

APPENDIX A

Supreme Court of Florida

TUESDAY, DECEMBER 3, 2019

CASE NO.: SC19-1595

Lower Tribunal No(s).:

2D17-2160;

521999CF003168XXXXNO

DESMOND BAKER

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)


This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See Fla. R. App. P. 9.330(d)(2).*

POLSTON, LABARGA, LAWSON, LAGOA, and MUÑIZ, JJ., concur.

A True Copy

Test:



John A. Tomasino

Clerk, Supreme Court



db

Served:

JEFFREY H. SIEGAL

CAROL J. Y. WILSON

HON. KEN BURKE, CLERK

HON. WILLIAM H. BURGESS III, JUDGE

HON. MARY BETH KUENZEL, CLERK

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DESMOND BAKER, DOC #R17904,)
)
Appellant,)
)
v.)
)
STATE OF FLORIDA,)
)
Appellee.)
_____)

Case No. 2D17-2160

Opinion filed July 10, 2019.

Appeal from the Circuit Court for
Pinellas County; William H. Burgess, III,
Judge.

Howard L. Dimmig, II, Public Defender,
and Carol J. Y. Wilson, Assistant Public
Defender, Bartow, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Jeffrey H. Siegal,
Assistant Attorney General, Tampa, for
Appellee.

ROTHSTEIN-YOUAKIM, Judge.

Desmond Baker challenges his sentence of fifty years' imprisonment
without review after twenty-five years, which the trial court imposed for his 1999 first-
degree murder conviction upon resentencing pursuant to Miller v. Alabama, 567 U.S.

460 (2012) (holding that mandatory life imprisonment without parole for offenders who were younger than eighteen years old at the time of their offense violates the Eighth Amendment). We agree with the State that Baker is not entitled to review because previous to his original sentencing on the first-degree murder count, he had been convicted of armed robbery and armed burglary arising out of criminal episodes separate from the one involving the murder. See § 921.1402(2)(a)(4), (5), Florida Statutes (2017) ("A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years [unless] he or she has previously been convicted of [certain enumerated offenses that were] part of a separate criminal transaction or episode"); cf. Wasko v. State, 505 So. 2d 1314, 1317-18 (Fla. 1987) (explaining that convictions obtained contemporaneously with a conviction for a capital offense "can qualify as previous convictions of violent felony and may be used as aggravating factors" at sentencing for the capital offense when those convictions "involved multiple victims in a single incident or separate incidents combined in a single trial" (and cases cited therein)). We reject Baker's other arguments without discussion.

Affirmed.

BLACK and SLEET, JJ., Concur.

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327**

August 28, 2019

CASE NO.: 2D17-2160
L.T. No.: 9903168CFANO

DESMOND BAKER

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing, clarification, certification, and rehearing en banc is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa
Jeffrey H. Siegal, A. A. G.

Carol J.Y. Wilson, A.P.D.
Desmond Baker
Ken Burke, Clerk

Howard L. Dimmig, II, P. D.

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

CASE NO. 99-03168-CFANO

-----X
STATE OF FLORIDA,

Plaintiff,

vs.

DESMOND BAKER,

Defendant.
-----X

FILED
CRIMINAL JUSTICE CENTER
00 JAN 12 AM 9:17
Kathleen F. Dellinger
Clerk Circuit Court

BEFORE:

The Honorable BRANDT C. DOWNEY
CIRCUIT COURT JUDGE

PLACE:

Criminal Justice Center
14250 49th Street North
Clearwater, Florida 33760

DATE:

November 9 & 10, 1999

REPORTED BY:

Teresa M. Conahan
Court Reporter
Sixth Judicial Circuit

JURY TRIAL

ORIGINAL

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P.O. BOX 35
CLEARWATER, FLORIDA 33757-0035
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1 won't be argued. So that motion will be granted.

2 What else?

3 MR. ELLIS: Your Honor, the age of the
4 Defendant at the time that he committed the crime and
5 presently, I anticipate an opening and closing that
6 this was a 15 year old -- a 15 year old or 16 year
7 old. I don't think that the age of the Defendant is
8 relevant to whether he committed the crime or not, and
9 I object to Defendant's age being admitted.

10 MS. BORGHETTI: Your Honor, I strongly
11 disagree with that.

12 THE COURT: I do too. I think the jury
13 should be aware of the fact that Mr. Baker was under
14 law a juvenile at the time of this. But I'm not going
15 to let it become the focal point of the trial. I'll
16 let them be told, but I think to argue it any further
17 than that, any further than just to inform them would,
18 in my mind, be an effort to seek some type of sympathy
19 from the jury.

20 We know that the law is that a 15 year old
21 can be convicted as an adult and sentenced to life for
22 first degree murder. That's the law. And, you know,
23 life meaning life means he'll never get out. But, you
24 know, anything more than, you know, advising the jury
25 that he's 15 or 16 now, whichever it is, would, in my

1 mind, be going towards sympathy. And so I think it's
2 appropriate to not allow the defense to argue his age
3 should mean that he not be convicted.

4 MS. BORGHETTI: Well, I certainly wouldn't
5 be doing that. Just because he's 15 I wouldn't be
6 saying that. But his age is relevant just like any
7 other witnesses and goes to his credibility. There is
8 a taped confession here so age is very relevant. I'll
9 deny it but with restrictions. All right? And we'll
10 see what comes up and certainly, State, you can object
11 if you feel that it's going too far. What else?

12 MR. ELLIS: The third one is what you just
13 talked about, life with life penalty. I don't want a
14 this is a 15 year old looking at life type of
15 argument. I don't want the penalty to be described to
16 the jury other than we're not seeking the death
17 penalty. I don't know if the Court wants to inform
18 the jury of that.

19 THE COURT: I'll inform the panel during my
20 questioning that, you know, should the Defendant be
21 found guilty as charged, there's only one sentence
22 that could be imposed and that is life imprisonment.
23 And under Florida law, life imprisonment means without
24 the possibility of release. And I will further go on
25 to say that there are certain lesser included offenses

1 Q That's in St. Pete, Pinellas County, Florida?

2 A Yes, sir.

3 Q The gun that he had, what did it look like?

4 A A rusty .38.

5 Q Rusty?

6 A Yes, sir.

7 Q When he left the house, was it concealed out of
8 view?

9 A Yes, sir.

10 Q Did you see it when he came back?

11 A Yes, sir.

12 Q Do you know what he did with the gun when he came
13 back?

14 A He put it back my uncle room.

15 Q Okay. So he had gotten it from your uncle?

16 A Yes, sir.

17 MR. ELLIS: May I have a moment, Judge?

18 THE COURT: Yes.

19 MR. ELLIS: I have no further questions at
20 this time, Judge.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MS. BORGHETTI:

24 Q Mr. McTear, did Mr. Baker ever tell you where he
25 was when the gun went off, what position he was in, where

1 he was, his location, sir?

2 A Yes, ma'am.

3 Q And where did he tell you that?

4 A When he told me?

5 Q Yes.

6 A In the house.

7 Q He was in the house? Okay. But what did
8 he -- where did he say he was when the gun went off?

9 A In the front seat.

10 Q Do you remember talking to me in a deposition?

11 A Yes, ma'am.

12 Q And that was -- you were under oath, correct?

13 A Yes, ma'am.

14 Q And that was back on September 14th? And I asked
15 you, "Did he tell you whether he was in the front seat of
16 the cab or" --

17 MR. ELLIS: Page and line number?

18 MS. BORGHETTI: Excuse me. I'm sorry. Page
19 16, line 6.

20 MR. ELLIS: Judge, may I provide him with a
21 copy of the deposition?

22 THE COURT: Sure. That's a copy of your
23 deposition. You're looking at page 16. Go to page
24 16, line 6, please.

25 MS. BORGHETTI: The lines are on the side.

1 Do you see that?

2 THE WITNESS: Yes, ma'am.

3 BY MS. BORGHETTI:

4 "QUESTION: Did he tell you whether he was in the
5 front seat of the cab or the back seat of the cab?

6 "ANSWER: He didn't tell me."

7 And now you're saying he did tell you; is that
8 correct?

9 A Yes, ma'am.

10 Q And did you get any money -- I think that
11 question was asked. Did you get any money to buy a soda
12 from the cab driver's money?

13 A Yes, ma'am.

14 Q And I'm going to refer you to page 21, line 11:

15 "QUESTION: He didn't give you money to go buy a
16 soda?

17 "ANSWER: No."

18 And now you're saying he did give you money?

19 A Yes, ma'am.

20 Q Do you remember speaking to law enforcement?

21 A Yes, ma'am.

22 Q Okay. When did you talk to law enforcement?

23 A When he first got arrested.

24 Q And do you remember telling law enforcement that
25 Desmond told you the gun just went off. Do you remember

1 that?

2 A Yes, ma'am.

3 Q Now, what were you doing that morning at 4 a.m.?

4 A Just chilling.

5 Q Why were you awake then? What were you doing?

6 A What, inside the house?

7 Q Yes.

8 A Selling drugs.

9 Q And whose house was this?

10 A My uncle's.

11 Q And did he know you were selling drugs out of the
12 house?

13 A Yes, ma'am.

14 Q And you're incarcerated right now, sir?

15 A Yes, ma'am.

16 Q And part of your sentence was that you were to
17 testify against Mr. Baker; is that correct?

18 A Part of my sentence?

19 Q That's your understanding of what you received
20 for a plea? That you were suppose to testify against
21 Mr. Baker?

22 A Oh, yes.

23 Q Do you know where Desmond was living back when
24 this happened?

25 MR. ELLIS: Objection. May we approach,

1 Judge?

2 THE COURT: Approach.

3 (Thereupon, the sidebar conference was held outside
4 the presence of the jury as follows:)

5 MR. ELLIS: Judge, as it was brought up in
6 the motion to suppress, he wasn't living at home. The
7 fact that he may have been living on the street is
8 completely irrelevant. Again, all she's done this
9 whole trial is try to seek sympathy. That's what I
10 believe this is too.

11 THE COURT: What are you trying to get
12 at with where he was living?

13 MS. BORGHETTI: To see how much knowledge
14 the kid has about him.

15 THE COURT: I'll sustain the objection. I
16 think it's geared to gather sympathy.

17 (Thereupon, the sidebar conference was concluded and
18 proceedings resumed before the jury as follows:)

19 MS. BORGHETTI: I have no further questions.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. ELLIS:

23 Q Mr. Baker told you the gun went off and he shot
24 the cab driver?

25 A Yes, sir.

1 free to refuse. A request could come from someone who
2 was just curious or who would seek to find some kind
3 of fault with the decision that you reached.

4 Therefore, it is up to you to decide whether you wish
5 to preserve your privacy as a juror. Again, on behalf
6 of the citizens of Pinellas County, I'd like to thank
7 you for the time you've given this case over the last
8 couple of days. And with our great thanks, at this
9 time you are excused and free to go.

10 (Thereupon, the jury was excused at 3:10 p.m.)

11 the COURT: Ms. Borghetti, my understanding
12 is that in addition to the murder case, you have also
13 been appointed to represent Mr. Baker on the
14 other -- the two robberies and two other burglaries
15 that are pending against him; is that right?

16 MS. BORGHETTI: Right, your Honor. It's
17 Case No. 99-3285. There's four counts, two counts of
18 robbery, first degree PBL and then an armed burglary,
19 first degree PBL and then a burglary in the second
20 degree.

21 THE COURT: The armed burglary, was that
22 because he went in with a gun or came out with one
23 that he stole as far as the allegation is concerned?

24 MS. BORGHETTI: That I would have to -- that
25 was the one in the parking lot with Barbara Booth.

1 THE COURT: The armed burglary?

2 MR. ELLIS: No. No. I think he had the gun
3 when he went in and scared off, I believe it was the
4 son and the owner.

5 MS. BORGHETTI: Oh, that's right.

6 MR. ELLIS: It wasn't that he took a gun
7 from inside and left with it.

8 THE COURT: He went in armed? I understand.
9 Okay. Ms. Borghetti, if at all possible, it would be
10 my desire to try to resolve this other case. He falls
11 under the guidelines, he's -- I mean, we know what
12 sentence he's going to get on the murder. Whatever I
13 give him would be concurrent under the guidelines.
14 And Mr. Ellis is in the process of putting those
15 together at this point.

16 If we can't resolve them with a plea then,
17 you know, our alternative would be to set it for
18 trial. I don't know whether any useful purpose would
19 be served by that, but without a plea I know the
20 State's not going to dismiss them. So that would be
21 our alternative.

22 I know that the jury verdict, while maybe
23 not necessarily surprising to Mr. Baker, is certainly
24 overwhelming. And if he doesn't want to do it today,
25 I don't have a problem putting it off for a couple of

1 days, but I would like to take care of it within a
2 short period of time. I'm saying, Friday or Monday.

3 MS. BORGHETTI: Let me just speak to him for
4 a few minutes.

5 THE COURT: That's fine. Doug, where does
6 he fall in the guidelines?

7 MR. ELLIS: He scores 130.25 months up to
8 life. Judge, there are some aggravating factors on
9 these underlying felonies we would like to address.

10 THE COURT: Go ahead and do it now.

11 MR. ELLIS: Judge, the -- one of the
12 robberies was a robbery -- they are all cab driver
13 robberies. One of these robberies of a cab driver,
14 codefendant -- this Defendant and co-defendant robbed
15 a cab driver. The cab driver bailed out of the cab,
16 it crashed. They got in the car and started driving
17 it. They went looking for the cab driver, basically,
18 stalking him.

19 Considering the light of what happened in
20 this particular case, I think that's a rather
21 egregious and serious situation. I mean, these guys
22 were stalking this person down. This is, like, the
23 worse kind of D movie you'd see in Hollywood. Also,
24 the armed burglary, he chased away, I believe, it was
25 the son of the owner, when the son happened to come

1 home early. There had already been several burglaries
2 and he was checking on the house. He chased him away
3 using a firearm.

4 THE COURT: So the burglary and the armed
5 burglary are the same incident?

6 MR. ELLIS: No, there's two of them.

7 THE COURT: Okay. Fine.

8 MR. ELLIS: Same house, different incidents.
9 Judge, the three year minimum mandatories on the two
10 armed robberies and the residential burglary, I asked
11 that those be imposed consecutive. They were on
12 separate dates. I also ask this Court to give a life
13 sentence on those. You can. On three of the cases
14 they're punishable by life because of the very serious
15 nature of the incident. He was going down that road
16 that lead him to this conviction.

17 He used a firearm and violence in the past.
18 I believe, Judge, that is the appropriate disposition.
19 If he wanted to plead to a concurrent disposition, I
20 wouldn't have an objection to that, but I believe life
21 is what he should plead to.

22 THE COURT: I understand. Ms. Borghetti, on
23 the various counts, on the two robbery counts if
24 Mr. Baker wishes to enter a plea, I would sentence him
25 to 20 years on each one of those concurrent with each

1 other and concurrent with the sentence he's going to
2 get on the murder with three year minimum mandatory on
3 each one with a mandatories running consecutive.

4 On Count 3, I would sentence him to 15 years
5 concurrent, also with a 3 year minimum mandatory and
6 the burglary, I would sentence him to 10 years also
7 running concurrent with the 20 and the 15. All those
8 under the guidelines.

9 MS. BORGHETTI: He's indicated he wants to
10 enter a plea. The only thing he's telling me is that
11 the first count, that he did not do the first count.
12 Tory Eden did the first count. But he's willing to
13 plead to the other charges, your Honor.

14 THE COURT: So he's contesting Count one?
15 What's the date on that robbery, Doug?

16 MS. BORGHETTI: 23rd of December.

17 MR. ELLIS: That's correct, Judge.

18 THE COURT: That was also a cabbie hold up?

19 MS. BORGHETTI: Yes.

20 THE COURT: And is that the one where the
21 guy bailed and they went chasing him, or is that count
22 two?

23 MS. BORGHETTI: If that is, I need to have
24 further discovery done.

25 MR. ELLIS: There was a photo pack ID in

1 that one. I'm sorry. I'm really not --

2 THE COURT: I know. I know I'm catching you
3 blind. Let me have the court file on that. It
4 alleges in Count 1 that the victim is a gentleman by
5 the name of Robert Coffman. And your green sheet
6 indicates that Coffman made a photo pack ID. Were
7 there co-defendants on that or do we know?

8 MS. BORGHETTI: There were co-defendants.
9 Maybe that's what I'm remembering. I know I've taken
10 somebody's statement that alleged my client chased
11 after and hit the man.

12 THE COURT: But you're not sure whether
13 that's Count 1 or Count 2?

14 MR. ELLIS: Judge, on the 24th is the one
15 where they chased him. That would be Count 2.

16 THE COURT: That's Count 2?

17 MS. BORGHETTI: That's Count 2.

18 THE COURT: Now, this is the day before?

19 MS. BORGHETTI: No. He's indicating the
20 23rd he didn't do.

21 THE COURT: So he wants to plead to 2, 3,
22 and 4, under the sentence that I've proposed, and
23 we'll set Count 1 for trial; is that what we're
24 saying?

25 MS. BORGHETTI: That's what he wants to do.

1 THE COURT: Fine with me. I mean, I
2 certainly can't force him to plead to something he
3 don't want to. If he wants -- if he says he didn't do
4 it, in light of everything that's happened here today,
5 I certainly respect that position and we'll set it for
6 trial and make the State prove it.

7 MS. BORGHETTI: The other thing I need you
8 to do is appoint the public defender for purposes of
9 appeal.

10 THE COURT: Not a problem. I'll do that as
11 soon as I sentence him.

12 MR. ELLIS: Judge, can I turn in another
13 guideline since I filled it out with all of them
14 together?

15 THE COURT: It doesn't matter. He's -- yes,
16 turn in another one.

17 MR. ELLIS: He will still score in that
18 range and it will be a legal sentence, but I don't
19 have it properly finished.

20 THE COURT: I understand. Turn it in
21 Friday.

22 MR. ELLIS: Thank you, Judge. It will be
23 down to 100 months instead of 130 or something like
24 that.

25 MR. ELLIS: You're right.

1 THE COURT: But it's still a legal sentence,
2 at least the way I propose it.

3 MR. ELLIS: Correct.

4 MS. BORGHETTI: This is going to take me a
5 minute.

6 THE COURT: That's fine. Talk to him about
7 it. Let's take a short break. We'll come back and
8 take care of all of this.

9 (Thereupon, there was a recess held from
10 3:15 p.m. to 3:29 p.m.)

11 MS. BORGHETTI: We're all set. I read him
12 the plea form and he understands it. We're going to
13 enter no contest pleas.

14 THE COURT: Still on Counts 2, 3, and 4?

15 MS. BORGHETTI: Right.

16 THE COURT: All right. Mr. Baker, I do need
17 to ask you some questions, sir. Would you raise your
18 right hand sir.

19 Thereupon,

20 DESMOND BAKER,
21 after being first duly sworn on oath, was examined as
22 follows:

23 THE COURT: All right. Mr. Baker, you've
24 had a chance to talk to Ms. Borghetti and go over the
25 two page change of plea form with her?

1 THE DEFENDANT: Yes.

2 THE COURT: And you understand that you're
3 entering a change of plea on Counts 2, 3, and 4, and
4 the other case is pending against you?

5 THE DEFENDANT: Yes.

6 THE COURT: And you understand the sentence
7 that I'm going to give you is 20 years on one, 15 on
8 another one, 10 on another one, all running
9 concurrent?

10 THE DEFENDANT: Yes.

11 THE COURT: And all running concurrent with
12 the sentence I'm going to give you on the murder case?

13 THE DEFENDANT: Yes.

14 THE COURT: This is what you want to do to
15 get these three over with; is that right?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand on Count 2 you
18 could get life in prison?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand on Count 1,
21 the one you're denying you did, you could still get
22 life in prison on that too?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you currently under a
25 doctor's care or taking any medicine at this time?

1 THE DEFENDANT: I take a pill.

2 THE COURT: What's it for?

3 THE DEFENDANT: Some kind of depression pill
4 or something.

5 THE COURT: Okay. Other than that, are you
6 under the influence of any alcoholic beverage or other
7 type of mind altering substance?

8 THE DEFENDANT: No, sir.

9 THE COURT: And you fully understand, as it
10 relates to these cases, what's going on here this
11 afternoon?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I'll find Desmond Baker alert
14 and intelligent and understands what's going on here.
15 That he has freely and voluntarily agreed to change
16 his plea on Counts 2, 3, and 4. Nobody is forcing him
17 to do this, and he understands the maximum sentence he
18 could receive. He understands the actual sentence I'm
19 going to give him.

20 I'll accept his change of plea, adjudicate
21 him guilty on all three. On Count 2, sentence him to
22 20 years and impose a 3 year minimum mandatory for the
23 use of a firearm.

24 On Count 3, sentence him to 15 years
25 concurrent under the sentencing guidelines, again

1 impose a 3 year minimum mandatory running consecutive
2 to the 3 year minimum mandatory on Count 2.

3 On Count 4, sentence him to 10 years in the
4 Department of Corrections all running concurrent.

5 For those 3 cases, Mr. Baker, you have 30
6 days to appeal should you feel I've made any mistakes.
7 On those 3 cases, Mr. Ellis, is there any restitution
8 we need to talk about?

9 MR. ELLIS: Can we set a restitution status
10 check and invest cost status check for both those
11 cases and the murder case so I could present those
12 figures?

13 THE COURT: That's fine. We'll set a
14 restitution status check on December the 8th on these
15 three cases plus also to determine what investigative
16 costs, if any.

17 MR. ELLIS: Can we set Count 1 for a
18 pretrial in a week or two, Judge?

19 THE COURT: Yes.

20 MR. ELLIS: The State can make a decision as
21 to what to do.

22 THE COURT: That's fine. On Count 1 we will
23 set that for a pretrial on November the 29th.

24 MR. ELLIS: I'm on vacation then.

25 THE COURT: The 22nd?

1 MR. ELLIS: That would be fine.

2 MS. BORGHETTI: I'm in a civil trial.

3 THE COURT: Doug, when are you leaving?

4 MR. ELLIS: The week after Thanksgiving I'm
5 off.

6 THE COURT: Okay. When is your civil trial
7 in Tampa?

8 MS. BORGHETTI: It's going to be two days.

9 THE COURT: So the 24th you'd be available?

10 MS. BORGHETTI: The 24th I have a trial
11 here.

12 THE COURT: That's fine. Set a pretrial for
13 8:30 on the 24th on Count 1 so the State can make a
14 determination on how they're going to pursue it, set
15 it for trial, nolle pros. it, whatever.

16 MR. ELLIS: Yes, Judge.

17 THE COURT: All right. As it relates to the
18 murder trial in Case 99-3168-CFANO, Mr. Baker, the
19 jury having found you guilty of that offense, I will
20 hereby adjudicate that you are guilty. I will, as
21 mandated by Florida Statute, sentence you to life
22 imprisonment without the possibility of parole or
23 release.

24 I will, for what it's worth, impose a 3 year
25 minimum mandatory pursuant to the jury's findings that

1 a firearm was used. We'll set the same date in
2 December for determination of investigative costs. I
3 will impose \$408 in court costs, again for what that's
4 worth, obviously as a lien. Also, counsel fees on
5 both cases will be imposed as a lien.

6 On the murder charge, I have appointed the
7 Public Defender's Office for purposes of appeal to
8 represent Mr. Baker.

9 MS. BORGHETTI: I will file the appropriate
10 papers that I believe I have to. But I would like you
11 to sign a paper withdrawing me formally. I think they
12 require that.

13 THE COURT: After you file the notice and
14 the designation to the court reporter and to the
15 clerk, at that point, upon filing of those cases, I
16 will then file an order relieving you of further
17 responsibility. As it relates to the appeal on the
18 murder charge, Mr. Baker, you have 30 days to appeal
19 this sentence should you feel I've made any mistakes
20 during the trial or since the time of your arrest.

21 We need to get some fingerprints both on the
22 murder case and also on the other case too. Okay.

23 MS. BORGHETTI: Your Honor, could I address
24 one more thing? Could he briefly speak to his mother?

25 THE COURT: Yes.

1 MR. ELLIS: May we be excused, sir?

2 THE COURT: You are.

3 (Thereupon, proceedings were concluded at 3:40
4 p.m.)

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THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

9903168CFANO-C
521999CF003168XXXXNO

STATE OF FLORIDA

v.

MURDER IN THE FIRST DEGREE -
CAPITAL

DESMOND BAKER
PID: 706569

STATE'S RESPONSE TO DEFENDANT'S MOTION TO DECLARE
FLORIDA STATUTE 775.082(1)(b)(1) UNCONSTITUTIONAL UNDER THE
EIGHTH AMENDMENT TO THE U.S. CONSTITUTION.

Comes now, BERNIE McCABE, State Attorney for the Sixth Judicial Circuit of Florida, and files this Response to Defendant's Motion to Declare Florida Statute 775.082(1)(b)(1) Unconstitutional Under the 8th Amendment of the U.S. Constitution and as grounds, therefore will state as follows:

DESMOND BAKER (hereafter, the DEFENDANT) was convicted on November 10, 1999, for the first degree murder of Harry Bockman. The DEFENDANT murdered Harry Bockman (i.e. a cab driver) on January 18, 1999, (Martin Luther King day). Harry Bockman was murdered during a Robbery while in his cab. The DEFENDANT later laughingly described the murder to friends at the Martin Luther King Parade on the same day.

The DEFENDANT was sentenced to life on November 10, 1999, following his jury conviction for First Degree Murder. The DEFENDANT filed a Motion for Resentencing under Florida Statute

775.082(1)(b)(1). The resentencing hearing was set for October 14, 2016. The DEFENDANT on September 26, 2016, filed the current Motion to Declare 775.082(1)(b)(1) Unconstitutional.

The DEFENDANT claims that the portion of Florida Statute 775.082(1)(b)(1), that indicates "... if the Court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment for at least 40 years ..." is unconstitutional. The DEFENDANT relies upon Miller v. Alabama 132 S.Ct. 245 (2012) and Graham v. Florida, 130 S.Ct. 2011 (2010). Neither Miller nor Graham indicates that a minimum mandatory sentence for juveniles is prohibited by the Constitution. Miller and Graham stood for the proposition that an automatic sentence of life without parole, with no consideration of the DEFENDANT'S youth and youth's attendant features (i.e. immaturity, home environment, recklessness, compulsive impulsivity, etc.), was unconstitutional.

Miller does not bar life without parole for juveniles convicted of First Degree Murder. Miller requires that the sentencer be given the opportunity to consider the DEFENDANT'S youth and youth's attendant features. Miller holds that if after such consideration, the sentencer feels that it is appropriate to impose life without parole, the sentencer may in fact constitutionally impose such a sentence. The Miller court deals with the ultimate ceiling of a sentence and does not forbid the

establishment of a floor. Florida Statute 775.082(1)(b)(1) establishes such a floor at 40 years. However, Florida Statute 775.082(1)(b)(1) provides that under Florida Statute 921.1402(2)(a), the DEFENDANT is subject to parole review and possible release after 25 years. Thus, the DEFENDANT'S ability to reform himself can be taken into consideration after 25 years.

The legislature has the authority and discretion to set sentencing schemes and minimum mandatories. Minimum mandatories for sentences for juveniles are not unconstitutional. In St. Val v. State, 174 So. 3d 447 (4th DCA 2015), the St. Val court dealt with a 25 year minimum mandatory as part of a 37 year sentence that the 17 year old DEFENDANT received for Attempted First Degree Murder. The St. Val court opinion was issued, post Miller and Graham. St. Val indicated that Miller "... limited it's disapproval to those schemes that resulted in sentences of life without parole." St. Val found that under Graham and Miller "... the minimum mandatory schemes that violate the eighth amendment are those sentences like life without parole, where the sentencer is effectively deciding that a juvenile offender forever will be a danger to society ... " The U.S. Supreme Court has demanded a review mechanism for this class of offenders and St. Val held that even though the minimum mandatory was a long and significant sentence, it did not prohibit the juvenile from a meaningful opportunity for early release. The Florida Legislature in Florida

Statute 775 and in Florida Statute 921 take into account a juvenile's youthful culpability and greater prospects for reform. St. Val held "clearly a minimum mandatory sentence does not share some characteristics with death sentences that are shared by no other sentences." The St. Val court held that a 25 year minimum mandatory for a juvenile in an Attempted First Degree Murder was a constitutional sentence.

In Collins v. State 189 So. 3d 342 (1st DCA 2016), minimum mandatories for juveniles were addressed. In Collins, the DEFENDANT was convicted of Carjacking with a Firearm, Attempted Second Degree Murder, and Attempted Armed Robbery. The DEFENDANT was originally sentenced to 20 years in prison with a minimum mandatory of 10 years as to the Carjacking, life in prison with a minimum of 25 years as to the Attempted Second Degree Murder, and 25 years with a minimum mandatory of 25 years as to the Attempted Armed Robbery. The DEFENDANT in Collins was approximately 16 years, 10 months of age, at the time he committed these offenses. The lower court in Collins ultimately resentenced Collins on the Attempted Second Degree Murder to 35 years, with a minimum mandatory of 25 years, followed by 15 years of probation, to run consecutive to the Carjacking with a Firearm. The Armed Robbery was to run concurrent with the Attempted Second Degree Murder. The Collins court held that "... no mandatory life sentence has been imposed and neither is appellant's sentence equivalent to a life

sentence; thus, the rationale of Henry v. State, 175 So. 3d 675 (Fla. 2015), holding that a juvenile's 90 year sentence is unconstitutional and thus is entitled to resentencing under Chapter 214-220 Laws of Fla. and Horsley is not applicable here". The First District Court of Appeals went on to hold that Collins' aggregate sentence of 55 years was both lawful and constitutional and not a de facto life sentence. Therefore, the Collins court held that the minimum mandatories applied to Collins in the Attempted Murder case, were in fact, constitutional. See also Williams v. State, 2016 WL 746540, February 26, 2016, a Second District Court of Appeals case.

In the instant case, the DEFENDANT was convicted after a jury trial for, not an Attempted Murder, but an actual First Degree Murder. He was, in fact, the individual who pulled the trigger that killed Harry Bockman. Per the hearing scheduled on October 14, the DEFENDANT is being provided a review mechanism to consider his youth and youth's attendant features, as discussed under Graham and Miller. If a 25 year minimum mandatory sentence (as part of an overall 37 year sentence) is constitutional under St. Val v. State, then a juvenile convicted of an actual First Degree Murder can be sentenced to a 40 year minimum mandatory (with a 25 year parole review). The 40 year sentence under Florida Statute 775.082(1)(b)(1), would therefore be a constitutionally approved minimum mandatory for a juvenile.

CONCLUSION

In light of the above arguments, the State of Florida respectfully requests this Honorable Court deny the DEFENDANT'S Motion to Declare 775.082(1)(b)(1) Unconstitutional under the Eighth Amendment to the U.S. Constitution.

I HEREBY CERTIFY that a copy of the above has been furnished to Stacey M. Schroeder, Assistant Public Defender, Attn: PUBLIC DEFENDERS OFFICE, CLEARWATER, FL 33762, pubdef-efiling@co.pinellas.fl.us, by e-service or personal service or U.S. Mail this 5th day of October, 2016.

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DRE/pc

IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT IN AND
FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

VS.

DESMOND ANDREAS BAKER,

Defendant,

CASE NO.: CRC99-03168CFANO-C

UCN: 521999CF003168XXXXNO

JUDGE: WILLIAM H. BURGESS, III

KEN BURKE
CLERK OF CIRCUIT COURT
AND COMPTROLLER

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AMENDED ORDER ON RESENTENCING

THIS CAUSE having come before the Court on remand from the Second District Court of Appeal for resentencing pursuant to Rule 3.781,¹ and the Court having examined the record in the case, reviewed the submissions of the parties, heard the testimony of witnesses, considered the argument of counsel, and been sufficiently advised in the premises, the Court finds as follows:

I. Background.

Desmond Andreas Baker (hereinafter the Defendant), was born on June 30, 1983. On the morning of January 18, 1999, the Defendant, while engaged in the perpetration or attempted perpetration of an armed robbery, murdered 44-year-old Independent Taxi driver Harry Amos Bockman by shooting Bockman to death with a firearm.

The Defendant was arrested by the police on January 29, 1999 and in a police interview confessed to the killing.² The State Attorney chose to prosecute him as an adult. On February 11, 1999, the Defendant was indicted by the grand jury for Murder in the First Degree (Capital Felony), under § 782.04(1)(a), Fla. Stat., in case CRC9903168CFANO, on a theory of felony murder. On November 10, 1999, the Defendant was convicted by a jury of Murder in the First Degree, as charged in the Indictment, and sentenced by the Court to life imprisonment without the possibility of parole, with a three-year minimum mandatory imprisonment under the provisions of § 775.087(2), Fla. Stat. On December 1, 1999, the Defendant was received by the Florida Department of Corrections to serve out his sentence. The Defendant's

¹Fla. R. Crim. P. 3.781.

²Transcript of police interview of Defendant, January 29, 1999.

conviction and sentence were affirmed on appeal, with the mandate being issued on December 7, 2000.³

On January 23, 2013, the Defendant filed a motion for post-conviction relief, alleging that his life sentence without possibility of parole was unconstitutional because he committed the offense when he was 15 years old. The trial court denied the motion on the grounds that *Miller v. Alabama*⁴ had not been held to apply retroactively. On appeal, the Second District Court of Appeal reversed and remanded for a new sentencing consistent with *Miller*⁵ and *Toye v. State*.⁶ On August 25, 2015 the Defendant was moved from the state prison in Raiford, Florida, to the Pinellas County Jail to await resentencing. On October 17, 2016, all appellate litigation in the case pending before the Second District Court of Appeal was concluded and a mandate was issued on October 20, 2016 that permitted the trial court to go forward with resentencing. On January 13, 2017, an evidentiary hearing was held at which the parties had the opportunity to present testimony and documentary evidence, as well as to make argument. On March 29, 2017, counsel for the Defendant submitted a detailed sentencing memorandum. On April 17, 2017, the State submitted a 3-page written response to the Defendant's sentencing memorandum.⁷

³Parenthetically, the Defendant is also serving a prison sentence in case CRC99-03285CFANOC: On February 12, 1999, the Defendant was charged by Information with two counts of Armed Robbery With a Firearm occurring on December 23 (Count 1) and 24 (Count 2), 1998, respectively, one count of Armed Burglary of a Dwelling (Count 3) occurring on January 5, 1999, and one count of Burglary of a Dwelling (Count 4) occurring on December 29, 1998. The first three counts were first-degree felonies punishable by life imprisonment and the fourth count was a second-degree felony punishable by up to 15 years in prison. On the same day he was convicted of murder in the first degree, November 10, 1999, the Defendant pled *nolo contendere* to counts 2-4 of the Information. The Defendant was adjudicated guilty on all three counts and sentenced on Count 2 to 20 years imprisonment with a 3-year minimum mandatory for possession of a firearm, on Count 3 to 15 years imprisonment running concurrently to the sentence on Count 2, with a 3-year minimum mandatory for possession of a firearm to run consecutively to the minimum mandatory in Count 2, on Count 4 to 10 years imprisonment to run concurrently to the sentences in Counts 2 and 3. See, Trial Transcript, CRC99-03285CFANO, pages 388-399. The Defendant did not appeal his convictions and sentences in this case and, on December 14, 1999, the State Attorney entered a *nolle prosequi* as to Count 1.

⁴*Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407, 78 A.L.R. Fed. 2d 547 (2012).

⁵See *Baker v. State*, 138 So. 3d 1175 (Fla. 2d DCA 2014).

⁶*Toye v. State*, 133 So. 3d 540 (Fla. 2d DCA 2014).

⁷The State Attorney did not submit a sentencing memorandum in this case.

II. Applicable Law.

A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under § 782.04, Fla. Stat., of a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with § 921.1401, Fla. Stat., the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to § 775.082(1)(b)1., Fla. Stat., is entitled to a review of his or her sentence in accordance with § 921.1402(2)(a), Fla. Stat.⁸

Upon conviction or adjudication of guilt of an offense described in § 775.082(1)(b), which was committed on or after July 1, 2014, the court may conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.⁹ In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court is required to consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

- (a) The nature and circumstances of the offense committed by the defendant.
- (b) The effect of the crime on the victim's family and on the community.
- (c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- (d) The defendant's background, including his or her family, home, and community environment.
- (e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
- (f) The extent of the defendant's participation in the offense.
- (g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- (h) The nature and extent of the defendant's prior criminal history.
- (i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- (j) The possibility of rehabilitating the defendant.¹⁰

A juvenile offender sentenced under § 775.082(1)(b)1., Fla. Stat., is entitled to review of his or her sentence after 25 years, unless the offender has previously been

⁸§ 775.082(1)(b)1., Fla. Stat.

⁹§ 921.1401(1), Fla. Stat.

¹⁰§ 921.1401(2), Fla. Stat.

convicted of one of several enumerated crimes, including armed burglary and armed robbery.¹¹

III. Findings.

A. Nature and Circumstances of the Offense.

The Defendant murdered a defenseless cab driver, Harry Bockman, without provocation and for monetary gain. The victim was engaged in a lawful activity and did not resist the robbery or provoke the Defendant into shooting him. The shooting of Bockman could not have happened without the Defendant pointing a loaded firearm at Bockman, with his finger on the trigger, and ready to fire.

The Defendant planned and prepared for his armed confrontation of Bockman. He called the cab company twice to make sure that his victim would arrive and be lured into the trap he had set. He entered the cab carrying a concealed and loaded .38 caliber handgun he had borrowed for the occasion, pointed the firearm at Bockman and demanded that Bockman hand over his money to the Defendant. Bockman, who had his hands up, immediately complied and gave the Defendant the \$25 he had in his pants pocket. The Defendant then shot Bockman at arm's length, striking Bockman in the chest, and later claimed that the gun "just went off" when Bockman grabbed for it.¹² The Defendant then left Bockman to die without summoning emergency assistance.

The Court takes special note of the suffering endured by the victim as a result of the Defendant's actions. Harry Bockman, knowing that he was grievously wounded after being shot by the Defendant, called in the attack to his dispatcher and attempted to drive himself to a hospital emergency room. Bleeding profusely, he lost control of his cab and struck a business, disabling his only means of escape. When the police found him, he was conscious, covered in his own blood, and in great pain. Officer Barry Books of the St. Petersburg Police Department, the police officer who found him, described Bockman as:

"[L]ying on his back, face up, near the driver's door of the cab... He had a lot of blood on his upper torso... he was just covered in blood, and massive blood on the ground and on his upper torso.... [Bockman] was in a great deal of pain. He was thrashing back and forth violently, moaning and groaning."¹³

¹¹§ 921.1402(1) & (2)(a), Fla. Stat.

¹²See, Transcript, police interview of Defendant, January 29, 1999, page 13.

¹³Trial transcript, testimony of Officer Barry Books, SPPD, pages 186-187.

Without a doubt, the Defendant caused Harry Bockman to suffer a cruel, painful, and lingering death, to which the Defendant was indifferent as he made his escape from the scene. The Defendant's actions after he shot Bockman also show remarkable callousness, presence of mind, and more than a little forethought: After shooting Bockman and fleeing the scene, the Defendant methodically disposed of the clothes he was wearing by burning some of them and ripping up others and throwing them out with the garbage, and returned the firearm to its owner.¹⁴ Later in the day, the Defendant spent the money taken from his victim and calmly bragged about the killing to friends.¹⁵

B. Effect of the Crime.

Harry Bockman lost his life while performing the lawful duties of his job. As a generalization, it can be accepted that Bockman's family, friends, and colleagues lost a valued individual. Bockman's murder was an uncommon type of violent crime in the St. Petersburg community, and could be expected to generate a degree of fear among its inhabitants. Beyond such a generalizations, however, the Court cannot find any specifically identifiable effects of the crime on the victim's family or on the community: While it has been suggested in the proceedings that Harry Bockman left behind a daughter and her three small children, and that the murder tore a hole in the fabric of Bockman's family and the community he lived in, the State Attorney has put forth no victim impact evidence, nor any evidence as to the effect of the crime on the community.

C. Age, Maturity, Intellectual Capacity, and Mental and Emotional Health at the Time of the Offense.

At the time of the offense, the Defendant was a street-wise 15-year-old male of average intelligence who regularly used marijuana and occasionally used cocaine in conjunction with his marijuana use. He was not physically or emotionally disabled and did not suffer from substance abuse impairment or mental illness. The Defendant also was an introvert with low self-esteem, poor ego strength, poor attention, and poor selfcontrol. He was in the tenth grade at the time of his arrest and, although he had behavioral problems and had difficulty reading, he was mainstreamed in his schooling.¹⁶ No credible evidence was presented to support the notion that the Defendant so lacked

¹⁴Notwithstanding his confession to the police, the Defendant refused to reveal to detectives where and from whom he got the murder weapon, or where and to whom he returned it to, and it has never been recovered.

¹⁵See, Trial transcript, testimony of Eric McTear, page 206; Trial transcript, testimony of Glen Davis, page 214.

¹⁶Evidentiary hearing testimony of Ms. Shari Konigsburg Zwirn, who was the Defendant's eighth grade educatable mentally handicapped (EMH) teacher and of Dr. Valerie McClain, Psy.D., who examined the Defendant prior to the hearing.

the age, maturity, intellectual capacity and emotional health as to mitigate his responsibility for his crime.

