No.

IN THE

SUPREME COURT OF THE UNITED STATES

RAFAEL JACOB STOFFEL,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida First District Court of Appeal

PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER

A. QUESTION PRESENTED FOR REVIEW

Whether a minimum mandatory sentence of twenty-five years' imprisonment imposed for the offense of touching a minor's breast violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the Constitution.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

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2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other Authority

The Petitioner, RAFAEL JACOB STOFFEL, requests the Court to issue a writ of certiorari to review the opinion/judgment of the Florida First District Court of Appeal entered in this case on May 16, 2018. (A-1).[1]

D. CITATION TO ORDER BELOW

Stoffel v. State, 247 So. 3d 89 (Fla. 1st DCA 2018).

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida First District Court of Appeal rendered on May 16, 2018.[2]

F. CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment to the Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

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[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

[2] After the Florida First District Court of Appeal issued its opinion, the Petitioner timely sought review in the Florida Supreme Court. On December 19, 2018, the Florida Supreme Court accepted review of the case (A-9), but on February 5, 2019, the Florida Supreme Court reversed course (without any explanation) and declined to accept review of the case. (A-8).

G. STATEMENT OF THE CASE

In 2015, the Petitioner was convicted following a jury trial of one count of lewd or lascivious molestation on a victim under the age of twelve[3] based on the allegation that the Petitioner touched the victim's breasts. (A-11). At the sentencing hearing, the trial court sentenced the Petitioner a mandatory minimum sentence twenty-five years' imprisonment followed by lifetime probation. (A-14). On direct appeal, the Petitioner argued that his sentence violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the Constitution. The Florida First District Court of Appeal affirmed the sentence without explanation. (A-1-7).

[3] *See* § 800.04(5)(b), Fla. Stat.

H. REASON FOR GRANTING THE WRIT

The question presented is important.

The Petitioner was convicted of one count of lewd or lascivious molestation on a victim under the age of twelve. The victim of the offense was S.P. At the time of her trial testimony, S.P. was eleven years old. During the trial, S.P. stated that in the summer of 2014, she lived in Niceville, Florida, with her mother, her stepfather (the Petitioner), and her four sisters. S.P. testified that she went on a "daddy/daughter" day with the Petitioner in 2014 where the two went to the beach and the movies. S.P. stated that while she and the Petitioner were at the movie, the Petitioner reached into her shirt and squeezed her chest. S.P. gave the following account of the incident:

> Q. All right. So he squeezed it. What did he squeeze?
>
> A. My chest.
>
> Q. Okay. And what, if anything, did he say?
>
> A. "You're growing up, and you're becoming quite a woman," and stuff.
>
> Q. And do you remember if he said anything else?
>
> A. He asked me if I liked it.
>
> Q. And what did you say?
>
> A. Well, I said, like – I said, "It's okay," I guess, because I wasn't exactly sure what was going on. And I kind of felt put on the spot because I didn't, like – I'm not use to telling people no, because I don't like to be – I feel like that's mean sometimes. So I didn't know what to say.
>
> Q. You didn't want to be mean?

A. Yeah.

Q. So how long, about, did that go on?

A. Well, I don't remember exactly, but I remember that it went on for like – maybe like two or three minutes. And probably about two minutes.

And then I got up and – like, the Icee and the popcorn are right next to the seat. And so I, like, grabbed some popcorn and took a sip of the Icee, and then I kind of looked back down. And I'm pretty sure, like, he did it again for two or three minutes, and I sat up because it didn't feel very comfortable.

Q. When you said he did it again, what did he do again?

A. The same thing he did beforehand.

Q. Did he say anything at that time that you recall?

A. I think – I think it was the second time that he asked if I liked it.

Q. And what made him stop? When did he stop?

A. When I sat up.

(Trial transcripts at pgs 215-16). S.P. testified that after the incident, the two watched the movie and the Petitioner "kept saying he was sorry." S.P. stated that she told her mother about the incident later that year.

