

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2019

CHRISTOPHER T. SHANAHAN
Petitioner,

v.

IDAHO
Respondent.

**On Petition for a Writ of Certiorari
to the Supreme Court of the State of Idaho**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 45716

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	Boise, May 2019 Term
)	
v.)	Opinion filed: July 11, 2019
)	
CHRISTOPHER T. SHANAHAN,)	Karel A. Lehrman, Clerk
)	
<u>Defendant-Appellant.</u>)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Jefferson County. Alan C. Stephens, District Judge.

The judgment of the district court is affirmed.

Ferguson Durham PLLC, Boise, for Appellant. Craig H. Durham argued.

Lawrence G. Wasden, Idaho Attorney General, Boise, for Respondent. Kenneth K. Jorgensen argued.

MOELLER, Justice.

I. NATURE OF THE CASE

Christopher T. Shanahan appeals from a district court decision denying his motion to correct an allegedly illegal sentence imposed in 1997. Shanahan argues that his indeterminate life sentence, with the first thirty-five years fixed, for a murder he committed as a juvenile in 1995 is equivalent to a life sentence without the possibility of parole. Therefore, he asserts that under *Miller v. Alabama*, 567 U.S. 460 (2012) and persuasive precedent from other states, he is entitled to a new sentencing where his youth and its attendant characteristics may be properly considered. Otherwise, he argues, his sentence violates the Eighth and Fourteenth Amendments to the U.S. Constitution. The district court denied the motion on the basis that *Miller* is inapplicable to Shanahan's sentence and, even if it applied, the sentencing court heard testimony regarding his age and mental health prior to sentencing him. For the reasons stated below, we affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

In the Fall of 1995, Shanahan and two friends devised a scheme to rob a convenience store in Grant, Idaho, and use the money to travel to Las Vegas, Nevada. Once there, they

planned to join a gang and lead a life of crime. Shanahan was fifteen years old at that time.

The day before the robbery was to occur, Shanahan explained the plan to other friends and said that, if necessary, he would shoot the store clerk. He apparently believed that killing someone would lend itself to his initiation into a gang. In an effort to dissuade him from his intended course of action, some of his friends offered him money for the trip to Las Vegas, but he refused.

The next day, Shanahan and two friends obtained guns, ammunition, gloves, and gas cans from their homes and Shanahan drove them to the store. Before entering the store, they discussed each person's role and Shanahan agreed that he would shoot the clerk.¹ After waiting for two people to leave the store, Shanahan signaled to one of his friends to enter. His friend's role was to distract the clerk so that she would not activate any alarms. Shanahan then put on gloves, so as not to leave fingerprints, and entered the store with a .22 caliber sawed-off rifle.² Inside, he joined his friend who was in the aisle next to where the clerk, Fidela Tomchak, was stocking a beverage cooler. From there, Shanahan positioned himself behind a rack of potato chips approximately three feet from Mrs. Tomchak, lifted the rifle, lowered it briefly, and then lifted it again and shot her in the back of the head, killing her. Although he later denied that his action was racially motivated, he referred to Mrs. Tomchak as a "Mexican bitch" while talking with his friends the night before he shot her. After killing her, Shanahan went to where her body lay, looked at her, and then proceeded to scan the store for witnesses, whom he testified he would have also killed. Upon finding no one else in the store, Shanahan went to the cash register, removed just over \$200, stole some cigarettes, and ran out of the store. The three boys then drove to Las Vegas.

The boys' plan fell apart shortly after they arrived when one of them became homesick and they decided to return to Idaho together. However, while driving back, they were stopped in Utah and arrested. One of Shanahan's friends confessed to the crimes, and as a result, Shanahan was charged with first degree murder and robbery with a sentencing enhancement because he used a firearm in the commission of the crimes. Shanahan pled guilty to the charges in exchange for the State dismissing the enhancement, agreeing not to seek the death penalty,³ and

¹ The sentencing court concluded that he was determined to kill the clerk even if it were unnecessary to do so.

² Shanahan and one of the other boys sawed the barrels off the guns and test-fired them before going to the store.

³ As a fifteen-year-old, Shanahan was not eligible for the death penalty under *Thompson v. Oklahoma*, 487 U.S. 815 (1988); however, at the time of his plea, the sentencing court, as well as Shanahan's counsel, apparently believed

recommending concurrent sentences. Shanahan then filed a motion seeking to be sentenced pursuant to the Juvenile Corrections Act. Given the egregious nature of his crimes, the motion was denied. At sentencing, the trial court considered a presentence investigation report and heard testimony from Mrs. Tomchak's husband, daughter, step-son, and the lead investigator on the case, as well as from Shanahan's mother, sister, and friends. Additionally, two mental health experts testified about Shanahan's psychological profile, which included evidence that he was significantly immature for his age, struggled from his parents' divorce and his father's emotional absence, and was susceptible to peer influences.

After extensive fact-finding, the district court "focused primarily on the age of the defendant in determining the death penalty was not an appropriate sentencing option." In its analysis of the potential for Shanahan's rehabilitation, the district court found that due to his young age, there was hope that he could "eventually become a contributing member of society." However, given the heinous nature of the crime committed, the district court sentenced Shanahan to concurrent unified life terms with thirty-five years fixed for the murder and ten years fixed for the robbery. Shanahan subsequently filed a motion to reduce his sentence pursuant to Idaho Criminal Rule 35. The court denied the motion.

On his first appeal, Shanahan argued that the district court abused its discretion in declining to sentence him as a juvenile, that his sentence amounted to cruel and unusual punishment, and that even if his sentences were not cruel and unusual, they were an abuse of discretion. The Court of Appeals rejected all of Shanahan's arguments and affirmed the district court's decision. *See State v. Shanahan*, 133 Idaho 896, 994 P.2d 1059 (Ct. App. 1999).

In June 2017, over twenty years after he was originally sentenced, Shanahan filed a motion to correct an illegal sentence pursuant to I.C.R. 35(a) on the basis that his sentence violates the Eighth and Fourteenth Amendments to the U.S. Constitution in light of *Miller v. Alabama*, 567 U.S. 460 (2012) (as made retroactive by *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016)), which held that sentencing courts must consider a juvenile's youth and its attendant characteristics before imposing a sentence of life in prison without the possibility of parole. The State objected on the basis that *Miller* does not apply because Shanahan was not sentenced to life without the possibility of parole, or its functional equivalent. On November 28, 2017, the district

that he was. Whether this misunderstanding of the law, to the extent it contributed to his decision to plead guilty, constitutes ineffective assistance of counsel or reversible error is not an issue Shanahan has raised on appeal.

court issued a memorandum decision denying Shanahan's motion. The court noted that, to the extent that the sentencing court considered Shanahan's age and mental health as factors weighing against imposing the death penalty, such consideration was improper, as Shanahan was not eligible for the death penalty as a minor. Nonetheless, it denied the motion on the basis that, even if *Miller* applies to Shanahan's indeterminate life sentence, the sentencing court heard and properly considered testimony regarding Shanahan's age and mental health before sentencing him. Shanahan timely appealed.

III. STANDARD OF REVIEW

Idaho Criminal Rule 35(a) "is a narrow rule which allows a trial court to correct an illegal sentence or to correct a sentence imposed in an illegal manner" at any time. *State v. Draper*, 151 Idaho 576, 601, 261 P.3d 853, 878 (2011). "Generally, whether a sentence is illegal or whether it was imposed in an illegal manner is a question of law, over which we exercise free review." *Id.*

IV. ANALYSIS

This appeal presents an issue of first impression in Idaho: whether a juvenile offender convicted of homicide who receives an indeterminate life sentence with a long fixed term is entitled to a sentencing hearing at which the factors enunciated in *Miller* are considered. This appeal also presents the issue of whether such a sentence, independent of *Miller*, amounts to cruel and unusual punishment in violation of the Eighth Amendment. Shanahan argues that since he was sentenced in 1997, material changes in constitutional law concerning the sentencing of juvenile offenders render the fixed portion of his sentence unconstitutional. He also argues that, pursuant to the Equal Protection Clause of the Fourteenth Amendment, he is entitled to a hearing at which his youth and its attendant characteristics are considered when sentencing him.

