

SUPREME COURT OF THE UNITED STATES

CRAIG CROSS,
Petitioner,

v.

CASE NO.: _____
L.T. CASE NO.: 83-12801CF10A
(FLORIDA)

STATE OF FLORIDA,
Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

INDEX

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APPENDIX E	<u>Sentence</u>
APPENDIX F	<u>Postconviction Motion (Fl.R.Crim. P. 3.850)</u>
APPENDIX G	<u>Motion for Rehearing</u>

Respectfully submitted,

Craig Cross

CRAIG CROSS, DC # 083510

Appendix A

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CRAIG CROSS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D19-743

[May 2, 2019]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Timothy L. Bailey, Judge; L.T. Case No. 83-012801CF10A.

Carey Haughwout, Public Defender, and Paul Edward Petillo, Assistant Public Defender, West Palm Beach, for appellant.

No appearance required for appellee.

PER CURIAM.

Affirmed.

CIKLIN, CONNER and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

August 02, 2019

CASE NO.: 4D19-0743
L.T. No.: 83-12801 CF10A

CRAIG CROSS

v. STATE OF FLORIDA

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that the appellant's June 21, 2019 motion for rehearing, rehearing en banc and/or written opinion is denied.

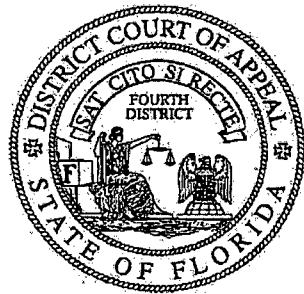
Served:

cc: Attorney General-W.P.B. Public Defender-P.B. Paul Edward Petillo
Craig Cross

kr

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Spencer D. Levine, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: August 23, 2019

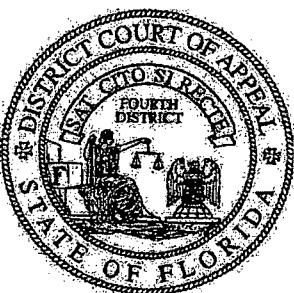
CASE NO.: 19-0743

COUNTY OF ORIGIN: Broward

T.C. CASE NO.: 83-12801 CF10A

STYLE: CRAIG CROSS

v. STATE OF FLORIDA



Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

Served:

cc: Attorney General-W.P.B.
Craig Cross

Public Defender-P.B.
State Attorney-Broward

Paul Edward Petillo
Clerk Broward

kr

Appendix B

STATE OF FLORIDA,

vs.

CRAIG CROSS.

Defendant.

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

CASE NUMBER: 83-12801CF10A

JUDGE: TIM BAILEY

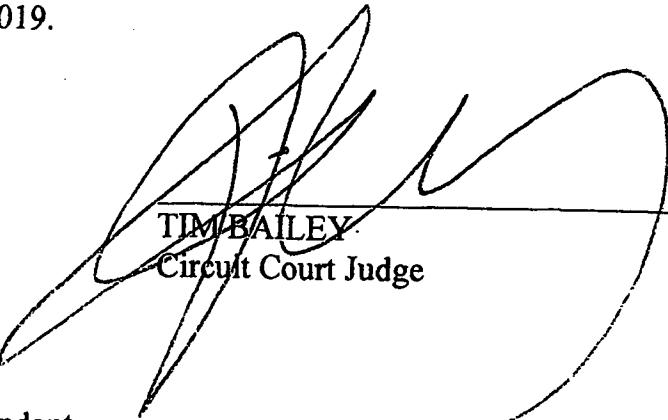
**ORDER ON DEFENDANT'S MOTION FOR
POST-CONVICTION RELIEF**

THIS CAUSE having come before this Court upon the Defendant's Motion for Post-Conviction Relief filed on January 12, 2018 and being fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that Defendant's Motion for Post-Conviction Relief is hereby Denied for the reasons set forth in the State's Response. A copy of the State's Response has been attached hereto.

The defendant has thirty (30) days from the date of rendition of this Order to file an appeal.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Broward County, Florida, this 14th day of February, 2019.



TIM BAILEY
Circuit Court Judge

cc: State Attorney's Office-Appeals
Christine Robbins, Esq. for Defendant

IN THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

STATE OF FLORIDA

v.

