

SUPREME COURT OF NEW JERSEY

STATE OF NEW JERSEY,

Appellant/Cross-Appellee,

v.

JAMES COMER,

Appellee/Cross-Appellant.

Docket No. 077318

Criminal Action

On Grant of Direct
Certification From:

Superior Court of New
Jersey,
Law Division, Essex
County

Honorable Thomas R. Vena,
J.S.C.

Docket No. Below A-4854-
14

BRIEF OF THE FAIR PUNISHMENT PROJECT AS *AMICUS CURIAE*

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INTEREST OF AMICUS CURIAE

The Fair Punishment Project ("FPP") is a joint project of the Charles Hamilton Houston Institute for Race and Justice and the Criminal Justice Institute, both at Harvard Law School. FPP's mission is to address ways in which our laws and criminal justice system contribute to excessive punishment for offenders. We believe that punishment can be carried out in a way that holds offenders accountable and keeps communities safe, while still affirming the inherent dignity that all people possess. To that end, FPP conducts research and advocacy and works with stakeholders to seek meaningful, consensus-driven criminal justice reform.

PRELIMINARY STATEMENT

James Comer challenges the constitutionality of the lengthy term-of-years prison sentence imposed upon him for offenses committed as a seventeen-year-old. Mr. Comer was sentenced to seventy-five years imprisonment, with an opportunity for parole only after sixty-eight years and three months. His term is the sum of four sentences that the trial judge, at his discretion, directed to run consecutively. See *State v. Comer*, No. A-4854-14 (Sup. Ct. May 8, 2015) (slip op. at 2-3). This Court should

determine that this severe sentence violates the Eighth Amendment of the U.S. Constitution because it ignores the fundamental differences between children and adults that the U.S. Supreme Court has repeatedly held are constitutionally relevant to juvenile sentencing, and is therefore disproportionate in light of Mr. Comer's status as a juvenile at the time of the offense.¹ See *Montgomery*, 136 S. Ct at 732 ("Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment").

As discussed in Part I, *infra*, *Miller* and *Montgomery* explicitly bar life sentences absent a finding of "irreparable corruption." *Montgomery*, 136 S. Ct at 726 ("[A] lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect 'irreparable corruption.'" (quoting *Roper v. Simmons*, 543 U.S. 551, 573 (2005))). States around the country are rapidly acknowledging that juvenile defendants who receive

¹ Amicus addresses constitutional obligations under the Eighth Amendment of the U.S. Constitution. Amicus believes that this Court's application of Article 1, Paragraph 12 of the New Jersey Constitution provides additional, independent support for its position and proposed remedy.

extremely long prison terms are entitled to the same constitutional protections as those receiving life sentences. See, e.g., *Gridine v. State*, 175 So.3d 672 (Fla. 2015) (holding that a 70-year sentence without possibility of parole “fails to provide [the offender] with a meaningful opportunity for early release based upon a demonstration of his maturity and rehabilitation” and is therefore unconstitutional as applied to juvenile nonhomicide offenders under *Graham*). The judge in this case sentenced Mr. Comer to spend more than seven decades in prison, but did not find Mr. Comer to be irreparably corrupted.² Mr. Comer, who has already served 15 years in prison, must therefore receive immediate relief, whether through parole eligibility or a rehearing to reassess Mr. Comer’s culpability and character in accordance with the requirements of *Miller*.

As addressed in Part II, *infra*, New Jersey must also ensure that the constitutional principle of proportionality is applied to all children facing severe prison sentences by requiring reassessment of these sentences beginning

² See *State v. Comer*, No. A-4854-14 (Sup. Ct. May 8, 2015) (slip op. at 3) (summarizing the factors considered in Mr. Comer’s sentencing).

within 10-15 years of the child's offense. Because a child's character and culpability cannot be accurately assessed while the child's brain development and identity formation are incomplete, reassessment of severe juvenile sentences should be mandated as soon as the defendant's development has progressed to the point where a meaningful assessment is possible. Research suggests that this milestone is typically reached around age twenty-five, although individuals continue to develop and change after that age. As a result, sentences should be reviewed within ten to fifteen years of the child's offense, and reviews should continue at regular intervals throughout the remainder of a juvenile's term of incarceration to account for continued development and maturation.

