five volumes of the record from Morgan's death penalty trial. (App. p. 16; pp. 42-43; p. 59-60). Additionally, the State called Judge Cole to review the evidence before him at resentencing, and the areas of consideration in the court's analysis.[1] Judge Cole testified that he reviewed the evidence from the capital sentencing regarding Morgan's youth and background, and noted that the "entire record" of the prior individualized sentencing preceding was entered and considered. (App. pp. 57-60). Critically, Judge Cole had "heard the witnesses that testified" at the capital proceedings, and had the opportunity to observe Morgan during trial and resentencing. (App. p. 54, line 23 – p. 55, line 1; p. 58, lines 22-25). Judge Cole was also "certain" that "rehabilitation was brought up" by the defense at resentencing. (App. p. 59, lines 5-8). He testified that he considered the evidence presented of youth, background, mental functioning, Morgan's statements, and the circumstance of the crime. (App. p. 56, line 6 – p. 61, line 5). Judge Cole testified that he considered proportionality in resentencing. (App. p. 61, line 7- p, 62, line 2).

Morgan presented no evidence in the reconstruction effort. Rather, Morgan asserted that resentencing afforded by *Aiken* required "de novo resentencing," and that what Judge Cole had determined previously was irrelevant. (App. p. 47, lines 21 – p. 48, line 5). Morgan argued that "the important part of this case is that juvenile sentencing has evolved since" sentencing and resentencing. (App. p. 66, lines 21-24). He argued that the *Aiken* decision acknowledged

[1] Morgan objected based on Rule 606, SCRE; however, the State did not ask about the details of deliberations, nor did Judge Cole testify regarding the actual deliberative process. Rather, the State maintained questioning that would reconstruct the parameters of the resentencing hearing when the transcript was not available. *See State v. Ladson*, 373 S.C. 320, 323–24, 644 S.E.2d 271, 273 (Ct. App. 2007) ("South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal.") (citing *China v. Parrott,* 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968)). Judge Miller stated as much. (App. p. 48, lines 11-15, "Judge Cole's testimony would be directed at a reconstruction of the record … [a]nd we will keep it confined to those parameters.").

"constitutional dimension that has to be considered when … determining whether a life without parole sentence was appropriate for a juvenile offender." (App. p. 67, lines 10-16). Morgan reasoned that *Aiken* and *Miller* must be strictly applied as to the factors recognized therein and that could not have happened in resentencing as those cases did not yet exist at the time of resentencing. (App. p. 68). He argued that all cases with mandatory or discretionary life sentences for juveniles prior to *Aiken* "had a constitutional defect because they had the failure to examine the youth of the offender through the lens that was mandated by *Miller.*" (App. p. 69, lines 7-10). Morgan maintained that it was immaterial if the base factors were considered as "this new constitutional jurisprudence that says it recognizes the importance of youth in a way that it was not recognized prior to 2012." (App. p. 70, lines 7-10). When asked what other evidence should be presented and considered, Morgan's counsel responded:

> It just would be a different case, a different investigation, a different presentation by the defense attorneys and different considerations by the sentencer. … we have not gotten to the stage where we've investigated this case … everything's been pending this Motion to Dismiss hearing."

(App. p. 72, line 24 – p. 73, line 12).

Morgan's counsel further noted that in other hearings, "[t]here has been some expert testimony about how youth impacted the crime. And any new evidence that has come to light in the new investigation would be presented at that hearing." (App. p. 74, lines 13-18). In follow-up, Judge Miller asked what type of new evidence, and questioned whether that would be Morgan's current prison records. Morgan's counsel responded, "Mainly, yes, unless there was something that the original attorneys didn't … uncover in their original investigation." (App. p. 74, line 24 – p. 75, line 3). Judge Miller asked if that meant "going back and re-plowing the whole field," and counsel confirmed that was the case. (App. p. 75, lines 4-15). Though recognizing that upset to finality, counsel for Morgan asserted, "I don't know how to get around [that] the Supreme Court

