No. 514PA11-2 TWENTY-SIXTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA,	)	
	)	From Mecklenburg County
v.	)	No. COA15-684
	)	06 CRS 222499-500
HARRY SHAROD JAMES		

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BRIEF OF AMICI CURIAE JUVENILE LAW CENTER, CAMPAIGN FOR FAIR SENTENCING OF YOUTH, AND JUVENILE SENTENCING PROJECT IN SUPPORT OF DEFENDANT-APPELLEE HARRY SHAROD JAMES

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BRIEF OF AMICI CURIAE JUVENILE LAW CENTER, CAMPAIGN FOR FAIR SENTENCING OF YOUTH, AND JUVENILE SETENCING PROJECT IN SUPPORT OF DEFENDANT-APPELLEE HARRY SHAROD JAMES

****

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

INTEREST AND IDENTITY OF AMICI CURIAE

Juvenile Law Center, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

Juvenile Law Center has worked extensively on the issue of juvenile life without parole, serving as co-counsel for petitioner in the U.S. Supreme Court case *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), and filing amicus briefs in the U.S. Supreme Court in both *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). Juvenile Law Center has also participated as either lead counsel, co-counsel or *amicus curiae* in numerous juvenile life without parole cases throughout the nation, including in the Supreme Court of California, Arkansas Supreme Court, Colorado Supreme Court, Florida Supreme Court, Maryland Court of Appeals, Michigan Supreme Court, Supreme Court of Missouri, Ohio Supreme Court, Supreme Court of Pennsylvania, and Supreme Court of Virginia. Additionally, Juvenile Law Center has been a key player in coordinating the effort to obtain and train counsel for the more than 500 juvenile lifers awaiting resentencing in

Pennsylvania.

The **Campaign for the Fair Sentencing of Youth (CFSY)** is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement just alternatives to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth. Our vision is to help create a society that respects the dignity and human rights of all children through a justice system that operates with consideration of the child's age, provides youth with opportunities to return to community, and bars the imposition of life without parole for people under the age of eighteen. We are advocates, lawyers, religious groups, mental health experts, victims, law enforcement, doctors, teachers, families, and people directly impacted by this sentence, who believe that young people deserve the opportunity to give evidence of their remorse and rehabilitation. Founded in February 2009, the CFSY uses a multi-pronged approach, which includes coalition-building, public education, strategic advocacy and collaboration with impact litigators—on both state and national levels—to accomplish our goal.

Established in 2012, the **Juvenile Sentencing Project** is a project of the Legal Clinic at Quinnipiac University School of Law. The Juvenile Sentencing Project focuses on issues relating to long prison sentences imposed on children. The Juvenile Sentencing Project researches and analyzes responses by courts and legislatures nationwide to the U.S. Supreme Court's decisions in *Graham v. Florida*, *Miller v. Alabama*, and *Montgomery v. Louisiana*, and produces reports and memoranda for use by policymakers, courts, scholars, and advocates. Recognizing that children have

a great capacity to mature and change, the Juvenile Sentencing Project advocates for sentences for children that provide a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

ARGUMENT

I. *MILLER* REQUIRES AN INDIVIDUALIZED CONSIDERATION OF AGE AND ITS HALLMARK FEATURES TO ENSURE THAT DISCRETIONARY LIFE WITHOUT PAROLE SENTENCES ARE IMPOSED ONLY IN THE RAREST CIRCUMSTANCES

A. *Miller* And *Montgomery* Establish A Presumption Against Sentencing Juveniles To Life Without Parole

The Supreme Court advises that "given all we have said in *Roper, Graham,* and this decision about children's diminished culpability and heightened capacity for change, we think *appropriate occasions for sentencing juveniles to this harshest possible penalty* [life without parole] *will be* ***uncommon***." *Miller v. Alabama,* 567 U.S. 460, 132 S. Ct. 2455, 2469, 183 L.Ed.2d 407 (2012) (emphasis added). In *Montgomery v. Louisiana*, the Court explained that *Miller* announced a new substantive rule: *Miller* "did bar life without parole . . . for all but the rarest of juvenile offenders, *those whose crimes reflect permanent incorrigibility*." 577 U.S. __, 136 S. Ct. 718, 734, 193 L.Ed.2d 599 (2016) (emphasis added). "*Miller* drew a line between children whose crimes reflect transient immaturity and *those rare children whose crimes reflect irreparable corruption*," *id*. (emphasis added), noting that a life without parole sentence "could [only] be a proportionate sentence for the latter kind of juvenile offender." *Id*. *Graham* acknowledged that the salient characteristics of youth—the lack of maturity, evolving character, vulnerability and susceptibility to negative