During the trial, Mrs. Stoffel, S.P.'s mother and the Petitioner's wife, also testified. Mrs. Stoffel stated that in August of 2014, she asked S.P. if anybody had ever touched her in a way that made her feel uncomfortable and S.P. answered "Daddy touched me on my chest when we were at the movies." Mrs. Stoffel testified that she confronted the Petitioner about the allegation later that day and she said that he "started crying, and he admitted to doing that" and she added that he said he "didn't

know why he did it." On cross-examination, Mrs. Stoffel explained that after she confronted the Petitioner about the incident, she and the Petitioner went to the see the pastor of their church and, following their meeting at the church, the Petitioner called the Florida Department of Children and Families and self-reported the incident.

After the Petitioner was convicted, the trial court was required to impose a minimum mandatory sentence of twenty-five years' imprisonment. *See* § 800.04(5)(b), Fla. Stat. & § 775.082(3)(a)4.a., Fla. Stat. Pursuant to the minimum mandatory sentence, the trial court had *no discretion* to impose a sentence less than twenty-five years' imprisonment. Notably, the lowest permissible sentence on the Florida Criminal Punishment Code scoresheet is *seventy-eight months' imprisonment.*

In *Miller v. Alabama*, 567 U.S. 460 (2012), the Court held that the Eighth Amendment's ban on "cruel and unusual" punishment prohibits the imposition of mandatory life-without-parole sentences on juveniles. *Miller* represents a continuation of the Court's expansion of the scope of the Eighth Amendment over the past decade. *See, e.g., Atkins v. Virginia*, 536 U.S. 304 (2002) (holding that the Eighth Amendment bars death sentences for mentally retarded offenders); *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that the Eighth Amendment bars death sentences for juveniles); *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (holding that the Eighth Amendment bars death sentences for individuals convicted of non-homicide crimes); *Graham v. Florida*, 560 U.S. 48 (2010) (holding that the Eighth Amendment bars life-without-parole sentences for juveniles convicted of non-homicide crimes). The Court in *Miller*

reiterated the common theme of these cases: the Eighth Amendment prohibits the imposition of a mandatory sentence that does not afford a defendant the opportunity to present – and the court an opportunity to consider – mitigating evidence:

> *Graham*, *Roper*, and our individualized sentencing decisions make clear that *a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty* for juveniles.

Miller, 567 U.S. at 489 (emphasis added).

In the instant case, the trial court was required to impose the statutory mandatory sentence of twenty-five years' imprisonment. The statutory scheme does not permit a defendant to present, or a court to consider, mitigating circumstances. Pursuant to *Miller*, the trial court should have been given discretion to impose an appropriate sentence in this case (without regard for any mandatory minimum sentence). Notably, the Petitioner has no criminal history. The prosecution offered a pre-trial plea offer of *no prison* (only probation). Based on the circumstances of this case (and the applicable mitigating factors[4]), a sentence of twenty-five years' imprisonment is unconstitutional.

In this case, consideration of (1) the gravity of the offense and the harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for commission of the same crime in other jurisdictions supports the Petitioner's argument that his twenty-five-year minimum mandatory sentence violates the Eighth Amendment. *See Solem v. Helm*, 463 U.S. 277, 292

[4] The Petitioner, who was thirty-two years old at the time of his trial, had previously served in the United States military for approximately ten years.

(1983). First, a threshold comparison of the crime committed (touching a minor's breast) and the sentence imposed (twenty-five years' imprisonment) leads to an inference of "gross disproportionality." Second, twenty-five-year sentences are *not* being imposed in Florida for defendants convicted of merely touching a minor's breast; rather, a minimum mandatory twenty-five-year sentence in Florida is normally reserved for defendants who engage in molestation of a minor's genital area. Finally, the sentences imposed for the commission of the same crime in other jurisdictions (i.e., touching a minor's breast) are nowhere near as severe as the twenty-five-year sentence imposed in this case. *See, e.g., People v. Carrillo*, 2004 WL 61110 (Cal. Ct. App. Jan. 14, 2004) (sentencing a defendant to six years' imprisonment for touching a minor's breasts – i.e., "performing a lewd act upon a child under the age of fourteen"). Thus, the Petitioner submits that the extreme disparity in this case between the crime and the sentence offends the Eighth Amendment.

