

IN THE
Supreme Court of the United States

CHRISTOPHER FRANK PITTMAN,
Petitioner,

v.

SOUTH CAROLINA,
Respondent.

**On Petition for a Writ of Certiorari to
South Carolina Supreme Court**

**BRIEF OF THE COUNCIL OF JUVENILE
CORRECTIONAL ADMINISTRATORS
AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONER**

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INTEREST OF THE AMICUS CURIAE¹

The Council of Juvenile Correctional Administrators (CJCA) represents the youth correctional CEOs in fifty states, Puerto Rico, Washington, D.C. and some major metropolitan counties. CJCA is a national non-profit organization, formed in 1994 to improve local juvenile correctional services, programs and practices so the youths within the systems succeed when they return to the community. Through the collaborative efforts of our members, CJCA has developed an expertise in designing and implementing the most effective practices for the treatment of juveniles within our care. Specifically, we have implemented proven protocols in our facilities such as multi-systemic therapy, functional family therapy, multi-dimensional treatment foster care and aggression-replacement training. CJCA has developed a growing body of evidence documenting what works to rehabilitate young offenders and the best practices in managing youth facilities.

Our nationally renowned reform initiative, the Performance-based Standards (PbS) project is a self-improvement and accountability system for Youth

¹ The parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the amicus curiae's intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

Correction and Detention Facilities. It is used in thirty states to better the quality of life for youths in custody and improve their outcome upon return to the community. Through PbS, CJCA sets national standards for the safety, education, health/mental health services, security, justice and order within facilities and gives agencies the tools to collect data, analyze the results to design improvements, implement change then measure effectiveness with subsequent data collections.

We as juvenile corrections administrators have the responsibility to work with youth who have been adjudicated as having offended and to return them to the community as more mature, law-abiding citizens. We also have the equally weighty responsibility to exercise considerable care in working with young persons who have been found to have committed violent offenses. We have developed significant expertise in the treatment and practices that work with young offenders who have been adjudicated to have committed all crimes, even violent crimes.

SUMMARY OF ARGUMENT

This case presents an extreme and unusual case – a twelve-year old boy who killed his grandparents – who was waived up to adult court, and given a thirty-year sentence with no possibility of parole. It appears that this was an uninformed and unfortunate decision. It was uninformed because of the absence of sufficient guidance as to the appropriateness of keeping young offenders such as Petitioner Pittman within the juvenile system. It was unfortunate because had this decision been fully

informed, it is highly unlikely the juvenile system would have expelled this young child to be tried as an adult, thereby resulting in a sentence that would allow no opportunity for parole for thirty years.

ARGUMENT

1. THIS COURT SHOULD GRANT CERT TO ENSURE THAT YOUNG OFFENDERS ARE NOT IMPROPERLY TRANSFERRED TO THE ADULT SYSTEM

- a. There is a lack of clarity in jurisdictions around the country about the appropriateness of keeping young offenders in the juvenile system

Even though it is still very rare for twelve-year-olds to be transferred to adult court, there are widely divergent practices in courtrooms around the country with regard to transferring juveniles to the adult system. Forty-five states and the District of Columbia have judicial waiver provisions, all of which vary with regard to the criteria – age, nature of offense, prior record or a combination - that render a juvenile eligible for transfer to adult court. Patrick Griffin, *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*, Special Project Bulletin, Office of Juvenile Justice and Delinquency Prevention, October 2003, at 2, 5-7.