has basically invalidated all of these juvenile sentences and said that there needs to be a new hearing." (App. p. 75, line 23 – p. 76, line 1). Judge Miller summarized that Morgan was requesting "to go back and examine" what counsel did and what PCR counsel had already examined, "but the only new material likely to be presented would just be his institutional record." (App. p. 77, lines 17-23). Judge Miller noted that Morgan "had the benefit of a lot of resources in his defense," questioned "how much more development this case needs," and noted "there are parties on all sides" noting a distinct concern, as expressed by the Legislature, that the victim's family also had established rights. (App. p. 78, lines 10-18).

The Solicitor added that the Seventh Circuit has received several orders regarding resentencing and each had been handled different according to the precise facts of the case and circumstances of the defendant. (App. p. 78, line 21 – p. 79, line 3). The Solicitor argued that if treating this one as an individual case on its individual facts, as one should, leads to the conclusion that dismissal was appropriate as the record showed the court afforded Morgan the type of detailed consideration secured by *Aiken* through the prior resentencing proceeding. (App. p. 79, lines 4-19).

Judge Miller took the matter under advisement. By written order filed March 5, 2018, Judge Miller granted the State's motion to dismiss finding that the facts contemplated in *Miller* and *Aiken* "were considered" and to hold another resentencing proceeding would be inappropriate. (App. p. 4).

The Court of Appeals, though it agreed that "the record contains evidence that Judge Cole considered Morgan's youth," nonetheless found relief was warranted. (App. p. 486). First, the court broadly reasoned that "Morgan falls within the class entitled to relief under *Aiken*" and since the resentencing predated *Aiken*, "it was not possible for the court in 2006 to *fully* consider the

factors identified in *Miller* and *Aiken.*" (App. p. 486) (emphasis added). Second, the court found "there is no getting around the fact that *Aiken* added new things for the sentencing court to consider," and the "overlap" with the evidence from the capital trial was not sufficient when "*Aiken* put extra weight on the opposite side of the scale from LWOP…." (App. p. 486). Finally, the court considered the arguments in the *Aiken* dissent which were rejected. The *Aiken* dissent discussed a non-capital case that showed a pre-*Aiken* consideration of youth. (App. p. 487-88). The Court of Appeals reasoned that the *Aiken* majority rejected that pre-*Aiken* evaluation of the evidence at sentencing was sufficient, thus, that resolution was binding in this circumstance. (App. pp. 487-88).

In the petition for rehearing, the State submitted the Court of the Appeals misapprehended the differences in a capital case returned for resentencing specifically after *Roper* and also the limits of the constitutional guarantee secured by *Miller* and *Aiken*, especially in light of the guidance in the Supreme Court's *Jones v. Mississippi* opinion. (App. pp. 489-97). As noted above, the Court of Appeals denied the State's petition. (App. p. 499).

This petition follows.

STANDARD OF REVIEW

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242 (b), SCACR. General reasons for granting a petition include to review a Court of Appeals decision that: (1) reflects a novel question of law; (2) included a dissent; (3) conflicts with this Court's precedent; (4) addressed a substantial constitutional right; or (5) decided a matter of federal law in a way that conflicts with federal precedent. *Id.* The foregoing list is not exclusive, and this Court may exercise its discretion in the absence of these facts.

"When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments, the appellate court's standard of review extends only to the correction of errors of law." *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019). Though this Court is "duty-bound to enforce the Eighth Amendment consistent with the Supreme Court's directives," such "duty to follow binding precedent is fixed upon case-specific holdings rather than general expressions in an opinion that exceed the scope of any particular holding." *State v. Slocumb*, 426 S.C. 297, 307, 827 S.E.2d 148, 153 (2019)

ARGUMENT

The Court of Appeals erred in reversing the circuit court's determination that Morgan was not entitled to another individual resentencing proceeding following *Aiken v. Byars* when the evidence before the circuit court demonstrated that Morgan had previously received two individualized sentencing proceedings – a detailed capital sentencing and another hearing to consider resentencing from 30 years to life – and the evidence before the circuit court confirmed that the hallmarks of youth and individual background were appropriately considered.

