No. 3-14-0723

IN THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	**On Appeal from the Circuit Court of Will County, Illinois**
Respondent-Appellee,	)	
	)	**Circuit Case No.: 84 CF 190**
v.	)	
	)	**Hon. Robert Livas,**
JAMES WALKER,	)	**Trial Judge Presiding**
	)	
Petitioner-Appellant	)	
	)	

BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER, *CIVITAS* CHILDLAW CLINIC, AND CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH IN SUPPORT OF PETITIONER-APPELLANT JAMES WALKER

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IDENTITY AND INTEREST OF *AMICI*

Amicus Curiae **Juvenile Law Center** is the oldest public interest law firm for children in the United States. Founded in 1975, Juvenile Law Center pays particular attention to the rights and needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to juvenile correctional facilities or adult prisons, or children in placement with specialized service needs. Juvenile Law Center works to ensure that children are treated fairly by systems that are supposed to help them, and that children receive the proper treatment and services. Juvenile Law Center also 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.

The ***Civitas* ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its Child and Family Law Clinic, the ChildLaw Center also routinely provides representation to child clients in juvenile delinquency, domestic relations, child protection, and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court-involved youth.

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 age 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.

SUMMARY

U.S. Supreme Court precedent establishes that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishment. Most recently, in *Miller v. Alabama,* 132 S. Ct. 2455 (2012), the Supreme Court established a presumption against imposing life without parole sentences on juvenile homicide offenders. *Miller* further requires that, prior to imposing a life without parole sentence on a juvenile offender, the sentencer must examine factors that relate to the youth's diminished culpability and heightened capacity for rehabilitation. Though *Miller* involved a mandatory life without parole sentence, its holding that juvenile offenders facing juvenile life without parole are entitled to individualized sentencing hearings in which their age and related characteristics are considered applies in discretionary sentencing cases as well. Because Mr. Walker did not receive a sentencing hearing in which his age and related characteristics were considered, his sentence should be vacated. Moreover, this Court must provide guidance to ensure that juvenile life without parole sentences, if imposed at all, are not imposed in an arbitrary and capricious manner.

ARGUMENT

The trial court's imposition of a sentence of life imprisonment without the possibility of parole on Defendant James Walker violates the Supreme Court's holding in *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

A. *Miller* Reaffirms The U.S. Supreme Court's Recognition That Children Are Fundamentally Different From Adults And Categorically Less Deserving Of The Harshest Forms Of Punishments

In *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama,* 132 S. Ct. 2455 (2012), the U.S. Supreme Court recognized that children are fundamentally different from adults and categorically less deserving of the harshest forms of punishment.[1] Relying on *Roper*, the U.S. Supreme Court in *Graham* cited three essential characteristics which distinguish youth from adults for the purpose of determining culpability:

> [a]s compared to adults, juveniles have a "lack of maturity and an underdeveloped sense of responsibility"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure"; and their characters are "not as well formed."

560 U.S. at 68 (citing *Roper*, 543 U.S. at 569-70).

Graham found that "[t]hese salient characteristics mean that '[i]t is 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.' Accordingly, 'juvenile offenders cannot with reliability

[1] *Roper* held that imposing the death penalty on juvenile offenders violates the Eighth Amendment, 543 U.S. at 578; *Graham* held that life without parole sentences for juveniles convicted of non-homicide offenses violate the Eighth Amendment, 560 U.S. at 82; and *Miller* held that mandatory life without parole sentences imposed on juveniles convicted of homicide offenses violate the Eighth Amendment, 132 S. Ct. at 2469.

be classified among the worst offenders.'" *Id.* (quoting *Roper*, 543 U.S. at 569, 573). The Court concluded that "[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 (1988)).

The *Graham* Court found that because the personalities of adolescents are still developing and capable of change, an irrevocable penalty that afforded no opportunity for release was developmentally inappropriate and constitutionally disproportionate. The Court further explained that:

> 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." *Id.*

Id. The Court's holding acknowledged the incongruity of imposing a final and irrevocable penalty on an adolescent, who had capacity to change and grow.

In reaching these conclusions, the U.S. Supreme Court has relied upon an increasingly settled body of research confirming the distinct emotional, psychological and neurological attributes of youth. The Court clarified in *Graham* that, since *Roper*, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence." *Graham*, 560 U.S. at 68. Because juveniles are more likely to be reformed than adults, the "status of the offenders" is central to the question of whether a punishment is constitutional. *Id.* at 68-69.