influences and external pressure—would make it "difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L.Ed.2d 825 (2010) (quoting *Roper v. Simmons*, 543 U.S. 551, 573, 125 S. Ct. 1183, 161 L.Ed.2d 1 (2005)). The Court recognized that the vast majority of juvenile offenses reflect transient immaturity that is a result of adolescent behavioral and neurological development. *Id.* ("[N]one of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. Those features are evident in the same way, and to the same degree [no matter the crime]." *Miller*, 132 S. Ct. at 2465).

Recent guidance from the Supreme Court further demonstrates that the determination must weigh in favor of parole eligibility. Justice Sotomayor underscored that "youth is the dispositive consideration for 'all but the rarest of children.'" *Adams v. Alabama*, __ U.S. __, 136 S. Ct. 1796, 1800, 195 L.Ed.2d 251 (2016) (Sotomayor, J., concurring) (quoting *Montgomery*, 136 S. Ct. at 726); *Tatum v. Arizona*, 137 S. Ct. 11, 13, 196 L.Ed.2d 284 (2016) (Sotomayor, J., concurring).

Read together, *Miller, Montgomery*, and their progeny establish a presumption against juvenile life without parole that requires judges to presume that crimes committed by juveniles reflect their transient immaturity, and to ensure that, due to the inherent immaturity and reduced culpability of children, only the truly rare and uncommon juvenile whose crime reflects 'irreparable corruption' is sentenced to life

without parole. Indeed, after *Montgomery* was remanded, the Louisiana Supreme Court held that the resentencing authority was to "determine whether [Montgomery] was 'the rare juvenile offender whose crime reflects irreparable corruption,' or he will be eligible for parole." *State v. Montgomery*, 194 So.3d 606, 607 (La. 2016) (per curiam) (quoting *Miller*, 132 S. Ct. at 2469). *See* also *Miller*, 132 S. Ct. at 2464 (a juvenile's "traits are 'less fixed' and his actions are less likely to be 'evidence of irretrievabl[e] deprav[ity]'" (quoting Roper, 543 U.S. at 570)); *id.* at 2465 ("Deciding that a 'juvenile offender forever will be a danger to society' would require 'mak[ing] a judgment that [he] is incorrigible'—but 'incorrigibility is inconsistent with youth.'" (alterations in original) (quoting Graham, 560 U.S. at 72-73)). See also *Landrum v. State*, 192 So.3d 459, 466 (Fla. 2016) (life without parole sentences only for "the 'rare' juvenile offender whose crime reflects 'irreparable corruption' (quoting *Montgomery*, 136 S. Ct. at 734)).

B. A Pro Forma Checklist Assessment Of The Characteristics Of Youth Is Insufficient

Although holding a resentencing hearing so long after the conviction may be challenging and time-consuming, it "is a task that must be undertaken if we are to remain faithful to the devotion to individualized sentencing and to take into account, as *Miller* mandates, how children are different from adults." *Songster v. Beard*, 201 F. Supp. 3d 639, 641 (E.D. Pa. 2016), *appeal dismissed* (Oct. 26, 2016). *Miller* delineated specific factors that sentencers must examine before imposing a discretionary sentence of life without parole: (1) the juvenile's "chronological age" and related "immaturity, impetuosity, and failure to appreciate risks and consequences;" (2) the juvenile's "family and home environment that surrounds him;" (3) "the

circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;" (4) the "incompetencies associated with youth" in dealing with law enforcement and a criminal justice system designed for adults; and (5) "the possibility of rehabilitation." 132 S. Ct. at 2468. The *Miller* Court warned, "[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Id.* at 2469. Thus prior to imposing a juvenile life without parole sentence, the sentencer must "follow a certain process," which meaningfully considers youth, and how it impacts the juvenile's overall culpability. *Id.* at 2471. A mere recitation of the age of the individual or consideration in checklist fashion is insufficient. In her concurrence in *Tatum*, Justice Sotomayor emphasized that:

> It is clear after *Montgomery* that the Eighth Amendment requires more than mere consideration of a juvenile offender's age before the imposition of a sentence of life without parole. It requires that a sentencer decide whether the juvenile offender before it is a child 'whose crimes reflect transient immaturity' or is one of 'those rare children whose crimes reflect irreparable corruption' for whom a life without parole sentence may be appropriate."