There is variation amongst and within these states in the discretion allowed to the juvenile court judge in rendering his decision. While forty-four

states² and the District of Columbia have discretionary waiver provisions that do not *require* the transfer of eligible juveniles to adult court, fifteen of these states also have presumptive waiver provisions, where statutory criteria - either age, offense or prior history - triggers a rebuttable presumption of criminal court waiver. Patrick Griffin, *National Overviews. State Juvenile Justice Profiles: Which States Waive Juveniles to Criminal Court?*, National Center for Juvenile Justice, <http://www.ncjj.org/stateprofiles/overviews/transfer2.asp> (last visited Jan. 29, 2008). Though normally the burden is on the prosecutor to establish transfer, this presumption shifts the burden to the juvenile to make an adequate showing against transfer. *Id.* In five states, a juvenile facing transfer must satisfy this burden with "clear and convincing evidence."³

Generally, the level of proof required in transfer hearings varies significantly among the states. Twenty states explicitly require the judge to find probable cause that the youth committed the acts charged before the transfer process may continue. Daniel M. Vannella, Note: *Let the Jury Do the Waive: How Apprendi v. New Jersey Applies to Juvenile Transfer Proceedings*, 48 WM. & MARY L. REV. 723, 739 (2006). Seven states adopt a preponderance of the evidence, reasonableness or prima facie standard regarding whether or not the youth committed the offenses. *Id.* at 740. The District of Columbia and Maryland allows the court

² Connecticut is the only state with a waiver provision that only prescribes mandatory waiver. Griffin, *Trying and Sentencing Juveniles as Adults*, *supra* at 3.

³ See 705 Ill. Comp. Stat. Ann. § 405/5-805(2); Minn. Stat. Ann. § 260B.125, subdiv. 2(6); Nev. Rev. Stat. Ann. § 62B.390(3); R.I. Gen. Laws § 14-1-7.3; Utah Code Ann. § 78-3a-602(3)(d).

to assume that the juvenile committed the crime. D.C. Code § 16-2307(e-1); Md. Code. Ann., Cts & Jud. Proc. § 3-8A-06(d)(2). The provisions of the remaining states are silent as to what level of proof is required. Vannella, *supra* at 740.

With regard to the ultimate waiver determination, the same disparities among states exist. While seven states require a preponderance of the evidence showing as to the relevant factors, seven states require "clear and convincing evidence" with one state adopting a substantial evidence standard. See Patrick Griffin, *National Overview, State Juvenile Justice Profiles* (Table), http://www.ncjj.org/stateprofiles/overviews/transfer_state_table.asp (last visited Jan. 29, 2008). Six additional states require probable cause, reasonable grounds, or a similar test. *Id.* The remaining twenty-three states and the District of Columbia do not articulate any standard of proof for authorizing transfer. *Id.*

In the five states that do not have waiver provisions, and with regard to certain categories of young offenders in the other states, the legislature has taken the decision away from the juvenile court system entirely either through prosecutorial waiver or automatic transfer provisions - mandatory waiver where the court has no role other than to determine if the statutory requirements have been met, or statutory exclusion, where certain youth are excluded from the jurisdiction of the juvenile court. Patrick Griffin, *National Overviews. State Juvenile Justice Profiles: Which States Try Juveniles as Adults and Use Blended Sentences?*, National Center for Juvenile Justice
http://www.ncjj.org/stateprofiles/overviews/transfer_state_overview.asp (last visited Jan. 29, 2008).

Fifteen states have prosecutorial waiver provisions; fifteen have mandatory waiver provisions and twenty-nine have statutory exclusions.⁴ *Id.* Again there is significant variation regarding the age and offenses that trigger these provisions.⁵ *Id.*; Griffin, *Trying and Sentencing Juveniles as Adults*, *supra* at 7-8, 10.

The use of automatic transfer provisions as well as the increasingly broad scope of transfer eligibility in waiver provisions reflect both a lack of faith in the juvenile justice system's ability to rehabilitate young offenders and a misguided shift away from a rehabilitative to a more punitive posture with these youth. A recent study confirms that this perspective has also taken hold within the juvenile system in making transfer determinations. This study evaluated how juvenile court judges weighed the "Kent factors"⁶ in transfer decisions and

⁴ Twenty-five states, however, have reverse waiver provisions so that the *criminal court* – not experienced in assessing the best interests of children – can choose to send a youth back to the juvenile system. See Patrick Griffin, *National Overviews. State Juvenile Justice Profiles: Which States Have Reverse Waiver Mechanisms for Removing Cases from Criminal Court to Juvenile Court?*, National Center for Juvenile Justice, <http://www.ncjj.org/stateprofiles/overviews/transfer6.asp> (last visited Jan. 29, 2008).