CRAIG CROSS

Defendant

) CASE NO: 83-12801 CF10A

) JUDGE: T. BAILEY

**RESPONSE TO DEFENDANT'S MOTION FOR
POST-CONVICTION RELIEF**

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and responds to the Defendant's Motion for Post-Conviction Relief, pursuant to Fla.R.Crim.P. 3.850, and the Order of this Honorable Court, as follows:

1. The defendant in this matter was found guilty at trial of murder in the first degree, and sentenced to life imprisonment, with no possibility for parole for 25 years, on June 15, 1984 (Exhibit I).
2. A motion for post-conviction relief was filed by the defendant based on *Miller v. Alabama*, 132 S.Ct. 2455 (2012), and this Court ordered the State to file a response to the motion. The State moved for a stay of proceedings based on the case of *Michel*

v. State, 204 So.3d 101 (Fla. 4th DCA 2016) being heard by the Florida Supreme Court (Exhibit II). Since the basis of the stay has been resolved by the decisions of the Florida Supreme Court, the State can now properly address the motion for post-conviction relief.

3. The motion of the defendant must be denied, because he is parole eligible in the above-styled matter. The allegation of the defendant that he is entitled to be resentenced based on *Miller v. Alabama*, 132 S.Ct. 2455 (2012) is without merit. Although the State of Florida agrees that the defendant was under the age of 18 at the time the crime in this matter was committed, a sentence under *Miller* is only unconstitutional where the defendant committed the crime under the age of 18 and the sentence was a mandatory life sentence with no possibility of parole. *Id.* at 2469. Because the defendant is parole eligible under the statute, *Miller* has no application to this case, and the sentence for murder in the first degree is legal. *Franklin v. State*, 43 Fla.L. Weekly S557 (Fla. November 8, 2018); *Michel v. State*, 43 Fla.L. Weekly S298 (Fla. November 1, 2018). See also *State v. Wesby*, Case No. 4D16-4246 (Fla. 4th DCA January 9, 2019); *State v. West*, Case No. 4D16-4252 (Fla. 4th DCA January 9, 2019). Consequently, this Honorable Court must deny the motion for post-conviction relief.

WHEREFORE, the State of Florida respectfully requests this Honorable Court to deny the Defendant's Motion for Post-Conviction Relief.

I HEREBY CERTIFY that a copy of the foregoing was furnished by e-mail to Christine Sharmae Robbins, Esquire (discovery@browarddefender.org) and (crobbins@browarddefender.org), Attorney for the Defendant, Craig Cross, this 14th day of January, 2019.

MICHAEL J. SATZ
State Attorney

By: 

JOEL SILVERSHEIN
Assistant State Attorney
Suite 07130
Broward County Courthouse
West Building
201 S.E. 6th Street
Fort Lauderdale, Florida 33301
Telephone: (954) 831-7913
courtdocs@sao17.state.fl.us
jsilvershein@sao17.state.fl.us

Appendix C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

August 02, 2019

CASE NO.: 4D19-0743
L.T. No.: 83-12801 CF10A

CRAIG CROSS

v. STATE OF FLORIDA

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that the appellant's June 21, 2019 motion for rehearing, rehearing en banc and/or written opinion is denied.

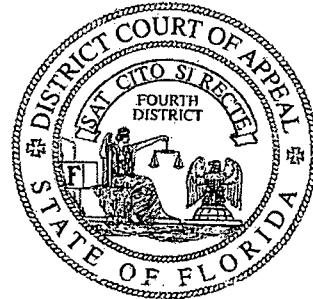
Served:

cc: Attorney General-W.P.B. Public Defender-P.B. Paul Edward Petillo
Craig Cross

kr

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



Appendix D

PROBATION VIOLATOR
(Check if Applicable)

STATE OF FLORIDA

-vs-

CRAIG CROSS
Defendant

IN THE CIRCUIT COURT, SEVENTEENTH
JUDICIAL CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA

DIVISION FM TYSON

CASE NUMBER 83-12801 CF

ST. ATTY. R. HARNEY

CT. RPTR. NANCY S. WILLIAMSON

BOOK 747 PAGE 010

JUDGMENT

The Defendant, CRAIG CROSS, being personally before this
Court represented by EVAN BARON, his attorney of record, and having:

(Check Applicable
Provision) Been tried and found guilty of the following crime(s)
 Entered a plea of guilty to the following crime(s)
 Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	CASE NUMBER
<u>01</u>	<u>MURDER IN THE 1ST DEGREE</u>	<u>782.04</u>	<u>CAPITAL</u>	

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s) *

The Defendant is hereby ordered to pay the sum of fifteen dollars (\$15.00) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of two dollars (\$2.00) as a court cost pursuant to F.S. 943.25(4).

The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25(8).
(This provision is optional; not applicable unless checked).

The Defendant is further ordered to pay a fine in the sum of \$ _____
pursuant to F.S. 775.0835.

(This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).

The Court hereby imposes additional court costs in the sum of \$ _____

The Court hereby stays and withholds the imposition of sentence as to count(s) _____
and places the Defendant on probation for a period of _____
under the supervision of the Department of Corrections (conditions of probation set forth in separate
order.)

The Court hereby defers imposition of sentence until JUN 19 1984
(date)

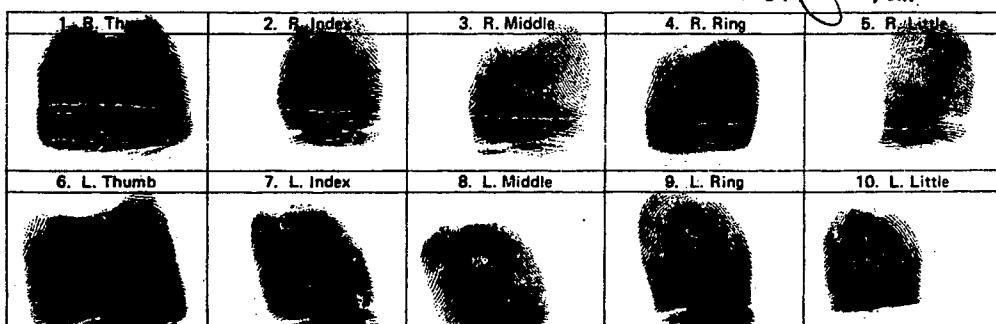
Imposition of Sentence
Stayed and Withheld
(Check if Applicable)

Sentence Deferred
Until Later Date
(Check if Applicable)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

FINGERPRINTS OF DEFENDANT

ROBERT M. TYSON, JR.



Fingerprints taken by:

R. M. TYSON, JR.

DONE AND ORDERED in Open Court at Broward County, Florida this 15 day of JUNE
A.D. 1984. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant,
CRAIG CROSS and that they were placed thereon by said Defendant in
my presence in Open Court this date.

BROWARD COUNTY, FLORIDA

This instrument filed for record on June 19, 1984

and recorded in MINUTES CIRCUIT COURT, BOOK 747

PAGE 661 ..nunc pro

tunc June 15, 1984 Record verified.

ROBERT E. LOCKWOOD, Clerk

By Robert Fountain D.C.

JUDGE

ROBERT M. TYSON, JR.

BROWARD COUNTY, FLORIDA
I certify this document to be a true
and correct copy of the original.
WITNESS MY HAND AND SEAL
ON DEC 11 2013
HOWARD C. FORMAN
CLERK OF COUNTY & CIRCUIT COURT
D.G. BY

Murphy, Jerry

IN THE CIRCUIT / COUNTY COURT IN AND FOR BROWARD COUNTY, FLORIDA

DATE 6-19-84 CASE NO. 83-12801 ARR. NO. BS 83-11253
 ROR (C) CASH SURETY

DEFENDANT Craig Cross

CHARGE Murder in the 1st Degree

ADJ. *John B. Murphy* OTHER

SENT Life imprisonment without possibility
of parole for 25 years Plus \$2.00 Assessment & \$15. Victim Costs
30 days to appeal.

Robert W. Taylor Jr. BY: *John B. Murphy*
 JUDGE CLERK'S OFFICE DEPUTY CLERK

BROWARD COUNTY, FLORIDA
 I certify this document to be a true
 and correct copy of the original.
 WITNESS MY HAND AND SEAL
 on DEC 11 2013
 HOWARD C. FORMAN
 CLERK OF COUNTY & CIRCUIT COURT
 BY John B. Murphy D.C.

Appendix E

BOOK 747 PAGE 608
Defendant CRAIG CROSS
Case Number 83-12801 CF

SENTENCE

(as to Count 01)

The Defendant, being personally before this Court, accompanied by his attorney, E. BARON, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

(Check either provision, if applicable)

- and the Court having on _____ (date) deferred imposition of sentence until this date.
- and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

- The Defendant pay a fine of \$ _____, plus \$ _____ as the 5% surcharge required by F.S. 960.25.
- The Defendant is hereby committed to the custody of the Department of Corrections
- The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida.
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

For a term of Natural Life **MANDATORY MINIMUM 25 YEARS**

- For a term of _____
- For an indeterminate period of 6 months to _____ years.