D. Background, Including Family, Home, and Community Environment.

The evidence demonstrates that the Defendant experienced lowered self-esteem as a child as a result of an unstable home environment and a lack of adequate supervision. The Defendant was born and raised in St. Petersburg, Florida. His biological parents lived separately and at various times the Defendant lived with one biological parent or the other. He has several biological siblings and step-siblings. He frequently resided with his grandmother and aunt, and it was during those occasions that he was exposed to illegal drug use. Notwithstanding conflicts with his parents and trouble in school, his family and known friends were generally supportive of him. The Defendant also associated with others in the community who encouraged his defiance of authority and engagement in illegal activities prior to Bockman's murder. Several of the Defendant's family members and friends from his school days testified at the evidentiary hearing in favor of his eventual release from prison and re-entry into the community, indicating that he would enter a supportive environment.

E. The Effect, If Any, of Immaturity, Impetuosity, or Failure to Appreciate Risks and Consequences On the Defendant's Participation In the Offense.

The available evidence in this case clearly establishes that the Defendant appreciated the risks and consequences of his actions. Prior to the murder, he had committed several violent crimes, including an armed robbery of another cab driver. The evidence also shows that the robbery that led to the murder was not committed on an impulse but was the product of cool, reflective thought and detailed planning, preparation, and execution. The robbery of Bockman also was part of an escalating pattern of violent criminality on the part of the Defendant and although the murder of Bockman does not appear to have been part of the Defendant's initial plan, it was always a foreseeable possibility given the Defendant's chosen mode of operation.

F. Extent of the Defendant's Participation In the Offense.

There is no doubt that the Defendant was the actual killer of Harry Bockman, nor that the Defendant and Bockman were the only people in Bockman's cab at the time of the killing. There also is no doubt that the entire crime was initiated, planned, and executed by the Defendant himself and that there were no other active participants.

G. The Effect, If Any, of Familial Pressure or Peer Pressure On the Defendant's Actions.

There is no credible evidence that familial pressure or peer pressure had any significant effect of the Defendant's actions in murdering Harry Bockman or that such pressure could account for the killing.

H. The Nature and Extent of the Defendant's Prior Criminal History.

At the time of the murder, the Defendant had already committed several serious crimes, including armed robbery of another cab driver, armed burglary, and burglary of a dwelling. These crimes were committed in the weeks leading up to the murder and comprise a clear pattern of escalating, violent criminality.

I. The Effect, If Any, of Characteristics Attributable to the Defendant's Youth On the Defendant's Judgment.

The Defendant was fifteen years old when he murdered Harry Bockman. His brain was not fully developed and his thought processes were not fully matured. According to Dr. McClain, the Defendant was more of a follower than a leader, and was also someone who suffered from low self-esteem, poor decision-making, and poor selfcontrol. It also appears from the evidence in the case that the Defendant sought out the company of older males who were engaged in various forms of criminal activity and drew inspiration from them. The age of the Defendant, combined with his mental and emotional immaturity, clearly played a part in his decision to commit armed robbery with a firearm, and the Court has taken this into consideration as mitigation.

J. The Possibility of Rehabilitating the Defendant.

The State Attorney introduced no evidence as to the possibility rehabilitating the Defendant, but did reference the Defendant's receipt of 17 disciplinary reports while in Department of Corrections custody. Dr. McClain testified for the Defendant that her assessment of the development of the Defendant's brain and corresponding mental processes demonstrated significant maturity from 1999 to the present, making the point that the Defendant's thinking is now more reflexive and less impulsive than it was in 1999. According to Dr. McClain, the Defendant presents good prospects for rehabilitation, but she strongly recommended that the Defendant receive counseling for his mental disabilities in the Department of Corrections before his release, and that he be under some form of supervision after his release. Dr. McClain was careful to indicate that the Defendant was not rehabilitated, and that he had not begun the proposed counseling. As such, the actual possibility of rehabilitating the Defendant remains unclear.

K. Eligibility for Sentencing Review.

The Court finds that the Defendant is not eligible for sentence review under § 921.1401(2)(a), Fla. Stat., because of his previous convictions for armed robbery and

armed burglary in case CRC99-03285CFANO, these offenses having been committed in criminal transactions or episodes that were separate from the murder committed in this case, notwithstanding the fact that convictions for those offenses were entered on the same day as entry of the Defendant's conviction for murder.¹⁷

IV. Conclusion.

It is, therefore, ORDERED AND ADJUDGED that the Defendant is sentenced for a term of imprisonment of 50 years in the Florida Department of Corrections in accordance with § 775.082(1)(b)1., Fla. Stat., with a 3-year minimum mandatory under § 775.087(2), Fla. Stat., for possession of a firearm. All previously imposed fines and costs remain.

DONE AND ORDERED at Clearwater, Florida on December 20, 2017.

William H. Burgess, III

Copies furnished to:

Atty. Douglas R. Ellis, Counsel for the State of Florida
Atty. Stacey M. Schroeder, Counsel for Defendant
Florida Department of Corrections.

¹⁷The plain language of § 921.1402(2)(a), Fla. Stat., does not require sequential convictions. See e.g., *State v. Barnes*, 595 So. 2d 22 (Fla. 1992) (statute defining habitual felony offenders did not require sequential conviction absent language to the contrary); *State v. Watts*, 595 So. 2d 19 (Fla. 1992) (same); 1 Wharton's Criminal Law § 1 (15th ed.), n. 8.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA, :
 :
 Plaintiff, :
 :
 vs. : Case No. 9903168CFANO
 :
 DESMOND BAKER, :
 :
 Defendant. :
 :
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MOTION TO CORRECT SENTENCING ERRORS

Defendant, Desmond Baker, by and through undersigned counsel, moves to correct sentencing errors pursuant to Fla. R. Crim. P. 3.800(a) & (b) (2). As grounds for this motion the defendant states:

1. Desmond Baker, a homeless fifteen years old, was charged with the first degree felony murder of Harry Bockman that occurred during a taxi cab robbery. (R46-47). The indictment alleged only felony murder and did not allege premeditation. (R46-47). The trial on the charge against the 15 year old child took place in 1999, when the state regarded a child's age an irrelevant fact used only to gain sympathy and not a plain fact impacting decision making and sentencing. In final closing arguments, the prosecution argued for the murder

conviction based solely on felony murder and a lack of premeditation. (T327-328). The prosecution argued to the jury "It doesn't matter whether he wanted to kill Harry Bockman or not, whether this was an intentional killing or an accident." (T328). The jury returned a verdict of guilty as charged and checked the box "Yes" under the statement "We find a firearm was used." (R67).

2. On November 10, 1999, Desmond Baker was convicted as a juvenile of first degree murder and sentenced to mandatory life imprisonment without parole. (R50-54).

3. On June 25, 2012, the United States Supreme Court decided *Miller v. Alabama*, 132 S.Ct. 2455, 2475 (2012), and held that mandatory life without parole is an unconstitutional penalty for juvenile offenders whose crimes are presumed to reflect transient immaturity of youth. For this protected class of juvenile offenders life without parole is only constitutionally permitted for "the rare juvenile offender whose crime reflects irreparable corruption." *Montgomery v. Louisiana*, 136 S.Ct. 718, 734 (2016). *Montgomery v. Louisiana*, 136 S.Ct. 718, 734 (2016), found the *Miller* holding to be retroactive. *Id.* The United States Supreme Court has plainly and repeatedly spoken: imposing a life sentence without meaningful review must be rare and only against the rare child

who cannot be rehabilitated. Life sentences against juveniles are no longer the norm they were when Desmond Baker was first tried before this Court. The currently imposed fifty year prison sentence with no review is a de facto life sentence that violates the eighth amendment to the United States Constitution and Article I, Section 17 of the Florida Constitution because Desmond Baker's actions reflect transient immaturity and not irreparable corruption.

4. Desmond Baker, who has no burden of proof in this matter, has proved through his behavior over time and his accomplishments in prison, that his past actions were due to transient immaturity and do not reflect irreparable corruption. The focus on resentencing must be on the child's development from the fifteen year old teenager to the thirty-three year old man he had become at the time of resentencing. The evidence shows Desmond Baker "has shown excellent progress, based upon the review of his disciplinary record, based on the review of his certificates." (R1077, stated by Dr. McClain during state cross examination of her). In response to questioning by this Court, Dr. McClain stated, "And after my initial interview with Mr. Baker it was quite clear to me, in talking with him, that there was what I would call a clear ability to analyze his own behavior, to add insight into his past and how it affected his

behaviors, his ability to plan for his future was demonstrated during my discussion with him, his understanding of why he had gotten DRs while he was incarcerated and they that stopped in 2014. Basically, I think the areas of judgment, insight, his ability to analyze situations was evident. He was talking - I asked him, for example, how do you avoid getting into situations that will get you into trouble? He talked about a reflective pattern of standing back. You know, monitoring his situation and staying out of situations where he could get into trouble. There were just a lot of examples of what I think would be an evolution from an adolescent brain of impulsivity, inattention, poor self control and insight into a much more developed brain, a much more mature individual." (R1081-1082). Such concrete evidence given by psychologist Dr. McClain shows Desmond Baker, despite a lack of consistent available opportunities in the Department of Corrections, has grown into a mature responsible adult, who needs help to achieve the transition to living outside prison. (R1065-1066, 1074-1076, 1084).

5. The state has failed to prove by any evidentiary standard that Desmond Baker is irreparably corrupt and that the offense at bar was not due to transient immaturity. The state has failed to prove these key sentencing elements beyond a

reasonable doubt, by clear and convincing evidence or even by a preponderance of the evidence.

6. a. The Florida Supreme Court reversed a 40 year sentence imposed without the review provision against a juvenile defendant convicted of second degree murder in *Waiters v. State*, 210 So.2d 209 (Fla. 2d DCA 2016), quashed *Waiters v. State*, SC16-2188, remanded for resentencing under *Kelsey v. State*, 206 So.2d 5 (Fla. 2016) by Order of June 23, 2017. *Kelsey* involved a reversal of a 45 year resentencing under *Graham v. Florida*, 560 U.S. 48 (2010) on the grounds the sentence did not provide for judicial review under the 2014 juvenile sentencing laws.

b. The Second District Court of Appeal has stated "it is clear that a juvenile's life expectancy is relevant to the determination of whether a lengthy term-of-years sentence is constitutional. Compare *Lane v. State*, 151 So.3d 20, 21 n. 2 (Fla. 1st DCA 2014) (noting that the State objected to appellant's argument regarding life expectancy because the documents were not admitted into evidence but not making any findings as to appellant's life expectancy), with *Adams*, 188 So.3d at 851-52 n. 5 (stating that "[a]ppellant's sentence will require him to serve at least 58.5 years in prison, which means he will not be released until he is nearly [seventy-six] years old. This exceeds his life expectancy, as reflected in the

National Vital Statistics Reports from the federal Centers for Disease Control and Prevention cited by [a]ppellant" and noting that "[t]he State did not dispute ... [a]ppellant's projected life expectancy"), and *Floyd*, 87 So.3d at 47 ('[C]ommon sense dictates that Appellant's eighty-year sentence, which, according to the statistics cited by Appellant, is longer than his life expectancy, is the functional equivalent of a life without parole sentence and will not provide him with a meaningful or realistic opportunity to obtain release.')." *Morris v. State*, 198 So.3d 31, 34 (Fla. 2d DCA 2015).

c. The life expectancy of an African American born in 1983 is 65 years. Vital Statistics of the United States, 1983 (attached as an appendix to the motion). Desmond Baker was born in 1983. Since he was sentenced to 50 years without any judicial review, the fifty year sentence is equivalent to a life without parole or review sentence, which has been declared unconstitutional repeatedly by the United States Supreme Court and the Florida Supreme Court. *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016); *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Landrum v. State*, 192 So.3d 459 (2016); *Falcon v. State*, 162 So.3d 954 (Fla. 2015); *Atwell v. State*, 197 So.3d 1040 (Fla. 2016). This Court has imposed an unconstitutional sentence upon Desmond Baker. See *Matias v. State*, 42 Fla. L. Weekly D2167b

(Fla. 2d DCA, filed Oct. 11, 2017)(fifty year sentence with no written review provision imposed for crime of sexual battery on person less than 12 years old was constitutional once remanded to impose a 20 year review period). The sentence imposed is not constitutional, because it is a de facto life sentence with no review provision and with a forty year minimum mandatory provision not authorized by statute or law.

7. This Court erroneously imposed a fifty year prison sentence with a forty year minimum mandatory provision, when there is no law that provides for a forty year minimum mandatory sentence. Section 775.082(1)(b)1. provides that the lowest term of years that can be imposed is 40 years, which is not a minimum mandatory term to be served prior to release for the full sentence imposed. A minimum mandatory sentence is expressly termed "mandatory minimum" or "mandatory term." See § 775.087, Fla. Stat. There is no lawful basis for a forty year minimum mandatory sentence in this case. The statute provides that for a term of years sentence, the trial court must impose at least a 40 year sentence. This is entirely different from the requirement of the child serving a minimum mandatory time. Indeed, a 40 year minimum mandatory sentencing provision would conflict with the review provisions, requiring a review after 25

years or 15 years, depending upon which sentencing review provision is applicable.

8. a. The fifty year prison sentence does not provide for judicial review. The plain language of the relevant statutory provision § 921.1402, requires a sentencing review in this case. This Court found that convictions gotten simultaneously with the murder conviction at bar are "prior" convictions, when the convictions were not obtained prior to sentencing for this homicide. There is no case law found supporting a reading of a "prior" conviction as being a conviction imposed on the same day. The *Barnes v. State*, 595 So.2d 22 (Fla. 1992) and *State v. Watts*, 595 So.2d 19 (Fla. 1999) cases on which this Court relied in deciding that simultaneous can mean prior, concern whether felony convictions gotten prior to the case at bar for sentencing must be sequential and those cases involve an interpretation of that adult habitual offense law. These cases do not hold that prior convictions can be convictions simultaneously entered with the case for which a defendant is being sentenced. *Barnes* and *Watts* merely interpret the following adult habitual offender sentencing statutory language: "The defendant has previously been convicted of two or more felonies in this state." The *Barnes* and *Watts* courts held the prior two or more felony convictions could have been

simultaneously obtained in order to qualify under that particular adult habitual offender statute as written. Those cases do not hold that the prior convictions can be simultaneously imposed with the case set for sentencing or that "prior" means anything other than its plain meaning. The Court's citation to 1 Wharton's Criminal Law 1, footnote 8, pertains to cases from multiple jurisdictional decisions about adult sentences and contains no language supporting a reading of a "prior conviction" to "plainly" mean a simultaneously imposed conviction.

b. To read the juvenile sentencing law to mean that a "prior" enumerated felony can be a conviction obtained simultaneously with the case at bar for sentencing does not comport with the plain meaning of the word "prior" or the reading of the statute as a whole, or the body of constitutional law finding that lengthy term of year sentences imposed upon juveniles must provide a meaningful opportunity for review. To construe the word "prior" to mean simultaneously gotten, is not in this case statutorily authorized or constitutionally permitted.

9. The prior enumerated felony exclusion does not apply to Desmond Baker because he was not charged with or convicted of a crime requiring proof of an intent to kill. He was convicted of

having a firearm, but not of discharging the firearm, according to the jury verdict. The statutes pertaining to Desmond Baker's case, §§ 775.082(1)(b)2., 921.1402(2)(c) Fla. Stat. (2017) require that a child sentenced for a crime not involving an intent to kill be sentenced to any term of years and the review provision is required and cannot be denied a defendant sentenced to more than 15 years. Desmond Baker must be resentenced under these statutory provisions.

10. The statute precluding a juvenile from judicial review due to prior enumerated felony convictions, § 921.1402(2)(a), is unconstitutional on its face and as applied to Desmond Baker, in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution, and Article I, §§ 9, 10, and 17 of the Florida Constitution. The mandatory exclusion does not follow the dictates set forth in *Miller* and *Montgomery* because the existence of a prior felony conviction is irrelevant to distinguishing between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Miller v. Alabama*, 132 S. Ct. at 2469; citing *Roper*, 543 U.S., at 573. Rather than focusing on the relevant factors set forth in *Miller*, including the defendant's capacity for change, the statutory exclusion precludes children from judicial review

based on their prior conduct when they were still children. The statute violates the Eighth Amendment prohibition against cruel and unusual punishment because it "disregards the possibility of rehabilitation even when the circumstances most suggest it." *Miller* at 2468. This is contrary to the rationale of federal jurisprudence regarding the sentencing of children.

11. a. This case does not concern a crime that "reflects irreparable corruption." The state has not proved beyond a reasonable doubt that Desmond Baker is irreparably corrupt, cannot be rehabilitated and therefore merits the highest possible permitted punishment. Nevertheless, the trial court has sentenced him to a fifty year sentence, that is a de facto life sentence. Desmond Baker's life expectancy is not expected to extend past 65 years. A fifty year sentence imposed on a fifteen year old child is a de facto life sentence. Since Desmond Baker's 50 year without review sentence ends when he is at the end of his 65 year old life, the sentence is a de facto life sentence without review. See *State v. Ratliff*, 42 Fla. L. Weekly D2361b (Fla. 2d DCA, filed Nov. 3, 2017); *Marshall v. State*, 214 So.3d 776, 777 (Fla. 2d DCA 2017) ("the Eighth Amendment will not tolerate prison sentences that lack a review mechanism for evaluating this special class of offenders for

demonstrable maturity and reform in this future.'"), quoting *Henry v. State*, 175 So.2d 675, 680 (Fla. 2015), cert. denied, 136 S.Ct. 1455 (Fla. 2016). Desmond Baker cannot obtain release prior to the expiration of his sentence based on a meaningful ability to demonstrate maturity and rehabilitation during his natural life. The Florida Supreme Court has already determined any such sentence that provides for no meaningful review and ability to demonstrate maturity and rehabilitation is unconstitutional under *Graham*. *Johnson v. State*, 215 So.3d 1237, 1239, 1242 (Fla. 2017). Desmond Baker, who has demonstrated his maturity and ability to be rehabilitated, has been condemned to serve a sentence that cannot review these qualities. Such a sentence under any circumstances is unconstitutional, but in this case such a sentence is exponentially egregious.

b. Every homicide involves a major loss and awful circumstances. *Miller* sentencings never involve a minor offense, but concern situations where a life has been taken. See *Adams v. Alabama*, 136 S.Ct. 1796 (2016) (Alito concurring, note 2 listing death penalty cases resentenced to life without parole due to *Roper v. Simmons*, 543 U.S. 551 (2005)). Part of the *Miller* inquiry is whether the facts of the homicide show a child whose character is so intractably corrupted that rehabilitation is not possible. The particular facts of a homicide alone

cannot show a child's character. *Roper v. Simmons*, 543 U.S. 552 (2005); Grisso & Kavanaugh, 22 Psychol. Pub. Pol'y & L 235 (2016).

c. The worse possible homicides are those where the defendant plots to kill and takes concerted measures to carry out that goal or where numerous other crimes of violence are done with the killing. This case is not that circumstance. Desmond Baker did not plot to kill anyone. He at best created danger by carrying a firearm he was not familiar with, but creating danger through carelessness is exactly the kind of juvenile behavior that can be changed with maturity. The facts here of a robbery gone bad place his conduct outside the worse of homicides and show juvenile behavior and not irreparable corruption.

d. Henry Montgomery, 17, killed Deputy Charles Hurt who was searching him lawfully when stopping him for truancy. Montgomery was sentenced in Louisiana to death originally and upon a retrial, was sentenced to life without parole. Montgomery shot at the officer in a panic during a time of heightened racial tensions in Baton Rouge, Louisiana. *State v. Montgomery*, 181 So.2d 756 (La. 1966); Brief of Petitioner, *Montgomery v. Louisiana*, at 4-6. In between trials, Montgomery escaped from prison and was captured. 242 So.2d 818, 181 (La. 1970) Reversing

the life without parole sentence, Justice Kennedy wrote, "Henry Montgomery has spent each day of the past 46 years knowing he was condemned to die in prison. Perhaps it can be established that, *due to exceptional circumstances*, this fate is a just and proportionate punishment for the crime he committed as a 17-year-old boy." 136 S.Ct. at 736 (emphasis added).

e. Desmond Baker, like Henry Montgomery, was carrying a gun when he should not have been. Desmond Baker, unlike Henry Montgomery, was only 15, and has no escape allegations against him. Desmond Baker shot a taxi cab driver, and Henry Montgomery shot and killed an officer instantly, quickly, when faced with possible arrest. The highest court in the land has not found Montgomery's tragic killing of the officer categorically to merit the highest punishment for a child. The United States Supreme Court has stated only "exceptional circumstances" would warrant sentencing a child who committed such a crime, to die in prison. The state, which has sought the highest permissible punishment, has not set forth any exceptional circumstances and has presented very little evidence outside the circumstances of the offense itself. The state has failed to prove that Desmond Baker warrants sentencing as a child who cannot be rehabilitated and is the rare child who is irreparably corrupt. The imposed

sentence is therefore unconstitutional under *Miller* and *Montgomery*, as well as *Landrum*.

12. Pertinent parts of Section 775.082 of the Florida Statutes read as follows:

(1)(b) 1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401 [established in section 2 of the new legislation], the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a) [established in section 3 of the new legislation].

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

The statute provides for punishment of any term of years and if the sentence exceeds fifteen years, for a review after fifteen years, for capital felonies involving no intent to kill.

Felony murder does not require an intent to kill. Therefore the statutory section 775.082(1)(b)2. applies to Desmond Baker's case, and he must be resentenced under this provision.

13. a. This Court found that following facts in sentencing Desmond Baker to a de facto life sentence without any review:

A. The Nature and Circumstances of the Offense

The Defendant murdered a defenseless cab driver, Harry Bockman, without provocation and for monetary gain. The victim was engaged in a lawful activity and did not resist the robbery or provoke the Defendant into shooting him. The shooting of Bockman could not have happened without the Defendant pointing a loaded firearm at Bockman, with his finger on the trigger, and ready to fire.

The Defendant planned and prepared for his armed confrontation of Bockman. He called the cab company twice to make sure that his victim would arrive and be lured into the trap he had set. He entered the cab carrying a concealed and loaded .38 caliber handgun he had borrowed for the occasion, pointed the firearm at Bockman and demanded that Bockman hand over his money to the Defendant. Bockman, who had his hands up, immediately complied and gave the Defendant the \$25 he had in his pants pocket. The Defendant then shot Bockman at arm's length, striking Bockman in the chest, and later claimed that the gun 'just went off' when Bockman grabbed for it. The Defendant then left Bockman to die without summoning emergency assistance.

* * * *

Without a doubt, the Defendant caused Harry Bockman to suffer a cruel, painful, and lingering death, to which the Defendant was indifferent as he made his escape from the scene. The Defendant's actions after he shot Bockman also show remarkable callousness, presence of mind, and more than a little forethought: After shooting Bockman and fleeing the scene, the Defendant methodically disposed of the clothes he was wearing by burning some of them and

ripping up others and throwing them out with the garbage, and returned the firearm to its owner. Later in the day, the Defendant spent the money taken from the victim and calmly bragged about the killing to friends.

(R397-398).

b. The state, having initially charged Desmond Baker with felony murder, and not premeditated murder, obtained a jury verdict for felony murder and not for premeditated murder. As the jury instructions in this case read, a conviction for felony murder does not require an intent to kill. (T361). The trial court findings that the killing was "planned and prepared for" are not based on the crime as charged or on the verdict rendered. The trial court erred in finding this fact and the numerous other factual details about how the crime occurred. The fact finder is the jury and the jury could only make fact findings based on charged allegations proved by admissible evidence beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *McKenzie v. State*, 31 So.3d 275 (Fla. 2d DCA 2010).

c. The issue of whether the *Alleyne v. United States*, 133 S.Ct. 2151 (2013) requires a jury fact finding of whether a juvenile offender actually killed, intended to kill or attempted to kill the victim is currently pending before the Florida Supreme Court in *Williams v. State*, SC17-506. The issue in

Williams concerns a similar but not the same factfinding issue. The sentence imposed here, based on the trial court's factual determinations and decision to increase the permitted punishment from a sentence for any term of years to one of at least 40 years in length and to also remove the review period from consideration, violates the state and federal constitutions. *Alleyne v. United States*, 133 S.Ct. 2151 (2013). U.S. Const. Amend V, VI, VIII, XIV; Fla. Const. Art. I, Sec. 16, 17, 22. See *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (holding that the Due Process Clause of the Fourteenth Amendment requires that, aside from a prior conviction, "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."). The "statutory maximum" for *Apprendi* purposes is the maximum sentence a judge may impose "solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." *Blakely v. Washington*, 542 U.S. 296, 303-04 (2004) ("In other words, the relevant 'statutory maximum' is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings.").

15. The jury did not specify that Desmond Baker intended to kill or was the actual and sole killer of Harry Bockman. Therefor there is no jury finding to support the imposition of

no review period based on either an intent to kill or being the actual shooter as required by § 775.082(b)1., Fla.Stat.(2017). Since under the facts of this case and the general verdict rendered, either statutory provision § 775.082(b)1., or § 775.082(b)2., might apply, the rule of lenity requires this Court to afford Desmond Baker to any term of years and to afford him a judicial review after he has served 15 years in prison.

16. a. Section 921.1401(2) constitutes a factfinding requirement that seeks to comply with *Miller v. Alabama*. Florida Rule of Criminal Procedure 3.781(b), which implements section 921.1401, specifies that the court "shall," after an evidentiary hearing, "make specific findings on the record that all relevant factors have been reviewed and considered" before imposing a life sentence. These findings parallel findings on aggravating and mitigating circumstances enacted in Florida's capital sentencing statute as a result of the Eighth Amendment decision in *Furman v. Georgia*, 408 U.S. 238 (1972). The United States Supreme Court in *Graham v. Florida*, 560 U.S. 48, 69 (2010) stated that for a juvenile, a life without parole sentence shares characteristics of a death penalty.

{L}ife without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the

sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence. *Solem*, 463 U.S., at 300–301, 103 S.Ct. 3001. As one court observed in overturning a life without parole sentence for a juvenile defendant, this sentence “means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.” *Naovarath v. State*, 105 Nev. 525, 526, 779 P.2d 944 (1989).

Id. Both section 921.1401 and rule 3.781(b), paralleling the capital sentencing law, require these procedures and therefore jury findings only so long as life remains a possible sentence, just as the capital sentencing law requires jury findings only so long as death remains a possible sentence for an adult.

b. In *Hurst v. Florida*, 136 S.Ct. 616 (2016), the U.S. Supreme Court held that Florida’s capital sentencing scheme violated the Sixth Amendment right to trial by jury in committing to the judge, and not the jury, the factfinding necessary for imposition of the death penalty. On remand, the Florida Supreme Court held that Article I, Section 22 of the Florida Constitution, as well as the Sixth Amendment, required unanimous jury findings on the recommendation of death before a death sentence may be imposed. *Hurst v. State*, 202 So. 3d 40, 58 (Fla. 2016).

c. Section 22 of Article I of the Florida Constitution states, "The right of trial by jury shall be secure to all and remain inviolate." Likewise, a jury determination that life imprisonment is an appropriate sentence in light of the sentencing factors in section 921.1401(2), is constitutionally indispensable to the offense defined by the statute as: first-degree murder by a juvenile offender punishable by life imprisonment. Under the Sixth Amendment and Article I, Sections 16 and 22, the determination must be made by a jury. If interpreted to authorize only the court to make findings that justify a life sentence for a juvenile offender, sections 775.082(1)(b)1 and 921.1401 would violate the jury trial guarantees in the Sixth Amendment to the U.S. Constitution and Article I, Sections 16 and 22 of the Florida Constitution.

d. Courts are required to construe statutes to avoid finding them unconstitutional if possible. *State v. Giorgetti*, 868 So. 2d 512, 518 (Fla. 2004). Sections 775.082(1)(b)1 and 921.1401 must be construed to authorize an evidentiary hearing before a jury when the state seeks a de facto or life sentence for a juvenile first-degree murder offender. In his concurring opinion in *Galindez v. State*, 955 So. 2d 517 (Fla. 2007), Justice Cantero suggested impaneling a new sentencing jury to decide facts necessary to impose a sentence greater than that

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legally authorized upon conviction of a criminal offense. *Id.* at 526-27 (Cantero, J., concurring). In *Ayala v. State*, 976 So. 2d 43 (Fla. 5th DCA 2008), the trial court impaneled a sentencing jury to determine aggravating factors necessary to impose sentence beyond the maximum sentence authorized under Florida's former sentencing guidelines. *Id.* at 45-46.

e. Section 921.1401 is amenable to a similar saving construction. A jury trial under the statute should proceed as follows: The parties present evidence and argument on the section 921.1401(2) sentencing factors. The state must prove beyond a reasonable doubt the sentencing factors it asserts require imposition of a life or de facto life sentence. The trial court instructs the jury to consider each factor and then, based on the determinations and weighing of the factors, render a verdict specifying whether life or a term of years equivalent to life is an appropriate sentence. If the jury unanimously finds life to be appropriate, the sentencing court could constitutionally impose a life or a de facto life sentence. If the jury unanimously finds life or a term of years equivalent to life to be inappropriate, the court is obligated to impose a sentence of a term of years less than de facto life, as well as the pertinent review provision.

17. This Court erred in making the factual findings contained in its written order without a jury. The factual findings were used to impose a minimum sentence under the statute of 40 years to life, with no review provision, in violation of *Alleyne v. United States*, 133 S.Ct. 2151 (2013). The following factual findings were made by the trial court, in addition to the findings about intent, and were used to support the de facto life sentence imposed, and were not factual findings made by a jury:

1. C. Age, Maturity, Intellectual capacity, and Mental and Emotional Health at the Time of the Offense.

At the time of the offense, the Defendant was a street-wise 15-year-old male of average intelligence who regularly used marijuana and occasionally used cocaine in conjunction with his marijuana use. He was not physically or emotionally disabled and did not suffer from substance abuse impairment or mental illness. The Defendant also was an introvert with low self-esteem, poor ego strength, poor attention, and poor self-control. He was in the tenth grade at the time of the arrest and, although he had behavioral problems and had difficulty reading, he was mainstreamed in his schooling. No credible evidence was presented to support the notion that the Defendant so lacked the age, maturity, intellectual capacity and emotional healthy as to mitigate his responsibility for his crime.

(R398-399).

These findings ignore the expert evidence of Dr. McClain, who examined Desmond Baker and his records prior to and during

incarceration, and determined he suffered from major depression, post-traumatic stress disorder, reactive attachment disorder, regular marijuana abuse since fifth grade, alcohol abuse, and cocaine abuse. These diagnoses are reflected in the McClain written report given to the trial court during sentencing (R1050-1051) and in Dr. McClain's testimony. (R1060-1063). The state did not present evidence to oppose these expert conclusions which are not addressed in the trial court's sentencing order. The Court noted Dr. McClain's findings of "mental disabilities" only in considering Desmond Baker's prospects for rehabilitation. (R400). The trial court erroneously concluded Desmond Baker needs further rehabilitation for mental disabilities in DOC, when the trial court previously had determined the child did not suffer from mental illness. (R398, 400). These fact findings ignore the school records in evidence from Osceola High School, showing the child as of October 1, 1998, was emotionally handicapped, failing all his classes, was disruptive to others, needed a peer tutor or aide, and was defiant and insubordinant. (R430-440). These facts ignore Dr. McClain's unrefuted testimony that Desmond Baker's school records immediately before the offense evidence someone "sliding down a mountain or falling off a cliff. There were noted difficulties in his willingness to complete assignments,

there were difficulties with him running away, family difficulties were noted." (R1058). The facts in this paragraph are not supported by substantial competent record evidence and were not determined by a jury.

2. D. The trial court ignored the fact that Desmond Baker was a homeless fifteen year old child at the time of the crime and did not take this significant fact into account when reviewing his background, family, home and community environment. (R399).

3. E. The Effect, If Any, of Immaturity, Impetuosity, or Failure to Appreciate Risks and Consequences On the Defendant's Participation in the Offense.

The available evidence in this case clearly establishes that the Defendant appreciated the risks and consequences of his actions. Prior to the murder, he had committed several violent crimes, including an armed robbery of another cab driver. The evidence also shows that the robbery that led to the murder was not committed on impulse but was the product of cool, reflective thought and detailed planning, preparation and execution. The robbery of Bockman also was part of an escalating pattern of violent criminality on the part of the Defendant and although the murder of Bockman does not appear to have been part of the Defendant's initial plan, it was always a foreseeable possibility given the Defendant's chosen mode of operation.

(R399)

The trial court determined these facts despite a jury verdict convicting the child of felony murder, which requires no

intent to kill. The trial court, while plainly considering the facts of the offense, did not incorporate or mention the expert evidence of Dr. McClain, who testified that Desmond Baker in middle school was in emotionally handicapped classes, due to his inability to control his behavior and poor impulse control, withdrawal, excessive dependency and anxiety. (R1054-1055). Sherry Zwirn was Desmond Baker's emotionally handicapped class teacher, and testified the child was in her class at first full time and she worked with him for three years. At the end of that time the child was still in her class one hour daily. His behaviors usually involved shutting down and becoming very withdrawn. (R975-891). The child's ability to engage in the kind of reflective thought process and his knowledge of the foreseeable risks and consequences of his actions are not proved in this record and are in fact presumed not to exist for a fifteen year old child, in the same way such concepts and abilities exist for an adult. *Miller v. Alabama*, 132 S.Ct 2455, 2464 (2012).

4. The trial court found the following:

G. The Effect, If Any, of Familial Pressure or Peer Pressure On the Defendant's Actions.

There is no credible evidence that familial pressure or peer pressure had any significant effect of [sic] the Defendant's actions in murdering Harry Bockman or that such pressure could account for the killing.

This conclusion ignores Dr. McClain's expert testimony that Desmond Baker "was seeking to please others, if you will. That because of his excessive dependency, he was already very vulnerable, even at a younger age. But I think that it became pronounced as he was developing and then, unfortunately, alienating from his family. Even though family was there, I think he was moving away from family, partly, in dealing with some of the adolescent feelings, but also just the difficulties with the anger that he felt, difficulties with impulse control, and being more vulnerable to peer influence." (R1056). This finding is at odds with the subsequent trial court fact finding that "Defendant sought out the company of older males who were engaged in various form [sic] of criminal activity and drew inspiration from them." (R400).

5. H. The Nature and Extent of the Defendant's Prior Criminal History. (R400). In considering this factor, the trial court noted only the offenses committed during the short time around the murder. The trial court failed to note the child had no prior involvement with the police and no prior criminal history, and failed to consider this in sentencing.

6. a. J. The Possibility of Rehabilitating the Defendant. Desmond Baker has demonstrated his ability to be rehabilitated,

even though he does not bear the burden of proof to do so. He has transformed from an impulsive fifteen year old to a mature, reflective adult who has demonstrated maturity and rehabilitation.

b. The trial court concluded that Dr. McClain recommended Desmond Baker "be under some form of supervision after his release." (R400). Dr. McClain opined that Desmond Baker would benefit from having "an anchor, a source that you go to independently to talk to and disclose and problem solve through issues." (R1084). The record does not show any psychological recommendation for supervision upon release.

c. The trial court found Dr. McClain indicated "that the Defendant was not rehabilitated, and that he had not begun the proposed counseling. As such, the actual possibility of rehabilitating the Defendant remains unclear." (R400). Dr. McClain did not testify the Desmond Baker is not rehabilitated. Dr. McClain testified that he would need specific assistance in transitioning from life in prison to life outside prison. She testified that Desmond Baker needs counseling of a kind that is not offered in prison, but that he could still benefit from pastoral counseling, if available, and from attending NA and AA meetings. Dr. McClain did not distinguish Desmond Baker's needs in this regard from that of any other person incarcerated for

long periods and who is at the will of the services offered at the DOC.

d. The state cannot lawfully imprison a child for lengthy periods of time, fail to offer required tools for rehabilitation and then conclude that the child cannot be rehabilitated or released because the tools the state will not offer the child have not been obtained. To permit this would be unconstitutionally cruel and unusual punishment that violates the Eighth Amendment to the United States Constitution and Article I, Section 17 of the Florida Constitution. The state cannot deprive a child of the tools for rehabilitation, such as therapy, and simultaneously continue to imprison him for not getting such tools like therapy. The state, which controls what programs are available to an incarcerated child and adult, cannot make rehabilitation contingent on obtaining services the state will not provide. To allow the state to continue to imprison a child offender while withholding the means for demonstrating rehabilitation is the same as imposing a sentence without any review. This is because under such circumstances the review is a mere formality which cannot realistically lead to demonstrated rehabilitation. Substantial record evidence does not support the trial court's conclusions regarding Desmond Baker's possibility of being rehabilitated.

WHEREFORE Defendant respectfully requests that this Court vacate the sentence, hold a sentencing hearing and impose a constitutional and lawful sentence that is derived in conformity with the due process clauses and laws required by the federal and state constitutions.

CERTIFICATE OF SERVICE

I certify that a copy has been electronically mailed to Pamela Jo Bondi, Attorney General, Concourse Center No. 4, 3507 E. Frontage Road, Suite 4, Tampa, FL 33607; and has been mailed by postal service to: Douglas Ellis, Office of the State Attorney, P.O. Box 5028, Clearwater, FL 33758; Stacey Schroeder, Assistant Public Defender, Office of the Public Defender, 14250 49th Street North, Clearwater, FL 33762; Hon. William Burgess, Pinellas County Criminal Justice Center, 14250 49th St. North, Clearwater, FL 33762-2800; on this 8th day of December, 2017.

Respectfully submitted,



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**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR PINELLAS COUNTY**

CRC 9903168 C.F.A.70

INDICTMENT FOR

vs.

MURDER IN THE FIRST DEGREE,
Capital Felony

The Grand Jurors of the State of Florida, impaneled and sworn to inquire and true charge make in and for the body of the County of Pinellas, upon their oath do charge that

in the County of Pinellas and State of Florida, on the 18th day of January, in the year of our Lord, one thousand nine hundred ninety-nine, in the County and State aforesaid unlawfully, while engaged in the perpetration of, or in an attempt to perpetrate the crime of Robbery, did shoot Harry Bockman, a human being, with a firearm, thereby inflicting upon the said Harry Bockman mortal wounds, of which said mortal wounds, and by the means aforesaid and as a direct result thereof, the said Harry Bockman died; contrary to Chapter 782.04(1)(a), Florida Statutes, and against the peace and dignity of the State of Florida. [L1]

11/10/99 FOUND Guilty by JURY

FILED
CLERK OF DISTRICT COURT
99 FEB 11 PM 12:24
Allen White
Hudson v. Hudson
Kathleen I. Gieskiel
Clark County Family Court

I, Bruce L. Bartlett, Chief Assistant State Attorney for the Sixth Judicial Circuit of Florida, have advised the Grand Jury returning the above Indictment, as authorized and required by law.

B. L. Bartlett

Assistant State Attorney for the Sixth
Judicial Circuit of the State of Florida,
Prosecuting for said State

Presented in open Court by the Grand Jury and filed this 11th day of
February, A.D., 1999.

Karleen F. DeBlaker

Clerk of the Circuit Court

By

Colleen White

Deputy Clerk

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
PINELLAS COUNTY, FLORIDA

The State of Florida

VS.

DESMOND BAKER

Indictment for

Murder in the First Degree

A TRUE BILL.

Jan M. Olliv
Foreman of the Grand Jury

SP99-003050 C-DE/0208MW4

✓

CIRCUIT/COUNTY COURT, PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION

CASE NO. CRC99 03168 CEANO

STATE OF FLORIDA
vs.

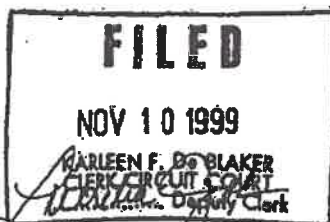
DESMOND BAKER

MURDER IN THE FIRST DEGREE

We, the Jury, find, as follows, as to the defendant in
this case: (check only one)

- (✓) The defendant is guilty of Murder in the First
Degree, as charged.
We further find a firearm was used:
☒ Yes
☐ No
- () The defendant is guilty of Murder in the
Second Degree, as included.
We further find a firearm was used:
☐ Yes
☐ No
- () The defendant is guilty of Murder in the Third
Degree, as included.
We further find a firearm was used:
☐ Yes
☐ No
- () The defendant is guilty of Manslaughter, as
included.
We further find a firearm was used:
☐ Yes
☐ No
- () The defendant is not guilty.

SO SAY WE ALL.



(VF-88)

Ellen Kleinfeld
FOREPERSON OF JURY
Ellen Kleinfeld
PRINT NAME OF FOREPERSON OF JURY
11-10-99
DATE

056

☐ Probation Violator
☐ Community Control Violator
☐ Retrial
☐ Resentencing

STATE OF FLORIDA

vs

DESMOND BAKER

Defendant

SPN:

00706569

SS#

NONE

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA
DIVISION: FELONY

CASE NUMBER: CRC

99-03168

CFANO C

OBTs Number

FILED

NOV 10 1999

KARLEEN F. De BLAVER
CLERK OF COURT

JUDGMENT

The Defendant, DESMOND BAKER, being personally before this
court represented by ANNE F. BORGHETTI, the attorney of record,
and the state represented by Doug Ellis, and having

- ☒ been tried and found guilty by jury/by court 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
<u>ONE</u>	<u>MURDER IN THE FIRST DEGREE</u> <u>(CAPITAL FELONY)</u>	<u>782.04(1)(a)</u>	<u>1st</u>

EXHIBIT 1

X and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is ADJUDICATED GUILTY of the above crime(s).

and pursuant to s. 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794), lewd and lascivious conduct (ch. 800), murder (s.782.04), aggravated battery (s.784.045), carjacking (s.812.133), or home invasion (s.812.135), or any other offense specified in s. 943.325, the defendant shall be required to submit blood specimens.