The Florida Supreme Court noted in 1981 that it has never found cruel and unusual punishment in a case where that argument was directed toward a minimum mandatory sentence. *See State v. Benitez*, 395 So. 2d 514, 518 (Fla. 1981). However, the Florida Supreme Court noted in *Benitez* that "in an extreme case wherein the sentence was grossly disproportionate to the severity of the crime the legislature's judgment would run afoul of [that] constitutional prohibition." *Id.* This case presents that extreme case.

A twenty-five-year mandatory sentence, as applied to the facts of this case, also

fails to bear a rational relation to a legitimate state goal. The Due Process Clause protects the individual against the arbitrary and unreasonable exercise of governmental power. *See* U.S. Const. amends. V & XIV. To comply with individuals' rights to substantive due process, legislative acts must have a legitimate purpose and bear "a reasonable and substantial relation to the object sought to be attained." *State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 1986). Further, legislative acts "shall not be unreasonable, arbitrary, or capricious." *Id.*

Based on the facts of this case, the Petitioner's conduct does not place him in the class of people for whom the Florida Legislature determined a minimum mandatory sanction is appropriate. For example, in *State v. Robinson*, 873 So. 2d 1205 (Fla. 2004), the defendant was designated as a sexual predator after he stole a car that contained a child; he was convicted of kidnapping a minor, and the predator designation followed as a matter of law. The Florida Supreme Court held that "[n]o rational relationship exists between the statute's purpose of protecting the public from known sexual predators and Robinson's designation as one." *Robinson*, 873 So. 2d at 1215.

In the instant case, no rational relationship exists between (1) the minimum mandatory twenty-five-year sentence for all defendants convicted under section 800.04(5)(b) and (2) the Petitioner's inclusion within the minimum mandatory sentence class. The trial court should have the discretion to weigh the circumstances of this case – including the Petitioner's background – and impose an appropriate sentence. This case – and in particular the Petitioner– is not the type of case/defendant that the Florida Legislature intended to punish with a twenty-five-year minimum mandatory

sentence. Undersigned counsel is not attempting to minimize the crime of touching a minor's breast, but undersigned counsel submits that there are thousands of offenders nationwide who commit far more egregious conduct and who are not subject to twenty-five-year minimum mandatory sentences. The mere touching of a minor's breast is not the type of case that a legislative body had in mind when it adopted the twenty-five-year minimum mandatory sentence for section 800.04(5)(b). Thus, the imposition of the minimum mandatory sentence in the instant case is both arbitrary and unreasonable as applied to the Petitioner's conduct/background. The trial court should have had discretion to impose an appropriate sentence in this case (without regard for any minimum mandatory sentence). *See Paey v. State*, 943 So. 2d 919, 935 (Fla. 2d DCA 2006) ("[When] someone receives a penalty that is grossly disproportionate to the defendant's moral guilt, it is the duty of the courts of this state to step in and apply the check granted by the Eighth Amendment . . . .") (Seals, Assoc. J., dissenting).

By granting the petition for writ of certiorari in the instant case, the Court will have the opportunity to consider the question of whether a minimum mandatory sentence of *twenty-five years' imprisonment* imposed for the offense of merely touching a minor's breast violates the prohibition of cruel and unusual punishment of the Eighth Amendment to the Constitution. The Petitioner urges the Court to exercise its discretion to hear this important question.

I. CONCLUSION

The Petitioner requests the Court to grant the petition for writ of certiorari.

Respectfully Submitted,

/s/ Michael Ufferman
MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER