

No. _____

In The
Supreme Court of the United States

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CHENE DEVONNE MANLEY,

Petitioner,

v.

MARK BRNOVICH, ATTORNEY GENERAL
OF THE STATE OF ARIZONA and
CHARLES L. RYAN, DIRECTOR, ARIZONA
DEPARTMENT OF CORRECTIONS,

Respondents.

◆

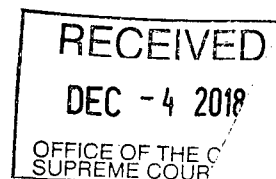
**On Petition For A Writ Of Certiorari To
The Arizona Court Of Appeals, Division One**

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PETITION FOR WRIT OF CERTIORARI

◆

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QUESTIONS PRESENTED

Does the Due Process Clause of the Constitution's Fourteenth Amendment entitle a convicted prisoner serving a natural life sentence to (1) appointment of counsel on a Notice of Post Conviction Relief asserting a claim of newly discovered material evidence directly bearing on a sentencing judge's determination of whether to impose a sentence of natural life vs. life with a possibility of parole for the offense of First Degree Murder, and/or (2) an opportunity to amend, if necessary, the Notice of Post Conviction Relief ("Notice of PCR"), when the newly discovered evidence involves a congenital neurological condition, *Chiari Malformation*,¹ with wide-ranging and highly complex effects and the prisoner has no reasonable means of investigating on her own and articulating to the court the full extent of physical, emotional, psychological, and behavioral effects of the newly discovered medical condition?

¹ Petitioner's congenital neurological condition is called *Chiari Malformation*, and was discovered when Petitioner was sent by the Arizona prison medical services provider for an MRI, as a diagnostic tool to investigate possible causes of Petitioner's various symptoms and conditions. Upon learning of the existence of the condition and with the assistance of her family, Petitioner initiated research into *Chiari Malformation*, its causes, effects, and treatment; and presented the information to the Court as newly discovered material evidence that placed consideration of her personal and criminal history in a completely different light. **The result of her admittedly preliminary research was stunning in the scope of the implications arising from the condition.**

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Chene DeVonne Manley respectfully prays that a Writ of Certiorari issue to review the judgment below, *i.e.*, the Arizona Court of Appeals, Division One, with respect to that court's affirmation of the trial level court's summary dismissal of her *pro se* Notice of Post Conviction Relief that presented newly discovered material evidence significantly bearing upon the sentencing decision to impose a sentence of natural life. The discovery of a congenital neurological condition, *Chiari Malformation* – in which a person's cranium fails to expand, thus progressively compressing the person's brain and increasingly causing a wide range of physical, medical, emotional, psychological, and behavioral effects that were inexplicable to her and to medical professionals until the condition was discovered and relieved by decompression neurosurgery – provided an otherwise unknown explanation for major parts of her personal and criminal history and presents a reasonable probability of a difference in the sentencing determination of whether to impose a sentence of natural life or a sentence of life with a possibility of parole after service of 25 calendar years.

DECISIONS BELOW

The Arizona Court of Appeals 10/26/2017 Memorandum Decision, Case No. 1 CA-CR 15-0741 PRPC, is unreported and a copy is attached hereto as **Appendix A**.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a). The unpublished decision of the Arizona Supreme Court denying discretionary review was filed July 3, 2018. No motion for rehearing was filed. Within the 90-day period provided by Rule 13(1), Rules of the United States Supreme Court, which ends on October 1, 2018, Petitioner now submits her *pro se* Petition for Writ of Certiorari.



RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the U. S. Constitution, which has been held to incorporate the Fifth, Sixth, and Eighth Amendments, provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fifth Amendment to the United States Constitution provides, in pertinent part:

No person shall be . . . , nor be deprived of life, liberty, or property, without due process of law. . . .

The Sixth Amendment to the United States Constitution provides, in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.

The Eighth Amendment to the United States Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Congenital Neurological Condition Discovered by MRI Scan Many Years After Being Sent To Prison With Natural Life Sentence. After serving many years of her natural life sentence, Petitioner was sent for an MRI by the prison medical system in an attempt to investigate possible causes of her numerous medical conditions that did not respond to the usual regimen for such problems. The MRI resulted in the discovery of a congenital condition called *Chiari Malformation*, a condition which causes extreme and progressive pressure on the brain as a result of the cranium being too small. The brain's ability to function normally is severely impaired by the pressure; as a consequence, Petitioner had suffered throughout her life from a host of medical problems such as uncontrollable high blood pressure, wildly erratic swings in endocrine gland function, thyroid problems, excessive

weight gain and all its associated problems, psychological problems, emotional and impulse-control problems, and an inability to rationally direct and react to the stresses of ordinary life, let alone highly-stressful circumstances.