137 S. Ct. at 13 (Sotomayor, J., concurring).[1] When "[t]here is no indication that, when the factfinders . . . considered petitioners' youth, they even asked the question *Miller* required them not only to answer, but to answer correctly: whether petitioners' crimes

[1] The Court noted that Justice Sotomayor's concurring opinion in *Tatum* "also applies to No. 15–8842, *Purcell* v. *Arizona*; No. 15– 8878, *Najar* v. *Arizona*; No. 15–9044, *Arias* v. *Arizona*; and No. 15– 9057, *DeShaw* v. *Arizona*." *Tatum*, 137 S. Ct. at 11 n.1.

reflected 'transient immaturity' or 'irreparable corruption,'" remand is required. *Adams*, 136 S. Ct. at 1800 (Sotomayor, J., concurring)(; *Tatum*, 137 S. Ct. at 13 (Sotomayor, J., concurring). Justice Sotomayor reasoned that remand was required because "none of the sentencing judges addressed the question *Miller* and *Montgomery* require a sentencer to ask: whether the petitioner was among the very 'rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.'" *Tatum*, 137 S. Ct. at 12 (Sotomayor, J., concurring) (citing *Montgomery*, 136 S. Ct. at 734).

1. *Miller* requires consideration of whether defendant's family and home environment diminished his culpability

Miller requires that a sentencer "tak[e] into account the family and home environment that surrounds [the juvenile]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional." 132 S. Ct. at 2468 ("'[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered' in assessing his culpability." *Id.* at 2467).

Children have greater vulnerability "'to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 132 S. Ct. at 2464 (alteration in original) (quoting *Roper*, 543 U.S. at 569). *See also id.* at 2468 ("All these circumstances go to [the juvenile's] culpability for the offense. . . . *And so too does [the juvenile's] family background.*") (emphasis added); *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S. Ct.

869, 71 L.Ed.2d 1 (1982) ("*there can be no doubt that evidence of a turbulent family history*, of beatings by a harsh father, and of severe emotional disturbance *is particularly relevant [mitigating evidence].*") (emphasis added).

Evidence of childhood trauma is a mitigating factor that diminishes a juvenile's culpability. *See, e.g.*, *Miller*, 132 S. Ct. at 2469. In the instant case, the resentencing judge acknowledged multiple times that Mr. James was the product of a broken home and that both his family life and home environment had been unstable. ("He had been enrolled in at least **24 different schools** by the time he was 16 years old. . . In the twenty-three months prior to his 16th birthday [Mr. James] had moved from one place to another **thirteen times.**" (emphasis added)). (R. at 109). The judge recounted the long history of violence that Mr. James had witnessed, as well as the physical and sexual abuse that Mr. James endured, yet did not meaningfully consider Mr. James' "background and mental and emotional development" as mitigating factors when assessing his culpability. *See Tatum*, 137 S. Ct. at 12 ("[The sentencing judge] then minimized the relevance of [defendant's] troubled childhood, concluding that 'this case sums up the result of defendant's family environment: he became a double-murderer at age 16. Nothing more need be said.'").

2. *Miller* requires consideration of whether peer pressure and/or duress were mitigating factors and whether defendant demonstrated sophisticated criminal behavior

A sentencing court must consider "the circumstances of the homicide offense, including the extent of [the juvenile's] participation in the conduct and the way familial and peer pressures may have affected him." *Miller,* 132 S. Ct. at 2468. As the

Court noted in *Roper:*

> [J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. . . . This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.

543 U.S. at 569 (internal citations omitted). Empirical studies in behavioral psychology and neuroscience continue to confirm that impulsive risk-taking is heightened under peer influence, a salient factor in risky behavior among adolescents, but less so among adults. *See, e.g.*, Laurence Steinberg et al., *Peers Increase Adolescent Risk Taking Even When the Probabilities of Negative Outcomes Are Known*, 50 DEVELOPMENTAL PSYCHOL. 1, 2 (2014); Christopher N. Cascio et al., *Buffering Social Influence: Neural Correlates of Response Inhibition Predict Driving Safety in the Presence of a Peer*, 27 J. COGNITIVE NEUROSCI. 83, 89 (2015); Nancy Rhodes et al., *Risky Driving Among Young Male Drivers: The Effects of Mood and Passengers*, TRANSP. RES. 65, 72-75 (2014); Anouk de Boer et al., *An Experimental Study of Risk Taking Behavior Among Adolescents: A Closer Look at Peer and Sex Influences*, J. EARLY ADOLESCENCE 1, 2 (2016).