It should also be noted that placing marginal limitations on the length of the most extreme juvenile sentences, while laudable, is not a substitute for conducting sentencing reviews beginning 10 to 15 years after the child's offense. Such marginal limitations standing alone would still permit children to spend many decades in prison based on unreliable assessments of culpability and in violation of the Eighth Amendment.

ARGUMENT

I. **James Comer's Severe Term-of-Years Sentence Violates the Eighth Amendment and the New Jersey Constitution.**

"Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment," *Montgomery v. Louisiana*, 136 S. Ct. 718, 732 (2016), and "children are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012). The distinct qualities of children weaken each of the penological objectives severe penalties purportedly serve—retribution, deterrence, incapacitation and rehabilitation. *See Miller*, 132 S. Ct. at 2465-66. "A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense." *Graham v. Florida*, 560 U.S. 48, 71 (2010). New Jersey's Cruel and Unusual Punishment Clause, N.J. Const. art. 1, para. 12, is grounded in these same principles of proportionality, *see State v. Ramseur*, 106 N.J. 123, 169 (1987), but reaches further, "afford[ing] greater protections [to criminal defendants] . . . than does the [E]ighth [A]mendment of the federal constitution." *State v. Gerald*, 113 N.J. 40, 76 (1988). Accordingly, this Court must take steps to ensure that juveniles do not serve terms of mandatory imprisonment

beyond those that have legitimate penological justifications. Those steps are discussed below in Part II.

A. Children Possess Unique Characteristics that Distinguish Juvenile from Adult Offenders.

Beginning with *Roper v. Simmons*, 543 U.S. 551 (2005), and extending through *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the U.S. Supreme Court has articulated three significant ways in which children are constitutionally different from adults. “First, children have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking.” *Miller*, 132 S. Ct. at 2464 (quoting *Roper*, 543 U.S. at 569). “The susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’” *Roper*, 543 U.S. 570 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).

“Second, children ‘are more vulnerable . . . to negative influences and outside pressures,’ including from their family and peers; they have limited ‘contro[ll] over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.”

Miller, 132 S. Ct. at 2464 (alterations in original) (quoting *Roper*, 543 U.S. at 569). "Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment." *Roper*, 543 U.S. at 570.

Third, "the character of a juvenile is not as well formed as that of an adult." *Id.*

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From 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.

B. The Differences between Children and Adults Undermine the Penological Purposes Behind Severe Sentences.

Because "[a] sentence lacking any legitimate penological justification is by its nature disproportionate to the offense," *Graham*, 560 U.S. at 71, this Court must consider the penological goals purportedly served by lengthy prison sentences imposed upon children. When continued incarceration advances no penological purpose,

its imposition constitutes cruel and unusual punishment. See *id.* “Even if the punishment has some connection to a valid penological goal, it must [also] be shown that the punishment is not grossly disproportionate in light of the justification offered.” *Id.* at 72.

The U.S. Supreme Court has recognized four legitimate goals of penal sanctions: “retribution, deterrence, incapacitation, and rehabilitation.” *Id.* at 71. Within these goals, the U.S. Supreme Court has recognized that retribution proportionate to culpability takes primacy in its analysis. See, e.g., *Roper*, 543 U.S. at 568 (establishing “extreme culpability” as requisite for the application of the death penalty). Because “the distinctive attributes of youth” collapse the rationales underpinning not only retribution, but each of the penological justifications for severe sentences, *Montgomery*, 136 S. Ct. at 734 (quoting *Miller*, 132 S. Ct. at 2465), this Court must analyze the larger societal objectives allegedly served by juvenile sentences with special care.

1. Retribution

While “[s]ociety is entitled to impose severe sanctions on a juvenile . . . offender to express its

condemnation of the crime and to seek restoration of the moral imbalance caused by the offense[,] . . . '[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.'" *Graham*, 560 U.S. at 71 (quoting *Tison v. Arizona*, 481 U.S. 137, 149 (1987)). An offender's culpability is not exclusively determined by the facts of his offense, but rather is a function of his "crimes and characteristics." *Id.* at 67. Where a punishment is not proportional to the offender's culpability, other penological rationales cannot justify continued incarceration. This principle is embedded in the fabric of our criminal law, and is acknowledged in the U.S. Supreme Court's Eighth Amendment jurisprudence. For example, in *Roper*, the Court explained that "[c]apital punishment must be limited to those offenders . . . whose extreme culpability makes them the most deserving of execution." 543 U.S. at 568 (internal quotation marks and citation omitted); see also *Thompson v. Oklahoma*, 487 U.S. 815, 834 (1988) (plurality opinion) ("It is generally agreed that punishment should be directly related to the personal culpability of the criminal defendant." (internal quotation marks and citation omitted)); *Robinson v. California*, 370

U.S. 660, 667 (1962) ("Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold.").