In *Miller*, the Supreme Court considered whether state sentencing schemes that mandate life in prison without the possibility of parole for juvenile homicide offenders violate the Eighth Amendment's prohibition against cruel and unusual punishment. 567 U.S. at 489. After reflecting upon a line of cases in which the Court determined that "children are constitutionally different from adults for purposes of sentencing," the Court concluded that, "[b]ecause juveniles have diminished culpability and greater prospects for reform . . . 'they are less deserving of the most severe punishments.' " *Id.* at 471 (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)). Specifically, the Court stated:

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. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory-sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment.

Id. at 489. Accordingly, before sentencing a juvenile to life without the possibility of parole, *Miller* requires consideration of the defendant's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Id.* at 477. In addition, a sentencing court must "tak[e] into account the family and home environment that surrounds [the juvenile] . . . from which he cannot usually extricate himself—no matter how brutal or dysfunctional," as well as "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." *Id.* The Supreme Court also lamented the fact that mandatory life without parole sentencing schemes "ignore[] that [the juvenile] might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." *Id.* at 477–78.

However, the U.S. Supreme Court declined to impose a categorical bar on life-without-parole sentences for juveniles convicted of homicide. *Id.* at 479. Rather, *Miller* only requires a sentencing court to consider the juvenile's "youth and attendant characteristics" before sentencing him to life without the possibility of parole. *Id.* at 483. Yet, in this regard, the Court also noted that:

[G]iven all we have said . . . 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. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at 68. 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.

Id. at 479–80.

Miller also clarified that if a juvenile's crime reflects unfortunate yet transient immaturity, “ ‘[a] State is not required to guarantee eventual freedom,’ but must provide ‘some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’ ” *Id.* at 479 (quoting *Graham*, 560 U.S. at 75).

Four years after *Miller* was decided, the Supreme Court of the United States announced that *Miller* applies retroactively and expounded upon its requirements:

Miller . . . did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of “the distinctive attributes of youth.” *Miller*, 132 S. Ct. at 2465. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects “ ‘unfortunate yet transient immaturity.’ ” *Id.* at 2469 (quoting *Roper*, 543 U.S. at 573). Because *Miller* determined that sentencing a child to life without parole is excessive for all but “ ‘the rare juvenile offender whose crime reflects irreparable corruption,’ ” *Id.* (quoting *Roper*, *supra*, at 573), it rendered life without parole an unconstitutional penalty for “a class of defendants because of their status”—that is, juvenile offenders whose crimes reflect the transient immaturity of youth. *Penry*, 492 U.S. at 330. As a result, *Miller* announced a substantive rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it “ ‘necessarily car[ries] a significant risk that a defendant’ ”—here, the vast majority of juvenile offenders—“ ‘faces a punishment that the law cannot impose upon him.’ ” *Schriro*, 542 U.S. at 352 (quoting *Bousley v. United States*, 523 U.S. 614, 620 (1998)).

Montgomery v. Louisiana, 136 S. Ct. 718, 734 (2016). Thus, life-without-parole sentences are barred under *Miller* and its progeny unless the juvenile's crime reflects irreparable corruption.

Applying these principles of law, we address Shanahan's arguments in turn.

A. Although *Miller* does not expressly apply to Shanahan's indeterminate life sentence, under our holding in *Windom*, its rationale extends to determinate sentences that are the functional equivalent of a life sentence.

As previously discussed, *Miller* only expressly prohibits mandatory sentencing schemes that impose a determinate life sentence on a juvenile offender who is convicted of homicide. 567 U.S. at 487. However, we have since applied *Miller* to non-mandatory sentences of life without the possibility of parole for juvenile homicide offenders. *Windom v. State*, 162 Idaho 417, 423, 398 P.3d 150, 156 (2017), *cert. denied*, 138 S. Ct. 977 (2018). Shanahan did not receive either a mandatory or non-mandatory determinate life sentence. Instead, he received an indeterminate life sentence with the possibility of parole after thirty-five years. As a result, neither *Miller* nor our extension thereof in *Windom* expressly apply to the indeterminate portion of Shanahan's

sentence. Nevertheless, we are persuaded that *Miller* still has some application to the determinate or fixed portion of a juvenile's sentence. In this case, that would be the thirty-five years of fixed time Shanahan received. As we explained in *Widowm*, “[a]lthough it is possible that the [Supreme] Court intended *Miller* to be applied retroactively only to those juveniles who were given mandatory sentences of life without parole, that reading would be inconsistent” with the Supreme Court's declaration that *Miller* rendered life in prison without the possibility of parole “‘an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.’” 162 Idaho at 423, 398 P.3d at 156 (quoting *Montgomery*, 136 S. Ct. at 734).

We acknowledge the dissent's concern that application of *Miller* to an indeterminate life sentence would “expand” the Supreme Court's holding in *Miller* because, according to the dissent, *Miller* only applies to fixed (*i.e.*, determinate) life sentences. The dissent's strict application of *Miller* focuses too narrowly on how a sentence is characterized and disregards the Supreme Court's admonition in *Miller* that states must provide “some meaningful opportunity” for release from prison where a juvenile's crime reflects transient immaturity. *Miller*, 567 U.S. at 479 (quoting *Graham*, 560 U.S. at 75). To provide a hyperbolic example, it could not reasonably be argued that a 100-year fixed sentence would provide a meaningful opportunity for release, even though it is not technically a fixed life sentence. In essence, we recognize that at some point on the sentencing spectrum, a lengthy fixed sentence equates to a fixed life sentence. Because the Supreme Court has “counsel[ed] against irrevocably sentencing [juveniles] to a lifetime in prison” without consideration of the *Miller* factors, 567 U.S. at 480, we conclude that the rationales of *Miller* and *Widowm* also extend to lengthy fixed sentences that are the functional equivalent of a determinate life sentence, regardless of whether such sentences are characterized as indeterminate life sentences or otherwise.

Accordingly, we must consider whether Shanahan's indeterminate life sentence, with the first thirty-five years fixed, is the functional equivalent of life without the possibility of parole.

B. Shanahan's sentence does not violate either the Eighth or Fourteenth Amendment under *Miller* because it is not the functional equivalent of a determinate life sentence.

Shanahan argues that under *Miller*, as made retroactive by *Montgomery*, his sentence of life with thirty-five years fixed is the equivalent of a life sentence and that it constitutes a cruel and unusual punishment under the Eighth Amendment because he was not given consideration of

the *Miller* factors at sentencing. He also argues that, without consideration of the *Miller* factors, he is being treated differently than similarly situated individuals who received a life sentence without the possibility of parole, which he asserts is a violation of the Equal Protection Clause of the Fourteenth Amendment.

The Eighth Amendment to the United States Constitution prohibits “cruel and unusual punishments.” U.S. CONST. amend. VIII. Where a punishment is grossly disproportionate to a crime, the Eighth Amendment is violated. *Graham*, 560 U.S. at 72. For purposes of evaluating whether a sentence violates the Eighth Amendment, this Court “treat[s] the fixed portion of a sentence as the term of confinement.” *State v. Matteson*, 123 Idaho 622, 626, 851 P.2d 336, 340 (1993). The Equal Protection Clause of the Fourteenth Amendment provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV.

As noted previously, the rationale of *Miller* applies to life sentences without the possibility of parole and their functional equivalents. 567 U.S. at 479–80. In essence, Shanahan argues that his indeterminate life sentence of life with thirty-five years fixed is the functional equivalent of a determinate life sentence because it is lengthy in terms of his age when he was sentenced (fifteen) and because “the risk is unacceptably high that [he] will die in prison without being given the opportunity for release.” He also argues that he is in a class of juvenile offenders whose crimes reflect transient immaturity and that all other members of that class will receive consideration of the *Miller* factors. As a result, he argues that, as a similarly situated defendant, he is being denied equal protection of the law.