Reasons to Grant the Petition

This Court's review is warranted for three reasons: 1) the Court of Appeals' resolution is inconsistent with this Court's precedent and federal precedent, 2) the resolution needlessly upsets finality, and 3) the resolution by the Court of Appeals introduces further uncertainty as to required evidence and findings for sentencing juveniles in this jurisdiction. In essence, the Court of Appeals misapplied *Aiken v. Byars* and its cornerstone, *Miller v. Alabama,* resulting in unwarranted additional litigation under the guise of constitutional infirmity correction. *Jones v. Mississippi,* 141 S.Ct. 1307 (2021) makes clear what *Montgomery v. Louisiana,* 577 U.S. 190 (2016) obscured: "*Miller* mandated 'only that a sentencer follow a certain process – considering an offender's youth and attendant characteristics – before imposing' a life-without-parole sentence." *Jones,* 141 S.Ct. at 1314. Morgan falls on the wrong side of *Jones.* The record shows Morgan received two

individualized sentencing proceedings where the hallmarks of youth and his background were thoroughly investigated, presented, and considered. He is entitled to no more. Forced resentencing serves no purpose other than to grant a windfall opportunity to undo Judge Cole's carefully considered sentence. It neither protects nor promotes constitutional soundness in sentencing. This Court should grant the State's petition, reverse the Court of Appeals, and affirm Judge Miller's well-reasoned decision finding Morgan already received that which *Miller* affords. In turn, this would not only allow the much needed finality to attach, it would also advise the bench and bar as to the discretionary parameters still afforded trial judges in these matters. Critically, if the capital proceedings here, as viewed specifically in resentencing, are not considered sufficient in investigation and presentation of youth and background, it is difficult to reason that any level of presentation would be sufficient. This leaves an uncertain and uncharted course for the lower courts since juveniles are still being prosecuted for heinous crimes and are still subject to sentences of life without the possibility of parole. And, the Court of Appeals' concept that a thumb is on the scale against life without parole infers a constitutional weight for which there simply is no guarantee. Again, this Court should grant the State's petition, reverse the Court of Appeals, reaffirm its direction in *Aiken* that capital-like sentencing procedures are still not required, nor are particular on-the-record findings necessary, and expressly reject a presumption or guarantee of any particular weight of evidence presented at sentencing.

Relevant Law

"[I]n *Miller v. Alabama*, the Supreme Court held that the Eighth Amendment forbade states from imposing on juveniles mandatory sentences of life without the possibility of parole for homicide offenses." *State v. Slocumb*, 426 S.C. 297, 305, 827 S.E.2d 148, 152 (2019) (citing *Miller,* at 489). In essence, *Miller* recognized that a sentence must "take into account how children

are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller,* at 480. It did not provide a procedure or framework. The Supreme Court, however, expressed that a defendant's family background, mental and emotional development, and the possibility of rehabilitation must be considered in assessing his culpability. *Id*.

In discussing the application of *Miller* in this jurisdiction, this Court recognized "*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." *Aiken v. Byars,* 410 S.C. 534, 543, 765 S.E.2d 572, 576–77 (2014); *see also id.,* at 543-44, 765 S.E.2d at 577 ("The absence of this level of inquiry into the characteristics of youth produced a facially unconstitutional sentence for these petitioners."). The majority extended applicability to discretionary life without parole sentences. *Id*. at 544, 765 S.E.2d at 577.[2] Like the Supreme Court, this Court similarly declined to adopt a required structure or necessary litany of findings. *Aiken*, 410 S.C. at 545 n.10, 765 S.E.2d at 578 n.10. However, this Court directed, following *Miller*, that certain factors be considered, such as the offender's age and other features of youth, family life, circumstances of the crime, understanding of the legal process, and possibility of rehabilitation. *Id*. at 544-45, 765 S.E.2d at 577-78. This Court eschewed the necessity of individualized sentencing mirroring capital proceeding, but observed that "the type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings." *Aiken*, 410 S.C. at 544-45, 765 S.E.2d at 577.

