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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER 2019 TERM

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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**ROBERT JACKSON,**  
**Petitioner,**

v.

**STATE OF FLORIDA,**  
**Respondent.**

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**On Petition For Writ Of Certiorari To The  
Fourth District Court Of Appeal,  
State Of Florida**

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**CORRECTED**  
**PETITION FOR WRIT OF CERTIORARI**

**ROBERT JACKSON,  
DC#196910  
DADE CORRECTIONAL INST.  
19000 S.W. 377<sup>TH</sup> STREET  
FLORIDA CITY, FLORIDA 33034**

**QUESTION PRESENTED**

**WHETHER EIGHTH AMENDMENT'S PROTECTION ESTABLISHED IN GRAHAM AND MILLER SHOULD BE EXPANDED BEYOND AGE CUTOFF AT EIGHTEEN TO PROHIBIT MANDATORY LIFE IMPRISONMENT WITHOUT PAROLE BASED ON NEW SCIENTIFIC EVIDENCE AND GROWING NATIONAL CONSENSUS?**

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**APPENDIX E** Eighth Amendment to the United States Constitution.

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## **PARTIES TO PROCEEDINGS**

Petitioner, **ROBERT JACKSON**, was the Petitioner in the Florida Fourth District Court of Appeal.

Respondent, the **STATE OF FLORIDA**, was the Respondent in the Florida District Court of Appeal.

## **DECISION BELOW**

The unelaborated decision of the Fourth District Court of Appeal, State of Florida affirming the trial court's denial of post-conviction relief motion is unreported and contained in the Appendix A.

## **JURISDICTION**

The judgment of the Fourth District Court of Appeal ring was entered on October 10, 2019. (App. A). This Court has jurisdiction under 28 U.S.C. § 1257(a) to consider Petitioner's claim that he is incarcerated in violation of the United States Constitution.

## **CONSTITUTIONAL PROVISION INVOLVED**

The Eighth Amendment of the United States Constitution provides:

“Excessive bail shall not be required,  
nor excessive fines imposed, nor  
cruel and unusual punishments inflicted.”  
Amend. VIII, U.S. Const. (App. G).

The Fourteenth Amendment provides, in pertinent part:

“[n]or shall any state deprive any person  
of life, liberty, or property, without due  
process of law. . .” Amend. XIV,  
§ 1, U.S. Cont. (App. H).

## **STATEMENT OF THE CASE**

Petitioner was born on October 15, 1974, New Orleans, Louisiana.

On November 20, 1996, while at age 22, Petitioner was accused of committing multiple felony offenses in Palm Beach County, Florida.

On December 2, 1996, a grand jury indicted Petitioner for, *inter alia*, the crime of first-degree murder with a firearm, attempted first degree murder, and armed burglary. The Indictment was filed with the Circuit Court of Palm Beach County, Florida under Case Number 1996-CF-12793-B02.

On August 20, 1997, Petitioner was convicted as charged. After formally adjudicating Petitioner guilty, the State trial court judge sentenced Petitioner, pursuant to Florida's sentencing statutes, to concurrent terms of life imprisonment for first degree murder and 75 years imprisonment on the remaining counts.

On August 13, 2018, Petitioner filed a Motion to Correct illegal Sentence in the State trial court claiming that the life imprisonment sentences without the possibility of parole, as applied to him for crimes committed when he was a 22 year old youth, violated the protection of the Eighth Amendment to the United States Constitution against cruel and unusual punishment. (App. D).

Petitioner argued in the post-conviction relief motion that his life sentences should be prohibited under the Eighth Amendment because, consistent with the

current medical consensus that brain development continues into late adolescence, he was comparable to a juvenile under the age of 18. (App. D). Petitioner sought a vacatur of the life imprisonment sentences without any possibility of parole. (App.D).

Respondent did not contest Petitioner's Eighth Amendment claim and the state trial court did not order a hearing on the post-conviction motion.