Furthermore, "the presence of peers increases arousal, and increases sensitivity for social evaluation, a process specifically present in adolescents." Anouk de Boer, *supra*, at 11; *See, e.g.*, Leah Somerville, *The Teenage Brain: Sensitivity to Social Evaluation*, 22 CURRENT DIRECTIONS IN PSYCHOL. SCI. 121, 124 (2013); Leah Somerville et al., *The Medical Prefrontal Cortex and the Emergence of Self-Conscious Emotion In Adolescence*, 24 PSYCHOL. SCI. 1554, 1554 (2013). Indeed, in some

situations, desire for peer acceptance may lead adolescents to decide that it is actually riskier for them to *not* go along with their peers. *See also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 THE FUTURE OF CHILDREN 15, 23 (2008) ("In some high-crime neighborhoods, peer pressure to commit crimes is so powerful that only exceptional youths escape. As [other researchers] have explained, in such settings, resisting this pressure can result in loss of status, ostracism, and even vulnerability to physical assault."). While the judge found that Mr. James was an active participant in the crime, he failed to consider how the peer pressure exerted by Mr. James' co-defendant, who was five years his senior, affected Mr. James' decision-making.

Miller also finds that courts must consider a youth's incompetencies in dealing with a criminal justice system designed for adults. 132 S. Ct. at 2468. This includes the fact that a juvenile "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." *Id.*

3. *Miller* requires a determination that a juvenile has no potential for rehabilitation before imposing a life without parole sentence

Finally, *Miller* requires that courts consider "the possibility of rehabilitation" before imposing life without parole on a juvenile. 132 S. Ct. at 2468. Research shows that as youth develop, they become less likely to engage in antisocial activities, an attribute that can be dramatically enhanced with appropriate treatment.

"Contemporary psychologists universally view adolescence as a period of development distinct from either childhood or adulthood with unique and characteristic features." Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 31 (2008). Studies show that youthful criminal behavior can be distinguished from permanent personality traits. Youth are developmentally capable of change and research demonstrates that when given a chance, even youth with histories of violent crime can and do become productive and law-abiding citizens, even absent intervention. Brain imaging techniques show that areas of the brain associated with impulse control, judgment, and the rational integration of cognitive, social, and emotional information do not fully mature until early adulthood. Scott & Steinberg, *Rethinking Juvenile Justice, supra,* at 46-68. *See also* Laurence Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence.* (Boston: Houghton Mifflin Harcourt, 2014): 9-11.

Indeed, compelling evidence demonstrates that non-rehabilitative, punitive sanctions have negative effects on juveniles' normal development from childhood to adulthood. Studies have shown that punitive sanctions may actually promote reoffending rather than help rehabilitate the youth. Justice Policy Institute, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, (December 2014) at 21-22 *at* www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf.

The resentencing judge noted that the adolescent development expert "was unable to say with any certainty that based upon [Mr. James'] behavior that he would

or not reoffend[,]" and that "clinical professionals do not yet possess the ability to reliably distinguish between offenses that are the result of immature development and those that are a reflection of true sociopathy." (R. at 108). Despite that, the judge resentenced Mr. James to life without parole, seemingly finding what neither the expert witness nor other clinical professionals could: that there was no possibility that Mr. James could be rehabilitated and without finding, as required, that Mr. James was one of the rarest of children whose crime reflects "irreparable corruption." *See Miller*, 132 S. Ct. at 2469.

Rather, the judge improperly allowed the penological goal of incapacitation to override all other considerations and foreclosed Mr. James' opportunity to demonstrate, through growth and maturity, that he was fit to rejoin society. *See Graham*, 560 U.S. at 73. As the Court explained in *Graham*:

> Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. *Roper*, 543 U.S. at 570. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

560 U.S. at 68. Accordingly, the Court recognized that "juvenile offenders cannot with reliability be classified among the worst offenders." *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 569).