Neither *Miller* nor *Montgomery* delineate a fixed term of years, or an age on release from prison, that would be sufficient to provide a juvenile offender with a meaningful “opportunity for release.” Indeed, in *Montgomery*, the Court acknowledged that it was leaving to the states “the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences.” 136 S. Ct. at 735 (alteration in original) (quoting *Ford v. Wainwright*, 477 U.S. 399, 416–17 (1986)). Thus, it falls to this Court to determine whether, under Idaho law, Shanahan’s thirty-five year fixed sentence is tantamount to life without the opportunity for parole.

We recognize that, fifty years ago, this Court held that “sentences of thirty years or more must be treated *for purposes of parole eligibility* as effective life sentences.” *King v. State*, 93

Idaho 87, 93, 456 P.2d 254, 260 (1969) (emphasis added). However, Idaho courts have since explicitly rejected efforts to define a life sentence as a determinate period of thirty years. *State v. Wood*, 125 Idaho 911, 913, 876 P.2d 1352, 1354 (1993) (rejecting defendant's argument that under *State v. King*, thirty years is a life sentence); *see also State v. Murphy*, 144 Idaho 152, 153, 158 P.3d 315, 316 (Ct. App. 2007) ("[U]nder Idaho law, a life sentence is not and never has been a thirty-year sentence, nor is there any 'custom and usage' making it so."). Further, the holding in *King* "no longer has precedential value in light of [Idaho's] adoption of the Unified Sentencing Act in 1986." *Wood*, 125 Idaho at 913, 876 P.2d at 1354.

Shanahan offers persuasive authority from other states in which the courts have determined that life sentences for juveniles with determinate periods the same length or even shorter than thirty-five years equate to fixed-life sentences because they do not provide a meaningful opportunity for release. However, none of those cases involve juveniles convicted of homicide. In *State v. Pearson*, for example, a seventeen-year-old was sentenced to fifty years with thirty-five years fixed for two counts of first degree burglary and two counts of first-degree robbery. 836 N.W.2d 88, 89 (Iowa 2013). There, the court extended the principles of *Miller* to non-homicide offenses and required "an individualized sentencing hearing where, as here, a juvenile offender receives a minimum of thirty-five years imprisonment without the possibility of parole for these offenses and is effectively deprived of any chance of an earlier release and the possibility of leading a more normal adult life." *Id.* at 96. Yet, that conclusion was drawn in light of the court's belief that "it should be relatively rare or uncommon that a juvenile be sentenced to a lengthy prison term without the possibility of parole *for offenses like those involved in this case.*" *Id.* (emphasis added); *see also State v. Houston-Sconiers*, 391 P.3d 409 (Wash. 2017) (involving robbery, conspiracy and assault charges).

Other cases Shanahan cites are similarly unavailing because the defendants were sentenced to much longer fixed terms, resulting in the potential for release at a significantly older age than Shanahan. *See State v. Null*, 836 N.W.2d 41, 45 (Iowa 2013) (*Miller* implicated where potential for release occurs after fifty-two years in custody, at the age of sixty-nine); *State v. Zuber*, 152 A.3d 197, 201 (N.J. 2017) (*Miller* implicated where potential for release occurs after sixty-eight years in custody, at the age of eighty-five); *Bear Cloud v. State*, 334 P.3d 132, 136 (Wyo. 2014) (*Miller* implicated where potential for release occurs after forty-five years in custody, at the age of sixty-one).

On the other hand, some state courts have determined that sentences similar to Shanahan's are not the equivalent of a life sentence. *See, e.g., Middleton v. State*, 721 S.E.2d 111, 113 (Ga. Ct. App. 2011) (thirty years fixed for a fourteen-year-old defendant not a *de facto* life sentence); *Steilman v. Michael*, 407 P.3d 313, 320 (Mont.), *cert. denied*, 138 S. Ct. 1999 (2018) (effective sentence of thirty-one years fixed for seventeen-year-old defendant not a *de facto* life sentence); *State v. Sanders*, No. 2012AP1517, 2014 WL 3819456, at *1–3 (Wis. Ct. App. Aug. 5, 2014) (thirty-five years fixed for a fifteen-year-old defendant not a *de facto* life sentence). In a case that closely resembles Shanahan's, the Supreme Court of Wyoming recently held that, because the defendant received life with a fixed term of thirty-five years for first degree murder, and is eligible for parole when he is approximately fifty years old, his sentence “is not a *de facto* life sentence and does not violate the Eighth Amendment.” *Sen v. State*, 390 P.3d 769, 777 (Wyo. 2017).

As a result of the trial court's sentence, Shanahan will be fifty years old when he becomes eligible for parole. Without any explanation or rationale as to why Shanahan would have an unusually short life expectancy, he argues that there is an “unacceptably high risk” that he will die in prison without being afforded an opportunity for release. However, even if he had provided any evidentiary support for this argument, we are inclined to follow the analysis in *Sen* and *Null* and decline to consider “specific projections of the defendant's life expectancy as a factor to be used in reviewing a juvenile's sentence,” as we “[do] ‘not believe the determination of whether the principles of *Miller* . . . apply in a given case should turn on the niceties of epidemiology, genetic analysis, or actuarial sciences in determining precise mortality dates.’” *Sen*, 390 P.3d at 776–77 (quoting *Null*, 836 N.W.2d at 71). Although Shanahan will be middle-aged when he becomes eligible for release, he still has a meaningful opportunity to obtain release—and much of his life ahead of him—if he can demonstrate that he is sufficiently rehabilitated and qualifies for parole. The Court is not satisfied that such a result is unjust under the circumstances of this case.⁴

For these reasons, we are disinclined to accept Shanahan's invitation to draw the line for a juvenile's fixed life sentence at thirty-five years or less. Accordingly, we hold that *Miller* does not apply and, thus, Shanahan's sentence does not violate the Eighth Amendment under *Miller*'s

⁴ Indeed, there is a realistic possibility that if he lives a normal lifespan, Shanahan will spend a greater portion of his life in freedom than his victim, who was only 41 years old when he murdered her.

rationale. More importantly, because Shanahan did not receive a life sentence without the possibility of parole or the equivalent thereof, he is not “similarly situated” to those who have received such sentences, and thus, the alleged lack of consideration of the *Miller* factors in his case does not violate the Equal Protection Clause of the Fourteenth Amendment.

C. Shanahan’s claim that his sentence is grossly disproportionate and otherwise violates the Eighth Amendment also fails.

We next turn to Shanahan’s argument that, even if he did not receive a *de facto* life sentence, his sentence is a cruel and unusual punishment in violation of the Eighth Amendment. Shanahan argues that, regardless of whether his sentence equates to a *de facto* life sentence, it violates the Eighth Amendment because it is “disproportionate given the attendant characteristics of youth present in this case.”⁵ As a result, he asks the Court to extend the rationale of *Miller* to all juvenile offenders who are prosecuted as adults, even where they are not sentenced to life without parole or its equivalent. The State alleges that Shanahan already raised similar arguments before the Court of Appeals in 1999, and therefore, he is barred under the doctrine of *res judicata* from arguing them again before this Court.

“*Res judicata* consists of claim and issue preclusion.” *Smith v. Smith*, 164 Idaho 46, ___, 423 P.3d 998, 1002 (2018). “The question of whether an action is barred by *res judicata* is a question of law over which we exercise free review.” *State v. Rhoades*, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000). Regarding application of *res judicata* in the context of criminal law, we have stated:

While this doctrine has traditionally been applied in the context of civil disputes, it is not foreign to criminal law. For example, in *State v. Beam*, 115 Idaho 208, 766 P.2d 678 (1988), *cert denied*, 489 U.S. 1073 (1989), this Court applied the principles of *res judicata* to a criminal defendant’s attempts to raise the same issues previously ruled upon on direct appeal in a subsequent petition for post-conviction relief. *Id.* at 210–11, 766 P.2d 680–81.

Id.