If "split" sentence
complete either of
these two paragraphs

- Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____, the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

**Firearm – 3 year
mandatory minimum**

- It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.
- It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)() are hereby imposed for the sentence specified in this count.

**Drug Trafficking –
mandatory minimum**

- The Court pursuant to F.S. 847.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

**Retention of
jurisdiction**

- The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Offender

- It is further ordered that the Defendant shall be allowed a total of **210 DAYS** credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Jail Credit

- It is further ordered that the sentence imposed for this count shall run consecutive to concurrent with (check one) the sentence set forth in count _____ above.

Consecutive/Concurrent

- It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run consecutive to concurrent with (check one) the following:

**Consecutive/Concurrent
(As to other convictions)**

- Any active sentence being served.
- Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Broward County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends _____

DONE AND ORDERED in Open Court at Broward County, Florida, this 19 day of JUNE
A.D. 19

BROWARD COUNTY, FLORIDA

This instrument filed for record on June 19, 1984.

and recorded in MINUTES, CIRCUIT COURT, BOOK

747 PAGE 608, nunc pro

tunc _____. Record verified.

ROBERT E. LOCKWOOD, Clerk

By Rebecca Mountain D.C.

JUDGE
ROBERT W. TYSYON, JR.

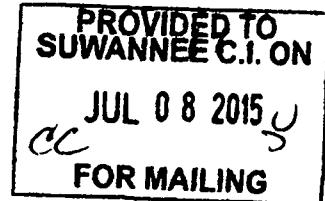
HOWARD COUNTY, FLORIDA
I certify this document to be a true
and correct copy of the original.
WITNESS: REBECCA MOUNTAIN AND SEAL
on DEC 1 2013

CLERK OF COUNTY & CIRCUIT COURT
BY HOWARD C. FORMAN

A 2

Appendix F

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA



STATE OF FLORIDA,
Plaintiff,

v.

Case No.: 83-12801 CF

CRAIG CROSS,
Petitioner/Defendant.

MOTION FOR POSTCONVICTION RELIEF
Fla. R. Crim. Proc. 3.850(B)(2)

Craig Cross, #083510
Suwannee C. I. Annex
5964 U.S. Highway 90
Live Oak, FL 32060

Exhibits attached: Plea and Sentence...

STATEMENT OF THE CASE AND FACTS

This is a postconviction motion filed under Fla. R. Crim. P. 3.850(B)(2). See also: *Falcon v. State*, no SC13-865 (Fla. 2015).

On December 7, 1983, Petitioner was charged by indictment by the Grand Jury with the crime of First Degree Murder. The Grand Jury had found that Petitioner did unlawfully and from a premeditated design to effect the death of [REDACTED] did murder the said [REDACTED] by shooting him with a firearm.

Contrary to the form of the statute in such made and provided, to wit: F.S. 782.04.

Petitioner was 17 years of age at the time of said crime. Petitioner had entered a plea of not guilty, was found guilty June 15, 1984. This Court thereafter sentenced this Petitioner to be confined in the Florida prison system for the rest of his natural life, with the stipulation or condition that he would not be eligible for parole until twenty-five years from the date of sentencing.

Petitioner was a juvenile at the time of crime.

ISSUE 1

WHETHER THE UNITED STATES SUPREME COURT'S DECISION IN *Miller*, 132 S.Ct. at 2469, WHICH HELD THAT THE EIGHTH AMENDMENT'S PROHIBITION ON CRUEL AND UNUSUAL PUNISHMENT FORBIDS A SENTENCE SCHEME THAT MANDATES LIFE IN PRISON WITHOUT POSSIBILITY OF PAROLE FOR JUVENILE OFFENDERS SHOULD BE APPLIED RETROACTIVELY.

Herein, the Miller case has dramatically disturbed the power of the State of Florida to impose a nondiscretionary sentence of life without parole on a juvenile convicted of a capital felony, and thus the decision falls within this first category of developments of fundamental significance that place beyond the authority of the State the power to regulate certain conduct or impose certain penalties. *Id.*

See: Judge Van Nortwick, specially concurring in *Smith v. State*, reached a similar conclusion.

Under Miller, a defendant cannot be given a mandatory sentence of life without parole if the defendant was a juvenile when the offense was committed. That is, Miller categorically bans mandatory life sentences for juveniles. Thus, *Miller* "places beyond the authority of the State [of Florida] the power to ... impose (a) certain penalty" mandatory life sentences for juveniles.