Since *Miller* and *Aiken*, the Supreme Court issued *Montgomery v. Louisiana*, which again

[2] There was no majority for finding an Eighth Amendment violation. Indeed, the concurrence found specifically that *Miller* did not extend non-mandatory sentences, and "that the majority exceeds the scope of current Eighth Amendment jurisprudence in ordering relief under *Miller,*" though the concurrence suggested that the extension could be accomplished by reliance on the state constitution. *Id.,* at 545-46, 765 S.E.2d at 578.

underscored that a sentencing court is not required to make specific findings to comply with *Miller.* 577 U.S. 190, 211 (2016). However, the Court reasoned that simply because "*Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole" as "*Miller* established that this punishment is disproportionate under the Eighth Amendment." 577 U.S. at 211.

Later though, in *Jones v. Mississippi*, 141 S. Ct. 1307, 1315–16 (2021), the Supreme Court further explained that no particular explanation is necessary:

> *First*, and most fundamentally, an on-the-record sentencing explanation is not necessary to ensure that a sentencer considers a defendant's youth. Jones's argument to the contrary rests on the assumption that meaningful daylight exists between (i) a sentencer's discretion to consider youth, and (ii) the sentencer's actual consideration of youth. But if the sentencer has discretion to consider the defendant's youth, the sentencer necessarily *will* consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth. Faced with a convicted murderer who was under 18 at the time of the offense and with defense arguments focused on the defendant's youth, it would be all but impossible for a sentencer to avoid considering that mitigating factor.

Id., at 1319.

The Supreme Court acknowledged that "*Miller* repeatedly described youth as a sentencing factor akin to a mitigating circumstance" and "in turn required a sentencing procedure similar to the procedure that this Court has required for the individualized consideration of mitigating circumstances in capital cases…." *Id.,* at 1315. In the Court's own words, "[t]o break it down further: *Miller* required a discretionary sentencing procedure." *Id.,* at 1317. The Court resolved that "because a discretionary sentencing procedure suffices to ensure individualized consideration of a defendant's youth, we should not now add still more procedural requirements." *Id.,* at 1321.

Discussion

Additional Resentencing Not Warranted in These Discrete Circumstances Because Morgan Already Received Appropriate Consideration; Additional Proceedings Would Constitute a Windfall to Which Morgan is Not Entitled

The circuit court did not err in granting the State's motion to dismiss because the relief secured by *Miller* and *Aiken* is the relief already afforded Morgan in his prior resentencing after reversal of his death sentence. Contrary to Morgan's position, his sentence is not unconstitutional – it was far from mandatory, and the sentencer, Judge Cole, was keenly aware of and considered youth, background, and the whole context for possibly sentencing to a term other than life. Indeed, this Court previously ensured a proper consideration of a sentence less than life imprisonment by specific direction in remanding the case for re-sentencing. *Morgan*, 367 S.C. at 619, 626 S.E.2d at 889.[3]

Further, and contrary to Morgan's position, *Miller* did *not* globally invalidate life without parole sentences.[4] In fact, as demonstrated above, the case law currently does not require certain fact-finding, nor a particular expression of reasoning. *Miller* recognized a life without parole sentence will generally be "disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution." *Montgomery*, 577 U.S. at

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[3] It is of no little note that this Court presciently "look[ed] to § 16-3-20(A) for guidance on how a person convicted of murder and who is not subject to the death penalty should be sentenced," and remanded for receipt of additional evidence expressly on whether the sentence should be less than life. *Id.,* at 618-19. The terms of the remand carved out a new path for juvenile sentencing that *Miller* later embraced and paved in constitutional significance, *i.e.,* individualized sentencing rather than mandatory life without parole, no discretion allowed.

[4] Interestingly, the Court in *Montgomery* set out that no resentencing needs to occur at all if the states allowed parole eligibility. *Id.,* at 212. This anticipates service of terms in excess of decades before ever considering "transient immaturity" or the opportunity for release. *Id.,* (citing Wyoming statute that provides "juvenile homicide offenders [are] eligible for parole after 25 years).

212. But it does no more.

Because the sentence was not automatically invalidated, it necessarily follows the sentence need not be disturbed. The State moved to dismiss in this particular case based on the record that demonstrated Judge Cole had already made the individualized determination later recognized in *Miller* as necessary to avoid an unconstitutional sentence. Yet, Judge Miller did not dismiss based solely on the mere fact of a prior resentencing. Rather, Judge Miller held a hearing and carefully considered the *extent* of the prior presentations, and, specifically, whether the presentation and consideration of facts and circumstances at resentencing satisfied the concerns expressed in the later *Miller* line of cases:

> On November 15, 2007, this Court conducted a hearing on the State's Motion to Dismiss. The State called the Honorable J. Derham Cole as a witness. Judge Cole testified that at the March 17, 2006 resentencing hearing he relied on the entire trial record as well as his independent memory of Morgan. He testified that he considered Morgan's youth at the time of the murder and specifically took into account each of the five *Aiken v. Byars* factors. The State specifically asked him if he considered the age of the defendant, premeditation of the crime, the defendant's thought process given his age, the defendant's immaturity, the way the defendant interacted with his peers, the circumstance of the crime, the defendant's participation in the crime, the way the defendant interacted with police officers and his own attorneys, and the possibility of rehabilitation. Judge Cole testified he considered each of the above factors in reaching to his decision to resentence Morgan to life without parole.

(App. p. 3).

The record supports Judge Miller's factual findings. Judge Cole testified that he reviewed the capital sentencing proceedings, and Morgan's age, details of his home environment, history in school, the evidence of premeditation and planning. Without doubt, youth was in sharp focus in the capital proceeding – a wealth of evidence and argument had been presented touching not just on age, but on background, upbringing, supports, risks, and a bevy of other factors that accompany individualized capital sentencing. Judge Cole confirmed that the capital proceeding evidence –

which he heard as the judge assigned the capital case – was reviewed and considered for resentencing. This is critical as it is, after all, the process of individualized sentencing that is protected; a process specifically derived from capital sentencing protections. And here, youth, background, and developmental history was *the* focus in the capital proceedings.[5] The defense presented evidence related to Morgan's youth, including, specifically, a background review and assessment by an expert in social work – one with experience working with "emotionally and behaviorally disturbed children," with an emphasis on "child welfare and working with families and children," and "child maltreatment" – who presented a "psychosocial assessment" which attempted to explain "how somebody could get in the current situation." (See App. pp. 226-43, testimony of Annette Harriston Boettee, gave testimony on her psychosocial assessment created from extensive interviews and record review regarding Morgan's background and development – testimony meant to be sufficient to meet the "special protections" afforded capital defendants at sentencing). Further, defense counsel argued youth and immaturity to avoid a death sentence. (See, for example, R. p. 346 ("a 17-year-old universe that was limited by certain things that he had been exposed to in his past and the chances that he had coming up")).

In addition to Judge Cole's testimony, Judge Miller carefully reviewed the actual evidence from the capital proceeding, noting that the record showed "testimony from Morgan's family, friends, and a sociologist." (App. p. 3). Judge Miller noted "[t]hese witnesses described Morgan's

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[5] In the capital sentencing, the defense relied on three statutory mitigating circumstances:

> (1) that the defendant has no significant history or convictions for crimes involving the use of violence against any person;
> (2) the age or mentality of the defendant at the time of the crime; and,
> (3) that the defendant was below the age of 18 years at the time of the commission of the crime.