⁵ A recent study of over 350 juvenile court judges found that 72% believed that there should be a return to individualized assessment of young offenders in the juvenile court. Dia N. Brannen et. al., *Transfer to Adult Court: A National Study of How Juvenile Court Judges Weigh Pertinent Kent Criteria*, 12 PSYCHOL. PUB. POL'Y & L. 332, 338, 346 (2006).

⁶ These factors are: 1) seriousness of the alleged offense; 2) manner in which the offense was committed – aggressive, violent, willful or premeditated; 3) whether the offense was against persons or property; 4) prospective merit of the complaint; 5) desirability of trying all of the accused – adults

found that amenability to treatment was not a significant predictor of their decision to transfer, while dangerousness and sophistication/maturity were significant predictors. Dia N. Brannen et. al., *Transfer to Adult Court: A National Study of How Juvenile Court Judges Weigh Pertinent Kent Criteria*, 12 PSYCHOL. PUB. POL'Y & L. 332, 347 (2006). This is particularly surprising given that the core tenet of the juvenile system – what distinguishes it from the adult system – is its belief in rehabilitation.

- b. By granting cert and ruling in favor of the Petitioner, this Court can establish some fundamental principles that would bring some consistency to these practices.

The mandate in *Kent* that waiver hearings measure up to "the essentials of due process and fair treatment", *Kent v. United States*, 383 U.S. 541, 561-62 (1966), has failed to provide sufficient guidance to the states. As a result, we are left with a process that sweeps far too many youth into the adult criminal system – those for whom punitive measures are unwarranted as well as those like Petitioner who, though the seriousness of their crime cannot be overstated, have great capacity to be rehabilitated. This overreaching of the adult system (or retreat of the juvenile justice system) comes at a time where many juvenile justice administrators and directors have taken significant steps to ensure that the

and juveniles – in one court; 6) sophistication and maturity of juvenile; 7) prior record and history of juvenile and 8) prospects for adequate protection of the public and likelihood of rehabilitation. *Kent v. United States*, 383 U.S. 541, 566-68, app.

juvenile justice system fulfills its purpose in treating and rehabilitating young offenders, including serious and violent offenders, *see infra* 2b.

Petitioner Pittman's transfer hearing – reported in a meager 47-page transcript – was the by-product of the confused and unguided transfer jurisprudence throughout this country. The juvenile court judge, although relying on the “Kent factors,” was ungoverned as to the standard of proof, or how Petitioner's young age should factor into the decision. *See* S.C. Code Ann. § 20-7-7605. South Carolina, like most states, offers no guidance as to how the factors governing this decision should be weighed. The state also offers no direction in determining the likelihood of reasonable rehabilitation.

While the juvenile court adopted a probable cause standard to find that Pittman committed the crime, it identified no standard by which it reasoned that “it was not likely that Defendant [Pittman] could be rehabilitated.” Appendix 2 – Family Court Transfer Order at 2-3. In addition, the judge made no reference to Petitioner's age other than a factual recitation that Petitioner was twelve at the time of the offense. *Id.* at 1. Nor do the Kent factors make explicit reference to consideration of a young offender's age; only that child's sophistication and maturity “as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.” *Kent*, 383 U.S. at 567. The juvenile court neither asked for nor considered any proposal for rehabilitation before determining that success was unlikely with this petitioner.

The Court should take this opportunity to reestablish the primacy of the rehabilitative regime in the juvenile justice system. This is consistent with the Court's recognition of the fundamental

differences between children and adults. *See Roper v. Simmons*, 543 U.S. 551, 569 (2005). To that end, the capacity for rehabilitation of a child *must* be given substantial weight at this "critically important" proceeding, *Kent*, 383 U.S. at 560. This means consideration of a child's age, his behavioral and cognitive development as well as his level of sophistication and maturity. This case presents an important opportunity for the Court to consider whether South Carolina's transfer scheme and the sentencing laws that apply when a child is transferred to adult criminal court provide sufficient consideration of an offender's youth and his potential for rehabilitation.