II. STATE SUPREME COURTS HAVE INTERPRETED *MILLER* TO REQUIRE CONSIDERATION OF YOUTH AS MITIGATING

State supreme courts have considered the constitutionality of life without parole sentences and their decisions turn on whether the trial court considered youth and its attendant characteristics as mitigating factors in a truly meaningful manner. *See Miller*, 132 S. Ct. at 2468.

The Ohio Supreme Court held that a pre-*Miller* discretionary life without parole sentence imposed on a juvenile homicide offender violated *Miller* because there was no evidence that the trial court treated the defendant's youth as a mitigating factor. *State v. Long*, 2014-Ohio-849, 8 N.E.3d 890, 898-99. Similarly, the South Carolina Supreme Court found that

> *Miller* does more than ban mandatory life sentencing schemes for juveniles; it establishes an *affirmative requirement that* ***courts*** fully explore the impact of the defendant's juvenility on the sentence rendered.

Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, 576-77 (2014) (emphasis added). The court concluded, "*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." *Id.* at 578 (emphasis added).

In *People v. Gutierrez*, the California Supreme Court vacated juvenile life without parole sentences under a discretionary sentencing scheme in which life without parole was the presumptive sentence. 58 Cal. 4th 1354, 324 P.3d 245, 270 (2014). The court held, "the trial court must consider all relevant evidence bearing on

the 'distinctive attributes of youth' discussed in *Miller* and how those attributes 'diminish the penological justifications for imposing the harshest sentences on juvenile offenders.'" *Id.* at 269 (citing *Miller*, 132 S. Ct. at 2465).

The Connecticut Supreme Court similarly held that "the dictates set forth in *Miller* may be violated even when the sentencing authority has discretion to impose a lesser sentence than life without parole if it fails to give due weight to evidence that *Miller* deemed constitutionally significant before determining that such a severe punishment is appropriate." *State v. Riley*, 315 Conn. 637, 110 A.3d 1205, 1213 (2015) ("[T]he trial court *must* consider the offender's 'chronological age and its hallmark features' as mitigating against such a severe sentence." *Id*. at 1216 (quoting *Miller*, 132 S. Ct. at 2468)).

The Georgia Supreme Court likewise held that the sentencer must determine that the defendant was irreparably corrupt or permanently incorrigible. The Court stressed that,

> by *uncommon, Miller* meant *exceptionally rare,* and thatdetermining whether a juvenile falls into that exclusive realm turns not on the sentencing court's consideration of his age and the qualities that accompany youth along with all of the other circumstances of the given case, but rather on a specific determination that he is *irreparably corrupt*. . . . The Supreme Court has now made it clear that LWOP sentences may be constitutionally imposed only on the worst-of-the-worst juvenile murderers, much like the Supreme Court has long directed that the death penalty may be imposed only on the worst-of-the-worst adult murderers.

Veal v. State, 298 Ga. 691, 702–03, 784 S.E.2d 403, 411-12 (2016). *See also Luna v. Stat*e, 2016 OK CR 27, 387 P.3d 956, 963 ("We find that *Miller* requires a sentencing

trial procedure conducted before the imposition of the sentence, with a judge or jury fully aware of the constitutional 'line between children whose crimes reflect transient immaturity and those *rare* children whose crimes reflect irreparable corruption.'"); *id* at 962 (LWOP sentence vacated when presented "no evidence pertinent to deciding whether [defendant's] crime reflected only transient immaturity or whether his crime reflected permanent incorrigibility and irreparable corruption" and "no evidence of important youth-related considerations").

III. CHILDREN ARE CATEGORICALLY LESS DESERVING OF THE HARSHEST PUNISHMENTS

A. Juvenile Life Without Parole Sentences Are Developmentally Inappropriate And Constitutionally Disproportionate

The Supreme Court has consistently recognized that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishments. *Miller*, 132 S. Ct. at 2464; *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569-70. *See also Montgomery*, 136 S. Ct. at 733. In *Graham*, the Supreme Court confirmed that, since *Roper*, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." 560 U.S. at 68. The Court's holding rested largely on the incongruity of imposing a final and irrevocable penalty that afforded no opportunity for release on an adolescent who had inherent developmental capacity to change and grow. *See id*. The Supreme Court's sentencing jurisprudence has made it definitively clear that "children are constitutionally different from adults for purposes of sentencing." *Miller,* 132 S. Ct. at 2464.