Congenital Medical Condition Unknown to Petitioner, Her Family, Her Prior Physicians, or Her Sentencing Counsel. Neither Petitioner nor her family nor any of the prior medical practitioners who had seen her and treated her for numerous serious non-responsive medical conditions were aware of the congenital *Chiari Malformation*. Accordingly, neither Petitioner nor her sentencing counsel could bring this matter to the attention of the sentencing court following her conviction. The sentencing court, taking into consideration Petitioner's erratic and impulsive history, elected to impose a natural life sentence rather than a sentence of life with possibility of parole after service of 25 calendar years.

Research; Filing of Collateral Challenge; Newly Discovered Material Facts Pertinent to Sentence to Natural Life vs. Life With Possibility of Parole. Upon learning of the condition, Petitioner and her family initiated research into *Chiari Malformation* and its causes, effects, and treatment, for the purpose of understanding her own behavior from childhood forward, including criminal acts, medical problems, and numerous (and erratic) psychological difficulties she has experienced throughout her life. Upon learning of the wide ranging effects of *Chiari Malformation*, Petitioner prepared a Notice of Post

Conviction Relief for the purpose of presenting the newly discovered material evidence to the Court. The congenital *Chiari Malformation* condition provided a previously unknown scientific basis and explanation for her problems, history, and behavior that, if it had been presented to the sentencing court, there was a reasonable probability that the result of the sentencing determination would have been different.

Summary Dismissal of Notice of Post Conviction Relief. The collateral challenge was required to be initiated at the trial court level by the filing of a Notice of Post Conviction Relief. Petitioner attached documentary information about the discovery of her congenital medical condition, pointed out why it was particularly pertinent to the sentencing decision in her case, explained why she could not have presented the information previously, and requested appointment of counsel to assist her in the development of a full-fledged Petition for Post Conviction Relief. The Superior Court dismissed her Notice of Post Conviction Relief on the ground that “*her evidence is based on technology and research developed during the 16 years since Defendant’s sentencing. Because this evidence did not exist at the time of sentencing, it does not qualify as ‘newly discovered evidence’ that would entitle Defendant to relief under Rule 32*” – despite the fact that the congenital medical condition had existed since the time of her birth and therefore clearly existed at the time of her sentencing. See **Appendix C**, at page 2, first full paragraph (*i.e.*, 08/18/2015 Superior Court

Minute Entry Order summarily dismissing Petitioner's Notice of Post Conviction Relief).

**HOW THE FEDERAL QUESTIONS
WERE RAISED AND DECIDED BELOW**

In the trial level court, Fifth, Sixth, and Eighth Amendment rights as incorporated into the Fourteenth Amendment and applied against the States were raised by Petitioner's filing of a *pro se* Notice of Post Conviction Relief (**Appendix B**); and the Notice was summarily dismissed by the post conviction court (**Appendix C**), as set forth above in the Statement of the Case.

The federal issues implicated by the summary dismissal of the *pro se* Notice of Post Conviction Relief included the right of access to the court, the right to present newly discovered material facts constituting a reasonable probability that the result of her sentencing determination would have been different, the right to appointment of counsel, and the right to a fair sentencing proceeding, along with an application of the constitutionally required reasonable probability standard rather than the erroneous standard of a preponderance of the evidence.

In the state court of appeals, the federal issues were raised by the filing of a Petition for Review (**Appendix D**), a supplemental citation to legal authority (**Appendix E**), and a motion for reconsideration (**Appendix F**). Petitioner took pains to point out the

significant difference between a Notice of Post Conviction Relief and a Petition for Post Conviction Relief, in that the basis for a Notice is an assertion that newly discovered material facts probably exist, while a Petition demonstrates that newly discovered material facts actually do exist and argues why those facts call for relief. The Court of Appeals ignored the distinction and held that the Notice itself was the opportunity to which Petitioner was entitled. The Court of Appeals denied relief on the ground that Petitioner failed to demonstrate that her congenital condition could not have been discovered by due diligence on the part of her sentencing counsel – despite the fact that no one at the time conceived that she had any congenital condition, let alone a very rare one with such unusual effects, not her family, not prior physicians, and not her, herself. Yet her sentencing counsel was allegedly supposed to have discovered it with nothing more than “*due diligence*,” according to the appellate decision.