2. THE REMOVAL OF YOUNG OFFENDERS FROM THE JUVENILE JUSTICE SYSTEM VIOLATES PRINCIPLES OF EFFECTIVE JUVENILE CORRECTIONAL MANAGEMENT

- a. Adolescents differ from adults and should be judged and treated differently

For more than a century, our society has been committed to treating young people who violated the law in a fundamentally different manner from adults. The reasons are many.

Adolescents simply do not possess the cognitive ability and judgment of adults. Reasoning skills and logic are immature in adolescents. *See Elizabeth Cauffman & Laurence Steinberg, (Im)maturity and Judgment in Adolescence: Why Adolescents May be Less Culpable than Adults*, 18 BEHAV. SCI. & L. 741, 756-57 (2000). These

developmental limitations often result in poor and impetuous decision-making. See Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCH. 625, 629 (2005). Studies have confirmed that the brain of an adolescent is not fully developed, particularly in the area of the prefrontal cortex, which is critical to impulse control and the exercise of good judgment. See Josh Day et al., *Structure and Function of the Adolescent Brain: Findings from Neuroimaging Studies*, 175 ADOLESCENT PSYCH., Jan. 1, 2005, at 1-34.⁷ This Court has acknowledged that children lack maturity and have an “underdeveloped sense of responsibility.” *Johnson v. Texas*, 509 U.S. 350, 367 (1993).

During the period of adolescence, because of these developmental deficiencies, recklessness and most criminal behavior is at its peak.⁸ See Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 339 (1992); Partrick H. Tolan & Deborah Gorman-Smith, *Development of Serious and Violent Offending Careers*, in SERIOUS AND VIOLENT JUVENILES OFFENDERS: RISK FACTORS AND

⁷ See also, B.J. Casey et al., *Structural and Functional Brain Development and Its Relation to Cognitive Development*, 54 BIOLOGICAL PSYCH. 241, 243 (2000); Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 NATURE NEUROSCIENCE 859, 860-61 (1999); Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Logitudinal MRI Study*, 2 NATURE NEUROSCIENCE 861, 861 (1999).

⁸ The exception to this is drug sales, which has been found to peak in early adulthood. Tolan & Gorman, *supra* at 73.

SUCCESSFUL INTERVENTIONS 73 (Rolf Loeber and David Farrington, eds. 1998). "[M]ost participants in adolescent delinquency desist from involvement by early adulthood, even those most involved during adolescence." Tolan & Gorman Smith, *supra* at 73.

In the context of a youth four years older than petitioner, this Court has observed that "the character of a juvenile is not as well-formed as that of an adult." *Roper v. Simmons*, 543 U.S. 551, 569 (2005). The American Psychiatric Association holds the position that "[a]lthough mental health professionals are able to characterize the functional and behavioral features of an individual adolescent, their ability to reliably predict future character formation, dangerousness, or amenability to rehabilitation is inherently limited." Brief for the American Psychological Ass'n, & Missouri Psychological Ass'n as Amici Curiae Supporting Respondent at 19, *Roper v. Simmons*, 543 U.S. 551 (2005). Mental health professionals currently are not able to reliably evaluate identity formation on an individualized basis so as to separate savvy young career criminals from ordinary adolescents. Elizabeth S. Scott, *Keynote Address: Adolescence and the Regulation of Youth Crime, Symposium: Law and Adolescence: The Legal Status, Rights and Responsibilities of Adolescents in the Child Welfare, Juvenile, and Criminal Justice Systems*, 79 *TEMPL. L. REV.* 337, 348 (2006).

Mental health professionals have consistently maintained that adolescents must be judged differently from adults because of their incomplete cognitive and behavioral development as well as mutable identity and character. Brief for American Psychological Ass'n, & Missouri Psychological Ass'n, *supra* at 13-24; Brief for the American Society for

Adolescent Psychiatry and the American Orthopsychiatric Ass'n as Amici Curiae in Support of Petitioner, at 17-30, *Thompson v. Oklahoma*, 487 U.S. 815 (1988). We agree.

The very existence of a juvenile justice system, whose specific purpose is the rehabilitation of young people engaged in reckless or criminal behavior, confirms that society has embraced the notion that adolescents and adults are different. The fundamental truths stated above are the tenets by which juvenile justice administrators operate. We believe that we have the ability to change and shape the lives of the youth who are placed in our care.

- b. The juvenile justice system has the ability to rehabilitate offenders such as petitioner.

The notion that violent young offenders are beyond hope is an unfortunately powerful but completely inaccurate and unreliable myth. Our experience has informed us and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has confirmed that when rehabilitative efforts are made with serious and violent offenders, a significant reduction in re-offense rates results. Shelley Zavlek, *Planning Community-Based Facilities for Violent Juvenile Offenders as Part of a System of Graduated Sanctions*. Bulletin. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, August 2005, at 6. Reoffending by this small subset of juvenile offenders "can be reduced by the use of appropriate interventions, especially interpersonal skills training and cognitive-behavioral treatment. *Serious and Violent Juvenile Offenders*.

Bulletin. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, May 1998, at 6. The OJJDP has emphasized the “critical[] importan[ce]” of providing effective treatment programs. *Zavlek, supra* at 6.

Effective treatment programs for serious and violent offenders have resulted in a 40% reduction in recidivism rates. M.W. Lipsey and D.B. Wilson, *Effective Intervention for Serious Juvenile Offenders: A Synthesis of Research, in SERIOUS AND VIOLENT JUVENILE OFFENDERS: RISK FACTORS FOR SUCCESSFUL INTERVENTIONS* 338 (Loeber & Farrington, eds. 1998). These treatment programs utilized behavioral programming – cognitive mediation training, stress inoculation training, reinforcement therapy - and focused on interpersonal skills – social skills training, anger management, moral education. *Id.* at 336-37. Even the “average” intervention program resulted in a 12% reduction in recidivism rates. *Id.* at 338. The moral here is simple – treatment works for these children.

As these numbers reveal, state juveniles systems who adopt an approach of intensive treatment for violent youth are successful in reducing recidivism. The Texas Youth Commission has had and continues to have great success treating youth convicted of murder and other serious violent offenses. The TYC operates the Capital and Serious Violent Offender Program⁹ within the high-security

⁹ Initially the program, when first established, was named the Capital Offender Program and was only for youth who committed homicides; but the program was eventually expanded in 1999 to include youths who committed offenses involving the use of a weapon or deadly force. Texas Youth Commission, *2002 Review of Agency Treatment Effectiveness* C.(2)(a),

Giddings State School in Central Texas. Texas Youth Commission, *Specialized Correctional Treatment*,

http://www.tyc.state.tx.us/programs/special_treat.html (last visited January 31, 2008). This is an intensive 24-week program where youths enrolled are involved in extended group therapy sessions and live together in a dorm. Texas Youth Commission, *2007 Review of Agency Treatment Effectiveness*, http://www.tyc.state.tx.us/research/TxmtEffect/02_programs.html (last visited January 31, 2008). The young offenders selected for the program must first spend years in the general population where they participate in a less specialized treatment program. John Hubner, *LAST CHANCE IN TEXAS* xxiv (2005). Many of these youth are given lengthy sentences by the juvenile court (30-40 years in some cases) pursuant to Texas's blended sentencing law but these sentences are parole-eligible, giving the court an opportunity to review the progress of the young offender. *Id.* at 86-87. If these juveniles successfully complete this program, they are routinely released on adult parole after serving only three years. *Id.* Further, the graduates of this program are less likely to re-offend. A study of the program showed overall a 55% reduction in re-incarceration for any offense, 43% for a felony offense. Texas Youth Commission, *Specialized Correctional Treatment, supra*.