(App. p. 366).

childhood, home environment, and maturity among other aspects of his life." (App. p. 3). In particular, Judge Miller observed:

> The record showed that Morgan did not have a father figure, moved around as a child, had little ability to read, and was on drugs and alcohol from an early age. A social worker also testified as to Morgan's childhood, life, and his incarceration record. Her testimony as to the incarceration record illustrated his good behavior in prison. The testimony also described Morgan as being respectful to adults and a good friend.

(App. pp. 3-4).

While not articulated as such at the time, the record supports that Judge Cole considered factors that mirror those set out in *Miller* and *Aiken*. Judge Cole's consideration included facts related to appellant's age, education level, his family and home environment leading up to and at the time of the offense, the circumstances of the offense including the involvement of a co-defendant, his inexperience with the criminal justice system, and other hallmarks of youth and level of maturity developed throughout the duration of the trial and first sentencing proceeding, as well as that developed at the 2006 hearing. (See App. pp. 56-62). He testified that given the testimony, not just from the social worker, but also from mother, a teacher, friends, and others, that he had "a relatively complete picture" of Morgan. (App. p. 54, line 23 – p. 55, line 12). But Judge Cole also had before him the details of a cold-blooded robbery-turned-murder, the planning involved in the crime, and Morgan's initial hesitancy to take responsibility for it. (See App. pp. 53-54). Critically, the information presented to Judge Cole was more than the "vague plea for mercy" referenced in *Aiken*, and Judge Miller properly found the resentencing comported with *Aiken*. The Court of Appeals erred in finding otherwise.

In reversing the lower court, the Court of Appeals looked to *Miller* and *Aiken* for the law that recognized the importance of the facets of youth in sentencing, but failed to consider the intent of the relief secured: individualized sentencing. *Aiken*, 410 S.C. at 545, 765 S.E.2d at 578

("*Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored."). The court also overlooked that *Miller relied upon and looked to capital sentencing* as an example of how to conceptualize the consideration of youth:

> …*Miller* repeatedly described youth as a sentencing factor akin to a mitigating circumstance. And *Miller* in turn required a sentencing procedure similar to the procedure that this Court has required for the individualized consideration of mitigating circumstances in capital cases such as *Woodson v. North Carolina*, 428 U.S. 280, 303–305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion), *Lockett v. Ohio*, 438 U.S. 586, 597–609, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion), and *Eddings v. Oklahoma*, 455 U.S. 104, 113–115, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982).

Jones v. Mississippi, 141 S. Ct. 1307, 1315–16 (2021). Even while embracing *Miller*, this Court still expressly declined to order similarly exhaustive proceedings as those required in capital cases. *Id*, 410 S.C. at 544–45, 765 S.E.2d at 577. But that is what occurred at Morgan's resentencing. He essentially received that heightened individualized sentencing twice, the last time focusing on youth and a sentence of something less than life.

To be clear, though, individualized sentencing does not mean that individual findings of a certain type are necessary for the record either in capital settings or non-capital settings. Regarding juvenile sentencing, the Supreme Court has explained:

> …*Miller* followed the Court's many death penalty cases and required that a sentencer consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence. *Miller* did not require the sentencer to make a separate finding of permanent incorrigibility before imposing such a sentence.

Jones, 141 S. Ct. at 1316.

It follows, then, that if the defendant is afforded the process, there is no further requirement. Judge Miller did not err in finding the process sufficient. Thus, Morgan did not show a deprivation or violation of any constitutional right.