Petitioner’s supplemental citation to legal authority pointed out the then-recent decision of the Arizona Supreme Court in *State v. Amaral*, 239 Ariz. 217, 368 P.3d 926 (2016). The *Amaral* Court made a ruling that supplemented Petitioner’s argument that the Superior Court had abused its discretion and constitutionally erred when it dismissed the Notice of PCR on the ground that the progressively developing medical research information supporting Petitioner’s claim of newly discovered material evidence did not exist at the time of Petitioner’s sentencing. The *Amaral* Court stated that:

The court of appeals is correct that the scientific advancements had yet to be discovered. **But it is the condition, not the scientific understanding of the condition, that needs to exist at the time of sentencing.** See *Bilke*, 162 Ariz. at 53, 781 P.2d at 30. Bilke's PTSD qualified as newly discovered evidence because the advancement of knowledge permitted the diagnosis of a previously existing – but unrecognized – condition.

Amaral, *supra*, at ¶ 19 (emphasis by bold print added).

The Petition for Review to the Arizona Supreme Court pointed out four errors in the Court of Appeals decision: (1) a misreading of *State v. Bilke*, 162 Ariz. 5, 53-54, 761 P.2d 28 (1989); (2) a failure to address *State v. Amaral*, 239 Ariz. 217, 368 P.3d 926 (2016); (3) a failure to adhere to the express terms of the governing rule, Rule 32.1(e), Ariz.R.Crim.P.; and (4) a misunderstanding of Petitioner's Eighth Amendment/change in the law claim under Rule 32.1(g), Ariz.R.Crim.P. The Arizona Supreme Court denied review.

Importantly, all of the underlying federal constitutional claims were evaded rather than directly addressed throughout the entire state court proceedings. Petitioner had (1) presented information documenting the discovery of her congenital medical condition, (2) pointed out why that condition was particularly pertinent to the sentencing decision in her case, (3) explained why she could not have presented the information previously, and (4) requested appointment of

counsel to assist her in the development of a full-fledged Petition for Post Conviction Relief. By doing so, Petitioner effectively called for the state court system to fulfill its federal constitutional obligations with respect to (1) reading her *pro se* pleadings liberally and (2) acknowledging her right of access to the court, a) right to appointment of counsel, b) right to a fair sentencing proceeding, c) right to present newly discovered material facts constituting a reasonable probability that the result of her sentencing determination would have been different, and d) right to the constitutionally required reasonable probability standard rather than the state's erroneous standard of a preponderance of the evidence.



REASONS FOR GRANTING THE PETITION

- I. **The State Utterly Refused to Comply with *Haines v. Kerner*, and Instead Read Petitioner's *pro se* Notice of Post Conviction Relief in A Manner that Completely Undermined Her Right to Due Process and Equal Protection, Her Right to Access to Court, Her Right to Appointment and Assistance of Counsel, and Her Right to Seek Relief Based on Newly Discovered Material Facts**

In *Conley v. Gibson*, 355 U.S. 41 (1957), this Court articulated a basic tenet of due process of law as rejecting hyper-technical reading of pleading requirements for litigants seeking relief within the judicial system. The *Conley* Court stated,

Following the simple guide of Rule 8(f) that *'all pleadings shall be so construed as to do substantial justice,'* we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. **The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.**

Conley v. Gibson, 355 U.S., at 48 (addressing federal rules governing pleading in declaratory judgment action). Of importance to this basic approach was the fact that there are additional stages at which additional information or requirements may be addressed, short of dismissal. See *Conley*, 355 U.S., at 48 and note 9. This principle also obtains in the case of state court collateral challenges; amendment is allowed for good cause, if amendment is needed, and represents a reasonable accommodation for due process of law short of summary dismissal.

In *Haines v. Kerner*, 404 U.S. 519 (1972), this Court held that prisoner *pro se* pleadings are to be held to less stringent standards than formal pleadings drafted by lawyers, see 404 U.S., at 520, and articulated an additional approach asking whether from a review of the pleadings, *"We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, 'it appears*

beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Haines v. Kerner*, 404 U.S., 520-21 (emphasis by bold print added), citing *Conley*, 355 U.S., at 45-46 and *Dioguardi v. Durning*, 139 F.2d 774 (2nd Cir., 1944).