The OJJDP has also noted the success of the Violent Juvenile Offender programs in Boston and Detroit in reducing the number and seriousness of

<http://www.tyc.state.tx.us/archive/Research/TxmtEffect02/introduction.html>; Texas Youth Commission, *Specialized Correctional Treatment*, http://www.tyc.state.tx.us/programs/special_treat.html.

re-arrests as compared to a control group. *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*, Office of Juvenile Justice and Delinquency Prevention, May 1995, at 155.

Other systems have also had success with violent young offenders by adopting a balanced model of juvenile corrections consisting of small secure treatment facilities with an array of community-based programming to improve reentry outcomes.¹⁰ Missouri's system, for example, has had extraordinary success through the adoption of this model. The state of Missouri has a blended sentencing system where juveniles tried as adults can receive a juvenile disposition along with an adult suspended sentence. Missouri Stat. §211.073. These youth are placed in secure care within the juvenile facility, and although many have 20-30 year suspended adult sentences, they are often released after 4-5 years in the juvenile system. Since 2006, the Division of Youth Services has maintained a recommitment rate of 8% and only 7% of discharged youth enter adult corrections within five years after discharge. Todd Lewan, *Young Offenders Turn Around with TLC*, TORONTO STAR, January 3, 2008, L05; Zavlek, *supra* at 30.

These children have been given an opportunity Petitioner Pittman has been denied by virtue of mandatory sentencing laws and the lack of discretion afforded criminal trial judges in South Carolina. It is clear to all – or should be – that Petitioner has made significant progress during his almost-five years

¹⁰ Many of these systems also have the same case worker assigned to the juvenile throughout the entire length of his confinement.

incarceration since his arrest. The first three years after his arrest, Petitioner was confined at a pre-trial juvenile detention facility in South Carolina¹¹ with limited programming and treatment¹², and overcrowded¹³ facilities. According to Dr. Atkins – a defense expert and child psychiatrist employed by the South Carolina Department of Mental Health - at the time of his arrest, Petitioner was developmentally and educationally behind his schoolmates. 12/2/04 H'rg Tr. at 634:12-635:8. In 2004, Atkins reported that once Petitioner was removed from his SSRI medication he made tremendous developmental and educational strides – including earning his GED. *Id.* As far as behavioral improvements, Petitioner went from having disciplinary incidents once every two weeks during his first year of pretrial detention, Transfer Hr'g Tr. at 32, to being described by Atkins as a model prisoner who was completely rehabilitated and represented no danger to society, 12/2/04 Hr'g Tr. at 635:14-637:7; *see also* 1/31/04 Hr'g Tr. at 3507:17-18

¹¹ Under South Carolina law, Detention centers are not for long-term confinement – only under exceptional circumstances is a child detained for more than ninety days – S.C. Code Ann § 20-7-7215(A). The average length of stay for a juvenile in secure detention in South Carolina is fourteen days. Children's Law Office, USC School of Law, *Juvenile Detention in South Carolina*, June 2006, at 6.

¹² Generally pre-trial detention centers don't offer a significant amount of services because juveniles within these facilities have not yet been found guilty or adjudicated delinquent and therefore have not been found to require rehabilitation.

¹³ The Department of Juvenile Justice in South Carolina has admitted that its pretrial detention facilities are overcrowded – from 2000-2005, South Carolina saw an 19% increase in detention admissions. *South Carolina Department of Juvenile Justice Report Card for 2006*, South Carolina Department of Juvenile Justice, at 8.

(testimony of Dr. Julian Sharman, a prosecution rebuttal witness, describing Petitioner's last year of confinement as "perfect" and "great").

Dr. Atkins testified at his trial that Petitioner Pittman:

Changed from being a child who made racial slurs, who cursed, who made sexually inappropriate comments, who was physically aggressive, who made weapons out of things in the detention center to a child that gets in no trouble despite provocation, makes all A's in school and works above grade level. Is consistent – every time I see him, his mood is consistent. He's a shy boy, but he's a very pleasant boy. Always very proud of his grades. Showing me his papers and proud of the progress he's making. A child that's adapting very well to a very difficult living situation.