This aspect of Shanahan’s appeal raises a concern of claim preclusion, also known as “true *res judicata*.” *Monitor Fin., L.C. v. Wildlife Ridge Estates, LLC*, 164 Idaho 555, ___, 433 P.3d 183, 188 (2019). As the Court of Appeals has explained,

⁵ Shanahan concedes that his age, maturity, background, and mental health were considered as mitigating factors by the Court at sentencing; however, he suggests that the trial court’s analysis would be more sharply focused on these issues if he were re-sentenced in the manner prescribed by *Miller*.

There are three requirements for the claim preclusive effects of *res judicata* to apply: (1) both actions must involve the same parties; (2) the claim alleged to be barred was presented in the first action or could have been raised; and (3) the first action resulted in a final judgment on the merits.

State v. Martin, 159 Idaho 860, 367 P.3d 255, 258 (Ct. App. 2016) (citing *Rhoades*, 134 Idaho at 863, 11 P.3d at 482); *see also State v. Wolfe*, 158 Idaho 55, 63, 343 P.3d 497, 505 (2015) (“[U]nder *res judicata*, a valid final judgment rendered on the merits is an absolute bar to a subsequent action between the same parties on the same claim.”). Shanahan’s 1999 appeal resulted in a final judgment and involved the same parties as those involved here, *i.e.*, Shanahan and the State of Idaho. *Shanahan*, 133 Idaho at 896, 994 P.2d at 1059. Thus, the only remaining issue is whether the “same claim” element of *res judicata* is satisfied.

“[T]he ‘transactional concept of a claim is broad.’ ” *Smith*, 164 Idaho at ___, 423 P.3d at 1003 (quoting *Ticor Title Co. v. Stanion*, 144 Idaho 119, 126, 157 P.3d 613, 620 (2007)). As a result, “claim preclusion ‘may apply even where there is not a substantial overlap between the theories advanced in support of a claim, or in the evidence relating to those theories.’ ” *Id.* (quoting *Ticor Title Co.*, 144 Idaho at 126, 157 P.3d at 620). Here, Shanahan’s argument that his sentence violates the Eighth Amendment is, in essence, the same as what he submitted to the sentencing court in his Rule 35 Motion and to the Court of Appeals in 1999.

In Shanahan’s 1997 Rule 35 motion requesting that the court reduce his sentence, he stated:

The herein motion is made on the grounds and for the reasons that the sentence imposed for First Degree Murder in the . . . matter is excessive and unreasonable. The herein motion is made on the further grounds and for the further reasons that the sentence imposed is grossly disproportionate and is out of proportion to the gravity of the offense committed and constitutes cruel and unusual punishment The herein motion is made on the further grounds that because of the defendant’s age at the time of the offense (15 years of age) and the fact that the Court sentenced the defendant as an adult pursuant to I.C. § 20-509, the sentencing goals of protection of society, deterrence, rehabilitation and retribution, should be modified to include consideration of the best interests of the child.

When the motion was denied, Shanahan appealed. The issues on appeal were presented as follows:

- A. The Appellant should have been sentenced in accordance with the juvenile sentencing options set forth in the Juvenile Corrections Act.

B. The sentence imposed on the Appellant for the First Degree Murder charge is excessive, unreasonable, grossly disproportionate and out of proportion to the gravity of the offense committed.

C. The sentence imposed for First Degree Murder constitutes cruel and unusual punishment in violation of the Appellant's rights guaranteed by the 8th Amendment to the United States Constitution and as guaranteed by Article I, § 6 of the Constitution of the State of Idaho.

D. The sentencing goals of protection of society, deterrence, rehabilitation, and retribution should have been modified to include consideration of the best interests of the Appellant (who was 15 years of age at the time of the charged offenses).

In addressing his arguments, the Court of Appeals concluded:

Shanahan argues that the district court should have given greater consideration to his age, his immaturity, and his mental condition. When it imposed the sentences in this case, the district court specifically considered the testimony of Dr. Heinbecker, a psychiatrist, who testified during the sentencing hearing. As the district court set forth in its sentencing memorandum, Dr. Heinbecker stated that Shanahan's thinking was "immature and uninformed" and that Shanahan had "no comprehension of the gravity of killing someone." According to Dr. Heinbecker, Shanahan, at the time of sentencing, still did not fully appreciate the seriousness of the crime. The district court also specifically noted Shanahan's life history—his parents' divorce, his lack of a role model and his low self-esteem. Finally, the district court noted that, although Shanahan was suffering from depression at the time of the crime, he was capable of distinguishing between right and wrong and had the ability to conform his behavior to societal standards.

....

Although the sentences in the instant case are severe, the Court cannot hold that they are excessive under any reasonable view of the facts.

Shanahan, 133 Idaho at 901–02, 994 P.2d at 1064–65. Because his argument before this Court is in substance a reiteration of his earlier argument before the sentencing court and the Court of Appeals, we hold that this claim is foreclosed by the doctrine of *res judicata*.

Further, even if Shanahan presented a new argument in light of "changes in the legal landscape," as he asserts, his argument fails for several reasons. Concerning the Eighth Amendment, the U.S. Supreme Court explained in *Miller*:

The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. That right, we have explained, flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense. As we noted the last time we considered life-without-parole sentences

imposed on juveniles, the concept of proportionality is central to the Eighth Amendment. And we view that concept less through a historical prism than according to the evolving standards of decency that mark the progress of a maturing society.

567 U.S. at 469–70 (internal citations and quotations omitted). In assessing whether a sentence violates the Eighth Amendment, “[a] court must begin by comparing the gravity of the offense and the severity of the sentence.” *Graham*, 560 U.S. at 60.

“[I]n the rare case in which [this] threshold comparison . . . leads to an inference of gross disproportionality” the court should then compare the defendant’s sentence with the sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions.

Id. (quoting *Harmelin v. Michigan*, 501 U.S. 957, 960 (1991)).⁶ “If this comparative analysis ‘validate[s] an initial judgment that [the] sentence is grossly disproportionate,’ the sentence is cruel and unusual.” *Id.* (quoting *Harmelin*, 501 U.S. at 1005).

Although Shanahan seeks to extend *Miller* to all juvenile offenders sentenced as adults, *Miller* only held that imposing the *harshest* possible sentence on a juvenile homicide offender without consideration of youth and its attendant characteristics poses a risk of violating the Eighth Amendment. *Miller*, 567 U.S. at 479 (“By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment.”). Thus, it does not follow from the logic of *Miller* that every youth who is sentenced as an adult is entitled to consideration of the *Miller* factors.

Moreover, this is not the “rare case” in which a threshold comparison of the gravity of the offense and the severity of the sentence leads to an inference of gross disproportionality. Shanahan committed a senseless, premeditated murder and a robbery that resulted in his sentence of concurrent unified life terms, with thirty-five years fixed for the murder and ten years fixed for the robbery. Given the gravity of his charged crimes and the heinous manner in which they were committed, it is quite a legal stretch for Shanahan to describe his sentence as being “far beyond excessive.”

⁶ Shanahan attempts to evade application of the *Harmelin* disproportionality test by arguing that in *Miller*, the Court “brushed aside strict adherence to [Harmelin’s] longstanding disproportionality test.” In *Miller*, the Court said, “Harmelin had nothing to do with children, and did not purport to apply to juvenile offenders. Indeed, since *Harmelin*, this Court has held on multiple occasions that sentencing practices that are permissible for adults may not be so for children.” 132 S. Ct. at 2459. However, Shanahan takes this language out of context. The *Miller* Court was not rejecting application of *Harmelin* in its entirety, but merely rejecting the State’s argument that *Harmelin* “forecloses a holding that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment.” *Id.* Thus, application of the *Harmelin* disproportionality test is appropriate in this case.