Here, even a cursory review of the detailed Notice of Post Conviction Relief demonstrates that it was a violation of basic due process of law for the state trial court judge to summarily dismiss the *pro se* pleading. Petitioner met every condition for filing a Notice of PCR for newly discovered material evidence and requesting appointment of counsel to perform the research essential to demonstrate entitlement to relief. She was and is indigent. She was confined in prison. She was unable to act as an attorney would act to obtain all the medical, behavioral, and criminal records which an expert could review to make a professional judgment that the newly discovered medical condition contributed in a significant way to the crimes for which she was sentenced. The Notice indicated that the defendant and her family were aware of numerous physical and psychological problems, but none of the previous diagnoses and treatments that were focused on the symptoms ever succeeded in addressing the chronic problems, for the reason that the observable symptoms were secondary effects of the undiagnosed primary condition – neither the defendant nor her family were aware that she suffered from *Chiari Malformation*.

The Notice addressed due diligence, indicating that the defendant was diligent in pursuing the Rule 32 process upon learning of the condition. The defendant brought her previously undiagnosed condition to the court's attention shortly after learning of the diagnosis. Petitioner included portions of the ADC medical records indicating that on 01/21/2015 she was scheduled for follow-up care based on an MRI that had been completed on 10/03/2014. During and following that follow-up care, Petitioner learned of the congenital condition and learned of general implications that the condition could not only explain numerous physical symptoms and conditions that had repeatedly failed to be corrected by the medical treatment prescribed over the years, but also that the condition had emotional and psychological effects. Upon realizing the implications of the condition, Petitioner filed a *pro se* Notice of Post Conviction Relief, asking for appointment of counsel to assist her with presenting a full-fledged Petition for Post Conviction Relief presenting a claim of newly discovered material evidence. The Notice indicated that the newly discovered medical condition was not merely cumulative or impeaching. The Notice indicated that the newly discovered medical condition was quite relevant to sentencing:

As mentioned, the condition is called Chiari Malformation, and was discovered when Petitioner was sent for an MRI as a diagnostic tool to investigate possible causes of Petitioner's various symptoms and conditions. With the assistance of her family, Petitioner has initiated research into Chiari Malformation, its

causes, effects, and treatment, **not only for the purpose of presenting the information to the Court as newly discovered material evidence, but also for the purpose of understanding her own behavior from childhood forward, including criminal acts, medical problems, and numerous (and erratic) psychological difficulties she has experienced throughout her life.**

Appendix B (05/11/2015 Notice of Post Conviction Relief), at page 3, Item 7 C), fourth paragraph (emphasis by bold print added). This is wholly compatible with case law on the subject, see *State v. Bilke*, 162 Ariz. 5, 30, 761 P2d 28, 53 (1989) (“*the mental condition and impaired capacity of a defendant are commonly considered in arriving at sentencing decisions . . . [and] can shed considerable light on why a defendant committed the acts and what an appropriate sentence would be. . . .*”

With regard to the fifth element of the rule, Petitioner was fundamentally unable to perform the legal and medical research to obtain all the information that would need to be provided to an expert who could render a professional opinion as to the probable causes and effects of the progressive condition with respect to Petitioner’s criminal history within the context of her newly discovered medical history, thus providing the sentencing court with information that could not have been obtained or provided previously. Petitioner has need of an expert to assist the sentencing judge in understanding that a congenital and progressive

neurological condition with psychological ramifications existed, that defendant suffered from it from birth onward, and that the condition was one contributing factor in the commission of the defendant's crimes, so that the information could be taken into consideration in making the determination about the appropriate sentence to be imposed – in particular about whether to sentence the defendant to life with the possibility of parole or to impose the sentence of natural life.

Petitioner's family went far beyond any form of "reasonable diligence" in seeking answers to her physical, behavioral, and psychological difficulties throughout her life and no one was able to diagnose *Chiari Malformation* as the underlying cause. Given that, it is fundamentally unreasonable and illogical to conclude that trial counsel could have discovered the condition with reasonable diligence. Even extraordinary diligence had failed to identify the condition. "*Newly-discovered material facts alleged as grounds for post-conviction relief are facts which come to light after the trial and which could not have been discovered and produced at trial through reasonable diligence.*" ***State v. Dogan***, 150 Ariz. 595, 600 (App.1986).