The State post-conviction judge entered a two-page order on May 10, 2019 denying Petitioner's motion to correct illegal sentence on the basis that no court has ever extended the logic of Miller v. Alabama, 567 U.S. 460 (2012) and Graham v. Florida, 560 U.S. 48 (2010) to a youth offender 18 years of age or older at the time of the crime. (App. B).

Petitioner filed a timely appeal to the Fourth District Court of Appeal of Florida.<sup>1</sup>

On October 10, 2019, the Florida appellate court per curiam affirmed, without an explanation, the trial court's order denying Petitioner's post-conviction relief claim seeking expansion of the principles established in Miller and Graham, based on more recent scientific findings on brain development, to offenders over 18 but less than 25 years of age at the time of their crimes. (App. A).

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<sup>1</sup> Under Florida Appellate Procedures, briefing is not required during a summary appeal taken from a final order denying a Criminal Rule 3.800(a) motion to correct illegal sentence without a hearing. Briefing is permissive. See Fla.R.App.P. 9.141(b)(2)(c)(2018). Petitioner opted to not file a brief.

## **REASONS FOR GRANTING THE WRIT**

Review should be granted by the Court in the present case because the Eighth Amendment prohibition against mandatory life imprisonment without possibility of parole sentences for juvenile offenders should also be made applicable or expanded to youthful offenders who were ages 18-21 at the time of their crimes based on current brain underdevelopment science not previously available to this Court and a national consensus, which has continued to grow after the Court's Graham and Miller decisions, indicating that late adolescent youth (like Petitioner) exhibits the same hallmark features of juveniles under age 18 which justifies punishing them equally the same.

The Eighth Amendment to the Constitution of the United States provides, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” Amend. VIII, U.S. Const. The Eighth Amendment is made applicable to States through the Due Process Clause of the Fourteenth Amendment which provides:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Amend. XIV, § 1, U.S. Const.

See Robinson v California, 370 U.S. 660, 667 (1962).

In the past two decades, this Court has issued several decisions holding that the imposition of the harshest prison sentence of life imprisonment without parole on juvenile offenders violates the Eighth Amendment rule against cruel and unusual punishment. Miller v. Alabama, 567 U.S. 460 (2012); Graham v. Florida, 560 U.S. 48 (2010); Roper v. Simmons, 543 U.S. 557 (2005).

The major issue in these cited cases, dealing with juvenile sentencing, was the adult-age line at which the Eighth Amendment protection should be drawn. In Roper, this Court held that capital punishment violated the Eighth Amendment when imposed upon offenders who are under age 18 when they committed their crimes. Id. 543 U.S. 574-578 (“Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules.” Id. at 574). The finding made in Roper by this Court that the death sentence imposed on offenders under age 18 constitutes cruel and unusual punishment was based on then-available findings from the medical and scientific community that the brain in adolescence criminal offenders does not become fully develop until during late adolescence between the ages of 18 and 25. Therefore, the Court concluded that, “[t]he qualities that distinguish juveniles from adults do not disappear when a individual turns 18.” Id. at 570.

In the Graham case, this Court held that the Eighth Amendment forbids a sentence of life imprisonment without the possibility of parole for the juvenile

offender who did not commit homicide. Id. 560 U.S. 48, 74-75 (2010). This Court considered that a life sentence is permitted to be imposed in the State of Florida for the offense of armed burglary. Because Florida had abolished its parole system in 1983, before the defendant committed the crime when he was under age 18, a life prison sentence meant that the defendant had no possibility of being released from prison during his life time unless he was granted executive clemency. Id. at 57. This Court emphasized in Graham that a sentence of life imprisonment without parole for a nonhomicide offense committed by a juvenile offender alters the offender's life by a forfeiture that is irrevocable. Id. at 69-70. The Court adopted from its precedents the bright-line rule of age 18 in finding that the Eighth Amendment prohibited mandatory life imprisonment without parole sentences for young offenders under age 18 at the time they committed nonhomicide criminal offenses.