Because juvenile offenders are biologically predisposed to immature and irresponsible behavior, are more easily influenced by their peers, and lack the ability to control their own environments, their criminal offenses are generally less morally reprehensible than those committed by their adult counterparts. See *Roper*, 543 U.S. at 571.

In addition, definitive determinations about culpability are more difficult to make because a juvenile offender's identity is still in flux. "'Only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior.'" *Miller*, 132 S. Ct. at 2464 (quoting *Roper*, 543 U.S. at 570). More so than an adult's, a juvenile's crimes usually do not result from "irretrievable depravity," but rather reflect "unfortunate yet transient immaturity." *Montgomery*, 136 S. Ct. at 733-34 (internal quotation marks and citation omitted).

2. Deterrence

Because juveniles' "lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions," they are less likely to fully appreciate and respond to risks when making decisions. *Graham*, 560 U.S. at 72 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). As a result, the deterrent effect of severe punishments upon juveniles is reduced. *Id.* This effect is directly related to the immature brain of a teenager—his diminished capacity for risk assessment, impulse control, and emotional regulation necessarily render him less responsive to long-term incentives that may successfully deter an adult.

3. Incapacitation

Although "[r]ecidivism is a serious risk to public safety," *id.* at 72, preventing potential recidivism decades in the future cannot justify imposition of the most severe sentences upon juveniles. In *Graham*, the Court noted that, even where an offender "deserve[s] to be separated from society for some time in order to prevent . . . criminal conduct, . . . it does not follow that he would be a risk to society for the rest of his life." *Id.* at 73 (internal quotation marks and citation omitted). "[O]rdinary

adolescent development diminishes the likelihood that a juvenile offender forever will be a danger to society," because a juvenile's offender's identity is not well-formed. *Montgomery*, 136 S. Ct. at 733 (internal quotation marks and citation omitted).

The need to incapacitate a juvenile offender far into the future is impossible to predict at the time of sentencing because juvenile identity is not fixed. As the Court explained in *Graham*, "[e]ven if the State's judgment that [an offender] was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made at the outset." 560 U.S. at 73.

4. Rehabilitation

Finally, to promote the rehabilitative ideal, a sentence must offer a juvenile offender a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 75. If a sentence does not do so, "[i]t reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change." *Miller*, 132 S. Ct. at 2465 (second alteration in original) (quoting *Graham*, 560 U.S. at 74).

Graham and *Miller* also indicate that in the vast majority of cases, a sentence imposed on a child cannot, consistent with the Constitution, "forswear[] altogether the rehabilitative ideal." *Graham*, 560 U.S. at 74. In imposing a categorical ban on life-without-parole sentences for juvenile nonhomicide offenders, the Court in *Graham* stressed the importance of rehabilitation in juvenile sentencing:

The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. . . . Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation.

Id. at 79.

C. All Juvenile Sentencing Must Accord with the Eighth Amendment's Substantive Guarantee of Proportionality.

Although *Graham*, *Miller*, and *Montgomery* address formal juvenile life without parole sentences, their underlying reasoning extends beyond that narrow category of juvenile sentencing.³ Proportionality is not a substantive guarantee

³ Juvenile life without parole is a decidedly narrow practice. A growing consensus has developed that it is no (...continued)

only when juveniles are sentenced to life without parole. Rather, it is a "precept of justice" that is "[e]mbodied in the Constitution's ban on cruel and unusual punishments." *Graham*, 560 U.S. at 59 (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). The unique characteristics of children that shape the U.S. Supreme Court's Eighth Amendment analyses in *Graham*, *Miller*, and *Montgomery* must therefore be considered when evaluating the constitutionality of any severe sentence imposed on a juvenile offender.