Despite the clear content of the *pro se* Notice of Post Conviction Relief, the Superior Court pounced upon a statement in the Notice and used what it interpreted as a pleading error to summarily deny the notice, thus also denying appointment of counsel and opportunity for Petitioner's day in court: "*Defendant concedes that she is "not . . . able to provide the Court with all the facts and research that demonstrates how*

and why her Chiari Malformation constitutes newly discovered material facts under the law.” Appendix C, at page 2, first full paragraph. The statement referred to was Petitioner’s acknowledgement that she needed and requested appointment of counsel. However, the content of her Notice clearly met the materiality standard set forth by this Court as a matter of constitutional law (see next section of this Petition), and thus it was improper for the state court to summarily dismiss the Notice without providing either an opportunity to amend the Notice or to appoint counsel.

II. The State Has Thumbed its Nose at This Court’s Materiality Standard

This Court has repeatedly set forth the materiality standard that is to be applied by courts:

In *United States v. Bagley*, 473 U.S. 667, 682 . . . (1985) (opinion of Blackmun, J.), we explained that evidence is “material” . . . when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. In other words, favorable evidence is subject to constitutionally mandated disclosure when it “could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Kyles v. Whitley*, 514 U.S. 419, 435 . . . (1995); accord, *Banks v. Dretke*, 540 U.S. 668, 698-699 . . . (2004); *Strickler v. Greene*, 527 U.S. 263, 290 (1999).

Cone v. Bell, 556 U.S. 449, 469-470 (2009) (discussing materiality within the context of required disclosure

because whether facts are material determines whether state has a constitutional obligation to disclose them to the defense).

The materiality standard is the essential component, *i.e.*, whether the facts provide a basis for a reasonable probability that the result of the proceeding would have been different. Indeed, the *Cone* Court openly acknowledged the connection between the materiality standard and the sentencing determination: “*Evidence that is material to guilt will often be material for sentencing purposes as well,*” *Cone*, 556 U.S., at 473.

Importantly, the materiality determination takes into consideration the specific context and the larger perspective, *i.e.*, whether the new facts “*could reasonably be taken to put the whole case in such a different light as to undermine confidence in the [outcome]*”. Here, we are discussing the difference between a sentence that condemns a young, 18-year old girl to a natural life sentence (no possibility of release of any type or kind) and a sentence that punishes her but allows for the possibility of parole after service of not less than 25 calendar years. One is absolute and irreversible; the other is severe but offers the possibility of rejoining her family and a life within the larger community.

Given the context of that determination, the type of facts arising from *Chiari Malformation* are unquestionably “material” in the constitutional sense of the word – facts about the causes and effects of the congenital progressive neurological condition with respect to

Petitioner's criminal history and one contributing factor in the commission of the defendant's crimes and about the correction of the condition and the new ability to consciously and rationally direct one's life and behavior.

The extent to which the State has pointedly ignored this Court's materiality standard is demonstrated by the express terms of its adopted rule, which states, "(e) *newly discovered material facts probably exist and those facts **probably would have changed the verdict or sentence.*** The federal constitutional standard is a "reasonable probability," which is less than a preponderance of the evidence. "A *reasonable probability* is 'a probability sufficient to undermine confidence in the outcome' and is less than a preponderance of the evidence. [*Strickland v. Washington*, 466 U.S. 668 (1984)] at 693-94. . . ." ***Dale v. Quarterman***, 553 F.3d 876, 880 (2008). The ***Strickland*** Court held that "*the appropriate test for prejudice finds its roots in the test for materiality of exculpatory information not disclosed to the defense by the prosecution, United States v. Agurs*, 427 U.S. [97 (1976)], at 104, 112-113. . . ."

Thus, "*probably would*" is a much higher standard than "*a reasonable probability*," for all the reasons discussed by this Court in vast numbers of cases dealing with materiality and prejudice, and for that reason the Arizona Supreme Court's express adoption of a standard that fails to meet constitutional muster is an additional factor to be taken into account.

**III. The State's Refusal to Read Petitioner's
pro se Pleading Liberally Rather Than
 Hyper-Technically and Insisting upon
 Dismissing Her Notice on the Basis of an
 Unreasonable Expectation Resulted in
 Denying Her Appointment of Counsel and
 Her Day in Court**

The State courts clearly ignored this Court's admonition that "*approach[ing] pleading [as] a game of skill in which one misstep by counsel may be decisive to the outcome*" and pointedly ignored the principle that "*the purpose of pleading is to facilitate a proper decision on the merits,*" *a la Conley v. Gibson, supra*, and *Haines v. Kerner, supra*. As a result, Petitioner was denied appointment of counsel to pursue what clearly was a legitimate claim for relief but which required the assistance of a person trained in the law to flesh out the claim and contact experts in the field who could testify about the scientifically accepted connection between the newly discovered neurological condition and Petitioner's lifelong struggles with behavioral, emotional, and psychological effects.