The U.S. Supreme Court in *Miller* expanded its juvenile sentencing jurisprudence, banning mandatory life without parole sentences for children convicted even of homicide offenses. Reiterating the central premise that children are fundamentally different from adults, *Miller* held that the sentencer must take into account the juvenile's reduced blameworthiness and individual characteristics before imposing this harshest available sentence. 132 S. Ct. at 2460. The rationale was clear: The mandatory imposition of sentences of life without parole "prevents those meting out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change,' and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties." *Id.* (quoting *Graham*, 560 U.S. at 68, 74). The Court grounded its holding "not only on common sense . . . but on science and social science as well," *id.* at 2464, noting "that those [scientific] 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.'" *Id.* at 2464-65 (quoting *Graham*, 560 U.S. at 68-69); *Roper*, 543 U.S. at 570).

Importantly, in *Miller*, the Court found that none of what *Graham* "said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime-specific." 132 S. Ct. at 2465. The Court instead emphasized "that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Id.* As a result, *Miller* held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders,"

id. at 2469, because "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.* at 2467.

B. *Miller* Establishes A Presumption Against Imposing Life Without Parole Sentences On Juveniles

Miller adopted a presumption against imposing life without parole sentences on juveniles. While the U.S. Supreme Court has left open the possibility that a trial court could impose a life without parole sentence on a child, the Court declared that "given all we have said in *Roper*, *Graham*, and [*Miller*] about children's diminished culpability and heightened capacity for change, *we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon*." *Miller*, 132 S. Ct. at 2469 (emphasis added). *See also People v. Davis,* 6 N.E.3d 709, 718 (Ill. 2014) (("Although the [U.S. Supreme] Court refused to declare categorically that a juvenile can *never* receive life imprisonment without parole for a homicide offense, the Court stated that 'given all we have said in *Roper*, *Graham*, and this decision . . . we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.'") (quoting *Miller*, 132 S. Ct. at 2469)). Quoting *Roper* and *Graham*, *Miller* further noted that the "juvenile offender whose crime reflects irreparable corruption" will be "rare." 132 S. Ct. at 2469.

Though *Miller* left open the possibility that discretionary juvenile life without parole sentences could still be imposed, *Miller* also, when read in combination with *Graham* and *Roper*, condemns the sentence for juveniles except in the rarest circumstances. The Court found that "'[i]t is 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*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 573) (emphasis added). If expert psychologists cannot determine which juveniles may be "irreparably corrupt," how can sentencing judges and juries accurately make such assessments? *See also* Brief for American Psychological Association et al. as *Amici Curiae* Supporting Petitioners at 25, *Miller v. Alabama*, 132 S. Ct. 2455 (2012), (Nos. 10-9646, 10-9647) [hereinafter "APA *Miller Amicus*"] ("[T]here is no reliable way to determine that a juvenile's offenses are the result of an irredeemably corrupt character; and there is thus no reliable way to conclude that a juvenile – even one convicted of an extremely serious offense – should be sentenced to life in prison, without any opportunity to demonstrate change or reform."). Therefore, *Miller* establishes, at a minimum, a presumption against juvenile life without parole sentences.

The state supreme courts of two states have held that *Miller* establishes this presumption against juvenile life without parole.[2] The Connecticut Supreme Court found:

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[2] At least one state supreme court, post-*Miller*, has gone further and banned juvenile life without parole sentences altogether. Based on the research cited by the U.S. Supreme Court, the Massachusetts Supreme Court held that even the discretionary imposition of juvenile life without parole sentences violates the Massachusetts Constitution. *Diatchenko v. Dist. Attorney for Suffolk Dist.*, 466 Mass. 655, 671 (2013). The court held:

> Given current scientific research on adolescent brain development, and the myriad significant ways that this development impacts a juvenile's personality and behavior, a conclusive showing of traits such as an "irretrievably depraved character," *Roper,* 543 U.S. at 570, can never be made, with integrity, by the Commonwealth at an individualized hearing to determine whether a sentence of life without parole should be imposed on a juvenile homicide offender. *See Miller,* 132 S. Ct. at 2464. Simply put, because the brain of a juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved. *See Graham,* 560 U.S. at 68. Therefore, it follows that the judge cannot

> [I]n *Miller*, the court expressed its confidence that, once the sentencing authority considers the mitigating factors of the offender's youth and its attendant circumstances, 'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.' *This language suggests that the mitigating factors of youth establish, in effect, a presumption against imposing a life sentence without parole on a juvenile offender that must be overcome by evidence of unusual circumstances.* This presumption logically would extend to discretionary schemes that authorize such a sentence.