Finally, even if this was the rare case where an initial comparison led us to believe that Shanahan's sentence is grossly disproportionate in light of the crimes he committed, a review of other sentences for homicide crimes committed by juveniles in this jurisdiction and others demonstrates that Shanahan's sentence is not excessive, and accordingly, does not violate the Eighth Amendment's prohibition against cruel and unusual punishment. *See, e.g., Adamcik v. State*, 163 Idaho 114, 130, 408 P.3d 474, 490 (2017), *cert. denied*, 138 S. Ct. 1607 (2018) (no Eighth Amendment violation for juvenile's sentence of life without parole for homicide); *Johnson v. State*, 162 Idaho 213, 226, 395 P.3d 1246, 1259, *cert. denied*, 138 S. Ct. 470 (2017) (no Eighth Amendment violation for juvenile's sentence of life without parole for homicide); *Brown v. Hobbs*, No. CV-13-1116, 2014 WL 2566091, at *6 (Ark. June 5, 2014) (no Eighth Amendment violation for juvenile's sentence of life without parole for homicide); *James v. United States*, 59 A.3d 1233, 1239 (D.C. 2013) (no Eighth Amendment violation for juvenile's sentence of life with thirty years fixed for homicide); *State v. Vang*, 847 N.W.2d 248, 262 (Minn. 2014) (no Eighth Amendment violation for juvenile's sentence of life with thirty years fixed for homicide); *State v. Houston*, 353 P.3d 55, 62 (Utah 2015) (no Eighth Amendment violation for juvenile's sentence of life without parole for homicide); *Sen*, 390 P.3d at 772 (no Eighth Amendment violation for juvenile's sentence of life with thirty-five years fixed for homicide). Notably, Shanahan cited no cases holding that an indeterminate life sentence with thirty-five years fixed, even for a juvenile, is disproportionate to a homicide offense.

In sum, we hold that *res judicata* bars Shanahan's claim, and even if it did not, his argument that his sentence is grossly disproportionate is without merit.

V. CONCLUSION

We affirm the decision of the district court denying Shanahan's Rule 35 motion.

Chief Justice BURDICK, and Justices BEVAN and STEGNER CONCUR.

BRODY, Justice, concurring in the result, but dissenting in Parts A and B of the analysis.

I respectfully dissent from the Court's decision to expand the U.S. Supreme Court's holding in *Miller v. Alabama*, 567 U.S. 460 (2012). I agree that the Supreme Court's decision in *Miller* required this Court to re-examine fixed life sentences for juvenile offenders convicted of homicide in cases where the imposition of the sentence was discretionary on the part of the trial

court. *See, e.g., Adamcik v. State*, 163 Idaho 114, 130, 408 P.3d 474, 490 (2017); *Windom v. State*, 162 Idaho 417, 423, 398 P.3d 150, 156 (2017); *Johnson v. State*, 162 Idaho 213, 226, 395 P.3d 1246, 1259 (2017). I am unpersuaded that *Miller*'s constitutional constraint on a life sentence for a juvenile extends to indeterminate sentences that are the “functional equivalent” of a fixed life sentence. *Miller* applies only to fixed life sentences. I agree with the Court’s decision to affirm the district court in this case, but would not start down the path of using the Eighth Amendment to re-examine lengthy indeterminate sentences for juveniles convicted of homicide.

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FILED IN THE CIRCUIT COURT
JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

STATE OF IDAHO,

Plaintiff,

VS.

CHRISTOPHER T. SHANAHAN,

Defendant.

Case No. CR-1995-502

DECISION AND ORDER RE:
MOTION TO CORRECT ILLEGAL
SENTENCE

This is a motion to correct what Defendant claims is now an illegal sentence. Defendant pled guilty in 1995 to first-degree murder and robbery charges for killing a convenience store clerk while robbing the store. Defendant was 15 years old at the time he committed the crime. Defendant was sentenced to concurrent unified life sentences with ten years fixed for the robbery and 35 years fixed for the murder. Defendant is not currently eligible for parole and will not be eligible for parole under his current sentence until he is 50. Defendant has filed this motion claiming that recent precedent from the United States Supreme Court governing interpretation of the Eighth Amendment as applied to sentencing of minors has made his sentence illegal because at the time he was sentenced his youth was not taken into consideration as a potential mitigating factor.

The court held a hearing on Defendant's motion on November 2, 2017 and has considered the motions, affidavits, declarations, and memoranda submitted by both parties. IT IS HEREBY ORDERED that Defendant's Motion is DENIED.

I. STANDARD OF REVIEW

Motion to Correct an Illegal Sentence

Rule 35 of the Idaho Criminal Rules states:

Within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction, a motion may be filed to correct or reduce a sentence and the court may correct or reduce the sentence. The court may also reduce a sentence on revocation of probation or on motion made within 14 days after the filing of the order revoking probation. Motions are considered and determined by the court without additional testimony and without oral argument, unless otherwise ordered. A defendant may only file one motion seeking a reduction of sentence. *I.C.R. 35(b)*.

Although the court is not required to hear additional testimony or argument on a Rule 35 motion, a defendant must provide new or additional information in support of the motion showing that the sentence is excessive. *State v. Huffman*, 144 Idaho 201, 203 (2007). A district court's decision on a Rule 35 motion is reviewed for abuse of discretion. *Id.*

II. ANALYSIS

Miller Requirements

In 2012, the United States Supreme Court decided *Miller v. Alabama*, 567 U.S. 460 (2012), which prohibited sentencing guidelines that mandated a sentence of life imprisonment without parole for any crime committed by someone under the age of 18. The Supreme Court had previously ruled that the death penalty was unconstitutional for minors in *Roper v. Simmons*, 543 U.S. 551 (2005), and ruled that life imprisonment without parole was unconstitutional for minors who committed non-homicide crimes in *Graham v. Florida*, 560 U.S. 48 (2010). The Court in *Miller* noted that the precedent set by *Graham* and *Roper* established that "children are constitutionally different from adults for the purposes of sentencing." *Miller*, 567 U.S. at 471. The Court's reasoning rested on three grounds: the recognition that children have a lack of

maturity and an underdeveloped sense of responsibility, that children are more “vulnerable ... to negative influences and outside pressures,” including the fact that they cannot escape negative environments as easily as adults can, and that a child’s character is not as “well formed” as an adult’s character, meaning that a child is more likely to change and a crime is less likely to be evidence of “irretrievable depravity.” *Id.*, citing *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569.

Even though *Graham* only dealt with a non-homicide crime and *Roper* dealt with the death penalty, the Supreme Court reasoned that the same qualities of youth that made the death penalty and life imprisonment without parole for non-homicide crimes inappropriate for juveniles also applied to homicide cases. The court stated that “none of what it [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. Those features are evident in the same way, and to the same degree, when (as in both cases here) a botched robbery turns into a killing.” *Miller*, 567 U.S. at 473.

Miller also emphasized that the penological justifications for harsh sentencing are weakened because of an offender’s youth – retribution, deterrence, rehabilitation, and incapacitation are all less effective, according to the Supreme Court, because of the “distinctive attributes of youth.” *Id.* at 472. Basing its reasoning on *Roper* and *Graham*, the Court held that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders...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." *Miller*, 567 U.S. at 479. The Supreme Court did not entirely ban the possibility of sentencing a juvenile to life without parole, but did state that:

Given all we have said in *Roper*, *Graham*, and this decision 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...especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 479-80; *citing Roper*, 543 U.S. at 573.

Given this language and conclusion, the Supreme Court clearly intended to minimize the number of life sentences without parole given to juvenile offenders, even if it declined to bar the sentence outright.