Appointment of counsel is a right dependent upon the facts of an individual litigant's situation and the complexity of the legal issues involved. The state does not get to provide a procedure for access to the court and then use a technicality to take advantage of an untrained litigant by denying the right to counsel.

IV. The State's Refusal to Read Petitioner's *Pro se* Pleading Liberally Rather than Insisting upon Dismissing Her Notice on the Basis of an Unreasonable Expectation Resulted in Misunderstanding Petitioner's Eighth Amendment Claim for Relief

The state Court of Appeals ruled that “*Manley was 18 years old at the time of the offenses; accordingly, because she was not a juvenile, Miller and Graham are inapposite.*” **Appendix A, 10/26/2017 Memorandum Decision**, at final sentence of ¶ 7.

The Court of Appeals misunderstood Petitioner's argument. Petitioner claimed that, analogizing the psychological and behavioral effects of the newly discovered congenital neurological condition, *Chiari Malformation*, to the arguments accepted and announced in *Miller v. Alabama*, 567 U.S. 460 (2012) and *Graham v. Florida*, 560 U.S. 48 (2010), she is constitutionally entitled to have a new sentencing hearing at which the court will be able to take into account the previously unavailable and unknown information in determining whether to impose a natural life sentence.

In this regard, Petitioner submits that the particulars of this case present “*compelling reasons*” that strongly support her contention that the newly discovered material facts provide a reasonable probability of a difference in the outcome of her sentencing hearing. She does not claim that the decisions of this Court in *Miller* and *Graham* mandate relief; rather, she asserts that the reasoning behind those decisions is

analogous to her case with regard to significant facts of congenital neurological trauma tending to lessen her level of culpability, not for purposes of determining guilt, but for purposes of determining the appropriate sentence to be imposed, taking account of Petitioner's personal and criminal history in light of this significant new factual information.

Petitioner's Eighth Amendment claim can be denied, but it must be denied on the merits, taking into consideration the argument that current law should be extended to cover and apply to Petitioner's situation.

CONCLUSION

This case presents the Court with a state court decision that is at odds with everything we understand to be the bedrock principles of due process of law. We have objective evidence of a previously unrecognized congenital neurological condition which without question had physical, emotional, psychological, and behavioral impact and effects, including upon Petitioner's ability to conform her conduct to the law and control herself as well as upon the medical community's ability to control the side effects and symptoms that arose as a result of the neurological condition. Yet, the State refused to appoint counsel and refused to allow her to proceed to have her day in court in order to present the facts and arguments in support of why the sentencing court should allow her to have an opportunity – after 25 calendar years – to seek parole to the community.

The newly discovered congenital neurological condition in this case was an insidious and internal condition that inhibited and impaired Petitioner's ability to rationally organize and direct her life. Her condition does not absolve her of guilt for the offense she committed, but it significantly changes the sentencing calculus with a mitigating factor that lessens the level of culpability for her actions and decisions and history and simultaneously increases her ability to reform and rejoin the larger community from which she currently has been barred for the rest of her life. Petitioner was essentially condemned by her own biology to a life of inexplicable resistance to medical treatment and equally inexplicable emotional and psychological reactions that she was not able to fully control or manage. Then, after discovering the underlying condition that so severely affected her, she was additionally victimized by an unfeeling state court system which denied her counsel and refused to allow her to proceed, with or without counsel, on the basis of technical legal matters beyond her ability to fulfill. Petitioner asks where is the precedent which supports the contention – let alone the conclusion – that she could have done what the state court system insisted that she had to do before it would have allowed her to proceed to have her day in court?

WHEREFORE, based upon the foregoing, Petitioner contends she is entitled to full post conviction relief briefing and appointment of counsel, in which she can present the newly discovered material facts

and supporting scientific research information relevant to sentencing. Although Petitioner contends her allegations are indisputably true, she is entitled to full briefing for an opportunity to develop them and flesh them out. She asks this Court to issue an Order vacating the Arizona Court of Appeals Memorandum Decision and directing that court to allow her to proceed with her post conviction relief action.

Respectfully Submitted this 30th day of November, 2018.

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