Two years after the Graham decision, this Court decided Miller v. Alabama. There, the Court extended Graham's holding to juvenile offenders convicted of homicide and, after adopting the cutoff line drawn in Roper at age 18 without considering whether the line should be moved or providing any analysis to support that line, held that the Eighth Amendment prohibits a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders

convicted of homicide offenses. Id. 567 U.S. 460 (2012). The Court explained in Miller that “[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” Id. at 476. The Court considered that the 14-year old juvenile offenders had committed the crime of capital murder and, before being sentenced, were never afforded an individualized sentencing hearing where “youth and its attendant characteristics,” such as the lack of maturity, underdeveloped sense of responsibility and impulsivity are considered as sentencing factors and given effect in determining how juveniles differs from adults. Id. at 471.

Petitioner submits that nothing in the Roper, Graham, and Miller, decisions states or even suggests that this Court is prevented from finding that the Eighth Amendment prohibits mandatory life without parole sentences for those offenders over age 18 but under age 25 and who the scientific community has concluded displays the same characteristics of immaturity and underdeveloped sense of responsibility as offenders under the age of 18.

Because this Court cut off the age of a juvenile offender at 18 in Roper, Graham, and Miller based on findings from the medical and scientific community available at that time, the Petitioner’s age at the time of the crimes in the present case is relevant to the question of whether the Eighth Amendment’s protection against cruel and unusual punishment should be expanded beyond age 18 based on

new scientific developments. Cruz v. United States, 2018 U.S. Dist. LEXIS 52924 (Conn. March 29, 2018)(expanded Miller to apply to a youth who was past his 18<sup>th</sup> birthday at the time of the crimes and ordered resentencing based on new medical and scientific evidence on full brain development during late adolescence.)

Turning to the present case. The evidence before this Court is indisputable that Petitioner was born on October 15, 1974 and that the crimes of first-degree murder, attempted first-degree murder, and armed burglary were committed on or about November 20, 1996. On August 20, 1998, following a jury trial, the Petitioner was sentenced to life imprisonment without parole as to the first degree murder offense. The prison sentences were ordered to be served concurrently. (App. D, pg. 4).

Although new medical and scientific findings have developed from underdeveloped brain research proving that adolescences' brains do not become fully developed until age 25, the Petitioner is requesting the Court to expand the age line to 23. Thus, the Court need not engage in any consideration further than is necessary to decide the age-expansion question in the present case.

This Court reached its decisions Roper, Graham and Miller after considering the continuing brain development in adolescents and the science available to the Court on the development of a child's brain to substantiate it's findings:

“[O]ur decisions rested not only on common sense - - on what ‘any parent knows’ - - but

on science and social science as well.

Id. at 569. . . In *Roper*, we cited studies showing that “[o]nly a relatively small proportion,

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of adolescents” ‘who engage in illegal activity’ ‘develop entrenched patterns of problem behavior.’ Id. at 570. . . (quoting Steinberg & Scott, *less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003). And Graham, we noted that “developments in psychology and brain science continue to show fundamental differences between juveniles and adult minds - - for example, in ‘parts of the brain involved in behavior control.’ 560 U.S., at [68] . . . We reasoned that those findings - - of transient rashness, proclivity for risk, and inability to assess consequences - - both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs his “deficiencies will be reformed.”

Id., *Miller*, 567 U.S. at 472

The analysis used by this Court in Roper, Graham and Miller began with objective indicia of national consensus. “The clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures.” Graham, 560 U.S. at 62.