1/31/05 Trial Tr. at 1636:12-22

This progress continued after his conviction, once he was transferred to the Secure Management Unit in Santee, a high-security facility where juveniles tried as adults are committed. In the Special Management Unit, Petitioner received cognitive and behavioral skills treatment as well as individual and group therapy. For almost the entire time he was there, Petitioner maintained a status that allowed him extra privileges as the result of good behavior.

It is unjust that South Carolina's sentencing scheme provides no opportunity for the sentencing

court to reconsider the length of the sentence in light of the significant progress made by Petitioner.

- c. The transfer of juvenile offenders to the adult criminal justice system has been shown to have negative outcomes, in contrast to the success associated with keeping them in the juvenile system.

There exists a real danger that the progress Petitioner has made will be undone now that he has been transferred into the adult prison system. Juveniles transferred to the adult criminal system are *more* likely to reoffend than those that remain in the juvenile system. Donna Bishop and Charles Frazier, *Consequences of Transfer*, in *THE CHANGING BORDERS OF JUVENILE JUSTICE* 261 (J. Fagan and F. Zimring eds. 2000); Donna Bishop, *Juvenile Offenders in the Adult Criminal System*, 17 *CRIME & JUST.* 81, 130-31 (2000). Transferred juveniles are 33.7% more likely to be rearrested for a violent or other crime. Michael Tonry, *Treating Juveniles as Adult Criminals: An Iatrogenic Violence Prevention Strategy if Ever There was One*, 32 *Am. J. Preventive Med.* (Supp. 1) S3, S3-S4 (2007).

This is probably, in part, due to the lack of programming available in the adult system and, in part, due to the long held belief that prisons breed anti-social and criminal behavior. Bishop and Frazier, *supra* at 262-64.

In the institutional world of the adult prison, youths were more likely to learn social rules and norms that legitimated domination, exploitation, and retaliation. They routinely observed

both staff and inmate models who exhibited these behaviors, and they observed these illegitimate norms being reinforced. In addition, youth in prison were exposed to an inmate subculture that taught criminal motivations as well as techniques of committing crime and avoiding detection. Even if the pains of punishment and confinement caused most juveniles to wish to avoid returning to prison, what they learned in prison provided a destructive counterbalance to their positive intentions.

Id. at 263-64.

The existence of higher recidivism rates among juveniles tried and sentenced as adults as compared to those who remain in the juvenile system indicates that transfer does not act as a specific deterrent to these individuals committing future crime. Given the psychosocial immaturity of youth, the general deterrence effects of transfer laws are also highly questionable. *See* Richard E. Redding & Elizabeth J. Fuller, *What do Juvenile Offenders Know About Being Tried as Adults? Implications for Deterrence*, 55 JUV. & FAM. CT. J. 35, 38 (2004). One study showed that only 40% of juveniles surveyed even thought about the possibility of getting caught when they committed their crime. *Id.* at 38. Research on the general deterrence effect has found either no effect or a counter-deterrent effect. Robert Hahn et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, Morbidity and Mortality Weekly Report, Center for Disease Control and

Prevention, November 30, 2007, www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm. (last visited Jan. 31, 2008).

Petitioner is now in the adult prison system where he will spend the next twenty-four years. The system has given up on a twelve-year old boy, deciding that there is no way this child could change his life for the better.

As correctional administrators, we believe that juveniles - especially those as young as twelve years old and even those who have committed serious and violent offenses - can be rehabilitated within the juvenile system. The Court has the opportunity in this case to ensure that the sentencing of any young offender recognizes the fundamental principles at the core of juvenile justice system in this country – the belief that every child has the capacity to reform.

CONCLUSION

The juvenile justice system has the capacity to rehabilitate violent offenders and the system should have been allowed the opportunity to show that it could rehabilitate Petitioner Pittman.

The petition for writ of certiorari should be granted.

Respectfully submitted,

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