Severe sentences like Mr. Comer's "forswear[] altogether the rehabilitative ideal," and extinguish hope for a "meaningful opportunity for release based on

(continued....)

longer within our "evolving standards of decency" as a society. *Roper* at 560-61 (2005). Seventeen states ban life without parole as a sentencing option for children: Alaska, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Montana, Nevada, South Dakota, Texas, Utah, Vermont, West Virginia, and Wyoming. See *States that Ban Life Without Parole for Children*, THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, <http://fairsentencingofyouth.org/reports-and-research/sentenceeliminated/> (last visited June 7, 2016). An additional five jurisdictions ban life without parole in most cases: California, the District of Columbia, Florida, New Jersey and New York. *Id.* Additionally, the Louisiana House and Senate have each voted overwhelmingly to abolish juvenile life without parole. H.B. 264, 2016 Reg. Sess. (La. 2016).

demonstrated maturity and rehabilitation.”⁴ See *Graham*, 560 U.S. at 75. State and federal courts are rapidly recognizing that the protections provided to juveniles under *Miller* and *Montgomery* must apply to sentences mandating imprisonment for lengthy terms of years. See *Henry v. State*, 175 So.3d 675, 679 (Fla. 2015) (unconstitutional to sentence a juvenile nonhomicide offender to any term that “does not afford any ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation’” (quoting *Graham*, 560 U.S. at 75)); *State v. Boston*, 363 P.3d 453, 457-58 (Nev. 2015) (same); *Bear Cloud v. State*, 334 P.3d 132, 142 (Wyo. 2014) (“[T]he prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a meaningful opportunity to demonstrate the maturity and rehabilitation required to obtain release and reenter society.”) (quoting *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013) (internal quotation marks and citation omitted)); *People v. Caballero*, 282 P.3d 291, 298 (Cal.

⁴ Barring action from this Court, Mr. Comer will become parole-eligible at the age of eighty-five years old. See *State v. Comer*, No. A-4854-14 (Sup. Ct. May 8, 2015) (slip op. at 3).

2012) (“*Graham*’s analysis does not focus on the precise sentence meted out. Instead . . . it holds that a state must provide a juvenile offender with some realistic opportunity to obtain release from prison during his expected lifetime.” (internal quotation marks and citation omitted)); *State v. Zarate*, 2016 WL 1079462 at *11 (N.J. App. Div. Mar. 21, 2016) (“The United States Supreme Court’s case law . . . focuses upon whether a juvenile offender will have a ‘meaningful’ opportunity for a future life outside of prison walls.”). To hold otherwise would be out of step with the majority of States to directly address the question post-*Miller*.

We therefore expect that New Jersey will join the growing consensus acknowledging that children subject to lengthy prison sentences are entitled to a meaningful opportunity for release from prison.

II. Juvenile Sentences Must Receive Meaningful Review As Soon As Defendant Has Reached an Age When a Reasonable Determination Can Be Made.

Rather than incrementally walking back the permissible mandatory length of juvenile sentences, this Court should recognize that the logical conclusion of the U.S. Supreme Court’s juvenile sentencing decisions is to provide for mandatory reassessment of all juvenile sentences at a point

in time when neurological brain development and identity formation are likely to be sufficiently advanced that a more accurate assessment of culpability and character can be made.

It is impossible to distinguish at the time of sentencing "between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption." *Montgomery*, 136 S. Ct. at 734. In *Roper*, the Court assessed this task as "difficult even for expert psychologists," and held accordingly that "juvenile offenders cannot with reliability be classified among the worst offenders," 543 U.S. at 569, 573.

The body of scientific evidence relied upon in *Roper* has only grown larger in the decade since that decision. The U.S. Supreme Court noted in *Graham*, 560 U.S. at 68, that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," and concluded in *Miller* that "'an irrevocable judgment about [an offender's] value and place in society[]' [is] at odds with a child's capacity for change." 132 S. Ct. at 2465 (first alteration in original) (quoting *Graham* at 74). Because neither medical professionals nor triers of fact can reliably assess

culpability and character in a child, severe sentences imposed on children must be revisited at a point in time when those assessments can be made with more accuracy.