— and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITH-
HELD as to Count(s) _____



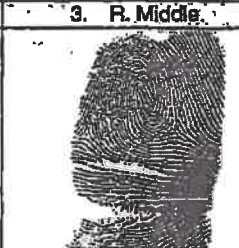





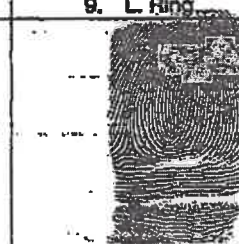

Sentence Deferred _____ The Court hereby defers imposition of sentence until _____
Until Later Date (Date)
(Check If Applicable)

The Defendant in Open Court was advised of the 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 the right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ORDERED in open court in Pinellas County, Florida this 10 day of NOVEMBER 19 99.


JUDGE

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
6. L. Thumb	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little
				

Fingerprints taken by:

PA 3247
(Name and Title)

I HEREBY CERTIFY that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, DESMOND BAKER, and that they were placed thereon by the defendant in my presence in open court this day.


JUDGE

Defendant DESMOND BAKER Case Number 99 03168 OBT's Number _____

SENTENCE

(As to Count ONE)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, ANNE F. BORGHETTI, and having been adjudicated guilty, 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 the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable)

_____ and the court having on _____ (date) deferred imposition of sentence until this date

_____ and the court having previously entered a judgment in this case on _____ (date) now resentsences the defendant

_____ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

It is The Sentence Of The Court That:

☒ The defendant pay total statutory costs in the amount of \$ 408.00 Lien

_____ The defendant pay attorney fees and costs of defense as determined by the Court.

_____ The defendant pay a fine of \$ _____, pursuant to 775.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by 938.04, Florida Statutes.

☒ The defendant is committed to the custody of the Department of Corrections.

_____ The defendant is committed to the custody of the Sheriff of Pinellas County, Florida.

_____ The defendant is sentenced as a youthful offender in accordance with 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable):

☒ For a term of natural life. B

_____ For a term of _____

_____ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph:

_____ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered.

_____ However, after serving a period of _____ imprisonment in Department of Corrections, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Defendant

DESMOND DAXER

Case Number CRC

99-03168-CFAND

Other Provisions: (continued)

Jail Credit

☒ It is further ordered that the defendant shall be allowed a total of 286 days as credit for time incarcerated before imposition of this sentence.

Prison Credit

☐ It is further ordered that the defendant be allowed credit for all time previously served on this court in the Department of Corrections prior to resentencing.

Consecutive/Concurrent
As To Other Convictions

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

(check one)

☐ any active sentence being served

☐ specific sentences: _____

It is further ordered that:

☒ Restitution is not applicable in this case

☐ Restitution is ordered in an amount to be determined

☐ Restitution is ordered as follows: _____

☐ Restitution is not ordered for the following reason(s): _____

Restitution to State:

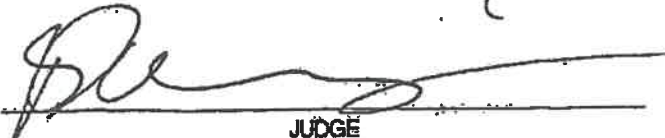
The defendant must make payment of any debt due and owing to the state under 960.17 and 948.03(1)(g), Florida Statutes. The amount of such debt shall not exceed \$10,000 and shall be determined by the Court at a later date upon final payment by the Crimes Compensation Trust Fund on behalf of the victim.

In the event the above sentence is to the Department of Corrections, the Sheriff of Pinellas County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in open court at Clearwater, Pinellas County, Florida, this 10 day of NOVEMBER, 1999.


JUDGE

Florida Department of Education Matrix of Services

For funding under the Florida Education Finance Program

Domain A	3	Domain D	1	Total of Ratings:	8
Domain B	2	Domain E	1	Cost Factor:	251
Domain C	1	Sp. Cond.			

1/97

Student Information

District: Pinellas
Date Completed: 10-1-98

Student Name: Deamond Banks

Student ID: 5287979101

Date of Birth: 6/30/83 Grade: 10

School: Wesley High School

Total Minutes in School Week: 1950

Minutes per Week with Non-ESE Persons: 1700

Names of Persons Completing Matrix:

Shagist

Areas of Eligibility (Put a "P" next to the primary exceptionally. Check all others that apply.)

Area of Eligibility	Data Entry Code
Autistic - AUT	P
Deaf or Hard of Hearing - DHH	H
Developmentally Delayed (Age: 0-5) - DD	T
Dual-Sensory Impaired - DSI	O
Educable Mentally Handicapped - EMH	A
Emotionally Handicapped - EH	J
Established Conditions (Age: 0-2) - EC	U
Gifted - GIF	L
Hospital/Homebound - HH	M
Language Impaired - LI	G
Occupational Therapy - OT	D
Orthopedically Impaired - OI	C
Other Health Impaired - OHI	V
Physical Therapy - PT	E
Profoundly Mentally Handicapped - PMH	N
Severely Emotionally Disturbed - SED	Q
Specific Learning Disabled - SLD	K
Speech Impaired - SI	F
Trainable Mentally Handicapped - TMH	B
Traumatic Brain Injured - TBI	S
Visually Impaired - VI	I

Instructions

1. Complete student information section.
2. Check all appropriate services or supports to be provided by the school district to the student in Domains A through F.
3. Mark the appropriate level (1 through 5) for each domain and record this level at the bottom of each domain.
4. Check applicable special considerations, if any, and record total special considerations rating.
5. Total the five domain ratings, sum the total of domain ratings and special considerations rating, and record the total in the box at the top of this page.
6. Determine the cost factor using the cost factor scale on the final page and record it in the box at the top of this page.

(Note: For more information, see *Matrix of Services Handbook*.)

Individual Educational Plan (IEP)
IEP Eligibility

for services: _____

name: Desmond Baker Student number: 5A59479161 Date: 9/30/98
date of birth: 6-30-83 Grade: 10 Reevaluation due date: 11/30/98

Exceptional student education (ESE) eligibility: (Check all that apply.)

- | | | |
|---|--|--|
| <input type="checkbox"/> Autistic | <input type="checkbox"/> Gifted | <input type="checkbox"/> Profoundly Mentally Handicapped |
| <input type="checkbox"/> Deaf or Hard of Hearing | <input type="checkbox"/> Hospital Homebound | <input type="checkbox"/> Severely Emotionally Disturbed |
| <input type="checkbox"/> Developmentally Delayed (0-5 yrs) | <input type="checkbox"/> Language Impaired | <input type="checkbox"/> Specific Learning Disabilities |
| <input type="checkbox"/> Dual Sensory Impaired | <input type="checkbox"/> Occupational Therapy | <input type="checkbox"/> Speech Impaired |
| <input type="checkbox"/> Educable Mentally Handicapped | <input type="checkbox"/> Orthopedically Impaired | <input type="checkbox"/> Trainable Mentally Handicapped |
| <input checked="" type="checkbox"/> Emotionally Handicapped | <input type="checkbox"/> Other Health Impaired | <input type="checkbox"/> Traumatic Brain Injury |
| <input type="checkbox"/> Established Conditions (0-2 yrs) | <input type="checkbox"/> Physical Therapy | <input type="checkbox"/> Visually Impaired |

Present levels of performance, annual goals and short term objectives are attached for the following domain areas:

- ☒ Curriculum and Learning Environment ☐ Independent Functioning
☒ Social/Emotional Behavior ☐ Communication

Note: If domain is NOT checked, student demonstrates no needs beyond those normally provided for all students.

Health care needs: ☒ None ☐ Specify

Other information:

THIS STUDENT IS ELIGIBLE FOR THE ASSISTANCE OF AN AIDE IN THE CLASSROOM AND SKILLS TRAINING IN AREAS TO IMPROVE THEIR BEHAVIOR AND ATTITUDES. THEY MAY ALSO HAVE COURSES

IEP meeting participants:

Parent/guardian/family member

Susan Hight
Individual who interprets instructional implications of evaluation results (required)

Howard McElbree
Exceptional education teacher or provider (required)

Student

Teacher

Agency representative, if applicable

Howard McElbree
LEA representative (required)

Howard McElbree OSCEOLA HIGH SCHOOL
Case manager School

Other

Other

If parent unable to attend IEP meeting, notices were provided:

Date: _____ Method: PCS 106 Date: _____ Method: Refer to PCS 106

IEP information was shared by: ☐ telephone call ☒ copy of IEP sent home ☐ other: _____

Date parent planning notes sent: 9/22/98 Date general education teacher notes sent: 9/22/98

NOTICE OF MEETING
 Individual Educational Plan (IEP)
 Gifted Educational Plan (EP) Family Support Plan (FSP)

Date: 9/21/98

Parent: Deshaun Butler DOB: 10 Grade: 10 School: Oscarde High

- are invited to attend meeting for the purpose of:
- ☒ Developing, amending, or updating your child's IEP/EP/FSP.
 - ☐ Reviewing your child's need for reevaluation.
 - ☐ Reviewing the results of your child's reevaluation.
 - ☐ Planning for transition services: At age 14, recommending courses of study; At age 16, determining your child's needs in the transition areas of instruction, development of employment, community experiences, postschool adult living and, if appropriate, acquisition of daily living skills and functional vocational assessment.

meeting is scheduled on 9/30/98 at 2:10
 Date Time
 Location

anticipate the following persons will be present:

- ☒ LEA Representative (may be school or district staff)
- ☒ Exceptional education teacher or provider.
- ☒ Evaluation specialist (someone who interprets instruction implications of evaluation results)
 Note: this is required for all IEPs and FSPs; not EPs.
- ☐ Your child: You may choose to involve your child at any age. We are required to send a separate invitation to your child if transition services will be discussed.
- ☐ If transition services will be discussed, a representative from the following agencies:
- ☐ For FSPs, Primary Service Coordinator and additional agencies:
- ☐ Other:

If your child is enrolled in general education classes, the general education teachers will be invited to participate, either by providing information in advance of the meeting, or by attending a portion of the meeting.

You may invite other persons to attend if you wish to do so. If you cannot attend at the scheduled time, please use the enclosed response form to suggest a day and time which would be convenient for you. If we cannot arrange a mutually convenient time, please indicate a telephone number and time when you can be reached so we may discuss the IEP/EP. A copy of the IEP/EP will be provided to you.

A copy of your Procedural Safeguards are enclosed. Parent Planning Notes may also be enclosed. If they are not enclosed and you would like a copy in order to provide your input prior to the meeting, please contact the person indicated below. If you would like any additional information, please contact:

Susan Hight School personnel Oscarde High School School/Office Telephone

For school personnel use: Indicate second notification date if parent did not respond to first notice: _____
 Method: ☒ Duplicate copy of this notice ☐ Telephone conference ☐ Face-to-face conference ☐ Note

PCS 108-A Copy 1 - Parent Copy 2 - Staffing folder Copy 3 - Case manager Copy 4 - Central files JH 02/03/00

Exceptional Student Education (ESE) Department
Individual Educational Plan (IEP)
Test Modifications and Least Restrictive Environment

Name: Deshaun Barber Student number: _____ Date: 9/30/95

Testing:

Modifications: ☐ Not Applicable or ☒ Specify

☒ Flexible scheduling:

☒ Flexible seating:

☒ Recording of answers:

☐ Mechanical aids:

☐ Revised format:

Exemption: ☒ Not Applicable

☐ Student is exempt from district testing ☐ CTBS ☐ Florida Writes ☐ HSCT ☐ FCAT

Rationale for exemption:

Alternative assessment(s) will include:

Least restrictive environment:

Educational interventions, modifications, or placements previously attempted or considered include:

☒ Educational interventions in general education ☐ 504 evaluation and plan ☐ Less restrictive ESE setting

☐ Academic Improvement Plan (AIP) ☐ Other ESE program(s) ☐ Other:

The above were not sufficient to meet the student's needs.

The student's need for interaction with non-disabled students is addressed in the following settings:

☒ Academic ☒ PE ☒ Electives ☒ Lunch ☒ Bus ☐ Work ☐ Extracurricular ☐ Community

The student will NOT participate with non-disabled students in other settings as a result of: ☐ Not applicable

☐ Academic/developmental needs ☐ Health needs ☐ Excessive disruptive behavior

☐ Social/emotional needs ☐ Communication needs ☐ Other:

☐ Independent functioning needs ☐ Student safety / Injury to self or others

Placement:

☒ General education class; student is with nondisabled peers more than 79% of the day

☐ General education class/part time special education class; student is with nondisabled peers 41% to 79% of day

☐ Full-time special education class; student is with nondisabled peers less than 41% of day

☐ Full-time special education school; student is with nondisabled peers less than 41% of day

☐ Hospital/homebound instruction

☐ Juvenile justice corrections facility

The other options were not selected because they did not provide the needed special education and related services in the least restrictive environment.

Student is assigned to: ☒ Zoned school ☐ School with required services nearest home
☐ Other: _____

PIRELLAS COUNTY SCHOOLS
 Optional Student Education (ESE) Department
 Individual Educational Plan (IEP)/ Gifted Education Plan (EP)
 Goals and Objectives

Page of

Name: Drsmond Bolton Student number: Date: 9/30/98

Present level of performance for domain: A - Curriculum and Learning Environment

Including how the child's disability affects the child's involvement and progress in the general curriculum and consideration of the strengths of the child, concerns of the parent and results of evaluation,
 THIS STUDENT IS A STANDARD DIPLOMA SEEKING STUDENT WHO IS MAINSTREAMED FOR ALL ACADEMIC CLASSES. THERE ARE CONSULTATION SERVICES AND THE USE OF A SAIL AIDE IN CLASSES IS AVAILABLE IF NEEDED. MODIFICATIONS FOR INSTRUCTION, CLASSWORK EXPECTATIONS AND TESTING REQUIREMENTS ARE AVAILABLE FOR THIS STUDENT.

*Drsmond is currently failing all of his classes
 He seems disinterested in academic success*

Priority educational need:

THE STUDENT MUST PASS ALL ACADEMIC CLASSES DURING THE SCHOOL YEAR OR AT SUMMER SCHOOL., MAINTAIN AT LEAST A 2.0 GRADE POINT AVERAGE AND PASS ALL STATE TESTING REQUIREMENTS FOR GRADUATION.

Annual goal:

will take responsibility for homework.

Short term objective: (minimum 2 per goal)
 will record homework assignment.

Criteria: 80%
 Schedule: Grading Period
 Procedure: Student product
 Result: See progress report

Short term objective: (minimum 2 per goal)
 will bring necessary materials home to complete assignment.

Criteria: 80%
 Schedule: Grading Period
 Procedure: Student product
 Result: See progress report

Short term objective: (minimum 2 per goal)
 will turn in homework on time.

Criteria: 80%
 Schedule: Grading Period
 Procedure: Student product
 Result: See progress report

Annual goal:

Short term objective: (minimum 2 per goal)

Criteria:
 Schedule:
 Procedure:
 Result:

Short term objective: (minimum 2 per goal)

Criteria:
 Schedule:
 Procedure:
 Result:

Short term objective: (minimum 2 per goal)

Criteria:
 Schedule:
 Procedure:
 Result:

NOTE: Student progress toward annual goals is measured by mastery of short term objectives. Progress reports are provided each grading period.

Individual Educational Plan (IEP)/ Gifted Educational Plan (EP)
Goals and Objectives

Name: Desmond Baker Student number: _____ Date: 9/30/98

Present level of performance for domain: B - Social/Emotional Behavior

Including how the child's disability affects the child's involvement and progress in the general curriculum and consideration of the strengths of the child, concerns of the parent and results of evaluation.

Desmond not only refuses to complete his own assignments, but is also disruptive to others in his classes

Priority educational need:

STUDENT WILL PARTICIPATE IN A WEEKLY REINFORCED BEHAVIOR SYSTEM IN A SPECIAL EDUCATION PROGRAM

Annual goal:

will accept responsibilities for his/her own actions.

Short term objective: (minimum 2 per goal)
will refrain from making somatic complaints in order to avoid situations, assignments or responsibilities.

Criteria: 85%
Schedule: Weekly
Procedure: Student product
Result: See progress report

Short term objective: (minimum 2 per goal)
will anticipate consequences before acting.

Criteria: 85%
Schedule: Weekly
Procedure: Student product
Result: See progress report

Short term objective: (minimum 2 per goal)
will accept consequences for behavior.

Criteria: 85%
Schedule: Weekly
Procedure: Student product
Result: See progress report

Annual goal:

Short term objective: (minimum 2 per goal)

Criteria:
Schedule:
Procedure:
Result:

Short term objective: (minimum 2 per goal)

Criteria:
Schedule:
Procedure:
Result:

Short term objective: (minimum 2 per goal)

Criteria:
Schedule:
Procedure:
Result:

NOTE: Student progress toward annual goals is measured by mastery of short term objectives. Progress reports are provided each grading period.

Individual Educational Plan (IEP)
Supplementary Aids: Course/Test Modifications

8 of 16

Name: Desmond Baker

Student number: _____

Date: 9/30/98

Student present level / need for time modifications:

☐ Not applicable ☒ Specify

STUDENT IS ELIGIBLE FOR THE FOLLOWING MODIFICATIONS

Time modifications:

- ☐ Decreased instructional time (specify):
☒ Increased instructional time (specify): EXTRA TIME FOR ASSIGNMENTS IF NEEDED
☒ Classwork (specify): ASSISTANCE FROM SAIL AIDE, PEER TUTOR OR TEACHER
☒ Homework (specify): SHORTENED ASSIGNMENTS OR EXTRA TIME IF NEEDED

Student present level / need for methodology modifications:

☐ Not applicable ☒ Specify

STUDENT MAY NEED SOME OR ALL OF THESE MODIFICATIONS TO BE SUCCESSFUL IN HER CLASSES

Instructional methodology modifications:

- ☐ Preferential seating:
☒ Check to assure accuracy of notes; provide assistance/copies as needed: TEACHER NOTES OR OUTLINE
☒ Limit written work, (specify): SHORTER WRITTEN ASSIGNMENTS IF NEEDED
☐ Accept computer-generated assignments:
☒ Assign peer to assist, as needed: USE OF PEER OR SMALL GROUP WORK IN CLASS
☒ Allow use of calculator for: MATH
☒ Shorten assignments: OR REVISED FORMAT FOR EVALUATION
☐ Other:
☐ Other:

Student present level / need for special communication systems modifications:

☒ Not applicable ☐ Specify

Special communication systems modifications:

- ☐ Daily behavior management system:
☐ Weekly behavior management system:
☐ Daily assignment log system:
☐ Weekly assignment log system:
☐ Mid-term progress report:
☐ Other:
☐ Other:

Student present level / need for test modifications (classroom and district):

☐ Not applicable ☒ Specify

STUDENT MAY NEED MODIFICATIONS IN CLASSROOM FOR TESTING

Test modifications:

- ☐ Flexible scheduling:
☒ Flexible setting: SMALL GROUP TO REDUCE DISTRACTIONS
☐ Recording of answers:
☐ Mechanical aids:
☒ Revised format: FOR EVALUATION PURPOSES, ALTERNATE ASSIGNMENT

PINELLAS COUNTY SCHOOLS
 Exceptional Student Education (ESE) Department
 Individual Educational Plan (IEP)
 Transition Services

Page 1 of 1

Name: Demond Batta Student number: _____ Date: 9/30/98

Transition service needs/courses of study required at age 14 and annually thereafter:

- | | |
|---|---|
| <input type="checkbox"/> Adult Handicapped Program | <input checked="" type="checkbox"/> Two Year College |
| <input type="checkbox"/> School to Supported Employment | <input checked="" type="checkbox"/> Four Year College |
| <input checked="" type="checkbox"/> School to Work | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Tech Prep | |

Diploma option: ☐ Not applicable until spring of eighth grade
☒ Standard ☐ Special ☐ Certificate of completion ☐ Non degree seeking
 Other information:

Desired post school outcomes: ☐ Not required until age 16

STUDENT WILL EXPLORE CAREER/EDUCATION OPTIONS WITH CASE MANAGER AND GUIDANCE

Interagency responsibilities and linkages:

- ☒ Not applicable:
☐ Developmental services:
☐ Vocational rehabilitation:
☐ Other:
☐ Other:

The student has been informed of transfer of rights at least one year prior to reaching age 18.
 Date of notification: _____

Transition areas

Area	Refer to goal in domain	Person responsible	Justification if service is not needed
Instruction	Curriculum and Learning Environment	School Staff	
Community experience			STUDENT IS INDEPENDENT IN THE COMMUNITY.
Employment			STUDENT IS CURRENTLY 100% COMPETITIVELY EMPLOYABLE.
Post school adult living			STUDENT IS INDEPENDENT IN ALL AREAS OF DAILY LIVING.
Daily living skills (optional)			Not applicable
Functional vocational eval (optional)			Not applicable

Copy 1 - Parent Copy 2 - Staffing folder Copy 3 - Case manager Copy 4 - Central files

Individual Educational Plan (IEP)
ESE Services

6/1

Name: Demetrius Butler

Student number: _____

Date: 9/30/98

Special considerations: Complete ONLY if applicable.

- ☐ If Limited English Proficient, specify language needs, as they relate to the IEP.
- ☐ If Visually Impaired, specify Braille instruction.
- ☐ If Deaf or Hard of Hearing, specify language & communication mode & instruction provided, e.g. sign language.
- ☐ If Assistive Technology devices and/or services are required, specify.
- ☐ If child's behavior impedes learning of self or others, specify positive behavioral interventions and supports.

Specify:

Projected beginning date for services: 9/20/98
Hospital Homebound beginning date: _____

Projected duration for services: _____
Hospital Homebound ending date: 9/30/99

Specialized Instruction:

Frequency:

Location:

- ☒ Academic areas
- ☐ Communication (spoken)
- ☐ Community based instruction
- ☐ Hospital homebound
- ☐ Language therapy
- ☐ On-the-job training
- ☐ Organizational/learning strategies
- ☐ Pre-K curriculum
- ☐ Behavior management/socialization
- ☐ Speech therapy
- ☒ Work related skills
- ☒ Summer Term
- (may involve a change in service delivery)
- ☐ Other

80-25 hrs.

Gen-educ.

10-15 hrs wk
10-15 hrs. wk.

DTGL

Gen. ed classroom

Supports for school personnel:

Consultation:

Frequency:

- ☐ Curriculum and learning environment ..
- ☐ Social/emotional behavior
- ☐ Independent functioning
- ☐ Health care needs
- ☐ Communication
- ☐ Other:

Related services:

Frequency:

Location:

- ☐ Specially designed physical education ..
- ☐ Occupational therapy
- ☐ Physical therapy
- ☐ Orientation and mobility
- ☐ Counseling
- ☐ Other:

Special transportation:

- ☒ None
- ☐ Lift bus for wheelchair
- ☐ Air conditioned bus
- ☐ Teacher assistant on bus
- ☐ Car seat
- ☐ Seat belt
- ☐ Curb to curb service
- ☐ Safety restraint (harness)
- ☐ Other:

PINELLAS COUNTY SCHOOLS
EXCEPTIONAL STUDENT EDUCATION (ESE) DEPARTMENT
POSITIVE BEHAVIORAL INTERVENTIONS, STRATEGIES & SUPPORT PLAN

Stapp

Student: Demond Baker DOB: _____ Grade: 10 Date: 12-7-98
School: Osceola High School Teacher: Stight ESE Program: EH

I. Target Behavior:

Reduce incidents of defiance and insubordination in school.

II. Possible Environmental Factors Contributing to Behavior:

Demond may be experiencing academic frustration. This might be contributing to his defiant behavior.

III. Events Surrounding Behavior Occurrence (eg. when, where, with whom, how often):

Demond does not like to follow directions. In a classroom situation when a student does not appear to be listening to the teacher's requests.

IV. Student Strengths:

Student has expressed an interest in attending a vocational program.

V. Positive Reinforcers:

Hopefully, possible attendance at PTEC. May encourage improved behavior.

VI. Interventions, Strategies and Supports:

Conferences,
parent contacts,
intervention center,
saturday school
detention
Out of school suspensions
Career Assessment which recommends PTEC
enrollment may provide positive motivation.

VII. Signatures:

Susan Stight
Teacher
Demond Baker

Review Date: _____

Progress _____

Review Date: _____

Progress _____

White - Parent

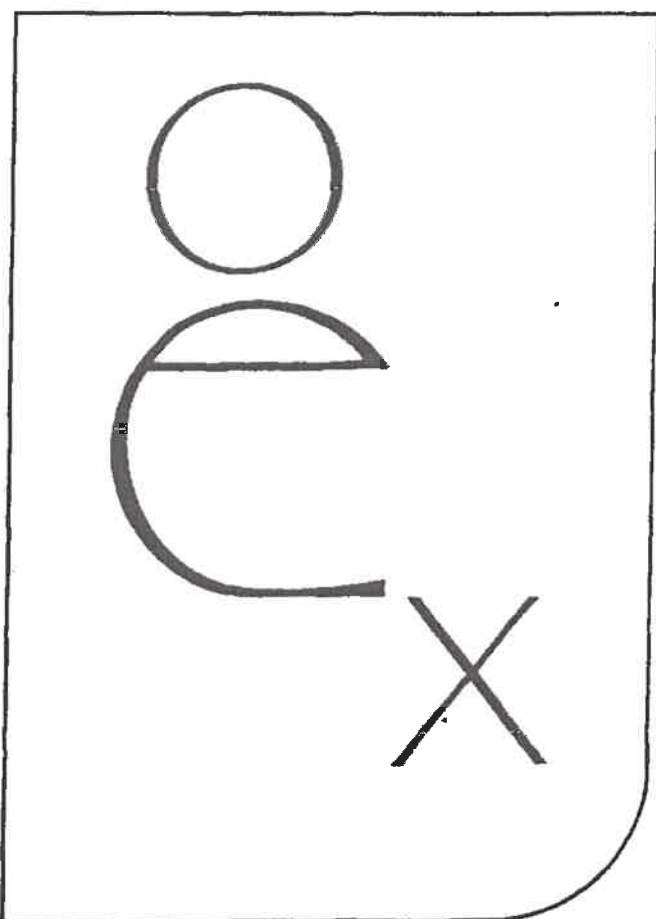
Yellow - Staffing Folder

Pink - Case Manager Folder

Vital Statistics of the United States, 1983

Life Tables

Volume II, Section 6



DHHS Publication No. (PHS) 86-1104

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
National Center for Health Statistics**

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Section 6. Life Tables

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Guide to tables in section 6

		TABLE: 6	-1	-2	-3	-4	-5
		PAGE:	6	10	11	12	14
Years:							
1900-1983 -----							15
1983 only -----			1	2	3		
Specified years and 1983 -----						24	
Type of entry:							
Proportion of dying (${}_nq_x$) -----			1				
Number surviving (${}_nL_x$) -----			1	2		4	
Number dying (${}_nd_x$) -----			1				
Stationary population (${}_nL_x$ and T_x) -----			1				
Average remaining lifetime (e_x) -----			1		3	4	
Average length of life (e_0) -----							5
Characteristics:							
Age by:							
Single years -----				2	3		
5-year intervals -----			1			4	
Race-specific -----			1	2	3		5
Sex-race specific -----			1	2	3	4	5
Sex-specific -----			1	2	3		5
Total population -----			1	2	3		5

¹ Entire United States for 1929-83; death-registration States for 1900-28.

² Entire United States for specified years from 1929 to 1983; death-registration States for specified years from 1900 to 1921.

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Death rates for a specific period may be summarized by the life table method to obtain measures of comparative longevity. There are two types of life tables—the generation or cohort life table and the current life table. The generation life table provides a “longitudinal” perspective in that it follows the mortality experience of a particular cohort, all persons born in the year 1900, for example, from the moment of birth through consecutive ages in successive calendar years. Based on age-specific death rates observed during consecutive calendar years, the generation life table reflects the mortality experience of an actual cohort from birth until no lives remain in the group. To prepare just a single complete generation life table requires data over many years; it is not feasible to construct generation tables entirely on the basis of actual data for cohorts born in this century.¹ For any cohorts that have not completed their life span, it is necessary to project data for the incomplete period. Generation life tables are useful for projecting mortality.²

The better known current life table may, by contrast, be characterized as “cross-sectional.” Unlike the generation life table, the current life table does not represent the mortality experience of an actual cohort. Rather, the current life table considers a hypothetical cohort and assumes that it is subject to the age-specific death rates observed for an actual population during a particular period. Thus, for example, a current life table for 1983 assumes a hypothetical cohort subject throughout its lifetime to the age-specific death rates prevailing for the actual population in 1983. The current life table may thus be characterized as rendering a “snapshot” of current mortality experience, and shows the long-range implications of a set of age-specific death rates that prevailed in a given year. In this section the term “life table” refers to the current life table only and not to the generation life table.

THE LIFE TABLE PROGRAM

Three series of life tables are prepared in the National Center for Health Statistics—complete, provisional abridged, and final abridged life tables. The complete life tables for the U.S. population contain life table values for single years of age. They are based on decennial census data and deaths for a 3-year period around the census year and have been prepared since 1900. The provisional abridged life tables contain values by 5-year age groups and are based on a 10-percent sample of deaths. The final abridged life tables (referred to in this section as “abridged life tables”) also contain values by age groups but are based on a complete count of all reported deaths.

In response to a growing number of requests for postcensal life table values, a series of abridged life tables was initiated in 1945. Available annually since that year, the abridged life tables are based on deaths occurring during the calendar year and on midyear postcensal population estimates provided by the U.S. Bureau of the Census. Refinements in the techniques for estimating the population and the methods for constructing abridged life tables permit these tables to be prepared in a way that provides reasonably accurate data on current trends in expectation of life and survivorship. Beginning with 1945 abridged life tables have been constructed by reference to a standard table.³ Methodology developed by Greville was used in constructing life tables for 1945–52. Since 1953 a modified method has been employed.⁴ U.S. life tables for the decennial period 1979–81 are used as the standard table in constructing the 1983 abridged life tables.

The 1945 abridged life tables were prepared for white and all other males and females. Since 1946 abridged life tables for the total population have also been available, and since 1948 abridged life tables have been calculated for total males and total females. Beginning with 1951 additional abridged life tables have been calculated for the total white and total all other populations.

Numerous requests have been received annually for current life table statistics that are more detailed than those available in the abridged life tables. Therefore tables showing l_x and e_x values by single years of age interpolated from the abridged life tables have been published since 1960.

The demand for information regarding up-to-date life table values has been responsible for the introduction of a third series, provisional abridged life tables. Beginning with 1958 provisional abridged life tables have been published for the total population only, in the “Annual Summary of Births, Deaths, Marriages, and Divorces, United States,” *Monthly Vital Statistics Report*. Values in these life tables are based on population estimates provided by the U.S. Bureau of the Census and on the estimated number of deaths derived from the “Current Mortality Sample” (CMS). The CMS consists of one-tenth of the death certificates filed in the vital statistics registration offices of each State, the District of Columbia, and New York City. The sample is taken by selecting 1 out of every 10 death certificates received between two dates a month apart.

LIFE TABLE VALUES

The data used to prepare the abridged U.S. life tables for 1983 are the final mortality statistics and the midyear estimates of the population by age, race, and sex, prepared by the U.S. Bureau of the Census. Selected life table values

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SECTION 6 - LIFE TABLES - PAGE 2

for 1900-1902, 1959-61, 1969-71, and 1979-81, and 1983 are shown in tables A and D.

Expectation of life—The most frequently used life table statistic is life expectancy (e_x), which is the average number of years remaining for persons who have attained a given age (x). Life expectancy and other life table values at specified ages in 1983 are shown for the total population and by race and sex in table 6-1. In addition, life expectancies at single years of age by race and sex are shown in table 6-3.

Life expectancy at birth for 1983 for the total population was 74.6 years. This represents the average number of years that the members of the life table cohort may expect to live at the time of birth (table A).

Survivors to specified ages—Another way of assessing longevity of the life table cohort is by determining the proportion that survives to specified ages. The L_x column provides the data for computing the proportion. For instance, for the total population, 78,386 out of the original life table cohort of 100,000 (or 78.4 percent) were alive at exact age 65 in 1983 (tables D and 6-2).

Median length of life—In addition to determining the proportion alive at a specified age, one can also compute the median age at death; the age at which exactly half the cohort (50,000 persons) still remain alive and half have died. For example, in 1983 the median age at death for the total population was 78.1 years (table D).

TRENDS AND COMPARISONS

In 1983 life expectancy in the United States reached a new high of 74.6 years. Among the race-sex groups, white females had the highest life expectancy at birth, 78.7 years, followed by black females, 73.6 years; white males, 71.7 years; and black males, 67.2 years (table A). The same order in life expectancy was maintained by each of the race-sex groups at ages 1, 20, and 65 years.

Between 1979-81 and 1983, the greatest increase was for black males, who could expect to live an average of 1.3 years longer at the end of the period than at the beginning. For the other race-sex groups the increases were white males, 0.9 years; black females, 0.7 years; and white females, 0.5 years.

Life expectancy has improved for males and females of both major race groups since the beginning of the century. For white and black males the average number of years of life added annually in the most recent period (1969-71 to 1983) was the same as that added during the previous 69-year period (1900-1902 to 1969-71). This was 0.3 years for white males and 0.4 years for black males (table B). But for white and black females improvements were greater during the earlier period than during the more recent period. White women added 0.4 years annually compared with 0.2 years, and black women added 0.5 years in the

Table A. Expectation of life at selected ages, by race and sex: Death-registration States, 1900-1902, and United States, 1959-61, 1969-71, 1979-81, and 1983

Life table value, period, and age	Total	White		All other			
		Male	Female	Total		Black	
				Male	Female	Male	Female
Expectation of life:							
At birth							
1983 -----	74.6	71.7	78.7	67.2	74.9	65.4	73.6
1979-81 -----	73.88	70.82	76.22	66.63	74.00	64.10	72.88
1969-71 -----	70.75	67.94	75.49	60.98	69.05	60.00	68.32
1959-61 -----	68.89	67.55	74.19	61.48	66.47	---	---
1900-1902 -----	49.24	48.23	51.08	---	---	32.54	35.04
At age 1 year							
1983 -----	74.5	71.5	78.4	67.4	75.1	65.9	73.9
1979-81 -----	73.82	70.70	77.98	66.01	74.31	64.60	73.31
1969-71 -----	71.19	68.33	75.66	62.13	70.01	61.24	69.37
1959-61 -----	70.75	68.34	74.68	63.50	68.10	---	---
1900-1902 -----	66.20	64.61	68.39	---	---	42.46	43.54
At age 20 years							
1983 -----	68.0	63.1	69.8	49.1	56.6	47.6	55.4
1979-81 -----	65.46	62.45	69.44	47.87	55.88	46.48	54.90
1969-71 -----	63.00	60.22	67.24	44.37	51.85	43.49	51.22
1959-61 -----	62.58	60.25	66.29	45.78	50.07	---	---
1900-1902 -----	42.79	42.19	43.77	---	---	35.11	36.89
At age 65 years							
1983 -----	16.7	14.5	18.7	14.1	17.9	13.4	17.3
1979-81 -----	16.51	14.26	18.55	13.83	17.60	13.29	17.13
1969-71 -----	16.00	13.02	16.93	12.87	15.99	12.53	15.67
1959-61 -----	14.39	12.97	16.88	12.64	15.12	---	---
1900-1902 -----	11.86	11.51	12.23	---	---	10.38	11.38

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Table B. Average annual change in life expectancy at birth in years, by race and sex: United States, 1900-1902 to 1969-71 and 1969-71 to 1983

Period	White		Black	
	Male	Female	Male	Female
1969-71 to 1983-----	0.3	0.2	0.4	0.4
1900-1902 to 1969-71-----	0.3	0.4	0.4	0.5

earlier period compared with 0.4 years during the more recent period.

Between males and females, differences in expectation of life widened for many years after the beginning of the century, but in more recent years the differences have narrowed (table C). For the white population the difference between males and females increased from 2.9 years in 1900-1902 to 7.6 years by 1969-71; the difference narrowed to 7.0 years by 1983. For the black population the difference increased from 2.5 years in 1900-1902 to 8.8 by 1979-81; it narrowed to 8.2 years by 1983.

Between the races, life expectancy differences generally narrowed since the beginning of the century (table C). By 1983 white males had a life expectancy of 6.3 years greater than black males compared with a difference of 15.7 years in 1900-1902. For women the race difference in life expectancy during this period diminished from 16.0 years in 1900-1902 to 5.1 years by 1983.

Table C. Differences in life expectancy between males and females, by race, and between white and black persons, by sex: Death-registration States, 1900-1902, and United States, 1959-61, 1969-71, 1979-81, and 1983

Period	Both sexes		Race	
	White	Black	Male	Female
1983-----	7.0	8.2	6.3	5.1
1979-81-----	7.40	8.78	6.72	5.34
1969-71-----	7.56	8.32	7.94	7.17
1959-61-----	6.64	---	---	---
1900-1902-----	2.85	2.50	15.69	16.04

In 1983 the percent surviving from birth to age 65 years had the same order among the race-sex groups as did life expectancy. The percent for white females was 85.3; black females, 74.5; white males, 74.1; and black males, 57.9. Median age at death in 1983 also showed the same order among the race-sex groups as both life expectancy and percent surviving to age 65 (table D).

TECHNICAL APPENDIX

The geographic areas covered in life tables before 1929-31 were limited to the death-registration areas. Life tables for 1900-1902 and 1909-11 were constructed using mortality data from the 1900 death-registration States—10

Table D. Percent surviving from birth to selected ages, and median age at death, by race and sex: Death-registration States, 1900-1902, and United States, 1959-61, 1969-71, 1979-81, and 1983

Life table value, period, and age	Total	White		All other			
		Male	Female	Total		Black	
				Male	Female	Male	Female
Percent surviving from birth:							
To age 1 year							
1983 -----	98.9	98.9	99.1	98.2	98.5	97.9	98.3
1979-81 -----	98.7	98.8	99.0	97.9	98.3	97.7	98.1
1969-71 -----	98.0	98.0	98.5	96.6	97.2	96.4	97.1
1959-61 -----	97.4	97.4	98.0	95.3	96.2	---	---
1900-1902 -----	87.6	86.7	86.9	---	---	74.7	76.5
To age 20 years							
1983 -----	98.0	97.8	98.5	96.9	97.7	96.6	97.5
1979-81 -----	97.7	97.5	98.4	96.4	97.4	96.1	97.2
1969-71 -----	96.7	96.6	97.6	94.3	95.9	94.1	95.7
1959-61 -----	96.1	95.9	97.1	93.1	94.7	---	---
1900-1902 -----	77.2	76.4	79.0	---	---	56.7	59.1
To age 65 years							
1983 -----	78.4	74.1	85.3	61.7	76.9	57.9	74.5
1979-81 -----	77.1	72.4	84.8	58.5	75.4	55.1	73.3
1969-71 -----	71.9	66.3	81.6	49.6	66.1	47.5	64.7
1959-61 -----	71.1	65.8	80.7	51.4	60.8	---	---
1900-1902 -----	40.9	39.2	43.8	---	---	18.0	22.0
Median age at death:							
1983 -----	78.1	74.9	82.1	70.4	78.5	68.7	77.1
1979-81 -----	77.6	74.2	81.8	69.0	77.8	67.4	76.6
1969-71 -----	74.9	71.5	79.5	64.8	72.8	63.8	72.2
1959-61 -----	74.3	71.4	78.5	65.6	70.6	---	---
1900-1902 -----	58.4	57.2	60.6	---	---	28.8	34.3

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States and the District of Columbia; and for 1919–21, from the 1920 death-registration States—34 States and the District of Columbia. The tables for 1929–31 through 1958 cover the conterminous United States. Decennial life table values for the 3-year period 1959–61 were derived from data which include both Alaska and Hawaii for each year (table 6–4). Data for each year shown in table 6–5 include Alaska beginning in 1959 and Hawaii beginning in 1960. However, it is not believed that the inclusion of these two States materially affects life table values.

Revised life table values, 1961–82—Life table values for 1961–69 and 1971–79 are based on revised intercensal estimates of the populations for those years and were constructed using the U.S. decennial life tables for 1959–61 and 1969–71, respectively, as the standard tables. Life table values for 1970 have also been revised by using the 1969–71 decennial life tables as the standard tables. Previously published abridged life tables for 1970–73 were constructed using the 1959–61 decennial life tables as the standard tables because the 1969–71 decennial life tables were not yet available.

The 1979–81 decennial life tables have been used as the standard life tables for the 1983 life tables as well as for revised life table values for 1980–82 shown in this report.

New Jersey data, 1962–64—The life tables for 1962 and 1963 for the six population groups involving race do not include data from New Jersey. This State omitted the item on race from its certificates of live birth, death, and fetal death in use at the beginning of 1962. The item was restored during the latter part of 1962. However, the certificate revision without this item was used for most of 1962 as well as for 1963. For computing vital rates, populations by age, race, and sex (excluding New Jersey) were estimated to obtain comparable denominators. Approximately 7 percent of the New Jersey death records for 1964 did not contain the race designation. When the records were being electronically processed for this State, the “race not stated” deaths were allocated to white or black.

Nonresidents—Beginning in 1970 the deaths of nonresidents of the United States have been excluded from the life table statistics.

Estimates for single calendar years—There has been an increasing interest in data on average length of life (\bar{e}_x) for single calendar years before the annual abridged life table series in 1945 was initiated. The figures in table 6–5 for the following years and race and sex groups were estimated to meet these needs.⁵

Years	Race and sex
1900–45 -----	Total
1900–47 -----	Male
1900–47 -----	Female
1900–50 -----	White
1900–44 -----	White male
1900–44 -----	White female
1900–50 -----	All other
1900–44 -----	All other male
1900–44 -----	All other female

POPULATION BASES FOR COMPUTING LIFE TABLES

The population used for computing life table values shown in this report (furnished by the U.S. Bureau of the Census) represents the resident population of the United States. The populations used for computing the 1983 life table values are estimated as of July 1, 1983⁶ and are based on the 1980 census levels. The 1980 census counts by race were modified to be consistent with Office of Management and Budget categories and historical categories for death data. The modification procedures are discussed in detail in a U.S. Bureau of the Census report.⁷

EXPLANATION OF THE COLUMNS OF THE LIFE TABLE

Column 1—Age interval (x to $x + n$)—The age interval shown in column 1 is the interval between the two exact ages indicated. For instance, “20–25” means the 5-year interval between the 20th birthday and the 25th.