113 So.3d 1058, 1062 (Fla. 1st DCA 2013) (Van Nortwick, J., specially concurring) clearly by invalidating Section 775.082(1), Fla. Statutes, as applied to juveniles convicted of a capital homicide offense, *Miller* announced a prohibition

on the State's power to "impose certain penalties". Under these circumstances, this alone is sufficient reason to conclude that Miller should be applied retroactively.

As the Court stated in Witt "[C]onsideration of fairness and uniformity make it very difficult to justify depriving a person of his liberty or his life, under process no longer considered acceptable and no longer applied to indistinguishable cases."
id. at 925 (quoting ABA standards relating to postconviction remedies 37 (Approved Draft 1968)).

The Supreme Court decision in Miller constitutes a "development of fundamental significance" under Witt and therefore applies retroactively.

Pursuant to Florida Rule of Criminal Procedure 3.850(B)(2), any affected juvenile offender shall have two years from the mandate issues in the case of Falcon v. State, No. SC13-865 (Fla. 2015).

In Horsley v. State, No. SC13-1938, Slip Op. 23 (Fla. Mar. 19, 2015), the Courts had concluded that legislation enacted by the Florida Legislature in 2014 to bring Florida's juvenile sentencing statutes into compliance with Miller and Graham provides the appropriate remedy for all juvenile offenders whose sentences are unconstitutional under Miller, even if the juvenile's offense was committed prior to the July 1, 2014, effective date of the legislation. In Horsley, the State had conceded that, if Miller applies retroactively, there are "no principled distinctions" as to the appropriate remedy for cases on collateral review and those

pending on direct appeal, as in the posture of Horsley. It had been concluded and fully set forth in Horsley, that trial courts should apply Chapter 2014-220 Laws of Florida, and conduct a resentencing proceeding in conformance with that legislation, when presented with a timely Rule 3.850 motion for postconviction relief from any juvenile offender whose sentence is unconstitutional under Miller, as is the situation in this Petitioner's case at bar.

Herein, Petitioner prays that this Court shall hold an individualized resentencing hearing for Petitioner pursuant to Section Two of Chapter 2014-220, Laws of Florida, in which directs the Trial Court to consider the enumerated and any other pertinent factors "relevant to the offense and Petitioner's youth and attendant circumstances." Ch. 2014-220, Laws of Florida under Section 1 of Chapter 2014-220, Laws of Florida, this Court must determine whether Petitioner "actually killed, intended to kill, or attempted to kill the victim", then Petitioner must receive a sentence of at least fourty years imprisonment, with subsequent judicial review of his sentence after having served twenty-five years of that sentence. Whereas, herein, this Petitioner has served 32 years of incarceration completed.

Further note: that if the Trial Court concludes that this Petitioner did not "actually kill, intend to kill, or attempt to kill the victim", the Trial court has broader discretion to impose a sentence of any lesser term of years, with judicial

review after fifteen years if Petitioner's sentence is to be more than fifteen years imprisonment.

CONCLUSION

For all the reasons cited, *supra*, it is evident that the United States Supreme Court's decision in *Miller* applies retroactively to this Petitioner's and any juvenile offender seeking to challenge the constitutionality of his or her sentence pursuant to *Miller* through collateral review seeking to correct his or her sentence by way of applying the juvenile sentencing legislation enacted by the Florida Legislature in 2014 and the Supreme Court's decision in *Horsley*.

RELIEF REQUESTED

Remand this case for resentencing in conformance with Chapter 2014-220, Laws of Florida.

So shall Petitioner pray.

Respectfully submitted,

Craig Cross
Craig Cross, #083510
Suwannee C. I. Annex
5964 U.S. Highway 90
Live Oak, FL 32060

UNNOTARIZED OATH

UNDER PENALTIES OF PERJURY, I have read the foregoing Motion for Postconviction Relief 3.850(B)(2) and state that facts stated herein are true and correct on this 8 day of July, 2015.

Craig Cross
Craig Cross, #083510

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion under Fla. R. Crim. P. 3.850(B)(2) has been placed into the hands of prison officials at Suwannee C. I. Annex to be mailed via U.S. Mail to:

Clerk of Circuit and County Court Archives Division 201 S.E. 6 th Street/Room 385 Fort Lauderdale, Florida. 33301	And to:	State Attorney Office 201 S.E. 6 th Street, Suite 665 Fort Lauderdale, Florida. 33301
---	---------	--

On this 8 day of July, 2015.

Craig Cross
Craig Cross, #083510
Suwannee C. I. Annex
5964 U.S. Highway 90
Live Oak, FL 32060