In establishing a constitutionally permissible sentencing scheme for juvenile offenders, the appropriate remedy is not to prohibit only those mandatory sentences that extend beyond the defendant's life expectancy. Such a remedy would tacitly permit sentences that consign a defendant to spend all but his geriatric years behind bars even though he may have matured decades earlier. Instead, this Court must ensure that juvenile offenders are provided with a meaningful opportunity for release upon reaching an age when brain development and identity formation have progressed to a point when a reasonably accurate assessment of the individual's culpability and ability to rejoin society can be made. Because juvenile brain development typically has advanced significantly by the age of 25, a juvenile sentence should be reviewed in a manner that provides a meaningful opportunity for release within 10-15 years of the offense.

Moreover, because some juvenile offenders may achieve personal growth, maturation and rehabilitation over a longer time period, meaningful review should be afforded to

juvenile offenders at regular intervals after an initial review for the duration of a juvenile offender's term of incarceration.⁵ Even for those juvenile offenders who have matured substantially at the point in time of the initial review, subsequent review remains critical, because it enables a court or parole board to assess a longer record confirming that development and rehabilitation has occurred.

A The Process of Brain Development that Causes Teenagers and Young Adults to Engage in Reckless, Impulsive and Risky Behaviors Is Not Complete until Approximately Age 25.

The U.S. Supreme Court's observations about juvenile behavior reflect what "any parent knows" and are founded in scientific evidence about brain development in teenagers and young adults. *Roper*, 543 U.S. at 569. The constitutionally significant "recklessness, impulsivity, and heedless risk-taking," *Miller*, 132 S. Ct. at 2464, of juvenile offenders is directly tied to the way in which brain development progresses throughout adolescence.

⁵Indeed, national crime statistics illustrate that people continue to mature, and as a result commit fewer violent crimes, as age increases. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS (2014) (reporting arrests by age for various crimes).

The confluence of two developmental processes results in what is commonly recognized as adolescent behavior. B.J. Casey et al., *The Adolescent Brain*, 28 DEVELOPMENTAL REV. 62 (2008). First, the systems and areas of the brain that promote risk-taking and sensation-seeking behavior reach full maturity early in adolescence. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 16:3 ANN. REV. CLINICAL PSYCHOL. 47, 54 (2009). This maturation process coincides with hormonal changes attendant to puberty, and the two forces act together to promote behavior that an adult would consider reckless, short-sighted, and often ill-advised. *Id.* Second, the prefrontal cortex, the portion of the brain that controls risk assessment, impulse control, emotional regulation, decision-making, and planning, does not fully develop until much later. Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROC. NAT'L ACAD. SCI. 8174, 8177 (2004). Therefore, at the same time there are powerful forces promoting recklessness, there is also a diminished capacity to self-regulate, comprehend consequences, and make responsible decisions. Casey, et al., *supra*. These forces are especially powerful when stress, emotions, and peer pressure are present.

Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 DEVELOPMENTAL PSYCHOL. 1531, 1536-38 (2007). This imbalance in brain function, which creates the "fundamental differences between juvenile and adult minds," *Graham*, 560 U.S. at 68, is not resolved until the brain reaches full maturity around age 25. Mariam Arain, et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DIS. TREAT. 449 (2013).

Identity formation is similarly incomplete in children and young adults. Personal "identity" refers to a person's beliefs, values, and goals. Seth J. Schwartz et al., *Identity Development, Personality, and Well-Being in Adolescence and Emerging Adulthood*, 6 HANDBOOK OF PSYCHOLOGY 339, 341 (2nd ed. 2012). The formation of identity in young adults is the process of "figuring out who they wish to be and what they wish to do with their lives." Seth J. Schwartz et al., *Identity Around the World: An Overview*, 138 NEW DIRECTIONS FOR CHILD AND ADOLESCENT DEVELOPMENT 1, 2 (2012). For juvenile offenders, this process is incomplete because "most identity development takes place during the late teens and early twenties." Laurence Steinberg & Robert G. Schwartz, *Developmental*

Psychology Goes to Court, in YOUTH ON TRIAL 9, 27 (Thomas Grisso & Robert G. Schwartz eds., 2000).

The conclusions reached through research about identity development and brain maturation are reflected in data about criminality and age. As one would expect, given the scientific understanding of the psychological maturation process, the incidence of criminal conduct, including violent criminal conduct, peaks between ages 21 and 23, and steadily declines thereafter. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS (2014) (reporting arrests by age for various crimes).

B. Penological Justification for Juvenile Imprisonment Must Be Reassessed as Soon as Character Can Accurately Be Assessed.