Twenty two year olds are classified as “youthful offender” in the State of Florida. See § 958.04, Fla. Stat. (1997). California offers a youthful offender parole program for offenders who were younger than twenty-five when they were convicted and sentenced as adults, making such offenders eligible for parole

sooner. See California: New Hope for Young Offenders—Parole Eased for 18 to 23 Year-Olds Convicted of Serious Crimes (Oct. 5, 2015), available at <https://www.hrw.org/news/2015/california-new-hope-young-offenders>. Several States now offer “young adult court” to delay the age when late adolescents age into adult court. The foundational idea for these courts is the growing body of research that ‘the prefrontal cortex of the brain -- responsible for our cognitive processing and impulse control -- does not fully develop until the early to mid-20’s.’ See the Supreme Court of California, County of San Francisco, Young Adult Court, <http://www.sfsuperiorcourt.org/divisions/collaborative/yac>. An additional idea in the young adult court setting is that, as older adolescents ‘are going through this critical developmental phases, many find themselves facing adulthood without supportive family, housing, education, employment and other critical protective factors that can help them navigate this tumultuous period.’ Id. Young adult courts accommodate these differences because the ‘traditional justice system is not designed to address cases involving these individuals, who are qualitatively different in development, skills, and needs from both children and older adults.’ Id. In California, the young adult court serves people aged 18 to 25. Id. Similarly, the young adult court system in Idaho, recognized that the “18-24 [year-old] brain is unique” because the prefrontal cortex is “not fully developed,” placing offenders in this age range at high risk. See Powerpoint on Young Adult

Court, Bonneville County, Idaho, <https://www.nadcp.org/sites/default/files/2014/CG-12.pdf>. Nebraska offers the Douglas County Young Adult Court, “a judicially supervised program that provides a sentencing alternative for youthful offenders up to age 25. See Nebraska Douglas County District Court, Young Adult Court, <https://www1.dc4dc.com/young-adult-court>. And New York’s young adult court serves defendants between sixteen and twenty-four in response to “the latest on adolescent brain developments.” See Center for Court Innovation, Youth Programs, <https://www.courtinnovation>.

The consistency is a trend towards abolition of harsh sentencing practices against late adolescents when applying the Eighth Amendment’s prohibition against cruel and unusual punishment. When considering the excessiveness of a punishment, this Court looked to an objective indicia” that a punishment has become disfavored in society. Roper, 543 U.S. at 609. For example, on February 5, 2018, the American Bar Association House of Delegates passed a resolution calling for jurisdiction still practicing capital punishment to prohibit death sentences for defendants under the age of twenty-two at the time of their offenses. That decision was supported by “a growing medical consensus that key areas of the brain relevant to decision-making and judgment continue to develop into the early twenties.” ABA Resolution, DOC. No. 121-1, at 6-10.

Some rulings have accepted that eighteen is no longer an appropriate cutoff line for adulthood in criminal sentencing. In Cruz v. United States, a case which is analogous to the present case, a federal district court was asked to determine whether or not the logic of Miller should be expanded to protect a criminal offender slightly over age of 18 at the time he and another man committed the crimes of murder. The defendant had received sentences of mandatory life imprisonment without parole under a sentencing scheme that mandated the imposition of such a sentence upon conviction. On March 29, 2018, after determining that a national consensus disfavors applying mandatory life imprisonment without parole to 18-year olds and that new brain science indicates that the same indicia of youth which made mandatory life imprisonment without parole unconstitutional for those under age 18 in Miller also applies to 18-year olds, the federal district court ruled that the Eighth Amendment forbids sentencing schemes that mandates life in prison without parole for offenders who were 18 years old at the time of their crimes and granted the defendant's motion to vacate sentence. The defendant is currently awaiting to be resentenced. The district judge specifically rationalized that “[w]hen the Roper Court drew the line at age 18 in 2005, the Court did not have before it the record of scientific evidence about late adolescence that is now before this court. . .” Id. 2018 U.S. Dist. LEXIS 52924.