Column 2—Proportion dying (${}_nq_x$)—This column shows the proportion of the cohort who are alive at the beginning of an indicated age interval and who will die before reaching the end of that age interval. For example, for males in the age interval 20–25, the proportion dying is 0.0081; out of every 1,000 males alive and exactly 20 years old at the beginning of the period, about 8 will die before reaching their 25th birthday. In other words, the ${}_nq_x$ values represent probabilities that persons who are alive at the beginning of a specific age interval will die before reaching the beginning of the next age interval. The “proportion dying” column forms the basis of the life table. The life table is so constructed that all other columns are derived from it.

Column 3—Number surviving (L_x)—This column shows the number of persons, starting with a cohort of 100,000 live births, who survive to the exact age marking the beginning of each age interval. The L_x values are computed from the ${}_nq_x$ values, which are successively applied to the remainder of the original 100,000 persons still alive at the beginning of each age interval. Thus out of 100,000 male babies born alive, 98,770 will complete the first year of life and enter the second; 98,525 will begin the sixth year; 97,642 will reach age 20; and 19,155 will live to age 85.

Column 4—Number dying (${}_nd_x$)—This column shows the number dying in each successive age interval out of 100,000 live births. Out of 100,000 males born alive, 1,230 will die in the first year of life; 245 in the succeeding 4 years; 791 in the 5-year period between exact ages 20 and 25, and 19,155 will die after reaching age 85. Each figure in column 4 is the difference between two successive figures in column 3.

Columns 5 and 6—Stationary population (${}_nL_x$ and T_x)—Suppose that a group of 100,000 individuals like that assumed in columns 3 and 4 is born every year, and that the proportions dying in each such group in each age interval throughout the lives of the members are exactly those shown

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in column 2. If there were no migration and if the births were evenly distributed over the calendar year, the survivors of these births would make up what is called a stationary population—stationary because in such a population the number of persons living in any given age group would never change. When an individual left the group, either by death or by growing older and entering the next higher age group, his place would immediately be taken by someone entering from the next lower age group. Thus a census taken at any time in such a stationary community would always show the same total population and the same numerical distribution of that population among the various age groups. In such a stationary population supported by 100,000 annual births, column 3 shows the number of persons who, each year, reach the birthday that marks the beginning of the age interval indicated in column 1, and column 4 shows the number of persons who die each year in the indicated age interval.

Column 5 shows the number of persons in the stationary population in the indicated age interval. For example, the figure given for males in the age interval 20–25 is 486,275. This means that in a stationary population of males supported by 100,000 annual births, and with proportions dying in each age group always in accordance with column 2, a census taken on any date would show 486,275 persons between exact ages 20 and 25.

Column 6 shows the total number of persons in the stationary population (column 5) in the indicated age interval and all subsequent age intervals. For example, in the stationary population of males referred to in the last illustration, column 6 shows that there would be at any given moment a total of 5,137,899 persons who have passed their 20th birthday. The male population at all ages 0 and above—the total male population of the stationary community—would be 7,104,901.

Column 7—Average remaining lifetime (\bar{x}_x)—The average remaining lifetime (also called expectation of life) at any given age is the average number of years remaining to be lived by those surviving to that age on the basis of a given set of age-specific rates of dying. To arrive at this value, it is first necessary to observe that the figures in column 5 of the life table can also be interpreted in terms

of a single life table cohort without introducing the concept of the stationary population. From this point of view, each figure in column 5 represents the total time (in years) lived between two indicated birthdays by all those reaching the earlier birthday among the survivors of a cohort of 100,000 live births. Thus the figure 486,275 for males in the age interval 20–25 is the total number of years lived between the 20th and 25th birthdays by the 97,642 (column 3) who reached the 20th birthday out of 100,000 males born alive. The corresponding figure 5,137,899 in column 6 is the total number of years lived after attaining age 20 by the 97,642 reaching that age. This number of years divided by the number of persons (5,137,899 divided by 97,642) gives 52.6 years as the average remaining lifetime of males at age 20.

Care must be exercised in drawing conclusions from the figures in column 7. Thus in observing that the average remaining lifetime of white persons is greater than that for those in the all other category, one should not conclude that the oldest ages reached by white persons necessarily exceed those attained by the most long-lived of the all other group. The difference in the average length of life results from the fact that a greater proportion of all other persons die before reaching old age. For example, the number surviving to age 65 out of 100,000 born alive is far greater among white persons than among all other persons; yet the average length of life remaining at age 65 is nearly the same for both groups.

SYMBOLS

Data not available-----	---
Category not applicable-----	...
Quantity zero-----	-
Quantity more than 0 but less than 0.05-----	0.0
Quantity more than zero but less than 500 where numbers are rounded to thousands-----	Z
Figure does not meet standards of reliability or precision-----	*

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⁷U.S. Bureau of the Census: Preliminary estimates of the population of the United States, by age, sex, and race, 1970 to 1981. *Current Population Reports*. Series P–25, No. 917. Washington. U.S. Government Printing Office, July 1982.

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Table 6-1. Abridged Life Tables by Race and Sex: United States, 1983

Age Interval	Proportion dying	Of 100,000 born alive		Stationary population		Average remaining lifetime
Period of life between two exact ages stated in years, months, and sex	Proportion of persons alive at beginning of age interval dying during interval	Number living at beginning of age interval	Number dying during age interval	In the age interval	In this and all subsequent age intervals	Average number of years of life remaining at beginning of age interval
(1)	(2)	(3)	(4)	(5)	(6)	(7)
x to $x+n$	nq_x	l_x	$n d_x$	$n^L x$	T_x	e_x
ALL RACES						
0-1	.00111	100,000	1,115	98,047	7,462,728	74.6
1-5	.0022	98,885	217	98,668	7,363,682	74.5
5-10	.0015	98,668	131	98,537	6,948,680	70.6
10-15	.0013	98,537	128	98,409	6,475,637	65.7
15-20	.0041	98,409	399	98,010	5,853,258	60.8
20-25	.0054	98,010	530	97,480	5,482,116	55.9
25-30	.0067	97,480	659	96,821	5,025,394	51.3
30-35	.0094	96,821	922	95,899	4,517,428	46.6
35-40	.0083	96,298	799	95,499	4,024,378	41.9
40-45	.0129	95,499	1,178	94,321	3,554,790	37.2
45-50	.0201	94,321	1,890	92,431	3,025,048	32.7
50-55	.0328	92,431	3,015	89,416	2,512,545	28.1
55-60	.0507	89,416	4,536	84,880	2,157,909	24.1
60-65	.0794	84,880	6,748	78,132	1,781,472	20.3
65-70	.1109	78,132	8,685	69,447	1,318,486	16.7
70-75	.1641	69,447	11,437	58,010	841,328	12.6
75-80	.2360	58,010	13,745	44,265	380,465	10.7
80-85	.3460	44,265	15,499	28,766	182,725	8.1
85 and over	1.0000	28,766	28,766	178,477	178,477	6.1
MALE						
0-1	.00129	100,000	1,280	98,720	7,104,801	71.0
1-5	.0026	98,720	256	98,464	7,005,333	70.9
5-10	.0018	98,464	179	98,285	6,611,441	67.1
10-15	.0017	98,285	164	98,121	6,118,330	62.2
15-20	.0058	98,285	569	97,716	5,527,872	57.3
20-25	.0091	97,716	891	96,825	5,127,899	52.5
25-30	.0084	96,825	809	96,016	4,651,834	48.0
30-35	.0094	96,016	902	95,114	4,189,414	43.4
35-40	.0111	95,114	1,062	94,052	3,691,258	38.8
40-45	.0180	94,052	1,692	92,360	3,218,036	34.2
45-50	.0280	92,360	2,607	89,753	2,750,911	29.7
50-55	.0428	89,753	3,811	85,942	2,259,401	25.4
55-60	.0689	85,942	5,893	80,049	1,841,277	21.4
60-65	.1004	80,049	8,032	72,017	1,438,831	17.9
65-70	.1474	72,017	10,601	61,416	1,046,041	14.5
70-75	.2174	61,416	13,442	47,974	712,151	11.5
75-80	.3005	47,974	14,399	33,575	455,629	8.0
80-85	.4275	33,575	14,366	19,209	251,089	5.9
85 and over	1.0000	19,209	19,209	160,859	160,859	5.2
FEMALE						
0-1	.0009	100,000	904	99,096	7,915,762	79.1
1-5	.0019	99,096	188	98,908	7,714,610	77.9
5-10	.0011	98,908	109	98,799	7,318,038	74.1
10-15	.0010	98,799	96	98,703	6,825,343	69.1
15-20	.0033	98,703	327	98,376	6,321,310	64.2
20-25	.0027	98,376	270	98,106	5,859,887	60.4
25-30	.0031	98,106	306	97,799	5,348,130	54.6
30-35	.0036	97,799	379	97,420	4,858,209	49.7
35-40	.0055	97,420	541	96,879	4,370,159	44.8
40-45	.0088	96,879	852	96,027	3,894,840	40.1
45-50	.0146	96,027	1,399	94,628	3,401,742	35.4
50-55	.0236	94,628	2,223	92,405	2,924,776	30.9
55-60	.0380	92,405	3,531	88,874	2,458,788	26.6
60-65	.0590	88,874	5,293	83,581	2,009,555	22.5
65-70	.0864	83,581	7,285	76,296	1,599,884	18.9
70-75	.1232	76,296	9,394	66,902	1,169,811	15.0
75-80	.1767	66,902	11,876	55,026	799,347	11.9
80-85	.2636	55,026	14,498	40,528	480,138	8.0
85 and over	1.0000	40,528	40,528	254,175	254,175	6.5

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Table 6-1. Abridged Life Tables by Race and Sex: United States, 1983—Con.

Age interval	Proportion dying	Of 100,000 born alive		Stationary population		Average remaining lifetime
Period of life between two exact ages stated in years, race, and sex	Proportion of persons alive at beginning of age interval dying during interval	Number living at beginning of age interval	Number dying during age interval	In the age interval	In this and all subsequent age intervals	Average number of years of life remaining at beginning of age interval
(1)	(2)	(3)	(4)	(5)	(6)	(7)
x to $x+n$	nq_x	l_x	n^d_x	n^L_x	T_x	e_x
WHITE						
0-1	.0007	100,000	973	95,168	7,521,480	75.2
1-5	.0029	99,027	189	305,642	7,422,314	75.0
5-10	.0018	98,838	128	409,008	7,005,572	71.1
10-15	.0015	98,705	127	409,239	6,592,396	66.2
15-20	.0041	98,578	403	401,374	6,039,393	61.2
20-25	.0061	98,176	604	406,531	5,547,610	56.5
25-30	.0052	97,571	508	457,077	5,097,679	51.8
30-35	.0036	97,065	342	484,600	4,570,902	47.0
35-40	.0072	96,723	699	461,463	4,068,402	42.3
40-45	.0108	96,024	1,045	477,800	3,594,934	37.6
45-50	.0181	94,979	1,718	470,441	3,127,794	33.0
50-55	.0303	93,261	2,819	459,239	2,657,293	28.5
55-60	.0478	90,442	4,315	441,589	2,198,054	24.3
60-65	.0729	86,127	6,274	415,352	1,785,465	20.4
65-70	.1183	79,853	9,597	378,168	1,341,113	16.8
70-75	.1807	71,117	11,491	308,051	902,945	12.6
75-80	.2948	59,626	14,021	254,310	554,894	10.5
80-85	.3443	45,605	15,720	189,223	370,574	8.1
85 and over	1.0000	29,845	29,845	181,291	181,291	6.1
WHITE, MALE						
0-1	.0108	100,000	1,079	99,076	7,187,913	71.7
1-5	.0323	98,921	284	335,185	7,008,337	71.5
5-10	.0315	98,637	145	433,089	6,573,671	67.5
10-15	.0210	98,492	123	432,478	6,140,582	62.7
15-20	.0096	98,369	579	490,591	5,655,184	57.9
20-25	.0077	97,791	734	487,245	5,167,483	53.1
25-30	.0076	97,057	734	483,484	4,710,178	48.5
30-35	.0078	96,323	753	478,785	4,238,714	43.9
35-40	.0096	95,574	922	475,823	3,748,838	39.2
40-45	.0141	94,652	1,350	470,179	3,271,245	34.8
45-50	.0233	93,302	2,172	451,615	2,801,066	30.0
50-55	.0350	91,130	3,580	447,409	2,339,451	25.7
55-60	.0534	87,550	5,546	424,819	1,892,042	21.6
60-65	.0961	82,002	7,895	351,482	1,467,223	17.9
65-70	.1447	74,106	10,735	244,851	1,075,741	14.5
70-75	.2144	63,411	13,593	203,820	780,760	11.6
75-80	.3393	49,818	16,409	210,755	445,979	8.9
80-85	.4270	34,410	14,632	134,473	236,112	6.9
85 and over	1.0000	18,718	18,718	101,539	101,539	5.2
WHITE, FEMALE						
0-1	.0036	100,000	360	99,640	7,933,435	79.3
1-5	.0017	99,640	172	392,147	7,763,174	78.4
5-10	.0018	99,468	162	434,594	7,379,527	74.5
10-15	.0005	99,306	94	434,121	6,945,453	69.8
15-20	.0023	99,212	226	433,320	6,514,333	64.6
20-25	.0025	99,046	248	432,115	6,081,002	59.9
25-30	.0023	98,798	271	433,623	5,639,387	54.9
30-35	.0025	98,527	251	463,543	5,196,054	50.1
35-40	.0048	97,798	473	457,429	4,741,495	45.2
40-45	.0078	97,325	759	464,412	4,277,066	40.4
45-50	.0130	96,566	1,265	476,470	3,800,654	35.7
50-55	.0216	95,301	2,087	471,285	3,329,169	31.2
55-60	.0335	93,214	3,124	458,478	2,860,699	26.8
60-65	.0521	90,090	4,699	438,179	2,422,521	22.6
65-70	.0776	85,391	6,625	411,083	1,991,443	18.7
70-75	.1185	78,766	9,406	371,972	1,620,469	15.1
75-80	.1848	69,360	12,811	318,179	1,301,496	11.8
80-85	.2658	56,549	15,770	241,851	959,600	8.8
85 and over	1.0000	38,738	38,738	257,849	257,849	6.5

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Table 6-1. Abridged Life Tables by Race and Sex: United States, 1983—Con.

Age interval	Proportion dying	Of 100,000 born alive		Stationary population		Average remaining lifetime
Period of life between two exact ages stated in years, race, and sex	Proportion of persons alive at beginning of age interval dying during interval	Number living at beginning of age interval	Number dying during age interval	In the age interval	In this and all subsequent age intervals	Average number of years of life remaining at beginning of age interval
(1)	(2)	(3)	(4)	(5)	(6)	(7)
x to $x+n$	nq_x	l_x	$n^d x$	$n^L x$	T_x	e_x
ALL OTHER						
0-1	.0168	100,000	1,678	86,975	7,111,076	71.1
1-5	.0090	98,322	285	382,696	7,018,801	71.3
5-10	.0017	98,027	165	486,679	6,818,005	67.5
10-15	.0016	97,862	165	486,686	6,180,228	62.5
15-20	.0050	97,707	300	487,684	5,641,241	57.7
20-25	.0070	97,394	683	485,016	5,159,597	53.0
25-30	.0067	96,644	646	481,103	4,659,541	48.3
30-35	.0119	95,739	1,078	475,593	4,187,378	43.7
35-40	.0148	94,721	1,406	470,268	3,710,860	39.2
40-45	.0214	93,315	1,985	461,894	3,240,467	34.7
45-50	.0337	91,331	3,078	446,377	2,778,579	30.4
50-55	.0488	88,253	4,311	430,978	2,355,485	26.4
55-60	.0734	83,932	6,180	404,881	1,886,447	22.6
60-65	.1085	77,772	8,509	369,019	1,488,556	19.2
65-70	.1534	69,263	9,842	325,180	1,184,537	16.2
70-75	.1944	60,381	11,717	272,635	789,857	13.3
75-80	.2465	48,664	11,822	219,157	585,598	10.8
80-85	.3051	36,842	13,890	148,518	312,832	8.6
85 and over	1.0000	23,092	23,092	184,018	184,018	7.1
ALL OTHER, MALE						
0-1	.0168	100,000	1,632	86,485	6,718,789	67.2
1-5	.0094	98,368	295	381,695	6,617,347	67.4
5-10	.0018	97,992	169	483,847	6,225,452	63.6
10-15	.0020	97,826	191	487,848	5,788,505	59.3
15-20	.0065	97,455	335	488,104	5,248,957	53.9
20-25	.0105	96,920	608	482,381	4,762,858	49.1
25-30	.0129	95,884	1,228	476,800	4,300,582	44.9
30-35	.0165	94,656	1,625	469,817	3,838,982	40.3
35-40	.0208	93,120	1,939	460,974	3,384,875	36.0
40-45	.0291	91,181	2,651	448,848	2,878,401	31.5
45-50	.0451	88,530	3,923	428,284	2,428,785	27.4
50-55	.0643	84,607	5,482	408,786	1,990,501	23.5
55-60	.0987	79,105	7,699	377,242	1,580,768	20.0
60-65	.1376	71,406	9,837	339,740	1,205,621	16.9
65-70	.1721	61,560	10,818	282,315	862,781	14.1
70-75	.2481	51,091	12,619	224,286	587,460	11.6
75-80	.3014	38,472	11,624	168,490	366,200	9.4
80-85	.4365	26,848	11,761	104,574	189,720	7.4
85 and over	1.0000	15,777	15,777	85,146	85,146	6.8
ALL OTHER, FEMALE						
0-1	.0162	100,000	1,818	86,718	7,484,108	74.8
1-5	.0086	98,182	254	382,328	7,284,054	75.1
5-10	.0015	98,228	144	480,748	7,000,082	71.9
10-15	.0012	98,084	117	480,157	6,500,320	66.4
15-20	.0029	97,967	228	480,312	6,016,183	61.4
20-25	.0039	97,739	379	487,800	5,530,881	56.6
25-30	.0050	97,360	485	485,636	5,046,051	51.8
30-35	.0088	96,876	844	482,848	4,562,412	47.0
35-40	.0099	96,031	939	478,970	4,078,594	42.5
40-45	.0148	95,092	1,407	478,182	3,594,894	37.7
45-50	.0240	93,685	2,288	464,143	3,121,412	33.2
50-55	.0369	91,397	3,403	450,320	2,657,886	29.0
55-60	.0548	87,994	4,825	430,148	2,205,549	25.0
60-65	.0790	83,169	6,596	401,700	1,776,800	21.3
65-70	.1081	76,564	7,822	365,422	1,379,100	17.9
70-75	.1559	68,746	10,755	318,998	1,008,678	14.8
75-80	.2041	58,021	11,980	261,783	685,780	11.8
80-85	.3211	46,041	14,853	194,459	429,017	9.3
85 and over	1.0000	31,408	31,408	224,358	224,358	7.5

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Table 6-1. Abridged Life Tables by Race and Sex: United States, 1983—Con.

Age interval	Proportion dying	Of 100,000 born alive		Stationary population		Average remaining lifetime
Period of life between two exact ages stated in years, race, and sex	Proportion of persons alive at beginning of age interval dying during interval	Number living at beginning of age interval	Number dying during age interval	In the age interval	In this and all subsequent age intervals	Average number of years of life remaining at beginning of age interval
(1)	(2)	(3)	(4)	(5)	(6)	(7)
x to $x+n$	nq_x	l_x	n^d_x	n^L_x	T_x	e_x
BLACK						
0-1	.0182	100,000	1,817	88,365	6,957,651	69.6
1-5	.0093	98,183	919	381,523	6,856,553	68.9
5-10	.0076	97,264	732	488,343	6,468,030	66.2
10-15	.0077	97,532	748	487,503	6,576,860	67.0
15-20	.0040	97,486	390	486,257	6,482,932	66.4
20-25	.0034	97,036	322	488,480	6,005,705	61.6
25-30	.0027	96,514	266	479,939	4,522,225	47.0
30-35	.0181	95,276	1,222	473,838	4,042,865	42.4
35-40	.0174	94,184	1,637	465,903	3,569,116	37.9
40-45	.0247	92,487	2,281	457,033	3,102,216	33.6
45-50	.0324	90,206	2,920	442,534	2,645,146	29.3
50-55	.0453	87,286	3,951	432,257	2,202,232	25.4
55-60	.0610	81,945	5,707	393,894	1,778,065	21.7
60-65	.1189	76,238	9,786	354,843	1,385,371	18.4
65-70	.1444	66,442	9,592	328,744	1,091,529	16.5
70-75	.2100	56,850	11,937	254,671	722,794	12.7
75-80	.3227	44,915	14,796	185,069	487,913	10.4
80-85	.3999	30,115	12,780	131,283	272,814	8.2
85 and over	1.0000	20,323	20,323	181,561	181,561	6.9
BLACK, MALE						
0-1	.0210	100,000	2,105	88,183	6,544,690	65.4
1-5	.0097	97,895	951	380,744	6,446,476	65.8
5-10	.0080	97,334	776	487,130	6,035,732	62.1
10-15	.0081	97,339	792	482,382	6,539,692	67.2
15-20	.0066	97,137	648	484,483	6,082,830	62.5
20-25	.0110	96,531	1,053	480,472	4,597,327	47.6
25-30	.0145	95,826	1,392	474,835	4,117,355	43.1
30-35	.0184	94,144	1,727	465,252	3,643,070	38.7
35-40	.0348	92,917	3,250	438,112	3,176,778	34.4
40-45	.0540	90,227	4,869	428,891	2,728,853	30.2
45-50	.0720	85,557	6,166	404,087	2,277,775	26.6
50-55	.0723	82,421	6,001	397,747	1,893,688	22.8
55-60	.1064	76,420	8,128	353,297	1,455,941	19.1
60-65	.1517	68,292	10,359	316,122	1,093,544	16.0
65-70	.1867	57,933	10,816	282,523	777,412	13.4
70-75	.2656	47,117	12,514	234,214	514,509	10.9
75-80	.3226	34,603	11,189	144,575	310,185	9.0
80-85	.4597	23,404	10,760	89,583	185,620	7.1
85 and over	1.0000	12,644	12,644	76,337	76,337	6.0
BLACK, FEMALE						
0-1	.0132	100,000	1,323	96,543	7,353,186	73.5
1-5	.0088	98,677	876	392,445	7,260,533	73.8
5-10	.0075	98,001	735	483,695	6,868,176	70.1
10-15	.0073	97,851	715	488,871	6,279,832	65.2
15-20	.0034	97,725	333	488,039	5,893,621	60.3
20-25	.0041	97,433	404	485,518	5,401,522	55.4
25-30	.0051	97,063	505	484,178	4,915,503	50.8
30-35	.0077	96,554	742	481,915	4,430,830	45.9
35-40	.0112	95,812	1,072	478,222	3,949,815	41.2
40-45	.0189	94,739	1,802	468,925	3,478,857	36.7
45-50	.0280	93,147	2,608	458,330	3,008,972	32.2
50-55	.0408	90,651	3,702	444,460	2,543,383	28.1
55-60	.0609	86,949	5,295	422,183	2,096,903	24.1
60-65	.0892	81,653	7,293	390,945	1,678,780	20.5
65-70	.1179	74,480	8,732	352,189	1,258,865	17.3
70-75	.1691	65,748	11,179	303,801	893,712	14.1
75-80	.2208	54,569	12,120	244,631	630,211	11.5
80-85	.3421	42,448	14,649	177,532	383,330	8.0
85 and over	1.0000	28,170	28,170	207,798	207,798	7.4

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Table 6-2. Number of Survivors at Single Years of Age, Out of 100,000 Born Alive, by Race and Sex: United States, 1989

Age	All races			White			All other					
	Both sexes	Male	Female	Both sexes	Male	Female	Total			Black		
							Both sexes	Male	Female	Both sexes	Male	Female
0	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
1	98,085	98,070	98,099	98,027	98,021	98,140	98,222	98,189	98,432	98,084	98,295	98,277
2	96,810	96,800	96,820	96,856	96,842	96,882	96,925	96,896	96,989	97,977	97,778	98,187
3	95,702	95,690	95,714	95,806	95,790	95,838	95,880	95,845	96,055	96,931	97,691	98,112
4	94,706	94,694	94,718	94,800	94,783	94,830	94,872	94,837	95,052	95,273	97,021	96,951
5	93,808	93,796	93,820	93,851	93,835	93,882	93,923	93,888	94,063	94,284	96,000	95,900
6	92,985	92,973	92,997	93,019	93,002	93,049	93,090	93,055	93,289	93,510	95,421	95,300
7	92,236	92,224	92,248	92,271	92,254	92,300	92,341	92,306	92,540	92,767	94,677	94,556
8	91,558	91,546	91,570	91,581	91,564	91,610	91,651	91,616	91,850	92,077	93,988	93,867
9	90,940	90,928	90,952	90,963	90,946	90,992	91,033	90,998	91,232	91,459	93,370	93,249
10	90,382	90,370	90,394	90,405	90,388	90,434	90,475	90,440	90,674	90,901	92,802	92,681
11	89,884	89,872	89,898	89,909	89,892	89,938	89,979	89,944	90,178	90,405	92,306	92,185
12	89,446	89,434	89,458	89,467	89,450	89,496	89,537	89,502	90,000	90,227	92,107	91,986
13	89,068	89,056	89,082	89,079	89,062	89,108	89,149	89,114	89,612	89,839	91,708	91,587
14	88,750	88,738	88,764	88,747	88,730	88,776	88,817	88,782	89,280	89,507	91,588	91,467
15	88,492	88,480	88,506	88,489	88,472	88,518	88,559	88,524	89,022	89,249	91,469	91,348
16	88,294	88,282	88,308	88,293	88,276	88,322	88,363	88,328	88,826	89,053	91,350	91,229
17	88,156	88,144	88,168	88,155	88,138	88,184	88,225	88,190	88,648	88,875	91,251	91,130
18	88,078	88,066	88,092	88,077	88,060	88,106	88,147	88,112	88,570	88,797	91,152	91,031
19	88,040	88,028	88,052	88,039	88,022	88,068	88,109	88,074	88,532	88,759	91,053	90,932
20	88,040	88,028	88,052	88,039	88,022	88,068	88,109	88,074	88,532	88,759	91,053	90,932
21	87,982	87,970	87,996	87,979	87,962	88,008	88,049	88,014	88,472	88,699	90,954	90,833
22	87,944	87,932	87,958	87,937	87,920	87,966	88,007	87,972	88,436	88,663	90,855	90,734
23	87,906	87,894	87,920	87,899	87,882	87,928	87,969	87,934	88,398	88,625	90,756	90,635
24	87,868	87,856	87,882	87,867	87,850	87,896	87,937	87,902	88,360	88,587	90,657	90,536
25	87,830	87,818	87,844	87,829	87,812	87,858	87,899	87,864	88,322	88,549	90,558	90,437
26	87,792	87,780	87,806	87,791	87,774	87,820	87,861	87,826	88,284	88,511	90,459	90,338
27	87,754	87,742	87,768	87,749	87,732	87,778	87,819	87,784	88,246	88,473	90,360	90,239
28	87,716	87,704	87,730	87,711	87,694	87,740	87,781	87,746	88,208	88,435	90,261	90,140
29	87,678	87,666	87,692	87,669	87,652	87,698	87,739	87,704	88,170	88,397	90,162	90,041
30	87,640	87,628	87,654	87,641	87,624	87,670	87,711	87,676	88,132	88,359	90,063	89,942
31	87,602	87,590	87,616	87,593	87,576	87,622	87,663	87,628	88,094	88,321	89,964	89,843
32	87,564	87,552	87,578	87,555	87,538	87,584	87,625	87,590	88,056	88,283	89,865	89,744
33	87,526	87,514	87,540	87,521	87,504	87,550	87,591	87,556	88,018	88,245	89,766	89,645
34	87,488	87,476	87,502	87,489	87,472	87,518	87,559	87,524	87,980	88,207	89,667	89,546
35	87,450	87,438	87,464	87,451	87,434	87,480	87,521	87,486	87,942	88,169	89,568	89,447
36	87,412	87,400	87,426	87,413	87,396	87,442	87,483	87,448	87,904	88,131	89,469	89,348
37	87,374	87,362	87,388	87,375	87,358	87,404	87,445	87,410	87,866	88,093	89,370	89,249
38	87,336	87,324	87,350	87,337	87,320	87,366	87,407	87,372	87,828	88,055	89,271	89,150
39	87,298	87,286	87,312	87,299	87,282	87,328	87,369	87,334	87,790	88,017	89,172	89,051
40	87,260	87,248	87,274	87,261	87,244	87,290	87,331	87,296	87,752	87,979	89,073	88,952
41	87,222	87,210	87,236	87,223	87,206	87,252	87,293	87,258	87,714	87,941	88,974	88,853
42	87,184	87,172	87,198	87,185	87,168	87,214	87,255	87,220	87,676	87,903	88,875	88,754
43	87,146	87,134	87,160	87,147	87,130	87,176	87,217	87,182	87,638	87,865	88,776	88,655
44	87,108	87,096	87,122	87,109	87,092	87,138	87,179	87,144	87,599	87,826	88,677	88,556
45	87,070	87,058	87,084	87,071	87,054	87,100	87,141	87,106	87,561	87,788	88,578	88,457
46	87,032	87,020	87,046	87,033	87,016	87,062	87,103	87,068	87,523	87,750	88,479	88,358
47	86,994	86,982	87,008	86,995	86,978	87,024	87,065	87,030	87,485	87,712	88,380	88,259
48	86,956	86,944	86,970	86,957	86,940	86,986	87,027	86,992	87,447	87,674	88,281	88,160
49	86,918	86,906	86,932	86,919	86,902	86,948	86,989	86,954	87,409	87,636	88,182	88,061
50	86,880	86,868	86,894	86,881	86,864	86,910	86,951	86,916	87,371	87,598	88,083	87,962
51	86,842	86,830	86,856	86,839	86,822	86,868	86,909	86,874	87,333	87,560	87,984	87,863
52	86,804	86,792	86,818	86,807	86,790	86,836	86,877	86,842	87,295	87,522	87,885	87,764
53	86,766	86,754	86,780	86,763	86,746	86,792	86,833	86,798	87,257	87,484	87,786	87,665
54	86,728	86,716	86,742	86,725	86,708	86,754	86,795	86,760	87,219	87,446	87,688	87,567
55	86,690	86,678	86,704	86,687	86,670	86,716	86,757	86,722	87,181	87,408	87,650	87,529
56	86,652	86,640	86,666	86,645	86,628	86,674	86,715	86,680	87,143	87,370	87,612	87,491
57	86,614	86,602	86,628	86,611	86,594	86,640	86,681	86,646	87,105	87,332	87,574	87,453
58	86,576	86,564	86,590	86,573	86,556	86,602	86,643	86,608	87,067	87,294	87,536	87,415
59	86,538	86,526	86,552	86,531	86,514	86,560	86,601	86,566	87,029	87,256	87,498	87,377
60	86,500	86,488	86,514	86,493	86,476	86,522	86,563	86,528	86,990	87,217	87,459	87,338
61	86,462	86,450	86,476	86,455	86,438	86,484	86,525	86,490	86,952	87,179	87,421	87,300
62	86,424	86,412	86,438	86,417	86,400	86,446	86,487	86,452	86,914	87,141	87,383	87,262
63	86,386	86,374	86,400	86,381	86,364	86,410	86,451	86,416	86,876	87,103	87,345	87,224
64	86,348	86,336	86,362	86,343	86,326	86,372	86,413	86,378	86,838	87,063	87,305	87,184
65	86,310	86,298	86,324	86,305	86,288	86,334	86,375	86,340	86,799	87,025	87,267	87,146
66	86,272	86,260	86,286	86,267	86,250	86,296	86,337	86,302	86,761	87,000	87,242	87,121
67	86,234	86,222	86,248	86,229	86,212	86,258	86,299	86,264	86,723	86,964	87,204	87,083
68	86,196	86,184	86,210	86,191	86,174	86,220	86,261	86,226	86,685	86,926	87,145	87,024
69	86,158	86,146	86,172	86,153	86,136	86,182	86,223	86,188	86,647	86,888	87,086	86,965
70	86,120	86,108	86,134	86,115	86,098	86,144						

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Table 6-3. Expectation of Life at Single Years of Age, by Race and Sex: United States, 1983

Age	All races			White			All other					
	Both sexes	Male	Female	Both sexes	Male	Female	Total			Black		
							Both sexes	Male	Female	Both sexes	Male	Female
0	74.6	71.0	78.1	73.2	71.7	78.7	71.1	67.2	74.9	69.6	65.4	73.6
1	74.5	70.9	77.9	73.0	71.5	78.4	71.2	67.4	75.1	69.9	65.5	73.9
2	73.9	70.0	77.0	72.5	70.8	77.4	70.5	66.5	74.1	69.0	64.9	72.9
3	73.6	69.9	76.9	72.0	70.5	76.4	69.4	65.5	73.2	68.1	64.0	72.0
4	73.4	69.1	76.0	72.1	70.6	75.5	69.5	64.6	72.2	67.1	63.0	71.0
5	73.0	67.1	74.1	71.1	68.6	74.5	67.5	63.6	71.3	66.2	62.1	70.1
6	69.7	65.1	70.1	67.1	64.6	73.5	64.6	60.6	70.3	65.2	61.1	69.1
7	69.7	65.1	70.1	67.1	64.6	73.5	64.6	60.6	70.3	65.2	61.1	69.1
8	67.7	64.3	71.1	65.2	62.7	70.8	62.8	59.7	67.4	62.3	59.2	67.2
9	66.7	63.2	70.1	64.2	61.7	70.8	61.8	58.7	67.4	61.3	58.2	66.2
10	65.7	62.2	69.1	63.2	60.7	69.8	60.8	57.8	66.4	60.3	57.2	65.2
11	64.7	61.2	68.2	62.2	59.7	68.8	59.8	56.8	65.4	59.3	56.2	64.2
12	63.7	60.2	67.2	61.2	58.7	67.8	58.8	55.8	64.4	58.3	55.2	63.2
13	62.9	59.2	66.2	60.2	57.8	66.8	57.9	54.9	63.4	57.3	54.2	62.2
14	61.9	58.3	65.2	59.2	56.8	65.8	56.9	54.0	62.4	56.3	53.2	61.2
15	60.8	57.3	64.2	58.2	55.8	64.8	55.9	53.0	61.4	55.3	52.2	60.2
16	59.8	56.3	63.2	57.2	54.8	63.7	54.9	52.0	60.5	54.3	51.2	59.2
17	58.8	55.4	62.2	56.2	53.8	62.7	53.9	51.0	59.5	53.3	50.2	58.2
18	57.8	54.5	61.2	55.2	52.8	61.7	52.9	50.0	58.5	52.3	49.2	57.2
19	57.0	53.6	60.2	54.2	51.8	60.7	52.0	49.1	57.5	51.3	48.2	56.4
20	56.0	52.6	59.4	53.2	50.8	59.8	51.0	48.1	56.5	50.3	47.2	55.4
21	55.1	51.7	58.4	52.2	49.8	58.8	50.0	47.2	55.5	49.3	46.2	54.4
22	54.2	50.8	57.4	51.2	48.8	57.8	49.1	46.2	54.5	48.3	45.2	53.5
23	53.2	49.8	56.4	50.2	47.8	56.8	48.1	45.2	53.5	47.3	44.2	52.5
24	52.3	48.9	55.4	49.2	46.8	55.8	47.2	44.2	52.5	46.3	43.2	51.5
25	51.4	47.9	54.4	48.2	45.8	54.8	46.2	43.2	51.5	45.3	42.2	50.5
26	50.4	47.1	53.4	47.2	44.8	53.8	45.2	42.2	50.5	44.3	41.2	49.5
27	49.4	46.2	52.4	46.2	43.8	52.8	44.2	41.2	49.5	43.3	40.2	48.5
28	48.5	45.3	51.4	45.2	42.8	51.8	43.2	40.2	48.5	42.3	39.2	47.5
29	47.5	44.3	50.4	44.2	41.8	50.8	42.2	39.2	47.5	41.3	38.2	46.5
30	46.6	43.4	49.4	43.2	40.8	49.8	41.2	38.2	46.5	40.3	37.2	45.5
31	45.7	42.5	48.4	42.2	39.8	48.8	40.2	37.2	45.5	39.3	36.2	44.5
32	44.7	41.6	47.4	41.2	38.8	47.8	39.2	36.2	44.5	38.3	35.2	43.5
33	43.8	40.6	46.4	40.2	37.8	46.8	38.2	35.2	43.5	37.3	34.2	42.5
34	42.8	39.7	45.4	39.2	36.8	45.8	37.2	34.2	42.5	36.3	33.2	41.5
35	41.9	38.8	44.4	38.2	35.8	44.8	36.2	33.2	41.5	35.3	32.2	40.5
36	41.0	37.9	43.4	37.2	34.8	43.8	35.2	32.2	40.5	34.3	31.2	39.5
37	40.0	36.9	42.4	36.2	33.8	42.8	34.2	31.2	39.5	33.3	30.2	38.5
38	39.1	36.0	41.4	35.2	32.8	41.8	33.2	30.2	38.5	32.3	29.2	37.5
39	38.2	35.1	40.4	34.2	31.8	40.8	32.2	29.2	37.5	31.3	28.2	36.5
40	37.3	34.2	39.4	33.2	30.8	39.8	31.2	28.2	36.5	30.3	27.2	35.5
41	36.3	33.3	38.4	32.2	29.8	38.8	30.2	27.2	35.5	29.3	26.2	34.5
42	35.4	32.4	37.4	31.2	28.8	37.8	29.2	26.2	34.5	28.3	25.2	33.5
43	34.5	31.5	36.4	30.2	27.8	36.8	28.2	25.2	33.5	27.3	24.2	32.5
44	33.6	30.6	35.4	29.2	26.8	35.8	27.2	24.2	32.5	26.3	23.2	31.5
45	32.7	29.7	34.4	28.2	25.8	34.8	26.2	23.2	31.5	25.3	22.2	30.5
46	31.8	28.8	33.4	27.2	24.8	33.8	25.2	22.2	30.5	24.3	21.2	29.5
47	30.9	27.9	32.4	26.2	23.8	32.8	24.2	21.2	29.5	23.3	20.2	28.5
48	30.0	27.0	31.4	25.2	22.8	31.8	23.2	20.2	28.5	22.3	19.2	27.5
49	29.1	26.1	30.4	24.2	21.8	30.8	22.2	19.2	27.5	21.3	18.2	26.5
50	28.2	25.2	29.4	23.2	20.8	29.8	21.2	18.2	26.5	20.3	17.2	25.5
51	27.3	24.3	28.4	22.2	19.8	28.8	20.2	17.2	25.5	19.3	16.2	24.5
52	26.4	23.4	27.4	21.2	18.8	27.8	19.2	16.2	24.5	18.3	15.2	23.5
53	25.5	22.5	26.4	20.2	17.8	26.8	18.2	15.2	23.5	17.3	14.2	22.5
54	24.6	21.6	25.4	19.2	16.8	25.8	17.2	14.2	22.5	16.3	13.2	21.5
55	23.7	20.7	24.4	18.2	15.8	24.8	16.2	13.2	21.5	15.3	12.2	20.5
56	22.8	19.8	23.4	17.2	14.8	23.8	15.2	12.2	20.5	14.3	11.2	19.5
57	21.9	18.9	22.4	16.2	13.8	22.8	14.2	11.2	19.5	13.3	10.2	18.5
58	21.0	18.0	21.4	15.2	12.8	21.8	13.2	10.2	18.5	12.3	9.2	17.5
59	20.1	17.1	20.4	14.2	11.8	20.8	12.2	9.2	17.5	11.3	8.2	16.5
60	19.2	16.2	19.4	13.2	10.8	19.8	11.2	8.2	16.5	10.3	7.2	15.5
61	18.3	15.3	18.4	12.2	9.8	18.8	10.2	7.2	15.5	9.3	6.2	14.5
62	17.4	14.4	17.4	11.2	8.8	17.8	9.2	6.2	14.5	8.3	5.2	13.5
63	16.5	13.5	16.4	10.2	7.8	16.8	8.2	5.2	13.5	7.3	4.2	12.5
64	15.6	12.6	15.4	9.2	6.8	15.8	7.2	4.2	12.5	6.3	3.2	11.5
65	14.7	11.7	14.4	8.2	5.8	14.8	6.2	3.2	11.5	5.3	2.2	10.5
66	13.8	10.8	13.4	7.2	4.8	13.8	5.2	2.2	10.5	4.3	1.2	9.5
67	12.9	9.9	12.4	6.2	3.8	12.8	4.2	1.2	9.5	3.3	0.2	8.5
68	12.0	9.0	11.4	5.2	2.8	11.8	3.2	0.2	8.5	2.3	0.2	7.5
69	11.1	8.1	10.4	4.2	1.8	10.8	2.2	0.2	7.5	1.3	0.2	6.5
70	10.2	7.2	9.4	3.2	0.8	9.8	1.2	0.2	6.5	0.3	0.2	5.5
71	9.3	6.3	8.4	2.2	0.8	8.8	0.2	0.2	5.5	0.3	0.2	4.5
72	8.4	5.4	7.4	1.2	0.8	7.8	0.2	0.2	4.5	0.3	0.2	3.5
73	7.5	4.5	6.4	0.2	0.8	6.8	0.2	0.2	3.5	0.3	0.2	2.5
74	6.6	3.6	5.4	0.2	0.8	5.8	0.2	0.2	2.5	0.3	0.2	1.5
75	5.7	2.7	4.4	0.2	0.8	4.8	0.2	0.2	1.5	0.3	0.2	0.5
76	4.8	1.8	3.4	0.2	0.8	3.8	0.2	0.2	0.5	0.3	0.2	0.5
77	3.9	0.9	2.4	0.2	0.8	2.8	0.2	0.2	0.5	0.3	0.2	0.5
78	3.0	0.0	1.4	0.2	0.8	1.8	0.2	0.2	0.5	0.3	0.2	0.5
79	2.1	0.0	0.4	0.2	0.8	0.8	0.2	0.2	0.5	0.3	0.2	0.5
80	1.2	0.0	0.4	0.2	0.8	0.8	0.2	0.2	0.5	0.3	0.2	0.5
81	0.3	0.0	0.4	0.2	0.8	0.8	0.2	0.2	0.5	0.3	0.2	0.5
82	0.4	0.0	0.4	0.2	0.8	0.8	0.2	0.2	0.5	0.3	0.2	0.5
83	0.5	0.0	0.4	0.2	0.8	0.8	0.2	0.2	0.5	0.3	0.2	0.5
84	0.6	0.0	0.4	0.2	0.8	0.8	0.2	0.2	0.5	0.3	0.2	0.5
85	0.7	0.0	0.4	0.2	0.8	0.8	0.2	0.2	0.5	0.3	0.2	0.5
86	0.8	0.0	0.4	0.2	0.8	0.8	0.2	0.2	0.5	0.3	0.2	0.5
87	0.9	0.0	0.4	0.2	0.8	0.8	0.2	0.2	0.5	0.3	0.2	0.5
88	1.0	0.0	0.4									

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Table 6-4. Life Table Values by Race and Sex: Death-Registration States, 1900-1902 to 1919-21, and United States, 1929-31 to 1983

[Alaska and Hawaii included beginning in 1959. For decennial periods prior to 1929-31, data are for groups of registration States as follows: 1900-1902 and 1909-11, 10 States and the District of Columbia; 1910-21, 34 States and the District of Columbia. For 1900-1902 to 1929-31, figures for "All other, male" and "All other, female" include only the black population. However, in no case did the black population comprise less than 86 percent of the corresponding "All other" population. Beginning 1970 excludes deaths of nonresidents of the United States; see Technical Appendix.]