State v. Riley, 110 A.3d 1205, 1214 (Conn. 2015) (emphasis added) (citations omitted). Similarly, the Missouri Supreme Court held that the state bears the burden of demonstrating, beyond a reasonable doubt, that life without parole is an appropriate sentence. *See State v. Hart*, 404 S.W.3d 232, 241 (Mo. 2013) (en banc) ("[A] juvenile offender cannot be sentenced to life without parole for first-degree murder unless the state persuades the sentencer beyond a reasonable doubt that this sentence is just and appropriate under all the circumstances.").

Because *Miller* requires, at a minimum, a presumption against juvenile life without parole sentences, and because this presumption was not applied in Mr. Walker's case, Mr. Walker's life without parole sentence should be vacated.

C. *Miller* Requires That Juveniles Facing Life Without Parole Receive Individualized Sentencing Hearings At Which The Sentencer Considers The Juvenile's Youth As A Mitigating Factor

Miller held that prior to imposing a life without parole sentence on a juvenile offender, the sentencer must examine factors that relate to the youth's diminished culpability and heightened capacity for rehabilitation. 132 S. Ct. at 2468-69. These

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> ascertain, with any reasonable degree of certainty, whether imposition of this most severe punishment is warranted.

Id. at 669-70.

factors include: (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." *Id. Miller* therefore requires the sentencer to make a individualized assessment of the juvenile's culpability prior to imposing life without parole. *Id.*

Miller further requires sentencers to take into account how the differences between children and adults "counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 2469. Therefore, pursuant to *Miller*, not only are mandatory juvenile life without parole statutes invalid, even discretionary juvenile life without parole sentences are constitutionally suspect if the sentencer failed to fully consider how the relevant aspects of the defendant's youth *counsel against* imposing a life without parole sentence.

At least four state supreme courts have concluded that *Miller* applies to discretionary juvenile life without parole sentences. 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*, 8 N.E.3d 890, 898-99 (Ohio 2014). In assessing the sentence, the court noted:

> Because the trial court did not separately mention that [the defendant] was a juvenile when he committed the offense, we cannot be sure how the trial court applied [the] factor [of his youth]. Although *Miller* does not require that specific findings be made on the record, it does mandate that a trial

> court *consider as mitigating* the offender's youth and its attendant characteristics before imposing a sentence of life without parole. For juveniles, like [the defendant], a sentence of life without parole is the equivalent of a death penalty. *Miller,* 132 S. Ct. at 2463. As such, it is not to be imposed lightly, for as the juvenile matures into adulthood and may become amenable to rehabilitation, the sentence completely forecloses that possibility.

Id.

Similarly, the South Carolina Supreme Court held that *Miller* applies to non-mandatory juvenile life without parole sentences. *Aiken v. Byars*, 765 S.E.2d 572, 577 (S.C. 2014). The Court found that "*Miller* is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution. . . . *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*." *Id.* at 576-77 (emphasis added). Upon examining of records of sentencing hearings where life without parole was imposed on juveniles, the Court noted:

> [A]though some of the hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by *Miller* where the factors of youth are carefully and thoughtfully considered. Many of the attorneys mention age as nothing more than a chronological fact in a vague plea for mercy. *Miller* holds the Constitution requires more. As the majority states succinctly, "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." We believe this statement deserves universal application. The absence of this level of inquiry into the characteristics of youth produced a facially unconstitutional sentence for these petitioners. In our view, whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment.

Id. at 577 (internal citation omitted). The Court concluded that "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.

In *State v. Riley*, 110 A.3d 1205 (Conn. 2015), the Connecticut Supreme Court held that *Miller* applies to discretionary life without parole sentences. The court held that the "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." *Id.* at 1213. The court

> conclude[d] that *Miller* does not stand solely for the proposition that the Eighth Amendment demands that the sentencer have discretion to impose a lesser punishment than life without parole on a juvenile homicide offender. Rather, *Miller* logically indicates that, if a sentencing scheme permits the imposition of that punishment on a juvenile homicide offender, the 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).

Finally, the California Supreme Court vacated juvenile life without parole sentences under a discretionary sentencing scheme in which life without parole was the presumptive sentence. *People v. Gutierrez*, 324 P.3d 245, 270 (Cal. 2014). The court held "that 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).