In Commonwealth v. Bredhold, a Kentucky state court declared the State's death penalty statute unconstitutional as applied to those offenders under the age of 21 based on a finding of a "consistent direction of change." The Bredhold decision was based largely on expert testimony that the lack of brain development in late adolescents affects them in ways similar to juveniles under eighteen. Id. No. 14-CR-161 (Fayette Circuit Court, August 1, 2017). (App. F, Exhibit A).

Elsewhere throughout this nation, the age of 18 is no longer treated as the cutoff line between defining adolescence and adulthood. In State v. Norris, a New Jersey court ordered resentencing for a defendant who was 21 years of age at the time the offenses of murder and attempted murder were committed. The Court vacated the sentence of 75 years imprisonment based in part on this "Court's recognition of the mitigating qualities of youth' and the need for courts to consider at sentencing a youthful offender's failure to appreciate risks and consequences as well as other factors often peculiar to young offenders." Id. No. A-3008-151-4, 2017 WL 2062145 (N.J. Super. Ct. App. Div. May 15, 2017).

The Supreme Court of Washington remanded a case for resentencing after the trial court declined to consider late adolescence as a factor in a non-capital sentencing because "studies reveal fundamental differences between adolescent and mature brains in the areas of risk and consequent assessment, impulse control,

tendency toward antisocial behaviors, and susceptibility to peer pressure.” State v. O’Dell, 358 P. 3d 359, 365 (Wash. 2015).

The Illinois Court of Appeals has also applied the protection of Roper and Miller to 19-year old criminal defendants. See People v. Harris, 70 N.E. 3d 718 (Ill. App. Ct. 2016); People v. House, 72 N.E. 3d 357, 388 (Ill. App. Ct. 2015).

Indicators of consensus also includes scientific evidence on the continued development of the brain in late adolescents. Leading researchers in this particular field have explained that, at the time of this Court’s decision in Roper, researchers understood young adults between ages 18 and 21 to constitute a less well-defined category. See Elizabeth S. Scott, Richard Bonnie, & Laurence Steinberg, Young Adulthood as a Transitional Legal Authority: Science, Social Change, and Justice Policy, 85 Fordham L. Rev. 641, 643 (2016).

In Roper, Graham and Miller, this Court identified “[t]hree general differences between juveniles under 18 and adults”: (1) that juveniles have a “lack of maturity and an underdeveloped sense of responsibility,” often resulting in “impetuous and ill-considered actions and decisions;” (2) that juveniles are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;” and (3) that “the character of a juvenile is not as well formed as

that of an adult." Roper, 543 U.S. at 569-570; Graham, 560 U.S. at 68; Miller, 567 U.S. at 471-72.

As to the first characteristic identified by this Court in Roper, scientific evidence developed in the thirteen years since Roper has clearly established that the same traits in a juvenile under age 18 are present in adolescence over 18 years old. Alexandra Cohen et al., When Does a Juvenile Become an Adult? Implications for Law and Policy. 88 Temple L. Rev. 769 (2016); Laurence Steinberg et al., Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation, Developmental Science 00 (2017). Therefore, after Roper, Graham, and Miller, mental health professionals have found that many of the same traits possessed by juveniles under 18 -- traits that make them ineligible for the death penalty -- also apply to older adolescents in their late teens and early twenties.

Because there currently exist a growing national consensus rejecting the cut off at 18 for distinguishing a juvenile from an adult for criminal sentencing, the life imprisonment without parole sentences imposed against Petitioner, who was age 20 when homicide and nonhomicide offenses were committed, violated the Eighth Amendment to the United States Constitution.

## **CONCLUSION**

Based upon the foregoing, the question presented should merit this Court's review or remand this case for an evidentiary hearing on the expanded age question.

Dated: January 2, 2020.

Respectfully submitted,

Robert Jackson  
Petitioner, Pro se

Robert Jackson

Robert Jackson, DC#196910  
Dade Correctional Institution  
19000 S.W. 377<sup>th</sup> Street  
Florida City, Florida 33034