Age, race, and sex	Number of survivors out of 100,000 born alive ($\frac{1}{2}$)									
	1908	1910-11	1915-16	1920-21	1925-26	1930-31	1935-36	1940-41	1945-46	1950-51
WHITE, MALE										
0	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
1	98,821	98,769	97,884	97,408	96,831	96,188	95,798	95,475	95,274	95,085
5	96,837	96,819	95,871	95,371	94,758	94,180	93,801	93,482	93,272	93,084
10	94,852	94,837	93,884	93,371	92,758	92,180	91,801	91,482	91,272	91,084
15	92,867	92,852	91,899	91,386	90,773	90,195	89,816	89,497	89,287	89,099
20	90,882	90,867	89,914	89,401	88,788	88,210	87,831	87,512	87,302	87,114
25	88,897	88,882	87,929	87,416	86,803	86,225	85,846	85,527	85,317	85,129
30	86,912	86,897	85,944	85,431	84,818	84,240	83,861	83,542	83,332	83,144
35	84,927	84,912	83,959	83,446	82,833	82,255	81,876	81,557	81,347	81,159
40	82,942	82,927	81,974	81,461	80,848	80,270	79,891	79,572	79,362	79,174
45	80,957	80,942	79,989	79,476	78,863	78,285	77,906	77,587	77,377	77,189
50	78,972	78,957	78,004	77,491	76,878	76,300	75,921	75,602	75,392	75,204
55	76,987	76,972	76,019	75,506	74,893	74,315	73,936	73,617	73,407	73,219
60	74,992	74,977	74,024	73,511	72,898	72,320	71,941	71,622	71,412	71,224
65	72,997	72,982	72,029	71,516	70,903	70,325	69,946	69,627	69,417	69,229
70	70,992	70,977	70,024	69,511	68,898	68,320	67,941	67,622	67,412	67,224
75	68,997	68,982	68,029	67,516	66,903	66,325	65,946	65,627	65,417	65,229
80	66,992	66,977	66,024	65,511	64,898	64,320	63,941	63,622	63,412	63,224
85	64,997	64,982	64,029	63,516	62,903	62,325	61,946	61,627	61,417	61,229
90	62,992	62,977	62,024	61,511	60,898	60,320	59,941	59,622	59,412	59,224
95	60,997	60,982	60,029	59,516	58,903	58,325	57,946	57,627	57,417	57,229
ALL OTHER, MALE										
0	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
1	96,168	96,168	95,225	94,750	94,175	93,600	93,225	92,900	92,675	92,450
5	94,337	94,337	93,394	92,919	92,344	91,769	91,394	91,069	90,844	90,619
10	92,506	92,506	91,563	91,088	90,513	89,938	89,563	89,238	89,013	88,788
15	90,675	90,675	89,732	89,257	88,682	88,107	87,732	87,407	87,182	86,957
20	88,844	88,844	87,901	87,426	86,851	86,276	85,901	85,576	85,351	85,126
25	86,993	86,993	86,050	85,575	85,000	84,425	84,050	83,725	83,500	83,275
30	85,142	85,142	84,199	83,724	83,149	82,574	82,200	81,875	81,650	81,425
35	83,291	83,291	82,348	81,873	81,298	80,723	80,348	80,023	79,798	79,573
40	81,440	81,440	80,497	80,022	79,447	78,872	78,497	78,172	77,947	77,722
45	79,589	79,589	78,646	78,171	77,596	77,021	76,646	76,321	76,096	75,871
50	77,738	77,738	76,795	76,320	75,745	75,170	74,795	74,470	74,245	74,020
55	75,887	75,887	74,944	74,469	73,894	73,319	72,944	72,619	72,394	72,169
60	73,996	73,996	73,053	72,578	72,003	71,428	71,053	70,728	70,503	70,278
65	72,145	72,145	71,202	70,727	70,152	69,577	69,202	68,877	68,652	68,427
70	70,294	70,294	69,351	68,876	68,301	67,726	67,351	67,026	66,801	66,576
75	68,443	68,443	67,500	67,025	66,450	65,875	65,500	65,175	64,950	64,725
80	66,592	66,592	65,649	65,174	64,599	64,024	63,649	63,324	63,099	62,874
85	64,741	64,741	63,798	63,323	62,748	62,173	61,798	61,473	61,248	61,023
90	62,890	62,890	61,947	61,472	60,897	60,322	59,947	59,622	59,397	59,172
95	61,039	61,039	60,096	59,621	59,046	58,471	58,096	57,771	57,546	57,321
WHITE, FEMALE										
0	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
1	98,140	98,088	97,203	96,728	96,153	95,578	95,203	94,878	94,653	94,428
5	96,309	96,257	95,372	94,897	94,322	93,747	93,372	93,047	92,822	92,597
10	94,478	94,426	93,541	93,066	92,491	91,916	91,541	91,216	90,991	90,766
15	92,647	92,595	91,710	91,235	90,660	90,085	89,710	89,385	89,160	88,935
20	90,816	90,764	89,879	89,404	88,829	88,254	87,879	87,554	87,329	87,104
25	88,985	88,933	88,048	87,573	86,998	86,423	86,048	85,723	85,498	85,273
30	87,154	87,102	86,217	85,742	85,167	84,592	84,217	83,892	83,667	83,442
35	85,323	85,271	84,386	83,911	83,336	82,761	82,386	82,061	81,836	81,611
40	83,492	83,440	82,555	82,080	81,505	80,930	80,555	80,230	80,005	79,780
45	81,661	81,609	80,724	80,249	79,674	79,099	78,724	78,399	78,174	77,949
50	79,830	79,778	78,893	78,418	77,843	77,268	76,893	76,568	76,343	76,118
55	77,999	77,947	77,062	76,587	76,012	75,437	75,062	74,737	74,512	74,287
60	76,168	76,116	75,231	74,756	74,181	73,606	73,231	72,906	72,681	72,456
65	74,337	74,285	73,400	72,925	72,350	71,775	71,400	71,075	70,850	70,625
70	72,506	72,454	71,569	71,094	70,519	69,944	69,569	69,244	69,019	68,794
75	70,675	70,623	69,738	69,263	68,688	68,113	67,738	67,413	67,188	66,963
80	68,844	68,792	67,907	67,432	66,857	66,282	65,907	65,582	65,357	65,132
85	66,993	66,941	66,056	65,581	65,006	64,431	64,056	63,731	63,506	63,281
90	65,142	65,090	64,205	63,730	63,155	62,580	62,205	61,880	61,655	61,430
95	63,291	63,239	62,354	61,879	61,304	60,729	60,354	60,029	59,804	59,579
ALL OTHER, FEMALE										
0	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
1	96,498	96,446	95,561	95,086	94,511	93,936	93,561	93,236	93,011	92,786
5	94,667	94,615	93,730	93,255	92,680	92,105	91,730	91,405	91,180	90,955
10	92,836	92,784	91,899	91,424	90,849	90,274	89,900	89,575	89,350	89,125
15	90,995	90,943	90,058	89,583	89,008	88,433	88,058	87,733	87,508	87,283
20	89,154	89,102	88,217	87,742	87,167	86,592	86,217	85,892	85,667	85,442
25	87,313	87,261	86,376	85,901	85,326	84,751	84,376	84,051	83,826	83,601
30	85,472	85,420	84,535	84,060	83,485	82,910	82,535	82,210	81,985	81,760
35	83,631	83,579	82,694	82,219	81,644	81,069	80,694	80,369	80,144	79,919
40	81,790	81,738	80,853	80,378	79,803	79,228	78,853	78,528	78,303	78,078
45	79,949	79,897	79,012	78,537	77,962	77,387	77,012	76,687	76,462	76,237
50	78,108	78,056	77,171	76,696	76,121	75,546	75,171	74,846	74,621	74,396
55	76,267	76,215	75,330	74,855	74,280	73,705	73,330	73,005	72,780	72,555
60	74,426	74,374	73,489	73,014	72,439	71,864	71,489	71,164	70,939	70,714
65	72,585	72,533	71,648	71,173	70,598	70,023	69,648	69,323	69,098	68,873
70	70,744	70,692	69,807	69,332	68,757	68,182	67,807	67,482	67,257	67,032
75	68,903	68,851	67,966	67,491	66,916	66,341	65,966	65,641	65,416	65,191
80	67,062	67,010	66,125	65,650	65,075	64,500	64,125	63,800	63,575	63,350
85	65,221	65,169	64,284	63,809	63,234	62,659	62,284	61,959	61,734	61,509
90	63,380	63,328	62,443	61,968	61,393	60,818	60,443	60,118	59,893	59,668
95	61,539	61,487	60,602	60,127	59,552	58,977	58,602	58,277	58,052	57,827
40	85,282	84,616	81,247	80,578	80,002	79,508	67,271	61,180	50,586	46,146
45	83,825	83,000	80,608	80,783	82,287	71,981	61,285	50,590	45,647	42,279
50	81,627	80,528	84,664	82,978	77,007	64,886	64,880	50,780	40,888	37,581
55	80,804	80,951	80,162	77,982	70,160	67,419	47,074	44,742	35,415	33,124
60	83,480	82,000	73,884	80,841	61,788	46,102	36,791	37,854	29,508	27,624
65	78,904	75,982	66,064	80,826	40,718	30,632	21,044	22,302	21,995	21,595
70	80,976	67,147	56,575	81,274	42,912	32,877	22,841	24,107	24,671	24,140
75	80,821	66,480	44,841	40,640	32,991	24,868	16,576	17,617	16,577	16,028
80	49,861	44,776	33,573	30,216	23,712	17,187	10,822	11,611	6,584	6,708
85	31,408	30,543	22,763	19,744	16,590	13,442	6,693	5,972	3,288	3,067

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Table 6-4. Life Table Values by Race and Sex: Death-Registration States, 1900-1902 to 1919-21, and United States, 1929-31 to 1983—Con.

(Alaska and Hawaii included beginning in 1959. For decennial periods prior to 1929-31, data are for groups of registration States as follows: 1900-1902 and 1909-11, 10 States and the District of Columbia; 1919-21, 34 States and the District of Columbia. For 1900-1902 to 1929-31, figures for "All other, male" and "All other, female" include only the black population. However, in no case did the black population comprise less than 95 percent of the corresponding "All other" population. Beginning 1970 excludes deaths of nonresidents of the United States; see Technical Appendix.)

Age, race, and sex	Average number of years of life remaining (e _x)									
	1903	1979-81	1969-71	1959-61	1949-51	1939-41	1929-31	1919-21	1909-11	1900-1902
WHITE, MALE										
0	71.7	70.82	67.84	67.55	66.31	62.81	59.12	56.94	50.89	48.23
1	71.5	70.70	67.63	67.34	66.10	62.60	58.91	56.73	50.68	48.02
5	67.6	66.87	64.23	64.01	62.77	59.27	55.58	53.40	47.35	44.69
10	62.7	61.99	59.35	59.13	57.89	54.39	50.70	48.52	42.47	39.81
15	57.8	57.09	54.45	54.23	53.00	49.50	45.81	43.63	37.58	34.92
20	52.9	52.15	49.51	49.29	48.06	44.56	40.87	38.69	32.64	30.00
25	48.0	47.22	44.58	44.36	43.13	39.63	35.94	33.76	27.71	25.07
30	43.1	42.31	39.67	39.45	38.22	34.72	31.03	28.85	22.80	20.16
35	38.2	37.40	34.76	34.54	33.31	29.81	26.12	23.94	17.89	15.25
40	34.6	34.04	31.97	31.73	31.17	28.03	24.34	22.16	16.11	13.47
45	30.0	29.55	27.48	27.34	26.87	23.73	20.04	17.86	11.81	9.17
50	25.7	25.26	23.34	23.22	22.83	19.69	16.00	13.82	7.77	5.13
55	21.8	21.29	19.51	19.45	19.11	15.97	12.28	10.10	4.05	1.41
60	17.9	17.56	16.07	16.01	15.76	12.62	8.93	6.75	0.00	0.00
65	14.8	14.36	13.02	12.97	12.75	9.42	5.73	3.55	0.00	0.00
70	11.5	11.35	10.38	10.33	10.07	6.42	2.74	0.56	0.00	0.00
75	8.9	8.87	8.06	8.02	7.77	4.17	0.00	0.00	0.00	0.00
80	6.8	6.76	6.18	6.09	5.83	2.58	0.00	0.00	0.00	0.00
85	5.2	5.09	4.89	4.84	4.65	1.02	0.00	0.00	0.00	0.00
ALL OTHER, MALE										
0	67.2	65.63	60.89	61.48	59.91	52.95	47.65	47.14	34.26	32.54
1	67.4	65.81	61.10	61.69	60.12	53.13	47.83	47.32	34.44	32.72
5	63.8	62.25	57.46	58.06	56.49	49.54	44.24	43.73	30.85	29.13
10	59.9	58.32	53.53	54.13	52.56	45.80	40.50	39.99	27.06	25.34
15	55.9	54.25	49.46	50.06	48.49	42.06	36.76	36.25	23.27	21.55
20	51.9	50.21	45.42	46.02	44.45	38.32	33.02	32.51	19.48	17.76
25	47.9	46.11	41.39	41.99	40.42	34.58	29.28	28.77	15.69	13.97
30	43.9	42.01	37.30	37.90	36.33	30.84	25.54	25.03	11.90	10.18
35	39.9	38.01	33.59	34.19	32.62	27.10	21.80	21.29	8.11	6.39
40	35.9	34.01	29.59	30.19	28.62	23.36	18.06	17.55	4.32	2.60
45	31.9	30.01	25.59	26.19	24.62	19.62	14.32	13.81	0.53	0.00
50	27.9	26.01	21.59	22.19	20.62	15.18	10.58	10.07	0.00	0.00
55	23.9	22.01	17.59	18.19	16.62	10.54	6.84	6.33	0.00	0.00
60	19.9	18.01	13.59	14.19	12.62	6.50	2.74	2.23	0.00	0.00
65	15.9	14.01	10.59	11.19	9.62	2.58	0.00	0.00	0.00	0.00
70	11.9	10.01	7.59	8.19	6.62	0.00	0.00	0.00	0.00	0.00
75	9.4	7.22	5.06	5.66	4.09	0.00	0.00	0.00	0.00	0.00
80	7.4	5.22	3.06	3.66	2.09	0.00	0.00	0.00	0.00	0.00
85	5.9	3.69	1.06	1.66	0.00	0.00	0.00	0.00	0.00	0.00
WHITE, FEMALE										
0	78.7	78.22	75.49	74.19	72.03	67.59	62.67	59.53	50.89	48.00
1	78.4	77.93	75.20	73.90	71.74	67.30	62.38	59.24	50.60	47.71
5	74.5	74.13	71.86	70.56	68.40	64.26	59.34	56.20	47.56	44.42
10	69.9	69.21	66.97	65.67	63.51	59.37	54.45	51.31	42.17	39.03
15	64.6	64.22	62.07	60.77	58.61	54.47	49.55	46.41	37.27	34.13
20	59.8	59.44	57.29	56.00	53.84	49.70	44.78	41.64	32.47	29.33
25	54.9	54.43	52.28	51.00	48.84	44.96	39.94	36.80	27.67	24.53
30	50.1	49.76	47.61	46.33	44.17	40.22	35.20	32.06	22.87	19.73
35	45.2	44.93	42.78	41.50	39.34	35.47	30.45	27.31	18.07	14.93
40	40.4	40.16	38.01	36.73	34.57	30.72	25.70	22.56	13.27	10.13
45	35.7	35.43	33.28	32.00	29.84	26.07	21.05	17.91	8.47	5.33
50	31.2	30.96	28.81	27.53	25.37	21.62	16.60	13.46	3.67	0.53
55	26.8	26.61	24.46	23.18	21.02	17.57	12.55	9.41	0.00	0.00
60	22.6	22.45	20.30	19.02	16.86	13.41	8.39	5.25	0.00	0.00
65	18.7	18.53	16.38	15.10	12.94	9.49	4.37	1.23	0.00	0.00
70	15.1	14.89	12.74	11.46	9.30	5.85	0.89	0.00	0.00	0.00
75	11.8	11.58	9.43	8.15	6.00	2.58	0.00	0.00	0.00	0.00
80	8.8	8.65	6.50	5.22	3.07	0.00	0.00	0.00	0.00	0.00
85	6.5	6.32	4.17	2.89	0.00	0.00	0.00	0.00	0.00	0.00
ALL OTHER, FEMALE										
0	74.9	74.00	69.25	68.47	66.70	62.81	58.51	55.82	47.67	45.04
1	75.1	74.31	70.01	69.10	67.33	63.44	59.14	56.45	48.30	45.67
5	71.9	70.53	66.94	66.04	64.27	60.38	56.08	53.39	45.24	42.61
10	68.4	66.94	63.45	62.55	60.78	56.89	52.59	49.90	41.75	39.12
15	64.4	62.93	59.44	58.54	56.77	52.88	48.58	45.89	37.74	35.11
20	59.8	58.28	54.79	53.89	52.12	48.23	43.93	41.24	32.69	30.06
25	54.9	53.28	49.79	48.89	47.12	43.27	38.97	36.28	27.23	24.60
30	50.1	48.39	44.90	44.00	42.23	38.52	34.22	31.53	22.48	19.85
35	45.2	43.49	40.00	39.10	37.33	33.63	29.33	26.64	17.68	15.05
40	40.7	38.96	35.47	34.57	32.80	28.90	24.60	21.91	12.83	10.20
45	35.7	33.87	30.38	29.48	27.71	23.81	19.51	16.82	7.64	5.01
50	31.2	29.29	25.80	24.90	23.13	19.23	14.93	12.24	2.84	0.21
55	26.8	24.85	21.36	20.46	18.69	14.79	10.49	7.80	0.00	0.00
60	22.6	20.57	17.08	16.18	14.41	10.51	6.21	3.52	0.00	0.00
65	18.7	16.59	13.10	12.20	10.43	6.53	2.23	0.00	0.00	0.00
70	15.1	12.91	9.42	8.52	6.75	2.58	0.00	0.00	0.00	0.00
75	11.8	9.61	6.12	5.22	3.45	0.00	0.00	0.00	0.00	0.00
80	8.8	6.53	3.04	2.14	0.37	0.00	0.00	0.00	0.00	0.00
85	6.5	4.18	0.65	0.00	0.00	0.00	0.00	0.00	0.00	0.00

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SECTION 6 - LIFE TABLES - PAGE 14

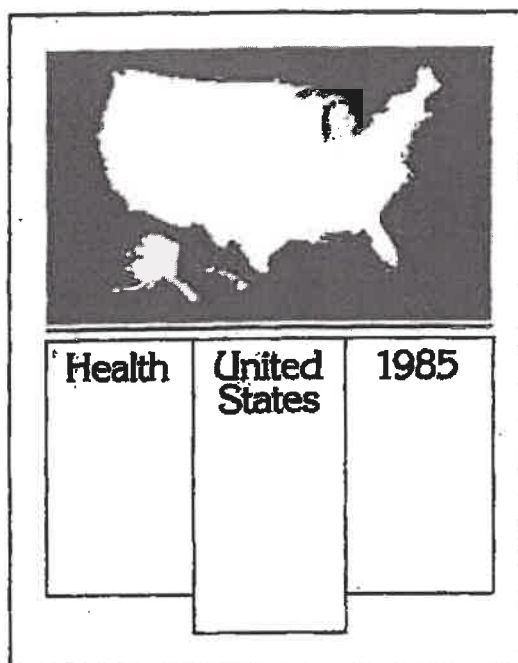
Table 6-5. Estimated Average Length of Life in Years, by Race and Sex: Death-Registration States, 1900-28, and United States, 1929-83

(For selected years, life table values shown are estimates; see Technical Appendix. Beginning 1970 excludes deaths of nonresidents of the United States; see Technical Appendix)

Area and year	All races			White			All other					
	Both sexes	Male	Female	Both sexes	Male	Female	Total			Black		
							Both sexes	Male	Female	Both sexes	Male	Female
UNITED STATES												
1982	74.6	71.0	78.1	75.2	71.7	78.7	71.1	67.2	74.9	68.6	62.4	73.9
1982 *	74.5	70.9	78.1	75.1	71.5	78.7	71.0	66.9	75.0	68.4	62.1	73.7
1981 *	74.2	70.4	77.8	74.8	71.1	78.4	70.8	66.1	74.4	68.0	61.8	73.2
1980 *	73.7	70.0	77.4	74.4	70.7	78.1	70.5	65.8	73.8	68.1	61.5	72.8
1979	73.9	70.0	77.9	74.6	70.9	78.4	70.6	65.4	74.1	68.5	61.9	72.9
1978	73.5	69.6	77.3	74.1	70.4	78.0	70.3	65.0	73.5	68.1	61.7	72.4
1977	73.2	69.5	77.2	74.0	70.2	77.9	70.2	64.7	73.2	67.7	61.4	72.0
1976	72.9	69.1	76.8	73.8	69.9	77.5	69.9	64.2	72.7	67.2	61.2	71.8
1975	72.6	68.9	76.5	73.4	69.5	77.2	69.5	63.7	72.4	66.8	61.0	71.5
1974	72.0	68.2	75.9	72.9	69.0	76.7	69.1	63.2	71.9	66.3	60.8	70.9
1973	71.4	67.6	75.3	72.2	68.6	76.1	68.1	62.0	70.3	65.0	60.6	69.8
1972 *	71.2	67.4	75.1	72.0	68.3	75.8	67.9	61.5	70.1	64.7	60.4	69.1
1971	71.1	67.4	75.0	72.0	68.3	75.8	67.8	61.4	69.9	64.6	60.3	68.9
1970	70.8	67.1	74.7	71.7	68.0	75.5	67.5	60.9	69.4	64.1	60.0	68.5
1969	70.5	66.8	74.4	71.4	67.7	75.2	67.2	60.4	68.9	63.6	59.7	68.1
1968	70.2	66.5	74.1	71.1	67.5	74.9	66.9	60.1	68.6	63.3	59.4	67.8
1967	70.0	66.3	73.9	70.9	67.3	74.7	66.7	59.8	68.3	63.0	59.1	67.5
1966	69.7	66.0	73.6	70.6	67.0	74.4	66.4	59.5	68.0	62.7	58.9	67.2
1965	69.5	65.8	73.4	70.4	66.8	74.2	66.2	59.2	67.7	62.4	58.8	66.9
1964	69.2	65.5	73.1	70.1	66.5	73.9	65.9	58.9	67.4	62.1	58.6	66.6
1963	68.9	65.2	72.8	69.8	66.2	73.6	65.6	58.6	67.1	61.8	58.3	66.3
1962 *	68.7	65.0	72.6	69.6	66.0	73.4	65.4	58.4	66.8	61.5	58.0	66.0
1961	68.4	64.7	72.3	69.3	65.7	73.1	65.1	58.1	66.5	61.2	57.7	65.7
1960	68.2	64.5	72.1	69.1	65.5	72.9	64.9	57.9	66.2	61.0	57.4	65.4
1959	68.0	64.3	71.9	68.9	65.3	72.6	64.7	57.7	65.9	60.7	57.1	65.1
1958	67.8	64.1	71.7	68.7	65.1	72.3	64.5	57.5	65.6	60.5	56.9	64.8
1957	67.6	63.9	71.5	68.5	64.9	72.1	64.3	57.3	65.3	60.3	56.7	64.5
1956	67.4	63.7	71.3	68.3	64.7	71.9	64.1	57.1	65.0	60.1	56.4	64.2
1955	67.2	63.5	71.1	68.1	64.5	71.7	63.9	56.9	64.7	60.0	56.1	63.9
1954	67.0	63.3	70.9	67.9	64.3	71.5	63.7	56.7	64.4	59.7	55.9	63.6
1953	66.8	63.1	70.7	67.7	64.1	71.3	63.5	56.5	64.1	59.5	55.7	63.3
1952	66.6	62.9	70.5	67.5	63.9	71.1	63.3	56.3	63.8	59.3	55.4	63.0
1951	66.4	62.7	70.3	67.3	63.7	70.9	63.1	56.1	63.5	59.1	55.2	62.7
1950	66.2	62.5	70.1	67.1	63.5	70.7	62.9	55.9	63.2	58.9	55.0	62.4
1949	66.0	62.3	69.9	66.9	63.3	70.5	62.7	55.7	62.9	58.7	54.8	62.1
1948	65.8	62.1	69.7	66.7	63.1	70.3	62.5	55.5	62.6	58.5	54.6	61.8
1947	65.6	61.9	69.5	66.5	62.9	70.1	62.3	55.3	62.3	58.3	54.4	61.5
1946	65.4	61.7	69.3	66.3	62.7	69.9	62.1	55.1	62.0	58.1	54.2	61.2
1945	65.2	61.5	69.1	66.1	62.5	69.7	61.9	54.9	61.7	57.9	54.0	60.9
1944	65.0	61.3	68.9	65.9	62.3	69.5	61.7	54.7	61.4	57.7	53.8	60.6
1943	64.8	61.1	68.7	65.7	62.1	69.3	61.5	54.5	61.1	57.5	53.6	60.3
1942	64.6	60.9	68.5	65.5	61.9	69.1	61.3	54.3	60.8	57.3	53.4	60.0
1941	64.4	60.7	68.3	65.3	61.7	68.9	61.1	54.1	60.5	57.1	53.2	59.7
1940	64.2	60.5	68.1	65.1	61.5	68.7	60.9	53.9	60.2	56.9	53.0	59.4
1939	64.0	60.3	67.9	64.9	61.3	68.5	60.7	53.7	60.0	56.7	52.8	59.1
1938	63.8	60.1	67.7	64.7	61.1	68.3	60.5	53.5	59.7	56.5	52.6	58.8
1937	63.6	59.9	67.5	64.5	60.9	68.1	60.3	53.3	59.4	56.3	52.4	58.5
1936	63.4	59.7	67.3	64.3	60.7	67.9	60.1	53.1	59.1	56.1	52.2	58.2
1935	63.2	59.5	67.1	64.1	60.5	67.7	59.9	52.9	58.8	55.9	52.0	57.9
1934	63.0	59.3	66.9	63.9	60.3	67.5	59.7	52.7	58.5	55.7	51.8	57.6
1933	62.8	59.1	66.7	63.7	60.1	67.3	59.5	52.5	58.2	55.5	51.6	57.3
1932	62.6	58.9	66.5	63.5	59.9	67.1	59.3	52.3	57.9	55.3	51.4	57.0
1931	62.4	58.7	66.3	63.3	59.7	66.9	59.1	52.1	57.6	55.1	51.2	56.7
1930	62.2	58.5	66.1	63.1	59.5	66.7	58.9	51.9	57.3	54.9	51.0	56.4
1929	62.0	58.3	65.9	62.9	59.3	66.5	58.7	51.7	57.0	54.7	50.8	56.1
1928	61.8	58.1	65.7	62.7	59.1	66.3	58.5	51.5	56.7	54.5	50.6	55.8
1927	61.6	57.9	65.5	62.5	58.9	66.1	58.3	51.3	56.4	54.3	50.4	55.5
1926	61.4	57.7	65.3	62.3	58.7	65.9	58.1	51.1	56.1	54.1	50.2	55.2
1925	61.2	57.5	65.1	62.1	58.5	65.7	57.9	50.9	55.8	53.9	50.0	54.9
1924	61.0	57.3	64.9	61.9	58.3	65.5	57.7	50.7	55.5	53.7	49.8	54.6
1923	60.8	57.1	64.7	61.7	58.1	65.3	57.5	50.5	55.2	53.5	49.6	54.3
1922	60.6	56.9	64.5	61.5	57.9	65.1	57.3	50.3	54.9	53.3	49.4	54.0
1921	60.4	56.7	64.3	61.3	57.7	64.9	57.1	50.1	54.6	53.1	49.2	53.7
1920	60.2	56.5	64.1	61.1	57.5	64.7	56.9	49.9	54.3	52.9	49.0	53.4
1919	60.0	56.3	63.9	60.9	57.3	64.5	56.7	49.7	54.0	52.7	48.8	53.1
1918	59.8	56.1	63.7	60.7	57.1	64.3	56.5	49.5	53.7	52.5	48.6	52.8
1917	59.6	55.9	63.5	60.5	56.9	64.1	56.3	49.3	53.4	52.3	48.4	52.5
1916	59.4	55.7	63.3	60.3	56.7	63.9	56.1	49.1	53.1	52.1	48.2	52.2
1915	59.2	55.5	63.1	60.1	56.5	63.7	55.9	48.9	52.8	51.9	48.0	51.9
1914	59.0	55.3	62.9	59.9	56.3	63.5	55.7	48.7	52.5	51.7	47.8	51.6
1913	58.8	55.1	62.7	59.7	56.1	63.3	55.5	48.5	52.2	51.5	47.6	51.3
1912	58.6	54.9	62.5	59.5	55.9	63.1	55.3	48.3	51.9	51.3	47.4	51.0
1911	58.4	54.7	62.3	59.3	55.7	62.9	55.1	48.1	51.6	51.1	47.2	50.7
1910	58.2	54.5	62.1	59.1	55.5	62.7	54.9	47.9	51.3	50.9	47.0	50.4
1909	58.0	54.3	61.9	58.9	55.3	62.5	54.7	47.7	51.0	50.7	46.8	50.1
1908	57.8	54.1	61.7	58.7	55.1	62.3	54.5	47.5	50.7	50.5	46.6	49.8
1907	57.6	53.9	61.5	58.5	54.9	62.1	54.3	47.3	50.4	50.3	46.4	49.5
1906	57.4	53.7	61.3	58.3	54.7	61.9	54.1	47.1	50.1	50.1	46.2	49.2
1905	57.2	53.5	61.1	58.1	54.5	61.7	53.9	46.9	49.8	49.9	46.0	48.9
1904	57.0	53.3	60.9	57.9	54.3	61.5	53.7	46.7	49.5	49.7	45.8	48.6
1903	56.8	53.1	60.7	57.7	54.1	61.3	53.5	46.5	49.2	49.5	45.6	48.3
1902	56.6	52.9	60.5	57.5	53.9	61.1	53.3	46.3	48.9	49.3	45.4	48.0
1901	56.4	52.7	60.3	57.3	53.7	60.9	53.1	46.1	48.6	49.1	45.2	47.7
1900	56.2	52.5	60.1	57.1	53.5	60.7	52.9	45.9	48.3	48.9	45.0	47.4

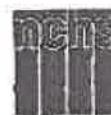
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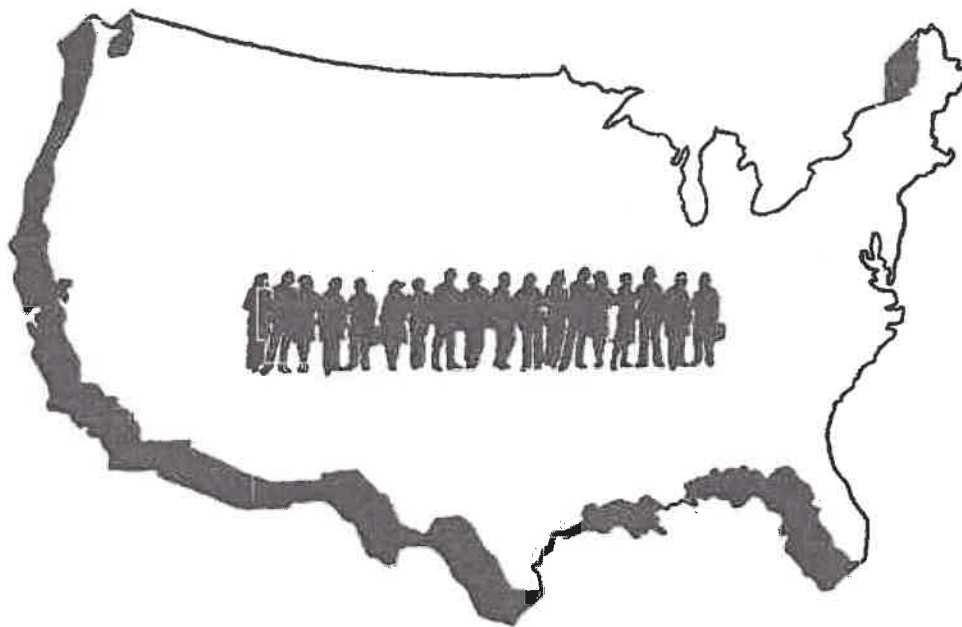
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A107

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A108

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Department of Health and Human Services
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Pursuant to the provision of 42, U.S.C. 3505 and the authority vested in me by the Secretary (43 FR 58871), I hereby certify that this publication is a true copy of the document on file in the Department of Health and Human Services.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Department of Health and Human Services to be affixed on this day of 19.....

.....
**Chief, Scientific and Technical Information Branch
Division of Data Services
National Center for Health Statistics
Public Health Service**

A109

IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT IN AND
FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

VS.

DESMOND ANDREAS BAKER,

Defendant,

CASE NO.: CRC99-03168CFANO-C

UCN: 521999CF003168XXXXNO

JUDGE: WILLIAM H. BURGESS, III

ORDER ON RESENTENCING

THIS CAUSE having come before the Court on remand from the Second District Court of Appeal for resentencing pursuant to Rule 3.781,¹ and the Court having examined the record in the case, reviewed the submissions of the parties, heard the testimony of witnesses, considered the argument of counsel, and been sufficiently advised in the premises, the Court finds as follows:

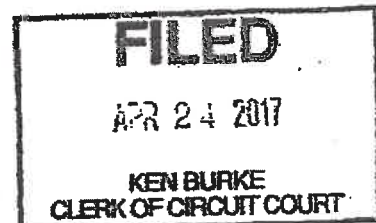
I. Background.

Desmond Andreas Baker (hereinafter the Defendant), was born on June 30, 1983. On the morning of January 18, 1999, the Defendant, while engaged in the perpetration or attempted perpetration of an armed robbery, murdered 44-year-old Independent Taxi driver Harry Amos Bockman by shooting Bockman to death with a firearm.

The Defendant was arrested by the police on January 29, 1999 and in a police interview confessed to the killing.² The State Attorney chose to prosecute him as an adult. On February 11, 1999, the Defendant was indicted by the grand jury for Murder in the First Degree (Capital Felony), under § 782.04(1)(a), Fla. Stat., in case CRC99-03168CFANO, on a theory of felony murder. On November 10, 1999, the Defendant was convicted by a jury of Murder in the First Degree, as charged in the Indictment, and sentenced by the Court to life imprisonment without the possibility of parole, with a three-year minimum mandatory imprisonment under the provisions of § 775.087(2), Fla. Stat. On December 1, 1999, the Defendant was received by the Florida Department of

¹ Fla. R. Crim. P. 3.781.

² Transcript of police interview of Defendant, January 29, 1999.



Corrections to serve out his sentence. The Defendant's conviction and sentence were affirmed on appeal, with the mandate being issued on December 7, 2000.³

On January 23, 2013, the Defendant filed a motion for post-conviction relief, alleging that his life sentence without possibility of parole was unconstitutional because he committed the offense when he was 15 years old. The trial court denied the motion on the grounds that *Miller v. Alabama*⁴ had not been held to apply retroactively. On appeal, the Second District Court of Appeal reversed and remanded for a new sentencing consistent with *Miller*⁵ and *Toye v. State*.⁶ On August 25, 2015 the Defendant was moved from the state prison in Raiford, Florida, to the Pinellas County Jail to await resentencing. On October 17, 2016, all appellate litigation in the case pending before the Second District Court of Appeal was concluded and a mandate was issued on October 20, 2016 that permitted the trial court to go forward with resentencing. On January 13, 2017, an evidentiary hearing was held at which the parties had the opportunity to present testimony and documentary evidence, as well as to make argument. On March 29, 2017, counsel for the Defendant submitted a detailed sentencing memorandum. On April 17, 2017, the State submitted a 3-page written response to the Defendant's sentencing memorandum.⁷

³ Parenthetically, the Defendant is also serving a prison sentence in case CRC99-03285CFANO-C: On February 12, 1999, the Defendant was charged by Information with two counts of Armed Robbery With a Firearm occurring on December 23 (Count 1) and 24 (Count 2), 1998, respectively, one count of Armed Burglary of a Dwelling (Count 3) occurring on January 5, 1999, and one count of Burglary of a Dwelling (Count 4) occurring on December 28, 1998. The first three counts were first-degree felonies punishable by life imprisonment and the fourth count was a second-degree felony punishable by up to 15 years in prison. On the same day he was convicted of murder in the first degree, November 10, 1999, the Defendant pled *nolo contendere* to counts 2-4 of the Information. The Defendant was adjudicated guilty on all three counts and sentenced on Count 2 to 20 years imprisonment with a 3-year minimum mandatory for possession of a firearm, on Count 3 to 15 years imprisonment running concurrently to the sentence on Count 2, with a 3-year minimum mandatory for possession of a firearm to run consecutively to the minimum mandatory in Count 2, on Count 4 to 10 years imprisonment to run concurrently to the sentences in Counts 2 and 3. See, Trial Transcript, CRC99-03285CFANO, pages 388-399. The Defendant did not appeal his convictions and sentences in this case and, on December 14, 1999, the State Attorney entered a *nolle prosequi* as to Count 1.

⁴ *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407, 78 A.L.R. Fed. 2d 547 (2012).

⁵ See *Baker v. State*, 138 So. 3d 1175 (Fla. 2d DCA 2014).

⁶ *Toye v. State*, 133 So. 3d 540 (Fla. 2d DCA 2014).

⁷ The State Attorney did not submit a sentencing memorandum in this case.

AMM

II. Applicable Law.

A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under § 782.04, Fla. Stat., of a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with § 921.1401, Fla. Stat., the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to § 775.082(b)1., Fla. Stat. is entitled to a review of his or her sentence in accordance with § 921.1402(2)(a), Fla. Stat.⁸

Upon conviction or adjudication of guilt of an offense described in § 775.082(1)(b), which was committed on or after July 1, 2014, the court may conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.⁹ In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court is required to consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

- (a) The nature and circumstances of the offense committed by the defendant.
- (b) The effect of the crime on the victim's family and on the community.
- (c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- (d) The defendant's background, including his or her family, home, and community environment.
- (e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
- (f) The extent of the defendant's participation in the offense.
- (g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- (h) The nature and extent of the defendant's prior criminal history.
- (i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- (j) The possibility of rehabilitating the defendant.¹⁰

A juvenile offender sentenced under § 775.082(1)(b)1., Fla. Stat., is entitled to review of his or her sentence after 25 years, unless the offender has previously been

⁸ § 775.082(1)(b)1., Fla. Stat.

⁹ § 921.1401(1), Fla. Stat.

¹⁰ § 921.1401(2), Fla. Stat.

convicted of one of several enumerated crimes, including armed burglary and armed robbery.¹¹

III. Findings.

A. Nature and Circumstances of the Offense.

The Defendant murdered a defenseless cab driver, Harry Bockman, without provocation and for monetary gain. The victim was engaged in a lawful activity and did not resist the robbery or provoke the Defendant into shooting him. The shooting of Bockman could not have happened without the Defendant pointing a loaded firearm at Bockman, with his finger on the trigger, and ready to fire.