Montgomery

In 2016, the Supreme Court made *Miller* both binding on the states and retroactive in application in *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016). In that case, the Supreme Court heard the case of a petitioner who had been sentenced to life in prison for a murder committed decades before *Miller* was decided. The Supreme Court held that "*Miller* announced a substantive rule of constitutional law...*Miller*'s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution." *Montgomery*, 136 S.Ct. at 736. The correct procedure for implementing *Miller* should be, under *Montgomery*, "a hearing where "youth and its attendant characteristics" are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Montgomery*, 136 S.Ct. at 735, *citing Miller*, 567 U.S. at 460. The *Montgomery* court acknowledged that *Miller* did not require a "finding of fact regarding a child's incorrigibility,"

However, the Court held that “giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.” *Montgomery*, 136 S.Ct. at 736. The rationale behind this holding was to ensure that “juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.” *Id.* The Court also stated that this requirement would not be an “onerous burden” on the states, nor would it “disturb the finality of state convictions,” since prisoners who had not reformed could simply remain in prison while those who had could be given parole eligibility instead of a full resentencing. *Id.*

Idaho Case Law since Miller and Montgomery

The primary Idaho case to have considered a situation similar to Defendant’s since *Miller* and *Montgomery* were decided was *Johnson v. State*, 395 P.3d 1246 (Idaho 2017). That case concerned a juvenile who was sentenced to life in prison without parole for the murder of her parents. After *Miller* and *Montgomery* were decided, she filed a motion to correct her sentence, stating that it was illegal under those cases. Part of her reasoning was based on the fact that the trial court had made no finding that the defendant was “irreparably corrupt,” and part of her reasoning was based on the argument that the district court did not adequately consider mitigation arguments based on her youth. *Johnson*, 395 P.3d at 1258. The court dismissed the first argument as being contrary to *Montgomery* (which acknowledged that *Miller* did not impose a fact-finding requirement), but did affirm that “the requirement to hold such a hearing “gives

effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Johnson*, 395 P.3d at 1258; citing *Montgomery*, 136 S.Ct. at 735. The court held that even though the defendant's sentencing hearing had been held before *Miller* and *Montgomery* were decided, the trial court had properly heard testimony about and taken into account the defendant's youth and psychological immaturity, and had properly taken such testimony into account in sentencing the defendant to life in prison without parole. *Johnson*, 395 P.3d at 1259. Therefore, the defendant's sentence did not violate *Miller*, because the trial court had properly considered such factors when sentencing the defendant.

In *State v. Jensen*, 385 P.3d 5 (Ct. App Idaho 2016) the Idaho Court of Appeals considered a defendant's challenge to the automatic sentencing statute found in Idaho Code § 20-509, which provides that juveniles who commit certain enumerated crimes are automatically charged and sentenced as adults. This case did not involve a life sentence without the possibility of parole, but the defendant argued that failure to take his youth into consideration violated *Miller*. *Jensen*, 385 P.3d at 8. The Court of Appeals, however, held that I.C. §20-509 was merely a procedural statute and did not implicate the Eighth Amendment. *Id.* at 9. The court stated that "being waived into adult court, whether mandatory or discretionary, is not a punishment. The Eighth Amendment only comes into play after a formal adjudication of guilt and therefore, does not apply." The court went on further to note that the statute permitted courts to sentence in accordance with adult sentencing measures, juvenile sentencing measures, or both. *Id.* Even though the Court of Appeals acknowledged that the norm may be adult sentencing, "youthful characteristics" may be considered at sentencing to avoid Eighth Amendment concerns. *Id.*

Miller and Montgomery as Applied to Defendant's Case

Defendant in this case argues that *Miller* applies because of Defendant's youth and immaturity at the time of the crime. It is not clear, however, that *Miller* is applicable to Defendant's case. *Miller* dealt exclusively with juveniles who were sentenced to life without parole for homicide killings. *Montgomery* also dealt with such a defendant, as did *Johnson* in Idaho. In this case, however, Defendant did not receive a sentence of life without parole. Defendant acknowledges this, and cites to other jurisdictions which have applied *Miller* to sentences which are the "functional equivalent" of life sentences. Some of these cases are more persuasive than others (*State v. Houston-Sconiers*, 391 P.3d 409 (Wash. 2017) , cited in Defendant's memo, involved non-homicide crimes, which are more appropriately handled under *Graham* than *Miller*, since *Miller* still permits life without parole for some circumstances involving homicide crimes), but none are directly controlling under Idaho law.

Much of Defendant's argument in paragraph C concerning Defendant's trial as an adult is foreclosed by *Jensen*. Only the actual sentencing is relevant for the purposes of an Eighth Amendment analysis, the procedure is not as it does not impose a sentence. Therefore, this cannot be taken into consideration in determining whether Defendant received an adequate hearing.

Defendant is correct that even though Defendant was lawfully prosecuted as an adult, Defendant was ineligible for the death penalty under *Thompson v. Oklahoma*, 487 U.S. 815 (1988). Therefore, although testimony was presented concerning Defendant's youth and mental health, to the extent that this testimony went to mitigating the death penalty it was inappropriate, since Defendant was completely ineligible for the death penalty. However, the fact remains that

this testimony was presented, and there is precedent in *Johnson* that a hearing specifically invoking *Miller* is not necessary so long as the testimony concerns the same issues and mitigating factors that *Miller* identified. *Johnson*, 395 P.3d at 1259 (“Although *Miller* and *Montgomery* had not been decided at the time of the sentencing hearing, and therefore the terms of “irreparably corrupt” and “transient immaturity” were not in the court’s lexicon at that time, the court clearly considered Johnson’s youth and all its attendant characteristics and determined, in light of the heinous nature of the crime, that Johnson, despite her youth, deserved life without parole.”) *Johnson* also held in agreement with *Montgomery* that a finding of “permanent incorrigibility” is not required, further refuting a portion of Defendant’s argument. *Id.* at 1258.

Ultimately, the issue with Defendant’s argument is that Defendant did receive a sentence of life with the possibility of parole as opposed to life without parole. It is true that other jurisdictions have held long terms of parole ineligibility to be subject to *Miller*, especially in light of the fact that *Miller* acknowledged that life in prison was a harsher punishment for a juvenile than an adult offender. *Miller*, 567 U.S. at 475. However, in light of the precedent in *Johnson*, where some testimony of Defendant’s age and mental health was presented at the mitigation hearing, Defendant’s situation is not exactly the same as the situation in *Miller*. Defendant cannot say that no testimony of his age was presented or heard. Because the sentencing court heard testimony regarding Defendant’s age and mental health, this Court must deny Defendant’s motion.

III. CONCLUSION

For the reasons stated above, Defendant's Motion to Correct Illegal Sentence is DENIED.
IT IS SO ORDERED.

Dated this 28th day of November, 2017.


Alan C. Stephens, District Judge



CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2017, I did send a true and correct copy of the forgoing document upon the parties listed below my mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by cause the same to be had delivered.

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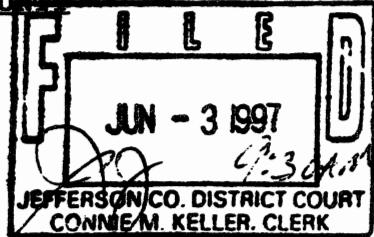
Attorney for Defendant

BY: 

Jefferson County Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, JEFFERSON COUNTY

STATE OF IDAHO,)
Plaintiff,)
v.)
CHRISTOPHER T. SHANAHAN)
Defendant,)



CASE # CR-95-502
FINDINGS OF THE COURT AND
IMPOSITION OF SENTENCE

Christopher Shanahan, on January 21, 1997, entered pleas of guilty to the First degree Murder and Robbery of Fidela Tomchak. These pleas were entered pursuant to written plea agreement filed of record on that date pursuant to which defendant also agreed to testify in the companion case of State v. Lundquist - CR #95-500. The court accepted the plea agreement and, following the Lundquist trial, ordered a pre-sentence report and scheduled the matter for sentencing on May 13, 1997.

A sentencing hearing was held May 13 - 14, 1997, for the purpose of hearing all relevant evidence and argument in aggravation and mitigation of the offense. Defendant was present at the hearing together with his counsel of record, Robert Crowley and Stephen Hart. The State of Idaho was represented by Robin Dunn, Jefferson County Attorney; and Stephen Clark, deputy prosecutor for Jefferson County, also participated.

This Court had, prior to sentencing, advised counsel for both parties that it did not view the death penalty as a valid sentencing option in view of the age of the defendant at the time the murder was committed. The sentencing hearing was conducted with that understanding.

The state called Mrs. Tomchak's husband, daughter, step-son, and Capt. LaVar Summers, and also relied upon the evidence

presented in a companion case i.e., State v. Lundquist - CV-95-500. The defendant called his mother, sister, friends, and Dr.'s John W. Casper, and Peter Heinbecker, psychiatrists.