The relevant scientific evidence identifies the approximate age of 25 as the point in time when neurological brain development and identity formation may be sufficiently advanced to eliminate the “fundamental differences between juvenile and adult minds” that reduce a child’s culpability and impair a trier-of-fact’s ability to impose proportional punishment with any accuracy. See *Miller*, 132 S. Ct. at 2464 (quoting *Graham*, 560 U.S. at 68). Therefore, the appropriate point in time to begin the follow-up inquiry into the status of a juvenile offender is

no later than 10-15 years after sentencing, when the juvenile offender is in his late twenties or early thirties. As the Iowa Supreme Court concluded:

[S]entencing courts should not be required to make speculative up-front decisions on juvenile offenders' prospects for rehabilitation because they lack adequate predictive information supporting such a decision. The parole board will be better able to discern whether the offender is irreparably corrupt after time has passed, after opportunities for maturation and rehabilitation have been provided, and after a record of success or failure in the rehabilitative process is available.

State v. Sweet, __ N.W.2d __, 2016 WL 3023726 at *28 (Iowa 2016) (citing *State v. Seats*, 865 N.W.2d 545 (Iowa 2015) (holding juvenile life without parole sentences must be reassessed after the offender reaches an age of maturity)).

Sweet prohibited juvenile life-without-parole sentencing in Iowa; however, its reasoning applies to all juvenile offenders receiving lengthy sentences. A trial court is no better suited to decide whether 50 years is an appropriate sentence for a child offender than it is to determine that life in prison is appropriate. Even if a severe sentence is ultimately warranted, such a sentence cannot be justified when imposed on a juvenile before the age of maturity without subsequent opportunities for review. See *Graham*, 560 U.S. at 73 ("Even if the State's

judgment that [an offender] was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made at the outset."). Thus, in establishing a constitutionally permissible sentencing scheme for juvenile offenders, the appropriate remedy is to ensure that juvenile offenders are provided with reassessment and a meaningful opportunity for release upon reaching an age of maturity, and for continued opportunities for release after that point to account for personal growth, maturation and rehabilitation that some juvenile offenders may achieve over a longer time period.

Indeed, New Jersey already recognizes this principle in its own juvenile sentencing practices, and other states are adopting similar rules. A homicide offender may be sentenced to no more than 20 years if tried and sentenced as a juvenile, N.J.S.A. 2A:4A-44, and must receive parole eligibility. N.J.A.C. 10A:71-3.23 (setting tentative parole release date for juvenile offenders convicted of an act of delinquency corresponding to first degree murder at eight years and four months). Juveniles sentenced to life without parole in California may petition the court for resentencing after 15 years. Cal. Penal Code § 1170; see

also Cal. Penal Code § 3051 (establishing parole eligibility for all juvenile offenders in California after 15, 20, or 25 years). In Florida, a juvenile like Mr. Comer who did not "actually kill, intend to kill, or attempt to kill the victim" must receive parole eligibility after 15 years. Fla. Stat. § 921.1402. West Virginia mandates that all juvenile offenders must be eligible for parole after serving no more than 15 years, W. Va. Code § 61-11-23(b), and must be reconsidered annually thereafter for offenders serving term-of-years sentences. W. Va. Code § 62-12-13(e).

It may well be the case that after 10-15 years of incarceration, valid penological goals dictate that a juvenile offender remain incarcerated. And subsequent review of a juvenile's sentence may find that a juvenile offender has not demonstrated maturation and rehabilitation sufficient to warrant deviation from the maximum sentence imposed by the trier of fact. Meaningful opportunities for release do not mandate that a juvenile offender actually be released, if doing so would hamper the State's valid penological interests. However, for many juvenile offenders, reassessment at the age of maturity will reveal fully rehabilitated adults for whom the State has no valid

interest in continued incarceration. For such individuals, continued incarceration is disproportionate and therefore unconstitutional.

CONCLUSION

A crucial element of the fundamental right to human dignity protected by the Constitution is that a person be allowed to manifest his personality and attempt to reach his full potential as a member of society. See *Trop v. Dulles*, 356 U.S. 86, 100 (1958) ("The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards.").

This Court should ensure that New Jersey fulfills its constitutional obligations by holding that all juvenile offenders must receive an opportunity for reevaluation at a point in time when their character and culpability may be more accurately assessed, and continued opportunities for review thereafter.

Respectfully Submitted,


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