The Defendant planned and prepared for his armed confrontation of Bockman. He called the cab company twice to make sure that his victim would arrive and be lured into the trap he had set. He entered the cab carrying a concealed and loaded .38 caliber handgun he had borrowed for the occasion, pointed the firearm at Bockman and demanded that Bockman hand over his money to the Defendant. Bockman, who had his hands up, immediately complied and gave the Defendant the \$25 he had in his pants pocket. The Defendant then shot Bockman at arm's length, striking Bockman in the chest, and later claimed that the gun "just went off" when Bockman grabbed for it.¹² The Defendant then left Bockman to die without summoning emergency assistance.

The Court takes special note of the suffering endured by the victim as a result of the Defendant's actions. Harry Bockman, knowing that he was grievously wounded after being shot by the Defendant, called in the attack to his dispatcher and attempted to drive himself to a hospital emergency room. Bleeding profusely, he lost control of his cab and struck a business, disabling his only means of escape. When the police found him, he was conscious, covered in his own blood, and in great pain. Officer Barry Books of the St. Petersburg Police Department, the police officer who found him, described Bockman as:

"[L]ying on his back, face up, near the driver's door of the cab... He had a lot of blood on his upper torso... he was just covered in blood, and massive blood on the ground and on his upper torso.... [Bockman] was in a great deal of pain. He was thrashing back and forth violently, moaning and groaning."¹³

¹¹ § 921.1402(1) & (2)(a), Fla. Stat.

¹² See, Transcript, police interview of Defendant, January 29, 1999, page 13.

¹³ Trial transcript, testimony of Officer Barry Books, SPPD, pages 186-187.

Without a doubt, the Defendant caused Harry Bockman to suffer a cruel, painful, and lingering death, to which the Defendant was indifferent as he made his escape from the scene. The Defendant's actions after he shot Bockman also show remarkable callousness, presence of mind, and more than a little forethought: After shooting Bockman and fleeing the scene, the Defendant methodically disposed of the clothes he was wearing by burning some of them and ripping up others and throwing them out with the garbage, and returned the firearm to its owner.¹⁴ Later in the day, the Defendant spent the money taken from his victim and calmly bragged about the killing to friends.¹⁵

B. Effect of the Crime.

Harry Bockman lost his life while performing the lawful duties of his job. As a generalization, it can be accepted that Bockman's family, friends, and colleagues lost a valued individual. Bockman's murder was an uncommon type of violent crime in the St. Petersburg community, and could be expected to generate a degree of fear among its inhabitants. Beyond such a generalizations, however, the Court cannot find any specifically identifiable effects of the crime on the victim's family or on the community. While it has been suggested in the proceedings that Harry Bockman left behind a daughter and her three small children, and that the murder tore a hole in the fabric of Bockman's family and the community he lived in, the State Attorney has put forth no victim impact evidence, nor any evidence as to the effect of the crime on the community.

C. Age, Maturity, Intellectual Capacity, and Mental and Emotional Health at the Time of the Offense.

At the time of the offense, the Defendant was a street-wise 15-year-old male of average intelligence who regularly used marijuana and occasionally used cocaine in conjunction with his marijuana use. He was not physically or emotionally disabled and did not suffer from substance abuse impairment or mental illness. The Defendant also was an introvert with low self-esteem, poor ego strength, poor attention, and poor self-control. He was in the tenth grade at the time of his arrest and, although he had behavioral problems and had difficulty reading, he was mainstreamed in his schooling.¹⁶ No credible evidence was presented to support the notion that the Defendant so lacked

¹⁴ Notwithstanding his confession to the police, the Defendant refused to reveal to detectives where and from whom he got the murder weapon, or where and to whom he returned it to, and it has never been recovered.

¹⁵ See, Trial transcript, testimony of Eric McTear, page 206; Trial transcript, testimony of Glen Davis, page 214.

¹⁶ Evidentiary hearing testimony of Ms. Shari Konigsburg Zwirn, who was the Defendant's eighth-grade educatable mentally handicapped (EMH) teacher and of Dr. Valerie McClain, Psy.D., who examined the Defendant prior to the hearing.

the age, maturity, intellectual capacity and emotional health as to mitigate his responsibility for his crime.

D. Background, Including Family, Home, and Community Environment.

The evidence demonstrates that the Defendant experienced lowered self-esteem as a child as a result of an unstable home environment and a lack of adequate supervision. The Defendant was born and raised in St. Petersburg, Florida. His biological parents lived separately and at various times the Defendant lived with one biological parent or the other. He has several biological siblings and step-siblings. He frequently resided with his grandmother and aunt, and it was during those occasions that he was exposed to illegal drug use. Notwithstanding conflicts with his parents and trouble in school, his family and known friends were generally supportive of him. The Defendant also associated with others in the community who encouraged his defiance of authority and engagement in illegal activities prior to Bockman's murder. Several of the Defendant's family members and friends from his school days testified at the evidentiary hearing in favor of his eventual release from prison and re-entry into the community, indicating that he would enter a supportive environment.

E. The Effect, If Any, of Immaturity, Impetuosity, or Failure to Appreciate Risks and Consequences On the Defendant's Participation in the Offense.

The available evidence in this case clearly establishes that the Defendant appreciated the risks and consequences of his actions. Prior to the murder, he had committed several violent crimes, including an armed robbery of another cab driver. The evidence also shows that the robbery that led to the murder was not committed on an impulse but was the product of cool, reflective thought and detailed planning, preparation, and execution. The robbery of Bockman also was part of an escalating pattern of violent criminality on the part of the Defendant and although the murder of Bockman does not appear to have been part of the Defendant's initial plan, it was always a foreseeable possibility given the Defendant's chosen mode of operation.

F. Extent of the Defendant's Participation in the Offense.

There is no doubt that the Defendant was the actual killer of Harry Bockman, nor that the Defendant and Bockman were the only people in Bockman's cab at the time of the killing. There also is no doubt that the entire crime was initiated, planned, and executed by the Defendant himself and that there were no other active participants.

G. The Effect, If Any, of Familial Pressure or Peer Pressure On the Defendant's Actions.

There is no credible evidence that familial pressure or peer pressure had any significant effect of the Defendant's actions in murdering Harry Bockman or that such pressure could account for the killing.

H. The Nature and Extent of the Defendant's Prior Criminal History.

At the time of the murder, the Defendant had already committed several serious crimes, including armed robbery of another cab driver, armed burglary, and burglary of a dwelling. These crimes were committed in the weeks leading up to the murder and comprise a clear pattern of escalating, violent criminality.

I. The Effect, If Any, of Characteristics Attributable to the Defendant's Youth On the Defendant's Judgment.

The Defendant was fifteen years old when he murdered Harry Bockman. His brain was not fully developed and his thought processes were not fully matured. According to Dr. McClain, the Defendant was more of a follower than a leader, and was also someone who suffered from low self-esteem, poor decision-making, and poor self-control. It also appears from the evidence in the case that the Defendant sought out the company of older males who were engaged in various form of criminal activity and drew inspiration from them. The age of the Defendant, combined with his mental and emotional immaturity, clearly played a part in his decision to commit armed robbery with a firearm, and the Court has taken this into consideration as mitigation.

J. The Possibility of Rehabilitating the Defendant.

The State Attorney introduced no evidence as to the possibility rehabilitating the Defendant, but did reference the Defendant's receipt of 17 disciplinary reports while in Department of Corrections custody. Dr. McClain testified for the Defendant that her assessment of the development of the Defendant's brain and corresponding mental processes demonstrated significant maturity from 1999 to the present, making the point that the Defendant's thinking is now more reflexive and less impulsive than it was in 1999. According to Dr. McClain, the Defendant presents good prospects for rehabilitation, but she strongly recommended that the Defendant receive counseling for his mental disabilities in the Department of Corrections before his release, and that he be under some form of supervision after his release. Dr. McClain was careful to indicate that the Defendant was not rehabilitated, and that he had not begun the proposed counseling. As such, the actual possibility of rehabilitating the Defendant remains unclear.

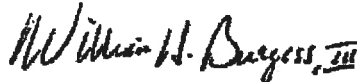
K. Eligibility for Sentencing Review.

The Court finds that the Defendant is not eligible for sentence review under § 921.1401(2)(a), Fla. Stat., because of his previous convictions for armed robbery and armed burglary in case CRC99-03285CFANO, these offenses having been committed in criminal transactions or episodes that were separate from the murder committed in this case, notwithstanding the fact that convictions for those offenses were entered on the same day as entry of the Defendant's conviction for murder.¹⁷

IV. Conclusion.

It is, therefore, ORDERED AND ADJUDGED that the Defendant is sentenced for a term of imprisonment of 50 years in the Florida Department of Corrections, with a 3-year minimum mandatory under § 775.087(2), Fla. Stat., for possession of a firearm and a 40-year minimum mandatory under § 775.082(1)(b)1., Fla. Stat., both minimum mandatories to be served concurrently. All previously imposed fines and costs remain.

DONE AND ORDERED at Clearwater, Florida on April 24, 2017.



WILLIAM H. BURGESS, III
CIRCUIT JUDGE

Copies furnished to:

Atty. Douglas R. Ellis, Counsel for the State of Florida
Atty. Stacey M. Schroeder, Counsel for Defendant
Florida Department of Corrections

¹⁷ The plain language of § 921.1402(2)(a), Fla. Stat., does not require sequential convictions. See, e.g., *State v. Barnes*, 595 So. 2d 22 (Fla. 1992) (statute defining habitual felony offenders did not require sequential conviction absent language to the contrary); *State v. Watts*, 595 So. 2d 19 (Fla. 1992) (same); 1 Wharton's Criminal Law § 1 (15th ed.), n. 8.

Defendant: DESMOND ANDREAS BAKER

UCN: 521999CF003168XXXXNO
REF No.: 9903168CFANO - C

OBTs Number

SENTENCE

(as to Count 01)

The defendant, being personally before the court, accompanied by the defendant's attorney of record, STACEY M SCHROEDER, Assistant Public Defender, and having been adjudicated guilty, 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 the defendant should not be sentenced as provided by law, and no cause being shown,

and the court having previously entered a judgment in this case on November 10, 1999 now resentsences the defendant.

It Is the Sentence Of the Court That:

The Defendant is committed to the custody of the Department of Corrections.

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of 50 Years.

SPECIAL PROVISIONS

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

Mandatory/Minimum Provisions:

Firearm (10-20-Life)
Destructive Device

It is further ordered that the 3 Years minimum imprisonment provision of 775.087(2), Florida Statutes, is imposed.

Capital Offense

It is further ordered that the defendant shall serve no less than 40 years in accordance with 775.082(1), Florida Statutes.

Other Provisions:

No Contact Order

It is further ordered that the defendant is prohibited from having contact with the victim, directly or indirectly, including through a third person, for the duration of the sentence.

1 THE COURT: Accepting responsibility?

2 THE WITNESS: Accepting responsibilities.

3 THE COURT: Anything else?

4 THE WITNESS: That's it, sir.

5 THE COURT: Did my questions cause either the

6 state or Defense to have any questions?

7 MS. SCHROEDER: No.

8 THE COURT: State?

9 MR. ELLIS: No.

10 THE COURT: May this witness be excused?

11 MS. SCHROEDER: Yes, Your Honor.

12 MR. ELLIS: Yes.

13 THE COURT: Thank you.

14 Defense, you may call your next witness.

15 MS. SCHROEDER: Now I will call Dr. Valerie

16 McClain.

17 THE COURT: Dr. McClain.

18 THE BAILIFF: Step this way. Stand right here.

19 Face the clerk. Raise your right hand to be sworn.

20 (Thereupon, the witness was duly sworn on oath.)

21 THE BAILIFF: Come have a seat up here. Adjust

22 the mic. Speak in a loud and clear voice for the

23 Court.

24 THE COURT: You may proceed, Counselor.

25 DIRECT EXAMINATION

1 BY MS. SCHROEDER:

2 Q. Can you begin by stating your name.

3 A. Certainly. Dr. Valerie R. McClain,
4 M-C-C-L-A-I-N.

5 Q. And can you describe for the Court your
6 education?

7 A. Certainly. I received my bachelor's --

8 MR. ELLIS: Judge, we could -- I will stipulate
9 to her qualifications.

10 THE COURT: And she's an expert in the field of
11 psychology or psychiatry?

12 THE WITNESS: It's psychology.

13 MR. ELLIS: I will stipulate.

14 THE WITNESS: Thank you, State.

15 THE COURT: You are qualified to testify as to
16 mitigation in this case. Okay. Thank you.

17 THE WITNESS: Thank you.

18 BY MS. SCHROEDER:

19 Q. Do you have a specialty or a subspecialty?

20 A. I do. I specialize in neuropsychology and
21 forensic psychology.

22 Q. And are you familiar with the signs or the study
23 of adolescent brain development?

24 A. Yes.

25 Q. And is that independent of the Supreme Court

1 decision in Roper, Graham, and Miller?

2 A. Yes.

3 Q. In conjunction with the Supreme Court decisions
4 in Roper, Graham, and Miller?

5 A. Yes.

6 Q. In the course of your practice with forensic
7 psychology, have you ever been called upon to specifically
8 do reports or competency evaluations of juveniles?

9 A. Yes, frequently.

10 Q. As well as adults?

11 A. Yes.

12 Q. Were you called upon by the Defense to do an
13 evaluation of Mr. Desmond Baker?

14 A. I was.

15 Q. And before you initially met Mr. Baker, were you
16 provided any materials?

17 A. I was.

18 Q. What sort of material were you provided?

19 A. I was provided the Indictment for his charges
20 and the charges immediately proceeding the count of
21 murder. I was provided with the DOC records, including
22 his disciplinary reports.

23 I was provided with certificates and awards of
24 accomplishment while he was incarcerated. I was provided
25 with his academic records, including the IEPs mentioned

1 earlier.

2 I was also provided with a list of the witnesses
3 that testified today and some additional witnesses. I
4 was provided with the Motion to Suppress. I was provided
5 with the transcript regarding the final statements in the
6 hearing. The initial --

7 Q. Trial?

8 A. -- trial.

9 I was provided with a 3.850 transcript involving
10 Anne Borghetti and Attorney Jordano. I was provided with
11 the Summary of Findings from the expert Ron McAndrew, a
12 jail and prison consultant, with specific regard to the
13 DOC record for Desmond Baker concerning an evaluation of
14 his disciplinary record in DOC.

15 I was also provided with his drawings that I
16 actually downloaded. His mother provided those to me upon
17 my request to the defendant to provide them to me.

18 I was provided with a certificate that he
19 achieved while he was waiting for this hearing, a
20 completion of PAR program. He completed six -- I believe
21 it was 6/6/16.

22 And I think -- I'm just trying to see if I am
23 missing anything. I would say the only other thing is
24 just the actual articles, the Miller and Graham articles.

25 Q. Did I provide you also with the amicus brief

1 from Miller?

2 A. Yes.

3 Q. And that would be what I call the 46 Academics
4 brief?

5 A. That's correct.

6 Q. And the American Medical Association?

7 A. Yes.

8 Q. And the American Psychological Association?

9 A. Yes.

10 Q. Were you aware of those studies independent of
11 being provided those briefs, or did those assist you in
12 your testimony?

13 A. I was aware of them.

14 Q. Were you also provided with the standards for
15 sentencing under 921.1401?

16 A. I was.

17 Q. Okay. And based on all of the material that you
18 were provided, did you have a chance to review those
19 before meeting with Mr. Baker?

20 A. I did.

21 Q. And I think some of them you mentioned you got
22 during the course of your evaluation of Mr. Baker?

23 A. Yes. And I want to be very specific, the
24 documents that I received following initially meeting with
25 the defendant, the document afterwards would include the

1 evaluation or summary by Ronald McAndrew of the DOC
2 Disciplinary Record. The PAR certificate was received
3 afterwards.

4 Communication with some of the other witnesses
5 occurred by phone prior to today. I also spoke with his
6 biological mother today, and also Julius Roberts. So
7 those materials were received afterwards, and the
8 drawings.

9 Q. Okay. How many times did you meet with Mr.
10 Baker?

11 A. I met with him on three occasions.

12 Q. And based on your meeting with Mr. Baker, your
13 interviews of the family or other witnesses, your review
14 of the written materials, the medical records, the school
15 records, et cetera, are you prepared to discuss any
16 findings that you have related to the criteria 921.1401?

17 A. Certainly.

18 Q. Okay. And did you prepare a report in this
19 case?

20 A. I did.

21 Q. Do you have a copy of the report for the Judge?

22 A. I do.

23 Q. Could you present that to His Honor?

24 A. I would be glad to.

25 Q. One of the things that was discussed in Miller

1 in prior cases was that juveniles have diminished
2 culpability and better prospects for reform. That was one
3 of the bases for which Miller, Graham, Roper found that
4 children were constitutionally different for purposes of
5 sentencing.

6 Did you find specifically to Mr. Baker prospect
7 for reform?

8 A. Yes.

9 Q. Okay. And is that based on things that were
10 occurring prior to his incarceration or just things that
11 occurred subsequent?

12 A. Actually, both.

13 Q. Okay. Can you explain to the Judge.

14 A. Yes, I can. First off, it was clear to me in
15 reviewing his academic records that, number one, he -- his
16 intelligence is in the average range. There's been
17 testing done, and it was noteworthy to me is that he does
18 have average intelligence, which I think is important in
19 terms of predicting rehabilitation and momentum forward.

20 I also saw that, even though he had adverse
21 circumstances early on in his development, when he was
22 placed in a structured program in EMH classes with
23 supportive teachers -- and I went into detail with the
24 teacher about the type of support and the progress, but he
25 showed progress.

1 And he moved from being staffed full-time in
2 those classes to basically not having to be in those
3 classes. Even though he was labeled EH, emotionally
4 handicapped, he actually made significant progress with
5 that structure.

6 I also found it was important that he wasn't one
7 that was acting out aggressively, but rather crying and
8 more withdrawn.

9 Q. More internalizing?

10 A. The pattern that he's had is to go into himself
11 and not disclose. To keep things to himself and to
12 internalize responsibility for things. Some of the early
13 testing helped to identify what those vulnerabilities
14 were, including very low self-esteem, basically feeling --
15 blaming himself, feeling responsible for situations.

16 They also noted poor ego strength, excessive
17 dependency, low self-esteem, poor impulse control, and
18 those issues were worked through during that period of
19 time from sixth to eighth grade.

20 Q. You mentioned they mentioned, so you're relying
21 on the school records?

22 A. These school records document objective testing
23 that was done that identified these issues independent of
24 the teacher's report. They were actually (inaudible)
25 evaluated, meaning with testing.

1 Q. So your opinion is not based on anything that
2 Mr. Baker told you at age 33? These were tests that were
3 done when he was, for example, age 6?

4 A. That's correct. That's correct.

5 Q. And I'm sorry, I didn't mean to interrupt you
6 about anything else that you observed that --

7 A. Well, what I was drawing a distinction to was
8 pre-incarceration and post incarceration or during
9 incarceration. And I think it is important because, in
10 talking with the defendant, I noted that he had taken
11 advantage of the courses that he could take and try to
12 gain some educational furtherance, such as getting his
13 high school diploma. He was incarcerated from the time he
14 was in 9th grade, but he was able to obtain his high
15 school diploma.

16 And even just prior to him being incarcerated,
17 it was amazing to see the level of performance he could do
18 in his academic work while he was awaiting sentencing. In
19 other words, the scores were very high. They were above
20 average.

21 So I think that similarly he pursued that and
22 got his high school diploma while he was incarcerated. He
23 also took courses in FEMA. That's a FEMA Professional
24 Development Series that he completed in 2012.

25 Q. Those are correspondence courses?

1 A. Yes. Also, he took courses in black history and
2 women's history activities, American sign language, keys
3 for successful living and reentry program. He took anger
4 management. Domestic violence classes.

5 And again, I already noted the Certificate of
6 Completion for the PAR program that was done while he was
7 awaiting the sentence.

8 So I think there's definitely evidence to
9 suggest, in my opinion, that he is capable of applying
10 himself and utilizing his skills.

11 Q. Okay. I want to bring you to another quote from
12 the Miller case, Children have a lack of maturity and an
13 underdeveloped sense of responsibility leading to
14 recklessness, impulsivity, and (inaudible) risk taking.

15 Did you find that to be true when you were
16 evaluating Desmond Baker and his circumstances?

17 A. Portions of that, yes.

18 Q. Can you explain?

19 A. Yes, I can. It was already noted, as I stated,
20 in the formal testing that was done, there was
21 difficulties for Mr. Baker and it was poor attention, poor
22 impulse control, withdrawal, excessive dependency,
23 anxiety. So it is, I think, parallel to some of what you
24 are discussing with poor impulse control, difficulty
25 regulating his behavior.

1 Now, based upon his history, beginning as an
2 infant and a toddler at two years old, he was shuffled,
3 basically, back and forth between his biological mother
4 and father. It has already been stated by the biological
5 mother some of his difficulties, and there were identity
6 issues as well.

7 I also see, in reviewing the data provided and
8 in talking to the mother, how there was a -- I would call
9 it frustration and inner anger in Mr. Baker leading to, I
10 think, more withdrawing, running away, as she's mentioned,
11 and as we see prior to these offenses, as Mr. Roberts
12 talked about, Julius Roberts, who was his mother's
13 boyfriend, that he is basically impulsive, he is spiraling
14 out of control, if you will, and I definitely think it is
15 that age where that would occur with the adolescence.

16 Q. Okay. Another quote from Miller, Children are
17 more vulnerable to negative influences and outside
18 pressure, including from their family and peers, and they
19 have limited control.

20 Did you find those kind of circumstances in Mr.
21 Baker's situation?

22 A. I did. And I think it also was borne out in his
23 placement in the EMH classes.

24 Q. And specifically regarding peer influence, you
25 heard testimony today about Eric McTier being two years

1 older, approximately, and having a history in '97, as well
2 as 1999.

3 So would you think that Mr. McTier had some
4 influence in these events?

5 A. Well, I think I would even go historically back
6 further. Based upon the objective testing that was done,
7 it already identified the fact that he was seeking to
8 please others, if you will. That because of his excessive
9 dependency, he was already very vulnerable, even at a
10 younger age.

11 But I think that it became pronounced as he was
12 developing and then, unfortunately, alienating from his
13 family. Even though family was there, I think he was
14 moving away from family, partly, in dealing with some of
15 the adolescent feelings, but also just the difficulties
16 with the anger that he felt, difficulties with impulse
17 control, and being more vulnerable to peer influence.

18 Q. And at that period of time, age 15 and onward,
19 is that a period where adolescents are known to try to
20 seek out or try on new identities?

21 A. Certainly.

22 Q. Okay. And especially here, when you say there
23 are already identity issues in the home, does that make
24 sense that he would go gravitate towards this other group
25 rather than his family?

1 A. Well, I think it is clear from listening to some
2 of his mother's statements about even basic -- and I want
3 to be very proper about this -- but the basic color of the
4 body, the skin. Being told that your mom is white, you
5 know, you're not -- that's not your mother.

6 There's already some blatant statements about
7 him being somehow the odd man out, if you will. And I
8 thought it was interesting the term "black sheep," so to
9 speak, because he felt that his color was darker than mom
10 and, for that reason, felt uncomfortable. We talked about
11 that when I interviewed him.

12 But it does make it very difficult, when you
13 have that type of situation, to develop the stable
14 identity, especially when you have already been very
15 fractured at an early age between the shuffling back and
16 forth between Mom and Dad, Dad taking him, but then
17 ultimately dumping him back on Mom's porch.

18 Q. And even though we've heard testimony from Ms.
19 Zwirm about how he did make progress in the emotionally
20 handicapped classes, is adolescence a period of time where
21 it's a smooth trajectory, or are there some stumbles along
22 the way?

23 A. There are definitely stumbles and much, I think,
24 has to do with the nature of the support structures in
25 place. And I'm talking about not just, you know, safety,

1 security of the home, but the caregivers, those people
2 that a developing child is attaching to.

3 Q. Okay. And as part of your review of the school
4 records, did you have a chance to review the IEP from the
5 fall immediately preceding his running away?

6 A. Yes.

7 Q. That would be the fall of 1998?

8 A. That's correct.

9 Q. And at that point, were you able to see -- was
10 he still on that trajectory as when he left Ms. Zwirm's
11 class or had he fallen apart?

12 A. No, it was actually quite the opposite. It was
13 like sliding down a mountain or falling off a cliff.
14 There were noted difficulties in his willingness to
15 complete assignments, there were difficulties with him
16 running away, family difficulties were noted. So he was
17 definitely not performing in school like he was capable
18 of.

19 Q. Pardon?

20 A. He was not performing like he was capable of.
21 He was failing.

22 Q. So that is immediately preceding the events of
23 December and January of 1999?

24 A. That's correct.

25 Q. Now, based on the brain science, the Supreme

1 Court in Miller said that based on the findings of
2 transient proclivity for risk (inaudible) consequences,
3 those are things that are developing in certain parts of
4 the brain during adolescence, correct?

5 A. That's correct.

6 Q. Can you explain to the Court what the
7 neurological processes are ongoing through the
8 adolescent's brain?

9 A. Yes. Very simply, what occurs is initially in
10 childhood development there's an excess production of
11 neuro cells, if you will, and then what starts to happen,
12 what we call the grey matter of the brain starts to be
13 pruned out, much like a tree that's overstuffed with
14 leaves and branches, so the grey matter starts to get
15 pruned out and replaced with what we call white matter, a
16 myelin sheath that speeds -- it allows the neurons to move
17 faster and more effectively to areas of the brain.

18 It is like paving a dirt road, if you will. It
19 allows the cars, for instance, to speed forward much
20 faster and not to be as bumpy, but it also affects those
21 areas of the brain in the frontal lobe, prefrontal cortex
22 and the frontal lobe, so those are areas of planning,
23 judgment, anticipating consequences, higher-level skills,
24 in other words, and even moral judgment improves, and it
25 is facilitated by this neurologic development.

1 Q. Okay. And that is an ongoing process up until
2 about what age?

3 A. Well, it is ongoing even up until, like, 22, 23,
4 all the way up to, like, 25 years old.

5 Q. So for a 15-year-old, he would have up to 10
6 years left of neurological development?

7 A. Yes.

8 Q. And is there a difference between anything that
9 you've just described and what is commonly referred to as
10 "executive function"?

11 A. No. It is included in what I've just described.

12 Q. And in looking at Mr. Baker, by speaking with
13 him, and speaking with his other family members, were you
14 able to come up with any diagnostic impressions?

15 A. I was.

16 Q. Okay. What sort of diagnoses were you able to
17 make?

18 A. I think first and foremost, he has struggled
19 with depression, major depression recurrent. And what
20 that refers to is periods -- distinctive periods during
21 his life where he was effected by changes in his mood for
22 a period of time, a withdrawal from others, isolation, low
23 self-esteem, and that's reflected in the early records,
24 the testing that was done objectively, but also in his
25 self report to me in what was happening in his

1 relationship with his family, in his feelings about
2 himself, and the struggles that he's had.

3 I also diagnosed him with post traumatic stress
4 disorder. He was subject to physical abuse by his
5 stepmother and observed domestic violence between his
6 biological father and the stepmother. And I think for him
7 it affected him very deeply. And he does still have
8 symptoms of post traumatic stress disorder.

9 He is very hypervigilant, meaning he watches his
10 environment. He has difficulty sleeping and tries to
11 maintain distance from situations that might cause
12 problems or be perceived as threatening.

13 He also does maintain a high level of
14 physiological arousal, meaning, kind of like muscular
15 tension, if you will. And we did talk about that at
16 length.

17 I diagnosed him also with reactive attachment
18 disorder. That is a disorder that is given to children
19 and subsequently to adults, as even when they grow up,
20 where there has been a lack of predictive supports in his
21 life and a difficulty relying and predicting those support
22 system and attachment figures.

23 It causes them to become more irritable,
24 anxious, and to isolate, if you will, from those sources
25 of support. It also makes it very difficult for the

1 individual with this disorder to avail themselves of
2 support.

3 Q. So even though the family might have been
4 supportive and loved him, he might not have perceived it
5 himself?

6 A. He may have perceived it, but be unable to trust
7 it. So it just depends upon the person, but in the
8 testimony or the statements made by Julius Roberts where
9 he sees him in the store and he says you need to come
10 home, you need to come home, where he is trying to
11 intervene and get him to come home and he is not ready to
12 come home.

13 In that moment, in that frozen moment, there's
14 an opportunity for him to come home, but he's not ready.
15 And I think part of that has to do with that reactive
16 attachment disorder of not knowing what is safe, what can
17 I trust. It makes it very difficult. It almost makes the
18 child or the teen their own worst enemy in some ways.

19 Q. And I see also some substance abuse?

20 A. Yes.

21 Q. Diagnoses?

22 A. Yes.

23 Q. And that's based on your evaluation of the
24 medical records from the jail?

25 A. It's based upon my records of talking also with

1 the defendant about his substance abuse. And it's
2 interesting, before I discuss that, that from all of the
3 witnesses that have testified for Defense there was not an
4 awareness of these problems there. There was not an
5 awareness of his substance abuse. It was as if there was
6 a part of him that was kept from them, compartmentalized.

7 He was actually using marijuana as early as
8 fifth grade on a regular basis and it progressed to a very
9 rapid use of it. There was also use of alcohol. He
10 actually began drinking daily at the age of 13, and
11 including excessive use of liquor.

12 So there was definitely a substance abuse
13 problem brewing, and I think affecting his behavior and
14 his choices, as well.

15 Q. You also mentioned cocaine use?

16 A. He did. My understanding was that it was
17 combined with the marijuana. For instance, the cocaine
18 was used in a blunt, if you will.

19 Q. And in your report you mentioned, or you have
20 those all in parentheses in remission?

21 A. Correct.

22 Q. And is that only because he is incarcerated, or
23 are these substances still available in correctional
24 facilities?

25 A. Those substances can be available in

1 correctional facilities and certainly have been found to
2 be in the defendant's possession. At one point he did
3 have a DR for a possession of marijuana in 2003.

4 Q. You were able to do a mental status exam with
5 Mr. Baker?

6 A. That's correct.

7 Q. Tell us about his mental status.

8 A. Mr. Baker was able to tell me where we were at,
9 the purpose for the evaluation. He was oriented to
10 person, place, time and purpose. His thought processes
11 were very clear, very logical, very goal directed.

12 He didn't report any type of psychotic symptoms
13 or auditory or visual hallucinations. He did not report
14 any type of paranoid thoughts. He wasn't presenting with
15 any suicidal thoughts or plans.

16 He -- the night of the homicide ideation, he did
17 indicate in the past he had some difficulty with his
18 temper, but that he wasn't presently having those
19 problems. He indicated that his appetite was good, but he
20 did have difficulty with sleep.

21 According to what he told me, he tries to
22 maintain vigilance and monitor situations and then gets
23 exhausted and basically collapses and passes into a very
24 deep sleep.

25 Q. So at this point would you -- he is obviously

1 competent at this point in time?

2 A. Certainly.

3 Q. And as far as concerns, if the Court were to
4 eventually release him, what sort of recommendations would
5 you make based on your mental status exam or the previous
6 history that you talked about?

7 A. Well, I think that it's very important to
8 consider the fact that he's been incarcerated for a
9 significant length of time. And I need to couch my
10 opinions about those recommendations with noting also his
11 progress while he's been incarcerated, and that includes
12 also a review of the disciplinary record and the summary
13 of that record by another expert.

14 I think that he has shown stabilization during
15 his period of incarceration. What I mean by that,
16 behavioral and emotional stabilization that goes to the
17 issue of compliance and the ability to comply with rules.

18 Now granted, this has been in a very
19 highly-structured situation. He's not on medication,
20 psychiatric medication. He doesn't present with a
21 psychotic thought disorder, where you would not be
22 concerned about not being compliant with his situation.

23 Q. You would not be concerned?

24 A. I would not be concerned with that.

25 Q. Okay.

1 A. He has taken the PAR course recently. I am
2 concerned, though, about continued participation in
3 substance abuse, like NA, if you will, Narcotics
4 Anonymous, or AA, just because I think it is one thing to
5 be in a structured setting (inaudible) and another thing
6 if you are released in the community.

7 He has taken some life skill courses related to
8 community reentry and anger management, but I still think
9 it would be important for him to have a continuation of
10 those skills.

11 The world has changed quite a bit in that period
12 of time since he's been incarcerated until the present.
13 And the coping skills required to deal with the demands of
14 society now are quite different. He's been in a situation
15 where his needs have been met, but will require him to, in
16 an honest way, begin to be productive as a citizen.

17 So I do think he will need some assistance with
18 developing further vocational skills, life skills, and
19 coping skills.

20 Q. I think we heard from one of the folks that was
21 in DOC that your time before you get released affects
22 whether or not you're allowed to participate in vocational
23 training.

24 So do you think that the Court should consider
25 the availability of vocational training when fashioning a

1 sentence?

2 A. Well, I think that it is up to the Court what
3 they want to consider, but in terms of predicting how
4 successful he could be in terms of returning to the
5 community, obviously his ability to be gainfully employed
6 and pursue further education is going to be influenced by
7 whether or not he can prepare for that ahead of time.

8 Q. I think I'm bouncing around a little bit amongst
9 the criteria.

10 In your view of the records, including the
11 Miranda form or his written statement to the detectives at
12 the time of his interrogation, as well as any of the other
13 materials, were you able to comment at all on Factor 3 in
14 921.1401, his age, maturity, intellectual capacity and
15 mental and emotional health at the time of the event?

16 A. Well, I think that just by virtue of his
17 chronological age and the fact that he was designated as
18 emotionally handicapped, it would go to the issue of the
19 immaturity and being, if you will, challenged.

20 Q. Okay. And on the Miranda form that they had
21 that Mr. Baker signed, the final question asking: Having
22 these rights in mind, do you wish to speak to us now?

23 Do you recall his response?

24 A. I do.

25 Q. What was his response?

1 A. His response was "I guess so."

2 Q. So does that, again, speak to his maturity or
3 the comprehension of the situation that he was in at the
4 time?

5 A. I think so.

6 Q. And we've talked about Factor 4, his background,
7 including his or her family, home, and community
8 environment?

9 A. Correct.

10 Q. Okay. What about the effect of immaturity,
11 impetuosity, or failure to appreciate risks and
12 consequences on his participation in the offense?

13 A. I think we talked about that.

14 Q. Okay. We talked a little bit about the peer
15 influence as well?

16 A. Yes.

17 Q. The prior criminal history, you were made aware
18 of the other concurrent crimes and sentences he received?

19 A. That's correct.

20 Q. And because he had other offenses, maybe a week,
21 two weeks, or around the weeks leading up to the homicide,
22 does that in any way discount the progress that he's made?

23 A. No.

24 Q. Okay. So the juvenile brain continues to
25 develop regardless of what kind of prior record they have?

1 A. Yes. And there is no hard and fast rule about
2 that. Each individual must be evaluated as an individual.
3 But in general, if -- barring other factors, like acute
4 traumas, you would expect development to proceed as
5 planned in the average individual who doesn't have some
6 trauma to the brain or something major happened.

7 Q. Okay.

8 A. So you would expect, definitely, that his brain
9 development would progress. And in Mr. Baker's situation,
10 there is no type of head injury that I saw in review of
11 the materials, any type of stroke or medical conditions
12 that would have impacted or traumatized his brain.

13 Q. So at this point we are past the point where the
14 adolescent brain had developed?

15 A. Yes.

16 Q. And I think given the diagnoses that you have
17 and the recommendations that you would have for him to
18 continue his maturation and successful reentry into the
19 community, have we discussed the factors that you have
20 evaluated him for?

21 A. Yes.

22 MS. SCHROEDER: A moment to confer?

23 THE COURT: You may.

24 BY MS. SCHROEDER:

25 Q. Dr. McClain you mentioned that you referred me

1 to Ron McAndrew, and you said that he is a corrections
2 expert who reviews the DR history?

3 A. That's correct.

4 Q. Okay.

5 A. He is an consultant for corrections and for the
6 jail.

7 Q. He is a former warden at Florida State Prison
8 and that sort of thing?

9 A. That's correct.

10 Q. Okay. And based on the DR history, the
11 discipline record history that was provided, did he
12 indicate to you that there's any contraindications based
13 on that DR history?

14 A. No. No. He indicated that he had undergone a
15 period of adjustment. He appeared to stabilize and he
16 made excellent progress.

17 MS. SCHROEDER: I know, Your Honor, that we've
18 talked about the medical records and the certificates
19 that he's earned and the school records, which have
20 already been introduced.

21 I also have -- let's see. The CD for
22 Mr. McAndrew -- and I don't know if the State would
23 object to those going into evidence now?

24 MR. ELLIS: I have no objection, Judge.

25 THE COURT: All right. Are those marked for

1 identification?

2 MS. SCHROEDER: The CD for Ron McAndrew is
3 marked as Defense Exhibit 6.

4 THE COURT: All right. It shall be admitted
5 without objection.

6 MS. SCHROEDER: The certificates that
7 Dr. McClain referred to, Defense Exhibit 4.

8 The medical records from Pinellas County Jail
9 are Defense Exhibit 3.

10 And Judge, Your Honor I think that I've
11 discussed it on the cross of Investigator Schock and
12 now on the direct of Dr. McClain, the criminal
13 history of Eric McTier. Those Judgment and Sentences
14 are Defense Exhibit 7.

15 THE COURT: Any objection to any of this?

16 MR. ELLIS: No, Judge.

17 MS. SCHROEDER: I think I already introduced the
18 certificate, correct?

19 BY MS. SCHROEDER:

20 Q. Were you able to review a letter that had been
21 written by the defendant?

22 A. I did.

23 Q. Okay. And that was a letter to the next of kin
24 to be presented to the Court?

25 A. That's correct.

1 Q. Did you have any impressions from that letter
2 regarding maturity or rehabilitation?

3 A. With regard to the content of the letter and the
4 structure of the sentences, if you will, just the emotion
5 conveyed in it, I think that, based upon my discussion
6 with the defendant, I was able to identify when that
7 letter was written.

8 After being asked about it in deposition, it
9 occurred approximately three years ago and was an ongoing
10 thing that he addressed in himself and modified and
11 progressed in the letter. I think it is genuine in
12 content.

13 And in talking with the defendant and observing
14 him facially and visually as I was talking about the
15 letter, I think he is genuinely remorseful.

16 MS. SCHROEDER: For the record, that's Defense
17 Exhibit 5.

18 THE COURT: Okay. Any objection to any of
19 those, Counsel for the State?

20 MR. ELLIS: No, Judge.

21 THE COURT: Okay. They all will be admitted
22 without objection.

23 MS. SCHROEDER: There were some things that we
24 had pulled from the original trial. The photographs
25 that were introduced in trial, State's Exhibit 2A,

1 are now marked as Defense Exhibit 12. I'm sorry,
2 it's a composite.

3 State's Exhibit 2 for the trial is now Defense
4 Exhibit 12A.

5 State's Exhibit 2C from the trial is now Defense
6 Exhibit (inaudible).

7 State's Exhibit 2D for the trial is now Defense
8 Exhibit 12D.

9 State's Exhibit 2E is now Defense 12E.

10 State's Exhibit 2B is now Defense Exhibit 12B.

11 They need to be reentered into evidence for
12 purposes of this hearing.

13 THE COURT: If State is not objecting, they are
14 all admitted.

15 MS. SCHROEDER: The fingerprint previously
16 introduced at the trial as State's Exhibit 3 is now
17 Defense Exhibit 13.

18 The Miranda form was previously introduced at
19 trial as State's Exhibit 5 and that's now Defense
20 Exhibit 9.

21 The written statement to Detective Noodwang from
22 Mr. Baker was previously admitted as State's Exhibit
23 6 and is now Defense Exhibit 10 for purposes of this.

24 And the photographs of the decedent previously
25 entered as State's Exhibit 8A, B, and C at trial in

1 '99, are now Defense Exhibit 11A, B, and C.

2 I think that is all that I have for now, Your
3 Honor.

4 THE COURT: All right. Cross-examination.

5 MR. ELLIS: Yes, Judge.

6 CROSS-EXAMINATION

7 BY MR. ELLIS:

8 Q. Doctor, you indicated that your diagnostic
9 impressions of the defendant had six different Axis 1
10 issues?

11 A. That's correct.

12 Q. Three of those you said were in remission?

13 A. Those would be the substance abuse issues.

14 Q. Alcohol, cocaine, and cannabis?

15 A. That's correct.

16 Q. The other three, major depressive recurrent,
17 post traumatic stress disorder, reactive attachment
18 disorder, are -- I'm not sure what the word is currently,
19 existing?

20 A. I think that there are components of the
21 attachment disorder and post traumatic stress disorder.
22 The depression comes and goes for Mr. Baker, but I'm not
23 comfortable with it being in complete remission, nor am I
24 comfortable with the others being in remission.

25 Q. And you would agree he needs counseling?

1 A. Absolutely.

2 Q. He's got no counseling?

3 A. That's correct.

4 Q. Okay. Is counseling available in the Department
5 of Corrections?

6 A. Not to my knowledge.

7 Q. Okay. And you would suggest he gets this
8 counseling before he is released?

9 A. I would recommend that he definitely have some
10 counseling.

11 Q. And how long would you suggest that he get this
12 counseling prior to any release, if he is going to be
13 released?

14 A. I would certainly think that it would be
15 important whether it is through pastoral counseling,
16 spiritual counseling, whatever is available in DOC, that
17 he participated in it. I would say he is going to need it
18 to understand more how to cope with his feelings, how to
19 cope with trust issues in a personal relationships. It is
20 going to take, I would say, if it is within DOC, at least
21 a year and then ongoing.