Mr. Dunn, at the conclusion of the sentencing hearing, suggested this case was similar to other cases where a defendant received a fixed life sentence without the possibility of parole. Alternatively, Mr. Crowley pointed to the possibility of rehabilitation, defendant's age when the offenses were committed, and suggested in light of those considerations that defendant should not receive a fixed sentence longer than eighteen (18) years so as to provide the possibility of parole.

Aggravation and Mitigation - Idaho Code Section 19-2515:

The Court makes the following findings:

1) The defendant, while represented by two competent court appointed counsel, entered pleas of guilty to Murder in the First Degree in violation of Idaho Code Section 18-4003(a), and Robbery in violation of Idaho Code Section 18-6501.

2) Defendant was then sworn and offered testimony in support of those pleas. That testimony, which was again repeated in the Lundquist trial, provides the factual basis to support acceptance of said pleas. The pleas were freely, voluntarily, and knowingly made after defendant's consultation with counsel, and with a full understanding of the possible consequences.

3) Prior to the beginning of the sentencing hearing the Court inquired of the defendant if there was any reason he wished to withdraw the pleas of guilty previously entered. Defendant responded that he did not, and further advised the Court that he understood the maximum sentence the Court could impose and the rights he had waived by pleading "guilty". Finally, defendant advised the Court that he was ready to proceed with sentencing.

4) A presentence report was prepared by order of the Court and a copy was delivered to the parties or their counsel at least seven (7) days prior to the sentencing hearing in accord with Idaho Code Section 19-2515, and the Idaho Criminal Rules.

5) Defendant, pursuant to court order, obtained psychiatric evaluations, and psychiatrists testified on defendant's behalf during the hearing.

6) The sentencing hearing was conducted pursuant to notice with each party presenting evidence in aggravation or mitigation of the offense together with their recommendations re sentencing.

7) Defendant wanted to run away to Law Vegas and join a "gang". He understood you could become a gang member by being "jumped" e.g., having all gang members beat you up and if you survived you could join, or you could shoot somebody. Defendant had frequently spoken with his friends about his desire to become a gang member prior to November 10, 1995.

8) The night before the robbery and murder defendant had told others of his plan to rob the Grant Store and kill the clerk if necessary, and that he would then run away to Las Vegas and join a gang. His friends advised him it "was stupid" to talk about it.

9) On the morning of November 10, Tyson Anderson said he wasn't going to Las Vegas with Shanahan. Shanahan then spoke with Lundquist and Jenkins and they agreed to go. The defendants then went to B J Jenkin's house to secure guns and to Tom Lundquist's home to obtain ammunition, participated in sawing off stocks and gunbarrels, test fired those guns, secured a pair of gloves so as not to leave fingerprints at the scene.¹ Defendant drove to the Grant store, waited for a delivery truck to leave and discussed with Tom Lundquist and B J Jenkins what each would do in connection with the robbery. By this time defendant Shanahan had made up his mind to kill the clerk in the store.

10) When the car and extra gas cans had been filled defendant advised B J it was time to go into the store to distract the clerk. (The distraction was to prevent the clerk from pushing any alarm buttons in the store.) Defendant then put on his gloves, checked

¹ Defendant stated at the Lundquist trial that when he got the gloves at the Lundquist home he had made up his mind that he would shoot the clerk. (Transcript of Shanahan testimony - pp. 124-125).

his gun to make sure that it was loaded and followed B.J. into the store concealing the gun.

11) As defendant entered the store Mrs. Tomchak looked up at him from where she was filling a cooler. Defendant then walked to where B J was standing in an isle across from the isle in which Fidela Tomchak was bent over filling the cooler. Defendant then reached over or through a rack of potato chips, raised his gun and shot Mrs. Tomchak in the back of the head. He then quickly checked the rest of the store to see if anyone else was there, and finding no one, told B J to get the beer while he took cigarettes and cash from the store.

12) The defendant testified at Mr. Lundquist's trial that had anyone else been in the store during the robbery he would also have shot them.

13) When defendant murdered Fidela Tomchak he was fifteen (15) years of age, had no prior history of violence, was suffering from low self-esteem and depression but was capable of distinguishing between right and wrong, and had the ability to conform his behavior to societal standards.

14) Dr. Peter Heinbecker, a psychiatrist, opined as follows:

- At age fifteen (15) defendant's thinking was very "immature and uninformed, with little understanding of what was going on"; had "no comprehension of the gravity of killing someone"; and "still has a long way to go to understand the gravity of his behavior";

- Initially defendant felt no remorse, and even today does not fully appreciate the seriousness of the crime. He is gaining a better intellectual understanding of the crime and is just now beginning to get an emotional understanding;²

² The following statement appears in Dr. Meyer's "consultation notes" of August 27, 1996. "He [Chris Shanahan] appears to be fairly well disassociated from the shooting incident with a vague recollection of feelings and exact circumstances surrounding the incident and the days preceding. His remorse for the shooting appears to be, however, mostly related to the feelings of a now limited lifestyle rather than remorse for the victim or family."

- That defendant was angry and "despairing of his life". He was suffering from low self-esteem, feelings of rejection by his father, his parent's divorce, depression, drug and alcohol use. "[H]is personality style directed violence outward rather than inward. His makeup caused this reaction - most people under the same circumstances would not have reacted in this manner."

- The defendant acquired his self-esteem from friends who had differing values than his. He was modeling his life after Tom Lundquist instead of his own father. Apparently defendant's "mind set" would not allow him to model after older people.

- That defendant's "relationship with Tom Lundquist was a major contributing factor" in this offense. Tom was "his hero" and Tom had said he had killed someone.³ An additional contributing factor was a video entitled "Menace to Society". Defendant had viewed this video on a number of occasions and it contained information on how to "hold up a convenience store and shoot the clerk".

- Had defendant continued his counseling with Dr. Casper, and maintained his medication, there is a "good chance this murder would not have occurred."

- Although it is "hard to predict, treatment will probably prevent future violence [but] untreated he may act violently toward others or himself." Defendant "has a chance to be a law abiding citizen" if he obtains the necessary treatment while in prison.

12) Defendant's family and friends have observed definite changes in him during his incarceration. They find him to be remorseful for his actions, and with a greater concern for his family than he has exhibited before.

13) Defendant's prior juvenile record reflects petit theft,

³ Defendant stated at the Lundquist trial: "I told my lawyers [that I killed this lady because of Tom] but that was something that was going on with me in my head". He never told Tom about this. (Transcript of Shanahan testimony - pp. 136-137). "Chris felt if he killed someone this would give him the same respect that Tom had." *Psychiatric Evaluation of Dr. Heinbecker*, p. 5.

possession of marijuana, and a charge of lewd conduct with a nine year old girl when he was twelve years old. Those charges, for purposes of this sentencing, were not considered as aggravating factors.

The court focused primarily on the age of the defendant in determining the death penalty was not an appropriate sentencing option. Dr. Heinbecker's evaluation also concluded that, based on defendant's immaturity at the time of the offense, he had little understanding of the seriousness of his actions. With these considerations in mind this Court's opinion that the death penalty would be unjust in this case, remains unchanged.

This Court must now determine what an appropriate sentence would be. In that regard the court must consider 1) the protection of society, 2) deterrence, 3) defendant's rehabilitation, and 4) punishment.

Protection of Society:

This Court heard Mr. Shanahan testify, during the Lundquist trial, about the events surrounding Mrs. Tomchak's murder. The court could not help but notice the almost "matter of fact" way the story was related with no visible display of emotion. It was almost as if he were describing an event to which he had no emotional attachment at all.

Dr. Heinbecker described defendant's lack of emotional understanding of his actions and related that in part to his immaturity. He further indicated that he could not predict the future but believed if Mr. Shanahan received the proper treatment he could become a contributing member of society. However, if he were left untreated he could become a danger to himself or others.