Like these state supreme courts, this Court should similarly hold that discretionary life without parole sentences are unconstitutional pursuant to *Miller* when the sentencer fails to consider how a juvenile offender's age and associated characteristics counsel against imposing life without parole.

D. Defendant's Life Without Parole Sentence Is Unconstitutional Because The Court Failed To Consider How Defendant's Status As A Juvenile Counseled Against A Life Without Parole Sentence

This Court should hold that Mr. Walker's juvenile life without parole sentence is unconstitutionally disproportionate because the sentencing judge: failed to consider his youth and associated characteristics at all in determining the proper sentence; allowed the fact of the homicide to overpower all other mitigating evidence of youth; and failed to presume, in the absence of any evidence to the contrary, that Mr. Walker was presumptively more immature, and therefore less culpable, than an adult defendant.

1. The Trial Court Failed To Consider Defendant's Youth As A Mitigating Factor

As discussed, prior to imposing a life without parole sentence on a juvenile offender, the U.S. Supreme Court "require[s] [the sentencer] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 132 S. Ct. at 2469. Because the trial court never took into account how Defendant's young age counseled against sentencing him to life without parole, his sentence is unconstitutional and must be vacated.

Here, the record does not reflect how, if at all, the trial court considered Defendant's young age at the time of the offense. Defendant's counsel, at sentencing, produced no witnesses and offered no evidence to support a lesser sentence. (R. at 651.) In determining the proper sentence, the trial judge found "absolutely nothing to mitigate

his conduct in this case." (R. at 675.) In light of *Miller*'s requirement that the sentencer *must* consider how the attributes of youth counsel against a lifetime in prison, Mr. Walker's sentence is unconstitutional. *Miller*, 132 S. Ct. at 2469.

2. In Determining A Proportionate Sentence For A Juvenile Homicide Offender, The Fact of The Homicide Must Not Overpower Evidence Of Mitigation Based On Youth

U.S. Supreme Court jurisprudence requires sentencers to separate the crime from the culpability of the offender. In the context of the juvenile death penalty, the U.S. Supreme Court found that "[a]n unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death." *Roper*, 543 U.S. at 573. This same "unacceptable likelihood" exists in juvenile life without parole cases; if the violent nature of the crime is permitted to overpower evidence of mitigation based on the juvenile's youth, juvenile life without parole will not be "uncommon," *see Miller*, 132 S. Ct. at 2469, since every homicide is a violent offense. Therefore, even were this Court to establish objective criteria reserving juvenile life without parole for the "worst of the worst" offenses and offenders, as discussed in Section D, *infra*, the sentencer must still look beyond the facts of the offense and consider how the youth's age and development *counsel against* a life without parole sentence. *See Miller*, 132 S. Ct. at 2469. Juvenile life without parole, if imposed at all, should only be imposed in exceptional cases in which both the circumstances of the offense *and* the particular characteristics of the juvenile offender suggest irreparable corruption.

In Mr. Walker's case, the sentencing court attached too much weight to the nature of the offense. In determining that life without parole was the appropriate sentence for Mr. Walker, the trial court relied only on the nature of the offense:

> I can think of few more criminal acts than to just select at random some person who did nothing more than have the temerity to drive a cab that day and say, "Well, we are going to take that person who the dispatcher sends out, whoever it might be, it could be male or female, young or old, we don't care who it is, we are just going to take that person and kill him."
>
> I think this demonstrates a person who is utterly devoid of human sensibility, who does not care about a human life. Mr. Walker, I think, would kill for the joy of it and seriously does not care at all about a human life; it makes no difference to him whatsoever.
>
> I think that conduct is shockingly evil and grossly bad. And the Court does find that the defendant's conduct is accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.
>
> The Court also would find with regard to Mr. Walker that the aggravating factor [in the statute] exists in that the murdered individual was killed in the course of another felony, and that the murdered individual was actually killed by the defendant.

(R. at 676-78.) These factors convinced the sentencing court to impose life without parole – but many of them would be present in any first degree felony murder. Every homicide produces a tragic loss, but the U.S. Supreme Court proscribes allowing the violent or fatal aspects of the crime to trump the prominence of youth in the sentencing calculus. Because the sentencing court assigned too much weight to the crime itself, and no weight to the mitigating attributes of youth, Mr. Walker's sentence should be vacated.