22 Q. But you indicated that you don't believe this
23 counseling is available to him in DOC?

24 A. Per se, as far as signing up for a therapist
25 with DOC, not to my knowledge. As far as alternatives,

1 such as pastoral counseling, possibly that would be
2 available. I'm not sure that the facility where he is at
3 whether or not there are counselors, but typically mental
4 health counseling such as you would receive with a
5 therapist is not available.

6 Q. You said he thrives when he has structure?

7 A. He does.

8 Q. And he had structure in the middle school
9 classes, that's why you believe he has thrived at that
10 point?

11 A. It is based upon at that point in time, yes.

12 Q. And he has structure in the Department of
13 Corrections?

14 A. That's correct.

15 Q. When he doesn't have structure, bad things
16 happen?

17 A. They have in the past, yes.

18 Q. And the past is predictive of the future in most
19 cases, wouldn't you agree?

20 A. I don't know that I would agree with that
21 because we are talking about a period in his life where
22 he's an adolescent, a juvenile. I think it is different
23 as you move into adulthood because of the brain
24 development and also looking at the span of years and
25 what's occurred.

1 So in other words, if you look at his age now,
2 which is 13 -- or 33, and he was incarcerated, roughly, at
3 age 15, you're talking about a majority of his life now
4 it's been within the Department of Corrections.

5 So if you are looking at his progress, his
6 evolution, it would be based upon DOC, what he has done in
7 DOC. And he has shown excellent progress, based upon the
8 review of his disciplinary record, based on the review of
9 his certificates.

10 Q. His disciplinary records, how many DRs were
11 there?

12 A. I believe that there were 17 total.

13 Q. From when to when?

14 A. They began in 2000 and the last one was in March
15 of 2014.

16 Q. And what did they include?

17 A. They included several --

18 Q. I mean, if he had several for the same thing,
19 you can just put it --

20 A. That's what I -- okay. Disobeying a verbal
21 order, it looks to be approximately four or five of those.
22 Possession of contraband was a small Sony radio.
23 Unauthorized area -- being in an unauthorized area.
24 Failure to comply with laying down during count. There
25 was also another failure to comply, so two of those

1 failure to comply with laying down during count -- three.

2 Then a possession of a cell phone. And there
3 was also one for masturbation.

4 Q. You indicated that he got a PAR certificate
5 while in the county jail?

6 A. That's correct.

7 Q. In June of last year?

8 A. Correct.

9 Q. At the time all of these proceedings were
10 pending?

11 A. That's correct.

12 Q. And you indicated that he would need NA or AA?

13 A. Certainly.

14 Q. Is NA and AA available in the county jail?

15 A. It is.

16 Q. Has he taken those courses or availed himself of
17 those courses?

18 A. I don't believe he is currently involved in NA
19 or AA. He has completed the PAR course.

20 Q. And his prior drug use was self reported?

21 A. That's correct.

22 Q. And that was your source of how you knew that he
23 had a drug problem?

24 A. Yes, sir.

25 Q. As you indicated, no one who testified -- no

1 family members testified about drug use?

2 A. No. None of the family members testified about
3 the drug use, which was very surprising to me.

4 Q. Somewhat sophisticated to hide that from family
5 members; wouldn't you agree?

6 A. Well, sophisticated is one word for it. I found
7 it more concerning just from the standpoint of him not
8 being able to get the help that he needs at a point where
9 it could have made a big difference.

10 Q. He was not under the influence of drugs or
11 alcohol at the time he committed the murder?

12 A. Not to my knowledge.

13 Q. He was alone when he committed the murder?

14 A. That's correct.

15 Q. He was not under the influence of someone else
16 when he committed this crime?

17 A. Not -- another person was not with him, no.

18 MR. ELLIS: Nothing further, Judge.

19 THE COURT: Cross-examination?

20 CROSS-EXAMINATION

21 BY MS. SCHROEDER:

22 Q. In reviewing the DR or Mr. McAndrew reviewing
23 the DR, is there anything that indicated violence?

24 A. No.

25 Q. And going to the self report, certainly you

1 talked to Mr. Baker about his substance abuse issues when
2 you were meeting with him, correct?

3 A. Correct.

4 Q. But also in the jail medical records when he is
5 being evaluated for placement and things, there are
6 references to drinking numerous cups of gin, the
7 marijuana, the cocaine usage, there's -- it is documented
8 back in 1999, correct?

9 A. Correct.

10 Q. So it is not just him saying something now in
11 2016/2017, there's documentation of it going back a
12 decade-and-a-half?

13 A. Correct. And typically that is through an
14 interview and through the self report of the defendant
15 that they would document that.

16 Q. Okay.

17 MS. SCHROEDER: Nothing further, Your Honor.

18 THE COURT: Recross?

19 MR. ELLIS: No, Judge.

20 THE COURT: Do Counsel mind if I ask the doctor
21 some questions?

22 MS. SCHROEDER: No objection, Your Honor.

23 THE COURT: State?

24 MR. ELLIS: No, Judge.

25 THE COURT: Dr. McClain, what's the essential

1 difference, in terms of the defendant's brain
2 development, between the time he was 15 years old to
3 the present?

4 What were the major changes that -- physical or
5 otherwise that you were able to detect in your
6 analysis?

7 THE WITNESS: Your Honor, that's an excellent
8 question. And after my initial interview with Mr.
9 Baker it was quite clear to me, in talking with him,
10 that there was what I would call a clear ability to
11 analyze his own behavior, to add insight into his
12 past and how it affected his behaviors, his ability
13 to plan for his future was demonstrated during my
14 discussion with him, his understanding of why he had
15 gotten DRs while he was incarcerated and why that
16 stopped in 2014.

17 Basically, I think the areas of judgment,
18 insight, his ability to analyze situations was
19 evident. He was talking -- I asked him, for example,
20 how do you avoid getting into situations that will
21 get you into trouble?

22 He talked about a reflective pattern of standing
23 back. You know, monitoring his situation and staying
24 out of situations where he could get into trouble.
25 There were just a lot of examples of what I think

1 would be an evolution from an adolescent brain of
2 impulsivity, inattention, poor self control and
3 insight into a much more developed brain, a much more
4 mature individual.

5 THE COURT: Thank you.

6 Does my questions cause either State or Defense
7 to have any additional questions of this witness?

8 REDIRECT EXAMINATION

9 BY MS. SCHROEDER:

10 Q. I'm not sure what you've just answered for the
11 Judge. Would you call that coping skills? Are there any
12 other coping skills that you've seen Mr. Baker develop?

13 A. I would call it -- I would actually -- going
14 back to the Judge's question, the evolution of the brain.

15 THE COURT: Yeah, I was not talking about
16 (inaudible) behavior.

17 THE WITNESS: The Judge was referring more to
18 the biological development of the brain or the
19 neurological development of the brain, and that's
20 what I was referencing.

21 Because of the areas of the brain, the developed
22 frontal lobe, the prefrontal cortex, the ability to
23 plan, understand, anticipate consequences, those
24 things, including judgment and insight, all evolve
25 and I definitely saw those components in talking with

1 him.

2 BY MS. SCHROEDER:

3 Q. And to go to coping skills, when the State was
4 asking you about the diagnoses that are still ongoing --

5 MR. ELLIS: I will object, Judge. I think that
6 is outside the scope of your question.

7 THE COURT: Well, when I ask a question the
8 floor is open to both sides to pick up on anything
9 that they think is relevant. It is not my place to
10 question witnesses. I'm trying to clarify the
11 testimony and give each side an opportunity to ask
12 that, and then give each side the opportunity to ask
13 questions that will (inaudible) issues that I need to
14 deal with for resentencing.

15 MS. SCHROEDER: Thank you, Your Honor.

16 BY MS. SCHROEDER:

17 Q. Since the Judge's question has prompted me to
18 think of other questions related to what Mr. Ellis had
19 asked you, you still have some diagnoses that you indicate
20 are not in remission and that are still ongoing?

21 A. That's correct.

22 Q. Mr. Ellis had talked to you about the fact that
23 you think he would still need counseling for those?

24 A. Certainly.

25 Q. And at this point you believe that alternative

1 ways of counseling are available, such as through the
2 pastor or chaplaincy program?

3 A. Correct.

4 Q. But in the course of his maturation and dealing
5 with incarceration, has he developed coping skills that
6 would assist him in participating in that kind of
7 counseling to be better equipped for life on the outside?

8 A. Yes, he has, and I think it is reflected in some
9 of the courses that he took, as far as the anger
10 management, domestic violence course, life skills
11 development, those are ways of didactically acquiring
12 skills, much like he would do Bibliotherapy, you get a
13 self help book and you read it.

14 What I am more concerned about and the reason
15 I'm recommending counseling is because, for Mr. Baker,
16 because he was -- is and was a private person and the
17 family was not aware of things, I think it is very
18 important to have an anchor, a source that you go to
19 independently to talk to and disclose and problem solve
20 through issues.

21 Q. And are you aware as to whether or not DOC
22 provides any kind of exit counseling or exit referrals if
23 someone is coming to their end of sentence?

24 A. Through my knowledge, from the defendants that
25 I've worked with, there has oftentimes been somewhat of a

1 rupture or breakdown in the exiting process. And that is
2 where one must be concerned because community entry can be
3 somewhat stressful.

4 Fortunately a positive predictor for Mr. Baker
5 is his tremendous family support that is evident in this
6 courtroom, in the courtroom. But again, I still think it
7 is important to have some independent structure in place
8 that he is accountable for. In other words, urine screen,
9 reporting to NA, AA, actively being accountable.

10 MS. SCHROEDER: Thank you.

11 THE WITNESS: Certainly.

12 THE COURT: State, any further questions?

13 RECROSS-EXAMINATION

14 BY MR. ELLIS:

15 Q. Between the age of a 15-year-old brain and a
16 33-year-old brain you said there's development. Are there
17 any studies indicating violence in 15 year olds and the
18 reoccurrence later in life?

19 A. There is no what I would call a research-based
20 predicative equation for that. It would be individual.

21 Q. And you're indicating that you think he could be
22 rehabilitated sufficient to be released from prison?

23 A. I'm indicating that I certainly think he can be
24 rehabilitated to be released from prison.

25 Q. But you can't say how long of a process that

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FORENSIC PSYCHOLOGICAL EVALUATION

NAME: Desmond Baker

AGE: 33

DOB: 06/30/83

DATE OF EVALUATION: 12/05/16, 12/12/16

PLACE OF EVALUATION: Pinellas County Jail, Clearwater, Florida

REFERRAL

The defendant was referred for a confidential psychological evaluation. He was referred by his Assistant Public Defender, Stacey M. Schroeder (Case No: 99-03168). Mr. Baker was originally sentenced as a juvenile and has been incarcerated since that time. The purpose of the present evaluation is to assess relevant factors for resentencing as defined by Fla.Stat. 921.140.

TESTS AND PROCEDURES ADMINISTERED

1. Clinical Interview
2. Review of documents-Indictment, Trial transcript-closing arguments, Department of Corrections Records including disciplinary records, awards and certificates, academic records, 3.850 transcript, Motion to Suppress
3. Review of Statutory Guidelines for Resentencing, Amicus Briefs from Miller
4. Mental Status Exam
5. Phone interview with collateral witnesses

HISTORY AND BACKGROUND INFORMATION

According to documents reviewed by this examiner, the defendant was charged with First Degree Murder and sentenced to a term of life. There were indications of significant medical, psychiatric, and substance abuse issues. Regarding medical issues, Mr. Baker was born full term and delivered by cesarean section. He walked alone at 1 ½ years of age, used full sentences at 2 ½ years of age and was toilet trained by 2 ½ years of age. Regarding psychiatric issues, Mr. Baker was identified as having emotional and behavioral issues in school. His mother sought counseling for him. Jail records indicate he was placed on psychiatric observations and prescribed Elavil in 1999 at the time of the event for which he is charged. He is currently taking no psychiatric medication. Regarding substance abuse issues, Mr. Baker reported initial use of marijuana in the fifth grade and progressed rapidly to daily use. He first used alcohol as a young child when it

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was given to him in a bottle. He later began drinking daily at age 13 years old including excessive use of liquor. He tried cocaine at 14 years old in combination with marijuana and used it occasionally.

Mr. Baker is not married and has no children. He reported his parents lived separately and he was raised by his father and stepmother at age 2 ½ years old. His biological father took him from his mother and he had occasional contact with his mother until the age of 5 years old when he was placed with his mother. He frequently resided with his grandmother and aunt where he was exposed to drug use. He has two step siblings, his step-brother, LeVar and his step-sister, Sukina on his father's side. He has three biological siblings on his mother's side and a step brother and step sister. He reported a history of physical abuse as a child by his mother and step-mother including being beaten with extension cords, belts and paddles. He also observed domestic violence between his father and step-mother which occurred frequently due to conflict involving his custody and visits with his mother. There was considerable verbal conflict between his step mother and mother during times in which he was transitioned between his parents. At times, he was not permitted to leave his father's house and go to his mother's house.

Mr. Baker was in his tenth year of high school when he was arrested. He obtained his High School Diploma in 2001 while incarcerated. Records indicate he was placed in EH classes. During his incarceration prior to sentencing in his case in 1999, he was in Drop Out Prevention classes. Academic records reviewed indicated he had difficulty with reading and behavioral problems as identified initially in 1989. Testing on the Burks' Behavior rating Scale indicated elevations for excessive self-blame, excessive anxiety, excessive dependency, poor ego strength, poor attention and poor impulse control. Results were consistent with children who are anxious over real or imagined wrong doings, worries about pleasing others, and feelings of inadequacy. His grades were variable during his education and fluctuated between average and below average during his education. Testing conducted in 1992 indicates his overall intellectual functioning was in the Average range based on results from the WISC-III (FSIQ = 90). Achievement results were in the average range for math, reading and spelling. He was noted to have difficulty with esteem including a poor self image. Concerns were raised regarding acting out or withdrawal to express his feelings. His IEP dated 09/30/98 indicated he was failing all of his classes and having both academic and behavioral difficulties including running away and isolating from his family. In a written assignment requiring him to identify three words that describe him, he was unable to do so and indicated none. Math, reading and geography assignments completed while in custody prior to sentencing indicate average to above average performance.

MENTAL STATUS AND BEHAVIORAL OBSERVATIONS

Mr. Baker is a 33-year-old African American male who was seen in an examination room at Pinellas County Jail. He was oriented to person, place, purpose, and time. His thought processes were clear, logical and goal-directed. Speech and language were within normal limits. He denied any history auditory or visual hallucinations, as well as any paranoid

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ideation. He denied any current or past suicidal ideation, intent, or plan. He denied any history of homicidal ideation, intent, or plan, but indicated he has had difficulty with his temper in the past. He reported his appetite is satisfactory but his sleep is variable. He acknowledged periods of intrusive recollections of past abuse and hypervigilance in situations in which he perceives a threat and is fearful of being hurt. He acknowledged emotional distress about being physically and emotionally abused by his stepmother and mother and feelings of abandonment by his father. Based on observations during this interview, his academic and vocational background, his estimated intelligence level is likely in the average range. Results from this evaluation can be viewed as a valid indicator of his current level of functioning.

DIAGNOSTIC IMPRESSIONS

Axis I: Major Depression, Recurrent – 296.32
Posttraumatic Stress Disorder – 309.81
Reactive Attachment Disorder – 313.89
Alcohol Use Disorder (in remission) – 303.90
Cocaine Use Disorder (in remission) – 305.60
Cannabis Use Disorder (in remission) – 304.30

PROGRESS AND BEHAVIOR DURING PERIOD OF INCARCERATION

During his incarceration, he has achieved awards and certificates including American Sign Language (2011), Black History and Women's History Activities (2015), Anger Management/Domestic Violence (2012), Keys for Successful Living and Re-entry Program (2011), Financial Peace (2011), FEMA-Professional Development Series (2012), and Certificate of Completion from PAR 06/06/16. His letter to the victim was reviewed and reflects significant remorse regarding his behaviors and responsibility for his actions. He obtained his high school diploma.

Review of his behavior with regard to DOC records indicates that during the period of 2000 until 2014 he received multiple disciplinary reports for failure to comply with orders during count and for possession of contraband (cell phone, marijuana). No reports were indicative of physical altercations.

INTERVIEWS WITH COLLATERAL WITNESSES

Tonya Felton (mother)-Ms. Felton indicated her son, Desmond Baker, had difficulties emotionally coping with shifting between his father's household and her own home. He was frequently kept from visiting her related to his step-mother and father withholding time with her. His biological father took him from her at age 2 years old and he remained primarily in his father's care except for visitation until the age of 6 years old. She reported that Desmond was confused about his identify and the fact that he was darker skinned than she and his siblings. Ms. Felton confirmed his self-report of abuse towards him by his step-mother and observing physical abuse by his biological father towards his

step-mother. She acknowledged he had difficulty in school and was in classes for emotionally and behaviorally handicapped children.

Shari Konigsburg Zwirn (teacher)-Mrs. Zwirn reported that Desmond Baker was her student during his placement in EMH classes. She described him as emotionally and behaviorally challenged initially. She reported he progressed well and by the end of 8th grade was ready to be released from the EMH program. She indicated that his father was not involved in his academic program during her tutelage. Desmond was frequently very emotionally distraught about his relationship with his father and cried or withdrew into himself.

Julius Roberts (stepfather)-Mr. Roberts indicated he was Desmond's stepfather and parented him during the period of 1995 through 1997. He described Desmond as bright and actively involved in sports. He also stated that Desmond was on the Yearbook planning team. Unfortunately, Mr. Roberts was involved in an accident in which he sustained serious injuries. He was unable to actively play sports with Desmond due to his injuries.

Diondre Tatem (childhood friend)-Mr. Tatem reported that Desmond excelled at sports, particularly basketball. He also reported Desmond was good at academics. He described him as a follower not a leader.

RELEVANT FACTORS FOR SENTENCING

As per Fla.Stat. 921.140, the following factors were considered in reviewing Mr. Baker's case.

1. Determination of sentencing through a hearing to determine appropriate sentence for a term of imprisonment for life or a term of years equal to life
2. The following factors can be taken into consideration by the Court in making this determination relevant to the offense and the defendant's youth and attendant circumstances as follows:
 - a. The nature and circumstances of the offense committed by the defendant
 - b. The effect of the crime on the victim's family and on the community
 - c. The defendant's age, maturity, intellectual capacity and mental and emotional health at the time of the offense – Mr. Baker was an adolescent when the crime occurred. He was identified as a child needing special education and emotionally handicapped services while in school. He clearly had emotional difficulties as identified in his academic records. He was identified as having low self-esteem, excessive self-blame, excessive anxiety, excessive dependency, poor ego strength, poor attention and poor impulse control. He experienced separation anxiety related to transitional periods in which he was shifted back and forth between his father's home and his mother's care.
 - d. The defendant's background, including his or her family, home, and community environment – As noted above, Mr. Baker's family structure was

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characterized by differences in disciplinary strategies and conflict between his biological parents. He was noted to have poor ego development and difficulty with socialization in social settings. Records indicate a history of dependency on others, insecurity and anxiety.

- e. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense – Mr. Baker was identified as having emotional and behavioral issues and placed in Emotionally Handicapped classes. He was described as being dependent, anxious, impulsive and lacking ego strength.
- f. The extent of the defendant's participation in the offense
- g. The effect, if any, of familial pressure or peer pressure on the defendant's actions
- h. The nature and extent of the defendant's prior criminal history – Mr. Baker is currently serving a life sentence which includes charges which occurred in close proximity to his first degree murder charge including Burglary and Armed Burglary.
- i. The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment - As noted in the literature relevant to adolescence, brain development and legal culpability, there are clearly issues in Mr. Baker's case with regard to youth and associated immaturity. The frontal lobe area known as the prefrontal cortex which controls the brain's most advanced functions changes significantly during adolescence. The necessary pruning of the gray matter to allow for increased myelination and expansion of the brain's operation occurs well into the early 20's in young adults. Prior to and during this process, those brain areas which govern impulsivity, judgment, planning for the future, foresight of consequences and other characteristics that are associated with culpability are significantly less developed. Research suggests that the ages of 21 and later are more likely targeted ages in which the necessary brain development has occurred.
- j. The possibility of rehabilitating the defendant – Mr. Baker presents with a history of consistently making progress in acquiring further education including obtaining his high school diploma. He has multiple certificates for courses and training he has pursued while incarcerated. He has had no disciplinary offenses since 2014 and has had no major offenses involving escape or violence.

SUMMARY AND RECOMMENDATIONS

Mr. Baker is a 33-year-old African American male who was referred for a confidential evaluation to assess factors for resentencing in accordance with Fla.Stat. 921.140. Mr. Baker presents with a history of noted progress during his incarceration with regard to academic, behavioral, personal and vocational goals. He is of average intelligence and

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insightful regarding his mental health issues and developmental history contributing to the offense for which he was charged and sentenced. Pending disposition of his case, it is this examiner's opinion that he will continue to make strides in his personal and career goals. Mental health services are recommended to provide him appropriate social, coping and life skills. He has specific goals of becoming employed, pursuing further education in business and art, and is amenable to any other recommendations for rehabilitation.

Thank you for referring this client to me for psychological evaluation. This examiner will gladly review any further documents regarding this case. If you have any questions concerning this evaluation, please feel free to contact me by pager number: 727-508-4298.

Valerie R. McClain, Psy.D.
Licensed Psychologist

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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

DESMOND BAKER,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

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Case No. 2D17-2160

APPEAL FROM THE CIRCUIT COURT
IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

HOWARD L. "REX" DIMMIG, II
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

I. THE REHABILITATION OF DESMOND BAKER

Over nineteen years ago, in January, 1999, Desmond Baker was a fifteen-year-old homeless teenager with years of documented mental health problems. (T, R427, 966, 974-975, 1240). Born in 1983, he had grown up torn between his father's and mother's homes, where he saw domestic violence between his father and stepmother who were fighting about him (R987); he was beaten by his stepmother and father, (R986-987), and introduced to illegal drugs while staying with his grandmother and aunt. (R399, 1241). He was told that his natural mother, with lighter features, had stolen him from his "real" darker parents and that he did not fit into his mother's family. Desmond Baker frequently voiced that he felt he did not belong. (R988, 1057). When Desmond was five years old, his father returned him to his mother because the father claimed the child was ruining his marriage. (R987, 1241).

Desmond Baker's adverse childhood and adolescent family life resulted in his acquiescing to others, withdrawing, low self esteem, excessive dependency, poor impulse control. (T751-752, 981, 988, 1052, 1055). He was placed in emotionally handicapped (EH) classes in 4th grade when he was 9 years old. (R427, 927, 988,

1242). He eventually thrived in middle school with the support of the EH classes, but when he got to high school things fell apart again. (R975-976, 1058).

In the fall of 1998, at the start of tenth grade, Desmond Baker was failing all his school classes, refusing to complete assignments and was disruptive in class. (R434-439). He was drinking several cups of beer and gin daily and smoking marijuana seven times daily. (R521, 524). He ran away from home. (R989, 1007-1008). His mother and step father did not look for the boy although he had been missing for 30 days. (R989, 1007-1009) The stepfather ran into Desmond in a store and tried to talk him into returning home, but the youth did not want to go back home. (1007-1008). When this robbery homicide happened, the homeless teenager was temporarily staying with Eric McTier, an older youth he had not known very long. (T194, R967). McTier sold drugs out of the home. (T204). The firearm used in the robbery came from the McTier residence. (T201). Baker's father was not part of his regular life, and did not participate in any court proceedings. (R1003).

On January 18, 1999, fifteen year old Desmond Baker called a taxi cab at 4 a.m. (T196). Taxi cab driver Harry Bockman picked up Baker, who carried a .38 revolver that came from the McTier home. (T192, 201). When Baker brandished the gun and demanded money, Bockman gave the juvenile \$25 and grabbed for the firearm. (R699). During a struggle over the gun, a single shot fired at Bockman.

(R699). Desmond Baker ran away. (R699). Bockman called dispatch to say he was shot and then died from the gunshot wound. (T192, 291-292).

Baker was arrested for Bockman's death, and on February 11, 1999, he was placed at the Pinellas County Jail. On June 1, 1999, he told jail personnel he did not want to live any more. (R579-580). Baker was monitored and on June 2, 1999, offered an antidepressant medication, Elavil, 100 milligrams daily, which was given to the juvenile at the time of his jury trial and afterwards when he plead to other felonies. (R562-564, 568, 579-580). ¹

On June 30, 1999, Desmond Baker turned 16 years old.

The teenager's ability to understand and participate in a criminal justice system he had never before confronted was limited. After the presiding judge, Judge Downey, denied the defense motion to suppress on October 29, 1999, Baker was seen crying in the court hallway. (R575). Jail psychology notes state the child's understanding of his case was that his lawyer "did some stuff – you know waivers and stuff like that," but he had not been found guilty of anything and returned to court for sentencing for first degree murder. (R575). During the jury trial, the youth

¹ Elavil is a drug the FDA now does not recommend for adolescents due to numerous side effects, including confusion and suicidal thoughts. The current dosage for adolescents is half of what Desmond Baker was given in 1999.

https://www.accessdata.fda.gov/drugsatfda_docs/label/2014/085966s095,085969s084,085968s096,085971s075,085967s076,085970s072lbl.pdf

Jail records note only nausea as a side effect for Appellant. (R578).

did not understand what was occurring or know how to assist his lawyer. (R834-837, 839-840). He did not understand his right to testify, how the videotaped statement would be used against him at trial, or how arguing for lesser offenses did not conflict with his not guilty plea. (R833, 841-841, 844). His mother, Taunya Felton, had testified at the suppression hearing that her son acquiesces to others and tells others what he thinks they want to hear. (R751-752).

Immediately after the jury returned the guilty verdict in this case, Judge Downey brought up plea negotiations in the teenager's other pending case and offered concurrent term of year sentences for the crimes. (T385, 388-389). Judge Downey asked the child if he had talked to his lawyer and gone over the plea form and if he understood "you're entering a charge of plea on Counts 2,3, and 4, and the other case is pending against you?" (T394-395). ² Judge Downey said, "you understand the sentence that I'm going to give you is 20 years on one, 15 on another one, 10 on another one, all running concurrent?" (T395). Next Judge Downey asked, "And all running concurrent with the sentence I'm going to give you on the murder case?" Then Judge Downey asked, "This is what you want to do to get these three over with; is that right?" Sixteen-year-old Desmond Baker answered each question

² The juvenile would not plea to one count because he stated he had not done that crime, and the state later dismissed that charge.

with a single word, “Yes.” (T394-395). Judge Downey informed the juvenile of the maximum sentences of life applicable to counts 1 and 2, but not for the other counts 3 and 4. (T395-396). Judge Downey asked the child, “Are you currently under a doctor’s care or taking any medication at this time? The teenager told Judge Downey “I take a pill. . . some kind of depression pill or something.” (T396). Judge Downey asked no further questions about the medication or its effects on the youth. Judge Downey asked, “And you fully understand, as it relates to these cases, what’s going on here this afternoon?” After the child responded, “Yes, sir,” Judge Downey pronounced “I’ll find Desmond Baker alert and intelligent and understands what’s going on here.” (T396).

During a hearing on a motion for post conviction relief, held before Judge Nelly Khouzam, trial defense counsel testified that Desmond Baker was “incompetent” in waiving Miranda rights and did not want to discuss the case with her. (R798-807, 813). She did not know if he understood her trial strategy of seeking a conviction for a lesser offense. (R798-807). Desmond Baker testified at the hearing that he was not aware of what was taking place during the jury trial. He heard and saw what was happening but did not comprehend the events. (R834, 839). He did not understand how the videotape evidence would be presented to the jury and what testifying at his own trial would involve. (R835, 844). He first learned he

could testify when Judge Downey asked him during the jury trial if he wanted to testify. (R835).

On December 1, 1999, Desmond Baker, still 16, entered the Florida Department of Corrections to begin serving the rest of his life in prison.

In 2001, Desmond Baker, who had last completed ninth grade in 1998, obtained his high school diploma from prison. (R623). He went on to complete the following classes in 2011 and 2012: an American Sign Language class, the Keys 4 successful living and re-entry program, the “Financial Peace” class, a FEMA Emergency Management Institute’s Professional Development Series, an anger management and a domestic violence 12-week thirty-hour course. In 2015 he participated in Black History and Women’s History activities held at Florida State Prison. In 2016, he finished Operation PAR’s 10-week drug program, Expanded Impact Education Sessions. (R623-658).

While in prison, Desmond Baker remained in touch with family and former school friends, who later came forward to testify on January 13, 2017, at the resentencing hearing about his personal development and maturity over the years. His younger brother, Lavar Baker, began visiting Appellant after returning from Marine tours of duty in Afghanistan. 1038-1039). Lavar Baker found his brother changed, remorseful, and offered to be part of his support system outside prison.

(R1040, 1044-1045). Cousin, Nicole Hunter, testified at resentencing that Appellant had fallen in with youth who had no guidance, and he now had plans to obtain mechanical skills and be a designer. (R 1019). Former classmate Latesha Fluker saw him change from someone who was angry and stand offish to a mature wise man who sent her graphics for t-shirt designs and who wanted to mentor kids to prevent what he did from happening to others. (R1022-1023). Diondre Tatem knew Desmond Baker from grade school and saw him again while they were both in prison. Baker advised Tatem before release in 2010 to think before reacting, not to be a puppet and to choose how to react to situations. (R1028). Angelo Valltos met Desmond Baker at first in the Pinellas County Jail, where he saw Appellant as a scared child. (R1030). Later Valltos saw Desmond Baker at Baker Correctional Institution, (BCI) prior to Valltos being released in 2008. Valltos remembers being a “loose cannon” in BCI initially, and was positively influenced by Baker, who invited him to church with him. (T1032-1033). When Valltos asked Baker how Appellant could remain so positive in such a negative situation, Baker responded, “[b]ecause you are going home, I want to live through you.” (R1034).

Valltos testified that only inmates with sentences of five years or less were able to participate in vocational training. Because of Appellant’s life sentence, he

could not attend classes, and was only able to do voluntary activities like attending church. (R1032).

Desmond Baker wrote a letter, which psychologist Dr. McClain said he thoughtfully and sincerely composed over a long time. (R1072). In the letter he apologized to the Bockman family and to his own family and friends and asked for forgiveness. Baker wrote,

It was not just Mr. Harry Bockman who passed because of my actions, but also a 15 yr [sic] old kid I used to be passed also. I stand before you today, not as a child, but as a man, a man who now understands what disasters can result from the actions of a person who doesn't think about what he does or why he does it, but who now sees, no matter what one does that there is always a consequence/result that is brought about, to think about what one does before one does it. I did not intentionally seek Mr. Harry Bockman's life nor did it cross my mind to take his life, but because I didn't think about what I was doing, didn't think about what can or could happen what did happen was not something that I ever thought could happen or could have prepared for.

(R659).

Dr. McClain, an expert in psychology with a subspecialty in neuropsychology and forensic psychology, testified that at the time of the offense fifteen-year-old Desmond Baker had poor impulse control and attention, withdrawal, excessive dependency, anxiety and difficulty regulating his behavior. (R1054). Because he was alienating his family as a means of dealing with anger and impulse control, he was more vulnerable to peer influences from an older teenager like McTier, who

then had more criminal experience. (R1056). In the Fall of 1998, just a few months before the robbery happened, school records show Desmond Baker had completely stopped the positive trajectory of the middle school days and “was like sliding down a mountain or falling off a cliff.” (R1058).

Dr. McClain explained that the adolescent brain is physically unformed in areas of planning, judgment, and anticipating consequences, and the youth had 10 more years of brain development to undergo when the offense occurred. (R1059-1060). Judge Burgess asked Dr. McClain, “what’s the essential difference in terms of the defendant’s brain development, between the time he was 15 years old to the present?” (R1080-1081). Dr. McClain answered, “After my initial interview with Mr. Baker it was quite clear to me, in talking with him, that there was what I would call a clear ability to analyze his own behavior, to add insight into his past and how it affected his behaviors, his ability to plan for his future was demonstrated during my discussion with him, his understanding of why he had gotten disciplinary reports while he was incarcerated and why that stopped in 2014. . . . There were just a lot of examples of what I think would be an evolution from an adolescent brain of impulsivity, inattention, poor self control and insight into a much more developed brain, a much more mature individual.” (R1081-1082).

Dr. McClain diagnosed Desmond Baker with having recurrent major depression, post traumatic stress disorder from the stepmother's abuse and the witnessed domestic violence, and reactive attachment disorder from a lack of predictive supports in his life. (R1060-1061). She also noted substance abuse diagnoses in remission. (R1062-1063). A prison consultant and former Florida State Prison warden, Ron McAndrews, concluded from Appellant's prison records that he had a period of adjustment which stabilized after which he then made excellent progress. (R1070). Dr. McClain noted Desmond Baker had no disciplinary reports for violent behavior, with 17 DRs over the years, mostly for not following instructions. (R1077-1078). Dr. McClain stated Desmond Baker needs counseling before he is released because he has been in prison for most of his life and he needs to understand how to cope with his feelings and trust issues. (R1074-1077). She testified there is no counseling of the therapeutic kind that he needs offered in Florida prisons, and the state prison system has a breakdown in its exiting process. (R1085). Dr. McClain stated Desmond Baker can be rehabilitated and did not state when. (R1085-1086). She recommended he be accountable through urine screens and/or reporting to NA/AA. (R1085). She noted he has "tremendous family support that is evident in this courtroom." (R1085).

II. THE CHARGE, THE JURY TRIAL VERDICT, AND RESENTENCING

The indictment charges that Desmond Baker, “while engaged in the perpetration of, or in an attempt to perpetrate the crime of Robbery, did shoot Harry Bockman, a human being, with a firearm, thereby inflicting upon the said Harry Bockman mortal wounds, of which said mortal wounds. . . the said Harry Bockman died. . .” (R46). Part of the evidence against him was a written statement he made to the police in which he said, “I pulled the gun out and asked for the money so he gave me \$25 dollars the [sic] we reached for the gun and he started tussling for the gun and then it went off. I hopped out the cab and raned [sic].” (R699). The state called friends of Desmond Baker to testify about statements he made in their presence about the robbery and shooting. The witnesses who testified about the details Desmond Baker told of the robbery said the juvenile told them the cab driver grabbed for the gun and the shot fired. (T194-236). Several youth witnesses stated the teenager had laughed about the shooting. (T214, 226). In final closing arguments during the jury trial, the prosecution argued for the murder conviction based solely on felony murder and a lack of premeditation. (T327-328). The prosecution argued to the jury “It doesn’t matter whether he wanted to kill Harry Bockman or not, whether this was an intentional killing or an accident.” (T328).

The jury verdict of November 10, 1999, found “The defendant is guilty of Murder in the First Degree, as charged. We further find a firearm was used: [X]

Yes.” (R67). Immediately after the verdict, the youth entered pleas to armed robbery, armed burglary and burglary and was sentenced to twenty, fifteen, and ten years concurrently for those offenses. (T396-397). At the same sentencing hearing Judge Downey sentenced the juvenile to life in prison for the felony murder. (T398). On May 21, 2014, this Court in *Baker v. State*, 138 So.3d 1175 (Fla. 2d DCA 2014), reversed the life sentence and remanded this case for resentencing under *Miller v. Alabama*, 567 U. S. 460 (2012).

At a resentencing hearing held before Judge Burgess, the state argued Desmond Baker should once again receive a life sentence based on the crimes he admitted doing around the same time, but the state did not seek to preclude Appellant from receiving sentencing review. (R386, 939-940). In seeking the maximum life sentence, the state presented no evidence from Harry Bockman’s family. (R970). The state presented no proof of Desmond Baker’s incorrigibility or of any exceptional inability to change. The state did not enter into evidence the judgments and sentences of any other felony cases, and only presented testimony from former homicide detective, Robert Schock, briefly describing the other crimes. (R951-953). The crimes described were a December 24, 1998 taxi cab robbery with a firearm, a December 29, 1998 burglary of a home, and a January 5, 1999 armed burglary about which Schock was uncertain who had the firearm. (R951-952). Schock had been

the lead detective in the case at bar and described his view of the homicide facts. (R946-951).

The defense filed a motion to declare section 775.082(1)(b)1., Fla. Stat. unconstitutional and in violation of the Eighth Amendment because the minimum 40-year sentence violated *Miller*, (R107-115), and the state responded that the applicable law which provides for a judicial review complies with *Miller*. (R131). The defense moved to preclude the state from proceeding under Section 775.082(1)(b)1. on the grounds that the jury had not made the findings to make that section applicable, as required by *Alleyne v. United States*, 570 U.S. 99 (2013) (R305-309). The trial court sentenced Baker under Section 775.082(1)(b)1. (R401).

In pronouncing sentence, Judge Burgess told Desmond Baker directly, “Mr. Baker, my decision was whether or not you should die in prison or whether you should have a chance to walk free some day.” (R1097). Judge Burgess imposed a sentence of 50 years imprisonment without any review. (R394-406).

Despite the lack of any dispute about the applicability of a review period, and the lack of any state argument that the other felonies were previous offenses, the trial court concluded, “The Court finds that the Defendant is not eligible for sentence review under § 921.1401(2)(a), [sic] Fla. Stat., because of his previous convictions for armed robbery and armed burglary in case CRC99-03285CFANO, these offenses

having been committed in criminal transactions or episodes that were separate from the murder committed in this case, notwithstanding the fact that convictions for those offenses **were entered on the same day as entry of the Defendant's convictions for murder.**" (R401). (emphasis added).

In imposing the 50 year prison sentence without any review, Judge Burgess found "The Defendant planned and prepared for his armed confrontation of Bockman." (R397). The trial judge noted Desmond Baker had twice called for a cab "to make sure that his victim would arrive and be lured into the trap he had set." (R397). Judge Burgess concluded "The Defendant then shot Bockman at arm's length, striking Bockman in the chest, and later claimed that the gun 'just went off' when Bockman grabbed for it." (R397). Additionally, the trial judge found, "The Defendant's actions after he shot Bockman also show remarkable callousness, presence of mind, and more than a little forethought." Judge Burgess noted that the youth fled from the scene, "methodically" burned and discarded his clothing and returned the gun to its owner, and that later in the day the teenager spent the \$25 and calmly bragged and laughed to friends about the shooting. (R398).

Judge Burgess did not mention the alcohol and drug abuse and found the juvenile offender "was not physically or emotionally disabled and did not suffer from substance abuse impairment or mental illness." (R398). The trial judge stated

that “although he had behavior problems, . . . he was mainstreamed in his schooling.” (R398). Judge Burgess found “No credible evidence was presented to support the notion that the Defendant so lacked the age, maturity, intellectual capacity and emotional health as to mitigate his responsibility for his crime.” (R399). Concerning Desmond Baker’s background, Judge Burgess described the youth as having “an unstable home environment and lack of adequate supervision,” and that his “family and known friends were generally supportive of him.” (R399). Regarding the impact of Desmond Baker’s immaturity, impetuosity or failure to appreciate risks and consequences, Judge Burgess found, “the Defendant appreciated the risks and consequences of his actions.” (R399). The conclusion is based on the juvenile Baker having done the other crimes before this offense, which Judge Burgess found to be part of “an escalating pattern of violent criminality.” (R399).

The trial court found “the robbery that led to the murder was not committed on an impulse but was the product of cool, reflective thought and detailed planning, preparation, and execution.” (R399). The trial court also found “the murder of Bockman does not appear to have been part of the Defendant’s initial plan,” but “was always a foreseeable possibility” (R399). In analyzing the juvenile offender’s prior criminal history, the trial court failed to note the offender had no prior convictions or contact with the criminal justice system. (R400).

Judge Burgess also determined that Desmond Baker's judgment was impaired by his youth, lack of a matured brain, low self-esteem, poor decision making, and poor self-control. The trial court found also that youth's judgment was affected by older peers engaged in criminal activity and that the juvenile drew inspiration from them. (R400). Judge Burgess concluded, "The age of the Defendant, combined with his mental and emotional immaturity, clearly played a part in his decision to commit armed robbery with a firearm, and the Court has taken this into consideration as mitigation." (R400). Concerning the possibility of rehabilitating Desmond Baker, the trial court concluded, "Dr. McClain was careful to indicate that the Defendant was not rehabilitated, and that he had not begun the proposed counseling. As such, the actual possibility of rehabilitating the Defendant remains unclear." (R400).

The defense filed a motion for reconsideration, in which CDC life expectancy evidence was presented. (R408-410, 1111-1112). The trial court denied the motion. (R1115). A timely appeal followed. (R411).

Appellant filed a motion to correct sentencing errors on the grounds that the 50 year sentence with the 40 year minimum mandatory and no review is unconstitutional under the state and federal constitutions, and not authorized by Florida law. The motion argued there is no jury finding to support the imposition of no review period based on either an intent to kill or being the actual shooter as required by §

775.082(b)1., Fla.Stat.(2017). A 15 year review is required since under the facts of this case and the general verdict rendered, either statutory provision § 775.082(b)1., or § 775.082(b)2., might apply. The rule of lenity requires imposing a sentence with a review after 15 years in prison. The motion noted that *Williams v. State*, 43 Fla. L. Weekly S91a (Fla., filed Feb. 22, 2018), was then pending before the Florida Supreme Court regarding the similar issue of whether *Alleyne* requires a jury fact finding of whether a juvenile offender actually killed, intended to kill or attempted to kill the victim. (R1137-1139).

The trial court entered an order granting the motion in part, striking the forty-year minimum mandatory portion of the 50 year prison sentence and denying the motion in all other aspects. (R1246-1252). A corrected sentencing or and document was rendered. (R1281-1284).

SUMMARY OF THE ARGUMENT

Desmond Baker is entitled to a sentencing review under section 921.1402(2)(a). Desmond Baker cannot be denied a sentencing review when he had no prior convictions at the time of the jury verdict, and his only other felony convictions were obtained simultaneously with the sentence imposed for the felony murder.