The Court of Appeals also erred in its interpretation of the "constitutional meaning" of mitigation based on youth. There is no constitutional guarantee for weight of the evidence – if it had been so, the Supreme Court would have found an exemption – taking the possibility of the life without parole sentence away – which it did not. The misunderstanding of the law led the Court of Appeals to an incorrect conclusion. While it is correct that *Miller* and *Aiken* did not exist at the time of the resentencing, the Court of Appeals' reasoning that "*Aiken* added new things for the sentencing court to consider," (see App. p. 486), is fundamentally flawed. The quality of youth has not changed. The acknowledgement of differences is not new. The Supreme Court, in banning capital punishment for juveniles in *2005*, spoke in terms of established factors: "The differences between juvenile and adult offenders *are too marked and well understood* to risk allowing a youthful person to receive the death penalty despite insufficient culpability." *Roper*, 543 U.S. at 572–73 (emphasis added). In *Miller*, the Court relied on the protections afforded the presentation and consideration of the " 'mitigating qualities of youth' " in its capital jurisprudence. *Miller*, 567 U.S. at 477 ("In meting out the death penalty, the elision of all these differences would be strictly forbidden. And once again, *Graham* indicates that a similar rule should apply when a juvenile confronts a sentence of life (and death) in prison.").

Additionally, while Petitioner agrees with the Court of Appeals' observation that the majority in *Aiken* made reference to the "constitutional meaning" of the evidence, (see App. pp. 486-88), Petitioner disagrees with the sway afforded that phrasing. The *Aiken* majority was expressly placing the term in context of giving effect to *Miller*. Consequently, this, too, goes back to procedure and allowing a more expanded view of the hallmarks of youth, *i.e.,* individualized sentencing and discretion to the sentencer. Again, there is neither an exemption from the sentence,

nor a guaranteed weight to the evidence presented. The Court of Appeals misapprehended the protections and requirements of *Millller* and *Aiken*.

It is undeniable that youth and background were the focus of the capital sentencing mitigation presentation; it is undeniable that the prior resentencing was only ordered *because* of youth; and, it is undeniable that Judge Cole, with the evidence from the capital sentencing proceeding, carefully considered the mitigating weight of the defendant's youth, in context and not as a mere passing factor, in individualized sentencing. Morgan is entitled to no more. Indeed, when pressed, Morgan agreed that was little more to be presented if anything of relevance at all.[6] He is not entitled to simply "try again." Finality should attach.

Lastly, allowing this case to stand perpetuates uncertainty as to what is sufficient in this jurisdiction for individualized sentencing. If a presentation sufficient for capital proceedings, plus reconsideration of a term less than life is not adequate, it is unlikely that any other presentation would do. This Court's guidance in *Aiken* that capital-like proceedings are not required will have been diluted beyond repair. The Court should also clarify that there is no guaranteed weight to evidence presented. The Court should grant the petition to prevent the application of the erroneous decision to juvenile sentencing procedures in this jurisdiction.

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[6] Again, Morgan did not present any evidence of perceived limitations in the prior resentencing presentation or arguments to show in the reconstruction effort the insufficiency of the case investigated, presented and relied upon for a sentence less than life imprisonment. Instead, Morgan simply argued he was entitled to a new proceeding regardless of the quality and quantity of the presentation, or the considerations before the resentencing court, even if those considerations precisely mirrored the *Miller* factors.

CONCLUSION

For all the foregoing reasons, Petitioner, State of South Carolina, respectfully requests this Court grant the petition, vacate the Court of Appeals opinion, and affirm the lower court.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

July 26, 2021
Columbia, South Carolina.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Petition for Writ of Certiorari to South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Honorable Edward W. Miller, Circuit Court Judge

Opinion No. 5820 (S.C. Ct.App. Filed May 12, 2021)
Court of Appeals Appellate Case No. 2018-001468

Eric Dale Morgan.....Respondent,

v.

State of South Carolina.....Petitioner.

Appellate Case No. 2021-

CERTIFICATE OF SERVICE

I, Melody Brown, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Petition for Writ of Certiorari, Appendix, and Certificate of Service has been forwarded to Respondent Morgan's counsel, Lindsey S. Vann, Esquire and Hannah L. Freeman, Esquire via email today, July 26, 2021 to lindsey@justice360sc.org and hannah@justice360sc.org.

I further certify that all parties required by Rule to be served have been served.

This 26th day of July, 2021.

s/ Melody Brown

Melody J. Brown Senior Assistant
Deputy Attorney General