3. *Miller* Establishes A Presumption Of Immaturity For All Juvenile Offenders

As discussed in detail in Section A., *supra*, *Miller*, together with *Roper* and *Graham*, establish that "children are constitutionally different from adults for purposes of sentencing." *Miller*, 132 S. Ct. at 2464. *Miller* emphasized that "children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." *Id.* (internal citation and quotation marks omitted). *Miller* noted that these findings about children's distinct attributes are not crime-specific. *Id.* at 2465. "Those features are evident *in the same way, and to the same degree*," whether the crime is "a botched robbery" or "a killing." *Id.* (emphasis added).

Given the Supreme Court's jurisprudence establishing that juveniles are developmentally different and less mature than adults, a sentencer must presume that a juvenile homicide offender lacks the maturity, impulse-control and decision-making skills of an adult. Indeed, it would be the unusual juvenile whose participation in criminal conduct is not closely correlated with his immaturity, impulsiveness, and underdeveloped decision-making skills. Therefore, absent expert testimony establishing that a particular juvenile's maturity and sophistication were more advanced than a typically-developing juvenile, a sentencer must presume the juvenile offender lacks adult maturity, and treat this lack of maturity as a factor counseling against the imposition of a life without parole sentence.[3] Because Mr. Walker did not benefit from a presumption of immaturity, his sentenced should be vacated.

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[3] The risk of inaccurately assessing maturity and culpability based on implicit biases confirms the importance of the presumption of immaturity for all juvenile defendants. A recent study found that "Black boys were more likely to be seen as older and more responsible for their actions relative to White boys." Phillip Goff, *et al.*, *The Essence of*

E. Defendant's Life Without Parole Sentence Was Unconstitutionally Arbitrary And Capricious

Because *Miller* and *Graham* explicitly view life without parole "for juveniles as akin to the death penalty," *Miller*, 132 S. Ct. at 2466, this Court must look to death penalty jurisprudence to determine the constitutionally of Mr. Walker's juvenile life without parole sentence. U.S. Supreme Court precedent establishes that "the penalty of death may not be imposed under sentencing procedures that create a substantial risk that the punishment will be inflicted in an arbitrary and capricious manner." *Godfrey v. Georgia*, 446 U.S. 420, 427 (1980) (plurality opinion).

In *Godfrey*, the state of Georgia permitted the imposition of the death penalty when there was a finding that the homicide was "outrageously or wantonly vile, horrible and inhuman." *Id.* at 428. The U.S. Supreme Court held that this finding was insufficient to warrant the death penalty because "[a] person of sensibility could fairly characterize almost every murder as 'outrageously or wantonly vile, horrific and inhuman." *Id.* at 428-29. *See also Maynard v. Cartwright*, 486 U.S. 356, 363-64 (1988) (holding Oklahoma's aggravating factor that a murder is "especially heinous, atrocious, or cruel" to be overbroad because "an ordinary person could honestly believe that every unjustified, intentional taking of human life is 'especially heinous.'").[4] Because every murder could

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Innocence: Consequences of Dehumanizing Black Children, 106 Journal of Personality and Social Psychology 526, 539 (2014). Specifically, "Black boys are seen as more culpable for their actions (i.e., less innocent) within a criminal justice context than are their peers of other races." *Id.* at 540. Therefore, the presumption of immaturity should only be rebutted by expert evidence, rather than the independent assessment of sentencers or lay witnesses who may hold these implicit biases.

[4] Similarly, the sentencing court's finding that Mr. Walker's actions were "shockingly evil," "grossly bad," "hateful," *see* Record at 676, is not a sufficiently narrow criteria to allow the imposition of the harshest allowable sentence in his case since almost any homicide could be considered evil, grossly bad, and hateful.

be considered "outrageously or wantonly vile, horrific and inhuman," *see Godfrey*, 446 U.S. at 428-29, or "especially heinous, atrocious, or cruel," *see Cartwright*, 486 U.S. at 364, the Supreme Court requires more specific criteria in order to ensure that the harshest available sentence is only imposed in the most egregious and extreme cases.

The facts of *Godfrey* are significant. The defendant, Godfrey, had previously threatened his wife with a knife, after which his wife left the home and filed for divorce. *Godfrey*, 446 U.S. at 424. When his wife refused to reconcile, the defendant

> got out his shotgun and walked with it down the hill from his home to the trailer where his mother-in-law lived. Peering through a window, he observed his wife, his mother-in-law, and his 11-year-old daughter playing a card game. He pointed the shotgun at his wife through the window and pulled the trigger. The charge from the gun struck his wife in the forehead and killed her instantly. He proceeded into the trailer, striking and injuring his daughter with the barrel of the gun. He then fired the gun at his mother-in-law, striking her in the head and killing her instantly.