A substantial period of incarceration is necessary to protect society from any further violence by this defendant. It will also provide the means to complete a more comprehensive evaluation of his potential for rehabilitation, and the extent to which he may represent a continuing danger to society.

Deterrence:

Society has determined that the taking of another human life is a most serious violation of societal norms and one for which the ultimate sanction - the loss of the offenders own life - may be imposed. Even so murders continue in our society and, alarmingly, they are too often are committed by teenagers. One must pause to wonder if anyone but the murderer is ultimately deterred by stiff sentences. However, such offenses cannot be tolerated, and those who may contemplate such actions must be reminded of the severe sanctions which will surely follow.

Rehabilitation:

Most sentencing hearings focus, almost exclusively, on this factor. Rehabilitation, however, is not entitled to more weight in sentencing than the other factors mentioned above.

Because of Mr. Shanahan's age, and with the availability of ongoing counseling and treatment, there is hope that he may eventually become a contributing member of society. Whether or not such a result can be obtained will only be determined after sufficient time has passed to make a proper assessment.

Punishment:

The courts are often criticized for being too lenient in sentencing those who commit criminal offenses. In response state legislatures often require imposition of mandatory minimum sentences which restrict the discretion of sentencing judges. Under Idaho law a First Degree Murder conviction carries a mandatory minimum period of incarceration of ten years. In this Court's opinion it would be an exceptional case in deed when any court could in good conscience consider a lesser sentence for such a serious offense.

As a counterweight to those seeking punishment alone to satisfy the demands of justice are others, usually friends and family members of the defendant, requesting mercy. The most difficult and heart wrenching decisions of necessity arise in

attempting to strike a proper balance. This is especially so when, as in this case, the very nature of the crime evidenced no mercy to the victim, Fidela Tomchak or her family. Such circumstances clearly reveal the shortcomings inherent in any mortal judges' attempt to properly balance the scales of justice.

The defendant's actions require a severe punishment even considering his age. The record reveals he specifically discussed his plans to rob the store and kill the clerk with friends the night before; he wanted to be a gang member and believed that by shooting someone he could belong to such a gang; he discussed his plan with the other defendants and told them there could be no witnesses to the robbery; he took gloves with him so as not to leave his fingerprints having already decided that he would shoot the store clerk; he went in the store as planned and executed Mrs. Tomchak without any apparent feeling; and it was only the fact that no one else was in the store at that time which prevented other lives from being taken.

SENTENCE:

This Court, in fashioning a sentence, must view the case before it and impose a sentence that is not influenced by sympathy or prejudice.

In attempting to meet this responsibility I have carefully read and listened to the Tomchak family's expressions of grief, anger and frustration as they continue to struggle with the senseless murder which has cost them so dearly, and shocked the entire community.

Likewise, I have read and heard explanations from psychiatrists as they attempt to answer the question asked by everyone affected by this tragedy - "why"? Can there every truly be an answer to such a question?

I have also read and heard the statements of defendant's family members and friends as they struggle, from a different perspective, with their own grief, anger and frustration arising from defendant's actions.

Having fully reviewed the factors which are to guide the Court in fashioning an appropriate sentence, **NOW THEREFORE**,

IT IS HEREBY ORDERED ADJUDGED AND DECREED:

1) Christopher T. Shanahan, for the First Degree Murder of Fidela Tomchak, shall serve a mandatory minimum period of not less than thirty five (35) years followed by an indeterminate sentence of life imprisonment.

2) Christopher T. Shanahan, for the Robbery of Fidela Tomchak, shall serve a mandatory minimum period of not less than ten (10) years followed by an indeterminate sentence of life imprisonment to be served concurrent with the sentence for First Degree Murder.

IT IS FURTHER ORDERED:

That Christopher T. Shanahan is hereby remanded to the custody of the Sheriff of Jefferson County, Idaho, to be delivered to the custody of the Idaho State Board of Corrections for execution of this sentence.

Dated this 3, day of June, 1997.

Brent J. Moss

Brent J. Moss, District Judge

AFFIDAVIT OF CHRISTOPHER T. SHANAHAN

1. Christopher Shanahan, declare under penalty of perjury:

1. I am currently serving a sentence of life in prison, with 35 years fixed, for first degree murder, and a concurrent life sentence, with 10 years fixed, for robbery.

2. I was 15 years old when I was arrested and charged as an adult. I have been in custody ever since. I am now 37 years old.

3. I am here because one fateful day in 1995 I shot Mrs. Fidela Tomchak, who worked at a convenience store, and I stole money and cigarettes. I was at the store with two other boys, my co-defendants Benjamin Jenkins and Thomas Lundquist. They have both been paroled. I confessed, pled guilty, and was sentenced by the Honorable Brent Moss.

4. I committed these crimes as an ignorant, self-centered, misguided, and troubled child. I knew my actions were wrong but I had very little comprehension of the actual impact and effects they would have.

5. Each year that has since passed has brought me a deeper and more painful understanding of the magnitude and finality of my actions. Now, as a man entering middle age, I struggle to comprehend the thinking and behavior of my younger self. I am both horrified and disgusted by the immense pain and damage that I have caused so many so senselessly taking Mrs. Tomchak's life. I am deeply sorry for what I've done and give my sincerest apologies to everyone who I have hurt with my actions, Mrs. Tomchak's family most of all. I know that will never be enough, but it is what I feel.

6. Seeing the pain and damage that I caused my family, as well as beginning to understand how far and to how many others that pain and damage extended, motivated me to choose a different and better direction for my life.

AFFIDAVIT OF CHRISTOPHER SHANAHAN - 1

7. After a few years of adjustment as a teenager trying to survive in the adult prison system, I began to make a turnaround. I decided to redouble my efforts to learn, to work hard, to become rehabilitated, and to give what little I could to help the community in which I find myself. I owe a huge debt of gratitude to my friends and my family, who have really provided a rock of support for me on which to build, and they still do.

8. I have had one disciplinary offense report in the last 18 years – for obtaining music outside of commissary. Other than that, I have been DOR-free since 1999.

9. I am proud of my work with the Inmate Dog Alliance Project of Idaho since 2009. I train and teach at-risk shelter dogs. I also train the new dog handlers. I was previously employed as an office clerk with Midstates as part of the Prison Industries work program. I have been recognized, with distinction, for my participation in the Boise State/ISCC Debate Initiative. I have been a team member since 2016.

10. Even though my arrest stopped me from attending school, I received my High School Equivalency in 1996. I've completed the Core Curricula class in prison and a class in basic computer skills. I have earned 24 credits from Ohio University.

11. I decided to take classes and courses voluntarily in prison without being required to do so by programming. I've successfully completed Cognitive Self-Change (Phase I) - twice, Cognitive Self-Change Community Model Program – as a member and mentor, Cage Your Rage Anger Management - twice, Breaking Barriers, Substance Abuse Education and Recovery, Life Skills, Thinking Errors Orientation, Relapse Prevention, and Breaking Barriers. I've been trained and have certificates from the National Center for Construction Education in Plumbing, Levels One and Two, and Electrical Wiring, Level One.

AFFIDAVIT OF CHRISTOPHER SHANAHAN - 2

12. I've also been trained in exercise science. I've received training certificates as an Endurance Training Specialist, Weight Training Specialist, and Sports Nutrition Specialist. I am a certified Master Fitness Trainer from the National Federation of Professional Trainers.

13. I am asking the Commission to allow me to present additional information to show to you my sincere remorse for what I've done and to show you how I have been rehabilitated since my youth, either with documentary materials or, better yet, at an in-person hearing.

Further affiant sayeth naught.

Dated this 28 day of June, 2017.

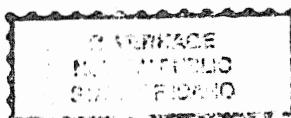
Christopher Shanahan
Christopher Shanahan

SUBSCRIBED and SWORN to before me this 8th day of June, 2017.

Notary Public: By
Residing at Canyon Country

My commission expires:

5/13/19



AFFIDAVIT OF CHRISTOPHER SHANAHAN - 3