The rule of lenity requires resentencing under Section 775.082(1)(b)2. Desmond Baker was charged and convicted of a crime involving no intent to kill,

felony murder, and if deemed the actual shooter, is eligible for sentencing under both Section 775.082(1)(b)1., and Section 775.082(1)(b)2., since the former applies to the actual shooter and the latter to an offender without an intent to kill. The rule of lenity requires resolving the ambiguity of which sentence provision applies by resentencing Desmond Baker under the without an intent to kill provision.

The imposed 50 year sentence without any sentencing review violates *Williams v. State* and *Alleyne* because the jury made no fact findings of an intent to kill or that Desmond Baker was the actual shooter or had any prior felony convictions. The lack of these jury fact findings cannot be deemed harmless beyond a reasonable doubt since the juvenile was convicted of felony murder which has no element of an intent to kill and the evidence of the shooting showed the juvenile and victim struggled over the firearm. The record does not contain a prior enumerated conviction, a knowing and voluntary plea colloquy or any judgments and sentences on which to base a review denial. The sentence must be reversed and remanded for resentencing under Section 775.082(1)(b)2., Florida Statutes, which provides for no minimum sentence and affords a review after fifteen years.

Section 921.1402(2)(a) of the Florida Statutes is unconstitutional on its face and as applied to Desmond Baker because the statute deprives a juvenile of any sentencing review without considering the *Miller* factors. The trial court's findings in the

sentencing order are not supported by jury fact findings, in violation of *Williams* and *Alleyne* and the error cannot be deemed harmless. The trial court's sentencing order findings are not supported by competent substantial record evidence supporting a de facto life 50 year sentence without review.

ARGUMENT

ISSUE

HE TRIAL COURT ILLEGALLY SENTENCED DESMOND BAKER, A FIFTEEN-YEAR-OLD OFFENDER TO AN UNCONSTITUTIONAL FIFTY-YEAR PRISON SENTENCE WITHOUT REVIEW.

The trial judge, who did not preside over the jury trial, sentenced Desmond Baker to a de facto life sentence of 50 years with no judicial review. The state did not dispute evidence of Desmond Baker's rehabilitation since this 1999 homicide and proved no previous felony convictions. The juvenile is entitled to resentencing under section 775.082(1)(b)2, providing for no minimum sentence and a 15 year review. Resentencing under this law is required by the rule of lenity and *Williams/Alleyne* error that cannot be deemed harmless beyond a reasonable doubt.

A. Desmond Baker is entitled to a sentencing review.

1. Desmond Baker has no prior offenses and under the applicable statute is entitled to a sentencing review.

Although Desmond Baker had no prior criminal record when he was originally

sentenced, and the state asserted the juvenile was entitled to a review (R131), the resentencing trial court denied the juvenile offender the statutorily required and constitutionally mandated sentencing review. The trial court ruled, “The Court finds that the Defendant is not eligible for sentence review under § 921.1401(2)(a), [sic] Fla. Stat. because of his previous convictions for armed robbery and armed burglary in case CRC99-03285CFANO, these offenses having been committed in criminal transactions or episodes that were separate from the murder committed in this case, **notwithstanding the fact that convictions for those offenses were entered on the same day as entry of the Defendant’s conviction for murder.**” (R401).

The standard of review for determining whether a sentence is illegal is de novo. *Landrum v. State*, 192 So.3d 459, 463 (Fla. 2016).

The plain language of § 921.1402(2)(a) states, “A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has **previously** been convicted of one of the following offense, if the offense for which the person was **previously** convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(1)(b)1. . .”

The statute precluding review for a certain class of juvenile offenders, applies to juveniles with convictions obtained prior to the sentencing for the homicide offense,

not for offenses committed prior to the homicide offense or imposed at the same sentencing proceeding. *See Hadley v. State*, 190 So.3d 217 (Fla. 4th DCA 2016)(trial court erred in finding child had a prior capital felony conviction when record showed the only capital felony convictions were the two first degree murder convictions set for sentencing, determining in effect that convictions simultaneously gotten cannot be deemed prior to one another). If the legislature had wanted to include prior or previous offenses and not convictions in defining the class of excluded juvenile offenders, the legislature would have written the law to include offenses and not convictions. Scalia, A. & Garner B., *Reading Law: The Interpretation of Legal Texts*, “Semantic Canons. 8. “A matter not covered is to be treated as not covered.” at 93 (2012).

The trial court erroneously found that convictions gotten simultaneously with the murder conviction at bar are “previous” convictions, when the convictions were not obtained prior to the conviction imposed for this homicide. There is no case law found supporting a reading of a “previous” conviction as being a conviction imposed on the same day. The trial court relied on *Barnes v. State*, 595 So.2d 22 (Fla. 1992) and *State v. Watts*, 595 So.2d 19 (Fla. 1999) in deciding that simultaneous can mean prior. Those cases concern whether felony convictions gotten prior to the case at bar for sentencing must be sequential and those cases involve an interpretation of that adult habitual offense law. Those cases do not hold that previous convictions can

be convictions simultaneously entered with the case for which a defendant is being sentenced.

To read the juvenile sentencing law to mean that a “previous” enumerated felony can be a conviction obtained simultaneously with the case at bar, does not comport with the plain meaning of the word “previous,” the reading of the statute as a whole, or the body of constitutional law finding that lengthy term of year sentences imposed upon juveniles must provide a meaningful opportunity for review or with due process. Accordingly, the trial court should impose a sentence with a review. The trial court’s precluding Baker from sentencing review under § 921.1402(2)(a) when he has no prior convictions constitutes cruel and unusual punishment and violates Baker’s rights to due process and equal protection under the federal and state constitutions.

Not only were the convictions not previously gotten, they were not proved. (R939-970). The state entered no charging document, fingerprints, or judgment and sentence for any other felony or crime into evidence. The only proof of any other felony crimes was made through a plea colloquy and through Mr. Schock’s brief description of other charges summarized without case numbers during the resentencing hearing. (T396-399; R951-952).

The plea colloquy and Schock testimony are insufficient evidence of any prior

conviction. A felony conviction must be proved by admitting into evidence a prior judgment that conforms to Florida Rule of Criminal Procedure 3.986, *Dolan v. State*, 187 So.3d 262 (Fla. 2d DCA 2016); *Keith v. State*, 844 So.2d 715 (Fla. 2d DCA 2003), or by admitting “the information, the plea of the accused, the jurisdiction of the court, the verdict of the jury, and the judgment and sentence of the court.” *Warren v. State*, 74 So.2d 688, 688 (Fla. 1954). Such evidence is not part of this record.

Any prior violent felony conviction increases the sentence because the juvenile can be denied any review based on those convictions. Such a fact should have been determined by a jury because the fact “alters the legally prescribed punishment so as to aggravate it.” *Alleyne v. United States*, 570 U.S. 99, 114 (2013); *Williams v. State* 43 Fla. L. Weekly S91a (Fla., filed Feb. 22, 2018). The prior felony conviction fact aggravates the prescribed punishment for a juvenile by eliminating any sentencing review altogether, requiring the child to serve the entire prison sentence imposed, which must be at least 40 years long. § 775.082(1)(b)1., Fla. Stat. (2017). The fact becomes an element of the offense that must be proved beyond a reasonable doubt. The error of failing to prove the prior conviction fact is subject to a harmless error analysis. *Williams*. Since the convictions used by the trial court to deny the review were not obtained until after the jury issued its verdict in this case, the convictions did not exist to submit to the jury, had that then been required. The state below failed to

prove any previous conviction. *Id.*

The error of insufficient evidence of the prior convictions and the lack of a jury finding cannot be deemed harmless beyond a reasonable doubt. The plea colloquy for this sixteen-year-old offender did not comply with Rule 3.172 of the Florida Rules of Criminal Procedure for an adequate plea colloquy or Rule 8.080 of the Florida Rules of Juvenile Procedure regarding acceptance of a no contest plea from a juvenile. (R394-396). Judge Downey did not ask then sixteen-year-old Desmond Baker if he understood the charges he was pleading to and did not advise him of all the maximum penalties or of what rights he was giving up by entering a plea. No factual basis was given for the crimes. Judge Downey asked, “This is what you want to do to get these three over with; is that right?” Sixteen-year-old Desmond Baker answered with a single word, “Yes.” (R394-395).

The juvenile offender was given a depression medication, Elavil,³ (R562-564, 568, 579-580) at the jail, and when Judge Downey learned about the youth taking medication, no questions were asked about it. (T396). Desmond Baker testified at the hearing on the post-conviction motion that he did not understand what was occurring during the jury trial, (R834, 841-844), and his defense attorney described him as

³ Elavil is no longer is FDA approved for adolescents and the dosage given Desmond Baker back in 1999 was twice the current recommended dosage for an adolescent.

“incompetent” in waiving *Miranda*⁴ rights and as uncommunicative as a client. (R798-807, 813). The retired detective’s resentencing testimony summarizing three other felonies does not match those crimes to any judgment or sentence. (R951-952). See *Sanders v. State*, 765 So.2d 161 (Fla. 2d DCA 2000)(prosecutor references to other cases and to court file not entered into evidence did not prove prior convictions for enhanced habitual offender sentencing).

Likely the evidence of the other convictions was lacking because the state below did not seek to preclude a judicial review but sought a life sentence with review. (R131). Under the totality of these circumstances, the error of using such convictions cannot be deemed harmless beyond a reasonable doubt. Accordingly, Desmond Baker is entitled to sentencing review.

2. Desmond Baker was convicted of felony murder, a homicide crime not requiring proof of intent to kill, and under the rule of lenity, he is entitled to the fifteen-year review granted to offenders whose homicides were not committed with an intent to kill.

The previous enumerated felony exclusion found in § 921.1402(2)(a), Fla. Stat., does not apply to Desmond Baker because he was not charged with or convicted of a crime requiring proof of an intent to kill and therefore must be sentenced under § 775.082(1)(b)2., Fla. Stat. and not § 775.082(1)(b)1., Fla. Stat.

⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

Felony murder does not require proof of an intent to kill. *Linehan v. State*, 442 So.2d 244, 254 (Fla. 2d DCA 1983). The juvenile sentences for capital felonies require a review period based on whether the offender “actually killed, intended to kill, **or** attempted to kill” § 775.082(1)(b)1., Fla. Stat. or whether the juvenile “did not actually kill, intend to kill **or** attempt to kill,” § 775.082(1)(b)2., Fla. Stat. The statutory language uses the word “or” evidencing a meaning that any of the delineated acts or intents apply. Scalia, A. & Garner B., *Reading Law: The Interpretation of Legal Texts*, “Semantic Canons. 12. Conjunctive/Disjunctive Canon,” at 116.

Under the plain meaning of the statute as written, a juvenile who has no intent to kill and is found to have actually killed should be subject to the fifteen-year review provision of section 775.082(1)(b)2. The rule of lenity requires that “when statutory language is susceptible of differing constructions, it shall be construed most favorably to the accused.” § 775.021(1), Fla. Stat.; *Kasischke v. State*, 991 So.2d 803, 813 (Fla. 2008). Here the statutory provisions plainly give a 25 year review period for the group of juvenile capital murder offenders who actually kill and provide for a 15 year review period of review for the group of juvenile capital murder offenders who have no intent to kill. When applied to a child convicted of felony murder, such as Desmond Baker, the statute is susceptible of multiple and irreconcilable interpretations and the most lenient interpretation must be applied. Since such a homicide fits both subsections, the

rule of lenity requires apply the most lenient applicable provision, which is the 15 year review subsection.

The trial court in its order on the motion to correct sentencing error stated, “the plain language of these sections are [sic] not ambiguous as applied to Defendant. It is apparent that these subsections do not distinguish between premeditated and felony murder in situations where the defendant perpetrates the killing him or herself. Rather these subsections distinguish between homicide offenses where a defendant perpetrates the killing him or herself and those where the defendant acts as a principal to the crime, but does not physically perpetrate the killing. Although the Court finds that this is apparent from the plain language of the statute, the legislative history also supports the contention that these subsections were intended to distinguish between offenders who ‘participated in the physical killing of the victim,’ and those who did not.” (R1250). The trial court cites to a March 21, 2014 Staff Analysis of the legislation which does distinguish between offenders who participate in the killing and those who do not. However, a staff analysis subsequently written June 27, 2014, right before the bill was passed, no longer divides homicides into those involving participating offenders and those where the offender did not participate. The most recent bill analysis reflects that the legislature changed the breakdown to reflect the same categories stated in the present

law. The most recent legislative intent therefore is in the statute itself and not in its prior analysis which was changed before the law was passed. Since the legislature did not breakdown offenders into the categories stated in the March 21, 2014 staff analysis, that evidences a legislative intent not to divide capital murder juvenile offenders merely into those who participated in the crime and those who did not.

Since the state failed to charge and prove an intent to kill, and there is no jury finding of “actual killer,” the applicable statutory review provisions must be sections 775.082(1)(b)2 and 921.1402, Fla. Stat. (c). These laws require a review after fifteen years and do not provide for any sentence that excludes sentencing review. The trial court erred in sentencing Baker under the wrong sentencing provisions, an error that resulted in the elimination of any judicial review of his fifty-year sentence and rendered the sentence unconstitutional, cruel and unusual as applied to him. Reversal and resentencing under the correct sentencing provision is required.

B. The Florida Supreme Court held in *Williams v. State*, 43 Fla. L. Weekly S91a (Fla., filed Feb. 22, 2018), that a jury must decide if a juvenile offender actually killed or intended to kill in order to sentence a juvenile under section 775.082(1)(b). Such a jury finding is absent here, and the error is not harmless, thus the remedy is to remand for sentencing under section 775.082(1)(b)2.

In *Williams* the child offender was convicted on December 19, 2013, along with several co-defendants, for first-degree murder and kidnapping after a marijuana dealer was taken, beaten, bound and gagged, placed in a trunk and driven to a location where

he was shot and killed. The evidence at trial conflicted over who actually fired the gun. The jury was instructed on both felony murder and premeditated murder, but the jury verdict form did not specify what theory the jury found in convicting Williams of first-degree murder. The trial court sentenced Williams to life with the possibility of parole after 25 years. After the district court remanded the case to the trial court for resentencing under the 2014 juvenile sentencing laws, Williams moved to empanel a jury to render findings on whether he had actually killed, intended to kill or attempted to kill the victim. The trial court denied the motion and without a jury found that Williams had actually killed and intended to kill the deceased. Williams was sentenced to life with a review after twenty-five years. The Florida Supreme Court ruled that the Sixth Amendment right to a jury trial was violated by sentencing Williams according to findings not made by the jury, i.e. that Williams actually killed and intended to kill. In so finding, the state supreme court reviewed the charging document, jury instructions and verdict form to find the Sixth Amendment constitutional error had occurred. The Florida Supreme Court then undertook a harmless error analysis. Because the evidence was conflicting about who actually killed and whether Williams was convicted of felony murder or premeditated murder, the error was not deemed harmless. The sentence was reversed and remanded with directions that Williams be sentenced under section 775.082(1)(b)2., with no minimum required sentence and a

fifteen-year review provision.

In this case there the jury plainly found that no intent to kill was proved, because felony murder was the only charge before it. The question is then whether the jury verdict reflects a finding that Desmond Baker was the actual killer. The indictment alleges Desmond Baker “did shoot Harry Bockman.” (R46). The jury instructions given for felony murder required the jury to find Desmond Baker “was the person who actually killed Harry Bockman.” (T361). The verdict found “[t]he defendant is guilty of Murder in the First Degree, as charged. We further find a firearm was used: [x] Yes.” (R67). The jury verdict does not find Desmond Baker discharged the firearm. This omission creates an *Alleyne* and *Williams* error in this case involving a struggle over the gun during a robbery.

The juvenile and cab driver struggled over the gun and the gun fire. Mr. Bockman was killed, but it is not clear that Desmond Baker fired the shot or “actually killed” him. In final closing arguments, the prosecution argued for the murder conviction based solely on felony murder and a lack of premeditation. (T327-328). The prosecution argued to the jury “It doesn’t matter whether he wanted to kill Harry Bockman or not, whether this was an intentional killing or an accident.” (T328). The jury returned a verdict of guilty as charged and checked the box “Yes” under the statement “We find a firearm was used.” (R67). The jury did not make a finding

that Desmond Baker was the “actual killer” and intent to kill was not charged or proved. The facts presented at trial showed that Desmond Baker robbed Harry Bockman during a cab ride and the firearm discharged and hit Mr. Bockman who ultimately died from the gunshot injuries. (T292). Desmond Baker told the police and others that the gun discharged during a struggle. (T206, 213-214, 235-236, 266). The medical examiner evidence supports the struggle over the firearm having occurred. (T291-296). The struggle scenario could only be ruled out by the medical examiner if Mr. Bockman had worn a “regular shirt” at 4 a.m. in January, and the state gave no evidence of what Mr. Bockman wore that night. (T294-295, 299).

A harmless error analysis requires determining “whether the record demonstrates beyond a reasonable doubt that a rational jury would have found the juvenile offender actually killed, intended to kill or attempted to kill the victim.” *Williams. v. State*, 2018 WL 1007810 at 8. The jury here did not find an intent to kill, since premeditation was never charged or found. The question is whether the record shows beyond a reasonable doubt a rational jury would have found Desmond Baker was the actual killer. The record does not.

To obtain the conviction, the prosecution argued to the jury, “If they struggled and it’s an accident, plus a robbery, it’s first degree felony murder.” (T350) and “Pointing a gun out and threatening to kill somebody, the natural consequence is you’re

going to get shot or somebody's going to get shot. And it was during a commission or as he was escaping, either way you want to believe it. The law includes everything." (T350-351). Given the unique circumstances of the case, the "actual killed" language in the jury instruction could have been taken to mean what the prosecution argued it meant, that the killing took place at some point during the robbery, whether as part of an accidental shooting or otherwise. Under these circumstances, the jury verdict does not plainly find Baker actually killed Bockman, since in the accidental shooting Bockman could have caused the shot to fire. The jury verdict does not find Desmond Baker was the actual killer or actually discharged the firearm, but only states that a firearm was used. Therefore, the error of the lack of a jury finding on "actual killer" cannot be deemed harmless beyond a reasonable doubt in this record. Given the plain finding of no intent to kill, coupled with the ambiguous evidence about how the gun went off, the trial court could not sentence Desmond Baker to no review using the most severe portion of the juvenile first degree murder laws. *Williams*. The remedy under *Williams* is to resentence Appellant under Section 775.082(1)(b)2, Fla. Stat. (2017).

C. A review is constitutionally required to be afforded to the child offender whose crime reflects transient immaturity and not irreparable corruption.

The statute precluding a juvenile from judicial review due to prior enumerated felony convictions, § 921.1402(2)(a), is unconstitutional on its face and as applied to Desmond Baker, in violation of the Fifth, Sixth, Eighth, and Fourteenth

Amendments to the U.S. Constitution, and Article I, §§ 9, 10, and 17 of the Florida Constitution. The mandatory exclusion does not follow the dictates set forth in *Miller* and *Montgomery* because the prior felony conviction fact alone does not distinguish between “the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Miller v. Alabama*, 132 S. Ct. at 2469; citing *Roper*, 543 U.S., at 573. This case involves undisputed evidence of Desmond Baker’s rehabilitation and not mere opinions about his prospects for change. Rather than focusing on the relevant factors set forth in *Miller*, including the defendant’s capacity for change, the statutory exclusion precludes child offenders from judicial review based on their prior conduct when they were still children. Such a law violates the Eighth Amendment prohibition against cruel and unusual punishment and Article I, Section 17 of the Florida Constitution because it “disregards the possibility of rehabilitation even when the circumstances most suggest it.” *Miller* at 2468.

Desmond Baker began getting his high school diploma and taking classes to learn and better his situation before the *Miller* decision came out on June 25, 2012. He learned how to use sign language, completed a reentry course, a course in finances, and started a FEMA emergency management professional development course before *Falcon v. State*, 162 So.3d 954 (Fla. 2015), was decided and before

any lawful basis for his release existed. (R623-658). Dr. McClain's expert opinion that Desmond baker can be rehabilitated is undisputed in this record. (R1085). See *People v. Wines*, 2018 WL 1219101 at 5 (Mich. App., filed March 8, 2018)(trial judge should have noted evidence of Wines' behavior in prison over last 20 years in *Miller* resentencing).

The Florida Supreme Court has repeatedly held that nonhomicide offenses require resentencing where no review has been imposed. *Johnson; Kelsey*. The Florida Supreme Court has also disapproved of homicide term of year sentences imposed without any review period and remanded the following cases for resentencing under the 2014 juvenile sentencing laws. *Waiters v. State*, 210 So.3d 209 (Fla. 2d DCA 2016), quashed *Waiters v. State*, 42 Fla. L. Weekly S751 (Fla. 2017); *Lindsey v. State*, 168 So.3d 267 (Fla. 2d DCA 2015), quashed, 41 Fla. L. Rev. S372 (Fla. 2016). Here Desmond Baker was sentenced under the 2014 juvenile sentencing laws to an unlawful and unconstitutional fifty-year sentence with no review.

D. A juvenile whose crime reflects transient immaturity cannot be sentenced to a de facto life sentence without review.

1. The standard of review.

The standard of review is de novo for the application of the facts to the law. The trial court's factual findings that are within its purview and based on testimony are deferred to if supported by competent, substantial evidence. See *Commonwealth v.*

Batts, 163 A.3d 410, 435-436 (Pa. 2017). Since Judge Burgess did not preside over this jury trial and reviewed transcripts to arrive at the conclusions supporting the sentence, this Court need not defer to such factual findings based on undisputed transcripts. See *Ramirez v. State*, 15 So.3d 852, 855 (Fla. 1st DCA 2009).

2. The state bears the burden of proving beyond a reasonable doubt that the child offender is incorrigible and incapable of being rehabilitated and the state failed to meet its burden of proof in this case.

The United States Supreme Court has declared that only the rare juvenile homicide offender whose crime reflects irreparable corruption can be sentenced to life in prison without parole. *Miller v. Alabama*, 567 U.S. 460, 479-480 (2012). The presumption for juvenile offenders is that they are categorically less culpable than the average criminal and cannot with reliability be classified among the worst offenders. *Roper v. Simmons*, 543 U.S. 556, 567, 568 (2005). In *Graham v. Florida*, 560 U.S. 48 (2010), the high court recognized that a life sentence without parole shares unique characteristics with capital punishment, including the irrevocable forfeiture of liberty without hope of its restoration. In *Miller*, the court reasoned that “[d]eciding that a ‘juvenile offender forever will be a danger to society’ would require ‘mak[ing] a judgment that [he] is incorrigible’ – but ‘incorrigibility is inconsistent with youth.’” 567 U.S. at 472-473. In *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), the high court clarified that a sentence that does not consider the distinctive attributes of youth

“violates the Eighth Amendment for a child whose crime reflects ‘unfortunate yet transient immaturity.’” *Id.* at 734, *quoting Miller v. Alabama*, 567 U.S. at 479. In *Montgomery*, the court stated that a life without parole sentence “is a disproportionate sentence for all but the rarest of children, those whose crimes reflect irreparable corruption,” “permanent incorrigibility,” and “such irretrievable depravity that rehabilitation is impossible,” thus excluding “the vast majority of juvenile offenders.” *Id.* at 726, 733, 734.

A unanimous Florida Supreme Court in *Landrum v. State*, 192 So.3d 459, 460 (Fla. 2016), held that *Miller* applies to sentences imposed against children without taking into account “how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *quoting, Miller v. Alabama*, 132 S.Ct. at 2469. The state supreme court declared that “The sentencing court’s discretion must be guided by two overarching principles set forth in *Miller* and reaffirmed by *Montgomery v. Louisiana*,: The requirement that sentencing courts give due weight to evidence that *Miller* deemed constitutionally significant before determining that the most severe punishment possible for juvenile offenders is appropriate; and that under *Miller*, sentencing juvenile offenders to life imprisonment must be ‘rare’ and ‘uncommon.’” *Id.*, *quoting Miller*, 457 U.S. at 480. The *Miller* factors a sentence must consider include: 1) the offender’s chronological age and its

hallmark features; 2) a juvenile's lessened culpability and greater capacity for change as compared to an adult; 3) the offender's lack of maturity and underdeveloped sense of responsibility that lead to reckless and impulsive behavior and heedless risk-taking; 4) the incompetencies associated with youth. *Landrum v. State*, 192 So.3d at 464-465. The *Landrum* court stressed that a sentencing court cannot sentence a child whose crime reflects transient immaturity to life without parole because such a punishment violates the Eighth Amendment to the United States Constitution. *Id.* at 465. Additionally, the *Landrum* court stated that a sentencer is required to determine if the juvenile offender before the court is among the very rarest of juvenile offenders whose crimes indicate permanent and intractable incorrigibility. *Id.* at 466. The Florida Supreme Court in *Landrum* concluded that the heart of the *Miller* and *Montgomery* decisions is in "the Eighth Amendment's prohibition of imposing certain punishments on juvenile offenders that fail to consider a juvenile's 'lessened culpability and greater capacity for change.' *Id.*, at 467, quoting *Horsley v. State*, 160 So.3d 393, 396 [Fla. 2015](citing *Miller*, 567 U.S.at 465).

If under *Miller*, *Graham*, *Roper*, and *Landrum*, only in rare circumstances can the most extreme punishment of life imprisonment without review be inflicted on a juvenile homicide offender, the presumption must be that a juvenile offender will not merit a life sentence, or as in Desmond Baker's case, a de facto life sentence without

review. That presumption can only be overcome by the state proving beyond a reasonable doubt that the juvenile offender cannot be rehabilitated and is permanently and intractably incorrigible. *See Comm. v. Batts*, 163 A.3d at 453. Here the state failed to prove Desmond Baker cannot be rehabilitated. The error violates Desmond Baker's constitutional rights to be free from cruel and unusual punishment and to due process as guaranteed by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution and by Article I, Section 9 and 17 of the Florida Constitution.

3. This child offender born in 1983 has a life expectancy of 65 years, rendering the 50 year sentence imposed on a fifteen-year child in this case a de facto life sentence.

The undisputed record evidence shows that Desmond Baker's life expectancy is not expected to extend past 65.4 years. (R1168, 1181). A fifty-year sentence imposed on a fifteen-year-old child with a life expectancy of 65.4 years is a de facto life sentence. This Court has stated "it is clear that a juvenile's life expectancy is relevant to the determination of whether a lengthy term-of-years sentence is constitutional." *Morris v. State*, 198 So.3d 31, 34 (Fla. 2d DCA 2014). The state below did not dispute or object to the life expectancy evidence or present any contrary evidence.

Since Desmond Baker's 50 year without review sentence ends when he is at the end of his predicted 65-year life, the sentence is a de facto life sentence without

review. *See State v. Ratliff*, 42 Fla. L. Weekly D2361b (Fla. 2d DCA, filed Nov. 3, 2017); *Marshall v. State*, 214 So.3d 776, 777 (Fla. 2d DCA 2017)(“the Eighth Amendment will not tolerate prison sentences that lack a review mechanism for evaluating this special class of offenders for demonstrable maturity and reform in this future.”), *quoting Henry v. State*, 175 So.2d 675, 680 (Fla. 2015), *cert. denied*, 136 S.Ct. 1455 (Fla. 2016). *See also Bear Cloud v. State*, 334 P.3d 132 (Wyo. 2014)(45-year sentence for multiple crimes including murder is a de facto life sentence). Desmond Baker cannot obtain release prior to the expiration of his sentence based on a meaningful ability to demonstrate maturity and rehabilitation during his natural life. The Florida Supreme Court has already determined any such sentence that provides for no meaningful review and ability to demonstrate maturity and rehabilitation is unconstitutional under *Graham. Johnson v. State*, 215 So.3d 1237, 1239, 1242 (Fla. 2017). This principle must also apply to this felony murder crime. The 50 year sentence without any review is unconstitutional and violates the Eighth Amendment to the United States Constitution and Article I, Section 17 of the Florida Constitution and requires reversal and resentencing.

E. The trial court failed to give due weight to evidence *Miller* deemed constitutionally significant before sentencing Desmond Baker to a de facto life sentence without review.

Miller specified the following five characteristics or consequences of a

juvenile's immaturity: 1) Decisional – a youth's greater propensity for sensation driven, risk taking behaviors and poor judgment during decision making; 2) Dependency – an adolescent's dependency and lesser ability to avoid negative life influences from family and peers; 3) Offense Context – the potential relations of the risk taking and dependency factors to the child's involvement in the killing; 4) Rehabilitation Potential – a juvenile's greater potential for change due to developmental immaturity; 5) Legal competency – their lesser general capacities for making decision in their criminal case. *See* Grisso & Kavanaugh, "Prospects for Developmental Evidence in Juvenile Sentencing Based on *Miller v. Alabama*," 22 Psychol. Pub. Pol'y & L. 235, 236 (2016).

The trial court failed to take into account how the youth's decisional impairments and lesser ability to avoid negative influences influenced Desmond Baker, causing him to be homeless and ultimately to live with criminals and to participate in the armed robbery. The trial court ignored that the juvenile Baker had no prior contact with the criminal justice system prior to being swept up in a period of brief and severe criminality. The trial court did not consider the juvenile defendant's legal incompetencies during police interrogation and his trial and during the post-trial plea which all indicate his inability to confront the legal process and participate in and make decisions about his criminal case. The trial court failed to consider that Desmond

Baker had affirmatively already demonstrated a capacity for rehabilitation. The trial court's failure to consider these factors before imposing a 50 year sentence with no review cannot be deemed harmless beyond a reasonable doubt. *See State v. Roby*, 897 N.W.2d 127, 145-148 (Iowa 2017).

An offender's youth does not merely create an inference of mitigation that may be overcome by evidence of mature behavior. A court may find other factors aggravating despite an offender's youth, but under *Miller* it cannot use those factors to reject youth as a mitigating circumstance, as the court evidently did here. As noted by the Iowa Supreme Court in *State v. Sweet*, 879 N.W.2d 811 811, 831 (Iowa 2016), "[t]he traits of youth that diminish ordinary criminal culpability are not crime specific and are present even in juveniles who commit heinous crimes." Reversal and a new sentencing hearing are required.

F. A jury is constitutionally required to make any fact findings on which the imposed sentence is based and the imposed sentence unconstitutionally increased the minimum sentence based on facts not found by a jury.

Section 921.1401(2) constitutes a factfinding requirement that seeks to comply with *Miller v. Alabama*. Florida Rule of Criminal Procedure 3.781(b), which implements section 921.1401, specifies that the court "shall," after an evidentiary hearing, "make specific findings on the record that all relevant factors have been reviewed and considered" before imposing a life sentence. These findings parallel

findings on aggravating and mitigating circumstances enacted in Florida's capital sentencing statute. The United States Supreme Court in *Graham v. Florida*, 560 U.S. at 69 stated that for a juvenile, a life without parole sentence shares characteristics of a death penalty.

Both section 921.1401 and rule 3.781(b), paralleling the capital sentencing law, require these procedures and therefore jury findings only so long as life remains a possible sentence, just as the capital sentencing law requires jury findings only so long as death remains a possible sentence for an adult.

In *Hurst v. Florida*, 136 S.Ct. 616 (2016), the U.S. Supreme Court held that Florida's capital sentencing scheme violated the Sixth Amendment right to trial by jury in committing to the judge, and not the jury, the factfinding necessary for imposition of the death penalty. On remand, the Florida Supreme Court held that Article I, Section 22 of the Florida Constitution, as well as the Sixth Amendment, required unanimous jury findings on the recommendation of death before a death sentence may be imposed. *Hurst v. State*, 202 So. 3d at 58.

Section 22 of Article I of the Florida Constitution states, "The right of trial by jury shall be secure to all and remain inviolate." Likewise, a jury determination that life imprisonment is an appropriate sentence in light of the *Miller* factors and the sentencing factors in section 921.1401(2), is constitutionally indispensable to the

offense defined by the statute as: first-degree murder by a juvenile offender punishable by life imprisonment. Under the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Sections 9, 16 and 22 of the Florida Constitution, the determination must be made by a jury.

Under *Miller* and *Montgomery* only the rare juvenile who cannot be rehabilitated would merit the harshest penalty of life without sentencing review. That harshest penalty increases the maximum sentence from life with review to life without review. Such a sentencing increase requires a jury finding that the juvenile cannot be rehabilitated as well as jury findings for the statutory findings required by 921.1401(2). *Hurst; Alleyne; Blakely v. Washington*, 542 U.S. 296 (2004); *Apprendi v. New Jersey* 530 U.S. 466 (2000). No such jury findings were made to support the de facto life sentence imposed, and the error is not harmless beyond a reasonable doubt. *Williams*.

The Third District and the First District have both decided that jury findings for section 921.1401(2) facts are not constitutionally decided. *Copeland v. State*, 43 Fla. L. Weekly D341 (Fla. 1st DCA, filed Feb. 9, 2018); *Beckman v. State*, 230 So.3d 77, 94-97 (Fla. 3d DCA 2017). The decisions are wrongly decided and should not be followed, especially in light of *Williams*.

Courts are required to construe laws to avoid finding them unconstitutional if

possible. *State v. Giorgetti*, 868 So. 2d 512, 518 (Fla. 2004). Sections 775.082(1)(b)1 and 921.1401 must be construed to authorize an evidentiary hearing before a jury when the state seeks a life sentence for a juvenile first-degree murder offender or the law must be stricken as unconstitutional. The trial court erred in making the factual findings contained in its written order without a jury. *Hurst; Alleyne; Blakley; Apprendi; Williams*.

G. The trial court erred in sentencing Desmond Baker based on fact findings that are not supported by competent substantial evidence.

The following factual findings were made by the trial court without a jury in and were used to support the de facto life sentence imposed. Judge Burgess did not preside over the jury trial, but only constructed the events of the homicide from transcripts. His conclusions about the crime are not based on witness observation or credibility determination. This Court need not defer to Judge Burgess' factual findings about the offense based on undisputed transcripts. *See Ramirez*. Because the following fact findings are not based on competent, substantial evidence, the sentence must be reversed.

Judge Burgess erred in finding the crime reflected "remarkable callousness," "presence of mind," and "more than a little forethought," when the homicide was equally likely an accident that happened due to transient immaturity, an inability to appreciate consequences, and impulsiveness. (R398). The trial court supports such

fact findings with the juvenile's actions of running away after the gun fired, disposing of his clothes by burning some, ripping others and throwing others in the garbage, as well as putting the gun back. Such behaviors by a juvenile, should be considered in light of a youth's impetuosity and immaturity. *Miller; Montgomery*. Given the incompetencies of youth, running away and trying to distance oneself from a terrible event by disposing of clothing and returning the gun, is more likely the result of fear and the trauma of having shot someone than it is the product of some planning and callousness. The trial judge's determination that Desmond Baker "methodically" disposed of the clothing is based on inference, not on record facts and the inferences are contrary to a juvenile's presumed impetuosity and immaturity. The police asked the juvenile what he did with his clothes and the gun, and he said he burned and threw away the clothes. No direct facts indicate he did so as part of a plan. McTier said Baker was "hyper" and breathing hard when he returned from the robbery and put the gun back. (T199). Before the robbery Desmond Baker called a cab company twice to ensure he got a cab, and McTier said Baker wiped a bullet before placing it in the revolver. (T196-198). The phone calls as likely evidence impatience and wiping the bullet may be something the juvenile was taught or mimicked and did without forethought. Since the revolver did not discharge shells, wiping the bullet would not keep the police from finding fingerprints on a discharged shell at the scene. (R969).

The inference of the incompetencies of youth is not overcome by the trial court's injection of adult planning behavior into a cold record.

Concerning Desmond Baker's age, maturity, intellectual capacity and emotional health, the trial court found:

At the time of the offense, the Defendant was a street-wise 15-year-old male of average intelligence who regularly used marijuana and occasionally used cocaine in conjunction with his marijuana use. He was not physically or emotionally disabled and did not suffer from substance abuse impairment or mental illness. The Defendant also was an introvert with low self-esteem, poor ego strength, poor attention, and poor self-control. He was in the tenth grade at the time of the arrest and, although he had behavioral problems and had difficulty reading, he was mainstreamed in his schooling. No credible evidence was presented to support the notion that the Defendant so lacked the age, maturity, intellectual capacity and emotional health as to mitigate his responsibility for his crime.

(R398-399).

These findings contradict one another. These findings also ignore the expert evidence of Dr. McClain, who examined Desmond Baker and his records prior to and during incarceration, and determined he suffers from major depression, post-traumatic stress disorder, reactive attachment disorder, regular marijuana abuse since fifth grade, alcohol abuse, and cocaine abuse. These diagnoses are reflected in the McClain written report given to the trial court during sentencing (R1050-1051) and in Dr. McClain's testimony and unrefuted opinions. (R1060-1063). These fact findings ignore the school records in evidence from Osceola High School, showing

the child as of October 1, 1998, was emotionally handicapped, failing all his classes, was disruptive to others, needed a peer tutor or aide, and was defiant and insubordinate. (R430-440). These facts ignore Dr. McClain's unrefuted testimony that Desmond Baker's school records immediately before the offense reflect someone emotionally "sliding down a mountain or falling off a cliff." (R1058).

The trial did not consider that Baker was homeless when reviewing his background, family, home and community environment. (R399).

The trial court found the following concerning Desmond Baker's immaturity and failure to appreciate risks and consequences as impacting participation in the crime:

The available evidence in this case clearly establishes that the Defendant appreciated the risks and consequences of his actions. Prior to the murder, he had committed several violent crimes, including an armed robbery of another cab driver. The evidence also shows that the robbery that led to the murder was not committed on impulse but was the product of cool, reflective thought and detailed planning, preparation and execution. The robbery of Bockman also was part of an escalating pattern of violent criminality on the part of the Defendant and although the murder of Bockman does not appear to have been part of the Defendant's initial plan, it was always a foreseeable possibility given the Defendant's chosen mode of operation.

(R399)

The trial court determined these facts despite a jury verdict convicting the child of felony murder, which requires no intent to kill. The trial court in this finding

did not account for the unrefuted expert evidence of Dr. McClain, who testified Desmond Baker in middle school was in emotionally handicapped classes due to his in ability to control his behavior and poor impulse control, withdrawal, excessive dependency and anxiety. (R1054-1055). The child's ability to engage in the kind of reflective thought process and his knowledge of the foreseeable risks and consequences of his actions are not proved in this record and are in fact presumed not to exist for a fifteen-year-old child, in the same way such concepts and abilities exist for an adult. *Miller v. Alabama*, 132 S.Ct 2455, 2464 (2012).

The trial court found the following concerning the influence of family and peers on the child's actions:

There is no credible evidence that familial pressure or peer pressure had any significant effect of [sic] the Defendant's actions in murdering Harry Bockman or that such pressure could account for the killing.

(R400). This conclusion ignores Dr. McClain's expert testimony that Desmond Baker "was seeking to please others, if you will. That because of his excessive dependency, he was already very vulnerable, even at a younger age. But I think that it became pronounced as he was developing and then, unfortunately, alienating from his family. Even though family was there, I think he was moving away from family, partly, in dealing with some of the adolescent feelings, but also just the difficulties with the anger that he felt, difficulties with impulse control, and being more

vulnerable to peer influence.” (R1056). This finding of no evidence of peer influence is at odds with the subsequent trial court fact finding that “Defendant sought out the company of older males who were engaged in various form [sic] of criminal activity and drew inspiration from them.” (R400).

In considering Desmond Baker’s criminal history, the trial court noted only the offenses committed during the short time around the murder. (R400). The trial court failed to consider the child had no prior involvement with the police and no prior criminal history. (R400).

Concerning Desmond Baker’s amenability to rehabilitation, the trial court found Dr. McClain indicated “that the Defendant was not rehabilitated, and that he had not begun the proposed counseling. As such, the actual possibility of rehabilitating the Defendant remains unclear.” (R400). On recross examination Dr. McClain plainly stated, “I’m indicating that I certainly think he can be rehabilitated to be released from prison.” (R1085). The psychologist testified that Desmond Baker would need specific assistance in transitioning from life in prison to life outside prison. She testified that he needs counseling of a kind that is not offered in prison, but that he could still benefit from pastoral counseling, if available, and from attending NA and AA meetings. The trial court erroneously concluded the possibility of rehabilitating Desmond Baker is “unclear” because Baker, after living

all of his adult life in prison, will need supervision, counseling and to attend AA and NA meetings. The state presented no evidence Desmond Baker cannot be rehabilitated. The state cannot lawfully deprive a child of the tools for rehabilitation, such as therapy, and simultaneously continue to imprison him for not getting such tools, since to do so would be the same as imprisoning a child while depriving him of the means of showing rehabilitation, which violates *Miller* and the federal and state constitutional prohibitions of cruel and unusual punishment. *See Graham v. Florida*, 560 U.S. at 79. The 50 year sentence without review based on a finding that it is “unclear” that Baker can be rehabilitated, punishes Baker for not beginning counseling that is not offered in DOC. Such a sentence leads to the perverse consequence of imprisoning Baker for decades for lacking maturity which is then continually reinforced and ingrained by depriving him of access to the tools required to overcome it. Such punishment of a juvenile offender is unconstitutional and the very definition of cruel and unusual punishment.

CONCLUSION

Based on the arguments and authorities cited in this brief, Appellant respectfully requests that this Court reverse the sentence below and remand this matter for resentencing to a term of years less than a de facto life sentence of 50 years and which includes a mandated review hearing after fifteen years.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to Pamela Jo Bondi, CrimAppTpa@myfloridalegal.com Concourse Center #4, 3507 E. Frontage Rd. – Suite 200, Tampa, FL 33607, (813) 287-7900, on this 19th day of March, 2018.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,



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