Graham and *Miller* both recognized that though youth does not absolve juveniles of responsibility for their actions, it lessens their culpability. ("A juvenile is not absolved of responsibility for his actions, but his transgression 'is not as morally reprehensible as that of an adult.'" *Graham*, 560 U.S. at 68 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S. Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion)*;* "We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" *Miller*, 132 S. Ct. at 2464-65). The Court has also recognized that the "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes," which renders life without parole sentences disproportionate when applied to anyone other than 'rare' and 'uncommon' juveniles. *See Miller*, 132 S. Ct. 2465.

B. State Legislative Reforms Reflect Emerging National Consensus That Juvenile Life Without Parole Is Constitutionally Impermissible

In the five years since *Miller* was decided, the number of states that ban life sentences for juveniles has nearly quadrupled, reflecting an astonishing rate of change and an emergent national view that all children, regardless of their offense, must have a meaningful opportunity for release. In 2012, only five states banned the imposition of life without parole sentences on juveniles.[2] Today nineteen states and

[2] Alaska, Colorado, Kansas, Kentucky, and Montana.

the District of Columbia ban juvenile life without parole sentences either through legislation or a judicial determination.[3] An additional four states—California, Florida, New York, and New Jersey—ban the practice in nearly all cases and three states—Maine, New Mexico, and Rhode Island—have never sentenced a juvenile to life without parole. The Campaign for the Fair Sentencing of Youth, *Righting Wrongs: The Five-Year Groundswell of State Bans on Life without Parole for Children*, at http://fairsentencingofyouth.org/wp-content/uploads/2016/09/Righting-Wrongs-.pdf.

The U.S. Supreme Court has "emphasized the importance of state legislative judgments in giving content to the Eighth Amendment ban on cruel and unusual punishment," *Moore v. Texas*, 581 U.S. __, 137 S. Ct. 1039, 1056, 197 L.Ed.2d 416 (2017) (Roberts, C.J., dissenting), and considers the rate of legislative change in assessing the constitutionality of a sentencing practice. Indeed, legislative enactment and state practice reflect "objective indicia" of society's evolving standards of decency. *Roper*, 543 U.S. at 563. The recent momentum banning juvenile life without parole underscores the constitutional impermissibility of sentencing juveniles to life in prison.

[3] *See* Appendix A for a complete list of states that categorically prohibit life without parole sentences for juveniles.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that this Court reverse the ruling of the court of appeals and remand for a new resentencing hearing.

Respectfully submitted, this the 17 day of May, 2017.

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Rule 33(b) statement: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it:

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APPENDIX A

Complete list of states that have legislatively or judicially prohibited life without parole sentences for juveniles.

ALASKA STAT. § 12.55.015(g) (1997)

ARK. CODE ANN. § 5-4-108 (2017)

COLO. REV. STAT. §§ 17-22.5-104(2)(d)(IV), 18-1.3-401(4)(b)(1)(2006)

CONN. GEN. STAT. § 54-125a(f) (2015)

DEL. CODE ANN. tit. 11, §§ 4209A, 4202A(d) (2013)

D.C. CODE § 22-2104(a) (2001)

HAW. REV. STAT. § 706-656 (2014)

State v. Sweet, 879 N.W. 2d 811 (Iowa 2016)

KAN. STAT. ANN. § 21-6618 (2010)

KY. REV. STAT. ANN. § 640.040(1) (1986)

Diatchenko v. Dist. Att'y for Suffolk Dist., 466 Mass. 655, 674, 1 N.E.3d 270 (2013)

MONT. CODE. ANN. § 46-18-222(1)

NEV. REV. STAT. § 176.025 (2015)

NORTH DAKOTA HB 1195 (2017)

S.D. CODIFIED LAWS § 22-6-1 (2016)

TEX. PENAL CODE ANN. § 12.31 (2013)

UTAH CODE ANN. § 76-3-209 (2016)

VT. Stat. Ann. tit. 13, § 7045 (2015)

State v. Bassett, No. 47251-1-II, 2017 WL 1469240 (Wash. Ct. App. Apr. 25, 2017)

W.VA. CODE § 61-11-23 (2014)

WYO. STAT. ANN. § 6-2-101(b) (2013).

CERTIFICATE OF SERVICE

I certify that today, a copy of the foregoing has been duly filed pursuant to Rule 26(a)(2) of the North Carolina Rules of Appellate Procedure. I further certify that I have served all counsel by transmitting a copy via e-mail to the following persons at the following e-mail addresses:

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