Id. at 425. He later informed police that he had "been thinking about [the crime] for eight years" and that he would "do it again." *Id.* at 426.

Even under these facts, the Court held that Godfrey's "crimes cannot be said to have reflected a consciousness materially more 'depraved' than that of any other person guilty of murder." *Id.* at 433. *See also Cartwright*, 486 U.S. at 363 (noting that *Godfrey* "plainly rejected the submission that a particular set of facts surrounding a murder, however shocking they might be, were enough in themselves, and without some narrowing principle to apply to those facts, to warrant the imposition of the death penalty").

The trial court in this case justified Mr. Walker's sentence based, in part, on the trial court's determination that Mr. Walker's actions were "shockingly evil," "grossly

bad," "hateful," and "exceptionally brutal or heinous behavior indicative of wanton cruelty." (*See* Record at 676.) In *People v. Odle*, 538 N.E.2d 428, 440 (Ill. 1988), the Illinois Supreme Court upheld the section of Illinois' death penalty statute that "states that a person convicted of murder may be eligible for the death penalty if: 'the murdered individual was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.'" However, the Court emphasized

> as the Supreme Court held in *Godfrey v. Georgia* 446 U.S. 420 (1980), that although the statute may be constitutional on its face, it cannot be applied in the manner that leads to arbitrary results. *That is, certain qualifying requirements of the statute cannot be omitted so that its application is left unchanneled.* Thus, *the victim must be under the age of 12, and* the conduct which brings about the victim's death must not only be exceptionally brutal or heinous, it must also be such that it is indicative of wanton cruelty.

Id. at 440-41 (emphasis added). Here, too, the discretion of the sentencer to impose the harshest available sentence on a juvenile cannot be left unchanneled.[5]

The U.S. Supreme Court has found that "'[i]t is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.'" *Godfrey,* 446 U.S. at 433 (quoting *Gardner v. Florida*, 430 U.S. 349, 358 (1977) (plurality opinion)). This same standard must apply in juvenile life without parole cases. Because there were no objective criteria for demonstrating either Mr. Walker's irreparable corruption – particularly in light of *Miller*'s finding that "juvenile offender whose crime reflects irreparable corruption" will be "rare," 132 S. Ct. at 2469 – or that his offense was more severe or

[5] Notably, under the statute examined in *Odle*, at least one such limiting factor – that the victim is under the age of 12 – is not present in this case, and therefore imposing the juvenile life without parole was unconstitutionally arbitrary and capricious.

egregious than any other felony murder offense, Mr. Walker and the community cannot be confident that the imposition of the harshest available penalty was based on "reason rather than caprice or emotion." *Gardner*, 430 U.S. at 358. Therefore, this Court must vacate Mr. Walker's life without parole sentence.

CONCLUSION

Amici respectfully request that this Court vacate Mr. Walker's sentence and remand this matter to the trial court for a sentencing hearing consistent with the dictates set forth by the Supreme Court in *Miller v. Alabama*.

Respectfully,

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DATED: June 8, 2015

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 21 pages.

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CERTIFICATE OF FILING BY MAIL

I, Marsha Levick, on oath, state that on the 8 of June, 2015, I caused to be filed the above AMICUS BRIEF IN SUPPORT APPELLANT WALKER. by enclosing it in an envelope, addressed to the Clerk of the Appellate Court, Third Judicial District, 1004 Columbus Street, Ottawa, Illinois 61350 with First Class postage prepaid, and depositing the envelope in the U.S. Mail Depository at the corner of Thirteenth Street and Walnut Street, Philadelphia, Pennsylvania 19107. .

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No. 3-14-0723

IN THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	**On Appeal from the**
Respondent-Appellee,	)	**Circuit Court of Will County, Illinois**
	)	
v.	)	**Circuit Case No.: 84 CF 190**
	)	
JAMES WALKER,	)	**Hon. Robert Livas,**
	)	**Trial Judge Presiding**
Petitioner-Appellant	)	

PROOF OF SERVICE

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The undersigned certifies that on June 8, 2015, they caused copies of the Brief for *Amici Curiae* in the above-entitled cause to be submitted to the Clerk of the above Court for filing. On that same date, I caused to be served copies to the State's Attorney Appellate Prosecutor, Will County State's Attorney, Petitioner-Appellant, and his counsel in envelopes deposited in a U.S. mail box in Philadelphia, Pennsylvania with proper prepaid postage.

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